

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Original Application No. 05 of 2021 (SZ)

With

Original Application No. 09 of 2021(SZ)

IN THE MATTER OF

Tribunal on its own motion

Suo motu based on the News item in
The Indian Express Newspaper Edition
Dt. 20.12.2020, "Shrimp hatcheries along
ECR have no CRZ clearance".

with

1. The Chief Secretary to Govt. of Tamil Nadu,

Govt Secretariat,
Fort St. George,
Chennai, Tamil Nadu- 600009.

2. The Secretary to Govt. of Tamil Nadu,

Department of Environment, Climate Change and Forests,
Govt Secretariat,
Fort St. George,
Chennai, Tamil Nadu- 600009.

3. The Chairman,

Tamil Nadu Pollution Control Board,
NO. 76, Anna Salai, Guindy,
Chennai, Tamil Nadu- 600032

4. The Member Secretary,

Tamil Nadu Coastal Zone Management Authority,
Department of Environment and Forests,
First Floor, Panagal Building,
Saidapet, Chennai- 600015.

5. Member Secretary,

Coastal Aquaculture Authority,
5th Floor, Fanepet, Nandanam,
Chennai- 600 035.

6. The Chief Engineer,

State Ground and Surface Water Resources Data Centre,
Tharamani,
Chennai- 600113.

7. The District Collector,

Chengalpet District,
Collector Office, GST Road,
Chengalpattu- 603 001.

8. The District Collector,

Villupuram District,
Collector Office road,
Moovendar Nagar,



Villuppuram,
Tamil Nadu- 605602

9. The Block Development Officer,

Lathur Panchayat,
Chengalpet District,

Pooja Kumar,

D/o V. Kumar,
Aged about 30,
1-A Annapoorna Apartments,
68, Rukmani Road, Kalakshetra Colony,
Besant Nagar, Chennai-90
(Added as Intervenor as per order dated 02.12.2021)

...Respondent(s)

With

S. Velu

Kanathur Village,
Koovathur Post,
Cheyyurtaluk,
Chengalpattu District- 603305.

...Appellant (s)

Versus

1. The District Collector,

Chengalpet District,
Collector Office, GST Road,
Chengalpattu- 603 001

2. The Block Development Officer,

Kanathur Villge,
Block Panchayat, Lathur,
Pavunjur- 603 302.

3. The Tahsildar,

Kanathur Village,
Cheyyurtaluk, Cheyyur- 603302
Chengalpettu District.

4. The Member Secretary,

Coastal Aquaculture Authoity,
5th Floor, Fanepet, Nandanam,
Chennai- 600 035.

5. The Member Secretary,

Tamil Nadu Pollution Control Board,
NO. 76, Anna Salai, Guindy,
Chennai, Tamil nadu- 600032

6. The Village Adminstrative Officer,

Village Panchayat,
Koovathur Gram Panchayat,
Cheyyur Taluk,
Chengalpattu District.

7. Surej Naik,

No. 107, Kanathur Village,
Cheyyurtaluk,



Chengalpattu District.

8. Manikavel,

No. 107, Kanathur Village,
Cheyyurtaluk,
Chengalpattu District.

...Respondent(s)

O.A. No. 05 of 2021

For Applicant(s):

Suo Motu

For Respondent(s):

Dr. D. Shanmughanathan for R1, R2, R4, R6 to R9

Mr. Sai Sathya Jith for R3

Mr. Pragadish for R5

Mr. A. Yogeshwaran for Intervener

O.A. No. 09 of 2021

For Applicant(s):

None

For Respondent(s):

Dr. D. Shanmughanathan for R1 to R3, R6

Mr. Pragadish for R4

Mr. Sai Sathya Jith for R5

Mr. B. Manoharan for R8

Judgment Reserved on: 12th September, 2022.

Judgment Pronounced on: 29th September, 2022.

