

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2009

CORAM

THE HONOURABLE MR. JUSTICE K.N.BASHA

W.P.No.14160 of 2002

S.R.Rajini

... Petitioner

Vs

- 1.Principal,
Madurai Law College,
Madurai.
 - 2.The Director,
Directorate of Legal Studies,
Nandanam, Anna Salai,
Chennai-32.
 - 3.The Joint Director of Government
Examinations (Higher Secondary),
Chennai-6.
 - 4.The Headmistress,
OCPM Government Higher Secondary
School, Thallakulam,
Madurai-2.
 - 5.The Registrar,
Tamil Nadu Dr.Ambedkar Law University,
Chennai-28.
- ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records of the first respondent in connection with the impugned proceedings Na.Ka.No.439/E/2001 dated 12.4.2002 and quash the same and consequently, direct the respondents to permit the petitioner to pursue her studies in the 4th and 5th year of B.L.Degree Course at the first respondent college and write the concerned examinations conducted by the 5th respondent.

For Petitioner

: Mr.M.Venkatachalapathi,
Senior Counsel
for Mr.M.Sriram

For Respondents : Mr.Sankaran,
1 to 3 Special Government Pleader
for Mr.A.Suresh,
Government Advocate
For 4th respondent : Mr.G.R.Swaminathan
For 5th respondent : Mr.T.D.Vasu

O R D E R

The challenge in this writ petition is to the order passed by the first respondent dated 12.4.2000 made in his proceedings Na.Ka.No.439/E/2001 cancelling the admission of the petitioner to the five year Bachelor of Law Course for the academic year 1998-99 on the ground of submission of a bogus +2 Mark sheet and consequently, seeking for the relief of a direction to the respondents to permit the petitioner to pursue her studies in the fourth and fifth year of B.L.Degree Course at the first respondent college and write the concerned examinations conducted by the fifth respondent.

2. The filing of the petition arising out of the following factual scenario :

The petitioner appeared for the +2 examination held during March 1998 and as per the original mark sheet issued to the petitioner, the petitioner said to have secured 44% marks out of 200 in Mathematics subject. As the petitioner expected more marks she has applied for retotalling of her marks in Mathematics subject by submitting her application dated 12.6.1998 to the third respondent herein. The petitioner also paid the necessary fees for retotalling the marks in Mathematics. Thereafter, the petitioner received a letter dated 9.7.98 from the third respondent through his proceedings Na.Ka.No.063268/Me.Ni.16/98 by post intimating that the retotalling marks comes to 81 and instructed the petitioner to receive the mark sheet from the fourth respondent, namely, the Headmistress of the Higher Secondary School. The third respondent addressed the said letter dated 9.7.1998 to the Headmistress, the fourth respondent herein, and marked a copy to the petitioner herein. Thereafter, the petitioner obtained the retotalling mark sheet from the fourth respondent.

3. The petitioner after obtaining the mark sheet as stated above applied for five year Bachelor of Law Course in Madurai Law College for the academic year 1998-99 and she has written the entrance examination on 5.10.1998. The petitioner was selected for the five years Bachelor of Law Degree Course in Madurai Law College and after payment of tuition fees, she has been admitted for the first year B.L. Degree Course for the year 1998-99. The petitioner was regularly attending the classes and she has passed the first two years and appeared for the third year examination during March 2001.

But her results have been withheld. The first respondent issued a show cause notice dated 21.3.2001 in his proceedings Na.Ka.No.439/2/2001 stating that the petitioner's +2 mark sheet was sent to the third respondent for clarification which revealed that the +2 mark sheet furnished by the petitioner was a forged and bogus one and the said mark sheet was not issued by the third respondent. The petitioner replied to the said show cause notice on 23.3.2001 by submitting her explanation to the effect that the mark sheet produced by her is a genuine one and only as per the intimation sent by the third respondent, she has received the said mark sheet from the fourth respondent by surrendering her old mark sheet. The petitioner denied the allegations and as the first respondent proceeded to take action in spite of such submission of explanation, the petitioner was constrained to file W.P.No.6174 of 2001 before this Court and this Court passed an order in the said writ petition dated 14.02.2002 directing the first respondent to institute a proper enquiry on the show cause notice and to pass orders on merits after giving due opportunity to the petitioner to produce all materials and also after giving a personal hearing to the petitioner.

