

MEMORANDUM OF WRIT APPEAL

(Filed under Clause 15 of the Letters Patent Act)

IN THE HIGH COURT OF ANDHRA PRADESH AT HYDERABAD

WRIT APPEAL NO. OF 2010

Against Order Dated December 29, 2009 in

WRIT PETITION NO. 25775 OF 2009

BETWEEN:

Veterinary Council of India  
Represented by its Secretary  
A Wing, II Floor,  
August Kranti Bhawan  
Bhikaji Cama Place  
New Delhi

Respondent No. 3/Appellant

And

1. Dr. K. Krishna Kumar  
S/o Shri K. Nagi Reddy  
Veterinary Doctor, Dept of Animal Husbandry, A. P.  
Presently working at Animal Quarantine & Certification Services  
Rajiv Gandhi International Airport  
Shamsabad,  
Hyderabad  
Petitioner/Respondent No. 1
2. Government of India  
Department of Animal Husbandry  
Dairying & Fisheries,  
Represented by Secretary  
Krishi Bhawan  
New Delhi  
Respondent No. 1/Respondent No. 2
3. Returning Officer  
Room No. 230  
Krishi Bhawan  
New Delhi  
Respondent No. 3/Respondent No. 3
4. A. P. State Veterinary Council  
Represented by its President  
Shanti Nagar, Masab Tank,  
Hyderabad  
Respondent No. 4/Respondent No. 4

The Address for service of all notices and process of the above named Appellant is that of his counsel Mr. G. Arun (8515) and Mr. T. Srinivasa Murthy, Advocates, 105, Meenakshi's Royal Court, Road No. 11, Banjara Hills, Hyderabad 500 034.

Being aggrieved by the order dated December 29, 2009 in Writ Petition No. 25775 of 2009 passed by His Lordship Shri Justice L. Narasimha Reddy, the

above named Appellant prays to present this Memorandum of Writ Appeal on the following among other:

GROUNDS

1. The order passed by the Ld. Single Judge allowing the writ petition filed by the Petitioner is contrary to the terms of the 1984 Act and the 1985 Rules.
2. The Ld. Single Judge ought not to have entertained the writ petition filed by Respondent No. 1 herein as there was a statutory remedy available under Section 4 of the 1984 Act which envisaged a reference to the Central Government of any disputes arising in regard to any election to the Council.
3. The Ld. Single Judge ought not to have passed any orders which had the effect of halting the process of elections, which had already commenced and been carried on to a significant extent on the date when the writ petition was filed.
4. The effect of the order passed by the Ld. Single Judge has been to stay not merely the portion of the elections relatable to Andhra Pradesh but the entire process of electing members to the Veterinary Council of India, which the Central Government is statutorily required to carry out in accordance with the stipulations in the 1984 Act with the Appellant fulfilling its part in the process as envisaged by the 1984 Act and the rules framed thereunder.
5. The Ld. Single Judge failed to appreciate that the right to participate in elections is a statutory right and not a fundamental right as claimed by the writ petitioner. I state that being a right conferred by statute, in the instant case the 1984 Act, the said right has to be exercised, or is

exercisable, in accordance with the terms and conditions of the 1984 Act.

6. The Ld. Single Judge failed to appreciate that the actions of the Veterinary Council of India were strictly in accordance with the procedure stipulated under the 1984 Act and the 1985 Rules. The Veterinary Council of India and the State Veterinary Councils are required to act on the issue of change of address of a person registered in the Indian Veterinary Practitioners Register only in accordance with the procedure laid down under Section 28 of the 1984 Act. Under Section 28 of the 1984 Act, the onus lies on the registered veterinary practitioner to notify any transfer of the place of his residence or practice to the Council and the State Veterinary Council within ninety days of such transfer, failing which his right to participate in the election of members of the Council or a State Veterinary Council shall be liable to be forfeited by order of the Central Government either permanently or for such period as may be specified therein. In the absence of any such notification by the registered practitioner, for the purposes of the elections to select members of the Veterinary Council of India, the State Veterinary Council and the Veterinary Council of India are obliged to act strictly in accordance with the Indian Veterinary Practitioners Register as contemplated by Section 23 of the 1984 Act.
7. The Ld. Single Judge failed to appreciate that the Appellant herein did not receive any intimation under Section 28 of the 1984 Act of transfer of place of residence or practice from any registered Indian veterinary practitioner. The communication dated August 20, 2009 forwarded by Respondent No. 4 also did not contain any particulars of any such notification. There was neither any copy of such notification from any

of the practitioners nor was there a mention of any such notification having been made by any practitioners. Respondent No. 4 merely stated that the addresses of several registered veterinarians are to be updated and forwarded as compact disc containing the electoral roll, serial number, IVPR Number, page number, APVC Registration Number, name and purportedly, the latest address of the registered veterinarians. In view of there being no compliance with the provisions of Section 28 of the 1984 Act and the 1985 Rules, the communication from Respondent No. 4 could not have been acted upon by the Appellant herein as the same would have amount to an amendment of the Indian Veterinary Practitioners' Register without following the procedure under the 1984 Act but would have also disturbed the sanctity of the electoral rolls, which is precisely what Section 28 of the 1984 Act seeks to protect.

