

GAHC010163492024



2024:GAU-AS:9638

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

Case No. : WP(C)/4108/2024

SELF DEPENDENT MOTOR DRIVER UNION AND 12 ORS
ONGC, ASSAM ASSET, NAZIRA, SIVASAGAR, A UNION, REGISTERED
UNDER THE PROVISION OF TRADE UNIONS ACT, 1926 HAVING ITS HEAD
OFFICE AT AMULAPATTI, NAZIRA, SIVASAGAR, ASSAM, REPRESENTED
BY ITS PRESIDENT SRI TARUN BORGOHAIN, S/O- LATE PARESH
BORGOHAIN, R/O- VILL.- MOTHACHIGA GOHAIN GAON, P.O. RAJMOW,
DIST. SIVASAGAR, ASSAM, PIN- 785685.

2: NABAJIT BORPATRA GOHAIN
SELF DEPENDENT MOTOR DRIVER UNION
ONGC
ASSAM ASSET
NAZIRA
SIVASAGAR
S/O- SRI BADAN BORPATRA GOHAIN
R/O- VILL.- BETBARI BORPATRA GAON
P.O. MITHAPUKHURI
DIST. SIVASAGAR
ASSAM
PIN- 785697.

3: ASSAN HUSSAIN
JOINT SECRETARY
SELF DEPENDENT MOTOR DRIVER UNION
ONGC
ASSAM ASSET
NAZIRA
SIVASAGAR
S/O- ARMAN HUSSAIN
R/O- NAZIRA AMULAPATTY
WARD NO. 6
P.O. NAZIRA
DIST. SIVASAGAR
ASSAM

PIN- 785685.

4: AJOY BORGOHAIN
S/O- LATE CHANDRA NATH BORGOHAIN
R/O- KONWARPUR
DIST. SIVASAGAR
ASSAM
PIN- 785667.

5: ABHIJIT GOGOI
S/O- MUNINDRA NATH GOGOI
R/O- BORKOLA MANIPURI GAON
P.O. SIMALUGURI
DIST. SIVASAGAR
ASSAM
PIN- 785686.

6: BABU ALI
C/O- ABDUL MAZID
R/O- DUI ALI MAZ
JENGONI KOTIA
P.O.
P.S. AND DIST. SIVASAGAR.

7: TRILUCHAN DUTTA
S/O- BANI DUTTA
R/O- BILUDAS ROAD NEAR MADHABDEV NAMGHAR
PHUKAN NAGAR
P.O.
P.S. AND DIST. SIVASAGAR
ASSAM
PIN- 785640.

8: RATAN GOGOI
C/O- THANESWAR GOGOI
R/O- HATIMURIA GAON
P.O. AND P.S. CHEREKAPER
DIST. SIVASAGAR
ASSAM
PIN- 785701.

9: HEMANTA PHUKAN
C/O- MON PHUKAN
R/O- HAHCHARA LABANG GAON
SIVASAGAR
P.O. HAHCHARA
P.S. CHEREKAPER
DIST. SIVASAGAR

ASSAM
PIN- 785701.

10: AJIJ KHAN
C/O- MOJID KHAN
R/O- TAXI ALI BYE LANE-1
JENGONIKOTIA
P.O.
P.S. AND DIST. SIVASAGAR
ASSAM
PIN- 785640.

11: BHUPEN BURAGOHAIN
S/O- PUNA BURAGOHAIN
R/O- STATION ROAD
SIMALUGURI
SIMOLU GURI TOWN
SIVASAGAR
SIVASAGAR
P.O. AND P.S. SIMALUGURI
DIST. SIVASAGAR
ASSAM
PIN- 785686.

12: NIRAN TAMULI
S/O- DURGESWAR TAMULI
R/O- 1 NO. CHOULKARA GAON
CHAUL KORA NO. 1
P.O. CHOULKARA
DIST. SIVASAGAR
ASSAM
PIN- 785667.

13: ROYAL SAIKIA
S/O- PUTUKON SAIKIA
R/O- VILL.- MOTHIASIGA GOHAIN GAON
P.O. RAJMOW
DIST. SIVASAGAR
ASSAM
PIN- 785685

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF PETROLEUM AND NATURAL GAS, NEW DELHI.

2:THE OIL AND NATURAL GAS CORPORATION LTD.

EASTERN REGION
REPRESENTED BY THE EXECUTIVE DIRECTOR (E.D.)
ASSET MANAGER
P.O. NAZIRA
DIST. SIVASAGAR
ASSAM

3:THE CHIEF GENERAL MANAGER
HEAD MM
ASSAM ASSET
ONGC (L)
NAZIRA ROB-II
ASSAM

4:THE HEAD MM

MATERIAL MANAGEMENT DEPARTMENT
CONTRACT CELL
ASSAM ASSET
EASTERN REGION
ROB-II
FIRST FLOOR
NAZIRA
ASSAM
PIN- 785685.

