

(2003) 07 MAD CK 0195

In the Madras High Court

Case No : Writ Petition No. 10243 of 1996 and W.M.P. No. 13524 of 1996

M.S. Tamilselvan

APPELLANT

Vs

The Registrar, Bharathiar University and Others

RESPONDENT

Date of Decision : 28-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 07 MAD CK 0195

Hon'ble Judges : K.P. Sivasubramanian, J

Bench : Single Bench

Advocate : Ashok Kumar, for the Appellant; S. Haja Mohideen Girthi, for R1, V. Velumani, AGP for R2 and S. Ravindran and T.S. Gopalan and Co. for R3, for the Respondent

Judgement

K.P. Sivasubramanian, J.—Petitioner seeks to issue writ of certiorarified mandamus, calling for the records of the third respondent with reference to notice dated 26.3.1996 complying to the letter of the first respondent dated 15.2.1996, to quash the same and to direct the respondents to allow the petitioner to pursue his B.A. Corporate Secretary-ship Course in the third respondent college.

2. The father of the minor petitioner states that his son has completed his Higher Secondary School Education, having studied in G.H.M. Higher Secondary School, Salem. He completed his Higher Secondary Course during the year 1994-1995 and he received his mark sheet in original and the details of the marks are given in the affidavit. He applied for re-totalling, as he was not satisfied about his marks in Mathematics and Accountancy. The petitioner was very much confident of securing higher marks and the marks found in the mark sheet was very low to his expectations. On his application for re-totalling, the petitioner was informed that his marks in Mathematics was 90 out of 200 as against 056 as given in the original mark list. He forwarded his original mark sheet for issuance of fresh mark sheet, incorporating the same in the fresh mark sheet after re-totalling. He

was issued with a fresh mark sheet as per certificate issued by the Department of Government Examinations, Madras-6. He secured admission after remitting necessary fees and pursuing the said course. While so, the petitioner came to be served with a communication from the office of the Director of School Examination (Higher Secondary) intimating that the petitioner has secured 100 marks in accountancy (re-totaling) and requesting the petitioner to send the certificate for issuing the mark list. As he had joined the third respondent-college, he was not able to send the mark sheet. While the petitioner has been studying in the third respondent college, to his shock and surprise, he received a notice dated 1.3.1996 from the third respondent stating that they have received a communication from the Registrar, Bharathiar University, Coimbatore, to the effect that the Higher Secondary Mark sheet submitted by the petitioner for the purpose of admission has been found to be bogus and called on the petitioner to explain as to why he should not be removed from the college with immediate effect. The petitioner submitted his reply stating that the mark sheet produced by him to the college is a genuine one. By further notice dated 26.3.1996 the third respondent informed that the name of the petitioner will be removed from the rolls of the college with effect from 26.3.1996 and that a police complaint was also lodged against the petitioner. The petitioner also states that he came to know that the third respondent had laid a complaint dated 26.3.1996 to the Deputy Commissioner, Coimbatore and to be forwarded to the Judicial Magistrate VI, Coimbatore and subsequently, he obtained bail. The petitioner contends that he is innocent. Aggrieved by the action of the respondents, the petitioner has filed the present writ petition.

3. In the counter filed by the Director of Government Examinations, Madras-6, it is stated that the Directorate of Government Examinations have to conduct the examinations, value the answer sheets, issue the mark sheets, re-total the answer sheets within the stipulated time. In terms of G.O.Ms. No. 301, Education, dated 7.4.1994, during 1994-1995 about 80, 000 mark certificates were received in his office for verification. The mark certificates were being sent to the Directorate of Government Examinations by various institutes. The mark certificates sent to the Directorate of Government Examinations have to be verified and their authenticity have to be certified by Gazetted Officers alone. As regards the petitioner, the third respondent college had sent the mark certificates for verification. On verification from the Directorate's records, it was found that the mark sheet produced by the petitioner to secure admission to the third respondent college was a bogus certificate. The marks secured by the petitioner as per the records and the details are given in the counter affidavit. The marks originally obtained and after verification, they are given as follows:-

