

IN THE SUPREME COURT OF INDIA

[Order XVI Rule 4(1)(a)]

CIVIL APPEALATE JURISDICTION

[UNDER ARTILE 136 OF THE CONSTITUTION OF INDIA]

SPECIAL LEAVE PETITION (CIVIL) Diary no. 6098 Of 2011

(Against the impugned judgment and Final Order dated 22.12.2010 passed by
the Hon'ble High Court of Gujarat at Ahmedabad in Writ Petition (PIL) No.
15 of 2010)

(WITH PRAYER FOR INTERIM RELIEF)

IN THE MATTER OF :-

“People for Better Treatment” (PBT)

....Petitioner

Versus

Dr. Ketan Desai & 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

This special leave petition (SLP) raises questions of seminal significance related to “public interest” and “healthcare” in India. First, Whether a doctor whose medical registration has been suspended by the Medical Council of India (MCI) for “professional misconduct” involving serious criminal charges can be elected unopposed in the University Senate for a post which is reserved for the registered medical graduates? Whether a court can dismiss a PIL filed by a registered humanitarian society (NGO) based in Kolkata because the president of the organization is a non-resident Indian (NRI)? Whether a court can simply assert that NRIs cannot have any concern for “public interest” in India?

The Petitioner, “People for Better Treatment” (PBT), is a non-governmental organization (NGO) duly registered in Kolkata under the West Bengal Societies Registration Act, 1961. Over the past ten years, PBT has been involved with charitable work aimed primarily at promotion of better healthcare and prevention of medical negligence in India. Although the president of PBT, Dr. Kunal Saha, is originally a physician from India, he has been settled in the USA working as a consultant and well-known researcher in the field of HIV/AIDS. Dr. Saha is also a dual-citizen of India and USA (“overseas citizen of India”; OCI). However, almost all members of the PBT including its secretary and the members of the “Governing Body” are permanent residents and citizens of India. As indicated above, PBT’s humanitarian activities focus exclusively for promotion of better healthcare for the people of India.

Over the past decade, PBT has been working in various aspects of the Indian

healthcare system and toward helping the victims of “medical negligence” through awareness programs as well as legal challenges (PILs) in the Supreme Court and High Courts across India. Some of the important PILs that PBT has already been involved with in the Apex Court and High Courts in specific areas of the medical system are listed below:

Case no./Court	Subject
i) W.P. Civil No. 317/2000 (Supreme Court)	To bring changes in the Medical Council of India (MCI) Act for proper disposal of complaints against errant doctors. (This PIL resulted in establishment of Sections 8.7 and 8.8 in the MCI “Code of Ethics and Regulations” in 2004)
ii) SLP (Civil) 7510/2009 (Supreme Court)	Against National AIDS Control Organization (NACO) against procuring sub-standard HIV test kits and bringing danger of transmission of deadly AIDS virus through contaminated blood transfusion.
iii) W.P. (Civil) 316/2006 (Supreme Court)	To impose a ban on “doctors’ strike that brought endless miseries and deaths of innocent patients.
iv) W.P. (Criminal) 7846/2007 (Supreme Court)	To intervention in a criminal case against production of spurious test kits by <i>Monozyme India Ltd.</i>
v) W.P. (Civil) 5973/2008 (Delhi HC)	Against NACO for production and supply of spurious kits for testing blood for HIV/Hepatitis viruses.

vi) W.P. (Civil) 13208/2009
(Delhi HC)

To intervene against introduction of a sharply-reduced medical course in the name of rural doctors for India.

vii) W.P. (Criminal) 754/2010
(Delhi HC)

To intervene in the CBI corruption case against ex-MCI president, Dr. Ketan Desai (Respondent no. 1), for taking bribes from a private medical college in exchange for providing recognition to offer MBBS course.

3. Dr. Ketan Desai, Respondent no. 1, is a well-known figure in Indian medicine, albeit not always for the right reasons. During the past two decades, Dr. Desai maintained a strong grip over the Indian healthcare system. Dr. Desai's total control over medical education and practice of medicine in India would be evident from the fact that he had been the president of the MCI, Indian Medical Association (IMA) as well as the Gujarat Medical Council (GMC) for the most part of the last two decades. He has also been a leader of many other powerful medical regulatory agencies including the Dental Medical Council and a "life member" of the prestigious B.C. Roy Award Committee.

