
(2006) 12 DEL CK 0137

In the Delhi High Court

Case No : Writ Petition (C) . No's. 6302, 6441, 6767 and 6768 of 2006

Ankit Gupta

APPELLANT

Vs

Vice Chancellor, University of Delhi and Others
 Pulkit
Kaushik Vs The Director, NSIT and Others
 Deepak
Khanduja Vs University of Delhi and Another
 Rachit
Gupta Vs The Registrar, University of Delhi and Others

RESPONDENT

Date of Decision : 19-12-2006

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 19, 21, 226
Delhi University Ordinances — Ordinance 10A, Ordinance 10A(13), Ordinance 10A(9)
Penal Code, 1860 (IPC) — Section 120B, 465
Representation of the People Act, 1951 — Section 153

Citation : (2006) 12 DEL CK 0137

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Anil Grover, in W.P.C. No. 6441/2006, Sandeep Sethi and P.S. Bindra, in W.P.C. Nos. 6763 and 6767/2006, Arvind Nigam and Sanjeev Nigam, in W.P.C. No. 6302/2006 and Shantanu Rastogi, in W.P.C. No. 6768/200, for the Appellant; V.P. Singh and Mohinder J.S. Rupal and Latika Chaudhary, in W.P.(C). Nos. 6302, 6441 and 6768/2006 and Latika Chaudhary and V.P. Singh and Mohinder J.S. Rupal, for Respondent No. 2. in W.P.(C). Nos. 6763 and 6767/2006, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—This order shall dispose off these five writ petitions against the order of the Delhi University canceling petitioners' examinations of CEE, 2005 and further debarring them for five years from appearing in the examinations of Delhi University w.e.f June, 2005. All these students had appeared in the CEE, 2005 on 29th May, 2005 and the result was declared on 13th June, 2005 and they were given question series No. 16. After following the procedure as contemplated under rules and regulations, petitioners' examinations for CEE, 2005 has been cancelled and they have been debarred for a period of five years

for using unfair means in the examination.

2. Some relevant details of these five students regarding the year they qualified the Senior Secondary Examination, percentage of marks obtained by them in the senior secondary examination, percentage of marks in Physics, Chemistry and Mathematics, their roll number in CEE, 2005 examination, rank obtained by them in CEE, 2005; the question series which was given to them in CEE, 2005 examination and ranking of some of the petitioners in other competitive examination to comprehend the disputes are as under:

Ankit Gupta Question Series : 16 Roll No. : 69753 Rank CEE, 2005 13 Rank AIEEE, 2005 70335 Year of passing School : 2005 Percentage in School : PCM 233(Math 87, Physics 38+30, Chem 48+30) Percentage of marks : 77.66% Marks before EDC out of 120 marks in 30 questions: 21 Pulkit Kaushik Question Series : 16 Roll No. : 60843 Rank CEE, 2005 25 Rank AIEEE, 2005 330151 Rank AIEEE, 2006 488629 Year of passing School : 2005 Percentage in School : PCM 200(Math 73, Physics 31+30, Chem 36+30) Percentage of marks : 66.66% Marks before EDC out of 120 marks in 30 questions: 18 Deepak Khanduja Question Series : 16 Roll No. : 68061 Rank CEE, 2005 : 50 Rank AIEEE, 2005 247843 Rank CET, 2005 18738 Year of passing School : 2005 Percentage in School : PCM 194(Math 73, Physics 39+29, Chem 23+30) Percentage of marks : 64.66% Marks before EDC out of 120 marks in 30 questions: Refused to solve questions Ankit Sharma Question Series : 16 Roll No. : 67469 Rank CEE, 2005 73 Year of passing School : 2004 Percentage in School : PCM 211(Math 63, Physics 42+29, Chem 50+27) Percentage of marks : 70.33% Marks before EDC out of 120 marks in 30 questions: 27 Rachit Gupta Question Series : 16 Roll No. : 50083 Rank CEE, 2005 107 Rank CEE, 2004 3073 Rank AIEEE, 2005 108797 Year of passing School : 2004 Percentage in School : PCM 222(Math 82, Physics 38+29, Chem 43+30) Percentage of marks : 74% Marks before EDC out of 120 marks in 30 questions: 26

3. These five petitioners scored following marks and their ranking in CEE, 2005 was as under

Name of the Candidate	Marks	Ranking	Obtained in CEE, 2005
Ankit Gupta	532	13	
Pulkit Kaushik	527	25	
Deepak Khanduja	518	50	
Ankit Sharma	512	73	
Rachit Gupta	497	107	

4. The comparison of their answer books revealed unusual sameness. On comparison and tabulation of their answers it was revealed that the questions which were answered incorrectly were the same and their incorrect options were also the same as every question had four options. The answers of questions which were found to be wrong of all these petitioners were as under:

Question numbers	whose Answers were incorrect	Same Option (Answer)
4	3	20
3	21	4
41	2	44
3	56	1
60	2	67
4	80	2
89	3	91
1	95	4
96	1	104
3	105	3
106	2	107
2	108	2
109	4	110
1	111	1
116	2	118
2	123	3
126	2	129
1	147	3
152	4	180
4		

5. Another striking similarity in the answer books of these five petitioners was that they did not attempt the same questions. i.e did not give answer to the same questions which were question Nos. 112, 153 except Petitioner, Rachit Gupta who also did not answer question number 14, 38, 50, 67, 95, 103, 130, 150, 166 and 168.

6. The dissimilarities in answers which has led to different marks of these five petitioners and their different ranking are as follows.

i. The petitioner, Ankit Gupta marked options 4, 1, 4, 1, 4, 4 and 2 for the questions 13, 14, 26, 53, 85, 115 and 169 respectively whereas other petitioners marked options 1, 4, 1, 3, 3, 1 and 1 for the questions 13, 14, 26, 53, 85, 115 and 169 respectively.

ii. Petitioner, Deepak Khanduja, marked option 1 for the question 150 whereas other petitioners had marked option 2 for the said questions. He had not answered question No. 176 whereas other candidates had answered the said question number 176 with option 2.

iii. Petitioner, Ankit Sharma, marked options 4, 1, 3, 4, 2, for questions 136, 137, 138, 139, 140 whereas the other candidates marked options 3, 2, 2, 1 and 4 for the said questions which answer of other candidates were found to be correct.

iv. The petitioner, Rachit Gupta, had marked option 1 for question No. 139 whereas other petitioners had marked option 1 and Ankit Sharma had marked option 4 for the said questions. The said petitioner also did not attempt question No. 14, 38, 50, 67, 95, 103, 130, 150, 166, 168.

These miniscule differences in their answers had led to their different scores and different ranks in CEE, 2005 examination. Apart from the present petitioners there are four other students, namely, Shruti Gupta (Roll No. 69793), Sandharbh Kapoor (Roll No. 51335), Sajal Dahiya (Roll No. 14553) and Gaurav Gupta (Roll No. 69761) who have also impugned an identical order by the respondents before this Court in Writ Petition (C) No. 11257-64 of 2006 titled Manik Bansal and Others v. Dean, Faculty of Technology (Delhi University) and Anr. which is pending adjudication. Apart from the these students who have instituted proceedings before this Court, there are four other students as well, who have not filed any writ petition before this Court however in their cases also identical orders were made by the University, debarring them for 5 years from appearance in the examination of Delhi University w.e.f June 2005 on identical grounds. The details of these students are as follows:-Manoj Kumar (Roll No. 69753), Ashish Bajaj (Roll No. 68085); Ritesh Kumar Tehalan (Roll No. 67397); Sunveer Mann(Roll No. 59867). The answers of these students were almost the same as that of the petitioners. Consequently the pattern of answers of these students was almost same i.e. almost same mistakes, option marked for the mistakes and the questions which were not attempted were similar and the answers were also similar.

7. A petition seeking cancellation of result of CEE on the ground that the question paper had leaked and rigging of paper of CEE, 2005 was filed and an order canceling the admission of 33 students, on the ground that they had adopted unfair and illegal means, was passed on 25th July, 2005. A complaint was made to CBI. In the complaint it was disclosed that the candidates scoring ranks number 13, 25, 36 & 56 and were 5, 3, 2 & 11 in numbers who had scored exactly the same marks in physics, chemistry and mathematics. Aggrieved by the said order some students had filed an appeal before the division bench which was disposed off by order dated 23rd August, 2005 and CBI was directed to complete the investigation within six weeks. Inquiry was sought in respect of 21 candidates but not against petitioner, Deepak Khanduja.

8. The University of Delhi had given show cause notices to the petitioners Ankit Gupta & Pulkit Kaushik dated 6th October, 2005 which were replied by them. The University of Delhi, however, cancelled their examination by Memorandum dated 21st October, 2005 against which these petitioners, Ankit Sharma & Pulkit Kaushik, filed writ petition being WP (C) 21460 of 2005 and WP (C) 21506 of 2005 respectively. The University of Delhi withdrew the show cause notices which were given and the memorandums canceling their examination and as such the writ petitions were disposed of by order dated 8th February, 2005 and the liberty was given to the University of Delhi to issue fresh show cause notices.

9. Show cause notices dated 6th October, 2005 were also given to the petitioners, Deepak Khanduja, Ankit Gupta and Rachit Gupta and against them also and by memorandum dated 21st October, 2005 the examination of these petitioners was also cancelled. Writ petitions being WP (C) 21312 of 2005; WP (C) 22525 of 2005 and WP(C) 21670 of 2005 were filed these candidates. The University of Delhi withdrew the show cause notices which were given and the memorandums canceling their examination and as such the writ petitions were disposed of by order dated 5th December, 2005 and the liberty was given to the University of Delhi to issue fresh show cause notices.

10. Pursuant thereto another show cause notice was issued to the petitioners calling upon them to explain in writing why disciplinary action as contemplated under Ordinance X-A of the Delhi University be not taken and the petitioners were directed to appear before the Examination Disciplinary Committee (EDC). The show cause notices dated 27.2.2006 was issued to Ankit Gupta, dated 25.2.2006, to Deepak Khanduja and Rachit Gupta and dated 24.2.2006 to Ankit Sharma and Pulkit Kaushik. The petitioners appeared before the EDC where the petitioners were asked to solve a question paper containing 30 questions. Considering the show cause notice, reply given and other factors including the answers to the 30 questions given during the hearing, notices dated 7th April, 2006 and their replies asking them as to why the result of the petitioners for CEE, 2005 be not cancelled and they be further debarred for five years, the University of Delhi has debarred the petitioners for a period of five years and has also cancelled their examination for CEE, 2005 by order dated 19th April, 2006

on the ground that the petitioners have used unfair means in the examination. These orders were based on the fact that there was little or no rough work on the QPB of the petitioners; there were alleged answer keys on the QPB which some of the petitioners tried to erase; there was bunching of result of some of the candidates and wrongly answered and unanswered options of these candidates were almost the same except a very few answers which were different, all other answers were almost the same and their performance in 30 questions was dismal and that the performance of some of the candidates in other competitive examinations did not commensurate with their performance in CEE, 2005.

