

IN THE HIGH COURT OF DELHI AT NEW DELHI

**+LPA Nos.39/2007, 40/2007/ 41/2007, 42/2007, 43/2007, 44/2007, 46/2007,
49/2007, 51/2007, 118/2007 and 204/2007**

Date of Decision: 04.07.2008

#Manish Dabas	Appellant in LPA No.39/2007
Varun Jain	Appellant in LPA No.40/2007
Naman Rastogi	Appellant in LPA No.41/2007
Pranjal Vashisth	Appellant in LPA No.42/2007
Manendera Singh Rana	Appellant in LPA No.43/2007
Mohit Banka	Appellant in LPA No.44/2007
Ankit Sehgal	Appellant in LPA No.46/2007
Karan Jain	Appellant in LPA No.49/2007
Deepak Khanduja	Appellant in LPA No.51/2007
Rachit Gupta	Appellant in LPA No.118/2007
Prashant Vats	Appellant in LPA No.204/2007

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Through: Mr.Arvind Nigam with
Mr.Samrat Nigam for the appellants
In LPA Nos. 39, 40, 41, 42, 43, 44, 46,
51 and 204/2007.
Mr.Mike Desai for the appellant in LPA
No.49/2007.

Versus

\$University of Delhi & Anr. ^	Respondent Through Mr.V.P. Singh, Senior Advocate with Mr.Mohinder J.S. Rupal for the University of Delhi. Ms.Avnish Ahlawat with Ms.Latika Chaudhary for DCE and NSIT.
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CORAM :-

***THE HON'BLE MR.JUSTICE A.K.SIKRI
THE HON'BLE MR. JUSTICE J.R. MIDHA**

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

:

1. For admission to the Engineering course, the Delhi University conducted Combined Entrance Examination (CEE) 2005. Result of this exam was declared and merit list prepared. The appellants herein were placed quite high up in the merit list. However, immediately after the declaration of the results on 13.6.2005, the University received some complaints to the effect that unfair means were used in the said examination by many candidates. A preliminary scrutiny was conducted by the University authorities which according to the University revealed that there was some substance in the complaint regarding unfair means. The Registrar of the Delhi University, thus, vide FIR dated 27.6.2005 reported the matter to the Director, CBI for detailed investigation, alleging therein that the facts stated in the said FIR disclose commission of offences punishable under Section 120-B r/w Section 420 IPC r/w 13(d) r/w 12(2) of the Prevention of Corruption Act, 1988. Twenty one candidates were named in the said FIR. The names of the appellants were not in that list. It was alleged in the said FIR that the

University had discovered that at Ranks 13, 25, 36 and 56 of the merit list, there were 5, 3, 2 and 11 candidates respectively who had secured exactly the same marks in Physics, Chemistry and Mathematics, which was an unusual pattern.

2. Thereafter, the University issued show cause notices to many more persons, including the appellants herein on 6.10.2005 alleging that they had also used unfair means in the same examination and it was proposed to cancel the admission of the appellants on that basis. Separate notices were issued to these appellants, who were called upon to show cause why disciplinary action under the provisions contained in Clause 13 read with Clause 9 of Ordinance X-A of the University be not taken against them. The appellants submitted their replies. Thereafter personal hearing was also granted to them. All the appellants were separately interviewed for some time. Vide Memorandum dated 21.10.2005, result of the appellants at CEE-2005 was cancelled and they were debarred from any future examination of the Delhi University for a period of five years from 2005-06. Since the appellants were given admissions in different colleges, in the meantime, those admissions were also cancelled. On the basis of the said Memorandum, the colleges also passed orders cancelling the admissions.
3. Spate of writ petitions came to be filed before this Court challenging

Memorandum dated 21.10.2005. Appellants were also the writ petitioners. When these writ petitions came up for hearing on 5.12.2005, the University sought to withdraw the impugned show-cause notices with liberty to issue fresh show-cause notices. This request of the University was allowed and the writ petitions were disposed of with the direction that the impugned show-cause notice would stand withdrawn and liberty was granted to the University to issue a fresh show-cause notice on the basis of evidence which was collected in this behalf.

