

IN THE HIGH COURT OF JUDICATURE OF ANDHRA
PRADESH AT HYDERABAD

W.P.No. 25775 of 2009

46

Between:

Dr. K.Krishna Kumar, S/o. K.Nagi Reddy,
Aged 43 years, Occ: Veterinary Doctor,
Department of Animal Husbandry,
Presently working at Animal Quarantine &
Certification Services,
Rajiv Gandhi International Airport,
Shamshabad, Hyderabad.

..Petitioner

And

1. Government of India,
Department of Animal Husbandry,
Dairying & Fisheries, Rep. by Secretary,
Krishi Bhavan, New Delhi.
2. Veterinary Council of India,
Rep. by its Secretary,
A Wing, II Floor, August Kranti Bhavan,
Bhikaji Cama Place, New Delhi.
3. Returning Officer,
Room No. 230, Krishi Bhavan, New Delhi.
4. A.P. State Veterinary Council,
Rep. by its President,
Shanti Nagar, Msab Tank, Hyderabad.

...Respondents

**COUNTER AFFIDAVIT FILED BY THE
RESPONDENT NO.1 AND 3**

I, G.Subramani, S/o. Sri S.Gopala Krishnan, aged about 59
years, Occ: Deputy Secretary in the Department of Animal
Husbandry, Dairying & Fisheries, Ministry of Agriculture, Krishi
Bhavan, New Delhi - 1 and appointed as Returning Officer on
16.07.2009 for the election, do hereby solemnly affirm and sincerely
state on oath as follows:

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1. I am the Respondent No.3 herein and, as such I am well acquainted with the facts of the case. I am authorized to file this Affidavit on behalf of the 1st Respondent also.

2. I have read the writ petition filed by the petitioner and after going through the same, I am replying the same on the basis of the information gathered from the official records which I believe to be true and correct. I have gone through the writ petition/writ affidavit, along with the material papers and hereby deny all the averments except those which are specifically admitted hereunder. The deponent to the writ affidavit may be put to strict proof of the averments made therein.

3. I submit that the writ petitioner chose to make allegations against me without there being any truth, muchless warrant. I strongly refute all the allegations made against me in the affidavit filed in support of the above writ petition. The petitioner is put to strict proof of the same.

4. I submit that in reply to para No.1 of the Affidavit, no comments, except to the extent of clarification that the petitioner is actually contesting the Election to V.C.I. 2009 and not merely intending to contest in the forthcoming elections as contended by the petitioner.

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5. I submit that in reply to para No.2 of the Affidavit, the 1st and 3rd respondents are following the exact procedure as prescribed in the Indian Veterinary Council Rules, 1985.

6. In reply to para No.3 of the Affidavit, I submit that so it does not require any comments regarding this.

7. I submit that in para No.4, it is concerned with regard to the factual schedule of the election. Already all details mentioned in this para are further amplified in the brief in below.

8. I submit that in reply to para No.5 of the Affidavit, needs to be replied by respondent No.2 and respondent No.1 and 3 are not concerned. Regarding the para 5, the Secretary to the VCI is the responsible for preparation of Draft Electoral Roll and other connected matters including the final publication of the voters list with amendments if any.

9. I submit that in reply to para No.6 of the Affidavit, in terms of Rule 16 the Returning Officer shall, not later than 30 days before the date appointed for the poll, send by Air-mail to every elector residing or practicing abroad and by post to every other Elector voting and other connected paper to the addresses of the Electors, as per the

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49

23

electoral roll furnished by the Secretary of the Council to the Central Government. The procedure, as prescribed in the Rules, was strictly followed by the Returning Officer. It is not either for the respondent No.1 or 3 to verify the addresses of the registered Electors maintained by the 2nd or 4th respondents.

