SACHIDANANDA TRIPATHY
Retired Judge
Senior Legal Consultant

**Without Prejudice**

To,

November 19, 2019

**Dr. R K Vats,**
**Secretary General,**
**BOG – MCI,**
**Pocket- 14 , Sector - 8,**
**Dwarka Phase -1,**
**New Delhi – 110077.**

**Subject: Notice to show cause that why contempt of court and criminal and civil proceedings should not be initiated against you and the others concerned for wilful disobedience of the order of the Hon'ble High Court for acting against law and wilful violation of the Fundamental Right to education guaranteed under Articles 14, 19 & 21 of the Constitution of India.**

**Ref.: Public Notice No.: MCI-34(41)(Gen.)/2019-Med./160279 dated 30.10.2019**

Sir,

Under instructions and on behalf of the students and parents of Singhania University Pacheri Bari ("**University**"), I am constrained to hereby serve upon you and the others concerned, the following notice:

1. At the outset, it is respectfully submitted that you have issued the Public Notice in wilful disobedience and gross defiance of the stay order dated 07.08.2009 passed by the Hon'ble Rajasthan High Court at Jaipur in S.B.C.W.P. No.8102/2009 in which the Hon'ble Court was pleased to direct that the authorities shall restrain from

P-24 Green Park Extension New Delhi - 110016
T - +91-11-47471414, E-Mail - sntripathyj@gmail.com

taking any coercive action against the University. As such the subject matter is *sub-judice* and the competent Court is seized of the matter and your blatant attempt to overreach the Court on this issue tantamount to contempt of Court liable to be punished. It is pertinent to state that despite being issued a notice by the Hon'ble Court in the said writ petition, no reply has been furnished by MCI till date. It is clear that instead of submitting reply in the writ petition pending before the Hon'ble Court, you have published the Public Notice to harm the students and defame the University for oblique and malafide reasons. It is evident that MCI has no submission to make in response to the case of the petitioner and therefore, it is indulging in such tactics to deter the students from peacefully obtaining education from the university of their choice. Though you already have a copy of the writ petition, however, a copy of the writ petition has been enclosed herewith for your reference.

2. It is submitted that MCI being a statutory body, its powers and functions are as provided in the legislation under which it is established i.e. the Indian Medical Council Act, 1956 ("**MCI Act**"), which does not vest in it any authority to issue a Public Notice maligning a University, which is also a statutory body and acting within its statutory powers and functions. It is fundamental principle of law that no one is judge in his own cause and when the subject matter is sub judice and pending before the competent court, it is beyond imagination that MCI has attempted to act without jurisdiction, overreaching the Hon'ble Court and suo moto

passed judgment on a matter on which it had no authority to comment. As such, the Public Notice having been issued without jurisdiction is nullity, non-est and *void ab initio.*

3. It is submitted that it is well settled law that before taking any adverse action, it is the duty of the public authority to issue a show cause notice containing the specific grounds however, no such show cause notice was ever served and the Public Notice has been published in gross violation of the fundamental principles of natural justice. It is submitted that public authorities are bound under law to always act fairly, reasonably, lawfully and not arbitrarily and no public authority is authorised to act in violation of law or against law. It is submitted that the Public Notice is vitiated by the principles of natural justice and is nullity, non-est and void.

4. It is respectfully submitted that it is wholly false and against law to state that a statutory university requires prior permission of the Central Government/ Board of Governors of MCI to take admissions or to impart education. You are put to strict proof to show which provision of law requires a statutory university to take prior permission before taking admissions, imparting education and conferring qualifications in any course of education.

5. Rather it is well settled law that the students have got constitutionally protected fundamental right to receive and universities have got fundamental right to impart education in all courses of education and throughout the country as guaranteed

under Articles 14, 19 & 21 of the Constitution of India, as such, no restrictions can be placed in the exercise of fundamental rights. If any restrictions are placed with respect to imparting of education the same would be ultra vires and unenforceable. Reference in this regard may be made to the judgment of the Hon'ble Apex Court in the case of ***Maharshi Mahesh Yogi Vedic Vishwavidyalaya v. State of M.P. & Ors., (2013) 15 SCC 677*** wherein the Hon'ble Court held as under:

