

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

DISTRICT: AHMEDABAD

LETTERS PATENT APPEAL (LPAST) NO. 1926 OF 2011

IN  
SPECIAL CIVIL APPLICATION NO.7204 OF 2011

[Appeal under Clause 15 of the Letters Patent]

Dr. Kunal Saha

(Overseas Citizen of India)

Resident at 3937 Kul Circle S.,

Hilliard, OH 43026, USA and also having

residence at: Subol Apartment (Flat- E1)

First Floor, 7 Nilgunge Road

Calcutta 700 056, West Bengal.

**....Appellant**

(Org. petitioner)

**Versus**

1 The Gujarat Medical Council

(Notice to be served thro' its President)

having its Office at: `Council' House

Opp: Maniben Ayurvedic Hospital

Besides New Civil Hospital Post Office

Ahmedabad 380 016.

2 The Medical Council of India

(Notice to be served through its Secretary)

Pocket – 14, Sector 8, Dwaraka Phase-I

New Delhi 110 077.

...

**Respondents**

(Org. Respondents)

To

The Hon'ble the Chief Justice & Other

Hon'ble Judges of the High Court of

Gujarat, Sola at Ahmedabad.

The humble Appeal of the

Appellant above named:

**MOST RESPECTFULLY SHEWETH THAT:**

1. By way of the present Appeal, the appellant herein challenges the legality, validity and propriety of the judgment and order dated 12.07.2011, passed by the learned Single Judge in Special Civil Application No. 7204 of 2011, whereby the learned Single Judge has been pleased to dismiss the petition filed by the present appellant. A copy of the impugned Order dated 12.07.2011 passed by the learned Single Judge, in Special Civil Application No. 7204 of 2011 is annexed hereto and marked as **ANNEXURE -A** to this Appeal.

2. Brief facts which give rise to preferring of the present Appeal are summarized hereunder:

2.1. The appellant herein is originally a physician from India but he has been settled in USA and is residing at the address shown in the cause title. The appellant is also a well known researcher in the field of HIV/AIDS. The appellant is a naturalized citizen of the USA and is also holding an Overseas Citizenship of India (OCI) Certificate. The appellant is also the President of the "People for Treatment" (PBT), a registered NGO in India that has been working for betterment of the health care system in India and also working for helping the victims of medical negligence through important public interest litigations

(PILs) in the Supreme Court and High Courts in India as and when necessary and also through public awareness programmes across the country.

**2.2.** The respondent no. 1 (Gujarat Medical Council; henceforth “GMC”) and respondent no. 2 (Medical Council of India; henceforth “MCI”) are “States” within the meaning of Article 12 of the Constitution of India as they have vested with the statutory power to issue binding directions, the disobedience of which may also entail penal consequences.

**2.3.** The appellant filed a complaint on 5.5.2010 with the GMC for professional misconduct against one Dr. Ketan Desai, ex-president of both GMC and MCI, who brought disgrace to the entire medical community when he was arrested by the CBI while taking bribes from a medical college on April 23, 2010. The said complaint along with necessary materials were filed by the appellant in accordance with the provisions of the sub-rule (3) and (4) of rule 79 of the GMC to initiate investigation for “professional misconduct” against said Dr.Desai who, at that point of time was also acting as the president of the GMC (respondent no. 1) even after his arrest by the CBI. Unfortunately, no steps were taken by GMC for investigation of the complaint or disciplinary action against Dr. Desai even after the lapse of almost 6 months. In fact,

the GMC did not even acknowledge the complaint filed by the appellant as they remained totally unresponsive despite repeated requests by the appellant clearly indicating a sinister ploy to shield Dr. Desai. Therefore, the appellant was constrained to approach the MCI (respondent no. 2) which is also the appellate authority over the GMC, as per the provisions of Section 8.7 and 8.8 of the MCI “Professional Conduct, Etiquette and Ethics Regulations, 2002”. The provisions of said sections 8.7 and 8.8 are relevant for the purpose of deciding the present petition, for the sake of convenience, the same are reproduced hereunder:

