

Item Nos. 01 to 03

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

(By Video Conferencing)

Original Application No. 82/2016/SZ

Mr. A. Paramasivan

Applicant

Versus

TNPCB, Chennai & Ors.

Respondent(s)

WITH

Original Application No. 173/2016/SZ

&

I.A No. 100/2022/SZ

[for impleading]

K.M Raji

Applicant

Versus

TNPCB, Chennai & Ors.

Respondent(s)

WITH

Original Application No. 175/2016/SZ

S. Srinivasan

Applicant

Versus

TNPCB, Chennai & Ors.

Respondent(s)

Date of hearing: 26.05.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Item No.1:

For Applicant: Mr. G. Stanley Hebzon Singh, Advocate.

For Respondent(s): Mr. S. Sai Sathya Jith, Advocate for R1 & R2.
Dr. D. Shanmuganathan, Advocate for R3 to R6, R8 & R9.
Mr. G.M. Syed Nurullah Sheriff, Advocate for R13.

Item No.2:

For Applicant(s): Mr. R. Sravanakumar, Advocate.

For Respondent(s): Mr. S. Sai Sathya Jith, Advocate for R1 & R2.
Dr. D. Shanmuganathan, Advocate for R3 to R5.
Ms. Jeyanthi, Advocate represented
Mr. R. Shanmugham for R7 to R12.
Mr. K.S. Karthikeyan, Advocate (Applicant – I.A. No.100/22)

Item No.3:

For Applicant(s): Mr. R. Sravanakumar, Advocate.

For Respondent(s): Mr. S. Sai Sathya Jith, Advocate for R1 & R2.
Dr. D. Shanmuganathan, Advocate for R3 to R5.
Ms. Jeyanthi, Advocate represented
Mr. R. Shanmugham, Advocate for R7 to R12.

ORDER

The Issue raised

1. Grievance in these applications is against illegal prawn culture aqua farm activities in coastal area of Tamilnadu in violation of directions of the Hon'ble Supreme Court in S. Jagannath v. Union of India & Ors., (1997) 2 SCC 87, Coastal Aquaculture Authority Act, 2005 (CAA, 2005), CRZ Notification, 1991/2011/2019, Wild Life (Protection) Act, 1972 and environmental norms under other different laws, as applicable.

2. Since all the three applications involve common questions and have been considered together earlier, it will suffice to refer to the averments in the first application to appreciate the context. These are that illegal prawn culture aqua farm activities are taking place at Pakkam Village, Ponneri Taluk, Tiruvallur District, Tamil Nadu in Survey Nos. 58 and 62 of No.8. Regulatory authorities are not controlling such illegal activities. The site in question is part of *Chitteri* water body which is source of drinking water in Chennai city. The said water body is a part of Pazhaverkadu Bird Sanctuary, declared as such under the Wildlife (Protection) Act, 1972. The water body attracts migratory and other birds. The threat to the water body is from prawn cultivation farm which have emerged in 2012-13. The said activity has adversely affected cultivation of paddy and contributed to the water pollution. The area is also close to Pulicat lake which is also affected by the said activities.

3. The applicant earlier filed *O.A No. 227/2014, Mr. A. Paramasivam, Ponneri Taluk, Thiruvallur Chennai. V. The Chairman, Tamil Nadu Pollution Control Board, Chennai and 13 others*, which was disposed of on 10.12.2015, as the illegal activity had stopped. Subsequently, the said activity again commenced. The Hon'ble Supreme Court vide judgement reported in *S. Jagannath v. Union of India & Ors., (1997) 2 SCC 87*, directed constitution of an Authority to regulate such activities which has led to enactment of CAA, 2005 but the same is not being enforced. Few of the shrimp ponds are located well within 1000 meters and others are located 2000 meters from the Pulicat Lake. Many of these lands are *Kali poromboke*. Prawn rearing activities are taken place without the prior approval from the authority constituted by the Central Government. The International Union for Conservation of Nature and Natural Resources (IUCN) has declared the Pulicat lagoon system a Ramsar site of international importance. World Wide Fund for Nature has declared it a protected area.

