2026 INSC 881

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10772 OF 2026

(ARISING OUT OF SLP (C) NO. 16792 OF 2026)

M/S. UTKARSH ENTERPRISES & ORS. ...……APPELLANTS

VERSUS

UNION OF INDIA & ORS. ……RESPONDENTS

WITH

CIVIL APPEAL NO.10773 OF 2026

(ARISING OUT OF SLP (C) NO. 18491 OF 2026)

M/S. PHILIPS INTERNATIONAL …………APPELLANT

VERSUS

UNION OF INDIA & ORS. ...……RESPONDENTS

J U D G M E N T

<u>ARUN PALLI, J.</u>

1. Leave granted.

2. These Civil Appeals arise out of the final order and judgment dated 29.04.2026 passed by the High Court of Delhi in W.P.(C) No. 4487 of 2026, whereby the Writ Petition assailing certain clauses/conditions of the tender(s) issued by the Directorate of Education, Government of the National Capital Territory of Delhi ('DoE'), for procurement of **sports goods** and **outdoor gymnasium equipment** for government schools and sports centres, came to be dismissed.

3. The lead Appeal [SLP (C) No.16792/2026] has been preferred by three of the four Writ Petitioners, whereas the connected Appeal [SLP (C) No.18491/2026], is filed by M/s. Philips International ('Philips'). Notably, Philips had moved an application to be arrayed as a party to the Writ Petition filed by the Appellants in SLP (C) No. 16792/2026, which has also been disposed of vide impugned judgment. This Court vide order dated 18.05.2026 also permitted Philips to file the Special Leave Petition, and it was ordered to be tagged with the lead Appeal.

4. A brief narration of the facts that have led the parties to the current stage shall be imperative.

a) Out of the **seven tenders**, the DoE floated six Sports Equipment Tenders (‘**SET**’) on 13.11.2025 and 22.12.2025 for procurement of sports material at different sports coaching centres/Government schools and all such places in Delhi NCR where the events are organised by Sports & Physical Education Branch of the DoE. The seventh tender, for Outdoor Gym Equipment (‘**Gym Tender**’) was floated on 23.01.2026 to procure equipment such as air walker, leg press etc.

b) Aggrieved by the allegedly “stringent” tender conditions, such as that in relation to the past performance and average minimum turnover, denial of Micro and Small Enterprises (‘MSE’) relaxations, requirement of an office/warehouse in Delhi for the past three years, as well as the mandate of submitting physical samples as a precondition for bid evaluation, the Appellants herein, barring Philips, collectively filed a Writ Petition.

c) In essence, the grievance of the Appellants was that the impugned tender conditions were so manifestly arbitrary and **exclusionary** that they effectively barred the Appellants from participating in the tender process. Pertinently, a majority of the impugned clauses under both the categories of tenders (i.e., the six SETs and the seventh Gym tender) were of similar nature, if not identical.

d) The only distinct challenge under SET was to **Clause 2.17**, which required not only having a fully functional office in Delhi but also a warehouse in Delhi/NCR region for the last three years. The case of the Appellants has been that the impugned clause operated as an effective bar on those participants, who, if not for the said criteria, were otherwise fully eligible.

e) Additionally, clauses such as the "past performance criterion" requiring supply of same/similar category products for 30% of bid quantity in at least one out of the last three financial years, and further, similar kind of supplies for the last three financial years, as well as an annual average turnover, were deemed to be "onerous". The grievance of the Appellants was that this was an unreasonably high threshold. The lack of relaxations to MSEs for years of experience and turnover, while also compelling them to deposit earnest money, was further termed to be in direct contravention of Public Procurement Policy MSE Order (2012). In a nutshell, cumulatively, the conditions were alleged to be contrary to various Government-e-Marketplace ('GeM') disclaimer clauses.

f) Further, the requirements in the nature of "physical submission" caused undue hardship to participants outside of Delhi, Appellants pointed towards clauses such as those requiring physical sample submission at Delhi (Clause 7.5.1), stipulating non-consideration and return of those bids, unopened, which were without samples (Clause 7.5.2) as well as the two–stage technical evaluation requiring not only document submission (Part-I) but also physical technical evaluation (Part-II). These clauses, therefore, forced bidders to expend large sums of money at an early stage, just in order to participate in the tender.

