

Bombay High Court

Bses Limited vs Union Of India (Uoi) on 17 August, 2000

Equivalent citations: AIR 2001 Bom 128, 2001 (1) BomCR 394

Author: B Singh

Bench: B Singh, S Radhakrishnan

JUDGMENT

B.P. Singh, C.J.

1. The First Petitioner herein, BSES Limited, is a Company registered under the Indian Companies Act, 1913, having a Thermal Power Station at Dahanu, in the State of Maharashtra, which has challenged the decision of the Dahanu Taluka Environment Protection Authority ('DTEPA', for short), an Authority constituted under the provision of Section 3(3) of the Environment Protection Act, 1986 ('the Act', for short) dated 12th May, 1999, whereby it has directed the Petitioners to Instal a Flue Gas' Desulphurisation (FGD) Plant for environmental safety and protection and for the well-being of the people of Dahanu. It has been directed to start the Installation of the EGD Plant within a period of 6 months, and to complete the work within a reasonable time.

The Petitioners had preferred an Appeal before the Ministry of Environment and Forests, Government of India, against the impugned Order of DTEPA, but the same was not entertained on the ground that no Appeal was provided for against the decision of the Authority before the Ministry of Environment and Forests under the Notification constituting DTEPA. The order of rejection of the Appeal is Exhibit 'HH', dated 29th July, 1999. Thereafter, the Petitioners had filed a Review Petition before DTEPA. That was also rejected by DTEPA on 28th September, 1999, observing that there was no provision for a review, and additionally, no new material had been placed before DTEPA justifying a review, even if such review was permissible. The said Extract of Minutes of Meeting of DTEPA has been filed as Exhibit 'A-3'. Though, in this Writ Petition, it was prayed that respondent No. 1 be directed to review the Order dated 12th May, 1999, as it had authority to do so, no submissions were advanced before us in this regard.

2. At the threshold, it may be noticed that by Notification dated 20th June, 1991, the Government of Maharashtra in the Ministry of Environment and Forests, in exercise of powers conferred by Clause (v) of subsection (2) of Section 3 of the Act, in consultation with the Government of Maharashtra, 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, has declared Dahanu Taluka, in the District of Thane (Maharashtra), as an ecologically fragile area, and has imposed restrictions on the setting up of industries which have detrimental effect on the environment. It is well-known that the local economy of Dahanu is totally dependent upon the orchards, fisheries and minor forest produce, as it is an ecologically fragile area. By the aforesaid Notification, industries have been classified under three categories, viz., Green, Orange and Red, for the purpose of permitting/restricting such industrial activities in Dahanu Taluka on the basis of environmental and ecological considerations.

In the Green Category are industries that can be considered by the Maharashtra Government agencies for approval or rejection in approved industrial areas without prior approval of the Ministry of Environment and Forests, Government of India, subject to the conditions laid down in the Notification being fulfilled. Even in respect of industries Included in the Green Category, only those industries that do not use coal in their manufacturing processes are to be permitted. In the Orange Category are industries that can be permitted with proper environmental assessment and adequate Pollution Control measures in sites that have been approved by the Ministry of Environment and Forests, Government of India. The Red Category contains list of industries that cannot be permitted in Dahanu Taluka, and includes "Industries based on the use of coal/coke". Since this Notification has been issued on 20th June, 1991, the fact that Dahanu Taluka is an ecologically fragile area, must be kept in mind while considering the issues that arise in this Writ Petition.

3. The First Petitioner, BSES Limited, initially, was a licensee for distribution of electricity under Section 3 of the Indian Electricity Act, 1910, but, since 1976, as a condition of the licence, it was required to erect its own 500 MW Power Station for direct supply to its licensed area of distribution. The licence was renewed from time to time, and ultimately on 21st July, 1988, the Government of Maharashtra gave its clearance to the BSES Limited to set up the Thermal Power Station at a site in Dahanu on certain terms and conditions. The conditions relevant are the following :--

"1. Bombay Suburban Electric Supply (BSES) Limited shall make efforts for obtaining gas/LSHS and use gas if available. In preference to coal.