Ironically, Dr. Desai was removed from the post of MCI president on serious charges of "corruption" and "abuse of official power" with scathing observations by the Hon'ble Delhi High Court in a historic judgment in 2001 (L.P.A. Nos. 299 & 301/2001; *Dr. Ketan Desai vs. Harish Bhalla & Ors.*). But Dr. Desai was able to make a remarkable return to regain the post of MCI president "unopposed" underscoring the strength of his unfettered grip

over the healthcare system in India. However, Dr. Desai was caught red-handed by the Central Bureau of Investigation (CBI) on April 23, 2010 while taking bribe of Rs. 2 crore from a private medical college. Soon after his arrest, the CBI also raided his home in Gujarat and filed additional charges for “disproportionate wealth” against him and his wife. This made major headlines and caused a huge public uproar across India. The entire body of the MCI with over 100 doctor-members (who re-elected Dr. Desai unopposed as the MCI president in 2009) was soon dissolved by the health ministry and it was replaced by a 6-member “Board of Governors”. This sordid episode brought shame and disrepute to all Indians and doctors of Indian origin living across the globe. Following a complaint by the PBT president, the newly formed MCI summarily suspended Dr. Desai’s medical registration and debarred him from practicing medicine or presenting himself as a doctor in any conference.

4. Dr. Desai was freed on bail later in October, 2010 as the CBI criminal investigation continued. In November, 2010, the Petitioner came to learn from the news with utter disbelief that Dr. Desai was going to be elected “unopposed” to the Gujarat University (GU) Senate to a seat reserved for the registered medical graduates. It may be pertinent to mention that under the Indian Medical Council Act, 1956, (IMC Act, 1956) a medical member from each University Senate in India is to be elected as a member of the MCI under Section 3(2) of the IMC Act, 1956. In other words, unopposed election of Dr. Desai to the GU Senate would almost certainly make his return to the MCI for the third time even while out on bail and facing serious criminal charges for bribery and corruption.

5. The Petitioner was deeply concerned with the news of Dr. Desai's uncontested nomination and election to the GU Senate as an NGO fighting against corruption in healthcare. The Petitioner was also prejudiced for this situation as it is their complaint that resulted in the suspension of Dr. Desai's medical registration by the MCI only one month earlier. The Petitioner immediately approached the authorities in the Gujarat University as well as the government of Gujarat urging them to stop Dr. Desai and to remove him from the GU Senate because he was no longer a registered medical graduate to contest for this post in the GU Senate and also because Dr. Desai's nomination to the GU Senate in this manner would send the wrong message for the ordinary people as well as the honest members of the medical community in India.

6. It is pertinent to mention that the Petitioner also brought this unfortunate development in the GU to the attention of the MCI that suspended Dr. Desai's medical registration just weeks ago. In fact, the MCI also directly wrote to the GU urging them not to allow Dr. Desai to become a member of the university Senate. These irregular developments involving Dr. Desai also made huge public outcry as they were also being reported in the news on a regular basis. Unfortunately, there was no response either from the university or the Gujarat government as Dr. Desai, even with a suspended medical registration, became a member of the GU Senate to a post reserved for the registered medical graduates.

7. With no other option to stop Dr. Desai from becoming a member of the GU Senate that obviously produced a deep sense of frustration among the ordinary people of Gujarat and across India, the Petitioner approached the

Gujarat High Court with a writ petition under Article 226 seeking court's intervention to prevent Dr. Desai from going to the GU Senate as his election to the Senate clearly violated the law and fundamental principles for fairness. The said writ petition provided detail background and reasons how Dr. Desai's election to the GU Senate had a negative impact on ordinary citizens of India and potential long-term negative effects on Indian healthcare and also how it violated the Gujarat University Act both in spirit and substance.

8. On December 22, 2010, a division bench of the Gujarat High Court dismissed the said writ petition without even looking into the subject matter or the merits of the application and without even hearing any argument from the writ petitioner on the primary ground that since the president of the writ petitioner (PBT) is an NRI who resides in the USA, the Petitioner may not have any concern with "*public interest of the Indians*". Furthermore, quoting from a second judgment passed on a separate PIL filed by a private citizen as indicated above, the high court justified dismissal of the writ petition filed by PBT even though apart from a common prayer to remove Dr. Desai from the GU Senate, there was virtually no commonality on factual or legal similarity between the two PILs, as discussed below.

9. Apart from criticizing the Petitioner for having an NRI as its president, the entire judgment by the High Court basically contained an entire paragraph copied from the second PIL giving justification for dismissal of the writ petition filed by PBT. Unfortunately, the Hon'ble High Court has miserably failed in proper application of mind while drawing a comparison between the two PILs as would be evident from portions of the second judgment incorporated since virtually none of the grounds given for dismissal applies

for the instant writ petition filed by PBT. For example:

The High Court has quoted, “*Firstly, the petitioner has not established his credentials and bona fide for pursuing the present petition or to permit to entrust him with writ of the Court. He has stated that he is engaged in trading in Gas-stoves and ancillary products*”.

