

**Item No.1:-**

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

***Dated this the 21<sup>st</sup> day of May, 2024.***

(Through Video Conference)

**Original Application No.49 of 2022 (SZ) &  
I.A. Nos.122 of 2022 & 15 of 2024 (SZ)**

**IN THE MATTER OF**

**1) Pradeep Babu Tandel**

Somnath Temple, Binaga, Post Binaga,  
Karwar, Uttara Kannada,  
Karnataka – 581 301.

**2) Poonam Phal**

Devawada, Sadashivgad,  
Kanasgiri, Uttara Kannada,  
Karnataka – 581 352.

...Applicant (s)

***Versus***

**1) Union of India**

Through the Secretary  
Ministry of Environment, Forest and Climate Change  
Indira Paryavaran Bhawan, Jor Bagh,  
New Delhi – 110 003.

**2) The State Level Environment Impact Assessment Authority –  
Karnataka**

Through the Chairperson  
Room No.706, 7<sup>th</sup> Floor, 4<sup>th</sup> Gate,  
M.S. Building, Dr. Ambedkar Veedhi,  
Bangalore – 560 001.

**3) Karnataka Maritime Board**

Through the Chief Executive Officer,  
O/o. Directorate of Ports & IWT,  
Baithkol, Karwar.

**4) Directorate of Ports and Inland Water Transport**

Through the Executive Engineer  
The Directorate of Ports and Inland Water Transport  
Government of Karnataka, Baithkol,  
Karwar, Uttara Kannada District,  
Karnataka – 581 302.

**5) State of Karnataka**

Through Additional Chief Secretary  
Forest, Environment & Ecology Department  
Karnataka Government Secretariat  
Room No.447, 4<sup>th</sup> Floor, Gate No.2,  
M.S. Building, Bangalore – 560 001.

**6) Principal Chief Conservator of Forests  
(Head of Forest Force)**

4<sup>th</sup> Floor, Aranya Bhavan,  
18<sup>th</sup> Cross, Malleshwaram,  
Bengaluru – 560 003.

...Respondent(s)

**For Applicant (s):** M/s. Ritwick Dutta, Rahul Choudhary and  
G. Stanly Hebzon Singh.

**For Respondent(s):** Mr. G.M. Syed Nurullah Sheriff for R1.  
Mr. H.K. Vasanth for R2.  
M/s. Shivkumar Iyer & Aditi Maheswari for R3.  
Mr. Rajat Jonathan Shaw represented  
Mr. Darpan K.M. for R4 to R6.

**Judgment Reserved on: 16<sup>th</sup> February, 2024.**

**CORAM:**

**HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER**

**HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER**

**J U D G E M E N T**

***Delivered by Smt. Justice Pushpa Sathyanarayana, Judicial Member.***

**1.** This Original Application is filed by the residents of Karwar in Uttara Kannada, Karnataka, seeking revocation of the Environmental Clearance dated 23.01.2019 granted in favour of the 4<sup>th</sup> Respondent/ Project Proponent on the ground that the same has been obtained without disclosure of all relevant information and that there is a change in scope of the project.

**2.** The challenge relates to the proposed second stage development of the commercial Karwar Port at Baithkol Village, Karwar Taluk, Uttara Kannada. The existing port has a capacity of 3 MTPA with a total land area of 3 Hectares. This is proposed to be expanded by an additional 1.5 MTPA, amounting to a total of 4.5 MTPA, as stated in the Environmental Clearance dated

23.01.2019. The project was considered by the State Expert Appraisal Committee (SEAC) – Karnataka in 2017, the Terms of Reference (ToR) was issued on 01.04.2017, and a recommendation for grant of Environmental Clearance was given on 04.12.2018. The State Environment Impact Assessment Authority (SEIAA) – Karnataka, in its meeting dated 26.12.2018, decided to accord the Environmental Clearance. The Project Proponent had also applied for the Forest Clearance for diversion of forest land for non-forest purposes. In this regard, the Project Proponent had not disclosed the requirement of either forest land or additional land over and above the 17 Hectares, based on which, the Environmental Clearance was granted earlier. It is alleged by the applicants that the need for forest land was never mentioned during the EIA process.