11. The show cause notices dated 24.2.2006, 25.2.2006 and 27.2.2006 issued to the petitioners stipulated the earlier orders passed by the High Court superseding the earlier show cause notice and memorandum dated 21st October, 2005. It also mentioned about the scrutiny done on the basis of a complaint which revealed the bunching of results/ranks and about the questions which were left unattempted or the questions which were wrongly answered tallied almost completely which made the University to believe that certain malpractices were adopted in the course of the examination CEE, 2005. It also stipulated the names of the candidates in respect of whom bunching was noticed. In the show cause notices to the petitioners, it was categorically stated that the copies OMR sheets of these candidates were supplied to them. It was also mentioned that that phone bearing numbers 9872899095 and 9899214819 were recovered by the invigilators from Mr. Anshul Aggarwal(Roll No. 16628) and Mr. Saumya Agarwal (Roll No. 68059). Mr. Anshul Aggarwal had confessed that the last SMS received on his mobile phone was `03244312241310" which was the answer from second numeral to last but one, of questions number 168 to 179. The OMR answer sheet is printed in blocks of five rows, each row corresponding to one question and each row has four ovals marked 1 to 4. The numbers in the ovals refer to the options for each question as set out in QPB. Any key to answers to these questions would consist of five digit numbers having numerals from 1 to 4. It was stated that the said incident of recovery of mobile phones and communication of messages in digital form had created doubts that unfair means were used in CEE, 2005. In Para 6 of the notices given to the petitioners the result of scrutiny of QPB and OMR answer sheet were given of every petitioners. The petitioners had given replies to the notices given to them. Para 6 of the show cause notices given to the petitioners and their replies are as under:

ANKIT GUPTA - WPC No. 6441/2006

6. In course of this detailed scrutiny, your QPB and OMR answer sheet was also taken up. You had secured a common rank of 13. The scrutiny revealed as under:

6: I deny the allegations leveled against me in para 6 of the show cause notice. It is pointed out that these allegations were also leveled in the work sheet allegedly prepared by the alleged disciplinary committee, copy of which was also filed before the Hon"ble High Court in W.P.(C) No. 22525 of 2005 and on the

basis of which memorandum dated 21.10.2005 was passed. These allegations were again repeated in the counter affidavit filed in the said writ petition but the Hon"ble High Court did not accept the same. Thus the University withdrew the earlier show cause notice dated 6.10.2005 during the course of hearing held on 5.12.2005 before the Hon"ble High Court pretending that there was some material which came to its notice subsequently. But no subsequent material has been mentioned in the present show cause notice and the information relied upon by your goodself is the same and based upon mere probabilities, which has already been rejected by the Hon"ble Court. It is also relevant to point out that my centre for examination was at Department of Applied Physics, Delhi University Main Campus, Delhi. The result was declared on 13.06.2005 and I was awarded 13 rank by securing 186 marks in Mathematics, 195 marks in Physics and 151 marks in Chemistry, total being 532 marks out of 720 marks. The marks in each subject of the other persons who also got 13th rank are entirely different from the marks obtained by me. Thus no comparison of any other person can be made with me.

(i) In the QPB, in respect of a large number of questions (55) you have ticked either two different probable choices or one choice has been ticked twice. This trend is dominant in case of physics and chemistry questions. In this set, in respect of Q.Nos. 21,26, 67, 80,85 and 91 one of the two choices ticked happens to be the correct choice but it has not been encoded on the OMR answer sheet. On the contrary, the second ticked choice, which happens to be a wrong one, has been encoded. It is further observed that the choice encoded in respect of Q.Nos. 21,67, 80 and 91, although wrong, matches exactly with the encoding done by two other candidates, Mr. Sajal Dahiya and Mr. Sandarbh Kapoor, having Roll Nos. 14553 and 51335, respectively. These candidates appeared from different centres and were given QPB of the same series as yours. A key for answers in respect of the questions 1-180 in the QPB has been found written in the QPBs of these two candidates. This kind of similarity in answering cannot be found unless unfair means have been used.

6(i) The allegations leveled against me in para 6(i) are baseless and are result of probabilities and conjectures. In an examination where out of four given choices, one correct choice it to be opted, some times there is confusion which can lead to probabilities. Merely because out of 180 questions I have double ticked only 55 questions, out of which 6 questions were wrongly answered, by no stretch of imagination can lead to the conclusion of using unfair means. As already submitted in my earlier reply also, as far as I could recollect was that while hurriedly replying the question in the first round, probably I had noted some of their probable answers, regarding which I was not certain, on the question paper booklet to save my time in the second round. After my first round I have second thought and felt that some of the answers thought to be correct by me were in fact incorrect and Therefore, while filling the answer sheet, the final answers to some of the questions given by me do not tally with the answers which were written by me in the first round. Since I was not certain of the correct answers, I

have filled in 6 wrong answers, though I have ticked the QPB with the correct answer also. Thus the allegation of use of unfair means is clearly belied. Regarding the similarity in respect of 4 questions with Mr. Sajal Dahiya and Mr. Sandarbh Kapoor it is submitted that the same is merely a coincident and probability of only four similar questions being wrong can not be absolutely ruled out. On the contrary such a probability can be much higher. I would also like to point out that admittedly Mr. Sajal Dahiya and Mr. Sandarbh Kapoor and myself appeared from different centers and there is no allegation of use of the mobile phone and receiving the SMS message against me. Admittedly there was no link or connection of Mr. Sajal Dahiya and Mr. Sandarbh Kapoor and myself and none is even alleged in the present show cause notice. Thus the allegations are baseless, not tenable and without any supporting material and are wrong.

(ii) As per subject experts, the nature of the questions asked was such that in majority of cases some rough work was required, particularly in Physics and Mathematics (Encl.1). However, you have done little rough work/ The scribbling against Q.Nos. 3, 12, 15, 19, 24, 26, 28, 33, 39, 41, 45, 50, 52, 53, 72, 73, 89 and 143 is scanty and inconclusive.

(ii) similarly, the allegations leveled against me in para 6(ii) are baseless, arbitrary and wrong. A perusal of the alleged report of your expert, which has admittedly been prepared at my back, no rough work was required in most of the questions in Physics, Mathematics and Chemistry and wherever the rough work was required I have done the same. Admittedly, some rough work has also been deleted, which could not have been detected by the said expert. Moreover, nothing has been mentioned in the Instructions issued to the candidates that the rough work is must and in the absence of rough work it would be presumed that the examinee had used unfair means thereby completely ruling out any possibility of guess work of the examinee, which is used frequently in the exams in which only multiple choice questions are asked and no process for arriving at the correct conclusion is to be written. Your goodself is well aware that in an objective type papers, rough work is not mandatory and the answers can be filled purely on the basis of guess work also. There was also no instruction or condition of the examination, that the rough work done by the examinee must be to the satisfaction of the expert, which would be appointed subsequently and if the said expert is not satisfied with the rough work, it would again be presumed that the examinee had used unfair means in the examination. Thus the allegations in para 6(ii) are also inconclusive, vague and baseless.

(iii) Two (2) unattempted questions Nos. 112 and 153, and the Serial numbers of twenty nine (29) wrongly attempted questions as well as the options encoded therein match exactly with those of the candidates having Roll Nos. 54681, 68085, 67397, 69793, 59867, 60843, 68061, 67469 and 14553, who appeared for the CEE-2005 at different centres and were given booklets belonging to the same series as yours. As opined by the expert, it is not possible to have this kind of similarity without employing some unfair means.

(iii) The allegation that two un-attempted questions and 29 wrongly attempted questions match exactly with the candidates having roll Nos. 546681, 680885, 67397, 69793, 59867, 60843, 68061, 67469 and 14553 is also wrong and incorrect. A comparison of the chart annexed by the University with its counter affidavit in the W.P(c) No. 22525 of 2005 shows that the answers given by me are different from the answers given by other persons, as alleged in para under reply, in as much as out of total wrong answers, answers of 11 questions given by me and roll No. 54681 are different, answers of 10 questions given by me and roll No. 68085 are different, answers of 10 questions given by me and roll No. 67397 are different, answers of 10 questions given by me and roll No. 69793 are different, answers of 9 questions given by me and roll No. 59867 are different, answers of 10 questions given by me and roll No. 60843 are different, answers of 7 questions given by me and roll No. 68061 are different, answers of 11 questions given by me and roll No. 67469 are different, and answers of 10 questions given by me and roll No. 14553 are different. Moreover, all these persons appeared at different centres. Thus there was no link or contact between these persons and myself and none is alleged also. Moreover, more than 50% candidates have obtained similar marks in two subjects, which may lead to the same inference as is sought to be drawn against me, which is not justified since there were around 55000 students who appeared in the examination and any probability can not be absolutely ruled out. Thus no action as contemplated can be taken against me merely on the basis of probabilities, statics, conjectures and surmises and my career cannot be ruined because of whims of some one.

(iv) Attempt to destroy an evidence has been made by erasing some information written on pages 1, 6, 10, 12, 14, 25 and 26.

(iv) The allegation leveled against me in para 6(iv) is also wrong and baseless. I deny that any attempt was made to destroy any evidence by erasing some information. It is surprising that when in the entire show cause notice there is no allegation that I have received some information, which I ought not to have received, how there could be any attempt to erase such information.

PULKIT KAUSHIK - W.P.(C).No. 6767/2006

6. In course of this detailed scrutiny, your QPB and OMR answer sheet was also taken up. You had secured a common rank of 25. The scrutiny revealed as under:

6. In reply to this para, I refer to and rely upon the foregoing preliminary submissions. However, without prejudice, I submit paras reply as under:

(i) Ticking on the QPB and encoding in the OMR answer sheet is different in case of Q.Nos. 98, 148, 149, 156, 160 and 172 which have been ticked and also transfer 8, 9, 10, 11, 64, 88, 117, 127, 169.

