

**BEFORE THE H.P. PRIVATE EDUCATIONAL INSTITUTIONS REGULATORY COMMISSION
AT SHIMLA**

In the matter:

Case No. 2/2012

Date of filing the petition: 4.5.2012

Date of decision: 15.10.2014

1. Shri Amit Kumar son of Shri Diwakar Dutt Gautam, resident of Prakash Kunj, Cemetery road, Sanjauli, Tehsil and District Shimla (HP).
2. Shri Aman Thakur son of Shri Sohan Singh Thakur, resident of Hari Niwas, Near Cemetery Gate, Sanjauli, Shimla-171006 (HP).
3. Shri Arun Sharma son of Shri Dharampal Sharma, resident of Village Ghat, P.O. Kattal, Tehsil Nalagarh, District Solan (HP).
4. Shri Rajan Singh Vaidwan son of Shri Ranbir Singh, resident of Royal Hotel, 1/21 Nabha Estate, Tehsil and District Shimla -171004 (HP).

... Petitioners

Versus

1. Business Institute of Management Studies, Shimla Hotel, Near High Court Building, Bemloe, Tehsil and District Shimla-171001 (HP) through its chairperson Ms. Gunchu. J. Arora.
2. Ms. Gunchu J. Arora, Chairperson, Business Institute of Management Studies, Shimla Hotel, Near High Court Building Bemloe, Tehsil and District Shimla-171001 (HP).
3. Shri Manoj Jishtu, Director, Business Institute of Management Studies, Shimla Hotel, Near High Court Building Bemloe, tehsil and District Shimla-171001 (HP).

Petition under Section 11 of the H.P. Private Educational Institutions (Regulatory Commission) Act, 2010 and Rule 6 of H.P. private Educational Institutions (Regulatory Commission) Rules, 2011 read with Order 37 of the Code of Civil Procedure for recovery of Rs. 2,63,950/- from respondents.

Present: S/Shri Aman Thakur, Amit Kumar, Arun Sharma and Rajan S. Vaidwan petitioners

Shri Rajesh Prakash, Advocate for respondents No.1 and 2
Respondent No.3 proceeded *ex parte*

ORDER

1. The petitioners filed application and averred that they were students of respondent No.1, a study centre run by respondents No.2 and 3 under the distance education programmes conducted by Sikkim Manipal University, a University established under a State Act as defined under Section 2(f) of the University Grants Commission Act, 1956. It is also averred that the respondents allured the petitioners for admission by releasing various advertisements in newspaper and by circulating

pamphlets. The petitioners with an intention to pursue their BBA degrees through respondents, purchased prospectus for a sum of Rs. 500/- from the respondents (through no price was indicated) Copy of Prospectus enclosed at **Annexure P-1**. The extract of the prospectus is reproduced by the petitioners in the following manner:

Sr. No.	Categories	Fee (amount in Rs.)
1.	Registration Fee	Rs. 15,000/-
2.	Tuition fee	Rs. 95,000/-
3.	Study Material, Industrial Tour	Rs.30,000/-
4.	Library fee	Rs. 5,000/-
5.	Extra curriculum Activity fund	Rs. 5,000/-
	Total:	Rs. 1,50,000

For payment of above fee the instalment plan has been averred as under:

Registration Fee:	Rs. 15,000/-
At the time of reporting:	Rs. 22,500/-
5quarterlyinstalments	Rs. 22,500/- each.

2. It has further been averred that thepetitioners raised loans from different banks for completion of BBA course and interest on such amount was payable. The petitioners were admitted with the respondents for undergoing BBA course in June, 2009 and such examination was to be conducted in January, 2010 for the first semester. However, no examination was conducted for first semester in January, 2010. Moreover the respondents did not provide any facility as assured in the prospectus and at the time of seeking admission. Six months of 1st semester of petitioner No.4 were got wasted by the respondents, as no examination was got conducted. It has further been averred that petitioner No.4 was charged Rs. 15,000/- as registration fee + Rs. 37,500/- as first instalment for BBA Course against the prescribed first instalment of Rs. 22,500/-. It has also been averred that on the direction of the H.P. Private Educational Institutions Regulatory Commission, the petitioners tried to settle the matter amicably with the respondents on 26.4.2012. The claim forms/ facilities availed Forms were circulated by the respondents to some of the petitioners indicating therein the amount charged by the respondents against each column and remarks columns were to be filled up by the petitioners. The copies of the claim forms are annexed with the petition as **Annexure P-2** to **Annexure P-4**.

