
(2002) 05 AHC CK 0126
In the Allahabad High Court
Case No : C.M.W.P. No. 9889 of 2002

Krishna Kumar Upadhyay

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-05-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 409, 467, 468, 471
Uttar Pradesh Intermediate Education Act, 1921 — Section 7
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 4(2)

Citation : AIR 2002 All 331 : (2002) 3 AWC 2271 : (2002) 2 UPLBEC 1720

Hon'ble Judges : Vineet Saran, J;G.P. Mathur, J

Bench : Division Bench

Advocate : S.N. Tiwari, for the Appellant; Rudreshwari Prasad and P.K. Srivastava, C.S.C., for the Respondent

Final Decision : Disposed Of

Judgement

G.P. Mathur, J.—This writ petition under Article 226 of the Constitution has been filed by 175 students of Smt. Harpyari Devi Inter College, Rohai, district Hathras (Mahamaya Nagar) praying that a direction be issued to Madhyamik Shiksha Parishad, U. P. (Board of High School and Intermediate Education, Allahabad) to allot roll numbers to them and to permit them to appear in the High School examination which was scheduled to commence on 18.3.2002.

2. There is an institution known as Smt. Harpyari Devi Inter College, Rohai, district Hathras (Mahamaya Nagar) (hereinafter referred to as the institution), which is recognised by the Board of High School and Intermediate Education, U. P., Allahabad (hereinafter referred to as the Board) in accordance with U. P. Intermediate Education Act, 1921 (hereinafter referred to as the Act). The institution, however, does not receive grant-in-aid from the State Government. The writ petitioners claim that they are regular students of High School class in the institution and they filled up the examination forms for the High School, examination and also deposited the examination fee with the principal of the

Institution. The Principal of the institution, thereafter, forwarded the examination forms and the examination fee to the District Inspector of Schools, Hathras (for short D.I.O.S.) on 7.8.2001. The High School examination was scheduled to commence on 18.3.2002. The Board allots the roll numbers to the students for the purpose of appearing in the examination and a communication in that regard is sent to the institution. Shortly before the commencement of examination, the petitioners came to know that the Board had not allotted any roll number to them due to which they cannot appear in the examination. The writ petition was accordingly filed by the petitioners praying for allotment of roll numbers and for a direction to the Board to permit them to appear in the ensuing High School examination.

3. The petition came for admission hearing before this Bench on 16.3.2002 (Saturday) at about 4 p.m. Learned standing counsel, on the basis of instructions given by Additional Secretary of Board, who was present in Court, informed the Court that as the examination was commencing at 2.30 a.m. on 18.3.2002 (Monday) and the time was too short, it would not be possible for the Board to make necessary arrangement for holding of the examination of the writ petitioners in Rohai in district Hathras, which is more than 500 kms. away from Allahabad. For holding the examination, the requisite number of papers of all subjects and examination copies have to be sent and seating arrangement, etc. has to be made and on account of paucity of time, it was not possible to do all that which is necessary for a proper conduct of the examination. The respondents were given time to file counter-affidavit and notice was issued to the principal and Committee of Management of the institution which, after exchange of affidavits, appear to be the main party to the writ petition. The learned standing counsel had assured the Court that in the event the writ petition was allowed, the Board would hold a fresh examination of the writ petitioners so that their year was not wasted.

4. Section 7 of the Act confers powers on the Board to conduct examination at the end of the High School and Intermediate courses, to admit candidates to its examination, to demand and receive such fee as may be prescribed in the Regulations and to publish or withhold publication of the results of its examination wholly or in part and to do all such other acts and things as may be requisite in order to further the objects of the Board as a body constituted for regulating and supervising High School and Intermediate Education. The system for submission of the examination forms is that the students fill up the examination forms and deposit the examination fee of Rs. 150.75 in cash with the principal of the college. The principal then deposits the entire examination fee of all the students in the Government treasury. All the forms, a copy of the treasury challan and some other documents along with a smarika (memo) are then deposited in the office of D.I.O.S. by the Principal of the institution in a sealed packet. The D.I.O.S. sends the sealed packet to the Regional Secretary of the Board for further action like allotment of the roll number and holding of the examination. The office of the Regional Secretary of the Board for the district of

Hathras is located at Meerut. The last date for submission of the examination forms with the D.I.O.S. is normally in the month of August and this system is continuing for the last more than 50 years. Regulation 4 (2) of Chapter XII of the Regulations framed by the Board provides that the last date for submission of the examination forms of the students and the treasury challan is 14th August and along with late fee of Rs. 20 upto 31st August. However, in the present academic session, the Board had resolved that the last date for submission of the forms in the office of the D.I.O.S. would be 31.8.2001 and along with late fee, it would be 7.9.2001. There is no dispute regarding these facts.