**3.** The impugned Environmental Clearance dated 23.01.2019 is now sought to be revoked by the applicants on the following grounds:-

- a. The Project Proponent had sought for the Forest Clearance, as the need for the forest was land never part of the EIA process.
- b. The Project Proponent did not disclose the requirement of either forest land or additional land over and above the 17 Hectares, based on which, the Environmental Clearance was granted.
- c. Additional forest land request of 11.75 Hectares is an expansion project in terms of the total area and also with respect to the number of project related activities that are not listed in the EIA report or during the scoping process as well as appraisal process.
- d. While the impugned Environmental Clearance was granted based on the total area involved which was limited only to 17 Hectares, the additional 11.75 Hectares over and above the 17 Hectares is a substantial increase in the land requirement.

- e. The construction of additional components was not shown in the EIA Report and the infrastructure facilities were already said to be in place. While so, the Forest Clearance application was submitted on the grounds that the infrastructure facilities such as the Karnataka Maritime Board Office, guest house, two internal roads, Karnataka Maritime Institute, cold storage yard, cement silos, bulk cargo stacking yard, container terminal, parking area, tank terminal, garden, etc. needed to be constructed in the project area.
- f. As it was submitted by the Project Proponent that no new road and rail route is proposed under the proposed development, in the Forest Clearance application, two new roads are shown which amounts to a change in scope of the project which requires re-appraisal from the SEIAA – Karnataka.
- g. If it is an expansion project, the project will require a new Environmental Clearance, which in turn has to go for EIA Report, fresh Terms of Reference, public hearing, etc.

4. Hence, it is alleged by the applicants that there has been a clear and deliberate concealment of information at the stage of grant of Environmental Clearance, for which reason, the Environmental Clearance granted should be rejected.

5. The **1<sup>st</sup> Respondent/ Ministry of Environment, Forests and Climate Change (MoEF&CC)** in its counter affidavit has stated that the 4<sup>th</sup> Respondent had obtained the Environmental Clearance on 23.01.2019 from the SEIAA – Karnataka with respect to the expansion of Karwar Port. The Project Proponent had further applied for a grant of Forest Clearance under the Forest (Conservation) Act, 1980 for the diversion of 11.736 Hectares of forest land for the purpose of development of port activities, including the construction of Karnataka Maritime Board Office, Karnataka Maritime Institute, cement silo, cold storage yard, container terminal, etc. Admittedly, the Project Proponent had not disclosed the second

stage of the project, which involves the forest land. The 1<sup>st</sup> Respondent has also categorically mentioned that some of the activities mentioned in the Forest Clearance application attract the provisions of the EIA Notification, 2006, relating to the expansion of the project and therefore, require prior Environmental Clearance from the SEIAA – Karnataka. Even as per Condition No.14 of the Environmental Clearance dated 23.01.2019, in case of any deviation or alteration in the project proposal from those submitted to the authorities, a fresh reference shall be made to the authority to assess the adequacy of the conditions imposed and at additional environmental protection measures.

**6.** In the **additional affidavit filed by the 1<sup>st</sup> Respondent / MoEF&CC**, it is stated that they only sought for certain information from the Additional Chief Secretary to Government, Department of Forest, Ecology and Environment, Bengaluru.

**7.** The **2<sup>nd</sup> Respondent / SEIAA – Karnataka** in their reply statement had stated that the project proposal was considered by the SEAC – Karnataka during the meeting held on 21.03.2017 and recommended to the SEIAA – Karnataka for issue of standard ToRs along with additional ToR. The EIA Report was submitted on 27.09.2018, and based on the SEAC's recommendation, the Environmental Clearance was issued on 23.01.2019 subject to compliance with terms and conditions. The SEIAA – Karnataka has stated that the Environmental Clearance issued by them was for the proposed second stage development of commercial Karwar Port had a plot area of 17 Hectares in addition to the existing area of 3 Hectares with increase in capacity. According to the Karnataka Maritime Board, the application for Forest Clearance for 11.74 Hectares is an entirely different project and it is not in any way related to the second stage of the development of commercial Karwar Port. It is the duty of the 3<sup>rd</sup> Respondent/ Karnataka Maritime Board to establish that there is no change in scope of the project, to which, the Environmental Clearance was granted on 23.01.2019 and that there is no deliberate concealment of material in Form-I

at the time of submitting the application for prior Environmental Clearance.

