

Item No.01:

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Dated this the 26th day of September, 2023.

(Through Video Conference)

**Original Application No.76 of 2022 (SZ)&
I.A. Nos.116, 144 and 146 of 2022 (SZ)**

IN THE MATTER OF

Damayanti Subray Mesta

Tonka – 1, Kasarkod, Honnavar,
VTC: Kasarkod, P.O.: Kasarkod,
Uttar Kannada District,
Karnataka – 581 342.

...Applicant(s)

Versus

**1) Department of Public Works, Ports &
Inland Water Transport**

Government of Karnataka
Rep. by the Additional Chief Secretary to Govt.
Room 28, Vikasa Soudha
Bangalore – 560 001.

2) M/s. Honnavar Port Private Limited (HPPL)

Through its Director
#103, Lalehzar Apartments,
45/I-2, Palace Road, Bangalore – 560 001.

3) Karnataka State Coastal Zone Management Authority

Through its Chairman &
Additional Chief Secretary to Government,
Forest, Ecology and Environment Department,
4th Floor, M.S. Building, Bengaluru - 560 001.

**4) State Level Environment Impact Assessment Authority
Karnataka**

Through its Member Secretary
Department of Ecology & Environment
Room No.709, 7th Floor, IV – Gate,
M.S. Building, Bangalore – 560 001.

5) Karnataka Forest Department

Through the Principal Chief Conservator of Forest (PCCF)
Head of Forest Force (HoFF)
4th Floor, Aranya Bhavan, Malleshwaram
Bangalore – 560 003.

6) Ministry of Environment, Forest and Climate Change (MoEF&CC)

Integrated Regional Office, Bangalore
Through the Deputy Director General of Forests (C)
Kendriya Sadan, 4th Floor, E & F Wings,
17th Main Road, Koramangala II Block,
Bangalore – 560 034.

7) Directorate of Fisheries

Through the Director
3rd Floor, Podium Block,
Visvesvaraya Centre
Dr. Ambedkar Veedhi,
Bengaluru – 01.

8) Office of the Deputy Commissioner & District Magistrate

Uttar Kannada District
Karwar P.O. – 581 301.

...Respondent(s)

For Applicant(s): M/s. Sreeja Chakraborty.

For Respondent(s): Mr. Rajat Jonathan Shaw represented
Mr. Darpan K.M. for R1 & R8.
Mr. R. Ramasubramaniam Raja and
Mr. Aravind A.S. for R2.
Mr. H.K. Vasanth for R3 & R4.
Mr. Y. Kavitha for R6.

Judgment Reserved on: 03rd August, 2023.

CORAM:

HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER

HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

JUDGEMENT

Delivered by Smt. Justice Pushpa Sathyanarayana, Judicial Member.

1. The Government of Karnataka had accorded sanction to the 2nd Respondent viz., M/s. Honnavar Port Private Limited (HPPL) to develop the infrastructure as specified and carry on anchorage operations in respect of the project proposed and carry on anchorage operations in Honnavar Port and Kasarkod side of

Honnavar Port for a period of 30 years. Based on the same, the 2nd Respondent had obtained Environmental Clearance from the State Environmental Impact Assessment Authority (SEIAA) – Karnataka dated 21.09.2012. The total land requirement for the proposed facility is 44 Hectares, out of which, the coal stack yard area, iron ore stack yard area, general cargo storage area, general cargo storage closed area, liquid cargo storage area, etc. were earmarked for operations and for future expansion. The Environmental Clearance was issued on specific conditions and general conditions.

2. While so, the above Original Application is filed by the applicant residing in Kasarkod Village seeking a direction to the respondent authorities to remove the red soil, boulders, tar, jally stone, etc. used for the construction of the road on the Coastal Regulation Zone (CRZ) area of Kasarkod village and restore the CRZ III No Development Zone (NDZ) area (within 200 M from HTL) and initiate violation proceeding against the 1st Respondent and direct the Karnataka Forest Department not to issue work order under Section 2 of the Forest (Conservation) Act, unless the CRZ Clearance obtained from the 3rd Respondent which is the Karnataka State Coastal Zone Management Authority (KSCZMA) for construction of the road in CRZ I area.
3. According to the applicant, the impugned road is constructed through CRZ – I and III on NDZ up to 200 M from the High Tide Line (HTL) on the landward side of Kasarkod Beach without obtaining prior CRZ Clearance which is a violation of the CRZ Notification, 2011.
4. It is stated that the project has impacted the livelihood of 2,000 women engaged traditionally in drying, processing and selling fish, as their only means of livelihood. The CRZ area of the Kasarkod Village is used as a fish drying area by the fisherwomen of Kasarkod, while so the impugned road is being constructed to provide to the port a **“dedicated road corridor”** from the port project of M/s. HPPL to the National Highway 66. The total length of the impugned road is said to be 4 Km, of which, 3.8 Km is through the CRZ III NDZ area and the

remaining 0.2 KM is through the CRZ I A area on forest land in Forest Survey No.233 and 237 of Kasarkod Beach and Village.

