

# THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 16<sup>th</sup> August, 2021

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**SINGLE BENCH: THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**  
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W.P.(C) No.56 of 2018

**Petitioner** : Jyoti Agarwal

**versus**

**Respondents** : State of Sikkim and Others

Petition under Article 226  
of the Constitution of India

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**Appearance**

Mr. Pushkar Mehrotra with Mr. Saurav Singh, Advocates for the Appellant.

Dr. (Ms.) Doma T. Bhutia, Additional Advocate General with Mr. S.K. Chettri, Government Advocate for State-Respondents No.1 and 2.

Mr. Karma Thinlay, Senior Advocate with Mr. Thinlay Dorjee Bhutia, Advocate for Respondent No.3.

None for Respondents No.4 and 5.

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**J U D G M E N T**

**Meenakshi Madan Rai, J.**

**1.** The Petitioner, by filing the instant Writ Petition, seeks the following reliefs;

**a.** Writ or Direction in the nature of Certiorari quashing the written Communication, dated 08.08.2018 (Annexure P-8), issued by the Human Resource Development Department, Government of Sikkim.

**b.** Writ or Direction in the nature of Mandamus declaring the Degree, Master of Arts in Mathematics, obtained by the Petitioner from the Eastern Institute for Integrated Learning in Management University, Sikkim, as legal, genuine and valid for all purposes.

c. Further orders as this Court may consider necessary.

**2.** The Petitioner assails the Communication, dated 08.08.2018, vide which the State-Respondents No.1 and 2 informed the Respondent No.4-C.M.P. College, Allahabad University, where the Petitioner was employed, that Master of Arts in Mathematics [for short, M.A. (Math)] is not a recognized Course in the University Grants Commission (UGC)/Distance Education Council (DEC) for the Eastern Institute for Integrated Learning in Management University, Sikkim (EIILM University). Therefore, the Degree of the Petitioner in the subject was neither valid nor genuine.

**3.** Learned Counsel for the Petitioner, advancing his arguments before this Court, submitted that the Petitioner has been a meritorious student all through her academic career. On graduating in History and Mathematics from the Allahabad University, she enrolled in the EIILM University for M.A. (Math) in the 2010-2012 Session, after making all relevant queries with regard to the validity of the Degrees conferred by the University, which was listed on the official Website of the Respondent No.3-UGC, as a recognized University. Similarly, the official Website of the EIILM University indicated that all Courses offered by it were UGC recognized. The Petitioner appeared in the Internal and External Examinations conducted by the University for the Session 2010-2012 and successfully cleared the M.A. (Math) in the First Division. Pursuant thereto, she appeared in the Graduate Aptitude Test in Engineering in 2014 in which she duly qualified. On 22.06.2014, the Petitioner appeared in the Joint Council of Scientific and Industrial Research (CSIR)-UGC Test for Junior

Research Fellowship and National Eligibility Test (NET) for Lectureship and emerged successful. That, thereafter she pursued a Doctoral Degree in Philosophy (Mathematics) in Motilal Nehru National Institute of Technology, Allahabad and cleared the First and Second Semester Examinations in 2017-2018. That, on applications being invited from eligible candidates for the post of Assistant Professor in the Department of Mathematics by the Respondent No.4, she applied for and was appointed in the said post, which she joined on 08.01.2018. That, the instant matter arose on an anonymous Complaint lodged with the College regarding the Petitioner's Degree, upon which the Principal sought information from State-Respondent No.2 and in response received the impugned Communication of 08.08.2018. It is urged by Learned Counsel for the Petitioner that the impugned Communication is absolutely vague lacking material facts. That, the EIILM University, Jorethang, Sikkim, was established in 2006 and under Section 22 of the University Grants Commission Act, 1956 (Act No.3 of 1956) (UGC Act), any University defined under Section 2 (f) of the UGC Act can grant/confer a Degree, on the Degree being notified by the Central Government under Section 22 (3) of the Act. That, "Master of Arts" is reflected in the Notification of the UGC issued on 07.06.1999, at Serial No.60 of Appendix-I of the UGC Act. Consequently, once the Degree was specified in the Notification, the question of the Petitioner's Degree being invalid does not arise. Admittedly, the EIILM University was dissolved by the State vide its Order dated 08.05.2015, however the Petitioner had already completed her Course and Degree awarded to her in 2013, hence the dissolution of the University has no effect on her

Degree. Now, no explanation is forthcoming from any authority on why her Degree is invalid, which is prejudicial to her as she has completed several other Courses pursuant to her Degree in M.A. (Math). Moreover, her salary has also been withheld by the College where she was employed. Hence, the prayers in the Writ Petition *supra*. To buttress his contentions, Learned Counsel relied on the Order of the Hon'ble Supreme Court, dated 06.12.2019, in ***Deepak Rajak vs. Scheduled Caste Certificate Scrutiny Committee and Others***<sup>1</sup>. It was argued that although the Petition therein was dismissed by the Hon'ble Madhya Pradesh High Court, the Hon'ble Supreme Court despite dismissing the Special Leave Petition, clarified in the Order that the impugned Order of the Madhya Pradesh High Court shall be confined to the M.D. Course and not to the M.B.B.S. Course. Reliance was also placed on the decision of this High Court in ***Vineet Singh and Another vs. State of Sikkim and Others***<sup>2</sup> and the Judgment of the High Court of Judicature for Rajasthan at Jodhpur, in ***Shanti Lal vs. State of Rajasthan***<sup>3</sup>.

