

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1581 OF 2006

Dipti Gaurav Shah,
Proprietor of Dipti Products, a Proprietary
firm, having its place of business at
Survey No.327/12, Unity Industrial Estate,
Kachhigam, Daman- 396 210. ... Petitioner.

V/s.

1. The Administrator of Daman & Diu and
Dadra and Nagar Haveli Daman.
2. Pollution Control Committee,
Daman & Diu and Dadra & Nagar
Haveli-II, Daman.
3. Union of India,
through Ministry of Environment &
Forest, through its Government Pleader,
Aaykar Bhavan, New Marine Lines,
Mumbai. ... Respondents.

Mr.Sachin Mahagaokar with Mr.Jimish Shah I/b. Divya
Shah Associates for the petitioner.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 28th June 2018.

ORAL JUDGMENT: (Per A.S.Oka, J.)

The challenge is to the letter/order dated 31st March 2004 rejecting the application for grant of consent to establish unit for manufacture of Oxygen and Nitrogen gases and the order dated 10th February 2006 by which closure was ordered. The last substantive prayer is for directing the Pollution Control Board to grant consent.

2. The learned counsel appearing for the petitioner invited our attention to the documents in additional compilation and, in particular a copy of the subsequent notification dated 9th October 2015 and a copy of the final document on revised classification dated 29th February 2016. He also tendered across the bar a copy of notice of the direction dated 1st May 2018 issued by the Member Secretary of the Pollution Control Board of the Union Territory under the provisions of section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 and section 31-A of the Air (Prevention and Control of Pollution) Act, 1981. By the said notice of direction, the petitioner was called upon to produce documents in her possession regarding installation of plant and machinery and carrying out manufacturing activities and clarification for operating unit without consent to establish/ operate for manufacturing of Nitrogen and Oxygen gas. On 14th May, 2018, the petitioner replied to the said notice and has contended that in view of the notification dated 9th October 2015 and final document dated 29th February 2016, manufacture of oxygen gas requires no consent. It is mentioned in the reply that the petitioner was running a

unit. Copies of the notice dated 1st May 2018 and reply dated 14th May 2018 are taken on record and marked as “C-1 Collectively” for identification.

3. Thus, it appears from the reply dated 14th May 2018 submitted by the petitioner that notwithstanding the impugned orders dated 31st March 2004 and 10th February 2006, the petitioner started operating industry on the assumption that the consent is not required. Even according to the case of the petitioner, the notification dated 3rd May 1999 does not come in the way of the petitioner in conducting her activities as the stand taken in the reply dated 14th May 2018 is that for manufacturing of oxygen gas, the petitioner does not require consent in view of the subsequent notification.

4. Therefore, considering the stand taken in the reply dated 14th May 2018, none of the prayers in this petition survive with the passage of time. If the notice dated 1st May 2018 is not withdrawn or if any action is sought to be taken on the basis of the said notice, the petitioner can always challenge the same in accordance with law.

5. Subject to what is observed above, writ petition is disposed of. Rule is discharged.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)