- 5.** It is stated further that as per the lease agreement dated 11.10.2010 with M/s. North Canara Sea Ports - GVPREL Consortium, Hyderabad for the use of port land and port related activities, a road measuring 130 x 12 Meters to give entry to the port from NH 17 was proposed to be constructed by filling up the pond space in the corner of the Sharavathi bridge.
- 6.** The said subject matter of the lease was transferred with all the same recitals in favour of the 2nd Respondent viz., M/s. HPPL on 07.04.2011. The Government of Karnataka, while approving the Honnavar Port, granted the approval for an entirely different port connectivity road to connect the Honnavar Port to the NH 17.
- 7.** According to the applicant, the 2nd Respondent had applied for embedded Environment and CRZ Clearance for a project from the SEIAA – Karnataka and the Karnataka SCZMA respectively. Subsequently, the Port Department started the preparatory work for the construction of a 4 Km long, 25 M wide port connectivity road by deploying heavy machinery and boulders and reclamation of the sandy beach of Kasarkod. The said construction of the road has led to encroachment and pollution of the coastal commands on the Kasarkod beach who were using as a fish drying yard.
- 8.** Hence, the above Original Application is filed by the applicant who is a fisherwoman raising the following grounds:-
 - I.** The 4 Km long, 25 – 40 M wide road is constructed in the CRZ area without prior CRZ Clearance in violation of the CRZ Notification, 2011.
 - II.** The impugned road is a private road specifically built for the port authority creating a dedicated road corridor, as the inhabitants of the Kasarkod Village already have access to the 4 M wide existing road which connects the Honnavar fisheries harbour to NH 66 (NH 17). Therefore, the

requirement for the local inhabitants as mentioned in the CRZ is inapplicable in this case.

III. While natural fish drying is a permissible activity in the CRZ area, the construction of a road through the coastal beaches for the private interest of the 2nd Respondent on CRZ III NDZ is not a permissible activity.

IV. Construction of the impugned road without prior approval under the Wildlife Protection Act will lead to the destruction of the habitat and nesting ground of the Olive Ridley Turtle at Kasarkod Beach.

V. Construction of the said impugned road would alter the natural landscape, remove the native vegetation, flatten the dunes, etc.

9. In response to the above application, **the Department of Public Works, Ports & Inland Water Transport (Respondent No.1) and the Deputy Commissioner & District Magistrate, Uttara Kannada District (Respondent No.8) have filed a common reply**, wherein it is stated that

9.1 The issues regarding the Olive Ridley Turtle nesting grounds and the validity of the Environmental Clearance and the CRZ Clearance which includes the port connectivity road were raised before the Hon'ble High Court of Karnataka in W.P. No.4039 of 2021. The issues were dealt with comprehensively and the writ petition was dismissed on 24.11.2021. Aggrieved, a challenge is made before the Hon'ble Supreme Court of India in SLP No.8586 of 2022 and is pending adjudication. Hence, it is alleged that the present proceeding is nothing but an abuse of the process of law.

9.2 It is alleged that when already the applicant has moved the Hon'ble High Court on the same issue, they have approached the Tribunal which amounts to forum shopping.

9.3 It is stated that the allegation that the Olive Ridley Turtle nesting grounds along Kasarkod Beach would be destroyed has already been dealt with by the Hon'ble High Court of Karnataka in W.P. No.4039 of 2021 in detail and also analysed the Environmental Clearance and other clearances relating to the port project including the connectivity road threadbare.

9.4 The Hon'ble High Court had directed that unless the Stage – I approval under Section 2 of the Forest Act was granted, no work shall be carried out. The Stage – I Clearance was granted on 20.01.2022, based on which, the construction work had commenced. Hence, it is false to allege that the construction of the connectivity road was commenced not in accordance with law.

9.5 The W.P. No.4039 of 2021 which assailed the Environmental Clearance and the CRZ Clearance and also the issue of turtle nesting ground was disposed of by the Hon'ble High Court on merits vide Order dated 24.11.2021, after elaborately considering all the issues. Once the said issues have reached finality, the applicant ought not to have taken up the same issue once again.

