

MEMORANDUM OF WRIT PETITION
(Under Article 226 of the Constitution of India)
**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR
THE STATE OF TELANGANA**

WRIT PETITION NO. OF 2020

IN THE MATTER OF

All India Jamiatul Quresh Action Committee
(A Registered Society vide Registration No. 955 of 2004)
Represented by its General Secretary :

..PETITIONER

VERSUS

1. The Union of India
Ministry of Road Transport and Highways
Rep. by its Secretary,
Office of Ministry of Road Transport & Highways
Transport Bhawan, 1, Parliament Street,
New Delhi - 110001
2. The State of Telangana
Rep. by its Chief Secretary,
Secretariat Building, Secretariat,
Hyderabad, Telangana – 500022
3. The Principal Secretary,
Telangana Transport Department,
Raj Bhavan Quarters Colony,
Somajiguda, Hyderabad, Telangana 500004
4. Transport Commissioner,
Telangana Transport Department,

Raj Bhavan Quarters Colony,
Somajiguda, Hyderabad, Telangana 500004

RESPONDENTS

The address for service on the above named Petitioner is that of his counsel Mr. Mohd. Abdul Faheem

AFFIDAVIT

1. I,

do hereby solemnly

affirm and sincerely state on oath as under :

2. I am the General Secretary of the petitioner association All India Jamiatul Quresh Action Committee, a registered nongovernmental organization working for the upliftment of weaker sections of the society including the butchers and cattle traders of the country, and I am authorized to represent on behalf of the petitioner association herein and as such I am fully conversant with the facts of the case.

3. That the Petitioner Society is registered with the Office of The Registrar of Societies, Hyderabad vide Registration No. 955/2004, as Kul Hind Jamiatul Quresh Action Committee with amended clause referring the name is popularly known as All India Jamiatul Quresh Action Committee. I am

authorized to file the petition before this Hon'ble Court vide authorization letter dated 17.01.2020 attached with Vakalatnama. That the Petitioner Society is not involved in Civil/Criminal/revenue litigation so no nexus if any.

4. That the writ petitioner as well as its authorized representative has no personal interest in the litigation and the petition is not guided by any self-gain or for gain of any other person/institution/body and there is no motive other than of public interest in filing the present writ petition Under Article 226 of the Constitution of India.

5. That the address of the Petitioner Society All India Jamiatul Quresh Action Committee is the same as written in Petition, The copy of the ID proof of the Authorized Representative and General Secretary of the Petitioner Society is annexed herewith as **ANNEXURE P-2**. The copy of the Certificate of Registration of the Petitioner Society is annexed herewith as **ANNEXURE P-3**. Pan Card No. of the Petitioner Society is _____, annexed herewith as **ANNEXURE P-4** and **Authorization Letter (ANNEXURE P-5)** email address is _____ and Annual Income is nill as the Society is non profit Society.

6. That the present petition is being filed by the petitioner herein for agitating the cause of the cattle traders, farmers, butchers, agriculturists as well as non-vegetarian consumers.

7. That the petitioner is filing the present writ petition being aggrieved by an impugned Circular Memo No: 5380/R/2006, dated 07-12-2019 issued from the office of the Transport commissioner Telangana, with subject:-

Motor vehicles- Prevention of cruelty to animals during transportation by road- precautions to be taken instructions issued- Regarding.

8. The impugned circular memo invited the attention of all the district officers of the transport department to comply with the provisions under rule 253 of Telangana Motor Vehicle Rule 1989 and rule 125-E of Central Motor Vehicles Rule 1989.

9. The impugned Circular Memo also instructed the checking officers to book cases of violations for cruelty caused to animals in their transportation on road in discharge of their duties and also requested the district transport officers for instructions to the checking officers in their jurisdiction to conduct inspection of such vehicles whenever they find

animals transported in lorries and book cases of violations in the interest of safety of animals.

