

**FARWIN**  
**v**  
**WIJEYASIRI, COMMISSIONER OF EXAMINATIONS AND  
OTHERS**

SUPREME COURT  
FERNANDO, J.  
WIGNESWARAN, J. AND  
WEERASURIYA, J.  
S.C. 536/2002 FR  
22 JULY, 2003

*Fundamental Rights – GCE (Advanced Level) Examination – Loss of answer  
scripts of the petitioner – Departmental investigations amounting to a sham –  
Constitution, Article 12(1).*

The petitioner sat the GCE (Advanced Level) Examination held in April-May 2002. One of the subjects she offered was Chemistry II. She alleged that two sheets from her answer script in that subject, pages 7 to 10 had been removed by tampering with the envelope containing her answer scripts. Those sheets were received by her father with an anonymous letter. However, the then Commissioner of Examinations (6th respondent) failed to hold a proper inquiry and thereby infringed her rights under Article 12(1) of the Constitution.

The 3rd respondent (Deputy Commissioner of Examinations) who investigated the complaint failed to hold a proper inquiry. The court discovered from the official file and the notes of the Deputy Commissioner that there was evidence of tampering with the scripts. However, the Deputy Commissioner falsely stated that there was no indication of tampering and that the scripts contained pages 7 to 10.

**Held :**

Although it was doubtful on the petitioner's performance in all 3 subjects she sat for, whether she would have qualified for university entrance, the departmental investigations into the alleged tampering of the Chemistry II scripts was a sham. As such the petitioner's rights under Article 12(1) had been infringed by officials of the Department of Examinations.

**APPEAL** for relief for infringement of fundamental rights.

*Elmore Perera* for petitioner.

*M.Gopallawa*, State Counsel for respondents.

*Cur.adv.vult*

September 12, 2003

**FERNANDO, J.**

The petitioner was a candidate from Kalmunai for the GCE (Advanced Level) Examination held in April-May 2002. She sat for the Chemistry, Physics and Combined Mathematics papers at Centre No 1545. In this application she alleges that on 10.5.2002 she duly handed over her answer script for the Chemistry II paper; that her script consisted of six sheets (numbered as pages 1 to 12); that at that Centre there were in all 28 scripts, which had been put in an envelope and sealed; that before the scripts were marked, the packet had been unlawfully opened, and that two sheets had been removed from her script; that in consequence she received less marks than she should have; that her father complained to the 6th respondent, the then Commissioner of Examinations; and that she received no redress, not even the benefit of a proper inquiry. In

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these circumstances, she claims that her fundamental right under Article 12(1) had been infringed by the 1st to 3rd and 6th to 16th respondents.

The petitioner's case is that on 23.5.2002 her father had received by ordinary post an anonymous letter (in Tamil) dated 21.5.2002, enclosing two sheets, numbered as pages 7 to 10, from her answer script. That letter (as translated by her father) stated : 20

Please pardon me for associating and cooperating in destroying the life of a student. I did not have any way there. I am sending this to fear of my mind. Please do not put me into trouble. These are works of "Big Places". Look into the other subjects Sir.

It is common ground that for each of those three papers candidates had to answer some questions on the question paper itself, and the other questions on separate answer sheets. At each examination hall, blank answer sheets were given by invigilators, a few at a time, after initialling and dating each sheet. The two sheets in question have been duly initialled and dated. 30

This Court called for the petitioner's answer scripts. It was found that her Chemistry II script included four answer sheets, numbered as pages 1 to 6 and 11 to 12. Her Physics II script had four sheets, numbered as pages 1 to 6 and 9 to 10, and that script contained a cage in which the candidate had to enter the number of pages in which answers had been written; she had entered "10" (implying that there were five sheets). The first page of her Combined Mathematics II script contained instructions to candidates, and she had numbered the reverse of that page (which was blank) as page 1; there were ten additional sheets, numbered as pages 2 to 13, 16 to 19 and 22 to 25; and in the relevant cage she had indicated that answers had been written on 25 pages (implying that there were 12 additional sheets). The differences between the numbering of the pages and the actual number of sheets included in the answer scripts, suggested, *prima facie*, that from those three scripts there were missing two sheets, one sheet, and two sheets, respectively. Among the answer scripts produced were those for Chemistry I and Physics I, which were "OMR" papers, in which candidates were given printed scripts on which they merely selected answers by shading the appropriate cage. Those scripts were subsequently 40 50

corrected by computer. The petitioner alleged that the two scripts produced were not hers, but substitutions.

The available material was not sufficient to establish *prima facie* that any of the scripts, other than Chemistry II, had been tampered with – although there was some suspicion.

