

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4083 OF 2020

The Adarsha Education Society, ... **Petitioner**
Ambhai, Tq. Sillod, Dist. Aurangabad
Through its Vice President,
Shaikh Mohammad Saleem Ashaq
Hussain, Age 58 years, Occu: Agri.
R/o Snehanagar, Sillod,
District Aurangabad

VERSUS

1. The State of Maharashtra,
Through its Secretary, Higher and
Technical Education Department,
Mantralaya, Mumbai -32
2. Director of Higher Education, ... **Respondents**
Maharashtra State, Pune.
3. Joint Director of Higher Education,
Aurangabad Region, Aurangabad
4. Dr. Babasaheb Ambedkar Marathwada
University, University Campus,
Aurangabad,
Through its Registrar
5. Gurukul Bahuuddeshiya Sevabhavi
Pratishthan, Waghgaon,
Tq. Phulambri, District Aurangabad,
Through Its President/Secretary
C/o Principal, Proposed College i.e.
Gurukul Senior College, Aland,
Tq. Phulambri, Dist. Aurangabad

Mr. V. J Dixit, Senior Advocate i/by Mr. A. N. Nagargoje,
Advocate for the petitioner,
Mr. D. R. Kale, I/c Govt. Pleader for respondent Nos.1 to 3
Mr. S. S. Tope, Advocate for respondent No.4
Mr. Ajay S. Deshpande, Advocate for respondent No.5

AND
WRIT PETITION NO. 5004 OF 2019
WITH
CIVIL APPLICATION NO. 7868 OF 2019
WITH
CIVIL APPLICATION NO. 4451 OF 2020
IN
WRIT PETITION NO. 5004 OF 2019

The Adarsha Education Society, ... **Petitioner**
Ambhai, Tq. Sillod, Dist. Aurangabad
Through its Vice President,
Shaikh Mohammad Saleem Ashaq
Hussain, Age 58 years, Occu: Agri.
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Mr. V. J Dixit, Senior Advocate i/by Mr. A. N. Nagargoje,
Advocate for the petitioner,
Mr. D. R. Kale, I/c Govt. Pleader for respondent Nos.1 to 3
Mr. S. S. Tope, Advocate for respondent No.4
Mr. Ajay S. Deshpande, Advocate for respondent No.5 & Applicant
in Civil Application No.4451/2020
Mr. S. S. Thombre, Advocate h/for Mr. S.B. Solanke, & Mr
Tushar Gawali, Advocates for Applicant In C.A.No.7868/20

AND

WRIT PETITION NO.8021 OF 2019
WITH
CIVIL APPLICATION NO.11350 OF 2019
IN
WRIT PETITION NO. 8021 OF 2019

Bharti Mahila Mandal, Jalna, ... **Petitioner**
Through its Secretary,
Rita Manoharrao Wankhede,
Age 45 years, Occu: Advocate,
R/o Vipul Complex, Flat no.4,
Old Mondha, Mama Chowk,
Jalna, Tq. & Dist Jalna

VERSUS

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Through the Principal Secretary, Higher
and Technical Education Department,
Mantralaya, Mumbai -32
2. The Director of Higher Education, ... **Respondents**
Maharashtra State, Pune.
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University, University Campus,
Aurangabad,
5. Gurukul Bahuuddeshiya Sevabhavi
Pratishthan, Waghalgaon,
Tq. Phulambri, District Aurangabad,
Through Its President/Secretary

Mr. S. S. Thombre, Advocate h/for Mr. S.B. Solanke, & Tushar
Gawali, Advocates for the petitioner
Mr. D. R. Kale, I/c Govt. Pleader for respondent Nos.1 to 3
Mr. S. S. Tope, Advocate for respondent No.4
Mr. Ajay S. Deshpande, Advocate for respondent No.5
Mr. A.N. Nagargoje, Advocate for applicant in C.A.No.11350/2019

AND

WRIT PETITION NO. 6337 OF 2020

Bharti Mahila Mandal, Jalna, ... **Petitioner**
Through its Secretary,
Rita Manoharrao Wankhede,
Age 45 years, Occu: Advocate,
R/o Vipul Complex, Flat no.4,
Old Mondha, Mama Chowk,
Jalna, Tq. & Dist Jalna

VERSUS

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Through the Principal Secretary,
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Department, Mantralaya, Mumbai -32
2. The Director of Higher Education, ... **Respondents**
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University, University Campus,
Aurangabad,
5. Gurukul Bahuuddeshiya Sevabhavi
Pratishthan, Waghgaon,
Tq. Phulambri, District Aurangabad,
Through Its President/Secretary
6. Adarsha Education Society,
Ambhai Tq. Sillod, Dist. Aurangabad
Through its President.

Mr. S. S. Thombre, Advocate h/for Mr. S.B. Solanke, & Tushar
Gawali, Advocates for the petitioner

Mr. D. R. Kale, I/c Govt. Pleader for respondent Nos.1 to 3

Mr. S. S. Tope, Advocate for respondent No.4
Mr. Ajay S. Deshpande, Advocate for respondent No.5
Mr. A.N. Nagargoje, Advocate for respondent No.6.

CORAM : S. V. GANGAPURWALA &
SHRIKANT D KULKARNI, JJ.

RESERVED ON : 30th September, 2020

PRONOUNCED ON 22nd December, 2020

JUDGMENT (Per Shrikant D. Kulkarni, J.)

1. Rule. Rule made returnable forthwith. The petitions are taken up for final disposal with the consent of both the sides.

2. These petitions involve common set of facts and common questions of law. As such, to avoid rigmarole, it would be appropriate to decide all the petitions by a common judgment.

3. Brief facts of each petition which would help for disposal of these petitions together can be summarized as under.

4. **Writ Petition No. 8021/2019:** The petitioner/Bharti Mahila Mandal is a society registered under the Societies Registration Act and the Maharashtra Public Trusts Act 1950 as well. The petitioner promotes social service, and imparts education, particularly in rural areas.

