IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
REVIEW PETITION (CIVIL) NO. OF 2013
IN
TRANSFER CASE (CIVIL) NO. 98 OF 2012 and connected matters

[Under Article 137 of the Constitution of India read with Order XL Rule 1, Supreme Court Rules, 1966 against the majority judgment and order dated 18.7.2013 passed by this Hon'ble Court in T.C. (C) No. 98 of 2012 and connected matters]

IN THE MATTER OF:
Christian Medical College Vellore & Ors
...Petitioners

Versus

Union of India and Ors ...
Respondents

AND IN THE MATTER OF

Board of Governors in Supersession
of Medical Council of India,
through Secretary,
Medical council of India,
Pocket-14, Sector-8,
Dwarka, New Delhi-110077 ...Review
Petitioner

PETITION FOR REVIEW AGAINST FINAL MAJORITY JUDGEMENT AND ORDER DATED 18.7.2013 PASSED BY THIS HON'BLE COURT IN T.C. (c) No. 98 of 2012 AND CONNECTED MATTERS

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

The humble Petition for
Review of the Petitioner above
named:

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner is seeking a Review of the final majority judgment dated 18.7.2013 passed by this Hon'ble Court in T.C. (C) No. 98 of 2012 and connected matters whereby this Hon'ble Courts was pleased to allow the Transferred Cases as well as writ Petitions and held that the Medical Council of India is not empowered under Indian Medical Council Act, 1956 to hold National Eligibility-cum-Entrance Test (hereinafter referred to as 'NEET) for admission to MBBS and Postgraduate Medical Courses and consequently quashed the impugned notifications No. MCI-31(1)/2010-MED/49068 and MCI -18(1) 2010-MED/49070 both dated 21st December, 2010 and also amendment to the said Regulations dated 15.2.2012 published in Gazette of India.

2. That the Petitioner craves leave of this Hon'ble Court to refer and rely upon the facts, grounds, annexures, additional documents, written submissions filed in paper book of Transferred Cases and Writ Petitions while considering this review petition.

3. That the brief facts leading to the filing of the present petition are set forth hereinafter:

4. This Hon'ble Court has pronounced its judgment in the case of T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 and, inter alia, in paragraph 68, has

held that common entrance test for admission to private professional unaided minority/non minority institution is permissible and is in general public interest. The said view has been reiterated in the cases In fact to the contrary in the relevant portions of paras 110 in the judgment of this Hon'ble Court in ***Islamic Academy of Education & Anr. Vs. State of Karnataka & Ors***. – (2003) 6 SCC 697, it has been clarified as under:-

> **"110.** The professional institutions indisputably are governed by statutes like the MCI Act, the AICTE Act and the UGC Act. In terms of the provisions of the statutes and the regulations framed thereunder, the private professional institutions are required to maintain certain standards. They cannot be deviated or departed from. In the context of giving admissions to the meritorious students, it cannot be said that the students belonging to the minority community shall be admitted without reference to merit…"

5. That it is respectfully submitted that this Hon'ble Court in the case of ***Islamic Academy of Education Vs. State of Karnataka*** (Supra) in paragraph 177 at 778 held as under:

> "**177.** For the purpose of achieving excellence in a professional institution, merit indisputably should be a relevant criterion. Merit, as has been noticed in the judgment, may be determined in various ways (paragraph 59). There cannot be, however, any foolproof method whereby and whereunder the merit of a student for all times to come may be judged. Only, however, because a student may fare

> differently in a different situation and at different point of time by itself cannot be a ground to adopt different standards for judging his merit at different points of time. Merit for any purpose and in particular, for the purpose of admission in a professional college should be judged as far as possible on the basis of same or similar examination. In other words, inter se merit amongst the students similarly situated should be judged applying the same norm or standard. Different type of examinations, different sets of questions, different ways of evaluating the answer-books may yield different results in the case of the same student."

6. That it is submitted that seven judges bench of this Hon'ble Court in ***P.A. Inamdar Vs. State of Maharashtra*** (2005) 6 SCC 537 held that the conditions can be stipulated through the regulations for grant as well as for continuation of recognition. As a condition towards grant/ continuation of the recognition and in view of the above, the minority and non minority herein are obliged to comply with the requirements of the statutory and mandatory Regulations of MCI.

7. It is submitted that the aforesaid position in law has been categorically reaffirmed by this Hon'ble Court in ***Inamdar's case*** (supra) while observing that merely because Article 30(1) has been enacted, even in the case of minority educational institutions; it has been observed that they do not become immune to regulatory measures. The relevant observations are as under:-

"**91**. . . However merely because Article 30(1) has been enacted, minority educational institutions do not become immune from the operation of regulatory measures because the right to administer does not include the right to maladminister. . . "

94. Aid and affiliation or recognition, both by the State, bring in some amount of regulation as a condition of receiving grant or recognition. The scope of such regulations, as spelt out by a six-judge Bench decision in Rev. Sidhabji Case (1963) 3 SCR 837) and a nine judge Bench case in St. Xavier's (1974) 1 SCC 717 must satisfy the following tests: (a) the regulation is reasonable and rational; (b) it is regulative of the essential character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort it; (c) it is directed towards maintaining excellence of education and efficiency of administration so as to prevent it from in standards. However, Rev. Sidhajbhai Case and St. Xavier case go on to say that no regulation can be cast in the "interest of the nation" if it does not serve the interest of the minority as well. This proposition (except when it is read in the light of the opinion of Quadri, J) stands overruled in Pai Foundation (2002) 8 SCC 481 where Kirpal, C.J., speaking for the majority has ruled (vide SCC p. 563, para 107) –

"Any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the government from framing regulations in that behalf."

103. Merely because an educational institution belongs to a minority it cannot ask for grant of aid or recognition though running in unhealthy surroundings, without any competent teachers and which does not maintain even a fair standard of teaching or which teaches matters subversive to the welfare of the scholars. Therefore, the State may prescribe reasonable regulations to ensure the excellence of the educational institutions to be granted aid or to be recognized. To wit, it is open to the State to lay down conditions for recognition such as, an institution must have a particular amount of funds or properties or number of students or standard of education and so on. . .”

106. S.B. Sinha, J. has, in his separate opinion in *Islamic Academy* [(2003) 6 SCC 697] described (in para 199) the situation as a pyramid-like situation and suggested the right of minority to be read along with the fundamental duty. **Higher the level of education, lesser are the seats and higher weighs the consideration for merit. It will, necessarily, call for more State intervention and lesser say for the minority**.

107. Educational institutions imparting higher education i.e. graduate level and above and in particular specialised **education such as technical or professional, constitute a separate class**. While embarking upon resolving issues of constitutional significance, where the letter of the Constitution is not clear, we have to keep in view the spirit of the Constitution, as spelt out by its entire scheme. **Education aimed at imparting professional or technical qualifications stands on a different footing from other educational**

instruction. Apart from other provisions, Article 19(6) is a clear indicator and so are clauses (*h*) and (*j*) of Article 51-A. Education up to the undergraduate level aims at imparting knowledge just to enrich the mind and shape the personality of a student. Graduate-level study is a doorway to admissions in educational institutions imparting professional or technical or other higher education and, therefore, at that level, the considerations akin to those relevant for professional or technical educational institutions step in and become relevant. This is in the national interest and strengthening the national wealth, education included. **Education up to the undergraduate level on the one hand and education at the graduate and postgraduate levels and in professional and technical institutions on the other are to be treated on different levels inviting not identical considerations, is a proposition not open to any more debate after *Pai Foundation* [(2002) 8 SCC 481]** . A number of legislations occupying the field of education whose constitutional validity has been tested and accepted suggest that while recognition or affiliation may not be a must for education up to undergraduate level or, even if required, may be granted as a matter of routine, recognition or affiliation is a must and subject to rigorous scrutiny when it comes to educational institutions awarding degrees, graduate or postgraduate, postgraduate diplomas and degrees in technical or professional disciplines. **Some such legislations are found referred in paras 81 and 82 of S.B. Sinha, J.'s opinion in *Islamic Academy* [(2003) 6 SCC 697]**."

