

GAHC010141312024



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

Case No. : WP(C)/3559/2024

TRIMURTI ANUSUSHITA JATI SIKHITA NIBONUWA SELF HELP GROUP AND
ANR
BEARING REGISTRATION NO. GDB/DHK/67 AND HAVING ITS REGISTERED
OFFICE AT VILL- TELIADUNGA, PUKHURIPAR, P.O. BHARALUWA TINALUI,
P.S. GAURISAGAR, DIST.- SIVASAGAR (ASSAM), PIN- 785664 AND
REPRESENTED BY ITS SECRETARY SHRI DILIP HAZARIKA

2: SHRI DILIP HAZARIKA
S/O- LATE JHURAM HAZARIKA
SECRETARY OF TRIMURTI ANUSUSHITA JATI SIKHITA NIBONUWA SELF
HELP GROUP
RESIDENT OF VILL- TELIADUNGA
PUKURIPAR
P.O. BHARLUA TINALI
P.S. GAURISAGAR
DIST.- SIVASAGAR (ASSAM)
PIN- 78566

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, FISHERY DEPARTMENT, HAVING ITS OFFICE
AT DISPUR, GUWAHATI- 781006, DISTRICT- KAMRUP (M), ASSAM

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
HAVING ITS OFFICE AT DISPUR
GUWAHATI- 781006
DISTRICT- KAMRUP (M)
ASSAM

3:THE ADDITIONAL SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT

HAVING ITS OFFICE AT DISPUR
GUWAHATI- 781006
DISTRICT- KAMRUP (M)
ASSAM

4:THE DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
HAVING ITS OFFICE AT DISPUR
GUWAHATI- 781006
DISTRICT- KAMRUP (M)
ASSAM

5:THE DISTRICT COMMISSIONER
SIVASAGR
HAVING ITS OFFICE AT SIVASAGAR TOWN
DISTRICT- SIVASAGAR
ASSAM

6:THE MISING AUTONOMOUS COUNCIL
REPRESENTED BY THE PRINCIPAL SECRETARY
HAVING ITS OFFICE AT GOGAMUKH
DHEMAJI
ASSAM

7:THE PRINCIPAL SECRETARY
MISSING AUTONOMOUS COUNCIL
GOGAMUKH
DHEMAJI
ASSAM

8:THE CHIEF EXECUTIVE OFFICER/MEMBER
MISSING AUTONOMOUS COUNCIL
GOGAMUKH
DHEMAJI
ASSAM

9:SRI BIKRAM SING MILI
SON OF JOGESH MILI
VILLAGE- JANA MIRI BORGAON
P.O. BHARALUA TINIALI
P.S. GAURISAGAR
DIST.- SIVASAGAR
PIN- 78566

Advocate for the Petitioner : MR. H BURAGOHAIN, MS. S NATH,MR. C AGARWAL

Advocate for the Respondent : GA, ASSAM, MR. B PEGU (r-9),MR R DHAR (r-9),SC, FISHERY

Linked Case : WP(C)/3731/2024

DIGHALIA SINGRAJAN MEEN SAMABAI SAMITY LIMITED AND ANR
REPRESENTED BY ITS SECRETARY SRI BEDAKANTA DAS
HAVING ITS REGD. OFFICE AT VILL.- JAIL GAON
P.S. DISANGMUKH
P.S. AND DIST. SIVASAGAR
ASSAM-785663.

2: BEDA KANTA DAS
SECRETARY DIGHALIA SINGRAJAN MEEN SAMABAI SAMITY LIMITED
S/O- LATE JUGIRUM DAS
R/O- VILL.- JAIL GAON
P.S. DISANGMUKH
P.S. AND DIST. SIVASAGAR
ASSAM-785663.
VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
HAVING ITS OFFICE AT DISPUR
GUWAHATI-781006
DIST. KAMRUP(M)
ASSAM

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
HAVING ITS OFFICE AT DISPUR
GUWAHATI-781006
DIST. KAMRUP(M)
ASSAM

3:THE DISTRICT COMMISSIONER
SIVASAGAR
HAVING ITS OFFICE AT SIVASAGAR TOWN
DIST. SIVASAGAR
ASSAM

4:THE ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
(A GOVT. OF ASSAM UNDERTAKING) REPRESENTED BY ITS MANAGING
DIRECTOR
HAVING ITS OFFICE AT CHACHAL

