

IN THE SUPREME COURT OF INDIA  
(ORDER XXI RULE 3(1) (a))  
CIVIL APPELLATE JURISDICTION  
SPECIAL LEAVE PETITION  
(Under Article 136 of the Constitution of India)

**SPECIAL LEAVE PETITION (CIVIL) NO. 28529 OF 2016**

**AMENDED MEMO OF PARTIES**

**IN THE MATTER OF:**

**POSITION OF PARTIES**

In the High Court      In this Hon'ble Court

North Gujarat Unit of Association of Self Employed Owners (Paramedical) of Private Pathology Laboratories of Gujarat  
Trust Registration No. F/459/Junagadh  
Through its Secretary  
Shri Satish C. Bhavsar  
Office at 4, Om Complex,  
Opp. Ratilal Patel Hall,  
Bhairavnath Road,  
Ahmedabad 380 028,  
Gujarat

Respondent  
No. 21

Petitioner

**VERSUS**

- |  |                     |                                |
|--|---------------------|--------------------------------|
| 1. North Gujarat Pathologists Association<br>Registration No. F/1501/28.04.2000<br>Through its President<br>Dr. Mahendra Patel<br>Sarvodaya Pathology Lab<br>Vijapur, District Mehsana (Gujarat) | Petitioner          | Contesting Respondent<br>No.1  |
| 2. State of Gujarat<br>Through Secretary, Health Department, Sachivalya<br>Gandhinagar (Gujarat)   | Respondent<br>No. 1 | Contesting Respondent<br>No. 2 |
| 3. State of Gujarat<br>Through Secretary,<br>Home Department,  | Respondent<br>No. 2 | Contesting Respondent<br>No. 3 |

	Sachivalaya, Gandhinagar (Gujarat)		
4.	Director, Health Service Government of Gujarat Sachivalaya Gandhinagar (Gujarat)	Respondent No. 3	Contesting Respondent No. 4
5.	Registrar, Gujarat Medical Council New Mental Hospital Compound Meghaninagar Ahmedabad (Gujarat)	Respondent No. 4	Contesting Respondent No. 5
6.	District Collector Office of the District Collector Palanpur District Banaskantha Gujarat	Respondent No. 5	Contesting Respondent No. 6
7.	District Superintendent of Police Office of DSP, Palanpur District Banaskantha Gujarat	Respondent No. 6	Contesting Respondent No. 7
8.	District Health Officer District Health Office, Palanpur District Banaskantha, Gujarat	Respondent No. 7	Contesting Respondent No. 8
9.	District chief Medical Officer Civil Hospital Campus, Palanpur District Banaskantha, Gujarat	Respondent No. 8	Contesting Respondent No. 9
10.	District Collector Office of the District Collector Himmatnagar District Sabarkantha Gujarat	Respondent No. 9	Contesting Respondent No. 10
11.	District Superintendent of Police Office of DSP, Himmatnagar District Sabarkantha(Gujarat)	Respondent No. 10	Contesting Respondent No. 11
12.	District Health Officer District Health Office, Himmatnagar, District Sabarkantha Gujarat	Respondent No. 11	Contesting Respondent No. 12
13.	District Chief Medical Officer Sir Pratap General Hospital Campus, Himmatnagar	Respondent No. 12	Contesting Respondent No. 13

District Sabarkantha  
Gujarat

- |     |   |                      |   |
|-----|---|----------------------|---|
| 14. | District Collector<br>Office of the District Collector<br>Patan, District Patan, Gujarat                                | Respondent<br>No. 13 | Contesting<br>Respondent<br>No. 14                        |
| 15. | District Superintendent of Police<br>Office of DSP, Patan<br>District Patan, Gujarat                                    | Respondent<br>No. 14 | Contesting<br>Respondent<br>No. 15                        |
| 16. | District Health Officer<br>District Health Office, Patan<br>District Patan, Gujarat                                     | Respondent<br>No. 15 | Contesting<br>Respondent<br>No. 16                        |
| 17. | District Chief Medical Officer<br>General Hospital Campus, Patan,<br>District Patan, Gujarat                            | Respondent<br>No. 16 | Contesting<br>Respondent<br>No. 17                        |
| 18. | District Collector<br>Office of the District Collector<br>Mehsana<br>District Mehiana, Gujarat                          | Respondent<br>No. 17 | Contesting<br>Respondent<br>No. 18                        |
| 19. | District Superintendent of Police<br>Office of DSP Mehiana<br>District Sabarkantha (Gujarat)                            | Respondent<br>No. 18 | Contesting<br>Respondent<br>No. 19                        |
| 20. | District Health Officer<br>District Health Office, Mehiana<br>District Mehiana, (Gujarat)                               | Respondent<br>No. 19 | Contesting<br>Respondent<br>No. 20                        |
| 21. | District Chief Medical Officer<br>Civil Hospital Campus<br>Mehiana<br>District Mehiana (Gujarat)                        | Respondent<br>No. 20 | Contesting<br>Respondent<br>No. 21                        |
| 22. | Ministry Of Health And Family<br>Welfare, Through Joint Secretary,<br>Nirman Bhawan, C-Wing, New<br>Delhi, Delhi-110001 | Not a Party          | Newly added<br>respondent<br>being<br>Respondent<br>No.22 |
| 23. | Medical Council Of India, Pocket -<br>14, Sector-8, Dwarka Phase-1, New<br>Delhi-110077                                 | Not a Party          | Newly added<br>respondent<br>being<br>Respondent<br>No.23 |

Filed By:  
Rahul Gupta

Dated: 17.08.2016

Advocate For the Petitioner



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A

IN THE SUPREME COURT OF INDIA  
(CIVIL APPELLATE JURISDICTION)

I.A. No. \_\_\_\_\_ of 2018

In

REVIEW PETITION (CIVIL) NO. \_\_\_\_\_ OF 2018

IN

SPECIAL LEAVE PETITION (CIVIL) NO. 28529 OF 2010

IN THE MATTER OF

North Gujarat Unit Of Association Of Self Employed Owners  
(Paramedical) Of Private Pathology Laboratories Of Gujarat

...Petitioner

Versus

North Gujarat Pathologists Association And Ors. ..Respondents

OFFICE REPORT ON LIMITATION

1. The Petition is within Limitation
2. The Petition is barred by time and there is delay of 149 days in filing the same against order dated **12.12.2017** and the petition for Condonation of 149 delay has been filed.
3. There is delay of N/A days in Re-filing the petition and petition for Condonation of N/A days in Re-filing has been filed.

