

Dj.No. 1765/15(4)
9/7/15

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

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S.B. : HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

WP(C) No.08 of 2015

Petitioners

1. Mr. Pralhad Dani Chhetri,
S/o Padam Bahadur Dani Chhetri,
R/o Banasthali,
Kathmandu,
Nepal.
2. Mr. Pradip Kharbuja,
S/o Krishna Govind Kharbuja,
R/o Tapalachhi,
15 Bhaktapur,
Nepal.
3. Mr. Suresh Tiwari,
S/o Surendra Kumar Tiwari,
R/o Najuwakot,
Bidur,
Nepal.
4. Ms. Rashmi Adhikari,
D/o Ramhari Upadhyay,
R/o Birganj,
Dist. Parsa,
Nepal.



versus

Respondents

1. Union of India
through its Secretary,
Ministry of Human Resource Development
Department of Higher Education,
Shastri Bhawan,
New Delhi.

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2. University Grants Commission
through its Secretary,
Bahadur Shah Zafar Marg,
New Delhi.
3. Indira Gandhi National Open University,
Distance Education Council
through its Director,
Maidan Garhi,
New Delhi.
4. Sikkim Manipal University
through its Director,
5th Mile,
Tadong,
Gangtok,
East Sikkim.



Petition under Article 226 of the Constitution of India

Appearance

Mr. Zangpo Sherpa, Advocate with Ms. Mon Maya Subba, Advocate for the Petitioners.

Mr. Karma Thinlay Namgyal, Central Government Counsel for the Respondent No.1.

Mr. Karma Thinlay Namgyal, Senior Advocate with Mrs. Pollin Rai, Advocate for the Respondent No. 2.

None for Respondent No.3.

Mr. T. R. Barfungpa, Advocate for Respondent No.4.

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J U D G M E N T (ORAL)

(29th June, 2015)

Wangdi, J.

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1. The Petitioners in the Writ Petition are those who had passed out from the Sikkim Manipal University, Respondent No.4, as students in the Distance Education Mode (for short "DEM") run by it at their Study Centre situated in Kathmandu, the capital of our neighbouring country Nepal, of which they are the citizens. While the Petitioners No.1, 3 and 4 have been awarded with the degrees of Bachelor of Science in Information Technology on 05-05-2010, 24-12-2013 and 02-11-2006 respectively, the Petitioner No.2 completed his Master of Science in Information Technology and was awarded the degree on 04-04-2014. After successful completion and award of degree in BSc(IT), the Petitioner No.4 has been pursuing her MSc(IT) at the same Centre at Kathmandu, Nepal.

2. The Petitioners are aggrieved by letter dated 11-05-2011, Annexure P32, of the Ministry of Human

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Resource Development, Department of Higher Education, Government of India, Respondent No.1, addressed to the Royal Danish Embassy, informing that no Study Centre of the Respondent No.4-University had been approved either by the Distance Education Council (for short "DEC"), Respondent No.3 or the University Grants Commission (for short "UGC"), Respondent No.2, and that the degrees/programmes offered in the Distance Mode by it were not recognised under the Indian Law and could not be equated on terms with an Indian degree/programme, resulting in their admissions for higher studies being refused by the Governments of Denmark and Australia.

3. They are also aggrieved by Public Notice dated 27-06-2013, Annexure P39, issued by the Respondent No.2-UGC, announcing that a University established or incorporated by or under a State Act shall operate only within the territorial jurisdiction allotted to it under its Act and in no case beyond the territory of the State of its location.



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4. The primary contention of the Petitioners is that the Respondent No.4-University having been permitted by the UGC to run its Distance Education Programmes (for short "DEP") in the year 2001 and by the Indira Gandhi National Open University (for short "IGNOU"), Respondent No.3, of which the DEC is an Authority created under Statute 28 of the IGNOU Act, 1985, it was not permissible for the UGC to now restrict the DEP of the Respondent No.4-University under the DEM retrospectively in the manner in which it was being done. The action of the UGC, as per the Petitioners, was arbitrary and grossly unjust to them and those similarly circumstanced, who had undergone the DEP and awarded degrees by the Respondent No.4-University, after having spent several valuable years of their lives.



