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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4805 OF 2018

KANCHAN
VINOD
MAYEKAR

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Date: 2021.12.02 15:03:30
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Jagruti Foundation, Pune)
Shivganga College of Science)
Commerce and Arts, (Proposed))
Through its Director,)
Ms.Anita Sapte,)
Having office at :)
Decision Tower,)
Shop No.10, Survey No.692/693,)
Pune-Satara Road,)
Near Citypride Cinema, Bibwewadi,))
Taluka Haveli, District Pune)

..... Petitioner

VERSUS

1. State of Maharashtra,)
[Summons to be served on the)
Learned Government Pleader)
appearing for State of Maharashtra,))
under Order XXVII, Rule 4 of the)
Code of Civil Procedure, 1908])

2. Secretary,)
Higher and Technical Education)
Department, Mantralaya,)
[Summons to be served on the)
Learned Government Pleader)
appearing for State of Maharashtra,))
under Order XXVII, Rule 4 of the)
Code of Civil Procedure, 1908])

3. The Director of Education (Higher))
Department of Education,)
State of Maharashtra,)
[Summons to be served on the)

Learned Government Pleader)
appearing for State of Maharashtra,)
under Order XXVII, Rule 4 of the)
Code of Civil Procedure, 1908])

4. The Registrar,
Savitribai Phule Pune University,)
(formerly known as Pune University,)
Ganeshkhind Road, Shivajinagar,)
Pune – 411 007)

5. Jaywant Shikshan Prasarak Mandal,)
Rajashri Shahu Commerce and Science)
Mahavidyalay, Wagholi, Tal. Haveli,)
Pune – 412 207.)
Through its President/Secretary,)

6. Late Vitthalrao Beldare Patil)
Dyan Prasarak Sanstha,)
Sun-Bright Arts and Commerce Senior)
College, Ambegaon Budruk,)
Tal.Haveli, District : Pune – 411 046)

7. Lokseva Pratisthan Senior College,)
Phulgaon, Tal.Haveli, District : Pune.)

..... Respondents

ALONGWITH
WRIT PETITION NO.4059 OF 2018

Sanjay Modak Education Society,)
Through its President,)
Mr.Sanjay Vasant Modak,)
Aged Major, Occu : Social Worker,)
Having office at Survey No.228,)
Shop No.A/26, Ramanand Complex)
Hadapsar, Taluka : Haveli,)
District : Pune – 411 028)

..... Petitioner

VERSUS

**1. The State of Maharashtra,)
Through the Secretary,)
Higher & Technical Education)
Department, Mantralaya,)
Extension, Mumbai.)**

**2. The Director of Education (Higher))
Department of Education,)
Maharashtra State, Central Bldg.,)
Pune – 411 001.)**

**3. The Registrar,
Savitribai Phule Pune University,)
(formerly known as Pune University,))
Ganesh Khind, Pune – 411 007)**

**4. Jaywant Shikshan Prasarak Mandal,))
Rajashri Shahu Commerce & Science)
College, Wagholi, Tal. Haveli,)
District : Pune,)
Through its President/Secretary,)**

**5. Late Vitthalrao Beldare Patil)
Dnyan Prasarak Mandal,)
Sun-Bright Arts & Commerce Senior)
College,)
Through its President/Secretary,)
Having office at Ambegaon,)
Tal.Haveli, District : Pune – 411 046)**

**6. Lokseva Pratisthan,)
Lok Seva Senior College,)
through its President/Secretary,)
Having Office at Phulgaon,)
Tal.Haveli, District : Pune.)**

..... Respondents

Mr.Prathamesh Bhargude with Mr.Sumit Sonare for the Petitioner in
Writ Petition No.4805 of 2018.

Mr.Nagesh Y. Chavan for the Petitioner in Writ Petition No.4059 of

2018.

Mr.N.C. Walimbe, AGP for the State – Respondent Nos.1 to 3 in Writ Petition No.4805 of 2018.

Mrs.P.J. Gavhane, AGP for the State - Respondent Nos.1 and 2 in Writ Petition No.4059 of 2018.

