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

+ W.P.(C) 18485/2025 & CM APPL. 76653/2025

ARORA MEDI LINES PVT LTDPetitioner

Through: Mr. Anirudh Wadhwa, Mr. Kanishk Garg and Mr. Vibhu Pahuja, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS.Respondents

Through: Mr. Sameer Vashisht, Standing Counsel (Civil), Ms. Khushboo Mittal, Advocate for GNCTD.
Ms. Shweta Bharti, Ms. Tejaswini Chandrashekhar, Mr. Jatin Chaddha and Ms. Sanskruti Jinwal, Advocates for R-6.

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Date of Decision: 05.12.2025

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J: (ORAL)

1. Present petition has been filed under Article 226 of the Constitution of India, 1950, seeking to quash the bid documents dated 24.11.2025 issued by the respondents. The petition also seeks a direction to the respondents to conduct a fresh tendering process in respect of “*Educational School Kits for States (Q4)*” for Government schools in Delhi, in accordance with applicable regulations. The petition further seeks to frame appropriate guidelines for compliance by, *inter alia*, the respondents, in order to provide safeguards preventing collusion/cartelisation and ensuring transparency and equal



opportunity for all prospective bidders.

2. The facts in brief are as under:

a. In the financial year 2024-25, various tenders were issued by respondents nos.1 to 4 in respect of procurement of “*Teaching Learning Material (TLM kit) (by Samagra Shiksha, Delhi)(Q3)*” all of which included a condition for “*demonstration of kit containing all quoted items*” as part of the eligibility criteria under the buyer added Additional Terms and Conditions.

b. On 19.12.2024, the petitioner filed various writ petitions bearing W.P.(C) Nos. 17716/2024, 17695/2024 and 17717/2024 before this Court. These writ petitions were listed on 23.05.2024, where interim orders were passed noting that the finalisation of the bidders and any award of the tender would be subject to the final outcome of the batch of writ petitions.

c. It is stated that *vide* order dated 17.01.2025, this Court while hearing the said batch of petitions noted that respondent no.6/GeM (hereinafter referred to as “*GeM*”) had filed a written submission essentially supporting the challenge in the said bunch of petitions. It is stated that GeM was directed to file its counter affidavit. On the same date, the private respondent no.7, who was the successful tenderer in W.P.(C) 17716/2024, sought modification of the interim order of *status quo*. It is stated that this Court noted that the private respondent may make supplies at its own risk and consequence and that no equities would be claimed by it later on.

d. On 21.01.2025, GeM is stated to have filed its counter affidavits in the batch of writ petitions, *inter alia*, stating therein that the said requirement of providing samples is in direct contravention of the



Disclaimer clause mentioned in the bid document which governs the obligations and responsibilities of the parties.

e. While the said petitions are pending, on 03.02.2025, the Deputy Director of Education of the GNCTD instituted a writ petition bearing W.P.(C) 1543/2025 against GeM, impleading the petitioner herein as respondent no.6. It is claimed that the GNCTD sought a writ of mandamus restraining GeM from cancelling the tenders notified by GNCTD which were the subject matter of W.P.(C) 17717/2024. This petition is stated to have been listed on 17.01.2025 and in the order of the said date, the statement of the counsel for GeM that the tender process would not be cancelled till the next date of listing was recorded.

f. On 24.11.2025, the respondents herein uploaded three separate bid documents on the GeM portal pertaining to the procurement of “*Educations school kits for States (Q4) bearing (i)GeM/2025/B/6925805; (ii)GeM/2025/B/6925951 and (iii)GeM/2025/B/6927123*”.

g. Petitioner claims that upon finding the same offending clause regarding the requirement of the bidders to make available the demonstration kit, it submitted a representation on 26.11.2025 and uploaded the same on the GeM portal raising its grievance against the inclusion of the purported illegal clause no.10 pertaining to the demonstration kit.

h. The said representation dated 26.11.2025 is stated to have been summarily rejected by the GNCTD on 01.12.2025, *inter alia*, stating that, “*Demonstration has been asked to ensure the utility and safety for school students. Detail rational has been incorporated in the bid*



document.” Pursuant to such rejection order, the petitioner has filed the present writ petition. It is to be noted that the petitioner has not yet participated in the bid process and has laid challenge to the purported offending clause no.10 of the bid document.

