

IN THE HIGH COURT OF JUDICATAURE OF ANDHRA PRADESH AT
AT HYDERABAD

WP No. 27725 of 2010

Between:-

Dr. K. Krishna Kumar

...Petitioner

And

Secretary, Department of Animal Husbandry,
Dairying & Fisheries, Government of India,
and others

...Respondents

COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENTS

I, A.K. Barua, S/o Shri K.L.Barua, aged about 59 years, resident of New Delhi, having temporarily come down Ho Hyderabad, do hereby solemnly affirm on oath and submit as follows:

01. I am working as Director in the Department of Animal Husbandry, Dairying and Fisheries, Ministry of Agriculture, New Delhi, and also having been appointed as the Returning Officer for the election of members of the Veterinary Council of India (VCI) am well acquainted with the facts of the case and am, therefore, in a position to depose about the same.

02. It is humbly submitted that the Writ Petition is conceived. The present Writ Petition is filed under mere apprehension, suspicions and surmises. The Writ Petitioner thinks that the rules as contemplated u/s 18

(1) (c) and 18 (3) of the Indian Veterinary Council Rules, 1985 (IVC Rules for short) may not be strictly applied by the Returning Officer while scrutinizing the declaration papers for rejection of voter's papers. The specific allegation is verification of signatures may not take place in the manner to detect the possible fraud. The Petitioner seeks that the signatures should be verified, microscopically with the original specimen signature of the respective voter, which is not contemplated under the Rules. As such, the Writ Petition is not maintainable and liable to be dismissed in limini.

03. Further more, it is humbly submitted that the Writ Petition is ill-timed in as much as the election process is already set in motion and the Court would loathe interference by issuing the Writ to stall/delay the election process, once the schedule is already given. Equally, the Writ Petition is pre-mature for the reason there is no contravention of the rules prescribed at this juncture and on mere apprehension and conjectures that while scrutinizing the ballot papers, there is chance of possible error being committed by the Returning Officer would not give cause of action for filing the Writ Petition. The petitioner apprehends that the Returning Officer may not perform his duties as laid down in the rules. The petitioner seeks directions from this Hon'ble Court for the 2nd respondent to verify the signatures affixed by the electors in their respective 'Declaration Papers' macroscopically with their original specimen signatures while scrutinising the 'Declaration papers' (Form III) before counting of votes is taken up on 26th November, 2010. There is no such provision in the Indian Veterinary Council Rules, 1985. The petitioner seeks from this Hon'ble Court a

direction to the 2nd Respondent to instruct all the Registrars of the State and UT Veterinary Councils of all over the country to be present and verify the genuineness of signatures of the electors on the 'Declaration papers'. No such power has been conferred on the 2nd respondent under the Indian Veterinary Council Rules, 1985.

Be that as it may, I am herewith filing the counter to the affidavit filed by the Petitioner para-wise.

04. In reply to paras 2 to 4, it is humbly submitted that the Petitioner gives particulars about the V.C.I. and the election process for the election of 2009. He further gives the schedule of election in para-4.

05. In reply to para 5, it is humbly submitted that it is true that the Petitioner is one of the contestants from the Andhra Pradesh and that, he has filed the W.P. No. 25775 of 2009, seeking for a direction that the Respondents therein shall issue ballot papers to the Electoral as per the updated addresses of the electorates, sent by the V.C., Andhra Pradesh. The directions were also given by this Hon'ble Court in the said Writ Petition and those orders have been followed scrupulously. In compliance to the above directions in W.P. No. 25775 of 2009, the State V.C. has updated the addresses and sent those to the VCI New Delhi, which in turn had sent the revised electoral rolls of the persons enrolled in the Electoral Roll of the Registered Veterinary Practitioners of Andhra Pradesh. Thus, there is no violation of the orders of this Hon'ble Court in so far as these Respondents

are concerned. However, the contempt case arose because of the fact that the V.C.I., which is not the party to this Writ Petition has thought it fit to elect the President and the Vice President within existing members of the V.C.I. and that was found fault with the Hon'ble High Court in C.C. No. 1087 of 2010. In so far as the conduct of the Respondents herein, the Hon'ble High Court did not take any cognizance, in as much as there were no directions issued to these Respondents in W.P. No. 25775 of 2009.