2. It shall install Multi Fuel Boiler.

3. It shall obtain washed coal, if possible, from Coal fields, in case coal is to be used.

7. The BSES Ltd. will install Flue Gas Desulphurisation Plant with 90% efficiency.

10. The BSES Ltd. shall provide the chimney with a stack height of 275 metres.

13. There should be continuous monitoring' of emissions from the stack for SO₂ and particulate matter."

A copy of the letter granting Site Clearance from environmental angle has been filed as Exhibit 'C'.

4. Environmental clearance was thereafter granted by the Government of India in the Ministry of Environment and Forests by its letter (Exhibit 'D') dated 29th March, 1989. The approval of the Ministry for the proposed Power Station was granted, subject to several conditions, of which three are relevant. They are :

"(i) A multi-fuel boiler should be installed in which coal or oil or gas may be used in any proportions. Efforts should be made to obtain and use gas and LSHS in preference to coal.

(ii) A single multi-fuel stack of height not less than 275 metres should be provided.

(iv) Flue Gas Desulphurisation (FGD) Plant with 98 per cent efficiency must be provided in view of the good horticultural/ agricultural potential of the areas.

5. The Maharashtra Pollution Control Board also granted No Objection Certificate to the Petitioners for establishing a Thermal Power Station at villages Agwan and Asangaon in the Taluka of Dahanu. subject to conditions incorporated in the said No Objection Certificate dated 13th June, 1990. The relevant conditions were :--

"I. AIR POLLUTION CONTROL :

(1) A multi-fuel boiler should be installed in which coal or oil or gas may be used in any proportions. Efforts should be made to obtain and use gas and/or LSHS in preference to coal.

(2) A single multi-fuel stack of height not less than 275 metres should be provided.

(4) Flue Gas Desulphurisation (FGD) Plant with 90 per cent efficiency shall be provided to maintain emissions of SO₂ within permissible limit.

(7) A continuous monitoring and recording system for estimation of emissions of sulphur dioxide, oxides of nitrogen and particulate from the stack of Thermal Power Station should be established.

6. As early as in the year 1988, the Government of India had constituted a Subgroup to review the existing Stack emission standards of the Central Pollution Control Board on Thermal Power Plants in the light of the latest data available and recommend emission standards for various pollution parameters to be notified under the Act. The recommendations of the Sub-group were made in July, 1988, and subsequently by letter dated 1st February, 1989, the report of the Sub-Committee in respect of sulphur dioxide was also made. Dr. P. R. Ranganathan was the Secretary of the Subcommittee. It appears from the findings of the Sub-Committee that it was found that it would not be technically feasible to increase the stack height in the Thermal Power units already in operation. Scrubbing flue gas for SO₂ removal will result in enormous quantity of gypsum in the form of sludge, disposal of which would again be a problem. The Committee was of the view that new Thermal Power units should be based on fuel oil. For the units coming up in sensitive areas, irrespective of their capacity, provision for space and facilities for retrofitting FGD system or any other alternative devices for SO₂ control should be made. Also, in respect of units having capacity of 500 MW and above, irrespective of their location, provision for space and facilities for retrofitting FGD system or any other alternative devices for SO₂ control should be made. Stipulation for installation of SO₂ pollution control device should be prescribed in both the above cases by the competent authority "after examining one year post-project ambient air quality monitoring around the plant covering the points where maximum ground level concentrations are expected to occur".

In sum and substance, it appears that the Sub-Committee was of the opinion that for the future, stipulations be made for new Thermal Power units based on fuel, i.e. Thermal Power units, which were to be accorded environmental clearance in future. In respect of units coming up in sensitive area, irrespective of their capacity, provision was to be made, so that the FGD system should be installed later, if need be.

