
(1992) 09 DEL CK 0027
In the Delhi High Court
Case No : C.W.P. No. 2777 of 1992

Ms. Supna Kalia	Vs	APPELLANT
University of Delhi and others		RESPONDENT

Date of Decision : 29-09-1992

Acts Referred:

Citation : AIR 1993 Delhi 118 : (1993) 1 ILR Delhi 216

Hon'ble Judges : Mahinder Narain, J;Jaspal Singh, J

Bench : Division Bench

Advocate : R.K. Awasthi, for the Appellant; V.P. Chaudhary and A. Mariarputham, for the Respondent

Judgement

Jaspal Singh, J.—Pontius Pilate inquired of the Lord in the myth, "Quid est veritas? - "What is truth?" The same question haunts us too. Our quest is for an answer.

2. First, however, a thumb-nail description of the scenario.

The petitioner is one of the aspirants to gain admission to the 1st year of LL.B. course. She, like many others, appeared in the Admission Test held on August 2, 1992. Her Centre was the Faculty of Arts building. The question-paper was objective type with multiple choice answers to be selected and marked on a separate answer-sheet.

3. On August 6, 1992 the petitioner filed this writ alleging among other things, leakage of the question-paper and its mass availability and use of unfair means. She prayed for cancellation of the examination and holding of a judicial inquiry. As an interim relief she sought stay of declaration of the results. In support of her claim she placed on the record as Annexure E, a photo-copy of a booklet containing question-paper and an answer-sheet. It was asserted that the booklet bore number 0385 and that its photo-copies were freely available against price. On August 10, 1992 we issued notice to the respondents to show cause why the petition be not admitted and till the next date stayed the declaration of the

results.

4. In response to the show-cause notice, the respondents filed an affidavit of Mr. K. V. L. N. Rao functioning as Acting Registrar of the Delhi University. Needless to say he denied the allegations of leakage of the booklet and so also other allegations of the petitioner. However, what is of significance is that it did not deny specifically the allegation of the petitioner that the booklet Annexure E bore number 0385. In this respect we may profitably reproduce para (v) of the affidavit which runs as follows :

(v) The allegation of the petitioner that the question booklet bearing Si. No. 0385 was available prior to the commencement of the examination is incorrect. The question booklets and the answer sheets bearing the said numbers in all the series are available in the University and as such the question of the same having been available prior to the commencement of the examination does not arise. The allegation in this regard is baseless and without any merit."

The respondents also did not assert through the said affidavit that the photocopies Annexure E were actually of a booklet bearing number 0885 in series A. Of course, there was a reference to the snatching away of a booklet from the Art Faculty Centre. It was stated in para (vi) of the said counter-affidavit :

"(vi) It has come to the notice of the University that during the conduct of the examination one question booklet was snatched away from the examination hall at Art Faculty at around 4.20 p.m."

We may mention that Mr. Rao verified the contents of the affidavit on the basis of his "knowledge derived from the records of the University". Thus, though before the preparation of the affidavit Mr. Rao claims to have gone through the record, for reasons best known to him, he did not mention the number of the booklet alleged, to have been snatched away nor the number of the room from where it was so snatched away. And, as far as the time of the snatching of the booklet is concerned, we asked the learned Counsel to show us that record on the basis of which it had been mentioned as 4.20 p.m. but it was admitted that there was no such document. We are laying emphasis on these aspects of the matter as in the midst of our incisive scrutiny they will assume significance.

5. Going back to the earlier stages of the proceedings, when arguments were addressed after notice by Mr. R. K. Jain, Senior Advocate for the respondents on the application for interim stay, even then it was not stated that Annexure Mark E was not the photo-copy of booklet number 0385 in Series A. Rather the entire argument proceeded on the assumption that it really was the photo-copy of booklet number 0385 in Series A. During the entire arguments booklet number 0885 in series A did not figure at all. Of course, it was mentioned that one booklet had been snatched away from the Faculty of Arts Centre but neither the room number from which it had been allegedly taken was mentioned nor the number of that booklet nor the series to which it belonged. Rather on our persistent enquiry it was asserted and re-asserted that not a single booklet of

any of the three series namely A, B and C was missing and that all the booklets were accounted for. It was in this background that by our order dated 1-9-1992 we confirmed the ex parte order of stay. And as what we stated at that stage is still of great relevance, we adopt the same by reproducing its relevant portions. They are as follows :

Broadly the case of the University in its reply is that there has been no leakage of the question papers of the LL.B. Entrance Examination; that all question and answer papers in the form of booklets are accounted for and are with the University. However, it is contended that one booklet containing questions and answer paper was snatched away at about 4.20 p.m. from the Arts Faculty Examination Hall but the same did not "in any way affect the examination" as no body was allowed to enter the examination halls after 3.20 p.m.