10. I submit in reply to para No.7 of the Affidavit that the petitioner is very well aware of the fact that the Elections to the V.C.I. are conducted once in three years. The petitioner has stated that it has been a regular and common practice every three years sending the ballot papers to the wrong addresses. The petitioner had sufficient time of ensuring that the correct addresses were incorporated by the V.C.I. during the period three years. On their part sufficient publicity was given by the Returning Officer on 3.10.2009 indicating the tentative election schedule by letters to the Secretary, V.C.I. Vice Chancellor of Veterinary Universities, Registrar, Veterinary Council of State / U.Ts. the Directors of Animal Husbandry and Veterinary Services of States, Deans, college of Veterinary Sciences, Director, Animal Science Research Institute of I.C.A.R. Besides advertisement in the newspapers were given and the same was hosted in the web-site of the Department. Thereafter, similar exercise was carried out on 12th October, 2009 by publishing notification of the detailed election

4th page

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24

schedule. The Election Process was sent in motion on 12.10.2009 indicating the dates fixed for various stages of the election process. As per the schedule, the dispatch of the ballot papers to the registered electors as furnished by the V.C.I. was completed on 31.10.2009. The Rules provide for dispatch of voting and other connected papers through certificate of posting only. The petitioner who is also a candidate himself, registered Sl.No. 25 of the ballot paper, did not take any action till the 17th day of November, 2009, when the Election process was in final stages. The attempt by the petitioner to raise the issue now; is nothing more than an attempt to stall the election process a publicity gimmick. It is noted that for K.Krishna Kumar filed the petition in the Hon'ble High Court of Judicature of Andhra Pradesh on 25.11.2009 the Hon'ble High Court passed interim orders on 27.11.2009. The following two days namely 28/29.11.2009 were being holidays. The date for the poll was fixed for Monday 13th November, 2009 at 5 PM and the counting of the ballot papers was to commence immediately thereafter. It may be seen that the petitioner waited till the very end to derail the election process involving mobilization of considerable additional manpower. In addition to financial resources for printing of ballot papers, various kinds of envelopes, issue of notification and advertisement in newspapers are also involved. Arrangements were made for caterers and for erecting pandals, shamiyana for the officials deployed on counting duty etc.,

5th page
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51

25

Rule 16 (6) stipulates that no election shall be invalid by reason of the non-receipt by an elector of his voting papers and other connected papers. It is therefore clear that having waited for all these years when the petitioner could have taken swift and firm action, he has chosen the very last minute to portray himself as the wounded party.

11. I submit that in reply to para No.8 of the Affidavit, the various stages of Election schedule have been strictly followed as per rules and no deviation therefrom has taken place.

12. **BRIEF BACKGROUND OF THE CASE ARE THAT :**

- i. Election to the Veterinary Council of India is held once in three years:- the last one was conducted in the year 2006.
- ii. Section 3 sub-section 3 Clause (g) of the Indian Veterinary Council Act, 1984 provides for Election of eleven members to be elected from amongst themselves by persons enrolled in the Indian Veterinary practioners register. Further, Section 4 sub-section (1) of the said Act provides that an Election under Clause (g) of sub-section (3) of Section 3 shall be conducted by the Central Govt. in accordance with such rules as may be made by it in this behalf. Section 64 (1) empowers the Central Govt. to make rules to carry out the purposes of Chapters II, III, IV & V.

6th page
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iii. In exercise of the powers conferred by Section 64 read with Section 4 of the Indian Veterinary Council Act, 1984, the Central Govt. framed rules called the Indian Veterinary Council Rules, 1985. In the Rules, the definition 'Secretary' means Secretary of the Indian Veterinary Council. Rule 4 of the Indian Veterinary Council Rules, 1985, enjoins upon the Secretary to prepare the roll which shall contain the name of every person whose name is entered in the register arranged in the order in which they are entered in the register and thereafter publish the roll and make available a copy thereof for inspection by displaying in the Offices of all State Veterinary Councils and Veterinary Council of India. Rule 8 thereof provides that after disposing of the claims and objections, the Secretary shall prepare a list of amendments to carry out his decisions under the said Rule and shall publish the Roll together with the list of amendments, if any. Thereafter, a copy of the Roll together with the list of amendments published under Rule 8 (2) shall be sent by Secretary to the Central Government. It would be evident from the foregoing, that it is the responsibility of the Secretary of Veterinary Council of India to prepare the list of Electors with correct details of names and addresses which shall form the basis for further action.