Mr.Rajendra Ambhule for the Respondent No.4 in Writ Petition No.4805 of 2018 and for the Respondent No.3 in Writ Petition No.4059 of 2018.

Mr.A.V. Anturkar, Senior Counsel with Mr.Ajinkya M. Udane for the Respondent No.5 in Writ Petition No.4805 of 2018 and for the Respondent No.4 in Writ Petition No.4059 of 2018.

Mr.Ajit Anekar with Ms.Urvi Vaidya i/b M/s.Auris Legal for the Respondent No.7 in Writ Petition No.4805 of 2018 and for the Respondent No.6 in Writ Petition No.4059 of 2018.

**CORAM: R. D. DHANUKA AND
ABHAY AHUJA, JJ.**

RESERVED ON : 27th OCTOBER, 2021

PRONOUNCED ON : 2nd DECEMBER, 2021

JUDGMENT (Per R.D.Dhanuka, J.) :-

Learned counsel for the petitioners states that all the respondents are already served with the notice of the final hearing. Statement is accepted.

2. By Writ Petition No.4805 of 2018 filed under Article 226 of the Constitution of India, the petitioner has impugned the

communication dated 15th March, 2018 issued by the respondent nos. 1 and 2 to the respondent no.4 University refusing to grant Letter of Intent in favour of the petitioner for starting new college. The petitioner also prayed for writ of certiorari for quashing and setting aside the Government Resolution dated 28th February, 2018 to the extent that it allots Letter of Intent to the respondent nos. 5, 6 and 7 for the roster point of Haveli at serial nos. 46, 47 and 48. The petitioner seeks an order and direction against the respondent nos. 1 and 2 to issue Letter of Intent in favour of the petitioner for starting new proposed college in the name of Jagruti Foundation, Pune, Shivganga College of Science Commerce and Arts, for the streams of Arts, Commerce and Science at Arvi, Khed Shivapur, Taluka Haveli, District Pune for the academic year 2018-2019, in pursuance of its proposal dated 15th December, 2018.

3. Writ Petition No.4059 of 2018 is also filed by the petitioner under Article 226 of the Constitution of India *inter alia*, praying for writ of certiorari for quashing and setting aside impugned communication dated 15th March, 2018 and seeking writ of mandamus directing the respondent no.1 to issue Letter of Intent for starting new

proposed college by name Sanjay Modak College of Arts, Commerce and Science at Loni Kalbhor, Taluka Haveli, District Pune for the academic year 2018-2019. The petitioner also seeks writ of certiorari for quashing and setting aside the the impugned order/list dated 28th February, 2018 passed/published by the respondent no.1. The facts in both the matters being identical, the parties have agreed that both the matters be heard together and be disposed off by a common order. This Court accordingly heard both the petitions together. Both the petitions are accordingly heard together and are being disposed of by a common order.

The facts and submissions in Writ Petition No.4805 of 2018 :-

4(a) It is the case of the petitioner that the petitioner is a charitable trust in the area of educational training field since last 11 years. The respondent no.4 prepared the perspective plan for five years for the educational years of 2018-2019 to 2022-2023. It was proposed by the respondent no.4 University that considering the demand number of new colleges were to be increased by virtue of notification/circular.

(b) It is the case of the petitioner that on 15th September, 2017, the respondent no.4 University issued a circular showing that for

Taluka Haveli, 3 colleges for Arts, Commerce, Science to be opened. The Government Resolution came to be issued prescribing the guidelines for new colleges for the year 2018-2019. The Government Resolution also prescribed the mode and manner for filing online application for seeking permission to start new colleges. Such applications were to be scrutinized by the Scrutiny Committee appointed by the Vice-Chancellor of the said University. In case of any discrepancies in the application filed by any of the applicants, the same were to be removed by the applicants. It is the case of the petitioner that the respondent no.4 University invited the proposals for 21 roster points for 5 years period from District Pune in view of the ordinance dated 28th November, 2017.

(c) On 6th December 2017, the respondents extended time schedule for submitting proposals till 15th December 2017 and also increased 3 roster points for starting colleges in Taluka Haveli from the year 2018-19. On 15th December 2017, the petitioner submitted its proposal to the respondent no.4 for establishing a new college for the streams of Arts, Science, Commerce as required by the Government Resolution.