5. The petitioner Bharti Mahila Mandal was intending to start Arts, Commerce and Science College at village Aland, Taluka Phulambri District Aurangabad in view of inclusion of the

said village in perspective plan prepared by respondent No.4/Dr. Babasaheb Ambedkar Marathwada University, Aurangabad (hereinafter referred to as the University). The petitioner submitted a proposal to open Arts, Commerce and Science degree college at village Aland along with requisite documents. The University initially did not forward the proposal but in view of decision in Writ Petition No. 823 of 2019, forwarded the proposal to respondent No.1/State. It was necessary for the State to take decision on the proposal submitted by the petitioner.

6. According to the petitioner, the State has issued a letter of intent in favour of Respondent No.5/ Gurukul Bahuuddeshiya Sevabhavi Pratishthan, Waghalgaon (hereinafter referred to as Gurukul Pratishthan) vide Order/Government Resolution dated 31.01.2019. According to the petitioner, the impugned Government Resolution dated 31.01.2019/Letter of Intent is per se improper, incorrect and illegal. The State has not considered the provisions of the Maharashtra Public Universities Act, 2016 (hereinafter referred to as 'the Universities Act') in its letter and spirit. According to the petitioner, the proposal submitted by Gurukul Pratishthan was only for two faculties i.e. Arts and Science. As per the perspective plan, degree college should be for three faculties i.e. Arts, Commerce and Science. Gurukul

Pratishthan has sought permission to open new college only for Arts and Science faculties which was against the perspective plan. The State has not at all considered the proposal submitted by the petitioner which was submitted for three faculties. As such, the petitioner has challenged the Government Resolution/Order dated 31.01.2019 whereby letter of intent was issued in favour of Gurukul Pratishthan.

7. **WRIT PETITION NO. 6337/2020 :**

The petitioner/Bharti Mahila Mandal, Jalna by way of this petition is challenging the Government decision dated 07.02.2019 whereby the proposal submitted by the petitioner to open Arts, Commerce and Science College at village Aland came to be rejected by respondent no.1/State. According to the petitioner, the impugned decision is bad in law. The petitioner Institution fulfills the prescribed norms to start new Arts, Commerce and Science College at village Aland. The petitioner was the only institution, which has applied for permission to start new college for Arts, Commerce and Science faculties at Village Aland, as per the perspective plan. The Respondent/State has given flimsy grounds while rejecting the proposal of the petitioner. Feeling aggrieved by the impugned decision dated 07.02. 2019, the petitioner has knocked the doors of this Court.

8. **WRIT PETITION NO.5004 OF 2019:** By way of this Writ Petition, the petitioner/Adarsha Education Society, Ambhai, Tq. Sillod is challenging the action of the respondent/State refusing letter of intent in its favour to start senior college and granting the same to Gurukul Pratishthan for the faculties of Arts and Science for the academic year 2019-20 at village Aland. According to the petitioner, it has vast experience in the field of education. It is a minority institution and the competent authority ought to have granted letter of intent in its favour. The petitioner has submitted its proposal on 01.10.2018 with all requisite documents to the University. Necessary documents regarding requisite process fees, fixed deposits, Bank statement, audit report, etc. were annexed showing sound financial condition of the petitioner. The petitioner was fulfilling the criteria laid down under Government Resolution dated 15.09.2017. The petitioner has cleared certain deficiencies noticed by the University and submitted revised proposal on 03.11.2018 along with all necessary documents.

9. The expert committee had conducted physical verification /inspection of the proposed site of the college and submitted report to the University stating that the petitioner fulfills the criteria and infrastructure is available. The expert committee has recommended the petitioner's proposal for grant

of letter of intent to open the senior college. Even though the expert committee has recommended the petitioner's proposal, the University, vide letter dated 29.11.2018 forwarded the petitioner's proposal to the State Government with deficiencies. The petitioner had pointed out the correct position to the University and accordingly the University realized its mistake and again forwarded the petitioner's proposal on 03.12.2018 to the State with positive recommendation. It is contended by the petitioner that though Gurukul Pratishthan did not fulfill the criteria laid down in Government Resolution dated 15.09.2017, still its proposal came to be sanctioned and letter of intent came to be issued in favour of Gurukul Pratishthan to start senior college at village Aland for which the petitioner has applied. The State Government has not assigned any reasons why letter of intent has been issued in favour of respondent No.5/ Gurukul Pratishthan and how that institution is more meritorious than the petitioner.

10. It is contended by the petitioner that the State has adopted pick and choose policy and granted letter of intent in favour of Gurukul Pratishthan, though it is not fulfilling requisite condition. It is contended that the State has issued letter of intent on the last date so that nobody would question the said action. The State has not even communicated its decision to the

petitioner about rejection of its proposal. According to the petitioner, the action of the State refusing to issue letter of intent in favour of the petitioner without assigning any reason is unsustainable in the eyes of law. The said action deserves to be quashed and set aside and the letter of intent needs to be granted in favour of the petitioner/Adarsha Education Society by cancelling the earlier letter of intent granted in favour of Gurukul Pratishthan.

11. **WRIT PETITION NO. 4083 OF 2020:** By this petition, the petitioner Adarsha Education Society, Ambhai is challenging the order dated 13.09.2019 issued by the respondent/State thereby granting final permission in favour of Gurukul Pratishthan to start senior college at village Aland. It is contended by the petitioner that though the petitioner is fulfilling all the criteria and though the University has recommended its proposal, even then the State, vide order dated 31.01.2019, has issued letter of intent in favour of Gurukul Pratishthan though it does not fulfill the requisite criteria. Feeling aggrieved by the said order issuing letter of intent in favour of Gurukul Pratishthan, the petitioner approached this Court by filing Writ Petition No. 5004 of 2019.

12. This Court, on 25.04.2019, directed the parties to maintain status quo. The said order came to be modified on 12.06.2019 by permitting the respondents/State authorities to

proceed with proposal in accordance with law and Government Policy and if the final permission is granted then the same shall not take effect until further orders. The proposal of Gurukul Pratishthan for grant of final permission came to be rejected vide order dated 25.06.2019 observing that it is not fulfilling the requisite criteria. Again, vide order dated 13.09.2019, the State Government has granted final permission in favour of Gurukul Pratishthan to open senior College. It is contended that the impugned decision granting final permission in favour of Gurukul Pratishthan is contrary to the order dated 12.06.2019 passed by this Court. There is no subjective assessment and petitioner's proposal is not at all considered though it fulfills all the criteria laid down for grant of permission.