*"80. Having regard to our fundamental approach to the issue raised in this appeal and our conclusion as stated above, we are convinced that the arguments based on the Legislative competence also pales into insignificance. Even without addressing the said question, we have in as much found that by virtue of the amendment introduced to Section 4(1), an embargo has been clearly created in one's right to seek for education, which is a Constitutionally protected Fundamental Right. Therefore, there was a clear violation of Articles 14 and 21 of the Constitution and consequently, such a provision by way of an amendment cannot stand the scrutiny of the Court of Law. To support our conclusion, we wish to refer to the following decisions rendered by this Court, right from Mohini Jain case, viz.,*

*(i) Society for Unaided Private Schools of Rajasthan v. Union of India- (2012) 6 SCC 1*
*(ii) Bhartiya Seva Samaj Trust v. Yogeshbhai Ambalal Patel - (2012) 9 SCC 310*
*(iii) State of T.N. v. K. Shyam Sunder (2011) 8 SCC 737*
*(iv) Satimbla Sharma v. St. Paul's Sr. Sec. School (2011) 13 SCC 760*
*(v) Ashoka Kumar Thakur v. Union of India - (2008) 6 SCC 1;*

*wherein, this Court has consistently held that Right to Education is a Fundamental Right. Thus, our conclusion is fortified by the various judgments of this Court, wherein, it has been held that imparting of education is a Fundamental Right, in as much as, we have held that the establishment of the appellant University was mainly for the purpose of imparting education, while promotion of Vedic learning is one of the primary objectives of the University. Any attempt on the part of the State to interfere with the said main object viz., imparting of education, would amount to an infringement of the Fundamental Right guaranteed under the Constitution. Consequently, the amendment, which was introduced under the 1995 Act to Section 4(1) and also the insertion of the proviso, has to be held ultra-vires.*

6. Further, universities have got statutory right to impart education and award qualifications in all courses of education including medical education and such qualifications being conferred by authority of law are sui-generis, valid and recognised for all intents and purposes. Reference in this regard can be made to the decision of the Hon'ble Supreme Court in the case of ***Maharishi Markandeshwar Medical College and Hospital & Ors. v. State of Himachal Pradesh & Ors.*, *(2017) 6 SCC 675*** wherein the Hon'ble Court held that it is statutory right of university established under a state legislation to start courses, impart education and confer degrees. The relevant extracts of the judgment are reproduced hereinbelow for the convenience of ready reference:

*"23. After considering the rival submissions, we are in agreement with the appellants that the High Court has not touched upon the core issue relating to the autonomy of Appellant 2 University including its authority to start a constituent medical college, as prescribed by the 2010 Act. Admittedly, Appellant 2 University has been established under the 2010 Act. This Act received the assent of the Governor on 15.09.2010 and was brought into force w.e.f. 16.06.2010. The intendment of the 2010 Act is to provide for establishment, incorporation and regulation of the Appellant 2 University for higher education, to regulate its functioning and for matters connected therewith or incidental thereto…*

*…*

*30. From the legislative scheme of 2010 Act, it is axiomatic that an independent, autonomous University has been established under the Act. Appellant 2 University, therefore, has all the trapping of a full-fledged University, to not only start imparting education in prescribed courses but also to set up its constituent colleges to effectuate the purpose for which the University has been established. Indubitably, a constituent college of the University would be an integral part of the University. In one sense, an alter ego of the University. A student pursuing education in such a college will be required to appear in the examination conducted by Appellant 2 University and, at the end of the academic year, it is Appellant 2 University which can confer degrees or diplomas upon such successful students."*

7. It is respectfully submitted that the Public Notice is, on the face of it, false and against law as it is against the specific provisions of the Indian Medical Council Act, 1956 ("**MCI Act**"), the UGC Act, 1956 ("**UGC Act**") and the National Medical Commission Act, 2019 ("**NMC Act**") and does not take into consideration relevant fact and relevant law. The Public Notice is *per incuriam* being contrary to the well settled law regarding university education laid

down in catena of judgments by the Hon'ble Apex Court and the various High Courts from time to time.

8. It is respectfully submitted that the Public Notice suffers from inherent contradictions and grossly misconceived. It is submitted that by your own admission in the Public Notice, under the provisions of the MCI Act, permission of Central Government is required to establish a new medical college which is a distinct and separate entity from a university. A university is a constitutionally recognised body and a class by itself and has faculty of medicine and does not require to establish medical college. As such, it is evident that the entire Public Notice has been issued on the misconceived premise of establishment of medical college which is wholly irrelevant and is not even applicable in the case of the University. It is stated that when the fundamental premise on which the Public Notice is based is false and misconstrued, the entire Public Notice fails being meaningless and *non-est*.

