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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Judgment reserved on: 10.04.2026**Judgment pronounced on: 29.04.2026**Judgment uploaded on: 29.04.2026*

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W.P.(C) 4487/2026 & CM APPL. 21853/2026, CM APPL.  
21854/2026, CM APPL. 23295/2026

M/S UTKARSH ENTERPRISES &amp; ORS. ....Petitioners

Through: Ms. Diya Kapur, Senior  
Advocate with Ms. Aanchal  
Basur, Advocate.

versus

UNION OF INDIA &amp; ORS.

.....Respondents

Through: Mr. Devvrat Yadav (SPC) with  
Mr. Kush Garg and Mr. Girish  
Kumar, Advocates for UOI.  
Mr. Sameer Vashisth Standing  
Counsel for GNCTD, (Civil)  
alongwith Mr. Sumit K. Batra,  
Ms. Harshita Nathrani and Ms.  
Priyanka Jindal, Advocates and  
Mr. Ajay Kumar, LA (Sports)  
& Mr. Sandeep Dabas, OSD,  
PE & NI.**CORAM:****HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE AMIT MAHAJAN****J U D G M E N T****ANIL KSHETARPAL, J.:**

1. By way of the present Petition under Article 226 of the Constitution of India, the Petitioners assail seven different Tender processes initiated by the Directorate of Education, Government of NCT of Delhi through the Government e-Marketplace (GeM) Portal for procurement of outdoor gym equipment and sports equipment for schools and sports centres under its control, seeking quashing of the



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impugned bids and consequential directions for fresh procurement.

2. The Petitioners are GeM-registered sellers and registered MSME entities engaged in the manufacture and supply of sports goods and allied equipment. Their case, in essence, is that the impugned tenders incorporate conditions which are exclusionary, contrary to the governing GeM framework, inconsistent with the procurement regime applicable to MSEs, and arbitrary in their operation.

3. The challenge by the Petitioners is laid broadly to the stipulations in the impugned tenders relating to sample submission, denial of MSE-related relaxations, and experience / past-performance criteria and, insofar as the Sports-Equipment Tenders are concerned, additionally to the requirement of a fully functional office in Delhi and warehouse in Delhi/Delhi NCR.

4. The challenge of the Petitioners is required to be viewed in two distinct compartments. The first concerns the Outdoor Gym Tender, dated 23.01.2026, in which Petitioner No. 1 is stated to have participated. The second concerns the Sports-Equipment Tenders, in relation to which the Petitioners admittedly did not participate, but contend that the impugned conditions themselves operated as an effective bar to meaningful participation.

5. The Respondents oppose the present Petition, *inter alia*, on the grounds that the challenge is belated, that, save and except the Outdoor Gym Tender, the Petitioners did not participate in the tender process and therefore lack the requisite locus to assail the same, that the tender process had substantially progressed by the time the present



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Writ Petition was instituted and that the impugned conditions bear a rational nexus to the nature of the procurement, particularly having regard to safety, quality control, servicing, and operational requirements in respect of equipment intended for use by schoolchildren.

6. In this backdrop, the issues which arise are: whether the challenge, insofar as it concerns the Sports-Equipment Tenders, is maintainable at the instance of Petitioners who did not participate, whether the impugned conditions, tender-wise, are shown to be so arbitrary, exclusionary, or contrary to the applicable GeM procurement framework as to warrant interference under Article 226 and whether, having regard to the Petitioners' delayed approach to this Court after publication of bids and material progress of the tender process, the challenged is liable to be declined on the ground of delay and laches and whether, in the facts of the present case, any interference is warranted at all.

7. One of the impugned tenders pertains to procurement of Outdoor Gym Equipment. The bid document for that tender provides, *inter alia*, a minimum average annual turnover requirement of Rs. 150 lakhs, past experience requirement of 2 years, "MSE Relaxation for Years of Experience and Turnover" as "No", an EMD amount of Rs. 15,00,000/-, and a past-performance requirement of 80% of bid quantity. The said bid is also accompanied by a separate set of Additional Terms and Conditions [hereinafter referred to as 'ATC'], which, *inter alia*, prescribe an experience criterion requiring either one order of at least 80% of the estimated bid value, or two orders of at least 50% each, or three orders of at least 40% each.



