



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

% Judgment reserved on: 10.11.2025  
Judgment delivered on: 26.11.2025

+ W.P.(C) 4384/2025, CM APPL Nos.20164-66/2025, 57923/2025,  
69416/2025 & 69417/2025

ROCHE DIAGNOSTICS INDIA PRIVATE LIMITED .....Petitioner

versus

DELHI STATE HEALTH MISSION & ANR. ....Respondents

**Advocates who appeared in this case:**

For the Petitioner : Mr. Rajshekhar Rao, Senior Advocate with Mr. Aakash Bajaj and Ms. Prena Banerjee, Advocates.

For the Respondents : Mr. Sameer Vashisht, Standing Counsel (Civil) with Ms. Harshita Nathrani, Advocate for R-1/GNCTD

Mr. Sandeep Chilana, Mr. Priyojeet Chatterjee, Mr. Snehil Sharma and Ms. Anjali Jain, Advocates for R-2.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

**J U D G M E N T**

**TUSHAR RAO GEDELA, J.**

1. Present petition has been filed under Article 226 of the Constitution of India, 1950 seeking quashing of the award of the category/rank from L1-L2 by way of the Price Bid Report as updated on 30.03.2025 in the Subject Tender bearing Tender ID No.2024\_DSHM\_266434\_1 (hereinafter referred to as "*Subject Tender*") issued by the respondent no.1/Delhi State Health Mission



(hereinafter referred to as “DSHM”). The petition further seeks to set aside any action taken consequent to the award of contract/rank from L1-L2. The petition also seeks to set aside the subject tender issued by DSHM.

**BRIEF FACTS:-**

2. Briefly, facts as culled out from the petition and germane to decide the *lis* are as under:-

- a. Petitioner claims to be a leading provider of in-vitro diagnostic solutions and a global supplier of transformative innovative solutions across major disease areas since the year 1988 when it was incorporated. It claims to be a leading supplier of blood screening NAT systems in many institutions like AIIMS, SMS Jaipur, KGMU and SGPGI Lucknow, etc.
- b. DSHM issued the subject tender on 13.12.2024 for a rate contract for supply, installation and maintenance of fully automated NAT facility and, *inter alia*, for supply of reagents, solutions, sample cups, cuvettes and/or other consumable items required to perform the tests listed in the tender. A pre-bid meeting was held by DSHM with the prospective bidders on 20.12.2024 wherein petitioner sought certain clarifications. It is stated that in pursuance thereto, the DSHM issued two corrigenda on 27.01.2025 informing the clarifications regarding the subject tender.
- c. On 03.02.2025, the petitioner submitted three bids as mandated under the subject tender, (i) pre-qualification bid, (ii) technical bid and (iii) price bid. It is stated that on 20.02.2025, technical bid was opened for all bidders and the bid of the petitioner was declared technically compliant. Since the petitioner in its bid had also separately quoted the applicability of 18% GST, on 25.02.2025, DSHM sought clarifications regarding the



basis thereof and supporting documents. It is claimed that the petitioner provided a detailed explanation on 27.02.2025 to the DSHM confirming that 18% GST is applicable in accordance with HSNO999316 read with the SAC Code notified under Notification No. 11/2017-Central Tax (Rate). The relevant notification, scheme of classification of services and the explanatory note thereof is also claimed to have been furnished.

- d. Petitioner claims that since no response was received from the DSHM to the clarification given by the petitioner, vide the letter dated 13.03.2025 the petitioner raised concerns about inconsistent GST application by bidders requesting intervention to ensure fair evaluation before declaring any entity as successful L1 bidder. It is stated that DSHM did not even respond to this communication either.
- e. Petitioner claims that without resorting to any clarification or response to the repeated communications, the DSHM released the price bid report whereby it declared respondent no.2 as the L1 bidder. This, according to the petitioner, was contrary to the terms and conditions of the subject tender apart from being arbitrary, irrational and perverse. Being aggrieved by the said action taken by the DSHM, the present writ petition has been preferred by the petitioner.

### **CONTENTIONS OF THE PETITIONER:-**

3. Opening for the petitioner, Mr Rajshekhar Rao, learned senior counsel submitted that the infractions committed by the DSHM clearly point out the arbitrary, capricious, whimsical and perverse manner in which the subject tender process has been conducted.



4. Learned senior counsel invites attention to clause 6 of the NIT which provides the manner in which and the various parameters required to be factored by a bidder while quoting their financial bid rates. Alluding to such parameters, learned senior counsel would contend that the financial rates are purely for the services to be rendered and have no correlation with the taxes etc., especially GST. In other words, he contended that clause 6 directs bidders to quote “Cost Per Reportable Test” (hereinafter referred to as “*the CPRT*”) which necessarily includes various services to be offered without the taxes involved. According to him, it is this CPRT without taxes which is the determinative quote to be considered by the DSHM.

5. To buttress the aforesaid contention, learned senior counsel draws attention to the “Method of Tender Evaluation and Price Comparison” of the subject tender which provides insight into the procedure to be followed by DSHM while comparing the financial bids of the bidders. According to him, this clause clearly directs a bidder to quote only CPRT, which is exclusive of any element of tax and further mandates that L-1 would be decided as per “CPRT” performed considering the annual blood donation of 38,000 tests. He thus would contend that both the clauses, i.e., clause 6 read with the method of evaluation, manifestly require the bidders to quote only and only the CPRT and the element of any tax is conspicuous by its absence. By referring to the aforesaid clauses of the subject tender, learned senior counsel forcefully contended that the evaluation of financial bids has to be conducted in the manner and method provided therein and any method other than the one stipulated in such clauses would be extraneous and ought to be eschewed. According to him, DSHM has seriously infringed these mandatory terms of its own tender.