There are only two possibilities in this case in regard to the Chemistry II script. The respondent's case is that the petitioner had probably handed over her answer script with only **four** sheets numbered as pages 1 to 6 and 11 to 12; and that she had – deliberately or inadvertently – taken out two blank answer sheets when leaving the Centre. That necessarily implies that after leaving her Centre the petitioner herself had – dishonestly – written answers on those two sheets, numbering them as pages 7 to 10, and had thereafter caused them to be posted to her father, with the covering letter. The second possibility is that she did hand over her script with **six** sheets, and that two sheets had been unlawfully removed thereafter, before her script was marked. 60

On the night of 23.5.2002 the petitioner's father telephoned the 6th respondent, at his residence, and was told to submit a written complaint to the Department of Examinations in Colombo the following day. It was not possible to travel on 24.5.2002 due to a har- 70 tal, and the father's complaint dated 24.5.2002 and the documents were faxed to the 6th respondent on 24.5.2002. On the 6th respondent's instructions, all the original documents, including the envelope in which the anonymous letter had been sent, were handed over to the 2nd respondent, the Additional Commissioner of Examinations, on 28.5.2002. The packet was by then at the Evaluation Center at Visakha Vidyalaya Colombo, at which the scripts were due to be marked soon thereafter.

In order to investigate the petitioner's complaint, the 3rd respondent, the Deputy Commissioner of Examinations (Investigations) 80 and another Deputy Commissioner visited the Evaluation Centre at Visakha Vidyalaya on 29.5.2002. According to the first affidavit (dated 12.11.2002) of the 3rd respondent :

"... The envelope containing the petitioner's answer scripts had not been opened. The seals were intact. If the envelope had been opened the seals would have been damaged. *The envelope was*

also not damaged at any point and was *not tampered with in any way*. I then opened the envelope containing the petitioner's Chemistry answer scripts. The answer scripts were in order and there was no evidence that the petitioner's answer scripts had been tampered with. Answer scripts were tied together with twine through a perforation on the top corner of the answer scripts. There was no indication that any papers had been detached from the petitioner's answer scripts." [emphasis added] 90

The 3rd respondent was investigating a very serious allegation, and those averments should have been much more specific. He should have stated, but did not state, whether he examined the envelope containing the Chemistry II scripts. Had he opened only that packet, he would have found only **one** answer script of the petitioner: why, then, did he keep referring to "scripts" ? What he had to find out was how many sheets the petitioner's answer script consisted of, and whether there was any indication that one or more sheets had been removed. He should therefore have noted the index number of the script which he examined, the number of sheets which it contained, and the numbering of the available sheets; and should also have made an endorsement on that script to indicate that he had examined it on 29.5.2002. 100

What is more, he did not produce either any record (contemporaneous or otherwise) of his observations, or any report that he had made to the 6th respondent or to any one else. 110

the results of the examination were expected in or about August 2002. On 17.6.2002 the petitioner's father made an appeal to the 6th respondent to expedite the investigation. However, there was no communication from any one in the Department of Examinations either to the petitioner or to her father, until 9.7.2002 when her statement was recorded by an officer of the Department. Soon after that the petitioner became aware that the 6th respondent had referred the matter to the 5th respondent, the Director, CID, for investigation. She was not informed of the outcome of the departmental investigation. 120

At that point of time, if the 3rd respondent's affidavit is true, there was no reason for the 6th respondent to think that any irregularity had occurred. It was not at all clear why, and on what material, he

had referred the matter to the CID. He did not file an affidavit.

On 4.8.2002 the results of the examination were released, and on 2.9.2002 the petitioner filed this application.

In October 2002 the CID reported that there was no evidence that "the petitioner's answer scripts... were tampered with in any manner".

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In December 2002 this Court directed the 1st respondent (who had succeeded to the office of Commissioner of Examinations in mid-August 2002) to produce the journal containing the entries in relation to the sealing of the packets in which answer scripts were enclosed and the opening of such packets for various purposes connected with the examination. No journal was produced. In May 2003 while this application was being argued before a differently constituted Bench, it became necessary for learned State Counsel to obtain instructions from the 3rd respondent, for which purpose the 3rd respondent referred to a file which he had with him. That Bench then perused the file, and discovered that there was relevant material therein which had not been brought to the notice of the Court, and took it into Court custody. That turned out not to be an official file regularly maintained, with duly numbered folios, but a collection of documents - some originals, some copies - relevant to this case, but not even arranged in chronological order.

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That file contained the original of a journal maintained at the Visakha Vidyalaya Evaluation Centre, one page of which was intended for the observations of officials of the Department of Examinations. The 3rd respondent and the Deputy Commissioner who had accompanied him, had made an entry on 29.5.2002 to the effect that they had come there to examine the packet in question. However, inexplicably, they had failed to record any observations. It is probably for that reason that the journal was not produced when this Court called for it.

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There was also in that file a sheet of paper, with some notes made in Sinhala, undated and unsigned. It was admitted that these were the 3rd respondent's notes :

- (1) The **pastig** ("ඇල වීම") of the envelope was in a weak condition;

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- (2) The signature on the sticker was illegible.
- (3) Because it had not been *properly pasted* ("නිසි පරිදි ඇලවී නොතිබීම නිසා") .... [entry incomplete] by the strength of the sticker alone.
- (4) There were 28 answer scripts.
- (5) In the relevant answer script the page numbers shown .... [entry incomplete]. [emphasis added]

Even in those notes the 3rd respondent had not indicated which particular script had been examined and what exactly he had observed.