**4.** Learned Additional Advocate General for the State-Respondents No.1 and 2, while repelling the arguments raised by Learned Counsel for the Petitioner submitted that the EIILM University was closed down by the State in the year 2015, on account of the sale of fake Degrees and Certificates after Suo Motu FIR was registered against the sponsoring body of the University by the Sikkim Police in 2012. The University suspended Examinations on 24.12.2014 on account of the absence of the Management authorities including the Vice Chancellor, Registrar, Deputy

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<sup>1</sup> Special Leave to Appeal (C) No(s).27886/2019

<sup>2</sup> 2016 SCC OnLine Sikk 210

<sup>3</sup> S.B. Civil Writ Petition No.9198/2017

Controller of Examination and other Faculty. Due to the chaotic situation that prevailed in the University, the State was constrained to interfere and after achieving a semblance of order with regard to holding of Examinations for Regular students, the University was dissolved. That, EIILM University issued the Degree in M.A. (Math) to the Petitioner without approval of the UGC-DEC, duly communicated vide the assailed Communication. That, the Petitioner herself has not revealed whether she was enrolled as a Regular student or by Distance Education Mode nor are there documents to buttress her claim that M.A. (Math) was a recognized Degree. While admitting that EIILM University was established by an Act of State Legislature of Sikkim as a Private University, it was contended that it was not authorized to open a Study Centre/Off Campus Centre beyond the territorial jurisdiction of the State, as per the Judgment of the Hon'ble Supreme Court in **Prof. Yashpal and Another vs. State of Chhattisgarh and Others**<sup>4</sup>. Further, in terms of the UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003 (UGC Regulations), EIILM University was not permitted to open its Centres even within the State without the approval of the UGC. That, following several complaints from individuals across the country against the EIILM University, a Fact Finding Committee was constituted by the UGC to verify the complaints which found that the Courses to be offered by the University were only those detailed in Annexure R-1, dated 27.10.2015, relied on by the State-Respondents No.1 and 2, wherein M.A. (Math) finds no place, rendering the Petitioner's

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<sup>4</sup> (2005) 5 SCC 420

Degree invalid. Hence, the Writ Petition is not sustainable and deserves rejection by this Court.

**5.(i)** Learned Senior Counsel appearing for the Respondent No.3-UGC, while endorsing the submissions made by the State-Respondents No.1 and 2 added that firstly, the Petitioner has not come with clean hands before the Court given that she has concealed the fact as to whether she was enrolled in Distance Education Mode or was a Regular student in the University. Neither the averments in her Writ Petition including the amended Writ Petition nor the Rejoinders filed by her clarify her status as a student. Admittedly, the EIILM University was empowered to award Degrees as specified under Section 22 of the UGC Act but this pertained to its main Campus and students appearing in Regular Mode with the approval of the Statutory Bodies/Councils wherever required. The University had no jurisdiction to extend its operations beyond Sikkim. To fortify this submission, reliance was placed on **Prof. Yashpal's** case *supra*. It was emphasized that the Hon'ble Supreme Court observed therein *inter alia* that the Chhattisgarh Enactment which provided for extra territorial operation in the form of permission to open Off Campus Centre, Off Shore Campus and Study Centres at different places in India and other countries, was beyond the legislative competence of the Chhattisgarh Legislature. It was urged that in the light of the Judgment cited above, each University in the country must limit their jurisdiction to their own territory and cannot travel beyond the territorial jurisdiction of the State concerned, for the purposes of opening Off Campus Centres or Study Centres. That, the issue of territorial jurisdiction was also taken up for consideration by a Division Bench of this High Court in

***Sikkim Manipal University vs. Indira Gandhi National Open University and Others***<sup>5</sup> wherein one of the questions formulated by the Court for determination was whether it was permissible for Universities of all categories to run Distance Education Programmes outside the territorial limits of the State. Relying on the ratio of ***Prof. Yashpal (supra)***, the Division Bench propounded that the University shall be subject to its operation within the geographical territorial limits of the State under the Statute which created the University.

