

**DAHANU TALUKA ENVIROMENT PROTECTION
AUTHORITY (A GOVERNMENT OF INDIA AUTHORITY)**

**No. DTEPA/REL/DTPS/FGD/
ORDER/2005/133.**

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Date: 19th March 2005.

ORDER

After the long drawn battle, ultimately this Authority passed an Order dated 12th May 1999 and directed the then BSES Company to install the F.G.D. Plant at Dahanu Thermal Power Station within a period of six months from the issued of the order. This order was challenged by the BSES Co. in the High Court at Bombay and also in Hon. Supreme Court. The order passed by the authority was upheld by the High Court Bombay vide Judgment dated 17th August 2000 as well as Hon. Supreme Court vide order dated 6.11.2000. Therefore, it was mandatory for the company to install FGD Plant, as directed by this Authority. At the most period of six months granted could be counted from the final order of the Supreme Court. BSES Co. avoided taking any steps for one reason or another. The Dahanu Taluka Environment Welfare Association seriously challenged the very bonafides of the BSES CO.

2. In view of the submissions made and the attitude of the REL Company, long-term permission granted by the Maharashtra Pollution Control Board for five years was reduced to one year and the question of further permission was to be considered after monitoring the progress.

3. It is more than clear that order passed by the Authority, which is confirmed by the High Court, Bombay, and the Supreme Court, and which is final and conclusive and, therefore, M/s. REL Co. was bound to install the FGD Plant within the period prescribed.
4. It was made very clear in the Order of this Authority dated 23rd April 2004, that “No other Authority, Board, or Committee or even Central or State Governments can interfere with the said order or act contrary to it, otherwise it will amount to contempt of Court and death knell to the Rule of Law. Therefore, the permission was granted to operate the Dahanu Thermal Power Plant Station till 30th of April 2005 only. REL was directed to submit monthly progress report in this respect by 5th of every month to this Authority.
5. In the meeting held in the office of the Authority on 14th of Feb. 2005, REL representative requested this Authority to send representative of this Authority for the kick off meeting. The REL’s officers were asked that they should keep the Authority informed about the meeting. Obviously had this been done a representative of the Authority could have been sent when the kick off meeting took place. However, for the reasons best known to the REL it did not inform about the kick of meeting or the representative of this Authority was invited to the said meeting.
6. Earlier, when this issue was discussed at length in the 27th Meeting of the Authority held on 23rd April 2004, the Activists- i.e. Dahanu Taluka Environment Welfare Associations strongly objected to the attitude adopted by the REL Co. It was alleged by the said DTEWA that the REL is deliberately avoiding compliance with the orders, rather they have no desire to install the FGD Plant, and this is very clear from their conduct. Therefore, it was contended that either operation of the plant be stopped or suspended till the installation of FGD Plant, or the REL Co.

should be directed to deposit Rs. 300/- Crores (Rupees Three Hundred Crores) to show their bonafides.

7. In the last letter of REL Company, dated 2nd March 2005. REL informed this Authority that the letter of Intent (LOI) has been already issued on the 12th of February 2005, to M/s. Ducon Technologies Inc. USA for design, engineering, supply, erection and commissioning of FGD Plant at Dahanu Thermal Power Station. Then time table was given and request was made to restore operation of MPCB's consent, dated 23rd March, 2004 for its full term, again reiterating that the Plant is operating well within the parameters stipulated by the MPCB. This shows the attitude of the REL Co. that they are not very serious about installation of FGD Plant, and one way or other want to reopen the subject of installation of FGD Plant itself. Therefore, time has come when a serious view should be taken, so as to get the orders passed by this Authority, which is confirmed by the High Court and Supreme Court could be implemented. It is not disputed that this Authority has got such powers, Authority or jurisdiction.
8. By letter dated 14th March 2005, DTEWA placed on record information obtained by it in respect of apprehended collusion between REL and M/s. Ducon Technologies, which is likely to delay in installation of the FGD Plant. Contention of DTEWA both the parties have independently disclosed some extraordinarily disturbing facts that are required to be probed. It was also pointed out that M/s. Ducon Technologies inc. dose not have experience of installing seawater based FGD Plant and time Schedule given by M/s. Ducon Technologies Inc. is contrary to the schedule given by REL.

9. Further from the documents submitted by REL Co. it is obvious that M/s. Ducon Technologies did not have until very recently any established office in India nor any project nor any experience or tie up with a Company capable of executing the project. DTEWA seriously doubted as to whether Ducon has the requisite capacity, infrastructure and technical know-how to carry out installation of the FGD Plant at DTPS. In the said letter serious allegations were made against M/s. REL Co. and the Ducon Technologies co.

10. In view of this, this Authority issued a letter on 15th March, 2005 addressed to REL company and copy of which was forwarded to M/s. Ducon Technologies Inc. India, Branch, Navi Mumbai and requested them to make it convenient to attend the 30th meeting of this Authority scheduled to be held on 19th March, 2005 at 12-00 Noon in Mantralaya, Mumbai. However to Authority's dismay, Mr. Kiran Patil, General Manager (Operations) S.E. Asia of M/s. Ducon Technologies Co. telephonically informed the office of the Authority that, "because of important pre-occupation, it is not possible for him to attend the meeting of Authority to be held on 19.3.2005. He further informed that it would also not be possible for him to depute his representative for attending the said meeting and to participate in the discussion at this stage". Authority had invited the representative of Ducon Technologies to attend the meeting of Authority to find out as to whether it is capable of installing the FGD Plant and the REL is serious about it. From the whole conduct of REL, it appears that they are anyhow delaying the whole process and have no intention to install the FGD Plant.

