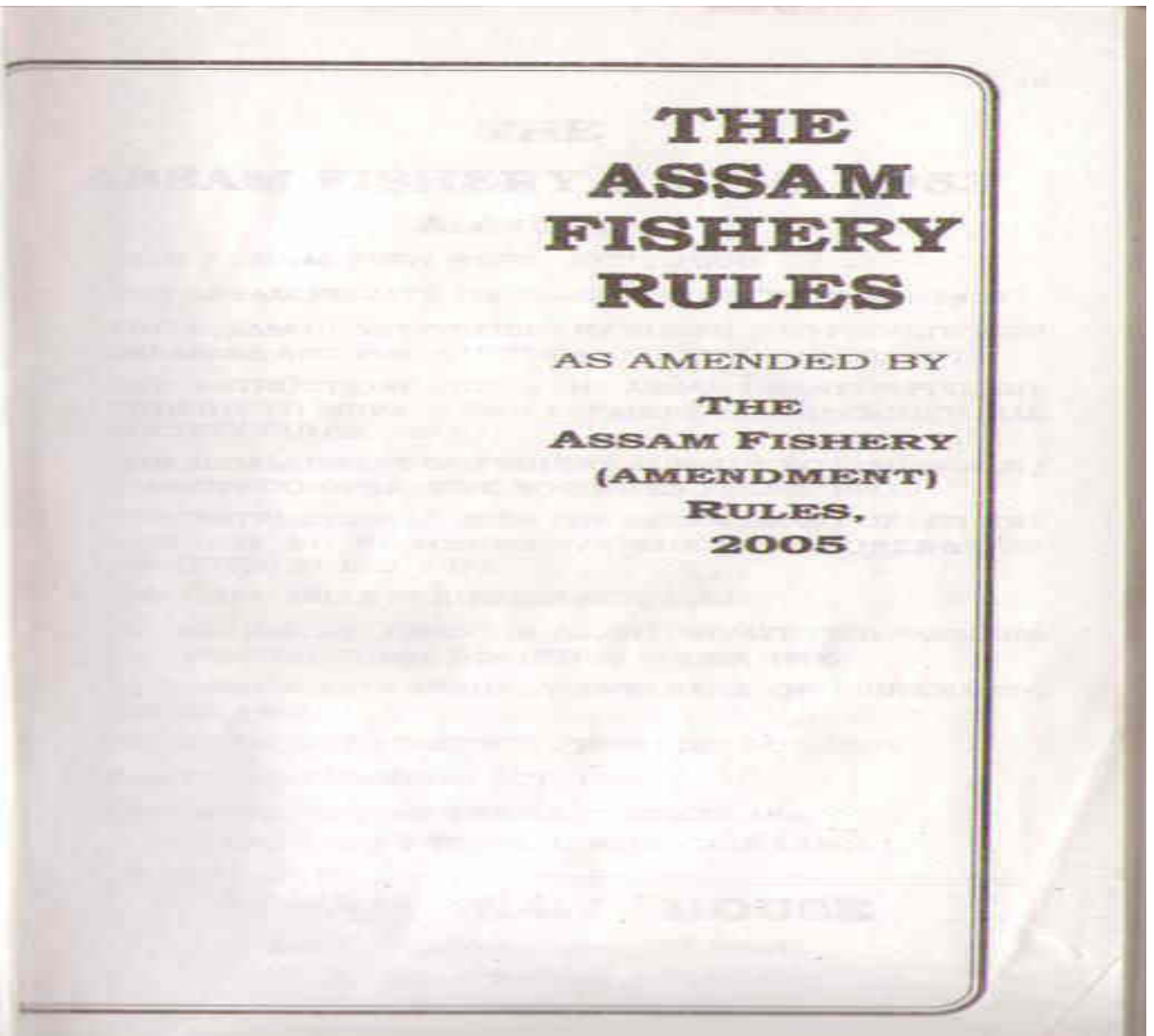


- OUR OWN PUBLICATIONS**
1. **G.C. Phukan's**
THE ASSAM FISHERY RULES, 1953
and allied matters
1st Edition 2001 Rs. 200.00
 2. **Burman & B.K. Ghosh's**
THE ASSAM PANDEYATI ACT, 1994
1st Edition 2001 Rs. 200.00
 3. **K.C. Majumdar, J.N. Choudhury & G.C. Phukan's**
THE LAND LAWS OF ASSAM IN VOLUMES
Vol. (I) Rs. 500/- Vol. (II) Rs. 500/-
Vol. (III) Rs. 200/- Total 1000/- Rs. 1000.00
1st Edition 2001 Hard set of 3 Vols.
 4. **K.C. Majumdar's**
THE ASSAM & MEGHALAYA CONTROL
ORDERS UNDER
THE ESSENTIAL COMMODITIES ACT, 1975
1st Edition 2002 Rs. 100.00
 5. **G.C. Phukan's**
THE ASSAM LEGAL ACTS & RULES
1st Edition 1994 2nd Edition 2002 Rs. 1000.00



THE ASSAM FISHERY RULES, 1953

ALONGWITH

- ✦ THE ASSAM FISH SEED ACT, 2005
- ✦ THE ASSAM PRIVATE FISHERIES PROTECTION ACT, 1935
- ✦ THE ASSAM GRANT OF FISHERY SUBSIDY TO PRIVATE FISH FARMERS AND PISCICULTURAL SOCIETY RULES, 1971
- ✦ THE INSTRUCTIONS UNDER THE ASSAM GRANT OF FISHERY SUBSIDY TO PRIVATE FISH FARMERS AND PISCICULTURAL SOCIETY RULES, 1971.
- ✦ THE ASSAM GRANT OF FISHERY SUBSIDY TO FISHERMEN/ FISHERY CO-OPERATIVE SOCIETIES RULES, 1971.
- ✦ THE INSTRUCTIONS UNDER THE ASSAM GRANT OF FISHERY SUBSIDY TO FISHERMEN/FISHERY CO-OPERATIVE SOCIETIES RULES, 1971.
- ✦ THE GARO HILLS FISHERIES ACT, 1953.
- ✦ THE MEGHALAYA GRANT-IN-AID TO PRIVATE FISH FARMERS AND PISCICULTURAL SOCIETIES RULES, 1986.
- ✦ THE MEGHALAYA FISHERY (WELFARE OF FISHERMEN) RULES, 1987.
- ✦ THE KHASI HILLS DISTRICT FISHERIES ACT, 1954.
- ✦ THE INDIAN FISHERIES ACT, 1897.
- ✦ THE IMPORTANT GOVERNMENT CIRCULARS.

ALL AMENDED UP-TO-DATE WITH CASE LAWS.

ASSAM LAW HOUSE

North Sarania, Gandhi Basti

Guwahati - 781003 - (ASSAM)

Ph. No. 0361- 2661952

ABOUT THE BOOK

PUBLISHED BY :

F. M. ANSARI

For, ASSAM LAW HOUSE

North Sarania, Gandhi Basti

Guwahati - 781001 (ASSAM)

Ph. No. 0361- 2661952

Mobile : 98543-80386

SECOND EDITION : 2006

FIRST EDITION : 2001

Price Rs. : 215.00

© All rights including copyrights reserved with the Publisher

Typesetting by : **ASAD Computers, Guwahati - 781003**

NOTE

In spite of our best care and caution, errors and omissions may creep in, for which our patrons will please bear with us and any discrepancy noticed may kindly be brought to our knowledge so that it is taken care of in the next edition, which will in prove our service. Further notified that neither the Publisher nor the Author, and not the sellers or the printers, will be responsible for any damage or loss occurring to anybody therefrom.

Preface to the Second Edition

The author of the book is happy that the book could serve the needy as and when required. After publication of the book several new things have come into the subject either as amendment or as new addition. So unless the new materials are incorporated in the book in the form of second edition the purpose of the author would not be served. Now in the new edition an attempt has been made to make the book up to date as far as practicable. With the above aim in view this edition is published and hope the same will give enough satisfactory service to the subscribers.

With best wishes

G. C. Phukan

Guwahati, 17th March, 2006

Preface to First Edition

Bentham wrote of law reform' by codification and its stimulating and humanising effect Bentham's conception of codification was that it should be a complete digest of the law on the subject dealt with and its style should be characterized by force and harmony.

Indian Fisheries Act, 1897 (IV of 1897) was enacted having felt the necessity for protecting the valuable fisheries resources of India by the Governor General of India in council. Section 6(6) of the Act empowered the State Government to make rules, hence the Governor of Assam was pleased to make The Assam Fisheries Rules, 1953, in supersession of all previous rules. The author's work is always a delicate task and more so when it has long been felt to bring a standard work on the subject. This is specially true of a work when good deal of the law on the subject has undergone radical changes. I hope to serve the need of the reader by bringing various allied laws on the subject at one place. The book contains—

The Assam Private Fisheries Protection Act, 1935; The Assam Grant of Fishery Subject to Private Fish Farmers and Piscicultural Society Rules, 1971 and The Instructions under the said rules; The Assam Grant of Fishery Subsidy to Fishermen/Fishery Co-operative Societies Rules, 1971 and The Instructions under the said Rules; The Garo Hills Fisheries Act, 1953; The Meghalaya Grant-in-aid to Private Fish Farmers and Piscicultural Society Rules, 1985; The Meghalaya Fishery (Welfare of Fishermen) Rules, 1987; The Khasi Hills Districts Fisheries Act, 1984; The Indian Fisheries Act, 1897 and the Important Government Circulars, as amended up-to date with case laws.

A through study of the book may help many interested persons or authorities from unnecessarily being entrapped in court litigations.

I hope the book may be found handy useful and dependable to the legal practitioners, Judicials and Government Officials, students of law and others who are interested in whatsoever a manner in question of law under the rules. Any suggestion for improvement will be highly solicited.

My sincere thanks are due to the publisher of the book.

Guwahati
Printed 15th August, 2001

G. C. Phukan

PUBLISHER NOTE

Having felt the need of a book on the Assam Fishery Rules, 1953, for several years since there has been a vacuum, an effort is made to bring out a book on the subject.

The Publisher hoped the book will be useful and dependable for legal practitioners, Judicial and Government Officials, students of law and others who are interested in this subject.

Also requested to render their sincere suggestions if any error, printing mistakes or other shortcomings occur in the book enabling us to rectify the same in our next edition.

We shall be highly obliged if the book receives readers sympathy and affection so that next edition may come in more better form.

Assam Law House

THE ASSAM FISHERY RULES, 1953¹

Dated the 15th April, 1953

No. RP. 23/45/284.— In exercise of the powers conferred by Sections 155 and 156 of the Assam Land and Revenue Regulation, 1886 (I of 1886) and by Section 6 of the Indian Fisheries Act, 1897 (IV of 1897), the Governor of Assam is pleased to make after previous publication the following rules for the settlement of fisheries in supercession of all previous rules in this behalf.

SECTION I

General and Settlement of Fisheries.

1. Definition.— In these rules, unless there is something repugnant in the subject or context—

(a) the term "fishery" means the waters declared to be a fishery by proclamation issued under Section 16 of the Assam Land and Revenue Regulation, 1886 (I of 1886) and includes *Kheos* or fish ways, *Dobus* and *Beels*; and "fish" includes shell-fish and turtles;

(b) the term "year" means twelve months from the 1st April, to the 31st March.

2. Register of Fisheries.— A register of Assessment Fishery (including navigable rivers which are public property), must be kept up by each District and Sub-Divisional Officer in Form No. 97 of the Assam Land Revenue Manual, Volume II and an alteration in the registers, whether by the addition or removal of the fisheries, or revision of fishery boundaries, may be made without the previous sanction of Government.

ISSUED IN THE ASSAM GAZETTE, PART II, DATED 22ND APRIL, 1953.

(1)

RULINGS

Rules 2 and 13 (1) (a). Rule 2 of the Assam Fishery Rules provides, each District and Sub-Divisional Officer maintain a register of Fishery and indicate the categorisation into 40% or 60%. See *Dibakar Hazarika v. State of Assam & Others* 2003 (3) O.L.J. 409.

In the case of *Kushi Mohan Rajbanshi v. Pimpura Harikala Panchayat Mitrago Bahani Samikha Society*, 1977 ALR 217 (DB) some dispute arose as to the actual boundaries of the two fisheries on the allegation that due to extensive erosion of Brahmaguira two fisheries were merged and one of them having ceased to exist Sub-Divisional Officer made enquiry into the matter through Sub-Deputy Collector. But the merger declaration was not published in the Gazette and lease continued. *Held*: The petitioner cannot be debarred from fishing in the fishery without a valid proclamation.

While taking steps for division of fishery during currency of the lease, it should not be such as to disturb the possession of the lessee in respect of the undivided fishery and will not in any way disturb fishing rights of the petitioners in the undivided fishery to which the lease was granted to them, till the end of the tenure of the lease. *M/s Charidar Brahmaguira and Kholbeel Fishery Co-operative Society Ltd. v. State of Assam*, (1987) 2 GLR 259.

3. Procedure for sale of Fisheries.— (a) The Deputy Commissioner or the Additional Deputy Commissioner in case of Sadar Sub-Divisions and the Sub-Divisional Officers in case of other Sub-Divisions shall annually fix a date, ordinarily not later than the [1]st January], for the sale of all registered fisheries held under leases expiring on the last day of the current year or which at the last previous auctions were reserved from sale under Rule 9. The date fixed shall be proclaimed by the Deputy Commissioner or the Additional Deputy Commissioner or the Additional Deputy Commissioner or Sub-Divisional Officer at least a month in advance by a written notice in Form No. 101 of the Assam Land Revenue Manual, Volume II, posted at the Sadar or Sub-Divisional Catchery as the case may be and at the Munsiff and

¹ Substituted for the figure 6 word "18th February" vide Notification No. 2022/2/9000/171 dated 21st March, 2005 (w.e. 20th April, 2005).

Police Station within the local limits of which the fishery or any part of it is situated. The notice shall state the name of the fishery, the *Mauza or Pargana* within which it is situated, and any other particulars that may be necessary for its identification; the term and price for which it was sold at the last auction; and the term for which it will now be sold, and the date, place and conditions of sale. The contents of this notice shall also (if possible), be made known by beat of drum at the *Bazar* nearest to the fishery.

(b) The fisheries of the Sadar Sub-Division shall be sold by the Deputy Commissioner or the Additional Deputy Commissioner or if so authorised by them in writing by the Sadar Sub-Divisional Officer and those of other Sub-Divisions shall be sold by the respective Sub-Divisional Officer.

[Provided that the procedure prescribed for fixation of date for the sale of all registered fisheries of proclamation of such date at least a month in advance by a written notice in Form No. *101 of the Assam Land Revenue Manual, Volume II as amended hereinafter shall not apply in respect of the sale of such fisheries for the year 1971-72.]

4. Place of sale.— The place of sale shall be the *Sadar Catchery* of the district for fisheries in the Sadar Sub-Division and Sub-Divisional *Catchery* for fisheries in other Sub-Divisions.

5. Conditions of Sale.— The following conditions of sale shall be specified in the notice and shall be proclaimed before the sale begins—

(1) The Officer conducting the sale does not bind himself to accept the highest ["tender"] or any ["bidder"].

[1] *Conditions of Sale of Fisheries.*— (a) Any

¹ Form No. 101, Notice of Sale of Fisheries.

² Deleted 'Government' in Rule 3 vide Notification No. VPE. 127/71/55, dated 14th June, 1971 (Published in the Assam Gazette (Extraordinary) of June 3, 1971).

³ Substituted for the word "bid" vide *ibid*.

tenderers including Co-operative Societies formed by Communities other than members of actual fishermen belonging to Scheduled Casts or members of Maimal Community of the District of Cachar shall, immediately after the acceptance of their tenders, furnish in cash, as security a sum equal to twenty-five percent of revenue of the fishery for the first year of the full term of settlement.

(b) Provided that Fisheries Co-operative Societies with 100 percent share-holder from members of actual fishermen belonging to Schedules Casts of the State or Maimal Community of the District of Cachar and registered under the Assam Co-operative Societies Act, 1949, shall, immediately on acceptance of their tenders, be entitled to deposit a sum as such security equal to ten percent of the revenue of the fisheries settled with them for the first year of the full term of settlement.

If any tenderer or tenderers referred to in sub-rules (a) and (b) above, fails/fail to furnish the security as laid down above the fisheries shall be re-sold at his or their risk forthwith and he or they be bound to make good the difference between his or their tenders and the amount realised at the subsequent sale, calculated on the whole period of settlement.¹

(3) If the purchaser fails to execute a counter-

1. Substituted vide Notification No. VPR, 127/71/53, dated 1st June, 1971 (Published in the Assam Gazette (Extraordinary) of August 7, 1971.)
Note.— Hence substitution of original sub-rule (2) of Rule 5 read as follows:—

"(2) The purchaser shall immediately after the acceptance of his bid furnish as security a sum equal to one quarter of a year's revenue and he be required to furnish within seven days of the date of sale additional security to the satisfaction of the Deputy Commissioner or the Sub-Divisional Officer as an in bringing up the total amount of the security to one third of the revenue for the full term of settlement, with the express approval of the Deputy Commissioner or the Sub-Divisional Officer, he may immediately after the acceptance of the bid furnish as security a sum not less than one-eighth of a year's revenue and furnish, within seven days of the date of sale, additional security to the satisfaction of the Deputy Commissioner or the Sub-Divisional Officer as an in being up the total amount of the security to one-third of the revenue for the full term of the settlement. Contd. next page."

part within one month from the date of the ["sale"]¹ the fishery shall be re-hold at his risk and he shall be bound to make good the difference between his ["tender"]¹ and the amount realised by the subsequent sale, calculated on the whole period of settlement :

Provided that the Deputy Commissioner or the Sub-Divisional Officer may, for special reasons require him to make good only the difference between his ["tender"]² for one year of the settlement and the amount realised for that period by the subsequent sale.

(4) If the purchaser fails to execute a counter-part within one month of the date of the ["sale"]¹ or if he fails to do anything which he is required or bound to do under sub-paragraphs (2) and (3) above, the Deputy Commissioner or the Sub-Divisional Officer may further direct that he shall also forfeit the security furnished, if any, or any portion of it.

RULINGS

It is clear that when a settlement is made, the successful tenderer before executing the deed of settlement may be asked to produce valid *patta*, *Jamabandi* or other document referred to in Clause 17 of Form No. 101 of Sale Notice. In the instant case, the cart was put, before the horse. Respondent No. 2 was called upon to produce the documents before any settlement was made in his favour, which was violative of

the rule as to furnish the initial or the additional security as prescribed above. The fishery shall be resold at his risk. In the former case, in breach of the rule after issue of the notice prescribed by Rule 6 and in either case he shall be bound to make good the difference between his bid and the amount realised by the subsequent sale calculated on the whole period of settlement.

Held that the Deputy Commissioner or the Sub-Divisional Officer is not bound to require him to make good only the difference between his bid and the amount realised for that period by the subsequent sale.

1. Substituted by the words "initial" and "bid" vide Notification No. VPR, 127/71/53, dated 1st June, 1971 (Published in the Assam Gazette (Extraordinary) of August 7, 1971.)

2. Substituted by the words "initial" and "bid" vide Notification No. VPR, 127/71/53, dated 1st June, 1971 (Published in the Assam Gazette (Extraordinary) of August 7, 1971.)

Rules 5(2) (b) as well as Clause 17 of the Sale Notice. On failure to produce the required security and/or document the penalty is prescribed in Clauses (2), (3) and (4) of the Tender Notice and in proviso to Rule 5(b) of Fishery Rules. The circumstances are entirely his under these circumstances, the Board or Revenue was absolutely justified in holding that there was no necessity of production of the documents before the settlement had been made. *M/s Joghajoga Fishery Co-operative Society Ltd. v. Assam Board of Revenue*, (1983) 1 GLR 394.

The sale of fisheries is a source of revenue for the State and there is no legal bar under these rules to the Commissioner refusing to confirm a tender in view of the low price submitted by the tenderer. *Jaiubala Nath v. Assam Board of Revenue*, 1973 ALR 144.

In an auction sale of fisheries the Government is not bound to accept highest bid but reason for refusal should be disclosed unless there are good reasons for refusal to accept the highest bid; the settlement should be made with the highest bidder. *Keshab Prasad Singh v. Mohuram Das*, AIR 1955 NOC 2808 (Assam).

[(5) The lessee shall co-operative with the Government or any person(s) authorized by the Government for conducting survey works, collection of statistics and taking up any development activity in the fishery. Lessee shall also be allowed to take up development activities after obtaining permission from the Government.

(6) The lessee shall not cause damage to the embankment or any other infrastructure of the fishery.

(7) The lessee shall not have any right of possession or claim over the Government infrastructure/property in the fishery.

(8) Violation of any provision under the rules by the lessee may result in cancellation of the lease.¹

6. When for default of furnishing the additional security mentioned in Rule 5(2) or of executing a counter-part under Rule 5(3) the fishery has to be put up to sale a second time, at the risk of the first

1. Inserted in the Rule 5, after sub-rule (4), vide Notification No. FIVE.1/2000/173 dated 21st March, 2000 (w.e.f. 15th April, 2000).

purchaser notice of sale shall be given as in the case of an original sale, with the additional proviso that the re-sale shall be at the risk of and on account of the first purchaser.

7. Lease.— When the sale has been concluded, a lease and counter-part shall be interchanged in Form Nos. 98 and 99 of the Assam Land Revenue manual, Volume II.

["B. Settling Authority.— (a) The Deputy Commissioners or the Additional Deputy Commissioners in case of Sadar Sub-Divisions and the Sub-Divisional Officers in case of other Sub-Divisions shall be the authorities for settlement of all registered fisheries under tender system of sale in their respective jurisdiction.

(b) Extension of the term of lease.— (i) Where the period of lease of registered fisheries being ordinarily not less than three years is interfered with, due to any natural cause or for any unavoidable reasons beyond the control of the lessee, Government may extend the period of such lease supported by official reports as to the nature of cause in exceptionally special cases for a reasonable period so as to enable such lessees to make good the loss.

(ii) The State Government may also on the recommendation of the Director of Fisheries extend the period of lease of a fishery with an intending pisciculturist who should invariably be the sitting lessee and who agrees to accept such an extension at a revenue and for such other additional terms and conditions as may be specified by Government.

Provided that one of the conditions of extension of lease against piscicultural plan shall invariably be the implementation of approved Scheme or schemes of Development and improvement of such a fishery at the lessee's own cost within a target period to be fixed by Government.

The orders of extension of lease on the aforesaid grounds, passed by the State Government shall be final and no appeal shall lie against such orders of extension.

(c) *Development of Fisheries and their consequential settlement.*—(i) The State Government on expiry of the term of settlement, may at any time, by a notification in the official Gazette, stop any fishery from further settlement under tender system and vest management of such a fishery with the Director of Fisheries for development. On publication of such Notification, the Deputy Commissioner or Sub-Divisional Officers, as the case may be, shall handover the fishery to the Director of Fisheries:

Provided that the Director of Fisheries may call for tenders consistent with the relevant provisions of these rules for settlement of such a fishery and submit the same with his view thereon within fifteen days of the date of opening the tenders to Government for approval. The decision of the State Government in this behalf shall be final:

Provided further that such settlement shall not interfere or conflict with the work of development of such a fishery and that the provisions of Rule 50 of the Fishery Rules will not apply in case of such settlement.

(ii) The State Government may at any time after constitution of the Assam Fisheries Development Corporation by a Notification in the Official Gazette, vest management of any registered fishery with the Assam Fisheries Development Corporation as considered necessary for the purpose of its development and management. On publication of such Notification the Deputy Commissioners, the Sub-Divisional Officers and the Director of Fisheries Assam, as the case may be shall hand over such fisheries to the Corporation.¹

¹ Inserted vide Notification No. VFF. 10/79/GP. RA/12, dated 29th June, 1976.

(d) *Confirmation of Sale.*—All sales of fisheries in the District made by the Deputy Commissioners or Sub-Divisional Officers shall be reported not later than seven days from the date of such sales to the Commissioners of Divisions for confirmation in Form No. 100 of the Assam Land Revenue manual. Volume II Confirmation orders must be passed within a period of thirty days from the date of receipt of such proposals.

(e) *Re-sale of fisheries.*—When for default of kist money or for violation of any of the conditions of the fishery lease including any of the provisions of these rules by a lessee the fishery shall be put to re-sale under tender system at the risk of original lessee. Notice of re-sale shall be given as in the case of the original sale with additional proviso that the re-sale shall be at the risk of and on account of the original lessee:

Provided that the question of such re-sale shall not be applicable where State Government permits extension of time for payment of kist money.¹

RULINGS

Rule 8(b) of the Assam Fishery Rules—Extension of Fishery lease - *See East Koligport Fishery v. Assam Fisheries Development Corp. Ltd. & Ors.* (2003) 2 GLR 159; 2003 (2) GLJ 159.

The main object of Rule 43 as well as of Rule 8(c) so far as giving of notice of sale or re-sale is concerned, is to make the contemplated sale widely known to the people so that a large circle of tenderers can submit their tenders in order to protect Government revenue sufficiently. Mere non-insertion of 'risk clause' in the notice will not defeat the object of the provision. *Held:* It is not possible to hold that the risk clause in Rule 8(c) is a mandatory provision. This part of the clause is a permissive provision. *Singul Chandra Sarkar v. Assam Board of Revenue*, 1974 ALR 187.

¹ Inserted Rule 8 vide Notification No. VFF. 12/71/55, dated the 14 June, 1971. (Published in the Assam Gazette (Extraordinary) of August 7, 1971.) Said Original Rule 8, was deleted vide Notification No. WOP. 99/60/37, dated 14th August, 1962, read as follows:

"8. Confirmation of Sale.—All sales of fisheries in a district shall be reported to the Commissioner of Jaintia Division for approval in Form No. 100 of the Assam Land Revenue Manual Volume II."

Where a solitary tender of Co-operative Society in respect of 60% fishery has been filed and fulfils the requirements of Rule 12 (a) it was sent for confirmation.

Held: The Commissioner has power to refuse confirmation on the ground that the offer is too low. There is limitation under the rules on the power of Commissioner in exercising his power under Rule 8(d). Rule does not envisage any abridgment of the Commissioner's power of confirmation provided he exercises it with fair corners of the rules. *Jatintra Nath Medda v. Assam Board of Revenue*, 1973 ALR 144.

Deputy Commissioner, selling fishery by auction to 'A' subsequently the lease was cancelled and re-settled in favour of another body. High Court held in restoring settlement with 'A'. *State of Assam v. Keshab Prasad*, AIR 1953 SC 305; 1953 SCR 865.

In view of Rule 8(b) (i) and 8(b) (ii) extension can be done only in exceptional cases by the State Government. It can be granted for reasonable cause and only on the basis of an official report as to the nature and cause of such loss sustained by the lessee. On being satisfied from the report the extension may be granted for a reasonable period to enable such lessee to make good the loss. Therefore the period of extension must have close nexus with the loss sustained by the lessee. Invariably quantum of loss is the important criteria for determining the period of extension. *Chaitrapur Anchalik Meon Samabai Samity Ltd. v. State of Assam*, (1994) 1 GLR 105; 1993 (2) GLJ 375.