**8. The 3<sup>rd</sup> Respondent which is the Karnataka Maritime Board** in their reply statement has mentioned that,

- 8.1 The applicants have alleged the change in scope of the project and violation of the conditions of the Environmental Clearance dated 23.01.2019 regarding the Stage – II of the Karwar Port and seeking revocation of the same on the ground of concealment along with direction to the Project Proponent to obtain a fresh Environmental Clearance.
- 8.2 This respondent specifically states that Stage – II of the Karwar Port and developmental activities of the Karnataka Maritime Board are two separate projects and there is no overlap between Stage – II of the Karwar Port and the Karnataka Maritime Board Project.
- 8.3 The allegations made by the applicants are erroneous, as the instant application made by the Karnataka Maritime Board, for which, the Forest Clearance was sought for is a change in scope of Stage- II of the Karwar Port.
- 8.4 It is further reiterated that the two projects are separate and independent of each other. According to this respondent, the Karnataka Maritime Board itself is a new institution established in the year 2018 and it required a permanent administrative headquarters which was proposed to be set up at Karwar for administrative and logical ease. Hence, an application was made to the Forest Department on 14.03.2022, the clearance of which is yet to be obtained from the PCCF. Therefore, no construction activity has commenced so far.
- 8.5 The 3<sup>rd</sup> Respondent had further pointed out that the Environmental Clearance granted on 23.01.2019 in favour of the 4<sup>th</sup> Respondent is already subjudice before the Hon'ble Supreme Court of India. The writ petitions were filed before the Hon'ble High Court of Karnataka in W.P.

No.1332 of 2020 and W.P. No.2336 of 2020 and the writ petitioners therein had sought for withdrawal of the Environmental Clearance dated 23.01.2019. The various issues were considered by the Hon'ble High Court of Karnataka and dismissed the writ petitions vide Common Judgment dated 29.07.2021, upholding the validity of the Environmental Clearance dated 23.01.2019. The said Judgment of the Hon'ble High Court of Karnataka is put to challenge, which is pending consideration before the Hon'ble Supreme Court in SLP No.17213 of 2021.

8.6 It is further stated that if the challenge is for cancellation of the Environmental Clearance dated 23.01.2019, the Original Application filed as such is barred by limitation.

8.7 The Karnataka Maritime Board has categorically stated that Stage – II of the Karwar Port and the construction activities of Karnataka Maritime Board are two different projects with absolutely no connection whatsoever and the above-mentioned forest land is away from the Stage – II development and is not a part of the Stage – II of the port. Stage – II of the Karwar Port is located on un-surveyed land at the seashore of the Karwar, while the Forest Clearance application has been made for surveyed land situated in Sy. No.42 of Baithkol Village. The boundaries of the two projects are different from each other. The components of Stage – II of the Karwar Port, for which, the Environmental Clearance was obtained is entirely different from the infrastructure intended to be created on the said forest land are different. There is no connection between the forest land and Stage – II of the Karwar Port. The facilities proposed in the forest land, including the setting up of the Karnataka Maritime Board Office, guest house, etc. are not part of the components of Stage – II of the Karwar Port. The infrastructures referred to above are the administrative requirements of the Karnataka Maritime Board which came into existence in the year 2018.

