

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4479 OF 2019

The Firm,

Vashi, Navi Mumbai

..Petitioner

Vs.

Navi Mumbai Municipal Corporation

and Another

..Respondents

Mr. Pravin Samdani, Senior Advocate a/w Mr. Ankit Lohia, Pooja
Batna, Mr. Rushabh Sheth i/b Rushab Sheth, for the Petitioners.

Mr. S. V. Marne, Ms. Sirisha Kurada, for the Respondents.

CORAM:-S. C. DHARMADHIKARI &

B. P. COLABAWALLA, JJ.

DATE :- APRIL 10, 2019.

P. C.:

By this Petition under Article 226 of the Constitution of India, the Petitioner challenges the order dated 22nd March, 2019 issued by the Navi Mumbai Municipal Corporation. At the outset, we must indicate that both sides understand the earlier order of this Court as granting liberty to the Municipal Corporation to reconsider its prior action. This means it was not precluded from passing a fresh order which accordingly has been passed.

2 The Navi Mumbai Municipal Corporation and its City Engineer are the Respondents.

3 This is a second or subsequent Petition on the same cause of action or grievance pertaining to disqualification of the Petitioner by the Navi Mumbai Municipal Corporation. This Corporation by the impugned order has disqualified the Petitioner from undertaking contracts from 15.11.2018 to 14.05.2019, 6 months in all. In the prior Writ Petition No. 1320 of 2019, this Court passed the following order:-

“1. By this petition, the Petitioner is challenging the order dated 15th November 2018 passed by Respondent No.2-the Chief Engineer, Navi Mumbai Municipal Corporation whereby the Petitioner is debarred from ongoing and new projects of Navi Mumbai Municipal Corporation for the period of 3 years from date of issuance of order.

2. The Petitioner is debarred / blacklisted in the light of incident dated 25th May 2018 in which one 11 year old boy – Sourabh had died and two other boys got injured as a result of fall of sliding gate. Immediately after the said incident, a reference was made by the Respondent-Corporation to the Indian Institute of Technology, Mumbai [for short “IIT”] to ascertain the negligence on the part of the Petitioner. Accordingly, on 20th September 2018, the IIT gave the report. The relevant part of the report is reproduced below :

“This is in reference to your letter No. NMMC/CE/1082/2018 dated 29-05-2018 in connection with the mishap happened in the above mentioned building when the sliding gate was detached. A visit to the site of school building was made by me on June 1, 2018 in the presence of the Engineers from the NMMC to see the detached sliding gate. The gate structure and its supports were critically examined during the visit and the photographs taken are shown in the Figure 1. It was observed that there was no damage in the top supporting / holding arrangements of the gate. Also, no sign of

scratches of the bottom wheels of gate observed on the road/ concreting work at the ground. In view of the above observations, it can be only said that the initially the gate was removed by the children and while fixing it back it fallen on them due to imbalance forces applied on it. Hence, it is purely an accident due to mischief of children. Necessary technical measures were taken for installing the gate and there was no negligence found in the gate arrangement."

3. In the light of above, it is clear that the Petitioner cannot be held responsible for the unfortunate incident in question in which 1 child died and two others were injured.

In the backdrop of IIT report, the Petitioner filed various representations for reconsideration of the order impugned in this petition. Mr. Marne, learned counsel for the Respondent-Corporation submitted that the said representations of the Petitioner shall be reconsidered by the Respondent-Corporation in the light of IIT report and they will withdraw the order blacklisting the Petitioner. Statement accepted.

4. Subject to above, writ petition is disposed of. The Respondent-Corporation is directed to take appropriate action within the period of one week from today."

4 The Petitioner claims to be an Architect and in the profession since 1999 and throughout these years rendered services to the Government and Private Sector, both at National and International level.

5 The Petitioner says that it has successfully commissioned and undertaken projects as Architect and in paragraphs 2 and 3, it is stated that the list would denote very high professional standards maintained by the Petitioner.