4. The further version of the petitioner is that during the pendency of the above said writ petition in W.P.No.6174 of 2001, the petitioner was permitted to write the third year examinations, but the results were withheld. The petitioner appeared for the enquiry on 23.2.2002 before the first respondent and the petitioner produced the mark sheet with Serial No.2456102, wherein the mark in Mathematics was shown as 44 and also produced the letter dated 9.7.98 issued by the third respondent stating that the retotalled mark is 81, a Challan copy for payment of a sum Rs.127/- for the retotalling dated 10.6.98 and the Xerox copy of the retotalled mark sheet bearing S.No. AB 2653092. The petitioner also filed a detailed affidavit denying the charges levelled against her. The first respondent rejected the explanation of the petitioner and passed the impugned order dated 12.4.2002 signed on 12.4.2002 cancelling the admission of the petitioner to the five year Bachelor of Law Degree Course. The said order is under challenge in this petition.

5. Mr.M.Venkatachalapathy, learned Senior Counsel appearing for the petitioner vehemently contended that the petitioner has been charged for the allegation of producing a bogus mark sheet without any materials. It is further contended that the said charge is baseless and no evidence available on record to implicate the petitioner to the effect that the petitioner forged the mark sheet. The learned senior counsel would also contend that the petitioner received a communication dated 9.7.1998 from the third respondent directing the petitioner to receive the retotalled mark sheet from the Headmistress of the school and the said communication was addressed to the Headmistress of the school and as such it cannot be contended by the third respondent that the mark sheet obtained by the

petitioner after retotalling is a bogus one. The learned senior counsel would further contend that the first respondent passed the impugned order holding that the petitioner has not proved that the mark sheet produced by her is a genuine one ignoring that it is the burden of the third respondent to prove that the mark sheet produced by the petitioner is not a genuine one. The learned senior counsel also proceeded to point out certain other illegalities and infirmities in passing the impugned order by the first respondent to the effect that the first respondent has ignored, overlooked the explanation submitted by the petitioner through her affidavit and also brushed aside the documents produced by the petitioner, namely, the letter dated 9.7.1998 sent by the third respondent, a chalan for payment of a sum of Rs.127/- for retotalling dated 10.6.1998 and the copy of the application submitted for retotalling dated 12.6.1998. It is contended on the other hand that the third respondent has not produced any materials to prove that the mark sheet submitted by the petitioner is a bogus one. The learned senior counsel would also contend that the first respondent before passing the impugned order has not called for any remarks from the third respondent and it is also contended that the first respondent passed the impugned order arbitrarily and without application of mind merely on the basis of the letter of the third respondent dated 3.3.2001 stating that the mark sheet produced by the petitioner is a bogus one without even examining the third respondent and without any evidence.

6. Per contra, Mr. Sankaran, learned Special Government Pleader appearing for respondents 1 to 3 contended that there is no illegality in the impugned order passed by the first respondent as the said order was passed after giving effective opportunity to the petitioner to put forth her contentions. It is further contended that the verification of the records available with the third respondent clearly shows that the third respondent has not at all received any application for retotalling from the petitioner herein and as such the mark sheet produced by the petitioner before the first respondent is a bogus one. The learned Special Government Pleader by placing three records before this Court namely, the Register maintained for making entries in respect of the original mark sheets, the Register maintained for registering the retotalling mark sheets and thirdly, the register maintained for issuing the retotalled mark sheet to the respective candidates contended that the said registers disclose that the petitioner neither sent the application for re-totalling nor the third respondent issued the re-totalled mark sheet through the communication dated 9.7.1998.

7. Learned counsel appearing for the fourth respondent submitted that the petitioner studied in the fourth respondent school and she had originally secured 44 marks in Mathematics and thereafter she applied for re-totalling. It is further submitted that the school has received a communication dated 9.7.1998 through registered post

from the office of the third respondent along with the re-totalled mark sheet showing that the petitioner has been awarded 81 marks in Mathematics. The learned counsel for the fourth respondent further submitted that subsequently, the petitioner appeared before the fourth respondent and received the re-totalled mark sheet. It is also submitted that the records available in the school discloses that the petitioner also brought the copy of the communication dated 9.7.1998 sent by the third respondent at the time of receiving the re-totalled mark sheet.

8. I have given my careful and anxious consideration to the rival contentions put forth by either side and also thoroughly scrutinised the materials available on record including the records produced before this Court by the third respondent herein and also perused the impugned order.

