

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI
Original Application No. 49 of 2022 (SZ).**

IN THE MATTER OF:

Pradeep Babu Tandel, Karnataka

...Applicant(s)

Versus

Union of India and Ors.

.... Respondents

Next Date 31/01/2023.

INDEX

Sr.No	Description	Pages No.
1.	Additional Statement of Objection on behalf of the Respondent No. 3 & 4 (Karnataka Maritime Board) & (Directorate of Ports and Inland Water Transport) along with Affidavit.	1-12
2.	Proof of Service	13

New Delhi
Date 10 /01/2023.

Filled By: -



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**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, AT CHENNAI**

ORIGINAL APPLICATION NO. 49 OF 2022

IN THE MATTER OF:

PRADEEP BABU TANDEL & ANR.

...APPLICANTS

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

**ADDITIONAL STATEMENT OF OBJECTIONS ON BEHALF OF
RESPONDENT NO. 3 (CHIEF EXECUTIVE OFFICER, KARNATAKA
MARITIME BOARD) AND RESPONDENT NO. 4 (DIRECTORATE OF
PORTS & INLAND WATER TRANSPORT, KARWAR)**

MOST RESPECTFULLY SHOWETH:

1. That the present Original Application regarding Stage II of the Karwar Port has been filed alleging change in scope of the project and violation of conditions of the Environment Clearance dated 23.01.2019, seeking revocation of the said Environmental Clearance on the ground of concealment, along with a direction to the project proponent to obtain fresh Environmental Clearance de novo, a direction for action against the project proponent for allegedly submitting false information, and a direction that the project be considered for fresh scoping.
2. It is reiterated at the outset that unfortunately, there is a deliberate attempt to mislead this Hon'ble Tribunal by claiming that the proposed infrastructure forming subject matter of Forest Clearance Application dated 14.03.2022 is an expansion

in scope of Stage II of Karwar Port, for which the EC dated 23.01.2019 was obtained. Such attempt at misleading this Hon'ble Tribunal has been made despite the fact that Forest Clearance Application dated 14.03.2022 for Survey No. 42 of Baithkol Village is for an entirely different project and has no overlap or correlation whatsoever with Stage II of Karwar Port.

3. That Respondent No. 1 herein has filed its Counter Affidavit dated 23.08.2022 and the Applicants have filed their rejoinder dated 27.08.2022 in the present matter both of which are filled with a multitude of incorrect submissions. As such, the present additional statement of objections is placed on record for a complete and correct adjudication of the dispute at hand.

WITH RESPECT TO THE COUNTER AFFIDAVIT FILED BY RESPONDENT NO. 1, MoEF&CC:

4. Respondent No. 1 has filed a counter affidavit supporting the Applicant's claim regarding violation of conditions of the Environment Clearance dated 23.01.2019 (**the EC**) and suppression in Form-1 while obtaining the EC. The following has been submitted by the said Respondent with respect to Stage II of the Karwar Port and with respect to Forest Clearance Application dated 14.03.2022 submitted for Developmental Activities of the Karnataka Maritime Board:
 - That there is no mention of involvement of Forest land for development of Stage II of Karwar port in Form 1 submitted during EIA process

- That some of the activities mentioned in the Forest Clearance application attract provisions of EIA Notification 2006
 - That General Condition 4 of the EC dated 23.01.2019 states that in case of any deviation/alteration in the project, the same would be liable for a fresh reference to SEIAA
5. The objections with respect to Respondent No. 1's Counter Affidavit are as follows:

Mere Repetition of the Applicants' Claims by Respondent No. 1

6. It is submitted that a bare perusal of Respondent No. 1's Counter Affidavit reveals that the above submissions of Respondent No. 1 with respect to both Stage II of the Karwar Port and the Maritime Board Project are nothing but mere repetition of what has been averred in the OA.
7. While it has specifically been placed on record by the Answering Respondents that the two projects are different, with their respective project boundaries, it is rather unfortunate that Respondent No. 1 has merely reiterated the Applicants' stand.

No Reasoning Behind Respondent No. 1's Averments

8. In continuation of the above submission, it is submitted that there is no reasoning provided by Respondent No. 1 regarding its basis for arguing concealment in Form 1 while obtaining EC or violation of the General Conditions of the EC.
9. The same is extremely pertinent in view of the fact that it has been specifically pleaded that the Forest Clearance Application

dated 14.03.2022 is restricted only to F Survey No. 42 of Baithkol Village. The said land is being utilized for Development Activities of the Karnataka Maritime Board. The said project is entirely different from Stage II of the Karwar Port, which was being constructed strictly in compliance with the terms and conditions of EC dated 23.01.2019. For the said reason, it was rightly mentioned in Form 1 while obtaining EC that no forest land is required for Stage II of the Port.

