

# RAJASTHAN HIGH COURT

J.P. Joshi

Vs.

Jai Narain Vyas University

S.B. Civil Writ Petition No. 3359 of 2000

(J.C. Verma, J.)

14.12.2001

## JUDGMENT

**J.C. Verma, J.**

1. The petitioner is a practising lawyer at Jodhpur and had been conducting the cases of the respondent Jai Narain Vyas University, Jodhpur (herein-in-after referred to as the University).

2. It is stated that the petitioner was approached by the University for conducting the cases in the High Court which the petitioner successfully conducted and the decisions were even upheld upto the Supreme Court. The petitioner submits that because of his being very busy lawyer, he had very clearly informed the University that he will only be able to do the important cases and that also on the terms and conditions to be negotiated. The Registrar of the University had persuaded the petitioner to conduct the cases with minimum fee of Rs. 5,500/- per case but if the nature of the cases so requires, or more complicated points are involved, the fee shall go right upto Rs. 11,000/- to Rs. 15,000/- per case. This understanding was agreed to and the petitioner was actually paid fee for some of the cases at the rate of Rs. 11,000/- as is clear from Annexure-1; the sanction of the University for conducting for the cases and payment of Rs. 44,000/- for the said four cases. The then Vice-Chancellor had relinquished the charge. The petitioner submits that certain members of the Syndicate who were wanting that certain cases of teachers to be decided to a particular direction to which the University otherwise was opposing and ultimately the teachers had lost the case, it had annoyed certain members of the syndicate as those cases were conducted by the petitioner and to revenge for this, the Syndicate members started working against the petitioner. The situation came to surface when for conducting 10 cases, the petitioner

had submitted a fee bill of Rs. 55,000/- @ Rs. 5,500/- and even a sanction was also accorded and the cheque had also been prepared in favour of the petitioner for the said amount but before the cheque could be delivered and encashed, on the initiation of one Dr. Gulab Singh Chouhan, a member of the Syndicate in a meeting held on 28.3.1999 had taken up the matter that the fee being paid to the advocate is at higher side. The Vice-Chancellor Dr. Laxman Singh Rathore is said to have succumbed to the pressure built up by a group of the leaders of the Teachers Association and without applying his mind to the fact that the payment was duly sanctioned and cheque had already been prepared in the name of the petitioner, had issued necessary direction to the Accounts Sections not to hand over the cheque to the petitioner, even though the amount stood duly sanctioned by his predecessor in office. According to the petitioner all this was being done to settle scores with earlier Vice-Chancellor Shri Shyam Lal Jedia. The Syndicate vide its resolution No. 3/99 had decided to constitute a committee in this regard and three meetings were held in May 1999 itself. Part of resolution No. 3 is reproduced as under :-

"After going into the facts as stated above from the file, the committee desired that details of all cases handled by Shri Joshi be made available along with details of payment. The Finance Officer has supplied the summary of payment made to Shri Joshi vide note No. 811 dated 5.5.99 (photo copy enclosed). Further, when the details of summary were examined, it revealed that Shri Joshi has been paid @ Rs. 11,000/- per case in five cases (including four similar cases). Further Shri Joshi has been paid Rs. 11,000/- for conference with Lawyer of the Supreme Court for contesting SLP filed by Shri Shishupal Singh & Virendra Tater. In the rest of the cases, payment has been made to him @ Rs. 5,500/- each case even though there were eight similar cases.

As per the decision of the Syndicate whenever a Lawyer is to be engaged out of panel or on different scale of remuneration, then the Syndicate's prior approval is necessary. Therefore, it is quite clear that Mr. Joshi was engaged without prior approval of the Syndicate and on much higher rates of remuneration in comparison to the rate of Rs. 2,500/- per case as approved by the Syndicate. The suggestions of the Lawyer on higher rates of remuneration was also not reported to the Syndicate for approval till date.

Further, Rs. 11,000/- per case was paid to Mr. Joshi in five cases over and above his negotiated rates of Rs. 55,00/- per case.

The Committee has also come across an order of the Govt. of Rajasthan No.

File A5/24/Raj./Case/91 dated 9.3.99 wherein the payable fee of the Lawyer in similar cases is lower than the fixed fee as per case.

The Committee concludes that Mr. Joshi was engaged without the authority and approval of the Syndicate and payment made to him were very excessive and not in order by passing the authority of the Syndicate."

3. The petitioner had been giving notices for payment of the amount but without any result.

4. Vide Annexure-5 another committee was formed vide resolution No. 19/2000 to go into the matter as to under which circumstances the then Vice-Chancellor is said to have approved Rs. 55,000/- to the petitioner; the committee was asked to submit his report. It is the contention of the petitioner that the action now being taken by the committee is *mala fide* and once the payment has been made or the payment is due as per discussion and negotiation, the committee cannot sit over such a decision specially when for engaging senior counsel approval was being given even upto the extent of Rs. 38,500/- to the Senior Advocate as per day hearing at the said rate and Rs. 11,000/- for advocate on record for per hearing in the Hon'ble Supreme Court. Prayer has been made to quash the resolution dated 13/14.5.2000 and with a direction to the respondent to release the payment with interest.

