

**(2008) 01 GAU CK 0028**

**Gauhati High Court**

**Case No:** Writ Petition (Civil) Nos. 2807 and 3933 of 2007

Bidhan Mudoi

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

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**Date of Decision:** Jan. 8, 2008

**Acts Referred:**

- Assam Panchayat Act, 1994 - Section 106, 106
- Constitution of India, 1950 - Article 226, 226

**Citation:** (2008) 2 GLR 592

**Hon'ble Judges:** I.A.Ansari, J

**Bench:** Single Bench

**Advocate:** R.Baruah, A.Verma, B.D.Konwar, B.Gogoi, K.K.Dutta, D.Saikia, Advocates  
appearing for Parties

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### **Judgement**

1, As both these writ petitions involve some common questions of law, both these writ petitions are being disposed of by this common judgment and order.

The facts giving rise to the present two writ petitions may, in brief, be set out as under:

WP(C) No. 2807 of 2007

(i) By an order, dated 2.6.2006, issued by respondent No. 7, namely, Chief Executive Officer and Exofficio Secretary, Majuli Anchalik Panchayat, the said Anchalik Panchayat granted settlement of Dakshinpat Neamati Parghat Ferry service, in favour of the present petitioner, for a period of one year commencing from 1.6.2006 and ending on 30.6.2007. On the basis of the settlement so granted, while the petitioner was running the ferry service, respondent No. 3, namely, Director, Inland Water Transport, Guwahati, issued an order, on 5.4.2007, granting to the respondent No. 5 herein settlement in respect of AphalamukhNeamati Commercial CargocumPassenger Service for a period of one year with effect from seven days

from the date of issue of the said order. The respondent No. 5 accordingly started the passenger ferry service at his allotted place. The petitioner's grievance is that the order, dated 5.4.2007, issued by the respondent No. 3, giving settlement of AphalamukhNeamati Commercial CargocumPassenger Service, in favour of respondent No. 5, is in violation of rule 35 of the Control and Management of Ferries (Amendment) Rules, 1976, for, AphalamukhNeamati Commercial CargocumPassenger Service is situated, according to the petitioner, at a distance of barely 350 meter from Dakshinpat Neamati Parghat Ferry service, which stands settled with the petitioner, whereas rule 35, according to the petitioner, does not permit establishment of ferry service within a distance of 3.5 kilometer from the limits of another ferry service. The respondent No. 3 has, thus, according to the petitioner, violated the statutory requirements of rule 35 by allowing ferry service to be operated by the respondent No. 5 at AphalamukhNeamati Commercial CargocumPassenger Service, which falls within a distance of less than 350 meters from Dakshinpat Neamati Parghat Ferry service, without any prior sanction of, or notification from, the competent authority and if the impugned order is not set aside, the petitioner will sustain irreparable loss.

(ii) While resisting the writ petition, the respondents, though, at one stage, contended to the effect that the distance between Dakshinpat Neamati Parghat Ferry service and AphalamukhNeamati Commercial CargocumPassenger Service is more than 3.2 kilometers, this plea has been abandoned meaning thereby that the distance between the two ferry services is, at any rate, less than 3.2 kilometers. The respondent's plea is to the effect that the Executive Officer cum Secretary of an Anchalik Panchayat is not the competent authority to grant settlement of any ferry service, for, the power, if any, to grant such settlement belongs to the Anchalik Panchayat. It is also the case of the respondents that if the State Government does not authorize an Anchalik Panchayat, the Anchalik Panchayat will have no right to run a ferry service. In the present case, it is contended by the respondents, the State Government has not authorized Majuli Anchalik Panchayat the right to grant settlement, of Dakshinpat Neamati Parghat Ferry service and, hence, the settlement, granted in favour of the petitioner by the said Anchalik Panchayat, is without jurisdiction. The respondents also contend that under section 105 of the Assam Panchayat Act, the power to grant settlement is of the President of an Anchalik Panchayat and not of its Executive Officer. It is further contended by the respondents that a person aggrieved by a settlement of ferry gnat by an Anchalik Panchayat has the right to prefer an appeal to the State Government under section 106 and as no appeal has been preferred, in the present case, by the writ petitioner, the present writ petition is misconceived inasmuch as there is a more comprehensive alternative statutory remedy available to the petitioner and this writ petition may not to be entertained. This apart, according to the respondents, rule 38 empowers the Directorate of Inland Water Transport Commercial Service to employ boat or vessels for the purpose of carrying relief or for any other purpose within the

jurisdiction of a ferry. The power under rule 38 is, according to the respondents, an all encompassing power and, hence, the settlement granted, in favour of the respondent No. 5, by the respondent No. 3 cannot be said to be without jurisdiction. Rule 38, it is further contended by the respondents, permits the Directorate to employ any boat or vessel for the purpose of carrying cargo as well as passengers for its commercial service. As the word passenger means and includes a traveller in public conveyance, the effect of rule 38, according to the respondents, is that the Director, Inland Water Transport, is competent to employ any boat for carrying passengers for the purpose of public conveyance.