9. The crux of the question involved in this matter is that whether the mark sheet produced by the petitioner is a genuine one or bogus one and whether the third respondent produced any evidence direct or indirect to prove such allegation and whether the impugned order passed by the first respondent is based on any evidence or even preponderance of probabilities ?

10. The categorical version of the petitioner is that she has preferred an application dated 12.6.1998 for re-totalling of her marks in Mathematics. The preference of such application by the petitioner is substantiated by the statement of the fourth respondent, the Headmistress of the School. In the counter affidavit filed by the fourth respondent school, it is stated categorically that the petitioner applied for re-totalling. Yet another document available on record as produced by the petitioner before the first respondent is the copy of certificate of credit in respect of payment of fee for re-totalling the marks issued by the Assistant Treasury Officer, Sub-Treasury, Madurai. The petitioner also produced the xerox copy of the application for re-totalling of marks dated 12.6.1998 before the first respondent. Therefore, it is crystal clear from the above said documents that the petitioner substantiated her version that she had submitted an application in the prescribed format issued by the department for retotalling the marks in Mathematics. Apart from substantiating the claim of the petitioner preferring the application for retotalling, the petitioner also produced other relevant connected records, namely, the letter of communication said to have been addressed to the Headmistress of the fourth respondent school and the postal cover. It is pertinent to note that the communication dated 9.7.1998 sent by the third respondent reveals that a copy was marked to the petitioner herein and further directed the petitioner to receive the mark sheet from the Headmistress of the school. The petitioner claimed that after receiving such mark sheet from the Headmistress, the fourth

respondent herein, she came to know that as per the retotalled mark sheet she secured 81 marks in Mathematics. It is seen that the said mark sheet contains the signature of the Secretary, Board of Higher Secondary Examination, Tamil Nadu with the seal.

11. The counter affidavit filed by the fourth respondent before this Court further discloses that the petitioner met the then Headmistress Sudanthiradevi Ramar and received the retotalled mark sheet and the said Headmistress since retired, the present Headmistress, the fourth respondent herein has filed the counter affidavit on the basis of the records available in the school. It is stated in the counter affidavit filed by the fourth respondent that a signed statement of the said Headmistress, namely, Sudanthiradevi Ramar, which is also available in the records of the school stating that she handed over the retotalled mark sheet to the petitioner herein. The learned counsel for the fourth respondent also produced a copy of the register maintained in the school to show that after the receipt of the retotalling mark, in the column mentioning the name of the petitioner mark in respect of Mathematics was corrected as 081 and also it is stated as 'pass' by striking the letters written as 'fail'. The said corrections also signed by the then Headmistress.

12. It is seen that on the production of the retotalled mark sheet along with the application, the petitioner appeared for written examination and ultimately selected for the five year B.L. Course for the year 1998-99. The petitioner was admitted after perusal and verification of the original mark sheet and other connected certificates by the first respondent herein. After completion of two years and when the petitioner was about to write the third year examination, the petitioner received a show cause notice dated 21.3.2001 from the first respondent alleging that as per the letter sent by the third respondent dated 3.3.2001, it was alleged that the mark sheet produced by the petitioner is a bogus one and as such the petitioner was called upon to give explanation as to why action should not be taken for cancelling her admission in the five year B.L. Course.

13. This Court cannot lost sight of the admitted fact to the effect that the show cause notice dated 21.3.2001 does not disclose any reasons or materials on which it was established that the mark sheet produced by the petitioner is a bogus one. The first respondent made only a reference in respect of the letter sent by the third respondent herein dated 3.3.2001 in Letter No.128784/V3/2000 stating that the mark sheet relating to the petitioner under Registration No.564979 March 1998 is found to be a bogus one on verification of the other office records and such certificate was not issued by the Department of Government Examinations and the petitioner on her own increased the mark in the mark sheet. It is pertinent to note that a copy of the said letter sent by the third

respondent to the first respondent dated 03.03.2001 also not served to the petitioner either at the time of serving the show cause notice or at the time of conducting enquiry. It is the admitted case of the respondents that except serving the show cause notice, no other document was served to the petitioner before or at the time of enquiry. At this juncture, it is relevant to state that on the other hand, it is only the petitioner produced the relevant documents, as stated above, to establish her contention that she had applied for re-totalling and she has received the re-totalled mark sheet through the fourth respondent, the school Headmistress.