7. The case of the petitioners is that this being a World Bank Project, the aforesaid Bank, while granting financial aid, had made an independent evaluation of the project for equipment requirement, and on the basis of such evaluation, had concluded that considering the low sulphur content in Indian coal, the Power Plant could function well within the stringent ambient air quality guidelines stipulated by the Indian Government without installation of a FGD system. However, it appears from the Aide-Memoire (Exhibit 'H') dated 13th November, 1990, that provision was made for the installation of FGD Plant while preparing the project cost estimates.

8. The grant of permission to the Petitioners for establishing a 500 MW Thermal Power Station was challenged before this Court by Bombay Environmental Action Groups. The Writ Petitions were ultimately disposed of by a judgment of this Court on 12th December, 1990 (Bombay Environment Action Group v. State of Maharashtra). While the Writ Petition was pending before this Court, the Petitioners had applied to the State Government for the waiver of the conditions relating to installation of FGD Plant. In the said application, Exhibit I, dated 8th December, 1990, reference was made to the Appraisal Report of the Project by the World Bank and International Finance Corporation (Washington), as also to the Report of the Ranganathan Committee. It was submitted that from the analysis of IB valley coal it is seen that the sulphur content varies from 0.35% to 0.6% only. Since a 275m, high stack was being provided for the station, it was found by an elaborate study that the annual 8 hourly average ground level concentration did not exceed 3.10 micrograms with 275 m. high chimney. The permissible ground level concentration of sulphur dioxide was 30 micrograms per cu. m. for sensitive areas and 80 micrograms per cu. m. for residential and mixed use areas. Comparing these values with the values obtained for the power station, it was argued that the values obtained are far too insignificant, and could not be expected to cause any harm to human population or vegetation, trees and orchards in the area. It was, therefore, submitted that the Department may put a stipulation regarding the provision of FGD Plant in consultation with the Maharashtra Pollution Control Board (MPCB).

9. The Writ Petitions filed by the Bombay Environmental Action Group came to be disposed of on 12th December, 1990. This Court was satisfied, after carefully examining all the facts and circumstances, that the authorities have not shown lack of awareness and were not oblivious to the needs of environment, as to warrant the Court's interference. There was considerable, thorough deliberation, consultation and application

of mind "by all concerned authorities and experts, and the in-depth analysis, the conditions imposed and the precautions taken inspired Court's confidence. The decision of the authorities could not be said to be arbitrary or capricious or one not in good faith or actuated by improper motive or extraneous considerations. This Court, therefore, dismissed the Writ Petitions. The finding was that it was not a case which warranted interference by this Court.

10. The Petitioners had also addressed a letter to the MPCB dated 4th January, 1991 requesting it to permit the petitioners to provide only space for installation of FGD Plant, which would be installed at a later stage, if the continuous air monitoring warranted such a Plant. The MPCB, by its letter (Exhibit 'G') dated 14th January, 1991, wrote to the Secretary, Department of Environment, Government of Maharashtra, that in view of the letter of the Petitioners dated 5th January, 1991 for re-consideration of the condition relating to installation of FGD Plant, the MPCB had referred the issue to Dr. Shirvaikar, Director, Nuclear Power Corporation, Bombay. It appears that the FGD System may not be rated compulsory if the total emissions remain within the prescribed limits. However, the necessary provision for sufficient vacant space for the installation of FGD Plant, as and when necessary, should be made from the planning stage itself. While the matter was being considered by the authorities, a draft Notification under Clause (v) of Sub-section (2) of Section 3 of the Act, inviting objections, was issued by the Government of India evincing its intention to declare the Dahanu Taluka as an ecologically fragile area, and to impose restrictions on the setting up of industries, which has detrimental effect on the environment. This Notification was followed by the final Notification issued on 20th June, 1991, to which reference has been made earlier.