Procedural History – response of statutory regulators

4. The Application was filed on 30.03.2016. It was first considered on 05.04.2016. Response/reports have been sought from statutory authorities and matter has been considered from time to time. The Tribunal issued interim directions for enforcing the statutory provisions and environmental norms and sought compliance reports. It is not necessary to refer to all the pleadings and orders but we may refer to some facts which have emerged from the response of the statutory authorities. R-4 -Tehsildar, District Thiruvallur conducted inspection and reported names of persons who were carrying on prawn culture, without requisite permissions. The Collector in his counter affidavit dated

25.07.2016 stated that 166 prawn/shrimp culture ponds were identified and removed. 52 licensed shrimp/prawn culture ponds were functioning in private patta land. 217 unlicensed ponds were running. List of some such establishments were filed. Coastal Aquaculture Authority (CAA) was added as Respondent No. 10 to the proceedings who submitted that area up to 2 Km of boundary of Pulicat lake is part of 'coastal area' as per Notification dated 23.01.2006 issued by the Ministry of Agriculture, Department of Animal Husbandry, Dairying and Fisheries under the CAA, 2005. The Notification is as follows:-

“NOTIFICATION

New Delhi, the 23rd January, 2006

S.O. 74 (E). -- In exercise of the powers conferred by clause (d) of Sub-section (1) of Section 2 of the Coastal Aquaculture Authority Act, 2005 (24 of 2005) the Central Government hereby specifies the following area to be coastal area for the purposes of the said Act, namely :-

“Area of land with in a distance of two kilometers from the High Tide Line (HTL) of seas, rivers, creeks and backwaters.”

Note:- 1. The delineating boundaries along rivers, creeks and backwaters shall be governed by the distance upto which the tidal effects are experienced and where salinity concentration is not less than 5 parts per thousand (ppt). For this purpose the salinity measurements shall be made during the driest period of the year.

Note:-2. In the case of ecologically fragile areas such as Chilka Lake and Pulicat Lake, the coastal area shall extend upto a distance of two kms. from the boundary of the lakes.”

5. CAA had granted permissions for 42 aqua farms, which stand expired. Coastal aquaculture activity without CAA registration should be closed.

Points for determination

6. Though according to us only issue is failure of the regulatory authorities to perform their duty, learned Counsel for the parties have submitted that there is confusion in law which needs to be clarified. There is conflict in norms to be applied in view of directions in the judgement of the Hon'ble Supreme Court in S. Jagannath, supra, on the one hand and CAA Act 2005, CRZ notifications and other laws on the other. There are multiple authorities having overlapping powers. While we do not find any confusion, we will endeavour to clarify the points raised.

Consideration of compliance status, finding and direction for remedial action

7. It does appear from factual reports of local authorities that that illegal aquaculture farming activities are continuing, in rampant violation of law. Regulatory mechanism appears to be lacking which needs to be seriously considered by the MoEF&CC and remedial measures taken in the interest of protection of coastal environment and rule of law.

8. Adverse consequences of commercial aquaculture farming on environment, particularly mangrove eco-systems, Casurina plantations, potable water, fish catch and blockage of direct approach to the seashore are well acknowledged. Ignoring the environmental concerns, agriculture lands and salt farms are being converted into commercial aqua-culture farms. The ground water has got contaminated due to seepage of impounded water from the aqua-culture farms. Highly polluted effluents are discharged by the shrimp-farms into the sea and on the sea coast. Social and environmental changes are resulting from expanding shrimp industry in coastal areas, largely due to the conversion into shrimp farms of the lands. Shrimp farms are developing at the expense of other agriculture, aquaculture, forest uses and fisheries that are better suited in many places for meeting local food and employment requirements.