3. The claim forms were filled up bythe petitioners and submitted to the respondents on the said date. The petitioners in order to settle the matter amicably were ready and willing to forego some amount but the respondents flatly refused to refund any amount to the petitioners. It has also been averred that respondents did nothing in the name of facility, as assured at the time of admission of the petitioners. All charges mentioned in the schedule of fee are nothing but full of surmises, conjectures and hypothetical just to grab money from the petitioners. Not only the respondents have burdened the petitioners with exorbitant fee under different heads but also saddled the petitioners with tax burden of Rs. 1500/- per semester. It has further been averred that if fee structure is perused the respondents are running "Off Campus Centre"of Manipal Universityas

its constituent unit but without having the University compliment of facilities, faculty and staff. However, if the facilities actually provided are seen, the respondents are running a study centre within the meaning of clause 2.4 of UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003 for the purpose of advising, counselling or rendering any other assistance required by the students used in the context of distance education. It has also been averred that the respondents are charging huge fee from the students which fee has never been approved by the State Government and UGC. It has further been contended that in the absence of requisite permission from the statutory bodies, there is apprehension that the degrees and certificates awarded by the University would not be recognised by the professional organisations as a result whereof the students studying in such University and obtaining the degrees therefrom would suffer immense loss, both in terms of money and also the time spent in completing the courses and the respondents be held responsible for their fraudulent act and for playing fraud with the future of the petitioners. Due to oppressive measures of the respondents for extracting money and not granting any facilities, the petitioners No.1,3 and 4 have left the respondent institute and now pursuing their studies from other learning /study centres at Nalagarh and Bilaspur. The petitioners have requested to compensate the petitioners for the false and baseless assurances given by the respondents at the time of admission. It has been prayed that against the actual amount payable by each petitioners to the tune of Rs. 1,66,500/-, the respondents have charged exorbitantly Rs. 4,30,950/- and a sum of Rs. 2,63,950/- is refundable (Rs. 65,100/- to petitioner No.1, Rs. 53,150/- to petitioner No. 2, Rs. 65,100/- to petitioner No.3 and Rs. 80,600/- to petitioner No.4) and the same be got refunded to the petitioners from the respondents and exemplary penalty has also been requested to be imposed on the respondents under the provisions of H.P. Private Educational Institutions (Regulatory Commission), Act, 2010 and Rules 2011 with cost of the petition, while reserving their rights to file criminal proceedings against the respondents.

4. On perusal of the averments made by the petitioners, prima facie it was felt that the petitioners are aggrieved by exorbitantly charging fees by the respondents, as such notices for appearance were issued/ served upon the respondents and the case was fixed for 1.10.2012.

5. On 1.10.2012 Shri Rajesh Prakash, Advocate appeared on behalf of the respondents No.1 and 2. Shri Amit Kumar, Shri Aman Thakur, Shri Arun Sharma and Rajan Singh, petitioners appeared in person. Shri Rajesh Prakash Advocate submitted Vakalatnama to represent the respondents No.1 and 2. He prayed that sometime be given for submission of reply to the petition filed by the applicants. Shri Arun Sharma, petitioner submitted authorisation letter on his behalf authorizing other petitioner (s) to represent him in proceedings before the Commission. The prayer of Shri Rajesh Prakash was allowed. Authorization of Shri Arun Sharma be taken on record. The case was fixed for 5.10.2012 for submission of reply on behalf of the respondents.

6. On 5.10.12012 Shri Rajesh Prakash, Advocate appeared on behalf of respondents No.1 and 2. Respondent No.3 did not put in appearance. Shri Amit Kumar, Shri Aman Thakur and Shri Arun Sharma petitioners appeared in person on their own behalf and on behalf of remaining petitioner. Shri Rajesh Prakash Advocate submitted reply to the petition on behalf of respondents No.1 and 2, copies of which were supplied to the petitioners. In their reply respondents No.1 and 2 raised preliminary objections viz. (a) the petition is not maintainable in the present form as it suffers from material defects and Commission is not having the jurisdiction to entertain the petition (b) the