13. According to the petitioner/Adarsha Education Society, the order dated 13.09.2019, issued by respondent/State thereby granting final permission to Gurukul Pratishthan to open Senior college at village Aland is illegal and contrary to the provisions of the Universities Act. The petitioner has prayed to issue writ of mandamus in its favour directing respondent/State to grant permission in its favour to start the senior college in the faculties of Arts and Science at village Aland in pursuance to its proposal dated 01.10.2018 and revised proposal dated 03.11.2018 for the ensuing academic year.

Reply of State

14. The State authorities/ Respondent Nos. 1 to 3 have filed their reply and justified their discretion in granting letter of intent as well as final permission to Gurukul Pratishthan to start senior college for Arts, Commerce and Science faculties at village Aland as per the perspective plan submitted by the University. It is the stand of the State in all the above matters/petitions that the State Government has discretionary powers under section 109(3) (d) of the Universities Act to issue letter of intent to such institution as the State Government may consider it fit and proper taking into account the relevant factors with regard to the location of institution of higher learning. It is the stand of the State that the letter of intent can be issued to those institutions who fulfill the norms as laid down in the Government Resolution dated 15.09.2017 for the academic year 2019-20. The University has recommended one proposal to the State Government for the place at village Aland. Similarly, as per the directions issued by this Court in Writ petition No. 1243/2018, another two proposals were also recommended to the government. The State has received in all these three proposals for the said place. The State has considered three proposals.

15. The State Government has issued letter of intent to Gurukul Pratishthan by taking into consideration the Society's

academic and social status, experience for running educational institution, financial planning, economical capability, demand of students in the said area, local need of education, etc. and then comparative merits of the society. The State Government has taken such decision by exercising its discretionary powers provided under section 109(3)(d) of the Universities Act. The decision of the State Government to issue letter of intent to Gurukul Pratishthan to start senior college at village Aland for the academic year 2019-20 vide Government resolution dated 31.01.2019 has been communicated to the petitioner/Adarsha Education Society vide letter dated 07.02.2019, against which the petitioner has filed writ petition No.5004/2019.

16. As per order passed by this court on 12.06.2019 in Writ Petition No.5004/2019, the proposal of Gurukul Pratishthan for final approval was considered and as per the norms given under Government Resolution dated 15.09.2017, the proposal was scrutinized and it revealed various shortcomings. The respondent State has issued order dated 25.06.2019 about rejection of the proposal of the Gurukul Pratishthan against which the Gurukul Pratishthan has filed Writ Petition No.7787 of 2019 before this Court. It is further stand of the Government that as per the order passed by this Court, representation of the Gurukul Pratishthan, so also the documents enclosed with the

proposal for final approval have been considered by the State in view of the observations made by this Court in Writ petition No. 7787/2019 under order dated 26th June, 2019. As per the interim orders passed by this Court dated 12.06.2019 in writ petition No. 5004/2019 and as per the prevailing norms of the Government, final approval was granted in favour of the Gurukul Pratishthan on permanent non grant basis, however subject to final decision in Writ Petition No.5004/2019. Final permission has been issued to Gurukul Pratishthan since it was found eligible on merits.

17. It is further stand of the State that according to the provisions of Section 107 of the Universities Act, 2016, the University has to upgrade its perspective plan for every year and accordingly the proposals are to be called. The Government, as per the point shown in the perspective plan and if the institutions are fulfilling the norms laid down by the Government, may grant permission. If the proposal is rejected, the institute may submit its proposal for next year as per the perspective plan. The procedure for issuing letter of intent to new colleges for the academic year 2019-20 has been completed within stipulated time and in the present circumstances, the Government has taken decision to grant final approval to the institution for the academic year 2019-20 and therefore the proposal of the

petitioner/Adarsha Education Society for the academic year 2019-20 cannot be considered now.

Reply of the University

18. Respondent No.4 University has also filed affidavit-in-reply through its Registrar (Academic). It is stated in the affidavit sworn by the Assistant Registrar that Adarsha Education Society has submitted its proposal for opening new college at village Aland for the year 2019-20 as well as another proposal for opening new college at Shirsala Tanda for the year 2019-20. The Adarsha Education Society has annexed fixed deposit receipts and advice issued by the State Bank of India and also balance certificate issued by the Aurangabad District Central Cooperative Bank. It is pointed out by the University that Adarsha Education Society has used same term deposit and balance certificate for both the proposals. As such the Adarsha Education Society was ineligible.

Reply of Gurukul Pratishthan

19. President of Gurukul Pratishthan has filed affidavit-in-reply and opposed the prayer made by Adarsha Education Society. It is stated that the proposal of Gurukul Pratishthan was initially rejected by the University which came to be modified later on and then the proposal was recommended by the University to the Government but there was delay. Gurukul

Pratishthan has filed writ petition No. 14243/2018 which came to be allowed on 16.01.2019 by holding that the delay in submission of proposal was attributable to the University and the Gurukul Pratishthan was not at fault. The Government was directed to take decision on its own merits. The State Government has been pleased to grant letter of intent in its favour vide Government resolution dated 31.01.2019 in view of section 109 (3)(d) of the Universities Act, 2016.

20. The Adarsha Education Society had filed writ petition No.5004/2019 wherein ex-parte order to maintain status came to be passed. The said order came to be modified on 12.06.2019 and it was clarified in the order that in case the State Government grants permission in favour of respondent No.5/ Gurukul Pratishthan, the same shall not take effect until further orders of this court. The Government, vide letter 25.07.2019, rejected the permission to start senior college at village Aland which ex-facie factually incorrect. The State did not consider the registered documents which were on record while rejecting the final permission. Aggrieved thereby, Gurukul Pratishthan filed Writ petition No. 7787/2019, wherein the State Government was directed to consider whether this Gurukul Pratishthan has placed on record the registered documents. Upon verifying the record submitted by Gurukul Pratishthan, the State Government

realized its mistake while issuing Government order dated 25.06.2019 thereby refusing final permission and in that background, final permission came to be granted in favour of Gurukul Pratishthan to start senior college at village Aland vide order dated 13.09.2019.

