

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

% Judgment reserved on : 29.05.2013

Judgment pronounced on : 31.05.2013

+ **W.P(C) No.669/2013**

M/S THERMO BLOW ENGINEERS ..... Petitioner  
Through Mr. Sidharth Joshi and Mr. Ankur,  
Advocates

versus

DDA AND ORS. .... Respondents  
Through Mr. Ajay Verma, Advocate

**CORAM:**  
**HON'BLE MR. JUSTICE V.K. JAIN**

**V.K. JAIN, J.**

1. The petitioner before this Court Shri Vijay Kumar Grover is carrying business under the name and style of 'M/s Thermo Blow Engineers' and is engaged in manufacturing and supply of various sports and fitness equipments. The respondent/DDA invited quotations for supply of belts and decks for Johnsons make Treadmill, to be supplied within 15 days of the order. The quotation of the petitioner having been accepted, an order was placed with him for supply of the aforesaid articles. After some days of the supply, the respondent complained that jerk was felt during workout of treadmill and there were chances of the user getting injured during the workout. The petitioner/respondent

replied to the complaint, saying that the material supplied by him was as per specifications and also requested them to lubricate the belts atleast once a week. DDA, however was not satisfied with the response and claimed that the belts supplied by him were of inferior quality and were giving problem. This was followed by exchange of correspondence between the parties but DDA continued to remain dissatisfied with the products supplied to it. A letter dated 23.6.2012 was then issued by DDA to the petitioner requiring him to show cause as to why action against him be not initiated, as deemed fit. The petitioner submitted a reply dated 29.6.2012. In the meantime, several complaints were received from the trainer and members of the gym with regard to the problems they were facing in the treadmills. DDA took the opinion of authorized distributors of Johnsons make treadmill who advised against lubrication and also reported that the belts supplied by the petitioner were of inferior quality, short in length and not of proper elasticity, thereby creating more load on the motor. The petitioner was, thereafter, again served with a notice dated 25.7.2012 asking him to replace all the belts and decks within three days. He, however, failed to do so, whereupon vide letter dated 7.8.2012, he was debarred from further tendering in DDA. The

petitioner made a representation dated 23.8.2012 against the order debarring him from further tendering in DDA. Thereupon, he was given yet another opportunity vide letter dated 10.9.2012 to change one belt and deck of Johnson make treadmill with the belt and deck of the same quality and size to prove his bona fide, but he did not do so. Thereupon, DDA purchased the belts and decks from another vendor.

2. Aggrived from the order of debarring him from further tendering in DDA, the petitioner is before this Court by way of this writ petition. Besides, quashing of the Circular dated 7.8.2012, he has also sought a writ directing DDA to make payment of Rs.1,65,150/-, being the price of the goods supplied by him to DDA along with interest on that amount.

3. The order debarring the petitioner from further tendering in DDA has been assailed by the learned counsel for the petitioner on the following grounds:-

- i) There was no provision in the terms of the notice inviting quotations for debarring the supplier from further tendering in DDA;
- ii) No show-cause notice against the proposed debarring was given to the petitioner;
- iii) The debarring was permanent and not for specified period.

3. The learned counsel for the DDA, on the other hand, relied upon the Rules of Enlistment of Contractor of DDA in support of his contention that the petitioner could be debarred from further tendering in DDA. Attention is drawn to Clauses 23.0 and 23.3 of the said Rules which reads as under:-

**“23.0 Disciplinary Actions :** The contractor shall have to abide by all the rules of enlistment and also by the terms and conditions of the contract and the Notice Inviting Tenders. He shall have to execute the works as per contract on time and with good quality. The enlisting authority shall have the right to demote a contractor to a lower class, suspend business with him for any period, debar him or remove his name from the approved list of contractors indefinitely or for a period as decided by enlisting authority after issue of show cause notice. Decision of the enlisting authority shall be final and binding on the contractor. The following actions of the contractor shall, in general, make him liable to disciplinary actions.

**23.3 Removal from the approved list :** The name of the contractor may be removed from the approved list of contractors, by the enlisting authority, if he:

A) has, on more than one occasion, failed to execute a contract or has executed it unsatisfactorily; or

B) is proved to be responsible for constructional defects in two or more works;”

4. It is an undisputed proposition of law that since an order debarring a person from doing business with the Govt. or its agencies carries serious civil consequences, no such order can be passed without giving notice to him, requiring him to show cause against the proposed debarring/blacklisting. Reliance in this regard may be placed upon the decision of the Supreme Court in **Raghunath Thakur vs. State of Bihar and Ors.** (1989) 1 SCC 229, where Supreme Court, inter alia, held as under:-

“4. ... It has to be realized that black-listing any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order.”

5. The communication dated 23.6.2012 which is stated to be the show cause notice given to the petitioner reads as under:-

“.....An assurance was given by your rep. that the defective parts installed by them will be replaced within 4 days. Since the defective parts have not been replaced after the assured period, you are therefore informed that why not actions should be initiated as deemed fit.”

It would, thus, be seen that there was no reference to the proposed debarring/blacklisting in the above-referred communication. In case the notice inviting quotations did not contain a term for debarring the tenderer in case the goods supplied by him were found to be defective, as the case of the petitioner is, the aforesaid communication cannot be interpreted to be a show-cause notice against the proposed debarring/blacklisting. In any case, the petitioner could not have taken this communication as an opportunity to explain his position qua the proposed blacklisting/debarring. The notice issued to the petitioner does not specify the action DDA proposes to take against it. The show cause notice could have met the requirement of the principles of natural justice, only if it specifically indicated that the respondents were proposing to debar the petitioner from tendering in future. Therefore, the aforesaid communication, in my view, does not meet the requirement of a show cause notice which is required to be given to a vendor before

blacklisting/debarring him from tendering in future. The impugned Order/Circular dated 7.8.2012 therefore, is liable to be quashed on this ground alone.

6. In **Vinay Construction Co. & Ors. vs. Municipal Corporation of Delhi and Anr.** [116(2005) DLT 14], this Court rejected the contention that there can be indefinite period of blacklisting, holding that since blacklisting carries a very severe consequence and needs to be for a prescribed period.

In **A. Rajendran vs. The General Manager** [Writ Petition No.17517 of 2002 decided on 16.10.2003], the Madras High Court, noticing that the order of blacklisting the petitioner did not specify the period of blacklisting, quashed the said order, thereby upholding the contention that blacklisting could not be for an indefinite period.

7. In the case before this Court, since the Circular dated 7.8.2012, debarring the petitioner from further tendering in DDA applies for an indefinite period and not for a specified period, such an order cannot be sustained in law.

8. For the reasons stated hereinabove, the impugned Circular dated 7.8.2012 is hereby quashed. It is, however, made clear that DDA shall be

at liberty to pass a fresh order debarring the petitioner for specified period after giving a proper show cause notice and an opportunity of hearing to the petitioner.

The petition stands disposed of accordingly. No order as to costs.

**MAY 31, 2013**  
*ks/rd*

**V.K.JAIN, J**

