

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) NO. 118 of 2020
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2020
In R/WRIT PETITION (PIL) NO. 118 of 2020
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 2 of 2020
In R/WRIT PETITION (PIL) NO. 118 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 14157 of 2020

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AMIT MANILAL PANCHAL

Versus

STATE OF GUJARAT

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Appearance:

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

for the Opponent(s) No. 1,2

MR SATYAM Y CHHAYA(3242) for the Opponent(s) No. 3

NOTICE SERVED(4) for the Opponent(s) No. 4

MR KAMAL B.TRIVEDI, ADVOCATE GENERAL with MS MANISHA LAVKUMAR SHAH, GOVERNMENT PLEADER for the STATE.

MR Y.N.RAVANI, ADVOCATE with MR V.V.BHAMARE, ADVOCATE.

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CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**

and

HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 15/12/2020

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. Pursuant to the order passed by this Court dated 30th September 2020, an additional affidavit has been filed on behalf of the State of Gujarat duly affirmed by Shri R.H.Vasava, Deputy Secretary, Urban Development and Urban Housing Department, Sachivalaya, State of Gujarat, Gandhinagar, highlighting the steps taken by the State Government so far in this litigation.

2. One further affidavit has also been filed on behalf of the respondent no.4 duly affirmed by Shri Rajesh Bhatt, Additional Chief Fire Officer, Ahmedabad Fire and Emergency Service, Ahmedabad Municipal Corporation, highlighting the progress in the matter.
3. An additional affidavit-in-rejoinder has been filed by the writ-applicant to the additional affidavit dated 12th December 2020 filed on behalf of the State of Gujarat referred to above.
4. All the three affidavits are ordered to be taken on record.
5. To recapitulate the developments that have taken place so far in this litigation, we may summarise the stance of the respondents as under :

“The affidavit-in-reply filed by the respondent No. 4 – Pages 326 to 399 dated 3rd October 2020 talks about the commission being appointed by the State Government to inquire about the unfortunate incident at the Shrey Hospital.

(a) The affidavit also talks about the affidavit filed by the Deputy Municipal Commissioner of the Ahmedabad Municipal Corporation in the Special Civil Application No. 5263 of 2009.

(b) The affidavit also states that 1200 Government and private schools hold the Fire NOC issued by the Fire Department of the Ahmedabad Municipal Corporation.

The affidavit-in-reply filed by the State – Page 399 to 585 dated 3rd October 2020 states as under :

(a) Paragraphs Nos. 7, 8 and 9 respectively, indicates the measures undertaken on behalf of the State which includes setting up of the posts, procuring equipments and recruiting staff for the Fire Department.

(b) Paragraph No.9 talks about setting up of a commission for the unfortunate incident at the Shrey Hospital.

(c) Paragraph No.16 states that the Municipal Corporations are autonomous bodies and their day-to-day operations are carried out according to the GPMC and GDCR and hence the Fire Act and Rules are not applicable.

(d) Paragraph No.20 states that it is not correct to say that the directions contained in the Oral judgment dated 20.01.2015 delivered by this Court in the Special Civil Application No. 5263 of 2009 have not been fully complied with.

(e) Affidavit states that all the necessary steps to strengthen the fire services are being taken, including providing adequate fire equipments and the State is equipped and ready to deal with any unfortunate eventuality likely to be created by fire.

The affidavit-in-rejoinder filed by the writ-applicant – Pages 585 to 620 dated 17th October 2020 states as under :

(a) The affidavit states that no information has been provided in respect of :

(i) The grant of No Objection Certificate which are existing on date;

(ii) Buildings which are functioning with No Objection Certificate issued by the Ahmedabad Fire and Emergency Services Department, Ahmedabad Municipal Corporation (herein after referred to as “ the AFES”) and other Municipal Corporations in the State of Gujarat;

(iii) Buildings without BU Permission;

(iv) High Rise Buildings and Special Buildings which are being occupied without No Objection Certificate been issued by the AFES and other Municipal Corporations in the State of Gujarat;

(v) Report of sanctioned posts in the AFES establishment and number of posts filled up against the sanctioned posts as also to indicate the number of vacancies existing in the AFES and other Municipal Corporations in the State of Gujarat;

(b) The Notification dated 3rd October 2020, whereby the Government of Gujarat has constituted eight more Fire Regions, in addition to the five Fire Regions earlier notified vide Notification dated 2nd December 2015.

(c) The Government of Gujarat has declared that the Fire Brigade by whatever name called, of all Municipalities and Municipal Corporations, shall not form part of the State Fire Service.

(d) The States of Gujarat and Goa respectively are yet to enforce the Clinical Establishments (Registration and Regulation) Act, 2010 (CEA).

The affidavit on behalf of the respondent State – Pages 621 to 662 – dated 24th October 2020 states as under :

(a) The affidavit talks about the recruitment process which has been undertaken by the State of Gujarat and the status of the NOCs in the eight Corporations of the State.