iv. Rules 9 provides that the Central Government shall, after receipt of a copy of the electoral roll published under Rule 8,

7th page
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designate or nominate a Returning Officer, who shall be an Officer of Government and may also appoint one or more person(s) as Assistant Returning Officers to assist the Returning Officer.

v. Vide Notification dated 16th July, 2009, the Central Government appointed Shri. G. Subramani, Deputy Secretary in the Deptt. Of Animal Husbandry & Fisheries as Returning Officer. Dr. V.K. Gupta, Director, (I&C) in the said Department and Dr. Vijaya Kumar, Quarantine Officer, Animal Quarantine & Certification Service, Delhi, were appointed as Assistant Returning Officers.

vi. Rule 10 of the Indian Veterinary Council Rules, 1985, provides for appointment of dates for nomination as under:-

(1) The Returning Officer shall by notification in the Official Gazette, or in such other manner as deemed fit appoint-

(a) the date for making nominations, which shall be the seventh day after the date of publication of the said notification or if that day is a public holiday, the next succeeding day which is not a public holiday;

8th page

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(b) the time and the date for the scrutiny of nominations, which shall be the fifth day after the last date for filing nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(c) the last date for withdrawal of candidatures, which shall be the second day after the date for scrutiny of nominations, or if that day is a public holiday, the next succeeding day which is not a public holiday.

(d) the date on which a poll shall, if necessary, be taken, which shall be a date not earlier than the thirty fifth day after the last date for withdrawal of candidatures; and

(e) the date, time and place for counting of votes and for declaration of results which shall not be beyond the third day from the date of poll.

vii. Accordingly, the following schedule for conduct of election was determined:-

	Date of Notification in the official gazette	12/10/2009 (Monday)
ii	Last date for making nomination	19/10/2009 (Monday) 5.00 PM
iii	Date and Time for scrutiny of nominations	24/10/2009 (Saturday) 10.00 AM at Office of the Returning Officer

55

29

iv	Last date for withdrawal of candidature	26/10/2009 (Monday) 5:00 PM at the Office of Returning Officer
v	Date on which a poll, if necessary shall be taken	30/11/2009 (Monday) 5:00 PM
vi	Date and time for counting	01/12/2009 (Tuesday) 10.00 AM onwards

viii. Rule 16 provides that if the number of candidates exceed the number of members to be elected, the Returning Officer shall, not later than 30 days before the date appointed for the poll, send by air mail to every elector residing or practicing abroad and by post to every other elector the voting paper and connected documents. Rule 16 (3) provides for mailing of the voting paper and connected documents to every elector other than those residing or practicing abroad under certificate of posting.

ix. Accordingly, the dispatch of voting papers was completed by the Returning Officer on 31st October, 2009 and a Certificate acknowledging the same was obtained from the Department of Posts. It may be emphasized that the voting documents were mailed to the electors as per the names and addresses provided by the Veterinary Council of India. There are approximately or around 52,000 registered voters in the country.

10th page

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x. The petitioner is a candidate who is contesting the ensuing elections to the Veterinary Council of India and is listed at No. 25 of the Ballot Paper. A complaint dated 17/11/2009 from Andhra Pradesh Veterinary Association regarding non-receipt of the ballot papers by the Registered Veterinarians in Andhra Pradesh was received on 19/11/2009. It may be stated that the petitioner is well aware that the elections for eleven members to the Council is conducted once in three years. A tentative election schedule for conduct of elections was published in select news-papers between 2nd to 4th October, 2009. In addition, a letter was also issued on 29/09/2009 to the Secretary; Veterinary Council of India; all Vice-chancellors of Agriculture / Veterinary Universities; all Registrars; Veterinary Council of States; all Directors; Animal Husbandry & Veterinary Services of States; all Deans of College of Veterinary Sciences; all Animal Science Research Institutes; all Regional Disease Diagnostic Laboratories; the Central Disease Diagnostic Laboratory and all State Veterinary Biological Production Units. The tentative election schedule was also hosted in the website of the Department. Subsequently on 12/10/2009, the same schedule was published in the Gazette of India and adequate publicity was given through all agencies as enumerated above.