**(ii)** That, the UGC as far back as in 2009, vide its Letter No.F.9-8/2008 (CPP-I), dated 16.04.2009, Annexure R-2, informed all the State Governments *inter alia* that the action of the Private Universities established by the State Governments and State Universities in opening Off Campuses, Study Centres and Franchise in the name of Distance Education Programmes outside the State, was impermissible in terms of the Judgment of ***Prof. Yashpal (supra)***. Drawing the attention of this Court to Annexure R-7 *viz.* Communication to the Vice Chancellor, EIILM University, dated 09.09.2009, by the DEC, Indira Gandhi National Open University (IGNOU), it was pointed out that for the Academic Year 2009-2010, the DEC had recommended the following Courses by Distance Mode for one year *viz.* (1) B.A. (Hospitality & Tourism); (2) BCA; and (3) MBA. No Course in B.A. (Math) or M.A. (Math) was alluded to nor specified. The said Communication also enumerated the Programmes not recommended by the DEC, IGNOU and the Universities were directed to note that the latest UGC Notifications would prevail over all previous Notifications and Circulars with regard to territorial jurisdiction of Programmes through Distance

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<sup>5</sup> 2014 SCC OnLine Sikk 46

Mode. The Communication thus expounded in no uncertain terms that State Universities (both private and Government funded) could offer Programmes only within the State and Deemed Universities from the Headquarters. In any case, no Courses were to be offered from outside the State, hence granting of the Course and the Degree in a Course being M.A. (Math) which was not recognized by the UGC, is illegal and thereby invalid. That, recognition given by the UGC vide Letter, dated 22.07.2008, to EIILM University, authorized it to issue Degrees under Clause 22 of the UGC Act but did not give it unbridled right to start Courses/Programmes beyond the jurisdiction of the State in Distance Mode. Hence, the Petition lacking in merits be dismissed.

**6.** Rebutting the arguments of the Respondents No.1, 2 and 3, it was contended by Learned Counsel for the Petitioner that M.A. (Math) was duly approved by the UGC for EIILM University as is evident from its Web Portal. That, the UGC ought to penalize the EIILM University for its mischief if any and not the Petitioner. That, the Public Notice with regard to Study Centres and territorial jurisdiction was issued by the UGC only on 27.06.2013, whereas the Petitioner had completed her Course in June, 2012, a year before the Notice and would thus be inapplicable to her circumstance. That, as nothing material has been concealed, the Petition be allowed.

**7.** The submissions of Learned Counsel for the parties were heard *in extenso* and all documents on record meticulously perused as also the citations made at the Bar.



**8.** What falls for determination by this Court is whether the Degree of M.A. in Mathematics obtained by the Petitioner from the EIILM University, Sikkim, is a valid Degree.

**9.** Before discussing the merits of the matter, it may be pointed out that the instant Petition was filed on 26.12.2018. Thereupon, Notice was issued to the State-Respondents No.1 and 2, who were the only Respondents arrayed in the Petition. On the third date i.e. 12.04.2019, the Petitioner sought to file an Impleadment application to implead other Respondents. I.A. No.03 of 2019 was consequently filed on 27.06.2019 by the Petitioner, seeking to implead (a) University Grants Commission, (b) Chairperson/Principal, Governing Body, EIILM University, (c) Chairman/Principal, Governing Body, C.M.P. Degree College and (d) Director, Alpha Edutech Pvt. Lt. The application was allowed on 06.08.2019, on which date, however, the Petitioner submitted that she did not desire to implead the Director, Alpha Edutech Pvt. Ltd. in the array of Respondents. Notice to Respondent No.5- Chairperson/Principal, Governing Body, EIILM University, was returned with the report "EIILM closed since 5 yrs." Thereafter Notice was effected upon Respondent No.5 by publication in the National Daily Newspaper "The Statesman" on 04.11.2019 and the Local Daily Newspaper "Sikkim Express" on 02.11.2019. No one represented the Respondent No.5. On the date fixed for final hearing i.e. 24.06.2021, Learned Counsel for the Petitioner sought to file certain documents which had not been annexed initially to the Writ Petition, on the plea that the documents were imperative for a just decision in the matter. This prayer being unopposed was permitted and the Petitioner took steps by filing an Additional

Affidavit with documents purported to be print outs of the Web Portal of the EIILM University.

**10.(i)** That having been said, undisputedly EIILM University was established by an Act of the State Legislature of Sikkim as a Private University on 22.07.2008. Annexure R-1 (document of the Respondent No.3), which is the UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003, *inter alia* defines "Private University" at "2.1," "Off-Campus Centre" at "2.2," "Study Centre" at "2.4" and "Student" at "2.5" as follows;

**"2. Definitions**

- 2.1.** "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.
- 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, counseling or for rendering any other assistance required by the students used in the context of distance education.
- 2.5.** "student" means a person duly admitted and pursuing a programme of study."

Regulation 3.3 *inter alia* reveals thus;

**"3. Establishment and recognition of Private Universities**  
.....

- 3.3. 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 interests of the students already enrolled therein shall be protected.

.....”

(Emphasis supplied)

(ii) In tandem with the Regulations *supra*, Annexure R-2 (document of the Respondent No.3) is Correspondence, dated 16.04.2009, addressed by the Secretary, UGC to all the State Governments, whereby the State Governments have been directed to stop all the State/State Private Universities in the State from operating beyond the territorial jurisdiction in the State in any manner, either in the form of Off-Campus/Study Centre/Affiliated College and the Centres operating through Franchises. Vide Annexure R-4 (document of the Respondent No.3) i.e. Communication, dated 15.06.2009, addressed to all the Vice Chancellors of the State Universities by the UGC, it is reiterated therein *inter alia* as under;