The power of the Government to extend the period of lease is discretionary and it may be allowed in case it falls within the category of "exceptionally special case". However, the provisions of the fishery rules do not debar a party to ask for extension even if he is a defaulter. *M/s. Kumuhis Group Fishery Co-operative Society v. State of Assam*, (1985) 2 GLR (NOC) 5.

While temporary defaults in respect of kists of fishery revenue were made and in spite of time allowed to clear arrears the lessee failed. The authority without notice to the subsisting lessee or cancelling the same invited tenders for sale of the fishery. *Held:* Re-settlement superimposing over a subsisting settlement is not tenable. *Desange Part II Meon Samabai Samity Ltd. v. State of Assam*, (1982) 1 GLR 143.

In the case of *Horn Oshery Min Mahal Samabai Samity*

Ltd. v. Assam Fisheries Development Corporation, 2001 (1) GLT 454, the question arose as to whether after transfer of the management of the Fisheries to the Corporation, the Statutory Fishery Rules will continue to be applicable in the settlement made by the Corporation. The Court held that Assam Fishery Rules are not applicable in the matter of settlement to be made by Assam Fisheries Development Corporation being a company incorporated under the Companies Act, 1956. Thus APDC does have the power to make any direct settlement of fisheries as per the proviso to Rule 12 of the Assam Fishery Rules.

The State Government having directed itself of the powers of managing the fishery in question, including the power of setting the same, by transferring the fishery to the Assam Fishery Development Corporation Ltd., could not have passed the impugned order of settlement in favour of respondent No. 5. *Held:* The settlement is liable to be quashed. The settlement holder will continue to be in possession till the Corporation makes a fresh settlement after inviting tenders. *M/s. No. 35 Pakaria Min Samabai Samity Ltd. v. State of Assam*, 1997 (1) GLT 587.

9. *Fisheries not sold.*—If the highest ["tender"] for any registered fishery is less than ten rupees, such fishery shall be reserved from sale until the ensuing years, unless in the meantime a ["tender"] of not less than ten rupees is made for it. Fisheries thus reserved may be declared open to the public by the Deputy Commissioner or Sub-Divisional Officer at the conclusion of the sale with the proviso that they will be sold whenever a sufficient bid is made for them.

10. In the Assam Valley, the Deputy Commissioners and the Sub-Divisional Officers are authorised to abstain from leasing any fishery or group of fisheries for which the "tender" is below Rs. 50 unless there are special reasons for leasing them, but this Rs. 50 limit would not apply in the case of fisheries which are farmed in the interest of sport, to prevent the indiscriminate destruction of fish.

¹ Substituted for the word "bid" vide Notification No. VFF. 12/71/55, dated 14 June, 1971. (Published in the Assam Gazette (Extraordinary) of August 7, 1971.)

["11. Appeal against order of the ["settling"] Authority.— All appeals against the orders of the ["settling"] authority passed under these Rules shall lie to the Assam Board of Revenue. Appeals must be preferred within thirty days of the date of such orders.]"

RULINGS

Rule 11 does not provide right of appeal to person other than those who contest the settlement by their tenders. The Court made strong doubts on the point as to whether a stranger has *locus standi* to prefer such an appeal. *Bhendra Nath Das v. Assam Board of Revenue*, (1983) 1 CLR 144.

Appeal to Assam Board of Revenue against order of settling authority dated 25.8.80 was filed on 25.12.80 beyond period of limitation of 30 days. Application for certified copy was also filed beyond time i.e. on 30.9.80. In spite of there being no application for condonation of delay Board of Revenue entertained the appeal.

In writ it was held, that the Board had no jurisdiction to entertain time barred appeal. *Bhendra Nath Das v. Assam Board of Revenue*, (1983) 1 CLR 144.

In the case of *Rampati Gouda v. Assam Das*, AIR 1967 (A & N) 50 the petitioner was the lessee of fishery for the years 1961-64. This settlement was made after his tender was accepted. He made some defaults of instalments, therefore the fishery was ordered to be resold on 20.12.1962, in respondent No. 1 for the unexpired period. Against the order an appeal was filed to the Assam Board of Revenue u/a 4 of Assam Board of Revenue Act (VIII) of 1960. It appears that in the meantime the Government in exercise of its power under Rule 12 made direct settlement with the respondent. Board of Revenue had jurisdiction to hear the appeal. Further appeal filed under Section 147 of Assam Land and Revenue Regulation Act being revenue matter relating to settlement of fishery can be entertained by the Board of Revenue.

1. Substituted by the words "Cancelling" with Notification No. VTR 127/7175, dated 27th October, 1972.

While the Board of Revenue allowed the appeal and directed settlement in favour of opposite party, only on the ground that the petitioner filed the year in the tender column No. 7 as "1962-64" instead of "1962-65", the Division Bench allowed the petition under Article 226 of Constitution holding that even assuming the filing to be defective such defect would not invalidate the settlement. *Bhuvan Chandra Das v. Assam Board of Revenue*, AIR 1967 (A & N) 98.

Deputy Commissioner, according to the letter of Government, settling fishery by auction to 'A' subsequently settlement in favour of 'A' was cancelled and fishery resettled in favour of another body. Acts of cancellation and settlement held were those of Deputy Commissioner and not of Government though he acted under direction of Government U/R 190 of Assam Land and Revenue Regulation, 1886. High Court had jurisdiction to entertain appeal. High Court rightly held in restoring settlement with 'A'— *State of Assam v. Keshab Prasad*, AIR 1953 SC 309; 1953 SCR 865.

Under the rules a S.D.O. in charge of an independent Sub-Division exercises concurrent jurisdiction in matters of settlement of fisheries and clarification of boundary disputes if any, within his jurisdiction. Appeal against the order of the SDO lies to the Board and not to the D.C. *M. Kharshid Ali v. D.C. Kamrup*, AIR 1970 (AIR) 7 (PB).

The power of the Board as an Appeal Authority in the matter of Fishery Settlement is Co-extensive with that of the settling authority. It has undoubted power of remand, but when it should cry a halt and decide on merits instead of remanding the matter, it must balance the cause of the parties alongwith the vital questions of public interest. The order of remand is therefore set aside. *Barpeta Road Fish Marketing Society Ltd. v. Assam Board of Revenue*, (1982) 1 CLR 130.

Where after a registered fishery was settled with the petitioner a dispute arose as to area. Interference by State Government is without authority of law. Since there is deprivation of lessee's right to fishery, mandamus can

be issued against Government. *Abdul Malik v. Deputy Commissioner*, AIR 1961 Assam 126.

Where the settling authority arising interim arrangement, the order is not one under Fishery Rules, therefore appeal does not lie. *Co-operative Society Ltd. v. State of Assam*, AIR 1981 (Gau) 32.

["12. Except those referred to in sub-rule No. 8(b) above, all registered Fisheries shall be settled under tender system of sale in place of sale auction.]"

["Provided that the Government shall settle a 60% category fishery with special category of co-operative Societies, Non-Government Organisations and Self Help Groups consisting of 100% actual fishermen in the neighbourhood of the fishery concerned by the Tender System."]

Explanation 1 :- For the purpose of this rule, the words "special category" means and includes the

* Substituted Rules 11 and 12, vide Notification No. VTR 127/71/85, dated 1st June, 1971 (Published in the Assam Gazette (Extraordinary), 1st August, 1971.)

Note (1) :- Before substitution of Rules 11 and 12, read as follows :-

"11. Appeal.— An appeal shall lie against an order of a Deputy Commissioner or a Sub-Divisional Officer passed under these rules to the Assam Board of Revenue within thirty days of the date of such order."

Provided that in those cases where orders of settlement were appealable after confirmation by Commissioner of Divisions before coming into force of Notification No. BGP 99/82/79, dated 17th May, 1963 and the period of limitation prescribed therein had not expired, an appeal shall lie within thirty days of the coming into force of the said Notification.

Provided that there shall be no appeal against an order of settlement passed by the State Government under Rule 12."

"12. No fishery shall be settled otherwise than by sale except by the State Government. The order of settlement passed by the State Government shall be final."

Provided that the State Government may introduce the tender system of settlement of Fisheries in place of sale by auction system whenever it is considered necessary."

Note (2) — The Original Rule 11 which was substituted vide Notification No. BGP 99/03/37, dated 18th August, 1963, read as follows :-

"11 Appeal.— All orders of a Deputy Commissioner or Sub-Divisional Officer made under these rules were appealable to the Assam High Court."

Co-operative Societies, Self-Help Groups, Non-Governmental Organisations comprising of 100% actual fishermen of the Scheduled caste community or Maimal community of erstwhile Cachar district. Who can not participate in competitive bidding because of poor financial condition due to famine, flood, draught, epidemic of any other circumstances which are beyond control of the society, non-Governmental Organisation or Self Help Groups as the case may be;

Explanation 2 :- For the purpose of this rule "a 60% category fishery" means 60% of registered fisheries available in a Civil Sub-Division eligible for settlement in a particular year."]

RULINGS

Rule 12 of the Assam Fishery Rules — Settlement of Fishery in favour of a co-operative society comprising of 100% fishermen communities — Since bid value offered by society was within range of 7½% of the bid value of higher bidder. See *Sonbeel Fishermen Co-operative Society Ltd. v. State of Assam*, 2005 (36) AIC 201 (Gau. H.C.).

Rule 12 of the Assam Fishery Rules — Settlement of Fishery — Except referred in sub-rule 8 (b) — all registered fishery — Government can settle by public auction. See *Abdul Das v. State of Assam And Ors.* AIR 2006 NOC 79 (Gau); (2006) 2 CLR 635.

Rule 12, Proviso -- of the Assam Fishery Rules — Direct

Substituted the existing 'Proviso' in Rule 12, vide Notification No. BGP 2/2000/171 dated 31st March, 2000 (w.e.f. 23rd April, 2000).

Note :- Before substitution of 'Proviso' in Rule 12 read as follows:-

Provided that the State Government may settle any registered fishery otherwise than under tender system with Fishery Co-operative formed with 10% percent actual fishermen of the fishing population in the neighbourhood of the fishery concerned and belonging to the Scheduled Caste of the State or Maimal Community of the Cachar District as a reserve fund and for a period decided by the State Government from time to time.

Settlement of Fishery. See *Keshkuri Pathar Meen Samabai Samites Ltd. v. State of Assam & Ors.* 2004 (3) GLJ 137.

Rule 12, Proviso - of the Assam Fishery Rules and Administrative Law - Direct Settlement and Cancellation of Fishery. See *Managing Committee, Ujan Lohit Kharkat Sait Min Samabai Samiti Ltd. & Another v. State of Assam & Another* 2004 (2) GLJ 564.

Rule 12, Proviso - of the Assam Fishery Rules, meaning of Neighbourhood - Object and purpose of Rules Settlement under the Rule 12, Proviso should be fair. See *Bratnagar Par II Madanahai Samabai Samity Ltd. v. State of Assam And Others.* (2003) 1 GLR 528 : 2003 (2) GLJ 10.

From reading proviso to Rule 12, it is abundantly clear that 60% of the registered fisheries available for settlement shall be settle normally by tender system. The proviso gives power to the Government to give settlement without going through the process of tender system by direct settlement. The Govt., can give direct settlement only on fulfilment of the conditions laid down in the provisions. In the absence of any of those conditions, the Government will have no jurisdiction to give settlement of any fishery in the said category under proviso to Rule 12. *Mangaldo Pioneer Fishery Co-operative Society Ltd. v. State of Assam.* (1996) 3 GLR 79 : 1996 (3) GLT 547.

Proviso to Rule 12 speaks only "neighbourhood" and not "the area of operation". However, so long proviso to Rule 12 in there, direct settlement can be given only on the basis of "neighbourhood". It is for the rule making authority to consider about such anomaly. *Mangaldo Pioneer Fishery Co-operative Society Ltd. v. State of Assam.* (1996) 3 GLR 79 : 1996 (3) GLT 547.

Merely opening of an office by a Co-operative Society within the area of operation or in the neighbourhood of the fishery is not enough to entitle the Society to claim the settlement under proviso to Rule 12. *Papara Harichon v.*

State of Assam. (2001) 1 GLR 447 : 2001 (1) GLT 139 : 2001 (1) GLJ 439.

While determining question of neighbourhood of a Co-operative Society, it is not expected of Writ Court to go into every minute factual details relating to neighbourhood. High Court cannot measure every inch of distance at which a Society is situated. High Court can examine as to whether the condition and requirements of neighbourhood as prescribed was present in the mind of Settling Authority if it is able to the requirements of rule and reflect in the order of settlement. Writ Court will not be justified of measuring the distance between two competent claimants. *M/s. Majorat Min Samabai Samity Ltd. v. M/s. Sukhray Min Samabai Samity Ltd.* 1998 (4) GLJ 458 : 1998 (1) GLT 405.

While deciding the matter of settlement in favour of society in the neighbourhood of the fishery, attention is paid to the area of operation of the Society whereas proviso to Rule 12 wants consideration of the fact as to whether in particular Society is in the neighbourhood of the fishery or not. *Shri Indul Das v. State of Assam.* (1989) 1 GLR 263.

In the case of *M/s. Jahnabi Machhrajubi Samabai Samity Ltd. v. State of Assam.* 1997 (1) GLT 134. The Hon'ble Court while upholding the settlement deprecated the action of State Government whereby it made undue favour to a particular Society ignoring the claim of the Petitioner Society which is situated in the neighbourhood of the fishery. The object of the rule is to preserve and protect the interest of fishing community living in the neighbourhood of the fishery.

The four conditions/pre-requirements must be present where the State Government decides to settle the Fishery under the proviso to Rule 12. Unless the conditions are fulfilled the order to settle would never be available to the State Government "Neighbourhood of the Fishery" is one of the pre-conditions. *M/s. Smithala Toprakhaus Min Samabai Samity Ltd. v. State of Assam.* 1997 (1) GLT 454.

The proviso to Rule 12 is meaningful in its object and it was introduced by the rule making authority to secure livelihood of the members of the Co-operative Society having 100 percent actual fisherman belonging to Scheduled Caste only who are in the neighbourhood of the petitioner. *M/s. Lohit Era-Sait Mach Mahal Samabai Samity Ltd. v. State of Assam.* 1997 (1) GLT 276.

Where the amount quoted in the tender 40% above the minimum revenue fixed by the Fishery Development Corporation and the Court found that the fishery concerned is definitely a profitable one in the vicinity, the amount cannot be said to be excessive. *Satyaj Das v. Assam State Fisheries Development Corporation Ltd.* (1995) 1 GLR 408.

As there is no such mention of the exemption of 40% fisheries and also there being the expression "any registered fishery" in the proviso to Rule 12, it must be held that the proviso is applicable to all fisheries subject to fulfilment of the conditions laid down therein. *L. Barman v. State of Assam.* (1983) 1 GLR (NOC) 18.

In the case of *No.7 Bhatnagarha Diphing Meen Samabai Samity Ltd. v. State of Assam.* 2001 (4) GLT 305 : 2001 (1) GLJ 623. The respondent No. 4 was held to be entitled to operate the fishery till 31.3.99 as per compromise in Writ Appeal No. 290/98. On 16.3.99 AFDC invited fresh tender. The respondent No. 4 prayed for extension for another five years and the Minister-in-charge of the Fisheries Department of the Govt., of Assam (vide order dt. 30.3.99) granted extension but the said order was not acted upon by the AFDC. High Court issuing direction to AFDC to take a decision as to whether the sitting lessee should be given extension or to proceed to finalise the tender process. Corporation instead of applying its mind in dependently, granted extension. The Court held that the AFDC is required to take decision on merits only and not at the dictates of the State Government or Minister. Therefore the matter was remanded back to Corporation for calling proper decision.

Assam Fisheries Development Corporation has no power to make any direct settlement as per proviso to Rule 12 of the Assam Fishery Rules, 1953. *Haria Dablong Min Mahal Samabai v. Assam Fisheries Development Corporation.* 2001 (1) GLT 454.

AFDC has independent entity and not part of Govt., or subordinate to Govt., it is incorporated under Companies Act 1956. In this case Corporation acted mechanically in withdrawing the fishery from tender process and settling with sitting lessee at the behest of Minister. *Gorjan Bullagan Matabhrajubi v. State of Assam.* 1999 (2) GLJ 583 : 1999 (2) GLT 537.

Where the State Government settled the fishery after transferring the fishery to the Assam Fisheries Development Corporation Ltd., the settlement is liable to be quashed. *M/s. No. 35 Pukaria Min Samabai Samity Ltd. v. State of Assam.* (1997 (1) GLT 557.

But in the case of *Assam Fishery Development Corporation v. D. Hazarika.* 1997 (1) GLT 455. The Hon'ble V.K. Khanna, CJ and A.K. Patnaik J has held that Assam Fishery Development Corporation is governed by the definition of "state" as defined under Article 12 of the Constitution.

Undoubtedly proviso to Rule 12 makes it clear that the Government may directly settle a fishery with any registered Fishery Co-operative Society, subject to fulfilment of requirements. *Unemployed Youth Firm v. State of Assam.* 1995 (3) GLT 74.

The preference should have been given to Fishery Co-operative Society formed with 100 per cent actual fisherman belonging to Scheduled Caste community. The Corporation has made contradictory stand in pleadings. The Court held that the Assam Fisheries Development Corporation Ltd., will convene their meeting within one month in order to decide by resolution as to what was the Policy which was being adopted by the Assam Fisheries Development Corporation Ltd., when

The proviso to Rule 12 is meaningful in its object and it was introduced by the rule making authority to secure livelihood of the members of the Co-operative Society having 100 percent actual fisherman belonging to Scheduled Caste only who are in the neighbourhood of the petitioner. *M/s. Lohit Ero-Sar Mani Mahal Samahaya Samity Ltd. v. State of Assam*, 1997 (1) GLT 276.

Where the amount quoted in the tender 40% above the minimum revenue fixed by the Fishery Development Corporation and the Court found that the fishery concerned is definitely a profitable one in the vicinity, the amount cannot be said to be excessive. *Surya Das v. Assam State Fisheries Development Corporation Ltd.*, (1995) 1 GLR 408.

As there is no such mention of the exemption of 40% fisheries and also there being the expression "any registered fishery" in the proviso to Rule 12, it must be held that the proviso is applicable to all fisheries subject to fulfilment of the conditions laid down therein. *L. Borsani v. State of Assam*, (1983) 1 GLR (NOC) 18.

In the case of No. 7 *Bathogathi Daping Meen Samahai Samity Ltd. v. State of Assam*, 2001 (1) GLT 306 : 2001 (1) GLJ 623. The respondent No. 4 was held to be entitled to operate the fishery till 31.3.99 as per compromise in Writ Appeal No. 200/98. On 16.3.99 AFDC invited fresh tender. The respondent No. 4 prayed for extension for another five years and the Minister-in-charge of the Fisheries Department of the Govt. of Assam vide order dt. 30.3.99 granted extension but the said order was not acted upon by the AFDC. High Court issuing direction to AFDC to take a decision as to whether the sitting lessee should be given extension or to proceed to finalise the tender process. Corporation instead of applying its mind independently, granted extension. The Court held that the AFDC is required to take decision on merits only and not at the dictates of the State Government or Minister. Therefore the matter was remanded back to Corporation for calling proper decision.

Individual is not entitled. *Sudhangshu Kumar v. State of Assam*, 1999 (2) GLT 210.

State Government has unfettered power to settle the fisheries directly in compliance with the provisions contained in proviso to Rule 12. The exercise of power is not arbitrary. The compliance of pre-requisites is necessary. In the absence of the same, power of settlement is not available to the State Government. *Arabinda Das v. State of Assam*, AIR 1981 Gau. 18 (FB) : (1982) 1 GLR 280.

In *Manu Ram Das v. Assam Fisheries Development Corporation*, 2000 (1) GLJ 163 : (2000) 1 GLR 362 : 2000 (1) GLT 41. Petitioner and Private respondent submitted application for direct settlement before Minister and were forwarded to Corporation. The settlement was made directly with Private respondent. It was held that the disposal/distribution of State largesse by writing open tenders, is a mark of maturity and good administration. When the matter pertains to fishery, the authority can limit the competition amongst the actual fishermen belonging to the listed castes to avoid the speculative bids keeping in mind the economic and financial status of the bidders. However it is matter relating to discretionary area of administration. The action of the respondent authorities in the present case under the said circumstances cannot be invalidated on this ground alone.

In the case of *M/s. Majoran Mtn. Samahai Samity Ltd. v. M/s. Sakhray Mtn. Samahai Samity Ltd.*, 1998 (1) GLJ 458 : 1998 (1) GLT 405, the petitioner Society made agreement with non S.C. people to sublet the fishery in case they got settlement. Subsequently petitioner Society filed application withdrawing earlier agreement. The settling authority settled the fishery with respondent Society. On challenge single Judge set aside the Settlement Order. In writ appeal it was held that the object and reasoning of the single Judge in this behalf cannot be subscribed to as it would defeat the very

Assam Fisheries Development Corporation has no power to make any direct settlement as per proviso to Rule 12 of the Assam Fishery Rules, 1953. *Haria Dablong Mtn. Mahal Samahai v. Assam Fisheries Development Corporation*, 2001 (1) GLT 454.

AFDC has independent entity and not part of Govt., or subordinate to Govt., it is incorporated under Companies Act 1956. In this case Corporation acted mechanically in withdrawing the fishery from tender process and settling with sitting lessee at the behest of Minister. *Gograj Ballujan Hachhupathi v. State of Assam*, 1999 (2) GLJ 583 : 1999 (2) GLT 537.

Where the State Government settled the fishery after transferring the fishery to the Assam Fisheries Development Corporation Ltd., the settlement is liable to be quashed. *M/s. No. 35 Pukaria Mtn. Samahai Samity Ltd. v. State of Assam*, 1997 (1) GLT 587.

But in the case of *Assam Fishery Development Corporation v. D. Hazarika*, 1997 (1) GLT 495. The Hon'ble V.K. Khanna, CJ and A.K. Patnaik J has held that Assam Fishery Development Corporation is governed by the definition of "state" as defined under Article 12 of the Constitution.

Undoubtedly proviso to Rule 12 makes it clear that the Government may directly settle a fishery with any registered Fishery Co-operative Society, subject to fulfillment of requirements. *Unemployed Youth Firm v. State of Assam*, 1998 (1) GLT 74.

The preference should have been given to Fishery Co-operative Society formed with 100 per cent actual fisherman belonging to Scheduled Caste community. The Corporation has made contradictory stand in pleadings. The Court held that the Assam Fisheries Development Corporation Ltd., will convene their meeting within one month in order to decide by resolution as to what was the Policy which was being adopted by the Assam Fisheries Development Corporation Ltd., when

object of the rules. After all administrative efficiency does not lie in curing a wrong which can be averted and if the settling authority thought it fit on the basis of materials available on record that the Society has already entered into an agreement to sub-let the fishery apparently for monetary gain even before a Settlement Order is passed. Naturally such move affects the credentials of the Society.

Where Maimal Community of Cachar District put at par with other Scheduled Castes of the State by Notification, it was held that the list of Presidential Order can neither be added nor subtracted by any other authority except Parliament. *M/s. Dighpur Maimal Mtn. Samahai Samity Ltd. v. State of Assam*, 1997 (2) GLT 582 : 1998 (1) GLJ 225.

Maimal Community of Cachar District and permanently residing in Darrang District is not entitled to be treated equally with any other Society consisting of members of Schedule Castes outside the District of Cachar for the purpose of Proviso to Rule 12. *M/s. Dighpur Maimal Mtn. Samahai Samity Ltd. v. State of Assam*, 1997(2) GLT 582 : 1998 (1) GLT 223.

The jurisdiction of Civil Court is barred in respect of any settlement granted under Rule 12. *Dudpoon Nijapora Fishery Co-operative Society Ltd. v. M/s. Bihari Fishery Co-operative Society Ltd.*, 1993 (2) GLJ 248 : (1993) Supp. (1) GLR 396.

Where no efforts have been made by the authority to find out whether the Society is a Fishery Co-operative Society to get Settlement under Provisions of Rule 12, the High Court under Article 226 of the Constitution cannot embark upon to make all those enquiries. *Lalit Kumar Das v. State of Assam*, (1995) 1 GLR 37.

Rule 12 is not violative of Article 14 or 19 (1) (g) of the Constitution. The naked and arbitrary powers are not given under this rule to pick and choose. The Government has power to make direct settlement in case special circumstances exist. *Pathanul Fishery Co-operative Society Ltd. v. State of Assam*, AIR 1969 (A & N) 212 (FB).

The High Court has extra-ordinary jurisdiction to interfere if there is violation of principles of natural justice in the matter of Settlement of Fishery. In the instant case since the petitioner had full knowledge of the enquiry conducted, the violation of the principle of natural justice holds a little water. *M/s. Pait-pam Fishery Co-operative Society Ltd. v. State of Assam*, 1997 (ii) GLT (HC) 283.

The theory of "distributive justice" is more particularly applicable in the distribution of Public Largesse. The Proviso to Rule 12 must also conform to the policy laid down in Part IV of the Constitution. *M/s. Lohit Krusun Mach Mahal Samabaye Samity Ltd. v. State of Assam*, 1997 (1) GLT 276.

Provisions for giving preferential treatment to protected communities (i.e., Backward Classes or to Co-operatives formed by members of such communities are laid down under the rule. It was held that while dealing with such claims principles of distributive justice and provisions of directive principles should be kept in mind. For giving preferential treatment bids which have been rejected as exorbitant, excessive or reckless or not actually acted upon should not be counted. *Shri Jay Kanta Hira v. State of Assam*, (1987) 2 GLR 471.

The Maimal Community of Cachar District residing out of the said District is entitled to get the benefit of the proviso to Rule 12. *Baghpori Maimal Min Samabai Samity v. State of Assam*, 1999 (2) GLT (SC) 7.

Application for Direct Settlement received by Minister who forwarded with personal note to Managing Director for consideration. The Corporation settled the Fishery with private respondent without applying its independent mind. Held—The settlement made at intervention of Minister suffers from external interference bad faith or abuse of power. *M/s. 129 Pait-pam Fishery Min Mahal Samabai Samity Ltd. v. Assam Fishery Development Corporation Ltd.*, 1999 (2) GLJ 622, 1999 (2) GLT 620.

***13. Settlement of Fisheries with Co-operative Societies.**—(a) with the prior approval of the State Government not more than 60 per cent of fisheries in a Sub-Division available for settlement in a year shall be selected for sale under tender system only with the Co-operative Fishery Societies formed with 100 per cent share holders from member of actual fishermen belonging to Scheduled Caste of the State and/or Maimal Community of the District of Cachar and registered under the Assam Co-operative Societies Act, 1949. Settlement of all such fisheries tenders of which have been accepted under Rule 5 shall be with the highest tender.

