THE ASSAM SETTLEMENT OF FOREST COUPES AND MAHALS BY TENDER SYSTEM RULES, 1967

1. **Title and application of the rules.** (1) These rules shall be called the Assam Settlement of Forest Coupes and Mahals by Tender System Rules, 1967.

(2) They shall come into force at once.

(3) They shall extend to all areas to which the Assam Forest Regulation, 1891 applies.

2. **Definitions.** In these rules, unless there is anything repugnant in the subject or context—

(a) "Conservator" means "Conservator of Forests" and includes "Chief Conservator of Forests" also ;

(b) "Coupe" means a compact area wherein a number of trees are permarked for sale by auction or tender and for removal within specified period ;

(c) "Mahal" means a defined area wherefrom certain types of forest produce are sold on condition of their removal within a specified period.

NOTES

It was held in *Bilash Ram Baishya* v. *Divisional Forest Officer* [1976 ALR 145], that the seized timbers cannot come within the meaning of "Coupe". For considering the question whether the seized timbers advertised for sale were forest produce or mahal it is necessary to look to the definition of 'forest produce' as defined in sub-Ss. (3) and (4) of of S. 3 of the Assam Forest Regulation. Their Lordships also considered the definition of the word 'Mahal', which means an area wherefrom certain types of forest produce are sold on condition of their removal within a specified period. That being the position, the seized timbers, as advertised in the sale-notice in question may be said to be a 'Mahal' and as such, the sale of the seized timbers in question, as stated in the sale-notice, may be said to be a sale under the Assam Settlement of Forest Coupes and Mahals by Auction System Rules, 1967. In *Mona Goshain* v. *State of Assam* [(1983) 1 GLR 147], the word 'coupe' has been defined as a compact area where a number of trees are permarked for sale. The trees which have felled and permarked no longer remain the part and parcel of the coupe.

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3. **Notice for tender.** A notice calling for tender for settlement of a coupe or a mahal shall be published in the official Gazette not less than 15 days before the last date fixed for submission of tender.

4. **Particulars to be included in the notice.** The notice shall state—

(i) the name of the coupe or the mahal ;

(ii) the particulars necessary for its identification ;

(iii) the period for which it is proposed to be settled ;

(iv) the last date and time for submission of tender ;

(v) the officer to whom and the manner in which the tender is to be submitted ;

(vi) the place at which the tender is to be submitted ;

(vii) the earnest money that will have to be paid ;

(viii) in the case of Royalty-cum-Monopoly Sale, the minimum stipulated quantity should be quoted ;

(ix) any other particulars deemed necessary by the authority calling for tender.

5. Earnest money. (1) Before submission of any tender, the tenderer shall deposit, in the treasury or in any branch of an approved Scheduled Bank, an earnest money (as fixed by the Conservator) by bank draft/treasury challan for each coupe or mahal pledged to the officer calling for tender.

(2) The earnest money shall be reduced by 50 per cent in case the tenderer belongs to any of the scheduled castes, scheduled tribes, or the backward classes recognised by the State Government.

6. Tender and its enclosures. (1) There shall be a separate tender for each coupe or mahal with the requisite court fee affixed to it.

(2) Each tender shall be in the tender form prescribed in Schedule A below and the tenderer shall state in the tender his full name and address and his father's name (or husband's name if the tenderer is a woman) and full address, with post office and telegraph office.

(3) The tenderer shall also state in the tender the maximum outright price or the monopoly fee per rupee of royalty, as the case may be, which is prepared to pay for each coupe or mahal, and shall also make a declaration as follows :

"I agree that I will not withdraw the tender offered by me during the time that will be required for intimation of acceptance of the tender for coupe/mahal being given to me ; nor will I withdraw it afterwards, should my tender be accepted. If I withdraw the tender, then I am liable to pay the whole sum of the tender or such amount on account of deficiency as in the opinion of the Conservator of Forests, Assam may be considered necessary to make good the whole of the loss and damages that may be suffered by Government in consequence thereof, and I shall pay the same, and if I fail to pay it, then it will be recovered from me as arrear of land revenue."