14. Now coming to the manner and method under which the enquiry was conducted by the first respondent, it is to be stated, at the outset, that the first respondent adopted a strange procedure unknown to law. A reading of the impugned order dated 1.4.2002 signed by the first respondent on 12.4.2002 reveals that neither the third respondent nor any one of the officials of the respondents 1 to 3 appeared and participated in the enquiry proceedings conducted by the first respondent herein to prove the allegation levelled against the petitioner. On the other hand, the impugned order reveals that the petitioner appeared before the first respondent and participated in the enquiry by filing her affidavit narrating the sequence of events and giving her explanation to the allegation levelled against her. It is seen that the petitioner also produced the documents, namely, the copy of the re-totalled +2 mark sheet bearing registration No.564979 March 1998, the copy of the original mark sheet, the copy of the application dated 06.11.2001 and the certificate of credit issued by the Assistant Treasury Officer, Sub-Treasury, Madurai, for the payment of a sum of Rs.127/- towards fees for re-totalling. Apart from filing the affidavit and producing the documents, the petitioner was also enquired by the first respondent and the petitioner answered all the queries put by the first respondent and categorically and assertively stated that the +2 mark sheet produced by her for the admission of five year law course is a genuine one. A perusal of the affidavit dated 22.3.2001 filed by the petitioner before the first respondent during the course of enquiry reveals that the petitioner stated all the details and denied the allegation as she has produced the bogus mark sheet. The petitioner also pointed out in the said affidavit that certain contradictory statements made in the counter filed in her earlier writ petition in W.P.No.6174 of 2001 by the respondents to the effect that serial number of the petitioner was wrongly mentioned as AB 2456096 instead of AB 2456102. It is further pointed out in the said affidavit that in the counter filed by the respondents in W.P.No.6174 of 2001 before this Court stated that the Director of Legal Studies has addressed a letter to the Joint Director of Government Examinations in letter No.1771/B3/2001 dated 31.3.2001 asking clarification as "Whether the letter No.053268/செந்/16/98 dated 9.7.98 purported to be issued by the

Joint Director of Government Examination informing the Headmistress of O.C.P.M. Girls Higher Secondary School, Madurai, regarding the cancellation of original Mark Statement of the petitioner herein and the issue of a revised mark statement bearing Serial No.AB 2653092 was a genuine one". The Joint Director of Government Examination in his letter No.128784/वि 3-3(वि 1)/2000 dated 17.4.2001 has replied the Director of Legal Studies as that "The letter No.053282 dated 9.7.98 is a forged one". Therefore, it is pointed out by the petitioner that the Joint Director of Government Examination has not replied the clarification sought for by the Director of Legal Studies and in his reply he has mentioned about some other letter bearing No.053282 dated 9.7.98 instead of the disputed letter bearing No.053268 dated 9.7.98. All these detailed explanation and statement given by the petitioner through her affidavit have been simply overlooked and ignored by the first respondent herein. The first respondent brushing aside the documents and affidavit by the petitioner and the version given by the petitioner during the enquiry, held that the petitioner has not produced any document to substantiate her version that the mark sheet produced by her is not a bogus one.

15. The first respondent has committed a serious error of law by wrongly placing the burden on the petitioner to prove the allegation that the +2 mark sheet produced by her is not a bogus one forgetting for a moment that it is the initial burden of the third respondent to produce prima facie materials and evidence to substantiate the allegation that the mark sheet produced by the petitioner is a bogus one. As already pointed out, neither the third respondent nor the second respondent or any of the officials of the Directorate of Government Examinations appeared and participated in the enquiry by giving their evidence and producing materials to substantiate the allegation levelled against the petitioner. The first respondent by merely placing reliance on the letter sent by the third respondent dated 3.3.2001 in his letter No.Na.Ka.No.128784/वि 3-3 (वि 1)/2000 held that the petitioner has produced a bogus mark sheet for getting admission in five year law course for the year 1998-99.

16. It is well settled that the departmental proceeding is a quasi judicial proceeding and the Enquiry Officer performs a quasi judicial function and in a domestic enquiry fairness in the procedure is a part of the principles of natural justice. But in the case on hand, the impugned order was passed not only in flagrant violation of principles of natural justice, but the first respondent arrived at the conclusion that the petitioner produced the bogus mark sheet without any evidence available on record by merely placing reliance on a letter of communication sent by the third respondent dated 3.3.2001, without examining the author of the letter, the third respondent herein, to prove the contents of the said letter. Neither the third respondent appeared and participated in the enquiry nor the

first respondent summoned the third respondent at the time of enquiry. The first respondent has inferred the guilt of the petitioner to the effect that the petitioner has produced the bogus mark sheet by placing reliance on the letter of the third respondent dated 3.3.2001. The first respondent treated the said letter of the third respondent dated 3.3.2001 as gospel truth without scrutinising and testing the credibility of such letter by summoning the third respondent and by seeking materials from the third respondent for substantiating the allegation levelled against the petitioner by the third respondent.