The affidavit on behalf of the respondent No. 4 – Pages 663 to 667 – dated 8th December 2020 states as under :

(a) The affidavit filed by the respondent talks only about the filling up of the vacant posts in the Fire Department.

The additional affidavit on behalf of the Respondent State – Pages 668 to 720 – dated 12th December 2020 states as under :

(a) The affidavit indicates the filling up of the vacant posts, which is the same data as provided by the respondent No. 4 in the affidavit dated 8th December 2020.

The additional affidavit-in-rejoinder filed by the writ-applicant – Pages 721 to 755 – dated 14th December 2020 states as under :

(i) Very little has been done to fill up the posts in the Fire Brigade Departments of the various Municipal Corporations.

(ii) Paragraph No.5.3 at Page 674 of the additional affidavit filed on behalf of the State of Gujarat, wherein only the status of the number of vacancies in the Fire Wing of the Municipal Corporations of Gandhinagar, Bhavnagar, Junagadh and Jamnagar is indicated and there are no posts which have been filled up in the said four Municipal Corporations.

(iii) In 32 Districts where there are 158 Nagarpalikas, there is not a single District Fire Officer/Divisional Fire Officer, Station Officers, Fire Wireless Officers, Deputy

Accountants, Clerks, Leading Firemen, Driver-cum-Pump Operators and Firemen-cum-Driver as no process for the recruitment has been undertaken, as categorically indicated by the deponent at Page 624 in the sub-para just above paragraph No.10 in the affidavit filed by the respondent State.

(iv) The writ-applicant wants the State to produce on record, by way of an affidavit, details with regard to the number of fire stations, number of vehicles, equipments and adequate disaster management infrastructure and proper firefighting and rescue equipments as required in the National Building Code at Annexure-H and as required by the Standing Fire Advisory Council, Ministry of Home Affairs, Government of India, so as to be able to point out to this Court how any disaster could be mitigated in such an eventuality of the said disaster taking place.

(v) Despite a clear direction issued on 17th August 2020, no details with regard to the hospitals, excluding medical clinics in the State, high rise buildings – both commercial and residential buildings, industries and factories, special buildings etc., have yet been provided to this Court.

(vi) Directions issued in Paragraph No.69 by the Division Bench at the judgment at Annexure-B requires that in all the high rise buildings, Fire Safety Measures are to be provided as per the provisions of the relevant Acts.

(vii) *The writ-applicant wants that the record of all such buildings, which exist as on date and which require installation of the Fire Prevention and Protective Systems (FPPS) in the said buildings, to be placed on record and also the details of all such buildings which do not have the Building Use Permission in the State of Gujarat.*

(viii) *This Court has already recorded the aforesaid aspects with regard to the buildings without the Building Use Permission in Paragraph No.4.1 [ii] of the Order dated 17th August 2020.*

(ix) *With regard to the CEA news report annexed at Page 620, the State has not yet enacted the Act.*

(x) *Reference with regard to enrolling the Engineering Graduates as the Fire Safety Officers, in the additional affidavit filed on 12th December 2020 in Paragraphs Nos.6.5 to 6.9 at Pages 676 – 678. The pertinent and relevant question is the responsibility to be fastened in the event of non-compliance and/or breach of responsibilities in that behalf, which could possibly result into a greater disaster and a catastrophic situation as it is only for the first time of issuance of the NOC, after the new system is brought in, that the Regional Fire Officer/Chief Fire Officer would examine, approve and issue the NOC for the respective building. No accountability so far has been fastened on the private agency while issuing the NOC, as it is a State function having consequences on the general public which is*

sought to be delegated, and the responsibility given to the private agency is with regard to the issuance of the NOC.”

6. We have heard Mr.Amit Panchal, the writ-applicant appearing in person, Mr.Kamal B.Trivedi, the learned Advocate General appearing for the State along with Ms.Manisha Lavkumar Shah, the learned Government Pleader, Mr.Y.N.Ravani, the learned counsel appearing with Mr.V.V.Bhamare, the learned counsel, seeking to be joined as a party respondent in this litigation, Mr.D.U.Prajapati, the learned counsel appearing in the Civil Application No.2 of 2020, also seeking to be joined as an intervenor.

7. We also take notice of the fact that a fresh writ petition being the Special Civil Application No.14157 of 2020 has been filed in public interest. This fresh petition has been filed by the kith and kin of the deceased persons who perished in the Shrey Hospital fire incident. We shall look into this new petition a little later.

