

## Aquaculture

# A welcome noose

**The recent radical ruling of the Supreme Court of India on regulating shrimp farms should be welcomed**

**O**n the 11 December 1996, the Supreme Court of India handed out one of the most radical decisions in recent times—radical in terms of the principles it has articulated and its approach to the special interests which are constantly being raised in the post-liberalization era of economic reforms in India.

The shrimp industry is touted as a major foreign exchange earner and an economic liberator of the agrarian economy. Behind the razzmatazz, with active support from government and financial institutions, millions of rupees have been pumped into this industry. Heady and flush with funds, the industry has been riding roughshod over environmental concerns for more than a decade now.

The way aquafarms were established without any sanction from any regulatory authority, one would think that the industry thought itself to be above the law. Public sector financial institutions, notorious for their tightfistedness and attention to detail when dealing with villagers asking for loans to build houses or buy cows, bent over backwards to fuel the 'pink gold' rush.

The nouveau pisci-prospectors converted large tracts of land all over the coast into prawn industry sites, blockading the coast, stuffing prawns with steroids and antibiotics, blinding mother prawns caught in the wild to raise reproduction rates and densely stocking the ponds with shrimps.

In addition, they increased the salinity of coastal aquifers, destroyed mangroves and wetlands and degraded the environment—cocking a snook, in fact, at all and sundry, including the interim

orders of the Supreme Court. All this was done in the name of a half-baked theory that the foreign exchange earned would at one stroke cure every single default and crime committed along the way.

This dollar-centric argument has been challenged by the ultimate arbiters of the public good, the people themselves, who embarked on a campaign of protests. Several networks of NGOs, fishing communities and environmental activists were formed. Demonstrations, fasts and strikes were undertaken to focus the attention of the powers-that-be on the problems caused by the 'blue revolution', as the aquaculture industry was heralded, bringing back bitter memories of a chemical-intensive agricultural transformation strategy employed in India during the 1960s and 1970s. Such a boom had already been witnessed in Taiwan, China, Thailand, the Philippines, Indonesia and Malaysia, though the environment there was subsequently ravaged by this industry.

Needless to say, governments of the coastal States as well as the Centre, remained impervious to people's sensitivities and the fact that the farms were violating the law. A petition under Article 32 of the Constitution of India was filed before the Supreme Court by a Gandhian, S. Jaganatthan.

### Enforcement sought

This sought the enforcement of the Coastal Regulation Zone (CRZ) Notification of 1991, passed under the Environment Protection Act, 1986, under which all activity within 500 metres of the High Tide Line (HTL) and near creeks, backwaters, estuaries and other water-bodies influenced by tidal action, was regulated. This notification has hardly been enforced in most states.

**T**he petition also sought the stoppage of intensive and semi-intensive type of prawn farming and also a ban on converting wastelands and agricultural lands to prawn farms. The Tamil Nadu based Campaign against Shrimp Industry filed intervention applications in this petition.

In March 1995, the Supreme Court ordered that no further shrimp or aquaculture farms be permitted, that no ground water be drawn for aquaculture and that no part of agricultural lands and salt pans be converted to commercial aquaculture farms.

In spite of the Supreme Court directing the District Collectors to enforce this, prawn farms continued to be established with no let-up. Going by a recent report filed by the Tamil Nadu Pollution Control Board in the Madras High Court, at least 65 farms in Tamil Nadu have been established in violation of the March 1995 order of the Supreme Court and the Tamil Nadu Aquaculture Regulation Act, 1995.

By May 1995, Tamil Nadu had enacted the Tamil Nadu Aquaculture Regulation Act, 1995. Under this, no prawn farm could be set up without a licence from the government. Existing farms also had to obtain a licence by 10 July 1995. According to data provided by the Tamil Nadu Pollution Control Board to the Madras High Court in December 1996, out of the

910 prawn farms in Tamil Nadu, 744 farms had not even applied for a license. No information was available on this aspect for 49 farms of Pudukottai district. None of the 78 farms in Thanjavur had applied for a licence. Out of 402 farms in Nagai Quaid-E-Milleth district, only five farms had applied for a licence. The majority of the farms which had applied for licence had done so only after the Madras High Court ordered the closure of all farms by Order dated 7 November 1996.