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8. In addition to the aforesaid, Respondent No. 2 also floated a set of tenders for the procurement of sports equipment, which were structured through a separate tender document containing instructions to bidders, pre-qualification conditions, technical requirements and additional terms. The estimated cost therein is stated at Rs. 6 crores, with bid security of 2% of the estimated cost, *i.e.* Rs. 12 lakhs.

9. Insofar as the Sports-Equipment Tenders [hereinafter referred to as 'SET'] are concerned, Clause 2.17 of the tender document stipulates that, since the Department may require supply of equipment at short notice, the bidding firm/company must have a fully functional office in Delhi and a warehouse in Delhi/Delhi NCR since the last three years.

10. The SET document separately sets out the regime relating to submission of samples/mini samples/catalogue. Clause 7.5.1 requires that the sample material be submitted physically before the last date and time, while Clause 7.5.2 states that any bid received without samples/mini samples/catalogue, where so required, shall not be considered and will be returned unopened. Clause 8 provides for a two-part technical evaluation, namely, a preliminary evaluation on the basis of documents submitted through GeM and a physical technical evaluation of sports equipment on the basis of samples/mini samples/catalogue submitted physically. The checklist annexed to the bid document also requires a proof of a fully functional office in Delhi and warehouse in Delhi/NCR since the last 3 years, together with a list of samples.

11. On the other hand, the ATC in relation to the Outdoor Gym



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Tender provide, *inter alia*, for supply, installation and commissioning obligations, warranty and after-sales support requirements, documentary proof of service support, physical inspection/display of goods, and a stipulation that sample with specifications must be submitted before the last date of bid. They also require that the bidder have a functional service centre in the Consignee State and service centres in at least five pin codes before the tender publication date. Notably, unlike the SET, the Outdoor Gym Tender does not stipulate any requirement of a fully functional office in Delhi.

12. The Petitioners assert that they objected to the tender conditions both by way of representations and at the pre-bid stage when a pre-bid meeting was held on 29.12.2025. The Petitioners also rely on subsequent representations and a legal notice before instituting the present Petition, which was filed on 02.04.2026 and listed before this Court for the first time on 06.04.2026. The Respondents, on the other hand, contend that the Petitioners approached the Hon'ble Court only after the procurement process had substantially progressed.

13. In relation to the SET, a meeting notice dated 01.04.2026 was issued, scheduling the sampling process from 07.04.2026 to 11.04.2026 for demonstration and technical evaluation of sports equipment submitted by the four bidders whose bids had been accepted on document basis. The said notice is significant inasmuch as it shows that, at least in relation to those tenders, document-based scrutiny had preceded the stage of demonstration / physical technical evaluation.

### **SUBMISSIONS ON BEHALF OF THE PETITIONERS:**



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14. Learned senior counsel for the Petitioners submits that the impugned tender conditions are *ex facie* contrary to the governing GeM framework and liable to be interdicted. It is submitted that the challenge is not to any mere matter of commercial preference, but to stipulations which are said to be prohibited by the tendering framework itself and which, in their cumulative operation, exclude genuine competition.

15. Learned senior counsel further submits, in relation to the SET, the requirement that the bidding firm/company must have a fully functional office in Delhi and a warehouse in Delhi/Delhi NCR since the last three years is manifestly arbitrary and bears no rational nexus to the procurement of sports goods. According to the Petitioners, such a stipulation operates as a geographical exclusion and effectively shuts out otherwise eligible suppliers situated outside Delhi, but within the NCR including the Petitioners, though they may be fully capable of executing the supply. Reliance is also placed by the Petitioners on the judgment of the Supreme Court in *Vinishma Technologies Pvt. Ltd. v. State of Chhattisgarh & Anr.*<sup>1</sup> to urge that artificial local barriers in tender eligibility offend a level playing field and violate Article 14 of the Constitution.

16. It is next submitted that the impugned tenders require physical submission of samples/mini samples/catalogue and, in the case of the Outdoor Gym Tender, expressly stipulate that sample with specifications must be submitted before the last date of bid. It is contended that the tender conditions themselves show that physical

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<sup>1</sup> 2025 INSC 1182



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sample submission forms part of the process and that bids without such samples, where required, are liable not to be considered. According to the Petitioners, such stipulations are exclusionary in effect and impose a disproportionate financial burden, particularly on MSME entities.