(i) In reply to para 6(i), it is submitted that the ticking on question paper booklet and differences in questions ticked in question paper booklet and encoding in the OMR answer sheet with respect to only 6 questions, out of 180, cannot be a

ground for suspecting that the Petitioner used unfair means. It is submitted that the questions were ticked by the undersigned in the question paper booklet initially as he was trained in coaching centre that to avoid rubbing on OMR answer sheet the questions in question paper booklet should be ticked. It is submitted that the OMR answer sheet was filled by candidates with respect to some questions where he had doubt while having a second thought and wanting to change the answer. Significantly, out 180 questions answers with respect to only 6 are different in the OMR answer sheet. However, the question Nos. 8, 10, 11, 64, 88, 117, 127, 169 have been ticked in the QP booklet and encoding in the OMR sheet are same as that of expert's observation. Further, a student before submitting the OMR sheet to the Invigilators can change the answers as many times as he wants. Ticking a different answer than the one earlier ticked on the QP booklet cannot in any way lead to the apprehension that he could have necessarily adopted unfair means for doing so. It shows that no mobile phone was there. Neither S.M.S. have received by the undersigned nor any answer key was made on the Question Paper Booklet.

(ii) As per subject experts, the nature of the questions asked was such that in majority of cases some rough work was required, particularly in Physics and Mathematics (Encl.1). However, you have done little rough work. The rough work done in respect of Q.Nos. 3, 61, 65 and 98 is irrelevant. There is some frivolous calculations on pages 22 to 31 which has been done by you to give a misleading impression of rough work though these do not lead to the correct answers. This clearly indicates that you have clandestinely received assistance from outside during the CEE-2005.

(ii) In reply to para 6(ii), it is submitted that the requirement to do rough work by a candidate is personal. In an examination where 4 answers are given against every question the process of elimination is adopted by most of the candidates. The same is taught to the candidates in coaching centres. To avoid wastage of time, candidates normally dispense with rough work for questions where there is no need of rough work. Secondly, even as per the Brochure of Common Entrance Examination-05 it is not mandatory for candidates to do rough work. No hard and fast rule requiring rough work to be made by candidate having been laid down, it cannot be said that a candidate has not done the rough work and hence he has adopted unfair means to answer the question.

Without prejudice to the above, it is submitted that the undersigned has done substantial rough work on the question paper booklet and the rough sheet provided. The allegation that the rough work done in respect of Q. Nos. 3, 61, 65 and 98 is irrelevant is misconceived. It is denied that I have clandestinely received assistance from outside during the CEE-2005. In this behalf it is submitted that a candidate doing some rough work midway may in his mind lead to a particular answer which may be one of the 4 options given in the question paper and as such would not require to do further rough work before ticking that answer. It is submitted that the chart given by the University showing

requirement of rough work in some questions cannot be appreciated in the absence of the question paper booklet, which has not been supplied by the University. Further, the undersigned has also consulted some experts who have opined that rough work was required varies to individual questions for which the petitioner has done substantial rough work. However, in the proceeding of the writ petition before the Hon"ble High Court the undersigned has submitted detailed reply to the counter affidavit filed by the University.

(iii) Two (2) unattempted questions Nos. 112 and 153 and the Serial numbers of twenty nine (29) wrongly attempted questions as well as the options encoded therein match exactly with those of the candidates having Roll Nos. 54681, 68085, 67397, 69793, 59867, 67469, 69761, 50083, 68061 and 69753 who appeared for the CEE-2005 at different centres and were given booklets belonging to the same series as yours. As opined by the expert, it is not possible to have this kind of similarity without employing some unfair means.

(iii) In reply to para 6 (iii) it is submitted that the option given in the question paper booklet are very close to the correct answer, the same is done with a view to confuse the candidates. As such, it is possible that some students answer the same question wrongly. It is denied that it is not possible to have this kind of similarity without employing some unfair means. It is submitted that if the story of the University is correct, then all 10 candidates as referred to in para under reply would have secured same rank and marks which admittedly is not the case here. The respective ranks of the candidates, whose roll numbers have been mentioned, are 36, 73, 41, 50 and 13, 69, 107, 30, 127 as per the record given by the University in series 16 of the Q.P. booklet of CEE-2005.

DEEPAK KHANDUJA - WPC No. 6302/2006

6. In course of this detailed scrutiny, your QPB and OMR answer sheet was also taken up. You had secured a common rank of 50. The scrutiny revealed as under:

6. That is if not understood why result were scrutinized in detail since it is the stand of the University that it was the results of the candidates detailed in paragraph 3 alone whose results were scrutinized in detail. The contents of the paragraph under reply are accordingly contradictory to the assertion of the University in paragraph 5 of the said Show Cause Notice. It however a matter of record that I secured rank 50 at the said examination, a single rank case.

It is further stated that the assertion of the University in the paragraph under reply are contrary to the earlier show cause notice dated 6.10.2005, the memorandum dated 21.10.2005, as also the counter affidavit filed to Writ petition (Civil) No. 21312 of 2005 are at variance with each other and also contrary to the allegations sought to be leveled in the Show Cause notice under reply. I crave leave to refer to and upon the said document in this behalf at an appropriate stage if found necessary.

(I) Ticking on the QPB and encoding in the OMR sheet is different in case of

Q.Nos. 1,88,115,116,156 AND 171 and different.

(i) That the allegation that in respect of a few questions I have ticked two options on the QPB however only one of the said answers has been encoded in the OMR answer sheet. This may be a fact that is borne out from the record however it is not understood how the said fact is material to allege use of unfair means by me and more particularly by way of receiving SMS messages on a mobile phone. It is further not understood how the manner and mode of answering his questions devised by me for the said examination has been interpreted by the University to mean that I have unfair means at the said examination.

Moreover it is very common for a candidate to initially mark certain options as a probable answer and subsequently arrive at a different conclusion and give a different answer in the answer sheet. I am a habit of marking preliminary answer with regard to questions of which I was not sure and had initially left those questions and after attempting/answering the questions of which I was relatively sure, I devote time and come to the correct answer or the answer which appeared to me to be correct. The purport of the allegation sought to be leveled is not understood in this behalf.

(ii) As per subject experts, the nature of the questions asked was such that in majority of cases some rough work was required, particularly in Physics and Mathematics (Encl.1). However, you have done little rough work. The scribbling against Q.Nos. 6,7,15,41,55,57,63,71,84,86,91,92 and 117 is scanty and inconclusive. The rough work against Q.Nos. 122,132,145,155,156,167,174 and 180 is irrelevant.

(ii) The contents of the paragraph under reply are baseless apart from being inconsistent with the earlier stand of the university in this behalf. It is submitted that the fact that there was absence of rough work in solving the alleged difficult questions even otherwise does not indicate anything suspicious. It is stated that I had done rough work for my reference as per my requirement. It is stated that I had done rough work for my reference as per my requirement. It would be relevant to point out that in objective type paper where 180 questions are to be answered in 180 minutes, speed and time management is the key to success. Accordingly, like various other candidates in view of four optional answers I too used the "Process of Elimination" whereby the obvious incorrect answers were eliminated and rough work was done for that purpose and by the same process the answer was sort to be given of the said question. In this process, it was not found necessary that with respect to all question a detailed rough work be carried out. Even otherwise, neither the examination rules nor the authorities require a candidate to show detailed step-wise calculation to show the manner of arriving at the answers. Furthermore, it has not been disclosed who the so called experts are who have given their opinion to the University. The same has in any event not been made available to me. The same accordingly vocative of the principles of natural justice. It seems improbable that even an expert would be

able to answer all 180 questions within the time stipulated after detailing all the steps and calculations required to arrive at correct answer. It is a matter of record that the University does not provide candidates with any extra or separate sheets to carry out any calculations or proper steps since the same is not the purport of the said examination and the candidates are not given any marks for the steps of arriving at the correct answers. It is further stated that the opinion of an expert only to the relevancy of any matter and not to its conclusiveness. Any opinion of an expert is only persuasive in nature and not binding upon any authority. Moreover the opinion of an expert is open to be tested in cross examination.

(iii) Two (2) unattempted questions, Nos. 112 and 153, and the Serial numbers of thirty one (31) wrongly attempted questions as well as the options encoded therein match exactly with those of the candidates having roll Nos. 54681, 68085, 67397, 67469, 59867, 60843, 69761, 50083, 69793 and 69753 who appeared for the CEE-2005 at different centres and were given booklets belonging to the same series as yours. As opined by the expert, it is not possible to have this kind of similarity without employing some unfair means.

(iii) The contents of the paragraph under reply further indicate that the university has proceeded on conjunctures and surmises. It is evidenced from a reading of the content of paragraph 6(iii) that there is no direct evidence available with the university against me and that the university has proceeded to issue an captioned show cause notice to me on the basis of probability and which is not based on any cogent reasoning or material. The alleged similarity between my result and that of I other candidates who allegedly took the said examination at various centers with regard to unstamped and wrongly attempted question is not at all a striking feature that ought to be held against me to level a serious allegation of having used unfair means at the said examination. Admittedly more than 55,000 students took the said examination and my result allegedly bearing some similarity with I other candidates is a probability that not highly improbable. Moreover the said similarity allegedly pertaining to 36 wrongly attempted questions not of a question paper carrying 180 questions too is not a striking feature which could be held against me to invite me for having used unfair means at the said examination.

Moreover the report of any alleged expert obtained by the university and held against me to allege that I have used unfair means at the said examination has not been made available to me. This is clearly vocative of the principle of natural justice and the said opinion of the alleged experts ought not to be held against me in the absence of the same having been furnished to me. The University accordingly cannot seek to use the said opinion against me.

(iv) In your QPB, some information written on the last page of the "space for rough work" has been erased thus destroying a piece of evidence.

(iv) That the contents of the paragraph under reply are contradictory to the

assertions of the University in the preceding paragraphs. The University on the one hand seeks to allege that no rough work has been done by me whereas on the other hand markings made by me are sought to be deciphered to my detriment by the University to be something surreptitious is not only unfair but also unacceptable. The allegation is entirely unsubstantiated and does not in any manner connect me with the use of any unfair means at the said examination.