(b) The remaining fisheries in the Sub-Division available in that year under tender system of sale, shall remain open for settlement to all communities including Co-operative Societies as referred to in sub-rule (a) above.

(c) A Co-operative Fishery Society formed by members of actual fisherman belong to the Scheduled Castes/Maimal Community/Scheduled Tribes/Other Backward Classes and registered under the Assam Co-operative Societies Act, 1949, shall be given option to accept settlement of Fisheries of the category as mentioned in sub-rule (b) above at the highest tender, provided that their tender is within 7% per cent of the highest tender.

(d) When the tenders for fisheries falling within the category referred to in sub-rule (b) above are below 7% per cent of the highest tender (i) Co-operative Societies as stated in sub-rule (c) above (ii) Individual members of actual fishermen belonging to the Scheduled Castes and Maimal Community, (iii) Individual members of the Scheduled Tribes and other Backward Classes who may offer tenders not less than 60 per cent of the highest

tender may be given option to accept settlement of the fisheries at the highest tender, in order of preference as stated above subject to suitability of the tenderers.

(e) When a fishery referred to sub-rule (b) above fetching a tender not exceeding Rs. 50,000 per annum is settled with any individual member from actual fishermen belonging to the Scheduled Castes, Scheduled Tribes/Maimal Community or Other Backward Classes the tender shall get a rebate of 7% per cent as concession. But when a fishery fetching a tender not exceeding Rs. 1 lakh (Rupees one lakh) per annum is settled with any Fishery Co-operative Society Formed by members from communities as stated above, the tenderer Society shall get a rebate of 10 (ten) per cent as concession:

Provided that 10 per cent rebate as aforesaid shall not be available to Fishery Co-operative Societies formed with 100 per cent share holders from actual fishermen belonging to the Scheduled Castes of the State and Maimal Community of the District of Cachar if the accept settlement of Fisheries as stated in sub-rule (a) above:

Provided further that such rebate shall not be admissible in case any individual or Fishery Co-operative Society of any protected community offers the highest tender.

(f) Any tenderer claiming the concession provided in this rule shall indicate the same in his tender.]

1. Substituted Rule "12" vide Notification No. VPR. 127/74/53, dated 10 June, 1971. [Published in the Assam Gazette (Extraordinary), August 7, 1971.]

Note (1)—Scheme Substitution of Rule "12" read as follows—

*12. Settlement of Fisheries with Co-operative Societies.—(a) The Fisheries Societies formed by actual fishermen of the Scheduled Castes and registered under the Assam Co-operative Societies Act, 1949,

shall be given option of taking settlement of Fisheries at the highest bid, provided that the bid of such Co-operative Societies is within 7% per cent of the highest bid.

(b) When the bids of such Co-operative Societies are below 7% per cent of the highest bid, (i) Co-operative Societies as stated above, (ii) Individual members of the Scheduled Tribes and Other Backward Classes who may offer a bid not less than 60 per cent of the highest bid, may be given option to take settlement of the fishery at the highest bid, in the order of preference stated above, subject to the suitability of the bidder.

(c) When a fishery, the bid value of which does not exceed Rs. 50,000 is settled with any one falling within one of the categories stated in sub-rule (b) or (b) above, the tenderer shall get a rebate of 7% per cent as concession.

(d) Any bidder claiming the concessions provided in this rule shall indicate the same in writing to the officer conducting the sale, immediately before the commencement of the sale.

Note—1. By actual fishermen of Scheduled Castes is meant fishermen by profession and not fishermen by caste alone.

Note—2. A Co-operative Fishery Society should be deemed to be a Society formed by actual fishermen, if not less than 90 per cent of the members thereof are actual fishermen of the Scheduled Castes.

Note—3. The list of recognized other Backward Classes in Assam, for the purpose of this Rule, includes—

1. Ahom.
2. Bania.
3. Barva.
4. Chutia.
5. Garmal in Cachar Hill.
6. Khamar.
7. Khasia.
8. Mahiya Das.
9. Manipuri.
10. Mizo and Matak.
11. Nepali.
12. Nepali (i.e., Thapa, Gurung, Magar, Limbu, Newar, Limbu, Gurung, Rai, Chhetri, Lachin, Sarki, i.e., Colahar and Desait).
13. Rajbanshi or Koch.
14. Santal.
15. Sudda Das or Day.
16. Sant.
17. Santal.
18. The Garden Tribes (i.e., Gunda, Mankai, Khundi, Gramon, Saikhai, Sivasar, Pank).

RULINGS

Prior to amendment—In case of Co-operative Societies "formed by actual fishermen" the Societies need not be formed by fishermen exclusively. *Maharaj Ram Hazarika v. A M Deshmukhaya*, AIR 1959 Assam 176 (DB).

In *Keshab Prasad Singh v. Moharaj Das*, AIR 1955 NUC (Assam) 2808 his leadership held that Fisheries Rules applies to individuals and not to registered partnership.

"Actual fishermen of Schedule Caste" mean fishermen by actual profession, whose main, if not the only, source of livelihood is fishing. Four out of seven persons are not fishermen by profession, therefore they cannot claim concession. *Keshab Prasad Singh v. Moharaj Das*, AIR 1955 NUC (Assam) 2808.

19. Toli
20. Jugi (Nadi)
21. Scheduled Caste (settled to Christianity)
22. BBN (Scheduled Caste)
23. Mulla
24. Muzais (Muslim Fisherman)

Note—(1) The Original Rule "ET" read as follows—

13. Settlement of fisheries with Co-operative Societies—(a) Registered Co-operative Fishery Societies formed by actual fishermen of the Scheduled Caste and individual actual fishermen of the Scheduled Caste, going unopposed for in the sale, shall be given the option of taking settlement of fisheries at the highest bid (a) or (b) of purchase stated above.

(b) Where a fishery had value of which does not exceed Rs. 20,000 (twenty thousand) as settled with any one falling within one of the above two categories, the lessee shall get a rebate of ten per cent on concession.

Note—1. By "Actual Fisherman of the Scheduled Caste" is meant fisherman by profession and not by caste alone.

Note—2. The 10 per cent rebate concession will be withdrawn at any time when circumstances so demand.

Note—3. "Substantial bid" means 40% bid exceeding 50 per cent in value of the highest bid.

The first part of the rule does not cover the case of fisherman bidding as an individual. Where he has been bidding to the bitter end and his was the highest bid he can not also ask for any concession because having offered that bid himself he disentitles himself to the privilege by his own conduct. *Jagat Chandru Das v. Nandi Sam*, AIR 1955 NUC (Assam) 4215.

Where fishery including certain "bills" was sold in auction but since five months later Revenue Authorities informed the lessee that certain "bills" in the area belonged to forest department and should be excluded. *Held*—If the Revenue Authorities were unable to allow the lessee to fish in the bills, the proper course for them was to refund the money and re-auction the fishery. *Sati Mahmud Dossari v. Province of Assam*, AIR 1955 NUC (Assam) 628.

The Rule does not lay down that the option has to be exercised only at the time of the auction sale or immediately thereafter. *Harnath Das v. State of Assam*, AIR 1958 Assam 70 - ILR (1958) 10 Assam 44.

After amendment—The sale of fisheries is a source of revenue for the State and there is no legal bar under these rules to the Commissioner refusing to confirm a tender in view of the low price submitted by the tenderer. *Jatindra Nath v. Assam Board of Revenue*, 1973 ALR 144.

Rule 13(a) provides reservation of not more than 60% of fisheries in a Sub-Division for settlement only with the corporation Fishery Societies formed with 100% share holders for members of Schedule Caste. The petitioner society with 90% membership of actual fisherman was denied settlement in view of Rule 13(b). It was held that such a rule is not violative of Article 15(1), 19(1) (c) and 19(1)(f) of the constitution. It is permissible for the State Government in view of the provision of Article 15(4) to make reservation of not more than 60% of fisheries. *Gowri Chandra, Secretary Chandra Muzais Samabai Society Ltd. v. Assam Board of Revenue*, 1973 ALR 360.

In case of *M/s. Kachhaya Motenajibi Samabai Samity Ltd. v. State of Assam*, 1995 (1) GLJ 218 - AIR-1995 (Gau) 101, the Civil Rule has been preferred against the Show Cause Notice issued to the writ petitioner by the Managing Director, Assam Fishery Development Corporation for cancelling the Settlement of Petitioner's Fishery. It was held that though there is no provision for show cause or review, authority can recall the order of settlement when the aggrieved party who was the highest bidder, objected to the settlement on the ground of prejudice and arbitrariness. For the same reason the respondent No. 1 cannot be stopped from taking action.

Rule 13(a) has to be read with Rule 5(f) and Rule 46 in the entire Scheme of the rules of settlement disclosed under the above rules, the conclusion is capable that Rule 13(a) is a directory provision. *Binod Chandra Sarkar v. Assam Board of Revenue*, 1974 ALR 167.

In the case of *Borman v. State of Assam*, (1983) 1 GLR (NOC) 18, a question arose as to whether the Government is empowered to make direct settlement in respect of 40% Category of Fisheries. It was held that in terms of Rule 13(c) and 13(d), Co-operative Societies get another premium in connection with the 40% fisheries stated under Rule 13(a).

The proviso is applicable to all the fisheries subject to fulfilment of the conditions laid down therein.

Where a solitary tender of Co-operative Society in respect of 60% fishery has been filed and fulfils the requirements of Rule 13(a), it was sent for confirmation.

Held—The Commissioner has power to refuse confirmation on the ground that the offer is too low. There is limitation under the rules on the power of Commissioner in exercising his power under Rule 8(d). Rules does not envisage any abridgment of the Commissioner's power of confirmation provided he exercises it with in the four

corners of the rules. *Jitendra Nath Medhi v. Assam Board of Revenue*, 1973 ALR 144.

In *Bapural Das v. Assam Board of Revenue*, (1984) 2 GLR (NOC) 2, case the necessary circumstances did exist as much as the tender of the Co-operative was "not less than 60%" of the highest tenders. Further of the three categories of tenderers mentioned in sub-rule (d), the first preference was available to respondent No. 4 which is a Co-operative Society of actual fisherman belonging to Scheduled Caste, therefore option shall have to be given. The same may be rejection by the Settlement Authority but he has to bear in mind the requirement of the sub-rule and has to assign good reasons. This would be subject to the suitability of the tenderer.

In case of any Settlement of Fishery in favour of an individual, procedure laid down under Rules 12 and 13 are to be strictly followed. It could be made only by following the tender system and not directly by the Government in favour of an individual. *Ganesh Das v. State of Assam*, 1998(4) GLT 49.

There is no arbitrariness or gain of Hostile discrimination in this rule to be hit by Article 14 of the constitution. The question that arose in this case was the selection of fisheries for sale to Co-operative societies. That object of these rules is to promote the economic interests of Schedule Castes and it is in furtherance of the Directive Principles of State as laid down in Article 46 of the Constitution. *Surendra Nath Borman v. State of Assam*, AIR 1973 (Gauhati) 6 - 1973 ALR 83.

In spite of the tender being of Rs 1825.25 of the petitioner whereas the highest tender was of Rs 5,525/- fisheries settlement was provisionally given to the petitioner by the SDO. In appeal before Board, the order of SDO was set aside. In writ it was held that same the

case of petitioner is not covered by Rule 13 (c) or 13 (d), hence it was rightly set aside by the Board. *Co-operative Society Ltd. v. Assam Board of Revenue*, (1983) 2 GLR 185.

The Settlement of Fishery with a Co-operative Society of actual fishermen by negotiations is valid when the price tendered by such Society is within 7% percent of the highest tendered price. *Behari Reserve Gas Mix Samabay Samity Ltd. v. Assam Board of Revenue*, AIR 1973 (Gauhati) 89.

14. Settlement of Fisheries as land.—Fisheries cannot be settled as land. In Cachar, however, small, i.e., second class fisheries which adjoin settled land shall be entered in a separate register in the Deputy Commissioner's Office and not included in the ordinary *Jamabandis*. The lease for such fisheries is in a special form sanctioned at the time of re-settlement. Fisheries which have silted up shall be settled as waste land under the ordinary rules. As by the terms of the lease the rights of the lessees extend to fishing only, they cannot acquire the status of a land holder.

15. Fishing right in Cachar.—The fishing rights in Cachar dealt with in Rule 14 shall be valued by the Settlement Officer and the *Mahal* shall be settled to the best advantage with any candidate who will undertake to collect the rates per net and basket hitherto in force. These rates shall be recorded, and it shall be a condition of the settlement that the holder of the *Mahal* shall not exact more. Another condition should be that he shall allow the continuance of the right of fishing to all who have hitherto enjoyed it, but shall not permit its extension to outsiders. Leases of such fisheries are exempt from the payment of stamp duty.

Fisheries of the River Barak or any other area which exceeds the limits of a single *Mouza* must be entered as

the fishery list and leased by auction, the income being credited in this case to "Miscellaneous Revenue".

[“Provided that the Settlement Officer shall submit the settlement proposal of Second Class Fisheries to the Commissioner of Division for approval.”]

RULINGS

Where an order settling fishery rights by Assam Fisheries Development Corporation was made at the instance of the Minister, Fisheries and canalisation order of settlement had also to be withdrawn at the interference of the Minister, the Court held that a decision of the Corporation is to be made in conformity with the Corporation norms keeping in mind the Corporate democracy. The order of settlement of the fishery in question vide communications issued by the Managing Director of the Corporation is, therefore vitiated by non application of mind. *Muzi Ram Das v. Assam Fisheries Development Corporation Ltd.*, AIR 2000 (Gauhati) 75.

***15-A.**—The fisheries in the upper reaches of the River Barak and its tributaries in the District of Cachar which are determined to be breeding grounds shall be declared by the Deputy Commissioner to be reserved fisheries by a notification in the Official Gazette specifying their boundaries therein with the previous sanction of the State Government. Such reserved fisheries shall be settled by the Deputy Commissioner in public auction subject to the following special conditions which shall be specified in the notice and shall be proclaimed before the sale begins and inserted in the lease—

¹ Substituted "proviso" in Rule 15 vide Notification No. VFR. 127/71/55, dated 1st June, 1971.

² Behari Substituted the Original "proviso" of Rule 15, read as follows: "Provided that the Settlement Officer shall submit the settlement proposal of second class fisheries to the Commissioner of Plains Division for approval."

³ Inserted Rule "15-A" vide Notification No. SF. 49/53/26, dated 7th March, 1955.

- (i) that construction of Dams and weirs shall be prohibited;
- (ii) that the minimum size of the mesh of the fishing net shall not be less than 4" square;
- (iii) that use of the *Mahajal* or *Berjal*, for the purpose of catching fish shall not be permitted;
- (iv) that the lease for these fisheries shall be for a period of six months only from the 1st October to the 31st March, and they shall remain reserved for the rest of the year;

Provided that in all other respects these fisheries shall be governed by the general Fishery Rules and that their sales shall be reported to the Commissioner of Plains Division, Assam, for approval. ["And that their Sales shall be reported to the Commissioner of Division for approval."]

16. Remission of fishery revenue.—Notwithstanding any provision in the condition of the fishery lease, remissions of fishery revenue may be granted in exceptional cases by the Deputy Commissioner up to the extent of Rs. 50 in any one case, and by the Commissioner of Plains Division up to the extent of Rs. 500 in any one case, provided the Officer authorized to grant the remission is satisfied that the refusal of remission will cause serious hardship to the lessee. A remission of revenue to the extent of more than Rs. 500 in any one case will require the sanction of the State Government.

17. Fishing without authority.—All fishing, without a lease previously obtained from the Deputy Commissioner of the district concerned or such other Officer as he may appoint for the purpose, in the fisheries of the province proclaimed Section 16 of the Assam Land and Revenue Regulation, 1886, is prohibited. Any person fishing in the proclaimed waters must carry his lease or an authority from the

¹ Substituted "proviso" in Rule 15 vide Notification No. VFR. 127/71/55, dated 1st June, 1971. [Published in the Assam Gazette (Extraordinary), of August 7, 1971.]

lessee and produce it when called upon to do so by any Officer duly authorised.

SECTION II Miscellaneous

18. Protection of fisheries.—No fishery shall be drained dry by the lessee, who shall be required to leave sufficient water for the protection of fish fry and for drinking purposes for cattle. The Deputy Commissioner or the Sub-Divisional Officer will, in the event of a dispute, fix the volume of water to be maintained in respect of any particular beel and his decision shall be final.

19. The Lessees of beel and tank fisheries must keep their fisheries clear of water hyacinth and other water weeds.

20. Fishing in Government fisheries by more than 25 persons at a time for their own consumption, even on payment of the lessees, dues (i.e., 4 Annas per instrument per annum), is prohibited in as much as it is highly detrimental to the interest of both the lessee and the Government. On infringement of this rule the persons at fault shall be liable to the penalties provided in the Rule 22.

21. Retting of jute prohibited.—If any person pollutes by the retting of jute the water of a Government beel fishery proclaimed under Section 16 of the Assam Land and Revenue Regulation and included in the District Register of Fishery, he shall be punishable with fine as prescribed in Rule 22:

Provided that the lessee of a fishery shall be held responsible for any deterioration of the fishery under his lease due to the retting of jute in it—

- (i) if he himself rets it or permits others to do so; or
- (ii) if he fails to inform the Deputy Commissioner or Sub-Divisional Officer as the case may be, when other persons do retting in his fishery.

["22. Penalties on breach of Rules.— (1) Any person contravening any of the provisions of these rules or who fishes, attempts to or abets fishing contrary to the above provisions shall be liable to a penalty which may extend to Rupees five thousand but not less than Rupees one thousand and when the breach is a continuing one, to a further fine which may extend to Rupees one hundred for every day, after the date of first conviction, during which the breach is proved to have been persisted in.

(2) If the contravention or breach of any provisions of these rules is committed by a lessee, the lease of such fishery shall be liable to cancellation in addition to any other penalty such forfeiture of security deposit and daily recurring fine as provided above if the offence be continued for some time."

"23. Restrictions on the use of nets.— (1) The use of *Bergal*/Mahajal or *Fosjal* or any type of net with meshes less than 7 c.m. bar/14 c.m. mesh is prohibited during breeding season beginning from the first day of the month of [April] and ending on the fifteen day of the month of July, both days inclusive, in any proclaimed fishery.

[Deleted]

(2) The use of net with less than 1 c.m. Bar/2 c.m. mesh *Mosajal* in size is prohibited in any fishery throughout the year.

[Deleted]

["(3) The Officers of the Fishery Department not below the rank of Fishery Extension Officer shall have access to any records/register/document, or any other

1. Substituted the word "Net" and Deleted the "Penalties" in sub-rule (1) & in sub-rule (2) of Rule 23, vide Notification No. FFRS.2/2000/171 dated 21st March, 2002 [w.e.f. 1st April, 2002].

Also, before substituted the "provisions" of Rule 23 (1) and (2) read as follows—
"Provided that this restriction may be relaxed by the State Government for *Mosajal* only."

"Provided that this restriction may be relaxed by the Deputy Commissioner/State Fisheries Officer for catching of smaller species like *Mussa*, *Pruthi*, *Sella*, *Carahi* etc., between the first day of the month of May and the fifteenth day of the month of July, both days inclusive."

materials including craft and gear of the lessee and have the power to seize them if any breach of rules is detected during the course of inspection and can impose a penalty to the extent of Rs. 500/- or as fixed by the Government from time to time."

["23-A. Restriction on fishing during breeding season on catching and selling of under sized fish.—

(1) Catching of brood fish (fish carrying eggs and sperm) of the following species, namely—*Rohu*, *Catla*, *Pihiti*, *Mrigal*, *Mali* (*Colbasi*), *Crital*, *Kharis*, *Pithia* (*Mahusol*), *Gharis* and *Kuri* (*Gontus*) is prohibited during season beginning from the first day of the month of May and ending on the fifteenth day of the month of July, both days inclusive, in any proclaimed fishery.

(2) Catching and killing, by any method, of fish for any purpose whatsoever including consumption and selling of under-sized fish of the following species, namely—*Rohu*, *Catla*, *Dabhi*, *Mrigal*, *Crital*, *Kharis*, *Pithia* (*Mahusol*) *Gharis* below 23 cm in length and *Mali* (*Colbasi*), *Gontus*, *Kuri*/*Bhagan* below 10 cm in length is prohibited between the first day of August and 31st of October.

Provided that the above restrictions may be relaxed by the order of the Director of Fisheries in writing, for piscicultural purposes only.

(3) All under-sized fish specified in sub-rule (2) above caught in the nets shall either be let off into the fishery or supplied to the Fisheries Department by the lessee in live conditions at the rate to be fixed by Government from time to time."

["24. No movable *Bana* with gap less than 7 cm sq. shall be used for fishing between the first day of the month of May and the fifteenth day of the month of July, both days inclusive, in any rivers, *Dobas* or *Beds* or Fisheries."

1. Inserted sub-rule (2), after sub-rule (1) in Rule 23, vide Notification No. FFRS.2/2000/171 dated 21st March, 2002 [w.e.f. 1st April, 2002].
2. Inserted Rule 23-A vide Notification No. VFR. 127/71/53, dated 1st June, 1971.

"25. *Bana* with less than 7 cm. sq. gaps fixed at the mouth of *Beds* or *Dobas* or at the boundaries of River Fisheries by which water is drained out is permissible to be used only during fishing season excepting the period between the first day of the month of May and the fifteenth day of the month of July of the year, both days inclusive."

26. Subject to the above rules and with the previous sanction of the State Government, Deputy Commissioner, may prescribed the mesh of fishing nets, the fixed engines or other contraventions which can be used and the manner in which the fishing operations shall be carried on and may lay down any other conditions which may be considered necessary from time to time. Such conditions shall be specified

Non-Bona substitution of Rule "22" and "23" read as follows—

"22. Penalties on breach of Rules.— Any person contravening any of the above provisions or who fishes, attempts to or abets fishing contrary to the above provisions, shall be liable to a penalty which may extend to one hundred rupees, and when the breach is a continuing one, to a further fine which may extend to one rupee for every day after the date of the first conviction during which the breach is proved to have been persisted in. If the contravention is by a lessee, then for a second offence committed by him, the lease shall be liable to cancellation in addition to any other penalty such as forfeiture of security deposit and daily recurring fine as provided above if the offence be continued for some time."

"23. Restrictions on the use of nets.— The use of *Bergal* or *Mahajal* or any net with meshes less than 7 c.m. sq. is prohibited during the period from the 1st April to the 15th June in any proclaimed fishery.

Provided that in certain cases this restriction may be relaxed by the Deputy Commissioner with the previous sanction of the State Government."

1. Substituted Rule "24" and "25" vide Notification No. VFR. 127/71/53, dated 1st June, 1971, by 364.

Non-Bona substitution of Rule "24" and "25" read as follows—

"24. No movable *Bana* with gaps less than 7 c.m. sq. shall be used for fishing from the 1st April to the 15th June of the year in rivers, *Dobas* or *Beds*."

25. *Bana* with less than 7 c.m. sq. gaps fixed at the mouth of *Beds* or *Dobas* or at the boundaries of River Fisheries by which water is drained out is allowed from the 1st of September to the end of March only."

Rule "26" is a colloquial name for a special type of *Bana* fishing with small gaps fixed to prevent fishes escaping from a fishery."

in the sale notice and shall be proclaimed before the sale begins.

27. Any Magistrate, any Police Officer or any person specially empowered by the State Government under Section 7(1) of the Indian Fishery Act, 1897, to arrest any person committing any offence punishable under the aforesaid rules, may seize and remove any net or fixed engine which is used in his presence for fishing in the Government fisheries in contravention of these rules. Any person, other than a Magistrate or an Officer-in-charge of a Police Station who under the authority of this seizure or remove any net or fixed engine, shall forthwith report the fact to the nearest Magistrate or to the Officer-in-Charge of the nearest Police Station and shall make over to the said Magistrate or Officer any net engine which he has seized and removed.

28. The Magistrate may order the forfeiture of any net or fixed engine proved to have been used for fishing in the Government fisheries in contravention of these rules.

29. (a) Any Magistrate, any Police Officer or any person empowered under Section 7(1) of the Indian Fisheries Act, 1897, to make arrests, may seize and remove any fish caught in his presence in the Government fisheries in contravention of these rules.

(b) Any fish so seized by a person, other than a Magistrate or an Officer-in-Charge of Police Station, shall be made over with as little delay as possible to the nearest magistrate or the nearest Officer-in-Charge of a Police Station.

(c) A Magistrate or Officer-in-Charge of a Police Station who has seized fish, or has received fish seized by an authorised person may, if the fish are likely to go bad before they can be brought to Court, cause them to be sold by auction.

(d) On proof that any fish were unlawfully caught in the Government fisheries the Magistrate may order them to be forfeited to the State Government, and if they have already been sold Clause (c) of this rule the price received shall thereupon be forfeited to the State Government.

(e) If the Deputy Commissioner or the Sub-Divisional Officer is satisfied that fish from any particular fishery is required for local consumption, he may insert a Clause, in the lease of such fishery to the effect that, such percentage of the catch shall be sold in the local market as may be determined by him.

SECTION III

Sanctuaries

30. Declaration of Sanctuaries.— The State Government may, by notification in the Official Gazette, declare any specified water to be a sanctuary for the protection of fish prohibiting all fishing therein for a period not exceeding ["Five years"], or declare any period to be a closed season for fishing in any fishery, the period of reservation as a sanctuary may be extended further by notification in the Official Gazette.

31. All fishing in a sanctuary shall be prohibited except for the purpose of pisciculture and on a licence containing the terms and conditions issued by the Officers of the Fishery Department not below the rank of ["District Fishery Development Officer"]. On infringement of fishing conditions in a sanctuary the licensee shall be liable to a fine of Rs. 100 for the first offence and for the second offence the security money shall be forfeited and the licence cancelled in addition.

1. Substituted for the word "two years" in Rules 30 and in Rules 22 for the words "Superintendent of Fisheries" vide Notification No. FPH.2/2000/171 dated 31st March, 2000 (p.s.18th April, 2000).

32. Unless otherwise specified as a condition in a licence issued under Rule ["31"] a licensee holder shall be permitted to fish with nets of all kinds varying from spawn collecting nets of very fine mesh to nets no portion of which has meshes of more than $1\frac{1}{2}$ " inches from knot or 2" all round. The length of such nets shall not exceed fifty feet in length. Provided that the licensee shall use at any more than two of either or any of the gears permitted to him be used under the rules.

33. A licence under Rule ["31"] shall not employ or engage any person below the age of 16 to help him with his nets.

34. (i) A licence to the authorised person shall be given under Rule ["31"] primarily with the object of catching spawn, fry and fingerlings of major carps and any species other than carps caught in the operation of the nets allowed under Rule 32.