- “.....  
**Keeping in view the above, you are requested to take an immediate action on the following:**
- i) **To ensure that no off campus centre(s)/study centre/affiliating college and the centres operating through franchises is opened by your University outside the territorial jurisdiction of the State in view of the judgment of Hon'ble Supreme Court of India in case of Prof. Yashpal vs. Government of Chhattisgarh.**
  - ii) **In case your university has already started any off-campus/study centre/affiliating college and the centre operating through franchises outside the State, it must be closed immediately.**
  - iii) **No distance education programmes shall be started without the prior approval of Joint Committee of UGC-AICTE-DEC for which DEC is the Coordinator.”**

(Emphasis supplied)

The EIILM University was evidently recognized by the UGC in terms of Section 2 (f) of the UGC Act as can be culled out from the undisputed averments. Section 22 (1) of the UGC Act provides the

University the right of conferring or granting Degrees to its students. Section 22 (3) of the Act defines "Degree" as follows;

**"22. Right to confer degrees.—....."**

**(3)** For the purposes of this section, "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette."

Contravention of the provisions invites penalty in terms of Section 24 of the UGC Act. In view of this provision, EIILM University being a Private University established by an Act of the State Legislature, was also clothed with the right to confer Degrees.

**(iii)** Annexure R-9 (document of the Respondent No.3), dated 07.05.2012, is Correspondence issued to the Pro-Vice Chancellor, EIILM University by the Director, IGNOU. The Correspondence is extracted hereinbelow for reference and convenience;

"Dr. Bharat Bhushan  
Director

F. No.DEC/SIK/EIILM/2008/2040  
Date:07.05.2012

Sub: Various complaints received against the EIILM University, Jorethang, Sikkim-reg.

Sir,

This is in continuation to our earlier letters regarding receipt of various complaints against EIILM University and request to EIILM University, Sikkim to apply afresh on the prescribed proforma of the DEC. Till date DEC has not received any response from you in this regard.

Further DEC continues to receive several complaints against your University wherein, the complainants have alleged that the EIILM University has opened hundreds of study centres in Kerala, Delhi, UP, Maharashtra etc. and other parts of the Country and giving advertisements for awarding degree within 6 months/one year and providing graduation degree in single sitting. One of the complainant has also alleged that the University has entered into agreement with collaborators which have further opened many centres. The applicant has stated that after having taken admission in the BA programme of EIILM University, the applicant is feeling cheated. The applicant has also enclosed copies of the various advertisements, website domains advertising one sitting degree/one year degree etc. offered by the EIILM University. The copies of the complaints are enclosed herewith.

**In this connection it is hereby informed that the DEC had accorded recognition to the EIILM University for one year only i.e. 2009-10 and for offering three programmes**

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**through distance mode i.e. BA (Hospitality & Tourism), BCA and MBA. The recognition has expired long back in September, 2010, yet the University has not stopped offering programmes through distance mode and continues to offer more than 100 programmes and is claiming to be recognized by the DEC, which is false and misleading.**

In view of the above, without obtaining prior approval of the DEC you are requested to immediately stop offering any programme through distance mode and issuing misleading advertisements failing which DEC would be forced to initiate appropriate action, as deemed necessary against your University.

Yours faithfully

(Bharat Bhushan)

Shri O.B. Vijayan  
Pro-Vice Chancellor  
EIILM University  
8<sup>th</sup> Mile, Budang  
Malabassey  
West Sikkim-737121

Encl: As above (5 complaints)

....."

**(Emphasis supplied)**

This Correspondence reveals that the University, without the requisite approval was offering Programmes through Distance Mode in more than 100 subjects.

**(iv)** By a Public Notice, dated 27.06.2013, Annexure R-5 (document of the Respondent No.3), the UGC cautioned people across the country that there was a compromise with standards of education by Private Institutions claiming to award University Degrees. It was clarified for the information of the students and parents that the Central or State Government could conduct Courses through its own Departments, its constituent Colleges or through its affiliated Colleges. The Students were advised not to take admissions in unapproved Study Centres, Off-Campus Centres, Franchisee Institutions, Colleges/Institutions claiming to be affiliated with Private Universities or Deemed Universities.

(v) Annexure R-8 (document of the Respondent No.3), dated 26.06.2014, addressed to the Vice Chancellor of the EIILM University by the UGC, reflects that the UGC had taken a decision to constitute a Fact Finding Committee to look into the issues related to the Courses conducted by the EIILM University through Distance Mode, unauthorized Study Centres, Franchisee etc. Pursuant to the constitution of the Fact Finding Committee, the Committee visited EIILM University Campus during the month of April, 2015, and concluded *inter alia* as follows;