(v) The encodings in your OMR answer sheet in respect of all the questions except Q.Nos. 115, 156 and 176 match with the encodings in the OMR answer sheet of Mr. Sandharb Kapoor, Roll No. 51335, appearing from a different centre. A key for answers to Q.Nos. 1-180 has been found written in the QPB Sr. No. 48824, of series 16, which was given to him. You had unauthorisedly received those keys and after using them in the CEE-2005, you erased them with a view to destroy the evidence of your use of unfair means in the said examination, as explained in para (iv) above.

(v) That the contents of paragraph 6(v) are entirely baseless and based on conjunctures and surmises. There is some pattern allegedly deciphered by the University that is sought to connect me to the said candidate which is unknown to me and not explained by the University. The allegation sought to be made against me is entirely speculative. The University does not even allege that I was carrying a mobile phone to the examination but alleges that I clandestinely received assistance during the course of the said examination is vague and discloses complete non application of mind. It is not understood how this could be possible. The University too does not attempt to decipher this. The contents of the paragraph under reply are baseless and conclusive of my innocence.

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6. In course of this detailed scrutiny, your QPB and OMR answer sheet was also taken up. You had secured a common rank of 73. The scrutiny revealed as under:

6. In reply to this para, I refer to and rely upon the foregoing preliminary submissions. However, without prejudice, I submit parasitic reply as under:

(i) Ticking on the QPB and encoding in the OMR answer sheet is different in case of Q.Nos. 3, 6, 8, 10, 12, 13, 14, 15, 17, 18, 20, 21, 23, 27, 28, 30, 32, 34, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 54, 55, 76, 128, 129 and 130.

(i) In reply to para 6(i), it is submitted that the ticking on question paper booklet and differences in questions ticked in question paper booklet and encoding in the OMR answer sheet with respect to some questions, cannot be a ground for suspecting that the Petitioner used unfair means. It is submitted that the questions were ticked by the undersigned in the question paper booklet initially as he was trained in coaching centre that to avoid rubbing on OMR answer sheet the questions in question paper booklet should be ticked. It is submitted that the OMR answer sheet was filled by candidates with respect to some questions where he had doubt while having a second thought and wanting to change the answer.

However, many questions have been ticked in the QP Booklet and encoding in the OMR sheet are same as that of the expert's observation. Further, a student before submitting the OMR sheet to the Invigilators can change the answers as many times and at any moment as he wants. No law of University makes it mandatory as the ticking on the QPB and encoding on the OMR be the same. Ticking a different answer than the one earlier ticked on the QP booklet cannot in any way lead to the apprehension that he could have necessarily adopted unfair means for doing so.

(ii) As per subject experts, the nature of the questions asked was such that in majority of cases some rough work was required, particularly in Physics and Mathematics (Encl.1). However, you have done little rough work. The rough against Q.Nos. 3, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 39, 41, 42, 44, 45, 47, 51, 52, 90, 92 and 93 is scanty and inconclusive.

(ii) In reply to para 6(ii), it is submitted that the requirement to do rough work by a candidate is personal. In an examination where 4 answers are given against every question the process of elimination is adopted by most of the candidates. The same is taught to the candidates in coaching centres. To avoid wastage of time, candidates normally dispense with rough work for questions where there is no need of rough work. Secondly, even as per the Brochure of Common Entrance Examination-05 it is not mandatory for candidates to do rough work. No hard and fast rule requiring rough work to be made by candidate having been laid down, it cannot be said that a candidate has not done the rough work and hence he has adopted unfair means to answer the question.

Without prejudice to the above, it is submitted that the undersigned has done substantial rough work on the question paper booklet and the rough sheet provided. It is denied that I have clandestinely received assistance from outside during the CEE-2005. In this behalf it is submitted that a candidate doing some rough work midway may in his mind lead to a particular answer which may be one of the 4 options given in the question paper and as such would not require to do further rough work before ticking that answer. It is submitted that the chart given by the University showing requirement of rough work in some questions cannot be appreciated in the absence of the question paper booklet, which has not been supplied by the University. Further, the undersigned has also consulted some experts who have opined that rough work was required only for _____ questions for which the petitioner has done substantial rough work. However, in the proceeding of the writ petition before the Hon'ble High Court the undersigned has submitted detailed reply to the counter affidavit filed by the University.

(iii) Two (2) unattempted questions, Nos. 112 and 153, and the Serial numbers of twenty nine (29) wrongly attempted questions as well as the options encoded therein match exactly with those of the candidates having Roll Nos. 54681, 68085, 67397, 69793, 59867, 60843, 69761, 50083, 68061 and 69753, who appeared for the CEE-2005 at different centres and were given booklets

belonging to the same series as yours. As opined by the expert, it is not possible to have this kind of similarity without employing some unfair means.

(iii) In reply to para 6 (iii) it is submitted that the option given in the question paper booklet are very close to the correct answer, the same is done with a view to confuse the candidates but still I have got a number of wrongly attempted questions that are different from those who got the same set of QPB i.e. 16 and if as you said that I might have received a SMS than why are the wrongly attempted questions differing from those candidates who got the same set of QPB (Annexure-C). As such, it is possible that some students answer the same question wrongly. It is denied that it is not possible to have this kind of similarity without employing some unfair means. It is submitted that if the story of the University is correct, then all 10 candidates as referred to in para under reply would have secured same rank and marks which admittedly not the case here is. The marks of the candidates, who secured same rank as my i.e. 73 (Annexure-A) are not all same as my as per the record given by the CBI charge sheet.

(iv) Sets of 5-digit numbers are written on page No. 5, 6, 7, 9, 13, 14, 15, 16, 17, 22, 23 and in the 'space for rough work'. These numbers provide key for answers to Q.Nos. 1-180 in the QPB. This information has been, in verbatim, used by you in encoding OMR answer sheet.

(iv) In reply to para (iv) it is submitted that the answers written on different pages on the QPB were written to avoid confusion before marking them on the OMR sheet. The same is taught to the candidate in coaching centres. To avoid confusion all the answers should be cross checked by writing them separately before marking on the OMR. So, quoting the answers before marking on the OMR doesn't states that he could have necessarily adopted unfair means for doing so.

(v) The mobile phone seized from the candidate bearing Roll No. 16628, mentioned in para 4 above, and scrutiny of his QPB revealed that the keys to the answers were received by some candidates in the form of sets of five digit numbers. In your case, the details mentioned in sub para (iv) above conform to this pattern. Therefore, the University is of the considered opinion that you received the keys mentioned in the preceding para through unauthorised/ clandestine means which was in violation of instructions for the candidates who were taking CEE-2005.

(V) In reply to para (v) it is submitted that the digit which you as the answer key were in set of 5 it is so because the OMR contains two different shades one dark and one light containing 5 bubbles each to be encoded. Hence to avoid confusion as stated I above para (iv). The candidate tried to write down the answers in set of 5 where as he was not able to do so for all the questions even. Hence, receiving of the SMS by roll No. 16628 for answering key in set of 5 digits doesn't proves that he received SMS as earlier denied as he didn't carried a mobile phone in the examination centre and was frisked before entering the examination hall.

6. In course of this detailed scrutiny, your QPB and OMR answer sheet was also taken up. You had secured a common rank of 107. The scrutiny revealed as under:

6. That my rank is not common to any of the other candidates under scrutiny:

(i) Ticking In the QPB and encoding on the OMR answer sheet in respect of Q.Nos. 24, 42, 43, 80, 82, 84, 90, 91, 92, 109, 113, 115 and 121 are different.

(i) It is not mandatory or a pre-requisite that the options marked in QPB and those marked in OMR sheet should be the same. Most of the questions under reference, viz. 43, 80, 82, 84, 90, 91, 109, 113 & 115 did not require any rough work, the options in this case were marked in QPB at first go by making little mental calculations, which did not require to be done in writing. In case of remaining four questions, i.e. 24, 42, 92 & 121, it is asserted that there was guess work and later on the options were changed as per the conscience which were again a guess work and the answers which quite probable were thereafter marked in the OMR sheet.

(ii) As per subject experts, the nature of the questions asked was such that in majority of cases some rough work was required, particularly in Physics and Mathematics (Encl.1). However, you have done little rough work. The scribbling against Q.Nos. 72, 80, 92, 93, 94, 126 and 129 is scanty and inconclusive. The rough work against Q.Nos. 141, 162, 163, 166, 170, 172, 175, 178 and 179 is irrelevant.

(ii) As regards the questions under reference in para 6(ii), some rough work was required and the same was also done. This has been acknowledged by you in the show cause notice. When it was realized by me that the rough work was not reaching a valid conclusion, the guess work was done based on elimination technique. It was totally a risk involving step for there was negative marking and was a do or die position for me. I was left with no other option but hit and try the luck. The above questions, I can say were attempted by me half-heartedly without any conclusions and at the end of the paper at the eleventh hour some of the questions, which had been left unattempted had been marked in the OMR sheet based on elimination technique and appropriate choice.

(iii) Two (2) unattempted questions, Nos. 112 and 153, and the Serial numbers of thirty one (31) wrongly attempted questions as well as the options encoded therein match exactly with those of the candidates having Roll Nos. 54681, 68085, 67397, 67469, 59867, 60843, 69761, 68061, 69793 and 69753 who appeared for the CEE-2005 at different centres and were given booklets belonging to the same series as yours. As opined by the expert, it is not possible to have this kind of similarity without employing some unfair means.

(iii) Highly assumptive and hypothetical approach is again reflected in this clause. The unattempted questions in my case is maximum, only two questions

bearing similarity out of 11 or 12 cannot be made a basis for arriving at conclusions. As per the annexure supplied along with the previous show cause notice, my case was compared with 14 candidates and now the comparison has been made with 10 examinees. Had this been the case, the similarity factor would have been 100%. Again this show cause notice is silent as to how any similarity can be arrived at in between candidates appearing at different places, again no telephonic linkages have been shown and this is again a failure on your part as this is the most crucial evidence (telephonic linkage) which has to be proved to hold a person/candidate involved in using unfair means. As such, the same cannot be made a ground to serve this shows cause notice.

(iv) In your QPB, some information written on the first page of the "space for rough work" has been erased thus destroying a piece of evidence.

(iv) That it is not necessarily and pre-requisite that any rough work/calculations, which have been done in reference to the questions should be left unerased on the QPB. Since it is known to all the persons appearing in such type of examination that no rough work is supposed to be done anywhere else except for the space provided for the rough work, hence the calculations done were erased and it cannot be held that any sort of evidence has been destroyed. Rough work/calculations were done on the QPB and were erased in good faith without any malafide intentions.

