

GAHC010113712025



2025:GAU-AS:13521

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2875/2025

MATIYAR RAHMAN
S/O. LATE HAJI MESHER, R/O. VILL. CHAYSIMANA, P.O. KADAMTALA, P.S.
ALOPATI, DIST. BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 OTHERS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
TRANSPORT DEPARTMENT, DISPUR, GUWAHATI- 06.

2:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
TRANSPORT DEPT.
DISPUR
GUWAHATI- 06.

3:THE ADDITIONAL SECRETARY TO THE GOVT. OF ASSAM
TRANSPORT DEPT.
DISPUR
GUWAHATI- 06.

4:THE DIRECTOR
INLAND WATER TRANSPORT
ASSAM
ULUBARI
GUWAHATI- 07.

5:THE JOINT DIRECTOR
INLAND WATER TRANSPORT
ASSAM
ULUBARI
GUWAHATI- 07.

6:THE EXECUTIVE ENGINEER
INLAND WATER TRANSPORT DIVISION
GUWAHATI

For the Petitioner(s) : Mr. P. K. Roychoudhury, Advocate

For the Respondent(s) : Ms. M. D. Borah, Standing Counsel

Date of Hearing : **16.09.2025**

Date of Judgment : **26.09.2025**

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (CAV)

Heard Mr. P. K. Roychoudhury, the learned counsel appearing on behalf of the Petitioner and Ms. M. D. Borah, the learned Standing counsel appearing on behalf of the Transport Department.

2. The Petitioner herein is aggrieved by the communication dated 17.05.2025 issued by the Additional Secretary to the Government of Assam, Transport Department whereby it was opined that the lease agreement should be terminated. The Petitioner is also aggrieved by the Speaking Order dated 19.05.2025 whereby the lease of Sunari Paglababathan Dudhnath Ferry Service made in favour of the Petitioner was terminated with immediate effect and directions were issued to urgently initiate re-tender process for settlement of the Sunari Paglababathan Dudhnath Ferry Service.

3. The issue which arises for consideration is as to whether the present case is a fit case for exercise of the powers of judicial review by this Court.

FACTS OF THE CASE:

4. A perusal of the writ petition reveals that the Executive Engineer Inland Water Transport Division, Guwahati had issued a Notice Inviting Tender on 13.02.2024 for leasing out the Sunari Paglababathan Dudhnath Ferry Service (for short 'the ferry service in question') for the remaining period of 2024-2026 w.e.f. the date of taking over by the lessee up to 31.03.2026. The Petitioner along with various other bidders participated in the said tender process. Vide a communication dated 30.08.2024 issued by the Joint Secretary to the Government of Assam, Transport Department to the Director, Inland Water Transport, Assam, Ulubari the decision of the Governor of Assam was conveyed to the effect that the settlement of the ferry service in question be made with the Petitioner for the remaining period of 2024-26 w.e.f. the date of taking over by the lessee up to 31.03.2026 at an amount of Rs.7,07,786/- only per year basis under the provision of Rule 4(1) of the Control and Management of Ferries Rules, 1968 (for short 'the Rules of 1968') subject to certain conditions mentioned therein. It was further mentioned in the said communication that the lease agreement be executed before handing over the charge of the ferry service.

5. At this stage, it is pertinent to mention that during the course of hearing, it was submitted at the Bar that there was a mistake in mentioning the amount in the communication dated 30.08.2024 inasmuch as the amount at which it was fixed per year was Rs.17,07,786/- and not Rs.7,07,786/-.

6. Subsequent thereto, the Director, Inland Water Transport, Assam informed the Executive Engineer vide a communication dated 01.09.2024

about the Government's decision. It was specifically mentioned in the said communication dated 01.09.2024 that the lease agreement be executed with the lessee before handing over the ferry service in question failing which the charges of the ferry services should not be handed over to the lessee. It was also mentioned that in no case, the ferry sublet is permitted as per the Rules of 1968. A copy of the said communication dated 01.09.2024 was also marked to the Petitioner.

7. The records reveal that although the period of settlement was for the remaining period of 2024-26 i.e. w.e.f. the date of taking over by the lessee up to 31.03.2026 but the agreement was entered into w.e.f. 06.09.2024 to 31.03.2025 and proportionately, for that period, the amount fixed to be paid was Rs.9,68,530/-.