6 Thereafter, there is a reference to the awards and

certificates of merit. In paragraphs 5 and 6 of this Petition, it is stated that in the Private Sector as well, the Petitioner has been chosen as an Architect and in the subject contract by an empanelment process, the Petitioner was appointed as an Architect. It is a panel Architect and for various projects of buildings in Navi Mumbai Municipal Corporation area. That such commissioning and appointment is from 2006 and during such professional endeavours, the Petitioner was appointed as an Architect for construction of a school building at Sector-11, Koparkhairne, Navi-Mumbai by the communication of 24th April, 2006. Ground plus two storey structure was to be constructed. After the project was revised and an additional floor was to come up, the Petitioner received appointment letter as an Architect for construction of 3rd floor of the school building at Sector-11. Then, there was an extension to this building of 4th and 5th floor.

7 The Petitioner says that as per the scope of work under the contract, the Petitioner was to *inter alia* prepare and submit designs and drawings for the project. The Petitioner was involved with the project as a Consultant right from the inception of the project in the year 2006 and that ever-since, the Petitioner has provided up to the mark services without any grievance.

8 In the same breath, in Clause (e) of paragraph 7, the Petitioner says that it was appointed as a Project Consultant for extension of the fourth and fifth floor of the school building. The Petitioner says that there was a contractor M/s Ashwini Infra Development Pvt. Ltd. The Petitioner invites the attention of this Court to the terms of the contractors' tender and then submits that the Petitioner as a Consultant was to *inter alia* assist the Engineer in Planning, designing and supervision of the project. The Petitioner in due compliance with its obligation under the contract rendered services *inter alia* providing designs and drawings for the project. The structural design and drawings of this project have been proof checked by the expert in the field of civil engineering and a professor of IIT Bombay.

9 The Petitioner refers to the site development plan and submits that the project premises had three gates, two of which being sliding gates had been designed by the Petitioner and had been installed by another contractor in the earlier phases of the project i.e prior to 2013. As far as the third gate is concerned, the Petitioner in its site development plan proposed for the same to be an openable gate. The main gate had a dedicated small openable

gate for pedestrian entry. The second gate was the interface between the playground and school premises. The third gate, namely, the gate at which the mishap took place, was planned for car parking area and any gate for vehicular entry or exit ought to be operated by a guard. The Petitioner, now says that despite the drawings and the site development plan prepared by the Petitioner suggesting and proposing the third gate to be an openable gate, a final decision to change the same to a sliding gate, similar to the two other gates that had been installed in the project premises prior to 2013, was taken by the Engineer.

10 On due completion of the works at the project, a completion certificate dated 2nd March, 2016 was issued by Respondent No.1 and the work was found to be satisfactory. Thus, the Petitioner claims that no grievance or defect with respect to either the design or the installation of the gate or for that matter any other defect in the gate was ever found or raised by the Engineers at any point of time.

11 The Petitioner, then, refers to how the Occupation Certificate was applied for and ultimately it is stated to be issued.

12 The Petitioner says that as per Clause 2.11 of the 'condition of agreement' on completion of the project, the Consultant was to furnish instructions for maintenance of the property, including painting, other finishes, landscaping etc. Even that part of the assignment was completed.

13 It is in these circumstances it is stated that the school building was not in use or in occupation till very recently. It was nothing but a deserted school building with no security guards to monitor and safeguard the premises from being used for unauthorized and illegal activities. It is only after this unfortunate mishap of 25th May, 2018 that the school has become operational and has been used and occupied for conducting classes for primary school children. The school premises were in fact trespassed by the children living in the nearby areas and were used by them as a playground. The premises were also used for unauthorized and illegal activities. Further, no maintenance of the gate or of any other structure in the manner, stipulated in the maintenance manual, had been carried out by the Respondents.

14 It is then claimed that in the accident, which occurred on account of unauthorized use, children from the neighbouring

area entered in the school premises to play and because they meddled with the gate and attempted to close it, that the third gate fell on them resulting in the death of a child and injuring two others.