5. In the counter-affidavit filed by Sri Santosh Kumar Misra, Deputy Secretary of the Board, it is averred that the Principal of the institution sent the examination forms of the students in a sealed packet to the office of the D.I.O.S., Hathras. on 22.10.2001, long after the expiry of the last date. The D.I.O.S. then sent the packet through a .special messenger to the Regional Secretary of the Board at Meerut on 29.10.2001. The Regional Secretary. Meerut, returned the examination forms on 6.11.2001 with certain objections, namely, to explain the reasons for delay in sending the forms and further to verify whether the late fee had been paid. It was also mentioned in the objection that after opening the sealed packet, it was revealed that no smarika (memo) was sent along with the examination forms nor there was any treasury challan regarding the deposit of the examination fee in the Government treasury. The D.I.O.S. then sent a letter to Sri Girish Pachauri, Principal of the institution (respondent No. 5) on 28.11.2001 asking him to appear in his office on the same day along with the Smarika (memo) and the treasury challan so that the same may be forwarded to the Regional Secretary after verification. In the letter, it was mentioned that the matter was extremely serious and should be given top priority otherwise he will be personally responsible for the lapse. However, the principal of the institution neither appeared in the office of the D.I.O.S. on the said date nor on any subsequent date nor he gave any reply. The D.I.O.S. then wrote another letter to the Principal. Sri Girish Pachauri on 5.12.2001. informing him that inspite of receipt of his letter on 28.11.2001, he had not appeared in his office till that day (5.12.2001) and as the smartika (memo) and treasury challan regarding deposit of examination fee had not been submitted, the examination forms sent by him were being returned. It was also mentioned in the letter that on account of return of the forms, the number of the students appearing from his institution would be treated as zero and for which the D.I.O.S. would not be responsible. The examination forms were also returned. The copies of both these letters were also forwarded to the Regional Secretary of the Board, Meerut. Secretary of the Board, Allahabad, Joint Director of Education, Agra and Director of Education, Lucknow. The copies of these letters have been filed as Annexures-C.A. 2 and C.A. 3 to the first counter-affidavit. Sri Girish Pachauri. Principal of the institution, then sent a letter to D.I.O.S., Hathras, on 10.12.2001 informing him that the examination forms had been deposited late as he was on leave on account of the fact that his son had received injuries and he will clarify the

position regarding smarika (memo) and the treasury challan after return of the clerk of the institution who was on leave and in case the same had not been deposited, it would be done within 3 days. The D.I.O.S. then sent another letter to the principal of the institution on 22.12.2001 stating that till that day the treasury challan regarding deposit of examination fee had not been submitted and the Regional Secretary, Meerut, had declared that the number of students appearing from his institution in the High School and Intermediate course was zero, for which he was personally responsible. A copy of this letter was also sent to all the four education authorities mentioned earlier and a copy of the same has been filed as Annexure-C.A. 5 to the first counter-affidavit. It is averred in paragraph 5 (e) of the first counter-affidavit that the D.I.O.S. personally visited the institution on 8.4.2002 and 9.4.2002 but no records were shown to him. Thereafter on 10.4.2002 the Principal appeared in the office of the D.I.O.S. and produced the treasury challan dated 21.3.2002 regarding deposit of Rs. 26,250 as examination fee. It is noteworthy that this deposit has been made subsequent to the order which had been passed in the writ petition on 16.3.2002 by which notice in the writ petition had been issued to the respondents including Sri Girish Pachauri, respondent No. 5.

6. Certain other very important facts have been stated in the first counter-affidavit of Sri Santosh Kumar Misra, Dy. Secretary of the Board. It is averred in paragraph 5 (h) of the counter-affidavit that Sri Girish Pachauri, Principal of the institution (respondent No. 5) had not deposited the examination fee of the year 1992, 1993, 1994, 1995 and 1996 amounting to Rs. 89,159. For the year 2001, the treasury challan of Rs. 15,772 submitted by him was found to be forged after verification and consequently, F.I.Rs. had been lodged against him at the police station.

7. Learned standing counsel has submitted that there are some institutions which are functioning in the rural area and in the interior of the districts wherein the Principal and the staff actively connive and help the students in indulging in copying in the Board's examination. For this, the Principal and the teachers charge heavy sum of money and they themselves actively participate in the use of all kinds of unfair means. These institutions acquire considerable notoriety and become well-known and unscrupulous students spend huge sum of money so that their examination centres may fall in the aforesaid institutions, and by use of unfair means, they are able to secure very good marks. It appears that the institution in question, namely, Smt. Harpyari Devi Inter College, Rohai, Hathras, had also earned such a name. The education authorities, therefore, took measures so that it may not be made the examination centre for the purpose of the Board's examination. The Joint Director of Education, Agra, wrote a letter on 7.1.1998 to the District Magistrate, Hathras, seeking his report regarding four institutions including the institution in question for making them examination centres. The District Magistrate then sent a letter to the Joint Director on 22.1.1998 that the secret enquiry done by him revealed that Sri Girish Pachauri, Principal of the institution, takes huge sum of money from the students to enable

them to adopt all kinds of unfair means and he somehow so manages that the students of coaching schools of even far off places like Delhi and Ghaziabad also appear in the Board's examination from his institution. It was also mentioned in the letter that the assets possessed by Sri Girish Pachauri were grossly disproportionate to his known source of income and he was one of the biggest "copying mafias" of the district. A copy of the letter of the District Magistrate, Hathras, has been filed as Annexure-CA9 to the counter-affidavit.