9.6 The National Centre for Sustainable Coastal Management (NCSCM) report has recorded that there are no turtle nesting grounds in the area in question. The above averment is placed on the report filed by the NCSCM in W.P. No.4039 of 2021 before the Hon'ble High Court of Karnataka.

9.7 The 2nd Respondent has obtained all the statutory clearances required under the law. The Environmental Clearance was obtained from the SEIAA – Karnataka upon recommendation from the Karnataka SCZMA on 21.09.2012. The Consent to Establish was also obtained from the Karnataka State Pollution Control Board on 06.02.2013 and a NOC from the Tourism Department was obtained on 03.04.2021. The validity of the

Environmental Clearance is extended up to 20.09.2022. Further, the extension was granted up to 20.09.2023.

9.8 Even as per the applicant, clearances were obtained only for the approach road to NH 17 and the construction of connectivity road to NH 66 is without statutory clearance. The said argument is misconceived as NH 17 has now been renumbered as NH 66.

9.9 The construction of the port connectivity road is a permissible activity under the CRZ Notification, 2011, as these require foreshore facilities.

9.10 The local community has been apprised of the project including the connectivity road. It is stated that the proposed dedicated road corridor to provide road connectivity from HPPL at Kasarkod Tonka to NH 66 is clearly mentioned in the Karnataka SCZMA Meeting held on 28.05.2012.

9.11 The Forest Clearance for the road was also duly obtained and the Stage – I Clearance was already granted. Finally, the local fishermen also will benefit from the port project, as the HPPL will construct two parallel breakwaters to stabilize the tidal inlets that are the existing gut at the confluence and estuary of the Sharavathi and Badagani Rivers and undertake dredging of the harbour basin and approach channel at their own cost to ensure safe and sufficient depth of water for smooth navigation of vessels, boats and barges. Additionally, the fishermen would be provided 24 x 7 free access to use the approach channel which would boost their fishing activity.

9.12 It is further pointed out that the local fishermen and fisherwomen are drying fish illegally in an unauthorized manner by constructing the sheds. The Deputy Commissioner, Uttar Kannada District had already issued an eviction order dated 29.11.2016 and were evicted on 07.12.2016.

10. Besides the above submissions, it was stated that the maritime trade in India is 95% by volume and 70% by value. Therefore, ports play a vital role and very important role in trade commerce and industries. Therefore, the 1st and 8th Respondents sought for dismissal of the application.

11. The 2nd Respondent which is M/s. Honnavar Port Private Limited (HPPL), in its reply, had submitted that

11.1 The EIA study for the port was conducted by L & T Ramboll who is the authorized agency of the MoEF&CC. The said EIA Report had clearly stipulated the road connectivity to the barge/vessel loading facility from NH 17 (New NH 66).

11.2 Besides raising the question of maintainability and limitation, the 2nd Respondent has stated that the construction of the road will not affect the livelihood of the fishermen community.

11.3 It is stated that of the total length of the 4 Km of the impugned road, 3.8 Km is through the CRZ III NDZ area and the remaining 0.2 Km is through the forest land in Forest Sy. No.233 and 237 and necessary approvals were obtained from the MoEF&CC.

11.4 The Principal Chief Conservator of Forest also recommended wildlife mitigation measures in respect of the conservation of the forest land and the Project Proponent has already paid the net present value of the forest land and the cost of raising plantation of 10 times of the tree for compensatory afforestation. The remaining road connectivity i.e. 3.8 Km within the Honnavar Port Limits declared as per the Government Notification dated 09.12.2013 is issued as per Section 5 of the Indian Ports Act, 1908. Therefore, the allegation that the proposed connectivity road is constructed in the absence of prior CRZ Clearance and is in violation of the CRZ Notification, 2011 is absolutely false and untenable.

11.5 Regarding the turtle nesting grounds, the NCSCM in its final report found that there was not even a single turtle nesting site in Karnataka. The report of the NCSCM on turtle nesting grounds in the year 2018 – 19 which was after the specific survey undertaken pursuant to the orders of the Hon'ble High Court of Karnataka observed that there was no nest, turtles, dead carcass observed in the entire 45 Hectare area of the proposed site during the survey. Further, it was found that the southern tip of the proposed HPPL project site had one nesting site in the year 2020 that too fell 3 Km land area from the shore.

