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Court on its own motion vs. State of H.P. and ors.

CWPIL No. 2 of 2022

17.1.2022

Present: Court on its own motion.

Mr. Narender Guleria and Mr. Sumesh Raj,
Additional Advocate Generals, for the
respondents-State.

Notice. Mr. Narender Guleria, learned
Additional Advocate General appears and waives service
of notice on behalf of respondents No. 1 to 3. Notice be
issued to respondent No. 4, returnable for 21.2.2022.

2 This Public Interest Litigation has been
registered on the basis of article which appeared in
News-18, dated 16.1.2022 under the caption **“A 12 year
old died at Paragliding Site in Himachal Pradesh. His
father is now looking for answers.”**

3 The article highlights the grief of the
unfortunate parents of 12 year old boy Advik, who came
all the way from Bengaluru alongwith his parents and
younger sister to visit Himachal Pradesh.

4 On December 22, 2021, the family of
deceased alongwith another family reached the so called
site of para-gliding at around 1:30 p.m. However, they
were informed that the take off point was about 10-15
kms away and only could be reached by jeep. Since
Advik’s sister was found to be too young i.e. less than 12

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years for the adventure, therefore, she stayed back. However, Advik alongwith his parents and the other family decided to go to the site. They were made to sign a waiver that stated that the agency was not responsible for any para-gliding mishap, but nothing was mentioned about the journey to the take-off point.

5 The jeep, comprised two rows of seats under the roof and another two in the open back and is alleged to be bereft of safety accessories. As against the seating capacity of five passengers, nine passengers occupied the roofless back portion of the jeep. The driver and four para-gliding pilots who were picked up on the way, sat at the front in the enclosed space.

6 A sudden collision with a two wheeler made the driver lose control of the vehicle, as a result whereof, the jeep tumbled over into a 15 feet gorge. While everyone received grievous injuries, Advik's head hit a rock, as a result whereof he died.

7 Now through the aforesaid article, the father of the deceased raises his concern regarding the safety not only at the adventurous spot, i.e. para-gliding, but with respect to the responsibilities of the person/persons from the journey point to the take-off point. The article concludes with the following words:

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“How many Adviks will it take for the Himachal Pradesh Government to take notice?”

8 The State of Himachal Pradesh has always been a much sought after tourist destination and its importance has grown manifold during the Covid-19 pandemic. Under the given circumstances, can the State really afford to turn a nelson’s eye to the repeated mishaps without taking any remedial steps in this regard, particularly in the field of adventure sports, like Rappelling, River Crossing, Skiing, Trekking, Rock Climbing, Hot Air Ballooning, Zorbing, Balls, Rolling Balls, Water Balls, Bungee jumping and Zipline/Flying Fox, Joy Rides/Fun Parks, River Rafting, Para-gliding, Air Rafting, Aero Sports activities etc. and other allied water sports, including boating, Power/speed/motor boating, boating on house boat, leisure trip on cruise or any other activities as notified by the government.

9 Even though the complaint in this article only pertains to para-gliding, however, taking into consideration the recent mishaps, which have taken place in other adventure sports and allied adventurous activities, we deem it proper to expand the scope of this petition by including the aforesaid activities also.

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10 It would be noticed that the government has framed various Rules for regulating adventure and allied adventure sports, which are enumerated here-in-below:

- (i) The Himachal Pradesh Aero Sports Rules, 2004;
- (ii) The Himachal Pradesh River Rafting Rules, 2005;
- (iii) The Himachal Pradesh Miscellaneous Adventure Activities Rules, 2017, as amended vide Himachal Pradesh Miscellaneous Activities (Amendment) Rules, 2021;
- (iv) The Himachal Pradesh Miscellaneous Adventure Activities (Amendment) Rules, 2021;
- (v) The Himachal Pradesh Water Sports Allied Activities Rules, 2021;

11 It would further be noticed that in majority of the provisions of the Rules so framed, the technical aspects of the matter have been left to the Director, Atal Bihari Vajpayee Institute of Mountaineering and Allied Sports, Manali, Himachal Pradesh, whereas the Regulatory Committees under all these Rules invariably consists of the Deputy Commissioner(s) as the Chairman(s) and the Superintendent(s) of Police, the Sub Divisional Magistrate(s), Commandant Home Guard, Chief Medical Officer(s) of the concerned District, Executive Engineer (Mechanical) HPPWD, Deputy

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Director, Tourism and Civil Aviation, District Tourism Development Officer and in his absence, the Assistant Tourism Development Officer is to be the Secretary of such committees. In case of Aero sports, the President of Aero Sports committee has to function as the Secretary.

12 Having expanded the scope of this petition, we deem it proper to implead the following as necessary parties to the petition.