8. A third counter-affidavit has been filed by Sri Santosh Kumar Misra (sworn on 30.4.2002) wherein it is averred that on account of non-deposit of examination fee for the years 1992 to 1996 amounting to Rs. 85,119 an F.I.R. was lodged against Sri Girish Pachauri u/s 409, I.P.C. on 8.5.2000, on the basis of which case Crime No. 73 of 2000 has been registered against him. A second F.I.R. under Sections 409, 467, 468 and 471, I.P.C. was lodged against Sri Girish Pachauri on 6.6.2001 as the treasury challan submitted by him regarding deposit of examination fee of the year 2001 was found to be forged and on its basis, case Crime No. 45 of 2001 has been registered. These two F.I.Rs. were lodged by Smt. Kusum Bhatnagar, Regional Secretary, Board, Meerut. A third F.I.R. was lodged against Sri Girish Pachauri by Sri Ravindra Singh, D.I.O.S., Hathras, on 9.1.2002 u/s 409, I.P.C. as he did not deposit Rs. 30,375.75 towards amanya shulka which had been deposited by the students of intermediate class in the year 2001. This fee is paid by those students who submit their examination forms for a subject for whose teaching the institution concerned is not recognised by the Board. Copies of these F.I.Rs. have been filed as Annexures-S.C.A. 1, S.C.A. 4 and S.C.A. 9 to the third counter-affidavit.

9. Another counter-affidavit has been filed by Sri Ravindra Singh, D.I.O.S., Hathras (in Hindi, sworn on 20.4.2002) wherein it is averred that in fact, the writ petitioners are not regular students of Smt. Harpyari Devi Inter College. It is averred in paragraph 5 onwards that the examination forms of the students were delivered in a sealed packet in the office of the D.I.O.S. on 22.10.2001 though it contained a forwarding letter dated 7.8.2001. The details of the various letters sent by the D.I.O.S. to the Principal of the institution on 28.11.2001, 5.12.2001 and 22.12.2001, reference of which has been made in the first counter-affidavit, has also been given.

10. Sri Girish Pachauri, Principal of the institution, has filed four counter-affidavits. In the first counter-affidavit (sworn on 17.4.2002), it is averred that he had deposited the examination forms and all the papers. In paragraph 6. it is averred that he again deposited the fee on 21.3.2002.

11. In the second counter-affidavit (sworn on 22.4.2002), it is averred that he has some personal enmity with Sri Ramvir Upadhyaya who was an M.L.A. and he was instrumental in passing of some orders by which it was directed that the institution in question will not be made the examination centre for the Board's examinations. However, this was challenged by the Committee of Management of the institution by filing Writ Petition No. 38990 of 1998 in which the High Court

stayed the operation of the order by which it was directed that the institution shall not be made the examination centre. In the next year also. Writ Petition No. 10282 of 1999 was filed by Teachers and Guardians Association of the institution in which an order was passed by the High Court on 19.3.1999 directing the Board to decide the representation which was ultimately decided against the institution. The Writ Petition No. 51992 of 1999 was filed in which on account of non-filing of counter-affidavit, an interim order was passed on 2.2.2000 that the institution in question shall be made the examination centre. It is also averred that on account of non-compliance of the order Contempt Petition No. 3789 of 1999 was filed. Again, for the year 2001, the Committee of Management filed Writ Petition No. 6247 of 2001. in which an interim order was passed on 19.2.2001, directing that the institution be made examination centre for the year 2001. It is also averred that with regard to F.I.R. which had been lodged on 8.5.2000 (Case Crime No. 73 of 2000, u/s 409, I.P.C.) after investigation, the police had submitted final report on 25.5.2000. Similarly, regarding the F.I.R. which had been lodged on 20.5.2001 (Case Crime No. 45 of 2001 under Sections 409, 467, 468 and 471, I.P.C.) after investigation, final report has been submitted by the police on 28.12.2001.

12. In the third counter-affidavit filed by Sri Girish Pachauri (sworn on 23.4.2002), it is averred in paragraph 4 that the necessary documents for submission of the examination forms were prepared on 7.8.2001 but the same were actually deposited in the office of the D.I.O.S. on 22.10.2001. In paragraph 5, it is admitted that the students had deposited their examination forms and examination fee with the principal of the institution within time. It is stated in paragraphs 5, 6 and 7 of this affidavit that the forms along with smarika (memo) and treasury challan were deposited in the office of the D.I.O.S. on 22.10.2001 which were checked and received by the D.I.O.S. It is also stated in paragraph 7 that the examination forms were not returned to the principal of the institution but only a letter dated 5.12.2001 of the D.I.O.S. was served upon the principal to which he gave a reply.