06. It is humbly submitted that on the other hand, the Hon'ble High Court in CC No. 1087 of 2010 was pleased to fix the time limit for conducting elections by the 2nd Respondent herein. Accordingly, the 2nd Respondent herein has taken the following action.

- (i) *A Notification No. SO 2708 (E) was published in the Gazette of India (Extraordinary) on 3rd November, 2010 notifying the date of polling by the persons enrolled in the Electoral Roll of the Registered Veterinary Practitioners of Andhra Pradesh which is 25th November, 2010 at 5 P.M. and that counting of votes cast by the persons enrolled in the Indian Veterinary Practitioners Register of the Veterinary Council of India shall be held on the 26th November, 2010 at 10.00 AM onwards and on or before 28th November, 2010 at Animal Quarantine and Certification Service Station, Department of Animal Husbandry, Dairying and Fisheries, Ministry of Agriculture, Kapashera Crossing, Near Kapashera Police Station, Old Delhi-Gurgaon Road, New Delhi-110037.*

(ii) *Voting papers alongwith connected papers have been despatched on 08.11.2010 under 'Certificate of Posting' to the persons enrolled in the electoral roll of the Registered Veterinary Practitioners of Andhra Pradesh.*

Thus the election process has been set in motion in order to complete the same within the time period set by this Hon'ble Court.

07. In so far as the averments in paragraph 6 are concerned, it is humbly submitted that there is no nexus to the averments with the present lis. In reply to para 7, it is humbly submitted that as mentioned supra, these Respondents have taken steps in compliance with the directions issued by this Hon'ble Court in CC No.1087 of 2010.

08. In reply to para 8, it is humbly submitted that the Writ Petitioner submits that the identity of the voters is vital issue in the conduct of elections and there should be foolproof measure to see that the genuine voter casts his vote. He further states that the postal address of the electors and signatures of the electors attested on the declaration papers are the true factors to confirm the identity of the voters. But, whatever is the apprehension/ suggestion of the Writ Petitioner, the Returning Officer is bound to go by the prescribed rules.

09. In reply to the averments made in para-9, it is humbly submitted tht they refer to the preparation of electoral rolls, but not to

conduct of election by the Returning Officer as per the rules prescribed. An isolated paragraph in the counter affidavit filed by the then Returning Officer in connection with preparation of the electoral rolls do not in any would go to show that the present Returning Officer would not act as per the rules prescribed in counting of the vote or in identification of the voters as the present lis is not concerned with the non-receipt of certain ballot papers to their correct postal addresses.

10. In reply to para 10, it is humbly submitted that the Writ Petitioner submits that there is no mechanism or no specimen signature of the voters available with the Returning Officer to verify the signature of the voters attested on the declaration paper to find out whether it is genuine or not. Thus, the Writ Petitioner is of the opinion that the Returning Officer's possible erroneous action could be corrected through the present Writ Petition. In this context, it is humbly submitted that it is not the case of the Writ Petitioner that the Returning Officer contravened any of the rules pertaining to the conduct of elections and it is also not his case that there is possibility of the Returning Officer in contravening the rules as prescribed under Rules 18 (3) of IVC Rules. What all he canvasses before this Hon'ble Court is that, even under Rule 18 (3), there is no proper mechanism to find out whether the voter casting vote is a genuine person or not. If this is the case, then, the Writ Petitioner should have challenged the very rules or vires of rule 18 (3) of IVC Rules, but he did not choose to do so, for the reasons best known to him and when the election schedule is given, faced by an

order in CC No. 1087 of 2010, the present Writ Petition is filed. Rule 18 of the IVC Rules is quoted hereunder;

Rule 18: Rejection of voting paper covers:-

- (1) A voting paper cover shall be rejected by the Returning Officer if—
 - (a) the outer envelope contains no declaration paper outside the voting paper cover, or
 - (b) the declaration paper is not the one sent by the Returning Officer or
 - (c) the declaration paper is not signed by the elector or
 - (d) the voting paper is placed outside the voting paper cover, or
 - (e) more than one declaration paper or voting paper cover have been enclosed in one and the same outer envelope.

- (2) In each case of rejection the word 'rejected' shall be endorsed on the voting paper cover and the declaration paper. The reasons for rejection shall also be recorded in brief, on voting paper cover.

