



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 2nd NOVEMBER, 2016

S.B. : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.56 of 2015

Petitioners : 1. Vineet Singh,
S/o Shri Mahender Pratap Singh,
R/o Plot No.114,
Runkata,
NH 2, Agra,
U.P.

2. A Institute of Hotel Management
through its Promoter Director Vineet Singh,
having its Office at 22/88,
NH 2, Near Canara Bank,
Sikandara,
Agra,
Uttar Pradesh.

versus

Respondents : 1. State of Sikkim
represented by and through
the Principal Secretary,
Human Resource and Development Department,
Government of Sikkim,
Gangtok.

2. University Grants Commission
Bahadur Shah Zafar Marg,
New Delhi – 110 002.

3. Eastern Institute of Integrated Learning
and Management
Jorethang,
South Sikkim.

Writ Petition under Articles 226/227
of the Constitution of India



Vineet Singh and Another vs. State of Sikkim and Others

Appearance

Mr. Ajay Rathi and Mr. Rahul Rathi, Advocates for the Petitioners.

Mr. S. K. Chettri, Mrs. Pollin Rai, Assistant Government Advocates for the State-Respondent No.1.

Mr. Bhusan Nepal, legal Retainer for Respondent No.1.

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

Mr. Shakeel Ahmed, Ms. Chitra Sharma, Mr. Yogesh Kumar Sharma and Mr. S. P. Bhutia, Advocates for the Respondent No.3.

J U D G M E N T

Meenakshi Madan Rai, J.

1. By filing this Petition under Articles 226/227 of the Constitution of India, the Petitioners, *inter alia*, pray for issuance of a Writ in the nature of Certiorari, to quash the impugned Order dated 30-04-2015 and to declare that Degrees awarded to the students who have passed the examinations conducted by the Eastern Institute for Integrated Learning in Management University (for brevity "EIILMU") are valid and legal and for a Writ in the nature of Mandamus directing the Respondents to allow the Petitioner to grant Mark Sheets and Migration Certificates to the students.

2. It is the Petitioners' case that the Petitioner No.1 is the Promoter Director of Petitioner No.2 "A Institute of

Hotel Management" (for brevity "AIHM") having its Campus at Agra, Greater Noida in the State of Uttar Pradesh and in Guwahati, Assam. That, the said AIHM commenced in the year 2006 and provides Graduate and Post Graduate Courses in Hospitality and Management which are approved by the Joint Committee of University Grants Commission (UGC)-All India Council for Technical Education (AICTE)-Distance Education Council (DEC) under the Ministry of Human Resource Development, Government of India. That, the Institute of the Respondent No.3, i.e., EIILMU, came into existence by the Eastern Institute for Integrated Learning in Management University, Sikkim Act, 2006 (for short "the Act of 2006"), with the objective of providing quality job oriented education after school. Powers were conferred upon the EIILMU to run Distance Education Courses provided the said Courses were not inferior in standard to the Courses run by the DEC, but no condition was imposed upon it to seek prior approval or pre-recognition from the DEC. The Committee of the UGC inspected the premises of the EIILMU on 15/16-03-2008 and submitted a Report that the EIILMU has jurisdiction all over India, but omitted to mention that the EIILMU has not been accorded permission to open off-Shore/Study Centres or admission centres outside the State. It merely mentioned that the status at the time of the Report was to the effect that no such Centres were established

outside the State. That, vide letter dated 22-07-2008 of the UGC, the EIILMU was informed that it was empowered to award Degrees as specified by the UGC under Section 22 of the UGC Act, 1956, but it did not state that the UGC has the power to authorise any University to award or confer Diplomas or such action is regulated by the UGC. That, the letter mentioned that approval of the Statutory Council is to be taken by the University, wherever required. It is averred that the Distant Education Council is not a Statutory Council being a Department of the IGNOU. On the Petitioner's approaching, the EIILMU for opening Admission and Counseling Centre and being allowed to do so admissions were taken by the Institute, students enrolled, classes taken, examinations conducted and results declared, as per the schedule of the University. The Petitioner was of the belief that the authorisation was as per the required law and Rules of the UGC as the Board of Governors of the University included a Member each of the UGC and the State of Sikkim. The Mark Sheets of the students who qualified in the University examinations were sent by the University to the Institute and made over to the students. On 01-09-2012, however, the Station House Officer of Jorethang P.S., lodged a *suo motu* FIR against the EIILMU Officials alleging distribution of fake Mark Sheets to students without admission, classes and examinations. It was alleged that the



