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COURT-APPOINTED MONITORING COMMITTEES: THE CASE OF THE DAHANU TALUKA ENVIRONMENT PROTECTION AUTHORITY

Geetanjoy Sahu and Armin Rosencranz

COMMENT



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House II, 1F, 7 Chemin de Balexert, 1219 Châtelaine-Geneva, Switzerland, Tel/fax: + 41 (0)22 79 72 623, info@lead-journal.org*

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* Geetanjoy Sahu, Assistant Professor at the School of Habitat Studies, Tata Institute of Social Sciences (TISS), Mumbai.
Email id: geetanjoy@tiss.edu, I would like to thank Michelle Chawla, S.S. Arvind and Sharachandra Lele for their comments on this paper.

** Armin Rosencranz, Visiting Professor at Johns Hopkins School of Advanced International Studies in Bologna, Italy.
Email id: armin@stanford.edu

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With a mandate to protect the ecology, natural resources and livelihoods of a region, the Dahanu Taluka Environment Protection Authority (DTEPA) has for a period of ten years been more than just a watchdog institution. Recognising the ecological politics of control over natural resources, the Authority has unwaveringly stood by the principles of social justice and equitable rights for local communities. With its landmark orders, the DTEPA has contributed to the environmental discourse in India. Considered a quasi-judicial body, the Authority has functioned like a peoples' court, responding to local environmental complaints and problems. Through a process of hearings, the Authority has been able to discuss and debate issues in a democratic manner, holding both public and private institutions accountable.

We argue here that an independent and proactive Court-appointed monitoring committee, namely the DTEPA, has not only ensured the effective implementation of environmental laws but has also exposed the anti-environment bias of both the Union Ministry of Environment and Forests (MoEF) and the State Government of Maharashtra. Further, the DTEPA has created a space for civil society groups and other stakeholders to be part of the monitoring committee to help implement Court directions. We discuss how the DTEPA's inclusive approach has empowered the local people to participate in decision-making that affects their environment. Finally, we offer recommendations to monitoring committees in other environmental cases that are faced with political pressure or industrial lobbying.

1

ANTECEDENTS OF THE DAHANU TALUKA ENVIRONMENT PROTECTION AUTHORITY (DTEPA)

Dahanu is situated 120 km. north of Mumbai, in the Thane district of Maharashtra, and is one of the last green belts along the country's rapidly industrialising western coast. Dahanu was 'notified', or classified, under the Indian Coastal Regulation Zone (CRZ) by the MoEF on 19 February, 1991.¹

1 For more details, see Government of India, Ministry of Environment and Forests, Notification dated 19 February 1991.

The CRZ bans any new construction and development activities within 500 metres of the high tide line. Dahanu was also declared 'eco-fragile' by a government notification of 21 June 1991² (Notification under the Environment Protection Act, 1986, restricts the development of industries, mining operations and other development in the region). Even though Dahanu had been declared an ecologically fragile area, political and industrial interests continued to bring forward development projects in Dahanu Taluka, sidelining both the eco-fragile notification and the CRZ notification of the Government of India. This led environmentalist Bittu Sehgal to file a writ petition in the Supreme Court in 1994, asking the Court to implement the notifications in Dahanu Taluka.³ The Supreme Court then appointed the National Environmental Engineering Research Institute (NEERI) to investigate the issues set forth in the petition. Based on the NEERI report, the Supreme Court upheld the Dahanu Notification prohibiting any change of land-use in the region and ordered that a committee of experts be formed under Section 3 of the Environmental Protection Act of 1986 to ensure implementation of the environmental laws protecting Dahanu's eco-fragility.

2

POWERS OF DTEPA

The MoEF appointed the Dahanu Taluka Environment Protection Authority in 1996 under the chairmanship of retired Mumbai High Court judge Justice S. Dharmadhikari and supported by a team of eleven expert members.⁴ The Authority is empowered to exercise the following powers and functions:

- to protect the ecologically fragile areas of Dahanu Taluka and to control pollution in the said area;
- to consider and implement the 'Precautionary Principle' and the 'Polluter Pays Principle';