17. At this juncture it is relevant to refer the decision of the Hon'ble Apex Court regarding the standard of proof in a domestic enquiry. The Hon'ble Apex Court in Maharashtra State Board of Secondary and Higher Secondary Education V. K.S.Gandhi reported in (1991) 2 SCC 716 held as follows :

"37. It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred, as much as is practical, as if they had been actually observed. In other cases the inferences do not go beyond reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation or conjecture. Therefore, when an inference of proof that a fact in dispute has been held established there must be some material facts or circumstances on record from which such an inference could be drawn. The standard of proof is not proof beyond reasonable doubt "but" the preponderance of

probabilities tending to draw an inference that the fact must be more probable."

(emphasis supplied)

If the case on hand is considered with the touch stone of the principle laid down by the Hon'ble Apex Court in the decision cited supra, then this Court has no hesitation to hold that the third respondent not only withheld himself from participating in the enquiry and producing the evidence but also not proved the allegation levelled against the petitioner even by preponderance of probabilities.

18. This Court cannot lost sight of certain other infirmities and inconsistencies in this case. It is seen that the show cause notice issued by the first respondent dated 21.3.2001 reveals that the mark sheet produced by the petitioner was sent for verification to the third respondent and in the counter, it is stated that the xerox copies of the mark sheets including the petitioner were sent for verification to the Director of Government Examinations for verifying the genuineness of the certificates. The show cause notice dated 21.3.2001 reveals that the mark sheets were sent to the Joint Director of Government Examination on 1.2.1999, 10.2.1999 and 8.1.2001 and there is no mention about the specific date on which the mark sheet relating to the petitioner was sent. But in the counter filed by the respondents 1 and 2, it is stated that the mark sheet of the petitioner was sent for verification on 1.2.1999. There is absolutely no whisper about seeking the original mark sheet produced by the petitioner by the third respondent in the counter filed by the respondents 1 and 2. A perusal of the impugned order reveals that the third respondent sought for the original mark sheet of the petitioner through his communication dated 19.12.2000 and accordingly, the said original mark sheet of the petitioner was sent to the third respondent. In spite of receiving the original mark sheet from the first respondent, the third respondent has not taken any steps to get sample hand-writing of the petitioner and sent both the original certificate and the sample hand-writing for the opinion of the hand-writing expert. Without adopting such procedure known to law, the third respondent carelessly and recklessly has come forward with the allegation that the petitioner produced the bogus mark sheet without assigning any valid reason in his letter dated 3.3.2001 sent to the first respondent herein.

19. At this juncture, it is pertinent to note that the present version of the respondents 1 and 2 before this Court as their counter is to the effect that the third respondent through his letter dated 17.04.2001 in letter No.128784/V3-3(VI)/2000 stated as hereunder :

1. "The letter No.053268/செந்/16/98 dated 9.7.98 purported to have been issued by the Directorate of Government

Examinations is a forged one and that the petitioner herein S.R.Rajini has herself prepared it.

- 2.The manually prepared, revised marks statement bearing Registration No.564979/March 98 and Sl.No.AB 2653092 was not issued after re-totalling."

It is relevant to note the above statement contained in the counter referring the letter of the third respondent dated 17.04.2001 discloses that it was alleged that the letter dated 9.7.98 purported to have been issued by the Directorate of Government Examinations is a forged one. As far as the mark sheet is concerned, it is merely stated that the said mark sheet was manually prepared and the same was not issued after re-totalling. A perusal of the disputed mark sheet itself clearly shows that it was specifically stated under the seal that "certificate manually prepared" and contains the signature of the Secretary. Even now the respondents 1 to 3 have not disputed the signature of the Secretary contained in the disputed mark sheet and it is not their case that the signature of the Secretary found in the disputed mark sheet is a forged one and there is absolutely no explanation from the respondents 1 to 3 on this important aspect.

