

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) (WRIT PETITION (PIL)) NO. 34 of 2024

With

**CIVIL APPLICATION (FOR JOINING PARTY) NO. 4 of 2024
In R/WRIT PETITION (PIL) NO. 34 of 2024**

With

R/WRIT PETITION (PIL) NO. 118 of 2020

With

**CIVIL APPLICATION (DIRECTION) NO. 1 of 2024
In R/WRIT PETITION (PIL) NO. 118 of 2020**

With

**CIVIL APPLICATION (FOR DIRECTION) NO. 2 of 2022
In R/WRIT PETITION (PIL) NO. 118 of 2020**

With

**CIVIL APPLICATION (FOR DIRECTION) NO. 5 of 2021
In 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. 1 of 2022
In R/WRIT PETITION (PIL) NO. 118 of 2020**

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SUO MOTU

Versus

STATE OF GUJARAT & ORS.

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Appearance:

WPPIL NO. 34/2024:

MR DM DEVNANI, ADVOCATE (AMICUS CURIAE)
MR KAMAL TRIVEDI, ADVOCATE GENERAL with MR VINAY BAIRAGRA,
AGP for the RESPONDENTS (s) No. 1-3, 8-10
MR KAMAL TRIVEDI, SENIOR ADVOCATE with G H VIRK(7392) for the
RESPONDENTS(s) No. 4,5,7,11-13
MR HS MUNSHAW, ADVOCATE for RESPONDENTS NO.15-16
MR KAUSHAL PANDYA, ADVOCATE FOR RESPONDENTS NO.6,14,17-18

WPPIL NO. 118/2020:

MR AMIT M PANCHAL, PARTY IN PERSON with MR ANGESH A.
PANCHAL for the Applicant(s) No. 1
MR KAMAL TRIVEDI, ADVOCATE GENERAL with MR VINAY
BAIRAGRA, AGP for the Opponent(s) No. 1,2
MR KAMAL TRIVEDI, SENIOR ADVOCATE with G H VIRK(7392)
for the Opponent(s) No. 3
MR HS MUNSHAW(495) for the Opponent(s) No. 5,6,8,9,10

MR KAUSHAL D PANDYA for the Opponent(s) No.7, 10, 11
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**CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

Date : 27/09/2024

**ORAL ORDER
(PER : HONOURABLE THE CHIEF JUSTICE
MRS. JUSTICE SUNITA AGARWAL)**

1. In compliance of the order dated 23.08.2024 passed by us, specifically in reply to paragraphs '6' to '12' of the said order and also the order dated 13.09.2024, the personal affidavit of the present Municipal Commissioner of Rajkot Municipal Corporation has been placed before us. It is stated therein that the deponent has gone through the entire papers including the record of the Writ Petition PIL No. 118 of 2020, more particularly affidavits filed by the Corporation from time to time along with the record of the office of the Corporation.
2. It is submitted that the directions contained in the orders dated 15.12.2020 and 26.02.2021 of this Court in Writ Petition PIL No. 118 of 2020 as well as the subsequent orders passed therein are of continuing nature and require consistent efforts on the part of the Corporation from time to time and that the Corporation is duty bound to implement the same.

3. It is, however, submitted that the responsibility for compliance of the directions contained in the aforesaid orders passed by this Court from time to time would primarily be of the concerned officers of the Corporation dealing/entrusted with the particular subject matter. The reason being that the Corporation has 36 different departments having more than 6000 employees, each headed by the Head of the Department for taking care of about 6 lakh buildings registered with the Corporation spread over 161 sq. kms. It is stated that such a large organisation does not work as one un-bifurcated entity, but as a culmination of well-structured departments, so that each department can be headed by sectorial experts who are tasked with specific jobs, such as :-

- i. The task relating to issuance of the requisite license with reference to any gaming zones/amusement parks, subject to the satisfaction of various pre-conditions including the possession of fire NOC is with the concerned police officials under Section 33(1)(1)/33(1)(x) of the Gujarat Police Act, 1951.
- ii. As regards the provisions of the Gujarat Fire Prevention and Life Safety Measures, 2015 read with the Rules and Regulations framed thereunder, it is the Chief Fire Officer and its subordinate officers appointed in the fire department, who would be responsible.
- iii. The task relating to issuance of Building Use

Permission and/or exercise of power prescribed under Section 260 of the Gujarat Provincial Municipal Corporations Act, 1949 and for any illegality related thereto is within the jurisdiction of the concerned jurisdictional Town Planning Officer who is delegated with such powers vide Office Order dated 11.10.2008 under Section 69 of the Gujarat Provincial Municipal Corporations Act, 1949.

4. It is further stated that during the relevant time period, i.e. June 2021 to May 2024, various steps were taken by both the then Municipal Commissioners of the Corporation and they had performed their task with utmost dedication. It is contended that the then Municipal Commissioners had duly discharged their respective duties including their supervisory roles diligently and that the plea of the learned Amicus that the then Municipal Commissioners of the Corporation should be held personally responsible for any alleged non-compliance of any of the directions issued by this Court, more particularly pertaining to the file of TRP Gaming Zone, is not correct.
5. It is further submitted that the TRP Gaming Zone was being run without there being any valid Building Use Permission and the said fact was never brought to the notice of the then Municipal Commissioners, specifically and individually, at any point of time and even the order dated 15.12.2020 passed by this Court in the Writ Petition PIL No. 118 of 2020 does not specifically

provide the same.

