

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
(PUBLIC INTEREST LITIGATION PETITION)**

W.P. (C). NO. /2014

IN THE MATTER OF :-

People for Better Treatment through its President,
Dr.Kunal Saha

....Petitioner

Versus

Union of India &Ors.

....Respondents

With

PAPER BOOK

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ADVOCATE FOR THE PETITIONERS: T.V. GEORGE

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Synopsis and List of Dates and events

The present Writ Petition attempts to expose how a few corrupt vested interests have perpetuated their unhealthy strangle-hold on the highest Regulatory Body of Allopathic Medicine in India, namely the Medical Council of India (MCI), by gross manipulation in the election process and also how the composition of the MCI wherein nominated members predominate goes to assist this unhealthy state of affairs.

March, 2001 Dr. Ketan Desai, then president of MCI, was ordered to be removed from his post in the medical council on charges of corruption by Hon'ble Delhi High Court.

March, 2009: Dr. Desai returned to MCI and was re-elected "unopposed" as MCI president.

April, 2010: Dr. Desai was caught red-handed by CBI through a sting operation while taking bribe from a private medical college. The entire MCI with more than 100 members was dissolved by health ministry (respondent no. 1) on ground of wide-spread

corruption. A 7-member Board of Governors (BOG) was established through an Ordinance to run MCI.

October 9, 2010: Dr. Desai's medical registration was suspended indefinitely by BOG in response to a complaint lodged by the petitioner.

October, 2013: Health Ministry declared that a new MCI will be established with elected/nominated members from different states/universities in accordance to Indian Medical Council (Amendment) Ordinance, 2013. Dr. Desai also managed to get himself nominated as a member of MCI from Gujarat University while still waiting for criminal trial to begin and his license still remains suspended by MCI. However, Dr. Desai's name was not forwarded to the health ministry to be published in the official Gazette for becoming an official member of the new MCI.

November 8, 2013: MCI issues a Notice for all newly elected/nominated members that election for next MCI president/vice-president and Executive/Post-graduate Committee members will be held at MCI office on 10th and 11th December, 2013 in a General Body meeting..

December 9, 2013: A dinner cocktail party was hosted by Dr. Ketan Desai at the Indian Medical Association (IMA) House in Delhi the presence of most of the newly elected/nominated members who would vote next day to elect new MCI president/vice-president and important Executive/Post-graduate Committee members. A printed list was circulated at this dinner party which contained names of members who are closely associated with Dr. Desai to be elected next day as new MCI president/vice-president and Executive/Post-graduate Committee members along with the names of those who would nominate these individuals (“proposers”) and those who would support the nominations (“seconders”) for the election next day. This entire scenario was described by Dr. Balvir Tomar, a newly elected/nominated MCI member through a formal complaint lodged with the health ministry.

Dece.10, 2013: Formal election for new MCI president/vice-president and Executive/Post-graduate Committee members was held at the MCI office. No recordings, audio or video, were kept for the election process. The same list which was circulated previous night at Dr. Desai’s dinner party

was openly given to the newly elected/nominated members (“electorates”) in the MCI election hall. Every member in the said list was elected “unopposed” as the new MCI president/vice-president and Executive/Post-graduate Committee members. Although some members tried to raise objection against this rigged election, nothing was recorded in the official minutes of the said meeting that was posted on the MCI website. The entire election was rushed and concluded before lunch on the first day (10th December, 2013) even though MCI Notice inviting all new members to vote categorically stated that election will be held over a period of two days, i.e. 10th and 11th December, 2013. A chain-email dated 25th December, 2013 circulated among many of the newly elected/nominated members categorically raised the blatant irregularities involved with this rigged election.

Dec. 2013: The newly elected MCI president/vice-president and members of important Executive/Post-graduate Committees who came to power in accordance to the printed list prepared by Dr. Desai continued deliberate manipulation of the medical education

system through reckless increase/decrease of seats at different medical colleges without any consent/approval of the General Body in brazen transgression of law. The new MCI leaders and health ministry also kept blind eyes to serious allegations of corrupt/unethical conduct against several members who were occupying top positions in the new MCI.

Mar. 31, 2014: A complaint was lodged with health ministry by MCI Deputy Secretary raising serious allegations of corruption and conspiracy involving MCI president/vice-president and important committee members and Dr.Ketan Desai.

It is further submitted that constitution of the new MCI was done in accordance to the Indian Medical Council Amendment Second Ordinance, 2013 (henceforth "Ordinance 2013") which was published in official Gazette on 28th September, 2013 following several changes made in the previously existing Indian Medical Council Act, 1956. The new changes in the "Ordinance 2013" resulted in significant increase in the number of MCI members who were either "nominated" by the

state/central government or chosen by the senate/court of different universities in contrast to number of members who were “elected” by the registered doctors in different states. In fact, out of a total of 58 names published in the official Gazette dated 6th November, 2013 who would participate in the election for the new MCI president/vice-president and members of Executive/Post-graduate Committee on 10th December, 2013, only 7 members were “elected” by other registered physicians in different states under section 3(1c) of “Ordinance 2013”. Almost all members who managed to win “unopposed” the top positions in the new MCI including the present MCI president and vice-president were “nominated” by the government.

Even otherwise Section 3 of the Indian Medical Council Act 1956 is violative of Article 14 of the Constitution of India for the reason that there is nothing in the Act or in the Rules which mandates that before the MCI Executive Committee is constituted, election of the representatives from the registered medical practitioners in different

states should be completed. Thus, in the scheme of things as it stands today U/s 3 of the Indian Medical Council Act 1956, even without completing the election under Section 3(1c) to decide the elected representatives of the registered medical practitioners, the election to the MCI Executive Committee could be completed with a majority of members who never contested or won any election. In fact, at the time of last election at MCI held on 10th December, 2013 to select new MCI president/vice-president and Executive/Post-graduate Committee members, elections to decide the representatives from among the registered medical practitioners from different states had not completed in a majority of States. It is respectfully submitted that this is grossly arbitrary, unreasonable and violative of Article 14 of the Constitution of India. Thus, Section 3 of the Indian Medical Council Act 1956 as well as “Ordinance 2013” under which MCI election was held on 10th December, 2013 held is to be struck down as being violative of Article 14 of the Constitution of India.