[Emphasis Supplied]

8. It is submitted that in view of the law laid down by the Constitution Benches of this Hon'ble Court in ***Islamic Academy*** and ***P.A. Inamdar*** (supra), that the Regulations framed by bodies like MCI cannot be deviated. That the legislations referred at the end of Para 107 of the Judgment of Hon'ble seven Judges of this Hon'ble Court in the case of ***P.A. Inamdar*** (supra) includes the Indian Medical Council Act, 1956.

8. That it is also most respectfully submitted that in the case of ***P.A. Inamdar*** (supra) this Hon'ble Court desired that there should be a single-window system of examination and counselling for admissions to professional courses [Paras. 134-138]. The relevant portion of the judgment of this Hon'ble Court in the case of ***P.A. Inamdar*** (supra) is quoted hereunder for ready reference:

> "133. So far as the minority unaided institutions are concerned to admit students being one of the components of "the right to establish and administer an institution", the State cannot interfere therewith. Up to the level of undergraduate education, the minority unaided educational institutions enjoy total freedom.
>
> 134. However, different considerations would apply for graduate and postgraduate level of education, as also for technical and professional educational institutions. Such education cannot be imparted by any institution unless recognised by or affiliated with any competent authority created by law, such as a university, Board, Central or State Government or the like. Excellence in

education and maintenance of high standards at this level are a must. **To fulfil these objectives, the State can and rather must, in national interest, step in. The education, knowledge and learning at this level possessed by individuals collectively constitutes national wealth.**

138. It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb malpractices, it would be permissible to regulate admissions by providing a centralised and single-window procedure. Such a procedure, to a large extent, can secure grant of merit-based admissions on a transparent basis. Till regulations are framed, the Admission Committees can oversee admissions so as to ensure that merit is not the casualty.

147. In our considered view, on the basis of judgment in Pai Foundation [(2002) 8 SCC 481] and various previous judgments of this Court which have been taken into consideration in that case, the scheme evolved out of setting up the two Committees **for regulating admissions and determining fee structure by the judgment in Islamic Academy [(2003) 6 SCC 697] cannot be faulted either on the ground of alleged infringement of Article 19(1)(g) in case of unaided professional educational institutions of both categories and Article 19(1)(g) read with Article 30 in case of unaided professional institutions of minorities**."

> **155. It is for the Central Government, or for the State Governments, in the absence of a Central legislation, to come out with a detailed well-thought-out legislation on the subject. Such a legislation is long awaited. The States must act towards this direction. The judicial wing of the State is called upon to act when the other two wings, the legislature and the executive, do not act. The earlier the Union of India and the State Governments act, the better it would be. The Committees regulating admission procedure and fee structure shall continue to exist, but only as a temporary measure and an inevitable passing phase until the Central Government or the State Governments are able to devise a suitable mechanism and appoint a competent authority in consonance with the observations made hereinabove. Needless to say, any decision taken by such Committees and by the Central or the State Governments, shall be open to judicial review in accordance with the settled parameters for the exercise of such jurisdiction.**
>
> [Emphasis Supplied]

9. That in the line with the aforesaid, MCI recommended to the Ministry of Health and Family Welfare, Govt. of India (hereinafter referred to as " MoHFW" seeking to introduce Common Entrance Test for the year 2009 in view of the huge disparity in the method of selection of students for medical courses in India and hardships caused to students because of the same. Along with

the recommendations draft regulations have also been sent to the Central Govt. on 23.06.2009.

10. That it is submitted that thereafter, there was a detailed and comprehensive exchanges of views between various authorities including State Govt. evidencing such exchange of letters and views between various stake holders including State Govt. had been placed before this Hon'ble Court during the course of hearing by way of additional document.

11. That in response to the recommendation of MCI the MoHFW was of the considered opinion that a system of single entrance examination for admission to medical courses would ensure merit based selection and further mitigate the problems faced by the students and also act as deterrent to the menace of capitation fee. Accordingly, a letter dated 14.09.2009 was written by the Secretary, MoHFW to State Governments seeking view of the States in order to facilitate early implementation of the suggestion of MCI. It is pertinent to mention that the draft regulations were also sent to all the State Governments by the MoHFW along with their letter dated 14.09.2009 principally complying with the requirement of Section 19A(2) of the Indian Medical Council Act, 1956.

12. This Hon’ble Court in the case of Simran Jain v. Union of India [Writ Petition (Civil) No.380 of 2009] has directed the DGHS to file an application praying for introduction of single window scheme for admission to medical courses which was filed by Director General of Health Services.

13. That it is submitted vide letter dated 05.11.2009, the UT of **Andaman & Nicobar** has informed the MoHFW that no Medical/Dental College exist in the UT, however, the amendment suggested may be accepted.

14. That vide letter dated 09/12.11.2009 the State of **Madhya Pradesh** has written to the MoHFW that it agrees to the proposal of such common national entrance examination.

15. That vide letter dated 12.11.2009 the State of **Himachal Pradesh** has written to the MoHFW that it agrees to the proposal of such common national entrance examination subject to the condition that the existing State quota of 50% seats in MBBS Course in medical college of the state is kept intact.

16. This Hon’ble Court directed impleadment of the petitioner-MCI as party to W.P.(C) No.380 of 2009 as it is a necessary party.

17. That since most of the States have not responded to the earlier query of the MoHFW, Govt. of India, again on 05.02.2010 letters were written to all the States requesting their views on a single national level entrance test so that a consensual decision may be taken by the MoHFW. Copies of some of the letters dated 05.02.2010 written by MoHFW.

18. That still most of the States did not respond to the query of the MoHFW, and the issue was of a national importance and wide impact, a reminder was sent to the States by the MoHFW on 06.07.2010 for submitting their views on national level common entrance examination for admission to medical courses immediately.

19. The petitioner-MCI submitted before this Hon'ble Court that the draft regulations for conducting of NEET are placed before the Central Govt. for necessary approval and this Hon'ble Court has requested the Central Govt. to consider the same expeditiously.

20. That still some of the States did not respond to the query of the MoHFW, and the issue was of a national importance and wide impact, a reminder was sent to the States by the MoHFW on 04.08.2010 for submitting their views on national level common

entrance examination for admission to medical courses by 18.08.2010. It is specifically prescribed in the said letters that if any of the States fails to respond it shall be presumed that there is concurrence on their part on the proposal of national entrance examination.

21. That it is submitted on 13.8.2010 in Simran Jain (Supra) recorded the statement and granted three weeks time to notify it and place it on record.

22. That the Hon'ble Chief Minister of the State of Tamilnadu, has written a letter No. D.O. Letter No.42891/MCA.1/2010 dated 15.08.2010 addressed to the Hon'ble Prime Minister raising certain objections on the National level test.

23. The Medical Council of India was superseded by Board of Governors by virtue of Ordinance issued on 15.05.2010 and power of Central Govt. under Section 10A is now vested in Board of Governors in place of Central Govt. The Ordinance was approved by Parliament and Indian Medical Council (Amendment) Act, 2010 received the assent of President on 4th September, 2010. The power of the Central Government under the Indian Medical Council Act, 1956 by virtue of Indian Medical Council Amendment Act, 2010 is now vested in Board of Governors.

24. That the Hon'ble Chief Minister of the State of Tamilnadu, has written another letter No. D.O. Letter No.35306/MCA1/2010 dated 07.10.2010 addressed to the Hon'ble Minister of Health & Family Welfare, Govt. of India raising certain objections on the National level test.