10. Rule 125-E reads as follows-

"125E. Special requirements of motor vehicles transporting livestock.-

(1) On and after, the 1st January, 2016, motor vehicles used for transportation of livestock by road shall be in accordance with the specifications of the Bureau of Indian Standards as provided in IS-14904:2007; or IS-5238:2001; or IS-5236:1982, as the case may be, as amended from time to time and the transporter or consigner of the livestock shall follow the code of practice laid down in the respective specification regarding the transport of the livestock.

(2) Subject to sub-rule (1), the motor vehicles for carrying animals shall have permanent partitions in the body of the vehicle so that the animals are carried individually in each partition where the size of the partition shall not be less than the following namely:—

(i) Cows and buffalos = 2 sq. mts.

(ii) Horses and mares = 2.25 sq. mts.

(iii) Sheep and goat = 0.3 sq. mts.

(iv) Pig = 0.6 sq. mts; and

(v) Poultry = 40 cm sq.

(3) No motor vehicles meant for carrying animals shall be permitted to carry any other goods.

(4) The Regional Transport Officer shall issue special licences for the motor vehicles meant for carrying animals on the basis of vehicles modified in accordance with the provisions of sub-rule (2).”

11. Rule 253 reads as follows-

“253. Carrying of animals in goods carriages vehicle.--

(1) No animal shall be carried in a goods vehicle unless.--

(i) in the case of goats, sheep, deer or a pig, a minimum floor space of 60 cm. x 100 cm. per head of such animal is provided in the vehicle;

(ii) in the case of any other animal.--

(a) minimum floor space of 210 cm. by 100 cm. per head of animal and half of such floor space for a young one of animal which is weaned is provided in the vehicle;

(b) the load body of the vehicle is constructed of strong wooden planks or of iron sheets with a minimum height of 1,500 cm. measured from the floor of the vehicle on all sides and the back; and

(c) the animals are properly secured by ropes tied to the sides of the vehicles; and

(iii) an attendant provided by the owner of the animals shall accompany the animals with necessary cattle food and give food and water to the animals, in transit, in time.

(iv) the Vehicles Transporting the cattle shall have the following fitments.

(a) there shall be Padding inside the Body after a height of 60 cm from the floor of the vehicle upto the height of 120 cm. The Padding shall be of coir with 4 inches thickness. This Padding shall be on the inside of the body along the inner sides.

(b) *the Cattle should be separated by means of wooden ballies or MS pipes with smooth outer surface in such a way that not more than 6 cattle or 9 Calves can be transported in the vehicle. The arrangement of cattle is shown in the Picture - A.*

(c) *there shall be a Ramp fixed to the vehicle on the rear side which can be folded Upwards and it should have a width of 1.5 meters and it should have an inclination of 30 degrees when it is lands on the ground. The material of the Ramp should be standard quality, which can bear the weight of the animal. The Hand Rails of the Ramp should be folding type on both sides as shown in the Picture-B.*

(v) *the Goods vehicle shall be provided with anti slipping material such as coir matting or wooden board on the floor.*

(vi) *thorough inspection of the vehicle shall be carried out to eliminate any projection like nails, etc inside the body of the vehicle to prevent any injury to the animal.*

(vii) *the animal should face the engine to prevent them from getting frightened.*

(viii) *while Transporting animals, the Goods Vehicles shall not be loaded with any merchandise of any kind.*

(ix) *there should be a First-Aid Box in the vehicle containing the following Medicines.*

- (a) *Anti-Inflammatory Injection - 5 bovine doses*
- (b) *Analgesic Injection - 5 bovine doses*
- (c) *Broadspectrum antibiotic Injection - 5 bovine doses*
- (d) *Styptic Injection - 2 x 20 Ampules.*
- (e) *Disposable Syringes (Sterile) - 10ml 2 Nos.*
- (f) *Disposable Syringes (Sterile) -2ml - 2 Nos.*
- (g) *Povidone Iodine - 100 ml bottle.*
- (h) *Absorbant Cotton - 100 gm Packet.*
- (i) *Antibiotic ointment - One tube.*
- (j) *Bandage Cloth*
- (k) *POP Bandage*
- (l) *Potassium Permanganate Crystals*
- (m) *Antibiotic dressing Powder*