21. According to Gurukul Pratishthan, petitioners may possess eligibility in terms of Government Resolution dated 15.09.2017, however, there were as many as three players, possessing basic eligibility. The law confers absolute discretion in favour of the Government in the matter of grant of permission in terms of Section 109 of the University Act. The discretionary power used by the State cannot be questioned by the petitioners. It is further stand of Gurukul Pratishthan that all the infrastructural facilities required as per government resolution dated 15.09.2017 are very much available with Gurukul Pratishthan. It has invested huge amount in making such infrastructure available in April, 2019 itself. As against this, the petitioners do not possess infrastructural facilities as required in view of Government Resolution dated 15.09.2017. According to Gurukul Pratishthan, there is no merit in the contentions raised by the petitioners- Adarsha Education Society and Bharti Mahila Mandal.

22. We have heard Mr. V.J. Dixit, learned Senior Advocate for Adarsha Education Society, Mr. S.S.Thombre, learned Advocate for Bharti Mahila Mandal, Mr. D. R. Kale, I/c Government Pleader for respondents/State Authorities, Mr. S.S.Tope, Advocate for the University and Mr. Ajay S. Deshpande, Advocate for Gurukul Pratishthan. We have called original file of the department of Higher and Technical Education, Mantralaya, Mumbai for perusal. We have carefully gone through the file. We have also perused the papers submitted by the parties in their respective petitions and reply filed by the respondents therein.

Arguments

23. Mr. Dixit, the learned senior counsel vehemently argued that the letter of intent and letter of final permission granted in favour of Gurukul Pratishthan are illegal. The State has not at all considered the proposal of Adarsha Education Society which is minority Institution having vast experience in the field of education. All the infrastructure is available with the said institution, it has sound financial capacity to start new senior college at village Aland as per the perspective plan. The expert committee of the University has positively recommended the proposal of the Adarsha Education Society to the Government. The Government has not assigned any reason while rejecting the proposal of the Adarsha Education Society. There was no

comparative assessment when there were three proposals before the Government.

24. The State Government, even though has discretionary power while issuing of letter of intent and final permission to the educational institutions, the same needs to be used judiciously. The impugned letter of intent and final permission accorded in favour of Gurukul Pratishthan is arbitrary, and capricious decision taken by the State. There is no comparative study of the proposals while granting final permission to Gurukul Pratishthan. It is lacking necessary infrastructure and as such, final permission ought not to have been issued in favour of Gurukul Pratishthan. There was no deficiencies in the proposal submitted by Adarsha Education Society. The learned senior counsel submitted that in fact the proposal of Gurukul Pratishthan forwarded by the University to the State Government was time barred and should not have been considered. Mr. Dixit the learned senior counsel submitted that there is no subjective assessment of the proposals at the hands of the State and it is no where stated as to why Adarsha Education Society is not eligible and how Gurukul Pratishthan is meritorious than Adarsha Education Society. Mr. Dixit, the learned senior counsel submitted that the impugned order of the State Government granting final permission to Gurukul Pratishthan to start senior college at

village Aland for the faculties of Arts, Commerce and Science is contrary to the Government policy and also contrary to the provisions of the Universities Act, 2016. As such, by considering all these aspects, the impugned order/decision dated 13.09.2019 needs to be quashed and set aside.

25. Mr. S. S. Thombre, the learned Advocate appearing for Bharti Mahila Mandal, Jalna, submitted that respondent No.4 University has issued public advertisement and invited applications for opening Arts, Commerce and Science College at Aland. The applications were invited through online process. Bharti Mahila Mandal has submitted its proposal in the prescribed format along-with requisite documents for grant of permission to open Arts, Commerce and Science College at village Aland according to the perspective plan of the University. He submitted that the Bharti Mahila Mandail has sufficient infrastructure and facility to start new senior college at village Aland. The institution was fulfilling all the criteria as per the Government Resolution dated 15.09.2017 even then, vide Government Resolution/order dated 31.01.2019, the State has issued letter of intent in favour of Gurukul Pratishtan and that order is challenged in Writ Petition No.8021/2019.

26. During pendency of the said writ petition, final permission was also accorded in favour of Gurukul Pratishthan. Mr. Thombre, the learned counsel submitted that Bharti Mahila Mandal is at better footing than Gurukul Pratishthan. According to Mr. Thombre, even though the Government has discretionary power while granting permission to start new colleges, the decision must be according to the provisions of the Universities Act. Gurukul Pratishthan does not fulfill the requisite criteria to start new senior college at village Aland. The decisions taken by the Government dated 31.01.2019 and 13.09.2019 granting letter of intent and final permission respectively to Gurukul Pratishthan are arbitrary and against the provisions of the Universities Act. He submitted that Bharti Mahila Mandal is the alone institution which has submitted proposal to the University to start new senior college for Arts Commerce and Science Faculties at village Aland according to the perspective plan of the University. Neither Gurukul Pratishthan nor Adarsha Education Society has submitted proposal for three faculties viz. Arts, Commerce and Science senior college at village Aland as per the perspective plan of the University. According to Mr. Thombre, Bharti Mahila Mandal alone is eligible to get final permission to start senior college at village Aland since it was only one in the race as per perspective plan for three faculties. The order of the State Government according final permission to

Gurukul Pratishthan is illegal and liable to be quashed and set aside.

