

Case Note: Case concerning setting up of thermal power plant which was given clearance by the Central Government. The court was satisfied by this clearance but ordered the plant to setup a Flue Gas Desulphurization Plant.

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1991(1)SCALE472, (1991)2SCC539

IN THE SUPREME COURT OF INDIA

Decided On: 19.03.1991

Dahanu Taluka Environment Protection Group and Anr.

v.

Bombay Suburban Electricity Supply Company Ltd. and Ors.

With

Bombay Environmental Action Group and Anr.

v.

State of Maharashtra and Ors.

Hon'ble Judges:

S. Ranganathan, S.C. Agrawal and N.D. Ojha, JJ.

JUDGMENT

S. Ranganathan, J.

1. The two petitioners, who are "Environment Protection Groups" objected to the clearance, by the State of Maharashtra and the Union of India, of a proposal of the Bombay Suburban Electricity Supply Company Limited (hereinafter referred to as "BSES") for the construction of a thermal power plant over an area of 800 hectares or thereabouts in Dahanu, Maharashtra. They filed writ petitions in the Bombay High Court challenging the decision of the Central Government to that effect dated March 29, 1989. After some hearing the Bombay High Court passed an order dated 30.3.1990 adjourning the hearing to enable the Government of India to consider the representations made by the two petitioners. Government of India did this and reaffirmed its decision to clear the project. A detailed affidavit was filed on behalf of the Union on 29.6.1990. To this was enclosed a memorandum dealing in seriatim with the various objections raised by the petitioners and setting out the Government's findings thereon. After considering the same and hearing the counsel at length, the High Court, by a detailed order, dismissed the writ

petitions by its order dated 12.12.1990. The objectors have thereupon filed these two petitions for leave to appeal before us.

2. The limitations, or more appropriately, the self-imposed restrictions of a Court in considering such an issue as this have been set out by the Court in *Rural Litigation & Entitlement Kendra v. State of U.P. and Ors.* 1987 (1) SCR 637 and *Sachidanand Pandey and Anr. v. State of West Bengal and Ors.* The observations in those decisions need not be reiterated here. It is sufficient to observe that it is primarily for the Governments concerned to consider the importance of public projects for the betterment of the conditions of living of the people on the one hand and the necessity for preservation of social and ecological balances, avoidance of deforestation and maintenance of purity of the atmosphere and water free from pollution on the other in the light of various factual, technical and other aspects that may be brought to its notice by various bodies of laymen, experts and public workers and strike a just balance between these two conflicting objectives. The Court's role is restricted to examine whether the Government has taken into account all relevant aspects and has neither ignored or overlooked any material considerations nor been influenced by extraneous or immaterial considerations in arriving at its final decision.

3. Having regard to the fact that the High Court, after giving a fresh opportunity to the objectors to have their objections considered, has gone into the matter in depth and found nothing wrong with the decision of the Government, the scope for any interference by this Court under Article 136 is indeed very narrow. However, as the project involved is a very vital one for the citizens of Bombay and its suburbs and the petitioners claim that the decision of the Governments was arrived at in disregard of certain guidelines prescribed and the recommendations of an expert committee set up by the Union Government itself, we have looked into the matter in detail. Sri Atul Satalvad, Sri Gopal Subramaniam and Sri G.S. Patel who appeared for the objectors and Sri Ashok Desai who appeared for respondents have taken us through considerable portions of the several paper books filed by them. We have also heard the Standing Counsel for the State. We have come to the conclusion that there are no grounds to grant leave to appeal from the order passed by the High Court. We shall briefly deal with the contentions urged before us:

(1) The BSES undertook surveys some time in 1976 and selected about ten sites where its thermal power station could be located and Dahanu was not one of them. After consideration, a site at Bassein was cleared in 1985. But the State Government objected to this site later on the ground that Bassein was located within a distance of one kilometer from the sea shore and 500 meters from the river banks. This region was reserved in a plan for extending Bombay metropolitan region and no construction activity could be permitted therein. When this happened, the company has manouevred to get approval for the plant location at Dahanu although even the company had not found it suitable earlier and although the objections raised about Bassein equally apply to Dahanu. This criticism is unfounded. The Bassein site fell within the extended Bombay Metropolitan Region; Dahanu falls outside this region. That apart, there were also other reasons to discard the Bassein site which do not apply to the Dahanu site. If the Bassein site having been rejected, an alternate site in Western Maharashtra had to be chosen and Dahanu being

close to Bombay after Bassein and beyond the Metropolitan development region has been chosen, there is nothing wrong in this.