Hence this Writ Petition

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
(PUBLIC INTEREST LITIGATION PETITION)

W.P. (C).NO. /2014

In the matter of :

People for Better Treatment

Through its President,

Dr.Kunal Saha,

Having its office at

1 Indra Roy Road

First floor, Room no. 9

Kolkata – 700025

.....Petitioner

Versus

1. Union of India through
Secretary, Ministry of Health & Family Welfare
NirmanBhawan, C-Wing
New Delhi 110001

2. The Secretary, Medical Council of India
Pocket-14, Sector-8,
Dwarka Phase -1,
New Delhi – 11007

3. Dr.Ketan Desai
“Aashirvas”, 7 Friends Avenue
Opposite Pakwan Cross Road
Bodakdev, Ahmedabad 3800059

..... Respondents

AND IN THE MATTER OF:

A PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA IN PUBLIC INTEREST SEEKING A WRIT OF MANDAMUS OR ANY OTHER WRIT OR ORDER TO INSTITUTE A CBI ENQUIRY INTO THE MANIPULATION/RIGGING OF ELECTION FOR THE PRESIDENT, VICE-PRESIDENT AND

EXECUTIVE COMMITTEE MEMBERS OF THE MEDICAL COUNCIL OF INDIA (MCI) AND ALSO FOR DECLARING THAT SECTION 3 OF THE INDIAN MEDICAL COUNCIL ACT 1956 IS VIOLATIVE OF ARTICLE 14 OF THE CONSTITUTION OF INDIA, ETC..

TO

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
SUPREME COURT OF INDIA

THE HUMBLE PETITION OF
THE PETITIONER ABOVE NAMED

1. **MOST RESPECTFULLY SHOWETH:**

The petitioner, "*People for Better Treatment*" (PBT), is a registered, non-governmental organization (NGO) which is devoted to promotion of a better healthcare delivery system and prevention of medical negligence in India. Apart from spreading awareness on patients' rights and responsibilities of doctors, the petitioner has also made seminal contributions in battle against corruption in healthcare and bringing important changes in the medical regulatory system in India. In fact, a PIL filed by the petitioner in the Hon'ble Supreme Court of India (Writ Petition Civil No. 317/2000) helped to bring unprecedented changes through introduction of two new provisions in medical laws (Sections 8.7 and 8.8) in the Medical Council of India (MCI) "Code of Ethics and Regulations" for

proper investigation of complaints against the errant medicos (2002 SCC 10, 93). Another PIL against “doctors’ strike” that has continued to bring unspeakable miseries for the hapless patients is currently pending before this Hon’ble Court (Writ Petition Civil No. 253/2012; *People for Better Treatment vs. Secretary, Indian Medical Association&Ors.*).

2. Questions of Law:

- i) Whether Section 3 of Medical Council of India Act 1956 is unconstitutional being violative of Article 14 of the Constitution of India?
- ii) Whether in the given facts and circumstances, election held on 10th December, 2013 for selecting members for the top positions in MCI including president/vice-president was lawful and democratic?
- iii) Whether extraneous pressure mounted on thenewly elected/nominated MCI members (electorates) at a dinner party on the night before election, i.e. 9th December, 2013 in presence of criminally indicted ex-MCI president, Dr. Ketan Desai, where a list of names was circulated all of whom were elected “unopposed” next day was an unlawful attempt to obstruct the course of a fair and impartial election?

- iv) Whether distribution of a list containing names of candidates to be elected as new MCI president/vice-president and members of important Executive/Post-graduate Committees along with the names who would nominate these candidates (“proposers”) and those who would support these nominations (“seconders”) at a party on the night before election was a deliberate act of intimidation to rig the MCI election?
- v) Whether deliberate attempt to sway the process of MCI election by Dr. Ketan Desai and his associates through external pressure and intimidation amounts to criminal conspiracy (Section 120b), criminal breach of trust (Section 405 IPC), Cheating (Section 415 IPC), and Mischief (Section 425 IPC)?
- vi) Whether Respondents’ deliberate silence and refusal to investigate serious allegations against members holding top positions in MCI is evidence of corruption?
- vii) Whether members holding top posts in MCI should be allowed to perform important function which directly affects public health and medical education in India when these members are accused of winning their posts by rigging the MCI election through conspiracy and deception?

3. Brief facts

- a. The MCI was constituted under Section 3 of Indian Medical Council Act, 1956 (henceforth “IMC Act, 1956”) with the primary objective to maintain high standard of medical education and proper regulation of medical practice by registered physicians in India. Needless to say that MCI plays a key role in the functioning of the entire healthcare delivery system which also has a direct effect on the quality of life for every citizen living in India.
- b. It is most respectfully submitted that despite having most important role in medical education and healthcare delivery system, MCI has been riddled with wide-spread corruption in the recent years which is a matter of grave concern for the entire society for obvious reason. In 2001, MCI was dubbed as a “den of corruption” by Hon’ble Delhi High Court which also directed to remove then MCI president, Dr.Ketan Desai (*Union of India &Anr. Vs. Harish Bhalla&Ors.*, LPA Nos. 299 & 301 of 2001). In fact, Dr. Desai had maintained a strong grip over the entire Indian medical community for the past more than two decades. His sinister influence over the Indian medical fraternity would also be evident from the fact that when Dr. Desai was found guilty for corruption and ordered to be removed from MCI by Hon’ble Delhi High Court in 2001, he was also holding the post of Indian Medical Association (IMA) president as well as

president of Gujarat Medical Council (GMC) along with many other top positions in different medical universities and healthcare regulatory bodies (see below). However, after Dr. Desai's removal from the post of MCI president in 2001, he managed to return to MCI again in 2009 using support from his numerous medical cronies who also benefited during the long reign of Dr. Desai. In fact, in an incredible turn of events following his ouster from MCI in 2001, Dr. Desai managed to get himself elected "unopposed" as MCI president once again in 2009 through explicit as well as implicit support from his numerous unscrupulous medical colleagues. It is ironic that pervasive corruption inside MCI was blatantly exposed once again in 2010 as Dr. Desai was caught red-handed through a sting operation by the Central Bureau of Investigation (CBI) while taking bribe allegedly in exchange of granting MCI recognition to a private medical college. Dr. Desai's arrest created a huge uproar across India and under enormous public pressure, entire body of MCI with its more than 100 doctor-members, who unanimously elected Dr. Desai as their president in 2009 and many of whom were helping him to run a reign of corruption in MCI, was also dissolved by the central health ministry (respondent no. 1) in April, 2010. While Dr. Desai stayed in jail for almost 7 months, he has been free on bail since late 2010 waiting to stand trial on serious charges of bribery and

corruption. This sordid episode inside MCI brought great ignominy for the entire nation and medical community as it also further eroded the dwindling public trust on doctors in India.