6. Mr. Rao, learned senior counsel stoutly contended that Annexure 9 appended to the subject tender is a document which would establish the contention addressed above. Alluding to Annexure 9 of the subject tender, he vociferously contended that a bidder was required to quote its bid without GST as well as with GST and the Table also mandated in column 'G' the total amount during contract, inclusive of GST. This, according to him, aligned with clause 6 and the Method of Evaluation stipulated in the subject tender. He laid emphasis on column 'C' and 'F' which are the approximate number of tests during one year and final rate per reportable test inclusive of GST respectively, to submit that the total amount specified in column 'G' is reckoned by figures in column 'C' and 'F' inclusive of GST. According to him, a bidder was mandated to enter all the fields, particularly, column 'D' (rate without GST) and column 'F' (final rate including GST) for the DSHM to compare the rates in column 'D' of various bidders as stipulated in the Method of Evaluation and then ascertain the final rates inclusive of GST. He would strongly urge that this interpretation of the relevant clauses read with the fields provided in Annexure 9 align properly with each other leaving no ambiguity at all. He contended that in the present case, DSHM has flagrantly violated these mandatory conditions.

7. In furtherance of the above contentions, learned senior counsel referred to the table drawn at para 18 of the writ petition indicating the prices quoted by the petitioner as also respondent no.2. He claimed that while the petitioner entered all fields by clearly indicating its CPRT of Rs.802/- in column 'D', GST at the rate of 18% in column 'E', total price of Rs.3,59,61,680/- as envisaged in column 'G', the respondent no.2 entered Rs.945/- as its CPRT in column 'D', GST at 0% in column 'E' and a total price of Rs.3,59,10,000/- in column 'F'. He



vehemently contended that purposely or with an oblique motive, respondent no.2 did not specify as to whether its CPRT of Rs.945/- is or is not inclusive of GST which was mandatory according to him. He would contend that in case it was without GST then the final price of respondent no.2 would be higher than that of the petitioner, which is Rs.946.13 (Rs.802 + 18% GST). According to him, the mandatory fields not having been entered, financial bid of respondent no.2 ought to have been rejected at the threshold itself.

8. He further contended that what is more intriguing is the acceptance of such a defective and non compliant bid by DSHM and that too with an Indemnity Bond. Learned senior counsel pointed out that while the successful bidder was yet to be finalised by the DSHM, for some unknown reason, respondent no.2 was required by the department to furnish an Indemnity Bond unilaterally. He forcefully contended that not only was this contrary to the terms of the subject tender but also violative of principles of transparency and fairness inasmuch as, no such opportunity was offered to the petitioner. He stoutly would contend that the arbitrariness and partisan behaviour of DSHM in awarding the contract to respondent no.2, is writ large in the tender process. In that, financial bids of both bidders are claimed to have been opened on 20.02.2025; clarifications sought from both bidders on 21.02.2025 regarding GST; clarifications were tendered by respondent no.2 on 26.02.2025 and by petitioner on 27.02.2025; respondent no.2 furnished the Indemnity Bond on 11.03.2025; DSHM sought clarification vide letter dated 21.03.2025 from GST department, regarding the quantum of GST chargeable on the services sought in the subject tender; *vide* the letter dated 25.03.2025 the GST department clarified that the services would indeed attract 18% GST and yet in a pre-determined and pre



decided manner, the award of contract was granted to respondent no.2 on 30.03.2025, without any reference to the petitioner. He vociferously contended that the action of requiring respondent no.2 to furnish an Indemnity Bond on 11.03.2025, even prior to the clarification dated 25.03.2025 was received from the GST department, itself establishes the pre-determined mind of DSHM which should vitiate the award of the contract to respondent no.2. Yet another significant submission of learned senior counsel is that the perversity of the tender process is writ large, in that, despite the GST department clarifying that 18% GST is indeed applicable to such services, the contract was awarded vide letter dated 30.03.2025 wherein the final price of Rs.945/- was shown as inclusive of GST. All this, according to learned senior counsel, displays collusiveness. He also points out that in case Rs.945/- is inclusive of GST, then the CPRT price of respondent no.2 in its financial bid/price bid ought to have correctly displayed the figure Rs.800.85 as exclusive of GST, which it did not. To buttress the dishonesty and falsity of respondent no.2, he invited attention to para 19 of the para-wise reply on merits of the counter affidavit of respondent no.2. Alluding to the contents therein, he would contend that respondent no.2 has changed its entire version by now claiming that Rs.945/- was inclusive of GST and that its CPRT quote is Rs.800.85 which is lower than that of the petitioner and has rightly been awarded the contract. He contended that respondent no.2 cannot re-submit its bid in such manner and ought to be disqualified. He forcefully contended that this action is dishonest and on that basis, the award of contract should be quashed.

9. Learned senior counsel while referring to clauses of the subject tender at page 49 of the paperbook submitted that the terms specified therein are not in



consonance with the specific details sought in Annexure 9. According to him, these are general instructions and the details sought in Annexure 9 are particular and specific to the requirements of the contract which are sanctimonious and ought to be adhered to. He would contend that once it is demonstrated that respondent no.2 violated the specific terms of the subject tender, its bid ought to be held to be ineligible or non compliant and resultantly, the contract be quashed.