5:THE DEPUTY COMMISSIONER
SIVASAGAR
DIST. SIVASAGAR
ASSA

Advocate for the Petitioner : MR. P J SAIKIA, MR. L N DIHINGIA,MR. A K SAHU

Advocate for the Respondent : DY.S.G.I., MR. M K DAS (3,4,5),FOR CAVEATOR,MR. M K DAS,GA, ASSAM

Date : 25.09.2024

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT & ORDER (ORAL)

1. Heard Mr. K.N Choudhury, learned senior counsel assisted by

Mr. L N Dihingia, learned counsel for the petitioner. Also heard Mr. I Chowdhury, learned senior counsel assisted by Mr. MK Das learned counsel for the respondent, ONGC.

2. The petitioners are members of a registered Trade Union by name and style of "Self Dependent Motor Driver Union", at ONGCL, Assam Asset, Nazira, Sivasagar and have challenged an NIT being Tender No.R16DC24005 issued for hiring of services of 372 numbers of light vehicles (Taxi) for Assam Asset of ONGCL. for a period of 4 years on one bidder one vehicle through Draw of Lots.
3. It is the case of the petitioners that while hiring of light vehicle, a clause should be inserted in the NIT giving priority to the license holder of driving license cum owner of the vehicle. Accordingly a representation was also filed on 02.08.2022 before the Executive Director, ONGCL, Assam Asset and a verbal assurance was also given to them that a special clause shall be inserted giving weightage to a license and experience.
4. Mr. KN Choudhury, learned senior counsel assailing the impugned NIT argues that the tender process is hit by vices of unfair, unreasonable and arbitrary tender conditions, more particularly, prescribing award of contract of hiring vehicle based on the Draw of Lot inasmuch Draw of Lot for award of a contract cannot be treated to be as fair action on the part of the respondent authorities. It is his contention that a Draw of Lot cannot be permitted in a bidding process inasmuch as, in

the case of Draw of Lot, there is always an element of arbitrariness, and discretion and there is no equality. According to him, draw of lot is mere luck and chance and therefore, such a course of action is not permissible when it involves state largesse.

5. According to Mr. Choudhury, when it is a tender process carried out by an instrumentality of the state and when it involves state largesse, certain pre conditions or qualifications for tenders have to be laid down to ensure that the bidders have the capacity and resources to successfully execute the work. Unfortunately, the respondent authorities, who claim to be one of the "Navaratna Company", have not prescribed any pre conditions or qualifications for the tenderers, resulting in the tendering process an arbitrary exercise of power. That being the position, even if there is a policy decision to adopt the procedure of Draw of Lots, this court can interfere with such an arbitrary process being violative of Article 14 of the Constitution of India in the exercise of its power of judicial review. In support of such contention, Mr. Choudhury relies on the decision of the Hon'ble Apex Court in the case of ***Michignan Rubber India Limited Vs. State of Karnataka & Ors*** reported in ***(2012) 8 SCC 216***.

6. Mr. K.N. Choudhury, learned Senior Counsel also refers to the definition of lottery under section 2(b) of the Lotteries (Regulation) Act, 1998 and contends that such process is a

game of luck and that instrumentalities of the state are prohibited from conducting lottery under section 4 of the Act, 1998. Therefore, the method prescribed in the NIT for the use of Draw of Lots, in fact is prohibited by the Act 1998. Learned Senior Counsel for the petitioner further contends that even though it is assumed that it can be done through Draw of Lots, there is no declaration/clarification in the NIT as regards the detailed process how such Draw of Lots would be conducted, leaving rooms for arbitrary exercise of power.

7. Assailing the tender condition of prescription of the age of the bidder to be a maximum 55 years and qualification of prescription of registration in Employment Exchange, the learned Senior Counsel argues that the Tender for the hiring process cannot be treated as an employment process. Therefore, such conditions of registration in Employment Exchange and prescription of maximum age for the purpose of carrying out business is not only in violation of Article 14 of the Constitution of India but also violative of the petitioners' right under Article 19(1)(g) and Article 21 of the Constitution of India inasmuch as, such restriction cannot be treated as a reasonable restriction rather it is an absolute bar for those who are not unemployed and above the age of 55 years to carry out the business in question.
8. Mr. I Chowdhury, learned senior counsel representing the ONGCL has raised certain preliminary objections, such as the

non-maintainability of the writ petition, as a determination had already been made by a coordinate bench negating a challenge to the policy based on which the impugned NIT was issued, for that there is serious suppression of material facts such as the approval of the policy by the highest authorities, the earlier determination made etc. At the same time, Mr. I Chowdhury, learned senior counsel has also extensively argued on the merit of the writ petition, which also includes some of the aforementioned points. Therefore, for brevity, instead of dealing separately with the argument of maintainability and arguments on merit, this court shall deal with the arguments advanced on the merit of the case only.

