

16.09.2025
Sl.Nos.1&2
Ct. No.42
ss

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. 15396 of 2025

CAN 1 of 2025

With

W.P.A. 20940 of 2025

CAN 1 of 2025

(Assigned)

Dr. Srabanti Bhattacharya

-Vs-

The State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharya, Sr. Adv.

Mr. Subir Sanyal, Sr. Adv.

Mr. Amiya Kr. Dutta

Mr. Swadesh Priya Ghosh

Mr. Saurojit Mukherjee

Mr. Saumen Datta

... for the petitioner in WPA 15396 of 2025

Mr. Bikash Ranjan Bhattacharya, Sr. Adv.

Mr. Subir Sanyal, Sr. Adv.

Mr. Amiya Kr. Dutta

Mr. Sabyasachi Chatterjee

Mr. Swadesh Priya Ghosh

Mr. Saurojit Mukherjee

Mr. Saumen Datta

... for the petitioner in WPA 20940 of 2025

Mr. Kishore Datta, Ld. A.G.

Mr. Swapan Banerjee, Ld. A.G.P.

Ms. Sumita Shaw

Mr. Soumen Chatterjee

... for the State

Mr. Nilotpall Chatterjee

Mr. Satyaki Banerjee

... for the Calcutta University in WPA15396 of 2025

Mr. Nilotpall Chatterjee

Mr. Saurabh Sengupta

... for the Calcutta University in WPA 20940 of 2025

Mr. Biswaroop Bhattacharyya

Mr. Subhrangsu Panda

Ms. Ina Bhattacharya

Ms. Mithu Singha Mahapatra

Ms. Haritri Roy

... for the respondent nos.7 to 10 in WPA 15396
of 2025 and respondent nos.8 to 11 in WPA
20940 of 2025

Mr. Subhrangshu Panda

...for the respondent no.14 in WPA 20940 of 2025

1. Both the writ petitions are appearing in the list under the heading 'For Orders'.
2. By the writ petition being WPA 15396 of 2025 the petitioner has sought for quashing of the show-cause notice dated 3rd July, 2025 (annexure P7) as well as for quashing of the notification dated 9th June, 2025 being No.375-Edb(CS)/4C-66/2020 (annexure P1).
3. By the second writ petition being WPA 20940 of 2025 the petitioner seeks for setting aside of the impugned order of suspension dated 29th August, 2025 (annexure P4) and for setting aside of the purported order of appointment of Vice-Principal vide No.624-Edn(CS)/DPI-99/350/2025-JD(DPI)-DPI dated 25th August, 2025.
4. Mr. Bikash Ranjan Bhattacharya, learned Senior Advocate along with Mr. Subir Sanyal, learned Senior Advocate appearing on behalf of the petitioner submitted that the petitioner joined as Principal with the college namely, Rani Birla Girls' College on 29th September, 2022 when the said college did not have a Governing Body (*in short*, 'GB') and was run and governed by an Administrator officiating from Department of Higher Education, Vikash Bhawan,

Salt Lake City, Kolkata. The said Administrator got transferred and new Administrator was introduced till the notice for formation of GB was issued. On 9th June, 2025 the respondent no.3, the Deputy Secretary, Department of Higher Education (C.S. Branch), Government of West Bengal issued a notice to the Principal of the said college to take necessary steps in the subject as mentioned in the said notification and furnish a report to the said Department at the earlier. By the said notification the appointment of the Administrator made earlier on 16th March, 2024 was cancelled. From the import of the said notification it is clear that the Principal was supposed to take steps for constitution of the GB. The issuance of notification does not mean formation of the GB. Referring to Section 3(xii) of the West Bengal Universities and Colleges (Administration and Regulation) Act, 2017 (*hereinafter referred to as 'the Act of 2017'*) he submitted that the 'Governing Body' means Governing Body of a college duly constituted as per prescribed procedure laid down by rules, orders, notifications of the State Government. Further, Section 5 of the Act of 2017 provides that the GB shall consist of three whole time regular teachers and one non-teaching staff elected amongst them along with nominated members. He informed the Court that the election of three whole time regular teachers and one non-teaching staff is yet to take

place. Under such circumstances, the GB of the said college has not been constituted till date as required under law. Further, referring to Section 5 of the Act of 2017 he indicated that the President shall be a person interested in education. The notification dated 9th June, 2025 does not depict that the President is attached to any educational institution or does any work of the like nature which has direct bearing with education. Thus, the appointment of President vide said notification on the face of it appears to be infraction of the provisions of Act of 2017. It is settled principle of law that mere nomination of a person for the chair as a President of the GB and other persons to be the members of GB by the State Government does not amount to reconstitution of the GB. Thus, when the GB has not been reconstituted the President nominated has no authority to take decisions.