**"REPORT OF FACT FINDING COMMITTEE**

1. EIILM University, 8<sup>th</sup> Mile, Budang, West Sikkim was not authorized to open study centre/Off Campus Centre beyond the territorial jurisdiction as per the Judgment of Hon'ble Supreme Court of India in case of Prof. Yaspal Vs. State of Chattisgarh. The University was not permitted to open its centre(s) even within the State as per the provision of UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003 without the approval of UGC. The UGC has not granted any approval to the University to open off campus/study centre.
2. Complaints were received by UGC from individuals across the Country, against EIILM, Jorethang District – Namchi about numerous programmes being run through distance mode, opening of unauthorized study centre(s), franchising of higher education, issuing degrees to students without conducting any exams or practical. Misleading students by promoting wrong information on website, selling degrees by charging money instead of providing classes or conducting exams, selling degrees in India, conducting programmes through collaborative mode with industries/firms/companies and abroad by conducting courses in one sitting and establishment of Off Shore Campus at Mauritius.
3. State Government of Sikkim has accorded approval for the dissolution of EIILM University in its Cabinet meeting held on 28<sup>th</sup> April, 2015. However in the best interest of regular students of EIILM University, the State Government has appointed interim management to conduct the affairs of the University till the completion of the process of dissolution.
4. Being unitary University, EIILM did not have any mandate to affiliate any College/Institute. UGC never granted any permission/approval to EIILM University to establish any Off Campus Centre(s)/Study Centre(s) Off-Shore Centre(s).
5. The Committee recommended to request the State Government to take steps to protect the interest of unsuspecting students of EIILM University, residing in Sikkim who has taken admission on regular basis. On Campus students may be accommodated by the State Government in different close(*sic*) by Colleges and Universities till completion of their courses.

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6. Regarding validity of degrees of Distance Courses, The Committee recommended UGC to authorize the Directorate of Higher Education, Govt. of Sikkim to validate the degrees of 2009-2010 in three disciplines i.e. B.A. (Hospitality & Tourism), BCA and MBA for students admitted within the territorial jurisdiction of State of Sikkim based on the admission records available with the University's Sikkim Campus/State Government. Degrees in other disciplines except in three as specified in preceding lines and beyond academic year 2009-2010 shall not be valid.

....."

**(vi)** Annexure R-2 (document of State-Respondents No.1 and 2), dated 10.08.2015, is Correspondence between the UGC and the Director Higher Education, Human Resource Development Department, Government of Sikkim. It reveals *inter alia* thus;

"No.F.9-19/2007 (CPP-I/PU)

10 August, 2015

Sh. Jitendra Singh Raje, IAS,  
Director Higher Education,  
Human Resource Development Department,  
Govt. of Sikkim, Gangtok,  
Sikkim.

Sub: - Status of EIILM University, Sikkim.

Sir,

With reference of your letter No.189/DIR(HE)/HRDD dated 28.07.2015 on the above subject, I am directed to inform you that Eastern Institute for Integrated Learning in Management University (EIILM), 8<sup>th</sup> Mile, Malbasey, Budang, West Sikkim-737121 was established by an Act of State Legislature of Sikkim as a Private University and was empowered to award degrees as specified under Section 22 of the UGC Act through its main campus in regular mode with the approval of Statutory Bodies/Councils, wherever its required.

Eastern Institute for Integrated Learning in Management University (EIILM), 8<sup>th</sup> Mile, Malbasey, Budang, West Sikkim-737121 was not authorized to open study centre/off campus centre beyond the territorial jurisdiction of the state as per the judgment of Hon'ble Supreme Court of India in case of Prof. Yashpal Vs. State of Chhattisgarh. The University was not permitted to open its centre(s) even within the state as per the provision of UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003 without the approval of UGC.

The UGC has not granted any approval to the University to open off campus/study centre.

....."

**(vii)** Vide Annexure R-1 (document of State-Respondents No.1 and 2) i.e. Notice, dated 27.10.2015, issued by the Director, Human Resource Development Department, Government of Sikkim, it was brought to the notice of all concerned that the Department

was receiving numerous applications seeking certain information relating to Courses offered by the EIILM University through Distance Mode and Regular Mode. The Department, in order to clarify the status of the EIILM University and Courses offered through Distance and Regular Mode, reproduced the Observation and Report of the Fact Finding Committee of the UGC, already extracted *supra*.

**11.** In the backdrop of the chronology of events which have unfolded as hereinabove, the Petitioner claims to have enrolled in M.A. (Math) in the EIILM University for the 2010-2012 Session. Although the documents of the State-Respondents No.1 and 2 *viz.* Notice dated 27.10.2015 (Annexure R-1), Communication dated 10.08.2015 (Annexure R-2), the documents of the Respondent No.3 *viz.* Communication dated 27.06.2013 (Annexure R-5), Communication dated 26.06.2014 (Annexure R-8) and Communication dated 07.05.2012 (Annexure R-9), were issued after the Petitioner's claim of enrolment in the M.A. (Math) Course for the Session 2010-2012, however, it is worthwhile remarking here that all through her averments, she has failed to enlighten this Court as to whether she was a student on Regular Mode or a student of the Distance Education Programme. Nevertheless, it is also pertinent to consider that Learned Counsel for the Petitioner conceded in his verbal submissions that although this fact had not been clarified before the Court in the averments, but the Petitioner was indeed a student enrolled in the Distance Education Programme. The Petitioner claimed to have appeared in the Internal and External Examinations conducted by the University and cleared the Examinations in the First Division. To buttress this



claim, she has placed reliance on Annexure P-3. On perusal of Annexure P-3, all that can be culled out from the document which is said to be a Statement of Marks, is that the Petitioner was a student of "Master of Arts (Maths)" for the Session July 2011-June 2012, there is no document to lend credence to her claim that she appeared in the Examinations of 2010-2011 as well. No documents have been filed by her to support her claim of admission in the Distance Education Programme in M.A. (Math) Course for the 2010-2012 Session. No documents indicating payment of fees, date of admission, or any correspondence between her and the University have been filed to support her stance.

