

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/WRIT PETITION (PIL) (WRIT PETITION (PIL)) NO. 34 of 2024****With****R/WRIT PETITION (PIL) NO. 118 of 2020**

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SUO MOTU**Versus****STATE OF GUJARAT & ORS.**

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Appearance of WPPIL/34/2024:

MR DM DEVNANI(5880) as LD AMICUS CURIAE

SUO MOTU for the Applicant(s) No. 1

G H VIRK(7392) for the Opponent(s) No. 11,12,13,4,5,7

MR KAMAL TRIVEDI, LD ADVOCATE GENERAL WITH MS MANISHA

LAVKUMAR, LD ADDL. ADVOCATE GENERAL WITH MR. VINAY BAIRAGRA,

AGP for the Opponent(s) No. 1,10,2,3,8,9

MR HS MUNSHAW(495) for the Opponent(s) No. 15,16

MR KAUSHAL D PANDYA(2905) for the Opponent(s) No. 14,17,18,6

Appearance of WPPIL/118/2020:MR AMIT M PANCHAL, PARTY-IN-PERSON WITH MR ANGESH A. PANCHAL
for the Applicant

MR KAMAL TRIVEDI LD ADVOCATE GENERAL WITH MS MANISHA LAVKUMAR

LD. ADDL. ADVOCATE GENERAL WITH MR VINAY BAIRAGA AGP for the

Respondent No(s). 1 and 2

MR G. H. VIRK(7392) for the Respondent No. 3

MR H. S. MUNSHAW(495) for the Respondent No(s). 5,6,8,9,10

MR DHAVAL G NANAVATI for the Respondent No(s). 7 and 11

MR CHINMAY M. GANDHI for the Respondent No.10

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**CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA
AGARWAL****and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI****Date : 04/07/2024****ORAL ORDER****(PER : HONOURABLE THE CHIEF JUSTICE
MRS. JUSTICE SUNITA AGARWAL)**

1. The report of the Fact Finding Committee constituted by the Principal Secretary, Urban Development and Urban Housing Department, Government of Gujarat to examine the TRP Game Zone fire incident, Rajkot filed today along with the affidavit of the Principal Secretary, Urban Development and Urban Housing Department, are taken on record.
2. It is stated in the affidavit of the Principal Secretary that a High Level Committee comprising of three senior officers had been constituted by him vide order dated 16.06.2024 to find out the erring officials in relation to the unfortunate fire incident occurred at TRP Game Zone, Rajkot.
3. In the report dated 03.07.2024 submitted by the Fact Finding Committee, some of the officers of the Town Planning Department and Fire Department of the Rajkot Municipal Corporation as well as Police Department are found responsible for the respective lapses on their part. An exhaustive inquiry has been directed to be conducted by the deponent, viz. Principal Secretary, so as not to spare any one guilty or being irresponsible and all aspects of dereliction of duties or inaction on the part of the officials of the Rajkot Municipal Corporation. A statement has been made that no officer would be spared, if found guilty, in any manner and the deponent, viz. the Principal Secretary would take all necessary steps in that regard. The deponent is in the process of conducting an exhaustive inquiry against the erring officers and take necessary action, if not yet taken by the competent authorities for their respective dereliction of duties.

4. From the chronology of the activities related to TRP Game Zone, as noted therein, based on available record, pertinent is to note that as per the application for performance license for J S Party Plot by Dhaval Corporation, dated 02.03.2021, a positive opinion was given by Police Inspector, Rajkot Taluka Police Station on 15.04.2021 without a valid fire NOC. License No.1/21 was issued on 04.06.2021 to Dhaval Corporation by the Police Inspector, Licence Branch, Rajkot City Police Commissioner. Second renewal dated 20.01.2022 and 25.04.2023 were, thereafter, granted. Between the period from end of 2020 to mid-2023, expansion work on the premise (from 966.20 sq. m to 4983.30 sq. m) was undertaken without intimation to the Corporation. Two notices dated 11.04.2023 under Sections 260(1) and 267 of the Gujarat Provincial Municipal Corporations Act, 1949 had been issued to show cause as to why the construction should not be demolished and to stop the illegal construction, respectively.
5. As no response was received to the said notices, the demolition order dated 08.06.2023 was passed by the Town Planning officer, Rajkot Municipal Corporation.
6. Another application dated 31.07.2023 for entertainment license by Raceway Enterprises was moved and positive opinion was given by the Police Inspector, Rajkot Taluka Police Station on 17.11.2023 on the said application without a valid Fire NOC. License No. 92/2023 has been issued on 21.11.2023 in the name of Raceway Enterprises by the Police Inspector, License Branch, Rajkot City Police Commissioner. A third renewal of the booking license no.1/21 to Dhaval Corporation for the

year 2024 was granted on 14.03.2024 and the first renewal of the booking license no.92/2023 was issued to Raceway Enterprises for the year 2024 on 14.03.2024 by the Police Inspector License Branch, Rajkot Police Commissioner.

