

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

In the matter:

Case No. 3/2012

Date of filing the petition: 4.5.2012

Date of decision: 15.10.2014

1. Shri Vivek Katoch son of Shri Kalyan Chand Katoch, r/o Village Dharun, P.O. Jalpehar, Tehsil Joginder Nagar, Distt. Mandi (HP).
2. Shri Tarun Chandel son of Shri Ramesh Chandel resident of Village and P.O. Chadpur, Tehsil Palampur, District Kangra (HP)
3. Ms. Parul Chauhan daughter of Shri Narender Chauhan, resident of Gagan Niwas, Kasumpti, Tehsil and District Shimla (HP)-171009.
4. Shri Khushal Kumar son of Shri Rawat Singh, resident of Village and P.O. Dawahan, Kotli, District Mandi (HP).
5. Shri Ravinder Kumar son of Shri Laxmi Dass, resident of Village Kiyar, P.O. Juri, Tehsil Rampur, District Shimla (HP)
6. Shri Ajay Kumar son of Shri Jai Singh Thakur, resident of Village Kanda, P.O. Panesh, Tehsil and District Shimla (HP).
7. Shri Vikram Sharma son of Shri Jai Krishan Sharma, resident of Village Sundauli, P.O. Jukhala, Tehsil Sadar, District Bilaspur (HP).
8. Ms. Meenakshi daughter of Shri Amar Singh, resident of Village Kunni, P.O. Shahdhar, Tehsil Rampur, District Shimla (HP).
9. Shri Jiwan Singh son of Shri Kanshi Ram, resident of Village and P.O. Dawahan, Tehsil Kotli, District Mandi (HP)
10. Prince Butail, r/o # 857 C, Bhatia Nagar, Tohana, district Fatehabad, Haryana - 125120.
... 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. 13,94,760/- from respondents.

Present: S/ Shri Vivek Katoch, Vikram Sharma, Jeevan Singh and Ms. Meenakshi, 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 MBA 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. 25,000/-
2.	Tuition fee	Rs. 1,60,000/-
3.	Laptop, Study material, Industrial Tour	Rs. 50,000/-
4.	Library fee	Rs. 20,000/-
5.	Extra curriculum Activity fund	Rs. 5,000/-
	Total:	Rs. 2,60,000

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

Registration Fee:	Rs. 25,000/-
At the time of reporting:	Rs. 29,375/-
7 quarterly instalments	Rs. 29,375/- each.

2. It has further been averred that the respondents assured the petitioners regarding dual specialization course i.e. MBA+ PGDBM, however, after admission, the petitioners were offered and provided the course of MBA only. It has also been averred that the respondents assured 100% job

placement at the time of admission but this service was never provided by the respondents. It has also been averred that some of the petitioners has raised loan from bank for pursuing MBA course and had to pay interest over the amount raised and the entire payment of Rs. 2,60,000/- was received by the respondents from each petitioner. Further the respondents were not given facilities as assured at the time of taking admission except providing laptops and internet facilities. The respondents did not provide MBA+ PGDBM with dual specialization, job placement and no guest lectures were conducted by the respondents. No summer internship programme and no British Education Communication Skill Programme were ever provided as were assured by the respondents at the time of admission. It has also been averred that the respondents charged exorbitant fee from the petitioners and on the directions of H.P. Private Educational Institutions Regulatory Commission the petitioners tried to settle the matter amicably by visiting personally to the office of 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-7**.

3. The claim forms were filled up by the 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. The respondents did nothing except providing face to face training, internet facility and laptop. The cost of laptop has been recovered from each student to the tune of Rs. 40,000/- whereas in the open market its cost was Rs. 25,000 to 30,000/- at the relevant time. The tax burden of Rs. 7,000/- has unnecessarily been slammed on each student. It has further been averred that if fee structure is perused the respondents are running "Off Campus Centre" of Manipal University as 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 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 students. 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 petitioner to the tune of Rs. 1,20,524/-, the respondents have charged exorbitantly Rs. 2,60,000/- and a sum of Rs. 1,39,476/- is refundable in the case of each petitioner and total amount of Rs. 13,94,760/- 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 respondents No.1 and 2 and furnished Vakalanama. He prayed that sometime be given for submission of reply to the petition filed by the petitioners. Shri Tarun Chandel, Ms Parul Chauhan, Ms. Meenakshi, Shri Vivek Katoch, Shri Khushal Thakur, Shri Vikram Sharma, petitioners also appeared in person. Ms. Meenakshi, Shri Tarun Chandel, Shri Vikram and Shri Kushal petitioners submitted authorization letter on their behalf authorizing Ms. Parul Chauhan and Shri Vivek Katoch, petitioners to represent them in the proceedings before the Commission. The prayer made by Shri Rajesh Prakash was allowed. Authorization letter was taken on record and the case was fixed for 5.10.2012 for submission of reply on behalf of respondents.