g) Likewise, the grievances in relation to the **gym tender**, were, yet again of a similar nature. Concerns were voiced against clauses stipulating: a functional service centre in the consignee State, a service centre in at least 5 pin codes before the date of tender publication. Further under challenge were: conditions requiring physical inspection of goods at Delhi, mandatory sample submission, a past performance criterion of 80% of the bid value and so on.

h) In short, the case set out by the Appellants was that the cumulative effect of the said conditions was exclusionary and therefore effectively barred meaningful participation in the tender process.

i) Per contra, the specific case set out by the Respondent authorities was that the impugned eligibility conditions, were within the knowledge of the Appellants since the date of publication of tenders. Therefore, the challenge laid to those conditions/clauses at an advanced stage, was nothing but an afterthought. Moreover, since the tenders involved supply of sports infrastructure to children in government schools and were of considerable public importance, therefore, any interference was undesirable, for the same could severely impair the very purpose for which the equipment was being procured. Further, in the guise of the petition, judicial rewriting of the tender was being sought. Respondents even questioned their locus by pointing towards the fact that as against the six SETs, none of the Appellants [SLP (C) No. 16792/2026] had participated and as against the gym tender, only M/s. Utkarsh Enterprises ('Utkarsh') had participated, albeit unsuccessfully.

j) Defending the various clauses under challenge, the Respondents stated that the "Delhi office/warehouse" requirement maintained a rational nexus with the object sought to be achieved, for the bulk quantity of goods was required to be supplied at short notice.

k) Lastly, the MSE relaxations were stated to be within the discretion of the procuring authority, whereas, the physical submission requirement was insisted to have a direct nexus with verifying suitability and safety of goods, considering the same were to be installed in and used by children in schools.

THE IMPUGNED JUDGMENT

5. Upon due analysis of the pleaded case of the parties, the High Court formulated a few questions that were considered necessary to determine the *lis*:

> ***a. Whether the challenge, insofar as it concerns the Sports-Equipment Tenders, is maintainable at the instance of the Petitioners who did not participate;***

b. ***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;***

c. ***Whether having regard to the Petitioners' delayed approach to this Court after publication of bids and material progress of the tender process, the challenge is liable to be declined on the ground of delay and laches;***

d. ***Whether, in the facts of the present case, any interference is warranted at all.***

6. And upon consideration of the matter in issue, it was observed that even though, at the time of filing the Writ Petition, the **gym tender** had reached the stage of financial evaluation, since one of the Appellants (Utkarsh) had participated in the tender process, the Court deemed it expedient to examine the clauses under challenge.

Accordingly, on a detailed analysis, it was concluded that the clauses assailed were neither arbitrary nor perverse, for: the past performance criterion under the bid document, stipulating work order of 80% of bid value in at least one of the last three financial years, was supplemented by the Additional Terms & Conditions ('ATC'), which allowed bidders to either show one work order of 80% of estimated bid value and alternatively: two of 50% or three of 40%. Further, since the Gym equipment had elements of installation, maintenance, and safety, requiring a functional service centre in the consignee State and physical sampling were justifiable. Similarly, the relaxations to MSEs in relation to past turnover and prior experience were held to be discretionary.

7. As regards the challenge laid to tender conditions set out in the SETs, the High Court was of the view that the same suffered from substantial delay, for the Petition had been filed about four months after bid publication, on 01.04.2026, by which time one of the SETs already stood awarded, and the other five had proceeded into part II of technical evaluation i.e., scheduled demonstration, in which physical samples were to be analysed.

8. Thus, in view of the belated challenge, coupled with the fact that none of the Appellants [SLP (C) No.16792/2026] had participated in the SETs, the High Court deemed it appropriate to not render a view on validity of the clauses under the six tenders, leaving it open and to be examined in an appropriate proceeding:

> *"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., 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."

…

"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."