9. It is respectfully submitted that a university established by statute is a self-regulatory autonomous statutory body acting under authority of law as per the provisions of the UGC Act and the degrees / diplomas awarded by the university including MBBS degrees are sui-generis valid and does not require any separate recognition or permission from any other authority or council to impart education in any course in any mode throughout the country.

10. It is wholly false, illegal and defamatory to state that the admissions made by the University in courses of medicine are illegal and void ab initio and the degrees conferred by the University are unrecognised qualifications. It is submitted that the degrees conferred by statutory university are recognised degrees and does not require MCI recognition. Reference can be made to the decision of the Hon'ble Supreme Court in the case of ***Purshotam Kumar Kaundal v. State of Himachal Pradesh & Ors.*** reported in ***(2014) 13 SCC 286*** in which the issue before the Hon'ble Apex Court was that whether a medical degree awarded by a university established by statute will considered as recognised without recognition of MCI. The Hon'ble Court held that a degree conferred by a statutory recognised university is recognised degree notwithstanding that the same is not recognised by MCI, thereby, holding that recognition of MCI is not required for conferring medical degrees by statutory recognised universities. The relevant portions of the judgment are reproduced hereinbelow for ready reference:

> *"7. The High Court was of the view that the eligibility criteria only required a recognised postgraduation degree. It did not require a postgraduation degree recognised by MCI. The degree obtained by Dr Gupta was a recognised postgraduation degree inasmuch as it was conferred by a recognised statutory university. Therefore, Dr. Gupta was eligible for being considered for promotion to the post of Assistant Professor in Pharmacology…*

*8. We are of the opinion that no fault can be found with the view taken by the High Court in the letters patent appeal filed by Dr. Gupta…"*

11. It is submitted that the Division Bench of the Hon'ble Rajasthan High Court in the case of ***Rajasthan Nursing Council v. Singhania University & Ors.***, ***D.B. Spl. Appl. Writ. No.671/2018*** vide final order and judgment dated 25.05.2018, after following the judgments of the Hon'ble Supreme Court, upheld the order of the Ld. Single Judge holding that the qualifications awarded by the University are sui-generis valid and automatically recognised and needs no recognition by any other authority and eligible for registration by councils and for employment in all jobs.

12. From the aforesaid, it is well established that medical degree conferred by a statutory university is a recognised degree and it is wholly preposterous and defaming of you to state that the University is playing fraud by indulging in running of unrecognized courses in modern medicine. It is respectfully submitted that the said statements made by you in the Public Notice are devoid of any substance whatsoever, instilling panic and fear amongst students and you and all concerned shall be held liable for causing injury to the students, the faculty and the University.

13. It is respectfully submitted that it is very unfortunate that this misinformation is being spread and propagated by various councils to the effect that a university established by an Act of State Legislature and recognised under Section 2(f) of the UGC

Act, 1956 requires approval of the councils to run different courses of education whereas the well-established legal position is otherwise.

14. It is submitted that the University is established in accordance with due process of law by the Act of State Legislature of Rajasthan namely, Singhania University Pacheri Bari (Jhunjhunu) Act, 2008 ("**State Act**") which received the assent of the Hon'ble Governor of Rajasthan on March 28, 2008 and is in force with effect from October 21, 2007.

15. It is submitted that the University being established by the State Act is recognised as 'university' under Section 2(f) of the UGC Act and is exclusively governed by the provisions of the UGC Act and the State Act which vests the University with powers to make rules/regulations for its functioning which have got force of law and overriding effect over other inconsistent laws. It is submitted that the provisions of the State Act provide statutory right to the University to take admissions, impart education and confer qualifications in all courses of education. Reference can be made to the powers and functions of the University stipulated in the State Act as under:

> "5. *Powers and Functions of the University: The University shall have the following powers and functions, namely:*
>
> *(b) to grant subject to such conditions as the University may determine, diplomas or certificate, and confer degrees or other academic distinctions on the basis of examinations, evaluation or any other method of testing on persons, and to withdraw any such*

*diplomas, certificates, degrees or other academic distinctions for good and sufficient cause;*

*(e) to provide instruction, including correspondence and such other courses, as it may determine;*

*(i) to cooperate, collaborate or associate with any other university or authority or institution in such manner and for such purpose as the University may determine;*

*(n) to determine standards for admission into the University, which may include examination, evaluation or any other method of testing;*

*(z) to do all such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the University."*

