

**IN THE HIGH COURT AT CALCUTTA**  
**(Constitutional Writ Jurisdiction)**  
**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Krishna Rao**

**W.P.A. No. 2385 of 2025**

**Indus Pest Management Pvt. Ltd. & Ors.**

**Vs.**

**Union of India & Ors.**

Mr. Pratik Dhar, Sr. Adv.

Mr. Samir Halder

Mr. Snehal Sinha

...For the petitioners.

Mr. Anjan Sengupta

Mr. Sahit Talukdar

.... For the U.O.I.

Hearing Concluded On : 06.03.2026

Judgment on : 12.03.2026

**Krishna Rao, J.:**

1. The petitioners have filed the present writ petition challenging the Office Memorandum dated 14<sup>th</sup> January, 2025, issued by the Joint Director (PQ), Plant Quarantine Division, Directorate of Plant

Protection, Quarantine and Storage, Ministry of Agriculture and Farmer's Welfare, NH-IV, Faridabad, Haryana, banning the petitioners with immediate effect for carrying out Methyl Bromide (MBr) and Aluminum Phosphide (ALP) fumigation treatments as per NSPMs 12 and 22.

2. The petitioners have been running a business of Pest Management and Fumigation Services since 2011. The petitioners have all the statutory requirements including trade license and accreditation number issued by the Plant Protection Advisor.
3. On 12<sup>th</sup> January, 2018, the CBI initiated a Case being R.C. Case No. 0102018A0001 of 2018 for the offence under Section 120B/467/468/471/and 477-A of the Indian Penal Code and Section 7/12/13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, against some persons including the petitioner no. 2. The petitioner no.2 was also arrested in connection with the said case on 23<sup>rd</sup> December, 2021 and on 3<sup>rd</sup> January, 2022, he was released on bail.
4. On 14<sup>th</sup> January, 2025, the respondent no. 4 issued the impugned order on the recommendation of the Central Bureau of Investigation, ACB, Kolkata.
5. Mr. Pratik Dhar, Learned Senior Advocate representing the petitioners submits that the impugned order is issued by the respondent no. 4 without giving any show cause notice or any opportunity of hearing to the petitioners. He submits that as per Clause 2.5 of the NSPM-12

(Guidelines for Assessment, Audit and Accreditation of Fumigation Agencies for Undertaking Methyl Bromide Fumigation) a show cause is mandatory but the respondents have not issued any show cause notice to the petitioners before issuance of the impugned order.

6. Mr. Dhar submits that as per Clause 2.5 of NSPM-12, blacklisting is permissible only in the event of suspension thrice or more within last five years but in the case of the petitioners, the petitioners were never been suspended. He submits that the respondents have issued the impugned order on the basis of the recommendation of the CBI but the copy of recommendation was not served to the petitioners.
7. Mr. Dhar submits that the respondents have issued the impugned order in violation of natural justice and in violation of their own guidelines (NSPM-12). He further submits that the respondents have issued the impugned order on the basis of the recommendation of the CBI as a criminal case is pending against the petitioners but the authorities failed to appreciate that unless the charges are not proved against the petitioners, it cannot be said that the petitioners are guilty of the alleged offences.
8. In support of his submissions, Mr. Dhar has relied upon the following judgments:

- i. ***Vetindia Pharmaceuticals Limited Vs. State of Uttar Pradesh and Another*** reported in ***(2021) 1 SCC 804***.

- ii. ***M/s Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*** reported in (1975) 1 SCC 70.
- iii. ***Raghunath Thakur Vs. State of Bihar and Others*** reported in (1989) 1 SCC 229.
- iv. ***Southern Painters Vs. Fertilizers and Chemicals Travancore Ltd. and Another*** reported in 1994 Supp (2) SCC 699.
- v. ***Daffodils Pharmaceuticals Limited and Another Vs. State of Uttar Pradesh and Another*** reported in (2020) 18 SCC 550.
- vi. ***S. Ganesan Vs. Rama Raghuraman and Others*** reported in (2011) 2 SCC 83.
- vii. ***Narendra Singh and Another Vs. State of M.P.*** reported in (2004) 10 SCC 699.
- viii. ***Helax Healthcare Private Limited Vs. State of West Bengal and Others*** reported in 2025 SCC OnLine Cal 9924.
- ix. Unreported judgment passed in the case of ***Prabha Surana Vs. State of West Bengal in CRM (DB) No. 4148 of 2022*** dated 19<sup>th</sup> May, 2023.
- x. Unreported judgment passed in the case of ***Union of India and Others Vs. Anil Bareja & Another*** in ***FMA No. 853 of 2022*** dated 23<sup>rd</sup> August, 2024.