15 A show cause notice was issued to the Petitioner alleging negligence on the part of the Petitioner and, that show cause notice is issued by pointing out that the Petitioner was a technical advisor. The whole school building was constructed under the supervision of the Petitioner. The sketch, designing and planning was the responsibility of the Petitioner and under the supervision of the Petitioner, the gate was installed. One Saurabh Sunil Chaudhari, an eleven year old boy died in the incident of 25th May, 2018 and two other children were injured. The Petitioner was stated to be responsible for the technical inspection and construction of the school building and gate and whether that is technically fit for being used or otherwise, should have been ensured by the Petitioner. The Petitioner is alleged to be negligent and that is why the sliding gate fell on the children and the mishap occurred.

16 In reply to this show cause notice, the Petitioner while

not disputing the incident stated that there is no failure on the Petitioner's part in providing any faulty design for the particular gate. This gate has been proposed as an openable gate. The drawings show the same. Subsequently, this has been changed to a sliding gate during one of the site meetings since there were two existing functional sliding gates of similar opening size and height. It is stated that they were to be installed by the contractor in earlier phases of the project prior to 2013. Therefore, it had been decided that the same design of the earlier existing sliding gate on site was to be followed for this particular sliding gate, as well.

17 The next submission of the Petitioner was that, the project has been completed in the year 2016. The particular sliding gate was unmonitored for almost a period of two years and used / misused by anybody without any control. There are media reports of the compound being misused by unauthorized people also.

18 It is then stated that any sliding gate is not supposed to be climbed upon, shaken or rode upon which caused gradual deterioration of hardware of the gate. Mud and water due to monsoons also infiltrates the hardware system causing rusting

and deterioration. In the absence of periodical maintenance, the gate tends to become hard to move and uneven angular force can cause the gate to come off the mechanism and fall. It is then stated that the current state of the sliding gate shows that the guide rollers bracket on top is missing and the gate lock stopper is also found missing/broken. The unfortunate incident would not have happened, if any anomaly in case of using the sliding gate was detected by any security guard on unoccupied project site. As now the Respondent has decided to appoint the Indian Institute of Technology (IIT) for structural audit of the gate, the Petitioner requested for a chance to represent the case post receipt of the audit report.

19 The Petitioner was also provided with a copy of the report styled as 'technical report' and heavy reliance is placed on the same. That report is at page 112 of the paper book and which reads as under:-

*“Ref.No.DRD.CE/RESJ-86/14-15
September 20, 2018.*

*The City Engineer
Navi Mumbai Municipal Corporation
NMMC Head quarter, Plot No.1,
Near Kille Gaonthan, Palmbeach Junction,
Sector 15A, C. B. D. Belapur, Navi Mumbai- 400 614.*

Subject:- Third party Audit of NMMC School on Plot No. 15, Sector 11, Koperkhairne, Navi Mumbai.

Dear Sir,

This is in reference to your letter No. NMMC/ CE/1082/2018 dated 29-05-2018 in connection with the mishap happened in the above mentioned building when the sliding gate was detached. A visit to the site of school building was made by me on June 1, 2018 in the presence of the Engineers from the NMMC to see the detached sliding gate. The gate structure and its supports were critically examined during the visit and the photographs taken are shown in the Figure 1. It was observed that there was no damage in the top /supporting/holding arrangement of the gate. Also, no sign of scratches of the bottom wheels of gate observed on the road/concreting work at the ground. In view of the above observations, it can be only said that initially the gate was removed by the children and while fixing it back it fallen on them due to imbalance forces applied on it. Hence, it is purely an accident due to mischief of children. Necessary technical measures were taken for installing the gate and there was no negligence found in the gate arrangement.

Yours sincerely

(R. S. Jangid)

*Professor, Department of Civil engineering
I. I. T. Bombay, Powai, Mumbai 76."*

20 The Petitioner on 15th November, 2018 was informed that having perused the necessary records pursuant to the show cause notice, including the explanation of the Petitioner, the Petitioner has been held responsible for the incident and for three years from the date of receipt of the communication, the Petitioner was held to be disqualified for any work to be awarded or issued by the Navi Mumbai Municipal Corporation. The Petitioner has been barred from accepting any works from the Corporation, save and except the ongoing works, for a period of three years.

