Bangladesh Environmental Lawyers Association (BELA) Vs. Bangladesh
WP No. 57 of 2010, D-/01-02-2012
(Regulating Saline Water Shrimp Cultivation)
Mr. Justice A.H.M. Shamsuddin Choudhury and Mr. Justice Jahangir Hossain

A.H.M. Shamsuddin Choudhury, J.: The Rule under adjudication, issued on 10.01.2010, was in following terms:

> "Let a Rule Nisi be issued calling upon the respondents to show cause as to why the saline water industrial shrimp cultivation in the agricultural and forest lands, being violative of the provisions of the applicable laws and the constitutional/fundamental rights of the people of the coastal districts as guaranteed under Articles 31, 32, 40 and 42 of the Constitution, shall not be declared unlawful, against national and public interest and why they shall not be directed to stop saline water industrial shrimp cultivation in agricultural, forest lands and public water bodies of the coastal districts (Annexure-A) and subject all shrimp cultivation projects to stringent environmental tests and the requirements of environmental clearance as mandated under the Environment Conservation Act, 1995 and/or such other or further order or orders passed as to this Court may seem fit and proper."

Averments figured by the petitioners are, briefly, summarised below:

The petitioner No. 1 is Bangladesh Environmental Lawyers Association (BELA), petitioner No. 2 Nijera Kori, is yet another NGO represented by its Coordinator Ms. Khushi Kabir. Both the petitioners are registered under the Societies Registration Act, 1860.

The petitioners are aggrieved by the facts that despite their own negative findings, the respondents are not taking measures as required by laws and policies to regulate the unsustainable, commercial shrimp cultivation in saline water in the coastal areas and, as such, are failing to protect the agricultural lands, forests, waterbodies, biodiversity and food security of the people of the said areas from the adverse effects of such shrimp cultivation.

Sub-sector of fishery, shrimp aquaculture as an industry started its journey in Bangladesh in early 80s and reached its boom during the last few decades. While saline water shrimp cultivation (Bagda) is limited to the coastal areas of the country, the cultivation of sweet water shrimp (Galda) is also expanding fast and is spreading beyond the coastal areas. Apart from the three hill districts in Chittagong, sweet water shrimp cultivation is being carried out in the rest of 61 districts since 2005.

The commercial shrimp aquaculture started getting institutionalized in Bangladesh when the Asian Development Bank under its Aquaculture Development Project (1982-1988) released funds for such shrimp cultivation in the then dense forest area of the Chokoria, Sunderbans. Records suggests that out of the total of 21,020.45 acres of forest land in the Chokoria district of Cox's Bazar, 18,500 acres of land was declared Reserved Forest while 2520.45 acres were declared Protected Forest in 1903. This aquaculture project

required cutting down of the natural forest which is admitted in the project completion report of the ADB, (1993) which states the disappearance of 800 hectors of mangrove forest in Chokoria, Sunderbans. The fact, however, is that a total of the 21,020.45 acres of the mangrove forest of Chokoria has been completely wiped of with no initiative from the government to regenerate the same. With that, has also disappeared the unique biodiversity and the rich wildlife resources that the natural forest retrained.

The Fourth Fisheries Project (1996-2006), of the government also recommended the coastal zones of the southeastern districts as suitable for shrimp cultivation. Based on such assessment, the government promoted saline water shrimp cultivation in the vast agricultural and forest area of the coastal districts of southeast and southwest. The petitioners are aggrieved by the fact that such decision of the government was arrived at having in mind only short-term economic return from export, and without any objective assessment of social and ecological consequences.

The major part of saline water commercial shrimp cultivation takes place in Khulna, Bagherhat and Satkhira districts of the southwest and Cox's Bazar district in the southeast. Despite protests at the local level, the industrial cultivation of saline water shrimp kept expanding progressively extending more agricultural lands. As such, while industrial shrimp cultivation was confined to a land area of 20 thousand hectors in the year 1979-80, the amount of land under industrial shrimp cultivation rose to 217,000 hectors in the fiscal year 2006-2007. Of this, saline water shrimp is being cultivated in about 1.72 lakh hectors of land (proposed National Shrimp Policy, 2009) which is about 17% of the total cultivable land of the country (source Dr. Md. Jahangir Alam, BFRI, 2008). In course of time and with inconsiderate policy support of the government, cultivation of industrial shrimp also expanded to the central coastal district of Noakhali and Cox's Bazar, including the mangrove forest areas of Sonadia and the 11,000 acres of the newly emerged char lands in Noakhali. Resultantly, while in the year 1988-1989, the amount of shrimp produced was 18,235 metric tone, in the year 2006-2007 production went upto 86,840 metric tons, all at the cost of traditional agriculture, natural resource base, water courses and overall environment and ecology.

