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July 2019 to respondent No.3-University and requested to consider its proposal for opening colleges for higher education in Arts, Commerce and Science at village Marunji, Taluka Mulshi District Pune. respondent No.3 considered the request of the petitioner and published a perspective plan for the year 2020-2021 for opening new colleges, faculties and new syllabus, etc. The said perspective plan included requirement of two colleges of Arts, Commerce and Science in Taluka Mulshi, Pune; one at Marunji and the other at Pirangut.

3 On the basis of the perspective plan of respondent No.3, the Maharashtra Commission for Higher Education and Development (MAHED) conducted a meeting on 23rd July 2019 wherein the perspective plan of respondent No.3 was accepted. On the basis of the said perspective plan, respondent Nos.1 and 2 called upon respondent No.3 to invite applications and proposals for opening new colleges at the points/locations included in the perspective plan which was approved by respondent No.1. It is contended that in the meantime, respondent No.1 formulated procedure for permission for opening of new colleges. The said procedure was formulated by way of G.R. dated 15th September 2017 under section 109 of the Maharashtra Public University Act, 2016 (for short "said Act of 2016"). Accordingly, respondent No.3 issued advertisement dated 24th August 2019 whereby it invited proposals for new college. At serial No.43 of the said advertisement, was the proposal of invitation for opening college at village Marunji, Taluka Mulshi, District Pune.

4 The petitioner submitted its proposal/application for opening

new college of Arts, Commerce and Science (Senior College) (Higher Education) at Marunji. The petitioner also deposited requisite fees of Rs.33,000/- with respondent No.3. Respondent No.3 scrutinised proposal/application and documents submitted by the petitioner and respondent No.4. On 29th November 2019, respondent No.3 recommended its proposal to respondent Nos.1 and 2 for opening new college of Art, Commerce and Science at Marunji. Respondent No.2 informed the petitioner by letter dated 11th December 2019 that the name of the petitioner was duly recommended by respondent No.3 for opening new college at Marunji. It is stated that inspite of recommendation by respondent No.3, the claim of the petitioner for opening new college at Marunji was denied by respondent Nos.1 and 2.

5 Being aggrieved and dissatisfied by the impugned decision dated 31st January 2020, the petitioner made a representation dated 2nd February 2020 to respondent No.1 to consider the proposal of the petitioner for granting Letter of Intent for opening new college of Arts, Commerce and Science at village Marunji, Taluka Mulshi, Dist. Pune. But respondent Nos.1 and 2 did not decide the representation of the petitioner. Hence, petitioner filed present Writ Petition bearing No.1788 of 2020. In the said Writ Petition, by order dated 6th March 2020 this Court directed respondent Nos.1 and 2 to decide the representation of the petitioner within four weeks from the date of the order. After hearing the petitioner, respondent Nos.1 and 2 rejected the representation of the petitioner by order dated 4th July 2020. It is contended that during the course of hearing, petitioner received additional information under RTI, which revealed that the proposal submitted by the petitioner was

considered to be eligible for opening college at Marunji. However, Letter of Intent was issued in favour of respondent No.4. It is also contended that the proposal of respondent No.4 was scrutinized and considered to be ineligible by respondent No.3, still the Letter of Intent was issued in favour of respondent No.4.

6 It is contended that the impugned decision of respondent Nos.1 and 2 dated 31st January 2020 is ex-facie illegal and contrary to the fundamental rights of the petitioner. It is contended that the petitioner had complied with all due requirements and respondent No.3 had recommended the proposal of the petitioner for opening new college at Marunji. Therefore, Letter of Intent ought to have been issued in favour of the petitioner. It is contended that the petitioner is in the field of Education for last 10 years. It is contended that the impugned order of the respondent Nos.1 and 2 is completely contrary under section 76 and 109 and other provisions of the Maharashtra Public Universities Act,2016. It is contended that the impugned order also contravenes the clauses of G.R. dated 15th September 2017.