8. Mr.Trivedi, the learned Advocate General, submitted that adequate steps are being taken so far as the recruitment on the vacant posts in the Fire Service of the State is concerned. According to Mr.Trivedi, the recruitment process with respect to the Ahmedabad Municipal Corporation is concerned, would be completed within a period of three weeks and top priority shall be given to ensure that the process is also completed with respect to the other Municipal Corporations. Mr.Trivedi submitted that so far as the recruitment process undertaken by the Municipalities across the State is concerned, the same is

going at a slow pace. Although advertisements have been published for the vacant posts, yet there has been no substantial progress in the same. According to Mr.Trivedi, the State would take all the necessary steps to see that the Municipalities act promptly in this regard. Mr.Trivedi further pointed out that the No Objection Certificate relating to fire has been issued for all the buildings as mentioned in the Schedule-II of the CGDCR-2017 after ensuring as regards the necessary requirements for fire protections under the Fire Regulations, NBC, and the CGDCR-2017.

9. Mr.Trivedi, in reply to the question put by this Court as regards the implementation of the Clinical Establishments (Registration and Regulation) Act, 2012 (for short, 'the CEA Act, 2012'), submitted that he would take up this issue with the State Government and see to it that necessary steps are taken at the earliest for the due implementation of the provisions of the Act. Mr.Trivedi clarified that the State of Gujarat has not thought fit till this date to frame any rules under the CEA Act, 2012. However, according to Mr.Trivedi, due steps shall be taken in this regard after discussing the matter with the State officials.

10. According to Mr.Trivedi, the State Government has thought fit to appoint a Commission of Inquiry into the Shrey Hospital fire incident and has appointed Hon'ble Mr.Justice D.A.Mehta, former Judge of the High Court of Gujarat, as the Chairman of the Commission. The Commission shall inquire and report into the cause of the Shrey Hospital fire incident in which eight innocent persons lost their lives.

11. Ms.Shah, the learned Government Pleader, submitted that the State Government is doing its best to ensure that the incidents like the one at the Shrey Hospital, does not occur in future on account of lack of adequate fire fighting measures and other shortcomings in the buildings. According to Ms.Shah, the State Government is duty-bound to fix the accountability of all the erring persons responsible for the unfortunate incident and will see to it that the guilty persons are proceeded in accordance with law.

12. In response to what has been submitted by the learned Advocate General and the learned Government Pleader, Mr.Panchal appearing in person, submits that appointing Commission of Inquiry is not going to solve the problem. He would submit that the Commissions of Inquiry remain pending for long time. The reports submitted do not bind the State, and inspite of transparency and public hearing which the Commissions often hold, the reports hardly serve any purpose. According to Mr.Panchal, the State needs to take concrete steps in the positive direction. Mr.Panchal submits that it is high time that this Court issues appropriate directions in the larger public interest.

13. Mr.Ravani, the learned counsel submitted, by placing strong reliance on the decisions of the Supreme Court in the case of Vishakha v. State of Rajasthan and others, AIR 1997 SC 3011, and Shayara Bano v. Union of India, AIR 2017 SC 4609, that this Court is empowered to direct the State Government to enact and adapt any particular law or frame appropriate rules. In the absence of the same, the fundamental rights guaranteed

to its citizens under the Constitution would stand violated or infringed. He would submit that the State Government has enacted the Gujarat Town Planning and Urban Development Act, 1976. He pointed out that with a view to have uniformity, the State Government has declared a common GDCR in 2017 applicable to the different towns and cities except Gandhinagar. Such GDCR provides for a separate chapter for fueling stations (petrol pumps). According to him, the State Government should consider enacting special provisions with respect to the construction of hospitals by way of a separate chapter in the GDCR of 2017. According to him, the following aspects deserve to be considered :

- (1) The ICU should be preferably on the ground floor, and if not possible, then there should be a fire exit staircase. Guidelines should be framed with respect to wiring, etc. to avoid accidents like the one that occurred at the Shrey Hospital at Ahmedabad. He laid emphasis on the fire resistant walls so far as ICU is concerned.
- (2) According to Mr.Ravani, separate rules need to be framed under the Gujarat Fire Prevention and Life Safety Measures Act, 2013. Mr.Ravani cited the example of the State of Sikkim. He pointed out that the State of Sikkim has framed guidelines to be followed. The State Government also should consider framing of such guidelines for the hospitals across the State of Gujarat.
- (3) In the last, Mr.Ravani talked about the international standards of different countries relating to the hospitals.

According to Mr.Ravani, relevant material has been placed in his Civil Application from pages 107 to 215. The salient features thereof are as under :

- (1) Fire Separation and Suppression;
- (2) Smoke Separation and Suppression;
- (3) Identification of Hazardous Areas and Precautions thereof;
- (4) Collection Room and Oxygen Storage Rooms;
- (5) Fire Detector;
- (6) Fire Alarms;
- (7) Fire Exits;
- (8) Fire Exits Master Plan;
- (9) Fire Compartmentation;
- (10) Fire Resistant Furnishing, Mattresses, Decorations;
- (11) Test Plan for all Fire Protections System;
- (12) Mock Drill for Evacuation in cases of Fire.

