

GAHC010217682024



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

**Case No. : WA/365/2024**

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 ASSAM

**Advocate for the Petitioner** : MR. P J SAIKIA, MR. S SAHU,MD S HOQUE,MR. L N DIHINGIA  
**Advocate for the Respondent** : DY.S.G.I., GA, ASSAM,MR. M K DAS ,FOR CAVEATOR

**BEFORE**  
**HONOURABLE THE CHIEF JUSTICE**  
**HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

**Date of hearing : 28.10.2024**  
**Date of Judgment & Order : 08.11.2024**

**JUDGMENT & ORDER (CAV)**  
***(N. Unni Krishnan Nair, J.)***

Heard Mr. K. N. Choudhury, learned senior counsel, assisted by Mr. L. N. Dihingia, learned counsel, appearing on behalf of the appellants. Also heard Mr. P. S. Bhattacharyya, learned CGC, appearing on behalf of respondent No. 1; Mr. Indraneel Chowdhury, learned senior counsel, assisted by Mr. M. K. Das, learned counsel; appearing on behalf of respondents No. 2 to 4; and Mr. N. Das, learned Government Advocate, Assam, appearing on behalf of respondent No. 5.

**2.** The present intra-Court appeal is directed against the judgment & order, dated 25.09.2024, passed by the learned Single Judge in WP(c)4108/2024.

**3.** The brief facts requisite for the purpose of adjudication of the issues arising in the present proceeding, is noticed as under.

**3.1.** In pursuance of the demands raised from various organizations as well as the unemployed youths of Sivasagar District; a tripartite meeting between the District Administration, representatives of the Oil and Natural Gas Corporation Ltd.(ONGCL) and various organizations of Sivasagar District, was held on 08.08.2023, with regard to the issue of hiring of vehicles by the Oil and Natural Gas Corporation Ltd.(ONGCL). In terms of the deliberations held in the said meeting; a decision was arrived at to the effect that the Oil and Natural Gas Corporation Ltd. (ONGCL) would issue tenders for hiring of passenger vehicles by adopting the principle of 'one applicant, one vehicle' and by resorting to the process of selection for award of contracts by way of draw of lots. It was also decided that experience certificate for the driver issued by the owner of the commercial vehicle would be accepted by the Oil and Natural Gas Corporation Ltd. (ONGCL) authorities and equal weightage would be given to all qualified bidders.

**3.2.** The aforesaid meeting also requested the Oil and Natural Gas Corporation Ltd.(ONGCL) authorities to review the matter at their level and come up with a rationale solution so as to address the genuine demands of the unemployed youth in the area. In pursuance of the said decision as arrived at the meeting held on 08.08.2023; the Oil and Natural Gas Corporation Ltd.(ONGCL) authorities, vide communication, dated 19.09.2023, reviewed the process of evaluation of tenders for "hiring of light vehicle in the Assam Asset" and decided for hiring of light passenger vehicles on one applicant, one vehicle basis, at the rate to be fixed by the Oil and Natural Gas Corporation Ltd.(ONGCL) authorities through a process of draw of lots. Accordingly, it was also stated that the provisions of the integrated M.M. Manual was modified in respect of evaluation of tenders for

hiring of vehicles in the Assam Asset as per Annexure-I attached to the said Communication.

**3.3.** The decision as contained in the said communication, dated 19.09.2023, issued by the Oil and Natural Gas Corporation Ltd.(ONGCL) authorities along with the decision of the said authority to cancel a tender issued in the month of July, 2023, for hiring of passenger vehicles came to be challenged before this Court by way of institution of a writ petition being WP(c)6208/2023. The learned Single Judge on consideration of the issues so arising, was pleased vide order, dated 18.06.2024, to dismiss the said writ petition upholding the policy as adopted by the Oil and Natural Gas Corporation Ltd.(ONGCL) authorities and contained in the communication, dated 19.09.2023. Further, the cancellation of the tender in the matter, issued in the month of July, 2023, was also upheld.

