

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONAL BENCH AT CHENNAI
IA NO. 15 OF 2024
IN
ORIGINAL APPLICATION NO. 49 OF 2022**

IN THE MATTER OF:

Pradeep Babu Tandel & Anr.

...Applicants

Versus

Union of India & Ors.

... Respondents

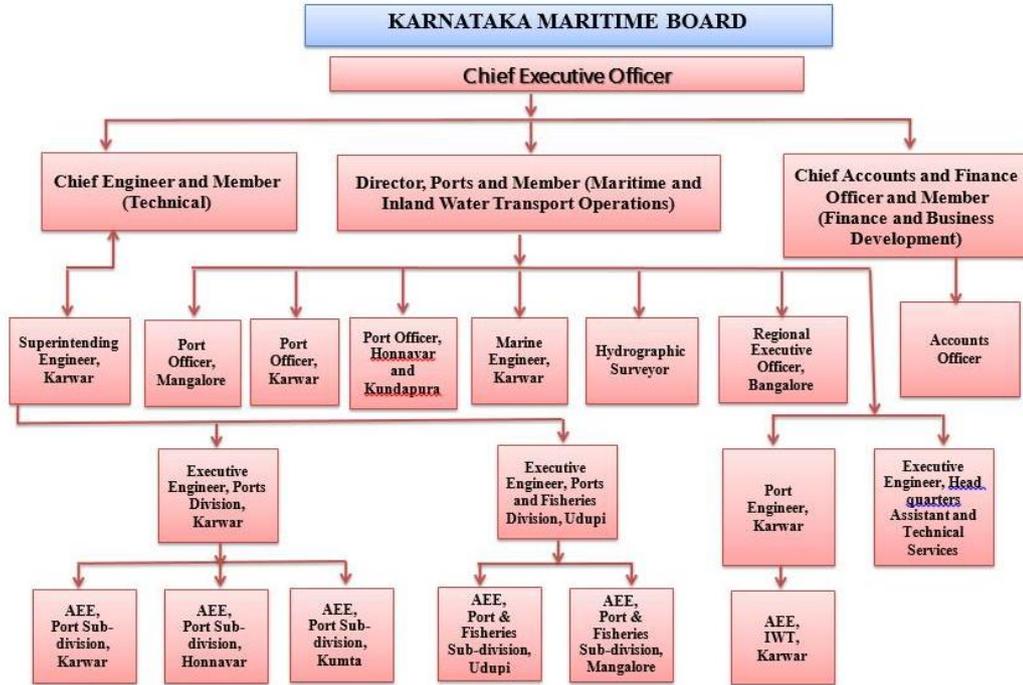
REPLY ON BEHALF OF THE APPLICANT DATED 15.02.2024

1. That the Karnataka Maritime Board, Respondent No. 3 has filed an application dated 29.01.2024 placing on record subsequent development relating to change in scope of the project. In view of the change in the scope of the project, it has been decided to withdraw the forest clearance application dated 08.08.2020. It is further stated that an amended forest clearance application will be submitted in due course.
2. That in the above mentioned application, the Respondent No. 3 has stated that there is no linkage between the projects of Karnataka Maritime Board and the Stage II of the Karwar Port. The relevant paragraph of the application reads as follows:

“10. At this juncture, it is appropriate to state that the very basis of the instant Original Application was the erroneous linking of the Karnataka Maritime Board Project with Stage II of the Karwar Port. Hence, the premise on which the OA stood has lost any legs to stand on.

11. Nevertheless, the erroneous impression cast on this Hon'ble Tribunal regarding an alleged nexus between two projects has been amplified on account of a factually erroneous report filed by Respondent No. 1, MoEF&CC.”

3. That in the said application, the Respondent No. 3 as stated that certain activities and construction such as cold storage yard, cement silo area, bulk cargo stacking yard, container terminal and tank terminal are now being dropped from the forest clearance proposals. However, in the letter to the Principal Chief Conservator of Forest dated 02.12.2023 (Annexure R-2) sent by the Respondent No. 3, it is stated that these constructions are being dropped in view of the difficulty in undertaking the construction due to nature of the terrain. Even after omitting these construction, the total area requires still amounts to 13.475 hectares which is more than the original application submitted which was 11.736 hectares. Thus, more than 2 hectares have been added to the original proposal. Therefore, it is clear that the project proponent, Respondent No. 3 still unclear about the total land required for the project.
4. That the assertion that there is no nexus between the Stage II expansion of Karwar Port and the proposal for diversion of 11.736 hectares is contrary to the facts on record. It is submitted that in view of the Karnataka Maritime Board Act, 2015, all activities related to development and management of ports in the State of Karnataka vest with the Karnataka Maritime Board, Karwar Port falls within the administrative control of the Karnataka Maritime Board.
5. That the administrative structure of the Karnataka Maritime Board as disclosed in the website clearly shows the relationship between the Karwar Port and the Maritime Board:



6. That the fact that the forest diversion proposal relates to the port expansion is evident from the justification given for diversion of forest land submitted to the Ministry of Environment and Forest. The same is annexed as (Annexure A-2) at page 45 of the Original Application. In the said note submitted by the Port officer of Karnataka Maritime State, it is stated that the forest land is required for development of infrastructure and providing better port facilities. The relevant paragraphs reads as follows:

“For the development of infrastructures and providing better port facilities for the users of this port sufficient land is inevitable and very essential. The development of Karwar Port is hampered due to acute shortage of land.