FACT: In sharp contrast to the quotation above which relates to the private citizen who filed the second PIL, Petitioner in the instant case is a bona fide and registered NGO that has been involved with important humanitarian work in the field of healthcare over the past ten years as elaborated above under paragraph 1.

The High Court has quoted, “*His (other petitioner) entire source of information is through newspaper reports. He has not filed any representation to the University authority before filing the petition*”.

FACT: As discussed before, the Petitioner (PBT) has played a central role in having Dr. Desai’s medical license revoked by the MCI (**Annexure- P2**). PBT has also played a key role in having the MCI to write to the GU for stopping Dr. Desai to become a Senate member (**Annexure- P3**). Moreover, PBT had already approached both the Gujarat University authority and Govt. of Gujarat requesting them to stop Dr. Desai from joining the GU Senate. Thus, contrary to what has been referred in the judgment, the Petitioner in the instant case actually made several representations before the appropriate authorities prior to moving the Hon’ble High Court. Thus, the portion quoted by the Hon’ble High Court while dismissing the PIL has absolutely no application with the facts and circumstances of the said writ petition.

The High Court has quoted, *“Further we find that the petitioner has not even joined Shri Ketan Desai as a respondent. Sole respondent is Gujarat University. Accepting the prayer made in the petition would directly and adversely affect Mr. Ketan Desai. The petitioner has not even cared to join him as respondent”*.

FACT: Mr. Ketan Desai was the first respondent in the writ petition filed by PBT even though he was not an opposite party in the second PIL filed by a private citizen. Thus Hon’ble High Court is clearly wrong in criticizing the Petitioner on the ground that Shri Ketan Desai was not made a party in the said PIL.

Taken together, despite having virtually no commonality either in the background or in the reasoning between the two PILs, the Hon’ble High Court has rejected the writ petition filed by the Petitioner with a broad stroke without even without looking into the facts and subject matter of the application with the assertion that both the PILs were basically identical.

10. The Hon’ble High Court has made a discriminatory and overtly derisive observation while dismissing the writ petition as a frivolous application by imposing a penalty of Rs. 10,000/- against the Petitioner even without looking into the subject matter of the application. It is apparent that the court concluded that this was a frivolous petition on the assumption that the Petitioner, a registered NGO based in Kolkata, is *“run by one Dr. Kunal Saha, who lives in Ohio, USA”* and thus, the Petitioner may not have any “public interest” in India. First, there is absolutely no evidence to imagine that the Petitioner, a major charitable organization in India is run by NRI Dr. Kunal Saha who is merely the president of this organization. Ironically, although an

NRI, Dr. Saha is also a “dual-citizen” of India (OCI). The Petitioner (PBT) is run by an authorized governing body of members all of whom (except Dr. Saha) are citizens and permanent residents of India. Further, as mentioned before, PBT has been involved with important charitable work in the field of Indian healthcare over the past ten years and all its humanitarian activities are confined within India and conducted by numerous Indian members and volunteers across the country.

It is truly unfortunate for the Hon’ble High Court to question whether as an NRI, Dr. Saha may have any concern for the people living in India. There can be no reason for an Indian court to hold such distrustful and sardonic attitude towards the NRIs many of whom are deeply patriotic for their motherland despite living in foreign countries for a variety of personal or professional reasons. Members of the NRI community have contributed significantly to the economic, social and technological progress of India over the years. Many NRIs, including Nobel Laureates, have also brought glory and international recognition for India. In fact, in order to encourage the NRIs to invest more in India and to take more active role in the continued progress of India, the Indian government has recently established a separate ministry, Ministry of Overseas Indian Affairs (MOIA). Unfortunately, the High Court has sent a wrong and divisive message to the entire NRI community by criticizing Dr. Saha’s intent to work for public interest in India and dismissing the writ petition with a cynical view that NRIs may not harbour any compassion for the people living in India.

11. The undisputed record in this case and the overtly cynical observations made by the Hon’ble High Court while dismissing the writ petition clearly

indicates the fact that the court below decided to dismiss the said PIL without even looking into the subject matter presented in the petition. The Supreme Court has made categorical observation while disposing of a PIL in *Vishwanath Chaturvedi v. Union of India and ors.* [AIR 2007 SC (Supp) 163]:

“39 In our view, it is wrong in law for the Court to judge the petitioner's interest without looking into the subject matter of his complaint and if the petitioner shows failure of public duty, the Court would be in error in dismissing the PIL”.