(n) *Thermometer.*

(x) *no animal shall be transported in the open body vehicle. The body shall be closed on the top with facility for open air on all four sides.*

(xi) *each Goods vehicles transporting animals shall have a Coaxer (A device which gives mild electric shock when switched on and is operated with two dry batteries) to drive the animals for loading and unloading into the vehicles.*

Explanation.-- (1) "Animal" for the purpose of this rule means livestock and includes the following animals namely-

(i) *Cattle including cow, bulls and bullocks, buffalo bulls and bullocks, cows buffaloes mithuns, yaks and calves.*

(ii) *Equines including horses, ponies, mules and donkeys.*

(iii) *Horse including entire (stallions), goldings, brood mares, colts and fillies.*

(iv) *Goat including adult goat, male or female of two years age and above.*

(v) *Ruck including male goat.*

(vi) *Kid young goat below one year of age.*

(vii) *Nanny female goat.*

(viii) *Sheep including adult sheep, male or female of two years age and above.*

(ix) *Ewe female sheep.*

(x) *Lamb young sheep below one year of age.*

(xi) *Ram male sheep.*

(xii) *Whether includes male lamb that has been castrated before reaching sexual maturity.*

(xiii) *Pig includes adult pig male or female of one year of age or above.*

(xiv) *Piglet includes young pig below one year of age.*

(2) No animal belonging to or intended for a circus manager or zoo shall be carried in a goods vehicle unless.--

(i) in the case of wild or ferocious animal, a suitable cage either separate from or integral

with the load body of the vehicle used and of sufficient strength to contain the animal securely at all times is provided; and

(ii) reasonable floor space for each such animal is provided in the vehicle.

(3) No goods vehicle when carrying any animal under this rule shall be driven at a speed in excess of 40 Kms. per hour.”

12. The copy of the impugned Circular Memo No: 5380/R/2006, dated 07-12-2019 issued from the office of the Transport commissioner Telangana is annexed as **ANNEXURE P1**. The cause of action arose from the date of issuance of impugned Circular Memo i.e. 7th December, 2019 and is still subsisting.

13. That the provisions in the impugned Circular Memo are not only against scheme of The Prevention of Cruelty to Animals Act 1960 (59 of 1960) but also ultra virus and violative of the constitutional provisions of :-

Article 19(1)(g): To practice any profession, or to carry on any occupation, trade or business.

Article 21 : Protection of life and personal liberty

Article 25 : Freedom of conscience and free profession, practice and propagation of religion

Article 41: Right to work

Article 43: Economic organization to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life

Article 47: Raising of the level of nutrition and the standard of living of its people and the improvement of public health

Article 48: To organise agriculture and animal husbandry on modern and scientific lines

Article 48A: To protect and improve the environment

Article 51A (g): To have compassion for living creatures

14. That the Prevention of Cruelty to Animals Act 1960(59 of 1960) is an Act to prevent the infliction of unnecessary pain or suffering on animals. The section 38 gives power to the Central Government to make rules by notification in the Official Gazette and subject to the condition of previous publication, to carry out the purposes of this Act but Section 38 does not delegate any power to override or rewrite the provisions of the Parent Act.

15. That the provisions of the Act, or the rules made there under shall be enacted or issued with an object of preventing unnecessary pain or suffering to animals and providing protection to them.

Section 38 of the Prevention of Cruelty to Animals Act:

38. Power to make rules : (1) The Central Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Central Government may make rules providing for all or any of the following matters, namely:

a)

h) the precautions to be taken in the transport of animals whether by rail, road, inland waterway, sea or air and the manner in which and the cages or other receptacles in which they may be so transported;

16. That every rule made by the Central Government or by the Committee constituted under section 15 and every regulation made by the Board shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions,

Section 38 (A) of the Prevention of Cruelty to Animals Act:

[38A. Rules and regulations to be laid before Parliament : Every rule made by the Central Government or by the Committee constituted under section 15 and every regulation made. by the Board shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, as the case may be, should not be made the rule or regulation shall there after have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

17. That the impugned Circular Memo contains the provisions bound to be framed in exercise of the powers conferred under section 38 of the Act 1960 and is mandatory to be laid before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in successive more sessions as described.