2 See Government of India, Ministry of Environment and Forests, Notification dated 20 June 1991.

3 See *Bittu Sehgal v. Union of India*, Supreme Court of India, W.P. (Civil) No. 231 of 1994.

4 For more details, see Government of India, note 1 above.

- to consider and implement the recommendations given by NEERI in respect of Dahanu Taluka;
- to ensure the implementation of the notifications issued by the Ministry of Environment and Forests, Government of India under notification No. S.O. 114(E) dated 19 February 1991 and No. S.O. 416 (E) dated 20 June 1991;
- to comply with the relevant orders issued by the Bombay High Court and the Supreme Court from time to time;
- to deal with any other relevant environment issues pertaining to Dahanu Taluka, including those which may be referred to it by the Union Ministry of Environment and Forests; and
- to furnish a progress report about its activities at least once in two months to the Central Government via the MoEF

3 ACTIVITIES OF DTEPA FROM 1996-2008

Since the formation of the DTEPA in 1996, the Authority has been engaged in resolving several disputes revolving around environmental issues. In this section, we highlight the major activities of the Authority for environmental protection and improvement in Dahanu Taluka.

4 BACKGROUND: THE DAHANU THERMAL POWER PLANT CASE

In 1989 the State Government of Maharashtra approved a proposal of the Bombay Suburban Electricity Supply Company (BSESC), to set up a coal-based thermal power

plant in the Dahanu Town of Thane District. On 29 March 1989, two local environmental activists: Nergis Irani and Kityam Rustom (Members of the Dahanu Taluka Environment Protection Group) along with Bombay Environmental Action Group filed writ petitions first in the Bombay High Court and then in the Supreme Court challenging the decision of the Central Government to build the power plant.⁵ They lost the case, with the Court citing the necessity of energy to power the city of Mumbai as strong grounds to sanction the project. To allay petitioners' apprehensions of environmental damage, the Court directed that the condition requiring the installation of a Flue Gas Desulphurisation (FGD)⁶ plant should not be relaxed without a full consideration of the consequences.

While this condition was imposed in 1989, no attempt was made by the BSESC to install FGD. The environmentalists took up the issue with the specially constituted quasi-judicial Authority, the DTEPA, that passed an order on 12 May 1999 directing the company to initiate the process of 'setting up of the FGD unit within a period of six months and complete the same within a reasonable time period'.⁷ Over the years, the company tried to escape this mandatory environmental clearance by challenging the order of the Dahanu Authority in the High Court of Mumbai as well in the Supreme Court of India. However, the Authority's order was upheld both by the High Court of Mumbai and the Supreme Court in 2000. Therefore, it was mandatory for the company to install FGD as directed by the Authority.

The thermal power plant was taken over from BSESC by Reliance Energy Ltd (REL) in 2002. As per the DTEPA order and REL's own schedule FGD was supposed to be installed in February 2005. When contacted about the delay, the Dahanu Power Plant

5 *Dahanu Taluka Environment Protection Group v. Bombay Suburban Electricity Supply Company Ltd. with Bombay Environmental Action Group v. State of Maharashtra and Others*, Supreme Court of India, 1991 (2) SCC 539.

6 A Flue gas de-sulphurisation unit performs the important role of reducing the sulphur di-oxide emissions from the thermal power plant.

7 Dahanu Taluka Environmental Protection Authority, Supreme Court Monitoring Committee Report dated May 12th 1999 for the Implementation of Dahanu Eco-fragile Notification of 1991, Maharashtra Pollution Control Board, Mumbai.

Manager⁸ said that *'the company has been keeping all the emission parameters well below the most stringent standards without the installation of FGD. So why is there a need for FGD?'*

In March 2005, the environmentalists filed an application with the Dahanu Authority seeking redressal in the form of a 300 crore rupees bank guarantee from the company demonstrating its commitment to installing a pollution control device in an ecologically fragile zone. After several hearings, the Dahanu Authority passed an order holding Reliance Energy responsible for the unnecessary delay in abiding by environmental clearance conditions as well as Court orders that demanded the setting up of the FGD unit. The Dahanu Authority directed Reliance Energy to put down a bank guarantee of Rupees 300 crores to prove its commitment to protecting Dahanu's environment.⁹ Reliance Energy appealed against this order in the Mumbai High Court in April 2005. In June 2005, the Mumbai High Court upheld the Authority's verdict regarding installation of the FGD unit, but lowered the amount of the bank guarantee from Rs.300 to Rs.100 crores.¹⁰ A deadline of October 2007 was accepted by all as being the final time schedule for the installation of the FGD unit. When contacted about the status of implementation, the Chairperson¹¹ of the Authority acknowledged that the deadline had been met.

