

ASSAM SALE OF FOREST PRODUCE, COUPES AND MAHALS RULES, 1977*

These Rules supersede the Assam Settlement of Forest Coupes and Mahals by Tender System Rules, 1967 notified under No. FOR 329/65/46, dated 25th September, 1967 and No. FOR 329/65/56, dated 25th September, 1967 respectively.

1. Title and application of the rules.

- (1) These rules shall be called the Assam Sale of Forest Procedure, Coupes and Mahals Rules, 1977.
- (2) They shall come into force with effect from 1st day of August, 1977.
- (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) "Governor" means the Governor of Assam;
- (b) "Government" means the Government of Assam;

- (c) “Conservator” means the Conservator of Forests and includes chief Conservator of Forests also;
- (d) “Divisional Forest Officer” means the Divisional Forests and includes Chief Conservator of Forests also;
- (e) “Contractor” means the contract registered as such under the Forest Department;
- (f) “Mahaldar” means the Mahaldar registered as such under the Forest Department or in the office of the Chief Conservator of Forest or in any of the circle offices or division offices;
- (g) “Coupe” means a compact area wherein a number of trees are premarked for sale;
- (h) “Mahal” means a well defined area wherefrom certain types of forest produce are sold;
- (i) “Lot” means a collection of forest produce meant for disposal;
- (j) “Forest produce” means “forest produce” as defined under Ss.4 (A) and (b) of the Assam Forest Regulation VII of 1891.

COMMENTS

In *Jagannath Choudhury v. State of Assam* [(1985)] GLR 496] the question arose as to whether fish is a forest produce notwithstanding the fact that the definition of “forest

produce” is an inclusive one. In *Divisional Forest Office v. Mool Chand Saraugi Jain* [AIR 1971 A and N 694], the Supreme; Court held that stone is not a forest produce and following this decision it was held in *Bejiram Ingty v. The State of Assam* [(1981) 1 GLR 222] that forest produce does not include stone. Taking into consideration such decisions, their Lordships of the Gauhati High Court in the instant case took the tentative view that fish is not a forest produce. It was also held that ‘fishery’ cannot be a ‘mahal’ nor coupe as defined under the provisions of the Assam Forest Regulations.

3. Mode of sale.

- (a) By inviting tender;
- (b) by public auction;
- (c) By negotiation, direct by Government or on behalf of Government of Assam in Forest Department or in any other manner as decided by Government on its own discretion.

PART I

Sale by Tender System

3. Notice of tender.

A notice calling for tender for settlement of a coupe or a Mahal shall be published in the official Gazette by the Divisional Forest Officer not less than one month before the last date fixed for submission of tender.

Explanation. Only person who have been registered under the Assam, Registration of Persons of these Rules shall be eligible to submit tender.

- 5.** The notice for sale shall be given as per form at Appendix I, For resale, publication in Gazette will not be necessary.

6. Earnest money.

- (1) before submission of any tender, the tenderer shall deposit, in the treasury or in any branch of an approved Schedules 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 tendered belongs to any of the scheduled tribes, or the backward classes recognised by the State Government on production of caste certificate issued

by the D.C. and Addl. D.C. or the S.D.O. or S.D.C. concerned.

7. Tender and its enclosures.

- (1) There shall be a separate tender for each coupe or Mahal or lot with the requisite court fee affixed to it.
- (2) Each tender shall be in the tender form as prescribed in Appendix II.
- (3) The tenderer shall also state in the tender the price which he offers to pay.
- (4) He shall also make a declaration as follows:

“I agree that I will not withdraw the tender offered by mw during the time that will be required for termination 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 the whole sum of tender or such amount on account of deficiency as in the opinion of the Conservator of Forests, or the Government of Assam, as the case 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.”

