

# Samit Khanna vs Union Of India & Anr on 5 September, 2023

**Author: Satish Chandra Sharma**

**Bench: Chief Justice, Sanjeev Narula**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
W.P.(C) 8553/2023, CM APPL. 32543/2023  
SAMIT KHANNA

UNION OF INDIA & ANR.

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W.P.(C) 8909/2023, CM APPLs. 33687/2023,  
M/S MATTRIX

UNION OF INDIA & ANR.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

% 05.09.2023 CM APPL. 45910/2023 (for condonation of delay in filing the counter affidavit on behalf of the R-2) in W.P.(C) 8909/2023 This is a digitally signed order.

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1. For the grounds and reasons stated in the application, the delay in filing counter affidavit on behalf of Respondent No. 2 is condoned, and the counter affidavit is taken on record.

2. Application is disposed of.

W.P.(C) 8553/2023 and W.P.(C) 8909/2023

3. The Petitioners before this Court have filed the present petitions against the NIT for a limited e-tender for "Empanelment of Firms for Supply of Items of New Kit (Jaadui Pitara) developed by NCERT", issued on 06th June, 2023 by Respondent No. 2 - National Council of Educational Research and Training ["NCERT"].<sup>1</sup> The grounds of challenge raised by Petitioners are two-fold: (a) restriction of participation in the tender to empanelled firms, thereby excluding other capable manufacturers and distributors, such as the Petitioners, and (b) waiver of the requirement of possessing valid certification from the Bureau of Indian Standards ["BIS certification"].

4. Ms. Juhi Arora, learned counsel for Petitioner in W.P.(C) 8553/2023, submits that despite their credentials of being a supplier to the Respondents, Petitioners have been excluded from bidding for a tender for supply of a kit containing toys intended for school-going children. She contends that there is no legitimate basis for permitting only entities empanelled with NCERT to participate in the tender. Ms. Arora further states that the 23 empanelled companies are primarily engaged in the production of scientific instruments and thus, are not fully adept to serve the tender's intended purpose. The impugned eligibility condition violates Article 14 of the Constitution of As amended by the corrigendum dated 15th June, 2023.

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 15:20:52 India, 1950 and Petitioners' right to carry out business of their choice, as guaranteed under Article 19(1)(g) as also the general principles specified in the General Financial Rules, 2017 ["GFR"]. Ms. Arora also presses the issue of lack of BIS certification criteria in the tender conditions. She refers to Clause 2.2.2 of the Manual on Procurement of Goods to emphasise that BIS mark is an essential technical requirement that must be specified in the tender document.

5. On the other hand, learned counsel for Respondents, draw the Court's attention to the following averments in the counter affidavit filed on NCERT's behalf in W.P.(C) 8553/2023:

"20. That the contents of para 20 of the writ petition are wrong and denied. It is submitted that Empanelled Firms are to be selected for supply of requisite Learning-Teaching Material of the new Kit. If any of the Learning-Teaching Material falls under category of toys, the supplier will be asked to comply with BIS Guidelines for making such items.

xx-xx-xx 23-24. That the contents of para 23 and 24 of the writ petition are wrong and denied. As stated above, the present Limited-E-Tender has been issued in conformity with Rule 162 of GFR 2017 as the estimated value of the tender is less than Rs. 25 Lakhs. The corrigendum dated 15.06.2023 was issued to clarify that the tender was not for empanelment of new Firms, but was to invite quotations for supply of one or more items of the New Kit, only from the currently empanelled firms

for supply of NCERT Educational Kits. The intention is to supply Sample Kits to States/UTs at the earliest, because' it is time of beginning of academic session in the schools in most of the States/UTs."

6. We have considered the afore-noted contentions. The NIT in question pertains to a limited tender for supply of samples of educational school kits, creatively called "jaadui pitara", to NCERT. The kits procured under the tender are to be distributed to schools as sample learning material before the onset of the academic session in 2023, under the framework of the National Education Policy, 2020. We are informed that the approximate value of the kits to be supplied under the impugned tender is about Rs. 8,00,000/- (i.e., This is a digitally signed order.

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7. Considering the afore-noted, no grounds are made out to grant the desired relief. The present writ petitions are accordingly dismissed.

SATISH CHANDRA SHARMA, CJ SANJEEV NARULA, J SEPTEMBER 5, 2023 nk This is a digitally signed order.

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