8. Before proceeding further, it is very pertinent at this stage to observe that a perusal of the Agreement entered into by and between the Petitioner and the Respondent Authority appears to be drawn up in terms with Appendix-D to the Rules of 1968 and the requirement of entering into the said lease and to be drawn up in terms with Appendix-D is mandated in Rule 21 of the Rules of 1968. As Rule 21 of the Rules of 1968 has relevance, this Court reproduces Rule 21 of the Rules of 1968 as herein under:

“21. When the 1st installment has been paid and after the sale/tender has been approved by the Secretary to the Government of Assam in transport department, a written lease signed by the Director “for and on behalf of the Governor of Assam” in the form in Appendix ‘D’ shall be drawn up. The lessee on being asked by the officer concerned to execute it after affixing adhesive stamp at his cost shall do so within 30 days from the date of asking him.”

9. Pursuant to the entering into the said lease agreement, it was informed by the Executive Engineer of the Inland Water Transport Division to the Assistant Executive Engineer, Inland Water Transport Sub-Division vide a communication dated 30.09.2024 that the Petitioner who is the lessee of the ferry in question had deposited the kist money and cash security and further the Petitioner had also executed the lease agreement. It is relevant at this stage to observe that the kist money was paid of an amount of Rs.4,27,000/- which was w.e.f. 01.10.2024 to 31.12.2024 and further, there was payment of cash security of an amount of Rs.4,27,000/-. The payment of the kist money w.e.f. 01.10.2024 to 31.12.2024 is of great relevance taking into account the dispute involved as would also be seen at the later segments of the instant judgment.

10. On 28.01.2025, the Joint Secretary to the Government of Assam, Transport Department issued a communication to the Director, Inland Water Transport, Assam informing to go for a fresh tender in respect to the ferry service in question thereby cancelling the existing settlement for the period from 2024-26 made in favour of the Petitioner. Thereupon, the Director, Inland Water Transport, Assam passed an Office Order on 29.01.2025 thereby cancelling the settlement of the ferry service in question which was made in favour of the Petitioner. The Petitioner being aggrieved approached this Court by filing a writ petition which was registered as WP(C) No.644/2025 challenging the said cancellation.

11. This Court vide an order dated 30.04.2025 set aside the letter dated 28.01.2025 as well as the Office Order dated 29.01.2025 on the ground that the said actions so taken by the Respondent Authorities were in violation to

the principles of natural justice. Be that as it may, it is very pertinent to take note of the operative part of the said order dated 30.04.2025. Paragraph Nos. 19 and 20 are reproduced herein under:

“19. In view of the above reasons, this Court is of the view that the letter dated 28.01.2025 and the office order dated 29.01.2025 are not sustainable. The same are accordingly set aside. The above being said, the corollary of setting aside the above letter and office order would, in normal circumstances, lead to reverting to the state of affairs that existed prior to the issuance of the impugned letter and office order. However, as the running of a ferry service involves the safety of passengers, this Court is of the view that the present arrangement being undertaken by the State respondents, in running the ferry service should be allowed to be carried on for a limited time period, i.e. till a decision is taken with regard to whether the settlement of the ferry service with the petitioner should be allowed to continue or be cancelled, after giving an opportunity of hearing to the petitioner.

20. In view of the above reasons, the State respondents are directed to issue a show-cause-notice to the petitioner, with regard to the authorization letter dated 01.10.2024 and/or for any other reason, which in their view should entail cancellation of the ferry service. The same should be communicated to the petitioner, within a period of 1(one) week from the date of receipt of a copy of this order. Thereafter, the petitioner should make a reply to the same, within a further period of 1(one) week. The State respondents should take a decision with regard to the show-cause notice and reply within a further period of 1(one) week from the date of receipt of the reply by the petitioner. The respondents shall be allowed to continue running the ferry service for a period of 3(three) weeks from the date of receipt of a copy of this order, till a decision is taken by them within the said 3 (three) weeks. If the direction with regard to communication of the show-cause notice is not done by the respondents and the entire process for taking a decision is not completed within the stipulated time period, the running of the ferry service

should be handed over to the petitioner, after the expiry of the stipulated time period of 3 (three) weeks, w.e.f. the date of receipt of this copy.”