10. Mr. Rao, learned senior counsel also invited attention to the statement made by DSHM before this Court and recorded in order dated 09.04.2025 to submit that the instructions received, itself displayed dishonesty. Though on 09.04.2025 it was stated that the work had commenced in both the Hospitals on 30.03.2025, yet, in the counter affidavit of respondent no.2 it was admitted that the testing machine was installed in Lok Nayak Hospital only on 29.04.2025 and the testing services commenced only on 30.04.2025. According to him, the statement was irresponsible and displayed wilful and deliberate suppression of true facts. Moreover, the statement was misleading as the petitioner lost its chance to obtain favourable order in respect of services to be offered at Lok Nayak Hospital. This deprivation was most unfair according to learned senior counsel.

11. Another relevant issue, according to learned senior counsel, was with respect to the unfair treatment received by the petitioner inasmuch as, once the DSHM received the confirmation of applicability of 18% GST upon the services sought by it, the petitioner too ought to have been called for negotiation or at least an opportunity be afforded to furnish an Indemnity Bond.



## **CONTENTIONS OF THE RESPONDENT NO.1/DSHM:-**

12. Appearing for the DSHM, Mr Sameer Vashisht, learned Standing Counsel would refute the submissions urged on behalf of the petitioner. At the outset, he stoutly urged that the law in regard to how the State is within its jurisdiction while considering the contours of any tender process is fairly well settled. Alluding to the judgements of the Hon'ble Supreme Court in *Michigan Rubber (India) Limited vs. State of Karnataka & Ors.: (2012) 8 SCC 216* and *Raunaq International Ltd. vs. I.V.R. Construction Ltd. & Ors.: (1999) 1 SCC 492*, he contended that tenders floated by the State are commercial matters and the State or its instrumentalities are treated as any prudent business person while considering their best interests and keeping in view the peculiar requirements of execution of a particular project. He relies on paragraph 9 in *Raunaq International (supra)* and paragraphs 23 and 24 in *Michigan Rubber (supra)* which are extracted hereunder:

### ***Raunaq International (supra):-***

*“9. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations. These would be:*

- (1) the price at which the other side is willing to do the work;*
- (2) whether the goods or services offered are of the requisite specifications;*
- (3) whether the person tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring specific skills are to be offered, the financial ability of the tenderer to fulfil the requirements of the job is also important;*
- (4) the ability of the tenderer to deliver goods or services or to do the work of the requisite standard and quality;*
- (5) past experience of the tenderer and whether he has successfully completed similar work earlier;*



- (6) time which will be taken to deliver the goods or services; and often
- (7) the ability of the tenderer to take follow-up action, rectify defects or to give post-contract services.

Even when the State or a public body enters into a commercial transaction, considerations which would prevail in its decision to award the contract to a given party would be the same. However, because the State or a public body or an agency of the State enters into such a contract, there could be, in a given case, an element of public law or public interest involved even in such a commercial transaction.”

### **Michigan Rubber (supra):-**

“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. Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

- (i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision



*made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”?* and

*(ii) Whether the public interest is affected?*

*If the answers to the above questions are in the negative, then there should be no interference under Article 226.”*

13. Learned counsel stated that in the subject tender too, DSHM acted in its best interests as also in the interest of the public by awarding the contract to the respondent no.2 whose rates were found to be lower of the two. He candidly submitted that the overall difference in cost worked out only to Rs.50,000/- which indicates that there is no substantial benefit that the State may have obtained by awarding the contract to the petitioner. He would also contend that the petitioner has neither challenged the capability nor other merits of respondent no.2 in terms of performance or equipment etc. In which case, according to him, it was the prerogative of the State to choose the best bidder. He contended that the price variation not being substantial, this Court would not interdict the tender process merely because the petitioner too could have offered the same services.

14. So far as the allegation of partisan or pre-determined decision to award the contract to respondent no.2 is concerned, he vehemently opposed the same. He would contend that the only issue canvassed by the petitioner is in respect of the GST payable and as to whether the rates quoted by respondent no.2 were or were not inclusive of GST. He had a very precise and concise reply to that. He contended that whether GST is payable or not or what were the binding terms of the subject tender are not predicated only on the details sought in Annexure 9 but Clause II of the tender. He stated that though in the said annexure details were sought from the bidder regarding prices of CPRT with and without GST, yet, the



tender conditions governing the said issue in Clause II are crystal clear brooking no ambiguity. The same read thus:

**“II. Taxes & Duties:-**

- i. xxx xxx xxx
- ii. *The prices shall be inclusive of all taxes & duties leviable including GST and Entry tax etc. and the Purchaser shall not be liable for the same.*
- iii. xxx xxx xxx
- iv. *If any rates of tax are increased or decreased, a new tax is introduced, a existing tax is abolished, or any change in interpretation or application of any occurs in the course of the discharge of contract, which was or will be assessed on the bidder in connection with discharge of the contract, an equitable adjustment of the contract price shall be made to fully take into account any such change by addition to the contract price or deduction the reform as the case maybe.”*

15. Referring to the aforesaid clauses, learned counsel contended that the intention of DSHM, i.e., the tender issuing authority, was unambiguous, in that the bidders were required to quote their prices inclusive of all taxes and levies including GST and simultaneously a demurrer in the nature of DSHM not being liable to such taxes, which would obviously include GST, was provided. In order to buttress the contention he also read clause (iv) to submit that the intention that DSHM would not be liable to offset or pay GST was made clear to the bidders irrespective of whether there is an increase or decrease in the tax component and that only equitable adjustment of the contract would be made. Thus, according to him, if the petitioner did not understand the terms of the tender, DSHM cannot be faulted.