25. This Hon'ble Court has permitted impleadment of all States in Sirmran Jain(Supra) on the issue of Common Entrance Test as the issue involved was of national importance and elicit their views.

26. This Hon'ble Court in Simran Jain(Supra) clarified vide order dated 13.12.2010 in unequivocal terms that pendency of writ petition in the would not come in way of MCI in notifying the amendment notifications introducing NEET.

27. The petitioner-MCI notified the MCI Undergraduate Medical Education (Amendment) Regulation, 2010 (Part-II) and MCI Postgraduate Medical Education (Amendment) Regulation, 2010, (Part-II) introducing the provisions for conducting of the National Eligibility cum Entrance Test (NEET for short) for admission to these courses and it came to be published in Gazette on 21st December, 2010.

28. That the Hon’ble Chief Minister of the State of Tamilnadu, has written another letter dated 03.01.2011 addressed to the Hon’ble Minister of Human Resource Development, Govt. of India raising certain objections on the National level test.

29. That a meeting of State Health Ministers and State Secretaries of Health & Medical Education took place at Hyderabad from 11.01.2011 to 13.01.2011. The NEET was on the agenda of the meeting. The approved minutes of above meeting dated 21.01.2011 was sent to all participants along with the list of participants.

30. This Hon’ble Court vide order dated 18.02.2011 passed in Simran Jain(Supra) directed the officials of the MCI and the Central Govt. to resolve the pending issue.

31. That a meeting was convened on 03/04.03.2011 between the officials of the MoHFW, Govt. of India and the Board of Governors, MCI to discuss the issue of Common Entrance Examination and the proposed joint stand of the Central Govt. & the MCI before this Hon’ble Court in the Writ Petition of ***Simran Jain*** (supra) pending before this Hon’ble Court on its next date of hearing, i.e. 07.03.2011.

32. This Hon’ble Court disposed of W.P.(C) No. 380 of 2009 vide its order dated 07.03.2011. While disposing of the writ petition this Hon’ble Court has cleared all doubts and specifically observed that the amendments vide MCI Undergraduate Medical Education (Amendment) Regulation, 2010 (Part-II) and MCI Postgraduate Medical Education (Amendment) Regulation, 2010, (Part-II) has been made with prior approval of Central Govt. Further, this Hon’ble Court observed that in view of the said amendments, the MCI has to take such steps as are necessary to implement the amended regulations.

33. That vide letter dated 08.03.2011, the Ld. Solicitor General of India informed the MoHFW that on 07.03.2012 this Hon’ble Court has recorded the submission of Ld.ASG appearing on behalf of Union of India on 13.08.2010 that the Central Govt. has Accorded its approval to the regulations framed by the MCI bringing into existence the NEET and was further pleased to direct the MCI to take necessary steps to implement the amended regulations.

34. That vide letters dated 10.08.2011 & 21.11.2011, the State of **Gujarat** raised certain objections to the conduct of NEET on three grounds. First, that there is no need for NEET as the Gujarat Govt. is already conducting common entrance test at State level; Second, that there is lack of clarity in the process of

conduct and the issue of reservation and 85% State Quota seats in MBBS Course; Third, that the NEET is not being conducted in Gujarati language therefore it will prejudice the Gujarati students. It is pertinent to point out that two of the above objections of Gujarat has already been taken care of as NEET is now also being conducted in Gujarati & State quota seats has been kept intact

35. That the Hon'ble Chief Minister of State of **West Bengal** written a letter dated 11.08.2011 to the Hon'ble Minister of Health Family Welfare, Govt. of India stating that the State of West Bengal like to continue with the State level examination, however, if consensus for national level exam is arrived at, then is must be conducted in Bengali language also. It is pertinent to point out the NEET of MBBS admission was conducted in Bengali also and this request of State of W.B. has been taken care of.

36. That it is submitted that after disposal of W.P.(C) No.380 of 2009 several interlocutory applications were filed by different States, seeking either exemption or deferment in implementation of the aforementioned amendment regulations which were not entertained by this Hon'ble Court and all of them were dismissed as withdrawn. Some applications filed by the Union of India and MCI are also dismissed as

withdrawn as this Hon'ble Court refused to entertain the applications filed after the writ petition stands disposed off after the notification of the amended Regulations.

37. That CBSE also conducted meeting regarding NEET on 23.09.2011 in which representatives of several State Govts. Participated.

38. The Writ Petition bearing No.24109 of 2011 came to be filed before the Hon'ble High Court of Judicature at Madras challenging the amended MCI Regulations making provisions for Common Entrance Test (NEET) in Postgraduate medical courses.

39. That vide letter dated 31.10.2011, the State of **Andhra Pradesh** has agreed in principle to the proposal of national entrance test, however has raised certain concerns about the need to amend the State Act and need of students to have some time to get familiar with the syllabus of NEET. The State of A.P. requested that it may be exempted from NEET till 2013. The State expressed its willingness to participate in NEET from 2014.

40. That the State of **Maharashtra** has written a letter dated 19.11.2011 to the MoHFW stating that due to the syllabus of NEET being slightly different from

State Board syllabus, therefore the students of Maharashtra need some time to prepare for NEET. The State of Maharashtra has given its consent to participate in NEET from the year 2013. It is pertinent to mention that above was the common concern of most of the States and hence the NEET was accordingly postponed to Session 2013-2014, therefore, the concern of State of Maharashtra was take care of.

41. That similarly the State of **Kerala**, vide its letter dated 21.11.2011 has consented to make admissions to the medical colleges of the State through NEET subject to the condition that reservation policy of the State is followed in making admission to UG & PG medical courses. It is pertinent to mention that the MCI Regulations prescribing for NEET clearly provides that the reservation policy of the concerned State Govt. shall not be disturbed while making admission through NEET.

42. That vide communication dated 30.12.2011, the MoHFW, Govt. of India had written to all the State Governments and other stakeholders that since a number of States has expressed their concerns on the issue of giving some time to the students to prepare for the syllabus of NEET, the Central Government decided to defer the implementation of NEET till

session 2013-2014. The States were informed that they can go ahead with their existing system for making admissions for session 2012-2013.

43. The Hon'ble High Court of Madras vide common order dated 11.01.2012 passed in W.P. No.24109 of 2011 with W.P. No.24110 of 2011 has been pleased to observe that since the regulations in question are going to be brought into force from academic session 2013-2014 only there is no need to stay the same and directed to place the matter for final disposal.

44. That vide letter dated 27.03.2012, the MoHFW, Govt. of India written to the State Governments and other stakeholder to inform them that most of their concerns have been addressed and accordingly a fresh notification dated 27.02.2012 has been issued by MCI with prior approval of Central Govt. introducing NEET from session 2013-2014. The States have also been asked by the Ministry to provide the details regarding their existing reservation policy and the centres where their State exams were being conducted so that to incorporate the said information may be published in the Prospectus of NEET and students may accordingly be apprised of the same. The Ministry also sought their suggestion as to any modification of the syllabus of NEET.

45. That in response to the above letter of MCI, several States have submitted the details of their reservation policy, centres of examinations to be published accordingly in Prospectus of NEET. Copy of letters dated 20.04.2012 of State of **Meghalaya**,dated 26.04.2012 of State of **Assam,** 30.04.2012 of UT of **Andaman & Nicobar**, 01.05.2012 of State of **Andhra Pradesh**, dated 15.05.2012 of State of **Karnataka**, dated 15.06.2012 of **State of M.P.,** dated 29.06.2012 of State of **Odisha**, dated 30.06.2012 of State of **Nagaland**, dated 04.07.2012 of State of **Mizoram**, dated 10.07.2012 of State of **Rajasthan**, dated 12.07.2012 of UT of **Lakshadweep**, dated 14.07.2012 of UT of **Dadra & Nagar Haveli**, dated 16.07.2012 of State of **Goa**, dated 26.07.2012 of UT of **Daman & Diu**, dated 06.08.2012 of State of **Mizoram**, dated 07.08.2012 of State of **Arunachal Pradesh**, dated 13.09.2012 of State of **Andhra Pradesh,** dated 18.09.2012 of State of **Chhattisgarh**, dated 03.10.2012 of State of **Gujarat,** dated 03.12.2012 of State of **Odisha** have been placed in additional documents placed on record during the course of hearing.