3. Appearing for the petitioner, Mr. Wadhwa learned counsel states that while the challenge to the said offending clause is still pending and due for consideration and examination by this Court in the previous batch of writ petitions, the Department of Education of the GNCTD has failed to rectify the error. He lays great emphasis on the fact that GeM, which is the portal on which the subject bids have been uploaded, has itself, in its counter affidavit filed in the previous writ petitions, categorically accepted that the requirement posted in clause 10 is in direct contravention of the Disclaimer clause mentioned in the bid document. That apart, learned counsel also emphasises that the Disclaimer clearly provides that if any clause is incorporated by the buyer entity in regard to the exceptions carved out in the Disclaimer clause, such bids may be cancelled by GeM at any stage of the bidding process without notice apart from cautioning that the contracts which may be entered into in pursuance of such bid documents, would be treated as ‘null and void’.

4. Petitioner draws attention to the condition in Sl No.8 of the Disclaimer available on GeM portal, which reads as under:

“8. Seeking sample with bid or approval of samples during bid evaluation process. (However, in bids for attached categories, trials are allowed as per approved procurement policy of the buyer nodal ministries.)”

Mr. Wadhwa, by pointing out to the Sl No.8 of the Disclaimer submits that the only exception to the prohibition contained therein is in respect of bids pertaining to defence procurement and other highly sensitive issues. According to him, the procurement of teaching learning material kits by the



Department of Education of the GNCTD would not fall within the exception carved out in SI No.8 of the Disclaimer.

5. Being aggrieved of the infraction in the bid document, the petitioner had submitted its representation dated 26.11.2025 and uploaded the same on the GeM portal. He invites attention to page 109 of the paper book where the rationale behind retention of clause 10 was provided, the same is extracted hereunder:

“Demonstration has been asked to ensure the utility and safety for the school students. Detail rational has been incorporated in the bid document.”

6. Learned counsel also referred to the purported rationale for retention of clause 10 which is stated to have been incorporated in the bid document. He states that the rationale provided is skewed and out of context and does not answer or give any clarification with respect to the prohibition mentioned in SI No.8 of the Disclaimer in the conditions of the GeM portal except to say that it would be purposeful to verify the cost-effectiveness and value for money with the quoted rates. No other lawful or legal reasons as to how such prohibition can be overridden or overlooked have been furnished by the GNCTD.

7. Learned counsel, while referring to pg.55 of the paperbook, states that the document which is a part of the RFP clearly specifies the minute details of the products/items that are sought to be procured. He states that the details are so clear, precise and specific that there is no element which is indeterminable. He emphasizes that only in those items where specifics may not have been given or are ambiguous or would require a demonstration enabling the tendering authority to ascertain the exact product so as to compare it with the price quoted by the bidders. In the present case, he states that there is no such



ambiguity; rather, the products are clearly detailed and specified and they are not indeterminable. His contention is that in such circumstances, the tendering authority cannot require the bidders to provide demonstration kits. In fact, according to him, the clause in the GeM portal would prohibit the tendering authority from inserting any such requirement in the RFP.

8. To lay emphasis on the aforesaid argument, learned counsel refers to para 9 of the Manual for Procurement of Goods (2nd Edition), 2024 of the Ministry of Finance, Government of India. In particular, he refers to sub para (a) of para 9 which, according to him, clearly prohibits calling for a sample alongwith the tender or requiring demonstration of equipment after bid opening. He also refers to sub clause (b) therein to submit that any exception to the prohibition could only be envisaged in circumstances where the items/products sought to be procured have indeterminable characteristics and consequentially require the tendering authority as also the bidder to mutually agree upon at a later stage. Thus, by relying on para 9, learned counsel submits that the prohibition is complete, not only as per the Sl No.8 of the Disclaimer, but also the Procurement Manual, 2024 which is binding on the GNCTD.