7 It is contended that the bare perusal of the scrutiny conducted by respondent Nos.1 and 2 shows that the proposal of respondent No.4 was declared to be ineligible. It is contended that respondent No.4 had not submitted Auditor's report, plan of the building and other relevant documents such as Indemnity Bond. Respondent No.4 did not have NAAC Accreditation. The proposal of respondent No.4 was not in accordance with the Rules framed under section 109 of the said Act of 2016. Even otherwise, impugned order dated 8th July 2020 is ex-facie

illegal, bad in law and deserves to be quashed and set aside. Respondent Nos. 1 and 2 ought to have appreciated on due scrutiny of documents submitted along with proposal, the petitioner was entitled to be held to be eligible for granting Letter of Intent. It is contended that the absolute discretion of the State Government to grant Letter of Intent to respondent No.4 is misconceived, contrary to the principles of natural justice, arbitrary exercise of power, illegal and bad in law. Respondent Nos.1 and 2 cannot use the said discretionary power to grant Letter of Intent to an Institute whose proposal is otherwise considered to be ineligible. Discretion has to be used in accordance with the principles of the said Act of 2016 and the State Government does not have unfettered and uncanalised power. Therefore, the decision of the State Government by exercising such power is ex-facie illegal, bad in law and deserves to be quashed and set aside. There is no reason assigned as to why proposal of the respondent No.4 found favour with the respondent Nos.1 and 2 especially when the name of the petitioner was recommended by the University. On the contrary, proposal of the respondent No.4 was declared to be ineligible. Hence, it is prayed upon examination of record and proceedings, the impugned decision dated 31st January 2020 be quashed and set aside. It is prayed that respondent Nos.1 and 2 may be directed to grant Letter of Intent for opening new college of Arts, Commerce and Science at Marunji, Taluka Mulshi, Pune, to the petitioner.

8 Respondent Nos.1 and 2 filed their affidavit in reply wherein it is contended that as per section 109 of the said Act of 2016 and as per the norms, non agriculture universities have submitted their proposal for opening of new college for the academic year 2020-21. It is contended

that respondent No.4 had submitted the said proposal to the State Government for opening new college at Marunji, Taluka Mulshi, Pune. It is contended that petitioner also submitted a proposal for the same which was scrutinized by respondent No.3. The said proposal of respondent No.4 was fulfilling the norms as per G.R dated 15th September 2017. However, there were more than one proposal received. Accordingly, respondent Nos.1 and 2 considered the proposal in exercise of power vested under section 109 (3) (d) of the said Act of 2016 and issued Letter of Intent to respondent No.4. It is contended that as per section 109 (3) (d), Letter of Intent may be granted to any such Institution as State Government may consider fit and proper in its absolute discretion taking into account relevant factors, suitability of management seeking Letter of Intent, state level priority with regard to location of Institutions of higher learning, etc. It is contended that the procedure for issuance of Letter of Intent to opening of new college for the academic year 2020-2021 has been completed. The Government vide its GR dated 31st January 2020 has granted Letter of Intent to eligible Institutions and accordingly Letter of Intent has been issued to respondent No.4 for opening new college of Arts, Commerce and Science at Marunji, Taluka Mulshi, Pune. It is contended that there is no substance in the contentions raised by the petitioner in this petition. In the additional affidavit, it is contended that respondent No.1 had considered the representation submitted by the petitioner and the facts stated by respondent No.3 and communicate its decision to the petitioner vide letter dated 8th July 2020. It is contended that as per the perspective

plan of respondent No.3, two proposal were received for opening college at Marunji. Accordingly, respondent No.1 had considered the proposal in exercise of power vested in it under section 109(3) (d) and issued Letter of Intent to respondent No.4. Hence, the proposal of the petitioner is not considered as acceptable and it was rejected.

9 Respondent No.4 filed Affidavit in Reply wherein it is contended that it is a trust registered under Bombay Public Trusts Act,1950 as well as Societies Registration Act,1860. Respondent No.4 is established in 1999 and it is catering to education of poor and needy people of rural area in Pune District. Respondent No.4 is a linguistic Minority Educational Institute as recognised by Minority Development Department of Government of Maharashtra. Respondent No.4 is running Engineering College, Pharmacy College, M.B.A. College, Schools and Post-Graduate Institutes. It is admitted that respondent No.3 had prepared perspective plan which was approved by the State Government as per section 107 of the said Act of 2016 for opening college at village Marunji, Taluka Mulshi, Pune. Respondent No.3 had published a notice dated 24th August 2019 and invited proposal for opening new colleges or Institutions for higher education. Respondent No.4 with intention to establish new college of Arts, Commerce and Science in Marunji Campus constructed a building for the said proposed college. Respondent No.4 submitted its application/proposal dated 30th September 2019 to respondent No.3

along with necessary fees and documents.