11. In the meantime, the Dahanu Taluka Environment Protection Group appealed against the Judgment and Order of this Court dismissing the Writ Petitions challenging the grant of permission to the Petitioners to set up a Thermal Power Station in Dahanu Taluka. The Supreme Court, by its Judgment and Order dated 19th March, 1991 in Dahanu Taluka Environment Protection Group v. BSES Ltd. , dismissed the Petitions for Special Leave with certain observations. An apprehension was expressed before the Supreme Court that the condition imposed for the clearance of the Plant may not be capable of enforcement by the Government or that they may be relaxed or waived at a later stage. It was submitted before the Court that the obligation to set up an FGD Plant immediately had already been waived by the State Government on the application of the Company, and that the proposal was then pending before the Central Government. In this context, the Court has observed as under :--

"5. we are satisfied that the clearance to the Thermal Power Stations 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. On 8th April, 1991, Petitioner No. 1 wrote to the Union of India to review the issue relating to the installation of the FGD Plant. On 20th June, 1991, Dahanu Taluka was declared as ecologically fragile area, and restrictions imposed on the setting up of industries which had detrimental effect on the environment.

13. The Government of India ordered an independent review, and appointed a Committee headed by Dr. Ranganathan to review the requirement of installation of FGD Plant for Power Station. The Government also referred the issue to the Expert Appraisal Committee for examination. After considering the Reports and after giving a hearing to the Environmental Groups, in accordance with the Order of the Supreme Court, on 12th March, 1993, by communication dated 2nd April, 1993, the Government of India conveyed its decision to

defer the implementation of the conditions relating to installation of the FGD Plant for one year. This decision (Exhibit 'q-1') further clarified that the decision in this regard will be taken after commissioning of the Power Plant, based on pre and post-project monitoring to ascertain the ambient levels and incremental additions of SO₂ and their impact on sensitive targets.

14. It appears that two environmentalists filed a Writ Petition No. 231 of 1994, before the Supreme Court of India for the enforcement of Environmental Laws in Dahanu, in which an interim order was passed on 16th August, 1995, directing the MPCB to issue individual notices to the industries in the Dahanu area directing the industries to set up pollution control devices, if not already done, within three months from the date of the notice. On 24th September, 1996, the Supreme Court directed the National Environment Engineering Research Institute (NEERI) to examine the effect of the Thermal Power Plant operating in Dahanu area and give its recommendations for controlling the pollution likely being caused by the said Thermal Power Plant. Ultimately, the Supreme Court transferred the said Writ Petition to this Court for monitoring. In its Order dated 31st October, 1996, which is Exhibit 'A' to the Affidavit-in-reply filed on behalf of Respondent No. 4, the Court had directed the Central Government to constitute an Authority under the Act before 20th December, 1996. The Authority so constituted was to consider and implement the "Precautionary Principle" and "the Polluter Pays Principle". The Authority was also directed to consider, and implement the recommendations of NEERI as quoted in the judgment. In the judgment, the Supreme Court has referred to the Report of NEERI dated 9th October, 1996, from which it appears that NEERI had recommended in paragraph 6.4 of its Report that the Petitioners, BSES Limited, should shift, at the earliest, to the use of natural gas in place of coal, and in the interim period, it should use only washed coal. It also recommended that the Petitioners "should instal Flue Gas Desulphurisation (FGD) system forthwith in view of limited air-environment assimilative capacity as delineated in Section 4.1." It had also recommended "restriction on ambient air quality levels of SO₂, Nox and Spm to 20, 30 and 100 ug/m³ respectively in Dahanu region to protect the orchards and plantations". In view of the directions of the Supreme Court, the Government of India constituted an Authority, known as "The Dahanu Taluka Environment Protection Authority", Respondent No. 3 herein, in exercise of powers conferred by Sub-section (3) of Section 3 of the Act, which has passed the Order impugned in the instant Writ Petition. The Authority has been vested with various powers and functions, in particular to protect the ecologically fragile areas of Dahanu, and to control pollution in the said areas, to consider and implement the "Precautionary Principle" and the "Polluter Pays Principle", to consider and implement the recommendations given by NEERI, Nagpur, in respect of Dahanu Taluka, etc.