**12.** Pausing here momentarily, it is beneficial to peruse Annexure P-8 (Page 32 of the Paper Book) i.e. the UGC Act, 1956, relied on by the Petitioner and to notice that the Petitioner has averred that Master of Arts is reflected in the Notification of the UGC issued on 07.06.1999. No such Notification has been placed by the Petitioner for the perusal of this Court. Notably, at Annexure P-8 (Page 35 of Paper Book), the list of Degrees specified by UGC are enumerated in Appendix-I and Appendix-II. Neither of the Appendices indicate M.A. (Math) as a subject offered. Even assuming that "MA" shown in Serial No.60 of Appendix-I is revelatory of the fact that generically M.A. was offered, the Appendices do not specify subjects offered in the Degree of Master of Arts. That apart, it is clear that for the Distance Education Mode, specific approval of the DEC was required, as evident from Annexure R-7, which approval has not been filed for perusal of the Court.

**13.** Relevantly, on perusal of Annexure R-7 (document of the Respondent No.3) specifically addressed to the Vice Chancellor, EIILM University by the IGNOU, DEC, dated 09.09.2009, reference has been made to Courses offered by the EIILM University through "Distance Education Mode" in the Academic Year 2009-2010. The Programmes recommended for that year have also been listed in the document and have already been reflected *supra* in the submissions of Learned Senior Counsel for the UGC. In fact, the Programmes not recommended by the DEC have also been reflected in the self-same Communication. The University has been specifically directed to note at "Serial No.6" that with regard to territorial jurisdiction for offering Programmes through Distance Mode, the latest UGC Notifications would prevail over all previous Notifications and Circulars. The Correspondence, dated 16.04.2009, Annexure R-2 (document of the Respondent No.3), addressed to all the State Governments by the Secretary, UGC, communicates *inter alia* as follows;

".....

It is brought to your kind notice that the UGC has received information through RTI applications or through various students visiting UGC Office that the State Universities/State Private Universities established by the State Governments have opened off campuses, study centres and have also created franchise in the name of distance education programmes outside the State. This action on the part of the State Universities or Private Universities established by the State Governments beyond the territorial jurisdiction of the respective State Governments is not permissible in the light of observations made by the Hon'ble Supreme Court of India in the famous Prof. Yash Pal case. The Hon'ble Supreme Court has held the view that Parliament alone is competent to enact laws for any part or for the whole country and the State Legislature can enact law only in respect of its territorial jurisdiction confined to the concerned State. A copy of the relevant extract of the Judgement of the Hon'ble Supreme Court is enclosed herewith.

However, notwithstanding the above provision in law and the judgement of the Hon'ble Supreme Court, the State Governments have enacted laws establishing State Universities and Private Universities which allow them operating beyond the territorial jurisdiction of the

concerned State in the form of off-campus/study centres, affiliated colleges and the centres operating through franchises etc. This has resulted into an anomalous situation and is also causing hardship to the student community at large.

Keeping in view the above, I shall be grateful if you kindly use your good offices and take an immediate action on the following:

- i) To take suitable steps for amending the existing Acts made so as to bring the same in conformity with the observations made by the Hon'ble Supreme Court of India in the case of Prof. Yash Pal and State of Chhattisgarh. This should be adhered in all future cases.
- ii) To stop all the State/State Private Universities in the State from operating beyond the territorial jurisdiction of your State in any manner either in the form of off-campus/study centre/affiliated college and the centres operating through franchises.  
....."

**14.** Vide Annexure R-3 (document of the Respondent No.3)

i.e. Communication to the Vice Chancellors of all Private Universities, dated 28.04.2009, the Secretary, UGC, reiterated the stand taken in the Communication, dated 16.04.2009, to the State Governments. Therefore, not only the State Governments but also the Vice Chancellors of all Private Universities were aware of the unequivocal position of the UGC in compliance with the Judgment of **Prof. Yashpal supra**. It needs no reiteration here that the EIILM University was set up by the State Act of 2006 and consequently, well aware of the Communications, dated 16.04.2009 and 28.04.2009.

**15.** Reverting to Annexure R-7, it was also clarified therein that as per the UGC Notification, State Universities (both private and Government funded) could offer Programmes only within the State and Deemed Universities from the Headquarters and in no case outside the State. That, Deemed Universities and Central Universities were to adhere to the UGC norms. That, the territorial jurisdiction for the Institutions (both private and Government

funded) would be the Headquarters and in no case outside the State. EIILM University was specifically directed to note that the territorial jurisdiction of their Institution would be within the State of Sikkim. Serial No.7 reveals that the DEC prohibited franchising of Study Centres and that the EIILM University was not to franchise any Study Centre. With all the Communications referred to above, the unambiguous position is that no Study Centres of the EIILM University were to be opened outside the territorial jurisdiction of the State of Sikkim.