VIP ROAD
GHY-781036
KAMRUP(M)
ASSAM

5:THE MANAGING DIRECTOR

ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
(A GOVT. OF ASSAM UNDERTAKING) HAVING ITS OFFICE AT CHACHAL
VIP ROAD
GUWAHATI-781036
KAMRUP(M)
ASSAM

6:THE MISING AUTONOMOUS COUNCIL
REPRESENTED BY THE PRINCIPAL SECRETARY
HAVING ITS OFFICE AT GOGAMUKH
DHEMAJI
ASSAM

7:THE PRINCIPAL SECRETARY
MISING AUTONOMOUS COUNCIL
GOGAMUKH
DHEMAJI
ASSAM

8:THE CHIEF EXECUTIVE OFFICER/ MEMBER

MISING AUTONOMOUS COUNCIL
GOGAMUKH
DHEMAJI
ASSAM

9:MUHIRAM PANGING
S/O- DEUCHARAN PANGING
VILL.- LEPAI SUMONI
P.O. DISANGMUKH
P.S. AND DIST. SIVASAGAR
PIN- 785663.

Advocate for : MR. H. BURAGOHAIN
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 8 ORS

Linked Case : WP(C)/3558/2024

NATUN GOTONGA R H SELF HELP GROUP AND ANR
REPRESENTED BY ITS SECRETARY SRI SUREN DAS

HAVING ITS REGD. OFFICE AT VILL. NATUN GATANGA KOIBARTA GAON

P.O.- SANTIPUR
P.S.- SIVASAGAR

DIST.- SIVASAGAR
ASSAM- 785667.

2: SUREN DAS
SECRETARY NATUN GOTONGA RH SELF HELP GROUP

S/O- BULA DAS

R/O- VILL. NATUN GATANGA KOIBARTA GAON

P.O.- SANTIPUR
P.S.- SIVASAGAR

DIST.- SIVSAGAR
ASSAM- 785667.
VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM

FISHERY DEPARTMENT

HAVING ITS OFFICE AT DISPUR
GUWAHATI- 781006

DISTRICT- KAMRUP(M)
ASSAM.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
HAVING ITS OFFICE AT DISPUR

GUWAHATI- 781006
DISTRICT- KAMRUP(M)

ASSAM.

3:THE JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT

HAVING ITS OFFICE AT DISPUR

GUWAHATI- 781006
DISTRICT- KAMRUP(M)

ASSAM.

4:THE DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
HAVING ITS OFFICE AT DISPUR

GUWAHATI- 781006
DISTRICT- KAMRUP(M)

ASSAM.

5:THE DISTRICT COMMISSIONER
SIVSAGAR
HAVING ITS OFFICE AT SIVASAGAR TOWN

DISTRICT- SIVASAGAR
ASSAM.

6:THE MISING AUTONOMOUS COUNCIL
REPRESENTED BY THE PRINCIPAL SECRETARY

HAVING ITS OFFICE AT GOGAMUKH

DHEMAJI
ASSAM.

7:THE PRINCIPAL SECRETARY
MISSING AUTONOMOUS COUNCIL
GOGAMUKH
DHEMAJI
ASSAM.

8:THE CHIEF EXECUTIVE OFFICER/ MEMBER
MISSING AUTONOMOUS COUNCIL
GOGAMUKH
DHEMAJI
ASSAM.

9:BIREN SINGH MILI
SON OF LALIT MILI

VILLAGE- AFALA

P.O.- ALALA

P.S.- SIVASAGAR

DIST- SIVASAGAR

PIN- 785663.

Advocate for : MR. H. BURAGOHAIN

Advocate for : SC

FISHERY appearing for THE STATE OF ASSAM AND 8 ORS

Linked Case : WP(C)/3971/2024

DIPANKAR DAS AND 4 ORS.

S/O- SRI GOKUL DAS

R/O- VILL.- CHAKRADHARAGAON

P.O. BARUAGAON

P.S. GHILADHARI

DIST. GOLAGHAT

ASSAM

PIN- 785603.

2: JANARDAN DAS

S/O- SRI SIMANTA DAS

R/O- VILL.- AUANATI GAON

P.O.BORDOLONI

P.S. GOGAMUKH

DIST. DHEMAJI

ASSAM

PIN- 787026.

3: BIDYUT JYOTI DAS

S/O- LATE ADHAR DAS

R/O- VILL.-BOLIAGHAT PATHALIA

P.O. BOLIAGHAT

P.S. JOYSAGAR

DIST. SIVASAGAR

ASSAM

PIN- 785667.