15. The Power Stations were commissioned between 6th January, 1995 and 29th March, 1995. It is the case of the Petitioners that there has been continuous monitoring of all discharges when the Power Plants have been working, by the Petitioners themselves as well as the respondent No. 3 and NEERI, and it has been found that the emissions of SO₂ and other discharges are well within the prescribed permissible limits. There has been no report of excessive SO₂ emission, nor has any adverse impact been reported. On constitution of the Authority, respondent No. 3, respondent No. 4 herein, viz., DTEWA, wrote to the Authority on 6th August, 1997 to direct the Petitioners to switch over to gas, and to instal FGD Plant. On the other hand, Petitioner No. 1 wrote on 30th August, 1997 to the MPCB that installation of FGD Plant was not called for, and that the Board should consider waiver of the condition for installation of FGD Plant. In this letter, it was explained that a continuous monitoring disclosed that the maximum variation in the SO emission had remained in the range of 6 to 12 Microgram/Cu.M. as against the prescribed parameter of 30 Microgram/Cu.M.

16. The DTEPA has considered the rival submissions in great detail, the order passed by it running into 26 typed pages. The matter was discussed in the meetings of DTEPA held on several days. Apart from the Company and its experts, experts of DTEWA-re-spondent No. 4 and experts of DTEPA took part in the discussions, and ultimately came to the conclusion that the petitioner-Company must instal the FGD Plant for environmental safety, protection and for the well-being of the people of Dahanu.

This is the Order impugned in this Writ Petition.

17. Before DTEPA, the petitioners submitted that the expert, Dr. Sudhakar, of the Centre for Energy, Environment and Technology, Administrative Staff College of India, Hyderabad, after completion of study, has given a report that with 500 MW Plant operation, the additional concentrations are not going to exceed the regulatory standard for sensitive areas, and by considering the plant operation using blended coal, it is not necessary to instal FGD Unit. Reliance was placed on opinion of another expert. Dr. Shirvaikar, Chairman of the Technical Committee of the MPCB, that FGD system may not be rated compulsory if the total emissions remain within the prescribed limits. It was also contended that after a full consideration of the matter, the installation of the FGD system was deferred for one year. The working of the Plant had established that there is no need to instal a FGD Unit. The petitioners had established three on-line Environment Monitoring Stations in the vicinity of the Plant for measuring ground level concentration and are regularly monitoring environmental impact in adjacent areas. The same disclosed that the SO₂ emission had remained well within the prescribed parameter. These submissions urged on behalf of the petitioners have been carefully considered by DTEPA in its impugned Order.

18. DTEPA took note of the Order passed by the Supreme Court in *Bittu Sehgal v. Union of India*, (Writ Petition (C) No. 231 of 1994), in which the Court had directed NEERI to examine the effect of the Thermal Plants operating in Dahanu area. The recommendations by NEERI included the recommendation that the petitioners should Instal FGD system forthwith, in view of the limited air-environmental assimilative capacity. The finding of NEERI was challenged by the petitioners before DTEPA, and it was submitted that the DTEPA was not bound to implement those recommendations, It was only required to consider those recommendations. The matter was considered by DTEPA in detail, and it has been emphasised that cognizance must be taken of the ecological fragility of the Dahanu region. It was for the reasons that the State Government, as well as the Government of India, while granting approval, had insisted upon installation of FGD Plant.

DTEPA was told by the petitioners that they had no desire to use gas in their Plant. Initially, gas could not be used, as it was not available, but even when gas was available, the petitioners gave up the idea of using gas. DTEPA noted that Metropolis Gas Company (P) Ltd. had made it clear that it could supply gas, if request was made by any consumer. DTEPA, therefore, recorded a finding that if efforts were made by the petitioners, gas could be made available in future, which it was expected to use in preference to coal.

19. The experts of DTEPA did not agree with the findings of Dr. Sudhakar of the Centre for Energy, Environment and Technology, Administrative Staff College of India, Hyderabad. There was a full discussion between Dr. Mishra of the National Institute of Hydrology, Roorkee, and the said Dr. Sudhakar. In his letter of 22nd April, 1999, Dr. Mishra had noted that it had been agreed upon that the computation of Sulphur Dioxide concentration should be made for stable atmospheric condition. Accordingly, the concentration of Sulphur Dioxide was computed, and results were enclosed, which showed that as envisaged, the concentration corresponding to stable atmospheric condition is higher than the concentration corresponding to neutral and unstable condition. Thus, the Gaussian dispersion model predicts concentration of Sulphur Dioxide which is more than the allowable limit. This view was expressed by Dr. Mishra after discussions with Dr. Sudhakar.

