

RESERVE JUDGMENT**Court No. - 8****Case :-** WRIT - A No. - 6870 of 2022**Petitioner :-** Vijay Kumar Singh**Respondent :-** State Of U.P. Thru. Prin. Secy. Home. Govt. Up Civil Sectt. Lko. And 6 Others**Counsel for Petitioner :-** Kapil Misra, Sunil Kumar Chaudhary**Counsel for Respondent :-** C.S.C.**Hon'ble Alok Mathur, J.**

1. Heard Sri S.C. Misra, learned Senior Advocate assisted by Sri Sunil Kumar Chaudhary, learned counsel for the petitioner as well as Sri V.K. Shahi, learned Additional Advocate General assisted by Sri Sandeep Chandra, learned Standing Counsel for the respondents.

2. The petitioner, who was holding the post of Chief Fire Officer, Lucknow has approached this court being aggrieved by the order dated 10.9.2022 whereby he has been placed under suspension in contemplation of departmental proceedings, with regard to a fire incident which had engulfed Hotel Levana Suites on 5.9.2022. In the said incident 4 persons had lost their lives and prima facie the petitioner has been found to be negligent in the preliminary inquiry conducted by a committee consisting of the Commissioner of Police, Lucknow, as well as the Divisional Commissioner, Lucknow Zone, for being responsible for issuance of the no objection certificate despite the fact that on most of the mandatory aspects including the fire service equipment were found to be deficient or non-existent.

3. Shri S.C. Mishra, Senior Advocate appearing on behalf of the petitioner has submitted that the impugned order of suspension is illegal and arbitrary and contrary to the statutory provisions contained

in the Fire Prevention and Fire Safety Act, 2005 (*hereinafter referred to as "the Act of 2005"*). It was submitted that according to Section 3 of the Act of 2005 the nominated authority/Fire Station Officer has the power to inspect any building of premises for ascertaining the adequacy of fire prevention and fire safety measures only where the building is of the prescribed height. It is submitted that the prescribed height as per the Act is 15 metres, and the height of the hotel in question is below 15 metres and consequently no duty was cast upon the petitioner to make any inspection of the premises. It is stated that initially the No Objection Certificate was granted in 2017 by predecessor in office of the petitioner and in this regard also the petitioner cannot be blamed.

4. It was further submitted that an enquiry has been conducted by the by the Inspector General of Police (Fire), who has reported that all the fire safety equipment was installed and there was no deficiency in this regard. On the strength of the said report it was submitted that the petitioner cannot be held be responsible for the fire occurring in the hotel premises.

5. Counsel for the petitioner has further relied upon the judgement passed for the U.P. Public Service Tribunal in the case of Abhay Bhan Pandey who was also previously posted as the fire station officer in Lucknow and against whom disciplinary proceedings were initiated with regard to an incident of fire in hotel on 19/6/2018 where 7 persons had died and in the said enquiry he was found guilty and punished. The Tribunal held that the No Objection Certificate has been issued subject to inspection by the Fire Station Officer, Hazratganj who had reported that all the fire prevention systems were in working condition and the hotel was below the height of 15 metres and hence concluded that there was no violation of the National Building Code or any rule to hold the petitioner therein to be liable or

responsible for the fire incident and consequently set aside the punishment order. The order of the Tribunal was subsequently upheld by this court as well as Apex Court. It has been submitted that the legal position has been clarified in the said Judgment and similarly the petitioner also cannot be blamed in such an incident.

6. Sri Vinod Kumar Shahi, Learned Additional Advocate General while opposing the writ petition has submitted that a charge sheet dated 18.10.2022 has already been issued containing 5 charges, and the disciplinary proceedings are underway. It was further submitted that the defence of the petitioner can be adequately considered during the course of the enquiry where the petitioner would have liberty to adduce evidence and material in his support to show that the charges levelled against him are not made out.

7. It was submitted that the guidelines for grant of no objection certificate have been framed pursuant to the directions of the High Court dated 03/02/2017 passed in writ petition number 1036 [MB] of 2016 [PIL]. The said guidelines contain the detailed procedure which has to be followed at the time of grant of No Objection Certificate. It is provided that it is mandatory to go through the approved layout plan as provided in clause 9(Ka) and only then the competent authority can proceed to grant the no objection certificate in terms of annexure 1 therein.

8. According to the procedure prescribed in annexure 1 the inspection of the premises has to be done by the FSO (Fire Safety Officer) . The Chief Fire Officer has to review the findings of the inspection and issue the no objection certificate. From the material on record it is evident the petitioner was fully aware about the deficiencies in the fire safety equipment installed at the hotel in question, and there was no second staircase which fact has been noticed by the petitioner himself and endorsed at the time of grant of No Objection Certificate but still

he proceeded to grant said certificate. Apart from the glaring lacune that no map was sanctioned for a hotel and even the mandatory safety equipment's were lacking including an fire escape staircase which was noticed by the petitioner himself, but still proceeded to issue No Objection Certificate and accordingly it was submitted that these facts are sufficient to initiate departmental proceedings against the petitioners and if these facts are proved, undoubtedly may entail serious consequences.