12. Pursuant thereto, the Petitioner was issued a Show Cause Notice on 06.05.2025 wherein it was inter alia alleged that the Petitioner had authorized Mr. Johirul Islam and Mr. Sanowar Hussain for operation of the ferry Service in question on his behalf and in terms with Rule 7 of the Rules of 1968, the lessee cannot sublet, encumber or transfer in any way the ferry leased to him. The Petitioner was therefore asked to explain why necessary action should not be initiated against him including cancellation of the settlement order of the ferry service in question and the Petitioner was granted 7 (seven) days time for submitting the reply from the date of receipt of the Show Cause Notice.

13. The Petitioner submitted a reply on 13.05.2025 denying that he had sublet the ferry in question to third party namely Mr. Johirul Islam and Mr. Sanowar Hussain. It was the stand of the Petitioner in the said reply that he has never sublet the said ferry service to anybody but for smooth functioning of the ferry service, he took help/assistance of the said two persons as labourers/temporary employees to run the said ferry service. In addition to that, the Petitioner also mentioned that the question of granting a lease to anybody without there being a registration under the Registration Act, 1908 does not arise and as such, the said document dated 01.10.2024 cannot be considered to be a lease. The Petitioner also enclosed affidavits dated 09.05.2025 executed by the said Mr. Johirul Islam and Mr. Sanowar Hussain wherein they stated that the Petitioner neither sublet the ferry service to them nor to anybody and they worked as labourers under him. These affidavits were made on 09.05.2025 pursuant to the Show Cause Notice

issued on 06.05.2025. At this stage, this Court finds it relevant to observe that the reply sent by the Petitioner only dealt with the question of sublet but did not deal with the question whether actions of the Petitioner amounted to transfer of the ferry service in any way.

14. The Additional Secretary to the Government of Assam, Transport Department upon perusal of the materials submitted a report dated 17.05.2025 to the Director, Inland Water Transport whereby it was opined that the lease agreement should be terminated with immediate effect. The reasons assigned in the report were violation of Rule 7 of the Rules of 1968; breach of lease agreement terms; non-compliance with the Inland Vessels Act, 2021 and associated safety Regulations and neglect of the tender eligibility criteria.

15. Pursuant thereto, the Petitioner was informed by way of a Speaking Order dated 19.05.2025 issued by the Director, Inland Water Transport that the lease agreement would be terminated for the reasons as disclosed in the communication dated 17.05.2025 and further that the ferry service in question is required to be re-tendered. It is under such circumstances, the Petitioner had approached this Court by filing the present writ petition.

INTERIM ORDER PASSED:

16. The records reveal that this Court vide an order dated 28.05.2025 issued notice and further observed that though the Court was not inclined to pass any blanket order of stay and there would be no restriction for going ahead with the new tender process but all actions taken would be subject to outcome of the writ petition. In addition to that, this Court also observed

and directed that before any final orders of allotment is made, leave of this Court is required to be taken.

The interim order dated 28.05.2025 thereupon had been continued.

AFFIDAVIT-IN-OPPOSITION FILED BY THE RESPONDENTS:

17. The Respondents filed an affidavit-in-opposition on 18.08.2025 wherein it was mentioned that the Inland Vessels Act, 2021 and Inland Vessels (Manning) Rules, 2022 required compliance with certain clear safety safeguards which the Petitioner failed to demonstrate, posing significant safety risks to the passengers. It was further mentioned that the non-compliance by the Petitioner also amounted to disregarding the directions previously issued by this Court in PIL (Suo Moto) No.8/2018 mandating enhanced safety measures for ferry services. It was the stand that the Notice Inviting Tender expressly prescribed that the bidders must possess relevant experience in ferry operations and this condition was completely flouted by the Petitioner inasmuch as the Petitioner delegated the control to individuals without the requisite expertise thereby affecting service quality and safety. In addition to that, the Respondents have justified the impugned actions not only on the ground of various violations referred to in the report dated 17.05.2025 but also in public interest.