13. The writ petition was heard by us on 23.4.2002. In view of the fact that a specific stand had been taken in the counter-affidavit filed on behalf of the Board and the D.I.O.S. (respondent Nos. 2 to 4) that the Principal of the institution had not deposited the examination fee and had not submitted the treasury challan when the examination forms were deposited in the office of the D.I.O.S. on 22.10.2001 and also that the Principal in his earlier affidavits had not disclosed the date of deposit of fee in the Government treasury, Sri Girish Pachauri, Principal of the institution, was directed to produce the original treasury challan in Court and the case was fixed for hearing on 1.5.2002.

14. Sri Girish Pachauri then filed a fourth counter-affidavit (sworn on 1.5.2002). In paragraph 7 (a) of this affidavit a plea has been taken that the treasury challan is in duplicate out of which one copy is retained with the treasury and the second copy was attached with the smarika (memo), which was deposited on

22.10.2001 and, in these circumstances, it was not possible to produce the copy of the treasury challan exhibiting deposit of fee in the Government treasury. In paragraph 7 (b), (c) and (d), it is stated that on 1.9.2001 and 6.9.2001, he asked the clerk of the institution to deposit the examination fee. His son met an accident on 7.9.2001 and, therefore, he was busy in his treatment upto 21.10.2001. He went to the institution on 22.10.2001 when the clerk showed the receipt dated 22.10.2001, regarding deposit of the documents in the office of the D.I.O.S., on which he became satisfied. It is also averred that he redeposited the fee on 21.3.2002.

15. In the second counter-affidavit filed by Sri Ravindra Singh, the D.I.O.S., Hathras, (in Hindi sworn on 20.4.2002), it has been specifically averred that the writ petitioners are not regular students of Smt. Harpyari Devi Inter College, Rohai, as they were not registered as the students of the college in the class IX. Some of the students belong to another college, namely, Vivekanand Vidyalaya, Hathras. In the present writ petition, it is not possible for this Court to find out as to who amongst the writ petitioners are the regular students of the institution and were entitled to submit the examination forms through same. However, this fact has some bearing on the other issues which arise in the case.

16. According to the prevailing system and the Regulations framed by the Board, the regular students of a college submit their examination forms and deposit the examination fee for the Board's examination in the month of August with the principal of their college. The principal then deposits the entire fee in the Government treasury. Regulation 4 (2) of Chapter XII of the Regulations made by the Board clearly provides that the principal of the college shall forward the examination forms along with the treasury challan latest by 14th August. The examination forms may be accepted by 31st August along with late fee of Rs. 20 per student. In the academic session 2001-2002, the Board had passed a resolution whereby the date for submission of the forms was extended till 31st August and the last date for acceptance of the forms along with late fee was 7th September, 2001. Though the forms have to be submitted in the Board but for the convenience of the colleges, a system has been evolved wherein the examination forms along with a smarika (memo) and the treasury challan (which is the receipt regarding deposit of examination fee in treasury) are delivered in a sealed packet in the office of the D.I.O.S., The D.I.O.S. then sends the sealed packet to the regional office of the Board. The Smarifca (memo) is a long document containing several columns which is to be filled in by the principal of the college. The sealed packet is not opened by the D.I.O.S. and it is forwarded to the regional office of the Board as it is. Therefore, the D.I.O.S. has no occasion to know or verify whether the sealed packet contains the Smarika (memo) and the treasury challan.

17. In the first and third counter-affidavit filed by Sri Santosh Kumar Misra, Dy. Secretary of the Board, it has been specifically averred that the examination forms were submitted in the office of the D.I.O.S. on 22.10.2001, which were

sent to the regional office at Meerut through a special messenger on 29.10.2001. The Regional Secretary then sent a letter dated 6.11.2001 that after opening of the sealed packet it was revealed that smarika (memo) and the treasury challan were not present. The D.I.O.S. by his order dated 28.11.2001 directed the principal to appear before him on the same date along with the memo and the treasury challan. Since the principal did not respond to the aforesaid letter, another letter was sent by the D.I.O.S. on 5.12.2001, intimating him that as the memo and treasury challan had not been submitted, the examination forms were being returned and the Board had treated the number of students who were appearing in the examination from his institution as zero. Annexure-C.A. 3 to the first counter-affidavit is the copy of the letter of the D.I.O.S. dated 5.12.2001 and it clearly mentions that the examination forms in original are being returned. In the reply sent by the principal on 10.12.2001 (copy filed as Annexure-4), the only thing stated was that the clerk of the institution was on leave and after he returns, the position will be explained and in case the smarika (memo) and the fee had not been submitted, the same will be done within 3 days. Though the stand taken in the fourth counter-affidavit filed by Sri Girish Pachauri, the principal of the institution is that the examination forms had not been returned but in his reply dated 10.12.2001 to the letter of the D.I.O.S. dated 5.12.2001, he nowhere said that the examination forms had not been received by him. It is important to note that in all the four counter-affidavits filed by Sri Girish Pachauri, the date of deposit of examination fee in the Government treasury has not been disclosed. Despite a clear order passed by the Court on 23.4.2002 to produce the original treasury challan, the same was not produced. A stand has been taken in the fourth counter-affidavit (sworn on 1.5.2002) that as the treasury challan is in duplicate only, and a copy is retained by the treasury and another was "submitted along with the examination forms on 22.10.2001, he was not in a position to produce the original treasury challan. The learned standing counsel and also the Additional Secretary of the Board who was present at the time of hearing of the writ petition, have made a statement that the treasury challan is in triplicate and one copy of the same is retained by the Principal of the institution for his own record. The standard practice regarding deposit of any amount in the Government treasury is that one copy of the challan exhibiting the deposit of amount is always given to the person making the deposit for the purpose of his own record. A specific query was made by the Court to the learned counsel for Sri Girish Pachauri to give the date of deposit of examination fee in the treasury but he could not give any details. It is, therefore, established beyond any shadow of doubt that though the last date for submission of the examination forms along with late fee was 7.9.2001 but in the present case the examination forms were submitted in the office of the D.I.O.S. on 22.10.2001 and this too was done without deposit of examination fee in the Government treasury.