20. It may also be noticed that reliance earlier placed upon the mathematical model was not pressed before DTEPA, but relying upon the opinion of the Expert Member, Dr. V. V. Shirvaikar of MPCB, it was submitted that the FGD System may not be rated compulsory. This view, according to the petitioners, also supported the assessment made by World Bank Experts after their appraisal. It was also submitted that about 14 projects have been granted clearance for installation of Thermal Power Plants without the establishment of FGD Plants.

21. DTEPA found that the petitioners had given up the mathematical model, because, after discussions and after getting the conclusions from the mathematical model, it was discovered that it went against the interests of the petitioners. That was why the petitioners had changed their stand, contending that it would be an idle exercise, as the mathematical model itself was not proper. DTEPA also found that the status of the areas

where Thermal Power Stations were allowed to come up without insisting upon installation of FGD Plant, was not comparable with the status of Dahanu. which is an environmentally fragile area, necessitating the issuance of the said Notification by the Government of India. After considering all aspects of the matter, DTEPA reached the following conclusions :--

"1. One of the initial tasks in carrying out an environmental assessment should include the use of appropriate air quality/dispersion models to estimate the impact of Thermal Power Plant Project on the ambient concentration of different associated pollutants. Accordingly a steady state Gaussian Plume Dispersion equation has been used to compute the SO₂ concentration for Constant Pollution emission rate of 45 metric tons per day and flow rate of emission of 15,65,928 m³/hour.

2. The other basic data, such as wind (sic) velocity, wind direction, air temperature, reference height at which wind velocities have been measured, stability class, mixing height, stack gas temperature, stack height etc. have been supplied by BSES and the hourly concentrations of SO₂ have been computed and using these values daily concentrations have been computed. The results have been computed for unstable, neutral and stable atmospheric condition. The computed concentrations at many locations and at several times are found to exceed the allowable limit,

3. It is recognised that the field measurements of ambient air quality periodically collected by the BSES Ltd. as well as by the MPCB have been showing the air quality parameters within the prescribed standards. It is also recognised that the measurements are available at rather few number of locations and thus there exists a scant possibility that the location of the highest concentration would coincide with the ambient air quality measurement station/van.

4. Thus, based on the scientific evidence and inferring from the results obtained from the computer modelling and keeping all the limitations of the models as well as the limitations of the assumptions and input data in mind, based on the "Principle of Caution", these researchers have reached a conclusion that the BSES Ltd. should set up the FGD Plant at DTPS (Dahanu Thermal Power Station)."

22. As will be evident from the impugned Order itself, all aspects of the matter have been carefully considered by DTEPA. The matter was heard on several days, and, apart from the experts of DTEPA, the experts of the Company and the experts of DTEWA-respondent No. 4, and other experts were also consulted, and there was full discussion amongst the experts. After considering all aspects of the matter, the conclusion was reached that the petitioners must instal FGD Plant. DTEPA also took note of the fact that while granting project clearance, the State Government, Government of India and MPCB had insisted upon the installation of FGD Plant. NEERI Report, as also assessment made by the experts of DTEPA, came to the conclusion that with a view to protect the environment, particularly in an environmentally fragile area, it was necessary that the FGD Plant be installed. The matters considered by DTEPA and the experts before it are highly technical matters, on which this Court cannot express its opinion. Since DTEPA has taken the decision after consideration of all aspects of the matter, interference by this Court in writ jurisdiction may not be justified. In fact, the same was the submission, advanced by the petitioners when the grant of clearance to them for installation of the plant was challenged before this Court. While dismissing the writ petition filed by the Bombay Environmental Action Group, this Court observed :--