46. That the UT of Pondicherry vide its letter dated 10.05.2012 objected to the NEET and submitted that they have already challenged the same before Hon’ble High Court of Madras vide W.P.

No.28255/2011 and has obtained Interim Stay on MCI Regulations in respect of UT of Pondicherry. It is pertinent to mention that W.P.No.28255/2011 was already been transferred to this Hon'ble Court and listed with the other matters related to issue of NEET

47. That CBSE has also conducted meeting regarding NEET on 22.08.2012 in which representatives of several State Govts. Participated.

48. That similar to the Christian Medical College several other writ petitions came to be filed before different Hon'ble High Courts by the State of Tamil Nadu, State of Andhra Pradesh, Union Territory of Pondicherry, several private medical college and Deemed to be Universities challenging the Regulations on Graduate Medical Regulation (Amendment) 2010 and Post Graduate Medical Education Regulation (Amendment) 2010 prescribing for single National Eligibility-cum-Entrance Test for admission to medical courses.

49. That since the issue was of national importance and any divergence in the opinion of Hon'ble High Court on this issue would have caused a lot of problems in implementation of the Regulations framed by the review Petitioner, the MCI filed the first Transfer Petition being T.P.(C) No.302 of 2012 titled as Medical

Council of India v. Karnataka Pvt. Medical & Dental Colleges Association.

50. That T.P.(C) No.302 of 2012 along with similar transfer petition were listed before this Hon'ble Court on 19.03.2012 wherein noticed were issued to the parties therein.

51. That for the first time this Hon'ble Court vide its order dated 10.10.2012 was pleased to allow the TP (C) Nos. 365 and 368 of 2012 and they were converted to TC(C) No. 98 of 2012 and TC(C) No.99 of 2012 respectively.

52. That similar order were passed in several transfer petitions on 12.10.2012 and this Hon'ble Court was pleased to allow all the transfer petition filed by the Medical Council of India and listed before this Hon'ble Court on that date.

53. That similar order were passed in several transfer petitions on 05.11.2012 and this Hon'ble Court was pleased to allow all the transfer petition filed by the Medical Council of India and listed before this Hon'ble Court on that date. Notices were also issued in fresh transfer petitions and writ petitions. Further directions were passed and liberty granted to different parties to file their respective affidavits and additional

documents. Permission was also granted to the institutions for receiving applications for their respectively entrance examination for session 2013-2014 with the reader that no equity can be claim by them.

54. That the matter was then heard on 04.12.2012, 10.12.2012 and vide order dated 13.12.2012 passed in TC(C) No.101 of 2012 this Hon'ble Court was pleased to permit all the States, the MCI, the DCI and Universities and Institutions to conduct their respective the entrance examination which were already notified but it was directed that results on the said examinations shall not the declared until further orders of this Hon'ble Court.

55. That it is submitted that the judgment was reserved on 30.4.2013 and vide its order dated 13.05.2013 this Hon'ble Court was further pleased to lift the bar on declaration on result of the entrance examination already conducted for admission to medical courses in session 2013-2014 by different entities so that the students can take advantage of the same for the current academic session.

56. That ultimately this Hon'ble Court was pleased to pass its final judgment and order dated 18.07.2013 in TC (C) No. 98 of 2012 and connected petitions and

quashed the Regulations on Graduate Medical Regulation (Amendment) 2010 and Post Graduate Medical Education Regulation (Amendment) 2010 prescribing for single National Eligibility-cum-Entrance Test for admission to medical courses.

57. Being aggrieved by the said order the petitioner is filing the present Review Petition on inter alia, the followings:-

GROUNDS

I. Because the majority judgment under review failed to even notice various pleas raised on behalf of the Medical Council of India. This fact is apparent from written submission filed on behalf of MCI when compared with majority judgment under review. Further several of pleas which have been noticed by majority judgment have not been considered in the reasoning.

Still further the reasoning which has been given is completely contrary to the law laid down by Constitution bench/ three judges Bench of this Hon'ble Court in catena of judgments.

II. Because specific reference to the reasoning and conclusion of Constitution Bench judgment in T.M.A. Pai (Supra), Islamic(Supra) and P.A. Inamdar (Supra) have not even been noticed in

the majority judgment under review. The ratio in the said judgment concludes the issue in favour of MCI which have arisen for consideration. However, the paragraphs of the said judgements have unfortunately not even been adverted to in the majority judgement of this Hon'ble Court. Hence, the majority judgement under review suffers from series of error apparent on the face of record. It unsettles the settled legal position that merit as determined in Common Entrance Test is to be basis for admission for professional education. The emphasis on matters of heart, human sympathies, beliefs and aspirations in preference to marks obtained in common entrance test will ruin medical education and adversely impact quality of professional education in our country.

III. Because the majority judgment under review suffers from error apparent on the face of record inasmuch as the core issue that " Standard of Education" includes conduct of examination and which has been held to be within the purview of MCI has not been decided.

IV. Because failure to even notice the contents of any of the series of judgment which have taken a view contrary to what has been held in the

majority judgment is in itself a good ground for review.

V. Because the minority judgment has captured the correct legal position and aptly described that NEET Regulations are " boon to the student asking to join medical profession".

VI. Because the majority judgment under review passed on 18.07.2013 in TC(C) No.98 of 2012 and connected cases was passed contrary to the principles of law laid down by this Hon'ble Court in Constitution Bench judgments in the cases of ***Ahmedabad St. Xavier's College Society Vs. State of Gujarat*** (1974) 1 SCC 717, ***Preeti Srivastava Vs. State of Madhya Pradesh*** (1999) 7 SCC 120, ***TMA Pai Foundation Vs. State of Karnataka*** (2002) 8 SCC 481, ***Islamic Academy of Education Versus State of Karnataka*** (2003) 6 SCC 697, ***P.A. Inamdar Vs. State of Maharashtra*** (2005) 6 SCC 537.

VII. Because the majority judgment under review passed on 18.07.2013 in TC(C) No.98 of 2012 was also passed contrary to the principles of law laid down by this Hon'ble Court in the cases of ***Medical Council of India Vs. State of Karnataka*** 1998 (6) SCC 131, ***Bharati Vidyapeeth (Deemed University) and others Vs. State of Maharashtra and another*** (2004) 11 SCC 755, ***Prof. Yashpal Vs.***

State of Chhattisgarh (2005) 5 SCC 420, ***State of Madhya Pradesh Vs. Gopal D. Teerthani*** (2003) 7 SCC 83, ***Harish Verma Vs. Rajesh Srivastava*** (2003)8 SCC 69, ***Medical Council of India Vs. Rama Medical College Hospital and Research Centre*** (2012) 8 SCC 80, ***Gujarat University, Ahmedabad Vs. Krishna Ranganth Mudholkar*** (1963) Supp. 1 SCR 112, ***Veterinary Council of India Vs. Indian Council of Agricultural Research*** (2000)1 SCC 750.

