
(2006) 12 DEL CK 0136

In the Delhi High Court

Case No : Writ Petition (C) . No. 6303 of 2006

Varun Jain

APPELLANT

Vs

University of Delhi and Another

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 0136

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Arvind Nigam and Sanjeev Nigam, for the Appellant; V.P. Singh Mohinder J.S. Rupal and Latika Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—This order shall dispose off these two writ petitions against the order of the Delhi University canceling petitioners' examinations of CEE, 2005 and further debarring them for five years from appearance 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. 14. 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 two 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 petitioner in other competitive

examination to comprehend the disputes are as under:

Varun Jain Question Series : 14 Roll No. : 55580 Rank CEE, 2005 310 Rank AIEEE, 2005 137567 Year of passing School : 2005 Percentage in School : PCM 224(Math 84, Physics 46+29,Chem 37+28) Percentage of marks : 74.66% Marks before EDC out of 120 marks in 30 questions : 19 Manendra S. Rana Question Series : 14 Roll No. : 69968 Rank CEE, 2005 149 Year of passing School : 2005 Percentage in School : PCM 187(Math 67, Physics 37+18, Chem 52+13) Percentage of marks : 62.33% Marks before EDC out of 120 marks in 30 questions : 23

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

Name of the Candidate Marks Ranking Obtained in CEE, 2005 Varun Jain 453 310 Manendra S. Rana 484 149

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, as every questions had four options, were also the same. The answers of questions which were found to be wrong of both the petitioners were as under:

Question numbers whose Answers were incorrect Same Option (Answer) attempted by Petitioners 1 1 3 3 6 2 23 1 24 1 27 3 30 3 33 1 51 4 53 3 62 2 68 2 74 4 78 1 92 1 95 4 99 3 101 1 106 1 112 1 113 2 114 1 116 1 117 4 118 1 119 4 120 1 128 3 147 3 153 4 161 4

5. Another striking similarity in the answer books of these two petitioners was that they did not attempt the same questions i.e did not give answer to the same questions which were question Nos. 56, 64, 66, 111, 115, 121, 123, 158, 162, 163, 176 to 180. Besides these questions, Petitioner Varun Jain also did not answer question Nos. 129, 130, 165. Petitioner Manendra S.Rana also did not answer question numbers 172 to 175.

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

i. The petitioner, Varun Jain, marked options 2, 3, 1 and 1 for the questions 168, 169, 170 and 171 respectively whereas other petitioner marked options 3, 2, 4 and 4 for the questions 168, 169, 170 and 171 respectively. The said petitioner also did not answer question 129, 130 and 165 whereas the other petitioner had answered said question numbers 129, 130 and 165. The answers to question 58 of this candidate is also different.

ii. Petitioner, Manendra S. Rana, did not answer question numbers 172 to 175.

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 two other students, namely, Praveen Duhan (Roll No. 22626) and

Manik Bansal (Roll No. 66072) who have also impugned identical orders by the respondents before this Court in Writ Petition (C) No. 11257-64 of 2006 titled Manik Bansal and Ors. v. Dean, Faculty of Technology (Delhi University) and Anr. which is pending adjudication. Apart from these students, who have instituted proceedings before this Court, there are five other students as well, who have not filed any writ petition before this Court, however, in their cases also identical orders were passed by the University, debarring them for 5 years from appearance in the examination of Delhi University w.e.f June 2005 besides cancellation of their examination for 2005 on identical grounds. The details of these students are as follows:-Amit Prakash (Roll No. 19496); Sumit Dabas (Roll No. 51560); Vatsal Mittal (Roll No. 57998); Dhruv Kishore (Roll No. 67368); Divyanshu Rohatagi(Roll No. 68624). 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 number of 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. The name of the Petitioners, Varun Jain and Manendra Singh Rana, did not figure in the list of fourteen candidates furnished by the CBI. The house of petitioner, Varun Jain, was however raided by CBI.

8. The University of Delhi had given show cause notices to both the petitioner, Varun Jain & Manendra Singh Rana, 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 both the petitioners, Varun Jain & Manendra Singh Rana, filed writ petition being WP (C) 20847 of 2005 and WP (C) 21653 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 being WP (C) 20847 of 2005 and WP (C) 21653 of 2005 were disposed of by orders dated 23.11.2005 and 5.12.2005 respectively and the liberty was given to the University of Delhi to issue fresh show cause notices.