11.6 So far as the forest area is concerned, the project site is having only a 200 M stretch in the port connectivity road in Forest Sy. No.233 and 237. It is also pointed out that there was no objection during the public hearing conducted in the year 2012 as per the EIA Notification regarding the Olive Ridley Turtle or fish drying.

11.7 Regarding the allegation of the applicant that the port connectivity road (130 x 12 M) to connect the port site to NH 17 was permitted by filling up the sand in the corner of Sharavathi bridge at Honnavar relates to the port to be developed at Honnavar side and not at Kasarkod side. It is specifically stated that two separate ports were to be developed, one on the Kasarkod side and another on the Honnavar side. The allegation made by the applicant relates only to the Honnavar side and not the Kasarkod side, for which, the application is filed.

11.8 The 2nd respondent further stated that the application filed itself is mischievous as the Public Interest Litigation filed before the Hon'ble High Court of Karnataka was already dismissed on the same grounds raised. The applicant is trying to reagitate the same issues before this Tribunal.

12. The **status report was filed by the Karnataka State Coastal Zone Management Authority (Respondent No.3)**, wherein it is stated that the project proposal was placed before them on 28.05.2012. The authority, after discussion and deliberation, recommended the proposal to the SEIAA – Karnataka as it requires clearance as per Para 4 (i) (b) of the CRZ Notification, 2011. The CRZ clearance had been issued for the activities mentioned within 44 Hectares of land in CRZ I B and CRZ III areas and breakwater construction in CRZ IV areas. It is further stated that nowhere approval for the construction of new roads outside the area mentioned i.e. 44 Hectares has been given by the Karnataka SCZMA. The Karnataka SCZMA also noted the information with regard to the proposal wherein regarding the connectivity, the road corridor connecting the project site to NH 17 is specifically mentioned.

13. From the above pleadings, the question that arises for determination is:

Whether the 4 Lane (4 Km long 25 M wide) dedicated road corridor undertaken by the 1st Respondent to provide port connectivity is permissible or not.

14. The application revolves around the 4 Km long dedicated road corridor. The dedicated road corridor mentioned in the application for a length of 4 Km and 25 M wide road is intended for port connectivity under the '*Bharatmala Pariyojana Scheme*' and the clearance from the MoEF&CC for the same is pending before the Expert Appraisal Committee for the project related to the Coastal Regulation Zone. The road that is now in dispute is the Kaccha road which is sought to be strengthened to construct a seawall and this is not a dedicated road corridor of 4 Lane which is referred to in the application.

15. It is categorically pointed out by the learned Senior Advocate Mr. T.K. Baskar that the Karnataka SCZMA has approved the 4 Lane and recommended the proposal for the dedicated road corridor under the '*Bharatmala Pariyojana Scheme*' and the proposal is being considered by the MoEF&CC.

16. He also produced the document relating to the Proceedings of the 40th Meeting of the Karnataka SCZMA dated 27.02.2023 which relates to the request for issue of NOC for 4 Laning of Honnavar Port connectivity road from 0 Km – 2.58 Km connecting Honnavar Port with NH - 66 at Km 195.986 and improve the NH - 66 from 195 Km to 197 Km to integrate port connectivity on EPC mud under '*Bharatmala Pariyojana Scheme*' Phase - I in Kasarkod Village of Honnavar Taluk of Uttara Kannada District by the Assistant Executive Engineer, Port Sub Division, Honnavar. The said request indicates the activities proposed as **"Proposed for 4 lane road connectivity to port from NH 66, Length of 2.58 Km average width 25 M, improvements to existing NH 66, length of 2 Kms, service road and construction of flyover"**.
17. In the said meeting, the HTL, hazardline from CRZ Notification, an alternate construction of a road on stilt, etc. were analyzed and discussed and found that there are no issues of re-habitation and resettlement in the execution of the project, as the proposed road is not passing through the high-density areas and will be constructed along the beach of the Kasarkod in port land. Finally, the authority had after detailed discussion and deliberation, recommended the proposal to the MoEF&CC with a condition that adequate mitigation measures need to be taken to protect the Olive Ridley Turtle nesting within port limits and to provide adequate medical facilities to the local fishermen and villagers. Regarding the CRZ Clearance for the usage of Kaccha Road along the seashore as a connecting road at Kasarkod Village for the development of Honnavar Port by M/s. HPPL, the activities proposed was **"Usage of existing Kaccha Road along the seashore at Kasarkod Village for development of Honnavar Port"**. Whether the permitted activity is as per the CRZ Notification, it is found that as per Para 3 (i) a - Port is waterfront activity, Para 4 (i) a- Clearance for waterfront and foreshore activities, Para 4 (ii) f - Foreshore requiring facility for transport of raw materials, Para 3 (iv) a -Setting up of foreshore facilities and then as per Para 8 III (A) (i) - NDZ shall not applicable for area falling in port limits of CRZ Notification, 2011.