16. That apart, learned counsel also referred to clause (xvi) of the General Conditions of Contract regarding Price Negotiation to submit that the DSHM had the right to negotiate the price further, if required, to enter into the rate



contract with the L-1 bidder. Thus, it is not open to the petitioner to contend that DSHM could not have negotiated the CPRT offered by respondent no.2 to also include GST within Rs.945/-. According to him, assuming without admitting the contention of the petitioner on this score, keeping in mind Rs.945/- as exclusive of GST, nothing prevented DSHM from negotiating with respondent no.2 to include GST within that price. He contended that though this was not required, however, this aspect is being urged only to demonstrate the hollowness of the contention of the petitioner.

17. Primarily, Mr. Vashisht would contend that price to be quoted being inclusive of GST, the issue of CPRT being inclusive of GST or not as per Annexure 9, was not a mandatory consideration for DSHM, while finalising the tender process. In that, the price of petitioner even after seeking clarification was quoted as Rs.802/- + 18% GST = Rs.946.13 on its assumption that 18% GST was chargeable, while respondent no.2 in its clarification stated that no GST is payable and its quote still remains at Rs. 945/-. Though, DSHM received the reply of the GST department that GST is chargeable, yet, respondent no.2 having quoted a lower price, was found suitable and since it offered the Indemnity Bond to indemnify DSHM from levy of GST, DSHM found the price suitable and awarded the contract. According to him, the entire process was not only fair and transparent but also in alignment with the procedure prescribed in the tender.

18. Learned counsel further submitted that the allegation that there has been arbitrariness or perversity in the tender process is belied by the fact that there were four committees which were constituted for the purpose of evaluation of the bids, namely, a) pre bid clarification committee, b) prequalification bid evaluation committee, c) technical bid evaluation committee and d) price bid



evaluation committee. He would contend that once the bid evaluation process was evaluated by four separate committees, the question of such process being arbitrary or perverse is ruled out. Thus, the contention without anything more, should be rejected.

19. By pointing out to the reply dated 27.02.2025 of the petitioner and dated 26.02.2025 of respondent no.2 in response to the clarification sought by DSHM *vide* the letter dated 25.02.2025, learned counsel contended that the openness and objectivity employed by DSHM is writ large. He would contend that in case any bias or partiality existed in favour of respondent no.2, there was no requirement for DSHM to call for any clarification from either of the parties. Moreover, according to him, DSHM also sought clarification from the department of GST *vide* letter dated 21.03.2025 which was responded to by the GST Department on 25.03.2025 informing that 18% indeed is chargeable. Since respondent no.2 had furnished an indemnity bond indemnifying the DSHM from the liability of payment of GST, by the letter dated 30.03.2025, respondent no.2 was awarded the contract. In support thereof he referred to Annexure R-15, which contains the file noting indicating the reasons as to why the department awarded the contract to respondent no.2. He thus submitted that the DSHM being the tendering authority, and also as a prudent business entity entering into commercial transactions, chose the best possible bid to suit its requirement keeping the paramount need of the public at large. He prays the petition be therefore dismissed.

### **CONTENTIONS OF RESPONDENT NO.2**

20. Mr. Sandeep Chilana, learned counsel appearing for respondent no.2, at the outset contended that the present petition is based on a limited knowledge of



the GST procedure and a misunderstanding of the same. While relying on notification no.12/2017 dated 28.06.2017, particularly entry at Sl. No. 74, he forcefully contended that the services offered to be provided by respondent no.2 squarely fell within the exemption of GST attracted to the said entry. He would contend that it was on that basis that respondent no.2 offered a CPRT of Rs. 945/-. According to him, the entire confusion arose purely on the basis of the petitioner's misunderstanding of the applicability of GST to the services sought for by DSHM. He would contend that if the petitioner had understood the terms of the subject tender correctly, there would be no occasion for filing the present writ petition.

21. He fairly conceded that respondent no.2 had indeed furnished the indemnity bond, however, the same was furnished as an abundant precaution to save itself from any purported infraction of GST procedures as also that DSHM would not find fault with respondent no.2 on that count. He would contend that as to whether GST would have to be eventually paid by respondent no.2 or not is a question which may arise in future if the GST Department deems it fit. He also contended that respondent no.2, though is depositing the GST, would at a future date possibly seek refund of such amount inasmuch as according to respondent no.2 the same is otherwise not payable. All this has nothing to do with the petitioner or the present writ petition.

22. In order to buttress his contentions above, he relies upon the judgment of Hon'ble Supreme Court in *Union of India and Ors. vs. Bharat Forge Ltd & Anr.:* (2022) 17 SCC 188. The relevant paragraphs are extracted hereunder:-

*"40. It is clear that the GST, be it under the Central Act and the State Goods and Services Act, are indirect taxes imposed on the supply of goods and services or*



*both. Except in a case falling under the reverse tax mechanism, it is the supplier of the goods and services, who would remain liable to pay the tax. The supplier is obliged to file the returns which includes monthly returns and annual return. He is to self-assess and pay the tax in accordance with the provisions. There is provision for provisional assessment of tax in Section 60. It becomes the duty of the taxing authority to assess and recover the tax due. No doubt, under the reverse tax mechanism, in regard to the specified transactions and persons covered thereunder, it would be the recipient of the goods and services or both, which would be liable to pay the tax due on the supply of goods or services or both, to it. Having borne in mind the above brief overview of the tax regime under the Central Act and the State Act, we may not proceed to consider the case in greater detail.*

*41. What is involved before the Court is not a direct challenge to the terms of the tender. The writ petitioner did not choose to challenge the terms of the NIT dated 9-4-2019 despite admitted understanding of the working of similar tender notification leading to some of the bidders showing the GST rate at 5% and even writing about it. The writ petitioner chose to participate in it and filed its bid, showing the tax rate at 18%. The entities, which were shown as entitled to rank as L-1 to L-3, have shown the tax GST liability as 5% on the product. It is thereafter that the writ petition was filed seeking the reliefs, we have already noticed.*