9. Thus, these Appeals.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

10. Mr. Raju Ramachandran, ld. Sr. Counsel for the Appellants, at the outset submits that the Appellants no longer wish to press their challenge in relation to the two tenders which already stand awarded i.e., the Outdoor Gym Tender (GEM/2025/B/6984141) on 30.04.2026, and the Sports Equipment Tender dated

13.11.2025 (GEM/2025/B/6858594), on 01.04.2026. Hence, all that this Court is left with, is the challenge laid to the five SETs.

11. It is contended that the lack of MSE relaxations is in violation of the MSME Policy and the requirement of samples at the stage of tender contravenes various GeM disclaimer clauses. It is further urged that the sampling requirement is onerous and exclusionary, for its aggregate cost across the five SETs is approximately Rs. 94 lakhs. The past performance criterion, too, is stated to be equally onerous.

12. Further, that the Delhi Office/Warehouse stipulation (Clause 2.17) has no rational nexus with the object sought to be achieved and in the earlier 2022 tender issued for identical goods, no such restriction was imposed and solely GST registration with the NCT of Delhi was mandated. And it is only now, they state, that the Clause is being portrayed as requiring merely "functional operational availability" as opposed to a "Delhi headquarter," contrary to the stance previously taken by the Respondents. Reliance is placed upon the decision of this Court in *Vinishma Technologies Pvt. Ltd. v. State of Chhattisgarh & Anr.*, ('Vinishma') *2025 INSC 1182*, to submit that the said decision squarely covered the matter as regards the challenge laid to Clause 2.17.

13. Lastly, he submits that the challenge was "timely" as technical evaluation was still under way at the time of filing the Writ Petition, which was preferred only upon exhausting non-judicial remedies, such as representations and pre-bid meetings.

14. Ms. Aanchal Basur, ld. Counsel appearing for the Appellants in the connected Appeal [SLP (C) No. 18491/2026] submits that she adopts the submissions advanced by Mr. Raju Ramachandran, ld. Sr. Counsel, and has nothing more to add.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

15. Ms. Swati Ghildiyal, ld. Counsel for the Respondents submits that as on date, two contracts stand awarded and the remaining five are at the stage of the financial evaluation. Therefore, an interference at such an advanced stage would prejudice not only the bidders but also undermine public interest.

16. On the issue of requiring earnest money deposit ('EMD') from MSEs, it is stated that the same is permissible under the General Terms & Conditions ('GTC') and that the same can be exempted, as per the additional terms, upon furnishing valid documents. To clarify it further, she submits that between 10 to 12 MSEs participated in the impugned tenders and, in fact, one of the tenders was even awarded to a registered MSE.

17. As regards Clause 2.17, it is argued that **(i)** There are about 500 varieties of sports equipment required to be supplied to schools in bulk quantity, often, on a short notice; **(ii)** Given the necessity of prompt installation, servicing, and maintenance of equipment supplied to government schools, delay in attending to defects or safety concerns could directly affect the beneficiaries, i.e., the school going children. Therefore, it is, rather, viable for the seller to have an office and warehouse in Delhi/NCR. Further, since a bidder is not required to be *headquartered* in, but only to maintain *functional operational availability* in Delhi, even a bidder outside of Delhi, is considered eligible upon demonstrating the prescribed operational infrastructure. Thus, the condition cannot be said to be geographically exclusionary.

18. Finally, in relation to the requirement of physical sampling, it is stated that the quality, durability, workmanship and safety of the sports goods could not be ascertained, as such, from the written descriptions given on the portal. Hence, the same is imperative.

ANALYSIS

19. Before proceeding further, it would be crucial to take note of the context in which matters involving public procurement tenders are looked at. The position of law is settled: delay in public procurement, whether goods or services, is not just to be measured against the calendar for the purposes of limitation but as against the progression of the process. Time is of extreme essence in such cases for they involve a larger public interest, and consist of multiple and complex stages of evaluation. Judicial discretion, therefore, must be exercised with extreme circumspection to ensure that **fence–sitters**, **proxies**, and **unscrupulous litigants** who bring a challenge at an advanced stage, are not allowed to disrupt an ongoing process.

