



AIROnline 2020 Guj 594
GUJARAT HIGH COURT

R. M. CHHAYA , J. and ILESH J. VORA , J.

SPECIAL CIVIL APPLICATION - 8015 of
2020 D/- 23 - 7 - 2020

**AAKASH PACKAGING v. GUJARAT
POLLUTION CONTROL BOARD**

**Electricity Act (36 of 2003), S.50 -
Disconnection of Supply of electricity -
Order passed by Board without affording
opportunity of being heard to consumer,
erroneous. Constitution of India, Art.14 -
(Paras 8 9 11)**

Cases Referred

**Chronological
Paras**

S.C.A No.6098/2020

Kethos Tiles Pvt. Ltd. (supra)

**Nanavati Associates for Petitioner; Rutvij S. Oza
for Respondent.**

Judgement

1.R. M. CHHAYA, J. :-Heard Mr. K. S. Nanavati, learned Senior Advocate assisted by Mr. Pranit K.Nanavati and Mr. Kunal Vyas, learned advocates for the petitioner and Mr. Rutvij Oza, learned advocate for respondent No.1. None appears for respondent No.2.

2. Mr. Nanavati, at the outset, has submitted that the draft amendment dated 11.07.2020 be granted.

3. Having considered the draft amendment, the same deserves to be granted and is hereby granted. Amendment to be carried out

4. By the draft amendment, the petitioner has, inter alia, prayed for a direction directing to

respondent No.2 to restore and resume the supply of electricity to petitioner.

5. In response to the notice issued by this Court, respondent No. 1 has filed affidavit in reply, which is taken on record.

6. Mr. Nanavati, learned Sr. Advocate has taken this Court through the factual matrix arising out of this petition and has submitted that, the impugned closure order dated 10.06.2020 is passed without giving any notice and without giving an opportunity of being heard to the petitioner. It was further contended by Mr. Nanavati that, even though, specific direction was given by this Court vide order dated 20.06.2020, there is no denial to the said fact by the respondent Board. Mr. Nanavati has further relied upon the judgment of this Court passed in the case of Kethos Tiles Pvt. Ltd. Vs. Gujarat Pollution Control Board in S.C.A No.6098/2020 dated 28.05.2020 and has contended that, in similar facts and circumstances, this Court has allowed the petition and has been pleased to quash and set aside such ex parte order of closure. Mr. Nanavati further submitted that, this Court in the said judgment was further pleased to remit back the matter to respondent Board for its fresh hearing. Mr. Nanavati also submitted that, it is an admitted position that, the impugned order has been passed by respondent No.1 Board without giving any notice and without hearing the petitioner and therefore, the impugned order deserves to be quashed and set aside and the petition deserves to be allowed.

7. Per contra, Mr. Rutvij Oza, learned counsel for respondent No.1 has opposed this petition and has relied upon the affidavit in reply. Mr. Oza, however, candidly submitted that, because of the circumstance narrated in the affidavit in reply, no hearing was necessary to be given to the petitioner. Mr. Oza further submitted that, the petitioner have an alternative remedy by way of an appeal before the Hon'ble National Green



Tribunal and therefore, the petition does not deserve any consideration and the same, deserves to be dismissed.

No other or further submissions have been made by learned counsel for the parties.

8. Having heard learned counsel appearing for the parties and considering the submissions made, it is an admitted position that, the impugned order of closure dated 10.06.2020 has been passed by respondent No.1 Board without affording an opportunity of being heard to the petitioner.

9. In light of the aforesaid admitted facts, the merits of the case are not necessary to be gone into. The contentions raised by Mr. Oza appearing for respondent No.1 Board on merits as well as on the ground of alternative remedy deserve to be negated.

10. This Court is of the opinion that, the respondent No.1 Board should have given an opportunity to the petitioner before passing the impugned closure order. In the case of Kethos Tiles Pvt. Ltd. (supra) in similar circumstance, this Court (Coram : J.B.Pardiwala and one of us Ilesh J. Vora, JJ.) has observed thus:

"11. We do not propose to go into the merits of the case as we are of the view that both the impugned orders deserve to be quashed only on the ground that appropriate opportunity of hearing was not given to the writ applicants. We are of the view that the writ applicants must be heard by the GPCB, and thereafter, a fresh order, in accordance with law, may be passed.

12 In such circumstances referred to above, this writ petition succeeds and is hereby allowed. The impugned orders dated nd 29th February 2020 at Annexure : A/1and dated 2 March 2020 at Annexure:A/2 are hereby quashed and set aside. The matter is remitted to the GPCB for fresh hearing. The GPCB shall inform a particular date

to the writ applicants for the purpose of fresh hearing. On a particular date, as may be informed by the GPCB the writ applicants shall appear before the competent authority and make good their case so far as the show cause notice referred to above is concerned.

13 Let this exercise be undertaken and completed within a period of six weeks from today.

14 As both the impugned orders are ordered to be quashed and set aside, the respondents No.3 is directed to restore the power "supply so far as the industrial unit of the writ applicants is concerned."

11. As the impugned order dated 10.06.2020 is passed in breach of principles of natural justice, the same is quashed and set aside by allowing this petition. Accordingly, the petition is allowed and the impugned order of closure dated 10.06.2020 is quashed and set aside and the matter is remitted back to respondent No.1 Board for fresh hearing. Respondent No.1 Board shall give an appropriate notice in accordance with law within a period of one week from the date of receipt of this order. The petitioner shall appear before the competent authority of respondent No.1 Board and shall attend the hearing of such show-cause notice. The competent authority of respondent No.1 Board shall give an opportunity of being heard to the petitioner and thereafter, pass an appropriate orders. Such exercise shall be undertaken within a period of 6 weeks from the date of receipt of this judgment and order.

The present petition is allowed. The impugned order of closure dated 10.06.2020 is hereby quashed and set aside. Respondent No.1 Board shall adhere to the directions issued and shall give appropriate notice as provided in this order and after hearing the petitioner, pass an appropriate order. As the impugned order of closure dated 10.06.2020 is quashed and set



aside, respondent No.2 is hereby directed to restore the power supply to the petitioner.

12. With the above directions, present petition stands disposed. However, there shall be no order as to costs. Direct service is permitted through E-mail.

Petition Allowed .