University in violation of the UGC Regulations had illegally opened Study Centre/off-Campus Study Centres outside the State of Sikkim. That, the UGC vide a Public Notice in the newspaper "The Times of India" dated 12-07-2013 informed the general public about advertisements published in national dailies offering opportunities to award University Degrees through various franchise programmes conducted by certain Private Institutions and for the first time informed that the UGC had not granted permission to any Private University to establish off-Campus/Study Centres. The Joint Secretary of the UGC vide letter dated 04-09-2013 directed the Vice Chancellor of the EIILMU to discontinue the Courses run by it without the approval of the UGC and DEC, under Distance Mode. The State Government then deemed it necessary to take over and run the Management of the EIILMU through its Officers. Vide Notifications No.55/DIR (HE)/HRDD and 56/DIR(HE)/ HRDD both dated 30-04-2015 the general public were informed that the State Government had declared the dissolution of the University invoking the powers under Section 47 of the Act of 2006 and students were restrained from applying for fresh admissions in the Academic Session 2015-16. That, vide Notice Ref. No. 56/DIR(HE)/HRDD dated 30-04-2015 it was informed that regular students of the Campus at Budang, Soreng, could send duplicate copy of their documents including Mark



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Sheets of the previous year, Provisional Certificates, Enrolment Number, Admit Card, Registration Number and any other concerned document to the Department on 07-05-2015. The documents would be verified after which issuance of Original Mark Sheets would be communicated. That, the above Notification viz. Ref. No. 56/DIR(HE)/HRDD dated 30-04-2015 is bad in law as it has differentiated between students who have studied in Sikkim and students who have studied outside the State even though enrolled as regular students by the EIILMU. That, students who have appeared in the examination conducted by the EIILMU cannot be denied their basic legitimate right due to any error committed by any or all of the Officials of the EIILMU. Accordingly, the prayers reflected hereinabove.

3. In its Counter-Affidavit, the Respondent No.1 averred that the Respondent No.3-EIILMU has been under controversy since 2012 when the Sikkim Police registered a *suo motu* FIR against the Sponsoring Body of the EIILMU for sale of fake Degrees and Certificates. Subsequently, the Enforcement Directorate issued a Provisional Attachment Order on the property and Bank Accounts of Respondent No.3 under Section 5 of the Prevention of Money Laundering Act, 2002, and the UGC had issued directions to the EIILMU to immediately close down its Distance Education Courses

and its Centres which had been opened without any approval of the Statutory Bodies. The activities of EIILMU came to a standstill after the suspension of the examination by its Management on 24-12-2014 the reason being the absence of the Management Authorities including the Vice Chancellor, Registrar, Deputy Controller of Examination, Faculties, etc., raising apprehension amongst students and law and order situation in the EIILMU. The Respondent No.1 to contain the situation issued instructions to the Respondent No.3 through the Acting Vice Chancellor ("AVC" for brevity) to conduct the examinations immediately. Despite numerous instructions, Notices and reminders by the Respondent No.1 the Respondent No.3 failed to comply. The employees of the Respondent No.3 were not paid salaries, while the Respondent No.1 took all necessary steps to restore normalcy to the EIILMU. Ultimately to stem the chaos the Respondent No.1 took over the EIILMU and conducted the examinations in the larger interest of the students. The Respondent No.3, however, failed to appear before the Authority to set out their grievances or to resolve their problems. The Respondent No.3 consequently took necessary steps for the regular students, however, with regard to the Distance Education, the EIILMU was dealing with it itself and the legality of imparting Distance Education has been decided by the Division Bench of this High Court in



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Sikkim Manipal University vs. *Indira Gandhi National Open University and Others*¹. However, it is denied that the EIILMU was allowed to run Distance Courses without the prior approval of the competent Authority. It is averred that the UGC has forwarded a letter dated 04-09-2013 addressed to the State Government regarding the Courses being run by EIILMU without the approval of UGC and DEC. That, in view of the above grounds the Petition requires no consideration.