18. But the provisions in impugned Circular Memo are not in the spirit of the Act to prevent infliction of unnecessary pain or suffering and for the well being and welfare of the animals and to preserve the natural instinct of the animal. In fact, impugned Circular Memo contains the provisions bound to be framed in exercise of the powers conferred under section 38 of the Act 1960. The new introduction of separate individual partitions in the vehicle with larger space prescribed nowhere in the animals laws of the world. It is also inconsistent and overriding the provisions of The Prevention of Cruelty to Animals Act 1960. It rendered the entire scheme of

the Act operating in the country as useless and nugatory.

19. That the provisions contained in the impugned Circular Memo has never been laid before the each Houses of Parliament without following the mandatory provision of the Act. The impugned provisions are not a legislature made law, Therefore, ex-facie illegal, contrary to the parent Act, decisions of Hon'ble High Courts, the decisions of the Hon'ble Supreme Court, ultra virus, do not enjoy presumption of constitutionality and is perse unconstitutional and violating article 19 (1)(g), 21, 25, 41, 43, 47, 48, 48A, 51A of the Constitution.

20. The petitioner is seriously aggrieved by 125E. Special requirements of motor vehicles transporting livestock- Rule 2(2) Subject to sub-rule (1), the motor vehicles for carrying animals shall have permanent partitions in the body of the vehicle so that the animals are carried individually in each partition where the size of the partition shall not be less than the following namely:-

- (i) Cows and buffaloes = 2 sq mts.
- (ii) Horses and mares = 2.25 sq. mts
- (iii) Sheep and goat = 0.3 sq. mts.
- (iv) Pigs = 0.6 sq. mts
- (vi) Poultry = 40 sq. cms

21. With regard to permanent partitions in the body of the vehicle for carrying individual animals in each partition- by not understanding this requirement, the petitioner consulted the truck body building agencies who have informed such a thing was never made in the body of the vehicle and if a design is provided the same could be examined. My efforts to get a design for such permanent partitions in the body of the vehicle for transport of different livestock have failed miserably. The response was it is impossible and impractical to have such partitions in the body of the vehicle.

22. That the space requirements prescribed for different species of animals, the veterinary experts having experience of livestock transport have informed that the spaces provided are for very large size of the species of livestock and for most animals which smaller in size these spaces are not appropriate and transporting animals in larger space than required would result discomfort and adverse effect as the animals will be

thrown about and may sustain injuries.

23. The veterinary experts have further informed that the transporting livestock in individual partitions is against animal welfare implications as the animals have a social bond and prefer to remain in smaller groups than individual. It was also confirmed that such a practice of transporting animals in individual partition does not exist anywhere in the World.

24. Thus, the entire provisions of Sub-rule 2(2) are impractical and impossible to implement and are detrimental to animal welfare as well as to the petitioners, farmers, butchers whose animals are to be transported for trade purpose. This provision would cripple the Livestock transporters and associated people as their operations would get halted and no way to proceed as the provisions cannot be complied due to their impractical nature. The Circular Memo provisions are against improving the natural environment and to have compassion for living creatures. Hence, the Circular memo provisions are against the spirit of Art 51A to have compassion for living creatures, therefore need to be deleted,

Article 51A.

51A. It shall be the duty of every citizen of India-

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

25. The petitioner is also seriously aggrieved of the Rule

2(3) No motor vehicles meant for carrying animals shall be permitted to carry any other goods.

26. That the Sub-Rule (3) defines 'No motor vehicles meant for carrying animals shall be permitted to carry any other goods'. The provision need to be considered for change as it would affect livestock transporters costs and in turn farmer economics get affected adversely due to heavily increased unbearable transport costs.

27. The current operation is Livestock are transported from rural area markets to urban area market or to user destinations and in the return journey as there will not be animals to be transported, vehicles carry appropriate goods which covers the transport costs and for sustainable operations.