(4) The tender shall be accompanied by the following documents, namely :

(i) A copy of the treasury challan or a bank draft evidencing deposit of the prescribed earnest money ;

(ii) An up-to-date income tax clearance certificate ;

(iii) If a tender is submitted on behalf of a Co-operative Society, or a firm or a joint stock company, then in addition to the requirement of (i) and (ii) above,—the original or certified copy of the registration certificate of the society or the firm or the company given by the respective Registrar in Assam, and the copy of the resolution authorising the person who signs the tender to manage the business of such society, firm or company on its behalf, and to undertake the liabilities as a tenderer on behalf of the society, firm and company and information regarding authorised, subscribed and paid-up capital of the concern ;

(iv) If the tender is submitted by a person belonging to any of the Scheduled Castes, Scheduled Tribes or other Backward Classes then in addition to the requirements of (i) to (iii) above, the original or certified copy of the certificate in support of his claim to belong to such community from the Deputy Commissioner of the District or the Sub-Divisional Officer of the sub-division within whose territorial jurisdiction the tenderer permanently resides ;

(v) Documents evidencing financial soundness of the tenderer :

Provided that such documentary evidence shall not be necessary in case of a tenderer who has been registered under any rule prescribed by the State Government for registration of forest contractors, but in such case he shall furnish the particulars of his registration.

NOTES

It was held in *Khoi Singha* v. *State of Assam* [(1983) 1 GLR 410], that this rule is optional and not mandatory. In *Muffasin Ali Barbhuiyan* v. *State of Assam* [AIR 1971 A and N 171 (DB)] it was held that this rule is directory.

After lengthy discussions it was also observed that whatever label may be given to the nature of settlement, namely 'privilege' or 'licence' or 'so called right', but it is a proceeding for enforcement of certain rights to the qualified persons who are entitled to get it and the validity of settlement, if arbitrary and capricious, can be questioned by any person. The discretion to grant largess by the Government is subject to two restrictions. First, the award must pass the test of reasonableness and public interest. Ordinarily all Governmental actions, whether done under the authority of law or in exercise of executive power without making law, failing to satisfy the tests of reasonableness and public interest are invalid. Secondly, while selecting the recipients, the Government is not at liberty, like a private individual, to pick and choose, as it likes. The Governmental action must be objective and impersonal, consistent and responsible. The validity of its action is liable to be tested on the touchstone of the principles of reasonableness, relevancy and the doctrine of equality judicially involved as a rule of Administrative Law running parallel with the doctrine of equality enshrined in Art. 14. Clause (v) mandates production of documents evidencing their financial puisance. Other Cls. (ii) and (iv) speak about production of 'certificates', whereas Cl. (v) mandates production of 'documents'. Hence there is clear distinction between 'certificate' and 'document'.

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7. Any other conditions not inconsistent with the rules. The authority calling for tender may call for any other particulars from the intending tenderer with a view to identify the tenderer or to eliciting information about his financial soundness.

8. Procedure for dealing with the tenders. (1) After the scrutiny of the tenders, the order for acceptance of any tender shall be passed by the respective competent authorities whose competency shall be according to the delegation of financial powers under the Assam Delegation of Financial Powers Rules, 1960.

(2) Where, according to the limit of financial power under the Delegation of Financial Powers Rules, 1960, the officer receiving the tenders is not competent to pass order of acceptance of tender, he shall forward the tender papers with his comments to his next higher authority for necessary action.

9. Appeal and review. (1) An appeal shall lie, within 15 days from the date of issue of the order of acceptance of tender as follows :

(a) against the order passed by the Divisional Forest Officer—to the Conservator whose order in appeal shall be final ;

(b) against the order passed by the Conservator—to the Governor of Assam, whose order in appeal shall be final.

(2) A petition shall lie to the Governor for review of his original order within 15 days from the date of issue of such order but no petition for review of appellate order of Governor shall lie.

(3) The appeal or the review petition, as the case may be, shall be in triplicate, two copies of which shall be submitted to the appellate or reviewing authority and one copy shall be simultaneously sent by the appellant or the petitioner to the Divisional Forest Officer direct. Only on the principal copy need be affixed the requisite court fee.

NOTES

As held in *Maneshwar Basumatary* v. *Niranjan Bachak* [1976 ALR -94], an appeal has been provided under the rules and has to be disposed of with the minimum requirements of a judicial approach. In support thereof, the decisions of the Supreme Court in *Shivji Nathubhai* v. *The Union of India*, [AIR 1958 SC 248] and in *State of Assam* v. *Hari Singh* [AIR 1969 SC 29] were referred to and in the last one cited, it was observed :

> "It is therefore clear that the duty of an authority invested with power to decide a question to act judicially need not arise from express enactment, it may result from necessary implication of the statute."