(v) In respect of thirty four wrongly attempted questions, the options encoded by you match exactly with those encoded by Mr. Sandharb Kapoor, Roll No. 51335, and Mr. Sajal Dahiya, Roll No. 14553, both these candidates had appeared at different centres. A key for answers to Q.Nos. 1-180 has been found written in their QPBs having Sr.Nos. 48824 and 41176 respectively, of series 16, which were given to them. You had unauthorisedly received those keys and after using them in the CEE-2005, you erased them with a view to destroy the evidence of your use of unfair means in the said examination, as explained in para (iv) above.

(V) As regards the similarity in the wrongly attempted questions, it is wrong to conclude that any unfair means were used. Such similarity can be of any weight if the candidates are sitting together or in proximity. Only the wrongly attempted questions and not the number of unattempted questions have been taken for comparison. The two roll numbers 51335 and 14553 had been allotted different centres and are not known to me. I have further never heard of them and also their ranks are not similar to me and are quite high.

(vi) As per the allegations, that answer keys were found on their examined material and that the same has been received by me during the conduct of exam, it is denied. No evidence nor any material in support of your allegations has been ever provided to me from your side. When I was never found in possession of any sort of mobile device and no recovery to that effect was made from me, it is highly absurd and illogical that I had received any sort of help from these two people or from anywhere else, especially when I am not known to any

of them. Any work done and thereafter subsequently erased cannot be said to be the key to the answers procured from some external aid or source. Hence the allegations contained in para 6(v) are denied as being without any logical and/or concrete evidence.

12. The respondents considered the show cause notices, replies to show cause notices, hearing given to the petitioners, performance of the petitioners in 30 questions given to the petitioners during hearing, performance of the petitioners in other competitive examinations, percentage of the petitioners in qualifying examination and their percentage in PCM in qualifying examination and the opinions of the experts, their QPB and OMR sheets. The respondent Nos. 2 & 3 passed the order dated 19th April, 2006 and stipulated that they considered the matter in detail on the basis of the findings of examination disciplinary committee, available records, candidate's submission in writing and in oral and the replies to the show cause notice and the reply to the notice proposing punishment against them. The petitioners were found guilty of use of unfair means in CEE, 2005 held on 29th May, 2005 and issued the memorandums under the provision contained in Clause 13 read with Clause 9 of Ordinance X-A of the University.

13. The petitioners have impugned these orders in their writ petitions. The learned Counsel for petitioners has argued at length pointing out the differences in the show cause notices given to the petitioners at different times. In the first show cause notice dated 6th October 2005 it was contended that the petitioners carried the mobile phones with the dishonest intention of misusing it and received SMS messages during the CEE, 2005 and the petitioners contact with Pankaj Dahiya/Himanshu Sharma for the use of unfair means had been established which was also confirmed by the disclosure statements of these persons. The emphasis was also laid in variations in show cause notices and the complaint filed with Central Bureau of Investigation and the grounds on which the earlier memorandum dated 21st October 2005 was challenged.

14. The earlier show cause notice had been withdrawn and also the memorandums by which punishment were inflicted. While withdrawing the earlier show cause notice, the liberty was granted to the respondents to issue fresh show cause notice and consequently fresh show cause notices dated 27.2.2006, 25.2.2006 and 24.2.2006 were issued to the petitioners. When the liberty was granted to the respondents to issue fresh show cause notices, there was no restriction from issuing the fresh show cause notices on the same grounds as were taken by the respondents in the earlier show cause notices. The petitioners had also not challenged the order granting liberty to the respondents to issue fresh show cause notices. Consequently some variation in the earlier show cause notice and the show cause notices dated 27.2.2006, 25.2.2006 and 24.2.2006 will not be very material to impugn the order passed pursuant to subsequent show cause notices given by the respondents.

15. While challenging the notices dated 27.2.2006, 25.2.2006 and 24.2.2006,

the learned Counsel for the petitioners have emphasized on the fact that the mobile phone was not recovered from the petitioners and the name of the petitioners did not appear in the list of 21 candidates which was prepared on the basis of bunching of marks. The petitioners have also challenged the order imposing punishment on the ground that the statistical theory about the statistical impossibility of commonality of result is not applicable to the petitioners and the Probability Theory was never put to them in the show cause notice. It was also pointed out that answers of question numbers 13, 14, 26, 40, 53, 85, 115 & 169 of petitioner Ankit Gupta were different and allegation of inadequate rough work is based on surmises and conjecture. Emphasis on the answer of question numbers 136 to 140 of petitioner, Ankit Sharma being different, answer of question number 150 of the petitioner, Deepak Khanduja, also being different was laid. Regarding the personal hearing given to the petitioners it was contended that it was merely an eye wash. During personal hearing the direction by the respondents to attempt question paper containing 30 questions was alleged to be impermissible.

16. The learned Counsel for the petitioners have argued on the premise that the respondents have failed to prove beyond reasonable doubt the use of unfair means by the petitioners. However what is to be seen is whether on the basis of preponderance of probability it could be inferred that the petitioners have used unfair means during the examination. Strict rules of evidence act and the standard of proof envisaged therein do not apply to such proceedings taken by the University against the candidates regarding their use of unfair means in the examination. What is to be seen is that the material germane and relevant to the facts in the issue had been placed and considered. What is also to be considered is that the inference have been drawn from the evidence and not based on the speculation and conjectures. The standard of proof is not proof beyond reasonable doubt but the preponderance of probabilities tending to draw inferences that the facts are more probable. In Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, , the Supreme Court had held that in administrative bodies and domestic tribunals the standard of proof required is preponderance of probabilities and not proof beyond reasonable doubt and the probative value is to be judged on the basis of particular facts and circumstances. The Supreme Court had held on page 748 as under:

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. Standard of proof cannot be put in a strait-jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries.

17. The learned Counsel for the petitioners have relied on *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, ; *Sawai Singh Vs. State of Rajasthan*, ; *R. Nitya Priya Vs. Revenue Divisional Officer Thirukoyilur and Another*, ; *Union of India (UOI) Vs. H.C. Goel*, ; *Bank of India v. Degala Suryanarayana* (1995) 5 SCC 762; *Hanumant Vs. The State of Madhya Pradesh*, ; *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others*, ; *Om Kumar v. Union of India* (2001) 2 SCC 386; *B.C. Chaturvedi Vs. Union of India and others*, ; *Union of India and another Vs. G. Ganayutham (Dead) by LR.*, and *Ranjit Thakur Vs. Union of India (UOI) and Others*, .

18. In *Mohinder Singh Gill* (supra) the returning officer had postponed the declaration of result of election on account of disruption due to mob violence and an order for repoll was passed under Article 324 of the Constitution of India and u/s 153 of Representation of People Act. In the SLP before the Supreme Court it was held that the writ petition challenging the cancellation coupled with the repoll amounts to calling in question, a step in "election" and the same is barred under Article 329(b) and Therefore the writ was not maintainable and the only remedy was by way of an election petition. It was also held by the Apex Court that when a statutory functionary makes an order based on certain grounds, its validity must be judged by reason so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise because otherwise an order as in the beginning, by the time it comes to court on account of challenge get validated by and additional grounds later brought out. In *Sawai Singh*(supra) the services of the appellant who was the returning officer for panchayat elections, were terminated on the ground that he showed undue favor to one of the

contesting candidates. The Supreme Court had held that the charges were not clear and charges involving consequences of termination of service must be specific, though a departmental inquiry is not like a criminal trial. In *R Nitya Priya* (supra) after the completion of the departmental inquiry and during the pendency of writ petition at the High Court, some additional evidence came to light and relying upon the same and observing that the document is crucial and fatal to the case of the petitioner, the High Court had upheld the order impugned. In these circumstances it was held by the Apex Court that the High Court should have remanded the matter back to the department rather than sitting and adjudicating upon it. In *Swadeshi Cotton Mills* (supra) the Apex Court had observed that where a statute does not, in terms, exclude a prior hearing but contemplates a post decisional hearing amounting to a full review of the order on merits, then such a statute would be construed as excluding the *Audi Alteram Partem* Rule at the pre decisional stage. And if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, as it would paralyze the administrative progress or frustrate the need for utmost promptitude. Therefore, it was held that the rule of fair play "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands" and the Court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. And thus the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

19. In *Union of India v. H.C. Goel* (supra) the Supreme Court had held that in respect of an order of dismissal of public servant, High Court can enquire whether the order is based on no evidence and mala fide exercise of power need not be shown to prove that the order is based on no evidence. It was held that the writ petition will be maintainable provided the dismissed employee is able to satisfy that the findings of enquiry were based on no evidence. In *Bank of India* (supra) the petitioner was found fit for promotion, however the finding of promotion committee was not given effect to on account of pendency of criminal cases. The criminal cases, however ended in favor of the respondent and the order of promotion was not issued and the writ petition was filed where an interim order was passed which was upheld by a division bench. Before the Apex Court the issue was whether the single judge was justified in interfering with the findings recorded by the enquiry officer. It was held that the disciplinary authority after taking into consideration the evidence, finding and reasons recorded by the enquiry officer, is entitled to give a different finding of its own supported by reasons and based on the evidence on record and such a finding of

disciplinary authority will not be subject to judicial review. In *Hanumant Govind Nargundkar & anr (supra)* the appellant was found guilty of offences u/s 120-B and u/s 465 of Indian Penal Code which conviction was partly upheld by Sessions Judge. The matter before the Supreme Court was whether the Supreme Court can interfere with the two concurrent findings of the court of first instance and court of appeal. It was held that if the finding of fact is based on the testimony of an accomplice it should not be accepted unless it is corroborated by some other evidence on record and in case of substantial and grave injustice, the Apex Court can interfere despite concurrent finding of facts. Regarding appreciation of circumstantial evidence it was held that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every other hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

20. Relying on *Maharashtra State Board of S & H.S Education (supra)* the petitioner contended that in administrative decisions, the order/decision may not contain reasons but the record should disclose reason which must be clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The Supreme Court had held in this judgment that the reasons are harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at. Such reasons excludes the chances to reach arbitrary, whimsical or capricious decision or conclusion and they assure an inbuilt support to the conclusion/decision reached. It was further observed that the order when it affects the right of a citizen or a person, irrespective of the fact, whether it is quasi-judicial or administrative, fair play requires recording of germane and relevant precise reasons. The recording of reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record. It also aids the appellate or revisional authority or the supervisory jurisdiction of the High Court under Article 226 or the appellate jurisdiction of this Court under Article 136 to see whether the authority concerned acted fairly and justly to mete out justice to the aggrieved person. In *B.C.Chaturvedi (supra)* it was held that where the finding of disciplinary authority are based on some evidence, then the court/Tribunal should not interfere with the same and will not re-appreciate the evidence and substitute its own findings. In this matter the Central bureau of investigation had concluded that the petitioner working as an income tax officer possessed assets disproportionate to that of his own income, however as the evidence was not sufficient the case could not be registered under the Prevention of Corruption Act. However, in the departmental proceedings initiated against him, he was dismissed from service.