28. The current system facilitates efficient use of vehicles and could also be considered in National economic

interest. The Petitioner further submit that a change in the Rule provision could be considered as mentioned in BIS Code, 'not to transport any other goods along with livestock except the materials required for the animals being transported such as feed, water etc.

29. *BIS Code provision at 4.6.1.1 under 4.6. Means of transport: They shall be appropriate for the species, size, and weight of the animals to be transported, maintained in good mechanical and structural condition and shall not be used to transport any other goods or merchandize during the transport of animals.*

30. However, as per the provision of the sub-rule (3) if the vehicle has to return after transporting livestock empty, the return journey costs also are to be borne on the account of the livestock transported which may double the costs of transportation. And for low value animals such as the culled stock these increases could be so large that the livestock operations may get adversely affected to the detriment of the resource poor livestock farmers or the consumers may get affected with substantial higher costs.

31. It is submitted that there is a possibility that due to severe increase in cost of transportation, the farmers may resort to transport of animals by hoof even for longer distances which would have adverse effect on animal welfare.

32. Hence a change in the Rule provision could be considered "not to transport any other goods along with livestock except the materials required for the animals being transported such as feed, water etc." BIS Code at para 4.6.1.1 also mention that vehicles "shall not be used to transport any other goods or merchandize during the transport of animals"

33. That the Sub-rule 2(4) The Regional Transport Officer shall issue special licenses for the motor vehicles meant for carrying animals on the basis of vehicles modified in accordance with the provisions of sub- rule (2)

34. The Petitioner submit that, as the modifications suggested for the motor vehicles meant for carrying animals are impractical and impossible as explained at Sub-Rule 2 (2) hence this provision need to be deleted.

35. It is also to be noted that any freedom under Article 19 can be restricted, only by a law made by the legislature and cannot be curtailed by a delegated executive fiat having no sanction in the Act of 1960. Further, the impractical and impossible restrictions on transportation of cattle by road would cast a huge economic burden on the farmers who find it difficult to feed their children today but would be required to feed the cattle as it is an offence under the Act of 1960 to starve an animal or failure to maintain it.
36. That there are number of incidents where the cows, bulls or bullocks are transported by any goods carriage or carried on foot, they are generally seized either by the police or some anti-social elements. The Police is also helpless before such anti-social elements, who are violating the Fundamental right of citizens to carry the trade of purchasing and selling the cattle.
37. That in a Judgment Passed by HIGH COURT OF JUDICATURE AT ALLAHABAD in Criminal Revision No. 131 of 2005 Between Kailash Yadav and others

Versus State of U.P. and another, It was held as under:

"It is often seen now-a-days that whenever the cow, bull or bullocks are transported by any goods carriage or carried on foot, they are generally seized either by the police or some anti-social elements. The Uttar Pradesh Police also is helpless before such anti-social elements, who are violating the Fundamental right of citizens to carry the trade of purchasing and selling the cattle."

38. There are long pending cases in the courts and there are number of incidents where after disposal of the cases the SPCA's, Animal Welfare Organizations and Goshalas never returned the cattle by willfully and deliberately disobeying the orders of the lower courts and High Courts in the country. There are several incidents in the country where cases under the Act has been registered on false complaints and the animals were seized on such false complaints and billions of worth animals purchased by farmers, cattle traders, butchers and others legally under valid transaction in the government cattle markets illegally handed over, or forcibly taken without any order and are in possession of SPCA's, Animal Welfare Organizations, infirmaries and Goshalas and never returned to its

owners. If the said impugned Rule is implemented it will encourage and give free hands to the bad elements even criminals to lodge false complaints with an intention to grab animals and for making source of their regular income under the pretext of animal laws.

39. That the preamble of the Constitution is an integral part of the Constitution. Democratic form of Government, federal structure, unity and integrity of the nation, secularism, socialism, social justice and judicial review are basic features of the Constitution. Accordingly Constitution by Article 19 (1) (g) guarantees to the Indian citizen the right to carry on trade or business subject to such reasonable restrictions as are mentioned in clause 6 of that Article. A constitutional guarantee of the right to take up the profession, calling, trade or business of one's choice is indeed a significant aid to the building up of a dynamic and democratic society. The framers of the Constitution have done well to incorporate these rights in the chapter on

Fundamental Rights and have thereby helped the evolution of a truly democratic society.