- (3) After satisfying himself that the electors have affixed their signatures to the declaration papers, the Returning Officer shall keep all the declaration papers in safe custody pending disposal under Rule 1.

11. Thus, the Writ Petitioner appears to be of the view that Rule 18(3) of IVC Rules is not a comprehensive one to check the genuineness of the voter by the Returning Officer and that, it is left to the discretion of the Returning Officer to satisfy himself. In this context, it is to submit that the

Apex Court while dealing with dimension of the areas in respect wherever the jurisdiction of the High Courts under Article 226 of the Constitution could be availed clearly held in Manda Jagannath Vs K.S. Rathnam and others case reported in (224) 7 SCC 492 – thus *“Of course, what is stated by this Court hereinabove is not exhaustive of the Returning Officer’s possible erroneous actions which are amenable to correction in the Writ jurisdiction of the Courts. But the fact remains that such an error should have effect of interfering in the free flow of the scheduled election or hinders progress of the election which is the paramount consideration. If by issuance of order, the conduct of election is not hindered, then the Courts under Article 226 of the Constitution should not interfere with the orders of the Returning Officer, remedy for which lies in the election Petition only.”*

12. Thus, in all fairness, if the Writ Petitioner is of the opinion that the Provisions of Rule 18 (3) of IVC Rules are not foolproof and left to the discretion of the Returning Officer in ascertaining the genuineness of the electors, he should have challenged the vires of the section at an early date i.e. before issuance of election notification, but not at this juncture.

13. In reply to paras 11 and 12, it is humbly submitted that the Writ Petitioner gathers some information, admittedly, from unofficial source and therefore, this Hon’ble Court cannot take into consideration and equally the apprehension that there would be every possibility of rigging of votes by unauthorized persons forging signatures of the electors is mere conjectures.

Ret-officer
should
have given
correct
figures
of the
petitioner
figures
are wrong

Since Returning Officer will be having
right information as per Rule 16(10)

14. In para 13, the Petitioner describes the process of election, appointment of Returning Officer etc and also deals with the despatch of ballot papers and how, there could be a possibility to manage the postal authorities to see that the ballot papers do not reach the addressee. These allegations do not have any bearing on the lis in the present Writ Petition. Equally, in para 14, the Petitioner refers to certain letters said to have been addressed by some of the Members of Parliament requesting the Hon'ble Union Minister for Agriculture, to adopt foolproof measure for ascertaining the genuinity of the signatures of the voters. Thus, the Petitioner is opines that there is no foolproof mechanism as per the rules and that the rules are to be amended or re-drafted in this context. In so far as the deponent is concerned, he has not received any representation nor he can take any action on such representation and he is bound to follow the rules which are in vogue.

we said
with regard
to the
UNDELIVERED
post due to
wrong address
where postal
authorities
were managed
to grab such
undelivered
post.

15. In reply to para 15, it is humbly submitted that the provisions of Rules 16 (8) of the I.V.C. Rules are not relevant at this juncture and so far as the Provisions of Rules 18 and 19 of the IVC Rules are concerned, they would come into effect after 25.11.2010 and the provisions under these Rules would be scrupulously followed.

16. In para-16, the Writ Petitioner repeats the averments in regard to the apprehension in verification of signature of the voter and the replies

given in the aforementioned paras would also apply to this para. Thus, to sum up, at the cost of repetition, the Writ Petition is filed on mere assumptions, suspicion and conjectures and admittedly, there is no contravention of any Rules and if the Writ Petitioner is not satisfied with the present Provisions of Law and apprehends that no foolproof method is prescribed under Rule 18 (3) of IVC Rules to verify the signatures macroscopically, he cannot make out a point in the present Writ Petition at this juncture. Thus, the Writ Petition is devoid of any merits and liable to be dismissed.

17. In the above circumstances, it is prayed that this Hon'ble Court may be pleased to dismiss the above writ petition as it is devoid of merits in the interest of justice.

DEPONENT

Sworn & signed before me on this the
12th day of November, 2010.

Before me

Attestor

VERIFICATION STATEMENT

I, A.K. Barua, S/o Shri K.L. Barua, aged about 59 years, the 2nd Respondent herein, being acquainted with the facts of the case do hereby

verify that the contents mentioned in the above paragraphs are true and correct to the best of my knowledge, information and belief and believed to be true and correct.