(emphasis added)

It is obvious that the Hon'ble High Court dismissed the PIL without even looking into the merit of the application or considering any argument by the Petitioner in clear disregard to the law as defined by this Hon'ble Court.

12. It is clear from the submissions made hereinabove that the court below has dismissed the writ petition without any application of mind and without appreciation of the potential and long-lasting damaging effects that Dr. Desai's unopposed election to the GU Senate may impose on healthcare in India. The court below has also failed to appreciate the negative impact of Dr. Desai's unlawful election to the GU Senate on the ordinary people and conscientious, honest doctors of India. The Hon'ble High Court has dismissed the instant writ petition based on misconceived ideas and assertions without looking into the facts, hence this special leave petition.

LIST OF DATES AND EVENTS

- October 12, 2001:** The Petitioner, “People for Better Treatment” (PBT), is a non-governmental organization (NGO) duly registered in Kolkata under the West Bengal Societies Registration Act, 1961. A copy of the certificate of Registration of Societies dated 12.10.2001 is annexed hereto and marked as **Annexure- P1** (Pages: to)
- April 23, 2010:** Dr. Ketan Desai, Respondent no. 1, the ex-president of the MCI, was arrested by the CBI while taking bribes from a private medical college.
- May, 2010:** The entire MCI is dissolved by the government and a six-member “Board of Governors” was established to run the functions of the MCI.
- Oct 9, 2010:** Dr. Desai’s medical registration was revoked by the MCI for professional misconduct in response to a complaint filed by the Petitioner. A copy of the said order passed by the MCI No. MCI - 211(2)/2010-Ethics./33317 dated 09.10.2010 is annexed herewith and marked as **Annexure- P2**.(Pages: to)
- Nov, 2010:** While free on bail, Dr. Desai runs in the election to become a member in the GU Senate for a post reserved for the registered medical graduates. The

Petitioner files appeals to the GU as well as the Gujarat state government to stop Dr. Desai. The MCI also requests the GU to prevent Dr. Desai from joining the GU Senate. These requests were ignored by the university. The said letter from the MCI dated 23.11. 2010 is annexed herewith and marked as **Annexure- P3.** (Pages: to)

Dec, 2010:

Dr. Desai is elected to the GU Senate “unopposed”. The Petitioner files a writ petition (PIL) in the Gujarat High Court bearing no.15 of 2010 against the unlawful and immoral election of Dr. Desai to the GU Senate. A copy of the said Writ Petition (PIL) No.15 of 2010 dated nil filed in the Gujarat High Court is annexed herewith and marked as **Annexure-P4.**(Pages: to)

Dec. 22, 2010:

The Hon’ble Gujarat High Court dismissed the said writ petition vide impugned Order/judgment on December 22, 2010.

Feb. 22. 2011:

Hence this Special Leave Petition (SLP).

IN THE SUPREME COURT OF INDIA
[Order XVI Rule 4(1)(a)]
CIVIL APPEALATE JURISDICTION
[UNDER ARTILE 136 OF THE CONSTITUTION OF INDIA]
SPECIAL LEAVE PETITION (CIVIL) Diary no. 6098 Of 2011

(Against the impugned judgment and Final Order dated 22.12.2010 passed by
the Hon'ble High Court of Gujarat at Ahmedabad in Writ Petition (PIL) No.
15 of 2010)

POSITION OF THE PARTIES
HIGH COURT THIS COURT

INTHE MATTER OF :-

“People for Better Treatment” (PBT)

Through President, Dr. Kunal Saha

2-A, Rakkall Mukherjee Road,

Bhawanipore,

Kolkata - 700025. And also

Flat E-1, Subol Apartment

Petitioner

Appellant

Versus

1. KETAN DESAI

RESIDING AT “AASHIRVAS”

7 FRIENDS AVENUE

OPPOSITE PAKWAN CROSS ROAD

BODAKDEV, AHMEDABAD 3800059

GUJRAT

Respondent no. 1

Respondent no. 1

2. VICE-CHANCELLOR

GUJARAT UNIVERSITY

NAVARANGPURA

AHMEDABAD 380009

GUJRAT

Respondent no. 2

Respondent no. 2

3. PRINCIPAL SECRETARY

CHIEF MINISTER'S OFFICE

GUJARAT GOVERNMENT

NEW SACHIVALAYA

GANDHINAGAR

GUJRAT

Respondent no. 3

Respondent no. 3

4. STATE OF GUJRAT

THROUGH SECRETARY / DEPUTY

SECRETARY, HEALTH & MEDICINE DEPARTMENT

SACHIVALAYA

GANDHINAGAR

GUJRAT

Respondent no. 4

Respondent no. 4

TO

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

THE HUMBLE PETITION OF
THE PETITIONER ABOVENAMED

MOST RESPECTFULLY SHOWETH:

The petitioner is filing this Special Leave Petition (SLP) against the impugned final order/judgment dated 22.12.2010 passed by the Gujarat High Court in Writ Petition (PIL) No. 15 of 2010, whereby the Hon'ble Division Bench of Gujarat High Court was pleased to dismiss the Writ Petition without looking into the subject matter or the questions of law and without any consideration of the serious issues raised in the application that have public interest and important implications on healthcare in India.

