

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/WRIT PETITION (PIL) NO. 118 of 2020**

=====

AMIT MANILAL PANCHAL

Versus

STATE OF GUJARAT

=====

Appearance:

PARTY IN PERSON(5000) for the Applicant(s) No. 1

MR KAMAL TRIVEDI, ADVOCATE GENERAL and MS MANISHA L. SHAH,
GOVERNMENT PLEADER for the Opponent(s) No. 1,2

=====

CORAM: HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH

and

HONOURABLE MR. JUSTICE J.B.PARDIWALA**Date : 17/08/2020****ORAL ORDER****(PER : HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH)**

1 This petition under Article 226 of the Constitution of India framed as a Public Interest Litigation has been filed by a practicing Advocate of this High Court Shri Amit Manilal Panchal.

2 We have heard the petitioner in person, Shri Kamal Trivedi, learned Advocate General and Ms. Manisha L. Shah, learned Government Pleader for the State respondent Nos.1 and 2.

3 Issue **notice** returnable on 30.09.2020. Ms. Manisha L. Shah, the learned Government Pleader waives service of notice on behalf of the State respondent Nos.1 and 2. The petitioner is permitted to serve respondent Nos.3 and 4 through their official emails and also through their Standing Counsel within three days.

4 The reliefs claimed by means of this Public Interest Litigation are stated in para 12 (A) to (E). The same are reproduced herein below:

“[A] Direct the Respondent Nos.1, 2 and 3, their officers, agents, servants, etc., to take steps forthwith in compliance of the directions issued by this Honourable Court in the judgment at Annexure-B – Lok Adhikar Sangh v. State of Gujarat and Others, reported in 2001 SCC OnLine Guj 95 : (2002)43 (2) GLR 1669, herein and also take steps forthwith in compliance with the directions issued by the Honourable Supreme Court of India in Paragraph No.47 of the Judgment at Annexure-D – Avinash Mehrotra v. Union of India and Others, reported in (2009)6 SCC 398;

[B] Direct the Respondent Nos.1, 2 and 3 to ensure that posts in the AFES and other Fire Brigade Departments in the Municipal Corporations in the State of Gujarat, are filled in at the earliest so as to be in a position of readiness to prevent any calamity in the event of any disaster, including incidents of fire like the one which took place in the early morning at 06.08.2020, at Shrey Hospital in Ahmedabad.

[C] Direct the Respondent Nos.1, 2 and 3 to forthwith acquire adequate disaster management infrastructure and proper fire fighting and rescue equipment, as required in the National Building Code of India at Annexure-H, so as to be

able to mitigate any disaster, either man-made natural, in public interest in the State of Gujarat and place it at the disposal of the respective Fire Brigade Department of the respective Municipal Corporations in the State of Gujarat.

[D] Be pleased to direct payment of reasonable and adequate compensation to the bereaved families of the victims and also to the injured in the aforesaid fire, of 06.08.2020, at Shrey Hospital in Ahmedabad.

[E] Take appropriate action against the person/s found accountable and responsible for the untimely and unfortunate deaths in the aforesaid fire incident of 06.08.2020, at Shrey Hospital at Ahmedabad and be pleased to direct the Respondent No.1, his officers, agents, servants, etc., to recover the amount of compensation from the said persons held to be accountable, as arrears of Land Revenue, considering that it would be in Public Interest to prevent utilization of tax payers money towards grant of interim compensation by the State of Gujarat.”

4.1 Further, in para 12(F) and its sub-paragraphs, interim directions have been sought, which are reproduced below:

“[F] Pending the admission, hearing and final disposal of this Writ Petition, Your Lordships may be pleased to:

[i] Call for a report from the Respondent No.1 of the incident which led to the aforesaid fire;

[ii] Direct the Respondent Nos.3 and 4 to file a status report immediately with regard to the grant of No Objection Certificate and which are existing on date and to also place on record the buildings which are functioning without a No Objection Certificate having been issued by the AFES and other Municipal Corporation in the State of Gujarat, along with Buildings without Building Use Permission before this

Honourable Court, within a period of 7 days including No Objection Certificate issued to High Rise Building and Special Buildings in the State of Gujarat.

[iii] Direct the Respondents to ensure that No Objection Certificate by the concerned owner/occupier who is required to procure the same, is obtained from the AFES and other Corporations in the State of Gujarat, for occupation of the building in question and for carrying out permissible activities in accordance of law, within a period of 4 weeks from the date of passing of the Order by this Honourable Court, or within such time as this Honourable Court finds proper;

[iv] Direct the Respondent No.3 and 4 to produce a report of the sanctioned posts in the AFES establishment, and also the number of posts which are filled up against the sanctioned posts and also to indicate the number of vacancies existing in the entire FES department of the Respondent No.3;"

5 A perusal of the reliefs claimed clearly reflects the unfortunate incident of fire at a COVID Designate Hospital viz. SHREY Hospital in Ahmedabad on 06.08.2020, in which 8 COVID patients in the ICU lost their lives, which has triggered filing of this petition. The relief clauses further urge that the petitioner has raised a much wider cause in public interest which relates to the statutory provisions relating to fire fighting equipment, No Objection Certificates in buildings which compulsorily require a No Objection Certificate from the Fire Department, installing necessary fire safety equipment in all buildings covered by the 2013 Act which include high-rise

buildings, hospitals, office complexes, schools, malls, etc.