Although in the coastal districts of the country, there was always a tradition of rice/shrimp rotating, with rice grown during part of the year and shrimp and other fish species cultured for the rest of the year, such traditional shrimp cultivation reportedly had no adverse impact on environment and ecology of such traditional mode of shrimp cultivation. They were usually of small scale, used low inputs and relied on natural tidal action of water exchange. Chemicals, antibiotics and processed feeds were not used in the traditional method and the cultivation method was natural. The harvest, though small, was sustainable over longer periods. Basic characteristics of such method of shrimp cultivation kept impounded an areas ranging from 2-200 hectore in size, alternating cultivation of paddy crop with shrimp/fish (inter monsoon), periodic harvesting during full and new moon periods and salinity variations according to rainfall.

When previously there used to be.traditional fishing (not cultivation) with natural species of fish including prawns during tidal inundation at slack agricultural seasons, currently

the practice is of cultivation occupying huge areas of cultivable lands. The department of fisheries claims that Bangladesh produces 5% of the world's commercial shrimp.

Admittedly the adverse impacts of such modern saline water shrimp cultivation includes, amongst others, shrinkages of agricultural lands (that has raised an alarming level in the south-western region), increase in salinity level of soil resulting in less soil fertility, contamination of drinking water resources, loss of biodiversity, livestock and other sources of traditional livelihood for the poor people and so on.

While agricultural economists have claimed that saline water shrimp cultivation is causing loss of worth $150 million per year, the Soil Resource Development Institute (SRDI), (2000) has observed that about 64% of the cultivable land in Satkhira is saline infested, while about 69% land in Khulna and 61% land in Bagerhat cannot be cultivated due to salinity intrusion.

Followed by serve tensions in the locality over availability of cultivable lands, food and potable water, an initial assessment done by the Department of Environment (2008) observed as follows:

> "খুলনা, সাতক্ষীরা ও বাগেরহাটের চিংড়িচাষ অধ্যুষিত এলাকা অধিকাংশই ছিল আবাদযোগ্য কৃষিজমি এবং ভূমি মালিক অধিকাংশই কৃষিপেশায় নিয়োজিত। মৎস্যঘের তথা চিংড়িচাষের ক্ষেত্রে অধিকাংশ ভূমি মালিকের মতামত ব্যতিরেকে কিংবা অনেকক্ষেত্রে স্বতঃস্ফূর্ত ইচ্ছার বিরুদ্ধে মুষ্টিমেয় কিছু ঘের ব্যবসায়ীর নেতৃত্বে এতদঅঞ্চলের মৎস্যঘেরসমূহ পরিচালিত হচ্ছে যা এলাকার ভুক্তভোগী জনগণের প্রতিক্রিয়ায় ব্যক্ত হয়েছে। অপরিকল্পিত উপায়ে চিংড়িচাষের ফলে বিগত ২০-৩০ বছরে এ অঞ্চলের মানুষের জীবন-জীবিকা, কৃষি, পশুপালন, জীববৈচিত্র্য, সর্বোপরি প্রাকৃতিক ভারসাম্যের ক্ষেত্রে নেতিবাচক প্রভাব সৃষ্টি হয়েছে বলে এলাকাবাসীর ধারনা।"

The said assessment of the Department of Environment further included the following important findings on loss of cultivable lands, biodiversity and livestock in the Khulna district.

> " খুলনা জেলা
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> - প্রতি বছর ১-১৫ হাজার হেক্টর কৃষিজমি চাষের আওতা থেকে কমে যাচ্ছে
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> - হেক্টর প্রতি উৎপাদনশীলতা ১৫-২০ টন ব্যাহত হচ্ছে
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> - আম, জাম, কাঁঠাল, লিচু, তাল, খেজুর, নারিকেল, সুপারিসহ অন্যান্য ফল জাতীয় গাছ লবণাক্ততার কারণে ক্ষতিগ্রস্ত হচ্ছে এবং ব্যাপকভাবে হ্রাস পাচ্ছে।"

The Agriculture Division of the Ministry of Agriculture in its letter dated 26 August, 2009 observed as follows:

> "লবণ পানিতে চিংড়ি চাষের ফলে যে ক্ষতি দেখা দিয়েছে তা নিম্নরূপঃ
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> ১। গবাদি পশুর গোচারণ ভূমি বিনষ্টের ফলে এলাকার গবাদি পশুর সংখ্যা মারাত্মকভাবে হ্রাস পেয়েছে, ফলে দুধ ও অন্যান্য প্রাণীজাত পুষ্টির অভাব অত্যন্ত প্রকট হয়েছে
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> ২। ঘেরের পানি জমিতে জমে থাকার কারণে রোপা আমন ধান চাষ খুবই বিলম্ব হয়, ফলে উৎপাদন অত্যন্ত কম হয়
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> ৩। এলাকার পুকুর জলাশয়ের পানি লবণাক্ত হওয়ায় পানীয় জলের প্রাপ্যতা কমে গেছে