We will deal first with the contention that all the papers in the series A, B and C are lying safely with the University. We may mention that in the petition it is asserted by the petitioner that the booklet containing the questions and answering sheet, bearing Sr. No. 0385, had been leaked out from the secured confines of the University, and photo copies of that were freely available to anybody, who was willing to pay the price. The petitioner has filed, as Annexure "E", a photo copy of this booklet containing 150 questions and, during arguments, the learned counsel for the University had fairly stated before us while handing over the original booklets in the series A, B and C, each bearing No. 0385, that Annexure "E" to the petition is the photo copy of the original booklet No. 0385 in series A.

It was asserted by the University that there was no leakage and that no person could take out of the Examination Halls either the question paper or the answer sheet and that, all the booklets in all the three series namely A, B and C are accounted for and are lying in safe custody with the University. If that be so, how has the petitioner produced the photo copies of the question paper and the answer sheet (Annexure "E")?, and how could a newspaper print a photo copy of the question paper on the very next day of the examination? We repeatedly put this question to the learned counsel for the University but there was no cogent answer forthcoming.

It was contended that at about 4.20 p.m. a booklet was snatched away from the Law Faculty Examination Hall. This argument was advanced to explain away the presence of photo copies of the question paper and answer sheet produced by the petitioner (Annexure "E"), and so also the publication of the paper in the Statesman of August 3, 1992. We feel no hesitation in rejecting it for the reasons some of which are as follows :--

1. The story of snatching away of the booklet does not inspire confidence as :
 - (a) It is not stated who snatched away the booklet.
 - (b) It is not stated what was the number of that booklet and in which series.

(c) No report was lodged with the police. None has been lodged since then.

(d) Although admittedly there was elaborate police arrangements, no effort was made to apprehend the culprit or to contact the police officials present at site.

(e) Above all, and we feel this is the most important, the photo copy is produced by the petitioner as Annexure "E" being No. 9385 of series A, and the original of the same being admittedly with the University (The learned Counsel for the University showed us the original), it cannot be taken that what had been snatched away was the original booklet No. 0385 of series A. It is not the case of the University that the original booklet No. 0385 of series A was first snatched away, then photocopied and later merely handed over to the University authorities.

It is for the reasons noted above and for yet another reason which we shall spell out presently that we feel strongly that a prima facie case is made out for the grant of the relief sought. The other reason is the unequivocal assertion of the University that all the booklets are lying safely with the University. If that is so, how does it fit in with the story that a booklet was snatched and taken away?

The University of Delhi has not given any cogent or convincing Explanation as to how a photo copy of the booklet containing questions and answer sheet, which was in the safe custody of the University is actually in the Court record. It appears, prima facie, that the story made by the University of Delhi in its reply, does not bear scrutiny, and the same is incorrect, and that what the petitioner states, is prima facie correct.

6. It was only after the said order that the respondents committed somersault by taking the plea that Annexure E was not the photo copy of booklet number 0385 in Series A but of 0885 in that very series and that it was in fact booklet number 0885 in series A which had been snatched away and that too from room number 30 of the Faculty of Arts building. As per the respondents all this came to be known only after one of their counsel looked at the photo copy of the answer sheet more carefully and on getting suspicious asked the University authorities to have a fresh look. The respondents, Therefore, now want us to believe that neither a senior officer like Mr. Rao nor the Senior Advocate Mr. Jain nor the other Advocates and staff members of the University in general and of the Faculty of law in particular who used to be always present in strength during the hearings had bothered to peep into the record with a discerning eye. We will be examining this stand in greater detail in the succeeding paragraphs. We may, however, give words to our feeling at this very stage that this complete change in the stand is sufficient in itself to cast grave doubts on the veracity of their version.

7. The star witness of the respondents on the changed scenario is one Mr. Dhawan who, we are told, was the Invigilator in room number 30 of the Faculty of Arts Centre. He has filed his affidavit which discloses the following :

(a) The first row in the room consisting of 6 desks and chairs was along with the wall and started immediately after the entrance and that two of the desks were touching the window from inside.

(b) He was to place one booklet on each desk after 4 p.m.

(c) He began distributing the booklets from the first desk of the first row near the entrance.

(d) Most of the candidates in the room were seated at the time of commencement of distribution of the booklets,

(e) while he was distributing the sheets he was informed by the candidate who was to sit at one of the desks adjacent to the window in the first row that there was no question paper-cum-answer sheet on his desk.

(f) The candidate who was sitting immediately next to him, stated that someone from outside had picked up from the desk through the window the question paper-cum-answer sheet and had run away.

(g) He gave that candidate one of sheets which he was distributing.