Intensive and semi intensive types of shrimp production hardly seems to meet these requirements. Taking note of this problem and referring to the expert studies on the subject, the Hon'ble Supreme Court in *S. Jagannath, supra*, found it necessary to ensure strict regulation of such activities. It was directed that the activity should be allowed after environment impact assessment so as to prevent environmental degradation. Social impact on local population must also be assessed. The Hon'ble Supreme Court directed the Central Government to constitute a regulatory authority and confer power on it to take regulatory measures. The authority was to implement 'Precautionary' and 'Polluter Pays' principles. Prohibition under the CRZ Notification was also to be enforced. The directions are reproduced below:-

"52. We, therefore, order and direct as under:

1. *The Central Government shall constitute an authority under Section 3(3) of the Environment (Protection) Act, 1986 and shall confer on the said authority all the powers necessary to protect the ecologically fragile coastal areas, sea shore, water front and other coastal areas and specially to deal with the situation created by the shrimp culture industry in the coastal States/Union Territories. The authority shall be headed by a retired Judge of a High Court. Other members preferably with expertise in the field of aquaculture, pollution control and environment protection shall be appointed by the Central Government. The Central Government shall confer on the said authority the powers to issue directions under section 5 of the Act and for taking measures with respect to the matters referred to in clauses (v), (vi), (vii), (viii), (ix), (x) and (xii) of sub-section (2) of Section 3. The Central Government shall constitute the authority before January 15, 1997.*
2. *The authority so constituted by the Central Government shall implement "the Precautionary Principle" and "the Polluter Pays" principles.*
3. ***The shrimp culture industry/the shrimp ponds are covered by the prohibition contained in para 2(i) of the CRZ Notification. No shrimp culture pond can be constructed or set up within the coastal regulation zone as defined in the CRZ notification. This shall be applicable to all seas, bays, estuaries, creeks, rivers and backwaters. This direction shall not apply to traditional and improved traditional types of***

technologies (as defined in Alagarswami report) which are practised in the coastal low lying areas.

4. **All aquaculture industries/shrimp culture industries/shrimp culture ponds operating/set up in the coastal regulation zone as defined under the CRZ Notification shall be demolished and removed from the said area before 31-3-1997.** We direct the Superintendent of Police/Deputy Commissioner of Police and the District Magistrate/Collector of the area to enforce this direction and close/demolish all aquaculture industries/shrimp culture industries, shrimp culture ponds on or before 31-3-1997, A compliance report in this respect shall be filed in this Court by these authorities before 15-4-1997.
5. *The farmers who are operating traditional and improved traditional systems of aquaculture may adopt improved technology for increased production, productivity and return with prior approval of the "authority" constituted by this order.*
6. *The agricultural lands, salt pan lands, mangroves, wet lands, forest lands, land for village common purpose and the land meant for public purposes shall not be used/converted for construction of shrimp culture ponds.*
7. *No aquaculture industry/shrimp culture industry/shrimp culture ponds shall be constructed/set up within 1000 meter of Chilka lake and Pulicat lake (including Bird Sanctuaries namely Yadurapattu and Nelapattu)*
8. *Acquaculture industry/shrimp culture industry/shrimp culture ponds already operating and functioning in the said area of 1000 meter shall be closed and demolished before March 31, 1997. We direct the Superintendent of Police/Deputy Commissioner of Police and the District Magistrate/Collector of the area to enforce this direction and close/demolish all aquaculture industries/shrimp culture industries, shrimp culture ponds on or before March 31, 1997. A compliance report in this respect shall be filled in this Court by these authorities before April 15, 1997.*
9. **Acquaculture industry/shrimp culture industry/shrimp culture ponds other than traditional and improved traditional may be set up/constructed outside the coastal regulation zone as defined by the CRZ notification and outside 1000 meter of Chilka and Pulicat lakes with the prior approval of the "authority" as constituted by this Court.** Such industries which are already operating in the said areas shall obtain authorisation from the "Authority" before April 30, 1997 failing which the industry concerned shall stop functioning with effect from the said date. We further direct that **any aquaculture activity including intensive and semi-intensive which has the effect of causing salinity of soil, or the drinking water or wells and/or by the use of chemical feeds increases shrimp or prawn production with consequent increase**

in sedimentation which, on putrefaction is a potential health hazard, apart from causing siltation turbidity of water courses and estuaries with detrimental implication on local fauna and flora shall not be allowed by the aforesaid Authority.