5 THE VADHAVAN INTERNATIONAL PORT CASE

On 17 February 1997, the State Government of Maharashtra accepted a proposal from P&O Australia to build an international port at VadHAVAN - a small

fishing village in the Dahanu region. The State Government required that P&O Australia submit a detailed feasibility report, including an environmental impact assessment study, within six months, and obtain all the necessary environmental clearances from the Central Government.¹² Meanwhile, objection was raised by the Dahanu Taluka Environmental Protection Group, People's Alliance for Implementation of Laws, VadHAVAN Bandar Virodhi Sangarsh Samiti, and others that, in view of the decision of the Supreme Court as well as the two notifications to save Dahanu's green belt, the construction or establishment of such a Mega Port is not permissible. Moreover, in the Regional Plan prepared for the Dahanu area, there is no provision for a Port at VadHAVAN or any other place in Dahanu Taluka. Hence, the proposed Port would be in clear violation of the Regional Plan.¹³

The proposal to develop a port at VadHAVAN in Dahanu region was forwarded by the MoEF to the DTEPA in November 1997 for its examination. The DTEPA gave its final decision on this matter on 19 September 1998. The DTEPA distinguished between two different questions raised by the port proposal: the legality of the project and its environmental feasibility. It was initially reluctant to decide the legality issue without considering also the feasibility question. For that purpose, it gave P&O Ports (India) permission to complete a detailed Environmental Impact Assessment of the project.¹⁴ While P&O India did carry out several preliminary studies, it was not ready to proceed with a full scale EIA unless the question of the project legality was resolved.

The Dahanu Taluka Environment Protection Group argued that building a Mega-Port in Dahanu would be inconsistent with the Dahanu and CRZ Notifications,

8 Interview with Prasad Rao, Dahanu Thermal Power Station Head by Geetanjoy Sahu on 23 September 2008.

9 Dahanu Taluka Environmental Protection Authority, Supreme Court Monitoring Committee Report dated 19th March 2005 for the Implementation of Dahanu Eco-fragile Notification of 1991, Maharashtra Pollution Control Board, Mumbai.

10 For more details, see Michelle Chawla 'Dahanu: The Environmentalists versus The People', available at <http://infochangeindia.org/200504055755/Environment/Features/Dahanu-The-Environmentalists-versus-The-People.html>.

11 Interview with Justice S. Dharmadhikari, Chairperson of DTEPA, by Geetanjoy Sahu on 28 September 2008.

12 See Dahanu Taluka Environmental Protection Authority, Supreme Court Monitoring Committee Report dated 19th September 1998 for the Implementation of Dahanu Eco-fragile Notification of 1991, Maharashtra Pollution Control Board, Mumbai.

13 See Ritu Dewan and Michelle Chawla, *Of Development Amidst Fragility: A Societal and Environmental Perspective on VadHAVAN Port* (Mumbai: Popular Prakashan, 1999).

14 See Dahanu Taluka Environmental Protection Authority, Supreme Court Monitoring Committee Report dated 19th September 1998 for the Implementation of Dahanu Eco-fragile Notification of 1991, Maharashtra Pollution Control Board, Mumbai.

and with the Supreme Court's decision of 31 October 1996. Moreover, as there was no provision for such a port in Dahanu's Regional Plan, the proposed port was also in violation of this plan. These arguments were rejected by the project promoters. While they admitted that the Dahanu Notification provided several restrictions for the setting up of industries in Dahanu, they argued that the term 'industries' should be interpreted as applying only to 'industries processing or manufacturing goods', and that the Notification has, therefore, 'no application to the setting up of a port'.

The DTEPA rejected the arguments of the project sponsors. It noted that the current Regional Plan for Dahanu provided no place for an industrial port. It noted, further, that while the word 'industry' was not defined in the Dahanu Notification, 'such a vast port, will obviously fall within the ambit and scope of the word industry', and that, therefore, 'the construction or establishment of such a Mega Port is wholly prohibited by [the] notification'.¹⁵ The DTEPA pointed, to the large back up facilities which would be required for the operation of the port, and to the fact that the cargo handled by the port will include cement, coal, petroleum products and chemicals. The DTEPA emphasised that unless the notification is amended, any modification of the Regional Plan would have to be in conformity with it. The DTEPA justified its interpretation by noting that Dahanu is the last surviving Green Zone on that Coastal area, is an ecologically fragile area, and the construction of such a port will be detrimental to the environmental and the socio-economic conditions of Dahanu area.