- 8.8 It is pointed out in the reply that the applicants have to clarify whether they wish to assail the Environmental Clearance dated 23.01.2019 or the application dated 08.08.2020 for the Forest Clearance. According to the 3<sup>rd</sup> Respondent, the Forest Clearance application is independent of the Environmental Clearance and the challenge is premature, as the Forest Clearance is yet to be granted. The 3<sup>rd</sup> Respondent has also further mentioned there was no violation committed while obtaining the Environmental Clearance.
- 8.9 They have categorically stated that the land has been vested with the Port Department since 1966 and an extent of 33.12.00 Acres of forest land situated in Forest Survey No.42 A of the Baithkol Village was handed over to the Port Department by the Range Forest Officer, Karwar and was taken over by the Deputy Port Conservator of Port Department on 25.07.1966. Thus, the forest land has been in the occupation of the Port Department since 1966. The Karnataka Maritime Board made an application to the Forest Department on 08.08.2020. The PCCF has also passed an order dated 31.08.2020, directing the 3<sup>rd</sup> Respondent to submit the particulars of the survey numbers of compensatory afforestation land and Recognition of Forest Rights (RoFR) Certificate from the revenue authorities. The Deputy Commissioner – Karwar also had issued the RoFR Certificate dated 21.06.2021. The 3<sup>rd</sup> Respondent also produced the relevant documents to show that the forest land vests with the Port Department since 1966 and that the forest land has been sanctioned in favour of the Port Department in 1965 by the Divisional Commissioner, Belagum for developmental activities.
- 8.10 Regarding the allegations made by the applicants, the 3<sup>rd</sup> Respondent have stated that the Forest Clearance is applied for a completely different project i.e. developmental activities of the Karnataka Maritime Board and that 11.7 Hectares of land is not part of Stage – II of

Karwar Port. Hence, it is incorrect to state that the said land is an expansion of the Karwar Port project.

8.11 The allegation of the applicants that the Forest Clearance is sought for a change of scope of an existing project is incorrect, as it is required entirely for a new project. Therefore, the Environmental Clearance dated 23.01.2019 is irrelevant for the new project.

So, in view of the above, the 3<sup>rd</sup> Respondent also sought for dismissal of the Original Application.

**9. The 4<sup>th</sup> Respondent, who is the Directorate of Ports and Inland Water Transport,** in their additional statement dated 11.10.2023, reiterated that Stage – II of the Karwar Port and the developmental activities of the Karnataka Maritime Board are two separate projects. There are no overlaps between Stage – II Karwar Port and the Karnataka Maritime Board Project. Stage – II of the Karwar Port is an independent project in itself and contains within its ambit the infrastructure required for a port to function. The Karnataka Maritime Board being a new institution requires permanent administrative headquarters proposed to be set up at Karwar for administrative and logistical ease. Hence, the application for Forest Clearance was filed on 08.08.2020 and the clearance is yet to be obtained from the PCCF. In view of the pendency of this Original Application, the Karnataka Maritime Board has not constructed any infrastructure on the concerned forest land. It is specifically stated in Para 14 of the additional statement that the additional infrastructure such as the cement silo area, coal storage area, tank terminal, etc. are intended to be constructed, since the existing Stage – I of the Port is not able to meet its existing capacity. Hence, the proposal has been made to utilize the available land for the existing Stage – I of the Port, though the main object was only for the construction of the Karnataka Maritime Institute and Karnataka Maritime Board Administrative Building along with guest house in the forest land. The 4<sup>th</sup> Respondent further stated that the Cumulative Impact Assessment does not entail connecting the independent projects,

as the Environmental Clearance is always site-specific and project-specific. Therefore, the allegation of the applicants that the Forest Clearance sought for by the Karnataka Maritime Board is for the expansion project of Karwar Port is denied.

**10.** The matter was posted for final hearing and we heard the learned counsel appearing for the applicant as well as the respondent.

**11.** When the learned counsel for the applicant had submitted his argument, the learned counsel Mr. Shivkumar Iyer who appears for the Karnataka Maritime Board (Respondent No.3) filed an interlocutory application [**I.A. No.15 of 2024 (SZ)**] to record certain subsequent events and documents which will have a direct impact on the application.