Date: 10.05.2018

BRANCH OFFICER

SYNOPSIS

1. The present Review Petition is filed under Article 137 of the Constitution of India read with Order XLVII Rule 1 and 2 of the Supreme Court Rules, 2013 for review of Order dated 12.12.2017 passed by this Hon'ble Court in SLP(C) No. 28529/2010 whereby this Hon'ble Court was pleased to disposed off the Special Leave Petition filed by the Petitioner by holding that Laboratory Report can be counter signed only by a Registered Medical Practitioner with a post graduate qualification in Pathology.
2. The Petitioner most respectfully submits that the present matter raises questions of great importance relating to larger public interest, ameliorate the hardships and inconvenience faced by thousands of patients on daily basis and prevent untold hardships and misery to thousands of persons employed in Private Pathology Laboratories across Gujarat who have been discharging their duties diligently for several decades.
3. That the Petitioner is the North Gujarat Unit of Association of Self Employed Owners (Paramedical) of Private Pathology Laboratories of Gujarat. The Association is registered under the Bombay Public Trust Act 1950 having registration number F/459/Junagadh.

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4. That Petition being Special Civil Application No. 17485 of 2006 was filed before the Hon'ble High Court of Gujarat by North Gujarat Pathologists Association seeking a declaration to the effect that no laboratory technician is allowed to run the laboratory and the laboratory technician can only work in a laboratory which is actually run by qualified pathologists.
5. That vide judgment and order dated 17.09.2010, the Hon'ble High Court of Gujarat was pleased to hold that though it is open to any person to run a pathology laboratory no report can be issued without the signature of a practicing Pathologist. It was further held that individual laboratory technicians cannot be allowed to run pathological laboratory independently without engaging a pathologist registered with the Medical Council.
6. That the judgment dated 17.09.2010 was challenged by Applicant Association before this Hon'ble Court by filing Special Leave Petition (Civil) No. 28529 of 2010. The contents of the same are not repeated herein for the sake of brevity and the Petitioner craves leave of this Hon'ble Court to refer and rely on the same as and when necessary.
7. That on 12.12.2017 this Hon'ble Court was pleased to dispose off the Special Leave Petition (Civil) No. 28529 of 2010 by holding that Laboratory Report can be counter



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signed only by a Registered Medical Practitioner with a post graduate qualification in Pathology.

8. That the said order has created a situation in as much as the work of the sample and recording of data which is presently being done by the members of the Applicant Association would continue to be done by them but mechanical reproduction of the said data on a piece of paper for being given to a physician or patient can only be done by a Pathologist. Therefore, a Pathologist who has virtually never examined a specimen under the microscope would be authenticating the data or result recorded by a Laboratory Technician but such Technician who has personally or through an automated machine examined or analyzed the specimen cannot record the result of his examination individually.

9. That it is imperative to note that the Members of the Applicant Association possess requisite clinical/paramedical qualification in the form of B.Sc., CMLT, DMLT, M.Sc. (Microbiology), B.Sc. (Microbiology), M.Sc. (Medical Biology), PhD (Microbiology) and PhD (Medical Microbiology), and are competent and qualified to conduct almost all of the tests being routinely carried out in the Laboratories manually.

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10. A bare perusal of the curriculum of Diploma in Medical Laboratory Technology would reveal that the subjects undertaken by the students of said diploma include an extensive study of all branches of clinical pathology and medical microbiology. The study includes in its ambit both theoretical as well as practical aspects of this branch of science. Thus the Diploma Graduates are well versed in performing the tests and reporting the technical analysis of the tests conducted by them.

11. That the Members of the Applicant Association are not engaged in medical practice per se. At the most it can be construed that the Members of the Applicant Association are working as a support staff to the regular medical profession. The Members of the Applicant Association are only required to report the results of the test performed by them as it is without submitting any medical or diagnostic opinion thereupon. Patients are referred to the Laboratory by medical practitioners and it is the medical practitioners who diagnose the disease after studying the report and prescribe appropriate remedy. The report prepared by Members of the Applicant Association are merely an indication of the clinical result of the test conducted on the patients and does not in any manner convey any opinion/analysis of the tests.

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12. That even as per the Minutes of the Meeting of the Ethics Committee of the Medical Council of India (hereinafter referred to as the MCI) dated 26.08.2004, Pathology Laboratories do not come under the purview of Medical Council of India and anybody can own a pathology laboratory whether he is a doctor or not. As recent as on 15.05.2017, the MCI in reply to an RTI query had categorically stated that the Pathology Laboratories do not come under the purview of the MCI.

13. It is also trite to bring into the notice of this Hon'ble Court the practice which is being followed internationally in the other countries of the world. In the provinces of Ontario and Alberta of Canada under the Medical Laboratory Technology Act, 1991 and the Health Professions Act, 2000 the staff of the laboratory having qualifications equivalent to the present Applicants are authorized to report the results of the tests performed directly to the person who requested it. Similarly, in the United Kingdom the Medical Laboratory Technicians are allowed to carry out a range of laboratory tests to assist the doctors in diagnosis. Further in New Zealand and Australia a Medical Laboratory Technician (having equivalent/similar qualifications as the Applicants herein) may practice independently as a medical laboratory

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scientist. In Singapore under the Private Hospitals and Medical Clinics Act, persons qualified in the field of 'medical microbiology' may be issued a license for running clinical laboratories. Section 54 of the said Act states that the report shall be signed by the Licensee of the Clinical Laboratory. In Sri Lanka as per the 'Specific Criteria for Medical/Clinical Testing Laboratories', special and routine tests may be reviewed and the results of the same may be signed by a person possessing B.Sc., M.Sc. Degree in Clinical Laboratory Sciences. Thus, the general approach worldwide is to enable Laboratory Technicians to issue the test reports especially with respect to special/ routine tests. The petitioner craves leave of this Hon'ble Court to refer to the same at the time of hearing if so required.

