

Debasish Bhattacharjee vs The State Of West Bengal & Ors on 11 March, 2026

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

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 17878 of 2025
With
CAN 1 of 2025
With
CAN 2 of 2025
With
CAN 3 of 2026

Debasish Bhattacharjee
Vs.
The State of West Bengal & Ors.

Mr. Anindya Lahiri, Sr. Adv.
Mr. Samrat Dey Paul
Mr. Subhomoy Paul

....For the petitioner.

Mr. Amal Kr. Sen, Ld. A.A.G.
Mr. Lal Mohan Basu

.... For the State.

Mr. Joydip Kar, Sr. Adv.
Mr. Parasar Baidya

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Mr. Soham Banerjee

.... For W.B.P.C.

Mr. Swati Agarwal
Mr. A Mandal

.... For the applicant in CAN 1 of 2025.

Mr. Arindam Samanta

.... For the applicant in CAN 2 of 2025.

Mr. Atindra Chowdhury

...For the applicant in CAN 3 of 2026.

Hearing Concluded On : 12.02.2026

Judgment on : 11.03.2026

Krishna Rao, J.:

1. The petitioner has filed the present writ petition challenging the Notification dated 28th July, 2025 and prayed for a direction upon the respondent no.2 to reinstate the petitioner in his post in the West Bengal Pharmacy Council as per Notification dated 22nd February, 2021.
2. The petitioner had been nominated by the Government on 5th October, 2012. On 18th June, 2018, the petitioner was again nominated, which was followed by the order dated 22nd February, 2021, nominating the petitioner amongst others is for five years.
3. During the tenure one of the member, namely, Dr. Rabindra Debnath passed away on 10th January, 2023. In place of Dr. Rabindra Debnath, Dr. Avick Dey was nominated as member. By a Notification dated 3rd October, 2023, the name of Dr. Avick Dey was withdrawn as a result the vacancy of one nominated member continued.
4. By a notification dated 28th July, 2025, the Secretary has reconstituted the Council in its entirety by nominating new members under Section 19(b) of the Pharmacy Act, 1948.
5. Mr. Anindya Lahiri, Learned Senior Advocate representing the petitioner submits that the Director of Health Service have been nominated in place and instead of an elected member of the Medical Council under Section 19(c) of the Act. He submits that the Director of Health Service may be construed as a member of the Council under Section 19(d) but he cannot named as member of the Council under Section 19(c). He submits that the Notification starts with the word "on expiry of the term of the West Bengal State Pharmacy Council" though the term of the Council is valid till February, 2026.
6. Mr. Lahiri submits that the members elected from amongst the registered pharmacists, were due from 2023 but was held in 2024. The names of such six (6) elected members under Section 19(a) were communicated on 28th July, 2025. He submits that the respondent authorities have issued the notification dated 28th July, 2025 in violation of the provisions of the Pharmacy Act, 1948.

7. Mr. Lahiri in support of his case, has relied upon the unreported judgment of Tripura High Court in the case of Nilimanka Das Vs. The State of Tripura & Ors. passed in WP (C) No. 654 of 2022 and submits that the Triupra High Court held that on conjoint reading of Sub-Sections (1), (2), (3), (4) of Section 7 of the Act of 1948, it manifests that the term of nominated member shall not be less than 5 (five) years and it may be extended beyond the period of five years till the new member is not nominated or elected.

8. Mr. Amal Kumar Sen, Learned A.A.G. representing the State submits that the petitioner is one of the nominated member of the Council under Section 19(b) of the Pharmacy Act, 1948. He submits that the General Election of the Council was pending since long due to various reasons and ultimately it was held in the year 2024 and the result was declared on 4th February, 2025 and was notified on 28th July, 2025.

9. Mr. Sen submits that the new members have been elected to take charge of the Council by way of an election and the newly nominated members and elected members are required to take charge of the Council for smooth functioning of the Council. He submits that the petitioner is a nominated member in respect of only one post and there is no dispute with regard to the other members are concern.

10. Mr. Joydip Kar, Learned Senior Advocate representing the West Bengal Pharmacy Council submits that on expiry of the term of West Bengal Pharmacy Council on 18th June, 2018, the Government has reconstituted the Council in terms of Section 19(b), (c), (dd), (e) of the Pharmacy Act, 1948 by nominating the officials by an order dated 22nd February, 2021. He submits that as per Section 25 of the Act of 1948, the tenure is five (5) years and the tenure expired in the year 2023.

11. Mr. Kar submits that on expiry of the term in the year 2023, the Government has constituted the Council by an order dated 28th July, 2025 and thus the contention of the petitioner is that the tenure of the petitioner was till 22nd February, 2026, is not correct. He further submits that in pursuance of Section 19(a) of the Pharmacy Act, 1948, the Government has published the names of six (6) Registered Pharmacists who have been duly elected as members of the West Bengal Pharmacy Council.

12. One of the elected member has filed an application being CAN No.1 of 2025 for addition of party in the present writ petition with the prayer for vacating interim order passed by this Court. He submits that due to the order of stay passed by this Court, normal functioning of the day- to-day affairs of the West Bengal Pharmacy Council as like issuance of duplicate certificate to the Pharmacists who have lost their certificates, fresh registration of candidates passing from college outside the State, since college verification could not be processed, disposal of other statutory and disciplinary matters under the Act of 1948.