8. The interference by the Ld. Single Judge in exercise of powers under Article 226 of the Constitution of India, in the midst of the election process, is contrary to well established principle of law, viz., once the election process has started, courts should not interfere and stay the same.
9. The Ld. Single Judge failed to appreciate that the writ petition was belated, *malafide* and *dehors* any material particulars and ought not to have been entertained.
10. The learned Single Judge erred in entertaining the writ petition on the sole and unsubstantiated allegation of non-receipt of ballot papers by the voters i.e., registered veterinary practitioners in the State of Andhra Pradesh; it was not the case of the writ petitioner that the election was being conducted in violation of any statutory provisions.

11. The learned Single Judge has failed to appreciate that the allegation of non-receipt of ballot papers was entirely unsubstantiated. In the absence of any other complaint from any other voters about non-receipt of ballot papers, entertaining the writ petition has resulted in miscarriage of justice.
12. The learned Single Judge failed to appreciate that it was not even the case of the writ petitioner that he has not received his ballot paper. The writ petition was filed without any cause of action and with entirely malafide intentions by the writ petitioner who was a candidate in the elections and filed the petition at the fag end of the electoral process with a view to derail the same, for reasons best known to him.
13. The impugned judgment is contrary to and/or inconsistent with the statutory provisions, namely, the Indian Veterinary Council Act, 1984 (hereinafter referred to as 'the said Act') and the rules made thereunder, i.e., the Indian Veterinary Council Rules, 1985 (hereinafter referred to as 'the said Rules'), which are a complete code by themselves for the purposes of conducting election of members of the Veterinary Council of India, the appellant herein. The learned Single Judge has failed to refer to and/or take note of these statutory provisions as well as the actions taken by the appellant in accordance therewith, as was fully stated in the appellant's counter affidavit to the writ petition.
14. The learned Single Judge failed to appreciate that the appellant has acted in accordance with the statutory provisions and as such the writ petition ought not to have been entertained. After publication of notification dated 19.05.2009 in the Extra-Ordinary Gazette of the same date by the Central Government under the provisions of Rule 3

of the said Rules calling upon the persons enrolled in the Indian Veterinary Practitioners Register (in short, IVPR as prescribed under Section 23 of Chapter III of the said Act) to elect members from amongst themselves for the Veterinary Council of India under clause (g) of sub-section (3) of Section 3 of the said Act, the Central Government by its letter dated 5.6.2009 asked the appellant to take necessary action for finalization of the electoral roll (electoral roll contains the name of every person whose name is entered in IVPR). Accordingly, the Secretary, Veterinary Council of India (in short, VCI), the appellant herein, addressed a letter dated 21.07.2009 to the Registrars of all State/UT Veterinary Councils (to which the said Act is applicable), circulating therewith a draft electoral roll and directing display of draft electoral roll and further action as prescribed in the said Rules for finalization of the electoral roll. The draft electoral roll was prepared containing the name of all veterinary practitioners whose names had been entered in IVPR upto 31.03.2008 as Gazetted upto February, 2009. It was, inter alia, categorically mentioned in the said letter dated 21.07.2009 that in case no claim or objection from any State/UT Council is received by the VCI by 21.08.2009, it shall be presumed that no claim/objection has been raised by the practitioners registered with the State/UT Council concerned. Notice regarding draft electoral roll was widely published in leading newspapers of each State Capital, including Hyderabad, on or about 22.07.2009. Draft electoral roll was also displayed on the website of the VCI. The Andhra Pradesh Veterinary Council, Respondent No. 4 herein, by its letter dated 20.08.2009 (almost at the end of the deadline prescribed) informed the VCI that "no claims or objections were received in the office of the Registrar, A.P. Veterinary Council regarding the Draft Electoral Rolls published by Veterinary Council of India for conduct