9. Mr. Anjan Sengupta, Learned Advocate representing the respondents submits that in Clause 5 of the Certificate of Registration of Fumigation Agency issued to the petitioners categorically specified that the certificate shall be liable to be withdrawn/cancelled if the firm involved in making a false records or issue fraudulent certificates or failed to meet the requirements of the Methyl bromide Standard or violates any

provisions of Insecticides Act, 1968 and the Rules and Regulations issued thereunder.

- 10.** Mr. Sengupta submits that the CBI has registered a case wherein the petitioner no. 2 is involved for committing offences related to forgery of Phytosanitary Certificate of a foreign country, complicity in corruption and shielding other similar entity importers who were otherwise liable for penalty.
- 11.** Mr. Sengupta submits that after registration of case, the CBI has investigated into the matter and finds that the petitioners are also involved in the said case for the offence under Section 120B/467/468/471 and 477-A of the Indian Penal Code and thus the respondents have passed the impugned order. He submits that NSPMs 11, 12 and 22 are not applicable wherein the situations arising out of the criminal offences.
- 12.** Mr. Sengupta submits that Clause 2.5 of NSPMs-12 and 22 applies to ineffectiveness/ incompetency / non-compliance of fumigation process and the same is not applicable to criminal offences committed by the fumigator or fumigation firm.
- 13.** Mr. Sengupta submits that during investigation conducted by the CBI, it was found that the petitioners have committed severe offences which necessitated prompt action against the petitioners to restrain the petitioners from performing fumigation operation immediately due to

which the respondents ruled out to hear the petitioners before passing the impugned order.

14. Mr. Sengupta relied upon the judgment in the case of ***State of Maharashtra and Others Vs. Jalgaon Municipal Council and Others*** reported in **(2003) 9 SCC 731** and submits that some of the relevant factors which enter the judicial process of thinking for determining the extent of moulding the nature and scope of fair hearing and may reach to the extent of right to hearing being excluded are: (i) the nature of subject-matter and (ii) exceptional situations. Such exceptionality may be spelled out by (i) the need to take urgent action for safeguarding public health or safety or public interest (ii) the absence of legitimate expectation, (iii) by refusal of remedies in discretion, (iv) doctrine of pleasure such as the power to dismiss an employee at pleasure and (v) express legislation.
15. Heard the Learned Counsel for the respective parties, perused the materials on record and the judgments relied by the parties. The only issue in the present writ petition is whether the respondents can pass an order by banning the petitioners to carryout Methyl Bromide and Aluminum Phosphide fumigation treatment as per NSPMs-12 and 22, without issuing show cause notice and without any opportunity of hearing to the petitioners.
16. The respondents have issued Certificate of Registration of Fumigation Agency to the petitioners. On 12<sup>th</sup> January, 2018, the Central Bureau

of Investigation initiated a case against some personnel including the petitioner no. 2. The allegation against the petitioner no.2 is that by resorting to corrupt and illegal means prepared and fabricated fake Phytosanitary Certificates (PSCs) to give an impression that the same were purportedly issued by the country of origin/ re-export viz Turkey, Ukraine/ Romania and amongst others through his accomplice Dipankar Saha and under the supervision of co-accused R.K. Shashidhar, Plant Protection Officer, the then In-charge of RPQS, Kolkata replaced the PSCs which are statutory documents annexed with the application requesting for quarantine inspection.

