

## Polluters must pay

**The recent order of the Supreme Court of India banning shrimp farms in coastal areas is a landmark judgement. Excerpts:**

...This petition under Article 32 of the Constitution of India—in public interest—has been filed by S. Jagannathan, Chairman, Gram Swaraj Movement, a voluntary organization working for the upliftment of the weaker sections of society. The petitioner has sought the enforcement of Coastal Zone Regulation Notification dated February 19, 1991 issued by the Government of India, stoppage of intensive and semi-intensive type of prawn farming in the ecologically fragile coastal areas, prohibition from using the wastelands/wetlands for prawn farming, and the constitution of a National Coastal Management Authority to safeguard the marine life and coastal areas.

Keeping with the international commitments and in the greater national interest, the Government of India and the Governments of the coastal States are under a legal obligation to control marine pollution and protect the coastal environments.

While the production increases and export earnings of the industry are well publicised, the socioeconomic losses and environmental degradation affecting the well-being of the coastal population are hardly noticed.

In fact, 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 seem to meet these requirements.

...We may refer to constitutional and statutory provisions which mandate the State to protect and improve the environment. Article 48-A of the

Constitution of India states that “the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country”. Article 51-A of the Constitution imposes as one of the fundamental duties on every citizen, the duty to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The Environment (Protection) Act 1986 (the Act) was enacted as a result of the decisions taken at the United Nations Conference on the Human Environment, held at Stockholm in June 1992, in which India participated.

...This Court in Vellore, Citizens Welfare Forum vs. Union of India and others has dealt with the concept of ‘sustainable development’ and has specifically accepted ‘the precautionary principle’ and ‘the polluter pays’ principle is part of the environmental laws of the land.

...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, seashore, water front and other coastal areas, and specially to deal with the situation created by the shrimp culture industry in the coastal States and Union Territories. The authority shall be headed by a retired judge of a High Court. Other members, preferably with expertise in aquaculture, pollution control and environmental protection, shall be appointed by the Central Government. The Central Govern-

ment shall confer on the said authority the powers to issue directions under the Act and for taking measures with respect to the matters referred to in clauses (v), (vi), (vii), (viii), (ix), (x) and (xi) of subsection (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 / shrimp ponds are covered by the prohibition contained in para 2 (1) 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 Alagarsamy's 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 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 filed in this court by these authorities before April 15, 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, wetlands, 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. Noaquaculture industries/shrimp culture industries/shrimp culture ponds shall be constructed/set-up within 1000 m of Chilka lake and

- Pulicat lake, including bird sanctuaries namely Yadurapattu and Nelapattu.
8. Aquaculture industry/shrimp culture industry /shrimp culture ponds already operating and functioning in the said area of 1000 m 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 filed in this court by these authorities before April 15, 1997.
  9. Aquaculture 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 m 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 authorization 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. Aquaculture 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 m from Chilka and Pulicat 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/ environment of the affected areas and shall be liable to compensate individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individual/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 the individuals. A statement showing the 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 utilized 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 a scheme/schemes for reversing the damage caused to the ecology and environment by pollution in the coastal States/Union Territories. The scheme/schemes so framed shall be executed by the respective 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 258 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 258 of the Industrial Disputes Act, 1947. These workmen shall be paid, in addition, six years wages as additional compensation. The compensation shall be, paid to the workmen before May 31, 1997. The gratuity amount payable to the workmen shall be paid in addition.

The writ petition is allowed with costs. We quantify the cost at Rs 1,40,000 (Rupees one lakh and forty thousand) to be paid by the States of Gujarat, Maharashtra, Orissa, Kerala, Tamil Nadu, Andhra Pradesh and West Bengal, in equal shares of Rs 20,000 each. The amount of Rs 1,40,000 realized from the seven coastal states shall be paid to Mr. M. C. Mehta, Advocate who has appeared in this case throughout. We

place on record our appreciation for the assistance rendered by Mr. Mehta. ३

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This judgement was delivered by Justice Kuldip Singh and S. Sagir Ahmad of the Supreme Court of India at New Delhi on 11 December 1996