9. On the aforesaid basis, learned counsel states that the subject Tenders, being contrary to the said prohibition, ought to be quashed or set aside.

10. *Per contra*, Mr. Sameer Vashisht, learned Standing Counsel (Civil) for the GNCT of Delhi, refutes the submissions of the petitioner. He submits that the retention of Clause 10 in the RFP is necessitated on a rational basis. In that, he submits that these are kits containing material and equipment which are meant for children studying in schools. He states that in such circumstances, *arguendo*, assuming that certain characteristics of the products are specified, yet the quality and the non-hazardous nature of the products to



be delivered by a bidder needs to be ascertained and confirmed by the tendering authority. He states that for such purpose, neither SI No.8 of the Disclaimer of the GeM portal nor the Procurement Manual, 2024 referred to by the petitioner, envisage any prohibition.

11. In support of the aforesaid contention, learned Standing Counsel also refers to para 9 of the said Procurement Manual, 2024, to submit that there is no specific or a mandatory prohibition for a tendering authority from calling for a demonstration kit before finalizing the bids. He states that this is not a case where the tendering authority i.e. respondent no.1, is calling for samples alongwith the bids to be submitted rather, it is only after the bids are submitted and for the purposes of ascertaining the quality and the non-hazardous nature of the products that the bidders are required to submit the demonstration kits.

12. So far as the contention of the petitioner in respect of the prohibition in the SI No.8 of the Disclaimer of the GeM portal is concerned, he states that the tendering authority, in suitable cases, can call for demonstration kits particularly in such tenders as in the present case.

13. Learned Standing Counsel emphasizes that the rationale provided in the bid document as also the response given to the representation of the petitioner would clearly indicate that the tendering authority has very carefully considered the requirement of the demonstration kit or the rationale or nexus has clearly been explained in the said documents.

14. Ms. Shweta Bharti, learned counsel appears for the GeM Portal and supports the contention raised by the petitioner in so far as prohibition contained in SI No.8 of the Disclaimer on the GeM Portal is concerned. She states that the GeM Portal is a service provider under which the States or their instrumentalities publish their RFPs, NITs or Tenders. She states that the



GeM Portal on behalf of the buyer, which may be a State or its instrumentality, subject to clear conditions specified on the GeM Portal, uploads the RFPs/NITs which would then enable the bidders to upload their bids on its portal. In that context, she submits that the GeM, being an intermediary, is obliged to ensure that the entire format and the process that is followed on its portal is uniform and unambiguous. It is in that regard, she states that the Disclaimer and the other conditions have been framed and put up.

15. She also states that it is clearly mentioned in the Disclaimer that any buyer who wishes to seek the utility services provided by GeM is necessitated to follow the conditions specified therein. Thus, to that extent, she states that Sl No.8 is binding upon the parties, including the GNCTD. She states that in case there is any contravention, the Disclaimer clearly provides for the consequences of such infraction. That is, the bid and the resultant contract shall be treated as null and void, and such bids may be cancelled by the GeM at any stage of the bidding process without any notice. According to her, since the infraction entails serious consequences, the prohibition in Sl No.8 of the Disclaimer needs to be treated as mandatory and needs to be appreciated in that context.

16. We have heard the learned counsel for the parties and have examined the material on record.

17. From the arguments addressed and on examination of the Disclaimer available on the GeM portal, the conditions mentioned in the RFP, particularly Clause 10 as well as Procurement Manual 2024, it appears that the question which needs to be determined by this Court is as to whether in view of the provisions of Sl. No.8 of the Disclaimer read with para 9 of the Procurement Manual 2024, the requirement of a demonstration kit as



specified in Clause 10 of the RFP, is prohibited.

