

GAHC010245282025



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/3569/2025

DIMORIA COLLEGE AUTONOMOUS
REPRESENTED BY ITS PRINCIPALC/O DIMORIA COLLEGE AUTONOMOUS
PERMANENTLY AFFILIATED TO GAUHATI UNIVERISTY,P.O. KHETRI,
KAMRUP M, ASSAM-782403.

VERSUS

PROF DR KRISHNA GOPAL BHATTACHARYA
GED ABOUT 74 YEARSSON OF
GOLAPBHATTACHARYA,CHANDRARESIDENT OF DONA PRESIDENCY,VIP
ROAD, SIX MILE, GUWAHATI,ASSAM - 781022.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY
HIGHER EDUCATION DEPARTMENT
GOVERNMENT OF ASSAM
DISPUR- 781006
ASSAM.

3:ADDITIONAL SECRETARY TO THE GOVERNMENT OF ASSAM
HIGHER EDUCATION DEPARTMENT
JANATA BHAWAN
GUWAHATI 781006.

4:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI 781019.

5:THE UNIVERSITY GRANTS COMMISSION
REPRESENTED BY ITS SECRETARY
BAHADUR SHAH ZAFAR MARG

NEWDELHI - 110002

6:DR PARAG PHUKON
DEPARTMENT OF GEOLOGICAL SCIENCES
GAUHATI UNIVERSITY
GUWAHATI 78101

Advocate for the Petitioner : MR. C TALUKDAR,

Advocate for the Respondent : SC, HIGHER EDU, A GAUTAM, SC, U G C

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 07-01-2026

Heard Mr. S. Sarma, learned Senior counsel, assisted by Mr. A. Gautam, learned counsel for the applicant. And also heard Mr. P. Mahanta, learned counsel for the opposite party No.1, Mr. S. Das, learned standing counsel for the pro-forma opposite party Nos. 2, 3 and 4 and Mr. A. Chamuah, learned standing counsel for pro-forma opposite party No. 5 and Mr. T. K. Bhuyan, learned counsel for the pro-forma opposite party No.6.

2. This interlocutory application, under Article 226(3) of the Constitution of India is preferred by the applicant - Dimoria College (Autonomous), for vacation of the interim order, dated 22.08.2025, passed by learned Single Judge of this Court in WP(C) No. 4879/2025.

3. It is to be noted here that vide interim order, dated 22.08.2025, the learned Single Judge has stayed the impugned order dated 20.06.2025, till next date. It is also to be noted here that vide impugned order dated 20.06.2025, the Additional Secretary to the Govt. of Assam, Higher Education Department has replaced the petitioner/opposite party No.1 herein from the post of President of

Governing Body of Dimoria College and also approved the name of Dr. Parag Phukan, Department of Geological Science, Gauhati University as the President of the Governing Body of Dimoria College (Autonomous), with immediate effect.

4. It is also to be noted here that vide order dated 20.06.2025, of the Additional Secretary to the Govt. of Assam, Higher Education Department is being challenged in the WP(C) No. 4879/2025.

5. Mr. Sarma, learned Senior counsel for the applicant, submits that while passing the interim order, dated 22.08.2025 in WP(C) No. 4879/2025, a Coordinate Bench of this Court has not discussed the requirement of prima-facie case, the balance of convenience and the irreparable loss, and on this count alone, the interim order is liable to be vacated. Mr. Sarma also referring to the annexures of the application, submits that the opposite party No.1 was the President of the Governing Body of Dimoria College for third term and during his Presidentship of the College, he did nothing for the College and for the same, the College suffered a lot. Mr. Sarma also submits that the opposite party No.1 is also a member of a Political Party of Assam, which is not permissible under Rule 3(3) of The Assam Provincialised Colleges and Assam Non-Government College Management Rules, 2001. And under such circumstances, he was replaced by another person, vide order dated 20.06.2025, by the Govt. of Assam.