1. The Director General of Police, H.P.
2. The Director, Atal Bihari Vajpayee Institute of Mountaineering and Allied Sports, Manali.
3. The Director, Tourism and Civil Aviation, H.P.,
4. The Deputy Director, Tourism and Civil Aviation, H.P.,
5. The Director, (Health) to the Government of Himachal Pradesh,
6. The Secretary, HPPWD to the Govt of Himachal Pradesh.
7. The Commandant, Home Guard, H.P.,
8. The President, Aero Sports Committee, H.P.
9. All the Deputy Commissioner(s) and all the Superintendent(s) of Police, posted in the District Headquarters.

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13 Mr. Narender Guleria, learned Additional Advocate General appears and waives service of notice on behalf of the aforesaid respondents. He prays for and is granted five weeks' time to file reply.

14 The composition of aforesaid Regulatory Committees is mainly of the officers as mentioned above, with some minor changes here and there, but as observed above, 4-5 officials as mentioned above, are invariably the members of such committees. Therefore, the responsibility to ensure that the provisions of these acts (supra) are strictly followed in their letter and spirit rests on the shoulders of the concerned Deputy Commissioner(s) and Superintendent(s) of Police.

15 Despite the composition of these Regulatory Committees, the number of mishaps and accidents in these adventure sports and allied activities, have not decreased. The most evident reason for the same appears to be the lack of over all monitoring of the adventurous activities by those at the helm of affairs.

16 It has been noticed that the service providers ,i.e. the operators, guides, instructors etc have failed to adhere to basic safety measures in providing safety covers to their clients, who are total strangers to the adventure sports. It could so happen that majority of

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these persons are trying the adventure for the first time, therefore, it is incumbent upon the operators to provide properly trained and qualified instructors and guides in the sports.

17 In majority of the cases, the instructors and trainers may be adhering to the basic guidelines and Rules, but many guides/instructors still feel that Rules does not apply to them, because they are far too experienced. There really appears to be no check or any periodic inspection of the staff, equipment, instruments etc. of these operators.

18 Going by experience, it is noticed that even helmets, harnesses, hooks, which are extensively used in the adventurous activities are not at all inspected, what to talk of these being periodically inspected. In many of the cases, even the license, qualifications etc. of the operators probably are not even looked into, let alone being verified. Therefore, it is high time that such practices must be dis-continued and stopped forthwith.

19 In the given facts and circumstances, we deem it proper to constitute a team under the chairmanship of the concerned Secretary, District Legal Service Authority and the following shall be the other members of the team:

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(i) The Director, Atal Bihari Vajpayee, Institute of Mountaineering and Allied Sports, Manali,

(ii) SDMs,

(iii) DY.S.Ps.,

(iv) Executive Engineer HPPWD,

(v) The President, Water Sports Association Member; in case of water sports.

(vi) Deputy Director Tourism and Civil Aviation or his/her representative

(vii) any other officer, as specified in the Rules.

Ordered accordingly.

20 The committee shall personally and physically verify the following documents:

- i. Registration and license of the operators and period of validity thereof.
- ii. details of all Guides and Instructors including copies of certifications and record of their experience, copies of all Permits and Permissions for the proposed adventure sports registration,
- iii. copies of identification documents, Insurance cover for all participants, guides and instructors;
- iv. copy of Standard Operating Procedure (SOP);
- v. and emergency Action Plan for the particular adventure sport to include arrangements for emergency lift and evacuation of clients in case of mishap.

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- vi. Specialization of activities or activity of the operator(s) for which it has been registered like Rappelling, River Crossing, Skiing, Trekking, Rock Climbing, Hot Air Ballooning, Zorbing, Balls, Rolling Balls, Water Balls, Bungee Jumping and Zipline/Flying Fox, Joy Rides/Fun Parks, or any other such activity being carried out in the tourist destination(s), hotels, resorts, camp sites, etc.
- vii. The details of the adventure equipments as well as specialized trained staff in First Aid/Cardio Pulmonary Resuscitation along with certificates evincing that they have successfully completed basic course in first aid from Government Hospital or any Recognized institution or certificate course conducted by the Adventure Tour Operators Association of India, who is otherwise competent to impart first aid training in the use of stretchers.
- viii. The documents in support of adventure tour operator having a minimum of two experienced and well qualified executive staff under its direct employment. Either Owner or Director himself or their operations-chief employed is well qualified in adventure activity which the operator wants to pursue.
- ix. The qualification must be duly certified by Atal Bihari Vajpayee Institute of

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Mountaineering and Allied Sports, Manali, Himachal Pradesh or Himalayan Mountaineering Institute, Darjeeling or Nehru Institute of Mountaineering, Utrakashi or Jawahar Institute of Mountaineering and Winter Sports Pehlgam or any other recognized National or State level Institute in the activity with at least practical experience of two years in concerned activities.