- c. It may be pertinent to mention in this regard that even this Hon'ble Court has been very mindful about the development of these ignoble episodes and deep decay in moral as well as ethical values in the medical community and MCI. In a recent judgment in *Rohilkhand Medical College & Hospital vs. MCI &Anr.* [2013 (12) JT 199], Hon'ble Apex Court has categorically observed (under para 39):

“Many of regulatory bodies like MCI, AICTE, UGC etc. were also under serious clout in the recent years. CBI, in the year 2010, had to arrest the President of the MCI for accepting bribeto grant recognition to one Medical College in Punjab. Later, it is reported that the CBI found that the President of the MCI and its family members possessed disproportionate assets worth of 24 crores. We have referred to these instances only to indicate the falling standards of our educational system at the highest level, sometime even at the level of the Central Government making a serious inroad to the right to life guaranteed to the citizens of the country under Article 21 of the Constitution of India.” (emphasis added)

Needless to say that an incompetent, inefficient or corrupt MCI would not only pose serious danger to public health, it would also violate fundamental right to life for all citizens which is guaranteed under Article 21 of the Constitution of India.

- d. As discussed above, full-body MCI was dissolved by respondent no. 1 on the ground of corruption following Dr. Desai's arrest in 2010 and a "Board of Governors" (BOG) was established to run the important functions of MCI through "Indian Medical Council Amendment Ordinance, 2010". The MCI had been functioning under the supervision of BOG until 2013 when respondent no. 1 decided that a full-body MCI would be re-established through election/nomination of new members in accordance to the provisions in "Ordinance 2013". Accordingly, BOG was dissolved and a new MCI was established in December, 2013 in accordance to the amended provisions of section 3 of "Ordinance 2013" which significantly increased the number of members "nominated" by the central/state government (section 3.1a) and members selected by different universities (section 3.1b).
- e. It is most respectfully submitted that petitioner-organization was deeply concerned with the manner in which respondent no. 1 rushed to form a new MCI by passing "Ordinance 2013". Many doctors who are known to be close associates of the disgraced ex-MCI president, Dr. Ketan Desai, and who were also part of the previous MCI which was disbanded on charges of wide-spread

corruption in 2010, again got themselves re-nominated to become members of the new MCI. In fact, while he is free on bail with a pending criminal trial on serious charges of bribery and corruption, even Dr. Desai managed to get himself re-nominated from Gujarat University as a member of the new MCI. It may also be noted that medical registration of Dr. Desai has remained suspended by the MCI since 9th October, 2010 after president of petitioner-organization, Dr. Kunal Saha, lodged a complaint against Dr. Desai following his arrest by CBI in 2010. But despite having his registration suspended by MCI and waiting for criminal trial to start, Dr. Desai still managed to get himself re-nominated from Gujarat University to become a member of the new MCI. It may be pertinent to mention in this regard that the petitioner-organization also moved a public interest litigation (PIL) against this seemingly atrocious election of Dr. Desai by the Gujarat University which was eventually disposed of by this Hon'ble Court in SLP (Civil) No. 9151/2013 *vide* an order dated 18th February, 2013 in which this Hon'ble Court granted permission to the petitioner-organization to approach the authorities to take appropriate action as provided under Section 58 of Gujarat University Act, 1949 for investigation of the alleged illegality of Dr. Desai's election to the Gujarat University Senate. A copy of the said order passed by this Hon'ble Court in SLP (C) No.CC

No.3408/2013 dated 18.02.2013 is annexed hereto and marked as **Annexure-P/1 (Pages: to)**.

- f. The petitioner was concerned when the new MCI was formed and came to power through a General Body meeting held on 10th and 11th December, 2013 for election of candidates for the crucial posts of MCI president/vice-president and members of important Executive/Post-graduate Committees. In this regard, a Notice dated 8th November, 2013 was circulated by MCI to all newly elected/nominated members. A copy of the MCI letter No.MCI-6(2)/2013-Med.Misc.141745 To 41812 dated 08.11.2013 is annexed hereto and marked as **Annexure-P/2 Pages: to)**. The petitioner was concerned because there was significant number of members of the new MCI who are also known cronies of Dr.Ketan Desai and as members of the previous MCI, they also voted to elect Dr. Desai as the MCI president in 2009. Interestingly, although Dr. Desai had also already been elected from Gujarat University to become a member of the new MCI, his name was not formally sent for listing in the official Gazette as a member of the new MCI when election was held on December 10th and 11th, 2013 for the top MCI posts of president/vice-president and Executive/Post-graduate Committee members.
- g. It is most respectfully submitted that the petitioner came to know from inside sources that in order to regain control of the new MCI, a deep-rooted conspiracy to manipulate and rig the proposed MCI

election on 10th and 11th December, 2014 was hatched by Dr. Desai along with his close associates who had already managed to get themselves re-elected/re-nominated for the new MCI. Unfortunately, the petitioner was unable to obtain any documentary proof about manipulation/rigging in the process of election for MCI president/vice-president and important Executive/Post-graduate Committee members on 10th and 11th December, 2013. However, the Minutes of the MCI General Body meeting held on 10th December, 2013 as posted on MCI website which implicitly indicated several unseemly phenomena underscoring possible corruption as shown below:

- i) Members who were elected for new MCI president/vice-president and important members of Executive/Post-graduate Committee were all elected “unopposed”.
- ii) Members who were elected “unopposed” to these top MCI positions are known to be closely associated with Dr. Ketan Desai. As mentioned above, many of these members were also part of the previous MCI who voted to make Dr. Desai MCI president in 2009.
- iii) Although MCI General Body meeting to elect the new MCI president/vice-present and important committee members was scheduled to take place after thorough discussion over a period of two full days, i.e. 10th and 11th December, 2013 as per the Notice from MCI, the entire election was concluded in very

short time before lunch on the first day, i.e. 10th December, 2013. In fact, there was no meeting whatsoever at MCI on 11th December, 2013.