৪। লবণাক্ত পানির প্রভাবে বসতবাড়ীর সাধারণ ফলজ, বনজ ও শাকসবজী বিনষ্ট হয়েছে

৫। লবণ পানির জন্য মাটি কৃষি কাজে ব্যবহারের সুযোগ সীমিত হওয়ায় শস্যে নিবিড়তা বৃদ্ধি বহুমুখীকরণ ইত্যাদি অসম্ভব হয়ে পড়েছে

সুতরাং এ সত্য সন্দেহাতীতভাবে প্রমাণিত হয়েছে যে, লবণ পানিতে চিংড়ি চাষ পরিবেশ তথা অত্র এলাকার জন্য মানুষের জীবন ও জীবিকার প্রশ্নে আর্শিবাদ তো নয়ই বরং অভিশাপ।"

According to the Food and Agricultural Organization (FAO) of the United Nations, the catch of 100 fries of bagda results in spoiling of 5,000 other species. Other studies suggest that while collecting shrimp fries, only 2% of the catch is utilized. If the claim of the government regarding the collectors of shrimp fries is accepted, then about 432,000 people are engaged in collection of shrimp fries leaving behind a horrifying picture of destruction of the aquatic resources.

Further studies/investigative reports of researchers and journalist show that saline water intrusion in the coastal districts has resulted in changes in the limits of water. To meet the demand of the shrimp cultivators for flowing saline water, about 15 khals (source of sweet water) now stand closed. Such changes in the water flow has severely threatened the popular fish stock of কৈ, মাগুর, শিং, শোল, টাকি, রয়না, বেলে whereas the fish species of নুন্দিবেলে has completely disappeared. The logical conclusion of such facts is that protein supply for the coastal people has decreased.

In addition to the above stated admitted negative ecological and environmental effects, the cultivation of commercial and saline water shrimp has also led to severe consequences in social and law and order situation of respective areas. The conflicts about control over and access to lands, abuse of women and children, forced intrusion saline water, have resulted in ever deteriorating law and order situation in the coastal areas under shrimp cultivation. It is widely believed that the killing of Gobinda Dutta, village Dohuri Bhaina, Dumuria Upazila, Khulna (died on 22nd July, 1988); Karunamoi Sadar, village Bigordana, Paikgachha Upazilla, Khulna (died on 7th November, 1990); Zaber Sheikh, village Korerdon, Batiaghata Upazilla, Khulna (died on 21st September, 1994), Mowla Box, village Mothbati, Upazilla Paikgacha, Khulna (died in 1989) Zaheda Begum, village Baburabad, Upazilla Debhata, Satkharia (died on 27 July, 1998); Kinu Gazi, village Khoria, Upazilla Paikgacha, Khulna (died on 24 September, 2008) and many more are all consequences of their leadership in the anti-shrimp campaigns.

The government is completely ignoring the above-stated negative impacts of saline water commercial shrimp cultivation and is continuing with its arbitrary support for the same. The arguments of the government remain that the shrimp sector is the second largest export sector with an export of taka 3,352 crore that secures 4.23% of the export income, employs about 1.5 crore people and thus contributes to poverty alleviation.

The above-stated arguments of the government in favour of the shrimp sector come without any holistic and objective analysis of the entire situation and ofcourse without doing any impartial Environment Impact Assessment (EIA) and Social Impact Assessment (SIA). Available statistics suggest that the connotation of the government in favour of shrimp are fallacious, erroneous, subjective and motivated. While the foreign

currency earning from the frozen food sector is 4.23% to the total export earning, shrimp constitutes 80% of the sector. Again, of the total exported shrimp, the larger part comes from the nature as the farm shrimp contributes to about 39%-46%.

Such in the bias and blindness of the government in favour of commercial shrimp cultivation that it has, in the draft shrimp policy, claimed that about 1.5 crore people are employed in the sector while the donor agency USAID reported in 2005 that about 1.2 million people are employed in the shrimp sector. Such claims of the government holds no water as in the readymade garments sector that employs the highest number of people, admittedly employs about 3 million people. Further, in presenting such figures of employment, the government has also ignored the fact that the employment in the shrimp sector dose not come as "addition" rather in most cases it is deviated employment in lieu of having lost of agriculture earnings, vegetables and fruit production from their homestead, loss of cattle, loss of fuel and firewood, all due to land being taken away for shrimp cultivation.

Although the government claims that the shrimp sector has contributed to poverty alleviation, according to the Poverty Index of the Statistical Bureau of Bangladesh, World Bank and World Food Programme, the upazilas of Kaliganj, Shyamnagar and Dakop respectively under the Satlchira and Dakop districts are still the most poverty stricken areas of Bangladesh. These are amongst the areas that are under extensive saline water industrial shrimp. While the monga striken areas of Dimla upazila under the Nilphamari district of North Bengal has a poverty rate of 61%, the poverty rate is 62% in Kaliganj, 65% in Shyamnagar and 60% in Dakop.

Unfortunately, the argument in favour of export earning has taken over all the negative impacts of such shrimp cultivation and unconscionably ignored the unbearable sufferings of the local people in relation to their health, lives, livelihoods and well beings. In all these years, the national interest has been hostaged to the economic interest of a few business houses and also to the demand of the foreign consumers.

