

**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

NEXT DATE 05.04.2023

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New Delhi

Filled By: -



Date: - 03/04/2023

(Mr. DARPAN KM Adv.)
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Kar/1053/2009.
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**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, AT CHENNAI
ORIGINAL APPLICATION NO. 49 OF 2022**

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**STATEMENT OF OBJECTIONS TO THE REPORT OF THE
KARNATAKA STATE LEVEL ENVIRONMENT IMPACT
ASSESSMENT AUTHORITY ('SEIAA') 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 an Additional Statement of Objections dated 09.01.2023. The contents of the Reply and the Additional Statement of Objections may be read as part and parcel of the present Objections to SEIAA Report and are not repeated herein for the sake of brevity.

SEIAA REPORT DOES NOT CONCLUDE CHANGE IN SCOPE

4. It is submitted that the report filed by SEIAA Karnataka correctly states that the alleged change in scope will have to be established. In this regard, it is pertinent to refer to the following extract from the concluding part of the report at para 13, which reads as under:

*“13...Therefore, the contentions made in this application with regard to change in scope of the project by adding additional forest land and concealment of material and relevant information in Form - I at the time of submitting application seeking Prior EC will be dealt with in accordance with law, **if established.**”*

(Emphasis Supplied)

5. It is hence submitted that the contention of change in scope has not been affirmed by SEIAA. The present O.A. is liable to be dismissed on this ground itself, as the Applicants have approached this Hon'ble Tribunal on a misleading and

erroneous premise that the activities mentioned under the Forest Clearance Application dated 14.03.2022 are in fact part and parcel of the proposed Stage II of the Karwar Port.

BURDEN OF PROOF LIES WITH THE APPLICANTS TO PROVE THAT THE KARNATAKA MARITIME BOARD PROJECT IS A CHANGE IN SCOPE OF THE PROPOSED STAGE II OF THE KARWAR PORT

6. As is rightly pointed out by SEIAA in the conclusion of its report, change in scope needs to be established. It is trite law that the burden of proof lies with the person approaching the Court and asserting a fact. Section 101 of the Indian Evidence Act, which reads as under:

Section 101: Burden of proof. — *Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*

7. In light of the above mandate, it is submitted that since the Applicants have approached this Hon'ble with the (incorrect) averment that the Forest Clearance Application dated 14.03.2022 is a change in scope of the E.C. dated 23.01.2019, the burden lies on them to prove the same.
8. In this regard, it is further submitted that the Applicants have not put forth a single document which would establish that the infrastructure under the Forest Clearance Application dated

14.03.2022 is part and parcel of the proposed Stage II of Karwar Port under the E.C. dated 23.01.2019 and have failed to prove their case.

WITH RESPECT TO PARA 12 OF THE SEIAA REPORT

9. As already stated above, the Report filed by SEIAA concludes that change in scope has not been established. The observations in Para 12 of the report, which state that the Forest Clearance Application dated 14.03.2022 would lead to change in scope of the project, is immediately followed by the prerequisite of the said contention being established, in Para 13 of the report. It is hence submitted that SEIAA's observation regarding the change in scope and the requirement of a fresh appraisal is a mere conditional observation, the condition precedent being establishment of change in scope.
10. It is submitted in this regard that the respective projects under the E.C. dated 23.01.2019 and the Forest Clearance Application dated 14.03.2022 are entirely different, and are in fact situated in different locations as well. While Stage II of the Karwar Port is located on un-surveyed seashore land, the Forest Clearance Application pertains to F Sy. No. 42 of Baithkol Village.
11. Reliance is placed on the contents of the Reply and the Additional Statement of Objections filed by the answering Respondents with respect to this fact, which are not repeated herein in order to avoid redundancy.

12. 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
Karwar
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: 31.03.2023

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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:

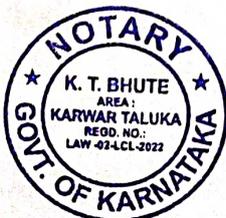
1. That I have been appointed the Officer in Charge on behalf of Respondent No. 3 and Respondent No. 4 in the above mentioned Original Application and being fully conversant with the facts and circumstances of the case, I am competent to swear this affidavit.
2. That I have gone through the accompanying Statement 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.

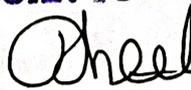
VERIFICATION:

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 st 31 day of March, 2023.



'SWORN TO BEFORE ME'


K. T. BHUTE
ADVOCATE & NOTARY KARWAR


DEPONENT
PORT OFFICER, KARWAR.

15-1 MAR 2023

No. of Correction: 1-11/31/03/2023