*“8.7 Where either on a request or otherwise the Medical Council of India is informed that any complaint against a delinquent physician has not been decided by a State Medical Council within a period of six months from the date of receipt of complaint by it and further MCI has reason to believe that there is no justified reason for not deciding the complaint within the said prescribed period, the Medical Council of India may – (i) impress upon the concerned State Medical Council to include and decide the complaint within a time bound schedule; (ii) May decide to withdraw the said complaint pending with the concerned State Medical Council straightaway or after the expiry of the period which had been stipulated by the MCI in accordance with para (i) above, to itself and refer the same to the Ethical Committee of the Council for its expeditious disposal in a period of not more than six*

*months from the receipt of the complaint in the office of the Medical Council of India.”*

*8.8 Any person aggrieved by the decision of the State Medical Council on any complaint against a delinquent physician, shall have the right to file an appeal to the MCI within a period of 60 days from the date of receipt of the order passed by the said Medical Council; Provided that the MCI may, if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days ,allow it to be presented within a further period of 60 days.”*

**2.4.** The appellant further states that being aggrieved by the inaction on the part of the GMC (respondent no. 1) in taking/ initiating any disciplinary action against the accused Dr. Ketan Desai, he appealed to the MCI (respondent no. 2) as per the provisions in the Section 8.7 of the “Professional Conduct, Etiquette and Ethics Regulations, 2002” narrated hereinabove to intervene in the matter.

**2.5.** The MCI 2 after having perused the said appeal filed by the appellant and after having perused the relevant materials submitted with it, passed an order dated 9.10.2010 whereby the Board of Governors of the MCI (respondent No. 2) found Dr. Ketan Desai *prima facie* guilty of a serious offense and decided to suspend his

medical registration for “professional misconduct” pending a full investigation by the MCI Ethics Committee. A copy of the said order passed by the MCI (respondent no. 2) was also sent to the Registrar of the GMC (respondent No.1) for initiating appropriate action for suspension of Dr. Desai’s medical registration and copy whereof was also sent to the present appellant.

**2.6.** The appellant further states that even after the receipt of the said Order dated 9.10.2010 from the MCI, the GMC (respondent No.1) refused to take any action in pursuance of the said order passed by the respondent No.2 on 9.10.2010.

**2.7.** That instead of taking the necessary steps for suspension of the medical license of Dr. Desai as directed by the MCI in their Order dated 9.10.2010, the GMC (respondent no. 1) sent an email to the appellant on 18.10.2010 in which they also attached a letter dated 7.10.2010 wherein the GMC acknowledged for the first time that they indeed received appellant’s complaint dated 5.5.2010. However, at this late stage in October, 2010 when the MCI had already initiated an investigation and decided to summarily suspend the medical license of Dr. Ketan Desai, the GMC asked the appellant to file a new

complaint in conformity to the Gujarat Medical Council Rules 79(3) and 79(4).

**2.8.** That it was obvious that although the GMC (respondent no. 1) attempted to give an impression that they decided to contact the appellant on 7.10.2010, that is 2 days prior to MCI's decision to suspend Dr. Desai's license on 9.10.2010, a plethora of evidence as discussed below would clearly indicate that the GMC actually decided to contact the appellant with a sinister motive only after coming to know about MCI's decision against Dr. Desai and not on 7.10.2010 as claimed by the GMC:

**a)** The email sent by GMC to the appellant on 18.10.2010 claims that their office decided to ask the appellant to file a new complaint in compliance to the council's rules and posted a letter dated 7.10.2010 to the appellant's local address in Kolkata. Had the GMC indeed had posted the letter to the appellant's office in Kolkata on 7.10.2010 as claimed, they would also have emailed the same to the appellant on the same or a nearby date and not after the lapse of 11 days on 18.10.2011.

This wide discrepancy in the date of the posted letter (7.10.2011) claimed to have been mailed to the appellant and the date (18.10.2011) shown on the actual email sent to the appellant indicates an oblique motive on part of the

GMC. In fact, email had been the common mode of communication between the appellant and GMC prior to this time. Why the GMC waited for long 11 days to send the email to the appellant as they have now claimed that they mailed a letter on 7.10.2010?