petitioners do not come under Section 2(f) of the H.P. Private Educational Institutions (Regulatory Commission) Act, 2010, (c) the BIMS is an Educational Society and registered under H.P. Societies Registration Act, 2006 and Act is not applicable to Societies, (d) the petitioners are estopped from filing the present petition as they had already left the institute (e) the petitioners had not come to the Commission with clean hands and had suppressed material facts (f) the petitioners have got no cause of action to file the present petition (g) petition is bad for joinder and misjoinder of parties and lastly (h) respondents reserve the right to give detailed reply and objection in the paras of the petition and to be read as a whole in respect of the petition. **On merits**, the respondents No.1 and 2 denied the petitioners to be the residents of Himachal and students of respondents institute and the competency of the Commission to entertain the present petition. It has further been contended that the respondent No.1 is the study centre, run and operated by respondents No.2 and 3 being a Society registered under H.P. Societies Registration Act, 2006 and hence Act is not applicable to the Societies. Copy of Certificate of Registration of Societies is annexed as **Annexure R-1**. It has been contended that the respondents did not allure the petitioners for admission as respondents are not hypnotizers, however, the petitioners contacted the respondents for getting admission. It has also been contended that the petitioners are not students within the meaning of Section 2(f) of the H.P. Private Educational Institutions (Regulatory Commission) Act, 2010, as the petitioners have left out the respondents institute at their own will. It has also been contended that the respondents have no due permissions from Sikkim Manipal University and Sikkim Manipal University from University Grants Commission. It has been contended that the petitioners are seeking refund of fees only due to reason that they failed to survive in this highly competitive world. It has further been contended that the respondents supply free prospectus and students who wish to join the course are charged fees of the prospectus and respondents in no way had assured the petitioners in any manner whatsoever. The respondents have admitted that the petitioners have paid all the fees. It has been contended that first semester exam was conducted in the month of June that time and there was no examination for BBA. In January only MBA exam were conducted. The fee structure has been contended to be well established all over India. The claim forms Annexure P-2 to P-4 showing the petitioners to be overcharged are contended to be fabricated. In rebuttal to the claim forms, the respondents No.1 and 2 has submitted as under:

Claim forms submitted by the petitioners as per Annexure P-2 to Annexure P-4				Contents of reply submitted by respondents No.1 and 2.
Sr. No.	Description	Fee as per schedule of BIMS	Remarks given by the students	-
1.	University Fee	Rs. 12,100/-	Rs. 11,100/-	It is remarked to get cu-offs and discounts who will pay for the books.
2.	Face to face training fee	Rs. 4,000/-	X	From where the teachers who teach them will be paid. Copy of attendance sheet of students annexed as Annexure R-2 .
3.	Building fund	Rs. 1,500/-	X	Wear and tear of the construction material, writings on the walls, desks spitting and such other ways.

4.	Business English Certificate	Rs. 1,000/-	X	It is designed to meet the ends of the private sector industry. If student fails to appear and do not wish to collect. The copies of Business English Certificate annexed as <u>Annexure R-2.</u>
5.	Industrial Tour	Rs. 500/-	X	Duly offered but denied. Photographs have been annexed as <u>Annexure R-3.</u>
6.	Degree fee	Rs. 100/-	X	Have gone through, now refusing. Left the Institute at their own will and without information.
7.	Case studies	Rs. 300/-	X	They are provided.
8.	Pre examination	Rs. 700/-	X	Conducted. The copies results annexed as <u>Annexure R-4.</u>
9.	Library			Duly available but they have not gone there. Copies of Library Register have been annexed as <u>Annexure R-5.</u>
10.	IT facility	Rs. 1,000/-	X	Fully IT enabled services computerized studies. Photo graphs annexed as <u>Annexure R-6.</u>
11.	Laptop			Every year the cost of the electronic equipment/ laptop keeps on declining and is outdated with the coming of new technical specifications.
12.	Guest Lectures	Rs. 1,000/-	X	Duly conducted. Copies of vouchers fee of Guest Lecturer annexed as <u>Annexure R-7.</u>
13.	Events/ Seminar/ workshops	Rs.100/-	X	Duly conducted.
14.	Internet facility	Rs. 500/-	X	Whole campus is of internet connective and is totally assessable 24x7 it is different but the petitioners have clubbed it to prove their petition. The copy of telephone Bill have been annexed as <u>Annexure 8.</u>
15.	6 months job experience	Rs. 300/-	X	Petitioners left the respondents Institute at their own will and without information.
16.	Placement charges	Rs. 500/-	X	Petitioners left the respondents Institute at their own will and without information.
17.	Taxes	Rs. 1,500/-	X	Who is going to maintaining charges.
	Total:	Rs.25,000/-		

7. It has further been contended that the petitioners had passed and they were no more students of the respondents and this petition is filed with malaise intention and petitioners are not entitled for any relief. It has further been contended that if the petitioners were not satisfied with the working of the respondents then they must have filed a petition when they were students and were continuing studies in their respective fields through respondents. It has also been contended that respondent institution is having all the amenities, faculty, staff and other services under one roof. The rest of the contents of the petition has been denied by the respondents. The respondents have challenged the jurisdictional competence of the Commission and prayed that the petition be dismissed.