VIII. Because the very basis of the majority judgment under review passed on 18.07.2013 in TC(C) No.98 of 2012 is based on an incorrect presumption of law that the powers vested in the MCI are only recommendatory in nature which is based on failed to appreciate of Indian Medical Council (Amendment) Act, 2010 along with sections 10A, 19A and 20 of the IMC Act, 1956. Even de hors the provisions, reasoning which has been given is completely contrary to law laid down by this Hon'ble Court on each of the issue which has been decided by majority judgment under review. This Court in Preeti Srivastava (Constitution Bench) (Supra) , Medical Council of India Vs. State of Karnataka (Three Judges Bench) (Supra)and recent judgment of this Hon'ble Court in Medical Council of India Vs.

Rama Medical College Hospital and Research Centre (Supra) held that the Regulations of Medical Council framed under Section 10A, 19A and Section 20 in Indian Medical Council Act, 1956 are mandatory, binding on medical Colleges and it has been held that the Regulation are neither advisory nor recommendatory are nature.

IX. Because in para 6 of the majority judgment it has incorrectly been recorded that power of the MCI under section 10A is purely recommendatory in nature, without adverting to the 2010 Amendment of the IMC Act, 1956 which gave exclusive power to the Board of Governors in Supersession of MCI to pass orders without any role of the Central Government.

X. Because it has incorrectly been held in the majority judgment that single entrance examination would adversely impact the fundamental right guaranteed to the institutions which are either universities, societies, trusts i.e. artificial persons and not natural persons therefore they are not “citizens” for the purpose of exercise of right under article 19 (1) (g) of the Constitution of India.

XI. Because it is a trite law settled by this Hon’ble Court that the fundamental right under Article 19(1)(g) of the Constitution is available only to

the natural persons who are citizens. The said position of law has been so held way back in 1960s by a Bench of 9 Hon'ble Judges of this Hon'ble Court in the case of ***The State Trading Corporation of India Ltd.*** **v.** ***The Commercial Tax Officer, Visakhapatnam*** [AIR 1963 SC 1811, (1964) 4 SCR 99] (Paragraphs 1 & 15-19). The said proposition of law has been followed by a subsequent Constitution Bench in the case of ***Meenakshi Mills Ltd. & Ors. Vs. Meenakshi Mills Ltd. & Ors***. (1992) 3 SCC 336.

XII. Because the majority judgment erred in observing that the National level single test seems attractive but it is fraught with practical difficulties as rather such test is specifically designed to alleviate the physical, financial and mental burden of the students who are ultimate beneficiaries of any admissions process.

XIII. Because the majority judgment has given primacy to right to carry out business, profession and occupation contained under Article 19(1)(g) over the superior right to education to all contained under Article 21 and 19(1)(a) of the Constitution.

XIV. Because the majority judgment had erroneously recorded in Paragraph 135 & 136 that there is nothing on record to show that the MCI ever sent the draft amended Regulations to the different

State Governments for their views and hence the MCI Regulations are invalid because of non-compliance of requirements of Section 19A(2) of the Indian Medical Council Act, 1956 and while recording this has failed to note the categorical submission made by the MCI recorded in Paragraph 113 of the judgment and the application of MCI vide which the additional documents were filed which contained correspondence between the State Government, Central Government, MCI and CBSE on the issue of framing of Regulations and conduct of NEET.

Further the majority judgment under review fails to notice to large number of judgments other than Manbodhan Lal Srivastava which has also been relied upon to show that the provision was merely directory and not mandatory.

Still further, majority judgment also failed to notice and deal with the stand of MCI that there has been detailed and comprehensive interaction with the State Govt. at various stages and various forum and it has been detailed in affidavit dated 4.3.2013. Further, in any event, amended draft Regulation were also available with the State Govt. All states were made party by this Hon'ble Court in Simran Jain's case (Supra). The details of

correspondence, meeting pertaining to the said amendments were placed on record.

XV. Because the Hon'ble Court failed to appreciate that except of State of Tamil Nadu, UT of Puducherry and State of A.P which sought postponement till 2014-15,all the State Governments have supported the national level entrance examination as it is in the national interest and the majority judgment has not even perused the correspondence as above mentioned with the State Governments filed by MCI and hence erroneously observed against the record that there was nothing to show consultation with States.

XVI. Because requirement of consultation with State Governments prescribed in Section 19A(2) of the IMC Act, 1956 though directory in nature was fulfilled in its spirit.

XVII. Because the majority judgment has not even discussed the judgment of this Hon'ble Court (three judges bench) in the case of ***Veterinary Council of India v. Indian Council of Agricultural Research*** (2000) 1 SCC 750 wherein validity of a national entrance test has already been upheld by this Hon'ble Court in admission to Veterinary Courses and where the provision of those Regulations are Pari-materia to the Regulations in question in present case. It

is relevant to note here that the majority judgment under review noticed the said judg ment while dealing with submission but not considered in the reasoning.

XVIII. Because a number of other decision on this aspect has also not been considered and finding of the majority judgment under review that Indian Medical Council Act, 1956 do not confer authority upon MCI to conduct examination or direct admission on the basis of NEET fails to notice legal position emanating from the constitution bench holding that Standard of Education covers entire gamut of admission and includes conduct of examination as well.

XIX. Because the majority judgment has totally forgotten the rights and plight of students and parents for whom the entire exercise of entrance examination and medical courses is designed and has given primacy to the business interests of the institutions over that of the common man.

XX. Because the majority judgment has failed to consider that under Article 19(6) reasonable restrictions can be imposed on the rights available under Article 19(1)(a) of the Constitution and the MCI Regulations have posed only one restriction over the exercise of right under Article 19(1)(a) that the students have to be admitted from the merit list determined

through the NEET. Various judgments cited in this regard have not been considered by majority judgment.

XXI. Because the MCI Regulations nowhere restricts the institutions from admitting students in the courses run by them. They are entitled to run the course and admit students of their choice from the merit list of NEET on the basis of recognised principle of merit. Hence there is no interference in the right to admit student which they are always allowed to do.

XXII. Because even the Right to admit students of their own choice given to the minority educational institutions under Article 30 of the Constitution is not violated in any manner. The minority institution are entitled to admit students belonging to their respective communities to the extent they are admitting earlier, the only regulation posed by the Regulation that inter-se merit of those minority students have to be determined on the basis of NEET.

XXIII. Because the ratio of the majority judgment mentioned in the paragraph 155 suggests that a candidate with superior marks can be rejected in preference over to a candidate with lesser marks who confirms to belief, aspirations and needs of the institution is in teeth of settled law laid down

by this Hon'ble Court that merit as determined on the basis of marks secured is to be the basis of admission to the professional education institution.

XXIV. Because the Majority judgment had relied upon the law laid down in the judgments of ***T.M.A. Pai Foundation*** (supra) and ***P.A. Inamdar*** (supra) which deals with education at the school and graduation level and failed to appreciate that the even those judgments have not applied the same principles on professional education and had expressly held that in professional courses, merit and academic excellence is the only criteria for admission to such courses. It is submitted that specific paragraphs of the said judgements were pointed out during the course of hearing and also mentioned in written submission and which completely clinches the issue in favour of MCI have not been adverted to.

XXV. Because the majority judgment failed to appreciate that the judgments of ***T.M.A. Pai Foundation*** (supra) and ***P.A. Inamdar*** (supra) itself have advocated for a single-window system for admission to professional courses.

XXVI. Because the majority judgment fails to deal with plea raised by MCI that protection under Article 25 of the Constitution is available to individual and not the institution. Further, even to

individual only essential and integral part of religion are protected and various judgments on this aspect have been completely ignored. It has been held that that secular activity associated with religious practice can be regulated.

Majority judgment also fails to notice vital fact that Article 26 of the Constitution is available to religious denominations and was not available to any of the petitioners which were not “Religious denominations”.

