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

% Judgment reserved on*: 05.08.2026*

Judgment delivered on*: 14.08.2026*

Judgment uploaded on*: As per Digital Signature~*

CNR No. DLHC010333792026

\+ W.P.(C) 10449/2026 CM APPL. 48477/2026 CM APPL. 50731/2026

PRAKASH MEDICOS .....Petitioner

versus

ADDITIONAL DIRECTOR CGHS SOUTH ZONE & ORS. .....Respondents

CNR No. DLHC010333802026

\+ W.P.(C) 10450/2026 CM APPL. 48479/2026 CM APPL. 50599/2026

M/S. A.S. ENTERPRISES & ORS. .....Petitioners

versus

ADDITIONAL DIRECTOR CGHS NORTH ZONE & ORS. .....Respondents

CNR No. DLHC010333812026

\+ W.P.(C) 10451/2026 CM APPL. 48481/2026 CM APPL. 50652/2026

A S ENTERPRISES & ANR. .....Petitioners

versus

ADDITIONAL DIRECTOR CGHS CENTRAL ZONE & ORS. .....Respondents

CNR No. DLHC010333822026

\+ W.P.(C) 10452/2026 CM APPL. 48483/2026 CM APPL. 50727/2026

A S ENTERPRISES & ORS. .....Petitioners

versus

ADDITIONAL DIRECTOR, CGHS (EAST ZONE) AND ORS. & ORS. .....Respondents

<u>Advocates who appeared in this case</u>

For the Petitioners : Mr. Viraj R. Datar, Sr. Advocate with Mr.

Vinay Kumar Dubey, Mr. Srikant Singh, Mr. Abhijit Singh, Ms. Priya Dubey, Mr. Aryaman Tomer, Ms. Vaishnavi Prajapati, Mr. Vishal Kumar Malhotra and Mr. Gautam Yadav, Advs.

Mr. Akshay Makhija, Sr. Advocate with Mr. Vinay Kumar Dubey, Mr. Sweet Deep Singh, Mr. Shweta Kumar, Ms. Priya Dubey, Mr. Aryaman Tomer, Ms. Vaishnavi Prajapati, Mr. Vishal Kumar Malhotra, Mr. Gautam Yadav, Advs.

Mr. Tanmaya Mehta, Mr. Vinay Kumar Dubey, Ms. Anunaya Mehta, Ms. Rashmi Gogoi, Ms. Priya Dubey, Mr. Aryaman Tomer, Mr. Aryan Bhardwaj, Ms. Vaishnavi Prajapati, Mr. Vishal Kumar Malhotra, Mr. Gautam Yadav, Advs.

For the Respondents : Mr. Akhand Pratap Singh Chauhan, SPC.
Ms. Parul Mehra, Adv.

For the Intervenors : Mr. Anurag Ahluwalia, Sr. Adv. with Mr. Dipanshu Gaba and Mr. Kunal Mittal, Advs. for Intervenor.

Mr. Samrat Nigam, Sr. Adv. with Mr. Kunal Mittal and Mr. Shiv Dutt Kaushik, Advs. for Intervenor.

Mr. Rajat Aneja, Sr. Adv. with Mr. Sumant De, Mr. Kunal Mittal, Mr. Shiv Dutt Kaushik and Mr. Mann Nankani, Advs. for Intervenor.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

V. KAMESWAR RAO, J.

1. As facts and issue(s) involved in all these petitions are common, which have been filed by the same petitioners, they are being disposed of by this common order.

2. The respondents herein are the Central Government Health Scheme ("CGHS") through its Director/ Joint Secretary/ Additional Secretary, DGHS and the Secretary, Ministry of Health and Family Welfare, Government of India.

3. The facts as noted from the record are that, on 18.03.2026, tenders were floated by South Zone, North Zone, Central Zone and East Zone of the CGHS for empanelment of *'Authorised Local Chemists'* for supply of branded medicines and surgical consumables. The last date of bid submission was 08.04.2026. The same was extended and the technical bids were opened on 08.05.2026. The petitioners were declared technically qualified in the bids. On 09.07.2026, financial bids were opened.