18. The Petitioner filed an affidavit-in-reply reiterating the statements made in the writ petition and denied the allegations of subletting the ferry. It was further mentioned that the Petitioner had not violated any Rules or Guidelines as per the Inland Vessels Act, 2021 and the Inland Vessels (Manning) Rules, 2022.

POINT FOR DETERMINATION:

19. The point for determination which arises for consideration is as to whether the cancellation of the lease agreement of the Petitioner in the present facts calls for interference from this Court in exercise of the powers under Article 226 of the Constitution.

ANALYSIS AND DETERMINATION:

20. The Northern India Ferries Act, 1878 (for short 'the Act of 1878') regulates the ferries in the various territories of India including Assam. In terms with Section 8 of the Act of 1878, the tolls of any public ferry may, from time to time, be let out for public auction for any term with the previous sanction of the State Government. In that regard, it is relevant now to refer to the communication dated 30.08.2024 whereby the Transport Department of the Government of Assam had settled the ferry in question in favour of the Petitioner.

21. Section 8 of the Act of 1878 further stipulates that the lessee shall conform to the Rules framed under the said Act of 1878 for the management and control of the ferry. The power to make Rules is conferred by Section 12 of the Act of 1878. The Control and Management of Ferries Rules, 1968 were made by the Director of Inland Water Transport on the basis of the power conferred by the Government of Assam, Public Works Department Notification dated 06.11.1967. In terms with Rule 4(1) of the Rules of 1968, all ferries which are let out by the public auction or by calling for tenders shall be managed by the lessee subject to the Rules of 1968 and the conditions entered in the lease granted for each ferry. Therefore, the lessee is obligated to follow the conditions so mentioned in the Rules of 1968.

22. Rule 7 of the Rules of 1968 is relevant for the purpose of the present adjudication. The said Rule is quoted herein below:

“7. The lessee shall not sublet, encumber or transfer in any other way the ferry leased to him.”

The above quoted Rule stipulates that the lessee shall not sublet, encumber or transfer in any other way the ferry leased to him. It is the opinion of this Court that the said Rule completely forbid the lessor to lease out the ferry, encumber or even transfer in any other way the ferry leased out to the lessee. The words “transfer in any other way the ferry” would include all forms of transfer by which the lessee conceivable under law including allowing another person or persons to run the ferry services. This Court at this stage finds it relevant to take note of Inland Vessels Act, 2021 (for short ‘Act of 2021’) which came into effect w.e.f. 16.02.2022 and the Inland Vessels (Manning) Rules, 2022 (for short ‘Act of 2022’). The provisions of the said Act of 2021 and the Rules of 2022 mandates who are the persons who can be the crew, manning the mechanically propelled vessels and the specific duties of the Operator/Owner. Reading the said Act of 2021 and the Rules of 2022 along with Rule 7 of the Rules of 1968, it appears that there cannot be any other person except the one who is entrusted by the lessor to run the mechanically propelled vessel.

23. Rule 21 of the Rules of 1968 as quoted above categorically stipulates that the lessee has to enter into a written lease signed by the Director “for and on behalf of the Governor of Assam” in the form in Appendix-D. Rule 25 of the Rules of 1968 further stipulates as to the crew which is required to be employed by the lessee. Rule 25 of the Rules of 1968 being relevance is

reproduced herein under:

*“**25.** The lessee is required to employ and keep available always at his own expenses one licensed driver and three boatman for each engine driver marboat and one licensed driver and two boatman for each engined driven single boat, three boatmen for each marboat and two boatmen for each single boat. He shall also employ and keep available always at his expenses two licensed/certificated drivers, one licensed/certificated master and other crew and persons as may be necessary for each steamer/motor driven ferry vessel, whether supplied by the lessee or by the Government.*

He shall immediately discharge any driver/master/other crew or person whose conduct or ability may not be considered as satisfactory and replace him/them without dislocation.”