10 On receipt of the proposal, respondent No.3 by its letter dated 23rd October 2019 pointed out to the respondent no.4, four deficiencies in the proposal and called upon respondent No.4 to comply with the same on or before 5th November 2019. Deficiencies were as follows:

- 1) Budget for current year not submitted;
- 2) Fix Deposit Certificate not submitted;
- 3) Undertaking for not to withdraw deposits without consent of University was not furnished;
- 4) NAAC Accreditation for existing college not obtained.

11 On 4th November 2019, respondent No.4 submitted compliance report of the deficiencies to respondent No.3. On receipt of compliance report from respondent No.4, respondent No.3 carried out scrutiny/physical inspection of proposed college building on 16th November 2019 through Local Inspection Committee constituted by respondent No.3. As per section 109(3)(c), respondent No.3 needs to forward positive recommendation to the State Government before 30th November 2019 in respect of the Institutions whose proposals are complete. Accordingly, respondent No.3 on 29th November 2019 forwarded proposal of respondent No.4 to respondent No.1 with

positive recommendation. As per section 109 (3)(e) of the said Act of 2016, State Government issued a GR dated 31st January 2020 issuing Letter of Intent to respondent no.4. On 27th June 2020 respondent No.3 constituted Local Inspection Committee. The said Committee prepared its report recommending the name of Respondent No.4 subject to outcome of Writ Petition No.1788 of 2020 filed by the petitioner in this Court. However, permission for Science faculty was denied, as on the date of local inspection, laboratories of Physics, Chemistry and Biology were not upto date with equipments. On the same date i.e 29th June 2020, respondent No.4 gave an undertaking to Local Inspection Committee that due to outbreak of COVID-19 and due to lock down, laboratories were not upto date. However, the same will be updated at the earliest. It is contended that respondent No.4 was held eligible for starting new college of Arts and Commerce by respondent No.1 and respondent No.4 was finally considered (except Science faculty as laboratories were not uptodate). It was contended that respondent No.4 has complied with all the deficiencies. Therefore, respondent No.4 was found eligible as per the proposal.

12 It is contended that the discretion to select one out of two Institutions of which proposal is positively recommended by the University is left with the State Government as per section 109 of the said Act of 2016. Accordingly, the State Government has issued Letter of Intent in favour of respondent No.4, by relying upon the

report of Local Inspection Committee. It is contended that the deficiencies pointed out by respondent No.3 were complied with by respondent No.4 by letter dated 4th November 2019. It is contended that the petitioner has sought to produce on record documents to show that the petitioner was held eligible and respondent No.4 was held ineligible. However, origin of the said documents namely date of document, authority who has issued documents, subject and nature of documents was not mentioned by the petitioner. Letter dated 1st July 2020 by which RTI information was supplied to the petitioner also does not indicate the date of document, authority who has issued the document, subject and nature of documents. Therefore, said documents cannot be relied upon. It is contended that Letter of Intent issued by respondent Nos.1 and 2 is correct and legal. Hence, there is no substance in the petition. The respondent No.3 has not filed a reply to the Petition.

13 Heard the learned counsel for the petitioner, learned AGP for respondent Nos.1 and 2 and the learned counsel for respondent No.3 and learned Counsel for respondent No.4.