Visits by petitioner organization (2008/2009) in the various unions of the Khulna, Satkhira and Cox's Bazar districts have revealed the following negative impacts of such saline water industrial shrimp cultivation:

- brackish water has diminished the greenery;
- the lively coastal districts once rich with unique biodiversity and vibrant with people's sustainable and traditional activities relating agriculture, are now listless and indolent;
- prolonged presence of saline water has affected the soil fertility and is rendering agriculture difficult;
- vast spreading of saline water has limited rearing of livestock;
- fruit and vegetables gardens are disappearing;
- sources of potable water has been salinized;

- forest has been destructed;
- rivers, beach areas and other water bodies are encroached with shrimp ghers;
- public embankments are being damaged for regulating in-flow and out-flow of saline water for shrimp ghers.

Under the traditional agricultural systems, lands of the coastal districts produced rice and also other season vegetables including mustard, sesame (till), potato, sweet potato, ladies finger, sweet pumpkin, water-melon, green chili, cucumber, bitter-gourd (corolla), corn, pulse that played a crucial role in meeting food and nutrient supply for the local people. Partly because of the permanent water logging in some parts of the coastal districts and partly because of the arbitrary government policy to promote industrial aquaculture for export earning these districts, since 1982 started experiencing wide spread cultivation of saline water shrimp cultivation. This seriously deceased rice and crop production in the coastal districts and attracted many outsiders to invest in these areas for saline water shrimp cultivation for prompt return of their investment. In connivance with local administrations, these influential and moneyed outsiders started taking possession of the lands of local farmers either by payment of a nominal fee (locally known as hari) or simply by encroaching upon their lands with saline water intrusion compelling them to surrender the same for use as shrimp ghers.

The instruction of salinity is not only affecting the rice production from the 2,17,877.05 hectors of lands presently used as saline water shrimp ghers/farms, but is also affecting the production of other crops and rearing of livestock that traditionally provided the rural people with needed supply of food and protein and additional sources of income. Since the land remains under saline water for considerable period of time, the farmers are not producing any rice, vegetables or fruits. The salinity is moving inwards and is gradually diminishing the homestead gardens. The number of fruit trees such as dates, palms, coconuts, betel nuts, banana and few home based fruit trees such mangoes, jackfruit, sofeda (sapodilla/chikoo), bel (wood apple), tamarind etc. has decreased significantly with the living ones hardly producing any fruits. In the absence of grazing fields, livestock is declining fast. All these factors have turned life into havoc for the local people who have lost control over the conventional sources for supply of rice, vegetables, fruits, milk, fish and fuel wood for their family members. The area was known, previous to the onslaught of shrimp cultivation in a large scale, as rice, milk and milk products such as ghee, poultry and egg surplus area.

Due to salinity instruction into the tube wells and ponds, most areas are faced with acute shortage of drinking water. Further the use of drugs, chemicals and antibiotics in the shrimp farms/ghres is polluting the land and adjacent water bodies. While the declining soil fertility is compelling the farmers of the adjoining lands to switch to high yielding/terminator varieties, the direct curse of pollution of the water bodies are on the wain. In view of declining supply of eggs and milks from household poultry and fish and water from the ponds, women not only have to walk miles to collect drinking water for their families, but are also compelled to engage in shrimp fry/seed collection for extra earning to meet the family demands. Due to pollution of the water supply sources,

diseases like dysentery, typhoid, renal disorder, hair loss, irritation of eyes, allergy and skin problems have increased.

To add to the miseries of the local people, shrimp cultivators in the southwestern districts use the public sluice gates and embankments to regulate the flow of saline water in their farms/ghers. In the process they forcibly flood the lands of adjoining owners and cause damage to the water management structures that are meant for public benefit and utility. Although respondent No. 10, the Water Development Board rarely files general diaries, the same are again not followed up by the police administration against the accused/culprits.

In a case before the Supreme Court of neighbouring India (S. Jagannath Vs. Union of India, AIR 1997, SC 811), the Indian Judiciary held that "the damage caused to ecology and economics by the aquaculture farming is higher than the earnings from the sale of coastal aquaculture produce". The parameters taken into consideration were land, equivalent wages for the farmers to be earned, equivalent amount of agriculture produce (rice, husk), loss due to cutting of casuarinas in terms of fuel, loss in terms of grazing grounds, loss involving asset, loss caused by cyclones due to cutting of casuarinas forests, loss due to desertification of land, loss in terms of potable water, total loss due to mangrove destruction, loss in fishing income, loss due to damage of fishing nets and man-days lost due to non-approachability to sea coast.