XXVII. Because the observation made in the majority judgment that MCI Regulations have circumvented the judgments of this Hon’ble Court in the cases of ***Ahmedabad St. Xaviers College Society*** (supra), ***T.M.A. Pai Foundation*** (supra) and ***P.A. Inamdar*** (supra) is without any basis and made by placing reliance on the portions of those judgments which do not relate to professional education but to school and graduate level education.

XXVIII. Because the MCI Regulations did not take away the right to admit students and the institutions have all the rights to admit students on the seats permitted to it from the merit list determined on the basis of NEET.

XXIX. Because the existing principles of quotas, reservations and preferences have also not been disturbed by the MCI Regulation and the

institutions are free to admit students of their own choice. The only regulation which is put on this right is that each candidate of the respective category has to be qualified in the NEET and the inter-se merit of that respective category shall not be violated.

XXX. Because the MCI Regulations merely regulated the admission process of medical courses but only prescribed for single entrance examination and eligibility requirement for admission to medical courses.

XXXI. Because even otherwise no admission is permissible in the medical courses without qualifying a common entrance examination with requisite percentage of marks as prescribed in MCI Regulations, thus the MCI Regulations have not brought into existence something which was not there but has only substituted the multiple “common entrance examinations” by a single national level eligibility-cum-entrance test.

XXXII. Because instead of interfering with the right of institutions under Articles 19(1)(g), 25, 26, & 30 of the Constitution, the NEET takes their burden of conducting entrance examinations and after conducting the same the merit list would be handed over to them to make admission of students of their own choice as per their inter-se merit.

XXXIII. Because the only reason that the private unaided institutions are shying away seems to be the banning o backdoor admissions made in violation of principle of merit on the basis of extraneous considerations.

XXXIV. Because the MCI Regulations are not in any way interfering with the fundamental rights guaranteed in Part-III of the Constitution of India and rather it aids in achieving the objective behind those fundamental rights, i.e. national interest, meritocracy and upliftment of backward and minorities.

XXXV. Because the Majority judgment failed to appreciate that the right to conserve distinct language, script and culture granted under Article 29(1) of the Constitution has no connection with medical education which is already held to be a secular education and since the syllabus and language of instruction for medical courses in India is only English the right under Article 29 of the Constitution has no bearing in the issues involved.

XXXVI. Because the majority judgment failed to appreciate that Articles 25 of the Constitution relates to freedom f conscience and right to freely profess, practice and propagate religion and is subject to public order, morality and health and to other provisions of Part-III of the

Constitution and as such includes only essential religious function in its purview and not practice of modern medicine which is to be governed solely by the existing laws of the land.

XXXVII. Because the majority judgment failed to appreciate that Article 26 of the Constitution of India also guarantees right to religious denominations to establish institutions solely for the purpose of essential religious functions and charitable purpose. Establishment of free/low cost Hospital might be considered a charitable purpose but medical education has to be governed by the laws of the land enacted for that purpose and no right to impart medical education flows from Article 26 of the Constitution.

XXXVIII. Because it has never been contended by the MCI in the present batch of cases that the right to conduct entrance examination flows from the clauses of Section 33 of the Indian Medical Council Act, 1956 which relates to conduct of professional examination because it was always the stand of MCI that such provisions related to examination after the admission in medical courses and not entrance examination. The right to conduct entrance examination flows from Sections 19A and 20 read with Section 33 of the Indian Medical Council Act, 1956.

XXXIX. Because the majority judgment also erroneously records that there is even no regulations of MCI conferring right of conducting the entrance examinations as the very challenge in the batch of cases pertains to a validly made Regulations by MCI giving right and authority to MCI to conduct the NEET.

XL. Because the majority judgment has completely overlooked the manner of admission made by the Christian Medical College, Vellore which is based on recommendations made by the Diocese without giving any regard to the principle of inter se merit among students of various Diocese.

XLI. Because in Paragraph 150 of the judgment the majority judgment records a finding that right to admit includes right to reject a more meritorious candidate on the basis of the beliefs of a lesser meritorious candidate is contrary to the law laid down in catena of judgments of this Hon’ble Court where the principle of merit has been given utmost importance especially in case of professional education of secular nature.

XLII. Because the Majority Judgment itself records in Paragraph 167 that the Amendments made in MCI Regulations of 1997 and 2000 are traced to Entry 66 of List-I of Schedule VII to the Constitution of India and yet reaches to a conclusion that the same shall be subservient to the State Legislations.

XLIII. Because the Majority judgment quotes and considered only opening lines of Article 371-D of the Constitution of India and not the whole Article. Article 371-D makes special provisions with respect to the State of Andhra Pradesh. A reading of sub-clause (1) makes it clear that it confers powers on the President to make an order with respect to the State of Andhra “for equitable opportunities and facilities for the people belonging to different parts of the State”, in matters of employment and education. Thus, the purpose of the Presidential Order is for equitable opportunities and facilities for people in different parts of the State.

Neither the said Article, nor the Presidential Order are concerned with standards of education. They are concerned with providing equitable opportunities and facilities for people in different parts of the State. The Regulations categorically provide that the Reservation Policy

in different States shall be followed. Thus, any rights available under Article 371-D are not adversely impacted by the impugned Regulations.

Further, sub-clause (2b)(iii) of Article 371-D provides that any order made under clause (1) may specify any part or parts of the State which shall be regarded as a local area for purposes of admission to any university. Under sub-clause (c) of clause (2) it is also permitted that the order under clause 1 may specify the extent to which and the manner in which conditions, preference for reservation, etc. is to be given. It is submitted that the Regulations nowhere negate any special needs for any local area or other category of reservation which may be determined by the State. Thus, the concern voiced by the State of Andhra Pradesh is completely misplaced.

Moreover, it is also relevant to note that a perusal of the application for filing additional documents dated 1.4.2013 filed by the MCI makes it clear that the State of Andhra Pradesh has given its consent to the NEET, with only the request that the same be introduced from the year 2014

XLIV. Because insofar as the State legislation providing for State level entrance examination is concerned, the same is not relatable to Article 371-D and as such in accordance with the law laid down in Dr. Preeti Srivastava, Gujarat University and other judgments highlighted above. The State legislation has to necessarily yield to the Union legislation. This is equally true for other State legislations as well.

XLV. Because while observing that single entrance examination is not practical the reason was given that standard and medium of education in whole country is not the same therefore single examination will not judge the actual merit the majority judgment did not consider that the percentage of seats reserved for candidates belonging to respective States has not been disturbed and 85% MBBS seats in each State has to be filled by the candidates as per eligibility criteria including giving preference on the basis of residence in Govt. Medical Colleges and similarly 50% of the PG seats also belong to the respective States in Govt. Medical College to be filled by them on the basis of institutional preference.

XLVI. Because the existing principle of All-India Quota and State Quota devised by this Hon'ble Court and approved by a Constitution Bench Judgment of ***Saurabh Chaudhri v. Union of India*** (2003)11 SCC 146 is not being disturbed and even if there is a single national level examination, the students who are equally placed will be competing against each other for admissions.

XLVII. Because the majority judgment failed to appreciate that the students belonging to rural area are still competing with students of urban area where coaching facilities are there in the examinations held by different States and Institutions and single entrance examination will not, in any manner, disturbs the existing practice and rather alleviate the burden of rural students.

XLVIII. That hundreds of entrance test throughout the country would not guarantee adequacy of doctors in rural areas which lies more in the hands of local administration and States to give additional benefits and perks to those working in rural areas. Contra to the same, a single entrance test would rather give chance to the rural candidates to rise to the national forum and

get better education in premier institutions and serve their people better.

XLIX. Because the Majority judgment failed to appreciate that single admission test will remove possibilities of backdoor admissions and donations etc. It is submitted that those who have spent a lot in getting admission will never go and work in rural areas but would obviously remain in urban areas to recover their expenditure on their education.