*42. The appellants stand in the shoes of a purchaser of goods and services. By the global tender floated by the appellants, the appellants called for e-tenders from intending suppliers of the goods. The terms of the tender were well-known to the tenderers. Under Clause 2.7.6, undoubtedly, the bidders and the tenderers, while quoting the rates, were to clearly indicate the rate of applicable duties and taxes included in the price quoted by them. Let us pause for a moment and analyse its true meaning. Under the said clause, the bidders were to quote the rate of applicable duties and taxes, which were included in the price quoted by them. This clause must be read in conjunction with Clause 2.8.6, which provides that the purchaser (appellants) will not be responsible for the payment of taxes and duties paid by the supplier, on the basis of the misclassification or a misapprehension of law. This would mean that the appellants as purchaser was making it clear that it will have no liability to shoulder, in the payment of tax if it is found that, while indicating the rate of applicable duty or tax by the tenderer, it has wrongly quoted a rate which is lower than the rate, which it was liable to pay in law. The quoting of the rate, in other words, by the tenderer, within the meaning of Clause 2.7.6, would bind the tenderer and he would not be heard to say that he had arrived at the rate and made the bid and which stood accepted, on the basis of misapprehension of law or misclassification. On the one hand, Clause 2.7.6 gives the impression that all the bidders/tenderers should clearly indicate the rate of the applicable duty and tax in the price quoted by them.*



*43. We must however read it in conjunction with Clause 2.9.2. The said clause provides for a clear duty with the tenderer to acquaint themselves with all the applicable taxes and duties. It further provides that in a case, where the taxes and duties are not indicated explicitly in their offer, the same will be considered, which means, the offer will be considered as inclusive. The meaning of this clause can only be that while ordinarily the tenderer would and should include in the tender not only the base price but the taxes and the rate of tax and arrive at the global sum at which he is making the bid, Clause 2.9.2 provides for the contingency of the tenderer not indicating about the applicable taxes and duties. In other words, he merely quotes a sum without specifically mentioning about the taxes and duties or the rates. This is pointed out by the learned ASG to contend that the fallacy committed by the High Court lies in it, not giving full meaning to the said clause.*

*44. We would understand that the working of the statutory variation clause would be as follows:*

*44.1. The successful tenderer must clearly indicate the rate of tax/duty in his offer. There must be a variation in the tax and duty, which takes place after the submission of the bid. There cannot be any claim for such statutory variation on account of misclassification by successful tenderer. If these conditions are met, then, the purchaser, under the statutory variation clause, would appear to undertake the liability, to pay to the successful tenderer, the differential tax or duty.*

*44.2. A perusal of Clause 2.7.7, which is the result of the first amendment would appear to indicate that for the tenders opening after roll out of GST, all the bidders, tenderers must ensure that they are GST compliant and their quoted tax structure/rates are as per the GST norms. This clause again must be read in conjunction with Clause 2.9.2, which makes it clear that a tenderer may quote a rate without including any tax component.*

*45. It is clear that the clauses read together will yield the following result, bearing in mind also the GST regime. The liability to pay tax under the GST regime is on the supplier. He must make inquires and make an informed decision as to what would be the relevant HSN Code applicable to the items and the rate of tax applicable. Thereafter, when he makes the bid, the issue of competition for winning the bid, would come into clear focus. The goal of the bidder ordinarily is to emerge successful and bag the contract. The extent of profit that he would earn, is a matter, which is essentially a matter to be decided by him. He may, for germane reasons, wish to bag a contract, with situations ranging from one extreme end of the spectrum viz. even when the prospect of a loss stares at him, or a slightly brighter outcome viz. the contract working on a break-even basis or moving on to an even more optimistic possibility, namely, of the contract earning him profit, which he is willing to take at a modest rate or a rate which he*



*considers as reasonable in his understanding and circumstances. This is a matter to be left to the commercial expediency of the bidder. Now, when the matter is viewed from the perspective of the purchaser, the purchaser seeks to buy goods and services or both by awarding the contract to the lowest bidder. When the purchaser happens to be the State, it would be not fair or reasonable to not expect it to accept the bid of the lowest bidder unless it decides to not accept the bid of the lowest bidder for reasons which are fair and legal. No doubt, it is not the law that the Government is bound to accept the lowest bid. It is always open to the Government for relevant, valid and fair reasons, to not accept even the lowest bid.*

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*51. The argument of the writ petitioner, which has found favour with the High Court and reiterated before us by Shri Amar Dave, learned counsel for the writ petitioner is that since the tender conditions contemplate the adding of the tax to the base price for the purpose of arriving at the ranking, which, in turn, will determine, as to who will be the successful bidder, there is the unfair trade practice indulged in by some of the bidders to understate the rate of tax. There is an eminent need for the State (appellants) to indicate the HSN Code. Once it is indicated, it becomes a panacea, as it were, to the evil, which has been perceived and successfully pressed by the writ petitioner. Is that so? The answer to this question, has both legal and factual dimensions.*

*52. As far as the legal aspects are concerned, the fundamental question, we must pose is, whether there exists any public duty with the appellants to indicate the HSN Code when they float a public tender. Here the learned ASG is correct, when he points out that there is no statutory duty cast on the appellants to indicate the HSN Code in a tender of the kind we are concerned with. Proceeding on the basis that a public duty may emerge, not merely from a statute but in various other ways, which has been touched upon, in *Andi Mukta [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691]* as also, in *Mansukhlal [Mansukhlal Vithaldas Chauhan v. State of Gujarat, (1997) 7 SCC 622 : 1997 SCC (Cri) 1120 : 1997 SCC (L&S) 1784]* and even on an expansive exploration, does such a duty flow from any other legitimate source?"*