(d) On 14th January 2018, the Expert Committee thereafter submitted a report. On 18th January 2018, the petitioner was served with a letter from the respondent no.4 University stating that the petitioner was eligible and was given preference no.2 for the purpose of establishing the college. On 28th February 2018, the Government Resolution was passed thereby publishing a list of colleges to whom Letter of Intent was given. It is the case of the petitioner that on 15th March 2018, the petitioner came to know by a letter that the respondent no.1 without giving any reason passed the impugned communication and refused to grant Letter of Intent to the petitioner for starting new college. The petitioner filed this petition for various reliefs.

Facts in Writ Petition No.4059 of 2018 :-

5. (a) The petitioner intended to start new (Regular and Vocational) College at Loni Kalbhor, Tal Haveli Dist. Pune in the name of Sanjay Modak College as per Government Resolution dated 15th September 2017 published by the respondent no.1 and submitted its proposal to the respondent no.3 on 14th December 2017. On 29th January 2018, the respondent no. University recommended the name

of the petitioner institution for starting the new college in the name of Sanjay Modak College of Arts, Commerce and Science. On 28th February 2018, the respondent no.1 however issued Letter of Intent to the different Institution for starting the new colleges in the District Kolhapur who are the parties to this petition. On 15th March 2018, the respondent no.1 without any reason issued the impugned communication/letter refusing to grant the Letter of Intent in favour of the petitioner Institution though the university had given preference at Serial No.1 to the petitioner. The petitioner accordingly filed this petition for various reliefs.

(b) On 6th June 2019, this matter appeared before a Division Bench of this Court. This Court observed that Section 109(3)(d) of the Maharashtra Public Universities Act, 2016 (for short “the University Act”) vests absolute discretion in the State Government in the matter of issuance of the Letter of Intent, however such discretion is qualified. The State is obliged to take into account the relevant factors such as the suitability of the management seeking Letter of Intent, State level priority with regard to location of institutions of higher learning etc. and the other relevant aspects. This Court noticed

that in the affidavit-in-reply filed by the State Government prior to the date of the said order, it had not been stated as to what were the additional factors which weighed or influenced the decision making process while awarding Letter of Intent to the respondent Institution who were issued Letter of Intent. This Court accordingly directed the State Government to file additional affidavit explaining the reasons for according priority to the respondent no.3 Institution over the petitioners Institutions which had been provided preferential ranking while recommending proposals. The State Government filed additional affidavit in these two writ petitions.

(c) On 31st March 2021, a Division Bench of this Court after adverting to the affidavit-in-reply filed by the State Government on 16th October 2019 observed that even in the additional affidavit filed by the State Government, no reasons are recorded as to why the discretion was exercised in favour of the Institution who were issued Letter of Intent and why the petitioners were not issued a Letter of Intent though they were qualified. This Court observed that no equities had been created in favour of the private respondents, as in the year 2018 itself, ad-interim stay had been granted, which had

continued till date. This Court also observed that this Court would have proceeded to set aside the impugned order itself, however, the question will still arise as to who should be given the Letter of Intent, as it is a common ground before this Court that starting of the college in that area is necessary. That the authorities would have to undertake the task of finding comparative merit between the applicant-Colleges.

(d) This Court accordingly adjourned the matter to enable the Joint Director/Secretary of Higher and Technical Education, Mantralaya to inform this Court as to when fresh hearing would be given to the rival contenders and an order after assessing comparative merit would be passed and in that regard, the fresh scrutiny would be restricted. This Court made it clear that those who had been disqualified per se, and had accepted the disqualification, would not be eligible for reconsideration. It was further observed that those colleges/institutions, whose applications had not been considered with the reasoning that these private respondents had already been given Letter of Intent, would be the ones to whom the scrutiny could be restricted. Matter was adjourned to 28th April 2021.