5.1. Mr. Sarma also submits that while the order of replacement was passed on 20.06.2025, the writ petition was filed on 19.08.2025, after two months and the interim order of stay was granted on 22.08.2025. There was no explanation for such delay, and in the meantime, the opposite party No.6, had already assumed charge of the President of Governing Body of the said College and also he had

taken part in a meeting of the Governing Body of the said College held on 20.08.2025, and approved as many as 12 Agenda Item in the said meeting. And as such, according to Mr. Sarma, no prima- facie case was made out nor the other two requirement i.e. balance of convenience and irreparable loss in granting interim relief/stay could be found in favour of the opposite party No.1. He also submits that the impugned order of removing the opposite party No.1 is not stigmatic and that he hold the post of president of the Governing Body of the applicant college, so long he enjoyed the pleasure of the Govt. and he has no legal right to hold the same for indefinite period as already he had enjoyed two consecutive terms. Therefore, Mr. Sarma has contended to allow this interlocutory application.

5.2. Mr. Sarma has referred following decisions, in support of his submission:-

- (i) **Siliguri Municipality and Ors., vs. Amalendu Das and Ors., reported in (1984) 2 SCC 436;**
- (ii) **State of U.P. and Ors. vs. U.P. State Law Officers Association and Ors., reported in (1994) 2 SCC 204;**
- (iii) **Krishna S/O Bulaji Borate vs. State of Maharashtra and Ors., reported in (2001) 2 SCC 441.**

6. Per contra, Mr. Mahanta, learned counsel for the opposite party No.1, submits that though the three requirements of granting interim stay were not expressly discussed in the interim order, yet the substance of the same is there in the order. Mr. Mahanta also submits that as per University Grants Commission (Conferment of Autonomous Status upon Colleges and Measures for Maintenance of Standards in Autonomous Colleges) Regulations, 2023, wherein at Regulation 12, the term of 5 years has been prescribed for the Governing body and the members and as such, before his removal he is, at least, entitled

to a notice but, without giving any notice, the opposite party No.1 was removed from the post unceremoniously, although he is one of the top most Scientist of the world. Mr. Mahanta also submits that instead of disposing of this interlocutory application, the entire matter may be disposed of by directing the opposite party No.3 to issue notice to the opposite party No.1 and also to afford him an opportunity of hearing, before removing him from the post of President of Governing Body of Dimoria College.

6.1. In support of his submission, Mr. Mahanta has referred following decisions in support of his submission:-

(i) **State of Assam and Ors. vs. Makhan Pegu and Ors.,** reported in (2006) 2 GLR 516.

(ii) **Jogendra Nath Sharma vs. State of Assam and Ors,** reported in 2018 Supreme (Gau) 440.

7. On the other hand, Mr. S. Das, learned standing counsel for the pro-forma opposite party Nos. 2, 3 and 4 submits that the Education Minister has received some complaints against the opposite party No.1 in respect of not holding a single Governing Body meeting since his appointment and also about indulging in political activities by him and on the note of Education Minister, that was addressed to the Secretary Education, the relevant file for removal of the opposite party No.1 and in his place the name of opposite party No.6 was put up before the authority and the said note having been approved, the impugned order dated 20.06.2025 was passed. Mr. Das has also produced the relevant file before this Court as per direction issued on 10.11.2025.

8. Having heard the submission of learned Advocates of both the parties, I have carefully gone through the application and the documents placed on record and also perused the interim order dated 22.08.2025 (**Annexure-1**), so

passed by a Co-ordinate Bench of this Court in WP(C) No. 4879/2025. Also gone through the decisions, referred by Mr. Sarma, learned Senior counsel for the petitioner and also by Mr. Mahanta, learned counsel for the opposite party No.1. Also gone through the file so produced by Mr. Das, learned standing counsel for the pro-forma opposite party Nos.2, 3 and 4.

9. It is to be noted here that while passing the interim order a Co-ordinate Bench of this Court has held as under:-

“Heard Mr. P. Mahanta, learned counsel for the petitioner, who has filed the instant writ petition under Article 226 of the Constitution of India for issuance of the appropriate writ or order to the respondents, on the ground that the petitioner was nominated for Governing body of the Dimoria college vide order dated 04.12.2024 and thereafter, he was nominated and appointed as a Chairperson of the Governing body of the Dimoria college vide order dated 27.01.2025 however, while the petitioner was discharging his duties as a Chairperson of the Governing body, he was informed through whatsapp communication, that the respondent No. 6 has been appointed as the President of the Governing body of the Dimoria college, without any show cause notice or intimation given to the petitioner. The learned counsel submits that this is in violation of the University Grants Commission (Conferment of Autonomous Status upon Colleges and Measures for Maintenance of Standards in Autonomous Colleges) Regulations, 2023, wherein at Regulation 12 the term of 5 years has been prescribed for the Governing body and the members. Aggrieved by the said subsequent nomination of the respondent No. 6 issued without any formal show cause notice or without the petitioner is being officially informed, hence the instant writ petition has been filed.”