9. Pursuant thereto another show cause notice dated 25th February, 2006 was issued to both 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 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, a notice was given on 7th April, 2006 asking the petitioners to show cause as why the result of the petitioners for CEE, 2005 be not cancelled and they be further debarred for five years. After considering the replies given by the petitioners, the University of Delhi has debarred the petitioners for a period of five years and have 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 examinations. 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.

10. The show cause notices dated 25th February, 2006 issued to the both petitioners stipulated the earlier orders passed by the High Court and 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. The copies of expert reports were also given to the petitioners. 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 sheets of both the petitioners were given. The petitioners had given replies to the

notices given to them. The petitioner Mahendra S. Rana did not file any reply to notice dated 25th February, 2006; however, he filed a reply dated 14th April, 2006. Para 6 of the show cause notices given to the petitioner, Varun Jain, and his reply and show cause notice to Mahender Singh Rana and relevant para of his reply dated 14.4.2006 are under:

VARUN JAIN - W.P.(C).No. 66303/2006

6. In course of this detailed scrutiny, your QPB and OMR answer sheet was also taken up. You had secured a common rank of 310. The scrutiny revealed as under:

6. That is understood why my results 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.

(i) Ticking on the QPB and encoding in the OMR answer sheet is different in case of Q.Nos. 11,15,1921,25,32,40,57,86,87,146,157 and 168.

(i) With regard to the allegation that in some places answers which have been ticked in the question booklet were different from the answers marked in the OMR answer sheet, it is submitted that it is very common for a candidate to initially mark certain option as a answer and subsequently arrive at a different conclusion and give a different answer in the answer sheet. I am also in the habit of marking preliminary answers with regard to question of which I was not sure as to the answer and have initially left those questions and after attempting the questions of which I was sure about the answers have devoted time and come to the correct answers or the answers which may appear to me to be correct.

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 against Q.Nos. 3,5,11,12,19,20,21,22,23,26,27,28,29,32,34,35,36,40,42,44,45,51,52,86,91,94,96,97,98,141,147,148,155,162,167 and 171 is irrelevant.

(ii) With regard to the allegation that nature of question asked was such that in majority of cases rough work was required and I have done little rough work it is submitted that little rough work in absence of the alleged difficult question does not indicate anything suspicious. I have done rough work 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 herein also in view of the four optional answers uses the "process of elimination" whereby the obvious incorrect answer are eliminated and rough work is done for that purpose and by the same process the answer is given to the said question. In these process, it is not necessary that with respect to all questions a detailed rough

work is 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 answer.

The contention now sought to be raised is self-contradictory. In the show cause notice issued to me earlier it was alleged that the may question paper booklet did not have any rough work and now with a view to justify the action against me a new case that the scribbling on the question booklet are unrelated to the questions has been set up. It is not understood as to how may rough work meant for myself and in the manner devised by me only could be interpreted by some other person to mean that it had no relation with the questions.

(iii) Eleven (11) out of eighteen (18) unattempted questions Nos. 56,64,66,111, 115, 121, 123, 158,162, 163 and 180 and the Serial numbers and option encoded therein in respect of thirty one (31) questions out of thirty nine (39) wrongly attempted questions, match exactly with those of the candidate having Roll Nos. 19496, 22626, 51560, 57998, 66072, 67368, 68624 and 69968, who appeared for the CEE-2005 at different centres and were given booklets belonging to the CEE-2005 at different centres and were given booklets belonging to the same series as yours. As opined by the expert, this kind of similarity is not possible without employing some unfair means.

(iii) That 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 contents of paragraph 6 (iii) that there is no direct evidence available with the University against me and that the University has proceeded to issue the 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 those of 8 other candidates with regard to unattempted and wrongly attempted questions 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 8 other candidates is a probability that not highly improbable. Moreover the said similarity allegedly pertaining to 11 unattempted questions and 31 wrongly attempted questions out of a question paper carrying 180 questions too is not a striking feature which could be held against me to incite 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 principles 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) On cover page of your QPB you have encircled 4 of "series 14".

(iv) The fact that on cover page 4 is encircled of series 14.1 cannot receive remember having encircled like this but might have been done just like that without any reason.

(v) On the bottom of page 1 of your QPB You have written the following:

12, 14, 16, 18 1 2 3 4 "B" On top of page 3 of your QPB you have written as follows:

9.30,10.30, 11.30,11.30,12.30 12 14 16 18

1 2 3 A B C D

2 4 6 8

On top of page 6 of your QPB you have written

12

A B C D 2 4 6 8

On page 7 you of your QPB you have written,

12 14 16 18 & 1 2 3 4

The above information, written in your QPB, is An indicator to an attempt to de-codify some Information about the series number.