(e) Matter thereafter appeared on 24th June 2021 when this Court noticed that the State Government had not complied with the directions given on 17th June 2021. The State Government filed additional affidavit before this Court on 24th June 2021. This Court deferred the hearing of these two petitions to 8th July 2021 and postponed the meeting before the respondent Secretary beyond the next date assigned to these two petitions. It is the case of the State Government that the petitioner raised objection on invitation of other Institutions and observations noted by this Court on 17th June 2021. The said hearing had been rescheduled on 28th July 2021 only with the petitioners and the respondents excluding the other Institutions. The hearing before the Joint Director however did not take place.

6. Mr.Bhargude, learned counsel for the petitioner in Writ Petition No.4805 of 2018 invited our attention to various documents annexed to the writ petition filed by his client, averments from various affidavits-in-reply filed by the State Government and the affidavits-in-reply filed by the respondent no.4. Learned counsel invited our attention to the impugned order and more particularly at page 232 of the writ petition holding that the application of the petitioner was

rejected only on the ground that since Letter of Intent was already issued to someone else, the petitioner was not issued Letter of Intent. He submits that no reasons are recorded by the State Government in the said order as to why the Letter of Intent was issued to one of the respondents and not to the petitioner on merit. No reasons are recorded as to why discretion was exercised in favour of the respondent no.5 and not in favour of the petitioner though the university had given higher preference to the petitioner.

7. Learned counsel invited our attention to Section 109(3)(c) and (d) of the said Universities Act and would submit that the impugned order passed by the State of Maharashtra granting Letter of Intent in favour of the respondent no.5 is contrary to the said provision. Though the State Government has discretion to issue Letter of Intent in favour of an applicant in whose favour no recommendation is made by the University, such discretion cannot be exercised arbitrarily and capriciously.

8. It is submitted by the learned counsel that the impugned order is in gross violation of the principles of natural justice, perverse

and deserves to be quashed and set aside. In support of this submission, learned counsel for the petitioner placed reliance on the following judgments :-

- (i) Unreported judgment of this Court in the case of ***Anjuman Moinut Tulba through Ziyaurrehman Mohammed Ishaque Vs. The State of Maharashtra, Higher and Technical Education Deptt. & Ors. and other companion matter*** in Writ Petition No.2081 of 2020 on 18th March 2021;
- (ii) Judgment of this Court in the case of ***Shetkari Shikshan Prasarak Mandal Ashti, Dist. Beed Vs. State of Maharashtra & Ors., 2002 (1) Mh.L.J. 814*** (paragraphs 29 and 31)
- (iii) Unreported judgment delivered by the Division Bench of this Court in the case of ***Akemi Education Society Vs. The State of Maharashtra and Ors.*** in Writ Petition No.1788 of 2020 on 3rd November 2020 (Paragraph 22)
- (iv) Judgment of this Court in the case of ***Digitek Krida Vikas Sanshodhan Va Shikshan Bahuuddeshiya Sanstha, Sindi (Railway) Vs. State of Maharashtra, 2011 (1) Mh.L.J. 793*** (paragraph 10)

9. Learned counsel for the petitioner invited our attention to

various paragraphs of the affidavit-in-reply filed by the State Government and would submit that the State Government cannot be allowed to supplant the reasons in the affidavit-in-reply which reasons are not recorded in the impugned order itself. He invited our attention to paragraph 6 of the additional affidavit dated 16th October 2019 and would submit that in any event, even according to the State Government, there was confusion in granting preferential numbers to the colleges provided by the concerned University and therefore, while considering the proposal along with the recommendation and preference number provided by the University, the same was not considered and decided by the State Government. He submits that on this ground also, the order passed by the respondent no.1 issuing Letter of Intent in favour of the respondent no.5 deserves to be quashed and set aside.

10. Learned counsel invited our attention to the order dated 31st March 2021 passed by the Division Bench of this Court in these two petitions and would submit that this Court had already indicated that this Court would have proceeded to set aside the impugned order.

11. Mr.Chavan, learned counsel for the petitioner in Writ Petition No.4805 of 2018 adopted the submission made by Mr.Bhargude, learned counsel for the petitioner in Writ Petition No.4805 of 2018 and would submit that his client was given first preference by the University however, while exercising the so called discretion by the State Government, merits of the petitioner and the said preference given by the University was totally overlooked. Without application of mind, the respondent no.1 decided to issue Letter of Intent in favour of the respondent no.5 in this writ petition.