14. This Hon'ble Court was pleased to dispose off the Special Leave Petition filed by the Petitioner challenging the Impugned Order passed by the Hon'ble High Court, by its Order dated 12.12.2017. The Petitioner was not successful in impressing upon the Hon'ble Court the gravity of the matter during the course of oral arguments on 12.12.2017 and hence the present Review Petition, beseeching this Hon'ble Court to Review its said Order dated 12.12.2017 and issue notice in the underlying Special Leave Petition.

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Hence, the present review petition.

**LIST OF EVENTS**

3.05.2006 Pathologist Association of North Gujarat filed a petition in the nature of a public interest litigation contending inter alia that

- (i) members of the Association are practicing pathologists,, possessing degree of M.D. Pathology or equivalent degree recognized by the Indian Medical Council Act, 1956, and their names are entered in the Medical Register as medical practitioners;
- (ii) pathology is a branch of medicine and work of a qualified pathologist is part of medical practice. Therefore no person other than a registered medical practitioner can practice as pathologist;
- (iii) laboratory technicians are not medical practitioners, they do not have license to practice medicine and, therefore, are not entitled to practice under the Gujarat Medical Practitioners Act;

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(iv) pathology laboratory can only be run by a pathologist and not by any technician.

so contesting, it was prayed that a direction be issued to ensure that no laboratory technician is allowed to run the laboratory and the laboratory technician can only work in laboratory which is actually run by qualified pathologist.

March-June  
2007

In response to the notice issued to the State Government, the Commissioner of Health, Medical Services and Medical Education, State of Gujarat constituted a Committee under the Chairmanship of Dr. R.N. Gosai, Professor and Head of Pathology Department, B.J. Medical College to look into these issues. The Committee, after calling for details from the Chief District Health Officers of all districts of the State, and considering the rules framed on the subject by other States and details of litigation concerning the subject, concluded that:

(i) As per the rules of the Medical Council of India, only the registered medical practitioner can practice in modern medicine and allopathy medicine;

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- (ii) Pathology laboratory is part of modern medical practice and therefore only registered medical practitioner can practice the same.

The Committee, however, recorded that in public sector institutions like Primary Health Centers, Community Health Centers and the General Hospitals where such qualified pathologist is not available, other registered medical practitioner can be made competent for preliminary laboratory test by giving them adequate training so that the public health sector may not be deprived of the services of pathology laboratory.

12.07.2007 Laboratory Technicians and Technologists being directly and vitally affected by the prayer sought in the petition moved an application, being Civil Application No. 9167 of 2007, for being joined in the petition and by order of Court were arrayed as respondent no. 21 in the petition.

The Association of Laboratory Technicians filed an affidavit-in-reply to the petition. It was primarily stated on behalf of Association that:

- (i) the members possess recognized educational qualification which entitles them to do clinical examination of samples in laboratories and record the result of such examination. The members do not practice any system of medicine and have never claimed to be medical practitioners; therefore, they do not fall within the purview of the Indian Medical Council Act, the Gujarat Medical Council Act or the Gujarat Medical Practitioners Act;
- (ii) Their work does not partake the nature of work being performed by medical practitioners, namely diagnosis of any ailment or disease and treatment thereof. The work performed by the Medical Laboratory Technicians is restricted to examining the specimen sample and reporting the data observed on analyzing the said sample. The said report is then carried to a physician who would read the report, interpret the analytical values mentioned therein and then prescribe medicine or



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advise therapy/treatment. Thus, the work being done by members of the Association is essentially a pre-diagnosis work and the report prepared by the technicians work as an aid in diagnosis and treatment of the patient.

- (iii) That carrying out tests on samples of blood, urine, etc. though normally done in connection with or is concerned with ailment or illness or diseases, does not amount to diagnosis or treatment of any ailment, disease, injury, etc. It is in fact a step anterior to the diagnosis and treatment of ailment. The work is more related to detection of abnormality and not diagnosis of the said abnormality or treatment thereof.

For example, a patient suffering from malaria or jaundice may be referred to a laboratory by doctor to get his blood examined for presence of billirubin, or his urine sample tested to ascertain presence of any fungus or bacteria. Or a person may simply want to get the sugar count in blood

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or level of hemoglobin assessed for his personal record. The laboratory test done by technician would mention whether the blood sample of patient has presence of malarial parasite or bilirubin level. Or the test report would reveal the blood sugar count. The report does not confirm as to whether presence or absence of a particular bacteria in blood sample of patient means that the patient is in fact suffering or not suffering from malaria or jaundice or any other disease. Similarly, the blood sugar count would not necessarily mean that the person is suffering from diabetes. Such interpretation of the laboratory test reports is done by the physicians and specialty doctors, who would opine whether the excess blood sugar count is because the patient is suffering from diabetes or not, or whether the presence of a particular bacteria in the blood sample establishes that the patient is suffering from malaria or jaundice or some other such disease,

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(iv) a laboratory can be set up by any person.

There is no law which restricts setting up of a medical or clinical laboratory to a medical practitioner whose name has been entered in the Register maintained under the Indian Medical Council Act or the Gujarat Medical Council Act.