6. On 5.10.2012 Shri Rajesh Prakash, Advocate appeared on behalf of the respondents No.1 and 2. Ms. Parul Chauhan appeared on her own behalf and on behalf of Ms. Meenakshi, Sh. Tarun Chandel, Sh. Vikram and Shri Khushal; petitioners. Petitioners No.1, 5, 6,9 and 10 did not put in appearance.

7. Shri Rajesh Prakash Advocate submitted reply to the petition on behalf of respondents No.1 and 2, copy of which was supplied to Ms. Parul Chauhan. 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 passed and had possession of degree certificates (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 passed out and have procured their degrees from the respondent sent by the University. The copies of the Degrees have been annexed with the reply as **Annexure R-2**. 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. It has also been contended that the petitioners themselves had opted for the single programme course and after the completion of the programmed course, they were duly provided placement letters but the petitioners withdrew themselves by not going to the places where they were provided jobs. The copies of interview letters are annexed with the reply as **Annexure R-3**. The respondents have admitted that the petitioners have paid all the fees. The raising of loan by the parents has been admitted to be the matter of record. It has been contended that the respondents had duly provided all the facilities and amenities to the petitioners and the petitioners did not wish to join private sector and petitioners are having fluctuating tendencies and that the petitioners refused to undergo dual specialisation course. It has been contended that the respondents have not charged exorbitant fees from the petitioners. The claim forms Annexure P-2 to P-7 are contended to be fabricated and that the petitioners are aimless about their future. 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-7				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. 14,150/-	Rs. 12,500/- was actual fee	Who will pay for the books.
2.	Face to face training fee	Rs. 10,000/-	Rs. 10,000- (exorbitant)	From where the teachers who teach them will be paid. Copy of attendance sheet of students annexed as Annexure R-4 .
3.	Building fund	Rs. 3,000/-	Not mentioned in the prospectus	Wear and tear of the construction material, writings on the walls, desks spitting and such other ways.
4.	Business English Certificate	Rs. 2,500/-	No course/ exam. Conducted.	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 Annexure R-5 .
5.	Cultural Events	Rs. 3,000/-	Only fresher party was convened once or twice during whole course, cost of which is not Rs. 3,000/- for all semesters.	Duly offered but denied. Photographs have been annexed as Annexure R-6 .

6.	Industrial Training	Rs. 1,500/-	Not conducted	Have gone through, now refusing. Copies of experience certificate annexed as <u>Annexure R-7.</u>
7.	Case studies	Rs. 2,500/-	Just 2 or 3 case studies and no exam conducted.	They are provided.
8.	Pre examination	Rs. 2,000/-	Not conducted.	Conducted. The copies results annexed as <u>Annexure R-8.</u>
9.	Library	Rs. 1,000/-	No facility	Duly available but they have not gone there. Copies of Library Register have been annexed as <u>Annexure R-9.</u>
10.	IT facility	Rs. 2,000/-	No facility	Fully IT enabled services computerized studies. Photo graphs annexed as <u>Annexure R-10.</u>
11.	Software charges	-	Nil	Study material is duly provided in the hard disks of the laptops for which no charge is taken.
12.	Laptop	Rs. 10,000/-	Cost of lap top is Rs. 27,124/- if divide in 4 instalments comes to Rs. 6,781/-	Every year the cost of the electronic equipment/ laptop keeps on declining and is outdated with the coming of new technical specifications.
13.	Guest Lectures	Rs. 2,000/-	Nil	Duly conducted. Copies of vouchers fee of Guest Lecturer have been annexed as <u>Annexure R-11.</u>
14.	Events/ Seminar/ workshops	Rs. 2,000/-	Nil	Duly conducted.
15.	Internet facility	Rs. 850/-	Rs. 850/- (also claimed the said facility at column No.10).	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 12.</u>
16.	6 months job experience	Rs. 1,000/-	No experience got.	Duly sent them but they shun their duties, again clubbed to prove their petition.
17.	Placement charges	Rs. 500/-	No placement	Duly sent interview letters to go to work even they shun their duties and are not willing to work. Copy of interview letters annexed as <u>Annexure R-13</u>