**3.4.** In pursuance of the said development; the Oil and Natural Gas Corporation Ltd.(ONGCL) authorities proceeded to issue an Notice Inviting Tender(NIT), bearing Tender No. R16DC24005, dated 31.07.2024, for the purpose of hiring of services of brand new 372 nos. of light vehicles(taxi) for the Assam Asset for a period of 4 years on lottery basis. The Make and Model of the vehicles so required along with the numbers of such vehicles required against each category, was spelt-out in the said Notice Inviting Tender(NIT). In terms of the provisions of the said Notice Inviting Tender(NIT), against the current requirement of 372 nos. of light vehicles; a total of 500 applicants were to be selected in the first round by way of draw of lots. The first 372 nos., of such selected applicants was to be ranked as short-listed applicants and the rest from 373 to 500 nos. of

applicants, sequentially, was to be ranked as wait-listed applicants. In terms of the methodology of the award of contract as provided for in the said Notice Inviting Tender(NIT), it was prescribed that the contracts would be so awarded to the applicants selected through a draw of lots subject to availability of those categories(IES) of vehicles, as selected by the applicants while submitting their respective applications, at the time of draw of lots and also subject to fulfilling of all conditions as stated in paragraphs No. 3.0 and 4.0 of the Notice Inviting Tender(NIT).

**3.5.** Paragraph No. 3.0 of the tender conditions which provides for the brief selection procedure for award of contract, *inter alia*, stipulates that applications from individuals having valid employment exchange cards from the employment exchanges as spelt-out in the provisions of paragraph No. 3(a) of the Notice Inviting Tender(NIT), dated 31.07.2024, would only be accepted.

**3.6.** Paragraph No. 4.0 of the tender conditions *inter alia* provides that the applicant if found to be below 18 years and above 55 years of age as on the closing date of the receipt of the applications, such application of the applicant would be rejected.

**3.7.** Further, Annexure-3 to the Notice Inviting Tender (NIT), dated 31.07.2024, lays down stipulations with regard to the eligibility required to be possessed by the driver. The said condition mandates that the permanent driver provided by the short-listed applicant against the vehicle selected for award of the contract, should be in possession of a valid commercial license and would be required to maintain the vehicle in

absolute working condition. It was further stipulated that the applicant is to ensure that the drivers are disciplined, smart in turn-out, well dressed in uniform having minimum 3 years driving experience in hill and plain roads.

**3.8.** The appellants, herein, being aggrieved with the stipulations as made in the Notice Inviting Tender(NIT), dated 31.07.2024, more particularly, with regard to the provision for awarding of contracts by way of draw of lots, had instituted a writ petition being WP(c)4108/2024 before this Court, assailing the said Notice Inviting Tender(NIT), dated 31.07.2024. The learned Single Judge on consideration of the matter and upon hearing the parties to the proceeding, was pleased vide order, dated 25.09.2024, to dismiss the said writ petition, rejecting the contentions made by the appellants, herein.

**4.** Being aggrieved; the appellants have instituted the present proceeding.

**5.** Mr. K. N. Choudhury, learned senior counsel appearing for the appellants, by taking this Court through the various provisions as contained in the Notice Inviting Tender(NIT), dated 31.07.2024, has submitted that the tender conditions so prescribed does not provide for the eligibility conditions required to be possessed by an intending applicant. The learned senior counsel has also submitted that the tender conditions do not further provide for any pre-conditions of qualifications required to be possessed by the applicant to ensure that the short-listed applicant has the capacity and resources to successfully execute the work.

**6.** Mr. Choudhury, learned senior counsel, has further submitted that the provisions made for awarding of the contract by way of draw of lots is illegal, arbitrary and is in violation of the provisions of Article 14 of the Constitution of India. The learned senior counsel has further submitted that the method as adopted for award of the contracts i.e. by way of draw of lots would lead to a situation of uncertainty in the tender process which is not permissible.

**7.** Mr. Choudhury, learned senior counsel, by referring to the stipulations as made in the tender conditions that the applicant should be within the age group of 18 to 55 years to be eligible for submission of his application in pursuance of the impugned Notice Inviting Tender(NIT), has contended that the present is a commercial transaction and is not for the purpose of an employment in the Oil and Natural Gas Corporation Ltd.(ONGCL). It is further contended that the prescription of maximum age as an eligibility condition is restrictive in nature, in-as-much as, the same has the effect of rendering many of the members of the petitioners' association ineligible to submit their respective applications in pursuance of the impugned Notice Inviting Tender(NIT). The learned senior counsel has submitted that the restrictive clause as incorporated on account of the prescription of age limit in the said Notice Inviting Tender(NIT), is in clear violation of the provisions of Articles 14, 19(1)(g) and 21 of the Constitution of India. It was also contended by the learned senior counsel that the restrictions, referred to above, cannot be treated as reasonable restrictions.

**8.** Mr. Choudhury, learned senior counsel for the appellants, has submitted that given the manner in which the Notice Inviting Tender(NIT),

dated 31.07.2024, has been structured; the same does not conform to the principles required to be followed in the matter of issuance of tenders. In support of his submissions, Mr. Choudhury, learned senior counsel for the appellants, has relied upon the decision of the Hon'ble Supreme Court in the case of **Michigan Rubber(India) Ltd. v. State of Karnataka & ors.**, reported in **(2012) 8 SCC 216**.