**b)** Although the posted envelope that appellant's office in Kolkata actually received on 22.10.2010 from the GMC contained a letter dated 7.10.2010 asking the appellant to file a new complaint against Dr. Desai in conformity with the GMC rules, the envelope carried a postal stamp that clearly showed a date of 18.10.2010, i.e. 11 days after GMC claimed that they actually mailed the letter to the appellant. Obviously, this letter was actually produced and mailed by the GMC around 18.10.2010 as an afterthought following the MCI's decision to suspend the Dr. Ketan Desai's medical registration on 9.10.2010.

**c)** The GMC never acknowledged to the appellant that they received the decision of the MCI (respondent no. 2) dated 9.10.2010 directing the GMC to take appropriate action for suspension of the medical registration of Dr. Desai even though the same has been clearly noted in the "Resolution" taken by the respondent no. 1.

**d)** Starting on 5.5.2010 when the appellant first filed a complaint of professional misconduct against Dr. Ketan Desai, Dr. Desai himself stayed as the head (president) of the GMC. This fact is also apparent from the “Resolution” passed in December, 2010 by the GMC wherein it has been noted that Dr. Desai has “*tendered his resignation*” even though it was not disclosed when exactly Dr. Desai was removed from the post of the GMC’s president.

Taken together, the discussion above left no room for any doubt that in order to shield Dr. Ketan Desai, the GMC sent a back-dated letter to the appellant with a date of 7.10.2010 even though it is clear that the said letter was produced only after the GMC became fully aware that the appellate authority, i.e. MCI (respondent no. 2) had already decided to suspend Dr. Desai’s license on 9.10.2010.

**2.9.** The appellant being the original complainant/appellant both before the GMC and MCI, brought to the notice of the GMC through e-mails on 27<sup>th</sup> October, 2010 and 1<sup>st</sup> November, 2010 seeking an answer as to whether they have adopted the appropriate steps against Dr. Desai so as to suspend his medical registration as directed on 9.10.2010 by the MCI. Unfortunately, despite MCI’s intention to stop Dr. Desai from practicing medicine or representing himself as a doctor in any

medical conference with immediate effect, the GMC remained completely silent allowing Dr. Desai to continue as a medical doctor in clear disregard to the letter and spirit of the MCI order of 9.10.2010.

**2.10.** The appellant further says that the GMC, however; took a totally defiant attitude towards the MCI's order and allegedly passed a "Resolution" dated 2.10.2010 on the foundation and the strength of a legal opinion obtained from an Hon'ble former C.J.I. who allegedly stated that the provisions in sections 8.7 and 8.8 of the of the MCI "Code of Professional Conduct, Etiquette and Ethics, 2002" are *ultra vires* the act to the extent they seek to substitute MCI as an appellate authority over GMC and a decision as per those provisions would be *ab initio void* and unenforceable. Based on this alleged opinion from a former CJI, the GMC has passed the impugned resolution and whereby they resolved that that the order/communication dated 9.10.2010 sent by the MCI (respondent No.2) to summarily suspend Dr. Ketan Desai's medical registration was without jurisdiction and has no bearing on the GMC and it would be void *ab initio* and therefore, no further action was required to be taken in that regard.

**3.** Feeling aggrieved by and dissatisfied with the said resolution passed by the GMC, the appellant preferred a writ petition before this Hon'ble court being SCA 7204/2011, which came to be dismissed on 12<sup>th</sup> July, 2011 and therefore; the appellant begs to prefer the present appeal on the following amongst other grounds which are set out without prejudice to each other as under:-

### **G R O U N D S**

**(a)** That the appellant most humbly states and submits that the judgment and order passed by the learned single judge in SCA 7204/2011 is completely illegal and erroneous and the same is uncalled for and unwarranted and therefore; the aforesaid order is deserved to be quashed and set aside in the interest of justice.