Central administrative tribunal upheld the charges, however, altered the punishment imposed. Relying on *State of Orissa Vs. Bidyabhushan Mohapatra*, , *Bhagat Ram Vs. State of Himachal Pradesh and Others*, and *Rangaswami Vs. State of Tamil Nadu*, , it was observed by the Apex Court that it has not been laid down that in no case, the High Court/Tribunal has the power to alter the penalty imposed by the disciplinary or appellate authority. However, disciplinary authorities being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose an appropriate punishment keeping in view the magnitude and gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or by the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/applicant authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. In *G. Ganayutham (supra)* it was held that according to *Wednesbury* case, while examining 'reasonableness' of an administrative decision the court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bonafide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the court to substitute its view. In this case 50% of respondent's pension and 50% of gratuity were withheld on proof of his misconduct. The tribunal had interfered with the quantum of punishment and had also substituted its view of the punishment. The Apex court had set aside the punishment imposed by the tribunal and had restored the punishment awarded by the Departmental authorities. The apex court had also summarized the position of proportionality in England and in India as follows:

(1) To judge the validity of any administrative order or statutory discretion, normally the *Wednesbury* test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the *Wednesbury* test

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational - in the sense

that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU9 principles.

(3)(a) As per Bugdaycay²⁰, Brind¹² and Smith¹⁹ as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14.

21. The quantum of punishment in disciplinary matters is primarily for the disciplinary authority to decide and the jurisdiction of the High Court's under Article 226 of the Constitution or of the administrative tribunals is limited and is confined to the applicability of one or other of the well-known principles known as the Wednesbury principles. This was held by the Supreme Court in *Om Kumar* (Supra). It was held that the courts are confined to a secondary role and only has to see whether the administrator has acted illegally or has omitted relevant factors into consideration or whether his view is one which no reasonable person could have taken and if his action does not satisfy any of these conditions it is to be treated as arbitrary.

22. The learned Counsel for some other candidates *Shri Anil Grover* has also relied on *Ram Phal Kundu v. Kamal Sharma* 2004 II AD (S.C) 261 ; *Marathwada University Vs. Seshrao Balwant Rao Chavan*, ; *State of U.P v. Maharaja Dharmender Prasad Singh* (1989) 2 SCC 50 ; *Bhupendra Singh Vs. University of Delhi and Others*, and *R.K. Sharma v. University of Delhi and Ors.* 2004 IV AD (Delhi) 445 to contend that there was no emergent situations nor can be made out from the files and the Vice Chancellor was not authorized to act as the power

is with the Executive Council. This plea was not taken by the Counsel in the writ petition filed by him on behalf of some other candidates who have also been awarded the punishment for use of unfair means in CEE, 2005 examination in similar circumstances as that of the petitioners. The counsel for petitioners in the present writ petitions had also adopted the arguments of counsel for other candidates and Therefore, these pleas are also dealt with.

23. Where the power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden, was held in *Taylor v. Taylor* 1876 (1) Ch. D 426 and this view has been followed by Indian Courts in a series of cases. In *Ram Phal* (supra) the dispute was as to which one of two persons was nominated by the Congress party. Relying on paras 13 and 13A of the symbols order, it was held that they lay down exhaustive and complete procedure for determining whether a candidate has been set up by a party or not. In *Marathwada University* (supra) it was held that it is a settled principle that when the act prescribes a particular body to exercise the power, it must be exercised only by that body and it cannot be exercised by the others, unless it is delegated and the law must also provide for such delegation. In this matter a Deputy registrar was required to discharge the duty of controller of examination. Bills raised for the printing work done during the annual examination were not cleared immediately and so an inquiry was set up. Executive council which also had Vice Chancellor, made certain observations against the Deputy Registrar, however, another committee gave a complete clean chit to him. Later on the Vice-Chancellor, instead of executive council, directed a departmental inquiry which action was subsequently ratified by the executive council. It was held that the act of the Vice-Chancellor was without any authority and the defect could not be cured by subsequent ratification. In *Indian Railway Construction Company* (supra) it was held by the Supreme Court that the Court will be slow to interfere in matters relating to administrative functions unless decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety. In *State of U.P. v. Maharaja Dharmander Prasad Singh* (supra) it was held that judicial review under Article 226 cannot be converted into an appeal. Judicial review is directed, against the decision, but is confined to the examination of the decision-making process. It was held that when an authority hands over its discretion to another body it acts ultra vires. Such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority.

24. In *Bhupender Singh* (supra) the Vice-Chancellor had invoked the emergency power under the ordinance in appointing the governing body of a college which power is vested in executive council. It was held that the opinion of the authority originating from its own subjective satisfaction regarding the existence and satisfactions of the conditions precedent for exercise of power under statute is subject to judicial review. A single judge of this Court in *R.K.Sharma* (supra) had held that the scheme of the Act, statute and Ordinances of the University of Delhi show that the Vice Chancellor of the University is an office of the University. The

executive council is a statutory body of the University. The Vice-Chancellor has been conferred with executive powers to act in emergent situations and so in nominal course the Vice-Chancellor cannot exercise executive powers except in emergent situations.

25. The petitioners' pleas are that only the Controller of examination could have exercised the power but no post of controller of examination is provided under XA-12. According to learned Counsel for the petitioners, no emergent situations has been shown for the Vice Chancellor to exercise the power of Executive Council. It was contended that nothing has been established by the respondents that executive Council could not be convened. By non consideration of the cases of the petitioners, the valuable rights of the petitioners have been denied. According to counsel for petitioners, VC has exercised powers under the statute 11(G)(4) of the University Calendar which falls within the exclusive domain of the Executive Council.

26. Statute 11(G)(4) of University Calendar empowers the Vice Chancellor to exercise powers in emergent situations which calls for immediate action and can later on report the same for confirmation at the meeting to the EC which, in ordinary course, would have dealt with the matter. It is not disputed that the Executive Council is the competent authority in the present facts and circumstance. This is also not disputed that Clause 9 of the ordinance X-A empowers the Executive Council to impose any punishment on candidate(s) who are found guilty of use of dishonest or unfair means or disorderly conduct in the examination on the recommendation of the EDC. Further statute 11-K (3)(f) of the University Calendar empowers the registrar to call for an emergent meeting of EC only in cases where neither the Vice Chancellor nor the Pro-Vice-Chancellor nor the Director, South Delhi Campus or the Dean of colleges is able to act. Thus in an emergency if Vice Chancellor is present meeting of Executive Council is not to be called. What is an emergent situation in which power conferred under the statute 11(G)(4) of the University Calendar can be exercised by the Vice Chancellor.

"Emergency" is defined in Black's Law Dictionary (Sixth Edition) as:- A sudden unexpected happening; an unforeseen occurrence or condition; perplexing contingency or complication of circumstances; a sudden unexpected occasion for action; exigency; pressing necessity. Emergency is an unforeseen combination of circumstances that calls for immediate action without time for full deliberation.

In the circumstances whether the Vice Chancellor was justified in exercising powers conferred on him under Statute 11 G (4) of the University Calendar or has he transgressed upon the powers which falls within the exclusive domain of the Executive Council. The circumstances as were there were sufficient to exercise emergent powers by the Vice Chancellor. From the perusal of the Statutes 11-G and 11(K) of the University Calendar it is apparent that emergent meeting of EC can not be called when the Vice Chancellor or the Pro-Vice-Chancellor or the Director, South Delhi Campus or the Dean of colleges is able to

act. Under statute 11-G (4) of the University Calendar in an emergency situation which calls for an immediate action, the Vice Chancellor who is also the ex-officio Chairman of the Executive Council, has been empowered to deal with the matter and take action himself and then report the same to the Executive Council. Thus even if a matter which falls within the exclusive domain of the Executive Council, in emergent situations, the Vice Chancellor can deal with and decide the same himself and such a decision cannot be challenged on the ground that it has been made incompetently.

27. In the present case by orders dated 5.12.2005 and 8.2.2006, this Court had directed the respondents to issue fresh show cause notices to the candidates and had further directed them to complete enquiry within 6 weeks which period was further extended up to 24th April 2006 vide order dated 29.3.2006 since the enquiry was not complete. Thus within a time frame the University was required to decide the matter. The executive council meeting was scheduled to take place in May. But since the decision was to be taken till 24th April, 2006, the emergent meeting of EC could not be called since Vice Chancellor was available. Since the Vice Chancellor was available there was no necessity for calling of the emergency meeting of the Executive Council by the Registrar. The argument put forward by the petitioners that instead of exercising the power which falls within the exclusive domain of the Executive Council, the respondents should have sought extension of time from the Court as there was no emergent situation, is not sustainable in the present facts and circumstances. In view of the charge of use of unfair means, the admission of all the candidates whose names were included in the list of candidates suspected of using unfair means in the CEE, 2005, was kept on hold till the decision of the University and since the academic year of so many students was involved, it called for expeditious enquiry and decision which was to be arrived at within a time frame and as such the matter could not have been delayed as the new academic year was to start soon in July. Further the sanctity of the entrance examination was also at stake and the offence was of serious nature which called for immediate action and Therefore exercise of emergent power by the Vice Chancellor cannot be faulted in the facts and circumstances. The plea of the petitioners, which has not been taken in the petition that there was no emergent situation, is not sustainable in the present facts and circumstances. The cases for use of unfair means were to be decided expeditiously as delay could have caused a lot of hardship and inconvenience. Therefore it cannot be said that there was no emergent situation and the Vice Chancellor was not justified to act. The cases relied on by the petitioners are distinguishable as it had been held that there was not emergent situation in those cases. But in the case of the petitioners it is apparent that there was emergent situation and in the circumstances the Vice Chancellor has not transgressed upon the power which falls under the exclusive domain of the Executive Council. The Vice Chancellor had passed the order imposing punishment in exercise of power conferred on it under Statute 11(G)(4) of the University Calendar. The other plea of the petitioners that the procedure as laid

down under Ordinance X-A Rule 9 and 13 has not been complied with by the respondents as the second show cause notice was issued by the Registrar which is not an executive body is also not acceptable on the similar reasoning in the facts and circumstances. The decisions of respondents, Therefore, can not be set aside on these grounds of the petitioners.