- h. It is most respectfully submitted that your petitioner has recently obtained incriminating documents that would shockingly demonstrate that the process for election of MCI president/vice-president and members for the important Executive/Post-graduate Committees as held on 10th December, 2013 at MCI office was nothing but a sham exercise. Your petitioner has obtained email written by a new MCI member which was circulated among numerous other newly elected/nominated MCI members who were present during the vote that would clearly show that the MCI election held on 10th December, 2013 was nothing but a bogus exercise in which all the winners were already chosen in accordance to a list prepared by Dr. Ketan Desai before the election. A copy of the said e-mail dated 25.12.2013 circulated among many of the newly elected/nominated MCI members is annexed hereto and marked as **Annexure-P/3 (Pages: to)**. Further, your petitioner has also obtained a formal complaint lodged with the health ministry (respondent no. 1) by another new MCI member who was also present during voting on 10th December, 2013 in which it has been categorically alleged that the MCI election held on 10th December, 2013 was a botched exercise manipulated by

Dr.Ketan Desai with a plan to put his close associates to the top positions in order to control the new MCI.

- i. The documents obtained by your petitioner containing direct communications from members of the newly formed MCI provides a scandalous and dreadful picture of how top positions in MCI, highest authority for regulation of medical education and medical practice in India, were manipulated by Dr. Desai and his cronies even before the election was held at MCI office on 10th December, 2013. It appears from the email communication dated 25th December, 2013 from Dr. D.K. Gupta (new MCI member and professor of AIIMS, New Delhi) which was sent to many other newly elected/nominated MCI members and also from the formal complaint dated 1st August, 2014 filed with respondent no. 1 by Dr. Balbir S. Tomar (new MCI member and Chancellor of NIMS University in Rajasthan)that election of candidates for the important posts of MCI president/vice-president and Executive/Post-graduate Committee members was decided by Dr. Ketan Desai and his associates even before the election was held on 10th December, 2013. It is crystal clear from these documents that a list of candidates to be elected “unanimously” as MCI president/vice-president and members of Executive/Post-graduate Committees was prepared and distributed at a dinner party hosted by Dr. Desai at the Indian Medical Association (IMA) house in Delhi on 9th December,

2013, i.e. the night before the scheduled election on 10th December, 2014. Other newly elected/nominated MCI members were also invited to the said dinner party in order to intimidate them and to mount extraneous pressure on these electorates most of whom were elected/nominated for the first time as MCI members from various states in 2013. It may not be difficult to appreciate that under the immense pressure and intimidation from Dr. Desai and his highly influential medical cronies, none of the newly inducted members were able to protest against the overtly corrupt tactic adopted by highly powerful Dr. Desai and his associates. Little wonder that all candidates in the printed list that was circulated at the dinner party hosted by Dr. Desai on 9th December, 2013 were elected “unopposed” to the top positions in MCI next day including president/vice-president and Executive/Post-graduate Committee members. Relevant portion of the formal complaint lodged with the health ministry by Dr. Tomaris reproduced hereinbelow for ready reference:

“On 9th December, 2013, a party was held by Dr. Ketan Desai, ex-president of MCI in IMA hall near ITO in New Delhi. The group of Dr. Ketan Desai’s members who have been elected/nominated as member of MCI and in this which was hosted by Dr. Ketan Desai, the ex-president of MCI at IMA Hall. Dr. Desai addressed to all the newly members who were present in this party, complete list of

who shall be elected for office bearer and who will nominate and who will second the name will be given on a print paper to all of you and you have to act accordingly.....I have seen with my own eyes all this. These members met next morning, i.e. on 10th December, 2013 in the MCI office and as planned, a printed list of who will be office bearers, who will propose them, who will second them was circulated before the meeting started. For each post, only one member was nominated so all selected unopposed. Dr. Sanjay Srivastava, was assistant director General Health, at that time who was officiating secretary, MCI, was asked to go out in the meeting room of MCI where the meeting was scheduled and he did so.....All the election of the new office bearer were held in only 10 minutes according the already circulated list which was made in the previous day 9th December, 2013.....General Body meeting which was called for two days for this purpose, but finished before lunch on December 10, 2013 and General Body members were asked to go same day back by newly elected president Dr. Jaishreeben Mehta.” (emphasis added)

Many other incriminating evidences against the devious role played by Dr. Desai and his close medical allies who managed to get to the MCI top positions through the botched election on 10th

December, 2013 and how the new MCI president/vice-president and Executive/Post-graduate members have been abusing their power at MCI have been discussed by Dr. Tomar in his complaint to respondent no. 1. Ironically, central health ministry (respondent no. 1) has not taken any steps even after receiving these specific and scathing allegations of gross irregularities and corruption with the MCI election.