In disposing of the case, the Supreme Court of India, while endorsing the principles of "sustainable development". "intergenerational equity" and "polluter pays", gave, amongst others, the following directions:

- Prior to permitting shrimp industry or shrimp pond in the ecologically fragile coastal area, strict environmental test has to be mandated.....There must be an environmental impact assessment before permission is granted to install commercial shrimp farms. The conceptual frame work of the assessment must be broad based primarily concerning environmental degradation linked with shrimp farming. The quality of the assessment must be analytically based on superior technology. It must take into consideration the intergenerational equity and the compensation for those who are affected and prejudiced.
- The agricultural lands, salt pan lands, mangroves, wet lands, forest lands, lands for village common purposes and the lands meant for public purposes shall not be used/converted for construction of shrimp culture ponds;
- No ground water withdrawal be allowed for aquaculture purpose.
- The concerned authorities shall frame scheme/schemes for reversing the damage caused to the ecology and environment by pollutions in the coastal State/Union Territories;
- Wild seed collection from creek and sea must be prohibited. Seed must be procured from hatcheries. If seed collection is noticed it must immediately be seized and dumped back into the creek;

- An eco-restoration fund must be created by collecting the stipulated fees from the owners of aquaculture farms. In addition, certain cent age of total export earning per annum must also be collected from commercial aquaculture farm owners and used for rejuvenation of coastal ecosystem with special reference to planting of mangroves and common eco-sensitive zones;
- The waste water treatment system with reuse and recycle must be installed by all units. The smaller units can form a co-operative and treat their water through common effluent treatment plant. The aquaculture units must be closed down if the waste water treatment system is not functioning to its designed efficiency;
- The compensation amount recovered from the polluters shall be deposited under a separate head and shall be utilised for compensating the affected persons as identified by the authority and also for restoring the damaged environment;
- The expenditure for reversing the ecology and environment shall be met from the aforementioned specially created fund, and from other sources provided by the respective State Government/Union Territory Governments and the Central Government;
- Aquaculture industry/shrimp culture industry/shrimp culture ponds other than traditional and improved traditional that are already operating in the coastal areas shall obtain authorization from the high powered authority directed to be set up by the Court within given time limit;
- 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 increase shrimp or prawn production with consequent increase in sedimentation which, on putrefaction, is a potential health hazard, apart from causing situation, turbidity of water courses and estuaries with detrimental implication on local fauna and flora shall not be allowed by the aforesaid authority;
- Any activity which has the effect of degrading the environment cannot be permitted. Apart from that, the right of the fishermen and farmers living in the coastal areas to eke out their living by way of fishing and farming cannot be denied to them.

The traditional and improved traditional types shrimp-farm technologies are environmentally benign and pollution free. Other types of technologies-extensive, modified extensive, semi-intensive and intensive-create pollution and have degrading effect on the environment and coastal ecology, such type of shrimp farms cannot be permitted to operate.

- The authority shall, with the help of expert opinion and, after giving opportunity to the concerned polluters, assess the loss to the ecology/environment in the affected area and shall identify the individual/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;

- The authority shall compute the compensation under two heads namely, for reversing the ecology and for payment to 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 polluters, the person 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 for land revenue. He shall disburse the compensation awarded by the authority to the affected persons/families.

  Provided they have been continuous service (as defined in S.25B 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 S. 25F(b) of the Industrial Dispute 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 workmen shall be paid in addition.

Thus in upholding the principle of sustainable development, the Supreme Court of India demystified the economic and trade rhetoric around saline water/brackish water shrimp cultivation.

The adverse effect of saline water industrial shrimp cultivation and the associated social problems are not unknown to the government. This is evident from the directions that the government has issued from time to time and also the preamble of the draft shrimp policy. In response to the public protests against saline water industrial shrimp cultivation, the government has required the consent of at least 86% people of the given populace of concerned locality prior to issuing license for shrimp ghers/farms. The government has also constituted committees to deal with forced occupation of land or saline water intrusion and to ensure payment of damages to the adjoining farmers. Unfortunately, such policy directions have given no effective relief to the suffering local people and no single case can be traced where a license was cancelled or compensation was paid to any aggrieved farmer.

Having failed to get any support from the administration against the ill effects of the saline water industrial shrimp cultivation, spontaneous public movement, resisting saline water intrusion and deforestation, has grown in various parts of the coastal districts. As such the local people of southwestern districts have formed "Lobon Jol Protirodh Committee", "Dakop Upazilla Nagorik Parishad" and "Shrimp Cultivation Protect Committee" while in Noakhali "Krishi Jami Rakhha Andholan" and "Noakhali Poribesh Anodolon" and in Cox's Bazar "Green Cox's bazar " have been formed. In the year 2007-2008 the movements in the Dakop Upazila of Khulna such a peak that 6,100 ghers

out of the total 6,600 have been freed from saline water where local farmers brought back the greenery by producing rice and other traditional crops including fruits and vegetables. In the said Upazila of Dakop, prior to elections, the lawmakers and the elected representatives of the local government agencies also expressed views in writing on saline water industrial shrimp cultivation.

Apart from the successes of the public movements in Dakop, the lawmaker of Cox's bazar accused for setting fire in the coastal mangrove of Sonadia has also been subjected to legal process whereas the landless people of Noakhali succeeded in getting judicial interference to resist their eviction from khas lands by the aspirant shrimp farmers.