(iii) The Department of Inland Water Transport, Assam, runs, according to the respondents, public ferry and also commercial ferry services for carrying passengers and cargoes, these services are provided not only for the benefit of the public at large, but also for the augmentation of revenue for the Department of Inland Water Transport, Assam and that the revenue, so collected by the Department, is utilised for the purpose of paying salary to its employees as well as maintenance of boats and vessels of the Department and, thus, the boats and vessels, employed by the Directorate, have a nexus with the affairs of the Department of Inland Water Transport, Assam.

WP(C) No. 3933 of 2007

(iv) The writ petitioner made a representation, dated 21.6.2007, addressed to the respondent No. 3, namely, Director, Inland Water Transport, seeking direct settlement of Guijan Barghuli Via Kabuchapari CommercialcumCommercial Service at 20% of the bid value. As the respondent No. 3 has settled directly, vide order, dated 21.6.2007, the said ferry service in favour of respondent No. 4, the petitioner, feeling aggrieved, has approached this court with the help of the present application made under article 226 of the Constitution of India, the case of the petitioner being, in substance, that the power of making direct settlement is vested only in the Secretary of the Department concerned and the Director of the said Department has no authority to make direct settlement and as the settlement, in favour of the respondent No. 4, has been directly made by the Director of the said Department, the settlement, so granted, is, according to the writ petitioner, wholly without jurisdiction and may be interfered with, particularly, when the respondent No. 3 has also declined to make direct settlement in favour of the petitioner by letter, dated 24.07.2007.

2. I have heard Mr. D. Saikia, learned counsel for the petitioner, in WP(C) 2807/2007, Mr.A.K. Goswami, learned senior counsel, appearing for the petitioner in WP(C) 3933/2007, Mr. A.K. Bhuyan, learned counsel, appearing on behalf of the State respondents in both the writ petitions, Mr. B.D. Konwar, learned counsel for the respondent No. 5 in WP(C) 2807/2007 and Mr. B.K. Das, learned counsel for the respondent No. 4 in WP(C) 3933/2007. I have also heard Mr. N. Dutta, learned senior counsel, who has appeared, in this set of writ petitions, as amicus curiae.

3. Appearing on behalf of the petitioner, in WPCC) 2807/2007, Mr. Saikia submits that under rule 35, Inland Water Transport Department cannot establish ferry service within a distance of 3.2 kilometers, but in the present case, since the ferry service, settled in favour of the respondent No. 5, is located barely at a distance of 350 metres, the settlement, so granted in favour of the respondent No. 5, is without jurisdiction and needs to be interfered with.

4. Opposing the submissions made on behalf of the petitioner, Mr. Bhuyan has contended that under Rule 38 of the Control & Management of Ferries Rules, 1968, the Directorate of Inland Water Transport is competent to run not only public ferries, but also commercial ferry service for carrying passengers and cargos and since the settlement, in favour of the respondent No. 5, has been made for the benefit of the public at large and for augmentation of the revenue of the Department concerned, the settlement, granted in favour of the respondent No. 5, is protected under rule 38.

5. It is also contended by Mr. Bhuyan that respondent No. 7 has no authority to grant settlement of ferry service and the settlement, if any, could have been granted, under section 105 of Assam Panchayat Act, not by its Chief Executive Officer, but by the said Anchalik Panchayat itself. It is also contended by Mr. Bhuyan that without the State Government having vested the right to make settlement of the said ferry service in favour of the said Anchalik Panchayat, Chief Executive Officer and Exofficio Secretary, Majuli Anchalik Panchayat, Kamalabari (i.e., respondent No. 7) has no authority to grant settlement in favour of the petitioner.

6. Appearing on behalf of the writ petitioner in WP(C) 3933/2007, Mr. A.K. Goswami, learned senior counsel, submits that under the provisions of subrule (2) of rule 4 of the Control and Management of Ferries Rules, 1968, framed under section 12 of the Northern India Ferries Act, 1878, it is not the Director, but the Secretary to the Government of Assam, Department of Transport, who is, in terms of the provisions of section 8 of the said Act, the competent authority to settle the ferries directly by negotiation. In the case at hand, submits Mr. Goswami, since the settlement, in favour of the respondent No. 4, has been made by the Director, the settlement is wholly without jurisdiction and needs to be set aside.

7. As far as Mr. B.D. Konwar, learned counsel, appearing for the respondent No. 5 in WP(C) 2807/2007, is concerned, he has candidly submitted that the issue stands settled by the decision in Jayanta Bora v. State of Assam, (2006) 3 GLT 844, which has held to the effect that for the purpose of enabling an Anchalik Panchayat to run public ferry, the State Government's authority is not necessary. As far as Mr. B.K. Das, learned counsel, is concerned, his submission is that the Director of Inland Water Transport Department is competent to grant settlement of public ferry and, hence, the settlement made in favour of the respondent No. 4, in WP(C) 3933/2007, may not be interfered with.