(5) The tender shall be accompanied by the following documents:

- (i) A copy of the treasury challan or a bank draft evidencing deposit of earnest money as stipulated in the sale notice;
- (ii) Up-to-date income tax and sales tax clearness certificate;
- (iii) Original or certified copy of the registration certificate of the tendered issued by the appropriate authority of the Forest Department;
- (iv) If a tender is submitted on behalf of a Co-operative Society, or a partnership firm or a joint stock company, then in addition to the requirements of (i), (ii) and (iii) above 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 undertake the liabilities as a tenderer on behalf of the society, firm and company. In case of co-operative society a certificate from the local Co-operative Officer (not below the rank of Assistant Registrar of Co-operative Societies) about the composition of society and its genuineness and financial condition. In case of a firm also a certified copy of the registration certificate granted by the Registrar of Firms under the Indian Partnership Act and authorisation to one of the partners to act shall have to be furnished.

8. Procedure for dealing with tenders.

- (1) Immediately after the closure of the tender time for receipt of tenders the Divisional Forest Office shall indicate time and date when the tenders shall be opened.

- (2) 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.

According to the present delegation of power the D.F.O. can accept tender up to Rs. 25,000

C.C.F. can accept tender up to Rs. 1,00,000.

A.C.F. can accept tender up to more than Rs. 1,00,000.

Government in Forest Department have the full power or have the full residuary powers of withdrawal of settlement or otherwise not repugnant in these rules.

- (3) 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.

- (4) The order of acceptance of tender by the appropriate authority as mentioned in sub-R. (2) above shall be communicated by the Divisional Forest Officer to the successful tenderer giving the latter 15 days' time for depositing the first fist:

Provided that the Divisional Forest Officer shall not accept the first kist if an appeal is filed by any of the unsuccessful tenderers within the 15 days' time:

9. Appeal and review:

- (1) An appeal shall lie within 15 days from the date of communication of the order of acceptance of tender by the Divisional Forest Officers as follows:
 - (a) against the order of acceptance of tender by the Divisional Forest Officer- to the Conservator whose order in appeal shall be finals;
 - (b) against the order of acceptance of tender by the Conservator of Forests and the C.C.F.- to the Governor, whose order in appeal shall be final.
 - (c) A petition shall lie with the Governor for review of his original order within 15 days from the date of communication of the order of acceptance of tender as provided under R. 8 (4) but no petition

for review of appellate order of Governor shall lie.

- (d) all review petition against the order of settlement shall lie before Government within 30 days of settlement order of C.F. and C.C.F., as the case may be.

- (2) (a) The appeal or the review petition, as the case may be, shall be submitted 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. The requisite court fee stamp need be affixed only on the principal copy.

- (b) The Divisional Forest Officer on receipt of the copy of the appeal or review petition shall immediately stay the order issued under R.8 (4) and forward the appeal or review petition alongwith the original tenders and other connected documents to the Conservator who shall dispose of the appeal which lies with him under sub-Cl. (1) (a) above and forward the appeal and/or review petition to the Government if the same lies with the Governor under sub-Cl. (1) (b) and (C) above.

COMMENTS

As held in *Suresh Chandra Giri v. State of Assam* [(1984) 2 GLR 205], the period of limitation will start against the unsuccessful tendered from date of communication of the order to him, and not from the date of order.

10. No obligation to accept the highest or any tender.

The highest tender will generally be accepted but it shall not obligatory on the part of the setting authority to accept the highest or any tender. Maximum number of coupes that one party may get should be not more than 5.

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 of 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 92-

1/2 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 aforementioned categories of persons is below 92-1/2 percent 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 7 ½ 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 percent 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. one 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 percent 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 percent 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 mentioned 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. one lakh, as the case may be.

12. No joint settlement.

- (a) No coupe or mahal shall be sold 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.
- (b) *Deconcentration of opportunities.*

No person shall be settled with more than five coupes/mahals at any time. If any person is found to get settlement of more than five coupes/mahals at any given time he shall have to surrender all the excess coupes/mahals retaining only five coupes and mahals to his choice. The surrender coupes/mahals shall be immediately resold at such person's risk.