14. We also heard Mr.D.U.Prajapati, the learned counsel who has filed the Civil Application No.2 of 2020.

15. We shall now look into the Special Civil Application No.14157 of 2020. This writ-application has been filed by the writ-applicants with the following prayers :

“(A) That this Hon'ble Court be pleased to admit and allow the present Petition;

(B) That this Hon'ble Court be pleased to issue appropriate writ, order or direction directing Respondent

No.1 to enact a consolidated Code/Act/Guidelines for fire safety requirement for clinical establishments/hospitals of all kinds setting out minimum standards of fire safety standards to be maintained by clinical establishments/hospitals such as across the State of Gujarat;

(c) That this Hon'ble Court be pleased to issue appropriate writ, order or direction directing the Respondent authorities to comply with the provisions of Gujarat Fire Prevention and Life Safety Measures Act, 2013 strictly in clinical establishments such as Hospital/Nursing Homes/School buildings of the city of Ahmedabad;

(D) That this Hon'ble Court be pleased to issue appropriate writ, order or direction and be pleased to hold that the notification dtd. 3.10.2020 at annexure – E herein, The Gujarat Fire Prevention and Life Safety Measures Act, 2013 was already applicable to Ahmedabad Municipal Corporation;

(E) That this Hon'ble Court be pleased to issue appropriate writ, order or direction and be pleased to hold that the notification dtd. 19.08.2014 includes and applies to all the Municipal Corporation areas;

(F) That pending the hearing and final disposal of the present Petition, this Hon'ble Court be pleased to direct Respondent Nos.3 and 4 to file a detailed report before this Hon'ble Court listing out the Hospitals/ Nursing Homes/Schools that have failed to comply with the provisions of

G.D.C.R. 2021 and Gujarat Fire Prevention and Life Safety Act, 2013 across the city of Ahmedabad after the Notification dated 19th August 2014 till date;

(G) That this Hon'ble Court be pleased to issue appropriate writ, order or direction thereby directing Respondent No.4 to ensure compliance of the G.D.C.R. 2021 and Gujarat Fire Prevention and Life Safety Act, 2013 in all the Hospitals/ Nursing Homes/ Schools;

(H) That this Hon'ble Court be pleased to issue appropriate writ, order or directions thereby directing Respondent No.1 to confer necessary powers to the respective Fire Departments across the State of Gujarat to conduct surprise visits/ raids/ inspections of all the Hospitals/ Nursing Homes/ Schools without waiting for a Petition for No Objection Certificate so that said inspections/ raids/ visits are not limited only to the institutions that apply for a No Objection Certificate with a view to ensure due compliance of G.D.C.R. 2021 and Gujarat Fire Prevention and Life Safety Act, 2013;

(I) That this Hon'ble Court be pleased to issue appropriate writ, order or directions thereby directing Respondent Authorities to make mandatory installation of sprinkles and a fire extinguisher in every room/ward of every Hospital/Nursing Home irrespective of its height with a view to protect lives of innocent and infirm patients who are not capable of escaping any disaster in case of emergency situations;

(J) That this Hon'ble Court be pleased to issue appropriate writ, order or directions directing the respondent no.1 to frame rules and guidelines for fire safety in ICU wards of the hospitals;

(K) That this Hon'ble Court be pleased to issue appropriate writ, order or directions thereby directing Respondent No.1 confer necessary powers upon the Fire Departments to conduct bi-annual inspections and surprise visits/ raids/ inspections of all the Hospitals/ Nursing Homes/ Schools across the State of Gujarat;

(L) That this Hon'ble Court be pleased to issue appropriate writ, order or directions directing the Respondents to pay adequate amount of compensation to the dependents who are son and brother of the deceased of Shrey Hospital Fire mishap occurred in Ahmedabad;

(M) That this Hon'ble Court be pleased to issue appropriate writ, order or directions directing Respondent No.3 to forthwith cancel/ suspend license of any Hospital/ Nursing Home/ School that is found in violation of the G.D.C.R. 2021 and Gujarat Fire Prevention and Life Safety Act, 2013 and initiate criminal proceedings against such Hospitals/ Nursing Homes/ Schools as the case may be for having put the lives of innocent and infirm patients at risk;

(N) That pending the hearing and final disposal of the present Petition, this Hon'ble Court be pleased to permit the

relatives of the victims of Shrey Hospital Fire mishap to conduct a third party survey of the ICCU Ward through a team consisting of retired fire safety officials;

(O) That this Hon'ble Court be pleased to direct the Respondents to offer adequate ex-gratia compensation to the relatives of the victims of Shrey Hospital Fire incident dated 6th August 2020;

(P) Such other and further orders and directions as this Hon'ble Court may deem just, fit and proper.”

16. We have heard Mr.R.R.Marshall, the learned senior counsel assisted by Mr.S.R.Shah, the learned advocate appearing for the writ-applicants.