16. It is stated that the 11-judge bench of the Hon'ble Apex Court in the case of ***T.M.A. Pai Foundation & Ors. V. State of Karnataka & Ors., (2002) 8 SCC 481*** has held that a university is a separate and distinct class being a statutory, autonomous and self-regulating body and a university is empowered under law to give admissions, commence new courses and award degrees i.e. the autonomy of a university cannot be questioned. The Hon'ble Court based its conclusion on the report of Dr. Radha Krishnan which is considered to be the genesis behind the enactment of the UGC Act observed as under:

> *"51. A University Education Commission was appointed on 4th November, 1948, having Dr. S. Radhakrishnan as its Chairman and nine other renowned educationists as its members. The terms of reference, inter alia, included matters relating to means and objects of university education and research in India and maintenance of higher standards of teaching and examining in universities and colleges under their control. In the report submitted by this Commission, in paras 29 and 31, it referred to autonomy in education which reads as follows:*

*University Autonomy - Freedom of individual development is the basis of democracy. Exclusive control of education by the State has been an important factor in facilitating the maintenance of totalitarian tyrannies. In such States institutions of higher learning controlled and managed by governmental agencies act like mercenaries, promote the political purposes of the State, make them acceptable to an increasing number of their populations and supply then with the weapons they need. We must resist, in the interests of our own democracy, the trend towards the governmental domination of the educational process.*

*Higher education is, undoubtedly, an obligation of the State but State aid is not to be confused with State control over academic policies and practices. Intellectual progress demands the maintenance of the spirit of free inquiry. The pursuit and practice of truth regardless of consequences has been the ambition of universities. Their prayer is that of the dying Goethe: More light or that Ajax in the mist, Light, though I perish in the light.*
*xxxxx xxx*

*The respect in which the universities of Great Britain are held is due to the freedom from governmental interference which they enjoy constitutionally and actually. Our universities should be released from the control of politics.*

*Liberal Education. -- All education is expected to be liberal. It should free us from the shackles of ignorance, prejudice and unfounded belief. If we are incapable of achieving the good life, it is due to faults in our inward being, to the darkness in us. The process of education is the slow conquering of this darkness. To lead us from darkness to light, to free us from every kind of domination except that of reason, is the aim of education.*

*52. There cannot be a better exposition than what has been observed by these renowned educationists with regard to autonomy in education. The aforesaid passage clearly shows that the governmental domination of the*

*educational process must be resisted. Another pithy observation of the Commission was that state aid was not to be confused with state control over academic policies and practices. The observations referred to hereinabove clearly contemplate educational institutions soaring to great heights in pursuit of intellectual excellence and being free from unnecessary governmental controls."*

17. It is stated that under Entry 66 in List I of Schedule VII, the Parliament has enacted the UGC Act, 1956 for coordination and determination of standards of university education, the universities are exclusively governed by their respective statutes read with the provisions of the UGC Act making them autonomous and self-regulated and being a special Act for universities no other Act can interfere in university education. A bare perusal of the UGC Act ratifies this and makes it clear that UGC Act is the special Act enacted for the promotion and coordination of university education and determination and maintenance of standards of teaching in university is the function of UGC and MCI has no role to play with respect to university education. Reference can be made to the provisions of the UGC Act which provide as under:

***Section 12 of UGC Act***

*"12. Functions of the Commission — It shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of performing its functions under this Act, the Commission may –*

*...*

*(d) recommend to any University the measures necessary for the improvement of University education and advise the*

*University upon the action to be taken for the purpose of implementing such recommendation;*

***Section 14 of UGC Act***

*"14. Consequences of failure of Universities to comply with recommendations of the Commission. - If any University grants affiliation in respect of any course of study to any college referred to in subsection (5) of section 12A in contravention of the provisions of that sub-section or fails within a reasonable time to comply with any recommendation made by the Commission under section 12 or section 13, or contravenes the provision of any rule made under clause (f) or clause (g) of sub-section (2) of section 25, or of any regulation made under clause (e) or clause (f) or clause (g) of section 26, the Commission, after taking into consideration the cause, if any, shown by the University for Such failure or contraventions may withhold from the University the grants proposed to be made out of the Fund of the Commission."*

***Section 22 of UGC Act***

*"22. Right to confer degrees. – (1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees….*

18. Section 12 stipulates that the function of the UGC is to take, in consultation with the universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of university education and for the determination and maintenance of standards of teaching, examination and research in universities, for the purpose of which UGC may recommend and advise universities. Section 14 provides the consequences in case any university fails to comply with the recommendations of the UGC

then the UGC may, after taking into consideration the cause shown by the University for such failure withhold from the university, the grants proposed to be made out of the funds of the Commission. Further, Section 22 of the UGC Act empowers the universities to confer or grant degrees in all courses of education without any restriction or condition as to the mode or place.