- j. The shocking allegations by Dr. Tomar that fraud, intimidation and corruption were intimately involved with the election of new MCI president/vice-president and members for the important Executive/Post-graduate Committees received strong corroborative support from the chain-email communication sent by Dr. D.K. Gupta, which was circulated to many other newly elected/nominated MCI members soon after the election. Some relevant portions from the said email after the sham MCI election which was held 10th December, 2013 is reproduced below for ready reference:

“.....The election was held and declared only according to the printed list of the members that was already available in the Hall. I had shown that publicly. This is a very serious issue and cannot be ignored. It is a gross irregularity and making mockery of the whole election process. As you all know, there were only few members in the Hall who proposed and seconded the names of their

chosen ones in quick succession. As if everything had been planned and decided in advance. No wonder a scheduled two (days) meeting finished the business in two hours. I hope there is a video and audio recording of the proceedings.” (emphasis added)

- k. The communications among and by the new MCI members from different states as enumerated hereinabove underscore the sinister influence and a deep rooted conspiracy which was orchestrated by disgraced ex-MCI president Dr. Ketan Desai and his close medical associates that blatantly rigged the election held on 10th December, 2013 to select the best candidates for the highest positions in MCI for proper regulation of medical education and practice of medicine in India. As discussed before, holders of the top positions in the recently formed MCI including the new president/vice-president, members of the important Committees/Sub-committees are all known to be closely associated with Dr. Ketan Desai. This includes Dr. Jayshreeben Mehta (President and Chairman of Executive Committee) who was chancellor of Sumandeep University in Gujarat who helped to promote Dr. Desai by organizing a medical conference where Dr. Desai was an invited keynote speaker even after his criminal indictment and with his medical license suspended by MCI; Dr. C.V. Bhirmanandam (Vice-president and Executive Committee), Dr. Baldev Singh Aulakh

(Executive Committee), Dr. G.B. Gupta (Executive Committee), Dr. V.N. Jindal (Executive Committee), Dr. V.P. Singh (Executive Committee), Dr.R.N.Tripathy (Executive Committee), Dr. M. Ahmed (Chairman, Ethics Committee), Dr. S.N. Chaudhary (Ethics Committee), Dr. D.J. Borah (PG Committee), Dr. D. G. Mhaisekar (PG Committee), Dr. Rani Bhaskaran (PG Committee who proposed Dr. Desai's name for MCI president in 2009), Dr. S.D. Sapeco (PG Committee), Dr. R.B. Panwar (PG Committee), and Dr. V.P. Mishra (Chairman, Academic Committee who seconded Dr. Desai's name for MCI president in 2009) - all of these members who are now holding important posts in MCI by virtue of their win through the botched MCI election on 10th December, 2013, were also members in the last MCI which was disbanded in 2010 on charges of corruption and all of them also voted to elect Dr. Desai as MCI president in 2009.

In this regard, a specific complaint was lodged with respondent no. 1 by your petitioner seeking removal of the members from the new MCI on specific ground because of their known link with Dr. Desai as their presence in the new council would undermine public trust on the highest regulatory body and Section 30A.2g of "Ordinance 2013" has categorically stated that any member whose presence in MCI "*would be detrimental in public interest*" should

be removed from the medical council. A copy of the said complaint dated 13.01.2014 lodged by your petitioner is annexed hereto and marked as **Annexure P/4 (Pages: to .** Unfortunately, more than 7 months has passed and neither ministry of health (respondent no. 1) nor the MCI (respondent no. 2) have taken any steps to investigate or respond to our specific complaint.

1. It is most respectfully submitted that your petitioner has also brought serious charges against several other members who are also occupying top positions in the new MCI by virtue of their association with Dr. Ketan Desai. Unfortunately, these complaints have also been shoved under the rug by respondent nos. 1 and 2 without any investigation whatsoever. For example, a complaint was lodged against one Dr. Ajay Kumar, a long-time close associate of Dr. Desai and chairman of the new MCI “Grievance Committee as well as Ethics Committee, for his deliberate attempt to shield Dr. Desai and to obstruct the course of justice in the pending criminal trial against him. Interestingly, Dr. Kumar was also chosen as the “returning officer” to conduct the botched MCI election on 10th December, 2013. As indicated above, our complaint dated 23rd January, 2014 against Dr. Kumar brought serious charges of obstruction to the course of justice with the ongoing CBI investigation against Dr. Desai. A copy of the said Complaint filed dated 23.01.2014 is annexed hereto and marked as

Annexure P/5(Pages: to). In order paint Dr. Desai in a positive light for swaying the course of ongoing criminal proceedings against Dr. Desai, Dr. Kumar had submitted a false document (on behalf of IMA) before the World Medical Association (WMA) claiming that all charges of corruption against Dr. Desai were dropped by the CBI so that Dr. Desai may be reinstated as the president-elect of WMA that had previously removed Dr. Desai from his post of WMA president-elect following his arrest by CBI in 2010. The blatant lie by Dr. Kumar was caught after your petitioner contacted CBI which informed that the claim made by Dr. Kumar was baseless since several criminal cases against Dr. Desai were still pending for trial in Delhi and other places. In fact, CBI has also referred this matter against Dr. Kumar to the MCI Vigilance for investigation and appropriate action. A copy of the communication No. MCI/CVO/006/2014y/121206 dated 24.07.2014 received from MCI in this regard is annexed here to and marked as **Annexure-P/6(Pages: to)**. It is noteworthy that both respondent nos. 1 and 2 have remained absolutely silent allowing Dr. Kumar to continue using his power as the chairman of MCI “Grievance Committee” and member of the Ethics Committee despite his involvement with this criminal proceeding.

Similarly, your petitioner also lodged a complaint against one Dr. Ved Prakash Mishra who is presently the Chairman of MCI

Academic Committee. Dr. Mishra is also a long-term ardent supporter of Dr. Desai who also voted to make him MCI president in 2009. Dr. Mishra also has a grossly tainted background under the leadership of Dr. Desai during his previous tenure as president of MCI between 1996 and 2001. In fact, Dr. Mishra was found guilty by CBI for “*intentional omissions and commissions*” in awarding huge contract to a construction company when he was a member of MCI Building Committee in 2005. The CBI also recommended “*major penalty*” against Dr. Mishra in their final enquiry report. A copy of the final enquiry report dated nil by CBI Anti corruption Unit is annexed hereto and marked as **Annexure-P/7(Pages: to)**. Shockingly, after Dr. Ketan Desai regained control of MCI after being re-elected as MCI president in 2009 (with supporting vote from Dr. Mishra who was also MCI member at that stage), the said CBI report was considered by the Executive Committee headed by Dr. Desai on 10th and 11th June, 2009 and without even mentioning the name of Dr. Mishra and that he was found guilty by CBI and recommended for “major penalty”, it was simply decided that the “*minutes of this item would be kept separately under the custody of President*”. Obviously, there was no question of any “major penalty” against Dr. Mishra as recommended by the CBI. Ironically, most of the members of the MCI Executive Committee of 2009 are also holding top positions in the newly formed MCI. The said MCI Executive Committee

report is also available at MCI website. Further, Under Secretary of the Ministry of Health also referred the petitioner's complaint against Dr. Mishra to MCI president, Dr. Jayshreeben Mehta, seeking a para-wise response "urgently" from the MCI president vide a letter dated 1st April, 2014. But even after the lapse of more than 5 months, MCI president has failed to provide any response, para-wise or otherwise. Taken together, the newly formed MCI has deliberately refused to investigate or take any disciplinary action to the serious allegations raised by your petitioner against several top-rank members of the newly formed MCI. A common thread between these accused MCI members is their close connection with Dr. Ketan Desai.