The DTEPA concluded that in view of these considerations the construction of such a Mega Port at VadHAVAN would be 'wholly impermissible and, therefore, will be illegal'. The DTEPA's independence of the local political establishment enabled it to see clearly what would be the social and environmental implications of the proposed port. In view of the DTEPA's decision, P&O India announced that it would not be going ahead with the plan to develop a port in Dahanu.¹⁶

¹⁵ *Id* at 4.

¹⁶ For more details, see Oren Perez, 'Reflections on an Environmental Struggle: P & O, Dahanu and the Regulation of Multinational Enterprises', 15(1) *Georgetown International Environmental Law Review* 1 (2002).

6 DTEPA VIS-À-VIS MOEF

Ever since Dahanu was declared an eco-fragile area in 1994 and the Court's direction to implement the notification in 1996 through the DTEPA, the political parties across their ideological differences have not only defaulted on implementing the notification but have been actively lobbying to rewrite the laws of the land to benefit developers and builders. Environmentalists accuse industry and vested interests of subverting various laws that were formulated to preserve the ecological fragility of the tribal-dominated Dahanu Taluka.¹⁷ Proponents of development, on the other hand, feel cheated by the notification and have challenged it in the Mumbai High Court.

In fact, there have been several serious attempts to de-notify Dahanu as well as disband the Dahanu Authority, by a section of powerful industrialists, builders and local politicians. In 2003, a special committee was constituted to ascertain if Dahanu could be considered eco-fragile.¹⁸ This Committee held a large public hearing in Dahanu with the aim of determining the views of the people. However, the meeting was conducted by local commercial interests and politicians, who asserted that the Dahanu notification was a major stumbling block to development in the region, and that it should be withdrawn. Misrepresenting the notification to claim that even a flour mill was not permitted in the area, the Committee created an atmosphere that projected a collective opposition to the Notification and the function of the Authority.

Since its very inception, the Maharashtra Government has been hostile to the notification, allege environmentalists.¹⁹ The state government seems insincere about implementing the eco-fragile notification. Most surprisingly, in January 2002, the

¹⁷ Interview with local environmental activist Nergis Irani of Dahanu by Geetanjoy Sahu on 22 September 2008.

¹⁸ See Mohan Rao Committee Report of 2003, Ministry of Environment and Forests, Government of India, New Delhi.

¹⁹ Interview with Michelle Chawla, Coordinator of Save Dahanu and also member of DTEPG of Dahanu, by Geetanjoy Sahu on 22 September 2008.

Ministry of Environment and Forests, an agency which should be protecting Dahanu and other eco-fragile areas, filed an application in the Supreme Court demanding an end to DTEPA on the grounds that it had already completed its work. The ministry claimed that it needs a single authority to monitor all eco-fragile areas.²⁰ The environmentalists fought this application at the Supreme Court and in January 2004, the application was dismissed.

The ministry's move to scrap the DTEPA seems to lack any credible reason. It said that the continuance of the Authority was not necessary as its only remaining activity was the finalisation of the development plan for Dahanu. The MoEF argued that Dahanu is too small an area to have a separate Authority of its own. Both the MoEF and the State Government of Maharashtra have showed little willingness to engage in constructive discussions with the local community, and seemed prepared to ignore the deep environmental and social problems of the development projects. The ministry has starved the Authority of operating funds, although the Authority has continued to function without these resources. The fault of the Authority seems to be that it took action. It would appear that the government does not appreciate efficiency at the cost of dissatisfying the industrialists. The DTEPA may just have been too effective for a government appointed committee: it has experts and not figureheads on its board.

7

WHY IS DTEPA EFFECTIVE?

There are three crucial factors that determined the effective functioning of the Authority. First, the Authority has been quite open to ideas and viewpoints of different stakeholders in dealing with various environmental issues. Unlike other monitoring

committees²¹ of the Supreme Court, the Authority has conducted regular meetings and public hearings giving sufficient notice to each and every party to the dispute. In this way, the local communities have found their voice with regard to any development issues in Dahanu through their participation in the DTEPA meeting and public hearing. The Authority has responded to all public appeals within a stipulated time-frame. There is no discrimination in this regard. The DTEPA demonstrates how the Environment Protection Act can be used to give decentralised powers to an expert committee. The very idea of an Authority of this type was to evolve a more decentralised approach to implementation of the law. The Authority has proved this and seems worthy of emulation.