**(b)** The appellant further submits that the learned single judge has erred in holding that as the matter is between the two statutory authorities, i.e. MCI (respondent no. 2) and Gujarat Medical Council (respondent no. 1), it is not for this court to interfere during the pendency of original complaint filed by the

appellant before the MCI. It is respectfully submitted that the learned single judge has failed to appreciate the important aspect of the matter that the MCI (respondent no. 1), which is also the appellate authority over all state medical councils in India, passed an interim order for immediate and summarily suspension of the medical registration of Dr. Ketan Desai as per the provisions in the “Professional Conduct, Etiquette and Ethics Regulations, 2002” in view of the absolutely heinous nature of the ethical violation committed by Dr. Desai. Thus, it was imperative for the GMC (respondent no. 1) to comply with the Order dated 9.10.2010 passed by the MCI and to urgently suspend Dr. Desai’s medical registration pending a full investigation by the MCI. It is also important to remember that the appellant is also the original complainant before the GMC (respondent no.1). The appellant/petitioner’s rights are substantially affected owing to the illegal and arbitrary resolution of the GMC and therefore, the judgment and order of the learned single judge deserves to be quashed and set aside in the interest of justice.

**(c)** It is humbly submitted that the learned single judge has also failed to appreciate that the MCI had

directed the GMC on 9.10.2010 to summarily suspend the registration of the disgraced Dr. Ketan Desai for taking bribes under specific provision in the MCI “Code of Ethics and Regulations, 2002” whereby the license/registration of a practicing physician is suspended on *prima facie* evidence of flagrant medical or ethical violation to maintain public trust in the medical system and to uphold a high standard for practice of medicine in India. More than one year later, Dr. Desai’s medical registration has still not been suspended as a result of deliberate inaction by the GMC clearly undermining the public trust on the healthcare regulatory system in India.

It is also pertinent to mention in this regard that the petitioner/appellant is also the president of “People for Better Treatment” (PBT), a registered humanitarian society dedicated for promotion of better healthcare and prevention of “medical negligence” in India. The petitioner filed the original complaint against Dr. Ketan Desai primarily for a greater public interest to stop the pervasive corruption in the healthcare system in India. Dr. Ketan Desai has been a symbolic figure of corruption in the medical system in India. The learned single judge has failed to realize that urgent intervention of this Hon’ble Court in the instant case was greatly

desirable not only for timely enforcement of the summarily suspension of Dr. Desai's medical registration as ordered by the MCI but also for a greater public interest under the facts and circumstances in this particular case.

**(d)** It is further submitted that the learned single judge has not appreciated the fact that the action on the part of the GMC is nothing but the abuse of power in as much as the GMC is statutorily obligated to follow the directions issued in the Order dated 9.10.2010 by the MCI, which is the highest authority for regulation of practice of medicine in India. The appellant being the original complainant before both the GMC (respondent no. 1) and MCI (respondent no. 2) is interested in the performance of its obligation by the GMC and despite being statutorily as well as morally obligated to act on the direction passed by the MCI and to take the necessary steps required for suspension of Dr. Ketan Desai's medical registration, the GMC has adopted a "resolution" in complete violation of its duties and statutory provisions by relying on a legal opinion by a retired CJI and by disregarding the statutory provisions. The obvious question that must be raised in this context is that instead of following the MCI's order and suspend the

medical license of Dr. Ketan Desai, a disgraced physician who was found *prima facie* guilty for a heinous offense like “bribery”, why the GMC opted to take the extra burden to obtain an opinion from a retired CJI (at the expense of the taxpayers) only to protect a delinquent doctor?

**(e)** It is further submitted that the learned single judge has also failed to appreciate the fact that no statutory provisions have been pointed out to the court in as much as the rules and regulations validly framed under a particular law are having the force of law only as per the various decisions of the Hon’ble the Apex court and therefore; also the judgment and order of the learned single judge deserves to be quashed and set aside in the interest of justice.