9. Mr. I Chowdhury, learned senior counsel for ONGCL contends that pursuant to a tri-partite meeting between the officials of ONGCL, various stakeholders and the District Administration of Sivasagar district held on 08.08.2023, it was decided that one bidder per vehicle would be accepted and that such process of hiring of vehicles would be through Draw of Lots to have a fair, transparent and non discriminatory method of selection and one of the objects is to deal with unemployment amongst youths.
10. According to Mr. Chowdhury, this is not a work contract which requires specialised knowledge or expertise and the purpose of the tender is only for hiring of vehicles and the only consideration of the ONGCL is a new vehicle BS VI norms with

a person who is licensed to drive. Therefore, Draw of Lots, in a work of such a nature, cannot be said to be arbitrary, more particularly, when the specifications as regards standard of vehicle, qualification of driver are already mentioned in the tender process. It is the further contention of Mr. Chowdhury that while taking such a policy decision, the authorities had considered that such vehicle shall be supplied by unemployed youths of the region and therefore, they have prescribed for registration in the Employment Exchange as well as have prescribed for minimum age 18 and maximum age 55. The object of inserting maximum age of 55 years, is in conformity with the terms of the hiring period, which is 4 years from 1st of January '2025 and the person having maximum age of 55 years on the last date of submission of the bid shall reach the age of 60 after four years i.e., the age prescribed for retirement.

11. Mr. Chowdhury, learned senior counsel contends that such policy of the ONGCL was put to challenge in WP(C) 6208/2023 by some of the aggrieved persons, however, this court under its judgment dated 18.06.2024 has already negated such challenge on the ground that there is nothing to show that the change in policy is unreasonable or that it violates Article 14 of the Constitution of India. Therefore, as the issues had already been settled, this court may not like to revisit the same issue in the present writ petition.

12. As regards the contention of Draw of Lots, while referring to different situation/provisions, where such method of Draw of Lots are being used such as allotment of affordable housing units, allotment of petrol pumps by IOC and BPCL etc., and the Draw of Lots in terms of section 102 of the Representation of Peoples Act, 1951 and under the Right of Children to Free and Compulsory Education Rule, Mr. Chowdhury contends that Draw of Lot cannot be equalised with lottery, where the price is involved in as much as, Draw of Lots is permissible in tender amongst equals. Accordingly Mr. Chowdhury contends that the writ petition is liable to be dismissed.
13. This court has given anxious considerations to the arguments advanced by the learned senior counsel for the parties and perused the materials available on record.
14. It is on record that there was an agitation by some local organisations against the earlier tender issued by ONGCL for hiring of Light Motor Vehicles. It is seen that the Deputy Commissioner of Sivasagar district mediated such a dispute between the different intending tenderers/organizations and the representatives of ONGCL, Assam Asset and accordingly, it was decided that tender for single vehicle will be accepted for single individuals through lottery, and equal weightage will be given to all the qualified tenderers. It is also on record that the meeting could not decide on the demand of the agitators' for a condition in the tender of having commercial vehicle not

more than 5 years old. Accordingly, the Deputy Commissioner requested the ONGCL to review the matter at their level and come out with a rational solution so that the genuine demand for unemployment may be addressed. What is discernible from the meeting that one of the objects of having one vehicle one person and the Draw of Lots is to address unemployment.

15. Be that as it may, on the basis of such resolution, a policy decision was taken, amongst others, to invite bid for hiring vehicles on "One Applicant One Vehicle Basis" and to hold Draw of Lots amongst all the applicants, in presence of the applicants/parties and the member of the Intending Department, Finance Department and MM Department. It was further decided that a few applicants are to be kept in a waiting list with a validity period of one year from the date of Draw of Lots for any future requirement. It was further provided in the policy that the Assam Asset is required to frame the detail tender process in consultation with Oil India Limited and same was to be approved by L1 executive.
16. Thus it is seen that policy was approved at the highest level and it was delegated to the competent authority at Assam Asset to frame the detail tenders on the basis of such policy. In the additional affidavit, the petitioners have brought on record an NIT dated 18.05.2024, issued by Oil India Limited for hiring of vehicle in support of their argument that the tender Condition framed by the Assam Asset, ONGCL is not in

conformity with the process of tender of Oil India Limited which was suggested by the higher authorities of ONGCL to the authorities at Assam Asset. However, on perusal of the said tender, it is clear that the tender condition incorporated by the OIL also prescribes Draw of Lot and one applicant/bidder per vehicle basis. Therefore, the contention of Mr. K.N. Choudhury that the policy was not yet framed and that the NIT is not in conformity with the tenders issued by Oil India Ltd cannot be accepted.