20. Tender schedules operate within compressed and purpose – bound timelines. Four months may appear modest when viewed merely as a measure of calendar time. In the life of a tender, however, it may mark the distance between invitation and evaluation, between evaluation and selection, and between an open field and the crystallization of competing interests. Delay in such matters is therefore not assessed by counting days alone. It must be assessed by reference to what has occurred during those days, whose interests have arisen, and what public consequences would follow from unsettling the process at that stage.

21. Having said that, we may now advert to the tender schedule in the matter at hand.

Bid Number	Published on	Bid end date	Description and estimated value

GEM/2025/B/ 6926215	**22.12.2025**	**13.01.2026**	Sports Equipment: approx. Rs. 5.99 crores
GEM/2025/B/ 6952429	**22.12.2025**	**13.01.2026**	Sports Equipment: approx. Rs. 5.99 crores
GEM/2025/B/ 6955334	**22.12.2025**	**13.01.2026**	Sports Equipment: approx. Rs. 5.99 crores
GEM/2025/B/ 6940948	**22.12.2025**	**13.01.2026**	Sports Equipment: approx. Rs. 5.98 crores
GEM/2025/B/ 6950683	**22.12.2025**	**13.01.2026**	Sports Equipment: approx. Rs. 5.99 crores
GEM/2025/B/ 6858594	**13.11.2025**	**28.11.2025**	**Sports Kit:** approx. Rs. 6.46 crores.

GEM/2025/B/6984141	**23.01.2026**	**13.02.2026**	**Outdoor Gym Equipment:** approx. Rs. 5 crores

22. As discernible from the position tabulated above, the Notice Inviting Tender (‘**NIT**’) for the SETs was floated on 22.12.2025, with the last date to bid being 13.01.2026 (extended from 06.01.2026). Concededly, the Writ Petition came to be filed four months thereafter on 01.04.2026, when one of the six SET tenders, dated 13.11.2025, as indicated above, already stood awarded. Similarly, even the gym tender was assigned to the successful bidder on 30.04.2026. Further, by this time, in compliance with **Clause 8.2** which contemplated a two – stage verification process, the remaining SETs had undergone the stage of document verification and had further proceeded into part II of technical evaluation i.e., scheduled demonstration wherein physical samples were to be analysed, and, where we currently stand post dismissal of the Writ Petitions, the five SETs have reached the stage of financial evaluation.

23. The primary grievance, as raised by the Appellants, is that the eligibility conditions mentioned in the tender were **arbitrary, irrational, and exclusionary**, thereby effectively barring participation in the bidding. It is pertinent to note that a challenge to a tender condition/eligibility criterion, as distinct from a challenge to the evaluation of a bid, or declaring a participatory tenderer as non–responsive, accrues on the very day the condition is published. Nothing further is required to be discovered. Therefore, an entity which finds itself excluded or ineligible owing to a condition that is perceived to be arbitrary or unconstitutional, must at the earliest raise that grievance by approaching the Court.

24. The doctrine of delay and laches here reflects the equitable refusal of the Court to assist a litigant whose conscious inaction has allowed the legal and administrative landscape to change. The Appellants herein did not lack knowledge of the eligibility criteria. They lacked diligence in challenging it.

25. The attempt to take refuge in the representations and legal notices addressed to the Authorities also does not enure to the Appellants' advantage for they were aware since the very inception that they do not qualify the multiple tender conditions and are thereby ineligible to participate.

26. There is yet another dimension to the matter: Those who participated in the tendering process, met every single condition/eligibility criterion, and went through a rigorous evaluation of their technical bids were declared responsive/compliant. Such entities, at the verge of final evaluation of their price bids, too have acquired certain rights and interests. Therefore, to stall the process and afford any judicial indulgence to the Appellants, who approached the High Court at their own convenience, would be unfair. Rather unjust.

27. It would be apposite to point out at this stage that this is not merely a dispute among commercial actors. At the far end of the tender stand the school children for whose benefit the equipment was/is to be procured. As indicated by the Respondents, the supply of sports and gym equipment, worth Rs. 34 odd Crores, was to be made to about 16,00,000 school students, a major portion of which has come to a standstill owing to the present litigation.