8. While considering the present two writ petitions, it is necessary to point out that New Oxford Advanced Learners Dictionary (Seventh Edition) defines "ferry" to mean, "boat that carries people, vehicles and goods across a river or across a narrow part of the sea". Webster's Dictionary (New Twentieth Century Edition) defines "ferry" as a transportation system in which passengers and goods are carried across a river or other narrow body of water. New Oxford Advanced Learners Dictionary (Seventh Edition) defines "ferryman" as a man, who is in charge of a ferry across a river. Webster's Dictionary (New Twentieth Century Edition) defines a \* ferry man" as one, who owns, manages or works on a ferry. Advanced Law Lexicon (Volume 2) (3rd Edition, 2005) defines "ferry\*" as a franchise or exclusive right of carrying passengers, animals or goods across a river or other body of water at a particular place and taking a toll for so doing, which is called ferriage. Advanced Law Lexicon (Volume 2) (3rd Edition, 2005) defines "ferry man", as a person, who conducts a ferry or is in charge of a ferry, "Ferry boat" been described, in Oxford Dictionary (7th Edition, 2005), as a boat, which is used as a ferry. Advanced Law Lexicon (Volume 7) (3rd Edition, 2005) defines "ferry boat" as boat used for carrying passengers from the one side of river to another side from any place on the bank.

9. From the definitions of "ferry", depicted as above, what becomes clear is that in ordinary parlance, "ferry" means carrying of people or goods by a boat and such boat may be steered with the help of oar used by human beings or run by mechanical device. In fact, boat is one of the oldest modes of transportation of man and material known to the mankind. Historically, therefore, there was no impediment, on the part of a person, to move through the water of a river or sea or narrow body of water from one place to another as well as to carry his men and materials or any other person or any other person's men and materials, on hire or for a reward, across the river or narrow body of water or from one place to another through the water of river or sea.

10. For the purpose of resolving the controversies, which the present writ petitions have raised, it is necessary to ascertain as to when and how the States, in India, happened to acquire the power to operate ferry and how and when it also acquired the power to restrain or control private individuals from operating ferry and what are the parameters of such control?

11. In order to effectively resolve the aforesaid controversies, it is imperative that the object behind passing of the Northern India Ferries Act, 1878, ("the Ferries Act") be carefully analysed. With this aim in view, the Statement of Objects and Reasons for the enactment of the Ferries Act are reproduced hereinbelow:

"Statement of objects and reasons. An Act for the regulation of ferries in the Punjab is much needed. Up to the 1st June, 1872, when Act No. IV of 1872 (the Punjab Laws, Act) came into force, ferries in the Punjab were governed by Bengal Regulation VI of 1819; but by the Punjab Laws Act that Regulation was inadvertently repealed and, no other law being substituted for it, there has, from that date, been no law for the

control of ferries in the Punjab. Another result is that, as the law now stands, it would be difficult for the Local Government to prevent an unlicensed person from setting up a rival ferry alongside of a Government ferry and thus materially reducing the income of the latter ferry and the funds available for its maintenance.

To remedy this state of things and at the same time to provide generally for the regulation of Government ferries, a Bill to regulate ferries in the Punjab was prepared. About the same time the Lieutenant Governor of the north Western Provinces and Chief Commissioner of Oudh submitted a draft Bill for the regulation of ferries in the territories under his administration. The Bill, so submitted and the Bill for the Punjab, as modified and supplemented in accordance with communications subsequently received from the Punjab, were found to differ so little that it was thought advisable to amalgamate the two Bills and accordingly the present Bill, extending to the Punjab, the North Western Provinces and Oudh, has been prepared."

The Bill is based" upon the Burma Ferries Act, II of 1873 and the provisions of that Act have been followed as closely as the different circumstances and requirements of the Provinces with which this Bill deals would permit.

12. A patient analysis of the statement of object and reasons of the Ferries Act and the provisions contained therein leave no room for doubt that before the Ferries Act was brought into force, there was really no impediment to set up a private ferry by a person either to move himself from one place to another through water or carry his materials or carry passengers or goods on hire or for reward. In course of time, Government also started operation of ferry service for the purpose of carrying passengers and/or goods. These Government owned ferries had to sustain losses whenever any person set up a rival ferry service within the close proximity of the Government's ferry service. As there was no law governing operation of such private ferries or, for that matter, as regards the control of the Government ferries, law had to be enacted to prevent the Government ferries from running into losses and also to regulate movement of the ferries, in general. This requirement gave birth to the Ferries Act in pre independent India. No wonder, therefore, that the definition of "Ferry", occurring in the Ferries Act, is inclusive inasmuch as the word "Ferry", according to section 3 of the Ferries Act, includes also a bridge of boats, pontoons or rafts, a swing bridge, a flying bridge and a temporary bridge and the approaches to and landing places of, a ferry.

13. Let me, now, turn to section 4 of the Ferries Act, which, I notice, reads as under:

"4. Power to declare, establish, define and discontinue public ferries. The State Government may from time to time

(a) declare what ferries shall be deemed public ferries and the respective districts in which, for the purposes of this Act, they shall be deemed to be situate;

- (b) take possession of a private ferry and declare it to be a public ferry;
- (c) Establish new public ferries where, in its opinion, they are needed;
- (d) define the limits of any public ferry;
- (e) change the course of any public ferry; and
- (f) discontinue any public ferry which it deems unnecessary.