4. Fresh show-cause notice dated 27.2.2006 was issued to the appellants. They were also asked to appear before the Examination Disciplinary Committee of the appellant. The appellants submitted their replies. Personal hearing was given when they were also asked to solve a paper carrying 30 questions. Thereafter, another show-cause notice dated 7.4.2006 was issued under Clause 13 of Ordinance X-A of the Delhi University Ordinances calling upon the appellants to show cause why the punishment recommended by the EDC, i.e., the result of the appellants at CEE-2005 be not cancelled. The appellants submitted their replies to such show-cause notices. Not convinced with these replies, the University issued separate Memoranda dated 19.4.2006 to all such persons including the appellants herein stating that the appellants were found guilty of

resorting to unfair means and their results were accordingly cancelled. They were also debarred from appearing in any future examination of the University for a period of five years commencing June 2005. Although there may be some variation in the dates of show-causes notices, dates on which the appellants gave their replies and the dates on which the orders were passed, for the sake of convenience we have taken note of the dates, as appear in LPA No.39/2007.

5. Challenging the aforesaid action of the University, writ petitions were filed by each of these appellants as well as many others. All these petitions were consolidated and heard together. Vide judgment dated 19.12.2006 the learned Single Judge has dismissed these writ petitions. This is how the appellants have filed the present LPAs questioning the legality of the said judgment. We may, however, add that the debarment of five years from 2005 has been reduced to two years to be calculated from the year 2005. This period has already expired. However, the appellants are still persisting with these appeals as they want their admission to be restored on the basis of CEE–2005.
6. Before coming to the challenge raised by the learned counsel for the appellants impugning the judgment of the learned Single Judge, it would be appropriate to summarize the discussion contained in the said judgment as

that would reflect not only the material which was placed before the learned Single Judge and the arguments which the parties had advanced but also the reasons which influenced the learned Single Judge to come to the conclusion that the appellants had used unfair means during CEE–2005 thus upholding the order of the University cancelling their examination.

7. We may also mention at this stage that out of 52 candidates, whose results were cancelled in the first instance, 33 candidates preferred writ petitions on the first occasion. After the first show-cause notice and fresh cancellation orders, only 27 candidates preferred writ petitions second time, which have been dismissed by the learned Single Judge vide the impugned judgment. Against this judgment, only 11 candidates have come up in appeal meaning thereby remaining persons have accepted the decision of the University and/or the learned Single Judge.

The Modus Operandi

8. Before we take note of the judgment of the learned Single Judge, it would be necessary to understand as to what kind of unfair means were used, what was the *modus operandi* and how, according to the University, the appellants also adopted unfair means. It is explained that every year the University conducts Combined Entrance Examination for admission to prestigious engineering courses of the University in Delhi College of

Engineering, Bawana and Netaji Subhash Institute of Technology, Dwarka. CEE–2005 was conducted on 29.5.2005. 120 Centres scattered all over Delhi were identified where the said examination took place. In all about 56000 students appeared in the examination. The question paper booklet (QPB) consisted of 180 objective type questions pertaining to three subjects, namely, Physics, Chemistry and Mathematics (60 questions in each subject). After the result of the examination, merit list was prepared and first 1010 candidates were found eligible to seek admission in the engineering course. Thereafter, complaint was received into which preliminary enquiry was made whereafter matter was referred to CBI. It so happened that two candidates, namely, Mr.Anshul Agarwal (Roll No.16628) and Mr.Saumya Agarwal (Roll No.68059) were caught by the invigilators at the respective examination centre during the course of CEE–2005 and mobile phones having numbers 9872899095 and 9899214819 were recovered from their person respectively. Carrying mobile phones inside the examination halls was prohibited. Mr.Anshul Agarwal had also confessed in the statement given to the Centre Superintendent that the last SMS message received on his mobile phone was “03244312241310”, which apparently consists of a set of numerals. A characteristic feature of this set is that numerals are varying from 1 to 4 with an exception of “0”. It is