4. The Respondent No.2, the UGC, in its Counter-Affidavit averred that it was constituted under the provisions of the University Grants Commission Act, 1956 (Act No.3 of 1956) which made provisions for coordination determination and maintenance of standards of teaching, examination and research in Universities. The Commission has been vested with the power to recommend to any University (i.e., any University under a Centralised Provincial Act or State Act recognised by the Commission as per relevant regulations,) the measures necessary for improvement of University education and to advise the University upon action to be taken for the purpose of implementation of the said recommendations. It's functions as provided under the University Grants Commission Act has been elucidated in the averments. That, in order to prevent the mushrooming growth of Private Universities as also the commercialisation

1. Judgment dated 26-06-2015 passed in WP(C) No.04 of 2013

of education, the UGC framed the UGC Regulations in 2003 duly notified in the Gazette Notification on 27-12-2003, of which Regulation 3 deals with Establishment and Recognition of Private Universities and all Private Universities are regulated by the Regulations *supra* with the objective of ensuing not only proper territorial jurisdiction of each Private University but also to ensure that concerned University attain standards in terms of physical and academic infrastructure. Thus, under Regulation 3.3, a Private University established under a State Act shall ordinarily operate within the State concerned and after the development of the main Campus, in exceptional circumstances, after five years of its existence, the University may be permitted to open off-Campus Centres/off-Shore Campuses and Study Centres, subject to the fulfilment of conditions as prescribed under the Regulations. This is with the objective of ensuring not only the proper territorial jurisdiction of each Private University, but also to ensure that the concerned University attains minimum standards in terms of physical and academic infrastructure before proceeding to expand further within its permissible territorial limits. So far as the Distance Education Programme (DEP) is concerned, earlier it was controlled by the DEC. The Government of India vide its



Notification dated 01-03-1995 duly notified in the Gazette Notification dated 08-04-1995, made it mandatory to obtain approval from DEC (IGNOU), New Delhi, for award of all Qualifications/Degrees by Universities through Distance Education Mode (DEM). On 10-05-2007, a Memorandum of Understanding (MoU) was signed between the UGC, AICTE and DEC for an initial period of three years to be reviewed from time to time constituting a Joint Committee to ensure quality of technical and general education offered through Distance and Mixed Mode and to prevent duplication of efforts in streamlining of activities. The UGC and the AICTE agreed to utilise the expertise and involvement of DEC in such functions for review of the Programmes and Courses, Curricula, norms, etc. In November, 2007, the UGC requested the Director, DEC, IGNOU to ensure that approval letters are issued as per the provisions laid down in Clause 9 of the MoU for Professional Courses. Meetings held between the Secretary, Department of Higher Education (Distance Learning Division), Ministry of Human Resource Development, convened on 19-02-2008 and subsequent meeting of UGC-AICTE-DEC held on 11-05-2009 so also details of the meeting held between the UGC-AICTE-DEC have also been put forth in the Affidavit. That, in the meeting between the UGC-AICTE-DEC it was, *inter alia*, decided that the jurisdiction prescribed in the Act of the

University or MOA or Deemed University would be strictly adhered to subject to the decision of ***Prof. Yashpal and Another*** vs. ***State of Chhattishgarh and Others***², wherein the State Universities have been directed not to operate outside the jurisdiction of the respective States. Thus, the UGC did not delegate its power to the Joint Committee *supra* and actions suggested by the Committee, was required to be placed before the Chairman, UGC and thereafter, the Commission for information. Vide a letter dated 29-12-2012, the Ministry of Human Resource Development, Government of India, *inter alia*, directed the UGC and the AICTE to act as Regulators for Higher Education (excluding Technical Education) and Technical Education through Open and Distance Learning (ODL) Mode. However, if the Universities were offering any Programme in the ODL Mode, they would require recognition from UGC-AICTE and NCTE and such other Regulators of the Conventional Mode of education in those areas of study. The UGC and AICTE were also directed to develop appropriate Regulations for maintaining standards in ODL Programme/Courses to create necessary physical infrastructure, qualified manpower and to discharge such responsibilities to prepare an Action Plan. On 24-01-2013, Statute 28 of IGNOU which established the DEC in 1991, was repealed and Notification issued on 01-05-