17. Learned senior counsel further submits that the regime of physical submission is itself contrary to the scheme of procurement through GeM. The Petitioners point out that the SET document contemplates not only online submission through the portal but also physical submission of bid-security related material and physical technical evaluation based on samples/mini samples/catalogue. The submission is that such conditions dilute the transparency and accessibility which the GeM platform is intended to secure.

18. The Petitioners also assail the denial of MSE-related relaxations. It is submitted that the tender documents expressly state “MSE Relaxation for Years of Experience and Turnover” as “No”, while also prescribing turnover, experience and past-performance thresholds which disproportionately burden smaller enterprises. In the Outdoor Gym Tender, it is pointed out that the bid document itself records MSE relaxation as “No”, and prescribes a past-performance requirement of 80% of bid quantity. The Petitioners contend that such stipulations operate to defeat the procurement policy intended to benefit MSEs.

19. Learned senior counsel for the Petitioners also relies on Office Memoranda issued in March 2016 and July 2016 to contend an orientation in favour of relaxing prior turnover and prior experience



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requirements for Micro and Small Enterprises and startups. It is contended that the denial of MSE relaxation in the impugned tenders runs contrary to that policy of the Government.

20. As regards the Outdoor Gym Tender specifically, learned senior counsel submits that the ATC travel beyond what is permissible. It is contended that the ATC not only requires sample submission before the last date of bid, but also imposes service-support conditions such as existence of a functional service centre in the Consignee State and service centres in at least five pin codes before the tender publication date. She contends that these stipulations are unduly restrictive and are tailor-made to narrow the field of competition.

21. On the maintainability aspect, learned senior counsel submits that the Petitioners' non-participation in the SET cannot be put against them, since the case of the Petitioners is precisely that the impugned conditions themselves rendered meaningful participation commercially and practically unviable. It is urged that the Petitioners did not stay away from the process by choice, but were effectively excluded by the Delhi office stipulation, the financial burden of the sample requirement, and the cumulative effect of the impugned eligibility conditions. Further reliance is placed on the decision of this Court in *Gaurav Enterprises v. Municipal Corporation of Delhi*<sup>2</sup> to contend that a challenge to tender conditions is not liable to be rejected merely because the challenger did not participate, particularly where the grievance is that the bid terms depart from the governing GeM/procurement framework.

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<sup>2</sup> 2026 SCC OnLine Del 372



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22. In sum, the Petitioners submit that the impugned stipulations are a cluster of exclusionary requirements that stifle competition, discriminate against MSE entities and outstation suppliers, and warrant interference.

**SUBMISSIONS ON BEHALF OF THE RESPONDENTS:**

23. *Per contra*, learned Standing Counsel for the Respondent No. 2 submits that the present Petition is thoroughly misconceived and is liable to be dismissed at the threshold.

24. The first objection of the Respondents is as to maintainability and locus. It is submitted that, save and except Petitioner No. 1, who participated only in the Outdoor Gym Tender, none of the Petitioners participated in the impugned SET. It is urged that non-participating entities, having chosen to remain outside the process, cannot be permitted to assail the tender conditions after the procurement has substantially progressed. In any event, according to the Respondents, even Petitioner No. 1 can have no grievance beyond the particular tender in which it participated, and the present challenge to multiple tenders is therefore misconceived.

25. The Respondent No. 2 next submits that the challenge is belated. It is pointed out that the impugned tenders were floated between November 2025 and January 2026 and that the GeM platform provided opportunity to seek clarifications during the bidding period and that the Petitioners approached this Court only after the tender process had reached an advanced stage. By the time the petition was filed, the Outdoor Gym Tender had reached the stage of financial evaluation, the SET had proceeded beyond the document stage, and



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the Sports Kit Tender, bearing Bid No. GEM/2025/B/6858594 Dated 13-11-2025 has already culminated in award. The submission is that interference at such a stage would disrupt an ongoing public procurement process contrary to public interest. Reliance is also placed on the decision of this Court in *Gaurav Enterprises v. GTB Hospital & Anr*<sup>3</sup>. to contend that a non-participating entity which approaches belatedly, after the bid process has materially progressed, may be non-suited on the grounds of locus as well as delay and laches.