Despite such adverse effect of saline water industrial shrimp cultivation and growing public movements against the same, the government is miserably failing to regulate the same so as to prevent its expansion in agricultural and forest lands. Instead, the arbitrary government support for such shrimp farming is continuing on the plea of export earning and without any impartial and objective EIA, SIA or cost benefit analysis. When people led movement resulted in resistance against saline water intrusion in the southwestern coastal districts, the government instead of responding to people's will, engaged itself in the process of farming a policy proposing to bring all cultivable lands under shrimp cultivation.

Despite their own findings about the negative impacts, the respondents have not taken any effective measures to regulate the expansion of saline water industrial shrimp farming in agricultural lands and forest lands. Consequently vast areas of agricultural lands are still under saline water intrusion particularly in the southwestern coastal districts, making traditional agriculture impossible and threatening severely the basic necessities of life for the bulk of the local people. A visit to the coastal districts having saline water shrimp cultivation will reveal the miseries of the people who are faced with severe crisis in earning a livelihood and in obtaining basic necessities including food and water. Since the fields flooded with saline water produces no rice, vegetables, fruits, species and instead contaminates land and water of the surrounding areas, coastal people are not only faced with food crisis, but also lack feed for the livestock, materials for roof topping and suffer from malnutrition and water included health problems.

The respondents have categorically failed in administering their own decisions as codified in the documents dated 01/01/94 and despite many complaints from the villagers, have not decided a single case in fovour of the farmers.

The patronage of the government for the saline water industrial shrimp cultivation and their failure to apply the relevant conditions regarding people's consent and protection of interest of the marginal farmers and adjoining land owners against forced aquaculture has seriously threatened the constitutional/fundamental rights of the villagers of the coastal districts as guaranteed under Articles 31, 32, 40 and 42 of the Constitution.

While the economist estimate the income from a shrimp farm of one hector as $ 16,000 considering the contribution of mangrove forest to the fishery, natural disasters, energy and other sectors, they estimate the return from one hector mangrove forest as $ 61,000. Unfortunately, due to the short sighted and donor driven decision of the government, the

mangrove forest of the Chokoria Sunderbans and Sonadia Island stand denuded only to bear the curse of such unconscionable commercial ventures.

Respondent Nos. 3 and 10 have failed to protect the public embankments of the southwestern coastal districts from unauthorized use by the shrimp farms. As a result, 108 kilometers of polders completely collapsed while 520 kilometers damaged partially during the tidal surge inducted by the cyclone Aila, subjecting the agricultural fields areas to tidal forces, preventing any cultivation till date.

Such failure of the respondents to protect the public sluice gates and embankments from unauthorized use by the shrimp cultivators is derogatory of the provisions of the Bangladesh Water Development Board Order, 2000.

The negligence of the respondents in regulating saline water industrial shrimp cultivation is violative of their statutory responsibilities under the Forest Act, 1927, Environment Conservation Act, 1995 and the rules made thereunder, the Embankment and Drainage Act, 1952, the Bangladesh Water Development Board Order, 2000, the State Acquisition and Tenancy Act, 1950, the notifications dated 1 January, 1994, memo: MAPABI/JEPRO-4/2(66)/93-06; dated 01 January, 1998, memo:MAPABI/JEPRO-4/2(66)/93-97/01; dated 03 September, 1998, memo:MAPABI/JEPRO-4/2(550)/93-98/243 and other related laws and policies.

Considering the negative impacts of saline water industrial shrimp cultivation on the surrounding environment and people, an impartial, proper and detailed cost benefit analysis upon consideration of all associated socio-economic and environmental impact is crucial in the greater interest of the nation and its people. It is also respectfully submitted that no saline water industrial shrimp cultivation be allowed without exhausting the process of environmental clearance as required under the Environment Conservation Act, 1995 and the Rules made thereunder in 1997.

If cultivation of shrimp in saline water is allowed to be continued without proper environmental impact assessment and environmental clearance, the same shall frustrate the spirit of the Environment Conservation Act, 1995, defeat the livelihood pursuits and violate the constitutional rights of the vast majority of the people suffering from the curse of such unregulated and unconscionable venture.

Respondent No. 1 has filed an affidavit in opposition figuring the following statements:

The Ministry initiated a project in Noakhali District for maintenance of fisheries, but, finally it was not approved and no gazette notification was published. Hence neither the petitioners are aggrieved nor is anything that would harm public interest.

The respondent has no project or plan to invite people for cultivation fish in rice filed by using saline water. Even the administration does not motivate the people for such kinds of cultivation. It is fact that thousands of people of south Bengal are engaged in shrimp cultivation and depending for their livelihood from the earning that emanated from the same. Shrimp cultivation does not why generative mass employment but also earns foreign currency from abroad. As area of our land is limited so for the better interest of our future the government has initiated to create a law to protect agricultural lands.

Steps have been taken to stop any further project for fish cultivation by resorting to saline water.