**(f)** It is most respectfully stated and submitted that the learned single judge has not properly appreciated the basic fact that the decision of the GMC of passing the “Resolution” to the effect that the order/ communication by the MCI (respondent no. 2) dated 9.10.2010 is null and void and without any authority of law, is totally illegal, arbitrary, *de hors* the statutory provisions of the Act and Rules and without any authority of law and, therefore, the said

resolution was required to be quashed and set aside in the interest of justice.

**(g)** It is most respectfully stated and submitted that the learned single judge has failed to appreciate the fact that the action of the GMC (respondent No.1) not to suspend the medical registration of Dr. Ketan Desai was based solely on the legal opinion obtained from a former Hon'ble CJI who, *inter alia*, opining that the provisions in the sections 8.7 and 8.8 in the MCI "Code of Professional Conduct, Etiquette and Ethics, 2002", to the extent they seek to substitute the MCI as an appellate authority over the state medical councils are *ultra vires* the Act and the action is mainly or exclusively based on the opinion that the decision taken by the MCI as an appellate authority, would be *ultra vires* the Act and consequently any decision taken by the MCI will be *ab initio* void and unenforceable.

**(h)** It is humbly submitted that the learned single judge further failed to appreciate the fact that opinion from a retired justice cannot have the force of law and, therefore; also the judgment and order of the learned single judge is required to be quashed and set aside in the interest of justice.

**(i)** In this context, it is also pertinent to mention that in *Dr. Kunal Saha vs. West Bengal Medical Council & Ors.* (Writ Petition No. 1873 of 2003), the Hon'ble Calcutta High Court has specifically dealt with the provisions present in the MCI "Code of Ethics and Regulations, 2002" for disciplinary action against doctors for professional misconduct. The Hon'ble High Court has categorically held that all state medical councils in India are bound to follow the provisions contained in the MCI "Code of Ethics & Regulations, 2002" notwithstanding anything contrary that may be present in any other state medical laws in force. Although the said judgment from Calcutta High Court was brought on record, the learned single judge has erroneously dismissed the petition without properly applying her mind that this specific legal point has already been unequivocally decided by another high court.

**(j)** It is further most respectfully stated and submitted that the provisions in the sections 8.7 and 8.8 of the MCI "Codes of Professional Conduct, Etiquette and Ethics 2002", which is enumerated hereinabove above, are very much in existence since the publication of the Notification dated 27.5.2004

in the Gazette of India. The said sections of law have come into force from the time of their publication in the official Gazette of the Union of India. It is further most respectfully stated and submitted that the learned single judge has failed to appreciate the fact that the statutory rules can only be declared to be *ultra vires* and unconstitutional the provisions of the Medical Council of India Act, 1956 (under which the said provisions were added in law) only by a competent court and, therefore; the action on the part of the GMC that the said Rules are completely illegal, arbitrary and without any authority of law was required to be deprecated and appropriate directions were required be given to the GMC.

**(k)** It is further submitted that the learned single judge has also failed to appreciate that for terming any statutory provisions/rules as illegal, they need to be declared to be so by a competent court of law and unless and until they are declared to be illegal and *ultra vires* by a competent court of law, the provisions must continue possessing the same legal force, therefore; the action on the part of GMC is totally arbitrary, without any authority of law and

therefore the said action is required to be quashed and set aside in the interest of justice.

(1) It is most respectfully stated and submitted that the background which resulted in the inclusion of the sections 8.7 and 8.8 in the MCI “Codes of Professional Conduct, Etiquette and Ethics, 2002” came into effect on the direction by the Hon’ble Supreme Court in the Writ Petition (Civil) No. 317 of 2000 (*Malay Ganguly vs. MCI & Ors.*). The said writ petition (PIL) was filed on behalf of the humanitarian organization (PBT), which is also headed by the petitioner/appellant herein, for greater public interest to unravel the fact that a large number state medical councils were acting only to shield their errant medical colleagues without caring for the lives of the innocent patients. After perusing all the facts and materials in the said PIL, the Hon’ble Supreme Court directed the Union Govt. of India to add the sections 8.7 and 8.8 in the MCI “Codes of Professional Conduct, Etiquette and Ethics, 2002” to provide appellate authority to the MCI over the state medical councils for better protection of the innocent patients. The learned single judge has failed this vital point while dismissing the writ petition which must be set aside for the ends of justice.