4. On 24.07.2026, the respondent no.1/concerned Additional Directors issued a letter(s) calling upon technically qualified bidders to submit a commercial justification of quoted discount in their respective bids as per the format attached, to identify and disallow abnormally lower bids. The petitioners on 23-24.07.2026 addressed an email to respondent no.1 seeking clarification of standard contained in the letter dated 24.07.2026, which as per them was vague and unidentified and sought appropriate extension of

time after such amendments.

5. It is case of the petitioner that, on 25/26.07.2026, as an abundant caution, they uploaded the requisite information/supporting documents as per the impugned letter on GeM portal. No response/acknowledgment has been received from the respondents.

6. The case of the petitioners as highlighted by Mr. Akshay Makhija, Mr. Viraj R. Datar and Mr. Tanmaya Mehta and, learned Senior Counsels/counsel for the petitioners is by relying upon Clause 4.1(C) and 7.1 of the Scope of Work, to state that the same guards against predatory pricing by outlawing abnormally low bids. According to them, though the impugned letter is ostensibly framed as a safeguard against predatory pricing and under cutting; the criteria and process laid down in the format to the impugned letter apart from being vague, arbitrary, discriminatory, is *malafide*, which strikes at the root of public interest.

7. It is their submission that the term *'commonly prescribed branded medicines'* has been left undefined without actually setting-out a framework which would govern what a '*commonly prescribed*' medicine would be. According to them, such a term ought to have been clearly defined with standard/objective criteria which ideally ought to be linked to the market-share of the medicines in question. According to them, the term *'commonly prescribed*' could have been linked to the top 500 brands by value provided in Delhi NCR by wellness centres, as per data available on the procurement website of the Ministry of Health. In the absence of specifically defining the term '*commonly prescribed*', the respondent has opened the possibility for

any medicine claimed by the bidder to be commonly prescribed.

8. According to them, it is not possible to discern whether the requirement is to submit details of commonly prescribed '*medicines*' marketed by any brand in each of the categories or commonly prescribed '*brands*' of medicines in each of the categories. Therefore, the method adopted by the respondents to weed out uncompetitive and predatorily priced bids has created more confusion, vagueness, and lack of any objective, verifiable standard against which evaluation can take place. They concede that the petitioners have filed requisite information/supporting documents for the consideration of the respondents but no action has been taken by the respondents till date.

9. It is their submission that, any discount offered over and above 25% to 30% of the MRP is impossible and hence, predatory. They are within their rights to approach this Court even at this stage keeping in view the settled position of law by this Court in the case of ***E Trav Tech Limited v. Union of India & Ors., W.P.(C) 6844/2026*** and connected petitions decided on 15.07.2026.

10. The respondents have filed a counter-affidavit to all the petitions. The submission of Mr. Akhand Pratap Singh Chauhan, learned counsel appearing for the respondents is that the present writ petitions are pre-mature as the petitioners have approached this Court at an intermediate stage of an ongoing tender/evaluation process without there being any final decision, rejection, disqualification or award of contract.

11. According to him, the writ petitions are based on mere apprehensions

and presumptions and does not disclose violation of any legal or fundamental right of the petitioners. The impugned communication dated 24.07.2026 issued through the GeM portal merely seeks clarifications and supporting documents from bidders in order to assess commercial sustainability of the quoted bids. In that sense, the said communication does not adversely affect any right of the petitioners. He also highlighted that no bidder has been declared unsuccessful, no bid has been rejected and no final decision has been taken by the respondents. So, no cause of action has accrued in favour of the petitioners for filing the present petition.

12. He stated that the tender document contains provisions enabling the respondents to seek clarification and supporting documents from bidders; where the quoted price appears commercially unsustainable or require further examination.