(h) Since he did not have a spare copy, he contacted the officials of the University who were standing in the Verandah and on their advice he got one additional question paper-cum-answer sheet from the adjacent room and supplied it to another candidate in the room.

We may mention at this stage that as per the respondents, the first candidate sitting on the first desk of the great row was with Roll No. 3541, the second with Roll No. 3542, the third with Roll No. 3543 while the fourth had Roll No. 3545 and the last carried Roll No. 3546. As per Chart "Y" supplied by the respondents, the distribution of the booklets was to be in the following order : 0884B, 0884C, 0885 A, 0885B, 0885C, 0886C (A, B & C being the series) and so on in that Serial order. We were told that the underlying idea of distribution of the booklets in that order was that no two candidates sitting one after the other should have booklets of the same series and that the respondents thereby wanted to give no chance to the candidates to indulge in copying. A laudable object indeed. That it was butchered is yet another story. In fact almost every instruction required to be followed was flouted. We shall show it later. And we shall show it not with the object to criticize but to point out that the whole version is so self-condemned and contradictory that it cannot be regarded as worthy. of reliance.

8. Coming to the laudable object referred to in the preceding paragraph, we shall have to go back to the affidavit of Mr. Dhawan. He says that on being informed that a booklet was missing, he brought booklet number 0903 in series B from the adjacent room. If a booklet in series A was missing, why did he bring a booklet in series B? If it was the candidate with roll number 3545 whose booklet was missing, why was he not given booklet number 0903B brought from the adjacent room and why was he instead given booklet number 0981 in series A which was

actually to go to the candidate with Roll No. 3561? If the reason for not giving 0903 in series B to the candidate with Roll No. 3545 was that the candidate with Roll No. 3544 had also been supplied a booklet in B series then why this principle was not adhered to in the case of candidates with Roll Nos. 3554 and 3555 and again in the case of candidates with Roll Nos. 3559 and 3560? This, however, is just the beginning. What follows would further show how Mr. Dhawan reveled in committing one breach of the instructions after another and how the respondents have made a mess of everything. And yet the irony is that we are being persuaded to rely \$1 Mr. Dhawan and accept as we accept the scriptures, the documents placed on record by the respondents.

9. The chart Mark "X" shows that distribution of booklets started from the candidate bearing Roll No. 3546. If that be so, the first booklet which was to be distributed (as per Chart Y) was No. 0884 in series B. But then why did the distribution actually start from 0884 in series C? Had the distribution started from booklet number 0884 in series B then the candidate with roll number 3545 would have got booklet number 0884 in series C and not 0885 in series A. In any case, if 0084 in series C had been distributed to the candidate with Roll No. 3546, why was booklet No. 0884 in series B not distributed to the candidate with Roll No. 3545 and why it was actually distributed to the candidate with Roll No. 3560 and that too in row number four? In the "Instructions to Invigilators", what is most significant is paragraph 1. It runs as follows :

"The Test Booklet has three series A, B and C. The candidates seated in a row are to be given the test booklets in the same order in which these have been packed i.e. A, B, C, A, B, C, A..... and so on. Therefore please do not disturb the packing arrangements and ensure that the distribution is made accordingly. In case of those who have not occupied their seats at the start of the test, their Booklets may be kept on the vacant seats."

If that be so, then whatever be the seating arrangements, why these instructions were not followed in the distribution of the booklets? And, in any case in the manner "A, B, C, A, B, C, A.....? But still the more important question is as to where did booklet number 0884 in series A go? Where did it vanish? If the booklets were packed series were starting from a booklet in series A, followed by a booklet of the same number in series B and then by a booklet of that very number in series C, then why was the booklet bearing No. 0884 in series A not in Room No. 30? And if it was there, and it ought to have been there, why was it not distributed?

10. Though the University wants us to believe that the distribution of the booklets started not from the front seat but from the last seat of the first row (which itself seems strange, queer and against what we generally call "natural course"), the problem is that the Invigilator himself cuts the roots of this assertion and falsifies it in no uncertain term. He says :

"I was to place one question paper-cum-answer sheet on each desk soon after 4

p.m. I started doing so beginning from the first desk of the First row near the entrance"

When does it show? it shows that the distribution of the question paper-cum-answer sheet started not from the last seat of the row, but from the first from the entrance. And if this is accepted the scenario changes drastically. Let us show how.