7. An Application dated 04.05.2024 has been moved by the occupants of the gaming zone under the Gujarat Regularization of Unauthorised Development Act, 2022 to the Town Planning Department, Rajkot Municipal Corporation, which was registered as Application No. 2740. Letter of queries were issued to the occupants on 09.05.2024 asking for necessary compliance, i.e. various NOCs such as Fire NOC. The ghastly fire incident at the TRP Game Zone had taken place on 25.05.2024, wherein fire engulfed about 27 lives of young people, middle aged people including children.
8. The report underlines roles, responsibilities and lapses of the owners/developers and the Government agencies relevant to the case, such as Town Planner Department, Fire Safety Department of Rajkot Municipal Corporation and finds fault with the working of various officers of the Town Planning Department and the Fire Department. It is reported that the erring officials are under suspension and have been arrested by the police. As regards the issuance of license by the Commissionerate of Police, Rajkot City, under the Gujarat Police Act, 1951, Section 33(w) contained in Chapter IV, the Committee finds clear negligence, improper discharge of statutory functions and dereliction of duty on the part of the PI, License Branch (Commissionerate of Police), PI, Rajkot Taluka Police Station :-

The fire at the TRP Game Zone building was due to non-compliance of various rules & regulations by the owner/ developer and administrative lapses including non- adherence to rules & regulations.

Major lapses on part of various offices which led to this incident are as follows:

- i. Issuance and renewal (thrice) of booking license by the License branch, office of Commissioner of Police, Rajkot city without any valid Fire NoC.
- ii. No intimation of issue of booking license no. 1/21 in 2021 and its subsequent renewal by the License branch, office of Commissioner of Police, Rajkot city to the Fire Department of RMC.
- iii. Non-identification of illegal structure for almost 2 years by the Town Planning Department of RMC
- iv. Non-execution of the demolition order for almost 1 year by the Town Planning Department of RMC.
- v. Non inspection and non-enforcement of fire safety regulations on the building by Fire Department of RMC despite the first fire incident.

9. Analysing the responsibility of the Municipal Commissioner in the present matter, it is stated that the Municipal Commissioner as the head of the administrative wing of the Corporation, is answerable to the elected body of the Municipal Councilors as per Section 63 of the Gujarat Provincial Municipal Corporations Act, 1949, several obligatory and non-obligatory functions which are to be performed by any Municipal Corporation for its effective

functioning. The Municipal Commissioner discharges these functions through senior class-I municipal officers, heading various departments. There are several associated agencies/authorities in which the Municipal Commissioner is involved as Chairman or CEO.

10. In Rajkot, the Municipal Commissioner manages more than 34 departments of the Corporation and is involved in supervisory capacity in 5 other authorities/agencies. The office of the Municipal Commissioner, in the modern-day corporation-setup is a nodal office for policy making, policy implementation and progressive policy improvement. Decisions having huge financial implications are to be reviewed and taken by the Municipal Commissioner, and thereafter, represented before the elected body of the Corporation. It is noted by the Inquiry Committee that the Municipal Commissioner is, to a great extent, dependent on his colleagues within the Corporation (each having a specific and expertise skillset) to perform statutory tasks, which by virtue of settled legal position, conventions, or general practice, are to be performed in a straight-jacket manner without any major variation.

11. It is also noted by the Committee that several powers of the Municipal Commissioner have been delegated to other municipal officers as per the provisions of Section 69 of the Gujarat Provincial Municipal Corporations Act, 1949 and delegation of power by the Municipal Commissioner, Rajkot Municipal Corporation, dates back to 1989. However, such delegation does not absolve the Municipal Commissioner of his supervisory role. He is required to review and supervise

work of subordinate officers as well as pass necessary directions from time to time. The Committee had examined two Municipal Commissioners posted from year 2021 till the date of the incident to seek their explanation specifically related to Town Planning and Fire Safety Department of the Rajkot Municipal Corporation.