World Bank also suggested to take these kinds of project to reduce poverty, yet it is them who are asking us to stop it. The respondents are not in any disagreement on the contention that these cultivation may environmental danger and hence they are neither taking nor, allowing any project for fish cultivation with saline water.

The deponent is not in favor of any further fish cultivation in rice land by using saline water. Though the government has initiated to create a law for protection of cultivation land, so the writ petition is not maintainable at this stage. If a law is passed in the parliament the purpose of the petitioners will be fulfilled. Even after passing the new law, the petitioners may come to fill up the loopholes which will be conducive to public interest.

Respondent No. 10 has filed an affidavit in opposition figuring the following statements:

> "খুলনা জেলাধীন পওর বিভাগ-২, পাউবো, খুলনা এর অধীন পোল্ডার নং-৯, ১০/১২, ১৬, ১৮/১৯, ২০, ২১, ২২, ২৩, ৩০, ৩২ এবং ৩৩ পোল্ডারসমূহ ১৯৬০ সনে শুরু হয়ে ১৯৬৯-৭২ সনের মধ্যে নির্মাণ কাজ শেষ হয়। প্রকল্পের মূল উদ্দেশ্য ছিল জনসাধারণের আর্থসামাজিক উন্নয়ন সামুদ্রিক লবণ পানি, বন্যা ও জলোচ্ছ্বাস হতে রক্ষা করা। পোল্ডারের অভ্যন্তরে বসবাসকারী জনগোষ্ঠীর জীবন ও সম্পদ রক্ষাকল্পে পাউবো সব সময় তৎপর রয়েছে। স্থানীয় চিংড়ী চাষীগণ উপজেলা চিংড়ি সম্পদ উন্নয়ন ও ব্যবস্থাপনা কমিটি হতে বিভিন্ন সময় লাইসেন্স প্রাপ্ত হয়ে পাউবো নির্মিত বেড়ী বাঁধে পাউবো অনুমোদিত নকশা মোতাবেক মিনি স্লুইসগেট নির্মাণের অনুমোদন গ্রহণ করেন। কিন্তু অতিপয় স্বার্থান্বেষী মহল অননুমোদিতভাবে পাউবো নির্মিত বাঁধ কাটিয়া পোল্ডার অভ্যন্তরে লবণ পানি প্রবেশ করান। তাদের বিরুদ্ধে আইনানুগ ব্যবস্থা গ্রহণের জন্য বিভিন্ন সময় সংশ্লিষ্ট থানায় এফআইআর রুজু করা হয়েছে এই প্রসঙ্গে উল্লেখ করা হচ্ছে যে, পোল্ডার অভ্যন্তরে লবণাক্ত পানি উত্তোলন পূর্বক চিংড়ী চাষ করার ফলে জমির উপর লবণের স্তর পড়ার কারণে কৃষি জমি উর্বর শক্তি হ্রাস/পানীয় জলের উৎস অপ্রতুল, গবাদী পশু, হাস মুরগী, বৃক্ষরাজী জীববৈচিত্র্য পশু-পাখি বিলীন ও পরিবেশের ভারসাম্যের উপর বিরূপ প্রতিক্রিয়া সৃষ্টি হচ্ছে। উল্লেখ্য যে শুধুমাত্র ফসল উৎপাদন ও জনস্বার্থে পাউবো বাঁধ/রেগুরেটর নির্মিত হয়েছে। লবণ পানি উত্তোলনের জন্য নহে। এমতাবস্থায়, পোল্ডার অভ্যন্তরে লবণ পানি উঠানোর বিরুদ্ধে সংশ্লিষ্ট ব্যক্তি বর্গের নামে ইতিমধ্যে আইনানুগ ব্যবস্থা গ্রহণ করা হয়েছে। সাম্প্রতিক কালে উপকূলীয় পোল্ডারে লবণ পানিতে চিংড়ী চাষ মাননীয় হাইকোর্ট কর্তৃক নিষেধাজ্ঞা ঘোষণায় অত্র দপ্তরে সকল কর্মকর্তাকে আরও জরুরি ভাবে লবণ পানি উঠানোর বিরুদ্ধে আইনগত ব্যবস্থা গ্রহণের জন্য নির্দেশ প্রদান করা হয়েছে।"

As the rule ripened and came up for adjudication, Ms. Rizwana Hasan for the petitioner drew our attention to all the odds that saline water oriented shrimp cultivation would unleash. According to her, the degree of catastrophe that saline water dependent shrimp cultivation can engender is so overriding that importance of keeping this project at the bay far transcends the significance of any gain from it. She was quite momentous to foray that unless drastic and imminent steps are put on the card and we apply our rectitude, a large area in the southern part of the Republic shall be faced with virtually irretrievable devastation. She nurtures the view that shrimp cultivated in sweet water also has a substantial overseas market. In her introspection, if saline water shrimp cultivation is to be kept on at all, that has to be in line with what the Indian Supreme Court has ordained in the case cited above. She gave us to believe that it is the native imperviousness of some awry people which has kept this frenzied project afloat. A greedy conglomerate are banking on the gullibility of some public functionaries.