**9.** Per contra, Mr. Indraneel Chowdhury, learned senior counsel appearing for the Oil and Natural Gas Corporation Ltd.(ONGCL) authorities, has submitted that the provisions as incorporated in the Notice Inviting Tender(NIT), dated 31.07.2024, is in pursuance of the tripartite meeting held on 08.08.2023, between the District Administration, Oil and Natural Gas Corporation Ltd.(ONGCL) authorities and various organizations of the District who had raised objections to the manner in which the tenders for hiring of passenger vehicles were being so issued by the Oil and Natural Gas Corporation Ltd.(ONGCL) authorities.

**10.** Mr. Chowdhury, learned senior counsel, has further submitted that in terms of the decision so arrived at in the tripartite meeting held on 08.08.2023; the Oil and Natural Gas Corporation Ltd.(ONGCL) authorities had vide communication, dated 19.09.2023, reviewed the procedure for evaluation of the tenders for hiring of light passenger vehicles in the Assam Asset and decided that hiring of light passenger vehicles would be on one-applicant-one-vehicle basis at the rate offered by the Oil and Natural Gas Corporation Ltd.(ONGCL) authorities, through a draw of lots.

**11.** Mr. Chowdhury, learned senior counsel, has also submitted that the

policy decision as contained in the communication, dated 19.09.2023, was put to challenge before this Court in the proceeding of WP(c)6208/2023, and the learned Single Judge had vide order, dated 18.06.2024, dismissed the said writ petition upholding the said policy decision of the Oil and Natural Gas Corporation Ltd.(ONGCL) authorities.

**12.** Mr. Chowdhury, learned senior counsel, has further submitted that a writ appeal being WA No. 219/2024 was so instituted against the order, dated 18.06.2024, passed by the learned Single Judge in WP(c)6208/2023. However, the said writ appeal vide order, dated 22.10.2024, was dismissed on withdrawal. Accordingly, the learned senior counsel has submitted that the policy decision as contained in the communication, dated 19.09.2023, on challenge having been upheld and the policy adopted in the matter being incorporated in the Notice Inviting Tender(NIT), dated 31.07.2024; the same would not call for an interference from this Court.

**13.** Mr. Chowdhury, learned senior counsel, has submitted that the Oil and Natural Gas Corporation Ltd. (ONGCL) authorities had formulated the tender conditions including the provisions for awarding of the contracts by way of draw of lots in terms of the decision as arrived at in the tripartite meeting held on 08.08.2023, as well as the provisions made in this connection in the tender issued by the OIL authorities, for similar works.

**14.** Mr. Chowdhury, learned senior counsel, responding to the submissions made by the learned senior counsel for the appellants, to the effect that the Notice Inviting Tender(NIT), dated 31.07.2024, does not provide for any pre-conditions and/or qualifications required to be possessed by an

intending bidder, has, by drawing the attention of this Court to the various provisions of the said Notice Inviting Tender(NIT); contended that in the present tender, the rates for hiring of the vehicles have been fixed in the tender itself by the Oil and Natural Gas Corporation Ltd.(ONGCL) authorities. The learned senior counsel has also contended that the Make and Model of the vehicles so required, have also been stipulated. Further, the eligibility conditions required to be possessed by the Driver to be provided by the short-listed applicant having also been mandated; it cannot be said that the tender conditions do not provide for the required eligibility criteria mandated for short-listing the applicants.

**15.** Mr. Chowdhury, learned senior counsel, has further submitted that the conditions as prescribed in the Notice Inviting Tender(NIT), dated 31.07.2024, having the effect of equalizing the intending valid applicants; the award of the contracts by way of draw of lots, cannot also be said to be illegal, arbitrary and/or discriminatory given the nature of the work, involved.

**16.** Mr. Chowdhury, learned senior counsel, has further submitted that the provision of draw of lots for award of contracts of similar nature is prevalent in other OIL companies not only for the purpose of hiring of passenger vehicles, but also for the purpose of grant of contracts pertaining to Petrol Pumps, LPG distributorships, etc.. It is also submitted that the draw of lots as provided for in the provisions of the Notice Inviting Tender(NIT), dated 31.07.2024, cannot be equalized to that of a lottery and the characteristics of such draw of lots is clearly distinct from a lottery.