10. Accordingly, obtaining a forest clearance for a different project situated at a different site does not constitute violation of any condition of the EC either.
11. It is therefore stated that the argument regarding concealment in Form 1 and violation of terms of the EC can only stem from first concluding that the two projects are one and the same. However, there is nothing placed on record by the said Respondent to show how it concludes that the 2 projects are one and the same, or that one is an expansion in scope of the other.
12. It is humbly submitted that in the absence of any reason whatsoever to support its arguments, the only reasonable inference is that the said Respondent's counter affidavit unfortunately is nothing but a mere repetition of the Applicant's claims.

WITH RESPECT TO REJOINDER DATED 27.08.2022 FILED BY THE APPLICANTS

13. The Rejoinder filed by the Applicants is in essence a repetition of the averments in the OA, and is hence redundant to that extent. Nevertheless, the Applicants have produced certain new documents along with the rejoinder, which did not accompany the OA, for which reason it is necessary for the answering Respondents to address the same. Moreover, there seems to be a deliberate attempt on part of the Applicants to mislead this Hon'ble Tribunal between the Maritime Board Project and the proposed Stage II of Karwar Port. It is hence crucial for the answering respondent to address the newly produced documents and the contentions in the Rejoinder. The objections to the rejoinder are as follows:

No Reference whatsoever to Stage II of Karwar Port in the Documents Produced along with the Rejoinder

14. The Applicants have refuted the factual position regarding the Forest Clearance dated 14.03.2022 having no connection with Stage II of the Port whatsoever. Certain documents such as *"Timeline Details, Request to issue RoFR compliance, Line Estimate, Layout Plan, undertaking to provide substitute land for afforestation, Survey No. wise statement, map of project area, details of forest area involved and undertaking to bear extraction charges of trees"* have been annexed by the Applicants as Annexure A-1 to the Rejoinder. By way of the said documents,

the Applicants attempt to argue that Forest Clearance for F Sy No. 42 of Baithkol Village is for Stage II of Karwar Port itself.

15. However, it is interesting to note that **nowhere in the said documents is there any reference whatsoever to the proposed Stage II of the Karwar Port.** It is curious then as to how, the Applicants seek to put forward the argument regarding the said Application being a part of Stage II of Karwar Port.
16. It is hence reiterated at the cost of repetition that this is merely an attempt to mislead this Hon'ble Tribunal, as Stage II of Karwar Port is an entirely different project, which was being constructed strictly in adherence to the EC dated 23.01.2019.

F Survey No. 42 of Baithkol Village is not a part of Stage II of Karwar Port

17. The Environment Clearance dated 23.01.2019 is limited to Stage II of the Karwar Port. The Forest Clearance dated 14.03.2022 on the other hand is obtained for Developmental Project of the Maritime Board. The same is limited to F. Sy No. 42 of Baithkol Village.
18. That there is no correlation between the two is also apparent from the fact that while the Maritime Board Project, forming subject matter of the Forest Clearance dated 14.03.2022 is situated on F Survey No. 42 of Baithkol Village, Stage II of Karwar Port on the other hand is situated away from the same, on un-surveyed land on the sea shore.

19. It is hence submitted that F Sy No. 42 of Baithkol Village is by no means a part of Stage II of Karwar Port and resultantly, neither is the Forest Clearance Application dated 14.03.2022.

Deliberate Attempt to Mislead this Hon'ble Tribunal Regarding the Nomenclature "Land at Karwar Port"

20. It is submitted that the attempt at misleading this Hon'ble Tribunal regarding the Forest Clearance Application being an expansion of Stage II of Karwar Port seems to stem from the nomenclature of the land used in the Forest Clearance Application. Various documents have been produced along with the rejoinder such as request for RoFR Certificate, Line Estimate, Layout Plan, Undertaking to Provide Substitute Land for Afforestation, Survey No. Wise Statement, Map of Project Site, Details of Project Area and Undertaking to Bear Extraction Charges of Trees. All of the said documents refer to the clearance being for "*Forest Land at Karwar Port.*"
21. It is stated at the outset that none of these documents mention Stage II of Karwar Port. Further, reference may be had to Annexure R-8 of the answering Respondent's Reply dated 18.07.2022 filed in the present O.A., and the translation of the said annexure filed by the answering Respondents. The land at F Sy No. 42 of Baithkol Village was handed over to the Port Department on 25.07.1996.

22. Relevant portion of the said annexure is extracted below for ready reference:

Form of Handing and taking over of A33-12-0 from forest Sy. No. 42A of Baithkol to Port Department

-----x-----

*Handed over today
Area of A 33-12-0
from F.Sy. No. 42A
of Baithkol To Port
Department*

*Taken over
charge of the
area of 33-12-
0 from F Sy No.
42A of Baithkol
from the Forest
Department This
day 25-4-466*

*Sd/-
Range Forest
Officer*

*Sd/-
Dy Port
Conservator*

Dated: 25-07-1966

*Dated: 25-07-
1966*

23. It is hence a matter of record that this land has been under the Port Department since 1966. For the said reason, the documents produced in the Applicants' rejoinder state "*Land at Karwar Port*". Such nomenclature arises from the transfer of land in 1966. It is submitted that only for the said reason, land F Sy No. 42 is referred to as Land at Karwar Port. It cannot mechanically be assumed that any use of this land is for Stage II of the Port itself, without any specific reference to Stage II at all.
24. It is unfortunate that the said nomenclature is being harped upon by the Applicants to mislead this Hon'ble Tribunal. It is stated at the cost of repetition that the Forest Clearance

Application has absolutely no correlation whatsoever with Stage II of the Karwar Port. For the very reason, Stage II of the Port does not even find a mention in any of the documents.