6. As regards the fact of attending function at TRP Gaming Zone at Rajkot by the then Municipal Commissioner, it is submitted that mere visiting of an officer in his personal capacity in a party thrown by his personal friend would not be a ground to state that he was well aware of the said TRP Gaming Zone having come up without a proper Building Use Permission. Further, the structure of the said TRP Gaming Zone was not in existence in its full format and it was only an open ground used for go-karting with a small temporary structure in one of the corners. The Municipal Commissioners of the Corporation posted at the relevant point of time cannot be held guilty of negligence or dereliction of any of their duties or responsibility of due exercise of supervisory role or control over their officers.
7. With regard to the responsibility of the erring officers of the Corporation, the proceedings are on and for fixing liability on the said officers for paying compensation to the victims at this point of time, would be premature.
8. From the averments made by the Municipal Commissioner, Rajkot Municipal Corporation, in the affidavit dated 26.09.2024, vehemence of the officer in giving response to the Court is clearly visible. In many of the paragraphs, while giving reply to the directions contained in paragraphs no. '6' to '12' of the order dated 23.08.2024, the statement is that the Court cannot hold

any of the then Municipal Commissioners responsible by holding them guilty for non-performance of their supervisory role. The vehemence with which the officer has responded to us in the affidavit dated 26.09.2024 shows that he has no respect for the Court of law and the affidavit has been drafted in order to dictate the Court as to what can be done and what cannot be. We do not expect an officer of the caliber of IAS cadre to submit response to the Court in this manner. We keep our order reserve to seek explanation by issuing a proper notice to the officer (deponent), who has filed affidavit dated 26.09.2024.

9. As regards the directions contained in the order dated 23.08.2024, we may note that we have categorically noted that in the connected petition viz. Writ Petition PIL No. 118 of 2020, the then Municipal Commissioner of the Rajkot Municipal Corporation had filed affidavits giving undertaking that all efforts would be made to ensure the fire prevention and life safety measures and implementation thereof and the fire prevention and protection systems would be installed in all the buildings of the State of Gujarat as required under the Comprehensive General Development Control Regulations, 2017. It was provided by this Court that occupancy certificate to the occupant of the building in the State of Gujarat would be granted only after consulting the concerned designated authority who issues the certificate and after requisite inspection of the

building, so as to ensure that necessary requirements for fire protection have been fulfilled.

10. At the cost of repetition, it is reiterated that the direction of this Court was that No objection certificate from the concerned fire department/authority will have to be produced before the competent authority who issues Building use permission/occupancy certificate in conformity with the Comprehensive General Development Control Regulations, 2017. It is clear that final nod for building use permission was to be granted by the competent authority under the Gujarat Provincial Municipal Corporations Act, 1949 after verification of the compliance such as fire safety certificate, license, etc. by the competent authority.
11. In any case, the question as to how in what manner the TRP Gaming Zone was functioning without Building use certificate and without fulfilling necessary requirement for fire protection, etc. is still bothering us. This is a serious lapse on the part of the authorities of the Corporation and the Municipal Commissioner of the Corporation cannot shed his responsibility for exercise of supervision and control over the acts and proceedings of other officers and servants of the Corporation, under his supervisory role.
12. We do not see any feeling of remorse in the statements of the officers posted as Municipal Commissioner, if any recorded in the fact finding report, nor any such

response has come up before us till date. All the affidavits filed before us from July 2024 onwards are of the tenor that in no eventuality, the Municipal Commissioner of the Rajkot Municipal Corporation posted at the relevant point of time can be said to be held responsible of dereliction of their duties and responsibilities, which was duly exercised as part of their supervisory role and control over his officers. There is no expression of feeling of remorse or any assurance to the Court that, in case, the then Municipal Commissioners had exercised their supervisory powers diligently and were alerted about the TRP Gaming Zone coming up having been run for a period of two years, such a ghastly incident where 27 young people, middle aged and child had died by burning alive, could have been avoided. This incident has created a deep dent in the functioning of the officials of different Municipal Corporations in the State as admittedly many Gaming zone flourished in the entire State prior to the incident have been closed or sealed on the ground that they were being run without proper Building Use Permission, after the TRP Gaming Zone fire incident had occurred in the month of May' 2024.

13. With a deep sense of pain and feeling of frustration, the way the response has been given by the officers with vehemence to the Court, we are of the view that two Municipal Commissioners posted in the Rajkot Municipal Corporation at the relevant point of time are required to

submit their response by filing their personal affidavits. We, therefore, call upon the Municipal Commissioners posted in the Rajkot Municipal Corporation between the years 2021 to May 2024 when the fire incident had occurred, to file their personal affidavits in response to the order dated 23.08.2024 passed by us. We further require the learned advocate appearing for the Rajkot Municipal Corporation to place the entire original record pertaining to the demolition order passed by the Town Planning Officer including the notice of demolition etc., the regularisation application moved etc. prior to the incident. The entire file containing all papers/communications etc. shall be placed in original before us. The entire file pertaining to the fire incident occurred on 04.09.2023 shall also be placed before the Court.

14. Coming to the structure of the fire department of eight Municipal Corporations as per the provisions of Gujarat Fire Prevention and Life Safety Measures Act, 2013, as prayed by Mr. Kamal B. Trivedi, learned Advocate General, time is granted to the Director appointed under Section 6 of the said Act, to give response by filing his personal affidavit, as to the exercise undertaken to strengthen the fire department of each Municipal Corporation, progress made in the matter of filling up the vacancies in the fire department and the response to the observations made in paragraphs '6' to '11' of the order dated 02.08.2024.

15. Further, the Secretary, Primary and Secondary Education Department is required to file his affidavit to bring further progress report on record in the matter of making of schools fire safety compliant, including installation of fire safety equipments, conducting mock drills and training to teaching and non-teaching staff of the institution.

16. Let the response of these officers be received by 25.10.2024.

Put up on 25.10.2024.

(SUNITA AGARWAL, CJ)

(PRANAV TRIVEDI,J)

BIJOY B. PILLAI