8. On 5.10.2012 petitioners present were asked whether they intended to file rejoinder to the reply or the case be fixed for arguments. Petitioners requested for hearing arguments in the case to which Shri Rajesh Prakash also agreed. I had gone through the case file. Respondent No.3 did not put in appearance despite of his service, as such he was ordered to be proceeded against *ex parte*. The case was fixed for hearing arguments on behalf of petitioners and respondents No.1 and 2 on 15.10.2012.

9. On 15.10.2012 Shri Amit Kumar, Shri Aman Thakur and Rajan Baidwan appeared in person on their own behalf and on behalf of Shri Arun Sharma. Shri Rajesh Prakash, Advocate appeared on behalf of the respondent No.1 and 2. Petitioners argued that they do not agree with the reply submitted by the respondents. Moreover, the teaching staff has wrongly been mentioned by the respondents. They further reaffirmed and reasserted their claim made in the petition and requested that the excess amount charged by the respondents be got refunded to them. Shri Rajesh Prakash, Advocate argued and stuck to the stand taken in the reply. Arguments of both the parties were heard at length and the same were closed on behalf of both the parties. Respondents were directed to furnish details of teaching staff alongwith their appointment letters and audited balance sheets for the relevant period in support of the stand taken by them by 5.11.2012. Accordingly the next date in this case for submission of documents by the respondents was fixed for 5.11.2012.

10. On 5.11.2012 Shri Rajan Baidwan and Shri Aman Thakur were present in person on their own behalf and on behalf of Shri Arun Sharma. Shri Amit Kumar did not put appearance. Shri Rajesh Prakash, Advocate appeared on behalf of the respondent No.1 and 2. Shri Rajesh Prakash submitted details of faculty. He prayed that time be granted for submission of balance sheets for the relevant period as the same were being prepared. Shri Rajan Baidwan and Shri Aman Thakur stated that the name of Shri Ravinder Verma as faculty of the institution has wrongly been mentioned by the respondents moreover Mrs. Shalu Sharma Puri had also left the job. The prayer made by Shri Rajesh Prakash was allowed. The balance sheets were ordered to be deposited by the respondents by 16.11.2012, this being the last opportunity. However, the judgment/ order in this case was reserved for pronouncement on 4.12.2012. The students present were directed to inform Shri Amit Kumar to be present on 4.12.2012. On 16.11.2012 Shri Rajesh Prakash, Counsel for respondents No.1 and 2 appeared in person. He submitted application for extension of time upto 23rd November, 2012 to file the Account Statements, as the same could not be prepared due to holidays. On 23.11.2012 Shri Rajesh Prakash counsel for respondents No.1 and 2 appeared in person. However, Respondents No.1 and 2 did not submit the audited balance sheet by 23.11.2012. On 4.12.2012 Shri Aman Kumar, Shri Amit Kumar and Shri Rajan Baidwan petitioners were present in person. Shri Rajesh Prakash counsel

for respondents No.1 and 2 also appeared in person. Shri Rajesh Prakash submitted that the Balance sheets are ready and the same shall be submitted to the Commission within two days. He prayed that time be granted for submission of balance sheets. The petitioners prayed for pronouncement of orders. In order to afford one more but last opportunity, the prayer made by Shri Rajesh Prakash was allowed for submission of balance sheets within 2 days. The case was adjourned and fixed for pronouncement of orders on 18.12.2012. The counsel for respondents No.1 and 2 submitted unaudited copies of balance sheets for the period 1.4.2010 to 31.3.2011 and 1.4.2011 to 31.3.2012 which were taken on record and date for pronouncement of orders was adjourned till such time perusal of the documents is completed.

The Learned Member, hearing the case, demitted office of the Commission. The Hon'ble Chairperson of the Commission heard the matter further on 11.09.2013 when Shri Rajan S. Baidan petitioner No.4 appeared in person and Shri Rajesh Prakash Advocate appeared on behalf of respondent No.1 and 2. Both the parties were heard and the arguments concluded on behalf of both the parties. Shri Rajesh Prakash was directed to furnish copy of Society's bye-laws under which BIMS is being run and also the details of faculty members since the year 2009 and the present status of the BIMS with regard to admissions. Time upto 13.09.2013 was given to furnish the above information. However final orders were reserved.

On 13.09.2013, the counsel for respondents No.1 and 2 submitted list of faculty members appointed during the year 2009-2011, copy of bye laws of BIMS Society and copy of notification with regard to amendment of The Sikkim Manipal University of Health, Medical and Technological Sciences (Amendment) Act, 2006 and further disclosed that presently there were 5 students in BBA and 10 students in MBA.

However on my joining the Commission, the case was remanded back for further hearing. The case was fixed for hearing afresh on 11.09.2013 when S/Shri Arun Sharma, Aman Thakur, Amit Gautam and Rajan Baidwan appeared in person. Shri Rajesh Prakash, Advocate appeared on behalf of respondents No.1 and 2 whereas respondent No. 3 had already been proceeded against ex parte.