Every such declaration, establishment, definition, change or discontinuance shall be made by notification in the Official Gazette:

Provided that when a river lies between two States, the powers conferred by this section shall, in respect of such river, be exercised jointly by the State Government of those States by notifications in their respective official Gazettes:

Provided also that, when any alteration in course or in the limits of a public ferry is rendered necessary by changes in the river, such alteration may be made, by an order under his hand, by the Commissioner of the Division in which such ferry is situate, or by such other officer the State Government may, from time to time, appoint by name or in virtue of his office in this behalf."

14. A bare reading of section 4 makes it clear that the State Government may, by a notification published in the official gazette, declare as to what ferries shall be deemed to be public ferries. Section 4 also empowers the State Government to take, by way of such notification, possession of private ferry and declare the same to be public ferry. Section 4 further empowers the State Government to establish new public ferries and/or define the limits of publicferry, change the course of public ferry and discontinue a public ferry. It also clearly follows from the scheme of section 4 that unless a notification is issued in terms of section 4, a ferry cannot be regarded as a public ferry within the meaning of the Ferries Act.

15. In the present case, sections 6, 7 and 7A are of great relevance and are, therefore, reproduced herein below:

"6. Superintendence of public ferries. The immediate superintendence of every public ferry shall, except as provided in section 7 (and section 7A) be vested in the Magistrate of the district in which such ferry is situate, or in such other officer as the (State Government) may, from time to time, appoint by name or in virtue of his office in this behalf;

And such Magistrate or officer shall, except when the tools at such ferry are leased, make all necessary arrangements for the supply of boats for such ferry and for the collection of the authorized tolls leviable thereat."

"7. Management may be vested in municipality. The State Government may direct that any public ferry situate within "the limits of a town be managed by the officer or public body charged with the superintendence of the municipal arrangements of

such town; and thereupon that ferry shall be managed accordingly."

Section 7A, in its application to the State of Assam, stands substituted and reads as follows:

"7A. The State Government may direct that any public ferry wholly or partly within the area subject to the authority of a Mohkuma Parishad in the State be managed by the Mohkuma Parishad and thereupon that ferry shall be managed accordingly."

16. From a dispassionate reading of sections 6, 7 and 7A as well as their applicability to the State of Assam, what becomes transparent is that under section 6 of the Ferries Act, the superintendence of public ferry stands, ordinarily, vested in the Magistrate of the district. The State Government may, however, under section 7 of the Ferries Act, vest, in a municipal authority, the power of superintendence and management of a public ferry, which falls within the territorial limits of such a municipality. Section 7A permits the State Government to direct, in general, that a public ferry be managed, wholly or in part, by a district council or by a district board or a local board. As regards its application to the State of Assam, section 7A clarifies that the State Government may direct that a public ferry, which falls wholly or partly within the area of a Mohkuma Parishad in the State of Assam, be managed by the Mohkuma Parishad and upon such a direction being passed by the State Government, such a public ferry shall be managed by the Mohkuma Parishad, Mohkuma Parishad being a statutory creation, which came to be, in the course of time, replaced by Panchayats under the provisions of the Assam Panchayat Act, 1994.

17. While considering the provisions of sections 6,7 and 7A, it is pertinent to bear in mind that though the management of a public ferry may be vested by the Government in a local body, such as, Mohkuma Parishad, ownership of such a public ferry remains vested in the State Government. There is no provision in the Ferries Act empowering the State Government to part with the ownership of a ferry, which has been declared, converted or acquired as a public ferry by virtue of its power under section 4 of the Ferries Act.

18. Coupled with the above, section 8 of the Ferries Act shows that a public ferry may be settled, for collection of tolls, by public auction for a term not exceeding five years with the approval of the officer, who is entrusted with the management of the ferry. Section 8 also shows that such settlement can be made, otherwise than by public auction, with the previous sanction of the State Government.

19. Bearing in mind, what is indicated above, let me, now, turn to section 12, which empowers the State Government to make rules for the purpose of controlling, managing and regulating a public ferry. Section 12 reads as under:

"12. Power to make rules. Subject to control of the State Government, the Commissioner of a division, or such other officer as the State Government may,



from time to time, appoint in this behalf, by name or in virtue of his office, may, from time to time, make rules consistent with this Act

(a) for the control and the management of all public ferries within such division and for regulating the traffic at such ferries;

(b) for regulating the time and manner at and in which and the terms on which, the tolls of such ferries may be let by auction and prescribing the persons by whom auctions may be conducted.