10. *Acquaculture industry/shrimp culture industry/shrimp culture ponds which have been functioning/operating within the coastal regulation zone as defined by the CRZ Notification and within 1000 meter from Chilka and Puliket Lakes shall be liable to compensate the affected persons on the basis of the "polluter pays" principle.*
11. *The authority shall, with the help of expert opinion and after giving opportunity to the concerned polluters assess the loss to the ecology/ the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families. The authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise.*
12. *The authority shall compute the compensation under two heads namely, for reversing the ecology and for payment to individuals. A statement showing total amount to be recovered, the names of the polluters from whom the amount is to be recovered, the amount to be recovered from each polluter, the persons to whom the compensation is to be paid and the amount payable to each of them shall be forwarded to the Collector/District Magistrate of the area concerned. The Collector/District Magistrate shall recover the amount from the polluters, if necessary, as arrears of land revenue. He shall disburse the compensation awarded by the authority to the affected persons/families.*
13. *We further direct that any violation or non-compliance of the directions of this Court shall attract the provisions of the Contempt of Courts Act in addition.*
14. *The compensation amount recovered from the polluters shall be deposited under a separate head called "Environment Protection Fund" and shall be utilised for compensating the affected persons as identified by the authority and also for restoring the damaged environment.*
15. *The authority, in consultation with expert bodies like NEERI, Central Pollution Control Board, respective State Pollution Control Boards shall frame scheme/schemes for reversing the damage caused to the ecology and environment by pollutions in the coastal States/Union Territories. The scheme/schemes so framed shall be executed by the respective State Governments/Union Territory Governments under the supervision of the Central Government. The expenditure shall be met from the Environment Protection fund and from other*

sources provided by the respective State Governments/Union Territory Governments and the Central Government.

16. *The workmen employed in the shrimp culture industries which are to be closed in terms of this order, shall be deemed to have been retrenched with effect from April 30, 1997 provided they have been in continuous service (as defined in Section 25-B of the Industrial Disputes Act, 1947) For not less than one year in the industry concerned before the said date. They shall be paid compensation in terms of Section 25-F(b) of the Industrial Disputes Act, 1947. These workmen shall also be paid, in addition, six year's wages as additional compensation. The compensation shall be paid to the workmen before May 31, 1997. The gratuity amount payable to the women shall be paid in addition."*

9. In pursuance of above, CAA Act was enacted and notified on 23.06.2005. Except Section 27, which is a validation section, other provisions came into force on 16.12.2005.

10. The Act provides for constitution of Authority and regulation of the coastal aquaculture activities by requiring compulsory registration, making any activity without registration punishable offence. Section 13 is the key provision which is as follows:-

"13. Registration for coastal aquaculture.-

- (1) *Save as otherwise provided in this section, no person shall carry on, or cause to be carried on, coastal aquaculture in coastal area or traditional coastal aquaculture in the traditional coastal aquaculture farm which lies within the Coastal Regulation Zone referred to in sub-section (9) and is not used for coastal aquaculture purposes on the appointed day unless he has registered his farm with the Authority under sub-section (5) or in pursuance of subsection (9), as the case may be.*
- (2) *Notwithstanding anything contained in sub-section (1), a person engaged in coastal aquaculture, immediately before the appointed day, may continue to carry on such activity without such registration for a period of three months from that day and if he makes an application for such registration under sub-section (4) within the said period of three months till the communication to him of the disposing of such application by the Authority.*
- (3) *The registration made under sub-section (5) or in pursuance of sub-section (9)—*

- (a) shall be valid for a period of five years;
 - (b) may be renewed from time to time for a like period; and
 - (c) shall be in such form and shall be subject to such conditions as may be specified by the regulations.
- (4) A person who intends to carry on coastal aquaculture shall make an application for registration of his farm before the Authority in such form accompanied with such fees as may be prescribed for the purpose of registration under sub-section(5).
- (5) On receipt of an application for registration of a farm under subsection (4), the Authority shall consider the application in the prescribed manner and after considering the application either register the farm or reject the application:

Provided that the Authority shall not reject the application without recording the reason for such rejection.