**17.** Mr. Chowdhury, learned senior counsel for the respondents, on instructions, has submitted that in pursuance of the Notice Inviting Tender(NIT), dated 31.07.2024, more than 28,000 applications were received. Thereafter, the process of draw of lots and publication of results of such draw of lots were carried-out and the applicants were short-listed in the manner as provided for under the tender conditions. The learned senior counsel has further submitted that contracts to 367 nos. of short-listed bidders have already been awarded and the process is now being carried forward for mobilization of the vehicles involved, by the short-listed applicants.

**18.** Mr. Chowdhury, learned senior counsel for the Oil and Natural Gas Corporation Ltd.(ONGCL) authorities, in the above premises, has submitted that given the nature of the contract involved and the process adopted by the Oil and Natural Gas Corporation Ltd.(ONGCL) authorities for the award of the contract; the same cannot be held to be arbitrary and/or unreasonable.

**19.** We have heard the learned counsels appearing for the parties and also perused the materials available on record.

**20.** The Notice Inviting Tender(NIT), dated 31.07.2024, was issued by the Oil and Natural Gas Corporation Ltd.(ONGCL) authorities for the hiring of services of brand new 372 nos. of light vehicles(taxi) for the Assam Asset, for a period of 4 years. The vehicles so required, were sub-categorized into 6 different categories. It was further specified that only the brand new vehicles with BS-VI emission norms along with all standard fittings and

accessories would be accepted. The tender conditions also provides that an applicant can only make one application with respect to any of the categories of vehicles, so specified in the Notice Inviting Tender(NIT), dated 31.07.2024. Further, the tender conditions stipulate that the award of contracts would be through draw of lots. It is provided that against the current requirement of 372 nos. of vehicles under the tender; a total of 500 applicants would be selected by the first round of draw of lots and would be called the short-listed applicants and the applicants from 373 to 500 applicants would be sequentially ranked as wait-listed applicants category-wise. It is seen that the said Notice Inviting Tender(NIT), dated 31.07.2024, prescribes the Make and Model of the vehicles along with the number of vehicles required category-wise. The rates for hiring of the vehicles including other charges with regard to each of the categories involved, has been fixed by the Oil and Natural Gas Corporation Ltd. (ONGCL) authorities in the tender itself. Further, the requisite eligibility conditions to be possessed by a driver of the vehicle to be so hired, has also been spelt-out in the tender conditions. The tender conditions so incorporated in the Notice Inviting Tender(NIT), dated 31.07.2024, emanate from the tripartite meeting held on 08.08.2023, between the District Administration of Sivasagar, Oil and Natural Gas Corporation Ltd. (ONGCL) authorities and various organizations of the District who had raised objection with regard to the manner in which the various conditions were incorporated in the tenders issued by the Oil and Natural Gas Corporation Ltd.(ONGCL) authorities for hiring of vehicles. In the said meeting, it was decided that the tenders shall be awarded through a process of draw of lots on the basis of one-applicant-one-vehicle principle. In pursuance of the decision as arrived at in the meeting held on 08.08.2023, the Oil and Natural Gas Corporation Ltd.(ONGCL) authorities

had vide communication, dated 19.09.2023, reviewed the evaluation of tenders for hiring of light vehicles in the Assam Asset and decided for hiring of light passenger vehicles on one-applicant-one-vehicle basis at the rate offered by the Oil and Natural Gas Corporation Ltd. (ONGCL) authorities, through draw of lots.

**21.** The policy decision as contained in the communication, dated 19.09.2023, came to be challenged before this Court in the proceeding of WP(c)6208/2023. The learned Single Judge vide order, dated 18.06.2024, on consideration of the matter, was pleased to dismiss the said writ petition upholding the policy decision as contained in the said communication, dated 19.09.2023. It is to be noted that the order, dated 18.06.2024, passed by the learned Single Judge was assailed by way of instituting a writ appeal being WA No. 219/2024, before this Court. However, the said writ appeal was vide order, dated 22.10.2024, dismissed on withdrawal. Accordingly, the decision of the learned Single Judge upholding the policy decision as contained in the said communication, dated 19.09.2023, has attained its finality.

**22.** The Oil and Natural Gas Corporation Ltd.(ONGCL) authorities, thereafter, by incorporating the evaluation criteria for hiring of vehicles, formulated on review and as contained in the communication, dated 19.09.2023, had issued the Notice Inviting Tender(NIT), dated 31.07.2024. The tender conditions as incorporated in the Notice Inviting Tender(NIT), dated 31.07.2024, being in tune with the policy decision as contained in the communication, dated 19.09.2023, including the provisions for award of contracts by way of draw of lots; the said conditions is not open to

challenge in view of the developments so taking place in the matter and noticed hereinabove.

