

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONAL BENCH AT CHENNAI

ORIGINAL APPLICATION NO. 49 of 2022

IN THE MATTER OF:

Pradeep Babu Tandel & anr.

...Applicants

Versus

Union of India & Ors.

...Respondents

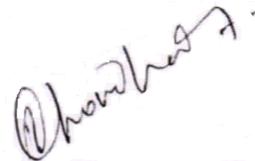
INDEX

S. No.	Particulars	Page No.
1	REJOINER TO REPLY OF RESPONDENT NO. 2	1-8

THROUGH



RITWICK DUTTA



RAHUL CHOUDHARY

COUNSEL FOR THE APPLICANT

N-73, Lower Ground Floor, Greater Kailash-1

New Delhi – 110048

Mobile No. 9312407881

Place:- Chennai/Delhi

Dated:- 20.04.2023

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONAL BENCH AT CHENNAI

ORIGINAL APPLICATION NO. 49 of 2022

IN THE MATTER OF:

Pradeep Babu Tandel & anr. ...Applicants

Versus

Union of India & Ors. ...Respondents

REJOINDER TO REPLY OF RESPONDENT NO. 2

MOST RESPECTFULLY SHOWETH:

1. That the above Application has been filed under Section 14 read with Section 2(m) of the National Green Tribunal Act, 2010 raising a substantial question relating to environment which affects the community at large. The principal concern of the Applicants herein is violation of the Environmental Clearance conditions as per the EIA Notification, 2006 with respect to Karwar Port in Uttar Kannada district in Karnataka which was granted Environmental Clearance on 23.01.2019. The Applicant submits that the violations of the Environmental Clearance conditions is not merely a technical or minor violation but a substantial question of law, not only in terms of the Environmental Clearance conditions but also is in violation of the provisions of the EIA Notification, 2006 read with the Environment (Protection) Act, 1986 as well as the law laid down by the Hon'ble Supreme Court in ***Keystone Realtors Pvt Ltd v. Anil Tharthare*** reported in **(2020) 2 SCC 66** and followed by judgment of this Hon'ble Tribunal in ***Badam Raji Reddy v. Union of India (OA 180 of 2021(SZ))***.
2. That Respondent No. 2 (State level Environment Impact Assessment Authority) has filed a Reply to the Original Application.

3. That Respondent No. 2 has raised the grounds in its Reply statement:
- i. In Para 10, it has been stated that:

"10. It is respectfully submitted that mere submission of an application before the concerned authorities for forest clearance cannot lead to the conclusion that the project proponent has indeed changed the scope of the project by adding additional land. It is for the applicants to satisfy the Hon'ble Tribunal beyond doubt that the application for forest clearance has been made by the project proponent for the purpose of adding additional lands to the project in question, thereby changing the scope of the project and that there was deliberate concealment of material and relevant information by the project proponent in Form - I at the time of submitting application seeking Prior EC."

(Emphasis supplied)

The Forest Clearance has been applied for obtaining additional land for 2nd stage development of Karwar Port

4. That the Forest Clearance has been applied by the project proponent for diverting forest land for the purposes of development of Karwar Port and not for other activities. The same is clear from the documents submitted by the project proponent for grant of Forest Clearance. The Applicants have elaborated on the same in the Rejoinder dated 27.08.2022 filed to the Reply filed by Respondent No. 2 and 3 and the same is being repeated here for the convenience of the Hon'ble Tribunal.
5. That the Project Report submitted by the project proponent for obtaining Forest Clearance is titled, "*Project Report For Obtaining Forest Permission In Respect Of 33-12-00 Acres-Guntas-Annas Of **Forest Land For Development Of Karwar Port***". The same name for the proposal is given in other documents such as Timeline Details, Cost Benefit Analysis,

Request to issue RoFR compliance, Line Estimate, Layout Plan, Justification Note, the undertaking to provide substitute land for afforestation, undertaking to pay the net present value of forest land, Survey no. wise statement, map of project area, details of forest area involved and undertaking to bear extraction charges of trees submitted by the project proponent itself for obtaining forest clearance (annexed as ANNEXURE A-1 with Rejoinder dated 27.08.2022 filed by Applicants). It is amply clear from these documents submitted by the project proponent that the diversion of the said forest land is for development of Karwar Port and hence is the same project for which the Environmental Clearance dated 23.01.2019 was obtained. Copy of Justification letter, project report, forest, cost benefit analysis, undertaking to pay the net present value of forest land are annexed as ANNEXURE A-2 of the Original Application.

6. That the Project Justification Note submitted by the project proponent also mentions that there is not sufficient land for the development of Karwar Port, and therefore forest land F.Sy.No 42 needs to be diverted for non-forest purposes. It states:

"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."

7. That it is also pertinent to mention that the Directorate of Ports and Inland Waterways, the authority to whom the Environmental Clearance dated 23.01.2019 was granted and the Karnataka Maritime Board are not separate entities. With the establishment of Karnataka Maritime Board through the Karnataka Maritime Board Act, 2017 (annexed as ANNEXURE A-2 with Rejoinder dated 27.08.2022 filed by Applicants) and subsequent notification of Karnataka Maritime Board Rules in 2019, it is clear that

Karnataka Maritime Board is now in charge of port development activities happening under Directorate of Ports and Inland Waterways. This is reiterated in both the Objectives of Karnataka Maritime Board, as well as reiterated in Section 20 of Karnataka Maritime Board Act. Relevant part of the Statement Of Objects And Reasons of the Karnataka Maritime Board Act, 2017 is reproduced below:

"The Bill among other things provides for,-

(i) constitution and functioning of the Maritime Board for Karnataka. The Board shall be in a position to find ways and means to undertake various developmental projects and maintenance activities in relation to ports, harbours, inland waterways and coastal protection and thus help in the growth and development of the coastal region and its hinterland.