**12.** In the said interlocutory application, it is mentioned that though the reply statement dated 23.08.2022 and additional statement of objection dated 09.01.2023 are already filed by the 3<sup>rd</sup> Respondent, who is the applicant in I.A. No.15 of 2024 (SZ), the present interlocutory application is filed for bringing to the knowledge of this Tribunal about certain subsequent development.

**13.** It is submitted that a detailed discussion was held with the senior officer of Karnataka Maritime Board on 10.10.2023 in the presence of the CEO, Karnataka Maritime Board regarding the technical feasibility of the forest land at Forest Survey No.42 of Baithkol Village. It was found that after taking into account terrain, slope and the approach to the proposed land, the actual area available for development is only about 15 Acres, as opposed to the earlier estimate of 29 Acres. Therefore, the proposed infrastructure under the Karnataka Maritime Board Project cannot be constructed owing to the nature of forest land. The Karnataka Maritime Board had now decided to construct only the following infrastructure owing to the land feasibility constraints:-

- 1) Karnataka Maritime Board Administrative Office and Guest House in about 5 Acres of land

- 2) Karnataka Maritime and Fisheries Training Institute and Hostel buildings in about 5 Acres of land
- 3) Eco Tourism Infrastructure and Parking areas in about 4 Acres of land
- 4) Approach Roads in about 1 Acre of land.

**14.** Out of the balance land, 14 Acres will be maintained as an Eco-Tourism Buffer Area. In view of the above, the Karnataka Maritime Board had decided to withdraw the Forest Clearance application dated 08.08.2020 and an amended Forest Clearance application for the aforesaid scope of the Karnataka Maritime Board Project will be submitted for seeking prior approval under the Forest (Conservation) Act, 1980. The Interlocutory Applicant/3<sup>rd</sup> Respondent also annexed the letter dated 02.12.2023 withdrawing the Forest Clearance application dated 08.08.2020.

**15.** In response to the above interlocutory application, the Original Applicants had filed a reply dated 15.02.2024, wherein they have stated that in view of the Karnataka Maritime Board Act, 2015, all activities related to the development and management of ports in the State of Karnataka vest with the Karnataka Maritime Board. Therefore, the Karwar Port falls within the administrative control of Karnataka Maritime Board. The Original Applicants would reiterate that the Stage – II development of Karwar Port and forest diversion is for the same project and the Project Proponent did not disclose the same while seeking Environmental Clearance which would amount to deliberate concealment of information.

**16.** According to the Original Applicants, there is no mention in the impugned Environmental Clearance that the forest land is involved. The impugned Environmental Clearance only has specifically stated that in case of a change in the scope of the project, the fresh appraisal shall take place and all statutory clearances, including the clearance under the Forest (Conservation) Act, 1980 shall be obtained. As there is no Forest Clearance as on date, even the development or construction referred to in the withdrawal letter cannot be commenced without proper approval.

**17.** In this regard, the letter dated 02.12.2023 addressed by the Government of Karnataka, Infrastructure Development, Ports and Inland Water Transport Department/ 4<sup>th</sup> Respondent herein to the Principal Chief Conservator of Forest, Bengaluru may be referred to.

**18.** In Para (12) of the said letter, it is stated that

"It has been finally decided that, only about 15 Acres of forest land in Sy. No.42 can be utilized for the construction of Karnataka Maritime Board Administrative Office and Guest House, Karnataka Maritime and Fisheries Training Institute and Hostel Buildings, Eco tourism Infrastructure and Parking Areas and Approach road. Out of the balance land, 14 Acres would be maintained for an Eco Tourism Buffer Area".

**19.** In the next paragraph, it is categorically stated that

"It has been decided to withdraw the Original Application submitted by this office on 08.08.2020 and an amended online application WILL be submitted for seeking prior approval under the Forest (Conservation) Act, 1980 for the construction of Karnataka Maritime Board Administrative Office and Guest House, Karnataka Maritime and Fisheries Training Institute and Hostel Buildings, Eco Tourism Infrastructure and Parking Areas and Approach Road."