9. The learned standing counsel has further submitted that the impugned order of suspension has been passed after receiving the report submitted by a committee consisting of Commissioner of Police, Lucknow, as well as the Divisional Commissioner, Lucknow Zone where the petitioner has been held to be negligent in his discharge of duties while issuing the no objection certificate to the hotel where the fire erupted and 4 persons lost their lives. This court had directed the standing counsel to produce the material on the basis of which prima facie satisfaction was recorded by the competent authority to proceed against the petitioner. In pursuance to the directions of this court the learned Standing Counsel has produced the inquiry report submitted by the committee dated 09/09/2022 as well and the material considered by the said committee..

10. The inquiry committee had sought reports from various other departments who were responsible for granting various licenses and no objection certificates for running the hotel. According to the report submitted by the Lucknow Development Authority, it has been stated that on 05/05/1984 an application was moved for approval of the map on the said land on which the hotel is existing, for purposes of an office. This application was rejected on 24/03/1986 on the ground that the land use in the said area is residential and such a building could not be permitted without change in land use. A writ petition was

preferred before this court where a stay order was passed in favour of the petitioner.

11. A fresh application was preferred by M/S Bansal Constructions on 09/02/1996 and after various correspondence at the level of the State Government a building plan was sanctioned for group housing. An undertaking was also given that the existing office would be removed as per the sanction plan failing which the sanctioned map would be deemed to have been cancelled.

12. Contrary to the sanction map, as well as the undertaking given to the State Government at the time of sanctioning of the group housing, the office premises was never converted to residential and on the other hand the illegal construction of an hotel was undertaken and completed totally contrary to the sanction map, and the regulatory authorities continued to look the other way, tacitly conniving and permitting the illegalities to thrive at the cost of innocent lives.

13. The Committee also examined the matter referred to it and the report submitted by fire department after inspection of the said premises, as well as the role of the petitioner in this regard. It was noticed that the Fire Department had proceeded as per the provisions of the National Building Code, 2016 and considered the premises in which the hotel was running as falling in category A5 and no objection certificate was granted on 25/10/2017 where the period of it's validity was not even mentioned. The No Objection Certificate was again renewed on 16/02/2021 by the petitioner himself. The renewal was issued contrary to the rules and guidelines in and also in gross disregard of compliance with regard to most of the mandatory requirements . It was notice that there are very few fire extinguishers on the various floor, much less than what was required, the Hose Reel was inadequate, there was no opening of the staircase on each floor, and similarly there was deficiency with regard to the wet riser,

automatic sprinkler system, manually operated electronic fire alarm system, automatic fire detection alarm system underground water tank combined with capacity in sprinkler.

14. The most glaring deficiency which was recorded by the Committee was with regard to the evacuations/emergency exit plan. It was noticed that with regard to the premises having a layout of 500 square metres or more there was a requirement of at least 2 staircases which should be enclosed. During the inspection it was found that both the staircases on the outside were not enclosed and the staircase at the back of the building went directly to the roof and could not have been used in case of emergency evacuation for occupants on any of the floors. The second staircase was near the gate of the building and was constructed only in October, 2021 which was also not enclosed and all the entrances/approach to all the floors was blocked with wall/ply board. The inspection team also recorded that all the windows had iron grill and consequently there was no way to escape in case there was any fire in the building. It was recorded that in case of any fire there was no way any person could have escaped or got out of the building using the emergency staircase or even by breaking open the windows, in hence there was deficiency and gross negligence with regard to the permissions granted to the hotel by the fire department. It is further noticed by the Committee that while renewing the fire and life safety certificate by the petitioner on 16/02/2021 it was specially recorded that there was a requirement of an extra staircase according to the guidelines in this regard, meaning thereby that the petitioner was fully aware that the premises did not conform or fulfil the mandatory requirements in relation to the fire and life safety equipment, but still the certificate was granted fully knowing the deficiencies in this regard.

15. This court has gone into the reports/which has formed the basis for initiation of disciplinary proceedings against the petitioner only to verify the existence of cogent and relevant material on the basis of which disciplinary proceedings are sought to be initiated against the petitioner. This aspect of the matter gained further relevance considering the arguments and grounds raised by the counsel for the petitioner that the decision of the State Government to initiate disciplinary proceedings against the petitioner is arbitrary as there is no material on the basis of which the disciplinary proceedings could be initiated. It was further submitted that the petitioner was not responsible for grant of the no objection certificates and in any case the same was granted after a physical inspection done by Junior Field officials.

16. Further the petitioners have relied on a inquiry report submitted by the Deputy Inspector General of Police (Fire) indicating that there was no deficiency on the part of the fire department in any manner. They said report on the face of it seems to be highly unsatisfactory and cannot in fact be called an “inquiry report” as it only records the existence of the equipment found in the premises of the hotel. It nowhere mentions as to what was the required standards which ought to have been maintained and whether they said equipment met those requirement. There is no mention as to whether the said equipment was in working order or not. There is no mention of the adequacy or condition of staircases and also with regard to the iron casing of the hotels with the grill on the windows impeding any attempts to escape by any person trapped in the inferno. The standing counsel on the basis of instructions has also submitted that the State Government has not relied/accepted the said report and hence the same is inconsequential and cannot be relied upon. This Court is also of the considered view that the report of DIG(Fire) is lacking in material

particulars which ought to be part of any inquiry report and hence due to its infirmities should be ignored as being unactionable.