27. Mr. D.R.Kale, learned I/c Government pleader justified the decision taken by the State Government while granting final permission in favour of Gurukul Pratishthan as per perspective plan of the University. He invited our attention to the affidavit filed by Mr. Digambar Gaikwad, Joint Director, Higher Education, on behalf of the State. He submitted that there were in all three proposals for the place at village Aland to start new senior college. The State Government has considered all these three proposals. In the background of academic and social status, experience in running the educational institutions, financial planning, economical capability, demand of students in the said area, local need of education and on the basis of comparative merits, the State Government has issued letter of intent to Gurukul Pratishthan to start new senior college at village Aland as per the perspective plan. Mr. Kale, the learned Government Pleader invited our attention to section 109(3)(d) of the Universities Act and submitted that the Government has discretionary power while issuing letter of intent and the Government has taken its decision only after considering all proposals. It is submitted that the proposal submitted by Adarsha Education Society and Bharti Mahila Mandal were

scrutinized and it was found that there were shortcomings. The State has accordingly rejected their proposals.

28. He further submitted that as per orders passed by this Court from time to time in these petitions as well as earlier orders, the State has considered all the aspects and accordingly issued final approval/permission to Gurukul Pratishthan for opening new senior college at Aland on merit basis. The final approval was granted on permanent non grant basis, however, subject to final decision in writ petition No. 5004 of 2019. He further submitted that the University has to upgrade its perspective plan every year and accordingly proposals need to be called. The Government, as per the point shown in the perspective plan and if the institutions are fulfilling the norms laid down by the Government, may grant permission. If proposal is rejected, such institution may submit its proposal for the next year as per the perspective plan. He submitted that at this stage, there is no merit in the petitions filed by Adarsha Education Society and Bharti Mahila Mandal.

29. Mr. S. S. Tope, learned counsel for respondent No.4 University has submitted that the University has forwarded all the proposals to the State Government as per procedure. The State Government has taken decision after studying all the

three proposals submitted by the different institutions. As per the perspective plan launched by the University, the educational institutions have submitted their proposals and on that basis, the University has forwarded those proposals with recommendations. Accordingly, the Government has taken its decision. He further invited our attention to the papers filed along-with affidavit sworn on behalf of the University and pointed out that Bharti Mahila Mandal has withdrawn the amount even before the proposal is forwarded to the Government, which is not permissible. He further pointed out that Adarsha Education Society has used one and the same set of bank documents, fixed deposit receipt, balance certificate for two proposals i.e. for village Aland and Shirsala Tanda, which is not permissible.

30. Mr. A. S. Deshpande, learned Advocate appearing for Gurukul Pratishthan argued that the Government has considered all the three proposals to start new senior college at village Aland. The State Government found that Gurukul Pratishthan is suitable institution by taking in to consideration all the relevant aspects and it fulfills all the criteria laid down in Government Resolution dated 15.09.2017. Accordingly, the Government has accorded letter of intent as well as final permission to Gurukul Pratishthan to start new senior college at village Aland as per the perspective plan of the University. The Government has used its

discretionary powers vested with it in view of Section 109(3)(d) of the University Act while issuing letter of intent as well as final permission in favour of Gurukul Pratishthan since the institution was found eligible on merits. As per prevailing norms, the final approval has been granted on permanent non-grant basis and in view of Government resolution dated 15.09.2017 the decision taken by the Government is correct, legal and according to the provisions of the Universities Act.

Evaluation

31. Before going to the merits of the case, it is obvious to look all the relevant provisions of the Universities Act. According to section 107 of the Universities Act, the University is required to prepare a comprehensive perspective plan for every five years and get the same approved by Commission. Such plan shall be prepared for the location of colleges and institutions of higher learning in a manner ensuring comprehensive equitable distribution of facilities for higher education having due regard, in particular, to the needs of unserved and under-developed areas within the jurisdiction of the University. Such plan shall be prepared by the Board of Deans and be placed before the Academic Council and the Senate through the Management Council. Another relevant provision is section 109 of the Act which relates to procedure for opening new college or new

course, subject or division. According to section 109(3)(a), the management seeking a letter of intent for opening new college or institution higher learning shall apply in a prescribed format to the Registrar of the University before the last day of September of the year preceding the year in which the letter of intent is sought.

32. Admittedly, there were three players in the field who were seeking letter of intent to start senior college at village Aland as per the perspective plan prepared by the University. Gurukul Pratishthan and Adarsha Education Society have submitted their proposals to start senior college at village Aland for the faculties of Art and Science. Whereas, Bharti Mahila Mandal Jalna has submitted its proposal to start senior college at village Aland for three faculties viz. Arts, Commerce and Science as per the perspective plan. Having regard to the provisions of sections 107 and 109 of the Act, it is clear that these sections prescribe complete procedure for according permission to open new senior college at a particular place as per perspective plan launched by the University. Under section 107 of the Universities Act, every step needs to be taken within the time frame stipulated in section 109 of the Universities Act. The provision also specifies the requirement to be complied with by the Institution. The Government Resolution dated 15.09.2017 also

supplements to section 109. The time frame provided under section 109 is mandatory.

33. There cannot be debate that the Government vests with a discretionary power in view of section 109 of the Universities Act in granting permission to a college, if there are two or more eligible proposals. The discretion needs to be exercised judiciously and not capriciously. It would be useful to refer the decision rendered by this Court at this Bench in **Writ Petition No. 6366/2018 with connected matters, to which one of us (S.V. Gangapurwala, J) was party**, decided on 07.06.2019 and one of the petitioners i.e Adarsha Education Society was party/petitioner to it. While rendering decision in the said matter, it is observed by this court in para No. 9 that, the Government has a discretion in granting permission to a particular college if there are two or more eligible proposals. However, the discretion that exists with the Government is not merely an ordinary discretion, but a discretion that has to be exercised judiciously and not capriciously. It is further observed that in such cases the State Government must evaluate all the proposals and grant permission to the more deserving institution. The Government is required to arrive at a subjective satisfaction based on objective assessment of the proposals. The Government

ought to have evolved a particular criteria for exercise of discretion.

34. Now, turning back to the facts of the case at hand, the letter of intent and final permission to start senior college for faculties of Arts, Commerce and Science are accorded to Gurukul Pratishthan vide orders dated 31.01.2019 and 13.09.2019 respectively. First, we will deal with the case of the Petitioner Bharti Mahila Mandal. The Government of Maharashtra, Department of Higher and Technical Education has issued Government Resolution dated 15.09.2017 laying down procedure for opening new colleges. The said government resolution has been issued in view of section 109 of the Maharashtra Public Universities Act. Appendix (A) to (D) annexed to the resolution which are part and parcel of the said Government resolution need to be complied with while submitting proposal to the University.