(2) The principal objection on behalf of the petitioners is that the clearance is in the teeth of the findings of an expert body appointed by the Government itself to examine all the aspects of the proposed location at Dahanu. It is contended that this Appraisal Committee for Thermal Power Stations (EAC) held its meetings on 27th October, 1988 and 29th December, 1988. The meetings were attended by the members of the EAC, concerned officers of the State of Maharashtra, the representatives of the company and representatives of various public bodies and groups. The Committee, after examining the various aspects, considered the site at Dahanu unsuitable and listed nine reasons for this conclusion. It is pointed out that this conclusion of the EAC was arrived at on 29.12.88. Surprisingly, counsel say, despite the opinion of the EAC, the Government of India cleared the proposal on 29.3.1989 without any reasons disclosed for rejecting the expert body's report. This, it is urged, shows absence of application of mind on the part of the Government to the dimensions of the problem.

4. Prima facie, this appears to be very forceful objection. But it proceeds on the misapprehension that the views of the EAC represent a decision of the Government and that the approval of the project is in the nature of a volte face. This is not correct. Sri Ashok Desai sought to brush aside the EAC papers relied upon as nothing but "minutes" and as ex cathedra pronouncements. This may be going too far. But we are in agreement with counsel that the findings of the EAC cannot be treated as conclusive or binding on the Central Government. We find that the Central Government had before it not only this "report" but also the findings of a State Expert Committee which had gone into the matter in detail and recommended the Dahanu site. The State Government in turn had before it several reports of expert bodies. The details are fully explained in the affidavit of Sri Ziradkar on behalf of the Government of Maharashtra which has been referred to in the judgment by the High Court. It is also seen that a comparative study of the two sites on all aspects such as pollution, contamination of fresh water sources, effect on fisheries, effect on plantation, agriculture and forests and effect on the tribal population living in the affected areas was looked into.

5. After examining all the aspects, the State Government approved the proposal subject to several stringent conditions. There were also a couple of reports received after 29.12.1988 but before 29.6.1990 when the final decision of the Central Government, after the reconsideration directed by this Court, was taken. The several expert reports expressed the view that the pollution of water on account of the hot water discharge from the cooling plant and the atmospheric pollution due to outlet of gases would be well within permissible limits. Though the EAC had pronounced against the location of the thermal station at Dahanu the Government of India had before it the strong recommendations of the State of Maharashtra and the several reports referred to above. If, after considering all the material, the Central Government chose to accept the recommendations of the State Government, its action cannot be said to be arbitrary. That apart, even assuming that some aspects might have been overlooked by the Government, that possibility has been taken care of as a result of the interim directions of the High

Court which resulted in a reconsideration of the whole issue in the light of the specific objections put forward by the petitioners. We have already referred to the fact that on 29.6.90 an affidavit and memorandum were filed on behalf of the Union meeting everyone of the objections that were sought to be raised. We are not concerned with the question whether the decision taken is right or wrong; the question is whether it has been taken after a consideration of all relevant aspects. It is clear that in the circumstances outlined above and having regard to all the material that has been made available, it is not possible to agree with the counsel for the petitioners that the Government decision should be faulted as it runs counter to the views of the EAC or that the Government has not applied its mind to all relevant aspects of the setting up of a thermal power station at Dahanu.

(3) Another grievance of the petitioners is that the clearance in respect of the site in question has been issued contrary to the "Environmental Guidelines for Thermal Power Plants" issued by the Government of India in 1987. The guidelines lay down various criteria, two of which, according to the petitioners, are very important. These are: (1) that thermal power plants should not be located within 25 km. of the outer peripheries of metropolitan cities, national parks, and wildlife sanctuaries and ecologically sensitive areas like tropical forests; and (2) that, in order to protect coastal areas, a distance of 500 metres from the high tide line (HTL) and a further buffer zone of 5 km. from the seashore should be kept free of any thermal power station.