4: NITYANANDA DAS

S/O- SHRI BHOLARAM DAS

R/O- VILL.- CHANGELIMARA

P.O. PANPUR

P.S. JAMUGURIHAT

DIST. SONITPUR
ASSAM
PIN- 784001.

5: RAJU DAS
S/O- SHRI NOREN DAS
R/O- VILL.- HAHCHARA
P.O. ANGERIKHOWA
P.S. PANIGAON
DIST. LAKHIMPUR
ASSAM
PIN- 787031.
VERSUS

THE STATE OF ASSAM AND 13 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI-781006
ASSAM

2:THE COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI-781006
ASSAM

3:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
FISHERY DEPARTMENT
DISPUR
GHY-781006
ASSAM

4:THE MISING AUTONOMOUS COUNCIL
REPRESENTED BY THE PRINCIPAL SECRETARY
MISING AUTONOMOUS COUNCIL
GOGAMUKH
DHEMAJI
ASSAM

5:THE PRINCIPAL SECRETARY
MISING AUTONOMOUS COUNCIL
GOGAMUKH
DHEMAJI
ASSAM

6:THE DISTRICT COMMISSIONER
DHEMAJI
ASSAM

7:THE DISTRICT COMMISSIONER
LAKHIMPUR
ASSAM

8:THE DISTRICT COMMISSIONER
SONITPUR
ASSAM

9:THE DISTRICT COMMISSIONER
MAJULI
ASSAM

10:THE DISTRICT COMMISSIONER
GOLAGHAT
ASSAM

11:THE DISTRICT COMMISSIONER
JORHAT
ASSAM

12:THE DISTRICT COMMISSIONER
SIVASAGAR
ASSAM

13:THE ASSAM FISHERIES DEVELOPMENT CORPORATION
REP. BY ITS MANAGING DIRECTOR
BIMALA PRASAD CHALIHA ROAD
CHACHAL
VIP ROAD
GHY-781036
ASSAM

14:THE MANAGING DIRECTOR
ASSAM FISHERIES DEVELOPMENT CORPORATION
BIMALA PRASAD CHALIHA ROAD
CHACHAL
VIP ROAD
GHY-781036
ASSAM

Advocate for : R M BAROOAH
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 13 ORS

Linked Case : WP(C)/3561/2024

M/S BRAHMAPUTRA PART-I MEEN SAMABAI SAMITY LIMITED AND ANR
REP.BY ITS PRESIDENT SAHADEV DAS
HAVING ITS REGD
OFFICE AT VILLAGE DISANG MUKH ALISIGA
SIVASAGAR
DIST- SIVSAGAR
ASSAM
PIN-785663

2: SAHADEV DAS
PRESIDENT

M/S BRAHMAPUTRA PART I MEEN SAMABAI SAMITY LIMITED

S/O- NIBARAN DAS

R/O- VILLAGE ALICHINGA
LIGRI BARI
SIVASAGAR
ASSAM
PIN-785663
VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
FISHERY DEPARTMENT

DISPUR
GUWAHATI-06
DIST- KAMRUP (M)

2:THE SECRETARY
TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI-06
KAMRUP (M)
ASSAM

3:THE JOINT SECRETARY
TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR

GUWAHATI-06
KAMRUP (M)
ASSAM

4:THE DEPUTY SECRETARY
TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI-06
KAMRUP (M)
ASSAM

5:THE DISTRICT COMMISSIONER
SIVSAGAR
ASSAM

6:THE MISING AUTONOMOUS COUNCIL
REP. BY THE PRINCIPAL SECRETARY
HAVING ITS OFFICE AT GOGAMUKH
DHEMAJI
ASSAM

7:THE PRINCIPAL SECRETARY
THE MISING AUTONOMOUS COUNCIL

GOGAMUKH
DHEMAJI
ASSAM

8:THE CHIEF EXECUTIVE OFFICER /MEMBER
THE MISING AUTONOMOUS COUNCIL

GOGAMUKH
DHEMAJI
ASSAM

9:POHARAM PANGING
S/O- DEBESWAR PANGING

VILLAGE- MAJARBARI

P.O- DESANGMUKH

P.S- SIVASAGAR

DIST- SIVASAGAR
PIN-785663

Advocate for : MR. H BURAGOHAIN
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 8 ORS

Linked Case : WP(C)/3560/2024

DILIP HAZARIKA
S/O- LATE JHURAM HAZARIKA
SECRETARY OF TRIMURTI ANUSUSHITA JATI SIKHITA NIBONUWA SELF
HELP GROUP
R/O- VILL.- TELIADUNGA PUKURIPAR
P.O. BHARLUA TINALI
P.S. GAURISAGAR
DIST. SIVASAGAR
ASSAM
PIN- 785664.

