

GAHC010226892024



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

Case No. : WP(C)/5571/2024

JITU DUTTA AND 7 ORS
SON OF LATE BHUPEN DUTTA, RESIDENT OF A.T.ROAD, TARAJOOPOL,
OPPOSITE HIGHWAY BAJAJ, P.O. AND P.S. JORHAT, ASSAM, PIN- 785001

2: SRI SHYAMAL JYOTI PHUKAN
SON OF HAREKRISHNA PHUKAN
RESIDENT OF J.E.C. ROAD
JORHAT
ASSAM
PIN- 785007

3: SRI MONOJ KUMAR BORAH
SON OF SRI DURGESWAR BOARH
RESIDENT OF CHARAIMORIA GAON
NEAR NAMGHAR
JORHAT
ASSAM
PIN- 785101

4: SRI BIJIT BORA
SON OF KHOGESWAR BORA
RESIDENT OF NEAR GRAMIN BIKASH BANK
PANICHAKUWA
P.O. PANICHAKUWA
JORHAT
ASSAM
PIN- 785006

5: SRI PRADIP BORUAH
SON OF BHOLA NATH BARUAH
BOLOMA NAHAR GAON
P.O. BOLONA
JORHAT
ASSAM

PIN- 785112

6: SRI PULIN GOGOI
SON OF SRI PHANIDHAR GOGOI
RESIDENT OF KHARIACHUK GAON
MURMURIA
JORHAT
ASSAM
PIN- 785008

7: SRI KAILASH KALITA
SON OF LATE BIPIN KALITA
RESIDENT OF KARENGA LAKHOLIA GAON
JORHAT
ASSAM
PIN- 785008

8: SRI PRASANTA KUMAR BORA
SON OF LATE MANIK CHANDRA BORA
RESIDENT OF TARAYAN CHOLADHORA
JORHAT
ASSAM
PIN- 78500

VERSUS

THE UNION OF INDIA AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT 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
A AND AA BASIN
P.O. JORHAT
DISTRICT- JORHAT
ASSAM

3:THE CHIEF GENERAL MANAGER
HEAD MM
ASSAM ASSET
DEPARTMENT OF MATERIAL MANAGEMENT
DHANSIRI BHAWAN
CINNAMARA
JORHAT- 785704
ASSAM

4:THE DEPUTY GENERAL MANAGER (MM)
ONGC
DEPARTMENT OF MATERIAL MANAGEMENT
DHANSIRI BHAWAN
2ND FLOOR
CINNAMARA
JORHAT- 78570

Advocate for the Petitioner : MR N K SARMA, MR H K DAS,MS D MAHANTA

Advocate for the Respondent : DY.S.G.I., FOR CAVEATOR,MR B CHOUDHURY

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

26.11.2024

Heard Mr. H.K. Das, learned counsel for the petitioners. Also heard Mr. I. Choudhury, learned Sr. Counsel for the ONGC/respondent Nos.2, 3 & 4 assisted by Mr. B. Choudhury, learned counsel. Ms. R.R. Saikia, learned counsel appears on behalf of Mr. S.K. Medhi, learned CGC for the respondent No.1.

2. The petitioners are aggrieved with the inclusion of the District Employment Exchange, Golaghat, Jagat Goswami Path, Chandmari, Assam-785621 as one of the employment exchanges, from which registered candidates can apply for participating in the NIT No.L46BC24007 dated 10.10.2024 issued by the ONGC, for hiring of the services of 52 brand new light vehicles (taxis) for the operational area of the ONGC Jorhat Asset, for a period of 4 years. The successful candidates are thereafter to be selected by draw of lots, on the basis of "one application one vehicle". The challenge made is on the ground that the applicants from the District Employment Exchange, Golaghat, Jagat Goswami Path, Chandmari, Assam-785621 (hereinafter referred to as the 'DEE,

Golaghat'), are not within the operational area of the ONGC Jorhat Asset.

3. The petitioners' second grievance is that the terms of the NIT require the applicants to be within the age group of 18-55 years, which is unreasonable and has no nexus to the object to be achieved through the NIT.

4. The petitioners' counsel submits that prior to the issuance of the NIT dated 10.10.2024, inviting applications from four employment exchanges, for the operational area of the Jorhat Asset, the ONGC had issued an NIT dated 31.07.2024 for the operational area of Sivasagar district. The applicants who could participate in the NIT dated 31.07.2024 for the Sivasagar operational area, were only those who were registered in employment exchanges within the operational area of Sivasagar district. The petitioners, being registered with an Employment Exchange in Golaghat district, could not participate in the NIT dated 31.07.2024, as applications were invited only from the operational area relating to Sivasagar district. However, in the subsequent NIT dated 10.10.2024 for the Jorhat Asset, the ONGC have made a deviation in terms of the persons who can apply for the NIT, by calling for candidates from employment exchanges beyond the operational area of the ONGC, Jorhat Asset, i.e. from the District Employment Exchange, Golaghat, Jagat Goswami Path, Chandmari, Assam-785621, (DEE, Golaghat).