12. Mr.Anturkar, learned senior counsel for the respondent no.5 in Writ Petition No.4805 of 2018 and for the respondent no.4 in Writ Petition No.4059 of 2018 relied upon Section 109 (3)(g) of the said Universities Act and would submit that the said provision empowers the State Government to grant final approval to such management as it may consider fit and proper in its absolute discretion, taking into account the budgetary resources of the State Government and other relevant factors, the suitability of management seeking permission to open new institution etc. He submits that the respondent no.1 Government has considered all these factors while

exercising discretion in favour of his client to issue Letter of Intent and not in favour of the petitioner.

13. It is vehemently urged by the learned senior counsel that irrespective of the fact whether the Letter of Intent was directed to be issued finally in favour of his client, under Section 109 of the said Universities Act, all the applicants could have been considered by the State Government by issuing Letter of Intent to start various new colleges, irrespective of number of applicants for the same locality or Taluka to each of the applicants with a view to offer best education and services to the students in competition with each other. It is vehemently urged that none of the provisions under the said Universities Act prohibits the State Government from issuing more than one Letter of Intent or final approval to start new college in the same locality or Taluka in the same stream. No such prohibition is imposed even in the perspective plan prepared by the University under Section 107 of the said Universities Act.

14. It is submitted that in this view of the matter, this Court may direct the State Government to issue Letter of Intent in

favour of the petitioners also in addition to Letter of Intent already having been issued in favour of his client. He further submits that the petitioners have no locus to file these writ petitions *inter alia* praying for quashing and setting aside the impugned order thereby issuing Letter of Intent in favour of his clients.

15. It is submitted by the learned senior counsel that the purpose of perspective plan is only to identify the location and not to restrict the number of applicants in a particular location or otherwise. The petitioner can apply for considering its case under Section 109 independently without applying for cancellation of Letter of Intent issued in favour of the respondent nos. 5 to 7. He relied upon Section 76(5) of the said Universities Act and also Section 77(1)(a) and would submit that while preparing guidelines for perspective plan of five years for each university, commission has to take into consideration the permission to be granted to start as many colleges as possible in each locality so as to provide best education and facilities to the students with wide option to select one or the other college of their choice to avoid any favoritism or monopoly creation. If there would be good competition amongst the colleges, facilities that

would be offered to the students would be economical.

16. Next submission of the learned senior counsel is that in this case, advertisement was issued by the State Government on 17th September 2017. Last date for filing application was 30th September 2017. The respondent no.5 had applied in response to the said advertisement on 28th September 2017 i.e. before 30th September 2017. The petitioners had applied after 30th September 2017 i.e. 15th December 2017. He submits that the said applications thus filed by the petitioners were not within the mandatory time prescribed under the said advertisement to be read with Section 109 (3) of the said Universities Act.

17. It is submitted by the learned senior counsel that the State Government had issued an Ordinance to extend the time to file an application on 28th January 2017. On 11th December 2017, the Maharashtra Public Universities (Amendment) Bill, 2017 (L.A. Bill No.LXVIII of 2017) came to be issued. On 21st December 2017, the said bill was passed by the Legislative Assembly and transmitted to the Legislative Council. Six weeks period had expired on 22nd

January 2018. The impugned decision to issue Letter of Intent was taken by the State Government in favour of the respondent nos.5 to 7 on 26th February 2018.

18. It is submitted that the said Ordinance issued on 20th January 2018 was not converted into Act before expiry of six weeks. No right was thus created in favour of the petitioners under the said Ordinance dated 26th February 2017. None of the petitioner has thus locus to file writ petition for impugning the decision taken by the State Government. In support of this submission, learned senior counsel placed reliance on the judgments of the Hon'ble Supreme Court in the case of ***T. Venkata Reddy and Ors. vs. State of Andhra Pradesh, (1985) 3 SCC 198*** and in the case of ***State of U.P. Vs. Seth Jagamander Das & Ors., AIR 1954 SC 683***. He submits that the judgment in the case of ***T. Venkata Reddy and Ors. (supra)*** delivered by the Hon'ble Supreme Court came to be overruled by 7 judges bench of the Hon'ble Supreme Court in the case of ***Krishna Kumar Singh and Anr. Vs. State of Bihar and Ors., (2017) 3 SCC 1***. Learned senior counsel placed reliance on the judgment of in the case of ***Gunwantlal Godawat Vs. Union of India & Anr., (2018) 12***

SCC 309 and more particularly paragraphs 23 to 29 thereof.