**16.** Assuming that the Petitioner had indeed enrolled in the M.A. Course for the year 2010, she has not filed any document to enable this Court to reach a finding that Distance Education Programme was allowed for the Academic Year 2010-2012 for the reason that Annexure R-7 viz. Correspondence by the DEC, IGNOU, dated 09.09.2009, to the Vice Chancellor, EIILM University, categorically lays down that EIILM University had been accorded recognition for a period of one Academic Year with effect from 2009-2010 for offering the Programmes listed in the Communication through Distance Education Mode. At Serial No.8 of Annexure R-7, it has been specified that the Institution's management of the Distance Education Programmes will be open for review and inspection from time to time by the DEC to provide inputs for further improvement or as deemed necessary. That, the academic norms of the Programmes shall be under monitoring and regulation by the concerned regulatory authorities. Even if it was to be assumed that the Petitioner was a regular student, there are no documents filed by her to establish that M.A. (Math) was offered as a subject by the EIILM University for the Academic Year 2010-

2012. On the other hand, if she was a student enrolled in the Distance Education Programme as claimed, this is also not buttressed by any document. Annexure P-3 relied on by her is issued only for the Session July, 2011 to June, 2012. Although the Petitioner's categorical contention was that she had joined the 2010-2012 Session, no document reflecting her appearance and clearing the previous years' Examinations viz. 2010-2011 have been placed for perusal of this Court. Annexure P-11 (five pages collectively) said to be print outs of the Web Portal of the EIILM University, bears no date nor does it reveal the date of insertion of the details or updation. At Page 5 of Annexure P-11, "Mathematics" has been indicated as a subject available but the Court is at sea as to whether this was offered in the Regular Mode or in the Distance Education Mode or for that matter, whether the subject was offered at all, sans documents substantiating such claim. The Court cannot adjudicate on the alleged trammelled rights of an individual on the basis of vague and unreliable documents. Page 4 of Annexure P-11 (Page 128 of the Paper Book) reveals that "M.A. (All Subjects)" is for a duration of two years. While on this point, it is apposite to notice that the subjects enlisted do not indicate Mathematics as a subject so offered. The document merely mentions "Subject Available" but does not state whether the subject offered is for the Undergraduate Level or at the Masters Level. Thus, in the absence of any specific document to indicate availability of the subject, the Court cannot conclude that Mathematics as a subject was offered in M.A. in Distance Mode by the EIILM University or that the Petitioner had undergone the Course of study for the prescribed period as no document fortifies her claim.

**17.** That apart, even if she was appearing through the Distance Education Mode, the ratio in **Prof. Yashpal's** case *supra* decided in the year 2005, much before the Petitioner joined the University, has clearly laid down *inter alia* as under;

"**60.** Dr. Dhavan has also drawn the attention of the Court to certain other provisions of the Act which have effect outside the State of Chhattisgarh and thereby give the State enactment an extraterritorial operation. Section 2(f) of the amended Act defines "off-campus centre" which means a centre of the university established by it outside the main campus (within or outside the State) operated and maintained as its constituent unit having the university's complement of facilities, faculty and staff. Section 2(g) defines "off-shore campus" and it means a campus of the university established by it outside the country, operated and maintained as its constituent unit, having the university's complement of facilities, faculty and staff. Section 3(7) says that the object of the university shall be to establish the main campus in Chhattisgarh and to have study centres at different places in India and other countries. **In view of Article 245(1) of the Constitution, Parliament alone is competent to make laws for the whole or any part of the territory of India and the legislature of a State may make laws for the whole or any part of the State. The impugned Act which specifically makes a provision enabling a university to have an off-campus centre outside the State is clearly beyond the legislative competence of the Chhattisgarh Legislature.**"

(Emphasis supplied)

**18.** It may appositely be noted here that the issue of territorial jurisdiction was taken up for consideration by a Division Bench of this High Court in **Sikkim Manipal University vs. IGNOU** (*supra*). The Division Bench examined the matter in the light of the provisions of the UGC Act, 1956 and the UGC Regulations of 2003 in tandem with the various Judgments of the Hon'ble Supreme Court including that of **Prof. Yashpal's** case *supra*. It concluded that the Sikkim Manipal University shall contain its operations within the geographical territorial limits of the State under the Statute which created it.

**19.** Learned Counsel for the Petitioner relied on the Order of **Deepak Rajak vs. Scheduled Caste Certificate Scrutiny Committee and Others** (*supra*) before the Hon'ble Supreme Court. A brief reference