interesting to note that in every question in QPB four options having serial numbers 1 to 4 are provided, out of which one of these is the correct answer to the respective question. The serial number of the correct option provides the answer to a question in the digital form. Mr.Anshul Agarwal received QPB bearing serial No.26730 of Series 14. The numerals from second number to the last but one in the above SMS received by him provide key to answers for questions No.168 to 179 of this series and “0” refers to no answer or not attempted question. Further as confessed by him, this message was the last SMS message received by him before the invigilator caught him. On the scrutiny of his QPB, two sets of 5-digit number were found written on page No.28 and in the “space for rough work”. These numbers indicating sets of 5-digit appearing in his QPB provide key to question Nos.1 to 55 of the series 14. These numbers tally with the encoded OMR answer sheets of other candidates for question No.1-55 of series 14, who figure in the bunch results. The case of Mr.Anshul Agarwal quoted above illustrates the manner in which keys for answers for questions in the QPB were constructed in the digit form consisting of set(s) of 5-digit numbers. The numerals in a 5-digit number vary from 1 to 4 and correspond to the serial number of the probable option to the question. Thus one 5-digit number provides a key to five

questions in a block in the OMR sheet and as there were 180 questions to be answered, a complete key to all the questions would therefore consist of a total of 36, 5-digit numbers. These numbers can be written in a variety of ways in a linear form, each number separated from the other by a comma or in a columnar form. From this it is evident that the *modus operandi* was that keys for the answers to questions in the QPB were received clandestinely in the form of sets of 5-digit numbers.

9. Show-cause notices were issued to 52 candidates whose results were cancelled. Out of these, 33 candidates preferred writ petitions on the first occasion, which were disposed of vide orders dated 23.11.2005, 5.11.2005 and 8.2.2006. The nature of these orders was same, namely, the University withdrew the earlier orders with liberty to serve fresh orders. It is stated that thereafter the University entrusted the matter to independent and separate Professors of Physics, Chemistry and Mathematics to look at the matter afresh. The case of all first 1500 candidates in order of merit in the said examination was reopened for scrutiny of their QPB and OMR sheets. The scrutiny revealed that there was unique pattern of bunching of results/ranks. It was observed that in case of bunched cases not only the total marks were same but the marks secured in different segments also tallied. The occurrence of such bunching is highly improbably, it can

happen only when there is a common source of information. Further, it was also observed that the questions which were left not attempted or wrongly answered with the options encoded therein, tallied amongst the bunched candidates. This unusual pattern was not observed in the remaining candidates out of total 1500. In some of the QPBs, some incriminating material was also detected. The candidates where any of the above characteristics features were found turned out to be 52 in number.

Judgment of the learned Single Judge

10. The learned Single Judge noted that in the show-cause notices it was mentioned that the scrutiny done on the basis of complaint revealed that there was bunching of results/rank in certain cases and the questions, which were unattempted and the questions which were wrongly answered, tallied almost the same, which was highly unusual pattern and thus, led the University to believe that certain malpractices were adopted in the course of the said examination, namely, CEE-2005. In agreeing with the submission of the University that there were unfair means used by the appellants herein as well, the learned Single Judge has been persuaded by various circumstances discussed in great length in the impugned judgment. We may summarise the same here under:-

11.A comparison of the answer books of these appellants and other candidates reveal unusual similarity. The questions which were answered incorrectly were the same. Their incorrect options were also the same, though every question had four options. The learned Single Judge has demonstrated so by giving details in this behalf in para 4 of the judgment.

12.Five appellants whose names are mentioned in para 3 of the judgment did not attempt the same questions, i.e., they did not given answers to the same questions, namely, question nos.51, 95, 99, 108, 134, 142 and 143, except Manish Dabas (appellant in LPA No.39/2007), who did not answer question no.164 also and Naman Rastogi, who did not answer question number 180 also.

13.It was the opinion of the experts on the subjects that nature of questions asked was such that in majority of cases some rough work was required, particularly in mathematics and physics. However, these persons had done hardly any rough work. Many had done some rough work and some had done little rough work mostly scanty and inconclusive. The learned Single Judge had found it to be correct after scrutinizing the QPBs, which were produced before him (we may mention that even we had perused these QPBs as well and find this observation to be correct).

14. Some sets of 5-digit numbers were locatable in the rough work done on the first page (space for rough work). Such 5-digit number provide key to the answer to the questions in QBP. One of the 5-digit numbers tallied with the encoding done by some of these candidates on the OMR answer-sheets for certain questions. It was suggestive of information received clandestinely, which was apparently being noted down on that page. The learned Single Judge, in these circumstances, agreed with the inference of the University that there were reasons to believe that since the rough work recorded in certain question papers was erased, that work was the information so recorded, which was later erased and camouflaged by doing some rough work over it.