13. Non-acceptance of tender of a defaulter.

No tender of a mahaldar or contractor or co-operative society on firm who is a defaulter in respect of any Government dues of any land or forest revenue shall be entitled to get settlement.

14. Security deposit.

- (1) The tenderer whose tender has been finally accepted shall be informed by the Divisional Forest Officer about the amount of security to be adjusted from his fixed security deposit for the coupe or mahal.
- (2)
 - (i) The amount of such security shall be at the amount at which the coupe or mahal is sold, subject to a minimum of Rs. 100.
 - (ii) 5 per cent on the amount in excess of the first Rs. 2,0000, subject to a minimum of Rs. 200.
 - (iii) 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) (i) above shall be reduced by 50 per cent.
 - (v) If the whole amount of fixed deposit is adjusted against the security of a particular coupe or mahal and if the security exceeds the fixed deposit, the amount fell short of and the amount

of fixed deposit shall have to be deposited before communication of the final order of acceptance of tender.

15. Instalments.

The sale value of the mahal or coupe shall be paid by the mahaldar or contractor in the following manner:

- (1) Where the mahal or coupe period is for one year, in four equal instalments at an interval of not more than 3 months each, the first instalment falling within 15 days from the date of issue of order of final acceptance of the tender.
- (2) Where the mahal or coupe period is for less than one year, in two equal instalments the first instalment falling due on the same period as mentioned in sub-R. (i) above and the third instalment not less than one month before the expiry of the mahal or coupe period.
- (3) Where the mahal or coupe period is for more than one year, the total amount payable for each year shall be paid in four equal instalments at an interval of not more than 3 months each, the first instalment of the first year falling due within the period as mentioned in sub-R. (i) above and the first instalment in succeeding year falling due at the beginning of each year.

16. Agreement.

An agreement as in form in Appendix shall be executed within one week of the payment of the first instalment and security money as mentioned in R. 15, by the mahaldar or contractor whose tender has finally 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 the security or to pay the instalment on due dates mentioned in R. 15 or to execute the agreement mentioned in R. 16, the sale of the coupe or the mahal shall be liable to be cancelled and the coupe or the mahal shall be resold for the remaining part of the coupe or mahal period at the risk of such tenderer as regards the loss to Government and if the proceeds on re-sale are less than the value at which it was originally sold, the difference shall be realisable from the him; and further, the earnest money shall be forfeited and the whole of the fixed security deposit or part thereof as may be necessary, shall be adjusted against the dues.

18. Mode of realisation of arrears of sale value.

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 pass order of acceptance of tender under sub R. (2) of R.8.

20. Right of withdrawal of any coupe or mahal from sale.

Government in Forest Department and the authority competent to accept tender shall have the right to withdraw any coupe or mahal from sale at any time before issue of final order of acceptance of tender or otherwise be negotiation.

21. Extension of mahal or coupe period.

- (1) No extension of the coupe or mahal period shall ordinarily be admissible. In exceptional cases, Government may, however reserve to itself the right of extension or merit of each case at its discretion.
- (2) In case, however, there is delay in communication of final order of acceptance of tender by 2 months or less beyond the date from which the coupe or mahal period is to commence, the Divisional Forest Officer within whose jurisdiction the coupe or mahal is situated shall automatically, if necessary, count be giving extension for so much time as is lost without charging any extension fee.

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

(i) extension under this sub-rule together with any extension given under sub-R (2) shall not exceed more than three years at a time.

(ii) Application for extension shall have to be submitted to the D.F.O. or to Government with a copy to the competent authority within one month period to the expiry of the mahal or coupe period;

(iii) coupe or mahal dues shall not have felled in arrear due to the lapses on the part of the contractor or mahaldar;

(iv) extension granted under this sub-rule in respect of mahals shall be on payment of proportionate value, or extension fee as determined by competent authority to grant extension.