17. Now coming to the argument of Mr. I. Chowdhury, as regards negation of the challenge made to the policy by the coordinate bench, after perusal of the said judgment, this court is of the opinion that the coordinate bench only dealt with the policy of one person one vehicle and had not dealt with the policy of Draw by Lot, and the other contentions raised by the petitioners in the present writ petition. Therefore, this court can very well examine the challenge made in the present writ petition except the challenge to the principle of one person one vehicle in absence of any successful challenge by the petitioner to such determination.
18. Law is by now well settled that court will generally not interfere with policy decisions made by the state or its instrumentalities unless they are arbitrary, irrational or violative of fundamental rights. The court's role in this regard is to ensure that policy is constitutionally valid and

implemented fairly and not to decide what the policy should be. If such policy violates the equality under Article 14, freedom of trade and commerce under Article 19(1)(g) and/or the right to life under Article 21, a Writ Court shall not be powerless to exercise its power of judicial review by interfering with such policies.

19. Now coming to the case in hand, as recorded hereinabove, the tender/bid in question relates to the hiring of vehicles, more particularly, Light Motor Vehicle for use in Assam Asset of ONGCL. The tender condition prescribes a qualification as regards makes and model of the vehicle, inasmuch as, the new vehicle with BS VI Emission norms is required to be put into service. Thus there is a prescription of standard of the vehicle. The tender condition also mandates three years experience of a driver. Against the requirement of 372 vehicles, the tender condition also prescribes that total 500 bidder will be selected by Draw of Lots and the rest 373 to 500 sequentially ranked, shall be placed as the waitlisted category. As per the condition of the tender, the applicant will have to have an employment exchange registration number and the bidder should be aged between 18-55 years on the closing date of submission of bid. A procedure for award of contract is also prescribed. Therefore, it is clear from the aforesaid that by the policy, the hiring is confined to a class of people, who are registered in the Employment Exchange i.e, the hiring process is confined amongst the unemployed youths aged between 18-55 years.

20. In the considered opinion of this court, the hiring of vehicle amongst unemployed youth registered in the Employment Exchange cannot be said to be an arbitrary or unreasonable action inasmuch as, the unemployed youth is a homogenous group and therefore, it cannot be said that there is violation of Article 14 of the Constitution of India by deprivation of another class of people or that there is no reasonable nexus between the object sought to be achieved and in the bidding process, more particularly, when it is clear that one of the object of adopting the impugned procedure is to address the unemployment issue.
21. Now, coming to the prescription of Draw of Lot, this court cannot be oblivious to the fact that our country is having a burning unemployment problem, more particularly in this region. The receipt of 28000 bids received by the ONGCL, pursuant to the impugned NIT, itself fortifies such a situation. In the aforesaid backdrop, when the District Administration and the authorities decide to complete the bid through Draw of Lot in an open manner in presence of the bidders, more particularly, when the bidding process is confined amongst unemployed youths, such Draw of Lots cannot be equated with the lottery as defined under the Act, 1998, inasmuch the other standards prescribed are same for all the bidders. The ONGCL has categorically stated in their affidavit as regards such object of addressing the issue of unemployment through such hiring process. Therefore, such policy cannot be said to be arbitrary

in nature.

22. The contention of the OIL as regards prescription of age is that the period of contract is likely to commence from 01.01.2025 and total period of the contract is four years. Therefore, the prescription of maximum age of 55 years on the last date of submission of the bid shall also be in conformity with the age of 60 years i.e., the employable age/retirement age, cannot also be held to be arbitrary or unreasonable in the given facts of the present case.
23. It is correct, as argued by Mr. K.N Choudhury that certain pre-conditions or qualifications for tenderers have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work, at the same time, in the considered opinion of this court, in the case in hand such conditions are already prescribed. The pre-condition, qualification and capacity is measured, under the tender in question, by imposing the pre conditions of having a new vehicle with BS IV standard and the drivers having a valid license and experience. If the employer is satisfied with these two conditions to assure that the bidder is having the capacity and resources to successfully supply the vehicles, this court in exercise of its power of judicial review can neither find fault with such decision nor this court can held such qualification to be arbitrary, in exercise of its power of judicial review. On this count also, this court do not find any infirmity either in the

tender conditions or in the policy.

24. That being the position, in the considered opinion of this court, the writ petition is devoid of any merit and accordingly, same stands dismissed. The ONGCL shall be at liberty to proceed with the tender process initiated vide impugned tender notice dated 31.07.2024.

JUDGE

Comparing Assistant