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2013, dissolving the DEC. It was further averred that so far as a State Private University established by an Act of State

2. (2005) 5 SCC 420

Legislature is concerned, it is empowered to award Degrees as specified by the UGC under Section 22 of the UGC Act, 1956, at its main Campus in Regular Mode with the approval of Statutory Bodies/Councils, whenever it is required. However, such a University is not competent to extend its jurisdiction and operations beyond the State in which it has been established. That, the UGC vide its letter dated 16-04-2009 informed all State Governments that Private Universities established by the State Governments have opened off-Campuses/Study Centres and also created franchise in the name of DEP, outside the States and requested the States to take suitable steps for amending the existing Acts to bring it in conformity with the observations of the Apex Court in ***Prof. Yashpal²*** (*supra*) and to stop all State/State Private Universities from operating beyond the territorial jurisdiction of their respective States. This letter was also sent to the Vice Chancellors of all Private Universities. A Public Notice dated 27-06-2013 was issued on the same lines advising students not to take admissions in unapproved Study Centres, off-Campus Centres, franchisee Institutions, Colleges/Institution claiming to be affiliated with Private Universities or Deemed Universities.



That, as Distance Education is a part of Higher Education, the Institutes require prior approval of the UGC to start the DEP which in the instant case was not obtained. That, the Gazette Notification dated 01-03-1995 made it clear that prior approval of DEC would be required for any Degree in Distance Mode to be valid and legal. The UGC had accorded recognition to EIILMU for only three Distance Mode Programmes vide its letter dated 09-09-2009 (Annexure R-11), i.e., in B.A. (Hospitality & Tourism), BCA and MBA. On receipt of complaints by the DEC and the UGC from various individuals against the Respondent No.3 regarding numerous Programmes being run through Distance Mode, opening of unauthorised Study Centres, Franchising of Higher Education, issuing Degrees to students, selling degrees in India, etc., a fact Finding Committee was constituted by the UGC vide letter dated 26-06-2014 and the Vice Chancellor EIILMU informed accordingly. The Fact Finding Committee after making necessary enquiries, recommended dissolution of the EIILMU and Public Notice was issued on 05-08-2015 cautioning the students not to take admission in the EIILMU and/or any of its Centres/Campuses/DEPs. Thereafter, the Notice dated 30-04-2015 [Annexure P-9 (colly)] was issued by the State Government regarding dissolution of the EIILMU. It is admitted that the UGC also had recommended to the EIILMU on 04-09-2013 immediate closure of all the



Admission-cum-Counselling Centres as it was in complete violation of the UGC Regulations. That, the Petitioner's Institution was never recognised by the Respondent No.2 for Regular or Distance Mode Programmes or as a Centre of the Respondent No.3, while letter dated 09-09-2009 (Annexure R-11) permitting EIILMU to start Distance Mode Education clearly prohibited opening Centres outside the State of Sikkim. Thus, with the passing of the Notice dated 30-04-2015 of Respondent No.1 the powers conferred on the University to award Degrees automatically stands withdrawn and the Petition be dismissed as whatever grounds have been taken were settled by this Court in ***Sikkim Manipal University***¹, hence the Writ Petition is not maintainable.

5. The Respondent No.3 in its response denied that the students who appeared in the examinations conducted by the EIILMU are denied their basic legitimate rights due to any error committed by any or all the Officials of the EIILMU when it was being run by the Respondent No.3. That this Court may issue appropriate Writ or direction or pass such orders as deemed fit.