- m. It is most respectfully submitted that the profound influence of Dr. Ketan Desai over the new MCI is also apparent from serious allegations that were raised inside MCI by a senior administrator, i.e. Joint Secretary of MCI. Your petitioner has obtained copy of a letter dated 31st March, 2014 written by Dr. Davinder Kumar, Joint Secretary of MCI, in which serious charges have been labelled against top MCI members with categorical evidences showing how Dr. Ketan Desai and his cronies occupying top positions in the new MCI are involved with wide-spread corruption. The complaint by the Joint Secretary has also alleged how workers in MCI who have refused to join hands with this corruption by the present MCI leaders have been subjected to intense humiliation

and harassment. The Joint Secretary has also discussed in great detail about the ongoing corrupt practices with medical education by the present MCI leaders using their power with a vested interest to allow or reject increase of medical seats in different medical colleges across India.

- n. That meanwhile on 01.08.2014, as mentioned in para 'i' above, Prof. Dr. Balvir Tomar, member of the newly formed MCI, filed a formal complaint against the botched election of MCI president/vice-president and members of Executive/Post-graduate Committee held on 10th December, 2013. A copy of the said formal complaint filed by Professor Dr. Balvir S. Tomar dated 01.08.2014 is annexed hereto and marked as **Annexure P/8** **(Pages: to)**
- o. It is most respectfully submitted that your petitioner firmly believes that Dr. Ketan Desai has built a massive and sinister network over the years with implicit and explicit support from a large number of unscrupulous medicos in order to maintain his control over the medical education and healthcare delivery system. Dr. Desai is still trying to wriggle out of the criminal charges for bribery and corruption that he has been facing now by installing his cronies to the top positions in the newly formed MCI. It may be out of place to mention in this regard that before Dr. Desai was arrested by CBI and removed from MCI in 2010, he was occupying important and powerful positions in numerous medical

regulatory and administrative bodies across India. For example, Dr. Desai was several times MCI president, president of national Indian Medical Association (IMA), president of Gujarat Medical Council (where he held the post even after his arrest by CBI and removal from MCI in 2010), chairman of Standing Selection Committee of All Indian Institute of Medical Sciences (AIIMS), member of Indian Council of Medical Research (ICMR), member of National Board of Examinations (NBE), Dean of Faculty of Medicine in Gujarat University, and he was and still is a member of the Dental Medical Council (DMC). As discussed above, many doctors who are currently holding top positions in the newly formed MCI including the president/vice-president and important Executive/Post-graduate Committee members are close and long-term allies of Dr. Ketan Desai. There is little wonder that top members of the new MCI have kept blind eyes to the serious allegations of corruption against members who are closely linked to Dr. Desai.

P. That the discussion above provides strong evidence that members occupying the highest positions in MCI today including president/vice-president and members of the Executive/Post-graduate Committees were elected on 10th December, 2013 in the most undemocratic and surreptitious manner through a

botched election orchestrated by Dr. Ketan Desai and his cronies. And even after coming to power, these top MCI leaders have continued to act in the most devious and unlawful manner causing great harm to medical education and healthcare delivery system in India. As a registered benevolent society involved in prevention of medical corruption and protection of interests for the millions of hapless patients of India, the petitioner has no other relief or remedy available to him but for the kind intervention of this Hon'ble Court for full conscionable justice, being left without any other forum for remedy or relief.

It is further submitted that the aforesaid manipulation and undue influence in the formation of the new MCI became possible by reason of a lopsided number of members who participated in the election were "nominated" by the government, and not "elected" by registered doctors, prior to holding the meeting for election of the president/vice-president and important committee members on 10th December, 2013. Such a composition of MCI, it is respectfully submitted, is unreasonable, arbitrary and violative of Article 14 of the Constitution of India. It is the humble submission of the petitioner that in the Constitution of MCI which being the highest Regulatory Body for allopathic medical practitioners in India, it is incumbent to assure that the top positions for MCI must be decided by majority of representatives/members who

are elected by all registered medical practitioners from different states under section 3(1c), and not merely nominated by the government/university under section 3(1a-b) of Indian Medical Council Act, 1956.

Even otherwise Section 3 of the Indian Medical Council Act 1956 is violative of Article 14 of the Constitution of India for the reason that there is nothing in the Act or in the Rules which mandate that before the top positions in MCI president/vice-president and members of important Executive/Post-graduate Committees are chosen, election of the representatives of all registered medical practitioners in different states should be completed. Thus, in the scheme of things as it stands today, even without the participation of even a single “elected” representative of the registered medical practitioners in India, the supreme posts of MCI president/vice-president and Executive/Post-graduate Committee members could be made solely with “nominated” members. In fact, MCI president/vice-president and important Executive/Post-graduate Committee members were elected on 10th December, 2013 by members majority of whom were “nominated” and not “elected” representatives from different states in accordance to section 3(1c) of Indian Medical Council Act, 1956. The legislators/framers of the Indian Medical Council Act, 1956 could not possibly have imagined to frame a law in

selecting doctors for the very top positions (president/vice-president and members of Executive/Post-graduate Committees) of the highest medical regulatory authority in India (MCI) who were “nominated” by the government and not “elected” by their peers in a fair and democratic manner. Therefore, it is most respectfully submitted that Section 3 of the Indian Medical Council Act 1956 should be struck down and declared unconstitutional for being violative of Article 14 of the Constitution of India.