(c) For compensating persons who have compounded for tolls payable for the use of any such ferry when such ferry has been discontinued before the expiration of the period compounded for; and

(d) Generally to carry out the purposes of this Act; and, when the tolls of a ferry have been let under section 8, such Commissioner or other officer may, from time to time, subject as foresaid, make additional rules consistent with this Act

(e) For collecting the rents payable for the tolls of such ferries;

(f) In cases in which the communication is to be established by means of a bridge of boats, pontoons or rafts, or a swingbridge, flyingbridge or temporary bridge, for regulating the time and manner at and in which such bridge shall be constructed and maintained and opened for the passage of vessels and drafts through the same; and

(g) In cases in which the traffic is conveyed in boats, for regulating (1) the number and kind of such boats and their dimensions and equipment; (2) the number of the crew to be kept by the lessee for each boat; (3) the maintenance of such boats, continually in good condition; (4) the hours during which and the intervals within which, the lessee shall be bound to ply; and (5) the number of passengers, animals and vehicles and the bulk and weight of other things, that may be carried in each kind of boat at one trip.

The lessee shall make such returns of traffic as the Commissioner or other officer as aforesaid may, from time to time, require."

20. Close on the heels of section 12, section 13, which relates to State Government's power to make rules with regard to establishment, maintenance, etc, of private ferry, reads:

"13. Private ferry not to ply within two miles of public ferry without sanction. Except with the sanction of the Magistrate of the district or of such other officer as the State Government may, from time to time, appoint, in this behalf, by name or by virtue of his office, no person shall establish, maintain or work a ferry to or from any point within a distance of two miles from the limits of a public ferry:

Provided that, in the case of any specified public ferry, the State Government may, by notification in the Official Gazette, reduce or increase the said distance of two miles to such extent as it thinks fit:

Provided also that nothing hereinbefore contained shall prevent persons, plying between two places, one of which is without and one within, the said limits, when the distance between such two places is not less than three miles, or apply to boats, which do not ply for hire or which the State Government expressly exempts from the operation of this section."

21. From what section 12 provides, it becomes clear that the State Government has the authority to make rules for control and management of all public ferries. This apart, section 13 prohibits maintaining or working of a ferry to or from any point within a distance of two miles from the limits of a public ferry without sanction of the Magistrate of the district or of such other officer as the State Government may, from time to time, appoint, in this behalf, by virtue of his office. This restriction of two miles, imposed by section 13, is, in the light of the proviso to section 13, relaxed in respect of boats, which do not ply for hire or boats, the operation whereof within the said limits of two miles is expressly exempted by the State Government.

22. A conjoint reading of sections 4, 6, 7, 7A, 8, 12 and 13 make it abundantly clear that the State Government can exercise power of control and management only in respect of such a ferry, which, by way of notification, as contemplated in section 4, has been notified as public ferry. The State Government has the power to either declare a ferry, which has already been in existence, as a public ferry or it may take over a private ferry and declare the same to be a public ferry. The State Government can create a public ferry, where no ferry exists, it can change the course of a ferry, which it has declared or created as public ferry, or it may even discontinue, which it might have created or declared, as a public ferry. Every ferry, which the State Government has declared as a public ferry under section 4, stands vested in the State Government, though the management and superintendence of such a ferry can be vested by the State Government in a municipality or any public body including local bodies, such as, Panchayat and when the management and superintendence of such a public ferry is vested in any municipality or public body, such a public body would become entitled to settle, for collection of tolls, such a public ferry by public auction with the approval of the Commissioner and, otherwise than by public auction, with the previous sanction of. the State Government.

23. Thus, the provisions of the Ferries Act demonstrate and perceive control of the State Government over all such ferries, which have been declared and created as public ferries under section 4, even when management thereof stand vested in the local bodies under sections 7 and 7A thereof.

24. Necessarily, therefore, unless and until a public ferry, as contemplated in section 4, is vested in terms of the provisions of sections 7 and 7A, no local self Government,

such as a Panchayat, will have, under the Ferries Act, the power to operate a ferry, which the State Government has declared or created as a public ferry. Any ferry, which is not a public ferry within the meaning of section 12, would be a private ferry. Section 13 puts an embargo on the private ferries from being run and operated within the distance of three miles of a public ferry. This distance of three miles may, however, be reduced, in a given case, by the State Government in exercise of its powers under section 13. Unless, therefore, a ferry has been declared or created as a public ferry within the meaning of section 4, there is really no legal impediment, under the Ferries Act, on any person establishing, maintaining or running a private ferry in any part of any river within the State of Assam. It further logically follows that the State Government cannot restrain or control operation of private ferries except as provided in the Ferries Act and/or the Rules framed thereunder.

25. What may also be pointed out is that a private boat/yacht/vessel does not necessarily mean a ferry, which does not carry passenger or goods belonging to a person other than the owner of that boat/yacht/vessel. Logically/therefore, a person may carry, his men or material in a boat, which may even be a run by a mechanized device, without a licence. A person can also carry, in such a boat, passenger or goods on hire or in lieu of a reward. No licence, under the scheme of the Ferries Act, is necessary for operation of such a ferry, which one may call private ferry.