(4) Extension under sub-R. (3) shall be granted by the following authorities:

(i) *D.F.O* (a) up to a maximum of one month in respect of drift wood and clear felling coupe at half proportionate value;

- (ii) up to a maximum of 4 months in respect of dead wood wind fallen and green wood coupes at extension fee equivalent to 5 percent of the coupe value;
- (iii) *C.F.* up to a maximum of 8 months in addition to extension granted under sub-R (4) (i) at extension fee equivalent to 5 percent of the coupe value on recommendation of the Divisional Forest Officer.
- (iv) Government in all other cases not covered under sub-R. 4 (i) and (ii) on payment of extension fee or proportionate value as may be decided up to 3 years maximum at a time.

PART II

Sale by auction system

22. Forest coupes/mahals/lots or any other forest produce estimated valuation of which does not exceed Rs. 1,000 that in the opinion of the Divisional Forest Officer requires immediately disposal shall be sold by auction amongst the registered forest contractors and mahaldars in the following manner: A proclamation for auction sale shall be published not less than 15 days before the date fixed for auction stating therein-

- (a) the name of the coupe or mahal or lot of any other forest produce;
- (b) the particulars necessary for its identification;
- (c) the period for which it is proposed to be sold;
- (d) the date and place of auction;
- (e) the office who will hold the auction.

23. Manner of publication of proclamation.

The proclamation shall be published by passing copies thereof on the notice boards of the office of-

- (i) the conservator, the Divisional Forest Officer and the Range Officer;
- (ii) the Deputy Commissioner, the Sub-Divisional Officer and the Sub-Deputy Collector; and
- (iii) the Mahkuma Parishad within whose local limits the coupe or the mahal is situate.

24. Manner of conduction the sale.

- (1) The auction sale shall be held by the Divisional Forest Officer deputed by him not below the rank of A.C.F. for the purpose.
- (2) The D.F.O. may postpone the auction sale on reasonable grounds but shall in such case, issue fresh proclamations in the manner of R. 23 above, publishing the new date fixed.
- (3) On the date fixed for auction, the D.F.O. or the Officer authorised to hold the auction shall call for the bids from registered contractors present:

Provided that if there is no bid or insufficient bid, he may continue the sale from the day today informing the bidders on the spot.

- (4) The Officer holding the auction shall be closed indicate by striking a hamner on the table, the closure of the sale of a particular coupe, mahal or any other forest produce in the auction.

(5) The auction shall be closed in favour of the highest bid which is received and final sale shall be made with the highest bidder subject to the production of the document mentioned at sub-Rr. (ii), (iii) and (iv) of R.7.

(6) If the highest bid received exceeds the limit of financial power delegated to the officer conducted the auction the procedure as is laid down in R. 8(3) of Part I of these rules shall be followed.

25. No appeal shall lie against the sale with the highest bidder in any auction.

26. Mode of payment of bid value.

The person declared to be the auction purchaser at an auction sale shall be required to pay immediately on the spot 50 percent of the sale value and if he fails to do so the coupe or the mahal or lot shall forthwith be again put up and sold.

The remaining 50 per cent of the sale value shall have to be paid immediately before lifting the forest produce of issue of work order as may be directed by the Divisional Forest Officer.

27. The provisions of Rr. 7 (4) (ii), (iii) and (iv), 12, 13, 16, 17, 18, 19, 20, and 21 shall equally be applicable in the sale of auction system.

28. Savings.

- (i) Notwithstanding any of the provisions contained in these rules, the Government of Assam in Forest Department reserve the right to settle or dispose of any forest produce in the form of mahal, coupes or by direct negotiations or any other manner at its discretion, otherwise then mentioned in these rules in public interest or in accordance with provisions of the Assam Forest Regulations, 1891.

- (ii) Any act done or purported to have been done prior to the introduction of these rules of 1977 or any action taken or purported to have been taken under the Settlement Rules, 1967 shall have been done under the New Rules, 1977.

- (iii) No State Government or State Government Officers or Forest Officers shall be responsible for loss or damage unless he shall have caused the same maliciously or fraudulently prior to the enforcement of these rules or thereafter under these rules.