19. The aforesaid provisions of the UGC Act makes it clear that the universities are empowered to award degrees in all courses of education by any mode and anywhere in the country and there is no such condition or restriction provided in the UGC Act.

20. It is pertinent to refer to Entry 44 in List I of Seventh Schedule (Union List) to the Constitution of India which provides as under:

> *"44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities;"*

The aforesaid provides that it is beyond the legislative competence of the Parliament to regulate the universities. It is respectfully submitted that when regulation of universities is beyond the legislative competence of the Parliament then it naturally follows that no such regulating powers can be delegated to the MCI and rather, the provisions of the MCI Act makes it clear, have not been delegated to the MCI. This is further consistent with Entry 66 of List I of the Seventh Schedule to the Constitution of

India under which the UGC has been formed which provides as "*Coordinate and determination of standards in institutions of higher education or research and scientific and technical institutions*". It is respectfully submitted that there is no power or provision under the MCI Act which empowers you or gives you the jurisdiction to invalidate any degree awarded by a statutory body under authority of law. It is respectfully submitted that usurpation of such alleged powers is wholly illegal, unconstitutional and misconceived and amounts to a public officer acting against law.

21. It is respectfully submitted that the MCI Act is enacted to reconstitute the Medical Council of India and maintenance of a medical register and has nothing to do with respect to university education. You are put to strict proof to show that which provision of the MCI Act provides the power to regulate university education or gives you the jurisdiction to arbitrarily declare the degrees awarded by University under the authority of law as invalid.

22. It is respectfully submitted that illegally MCI has assumed the authority to regulate medical education in the country and create a system of license/ permit/ quota/ inspector raj infested with huge

corruption as reported in newspaper from time to time. The corruption infested system of MCI has created a huge shortage of doctors in the country and recognising the same, MCI has been dissolved and the NMC Act has been enacted.

23. It is submitted that the NMC Act respects and recognises the autonomy of universities and is consistent with Entry 44 of List I of Schedule VI of the Constitution of India. It is submitted that a bare perusal of the provisions of the NMC Act establish that statutory universities have been excluded from the purview of the NMC and statutory university has been defined as a separate class and not included in the definition of medical institution. Further, Section 10(b) of the NMC Act clearly stipulates that the powers and functions of the NMC Act are restricted to lay down policies for regulating medical institutions and no such powers are provided viz a viz statutory universities. Furthermore, under the NMC Act, only new medical institutions have to take approval of the Medical Assessment and Rating Board and no such approval is required by statutory university.

24. The qualifications granted by statutory university are recognised medical qualification under the NMC Act and the students holding qualifications awarded by universities are stipulated to be entitled to take the National Exit Test for the purpose of obtaining license to practice medicine as medical practitioner and for enrolment in the State Register and the National Register. The relevant provisions of the NMC Act are as under:

> *2(i) "medical institution" shall mean any institution within or outside India which grants degrees, diplomas or licences in medicine and include affiliated colleges and deemed to be Universities;*
>
> *2(x) "University" shall have the same meaning as assigned to it in clause (f) of section 2 of the University Grants Commission Act, 1956 (3 of 1956) and includes a health University.*
>
> *26. Powers and functions of Medical Assessment and Rating Board.—(1) The Medical Assessment and Rating Board shall perform the following functions, namely:—*
>
> *(b) grant permission for establishment of a new medical institution, or to start any postgraduate course or to increase number of seats, in accordance with the provisions of section 28;*
>
> *35. Recognition of medical qualifications granted by Universities or medical institutions in India – (1) The medical qualification granted by any University or medical institution in India shall be listed and maintained by the Under-Graduate Medical Education Board or the Post-Graduate Medical Education Board, as the case may be,*

*in such manner as may be specified by the regulations and such medical qualification shall be a recognised medical qualification for the purposes of this Act.*
*(2) Any University or medical institution in India which grants an undergraduate or postgraduate or super-speciality medical qualification not included in the list maintained by the Under-Graduate Medical Education Board or the Post-Graduate Medical Education Board, as the case may be, may apply to that Board for granting recognition to such qualification.*

37. *Recognition of medical qualifications granted by statutory or other body in India.—(1) The medical qualifications granted by any statutory or other body in India which are covered by the categories listed in the Schedule shall be recognised medical qualifications for the purposes of this Act.*

49. *(1) Notwithstanding anything contained in this Act, any student who was studying for a degree, diploma or certificate in any medical institution immediately before the commencement of this Act shall continue to so study and complete his course for such degree, diploma or certificate, and such institution shall continue to provide instructions and examination for such student in accordance with the syllabus and studies as existed before such commencement, and such student shall be deemed to have completed his course of study under this Act and shall be awarded degree, diploma or certificate under this Act.*

25. From the above, it is well established that qualifications awarded by statutory universities have been *de jure* recognised as recognised medical qualifications and the students shall be *de facto* entitled to take the Exit Test for enrolment in the State Register or the National Register.