28. The counsel for the petitioners and other candidates have relied on various observations in different cases cited during the arguments. The observations made in most of the cases is not the ratio of the cases relied on by the counsel. A case is only an authority for what it decides as observed by the Supreme Court in *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*,

A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, LC said in *Quinn v. Leatham* 1901 AC 495:

Now before discussing the case of *Allen v. Flood* (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically Page 2009 from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all.

29. In *Ambalal Manibhai Patel Vs. State of Gujarat*, the Supreme Court had held:

The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.

30. In *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, , the Supreme Court had held:

It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

As held in *Bharat Petroleum Corporation Ltd and Anr. v. N.R. Vairamani and Anr.* AIR 2004 SC 778, a decision cannot be relied on without disclosing the factual situation. In the same judgment the Supreme Court also observed:

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor

as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

In *London Graving dock Co. Ltd. v. Horton* 1951 AC 737, Lord Mac Dermot observed:

The matter cannot, of course, be settled merely by treating the ipsissima verba of Wiles,^J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to distract from the great weight to be given to the language actually used by that most distinguished judge.

In *Home Office v. Dorset Yacht Co* 1970 (2) All ER 294 Lord Reid said, "Lord Atkin's speech is not to be treated as if it was a statute definition it will require qualification in new circumstances." Megarry,^J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell L.J as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* 1972 (2) WLR 537 Lord Morris said:

There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in setting of the facts of a particular case.

31. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and Anr. is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of Anr.. To decide Therefore, on which side of the line a case falls, the broad resemblance to Anr. case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it.

32. The precedents relied on by the petitioners' counsel and other counsel, Therefore, have to be considered with this settled law, as the observations made in the judgments cited were referred to and relied on, without adverting to the ratio of the cases cited.

33. The respondents have relied on *Ghaio Mall and Sons Vs. The State of Delhi and Others*, , *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, , *Board of High Scholl and Intermediate Education, U.P. and Anr. v. Bagleshwar Prashad and Anr. 1967 (III) DLT 438* , *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, ; *Triambak Pati Tripathi Vs. The Board of High School and Intermediate Education, U.P., Allahabad*, , *Triambakpati Tripathi v. The Board of High School and Intermediate Education, U.P., Allahabad*; *State of Bihar and Others Vs. Dr. Asis Kumar Mukherjee and Others*, , *Guru Nanak Dev University and another Vs. Harjinder Singh and another*, , *Union Public Service Commission v. Jagannath Mishra*, (2003) 9 SCC 237 , *Union Public Service Commission v. Jagannath Mishra and Ors. and V. Ramana Vs. A.P.S.R.T.C. and Others*, , *V. Ramanna v. A.P. SRTC and Ors.* in support of their pleas and contentions.

34. The respondents have produced the original QPB booklets of the petitioners and their OMR answer sheets. The petitioners have prayed for a writ of certiorari for quashing the impugned memorandum dated 19th April, 2006 canceling the result of the petitioners in CEE, 2005 and also debarring the petitioners from appearing in any future examination of University of Delhi during a span of next five years from 2005-2006. For issuing a writ of certiorari, this Court can peruse the entire record of the proceedings, QPB and OMR sheets and may also ascertain reasons if they are available from the record which may not have been recorded categorically in the order sought to be quashed.

35. The respondents have also produced the writings executed by the petitioners stipulating that they had received the photocopy of QPB booklets and received the documents filed by Central Bureau of Investigation and also the copies of the letters forwarding the documents to the petitioners. The resolution No. 18(1) of Executive Council of Delhi University dated 5th May, 2006; note of the Registrar duly approved by the Vice Chancellor; order of the Vice Chancellor invoking his power under the Statute 11(G)(4) in pursuance of the report of the EDC; constitution of Examination Disciplinary Committee; initiation of the action against the candidates containing noting by the OSD (Exams), i.e., Controller of Examination; office order No. 632 dated 12th July, 1997 and taking over charges as OSD (Examination) by Shri B.S.Garg dated July 14, 1997 have also been produced.

36. The respondents produced the original QPB booklets of petitioners as well as their OMR sheets. The photocopies of test booklets of Shri Ankit Gupta was also produced which was marked as R3/1; Shri Rachit Gupta as R6/1; Shri Ankit Sharma as R11/1 and Shri Deepak Khanduja as 9/1.

37. Perusal of QPB of the petitioner Shri Ankit Gupta reveals that answer digit keys were written on pages 1,6,10,12,14,25, 26 and attempt was made to erase them. Even after erasing the impression of five digit keys is apparent. Why these digits were erased by the said petitioner has not been explained. Though for the rough work, space was provided at the end of QPB but there was no bar in

writing anything in QPB. Since there was no bar for writing the answers or rough work in the QPB Therefore, there was no rational reason by the said petitioner to erase the five-digit answers put up by him there. Why did the petitioner put the answers in the five digit only and not in any other manner. There is no rational Explanation by the said petitioner for this. The EDC of the respondents considered his QPB, his OMR, his past performance, his percentage in school in PCM and his performance in 30 questions which were given to him for solving during the hearing on 8th March, 2006 when he appeared before the Committee.

38. Another petitioner, Rachit Gupta also wrote five digit numbers in the space for rough work. Some of the five digit numbers he erased and some other five digit numbers are distinctly visible. Some of the five digit numbers were tried to be erased by him. There is no rational Explanation by the said petitioner for this. The EDC of the respondents considered his QPB, his OMR, his past performance, his percentage in school in PCM and his performance in 30 questions which were given to him for solving during the hearing when he appeared before the Committee. Before the Committee he could score only 26 marks out of 120 marks. In AIEEE, merit rank of the petitioner was 108797 where as in CEE, 2005 it was 107. The answers by this candidate for question Nos. 4,20,21,41,44,56,60,80,89,91,96,104-111,116,118,123,126,129, 147, 152, 180 are wrong which is also the case of other petitioners and some other candidates who have not filed the writ petitions challenging the penalty imposed upon them. It is not only that these questions are wrong, the option which has been exercised for the wrong answers by these candidates are also the same. The said petitioner, Shri Rachit Gupta did not attempt question Nos. 112, 153 which is also the case of other petitioners and some other candidates namely Manoj Kumar (Roll No. 69753), Ashish Bajaj (Roll No. 68085); Ritesh Kumar Tehalan (Roll No. 67397); Sunveer Mann(Roll No. 59867).

39. The petitioner Deepak Kanduja in his QPB in the space for rough work has had also written five digit numbers and attempted to erase them which are, however, apparent despite attempt by the said petitioner to erase them. The EDC of the respondents considered his QPB, his OMR, his past performance, his percentage in school in PCM and his performance in AIEEE and in the competitive examination of GGSIP. This petitioner had refused to solve 30 questions which were given to him for solving during the hearing when he appeared before the Committee. In AIEEE, merit rank of the petitioner was 247843 where as in the competitive examination of GGSIP his merit rank was 18738 but in CEE, 2005 it was 50. The petitioner Ankit SharmaQPB also has five digit answer keys.

40. Certain other factors are apparent from the record which has been produced by the respondents. The petitioner, Pulkit Kaushik, had scored 18 marks out of 120 marks which were given to him during hearing.. The copy of OMR sheets along with charge sheet were handed over to the counsel for the petitioners and their receipts have been produced. Along with the show cause notices dated 27.2.2006, 25.2.2006 and 24.2.2006, the report of the subject expert was also

given to the petitioners, however, they have not produced the same along with the copy of the show cause notice annexed by him with the writ petition.

41. The EDC of the respondents considered all these factors and the charges stipulated against the petitioners have already been detailed hereinbefore in earlier paras as well as their replies to the show cause notices which were given to them. The copies of subject experts were also given to the petitioners with their show cause notices but they have not filed the copies of subject expert reports with the copies of show cause notices filed by the petitioners along with their writ petitions.

42. In the show cause notices dated 27.2.2006, 25.2.2006 and 24.2.2006, it was specifically brought to the notice of the petitioners that mobile phones were recovered from Mr. Anshul Aggarwal and Mr. Somiya Aggarwal and the examination of these candidates was cancelled and they were asked to leave the examination hall immediately. Mr. Anshul Aggarwal had also disclosed to the Centre Superintendent about answer keys consisting of a set of numerals for questions Nos. 168 to 179. It was categorically stipulated in the show cause notice that this circumstance has created a serious doubt about the use of unfair means by other candidates. It was subsequently on account of bunching of marks another pattern was revealed and still later on comparison of other OMRs and the answers, the similarities in the answers especially in the wrong answers and the questions not attempted and same wrong option for the wrong answer and substantial number of same correct answers, it transpired that that would have been possible on account of use of unfair means in the examinations. The case of the respondents is not that Anshul Aggarwal and Somiya Aggarwal from whom the mobile phones were recovered had communicated the same to the petitioners directly. In the case of petitioners, it has not been possible to get the direct evidence of communication of answer digits on the mobile phone and in the absence of direct evidence the other evidence which is their in the QPB having the five digit answer keys, the attempt to erase them, the comparison of the QPBs of different candidates, their performance in solving 30 questions given to them and the evidence regarding their performance in other competitive examinations have been considered. Whether this evidence in the absence of direct evidence was material and relevant? What is also to be seen is whether the enquiry which has been conducted by the respondents is fair and had afforded adequate opportunity to the petitioners to defend themselves and the inferences drawn by the EDC and respondents are not based on surmises and conjectures and decision does not suffer from procedural improprieties.