18. In the third counter-affidavit filed by Sri Girish Pachauri (sworn on 23.4.2002), it is admitted in paragraph 5 that the students had deposited the

examination forms, the examination fee with the Principal of the institution within time. In paragraph 4, it is admitted that necessary documents for submission of the forms were prepared on 7.8.2001 but were deposited on 22.10.2001. An attempt has been made by Sri Girish Pachauri to explain the delay in submission of the forms by saying that his son met an accident on 7.9.2001 and he was busy in his treatment in Agra till 22.10.2001. It is a strange coincidence that the son met the accident on the same date which was the last date for submission of the forms along with late fee. Except for the bold assertion, no material has been filed along with the counter-affidavit to show that his son had met an accident and that he was undergoing treatment in the Medical College at Agra, Agra is only 55 kms. from Hathras and one can easily cover the distance in 1-1/2 hours. That apart, the personal presence of the Principal is not required for the purpose of depositing the sealed packet in the office of the D.I.O.S. and any one of the institution can do it. It is obvious that the Principal deliberately did not deposit the examination forms in the office of the D.I.O.S. till 22.10.2001. It is quite likely that during this period deals were being struck with the students who would be shown to be regular students of the institution and whose forms would be forwarded so that they may be provided the help and assistance in using unfair means in the Board's examination.

19. The provisions, of Chapter XII of the Regulations of the Board regarding deposit of examination forms and the examination fee by a particular date are mandatory. The Board conducts examination of a huge number of students for High School and Intermediate classes. This year the number of students who appeared in the Board's examination in High School and the Intermediate classes is more than 33 lakhs. In Intermediate class, in different discipline like arts. science, commerce, agriculture, etc. there are in all 144 subjects having 373 examination papers. Similarly in High School class, there are 40 subjects having 49 examination papers in different disciplines. These figures have been given in writing by Shri A. N. Verma, Additional Secretary, U. P. Board at Allahabad, who was present in Court at the time of hearing. In view of this gigantic task of holding examination of such a large number of students who appear in different papers in different disciplines including practicals the Board has to maintain a strict time schedule for submission of examination forms and examination fee. In case, the colleges are permitted to submit the examination forms after the last date fixed for the purpose and at their sweet-will, the entire working of the Board will be paralysed and it will not be able to maintain the time-schedule for holding of the examination in March extending upto middle of April and the declaration of the results in June. Therefore, the time-schedule for submission of the examination forms must be strictly adhered to by the students and also by the head of the institutions. Since in the present case, the examination forms were submitted in the office of the D.I.O.S. on 22.10.2001 though the last date for receipt thereof along with late fee was 7.9.2001 and also the fact that the examination fee had not been deposited in the Government treasury till that stage but was deposited for the first time after filing of the writ

petition on 21.3.2002. the writ petitioners cannot claim any legal right that they should be allotted roll numbers and they may be permitted to appear in the Board's examination.

20. It appears from the material brought on record that the main responsibility for not submitting the examination forms and the examination fee is that of the principal of the institution and some of the writ petitioners may have deposited the forms and the examination fee with the principal of the institution before 7.8.2001, Therefore, taking a sympathetic view and in order to avoid wastage of one year, we are of the opinion that the Board should be directed to hold a fresh examination of the writ petitioners.