### **REJOINDER ON BEHALF OF PETITIONER:-**

23. Mr. Rao, learned senior counsel, in rejoinder, while inviting attention to para 19 of the para-wise reply of the counter affidavit of respondent no.2 submitted that the respondent no.2 has now changed its stand from what it had originally stated in the tender document. In that, originally in Annexure 9 of the



tender document, the respondent no.2 had indicated the CPRT of Rs.945/- without any GST, while in para 19, respondent no.2 has twisted the facts to now say that Rs.945/- is inclusive of GST and the original price of CPRT quoted ought to be reckoned at Rs.800.85/-. He vehemently contended that this would amount to alteration of its original bid and consequentially the award of contract dated 30.03.2025 indicating the price at Rs.945/- inclusive of GST, is a material variation of the tender terms and cannot be allowed. If that be so, according to learned senior counsel, both DSHM as well as respondent no.2 had violated the mandatory conditions and resultantly the award of contract dated 30.03.2025 ought to be quashed and set aside. Resultantly, the petitioner ought to be awarded the contract.

**ANALYSIS & CONCLUSIONS:-**

24. We have heard Mr. Rao, learned senior counsel for the petitioner, Mr. Sameer Vashisht, Standing Counsel for DSHM and Mr. Mr. Sandeep Chilana, learned counsel for respondent no.2, perused the records including the tender document.

25. According to us, from the arguments addressed, the moot question to be considered in the present case is as to whether GST is applicable for the services sought by DSHM and as to whether DSHM had infringed or violated any condition of the subject tender by awarding the contract to respondent no.2 ignoring the mandate provided in Annexure 9 read with Clause 6 and the “Method of Tender Evaluation and Price Comparison” of the tender document.

26. So far as the issue regarding applicability or otherwise of GST is concerned, that may strictly not be within the zone of consideration so far as the factual matrix of the present case is concerned. The applicability or otherwise of



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GST to the present tender conditions, in our opinion, has been clarified beyond doubt by the GST department itself *vide* the letter dated 25.03.2025 which is extracted hereunder:-

**“GOVERNMENT OF NCT OF DELHI  
DEPARTMENT OF TRADE AND TAXES  
POLICY & RESEARCH BRANCH,  
VYAPAR BHAWAN, IP ESTATE  
NEW DELHI – 110002**

**No.F.3(620)/P&R/DST/2025/**

**Dated: 25.05.2025**

To

*The Special Secretary (H&FW) &  
MD(DSHM), GNCTD  
Health & Family Welfare Department,  
Govt. of NCT of Delhi,  
Room No.902, 9<sup>th</sup> level,  
A-Wing, Delhi Sectt,  
I.P. Estate, New Delhi – 110002.*

**Sub.: Clarification w.r.t. applicability of GST.**

**Respected Sir,**

*With reference to your office Letter No.SSHFW1/235 dated 21<sup>st</sup> March, 2025 on the above cited subject, I am directed to inform that in terms of Notification No.11/2017 (Central Tax Rate) dated 28.06.2017, 18% GST is chargeable on Human Health & Social Care Services*

**Yours faithfully,**

*sd/-*

**(Anita Kumari)  
GSTO (P&R)”**

Since a pointed query was sent to the GST Department by DSHM, it is apparent that the response thereto by the said department puts the controversy beyond the pale of doubt. In that, 18% GST is indeed chargeable on Human Health and Social Care Services. Undoubtedly, the services sought by DSHM and offered by both the petitioner as also the respondent no.2 are squarely covered under the “Human Health and Social Care Services” on which 18% GST



appears to be chargeable. In that context, so far as the Notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 issued by the Department of Revenue, Ministry of Finance and relied upon by the respondent no.2 is concerned, having regard to the latest clarification tendered by the GST Department itself affirming 18% GST chargeable on the services sought, we are impelled to rely on the said clarification being “*contemporanea expositio*”. Moreover, we are not called upon to decide the correctness of the Notification or the clarificatory letter issued by the same department. *Ergo*, the issue as to whether the 18% GST is chargeable or not is answered in the affirmative. That said, we now need to consider as to whether for the purposes of selecting the L-1 bidder, the CPRT without GST is essential or whether price with GST inclusive would be relevant.

27. Having reached the aforesaid conclusion, so far as the 1<sup>st</sup> issue is concerned, we would now advert to the 2<sup>nd</sup> issue as to whether the DSHM has award the contract to respondent no.2 *vide* letter dated 30.03.2025 without violating the terms of the subject tender.