(ii) Any species other than carps caught in the net may be sold by the licensee in live or dead condition, but carp above fingerling size shall be put back into the water alive immediately after are caught;

(iii) Carp shall include *Pom (Rohu)*, *Bahur or BhaKua (Katla)*, *Mirka (Mrigal)*, *Natali (Nadru)*, *Malya (Kalbass)*, *Kurba (Kurcha)*.

35. When a closed season is declared by the State Government in any water no person other than the residents of neighbouring Villages may fish in such water during the period so declared unless he is in possession of a valid licence issued by and on such conditions as may be fixed by the Director of Fisheries, Assam.

Provided that the neighbouring Villagers may fish only with rod and line, hand line, long line or jolai for their own consumption only.

2. Substituted for the figure "10" vide Notification No. SF. 32/37, dated 28th July, 1958.

36. The licensee under these rules shall not make any use of poison, lime, dynamite or other noxious or explosive substances with intent thereby to catch or kill fish. On infringement of this rule the licensee shall be punishable under Sections 4(1) and 5(1) of the Indian Fisheries Act, (Act IV of 1897).

37. (i) Unless expressly allowed by the conditions of his license, a licensee or any person acting on his behalf, shall not erect fixed engines, dams, weirs or divert water for catching any fish.

(ii) All apparatus erected or used in contravention of sub-rule (i) may be seized, removed and forfeited and the licence cancelled.

38. (i) The fishery Officer or any other person authorised under the provision of rule ["31"] shall make full arrangements for the keeping alive of fish caught, except where scientific research necessitates the killing of any fish.

(ii) The authorised person shall arrange under the supervision of the Fishery Officer for hatchery pits or nursery tanks near the catching centres.

39. A licensee under these rules shall be bound to report to an Officer of the fishery ["Department"] or the Deputy Commissioner or Sub-Divisional Officer any breach of the rules in a declared sanctuary that comes to his knowledge or notice.

40. When a license granted under these rules is lost or destroyed, another license which shall be a duplicate copy of the original may be issued free of cost.

1. Substituted for the figure "10" vide Notification No. SF. 32/37, dated 28th July, 1958.

2. Substituted for the words "branch of the Agriculture Department" vide Notification No. FPH.2/2000/171 dated 31st March, 2000 (p.s.18th April, 2000).

[41. Penalties on breach of Rules.— (1) Any person contravening any of the above provisions or who fishes, attempts to fish or abets fishing, contrary to the above provisions, shall be liable to a fine which may extend to rupees five thousand but not less than rupees one thousand and if the breach is a continuing one, to a further fine which may extend to rupees one hundred for every day during which the offence is continued after the date of the first conviction.

(2) In addition to the penalty as provided above, the nets and all other fishing equipments used in the commission of the offence shall be liable to confiscation.

For a second offence the lease shall be liable to cancellation in addition to any other penalty such as forfeiture of security deposit and daily recurring line as provided above if the offence be continued for same time.]"

["(3) Appeal against imposition of fine and cancellation of lease shall be submitted to the Director of Fisheries, Assam, for redressal and to the Commissioner and Secretary to the Government of Assam, Fishery Department, against any order issued by the Director of Fisheries.]"

3. Substituted Rule "41" vide Notification No. VFR. 127/71/56, dated 1st June, 1971. [Published in the Assam Gazette (Extraordinary) of August 7, 1971].

Now better substitution of Rule "41" read as follows—

"41. Any person contravening any of the penalties on breach of rule three provisions or who fishes, attempts to fish or abets fishing, contrary to the above provisions, shall be liable to a penalty which may extend to one hundred rupees; and when the breach is a continuing one, to a further fine which may extend to ten rupees for every day after the date of the first conviction during which the breach is proved to have been persisted in, and in addition, if the offence is in contravention of Rule, 2, the net shall be liable to confiscation.

For a second offence the lease shall be liable to cancellation in addition to any other penalty such as forfeiture of security deposit and daily recurring line as provided above if the offence be continued for same time."

4. Inserted sub-rule (3) in rule 41, after sub-rule (2), vide Notification No. FPH.2/2000/171 dated 31st March, 2000 (p.s.18th April, 2000).

SECTION IV

Rules for settlement of fisheries by tender system

42. The Government may from time to time select any fishery or fisheries to be settled by tender system and instruct Deputy Commissioner or the Sub-Divisional Officer to lease them out for any specified periods.

RULINGS

In the matter of Settlement of Fisheries while tenders were invited the Government has power to stop procedure by tender and settle fishery directly. *Arubinda Das v. State of Assam*, AIR (Gau) 18 : (1982) 1 GLR 280.

43. On receipt of Government's instruction in any particular year the Deputy Commissioner or the Sub-Divisional Officer shall fix a date not later than the 5th February, on which the settlement of the registered fisheries selected by Government will be made by him after calling for tenders from the public. The date fixed shall be proclaimed by the Deputy Commissioner or Sub-Divisional Officer at least a month in advance by a written notice in the form in APPENDIX-A posted at the Sadar and Sub-Divisional Cutchery and at the *Munsiff* and Police Station within the local limits of which the fishery or any part of it is situated. The notice shall state the name of the fishery the *Mauza* or *Paragana* within which it is situated and any other particulars that may be necessary for its identification, the term and price for which it was last settle the term for which it will now be settle and the date, place and conditions of settlement. The contents of the notice should also (if possible) be made known by beat of drum at the *Bazaar* nearest to the fishery.

RULINGS

In *Bhutan Chandra Das v. Chairman Assam Board of Revenue*, AIR 1967 (A & N) 98, their Lordships held that

tender form was properly filled in, as the 1962-64 to be interpreted as beginning from 1st of April 1962 and ending on 31st March 1969 and even assuming the filling to be defective (i.e. 1962, such defect would not invalidate the settlement as the sale notice issued under Rule 43 did not lay down any mandatory provision regarding filling of tender forms. The Board of Revenue holding the defect to be fatal is the Settlement Committee an error of law.

The object of Rule 43 as well as of Rule 8(c) so far as giving of notice of sale or re-sale is concerned, is to make the contemplated sale widely known to the people so that a large circle of tenderers can submit their tenders in order to protect Government revenue sufficiently. Mere non insertion of "risk clause" in the sale notice will not defeat the object of the provision. *Held*-It is not possible to hold that the risk clause in Rule 8(c) is a mandatory provision. The part of the clause is a permissive provision. *Bhadr Chandra Sarkar v. Assam Board of Revenue*, 1974 AIR 187.

44. The place of settlement shall be the Sub-Divisional Cutchery for fisheries lying with an outlying Sub-Division of a District and the Sadar Cutchery of the district for those in the headquarters Sub-Division.

[45. The Deputy Commissioner or the Sub-Divisional Officer, as the case may be, shall open the tenders in the presence of an Advisory Board consisting of not less than 5 persons out of which one member should preferably be from actual fishermen of the Scheduled Castes called at the moment. The selection of members of the Board shall be strictly confidential.]

1. Substituted Rule "45" vide Notification No. VPR. 127/71/55, dated 1st June, 1971 [Published in the Assam Gazette (Extraordinary) of August 9, 1971.]

See further Substitution of Original Rule "43" read as follows:-

"43. The Deputy Commissioner or the Sub-Divisional Officer, as the case may be, shall open the tenders in the presence of an Advisory Board consisting of not less than 5 persons called at the moment and in consultation with that Board make a selection of the most suitable tender and submit the proposal for settlement to the Commissioner of District. The selection of members of the Board shall be strictly confidential."

RULINGS

In the matter of Settlement of Fisheries while tenders were invited, the Government has power to stop procedure by tender and settle fishery directly. *Arubinda Das v. State of Assam*, AIR 1981(Gau) 18 : (1982) 1 GLR 280.

[46. Fisheries shall be settled to the best advantage and subject to this condition, the agency of the middleman as lessee shall be done away with as far as possible.

(a) A Co-operative Fishery Society formed by the actual fishermen belonging to the Scheduled Castes/Maimal Community of Cachar/Scheduled Tribes/other Backward Classes and registered under the Assam Co-operative Societies Act, 1949 shall be given option to accept Settlement of Fisheries at the highest tender out of not less than 40 percent quota, provided that the tender of such a Co-operative Society is within 7½ percent of the highest tender.

(b) When the tenders of such Co-operative Societies are below 7½ percent of the highest tender, (i) Co-operative Societies as stated above, (ii) individual members of actual fishermen belonging to the Scheduled Castes and Maimal Community of the district of Cachar, (iii) individual members of the Scheduled Tribes and other Backward Classes who may submit tenders at not less than 60 percent of the highest tender may be given option to accept settlement of fisheries out of the quota as stated in sub-rule (a) above, at the highest tender in order of preference stated above subject to the suitability of the tenderer.

(c) When a fishery of the category as referred to in sub rule (a) above, fetching a tender not exceeding Rs. 50,000 (Rupees fifty thousand), per annum is settled with any individual members from actual fishermen belonging to Scheduled Castes/Scheduled Tribes/Maimal Community of the District of Cachar

or other Backward Classes, the tender shall get a rebate of 7½ percent as concession. But when such a fishery the tender for which does not exceed Rupees one lakh per annum is settled with a Fishery Co-operative Society formed by members of the aforesaid communities, the tenderer Society shall be entitled to a rebate of 10 percent as concession.

Provided that 10 percent rebate as aforesaid shall not, any case be extended to Fishery Co-operative Society formed with 10 percent share-holders from community as stated in proviso to sub-rule 13 (a), if they accept Settlement of Fisheries out of the quota not more than 60 percent of fisheries reserved for them :

Provided further that in no case the highest individual tenderer or tenderers society from any protected community shall be entitled to any rebate as provided above.

(d) Any tenderer who may claim the concession as provided in this Rule shall indicate the same in his tender.]

1. Substituted vide Notification No. VPR. 127/71/55, dated 1st June, 1971. See further Substitution of Rule "45" which was substituted vide Notification No. RGP. 52/57/103, dated 15th February, 1960, read as follows:-

"46. Fisheries shall be settled to the best advantage and subject to this condition, the agency of middleman as lessee shall be done away with as far as possible.

(a) A Co-operative Fishery Society formed by actual fishermen of the Scheduled Caste and registered under the Assam Co-operative Societies Act, 1949 shall be given option of taking settlement of Fisheries at the highest tender, provided that its tender is not less than 7½ percent of the highest tender.

(b) When the tender of such Co-operative Societies below 7½ percent of the highest tender, (i) Co-operative Societies as stated above, (ii) individual members of the Scheduled Caste, (iii) individual members of the Scheduled Tribes and other Backward Classes who may submit tender at not less than 60 percent of the highest tender may be given option to take settlement of the fishery at the highest tender in the order of preference stated above subject to the suitability of the tenderer.

(c) When a fishery, the tender value of which does not exceed Rs. 25,000 is settled with any one falling within one of the categories stated in the sub-rule (a) or (b) above, the lessee shall get rebate of 7½ percent as concession.

(d) Any tenderer who claims the concession provided in this rule shall indicate it in his tender."

RULINGS

Rule 45 of the Fishery Rules is mandatory and the settlement of the fishery cannot be made without complying with the provisions of the rules. Where the proposal which the Commissioner accepted was made by the Sub-Divisional Officer without consulting the Advisory Board the proposal amounts to violation of Rule 45 which is mandatory and any sanction accorded by the Commissioner on such an invalid proposal was no sanction in the eye of law at all and the settlement made is liable to be set aside made without proper sanction. In such a case the High Court in the exercise of its appellate powers could not only set aside the settlement but also make the settlement itself after selecting any suitable person amongst the tenderers. There may be irregularities or even impropriety in the matter of settlement by the authorities but there is no bar to the appellate court namely the High Court, exercising its full and preliminary power of settlement on merits. *Rajbirath Thakur v. Sub-Divisional Officer*, AIR 1962 Assam 1 (S2) : ILR (1961) 13 (Assam) 219.

In *Jagat Chandra Das v. Nasuli Ram*, AIR 1955 NUC (Assam) 4215 it was held that the highest bid was rejected as one that had been made recklessly. The bidder undisputedly a fisherman of the Scheduled Caste not seeking any preference or concession. His offer to deposit the entire lease money for the whole year in lump sum in advance and also the security needed under the rules is an effective answer to the view of the authorities that his bid had been reckless.

The Deputy Commissioner with the advice of Advisory Board settled the fishery with the petitioner at the highest offer of Rs. 4501/- for three years in view of the provisions of Rule 46(b) under which the petitioner is entitled to a preference. *Shaban Chandra Das v. Assam Board of Revenue*, AIR 1967 (A & N) 98.

The application of Rule 46(b) is not limited to the case where a Co-operative Society offers a tender below 7½% of the highest tender. The intention of the legislature in framing this rule was to promote with special interest the economic interest of the weaker section of the people, particularly of the Scheduled Tribes. So though the constructions of Clause (b) is somewhat unhappy, the words "when the tender of such co-operative societies is below 7½% of the highest tender"

Lease value will be fixed for a period of 7 years at a time with 10% annual increase."]

49. In settlements of fisheries under the tender system, the year shall be reckoned as beginning from the 1st April and ending on the 31st March following.

RULINGS

When the matter came before the Board of Revenue, the Board of Revenue by a majority decision allowed the appeal and directed the settlement in favour of O.P. The only ground on which the Board of Revenue held that settlement with the petitioner was illegal was that in the tender which he submitted in column No. 7 which required the year or years for which the settlement is sought for, the petitioner had given "1962-64".

Held: Tender form was properly filled in, as the year 1962-1964 was interpreted as beginning from 1st of April 1962 and ending on 31st March 1965 and even assuming the filing to be defective, such defect would not invalidate the settlement as the sale notice issued under Rule 43 did not lay down any mandatory provision regarding filling of tender forms. *Shaban Chandra Das v. Assam Board of Revenue*, AIR 1967 (A & N) 98.

[*50. (1) The right of fishing in registered fisheries shall extend upto a maximum of 7 years subject to fulfillment of the following :-

- (a) Stocking of major carp fish seed (above 125 mm) at least twice in a year in the month of August and January as per proportion and number fixed by the District Fisheries Development Officer and in presence of District Fisheries Development Officer or

*. Substituted Rule 48 vide Notification No. FISR.2/2006/171 dated 31st March, 2006 (w.e.f. 1st April, 2006).

Note:- Hence Substitution of Rule 48 read as follows:-

"48. The Deputy Commissioner or the Sub-Divisional Officer, with the approval of the Government shall fix the value of each fishery at the time of registration. The value once fixed shall not be changed except with the sanction of Government.

do not govern items of the other tenderers mentioned in the Rule but government items (i) only. *Chandi Ram v. Anul Patel*, AIR 1970 (A & N) 94.

47. When the settlement has been concluded, a lease and counterpart shall be interchanged in Forms Nos. 98 and 99 of the Assam Land Revenue Manual, Volume II.

[*48. (i) The Deputy Commissioner or the Sub-Divisional Officer with the approval of the Deputy Commissioner shall fix the value of each fishery at the time of registration. The minimum lease value will be fixed at 15% of the gross revenue from the fishery, which will be calculated as per following formula :-

$$L = (Y \times P \times A \times 15) / 100$$

Where L = Lease value in Rupees

Y = Yield rate in Kg/Ha

P = Price fish at landing sites in Rs/Kg.

(on 1st January of the year of tender).

A = Area of the beel in Ha

(ii) In case of beel fisheries developed by Government the yield rate to be considered at a minimum of 500 Kg/Ha/year or the actual production which ever is more and in case of other beel fisheries not developed so far it is minimum of 200 Kg/Ha/year or the actual production which ever is more. The formula is with the following rational and assumption :-

Cost of production (Fisher's share and wages)	= 50%
Managerial expenses	= 15%
Lessee's profit	= 20%
Revenue	= 15%

his representative to facilitate multiple harvesting;

(b) Submission of statement of annual returns as per the requirement of the Government within 31st March and monthly return before 10th of the following month;

(c) Keeping the water body free from aquatic weed as laid down under rule 19 to create congenial ecological conditions;

(d) Submission of statement on increased fish production to a reasonable/satisfactory level through adoption of scientific management practices;

(e) Submission of documentary evidence in respect of providing 50% returns to the fishers annually;

(f) Submission of Registration Certificate obtained from the Government alongwith lease paper at the time of submission of tender;

(g) Submission of certificates from District Fisheries Development Officer to these effects as above to the leasing authority with 30th April, and

(2) Renewal of lease for the fishery after the expiry of the original lease period is subject to making of an application by the lessee and payment of fee of

Rs. 500/- for a fishery upto 10 Ha water area,

Rs. 1000/- for a fishery between 10-20 Ha water area,

Rs. 2000/- for a fishery between 20-40 Ha water area,

Rs. 4000/- for a fishery between 40-75 Ha water area,

Rs. 5000/- for a fishery between 75-150 Ha water area,

Rs. 6000/- for a fishery between 150-500 Ha water area,

Rs. 7000/- for a fishery above 500 Ha water area or as fixed by the Government from time to time.

(3) Lease shall be cancelled for non fulfillment of any of the conditions as laid down in this rule.

(4) The conditions for consideration for renewal of lease shall also be applicable to those fisheries already leased out before coming into force of the Assam Fishery (Amendment) Rules, 2005 and whose original lease period has expired."]

51. Government may at any time after the expiry of the term of the current settlement stop any fishery previously selected by it from further settlement under tender system and order it to be settled under the auction system.

52. In all matters not covered by the above rules, the settlement shall be subject to the general Fishery Rules framed from time to time.

[53. The amendment of the Fishery Rules No. RF. 23/45/284, dated 15th April 1953 made by Government Notification No. VFR. 209/70/15, dated 3rd April, 1971 is hereby replaced."]

1. Substituted Rule 50 vide Notification No. FBR.2/2000/171 dated 21st March, 2005 (w.e.f. 8th April, 2005).
Note—Before substitution of Rule "50" read as follows—
"50. The right of fishing in registered fisheries shall not ordinarily be leased for less than three year.
2. Added Rule "53" vide Notification No. VFR. 127/71/255, dated 1st June, 1971. [Published in the Assam Gazette (Extraordinary) of August 7, 1971.]
- Note—The earlier Amendment of this rule vide Notification No. VFR. 100/71/25, dated 3rd April, 1971. Published in the Assam Gazette (Extraordinary) of April 5, 1971, got by the Gauhati High Court in the Case of *Orish Chandra Choudhury v. State of Assam*, [Civil Rule No. 247 of 1971 Decided on 7th June, 1971.]

APPENDIX 'A'

SALE NOTICE

Tenders for settlement of fisheries

1. Tenders are invited for the settlement of the under mentioned fishery/fisheries within the district for Sub-Division of the district for a period of years from to The tenderer should mentioned in the tender the amount of annual revenue he is prepared to pay for the fishery/fisheries. No subsequent offer of any amount other than the amount mentioned in the tender already submitted by the tenderer will be considered under any circumstances.

2. The tenders which must be sent in sealed covers and superscribed as "Tender for Fishery" should be addressed to the undersigned by name and will be received upto on the

3. Each tender should be for one fishery or a group of fisheries proposed to be sold in a lot and must accompany a Treasury Chalan showing deposit of Rs. 10 as tender fee without which no tender will be considered. In no case the aforesaid fee will be refunded.

4. (a) The successful tenderer in respect of such fisheries as are settled with him out of not less than 40 per cent quota shall have to deposit as each security on the day of settlement a sum equal to one quarter of revenue of a fishery settled with him for the first year of the full term of settlement.

Note—Substituted "Appendix A" vide Notification No. VFR. 127/71/255, dated 1st June, 1971. [Published in the Assam Gazette (Extraordinary) of August 7, 1971.]

(52)

(b) Fishery Co-operative Societies formed with 100 per cent share-holders from members of actual fishermen belonging to the Scheduled Castes of the State and/or Maimal Community of the District or Cachar with whom settlement of any fishery is made shall have to furnish as cash security on the day of settlement, a sum equal to one-tenth of the revenue of the fishery for the first year of the full term of settlement.

5. A lease will be issued to the successful tenderer and a *Kobuliyat* will have to be executed by him within one month of the date of settlement.

6. If the successful tenderer fails to fulfil conditions Nos. 4 and 5 of this notice, the fishery shall be re-settled at the risk after calling for fresh tender and if the subsequent highest tender be less than his tender, he shall be bound to make good the difference calculated on the whole period of settlement.

7. There is no obligation on the part of the undersigned to accept the highest or any tender or to assign any reason for rejecting any tender.

8. Fishing by nets including *Borjal*, *Mahajal* or *Faxjal* (gill net), *Moshrijal* with meshes less than 7 cm bar/14 cm mesh is prohibited during the first day of the month of May and the fifteenth day of the month of July, both days inclusive :

Provided that this restriction may be relaxed by the State Government for *Hillsa* fishing only.

8. (a). Catching of the following breed fish (fish carrying eggs and sperm), namely—*Rohu*, *Catla*, *Mrigal*, *Mahi*, *Chital*, *Kharra*, *Pithia*, *Gharra* and *Kurra* is prohibited during the breeding season, that is between the first day of May and the fifteenth day of July both days inclusive.

8. (b). Catching and killing for consumption or for sale, of undersized fish of the following species and sizes, namely—

- (i) *Rohu*, *Catla*, *Mrigal*, *Chital*, *Kharra*, *Pithia* (*Mahasol*), *Gharra* of below 23 cm in length; and
(ii) *Mahi*, *Kurra* and *Dhagan* of below 10 cm in length is prohibited between the first day of August and the thirty-first day of October.

8. (c) All under-sized fish specified under clause 8/(b) above caught in the nets in course of fishing, in any fishery, *Sobas* or *Beels* shall either be let off into the fishery or supplies to the Fishery Department by the lessee in live condition and he will be paid for at the rates as may be fixed by Government from time to time.

9. No movable *Bans* with gaps less than 7 cm Sq., should be used as a contrivance for fishing between the first day of May and the fifteenth day of July.

10. *Bans* with less than 7 cm Sq. gaps may be used at the month of fisheries for draining out water during fishing season excepting the period between the first day of May and the fifteenth day of July.

11. The successful tender shall have to supply adequate quantity of fish to be fixed by Deputy Commissioner/Sub-Divisional Officer in the head-quarter towns of the District/Sub-Division or any other locality/localities where fish is particularly scarce and specified by the Deputy Commissioner/Sub-Divisional Officer. No fish shall be sent outside the State except under a permit to be issued by the State Government.

12. The lessee shall not drain the fisheries dry. In case of *Beel*, *Daba* and *Tank* fisheries, the lessee shall at all times keep the fishery/fisheries clear of water hyacinth and other aquatic weeds and shall not rot jute therein.

13. The successful tenderer shall not without previous sanction of the Deputy Commissioner/ Sub-

Divisional Officer, employ outsiders in preference to local fishermen of the Scheduled Castes of the State/Maimal Community of the District of Cachar.

14. The successful tenderer must produce valid *Patta* or certified copy of *Jamabandi* in respect of land owned by him or any other acceptable proof of his financial capacity or stability. The tenderer is required also to produce a certificate as proof of his not being a defaulter in regard to any Government dues.

[deleted]

16. (a) A Co-operative Fishery Society formed by actual fishermen belonging to the Scheduled Castes/Maimal Community of the district of Cachar/Scheduled Tribes/other Backward Classes and registered under the Assam Co-operative Societies Act, 1949, shall be given option to accept settlement of fisheries out of not less than 40 per cent quota reserved at the highest tender provided its tender is not less than 7% per cent of the highest tender.

(b) When the tender of such Co-operative Society is below 7% per cent of the highest tender, (i) Co-operative Society as stated above, (ii) individual members of actual fishermen belonging to the Scheduled Castes and Maimal Community of the District of Cachar, (iii) individual members of the Scheduled Tribes and other Backward Classes who may submit tender at not less than 60 per cent of the highest tender may be given option to accept settlement of the fishery out of the quota of not less than 40 per cent of the fisheries at the highest tender in order of preference stated above subject to the suitability of the tenderer.

1. Deleted clause "13" of Appendix "A" vide Notification No. 492, 12773/179, dated October 22, 1953.

17. Contravention of any of the foregoing conditions will make the lease liable to cancellation with forfeiture of the security deposit in addition to other penalty.*

* Substituted "Appendix A" vide Notification No. 578, 12773/179, dated 1st June, 1951, [Published in the Assam Gazette (Extraordinary) of August 7, 1951.]
Note—Before substitution "Appendix A" read as follows—

APPENDIX 'A'

SALE NOTICE

Tenders for settlement of fisheries

*1. Tenders in the prescribed form which may be had from the office of the undersigned free of charge are invited for the settlement of the aforesaid fisheries/fisheries within the _____ sub-division of _____ district for a period of _____ years from _____ to _____.

The tenderer should mention in the tender the amount of initial revenue to be prepared to pay for the fishery/fisheries. No subsequent offer of any amount other than the amount mentioned in the tender already submitted by the tenderer will be considered under any circumstances.

Note—Vide Notification ROP 73/58/167, dated 21st October 1950.

2. The tenders which have to be sent in sealed covers and superscribed "Tender for fishery" should be addressed to the _____ undersigned by name and will be received upto _____ on the _____.

3. Each tender should be for one fishery or a group of fisheries proposed to be sold in a lot and must accompany a Treasury Chalan showing deposit Rs. 10 as tender fee without which no tender will be considered. In no case the aforesaid fee will be refunded.

*A. Each tender should be accompanied with certified copy of Income Tax Clearance Certificate and Sale Tax Clearance Certificate.

Note—Vide Notification ROP-17/59/167, dated 21st October 1950.

4. The successful tenderer shall have to deposit as cash security on the day of settlement a sum equal to one quarter of a year's revenue and may be required to furnish within seven days of the date of settlement an additional security to the satisfaction of the Deputy Commissioner/Sub-Divisional Officer as an assurance for the total amount of the security in accordance with the terms of the settlement.

5. A lease will be issued to the successful tenderer and a *Shubdhar* will have to be executed by him within one month of the date of the settlement.

6. If the successful tenderer fails to fulfil conditions 4 and 5 of this notice, the fishery shall be re-offered at the date after calling for fresh tenders and if the subsequent highest tender is less than his tender, he will be bound to make good the difference calculated on the whole cost of settlement.

Contd.

7. There is no obligation on the part of the undersigned to accept the highest or any tender or to assign any reason for rejecting any tender.

8. Fishing by nets including *Dupol* and *Mahajol* with meshes smaller than 2½" sq. is prohibited during the period from 1st April to the 15th June of the year.

9. No netting boat with gape less than 2½" sq. will be allowed to be used as a contrivance for fishing from the 1st April to the 15th June of the year.

10. Boat with less than 2½" sq. gape may be used at the mouth of the fishery in which water is drained out, during the period from the 1st September to the end of March only.

Note—Boat is colloquial name for a special type of bamboo fencing with small gaps devised to prevent fishes escaping from a fishery.