18.	Taxes	Rs. 7,000/-	What for	Who is going to maintaining charges.
	Total:	Rs. 65,000/-	Rs. 23,350/-	

8. It has been contended that the respondent institution is having all the amenities, faculty, staff and other services under one roof. The rest of the contents of the petition have been denied by the respondents. The respondents have challenged the jurisdictional competence of the Commission and prayed that the petition be dismissed.

9. 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 and petitioners No. 1,5,6,9 and 10 were ordered to be informed accordingly.

10. On 15.10.2012 Ms Parul Chauhan, Sh. Jeevan Singh, Shri Ajay Kumar and Shri Ravinder Kumar, petitioners appeared in person. Ms. Meenakshi, Sh. Tarun Chandel, Shri Vikram and Shri Khushal petitioners were duly represented by Ms Parul Chauhan as per authority letter dated 1.10.2012. Ms Parul Chauhan was directed to watch interest of remaining petitioner(s). 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. Ms Parul Chauhan stated that even the cost of the laptop has wrongly been charged in excess by the respondents. She submitted copy of the bill dated 17.5.2010 for perusal of the Commission which was taken on record, according to which cost of one PC is Rs. 26,190.48 + cost of carry case Rs. 952.38+ 5% VAN which works out to Rs. 1,357.14 aggregating to Rs. 28,500/-. She further argued that teaching staff has wrongly been mentioned by the respondents. The petitioners 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.

11. On 5.11.2012 Ms. Parul Chauhan and Sh. Jivan Singh were present in person. 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. Ms. Parul Chauhan and Sh. Jiwan Singh stated that only Mr. Rahul Berry was teaching the students and other names have wrongly been mentioned by the respondents. The prayer made by Shri Rajesh Prakash was allowed. The balance sheets were allowed 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. 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. Respondents No.1 and 2 did not submit the audited balance sheet by 23.11.2012. On 4.12.2012 Shri Ravinder Kumar, Shri Jeevan Singh and Ms. Parul Chauhan 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.

My learned predecessor, hearing this case, demitted office of the Commission. The case was fixed for hearing of argument afresh on 11.09.2013 by the Hon'ble Chairperson. On 11.09.2013 Ms. Parul Chauhan and Shri Jiwan Singh petitioners No. 3 and 9 were present in person. Shri Rajesh Prakash, Advocate appeared in person on behalf of respondents No. 1 & 2. Respondent No.3 did not put appearance, however he had already been proceeded against ex parte vide order dated 15.10.2012.

Ms. Parul Chauhan and Shri Jiwan Singh argued and stuck to the averments made in the petition and relied upon the documents already submitted. They prayed that the petition be accepted. Shri Rajesh Prakash Advocate argued and he also stuck to the reply and the documents already submitted.

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 are 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 enactment 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 next was fixed for 8.9.2014 on which date S/Shri Jiwan Singh, Tarun Chandel and Khushal Kumar appeared in person. Shri Rajesh Prakash, Advocate appeared on behalf of respondents No.1 and 2. Respondent No. 3 had already been proceeded against ex parte. S/Shri Jiwan Singh, Tarun Chandel and Khushal Kumar 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 do not intend to make any further statements or tender any additional documents in evidence, the evidence/arguments/ statements stand closed and the case was reserved for final orders on 19.09.2014. On 19.09.2014 S/Shri Khushal Kumar, Ravinder Kumar, Vivek Katoch and Ms. Meenakshi appeared in person. Shri Rajesh Prakash Advocate representing respondents No.1 and 2 also appeared in person. The next date for pronouncement of orders was given 15.10.2014. On 15.10.2014 S/ Shri Vivek Katoch, Vikram Sharma, Jeevan Singh and Ms. Meenakshi, petitioners appeared in person and Shri Rajesh Prakash Advocate representing respondents No.1 and 2 also appeared in person.