**(m)** It is further submitted that the learned single judge also failed to appreciate the fact that after having perused the relevant provisions of the relevant Acts including the Medical Council of Act, 1956 and after having heard the submissions of the Council of various states and Union of India, the Hon'ble Supreme Court of India issued appropriate directions and ultimately the sections 8.7 and 8.8 came to be inserted in the MCI "Codes of Professional Conduct, Etiquette and Ethics, 2002" , *vide* publication of Notification published on 27<sup>th</sup> May, 2004 in the Gazette of India and thus, these two specific provisions also possess the full force of law in India.

**(n)** It is further most respectfully stated and submitted that it is clear that the provisions in the sections 8.7 and 8.8 of the MCI "Codes of Professional Conduct, Etiquette and Ethics, 2002" which have been termed as illegal by the GMC based on the legal opinion of a former Hon'ble CJI, have been included in the MCI Rules only in pursuance of the filing of the PIL being Supreme Court W.P. (Civil) No. 317 of 2000 and it is the settled principle of law that if the Apex Court gives any judicial decision after interpreting relevant statutory provisions, these provisions interpreted for arriving at

a particular decision are automatically deemed to be tested by the Hon'ble Apex Court for they are being not *ultra vires* the Constitution of India and/or for they are being not *ultra vires* and not withstanding any other provisions of any particular statute. Thus, in the present case, there is no question of the said provisions of sections 8.7 and 8.8 in the MCI "Codes of Professional Conduct, Etiquette and Ethics, 2002" being illegal or *ultra vires* and, therefore, also the action of the GMC (respondent No.1) on the strength of a single legal opinion is completely illegal, arbitrary and without any authority of law.

- (o) It is most respectfully stated that the learned single judge has failed to appreciate the fact that the action on the part of the GMC was adopted capriciously in the most unreasonable manner in absence of any adequate determining principle and it has been taken on the whimsical and seemingly sinister approach of the GMC and, therefore; the said action is completely arbitrary and in violation of the provisions of the Article 14 of the Constitution of India and, therefore; also the resolution passed by the GMC (respondent No. 1) dated 2.12.2010 must be set aside in the interest of justice.

**(p)** It is further most respectfully stated and submitted that the learned single judge has also failed to appreciate the fact that it is the settled position of law that the power conferred on the statutory authority must be exercised reasonably and in consonance with the statutory provisions and in furtherance of public policy and public good and public cause and in the present case, the action taken by the GMC was only with a view to shield the delinquent Dr. Desai who had already been found *prima facie* guilty for “professional misconduct” by the MCI (respondent no. 2). The reason for the overtly arbitrary and capricious “resolution” adopted by the GMC to dismiss MCI’s order and to acquit Dr. Desai is best known to respondent no. 1 but such a decision is obviously not in consonance with the statutory provisions or for furtherance of good public policy and public cause. Under the circumstances, even on this ground also, the action of the GMC was required to be deprecated and the impugned resolution passed by them is required to be quashed and set aside in the interest of justice for the public at large.

**(q)** It is most respectfully stated and submitted that the learned single judge has failed to appreciate

various other contentions raised by the appellant, which are not reproduced in the present appeal of memo for the sake of brevity and therefore; the judgment and order of the learned single judge deserves to be quashed and set aside in the interest of justice.

**(r)** Even otherwise also, the judgment and order of the learned single judge in SCA 7204/2011 passed on 12/07/2011 is erroneous, illegal, unjust and against the settled provisions of law and, hence the impugned order deserves to be set aside in the interest of justice.

