

Court on its own motion vs. State of H.P. & Ors.

CWPIL No. 2 of 2022

18.11.2022 Present: Mr. B.C. Negi, Senior Advocate, as Amicus Curiae with Mr. Nitin Thakur, Advocate, for the petitioner.

Petitioner No. 2 through Video conferencing.

Mr. Ashok Sharma, Advocate General with Mr. Rajinder Dogra, Senior Additional Advocate General, Mr. Vinod Thakur, Mr. Shiv Pal Manhans, Addl. AGs, and Mr. Bhupender Thakur, Deputy Advocate General, for the respondents-State.

Mr. Ajay Sharma, Senior Advocate with Mr. Atharv Sharma, Advocate, for respondent No. 4.

Mr. Avinash Negi, Director, ABVIMAS, Mr. Amit Kashyap, Director, Tourism department, Mr. Vijay Kumar, Special Secretary, Tourism, Mr. Saleem Azan, SDM, Baijnath, Mr. L.M. Sharma, Dy. SP, Baijnath, Mr. Ran Vijay, SADA are in person.

On 11.11.2022, the Court passed the following order:-

“We have heard the matter for a considerable length of time. We really wonder why the State Government while preparing and notifying the Himachal Pradesh Aero Sports Rules 2022 framed under the power conferred by Section 64 of the Himachal Pradesh Tourism Development and Registration Act, 2022 to regulate the Paragliding/Aero Sports Activities have not followed in principle the draft National Aero Sports Policy (NASP Act, 2022) to make Aero Sports, affordable and assessable.

That apart, we completely fail to understand as to why there have been repeated causalities, more particularly, at Bir and we also have do not any information whatsoever as to whether any inquiry into such incident have been carried out by the respondents-Department.

Therefore, let responsible officer well conversant with the subject in question remain present in the Court alongwith relevant record of the last 15 days of the Paragliding Site at Bir, on the next date of hearing for the perusal of the Court.

List on 18.11.2022 at 2:00 p.m.”

2. As regards the first query, we find the explanation offered by the State to be not only plausible but also sustainable that the provisions of the National Aero Sports Policy (NASP, Act 2022) could not have been incorporated in the Himachal Pradesh Aero Sports Rules, 2022 as these rules were formulated and came into force prior to the publication of the draft National Aero Sports Policy (NASP, Act 2022). However, Mr. Amit Kashyap, Director, Tourism and Civil Aviation, Himachal Pradesh informs the Court that these rules are being re-looked into and as far as possible would be brought in consonance with the provisions of the draft National Aero Sports Policy.

3. We, however, noticed that though the aforesaid rules have come into force w.e.f. 20.4.2022 but yet the State has not constituted the committees in terms of Rules 6 and 8 thereto. Mr. Vijay Kumar, Special Secretary, Tourism assures the Court that such Committees shall not only be constituted but would be fully functional within one month from today. His statement is taken on record.

4. Mr. Amit Kashyap informs the Court that the department is exploring the possibility of providing various forms of tracking system so as to track the pilots who may unfortunately meet with an accident or go missing. In addition thereto, the department would also developing the mobile application (App.), which in addition to ensuring that none of the pilots over burdened but also ensure that the equipments are not used beyond their life span. Mr. Avinash Negi, Director, ABVIMAS informs the Court that National Paragliding School under the Atal Bihari Vajpayee Institute of Mountaineering and Allied Sports would in all probabilities made operational w.e.f. 01.04.2023.

5. We have also received certain sets of suggestions. The suggestions from the operators are as under:-

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- “1. Concerned district wise Aero club's should be formed to Regulate paragliding.
2. One Time pass should issued to cross country pilots after confirming their require qualification.
3. Surprise inspections including drug penal test should be done time to time by regulatory body and concerned aero sports clubs/association.
4. Do's & Don'ts Safety workshops, Rescue and first aid courses should be given to paragliding pilots.
5. Take off marshal and landing marshal should be on paragliding site alongwith home guards personnel. Provision for payment of such official should be made with certain authority for levying fine to defaulters. They should maintain day to day data of paragliding flights and submit the same with concerned regulatory authority of particular sites.”