9.1. Thereafter, it has been held that –

“This court considering the submission made by the learned counsels, find it appropriate that the impugned order dated 20.06.2025 be stayed till the next date of listing.”

10. It appears that the present interlocutory application for vacation of the aforesaid interim order was filed on 03.11.2025 and listed before this Court on 10.11.2025, on which the opposite party No.1 entered appearance and prayed for granting time to file objection. Further, it appears that vide order dated 10.11.2025, notice was also issued to the opposite parties. Thereafter, the matter was fixed on 26.11.2025. On 26.11.2025, the opposite party has prayed for time and the matter was again listed on 08.12.2025. On that day, on the prayer of the learned counsel for the applicant, the matter was adjourned till 12.12.2025 and on that day on the prayer of both the parties, the matter stands adjourned till 15.12.2025. And finally, the matter was heard on 18.12.2025.

11. The present application has been filed under Article 226(3) of the Constitution of India which provides that-

Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without-

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being

heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

11.1. The issue, as to whether Clause 3 of Article 226 of the Constitution of India is mandatory or directory, has been dealt with by Hon'ble Supreme Court in the case of **High Court Bar Association, Allahabad v. State of U.P. & Ors.**, reported in **2024 SCC Online SC 207**, wherein, it was observed that it is unnecessary for the Supreme Court to decide whether clause (3) of Article 226 of the Constitution of India is mandatory or directory. Further, it was observed that on its plain reading, clause (3) is applicable only when an interim relief is granted without furnishing a copy of the writ petition along with supporting documents to the opposite party and without hearing the opposite party. Even assuming that clause (3) is not directory, it provides for an automatic vacation of interim relief only if the aggrieved party makes an application for vacating the interim relief and when the application for vacating stay is not heard within the time specified. Clause (3) will not apply when an

interim order in a writ petition under Article 226 is passed after the service of a copy of the writ petition on all concerned parties and after giving them an opportunity of being heard. It applies only to ex-parte ad interim orders.

11.2. In the instant case, the interim order was passed on 22.08.2025. On that day only counsel for the respondent No.1, 2 and 3 was heard. The other three respondents were not there for which notice was issued to them. And without giving them an opportunity of being heard, the interim order was passed. Thus, the interlocutory application for vacation of the interim order, having been filed on 03.11.2025 and listed before the Court on 10.11.2025, the period of two weeks elapsed on 24.11.2025. If Clause 3 of the said Article 226 is mandatory in nature and will apply to the given facts and circumstances of the case, then the interim order dated 22.08.2025, is no longer in force.

12. It is to be noted here that in the case of **M/S Neeharika, Infrastructure Pvt. Ltd. vs. The State Of Maharashtra**, reported in **AIR 2021 Supreme Court 1918**, Hon'ble Supreme Court has emphasised the requirement of giving reason as to why it is necessary to pass an interim order, more particularly when the High Court is exercising the extraordinary and inherent powers under [Section 482](#) Cr.P.C. and/or under [Article 226](#) of the Constitution of India. It is however a fact that the above proposition of law was laid down in the case of a petition for quashing of an FIR. But, the requirement of giving reason in passing interim order, to the considered opinion of this Court, is applicable in all cases irrespective of criminal petition u/s 482 Cr.P.C. or under Article 226 of the Constitution of India.

12.1. Again in the case of **Siliguri Municipality (supra)** so referred by

Mr. Sarma, Hon'ble Supreme Court has held that the main purpose of passing an interim order is to evolve a workable formula or a workable arrangement to the extent called for by the demands of the situation keeping in mind the presumption regarding the constitutionality of the legislation and the vulnerability of the challenge, only in order that no irreparable injury is occasioned. The Court has, therefore, to strike a delicate balance after considering the pros and cons of the matter lest larger public interest is not jeopardized and institutional embarrassment is eschewed.