26. It is reiterated that universities are empowered to award the degrees notified u/s 22 of the UGC Act unconditionally i.e. there being no requirement to obtain approval from MCI or any other authority i.e. State or Central. As such, it is also empowered to impart education in all the courses of education in any mode for which it can award degrees to its pass out students and the same are sui generis valid. Thus, to state that the degrees awarded by the University to students cannot be termed as valid is grossly illegal and contrary to the provisions of law.

27. It is submitted that it is trite law that a degree, diploma or any qualification awarded by any university, established under the statute, is automatically recognised and needs no recognition by any other authority. There is catena of judgments of the Hon'ble Supreme Court of India which have held that the qualifications awarded by a university established under a statute is automatically recognised and valid for all intents and purposes. As such, it has already been held in the case of the University that the degrees awarded by the University are self-validating and automatically recognised and do not require approval by any other authority. The Hon'ble Rajasthan High Court in the case of ***Shyam***

***Kumar Vyas & Ors. v. State of Rajasthan & Ors.*** reported in ***(2006) 47 AIC 310*** while deciding on the question of law that whether a degree or diploma awarded by a university established by law needs any declaration or recognition or equivalence for considering it to be a valid qualification held as under:

> *"11. Thus, as per the aforesaid decision any degree or diploma or post graduate degree granted by any University set up under a statute in India anywhere has to be accepted as a valid qualification for any purposes where such qualification is required and that cannot be ignored."*

28. The Ministry of Education, Government of India has vide Circular No.F.18-27/70-T.2 dated 20.11.1970 has categorically stated that the degrees/ diplomas awarded by universities in India incorporated by an act of the central or state legislature in India stand automatically recognised by the Government of India for purposes of employment under the Central Government. No formal order recognising such degrees/ diplomas are issued by the Central Government. The Higher Education Department, Government of Rajasthan vide Circular dated 03.11.1999 has also expressly clarified that the qualifications awarded by the universities established under the Central or the State Act shall automatically stand recognised for the purposes of State

Government jobs and there is no requirement for issuing any separate orders in respect of the same.

29. It is respectfully submitted that the wide spread misinformation being spread by MCI-BOG in the Public Notice stating that seeking recognition from MCI is mandatory for imparting education in medical courses is malafide and in gross defiance of the settled law and does not take into consideration relevant laws and facts and is causing injury to the country.

30. It is respectfully submitted that degrees awarded by foreign universities and medical colleges which are running with their own standards and not as per MCI regulations, such degrees are being recognised with exit test and a grossly biased discretionary treatment is being adopted towards Indian statutory universities for reasons best known to MCI.

31. It is submitted that your action of getting published the Public Notice is on the face of it grossly malafide because you have never given reply to legal notice served upon you, neither replying

to RTI queries nor filing reply in the writ petition pending before the Hon'ble High Court. Your conduct is grossly unfit and unlawful.

32. It is submitted that the said spreading of such misinformation by MCI-BOG is in violation of the constitutionally protected fundamental rights of the students and the education institutions under Articles 14, 19 and 21 of the Constitution of India. As held by the Hon'ble Apex Court in the Maharishi Mahesh Yogi case (Supra), the students have got the Fundamental Right to get education in the course of their choice and from which it follows that the students have also got the Fundamental Right to get education at the place of their choice and also from the educational institution/university of their choice.