21 The Petitioner being aggrieved and dissatisfied with this communication of the Respondents on 12th December, 2018 even approached the Municipal Commissioner.

22 Post this Petition, the Petitioner approached the Corporation and pointed out that the earlier communication or order is harsh and proceeds to blacklist the Petitioner. It is this understanding of the Petitioner which was placed before the Corporation and it was requested to drop the drastic action.

23 However, by the impugned communication, copy of which is at Exhibit-H, the Petitioner has been debarred for six months. The Corporation has, by the impugned communication, informed that it has considered the matter in an overall manner and has reduced the period of three years to six months. This order is passed on 22nd March, 2019. It is this order, which is impugned in this Writ Petition.

24 We have heard Mr. Lohia, learned counsel appearing for the Petitioner and Mr. Marne, learned counsel appearing for the Respondents.

25 Mr. Lohia would submit that the impugned order is harsh, unreasonable, unfair and unjust in the sense that the Petitioner was not given a hearing prior to the same. It is nothing but an order of black listing passed without due process of law. The Petitioner had pointed out that there are two gates installed of a different category, whereas the Petitioner had advised the third gate to be an openable gate, yet, a decision was taken to install even the third gate of the same category, as the earlier two gates. In other words, the three gates were sliding gates but this was not the advice of the Petitioner. Secondly, the Petitioner could not have been blamed, if the property was left unattended and unmanned. If there are no security guards at site of these gates, even if the installation is perfect, these gates can fall by human intervention. The children in the vicinity easily access the building and premises and have also climbed up the gate to enter. In such circumstances, the gate was damaged and the mishap occurred. It was much after the project was completed. The Petitioner was not responsible for the mishap at all. It is in these circumstances that Mr. Lohia would submit that the impugned order be quashed and set aside.

26 Mr. Lohia attempted to point out that several such gates have been installed in the premises in the vicinity. No mishap or accident occurred simply because these gates were properly manned and looked after so also maintained. In such circumstances, a charge of negligence has not been made out at all.

27 Mr. Lohia relied upon several judgments of this Court, including a Division Bench judgment of this Court in Writ Petition (L) No.3264 of 2015 decided on 2nd March, 2016, to which one of us (S. C. Dharmadhikari, J.), was a party. Our attention is also invited to the judgment of the Hon'ble Supreme Court of India, particularly on the point of blacklisting and how that it named as punishment and virtually an economic death. In such circumstances, Mr. Lohia would submit that the Writ Petition be allowed.

28 Mr. Marne, on the other hand, supported the impugned order and would submit that the Writ Petition be dismissed.

29 For properly appreciating the rival contentions, we must first refer to Writ Petition No. 1320 of 2019 which was filed challenging the prior order of Respondent No.1 dated 15th November, 2018. The Petitioner was debarred from the ongoing and new projects of Navi Mumbai Municipal Corporation for a period of three years from the date of issuance of that order.

30 We have reproduced that order verbatim and in that order the facts have been referred in paragraph 2 and thereafter there is a reference made to the report of the Indian Institute of Technology, Mumbai which says that the mishap occurred when the sliding gate was detached. A visit to the site of school building was made by the representative of the IIT and he found that the Engineers were also present. The detached gate was examined very critically. It was observed that there was no damage in the top supporting /holding arrangement of the gate. Also, no sign of scratches of the bottom wheels of the gate observed on the road/concreting work at the ground. In view of these observations it can only be said that initially the gate was removed by the children and while fixing it back, it fell on them due to imbalance forces applied on it. Hence, it is purely an

accident due to mischief of the children. Necessary technical measures were taken for installing the gate and there was no negligence found in the gate arrangement.

31 This Court observed that in the light of the above, it is clear that the Petitioner cannot be held responsible for the unfortunate incident in question in which one child died and two others were injured. However, in that very paragraph, this Court observed that in the backdrop of this report of the IIT, the representations filed by the Petitioner for reconsideration of the order, have not been responded to. The Respondent Municipal Corporation, therefore, stated before the Court that these representations would be duly considered rather reconsidered in the light of this report and they will withdraw the order blacklisting the Petitioner. The statement was accepted and the Writ Petition was disposed off. However, this Court directed the Corporation to take appropriate action. Far from total exoneration, the tenor of the order and which must be read as a whole it is clear the Municipal Corporation was given liberty to reconsider its action. This Court did not express a firm final opinion and left it to Respondent No.1 to take a appropriate

decision. It was thus free to take the impugned action.