13. In the instant case, apparently no such reason has been assigned for passing the interim order of stay. The requirement of prima-facie case, and the balance of convenience and irreparable loss has not been discussed. Even though, a **prima-facie case** appears to be made out in favour of the petitioner/opposite party No.1 herein on account of the impugned removal order being passed by the proforma opposite party No.3 without giving a notice or opportunity of being heard, which seems to be a requirement in respect of tenure post in view of the University Grants Commission (Conferment of Autonomous Status upon Colleges and Measures for Maintenance of Standards in Autonomous Colleges) Regulations, 2023, wherein at Regulation 12 the term of 5 years has been prescribed for the Governing body and the members, as observed by a Division Bench of this Court in the case of **Makhan Pegu and Ors. (supra)**, so referred by Mr. Mahanta, yet, it appears that while the impugned order was passed on 20.06.2025, the petitioner has approached this Court on 19.08.2025, after two months and the interim order of stay was granted on 22.08.2025. Mr. Mahanta however, submits that the petitioner/opposite party No.1 herein has not been furnished with a copy of the said order and it was not even marked to him also and he had received it only

through WhatsApp. Thus, there appears to be some explanation for such delay. But, existence of a prima-facie case alone is not sufficient to grant interim relief, unless existence of other two requirements, such as balance of convenience and irreparable loss are successfully demonstrated.

13.1. It is the categorical contention of the applicant that in the meantime, the opposite party No.6 had already assumed charge of the President of Governing Body of the said College and also he had taken part in a meeting of the Governing Body of the said College held on 20.08.2025, and approved as many as 12 Agenda Item in the said meeting, before the interim order being passed by this Court on 22.08.2025.

13.2. The relevant file, so produced before this Court by Mr. Das, learned standing counsel for the opposite party Nos. 2, 3 and 4 also reveals that the Minister of Education had received complaints against the opposite party No.1, who had failed to hold a single Governing Body meeting since the date of his appointment and this is hampering the decision making process of the College Management and students are suffering from such negligence and he is also engaged in political activities, which is contrary to the O.M. of appointment of G.B. President. Thus, granting of interim relief caused greater hardship to the applicant herein, rather than granting it in favour of the opposite party No.1. It is to be noted here that interest of the student of the college is of paramount consideration of the authority, not of the individual interest. Under the given factual matrix, the **balance of convenience** cannot be found in favour of granting interim relief.

13.3. Further, the opposite party No.1 has failed to demonstrate that he will suffer **irreparable loss or injury**, such as loss of livelihood, demolition of property, or violation of fundamental rights, that cannot be adequately

compensated by damages, if interim relief is not granted. Even if it is accepted that his right to receive notice and opportunity of being heard is denied the same is indisputably not a fundamental right.

13.4. Notably, in the Review Petition No. 26/2018 (Uttam Chandra Pathak v. Jogendra Nath Sarma & Ors.), so referred by Mr. Sarma, learned Senior counsel for the applicant, a Co-ordinate Bench of this Court has stayed the interim order being passed in WP(C) No. 558/2018, wherein it was directed that the order of removal of the petitioner of said writ petition, from the President of Governing Body of the College, shall not be given effect to, till final order is passed, and when it was brought to the notice of the Court that writ petitioner was already removed and review petitioner was holding the post of president.

13.5. Besides, he had not disclosed before this Court at the time of granting interim relief that the opposite party No.6 in the meantime, had assumed charge of the president of the Governing Body of the applicant College and on 20.08.2025, one meeting of the Governing Body of the College was held under his presidentship, wherein as many as 12 agenda items were approved. Thus, there appears to be suppression of facts by the opposite party No.1.

13.6. Further, the relevant Office File, so produced by Mr. Das, learned standing counsel for the opposite party Nos. 2, 3 and 4, indicates that he had failed to hold a single Governing Body meeting since the date of his appointment which indisputably hampering the decision making process of the College Management and students are suffering from such negligence. The Office File, so produced also reveals that he is also engaged in political activities, which is contrary to the O.M. of appointment of G.B. President. Thus, his conduct is also not in favour of granting any interim relief.

14. This Court do not consider it necessary to dwell upon the other limb of argument made before this Court by learned counsel for the parties and also to discuss the case laws referred by them, as this application can be disposed of on the points already dealt with and decided by this Court.

15. Under the given factual and legal matrix, this court finds sufficient merit in this petition and accordingly, the same stand allowed. Accordingly, the interim order dated 22.08.2025 passed in WP(C) No.4879/2025, stands vacated.

JUDGE

Comparing Assistant