26. There is no dispute before me that it is under section 12 of the Ferries Act that the North Eastern Ferries Rules, 1878 ("the Ferries Rules, 1878") as well as the Control and Management of Ferries Rules, 1968 ("the Ferries Rules, 1968") have been framed. There is yet another set of Rules made under section 12 of the Ferries Act and these Rules are known as the Control and Management of Ferries (Amendment) Rules, 1976 ("the Ferries Rules, 1976"). The Ferries Rules, 1976, make some amendments to the Ferries Rules, 1968. The Ferries Rules, 1976, introduce, with the help of insertion of section 2(e), the concept of recognized nontransport ferry. A recognized nontransport ferry means and includes a private ferry or private boat authorized by the competent authority, which are not used, on hire, for carrying persons, animals and goods belonging to the owner of the ferry or boat without using the approach of any public ferry. Rule 2(e), thus, empowers the Inland Water Transport Department to recognize a nontransport ferry. A recognized nontransport ferry can run, in the light of the provisions of rule 35 of the Ferries Rules, 1976, even within the prohibited limits of the distance from a ferry, which may have been created or declared, under section 4 of the Ferries Act, as a public ferry.

27. What is, now, of immense importance to note is that there is no dispute before me that the Ferries Rules, 1878, the Ferries Rules, 1968 and also the Ferries Rules, 1976, are the Rules framed by the Government in exercise of its powers under section 12 of the Ferries Act. It is, thus, clear that the Ferries Rules aforementioned apply to only such a public ferry, which has been either declared as a public ferry

under section 4 or has been created, in terms of section 4, as a public ferry. Hence, unless a ferry has been declared or created as a ferry under section 4, the Department of Inland Water Transport, Government of Assam, cannot have jurisdiction to control or manage such a ferry. Rightly, therefore, rule 2(b) of the Ferries Rules, 1968, defines \* ferry\* to mean "Terry" specified in Schedule "A" appended to the Ferries Rules, 1968, meaning thereby that unless a ferry gets included in the Appendix "A" aforesaid, the State Government has no jurisdiction or authority to regulate, control or manage such a ferry or impose restrictions on the movement or operation of such a ferry except by taking resort to its constitutional authority, if any, under article 136 of the Constitution of India.

28. What, logically follows from the above discussion is that the power of the Department of Inland Water Transport, Government of Assam, to grant settlement of ferries would remain limited to only such a ferry, which has been declared or created as a public ferry under section 4 of the Ferries Act and has been placed in the Appendix "A" to the Ferries Rules, 1968. The Appendix A, originally, included as many as 11 major ferries on the river Brahmaputra. In course of time, some other ferries have been included in this list.

29. The ferries, which form the subjectmatter of dispute, in the present two writ petitions, do not, admittedly, find mentioned in Appendix "A". As the Inland Water Transport Department, Government of Assam, has no authority or jurisdiction to make settlement in respect of any ferry, which does not come within the list of ferries mentioned in Appendix A, there can be no escape from the conclusion that the said Department could not have granted settlement in respect of the ferries aforementioned in favour of the two private respondents.

30. In view of the conclusion reached above that in the present cases, both the ferries, in question, are not public ferries within the meaning of section 4 of the Ferries Act and that the State Government has no authority or jurisdiction to make settlement in respect of any of these ferries, the lease/settlement granted by the Director, Inland Water Transport Department, Govt. of Assam, in favour of the private respondents, in both these two writ petitions, has no legs to stand and must necessarily be set aside.

31. In view, however, of the fact that a reference has been made by Mr. B.D. Konwar, learned counsel, to the case of Jayanta Bora (supra), it is, in the opinion of this court, necessary that the impact, if any, of the decision, rendered in Jayanta Bora (supra), on the present two writ petitions is considered by this court and it is for the purpose of ascertaining the impact of the decision in Jayanta Bora (supra), in these writ petitions, that in these two cases, this court has heard Mr. N. Dutta, learned senior counsel, as amicus curiae.

32. Appearing as amicus curiae, Mr. Dutta has submitted that in the light of the discussions held in para 71 in Jayanta Bora (supra), it appears that the court has

taken the view that there is a conflict between the provisions of the Ferries Act and the Assam Panchayat Act, 1994 and that to the extent that the Ferries Act is inconsistent with the said Panchayat Act, the Ferries Act shall be treated to be impliedly repealed. The conclusion, so reached in Jayanta Bora (supra), is, according to Mr. Dutta, not supported by the provisions of the scheme of the said two enactments and that this matter needs to be referred, for effective resolution, to a larger Bench.

33. It is, no doubt, true, that if any conclusion reached by the court, in these two writ petitions, runs contrary to the decision, rendered in Jayanta Bora (supra), the remedy lies in referring the matter to an appropriate Bench. This court will not, however, enter into academic discussion on the correctness or otherwise of the decision in Jayanta Bora (supra), for, this court must not express any opinion on the correctness or otherwise of the observations made and the law laid down, in Jayanta Bora (supra) unless such an approach by this court becomes wholly indispensable for effective disposal of the present two writ petitions. With this proposition of law, even Mr. Dutta, learned amicus curiae, agrees. Bearing in mind this crucial aspect of the matter, let me, now, proceed with the matter in the light of the law laid down in Jayanta Bora (supra).