2. **QUESTIONS OF LAW:**

The following are substantial questions of law for consideration before this Hon'ble Court that have significant implications on public health and fundamental human rights.

- a. Whether a doctor whose medical registration has been suspended by the MCI can run in the election for a post which restricted only for registered medical graduates?
- b. Whether the court below was justified in dismissing a PIL without even looking into the subject matter or merit of the case because a separate

and allegedly frivolous PIL was filed by a private citizen seeking the same remedy?

- c. Whether the court below was justified in holding a cynical view that NRIs can play no role for public interest in India?
- d. Whether the court below was justified in depending on the Supreme Court judgment in *Gujarat Univ. vs. N.V. Rajguru & Ors.* [reported in 1988 (1) GLR p. 308] to rule that there is no recourse in the court of law in matters involving election to a statutory body on the face of the categorical observation made in *K. Venkatachalam vs. A. Swamickan & Anr.* (AIR 1999 SC 1723) wherein this Hon'ble Court has clearly stated that under Article 226, the High Court can and should intervene in the election matter in any statutory or legislative body if a disqualified person is elected?
- e. Whether the court below was justified in questioning the *locus standi* of the president of an NGO on a personal ground (non-resident status) for filing a PIL even though the writ petition was filed by a registered charitable organization in India?
- f. Whether the court below was justified in dismissing a PIL filed by a *bona fide* NGO because the president of the charitable organization is an NRI?
- g. Whether the court below was justified in dismissing the PIL without even considering the important fact that the MCI, highest medical regulatory authority in India, also wrote to the authority seeking the exact same remedy, i.e. Dr. Ketan Desai, Respondent no. 1, should not

be allowed to become a member of the GU Senate?

- h.** Whether the court below was justified in holding that the Appellant has no interest in public health without looking into the undeniable fact that the Appellant is a reputed registered NGO that has been working in the area of Indian healthcare for the past 10 years?
- i.** Whether the court below was justified in dismissing the PIL on the ground that the Appellant/Petitioner may not have the *locus standi* to file a PIL without any consideration of the undisputed fact that the Appellant/Petitioner has already brought major changes in Indian healthcare through PILs in the High Courts and Supreme Court over the past ten years?
- j.** Whether the court below was justified in making an adverse inference that NRIs may have no “public interest” in India without considering the fact that the NRI involved in this particular instance, Dr. Kunal Saha, is also a “dual-citizen” (OCI) of India?
- k.** Whether the court below was justified in assuming that no public interest is involved in the instant PIL even though this case primarily involved improper election of Dr. Ketan Desai (Respondent no. 1), a well known public figure in Indian healthcare, who has been facing serious criminal charges for corruption whose election to the GU Senate would undoubtedly send a wrong message not only for the ordinary citizens but also for the honest and conscientious doctors of India?
- l.** Whether the court below made gross abuse of power in imposing a penalty against the Appellant/Petitioner for filing the PIL without even

looking into the subject matter of the case and without considering that the Appellant/Petitioner is a *bona fide* humanitarian organization that has been fighting for promotion of better healthcare in India for the past ten years?

3. DECLARATION IN TERMS OF RULE 4 (2)

The Petitioner states that no other petition for Special Leave to Appeal against the impugned Judgment and final order, dated 22.12.2010 passed by the Hon'ble High Court of Gujarat at Ahmadabad in W.P (PIL) No.15 of 2010 has been filed by them before this Hon'ble Court.

4. DECLARATION IN TERMS OF RULE 6:

That the Annexures P/1 to P/4 produced along with this SLP are true photocopies of the pleadings/documents which also formed part of the records of the case in the Court below against whose order, the leave to appeal is sought for in this petition.

5. GROUND:

Leave to appeal is sought on amongst the following grounds:

- A. Because the impugned order/ judgment passed by the court below is incurably bad in law and must be set aside.
- B. Because the court below has dismissed the PIL without even looking into the subject matter or merit of the application on untenable grounds

that the president of the NGO (Petitioner) is an NRI and that a second private citizen also filed a similar PIL which was also dismissed.