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10. No obligation to accept highest or any tender. There shall be no obligation on the part of the competent authority to accept the highest or any tender or to assign any reason for rejecting any tender.

11. Preference and concession in settlement with tenderers belonging to scheduled castes, scheduled tribes, or other backward classes. (1) Subject to suitability and ability of the tenderer to perform the work satisfactorily, preference and concession in settlement of a coupe or mahal shall be admissible in the following manner to a person belonging to any of the scheduled castes, scheduled tribes, or other backward classes recognised by the State Government, provided the recognised highest offer for the coupe or the mahal does not exceed Rs. 50,000 :

(a) If the offer from a member of the above mentioned categories of persons is not below 92½ per cent of the recognised highest offer, the coupe or the mahal shall be settled with such person at his own offer.

(b) Even if the offer from a member of the afore-mentioned categories of persons is below 92½ per cent of the recognised highest offer, the coupe or the mahal may at the discretion of the competent authority be settled with such person at an amount 7½ per cent less than the recognised highest offer.

(2) The preference and the concession shall also be admissible in the following manner to a co-operative society, provided not less than 80 per cent of the members thereof are persons belonging to scheduled castes, scheduled tribes or other backward classes and provided the recognised highest offer for the coupe or the mahal does not exceed Rs. 1 lakh :

(a) If the offer from the above mentioned co-operative society is not below 90 per cent of the recognised highest offer, the coupe or the mahal shall be settled with such co-operative society at its own offer ;

(b) Even if the offer from the co-operative society is below 90 per cent of the recognised highest offer, the coupe or the mahal may at the discretion of the competent authority, be settled with such co-operative society at an amount 10 per cent less than the recognised highest offer ;

(c) As between individual members of the categories mentioned in sub-R. (1) above and a co-operative society mentioned in this sub-rule, the co-operative society shall be given preference over the individuals.

(3) No preferential treatment and concession as metioned in (1) and (2) above shall be admissible when the recognised highest offer for the coupe or the mahal exceeds Rs. 50,000 or Rs. 1 lakh, as the case may be.

NOTES

This rule was substituted, *vide* Notification No. FOR 329/65/46, dated the 25th September, 1967, in exercise of the powers conferred by Ss. 33, 34 and 72 (e) of the Assam Forest Regulation, and the substituted rule read as follows :

"*11. Preference and concession in settlement with tenderers belonging to scheduled castes, scheduled tribes, or other backward classes.* (1) Subject to suitability and ability of the tenderer to perform the work satisfactorily, preference and concession in settlement of a coupe or mahal shall be admissible in the following manner to a person belonging to any of the scheduled castes, scheduled tribes, or other backward classes recognised by the State Government, provided the recognised highest offer for the coupe or the mahal does not exceed Rs. 35,000 :

(a) If the offer from a member of the above mentioned categories of persons is within 7-1/2 per cent of the recognised highest offer, the coupe or the mahal shall be settled with such person at an amount 7-1/2 per cent less than the recognised highest offer.

(b) Even if the offer from a member of the aforementioned categories of persons is not within 7-1/2 per cent the recognised highest offer, the coupe or the mahal may at the discretion of the competent authority be settled with such person at an amount 7-1/2 per cent less than the recognised highest offer.

(2) (a) The preference and the concession mentioned in sub-R. (1) above shall also be admissible to a co-operative society, provided not less than 80 per cent of the members thereof or persons belonged to scheduled castes, scheduled tribes or other backward classes ;

(b) As between individual members of the categories mentioned in sub-R. (1) above and a co-operative society, formed in the manner of (a) above, the co-operative society shall be given preference over the individuals.

(3) No preferential treatment and concession as mentioned in (1) and (2) above shall be admissible when the recognised highest offer for the coupe or the mahal exceeds Rs. 35,000".

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12. No joint settlement. No coupe or mahal shall be settled jointly with more than one person except in the case of a co-operative society or a firm or a joint stock company duly registered in the office of the appropriate Registering Authority in Assam.

13. Option to refuse settlement with a defaulter. The authority competent to make settlement shall have the discretion to refuse settlement with a tenderer who, though otherwise suitable, is a defaulter in respect of any forest revenue in any forest division in Assam.

14. Security deposit. (1) The tenderer whose tender has been accepted shall, within 15 days of the issue of the final order of acceptance, make a security deposit in the manner directed by the authority competent to make settlement.