6. Advancing his arguments for the Petitioner, Learned Counsel drew the attention of this Court to Notification No.28/LD/2006 dated 03-04-2006 and contended that Section 8(a) of the said Notification gives the

EIILMU powers to establish, maintain and recognise such Regional Centres and Study Centres as may be determined by the EIILMU from time to time in the manner laid down by the Statutes. That, Section 8(c) empowers the EIILMU to confer Degrees, Diplomas, Charters, Certificates and other Academic Distinctions and Professional Designations in the manner and under conditions laid down in the Statutes. That, the Member, EIILMU consisted of representatives of the UGC and of the HRDD, Government of Sikkim, therefore, it is evident that both the Authorities were aware of the EIILMU having allowed the Petitioner to commence admissions in the Engineering Courses off-Campus. That, the Notice bearing Ref. No.56/DIR(HE)/HRDD dated 30-04-2015 differentiates between regular students and off-Campus students as provisions were made after closure of the EIILMU for the regular students to send duplicate copies of documents including Mark Sheets, Provisional Certificate, Enrolment Number, Admit Card, Registration Number and any other document to Department of HRDD by 07-05-2015. That, the Notice also provides that after due verification of the duplicate documents further information would be communicated for issuance of Original Mark Sheets, Migration Certificate and Degrees, as the case may be. No reference has been made to the off-Campus students which the Petitioner had recruited in terms of the permission



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granted to it by the Respondent No.3. In this regard, attention is drawn to Annexure P3, a letter issued by the Authorised Signatory of EIILMU addressed to the Petitioner No.1 dated 16-10-2010 whereby the Petitioner was appointed as the Non Exclusive Admission & Counselling Centre (EACC) of the Respondent No.3. Vide the said letter, he was also authorised to facilitate Registration and Admission to private candidates into EIILMU, Sikkim. He was further authorised to admit students in Engineering Diploma Programmes offered by EIILMU. Therefore, on the strength of this letter, the Petitioner has taken steps and recruited the students who have now been left without any Degree inasmuch as only Provisional Degrees have been provided to them and with the issuance of Notice of closure of the EIILMU as also the Notice differentiating the Regular and off-Campus students, the future of the off-Campus students recruited by the Petitioner are in jeopardy. Therefore, the Petitioners seek quashing of the Notification dated 30-04-2015. Learned Counsel while referring to the Report of the Inspection Committee on its visit to the EIILMU on 15/16-03-2008 submitted that Serial No.5 of the Inspection Report (Annexure P1) noted that the "Territorial Jurisdiction" of the EIILMU was "all over India and Courts in the Indian Territory of Delhi". That, the Report at Sl. No.21 in response to the query "whether any off-Campus or




Study/off-Shore Centre or Admission" as 'No'. Since the Inspection was conducted in 2008, it was clear that at that time there was no off-Campus or off-Shore Centre of the EIILMU. Permission to the Petitioner was given only in 2010 and was not reflected therein. The Inspection Report nowhere revealed that off-Campus and off-Shore Centres were not permitted by the UGC. That, the Respondent University is estopped from retracting its earlier statement granting authorisation to the Petitioner. That, unlike the UGC or the AICTE the DEC is not a Statutory Body and does not enjoy powers to compel its Regulations, consequently the prayers made in the Petition be granted.

7. *Per contra*, the question raised by Learned Senior Advocate for the Respondent No.2 while advancing his arguments was firstly on the point of *locus standi* of the Petitioner. According to him, the Petition itself indicates *"That the petitioner is promoter Director of A Institute of Hotel Management popularly known and herein after referred to as AIHM having it's Campus at AGRA and Greater Noida in the State of Uttar Pradesh and one campus in Guwahati, Assam"*. That, the Petition also reflects that the Institute provides Graduate and Post-Graduate Course in Hospitality and Management. Therefore, the question is when it is an Institute for Hospitality, how could the Institute be offering a Course in