**20.** As on date, the Karnataka Maritime Board has withdrawn their application from the Principal Chief Conservator of Forest, Bengaluru. The above-referred letter has also categorically stated that the amended application with the revised land utilization plan will be submitted later. Therefore, it is clear that the Karnataka Maritime Board cannot start any activity till such time a fresh application is made and permission obtained. Therefore, the apprehension of the applicants that they would continue to commence their work is misconceived. In this regard, we also make it very clear that the Karnataka Maritime Board cannot start any kind of activity without necessary approval from the appropriate authorities.

**21.** In as much as the letter withdrawing the original application submitted by the Project Proponent for seeking prior approval under the Forest (Conservation) Act, 1980 was submitted much after the present Original Application had been filed, it is evident that only after having realized the

irregularity/impermissibility of the proposal, as highlighted by the applicant in the Original Application, the Project Proponent has decided to withdraw the application.

**22.** The State and its Agencies have a duty as a trustee under Article 48 A of the Constitution of India to protect and improve the environment and safeguard the same. In **M.C. Mehta's** case, the principle of '*Public Trust Doctrine*' with regard to the preservation was applied by the Hon'ble Supreme Court. We have no hesitation to observe that, but for the above Original Application filed by the applicant, the Project Proponent would have pursued his application seeking approvals under the Forest (Conservation) Act, 1980. It is also to be noted that the proposed activities such as Maritime Board Administrative Office, Guest House, Maritime Training Institute, Hostel building, etc. are structures which can be located elsewhere rather than being located within the forest area.

**23.** Therefore, we hold that the Project Proponent ought not to have submitted the application in the first place. In order to ensure that the State Agencies uphold the principle of '*Public Trust Doctrine*' in letter and spirit and apply their mind even before making an application, we direct the Project Proponent to deposit a sum of Rs.10 Crores with the 6<sup>th</sup> Respondent/PCCF before making any application in this regard for the Forest Clearance. The said amount, when deposited, may be moved to an interest-bearing fixed deposit in any of the nationalized banks. The 6<sup>th</sup> Respondent/PCCF may obtain directions for disbursement.

**24.** In view of the subsequent development brought to our knowledge in I.A. No.15 of 2024 (SZ), which refers to the withdrawal of the earlier application, we hold that there is no fresh application for Forest Clearance made as on date to the authorities. As and when the fresh application for Forest Clearance is made, it will be open to the authorities to consider the absolute necessity for locating such structures in the forest area as per law.

**25.** In view of the foregoing discussions, as there is no construction/ expansion/ development activity in the forest area happening as of date, the Original Application [**O.A. No.49 of 2022 (SZ)**] is disposed of with liberty to the applicants to point out any deviation or violation committed by the 4<sup>th</sup> Respondent in this regard and it is also open to them to file a fresh application.

**26.** In the result,

- (i)** The Original Application [**O.A. No.49 of 2022 (SZ)**] is disposed of with liberty to the applicants to point out any deviation or violation committed by the 4<sup>th</sup> Respondent in this regard and it is also open to them to file a fresh application.
- (ii)** The Project Proponent is directed to deposit a sum of Rs.10 Crores with the 6<sup>th</sup> Respondent/PCCF before making any application in this regard for the Forest Clearance.
- (iii)** The said amount, when deposited, may be moved to an interest-bearing fixed deposit in any of the nationalized banks. The 6<sup>th</sup> Respondent/PCCF may obtain directions for disbursement.

**27.** In view of the above, the interlocutory applications [**I.A. No.122 of 2022 (SZ) & I.A. No.15 of 2024 (SZ)**] are closed.

**Sd/-**  
**Smt. Justice Pushpa Sathyanarayana, JM**

**Sd/-**  
**Dr. Satyagopal Korlapati, EM**

Internet – Yes/No

All India NGT Reporter – Yes/No

**O.A. No.49/2022 (SZ) &  
I.A. No.122/2022 (SZ)  
I.A. No.15/2024 (SZ)  
21<sup>st</sup> May, 2024. Mn.**