4. GROUNDS

- I) Because all elections including election in the medical councils must be held in a transparent, honest and democratic manner in accordance to law which was not the case during the election of MCI president/vice-president and members of important Executive/Post-graduate Committees held on 10th December, 2013.
- II) Because president/vice-president and all Executive/Post-graduate Committee members in the present MCI were elected “unopposed” as a result of a deep-rooted conspiracy hatched by disgraced, ex-MCI president, Dr. Ketan Desai, and his medical cronies.

- III) Because president/vice-president and members of the Executive/Post-graduate Committees in the present MCI were elected on 10th December, 2013 in absolute consonance to a printed list prepared and circulated among the electorates (newly elected/nominated members) at a dinner party hosted by Dr. Ketan Desai the night before, i.e. 9th December, 2013 at the IMA House in New Delhi (Annexure-P8). The said printed list was also made available to the voters (members) in the MCI election hall on the day of election on 10th December, 2013 (Annexure-P3).
- IV) Because even the names of the specific doctor-members who would nominate the president/vice-president/Executive-Post-graduate Committee members (“proposer”) and who would support the said nominations (“seconder”) for MCI election which was held at MCI office on 10th December, 2013 were already decided in a printed list which was circulated at the dinner party held at the IMA House on 9th December, 2013 (Annexure-P8) and also at the MCI election hall on 10th December, 2013 (Annexure-P3) underscoring the deep-rooted conspiracy and corruption with the said the MCI election.
- V) Because every single candidate who won election on 10th December, 2013 to become president/vice-president and members of the important Executive/Post-graduate Committees in the MCI were elected “unopposed” exactly as

their names appeared in the list printed and circulated at the dinner party on 9th December, 2013 hosted by Dr. Ketan Desai (Annexure-P8) and also available in the MCI election hall just prior to election on 10th December, 2013 (Annexure-P3) leaving no room for any doubt that the said election was held under intimidation and extraneous pressure on the new electorates by Dr. Desai and his cronies which cannot be condoned for any free and democratic election in our society.

VI) Because election of the new MCI president/vice-president and members of the Executive/Post-graduate Committees was concluded in less than two hours before lunch on 10th December, 2013 (Annexures-P3/8) even though in the election “Notice” sent by MCI to all the electorates from different states, it was categorically stated that election for MCI president/vice-president and important Executive/Post-graduate Committee members will be held at MCI office over a period of two days, i.g. 10th and 11th December, 2013 (Annexure-P2).

VII) Because no audio and/or video recording of any kind was kept for the process of election of the new MCI president/vice-president and members of the Executive/Post-graduate Committees held on 10th December, 2013 which raises serious concerns about fair and impartial election. This has also been specifically mentioned in the protest chain-

email circulated among many voters/members but the new MCI president refused to keep any record of this protest/objection by the members in the official Minutes of the said election (Annexure-P3).

VIII) Because president/vice-president and members of the important Executive/Post-graduate Committees in the present MCI were elected on 10th December, 2013 through deliberate manipulation, intimidation and misguidance of large number of new electorates by a handful doctors/members under the leadership of Dr. Ketan Desai at a dinner party at the IMA House in New Delhi on the night before the election (Annexure-P8). It must be noted that many of the newly elected/nominated members (“electorates”) who were present in the said dinner party on 9th December, 2013 had absolutely no experience about MCI election as they were nominated/elected from respective state/university for the first time as MCI members (Annexure-P3/8).

IX) Because a chain-email dated 25th December, 2013 circulated among a large number of newly elected/nominated MCI members has made scathing observation about the MCI election held on 10th December, 2013 that the election was held “*only according to the printed list*” through “*gross irregularity*” making “*mockery of the whole election process*” (Annexure-P3). Almost identical allegations that the said

MCI election was rigged and held in the most blatant manner by few members with a vested interest under the control of Dr. Ketan Desai were lodged with the health ministry (respondent no. 1) by another new MCI member, Dr. Balvir Tomar (Annexure-P8). Unfortunately, neither respondent no. 1 nor MCI (respondent no. 2) has felt it necessary to investigate these serious allegations as they have deliberately sat on these complaints without taking any action.

- X) Because serious complaints of corruption and unethical conduct have been filed by the petitioner with respondent nos. 1 and 2 against several members who are now occupying top positions in MCI in demand of their urgent removal in accordance to specific provision of law under section 30A(2g) of “Ordinance 2013) (Annexures-P4/5). Instead of conducting a prompt investigation for appropriate remedial measures, both respondent nos. 1 and 2 have remained as silent spectators allowing the accused members to continue abusing their top positions in MCI to take important decisions pertaining to medical education and practice of medicine in India.
- XI) Because only a handful members of MCI including president/vice-president and members of Executive/Post-graduate/Ethical Committees who managed to capture these important positions in the medical council through a rigged

election on 10th December, 2013 have been taking critical decisions in regard to medical education by increasing/decreasing seats in various medical colleges at their free wills with a vested interest and without any knowledge/approval of the General Body of the Council in blatant violation of the provisions of Indian Medical Council Act, 1956. This has been specifically pointed out by a sitting MCI member in his complaint which failed to yield any response from health ministry (respondent no. 1) (Annexure-P8).

XII) Because handful members of MCI including president/vice-president and members of the Executive/Post-graduate/Ethical Committees are also deliberately flouting the fundamental principles for selection of competent Inspectors who perform the vital job of evaluation of medical colleges for approval/disapproval of application for increase of seats for graduate and post-graduate medical education. As alleged by a current MCI member (Annexure-P8) and echoed in the chain-email circulated through numerous other new MCI members (Annexure-P3), appointment of Inspectors by the present MCI is under control of Dr. Ketan Desai which is not disclosed even to the members of the MCI General Body in blatant transgression of the IMC Act, 1956.