Engineering. In the next leg of his argument, it is submitted that the aggrieved students have not approached the Court neither have they authorised the Petitioner to appear and place their case before the Court on their behalf. Therefore, the question of quashing the Notice does not arise. That, in fact, the IGNOU vide letter dated 09-09-2009 (Annexure R-11) addressed to the Vice Chancellor, EIILMU, based on the recommendations of the Joint Committee of UGC-AICTE-DEC had been accorded recognition for the Academic Year 2009-10 for offering a number of Programmes through Distance Education Mode. One of such Programmes was B.A. (Hospitality & Tourism) as found in Sl. No.1 of Table 1 of the letter. Table 2, specifies Programmes not recommended by the IGNOU while include Diploma in Mechanical Engineering. Therefore, the question of the EIILMU granting permission to the Petitioner to recruit students in Mechanical Engineering, Electrical Engineering or any other Engineering Course did not arise as the EIILMU itself had not been permitted to run Engineering Courses. In fact, if one were to carefully scrutinise the contents of the letter dated 16-10-2010 by the EIILMU to the Petitioner No.1, it only authorises him "to admit" students into Engineering, Diploma Programmes offered by the EIILMU. On this count, it is reiterated that in the first instance, the EIILMU itself did not have permission to run Engineering Courses and secondly, the letter merely

authorises the Petitioner "to admit" students into the Engineering Diploma offered by the EIILMU, but does not authorise him to admit off-Campus students or to offer Courses to them in such Campus. Therefore, the Petitioner is responsible for all acts committed by him and can hold no one responsible. It is also contended that as per the letter dated 09-09-2009 (Annexure R-11), with regard to territorial jurisdiction for offering Programmes through Distance Mode, the latest UGC Notifications will prevail over all previous Notifications and Circulars. That, as per the UGC Notification, State Universities (both Private as well as Government funded) can offer Programmes only within the State and Deemed Universities from the headquarters and in no case outside the State. However, Deemed Universities could seek permission to open off-Campus Centres in other States and offer DEPs through the approved off-Campus Centres only with the approval of the UGC and DEC. The Section specifies that the territorial jurisdiction of EIILMU shall be Sikkim State and the DEC prohibits franchising all Study Centres, thus EIILMU would not franchise any Study Centres. Attention of this Court was invited to letter dated 04-09-2014 (Annexure R-14) addressed to the Station House Officer by the Deputy Director of the UGC clarifying therein that the territorial jurisdiction of the EIILMU was confined to the State of Sikkim which was duly



communicated vide DEC letter. That, in light of the UGC territorial jurisdiction policy, examinations were to be conducted at its headquarters or its own centres within the State of Sikkim only. Apart from the above, the letter lays down that the recognition accorded by the erstwhile DEC was only for one year, i.e., 2009-10. Thus, any Programme offered by the University are not recognised by the DEB, UGC after the said Academic Year 2009-10. That, in view of the documents on record, the prayers put forth by the Petitioner require no consideration.

8. Learned Counsel for the Respondent No.3 in his arguments submitted that the averments in its response were being relied upon and that the DEC was a part of the IGNOU and permission had been granted to the EIILMU to open off-Shore Centres.

9. I have considered the rival contentions put forth by Learned Counsel at length and meticulously examined all the documents on record.

10. What arises for consideration before this Court is, whether the Petitioner can seek quashing of Notice bearing Ref. No.56/DIR(HE)/HRDD dated 30-04-2015, *inter alia*, on the ground that off-Campus students were being differentiated as against the regular students after closure of



the EIILMU, in view of the letter dated 16-10-2010 of the Respondent No.3, authorising him to admit students in the Engineering Diploma Programmes.

11. In this regard, we may first refer to Notice bearing Ref. No.55/DIR(HE)/HRDD dated 30-04-2015. Vide this Notice, the HRDD, Government of Sikkim, Respondent No.1 reads as follows;

“

It is to inform to all concerned that State Government has approved dissolution of EIILM University under Section 47 of the EIILM University Act 2006. Hence, no students should apply for fresh admission in EIILM University for the forth coming academic session of 2015-16.

.....”