28. Great emphasis was laid by the petitioner upon the details to be indicated and entered in Annexure 9 of the tender document which according to it, was mandatory. In order to appreciate the said contention, it would be apposite to extract the same hereunder:

**“ANNEXURE-9**  
**PRICE BID**

***Tender’s Name-Entering into Rate Contract for Providing NAT Testing Facility (ID-NAT) on turnkey/reagent rental basis for 02 sites (1 for LNH & 1 for DU).***

***Qty.-As and when required during Rate Contract period***



**(Bidders should quote “destination price” i.e. at consignee(s), New Delhi inclusive of all statutory taxes i.e. GST, Insurance, forwarding charges, packaging and handling charges, third party expenses and all other charges etc. in the prescribed format only.)**

<i>S.No.</i>	<i>Description of Tests</i>	<i>Appropriate Number of tests to be conducted during the initial 1 year</i>	<i>Rate Per reportable test (without GST) in Rs</i>	<i>%GST</i>	<i>Final reportable test (including GST) in Rs.</i>	<i>Total amount during contract (including GST)</i>
<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>	<i>F</i>	<i>G=C x F</i>
<i>1</i>	<i>NAT Testing Reportable Test (CPRT)</i>	<i>38000</i>				

*Note: L1 bidder will be selected on the basis of grand total of price quoted in column G.”*

29. A perusal of the said Annexure makes it clear that what was required from the bidders was CPRT, firstly without GST in Column ‘D’, followed by the percentage of GST if applicable in Column ‘E’, thereafter the final rate of CPRT inclusive of GST in Column ‘F’ and the total amount during contract inclusive of GST in Column ‘G’. The total amount in Column ‘G’ was to be arrived at after multiplying the approximate number of tests i.e. 38,000 in column ‘C’ with the final rate of CPRT inclusive of GST in Column ‘F’.

30. At the stage of notification of the tender document, it appears that the DSHM was not aware as to the extent to which GST would be chargeable on such services as sought. It is only subsequently when it had two bidders, i.e., the petitioner quoting its CPRT with and without GST while respondent no.2 quoted



its price indicating that no GST is chargeable at all, that the conundrum arose. Both parties were completely at variance with each other in so far as chargeability of GST is concerned. On the one hand, petitioner was of the opinion that 18% GST is chargeable on such services while respondent no.2, relying upon the Notification No.12/2017 – Central Tax (Rate) dated 28/6/2017 was clearly of the opinion that no GST is applicable at all for the same services. It was this controversy which led the DSHM to seek clarification from the GST Department. As observed above, by the letter dated 25.03.2025, the GST Department clarified that for the services sought under the tender document, 18% GST was chargeable.

31. In the above backdrop, we have to consider what were the options available to DSHM to take an informed decision. In that context, it would be significant to consider the relevant clauses of the tender document. Sub-clauses (ii) & (iv) of Clause II of tender document are extracted hereunder:

*“II. Taxes & Duties:-*

- i. xxx xxx xxx*
- ii. The prices shall be inclusive of all taxes & duties leviable including GST and Entry tax etc. and the Purchaser shall not be liable for the same.*
- iii. xxx xxx xxx*
- iv. If any rates of tax are increased or decreased, a new tax is introduced, a existing tax is abolished, or any change in interpretation or application of any occurs in the course of the discharge of contract, which was or will be assessed on the bidder in connection with discharge of the contract, an equitable adjustment of the contract price shall be made to fully take into account any such change by addition to the contract price or deduction the reform as the case maybe.”*

32. A perusal of clauses (i) to (iv) clarifies the intention of the DSHM while authoring the tender conditions. In that, (1) as per clause (ii) the prices were to be inclusive of all taxes and duties leviable including the GST and the purchaser i.e.



the DSHM was not to be made liable for the same; and (2) as per clause (iv) if there is any increase or decrease in rate of taxes etc., during the period of execution of the contract, an equitable adjustment of the contract price is to be taken as per the situation.

33. Eloquent arguments were addressed on behalf of the petitioner to convince us that details entered in Annexure 9 of the tender document were not only mandatory, but also that the final decision thereof, on the financial bid, was to be fairly evaluated on the prices quoted therein. For that purpose, learned senior counsel had drawn attention to the Clause (vi) of the tender document and the clause respecting “Method of Tender Evaluation and Price Comparison” mentioned in the said document. According to learned senior counsel the price per unit i.e. CPRT was the deciding factor so far as the financial bids were concerned and GST was to be added thereon only for the purpose of reckoning the final cost of the tender. He laid great emphasis on the aspect that neither clause (vi) nor “Method of Tender Evaluation and Price Comparison” referred to any tax muchless any reference to GST at all. In his opinion, the financial evaluation ought to have been considered only on CPRT in which case had DSHM followed the correct procedure, petitioner which had quoted Rs.802/- would have been far lower than respondent no.2 which quoted Rs.945/-. The petitioner was held ineligible only for the reason that the final rate in column ‘G’ so far as petitioner is concerned, per CPRT inclusive of GST would be Rs.946.13. As against this, he contended that, if GST is made applicable to the rate quoted by respondent no.2 then the final rate of respondent no.2 would be Rs.945 + 18% GST, which would be way above the petitioner’s quote inclusive of GST at Rs.946.13. In such situation, awarding contract to the respondent no.2



is in violation of the tender conditions so specified in Annexure 9.

34. Though the aforesaid argument of the petitioner appears to be attractive at the first blush, however, on a closer examination of the tender conditions particularly sub clauses (ii) and (iv) of Clause II of the tender document, it would not be sustainable so far as DSHM is concerned. This is for the reason that though Annexure 9 definitely requires the bidders to give CPRT with and without GST, yet the final rate is reckoned inclusive of GST. Sub Clause (ii) has to be given its plain and natural reading and therefore, the DSHM is to consider a price inclusive of all taxes with no corresponding liability upon itself to set off or reimburse the same to any successful bidder. If the said sub clause (ii) is not read in the above manner, the same would be rendered otiose and nugatory. This surely cannot be the manner in which a particular term or a condition of a contract can be interpreted. It is trite that the tender conditions or conditions of any particular document have to be read harmoniously so as to further the cause or benefit arising to a party in the said document. In the present case clearly the DSHM is not only the tendering authority but also is entering into a commercial transaction with private entities and would be at liberty to choose what is best to suit its requirement. The fact that sub clause (ii) of Clause II has been engrafted in the tender document itself would suffice the proposition that DSHM could consider the prices quoted by respondent no.2 as inclusive of GST.