5. As the factual and legal aspects of this case are the very ones involved in WP(C) No.04 of 2013, in the matter of ***Sikkim Manipal University vs. Indira Gandhi National Open University and Others***, which was finally heard and disposed of vide judgment dated 26-06-2015 of a Division Bench of this Court where the

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undersigned, *Wangdi, J.*, was a part, we need not go into those to avoid prolixity.

6. It is also relevant to note that Public Notice dated 27-06-2013, Annexure P39, impugned in the present case, was also assailed in the said Writ Petition.

7. As regards the status and legal position of the UGC, it was held that UGC Act, 1956, under which it has been created, has a supervening influence over all other Legislations on the subject of education for maintenance of minimum standards in the country and indisputably governs Open University also. Thus, the resolution adopted in the 40th Meeting of the DEC dated 08-06-2012, Annexure P34, to confine the territorial jurisdiction of the Private Universities within the geographical limits of the States of its locations, having been taken as a consequence of a policy decision of the Government of India, it cannot be held to be unauthorised and invalid. The policy decision ultimately crystallised in the form of Order dated 29-12-2012, Annexure R4. This Order having been issued by the Ministry of Human Resource Development,



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Department of Higher Education, Government of India, Respondent No.1, in exercise of its powers under Sub-Section (1) of Section 20 of the UGC Act, 1956, assumes a statutory character and would be considered as part of the main Statute, i.e., UGC Act, 1956, and binding upon all Universities irrespective of whether the other Statutes including the ones under State Legislations provide otherwise. This is so far as the questions of law are concerned.

8. The anxiety of the Petitioners and their predicament also appears to have been taken care of in *Sikkim Manipal University* (supra), as would appear from the following portions of the judgment in that case:-



"24(i). Before finally concluding, it is essential to record here that some students of the Petitioner-University who have undergone studies in the DEP have approached this Court as Intervenors and were represented by Mr. P. N. Misra, Learned Senior Counsel. The Intervenors are students who passed out degree courses from the Petitioner-University through their Study Centre set up in Nepal, a foreign country. They have approached this Court in the present proceedings as the degrees issued by the Petitioner-University were not recognised by the Australian Government where they intended to pursue higher studies.

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(ii) On a perusal of the application for intervention and the records, the Intervenor appear to be students who had commenced with their degree courses on and from the year 2010. While the Intervenor No.1, 2 and 3 had commenced with their courses with effect from August, 2010 to July, 2013, the Intervenor No.4 from February 2011 to January, 2013. The Intervenor No.1 and 3 had undergone Bachelor of Business Administration (BBA), Intervenor No.2 had undertaken bachelor of Science in Information Technology (BScIT) and the Intervenor No.4 in Master of Business Administration (MBA) examinations. Thus, having undergone the courses when the Petitioner-University was offering programmes on the recognition granted by the Respondent No.1 through its Chairman for 3 (three) academic years commencing from 2009-10 to 2011-12, which was ratified by the Council in its 35th Meeting, they cannot be denied recognition of the degrees awarded to them by the Petitioner-University. This fact also appears to have been conveyed to the Respondent No.1 by the Petitioner-University through its letter dated 25-10-2012, Annexure P27, apart from the fact that it had directed a freeze on new admissions on 09-10-2012 even before direction to that effect was issued by the Respondent No.1 in its letter dated 10-10-2012, Annexure P26.

25(i). That apart, by order dated 22-02-2013, this Court in this very proceeding had stayed the operation of the condition "but not beyond the boundary of their respective States" contained in the minutes of the 40th Meeting of the DEC held on 08-06-2012 and that any consequential directions in this regard shall remain stayed and further that the Petitioner-University shall be permitted to continue to act in accordance with the communication dated 15-10-2009, Annexure P17. This interim order which was extended by

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order dated 19-07-2013 was confirmed on 07-11-2013 after impleadment of the UGC-Respondent No.3 as a party after notice.

(ii) By order dated 13-04-2015 of this Court in CM Appl No. 33 of 2015 had further confirmed the aforesaid two orders, the relevant portion of which is as follows:-

"6. At this stage, Mr. Misra submits that by making an observation of de-recognition of the degrees of the intervenors, their job prospects are being jeopardized and they are being deprived of prosecuting their further studies, therefore, some protection may be granted to them.

