

**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

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Filed by



Darpan KM

Advocate for Respondents No. 3 and 4

Lower Ground Floor, K-6

Lajpat Nagar - III

New Delhi - 110 024

darpan.advocate@gmail.com | +91 98991 25060

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**ADDITIONAL STATEMENT IN COMPLIANCE OF THE ORDER
DATED 24.08.2023 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 that Stage II of the Karwar Port and Developmental Activities of the Karnataka Maritime Board are two separate projects. It is submitted that there are no overlaps between Stage II of the Karwar Port and the Karnataka Maritime Board Project.
3. It is submitted that Stage II of the Karwar Port is an independent port project in itself, and contains within its ambit all infrastructure required for a port to function. It is hence pertinent to refer to the infrastructure that is part of the EC dated 23.01.2019 (**Ref: Annexure R4 of the Answering Respondents' Reply to the OA @ Pg. 145**). The EC lists out the following infrastructure as part of Stage II of the Karwar Port:
 4. *The proposed IInd Stage Development of Commercial Karwar Port project includes the following facilities:*
 - *Construction of 5 additional berths providing a berthing length of 1635m in continuation of existing berth in Northern Direction.*
 - *Upgradation of existing lighterage wharfs for a length of 100m to accommodate higher draft vessel.*
 - *Providing reclamation bund around 800m length by rubble mount.*

- *Reclaiming the sea area behind the berth to make the stockyard by filling average height of 6.5m.*
- *To construct POL jetty, jetty head, two berthing dolphins, two mooring dolphins.*
- *Construct, additional break water of 238 m in continuation of existing Break-water. In order to achieve necessary tranquillity of waves near of proposed extension of the berth, a new break-water is constructed of approximately for a length of 1200m completion of going work of existing breakwater of 250m.*
- *Hard surfacing the wharf area of 3, 39, 4505q.m of reclaimed land.*
- *To provide required infrastructure facilities to comply with MARPOL requirements.*
- *To provide labour amenity facilities as required under dock labour board Act.*
- *Installing cargo handling equipment and other facilities like ware house 200 X 50 m, transit sheds 200 X 50 m, cold storage facility 50 X 50 m. container facility 200 X 40 m and staff quarters - etc.,*

4. It is submitted that erroneous allegations have been made in the instant application that the Karnataka Maritime Board Project for which Forest Clearance approval was sought vide Application dated 14.03.2022 is a change in scope of Stage II of the Karwar Port.

5. Extensive pleadings have been led by the answering Respondents on the fact that the two projects are separate and independent of each other, in the Reply to the OA, Objections to SEIAA Report and the Additional Statement of Objections. The contents of the said pleadings may be read as part and parcel of the instant additional affidavit and are not repeated herein for the sake of brevity.
6. Vide order dated 24.0.2023, this Hon'ble Tribunal directed as follows:
- “6. Hence, the learned counsels are directed to file a clear sketch of the physical features of the above referred Stage- I, Stage- II and the Karnataka Maritime Board Development area with separate colour coding and the extent of the construction taken up by the Karnataka Maritime Board also to be furnished.”*
7. The instant affidavit is being filed in compliance of the above direction.

Genesis of Karnataka Maritime Board Project

8. In the budget speech for the State of Karnataka for the financial year 2022-23, vide para 255, it was announced *“to Establish a Marine and Fisheries Training Institute at Karwar*

with the coordination from the related institutions of State and the Centre.” The inception of the Maritime Board Project was hence with the intention of setting up a Maritime and Fisheries institute in Karwar.

9. The said institute will provide training to the youths of the fishermen community of this region, and will inculcate skills in them to be able to work capable to work in ships, inland vessels, fishing trawlers and other floating crafts and create huge employment opportunities.
10. Further, the Karnataka Maritime Board is a new institution, established in the year 2018. The said Board requires permanent administrative headquarters, proposed to be set up at Karwar for administrative and logistical ease.
11. Whilst the Forest Clearance Application was filed on 14.03.2022, the clearance has not yet been obtained from the Principal Chief Conservator of Forests (PCCF). While clearances were being sought, a status quo order came to be passed by this Hon'ble Tribunal on 16.05.2022 in the instant O.A. Hence the Maritime Board has not constructed any infrastructure on the concerned Forest Land.