xi. The petitioner had sufficient time at his disposal to take up the matter with the Veterinary Council of India for updating the incorrect

11th page
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57

names / addresses, if any. In any case, it is not the responsibility of Returning Officer or the Ministry to incorporate the changes in addresses which is the sole responsibility of the Veterinary Council of India. Having waited for three long years and particularly from 29/09/2009 when the tentative election schedule was announced, the petitioner did not take any action and till 25/11/2009 to file a writ petition seeking stay of election scheduled for 30/11/2009.

xii. Sub-rule of 6 of Rule 16 provides that no election shall be invalid by reason of the non-receipt by an elector of his voting paper and other connected papers.

xiii. The process of election was set in motion by a Notification dated the 12th October, 2009. The last date for the receipt of the ballot papers was 30/11/2009 and the counting process was scheduled immediately thereafter. We are in last leg of the election process which involves mobilization of man-power for dispatch of ballot papers within the prescribed schedule which is tight. Substantial financial expenditure for printing various documents, literature and envelopes both through the government and private agencies, the infrastructure required for the polling staff etc. is also involved.

12th page

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xiv. A copy of the Order of the Hon'ble High Court of Andhra Pradesh was received by respondents No. 1 and 3 only on 30/11/2009. Even though the Hon'ble High Court has deferred the date of poll by two weeks in so far it relates to the members to be elected by the Andhra Pradesh State Council, in practice it was not possible to separate the ballot papers state-wise in the absence of any indication on the envelopes containing the voting papers. Consequently, all the Ballot papers received up to 5.00 PM on 30/11/2009 have been secured in a steel box and sealed. Soon after the receipt of the orders of Hon'ble High Court, the matter was taken up with the Central Industrial Security Force and the Delhi Police for providing round the clock vigil. Both these Security Agencies have clearly expressed their inability to accede to the request as their forces are already stretched. Hence, at present, apart from sealing of the steel boxes there is no other security for safeguarding the ballot papers.

xv. The action of the petitioner in filing a petition seeking correction in the names and addresses of the registered voters at the last moment is nothing more than an attempt to derail the election process and gain publicity. He is well aware that updating the addresses is the concern of respondent no. 2 and there was always ample scope for him to ensure this at the time of draft publication of the roll by the Secretary to the Veterinary Council of India.

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xvi. In view of the large number of complaints about non-receipt of ballot papers and incorrect addresses, the allegation against the Veterinary Council of India may not be entirely baseless. Therefore, the Veterinary Council of India needs to perform their task more diligently. The matter has engaged attention at highest level and reforms have been suggested for conduct of elections in future and plugging the loop-holes on 28.11.2009. Any action at this stage by the Veterinary Council of India to undertake an exercise for updating the records is certain to halt the election process indefinitely.

13. The contra allegations of the writ petitioner are strongly refused as the same are untrue, incorrect and baseless. Therefore, it is clear from the aforesaid facts that under the guise of this writ petition, the writ petitioners are unnecessarily dragging the election through courts and indulging in fanciful and mudslinging litigation with oblique motives for obvious reasons.

14. In view of the above submissions, it is prayed that the petition may be dismissed and the stay is vacated to enable the election machinery to complete the election process.

14th page

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Hence it is prayed that this Hon'ble Court may be pleased to vacate the interim order passed in W.P.No.25775 of 2009 dt.27.11.2009 and dismiss the writ petition with costs and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Sworn and signed before me on
this the 3rd day of December, 2009
at Hyderabad.

Deponent

ADVOCATE::HYDERABAD

VERIFICATION

I, G.Subramani, S/o. Sri S.Gopala Krishnan, being the respondent No.3, do hereby verify and state that the contents of the paragraphs of the Affidavit are true to my personal knowledge, based on information and based on legal advice believed to be correct.

Verified at Hyderabad on this the 3rd day of December, 2009.

ADVOCATE

Deponent