26. On merits, learned counsel for the Respondent No. 2 submits that the impugned conditions are neither arbitrary nor tailor-made, but are founded on legitimate administrative considerations arising from the nature of the procurement. It is submitted that the goods in question are intended for use in government schools and sports centres, including by minor students, and that considerations of safety, durability, reliability, servicing, and operational continuity therefore are of significance.

27. As regards the sample/demonstration requirement, the Respondent No. 2 submits that the same is integrally connected to quality assurance and safety. It is urged that the procuring authority is entitled to verify the suitability and compliance of the goods sought to be supplied, particularly where the equipment is to be installed in schools and used by children. It is further submitted that, in relation to the SET, the process envisaged a document-based scrutiny first, followed by demonstration / physical technical evaluation of only those bidders whose bids had been accepted on document basis. In

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<sup>3</sup> 2026:DHC:1592-DB



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support, reliance is placed on the meeting notice dated 01.04.2026 scheduling a demonstration and technical evaluation for the bidders whose bids had been accepted on document basis.

28. The Respondent No. 2 also defends the eligibility criteria relating to experience, turnover and past performance. It is submitted that such conditions are intended to ensure that only capable and reliable vendors undertake supply and installation of goods of the requisite quality. In that regard, reliance is placed on the Office Memorandum dated 20.09.2016, which clarifies that although relaxation of prior turnover and prior experience is ordinarily to be afforded to startups, there may be procurements involving public safety, health, critical operations and equipment where such relaxation need not be granted, provided justification exists. According to the Respondents, the present procurement falls within that exception, having regard to the nature and end-use of the equipment.

29. Insofar as the MSE-related relaxation objections are concerned, learned counsel contends that the Office Memoranda relied upon by the Petitioners use the expression 'may' and therefore do not render relaxation inflexible in every case.

30. As regards the stipulation requiring service support/office presence, the Respondents submit that the same bears a direct nexus to the object sought to be achieved. It is urged that the equipment in question may require prompt servicing, maintenance, replacement support, or rectification, and that delays in such support may compromise safety and disrupt usage in schools. On this basis, the Respondents seek to justify the service-centre requirement in the



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Outdoor Gym Tender and the office/warehouse condition in the SET as operational stipulations rooted in public interest.

31. Learned Counsel for Respondent No. 2 further submits that the GeM framework itself contemplates bid-specific ATC. According to them, the ATCs in the present case operate within the permissible framework, supplement the general conditions in areas where tender-specific requirements arise, and were uniformly applicable to all bidders. The submission is that the Petitioners have failed to establish that the challenged conditions were either *mala fide*, discriminatory, or lacking in rational nexus with the procurement objective.

32. Lastly, learned counsel for the Respondents urges that the present case discloses no such exceptional circumstance and that any interference at this stage would delay procurement intended for government schools and thereby adversely affect the ultimate beneficiaries.

### **ANALYSIS AND FINDINGS:**

33. Before advertng to the contentions on the merits, it is necessary to notice the settled limits within which the Court exercises jurisdiction in matters concerning tenders and public procurement. Formulation of tender conditions, prescription of eligibility criteria, and assessment of operational requirements are, in the first instance, matters for the procuring authority. The Court does not sit as an appellate authority over such decisions merely because another view may also be possible. At the same time, if the tender conditions are shown to be manifestly arbitrary, *mala fide*, discriminatory without a rational basis, tailored so as to stifle fair competition or plainly



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contrary to the governing legal / procurement framework, the Court would not be denuded of jurisdiction merely because the subject matter arises out of a tender. The touchstone, however, remains legality of the decision-making process and not substitution of the Court's commercial or administrative preference for that of the tendering authority.