**17.** The impugned order is issued against the petitioners by the respondents on the recommendation of the CBI dated 30<sup>th</sup> November, 2024. The CBI has recommended for banning on the basis of the investigation carried out by the CBI. Admittedly, the case initiated by the CBI is pending for adjudication. Without adjudication of the criminal trial against the petitioners by the competent Court of law, it cannot be presumed that the petitioners have committed the alleged offence. In the case of ***Prabha Surana (supra)***, the Division Bench of this Court held that there is presumption of innocence of an accused unless proved guilty after proper trial.

**18.** In the case of ***Narendra Singh (supra)***, the Hon'ble Supreme Court held that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. The presumption gets stronger when a judgment of acquittal is passed.

- 19.** In the case of **S. Ganesan (*supra*)**, the Hon'ble Supreme Court held that every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of a criminal jurisprudence in India.
- 20.** Clause 2.5 of the NSPM-12, Guidelines for assessment, Audit and Accreditation of Fumigation Agencies for Undertaking Methyl Bromide Fumigation reads as follows:

***“2.5 Suspension and Reinstatement Protocols***

*The Plant Protection Adviser shall immediately issue a show cause notice to the fumigation agency and accredited fumigation operator that perform ineffective fumigation operations which includes receipt of notification of noncompliance for the consignment fumigated by the agency, why they should not be suspended and if satisfactory reply not received within 15 days, following action will be taken:*

| <b>Type of NC</b>                                  | <b>Number of NC for the Agency in Past three years</b> | <b>Investigation findings</b>                         | <b>Action</b>                                                                                                                      |
|----------------------------------------------------|--------------------------------------------------------|-------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| <i>Interception/ notification of noncompliance</i> | <b>First</b>                                           | <i>If, reported pest not associated with pathway.</i> | <i>Advisory will be issue to the firm, to be more careful in future operation to avoid reoccurrence of noncompliance in future</i> |

|  |                                                                                          |                                                       |                                                                                                                                                                                                                      |
|--|------------------------------------------------------------------------------------------|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |                                                                                          | <i>If, reported pest associated with pathway.</i>     | <i>Suspension for minimum three months for the specific country, which reported Non-Compliance and an advisory will be issued to the firm. Revoking of suspension subject to re-instatement audit</i>                |
|  | <b>Subsequent</b><br><i>(If repeated non-compliance received within a calendar year)</i> | <i>If, reported pest not associated with pathway.</i> | <i>Suspension for minimum three months for the country, which reported Non-Compliance and an advisory will be issued to the firm. The suspension will be auto-revoked after three months.</i>                        |
|  |                                                                                          | <i>If, reported pest associated with pathway.</i>     | <i>Suspension for minimum six months for all countries and refresher training of Operator mandatory also corrective plan will be sought before reinstatement audit. Revoking of suspension subject to outcome of</i> |

|  |  |  |                         |
|--|--|--|-------------------------|
|  |  |  | reinstatement<br>audit. |
|--|--|--|-------------------------|

In the event of **suspension thrice** or more within 5-year **period** the branch/agency and operator will be **black listed**.

Fumigation Agency has to pay Rs.15000/ for reinstatement audit.

If during an audit, infrastructure & manpower of branch do not justify past fumigation activities or one or more critical non-conformities and/two or more than two major non-conformities are found, fumigation company and accredited fumigation operator will be suspended and will be subject to a reinstatement audit. Re-training of accredited fumigation operator may be necessary.

If during an audit, less than two major and less than four minor non-conformities are found the fumigation company and the accredited fumigation operator will be subject to an additional announced audit within six (6) weeks. If during the follow-up audit, the non-conformities have not been addressed, the fumigation agency and the accredited fumigation operator will be suspended and will be subject to a reinstatement audit within six (6) weeks. Reinstatement audit will continue until the fumigation agency and the accredited fumigation operator demonstrate competency in fulfilling the requirements of the Methyl Bromide Standard. Re-fresher training of accredited fumigation operator may be necessary.

The registration granted to the fumigation agency and the accreditation granted to the fumigation operator will be cancelled, if:

- On a reinstatement audit, a critical or two major and four minor non-conformities have been accrued or
- They are suspended on three separate occasions within a period of five years.