20. Having miserably failed to produce prima facie materials to establish even by preponderance of probabilities that the petitioner has produced the forged and bogus mark sheet and having this Court raised a crucial question as to what happened to the fate of the application submitted by the petitioner for re-totalling, the respondents raised a new plea before this Court by filing an additional counter by the third respondent to the effect that the petitioner has not at all applied for re-totalling. This plea was neither alleged in the show cause notice dated 21.3.2001 nor raised in the counter filed by the respondents 1 and 2. There is also no finding in the impugned order to the effect that the petitioner has not at all applied for retotalling. Mr.Sankaran, learned Special Government Pleader took enormous pain to contend that the third respondent not at all received the application from the petitioner for re-totalling by placing reliance on the three registers produced by the third respondent before this Court, namely, (i) the register maintained for making entries in respect of the original mark sheets ; (ii) the register maintained for entering re-totalled mark sheets and (iii) the register maintained for issuing retotalled mark sheets. The fact remains that the third respondent has not produced the register maintained for receipt of application for re-totalling of marks. It is further stated before this Court that the application for re-totalling would be destroyed after a period of six months and for such contention there is no proof or material placed before this Court. It is pertinent to note that even in the additional counter affidavit filed by the third respondent, there is no proper explanation for this serious question regarding the

application of the petitioner preferred for re-totalling. It is seen that in the said additional counter affidavit, it is stated that the application for re-totalling would be destroyed after a period of one year and as such even for such explanation there is no consistency. Therefore, this Court has no hesitation to hold that the third respondent miserably failed to explain as to what happened to the application preferred by the petitioner for re-totalling the marks but, on the other hand, as this Court already held that the petitioner has proved by producing overwhelming materials to the effect that she had applied for re-totalling.

21. Yet another vain attempt made by the third respondent, as per the additional counter, to contend that the mark sheet produced by the petitioner is a bogus one is that the communication about re-totalling of marks would be directly sent to the residential address of the students and the revised mark sheet would be served only in person after surrendering the earlier mark sheet. It is pertinent to note that the perusal of the instructions given on the reverse of the application form does not indicate that the mark sheet would be issued to the candidates directly and not through the school authorities. It is further seen from such instructions that after re-totalling of marks, the change as well as no-change would be informed to the respective candidates.

22. The third respondent has come forward with yet another plea before this Court raising in the additional counter affidavit filed before this Court dated 30.4.2009 that 140 blank mark certificates were stolen from the Government Data Centre and the mark certificate produced by the petitioner with the serial No.2653092 is one of the said 140 blank certificates and such stolen blank mark certificate had been used for preparing the bogus mark certificate. It is further stated in the additional counter that on the basis of the complaint given by the department, a criminal case was registered and the judgment was also delivered in that case. However, the fact remains that the petitioner is not an accused in the said criminal proceedings and as such the third respondent cannot place reliance on such criminal proceedings.

23. At the risk of repetition it is to be reiterated that the first respondent has passed the impugned order arriving at the conclusion that the petitioner has produced the bogus mark sheet for getting admission in five year B.L. Course without any evidence available on record. As already pointed out, there is not an iota of evidence produced by the third respondent to substantiate the allegation that the petitioner produced bogus mark sheet. The respondents 2 and 3 have not produced any material or examined any witness to substantiate their allegation levelled against the petitioner. The first respondent solely placed reliance on the letter

sent by the third respondent dated 3.3.2001 for coming to the conclusion that the petitioner has produced the bogus mark sheet without even examining the third respondent to prove the contents of the letter dated 3.3.2001. This Court has no hesitation to hold that the finding of the first respondent was neither based on any direct evidence adduced by the third respondent or based on preponderance of probabilities but merely on surmises and conjectures.

24. At this juncture, it is relevant to refer certain decisions of the Hon'ble Apex Court.

(i) The Hon'ble Apex Court in *Mukunda Bore V. Bangshidhar Buragohain and others* reported in (1980) 4 SCC 336 held as follows :

"Under Article 226 a finding of fact of a domestic tribunal cannot be interfered with. The High Court in the exercise of its special jurisdiction does not act as a court of appeal. It interferes only when there is a jurisdictional error apparent on the face of the record committed by the domestic tribunal. A finding based on no evidence or purely on surmises and conjectures or which is manifestly against the basic principles of natural justice, may be said to suffer from an error of law with which the High Court can interfere."