This Notice is not under challenge in this Writ Petition. It is the second Notice of the same date, i.e., 30-04-2015, bearing Ref. No.56/DIR(HE)/HRDD which is being referred to by the Petitioners. For better understanding of the matter, it would be expedient to reproduce the relevant portion of the Notice hereunder;

“

It is to inform to all students who were registered as regular student (sic) in EIILM University, Budang Campus, Soreng, West Sikkim that the Department is in compilation of the mark sheets, migration Certificate and Degrees of previous year as well as current year. Hence, it is directed that the regular students who have studied within Sikkim can send the duplicate copies of documents including previous year mark sheets, provisional certificates, Enrolment Number, Admit Card, Registration Number and any other concern (sic) document to the Department by 07th May, 2015.

.....



After due verification of the documents further information would be communicated for issue of original mark sheets, migration certificate and degrees, as the case may be.

.....”

12. It is the specific contention of the Petitioner that the Department has made provision of issuing Original Mark Sheets, Migration Certificate and Degrees only for students who have registered as regular students in EIILMU, Budang Campus, Soreng, West Sikkim, while at the same time, although he had been accorded permission by the Respondent No.2 to admit students in Engineering Diploma Programmes, no similar provisions exists for these students. Now, in this connection, in the first instance, it would be essential to refer to letter dated 09-09-2009 (Annexure R-11). The letter is addressed to the Vice Chancellor of the Respondent No.3 by the Director, DEC, IGNOU, New Delhi, informing the Vice Chancellor as follows;

“.....

With reference to your application seeking recognition of Distance Education Council for offering programmes through distance education mode, I have been directed to inform you that based on the recommendations of the Joint Committee of UGC-AICTE-DEC, your University/Institution has been accorded recognition for a period of one year academic year w.e.f. academic year 2009-10 for offering following programmes through distance education mode:

.....”

Thereafter, a Table has been prepared in which the First Table pertains to “1. Programmes recommended for one



year" which included B.A. (Hospitality & Tourism) which has a duration of three years, BCA with a duration of three years and MBA for three years. The next table reads as "2. Programmes not recommended", which are eight in number, and include B.A. (Fashion Technology), BCA-MCA Integrated, MCA, M.Sc (Biotechnology), MA (Journalism & Mass Communication), Diploma in Mechanical Engineering, Diploma in Electrical Engineering, Diploma in Electronics and Communication. Apart from the above Tables, it is also specified that the territorial jurisdiction of the Institution shall be in Sikkim State. Paragraph 6 of the letter specifies that —

"6. *Regarding territorial jurisdiction for offering programmes through distance mode the latest UGC notifications will prevail all over previous notifications and circulars. As per the UGC notification, State Universities (both private as well as Govt funded) can offer programmes only within the State and Deemed Universities from the Headquarters and in no case outside the state. However, Deemed Universities may seek the permission to open off campus centres in other states and offer distance education programmes through the approved off campuses only after approval of UGC and DEC. Central Universities will also adhere to the UGC norms. The territorial jurisdiction for the institutions (both private as well as Govt funded) shall be the Headquarters, and in no case outside the State. Thus, the territorial jurisdiction of your Institution shall be **Sikkim State**."*

Hence, this letter speaks for itself and no further elucidation is necessary. Despite such a clear cut letter which succinctly lays down the parameters within which State Universities (both Private as well as Government

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funded) were to work under, the Respondent No.3 has chosen to issue letter dated 16-10-2010 (Annexure P3) to the Petitioner. Assuming that the Petitioner cannot be faulted for having recruited students to the Engineering Diploma being unaware of the provisions mentioned in letter dated 09-09-2009 (Annexure R-11), his fault lies in the fact that although he was merely authorised to admit students in the Engineering Diploma Programmes offered by the EIILMU he has proceeded to conduct classes, give examinations and results. In fact, he has been appointed as a "Non Exclusive Admission & Counseling Center". Nowhere does the letter permit him to give Classes, run the Course for the Engineering Diploma or empower him to issue degrees to the students. Besides the above facts, it is also evident that the communication between the Petitioner No.1 and the EIILMU (Annexure P3) vide which the Petitioner was authorised to "admit students in Engineering Diploma Programmes offered by EIILM University" was not brought to the notice of the UGC, DEC or for that matter to the HRDD, Government of Sikkim, who were in the dark about such communication shared between the Petitioner and the Respondent No.3. All correspondence on record for sure do not indicate any permission by the UGC to open off-Campus Centres or Study Centres to the EIILMU and even when permission was granted for Distance Education Mode for three Courses, it