43. A lot of emphasis had been laid during the arguments about non-recovery of mobile phones and non-linking between the petitioners with the candidates from whom the mobile phones were recovered and absence of invigilators report. It is apparent that the case of the petitioners is not of direct evidence. As a principle, it cannot be held that whenever there is no report from the Invigilator indicating adoption of unfair means in any examination or till a link is established between

the petitioners and those persons from whom the mobile phones were recovered and who admitted receiving the answers to the questions in SMS, the respondents could not come to a conclusion about the adoption of unfair means by the petitioners.. There is no bar for the Expert committee of the respondents to come to a definite conclusion about the adoption of use of unfair means in the examination in absence of recovery of mobile phones and a link between Somiya Aggarwal and Anshul Aggarwal and the petitioners. In Union Public Service Commission (supra), the Supreme Court had held that where an expert body comes to a conclusion of a fact, the same should not be ordinarily interfered with by a court of law. In this case, the candidates had appeared in the written examination for Indian Engineering Services and the examiner while examining the answer paper in Civil Engineering paper II reported that the candidate having the next roll number was suspected to have copied the answer paper of the respondent. The papers of two students were, Therefore, examined by an expert committee which confirmed that the candidates had copied from each other and there after a show cause notice was issued to both the candidates and after giving a due hearing they were debarred from appearing in any competitive examination for a period of 10 years. It was held by the Apex Court that mere absence of report would not be sufficient to exonerate the delinquency as in a matter like this it will be difficult to get direct evidence and in such circumstances, if an enquiry is held to be fair and which affords the candidates adequate opportunity to defend themselves, the matter should not ordinarily be examined by courts with same strictness as applicable to criminal charges. The Supreme Court, however, had reduced debarment from ten years to five years.

44. In another matter, Guru Nanak Dev University and another (supra), the Apex Court had held that though the incriminating material was not recovered from the candidate, however, it was immaterial because the answers tallied with the answers found on the incriminating material which was also confirmed by subject expert on comparison. The definition of unfair means was held to be inclusive and not exhaustive and it was held that so long as the University had communicated the charges to the candidate in clear terms and given him an opportunity to defend himself, it can not be held that he is not guilty simply because he is not covered specifically by any of the clauses of the Ordinance. A Full Bench of Allahabad High Court in Triambakpati Tripathi (supra) relying on The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others, had observed that in the matter of adoption of unfair means, direct evidence may some time be not available and in such cases the question will have to be considered in the light of probabilities and circumstantial evidence, however, such an order which is passed by the expert bodies, the High court does not sit in appeal over the decisions and the jurisdiction is limited to see if the order in question is not supported by any evidence at all. In this case, petitioner had given the square root of 45.5625 as 7.675 without doing rough work or calculation and given an Explanation that he worked out the square root orally. The Examination Committee was of the opinion that it was not possible to

accept the Explanation given by the candidate which was rejected and consequently the inference drawn by the Committee that the candidate had found the square root by some improper method was accepted. In the present case the subject experts had opined that questions in CEE, 2005 could not be answered or solved without rough work. The petitioners in the present writ petitions have almost not carried out any rough work and some of them who have carried out some rough work, but it was found to be insufficient to answer all the questions in different subjects. The Explanation to the contrary given by the petitioners have not been accepted and in the present facts and circumstances the opinion of subject experts that rough work was required to solve the questions cannot be faulted and differed with by this Court.

45. Whether the EDC (Examination Disciplinary Committee) had sufficient evidence to deduce necessary inference to prove the facts in issue? Whether the petitioners have used unfair means in the examination or not? The question paper book containing five digit keys were before the EDC as well as OMR sheets. Comparison of OMR sheets revealed striking similarity in the pattern of answers given by the petitioners. Although the answers were not descriptive but objective where one of the options out of the four options given to the petitioners was to be chosen. The petitioners have contended that probability theory on the basis of which the petitioners have been found to be guilty was not put to them. The experts report was given to the petitioners with regard to statistical impossibility on account commonality of result. The statistical impossibility is computed on the basis of the probability theory. The petitioners have wrong answers for the same questions except some more questions in case of some of the petitioners and even the options which have been marked by the petitioners which are wrong answers are also the same. Coupled with this fact, the other incriminating circumstance is that the questions which have not been attempted by the petitioners are also same. This is further compounded by the fact that almost all the correct answers of all the petitioners are also the same except few mistakes here and there which has resulted in different marks obtained by them and different rankings. This will constitute sufficient evidence of outside help taken by the petitioners which fact is further substantiated by the facts that the performance of the petitioners in their qualifying examinations and their performance in solving 30 questions given to them during the hearing after show cause notices, does not commensurate with their performance in the CEE, 2005 examination. Some of the petitioners ranking in other competitive examination also augment inference drawn by the EDC that the petitioners had taken outside help in attempting the question paper. No plausibly acceptable reason has been given by the petitioners for either writing the answers in the form of five digit numbers or their attempt to erase them and EDC has not believed their version. The Explanations given by the petitioners have not been believed and in the facts and circumstances it will not be appropriate to draw other inference different from the inference drawn by the EDC and to hold that external source was not used by them and not to impose punishment on the petitioners.

46. From this evidence which was before the EDC and the respondents, it is difficult to contend that the inference drawn by the EDC and the respondents are based on mere speculation or conjectures. There were material facts or circumstances on record from which the inference have been drawn and especially since the standard of proof is not of "beyond reasonable doubt", but "preponderance of probabilities". Therefore the inferences drawn by the respondents that the petitioners have used unfair means in the examination cannot be faulted in the facts and circumstances.

47. Though the petitioners very laboriously pointed out certain variations in different show cause notices given to the petitioner and variations between the show cause notice and the report to the Central Bureau of Investigation but taking the totality of facts and circumstances and the show cause notices dated 27.2.2006, 25.2.2006 and 24.2.2006 and the reply given by the petitioners and the personal hearing given to them during which also the effort was made to ascertain the capability of the petitioners by giving them 30 questions to be solved, reflects nothing but that the charges were communicated to the petitioners cogently and reasonable opportunity of being heard was given. In the present facts and circumstances, it can not be doubted that the opportunity which was given to the petitioners was genuine and not an empty public relations exercise. Pursuant to the recommendation of the EDC, the notices were again given stipulating the punishment proposed and the reply given by the petitioners had also been considered and in the circumstances it will not be correct to draw an inference that the petitioners had not been given opportunity of being heard or the opportunity given to the petitioners was an empty public relations exercise.

48. A lot of emphasis was also placed by the learned Counsel for the petitioners on slight differences in some of the answers given to 180 questions by the petitioners. Even if those questions which had been attempted differently are considered, the answers to other questions especially the wrong questions and their wrong options and almost same questions which remained un-attempted and other factors, lead to inevitable probable conclusion that outside help was received by the petitioners. This fact has been further augmented by the five-digit keys which has been ascertained from the QPB of the petitioners and their Explanation has been disbelieved. The petitioners have not given any rational Explanation for writing the five digit keys and erasing them. The petitioners are unable to explain how their performance is so well in the CEE, 2005 compared to their dismal performance in other competitive examinations and in solving the thirty questions given to them during the hearing. The similarities are striking and there is no rational Explanation. One factor in isolation may not establish the guilt of the petitioners about use of unfair means in the examination but if all the factors are taken together and the yardstick of preponderance of probability is applied the inevitable inference is that the inferences drawn by the EDC and the respondents do not suffer from any infirmity.

49. The evidence against the petitioner is substantial and the conclusion of guilt

can be drawn from the said evidence in the first instance itself and all the facts unequivocally points towards guilt of the petitioners. The circumstances on the basis of which the EDC and respondents have drawn the inference can not be termed illusory or based on surmises. The reasons which are available on record and in the orders passed by the respondents, it is apparent that the respondents have consciously applied their mind to the facts of the case and they have acted fairly to do justice in the facts and circumstances.

50. Under the relevant Ordinance the respondents are entitled to impose a maximum penalty of debarment from examinations for a period of five years. The respondents are invested with the discretion to impose proper punishment keeping in view the magnitude and amplitude of the misconduct. Though the learned Counsel for the petitioners have contended that Anshul Aggarwal and Somiya Aggarwal from whom the mobile phones were recovered, only their examination has been cancelled as the examination papers was taken from them and they went out of the examination hall and thereafter nothing has been done against them whereas against the petitioners not only examinations for CEE, 2005 have been cancelled but they have been further debarred for a period of five years from 2005. This is not disputed that the quantum of punishment in disciplinary matters is to be imposed by the concerned authorities and this Court under Article 226 of Constitution of India will not interfere with the same as the role of the Court is only secondary and what is to be seen is whether the authorities have acted illegally or have taken relevant factors into consideration and whether the view taken by the authorities is such which no reasonable person could have taken. In view of the substantial evidence before the respondents, it cannot be held that they have acted illegally or has omitted relevant factors into consideration. The petitioners did not admit their guilt and use of unfair means could be inferred by detailed investigation and effort. The case of the petitioners is Therefore, not the same as that of two persons from whom the mobile phones were recovered and whose examination was cancelled. Though some variations in the show cause notice have been pointed out and also some variations in the performance of the petitioners, however, that does not reflect any procedural impropriety or such an illegality which must be interfered with under Article 226 of the Constitution of India in consonance with various precedents which have been discussed herein above. The petitioners are unable to point out which other relevant matters have not been taken into account and what irrelevant matters have been taken into account to draw the inference as has been drawn by the EDC and the respondents. In my opinion, the decision of EDC and thereafter punishment awarded by the respondents cannot be termed absurd or perverse nor it will be appropriate to substitute different inferences with the inference drawn by EDC and the respondents even if some other inference can be drawn in the facts and circumstances.

51. As discussed earlier, the petitioners have been imposed with the maximum penalty of debarment for a period of five years, however, reason for inflicting the maximum penalty has not been cogently stipulated by the respondents.

Consequently, despite the role of the Court being secondary, it will be appropriate in the totality of facts and circumstances to modify the punishment inflicted on the petitioners to be of cancellations of their result for CEE, 2005 and further debarment for a period of two years from 2005 instead of debarment for a period of five years. Consequently, the petitioners shall be entitled to appear in the examination of respondents only from the academic years 2007 and afterwards.

52. Therefore, the writ petitions seeking quashing of orders holding that the petitioners had used unfair means during the CEE, 2005 examination are dismissed. However, regarding the punishment imposed the writ petitions are disposed off with the direction that the punishment awarded to the petitioners for cancellation of their examination for CEE, 2005 and debarment for a period of five years from 2005 shall now be cancellation of their CEE, 2005 examination and their debarment for a period of two years only from 2005. With these observations, the writ petitions are disposed off and parties are left to bear their own costs.