19. It is submitted that since there was no enduring right created in favour of the petitioners, only the respondent nos.5 to 7 who had filed applications before 30th September 2017, their applications could have been considered by the State Government for issuance of Letter of Intent. The State Government has thus rightly considered only the applications made by the respondent nos.5 to 7 which were received within the time prescribed and not of the petitioners.

20. Learned counsel for the respondent no.7 in Writ Petition No.4805 of 2018 and for the respondent no.6 in Writ Petition No.4059 of 2018 adopted the submission made by Mr.Anturkar, learned senior counsel and would submit that the reasons recorded in the affidavits-in-reply as to why the applications made by the petitioners were not considered for issuance of Letter of Intent and as to why the applications of the respondent nos.5 to 7 were considered are relevant factors and are required to be considered by the Court.

21. Mr. Walimbe, learned AGP for the State strongly placed reliance on the averments made in the affidavit-in-reply and the additional affidavit filed in these two petitions and would submit that this Court consider those reasons now though those reasons were not recorded in the impugned order.

22. Mr. Anbhule, learned counsel for the university submits that under Section 107 (1) of the Universities Act, the university has to prepare comprehensive perspective plan for every five years 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. Similarly, the university under Section 107 (5) has to prepare an annual plan every year for the location of colleges and institutions of higher learning, in consonance with the perspective plan and shall publish it before the end of academic year. He submits that in accordance with the annual plan for the academic year 2018-19, the respondent no.4 university invited the proposal for 21 locations in Pune District. The said Ordinance of 2017 was issued extending the

date for submitting the online proposal for opening new colleges for the academic year 2018-19 was extended upto 15th December 2017. The University had issued a public notification dated 6th December 2017 thereby extending time limit to submit proposal till 15th December 2017.

23. It is submitted that his client had scrutinized all the applications which were filed within the prescribed time limit duly extended and forwarded the same with recommendation to the State Government for consideration and for issuance of Letter of Intent. The petitioner had submitted its online proposal on 15th December 2017 within the extended time limit. He invited our attention to paragraph 7 of the affidavit-in-reply filed by his client and would submit that the petitioner in Writ Petition No.4059 of 2018 was granted first preference whereas the petitioner in Writ Petition No.4805 of 2018 was granted second preference. The respondent no.7 was granted third preference.

24. It is submitted that Section 109 of the said Universities Act cannot be read in isolation but has to be read with Section 107.

He invited our attention to Section 76 of the said Universities Act and would submit that the Maharashtra State Commission for Higher Education and Development was appointed under the said provision comprising of Experts to approve perspective plan. The function and duties of the said commission are prescribed in Section 77 which includes the duty of preparing guidelines for perspective plan of five years for each university. He strongly placed reliance on Section 109 (3) (d) proviso and would submit that the State Government is though empowered to issue grant of Letter of Intent to such institutions whose names are not recommended by the university while exercising such discretion, in such exceptional cases, reasons have to be recorded by the State Government as to why such applicant whose name was not recommended by the university for grant of a Letter of Intent, was issued Letter of Intent and why other applicants though were recommended by the University were not issued Letter of Intent.

25. Mr.Bhargude, learned counsel for the petitioner in Writ Petition No.4805 of 2018 invited our attention to the conclusion recorded by the Hon'ble Supreme Court in the case of Krishna Kumar Singh and Anr. Vs. State of Bihar and Ors.(supra) and would

submit that the said conclusion would support the case of the petitioner and not the respondent nos.5 to 7. He also invited our attention to paragraphs 105.12 and 106 of the said judgment and would submit that the Court has power to mould the relief.