L. Because the single entrance test will eradicate the menace of capitation fees and low expenditure on education will encourage students to work in rural and far flung areas to serve humanity and will not put burden in them to work in urban areas only to recover the huge expenditure made by them on their education in form of capitation fees.

LI. Because it is submitted that minority judgement has struck a proper balance between the fundamental right guaranteed under Article 19(1)(g) of the Constitution of India and rights of the minority institutions under Article 29 and 30 and the provisions of Medical Council of India Act, 1956 and the interest of society and student

aspiring to study medicine to have a common examination in the nature of NEET.

LII. Because the majority judgment and order is bad in law inasmuch as it has been passed in ignorance of the provisions of law, ratio laid down in the Constitution Bench judgement.

58. That the petitioner states that it has not filed any other, review petition against the majority final judgment in this Hon'ble Court.

PRAYER

In view of the aforesaid facts and circumstances and in the interest of justice it is most humbly prayed that your Lordships may graciously be pleased to:-

(a) Admit and allow this Review Petition and recall the final majority Judgment dated 18.07.2013 passed by this Hon'ble Court in T.C. (C) No. 98 of 2012 with T.C. (C) No. 99 of 2012; T.C. (C) 100 of 2012; T.C. (C) No. 101 of 2012; T.C.(C) No. 102 of 2012; T.C.(C) No. 103 of 2012; W.P. (C) No. 480 of 2012; T.C. (C) No. 104 of 2012; T.C. (C) No. 105 of 2012; W.P.(C) No. 468 of 2012; W.P. (C) No. 467 of 2012; W.P.(C) No. 478 of 2012; T.C. (C) No. 107 of 2012; T.C. (C) No. 108 of 2012; W.P.(C) No. 481 of 2012; W.P.(C) No. 464 of 2012; T.C. (C) No. 110 of 2012; T.C. (C)

NO. 132-134 of 2012; T.C. (C) No. 117-118 of 2012; T.C. (C) No. 115-116 of 2012; T.C. (C) No. 125-127 of 2012; T.C. (C) No. 113-114 of 2012; T.C. (C) No. 128-130 of 2012; T.C. (C) No. 121-122 of 2012; T.C. (C) No. 112 of 2012; T.C.(C) NO.131/2012; T.C.(C) NOS.123-124/2012; T.C.(C) NO.111/2012; T.C.(C) NO.120/2012; T.C.(C) NO.119/2012; T.C.(C) NOS.135-137/2012; T.C.(C) NOS.138-139/2012; W.P.(C) NO.495/2012; W.P.(C) NO.511/2012; W.P.(C) NO.512/2012' W.P.(C) NO.514/2012; W.P.(C) NO.516/2012; W.P.(C) NO.519/2012; W.P.(C) NO.535/2012; T.C.(C) NO.142/2012 @ T.P.(C) NO.364/2012; W.P.(C) NO.544/2012; W.P.(C) NO.546/2012; W.P.(C) NO.547/2012; T.C.(C) NO.144/2012 @ T.P.(C) NO.1524/2012 & 1447/2012; T.C.(C) NO.145/2012; T.C.(C) NO.1/2013 @ T.P.(C) NO.1527/2012; T.C.(C) NOS.14-15/2013 @ T.P.(C) NOS.1672-1673/2012; T.C.(C) NO.76/2013 @ T.P.(C) NO.1702/2012; T.C.(C) NO.12-13/2013; T.C.(C) NO.4/2013; T.C.(C) NO.11/2013; T.C.(C) NOS.21-22/2013 @ T.P.(C) NO.1714-1715/2012; T.C.(C) NO.5/2013 @ T.P.(C) NO.1718/2012; W.P.(C) NO.2/2013; W.P.(C) NO.1/2013; T.C.(C) NO.60/2013 @ T.P.(C) NO.12/2013; W.P.(C) NO.13/2013; W.P.(C) NO.15/2013; W.P.(C) NO.16/2013; W.P.(C) NO.20/2013; T.C.(C) NO...../2013 @ T.P.(C) NO.31/201; T.C.(C)

NO.2/2013 @ T.P.(C) NO.1532/2012; T.C.(C) NO.8/2013; T.C.(C) NO.3/2013 @ T.P.(C) NO.1533/2012; W.P.(C) NO.24/2013; T.C.(C) NO.9/2013; T.C.(C) NO.17/2013 @ T.P.(C) NO.1588/2012; W.P.(C) NO.483/2012; W.P.(C) NO.501/2012; W.P.(C) NO.502/2012; W.P.(C) NO.504/2012; W.P.(C) NO.507/2012; T.C.(C) NO.10/2013; T.C.(C) NO.7/2013 @ T.P.(C) NO.1644/2012; T.C.(C) NO.18/2013 @ T.P.(C) NO.1645/2012; T.C.(C) NO.75/2013 @ T.P.(C) NO.1647/2012; T.C.(C) NO.19/2013 @ T.P.(C) NO.1653/2012; T.C.(C) NO.20/2013 @ T.P.(C) NO.1654/2012; T.C.(C) NO.59/2013 @ T.P.(C) NO.1656/2012; T.C.(C) NO.53/2013 @ T.P.(C) NO.1658/2012; T.C.(C) NO.25/2013 @ T.P.(C) NO.1671/2012; T.C.(C) NO.23-24/2013 @ T.P.(C) NO.1697-1698/2012; T.C.(C) NO.58/2013 @ T.P.(C) NO.1/2013; W.P.(C) NO.27/2013; T.C.(C) NO.72/2013 @ T.P.(C) NO.58/2013; T.C.(C) NO.16/2013; T.C.(C) NO.61/2013; T.C.(C) NO.73/2013 @ T.P.(C) NO.75/2013; T.C.(C) NO...../2013 @ T.P.(C) NO.79/2013; T.C.(C) NO.62/2013; W.P.(C) NO.47/2013; T.C.(C) NO.28-29/2013; T.C.(C) NO.30/2013; T.C.(C) NO.31-32/2013; T.C.(C) NO.33-36/2013; T.C.(C) NO.37-38/2013; T.C.(C) NO.39/2013; T.C.(C) NO.40/2013; T.C.(C) NO.41/2013; T.C.(C) NO.42/2013; T.C.(C) NO.43/2013; T.C.(C)

NO.44/2013; T.C.(C) NO.45/2013; T.C.(C) NO.46/2013; T.C.(C) NO.47/2013; T.C.(C) NO.48/2013; T.C.(C) NO.49/2013; W.P.(C) NO.66/2013; W.P.(C) NO.76/2013; W.P.(C) NO.74/2013; T.C.(C) NOS.63-65/2013; T.C.(C) NOS.66-69/2013; T.C.(C) NOS.70-71/2013; W.P.(C) NO.41/2013; W.P.(C) NO.228/2013;

(b) hear the review petition in open court and allow submissions to be made on the issue raised and

(c) Pass such further order and orders as it may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL EVER PRAY

NEW DELHI
DRAWN ON:14.8.2013
FILED ON: 16.8.2013

Settled by

Shri Nidhesh Gupta,
Senior Advocate

DRAWN AND FILED BY

[AMIT KUMAR]
ADVOCATE FOR THE
PETITIONER

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
REVIEW PETITION (CIVIL) NO. OF 2013
IN
TRANSFER CASE (CIVIL) NO. 98 OF 2012

IN THE MATTER OF:
Christian Medical College Vellore & Ors ...
Petitioners

Versus

Union of India and Ors ...
Respondents

AND IN THE MATTER OF:
Board of Governors in Supersession
of Medical Council of India ...Review
Petitioner

C E R T I F I C A T E

Certified that the Review Petition is confined only to the pleadings before the High Court whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Review Petition. It is further certified that the copies of the documents/annexures attached to the Review 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.