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
HAVING ITS OFFICE AT DISPUR
GHY-781006
DIST. KAMRUP(M)
ASSAM

2:THE SECRETARY TO THE GOVT. OF ASSAM
FISHERY DEPARTMENT
HAVING ITS OFFICE AT DISPUR
GHY-781006
DIST. KAMRUP(M)
ASSAM

3:THE DISTRICT COMMISSIONER
SIVSAGAR
HAVING ITS OFFICE AT SIVASAGAR TOWN
DIST. SIVASAGAR
ASSAM

4:THE ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.

(A GOVT. OF ASSAM UNDERTAKING) REPRESENTED BY ITS MANAGING
DIRECTOR

HAVING ITS OFFICE AT CHACHAL
VIP ROAD
GHY-781036
KAMRUP(M)
ASSAM

5:THE MANAGING DIRECTOR

ASSAM FISHERIES DEVELOPMENT CORPORATION LTD. (A GOVT. OF
ASSAM UNDERTAKING) HAVING ITS OFFICE AT CHACHAL
VIP ROAD
GHY-781036
KAMRUP(M)
ASSAM

6:THE MISING AUTONOMOUS COUNCIL
REPRESENTED BY THE PRINCIPAL SECRETARY
HAVING ITS OFFICE AT GOGAMUKH
DHEMAJI
ASSAM

7:THE PRINCIPAL SECRETARY
MISING AUTONOMOUS COUNCIL
GOGAMUKH
DHEMAJI
ASSAM

8:THE CHIEF EXECUTIVE OFFICER/MEMBER

MISING AUTONOMOUS COUNCIL
GOGAMUKH
DHEMAJI
ASSAM

9:NAYAN MILI
S/O- LATE BHUGESWAR MILI
R/O- VILL.- THEKERATAL
P.O. BHARALUA TINIALI
P.S. GAURISAGAR
DIST. SIVASAGAR
ASSAM
PIN- 785664.

Advocate for : MR. H. BURAGOHAIN
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 8 ORS

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

29.08.2024

1. Heard Mr. H. Buragohain, learned counsel for the petitioners in WP(C) 3559/2024, WP(C) 3558/2024, WP(C) 3560/2024, WP(C) 3561/2024 and WP(C) 3731/2024. Also heard Mr. T.J. Mahanta, learned Senior Counsel assisted by Ms. R.M. Barooah, learned counsel for the petitioners in WP(C) 3731/2024. Mr. P. Sharma, learned counsel appears for the Fishery Department and Assam Fishery Development Corporation (for short, 'the AFDC'). Mr. D. Gogoi, learned counsel appears for the Mising Autonomous Council (for short, referred to as 'MAC'). Mr. R. Dhar, learned counsel appears for the private respondent in WP(C) 3559/2024, WP(C) 3558/2024, WP(C) 3560/2024 and WP(C) 3561/2024. Ms. U. Das, learned counsel appears for the District Commissioners of the various concerned Districts.

2. The issues raised in these writ petitions is with regard to whether the MAC has the authority to settle any Fishery or natural water bodies within the area of the MAC. As such, the connected issue that is to be decided, is as to whether the MAC could have issued any Notice Inviting Tender (NIT for short) for settlement of any Fishery or natural water bodies within the area of the MAC.

3. In WP(C) 3559/2024, the petitioners are aggrieved with the settlement order of a fishery made by the MAC in favour of the private respondent, without issuance of an NIT. In WP(C) 3558/2024, WP(C) 3560/2024, WP(C) 3561/2024 and WP(C) 3731/2024, the petitioners are aggrieved with the settlement of the

Fishery by the MAC with the private respondents, without issuing an NIT, even though the petitioners are the existing lessee of the said Fishery, on the basis of settlement orders issued by the Fishery Department, Government of Assam or the Assam Fishery Development Corporation (AFDC). In WP(C) 3971/2024, the petitioners are aggrieved with the issuance of the NIT dated 05.06.2024 by the MAC, for settlement of fisheries located within the MAC area.