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 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.

12. 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-4 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 only Mr. Rahul Berry taught them and rest of the faculty members were shown to be fictitious. 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 the degrees were awarded on 26.9.2011 (eight degrees) and 28.12.2012 (one degree). If the dates of appointments of faculty members are compared with the dates of awarding the degrees, it is clear that MBA degrees to 8 petitioners were awarded after appointment of 2 faculties on 18.1.2011 and before appointments 2 faculty members on 10.10.2011 and 12.6.2012. However one faculty member was appointed on 25.7.2011 i.e. slightly earlier to completion of the MBA degrees. The appointment of 2 faculty members on 18.1.2011 i.e. 8 months before awarding of degrees shows that teaching faculties were not sufficiently available with respondent No.1. The list of faculty members submitted on 13.09.2013 is totally contrary to the appointment letters placed on record. Ms. Rashmi Chhiber, Ms Poonam Kaushal, Mr. Rahul Berry have not been shown to be faculties during the year 2009-2011 whereas they were appointed on 10.10.2011, 25.07.2011 and 18.1.2011 respectively. The record submitted by the respondents seems to be fabricated. 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 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 as students with Sikkim Manipal University for pursuing their MBA 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 for the purpose of entertaining the petition before the Commission. 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. informing some of the petitioners for the interviews through email Annexure R-3 seem to be fabricated as all the documents were generated by Mr. Rahul Berry HOD BIMS showing different dates however, such communications have been shown to be issued on 3.10.2012 as is evident from footnote automatically printed at the time of taking print of such communication. Moreover the reply to the petition has been filed by the respondents on 4.10.2012, hence these communications cannot be considered genuine for substantiating the fact that the respondents have made efforts for placement of the petitioners. 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 conducted any Business English course in the learning centre. Against cultural events the evidence produced by the respondents are not sufficient to prove that a sum of Rs. 3000/- was justified for each semester. 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-7, the students have indicated that against actual University fee of Rs. 12,500/-, they have been charged Rs. 14,150/- per semester. For face to face training fee the respondents have charged Rs. 10,000/- per semester which is exorbitant. The cost of laptop has been charged as Rs. 40,000/- against the actual price at Rs. 27,124/- or Rs. 28,500/- (as per bill submitted by

petitioners). Rest of the facilities are denied to be extended by the respondents to the petitioners; to be read with findings against Issues No. (d) and (e) above. Therefore, it has been found that the respondents have not only charged Rs. 1,39,476/- as over and excess to the actual charges of Rs. 1,20,524/- (Rs. 50,000/- towards University fee, Rs. 40,000/- towards face to face training fee, Rs. 3,400/- towards Internet fee and Rs. 27,124/- towards Laptop price) but have indulged in duping the petitioners in collusion with Sikkim Manipal University. The respondents were not legally entitled to charge any fee from the petitioners, as it could not have run the study centres without the due observance of law. Therefore, the entire money has illegally been charged by the respondents from the petitioners.

(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-7 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 documents i.e. informing some of the petitioners for the interviews through email Annexure R-3 seem to be fabricated as per my finding against Issue No. (f), hence these communications cannot be considered for substantiating the fact that the respondents have made efforts for placement of the petitioners. 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. The information given by the respondents under Annexure R-5 does not establish that the respondents conducted any Business English course in the learning centre. Against cultural events, the evidence produced by the respondents are not sufficient to prove that a sum of Rs. 3,000/- was justified for each semester. 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 the petitioners of their hard money earned/ borrowed from the Banks 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 the amount to the petitioners to the tune of Rs. 13,94,760/- (Rupees Thirteen Lacs Ninety Four Thousand Seven Hundred Sixty) within 30 days according to details contained in para 19 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 and compliance be reported within 7 days hereof.

Parties be supplied certified copies of orders.

File after due completion be consigned to record room.

Announced in open Court.

(Sunil Dutt Sharma)
Member