S/Shri Arun Sharma, Aman Thakur, Amit Gautam and Rajan Baidwan stated that they did not intend to submit any document or additional evidence or make any further statements. They requested that orders in the case may be passed early. Shri Rajesh Prakash also stuck to the record already submitted by respondents 1 and 2 and the arguments addressed earlier. He further stated that petitioners did not fall within the definition of "students" and their case cannot be considered by the Commission. He stated that respondent Institute was still in existence, however, there was no student as on date. He stated that he had no further submissions to make.

Both the parties were heard at length and the arguments concluded on behalf of both the parties. Since they did not intend to make any further statements or tender any additional documents in evidence, the evidence/arguments/ statements stood closed and the case was reserved for final orders on 19.09.2014. On 19.9.2014 S/ Shri Aman Thakur, Amit Kumar, Arun Sharma and Shri Rajan S. Baidwan appeared in person. Shri Rajesh Prakash Advocate representing respondent No.1 and 2 also appeared in person. The pronouncement of order was fixed for 15.10.2014. On 15.10.2014 S/Shri when S/Shri Arun Sharma, Aman Thakur, Amit Kumar and Rajan

Baidwan appeared in person. Shri Rajesh Prakash, Advocate appeared on behalf of respondents No.1 and 2.

I have gone through the entire record submitted by the parties. Perusal of faculty details does not reveal the breakup of appointments as to when and how long the faculty taught in the respondent institute. More over the same has not been supported by the Statement of Account maintained by the Bank for disbursement of salaries to the faculties. The aims and objectives of the Society, as described in the bye laws, inter alia covers promotion of science, education, literature or fine arts. The copy of notification dated 3.4.2006 establishes that Sikkim Government enacted "The Sikkim Manipal University of Health, Medical and Technological Sciences (Amendment) Act, 2006 being Act No.6 of 2006.

Perusal of balance sheets submitted by the respondents shows an indirect income of Rs. 6,11, 000/- (Rs. 1,35,000 on account of donations and Rs. 4,76,000 on account of fee) has been booked for the FY 2010-11 against which the respondents have incurred expenditure of Rs. 6,25,794/- thereby respondents have suffered a loss of Rs. 14,794. During the FY 2011-12 indirect income of Rs. 9,00,329.00 (Fee income Rs. 7,70,329 and members contribution Rs. 1,30,000/-) has been booked by respondents against which an expenditure of Rs. 10,68,652 has been shown to be incurred thereby the respondents suffered loss of Rs. 1,68,323/-.

If the roll of students in the respondent institute is considered there was average intake of 30 students in MBA course during the FY 2010-11 and 5 students in BBA course aggregating to 35 students. If the fee schedule is perused the respondents c collected Rs. 14,150 per semester against the actual fee of Rs. 12,500/-. Against the total collected amount of Rs. 65,000/- per semester per student the respondent has paid fee to Manipal Sikkim University @ Rs. 12,500/- and Rs. 10,000/- was collected for lap top per student, the balance amount of Rs. 42,500/- has been collected towards various facilities head which were never provided by the respondents. If a sum of Rs. 42,500/- as collected per semester per student, the respondents collected a sum of Rs. 59,50,000/- per year as an income against which 6,11,000/- has been shown. If the expenditure of Rs. 6,25,794 claimed to have been incurred by the respondents against various heads is considered there ought to have been profit of Rs. 53,24,206/- during the FY 2010-11. The balance sheets submitted by the respondents if compared with the actual facilities provided is perused it is apparent that the balance sheets are not genuine but fabricated which fact is substantiated that these have not been audited by the Chartered Account at all.

11. I have heard both the parties at length and perused the petition and the reply alongwith documents submitted therewith by both the parties. For adjudicating the preliminary objections raised by the respondents and the case on merits, the following issues emerged in the case at hand and my findings against each issue are recorded thereunder;

(a) Whether a Society registered under H.P. Societies Registration Act, 2006 and running a study centre in Himachal Pradesh comes under the ambit of H.P. Private Educational Institutions, Regulatory Commission?