5. In the writ petition being WPA 15396 of 2025 the petitioner challenges a show-cause notice dated 3rd July, 2025 issued by the nominated President (proposed) on the ground that issuance of such show-cause notice is without jurisdiction. In his usual fairness, he submitted that ordinarily, a writ application does not lie against a charge-sheet or a show-cause notice for the reason that it does not give rise to any cause of action. However, a writ lies when the same has been issued by an authority not competent to initiate the proceedings. Since the

issuance of show-cause notice by an authority who is not competent to issue, the petitioner can maintain a writ petition challenging the same. In support of his contention he relied on the decision of the Hon'ble Supreme Court in ***Secretary, Ministry of Defence and others –versus- Prabhash Chandra Mirdha***, reported in ***(2012)11 SCC 565*** and another decision of this Court in ***Andul Malek –versus- State of West Bengal & ors.***, reported in ***2012 SCC OnLine Cal 4989***. Further, he submitted that the second writ petition being WPA 20940 of 2025 is a challenge to the suspension order issued against the petitioner during the pendency of the earlier writ petition being WPA 15396 of 2025. In view of the provision of the Act of 2017 the subsequent order of suspension is also without jurisdiction since the GB has not yet been reconstituted. The general principle applicable to consequential orders is that once the basis of a proceeding is gone, any intermediate action by the authority in the meantime will fall on the ground. Such principle applies to judicial, quasi judicial and administrative orders as well. To buttress his contention he relied on a decision of the Hon'ble Supreme Court in ***Badrinath –versus- Government of Tamil Nadu & ors.***, reported in ***2000(8) SCC 395***. He also indicated that the order of suspension has not been issued in terms of West Bengal College Teachers (Security of Service) Act, 1975 which empowers a GB

of the college to place a teacher under suspension when an enquiry against him under sub-Section (2) of Section 9 is contemplated. In light of the aforesaid submissions, he prayed for stay of the show-cause notice dated 3rd July, 2025 and all consequential orders passed including suspension order dated 29th August, 2025.

6. On the contrary, Mr. Kishore Datta, learned Advocate General appearing on behalf of the State submitted that Section 5(1) of the Act of 2017 clearly empowers the State to nominate the President of the GB from outside. Therefore, the nomination of the President made by the respondent no.3 vide letter dated 9th June, 2025 *per se* cannot be said to be bad in law. An Administrator was appointed on 16th March, 2024 and by notification dated 9th June, 2025, while nominating the President and two nominees, the State Government has cancelled appointment of the Administrator. On 4th February, 2025 one member has been nominated by the West Bengal State Council of Higher Education and on 24th June, 2025 nomination of the Calcutta University has also been made. As per Section 5 of the Act of 2017 the GB consists of 11 members. He placed on record that out of eleven members since five members have already been nominated, the *quorum* as provided under Section 5(4) of the Act of 2017 has been reached and therefore, the five nominated members forming the

quorum are authorized enough to take decision of the GB and such decision cannot be called in question to be without jurisdiction. He also submitted that a statute cannot be made redundant on the ground that the required members from the teaching and non-teaching staff have not been elected. In the present circumstances, since there is existing five nominated members which forms the *quorum* of the GB, on applying the doctrine of necessity the statute is to be made workable so that the objects as set out in the statute are fulfilled. The Act of 2017 is silent with regard to the effect if the teaching and non-teaching staff are not elected after the nomination has been made. However, under the principle of *casus omissus* Courts generally cannot supply these omissions and fill up the resulting gap in the law. Instead, the Court must interpret the law as it is and significant gaps are typically the responsibility of the legislature to correct through an amending Act. The Act, as it exists, has to be given a purposive interpretation. Therefore, the action taken by the GB has been done in terms of the provisions of the existing Act. He opposes the prayer for interim order of stay and seeks to file affidavit-in-opposition to the writ petition.