32 After this order was passed, the parties understood it to mean that the period of three years mentioned in the earlier order was unduly long and the Petitioner could not have been kept out of all contracts of Navi Mumbai Municipal Corporation for a duration of three years.

33 The Division Bench judgment relied upon by the Petitioner's counsel deals with a matter of total blacklisting. The Petitioner before this Court was banned from all business dealings with ONGC for two years and reason for that was that, it violated an integrity pact, a formal and binding contract between the Petitioner and the ONGC. The order proceeds to state that no tender inquiry is issued on the Petitioner or any of its allied concerns, partners, associates, directors or proprietors for any ongoing or future tenders during the period of the ban.

34 The Division Bench on perusing all materials and particularly, the terms and conditions of the contract and integrity pact found that the ONGC had proceeded on the footing

that there was a breach of this integrity pact. The show cause notice was issued and 12 questions or statements were set out therein and called for response of the Petitioner. Thereafter, the internal findings were considered and the Petitioner before this Court replied to the show cause notice and dealt with every aspect. It pointed out that the allegations were false and were not at all borne out from the record. The Petitioner's explanation is referred in great detail and then the inquiry officer's findings are also referred by the Division Bench. The inquiry officer, in the first instance, had exonerated the Petitioner before this Court but then there was a second report and after that second report, the third report also followed, of the same inquiry officer. It was, therefore, a per-determined endeavour of holding the Petitioner guilty of breach of the terms and conditions of the contract. However, this Court found that the integrity pact and particularly Section 3 (2) thereof, required proof beyond reasonable doubt. If the findings in the earlier report were to be reappraised, reviewed or reconsidered, there has to be cogent material. It is in these circumstances that this Court found the decision making process to be violative of the mandate of Article 14 of the Constitution of India. That this mandate must be followed even in contractual

matters, and particularly, when there are public bodies involved, is fairly well established. However, we do not find that this decision has any application to the facts and circumstances of the present case. The Petitioner had in his representations maintained that there is no failure on its part in providing any faulty designing of the particular gate. The gate has been proposed as an openable gate.

35 In this Petition, the same assertion is to be found. Further attempt is to establish that when the advice and opinion was sought, the Petitioner indeed advised that two sliding gates have already been installed and the third should be openable gate.

36 Pertinently, the Petitioner is aware of the terms of its engagement, the extent of its obligation. Else, in Paras 7(d) to (i), the following statements would not have been set out. These sub-
paras read as under :-

“d. As per the scope of work under the contract, the Petitioner was to inter alia prepare and submit designs and drawings for the project. It is pertinent to note that the Petitioner has been involved in the project as consultants right from the inception of the project in the year 2006 and that ever since, the Petitioner has provided up to the mark services to the Respondents without any grievances of any nature having being raised by the Respondents. It is owing to the efficient services rendered by the Petitioner that the Respondents year after year awarded the contract for the various phases of the school project to the Petitioner.