Finding:

As per provisions of UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003 specifically clause 2.1 which reads as under “private university” means a university duly established through a State/ Central Act by a sponsoring body viz. a Society registered under the Societies Registration Act, 1860, or any other corresponding law for the time being in force in a State or a Public Trust or a Company registered under Section 25 of the Companies Act, 1956. When the private Universities being run in Himachal Pradesh by Societies/ Trusts registered under the aforesaid Acts are within the ambit of provisions of H.P. Private Educational Institutions (Regulatory Commission) Act and Rules, how and why the Study Centre being run by a Society registered under the Societies Registration Act with the aim and objective of imparting higher education under distance education programmes of a private university after fulfilling all the codal formalities, does not fall within the ambit of H.P. Private Educational Institutions (Regulatory Commission) Act and Rules. Therefore, it is clear that the study centres, if opened by the Private Universities after due observance of law, in the State of Himachal Pradesh by Societies/ Trusts are within the jurisdiction of H.P. Private Educational Institutions Regulatory Commission for all intents and purposes as enshrined in H.P. Private Educational Institutions (Regulatory Commission) Act and Rules.

(b) **Whether Sikkim Manipal University is a Private University?**

Finding:

For this purpose I have ascertained that Sikkim Manipal University was established in the year 1995 in the state of Sikkim in accordance with the Sikkim Manipal University of Health, Medical and Technological Sciences Act, 1995 (Act No.9 of 1995) passed by the State Legislature of the Government of Sikkim with the aim of imparting educational opportunities and healthcare services in the State of Sikkim and country wide providing courses in IT, Engineering, Management, Commerce, Hospitality, Journalism & Mass Communication, Biotech and Health Sciences. Respondents has also submitted Respondents No.1 and 2 have submitted copy of notification dated 3.4.2006 which established that Sikkim Government amended “The Sikkim Manipal University of Health, Medical and Technological Sciences (Amendment) Act, 2006 being Act No.6 of 2006, which clearly corroborated that this University is a Private university and comes under the provisions Section 2(f) of UGC Act, 1956 (Act No.3 of 1956) which reads **“University means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act and includes any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this Act”**. Therefore it is found that Sikkim Manipal University is a Private University constituted under the aforesaid Act.

(c) **Whether the respondents were able to produce the required permission granted by UGC to run their Institute as distance education programme study centre & subsequent permission by the State of Himachal Pradesh?**

Finding

As per the averments contained in para-14 of the petition, petitioners have specifically alleged that they are apprehended that in absence of requisite permission from the statutory bodies, the degrees and certificates awarded by the Universities would not be recognized by the professional organizations as a result whereof the students studying in such Universities and obtaining the degrees therefrom would suffer immense loss, both in terms of money and also the time spent in completing the courses. It is further contended by the petitioners that if the respondents are found functioning illegally without any prior permission from the statutory bodies, fraudulent act and for playing fraud with the future of the students. In reply to the aforesaid contentions the respondents have only denied them in toto and have articulately manipulated their reply by confining it to the reorganization granted to Sikkim Manipal University without placing any documentation with respect to the permission granted by UGC to run their Institute as distance education programme study centre & subsequent permission by the State of Himachal Pradesh. Based upon the aforesaid observations, it is apparently clear that the respondent No.1 institute is having no permission from the UGC and State Government to run study centre through distance education programme and hence, their educational activities are illegal.

(d) **Whether Sikkim Manipal University can run programmes under Distance Education for the course undergone by the petitioners in Himachal Pradesh?**

Finding:

The University is offering courses in distant education through Sikkim Manipal University Distance Education (SMUDE). Clause 3.3 of UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003 provides "A private university established under a State Act shall operate ordinarily within the boundary of the State concerned. However, after the development of main campus, in exceptional circumstances, the university may be permitted to open off-campus centres, off shore campuses and study centres after five years of its coming into existence, subject to the following conditions:-

- 3.3.1 The off-campus centre(s) and /or the study centre(s) shall be set up with the prior approval of the UGC and that of the State Government (s) where the centre(s) is/ are proposed to be opened.
- 3.3.2 The over-all performance of the off-campus centre(s) and/or the study centre(s) shall be monitored annually by the UGC or its designated agency. The directions of the UGC for management, academic development and improvement shall be binding.

- 3.3.3 If the functioning of the said centre(s) remains unsatisfactory, the private university shall be instructed by the UGC to close down the said centre(s) which shall be binding on the university. In such a situation, the interest of the students already enrolled therein shall be protected.”

The Sikkim Manipal University can run courses under Distance Education Programme in Himachal Pradesh after due observance of law i.e. obtaining permissions from UGC and Government of Himachal Pradesh. In the case at hand the respondents failed to prove on record, if any permission was ever granted in favour of Sikkim Manipal University by the Government of Himachal Pradesh or the University Grants Commission for running distance education programme in Himachal Pradesh specifically through respondents and both the permissions are essential. In the reply submitted, the respondents have specifically admitted of having no due permissions from Sikkim Manipal University and Sikkim Manipal University from University Grants Commission. Therefore, it is found that Sikkim Manipal University cannot run programmes under distance education in Himachal Pradesh.