4. The counsels for the petitioners submit that the said issues have already been decided by a Coordinate Bench of this Court in a batch of writ petitions, the lead case being WP(C) 3065/2024. They accordingly submit that the present writ petitions can be disposed of in line with the judgment and order dated 20.08.2024 passed in WP(C) 3065/2024.

5. The counsels for the respondents also submit that the present batch of cases are covered cases in terms of the judgment and order dated 20.08.2024 passed in WP(C) 3065/2024.

6. I have heard the learned counsels for the parties.

7. A perusal of the judgment and order dated 20.08.2024 passed by a Coordinate Bench of this Court in WP(C) 3065/2024 shows that the present batch of writ petitions is covered by the above judgment.

8. On perusal of the judgment and order dated 20.08.2024 passed in WP(C) 3065/2024, I do not find any grounds to disagree with the decision taken by the Coordinate Bench of this Court, wherein it has been held that neither the

General Council or the Village Council of the MAC has the authority to settle any Fishery or even natural water bodies, as notified in the Notification dated 07.03.2017, issued in the name of the Governor by the Principal Secretary to the Government of Assam, Fishery Department.

9. Paragraph 39, 40, 44, 45, 47, 48, 50 & 51 of the judgment and order dated 20.08.2024 passed in WP(C) 3065/2024 are reproduced hereinbelow, as follows :

“39. In the backdrop of the above, this Court further finds it relevant to take note of the order dated 7th of March 2017 issued in the name of the Governor by the Principal Secretary to the Government of Assam, Fishery Department. The contents of the said order is reproduced herein below:-

“ORDER

Dated the 7th March, 2017

No. FISH. 224/2014.-*In exercise of power conferred by Section 155 and 156 of Assam Land & Revenue Regulation, 1886 (Regulation 1 of 1886) read with Section 6 of Indian Fisheries Act, 1897 (Act No. 4 of 1897) the Governor of Assam is pleased to vest the administrative control of all natural water bodies viz. beels, ox-bow lakes, low laying areas, swamps, derelict water bodies, dead river courses, river tributaries and reservoirs with the Fishery Department henceforth which are presently being settled by Revenue & Disaster Management Department and are administered by concerned Deputy Commissioner/SDO of a district/civil sub-division for proper scientific method of conservation and management and for sustainable development of such rich natural resources in a productive manner or overall economic development of people living in the vicinity of such natural water bodies.*

Accordingly, the Revenue & Disaster Management Department shall hand over possession of such natural water bodies under the Department through concerned DC/SDO to Fishery Department represented by DFDO of the concerned district. Consequently upon above, the land record of concerned

Revenue Circle & Sadar records shall be modified to reflect the administrative control of such natural water bodies by the Fishery Department.

It is further ordered that, in case of any such natural water body already leased out by concerned DC/SDO; the right of fishing over such natural water bodies by the lessee shall not in any way get affected till expiry of the lease period subject to the condition that such lessee shall not obstruct in any way the steps taken by the Fishery Department for development of such natural water bodies in the intervening period till completion of lease."

40. *A perusal of the said order would show that the administrative control over all natural water bodies upon which the Revenue Department was exercising the administrative control was transferred to the Fishery Department of the Government of Assam. A conjoint reading of Section 16 of the Regulation with the order dated 07.03.2017 would show that while Section 16 of the Regulation referred to collection of water, running or still which could be declared as a fishery, the order dated 07.03.2017 provide with details what would be construed to be a natural water body. However, there appears to be a fundamental difference in as much as in Section 16 of the Regulation, any collection of water, running or still, could be declared to be a fishery as per the manner prescribed and in such declared fishery, the rights to the fishery shall be subject to the Rules to be framed in terms with Section 155 (f) of the regulation whereas vide the order dated 07.03.2017, all the administrative control of the natural water body was transferred from the Revenue Department to the Fishery Department whether there is a proclamation declared or not. This aspect of the matter is a clear pointer to the fact, that the State Government would only have executive powers over any collection of water, running or still including all natural water bodies in the State of Assam. Be that as it may, for the sake of clarity, it observed that the said observation would not be applicable in so far as the 6th Schedule Area of the State of Assam provided the Governor exercises the powers mentioned in Paragraph No.6(2) of the 6th Schedule to the Constitution.*