None of the 910 farms or 54 hatcheries in Tamil Nadu has a valid order of consent from the Tamil Nadu Pollution Control Board under the Water (Prevention of Pollution) Act, 1974. Of the farms, 702 had not applied for permission from the Pollution Control Board to discharge effluent. Only 208 units had applied for such permission.

#### **Court order**

Many of these applications had been made after the order of the Madras High Court. Of the 54 hatcheries, 30 had not bothered to apply for permission to operate from the Pollution Control Board. The Tamil Nadu Pollution Control Board has categorically gone on record that there is a likelihood of groundwater, surface water, creeks, sea and land being polluted, and that untreated effluent generated from the aquaculture farms or hatcheries are being disposed into the sea, creeks, land and inland surface water.

A 13-member scientific team from the National Environmental Engineering Research Institute (NEERI), on the directions of the Supreme Court, visited prawn farms in Tamil Nadu between 10 and 19 April 1995, and submitted a report. This report quantified the total permanent damage on account of aquaculture at Rs 17,791.2 million, the annualized damage at Rs 4,230 million and the annual earnings from the aquaculture activity at Rs 2,800 million.

Needless to say, this report was criticised by the aquaculture industry. They questioned its methodology and its findings, without pausing to think that they had not undertaken any environmental impact assessments before setting up their farms.

The Campaign Against Shrimp Industry also set up an Expert Committee to undertake a fact-finding mission on the environmental impact of prawn farms in Tamil Nadu and Karaikal in Pondicherry. This Committee comprised of Justice H. Suresh, a retired judge of the Bombay High Court, A. Sreenivasan, retired Joint Director of the Fisheries Department, A. G. K. Menon, ichthyologist, V. Karuppan, a retired civil servant, and Dakshinamurthy, a medical surgeon. This Committee also submitted a report clearly indicting the prawn farmers for their unfriendly practices on the environment and the livelihood of the

fishing communities dependent on the coast. The report was extensively quoted by the Supreme Court in its 110-page order, passed in December 1996, after hearing all points of view over several months.

The order directed the demolition of all prawn farms set up within 500 m of the HTL and alongside creeks, backwaters, estuaries, rivers, etc. and within 1000 m of the Chilka lake in Orissa and the Pulicat lake in Tamil Nadu and Pondichery, by 31 March 1997. The Court further directed the setting up of a Special Authority to protect the coast. This Authority alone would licence all aquaculture industry outside this area. It would also be empowered to assess the loss caused to the ecology and to the villagers and collect damages from the prawn farms.

Apart from the CRZ areas (500 m from the HTL and within 100 m of lakes, rivers, creeks and backwaters, as set out in the Coastal Zone Management Plan of the State of Tamil Nadu), the Court also banned the conversion to shrimp farms of agricultural land, salt pans, mangroves, wetlands, forest lands, land for village commons and land meant for public purposes.

Environmentalists hailed the judgment as historic. The response from the industry was muted. The industry claimed that the majority of the farms in Tamil Nadu were

traditional and, therefore, outside the scope of the Court order.

**T**hey also claimed that they had Pollution Control Board clearance and that the majority of farms were outside the CRZ areas. All this in the face of clear reports that out of 910 prawn farms in Tamil Nadu, 119 were situated within 0-200 m of the HTL, 64 within 200-500 m of the HTL and 722 next to creeks.

Out of the 54 hatcheries in Tamil Nadu, 37 were within 0-200 m of the HTL, 10 within 200-500 m of the HTL and six were next to creeks. Therefore, contrary to claims that only a small percentage would be affected by the order of the Supreme Court, merely five farms and one hatchery possibly lie outside the CRZ area.