34. While considering Jayanta Bora's case (supra), what needs to be borne in mind is that a public ferry, as is commonly understood, is different from a private ferry as conceived by law. Even a ferry, run by a private individual for the purpose of ferrying passenger or cargo on hire or reward, is loosely called a public ferry; whereas a public ferry, as already indicated above, is, in law, a ferry, which is established by the State Government by publishing a notification, in this regard, in exercise of its powers under section 4 of the Ferries Act. It also needs to be noted that by virtue of the Government's rulemaking powers under section 12 of the Ferries Act, 1878, Northern India Ferries Rules, 1878, (the Ferries Rules, 1878"), were framed. The Ferries Rules, 1878, help the State Governments control and manage the public ferries as conceived under the Ferries Act, 1878. The question, now, is as to whether there is any difference between a public ferry, which is brought into existence under section 4 aforementioned and a Government ferry. The Government ferry is, in fact, a concept rooted in the rules framed under the Ferries Act, 1878 and developed further in subsequent enactments and rules framed thereunder.

35. A Government ferry, as denned under the Ferries Rules, 1878, means a public ferry, one of whose ends is at a Government road as defined in the Assam Highways Act, 1928. A Government road, according to section 2 of the Assam Highways Act, 1928, means a road vested in the Government or under the control and administration of the State Government and includes all lands and embankments vested in the Government or under the control and administration of the State Government. Thus, the definition of the Government ferry, as discussed hereinbefore, signifies that while every Government ferry is indispensably a public

ferry, every public ferry would not necessarily be a Government ferry, for, a Government ferry, as already indicated hereinbefore, would mean a public ferry, established under section 4, one of whose ends is on a Government road or Government land or embankment.

36. It is, now, worth noticing that the Control and Management of Ferries Rules, 1968, have also been framed in exercise of the Government's powers under section 12 of the Ferries Act, 1878. The provisions of the Ferries Rules, 1968, are substantially in *peri materia* with the Ferries Rules, 1878. The Ferries Rules, 1968, embody a complete mechanism for regulation, control and management of ferries. What is, however, of great significance to note is that though latter in point of time, the Ferries Rules, 1968, have not been framed in supersession of the Ferries Rules, 1878. Consequently, these two sets of Rules continue to remain in force. Thus, the Ferries Rules, 1968, as held in *Jayanta Bora* (*supra*), must be kept confined in their application to ferries including public ferries, which may be notified under Appendix "A" to Ferries Rules, 1968.

37. In *Jayanta Bora* (*supra*), what has been held is that in the light of the provisions of section 106 of the Assam Panchayat Act, 1994, a public ferry need not necessarily be vested in an Anchalik Panchayat; rather, an Anchalik panchayat, by virtue of the provisions of section 106 of the Assam Panchayat Act, 1994, has the exclusive authority to settle, in accordance with the rules framed for the purpose, a public ferry, which is not a Government ferry, but located within its territorial jurisdiction. What is, now, of utmost importance to note is that under section 106 of the Assam Panchayat Act, a public ferry, other than a Government ferry, stands vested in an Anchalik Panchayat within whose local jurisdiction such a ferry falls. This, in turn, shows that no Anchalik Panchayat has the authority or jurisdiction to settle such a public ferry, which may have been acquired or established as a public ferry under section 4 of the Ferries Act, 1878, but one of whose ends meet a Government road, Government land or embankment. If, however, none of the ends of a public ferry, established under section 4 of the Ferries Act, 1978, meets a Government road, Government land or embankment, such a public ferry would stand vested in the Anchalik panchayat within whose territorial jurisdiction such a public ferry falls, for, such a "public ferry" would not fall within the ambit of the definition of the "Government ferry".

38. A careful and dispassionate reading of section 106 clearly shows that all public ferries, other than Government ferries, which fall within the territorial jurisdiction of an Anchalik Panchayat, shall be settled by the Anchalik Panchayat for a period coinciding with and not exceeding one financial year by inviting tenders at the office of the Anchalik Panchayat by its President. The language, employed in section 106 of the Assam Panchayat Act, leaves no room for doubt that Anchalik Panchayat has no authority to settle the Government Ferries. In other words, in respect of all those public ferries, established under section 4 of the Ferries Act, 1878, whose one of the

ends meets a Government road or Government land or embankment, no Anchalik Panchayat has the authority to make settlement. When the Ferries Act, 1878, is read in conjunction with the Assam Panchayat Act, 1994, what becomes transparent is that the control and management of a public ferry, which has been established or created under section 4 of the Ferries Act, 1878, can be vested in a local body by the State Government. The State Government has, however, under Entry 13 of the State List of the Seventh Schedule of the Constitution of India, can make legislation with respect to ferries. It is in exercise of this legislative power that the State Government has made provisions for automatic vesting of public ferry, other than Government ferry, in the Anchalik Panchayats as indicated hereinbefore.