11. As per the chart Mark X supplied by the University itself (And, we are laying emphasis on it repeatedly lest this fact is overlooked) the first question paper-cum-answer sheet distributed in Room No. 30 was 0884 in series C, the second was 0885 in series A. If that be so, then as per what has been sworn by Mr. Dhawan, the first desk from the entrance should have got booklet No. 0884 in Series C and the second 0885 in series A. And if the second desk was to get booklet No. 0885 in series A then it could not be taken away from the window as the second seat would be by the side of the wall far removed from the window. Not only this, if Chart Mark X is believed to the extent that the first booklet distributed in the room was 0884 in series C and if Mr. Dhawan is correct in asserting that he started distributing from the first front seat and not from the back seat then in that case 0884 in series C ought to have gone to the candidate with Roll No. 3541 and not to Roll No. 3546 and the crucial booklet A0885 would have gone to the candidate having Roll No. 3542 and not to the desk of the candidate with Roll No. 3545. How does one reconcile? Either Mr. Dhawan is telling a lie or the University is presenting, to put it very mildly, a wrong chart to present a wrong picture.

12. However, the position becomes bad to worse when one looks at the Attendance Form for Examinations (Annexure R-3) and compares it with the chart Mark "X" an chart Annexure R 1. The charts show that the candidate bearing roll No. 3545 sat in the first row. However, if the Attendance Form for Examination is looked into, it would reveal that the candidate who sat in between the candidates with roll numbers 003544 and 003546 was not with roll number 003545 (as we all would have expected) but strangely one having roll No. 003561. And where did 003545 go? Well, he sat in between the candidates with roll numbers 003560 and 003562 and that too not in the first row but in the fourth row. Pray, why? who knows? And why this change with regard to only that candidate who, according to the respondents, was to get the all important booklet No. 0885 in series A? But then, this is not the end. Once again, either the charts Mark X and Annexure R1 are suppressing the truth or the Attendance Form For Examiners is twisting it. Candidate having roll No, 003545 could not be present in the fourth row if he was sitting in the first row. And, if he was actually sitting in the fourth row could he be distributed booklet No. 0885 in series A? And, in that case could his booklet be so removed? Annexure "C" contains "Instructions to Candidates" which shows that the candidates were necessarily to occupy the seats allotted to them. Why then this departure? And why this departure in room No. 30 only when no such departure was made in any other

room? And, above all, why with regard to that very desk only which was to get the all important booklet number 0885 in series A?

13. In any case, it is the affidavit of Mr. Dhawan which once again arrests our attention. If his affidavit is correct, the complaint with regard to the missing booklet was made not by the candidate bearing Roll No. 003561 but "by the candidate who was to sit at one of the desks adjacent to the window in the first row," and as per Mr. Dhawan he gave "to that candidate" one of the sheets he had for distribution. If that be so, the candidate with Roll number 003561 was positively not the candidate who was to sit at one of the desks adjacent to the window. As per chart Mark X it was the candidate with Roll Number 003541 who was to sit there. The expression "who was to sit at one of the desks adjacent to the window" would mean clearly the person who was assigned that desk. Clearly then the candidate with Roll number 003561 was not that person. Had Mr. Dhawan meant the candidate with Roll No. 003561 then instead of the expression actually used by him and as reproduced by us above, he would have said some thing like "who was sitting at one of the desks adjacent to the window" or "who later sat (or occupied) one of the desks adjacent to the window". Thus Mr. Dhawan clearly excludes candidate with Roll Number 003561 as the complainant. Did then the candidate with roll number 003541 make the complaint? It is not possible to so believe. After all he was sitting in Row number 4 and it is nobody's case that he shifted to that row after lodging the complaint.

14. We have already mentioned above that as per Chart Mark X, the first paper which was distributed in the first row of room number 30 was number 0884 in series C and the second which was 0885 in series A. We have already shown that as per Mr. Dhawan he started distributing the booklets from the first and not from the last seat in the row and if that was so and the order of distribution of the booklets started from C-0884 then, in that case, the person who was to get booklet No. 0885 in series A was sitting on desk number 2 which was in no way near to the window. We have already tried to show that the two versions make a fun of each other. We, however, did not make reference at that stage to yet another document which was supplied to us by the University and which, for the sake of convenience, we have marked as "Y". It gives the Serial number of the booklets that were to be distributed to the candidates in room number 30. The first five in the given order are as follows :

0884 B 0884 C 0885 A 0885 B 0885 C if the papers were packed in that order then it was positively against the specific order of "A, B, C, A, B, C, A....."as given in the "Instructions to the Invigilators" and no Explanation is forthcoming for the departure. In any case, even if the packing arrangement was as given in Annexure Y, then as per the instructions given to the Invigilators the distribution was to be made according to the packing arrangement. In other words, keeping in view the arrangement as given in Mark Y, the first candidate was to get booklet number 0884 in series B, the second was to get booklet number .0884 in series C while the third was to receive booklet number 0885 in