7. There is no occasion for this Court to deliberate on this point in an application field for permission to intervene in the main writ petition. However, it is observed that by interim order dated 22.02.2013 passed in W.P. (C) No.04/2013, it has clearly been held by this Court that during the pendency of the Writ Petition, the operation of the condition "but not beyond the boundary of their respective States", which clearly relates to the territorial jurisdiction of the Petitioner-University, contained in the Minutes of 40th Meeting of the Distance Education Council of Indira Gandhi National Open University held on 08.06.2012, and any consequential direction in this regard shall remain stayed and the same order by a subsequent order dated 07.11.2013 has also been held to be binding on all the parties including the University Grants Commission (UGC). We are of the view that the earlier two interim orders would make the situation very clear and it is expected that all the parties concerned, including the UGC, would implement the said orders in their letter and spirit."



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(iii) None of the Respondents have taken any steps to approach this Court for either alternation/ modification or vacation of this order. They also do not appear to have approached the Hon'ble Supreme Court to get the above orders set aside. Thus these orders having been confirmed, are held to be binding on all parties including the Respondent No.3 as observed in order dated 13-04-2015.

(iv) So far as the case of the Intervenors are concerned, considering the facts and circumstances set out above, we are of the view that their degrees should stand protected as valid. This order would also apply to all the students who are in similarly placed as the Intervenors although they are not before us."

[underlining mine]



9. As the Petitioners had undergone the courses during the period when the DEP of the Respondent No.4-University was being run under valid recognition of the UGC and the DEC, their cases would be fully covered by the aforesaid decision.

10. It is relevant to note that there are 3 (three) categories of students who stand thus protected. They are – (i) those who had commenced and completed their DEP anytime prior to the academic session 2011-12; (ii) those who had commenced with their DEP prior to the academic session 2011-12 but, completed after

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that; and (iii) those who were admitted to the DEP any day after the interim order of this Court dated 22-02-2013 passed during the proceedings of **Sikkim Manipal University** (supra) by which operation of the condition "but not beyond the boundary of their respective States" stipulated in the decision of the DEC in its 40th Meeting dated 08-06-2012, Annexure P34, was stayed and the Respondent No.4-University was permitted to continue to act in accordance with the communication dated 15-10-2009, Annexure P27, subject to compliance of the terms thereof. The case of the Petitioners would certainly fall within the purview of the judgment in **Sikkim Manipal University** (supra) extracted above.

11. Apart from the above, the interim order of stay dated 22-02-2013 that was directed to be continued by a subsequent order dated 07-11-2013, was later confirmed by order dated 13-04-2015 in CM Appl No.33 of 2015 arising out of WP(C) No.04 of 2013 in **Sikkim Manipal University** (supra). Therefore, as a natural corollary and by necessary implication, the degrees in respect of the students, who were admitted



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to the DEP of the Respondent No.4-University after the order of stay, one of whom appears to be the Petitioner No.4, shall also be protected.

12. The information conveyed in letter dated 11-05-2011, Annexure P32, issued by the Respondent No.1 to the Royal Danish Embassy, being in conflict with the decision of the DEC, firstly, in ratifying the decision of its Chairman granting recognition to the DEP of the Respondent No.4-University for the academic years 2009-10 to 2011-12 and, secondly, its own grant of recognition, be it provisional or regular, for the preceding years, would be rendered a nullity, *non est* and, therefore, unenforceable and is accordingly, ordered so.



13. Consequently, the DEP of the Respondent No.4-University undergone by the Petitioners and the degrees awarded to them are treated as valid and deserving to be equated on terms with an Indian degree/programme.

14. It is needless to state that this order would also apply to all the students who are similarly

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placed as the Petitioners although they are not before us.

15. In the above facts and circumstances and for the reasons aforesaid, the Writ Petition is hereby allowed.

16. No order as to costs.



Sd/-
(S. P. Wangdi)
Judge
29-06-2015

CERTIFIED TO BE TRUE COPY

[Signature] 17/7/15
Deputy Registrar (Judicial)
High Court of Sikkim
at Gangtok

Approved for reporting : Yes

Internet : Yes

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HIGH COURT OF SIKKIM

Date of Application : 29/6/15

Date of Notification of defects : 17/7/15

Date of Rectification of defects : 17/7/15

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SIGNATURE