- (6) The Authority shall, after registering a farm under sub-section (5), issue a certificate or registration in the prescribed form to the person who has made the application for such registration.
- (7) In the case of a farm comprising more than two hectares of water spread area, no application for registration to commence any activity connected with coastal aquaculture shall be considered under sub-section (5) unless the Authority, after making such inquiry as it thinks fit, is satisfied that registration or such farm shall not be detrimental to the coastal environment.

(8) Notwithstanding anything contained in this section, ---

- (a) no coastal aquaculture shall be carried on within two hundred metres from High Tide Lines; and**
- (b) no coastal aquaculture shall be carried on in creeks, rivers and backwaters within the Coastal Regulation Zone declared for the time being under the Environment (Protection) Act, 1986 (29 of 1986)**

Provided that nothing in this sub-section shall apply in the case of a coastal aquaculture farm which is in existence on the appointed day and to the non-commercial and experimental coastal aquaculture farms operated or proposed to be operated by any research institute of the Government or funded by the Government;

Provided further that the Authority may, for the purposes of providing exemption under the first proviso, review from time to time the existence and activities of the coastal aquaculture farms and the provisions of this section shall apply on coastal aquaculture farms in view of such review.

Explanation - For the purposes of this sub-section, "High Tide Line" means the line on the land up to which the highest water line reaches during the spring tide.

- (9) Notwithstanding anything contained in this section, any traditional coastal aquaculture farm which lies within the Coastal Regulation Zone declared by the notification of the Government of India in the Ministry of Environment and Forests (Department of Environment, Forests and Wildlife) No. S.O. 114 (E), dated the 19th February, 1991 and is not used for coastal aquaculture purposes on the appointed day shall be registered under sub-section (5) by producing before the Authority, by the person who is the owner of such farm, the documentary proof of such ownership failing which such farm shall not be registered under sub-section (5) and if such person after such registration does not utilise such farm, within one year, for coastal aquaculture purposes, the registration shall be cancelled by the Authority.**
- (10) *A person, who intends to renew the registration of a farm made under sub-section (5) or in pursuance of sub-section (9), may make an application within two months before the expiry of such registration to the Authority in the prescribed form accompanied with the prescribed fees and the Authority shall, after receiving such application, renew the registration and for such purpose make an entry with its seal on the registration certificate relating to such form issued under sub-section (6).*
- (11) *The Authority may refuse to renew the registration of a farm under sub-section (10) if the Authority is satisfied that the person to whom such registration is made has failed to utilise such farm for coastal aquaculture purposes or without any reasonable cause has violated any provision of this Act or the rules or regulations made thereunder or any direction or order made by the Authority in pursuance of section 11:*

Provided that such refusal to renew the registration shall not be made without providing such person an opportunity of being heard.

Explanation 1. --- For the purpose of this section, "appointed day" means the date of establishment of the Authority.

Explanation 2. --- For the removal of doubts, it is hereby declared that the expression "to renew the registration" used in sub-sections (10) and (11) shall be construed to include further renewal of the registration."

11. From the above, it is seen that apart from procedure for registration, sub-section 8 contains prohibition against aquaculture activity within 200 meters from High Tide Line (HTL) and in creeks, rivers

and backwaters within the Coastal Regulation Zone area. However, pre-existing activities on the appointed date i.e. 16.12.2005 are saved and non-commercial activities operated by research institute fall under provision of exemption. Under Sub-section 9, traditional coastal aquaculture activity in CRZ area is separately dealt with.