(v) 9.30 to 10.30, 11.30, 11.30, 12.30 1 2 3 was noted just to divide its time in three subjects and attempt paper from 9.30 to 10.30 first part i.e physics, 10.30 to 11.30 second part chemistry & 11.30 to 12.30 third part i.e. Mathematics. As regards 12,14, 16, 18 & 1,2,3,4 and 12,14,16, 18 as explained were preliminary answers marked by me.

If the above said is an indicator to attempt to de-Codify some information about the series number then the question paper booklets of the 33 students, who have been found guilty of using the unfair in the manner which is now being alleged against me, should also contain the said notations, which they do not. I am not one of those persons who has used unfair means. In case, each answer was to be preceded by a number or alphabet, my booklet would contain answers to the entire 180 questions or to the majority of them. The fact that only 12 random numbers have been indicated shows that I was not a part of the unfair means adopted by a group of students. The said random figures have no relation to the alleged SMS message received by Anshul Aggarwal, which further shows that I had not adopted any unfair means.

(vi) The following hand written information appears on page 7 of your QPB: "** means separation

After 5 questions there is a comma, "O" means no answer"

This information has no direct bearing to the questions in the QPB but is

intimately linked with the interpretation of information regarding key for answers to the questions in the QPB, that you had received clandestinely for making the correct options in OMR sheet for CEE-2005.

(vi) The answer to the allegation with regard to the allegation that I had written "* mark means separation, after five questions there is a, O means no answer" in the question booklet is as follows:

I had made these noting for my own reference from Physics and Chemistry. On some topics which were refreshed by me in the morning and where I had sometimes had some confusion. Also I made some noting to set some ground rules for myself, which was from my experience of previous exams.

Detailed Explanation for each notation is given as under-

* mark means separate ion - The word used by me in the question booklet is not separation but separate ion. It is submitted that in "linear combination of atomic orbital theory" (a subject in Chemistry) * is used to represent anti bonding molecular orbital and to distinguish from Bonding molecular orbital". The relevant page of chemistry book are enclosed along with the present reply.

O means no answer - In "logic gate" a subject of Physics where only binary numbers "0" & "1" are used for input and output for various combination of logic gates and O represents "false" and I represents "true" for output. Relevant pages from physics book are enclosed along with the present reply.

After five questions there is a, - I had suffered in my previous examinations where I could not manage my time in objective type paper as such used to spend lot of time on some questions, of which I was not sure as a result I could not complete my question papers properly. I Therefore decided that I will leave all such questions with my preliminary answers and come back to them in ground of 5 after first attempt of entire paper and if time permits.

It is submitted above said notation are exclusively been used by me for my own purpose as explained hereinabove. It has no relationship with the unfair means and suffice to say that it only proves my innocence.

(vii) On top of page 29 of your QPB you have written DCE, Delhi College of Engineering.

(vii) DCE is the commonly used short form of Delhi College of Engineering. The fact that DCE, Delhi College of Engineering has no relevance and is further not stated as to how this leads any body to believe that I have used unfair means.

MANENDRA SINGH RANA - WPC No. 6320/2006

6. In course of this detailed scrutiny, your QPB and OMR answer sheet was also taken up. You had secured a common rank of 149. The scrutiny revealed as under:

Reply dated 14th April, 2006

(I) In the QPB, you have ticked a probable choice in respect of the questions attempted. However, all the questions attempted by you have been duly encoded in the OMR answer sheet

2. The very purpose of the present Examination Disciplinary Committee was only to fulfill the lacunas left in the earlier E.D.C. and the purpose was not to find out the truth of the allegations and the respective Explanations given by the individual candidate. I also take this opportunity that the E.D.C. was nothing but an eyewash and the findings of the committee are sham. I also say that my earlier reply dated 5.3.2006 was not even remotely discussed by they committee at the time of the so called personal hearing. The said committee took a sample test which appeared to be strict test despite the fact that no such prior notice of any such test was mentioned either in the earlier Show Cause Notice or was communicated to the undersigned. The undersigned took the said sample test despite very hostile atmosphere/environment the committee had created. The undersigned took that sample exam to show his bonafide and despite the fact that for last almost 1 year the undersigned has not prepared for competitive exam.

That it is submitted that no action is desirable against the undersigned as the finding of the E.D.C. are based on hearsay allegation and the committee had not considered the reply filed by the undersigned and proceeded against the undersigned in most mechanical and arbitrary manner in most whimsical manner without any iota of evidence. It is also pertinent to mention that the Ld. Trial Court had returned the charge sheet allegedly filed by the C.B.I. against the undersigned and did not took cognizance against the undersigned. When the C.B.I. after conducting investigation for such long time could not find any evidence against the undersigned of committing the alleged offence of use of unfair means in the said examination and the fact that the Ld. Trial Court had returned the charge sheet against the undersigned.