5. The petitioners' counsel submits that persons who are registered with the DEE, Golaghat cannot participate in the NIT dated 10.10.2024, as the DEE, Golaghat, which is registered at Jagat Goswami Path, Chandmari, does not fall within the operational area of the ONGC, Jorhat Asset, while the petitioners who are from the Employment Exchange, Dhansiri, Barpathar, Golaghat district, fall

within the operational area of the ONGC, Jorhat Asset.

6. The petitioners' counsel also submits that during the pendency of the writ petition, a draw of lots has been conducted by the ONGC, for selecting the successful tenderers and in this respect, some applicants have been selected by the ONGC, one of them being registered with the employment exchange of Goalpara district, which is not a part of the operational area of the Jorhat Asset. He submits that the entire tender process of selecting the successful tenderers being illegal, the selection of the successful tenderers by way of draw of lots should be cancelled. He however submits that he does not know the origin of all the tenderers (employment exchanges) who have been declared successful, in terms of the NIT dated 10.10.2024, pursuant to the draw of lots.

7. The counsel for the petitioners submits that the petitioners have been working under the ONGC, by providing their vehicles as taxis for the last 23 years. He submits that with the ONGC allowing applicants from the DEE, Golaghat to participate in the NIT, there is more competition, which reduces the chances of the petitioners who are from a different employment exchange, from being selected. He submits that the same goes against the object for providing job opportunities to the local people, as the NIT dated 10.10.2024 is only for those candidates registered in Employment Exchanges, within the operational area of the Jorhat Asset.

8. Mr. I. Choudhury, learned Sr. Counsel for the ONGC, on the other hand, submits that the ONGC Jorhat Asset includes the entire Jorhat and Golaghat districts. He also submits that the operational area of the ONGC, Jorhat Asset having included the entire district of Jorhat and Golaghat, there is no infirmity

with the ONGC calling for applications from the DEE, Golaghat. In any event, no legal right of the petitioners has been violated by calling for more candidates by the ONGC.

9. Mr. I. Choudhury, learned Sr. Counsel also submits that the grievance of the petitioners, with regard to the requirement of the applicants being within the age group of 18-55 years, has already been upheld this Court in WP(C) 4108/2024 (*Self Dependent Motor Driver Union and 12 Ors. Vs. The Union of India and 4 Ors.*) decided on 25.09.2024. He submits that the said judgment passed by in WP(C) No.4108/2024 was upheld by the Division Bench of this Court in W.A. No.365/2024, vide judgment and order dated 08.11.2024. He also submits that in terms of the judgment of the Hon'ble Supreme Court in the case of **Balaji Ventures Pvt. Ltd. Vs. Maharashtra State Power Generation Company Ltd. and Anr.**, reported in **2022 SCC OnLine SC 1967**, a bidder/tenderer cannot be permitted to challenge a bid condition which might not suit him or is not convenient to him. He accordingly submits that no case having been made out by the petitioners, the writ petition should be dismissed.

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

11. The first issue that is being taken up by this Court is whether the petitioners' challenge to the condition in the NIT dated 10.10.2024, with regard to the applicants' age requiring to be within 18-55 years, is arbitrary or unreasonable. In WP(C) 4108/2024, this Court had the opportunity to decide the said issue in respect of the NIT dated 31.07.2024 pertaining to the Sivasagar district. This Court held in Para 22 of the said judgment that the prescription of the maximum age of 55 years on the last date of submission of

the bids, could not be held to be arbitrary or unreasonable. The challenge made to the judgment and order passed in WP(C) No.4108/2024, vide W.A. No.365/2024, was dismissed by the Division Bench of this Court, where it held that the prescription of the age limit entitling an applicant to participate in the NIT between the age of 18-55 years, cannot be held to be unreasonable. In view of the decision of this Court and the Division Bench of this Court, the challenge to the age limit of 18-55 years, prescribed in the NIT dated 10.10.2024 fails.