34. It is equally well settled that a challenge to tender conditions is ordinarily expected to be laid with due expedition. Where a party, being aware of the terms of a tender, stands by and approaches the Court only after the process has substantially advanced, it would not be right to intervene in an ongoing procurement, particularly where third-party rights may have intervened or where public interest in timely completion of procurement would be seriously affected. This consideration assumes added significance where the challenger did not participate in the tender process. In *Gaurav Enterprises v. GTB Hospital & Anr.*<sup>4</sup>, this Court reiterated that a facial challenge to tender conditions, if genuine, is expected to be brought promptly, and that a delayed challenge after the process has materially progressed may itself justify refusal of relief on delay and laches alone.

#### I. EFFECT OF THE STAGE OF THE TENDER PROCESS, DELAY AND PUBLIC INTEREST:

35. This aspect weighs significantly with this Court. The impugned SET were floated on 22.12.2025, and the Outdoor Gym Tender on 23.01.2026. The present Writ Petition came to be instituted only on 02.04.2026 and was listed before this Court for the first time on 06.04.2026. Even if the Petitioners are given some credit for having



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raised objections and representations before approaching this Court, the challenge is to the facial tender conditions, raised more than 2-3 months after the publication of the bids. Such a challenge could, in the ordinary course, have been laid much earlier after publication of the bids. By the time the Petition came to be instituted, the SET had already moved into scheduled demonstration/technical evaluation, the Outdoor Gym Tender had already reached the stage of financial evaluation. In tender matters, delay bears directly on the interference with the procurement process that has already materially advanced. As observed by this Court in *Gaurav Enterprises v. GTB Hospital & Anr.* (*Supra*), if a Petitioner were a serious bidder, it would have approached the Court much earlier, and a delayed challenge to facial tender conditions may itself justify refusal of relief on delay and laches.

36. Interference at such a point would unsettle an ongoing procurement, delay supply intended for school-going children and sports facilities, and carry consequences extending beyond the immediate dispute between the parties.

37. In Tender matters, time is of the essence, and public procurement is undertaken for public benefit. Where the procuring authority has disclosed a rational explanation for the conditions adopted, and where the threshold of manifest arbitrariness or patent illegality is not crossed, it would not be right to interfere. That consideration applies with added force in the present case, where the procurement is stated to be for use in government schools, stadia and

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<sup>4</sup> 2026:DHC:1592-DB



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sports centres.

## II. MAINTAINABILITY AND LOCUS IN RESPECT OF THE SPORTS-EQUIPMENT TENDERS (SET):

38. That said, non-participation is not always fatal or conclusive. A challenge by a non-participating entity may still require examination where the case set up is that the impugned condition itself operated as an exclusionary barrier and thereby foreclosed meaningful participation. In such a case, however, the burden on the Petitioner is necessarily heavier.

39. At the outset, this Court considers it necessary to preserve the distinction between the Outdoor Gym Tender and the SET. Petitioner No. 1 participated in the Outdoor Gym Tender, whereas none of the Petitioners participated in the SET. The Respondents submit that non-participation is, by itself, fatal to the challenge. The Petitioners answer that objection by contending that their non-participation was not voluntary, but was itself occasioned by the impugned conditions, particularly the requirement of an office in Delhi, the warehouse stipulation and the sample regime.

40. In the opinion of this Court, the Respondents are right to the extent that a non-participating challenger ordinarily stands on a narrower footing than a bidder who has actually entered the tender process and suffered an adverse consequence in the course of evaluation. At the same time, non-participation cannot be treated as an absolute bar in every case. Where the challenge is directed to the very conditions of eligibility or participation, and the case set up is that such conditions themselves foreclosed meaningful participation, the



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Court would still be required to examine whether that grievance is genuinely borne out from the tender record.

41. The challenge to the SET, therefore, does not fail at the threshold merely because the Petitioners did not participate. But that is as far as the matter can be carried in their favour on maintainability. Their non-participation remains a material circumstance, and the challenge must, for that reason, be tested on a narrower standard. It would be for the Petitioners to show not merely that the impugned stipulations were inconvenient or commercially burdensome, but that they were of such a nature as to preclude meaningful participation and were, in law, manifestly arbitrary, discriminatory, or incompatible with the governing procurement framework.