CORAM:

HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER

HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

JUDGMENT

Delivered by Smt. Justice Pushpa Sathyanarayana, Judicial Member

1. The Original Application No. 05 of 2021 was suo motu registered by this Tribunal on the basis of the newspaper report published in the Indian Express newspaper, Edition, dated 20.12.2020 under the caption "*Shrimp hatcheries along ECR have no CRZ clearance*" and also the report published in Tamil Hindu newspaper edition dated 21.12.2020, under the caption "*இறால் பண்ணையால் நிலத்தடி நீர் மாசடைவதாக கூறி கானத்தூர் மக்கள் முற்றுக்கை போராட்டம்*" and yet another newspaper called the News Minute, published on 01.01.2021 under the caption "*65 hatcheries in coastal TN don't have CRZ clearance, affect fishermen and marine life*".
2. While admitting the matter, the Tribunal had appointed a Joint Committee to go into the question and submit a factual as well as action taken report after inspecting the areas in question, if there is any

violation. The Committee was further directed to ascertain the number of such illegal shrimp culture or hatcheries that are functioning in the area without getting necessary permission from the authorities, the nature of impact of such activities on soil and ground water and what are all action taken by the authorities against such violators including the imposition of Environmental Compensation for such violations. The Committee was also directed to submit their findings regarding the damage caused to the environment such as ground water as well as soil contamination, the nature of remediation measures to be taken for mitigating the same and the amount required for such restoration.

3. After this Tribunal had registered the issue involved suo motu based on the newspaper reports, O.A. No. 09 of 2021 was filed by the applicant therein, who is a resident of Kanathur Village in chengalpattu District. He has stated that there are more than thousand families in the said village and their only source of income is from agriculture. They are using the ground water for agriculture and drinking purpose and several others nearby villages are also using the ground water for their drinking and other purposes. The applicant has stated that the private respondents are constructing a shrimp farming unit in Sy. Nos. 92 and 93 of Kanathur Village, Cheyyur Taluk occupying an extent of 01 acre which is 100m from the residential area of the villages. Shrimp farming unit is using high chemical foods to the shrimp farms and the waste water is let into channel without treatment. Such illegal activity of the respondent nos. 7 and 8 affects the drinking water and also the agricultural activities of the farmers. The agricultural lands are spoiled by the untreated effluent water let by the hatcheries without treating the same with heavy content of chemicals. The said hatcheries have not taken permission from the Block Development Authority or get consent from the Tamil Nadu Pollution Control Board to run these units.

4. As the ground water is polluted in Kanathur Village, the people in that village are incurring losses in agricultural activities and also facing scarcity for drinking water. Hence the applicant has sought for a direction to the District Collector to stop the illegal construction of shrimp farms by the 7th and 8th respondent and also direct the respondent authorities not to grant any permission for opening or operating shrimp farm units. As the issue involved in both these applications are same, they were clubbed together and taken up for hearing.

5. **The 4th respondent, who is the Tamil Nadu State Coastal Zone Management Authority (TNCZMA)** has filed its reply stating that the Coastal Aquaculture Authority (CAA) has informed that as per the Coastal Aquaculture Act, 2005 all the hatcheries would come under the jurisdiction of CAA. The TNCZMA also has filed its report as part of the Joint Committee. The Joint Committee constituted by this Tribunal had filed a report dated 16.07.2021. This Tribunal also had directed the Joint Committee to inspect the areas in question in O.A. No. 09 of 2021 in the matter of Mr. S. Velu with respect to SY. No. 92 and 93 in Kanathur Village, Chengalpattu District. The Joint Committee included a Senior Officer from Coastal Aquaculture Authority along with District Collectors of Chengalpattu and Villupuram District, Tamil Nadu State Coastal Zone Management Authority, Tamil Nadu Pollution Control Board and Ministry of Environment, Forest and Climate Change. The inspection was conducted on 29.03.2021 and water samples from the shrimp hatcheries were collected by the Tamil Nadu Pollution Control Board to ascertain the quality of the effluent discharged. The Joint Committee in compliance of the order of this Tribunal had given the following findings:

- (a) *All the shrimp hatcheries mentioned in the news item in the Indian Express are located within 2 km of high tide line (HTL). All these hatcheries are fall under the jurisdiction of Coastal Aquaculture Authority (CAA). The CAA regulates all the activity of the hatcheries starting from construction to monitoring their operation. The hatcheries that violate or contravene the provisions of the CAA, 2005 and its rules and regulations are deregistered and closed by the CAA. The submission made by CAA in this regard is enclosed as Annexure I.*
- (b) *These shrimp hatcheries have to be registered with CAA as per the Coastal Aquaculture Authority Act, 2005. The registration has to be renewed once in five years. The hatcheries that are not registered with CAA or which have not renewed the registration are considered as illegal. As shown in Annexure I, which is the submission of the CAA, 13 shrimp hatcheries that operated without permission have already been closed.*
- (c) *It is reported in the news item in the Indian Express that hatcheries are discharging untreated effluents which contain pharmaceutical wastes that were used as medicine to treat infection in the cultured animals. The Committee found that no antibiotics or any other medicines are used to treat the infection of the cultured animals. It was found by the Committee that the hatcheries use natural seawater for three purposes (i) to grow brooder (parent) shrimp that produces millions of eggs, (ii) to grow larvae of the shrimp in different stages, which are microscopic in size and (iii) to culture microscopic algae that are used as feed to certain stages of larvae. Once the larvae reached post-larval stage, which are visible to naked eye but very small in size (less than 10mm), they are fed with another microscopic organism namely, Artemia. Since the brooder, larvae, post larvae and algae are very sensitive to changes in water quality it was informed by the hatchery operators that they could not afford to use any chemicals including antibiotics. Only natural seawater is used for cultural operations, which is treated by hatcheries using a series of filtration system and UV treatment to remove the infectious organisms in the*

natural seawater,

- (d) The seawater thus used for culture operations contains fecal matters excreted by the larvae and also unused feed. To remove these as well as to avoid escaping any other microscopic organism from the hatchery each hatchery has an Effluent Treatment System (ETS), wherein effluents are treated with chlorine and de-chlorinated water is discharged into the sea. The Member from CAA informed that the structure and function of the effluent treatment plant and quality of the effluent are periodically monitored by the CAA. During the field inspection, the Tamil Nadu Pollution Control Board collected treated effluents and analyses of the quality of these effluents are given below (Annexure II). The values of all the parameters analyzed in the effluents are within permissible limit.

| S. No | Parameter | Unit | Analysis report | | Permissible limit |
|-------|---|------|-----------------|------------|-------------------|
| | | | Effluent 1 | Effluent 2 | |
| 1.0 | pH@25 ⁰ C | | 7.68 | 6.88 | 5.5 to 9 |
| 2.0 | Total Suspended Solid@105 ⁰ C | mg/l | 2 | 2 | 100 |
| 3.0 | Total Dissolved Solids@180 ⁰ C | mg/l | 68627 | 34536 | |
| 4.0 | Chloride as Cl | mg/l | 14872 | 12426 | |
| 5.0 | Sulphates as SO ₄ ²⁻ | mg/l | 508 | 519 | 1000 |
| 6.0 | BOD@27 ⁰ C for 3 days | mg/l | 8 | 7 | 100 |
| 7.0 | COD | mg/l | 88 | 64 | 250 |
| g.0 | Total Kjeldhal Nitrogen as N | mg/l | <2 | <2 | 100 |
| 9.0 | Dissolved Phosphate as P ₄ ³⁻ | mg/l | 0.97 | 0.88 | |
| 10.0 | Ammonia Nitrogen as N | mg/l | <2 | <2 | 50 |
| i1.0 | Nitrate as NO ₃ ⁻ | mg/l | 2.09 | 1.52 | |

- (e) The Joint Committee noticed sludge in the ETS and the quantity of sludge produced varies depending on the quantity of shrimp larvae produced. For example, a hatchery with a production capacity of 300 million larvae per year produces about 5 to 7 metric tons of sludge. The sludge contains organic matter produced due to degradation of fecal matter produced by the larvae and dead algal cells, and also sand particles driven from sand filter. Some hatcheries mentioned that the sludge is scrapped and dumped in nearby areas. Some others mentioned that the sludge is removed by mobile sewage removal tanks by private sewage transporters and then disposed in some other place. Thus, no proper mechanism exists with regard to collection and disposal of this sludge. This sludge cannot be used as manure or landfill since it contains salt. Hence, a proper system should be evolved for safe handling and disposal of this sludge.

- (f) The Joint Committee also noticed that solid waste generated in the hatcheries such as packing materials, plastic containers, filters used in desalination systems etc are not properly handled and disposed off. In some of the hatcheries they are sold for recycling but in other hatcheries they are dumped adjacent to the or outside the campus of the hatcheries. Hence, a proper system should be evolved for safe handling and disposal of solid waste generated in shrimp hatcheries.