(v) Though the petition is styled as a public interest litigation, it is actually a petition preferred for serving limited interest of the members of the petitioner's association. By way of petition, the pathologists want a declaration from the Court that it is only they who can run laboratories and that each and every patient across the country should be referred for any test to the laboratories run by members of the petitioner's association;

(vi) reliance placed by the pathologists on the decision of the Madhya Pradesh High Court rendered in the case of Smt. Kamla Patel vs. State of Madhya Pradesh is misplaced. The said decision was in the context of the Madhya Pradesh Ayurvedigyan Parishad

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Adhiniyam and the Madhya Pradesh Sahachikitsiy Parishad Adhiniyam, 2000, which prescribe and regulate the qualification as well as practice by para-medical practitioners. Similar Acts do not exist in the State of Gujarat and presently there is no statute or regulations prevailing in Gujarat governing the para-medics,

The Indian Medical Council Act, 1956 does not make any provision for establishment of a medical laboratory or educational qualification necessary for that purpose. In fact, in response to a specific query as to whether the Council considers collecting blood by vein puncture, analyzing blood for various tests and signing report indicating analytical values of various blood tests as 'medical practice' and further as to whether there is any law of the Council preventing a laboratory technologist from running a laboratory where blood and urine tests are carried out and reports submitted under the signature of the laboratory technologist, the Medical Council stated thus:

"The Ethics Committee after due

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deliberations noted that the existing MCI's Act and Regulations there under are silent with respect to queries raised and as such there is no information available in this regard and in addition, many of the queries seem beyond the purview of the Medical Council of India".

Even in the minutes of the meeting of the Ethics Committee held on 26<sup>th</sup>, 27<sup>th</sup> and 28<sup>th</sup> August, 2004, it has been noted thus:-

"46. Clarification of rules of Medical Council of India regarding practice of Pathology (F.No.177/02)

Read: the matter with regard to clarification of rules of Medical Council of India regarding practice of Pathology.

The Ethics Committee considered the matter with regard to clarification of rules of Medical Council of India regarding practice of Pathology and decided that the Pathology Lab. do not come under the purview of the Medical Council of India."

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Even the Gujarat Medical Council, in response to a query made as to whether the activity of analytical testing being done in a laboratory wherein only the numerical values are indicated in the report and no diagnosis or opinion is given would come within the purview of the Gujarat Medical Council Act, 1967, stated that there is no mention in the Act or the Rules regarding pathological laboratory and therefore they are unable to conclusively state as to which acts would be considered as medical practice.

The Parliament being conscious and aware of the fact that the Medical Laboratory Technicians presently are not covered under the provisions of the Indian Medical Council Act has prepared a separate bill titled "The Paramedical and Physiotherapy Central Council Bill, 2007". The preamble to the said Bill reads as under:

*"to provide for the constitution of Central Councils of the Paramedical (Medical Laboratory Technology), Paramedical (Radiology Technology) and the*

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*Physiotherapy, the coordinated development in the education of paramedical and physiotherapy with a view of regulating and maintaining standards of such education, maintenance of Register of Paramedics and Physiotherapists and for matters connected therewith or incidental thereto."*

The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Rules, 2003 provide that any person having adequate space and being or employing "a laboratory technician, having a B.Sc. degree in Biological Sciences or a degree or diploma in medical laboratory course with at least one year experience in conducting appropriate parental diagnostic techniques, tests or procedures" may set up a genetic laboratory.

National Accreditation Board for Testing and Calibration Laboratories, an autonomous body set up under the aegis of the Department of Science and Technology, Government of India, recognizes persons who are not pathologists as persons having knowledge and competent to sign report of

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tests done in laboratory. For instance, the qualification norms for authorized signatories provides that a person, with qualification M.Sc. in MICROBIOLOGY OR Medical Biochemistry with 5 years experience or M.Sc. in Biochemistry with 7 years experience in medical laboratory shall be authorized signatory for following disciplines - Clinical Biochemistry, Clinical Pathology, Routine Hematology, Routine Microbiology and Serology. Similarly, persons with M.SC./Ph.D. (Microbiology) with M.Sc. (Medical Microbiology) and Ph.D.(Biochemistry) with M.Sc. (Biochemistry) have been recognized as authorized signatory for microbiology and serology, clinical pathology, flow cytometry, molecular biology & nuclear medicine test.

The Drugs Controller of India who issues license to blood banks for collection and supply of blood requires only a person having MBBS qualification for tapping and a Laboratory Technician for testing the blood samples. The Blood Bank License does not mention about requirement of a pathologist. Instead it recognizes and permits a laboratory



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technician to perform various blood tests like HIV, hemoglobin, SGPT, malarial parasite, VDRL, HbsAg, etc.

As the High Court directed the parties to file their written submissions instead of advancing arguments, the technicians filed exhaustive written submissions in lieu of their oral arguments. Gujarat Medical Council also filed its written submissions.

17.09.2010 High Court, relying heavily upon the written submissions of the Gujarat Medical Council and the decision of the Madhya Pradesh High Court rendered in the case of Smt. Kamla Patel vs. State of Madhya Pradesh reported in AIR 2007 MP 192, held that:

- (i) Laboratory Technicians have obtained educational qualification with subjects like pathology, but such qualification cannot be termed as a course in medical subject as recognized by the Medical Council of India, and therefore they cannot be termed as Pathologists;
- (ii) Laboratory Technician has the knowledge to

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analyze human fluid samples and may perform a full range of laboratory tests, but he has to report laboratory finding to pathologists and other physicians;

- (iii) Laboratory Technician cannot supply report to any patient for his utility. Such report may be submitted before a Pathologist who being registered to competent to medical practice under the Act, and on being satisfied the Pathologist may sign the same for utility of the patient or to diagnose, treat, operate or prescribe medicine or any other remedy.

4.10.2010 Special Leave Petition being S.L.P. © no. 28529 of 2010 was filed by the petitioner association assailing the order dated 17.09.2010 passed by the Hon'ble High Court Of Gujarat in Special Civil Application No. 17485 of 2006.

09.08.2016 This Hon'ble Court was pleased to implead Ministry of Health and family welfare, Government Of India and Medical Council Of India as necessary parties

24.08.2017 The newly impleaded respondent Medical Council Of India filed their reply affidavit to the special

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leave petition.