"14. Mr, Andhyarujina, learned counsel for the company Bombay Suburban Electric Supply Company Limited, laid considerable emphasis on Court's power of judicial review in a matter and project of the instant nature. He contended that the Court's jurisdiction under Article 226 of the Constitution was not unlimited. If the Court found that the concerned Government authorities, both at the Centre and State level, have applied their minds to the relevant facts and circumstances and that there are no extraneous considerations weighing with the authorities, then, in the absence of mala fides or ulterior motive, it was not open to the Court to revoke the executive and/or administrative decisions merely and only because another view of the matter may also perhaps be a possible view. He contended that all the objections were duly considered. Indeed, the matter

was even reconsidered in the light of subsequent representations. He emphasised that there was no allegation of any ulterior motive or any mala fides. In a matter such as this involving diverse pros and cons, technical and otherwise, the Courts should be extremely slow to interfere unless inevitable.

17. Environmental issues are relevant and deserve serious consideration. But the needs of the environment require to be balanced with the needs of the community at large and the needs of a developing country. If one finds, as In this case, that all possible environmental safeguards have been taken, the check and control by way of judicial review should then come to an end. Once an elaborate and extensive exercise by all concerned including the environmentalists, the State and the Central authorities and expert-bodies is undertaken and effected and its end result judicially considered and reviewed, the matter thereafter should in all fairness stand concluded. Endless arguments, endless reviews and endless litigation in a matter such as this, can carry one to no end and may as well turn counterproductive. While public interest litigation is a welcome development, there are nevertheless limits beyond which it may as well cease to be in public interest any further."

The same view was reiterated by the Supreme Court when the matter was taken in appeal. In the judgment in the case of Dahanu Taluka Environment Protection Group v. Bombay Suburban Electricity Supply Company Ltd., the Court observed ;

"2. The limitations, or more appropriately, the self-imposed restrictions of a Court in considering such an issue as this (construction of a Thermal Power Plant) have been set. out by the Court in Rural Litigation & Entitlement Kendra v. State of U. P. (1987) 1 SCR 637. See in this regard the connected detailed judgment of Ranganath Misra, J, (as he then was) in the same matter at and Sachidanand Pandey v. State of W. B.

. 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 nor overlooked any material considerations nor been influenced by extraneous or immaterial considerations in arriving at its final decision."

23. The same principles must apply to the case in hand. MPCB, which consists of experts, has considered all aspects of the matter in the light of the special status of Dahanu, being an ecologically fragile area. Various experts have expressed divergent views, and discussions were held before arriving at the conclusion. These views have been taken into account by DTEPA. The petitioners themselves had set up the Thermal Power Plant with a clear understanding that they would have to set up FGD Plant. The mere fact that another view is possible, inasmuch as presently there is no imminent threat to the environment, is no ground for interfering with the order of DTEPA. The setting up of FGD plant is a preventive measure, and the petitioners cannot insist that the setting up of the FGD Plant must be insisted upon only after it is established that the emissions from the Thermal Power Plant have adversely affected environment in Dahanu region. It is precisely with a view to prevent such an occurrence that the aforesaid measure is insisted upon. We find that all relevant aspects have been considered by DTEPA, which is an expert body, and in a case of this nature, no interference by this Court is justified. Even if there is a difference of opinion between the experts, the view taken by DTEPA supporting one such view cannot be characterised as irrational or perverse. In any event, this Court cannot be called upon to substitute its views for those of an expert body.

24. We, therefore, find no merit in this writ petition, and the same is, accordingly, dismissed.

25. After the judgment was pronounced. Mr. Chagla, learned Counsel appearing on behalf of the petitioners, prayed that the operation of this Judgment and Order may be stayed for a period of six weeks.

26. Counsel appearing for the respondents submit that no stay was prayed for, or granted, during the pendency of the writ petition, and therefore, there is no justification for granting stay at this stage. In any event, they are prepared to make a statement that they will not take any contempt proceeding against the petitioners for a period of six weeks.

27. Having considered all aspects of the matter we grant stay of the operation of this Judgment and Order for a period of six weeks from today.