33. It is stated that the Public Notice suffer from lack of jurisdiction and are therefore, nullity and non-est. As held by the Hon'ble Apex Court in a number of cases that any action taken by an authority without jurisdiction is nullity and void ab initio. Reference in this regard can be made to the judgment of the Hon'ble Apex Court in the case of ***Dr. Jagmittar Sain Bhagat v. Dir. Health Services, Haryana and Ors.*** reported in ***AIR 2013 SC 3060*** *wherein the Hon'ble Court held as under:*

"7. *Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the roots of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a Court or Tribunal becomes irrelevant and unenforceable/in executable once the forum is found to have no jurisdiction. Similarly, if a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetuate and perpetrate, defeating the legislative animation. The Court cannot derive jurisdiction apart from the Statute. In such eventuality the doctrine of waiver also does not apply. (Vide: United Commercial Bank Ltd. v. Their Workmen MANU/SC/0067/1951 : AIR 1951 SC 230; Smt. Nai Bahu v. Lal Ramnarayan and Ors. MANU/SC/0367/1977 : AIR 1978 SC 22; Natraj Studios (P) Ltd. v. Navrang Studios and Anr. MANU/SC/0477/1981 : AIR 1981 SC 537; and Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and Ors. MANU/SC/0278/1999 : AIR 1999 SC 2213).*

8. *In Sushil Kumar Mehta v. Gobind Ram Bohra (Dead) thr. L.Rs. MANU/SC/0593/1989 : (1990) 1 SCC 193, this Court, after placing reliance on large number of its earlier judgments particularly in Premier Automobiles Ltd. v. K.S. Wadke and Ors. MANU/SC/0369/1975 : (1976) 1 SCC 496; Kiran Singh v. Chaman Paswan MANU/SC/0116/1954 : AIR 1954 SC 340; and Chandrika Misir and Anr. v. Bhaiyalal MANU/SC/0328/1973 : AIR 1973 SC 2391 held, that a decree without jurisdiction is a nullity. It is a coram non judice; when a special statute gives a right and also provides for a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act and the Common Law Court has no jurisdiction; where an Act creates an obligation and enforces the performance in specified manner, performance cannot be forced in any other manner."*

*9. Law does not permit any court/tribunal/authority/forum to usurp jurisdiction on any ground whatsoever, in case, such a authority does not have jurisdiction on the subject matter. For the reason that it is not an objection as to the place of suing;, "it is an objection going to the nullity of the order on the ground of want of jurisdiction". Thus, for assumption of jurisdiction by a court or a tribunal, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the court or tribunal has power to decide on the adjudicatory facts or facts in issue. (Vide: Setrucharlu Ramabhadra Raju Bahadur v. Maharaja of Jeypore MANU/PR/0093/1919 : AIR 1919 PC 150; State of Gujarat v. Rajesh Kumar Chimanlal Barot and Anr. MANU/SC/0672/1996 : AIR 1996 SC 2664; Harshad Chiman Lal Modi v. D.L.F. Universal Ltd. and Anr. MANU/SC/0710/2005: AIR 2005 SC 4446; and Carona Ltd. v. Parvathy Swaminathan and Sons MANU/SC/3938/2007 : AIR 2008 SC 187)."*

34. It is respectfully submitted that as per law, all public officers are bound to act fairly, lawfully and justly and by issuing false public notices and spreading misinformation regarding MCI and its jurisdiction, without considering the relevant laws, the action of MCI-BOG tantamounts to various offences including but not limited to offences punishable under Sections 166, 167, 323, 409, 425, 463, 499 IPC amongst other provisions which provide as under:-

***Section 166 - Public servant disobeying law, with intent to cause injury to any person :-***

*Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine,or with both.* ***(Non- Cognizable)***

***Section 167 - Public servant framing an incorrect document with intent to cause injury:-***

*Whoever, being a public servant, and being, as [such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.* ***(Cognizable)***

***219. Public servant in judicial proceeding corruptly making report, etc., contrary to law.—***

*Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.*

**Section 323 – Voluntarily Causing hurt :-**

*Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.* ***(Non-Cognizable)***

**Section 409 - Criminal breach of trust by public servant, or by banker, merchant or agent:-**

*Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.* ***(Cognizable)***

**Section 425 – Mischief :-**

*Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".*

***Explanation 1.-*** *It is not essential to the offence of mischief that the offender should intend to cause loss or damage to*

*the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.*

***Explanation 2** - Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.*

***Section 463 – Forgery :-***

*Whoever makes any false documents or false electronic record or part of a document or electronic record with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.*

***Section 465 – Punishment for forgery :-***

*Whoever commits forgery shall be punished with imprisonment of either description for a term which may extent to two years, or fine or with both.* ***(Non-Cognizable)***

***468. Forgery for purpose of cheating :-***

*Whoever commits forgery, intending that the 3[document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either*

*description for a term which may extend to seven years, and shall also be liable to fine.*

***Section 499 – Defamation :-***

*Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.*

*Explanation 1 - It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living and is intended to be hurtful to the feelings of his family or other near relatives.*

*Explanation 2 - It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.*

*Explanation 3 - An imputation in the form of an alternative or expressed ironically, may amount to defamation.*

*Explanation 4 - No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.*

35. In the premise, you are hereby called to cancel and withdraw the Public Notice, which is grossly against law and not based on true factual basis and also in gross violation of principles of natural justice i.e. violation of Article 14 of the Constitution of India. In case, no written reply is received within 7 days of receipt of this notice, it will be considered that the Public Notice has been cancelled and withdrawn.