12.12.2017 This Hon'ble Court was pleased to disposed off the Special Leave Petition preferred by the petitioner by holding that the Laboratory report can be counter signed only by a registered medical practitioner with a post graduate qualification in pathology.

09.03.2018 The petitioner association filed an application for modification/ clarification of order dated 12.12.2017. The same was lodged by the Learned Registrar vide order dated 19.04.2018 being not maintainable.

10.05.2018 Hence, the present Review Petition

ITEM NO.1

COURT NO.3

SECTION III, IVA

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 28529/2010

(Arising out of impugned final judgment and order dated 17-09-2010  
in SCA No. 17485/2006 passed by the High Court Of Gujarat At  
Ahmedabad)

NORTH GUJARAT UNIT OF ASSOCIATION OF  
SELF EMPLOYED OWNERS (PARAMEDICAL) OF  
PRIVATE PATHOLOGY LABORATORIES OF GUJARAT Petitioner(s)

VERSUS

NORTH GUJARAT PATHOLOGISTS ASSOCIATION & ORS. Respondent(s)

WITH

SLP(C) No. 8147/2009 (IV-A)

SLP(C) No. 6325/2009 (IV-A)  
(IA 1/2008 FOR CONDONATION OF DELAY IN FILING)

SLP(C) No. 6323/2009 (IV-A)  
(IA 1/2008 FOR CONDONATION OF DELAY IN FILING)

SLP(C) No. 6322/2009 (IV-A)  
(IA 1/2008 FOR CONDONATION OF DELAY IN FILING  
IA 2/2009 FOR PERMISSION TO FILE ANNEXURES)

SLP(C) No. 6324/2009 (IV-A)  
(IA 1/2008 FOR CONDONATION OF DELAY IN FILING)

SLP(C) No. 32596/2010 (III)

Date : 12-12-2017 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI  
HON'BLE MRS. JUSTICE R. BANUMATHI

For Parties

Mr. Pallav Shishodia, Sr. Adv.  
Mr. Rahul Gupta, AOR  
Mr. Mayank Goel, Adv.

Signature invalid

Digitally signed by  
HEETU KUMAR  
Date: 2017.12.12  
Reason:

Mr. B. S. Banthia, AOR

Ms. Astha Deep, Adv.  
Mr. Shivaji M. Jadhav, AOR

Mr. Mishra Saurabh, AOR  
Mr. Ankit Kr. Lal, Adv.

Mr. Manoj K. Mishra, AOR  
Mr. S.K. Pathak, Adv.  
Mr. Bhim Pratap Singh, Adv.

Ms. Binu Tanta, Adv.  
Mr. Atulesh Kumar, Adv.  
Ms. Snidha Mehra, Adv.  
Mr. Hemant Arya, Adv.  
Mr. G.S. Makker, AOR

Mr. Dhawal Mohan, Adv.  
Mr. Prateek Bhatia, Adv.  
Ms. Amandeep Kaur, Adv.  
Mr. Gaurav Sharma, AOR

Mr. Amit Kumar, AOR

Ms. Minakshi Vij, AOR

Mr. Abhinav Mukerji, AOR  
Ms. Bihu Sharma, Adv.  
Mr. Siddharth Garg, Adv.  
Ms. Purnima Krishna, Adv.

Ms. Hemantika Wahi, AOR  
Ms. Jesal Wahi, Adv.  
Ms. Puja Singh, Adv.  
Ms. Shodhika Sharma, Adv

UPON hearing the counsel the Court made the following

ORDER

Heard learned counsels for the parties.

Delay condoned.

We dispose of all these special leave petitions and other pending applications, if any, by taking a view that the stand of the Medical Council of India that Laboratory Report can be counter signed only by a registered medical

practitioner with a post graduate qualification in  
pathology is correct.

(NEETU KHAJURIA)  
COURT MASTER

(ASHA SONI)  
BRANCH OFFICER

(True Copy)

4

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

REVIEW PETITION (CIVIL) NO. \_\_\_\_\_ OF 2018

IN

SPECIAL LEAVE PETITION (CIVIL) NO. 28529 OF 2010

AMENDED MEMO OF PARTIES

IN THE MATTER OF:

POSITION OF PARTIES

In the High  
Court

In this Hon'ble  
Court

North Gujarat Unit of Association of Self  
Employed Owners (Paramedical) of  
Private Pathology Laboratories of Gujarat  
Trust Registration No. F/459/Junagadh

Respondent  
No. 21

Petitioner

Through its Secretary  
Shri Satish C. Bhavsar  
Office at 4, Om Complex,  
Opp. Ratilal Patel Hall,  
Bhairavnath Road,  
Ahmedabad 380 028,  
Gujarat

VERSUS

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- |    |  |                     |                                   |
|----|--|---------------------|-----------------------------------|
| 1. | North Gujarat Pathologists<br>Association<br>Registration No. F/1501/28.04.2000<br>Through its President<br>Dr. Mahendra Patel<br>Sarvodaya Pathology Lab<br>Vijapur, District Mehsana (Gujarat) | Petitioner          | Contesting<br>Respondent<br>No.1  |
| 2. | State of Gujarat<br>Through Secretary, Health<br>Department, Sachivalya<br>Gandhinagar (Gujarat)   | Respondent<br>No. 1 | Contesting<br>Respondent<br>No. 2 |
| 3. | State of Gujarat<br>Through Secretary,<br>Home Department,<br>Sachivalaya, Gandhinagar<br>(Gujarat)  | Respondent<br>No. 2 | Contesting<br>Respondent<br>No. 3 |
| 4. | Director, Health Service<br>Government of Gujarat<br>Sachivalaya<br>Gandhinagar (Gujarat)  | Respondent<br>No. 3 | Contesting<br>Respondent<br>No. 4 |
| 5. | Registrar, Gujarat Medical Council<br>New Mental Hospital Compound   | Respondent<br>No. 4 | Contesting<br>Respondent          |