6. It is pointed out that the EAC had decided against the Dahanu location as it is the only green belt left in the region having about 40 to 60 per cent of forest cover located in Thane district and also as Dahanu town has chikoo gardens and forest areas located at about 3 to 7 kms. from the power station. It opined that the emissions of pollutants and the coal and fly ash contaminants are likely to have an adverse effect on the chikoo plant and forest. In the memorandum dated 29th June, 1989, it is said, the Government of India has waved away this important objection with a very brief comment that there are no ecologically sensitive areas within 25 kms. of the project site.

7. The above criticism does not fairly summarise the reply given by the Government of India to the objection based on the various guidelines relied upon by the objectors. If the reply of the Government of India is taken into account in its entirety, it will be seen that the Government has considered all the aspects of guidelines relied upon by the objectors. It has pointed out that the guidelines are of general nature applicable to proposals for thermal power stations all over the country but that, in locating a thermal power plant in a particular region, the special features of that region have to be taken into account. It will be appreciated, having regard to the fact that the electricity is to be supplied to the Bombay suburban areas and that requirements of water supply dictate closer access to the sea, it was only natural to consider that the plant be located as near as possible from Bombay and the sea. As Sri Ashok Desai rightly points out, it is probably impossible to have a location in the region which will have a clearance of 5 kms. from the sea and 25 kms. from all tropical forests of Western Ghats. The distance mentioned in the guidelines are only intended as a safeguard against possible pollution effects; it cannot be treated as rigid and inflexible irrespective of local conditions. It is, therefore, quite natural for the

Government of India to decide that the site could be cleared subject to stringent conditions to prevent danger of pollution. They have insisted on the installation of a multi-fuel boiler making possible the utilisation of not merely coal but also oil, gas or LSHS to the maximum extent possible. They have insisted upon a tall stack of not less than 275 metres, electrostatic precipitators and a Flue Gas Desulphurisation Plant (FGD). Continuous monitoring of stack emissions and ambient air quality have been insisted upon. Taking into account the Expert Committees' reports, which have been referred to earlier, the Central Government was satisfied that if these conditions are adhered to there will be no significant impact on the environment either due to atmospheric or water pollution.

(4) The second objection based on the guidelines is that the present plant cannot be located in such a way as to ensure being away from HTL by more than 500 metres not to speak of its being beyond 5 kms. from the coastline. Here again attention is drawn to the EAC's report which says that "the site falls within high-tide line in the Dahanu creek" and that "the site is low-lying land virtually in the creek which gets submerged during high-tide". It is true that the plant is located within 5 kms. of the sea but, for the reasons already pointed out, it is impossible to rigidly apply this standard in the context of the present project. The second part of the objection regarding its being within 500 metres of the HTL is, however, based on a misconception. In the first place the restriction in the guidelines is only for the buildings of the thermal station and, for obvious reasons pointed out by Sri Desai, cannot be read to as to mean that no part of the site of the thermal station of about 800 hectares should at all fall within the distance of 500 metres. Secondly, the comments made by the EAC related to the site of the power plant building originally under consideration. As a result of the discussions that ensued subsequently and, in particular after the Government of India heard the various objections by the petitioners and took them up with the company, the company agreed to move up the thermal plant in such a way as to have a clearance of 500 kms. from HTL on all sides. This is perfectly clear from the letter written by the Company to the Government of India on 15th June, 1990 and the plan annexed thereto. The plan is one drawn to scale and we are told that the High Court satisfied itself that the new site for the thermal station buildings shown in the plan did have a clearance of 500 metres from the high tide line on all sides. We would, however, like to place the matter beyond doubt by directing the Central and State Governments to monitor the construction of the buildings under the scheme to ensure that no building of the thermal power station comes up within a distance of 500 metres from the HTL.

(5) Learned Counsel for the petitioners invited our attention to two notifications of the Government of India issued subsequent to the clearance with which we are now concerned. The first notification, dated 15th December, 1990, prohibits dumping of ash from thermal power stations and construction activities in the Coastal Regulation Zone, which covers a distance of 500 metres above the High Tide Line. Our attention is also drawn to another notification dated 8th February, 1991. This is a draft notification which sets out that it has been issued, "after considering the need for protecting the ecologically sensitive Dahanu Taluka and to ensure that the development activities are consistent with principles of environmental protection and conservation". The notification proposes to

declare Dahanu Taluka as an ecologically fragile area and proceeds to impose restrictions on the setting up of industries which have detrimental effect on the environment. It sets out new guidelines for permitting/restricting industries and industrial units in the Dahanu Taluka. It prohibits the location of thermal and nuclear power plants' in the zone. It is submitted that the clearance given runs in the teeth of these notifications.