- (g) All the hatcheries employ permanent staff and also daily wage labourers. The number of staff and wage labourers employed depends on the production capacity of the hatchery. Irrespective of the numbers, sewage generated are stored in septic tanks and disposed periodically by private sewage transporters. The shrimp hatcheries may be mandated to establish a sewage treat plant if the quantity of sewage generated exceeded as per the norms of the Tamil Nadu Pollution Control Board.

- (h) All the shrimp hatcheries are operating without Consent to Establish and also without Consent to Operate from the Tamil Nadu Pollution

Control Board. However, the CAA informed that as per the Coastal Aquaculture Authority Act, 2005 construction of hatcheries and its commissioning require prior permission of the CAA.

- (i) With respect to Original Application 9 of 2021, the Joint Committee found that no shrimp farms are being illegally constructed in Survey No 92 and 93 in Keelarkollai in Kannathur village, Cheyyer taluk, Chengalpattu district. In these plots shrimp hatchery is being constructed as per the permission given by the Coastal Aquaculture Authority.

6. Based on the above findings, the Joint Committee also had given its recommendations which are as follows:

- a. Shrimp hatcheries should maintain records on the quantity of seawater used and quantity of effluent generated along with the quality of the effluents discharged, which should be periodically monitored by the CAA.
- b. Shrimp hatcheries to get permission from the Tamil Nadu Maritime Board to withdraw seawater for the operation of the hatcheries.
- c. Shrimp hatcheries to obtain Consent for Establishment (CFE) and Consent for Operation (CFO) from the State Pollution Control Board. However, the CAA informed that as per the Coastal Aquaculture Authority Act, 2005 construction of hatcheries and its commissioning require prior permission of the CAA.
- d. Shrimp hatcheries to establish sewage treatment plant as per the norms of the Tamil Nadu Pollution Control Board.
- e. Shrimp hatcheries to develop and implement Corporate Social Responsibility (CSR) programme as per the Companies Act 2013 and as per the provisions of the Companies (Corporate Social Responsibility) Rules, 2014.
- f. Coastal Aquaculture Authority to evolve and enforce guidelines for disposal of sludge generated in the treatment plant as well as solid waste generated in the hatcheries.
- g. Coastal Aquaculture Authority and Ground Water Department periodically monitor soil and ground water quality at the point where effluent is discharged.
- h. Coastal Aquaculture Authority to take action against the hatcheries that have not registered/ renewed the registration with CAA in accordance with CAA Rules, 2005.
- i. Coastal Aquaculture Authority to create awareness about the Coastal Aquaculture Authority Act, 2005 and roles and operation of the shrimp hatcheries among public, Panchayat Raj Institutions, District Collectorates and all concerned Departments.

7. **The Coastal Aquaculture Authority (CAA)** had filed its independent report. In the said report, it has been submitted that hatcheries is an indoor facility where marine organisms, namely, fish, Crustaceans, Molluscs, Seaweed and other marine life are bred for natural stock enhancement of the sea or for aquaculture. A hatcheries requires pristine seawater of oceanic quality for the broodstock holding, maturation, larval and juvenile rearing of all marine organisms. Hence, a hatchery is essentially a seafront activity requiring access to oceanic quality seawater as provided in the Guidelines for Regulating Coastal Aquaculture under Rule 3, Chapter 2 of CAA Rules, 2005. The report states that considering the indispensability for the requirement of oceanic

quality seawater and seafront access of a hatchery, the CRZ regulation from the day it came into existence in 1991 till today have consistently treated the hatchery activity as a permitted activity in CRZ and excluded or exempted it from the prohibitions imposed by the CRZ notification. It is stated that the subsequent CRZ, Notification, 2011 also exempted the hatcheries from prohibitions from the CRZ areas. It is stated that the CRZ Notification of 2019 of the MoEF&CC dated 18.01.2019 also exempted the hatcheries from the prohibitions in the CRZ areas and classified hatcheries under the activities regulated or permissible even in the CRZ-IB area.