17. Mr.Marshall would submit that the writ-applicant no.1 is a practicing advocate of this High Court and his wife had to be admitted at the Shrey Hospital in connection with kidney ailment. The wife of the writ-applicant no.1 was to be discharged within a day, but unfortunately she lost her life along with seven others in the fire that engulfed the entire ICU of the Shrey Hospital. According to Mr.Marshall, the writ-applicants as the kith and kin of the victims are anxious to know as to who is responsible for this fire. They would like to know from the State Government, whether the accountability of any particular person has been fixed in this regard. They would also like to know from the State Government as to whether the culprits responsible for this have been booked and punished or not so far. Mr.Marshall pointed out something very shocking. He pointed out that the

building plans in which the Shrey Hospital is running originally was a residential building. In other words, the Corporation had sanctioned the plan as a residential complex, but later revised the same for commercial use upon acceptance of the impact fee. Mr.Marshall questions the very act on the part of the authority concerned in revising the plans by accepting the impact fees. According to Mr.Marshall, there could be so many such buildings across the State of Gujarat absolutely vulnerable to such accidents. Mr.Marshall would also submit that appointing Commission of Inquiry is not going to serve the purpose, and it is high time that this Court issues appropriate directions and more importantly inquire with the State Government as to whose accountability should be fixed if ultimately it is found that the rules and regulations are not being implemented in accordance with law.

18. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are atleast at one so far as the appointment of Commission of Inquiry is concerned. Appointing a commission is the first thing any State Government would do when a mishap like the Shrey Hospital Fire occurs. We are reminded of what the Supreme Court observed in the case of Sanjivkumar v. State of Haryana and others, reported in (2005)5 SCC 517. We quote the observations made in paragraphs 13 and 14 respectively thus :

“13. We have given our thoughtful consideration to the respondents’ proposal for entrusting the whole matter to a Commission of Inquiry, assisted by a special investigating task force. The flaw with Commissions of Inquiry, as

revealed by experience, is that they do not have enough teeth and for their functioning they have to depend on the State's assistance. Commissions of Inquiry remain pending for unreasonable lengths of time. The reports submitted do not bind the State and in spite of transparency and public hearings which the Commissions often hold, at times with fanfare, the reports hardly serve any purpose. By the time the reports are submitted the public memory has already faded and people are not any more bothered about the results. It is in the discretion of the State to take or not to take any action on the report submitted by the Commission of Inquiry and the experience is that the follow-up action depends more on political considerations rather than for public good.

(Emphasis supplied)

14. We feel, Commissions of Inquiry are more suited for inquiring into such matters of public importance where the purpose is to find out the truth so as to learn lessons for the future and devise policies or frame legislation to avoid recurrence of lapses. Such Commissions do not suitably serve the object of punishing the guilty."

(Emphasis supplied)

19. It would be too much, or rather, it would amount to adding insult to injury to tell the kith and kin of all the victims who perished in different accidents of fire that take solace from the fact that the State Government has appointed a Commission of Inquiry.

20. However, one positive development with respect to the appointment of the Commission of Inquiry in the present case is that the Chairman who is going to head the Commission, namely Hon'ble Mr.Justice D.A.Mehta, Former Judge of this High Court, was a part of the Bench that decided the Special Civil Application No.4578 of 1997 vide judgment dated 2nd July 2001. Hon'ble Justice Mehta is well versed with this litigation relating to fire. We may recapitulate the directions which were issued by this Court way back on 2nd July 2001 in a Public Interest Litigation relating to the High Rise Buildings and its vulnerability to fire. We quote thus :

“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 checking 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. ”

21. We wonder whether the afore-noted directions issued almost two decades back have also been complied with or not.

22. We take notice of an article reported in the Ahmedabad Mirror dated 17th December 2020 relating to the long-term fire safety at the Covid Hospitals. Two very senior and high ranking Fire Officers; one, from Ahmedabad, and another, from Surat, were interviewed. This is what both the officers had to say with regard to (1) Structural problems, (2) Fire Safety Equipment and (3) Electrical Load. We quote thus :

“Fires at Covid-designated hospitals in Ahmedabad and Rajkot, which claimed 13 innocent lives, saw Gujarat government cracking down on health care centres that lack fire safety systems. While all 95 Covid designated hospitals in Ahmedabad have made requisite changes by updating and installing safety equipment, it is a short-term solution. Many of the small and medium hospitals are set up in commercial buildings that were not meant to be used as health care centres. Fire officers say changes like structural issues, heightened electrical load, critical installations in ICUs of small and medium Covid-19 hospitals are needed to ensure long-term safety. However, it is a Catch-22 situation as these centres cannot see renovations till the facilities stop admitting Covid-19 patients.

(Emphasis supplied)

AMC completed a major review of fire safety installations and equipment at the city’s Covid-designated hospitals in the first week of December. A senior fire official said, “Most of the 95 hospitals complied with emergency regulations by purchasing fire safety tools, ensuring ventilation, and installing fire alarms. They also stopped illegal use of

basements, installed AC dampers, and other immediate measures to make sure they have basic precautions. All of them were reissued new Fire Safety NOCs after these audits.” Similar audits were conducted by Vadodara and Surat fire departments.