(emphasis supplied)

(ii) In *Ahmedabad Municipal Corporation V. Virendra Kumar Jayantibhai Patel* reported in (1997) 6 SCC 650, the Hon'ble Apex Court held as hereunder,

"High Courts under Article 226 of the Constitution are entitled to issue directions, writs and orders for correcting the record of the inferior courts or the tribunal. It is true that the High Court while exercising its jurisdiction under Article 226, cannot convert itself into a court of appeal and assess the sufficiency or adequacy of the evidence in support of the finding of fact reached by the competent courts or the tribunals, but this does not debar the High Court from its power to enquire whether there is any evidence in support of a finding recorded by the inferior court or tribunal. There is a difference between a finding based on sufficiency or adequacy of evidence and a finding based on no evidence. If the finding of fact recorded by the tribunal is based on no evidence, such a finding would suffer from error of law apparent on the face of record."

(emphasis supplied)

(iii) In yet another decision in *Secretary, ONGC Ltd., V. V.U. Warriar* reported in (2005) 5 SCC 245 held as follows :

"26. It is well settled that the jurisdiction of the High Court under Article 226 of the Constitution is

equitable and discretionary. The power under that article can be exercised by the High Court "to reach injustice wherever it is found". More than fifty years before, in *Veerappa Pillai V. Raman & Raman Ltd.* (1952 SCR 583), the Constitution Bench of this Court speaking through Chandrasekhara Aiyar, J., observed (at SCR p.594) that the writs referred to in Article 226 of the Constitution are obviously intended to enable the High Court to issue them "in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice"

(iv) The Hon'ble Apex Court in a latest decision in *Roop Singh Negi V. Punjab National Bank* reported in 2009 (2) SCC 570 referring its earlier decision held as follows :

".... In exercising its jurisdiction under Art.226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which dealt with the question ; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion."

(emphasis supplied)

25. The above well-settled principle of law laid down by the Hon'ble Apex Court in the decisions cited supra is squarely applicable to the case on hand as in this case also, the first respondent has passed the impugned order not only in flagrant violation of principles of natural justice but also arrived at the conclusion against the petitioner without any evidence available on record much less on preponderance of probabilities. The first respondent inferred from the communication sent by the third respondent dated 3.3.2001 for arriving at his conclusion without any evidence adduced by the third respondent to substantiate the allegation levelled against the petitioner. The conclusion of the first respondent is merely based on suspicion without any legal proof. The Hon'ble Apex Court in the decision cited supra in *Roop Singh Negi's* case also held as follows :

"Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. (See

Central Bank of India Ltd. V. Prakash Chand Jain (1969) 1
SCR 735, Kuldeep Singh V. Commissioner of Police and Ors.
(1999) 2 SCC 10)."

26. In view of the foregoing reasons and in view of the settled principle of law laid down by the Hon'ble Apex Court, it is crystal clear that the case on hand is not a case of sufficient or insufficient evidence in support of the conclusion of the first respondent but it is a clear case of no evidence and as such the impugned order passed by the first respondent is vitiated by error apparent on the face of the records which resulted in manifest injustice to the petitioner and therefore, the impugned order passed by the first respondent is liable to be quashed and accordingly, the order of the first respondent in his proceedings in Na.Ka.No.439/E/2001 dated 1.4.2002 signed on 12.4.2002 is hereby quashed.

27. It is brought to the notice of this Court that pursuant to the order passed by this Court in W.P.M.P.No.19095 of 2002 dated 6.8.2002, the petitioner was allowed to continue her course and also completed the five years course and as on date she has written all the examinations except to the fact that the results have been withheld by the authorities concerned. Therefore, in view of the order passed by this Court, the fifth respondent is directed to declare the results of the petitioner from the third year onwards as the results for first and second year were already declared and also it is made clear that in the event of passing her examination throughout, the petitioner is also entitled to get her degree certificate.

28. Before parting with this matter, this Court is constrained to state that the authorities concerned should prescribe some time limit for verification of the mark sheets submitted by the applicants for admission in any course in any college regarding its authenticity and genuineness. In this case, it is seen that the petitioner got admission into five year law course in the year 1998-99 and the first respondent claimed to have sent the mark sheet for verification to the third respondent on 1.2.1999 and even that date is not very clear as the show-cause notice referred to about three dates, namely, 1.2.1999, 10.2.1999 and 8.1.2001 and ultimately the petitioner, who had completed two years of her course and was about to write her third year examination, received the show cause notice dated 21.3.2001 alleging that the mark sheet produced by her was the bogus one and after enquiry her admission into five year law course was cancelled by the impugned order 1.4.2002 signed on 12.4.2002. The inordinate delay in verification not only resulted in grave prejudice to the petitioner but also the petitioner has suffered harassment and humiliation and undergone mental torture and agony. It is needless to state that the sufferings of the younger generation from

disappointment and depression should be prevented by expediting the process of sending and scrutinising the genuineness of the mark certificates.

