

(Civil Extraordinary Jurisdiction)

**DATED : 28<sup>TH</sup> SEPTEMBER, 2015**

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

**CM Appl No.201 of 2015**

arising out of

**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**

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- Respondents** : 1. Union of India  
through its Secretary,  
Ministry of Human Resource Development,  
Department of Higher Education,  
Shastri Bhawan,  
New Delhi.
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,  
5<sup>th</sup> Mile,  
Tadong,  
Gangtok,  
East Sikkim.

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**Appearance**

Mr. Ritesh Agarwal, Advocate with Mr. Zangpo Sherpa,  
Advocate for the Petitioners-Applicants.

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

Mr. Karma Thinlay Namgyal, Senior Advocate with  
Mr. Thinlay Dorjee Bhutia, Advocate for the  
Respondent No. 2.

None for Respondent No.3.

Mr. Bhaskar Raj Pradhan, Senior Advocate with Mr. T.  
R. Barfungpa, Advocate for Respondent No.4.

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**O R D E R (ORAL)****Wangdi, J.**

**1.** This matter was not listed today but, has been taken up, on being mentioned.

**2.** In this application, the Petitioners, *inter alia*, seek for a direction upon the Respondent No.2-UGC to upload the judgment and order dated 29-06-2015 passed in WP(C) No.08 of 2015 in their official website with immediate effect and also to communicate the said judgment to the Australian High Commission and the Denmark Embassy, New Delhi.

**3.** The need to file the present application, as per the Petitioners, arose as the Australian High Commission expressed its doubt on the applicability of the aforesaid judgment on the Respondent No.2-UGC, which according to them, is a "Federal Body". The Embassy had got this impression due to a communication received by them from the Ministry of Human Resource Development, Department of Higher Education, Government of India, vide their letter dated 11-05-2011 [Annexure P32 filed in WP(C) No.08 of 2015]

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by which it was informed that no Study Centre of the Respondent No.4-University had been approved either by the Distance Education Council or the University Grants Commission, Respondent No.2 and further, that the degrees/programmes offered in the Distance Mode by the Respondent No.4-University were not recognised under the Indian Law and could not be equated on terms with an Indian degree/ programme. This fact was also noted by this Court in its judgment dated 29-06-2015 passed in WP(C) No.08 of 2015.

**4.** The Petitioners are some of the students in the Distance Education Programme of the Respondent No.4-University through their Study Center in Kathmandu, Nepal. While the Petitioners No.1 to 3 are those who had taken their admissions during the validity of the Distance Education Course prior to the academic year 2011-12, the Petitioner No.4 is one who had taken admission during the subsistence of the interim order of this Court dated 22-02-2013 passed in WP(C) No.04 of 2013 in the matter of ***Sikkim Manipal University*** vs. ***Indira Gandhi National Open University and Others***.

5. It is stated that after pronouncement of the judgment dated 29-06-2015 in WP(C) No.08 of 2015, the Petitioners had approached the Respondent No.2-UGC requesting them to communicate to the Australian High Commission, Denmark Embassy and other Foreign Authorities, about the validity of their degrees as a consequence of the judgment. However, the Respondent No.2-UGC did not respond leading the Petitioners to file the present application praying for issuance of appropriate directions upon the Respondent No.2-UGC.

6. The other relief which the Petitioners seek is a direction upon the Respondents to allow the Petitioner No.4 and other similarly situated students undergoing studies in the Distance Mode of the Respondent No.4- University through its Study Centre situated at Kathmandu, Nepal, who were admitted prior to the date of judgment dated 26-06-2015 in WP(C) No.04 of 2013, to complete their courses. This relief is sought for as the Respondent No.4-University is said to be closing down its Study Centre in Kathmandu, Nepal, even for the students who got admissions prior to the

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date of judgment dated 26-06-2015 and are still continuing with their studies depriving a large number of students the opportunity of completing their courses despite directions of this Court in judgments dated 26-06-2015 in WP(C) No. 04 of 2013 and dated 29-06-2015 in WP(C) No.08 of 2015.

7. I have heard the Learned Counsel for the parties and have considered the application in the light of the judgments in WP(C) No.08 of 2015 and WP(C) No.04 of 2013.

8. While taking up the second prayer first, at the very outset, Mr. Bhaskar Raj Pradhan, Learned Senior Advocate, appearing on behalf of the Respondent No.4-University, on instructions, submitted that all necessary steps shall be taken by the Respondent-University to conduct classes in the spirit of the directions contained in the judgment dated 29-06-2015 in WP(C) No.08 of 2015, in the face to face mode and to hold examinations in Kathmandu, Nepal, as had been earlier promised to the students.

In view of this, no direction need be passed. The student shall approach the Respondent No.4-University on this score.

**9.** On the first question, Mr. Karma Thinlay Namgyal, Learned Central Government Counsel, appearing on behalf of the Ministry of Human Resource Department, Department of Higher Education, Respondent No.1 and in the capacity of Senior Counsel for the Respondent No.2-UGC, was asked as to whether there was any need to issue directions as prayed for by the Petitioners-Applicants in view of the fact that the two judgments referred to above have not been interfered with by the Hon'ble Supreme Court in Special Leave Petition (Civil) Nos.26223 of 2015 [arising out of WP(C) No.04 of 2013] and 26239 of 2015 by order dated 21-09-2015 [arising out of WP(C) No.08 of 2015].