35. We noticed following episodes with relevant dates in the matters.

Writ Petition No. 8021 of 2019 and Writ Petition No. 6337 of 2020 filed by Bharti Mahila Mandal, Jalna

Aland-Tal Phulambri District Aurangabad, included in the prospective plan - 2018-2019 Arts, Science and Commerce (Senior) College.

18/09/2018	University - Public Advertisement
01/10/2018	Proposal submitted
31/01/2019	Proposal forwarded to Government
07/02/2019	Proposal rejected
31/01/2019	Letter of intent issued in favour of Gurukul Bahuudeshiya Sevabhavi Pratishthan
13/09/2019	Final permission granted to Gurukul Bahuudeshiya Sevabhavi Pratishthan
W.P. 8021/2019	Letter of intent and final order challenged after amendment
W.P. 6337/2020	Final permission challenged

Writ Petition No. 5004/2019 and Writ Petition No. 4083/2020 filed by Adarsha Education Society

W.P.5004/2019	Challenging Letter of Intent
W.P.4083/2020	Challenging final permission
01/10/2018	Proposal for grant of letter of intent
03/12/20018	Expert Committee verified proposal and visited to proposed site. Expert Committee recommended the proposal
31/01/2019	University recommended proposal
31/01/2019	Letter of Intent issued to Gurukul
25/06/2019	Final permission to Gurukul rejected
13/09/2019	Again final permission granted to Gurukul

Respondent No.5/Gurukul Bahuudeshiya Sevabhavi Pratishthan

25/02/2019	Proposal submitted earlier/rejected
16/01/2019	Order passed in W.P. No. 14243/2018 whereby directed to reconsider its proposal
01/05/2019	Last date of forwarding proposal by the University to Government
15/04/2019	Deficiencies were complied
18/04/2019	Expert Committee and University - Visit
31/01/2019	Letter of Intent
14/06/2019	University forwarded proposal for final permission to the government after modification of order by this Court on 12.06.2019
13/09/2019	Final permission granted Gurukul Pratisthan

36. According to Appendix (A), it is necessary to invest Rs. Seven lakh to start new college in a nationalized Bank in fixed deposit for a period of five years and joint letter signed by concerned official of the nationalized /scheduled Bank and the concerned person of the Educational Institution giving undertaking not to withdraw the said amount for five years are to be enclosed. Bharti Mahila Mandal has invested Rs. Seven lakh in fixed deposit with Bank of Maharashtra, Sillod Branch on 29.09.2018 while submitting the proposal for letter of Intent. It is evident from the record that Bharti Mahila Mandal has encashed the said fixed deposit in the year 2018 when proposal was under consideration. Bharti Mahila Mandal has breached its own undertaking. No confidence can be reposed on such undertaking. The Government could have considered the proposal of Bharti Mahila Mandal if the Institution had not encashed the fixed deposit. As such, there was no fixed deposit existing along-with the proposal for letter of intent submitted by Bharti Mahila Mandal. As such it does not fulfill the basic criteria laid down under the Government Resolution dated 15.09.2017. Certainly Bharti Mahila Mandal was out of race, even before consideration of proposal for letter of intent. The basic condition for keeping fixed deposit of Rs.7,00,000/- in a Nationalized Bank has been breached by Bharti Mahila Mandal and as such, it has no vice to put-forth its claim for letter of intent, much less for final permission to start new senior college at village Aland.

37. In view of the factual position noticed above, we do not find any merit in the argument advanced by Mr. S.S. Thombre, learned advocate appearing for Bharti Mahila Mandal. In fact, Bharti Mahila Mandal was the only institution which has submitted proposal for letter of intent to start new senior college for three faculties i.e. Arts, Commerce and Science at Aland as per the perspective plan for the year 2019-20. Bharti Mahila Mandal could have been the best competitor. The said institute seems to have encashed the fixed deposits before consideration of its proposal for letter of intent. It has to blame itself.

38. Now coming to the case of Adarsha Education Society, we have carefully gone through the record/file made available by the learned A.G.P., called from the Department of Higher and Technical Education, Mantralaya, Mumbai. The Petitioner/ Adarsha Education Society has submitted the proposal to the University on 01.10.2018 to open new college at village Aland as per the perspective plan for the academic year 2019-20 as per to the Government Resolution dated 15.09.2017 for the faculty of Arts and Science along-with requisite documents. It is submitted by Mr. Dixit, the learned Senior Advocate that the petitioner has furnished copies of the F.D. receipts, bank statement and audit report showing sound financial condition of Adarsha Education

Society. Documents relating to availability of land and building, infrastructure, staff etc. were also furnished along-with the proposal.

39. It is evident from the record that the University has noticed certain deficiencies in the proposal submitted by the Adarsha Education Society and as per the instructions of University, the Institution has removed those deficiencies and revised proposal was submitted with the University on 03.11.2018. Further, it is evident that the expert committee has paid visit to the proposed site and submitted its report on 15.11.2018 to the University recommending Adarsha Education Society's proposal to start new college at Aland. The University, vide letter dated 29.11.2018, forwarded the proposal of Adarsha Education Society to the State Government, however, with certain deficiencies. The Adarsha Education Society again pointed out the correct position to the University and the University again forwarded the proposal of Adarsha Education Society to the State Government with recommendation vide letter dated 03.12.2018. The said revised recommendation was sent after cut off date and as such, the Government was not considering the said proposal. Adarsha Education Society approached this Court by filing Writ Petition No. 552/2019 and sought directions. This court was pleased to issue directions under order dated

23.01.2019 to the State Government to consider the proposal of Adarsha Education Society on its own merits.