6. Whereas, the second set of suggestions is as under:

- “1. We would like to draw your kind attention about today's case CWPII No. 2 of 2022. We came to know that Court Demand the information regarding paragliding accidents and full information about paragliding activity in Bir Billing.
2. As everybody knows (BPA) Billing Paragliding Association is helping the pilot

from 2002. But official registration of BPA is 2006.

3. From our record there is around 800 foreigner pilot visits every year for flying except Corona time and more than 250 pilots all over the India come to Bir Billing every year.

4. From 15 Sept. onwards to till date the paragliding record is as follows:

(i) For solo paragliding:

Number of foreigner pilots 800

Number of Indian pilots 250

Number of students who are learning paragliding 250

And the fact is that every one of them register themselves in the tourist information center at Bir with all legal formalities including fees but whenever there is any accident happens we comes to know from the newspaper that he is not registered with the department.

And whenever our rescue team of the association wants to know the information about the accidental case then there is no response from the department. They denied all the things and gave excuses we do not have any information about them.

Department charges 1000 rupees from solo pilots from an week and provides zero facility.

This the data which is verified by BPA.

(ii) For the Tendem Paragliding the information is as follows:

8500 flying since September 15, 2022 till 15 November.

Army competition also held in October Last and we do not have the information about them.

5. About 75 Rs.:

SADA is charging Rs. 75 on each ride & in return they are giving nothing. In name of Rs. 75 they said that we will provide rescue, retrieve & all related facility of paragliding including Toilet, take of clearance etc. But in ground we got nothing. Fresh accident are example of failure.

6. We completely failed to understand as to why has been repeated casualty more particularly in Bir Billing.

7. Overloading of traffic on takeoff may also cause of small accident. There is no system maintained by department on takeoff and landing to regulate the procedure of paragliding like Air Traffic Control system. There is no qualified person on Takeoff & landing site to guide visitor pilot & to tourists to avoid accident.

8. Repeated causality is lack of SADA & in charge of paragliding or issuing authority. There is no communication between pilot & administration. In case of accidents misunderstanding between pilot, helping pilot, administration & BPA cause more trouble & in charge paragliding not helping any pilot, they just charging the fee & give nothing back. We BPA already given lot of suggestion to department to avoid such accident time to time. The recent accident of NAVAL pilot Mr. Viven

was due to lack of instructor & knowledge of pilot because said pilot has recently completed course basis course, but he was flying Advance glider like a teenagers has recently learn cycling but see dream to drive racing bike & it surely will cause accident.

9. The evacuation of Mr. Viven had done by BPA pilot only. No one from SADA was there at that time. Even employees of SADA (those who collect receipt) were there but they didn't do anything.

10. For flying there is no digital detail of visitor pilot & of local Solo pilot. In case of accident department said that they don't have information & it is very difficult for BPA to make rescue immediately cause of no digital record. 95% of rescue has done by BPA since 2002. Every where in the world paragliding is fully digital and providing lot of infrastructure to pilot & this cause less accidents. But in India as explained before that there is no digital record. We have suggest lot of Safety measures to avoid accident as per our knowledge, but sorry to say that we don't have authority to implement such suggestions.

11. Department is not giving anything like- No Map, No Record Gear, No guideline, No Medical & even no basic facility.

12. No. of accident (Small & Major) in recent 2 months are 11 in which there were 2 casualty (Both army person) rest 8 crashed pilots were evacuated by BPA (Record already submitted in office of

Deputy Commissioner, Kangra).

13. SADA is already charging green tax from last 5 years. Before this they said that they will provide Basic infrastructure in Bir Billing area. But after 5 years they didn't spent any money for its development.

14. Over all SADA is department who charge money in name paragliding & till said that we have no information related to paragliding. For further & necessary action please."

7. The respondents are directed to consider these suggestions and file their response(s) on or before the next date of hearing.

8. List on **16.12.2022**, when the records of paragliding for the last five years be produced by the concerned authorities.

Copy of this order be supplied to the petitioner.

(Tarlok Singh Chauhan)
Judge

(Virender Singh)
Judge

November 18, 2022
(vs)