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was only for the Academic Year 2009-10. Therefore, the EIILMU blatantly and in clear violation of the directions of the IGNOU which was based on the recommendations of the Joint Committee of UGC-AICTE-DEC, issued letter dated 16-10-2010, Annexure P3, to the Petitioner No.1. It is thus apparent that neither the HRDD nor the UGC were aware of the arrangement and communication between the EIILMU and the Petitioner, and, therefore, now the Petitioner cannot be heard to say that the HRDD is making a differentiation in the off-Campus students and the regular students, when they are devoid of knowledge of any such arrangements between the Petitioner and the Respondent No.3. It may be reiterated for emphasis that the Petitioner was not even authorised to offer the Course and run Classes or issue Diplomas/Degrees to the students. As pointed out by the Learned Senior Counsel for the Respondent No.2 the allegedly aggrieved students have not approached the Court added to which the Petitioner was only a Promoter Director of "A Hotel Management Institute", how he was equipped or had the wherewithal to offer Courses in the Engineering Programmes, is beyond the comprehension of this Court. One also needs to mull over the averment of the Petitioner that the UGC vide a Public Notice in the newspaper "The Times of India" dated 12-07-2013 (Annexure P-6) informed the general public about advertisement published in national

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dailies offering opportunities to award University Degrees through various franchise Programmes conducted by certain Private Institutions and for the first time informed that the UGC have not granted permission to any Private University to establish off-Campus/Study Centres. The above Notice is evidently in the knowledge of the Petitioner who as per Annexure P-3 dated 16-10-2010 was authorised by the Respondent No.3 to admit students in the Engineering Diploma Programmes offered by Respondent No.3 in October, 2010, itself. Why he exercised restraint from taking necessary steps against the Respondent No.3 in view of the facts and circumstances and also bringing the facts to the notice of Respondents No.1 and 2 has not been explained. If the notice was issued in 2013 and was within his knowledge it is questionable as to why he took up cudgels for the allegedly aggrieved students only on 10-09-2015 by filing the instant Writ Petition. In addition to the above, it was also averred *"That vide letter dated 4.9.2013, the Joint Secretary of the University Grants Commission Shri A. K. Dogra directed the Vice Chancellor of the EIILM University to at once discontinue the courses run by the EIILM University under distance mode through study centre without the approval of the UGC and DEC." "..... and directed the Universities that (i) courses under distance mode can be conducted only after prior approval of UGC; (ii) immediately close down all the 'Admission-*

cum-Counselling Centres' which are admitting students for courses run under distance mode." (Annexure P-8).

The Petitioner undoubtedly was seized of this letter, but did not deem it essential to bring his position to the Notice of the Respondents No.1 and 2 and neither did he question the Respondent No.3. I also find that since the Petitioner has taken upon himself to file this Petition and none of the allegedly aggrieved students have deigned it fit to do so, the act of the Petitioner smacks of forestalling thereby pre-empting steps that may be taken against him by off-Campus students recruited by him. His conduct in rushing to the Court reinforces this assumption as he admittedly has not approached the HRDD, Government of Sikkim, with his grievances on closure of the University. He has not deemed it essential to inform the Respondents No.1 and 2 of the pitfalls he has had to endure, but has approached the Court without exhausting the other remedies available to him. The question of invoking the doctrine of promissory estoppel by the Petitioner against any of the Respondents in the facts and circumstance does not arise.

13. In the result, the Writ Petition is dismissed.

14. No order as to costs.



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(Meenakshi Madan Rai)
Judge
02-11-2016

Approved for reporting : **Yes**

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Internet : **Yes**