(e) **Whether the respondent No.1 is a duly authorized off-campus or study centre of Sikkim Manipal University?**

Finding:

For adjudication of this this point, again UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003 was construed, provisions of which envisage as under:

“2.2 “Off-campus centre” means a centre of the private university established by it outside the main campus (within or outside the State) operated and maintained as its constituent unit, having the university(s) compliment of facilities, faculty and staff.

2.4 “study centre” means a centre established and maintained or recognized by the University for the purpose of advising, counselling or for rendering any other assistance required by the students used in the context of distance education.

[off-campus centre and study centre as defined under these Regulations shall be applicable to the universities as defined under 2(f) of the UGC Act,1956]”.

The respondents have annexed copies of attendance of petitioners, as Annexure-2 to substantiate that teachers delivered lectures in the respondent No.1 and the respondents provided teaching facilities to the petitioners. The submission of attendance sheets of students does not prove that they were delivered lectures regularly on such dates. The respondents were directed to submit the details of faculty members alongwith their appointments letters. The respondents submitted such information before the Commission, however, the petitioners contended that name of

Shri Ravinder Verma as faculty of the institution has wrongly been mentioned by the respondents moreover Mrs. Shalu Sharma Puri had also left the job. Perusal of appointment letters revealed that such appointments were accepted by the faculties on 18.1.2011 (two faculties), 25.7.2011, 10.10.2011 and 12.6.2012, (one each faculty) whereas perusal of Annexure R-2 shows that at the time of admissions of petitioners No.1, 3 and 4 in the month of August, 2010 there existed no faculty as the appointments of faculties are of much later dates. The respondents appointed two faculty members in the month of January, 2011 and the classes were started in February, 2011 when there was thin attendance in the study centre. Only two faculties taught in the Study centre upto 25.7.2011. The details of faculties appointed during 2009-2011 as supplied by the respondents on 13.09.2013 does not tally with the appointment letters, copies of which were placed on record by the respondents. Ms. Rashmi Chhiber, Ms. Poonam Kaushal, Mr. Rahul Berry who were appointed on 10.10.2011, 25.7.2011 and 18.1.2011 respectively have not been reflected in the list of faculties supplied by respondents on 13.09.2013, therefore, the record submitted by the respondents is self-contradictory and cannot be relied upon. Perusal of attendance sheet shows that there had been thin attendance in the study centre from July,2011 onwards, which clearly indicates that there had been no teaching work in the study centre. Moreover, the provisions of Section 2.2 of UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003 remained unfulfilled as the respondent No.1 had never been Sikkim Manipal University's compliment of facilities, faculty and staff, as such respondent No.1 cannot be held to be an "off campus centre" of Sikkim Manipal University. The aspect of existence of respondent No.1 as a "study centre" was also examined on the basis of record submitted by both the parties. Since the respondents could not produce any permission granted by the UGC and the Government of Himachal Pradesh in favour of Sikkim Manipal University to run study centres in Himachal Pradesh, therefore, it is deduced that respondent No.1 is also not a "study centre" of Sikkim Manipal University.

(f) Whether the petitioners come under the definition of "students" in the present case?

Finding:

If the prospectus sold by the respondents is perused, it incorporates, "**recognized by Sikkim Manipal University**". Though the petitioners have also averred that the respondent No.1 is a "study centre" run by the respondents No.2 and 3 under the distance education programmes conducted by the Sikkim Manipal University, which fact has also been admitted by the respondents and the petitioners were enrolled with Sikkim Manipal University for pursuing their BBA course through respondent No.1 being run by respondents No.2 and 3, yet as per findings rendered against issues No. (c) and (d) above, Sikkim Manipal University was neither competent to run the programmes pursued by the petitioners nor respondent No.1 was legal entity as per provisions of UGC Act & the Regulations, therefore, the petitioners could not be held to be "students" either of Sikkim Manipal University or respondent No.1. However, since the

subject matter of the petition was higher education though not legally imparted, hence the petition has been entertained for scrutinization.

(g) Whether teaching facilities were provided by the respondents?

Finding:

In view of my findings recorded against issues No. (d), the respondents have not provided any teaching facilities. The documents i.e. attendance sheets and the Class performance sheets appear to be fabricated documents, as the attendance of petitioners shown therein does not correlate with each other. The respondents have charged tuition fee and other charges wrongly not only over and above the fee fixed by the Sikkim Manipal University, but as a whole this practice has been adopted with an intention to gain capital without any due benefits. The information given by the respondents under Annexure R-5 does not establish that the respondents has given sufficient Library facilities to the petitioners. The rebuttal given by the respondents against the column of facilities denied by the petitioners is vague and totally absurd. I am not satisfied with the reply of the respondents with regard to making available facilities in the said learning centre as no cogent and reliable proof has been produced by the respondents. The services claimed to have been made available to the petitioners by the respondents are nothing but mere conjectures and surmises as the respondents have failed to prove the same to have been extended to the petitioners.