14 From the submission of the rival parties, following undisputed points/facts emerge:

(A) Respondent No.3 received representations to open new colleges

at village Marunji and Mulshi. Accordingly, respondent No.3 prepared perspective plan for the year 2020-2021 for opening new colleges. The said perspective plan was placed before the Maharashtra Commission for Higher Education and Development (for short "MAHED"). The said perspective plan for the year 2020-2021 was approved by the MAHED. The said plan was published by respondent No.1. respondent Nos.1 and 2 called upon the respondent No.3- University to invite the applications and proposals for opening new colleges at the locations included in the approved perspective plan. Respondent No.3 invited the applications for opening new college. In view of the advertisement, petitioner and respondent No.4 submitted their proposals for opening new colleges of Arts, Commerce and Science at village Marunji, Taluka Mulshi, Pune. On receipt of the proposals, respondent No.3 scrutinised the same in accordance with the Rules and directions issued by the respondent Nos.1 and 2. While scrutinising the proposal of respondent No.4, respondent No.3 found four deficiencies in the proposal as follows :

- (I) copies of the detailed estimate of the current year;
- (II) certified copy of the Fixed Deposit of minimum 5 years as follows :

- (a) Law College : 15.00 lakh

- (b) Traditional College : Rs.7.00 lakh

- (e.g.Arts, Science, Commercial etc.)

(III) Joint assurance letter of the concerned Nationalised Bank and Society about not withdrawing the fixed deposit fund kept in the concerned Nationalised/Scheduled Bank without prior permission of the University.

(IV) Non submission of the NAAC Certificate of other college of the respondent No.4.

(B) On scrutiny of the proposals, respondent No.3 recommended proposals of the petitioner as well as respondent No.4 for opening new college at Marunji, Taluka Mulshi, Pune. The respondent No.1 received the proposals/applications of the petitioner and respondent No.4. The said proposals were again scrutinised by respondent No.1.

(C) On 31st January 2020, respondent No.1 issued Letter of Intent for opening new college at Marunji in favour of respondent No.4. Being aggrieved by the said impugned decision, petitioner filed representation dated 2nd February 2020 before respondent Nos.1 and 2. The said representation was not considered by respondent Nos.1 and 2 till 20th February 2020. Hence, the petitioner filed the present Petition.

(D) Upon hearing the petitioner, this Court by an interim order directed respondent Nos.1 and 2 to decide the representation of the petitioner within four weeks. The representation was ultimately

decided on 4th July 2020, respondent No.1 rejected the representation of the petitioner only on the ground that the process of issuance of Letter of Intent for AY 2020-21 has been completed on 31st July 2020. No reasons were assigned why the proposal of the petitioner was rejected and that of respondent No.4 accepted. Thereafter, petitioner prayed for stay to the impugned decision of respondent No.1 regarding issuance of the Letter of Intent in favour of respondent No.4. The impugned decision was kept in abeyance as per the order dated 3rd August 2020 of this Court. The petitioner amended the Petition and impleaded respondent No.4 as party respondent. During the pendency of the Petition, Local Inspection Committee of respondent No.3 visited the premises of respondent No.4 at Marunji wherein it was noticed that there was no proper provision of laboratories for Physics, Chemistry and Biology Departments. Hence, the Committee reported to respondent Nos.1 and 2 that final Letter of Intent for Science stream should not be issued to respondent No.4. On the basis of the said report, Government of Maharashtra issued Letter of Intent in favour of respondent No.4 for opening new college for Arts and Commerce subject to outcome of this Writ Petition.

15 Learned Counsel for the petitioner submits that at the time of submitting the application/proposal, respondent No.4 did not comply with the GR/guidelines dated 15th September 2017 issued by respondent No.1. On the other hand, learned counsel for respondent

No.4 submits that according to the guidelines issued by respondent No.1, deficiencies found by the University were complied with within prescribed time. To substantiate his point, he invited our attention to clauses 1.10, 1.11 and 1.12 of guidelines dated 15th September 2017. On going through the said clauses, it appears that if the University finds defects in the proposal or document, then it should be informed to the society/Applicant and it is necessary for the Applicant/society to remove the defects. On removal of the defects/deficiencies,, Scrutiny Committee is required to submit its report along with the proposal to the Committee of the University.