18. The following were the objections raised by the applicant:-

- i. There was no Kaccha Road that existed along the seashore in Kasarkod Village before January 2022.
- ii. The villagers of the Kasarkod used a mud path or Kaludhari to access their homes on the seashore and the same was used as a fish drying area during the day.
- iii. The said path existed in patches and did not provide connectivity for a length of 4 Km.
- iv. Most of the laid road was washed during the high tide and what existed today is a 2 - Lane broken path that was laid by the Port Department.

19. To the above objections, the 2nd Respondent furnished the following clarifications:-

- i. The existing Kaccha Road runs parallel to the beach from NH - 66 at Kasarkod up to the proposed port area in CRZ III (road with gravel mixture) which was developed while forming the construction of seawalls for protection from sea erosion.
- ii. The proposal of usage of Kaccha Road along the seashore as a connecting road at Kasarkod Village for the issue of CRZ Clearance was considered in the DCZMC Meeting held on 25.11.2022.
- iii. The proposal was recommended to the Karnataka SCZMA on 29.11.2022. In the said recommendation, it was clearly stated that the existing Kaccha Road was formed for the construction of seawalls to protect the area from sea erosion and the potholes have been made good using murram and jally.
- iv. However, presently this road is being used by the local inhabitants as an access road to their houses which is admitted by the applicant. Therefore, it is clear that the said road was not formed originally for the local inhabitants, but was formed for the transportation of construction materials like boulders, granite stones and other materials to the construction site for the formation of seawalls.

- 20.** The learned Senior Advocate also referred to the Notification dated 09.12.2013 issued by the Government of Karnataka prescribing the port limits of the Honnavar Port. In the said Notification, the limits on the eastern side are stated as the seashore of Honnavar 50 M above the high water mark between the North and South boundary mark. Thus, the 2nd Respondent submitted that the alternate alignment which is after the seawall protection and the existing Kaccha Road and there is no remote threat to the turtle nesting even presuming that there is sporadic turtle nesting.
- 21.** Further, the learned counsel for the applicant pointed out that the existing Kaccha Road was in existence even prior to 2000. The said Kaccha Road was developed for the purpose of transporting seawall materials like Granite, Boulders, sandbags, and Murram for forming the road. The said Kaccha Road was developed as a pre-requisite for the movement of tippers and dumpers to carry the materials required for seawall protection and the Kaccha Road was constructed on the landward side in order to facilitate the smooth movement of vehicles and machinery. The said fact is even admitted by the applicant stating that it was used by the fisherwomen for drying fish.
- 22.** A Letter dated 08.09.2022 issued by the Karnataka Infrastructure Development, Ports and Inland Water Transport Department to the Director, Port and Member, Karnataka Water Transport Board furnishing the details of the works undertaken in Kasarkod Tonka Village of Honnavar Taluk clarifies that the construction of the seawall work from Chainage 185.420 to 185.670 Km (i.e. 300 M) in Kasarkod Tonka area, Honnavar Taluk was completed on 31.03.2010. The said fact was also admitted by the applicant by producing the document, in which, the details of the contractors and cost incurred for sea erosion works in the past three years was furnished. In Uttar Kannada District for providing coastal protective works at Kasarkod Tonka, Chainage 184.180 to 184.230 Km, etc. and in Honnavar Taluk, the work is said to be in progress.

23. It is further pointed out that the existence of the seawall was also evident from the CRZ Map of 2019 and also the photographs produced by the 2nd Respondent.

24. It is the said Kaccha Road which is already in existence was being strengthened by the Ports & IWT Department to make it motorable for being used by the Project Proponent / 2nd Respondent to carry the materials to the project site. The said road is what was permitted by the Karnataka SCZMA by strengthening the same and using all the access roads as permitted in the Environmental Clearance.

25. To be noted in this regard is that on 21.10.2022, this Tribunal had given liberty to the 2nd Respondent to approach the authorities for the usage of the existing road by making an application to the Karnataka SCZMA and the application to the SEIAA – Karnataka to be examined by the authorities and pass appropriate orders. This is based on the submissions made by the 2nd Respondent with particular reference to the Final EIA Report regarding the connectivity. Clause 1.3.2 refers to the connectivity.