- e. *After the appointment of the Petitioner as the project consultant for extension of the fourth and fifth floor of the school building, a tender bearing No.B-1/ACE/18/2013-14 dated 28th August, 2013 (hereinafter referred to as the "Contractor's tender") was floated by Respondent No.1 for the purpose of appointment of a Contractor for the execution and supervision of the project. After due procedures, M/s Ashwini Infra Development Pvt. Ltd. (hereinafter referred to as the 'contractor') came to be appointed as the contractor for the said project. The Petitioner craves to refer to and rely upon the tender documents as and when produced.*
- f. *As stipulated in the Contractor's tender, the term "Engineer" shall mean the Additional City Engineer authorized by the Commissioner to carry out the functions of the Engineer and the term "Engineer's representative" shall mean the Executive Engineer / Deputy Engineer / Sectional Engineer / Junior Engineer appointed from time to time by the Engineer. The Contractor's tender lays down in detail the duties and obligations of the Contractor as also of the Engineer.*
- g. *The Petitioner as the consultant was to inter alia assist the Engineer in planning, designing and supervision of the project. The Petitioner in due compliance with its obligations under the contract rendered services inter alia of providing designs and drawings for the project. The structural design and drawings of this project have been proof checked by Dr. R.S. Jangid, an expert in the field of civil engineering and a professor of IIT Bombay. The Petitioner craves leave to refer to and rely upon the letters issued by the Dr. R.S.Jangid on the proof checking of the structural designs, as and when produced.*
- h. *As is evident from the Site Development Plan, the project premises had three gates, 2 of which being sliding gates had been designed by the Petitioner and had been installed by another contractor in the earlier phases of the project, i.e. prior to the 2013. As for the 3rd gate, the Petitioner had in its Site Development Plan proposed for the same to be an openable gate. The main gate had a dedicated small open-able gate for pedestrian entry. The 2nd gate was the interface between the playground and school premises. While the 3rd gate, i.e. the gate where the mishap took place was planned for the cars parking area and any gate for vehicular entry or exit ought to be operated by the guard.*
- i. *Despite the drawings and the Site Development Plan prepared by the Petitioner suggesting and proposing the 3rd gate to be an openable gate, a final decision to change the same to a sliding gate, similar to the two other gates that had been installed in the project premises prior to 2013, was taken by the Engineer."*

assignment. Even if its opinion was otherwise, it had not made any attempt to withdraw from the scene. In fact, it attended site meetings and had dialogues with the Engineer and thereafter installation as a sliding gate took place. The only explanation by the Petitioner is that, the project has been completed in the year 2016. The fact remains that this particular sliding gate was unmonitored for almost a period of two years. The Petitioner was in overall charge of the project. The designs and other specifications were finalized by the Petitioner and it is under the Petitioner's advice that the installation was done.

38 Pertinently, there are three sliding gates installed in the same premises. If the premises was not used as a school and virtually lying unattended, unmanned out of the three gates, the third gate allegedly was accessed to get into the premises by miscreants and children residing in the nearby locality. Pertinently, the whole building was not provided with security but nothing happened to two other gates. All the three gates were installed more or less at the same time. The designing of all the three gates is of the Petitioner and there is no explanation how two other gates of the same design and pattern stood firm but only

the third one was uprooted by the children in the vicinity. We do not find that the Municipal Corporation was in error in refusing to accept such explanation. Then, the explanation is that, any sliding gate is not supposed to be climbed upon, shaken or rode upon and that caused gradual deterioration in the hardware of the gate. We do not see how the Petitioner can then claim that there was no fault in the design or that the gate was installed in accordance with the established practice, standards and norms. It had been allegedly manipulated or on account of human intervention, fault developed in it. This assertion of the Petitioner is not proved by it though the burden rested squarely on it. The Petitioner has proclaimed that it had nothing to do with the project site after 2016. Then, why the above explanation has been provided, is not clear to us at all. After such an explanation being provided and which the Municipal Corporation was not bound to accept, we see no reason to then entertain the grievance and of the nature raised before us.

39 The submission canvassed that there is breach of principles of natural justice, fails to impress us. In all such matters, we do not see how every party like the Petitioner can complain that it was not heard. The Petitioner was served with

the show cause notice, the Petitioner gave a reply to it. If the Petitioner was awaiting an opportunity of personal hearing , then, merely because that was not allegedly extended, does not mean that the impugned order is grossly unfair and unjust. In fact, the Petitioner fully relied upon the materials which it had in its possession. It was stated throughout by the Petitioner that the installation of the gate was carried out and completed in the year 2016 itself. In the Petition itself, at page 10 in paragraph 7 (q) & (r), the Petitioner refers to the letter of 31st May, 2018 by which it replied to the show cause notice and after denying the allegations, requested Respondent No.2 to give it a hearing and provide it an opportunity to represent itself but at the same time, the Petitioner says that at the request of the Respondents, a Professor in the Department of the Civil Engineering, IIT, Powai had personally visited the site on 1st June, 2018 and gave the report on 20th September, 2018. The finding is that, the mishap occurred solely due to the mischief of the children. This report is heavily relied upon by the Petitioner but with great respect, neither the IIT nor the Petitioner produced any material to support the above conclusion.