The fire officers raised a number of concerns mainly regarding small and medium hospitals -- ones that were never meant to be run at full or over capacity as is happening now due to the pandemic. Set up for specific medical treatments like paediatrics or orthopaedics, these facilities were not equipped to hold so many patients, especially ones suffering from infectious disease.

The rise in medical manpower, number of patients, electrical load, storage of inflammable materials, rise in oxygen-rich environment, reduction in work space and overall fire load has changed dynamics and parameters under which these hospitals were given fire safety NOCs.

Officers in major fire departments rued, “Nobody asked the fire service for a review before designating these hospitals as Covid facilities else some measure of control could have been imposed. Now, the situation is impossible to resolve as long as patients are admitted there.”

Many shortfalls in fire safety were addressed after the judiciary took serious view of the same following fires at

Shrey Hospital in Ahmedabad and Uday Shivanand hospital in Rajkot. Patients at other major hospitals in Jamnagar, Surendranagar, Surat, and Vadodara closely escaped hospital fires these last few months. Officials say that since many hospitals were set up either in spaces that were never meant to be for health services or in commercial buildings, the very structural layout are not adaptable to norms of the National Building Code and the State's GDCR.

Rajesh Bhatt, acting Chief Fire Officer of Ahmedabad Fire and Emergency Services told Mirror, "We are currently doing all we can to make sure the Covid-designated hospitals in the city have enough fire safety without putting people in danger. However, there are some things that are simply out of our hands because there is need for either structural changes to the buildings or further changes in the ICUs, both of which cannot be done while patients are admitted to these facilities."

Structural problems

1. While ideally hospitals need two staircases for emergency exit, many hospitals have just one. In most cases, they are narrow and less than the required 2 m, to use in cases of disaster. While this problem has not been addressed in Ahmedabad, the Surat Fire and Emergency Services built emergency staircases at multiple hospitals for outdoor evacuation of patients. In one case, the Surat fire department had a hospital with two buildings, with just one

staircase in each, build bridges connecting both buildings on each floor and thus assured two staircases for emergency exit, said Surat CFO Basant Pareek.

2. Dedicated emergency elevators are missing from most small and medium-scale hospitals that have been Covid-designated. If there is one, there is no second power line to ensure it stays functional during an emergency.

3. Area obstructions due to temporary partitions created to separate Covid and non-Covid designated areas

4. False ceilings have been noticed in hospitals that can leave less space for smoke from fires to rise upward, trapping it at eye level and liable to cause asphyxia. It also leaves less space for heat to spread in cases of fire.

5. Other problems include walled up stairwells, glass facades, grills everywhere and buildings having more concentration on aesthetics over fire safety, said officials.

Fire Safety Equipment

1. The fire department has been unable to install sprinkler systems in ICUs of many Covid-designated hospitals because this cannot be done while patients are admitted there.

2. *While fire extinguishers have been installed in ICUs where most recent fires have taken place, questions have arisen on the capability of health care staff to be able to operate them while wearing PPEs.*

3. *There is no long term policy for compulsory fire training to medical staff. Qualified firefighters should be appointed at hospitals to lead firefighting before the department arrives on the scene, said officers.*

4. *For Covid hospitals sharing space with other businesses in commercial buildings, there is confusion whether fire hydrant systems must be installed only at the hospital or in the entire building.*

Electrical Load

1. *There is no policy to continuously change or replace ventilators and other critical medical equipment that are used 24*7 on patient after patient in the ICUs.*

2. *Electrical load of small and medium hospitals have increased after becoming Covid-designated facilities. However, it is not possible to change the wiring to LHS (low smoke) cables or electrical sockets while the facility is in use.*

3. Generator sets need to be installed at specific places and needs special space which has been found missing in several places simply because there is no space to keep them in smaller hospitals.

Vadodara acting CFO Parth Brahmbhatt said, “We need to break the chain of fire, reduce conductivity by changing equipment like installing fire-resistant doors, bettering electrical points, switching miniature circuit breaker to earth leakage circuit breakers, using fire-resistant paint and stop plugging 15 ampere machines into 5 ampere sockets Many places have 100 milliampere switches instead of 30 mA. These will not trip at small spikes in power. This is ill-advised, especially for hospitals.”