**GENUINENESS AND BONA FIDES OF THE APPLICANTS
NEED TO BE TESTED**

25. It is submitted that the above stated facts make it amply clear that the Forest Clearance Application dated 14.03.2022 has no correlation with Stage II of the Karwar Port. Under the said circumstances, it is humbly reiterated, as stated in the Reply and the Application for Vacation of Stay filed by the Answering Respondents, that the present OA before this Hon'ble Tribunal is nothing but mere forum shopping.
26. The Hon'ble Supreme Court has held in ***State of U.P. v. Uday Education & Welfare Trust, 2022 SCC OnLine SC 1469*** that the genuineness and *bona fides* of the Applicants approaching this Hon'ble Tribunal shall be tested, especially in cases where the orders would have large scale ramifications with far reaching effects on aspects such as employment opportunities, investment in the State *etc.*, as is the case here. The following has been observed by the Hon'ble Supreme Court in this regard:
- "99. We find that before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and bonafides of the applicants must be tested.*

...We would, therefore, only request the learned NGT that, when credentials and bonafides of such litigants are seriously raised and when entertaining the grievance of such litigants, which is likely to adversely affect the rights of many, it should ensure the bonafides and credentials of such litigants.

(Emphasis Supplied)

27. It is rather curious that the present Original Application has been filed 21 days after the Hon'ble Supreme Court while issuing notice in SLP (C) No. 17213/2021 did not grant any stay on construction of Stage II of Karwar Port. The only averment of the Applicants regarding forum shopping is that:

“the Petitioner in Writ Petition (C) No. 1332 of 2020 before the Hon'ble High Court of Karnataka and in SLP (C) No. 17213/2021 is “Baithkol Bandharu Nirashrithara Yantrikrut Dhoni Meenugarara Sahakara Sangha Niyamitha”. The Applicants in the present Application are entirely different from the Petitioner before the Hon'ble High Court of Karnataka and the Hon'ble Supreme Court. Therefore, the Applicants, Pradeep Babu Tandel and Poonam Phal cannot be held guilty of forum shopping as they are separate from the petitioners before the Hon'ble High Court of Karnataka and the Hon'ble Supreme Court.”

28. It has however been specifically submitted before this Hon'ble Tribunal that amongst persons and organizations involved in forum hunting, it is a common practise to invoke the jurisdictions of various forums under the names of different Applicants/Petitioners in a bid to technically get over the hurdle of forum shopping.

29. It is hence submitted in view of the Hon'ble Supreme Court's judgment in *State of U.P. v. Uday Education & Welfare Trust* that the Applicants have miserably failed to prove their *bona fides* for which reason alone, the present Original Application is liable to be dismissed with exemplary costs.
30. In view of the above submissions, it is humbly prayed that this Hon'ble Tribunal may graciously be pleased to dismiss the present Original Application with costs.


Port Officer
PORT OFFICER
Karwar
KARNATAKA
On Behalf of
Respondent No. 3 and Respondent No. 4

THROUGH


Darpan KM
Advocate for Respondents No. 3 and 4

Date: 09.01.2023

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...APPLICANTS

VERSUS

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...RESPONDENTS

AFFIDAVIT

I, Capt. Arun R. Gaonkar, S/o Ramchandra Gaonkar, aged about 65 years, working as Port Officer, Karwar, having office at Port Office, Baithkol, Karwar, Uttar Kannada District, Karnataka 581302 do hereby solemnly affirm and state as under:

1. That I have been appointed the Officer in Charge on behalf of Respondent No. 3 and Respondent No. 4 in the above mentioned Original Application and being fully conversant with the facts and circumstances of the case, I am competent to swear this affidavit.
2. That I have gone through the accompanying State of Objections, drafted on my instructions. I say that the contents thereof are true and correct to the best of my knowledge and belief.


DEPONENT
PORT OFFICER
KARWAR

VERIFICATION:

I, the above named deponent do hereby verify that the contents of my affidavit are true and correct to the best of my knowledge and belief, no part of which is false and nothing material has been concealed therefrom.

Verified at Karwar on this 9th day of January, 2023.



'SWORN TO BEFORE ME'



**K. T. BHUTE
ADVOCATE & NOTARY KARWAR**

9 JAN 2023 No. of Corrections 1 09/01/2023


DEPONENT
PORT OFFICER
KARWAR