40. That restrictions under the impugned Circular Memo, on the face of it, is of an arbitrary nature amount to an infringement of the fundamental right guaranteed by Article 19 (1)(g) of the Constitution.

41. It's a forceful imposition on the cattle traders without any alternative arrangements imposing impractical and unconstitutional restrictions from using the cattle markets for their trade of cattle which is their ancestral and traditional occupation being carried on from their ancestors with no other skills to get employed or adopt any other profession. It is a forceful imposition of impugned Circular Memo depriving them from livelihood.

42. That the provisions in impugned Circular Memo for implementing with the specifications of the Bureau of Indian Standard provided in IS-14904 : 2007 ; or IS-5238 : 2001 ; or IS-5236 : 1982, the livestock markets need to be developed with the necessary facilities for

complying with the responsibilities of different officials / entities operating in the market.

43. That the markets are deficient of many requirements and developing livestock markets is a prerequisite for effecting implementation of Animal Laws which are constitutional the impugned Circular Memo imposes a impractical provisions causing a complete ban on sale, purchase or resale of animals. It would cast a huge economic burden on the farmers, cattle traders, butchers, all associated traders, transporters and several others who find it difficult to feed their children today. It would also give way for Cow Vigilantes to harass traders under the blessing of the impugned Circular Memo. Therefore, the impugned provisions are in violation of the right to livelihood under Article 21 of the Constitution of India and in violation of the right to carry on trade or business and amount to an infringement of the fundamental right guaranteed by Article 19 (1)(g) of the Constitution of India. The nature of injury is loss of livelihood, deprivation of freedom of Religion and Cultural Preservation and illegally taking away the sale and Purchaser rights of Public at large.

44. The impugned Circular Memo imposed impractical and impossible restrictions on transportation of cattle causing a ban on the trade of sale or purchase of animals for slaughter. Therefore, the impugned provisions are imposing an absolute ban on slaughtering of permitted animals directly effecting the employment of the butchers and their trade and also depriving the citizens to have the food of their choice in violation of the right to livelihood under Article 21 of the Constitution of India.

45. There are long pending cases in the courts and there are number of incidents where after disposal of the cases the SPCA's, Animal Welfare Organizations and Goshalas never returned the cattle by willfully and deliberately disobeying the orders of the lower courts and High Courts in the country. There are several incidents in the country where cases under the Act has been registered on false complaints and the animals were seized on such false complaints and billions of worth animals purchased by farmers, cattle traders, butchers and others legally under valid transactions in the

government cattle markets illegally handed over, or forcibly taken without any order and are in possession of SPCA's, Animal Welfare Organizations, infirmaries and Goshalas and never returned to its owners. If the said provisions in impugned Circular Memo are implemented it will encourage and give free hands to the bad elements even criminals to lodge false complaints with an intention to grab animals and for making source of their regular income under the pretext of animal laws.

46. That the procedure prescribed by law for the deprivation of the right conferred by Article 21 must be fair, just and reasonable. Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right, must conform to the means of justice and fair play. Procedure, which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, there by vitiating the law which prescribes that procedure and consequently, the action taken under it. Any action

taken by a public authority which is invested with statutory powers has, therefore, to be tested by the application of two standards: The action must be within the scope of the authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable.

47. That the act of the respondents is completely unreasonable, illegal, arbitrary and unconstitutional, hence requires interference of this Hon'ble Court in exercise of its Extra Ordinary Jurisdiction.