8. The above criticism, again, is based on a misconception. As pointed out on behalf of the company, a notification of the nature referred to above is contemplated in the clearance given to the company's thermal station. While a clearance was given to the thermal station in question having regard to the circumstances we have already referred to above, the Government realised the necessity of prohibiting further industrialisation in the area. One of the conditions imposed while granting the clearance was that in future the State Government would not allow any industrial estate of any private industries to come up in Dahanu Taluka. This has also been mentioned in the Memorandum dated 29th June, 1990. It is in implementation of this condition that these notifications have been issued to prevent further proliferation of industries in the area. These notifications do not affect the validity of the clearance granted to the company's thermal power station.

(6) Finally, counsel for the petitioners expressed an apprehension that the conditions imposed for the clearance of the plant may not be capable of enforcement by the Government or may be relaxed or waived at a later stage. In this context, it is submitted that the obligatory requirement to set up a FGD plant immediately has already been waived by the State Government on the application of the company and that the proposal is now before the Central Government. It is suggested that while a large number of conditions are imposed on paper there is a danger of these conditions being slowly relaxed in actual practice over a period of time with the result that all these directions will become meaningless in course of time. It has been submitted that it is the experience of the petitioners that similar relaxations have been given by the Government in respect of earlier projects which had been likewise conditionally cleared.

9. The apprehension that the Government will not be in a position to enforce the conditions imposed for the clearance is not well founded. In fact one of the conditions specifically mentions that if there is any infringement of the conditions, the Government will have a power to shut down the operations immediately in the power plant. There are also enough statutory provisions to enable the Government to enforce these conditions. There is, therefore, no substantial reason for the petitioners to apprehend that the conditions can be violated by the company with impunity.

10. We may observe that there is no material before us to show that the conditions imposed while granting sanctions are being relaxed without proper advertance to the consequences. So far as the present allegation regarding the FGD plant is concerned however, it is not denied that the Company has asked for dispensing with the requirement at this stage. Sri Ashok Desai submits that this has been done on the basis of the findings of the World Bank that, having regard to the nature and quality of the coal proposed to be used as could be seen from the analysis made available, the immediate installation of a FGD plant may not be necessary. It has been suggested that the plant

could be designed in such a way that it found necessary the FGD plant could be installed at a later date. Shri Ashok Desai also submits that the Environment (Protection) Rules, 1986, which have been promulgated on 30th August, 1990, also envisage a policy of increasing the stack height so that contamination by emission of gases at ground level might be minimised. He submits that there is no reason for the petitioners to anticipate any relaxation of this condition if it will be harmful to environmental interests. We do not wish to say anything more at this stage on this issue except to say that the condition regarding an FGD plant has been imposed under the Government sanction and this has to be adhered to by the company. Whether it has to be relaxed or not in future will be a matter which has to be tackled when the application is made in this behalf and considered by the Central Government. But, we think, some safeguard should be provided in this regard which we indicate below.

11. For the reasons discussed above, we are satisfied that the clearance to the thermal power station was granted by the Central Government after fully considering all relevant aspects and in particular the aspects of the environmental pollution. Sufficient safeguards against pollution of air, water and environment have been insisted upon in the conditions of grant. However, in order to allay the apprehensions on the part of the petitioners that the company may seek and obtain relaxations or modifications of the conditions that may prove detrimental to environment, we direct that the condition requiring the installation of a FGD plant should not be relaxed without a full consideration of the consequences and that, if there is any proposal from the company to relax this or any other condition subject to which the plant has been cleared, neither the State Government nor the Union Government should permit such relaxation without giving notice of the proposed changes to the petitioner groups and giving them an opportunity of being heard.

12. Subject to the directions contained in sub-paras (4) and (6) above we agree with the decision of the High Court and dismiss these special leave petitions. We make no order regarding costs.