13. According to him, the impugned communication dated 24.07.2026 merely seeks commercial justification and supporting documents from the technically qualified bidders in exercise of Clause 3.l (C) read with Clause 6.1 of the Scope of Work of the Tender Document and Department of Expenditure Memorandum dated 06.02.2020. He submitted that the exercise is meant to protect public health and to prevent disruption in medicine supply by vetting whether quoted discounts are sustainable. The said communication neither rejects nor disqualifies any bidder nor determines any right of the petitioners.

14. We also note that in paragraph 9 of the counter-affidavit, the following has been stated:-

> *"9. That it would not be out of place to mention that the regulatory framework under Drugs (Prices Control) Order 2013 and margins fixed by National Pharmaceutical Pricing Authority are matters of record. However, the theoretical calculations and assumptions made by the Petitioners regarding maximum permissible discount thresholds (25%-33%) are self-serving and hypothetical. Market discounts vary significantly depending on bulk procurement contracts, direct manufacturer tie-ups, and institutional supply arrangements. The Financial Evaluation Committee (FEC) is fully empowered to scrutinize individual purchase invoices and commercial agreements submitted by bidders to test sustainability."*

15. Mr. Chauhan stated that the petitioners having participated in the tender process and submitted the documents sought by the respondents without objection, cannot now challenge the very process undertaken in accordance with the tender conditions. He also stated that the only right available to a bidder is fair and non-discriminatory consideration of its bid.

16. He submitted that the response documents furnished by the petitioners shall be duly considered and evaluated by the competent authority strictly in accordance with the terms and conditions of the tender, applicable government procurement policies, rules and guidelines and other relevant provisions governing the procurement process. He also submitted that the respondents shall take appropriate decisions, in accordance with law, on the basis of material available on record and the applicable evaluation parameters, without being influenced by any extraneous consideration. He has also relied upon the following judgments in support of his submissions: -

i. ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd., (2016) 16 SCC 818.***

ii. ***Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489.***

iii. ***Agmatel India Pvt. Ltd. v. Resoursys Telecom, (2022) 5 SCC 362.***

17. He seeks dismissal of the petitions.

SUBMISSIONS ON BEHALF OF THE INTERVENORS/ APPLICANTS.

18. Mr. Anurag Ahluwalia, learned Senior Counsel for the intervenors/M/s. Medicurit Pharma would submit that the petitioners have no *locus* to file the present petitions for the reasons that, it is a settled law that *post facto* challenges to tender by unsuccessful bidders are impermissible in law. A bidder who consciously accepts the tender conditions and takes part in the process cannot subsequently assail those very conditions after failing to secure the contract.

19. He submitted that the present petitions in the garb of challenging the letter dated 24.07.2026 issued by the Respondent No.1, whereby a clarification is sought from all technically-qualified bidders to provide a "*Commercial justification for their quoted discounts*" under Clause 4.1(C) read with Clause 7.1 of the Scope of Work of Bid Document dated 18.03.2026, seeks to modify and expand the scope of terms/object/ methodology of the subject tender with the sole motive to make the entire process redundant, futile and inoperative, when the petitioners have miserably failed to secure the highest bid in the subject tender for any of the

wellness centres.

20. According to him, the petitioners by way of the present petitions intend to change the rules of the game after willingly participating and losing in the subject tender with the sole motive to make it impossible for the H1 Bidders to deliver in terms of the tender.

21. He highlighted the following facts in support of his submissions: -

(i) The applicant(s) applied in two zones i.e. North and East Zone. Applicant(s) emerged as the successful H1 bidder in the tender when the financial bids of the tender were opened on 09.07.2026. Out of 8 Wellness Centre for which the applicant applied, the applicant was declared successful H-1 bidder in respect of 8 wellness centres.

(ii) The petitioners were not declared H-1 for any of the CGHS Wellness Centres.

(iii) On 24.07.2026, the respondent no. 1 sought a clarification from all technically-qualified bidders to provide a "*Commercial justification for their quoted discounts*".