5. Per contra it is stated in written statement by the University that a Committee had been constituted to go into the matter and, therefore, the present writ petition has been filed prematurely; i.e. counsel for respondent submits in written statement that till the finding of the Committee is given the writ petition should not have been filed. It is further submitted that as many as 19 lawyers were appointed on panel in University with Rs. 2,500/- was fixed as fee per case, and, therefore, the demand of petitioner at the rate of Rs. 5,500/- or Rs. 11,000/- per case was not justified. It is further submitted that the University while constituting the panel had categorically laid down the norm of fee and thus the petitioner is not entitled to claim any amount more than the fee fixed. It is admitted that the annexure-1 was passed by the University giving sanction of payment of fee as mentioned in annexure- 1. It is further submitted that the Vice-Chancellor was not vested with the powers to enhance the fee. The *mala fides* are denied.

6. It is true that vide the annexure R1/2 the University has prepared the panel of

lawyer including the name of petitioner. It is mentioned in the order that Rs. 2,500/- per case shall be paid to Advocate in High Court and Rs. 1,200/- in Trial Court to contest the case on behalf of University and the Vice-Chancellor had been authorised to engage the Advocate out of the panel to contest the cases in interest of the University. The Advocates mentioned in panel were asked to give their approval.

7. Vide annexure R1/4, attached by the respondent with the written statement, is in regard to meeting of the Syndicate held on 28th March, 1999 wherein the matter was taken up that the Vice-Chancellor had allowed the fee Rs. 5,500/- in certain cases to certain Advocates and that the total payment of fee bill in favour of petitioner be stopped.

8. On 10.5.2001, this court had adjourned the case to await the decision of Committee. Today the decision of the Committee has been shown to court in original. The Committee has given finding that earlier Vice-Chancellor had made payment of fee bill as per increased rate and the amount should be recovered from the then Vice-Chancellor and it has been further opined that Mr. Joshi be paid only Rs. 2,500/- per case, i.e. the Committee has not been able to solve the grievance of the petitioner. Therefore, the arguments were heard finally. (The original report is ordered to return back after keeping the copy of the same on record.)

9. After hearing counsel for parties, I find merit in the submission of learned counsel for the petitioner. It is true that a panel was constituted by the Syndicate and the fees of the Advocates was fixed as mentioned therein. The approval was sought by the University from the counsel, to which the petitioner, who is one of the senior, experienced Advocate practising in High Court, had specifically informed the University that he would be able to contest the cases of University on the terms as expressed by him, which fact stands established. It was upto University to have not given any case to petitioner, if the terms of the petitioner were not acceptable to the University. But the University in its wisdom, despite the letters written by petitioner, had still handed over certain brief to petitioner which were successfully contested by the petitioner on behalf of the University. It cannot be ruled out that the petitioner remained under impression that his terms have been accepted, and, therefore, he had rightly submitted the fee bill according to his own terms. Even otherwise, in my opinion, the Senior Advocate having vast expertise of conducting the law cases, has sent the bill as per his terms, it cannot be said to be excessive side or on high side

specially when the University is also making payment of fee to Senior Advocates in Supreme Court at per day basis as mentioned above. There is no merit in the contention of petitioner. Not only this but the University had even made payment of fee as per annexure-1. It was not proper for the University to now to say that the amount should be recovered from the Advocate/petitioner, which payment of fee was not at all excessive. If the terms of the fee of petitioner were not acceptable to University/litigant the University was at liberty not to engage this counsel to contest the case. But if the counsel is so engaged by the University, the University is bound to make payment of fee as asked by the counsel. The moment the brief is given to counsel, despite the fact that the counsel had clearly mentioned that he would not charge the fees less than as demanded by him, it is presumed that the University had agreed to such situation. The fee of counsel can vary from counsel to counsel according to the panel, the fee has been prescribed irrespective of the fact of experience or standing of the counsel.

10. For the abovesaid discussion, the "respondent is bound to pay the fee to Advocate as demanded by him if the cases were so entrusted. However, the University in its wisdom is always at liberty to engage the counsel with lesser fee, if the University feels or if in its opinion the fee asked by the counsel is too high, the University may not engage such a counsel. The Vice- Chancellor is authorised under the provision to act in such situation to agree or not to agree the terms as put by the counsel. In case the earlier Vice- Chancellor in view of the experience of the counsel had agreed to the terms of the counsel, it cannot be said that the Vice-Chancellor had acted beyond its powers.

11. Before parting with the judgment, I may opine that the University which is statutory authority and imparting education to the students must not unnecessarily involve itself in unnecessary litigation as to create an impression of extraneous consideration having been played in either way.

12. In view of the aforesaid discussion, there is hardly any necessity for me to go into the matter of *mala fide* against the members of Syndicate. No other point has been agitated by either of the parties. The action of the University cannot be sustained in the eyes of law and the same is set aside.

13. In the result the writ petition is allowed with the direction as prayed in writ

petition. No recovery of any amount can be made from the petitioner. The petitioner shall be entitled to the fee as per his terms of the case already conducted and bill submitted, which were impliedly agreed to by University, when despite the letter of petitioner the cases were handed over to the petitioner.

14. In view of the aforesaid discussion the writ petition is allowed with cost. The cost is assessed as Rs. 500/-.

Petition allowed.