40. One Shobha w/o Shripatrao Kisve, Assistant Registrar (Academic), Dr. Babasaheb Ambedkar Marathwada University, has filed affidavit and thrown light on the factual position of the proposal submitted by Adarsha Education Society. The relevant paras of the said affidavit read as under:

"1. The Adarsha Education Society, Ambhai, Tq. Sillod, District Aurangabad has filed its proposal for opening of new college for the two faculties i.e. Arts and Science at Undangaon in the year 2018-19 on 30.09.2017. Alongwith the said proposal the institute has annexed the Term deposit advice dated 28.09.2017 issued by the State Bank of India bearing Account No. 37201719321 mentioning the amount of Rs. 7 lakh for 5 years and it is having maturity on 28.09.2022.

The said institution has also annexed the balance certificate dated 28.09.2017 issued by Aurangabad District Central Co-operative Bank having Saving Account No. 004411101100054 for amount of Rs.7 lakh 2 thousand. The copies of the Term Deposit Advice dated 28.09.2017 issued by SBI and Assurance letter dated 29.09.2017 alongwith Balance Certificate dated 28.09.2017 issued by ADCC Bank Certificate are annexed herewith and marked as Exhibit R-1 collectively.

02. The Deponent further submits that , the Adarsha Education Society, Ambhai, Tq. Sillod, District Aurangabad has filed its proposal for opening of new college at Aland in the year 2019-20 on 26.09.2018. Alongwith the said proposal, the institution has annexed the Term Deposit Advice dated 28.09.2017 issued by the State Bank of India bearing Account No. 37201719321 mentioning the amount of Rs.7 lakhs for 5 years and it is having maturity on 28.09.2022.

Moreover, the said institution has also annexed the Term Deposit Advice dated 28.09.2018 issued by State Bank of India bearing Account No. 37975671772 mentioning the amount of Rs.7 lakhs for 5 years and it is having maturity on 28.09.2023.

The said Institution has also annexed the balance certificate dated 26.09.2018 issued by the Aurangabad District Central Co-operative Bank having Saving Account No. 00441101100054 for amount of Rs.7,09,300/-.

03. The deponent further submits that Adarsha Education Society, Ambhai Tq.Sillod Dist.Aurangabad has filed its proposal for opening new college at Shirsala Tanda in the year 2019-20 on 26.09.2018. Alongwith the said proposal, the Institution has annexed the term deposit advice dated 28.09.2017 issued by State Bank of India bearing Account No. 37201719321 mentioning the amount of Rs.7 Lakhs for five years and it is having maturity on 28.09.2022. Moreover, the said institution has also

annexed the Term Deposit Advice dated 28.09.2018 issued by State Bank of India bearing account No. 37975671772 mentioning the amount of Rs.7 lakhs for five years and it is having maturity on 28.09.2023.

The said Institution has also annexed the balance certificate dated 26.09.2018 issued by Aurangabad District Central Cooperative Bank having Saving Account No. 004411101100054 for amount of Rs.7,09,300/-.

Therefore it is clear that Adarsha Society, Ambhai Tq. Sillod, District Aurangabad has submitted two proposals for the year 2019-20 i.e. for the points at Aland Tq. Sillod and Shirsala-Tanda, Tq. Sillod. This institution has annexed exactly same Term Deposit Advice issued by SBI Bank and Balance Certificate of Saving Account of ADCC Bank with both these proposals."

4. The deponent further submits that, the informative chart regarding proposals submitted by the Adarsha Education Society, Ambhai, Tq. Sillod Dist. Aurangabad is mentioned below for the kind perusal of this Hon'ble Court.

Sr. No.	Proposal for point	Proposal for Year	Term Deposit Advice Details
01.	<u>Undangaon</u> Tq. Sillod	For 2018-19 Submitted on 30.09.2017	01. 28.09.2017 SBI Account No.37201719321 Amount Rs.7 Lakhs for five years. Maturity on 22.09.2022 02. Balance Certificate dated 28.09.2017 ADCC Bank Saving Account No.004411101100054 Amount Rs.7,02,000/-

02.	<u>Aland</u> Tq. Sillod	For 2019-20 Submitted on 26.09.2018	01. Same as above mentioned at Sr. No.1. 02. Term Deposit Advice dated 28.09.2018 SBI Account No.37975671772 Amount Rs.7 Lakhs for 5 years, Maturity On 28.09.2023 03. Balance Certificate dated 26.09.2018,ADCC Bank Saving Account No.004411101100054 Amount Rs.7,09,300/-
03.	<u>Shirsala</u> <u>Tanda</u> Tq. Sillod	For 2019-20 Submitted on 26.09.2018	Same Term deposit Advice issued by SBI Bank annexed which are annexed alongwith the proposal for Aland point and same Balance Certificate issued by ADCC Bank.

41. Having regard to the factual position coming from the affidavit sworn on behalf of the University by the authorized officer, it is very much clear that Adarsha Education Society has submitted two proposals for the academic year 2019-20, one proposal for opening new Arts, Commerce and Science, College at Aland, Tq. Phulambri District Aurangabad and another for Shirsala Tanda Taluka Sillod, District Aurangabad.

42. As pointed out earlier, it is noticed by us that Adarsha Education Society has used the same term deposit advice issued by the State Bank of India and balance certificate of saving account of Aurangabad District Central Cooperative Bank for two proposals which is not permissible in view of Government resolution dated 15.09.2017 and Appendix thereto. It was mandatory on the part of Adarsha Education Society to furnish independent fixed deposit receipt of any nationalized bank and

balance certificate of saving account as contemplated by Government Resolution dated 15.09.2017. Adarsha Education Society seems to have played this game to obtain letter of intent for sites at Aland and Shirsala Tanda by using same term deposit receipt and balance certificate. The Adarsha Education Society has filed rejoinder dated 05.09.2020 but same is completely silent on the above aspect. The University has made its stand very much clear as to how the proposal submitted by Adarsha Education Society was not according to the Government resolution dated 15.09.2017. The Adarsha Society cannot use the same term deposit receipt and balance certificate and lay hand on both the sites. As such, inference can be safely drawn that the petitioner/Adarsha Education Society has suppressed the true facts from the University as well as from the Government and put forth its claim. In fact, Adarsha Education Society played a fraud on this system. Certainly Adarsha Education Society was ineligible for the Site of Aland in view of the above defect and resultantly out of race to get the letter of intent.