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Finally, that file also contained a copy of the 6th respondent's letter dated 2.7.2002 to the Director, CID, in which he had stated that upon examination of the petitioner's script it had been found to contain pages 7 to 10, and that that suggested that a *grave irregularity* had taken place. If the material then available to the 6th respondent – as a result of the 3rd respondent's investigation – indicated that the packet had *not* been tampered with, it is difficult to understand why he thought that an irregularity had occurred. These matters were not explained by him by means of an affidavit. It appears likely that the respondents have not disclosed all the available material to this Court, particularly the original file(s) containing the petitioner's father's complaint and the subsequent related documents.

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The file taken from the 3rd respondent was kept in Court custody. Thereafter the 3rd respondent perused the file in the registrar's office, and filed a third affidavit, in June 2003, in an effort to explain these matters. He translated his unsigned note as follows :

- (1) The *binding* of the envelope was in a weak condition.
- (2) The signature on the sticker was illegible.
- (3) The *envelope was held together* by the strength of the sticker *in view of the weak binding*.
- (4) There were 28 answer scripts.
- (5) the *petitioner's* answer script contained page nos. 1-7 and 10." [emphasis added]

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An examination of the envelope containing the Chemistry II scripts revealed that a *part* of the flap had not been pasted down, and that it was a sticker pasted over the flap which kept the envelope closed. It is possible that the sticker had been partly removed, that the contents of the envelope had been tampered with, and that the sticker had then been re-fastened. It was common ground that the 3rd respondent and the officials at the Evaluation Centre had not opened that envelope from that particular side. (There were no signs of tampering on the other envelopes.) 200

The respondent's case depended heavily on the 3rd respondent's affidavits. It was he who first examined the packet, and his observations were vital. His first affidavit gave the impression that the envelope and the seals (i.e. the stickers) were in perfect condition. Thereafter when his file was examined by Court his observations as to the unsatisfactory "pasting" of the envelope were discovered. That he tried to explain away by referring to the "binding" of the envelope. What is more serious, he tried to get over the absence of a contemporaneous record of his observations regarding the petitioner's script by claiming – falsely – that his undated note did refer to the actual page numbers of the available sheets of that particular script. However, in making that false claim he added another false assertion, that the script contained pages 7 and 10, which it most certainly did not. 210

Learned State Counsel valiantly urged that the reference to pages 7 and 10 was an obvious mistake, and that he had meant to say "pages 1 to 6 and 11 to 12". In an affidavit intended to deal with a vital issue, with legal assistance available, how could he have made such a mistake? If pages 7 and 10 had been found in the petitioner's answer script, then the two sheets (pages 7 to 10) which the petitioner's father claimed to have received could not have been submitted at the examination, and must necessarily have been subsequent fabrications. 220

Let me assume, however, that the 3rd respondent did make a mistake. It was not an incautious answer in the witness box, but a mistake in a document prepared and signed after being carefully read and considered. Such a mistake betrays a serious lack of care, aggravating the lack of diligence shown throughout his investigation. The allegation which he was investigating affected the 230



integrity of one of Sri Lanka's most important public examinations – one of vital importance to about 150,000 students annually, affecting their right to universal and equal access to higher education (recognised by Article 13 of the International Covenant on Economic Social and Cultural Rights, and made an objective of Sri Lankan State policy laid down by Article 27(2)(h) of the Constitution).

The officials of the Department of Examinations owed a duty to the petitioner, and to all other candidates, to conduct that examination with adequate security measures to ensure the integrity of the examination, and in particular that answer scripts were not tampered with and were duly marked in full; and consequently to conduct a full and open investigation in respect of any serious allegation of irregularity. The material before the Court does not enable me to reach a conclusion that her script had or had not been tampered with. However, I have no hesitation in holding that there had not been a proper investigation, and that thereby the petitioner's right under Article 12(1) to the protection of the law had been infringed. 240 250

In regard to the other scripts, the petitioner made no complaint to the department – and she complained about those scripts only after they were produced. In the circumstances, it is difficult to find fault with the Department for not holding an inquiry into those matters as well.

I turn now to the question of relief. The petitioner's grades were:

Combined Mathematics	C
Physics	C
Chemistry	C

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Her Z-scores were not disclosed to her, on the ground that the University Grants Commission, which was not made a respondent, did not require such disclosure in the case of candidates not eligible to apply for University admission. The respondents pointed out that the petitioner had answered more than the required number of questions, and that even if the additional sheets were taken into account her grades would not change, and she would still be ineligible to apply for University admission.

On the available material, I am unable to conclude that the petitioner's results would have been significantly better, at least to the extent of achieving eligibility to apply for University admission. In any event, bare eligibility was most unlikely to result in admission. However, the departmental investigation has been a mere pretence. I therefore hold that the petitioner's fundamental right under Article 12(1) has been infringed by officials of the Department of Examinations, and I award her a sum of Rs 100,000 as compensation and costs payable by the State. I direct the 1st respondent to consider whether a disciplinary inquiry should be held to determine whether the 3rd respondent had failed to conduct a proper investigation.

**WIGNESWARAN, J.** - I agree.

**WEERASURIYA, J.** - I agree.

*Relief granted.*