(iv) All technically-qualified bidders including the petitioners as well as the applicant(s) have filed their response to the said clarification.

22. In any case, it is his submission that the writ petitions are pre-mature as the impugned letter neither accepts nor rejects any bid. It merely seeks clarification and assailing the same is premature and speculative. He also

submitted that the impugned letter is completely legal and within the mechanism provided in terms of the tender. Modifying and expanding the scope of terms/object/methodology of the clauses of the tender after failing to secure the contract is impermissible.

23. He highlighted that the petitioners have concealed material facts inasmuch as the bid corrigendum dated 03.04.2024 having details of the pre-bid meeting where questions were raised and clarifications sought by the petitioners themselves on the same issue has not been filed. The fact that petitioners themselves supply branded medicines at a discount of 49.51% under the state tender is not disclosed. He also submitted that, "Central Govt. Employees Consumer Co-op. Society Limited (Kendriya Bhandar)" has out-bided the petitioners in the subject tender a fact not disclosed. The discounts offered by the intervening applicants therefore cannot be said to be "*predatory/ abnormally low*".

24. He submitted that the subject tender(s) covers a broad range of branded medicines and surgical consumables, not just one category or particular brands. The uniform discount rate applies to the entire spectrum, based on the bidder's analysis of procurement prices, trade margins, turnover, and volume across all supplies. Different brands have varying margins and discounts, which a prudent bidder blends to determine his single viable discount to meet the terms of tender.

25. According to him, the author of the tender document is the best person to interpret its documents and requirements and, in that regard, he has placed reliance on the counter-affidavit filed by the respondents. That

apart, it is his submission that, Courts should not interfere with the tender process at an intermediate stage; interference, if at all, is confined to a completed decision that is demonstrably arbitrary, *malafide* or perverse. In view of the submission made, he seeks dismissal of the petitions.

26. Mr. Samrat Nigam and Mr. Rajat Aneja, learned Senior Counsels appearing for the respondents in the connected petitions have adopted the arguments of Mr. Ahluwalia and additionally, contended that the petitioner being L7 have no *locus standi* to challenge the bid. Rather, it is their submission that it is nothing but the petition filed is *malafide* and they seek the dismissal of the petition.

ANALYSIS AND FINDINGS

27. Having heard the learned counsel for the parties and perused the record, the challenge in these petitions is to the impugned communication dated 24.07.2026 primarily on the ground that the same has been issued by the respondents seeking certain clarifications but does not clarify *'commonly prescribed branded medicines'* despite clarification sought by the petitioners. In substance, it is their case that the clarifications sought vide communication dated 24.07.2026 are vague.

28. There is no denial to the fact that the petitioners did submit a response to the impugned letter dated 24.07.2026 along with the documents.

29. The case of the respondents is that the impugned letter has been issued to seek commercial justification of quoted discount in the bids of the tenderers.

30. According to Mr. Chauhan, the intent behind 24.07.2026 communication is to assess commercial sustainability of the discount quoted by the bidders so as to ensure that there are no disruptions in medicine supply. It is also the case of the respondents as contended by Mr. Chauhan that the communication neither rejects nor disqualifies any bidder nor determines the right of the petitioners, in that sense, the petitions are premature. In substance, the case of the respondents is, no decision has yet been taken by the respondents on the bids.

31. We agree with the submission made by Mr. Chauhan that the present petition is pre-mature. Surely, the respondents should be allowed to take a decision on the bids, on the basis of the information sought by them in terms of communication dated 24.07.2026. Hence, without going into various submissions made by the learned counsel for the petitioners as well as intervenors, we are of the view that appropriate shall be, the respondent shall consider the responses/documents given by the bidders/petitioners and take a decision on the bids by considering the same, which surely be a reasoned one, and communicate the same to the bidders/petitioners. It goes without saying, any bidder aggrieved by the decision shall be at liberty to seek such remedy as available in law. The petitions along with the pending applications are, accordingly, disposed of. No costs.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

AUGUST 14, 2026/sr