43. As per guidelines laid down under the Government Resolution dated 15.09.2017, the Adarsha Education Society has submitted only 57 R land Rent Agreement and N.A. order. But rent agreement sworn before the Notary for play ground was enclosed. As per the requirement under the Government Resolution dated 15.09.2017, the rent agreement pertaining to the land must be

duly registered under the Registration Act. Further insufficient area of the land was noticed. As such, factually, Adarsha Society was also not fulfilling the criteria for infrastructure, play ground etc., as pointed by the State in its affidavit in reply.

44. In the above premise, the proposal submitted by Adarsha Education Society for village Aland to start new college for the academic year 2019-20 was not only defective and not in consonance with the guidelines laid down by the State vide Government Resolution dated 15.09.2017 but the same was tainted with fraud inasmuch as one F.D. receipt was used for two proposals.

45. Mr. Dixit, the learned Senior Advocate vehemently argued that there is no comparative assessment of the proposals submitted by various educational institutions for the proposed site at village Aland to start Arts, Commerce and Science College. According to Mr. Dixit, it was mandatory on the part of the State Government to make comparative assessment of the proposals and then should have taken the decision on merits. There is no dispute about the legal proposition put forth by Mr. Dixit, the learned Senior Advocate. However, as pointed earlier, the proposal submitted by Adarsha Education Society was found defective and as such, it was out of race.

46. The proposals of Bhartia Mahila Mandal and Adarsha Education Society for opening new senior Colelge at village

Aland as per perspective plan for the years 2019-20 were found defective in view of the criteria laid down in the Government Resolution dated 15.09.2017.

47. As pointed out earlier, there were three players in the field namely Bharti Mahila Mandal, Adarsha Education Society and Gurukul Pratishthan claiming letter of intent to start new senior college at Aland for the academic year 2019-20 as per the perspective plan of the university. Bharti Mahila Mandal was out of race in view of encashment of fixed deposit receipt when its proposal was pending for consideration and as such, thrown away from the game. Adarsha Education Society has submitted two proposals, one for Aland and another for Shirsala Tanda by using one and the same fixed deposit receipt of the Stand Bank of India and balance certificate of Saving Bank Account of ADCC Bank and resultantly, also out of race. The only player remained in the field was Gurukul Pratishthan.

48. Mr. Dixit, the learned Senior Advocate argued that initially, final permission to Gurukul Pratishthan was rejected and at the Second breath, the Government has issued final permission to Gurukul Pratishthan to start new senior college at village Aland and it is nothing but a pick and choose policy of the Government. We do not find any merit in the argument advanced by Mr. Dixit, the learned Senior Advocate. It is

evident from the record as well as observations in the order passed by this Court in Writ Petition No.7787/2019 that the Government has rejected final permission to Gurukul Pratishthan on incorrect premise of unregistered document. The officers at Mantralaya did not scrutinize the proposal of Grukul Pratishthan properly and wrongly rejected the final permission by observing that the Gurukul Pratishthan has not furnished registered document as per the requirement. In fact, Gurukul Pratishthan has produced the registered documents as per the requirement of the Government Resolution dated 15.09.2017 alongwith the proposal and it was mistake at the Government level and that mistake was rectified in view of the observation made in Writ petition No. 7787/2019 and after due scrutiny of the documents, the Government has issued final permission to Gurukul Pratishthan to start new senior college at village Aland for the academic year 2019-20 as per perspective plan of the University.

49. Proposal of Gurukul Pratishthan was alone eligible before the Government for the proposed site at village Aland and as such, there was no reason for the State Government to make comparative assessment in the scenario of defective proposals of Bharti Mahila Mandal and Adarsha Education Society. It would have unnecessary exercise. Had there been eligible proposals of Bharti Mahila Mandal and Adarsha Education Society, competing

with proposal of Gurukul Pratishthan, then certainly it was incumbent on the part of the State Government to make comparative assessment of the proposals. In that case, the State Government was required to evaluate the proposals for grant of permission to meritorious educational institution and to arrive at subjective satisfaction based on objective assessment of the proposals. Such is not the position in the matter.

50. As discussed herein before, already two players were out of the game and only one player was remained to complete the game. The Government seems to have accorded final permission to Gurukul Pratishthan by invoking provisions of Section 109 of the Universities Act, 2016 and as per the guidelines laid down in the Government Resolution dated 15.09.2017. The Government has made it clear on affidavit that the procedure for issuing letter of intent to start new college at village Aland for the academic year 2019-20 was completed within stipulated time and took decision for grant of final approval to Gurukul Pratishthan for the academic year 2019-20 as per the perspective plan, on merits.

51. Now both the players viz. Bharti Mahila Mandal and Adarsha Education Society were out of consideration. The decision taken by the State to grant final permission to Gurukul Pratishthan to start new senior college at village Aland for the

academic year 2019-20 as per the perspective plan is found proper and correct in view of the Government Resolution dated 15.9.2017. We do not find any merit in the submissions of Mr. Dixit, the learned Senior Advocate for Adarsha Education Society and no case of pick and choose also found.

52. The decision, granting final permission dated 13.09.2019 to Gurukul Bahuuddeshiya Sevabhavi Pratishthan, Waghalgaon, Tq. Phulambri, District Aurangabad, to start senior college at village Aland cannot be said to be arbitrary or capricious.

53. Having regard to the above discussion, we arrive at conclusion that all the petitions devoid of merit and liable to be dismissed.

ORDER

- (1) All the Writ Petitions stand dismissed.
- (2) Rule discharged. No order as to costs.
- (3) In view of disposal of the writ petitions, pending civil applications also stand disposed of.

(SHRIKANT D. KULKARNI, J.)

(S.V.GANGAPURWALA, J.)

At this State, Mr. Nagargoje, the learned Advocate seeks continuation of the interim order passed in Writ Petition No. 5004 of 2019.

After having considered the matter on merit, judgment has been finally delivered. In view of that, we do not find it necessary to continue the interim relief.

(SHRIKANT D. KULKARNI, J.)

(S.V.GANGAPURWALA, J.)

JPC