Once an accreditation has been cancelled, before re-accreditation can take place, the accredited fumigation operator will be subject to additional accreditation/refresher training and the fumigation company and the accredited

*fumigation operator will be required to undergo the complete assessment process.”*

21. Admittedly, no show-cause notice was issued and no opportunity of hearing was given to the petitioners before issuance of the impugned order. It is the contentions of the respondents that the allegation against the petitioners are serious in nature and had direct impact on the aspect of protecting the agricultural bio-security of the country and in view of the sensitivity of the task involved, the principle of natural justice is not applicable. The CBI has initiated a case on 12<sup>th</sup> January, 2018 and was arrested the petitioner no. 2 on 23<sup>rd</sup> December, 2021 and released on bail on 3<sup>rd</sup> January, 2022. The impugned order is passed on 14<sup>th</sup> January, 2025, i.e. after the period of seven years. From the date of FIR till the issuance of impugned order, the petitioners were carrying out Methyl Bromide and Aluminum Phosphide fumigation treatment as per the certificate issued by the respondents. After the period of seven years from the date of registration of FIR, the respondents woke up and found that the offence alleged to have been committed by the petitioners is serious in nature and direct impact of protecting the agricultural bio-security of the country is not digestible.
22. The judgment relied by the respondents in the case of ***Jalgaon Municipal Council (supra)*** is distinguishable from the facts and circumstances of the present case. The impugned order is issued only on the basis of the recommendation of the CBI. The respondent authorities have not taken any independent decision. In the impugned

order also it is not mentioned that the said order is issued for safeguarding the public health or safety or public interest or any other reasons.

- 23.** In the case of ***M/s Erusian Equipment & Chemicals Ltd. (supra)***, the Hon'ble Supreme Court held that:

*“20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”*

- 24.** In the case of ***Raghunath Thakur (supra)***, the Hon'ble Supreme Court held that blacklisting any person in respect of business venture 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.

- 25.** In the case of ***Vetindia Pharmaceuticals Limited (supra)***, the Hon'ble Supreme Court held that an order of blacklisting operates to the prejudice of a commercial person not only *in praesenti* but also puts a taint which attaches far beyond and may well spell the death knell of the organization/ institution for all times to come described as a civil death.

**26.** In the case of ***Daffodills Pharmaceuticals Limited and Another (supra)***, the Hon'ble Supreme Court held that:

*“15. In the present case, even if one assumes that Surender Chaudhary, the accused in the pending criminal case was involved and had sought to indulge in objectionable activities, that ipso facto could not have resulted in unilateral action of the kind which the State resorted to against Daffodills, which was never granted any opportunity of hearing or a chance to represent against the impugned order. If there is one constant lodestar that lights the judicial horizon in this country, it is this : that no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing, and prior intimation of such a move. This principle is too well entrenched in the legal ethos of this country to be ignored, as the State did, in this case.”*

**27.** In the case of ***Southern Painters (supra)***, the Hon'ble Supreme Court held that the deletion of the appellant's name from the list of approved contractors on the ground that they were some vigilance report against it, could only be done consistent with after due compliance with the principles of natural justice.

**28.** In the present case, an FIR was initiated on 12<sup>th</sup> January, 2018, the petitioner no. 2 arrested on 23<sup>rd</sup> December, 2021, after the period of three (3) years from initiation of FIR. On 3<sup>rd</sup> January, 2022, the petitioner no. 2 was released on bail. Only after the period of seven (7) years, the respondents have issued the impugned order banning the petitioners for carrying out Methyl Bromide and Aluminum Phosphide fumigation treatment as per NSPMs-12 and 22. Clause 2.5 of NSPM-12 provides for show cause notice and it is also provided that in the event

of suspension thrice or more within five years period, the branch/ agency and operator will be blacklisted but the petitioners were never suspended at any point of time.

**29.** Considering the above, this Court finds that the respondent no. 4 has issued the impugned Office Memorandum dated 14<sup>th</sup> January, 2025, in violation of natural justice and also in violation of Clause 2.5 of the NSPM-12. Accordingly, the impugned Office Memorandum dated 14<sup>th</sup> January, 2025, is set aside and quashed.

**30. WPA No. 2385 of 2025 is allowed.**

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**(Krishna Rao, J.)**