11. The successful tenderer will have to supply adequate quantity of fish to be used by Deputy Commissioners / Sub-Divisional Officer to the head-quarter town of the District/Sub-Division or any other locality specified by the Deputy Commissioner / Sub-Divisional Officer.

12. The lessee shall not drain the fishery/fisheries etc. In case of open, doab and bank fisheries, the lessee shall at all times keep the fishery/fisheries clear of water hyacinth and shall not set pits therein.

12A. "The lessee shall not without previous sanction of the Deputy Commissioner/Sub-Divisional Officer, employ any person, (a) preference to local fishermen of the Scheduled Caste for working the fishery".

Note—Vide Notification ROP, 64/57/163, dated 15th February 1960.

13. Contravention of any of the foregoing conditions will make the lease liable to cancellation with forfeiture of the security deposit in addition to other penalty.

14. [deleted]

15. In settlement of fishery or a group of fisheries—

(a) A Co-operative Fishery Society formed by actual fishermen of the Scheduled Caste and registered under the Assam Co-operative Societies Act, 1949, shall be given option of taking settlement of fisheries at the highest tender provided that its tender is not less than 7% per cent of the highest tender.

(b) When the tender of such Co-operative Societies below 7% per cent of the highest tender, (i) Co-operative Societies as stated above, (ii) individual members of the Scheduled Caste, or individual members of the Scheduled Tribes and other Backward Classes who may submit tender at not less than 60 per cent of the highest tender may be given option to take settlement of the fishery at the highest tender in the order of preference stated above subject to the suitability of the tenderer.

Deputy Commissioner
Sub-Divisional Office

TENDER FOR SETTLEMENT OF FISHERIES

One tender form should be used for one fishery or a group of fisheries*

1. Name, father's name and permanent address of the tenderer.
2. In case the tender is on behalf of a Co-operative Society, State its name and address and the office held by the tenderer. Attach a certified copy of the registration certificate.
3. Do you belong to any of the Scheduled castes/Tribes or Backward Classes? If so, please state it.
4. Are you an actual fisherman by profession?
5. In case the tender is on behalf of a Society, State clearly whether it is a duly registered Co-operative Fishery Society and is formed exclusively by actual fishermen of Scheduled Caste.
6. Name and number of the fishery or group of fisheries tendered for.
7. Year or years for which the settlement is sought for.

* Vide Notification No. ROP-52/57/163, dated 10th February, 1960.

Department who will also sell the fries so as to pay for the staff involved. The Fishery Demonstrator will be under the local Fishery Instructor.

Dated the 21st December 1954

Notification RF. 126/53/14.—In exercise of the powers conferred by Sections 155 and 156 of the Assam Land and Revenue Regulation, 1886 (1 of 1886) and by Section 6 of the Indian Fisheries Act, 1897 (IV of 1897), the Governor of Assam is pleased to revise the Fishery Lease Form (No. 98), Fishery Acceptance Form (No. 99) and Notice of Sale of Fishery Form (No. 101) of the Assam Land Revenue Manual Volume II as shown below—

FORM No. 98 FISHERY LEASE

(For use in Assam District)

No. _____ of _____
I, _____ Deputy Commissioner/Sub-Divisional Officer on behalf of the Governor of Assam hereby authorise you _____ son of _____ Residing at _____ district _____ to fish within the limits of the _____ Fishery known as _____ Register No. _____ Belonging to Government, situated in Mouza _____ Paragana _____ District _____ for a period of _____ from _____ to _____ On payment by you of annual sum of Rs. _____ to be paid in the following instalments and upon the dates named below subject to the conditions following—

excuse you from payment in full of the revenue you have engaged to pay.

VI. You shall have no power to sell your right of lease of this fishery or to sublet it to any one, or to admit any one as a partner, without informing the Deputy Commissioner/Sub-Divisional Officer who may refuse his sanction thereto.

VII. Should you, or your partner, or any person holding from you infringe any of the conditions of this lease the Deputy Commissioner/Sub-Divisional Officer may cancel your lease of his own authority, in which case all sums paid by you will be forfeited and you will further be held liable for any loss which may be incurred by Government in releasing the fishery by the Deputy Commissioner/Sub-Divisional Officer.

[*VIII. Instalments.—When security is taken the following instalments are allowed subject to approval of the Deputy Commissioner/Sub-Divisional Officer in the years of Lease term.

(1) Security—

(a) For successful tenderers including Co-operative Societies formed by Communities other than actual fishermen belonging to Scheduled Caste/Maimal Community, one-fourth of revenue for 1st year of the full term of settlement to be deposited towards cash security;

(b) For Fishery Co-operative Societies with 100 per cent share holders from actual fishermen belonging to Scheduled Caste/Maimal Community, one tenth of revenue for 1st year of the full term of settlement to be deposit towards cash security.

I. You shall permit the Raiyats of the adjoining Villages to catch fish for their own consumption only and not for sale, on payment to you of a fee of 4 Annas per net or basket per annum and you shall not exact any other fee from them any account whatever.

II. You shall not, without the sanction of the Deputy Commissioner, Sub-Divisional Officer, raise the rates at which you levy fees from persons who catch fish for sale above the rates paid in the preceding year.

III. Should you fail to pay the revenue, upon the dates named below, the same shall be recoverable from you as if it were an arrear of land revenue.

IV. Your right acquired by this agreement extends only to the right of fishing and you shall not be at liberty to appropriate or cause injury to any produce, trees, crops, grass, etc., within the limits of this fishery; you shall be responsible for any damage caused to the fishery through any act done by you or negligence on your part; you have not, and shall not exercise of any right to levy duties on, or to hinder or prevent any boats or road passing over or anchoring within the limits of this fishery and you shall not catch fish by means of poisoning or intoxicating drugs. You shall maintain the customary embankments and channels required for the proper conduct of the fishery but shall not construct any new embankments or cut any new channels or raise any bank above the customary level without the permission of the Deputy Commissioner/Sub-Divisional Officer.

V. No allegation on your part of any losses incurred by inundation drought or scarcity of fish, or other accidental occurrence, shall be of any avail to

(2) Instalments—

25 per cent of one year's revenue on or before 15th December.

50 per cent of one year's revenue on or before 15th January.

25 per cent of one year's revenue on or before 15th February.]

IX. You shall not use dynamite or other explosives for the purposes of catching fish under the penalties provided by Section 4, Act, IV of 1897.

Substituted "Clause VIII" vide Notification No. 578, 122/71/53, dated 1st June 1953, published in the Assam Gazette (Extraordinary) of August 7, 1953.

Now—Delete substitution of "Clause VIII" read as follows—

*VIII. Instalments—

In the year of sale	—	Dates on which payable
one-fourth of one year's revenue	—	On the day of sale
Three-eighths of one year's revenue	—	On 15th November
Do	Do	On 15 January

In the second and third years	—	Dates on which payable
one-fourth of one year's revenue	—	On 15 February
Three-eighths of one year's revenue	—	On 15th November
Do	Do	On 15 January

When security is taken the following alternative instalments are allowed subject to approval by the Deputy Commissioner/Sub-Divisional Officer

In the year of sale	—	Dates on which payable
Security	—	One third of three years' bid
Half of one year's revenue	—	On 15th November
Do	Do	On 15 January

In the second and third years	—	Dates on which payable
Half of one year's revenue	—	On 15th November
Do	Do	On 15 January

X. This settlement is subject to the provisions of the Assam Land and Revenue Regulation, 1886, and the rules that may have been, or may thereafter be, made there under, as well as the instructions relating to Government fisheries that may have been, or may hereafter be, published in the Assam Land Revenue Manual.

Dated: Deputy Commissioner/
Sub-Divisional Officer

FORM No. 99. FISHERY ACCEPTANCE

From
To,
The Deputy Commissioner of
Sub-Divisional Officer

Dated:

Where I have taken the lease of the fishery known as Register No. From the Deputy Commissioner/ Sub-Divisional Officer of for a term of year namely, from the to the I do hereby declare that I accept and hold myself bound by all the conditions expressed in that lease.

their tenders, furnish in cash as security a sum equal to twenty-five per cent of revenue of the fishery for the first year of the full term of settlement:

Provided that Fishery Co-operative Societies with 100 per cent shareholders from members of actual fishermen belonging to the Scheduled Castes of the State of members of Maimal Community of the District of Cachar, shall immediately on acceptance of their tenders, be entitled to deposit a sum as cash security equal to ten per cent of the revenue of the fisheries settled with them for the first year of the full term of settlement.

If any tenderer or tenderers Society fails to furnish the required security as laid down above the fishery shall be re-sold at his/its risk forthwith and he or it shall make good the difference between his or its tender and the amount realised by the subsequent sale, calculated on the whole period of settlement.

(3) If the tenderer fails to execute a counter-part within one month from the date of the sale, the fishery shall be re-sold at his risk and he shall be bound to make good the difference between his tender and the amount realised by the subsequent sale, calculated on the whole period of settlement.

(4) If the tender fails to execute a counter-part within one month of the date of the sale or if he fails to do anything which he is required or bound to do under sub-paragraphs (2) and (3) above, the Deputy Commissioner/Sub-Divisional Officer may further direct that he shall also forfeit the security furnished, if any, or any portion of it.

(5) In the River Fisheries the use of *Mohajal* and fishing by means of *Kottohn* are prohibited unless specifically allowed.

"FORM NO. 101-NOTICE OF SALE OF FISHERIES"

It is hereby notified for general information that Government Fishery,

Know as Situated in
registered No. Within the boundaries specified
below, which was settled last with
..... of Mouza
for a period of years at an
annual rent of will be sold by
tender at the office of the on
..... day of next,
corresponding to B.S. for a period
of Years, the term of the last
settlement having expired. Tenders will be received up to
..... on and will be opened
on At in the office of
the undersigned.

In tending tenderers are invited to submit their tenders accordingly.

The sale will be made subject to the following conditions—

(1) The Officer conducting the sale does not bind himself to accept the highest tender or any tender and reserves the discretion to settle the fishery or group of fisheries for either a longer or a shorter term than that specified above.

(2) Any tenders including Co-operative Societies formed by communities other than members of actual fishermen belonging to Scheduled Caste or Members of Maimal Community of the District of Cachar shall, immediately after the acceptance of

(6) The Beel Fisheries may not be drained completed dry unless specifically allowed.

(7) Should the lessee or any of his agent infringes any of the conditions of his lease, the Deputy Commissioner/Sub-Divisional Officer may cancel the lease in which case all sums paid by the lessee on account of the fishery will be forfeited and the lessee will be liable for any loss incurred by Government in the re-settlement of the fishery.

(8) [Deleted]

(9) You shall not without previous sanction of the Deputy Commissioner/Sub-Divisional Officer, employ any person in preference to local fishermen of the Scheduled Castes or Maimal Community for working the fishery.

(10) Settlement of Fishery or a Group Fisheries—

(a) Co-operative Fishery Society formed by actual fishermen belonging to the Scheduled Castes/Maimal Community of the District of Cachar/Scheduled Tribes/Other Backward Classes and registered under the Assam Co-operative Societies Act, 1949, including individual members of the said communities shall be given option to accept settlement out of not less than 40 per cent quota of fisheries notified for settlement at the highest tender, provided that the tender of such Co-operative or individual member is within 7% per cent of the highest tender.

(1) Deleted Clause "(9)" for the words "The settlement will be subject to the Commissioner approval" vide Notification No. CPH. 12577/17C. Dated 27.12.1973.

(b) When the tender of such a Society is below 7½ per cent of the highest tender (i) Co-operative Society as stated above, (ii) Individual member of actual fishermen belonging to the Scheduled Castes or Maimal Community of the District of Cachar, (iii) Individual member of the Scheduled Tribes and Other Backward Classes who may offer a tender not less than 60 per cent of the highest tender may be given option to accept settlement of the fishery out of the quota of not less than 40 per cent of the fisheries notified for settlement at the highest tender in order of preference stated above subject to the suitability of the tenderer.

(11) The tenders which must be sent in sealed cover and superscribed as 'Tender for Fishery' should be addressed to the undersigned by name and will be received upto.....p.m. on the and the settlement will be made on.....from.....a.m.

(12) (a) Each tender should be for one Fishery or a Group of fisheries proposed to be sold in a lot and must accompany a *Treasury Challan* showing deposit of Rs. 10 as tender fee without which no tender will be considered. In no case the aforesaid fee will be refunded.

(b) Each tender should be accompanied with certified copies of Income-Tax Clearance Certificate, Sale-Tax Clearance Certificate and Caste Certificate.

(c) Any settlement will be liable to be cancelled if it is proved to the satisfaction of the settling authority that the tender contains any wrong statement specially as to the caste.

(b) When the tender of such a Society is below 7½ per cent of the highest tender (i) Co-operative Society as stated above, (ii) Individual member of actual fishermen belonging to the Scheduled Castes or Maimal Community of the District of Cachar, (iii) Individual member of the Scheduled Tribes and Other Backward Classes who may offer a tender not less than 60 per cent of the highest tender may be given option to accept settlement of the fishery out of the quota of not less than 40 per cent of the fisheries notified for settlement at the highest tender in order of preference stated above subject to the suitability of the tenderer.

(11) The tenders which must be sent in sealed cover and superscribed as 'Tender for Fishery' should be addressed to the undersigned by name and will be received upto.....p.m. on the and the settlement will be made on.....from.....a.m.

(12) (a) Each tender should be for one Fishery or a Group of fisheries proposed to be sold in a lot and must accompany a *Treasury Challan* showing deposit of Rs. 10 as tender fee without which no tender will be considered. In no case the aforesaid fee will be refunded.

(b) Each tender should be accompanied with certified copies of Income-Tax Clearance Certificate, Sale-Tax Clearance Certificate and Caste Certificate.

(c) Any settlement will be liable to be cancelled if it is proved to the satisfaction of the settling authority that the tender contains any wrong statement specially as to the caste.

RULINGS

Statutory Notice of sale of Fisheries, Form No. 101. Clause 12(b) the requirements set forth therein occupy a field which may be characterised as minor or non essential one of the touchstone to determine whether a requirement is essential, or not is to consider the consequence of the failure to follow the provisions and if the requirements are minor and not urgent in nature or character, the interpretation must be that the provision is directory. *M/s. Jorighajya Fishery Corporation Society Ltd. v. Assam Board of Revenue*, (1983) 1 GLR 394.

(13) Fishing by nets including *Barjal Mahajal*, *Fasjal* (gill net *Masharjal*), with meshes less than 5 cm bar/14 cm mesh is prohibited during the first day of the month of May and fifteenth day of the month of July both days inclusive :

Provided that this restriction may be relaxed by the State Government for *Hilsa* fishing only.

(13) (a) Catching of the following breed fish (fish carrying eggs and sperm), namely—*Rohu*, *Catla*, *Mrigal*, *Chital*, *Kharis*, *Pithia*, *Gharis* and *Kurhi* is prohibited during the breeding season, that is between the first day of May and the fifteenth day of July, both days inclusive.

(b) Catching and killing for consumption or for sale of undersized fish of the following species and sizes, namely—

(i) *Rohu*, *Catla*, *Mrigal*, *Chital*, *Kharis*, *Pithia* (*Mohasol*), *Gharis* of below 23 cm in length;

(ii) *Mali*, *Kurhi* and *Bagan* of below 10 cm in length is prohibited between the first day of August and Thirty first day of October.

(c) All under-sized fish specified under 13-(b) above caught in the nets in course of fishing in any

RULINGS

Statutory Notice of sale of Fisheries, Form No. 101. Clause 12(b) the requirements set forth therein occupy a field which may be characterised as minor or non essential one of the touchstone to determine whether a requirement is essential, or not is to consider the consequence of the failure to follow the provisions and if the requirements are minor and not urgent in nature or character, the interpretation must be that the provision is directory. *M/s. Jorighajya Fishery Corporation Society Ltd. v. Assam Board of Revenue*, (1983) 1 GLR 394.

(13) Fishing by nets including *Barjal Mahajal*, *Fasjal* (gill net *Masharjal*), with meshes less than 5 cm bar/14 cm mesh is prohibited during the first day of the month of May and fifteenth day of the month of July both days inclusive :

Provided that this restriction may be relaxed by the State Government for *Hilsa* fishing only.

(13) (a) Catching of the following breed fish (fish carrying eggs and sperm), namely—*Rohu*, *Catla*, *Mrigal*, *Chital*, *Kharis*, *Pithia*, *Gharis* and *Kurhi* is prohibited during the breeding season, that is between the first day of May and the fifteenth day of July, both days inclusive.

(b) Catching and killing for consumption or for sale of undersized fish of the following species and sizes, namely—

(i) *Rohu*, *Catla*, *Mrigal*, *Chital*, *Kharis*, *Pithia* (*Mohasol*), *Gharis* of below 23 cm in length;

(ii) *Mali*, *Kurhi* and *Bagan* of below 10 cm in length is prohibited between the first day of August and Thirty first day of October.

(c) All under-sized fish specified under 13-(b) above caught in the nets in course of fishing in any

RULINGS

When a settlement is made, the successful tenderer before executing the deed of settlement may be asked to produce valid *Patta*, *Jamhanda* or other document referred in Clause 17 of Form No. 101 Sale Notice in this case the respondent No. 2 was called upon to produce the documents before any settlement was in his favour which was violative of Rule 5(b) as well as Clause 17 of Sale Notice. *M/s. Jogighopa Fishery Co-operative Society Ltd. v. Assam Board of Revenue*, (1983) 1 GLR 394.

- (14) If the purchaser fails to execute a counter-part within one month of the date of this notice, or if he fails to do anything which he is required or bound to do under sub-paragraphs (2) and (3) above, the Deputy Commissioner/Sub-Divisional Officer may further direct that he shall also forfeit the security furnished, if any, at any portion of it.
- (15) In the river fisheries the use of *Mehajal* and fishing by means of *Kantola* are prohibited unless specifically allowed.
- (16) The hill fisheries may not be drained completely dry unless specifically allowed.
- (17) Should the lessee or any agent of his infringe any of the conditions of his lease, the Deputy Commissioner/Sub-Divisional Officer may cancel the lease in which case all sums paid by the lessee on account of the fishery will be forfeited and the lessee will be liable for any loss incurred by Government in the re-settlement of the fishery.
- (18) The shall not without previous sanction of the Deputy Commissioner/Sub-Divisional Officer employ any person in preference to local fishermen of the Scheduled Caste for working the fishery.
- (19) In settlement of the fishery or a group of fisheries—
- (a) Co-operative Fishery Societies formed by actual fishermen of the Scheduled Caste and registered under the Assam Co-operative Societies Act, 1948, shall be given option of taking settlement of fisheries at the highest bid, provided that the bid of such Co-operative Societies is within 7% per cent of the highest bid.
- (b) When the bids of such Co-operative Societies are below 7% per cent of the highest bid, (i) Co-operatives the Scheduled Caste, (ii) individual members of the Scheduled Tribes, and Other Backward Classes who may offer a bid not less than 5% per cent of the highest bid may be given option to take settlement of the fishery at the highest bid, in the order of preference stated above, subject to the suitability of the bidder.

*THE ASSAM PRIVATE FISHERIES PROTECTION ACT, 1935

(Assam Act 1 of 1935)¹

An Act for the protection of the right of fishing in private waters.

Preamble—WHEREAS it is expedient to provide for the protection of private rights of fishery; And WHEREAS the previous sanction of the Governor-General has been obtained under subsection (3) of Section 80A of the Government of India Act to the passing of this Act.

It is hereby enacted as follows—

1. Short title.—(1) This Act may be called the *Assam Private Fisheries Protection Act, 1935*.

(2) **Extent.**—It extends in the first instance only to the areas in Assam in which the Private Fisheries Protection Act, 1859 (Bengal Act II of 1859) is, before the passing of this Act, in force and the [State Government]² may, by Notification in the [Official Gazette]³ extend to any other area all or any provisions of this Act.

The Indian Fisheries Act, 1897 (Act IV of 1897) is to be read a supplemental to this Act.

¹ For Statement of Object and Reasons, see Assam Gazette, 1934, Part V, page 48; for Report of Select Committee, see Assam Gazette, 1934, Part V, T-V, for Proceedings in Council, see Assam Gazette, 1934, Part VI, pages 1024-1025, Assam Gazette, 1935 Part VI, pages 199, 778-784.

² Published in the Assam Gazette of the 14th August 1935.

³ Substituted by the Adaptation of laws order, 1950 for "Provisional Government".

⁴ Substituted by the Adaptation of laws order, 1935.

(75)

2. Interpretation clause.—In this Act, unless there be something repugnant in the subject or context—

- (1) **Fish.**—“Fish” includes shell-fish and turtles.
- (2) **Fixed engine.**—“Fixed engine” means any net, cage, trap or other contrivance for taking fish fixed in the soil or made stationary in any other way.
- (3) **Private waters.**—“Private waters” means water—
- (a) which are the exclusive property of any person; or
- (b) in which any person has an exclusive right of fishery.

RULINGS

“Private Waters” means waters which are the exclusive property of Person on the same analogy *Ram Labbaya v. In the Case of Dhanarun Namazudra v. Kalicharan Namazudra*, AIR 1950 Assam 138 1LR (1950) 2 (Assam) 340 held that where a channel can lawfully be used by private person for six months when there is water in it and if any body prevents by obstruction the Provisions of Section 133(1) Cr PC is attracted.

3. Penalties.—Any person who—

- (a) fishes in any private waters, not having a right to fish therein;
- (b) erects, places, maintains or uses any fixed engine in private waters, or puts, or knowingly permits to be puts, therein any matter for the purpose of catching or destroying fish without the permission of the person to whom the right of fishery therein belongs;

shall be guilty of an offence, and shall be punished for a first offence with a fine not exceeding fifty rupees;

and for a subsequent offence with imprisonment which may be simple or rigorous for a term not exceeding one month, or with a fine not exceeding two hundred rupees or both;

Provided that nothing therein contained shall apply to acts done by any person in the exercise of a bona fide claim of right, or in accordance with a long-established custom or shall prevent any person from angling with a rod and line or with a line only in any portion of a navigable river.

4. (1) Any fixed engine erected, placed, maintained or used in contravention of the last preceding section, and any fish taken by means of such engine, or otherwise in contravention of this Act shall be forfeited.

(2) And such fixed engine may be removed or taken possession of by the Deputy Commissioner of the District, or such person as he empowers in this behalf.

5. Whoever enters upon land in the possession of another or upon private waters, with intent to commit any of the offences specified in Section 4, shall be punished with a fine not exceeding fifty rupees.

6. Act V of 1898.—Offences committed under this Act shall be considered “cognisable offences” as defined in the Code of Criminal Procedure, 1898.*

*See the Code of Criminal Procedure, 1973 (Act No. 2 of 1974).

2. Interpretation clause.—In this Act, unless there be something repugnant in the subject or context—

- (1) *Fish*.—“Fish” includes shell-fish and turtles.
- (2) *Fixed engine*.—“Fixed engine” means any net, cage, trap or other contrivance for taking fish fixed in the soil or made stationary in any other way.
- (3) *Private waters*.—“Private waters” means water—
 - (a) which are the exclusive property of and person; or
 - (b) in which any person has an exclusive right of fishery.

RULINGS

“Private Waters” means waters which are the exclusive property of person on the same analogy *Ram Labbaya J* in the case of *Dhanaram Namazinda v. Kalicharan Namazinda*, AIR 1950 Assam 138—ILR (1950) 2 (Assam) 340 held that where a channel can lawfully be used by private person for six months when there is water in it and if any body prevents by obstruction the provisions of Section 133(1) Cr PC is attracted.

3. Penalties.—Any person who—

- (a) fishes in any private waters, not having a right to fish therein;
- (b) erects, places, maintains or uses any fixed engine in private waters, or puts, or knowingly permits to be puts, therein any matter for the purpose of catching or destroying fish without the permission of the person to whom the right of fishery therein belongs;

shall be guilty of an offence, and shall be punished for a first offence with a fine not exceeding fifty rupees;

and for a subsequent offence with imprisonment which may be simple or rigorous for a term not exceeding one month, or with a fine not exceeding two hundred rupees or both:

Provided that nothing therein contained shall apply to acts done by any person in the exercise of a bona fide claim of right, or in accordance with a long-established custom or shall prevent any person from angling with a rod and line or with a line only in any portion of a navigable river.

4. (1) Any fixed engine erected, placed, maintained or used in contravention of the last preceding section, and any fish taken by means of such engine, or otherwise in contravention of this Act shall be forfeited.

(2) And such fixed engine may be removed or taken possession of by the Deputy Commissioner of the District, or such person as he empowers in this behalf.

5. Whoever enters upon land in the possession of another or upon private waters, with intent to commit any of the offences specified in Section 4, shall be punished with a fine not exceeding fifty rupees.

6. Act V of 1898.—Offences committed under this Act shall be considered “cognisable offences” as defined in the Code of Criminal Procedure, 1898.*

*See the Code of Criminal Procedure, 1973 (Act No. 2 of 1974).

2. Interpretation clause.—In this Act, unless there be something repugnant in the subject or context—

- (1) *Fish*.—“Fish” includes shell-fish and turtles.
- (2) *Fixed engine*.—“Fixed engine” means any net, cage, trap or other contrivance for taking fish fixed in the soil or made stationary in any other way.
- (3) *Private waters*.—“Private waters” means water—
 - (a) which are the exclusive property of and person; or
 - (b) in which any person has an exclusive right of fishery.

RULINGS

“Private Waters” means waters which are the exclusive property of person on the same analogy *Ram Labbaya J* in the case of *Dhanaram Namazinda v. Kalicharan Namazinda*, AIR 1950 Assam 138—ILR (1950) 2 (Assam) 340 held that where a channel can lawfully be used by private person for six months when there is water in it and if any body prevents by obstruction the provisions of Section 133(1) Cr PC is attracted.

3. Penalties.—Any person who—

- (a) fishes in any private waters, not having a right to fish therein;
- (b) erects, places, maintains or uses any fixed engine in private waters, or puts, or knowingly permits to be puts, therein any matter for the purpose of catching or destroying fish without the permission of the person to whom the right of fishery therein belongs;

shall be guilty of an offence, and shall be punished for a first offence with a fine not exceeding fifty rupees;

and for a subsequent offence with imprisonment which may be simple or rigorous for a term not exceeding one month, or with a fine not exceeding two hundred rupees or both:

Provided that nothing therein contained shall apply to acts done by any person in the exercise of a bona fide claim of right, or in accordance with a long-established custom or shall prevent any person from angling with a rod and line or with a line only in any portion of a navigable river.

4. (1) Any fixed engine erected, placed, maintained or used in contravention of the last preceding section, and any fish taken by means of such engine, or otherwise in contravention of this Act shall be forfeited.

(2) And such fixed engine may be removed or taken possession of by the Deputy Commissioner of the District, or such person as he empowers in this behalf.

5. Whoever enters upon land in the possession of another or upon private waters, with intent to commit any of the offences specified in Section 4, shall be punished with a fine not exceeding fifty rupees.