Subject Marks Marks

Tamil	123	123	English	129	129	Mathematics	056	090	Economics	075	075
Commerce	101	101	Accountancy	088	088	-----	-----	0572	0606	=====	
										=====	

4. The first mark sheet given to the petitioner was as per the entries in the tabulated mark Register only. The petitioner has actually failed in Mathematics subject and the certificate was issued to the petitioner with the above marks. The petitioner has stated that he has produced the original mark sheet issued by the Board of Examination. However, he has produced bogus certificate and produced the same to the third respondent for the admission to the course. The petitioner has not come out with clean hands and on this score alone the writ petition has to be dismissed. When a candidate is not eligible for promotion to higher studies and if he has produced bogus certificate by illegal means, Chapter XI (i)(a) of the Scheme of Higher Secondary Examination empower the Director of Government Examinations to withhold the certificates or suspend or cancel the certificates.

5. In the counter filed by the third respondent, it is stated that he acted in terms of the information received from the respondents 1 and 2. Though the petitioner had been issued with a show cause notice and had stated that he would produce materials to prove his innocence, he did not submit further materials and therefore, in terms of the directions of the respondents 1 and 2, action was taken against the petitioner.

6. I have heard the learned counsel for petitioner as well as the respondents.

7. Learned counsel for the petitioner states that by virtue of interim order, the petitioner was allowed to continue the studies and he has completed his course of study. Learned counsel also states that the criminal case filed against the petitioner in C.C.No. 423 of 1996 on the file of Judicial Magistrate VI, Coimbatore is pending for disposal and that the respondents may be directed to await for the result of the criminal proceedings.

8. Learned counsel appearing for the college states that no separate oral enquiry was conducted, in view of the complaint. Even though the petitioner had undertaken to produce materials in support of his explanation, no such materials were forthcoming till 26.3.1996. He was informed about the failure on his part to produce any material and ordered the removal of the petitioner.

9. I have considered the submissions of both sides. I am unable to accept the contention of the learned counsel for petitioner that the proceedings by the respondents herein, should abide by the outcome of the criminal complaint before the Magistrate against the petitioner. The proceedings in a criminal case is decided entirely on different considerations and yardstick and how far the petitioner himself was positively and individually guilty of the production of bogus certificate. But different considerations would arise in the case of an enquiry by the University and the college. The University and the college are only concerned with the genuineness of the mark certificate procured by or given to the petitioner and on the basis of which, he was admitted to the college. The main issue is as to whether the petitioner was eligible to be declared as pass and whether eligible to admit into the college. Who has actually done it is only one

part of the enquiry. If the petitioner had failed in the course, then he is not entitled to continue the course. Therefore, the mere fact that the petitioner may be acquitted in the criminal proceedings, does not necessarily follow that he should succeed before the respondents.

10. However, I find that no oral enquiry had been conducted by the respondents, though there is a failure, on the part of the petitioner to produce any supporting material as undertaken by him, the college could not have ordered the removal of the petitioner without holding an enquiry.

11. Therefore, I am inclined to hold any action to be taken by the respondents can only be, after properly conducting the oral enquiry. Two issues have to be gone into in the enquiry. (1) Whether the marks given in the second list are true and correct. (2) Whether the student is responsible for the manipulation. When once it is found that the marks are bogus, it has to follow that the student is not eligible to continue his studies on the basis of the bogus mark sheet. He cannot claim any equity arising out of the interim orders passed by this court. It is high time that the educational authorities review the retotalling scheme which has become a scandal and source of manipulation.

12. I am inclined to pass the following order:-

(i) The respondents are directed to conduct oral enquiry with the petitioner and also permit him to produce materials, if available with him;

(ii) On such examination, the respondents are entitled to pass appropriate orders giving reasons for the conclusion.

(iii) It is also made clear that the respondents are not bound to wait for the findings of the criminal case, filed against the petitioner; and

(iv) The respondents are directed to comply with the above directions within a period of three months from the date of receipt of a copy of this order.

With the above directions, writ petition is disposed of. Consequently, no order is necessary in W.M.P.No. 13524 of 1996 and the same is closed.