48. That being aggrieved by the act of the respondent, the petitioner herein on behalf of public at large including cattle traders, farmers, butchers, agriculturists as well as non-vegetarian consumers, files the present petition on one and each of the following grounds:-

 GROUND :-

- a. Because the impugned Circular Memo is bad and erroneous as per law and hence deserves to be declared ultra vires by this Hon'ble Court.
- b. Because the Prevention of Cruelty to Animals Act 1960 (59 of 1960) is a special Act for promotion of animal welfare and to prevent the infliction of unnecessary pain or suffering on animals. The respondent has no role, authority or jurisdiction to implement laws repugnant to the provisions of the Act.
- c. Because the section 38 of the Act gives power to the Central Government to make rules by notification in the Official Gazette and subject to the condition of previous publication, to carry out the purposes of this Act but the provisions under rule 253 of Andhra Pradesh Motor Vehicle Rule 1989 and rule 125-E of Central Motor Vehicles Rule 1989 in impugned Circular Memo override and rewrite the provisions of the Parent Act made by the Parliament.

- d. Because the provisions of the Act, or the rules made there under shall be enacted or issued with an object of preventing unnecessary pain or suffering to animals and providing protection to them, but the provisions in impugned Circular Memo to have permanent partition in the body of the vehicle cause infliction of injury to the animal and it is against the purpose of the Act causing transporters to commit crime against animals.

- e. Because the spaces provided are for very large size of the species of livestock and for most animals which smaller in size these spaces are not appropriate and transporting animals in larger space than required would result discomfort and adverse effect as the animals will be thrown about and may sustain injuries.

- f. Because the truck manufacturers and the truck body building agencies have no approved design for making partitions in the trucks and they have never made partitions in the body of the vehicle and there is no single vehicle available in the state of Telangana or

Andhra Pradesh as prescribed in the impugned Circular Memo.

- g. Because there is no alternative arrangement of vehicles to transport cattle from rural to urban areas and from one cattle market to another.
- h. Because the vehicle has to return after transporting livestock empty, the return journey costs also are to be borne on the account of the livestock transported which may double the costs of transportation. And for low value animals such as the culled stock these increases could be so large that the livestock operations may get adversely affected to the detriment of the resource poor livestock farmers or the consumers may get affected with substantial higher costs.
- i. Because the respondent has not competent to make Rules on a subject matter falling purely within the legislative domain of the Parliament under the provisions of section 38 of the Act.

- j. That the provisions contained in the impugned Circular Memo are not made in exercise of the powers conferred under section 38 and has never been laid before the each Houses of Parliament following the mandatory provision under section 38 (A) of the Act. The impugned provisions are not a legislature made law.

- k. Because the impugned circular made it impractical and impossible for transportation of animals causing complete ban on sale, purchase or resale of animals, would cast a huge economic burden on the farmers and cattle traders, who find it difficult to feed their children today but would be required to feed the cattle as it is an offence under the Act of 1960 to starve an animal or failure to maintain it.

- l. Because the provisions give way for Cow Vigilantes to harass farmers and cattle traders under the blessing of the impugned regulations.

- m. Because the said impugned rule if implemented it will encourage and give free hands to the bad elements even criminals to lodge false complaints against transporters with an intention to grab animals and for making source of their regular income under the pretext of the provisions of impugned Circular Memo.
- n. Because registered and unregistered infirmaries/gaushalas used to seize the animals of cattle traders by implicating transporters in false cases and despite court orders to release the same, they willfully disobeyed the orders and due to long pendency of cases, they raise the care and maintenance bill which virtually more than the cost of the animals and as such these impugned rules give power to these infirmaries/gaushalas to misappropriate with the animals.
- o. Because the impugned provisions which prohibit the sale or purchase of animals, it's transportation for religious purposes, offends

the right to freedom of religion guaranteed under Article 25 of the Constitution of India.

p. Because the impugned provision causing deprivation of citizen's right to sell or purchase any animal for sale or slaughter the same as a part of meat vending business. It is an unreasonable and excessive restriction on the right to free trade and business and unconstitutional interference into the freedom of trade and business guaranteed under Article 19(i)(g) of the Constitution of India.