12. As per CRZ notification, aquaculture activities in CRZ were prohibited but under CAA Act, the same have been permitted beyond 200 mtrs from HTL in CRZ area, subject to registration. Even permitted coastal aquaculture activity has to undergo regulation as per CRZ Notification, 1991/2011/2019. Section 27 of the Act merely validated activities which are prohibited by para 2 of CRZ Notification, 1991 but even to the extent such activity is permitted, CRZ regulations are not excluded. There can also be no dispute that the Wild Life (Protection) Act, 1972, Water Act and other statutes not covering the field of regulation of aquaculture registration continues to apply in area of their operation which issues are not subject matter of regulation under the CAA Act 2005. Notification of 2006 under Section 2 (d) of the CAA Act is applicable for purposes of this Act, on the subject of definition of coastal area.

13. Thus, while the directions of the Hon'ble Supreme Court deal with the issue generally and are binding, to the extent CAA Act has made conflicting provision, in absence of challenge to such provision, the said provisions can be enforced. However, CAA Act is not exhaustive law and does not exclude other statutes on the subject. Water pollution is still governed by the Water Act. Wildlife protection is governed by the Wildlife Act. Assessment of impact on coastal area is governed by CRZ notifications. CAA Act provides for prohibiting such activities without registration to the extent permissible. Thus, no unregistered activity can

continue. Prohibited activity under section 13(8) can also not continue. Even permitted activities, apart from registration require compliance of environmental norms under other statutes. In our view this position is clear and no other view appear to be tenable, nor has been canvassed. We clarify the confusion, if any, accordingly.

14. In view of large-scale violations as per our above finding, there is need for strict enforcement of the statutory mandate by the concerned statutory authorities, which needs to be overseen by a monitoring committee atleast for some time. At the moment, enforcement is highly inadequate. Unregistered aquaculture activities have been found in abundance.

15. We hope with above clarifications, the authorities will now take necessary steps to stop illegal aquaculture activities operating without registration or in prohibited area or without CRZ clearance or requisite consents under water Act or in violation of Wildlife Act, wherever applicable. For past violations, compensation needs to be recovered and used for restoration of environment and compensating the victims, if identified.

16. To sum up, our directions are :-

- i) Coastal Aquaculture Authority, Chennai may remove and demolish all illegal Coastal Aquaculture activities in their jurisdiction, operating without registration or in violation of Section 13 (8) of the CAA Act, 2005. Apart from such prohibition, the said Authority may initiate prosecution by filing a written complaint under Section 15 of the Act and also assess compensation for the past violations

as per 'Polluter Pays' principle, following due process of law. Compensation be used for restoration of environment.

- ii) TN CZMA may enforce CRZ Notification in relation to prohibited activities in terms of the said notification or permissible activities, which do not comply with the regulatory requirements.
- iii) State PCB may enforce Water Act or other applicable provisions within its purview.
- iv) Chief Wildlife Warden, Tamil Nadu may take action against Coastal Aquaculture Activity operating in violation of the Wildlife Act, if any.
- v) We also constitute a monitoring Committee headed by Member Secretary, NCZMA with nominee of Director, NCSCM, Chennai, TN CZMA, CAA and Chief Wildlife Warden TN as Members for a period of six months. The Chairman of the constituted Committee may call a meeting within two weeks, take stock of the situation, prepare an action plan and execute the same within reasonable time thereafter. The meeting may be held physically or online. It will be open to the Committee to coordinate with other concerned Departments/ individuals/Experts, to interact with stakeholders and also to undertake visit to the site in question. Its proceedings may be placed on the website of TNCZMA.

The application is disposed of.

A copy of this order be forwarded to NCZMA, Director, NCSCM, Chennai, TN CZMA, CAA and Chief Wildlife Warden, TN by e-mail for compliance.

If any grievance survives, it will be open to the aggrieved parties to take remedies in accordance with law.

All pending IAs/MAs will also stand disposed of.

Adarsh Kumar Goel, CP

K. Ramakrishnan, JM

Dr. Satyagopal Korlapati, EM

Prof. A. Senthil Vel, EM

May 26, 2022

Original Application No. 82/2016/SZ & connected matters

AB