(2) The amount of such security shall be at the following rate namely :

(i) 10 per cent on the first Rs. 2,000 of the amount at which the coupe or the mahal is settled, subject to a minimum of Rs. 100.

(ii) 5 per cent on the amount in excess of the first Rs. 2,000, subject to a minimum of Rs. 200.

(3) In case of a tenderer belonging to any of the scheduled castes/ scheduled tribes or other backward classes, the amount of security deposit mentioned in sub-R. (2) above shall be reduced by 50 per cent.

(4) The authority competent to make settlement may, in its discretion call for additional security which together with the ordinary security mentioned in sub-Rr. (2) and (3) above shall not exceed 25 per cent of the total value at which the coupe or the mahal is settled.

15. Instalments. The amount at which the coupe or the mahal is settled shall be paid is in the following manner :

(1) Where it is settled for one year, in four equal instalments at interval of not more than 2 months each, the first instalment falling due on the same day on which the security deposit is required to be made.

(2) Where it is settled for less than one year, in two equal instalments the first instalment falling due on the same day on which the security deposit is required to be made and the second instaiment not less than 2 months before the expiration of the period of settlement.

(3) Where it is settled for more than one year, the total amount payable for each year shall be paid in four equal instalments at interval of not more than 2 months each, the first instalment of the first year falling due on the same day on which the security deposit is required to be made and the first instalment in succeeding year falling due at the beginning of each year.

16. Agreement. An agreement of settlement shall be executed within one week of the payment of the security money as mentioned in R. 14, by the tenderer whose tender has been accepted by the competent authority.

17. Cancellation and resale for failure to pay security and instalments and to execute agreement. If the tenderer whose tender has been accepted fails to pay on due dates the security mentioned in R. 14 or to pay the instalments mentioned in R. 15, or to execute the agreement mentioned in R. 16, the settlement of the coupe or the mahal shall be liable to be cancelled and the coupe or the mahal may be resettled for the remaining part of the settlement period at the risk of such tenderer as regards the loss to Government and if the proceeds on re-settlement are less than the value at which it was originally settled, the difference shall be realisable from him ; and further, the earnest money and the security money if already deposited, shall be liable to be forfeited.

NOTES

As held in *Bilash Ram Baishya* v. *Divisional Forest Officer* [1976 ALR 145], for dues under this rule, the Divisional Forest Officer may request the Deputy Commissioner of the district for realisation of the dues as provided under Chapter V of the Assam Land and Revenue Regulation read with R. 16 of the Settlement Rules. But the Divisional Forest Officer Goalpara cannot make any request for initiation of proceedings to the Baki jai Officer or Collector Kamrup under Chapter V of the Regulation.

This rule is applicable only when in fact and in reality a coupe or mahal is re-sold and then the difference between re-sale value at which it was originally settled is realisable as due. As held in *Bejiram Ingti* v. *State of Assam* [(1981) 1 GLR 222], there is no provision to treat such arrears as dues under the Rules.

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18. Mode of realisation of amount. Any amount due under these rules shall be recoverable as arrears of land revenue.

19. Power of attorney. No power of attorney or mortgage deed or any encumbrance shall be recognised in respect of the coupe or the mahal except when executed with previous permission in writing from the authority competent to make the settlement.

20. Right of withdrawal of any coupe or mahal. The authority competent to make settlement shall have the right to withdraw any coupe or mahal from settlement at any time before issue of final order of acceptance of tender.

NOTES

Under this rule both the Government in the Forest Department and the authority competent to accept the tender shall have the right to withdraw. It is being recognised that settlement is a very drastic power, comprehensively affecting the rights of citizens which demands fair administrative procedure. Natural justice is demanded in case of revocation, suspension of leases or settlements already granted ; and the same principle has been applied to initial leases or settlements as well. It is being recognised that settlement is a

drastic power, greatly affecting the rights of the citizens, and that this demands administrative procedure. It is the duty of the authorities concerned to observe natural justice in the context.

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21. Extension of the period of settlement. (1) No extension of the period of settlement shall ordinarily be admissible.

(2) In case, however, there is delay in passing final order of settlement by more than 2 months beyond the date from which the period of settlement is to commence, the Divisional Forest Officer within whose jurisdiction the coupe or mahal is situated may give extension by so much time as has been lost beyond the aforementioned 2 months ; provided such delay was not caused by any lapses on the part of the tenderer himself.