Mr. Delwar Hossain Samaddar on the other had submitted that it is not that the respondents do not visualise the pathogen, but a balance must be struck to extract optimum yield without jeopardizing the interest of biodiversity and echology. He went on to try to lead us to accept that effective measures are in the offing to make things eco-friendly and congenial.

He however iterated that the petition is not maintainable.

Mr. Monzil Murshed, the learned Advocate appearing for respondent No. 1, stated that a law in order to protect forests, trees and agriculture land from saline water is already under active consideration of his client.

For us, the solitary question is whether shrimp cultivation in the prevalent manner, with the aid of saline water, breaches any legislative scheme and/or whether it is repugnant to general public interest.

Curiously enough we have witnessed wide area of consensuality in the anxiety and the dismay both the petitioners and the respondents reflected. Appreciably the respondents do not appear to be oblivious of the danger that continued and rather extensive use of saline water may ensue.

The overall scenario that the petitioner has projected is dreadful indeed. What is worse even is the apparent indolence of some public functionaries, who visibly failed to raise to the occasion.

While we are in total concord with the foreboding the petitioners have quite astutely and conscientiously demonstrated, we also remain mindful to the fact that saline water shrimp culture is admittedly a source of foreign exchange earning to be reckoned, and that the projects stand as thresholds for the employment of a significant number of people.

It is quite apparent from the affidavits of the respondents that they also admit that saline water is malevolent to our agriculture products, to the fertility of our land and to our ecology as a whole and that measures should have been taken to minimize the harm proliferated by saline water. So, in our reckoning a finely trimmed balance has to be struck, to emasculate the source of damage caused by saline water on the one hand and also to devise ways to maintain shrimp cultivation on the other. That also is, we understand, what the petitioners are after.

We observed in our interlocutory order that the area of agriculture land has been shrinking day by day and that if unscrupulous and free style shrimp cultivation are allowed in the present pace, environment as well as existing agriculture land will plunge into a state haywire.

The respondent must, hence make all possible endeavors to minimize the use of saline water so that such water can not damage our forests trees, our agriculture land and imperil public health. Efforts to protect forests, trees, agricultural land, eco-diversity and public health can not be compromised. So, the authorities must not allow artificial saline water flow over our forests, trees and agrarian land. The authorities shall also not force any agriculture land holder to accept saline water on to their land. The authorities shall

limit use of saline water for shrimp culture to such a minimum without which this industry can not survive. Roguish shrimp cultivators shall not be allowed to damage our ecology by spreading their wing over other people's land and forest land. The authorities must take appropriate action against those knavish shrimp cultivators who are out there to put people's interest topsy turvy.

We have perused with meticulous precision the commandments the Indian Supreme Court has unmasked. Reckoning that our situation is hardly different, we are swayed to the equation that there exists no reason why those surmons should not apply to us equally well. They shall, in our view, act as the best balancing factors. We are therefore poised to endorse, and, indeed adopt them in toto and direct the respondents to implement them mutatis mutandis.

The rule is made absolute in above terms without any order on costs.

Bangladesh Environmental Lawyers Association (BELA) Vs. Bangladesh
WP 10766 of 2011, D-/20-02-2013
(Prohibiting Operation of Brick Field & Saw Mills in Protected Forest Area)
Mr. Justice Mirza Hussain Haider and Mr. Justice Muhammad Khurshid Alam Sarkar

MIRZA HUSSAIN HAIDER, J.: This Rule has been issued calling upon the respondents to show cause as to why the establishment and operation of the brickfields and sawmills within the prohibited area of the Reserved Forest in Lohagara Upazila under Chittagong district, in violation of circulars issued by the Ministry of Environment and Forest vide Annexures-D and E and in violation of Rule 8(1) of the Sawmill (License) Rules, 1998 respectively, should not be declared to be of without lawful authority and of no legal effect, as the same are violative of the provisions of the existing laws and afforsaid circulars and further to show cause as to why direction should not given upon them to take effective and appropriate measures to stop the operation of all the brickfields and sawmills in and around the prohibited areas and to remove the same from such prohibited areas. Side by side respondent Nos. 7-11[1] were directed to inspect the areas as reported in Annexure-A and shutdown all the brickfields and sawmills situated in such prohibited areas and also to take appropriate action against the concerned persons of the said brickfields and sawmills, situated therein, within 48 hours from the date of receipt of this order.

Pursuant to the order of this Court dated 15.12.2011 respondent Nos. 7-11 inspected the area and inquired into the matter and found that, all the brickfields and sawmills (as reported in Annexure-A) have been established within the prohibited areas as provided under Section 4(5) of the Brick Burning (Control) Act, 1989 and under Rule 8(1) of the Sawmill (License) Rules, 1998 and accordingly, respondent Nos. 7-11 have already shut

[1] Government Officials