17. The decision of the U.P Public Service Tribunal in the case of Abhay Bhan Pandey also cannot come to the assistance of the petitioner at this stage. The Tribunal therein was considering the validity of the punishment order in light of the peculiar facts of the said case. In the present case the disciplinary proceedings are in their infancy and only the charge sheet has been served upon the petitioner and at this stage the validity of any proposed punishment cannot be considered. This Court at this stage is only considering the validity of the suspension order which has been passed in contemplation of disciplinary proceedings, and the reasons stated therein. This Court is also conscious of its limitations, and at this stage cannot undertake any exercise to test the veracity of the charges, and the limited skirmish with facts have done only to examine the arguments raised by Counsel for the petitioner and to record our satisfaction with regard to the validity of the impugned order.

18. This court has considered the report submitted by the committee consisting of Commissioner of Police Lucknow as well as the divisional commissioner Lucknow. The said Committee in turn has taken inputs, material and documents from all the concerned departments before submitting their report. The report unequivocally discloses the involvement of petitioner who in discharge in his duties of Chief Fire Officer granted/renewed the No Objection Certificate, and also had sufficient knowledge about the deficiencies in the fire prevention equipment and the mandatory requirements in this regard. The arguments of the petitioner that the decision of initiating disciplinary proceedings against the petitioner and placing him under suspension is arbitrary and illegal without there being any material in this regard, is not made out and is consequently rejected. There is

sufficient material as borne out from the report of the Committee dated 09/09/2022 to proceed against the petitioner, hence the writ petition is accordingly **dismissed**. The enquiry shall proceed against the petitioner in accordance with law and the enquiry officer shall not be influenced or guided by any of the observations made by this Court.

19. Before parting with the matter it is necessary to record our observations to the contents of the report of the Committee dated 09/09/2022 and the material placed before us by the learned Standing Counsel. The report of the Committee discloses serious disturbing facts with regard to the functioning of the regulatory authorities who are given the task of ensuring the safety and security of the public at large, and are expected to discharge their duties sincerely following the mandate of law. The Development Authority tasked with the object of ensuring planned development and scrutinising and sanctioning of building maps is permitting rampant construction in total violation of the rules and norms as is evident from the report placed before this Court. It is only when incidents like the present one occur where numerous lives are lost, then only their work and conduct is scrutinised. Further it seems there is a clear effort to absolve all the senior responsible officers who are given sufficient cloak to take shelter like the report of the Deputy Inspector General of Police (Fire).

20. It is surprising how such a report could have been submitted considering that that most of the fire safety equipment was not working as per the report of Committee. There was no answer forthcoming to the query of the court as to how the hotel was functioning without even having a valid sanctioned map, and all the agencies had come to its aid and granted all the permissions overlooking the basic requirements as provided for in various Government Orders and enactments.

21. In the said Enquiry Committee report it has been stated that the Electricity Department had sanctioned a electricity connection of 250 kW for commercial use without even verifying as to whether the hotel was sanctioned. The Excise Department granted licence to run a bar shutting their eyes to the fact that there was no sanction plan and even the mandatory requirements as contained in government order dated 7/10/2013 were not fulfilled, before they proceeded to grant an excise license. The basic documents/material were not examined with regard to the fact whether the applicant does or does not have any criminal antecedents, or he has any liability of outstanding Government dues, before the bar license was granted.

22. It is expected that a thorough inquiry be held as to how such infraction of rules and regulations has taken place despite a detailed regulatory mechanism has been put in place for grant of all licences/No Objection Certificates. In the above circumstances, it is absolutely necessary that proceedings are initiated against all persons responsible in all departments as per the report of the Committee dated 09.09.2022. It is the seriousness of the issues involved herein, where lives and safety of ordinary citizens are at stake, that compels us to take cognizance and issue necessary directions to the State to immediately take appropriate and effective ameliorating measures. In this regard let a High Powered Committee be constituted by the Chief Secretary, Government of U.P., Lucknow forthwith, consisting of two Additional Chief Secretaries and Director General of Police to scrutinise the report and the recommendations made by the Committee dated 09.09.2022 and firmly ensure that all the responsible persons manning various regulatory and licencing authorities are proceeded against and secondly to consider the recommendation of the said Committee and oversee that all the rules and regulations are modified so as to ensure strict compliance of the same. The High

powered Committee shall not be constrained by the report of the Committee dated 09/09/2022 but may also make its own recommendations in public interest with the object of securing safety and security of public at large.

23. The Senior Registrar of this Court is directed to send a copy of this order to the Chief Secretary U.P. for necessary compliance.

Order Date :- 02.11.2022

A. Verma

(Alok Mathur, J.)