35. In all probability it appears that the indemnity bond was asked to be furnished by respondent no.2 in the above context. Thus, the argument that the financial bid in the subject tender ought to have been considered only on the basis of CPRT, though may be a relevant consideration, yet the overriding power of the DSHM to consider the prices inclusive of GST and requiring a bidder to



furnish an indemnity bond in that context cannot be said to be a perverse or an arbitrary exercise. In that view of the matter, we are of the considered opinion that the award of contract to respondent no.2 by DSHM considering the same as inclusive of GST @ 18% may not be amenable to interference or interdiction.

36. Having observed as above, yet we find a disturbing feature in the tender process. Annexure 9 is undoubtedly a relevant part of the tender document. As a corollary it is obvious that all the fields which were required to be entered in Annexure 9 would also be a relevant consideration. It is also not disputed that respondent no.2 did not specify as to whether its quote of Rs. 945/- was or was not inclusive of GST as required in Annexure 9. Though, respondent no.2 contended that according to it GST was not chargeable, the same is belied by the letter dated 25.03.2025 of the GST Department which in no uncertain terms clarified that 18% GST is chargeable on Human Health and Social Care Services. If that be so, when the DSHM was in receipt of such information, it was incumbent upon it to call both the parties for further clarification or negotiations before finalising the award of contract. This provision of price negotiation is provided in the tender document at sub clause (xvi) of Clause IV of the General Terms and Conditions of the subject tender. The same is extracted hereunder:

*“xvi **Price Negotiation**:- In exceptional circumstances negotiations can be undertaken but only with the prior approval of the Competent Authority, e.g., where there is no competition or where there is shortage of capacity or where the items/ stores required are known to be manufactured only by two or three firms. Such negotiations shall be conducted by Committee consisting of representatives of Indenter, Purchase, Finance and such other members Competent Authority may like to nominate. The lowest quoted technically qualified bidder/ bidders will be considered as L1 and called for negotiation, if required, to enter into the rate contract.”*



37. Though the provision appears to be in respect of L-1 bidders, in such peculiar and exceptional circumstances as have occurred in the present case, due diligence and care on the part of the officials of DSHM ought to have been taken. Fairness and transparency in the process and procedure involved in tenders and that too while evaluation by a State or its authority, are the minimum basic and paramount underlying principles not only expected from such public authorities, but are binding. When such expectations are not met by public authorities, it ordinarily brings disrepute to the tender procedure. Due care ought to be taken to avoid such affliction.

38. A controversy was also brought forth by the petitioner by referring to the order dated 09.04.2025, wherein it was noted that a written statement was tendered on behalf of DSHM that respondent no.2 had already commenced its operations in both the hospitals, namely, Lok Nayak Hospital, Delhi and Deen Dayal Hospital, Delhi on and from 30.03.2025, whereas in the counter affidavit of respondent no.2 it was candidly admitted that so far as Lok Nayak Hospital is concerned the NAT equipment was installed on 29.04.2025 and services commenced from 30.04.2025. We are appalled and disturbed to note that such incorrect instructions were furnished to the learned counsel for DSHM which tend to interfere with the fair appreciation of the facts. We deprecate such practices. Keeping in view the seriousness in such matters, we would have issued notices of contempt to such officers yet we limit ourselves to admonishment of such behaviour. The incorrect instructions clearly fall within the doctrine “*suppressio veri suggestio falsi*”. We choose to leave it at that.

39. We have been informed that services sought under the tender are being



executed by respondent no.2 since April 2025 and the award of contract is for a period of 1 year and would be over in March-April 2026. Having regard thereto, we are not interdicting the tender or the contract issued in favour of respondent no.2 at this belated stage lest it may cause significant disruptions to the services being offered and would surely disturb the public services, which are paramount to any tender.

40. So far as the judgements of the Hon'ble Supreme Court in *Raunaq International (supra)* and *Michigan Rubber (supra)* are concerned, there is no quarrel with the ratio laid down. However, fairness, transparency and impartiality are the underlying principles which need to be adopted. It is not only to be done but also seen to be applied. It has been observed consistently by the Hon'ble Supreme Court in several judgments that the Court may interfere in an administrative decision, if and only if the same is arbitrary, irrational, unreasonable, mala fide or biased. (See: *Tata Cellular vs. Union of India: (1994) 6 SCC 651* and *Subodh Kumar Singh Rathore vs. Chief Executive Officers & Ors.: 2024 SCC OnLine SC 1682*). Thus, the exercise of powers of judicial review, though circumscribed, are not completely prohibited.

41. So far as the judgement *Bharat Forge (supra)* relied upon by respondent no.2 is concerned, the Hon'ble Supreme Court has held that it is not the law that the Government is bound to accept the lowest bid. It is always open to the government for relevant, valid and fair reasons, to not accept even the lowest bid. The Hon'ble Supreme Court insofar as the issue regarding the appellant (State) therein having failed to indicate the HSN Code is concerned, held that there is no statutory duty cast on the appellants to indicate the HSN Code in a tender since, the appellant (State) therein, can protect its best interest as a player



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in the commercial field. The same has been applied here too.

42. In view of the above, the writ petition is dismissed with pending applications if any, without any order as to costs.

**TUSHAR RAO GEDELA  
(JUDGE)**

**DEVENDRA KUMAR UPADHYAYA  
(CHIEF JUSTICE)**

**NOVEMBER 26, 2025/rl/yrj**