39. The question, now, is as to whether there is any conflict between the Ferries Act, 1878 and the Assam Panchayat Act, 1994. That the Assam Panchayat Act, 1994, is a valid piece of legislation is not in dispute. That the State Legislature was, by virtue of its powers under Entry 13 of the State List, competent to make legislation with regard to the ferries established by it under section 4 of the Ferries Act, 1878, is not also in dispute. Obviously, therefore, it is in exercise of this legislative authority that the State Government has made provisions, in the Assam Panchayat Act, 1994, as regards automatic vesting of public ferries, other than the Government ferries, in the Anchalik Panchayats. In short, a ferry, other than Government ferry, which the State Government creates under section 4 of the Ferries Act, gets, automatically, vested in the Anchalik Panchayat in the light of the provisions of the Assam Panchayat Act. So far as the Government ferries are concerned, these ferries would still remain vested in the State Government and the settlement of such ferries can be given by the State Government in terms of the Ferries Rules, 1968 and by none else. I do not find that the conclusions, so reached by me, are, in any way, different from what Jayanta Bora's case (supra) lays down. Hence, the question as to whether the decision, rendered in Jayanta Bora's case (supra), to the effect that the Ferries Act shall be treated to be impliedly repealed to a limited extent, by virtue of the application of the Assam Panchayat Act, 1994, is really a question, which is not necessary to be considered for disposal of the present two writ petitions. It would, therefore, be an academic exercise, on the part of this court, if it endeavours to determine as to whether or not the conclusion, reached in Jayanta Bora's case (supra), that the Ferries Act stands repealed, as indicated hereinabove, is correct or not. Such an academic exercise is neither permissible nor desirable in law. It is trite that any question, which is not imperative for decision in a writ application and which would be purely academic in nature, the court should not embark upon the discussion of such academic issues. In other words, if any particular aspect raised in a writ petition is not necessary to be ascertained for the purpose of disposal of the writ petition, the court should not indulge into the exercise of deciding such an issue. I am guided to adopt this view from the law laid down in *State of Bihar v. Rai Bahadur Hurdut Roy Moti Lal Jute Mills*, AIR 1960 SC 378, wherein it has been held as follows:

"In cases where the vires of statutory provisions are challenged on constitutional grounds, it is essential that the material facts should first be clarified and ascertained with a view to determine whether the impugned statutory provisions are attracted; if they are, the constitutional challenge to their validity must be examined and decided. If, however, the facts admitted or proved do not attract the impugned provisions, there is no occasion to decide the issue about the vires of the said provisions. Any decision on the said question would in such a case be purely academic. Courts are and should be reluctant to decide constitutional points merely as matters of academic importance."

40. Even in *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi*, 1987 SCO Supp. 93, the Apex Court observed,

"4.....Court should not undertake to decide an issue unless it is a living issue between the parties. If an issue is purely academic in that its decision one way or the other would have no impact on the position of the parties, it would be waste of public time to engage itself in deciding it."

41. What emerges from the above discussion is that a public ferry, other than a Government ferry, created under section 4 of the Ferries Act, stands vested in an Anchalik Panchayat within whose territorial jurisdiction such a ferry falls and the Anchalik Panchayat has the freedom to settle, in terms of Section 106 of the Assam Panchayat Act, 1994, such a public ferry by inviting tenders. This apart, every Anchalik Panchayat or, for that matter, every individual is free to set up its own ferry, for, no legislation exists stopping an Anchalik Panchayat or any other individual from setting up a ferry, which does not come within the specified distances of a public ferry notified under section 4 of the Ferries Act.

42. In the backdrop of what has been discussed above, when I revert to the cases at hand, what attracts the eyes, most prominently, is that the ferry, in question, in WP(C) No. 2807/2007, is not a ferry created under section 4 and, hence, the State Government or the Department of Inland Water Transport, Government of Assam, can have no say in the operation, control and management of the said ferry. This apart, unlike the Motor Vehicles Act, 1988, which requires granting of license for using a vehicle on the road, there is no parent legislation restricting establishment of a private ferry. Hence, any rule, framed by taking resort to the Ferries Act, 1878, which try to govern a private ferry, except to the extent that the Ferries Act, 1878, permit, will ex facie be beyond the permissible limits of the delegated legislation, for, when the parent enactment, i.e., the Ferries Act, 1878, has not made provisions for control and management of a private ferry, except what section 13 of the Ferries Act, 1878, authorizes, a delegated piece of legislation cannot be made for control, regulation and management of a private ferry. In the circumstances as indicated above, it is not really material to determine, in the present case, if Secretary of an Anchalik Panchayat is legally competent to issue an order of settlement of ferry or not.



43. As far as the ferry, involved in WP(C) 3933/2007 is concerned, suffice it to mention here that under rule 4(2) of the Ferries Rules, 1968, it is the Secretary, Inland Water Transport Department, Government of Assam, who is the competent authority to grant settlement of public ferry directly or by negotiation. In the present case, the settlement, in favour of respondent No. 4, has been granted by the Director of the said Department. The settlement, so granted, in favour of respondent No. 4, is ex facie without jurisdiction, for, the Director of the said Department has no jurisdiction to make direct settlement. Thus, the settlement, made in favour of respondent No. 4, cannot survive and must, therefore, be struck down.

44. Because of what have been discussed and pointed out above, the impugned settlements made by the Director, Inland Water Transport Department, Government of Assam, in favour of the private respondents in both these writ petitions are hereby set aside and quashed.

45. With the above observations and directions, these writ petitions shall stand disposed .

46. No order as to costs.