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

+ **LPA 796/2017**

M/S VINS BIOPRODUCTS LTD & ANR Appellants

Through : Mr Sunil Fernandes, Mr Arnav,
Mr Vidyarth, Ms Anju Thomas and
Ms Nupur Kumar, Advocates.

versus

DIRECTOR GENERAL ARMED FORCES MEDICAL SERVICES
& ANR Respondents

Through : Mr Rajesh Kumar Gogna with
Ms Vipra Bhardwaj, Advocates for
R-1 & 2.
Lt Colonel Naveen Agrawal,
Advocate for Ministry of Defence.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K.CHAWLA

ORDER

% **18.12.2017**

CM No.46033/2017(exemption)

Allowed, subject to all just exceptions.

LPA 796/2017 & CM No.46032/2017(stay)

1. Issue notice. Mr Rajesh Kumar Gogna, Advocate accepts notice on behalf of the respondent Nos.1 & 2.
2. The Appellant's/Writ Petitioner's grievance is with respect to an order dated 23.11.2017, which it complains has the effect of blacklisting.
3. The Appellant concededly is supplying *Anti-Snake Venom Serum* to the Respondent under various Contracts and has been

consistently doing so for some time.

4. The Respondent, i.e. Directorate of Quality Assurance of the Ministry of Defence (MoD) (hereafter referred to as '*the Directorate*'), was of the opinion that two of the batches supplied were not of the contracted standard and quality and apparently referred them for testing.

5. On 23.11.2017, in the second order - later by the impugned judgment in the Writ Petition, it was stated as follows:-

"....4. The subject drug of M/s. Vins Bioproducts Ltd. has been banned for one year from the last rejection of the batch. Please ensure that further orders for the subject item are not placed on M/s. Vins Bioproduct Ltd. till the completion of ban period or recovery of the entire cost of the defective batches, whichever is later....."

6. It was contended that the action is nothing short of blacklisting and *per se* illegal on account of non-compliance with the *principles of natural justice*. Learned counsel emphasizes that the Authorities have consistently ruled that in such circumstances, a banning order or blacklisting which is not preceded by the minimum opportunity or fair hearing will be adverse.

7. Learned counsel for the Directorate urges that the effect of the impugned order is not punitive and all that it clarifies is that till the completion of bank period or recovery of the cost of the defective batches, no Contract would be awarded.

8. This Court is of the opinion that facially the order – portion of which has been quoted above – amounts to blacklisting and is

plainly adverse.

9. The Authorities relied upon by the Appellant i.e. *Erusian Equipment & Chemicals Limited versus State of West Bengal*, 1975 (1) SCC 70, *Raghunath Thakur versus State of Bihar*, 1989 (1) SCC 229 etc. have clearly spelt out the standards which the Public Agency has to comply with before issuing such orders.

10. In the present case, there was no effort on the part of the Respondent to do so.

11. This Court is of the opinion that the Directorate should clearly spell out in a show-cause notice, the allegations which are required to be contested or traversed by the Writ Petitioner/Appellant. In this regard, a notice may be issued, within a week. The Appellant shall reply or represent against the notice within a week of its receipt.

12. The respondents shall pass a reasoned order, which shall clearly analyze the show-cause notice and reply.

13. All rights and contentions of the parties are reserved.

14. Learned counsel seeks liberty to withdraw the Writ Petition No.11011/2017. In the light of the above order, the same is accordingly disposed of as withdrawn.

15. The impugned order dated 23.11.2017 is hereby set aside.

16. LPA 796/2017 is disposed of in the above terms.

S. RAVINDRA BHAT, J

DECEMBER 18, 2017/§n'

A.K.CHAWLA, J