8. It is stated that the intention of the Government was not to treat coastal aquaculture as a prohibited activity within the meaning of the CRZ notification. But in tandem with the intention and policy of the Government, the Coastal Aquaculture was established under the Coastal Aquaculture Authority Act, 2005 for regulating activities connected with coastal aquaculture in coastal areas and for matters connected therewith or incidental thereto to ensure that coastal aquaculture does not cause any detriment to the coastal environment. The objective of the CAA is to promote sustainable coastal aquaculture development without causing damage to the coastal environment following responsible coastal aquaculture practices and to protect the livelihood of various stakeholders living in the coastal area. According to the CAA, the establishment and operation of hatcheries was always and consistently been excluded/exempted activity from the prohibited activities in the CRZ areas. The hatchery activity was not considered under the CAA Act enacted during 2005. Accordingly, the hatchery activity has been excluded from the purview of the Coastal Aquaculture Act, 2005 by defining coastal aquaculture in such a way to exclude hatcheries from the mandate of the Coastal Aquaculture Authority Act, 2005.
9. As per Sub-Section 1(C) and 1(D) of Section 2 of CAA, Act, 2005, Coastal Aquaculture is defined as "*culturing under controlled conditions in ponds, pens, enclosures or otherwise, in coastal areas, of shrimp, prawn, fish or any other aquatic life in saline or brackish water but does not include fresh water aquaculture*". CAA Act, 2005 itself was enacted by the Parliament to provide for the regulation of farms alone as provided under Section 11 and 13 of CAA Act, 2005 empowering CAA to register and regulate coastal aquaculture farms. To be noted is that all the provisions of the CAA Act, 2005 dealt with aquaculture farms exclusively and

hatchery activity did not find a place in the Act. However, Section 11 of the CAA Act, 2005 provides as under:

"11. Functions of Authority- (i) Subject to any guidelines issued by the Central Government under Section 3, the Authority shall exercise the following powers and perform the following functions, namely:

- (a) To make regulations for the construction and operation of aquaculture farms within the coastal areas;
- (b) To inspect coastal aquaculture farms with a view to ascertaining their environmental impact caused by coastal aquaculture;
- (c) To register coastal aquaculture farms;
- (d) To order removal or demolition of any coastal aquaculture farms which is causing pollution after hearing the occupier of the farm;
- (e) to perform such other functions as may be prescribed.

(2) Where the Authority orders removal or demolition of any coastal aquaculture farm under clause (d) of sub-section (1), the workers of the said farm shall be paid such compensation as may be settled between the workers and the management through an authority consisting of one person only to be appointed by the Authority and such authority may exercise such powers of a District Magistrate for such purpose, as may be prescribed."

10. Section 13 provides for process of registration. Therefore, it is reported by the CAA that hatcheries had not been considered for registration under the purview of Section 13 of the CAA Act, 2005. Instead the Government authorised Marine Products Export Development Authority (MPEDA) to register all shrimp hatcheries vide Sub-Para 7.1 of the Guidelines for regulating coastal aquaculture issued as Annexure-I under Rule 3 of CAA Rules, 2005 as the hatchery is already a permissible activity in the CRZ Notification, 1991. Therefore, the CAA submitted that the hatchery was not under its purview except for the power to review the registration of hatcheries. MPEDA was the agency empowered by the CAA guidelines for registration the hatcheries since 2005 till 2015. The CAA Rules, 2005 provides for registration of all shrimp hatcheries by the MPEDA. Hence, it was submitted by the CAA that Section 27 of Coastal Aquaculture Authority Act, 2005 excluded the coastal aquaculture from the prohibitions of CRZ notification issued from time to time.

11. With the clear exemption of the coastal aquaculture from the prohibitions imposed under the CRZ Notifications as provided under Section 27 of CAA Act, 2005, the coastal aquaculture and hatcheries have been exempted from the regulated purview of Coastal Zone Management Authorities and thus the coastal aquaculture and hatcheries do not come under the purview of Pollution Control Board of the State Governments. This has been confirmed with the fact that no hatcheries is issued with consent to establish or consent to operate by Coastal Zone Management

Authority or Pollution Control Board of the State Governments. Instead the CZMA have reiterated that the coastal aquaculture and hatcheries do not come under their purview.