29. It is seen that the School Education Department of the Government of Tamil Nadu issued a Citizen's Charter 2008-2009, Preface of which reads hereunder :

PREFACE

This Charter is a statement of Commitment of the educational activities of the School Education Department to the people of Tamil Nadu.

The following Directorates are under the administrative control of the School Education Department:-

1. Directorate of School Education
2. Directorate of Elementary Education
3. Directorate of Matriculation Schools
4. Directorate of Non Formal and Adult Education
5. Directorate of Government Examination
6. Directorate of Teacher Education, Research and Training
7. Teachers' Recruitment Board
8. Directorate of Public Libraries

The Commitment of each to the people of Tamil Nadu are elucidated in the succeeding pages.

The above said Charter contains one of the schemes under the Directorate of Government Examination which is in respect of verification of Genuineness of the Mark Certificates under scheme number (7) and the same reads hereunder :

(7) Verification of Genuineness of the Mark Certificates

Name of the Scheme	Verification of genuineness of the mark certificates issued by this Department of Government Examinations.
Object of the Scheme	An effort to prevent fraudulent admission in the education institutions and employment in government/public/private sectors by means of producing bogus Certificates.

Name of the Scheme	Verification of genuineness of the mark certificates issued by this Department of Government Examinations.
How to apply	The services of verification of genuineness of mark certificates are offered against payment of prescribed fees. The heads of Institution have to send requisition letter requesting verification of mark certificates along with the Xerox copies of the same in duplicate along with the receipted chalan in token of having paid the prescribed fees. (i.e.) Rs.10/- per Mark Certificate.
Fees Details	Rs.10/- per Mark certificate is calculated and the fees paid for the total number of certificates of the candidates to be verified should be remitted by means of chalan in the State Bank of India treasury branch.
Liason Officer	1. Hr.Sec. Examinations - J.D. (Hr.Sec.) 2. S.S.L.C. & O.S.L.C. - J.D. (P) 3. Anglo Indian & Metric Examn. - A.S. (Matric) 4. Technical Examination - A.S. (Technical)

30. The schemes introduced by the School Education Department of the Government of Tamil Nadu under the Citizen's Charter 2008-2009 are commendable one. The verification of genuineness of the mark certificates comes under Scheme number 7 of the Directorate of Government Examination under the Charter as stated above. The reading of the said scheme clearly shows that it is the responsibility of the Heads of Institutions to send requisition letters requesting verification of genuineness of mark certificates along with the xerox copies of the same. Therefore, this Court is of the considered view that the Heads of the Institutions, for example, the Principal in the case on hand, should take steps without any delay to send the mark certificate for verification regarding its genuineness. In view of the reasons stated above, this Court is of the considered view that it is high time for the authorities concerned to prescribe time limit to avoid inordinate delay in verification of the genuineness of the mark certificate submitted by the students seeking for admission in colleges/higher educational institutions as the delay would defeat the very object of subjecting the mark certificate for verification. Therefore, the Secretary, School Education Department, Government of Tamil Nadu, shall take immediate and effective steps to prescribe time limit for sending the mark certificates, which were produced by the students at the time of admission, by the Heads of Institutions for verification of its genuineness as well as for scrutinising the said mark certificates

about its genuineness within the prescribed time limit to be stipulated.

With the above observation and directions, the petition is hereby disposed of. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

tsi/gg

To

1. The Principal,
Madurai Law College, Madurai.
2. The Director,
Directorate of Legal Studies,
Nandanam, Anna Salai, Chennai-32.
3. The Joint Director of Government
Examinations (Higher Secondary),
Chennai-6.
4. The Headmistress,
OCPM Government Higher Secondary School,
Thallakulam, Madurai-2.
5. The Registrar,
Tamil Nadu Dr.Ambedkar Law University, Chennai-28.

Copy to :

The Secretary,
School Education Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

- 1 cc To Mr.F.D.Vasu, Advocate, SR.19774.
1 cc To Mr.G.R.Swaminathan, Advocate, SR.20228.
1 cc To Mr.M.Sriram, Advocate, SR.20026.

W.P.No.14160 of 2002

MBS (CO)
RVL 02.06.2009