12. The Committee finds that the notices issued to the TRP Game Zone dated 11.04.2023 of demolition were never brought to the notice of the Municipal Commissioner. The Chief Fire Officer did not send the report of the first fire incident, which took place at the TRP Game Zone on 04.09.2023 to the knowledge of the Municipal Commissioner. It is further noted that both the Municipal Commissioners, had otherwise performed their duties diligently and even their supervisory roles have been duly discharged during their tenure.
13. The Committee further notes that once the power is delegated to the expert officers within the Corporation such as Town Planning Officer and officers of the Fire Department, who are expert, they were required to ensure strict implementation of the delegated power as the power entails corresponding responsibility. It is further opined that looking to the quantum of work of the Municipal Commissioner, it would be impossible for him/her to review all the matters on a case to case basis. Thus, the Committee opined that the Municipal Commissioners cannot be held directly responsible in the matter and in discharge of their supervisory roles. The recommendation of the Committee has been placed before the Principal Secretary, Urban Development and Urban Housing

Department.

14. Taking note of the Fact Finding Report, we only observe that the Principal Secretary, Urban Development and Urban Housing Department while considering the report of the Fact Finding Committee shall keep in mind the role and responsibility of the Municipal Commissioner aligned in Section 67 to exercise supervision and control over the acts and proceeding of all municipal officers and servants, inasmuch as, the entire executive power for the purpose of carrying out the provisions of the GPMC Act and of any other Act for the time being in force, which imposes duty and power in the Corporation, vests in the Commissioner. It is to be noted that even in case of delegation of power to the other officers of the Corporation being the head of the institution, in supervisory control over other municipal officers, it was required by the Municipal Commissioners to keep a check and control over any lapses by his subordinates by taking review meetings of the works undertaken by them.
15. Necessary directions/action is to be taken by the Principal Secretary, Urban Development and Urban Housing Department, Government of Gujarat on consideration of the Fact Finding Inquiry Report dated 03.07.2024 submitted to him.
16. As regards other directions issued by us in paragraphs 17 and 18 of the order dated 13.06.2024 passed by this Court, it is submitted by the learned Advocate General appearing for the State respondents that the action taken by the concerned

Secretaries shall be placed before the Court on the next date fixed. We, therefore, require the Principal Secretary, Education Department and Principal Secretary, Urban Development and Urban Housing Department, Government of Gujarat to file their Compliance affidavits on the next date fixed. The action taken by the Principal Secretary, Urban Development and Urban Housing Department, Government of Gujarat on the Fact Finding Report dated 03.07.2024 shall be placed on record in the said affidavit.

17. Before parting with this order, we may note that in a table given to us during the course of argument, the majority of the fire incidents occurred in the State of Gujarat between 24.05.2019 and 25.05.2024 have been indicated, which had occurred in public places like hospitals, coaching class, apartment building in Ahmedabad and the last incident of fire occurred in TRP Zone, Rajkot.
18. It has been brought before us that the Gujarat Fire Prevention and Life Safety Measures Act, 2013 has been enacted to make effective provisions for the fire prevention, safety and protection of life and property in various types of buildings and temporary structures or shamianas or tents or mandaps likely to cause a risk of fire, in the different areas of the State of Gujarat. Section 3 of the Act, 2013 provides that there shall be one State fire service for the whole of the State and all officers and subordinate ranks of the fire service shall be liable for the posting to any office of the fire service. It has further been provided in the proviso that by the Notification of the State Government, the State may declare

any Fire Brigade or any other Local Fire Service of any local authority of the State by whatever name called, that the same shall form a part of State Fire Service at any time. Second proviso of sub-section (1) of Section 3 further states that this provision would not apply to private fire services maintained for providing fire protection coverage to specific building or industry by the owner or occupier thereof.

19. It is brought before us by the learned Advocate General that all fire services provided by local authorities including Municipal Corporation, Nagar Panchayat, Municipality, District Panchayat, Taluka Panchayat, Gram Panchayat, Notified area committee or Cantonment board constituted under the relevant local authority law as defined in Section 2(r) of the Act, 2013 have been brought within the umbrella of one State Fire Service constituted under Section 3 of the Act, 2013. However, the existing structure of the fire service in the State of Gujarat as contemplated under the Gujarat Fire Prevention and Life Safety Measures Act, 2013 is required to be brought before us.

20. It is submitted by the learned Amicus curiae that there are vacancies in the fire department of various Corporations and Municipalities. The process for filling-up the said vacancies has been initiated, as submitted by the learned Advocate General. The details of the vacancies and progress report for filling-up the same shall be brought on record by affidavit on the next date fixed by means of affidavit of a competent gazetted officer from the office of the Principal Secretary concerned.

Put up on 25.07.2024.

(SUNITA AGARWAL, CJ)

(PRANAV TRIVEDI,J)

BIJOY B. PILLAI