

**(2005) 05 RAJ CK 0064**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 5657 of 2004**

Raghu Sharma

APPELLANT

Vs

University of Rajasthan and Another

RESPONDENT

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**Date of Decision :** 17-05-2005

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Rajasthan University Act, 1946 — Section 21, 21(1), 8

**Citation :** (2005) 3 RLW 1993 : (2005) 3 WLC 581

**Hon'ble Judges :** K.S. Rathore, J

**Bench :** Single Bench

**Advocate :** Lokesh Sharma, for the Appellant; R.D. Rastogi, for the Respondent

**Final Decision :** Dismissed

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## Judgement

K.S. Rathore, J.—By way of this present petition the petitioner prayed the following prayers:

(i) by an appropriate writ, order or direction the impugned order dated 14.7.2004 may be quashed and set aside.

(ii) by further appropriate writ, order or direction the respondent University may be directed to allow the petitioner to continue to work as Member of the Syndicate, University of Rajasthan as per his nomination order dated 25.8.2003 and he may be continued as a member of Selection Committee being a member of Syndicate as he was earlier appointed for the same for a period of one year.

(iii) by further appropriate writ, order or direction the respondent/University may be restrained from nominating any other person as Member of the Syndicate in place of the petitioner and if any such illegal order of nominating any person is issued during pendency of the writ petition, the same order may kindly be taken on record and it may also be quashed by the Hon''ble Court.

(iv) Any other appropriate order or direction which the Hon''ble Court may deem

fit and proper in the facts and circumstances of the case, may also kindly be passed in favour of the petitioner.

(v) Cost of the writ petition be awarded in favour of the petitioner.

2. The main controversy is with regard to that while exercising power vested u/s 21 (1) (iv) of the University Act the Vice Chancellor nominated the petitioner on 25.8.2003 as member of Syndicate for a period of three years.

3. The controversy arose when the order dated 14.7.2004 was issued by the Registrar, University of Rajasthan by which it is alleged by the petitioner that the Registrar, University of Rajasthan has cancelled the nomination of the petitioner as Member of Syndicate without affording proper opportunity of hearing before passing of order dated 14.7.2004. Therefore, the present petition.

4. The petitioner was listed on 28.6.2004. The notices were issued to the respondents. Service is affected upon the respondents but on 01.12.2004 none appeared on behalf of the respondents despite service. The writ petition was admitted and notices were also issued to the respondents. The operation of order dated 14.7.2004 was stayed.

5. Dr. S.D. Mishra, who has been nominated in place of the petitioner filed application for impleadment as necessary party. The applicant was impleaded as party respondent No. 3. A reply was also submitted on behalf of Dr. S.D. Mishra.

6. After receipt of the reply since the respondent has raised preliminary objections, the petitioner moved application for amendment in the writ petition. The amendment application is strongly objected by the respondent.

7. Learned counsel for Dr. Mishra has submitted that the petitioner has not come with clean hands and the petition itself is not maintainable. It should be dismissed solely on the ground of grave concealment of material facts. The petitioner also tried to mislead this Court by mentioning wrong facts on oath.

8. Mr. Rastogi referred para 5 of the petition and after referring para 5 he submits that Shri Raghu Sharma tried to make out a case that he was nominated as member of the Syndicate of the University of Rajasthan by Vice Chancellor under his powers conferred u/s 21 (1) (iv) of the University of Rajasthan Act. This averment is patently false and Shri Raghu Sharma was nominated vide order dated 25.8.2003 issued by the Education Department, Govt. of Rajasthan u/s 21 (1) (viii) of the University of Rajasthan Act.

9. This fact has repeatedly been written in the writ petition in several paras that the petitioner is nominated by the Vice Chancellor as a member of Syndicate and the same has been withdrawn by the Vice Chancellor without affording opportunity of being heard and without showing any justification.

10. Upon perusal of Annex.1 dated 10.9.2003 it reveals that the petitioner was nominated by the Education Department vide order dated 25.8.2003. The petitioner was informed that his nomination was made by the State Government

u/s 21 (1) (viii) of the University Act.

11. The petitioner prayed in its writ petition that the order impugned dated 14.7.2004 may be quashed and set aside. Upon perusal of the impugned order dated 14.7.2004 (Annex.3) it reveals that the Registrar, University of Rajasthan has informed the petitioner that in continuation to order dated 08.07.2004 issued by the Govt. of Rajasthan, Education Department the petitioner's nomination has been withdrawn with immediate effect and the petitioner was requested not to attend the meeting of Syndicate, which was held on 17.7.2004. By this order itself it reveals that the nomination has been withdrawn by the State Government vide order dated 08.7.2004. Knowing this fact the petitioner has not cared to challenge the order dated 08.7.2004 and after receipt of the reply filed on behalf of respondent No. 3 the petitioner only became wise and filed amendment application.

12. So far as concealment of facts are concerned, upon perusal of the reply it reveals that the respondent No. 3 after his nomination vide order dated 08.7.2004 have attended Syndicate meetings held on 17.7.2004, 18.10.2004 and 29.11.2004. But this fact has not been mentioned and when the matter was listed on 01.12.2004 the petitioner again submitted before this Court that the order impugned dated 14.7.2004 is passed without giving opportunity of being heard to the petitioner. Therefore, this Court vide order dated 01.12.2004 passed exparte interim order by which the operation of order dated 11.7.2004 has been stayed.