24. This Court further finds it relevant to take note of Rule 36 of the Rules of 1968 which stipulates the power of the Secretary to the Government of Assam to cancel the lease in the circumstance the lessee violates or fails to perform any of the covenants contained in the Rules of 1968 or in the lease and further forfeit any portion of the ferry rent, advance or security of any kind. Rule 36 of the Rules of 1968 being relevant is reproduced herein under:

*“**36. (1)** If the lessee violates or fails to perform any of the covenants contained herein or in the lease, he shall in addition to any other liability be liable to have his lease cancelled by the Secretary to the Government of Assam in the transport department and in that event shall not be entitled to any compensation or to the refund of any portion of the ferry rent, advance or security of any kind.*

***(2)** Whether a lease is liable to cancellation under the preceding sub-rule,*

the secretary to the Government of Assam in the transport department may in lieu of cancelling the lease, allow the lessee the option of retaining it subject to the payment to the Government of such sum not exceeding Rs.200 for each breach or default as he deems proper.”

25. This Court also finds it pertinent to take note of Appendix-D to the Rules of 1968 which categorically stipulates at Clause No.14 that the lessee shall not sublet the ferry. This Court finds it relevant to take note of Clause 27(i) of Appendix-D which is similarly worded with Rule 36(1) of the Rules of 1968 as quoted above. Be that as it may, taking into account its relevance, the same is reproduced herein under:

“27(i) If the lessee violates or fails to perform any of the covenants herein contained he shall in addition to any other liability be liable to have his lease cancelled by the Secretary or the Government of Assam in the Transport Department and in that event shall not be entitled to any compensation or to the refund of any portion of the ferry rent, advance or security.”

26. During the course of the hearing, a submission was made that the lease agreement do not permit appropriation of the security deposit. It is in that context, now this Court finds it relevant to take note of the lease agreement which is enclosed as Annexure-5 to the writ petition. In the said lease agreement at Clause 30(i), there seems to be an omission of the word “not” between the words “in that event shall” and “be entitled to any compensation” inasmuch as the said Clause has to be in terms with Appendix-D and in conformity with the Rules of 1968. It is the opinion of this Court that the omission of the word ‘not’ in between the words “in that event shall” and “be entitled to any compensation” appears to be a printer’s devil inasmuch as the lease agreement cannot go contrary to Rule 36(1) of the

Rules of 1968 and Clause 27(i) of Appendix-D. This Court expects that the State Respondents shall do the needful in respect to future lease agreement.

27. In the backdrop of the above, let this Court now revert back to the facts involved.

28. As already stated hereinabove, the Petitioner had paid the kist money for the period from 01.10.2024 to 31.12.2024 of an amount of Rs.4,27,000/- as would appear from Annexure-6 to the writ petition. The period for which the payment made was w.e.f. 01.10.2024. It appears that the reason why the payment was made w.e.f. 01.10.2024 is that Petitioner was handed over the possession of the ferry service in question w.e.f. 01.10.2024. On that very date, the Petitioner executes an Authorization Letter before the Notary Public, Goalpara. The contents of the said Authorization being relevant is reproduced herein under:

“BEFORE THE NOTARY PUBLIC :: GOALPARA

AUTHORIZATION LETTER

THIS AUTHORIZATION LETTER is made on this 1st day of October, 2024 at Goalpara.

*I. **Mr. Motior Rahman**, S/O Lt, Meser Haji, by religion - Islam, by profession- Business, a resident of village-Chaysimana, P.O-Kadamtola, P.S.-Alopatj, Dist.-Barpeta, Assam, the lessee of **Chunari Paglababa Than Dudhnath Ferry Service**, vide Order No-EWT/FS/SPD/2024-26 issued by the Executive Engineer, Inland Water Transport Division, Ulubari, Guwahati-7, but I am being the resident of Barpeta district facing communication troubles to take care of the ferry Service ghat, as because of which, I do hereby authorize (1) Mr. Jahirul Istam, S/O-Abdul Jobbar, by religion-Islam, by profession- Business, a resident of village- Latibari, P.O- Rowkhowa, P.S. Chunari, Dist.-*

*Goalpara, Assam, (2) Mr. Sanowar Hussain, S.O- Lt. Rahman Ali, by religion-Islam, by profession- Business, a resident of village-Bamuner Alga, P.O.-Rowkhowa, P.S. Chunari, Dist,- Goalpara, Assam, to take care and run the ferry Service smoothly i.e. **Chunari Paglababa Than Dudhnath Ferry Service** during my lessee period with effect from 02.10.2024 and do hereby execute this Authorization Letter on this 1st day of October, 2024 at Goalpara in presence of the following witnesses.*

