

GAHC010256192022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil) No.3705/2022
In Writ Appeal No.154/2021

SIKKIM-MANIPAL UNIVERSITY (SMU) THROUGH ITS REGISTRAR,
5TH MILE, TADONG, GANGTOK, EAST SIKKIM

VERSUS

1: UNION OF INDIA AND 2 ORS
THROUGH ITS SECRETARY, MINISTRY OF HUMAN RESOURCES
DEVELOPMENT, SHASTRI BHAVAN, NEW DELHI, 110001

2:UNIVERSITY GRANTS COMMISSION THROUGH ITS ADDITIONAL
SECRETARY DISTANCE EDUCATION BUREAU 35-FEROZE SHAH ROAD
NEW DELHI 110001

3:THE STATE OF SIKKIM THROUGH ITS PRINCIPAL SECRETARY
DEPT. OF HRDD GOVERNMENT OF SIKKIM SECRETARIAT TASHILING
GANGTOK EAST SIKKI

For the Applicant : Mr. N. Nayyar, Senior Advocate (through video-conferencing),
by Mr. M. Das, Advocate.

For the Respondents : Mr. A. Chamuah, Standing Counsel, University Grants Commission (UGC).

- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE MITALI THAKURIA

12.05.2023

Affidavit-in-opposition on behalf of the University Grants
Commission (UGC) has been filed.

The instant interlocutory application, which has come up for orders, has been filed by the appellant Sikkim Manipal University (SMU) seeking permission to conduct an online examination for a specially-abled (visually impaired) student, namely, Shri Amol Subhash Dani, who was admitted to MBA (Finance) Distance Education Programme in the year 2017. Since, under the directions of the UGC, the Sikkim Manipal University is barred from holding examination outside the State, the said candidate moved an application to the Court of the Chief Commissioner for Persons with Disabilities (Divyangjan), which was registered as Case No.13263/ 1040/2022 and came to be disposed of vide order dated 28.10.2022 with the following directions:-

“5.5 However, this Court is constrained to pass recommendations on the merits of this complaint because this Court cannot interfere when similar issue is pending before the Hon’ble High Court in appeal.

5.6. Therefore, without touching upon the merits of the present Complaint, this Court recommends that the respondent can take a sympathetic approach and may file an application before the Hon’ble Sikkim Court in the pending appeal, requesting the Hon’ble Court to consider this case as well as cases of other Divyang candidates as a special case and may seek relief from the Hon’ble High Court to allow the respondent to conduct examinations of divyang candidates at different locations outside the State of Sikkim online examination as well, so that divyang candidates can avoid the problems of travelling long distance to appear in the examinations.

5.7. Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.”

Mr. N. Nayyar, learned senior counsel representing the applicant/appellant University urges that this is an exceptional situation

because the University has been directed by the Chief Commissioner to make an attempt to seek an order for holding the examination of the applicant and the other dibyang candidates by the online process even from a remote location outside the State. He submits that in order to facilitate the student Shri Amol Subhash Dani, who is a visually impaired person and permanent resident of Pune, without entering into the merits of the case and without prejudice to the outcome of the appeal, as an exception, an order be passed that the University would provide appropriate facility to the candidate by holding his examination at a suitable location in Pune under the supervision of the UGC observer.

Mr. A. Chamuah, learned standing counsel, UGC submits that such an order may prejudice the outcome of the appeal because precisely the controversy, which is placed before the Court in the appeal, is as to whether the University can hold examinations from locations beyond the State of Sikkim.

We have heard and considered the submissions advanced at Bar and have gone through the material placed on record.

Suffice it to say that the application has been filed by the University by way of exception so as to provide facility to a specially-abled person for appearing the final examination of the course which he joined as a distance learning course way back in the year 2017 from his city, i.e. Pune. It cannot be denied that requiring such differently abled person to travel to Sikkim would cause him great hardship and would be against the letter and spirit of the Rights of Persons with Disabilities Act, 2016.

Thus, as a special and exceptional case and without prejudice to the outcome of the main writ appeal and without creating a precedent, it is

hereby directed that the applicant/appellant University shall be allowed to conduct online examination for the candidate, namely, Shri Amol Subhash Dani, by creating appropriate facilities at Pune. The UCG shall appoint an observer for the examination the expenses whereof shall be borne by the University. The process as directed above shall be completed within a period of 30(thirty) days from today.

With the above observation and directions, the interlocutory application is disposed of.

JUDGE

CHIEF JUSTICE

Comparing Assistant