"The site has good road connectivity. NH 17 passes through Honnavar towards the East of the project site at a distance of 1 Km. The site is connected to Bellary through NH 63 and NH 17. NH 17 meets NH 63 near Ankola at about 45 Km from the site. Presently, the site can be approached from a single lane blacktop road that runs in continuation of NH 17 and then lies parallel to the shoreline."

26. In the same report, the proposed dedicated rail/road corridor has been mentioned, in which, following options have been given by the HPPL.

"2.6.16.1 Road Connectivity Option : I

The road in this option takes off from NH 17 at Topalgaere and then traverses southeast a distance of around 0.90 km. A proposed bridge passing over River Bagdani will connect the road to the project site. Thus the overall length of this connectivity option will be around 1 km with a width of 25 m with a provision of double lane road.

2.6.16.2 Road Connectivity Option : II

In this option the proposed road starts from NH 17 at Kasarkod. This road will then run south east for some distance and then aligns parallel to the shoreline till it reaches the proposed project site. This option will be parallel to the existing

single lane road at an offset distance of 100 m. The total length of this road from NH 17 to the proposed site is 4 km. This road connectivity will have a width of 25 m.”

- 27.** In response to the application for usage of the existing road for the development of Honnavar Port by the 2nd Respondent, the Karnataka SCZMA passed an order on 04.03.2023 which is as follows:-

“After perusing the materials on record and averments made there under, the Karnataka SCZMA discussed and decided to exempt the use of the existing Kaccha road in **as is where is basis** only, as the proposed area falls in notified port limits where the NDZ is not applicable in such areas falling within the notified port limits as per the provisions in Para 4 (1) (a) of the CRZ Notification, 2011.”

- 28.** Thereafter, the SEIAA – Karnataka was approached for the same purpose by the 2nd Respondent. In response, the SEIAA – Karnataka sent a communication to the Karnataka Maritime Board vide Letter dated 28.03.2023, the relevant portion is as follows:-

“Your proposal regarding usage of the existing road for development of Honnavar Port by M/s. Honnavar Port Private Limited with 2.1 Km length was deliberated and it was observed that your proposal does not fall in the screening and scoping by SEIAA as it is not covered under EIA Notification, 2006 issued by the MoEF&CC vide S.O. No.1533 dated 14th September 2006 and wherein it is stated that “project activities listed under 7 (f) of 2 & 7 of the Schedule of Projects or Activities requiring prior Environmental Clearance are applicable only for A Category Projects – (i) New national Highway Projects (ii) Expansion of National Highways greater than 100 KM involving additional right of way or land acquisition greater than 40 M on existing alignment and 60 M on re-alignment or by-passes and for B Category Projects – (i) All new State Highway Projects and (ii) State Highway expansion projects in hilly terrain (above 1000 M AMSL) and or ecologically sensitive areas.”

- 29.** Thus, the Karnataka SCZMA as well as the SEIAA – Karnataka had permitted the 2nd Respondent to use the road which is referred to as Kaccha Road in '**as is where is basis**'.

- 30.** Additionally, it is also stated that the 2nd Respondent was permitted to use the said Kaccha road as per the lease deed and the Environmental Clearance. The lease agreement for the use of port land for port related activities, and anchorage operations

at Honnavar Port was executed on 11.10.2010. In Clause 43 of the lease agreement, it is stated that "*the lessee shall use the road available on Kasarkod side as shown in Map C*". This is further clarified in the proceedings of the 231st Meeting of the SEIAA – Karnataka dated 10.03.2023, wherein the online proposal of the 2nd Respondent for the usage of the existing road for the development of the Honnavar Port was considered in the following words:-

"Therefore, it is the opinion of the authority that the usage of the existing road for the development of the Honnavar Port by M/s. HPPL with 2.1 Km length does not come under the ambit of scheduled activities listed in the EIA Notification, 2006 and its amendment for prior Environmental Clearance."

- 31.** Even in the EIA Report, Chapter (5) which deals with the 'Anticipated Environmental Impacts and Mitigation Measures', it is reported as follows:-

"To mitigate impacts from transportation of stones and construction materials, existing roads will be strengthened and widened to enable movement of dumpers. Hence, impacts would not be significant as quarries are accessible.

Also, as a part of infrastructure development for Honnavar Barge/ vessel loading facility, it is proposed to develop 4 Km of road from NH – 17 to Kasarkod and a new railway of 14.6 Km from Manki railway station to the proposed project site. New Proposed railway line will run parallel to existing railway line for a length of about 8 Km and then will take a turn towards sea coast which will then run parallel to the sea coast till the proposed project site for the remaining 6.6 Km. In order to minimize the strain on the existing infrastructure in the region, dedicated road corridor will be developed at the earliest. Until then existing road will be strengthened and widened to ease the traffic movement."