to the facts in ***Deepak Rajak vs. Scheduled Caste Certificate Scrutiny Committee and Others***<sup>6</sup> before the Hon'ble High Court of Madhya Pradesh (Indore Bench) may be made. The Petitioner, Deepak Rajak, was admitted to the Mahatma Gandhi Medical College, Indore for the M.B.B.S. Course as a Scheduled Caste Candidate. Later, it came to light that his Scheduled Caste Certificate was fake by which time he had already completed not only his M.B.B.S. Degree but also his Post Graduate Course viz. M.D. (Anesthesia). The Hon'ble Court referred to Paragraphs 12 and 13 of the ratio of the Hon'ble Supreme Court in ***Kumari Madhuri Patil & Another vs. The Additional Commissioner, Tribal Development and Other***<sup>7</sup> and concluded that the Order passed by the Hon'ble Supreme Court therein made it clear that after cancellation of Caste Certificate, holding that it is a forged and fabricated document, consequential action can be initiated by the authority. That, in the case of Deepak Rajak, consequential action had been taken by the concerned College by cancelling the admission in respect of the M.B.B.S. Course. Once the admission of the Petitioner to the M.B.B.S. Course had been cancelled, the Degree obtained by the Petitioner had become a nullity and the subsequent admission of the Petitioner to M.D. (Anesthesia) had to be cancelled, and had rightly been done in the peculiar facts and circumstances of the case. The High Court also noted that the cancellation of the Degrees was indeed very harsh punishment but the Court had to decide the issue on the basis of statutory provisions and not by taking into account equity or other factors as prayed by the Petitioner. Impugning this Judgment of the High Court, the Petitioner was

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<sup>6</sup> 2019 SCC OnLine MP 4900

<sup>7</sup> (1994) 6 SCC 241

before the Hon'ble Supreme Court which found no ground to interfere with the impugned Order and dismissed the Special Leave Petition with the clarification that the impugned Order of the Hon'ble Madhya Pradesh High Court would be confined to the M.D. Course and not to the M.B.B.S. Course. The facts in the cited case are clearly distinguishable from the facts in the instant matter inasmuch as the Medical College was without an iota of doubt offering the M.B.B.S. Course and the Petitioner had enrolled therein and completed the Course. These facts were not disputed. The Degree of the Petitioner was also not in dispute. The only consideration was whether his admission to the Courses were valid based upon a false document, which resulted in the impugned Judgment. In the matter at hand, the very existence of the subject offered viz. M.A. (Math) is disputed, as evident from the discussions that have taken place hereinabove and no document lends succour to the case of the Petitioner that Mathematics was offered by the EIILM University at the M.A. Level by DEC.

**20.** Reliance was also placed by the Petitioner in ***Shanti Lal vs. State of Rajasthan (supra)***. The facts in the said Petition are also discernible from the matter at hand, inasmuch as the Petitioners therein had obtained their Diploma in Education/B. Ed. offered by the Singhanian University established under the Singhanian University, Pachari Bari (Jhunjhunu) Act, 2008, which was not contested. Thereafter they participated in the recruitment for the post of Teacher, Grade III and were offered appointment on merit. The appointment was withheld by the State-Respondents on the ground that the Petitioners had obtained B.Ed. Diploma in Education from Singhanian University and it was not recognized by



the National Council for Teacher Education. The High Court concluded that the Singhania University was established under a Statute and automatically recognized. It needed no recognition by any other authority and hence the prayers of the Petitioners were granted. This is not the dispute in the instant matter. As already pointed out while discussing **Deepak Rajak's** case *supra*, the fact of the subject of M.A. (Math) having been offered by EIILM University is denied and disputed by the UGC and no documents support the claim of the Petitioner. It is no one's case that EIILM University was not a UGC recognized University. It is also no one's case that it was not empowered to grant Degrees on completion of the course. The only issue is that it did not offer M.A. (Math) in the Distance Education Programme as stands unraveled by all documentary evidence before this Court. The Petitioner claims that the official Website of the University indicated all Courses offered by it were UGC recognized but failed to repel the argument of the UGC that M.A. (Math) was not an offered subject as clear from the UGC Act, 1956, wherein Appendix-I and Appendix-II enumerates the list of Degrees specified by the UGC, which does not indicate M.A. (Math) as an offered subject. Moreover, there is no proof that Distance Education Programme was offered in the 2010-2012 Session as Annexure R-7 (document of the Respondent No.3), reveals Courses offered by the EIILM University through Distance Education Mode only for the Session 2009-2010. Reliance by the Petitioner on the decision of **Vineet Singh and Another** (*supra*) of this High Court also fails to assist her claim. In the midst of all the discussions that have emerged, it cannot but be remarked that the Petitioner has

made no mention of legal steps either already taken by her, or envisaged to be taken by her against the erring University.

**21.** In light of all the discussions *supra*, the larger question is whether this Court is in a position to declare valid, a Degree granted for a non-existent subject alleged to have been offered by the EIILM University? This would be crossing the amplitude of all legal parameters and the answer would obviously be in the negative. Needless to add that the High Court, while exercising extraordinary jurisdiction under Article 226 of the Constitution, cannot perpetuate illegalities, irregularities or improprieties based on what evidently is a nebulous plea.

**22.** In conclusion, the Petitioner has failed to make out her case for recognition of her Degree in M.A. (Math) from the EIILM University as legal, genuine and valid for all purposes. Devoid of any merit, the Petition deserves to be and thus stands dismissed.

**23.** Writ Petition disposed of accordingly.

**24.** Pending applications, if any, also stand disposed of.

**25.** No order as to costs.

( **Meenakshi Madan Rai** )  
**Judge**  
16.08.2021