13. One of the nominated member has filed an application being CAN No. 2 of 2025 claiming for the same relief as claimed in CAN No. 1 of 2025.

14. Sections 19 and 25 of the Pharmacy Act, 1948 reads as follows:

"19. Constitution and composition of State Councils.-- Except where a Joint State Council is constituted in accordance with an agreement made under section 20, the State Government shall constitute a State Council consisting of the following members, namely:--

(a) six members, elected from amongst themselves by registered pharmacists of the State;

(b) five members, of whom at least [three] shall be persons possessing a prescribed degree or diploma in pharmacy or pharmaceutical chemistry or [registered pharmacists], nominated by the State Government;

(c) one member elected from amongst themselves by the members of each Medical Council or the Council of Medical Registration of the State, as the case may be;

(d) the chief administrative medical officer of the State ex-officio or if he is unable to attend any meeting, a person authorised by him in writing to do so;

(dd) the officer-in-charge of drugs control organisation of the State under the [Drugs and Cosmetics Act, 1940 (23 of 1940)], ex officio or if he is unable to attend any meeting, a person authorised by him in writing to do so;]

(e) the Government Analyst under the [Drugs and Cosmetics Act, 1940 (23 of 1940)], ex officio, or where there is more than one, such one as the State Government may appoint in this behalf:

Provided that where an agreement is made under clause (b) of sub-section (1) of section 20, the agreement may provide that the State Council to serve the needs of the other participating States also shall be augmented by not more than two members, of whom at least one shall at all times be a person possessing a prescribed degree or diploma in pharmacy or pharmaceutical chemistry or a [registered pharmacist], nominated by the Government of each of the said other participating States, and where the agreement so provides, the composition of the State Council shall be deemed to be augmented accordingly

25. Term of office and casual vacancies.--

(1) Subject to the provisions of this section, a nominated or elected member, other than a nominated President, shall hold office for a term of five years from the date of his nomination or election or until his successor has been duly nominated or elected, whichever is longer.

(2) A nominated or elected member may at any time resign his membership by writing under his hand addressed to the President, and the seat of such member shall

thereupon become vacant.

(3) A nominated or elected member shall be deemed to have vacated his seat if he is absent without excuse sufficient in the opinion of the State Council from three consecutive meetings of the State Council, or if he is elected under clause (a) or

(c) of section 19 or 21, if he ceases to be a registered pharmacist or causes to be a member of the Medical Council or Council of Medical Registration of the State, as the case may be.

(4) A casual vacancy in the State Council shall be filled by fresh nomination or election, as the case may be, and the person nominated or elected to fill the vacancy shall hold office only for the remainder of the term for which the member whose place he takes was nominated or elected.

(5) No act done by the State Council shall be called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of the State Council.

(6) Members of the State Council shall be eligible for re-nomination or re-election."

15. Initially, the petitioner was nominated as member of the West Bengal Pharmacy Council on 5th October, 2012. The petitioner was again nominated as member by an order dated 22nd February, 2021. In the order dated 22nd February, 2021, it is mentioned that on expiry of the term of the West Bengal State Pharmacy Council on 18th June, 2018, it was re-constituted. The petitioner has raised the contention that the tenure of the Council is taken into consideration from 22nd February, 2021 and not from 18th June, 2018, thus the term of the petitioner is up till 22nd February, 2026 but the respondents have nominated and elected the members of the Council on 28th July, 2025 i.e. before the expiry of the term of the petitioner as nominated member.

16. As per Section 25 of the Act of 1948, a nominated or elected member shall hold the office for a term of five years from the date of his nomination or election or until his successor has been duly nominated or elected, whichever is longer. The petitioner was initially nominated as member by a letter dated 5th October, 2012. As per order dated 22nd February, 2021, the terms was expired on 18th June, 2018 in between 5th October, 2021 till 21st February, 2021, no member was nominated in place of the petitioner and the petitioner continued as nominated member. By an order dated 22nd February, 2021, the petitioner was again nominated as member.

17. By an order dated 22nd February, 2021, the nomination of the petitioner as member was regularized with effect from 18th June, 2018 as the original term of five years was expired on 18th June, 2018. Thus the tenure of the petitioner was uptill 18th June, 2023 but the respondents have neither nominated nor elected any member till 28th July, 2025, thus the petitioner continued as nominated member till 28th July, 2025.

18. The respondents by an order dated 28th July, 2025, nominated five (5) members of the Council in terms of Section 19(b) of the Act of 1948 and six (6) persons have been declared as elected members of the Council, thus as per Section 25 of the Act of 1948, the petitioner cannot claim any right as nominated member of the Council after 28th July, 2025.

19. The judgment relied by the petitioner in the case of Nilimanka Das (supra), is distinguishable from the facts and circumstances of the present case.

20. Considering the facts and circumstances mentioned above, this Court did not find any merit in the present writ petition, accordingly, WPA No. 17878 of 2025 is dismissed. Interim order is vacated. Consequently, CAN No. 1 of 2025, CAN No. 2 of 2025 and CAN No. 3 of 2026 are disposed of.

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.)