11. REL Co. though agreed in the meeting to file an Affidavit, informed this Authority to dispense with the filling of the necessary Affidavit. In view of this DTEWA are insisting for consideration of their application dated 21st April

2004 for closing down the DTSP or suspending its operation till the FGD Plant is installed / established or in the meantime the Company should be directed to deposit Rs. 300/- Crores (Rs. Three Hundred Crores) to show their bonafides. Admittedly Cost of FGD Plant installation is much more, and damage to environment will be enormous, which is incapable of being compensated in terms of money, as contended by the Activist – DTEWA. Therefore – it is necessary that REL should deposit the whole cost of the plant, as an assurance or guarantee that it will implement the order or it could be otherwise get implemented.

It is well settled that Environmental Protection should have precedence over economic and other interests. More so, the REL have disobeyed Orders of the Courts of Law. Those who has committed Contempt of Court, deserves no sympathy or indulgence, nor it could be allowed to continue to disobey the Orders of the Court, and Conditions of license. If this is allowed, it will be negation of rule of law. We will have to strike a Balance; even at the risk that public might suffer, if an extreme step is taken. But on that count, nobody can be allowed to disobey the Orders of the Courts of Law, or destroy environment.

As correctly noted by the Ministry of Environment & Forests, New Delhi in the letter dated 16h Feb. 2005 that initial permission was granted on the condition that the Project Authority must provide a Flue Gas De-sulphurisation (FGD) Plant with 90% efficiency in view of the good horticultural / agricultural potential of the area and BSES Co. has not complied with the above mentioned condition so far. We have also received several complaints in this regard. Therefore, without prejudice to the Penal action which could be taken, in our view stage has come when serious view will have to be taken so that Orders passed by this Authority, Bombay Court and the Supreme Court are implemented and in this regard we find force in the contentions raised by DTEWA that either Power Station be closed or REL. be directed to deposit an amount of Rs. 300/- Crores (Rupees Three Hundred Crores).

12. An impression is being created and which has some substance that REL is not serious in the matter and they are avoiding to obey the Orders passed by this Authority, or High Court or Supreme Court. In this context, it is pertinent to note that the License granted to the BSES Company to install Power Station was itself a conditional one, and that they will install FGD Plant with 90% efficiency. Such an assurance was also given to this Authority from time to time.
13. In the initial order passed by the Hon. Supreme Court dated 31.10.1996, in the Writ Petition No. 231. of 1994 Shri. Bittu Sehgal & Another's V/s. Union of India, & others this position was made very clear, in view of the Recommendations made by NEERI and having regard to the eco-fragile nature of the area.
14. In these circumstances, normally when the REL is not respecting the orders passed by the Authority, High Court Bombay or Supreme Court, natural consequences should have been the closure of the DTSP itself. But since this Authority thought that it would affect the general public and power position in the state, some latitude was shown. Obviously, the Company is misusing this. Attitude of M/s. Ducon Technologies in not attending the meeting or not sending any representative to discuss the matter, obviously strengthens this apprehension.
15. It is no doubt true that the permission granted to REL Co. will expire on 30th April 2005, as per the Orders passed by this Authority on 23rd April 2004. The REL has prayed for restoration of the initial order passed by the Maharashtra Pollution Control Board, by which they were permitted to operate the Plant till 31st March 2009. For the reasons recording in the order of this Authority, dated 23rd April 2004, this period was reduced to 30th April 2005. As to whether REL should be permitted to operate the DTSP beyond that period is a moot question, which will have to be decided in the next meeting of Authority.

16. In our view, there is much substance in the contention of the Activists – Dahanu Taluka Environment Welfare Association, that the REL should be directed to deposit Rs. 300/- Crores (Rupees Three Hundred Crores) to show their bonafides, or close down the power station till FGD Plant is installed.
17. In our view, instead of directing deposit of the said amount, ends of justice will be met, if the Reliance Energy Limited is directed to give a Bank Guarantee for the said amount of Rs. 300/- Crores (Rupees Three Hundred Crores) in favor of the Ministry of Environment & Forests, Govt. of India, within a period of one month from today i.e. on or before 19th of April 2005. It is accordingly directed to give the Bank Guarantee as stated above. The request of Reliance Energy Limited, to grant further permission to operate Dahanu Thermal Power Station will be considered thereafter in the next meeting of this Authority scheduled to be held on 26th April 2005.

Mumbai.

Dated: 19/3/2005.

**Sd/-
(V. B. Vichare)
NGO Member**

**Sd/- 19.3.2005
(C.S. Dharmadhikari)
Chairman, DTEPA.**

**Sd/-
(N. V. Jantre)
Collector & Dist. Magistrate,
Thane & Member, DTEPA.**

**Sd/- 19.3.2005
(Dr. Shyam R. Asolekar)
Member, DTEPA.**