### III. CLAUSE 2.17 OF THE INSTRUCTIONS TO BIDDERS AND THE OFFICE/WAREHOUSE REQUIREMENT:

42. The principal grievance in relation to the SET is directed against Clause 2.17, which requires the bidding firm/company to have a fully functional office in Delhi and a warehouse in Delhi/Delhi NCR since the last three years. According to the Petitioners, that stipulation operated as an exclusionary condition and effectively impeded their participation. The Respondents, on the other hand, seek to justify it on the basis of short-notice supply requirements, servicing needs, and the nature of the end-use in schools, stadia and sports centres.

43. This Court is of the view that the challenge to Clause 2.17 is not liable to be rejected as wholly frivolous. Equally, however, the Court cannot lose sight of the facts in which the issue arises in the present case. The Petitioners admittedly did not participate in the SET, and the



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Writ Petition came to be instituted more than three months after the publication of the bids, and only after the tender process had materially progressed.

44. In that view, and bearing in mind the limited nature of judicial review in tender matters, this Court does not consider it necessary to render any final view on the validity of Clause 2.17 in the present case. Whether this stipulation would withstand scrutiny in an appropriate case, brought promptly, is a question which is left open.

#### IV. THE SAMPLE REGIME: SPORTS-EQUIPMENT TENDERS AND OUTDOOR GYM TENDER:

45. The challenge to the sample regime requires careful differentiation between the SET and the Outdoor Gym Tender. All the impugned bids are not identical in this regard. Each tender must be read on its own terms.

46. Insofar as the SET are concerned, Clause 7.5.1 provides that the bid must be received online before the last date and time, and further states that the samples / mini samples / catalogue must be submitted physically at the Sports Branch, Chhatrasal Stadium, before the last date and time mentioned in the GeM bid documents. Clause 8.2 then contemplates a two-part technical evaluation: Part I on the basis of documents submitted through the GeM portal, and Part II by way of physical technical evaluation of sports equipment on the basis of samples/mini samples/catalogue submitted physically. The same clause also states that the submitted samples/mini samples/catalogue “will be scrutinized only after the bidder is technically qualified.”

47. The Respondents were, therefore, justified only to the limited



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extent of contending that sample scrutiny or demonstration was undertaken after the document stage. The submission cannot be accepted in any broader sense so as to suggest that the tender did not require physical sample submission before that stage. The tender clauses expressly indicate otherwise. The meeting notice dated 01.04.2026 is also consistent with this position, inasmuch as it shows that demonstration and technical evaluation were scheduled from 07.04.2026 for bidders whose bids had first been accepted on document basis.

48. The Outdoor Gym Tender stands on a different textual footing. In its case, the ATC expressly require that sample with specifications be submitted before the last date of bid and also provide for physical inspection / display of goods at the designated site. The Outdoor Gym Tender does not employ the same elaborate two-part technical formulation as in the SET, yet it equally cannot be said that no sample-related requirement applied to that Tender. Sample-related stipulations exist in both Tender sets, though not in precisely the same form.

49. This structural distinction is material. It shows that the challenge to the sample regime cannot be addressed in a uniform manner across all the impugned tenders. Insofar as the SET are concerned, whether the sample regime would withstand a broader challenge, brought promptly and in a case otherwise fit for such examination, is a question which this Court does not consider it necessary to finally determine in the facts of the present case. At the same time, the Respondents' explanation that the goods were intended for institutional use in schools and sports facilities, and that quality



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and suitability verification formed part of the procurement rationale, cannot be said to be wholly devoid of nexus.

50. So far as the ATC in the Outdoor Gym Tender are concerned, it is not shown to stand in conflict with the GeM framework. Read in the context of the procurement as a whole, including installation, safety, service-support, inspection/display and demonstration requirements, the ATC is capable of being harmonized with the GTC and the Disclaimer. In this regard, *Arora Medi Lines Pvt. Ltd. v. Government of NCT of Delhi & Ors.*<sup>5</sup> is of assistance, inasmuch as this Court therein accepted a harmonised reading of the Disclaimer and the governing procurement framework in the context of a procurement justified on utility and safety considerations for school students. The framework-based challenge to the sample / demonstration component of the Outdoor Gym Tender, therefore, does not merit acceptance.