**23.** Mr. Choudhury, learned senior counsel for the appellants, in support of his contentions, has relied upon the decision of the Hon'ble Supreme Court in the case of **Michigan Rubber(India) Ltd.**(supra), more particularly, the conclusions as contained in paragraph 23 of the decision. Paragraph 23 of the said decision being relevant, is extracted hereinbelow:

*“23. From the above decisions, the following principles emerge:*

*(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;*

*(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;*

*(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;*

*(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and*

*(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.”*

**24.** It is to be noted that Mr. Choudhury, learned senior counsel for the appellants, has laid emphasis on sub-paragraphs (a) and (d) of Paragraph 23 of the said decision of the Hon'ble Supreme Court rendered in the case of **Michigan Rubber(India) Ltd.**(supra).

**25.** A perusal of the tender conditions stipulated in the Notice Inviting Tender(NIT), dated 31.07.2024, in the background of the facts involved including the policy decision as contained in the communication, dated 19.09.2023, which has been upheld by this Court, on a challenge being presented to it; would go to show that the tender conditions involved in the matter, are germane to the nature of the work involved.

**26.** The work being for hiring of the vehicles and that too, on the basis of one-applicant-one-vehicle principle; the tender having provided for the make and model of the vehicles required against the various categories so specified, and the eligibility of the driver who would ply the vehicle offered by the applicant concerned having also been mandated; we are of the considered view that the eligibility criteria requisite for selecting applicants in pursuance of the said tender was duly specified. Further, the rates of the vehicles to be hired against each of the categories involved having been so fixed in the tender itself coupled with the specification with regard to the vehicles so required by the Oil and Natural Gas Corporation Ltd.(ONGCL) authorities; the method adopted for award of contracts by way of draw of lots, in our considered view, would not cause prejudice to any intending applicant in-as-much as such condition is equally applied to all the intending applicants.

**27.** Another aspect which requires to be noted, is that the minutes of the tripartite meeting held on 08.08.2023, indicates that the objections raised in the matter by various organizations was with a view to provide employment opportunities to the youths of Sivasagar District, falling within the Employment Exchange as specified under the provisions of paragraph

3(a) of the Notice Inviting Tender(NIT), dated 31.07.2024. Keeping the said objective in mind; we are of the considered view that prescription of the age limit entitling an applicant to apply in pursuance of the said tender between the age of 18 to 55 years, cannot be held to be unreasonable.

**28.** The above discussion with regard to the conditions incorporated in the Notice Inviting Tender(NIT), dated 31.07.2024, would go to satisfy the conclusions as reached by the Hon'ble Supreme Court in paragraph 23(a) and (d) of its decision in **Michigan Rubber(India) Ltd.**(supra).

**29.** At this stage, it is to be noted that the Hon'ble Supreme Court in the said decision, in paragraph 23(c), had further laid down that in the matter of formulating the conditions of a tender and awarding of a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers.

**30.** The learned Single Judge upon considering the matter, had drawn the following conclusions:

*“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 preconditions 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.”**

**31.** The discussions as made hereinabove would go to demonstrate that the conclusions drawn by the learned Single Judge and extracted hereinabove, are not perverse and/or contrary to the settled principles of law pertaining to issuance of the Notice Inviting Tenders and the same is

also in tune with the factual matrix as involved in the matter leading to the issuance of the Notice Inviting Tender(NIT), dated 31.07.2024, and accordingly, we are of the considered view that the said conclusions would not call for any interference.

**32.** It is also to be noted that in pursuance of the said tender process, around 28,000 applications were received and the Oil and Natural Gas Corporation Ltd.(ONGCL) authorities in terms of the provisions of the said Notice Inviting Tender(NIT), had already short-listed applicants for award of the contracts. The said tender conditions also provides for submission of the performance security by the selected contractor in the manner as prescribed therein and it also provides for liquidated damages for default in timely mobilization of the vehicles and completion of the works, involved. The said provisions as incorporated in the said tender, protects the interests of the Oil and Natural Gas Corporation Ltd.(ONGCL) authorities and would go to ensure that the applicants awarded with the contracts, executes the same in the manner as required. Accordingly, the conditions as incorporated in the Notice Inviting Tender(NIT), dated 31.07.2024, cannot be said to be illegal, arbitrary and/or discriminatory.

**33.** In view of the above discussions and the conclusions reached by us hereinabove; this writ appeal is held to be devoid of any merit and consequently, the same stands dismissed. However, there shall be no order as to costs.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**