28. However, for ld. Sr. Counsel for the Appellants would assert that the decision of this Court in Vinishma (*supra*) squarely covered the matter as regards Clause 2.17, it is deemed necessary to examine the contention to this limited extent. Therefore, we may straightaway advance to Clause 4 in the said case:

> *"**(4) Past Performance Restriction : Bidders must have supplied sports goods worth at least Rs.6.00 crores (cumulative) to State Government agencies of Chhattisgarh in the last three financial years (2021-22, 2022-23, 2023-24 or 2022- 23, 2023-24, 2024-25).**"*

29. On closer scrutiny, the Clause assailed in Vinishma (*supra*) imposed a threefold requirement, namely, that Bidders must have supplied sports goods:

a) Worth Rs.6.00 crores (cumulative); and

b) To State Government agencies of Chhattisgarh; and

c) In the last three financial years (2021-22, 2022-23, 2023-24 or 2022-23, 2023-24, 2024-25).

30. Therefore, in a given scenario, even supposedly the best in business, who is compliant with conditions (a), (c), as well as having supplied to a State

Government agency previously, but not of Chhattisgarh, is still rendered ineligible.

31. And upon a detailed and comprehensive analysis, this Court in Vinishma (*supra*) while concluding that the said clause was arbitrary, unreasonable and discriminatory, held as under:

> *"18. … **In the instant case, the impugned tender condition has the effect of excluding bidders who though otherwise financially sound and technically competent, have no experience of supply of sports goods to the State Government agencies of Chhattisgarh in past three years. The State by linking the eligibility criteria with past local supplies has created an artificial barrier, against the suppliers who had no past dealing with the State of Chhattisgarh. The impugned condition curtails the fundamental rights of the bidders, who have been ineligible to participate in the tenders.***
>
> ***19. The object of public procurement is to secure quality goods and services for the benefit of public exchequer. The said object can be achieved by requiring the bidders to demonstrate financial capacity, technical experience, and past performance in contracts of similar nature, regardless of place of performance of the contract. To confine the eligibility to participate in the tender, within one State is not only irrational but is also disproportionate to the goal of ensuring effective delivery of Sports Kits.***".

32. Adverting to the present case and before we even refer to Clause 2.17, it would but be indispensable to take into account the context and purpose the impugned clause was crafted to cater to. The tenders in the present case were for the procurement of sports material at different sports coaching centres/Government schools and all such places in Delhi NCR where the events are organised by Sports & Physical Education Branch of the DoE. Clause 2.17 in the present case is worded as:

> "*Since the department may require supply of equipment at short notice, the bidding firm/company must have a fully functional office in Delhi and warehouse in Delhi/ Delhi NCR since last 3 years.*".

33. To crystallize the position further, we deem it necessary to even refer to the stand set out by the Authorities as regards Clause 2.17.

> "*The stipulation is operational rather than geographical in nature. It has been incorporated to ensure prompt installation, inspection, servicing, maintenance and replacement of sports equipment supplied to Government schools, where delays in attending to defects or safety concerns would directly affect institutional use by school children and therefore, bears a direct nexus with the object of the procurement and does not operate as an exclusionary condition against the bidders located outside Delhi, who remain eligible to participate upon establishing the prescribed operational infrastructure*".

34. In this backdrop we are of the view that the decision in Vinishma (*supra*) as such has no decisive bearing on the matter.

CONCLUSION

35. While we are constrained to hold that the Appellants' case is bereft of any merit, it is for this belated challenge, portraying a lack of *bona fide* that we are dissuaded from examining the assailed clauses, rendering any findings on the same, and hence lie on the same page as the High Court. Accordingly, we leave the question as regards the validity of Clause 2.17 open and to be examined in an appropriate case.

36. In the wake of the position sketched out above, we find no ground to interfere with the judgment passed by the High Court.

37. Both the Appeals are accordingly dismissed. Pending applications if any, are thereby disposed of. No order as to costs.

…………………….J.
[K.V. VISWANATHAN]

…………………….J.
[ARUN PALLI]

NEW DELHI,

AUGUST 18, 2026.