21. Learned standing counsel has strenuously urged that this Court should issue some directions in order to check the malpractice which is adopted by Principals of some colleges in the State of U. P. who misappropriate the examination fee deposited by the students thereby causing loss to the public exchequer and who actively connive and assist the students in use of unfair means after realising huge amount of money. He has submitted that unless stern measures are taken to stop this malpractice, the entire system of examination of High School and Intermediate classes being conducted by the Board would get polluted causing irreparable injury to the vast majority of honest and bona fide students who take the examination in a true spirit and where their knowledge and learning is properly assessed. Teaching is the most noble profession and a teacher commands respect for his knowledge and learning and the efforts he has made for grooming the students to acquire knowledge and build up their character and become a good citizen of the country. The future of the nation lies in its students. A teacher is never recognised by his personal affluence and wealth. If some teachers or principals are utilising their position to make illegal money by adopting wrong methods, it must be curbed by taking stringent measures. As stated earlier, the Board of High School and Intermediate Education, U. P. has to perform a gigantic task of holding examination of over 33 lakh students of High School and Intermediate classes, the number of papers in which the examinations have to be conducted is also very big as there are 40 subjects in different disciplines having 49 papers in High School class and 144 subjects having 373 papers in different disciplines in the Intermediate classes. The Board has to send the requisite examination copies and the requisite number of papers of different types to various examination centres spread all over the State, some of which are in remote villages. The conduct of the examination requires a high degree of secrecy as well as making of innumerable arrangements. The Board also maintains complete record of the date of birth and the marks secured by a student in different papers for a long period. This was shown before a Division Bench to which one of us (G. P. Mathur, J.) was a member on 20.4.2000 in Special Appeal No. 290 of 2000, where a dispute of date of birth had arisen after retirement of a Government servant. Learned Standing Counsel was able to produce within 48 hours the original record relating to his date of birth and the marks obtained by him in various papers and other details though he had passed

the High School examination exactly half a century back in the year 1950. The maintenance of records of such a large number of students is not an easy job. Though many degree colleges and universities in the State of U. P. have not been able to maintain the time-schedule for completion of academic session and holding of examination, but the Board regularly holds the examination in March/April and declares the result in June. There has never been any default on its part in maintaining the time-schedule in the last half a century. Any effort by those who want to disturb the working of the Board or who have made the conduct of examination by the Board a means to make illegal money should not be tolerated and must be dealt with appropriate stringent measures. We, therefore, consider it our duty to issue some more directions in view of the facts which have come to our notice in the present case.

22. The writ petition was initially heard by a learned single Judge as an education matter but he passed an order on 7.3.2002 for placing the writ petition before the appropriate Bench as a public interest litigation. Thereafter, the matter was placed before this Bench.

23. It is disclosed in the third counter-affidavit filed by Sri Santosh Kumar Misra, Deputy Secretary of the Board, that on account of non-deposit of examination fee of High School examination for the years 1992, 1993, 1994, 1995 and 1996 and Intermediate examinations of 1994 amounting to Rs. 85,119.20 an F.I.R. u/s 409, I.P.C. was lodged by Smt. Kusum Bhatnagar, Regional Secretary, Board, Meerut, against Sri Girish Pachauri at the concerned police station on 8.5.2000 on the basis of which Case Crime No. 77 of 2000 was registered against him. It is mentioned in the F.I.R. (Annexure-SCA 1) that for nearly one year repeated letters were sent from the regional office of the Board to Sri Girish Pachauri to produce the copy of the challans and give details of the date of deposit of the examination fee but he did not furnish any document nor gave any details, etc. Thereafter, a team consisting of Assistant Account Officer of the Board and two others of the same office made enquiries in the Government Treasury, Hathras, and it was revealed that the examination fee had not been deposited. The report of the team was also filed along with the F.I.R. However, the incharge of the police station submitted a final report within 15 days on 23.5.2000, mentioning that from the statement of the witnesses and documentary evidence, no offence is made out against the accused Girish Pachauri. To say the least, the investigation done in the case appears to be most perfunctory and the reasons given for submitting the final report are wholly irrelevant and unsatisfactory. The fact whether examination fee has been deposited in the Government Treasury or not, can be ascertained from the records of the Government Treasury, Hathras, with absolute certainty. The Regional Secretary of Board at Meerut is a Class I State Government servant and is a responsible person. A team of three officers headed by an Assistant Account Officer was deputed by the Board to make enquiry in the treasury, who after examining the records, submitted a report that the examination fee had not been deposited. It is not a matter which is to be decided on the basis of oral statement of witnesses but from the Government

records. The Investigating Officer did not find that the examination fee had in fact been deposited, yet he submitted a final report. The Regional Secretary of the Board lodged a second F.I.R. against Girish Pachauri under Sections 409, 467, 468 and 471, I.P.C. at the concerned police station on 6.6.2001 which was registered as Case Crime No. 45 of 2001 (copy filed as Annexure-SCA 4). The allegation in that F.I.R. is that Girish Pachauri submitted forged documents showing deposit of fee of Rs. 26,626 for the High School/ Intermediate examination in the year 2001. On verification from the treasury, the challans submitted by him were found to be forged. In this case also, a final report has been submitted by the concerned police station on 28.12.2001. The reason given therein is that someone else had attached the forged treasury challan along with the examination forms and there was no dishonest motive on the part of the accused, Girish Pachauri. Here again, the investigation of the case does not appear to have been fairly done as there is no finding that the amount of fee had actually been deposited in the Government Treasury. If examination fee had been realised from the students and the same was not deposited in the treasury, it would certainly amount to an offence u/s 409, I.P.C. Examination forms and treasury challans are submitted by the Principal of the institution in the office of the D.I.O.S. in a sealed packet and no one else can have any reason, motive or occasion to submit forged treasury challan. In our opinion, the allegations made in both the F.I.Rs. are quite serious and. therefore, they should be investigated again by an independent agency.