**4.** The appellant craves leave to urge more grounds at the time of hearing of this Appeal.

**5.** The appellant begs to supply the whole set of the memo of Special Civil Application along with the annexures.

**7.** The appellant, therefore, prays as under :

(A) Your Lordships may be pleased to Admit and Allow this Appeal;

(B) Your Lordships may be pleased to quash and set aside the impugned Order dated 12<sup>th</sup> July, 2011 passed by the learned Single Judge in Spl. Civil Application No. 7204 of 2011 and your Lordships be further pleased to quash and set aside the Resolution passed by the respondent no.1 dated 2.12.2010.

(C) Your Lordships be pleased to pass such other and further orders as may be deemed fit, just and proper in the peculiar facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS AND JUSTICE THE APPELLANT SHALL AS IN DUTY BOUND FOR EVER PRAY.

Ahmedabad  
Dt : .2011

Ravish Bhatt  
ADVOCATE FOR THE APPELLANT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

DISTRICT: AHMEDABAD

LETTERS PATENT APPEAL (LPAST) NO. 1926/2010

IN  
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....**Appellant**

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The Gujarat Medical Council & anr.

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**I N D E X**

Annexure	Particulars	Page Nos
	Memo of Appeal	
A	Copy of impugned Order dt. 12.07.2011 passed by learned Single Judge in Spl. Civil Application No. 7204 of 2011.	
-	A complete set of Special Civil Application No. 7204 of 2011 along with annexures.	

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DISTRICT: AHMEDABAD

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[Appeal under Clause 15 of the Letters Patent]

Dr. Kunal Saha

**....Appellant**

**Versus**

The Gujarat Medical Council & anr.

**...Respondents**

**EVENTS**

Appellant herein originally a Physician from India and he has been settled in the USA and is residing at the address shown the cause title.

Appellant is also a well known researcher in the filed of HIV/AIDS and is also a dual citizen of USA and India holding the Overseas Citizen of India (OCI).

Appellant is also the President of the “People for Better Treatment” (PBT), a registered NGO working for the betterment of the health care system in India and also working for helping the

victim of medical negligence through awareness programmes.

**5.5.2010**

Appellant filed a complaint before respondent no.1 against one Dr. Ketan Desai, ex-president of MCI and Gujarat Medical Council, in accordance with the provisions of the sub-rule (3) and (4) of rule 79 of Gujarat Medical Council Rules to initiate investigation for professional misconduct committed by the said Dr. Desai who 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.

The respondent No.1 did not take any action even after lapse of about 5 to 6 months, appellant was constrained to approach the 2<sup>nd</sup> respondent by filing an appeal, which is the appellant authority over the 1<sup>st</sup> respondent, as per the provisions of Section 8.7 and 8.8 of MCI “Codes of Professional Conduct, Etiquette and Ethics, 2002”.

**9.10.2010** Respondent No. 2 after having perused the appeal of the present petitioner and after having perused the relevant material, passed the order and whereby the Board of Governors of the respondent No. 2 decided to suspend the right of Dr. Desai to practice medicine for the alleged professional misconduct on his part pending the appeal before the Ethics Committee of the respondent No.2.

Respondent No. 2 sent copy of the said order to the Registrar of the respondent No.1 for initiating appropriate action against the said Dr. Desai and copy whereof was also sent to the present petitioner.

**19.11.2010** As the Respondent No.1 did not take any action, petitioner sent an email to the respondent No.1 and requested that appropriate action against delinquent Doctor be taken and also brought to the notice of the respondent No.1 that an order was passed by the respondent No. 2

**2.10.2011** Respondent No. 1 instead of initiating action against the delinquent Dr. Desai, passed an arbitrary Resolution dated 2.10.2011 on the foundation and the strength of the legal opinion obtained from the Hon'ble former C.J.I. and that respondent No. 1 has passed the impugned resolution and whereby resolved that that the order/communication dated 9.10.2010 sent by the respondent No.2 is without jurisdiction and has no bearing on the respondent No.1 and it would be void ab initio and therefore it was further decided by the respondent No.1 that no further action is required to be taken in that regard.

**May, 2011** The appellant filed SCA 7204/2011 for getting resolution dated 2.12.2010 quashed.

**12<sup>th</sup> July, 2011** SCA 7204/2011 came to be dismissed.

Hence the present appeal.