18. In order to appreciate the aforesaid issue, it would be apposite to extract the Disclaimer contained as one of the conditions in the GeM portal, which is as under:

*“The additional terms and conditions have been incorporated by the Buyer after approval of the Competent Authority in Buyer Organization, whereby Buyer organization is solely responsible for the impact of these clauses on the bidding process, its outcome, and consequences thereof including any eccentricity / restriction arising in the bidding process due to these ATCs and due to modification of technical specifications and / or terms and conditions governing the bid. **If any clause(s) is / are incorporated by the Buyer regarding following, the bid and resultant contracts shall be treated as null and void and such bids may be cancelled by GeM at any stage of bidding process without any notice:-***

xxx

xxx

xxx

8. Seeking sample with bid or approval of samples during bid evaluation process. (However, in bids for attached categories, trials are allowed as per approved procurement policy of the buyer nodal Ministries)

xxx

xxx

xxx

Further, if any seller has any objection/grievance against these additional clauses or otherwise on any aspect of this bid, they can raise their representation against the same by using the Representation window provided in the bid details field in Seller dashboard after logging in as a seller within 4 days of bid publication on GeM. Buyer is duty bound to reply to all such representations and would not be allowed to open bids if he fails to reply to such representations.”

(emphasis supplied)

19. From a perusal of the Disclaimer, it is clear that as and when any buyer incorporates additional terms and conditions after the approval of the Competent Authority in the Buyers’ organisation and incorporates any of the excepted conditions mentioned in Sl. No.1 to 16 of the Disclaimer, such bid may be cancelled by GeM at any stage of the bidding process without any notice and shall also entail the contracts which might have been entered into as null and void. Sl. No.8 appears to prohibit seeking a sample with the bid or approval of samples during the bid process except those specified in the



attached categories where trials are allowed as per approved procurement policy of the Buyer Nodal Ministries. Reading the said provisions on a standalone basis, it appears that any incorporation/insertion of a condition in the additional terms and conditions of the contract by the Buyer's organisation which may be contrary to the conditions specified in the Disclaimer on the GeM portal, would entail serious consequences like cancellation of the tender process or the contracts entered into by such Buyer's organisation, being rendered null and void, except in certain cases specified in Sl No.8 of the Disclaimer.

20. However, the aforesaid rigor present in the Disclaimer on the GeM portal particularly at Sl.no.8 therein appears to be tempered by para 9 of the Procurement Manual. In order to appreciate as to how we would reach that conclusion, it would be necessary to extract hereunder para 9 of the Procurement Manual 2024 in totality:-

***“9. Discourage procurement involving evaluation of samples/ demonstration of Equipment:** According to the existing guidelines on public procurement of goods, purchase in accordance with a sample or requiring demonstration of equipment should not be usually undertaken.*

a) Calling for a sample along with the tender or requiring a demonstration of equipment after bid opening and deciding based on evaluation of the sample/ demonstration of equipment should NOT be done.

b) In certain specifications, there may be a built-in sample clause. Usually, such clauses are stipulated to illustrate indeterminable characteristics such as shade/ tone, makeup, feel, finish, workmanship, and so on. In some specifications, there may not be a sample clause, but such indeterminable characteristics are left to be agreed to between the seller and buyer. One way to procure/indigenise certain spares whose drawings/specifications are not available is to procure in accordance with an available sample of the part. In such cases, the supply must conform to an agreed reference sample only, whereas the remaining characteristics must conform to the drawings/specifications.

c) However, no sample should be called for or evaluated along with the bids. If desired, three copies of the purchaser's reference sample with seal/



label may be displayed for prospective bidders to illustrate the desired indeterminable characteristics, which final supplies from successful bidder(s) will have to meet in addition to the specifications/drawings. If required, in addition to the purchaser's reference sample, the provision for the submission of a pre-production sample matching the purchaser's sample by the successful bidder(s) may be stipulated for indeterminable characteristics before giving clearance for bulk production of the supply. On placement of the contract, one of the copies of the purchaser's reference sample may be given to the contractor for preparing pre-production sample/ supplies, one copy to the consignee for matching with the pre-production sample/ supplies and one should be kept secure under lock and key in the sample room of the procuring entity. The Indent for items that are to be procured in accordance with a sample must be accompanied by three sealed reference samples as far as possible. Please refer to para 5.3-3-g) and 7.4.1-3 for further details.

d) If a demonstration of equipment (say entirely newly developed equipment) is considered necessary, it may be planned only during the pre-bid stage, but the evaluation of tenders should not be based on this."