15. Encoding of certain candidates exactly matched with encoding of other candidates who appeared in the said exam from a different centre. A key for answers to question No.1-180 was written on the page 'space for work' in the QPB of Mr.Kartik Sharma.

16. Apart from the aforesaid features noted in the answer-sheets of these candidates which led to the belief that there was cheating and unfair means used in the examination. The following two additional circumstances weighed with the learned Single Judge in cementing the aforesaid inference, namely:

(i) these appellants had taken entrance exam in other institutions/universities as well, i.e., CBSE AIEEE-2005 and GGSIP-2005.

Though in the CEE–2005 these appellants had secured very high rank in the merit, the ranking in the other two examinations was far below, as is clear from the following chart:-

Sr.	Name	CEE–2005 Series	CEE–2005 Ranks	CBSE AIEEE-2005 Ranks	GGSIP 2005 Ranks
1	Pranjal Vashisht	12	221	2,69,130	19,329
2.	Ankit Sehgal	12	52	1,30,548	
3.	Varun Jain	14	310	1,37,567	
4.	Prashant Vats	14	24	1,01,125 2,08,934 (2007) Phy = 17 Che = 06 Math = 26 Total=49/260	15,009
5.	Manender S. Rana	14	149	4,83,817 (2006)	
6.	Rachit Gupta	16	107	1,08,797	
7.	Deepak Khanduja	16	50	2,47,843 4,31,229(2007) Phy = 04 Che = -7 Math = 17 Total = 14/360	18,738
8.	Manish Dabas	18	92		2346 (2007)
9.	Naman Rastogi	18	35		

10.	Karan Jain	18	52		
11.	Mohit Banka	18	52	4,00,853 (2007) Phy = -3 Che = 4 Math = 17 Total = 18/360	

(ii) As pointed out above, after the second show-cause notice when these appellants were called for hearing, they were given 30 questions to answer which carried total 120 marks. The performance of all these candidates, whose results were cancelled, including the appellants herein, was very poor and abysmal, which would point out to their low calibre who could not have secured such a high ranking in CEE–2005. Following marks were obtained by each of the appellants out of 120 in the said test:-

Sr.	Name	Marks in 30 Qs. before EDC out of 120
1	Pranjal Vashisht	8
2.	Ankit Sehgal	24
3.	Varun Jain	19
4.	Prashant Vats	33
5.	Manender S. Rana	23
6.	Rachit Gupta	26
7.	Deepak Khanduja	Refused
8.	Manish Dabas	3

9.	Naman Rastogi	18
10.	Karan Jain	26
11.	Mohit Banka	18

17. We may also note at this stage that Mr.V.P. Singh, learned senior counsel appearing for the University emphasised before us that apart from the aforesaid, the performance of these appellants in CBSE was also not very encouraging and the marks obtained by them in the CBSE would show that they were very average students. Percentage of marks obtained by them in CBSE or PCM (Physics, Chemistry and Maths), as these were the subjects for which they were tested in CEE–2005:-

Sr.	Name	PCM out of 300 Marks	% of Marks
1	Pranjal Vashisht	214	71.33
2.	Ankit Sehgal	188	62.66
3.	Varun Jain	224	74.66
4.	Prashant Vats	204	68
5.	Manender S. Rana	187	62.33
6.	Rachit Gupta	222	74
7.	Deepak Khanduja	194	64.66
8.	Manish Dabas	224	74.66
9.	Naman Rastogi	235	78.33
10.	Karan Jain	248	82.66
11.	Mohit Banka	215	71.66

18. There appears to be some force in this submission of the learned counsel for the University as well inasmuch as, in science and maths papers the marks which these appellants got ranged between 62% to 78% and one candidate has secured 82%. It is a matter of common knowledge that with these marks the ranking of the appellants in CBSE would be virtually at the bottom of those who passed such an examination. The aforesaid factors, in our opinion, when taken cumulatively, would furnish requisite and sufficient basis to reasonably conclude that performance of these appellants in the CEE–2005 was the result of unfair means.

19. We may note at this stage that learned counsel for the appellants had argued that only inferences were drawn and there was no direct evidence which would establish beyond reasonable doubt the use of unfair means by the appellants. The learned Single Judge rejected this contention of the appellants seeking to invoke the application of the principle “proof beyond reasonable doubt”. In the opinion of the learned Single Judge such cases are to be examined on the touchstone of “preponderance of probability”. We are in agreement with this approach of the learned Single Judge simply because this approach has the support of catena of judgments of the Supreme Court which were taken note of while formulating the aforesaid principle. We quote the relevant extracts from the impugned judgment in

this behalf:-

"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 Education Vs K.S.Gandhi & Ors.** (1991) 2 SCC 716, 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."