of Election of New Members for Veterinary Council of India, within the stipulated time i.e. 15.08.09.” This categorical statement by the A.P. Veterinary Council was sufficient enough to treat the draft Electoral Roll as final Electoral Roll as per the said Rules so far as the State of Andhra Pradesh was concerned and it was neither required nor warranted to amend the draft Electoral Roll, particularly having regard to the provisions of Rules 6, 7 and 8 of the said Rules. The Secretary, VCI, after taking into consideration the response received from various State/UT Councils finalized the electoral roll which was circulated amongst all the State/UT Councils by letter dated 28.08.2009 with request to display at their respective offices. Thereafter, the Secretary, VCI by its letter dated 31.08.2009 submitted the final electoral roll to the Central Government. Simultaneously, the final electoral roll was also put on the website of the VCI. Despite the wide publicity of the draft as well as the final Electoral Roll as early as 31.08.2009, the petitioner did not raise any objection that addresses of the voters in the State have not been corrected nor did he complain that he has not received the ballot paper. The writ petitioner as well as the President, A.P. Council chose to act at the fag end of the electoral process. The learned Single Judge has erroneously omitted and/or failed to appreciate these vital facts as well as the statutory provisions while delivering the impugned judgment.

15. The learned Single Judge ought not to have taken any cognizance of the entirely unsubstantiated allegation and/or averment that about 90% of the voters in the State of A.P. have not received ballot papers inasmuch as Rule 16(4) of the said Rules provides for issuance of fresh ballot papers and there was no averment in the counter affidavit of the

Returning Officer that any request for issuance of fresh ballot papers was received by him.

16. The learned Single Judge erred in relying upon the letter dated 17.11.2009 written by the A.P. Veterinary Council. The said letter has not indicated the reason for alleged non-receipt of ballot papers. The President nowhere alleged that his address was wrong.
17. The learned Single Judge failed to appreciate that the Secretary, VCI could not have acted upon the CD sent by the Registrar, Andhra Pradesh Veterinary Council for the reason that the Registrar in his said letter dated 20.08.2009 has categorically stated that no claim or objection was received in respect of the draft Electoral Roll. Further, no name could have been added in the draft Electoral Roll if such name has not already been included in the IVPR and duly gazetted as per the requirement provided in Section 23 of the said Act read with Rule 4(1). It is stated that it was not clear from the contents of the CD that no such new name has been included nor was there any certification to that effect by the said Registrar and as such the said CD was liable to be ignored and/or not acted upon.
18. The learned Single Judge has committed an error in observing that objection by the Secretary, VCI regarding absence of remarks in regard to change of address of registered veterinary practitioners is untenable inasmuch as Section 28 of the said Act cast upon a duty upon the registered veterinary practitioner to inform the State Council concerned and the VCI regarding change of the address, failing which his voting right is liable to be forfeited. The Secretary, VCI was right and justified in ignoring and/or not acting upon the said CD in absence of remarks regarding change in address.



19. The learned Single Judge failed to appreciate that the contents of the letter dated 20.08.2009 of the Registrar of the Andhra Pradesh Veterinary Council were inconsistent and/or contradictory and as such the Secretary, VCI was not obliged to act upon the contents of the CD. It is submitted that in absence of any claim or objection from the voters of the State, as clearly stated in his said letter by the Registrar of the State Council, there was no occasion for change in address or updation thereof, particularly in view of Section 28 of the 1984 Act.
20. The learned Single Judge erred in concluding that the 4<sup>th</sup> respondent to the writ petition, viz., Andhra Pradesh Veterinary Council, had received objections to the displayed draft Electoral Roll from the concerned members, whereas in the said letter dated 20.08.2009 of the Registrar of the said State Council it has been categorically stated that no claims or objections were received regarding the draft Electoral Roll.
21. The learned Single Judge committed a grave error by directing that ballot papers be issued as per the addresses furnished in the Compact Disk without first examining and recording findings to the effect that the names mentioned in the CD are valid and eligible names in accordance with the provisions of the said Act and the Rules and are as per the IVPR and consequently the Electoral Roll. Any further action without undertaking this basic exercise may vitiate the election. The learned Single Judge has wrongly cancelled the ballot papers earlier sent to the registered veterinary practitioners of the State.
22. Without prejudice to the foregoing and other contentions, it is further submitted that the impugned direction to fix another date of polling and issue of ballot papers, ought not to have been issued to the

appellant VCI, for the said acts come under the jurisdiction of the Central Government under the provisions of the said Rules.

23. The learned Single Judge has erroneously recorded findings or has made observations to the effect that there is a serious lapse on the part of the appellant and that it appears to be almost insensitive thereto. The said observations and/or findings are liable to be struck off the record.
24. Other grounds would be urged at the time of hearing.

**VALUE OF THE APPEAL**

A fixed court fee of Rs. 100/- is paid herewith.

Hyderabad

Dated: January 27, 2010



Counsel for the Appellant/Petitioner