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44. *Section 23 of the Act of 1995 stipulates that the General Council may subject to the Act of 1995 or the Rules which have been framed and further subject to the approval of the Government make byelaws to be applicable within the Council Area with respect to all or any of the matters enumerated in Sections 18, 19, 43 & 44 of the Act of 1995 for the Regulation, Control and Administration thereof, and such byelaws shall have effect upon publication in the Official Gazette. Taking into account the mandate of Section 23 of the Act of 1995, which requires the byelaws to have the approval of the State Government, it is clear that for the purpose of Regulation, Control and Administration of the matters enumerated in Section 18 of the Act of 1995 including fisheries, the General Council of the MAC cannot exercise any powers of Regulation, Control and Administration of the fisheries without the byelaws being made with the due approval of the State Government. This aspect is important in as much as admittedly there are no byelaws made under Section 23 of the Act of 1995 in so far as fisheries are concerned.*

45. *At this stage, this Court finds it relevant to take note of Section 79 of the Act of 1995 which only empowers only the State Government to make Rules. Admittedly, neither the Rules have been made in terms with Section 79 by the State Government, nor any byelaws have been made in terms with Section 23 of the Act of 1995 in so far as fisheries are concerned.*

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.....

47. *A perusal of the said provision stipulates that the provisions of the Act of 1995 shall not affect the application of any laws, whether made before or after the Act of 1995 has come into force to the Council Area, unless such law specifically provides for exclusion of the Council Area of such application. The Explanation also is equally important in as much as the term "law" has been stipulated to include any enactment, ordinance, regulation, order, byelaw, rules, schemes, notification or other instrument having the force of law. In view of the Explanation, the order dated 07.03.2017, would be a law within the meaning of Section 81 of the Act of*

1995. Therefore, by virtue of section 81 of the Act of 1995, Section 16 of the Regulation, Rules of 1953 as well as the notification dated 07.03.2017 would apply to the Council Area of the MAC taking into account that the said provisions as well as the order dated 07.03.2017 do not exclude the Council Area from its application. A priori ergo is that any collection of water, still or running including all natural water bodies as exemplified and explained in the notification dated 07.03.2017 would administratively vest upon the Fishery Department of the Government of Assam.

48. The question therefore arises as to whether in such a situation where the declared fishery as well as all natural water bodies are outside the administrative control of the MAC can the General Council of the MAC settle any fishery. The answer to the same has to be in the negative taking into account that the Rules of 1953 as well as the notification dated 07.03.2017 would have an overriding effect in view of Section 81 of the Act of 1995 and consequently, if the MAC does not have the administrative control over the natural water bodies, whether a declared fishery or not, it would have no right to grant settlement or for that matter initiate any process for settlement.

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50. Another aspect of the matter, which is the supplementary point for determination is as to whether in absence of the prescription which is required to be made by the Government of Assam by framing Rules under Section 79 of the Act of 1995 and further without there being any Byelaws made which are required to be made in terms with Section 23 of the Act of 1995, whether the General Council can exercise the executive powers in respect to fisheries. The answer has to be in the negative in as much as Section 23 of the Act of 1995 categorically states that the Regulation, Control and Administration of the subjects mentioned in Section 18 of 1995 has to be prescribed by the Byelaws. As there are no Byelaws for regulation, administration and control of fisheries, the MAC cannot exercise its executive powers over the fisheries.

51. In that view of the matter, this Court is of the opinion that neither

the General Council or the Village Council of the MAC has the authority to settle any fishery or even natural water bodies as exemplified in the notification dated 07.03.2017 and consequently they cannot also initiate process for settlement.”

10. As this Court does not find any ground to come to a different finding with respect to the issues raised in the present batch of writ petitions, vis-a-vis the judgment passed by a Coordinate Bench of this Court in WP(C) 3065/2024, this Court also holds that the General Council or the Village Council of the MAC does not have the authority to settle any Fishery or natural water bodies with any person or society, as per the Notification dated 07.03.2017. Accordingly, the issuance of an NIT, for settlement of the said Fisheries lying within the area of the MAC is also beyond the competence of the MAC. The settlement of the Fisheries made in favour of the private respondents in WP(C) 3559/2024, WP(C) 3558/2024, WP(C) 3560/2024, WP(C) 3561/2024 and WP(C) 3731/2024 are hereby set aside. Further, the issuance of the NIT dated 05.06.2024 in WP(C) 3971/2024 for settlement of the Fishery within the MAC area by the MAC is also set aside.

11. The writ petitions are accordingly allowed.

JUDGE

Comparing Assistant