- C.** Because the court below has failed to consider that the Apex Court in *Vishwanath Chaturvedi v. Union of India and ors.* [AIR 2007 SC (Supp) 163] has categorically held that it would be wrong for a court “to judge a petitioner’s interest without looking into the subject matter of his complaint” to dismiss a PIL. In the instant case, the court below did not even look into the subject matter of the writ petition but nevertheless made an assumption that the Petitioner did not have any public interest without considering the merit of the application.
- D.** Because the court below has made a grave error in law that the high court cannot intervene in disputed elections in a statutory body like the GU Senate solely based on the Apex Court judgment in *Gujarat Univ. vs. N.V. Rajguru & Ors.* [reported in 1988 (1) GLR p. 308]. The court below has failed to appreciate a subsequent decision and categorical observations made by this Hon’ble Court in *K. Venkatachalam vs. A. Swamickan & Anr.* (AIR 1999 SC 1723) whereby this court has clearly held that the High Courts can and should intervene under Article 226 in any election matter even after the election is over if a disqualified person is elected in the process.
- E.** Because the court below has made a serious error in law by failing to appreciate that Dr. Desai (Respondent no. 1) was disqualified from running in the election for a particular post in the GU Senate because his legal as well as moral standing during and prior to the election clearly violated at least two provisions in the Gujarat University Act,

1949, i.e. Section 16 that stipulated that selection for this particular post must be confined to registered medical doctors and Section 46 that stipulates that anyone guilty of “*scandalous conduct*” should be removed from the GU.

F. Because the court below has dismissed the PIL on the ground that a second PIL seeking the same remedy which was filed by a private citizen was also dismissed without appreciating the undeniable fact that there was virtually no commonality either in the background the reasoning between the two PILs as elaborated above under paragraph **9 a-c**.

G. Because the court below has made an absurd and discriminatory assertion that NRIs cannot have feelings for “public interest” in India in clear contrast to the factual position in the real world that many NRIs have contributed significantly over the years in different ways for the progress of India. Despite living in foreign countries for a variety of personal or professional reasons, NRIs also have strong patriotic feelings for their motherland. Many NRIs have also glorified India’s name in the world through their personal efforts and achievements. The inequitable view expressed by the court below that just because the president of the NGO which filed the PIL is an NRI, the entire NGO may not have any “public interest” for people of India is truly unfortunate.

H. Because the court below has miserably failed to appreciate the basic fact that the Petitioner (PBT) is a registered NGO based in Kolkata and that Dr. Kunal Saha is merely the president of the said NGO. The court

below has also failed to appreciate that PBT has been working for promotion of better healthcare and to help the victims of “medical negligence” in India since its inception ten years ago. In fact, the court below has also failed to appreciate that PBT has already brought major changes in Indian healthcare through PILs in different courts of the country which include introduction of the Sections 8.7 and 8.8 in the MCI “Code of Ethics and Regulations” in 2004 (the right to appeal and a time-limit for investigation of complaints against the errant doctors, respectively) that resulted from a PIL filed in the Apex Court (W.P. Civil No. 317/2000) by the Petitioner through its Secretary, Mr. Malay Ganguly.

- I. Because it would be crystal clear from the record that Dr. Ketan Desai’s election to the Senate of Gujarat University is a matter of huge public grievance in as much as the fact that his election as a medical member of the GU senate also paves the way for Dr. Desai to get back to the MCI that has very wide powers to regulate the healthcare system and medical education in the entire country. Therefore, Dr. Desai’s election to the GU Senate is in complete violation of the public interest.
- J. Because the court below has made a grave error in considering the PIL as a frivolous application and in imposing a penalty without even looking into the subject matter in the petition only because a second PIL which was filed by a private citizen seeking similar relief had no *locus standi* despite the fact that unlike the petitioner in the second PIL, PBT is a *bona fide* NGO working to improve the healthcare system in India for the past ten years. As such, the Appellant/Petitioner has a definite

locus standi in bringing to the court's attention to the improper election of Dr. Ketan Desai to a post in the Gujarat University that may have important implications and long-lasting effects on healthcare in India.

- K.** Because the impugned orders by the lower courts are otherwise bad in law and must be set aside.

6. GROUNDS FOR INTERIM RELIEF:

Because for the reasons stated in paragraphs 5-9 above, the Petitioner has a good prima facie case. The balance of convenience is in favour of the Petitioner. The Petitioner will suffer irreparable injury if stay is not granted against the impugned order by the Hon'ble High Court that has imposed a cost of Rs. 10,000/- against the Petitioner suggesting that the Petitioner has no *locus standi* or valid ground to file the said PIL even without looking into the subject matter or merit of the writ petition.