- 32.** The same report further states that the temporary approach roads may be developed with prior permission from the competent authority and all approach roads shall be blacktopped and the internal roads and major haul roads shall be blacktopped or concreted and swept regularly with mechanical sweepers.
- 33.** In view of the above, it is pointedly argued by the learned Senior Advocate appearing for the 2nd Respondent that permission was given to blacktop all the approach roads, as the Kaccha road was not blacktopped. If the Kaccha road was already blacktopped,

such direction would not have been given by the SEIAA – Karnataka. Therefore, all the approach roads can be blacktopped, including the existing Kaccha road which is a gravel / mud top road for use at the construction stage.

- 34.** The learned Senior Advocate also further referred to the issues raised during the public hearing regarding the anticipated potential impact due to the proposed road alignment and the respective mitigation measures. He further pointed out that the proposed connectivity starts from NH 17 at Kasarkod. This road will then run southeast for some distance and then aligns parallel to the shoreline till it reaches the proposed project site. This will be parallel to the existing single lane road at an offset distance of 100 M. The total length of this road from NH 17 to the proposed site is 4 Km. This road connectivity will have a width of 25 M.
- 35.** The next objection of the applicant that the impugned 4 Km long road constructed on the CRZ area is violative of the CRZ Notification, 2011 is assailed by the 2nd Respondent by stating that there is no CRZ violation, as the said Kaccha road was formed even prior to the issuance of the Environmental Clearance in the year 2012. Besides, the said Kaccha road falls in the CRZ III as per the CRZ Map which is within the port limits and as per the CRZ Regulation 8 (I) (III) (i), the NDZ shall not be applicable in such areas falling within the notified port limits.
- 36.** It is also specifically stated that the NCSCM report which superimposes the Kaccha road on the CRZ Map clearly shows that the Kaccha road falls within the CRZ III NDZ which is not applicable to any notified port area. Hence, the objection raised by the applicant is not sustainable.

Turtle Nesting Zone:

- 37.** The objection of the applicant is that the impugned road is without prior approval under the Wildlife Protection Act, 1972, leading to the destruction of the habitat and nesting ground of the Olive Ridley Turtle at Kasarkod Beach. According to the applicant, the coastal development and the construction of ports,

jetties, resorts, industries, etc. are a threat and disturbance that attribute to the loss of nesting beaches.

38. In response to the said objection, the learned Senior Advocate for the 2nd respondent would submit that as already a seawall was constructed and there is a Kaccha road in place, the Kaccha road cannot be said to be a turtle nesting ground. The alternative alignment of 4 Laning of Hannavor Port connectivity road from 0.00 Km of Kasarkod side to 2.580 Km connecting Honnavar port with NH 66 under the Bharatmala Phase – I is already coming on the landward side, there is no threat to the turtle nesting grounds even if there exists the Olive Ridley turtle nesting. It is also pointed out that in Karnataka, there is sporadic nesting only. The Kasarkod beach is only a potential or occasional nesting site and not a turtle nesting ground.

39. The entire stretch of the beach is not an ecologically sensitive area under the CRZ Notification except the area of 0.76 Ha. notified as an ecologically sensitive area coming under the CRZ I A, in which, there is no road. The said Kaccha road is only in CRZ III NDZ between the HTL to 200 M on the landward side. Therefore, the absence of any ecologically sensitive area indicates the scope for improvement. In this regard, it was vehemently opposed by the 2nd Respondent that the applicant is re-agitating the same issue which has already reached the finality before the Hon'ble High Court of Karnataka.

40. Before the Hon'ble High Court of Karnataka, the Honnavar Taluk Hasimeenu Vyparastara Sangha had filed a writ petition as **W.P. No.4039 of 2021 (GM-POL) PIL [Honnavar Taluk Hasimeenu Vyparastara Sangha Rep. by its President Vs. M/s. Honnavar Port Pvt. Ltd. and Ors.]** seeking a direction to the respondents therein not to continue with the construction of the port on the beaches of Kasarkod, Malukurva, Pavinkurve, Karki and Honnavar in Honnavar Taluk, Uttar Kannada District and also to quash the Environmental Clearance granted dated 21.09.2012 and the further extensions for the same. The said writ petition was disposed of on 24.11.2021 by the First Division Bench, as it was filed in the public interest.