**10.** Before noting the response of the Learned Central Government Counsel, it is essential to reproduce below the relevant portion of the order of the Hon'ble Supreme Court as it is of immense significance to the students: -



"....."

Applications for exemption from filing certified copy of the impugned judgment and application for permission to place additional documents on record are allowed.

Insofar as the questions of law raised by the petitioner-University Grants Commission before the High Court were concerned, they have been decided in favour of the petitioner. However, in the peculiar facts of the case as noted by the High Court, relief is granted to the students who had undergone the distant learning courses. We are not inclined to interfere with those directions passed by the High Court on those facts.

The special leave petitions are, accordingly, dismissed.

Obviously, such an order would not be cited as a precedent in any other case.

....." [underlining mine]

**11.** The aforesaid order of the Hon'ble Supreme Court was issued in the context of certain observations and directions of the Division Bench of this Court in its judgment dated 26-06-2015 in WP(C) No. 04 of 2013 and, dated 29-06-2015 in WP(C) No.08 of 2015, the relevant portions of which are extracted below in *seriatim*: -



**WP(C) No. 04 of 2013**

**"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.

**(ii)** On a perusal of the application for intervention and the records, the Intervenors appear to be students who had commenced with their degree courses on and from the year 2010. While the Intervenors 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 Intervenors 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 35<sup>th</sup> 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 40<sup>th</sup> 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 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 filed 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

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not beyond the boundary of their respective States", which clearly relates to the territorial jurisdiction of the Petitioner-University, contained in the Minutes of 40<sup>th</sup> 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."

*(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 Intervenorers 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 Intervenorers although they are not before us." [underlining mine]

### WP(C) No. 08 of 2015

*"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 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 40<sup>th</sup> 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 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

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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 placed as the Petitioners although they are not before us." [underlining mine]

**12.** Thus, undeniably the present Petitioners would squarely fall within the ambit of the aforesaid orders which, needless to state, have not been interfered with by the Hon'ble Supreme Court.

**13.** Mr. Karma Thinlay Namgyal, Learned Senior Advocate, fairly conceded to the implication of the above orders and submitted that appropriate directions may be issued for compliance in respect of the first prayer made by the Petitioners in this application.

**14.** It may be observed with a deep sense of consternation that the Respondent No.2-UGC, has not taken with seriousness the directions of this Court in the aforesaid judgments which are now binding upon

them in view of the order of the Hon'ble Supreme Court extracted earlier. The obduracy on the part of the Respondent No.2-UGC which could have been avoided, is highly regrettable. It is expected of them to honour directions passed by any Court of law in the Union of India. In a democracy, Rule of Law is supreme and no Executive Authority howsoever high, has the authority to undermine the majesty and dignity of the Courts of law. All those holding seats of power, like the Respondent No.2-UGC, ought to be mindful of this. The role of the Respondent No.2-UGC is not just to issue orders, direction or notification and leave it at that unmindful of its consequences. Its primary responsibility is to ensure that public interest is subserved, particularly when the Respondent No.2-UGC is an Institution to monitor and control education of the millions of aspiring young lives. It is expected that while taking any such step situations of hardship as faced by the students would be anticipated and mitigative measures provided for. That is what this Court had done in the aforesaid two judgments considering the predicament faced by the students

which was not of their making which, the Respondents No.1 and 2 failed to do. The obvious wilful and deliberate attempt on the part of the Respondent No.2-UGC to undermine the Authority of this Court has not escaped our notice.

**15.** Be that as it may, but in its backdrop and in view of the judgments passed in WP(C) No.04 of 2013 and WP(C) No.08 of 2015 as well as the order of the Hon'ble Supreme Court dated 21-09-2015, it is directed as under: -

(a) The Respondent No.2-UGC shall forthwith upload on its official website the judgments of this Court dated 26-06-2015 and 29-06-2015 in WP(C) No. 04 of 2013 and WP(C) No.08 of 2015 respectively as well as the order of the Hon'ble Supreme Court dated 21-09-2015 in Special Leave Petition (Civil) Nos.26223 of 2015 and 26239 of 2015.

(b) As the refusal on the part of the Australian High Commission and the Royal Danish Embassy, to accept the qualifications acquired by the students through the Distance Education

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Programme of the Sikkim Manipal University, Respondent No.4, was as a result of the communication made by the Respondent No.1, the Ministry of Human Resource Development, Department of Higher Education, Government of India dated 11-05-2011, the Respondents No.1 and 2 are directed to issue necessary communications not later than 10 (ten) days from the date of this order to the Australian High Commission and the Royal Danish Embassy as well as the concerned authorities of other countries informing them of the judgments passed by this Court and the order of the Hon'ble Supreme Court referred to in (a) above.

- (c) In their communications, the Respondents No.1 and 2 shall make it clear that the degrees acquired by the students who fall within the 3 (three) categories mentioned in paragraph 10 of the judgment of this Court dated 29-06-2015 in WP(C) No.08 of 2015 shall be recognised as valid and equal on terms with an Indian degree/programme.



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**16.** With the above directions, this application stands disposed of.

**17.** No order as to costs.

**18.** It is made clear that in the event of non-compliance of the directions by any of the Respondents, the Petitioners may approach this Court for appropriate orders or directions.

Sd/-  
( S. P. Wangdi )  
Judge  
28-09-2015

Approved for reporting : **Yes**

Internet : **Yes**