7. MAIN PRAYER

It is, therefore, most respectfully prayed that your Lordships may graciously be pleased to:-

- a.** Grant this Special Leave Petition against the impugned judgment and final order dated December 22, 2010 passed by the Hon'ble High Court of Gujarat at Ahmadabad in Writ Petition (PIL) No. 15 of 2010.
- b.** Pass any other order/orders as may be deemed fit in the facts and circumstances of this case.

8. PRAYER FOR INTERIM RELIEF :

Stay of impugned judgment and final order dated December 22, 2010 passed by the Hon'ble High Court of Gujarat at Ahmadabad in Writ Petition (PIL) No. 15 of 2010.

AND YOUR PETITIONER, AS IN DUTY BOUND SHALL EVERY PRAY.

Drawn on:

Filed by:

Filed on: February 22, 2011

T. V. GEORGE

Advocate for the petitioner

CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) Diary no. 6098 of 2011

IN THE MATTER OF :-

“People for Better Treatment” (PBT)

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....Respondents

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleading before the Court / Tribunal whose order is challenged and the documents relied upon in those proceedings. No additional facts, documents or grounds have been taken on relief upon in the Special Leave Petition. It is further certified that the copies of the documents / annexures are attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the petitioner / petition authorized by the petitioner whose affidavit is filed in support of the Special Leave Petition.

DRAWN & FILED BY

[T.V.GEORGE]

Advocate for the Petitioner

New Delhi

Dated : 22-02-2011

Annexure P/

Board of Governors in Super-session of
MEDICAL COUNCIL OF INDIA

No. MCI - 211 (2)/2010 - Ethics./33317

Dated: October 9, 2010

To:

Dr. Ketan Desai

“Aashirvas” 7, Friends Avenue,

Opp. Pakwan Cross Road,

Bodakdev, Ahmadabad - 3800059

Ph. 079-26854433 ®

E-mail: ketandesai@drketandesai.com

Koala@gmail.com

Sub: Suspension of license of De. Ketan Desai to practice medicine during the pendency of appeal before Ethics Committee of Board of Governors in suspension of Medical Council of India

Sir,

I am directed to convey the following order of Board of Governors in Suspension of Medical Council of India dated October 9th 2010:

ORDER

Whereas Board of Governors in suspension of Medical Council of India has received an appeal from Dr. Kunal Saha on 8th of October, 2010 stating that he has filed the complaint dated 5.5.2010 to Gujarat Medical Council against you

alleging that you have committed professional misconduct as you have been arrested as President of Medical Council of India by Central Bureau permission for increase and/or recognition of medical colleges. He has also stated in the appeal that Medical Council of Gujarat has not at all responded to his complaint as you are the President of Gujarat Medical Council and he has apprehension that he will not get justice from Medical Council of Gujarat as his complaint will be dealt by Medical Council of Gujarat which is presided by you. In short, the allegation is that you being a medical practitioner have done disservice to the community of medical professionals of India in particular and people of India in general by indulging in corruption.

And

Whereas Board of Governors in suppression of Medical Council of India has also received the copies of first information reports registered by Central Bureau of Investigation (C.B.I) from C.B.I wherein the allegation is that by virtue of your position as the President of Medical Council of India. You have indulged in corruption and acquired assets which is disproportionate to your known source of income.

And

Whereas Board of Governors in supersession of Medical Council of India has also received the report that you have been invited to attend conference of World Medical Association where you will represent doctors community of India in a conference proposed to be held between 13th October to 16th

October, 2010 at Vancouver in Canada.

And

Whereas Board of Governors in supersession of Medical Council of India considered the issue in totality and having regard to the cardinal principle of natural justice that nobody should become judge in his own case, has therefore decided to refer the complaint against you to Ethics Committee of Board of Governors in Supersession of Medical Council of India. Since you are the President of Medical Council of Gujarat and in the said capacity, you would be required to examine the complaint of Dr. Kunal Saha against you and therefore, it is deemed appropriate and in the interest of justice to refer the complaint/appeal of Dr. Kunal Saha and other such materials containing various allegations of acts and omission of Dr. Ketan Desai, ex President of Medical Council of India for consideration of Ethics Committee of Board of Governors in Supersession of Medical Council of India.