- x. Documentary proof that the operator(s) has covered risk factor of the Client/guides/instructors by insurance to cover accidental deaths, loss of limbs and/or eyes and permanent/partial disability and emergency evacuation.
- xi. The Guide/Instructor is 21 years of age and medically fit as certified by the Medical Officer. He/she holds a valid basic First Aid and Cardio Pulmonary Resuscitation (CPR) Certificate or equivalent Certificate issued by Medical Officer of the government hospital or any recognized institution.
- xii. The Guide/Instructor has clearly indicated, at the conspicuous place, its specialization of activity or activities, for which client wants to register like Rappelling, River Crossing, Skiing, Trekking, Rock Climbing, Hot Air Ballooning, Zorbing, Balls, Rolling Balls, Water Balls, Bungee

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Jumping and Zipline/Flying Fox, Joy Rides or any other allied adventure sports.

21 As regards sports covered under the Himachal Pradesh Aero Sports Rules, 2004, the team, in addition to the aforesaid, shall also inspect and certify:-

- (i) the equipments of the operators are internationally homologated design, safety parachute, helmets, two way radio communication equipment, instrument panel (altimeter variometer/compass/air speed indicator) and general positioning system, ground support and retrieval vehicle, insurance for operators or insurance for use of helicopter for casualty evacuation;
- (ii) whether the operator has been carrying with him/her on site two well-equipped first aid kits consisting of triangular bandages, sterile pads, gauze roller bandages, pressure bandages, first aid adhesive tape, splints, scissors, as a bare minimum.
- (iii) The operator has two aero sports qualified guides for the guidance of participants and the persons operating the air raft having the requisite qualifications and experience prescribed under these Rules and have equipment individually for safety measures on the same lines as are required for participants.

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- (iv) The operator has guides not less than 18 years of age and all guides are well trained in aero sport and rescue techniques.
- (v) The operator has necessary equipments, medical facilities and other facilities and safety measures, during the operation as envisaged under Chapter-III of the Aero Sports Rules, 2004 and Himachal Pradesh and complies with the Himachal Pradesh Miscellaneous Adventure Activities Rules, 2017 .
- (vi) The aero sport operations are finished one hour before sunset or 6 PM, whichever is earlier.

22 As regards river rafting, the Committee shall inspect and verify as to whether the operator has necessary equipments, medical facilities and other facilities as also safety measures, during the operation and complies with Rules 9, 10, 11, 12, 13 and 14 of chapter III of the River Rafting Rules, 2005.

23 As regards water sports, the Committee shall inspect and verify as to whether the operator has necessary equipments, medical facilities and other facilities as also safety measures, during the operation and complies with Rules 13, 14 and 15 of Chapter IV of the Himachal Pradesh and Water Sports and Allied Activities Rules, 2021 and the steps taken to ensure that participants comply with Rule 17 relating to the conduct of the participants.

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24 Insofar as animal safari/rides in the State of Himachal Pradesh are concerned, it shall be ensured that no cruelty is meted out to the animals and the operator does not violate the provisions of the Indian Wildlife (Protection) Act and each of such animals including horses and yaks etc, shall be medically examined by a veterinary doctor.

25 The inspections be carried out positively before 6.2.2022 and compliance report to this effect, in a tabulated form, evincing compliance of the various provisions of the aforesaid Rules be filed by the concerned Secretary, District Legal Services Authority. However, if during the course of inspection, it is found that the adventure sports activities are being conducted in total violation of the rules without there being valid registration or license, as the case may be, then the same shall be stopped forthwith on the direction of the concerned Secretary, District Legal Services Authority and report to this effect shall also be submitted in the aforesaid manner.

26 The Public Relation Officer of this court is directed to contact News 18 channel and request the channel to provide complete particulars of the father of Advik i.e. Sh. Rishabh Tripathi and if possible, get his e-mail, whatsapp number so that he may be informed not only about the registration of the case, but also invite his

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inputs and suggestions, for which separate link to fair proceedings on virtual platform be provided to him on the next date of hearing.

27 List on 21.2.2022.

28 A copy of this order be sent by the registry to the Member Secretary, Himachal Pradesh State Legal Services Authority for compliance, who, in turn, shall circulate copy of this order to all the Secretaries, District Legal Services Authority, for compliance. It shall be the responsibility of the Director, H.P. Tourism and Civil Aviation Department and the concerned District Tourism Development Officer to provide all logistic support, copy of the rules/regulations, all other relevant records including applications submitted by the operators and also furnish details of those sites and operators where no permission or limited permission has been granted, yet adventure sports activities are being carried out. The committee shall be free to invite public objections/suggestions and conduct public hearing, if so warranted.

(Tarlok Singh Chauhan)
Judge

(Satyen Vaidya)
Judge

17.1.2022
(kalpana/pankaj)