- 41.** The challenge in the writ petition was to the location and the construction of the port on the beaches of Kasarkod, Honnavar, etc. contending that certain forest lands in the said beaches, for which, no approval from the MoEF&CC was obtained by the 2nd Respondent herein. Secondly, it was contended that the construction is carried out in CRZ I area and the beach is a turtle nesting ground.
- 42.** Regarding the site which has been leased for development of the port which is alleged to be a nesting area of turtles, the Hon'ble High Court had perused the survey report of the NCSCM and found that no nest, turtle or dead carcass was found during the survey of the entire 45 Hectare of the proposed site and directed the concerned authorities to ensure that no damage is caused to the nesting turtles or any other endangered species found in the area.
- 43.** The Hon'ble High Court had specifically directed the Project Proponent to obtain approval from the MoEF&CC and other necessary approvals / sanctions/ permissions from the concerned authorities. The above said writ petition was disposed of giving liberty to the petitioner therein to approach the Principal Secretary – Department of Public Works, Ports and Inland Water Transport Department, Government of Karnataka to consider the grievance of the petitioner therein, if approached and pass appropriate orders. In view of the above directions given by the Hon'ble High Court, the Karnataka Forest Department is actively ensuring that there is no damage to the turtle nesting grounds caused.
- 44.** A letter dated 28.06.2023 issued by the Deputy Conservator of Forest, Honnavar Division to the Karnataka Biodiversity Board was pressed into service by the 2nd Respondent stating that the area does not fall under the jurisdiction of the Forest Department. However, the Forest Department has undertaken the work of in-situ conservation of turtle eggs and release of hatchlings into the sea since 2012 – 2013 till date. This area is being used by the local fishermen for fishing activities and therefore, in case this area is declared as a Heritage Biodiversity area, the local people may likely oppose the same. Stating so,

the Deputy Conservator of Forest has specifically stated that the area is not suitable for declaring as a Heritage Biodiversity area.

- 45.** From the above facts, it is made clear that the allegation of the applicant that the 2nd Respondent is proceeding with the dedicated road corridor is not correct and it is only the existing Kaccha road which is being strengthened by the 2nd Respondent for transporting the construction materials. The Karnataka SCZMA has permitted the 2nd Respondent to use the Kaccha road on '*as is where is basis*' only.
- 46.** Regarding the Olive Ridley Turtle nesting grounds, already the Hon'ble High Court of Karnataka in **W.P. No.4039 of 2021 (GM-POL) PIL** held that the concerned authority to ensure that no damage is caused for the same. Accordingly, the NCSCM as well as the Forest Department are concerned about the same and granted necessary permission to the 2nd Respondent.
- 47.** It is already made clear that the dedicated road corridor for the port connectivity under the '*Bharatmala Pariyojana Scheme*' is still pending clearance from the Expert Appraisal Committee (EAC) of the MoEF&CC and that is a different road from the Kaccha road which is now being considered by MoEF&CC.
- 48.** From the records, it is seen that the original Environmental Clearance granted was extended and is said to be valid till 20.09.2023. Therefore, necessarily, the 2nd Respondent has to get the same renewed for proceeding with further. While considering the renewal of the Environmental Clearance, the SEIAA – Karnataka and the Karnataka SCZMA have to consider the question of using the Kaccha Road which was permitted by the Karnataka SCZMA for usage of the 2nd Respondent in '*as is where is basis*', as per rules in vogue.

49. In such circumstances, we have left with no other alternative, excepting to reject the application, however, with the following directions:-

(I) While considering the renewal of the Environmental Clearance, the State Environmental Impact Assessment Authority (SEIAA) – Karnataka and the Karnataka State Coastal Zone Management Authority (SCZMA) are directed to consider the question of using the Kaccha Road which was permitted by the Karnataka SCZMA for usage of Respondent No.2 (M/s. Honnavar Port Private Limited) in '*as is where is basis*', as per rules in vogue.

(II) The Expert Appraisal Committee of MoEF&CC to consider the issues of turtle nesting sites, nature of CRZ category etc., if the project is likely to impact the same.

50. As a corollary, the interlocutory applications [I.A. Nos.116, 144 and 146 of 2022 (SZ)] are also disposed of.

Sd/-

Smt. Justice Pushpa Sathyanarayana, JM

Sd/-

Dr. Satyagopal Korlapati, EM

Internet – Yes/No
All India NGT Reporter – Yes/No

O.A. No.76/2022 (SZ)
I.A. Nos.116, 144, 146/2022 (SZ)
26th September 2023. Mn.