6

	Meghaninagar Ahmedabad (Gujarat)		No. 5
6.	District Collector Office of the District Collector Palanpur District Banaskantha Gujarat	Respondent No. 5	Contesting Respondent No. 6
7.	District Superintendent of Police Office of DSP, Palanpur District Banaskantha Gujarat	Respondent, No. 6	Contesting Respondent No. 7
8.	District Health Officer District Health Office, Palanpur District Banaskantha, Gujarat	Respondent No. 7	Contesting Respondent No. 8
9.	District chief Medical Officer Civil Hospital Campus, Palanpur District Banaskantha, Gujarat	Respondent No. 8	Contesting Respondent No. 9
10.	District Collector Office of the District Collector Himmatnagar District Sabarkantha	Respondent No. 9	Contesting Respondent No. 10

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Gujarat

- |   |                      |                                    |
|---|----------------------|------------------------------------|
| 11. District Superintendent of Police<br>Office of DSP, Himmatnagar<br>District Sabarkantha(Gujarat)                        | Respondent<br>No. 10 | Contesting<br>Respondent<br>No. 11 |
| 12. District Health Officer<br>District Health Office,<br>Himmatnagar,<br>District Sabarkantha<br>Gujarat                   | Respondent<br>No. 11 | Contesting<br>Respondent<br>No. 12 |
| 13. District Chief Medical Officer<br>Sir Pratap General Hospital<br>Campus, Himmatnagar<br>District Sabarkantha<br>Gujarat | Respondent<br>No. 12 | Contesting<br>Respondent<br>No. 13 |
| 14. District Collector<br>Office of the District Collector<br>Patan, District Patan, Gujarat                                | Respondent<br>No. 13 | Contesting<br>Respondent<br>No. 14 |
| 15. District Superintendent of Police<br>Office of DSP, Patan<br>District Patan, Gujarat                                    | Respondent<br>No. 14 | Contesting<br>Respondent<br>No. 15 |

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22. Ministry of health and Family Welfare,  
Through Joint Secretary,  
Nirman Bhawan, C-Wing,  
New Delhi-110001

Not a Party

Newly added  
respondent  
being  
Respondent  
No. 22

23. Medical Council of India,

Not a Party

Newly added

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16. District Health Officer  
District Health Office, Patan  
District Patan, Gujarat

Respondent  
No. 15

Contesting  
Respondent  
No. 16

17. District Chief Medical Officer  
General Hospital Campus, Patan,  
District Patan, Gujarat

Respondent  
No. 16

Contesting  
Respondent  
No. 17

18. District Collector  
Office of the District Collector  
Mehsana  
District Mehsana, Gujarat

Respondent  
No. 17

Contesting  
Respondent  
No. 18

19. District Superintendent of Police  
Office of DSP Mehsana  
District Sabarkantha (Gujarat)

Respondent  
No. 18

Contesting  
Respondent  
No. 19

Supreme Court Rules, 2013 is being preferred seeking review of the Order dated 12.12.2017 passed by this Hon'ble Court in SLP(C) No. 28529/2010 whereby this Hon'ble Court was pleased to dismiss the Special Leave Petition filed by the Petitioner.

2. It is humbly submitted that this Hon'ble Court has observed that the stand of the Medical Council Of India that "Laboratory report can be counter signed only by a registered medical practitioner with a post graduate qualification in pathology is correct" is an error apparent on the face of the record. It is respectfully submitted that the stand of the MCI is stated in their counter affidavit before this Hon'ble Court in para -21 which is extracted hereunder for ready reference :

" 21. In view of the above it is most humbly and respectfully submitted that in order for the person to run a pathological laboratory, a person shall have the qualification of MBBS alongwith Postgraduate qualification in Pathology, as provided under the IMC Act, 1956 and regulations made thereunder."

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3. From the above, there are two errors which have inadvertently occurred and which requires the point at issue to be reconsidered as explained herein under:

Firstly, Medical Council Of India has not stated that the report is to be counter signed by Registered Medical Practitioner who has done M.D. in pathology but as per para 21 of the affidavit of MCI as extracted above, it states that in order for a person to run a pathological laboratory , a person shall have the qualification of MBBS alongwith post graduate qualification in pathology, as provided under IMC Act,1956 and regulations made thereunder.

Secondly, It is the stand of the MCI as stated in the reply under R.T.I Application that the pathological laboratories do not come under their jurisdiction.

4. The effect of the above errors on the face of the record on the merits of the case made of the judgment.
- a) When Pathological Laboratories do not come under the regulation of MCI, their stand would not be applicable to the Pathological Laboratories. As far as stand of MCI is concerned, the same can only be applicable to the doctors practicing medicine and registered with MCI. Further

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doctors do not conduct tests or analyze for the scientific report/break up of any pathological products for arriving at a diagnosis of most possible disease for treatments as such medical practitioners registered with MCI who may be known as Registered Medical Practitioners to a layman/patient will not be in a position to affirm/verify and thus countersigned reports of pathological laboratory on their query as to its authenticity or correctness. They only go by the test conducted and the results arrived at by the skilled and qualified Lab assistants/technicians as to the analysis done on known technical and scientific method of analysis.

b) Petitioner is an association of such Lab Assistants/technicians who are the actual persons who have conducted these tests and have arrived at results of their analysis.

In view of the above explanation in fact no registered medical practitioner would be professionally and ethically entitled to countersign the lab reports for its authenticity and correctness and even if someone does it just for commercial benefits, the same would be wrong in the field of medicine.