Signature of the Executant

Drafted and interpreted by

(Mofidul Islam)

Advocate, Goalpara"

29. A reading of the Authorization Letter as quoted above would clearly show that the Petitioner on the very date on which he was handed over the charge of the ferry in question avers in the Authorization Letter that he being a resident of Barpeta District and facing communication troubles to take over the ferry service ghat, had authorized Mr. Johirul Islam and Mr. Sanowar Hussain to take care and run the ferry service smoothly i.e. Sunari Paglababathan Dudhnath Ferry Service during the Petitioner's granted lease period w.e.f. 02.10.2024. The Petitioner had neither denied the execution of the Authorization Letter nor the contents thereof. In the opinion of this Court, the tenor of the contents of the Authorization Letter violates Rule 7 of the Rules of 1968 inasmuch as the Petitioner had permitted the said two persons namely Mr. Johirul Islam and Mr. Sanowar Hussain to run the ferry service in question for the entire period w.e.f. 02.10.2024. The plea taken by the Petitioner that these persons were labourers/temporary employees employed for smooth functioning of the ferry service appears to be an

afterthought. Apart from that, when the ferry in question operates by carrying passengers, such permission/authorization by the operator like the Petitioner to persons whose credentials were not known endangers the lives of the passengers. Such authorization was not only illegal and contrary to the Rule 7 of the Rules of 1968 but also against public interest.

30. Mr. P. K. Roychoudhury, the learned counsel appearing on behalf the Petitioner submitted that by way of the Authorization Letter, these persons were only permitted to run the ferry service in question as labourers or temporary employees and there was no lease given to them. In the opinion of this Court, the said submission cannot be accepted. The reason as already aforesaid being that the contents of the Authorization Letter dated 01.10.2024, which the Petitioner does not deny, clearly shows that the Petitioner had permitted the two persons namely Mr. Johirul Islam and Mr. Sanowar Hussain to run the ferry in question w.e.f. the very next date of taking over the charge i.e. w.e.f. 02.10.2024 that too for the entire period during which the Petitioner was granted the lease. This was in clear violation to Rule 7 of the Rules of 1968 as it amounted to "transfer in any other way" which was clearly forbidden.

31. In addition to the above analysis, this Court also finds it pertinent to take note of that the Parliament had enacted the Inland Vessels Act, 2021 in order to promote economical and safe transportation and trade through inland waters; to bring uniformity in application of law relating to inland waterways and navigation within the country; to provide for safety of navigation; protection of life and cargo and prevention of pollution that may be caused by the use or navigation of inland vessels; to ensure transparency

and accountability of administration of inland water transportation; to strengthen procedures governing the inland vessels, their construction, survey, registration, manning, navigation and such other matters connected therewith or incidental thereto.

32. The said Act came into force w.e.f. 16.02.2022. In terms with Section 35 of the said Inland Vessels Act, 2021, the minimum manning scale applicable to different class or category of mechanically propelled inland vessels, categorized under the Inland Vessels Act, 2021 or any other laws for the time being in force in India, shall be such as may be prescribed by the Central Government. In that regard, the Central Government have made a set of Rules mainly the Inland Vessels (Manning) Rules, 2022 i.e. the Rules of 2022 whereby Rule 4 categorically stipulates that the minimum manning on board in respect to Inland vessels described in Rule 3. The Petitioners have not placed anything on record as to what certifications the two persons namely Mr. Johirul Islam and Mr. Sanowar Hussain have when they were employed to run the ferry services on behalf of the Petitioner as labourers/temporary employees.

33. Under such circumstances, the stand which was taken by the Petitioner that there was no lease but the two persons namely Mr. Johirul Islam and Mr. Sanowar Hussain were labourers/temporary employees who were allowed to run the ferry service in question is contrary to the Act of 2021 and the Rules of 2022.

34. Accordingly, this Court does not find that the report dated 17.05.2025 as well as the Speaking Order dated 19.05.2025 impugned in the present proceedings call for any interference by this Court under Article 226 of the

Constitution. The instant writ petition therefore stands dismissed.

35. Interim orders passed earlier stands vacated.

JUDGE

Comparing Assistant