23. After due consideration of all the relevant aspects of the matter, we deem fit to issue the following directions :

(1) The respondents are directed to forthwith ensure that the Fire Prevention and Life Safety Measures are taken and implemented forthwith with the FPPS installed in all the buildings in the State of Gujarat, as required under the Comprehensive General Development Control Regulations, 2017, and which are in force today;

(2) The respondents are directed to ensure that all the buildings in the State of Gujarat have the adequate Disaster Management Infrastructure and proper

firefighting and rescue equipments, as required in the National Building Code at Annexure – H, and also as required by the Standing Fire Advisory Council, Ministry of Home Affairs, Government of India;

(3) The respondents are directed to ensure that effective steps are taken forthwith for the Fire Prevention and Safety and for the protection of the life and property of citizens in various types of buildings and temporary structures in the State of Gujarat, so as to serve the object and purpose of the Gujarat Fire Prevention and Life Safety Measures Act, 2013 and the Rules and Regulations framed thereunder;

(4) The respondents are directed to grant Occupancy Certificate to the applicant/occupant, of the buildings in the State of Gujarat, and permit occupation of the building concerned, only after consulting the concerned designated authority which issues the Certificate, after requisite inspection of the building, so as to ensure that necessary requirements for the Fire Protection have been fulfilled, as required under the provisions of the Gujarat Fire Prevention and Life Safety Measures Act, 2013, and the Rules and Regulations framed thereunder, and that the No Objection Certificate (NOC) from the concerned Fire Department/Authority has been produced before the Competent Authority which issues Building Use (BU) Permission / Occupancy Certificate in conformity with the Comprehensive General Development Regulations, 2017;

(5) The respondents are directed to ensure total compliance of the procedure for obtaining the permission for the Building Use (BU), as is required under the Comprehensive General Development Regulations, 2017, and which are in force today in the State of Gujarat;

(6) The respondents are directed to place on record by way of an affidavit, the details of all such buildings, which exist as on today and which require installation of the Fire Prevention and Protective Systems (FPPS) in the said buildings;

(7) The respondents are directed to place on record by way of an affidavit, the details of all such buildings, hospitals including the COVID – 19 Hospitals, Schools, Factories and Industrial units situated within the jurisdictional limits of all the Municipal Corporations, Nagarpalikas and Local Bodies which do not possess the valid and subsisting No Objection Certificate with regard to the Fire Prevention and Protection Systems in the State of Gujarat so that this Court may consider to take appropriate action or steps by issuing them notice and calling upon them to show-cause why action should not be taken;

(8) The respondents are directed to place on record by way of an affidavit, the details of all such buildings situated within the jurisdictional limits of all the Municipal Corporations, Nagarpalikas and Local Bodies not

possessing the Building Use Permission (BU) in the State of Gujarat;

(9) The respondents are directed to place on record by way of an affidavit, what action has been taken for not holding the valid and subsisting Building Use Permission and/or No Objection Certificate;

(10) The respondents are directed to place on record by way of an affidavit, the details of all the factories and the industrial units situated within the jurisdictional limits of all the Municipal Corporations, Nagarpalikas and Local Bodies considering Section 38 of the Factories Act, 1948, read with Rule 66-A of the Gujarat Factories Rules, 1963, as amended from time to time with regard to the safety measures installed in the said factories in the State of Gujarat;

(11) The respondents are directed to place on record by way of an affidavit, the details of all such hospitals, including the COVID-19 designated hospitals and health care centres, in the jurisdictional limits of all the Municipal Corporations, Nagarpalikas and Local Bodies which do not have the valid and subsisting No Objection Certificate and the Building Use Permission (BU) in the State of Gujarat;

(12) The respondents are directed to place on record by way of an affidavit, the details of all the schools, public and

private, in the State of Gujarat, indicating the compliance of the directions issued by the Supreme Court in Paragraph No. 47 of the judgment at Annexure–D, with regard to holding a valid and subsisting No Objection Certificate from the Fire Brigade Department/Competent Authority;

(13) The respondents are directed to act strictly in conformity with the provisions of the Gujarat Fire Prevention and Life Safety Measures Act, 2013, and the Rules and Regulations framed thereunder, the National Building Code at Annexure–H, and also as required by the Standing Fire Advisory Council, Ministry of Home Affairs, Government of India, and the Comprehensive General Development Regulations, 2017, while taking any administrative steps and/or action, more particularly under Chapter V of the Gujarat Fire Prevention and Life Safety Measures Act, 2013, and shall not act opposed to the same;

(14) The respondents are directed to ensure for the hospitals, especially for the Intensive Care Units (ICUs), the following :

- a. Use of the Fire Retardant Material for the curtains, bedsheets, ceiling and wall claddings;
- b. Servicing of Ventilators once a month;

- c. Servicing of Air Conditioners once a month;
- d. Use of Earth Leakage Circuit Breaker (ELCB) and Miniature Circuit Breaker (MCB) for electrical wiring;
- e. Servicing of Electrical Points inside the ICU once a month;
- f. Whole of the ICU should have sprinkler system installed and the system should be serviced once a month;
- g. ICU should preferably be located only on the Ground Floor and have alternate Exits wide enough to roll the beds out in the event of necessity;
- h. Ventilators and Filters shall be installed at the Ground Level and Fresh Air to be inducted from Terrace Level;
- i. Amber Yellow Emergency Lights with Auto Starting Sensor/System;
- j. Glass facades to be removed forthwith and staircases shall be fully ventilated above the parapet wall;
- k. Glass facades of the hospital buildings should not be permitted in any event;