5. It is submitted that even the "M.D. pathologists" would not be qualified to countersign unless the required samples are collected, analyzed and the tests are conducted and analyzed by him and seen the results on the equipment/machine himself.. Under such circumstances, the reports can best be signed by qualified and skilled lab technicians/assistants. Further the stand of the MCI in para 21 of the counter affidavit in order for a person to run a pathological laboratory , a person shall have the qualification of MBBS along with post graduate qualification in pathology, as provided under IMC Act,1956 and regulations made thereunder is based on the faith of the post graduate pathologists on their Lab assistants and not for their own subjective satisfaction. Therefore, the stand of the MCI is also ill founded. In any view of the matter , as stated above, MCI is otherwise also not competent to lay down any parameters for pathology laboratory and assistant lab technicians as they are not covered within their jurisdiction.
6. It is respectfully submitted that in view of the above, the present Special Leave Petition which has been disposed off on the basis of so stated stand of MCI stated in their affidavit and in any case stand of the MCI is irrelevant as the petitioners and it's members do not come within the jurisdiction of MCI.

7. It is therefore respectfully submitted that the present petition against the impugned judgment would therefore required to be reconsidered in the light of the submissions made herein above and to observe that the members of the petitioner association would be entitled to run, operate and manage pathological laboratories and work as aid and assistance to the field of medicine in diagnostic area so as to be an extended for all the registered medical practitioners as well as clinics/nursing homes and or hospitals.
8. In the interest of brevity, all the Grounds stated in the Special Leave Petition are not being re-iterated again. They may be read as Grounds for the purposes of the present Petition as well.
9. The Petitioner has not filed any other petition before this Hon'ble Court in respect of the order dated 12.12.2017 passed by this Hon'ble Court in SLP (Civil) No. 28529 of 2010.

**PRAYER**

In view of the facts and circumstances mentioned hereinabove, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- (i) Review the order dated 12.12.2017 and recall the disposal of the SLP(C) No. 28529/2010; and



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(ii) Pass any such other or further order as this Hon'ble Court may deem fit and proper in the circumstances of the present case.

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

FILED BY

(RAHUL GUPTA)  
ADVOCATE FOR THE PETITIONER

Drawn on:27.04.2018  
Filed on: 10.05.2018  
New Delhi

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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
REVIEW PETITION (CIVIL) NO. \_\_\_\_\_ OF 2018

IN

SPECIAL LEAVE PETITION (CIVIL) NO. 28529 OF 2010

IN THE MATTER OF

North Gujarat Unit Of Association Of Self Employed  
Owners (Paramedical) Of Private Pathology Laboratories  
Of Gujarat

...Petitioner

Versus

North Gujarat Pathologists Association And Ors.

..Respondents

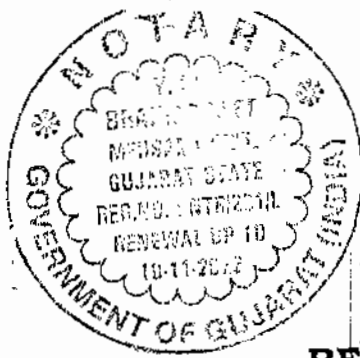
CERTIFICATE

Certified that the present Review Petition is the first application for the review of the order dated 12.12.2017 and it is based on the grounds admissible under the Rules. No additional facts, documents or grounds have been taken therein or relied upon in the Review Petition which were not part of the SLP earlier.

FILED BY

(RAHUL GUPTA)  
ADVOCATE FOR THE PETITIONER

Filed on: 10.05.2018  
New Delhi



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**IN THE SUPREME COURT OF INDIA  
ORIGINAL JURISDICTION  
REVIEW PETITION (CIVIL) No. \_\_\_\_\_ of 2018  
IN  
SPECIAL LEAVE PETITION (C) No.28529 OF 2010**

IN THE MATTER OF

North Gujarat Unit Of Association Of Self  
Employed Owners (Paramedical) Of Private  
Pathology Laboratories Of Gujarat

...Petitioner

Versus

North Gujarat Pathologists Association And Ors.

..Respondents

**AFFIDAVIT**

I, Paresh Kumar Patel, S/o Shri Trikambhai Patel  
aged about 44 years, R/o Vidhi Pathology Laboratory,  
C/o -Khushi Hospital, T.B.Road, Po- Vijapur - 382870,  
Gujarat do hereby solemnly affirm and state as under:

1. That I am the president of the petitioner Association  
in the above mentioned Review Petition and well  
versed with facts and circumstances of the case and  
in that capacity am fully authorized and competent  
to swear the present affidavit.
2. That I have been explain the contents of the Review  
Petition in vernacular and the accompanying list of  
dates (Pages B. to V); Review Petition (Pages 4 to  
18) and Paras 1 to 9 as well as the  
accompanying applications which have been drafted

*Patel*

Paresh Kumar Trikambhai Patel

on my instructions. The facts stated therein are true and correct to my knowledge and belief.

3. I state that the annexures are true copies of their respective originals.

*P Patel*  
DEPONENT  
*Pareek Kumar M. Kambhvi Patel*

**Verification:**

That the contents of the above affidavit are true to my knowledge and belief as derived from the records and believed to be true and correct by me. I say that nothing material has been concealed therefrom.



Verified at Vijapur on this 15<sup>th</sup> May, 2018.

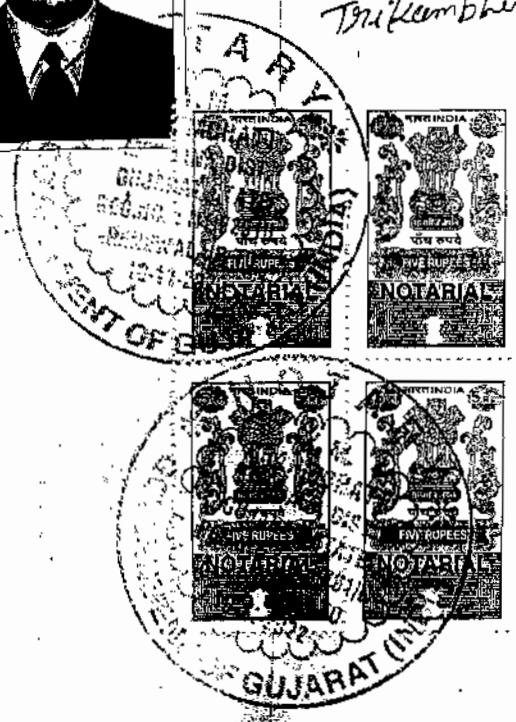
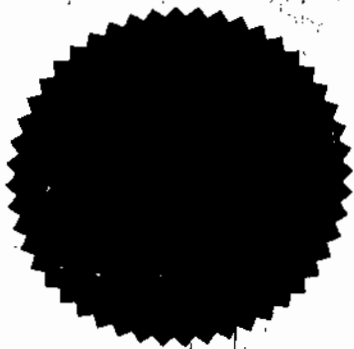
*Self FMB.12*  
*[Signature]*



