

Item No. 15

Court No. 2

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 185/2023

Chandan Sharma

Applicant

Versus

State of Rajasthan

Respondent

Date of hearing: 24.05.2023

**CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Application is registered based on a complaint received by post/e-mail

ORDER

1. This original application under Section 14 and 15 of National Green Tribunal Act, 2010 (hereinafter referred to as 'NGT Act, 2010') has been registered on a letter petition dated 30.11.2022 sent by Chandan Sharma r/o AD 6A, Devi Marg, Bani Park, Jaipur, Rajasthan.

2. The grievance is that in village Chandlai, Tehsi Chaksu there is a pond in which a Fisheries Contractor is breeding and maintaining prohibited category of exotic catfish i.e. Thai Magur which is dangerous for the aquatic ecology as it damages very seriously the entire aquatic ecology in the water area where it is allowed to breed or maintain. The Contractor is also causing pollution to the pond water by leaving dead fishes on the bank of the pond and is also using banned fish net (Chetti)

which is prohibited under the provisions of Rajasthan Fisheries Act, 1953.

3. The issue with regard to exotic cat fish was considered by this Tribunal in O.A. no. 435/2018, *Hussain Khan v. Fisheries Department & Ors.*, connected with O.A. Nos. 466/2018, *Chand Pasha v. Tahsildar, Haskote Taluka & Ors.*, 494/2018, *Mohammed Nazim v. The Chief Executive Officer & Ors.* and 381/2018, *Sandip Ankush Jadhav v. UOI & Ors.* In the order dated 22.01.2019, Tribunal referred to a letter dated 19.12.1997, issued by Fisheries Development Commission of Ministry of Agriculture, Department of Agriculture and Cooperation, Govt. of India constituting National Committee to oversee regulatory introduction of exotic fishes in India water and its recommendations read as under:-

“The Ministry of Agriculture should write to all the States/UTs to take immediate steps to destroy the existing stock of exotic magur and big head which have been introduced into the country without official sanctions. All hatcheries may be identified and destroyed by the concerned States. It was stressed that exotic magur (Clarias gariepinus) should not establish in the natural environment and cross with the endemic species (Clarias batrachus). A strict controlling measure should also be adopted to avoid spread of exotic disease(s) from (Clarias gariepinus) to the endemic fishes.”

4. Later on Ministry of Agriculture, Department of Animal Husbandry and Dairying (Fisheries Division), on 29.06.2000, passed another order after collecting factual information based on scientific evidence furnished by Fishery Research Institute of Indian Council Agriculture Research. Relevant extract of the order reads as under:-

“(i) that Clarias gariepinus is an exotic fish and in line with the prescribed procedures for introduction of any exotic plant or animal every care is to be exercised with regard to effect of the new species on the flora, fauna and the ecological environment of the country where it is being introduced. The fact that the species is grown in African and European countries does not mean that they could be introduced into Indian waters unmindful of its impact within this country. There is no evidence to show that exotic magur found its way through rivers from neighbouring countries. It is evident that the

species has been introduced in an unauthorized and clandestine manner and not through natural sources,

- (ii) that Indian species of cat fish (Clarias batrachus) are much less predacious as compared to the exotic magur. Carnivorous feeding habit of any organism which means subsisting or feeding on animal tissue are considered for introduction based on its economical and ecological importance. The predatory habit of the cat fish species under consideration can lead to drastic changes in the eco system in the long run and can cause economic losses. Exotic magur feeds on fish when available, and can switch over to other diets like crustacean and molluses. While the native carnivorous species would not affect the ecological balance in the natural water bodies which have been established over a very long time period (thousands of year) the same cannot be presumed of the exotic magur. Further, farmers in UP have experienced problems in culturing exotic magur with carps due to its carnivorous nature since it is inimical to carps in a mixed culture and also competes for the food available. Instances of cannibalism is also reported in pond culture. Although there is no natural hybridization with the local cat fish at present the possibility cannot be over-ruled.*
- (iii) That though many exotic species do not breed naturally, it is observed that exotic magur has been naturally reproducing in ponds (in UP) and has been potential to cause ecological damage. Experiments have already been taken up in Central Institute of Freshwater Aquaculture to evaluate the exotic magur and indigenous cat fish along with their hybridization. Though it has not been found to carry any exotic disease as yet, the possibility of the exotic magur to be carriers of any exotic disease cannot be ruled out. Since husbandry practices are very rare, the changes of epidemics is quite high,*
- (iv) That a decision on introduction of any exotic species into the culture system cannot be taken in isolation based on factors such high yielding capacity or its market value alone. Other ecosystem has to be paid due attention to. Indiscriminate stocking of exotic magur in ponds has been observed to adversely affect the catla production. Though exotic magur grows faster, it has been a poor survival rate. Further, introduction of any exotic species requires the approval of the National Committee on Exotic Species set up for this purpose and the applicants should have applied to this Committee for introduction of any exotic species including exotic magur along with the recommendations of the concerned State Government.”*

5. After referring to above orders, Tribunal disposed of the matters issuing certain directions. Relevant extract of the order dated 22.01.2019 is reproduced as under:-

“5. In sum and substance breeding of exotic magur (Cat fish) was not allowed without the approval of National Committee on Exotic Fishes and also the State Government concerned because of its potential to cause ecological damage in our country.