It is further submitted that no action against the undersigned could be initiated against the undersigned as the University has no evidence of use of unfair means/disorderly conduct during combined entrance examination 2005 held on 29th May, 2005, by the undersigned. The undersigned had appeared in the said examination and followed all prescribed rules and regulations of the University. Neither any student or any invigilator or any other University Official posted/ present at the examination centre has ever complained against the undersigned for any use of unfair means of disorderly conduct during the said examination. Certain other people may or may not have used unfair means or conducted disorderly during the said examination but not the undersigned.

(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 against Q.Nos. 91 and 148 is irrelevant.

3. That after a very long and intensive investigation of the highest esteemed agency of the nation i.e. C.B.I. it has not been able to establish the prima-facie allegation in the court of law i.e. the Trial Court and the Trial Court has returned the charge sheet of this case filed by C.B.I. because of absence/lack of evidence of the allegations leveled by the complaint against the undersigned. And the university is making unsuccessful try to force this false case by misusing the power of the highest esteemed agency i.e. C.B.I.

(iii) Eleven (11) out of nineteen (19) unattempted questions, Nos. 56, 64, 66, 111, 115, 121, 123, 158, 162 and 180, and the Serial numbers and options encoded therein in respect of thirty one (31) questions out of thirty two (32) wrongly attempted questions, match exactly with those of the candidates having Roll Nos. 19496, 22626, 51560, 55580, 57998, 60690, 66072, 67368 and 68624, 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.

4. That no such formal allegations/complaint of using unfair means has been made by the staff of the centre where the said examination had been conducted. When the examinees entered in the examination hall they had been searched and no mobile phones had allowed in the examination halls and thus the allegation of using mobiles phones in the examination hall is false, baseless and nonsense allegation unsupported by any of the staff member of the examination hall/centre.

(iv) Some information written on the first page of "space for rough work" appears to have been erased. Further, an effort to suppress any trace of evidence to this effect has been resorted to by writing some irrelevant matter.

(v) The encoding on your OMR answer sheet for Q.Nos. 1-171 matches exactly with the encoding on the OMR answer sheet of Mr. Divyanshu Rohtagi, Roll No. 68624, appearing from a different centre. A key for answers to Q.Nos. 56-180 is found written in the QPB, Sr.No. 38369, of series 14 which was given to Mr. Divyanshu Rohtagi. 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.

11. 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.

12 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/ Lalit Hooda 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.

13. 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 25th February, 2006 was 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 25th February, 2006 will not be very material to impugn the order passed pursuant to subsequent show cause notices given by the respondents.

14. While challenging the notices dated 25th February, 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 58, 168 to 173 and 175 of petitioner, Varun Jain, were different and allegation of inadequate rough work is based on surmises and conjecture. 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.

15. Petitioner Varun Jain contended that on cover page 4 of "series 14" is

encircled but he does not remember the reason for it. Regarding 9.30 to 10.30, 11.30, 12.30 and 1 2 3 was noted to divide his time in three subjects. As regards 12, 14, 16, 18 & 1,2, 3, 4 were explained as preliminary answers marked by the said petitioner. The said petitioner also contended that his QPB does not contain answers to entire 180 questions or the key to majority of them and only 12 random numbers indicated on his QPB shows that the petitioner was not a part of unfair means adopted by other group of students. The petitioner also gave an Explanation regarding "* mark means separation, after five questions there is 0 means no answer" that he had made these noting for his own reference from physics and Chemistry. Petitioner also give the Explanation for * and 0 and stated that in previous examination he could not manage his time and he suffered and could not complete question paper properly

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*, ; *Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others*, ; *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 LRs., 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. Bidyabhusan 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 *CCSU* 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 Dharmander 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 23.11.2005 and 5.12.2005, 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. Leathem* 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 ventral 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, , Mustaff Vs. Union of India and Others, , 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, , 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 , 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 memorandums 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 Varun Jain and Shri Manendra Singh Rana were also produced which were marked as R1/1 and R15/1 respectively. The digit keys were noticed on the QPB of Varun Jain were encircled and were marked as Q282-Q290 and of Manendra Singh Rana as Q 131-Q134.