Second, effective leadership has been an important factor in the success of the Authority. The Authority is functioning under the leadership of retired Justice S. Dharmadhikari, who is committed to the Gandhian vision of development and protecting environment from rapid industrialisation. He believes in strict adherence to the implementation of environmental laws. His commitment to saving Dahanu's green belt is explained in this observation: 'There are several industrial zones in Maharashtra for development activities; then why not spare two per cent land of Dahanu from development activities?' He also noted that around 60 per cent of the people of Dahanu Taluka are Scheduled Tribes who depend upon agriculture and fishing activities, for whom modern forms of development are not going to generate any kind of livelihood.²²

As Chairperson of the DTEPA, Dharmadhikari has introduced new principles in the field of rehabilitation in the Dahanu environmental case, namely the principles of 'pre-afforestation', and 'pre-habilitation', which are unprecedented. Before cutting a tree, authorities concerned are obliged to plant ten trees; before

20 In addition to Dahanu, more recently, the hill stations of Matheran and Mahabaleshwar-Panchgani have been notified eco-sensitive zones in Maharashtra after a lot of pressure from environmentalists. There are other regions in the country that are similarly notified, such as the Doon Valley (the first), the Aravalli range, Pachmarhi in Madhya Pradesh and Numaligarh in Assam.

21 Apart from Dahanu Taluka Environmental Protection Authority, there are several monitoring committees in different environmental cases to ensure the implementation of Court directions, such as Loss of Ecology Authority in the Vellore Industrial Pollution Case, Central Empowered Committee in the T N Godavarman Case, and Bhurelal Committee in the Delhi Vehicular Pollution Case.

22 Information gathered from Interview with Justice S. Dharmadhikari, Chairperson of DTEPA, by Geetanjoy Sahu on 28 September 2008.

demolishing a house, authorities are obliged to construct a new house for a person who is likely to be displaced, and only after the person shifts to the new house is demolition of the old house permitted. Under the Justice's leadership, afforestation programmes have taken place in several villages of Dahanu Taluka, such as in Khambale, Chikhala, Kodad, Khanivade, Nandgaon, Jalsar, and also in Dahanu Town.

Third, the composition of the Authority has been one of the significant factors in its effective functioning. The Authority consists of one retired judge as Chairperson and eleven expert members from different fields. The coordination among the members to deal with any kind of environmental problem is quite unique. DTEPA may be the only Authority in India that has been consistently conducting its meeting and submitting its report as per the direction of the Court. None of the derailing strategies – from the Ministry of Environment and Forests to the political and industrial lobby – have succeeded in influencing the impartial and independent function of the members of the Authority. This commitment reflects a sustained willingness of the members to render the decision-making process more democratic and participatory. Furthermore, the DTEPA, in its strong standing against the local political and industrial establishment, has effectively reflected the hopes and aspirations of environmentalists and local community members.

DTEPA show that this success might be temporary), but also because its multi-disciplinary structure and highly independent mode of operation created a new deliberative space, which was open to the arguments of the local community. The independent and impartial nature of functioning of the Authority suggests that the expert members of a Court-appointed committee, once selected, must rise above any other considerations to find out the ground reality. They should discharge their functions judiciously and objectively. If this happens and the expert body is empowered to take independent decisions, a Court-appointed monitoring committee can be an effective instrument for India's long term environmental management. Rather than being vilified as interfering in the affairs of the executive, the DTEPA has shown how useful a multi-disciplinary environmental monitoring committee can be to implement Court directions on environmental issues and to empower local people.

8

LESSONS TO BE DRAWN

The effectiveness of DTEPA can be followed as a model for other Court-appointed committees. What has allowed the independent functioning of this committee, despite various problems created by the MoEF and state agencies, was its ability to provide hope and a mode of expression to the local community. The fact that the Court decisions in a majority of cases have not been implemented has not discouraged the local community in having faith in the justice system. Thus, the work of the Dahanu Taluka Environment Protection Authority was of value, not necessarily because of its instrumental success in protecting Dahanu (recent attempts by the local political/business establishment to wind up the

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