Hence, verified on this the 12th day of November, 2010.

Counsel for Respondents.

Deponent

True
[Handwritten signature]

Hyderabad District

HIGH COURT :
HYDERABAD

W.P.NO.27725/2010

Para 10 & 12 should have
been taken into
of Rule 18(3)

We are subject 18(3)

After satisfactory
features

Apprehension
based on
material
available
foundations

judgment is
applicable in
this case as
the petition is
not a matter of
law & election

COUNTER AFFIDAVIT

Filed By: CH. SAMSON BABU

COUNSEL FOR RESP. 1 & 2

No. 52-37/2009-LDT (VC) (Vol.II)
Government of India
Ministry of Agriculture
Department of Animal Husbandry, Dairying & Fisheries

Krishi Bhavan, New Delhi
Dated: 18/11/ 2010

To

CH. Samson Babu,
Central Government Standing Counsel,
Andhra Pradesh High Court at Hyderabad.

Subject: WP No. 27725 of 2010 filed by Dr. K. Krishna Kumar
against the Secretary (ADF) and the Returning Officer in
the Andhra Pradesh High Court at Hyderabad.

Sir,

In its hearing on 12/11/2010 on the WP No.27725 of 2010 filed by Dr. K. Krishna Kumar against the Secretary (ADF) and the Returning Officer, VCI Election, the Hon'ble High Court asked about the method to be adopted by the Returning Officer to satisfy himself that the electors had affixed their signatures on the Declaration Papers accompanying the envelopes containing the voting papers. The Hon'ble Court was informed that the Returning Officer was not provided with the specimen signatures of the electors attested by the State Veterinary Councils and, therefore, he would not be able to counter-check the signatures. The Hon'ble Court wanted to know whether any alternative arrangement could be made to ascertain the genuineness of the signatures on the Declaration Papers and adjourn the matter to Monday, the 15th November, 2010.

2. The issue raised by the Hon'ble Court has been examined in the Department and the views of the Department are as in the succeeding paragraphs.

3. Rule 17 of the Indian Veterinary Council Rules, 1985 reads as under:

Rule 17: Opening of the cover –

(1) The Returning Officer shall open the outer envelopes immediately after the appointed time for closing of voting on the date of fixed for the poll at the place to which the envelopes are addressed to him.

(2) Any candidate may be present in person or may send a representative duly authorized by him in writing to be present at the time when the outer envelopes are opened.

4. Rule 18 of the Indian Veterinary Council Rules, 1985 reads as under:

Rule 18: Rejection of voting paper covers:-

(1) A voting paper cover shall be rejected by the Returning Officer if –

- (a) the outer envelope contains no declaration paper outside the voting paper cover, or
- (b) the declaration paper is not the one sent by the Returning Officer or
- (c) the declaration paper is not signed by the elector or
- (d) the voting paper is placed outside the voting paper cover, or
- (e) more than one declaration paper or voting paper cover have been enclosed in one and the same outer envelope.

(2) In each case of rejection the word 'rejected' shall be endorsed on the voting paper cover and the declaration paper. The reasons for rejection shall also be recorded in brief, on voting paper cover.

(3) After satisfying himself that the electors have affixed their signatures to the declaration papers, the Returning Officer shall keep all the declaration papers in safe custody pending disposal under Rule 1.

5. Each of the electors to whom the voting papers were despatched were supplied with a 'Letter of Intimation' in the prescribed form (Form IV) requesting him/her, inter-alia, to-

- (a) fill up and sign the declaration paper (Form III);
- (b) mark his/her vote in the column provided for the purpose in the voting paper (Form II) as directed on the voting paper;
- (c) enclose the voting paper in the smaller cover and stick it up; and
- (d) enclose the smaller cover and declaration paper in the outer envelope which is larger and on which the address of the Returning Officer was already printed and return the same to the Returning Officer by post at his/her cost or deliver it in person in the office of the Returning Officer so as to reach him not later than the date mentioned therein.