- XIII) Because your petitioner has also lodged several complaints with respondent nos. 1 and 2 against different members who are occupying top positions seeking their imminent removal from MCI for public interest under specific provision of law (Annexures-P4/5). Some of these complaints were filed soon after the new MCI came to power in December, 2013. These complaints also include one complaint against Dr. Ajay Kumar, a close associate of Dr. Ketan Desai (Annexure-P5). Complaint against Dr. Kumar was also referred by the CBI to the MCI Vigilance (Annexure-P6). Ironically, no step whatsoever has been taken by the health ministry or MCI as Dr. Kumar has continued to make critical decisions on medical ethics and public grievances as the chairman of MCI “Grievance Committee” and member of “Ethics Committee”.
- XIV) Because serious allegations of discrimination/retaliation by the new MCI president/vice-president and members of the Executive/Post-graduate Committees and direct influence of Dr. Ketan Desai have also been raised by the Joint-Secretary of MCI with many specific evidence of the ongoing corrupt practices by the newly formed MCI.
- XV) Because MCI has refused to provide simple information (sought under RTI Act, 2005) in regard to communications that took place between December 2013 and April 2014 between MCI president and health ministry under the

previous UPA-government that rushed to hold new MCI election by passing “Ordinance 2013”

XVI) Because practice of medicine and medical education system in India is in serious jeopardy due to the unlawful and disturbing encroachment of the top positions in the newly formed MCI through manipulation of the election held on 10th December, 2014 by some members with vested interests. As the highest medical regulatory body in the country, any taint in MCI is likely to have serious impact on the entire healthcare delivery system in India. As a registered, benevolent society involved with fighting medical corruption and protecting interests of the defenseless patients of India, the petitioner-organization has no other relief or remedy available to him but for the kind intervention of this Hon’ble Court rectify the serious flaw that has already affected MCI and the relief, if granted, will conduce to the complete remedy and full conscionable justice, being left without any other forum for his remedy or relief.

XVII) Because the manipulation and undue influence in the Constitution of the present MCI including election of president/vice-president and important members of the Executive/Post-graduate Committee became possible by reason of a skewed system in which a large number of members “nominated” by the government may decide the

composition of the important posts of president/vice-president and Executive Committee members by holding election with small number or no members who are actually “elected” by other registered doctors under Indian Medical Council Act, 1956. Such a composition of MCI is unreasonable, arbitrary and violative of Article 14 of the Constitution of India. It is the humble submission of the petitioner that in formation of MCI which is the highest Regulatory Body of the registered medical practitioners in India, it is incumbent that election for the top positions in MCI must be conducted in the presence of a majority of “nominated” members.

xviii) Because Section 3 of the Indian Medical Council Act 1956 is also violative of Article 14 of the Constitution of India for the reason that there is nothing in the Act or in the Rules which mandate that before the top posts in MCI is constituted, representatives who are “elected” by the registered medical practitioners from different states under section 3(1c) of Indian Medical Council Act, 1956 should to be completed in order for selection of the right candidates for the top positions by majority of “elected” members and not by members who were “nominated” by the government and/or universities. In the scheme of things as it stands today, MCI

president/vice-president and important members of the Executive/Post-graduate Committees could be chosen by a majority of “nominated” members in the presence of a few or no “elected” members. In fact, in the election held on 10th December, 2013 to elect new MCI president/vice-president and important members of Executive/Post-graduate Committees, candidates were chosen in the presence of a small number of members who were duly “elected” by other registered doctors from different states while vast majority of the members were either “nominated” by the government (which also includes both president and vice-president) or chosen by the universities. This mode of formation of MCI is grossly arbitrary, unreasonable and violative of Article 14 of the Constitution of India. Therefore, it is respectfully submitted that Section 3 of the Indian Medical Council Act, 1956 is should be struck down as it is clearly violative of Article 14 of the Constitution of India.

5. That the petitioner has not filed any similar writ petition in this Hon’ble Court or any other High Court throughout India. That in the event of this Hon’ble Court imposing cost, the petitioner is able and willing to remit the cost so imposed.

6. That this petition is made bona fide and in the interest of justice.

PRAYER

It is therefore respectfully prayed that your lordships may graciously pleased to:

In the facts and circumstances narrated hereinabove, the Petitioner most humbly prays that this Hon'ble Court may graciously be pleased to:

- a) Issue a writ of mandamus or any other appropriate writ, order, or direction for an independent investigation of the MCI election held on 10th December, 2013 by Central Bureau of Investigation (CBI) and/or appropriate authority and to prosecute the MCI members and/or other individuals, if any, who are found to be involved with the manipulation and/or rigging of the said MCI election.
- b) Issue a writ of mandamus or any other appropriate writ or order directing the Health Ministry (Respondent no. 1) to take urgent steps for immediate halt of functioning of the present MCI president/vice-president and Executive/Post-graduate Committees and to appoint a new Committee/Board with appropriate doctors/members to assure transparent and honest functioning of MCI for regulation of medical education and

practice of medicine until investigation of the alleged botched MCI election is concluded by CBI and/or appropriate authority.

- c) Declare that section 3 of the Indian Medical Council Act 1956 is unconstitutional and violative of Article 14 of Constitution of India.
- d) Any further or other order or orders be made and/or direction or directions be given as to this Hon'ble Court may deem fit and proper.

**AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IS
DUTY BOUND SHALL EVER PRAY**

DRAWN & FILED BY

[T. V. GEORGE]
Advocate for the Petitioner

New Delhi
Dated :

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
PUBLIC INTEREST LITIGATION

W.P. (C).NO. /2013

IN THE MATTER OF :-

People for Better Treatment through its President,
Dr.Kunal Saha **....Petitioner**

Versus

Union of India &Anr. **....Respondents**

AFFIDAVIT

I, Dr.Kunal Saha, President of People for Better Treatment (PBT) having its office at 1 Indra Roy Road, First floor, Room no. 9, Kolkata – 700025 do hereby and solemnly states and affirm as follows:

1. That I am President of the above mentioned petitioner association People for Better Treatment (PBT) as such am conversant with the facts of the case and I am competent to swear this affidavit .
2. I have read the accompanying synopsis and list of dates from Pages B to ___ and Writ Petition with affidavit from pages ___ to ___ and total pages_____ are all true and correct to my knowledge and belief.
3. I have read the accompanying Annexures and the same are true and correct copies of their originals and no part of it is false and nothing material has been concealed there from.

DEPONENT

Verification

Verified at New Delhi on the ____ day of September 2014 that the contents of the above affidavits are true and correct to my knowledge and nothing materials has been concealed therefrom.

DEPONENT