And

Whereas Ethics Committee of the Board of Governors in Supersession of Medical Council of India has considered the appeal and complaints by special agenda item circulated to the members of Ethics Committee against you on 08.10.2010 and has recommended to the Board of Governors in supersession of Medical Council of India by a detailed order to initiate proceedings against Dr. Ketan Desai under Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 and has further recommended that in view of the grave and serious allegations against you having prima facie merit in the same, permission granted to you to

practice medicine be suspended during the pendency of appeal/complaint with the Board of Governors in Supersession of Medical Council of India which would necessarily mean and include that you are debarred from practicing medicine and participating as a doctor in a medical conference anywhere and representing doctors in any medical council, conference and association etc. (A copy of the recommendation of Ethics Committee dated 8.10.2010 to Board of Governors is enclose).

And

Whereas Board of Governors in Supersession of Medical Council of India has accepted both the recommendations of Ethics Committees and on recommendation of Ethics Committee, Board of Governors has decided to suspend your right to practice medicine during appeal/complaint alleging professional misconduct on your part pending before the Ethics Committee of Board of Governors in supersession of Medical Council of India

Please take note that you are directed to follow the order of Board of Governors in supersession of Medical Council of India scrupulously and without breach.

For Board of Governors in Supersession
of Medical Council of India

Dr. P. Prasannaraj

Additional Secretary

Medical Council of India

Copy for information and necessary action:-

Endst. No. MCI - 211 (2)/2010 - Ethics./33318-19

Dated: 09/10/2010

1. The Registrar, Gujarat Medical Council, "COUNCIL HOUSE" Opp. Maniben Ayurvedic Hospital, B/s, New Civil Hospital Post Office, Behind F.S.L. Building, Ahmedabad-380016
2. Dr. Kunal Saha, MD, PhD, Professor, HIV/AIDS Center, Columbia, Ohio, USA.

Email: ankul1@earthlink.net, anku@aol.com

Annexure P/

MEDICAL COUNCIL OF INDIA

Pocket - 14, Sector - 8, Dwarka, New Delhi - 110 077

No. MCI - 211 (2)/2010-Ethics/42330

Date: 23/11/2010

The Vice-Chancellor,

University of Gujarat,

PB No.4010, Navrangpura,

Ahmedabad

Subject: Election of Dr. Ketan Desai, Former President of Medical Council of India as a member for Senate berth in the Faculty of

Medicine, University of Gujarat - the suspension of his license during pendency of the appeal before the Ethics Committee of Board of Governors.

You may kindly be informed that through various daily newspapers, it has come to the notice of the Board of Governors, in super-session of Medical Council of India that Dr. Ketan Desai, Ex-President, Medical Council of India has contested the election for Gujarat University's Court (senate) in the Registered Graduate Category from the Faculty of Medicine.

In this regard, the Board of Governors deems it essentially appropriate to invite your attention to the MCI's letter No.MCI-211(2)/2010-Ethics/35317, dated 9th October, 2010 vide which an order was issued stating therein that “ In view of the grave and serious allegations against you having prima facie merit in the same, permission granted to you to practice medicine be suspended during the pendency of appeal/complaint with the Board of Governors in super-session of Medical Council of India which would necessarily mean and include that you are debarred from practicing medicine and participating as a doctor in a medical conference anywhere and representing doctors in any Medical Council, conference and association etc. You are directed to follow the order of Board of Governors in super-session of Medical Council of India scrupulously and without breach”.

The above said order was communicated amongst others to Dr. Ketan Desai, Ahmadabad & Gujarat Medical Council. In addition, the same is available on this Council's website (No. www.mciindia.org) and a copy of the said order is also being enclosed for your information.

You are requested to take immediate necessary actions before appointment to the Senate to avoid violation of the order vide MCI letter No.MCI-211(2)/2010-Ethics/33317, dated 9th October, 2010.

A line in confirmation of the compliance of MCI's order would be appreciated.

Yours faithfully,

(Dr. P. Prasannaraj)

Additional Secretary

Copy forwarded for information & necessary action to:-

1. The Secretary, University Grants Commission, B.S.Z. Marg, Kotla Road, New Delhi
2. The Registrar, Gujarat Medical Council, "COUNCIL HOUSE" Opp. Maniben Ayurvedic Hospital, B/s, New Civil Hospital Post Office, Behind F.S.L. Building, Ahmedabad-380016
3. The Registrar, Gujarat University, PB No.4010, Navrangpura, Ahmadabad - 380009.

For kind information-

1. The Secretary, To His Excellency the Governor of State of Gujarat, PB No.4010, Navrangpura, Ahmedabad-380009 for his kind information.
2. P.S. to Secretary, Ministry of Health & P.W., Nirman Bhawan, New Delhi.

(Dr. P. Prasannaraj)

Additional Secretary