40 To say the least we are surprised at such response of

the Petitioner, particularly, when the incident resulted in a casualty. One precious human life of a minor child was lost and two others were injured. The Petitioner went to the extent of urging that it had never advised installation of a third sliding gate but had stated that the third gate should be an openable gate. Why then the Petitioner was relying upon the finding in the report of the IIT, has not been clarified to us at all. If the version on merits is that the accident did not result because of faulty designing but poor maintenance, then, that line of argument should have been maintained throughout. In fact, what we find is that after this Court's order, the Petitioner made a representation to the City Engineer and stated that the blacklisting for 3 years results in a scar on its reputation and there is already a reply given to the show-cause notice. Pertinently, if that action was withdrawn altogether and the Petitioner was given an opportunity to represent its case again, then, that opportunity was not availed of to prove the merits of the case. This opportunity could have been utilised to seek total exoneration but advisedly the Petitioner only requested to reduce the period of the ban.

41 Then, there is a representation at page 116 of the paper book dated 12th December, 2018 in which the Petitioner says

that the unfortunate accident has happened after two years of completion of the work. The completion report issued by the Engineering Department states that the work is found to be satisfactory and completed within the time frame. Even technical measures were taken for installing the gate and there was no negligence found in the gate arrangement, is the further case.

42 The Municipal Corporation was not bound to accept this version. It could only have, in the given facts and circumstances, reduced the duration of the ban and which it indeed did. Beyond this, we do not think that the Petitioner deserved any opportunity. Even in the order of this Court passed on 8th March, 2019, we find that the version in these representations is maintained but eventually never pressed.

43 A reliance on the report of the IIT submitted after the accident does not carry the case of the Petitioner further. It is not the argument of the Petitioner that an Architect and Technical Advisor like the Petitioner cannot be proceeded against. In fact, the Petition itself narrates as to how the Petitioner, though an Architect was engaged by the Respondents for not only advising it but was consulted throughout. The Petitioner had alleged that the

accident occurred on account of human intervention. The Petitioner had gone to the extent of saying and alleging in the Writ Petition that along with the application dated 5th February, 2018 for obtaining Occupation Certificate, a copy of the revised plan consisting of the sliding gate, was enclosed. Thus, it has gone to the extent of blaming the Municipal Corporation for having issued the Occupation Certificate and now turning around to allege a negligence on the part of the Petitioner.

44 We do not think that any such ground, as is now projected before us after the incident resulting in loss of a precious human life, deserves to be accepted. At the best, everything that was placed before the authority is an afterthought. This is not a matter where we should be interfering in our writ jurisdiction, particularly, when the order passed on 22nd March, 2019 reduces the period to six months from the initial three years. Today, the position is that this order will not remain in force beyond the stated period. It is not as if this order is so harsh, arbitrary, unfair, unreasonable and unjust that we should interfere with it in our writ jurisdiction. A public body was obliged to hold a thorough inquiry into the accident and mishap. It proceeded to do so. That it had proceeded also to hold the Petitioner responsible,

does not give the Petitioner an opportunity to turn around and blame the Municipal Corporation for neglecting its own premises and leaving them unguarded and unprotected. We do not expect professionals to go to this extent, when they have been engaged for their experience and expertise. It is the faulty designing and installation which may inter alia have caused the serious accident. The Petitioner carried a version, without any supporting documents, of a human intervention. The media reports would not take a case of this nature any further.

45 We do not think that in proceeding against the Petitioner, amongst others, for the mishap and passing an order to the above effect requires our intervention in writ jurisdiction. The impugned order cannot be said to be perverse nor are we a Court of further appeal which can re-appreciate and reappraise all the materials so as to exonerate the Petitioner.

46 As a result of the above discussion, the Writ Petition fails and is dismissed. No costs.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)