12. In the meanwhile in O.A. No. 05 of 2021 an intervening application was filed. It was submitted on behalf of the intervenor that:

- The Para-2 of the CRZ Notification, 1991 contain the list of activities that were prohibited in CRZ area and Para-3 of the Notification in Sub-Para-1 made it clear that clearance under the notification would be given only to activities that require water front or foreshore facilities. Any permitted activity in CRZ area require clearance from the authorities specified in the notification and the notification *per se* did not exempt any activity from the ambit of the notification.
- It was pointed out that in **(1997) 2 SCC 87, S. Jagannath Vs. Union of India**, the Hon'ble Supreme Court had held had the shrimp culture industry/the shrimp ponds are covered by the prohibition contained in Para- 2(1) of CRZ Notification. No shrimp culture pond can be constructed or set up within the coastal regulation zone as defined in the CRZ notification.
- It is contended that only in order to nullify the above Judgment, Section 27 was inserted in the CAA Act, 2005 stating that "nothing contained in this paragraph shall apply to coastal aquaculture". The contention of the internvor is that the Para 2 of the notification contains the list of activities prohibited in CRZ areas and the Hon'ble Supreme Court held that shrimp culture industry was prohibited under Para 2(1) of the CRZ Notification, 1991. But by introducing the above clause in Section 27 coastal aquaculture was no longer a prohibited activity but a permitted activity. Nevertheless all permitted activities require prior clearance.

Discussions:

13. In the instant case, hatcheries have been established in the CRZ area without prior clearance which has also been categorically found by the Joint Committee. Further, the release of effluents from the aquaculture operations into the sea is also a prohibited activity under Para-8(4)(a) of the 2011 Notification. Therefore, it is contended that CAA Act, 2005 does not exempt hatcheries from the ambit of the CRZ Notifications. As long as the CRZ notifications govern the CRZ areas, all permissible activities have to take prior clearance. Similarly, consent to establish and consent to operate from the Pollution Control Board under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 is also mandatory, and CAA Act, 2005 cannot nullify the above mandates under these Acts.

As compliance of CAA Act, 2005 is also one of the requirements that coastal aquacultures have to abide by and the CAA cannot contend that the hatcheries do not require CRZ clearance or consent from the Pollution Control Board and such contention is contrary to law and it is unsustainable.

14. Sub-Section (8) of Section 13 of CAA Act, 2005 prescribes the following:

"13(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:

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."

15. The reading of the above provision clearly indicates that Section 13(8) of the CAA Act, 2005 prohibits the setting up of aquaculture facilities within 200m from the 'High Tide Line' which is harmonious within the provisions in the CRZ notification which categorically declared a 200m "No Development Zone" in CRZ-III area. Even otherwise, any development beyond the 200m setback requires clearance by CAA and also under CRZ notification.

16. At this juncture, it was pointed out that there was an order passed by CAA in F. NO. 56-3/2020- Tech dated 05.03.2021 exempting hatcheries from the provisions of Section 13(8)(a) of CAA Act, 2005. However, it is stated that the said order is stayed by the Division Bench of Madurai Bench of Hon'ble High Court of Madras in W.P. No. 8806 of 2021 on 07.04.2021 and the Writ Petition is pending final adjudication. In view of the above, as on date, hatcheries cannot be allowed to be located within 200m from the HTL or in CRZ-I areas. Beyond 200m in CRZ-III areas hatcheries may be located with prior permission. Hence any hatcheries within 200m of HTL which is "No Development Zone" or in CRZ-I areas would be illegal and to be demolished immediately.

17. No doubt, CRZ notification consistently exempted hatcheries on the coastal zone deeming it to be a permitted activity, but it is mandatory to get prior permission from Coastal Zone Management Authority (CZMA) and get clearance for coastal aquaculture hatcheries.
18. The requirement of sea front for hatchery is discussed in detail in **S. Jagannath Vs. Union of India, (1997) 2 SCC 87**. The relevant Para is usefully extracted below:

"23.It is, thus, clear that the part of the shore which remains covered with water at the High Tide and gets uncovered and become visible at the Low Tide is called "foreshore". It is not possible to set no a shrimp culture farm in the said area because it would completely sub-merge in water at the High Tide. It is, therefore, obvious that foreshore facilities are neither directly nor indirectly needed in the setting up of a shrimp farm. So far as "water front" is concerned it is no doubt correct that shrimp farm may have some relation to the water front in the sense that the farm is dependent on brackish water which can be drawn from the sea. But on a close scrutiny, we are of the view that shrimp culture farming has no relation or connection with the `water front' though it has relation with brakish water which is available from various water-bodies including sea. What is required is the "brakish water" and not the `water front'. The material on record shows that the shrimp ponds constructed by the farms draw water from the sea by pipes, <??> etc. It is not the `water front' which is needed by the industry, what is required is the brakishwater which can be drawn from any source including sea and carried to any distance by pipes etc. The purpose of CRZ notification is to protect the ecological fragile coastal areas and to safe guard the aesthetic qualities and uses of the sea coast. The setting up of modern shrimp aquaculture farms right on the sea coast and construction of ponds an other infrastructure thereon is per se hazardous and is bound to degrade the marine ecology, coastal environment and the aesthetic uses of the sea coast. We have, therefore, no hesitation in holding that the shrimp culture industry is neither "directly related to water front" nor "directly needing foreshore facilities". The setting up of shrimp culture farms within the prohibited areas under the CRZ notification cannot be permitted."

19. It would be appropriate to advert to Section 2(1)(d) of CAA Act, 2005 which defines "Coastal area"

"2(1)(d) "coastal area" means the area declared as the Coastal Regulation Zone, for the time being, in 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 includes such other area as the Central Government may, by notification in the Official Gazette, specify;"

20. The above definition and the judgment of the Hon'ble Supreme Court make it amply clear that hatcheries do not require sea front but need sea water only. Besides when the hatcheries cannot be located within 200m of Inter Tidal Line sea-front is not possible at all. In view of the discussions, the report of the CAA that Section 27 of the CAA Act, 2005 excluded the aquaculture from the prohibitions of CRZ Notification issued from time to time in areas beyond 200m from HTL and imposed a

prohibition of aquaculture within 200m from the HTL is unacceptable. The report of the CAA contended that the provisions of CAA Act, 2005 within the "No Development Zone" of 200m from the HTL as provided under Sub-Section 8 of Section 13 of CAA Act, 2005 does not apply to hatcheries as the same has not been covered under the definition of coastal aquaculture as provided under Sub-Section 1(c) of Section 2 of CAA Act, 2005 is also not sustainable. Finally, the report of the CAA contending that with clear exemption of coastal aquaculture from the prohibition imposed under CRZ Notifications as provided under Section 27 of the CAA Act, 2005, the coastal aquaculture and hatcheries have been exempted from the regulatory purview of Coastal Zone Management Authorities and thus the coastal aquaculture hatcheries do not come under the purview of Pollution Control Board of State Governments is also not sustainable.

21. In this regard, it would be appropriate to advert to the decision of Special Bench of this Tribunal in **O.A. No. 82 of 2016(SZ)** wherein it has clarified the directions in the Judgment of the Hon'ble Supreme Court in S. Jagannath referred supra in one hand and CAA Act, 2005 and CRZ Notifications and other laws on the other hand. After adverting to the directions issued by the Hon'ble Supreme Court, *qua* the directions to the Central Government to constitute a regulatory authority and confer powers on it to take regulatory measures. The Special Bench had observed that CAA Act, 2005 was enacted and notified on 23.06.2005 based on the above directions by the Hon'ble Apex Court. The Act provides for constitution of authority and regulation of coastal aquaculture activities by requiring compulsory registration, making any activity without registration a punishable offence. Even as per Section 13, it is found that Sub-Section 8 of Section 13 prohibits aquaculture within 200m from High Tide Line (HTL) and in creeks, rivers and backwaters within the CRZ area. However, pre-existing activities on the appointing 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. Further it was held that 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. The Special Bench had categorically held that CAA is not an exhaustive law and does not include

other statutes on the subject as air pollution and water pollutions are governed by the respective Acts. Assessment of impact on coastal areas is governed by CRZ Notifications. CAA Act, 2005 also provides for prohibiting such activities without registration to the extent permissible. Thus, no unregistered activity can continue. Even permitted activities, apart from registration, require compliance of environmental norms under other statutes. Thus holding the Special Bench had issued directions which reads as follows:

"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 14 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.