#### V. OUTDOOR GYM TENDER:

51. Insofar as the Outdoor Gym Tender is concerned, Petitioners stand on a somewhat different footing since Petitioner No. 1 did participate therein. The challenge to that tender must, therefore, be examined on its own merits and not merely through the lens of the non-participation of the other Petitioners.

52. The Petitioners mainly assail the Outdoor Gym Tender on the basis of the sample requirement, the service-support stipulations, the experience/turnover thresholds, the denial of MSE relaxation in respect of experience and turnover, and what they describe as an

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<sup>5</sup> 2025:DHC:11032-DB



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excessive 80% threshold. The bid document prescribes a past-performance requirement that the bidder or its OEM should have supplied the same or similar category products for 80% of the bid quantity in at least one of the last three financial years. The ATC, in turn, requires submission of sample with specifications before the last date of bid, stipulates service-support conditions including service-centre requirements, and prescribes an experience criterion requiring either one order of at least 80% of the estimated bid value, or two orders of at least 50% each, or three orders of at least 40% each of the estimated bid value.

53. The Petitioners have contended that the Outdoor Gym Tender contains stringent qualification thresholds. However, the Tender does not rest on a single 80% performance requirement alone. The bid contains a quantity-based past-performance stipulation, whereas the ATC separately prescribes a value-based experience criterion with alternatives of 80%, 50% and 40% of the estimated bid value. The Petitioners' grievance is directed mainly against the 80% threshold. However, the tender conditions, read as a whole, disclose a broader structure. Further, the Office Memoranda relied upon by the Petitioners indicate an inclination in favour of relaxing prior turnover and prior experience for MSEs/startups, but they are in enabling terms and discretionary in nature.

54. In the present case, it cannot be said that the Respondents' explanation is wholly lacking in rational nexus. Outdoor Gym equipment is not a mere consumable. It is intended to be supplied, installed, anchored, maintained, and kept in safe operating condition over time. The ATC is structured around those very considerations,



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including installation, safety, warranty, and post-installation support. Whether another tender authority may have framed the procurement differently is not the issue. The question is whether the conditions as framed are so demonstrably arbitrary or perverse that no reasonable authority could have prescribed them. On that threshold, the Petitioners' challenge to the Outdoor Gym Tender does not merit acceptance.

#### VI. SPORTS-EQUIPMENT TENDERS (SET):

55. The challenge to the SET survives only on the narrower basis that the impugned conditions themselves were so exclusionary as to preclude meaningful participation and were, in law, unsustainable. However, having regard to the delay, non-participation of the Petitioners and the facts of the present case, this Court does not consider it necessary to render a view on each of the impugned stipulations governing the SET.

56. Insofar as Clause 2.17 is concerned, for the reasons already noticed above, the Court leaves its validity open to be examined in an appropriate case. The same approach is adopted regarding the related objections to the SET sample regime and the GeM framework. Since the Petitioners did not participate in the bidding process and only filed their Petition after the tender process had significantly advanced, these issues likewise do not warrant intervention.

57. For the same reason, this Court does not consider it necessary to render any final view on the Petitioners' broader submission that the impugned SET conditions are liable to be treated as "null and void" under the GeM Disclaimer, or that the MSE-relaxation related



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objections warrant invalidation of the SET in the facts of the present case. Those questions are also left open.

58. The SET challenge is, therefore, liable to fail on the grounds of delay, laches, non-participation of the Petitioners and the advanced stage of the procurement process. In the exercise of its extraordinary jurisdiction, this Court is not persuaded to interdict an ongoing procurement on a challenge instituted at such a belated stage by parties who admittedly did not participate in the Tender process.

### **CONCLUSION:**

59. For the reasons aforesaid, the challenge to the Outdoor Gym Tender fails on merits. Regarding the SET, this Court is not persuaded to interfere in the exercise of Writ Jurisdiction, due to the substantial delay in approaching this Court, the Petitioners' non-participation and the advanced stage of the Tender process. The larger questions concerning the validity of Clause 2.17 and the allied impugned conditions in the SET are left open to be examined in an appropriate case.

60. The present Petition is, accordingly, dismissed. The pending applications also stand closed.

**ANIL KSHETARPAL, J.**

**AMIT MAHAJAN, J.**

**APRIL 29, 2026**  
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