24. A third F.I.R. has been lodged by Sri Ravindra Singh, D.I.O.S.. Hathras, against Girish Pachauri on 9.1.2002 u/s 409, I.P.C. which has been registered as Case Crime No. 23 of 2002 on the ground that he realised Rs. 30,375.75 as amanya shulk (fee) from the students of Intermediate class for the examination held in the year 2001 but the same was not deposited by him in the treasury. The reply given by Girish Pachauri in his fourth counter-affidavit is that the amount was deposited in the treasury on 12.4.2002. It may be noticed here that in the writ petition an order had already been passed on 16.3.2002 issuing notice to him and the notice was also served upon him personally. Even assuming that the amount has been deposited on 12.4.2002, the same was done after notice had been issued to him in the writ petition. The amanya shulka had been paid by the students for an examination held one year earlier in March, 2001. Section 403, I.P.C. defines misappropriation and Explanation I to this section provides that a dishonest misappropriation for a time only is a misappropriation within the meaning of the section. In this case, the concerned police station has not submitted any report so far. In our opinion, this case should also be investigated by an independent agency.

25. As discussed in the earlier part of the judgment, the clear stand of the Board is that the examination fee of the writ petitioners of the present case was not deposited by Girish Pachauri. Despite a specific order passed by this Court on 22.4.2002, he neither submitted any treasury challan nor gave the date of the deposit of the fee. In the fourth counter-affidavit filed by him. it has been

averred in paragraph 7 (c) that he re-deposited the examination fee in the State Bank of India, Saidabad, on 21.3.2002. He had submitted an affidavit before the Regional Secretary of Board on 16.3.2002 (copy filed as Annexure-3A to his fourth counter-affidavit) and here he did not state that the examination fee has already been deposited along with the forms on 22.10.2001, In paragraph 6 of the first counter-affidavit, it is stated by him that after copy of the order passed by the High Court on 16.3.2002 in the present petition was handed over to him and the pressure of the students was built up, he deposited the fee on 21.3.2002. In paragraph 5 of his third counter-affidavit, it is averred that the students had deposited their examination forms and the examination fee with the Principal within time, which means in the month of August, 2001. If fee was realised in August, 2001, and was deposited on 21.3.2002 after passing of the order of the High Court and building up of the pressure of the students, it would be covered by Explanation I to Section 403, I.P.C. and would amount to an offence u/s 409, I.P.C. In our opinion, this matter also requires investigation by an independent agency.

26. In paragraph 5 (I) of the first counter-affidavit of Sri Santosh Kumar Misra. Dy. Secretary of the Board, it is averred that the examination committee of the Board had recommended on 7.10.1998 for withdrawing the recognition of Smt. Harpyari Devi Inter College, Rohai, Hathras (institution) and for debarring it as an examination centre for Board's examination and examination form forwarding centre for private candidates. A copy of the letter dated 22.1.1998 sent by the District Magistrate to the Joint Director of Education, Agra, has been filed as C.A. 9 to this affidavit wherein it is mentioned that after enquiries, It was revealed that Girish Pachauri realises huge sum of money from the students of far off places who are actively assisted by him in adopting unfair means in the examination and that the assets possessed by him are far disproportionate to his known source of Income. In Annexure-14 to the counter-affidavit of Ravindra Singh, D.I.O.S., there is indication that he has a cold storage. A Principal of a college where examination of U. P. Board of High School and Intermediate Education are conducted is a public servant as defined in Section 2(c)(xi) of the Prevention of Corruption Act, 1988. The allegation made against Girish Pachauri of being in possession of assets which are disproportionate to his known source of income amounts to an offence u/s 13(1)(e) of the Prevention of Corruption Act. This allegation also deserves investigation by an independent agency.