Even these may still fall foul of the Tamil Nadu Aquaculture Regulation Act, 1995, and the Supreme Court directive on non-conversion of agricultural and other lands to aquaculture.

The claim of the Tamil Nadu aquaculture industry that it was traditional was clearly belied by the finding of the Supreme Court that the only States in India where traditional aquaculture was practised were West Bengal, Kerala and Goa.

When the full impact of the Supreme Court order was understood by the industry, it started laying claims that the majority of the farms were held by small farmers. Actually, only a few farms involve investment of under Rs 200,000.

The industry further claimed that Rs 2,000 million had been advanced by public sector financial institutions and that many fishing communities depended on the industry. However, the industry is hardly labour-intensive. On the other hand, it tends to displace and marginalize labour.

All or most of the farms, claimed industry spokesmen, had pollution control technology installed. In truth, over half the farms do not even have the space to install effluent treatment plants.

The falsity and untenability of these claims was exposed when a petition referred by some of the industrialists

before the Supreme Court, seeking review of the December 1996 order, was dismissed on 4 January 1997.

Whatever be the arguments of the industry, it can have no valid claim to any sympathy. In several parts of Tamil Nadu, the industry has attempted to intimidate environmental activists, employed child labour and committed innumerable acts of human rights deprivation, with the active connivance of the State government machinery.

In the context of the conduct of the industry, the order of the Supreme Court is but a richly deserved hangman's noose. In the process of bringing the errant aquaculture industry to book, the litigation against the industry has enriched environmental jurisprudence.

From a purely legal point of view, the court has reiterated the principles of 'precaution' and 'the polluter should pay'. Ever since the Union Carbide Bhopal gas tragedy, the courts have been sympathetic to environmental concerns and have imported well established principles of law into Indian tort law.

Simply put, the precautionary principle means that environmental regulation should anticipate and prevent environmental degradation, and not merely attempt to provide relief after the damage has occurred.

This principle postulates that the onus of proof is on industry to show that its operation is benign and that even if there is a threat of serious and irreversible damage to the environment, immediate steps should be taken to prevent it, without quibbling over scientific certainty. In the case of the 'polluter pays' principle, the industry would be absolutely liable to compensate victims of pollution, and also reverse environmental degradation.

#### **Jurisprudence**

These principles are nothing new to the world of environmental jurisprudence. But their reiteration could not have come at a more opportune moment than now. From the viewpoint of an environmental lawyer. The judgment is trend setting for its acceptance of the validity of the citizens

reports on environmental litigation. It thus takes to its logical conclusion the long-accepted view that all public interest litigation is non-adversarial in search of the truth.

The judgment is also a clear indictment of the Pollution Control Boards. With no public representation, these regulatory bodies have held themselves out to be the final arbiters of environmental standards and have for years been acting as an active limb of the industry, neglecting the interests of the people.

Concepts such as 'sustainable development', 'the polluter pays', the precautionary principle' and 'inter-generational equity' have thus been indelibly stamped on to Indian environmental jurisprudence. This will enrich other ongoing struggles against national and multinational industries (like Enron's Dabhol power project and DuPont's nylon-6,6 project, to name a couple) which have set up shop in India violating these norms. It has shown the way for the courts of the future to employ tools of environmental economics to give short shrift to the half-baked 'dollar' argument.

However, in my opinion, the most progressive part of the judgement lies in its articulation of inter-generational equity, the central tenet of which is the right of each generation of human beings to benefit from the cultural and natural inheritance from past generations as well as the obligation to preserve such heritage for future generations.

The recognition of this principle by the Supreme Court of India points to the long road that human rights jurisprudence has traversed in India. It should also serve as a timely reminder to policymakers who indiscriminately allocate resources that are already threatened.

The judgement by the Supreme Court of India is radical, progressive and empowers people, hitherto marginalized to fight longer and harder battles. §

This piece has been written by T. Mohan, a lawyer based in Madras, who is associated with the Coastal Action Network