series A. However, if chart "X" is to be believed the first got 0884C, the second 0885 in series A (which allegedly was later found missing) and the third got 0885 in series B. This was positively against the arrangement as detained in "Y" and no Explanation is forthcoming as to why the first was not given 0884B and the second 0884C and the third 0885A. This much as far as Chart "X" is concerned (according to which, as we have already noticed above, the distribution strangely started from the last seat of the first row). Coming again to the affidavit of Mr. Dhawan, it may be stated even at the risk of repetition, that as per him he started distributing from the front seat of the first row. He nowhere states that he did not follow the instructions with regard to the distribution of the booklets. Thus, it has to be taken that following the order as given in Mark "Y" he placed booklet number 0884 in series B at the first desk, 0884C at the second and 0885A at the third. If that was really so, the third desk to which 0885A went was far away from the window (this would be borne out from the photograph placed on record by the University itself) and it was impossible for anyone to remove it through the window while standing outside. Does all this not show that the entire version given by the University is self-contradictory and self-condemned?

15. Besides what we have noticed above, there are yet other salient features which need to be noticed. The first is that Mr. Dhawan has nowhere stated in his affidavit that the booklets distributed by him included booklet number 0885 in series A. He has also nowhere stated on oath that the booklet which was stated to be missing was number 0885 in series A or that he had verified that he had actually been supplied booklet number 0885 in series A for distribution. Significantly even in the report which he allegedly made (we are using the expression "allegedly" as it was contended by the petitioner that it was manufactured later) he did not allege that the booklet stated to have been taken away was number 0885 in series A although this could be easily verified by Mr. Dhawan at that very moment. The University has not placed on record any documentary evidence excepting a self-condemned chart Mark Y, to prove that thirty booklets were actually supplied to Room number 30 and that those booklets contained booklet number 0885 in series A. During arguments we repeatedly asked Mr. Chaudhary, counsel appearing for the University, to produce before us the record showing how many booklets and bearing which numbers had been supplied to each room and how many were received back from each of those rooms but were told that there was no such record. This being the position and Mr. Dhawan being totally silent about it, how can we be sure that booklets thirty in number including booklet number 0885 in series A had been actually supplied to Room number 30?

16. Mr. Dhawan nowhere states in his affidavit that he had actually placed a booklet on the desk on which no booklet was found, or that the booklet so placed by him was number 0885 in series A. What he says is :

"While I was distributing the sheets, I was informed by the candidate who was to sit at one of the desks adjacent to the window in the first row that there was no

question paper-cum-answer sheet on his desk. The candidate, who was sitting immediately next to him, stated that someone from outside had picked up from the desk through the window the question paper-cum-answer sheet and ran away..."

Significantly, the name and roll number of the candidate who made the complaint has been held back. Similarly the name and roll number of the candidate who gave the information has not been supplied nor his affidavit has been placed on the record. Mr. Dhawan had not himself seen the booklet being removed. The version regarding its removal is thus more in the nature of hearsay. How can we thus believe this version?

17. It was argued that since 1440 booklets had been supplied to the Faculty of Arts Centre out of which 1054 used booklets and 385 unused booklets had been received back leaving one booklet unaccounted for and since it was only in room number 30 that a booklet was stated to have been taken away by someone and since all the booklets excepting booklet number 0885 in series A are accounted for, Therefore, it must be taken that it was booklet number 0885 in series A which was supplied to room number 30 and which was taken away. We feel that no such assumptions can be drawn.

18. The University has been changing its stand with such frequency and contradicting itself with such speed that it has become difficult for us to accept whatever it states as Gospel Truth, First it accepted the position that Annexure E was the photocopy of booklet number 0385 in series A and addressed arguments on that basis but much later it took the stand that Annexure E had nothing to do with 0385 in series A and that actually it is the photocopy of 0885 in series A which had been snatched away. Significantly initially it was nowhere asserted that the booklet snatched away bore number 0885A. No number of the booklet or its series was given and what is more significant is that rather it was asserted that all the booklets had been accounted for and that not a single booklet was missing. It was only later on that it was claimed that booklet number 0885 in series A was actually missing and that it was missing from Room number 30. In fact even Room number 30 became a subject of controversy. First it was asserted that the room from where 0885 A had been taken away faced the General Library and it was admitted that the said room had a window opening at a height of more than five feet. When we expressed that it was probably not possible to snatch away a booklet from a window of that height and asked the learned counsel to supply the exact measurements, the very location of the room was changed on the next hearing. It came to be located at another place with a low lying window. Was this change introduced to make the story of removal of the booklet through the window plausible? In any case when the plan of Room number 30 was filed, it led to another change in stand. As per the original plan six desks and chairs could not possibly be placed in the first row. When this became clear, there came on the next date yet another plan sufficiently modified. Not only this, when it became clear, during arguments, that if booklets are taken

to have been distributed from the front seat then booklet No. 0885 in series A could not be placed on a desk facing the window, the University came up on the next date with chart Mark X showing that the distribution actually commenced from the last seat. We have already shown how chart Mark "X" makes a mockery of everything. Under the circumstances it is difficult for us to assume that booklets thirty in number had actually been supplied to room number 30 or that one of them was bearing number 0885 in series A. The University has not placed on record any cogent material to make us so believe. We feel some record must have been maintained showing handing over of booklets to the Invigilators of each room and the numbers of those booklets and the subsequent receipt of those booklets from those Invigilators. No such record has been produced despite our having asked for it.