22. The above direction to the CAA, Chennai was given by the Special Bench (SZ) on 26.05.2022. The CAA had filed its report in August, 2021. Nevertheless, the CAA has not filed any additional report in line with the above directions. It's also not reported whether any appeal has been preferred against the above order. In the independent report filed by CAA the list and status of hatcheries registered and regulated by CAA in the Districts of Chengalpattu, Viluppuram, Nagapattinam and Cuddalore, Tamil Nadu is furnished. A few of the industries have got their registration valid up to March, 2025, March, 2024 and March, 2023 and few of industries registration validity is over long back. This report has been filed by the Member Secretary, CAA on 17.03.2021. It is not known whether registration has been renewed subsequently.

23. Regarding the action taken by the CAA on the violations of the hatcheries, it is submitted that, through regular monitoring and taking punitive action on hatcheries that violate or contravene the provisions of CAA Act, 2005, the environmental pollution is either minimised or eliminated. The monitoring and enforcement by CAA is also tabulated from the year 2010 to 2021 and the action taken against the violators are mentioned. However, there is no particular mention to the 7th and 8th respondent in O.A No. 09 of 2021. CAA also claimed to have inspected the unregistered hatcheries located along the coast of Chengalpattu and Viluppuram Districts of Tamil Nadu and their closure by the Committee. The hatcheries which did not have registration of CAA have been inspected, the stock found in one hatchery was destroyed and the facilities have been ordered to cease their operations until further orders.

24. The above action taken by the CAA is with a view that the hatcheries have always been excluded and exempted from the prohibition of CRZ notifications and that prohibition of the CAA Act, 2005 within the "No Development Zone" of 200m from HTL as provided under Section 13(8) of CAA Act, 2005, therefore, the said report is not acceptable fully.

25. The Learned Counsel appearing for the intervenor has listed out about 65 of the coastal aquaculture hatcheries in two districts, namely, Chengalpattu and Villupuram. Whether the same is also exhaustive is not known. Therefore the following directions are issued to the authorities:

- (1) The CAA should undertake a detailed survey of all aquaculture hatcheries along the coast line of Tamil Nadu and Puducherry and ensure compliance of CRZ Notification, 2011 and other applicable Acts including CAA Act, 2005, the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974.
- (2) All the aquaculture (Shrimp hatcheries) farms which are operating in the CRZ area as defined under the CRZ Notification, 2011 and 2019 should obtain CRZ Clearance from CZMA apart from obtaining the registration under the CAA Act, 2005.
- (3) Those hatcheries which are operating within the prohibited zone should be removed by the CAA and initiate prosecution and also assess the compensation for the past violations applying the

“Polluter Pays” Principle following due process of law. The compensation may be used for restoration of the environment.

- (4) The Tamil Nadu Pollution Control Board is also directed to enforce the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 or any other applicable provisions for all these hatcheries including those which survive the CRZ regulations and take appropriate action against them for any violations.
- (5) As already a Monitoring Committee has been constituted by the Special Bench in the case of **A. Paramasivan Vs. TNPCB, Chennai and Ors. O.A. No. 82 of 2016(SZ)**, the same should continue to monitor the coastal aquaculture activities operating in violations of any of the statues or regulations and clear the hatcheries which are in violation immediately.
- (6) If the aquaculture activities are not coming under the purview of the State Pollution Control Board, steps may be taken to issue appropriate guidelines or directions to regulate these hatcheries and bring them under the purview of the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974.
- (7) The authorities are directed to ensure that there is no discharges of any chemical effluent in the ‘Inter Tidal Zone’ affecting the health of inter tidal life and also polluting the shore waters.
- (8) The small scale fisheries may be separately identified and appropriate compensation be awarded. Finally, there should be a proper regulatory check over these hatcheries units and only those which are legally permissible with valid permission should be allowed to set up and operate.

26. With the above directions, the Original Applications are disposed of.

.....J.M.
(Smt. Justice Pushpa Sathyanarayana)

.....E.M.
(Dr. Satyagopal Korlapati)
Internet – Yes/No
All India NGT Reporter – Yes/No

O.A. No. 05/2021(SZ)&
O.A. No. 09/2021(SZ)
29th September, 2022. (AM)

**Before the National Green
Tribunal
Southern Zone (Chennai)**

**O.A. No. 05 of 2021
&
O.A. No. 09 of 2021**

Tribunal on its own motion

Vs.

The Chief Secretary to Govt of Tamil
Nadu and Ors.



O.A. No. 05/2021(SZ)
&
O.A. No. 09/2021(SZ)

29th September, 2022. (AM)