13. Now in the light of the submissions made on behalf of the respondents this is very important issue that the petitioner has not even challenged withdrawal of the nomination order and nomination order of respondent No. 3 and only challenged the communication made on behalf of the Registrar. It is also found that the petitioner has wrongly mentioned that he was nominated by the Vice Chancellor.

14. I also perused Section 21 of the University of Rajasthan Act. As per Section 21(1) (iv) the Vice Chancellor has power to nominate two University Professors nominated by the Vice- Chancellor other than Deans as member of Syndicate whereas as per the provision of Section 8 of Section 21 two persons to be nominated by the State Government. This fact is uncontroverted that the order dated 08.7.2004 is issued by the Government exercising power u/s 21 (1) (viii) not by the Chancellor.

15. Thus very foundation of the writ petition itself is defective and the petitioner has not come with the clean hands and concealed material facts from this Court and tried to mislead this Court. He secured the exparte interim order dated 01.12.2004.

16. The Hon''ble Supreme Court in the case of Welcom Hotel and Others Vs. State of Andhra Pradesh and Others, has categorically held that after suppressing this material fact from the Court in the petition, the petitioners obtained an ex-

parte stay order on January 12, 1981 and this was suppression of such a material fact as would disentitle the petitioners to any relief at the hands of this Court. That apart review at reasonable interval is implicit in any price fixation measure.

17. The Hon"ble Supreme Court further observed that for this malaise, petitioners have to thank themselves because it was an integral part of their agreement with the Minister of Civil Supplies on December 31, 1980 that the maximum prices fixed by the impugned Orders would be re-examined on the expiration of the three months from the date of the agreement. Instead of honouring this agreement, the petitioners within a span of 12 days rushed to this Court and obtained ex-p arte stay order wholly suppressing the fact that the orders impugned in these petitions have already been replaced by the latest Order dated January 5, 1981. Petitioners who have behaved in this manner are not entitled to any consideration at the hands of the Court.

18. The same view has been taken by the Division Bench of this Court in the case of Daya Ram v. Jaipur Vidyut Vitaran Nigam Ltd. and Anr. reported in 2003 WLC (Raj.) UC197. The Division Bench of this Court observed as under:

"In the proceedings under Article 226 of the Constitution which are initiated for attracting the extraordinary equitable jurisdiction of this court, it is utmost important and necessary that the petitioner should come forward with clean hands. This court sitting under extraordinary equitable jurisdiction also cannot encourage the idea that a person is entitled to adopt dubious, dishonest or fraudulent means and make false averments or conceal the material facts while submitting a writ petition in this court and when the other side has exposed this material concealment of the facts made by the petitioner by putting the necessary facts before the court, it is not proper to allow the petitioner to make his submissions on the merits of the case. It would be laying down a very dangerous principle in the conduct of human affairs if the courts of law would allow to be flooded with the petition based on concealed facts or false averments. This Court in its extra ordinary equitable jurisdiction can help only to those persons who approach the court with clean hands, and in a case where the court finds that the conduct of the petitioner is not honest and free from deceit it is perfectly legally justified, to decline to give any relief to the petitioner. A person who adopts dubious means; in the court must suffer the consequences of his conduct.

The law is well settled that the petitioner is not entitled as a; matter of course to a writ of certiorari and mandamus. He must be perfectly frank and open to the court. He has an obligation to the court to make full and correct disclosure of all the material facts in a; candid manner and if he does not do so and suppress any material fact and thereby obtain a rule nisi or notice or exparte ad interim relief, the court will not grant any relief to them on merits."

19. By applying the ratio decided by the Hon"ble Supreme Court and the Division

Bench of this High Court it appears that the petitioner has not come with the clean hands and concealed the material facts. The petitioner has not challenged the impugned order and only challenged communication made by the Registrar of University. Now by way of amendment the petitioner wanted to challenge the order passed by the State Government and deviate from the stand taken in the original writ petition.

20. As it is held by the Division Bench of this Court it is utmost important and necessary that the petitioner should come forward with clean hands. This court sitting under extraordinary equitable jurisdiction also cannot encourage the idea that a person is entitled to adopt dubious, dishonest or fraudulent means and make false averments or conceal the material facts while submitting a writ petition in this court and when the other side has exposed this material concealment of the facts made by the petitioner by putting the necessary facts before the Court, it is not proper to allow the petitioner to make his submissions on the merits of the case.

21. Herein the instant case also the respondent has brought all the necessary facts before this Court and after receipt of the reply only the petitioner filed an amendment application. Therefore, in the instant case also it is not proper by this Court to enter into the merit of the case as it would be laying down a dangerous principle in the conduct of the affairs if the courts of law is allowed to be flouted with the petition based on concealed facts or false averments.

22. In my considered opinion the petitioner has concealed material facts and not come with the clean hands. More so the order impugned is not under challenge and only communication dated 11.7.2004 has been challenged. In such circumstances also the petitioner is not entitled to get any relief from this Court.

23. The amendment asked for by the petitioner cannot be allowed and the amendment application is herewith dismissed.

24. The writ petition is also not maintainable on the ground of concealment and misleading this Court.

25. Consequently, the writ petition is not maintainable and is herewith dismissed. The interim order granted by this Court dated 01.12.2004 also stands vacated.