19. There were two Invigilators in room number 30. Only one of them namely Mr. Dhawan has filed the affidavit and, as already noticed above, he has nowhere deposed that he had been supplied 30 booklets and that one of them bore number 0885 in series A. Even in his complaint he gave no number of the booklet alleged to have been taken away. As we have already mentioned, he nowhere stated that he had placed a booklet much less booklet number 0885 in series A on a desk. He did not see any booklet being removed. Allegedly the source of his information was a candidate whose identity has remained shrouded in mystery and who has not come forward to support the version. In any case in the complaint lodged by him he did not mention about any complaint by a candidate or about the information allegedly supplied by another. The version was missing even in the reply given at the earliest by the University. All this makes the version highly doubtful. We are not inclined to believe it for the following additional reasons also :

- (i) No report was lodged with the police.
- (ii) Although it is stated that the entry gate had been sealed, no effort whatsoever was made to trace the culprit.
- (iii) Admittedly senior Police Officers were present inside the building and yet no effort was made to contact them and seek their assistance.
- (iv) No enquiry was made even by the University authorities.
- (v) It is not possible to believe that somebody could remove the booklet and run away with the same when University and Law Faculty officials were present in that very Verandah in which the window opens.

20. We may mention that much cannot be allowed to be made out of the fact that a booklet had been taken by Mr. Dhawan from the adjacent room for distribution in Room Number 30. If at all it proves anything it is that during the examination the University instructions to the Invigilators were flouted. The reasons for this conclusion are two (a) an additional booklet could be obtained only from the Supdt. of Examinations ,and (b) how could the Invigilator of the

adjacent room supply a booklet from his own stock already limited to the number of candidates to sit in that room and at a time meant for distribution of the booklets? After all, that was no time to conclude that he would have a spare copy because till after about 30 minutes of the distribution of the booklets any candidate could report for examination.

21. What further attracted our attention during arguments was that as per the record two booklets were allegedly supplied from room number 16 to room number 15 without there being any endorsement to that effect by the Invigilator of Room number 15. In any case room number 15 could not require two additional booklets as it already had 5 spare booklets, there being five absentees in that room. Where did those two booklets go?

22. It is unfortunate that even the documents are shrouding the truth.

23. One more example will suffice. We were told that after the examination, all the booklets used as well as unused were Dispatched to the Controller of Examinations through "Dispatch Memo" filled in triplicate (carbon copies) out of which the first two copies were to be sent to the Controller of Examination and the third was to be retained in the Dispatch Memo book. What shocked us is as follows : (a) Although in the Dispatch Memo in column No. 5 "Roll Nos. of absentees" were required to be mentioned specifically and although this instruction was complied in the case of Memo Nos. 03451 and 03452 relating to M.B.B.S./B. Ds Entrance Examinations, this requirement was given a complete go by in the case of Memo number 03453 relating to this examination. What is written in the said column requiring "Roll Nos. of absentees" is "102 (as per list)." Why the roll numbers were not written in the column? In any case where is that list? We found no such list in the Dispatch Memo book and no signs also, either of gum or oil pin showing that any such list had ever been attached with it. This is not the end of the matter. The third carbon copy of Memo No. 03453 retained in the Dispatch book and which relates to this very examination in the Faculty of Arts Centre mentions the following in column numbers 3 and 4 :

"3. No. of Answer books : One (Court case)

4. No. of Packets : One"

However, what appears in the original and in the second copy need to be mentioned. In the original Dispatch Memo the words "(Roll No. 5125)" have been added later just below "(Court case)". In the second copy which, like the third, is a carbon copy, although "(Court case)" appears in carbon impression, the words "(Roll No. 5125)" have been added with pen ink. However, in the third copy which is part of the Dispatch Memo book the writing "(Roll No. 5125)" does not appear. Does all this not show that writing "(Roll No. 5125)" was added later on? Does it also not show that the University authorities think nothing of making changes in the documents at any stage? And if that is so, what sanctity can be attached to the other already condemned documents like, for example, Mark X, Mark "Y", to the letter allegedly written by Mr. Dhawan about the missing paper

and to the maps and plans and their differing measurements and the change overnight of the room from one place to another? Take again, for example, the Dispatch Memo number 03453. It mentions absentees as 102 in number though as per the attendance sheets of the Arts Faculty Centre taken together the absentees numbered 103.