6. Act V of 1898.—Offences committed under this Act shall be considered “cognisable offences” as defined in the Code of Criminal Procedure, 1898.*

*See the Code of Criminal Procedure, 1973 (Act No. 2 of 1974).

INSTRUCTIONS UNDER THE ASSAM GRANT OF FISHERY SUBSIDY TO PRIVATE FISH FARMERS AND PISCICULTURAL SOCIETY RULES, 1971.

Instructions to be followed by the District Officers for disbursing the grant to Fish Farmers and Piscicultural Societies and follow up action.

Rules for issue of subsidy to the Fish Farmers and Piscicultural Societies which was published by Government vide Notification No. VFF, 26/68/69, dated the 26th March, 1971 should be strictly followed in issuing the grant to each party with particular reference to the following—

1. The District Fisheries Development Officers should ensure after personal verification of each tank before making payment of grant without verifying the existence of tanks no payment should be made. He may, however, entrust his Sub-Divisional Fisheries Development Officer/ Officers in case if it is not possible to verify of but in all case, he shall be directly responsible for any lapses. Every case has been taken in preparing the list correctly. However, there might be some mistake somewhere. It is, therefore, necessary that the District Fisheries Development Officer/Sub-Divisional Fisheries Development Officer should himself verify the list before releasing the grant and any mistake or discrepancy that comes to notice should be informed this Office immediately.
2. The District Fisheries Development Officer/Sub-Divisional Fisheries Development Officer should ensure that each grantee executes a bond in prescribed form (copy enclosed), affixing Court Fee of Rs. 2.00 (Rupees two only), in which the purpose for which subsidy is granted should be clearly specified.
3. Clauses 8 and 9 of the Rule must strictly be followed.

4. As specified in the prescribed bond (The District Fisheries Development Officer/Sub-Divisional Fisheries Development Officer) should ensure that accounts maintained by the grantee is open for inspection of the Officer/Officers authorised by the Director of Fisheries, Assam.
5. Where subsidy is granted to a Piscicultural Society or any other group of persons, resolution passed by the Executive Committee duly signed by the President and the Secretary of the Society Committee authorising certain Office bearer to receive the payment on behalf of the Society/Committee will have to be furnished at the time of receiving payment.
6. No payment should be made before execution of bond and APR and bond should be sent to this Office for record.
7. Follow up action after issuing of grant should be strictly followed to ensure proper utilisation and utilisation certificate should be obtained and submitted within six months from the date of issue of grant.
8. If at any time the District Fisheries Development Officer finds that subsidy so granted has not been utilised or accounts not maintained properly matter should be brought to the notice of the Director of Fisheries, Assam at once for immediate decision.
9. Progress report, advancement of doubtful works should be submitted to the Director of Fisheries, Assam within specified period as prescribed under Rule.
10. The District Fisheries Development Officer/Sub-Divisional Fisheries Development Officer should maintain a separate Register for Piscicultural Society as per prescribed proforma.

(84)

THE ASSAM GRANT OF FISHERY SUBSIDY TO FISHERMEN/FISHERY CO-OPERATIVE SOCIETIES RULES, 1971¹

(ASSAM RULE XVI OF 1971)

Dated the 26th March, 1971

Notification No. VFF, 25/64/66.—The following Rules made by the Governor of Assam is published for general information—

Preamble.—WHEREAS it is considered expedient to assist Fishermen/Fishery Co-operative Societies to implement schemes for increasing fish production by way of exploitation and marketing in natural and artificial fisheries in the State and to give subsidy therefore in Cash or in Kind.

Now, therefore, the Governor of Assam is pleased to make the following Rules, namely—

1. **Short title, extent and commencement.**—(1) These Rules may be called the Assam Grant of Fishery Subsidy to Fishermen/Fishery Co-operative Societies Rules, 1971.

(2) These extend to the State of Assam.

(3) They shall come into force with immediate effect.

2. Subsidy in cash or in kind or both will be granted to registered Fishermen/Fishery Co-operative Societies in the State of Assam in order to improve the socio-economic conditions of Fishermen and persons engaged in fishing and fish-trade under the following terms and conditions for all or any of the purposes specified below—

8.5] The A. G. of F. Subsidy to F/F Co-Operative Soc. Rules 1971 83

(i) The following articles may be supplied in kind—
Yarn, Nets, Floats;

(ii) Subsidy in cash may be granted for purchase of boats and other fishing implements;

(iii) For purchase of ice from the departmental ice plant and hire charge of Cold Storage owned by Department at 50 per cent subsidised rate.

3. The term 'Fishermen' may be explained as under, that the persons belong to a Scheduled Caste community and defined vide Government, Circular No. RGP 52/57/103, dated 15th February 1960 and subsequent amendment made thereafter and engage themselves in any one of the following professions—

(i) That the persons undertake fishing by themselves in a fishing group;

(ii) That the persons directly undertake fish trade such as marketing of fresh fish, preserved fish other preserved fish, fishing implements, etc;

(iii) Members of Fishermen Co-operative Societies undertake fishing or fish trade, etc., as in (ii) above.

4. Subsidy either in cash or in kind or both may be granted on the recommendation of the Assistant Registrar of Co-operative Societies and Superintendent of Fisheries concerned to the extent of 50 per cent of the estimated requirement or 10 times the share capital, whichever is less subject to a maximum of Rs. 5,000 on condition that the grantee shall supply fish to the Department or sell through the Department at the rates to be determined by the Department from time to time.

5. Applications for subsidy must be made in writing in prescribed form appended herewith at ANNEXURE 'A' to the Superintendent of Fisheries concerned with detailed scheme. The Superintendent of Fisheries concerned will obtain report on local enquiry from the Assistant Registrar of Co-operative Societies or an Officer of Co-operative Department not below the rank of Assistant Co-operative Officer and also will obtain report from all

1. Published in The Assam Gazette (part III) of APRIL 21, 1971, pp. 915-917.
2. With effect from APRIL 21, 1971.

Officer of the Fisheries Department not below the rank of Fishery Officer concerned on the following points—

- (a) Total number of members belonging to actual fishermen community and directly engaged in fishery work;
- (b) Property owned by the Society;
- (c) Paid up share capital, reserve fund, other fund, etc., of the Society;
- (d) Whether the Society has obtained financial assistance from any other source previously and if so whether it has been properly utilised and re-payment if any made regularly;
- (e) Whether the Society is indebted to some other source;
- (f) Any other remarks with recommendations.

Superintendent of Fisheries will then forward the application along with the report to the Director of Fisheries, Assam with his recommendation on the scheme for sanction of the amount

6. (i) On receipt of the applications with necessary reports from the Superintendent of Fisheries, the Director of Fisheries, Assam will scrutinise and place them before a Advisory Committee to be constituted by the Government.

The Committee shall consist of the following members—

1. The Director of Fisheries, Assam, Gauhati.
2. Deputy Registrar of Co-operative Societies, Gauhati.
3. Six non-official Members.

The Committee on the merits of the cases will finalise the list against which Director of Fisheries will issue sanction against individual case with copies to the Registrar and Assistant Registrar of Co-operative Societies and Superintendent of Fisheries. Director of Fisheries will call for the meeting of the Advisory Committee half yearly in the months of July and January of each financial year. The Committee will also review the

11. The Government at the first instance will accord bulk sanction of the entire amount as provided in the budget under the Co-operative Scheme for issue of grants-in-aid and on receipt of such sanction the Director of Fisheries, Assam will issue individual sanction based on the recommendation of the Superintendent of Fisheries.

12. The Director of Fisheries, Assam, will invite applications for issue of subsidy to the Co-operative Societies and the applicants must submit their applications to the respective Superintendent of Fisheries within the due time. On receipt of the applications the Superintendent of Fisheries will obtain reports as provided under Rule 4 of these Rules within 15 days from the date of applications and forward the same with all relevant papers together with his recommendation after examining the technical aspects to the Director of Fisheries, Assam. All applications received by the Superintendent of Fisheries must not take more than 30 days for submission of reports and his recommendation in case of processing and in case of any unavoidable delay the matter should be reported to the Director of Fisheries. All applications received from Superintendent of Fisheries, till the end of June and December shall be placed before the Advisory Committee and on the following month.

utilisation of subsidy granted previously and extent of benefit derived by actual fishermen.

(ii) Subsidy in Cash and Kind will be released by the Director of Fisheries, Assam and will be distributed through the Superintendent of Fisheries concerned under intimation to the Assistant Registrar of Co-operative Societies. But Society must invest an amount of their own equal to the subsidy already granted.

The subsequent subsidy will be released on phased basis on the merit of expenditure and progress made on the programme of the Societies.

7. The member formally authorised by the Society to receive subsidy shall have to execute a bond on behalf of the Society in the prescribed form at ANNEXURE 'B' affixing Court Fee Stamp of Rs. 2 on receipt of the subsidy.

8. Subsidy shall be utilised for the purpose for which it is granted and the Director of Fisheries, Assam shall to that end arrange that the business is periodically inspected. Each grantee must submit to the Assistant Registrar of Co-operative Societies a report of actual works done and expenditure incurred half yearly. Assistant Registrar of Co-operative Societies will obtain technical reports on the actual utilisation of subsidy from the Superintendent of Fisheries concerned and forward the same with his report to the Director of Fisheries, Assam who will examine the progress and achievement made by the Society.

9. If at any time the Director of Fisheries finds that the subsidy has been misused by the society, he may direct that whole of the subsidy with 5 per cent per annum interest payable thereon shall be recovered from the Society immediately.

10. The Director of Fisheries shall maintain a register for subsidy issued under these rules in a form which he thinks best. The register should clearly show the State in which each transaction stands at any particular time.

ANNEXURE "A"

APPLICATIONS FORM FOR SUBSIDY FOR DEVELOPMENT OF FISHERIES THROUGH FISHERIES CO-OPERATIVE SOCIETIES

1. Name of the Society (in block letters)
2. Registered address of the Society.
3. No. and date of Registration.
4. Value of each share.
5. Total number of members on the Roll.
6. Total number of members belonging to the fishermen community.
7. Total number of crafts and tackles possessed—
 - (a) Cast net (with size);
 - (b) Drag net (with size);
 - (c) Boat (with size);
 - (d) Transport charge and Storage cost of ice required from the Department;
 - (e) Fishery requisites of any other kind with description.
8. Amount of share capital subscribed.
9. Total share money realised.
10. Name of—
 - (a) Chairman;
 - (b) Secretary;
 - (c) Treasure.
11. (a) Maximum credit limit of the Society.
- (b) Maximum credit limit of individual members.

12. Any business of fishery project already taken up by the Society.

13. Subsidy required.

14. Purpose for which subsidy is required (supported by detailed scheme separately).

15. Copy of resolution of Managing Committee asking for the subsidy and authorising the persons to receive it to be attached.

16. The Society agrees to abide by all the rules and such instructions as may be issued by the Department of Fisheries and Co-operative Societies, Assam from time to time.

Scaled and Signature of Chairman
Signature of Secretary

ANNEXURE "B"

PROFORMA FOR BOND TO BE EXECUTED BY THE FISHERMEN/CO-OPERATIVE SOCIETY IN RESPECT OF SUBSIDY FROM THE GOVERNMENT (FOR FISHING, FISH TANKS, ETC.)

1. This instrument made this day of the year between Shri son of Shri village Thanna P.O. in the District/Sub-division (hereinafter called the 'Grantee') of the one part and the Government of Assam (hereinafter called 'Grantor of the other part).

2. Whereas the grantee has received from the Grantor a sum of Rs. (Rupees) and Gooda value of at Rs. (Rupees) and) as subsidy for the purpose of

3. It is hereby agreed that the subsidy will be utilised by the said Society within a period of one year for the purpose for which it is granted and the accounts and works of the Society will be open for inspection by any departmental Officer nominated by the Director of Fisheries Assam/Registrar of Co-operative Societies, Assam.

4. It is agreed that in violation of Grantee of any or all terms and conditions laid down herein and the rules for granting subsidy or in case of failure of the Grantee to utilise the subsidy for which it was granted within the prescribed period the Grantor shall realise the full value of the subsidy with 5 per cent interest per annum thereon from Shri son of of village Thanna P.O. District who stands as surety for the Society as arrears of Land Revenue.

Signed on behalf of and under the authority of Scaled and Signed by—

Director of Fisheries, Assam, Gauhati

Signature of grantee.....
on behalf of Government of Assam.

Designation.....

Address.....

Witnesses—

1. Name..... I stand surety for
Address..... and on behalf of the
society against full
payment so granted
with interest as laid
down in the deed.

2. Name.....
Address.....

Signature of Surety.....

Address—

(a) Village.....

(b) Thanna.....

(c) P. O.

(d) District.....

INSTRUCTIONS UNDER THE ASSAM GRANT OF FISHERY SUBSIDY TO FISHERMEN/ FISHERY CO-OPERATIVE SOCIETIES RULES, 1971.

Instructions to be followed by the District Officers for disbursing the grant to the Fishery Co-operative Societies and follow up action.

Rules for issuing of subsidy to the Fishermen/Fishery Co-operative Societies as published by Government vide Notification No. VFF. 35/64/66. Dated the 26th March, 1971 should be followed strictly in issuing grant to each Society with particular reference to the following—

1. The resolution must be adopted and passed by the Executive Committee of the Societies concerned and should be signed by the President and the Secretary with their Official seal. The resolution must be a comprehensive one authorising certain Office bearers to act on behalf of the Society for a prescribed period. The Office bearer so authorised should have full power to submit the application for specific grant, make necessary correspondence with this Department, execute bond, receive payment etc. The bond should be executed by the authorised Office bearer on behalf of that particular Society in prescribed form as approved vide ANNEXURE 'B' of the approved rules and affix Court Fee of Rs. 2.00 (two). Bond should be executed prior to issue of subsidy and utilisation certificate of subsidy should be submitted within 6 months from the date of execution of bond. In case any Society obtained subsidy once and applies for further subsidy their fresh application of should be considered only on submission of utilisation certificate of the grants are found to be satisfactory.

2. As provided under Clause 4 of approved Rules, the Societies so granted with subsidy should be asked to sell their catches through this Department at the

Signed on behalf of and under the authority of..... Sealed and Signed by—
 Director of Fisheries, Assam, Gauhati
 Signature of grantee.....
 on behalf of Government of Assam.

Designation.....
 Address.....

Witnesses—

1. Name..... I stand surety for
 Address..... and on behalf of the
 society against full
 payment so granted
 with interest as laid
 down in the deed.

2. Name.....
 Address.....

Signature of Surety.....
 Address.....

- (a) Village.....
 (b) Thanna.....
 (c) P. O.....
 (d) District.....

INSTRUCTIONS UNDER THE ASSAM GRANT OF FISHERY SUBSIDY TO FISHERMEN/ FISHERY CO-OPERATIVE SOCIETIES RULES, 1971.

Instructions to be followed by the District Officers for disbursing the grant to the Fishery Co-operative Societies and follow up action.

Rules for issuing of subsidy to the Fishermen/Fishery Co-operative Societies as published by Government vide Notification No. VFF. 35/64/66, Dated the 26th March, 1971 should be followed strictly in issuing grant to each Society with particular reference to the following—

1. The resolution must be adopted and passed by the Executive Committee of the Societies concerned and should be signed by the President and the Secretary with their Official seal. The resolution must be a comprehensive one authorising certain Office bearers to act on behalf of the Society for a prescribed period. The Office bearer so authorised should have full power to submit the application for specific grant, make necessary correspondence with this Department, execute bond, receive payment etc. The bond should be executed by the authorised Office bearer on behalf of that particular Society in prescribed form as approved vide ANNEXURE 'B' of the approved rules and affix Court Fee of Rs. 2.00 (two). Bond should be executed prior to issue of subsidy and utilisation certificate of subsidy should be submitted within 6 months from the date of execution of bond. In case any Society obtained subsidy once and applies for further subsidy their fresh application of should be considered only on submission of utilisation certificate of the grants are found to be satisfactory.

2. As provided under Clause 4 of approved Rules, the Societies so granted with subsidy should be asked to sell their catches through this Department at the

(95)

time being in force relating to Fisheries in the territories to which the Act extend. It extends to whole of India except the territories which immediately before the 1st November 1956, were comprise within part B States.

3. (1) All laws, for the time being in force in the State of Assam as may be amended and modified from time to time by the District Council with the previous approval of the Governor of Assam, shall *mutatis mutandis* apply in respect of the establishment and management of fisheries in the Garo Hills Autonomous District.

(2) All references in the said law to the Commissioner, Deputy Commissioner or the Sub-divisional Officer shall be construed as references to the Chief Executive Member of the Garo Hills District Council.

THE MEGHALAYA GRANT-IN-AID TO PRIVATE FISH FARMERS AND PISCICULTURAL SOCIETIES RULES, 1986¹

Dated the 15th January 1987

Notification No. PISC(E) 125/86/1.—The Governor of Meghalaya is pleased to notify the following non-statutory Rules for the Grant-in-aid to Private Fish Farmers and Piscicultural Societies, for general information.

1. Short title, extent and commencement.—(1) This Rule may be called the Meghalaya Grant-in-aid to Private Fish Farmers and Piscicultural Societies Rules, 1986.

(2) They shall extend to the whole of Meghalaya.

(3) They shall come into force with effect from the date of publication in the Official Gazette.²

2. Financial assistance shall/may be granted for "New Construction" or "Improvement" of ponds/tanks.

(a) "New Construction" means bringing "New or additional area under water with a view to rear fish by excavation, construction of bund, retaining wall or canal/in-let provision, etc.

(b) "Improvement" means cleaning, dewatering, renovating or repairing of existing pond/tank without adding water area.

3. No financial assistance will be granted without a local enquiry being made by the Superintendent of fisheries or an Officer subordinate to him. Such enquiry should indicate reports regarding feasibility and suitability of the water area to be utilised for Pisciculture.

4. (1) Financial assistance will be granted in cash as follows—

¹ Published in the Meghalaya Gazette (part VA), dated March 12, 1987.
² With effect from 12 March, 1987.

(97)

- (a) for construction of new pond/tank, financial assistance shall be granted at the rate of Rs. 5,000 (five thousand) per 0.1 hectare (one acre) of water area subject to the maximum amount of Rs. 10,000 (ten thousand) depending on the water area. New ponds/tanks must have a minimum water area of not less than 500 Sq. meter in case of individual Pisciculturists. In case of co-operatives and Community Fisheries the maximum amount of subsidy shall not exceed Rs. 30,000 depending on the water area of 50 per cent of the total estimated cost of the project whichever is less;
- (b) for improvement of tanks/pond, etc., financial assistance shall be granted to individual Pisciculturists at the rate of Rs. 1,500 (one thousand five hundred) per 0.4 hectare (one acre) of water area subject to the maximum amount Rs. 2,000 (two thousand). In case of Co-operatives and Community Fisheries the maximum amount of subsidy should not exceed Rs. 3000 (three thousand) or 50 percent of the total whichever is less.
- (2) (a) For monoculture of Common Carp species, fish seeds of fry size (25 mm. to 39 mm.) at stocking rate of 5,000 numbers per Hectare and of fingerlings size (40 mm. to 100 mm.) at the stocking rate of 2,500 numbers per Hectare shall be supplied by the Department at the rate as fixed by the Department from time to time. The party shall have to bear the cost of the containers, plastic bags, Oxygen, packing charge, transport, etc.
- (b) for composite culture with fish seeds of fingerlings size of Major Carps (i.e., Catla, Rohu and Mrigal) and of exotic carps (i.e., Silver Carp Grass Carp and Common Carp) at the stocking rate of 8500 Nos. of fingerlings per Hectare water area in the following preferred combinations—

- (b) Allow the officers of the Department to inspect the progress of work.
10. If at any time, the Department finds that the financial assistance given has been misused, the Department may direct that the whole or part of the financial assistance with 5 per cent (five per cent) interest payable therein shall be recovered immediately from the defaulting party or parties.
11. (a) There shall be constituted a Committee in each district to be known as District Advisory Committee with the Deputy Commissioner as the Chairman, the District Fishery Officer as the member Secretary and such official, non-official members as may be determined by the Government at the time of constitution.
- (b) the aforesaid Committee shall scrutinise applications for grant-in-aid and enquiry reports thereon and recommend the beneficiaries and also specify the amount of grant-in-aid recommended in each case as per scale laid down in these rules.

Catla 750 Nos, Rohu 750 Nos, Common Carp 1,500 Nos, will be supplied by the Department at the rate as fixed by the Department from time to time. The party shall have to bear the cost of the containers, plastic bags, Oxygen, packing charge, transport, etc.

5. **Application for financial assistance.**—Application for financial assistance shall be accompanied with a plan and estimate. The Department of Fishery shall issue prescribed application forms to the Block Development Officer for distribution to the interested pisciculturists under his jurisdiction. On receipt of application, the technical staff of the Department either posted in the Block or in the District Headquarters shall conduct preliminary enquiry of the project and submit their technical report on prescribed form to the District Fishery Officer. The application submitted should be in the prescribed form duly affixed with the seal of the District Fishery Officer. Prescribed application form is at Schedule I.

6. The District Fishery Officer will scrutinize the technical report and submit recommendation of the project in order of merit and feasibility to the Director of Fisheries for financial sanction of the project, after obtaining the approval of the District Advisory Committee. Whose selection is final subject to Department's approval.

7. The Amount of the financial assistance will be disbursed to the beneficiaries by the District Fishery Officer. The District Fishery Officer will submit utilisation certificate to the Director of Fisheries.

8. The financial assistance shall be utilised for the purpose for which it was granted as per plan and estimate and the Director of Fisheries will ensure that the project is periodically inspected and follow up programmes taken up.

9. **Each grantee shall—**

- (a) Give an undertaking before receipt of the grant to utilise the same for the purpose for which was it given, in the proforma, at Schedule II.

SCHEDULE—I

APPLICATION FORM FOR GRANT-IN-AID TO FISH FARMERS

- Name of the Applicant (in block letters).
- Father's name (Registration not in case of society).
- Address in full—
 - Village.....
 - Post Office.....
 - Police Station.....
 - Development Block.....
 - District.....
- (a) Is the applicant owner of the tanks/ponds proposed for improvement?
(b) If not, how will he/she have a right over the tanks/ponds?
- Purpose for which grant-in-aid is required (enclosed estimate).
- Details of the existing tanks or ponds—
 - Location of the projects.
 - Name of the Development Block.
 - Nature of the Area.
 - Size (in Acre).
 - Source of water.
 - Number of seeds stocked.
- Estimated cost of the project.
- Amount of grant-in-aid required.

THE MEGHALAYA FISHERIES (WELFARE OF FISHERMEN) RULES, 1987¹

Dated the 12th May 1987

Notification No. FISC (G) 11/86/1.—The Governor of Meghalaya is pleased to notify the following non-statutory Rules for the purpose of granting fishing tools and or implements on Subsidy to individual Fishermen and or Fishermen Co-operatives and Societies for the Welfare of Fishermen.

1. Short title and commencement.—This Rule may be called the *Meghalaya Fisheries (Welfare of Fishermen) Rules, 1987*.

They shall come into force from the date of notification.

2. Definition.—In this Rule unless there is anything repugnant to the subject or context—

- (a) "Individual Fishermen" means any individual fisherman belonging to the State of Meghalaya who is actively engaged in fishing occupation;
- (b) "Fishermen Co-operatives" means any recognised fishery Co-operative duly registered by the Government and engaged in fishing trade;
- (c) "Fishing tools/implements" means boats, harpoons, petrolax lamp fishing nets, *etc.*, gill net, drag net, cast net, nylon twine and other related accessories;

1. Published in the Meghalaya Gazette (part VII), dated August 12, 1987.
2. With effect from May 12, 1987.

(108)

110

The Assam Fishery Rules, 1953

HC 5

5. Scrutiny of Applications by the Committee.—

Applications received by the Superintendent of Fisheries will be properly enquired into and periodically place before the District Advisory Committee whose recommendation shall be final.

The District Advisory Committee shall consist of the following members:

Chairman—

- (i) Deputy Commissioner of the District.

Members—

- (ii) Sub-Divisional Planning Officer of the District.
- (iii) Assistant Registrar, Co-operative Societies.
- (iv) 3 (four) non-official members nominated by Government.
- (v) Any other member nominated by the Government.

Member-Secretary—

- (vi) Superintendent of Fisheries of the District.

The term of the Committee will be for three years from the date of its constitution, unless otherwise notified by Government in the Official Gazette.

6. Interpretation.—If any question arises relating to the interpretation of these Rules, the decision of Government in the Fishery Department shall be final.

5-4)

The Meghalaya Fisheries (Welfare of Fishermen) Rules, 1987

111

(d) "District Advisory Committee" means the Committee constituted as such by the Government for a period of 3 (three) years from the date of notification;

(e) "Body Associate" means any organisation or group engaged in fishing operation other than fishery Co-operative;

(f) "Governor" means the Governor of Meghalaya.

3. Purposes.—The purpose of these Rules is to uplift the socio-economic condition of fishermen by augmenting their resources and capabilities of fish-catch through better tools and implements, to be provided to individual fishermen, fishermen Co-operatives or Body associate(s).

4. Eligibility and procedure for applying for the grant.—(a) Assistance will be available only to the genuine fishermen members of Co-operative and body associate who are wholly or partially engaged in the fishing occupation as a primary or secondary means of livelihood.

(b) Tools and implements as required by Fishermen should be indicated in the prescribed application Form appended as Schedule I which may be obtained from the Superintendent of Fisheries or Block Development Officer.

(c) Government subsidy will be limited to the extent of 75 percent of the cost of the tools, implements.

(d) The Superintendent of Fisheries shall place the indent for required tools implements to the Director of Fisheries, who will procure and issue same to the Superintendent of Fisheries, through Departmental Purchase Committee Procedures, for distribution to the selected beneficiaries.

THE [KHASI HILLS]¹ DISTRICT FISHERIES ACT, 1954²

(ACT NO. 1 OF 1954)

Dated the 26th March, 1954

Notification No. DC/L/X/31/54.—In pursuance of paragraph 11 of the Sixth Schedule to the Constitution of India, the following Act of the District Council of the [Khasi Hills]³ District is published for general information.

An Act to provide for matters relating to fisheries in the [Khasi Hills]⁴ District.

WHEREAS it is expedient to provide for matters relating to fisheries in the [Khasi Hills]⁵ District—

Be it enacted as follows—

1. Title, extent and commencement—

- (1) This Act may be called the [Khasi Hills]⁶ District Fishery Act, 1954.
- (2) It extends to the whole of the [Khasi Hills Autonomous District].
- (3) It shall come into force at once.⁷

2. Definition.—In this Act, unless the context otherwise requires the following expression have the meaning hereby respectively assigned to them, that is to say—

- (i) "District" means the Autonomous District of the [Khasi Hills];
- (ii) "District Council" means the District Council of the [Khasi Hills]⁸ Autonomous District;
- (iii) "Executive Committee" means the Executive Committee of the District Council of the [Khasi Hills]⁹ Autonomous District and the term "Chief Executive

¹ Substituted by the Act No. 1 of 1986 by the words "United Khasi-Jaintia Hills".
² Published in The Assam Gazette, March, 31st, 1954.
³ With effect from 21st March, 1954.