INDEPENDENCE OF STAGE II OF KARWAR PORT AND KARNATAKA MARITIME BOARD PROJECT

12. It is submitted that the application pertaining to Forest Survey Number 42 is not at all connected to Stage II of Karwar Port in any manner whatsoever. As stated above, Stage II of the Karwar Port is an out and out independent port project, with all infrastructure required for a Port to function being part of EC dated 23.01.2019 itself. It is pertinent to note that Stage I as well as Stage II of the Karwar Port can function independently without any usage of the said Forest Land at all.
13. By way of the Maritime Board Project, the Department primarily intends to construct a Maritime Institute and a Maritime Board Administrative Building.
14. However, some additional infrastructure such as cement silo area, cold storage yard, tank terminal etc., is intended to be constructed since the existing Stage I of the Port is not able to meet its existing capacity. Hence, a proposal has been made to utilize the available land for the existing Stage I of the Port. Nevertheless, the primary focus of the Karnataka

Maritime Board Project is the construction of a Maritime Institute and a Maritime Board Administrative Building along with a guest house in the said forest land. Hence, it is reiterated at the cost of repetition that Stage II of the Karwar Port has no dependence on or correlation with the said infrastructure under the Maritime Board Project at all.

15. It is also pertinent to note the existing infrastructure at Stage I of the Karwar Port which includes:

- 516 meters Wharf accommodating 3 ships of 7.5 mtrs draft with other matching facilities.
- 250 meters. long break-water.
- Departmental transit sheds – 4 Nos. 1000 sqmtrs.
- Bunkering facilities by IOC.
- Signal Station, Flag – mast and transit marks.
- Tidal observatory, watch tower as per ISPS requirement.

16. With the above submissions and clarifications being placed on record, the answering Respondents are filing a digital map showing the clear sketch of the physical features of the proposed 2nd Stage of Karwar Port under Sagar Mala Project, along with the existing Stage I of the port as well as the forest

land where the Karnataka Maritime Institute and Karnataka Maritime Board office are proposed to be constructed. True Copy of Colour Coded Map of Stage I and II of Karwar Port along Karnataka Maritime Board Project is annexed herewith as **Annexure R-1**.

17. The said map indicates the following among other features of the area in question:

- Existing Karwar Port indicated in Yellow;
- Proposed Stage II of Karwar Port indicated in Blue;
- Forest Area in Baithkol Village indicated in Red;
- Proposed KMB project at F. Survey No. 42, Baithkol Village indicated in Green.

18. A bare perusal of the map clearly indicates that there is no correlation whatsoever between the forest land for which clearance is sought and the proposed Stage II of the Karwar Port.

19. With the above facts as well as the map being brought on record, it is pertinent to refer to the Hon'ble Supreme Court's

judgment in **Rajeev Suri v. DDA, (2022) 11 SCC 1** wherein it was held as follows:

486. *It is true that the 2006 Notification prescribes for a cumulative impact assessment. We are in agreement with the proposition that the basic purpose of an environmental impact assessment is to determine and mitigate the cumulative impact of a project — if the project proponent intends to commence development together or within reasonable time space. However, the meaning of the expression “cumulative impact/effect” is not to be understood as an expression of art. It does not shun segregating an independent project. In an examination of this nature, the foremost requirement is to identify the precise expanse of a project. For this purpose, the first source is the information supplied by the project proponent in Form 1 as it expressly requires information on any interlinked projects. Upon the receipt of that information, it falls upon the EAC to check and scrutinise whether there is more to the project which has been left out of its scrutiny. This latter scrutiny is dependent upon the nature of the project as it would involve collective consideration of all operational aspects of a project. **It does not mean connecting independent projects upon a subjective notion that it is necessary to do so for a collective appraisal merely because such projects fall in the same region.** The word “cumulative” is to be read in conjunction with the word “project” and idea behind examination of cumulative impact is to assess the impact of the project including all its functional components, and not of all development activities going on in a region.*