24. Time and again it was stressed by Mr. Chaudhary and with eloquence overflowing with emotions that the University enjoys a great reputation and that the petitioner is trying to besmear it by levelling false allegations. We, however, feel that neither stirred sentiments nor surcharged emotions can be allowed to blur the vision. Probably Mr. Chaudhary may get solace from the Yiddish proverb that if God lived on earth, people would break his windows also. The spirit of criticism and understanding should not be lost sight of. We are proud of the University and it is a matter of great satisfaction for us that we too travelled once through this green valley of great learning. Yes, age has turned rich gold into yellow autumn sun but the memory lingers. However, what pains us is inconsistencies and contradictions writ large in the stand taken by the University although it was all along aware of the full facts. After all, discordant notes are always jarring to the ears.

25. We repeat that the version given by the University has failed to inspire confidence. We are not convinced. We reject it. But take it that the photocopy Mark E is actually the photocopy of not 0385A but of 0885A. Take it that the version of the University that booklet number 0885A was taken away through the window while Mr. Dhawan was still distributing the booklets. Take it also that he had commenced distributing booklets at 4 p.m. If all this is accepted, the booklet 0885A must necessarily have been removed say at about 4.03 or 4.05 at the most. Let us not forget that as per Mr. Dhawan all the candidates had not yet reported in the room meaning thereby that some of them at least were still outside the room. This must have been true with regard to the other rooms. As per the "Instructions to Invigilators" the candidates could report for examination till after 40 minutes of the completion of the distribution of the booklets. Thus if distribution was completed say at 4.10 p.m., the candidates could enter the room till about 4.50 p.m., or at the earliest till about 4.45 p.m. (We are arriving at this point of time on the basis of the affidavit of Mr. S. K. Jain). Admittedly, entry into the Arts Faculty Building was not regulated and great many people who were themselves not candidates had also entered the building and some of them had even locked the Invigilators inside Room number 22 and the police had to be called in to restore normalcy. What is of significance is that while normalcy was being restored, booklet number 0885 in series A had already been taken away. We are sure nobody took it away with the intention of getting it framed and then to adorn it on the walls of his Puja room. The purpose was obvious and we are sure it was to know the question paper and to exploit it. And, for that he had all the time at his disposal with no lurking fear to haunt him because nobody had seen him, nobody had known him, nobody had followed him and nobody had even cared to report the matter to the police. It need hardly be mentioned that

the questions in all the A, B and C series were the same. Benefit was thus available to all the seekers for more than 45 long long minutes. It may also be emphasised that all the questions were objective in type with multiple choice answers and such questions take hardly any time to solve more so when very many heads are available at each other's elbow. Can the petitioner thus be disbelieved when she asserts that it was really so? The affidavits filed by her, though denied, reassert the only inescapable conclusion that through this leakage quite a good number of candidates got unfair advantage. This must be the conclusion even if the version of the respondents is accepted in totality.

26. This, however, is not the end of the journey.

The Faculty of Law is just adjacent to the Faculty of Arts. Their walls salute each other. On the fateful day, the gate kept open for entry to the Faculty of Arts was that which is closest to the Faculty of Law. Thus it would have taken less than a minute for the candidates appearing in the Faculty of Law Centre to enter the portals of the Faculty of Arts. The examination in the Faculty of Law started at 3 p.m. and as such any candidate could come out of that centre at 3.30 p.m. The examination at the Faculty of Arts commenced at 4.15 p.m. and as per the Instructions a candidate could enter the examination room till 4.45 p.m. The question papers were the same at both the centres. Thus a candidate appearing at the Faculty of Arts Centre could know the paper from the candidates who had appeared in the Faculty of Law Centre about 75 minutes before entering their own examination room. Once this position is accepted, and we may mention that the petitioner has actually filed affidavits of some of the candidates which show that it indeed was the position. Can it be said that the paper had not leaked out or that there was, at least, no such probability?

27. It was contended by Mr. Chaudhary that there must be "strong" evidence to show that the question paper had actually leaked out and that as the same was lacking, the petition could not succeed; We do not know the basis requiring the use of such an adjective. The Evidence Act does not use it. Evidence is evidence. The Court may accept it or reject it. It may prefer one piece of evidence and discard another or reject both. Of course, we know of burden of proof and we also know that in a case like the present one the petitioner need not prove its case beyond any shadow of doubt. It, after all, is not a criminal trial. In any event, it is a case in which the facts and circumstances are speaking for themselves and we feel that even if the adjective "strong" must necessarily creep in to act as our guard and guide, the evidence on the record, the totality of attending circumstances and the probabilities satisfy that requirement too.