(11)

Members" and "Members of the Executive Committee" shall be construed accordingly.

- (ii) "Fish" includes shell fish;
- (iv) "Fixed engine" means any net, cage, trap or contrivance for taking fish, fixed in the sea or made stationary in any other way; and
- (vi) "Headman" means a headman of the Village appointed as such under the provisions of the [Khasi Hills] Autonomous District (Appointments and Succession of Chiefs and Headmen) Act, 1959 as amended from time to time[;]
- (vii) "Private water" means water which is the exclusive property of any person, or in which any person has for the time being an exclusive right of fishery whether as owner, lessee or in any other capacity.

RULINGS

"Private Waters" means waters which are the exclusive property of a person on the same principle from *Lalbhaya J in the Case of Dhuranta Narmada v. Khatkhat Narmada*, AIR 1950 Assam 138; ILR (1950) 2 (Assam) 340 held that where a channel can lawfully be used by private person for six months when there is water in it and if any body prevents by obstruction the provisions of Section 133(1) Cr. PC is attracted.

Explanation.—Water shall not cease to be "private water" within the meaning of the definition by reason only that other persons may have by custom a right of fishery therein.

(viii) "Village Court" means a Village Court constituted for a village under the [Khasi Hills] Autonomous District (Administration of Justice) Rules, 1953 as amended from time to time.]

[3. Destruction of fish by explosive.—If any person uses any dynamite or other explosive substances in any water with intent thereby to catch or destroy any of the fish that may be therein, he shall be deemed to have

1. Inserted clause "vi" by the Act No. 1 of 1966 and original clause "v" reconstituted as clause "vi" respectively.
2. Substituted by the Act No. 1 of 1966, for the words "United Khasi-Jaintia Hills".
3. Inserted new clause "vii" by the Act No. 1 of 1966.

committed an offence under this Act, and such person shall be punishable with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months or with both[.]

[4. Destruction of fish by poisoning waters.—If any person puts any poison, lime or noxious materials like tinfo copper sulphate, Khariew, Jaur, etc., into any water with intent thereby to catch or destroy any fish, he shall be deemed to have committed an offence under this Act, and such person shall be punishable with fine which may extend to one thousand rupees or with imprisonment for a term which may extend to three months or with both.]

[4-A. Power of Village Court or Village Headman and his Durbar to try offences under this Act—

(1) Whoever commits an offence under Section 3 or Section 4 above shall be tried before the Village Court in whose territorial jurisdiction the offence is committed, in accordance with the customary laws of the Village :

Provided that the Village Court shall have no power under this Act to impose a fine exceeding rupees one hundred and shall not be competent to pass a sentence of imprisonment;

Provided further that if the offender is arrested and produced before the Magistrate under Section 6, such offender shall be tried by the Magistrate before whom he is so produced.

Substituted Section "3 and 4" by the Act No. 1 of 1966.

See—before substitution of Section "3 and 4" read as follows—

3. Destruction of fish by explosive.—If any person uses any dynamite or other explosive substances in any water with intent thereby to catch or destroy any of the fish that may be therein, he shall be punishable with imprisonment for a term which may extend to two months, or with fine which may extend to two hundred rupees or with both.

4. Destruction of fish by poisoning waters.—If any person puts any poison, lime or noxious materials like tinfo copper sulphate, Khariew, Jaur, etc., into any water with intent thereby to catch or destroy any fish, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two hundred rupees, or with both.

Substituted Section "3 and 4" by the Act No. 1 of 1966.

Inserted as a new Section "4A" by the Act No. 1 of 1966.

(2) Where there is no Village Court in the Village by reason of it having not been constituted or otherwise, the Headman of the Village and his Durbar in whose territorial jurisdiction the offence is committed shall be competent to try the offences under this Act in accordance with the customary laws of the Village :

Provided that the Village Headman and his Durbar shall have no power under this Act to impose fine exceeding rupees one hundred and shall not be competent to pass a sentence of imprisonment;

Provided further that where the offender is arrested and produced before the Magistrate under Section 6, such an offender shall be tried by the Magistrate before whom he is so produced.

(3) If upon such trial, the Village Court or Village Headman and his Durbar, as the case may be, is of the opinion that the sentences to be imposed upon the offender in the circumstances of the case, is beyond their competency, they shall without delay refer the case to the competent Court having jurisdiction to try the offender who shall dispose of the case in accordance with the procedure adopted by it for the trial of cases.

(4) An appeal from any order passed by the Village Court or Village Headman and his Durbar, as the case may be, shall lie to the Court to which order made by such a Village Court is ordinarily appealable, provided the appeal is preferred within 30 days from the date of passing of the order excluding the time for getting copies thereof.

(5) Notwithstanding anything herein before contained, the subordinate District Council Court or the Additional Subordinate District Council Court, as the case may be, upon complaint received or on its own initiative may call for and examine the records of any proceeding of a Village Court or of a Village Headman and his Durbar within its jurisdiction and may enhance, reduce, cancel or modify any finding or order passed by

such Village Court or Village Headman and his Durbar or remand the case for retrial.]

5. Protection of fish in selected waters by rules of [Khasi Hills Autonomous District].—Subject to the approval of the District Council—

- (1) The executive Committee may make rules for the purposes hereinafter in this section mentioned, and may by notification in the [Meghalaya] Gazette or any such rules to such water, not being private waters, as may be specified in notification.
- (2) Such rules may prohibit or regulate all or any of the following matters, that is to say—

- (a) the erection and use of fixed engine;
- (b) the construction of weirs; and
- (c) the dimension of the meshes and kind of the nets to be used and the modes of using them.

- (3) Such rules may also prohibit all fishing in any specified water for a period not exceeding two years.

- (4) In making any rules under this Section the Executive Committee, may—

- (a) direct that a breach of it shall be punishable with fine which may extend to one hundred rupees, and, when the breach is a continuing breach, a further fine which may extend to ten rupees for every day after the date of the first conviction during which the breach is proved to have been persisted in; and

- (b) provide for—

- (i) the seizure forfeiture and removal of fixed engines, erected or used, or nets used in contravention of the rule; and

Inserted as a new Section "4A" by the Act No. 1 of 1966.

Substituted by the Act No. 1 of 1966, for the words "United Khasi-Jaintia Hills".

Substituted by 84A, for the word "Assam".

- (iv) the forfeiture of any fish taken by means of any such fixed engine or net.
- (5) Rules made under this Section shall be published for eliciting public opinion.

6. Arrest without warrant for offences under this Act—

(1) Any Officer or person empowered by the Executive Committee, in this behalf, either by name or as holding any Office, for the time being may, without an order from a Magistrate and without warrant, arrest any person committing to his view any offence punishable under Section 3 or 4 under any rule under Section 5—

- (a) if the name and address of the person are unknown to him; and
- (b) if the person decline to give his name and address or if there is reason to doubt the accuracy of the name and address if given.

(2) A person arrested under this section may be detained until his name and address have been correctly ascertained :

Provided that every person so arrested and detained shall be produced before the nearest Magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

In authentication whereof I give my signature this day the 2nd march, 1954.

F. War,

Chairman,

District Council, United Khasi-Jaintia Hills
Autonomous District, Shillong.

THE INDIAN FISHERIES ACT, 1897

(Act No. 4 of 1897)*

Dated 4th February, 1897

ARRANGEMENT OF SECTIONS

Sections

1. Title and extent
2. Act to be read as supplement to other Fisheries Laws
3. Definitions
4. Destruction of fish by explosives in inland waters and on coasts
5. Destruction of fish by poisoning of waters
6. Protection of fish in selected waters by rules of State Government
7. Arrest without warrant for offences under this Act

An

Act

to provide for certain matters relating to fisheries

WHEREAS it is expedient to provide for certain matters relating to fisheries;

It is hereby enacted as follows—

1. Title and extent.—(1) This Act may be called the Indian Fisheries Act, 1897.

See Statement of Objects and Reasons, Ann. Gazette of India, 1903, Pt. V, p. 103. For Report of the Select Committee, see ibid., 1907, Pt. V, p. 12 and for proceedings in Council see ibid., 1908 Pt. VI p. 207, ibid., 1909, p. 259 and 266, 1917, p. 21.

(117)

(2) It extends to the whole of India except the territories which, immediately before the 1st November, 1956 were comprised in Part B States.

2. Act to be read as supplement to other Fisheries Laws.—Subject to the Provisions of Sections 8 and 10 of the [General Clauses Act, 1887 (1 of 1887)]¹ this Act shall be read as supplemental to any other enactment for the time being in force relating to fisheries in the territories to which this Act extends.

3. Definitions.—In this Act, unless there is anything repugnant in the subject or context—

- (1) "fish" includes shell-fish;
- (2) "fixed engine" means any net, cage, trap or other contrivance for taking fish, fixed in the soil or made stationary in any other way; and
- (3) "private water" means water which is the exclusive property of any person or in which any person has for the time being an exclusive right of fishery whether as owner, or lessee or in any other capacity.

RULINGS

"Private Waters" means waters which are the exclusive property of a person on the same analogy as in *Labhaya J* in the Case of *Dhanoram Namasudra v. Kalicharan Namasudra*, AIR 1950 Assam 138. ILR (1950) 3 (Assam) 340 held that where a channel can lawfully be used by private person for six months when there is water in it and if any body prevents by obstruction the provisions of Section 133(1) Cr PC is attracted.

Explanation.—Water shall not cease to be "private water" within the meaning of this definition by reason only that other persons may have by custom a right of fishery therein.

4. Destruction of fish by explosives in inland waters and on coasts.—(1) If any person uses any dynamite

or other explosive substance in any water with intent thereby to catch or destroy any of the fish that may be therein, he shall be punishable with imprisonment for a term which may extend to two months, or with fine which may extend to two hundred rupees.

(2) In sub-section (1) the word "water" includes the sea within a distance of one marine league of the sea-coast; and offence committed under that sub-section in such sea may be tried, punished and in all respects dealt with as if it had been committed on the land abutting on such coast.

5. Destruction of fish by poisoning of waters.—(1) If any person puts any poison, lime or noxious material into any water with intent thereby to catch or destroy any fish, he shall be punishable with imprisonment for a term which may extend to two months, or with fine which may extend to two hundred rupees.

(2) The State Government may, by notification in the Official Gazette, suspend the operation of this section in any specified area, and may in like manner modify or cancel any such notification.

6. Protection of fish in selected waters by rules of State Government.—(1) The State Government may make rules for the purposes hereinafter in this section mentioned, and may by notification in the Official Gazette, apply all or any of such rules to such waters, not being private waters, as the State Government may specify in the said notification.

(2) The State Government may also, by like notification, apply such rules or any of them to any private water with the consent in writing of the owner thereof and of all persons having for the time being any exclusive right of fishery therein.

(3) Such rules may prohibit or regulate all or any of the following matters, that is to say—

1. See now Sections 4 and 26 of the General Clauses Act (10 of 1930) 1930.

- (a) the erection and use of fixed engines;
 (b) the construction of weirs; and
 (c) the dimension and kind of the nets to be used and the modes of using them.
- (4) Such rules may also prohibit all fishing in any specified waters for a period not exceeding two years.
- (5) In making any rule under this section the State Government may—
- (a) direct that a breach of it shall be punishable with fine which may extend to one hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to ten rupees for every day after the date of the first conviction during which the breach is proved to have been persisted in; and
- (b) provide for—
- (i) the seizure, forfeiture and removal of fixed engines, erected or used, or nets used in contravention of the rule, and
- (ii) the forfeiture of any fish taken by means of any such fixed engine or net.
- (6) The power to make rules under this section is subject to the condition that they shall be made after previous publication.

RULINGS

A sale of the Fishery No. 82/86 Keimou Awangsoi and some other fisheries was advertised in the Gazette dated 1.1.68 for public auction for 3 years 1.4.68 to 31.3.71. The petitioners deposited Rs. 1730/- towards Security Deposits. The Petitioners joined the auction and offered a sum of Rs. 40,000/- for 3 years. The officer conducting the sale accepted the bid of the petitioners as it was the highest bid. On 16.2.68 the petitioners tendered another sum of Rs. 8270/- to make up Rs. 10,000/- being 1/4th of Rs. 40,000/- as security amount. The Fishery Officer refused to accept Rs. 8270/- stating that the bid of Rs. 40,000/- was only for one year and the security deposits would

be Rs. 30,000/- being 1/4th of Rs. 1,20,000/-. The Deputy Commissioner also rejected the request of petitioners dismissing the appeal. The Deputy Commissioner by a letter dated 25.9.1968 to the petitioners demanding him to deposit Rs. 30,000/- by 7.10.68 else it shall be put to auction. On failure of petitioners it was re-auctioned on 30.10.68 held - there is no error apparent which can be corrected by the High Court. The findings of fact can be entered. *Ayokum Anghal Singh v. Union of India*, AIR 1970 (Manipur) 15.

However, there can be direct Settlement of a Fishery by the Government with a certain Fishery Co-operative Society. The extension of settlement in favour of the aforesaid Co-operative Society was granted with certain directions. On failure of Society to comply with directions, the Government of Assam under its order dated 2.6.92, cancelled the extension without affording opportunity of hearing the Society. Held there is violation of principles of natural justice. The extension order is quashed. *M/s. Shantipur Min Silpa Samstha Society Ltd. v. State of Assam*, AIR 1994 (Gau) 2.

7. Arrest without warrant for offences under this Act.—

(1) Any police officer, or other person specially empowered by the State Government in this behalf, either by name or as holding any office, for the time being, may, without an order from a Magistrate and without warrant, arrest any person committing in his view any offence punishable under Section 4 or Section 5 or under any rule under Section 6—

- (a) if the name and address of the persons are unknown to him; and
- (b) if the person declines to give his name and address or if there is reason to doubt the accuracy of the name and address so given.

(2) A person arrested under this section may be detained until his name and address have been correctly ascertained.

Provided that no person so arrested shall be detained longer than may be necessary for bringing him before a Magistrate, except under the order of a Magistrate for his detention.

IMPORTANT GOVT. CIRCULARS

No. 31013/15/90-Fy(3)

Government of India
 Ministry of Agriculture
 (Department of Agriculture & Co-operation)
 Kirti Bhawan, New Delhi Dated the 23rd March, 1992

To the Secretary Incharge of Fisheries,
 Govt. of Assam
 Dispur

Subject:—Centrally Sponsored Scheme Revised pattern of Assistance for Fish Farmers Development Agencies (FFDAs).

Sir,

I am directed to refer to this Ministry's letter of even number dated 20/12/91 conveying the revised pattern of assistance approved for FFDAs Scheme. Some of the State Government have raised certain queries about the pattern of assistance under the scheme. The Clarifications in this regards are given below—

- (i) Subsidy for construction of new ponds alongwith screened inlet and outlet with shallow tubewells is available @ 20 % of Rs. one lakh per ha, with a maximum ceiling of Rs. 20,000/- for all categories of fish farmers except Scheduled Tribe Fish Farmers in notified areas who will get 40% subsidy with a maximum ceiling of Rs. 10,000/-. In case shallow tubewells are not require the same may be insisted upon. However, the 5age and maximum amount of subsidy will remain the same as stated above.

- (ii) At present, double the rate of subsidy on all approved items to Scheduled Tribe Fish Farmers is available only in notified Tribal Districts. Subsidy at double the rates to Scheduled Tribes Fish Farmers outside notified Tribe FFDAs will be considered while revising the scheme during 8th Plan.
- (iii) Maximum areas for fish culture under the scheme for each beneficiary to whom subsidy can be given may be decided by the Management Committee of FFDAs on the recommendation of Chief Executive Officer (CEO) of FFDAs.
- (iv) Subsidy for construction of new ponds, renovation/reclamation of ponds and running water fish culture may be permitted to the beneficiary if he makes his own contribution instead of bank loan under FFDAs Scheme. The benefits however may be duly certified by CEO of FFDA and approved by the Management Committee before the subsidy is released for the work under taken.
- (v) Since the scheme is likely to be revised during 8th Plan period, it is requested that suggestions for improvement of the scheme, new items of assistance etc. may pleased be sent to this Ministry by the end of April, 1992. The suggestion received in this regard shall be considered for incorporation while revising the scheme for implementation during 8th Plan.

Yours faithfully,

Sd/- K. M. JOSEPH

FISHERIES DEVELOPMENT COMMISSIONER
 Copy to Director of Fisheries, Govt. of

MINISTRY OF AGRICULTURE

**Department of Agriculture & Co-operation Kriabi
Bhawan, New Delhi 110 001**

K.M. Joseph
Fisheries Development Commissioner

D.O. No. 31013/15/90-Fy(3), **September 17th, 1992**

Dear Sir,

Revised pattern of assistance for the development of fresh water aquaculture through Fish Farmers Development Agencies (FFDAs) was communicated to the State Governments vide this Ministry's letter of even number dated 20th December, 1991. This was followed by a.d.o. letter dated 17th January, 1992 from JC(Fisheries)

As you are aware two new items of assistance viz., construction of new ponds and running water fish culture have been added under the FFDA programme from the last quarter of 1991-92 besides revision of assistance for renovation of ponds and first year's input. Subsidy as high as Rs. 20,000/- per ha, is now available for construction of new ponds with shallow tubewell, if required and Rs. 2,000/- per unit of 1500 sq. ft. for running water fish culture in hilly areas. The subsidy is available at double the rates for tribal fish farmers in the notified tribal districts in the country. The subsidy can also be given to a beneficiary if the remaining cost of construction/renovation and input is contributed by him from his own resources and is only certified by the CEO and approved by the Management Committee of the FFDA.

(124)

It has come to the notice of this Ministry that some of the State Governments have not yet issued the orders incorporating the above mentioned two items under FFDA programme. In the absence of such orders, it may not be possible for the State Governments to increase the water area for fish culture under FFDA programme.

I shall be grateful if you could look into the matter personally and get the necessary orders issued in this regard. You are also requested to hold a regular review meetings of all the FFDAs working in your State and impress upon the CEOs of the agencies to expedite the development of freshwater aquaculture in the Districts. Please inform the action taken or proposed to be taken in this regard immediately.

With regards,

Yours sincerely,
Sd/- K. M. Joseph

Shri L. Rynjah,
Secretary Incharge Fisheries,
Government of Assam,
Dispur.

PART II-A

THE ASSAM GAZETTE, MAY 12, 1993

315

Dated the 26th March, 1993

No. FISH 233/92/3.—In the interest of public service and in order to streamline and strengthen the functions of the District and Sub-Divisional functionaries in the State, the Governor of Assam is pleased to re-organise the zones alongwith shifting of headquarter in some cases, as indicated below—

Name of Zone	Place of Headquarter	Name of the District covered by the Zone
I. Lower Assam Zone	Barpeta	(1) Kokrajhar (2) Bongaigaon (3) Dibrui (4) Goalpara (5) Barpeta
II. Central Assam Zone	Guwahati	(1) (2) Kamrup (3) Darrang
III. North Assam Zone	Tezpur	(1) Dhemajai (2) Lakhimpur (3) Sonitpur (4) Nagaon (5) Merigaon
IV. Upper Assam Zone	Sibsagar	(1) Tinsukia (2) Dibrugarh

(126)

		(3) Sibsaagar
		(4) Jorhat
		(5) Golaghat
V. South Assam Zone	Silchar	(1) Cachar (2) Karimganj (3) Hailalandi
VI. Hills Zone	Diphu	(1) Karbi-Anglong (2) N.C. Hills

All the Zones as indicated above shall be headed by an officer of the rank of Deputy Director of Fisheries, except the Hills Zone which shall be headed by an officer of the rank of Joint Director of Fisheries. The Central Zone shall be looked after by the Deputy Director of Fishery (Fish Seed Farming) in addition to his normal duties.

The Zonal Officers will supervise and provide proper guidance to the subordinate officer of the department posted in the Districts and Sub-Divisions under the respective zones.

L. RYNJAH
Commission and Secretary
to Govt. of Assam Fishery Department

**GOVERNMENT OF ASSAM
DEPARTMENT OF FISHERY, DISPUR**

No. FISEL 17/93/12. *Dated Dispur, the 19th July 1993.*

In the interest of public service and for streamlining the functionalities of the Fishery Department the Governor of Assam is pleased to merge the following 12 posts of Chief Executive Officer carrying the scale of pay of Rs. 1835-80-2035-60-2395-80-2555-FB-80-2875-100-3575-125-1325/-P.M. created under the following Fish Farmers Development Agencies (FFDA) shown against each post, with the post of District Fishery Development Officer of the concerned Districts which have been upgraded vide Notification No. FISH. 17/93/13, dated, 19.07.93 with immediate effect.

Name of post	Name of F.F.D.A.
1. Chief Executive Officer	Dhubri FFDA, Dhubri.
2. Chief Executive Officer	Kokrajbar FFDA KOKRAJBAR.
3. Chief Executive Officer	Darrang FFDA Darrang.
4. Chief Executive Officer	Sonitpur FFDA Tezpur.
5. Chief Executive Officer	North-Lakhimpur, FFDA.
6. Chief Executive Officer	Kamrup FFDA, Gouwahati.
7. Chief Executive Officer	Nagaon FFDA, Nagaon.
8. Chief Executive Officer	Sibsagar (old) FFDA, Jorhat.
9. Chief Executive Officer	Dibrugarh FFDA, Dibrugarh.
10. Chief Executive Officer	Karbi Anglong FFDA, Diphu.
11. Chief Executive Officer	Cachar FFDA, Silchar.
12. Chief Executive Officer	Karimganj FFDA, Karimganj.

(128)

**GOVERNMENT OF ASSAM FISHERY
DEPARTMENT**

No. Fish. 150/92/25. *Dated, Dispur 18th Nov., 1993*

To,

1. Deputy Commissioner & Chairman, FFDA
2. Deputy Director of Fisheries, Zone
3. District Fishery Development Officer/Additional DFDO

Subject—Leasing of the department fishery farms.

Sir,

I am directed to inform you that the Government is concerned at the massive drain of resources required in the maintenance and running of the departmental fishery farms. On the contrary, the production of fish and fish seeds from the farms has remained very insignificant all these years. After taking all points into consideration, Government has now decided to lease out the departmental farms to various genuinely interested individuals or organizations. In this connection, the following steps are to be taken—

1. A list of farms in your district which are to be leased out is enclosed herewith. The list is however not exhaustive, and the factual details shown against each may have undergone some changes in the meanwhile. These farms, along with other farms to be identified locally by you, should then be leased out after giving wide publicity.

At least one or two farms are however to be retained with the department/FFDA to be used for various training purposes to the fish farmers.

(130)

The incumbents of these posts shall be posted against the new cadre posts of District Fishery Development Officer (DFDO) which have been upgraded. The D.F.D.Os function as the Head of the Executive Wing of the F.F.D.A. of the respective district.

This issues with the concurrence of Finance R(ECI) Department conveyed vide their U/O No. FEC (I) 598, dated, 19.06.93.

Sd./- I. RYINJAH
Commissioner & Secretary,
Fishery Department.

2. Having finally identified the farms as indicated above, these are then to be formally handed over to the FFDA's and the fact that it has been done so should be recorded in the Asset and Liability Register of the FFDA which should be opened for inspection whenever required.
3. The identified farms are then now ready to be given out on lease. The period of lease should be for 5 years, and in some cases more than 7 years. The significance of granting the fishing rights to a lessee for a period of 5 years or more is to enable the lessee to avail of institutional finance for investing in various development activities in the farm.
4. One of the developmental activities that should be insisted upon on the lessee is stocking of the farm with suitable varieties and quantity of fish fry and fingerlings. As a matter of fact this is one of the reasons why an uninterrupted fishing right of 5 years or more is given to the lessee so as to enable him to reap the harvest of fish which he had stocked at the initial phase of the lease period.
5. As regards the lease amount to be fixed against each fishery farm a rational amount has to be worked out. Such factors as productivity of the farm, prevailing market price of fish etc., should be taken into consideration before finalising the amount of revenue against each farm.
6. The amount received from each farm should be kept in the bank account to be opened by the FFDA.
7. Preference should be given to genuinely interested unemployed youth, fish seed-growers and well-meaning organisations while selecting the lessee for the fishery farms. A bond to this effect has to be executed on the lines as indicated in the ANNEXURE enclosed.

As the question of leasing out a departmental fishery farm is being carried out for the first time in our State, it is requested that utmost care be taken to ensure that there be no public criticism of the efforts made by the Government. A committee consisting of the Deputy Commissioner and Chairman, FFDA, the Zonal Deputy Director of Fisheries and DFDO/Additional DFDO as Member Secretary is to be constituted for the purpose of deciding various issues relating to the leasing to the departmental fishery farms.

As the working season has already started it would be necessary that action on the points as indicated above be taken up immediately with intimation to the undersigned.

Your faithfully

Sd/- L. Rynjah

Commissioner & Secretary,
Fisheries

Enclosed as above.

No. Fish. 150/92/25-A Dated. 18th November, 1993

Copy to :

1. The Sub-divisional Officer (Civil) for information.
2. The Officer on Special Duty, Fishery College, Raha.

This may please be brought to the notice of the interested students.

DEED OF LEASE OF FISH-FARM

This lease is made the day of 1993 between the Governor of Assam (herein after called "the lessor") of the one part and Shri son of residing at District hereinafter called "the lessee") of the other part, WITNESSES as follows :

In consideration of the rent hereinafter reserved and the covenants and conditions hereinafter contained to be observed and performed on the part of the lessee the lessor does hereby grant, transfer, demise by way of lease to the lessee all that Fish Farm described in the Schedule below to have and to hold the same into and to the use of the lessee for the term of years commencing from the day of 19 at the rate of annual rent hereafter provided—

The lessor hereby covenants with the lessee as follows—

I. That lessee shall enjoy the right of water area within the limits of the fish farm only for the purpose of pisciculture to be conducted on payment of annual rent as indicated below, to be paid in following instalments and upon the dates named below subject to the following conditions; namely—

Annual Rent	Rate of annual rent (in words)
1 st year	Rs.
2 nd year	Rs.
3 rd year	Rs.
4 th year	Rs.
5 th year	Rs.

5 th year	Rs.
6 th year	Rs.
7 th year	Rs.
8 th year	Rs.
9 th year	Rs.
10 th year	Rs.

(ii) Instalment.—25% of one year's rent on or before 15th day of the seventh month 25% of one year's rent on or before last day of the 9th month and 50% of one year's rent on or before 15th day of the 12th month commencing from the date of taking over possession of the Fish Farms shall be deposited by the lessee.

(iii) Security money.—Security money equivalent of one fourth of rent for 1st year of full term of settlement, shall be deposited to the Fish Farmers Development Agency (hereinafter referred to as the Agency) in cash as soon as the lease is signed. This shall be adjusted against the future dues at the time of expiry of lease.

