

**IN THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUHERN ZONE,
CHENNAI BENCH**

IN

ORIGINAL APPLICATION NO. 49 OF 2022

IN THE MATTER OF:

Pradeep Babu Tandel & Anr.

Vs.

...Applicants

Union of India & Ors.

...Respondents

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**Counter Affidavit On Behalf of Ministry of Environment, Forest
and Climate Change (Respondent No.1)**

IT IS MOST RESPECTFULLY SHOWETH:

I, Suresh Kumar Adapa, S/o Shri. A. Ramulu, aged 43 years, resident of Bengaluru, do hereby solemnly affirm and state as under:-

1. That I am working as Scientist "E"
2. That I am fully conversant with the facts and circumstances of the case from records maintained in the office. I have read and understood the contents of the petition thereof and as such authorized and competent to swear the present affidavit.
3. That the Applicant herein has alleged violation of provisions of EIA Notification, 2006 as well as conditions of Environmental



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Clearance which was granted on 23.01.2019 by the State Level Environment Impact Assessment Authority of Karnataka to the Directorate of Ports and Inland Water Transport, Government of Karnataka for second stage development of commercial Karwar port at Baithkol village, Karwar Taluk, Uttar Kannada district of Karnataka.

4. That the Applicant has contended that the Project Proponent (Respondent no. 4) applied for Forest Clearance for diversion of 11.74 hectares of forest land for non- forest purpose over and above 17 hectares without disclosing the requirement of acquisition of forest or additional land in Form 1 during the grant of Environmental Clearance.
5. Further contention raised by the Applicant herein is that Forest Clearance has been sought by the Respondent no. 4 for construction of infrastructure facilities such as Karnataka Maritime Board office, guest house, two internal roads, Karnataka Maritime Institute, cold storage yard, cement silo area, bulk cargo stacking yard, container terminal, parking area, tank terminal, garden etc. However, the Respondent no. 4 for grant of Environmental Clearance had stated in Form 1 that such infrastructure facilities are already in place, leading to concealment of vital information.

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6. That in this regard, the answering Respondent respectfully submits that under clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986, the Central Government has the power to make rules for carrying out the purposes of the said Act. While exercising the powers conferred by the Environment (Protection) Act, 1986, the Ministry had issued the Environment Impact Assessment (EIA) Notification vide S.O.60 (E) dated 27th January, 1994 mandating 32 categories of projects listed in Schedule- I to obtain prior environmental clearance based on the investment criteria (originally it was Rs 50 crores, which was enhanced to Rs 100 crores). It is further submitted that the Environmental Impact Assessment (EIA) was made a statutory requirement for certain category of construction and development activities through amendment dated 07.07.2004 in the EIA Notification, 1994.
7. It is humbly submitted that under the Environment (Protection) Act, 1986 read with Environment (Protection) Rules, 1986, the Ministry has issued a notification number S.O. 1533(E) dated 14.09.2006 (hereinafter referred to as the "EIA Notification, 2006"), in suppression of the notification number S.O.60(E) dated 27th January, 1994.
8. It is further submitted that under the provision of the EIA Notification, 2006, all new projects or activities listed in the

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Schedule to the EIA Notification, 2006 or the expansion or modernization of existing projects or activities listed in the Schedule to the EIA Notification, 2006 with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization or any change in product -mix in an existing manufacturing unit included in Schedule beyond the specified range, shall be undertaken in any part of India, as applicable, only after receipt of the prior environment clearance from the Central Government or by the State Level Environment Impact Assessment Authority ("SEIAA"), as the case may be. It is submitted that the Central Government under sub-section (3) of Section 3 of the Environment Protection Act, 1986 in accordance with the procedure specified in the EIA Notification, 2006, duly constitutes SEIAA in the States.

9. It is humbly submitted by the answering Respondent that under the Schedule to the EIA Notification, 2006 relating to the list of activities requiring prior Environmental Clearance, ports, harbors, break waters and dredging are included under sub-clause (7e) of clause (7) of the said Schedule, the relevant portion of which is reproduced below:-



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(1)	Project or Activity	Category with threshold limit		Conditions if any
		A	B	
(1)	(2)	(3)	(4)	(5)
7(e)	Ports, harbors, break waters, dredging	≥ 5 million TPA of cargo handling capacity (excluding fishing harbours)	< 5 million TPA of cargo handling capacity and/or ports/harbours ≥10,000 TPA of fish handling capacity	General Condition shall apply Note: 1.Capital dredging inside and outside the ports or harbors and channels are included; 2. Maintenance dredging is exempt provided it formed part of the original proposal for which Environment Management Plan (EMP) was prepared and environmental clearance obtained.

Therefore, in accordance with the provisions of the EIA Notification, 2006, the current project in question comes within the purview of Category B project as the proposed capacity of the project for expansion is 4.5 Million Tonns/Anum and the concerned regulatory authority to accord prior Environmental Clearance for such projects is the State level Environmental Impact Assessment Authority of Karnataka.

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10. The answering Respondent respectfully submits that the Respondent no. 4 obtained Environmental Clearance on 23.01.2019 from the State Level Environment Impact Assessment Authority of Karnataka with respect to expansion of Karwar Port, Karnataka.

11. It is respectfully submitted that the Respondent No. 4 has submitted an Application for grant of Forest Clearance under the Forest (Conservation) Act, 1980 for diversion of 11.736 hectares of forest land for the purpose of development of Port activities such as:

- a. Karnataka Maritime board office and Guest House
- b. Karnataka Maritime Institute
- c. Cement Silo
- d. Cold storage yard
- e. Tank Terminal
- f. Container Terminal
- g. Bulk Cargo Stacking Yard
- h. Parking Area
- i. Park/ Garden
- j. Utilities
- k. Road

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12. However, in Form 1 submitted at the time of EIA process, the Respondent no. 4 failed to disclose under Sl no. 21 and 23 that the second stage development of the project involves forest land and shall require Forest Clearance under the Forest (Conservation) Act, 1980.
13. It is further submitted that out of the aforesaid activities mentioned in the Application for Forest Clearance, some of the activities like construction of cold storage yard, bulk cargo stacking yard and road projects, etc. attract provisions of EIA Notification, 2006 relating to expansion of project and therefore require prior Environmental Clearance from the SEIAA.
14. It is most respectfully submitted and as also iterated in General Condition No. 4 vide EC letter dated 23.01.2019 issued by the SEIAA to Respondent no. 4 (Annexure A-1 of the Petition filed by the Applicant), that in case of any deviation or alterations in the project proposal from those submitted to the Authority for grant of Environmental Clearance, a fresh reference shall be made to the Authority to assess the adequacy of conditions imposed and to add additional environmental protection measures, if any.
15. In view of the above, it is prayed that this Hon'ble Tribunal may take on record and consider above submissions while passing an appropriate order, which the answering respondent shall duly comply with and thus render justice.

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16. The answering Respondent craves liberty to file additional information, if any, till pendente lite.

A. Suresh Kumar
23/08/22

DEPONENT

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VERIFICATION

I, the aforementioned Deponent do hereby declare on this 23rd day of August, 2022 at Bengaluru that the contents of the affidavit are true to my knowledge and belief and nothing material has been concealed therefrom.

A. Suresh Kumar
23/08/22

DEPONENT

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