7. Mr. Biswaroop Bhattacharyya, learned Advocate for the respondent nos.7 to 10 in WPA 15396 of 2025 and respondent nos.8 to 11 in WPA 20940 of 2025 submitted that the provisions of Section 5(4) of the

Act of 2017 does not provide for a required number of members equivalent to form the *quorum* of a GB. It only provides that 1/3rd of the members of the GB will form the *quorum*. The five members having been nominated form the *quorum* as required under the law. The other members as provided under Section 5 of the Act of 2017 would subsequently pour in to the GB. The administration of the GB can very well be continued by the nominated members till such members namely, the teaching and non-teaching members are elected. Further, the validity of the notification dated 9th June, 2025 was never challenged until the show-cause notice was issued against the petitioner. By issuing the notice for holding election of teaching and non-teaching staff the petitioner has in a way accepted the notification dated 9th June, 2025. Since the GB has been constituted following statutory norms there cannot be any jurisdictional issue as raised by the petitioner. The show-cause notice has been issued to the petitioner for dereliction of her duties on several counts including harassment of teachers and remaining absent from the college without informing the President etc. He also opposes the prayer for interim protection as sought for by the petitioner. He also seeks to file affidavit-in-opposition to the writ petition.

8. Mr. Subhrangsu Panda, learned Advocate for the respondent no.14-Vice Principal of the college in WPA

20940 of 2025 also submitted in the similar fashion and informed the Court that the GB has been formed with the nomination of the President and other members. The legal existence of the GB is not dependent on the election of teaching and non-teaching staff which comes later on. The GB can very well continue and function with the nominated members. Referring to Section 99(d) of the Calcutta University First Statutes, 1979 he submitted that the Principal cannot operate the college funds singly. The operation of the college funds should be made jointly with the President or any other member of the GB as may be authorized by the GB of the college. He also opposes the prayer for interim order and seeks to file affidavit-in-opposition.

9. Mr. Sudip Deb, learned Advocate for the added respondent nos.18 and 19 in WPA 20940 of 2025 submits that certain allegations have been made in the writ petition against his clients concerning defalcation of college finances and funds which is uncalled for. He also seeks to file affidavit-in-opposition.
10. In reply, Mr. Bhattacharyya, learned Senior Advocate appearing on behalf of the petitioner submitted that the President nominated by the impugned notification dated 9th June, 2025 is a Councillor and cannot be a person having interest in education. Prior to nomination the Government ought to have examined

the fact as to whether the GB has already been constituted or not. The act of the State is a malice in law. In support of his contention he relied on the decision of the Hon'ble Supreme Court in **Smt. S.R. Venkataraman –versus- Union of India & anr.**, reported in **(1979) 2 SCC 491** and in **State of A.P. and others –versus- Goverdhanlal Pitti**, reported in **(2003) 4 SCC 739**.

11. Having heard the learned Advocates for the respective parties, it would be apposite, at the beginning, to reproduce Section 5 of the Act of 2017 which provides for constitution of the GB:

“5. (1) Notwithstanding anything contained in any other law for the time being in force or in any custom or usage to the contrary, the Governing Body of every Government-aided College shall consist of the following members, namely:

(i) the President shall be a person interested in education, and shall be nominated by the State Government from amongst them and the Governing Body or from outside:

Provided that the employees or the students of the concerned college shall not be eligible for nomination as President;

(ii) the Principal or the Vice-Principal or the Teacher-in-Charge, as the case may be, of the concerned college, who shall act as the ex officio Secretary to the Governing Body;

(iii) three whole time regular teachers including librarians and Graduate Laboratory Instructors, to be elected from amongst them;

(iv) one non-teaching employee to be elected from amongst them;

(v) two persons to be nominated by the State Government and one person to be nominated by the West Bengal State Council of Higher Education constituted under the West Bengal State Council of Higher Education Act, 2015 respectively;

(vi) one representative from amongst the donor of the college or from the sponsoring body promoting the establishment of the concerned college;

(vii) two persons to be nominated by the affiliating University from amongst eminent educationists, of whom at least one shall be (viii) one student representative, who shall be the General Secretary of

the duly-constituted Students' Body or Union, as the case may be, of the college.