36. Further, in the interest of justice and fairness and in order to follow principles of Natural Justice, this notice is served upon you to show cause that why criminal and civil proceedings should not be initiated against you for acting against law, spreading false information in public, usurping jurisdiction and causing harm to various students and their families across the country and in case no response is received from you within next 7 days of receipt of this notice, criminal and civil action shall be initiated against you personally and others as may be advised.

This is without prejudice to other rights under law and also without prejudice to the matter being sub- judice in Hon'ble High Court of Rajasthan.

Copy Kept.

Kindly acknowledge receipt.

Thanking you.

**Shri Sachidananda Tripathy**
**Retired Judge,**
**Senior Legal Consultant & Advocate**

Copy to:

1. Chairperson, MCI-BOG.
2. Shri Ravi Shankar Prasad, Hon'ble Minister, Ministry of Law & Justice.
3. Shri. Anoop Kumar Mendiratta, Secretary, Department of Legal Affairs.
4. Shri Dr. G. Narayana Raju, Secretary, Legislative Department.
5. Shri Dr. Alok Srivastava, Secretary, Department of Justice.
6. Collector, Distt. Jhunjhunu Rajasthan.
7. Additional Director (Adm.), Directorate of Medical Education, Jaipur.
8. Under Secretary to GoI, Ministry of Health & Family Welfare.

(1) Nitesh K. Mahawar — Nitesh
(2) Uzma Rashid — Uzma
Hitesh Saini — Hitesh
Simran Dhingra — Simran
Aayaz Alam — Aayaz Alam
Shwetha Ashoka Kumar — Shwetha
Charman Kumar — Charman Tomer.
Samriddhi Rajaratnam — Samriddhi
Pankaj Mishra — Chighna P. Chauhan
Priyanshu Chauhan — Priyanshu
Nabam Tarang — Nabam
Sharif Mustak Khan — Sharif
Page 30 of 30 — Abhijeet Dey
Gurjasdeep Singh — Gurjasdeep
Alsaba Fatima — Alsaba
Neetha Vaidya — Neetha

Reena Chaudhary

Himanshu Pandey.

Simranjeet Kaur

Deepshikha Patidar

Kinnari Pippania

Abhishek K. Jha

Vedanti Arya

Anuraksha Chaturvedi

Srabani Naskar

Abhishek

Md Abuseddik Molla

Mrunali Ganthade

Md. Fahim Alam

Pinki Chakraborthy

Manisha

Tanumoy Patra.

Mahebub Jaheed Sardar

Pradeep Patidar

Kuldeep Kashyap

Priyanshi Jain

Prashant Singh Scinate

Avinash Chauhan

Madhav Dhingra

Manvendra Chaturvedi

Deepak Kumar

Tejus Sharma

Fakhiyat Faiyaz

Siddique — Siddique

shmi Dhar — Rashmi Dhar

Tamanna Parveen Shah — Tamanna Parveen

Manasi Padalkar — Manasi

Shivani Singh —

RUKSANA BANO —

Rabil Shah —

Selima —

Anjali singh —

Insha Reyaz —

Shivangi —

YASH Thakur —

YASH —

HUDA —

NENA —

BHAWNA —

MAHAK

AFRIDI

RITESH

AMARJIT

AYUSH

ARVIND

DEEPAK →

PRASANT →

TEJVIR →

MADHAV DHINGRA →

MANVENDRA →

DANISH —

ABUL KALAM — Abul

ASHIF — Ashif

STUDENTS

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Vrutika Ramesh Dhage

Laeeq Zehra

Rakshita Singh

Noorein shah

Vineet Bhardwaj

Khaid Hasan Mondal

Kriti Vashishtha

Saurabh Singh

Dnyaneshwar dhanasure

Parag Bhore

Nikita Kamble

Prachi Roy

Pappiya

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Sahib

Pandita

Krishnaveni

Afrin

Dhage

Laeeq Zehra

Rakshita

Noorein

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Saurabh

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