487. **In the light of the 2006 Notification read with Office Memorandum dated 7-10-2014 issued by MoEF, it is settled that environmental clearance is always site specific** and is required to be obtained only before the actual commencement of work on the project and not before that. Thus, **there is no sound basis for the argument that the Central Secretariat Project must be assessed with Parliament Project.** For, the stage of commencement of work in respect of the former Project has not reached yet

and indisputably the same will be on a different site altogether.

488. Once the project proponent frames a conscious timeline of completion of various projects which broadly fall under the umbrella of a common vision for the region, the same cannot be disturbed on the notion that the whole vision should go through the regulatory compliances at once. That would defeat the whole purpose of advance planning of a development activity. Planning involves an in-depth consideration of a wide range of concerns including regulatory requirements. **The decision to attribute different timelines and purposes to different projects is a domain of planning and the Court cannot readily attribute the label of mala fides to such informed decision** until and unless there is a clear attempt to evade the requirements of law. Noticeably, Parliament Project involves two components — renovation of existing building and construction of new building on adjacent plot — and both these components have been submitted for collective assessment by the project proponent. If these components would have been separated and submitted for clearance in a piece-meal manner, it would have been a case of “cake-slicing” the project. For, these two components are functionally and intrinsically connected and must be considered cumulatively.

490. Irrefutably, any exposition on what could amount to an integrated project, thereby calling for a cumulative assessment, has to be done with circumspection. For, the 2006 Notification would apply equally to other public projects including private projects without variation in the legal standard. The question here is whether a common builder/developer undertaking construction work on ten different plots totalling up to thousand acres scattered in different areas of a region/State/country and not adjoining or contiguous could be subjected to the rigours of cumulative assessment equivalent to an integrated project merely because the total area across which the projects are spread, when added up,

turns out to be beyond permissible limits warranting such assessment. That is not the dispensation prescribed by law as of now. In our considered opinion, this interpretation would be counter-productive to the very idea of sustainable development. To be considered as integrated, the plots must involve multi-sectoral components in close proximity if not contiguous and fulfil other specifications under the notification.

491. The tenor of the 2006 Notification shows that the grant of environmental clearance is project as well as owner/builder specific. Appendix I attached with the notification contains the format of Form 1. The terminology used in the format includes expressions such as “Name of the Project(s)”, “Name of the applicant”, “Designation (Owner/ Partner/ CEO)”, “Address”, “Location, Plot/Survey/Khasra No.”, etc. which reveal that the application for grant of clearance initiates from the owner of the subject land and is a site-specific exercise. **Merely because the proponent (Central Public Works Department, CPWD) undertakes multiple independent projects/activities of similar type, that by itself cannot be the basis to assess the category applicable for the purpose of the notification under consideration.** Furthermore, Item 8 in the Schedule attached with the 2006 Notification providing for “List of Projects or Activities Requiring Prior Environmental Clearance” provides that environmental clearance is warranted only when the built-up area (project-specific) is equal to or exceeds 20,000 sq m. Thus, if the built-up area of a particular owner does not exceed the aforesaid minimum threshold, there would be no occasion for such owner to apply for any clearance. This ought to be even if the common builder engaged by such owner is working on other projects in the same region. That would not ipso facto subject the owner to the 2006 Notification.

492. As discussed above, the factum of land ownership is equally pertinent in such enquiry. If ownership or control over the land to be developed vests in different entities, then merely because the common builder (CPWD) is developing

different projects, cannot be assessed as a uniform or as an integrated/interlocked project. It would be anomalous to press different owners for a collective environmental appraisal (of higher standard) merely due to location of their sites in close proximity despite the fact that development thereof is yet to commence and do not involve multi-sectoral components.