12. With regard to the second issue, i.e., whether the calling of applicants from the DEE, Golaghat was arbitrary and could not have been allowed in terms of the NIT dated 10.10.2024, it would be best if Clause 3.0 of the NIT dated 10.10.2024 is reproduced hereinbelow, which is as follows:-

“3.0 ***Brief Selection Procedure for award of contract:*** -

(a) *Applications, from individuals having valid employment exchange registrations pertaining to **Jorhat and Golaghat districts** i.e. the following 04 (Four) exchanges areas shall only be accepted:*

- i. *District Employment Exchange, P.O.-Jorhat, Pin No. 785014, Dist.-Jorhat, Assam.*
- ii. *University Employment Information & Guidance Bureau, Assam Agriculture University, P.O. & Dist. Jorhat, Assam- 785013*
- iii. *District Employment Exchange, Golaghat, Jagat Goswami Path, Chandmari Assam-785621*
- iv. *Employment Exchange, Dhansiri, Barpathar, P.O.- Barpathar, Pin 785602, Dist.- Golaghat, Assam.”*

13. The petitioners belong to Serial No.(iv), i.e., the Employment Exchange, Dhansiri, Barpathar, Golaghat District. The petitioners’ case is that though the

Employment Exchange, Dhansiri, Barpathar, Golaghat District is in the operational area of the Jorhat Asset, Serial No.(iii), i.e., the DEE, Golaghat, which is also in Golaghat district, is not within the operational area of the ONGC, Jorhat Asset.

14. On the other hand, the ONGC have stated in Para 13 of their affidavit that the Jorhat Asset of the ONGC operates more than 170 oil wells in the Golaghat district and that the operational area of the Jorhat Asset of the ONGC also spans the entire Golaghat district. As such, the two existing employment exchanges of the Golaghat district, i.e. Serial No. (iii) & (iv) have been included in Clause 3.0 of the NIT dated 10.10.2024, thereby giving an opportunity to the unemployed youth of Golaghat district from the above 2 employment exchanges to participate in the tender process.

15. The petitioners are apprehensive of the applicants of the DEE, Golaghat participating in the tender process, though the petitioners themselves belong to another employment exchange from Golaghat district, i.e., one located at Dhansiri, Barpathar, Golaghat district. When the ONGC has categorically taken a stand that the operational area of the Jorhat Asset of the ONGC also includes the entire Golaghat district, no fault can be found with the calling of candidates from the DEE, Golaghat also.

16. A perusal of the NIT dated 31.07.2024 pertaining to the Sivasagar district shows that in terms of Clause 3.0 of the said NIT, applications had been invited from the employment exchanges of 1.Sivasagar, 2.Nazira, 3.Sonari and 4.Moran. Thus, when applicants have been called from the employment exchanges in the operational area of the Sivasgar district, this Court is of the view that there can

be no infirmity in the calling for candidates from employment exchanges registered in both Jorhat and Golaghat district, when the operational area of the ONGC, Jorhat Asset includes both Jorhat and Golaghat district.

17. The above being said, there is nothing to show that any fundamental or legal right of the petitioners have been violated, just because applications have also been called from candidates belonging to the DEE, Golaghat. It is settled law that to be an aggrieved person, the petitioners would have to show that some enforceable rights of theirs has been violated. The inability of the petitioners to show that any of their rights have been violated, just because there is going to be more competition, does not enclothe the petitioners with any right to restrict the field of competition in the manner sought to be done.

18. In the case of ***Balaji Ventures Pvt. Ltd.(supra)***, the Supreme Court has held that the owner should always have the freedom to provide the eligibility criteria and/or the terms and conditions of the bid, unless it is found to be arbitrary, mala fide and/or tailor made. The bidder/ tenderer cannot be permitted to challenge the bid condition/clause which might not suit him and/or which is not convenient to him.

19. This Court on considering the above facts, is of the view that the condition allowing for applicants from the DEE, Golaghat to participate in the NIT dated 10.10.2024, by expanding the field of participants/tenderers, does not suffer from any infirmity and the same is not restrictive in nature and is in fact, in tune with Article 14 of the Constitution. As such, the challenge made to Clause 3.0(iii) of the NIT by the petitioners is not reasonable or sustainable.

20. In view of the reasons stated above, this Court finds no merit in the writ petition. The same is accordingly dismissed.

21. With regard to the submission made by the learned counsel for the petitioners that the selection of the successful candidates by way of draw of lots should be cancelled, this Court is of the view that the issue/cause of action sought to be raised by the petitioners at this stage, is different from the issue raised in the main writ petition. The selected candidates would also have to be made parties, if their selection is being challenged. As such, the petitioners are given liberty to make any challenge to the selection of the successful candidates, by way of a separate appropriate petition, if so advised.

JUDGE

Comparing Assistant