(2) All existing members of the Governing Bodies which were constituted immediately preceding the date of coming into effect of this Act shall continue to be the member of such Governing Body until the normal tenure of the Governing Body expires by efflux of time or unless it is dissolved by the State Government, whichever is earlier.

(3) The tenure of the Governing Body shall be such as may be determined by the State Government from time to time.

(4) Every meeting of the Governing Body shall be convened in the name of the President:

Provided that the President's absence in any meeting of the Governing Body shall not invalidate the proceedings of the Governing Body if any one of the nominees of the State Government is present in such meeting and the quorum has been duly formed: Provided further that one third of the members shall form a quorum in every meeting of the Governing Body.

(5) Powers and functions of the Governing Body shall be such as may be provided in the statutes of the affiliating University."

12. It is informed by the learned Advocate General that five members as required under the Act have already been nominated. Be that as it may, upon bare reading of Section 5 of the Act of 2017 there is also requirement under Clauses (iii) and (iv) of Section 5(1) of the Act of 2017 that three whole time regular teachers including librarians and Graduate Laboratory Instructors, to be elected from amongst them and one non-teaching employee to be elected from amongst them. Admittedly, the whole time regular teachers and non-teaching employee have not been elected as yet.
13. It has been strenuously argued on behalf of the State as well as respondent nos.7 to 10 that since five members have already been nominated as required, forming the *quorum* under Section 5 of the Act of

2017, the GB has been constituted and it can continue to function. Primarily, if such proposition is accepted the election of three whole time teachers and one non-teaching employee would be an empty formality. Moreover, the words '*Proposed as*' is indicated against nomination made of the President and other two members vide notification dated 9th June, 2025. Further vide such notification, a request has been made to the Principal/Teacher-in-Charge to take necessary steps in such regard and furnish report. Therefore, the nomination as proposed in the said notification is subject to further steps and furnishing of report by the Principal/Teacher-in-Charge to the department. Needless to mention that such a report has not been furnished to the department by the Principal/Teacher-in-Charge.

14. Upon going through the earlier Constitution of the GB at page 158 of the writ petition being WPA 20940 of 2025 it is found that in the year 2021 the teacher-in-charge informed the Assistant Secretary of the Government of West Bengal, Department of Higher Education of the constitution of the GB and also disclosed names of the members. Upon query from the learned Advocates for the respondents it has been informed that such letter has not been issued as yet.
15. Such being the position, it is primarily seen that the reconstitution of the GB is yet to take place.

16. Further the impugned notification dated 9th June, 2025 has been challenged on the ground that the President as proposed is a councilor and cannot be a person interested in education as required under Section 5 of the Act of 2017. It has been vociferously argued by respondent no.7 to 10 that said notification has not been challenged till issuance of show-cause against the petitioner and the petitioner has accepted the notification by issuing notice for holding election. Be that as it may, Section 5 of the Act of 2017 provides that a President has to be person interested in education. During the course of hearing, nothing is placed on record in support of such requirement of law. Therefore, the legality of the said notification needs to be examined.
17. In view of such circumstances, this Court finds that an arguable case has been made out on behalf of the petitioner pertaining to the question as to whether with the nomination of members the GB is formed and constituted, without there being election of teaching and non-teaching staff and whether the impugned notification is sustainable in view of the provision of Section 5 of the Act of 2017 providing that a President should be a person interested in education.
18. Accordingly, the show-cause notice dated 3rd July, 2025 issued against the petitioner by the proposed President and all consequential orders/decision of proposed President including the suspension order

dated 29th August, 2025 is stayed for a period of eight weeks from date or until further order, whichever is earlier.

19. Parties are at liberty to pray for variation, modification and/or vacating of the interim order.
20. State-respondent as also other respondents are directed to file their affidavit-in-opposition to the writ petitions within a period of four weeks from date. Advance copy of such affidavit-in-opposition be served upon the petitioner. Reply thereto, if any, be filed within two weeks thereafter.
21. List this matter after six weeks under the heading **‘Returnable Motion’** along with the CAN applications.

(Bivas Pattanayak, J.)