(3) Where, under exceptional circumstances, any extension beyond the time mentioned in sub-R. (2) obove is found to be justified, such extension may be given on the following conditions :

(i) extension may be given only in respect of coupe and not in respect of mahal ;

(ii) extension under this sub-rule together with any extension given under sub-R. (2) shall not exceed one year ;

(iii) extension under this sub-rule may be given only by the authority which passed the final order of acceptance of tender ;

(iv) an extension fee for any extension given under this sub-rule shall be payable at progressive rates, namely :

(a) for the first 6 months under such extension—1 per cent. of the total value at which the coupe is settled ;

(b) beyond the first 6 months—2 per cent. of such total value.

NOTES

Sub-rule (1) confers discretion in the Government to grant extension of coupes or mahals in 'exceptional cases'. The nature and power of the State Government is purely discretionary.

However, the exercise of the power should not be arbitrary. As held in *Daya Ram Basumatary* v. *The State of Assam* [(1981) 1 GLR 334], some tincture of judicial discretion is necessary in making such an order.

As held in *Sureshwar Mazumdar* v. *State of Assam* [(1982) 1 GLR 399], a bare perusal of sub-R. (3) of R. 21 shows that it is only applicable in case where exceptional circumstances exist and not otherwise. It is equally incumbent on the part of the person concerned to invoke sub-R. (3) to show existence of any exceptional circumstances for which extension of period is sought for. If he fails to do so it is not obligatory on the part of the authority concerned to allow such a prayer even if as a matter of course one claims the existence of any such exceptional circumstances. In *Jagannath Choudhary State of Assam* [(1985) 1 GLR 496] also their Lordships observed that extension may be granted only in exceptional cases and one of the relevant conditions is that extension may be granted on payment of proportionate value or extension fee, as determined by the competent authority to grant extension. Their Lordships considered the words 'on payment' to be significant. Accord-

ing to Black's Law Dictionary, the expression 'payment' means—"the fulfilment of a promise or the performance of an agreement, discharge of an obligation or debt and part-Payment, if accepted.....Payment is delivery of money or its equivalent in either specific property or services....."

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22. The settlement of a coupe or a mahal under these Rules shall be without prejudice to the working of other forest produce or catching of elephants inside the coupe or the mahal by other coupe holders or mahaldars during the same period.

SCHEDULE 'A'

TENDER FORM

To

... ... [here state the designation and address of the officer to whom the tender is to be submitted].

I hereby submit my tender as follows :

1. Full name and address of the tenderer... ... ...
(In Block letters)
Post Office... ... ...
Telegraph office...
2. Name of the father or the husband of the tenderer...
Address...
Post Office...
Telegraph Office...
3. Previous experience, if any...
4. The name and description of the coupe/mahal for which the tender is given ..
5. The outright price offered by the tenderer for the coupe/mahal...

Or

The monopoly fee per rupee of royalty offered by the tenderer for the coupe/mahal...

6. Declaration :

"I agree that I will not withdraw the tender offered by me above during the time that will be required for intimation of acceptance of the above tender for coupe/mahal being given to me ; nor will I withdraw it afterwards, should my tender be accepted. If I withdraw the tender, then I am liable to pay the whole sum of the tender or such amount on account of deficiency as in the opinion of the Conservator of Forests, Assam may be considered necessary to make good the whole of the loss and damages that may be suffered by Government, in consequence thereof, and I shall pay the same, and if I fail to pay it, then it will be recovered from me as arrears of land revenue.

Signature of the tenderer"

Dated... ... ...

Enclosures :

(a) Treasury Challan No... ..., dated... ...or pledged bank draft of the approved Schedule Bank... ...dated... ... as evidence of deposit of earnest money.

(b) Income-tax clearance certificate dated.....

(c) Documents in evidence of the financial soundness of the tenderer...

(d) In case of Co-operative Society or Firm, or Joint Stock Company :

(i) Original or certified copy of the Registration Certificate from the Registrar concerned in Assam.

(ii) The certified copy of the resolution authorising the person who signs the tender to manage the business of such Society, Firm or Company and to undertake the liabilities as a tenderer on behalf of the Society, Firm or Company concerned.

(iii) Statement regarding authorised, subscribed and paid-up capital.

(d) In case of a tenderer belonging to any of the Scheduled Castes/ Scheduled Tribes or other Backward Classes, the original or certified copy in support of his claim to belong to such community from the Deputy Commissioner or Sub-divisional Officer..... dated.....

Note. The tenderer is advised to strike out those portions of the form which do not apply to his tender.

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