6 Shri Panchal, at the outset, drew our attention to a judgment of this Court in the case of **Lok Adhikar Sangh vs. State of Gujarat and Others reported in AIR 2002 Guj. 59**, more particularly, para 69 thereof wherein the Division Bench made all the interim directions issued during the pendency of the petition absolute and accordingly disposed of the matter. We reproduce para 69, which reads as follows:

“69. In the result, having considered all the pros and cons of this matter and having heard the learned advocates in detail on various occasions, we intend to dispose of this petition by making the following interim directions absolute:

(1). In all high rise buildings, fire safety measures are to be provided keeping in mind the provisions made in BMPC Act, Gujarat Town Planning & Urban Development Act and specific provision for fire protection systems in the byelaws under Chapter III of the General Building Requirements and National Building Code as well as other provisions which may be applicable.

(2). So far as the existing but unoccupied buildings and/or the buildings under construction are concerned, Ahmedabad Municipal Corporation and AUDA are directed that they shall not grant NOC or Building Use Permission unless and until sufficient fire protective system is installed and made operational by them. These authorities shall strictly enforce the provisions relating to fire protective system before granting occupation certificate.

(3). It is further directed that henceforth AMC or AUDA shall not supply essential services to any new building unless and until the building is erected in accordance with law and BU Permission is granted by the competent authority.

(4). Ahmedabad Electricity Company shall not supply electric connections to any building unless BU Permission issued by the AMC and/or AUDA as the case may be is produced before it. If the builder / developer is found indulging in malpractice of supplying electricity for residential use from the connection given to the builder / developer for construction purpose and thereby permit illegal occupation, such connections shall be disconnected and legal action as permissible under the relevant law shall be initiated against such builders / developers.

(5). So far as the existing and occupied buildings are concerned, the Court has already given directions in this regard in its earlier Order dated 25.07.2000 and the authorities are directed to follow that directions.

(6). AMC and AUDA shall carry out periodical as well as surprise checkings of the fire safety systems provided in high rise buildings, and if the same are not found operational or in working Order or if the builders / developers / owners / occupiers have made only a show of providing fire safety measures, they shall be called upon to set right the system at the earliest possible but not later than 21 days, and on failure to set right the fire safety systems, essential supplies to such buildings such as drainage, water, electricity etc. shall be disconnected.

(7). Regarding Cinema Halls, the concerned respondent authorities shall continue to monitor cinema halls and no renewal of license shall be granted unless adequate protective measures have been provided by them and the same are operational and in working condition. The officers of the Corporation shall inspect, verify and test the fire safety measures at such intervals, in consultation with the head of Fire Brigade Department and shall make a note in the inspection-register or diary to be maintained in each

cinema hall. Over and above this, there should be surprise checking also. If the safety measures are inadequate or not functioning, the concerned respondent authorities shall take immediate action including suspension of license and closure of the cinema halls till the systems are made fully operational.

(8). So far as Factories are concerned, the concerned respondent authorities shall keep in mind Section 38 of the Factories Act, 1948 read with Rule 66.A of the Gujarat Factories Rules, 1963 and other relevant provisions and shall insist on compliance with those provisions.

(9) The State is directed to install adequate fire safety measures in the Government high-rise buildings. In its Order dated 7.8.2000, the Court has recorded the assurance given by then Additional Advocate General to the effect that without constraint of time and finance, fire safety measures shall be provided. State to report within 21 days about the fire safety measures in its buildings.

(10). The State, AMC and AUDA shall initiate disciplinary proceedings against its employees / servants / officers if it is found that (i). due to their dereliction of duties fire safety measures are not provided in high-rise buildings, and (ii). essential supplies are provided to buildings without adequate fire safety measures.

(11). Before issuance of Building Use Permission, the Commissioner or the Chairman of AUDA, as the case may be, shall record satisfaction about the fire safety measures provided as per the requirement and its operation, and shall not permit anyone to occupy the buildings till such satisfaction is recorded and BU Permission is issued."