494. We find merits in the plea taken by the respondents that Parliament Project cannot be regarded as interlinked or interdependent with the Central Secretariat Project. *The differences relating to functionality, budgeting, timelines and purpose are glaring and substantial.*

495. Notably, the argument of the petitioners alleging fraud in segregation of the project is also devoid of merit. For, it completely blurs the line between a conscious policy decision to separate the development project need-based and concealment, misrepresentation or fraud. *Fraud stands on the foundation of a fraudulent mental intent and culling out that specific intent is a prerequisite for establishing the ground of fraud in a court of law. The petitioners' argument of fraud lacks a judicial sustainable basis.*

(Emphasis Supplied)

20. In view of the above, it follows as a necessary corollary that:

- Cumulative impact assessment does not entail connecting independent projects upon a subjective notion that it is necessary to do so for a collective appraisal merely because such projects fall in the same region;
- Environmental clearance is always site specific and project specific;
- Once the project proponent frames a conscious timeline of completion of various projects which broadly fall

under the umbrella of a common vision for the region, the same cannot be disturbed on the notion that the whole vision should go through the regulatory compliances at once;

- The decision to attribute different timelines and purposes to different projects is a domain of planning and the Court cannot readily attribute the label of mala fides to such informed decision;
- Mere allegation of fraud and concealment in segregation of projects blurs the line between a conscious policy decision to separate the development project need-based and concealment, misrepresentation or fraud.

21. In the instant case as well, there is a deliberate attempt on part of the Applicants to mislead this Hon'ble Tribunal by making unsubstantiated allegations regarding the Maritime Board Project and Stage II of the Karwar Port.
22. It is submitted that in view of the Hon'ble Supreme Court's judgment in ***Rajeev Suri v. DDA, (2022) 11 SCC 1*** as well as in accordance with the map produced at Annexure R-1 herein, it is established that Forest Clearance Application dated 14.03.2022 for Karnataka Maritime Board project does not constitute an expansion or change in scope of E.C. dated 23.01.2019 granted for Stage II of the Karwar Port.

In light of the above facts and submissions, it hence prayed that this Hon'ble Tribunal may graciously be pleased to dismiss the instant Application with costs.


PORT OFFICER

**Port Officer
 Karwar
 Karnataka
 On Behalf of**

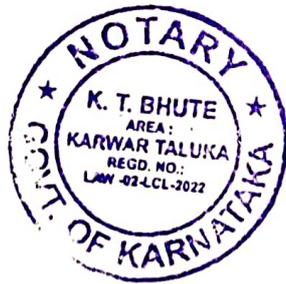
Respondent No. 3 and Respondent No. 4

THROUGH



**Darpan KM
 Advocate for Respondents No. 3 and 4**

Date:



"SWORN TO BEFORE ME"



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

11 OCT 2023

No. of Corrections - 11/10/2023

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...RESPONDENTS

AFFIDAVIT

I, Rajkumar Hede, S/o B. Shankar, aged about 54 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 Additional Statement drafted on my instructions. I say that the contents thereof are true and correct to the best of my knowledge and belief.

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 11th day of October, 2023.