Karwar Port is having only 165 acres of port land out of which 42 acres of land has been occupied by the ex-owners of the land. All available land has been already utilized for

the creation of Port Infrastructure like berths, Godowns, Tansit, Sheds, Roads, Quarters, and Office buildings. Remaining land is allotted to private Port Users for the construction of liquid cargo storage tank terminals and transit sheds. As such, at present no land is available for development of Port Infrastructure in order to cater to the requirements of port users.

The permission of the Forest department for utilization of the said land for the creation of additional infrastructure facilities is inevitable and mandatory. This will help in the overall development of the Uttara Kannada District and also contribute for the Industrial, Socio-Economical, Commercial activities of the State and would create ample employment opportunities. The handing and taking over of A 33-12-00 from forest Sy no 42A of baithkol to port development (is enclosed as a proof of the said land already handed over to port department it is requested to accorded permission for utilization of said land for the development of Karwar port activities.

In view of the facts mentioned above, it is to be reiterated again that land availability is the biggest constraint for the development of the Port. Non forest land is not available at Karwar. Hence, it is proposed to apply for the above mentioned forest land.

As such, it is kindly requested to accord approval for the utilization of the above mentioned forest land for infrastructure development of the Karwar Port.”

7. That it is clear that all the above activities are link to infrastructure development of Karwar Port. Therefore, contrary to what has been stated in the application by

Respondent No. 2, the Stage II development of Karwar Port and forest diversion is for the same project. The project proponent did not disclose the same while seeking environmental clearance. This amounts to deliberate concealment of information which is material for scoping and screening and is in violation of para 8 of the EIA Notification, 2006 which make the environmental clearance liable for rejection and prior environmental clearance to be cancelled (para 8(vi)).

8. That it is further point out that even without seeking prior approval, the port officer has taken over the forest land in survey No. 42A of Baithkol for port development. This aspect has also been highlighted in the letter dated 15.07.2022 of the MoEF&CC to the Government of Karnataka (Additional Affidavit of MoEF&CC dated 27.03.2023).
9. That in view of the above fact it is clear that the Respondent No. 3 has clearly failed to disclose the true extent of the land required for port development. The Environmental Clearance is for 17 hectares of land. However, there is no mention that in the Environmental Clearance that forest land is involved. In the Environmental Clearance issued on 23.01.2019 (Page 29 of Original Application), it is clearly stated that in case of change in the scope of the project fresh appraisal shall take place (General Condition No. 22) and all statutory clearance including Forest Conservation Act, 1980 clearance shall be obtained. Since, no forest clearance has been obtained and all the activities in the 13 hectares are integral to port development, no work related to the project can commence. Further, action needs to be initiated against to the project proponent for deliberate concealment of information while seeking Environmental Clearance.

10) Pass any other order as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.

Applicant No.1

Ritwick Dutta

**Rahul Choudhary
Advocate**

COUNSELS FOR THE APPLICANTS
N-73, LGF, Greater Kailash - 1,
New Delhi - 110048
Mobile: +91 9312407881
Email: dclaw160@gmail.com

VERIFICATION

Verified by Pradeep BabuTandel, R/O Somnath Temple, Binaga, Post Binaga, Karwar, Uttara Kannada, Karnataka- 581301, do hereby verify that the contents of Paragraphs 1 to ^v 2 are true to my personal knowledge and nothing material has been concealed therefrom. _{(1) 0}



No. OF CORRECTIONS

One (1) only

APPLICANT NO. 1

SWORN AND SIGNED BEFORE ME

**S. M. DURGEKAR
NOTARY, KARWAR.**

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...RESPONDENTS

AFFIDAVIT

I, Pradeep Babu Tandel, R/O Somnath Temple, Binaga, Post Binaga, Karwar, Uttara Kannada, Karnataka- 581301 do hereby solemnly affirm and declare as under:

1. That I am the Applicant No. 1 in the above titled Original Application, and hence well conversant with the facts and circumstances described in the present case and as such competent to swear this Affidavit.
2. That the contents of the accompanying Reply are true and correct and nothing material has been concealed therefrom.



DEPONENT

VERIFICATION

Verified on this ^{14th} day of ^{February} 2024 that the contents of the present Affidavit are true and correct to my knowledge and belief and nothing material is concealed therefrom.





DEPONENT

No. OF CORRECTIONS

Two (2) only


**S. M. DURGEKAR
NOTARY, KARWAR.**