*P Patel*  
DEPONENT  
*Pareek Kumar M. Kambhvi Patel*

S.R.NO. 2225/01/2018  
SOLEMNLY AFFIRMED  
BEFORE ME

*[Signature]*  
Y.M. BRAHMBHATT  
NOTARY  
GOVT. OF GUJARAT  
DATE: 15 MAY 2018



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IN THE SUPREME COURT OF INDIA  
(CIVIL APPELLATE JURISDICTION)

I.A. No. \_\_\_\_\_ of 2018

In

REVIEW PETITION (CIVIL) NO. \_\_\_\_\_ OF 2018

IN

SPECIAL LEAVE PETITION (CIVIL) NO. 28529 OF 2010

IN THE MATTER OF

North Gujarat Unit Of Association Of Self Employed  
Owners (Paramedical) Of Private Pathology Laboratories  
Of Gujarat

...Petitioner

Versus

North Gujarat Pathologists Association And Ors.

..Respondents

APPLICATION FOR CONDONATION OF DELAY IN FILING REVIEW PETITION

To

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

THE HUMBLE PETITION OF THE PETITIONER ABOVE NAMED:

MOST RESPECTFULLY SHOWETH:

1. The present Review Petition is filed under Article 137 of the Constitution of India read with Order XLVII Rule 1 and 2 of

the Supreme Court Rules, 2013 for review of Order dated 12.12.2017 passed by this Hon'ble Court in SLP(C) No. 28529/2010 whereby this Hon'ble Court was pleased to disposed off the Special Leave Petition filed by the Petitioner by holding that Laboratory Report can be counter signed only by a Registered Medical Practitioner with a post graduate qualification in Pathology.

2. That the brief facts and grounds are set out in the accompanying Review Petition therefore same are not reproducing herein to avoid repetition.
3. That the impugned order in the present case was passed on 12.12.2017. Therefore, the limitation for filing the present Special Leave Petition expired on 11.01.2018. Since the present petition is being filed on 10.5.2018, there is a delay of 149 days in filing of the same.
4. It is respectfully submitted that after 12.12.2017 the members of petitioner association took legal advice from different advocates as what is to be done and what all legal remedies are available to them as because of the impugned order their work has come to a standstill. Further they were advised to file an application for modification and clarification of order dated 12.12.2017. The same was drafted by the advocate for in the first week of February, 2018 and was finally settled by the Learned Senior Counsel by 17.02.2018. It is further

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submitted that it took further time to arrange for the documents and finally on 09.03.2018 the same was filed with the registry of this Hon'ble Court. On 23.04.2018 the advocate on record received a letter dated 19.04.2018 stating therein that the application for modification/clarification filed on behalf of the petitioner association was lodged as not maintainable. Thereafter, it was advised and hence decided that the review petition should be preferred against the order dated 12.12.2107. In view of the aforesaid the above delay of 149 days occurred which is neither deliberate nor willful. Thereafter, the present petition has been filed without any further delay.

5. It would thus be in the interest of justice if the delay of 149 days in filing the present petition is condoned.

#### PRAYER

In the circumstances it is respectfully prayed that this Hon'ble Court may be pleased to:

1. Allow the present application and condone the delay of      days in filing of the present Review Petition against the Final Judgment and Order dated 12.12.2017 passed by this Hon'ble Court in Special Leave Petition © no. 28529 of 2010.

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2. Pass such other and/or other further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

Filed by

Filed on: 10.05.2018

(RAHUL GUPTA)

ADVOCATE ON RECORD

FOR THE PETITIONER



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IN THE SUPREME COURT OF INDIA  
(CIVIL APPELLATE JURISDICTION)

I.A. No. \_\_\_\_\_ of 2018

In

REVIEW PETITION (CIVIL) NO. \_\_\_\_\_ OF 2018

IN

SPECIAL LEAVE PETITION (CIVIL) NO. 28529 OF 2010

IN THE MATTER OF

North Gujarat Unit Of Association Of Self Employed  
Owners (Paramedical) Of Private Pathology Laboratories  
Of Gujarat

...Petitioner

Versus

North Gujarat Pathologists Association And Ors.

..Respondents

AN APPLICATION FOR AN OPEN COURT HEARING.

To,

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

THE REVIEW PETITION OF THE PETITIONER  
ABOVENAMED

MOST RESPECTFULLY SHOWETH:-

1. The Petitioners have filed the accompanying review petition against the this Hon'ble Court's Order dated 12.12.2017 passed by this Hon'ble Court in Special Leave, Petition © No. 28529 of 2010.

2. It is respectfully submitted that the errors apparent from the records of the case as have arisen have been explained in detail in the Review Petition.

3. It is submitted that in the Review petition, references have been made to the records of the Special Leave Petition. It is therefore respectfully submitted that the contentions in the Review petition would be better appreciated and considered with the assistance of the Counsel.

4. It is therefore in the interest of justice that this Review Petition be heard in Open Court instead of by circulation. The Petitioners submit that this is the last Court and the points raised in the Review Petition go to the root of the matter and it is, therefore, necessary and in the interest of justice that the Review Petition is heard in Open Court.

PRAYER

5. It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to :

a) direct the Review Petition to be heard before the Hon'ble Court in open court instead of by circulation, and

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

FOR WHICH ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN AND FILED BY

(RAHUL GUPTA)

Advocate for the petitioner

New Delhi

Filed on :10.05.2018