**DEPONENT
PORT OFFICER
KARWAR**

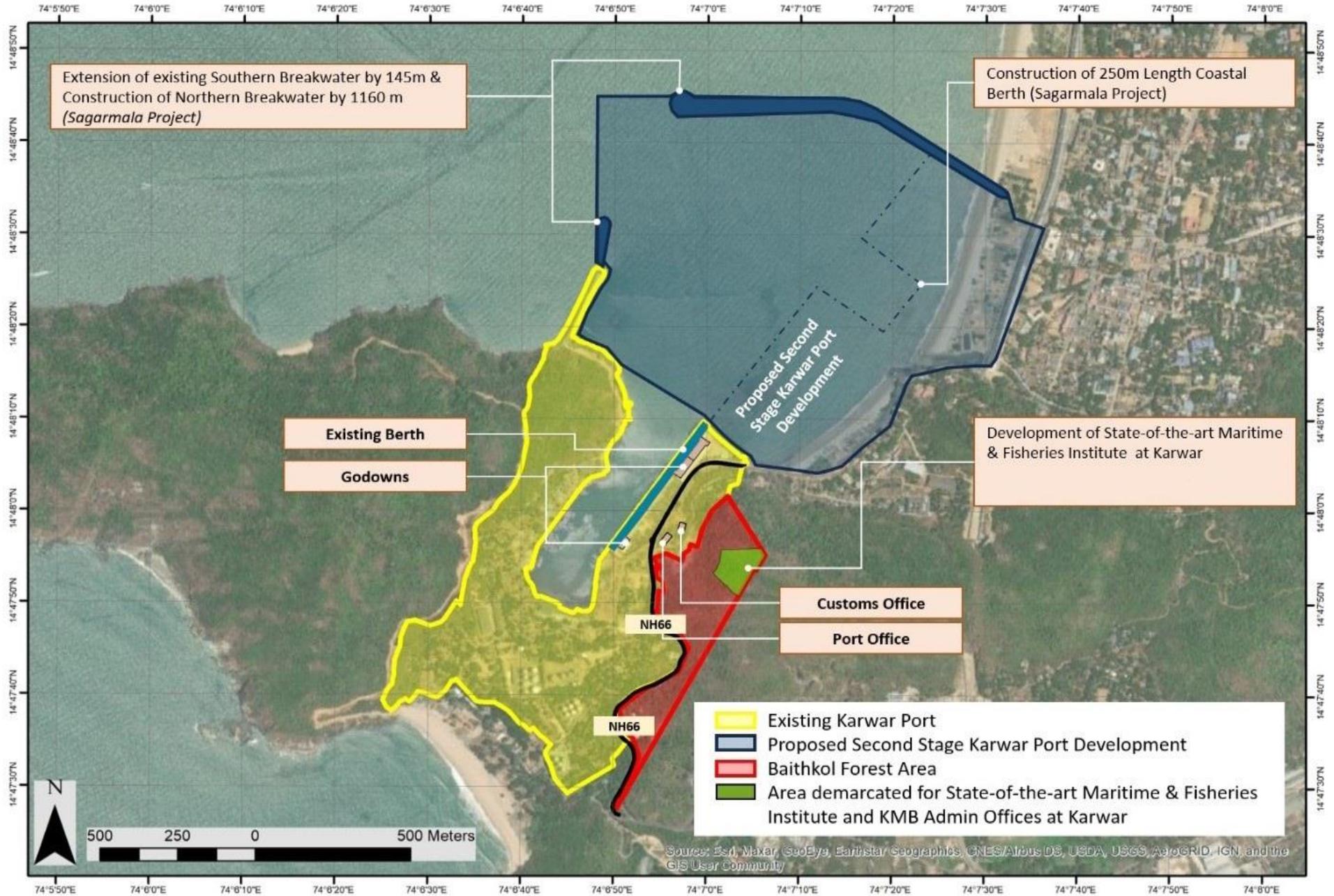



K. T. BHUTE
ADVOCATE & NOTARY KARWAR
11.10.2023


**DEPONENT
PORT OFFICER
KARWAR**

No. of Corrections 1-20/10/2023
11/10/2023

ANNEXURE R-1





Rajat Shaw <rajatshaw178@gmail.com>

OA 49/2022, Pradeep Tandel v. UOI and Ors - Advance Service of Additional Statement

1 message

Rajat Shaw <rajatshaw178@gmail.com>

11 October 2023 at 20:27

To: litigation.life@gmail.com, stanly hebzon <stanly.lawyer@gmail.com>, Vasanth HK <vasanthhk72@gmail.com>, Secy-moef@nic.in, Darpan Gowda <darpan.advocate@gmail.com>

Sir

Please accept advance service of the additional statement filed by Respondent No. 3 and 4 in compliance of the order dated 24.08.2023 in the instant OA.

Regards
Rajat Jonathan Shaw
For
Mr. Darpan KM
Standing Counsel
State of Karnataka

**Additional Statement OA 49 of 2022.pdf**

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