20.The learned Single Judge also rightly rejected the contention of the appellants, viz., in the absence of direct evidence, the appellants could not be inflicted with such a severe punishment. This argument was predicated on the non-recovery of mobile phones and non-linking between the appellants with candidates from who mobile phones were recovered and absence of invigilator's report. The learned Single Judge rightly held that

merely because there was no direct link established, it cannot be said that the University could not come to a definite conclusion about adoption of use of unfair means. There was other material, sufficient enough to indicate the use of unfair means. The learned Single Judge in this behalf made the following observations:-

“50. A lot of emphasis had been laid during the arguments on the non-recovery of mobile phones and non-linking between the petitioners with the candidates from whom the mobile phones were recovered and absence of invigilators report. It is apparent that the case of the petitioners is not of direct evidence. As a principle, it cannot be held that whenever there is no report from the Invigilator indicating adoption of unfair means in any examination or till a link is established between the petitioners and those persons from whom the mobile phones were recovered and who admitted receiving the answers to the questions in SMS, the respondents could not come to a conclusion about the adoption of unfair means by the petitioners.. There is no bar for the Expert committee of the respondents to come to a definite conclusion about the adoption of use of unfair means in the examination in absence of recovery of mobile phones and a link between Somiya Aggarwal and Anshul Aggarwal and the petitioners. In **Union Public Service Commission** (supra), the Supreme Court had held that where an expert body comes to a conclusion of a fact, the same should not be ordinarily interfered with by a court of law. In this case, the candidates had appeared in the written examination for Indian Engineering Services and the examiner while examining the answer paper in Civil Engineering paper II reported that the candidate having the next roll number was suspected to have copied the answer paper of the respondent. The papers of two students were, therefore, examined by an expert committee which confirmed that the candidates had copied from each other and there after a show cause notice was issued to both the candidates and after giving a due hearing they were debarred from appearing in any competitive examination for a period of 10 years. It was held by the Apex Court that

mere absence of report would not be sufficient to exonerate the delinquency as in a matter like this it will be difficult to get direct evidence and in such circumstances, if an enquiry is held to be fair and which affords the candidates adequate opportunity to defend themselves, the matter should not ordinarily be examined by courts with same strictness as applicable to criminal charges. The Supreme Court, however, had reduced debarment from ten years to five years.

51. 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 AIR 1966 Supreme Court 875, Board of High School and Intermediate Education Vs. Bagleshwar Prashad had observed that in the matter of adoption of unfair means, direct evidence may some time be not available and in such cases the question will have to be considered in the light of probabilities and circumstantial evidence, however, such an order which is passed by the expert bodies, the High court does not sit in appeal over the decisions and the jurisdiction is limited to see if the order in question is not supported by any evidence at all. In this case, petitioner had given the square root of 45.5625 as 7.675 without doing rough work or calculation and given an explanation that he worked out the square root orally. The Examination Committee was of the opinion that it was not possible to accept the explanation given by the candidate which was rejected and consequently the inference drawn by the Committee that the candidate had found the square root by some improper method was accepted. In the present case the subject experts had opined that questions in CEE, 2005 could not be answered or solved without rough

work. The petitioners in the present writ petitions have almost not carried out any rough work and some of them who have carried out some rough work, but it was found to be insufficient to answer all the questions in different subjects. The explanation to the contrary given by the petitioners have not been accepted and in the present facts and circumstances the opinion of subject experts that rough work was required to solve the questions cannot be faulted and differed with by this court.”

