

Sea Link Adventures And Others Vs Lieutenant Governor & Others

Court: Calcutta High Court

Date of Decision: April 10, 2019

Hon'ble Judges: Tapabrata Chakraborty, J

Bench: Single Bench

Advocate: Anjili Nag, Arul Prasanth

Final Decision: Disposed Off

Judgement

The present writ petition has been preferred challenging inter alia an order of suspension dated 26th March, 2019 issued by the Deputy Director

(Tourism), Andaman and Nicobar Administration.

Ms. Anjili Nag, learned advocate appearing for the petitioners submits that M/s Sea Link Adventures, being the petitioner no.1 (hereinafter referred to

as the petitioner firm) is a partnership firm conducting sea walk/helmet dive activities at Elephanta beach, Swaraj Dweep, upon obtaining permission

from the Director (Tourism). Such permission was extended from time to time. The last extension was issued by a memorandum dated 31st August,

2018 till 30th June, 2019 subject to the conditions specified in the said memorandum and the guidelines framed vide memorandum dated 12th April,

2014. The petitioner nos. 2 to 5 are the partners of the petitioner no. 1. On 25th March, 2019, one Atul Lakhiani approached the petitioners for sea

walk. He was made aware of the risks involved and thereafter he signed a declaration, as would be explicit from the document annexed at page 73 of

the writ petition. The said person successfully completed the sea walk activities and thereafter he was left at the shore absolutely fit and perfect.

Subsequently, the petitioners came to learn that the said person again went for a swim and fainted thereafter. Surprisingly on the very next date, i.e.,

26th March, 2019 the impugned notice was issued suspending the permission granted to the petitioner firm with immediate effect till further order. On

the self same date, the respondents published a notice in a local newspaper intimating that the Elephanta beach at Swaraj Dweep had been closed for

tourists with immediate effect till further orders.

Drawing the attention of this Court to clause 12 of the guidelines, Ms. Nag submits that the order of suspension could have been issued only after due

enquiry on any complaint lodged and the tenure of such suspension can be of fourteen days in case of any serious complaint/third complaint. The

petitioner firm was never intimated about any complaint and no enquiry was conducted and without even granting an opportunity of hearing to the

petitioners, the impugned order was abruptly issued though on the part of the petitioners there had been no breach of the guidelines. Such action is ex

facie violative of the principles of natural justice. The impugned order is cryptic and the undue haste towards issuance of the impugned order renders

the steps taken to be arbitrary. The maximum tenure of such suspension even if the same has been issued on the basis of any complaint can be for

fourteen days. The said period has already expired and as such appropriate directions needs to be issued to quash the order of suspension.

She contends that a statutory authority can act only in the manner stipulated in the statute. The guidelines do not provide for any indefinite suspension.

Even after expiry of the maximum period of fourteen days, the order of suspension has been continued and such action being violative of the

guidelines is non est. The employees of the petitioner firm have been deprived of their sole source of livelihood. In support of the arguments advanced,

reliance has been placed upon the judgments delivered in the cases of Somesh Jana v. State of West Bengal, Indo-Foreign (Agent) Pvt. Ltd. Vs.

Union of India and State of Uttar Pradesh & others Vs. Ashok Kumar Nigam, reported in 2013(3) SCC 372.

Mr. Prasanth, learned advocate appearing for the respondents submits that in view of the unfortunate incident of death, the respondents took

immediate steps to ascertain as to whether the safety norms are being maintained by the operators and to prevent such incidents a circular was issued

declaring that the Elephanta beach at Swaraj Dweep would be closed with immediate effect until further orders. A Committee was constituted

thereafter to conduct an inspection. Such inspection was conducted and report was prepared by the said Committee on 5th April, 2019. In continuation

of the circular dated 25th March, 2019, a further memo was issued on 1st April, 2019 observing inter alia that "Activities like snorkeling, scuba

diving, sea walk i.e. under water activities shall continue to be closed till the safety norms being followed by the operators are assessed by the

Committee." Let the copies of documents, as produced be kept on record. Copies of the same were handed over to Ms. Nag in course of hearing.

Mr. Prasanth submits that on the basis of the inspection report, as furnished, a show cause notice would be issued to the petitioner firm and a fresh

decision would be taken as to whether the petitioner firm can be allowed to resume its activities.

He also informs this Court that there are other operators apart from the petitioner, whose activities have also been stopped by the respondents for the

unfortunate incident.

Ms. Nag, in reply, denies that the respondents have suspended the activities of any other operator in the concerned beach.

Indisputably, an unfortunate incident occasioned on 25th March, 2019 when a tourist, who took part in the recreational activities, expired. A complaint

was lodged by the widow of the deceased on 25th March, 2019 itself alleging negligence on the part of the petitioner firm. The said complaint was

treated as FIR and a criminal proceeding has been initiated. The post mortem report has also been produced before this Court dated 26th March, 2019

wherein in answer to a query "Was it triggered by sea walk?" it was stated that "Yes. Possible. 59 years, obese, known hypertensive,

hypothyroidism, liver disease and asthma". Let the said post mortem report, as produced, be kept on record.

The penalty clause upon which reliance has been placed by Ms. Nag runs as follows:-

"12. Penalty clause:

In the event of any breach of terms and conditions herein contained by the operator or receipt of any complaint against the operator which upon due

enquiry if found to be valid, besides action as per law, the department may impose fines as follow:-

a) Fine of Rs.1000/- on first violation of complaint received and found correct.

b) Fine of Rs.10000/- on second complaint/violation of terms and conditions laid down in the guidelines.

c) Suspension of operation for 7 or 14 days in view of serious complaint/third complaint."

As per the said clause a suspension order can be passed in the event of any breach of terms and conditions by an operator on receipt of any complaint

and upon conducting an enquiry, the authorities can either impose fine of Rs.1000/- or Rs.10000/- or can direct suspension of operation for seven or

fourteen days in view of serious complaint/third complaint "besides action as per law".

In the guidelines it has been categorically stated that the operators have to observe zero tolerance policy. In view of the paramount consideration to

ensure the safety and security of the tourists, steps have been taken by the respondents to eliminate all possibilities of recurrence of any such

unfortunate incident. The judgments relied upon by the petitioners are distinguishable on facts inasmuch as no issue of safety and security of human

life was involved in the same.

On general principles, an authority has a right to suspend and such suspension is co-terminus with the enquiry procedure. In the instant case, enquiry

has been conducted and the report has been obtained. Mr. Prasanth also submits that on the basis of the report, a show cause notice would be issued

to the petitioner.

The respondents have the responsibility to maintain strict surveillance so that no life is lost in course of the activities of snorkeling, sea walk, sea diving

etc. No mala fide can be imputed to the actions of the authorities warranting any interference. However, since an order of suspension cannot operate

for an indefinite period and as an inspection has already been conducted and a report has been prepared, the impugned order needs to be revisited on

the basis of the said report.

In the said conspectus and in view of the submission of Mr. Prasanth, this Court directs the respondent no.3 to issue a show cause notice to the

petitioners within a period of ten days from date and to revisit the earlier decision towards suspension, upon granting an opportunity of hearing to an

authorized representative of the petitioner firm and to pass a reasoned order and to communicate the same to the petitioners within a period of ten

days thereafter.

With the above observations and directions, the writ petition is disposed of.

There shall be, however, no order as to costs.

Urgent certified copy of this order, if applied for, be supplied to the parties forthwith upon compliance of usual formalities.