24. Subject to what the respondents have to say with regard to fixing the accountability, we propose to fix the accountability as under :

Accountability		
Sr. No.	Particular	Person Responsible
1.	Occupation without B.U. Permission	Owner/Builder/ Developer
2.	Expired NOC/ No NOC	Occupant/Owner/Chief Fire Officer
3.	Accountability for illegal action or inaction by the Authority	i. Municipal Commissioner ii. Deputy Municipal Commissioner (Estate Department) iii. Deputy Municipal Commissioner in-charge of the concerned Department. iv. Chief Fire Officer

25. In the aforesaid context, we may quote the observations made by the Supreme Court in the case of Indo Council for Enviro-Legal Action v. Union of India and others, reported in (1996)5 SCC 281 as contained in paragraph 26. The same reads as under :

“26. Enactment of a law, but tolerating its infringement, is worse than not enacting law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the

violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the Enforcement Authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for law abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the Legislature feels that it is necessary.”

26. On the question of accountability, we would like to say something over and above what has been observed in para-24.

27. As observed by the Supreme Court almost two decades back that the Governor runs the Executive Government of a State with the aid and advise of the Chief Minister and the Council of Ministers which exercise the powers and performs its duties by the individual Ministers as Public Officers with the assistance of the bureaucrats working in the various departments, corporate sectors, etc. Although they are expressed in the name of the Governor, yet each Ministers is personally and collectively responsible for the actions, acts and policies. They are accountable and answerable to the people. Their powers and duties are regulated by the law and the rules. The legal and moral responsibility or liability for the acts done or omissions, duties performed and policy laid down rest solely on the Minister of the Department. Therefore, they are indictable for their conduct or omission, or misconduct or misappropriation. He/they is/are also publicly accountable for the acts or conducts in the performance of duties.

28. We may quote paragraphs 10 and 11 of the decision of the Supreme Court in the case of Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and others, reported in (1997)1 SCC 35 :

“10. The Governor calls upon the leader of a political party/groups that command majority in the Assembly to form the Government and appoints him as Chief Minister. On later's advice appoints other Ministers. Business of the Government gets allocated and is run as per business rules framed under Article 166(3). The executive power of the State Government extends over which the legislature has power to make law. The Governor runs the Executive Government of a State with the aid and advice of the Chief Minister and the Council of Ministers which exercise the powers and performs its duties by the individual Ministers as public officers with the assistance of the bureaucracy working in various Departments and Corporate sectors etc. Though they are expressed in the name of the Governor, each Minister is personally and collectively responsible for the actions, acts and policies. They are accountable and answerable to the people. Their powers and duties are regulated by the law and the rules. The legal and moral responsibility or liability for the acts done or omissions, duties performed and policy laid down rest solely on the Minister of the Department. Therefore, they are indictable for their conduct or omission, or misconduct or misappropriation. The Council of Ministers are jointly and severally responsible to the Legislature. He/they is/are also

publicly accountable for the acts or conducts in the performance of duties.

11. The Minister holds public office though he gets constitutional status and performs functions under constitution, law or executive policy. The acts done and duties performed are public acts or duties as holder of the public office. Therefore, he owes certain accountability for the acts done or duties performed. In a democratic society governed by rule of law, power is conferred on the holder of the public office or the concerned authority by the Constitution by virtue of appointment. The holder of the office, therefore, gets opportunity to abuse or misuse of the office. The politician who holds public office must perform public duties with the sense of purpose, and a sense of direction, under rules or sense of priorities. The purpose must be genuine in a free democratic society governed by the rule of law to further socio-economic democracy. The Executive Government should frame its policies to maintain the social order, stability, progress and morality. All actions of the Government are performed through/by individual persons in collective or joint or individual capacity. Therefore, they should morally be responsible for their actions.”

29. We may only say while closing this order that the mode and manner in which the State Government is fighting a gallant battle against the Covid-19 pandemic by implementation of the strict Covid norms, rules and regulations, to protect its subjects, in the same manner, we expect the State Government to take up

this issue of fire once and for all with all seriousness. The Covid-19 will surely perish one day, but the problem of fire will remain for all times to come unless adequate and appropriate steps are taken in the right direction. This Court is confident that the problem can be solved provided the directions issued so far by this Court are implemented strictly and in its letter and spirit. We extend a helping hand to the State Government to combat this situation also, for which this Public Interest Litigation is heard by this Court.

30. Let a formal NOTICE be issued in the Special Civil Application No.14157 of 2020 to the respondents so as to seek their response with respect to the other reliefs prayed for in the writ-application.

31. Post this matter for further hearing in the last week of February 2021 before this Bench (Coram : J.B.Pardiwala and Ilesh J.Vora, JJ.).

(J. B. PARDIWALA, J.)

(ILESH J. VORA, J.)

/MOINUDDIN