q. Because the farmers, cattle traders and others involved in sale & purchase of cattle in the cattle markets, butchers and their employees engaged in slaughter houses, meat shops, meat processing units, they would be gravely deprived of their right to livelihood as under the impugned regulations, an impractical restrictions have been imposed on transportation of animals. Therefore, the impugned circular is in violation of the right to

livelihood under Article 21 of the Constitution of India.

r. The impugned provisions are not only in violation of the right to livelihood under Article 21 of the Constitution of India and but also in violation of the right to carry on trade or business and amount to an infringement of the fundamental right guaranteed under Article 19(1)(g) of the Constitution of India.

s. Because the right to choice of food (Non Vegetarian or Vegetarian) is a part of the right to personal liberty, conscience and privacy. By imposing a restriction on transportation of animals for food, the citizens with a choice to eat the flesh of such animals would be deprived of such food, which violates the right to food, privacy and personal liberty, guaranteed under Article 21 of the Constitution of India.

t. Because Any action taken by a public authority which is invested with statutory powers has,

therefore, to be tested by the application of two standards: The action must be within the scope of the authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable.

u. Because the impugned rules are ultra vires, illegal, unreasonable and unsustainable, therefore unconstitutional and violative of Articles 19 (1) (g), 21, 25, 41, 43, 48, 48A and 51 of the Constitution of India.

49. The Petitioner states that other grounds would be urged at the time of hearing.

50. The Petitioner has no other alternative remedy, except to approach this Hon'ble Court under Article 226 of the Constitution of India.

51. The Petitioner has not filed any writ petition, suit or any other proceeding for the relief or reliefs sought in this writ petition.

52. The Petitioner reserves its right to file better or additional affidavit, if any, if the circumstances so warrant.

53. The material papers filed herein may be read as part and parcel of this affidavit.

54. The Petitioner states that the aforesaid facts clearly show that there is a strong prima facie case. If the interim relief as prayed for is not granted, the members of the Petitioner Association will suffer grave injury. The Petitioners also states that the balance of convenience is in its favour for granting interim relief as prayed for.

PRAYER

In the light of the facts and the circumstances submitted above, your lordship of this Hon'ble Court may graciously be pleased to suspend the operation of the Rule 125E of the Motor Vehicle Rules, 1989 framed by Respondent No. 1, pending the disposal of the Writ Petition,

The Petitioner further prays that the Hon'ble Court suspend the operation of the Rule 253 of the Telangana Motor Vehicles Rules, 1989 framed by Respondent No. 3 as sought to be

implemented by Respondent No. 4 vide his circular memo no. 5380/R/2006 dated December 7, 2019, pending the disposal of the Writ Petition and pass any such orders as this Hon'ble court deems fit and proper in the circumstances of the case.

For the aforesaid reasons, it is humbly prayed that this Hon'ble Court may be pleased to issue an appropriate Writ, Direction or Order more in the nature of Mandamus,

- a. To strike down the Rule 125-E of the Central Motor Vehicles Rules, 1989 as being manifestly arbitrary, unscientific, unlawful and a colourable exercise of power as well as violative of the rights granted to the members of the Petitioner association under Article 14, 19 (1) (g), 21, 25, 41, 43, 48, 48A and 51A of the Constitution of India.

- b. To strike down Rule 253 of the Telangana Motor Vehicles Rules, 1989 as being manifestly arbitrary, unlawful, unscientific and a colourable exercise of power as well as being violative of the granted to the members of the Petitioner association under Article 14, 19 (1) (g), 21, 25, 41, 43, 48, 48A and 51A of the Constitution of India;

c. and pass such other order(s) as this Hon'ble Court deems fit and proper in the extraordinary circumstances of the case in the interests of justice.

Sworn and signed before me on this 27th day of January, 2020 at Hyderabad

DEPONENT

VERIFICATION

I,

being the General Secretary of the petitioner All India Jamiatul Quresh Action Committee and authorized person acquainted with the facts of the case, do hereby declare that the contents in the paragraph Nos. 1 to 54 are true and correct to the best of my knowledge and belief and based on the legal advice.

Hence verified on this this 27th day of January, 2020 at Hyderabad .

Counsel for Petitioner

Deponent