28. It was argued by Mr. Chaudhary that since the petitioner could approach the Visitor under S. 7(a) of the Delhi University Act, or the Vice-Chancellor under Statute 11 (G) or the Academic Council under Statute 8(xviii) and as she did not avail of any of these alternative remedies which, according to him, were quite efficacious, Therefore, on that short ground alone, we should throw out the petition. It was further contended that since intricate questions of disputed facts

are involved, writ jurisdiction of this Court Cannot be invoked. In support reference was made to Dr. S.K. Sinha Vs. Patna University and Others, , A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , Ghazanfar Rashid Vs. Secretary, Board of High School and Intermediate Education, U.P., Allahabad and Others, and Guru Nanak University Vs. Dr. (Mrs.) Iqbal Kaur Sandhu and Others, .

29. We feel, with respect, that none of the judgments referred to by Mr. Chaudhary have any application to the facts of the present case.

30. In the case of Dr. S. K. Sinha, the question revolved around the appointment of two professors. The third, aggrieved by the appointments filed a regular title suit in his attempt to get a temporary injunction against the University. On his failure to get a temporary injunction, he filed the writ petition covering the same grounds involved in the suit, keeping the suit pending. As soon as the writ application was admitted and some interim relief was obtained and his purpose having been fulfilled for the time being, he withdrew the suit. Holding that the history of the case could not be wholly lost sight of and as the petitioner was choosing his forum of litigation at his convenience, in the expectation that he would get redress in the forum of his own choice, the court should refuse to come to his aid and it was under these circumstances that he was directed to first exhaust his remedies u/s 9(4) of the Patna University Act. How does this judgment apply?

31. In Ghazanfar Rashid's case, on a complaint to the Board of High School and Intermediate Examination that unfair means had been used by the examinees in answering the question papers, a Screening Committee of experts was appointed which held that unfair means had actually been used. On that report the Examination Committee appointed a Spot Enquiry Committee to enquire into the matter in detail and to serve charge sheet on the person found guilty. Consequently the charge sheet was served on the petitioner whose reply to the charge was rejected by the Examination Committee. On these facts, it was held by the Full Bench of the Allahabad High Court that if the Examination Committee, relying on the report of the Screening Committee as well as on the answers of the examinee, bona fide arrived at the conclusion that the examinee used unfair means in answering the questions, it was not open to the High Court to interfere with that decision merely because the High Court might take a different view on re-assessment of those circumstances. This being the position, this judgment too hardly comes to the rescue of the respondents.

32. Coming to the case of Guru Nanak University, the Court dilated on the undesirability of deciding contentious matters on which the parties are at variance and cannot be satisfactorily decided without taking evidence. However, in the case before us, we have referred to the admitted documents of the respondents, the admissions made by them at different stages of the proceedings, their obvious and inherent contradictions and have arrived at our conclusions principally on that material. Obviously, then, the observations made in the Punjab and Haryana case are not attracted.

33. Normally, before a petition under Article 226 is entertained, there should be recourse to statutory authorities which have power to give relief. But that is a rule of practice and not of jurisdiction. Therefore, a High Court is competent to entertain a petition even where the aggrieved party has not exhausted the remedies available under the statute, before the departmental authorities. We may also emphasise that whether the failure to have resort to the alternative remedy should constitute a reason for refusal to exercise jurisdiction must necessarily depend upon the facts and circumstances of the case and we do feel that in the present case approach to the authorities would neither have been equally efficient nor adequate. It called for an urgent, effective remedy, and if the petitioner is to be believed the Dean of the Faculty of Law was actually approached but he lent a deaf ear. In any case, a petition entertained and heard on merits cannot thereafter be rejected on the ground that statutory remedy was not availed of.

34. It was Cicero, probably, who said about someone "He saw life clearly and he saw it whole". We have endeavored to inculcate at least a little bit of that while analysing the facts and circumstances of this case and we firmly believe that the petitioner can certainly not be accused of spinning out a mock epic from a pair of broken shoe-laces. She indeed is on terra firma.

35. Examinations like the present one must be conducted in strict secrecy. There can and should be no compromise on it. Tested on this anvil, the respondents meet their Waterloo.

36. There" are no fanciful doubts or lingering suspicions. The remedy calls for amputation and not pruning .Mr. Chaudhary stated that the very credibility of the University was at stake. We do not believe so. However, in our humble way, we would recommend to the University the same road as recommended to the man who founded a new religion : Be crucified, and rise again on the third day.

37. The writ petition is allowed. The admission test held on August 2, 1992 for admission to the 1st year of LL.B. course is hereby quashed but without any order as to costs.

38. Petition allowed.