The certificate is given on the basis of instruction given by the petitioner / person authorized by the petitioner whose affidavit is filed in support of the Review Petition".

FILED BY

(AMIT KUMAR)

NEW DELHI ADVOCATE FOR THE PETITIONER
FILED ON: 18.07.2013

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
REVIEW PETITION (CIVIL) NO. OF 2013
IN
TRANSFER CASE (CIVIL) NO. 98 OF 2012

IN THE MATTER OF:
Christian Medical College Vellore & Ors ...
Petitioners

Versus

Union of India and Ors ...Respondents

AND IN THE MATTER OF:
Board of Governors in Supersession
of Medical Council of India ...Review
Petitioner

AFFIDAVIT_

I, Shikhar Ranjan, Law Officer, Board of Governors in supersession of Medical Council of India, Pocket-14, Sector-8, Dwarka, New Delhi-110077, do hereby solemnly affirm and state as under:

1. That I am the law officer of the review petitioner in the Review Petition and I am also well conversant with the facts and circumstances and records of this case and am competent to swear this affidavit.
2. That I have read and understood the contents of Review Petition from page 202 to 249 and para 1 to 59 and the interlocutory applications I state that the contents thereof are true and correct to the best of my knowledge.
3. That the annexures are true copies of their respective originals and form parts of the record.
4. That no part of this affidavit is false and nothing material has been concealed there from.

DEPONENT

VERIFICATION:

I, the deponent above named do hereby verify that contents of the above affidavit are true to the best of my knowledge and belief and based on the record, no part of it is false and nothing material has been canceled therefrom.

Verified at New Delhi on this 18th day of August, 2013

DEPONENT

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. OF 2013

IN

REVIEW PETITION (CIVIL) NO. OF 2013

IN

TRANSFER CASE (CIVIL) NO. 98 OF 2012 and connected matters

[Under Article 137 of the Constitution of India read with Order 40 Rule 1, Supreme Court Rules, 1966 against the final judgment and order dated 18.7.2013 passed by this Hon'ble Court in T.C. (C) No. 98 of 2012 and connected matters]

IN THE MATTER OF:
Christian Medical College Vellore & Ors
...Petitioners

Versus

Union of India and Ors ...
Respondents

AND IN THE MATTER OF

Board of Governors in Supersession
of Medical Council of India,
through Secretary,
Medical council of India,
Pocket-14, Sector-8,
Dwarka, New Delhi-110077 ...Review Petitioner

AN APPLICATION FOR PERMISSION TO ALLOW THE HEARING OF THE ACCOMPANYING REVIEW PETITION IN OPEN COURT

To

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUDGES OF THE

HON’BLE SUPREME COURT OF INDIA

The humble Petition for
Review of the Petitioner above
named:

MOST RESPECTFULLY SHOWETH:

5. That the Petitioner has filed the accompanying petition under Article 137 of Constitution of India red with Order XL of Supreme Court Rules, 1966 seeking review of the common order and judgment dated 18.07.2013 passed by this Hon’ble Court in T.C.(C) No.98 of 2012 and connected matters.

6. The contents of the same may be read as part of this application as the same are not being repeated herein for the sake of brevity.

7. That the question that arises for consideration before this Hon’ble Court is involving interpretation of the Constitution and is of great importance which have grave consequences for health, medical and professional education in the country. The issue requires hearing, elaboration and explanation, therefore, it is prayed that the accompanying review petition preferred by the Review Petitioner may be placed in open court for hearing.

PRAYER

It is, therefore, respectfully prayed that this Hon’ble Court may be pleased to:

a) Pass an order allowing the hearing of the accompanying review petition in open court;

b) pass such further order and orders as it may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL EVER PRAY

NEW DELHI

DRAWN ON:14.8.2013
FILED ON: 16.8.2013

DRAWN AND FILED BY

[AMIT KUMAR]
ADVOCATE FOR THE PETITIONER

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. OF 2013

IN

REVIEW PETITION (CIVIL) NO. OF 2013

IN

TRANSFER CASE (CIVIL) NO. 98 OF 2012 and connected matters

[Under Article 137 of the Constitution of India read with Order 40 Rule 1, Supreme Court Rules, 1966 against the final majority judgment and order dated 18.7.2013 passed by this Hon'ble Court in T.C. (C) No. 98 of 2012 and connected matters]

IN THE MATTER OF:
Christian Medical College Vellore & Ors
…Petitioners

Versus

Union of India and Ors …
Respondents

AND IN THE MATTER OF

Board of Governors in Supersession
of Medical Council of India,
through Secretary,
Medical council of India,
Pocket-14, Sector-8,
Dwarka, New Delhi-110077 …Review Petitioner

AN APPLICATION FOR STAY

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

The humble Petition for
Review of the Petitioner above
named:

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner has filed the accompanying petition under Article 137 and Article 142 of Constitution of India red with Order XL of Supreme Court Rules, 1966 seeking review of the common order and judgment dated 18.07.2013 passed by this Hon’ble Court in T.C.(C) No.98 of 2012 and connected matters.

2. That the Petitioner seeks leave of this Hon’ble Court to refer to and rely upon the contents of the accompanying Petition at the time of hearing of the instant application and the same are not being repeated here for the sake of brevity.

3. That if the judgment and order dated 18.07.2013 passed in T.C.(C) No.98 of 2012 by this Hon’ble Court is not stayed, it will seriously prejudice the progress of the process of holding common entrance test which has been evolved over the period of more than five years of deliberatoins, judicial orders. Moreover, it lays down the eligibility criteria and it is also in consonance with directions of this Hon’ble Court passed from time to time in the case of Simran Jain v. Union of India [W.P.(C) No.380 of 2009].

4. That it is submitted that findings recorded by the majority judgement is against the settled principle of law and has serious repercussions on medical education and Medical Council and Medical Council has been gravely prejudiced and shall not be in position to ensure admission to medical college on

merit as the majority judgemnt in effect has held that merit can be ignored on human sympathies, aspiration of institutions. This has gravely prejudiced the administration of medical and professional educaiotn in India.

5. That the judgment and order of majority judgment is to be misused by the unscruplous persons who are likely to misuse the said conclusion and may charge capitation fee by deny ing admissin to meritorious candidates and may advance the plea that the candidates who have secured higher marks are not fulfilling the aspirations of isntutions. This would be death knell to admission based on merit.

6. That the judgment and order of majority is completely agaisnt the ratio laid down in T.M.A. Pai, Islamic and. P.A. Inamdar (Supra), Dr. Preeti Srivastava (Supra).

5. That it is submitted that in terms of time schedule provided in Postgraduate Medical Education Regulation whereby amended Regulation has brought on statute book and which has been struck down by majority judgment, the National Eligibility-cum-Entrance Test would have been held in the month of November-December, 2013 and for the same notification/prospectus would be be issued if the majority judgment of this Hon’ble Court is stayed as the majority judgment is based on series of error apparent on the face of record and is in ignorance of staututory provisions and in number of judgements of

Constitution Bench judgment of this Hon'ble Court. Therefore, immediate stay of the majority judgement under review is in the interest of maintenance of standard of medical education and is larger public interest.

P R A Y E R

Therefore in the aforesaid facts and circumstances of the case it is most respectfully prayed that this Hon'ble Court may graciously be pleased to;

(a) Stay the majority judgment and order dated 18.7.2013 passed by this Hon'ble Court in T.C. (C) No. 98 of 2012 and connected matters;

(b) pass any other and further order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the case.

PETITIONER

THROUGH

PLACE:- NEW DELHI [AMIT KUMAR]
DATED: 17.08.2013 ADVOCATE FOR THE PETITITIONER