6. The case of the applicants is that they are breeding Indian Cat fish which is not a banned fish and therefore, they should be allowed to rear them in their ponds. Applicants have also submitted that the Respondents are under a mistaken belief that the cat fish being reared by them are *Clarias gariepinus*. They have submitted that Thai cat fish and Indian cat fish are the same species of fish i.e. *Clarias batrachus* and the Respondents have wrongly labelled Thai cat fish i.e. *Clarias batrachus* as African cat fish. The applicants have, therefore, requested the Tribunal to issue appropriate direction or orders refraining Respondents from taking any coercive action against rearing, cultivation, storage and transportation of Thai Cat fish.

7. The Respondent States have submitted that the applicants are breeding banned fish i.e. *Clarias gariepinus* under the fake shadow of Indian catfish i.e. *Clarias batrachus* which has been confirmed by the test report of NBFGR (a unit of ICAR). The Counsel appearing for the State of Uttar Pradesh has categorically stated that the fish being cultured in the ponds of Hawal Madopur, Dist. Hapur is absolutely banned fish i.e. *Clarias gariepinus*. A similar submission has also been made for the Ld. Counsels appearing for the State of Karnataka, Andhra Pradesh and Telangana.

8. There is no dispute whatsoever, that the breeding of Indian catfish i.e. *Clarias batrachus* is allowed in our country and breeding of exotic catfish i.e. *Clarias gariepinus* (Thai Magur) and its hybrids is banned in all the States and the Union Territories. In the facts and circumstances, we direct as follows:-

- (1) The breeding and culturing of exotic cat fish or its hybrids (Thai Magur etc.) i.e. *Clarias gariepinus* is prohibited in all the States and the Union Territories. The existing stock will be destroyed forthwith. For this purpose concerned District Collectors/ District Commissioners will take necessary action by forming inspection teams of officials of the fisheries Department for inspection of fish ponds and proper identification of prohibited *Clarias gariepinus* i.e. Thai Magur which are being reared and to destroy such stocks forthwith.
- (2) All the cat fish breeders shall be required to source their fish from State Fisheries Department or from the agencies which are authorized by the Department for this purpose.
- (3) Compliance report of this order shall be filed by the Directors of Fisheries Department of all the States and Union Territories within a period of one month.

9. With these aforesaid directions Original Application Nos. 381/2018, 435/2018, 466/2018 and 494/2018 are disposed of and the Miscellaneous Application Nos. 867/2018, 1234/2018,

1501/2018, 1149/2018, 1105/2018 & 1500/2018 in consequence thereof, shall also stand disposed of, with no order as to cost.”

6. Thereafter, it appears that Assistant Commissioner, Fisheries Department, Hadapsar, Pune issued orders to certain individuals directing them to destroy stock of Magur Fish (*Clarius gariepinus*). This direction was challenged before this Tribunal in I.A. No. 472/2019 in OA No. 652/2019. Tribunal referred to its earlier order dated 22.01.2019, held that illegal activities of storing and breeding of *Clarius gariepinus* (Thai Mangur Fish) cannot be allowed to continue, rejected the I.A. Relevant extracts of the order dated 13.08.2019 is reproduced below:-

“2. It is undisputed that vide order dated 22.01.2019, this Tribunal dealt with subject of breeding of exotic cat fish prohibited by the Ministry of Agriculture, Fisheries Development Commissions vide orders dated 19.12.1997 and 29.06.2000. Tribunal accordingly held that:-

*“There is no dispute whatsoever, that the breeding of Indian catfish i.e. *Clarias batrachus* is allowed in our country and breeding of exotic catfish i.e. *Clarias gariepinus* (Thai Magur) and its hybrids is banned in all the States and the Union Territories. In the facts and circumstances, we direct as follows:-*

*(1) The breeding and culturing of exotic cat fish or its hybrids (Thai Magur etc.) i.e. *Clarias gariepinus* is prohibited in all the States and the Union Territories. The existing stock will be destroyed forthwith. For this purpose concerned District Collectors/ District Commissioners will take necessary action by forming inspection teams of officials of the fisheries Department for inspection of fish ponds and proper identification of prohibited *Clarias gariepinus* i.e. Thai Magur which are being reared and to destroy such stocks forthwith.*

(2) All the cat fish breeders shall be required to source their fish from State Fisheries Department or from the agencies which are authorized by the Department for this purpose.

(3) Compliance report of this order shall be filed by the Directors of Fisheries Department of all the States and Union Territories within a period of one month.”

3. Learned counsel for the applicants submitted that the applicants were not having the stock of prohibited cat fish but was breeding Indian cat fish *Clarias batrachus*. We are unable to accept the submission. The impugned order clearly finds that the applicants

were found storing and breeding the Clarias Gariepinus (Thai Mangur). Both are different categories as held by this Tribunal.

4. The applicants have not placed any material on record to dispute the finding beyond simple self-serving denial. Their representation also does not contain any material to support the argument that the fish which was being bred were Indian fish and not Thai Mangur fish which are prohibited.

5. We may further note that an application under Section 15 can be filed only by a victim of pollution. The applicants cannot maintain such an application against closure of illegal activity in compliance with the orders of this Tribunal.”

7. With regard to banned fish net (Chetti), we find that prohibited activities cannot be allowed by a private person or by any individuals. The officials of Fisheries Department are bound to enforce law without any hesitation and without wasting any further time on the matter.

8. In view of the above discussion, we dispose this application, directing concerned officials of Fishery Department to look into this matter and if banned categories of fishes are being cultured or developed in the concerned pond by the Fisheries Contractor, and it also using prohibited fish net, appropriate action in accordance with law for preventing such activity shall be taken within one month.

With the above direction, the application is disposed of.

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

May 24, 2023
Original Application No. 185/2023
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