21. Commenting that there was enough material to deduce necessary inference before the EDC, it was observed:-

“52. 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 one or two questions more in case of some of the petitioners and even the options which have been marked by the petitioners which are wrong answers are also the same. Coupled with this fact, the other incriminating circumstance is that the questions which have not been attempted by the petitioners are also same. This is further compounded by the fact that almost all the correct answers of all the petitioners are also the same except few mistakes here and there which has resulted in different marks obtained by them and different rankings. This will constitute sufficient evidence of outside help taken by the petitioners which fact

is further substantiated by the facts that the performance of the petitioners in their qualifying examinations and their performance in solving 30 questions given to them during the hearing after show cause notices, does not commensurate with their performance in the CEE, 2005 examination. Some of the petitioners ranking in other competitive examination also augment inference drawn by the EDC that the petitioners had taken outside help in attempting the question paper. No plausibly acceptable reason has been given by the petitioners for either writing the answers in the form of five digit numbers or their attempt to erase them and EDC has not believed their version. The explanations given by the petitioners have not been believed and in the facts and circumstances it will not be appropriate to draw other inference different from the inference drawn by the EDC and to hold that external source was not used by them and not to impose punishment on the petitioners.”

22. We approve the aforesaid observations of the learned Single Judge as well.

The attempt on the part of the learned counsel for the appellants to dislodge the aforesaid findings and to suggest that there was no evidence to implicate the appellants, does not inspire us.

23. In view of our aforesaid discussion, there is hardly any reason to take a view different than the one taken by the learned Single Judge. If the contention of the appellants is accepted, viz., there should be a direct evidence of cheating, i.e., either the candidate should be caught red-handed by the invigilator or in a case like the present one there should be some link established between the appellants and the persons who were caught red-handed, it would mean ignoring all the other circumstances

which categorically establish unusual similarity in the pattern in which all these candidates answered the questions. The circumstances, as pointed out above, can be glossed over and they are adequate to form basis for a reasonable person with ordinary prudence to draw the legitimate inference of cheating/unfair means used by the appellants in the said examination.

24.It is stated at the cost of repetition that the experts in the field, namely, those conversant with the intricacies and nuances of Physics, Chemistry and Mathematics would know better that same pattern of obtaining marks by all these candidates is highly unusual and cannot be present unless there is cheating. Once such a conclusion is arrived at by the experts, it is not in for this Court to interfere with the same unless it is shown that there is perversity in those findings. We find none.

25.The last effort on the part of the learned counsel for the appellants, to dislodge the conclusion arrived at by the Court below was that the learned Judge was influenced by the results of other entrance examinations as well as the marks obtained by these appellants in the 30 questions which they were asked to answer at the time of personal hearing, which was not proper. His submission was that in so far as result of other examinations is concerned, it is not even made the subject-matter of show-cause notice or the impugned order of cancellation and therefore, having regard to the

principles laid down by the Supreme Court in Mohinder Singh Gill v. Chief Election Commissioner, **AIR 1978 SC 851**, this material could not have been taken into consideration. As regards the marks obtained by these appellants in the test taken at the time of personal hearing, submission was that this was done without any notice to the appellants who were taken by surprise and were not prepared to take such an exam. There was time lag between CEE–2005 and the said test and therefore on the basis of results of the said test adverse inference could not have been drawn against the appellants.

26. In so far as the first contention is concerned, while rejecting the same, the only observation which we would like to make is that various similarities were found in the QPBs of these candidates, as highlighted above. We again reiterate that as per the experts, finding of such similarities, namely, answering same questions; ticking same options while giving wrong answers to same questions would be very unusual and is possible only if there is some link between them through some unfair methodology. When this is accepted which was primary consideration to draw a reasonable conclusion about adoption of unfair means, there was nothing wrong for the Court to take additional circumstances like the results of these candidates in CBSE and the performance of these candidates in other

entrance examinations, to cement that conclusion. It was permissible for the Court to take these factors into consideration while refusing to exercise discretionary jurisdiction in favour of the appellants under Article 226 of the Constitution.

27. In so far as the second contention is concerned, that also needs outright rejection. May be with passage of time there can be slight decline in the performance, more so when a candidate had not prepared for the said test. However, the performance cannot be completely off the mark and far inferior to the performance in CEE–2005. When we compare the two results, namely, the marks obtained by these candidates in CEE–2005 with the test taken later, it is not believable that the two tests are taken by the same person with such varying results. Therefore, to that extent it will also be a factor which would lend credence to the inference/conclusion drawn by the University that the appellants had used unfair means in the exams.

28. We accordingly do not find any merit in all these appeals, which are hereby dismissed. However, parties are left to bear their own costs.

(A.K. SIKRI)
JUDGE

July 04, 2008
HP.

(J.R. MIDHA)
JUDGE