37. Shri Varun jain, petitioner, though in his writ petition has denied that he received keys for answers to the questions in the QPB from some external source, however, he is unable to explain the striking similarities in wrong answers and wrong option used by him with other candidates. The questions which have not been attempted by the said petitioner are also almost the same as that of other petitioner Mahinder Singh Rana and other candidates namely Praveen Duhan (Roll No. 22626) and Manik Bansal (Roll No. 66072) who have also impugned identical orders 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 these students, who have instituted proceedings before this Court, there are other students as well, who have not filed any writ petition before this Court, however, in their cases also identical orders were passed by the University who are Amit Prakash (Roll No. 19496); Sumit Dabas (Roll No. 51560); Vatsal Mittal (Roll No. 57998); Dhruv Kishore (Roll No. 67368); Divyanshu Rohatagi (Roll No. 68624) and there are striking similarity between the answers of these candidates and the petitioner. The version given by the petitioner that 9.30 to 10.30, 11.30, 11.30, 12.30 and 1 2 3 was noted to divide his time in three subjects and 12, 14, 16, 18 & 1, 2, 3, 4 were explained as preliminary answers marked by the said petitioner. This Explanation of the petitioner has not been believed. The said petitioner also contended that his QPB does not contain answers to entire 180 questions or the key to majority of them and only 12 random numbers indicated on his QPB shows that the petitioner was not a part of unfair means adopted by other group of students but this Explanation of the said petitioner has not been believed. The petitioner also gave an Explanation regarding "*" mark means separation, after five questions there is 0 means no answer" that he had made these noting for his own reference from physics and Chemistry and the Explanation for * and 0 that in previous examination he could not manage his time and he suffered and could not complete question paper properly and so the notations were devised by him, have not been believed by the EDC and the respondents. The said petitioner was unable to explain the striking similarity and vast difference in his performance in two competitive examinations, as in CEE, 2005 his ranking is 310 whereas in AIEEE, 2005 his ranking was 137567 and his percentage of marks in qualifying examination was measly 74.66% and he scored only 19 marks out 120 marks in 30 questions attempted by him before the EDC.

38. Another petitioner, Manendra Singh Rana, also categorically stated that he had not written anything on his QPB, however, the impression of five-digit numbers are clear on the last page of question paper book which is reserved for rough work and a copy of which has also been produced as R15/1. These five-digit numbers are also surrounded by some other rough work but the existence of five digit keys can not be denied by him. This petitioner has himself stated that he had written the probable answers in the space available for rough work. The answers by this candidate for question Nos. 1,3,6,23,24,27,30,33,51,53,62, 68,74,78,92, 95,99,101,106,112,114,116,120,128,147,153,161 are wrong which is also the case of other candidates namely Praveen Duhan (Roll No. 22626) and Manik Bansal (Roll No. 66072) who have also impugned identical orders 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 these two students, who have instituted proceedings before this Court, there are other students as well, who have not filed any writ petition before this Court, however, in their cases also identical orders were passed by the University who are Amit Prakash (Roll No.

19496); Sumit Dabas (Roll No. 51560); Vatsal Mittal (Roll No. 57998); Dhruv Kishore (Roll No. 67368); Divyanshu Rohatagi(Roll No. 68624). The answers of these students were almost the same as that of the petitioners. The petitioners have also made a grievance of the tabulation of answer books provided by the respondents during the arguments. The tabulations are nothing but the compilation of facts of different answer books, the copies of which were provided to the petitioners. On this ground the petitioners can not contend that a reasonable and fair opportunity was not given to them.

39. The charges stipulated against the petitioner have already been detailed hereinbefore in earlier paras as well as their replies to the show cause notices which were given to them. The petitioners were also given the copies of the subject experts with the show cause notices dated 25th February, 2006, however with the writ petitions filed by them, they have not produced the copies of the subject experts with the copies of show cause notices given to them.

40. In the show cause notices dated 25th February, 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.

41. 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 the 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.

42. 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 whatever rough work has been carried out 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.

43. 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 the petitioner Varun Jain. Coupled with this fact, the other incriminating circumstance is that the questions which have not been attempted by the petitioners are also same except some more questions which have not been attempted by the petitioner Manendra Singh Rana. This is further compounded by the fact that almost all the correct answers of both the petitioners and some other candidates were 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.

44. 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 of "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.

45. 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 25th February, 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.

46. 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.

47. The evidence against the petitioners 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.

48. 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 were 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 have 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 substantial 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 cannot be termed absurd or perverse nor it will be appropriate to substitute different inferences with the inference drawn by EDC even though theoretically some other inferences may be drawn, which have not been drawn by this Court in the present facts and circumstances.

49. 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 of 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.

50. 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.