6. It is submitted that following the rules laid down in the Indian Veterinary Council Rules, 1985, the voting papers were despatched by 31.10.2009 to all the persons enrolled in the Indian Veterinary Practitioners Register individually 'Under Certificate Of Posting' and not in bulk to a single addressee. The envelopes containing the voting papers have been received either by post or in person or by courier. Further, in pursuance of the orders of the Hon'ble High Court in the Contempt Case 1087/2010, fresh voting papers have been despatched by 08.11.2010 to all the persons enrolled in the Electoral Roll of Indian Veterinary Practitioners in respect of Andhra Pradesh in the same manner. These envelopes containing the voting papers will also be received in the same manner. There is no reason for the Central Government or the Returning Officer to suspect that the voting papers despatched to the individual electors were usurped at any stage. There is no reason for the Central Government or the Returning Officer to suspect any rigging in the election process. In the absence of any evidence to the contrary, the presumption should, therefore, be in favour of the signature being genuine unless the same is proved otherwise. Thus procedure has been laid down for the Returning Officer under Rule 18(3) of the IVC Rules, 1985, The Returning Officer goes with the presumption that the signature is genuine. If any elector/candidate suspects about the genuineness of the signature on the declaration paper he is permitted to be present in person or be represented by an authorized person.

7. Besides, Rule 17(2) of IVC Rules provides that any candidate may be present in person or may send a representative duly

authorised by him in writing to be present at the time when the outer envelopes are opened by the Returning Officer after the expiry of the voting time. It is, therefore, implicit in the rules that a candidate may take objection on the genuineness of the signature affixed on the Declaration papers. If any objection is taken by any candidate or his representative on the genuineness of the signature affixed on a declaration paper he will have to support his objection with concrete proof. If there is any objection duly supported by evidence the Returning Officer will take a judicious decision whether the declaration paper is signed or not by the elector and accordingly reject or not reject the voting paper cover by exercising his powers under Rule 18(1) (c) of the IVC Rules. Thus, there are adequate safeguards in the IVC Rules to address the apprehensions of the petitioner.

8. However, a situation may arise where a 'Declaration Paper' signed by an elector may not contain his registration number. Without registration number it will not be possible to ascertain as to which State/UT Electoral Roll the elector is registered with. While the 'Declaration Paper' sent to the electors requires that Electors name and number on the State Veterinary Register and page number in the Indian Veterinary Practitioners Register are to be mentioned therein, in the absence of these details it will not be possible to implement the Orders dated 29.12.2009 and 29.10.2010 of this Hon'ble Court on WP No. 25775 of 2009 and Contempt Case No. 1087 of 2010. **In such a circumstance the Returning Officer has the ^{over} authority to reject the voting paper cover on the ground that the 'Declaration form has not been properly filled'.**

9. In view of the above you are requested to inform the Hon'ble Court:

- (i) that by following the rules laid down in the Indian Veterinary Council Rules, 1985, the voting papers were despatched to all the persons enrolled in the Indian Veterinary Practitioners Register individually 'Under Certificate Of Posting' and not in bulk to a single addressee;
- (ii) that the envelopes containing the voting papers were received either by post or in person or by courier;

- (iii) that, therefore, there is no reason for the Central Government or the Returning Officer to suspect that the voting papers despatched to the individual electors were usurped at any stage;
- (iv) that there is no reason for the Central Government or the Returning Officer to suspect any rigging in the election process;
- (v) that In the absence to any evidence to the contrary, the presumption should, therefore, be in favour of the signature being genuine unless the same is proved otherwise;
- (vi) that in the absence of any procedure in the rules to verify the genuineness of the signatures on the 'Declaration Papers' the onus to prove that the signature is not genuine should rest on the one who alleges it as it is well settled that the onus to prove a fact lies on the one who alleges it;
- (vii) that Rule 17(2) of IVC Rules provides that any candidate may be present in person or may send a representative duly authorised by him in writing to be present at the time when the outer envelopes are opened by the Returning Officer after the expiry of the voting time; that it is, therefore, implicit in the rules that a candidate may take objection on the genuineness of the signature affixed on the Declaration papers; that if any objection is taken by any candidate or his representative on the genuineness of the signature affixed on a declaration paper he will have to support his objection with concrete proof; that if there is any objection duly supported by evidence the Returning Officer will take a judicious decision whether the declaration paper is signed or not by the elector and accordingly reject or not reject the voting paper cover by exercising his powers under Rule 18(1) (c) of the IVC Rules; that thus, there are adequate safeguards in the IVC Rules to address the apprehensions of the petitioner.

Yours faithfully,


(A.K. Barua)

Director(Admn) & Returning Officer, VCI Election