(emphasis supplied)

21. Para 9 specifies that according to the existing guidelines of public procurement of goods, purchase in accordance with a sample or requiring demonstration of equipment should not be "usually" undertaken. It is emphasized that the word "usually" employed in the said manual is an indicator that, in exceptional cases, the sample requiring demonstration during the tender process is not completely barred or mandatorily precluded. Moreover, when such language is employed while drafting such guidelines, it can be inferred that the drafter has kept in mind the "play in the joints" for a tendering authority to carve out an exception in exceptional cases. Though sub-para (a) of para 9 categorically prohibits calling for a sample with the tender or requiring a demonstration of equipment after bid opening and reaching a decision based on the evaluation, sub-para (b), (c) & (d) provide for adequate safeguards before a tendering authority calls for a demonstration kit. In other words, para 9 of the Procurement Manual, 2024 while providing



for prohibition of such excepted categories, itself carves out an exception in certain circumstances. Thus, the argument of learned counsel for the petitioner predicated on para 9 of the Procurement Manual is unpersuasive and does not appeal to us.

22. In so far as Sl No.8 of the Disclaimer on the GeM portal is concerned, we are of the considered opinion that the prohibition is tempered by the provisions of para 9 of the Procurement Manual, 2024. Read in that context, we are of the considered opinion that the interpretation of the inter-play of the rigors between Sl No.8 of the Disclaimer and para 9 of the Manual can be harmonised without doing violence to the language employed in either of the provisions. In that, though the Disclaimer appears to be prohibitory but the relaxation/exception provided in the Procurement Manual, 2024, would, in our humble opinion, afford an opportunity to the tendering authority to have a “*play in the joints*”. We emphasize on this for the reason that if such exception in certain exceptional circumstances is not provided to the tendering authority, in a case akin to the present subject tender, the entire effort and emphasis to be able to ascertain not only the quality but also the hazardous or non-hazardous nature of the material which would be ultimately supplied to young students and children, would be taken away, which may ultimately prove detrimental to public interest.

23. We are acutely conscious of the fact that though the equipment and the tool kit which is sought to be procured are not “indeterminable” as the word is used in sub-para (b) of para 9 of the Procurement Manual, 2024, yet, since the very users of such learning tool kits are young children and students, how far would the public health also be impacted, cannot be undermined.

24. Having reached the aforesaid conclusion, the arguments raised by the petitioner in the context of rejection of its representation on the purported



edifice that there is no rationale offered as to why the GNCTD has sought demonstration kits in Clause 10 of the RFP, pales into insignificance. We have carefully perused the explanation provided in the RFP as also the explanation provided to the petitioner that the “*demonstration has been asked to ensure utility and safety of the school students*”, and find the same satisfactory and in alignment with the exceptions analysed by us under para 9 of the Procurement Manual, 2024.

25. So far as the argument of learned counsel for GeM as to the mandatory character of the Disclaimer is concerned, we are not giving any definitive opinion and would leave it to be decided in a more appropriate case depending upon the facts of such case. We are of the opinion that it would be more appropriate to decide this aspect in a different case where such question would be directly in issue.

26. For the aforesaid reasons, we are also not inclined to render any opinion one way or the other, as to whether the petitioner, who has not yet participated in the tender process, does or does not have locus to challenge the tender conditions.

27. In view of the above, the present petition alongwith pending applications stands dismissed.

**TUSHAR RAO GEDELA
(JUDGE)**

**DEVENDRA KUMAR UPADHYAYA
(CHIEF JUSTICE)**

DECEMBER 5, 2025

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