6.1 Shri Panchal further drew our attention to a judgment of this Court in the case of **Avinash Mehrotra vs. Union of India & Ors. reported in [(2009)6 SCC 398]** wherein

the Supreme Court issued directions to all the State Governments and Union Territories to ensure that the buildings of all the Government and private schools are safe and secure from every angle and are constructed according to the safety norms incorporated in the National Building Code. The directions contained in paras 47 and 48 of the aforesaid report are reproduced below:

“47. In view of what happened in Lord Krishna Middle School in District Kumbakonam where 93 children were burnt alive and several similar incidences had happened in the past, therefore, it has become imperative to direct that safety measures as prescribed by the National Building Code of India, 2005 be implemented by all government and private schools functioning in our country. We direct that:-

(i) Before granting recognition or affiliation, the concerned State Governments and Union Territories are directed to ensure that the buildings are safe and secured from every angle and they are constructed according to the safety norms incorporated in the National Building Code of India.

(ii) All existing government and private schools shall install fire extinguishing equipments within a period of six months.

(iii) The school buildings be kept free from inflammable and toxic material. If storage is inevitable, they should be stored safely.

(iv) Evaluation of structural aspect of the school may be carried out periodically. We direct that the concerned

engineers and officials must strictly follow the National Building Code. The safety certificate be issued only after proper inspection. Dereliction in duty must attract immediate disciplinary action against the concerned officials.

(v) Necessary training be imparted to the staff and other officials of the school to use the fire extinguishing equipments.

48. The Education Secretaries of each State and Union Territories are directed to file an affidavit of compliance of this order within one month after installation of fire extinguishing equipments.”

6.2 Further, our attention was drawn to the Gujarat Act No.11 of 2013 called the Gujarat Fire Prevention and Life Safety Measures Act, 2013 enacted with the object, which reads as follows:

“WHEREAS it is expedient to make effective provisions for the fire prevention, safety and protection of life and property in various types of buildings and temporary structures of shamiyana or tents or mandap likely to cause a risk of fire, in different areas in the State of Gujarat, fire service fee, constitution of a special fund and for the purposes connected therewith or incidental thereto;”

6.3 Further, attention of this Court was drawn to the Rules framed under the Act in exercise of powers conferred by Section 57 of the 2013 Act, called the Gujarat Fire Prevention and Life Safety Measures Rules, 2013.

6.4 Shri Panchal drew our attention to the regulations framed by the State Government in exercise of powers conferred by subsection (2) of Section 18 of the 2013 Act.

6.5 Shri Panchal further drew our attention to a very interesting feature which according to him emerges from a notification dated 19.08.2014 published in exercise of powers conferred by subsection (3) of Section 1 of the 2013 Act. According to Shri Panchal under Entry No.23 its content would exclude eight municipalities in the State from the purview of the 2013 Act. Shri Panchal further submitted that the State needs to explain as to why the eight municipalities in the State of Gujarat have been excluded from the purview of the 2013 Act.

6.6 Our attention was next drawn towards certain newspaper reports which convey that 'leave aside other buildings which required No Objection Certificate from the fire Department in the city of Ahmedabad out of 2022 hospitals only 91 have No Objection Certificates from the Fire Department'. This news is carried in a reputed English daily having wide circulation not only in the city and State, but nation wide viz. Times of India

dated 07.08.2020. There are other news reports also which we would not like to refer to at this stage. It is also submitted by Shri Panchal that even SHREY Hospital where the unfortunate incident took place on 06.08.2020 did not have the No Objection Certificate from the Fire Department.

6.7 Shri Panchal lastly submitted that the respondent State as also the Ahmedabad Municipal Corporation should be called upon to answer all the issues raised in the petition by way of a detailed counter affidavit and in the meantime the directions may be issued as prayed for in para 12(F) of the petition.

7 Shri Kamal Trivedi, the learned Advocate General, submitted that insofar as the incident at SHREY Hospital is concerned, the Government has already taken appropriate steps to provide assistance to the dependent family members of the deceased. He also informed that a Commission has also been constituted to inquire into the unfortunate incident at SHREY Hospital. However, insofar as other issues raised are concerned Shri Trivedi prays for reasonable time.

8 In view of the above, the State respondents as also

the Ahmedabad Municipal Corporation are directed to file their detailed counter affidavits to the averments contained in the petition and to place on record all the necessary information as may have been prayed for in this petition or as may be averred in the petition. We make it clear that the Court requires a thorough and complete counter affidavit. We also make it clear that we are not restricting the scope of the petition to hospitals only, but it would encompass all the buildings which require fire safety equipment to be necessarily installed as per the Act, Rules and Regulations and its use to be permitted only after issuance of No Objection Certificate by the concerned Fire Department. The State will provide all such necessary information in this regard. For the said purpose, six weeks time is granted with a clear direction that no further time would be granted. The information would be with regard to the State of Gujarat and not limited to Ahmedabad.

9 Let this matter be listed on 30.09.2020.

10 We also make it clear that in the meantime the State Government shall continue with its efforts of taking whatever measures as may be necessary to ensure for full compliance of

the provisions of the Act, Rules and Regulations with regard to fire fighting equipment to be installed in all the buildings.

(VIKRAM NATH, CJ)

DRASHTI K. SHUKLA

(J. B. PARDIWALA, J)