(iv) Should the lessee fail to pay the rent upon the dates named below the same shall be recoverable from the lessee as if it were an arrear of land revenue.

(v) Lessee's right acquired by this agreement extends only to the right of producing, catching and selling of fish, and the lessee shall not be at liberty to appropriate or cause injury to any produce, trees, crops, grass etc., within the limits of this Fish Farm.

(vi) The lessee shall be responsible for any damage caused to the Fish Farm through any act done by the lessee or negligence on his part.

(vii) The lessee shall not catch fish by means of poisoning by intoxicating drugs.

(viii) The lessee shall maintain the customary embankment and otherwise required for the purpose

conduct of fishery but shall not destruct any new embankment or cut any new channels or raise any bank above, the customary level without the permission of the Agency.

(ix) The lessor shall not, without the previous sanction of the Governing Council of the Agency employ any person in preference to local fisherman of the Scheduled Caste for working in the Fish Farm.

(x) No allegation on the lessee's part of any loss incurred by inundation, drought, disease or scarcity of fish or other accidental occurrence, shall be of any avail to excuse lessee from payment in full of the rent the lessee has agreed to pay.

(xi) The lessee shall have no power to sell right of lease of this Fish Farm or to sublet it to any one, or to admit anyone as partner, without informing the Chairman of the Agency who may refuse his sanction thereto.

(xii) Should the lessee or his partner or any reasons employed by lessee infringe on the conditions of this lease, the lease shall be liable to be cancelled in which case all sums paid by lessee shall be forfeited and the lessee shall further be held liable for any loss which may be incurred by the State Government in releasing the Fish Farm by the Agency. On cancellation of the lease due to violation of any condition of this lease by the lessee or if the lessee surrenders the lease in the mid-way of the lease term the lessee shall not have any claim over the expenditure incurred if any in connection with pisciculture in this Fish Farm.

(xiii) In the event of expiry of lease the lessee shall not have any claim on fishes if remain under water area of this Farm.

(xiv) The lessee must keep this Fish Farm clear of water hyacinth and other water weeds, repairing works in the Fish Farm if necessary, shall be done by the lessee his own cost.

(xv) De-watering if and when necessary for the purpose of proper conduct of pisciculture only can be made only with the motor-pump set with the prior permission of the Agency. Draining out of water in traditional methods is prohibited.

(xvi) The lessee shall have to supply adequate quantity of fish to be fixed by the Deputy Commissioner/Sub-Divisional Officer to the headquarter towns of the District/Sub-Divisional of any other locality/locations where fish is particularly scarce and specified by the Deputy Commissioner/Sub-Divisional Officer. No fish shall be sent outside the State except by a permit to be issued by the State Government.

(xvii) The lessee shall abide by all the instructions of the agency given to the lessee from time to time.

(xviii) On expiry of the lease term or on cancellation of lease the Agency shall not be liable in any circumstances to bear the liabilities of any loan taken by the lessee from any financing institutions in the capacity of holding this lease.

(xix) The Fish Farm shall be covered under 'Vtop Insurance Scheme' of any recognised Insurance Company.

(xx) This settlement is subject to the provisions of Assam Land Revenue Regulations 1886 and the rules that may have been or may hereafter be made there under, as well the instructions relating to Government

Fisheries that may have been or may hereafter be published in the Assam Land Revenue Manual.*

(xii) On the determination of the lease, the lessee shall deliver peaceful possession of the Fish Farm to the lessor.

In witness whereof the said lessor and the said lessee have put their respective signatures hereunder the day, month and year first above written.

Schedule I.

Signature of lessor
Chairman Fish Farmers' Development

Agency, in the capacity of holding the office of the Deputy Commissioner.

(For and on behalf of the Governor of Assam)

Witnesses—

Signature of the lessee

* See also Land Laws of Assam by K.C. Majumdar, J.S. Choudhury & G.C. Phukan's in 2 vols. Published by the Science Law Press, Calcutta 781003.

GOVERNMENT OF ASSAM

DEPARTMENT OF FISHERY DISPUR, GUWAHATI

No. FISH. 218/93/19. Dated 27th September, 1994

To, 1. The Deputy Commissioner
2. Sub-Divisional Officer (Civil)

Subject—Prevention of exploitation of fish resources in the water bodies, and catching of fingerlings by closely-knitted nets.

Sir,

One of the main reasons which has been adduced to the depletion of fish in the water bodies and rivers in our State is due to wanton catching of the fingerlings by the lessee and other fishermen for sale in the market. Such a destructive practice leaves no opportunity for the fingerlings to grow into standard sized fish, resulting eventually in the shortfall in the production of fish in the State.

Preventive provision.—To prevent such a practice, a provision has been made in the Fishery settlement Rules by which a lessee is prohibited from catching fish with closely-knitted nets, specially during the breeding seasons. Unfortunately in spite of the fact that the power to take punitive action for violations of this provision of the Rule having been vested with the DCs and the SDOs, no conscious effort has been taken by them in this respect. It is in this connection, that I am directed to request you to ensure that necessary punitive measures be taken on any lessee or fishermen who catches fish with the prohibited nets. All officers having magisterial power may kindly be alerted to take similar deterrent steps on the lines as mentioned. It would also be desirable if a motivational campaign be launched to educate the Gaon

Paluhayata and other non-governmental agencies to come forward and help the Government in combating this destructive practice once and for all. This is one of the strategies to prevent exploitation of the water bodies.

New strategy.—The other strategy which is going to be adapted hereafter has a more positive aspect to it. According to the recent policy taken by the Government a lease for fishing rights (popularly known as "settlement of fishery") when granted to an individual or a fishery Co-operatives or any agency shall be done so by the leasing authority for a longish of not less than 5 years at a stretch. While granting the lease it would be mandatory for the lessee to stock in the water body so decided to be leased out to him with sufficient quantity and suitable variety of fingerlings. The fact that the fingerlings stocked in the water body would grow into standard sized fish during a period of one year (i.e. within the lease period) and turn in to his own valuable assets would act as inducement to the lessee to nurse the fingerlings rather than exploit by catching them either by closely-knitted nets or other destructive fishing gears.

Thanks to the laudable contribution by the private fish farmers in our State, we are now in a very comfortable situation in the matter of production of fish seeds and fingerlings. It should therefore not be a problem carrying out the strategy as outlined in the foregoing paragraph. Besides more hatcheries are being installed through the FFDA's and Rural Development. The Des/SDO's should however work out a system to ensure that the lessee actually stocks the water body as enjoined as one of the conditions of the lease.

I shall be grateful if necessary steps are taken accordingly with the view to ensure sufficient harvest of fish in the State.

Yours faithfully,

(L. RYNJAH)

Commissioner & Secretary (Fishery)

Memo No. FISH-218/93/19-A Dated 27th September, 1994

Copy to : (1) DEPDO/Addl. DEPDO
for information and necessary action
(2) Deputy Director of Fishery (Zonal)
for information and necessary action

S/d. L. RYNJAH

Commissioner & Secretary,
Fishery

Minister, Fishery.—

The note placed below would indicate the trend of thinking of the Department for the development of beels and water bodies in the State. While the Fishery Settlement Rules shall be suitably amended, in the meanwhile necessary instructions are being issued to the District Officers and all concerned. Sufficient copies are made available for distribution whenever desired by the Minister.

L. RYNJAH

Commissioner & Secretary
Fishery

GOVERNMENT OF ASSAM

REVENUE (SETTLEMENT) DEPARTMENT

No. RSS. 799/94/4. Dated Dispur, the 21st November 94

From Shri D.C. Pathak IAS
Secretary to the Govt. of Assam

To : 1. The All Deputy Commissioners
2. All Sub-Divisional Officers

Subject : Development of Fisheries in the State
Reservation of Land.

Sir,

I am directed to say that as per para 4.1 of the existing land policy, 1989, land in rural areas may be allotted for pisciculture on the basis of schemes or projects duly approved by the Department concerned to landless families who have taken pisciculture as a means of livelihood subject to maximum limit 5 (five) bighas per family, and 20 (twenty) bighas for registered Co-operative Societies/Farm. In spite of this specific provision in the land policy for development of fisheries in the state, progress of pisciculture has not been encouraging.

The Government has carefully examined these aspects of fisheries in the State to keep certain marshy, low lying land at the disposal of Govt., in the Revenue Department fit for pisciculture reserved in the name of the Fisheries Department so that the Fisheries Department may use those areas for

(141)

development of fisheries. Accordingly, it has been decided that low lying areas fit for pisciculture measuring 20 bighas and above should not be allotted or settled for any other purpose and be kept reserved for pisciculture. On proper identification of each such marshy low lying area by Fishery Department formal reservation be made in favour of Fishery Department and possession of the identified land should be handed over so that they may develop these areas into fisheries and lease out either individually or on Co-operative basis, needless to mention, that para 4.1 existing land policy which has provided for allotment of land for pisciculture up to 5 bighas per family and up to 20 bighas for registered Co-operative Societies will be continued to be operated and acted upon by the Govt., in the Revenue Department. Only the bigger sized low lying areas measuring 20 (twenty) bighas and above with potential for pisciculture area to be reserved in the name of Fisheries Department for development and lease, to Gaon Panchayats/Co-operatives and unemployed youths in the locality.

The lease shall be limited to the fishing rights only for the period to be specified, while the land shall remain with the Govt. It is expected that this will boost the fish production in the State and solve the unemployment problem to some extent rural areas.

Yours faithfully,

Secretary to the Govt. of Assam,
Revenue(s) Department.

Memo No. RSS. 799/94/4-A Dated 21st Nov. 94

Copy to—

1. The P.P.S. to Chief Minister, Assam Janata Bhawan, Dispur, Guwahati-6.
2. The P.S. to Minister, Revenue/Fisheries for kind information of the Minister.
3. The P.S. to Minister of State Rural Development Department.
4. Shri A. Bhattacharyya, IAS, Addl. Chief Secretary, Assam.
5. All Commissioners of Divisions.
6. The Commissioner and Secretary, Fisheries Department, Assam.
7. The Commissioner and Secretary, Panchayat and Rural Development of Assam.
8. The Director of Panchayat and Rural Development of Assam.
9. The Director of Land Records, Assam Guwahati-21.
10. The Director of Fisheries, Assam.
11. The Deputy Secretary, to the Govt. of Assam Fisheries, Department, Assam.

By order etc.

Secretary to the Govt. of Assam
Revenue (s) Department.

**GOVERNMENT OF ASSAM FISHERY
DEPARTMENT**

No. FISH. 61/93/49 Dated Dispur the 29th November 94

To: 1. The Deputy Commissioner
.....
2. Sub-Divisional Officer (Civil)
.....

Subject—Reservation of low-lying land for fishery.

Sir,

I am directed to draw your attention to the recent decision taken by the Government in the Revenue Department on the reservation of land for fisheries. **This was a landmark decision which has a long term effect on the development of fishery in the State.** As per the Government's letter No. RSS. 799/94/4, dated 24/11/94, all low-lying areas which are not fit for agriculture shall be reserved for Fishery Department for the development of fishery.

On having obtained possession of such types of land the Fishery Department shall develop such lands into fisheries by adopting modern packages of practices. Once developed the fisheries shall then be handed over nationally either to the PFDA's or to the Goun Panchyats which organisations shall in turn lease out such fisheries on long term basis by granting of fishing rights to the lessee. Such lessees could be an individual fish farmer or a group of entrepreneurs having a genuine interest in the development of fishery, or a fishery Co-operative. It may be noted here that the lease so granted is for the purpose of fishing rights only, and does not extend to the rights on the land on which such a water body occupies.

(144)

In view of the importance of the decision taken by the Government as mentioned, the District Fishery Development Officers should be asked to identify suitable plots of land measuring more than 20 bighas for the purpose of reserving such lands for the development of fishery in your district. Funds from various sources could be availed of for drawing up suitable schemes in such reserved lands.

Yours faithfully,

(L. RYNJAH)

Commissioner & Secretary
Fishery

Memo No. Fish. 61/93/49-A Dated Dispur, the 29th November, 94

Copy to—

1. The Director of Fishery,
Government of Assam, Dighalipukhuri, Guwahati.
2. The District Fishery Development Officer.
3. The Addl. District Fishery Development Officer.
4. The Sub-divisional Fishery Development Officer.
(For information and necessary action)
5. The Director of Panchayat & Rural Development
Govt. of Assam, for favour of information and
necessary action. Notes: (2) & (3): They are to
identify suitable plots of land and obtain
possession of such lands from the concerned
Revenue authorities. Suitable schemes should
then be drawn up in consultation with the
Deputy Commissioner.

(L. RYNJAH)

Commissioner & Secretary
Fishery

GOVERNMENT OF ASSAM

REVENUE (SETTLEMENT) DEPARTMENT

No. RSS. 799/94/6. Dated Dispur, the 6th Dec., 94

From: Shri D.C. Pathak, IAS
Secretary to the Govt., of Assam

To:
All Deputy Commissioners,
All Sub-Divisional Officers.

Subject—Development of fisheries in the State
reservation of land-clarification thereof.

Ref: Govt. letter No. RSS. 799/94/4. Dated 21/11/94

Sir,

I am directed to refer to the aforesaid Govt., circular on the subject and say that it has been indicated in the letter referred to that on proper identification of each such marshy low lying areas by fishery Department, formal reservation be made in favour of fishery Department and the possession of identified land should be handed over so that they may develop these areas into fisheries and lease out either individually or on Co-operative basis. It is clarified that on proper identification of each such marshy low lying areas by the fishery Department, formal proposal for reservation in favour of fishery Department should be submitted to the Govt., in the Revenue Department as per usual practice. Only after receipt of approval from the Govt.

(146)

in the revenue Department, formal reservation be made in favour of the fishery Department and possession of the identified land should be handed over. This procedure of obtaining formal approval from the Revenue Department shall have to be strictly followed. Under no circumstances this formal reservation in favour of Fishery Department, or the possession of identified land be handed without formal approval from the Revenue Department.

In this context it is mentioned that even for settlement of land for pisciculture at the rate of 5 bighas in case of individual and 20 bighas in case of Co-operative Societies, formal approval of Govt., is necessary. Hence, the formal approval in case of reservation of land exceeding 20 bighas shall have to be obtained from the Revenue Department.

Kindly acknowledge receipt of this.

Yours faithfully,

Sd/ Secretary to the Govt., of Assam,
Revenue (S) Department.

Memo No. RSS 799/94/6-A. Dated Dispur, 6th December, 94

Copy to—

1. The P.P.S. to Chief Minister, Assam Janata
Bhawan, Dispur, Guwahati-6
2. The P.S. to Minister, Revenue/Fisheries for
kind information of the Minister.
3. The P.S. to Minister of State Rural
Development Department.
4. Shri A. Bhattachariya, IAS, Addl. Chief
Secretary, Assam.

5. Shri D.K. Gangopadhyay, IAS, Addl. Chief Secretary, Assam
6. All Commissioner of Divisions.
7. The Commissioner and Secretary, Fisheries Department, Assam.
8. The Commissioner and Secretary, Panchayat and Rural Development, Assam.
9. The Director of Panchayat and Rural Development, Assam.
10. The Director of Land Records, Assam, Guwahati-21
11. The Director of Fisheries, Assam.
12. The Commissioner and Secretary, to the Govt of Assam.
Fisheries Deptt., Assam.
By order etc...
Sd/- Secretary to the Govt. of Assam
Revenue (S) Department.

Strategy for Preservation and Production of Fish in the 'Beels' and Other Water Bodies

The practice of catching fish from the beels and other water bodies by means of closely-knitted nets is highly destructive, and has a long term adverse effect on the production of fish in the State. We are now beginning to feel the effect of this destructive practice which has been want only carried out for quite some time now. Such a practice deprives the water body from being able to sustain itself for future breeding and production of fish. And with most of the linking channels to the feeding rivers having been choked up either due to siltation or unystematic construction of embankments, the only lifelines of the water body are also totally cut off and the natural process of auto-stocking is very essential to recoup and re-juvenate the water bodies for production of fish has now become a thing of the pass. No wonder the productivity of the beels in our State at present is a mere 22 Kg. per hectare per year where it should not be less than 320 Kg. per hectare per year.

There are prohibitory provisions in the Fishery Settlement Rules against destructive fishing. These relate to prevention of fishing during the breeding season, and prohibition in the use of fishing nets of particular sizes. These provisions have however not been effectively invoked due to various difficulties. However in order to ensure that the fish fries and fingerlings in the water bodies are allowed to grow into standard size, alternative strategies as spelt out below are now sought to be carried out:

- (i) To ensure that one of the terms for lease of a water body is for the lessee to stock the water body with appropriate quantity and species of fish fries and fingerlings at the beginning of the lease period. (There should be no problem in procuring fish seeds, as the production of fish seeds has reached a surplus stage in the State. In fact the trade in fish seed has slumped and prices have come down at present due to surplus production. Mandatory

(149)

stocking of all water bodies as proposed will once again upswing the business of fish seed production. Manual stocking of fish seed in a water body is the next best available means of recouping a water body in the absence of auto stocking from the feeder-channels).

- (ii) In order to supplement the efforts of the lessee as indicated at (i) above, the period of lease should be reasonably long, say not less than 5 years at a stretch. During this period the fish fries and fingerlings stocked by the lessee at the beginning of the lease period would have grown to a standard marketable size, and fetch a substantial price to the lessee. This is the incentive to the lessee who, in his own interest, would now take care (and not indiscriminately catch them with closely knitted nets) to nurse all the fries and fingerlings available in the water body leased out to him, including the ones manually stocked by him. The strategy also has the unwritten but self imposing regulatory provision on the lessee without the necessity of having a second party in the form of Magistrate and police to oversee its implementation. (Long term lease would also attract funding for development from financing institutions.)

It is evident that when both the strategies as mentioned above are carried out simultaneously the necessity of the existing negative prohibitory provisions of the Fishery Settlement Rules, which become redundant, making way for a more positive measure of preservation and increased production of fish in the State.

(L. RYNSAH)

Commissioner & Secretary

Fishery

Copy for perusal and comments, if any is sent to:

FISHERY SETTLEMENT RULES-A NOTE

The Fishery Settlement Rule has been in operation in our State for quite some time now. It is on the basis of these Rules that settlement of both river land beel fisheries numbering more than 500 are decided upon every year. While **earning of revenue** to the State's exchequer is one of the prime objectives in the settlement of fisheries, protection of the **interest of the weaker sections** namely the fishermen community, is also taken care of while framing and implementing the Rules. Besides, the Rules in some measure also reflect the desire of the Government to **protect some identified species of fish** by preventing their catch during certain periods of the year or even to **conserve them** by providing for some fisheries to be declared as sanctuaries.

The present set of Settlement of Fishery Rules is however not adequate to meet the exigencies of the changing times. While on one hand some provisions of the Rules shall have to be amended on the other hand additional provisions shall have to be incorporated with a view to provide a more positive approach towards development of the Beels which are the major treasure source of fish in our State. These points are elaborated in the note enclosed herewith.

Minister, Fisheries :—

A. P. C.

In our State, inspite of being richly endowed with abundant water bodies precious little has been done so far to tap this vast potentiality for maximization of fish production. The water area under the category of Beels alone covers, as per records available, as much as 1 lac hectares (although the actual effective water area has over the years been reduced considerably due to siltation). Tanks and ponds contribute 23,000 hectares of water area, reservoirs 15,000 hectares and another

(151)

2.05 lac hectares provided by the 4500 kilometers of river length which criss-cross the length and breadth of the State. And yet in spite of the tremendous wealth in natural resources we continue to bring in fish from outside the State in order to meet our local demands. On a rough survey conducted, about 360 truckload of fish make their entry into the state every month. In terms of fish, the quantity works out approximately to 1800 MT per month. While a substantial quantity is consumed in our State, the rest goes to the other North Eastern States. Such heavy import of fish from outside the state leads to a massive drain of the scarce resources of the State. The two extreme contrasting scenario as pointed out above only seek to drive home the paradox situation that obtain in our state at present. Steps should therefore be taken to reverse the situation and turn Assam into a self-sufficient state in the production of table fish at a reasonable price.

In this note we shall confine our attention to the beels which contribute substantially to our water areas, and examine what steps have been taken so far for their development. In this connection, a late start has been made some time in 1988 with the implementation of the WFP-assisted programme for development of the 102 identified beels in the state through the AFDC. The Pilot has just been completed in 16 beels, and their contribution to/increase fish production is yet to be assessed.

In respect of the other beels in the State, the Government's association with them is only when the annual ritual of their settlement has to be gone through at the end of the financial year. During the rest of the year the beels are totally left at the mercy of the lessee. And the Settlement Rules for Fishery provide for a one-way route for the lessee to exploit the beel for his own short-term commercial interest. Nowhere in the Fishery Settlement Rules is there any provision which enjoins the lessee to develop the beel.

What is now proposed is to incorporate in the Fishery Rules a provision by which a lessee must mandatorily stock appropriate quantity of fish seeds/fingerlings at the beginning of each operation as the natural process of auto-stocking has almost died out due to unplanned construction of embankments which close the channel from the river Brahmaputra to the beels.

The process of artificial stocking would be a valuable investment in the beel which is settled with a lessee and in the long run contribute substantially to increasing fish production. The expenditure on such an item of investment shall also be taken into account by the Valuation Committee. (Please see note on Fixation of revenue of a beel, in the following paragraph), while assessing the revenue to be fixed on a beel. On the part of the settlement authorities support must be given to such a lessee by settling the fishery for a period which should not be less than 5 years at a stretch during which time the lessee is expected to reap proportionate returns from his investment. It is for the reason that an element of developmental activity be introduced at the time of settlement of a fishery that one of the recommendations of the Central Board of Fisheries is for settlement of fishery for a period which should not be less than 7 years at a time. Besides, there is also the beneficial spin-off from stocking the beels with fish seeds/fingerlings. The process will rejuvenate the trade on fish seed which is dull at present (as against the rate of Rs. 170/- thousand during 1987-88, the present rate Rs. 30/- thousand) due to surplus production in the state.

Fixation of revenue from a beel :

The other aspect which requires to be looked into relating to the beels is the revenue generated out of their settlement. At present there is no standard norm followed while assessing the revenue to be fixed for a beel. An indicative random figure is furnished by the Deputy Commissioner/SDOs which figure actually emerged out of the guesswork of the Lok Mandal. The state stands to lose substantial revenue due to such

(Rule 30 of the Fishery Rules has a provision of declaring certain identified water areas as sanctuary. No action has been taken by the department of Fishery to implement this important provision so far. It is for the Director of Fishery to identify such low lying areas and move the Government for declaration of such areas as sanctuaries. Once a particular water areas is notified as sanctuary no fishing shall be allowed to be undertaken in such an area).

- (iv) All the notified fisheries are still under the Revenue Department Fishery Department only carried out the process of settlement in the notified fisheries. It is desired that the notified fisheries be handed over to the Fishery Department.

In addition to the notified fisheries, it would be necessary that all the water areas which are deemed to be suitable for pisciculture be handed over to the Fishery Department by the Revenue Department for taking up various development schemes. (This requires the approval of Revenue Department).

Other issues which would require amendment of the Fishery Settlement Rules are indicated below—

- (i) For the category of registered fisheries settled by the Government, the procedure of calling of tenders should also be adopted on the lines as being followed for the category of fisheries which are settled by the SDOs/DCs. However, only such of those fishery Co-operatives constituted of actual fishermen operating in the neighbourhood of a registered fishery shall be allowed to submit their tenders.
- (ii) An appeal against the orders of the Government passed in the matter of settlement of fisheries

shall lie with the Assam Board of Revenue, as per Rule-11 of the Settlement Rules.

Legal Remembrance, U/O :

The registered fisheries in the State are categorised into two : While the first category are settled by the DCs/SDOs, the second category of fisheries are settled by the Government. Rule 8(a) & (b) apply to the category of fisheries which are settled by the DCs/SDOs. Appeal against the order of the confirming authority for such settlement lies with the Assam Board of Revenue as per Rule 11 of the Fishery Settlement Rules.

However, in respect of the category of fisheries which are settled by the Government, as per Rule 12 of the Fishery Settlement Rules no definite provision has been laid down for appeal against the order passed by the Government in the matter of settlement of fisheries. Interested parties however, approach the Hon'ble High Court in the matter of appeal relating to such cases. The Department is of the view that on the lines as prescribed for category of fisheries settled by the DCs/SDOs in the matter of filing appeals a similar provision should be incorporated by which appeals against the order of the Government for the other category of fisheries should also be referred to the Assam Board of Revenue.

I shall be grateful if you could kindly advise us on this matter. This has the approval of Minister, Fisheries.

Sd/ L. RYMIAN
Commissioner & Secretary
Fishery Department.

Fisheries Department—U/O.

Yours endorsement above.

The Provisions of appeal against the order of the Government under Rule 12 of the Fishery Rules as

proposed can be prescribed with the prior decision of the Cabinet. Thereafter, Legislative Department should be consulted.

Dy. Legal Remembrancer,
Judicial Department

Minister, Fisheries :

As the Minister is aware, there are three loose ends in the matter of settlement of fisheries by the Government as per the provisions of Rule 12 of the Fishery Settlement Rules. These are elaborated below :

1. A fishery is to be settled with a fishery Co-operative Society formed with 100% actual fishermen of the fishing population in the neighbourhood concerned. Here, the term neighbourhood is vague. We have sought clarification from the Registrar of Co-operative Societies whose reply may be sent at 2c below. The reply does not help us in getting a clear definition of the term neighbourhood. In determining whether a particular fishery Co-operative is within the neighbourhood of a registered fishery or not, we may include such co-operatives which are located within a radius of 5 kilometers from the periphery of the belt. In case of a river fishery the same principle of 5 kilometers from the bank of the river which has been notified as a fishery shall apply.
2. Within the neighbourhood of a fishery there are quite a number of fishery qualify the norms as

prescribed under Rule 12, and can be considered for settlement of a beel. At present a registered fishery is settled with any one of the fishery Co-operatives (situated within the neighbourhood of a fishery), at a revenue almost arbitrarily fixed by the Government. No tender system is followed in respect of settlement of a fishery with such fishery Co-operatives.

In order to provide a healthy competition amongst the fishery Co-operatives located within the neighbourhood of a registered fishery the procedure of settlement by tender system could be introduced limiting the tenders to the fishery co-operatives within the neighbourhood.

3. There is no specific provision for filing appeals against order of the Government for settlement of registered fisheries under Rule 12. Interested parties rush to the High Court for all manners of appeals. We have since sought the opinion of the Legal Remembrancer which may kindly be seen at 3a pre-page. We shall therefore seek the approval of the Cabinet for incorporating a provision in the settlement rules by which appeals against the order of the Government shall rest with the Board of Revenue as done in the case of appeals against the order of the DCs and SDOs.

Sd/- L. RYNDIAH
Commissioner & Secretary
Fishery Department.