16 In the present case, respondent No.3-University has communicated the deficiencies found in the application/proposal to respondent No.4 on 23rd October 2019. According to respondent No.4, it removed the deficiencies and report was submitted to respondent No.3 by letter dated 4th November 2019. On this point, learned counsel for the petitioner submits that respondent No.4 received NAAC certificate on 26th November 2019 but in their letter dated 4th November 2019 they falsely intimated to the University that they received NAAC certificate which was not in existence on 4th November 2019. It appears from the documents produced by respondent No.4 that they applied for NAAC certificate on 3rd April 2019. They deposited fees for obtaining the said certificate and produced on record receipt dated 3rd November 2019 establishing

payment of NAAC fees of Rs.2,21,250/-. Receipt of payment of fees for Accreditation was enclosed by respondent No.4 in its compliance report dated 4th November 2019. It appears that on the basis of the said receipt issued by NAAC dated 3rd November 2019 in favour of respondent No.4, respondent No.3 has treated it as compliance of the deficiencies.

17 The learned Counsel for respondent No.4 submits that respondent no.4 applied for NAAC on 29th April 2019 by paying Application fees of Rs.29,500/-. Thereafter NAAC Authority asked respondent No.4 to pay NAAC fees of Rs.2,21,250/- which was deposited on 3rd November 2019. On the basis of the said facts, he submits that the NAAC Certificate issued on 26th November 2019 relates back to the date of application of the certificate. To substantiate, he relied upon the ratio laid down by Delhi High Court decided on 31st May 2007 in the case of **Pfizer Products Inc. vs. Rajesh Chopra & Others**, in I.A.Nos.1879/2005 & 8252/2006 in CS(OS) No.311/2005 wherein Plaintiff applied for registration of the trade mark “Zoloft” in India on 18th November 1992 in Class 5 under the Schedule to the Trademark and Merchandise Marks Act,1958. The registration certificate was issued on 4th June 2005 of the trademark “Zoloft” in favour of the Plaintiff. It was held therein that the registration certificate dated 4th June 2005 relates back to its application dated 18th November 1992. The learned Counsel for

respondent No.4 submits that the above analogy be applied in the facts of the present case because respondent No.4 applied for NAAC certificate on 29th April 2019 which was granted on 26th November 1992 and the Certificate issued by NAAC relates back to the date of application dated 29th April 2019. He also relied upon the ratio in case of **N. Ammad Vs. Manager, Emjay High School reported in [(1998) 6 SCC 674]** wherein it was held that the school which is otherwise a minority school would continue to be so whether the Government declared it as such or not. When the Government declared the School as a minority school it has recognised a factual position that the School was established and is being administered by a minority community. The declaration is only an open acceptance of a legal character which should necessarily have existed antecedent to such declaration. The learned Counsel for respondent No.4 also submits that above ratio applies to the facts of the present case as far as issuance of NAAC certificate is concerned.

18 The petitioner has also produced on record copy of documents obtained under RTI Act from respondent No.1. The said documents are at page Nos.91 and 92. At page No.92 at serial No.75, proposal of the respondent No.4 was shown as ineligible. In the said document, four deficiencies are shown in the proposal of respondent No.4. Due to said deficiencies, proposal of the petitioner was shown as ineligible. The said deficiencies were communicated to respondent

No.4 by respondent No.3-University. According to the respondent No.4, the said deficiencies were removed and compliance report was submitted by respondent No.4 on 4th November 2019. It appears that the said compliance was accepted by respondent No.3.

19 The proposals of the petitioner and respondent No.4 were held to be proper by respondent No.3. The said proposals were sent to respondent Nos.1 and 2 for necessary action. It appears that on scrutiny of both the proposals, respondent Nos.1 and 2 issued Letter of Intent in favour of respondent No.4. Respondent Nos.1 and 2 used its discretionary powers and issued Letter of Intent in favour of respondent No.4 for opening new college at village Marunji, Taulka Mulshi, Pune. Admittedly no reasons are assigned in the impugned decisions dated 31st January 2020 and 4th July 2020 as to why the proposal of the petitioner was rejected and that of respondent No.4 was accepted, despite the order 3rd August 2020 of this Court to decide the representation of the petitioner.

20 It is vehemently submitted on behalf of respondent Nos.1 and 2 that as per the provisions of Section 109 (3) (d), the State Government has absolute discretion while issuing Letter of Intent.