(h) Whether the petitioners have been overcharged the fee applicable to Sikkim Manipal University?

Finding:

As per claim form submitted as Annexure P-2 to Annexure P-4, the petitioners have put cross against all the facilities except University fee which has been claimed to be exorbitantly charged by the respondents. Therefore, it has been found that the respondents have not only charged over and excess fee to the actual fee of the Sikkim Manipal University but have indulged in duping the petitioners in collusion with Sikkim Manipal University.

(i) Conclusion and relief:

Petitioners have placed on record copy of prospectus as annexure P-1 which has been sold by the respondents. The perusal of which shows that this is not a prospectus issued by the Sikkim Manipal University but in fact this is a document devised by the respondents showing therein the exaggerated fee schedule. The copies of claim forms have also been placed on record as Annexure P-2 to Annexure P-4 which were duly received by the respondents as the same bear signatures of Shri Manoj, respondent No.3. Moreover these documents were not denied by the respondents, as such considered to be genuine. The contents of documents i.e. Annexure R-2 and Annexure

R-4 do not tally with each other, as such held to be fabricated. Respondents not only charged fee over and above fixed by Sikkim Manipal University but as a whole this practice has been found to be illegal exercise on the part of respondents in collusion with the Sikkim Manipal University and the petitioners have been duped by the respondents to gain capital by adopting illegal course/ method. I am not satisfied with the reply of the respondents at all with regard to making available facilities in the learning centre, though being run illegally, as no cogent and reliable proof has been produced by the respondents. The services claimed to have been made available to the petitioners by the respondents are nothing but an act to gullible petitioners. Not only this, the UGC Act has been made nugatory as Sikkim Manipal University is offering courses without subscribing to the conditions laid down by the UGC, as such the degree awarded by Sikkim Manipal University may not be of any value. The action of Sikkim Manipal University is contrary to the provisions of University Grants Commission Act, 1956 and the Regulations framed thereunder, as it has indulged in alluring people all over the country to pursue higher studies through such study centres, which could not be opened without the prior permission of the State Government and has also befooled petitioners to apply for admission and thereby substantial amount of money has been collected both by Sikkim Manipal University and the respondents. The primary duty of the University to maintain the highest standards of its teaching and examinations has been completely depleted. Universities are our national institutions, and to keep up our national prestige our degrees must be such as to command international recognition. The function of the university is not only to preserve, disseminate and advance knowledge but also to furnish intellectual leadership and moral tone to society. Mere conferment of degree is not enough. What is necessary is that the degree should be recognised. It is for this purpose that the right to confer degree has been given under section 22 of UGC Act only to a university established or incorporated by or under a Central Act, Provincial Act or State Act or an institution deemed to be a University under Section 3 of an institution specially empowered by an Act of Parliament to confer or grant degrees. The possibility that such universities which award degrees by running courses under Distance Education Programme without fulfilling the ingredients of UGC Act and Regulations, will do so only for the purpose of making money is writ large in the present case and such practice is bound to create havoc with the system of higher education in the country and would result in nullifying the main object for which University Grants Commission has been established and would render many provisions of the UGC Act unworkable and futile. The respondents and Sikkim Manipal University have been successful in duping money from the petitioners without rendering any higher education after due observance of law.

Since Sikkim Manipal University was never accorded approval by the Government of Himachal Pradesh to run its courses under Distance Education Programme, nor the respondents were running learning centre legally, therefore, the following orders are passed:

- A. Based upon the aforesaid observations the petition is allowed by directing the respondents jointly or severally to refund amount to the petitioners to the tune of Rs.

2,63,950/- (Rupees Two Lacs Sixty Three Thousand Nine Hundred Fifty) within 30 days according to the details contained in para 18 of the petition, failing which the respondents shall be liable to pay the entire amount alongwith interest at the rate of 14% per annum from the date of imparting of judgment.

- B. Respondent institution has failed to produce any permission from the UGC to run its study centre for imparting distance Education Programme alongwith required permission from the State of Himachal Pradesh and hence BIMS is directed to close down all distance education programme with immediate effect.
- C. The Principal Secretary (Education) to the Government of Himachal Pradesh be informed of the decision taken facilitating implementation of the same.

Parties be supplied certified copies of orders.

File after due completion be consigned to record room.

Announced in open Court.

(Sunil Dutt Sharma)
Member