(ii) Developing all Karnataka ports on public private partnership Basis.

(iii) development and maintenance of fishing harbours by the Board with suitable budgetary grants and subventions from the Government. However, the operations and management of the fishing harbours shall continue to be done by the Fisheries Department and not by the Maritime Board."

(Emphasis supplied)

8. That Section 20 of the Karnataka Maritime Board Act, 2017 also validates transfer of assets and liabilities of Government to Karnataka Maritime Board in relation to any port, Inland Water Ways, Ferry Service and Coastal Protection Works. Therefore, it is submitted that since all the powers, assets and liabilities have been transferred from the Government to the Karnataka Maritime Board in relation to all ports of Karnataka, therefore, Directorate of Ports and Inland Waterways is not a different entity from Karnataka Maritime Board, with all properties, contracts and suits having been transferred to it.

Responsibility of the project proponent to prove that the additional forest land is not for Karwar Port

9. That the SEIAA has stated in its Reply that it is:

"for the applicants to satisfy the Hon'ble Tribunal beyond doubt that the application for forest clearance has been made by the project proponent for the purpose of adding additional lands to the project in question, thereby changing the scope of the project and that there was deliberate concealment of material and relevant information by the project proponent in Form-I at the time of submitting application seeking Prior EC."

10. It is submitted that it has been held by the Hon'ble Supreme Court that the onus to prove that the activities being undertaken do not have a detrimental impact on the environment is on the project proponent itself. In the case of **Vellore Citizens' Welfare Forum vs. Union of India** reported in **(1996) 5 SCC 647**, the Hon'ble Supreme Court had held that:

"Some of the salient principles of "Sustainable Development", as culled-out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Nature Resources, Environmental Protection, the Precautionary Principle, Polluter Pays principle, Obligation to assist and cooperate, Eradication of Poverty and Financial Assistance to the developing countries.

We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays" principle are essential features of "Sustainable Development". The "Precautionary Principle" - in the context of the municipal law - means.

(i) Environment measures - by the State Government and the statutory Authorities must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage lack of scientific certainty should not be used as the reason for postponing, measures to prevent environmental degradation.

(iii)The "Onus of proof" is on the actor or the developer/industrial to show that his action is environmentally benign."

(Emphasis supplied)

11. That, in the present case, the responsibility is upon the project proponent to show that the forest land for which Forest Clearance has been applied for is not for construction activities pertaining to Karwar Port but for other activities.

Responsibility of SEIAA to undertake proper appraisal and verify documents

12. That it is the responsibility of State level Environment Impact Assessment Authority to conduct proper appraisal and verify the documents submitted by the project proponent for grant of Environmental Clearance.
13. That SEIAA in its Reply has not clarified its stand on the issue whether the additional land for which Forest Clearance has been applied for is for development of Karwar Port.
14. That since SEIAA is the authority which granted Environmental Clearance to the project, it is upon them to clarify whether there has been any violation of the Environmental Clearance conditions with regard to change in the scope of the project or whether there is deliberate concealment of information by the project proponent in Form 1.
15. That SEIAA has only stated that it is the responsibility of the Applicants and the project proponent to prove to the Hon'ble Tribunal beyond doubt whether the forest land will be diverted for development of Karwar Port or not.

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


APPLICANT No.1

 THROUGH
RITWICK DUTTA


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

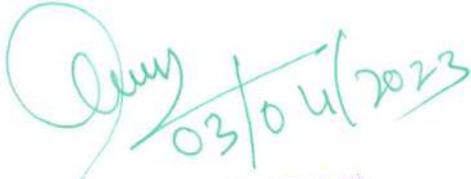
VERIFICATION

Verified by Pradeep Babu Tandel, R/o: Near Sonath Temple, Post Binaga, Karwar Taluk, Uttar Kannada District, Karnataka State - 581301, do hereby verify that the contents of Paragraphs 1 to 2 are true to my personal knowledge and nothing material has been concealed therefrom.

SWORN AND SIGNED BEFORE ME


APPLICANT No.1




03/04/2023
S. M. DURGEKAR
NOTARY, KARWAR.

No. OF CORRECTIONS 

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONAL BENCH AT CHENNAI
ORIGINAL APPLICATION NO. 42 OF 2023

IN THE MATTER OF:

PRADEEP BABU TANDEL & ANR.

...APPLICANTS

VERSUS

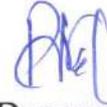
UNION OF INDIA & ORS.

...RESPONDENTS

AFFIDAVIT

I, Pradeep Babu Tandel, R/o: Near Sonath Temple, Post Binaga, Karwar Taluk, Uttar Kannada District, Karnataka State – 581301 do hereby solemnly affirm and declare as under:-

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



Deponent

VERIFICATION

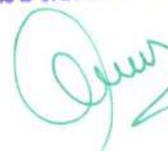
Verified on this 03rd day of April 2023 that the contents of the present Affidavit are true and correct to my knowledge and belief and nothing materials is concealed therefrom.





Deponent

SWORN AND SIGNED BEFORE ME

 03/04/2023

S. M. DURGEKAR
NOTARY, KARWAR.

No. OF CORRECTIONS 