21 Section 109(3) (d) reads as under:

“109(3)(d) Out of applications recommended by the

University, the State Government may grant a Letter of Intent on or before 31st January of the immediately following year after the recommendations of the university under clause (c). The Letter of Intent may be granted to such Institutions as the State Government may consider fit and proper in its absolute discretion, taking into account the relevant factors, the suitability of the management seeking Letter of Intent, state level priority with regard to location of Institutions of higher learning etc. The Letter of Intent shall be communicated by the State Government to the University, on or before the date specified in this clause :

Provided, however, that in exceptional cases and for the reasons to be recorded in writing any application not recommended by the university may be approved by the State Government for grant of a Letter of Intent to college or Institutions of higher learning;

Provided further that, for the first academic year, immediately after the commencement of this Act with a view to facilitate the Universities to decide the applications for permission for opening of new college the date refer to in clauses (a), (c) and (d) of sub-section (3) as specified in column (2) of the Table hereto shall be read as provided in

column (3) of the said Table :-

Clauses (1)	For the date existing provision (2)	Date for the Academic Year 2017-18 (3)
(a)	Last day of September of the year	15 th December 2017
(b)	Before 30 th November of the year	Before 15 th January 2018
(c)	Before 31 st January of the immediately following year	Before 28 th February 2018

22 On going through the provisions of section 109(3)(d), it is seen that the State Government has to consider all relevant factors, suitability of management seeking Letter of Intent, State level priority with regard to the location of the Institution of higher learning. Though it is stated in section 109(3)(d) that absolute discretion vests in the State Government while taking the decision, still the Government is required to take into account the factors as stated in section 109(3)(d) itself. In the present case, it appears that respondent No.3 on scrutiny found that the proposals of the petitioner and respondent No.4 complied with all the conditions. It also appears that respondent No.3 has recommended the proposals of the petitioner and respondent No.4 to respondent Nos.1 and 2 for issuance of Letter of Intent to one of them. On perusal of the impugned orders dated 31st January 2020 and 4th July 2020 we find that there is no whisper as to why the discretion was exercised in favour of respondent No.4. In the decision dated 4th July 2020, it is simply mentioned that the last date of issuance of Letter of Intent was

31st January 2020, therefore, the representation of the petitioner was rejected. Respondent Nos.1 and 2 have not given any reasons for rejecting the representation of petitioner and it was expected from respondent Nos.1 and 2 to mention what factors prompted it to issue Letter of Intent in favour of respondent No.4. The impugned decisions suffer from the vice of arbitrariness and cannot be sustained.

23 Having regard to the facts and circumstances of the case, we deem it fit to set aside the decisions dated 31st January 2020 and 4th July 2020 and remand the proposals of the petitioner and respondent No.4 for re-consideration to respondent Nos.1 and 2. The Letter of Intent is to be issued for Academic Year 2021-22 which is to begin only on 15th June 2021. Respondent Nos.1 and 2 shall hear the petitioner and respondent No.4 and consider all relevant factors and give reasons while passing the order afresh, notwithstanding the cut-off date mentioned in the GR dated 15th September 2017, for issuance of Letter of Intent.

24 Hence, we dispose of the Writ Petition by passing the following order:

- (1) The impugned decisions dated 31st January 2020 and 4th July 2020 are set aside and the matter is remitted back to the respondent No.1 and 2;

(2) Respondent Nos.1 and 2 to consider the proposals of the petitioner and respondent No.4 afresh without being influenced by the earlier decisions and notwithstanding the cut-off date of issuance of Letter of Intent as mentioned in the GR dated 15.9.2017;

(3) Respondent Nos.1 and 2 to hear the petitioner and respondent No.4 and assign reasons while passing the fresh order;

(4) Respondent Nos.1 and 2 shall take a decision on the proposals of the petitioner and respondent No.4 within a period of three weeks from date of this order and communicate the same to respondent No.3, the petitioner and respondent No.4 at the earliest;

(5) We make it clear that we have not gone into the merits of the matter.

[SURENDRA P.TAVADE, J.]

[A. A. SAYED, J]