27. In the second counter-affidavit filed by Sri Girish Pachauri, reference has been made to several writ petitions which were filed when the examination committee of the Board recommended that Smt. Harpyari Devi Inter College, Rohai, Hathras, may not be made an examination centre for the Board's High School and Intermediate examination in the year 1999 and 2001. Some contempt petition was also filed on the allegation that the Secretary of the Board had not passed any order on the representation. Filing of repeated writ petitions in the High Court and contempt petition and running to Allahabad from Hathras involves a lot of expenditure. Holding and conducting an examination is not a

very pleasant job. It requires a lot of effort and extra work. We fail to understand why there should be any keenness or desire that the institution in question must necessarily be made an examination centre for the Board's examination. There is considerable material on record to suggest that the Principal of the college, Girish Pachauri charges huge sum of money from some unscrupulous students for actively helping them in indulging in unfair means in the Board's examination. In the reply given by the Education Minister of the U. P. Government in the House on 9.3.1999 (copy of which has been filed as Annexure-5 to the second counter-affidavit of Girish Pachauri himself), it is mentioned that Girish Pachauri charges about Rs. 25,000 from each student and after manipulating that their examination centre falls in his institution, large-scale unfair means are adopted wherein the students are able to secure very high marks. We do not want to express any opinion in this regard in the present writ petition. However, the fact remains that a very responsible officer of the State Government of the level of the Regional Secretary of the Board and also the D.I.O.S., Hathras, who have no personal animosity of any kind with Girish Pachauri, have after careful enquiry, lodged three F.I.Rs. against him that he did not deposit examination fee of the students realised by him in the last several years. In the present case also, 175 students, who are the writ petitioners, and who admittedly deposited the examination fee with the principal in August, 2001, could not appear in the Board's examination which commenced on 18.3.2002 on account of the fact that the fee was not deposited in the Government treasury. This undoubtedly shows that the principal and also the institution are functioning in a manner which is highly detrimental to the holding of Board's examination in time and also in maintaining the purity and sanctity of the examination. If Girish Pachauri is really in possession of assets which are disproportionate to his known source of income, it will certainly be an important link to establish that he has been charging big money from the students for actively assisting them in indulging in unfair means and resorting to copying in the examination. We are, therefore, of the opinion that till Girish Pachauri, Principal of the institution, is cleared of all the allegations of having committed criminal offences, the institution, Smt. Harpyari Devi Inter College, Rohai, Hathras, should not be made examination centre for the Board's examination of High School and the Intermediate classes.

28. The holding of fresh examination of the writ petitioners would cause extra burden on the Board. The examination papers would have to be set again and got printed and arrangement for holding of the examination and evaluation of the answer-books and preparation of the result etc. will have to be made all over again. For this, the entire blame lies upon Girish Pachauri. We are of the opinion that he should be directed to pay Rs. 20,000 as cost to the Board though, in fact, the expenditure incurred by the Board would be much more.

29. In view of the discussion made above, the writ petition is disposed of with the following directions :

(1) The Board will hold a fresh examination of all the writ petitioners. This may be done expeditiously, preferably by 31st July, 2002.

(2) The criminal cases which have been registered against Sri Girish Pachauri, Principal of the institution, shall be investigated by an officer of the rank of Superintendent of Police of C.B.C.I.D. U. P. The investigation shall be done and concluded expeditiously, preferably within 3 months.

The I.G., C.B. C.I.D. of the area shall personally monitor the investigation. After investigation is completed, a report shall be submitted in the Court in accordance with law. The concerned officer of the C.B.C.I.D. shall investigate the following cases :

(i) Case Crime No. 73 of 2000 u/s 409, I.P.C., P. S. Chandpa, Hathras.

(ii) Case Crime No. 45 of 2001, under Sections 409, 467, 468 and 471, I.P.C., P. S. Chandpa, Hathras.

(iii) Case Crime No. 23 of 2000 u/s 409, I.P.C., P. S. Chandpa, Hathras.

(iv) If in the present case the examination fee deposited by the writ petitioners in August, 2001, was not deposited in the treasury within time prescribed by the Regulations of the Board, it will amount to an offence u/s 409, I.P.C. This matter shall be investigated and appropriate further action in accordance with law will be taken.

(v) The allegation that Girish Pachauri is in possession of assets disproportionate to his known source of income would also be investigated and follow up action in accordance with law would be taken.

(3) The institution, namely, Smt. Harpyari Devi Inter College, Rohai, Hathras, shall not be made examination centre for the Board's High School and Intermediate examination in future till Girish Pachauri, the Principal of the institution is completely exonerated of all the criminal offences mentioned in direction No. 2 above. This may be as a result of final reports being submitted after investigation of the offences or if a charge-sheet is submitted, after acquittal by the Court concerned.

(4) Girish Pachauri is directed to pay Rs. 20,000 as cost to the Board within 2 months. If the cost is not paid within the aforesaid period, it will be open to the respondent Nos. 1 to 4 to apply to the Collector, Hathras, who shall recover the amount from him as arrears of land revenue.

(5) The concerned criminal court at Hathras where final reports have been submitted in Case Crime Nos. 73 of 2000 and 45 of 2001, P.S. Chandpa, Hathras, shall be informed that fresh investigation by C.B.C.I.D. has been ordered in the aforesaid cases.

30. The statement regarding number of students appearing in the Board's examination in the year, 2002 and also the examination papers in High School

and Intermediate classes, as given by the Additional Secretary of the Board and has been supplied to the Court by the learned standing counsel, as well as a photocopy of the order passed in Spl. Appeal No. 290 of 2000 on 20.4.2000 shall be placed on the record of this case.