26. In so far as the first submission of Mr. Anturkar, learned senior counsel for the respondent no.5 about the scope of Section 109 of the said Universities Act is concerned, he submits that the said argument is totally contrary to the said provision and if accepted, would not be in the interest of the students. Learned counsel for the petitioner placed reliance on Section 7 of the Amending Act and would submit that Section 1 of the Amending Act came into force on 28th November 2017. He submits that if the arguments of the learned senior counsel for the respondent no.5 are accepted, even his client would be affected and would have been declared as ineligible. He submits that the perspective plan contemplated under the provisions of the said Universities Act considers continuing need of students in particular locality or Taluka. The Haveli Taluka consists of 1163.55 sq. kms.

27. Learned counsel invited our attention to Government Resolution dated 15th September 2017 issued under Section 109 (g). He submits that if this Court remands the matter back to the State Government for reconsidering the applications, the matter shall be remanded only for the applicants who had appeared before this Court and had participated in these proceedings and not all the applicants who have either not impugned the order or have not appeared in these petitions. He submits that in Writ Petition No.4905 of 2018, the respondent no.6 has remained absent all throughout though served. If the matter is remanded back, the applications be heard by the Secretary/Higher Education, State Government, Pune.

REASONS AND CONCLUSIONS :-

28. It is not in dispute that the University had prepared comprehensive perspective plan under Section 107(1) of the said Universities Act for a period of 5 years. The university also prepared annual plan under Section 107(5) of the said Universities Act for the academic year 2018-19 and published on 12th September 2017. In so far as the Taluka Haveli, Pune District except the Municipal Corporation limits for the academic year 2018-19 is concerned,

annual plan was prepared for 3 colleges of Arts, Commerce and Science. Pursuant to the said advertisement, various applicants including the petitioners and the respondent nos.5 to 7 applied for permission to establish new colleges in Taluka Haveli. The university made recommendation in favour of various applicants by giving them preference number. The petitioner in Writ Petition No.4059 of 2018 was given first preference whereas the the petitioner in Writ Petition No.4805 of 2018 was given second preference. A perusal of the impugned order indicates that both these petitioners in these writ petitions having been refused Letter of Intent only on the ground that some other applicant was granted Letter of Intent.

29. Under Section 109(3)(d) proviso, though the State Government has been granted discretion to issue Letter of Intent in favour of such institutions as the State Government may consider fit and proper taking into account the relevant factors such as the suitability of the management seeking Letter of Intent, State level priority with regard to location of institutions of higher learning etc. in exceptional cases, 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.

30. A perusal of the impugned order clearly indicates that though there was no recommendation made in favour of the respondent nos.5 to 7 and though recommendation was made in favour of both these petitioners, the respondent no.1 did not record any reason as to why the applications made by the petitioners were not considered for grant of Letter of Intent and why Letters of Intent were granted in favour of the respondent nos.5 to 7. The order does not indicate as to whether any exceptional case is made out by the respondent nos.5 to 7 for grant of issuance of Letter of Intent though there was no recommendation made by the University in their favour.

31. We have minutely perused the judgments relied upon by the learned counsel for the petitioner in the Writ Petition No. 4805 of 2018 in support of the submission that the respondent no.1-State not having recorded any reasons while issuing Letter of Intent in favour of the respondent nos. 5 to 7 and while rejecting the applications filed by these petitioners has violated the principles of natural justice and the

impugned order is thus vitiated. The principles of law culled out from those judgments are summarized here under:-

(a) the reason is the soul of administrative action. Reason clears the wilderness of the imagination. The order without reason is a dead letter. What is considered does not substitute the valid reasons. The reasons flow from deliberation with regard to comparative merits. The ultimate order must reflect conscious application of mind.

(b) The absolute discretion vested in the Government under Section 82(5) of the Maharashtra Universities Act, 1994 is to be exercised in the light of what is right and what is proper. The concept of absolute discretion does not absolve the State Government in each and every case from not giving reasons for its administrative actions. Even in case of extreme categories of discretion the idea of fair play is inherent in the power of absolute discretion. The fair play demands some kind of reasons for giving preference to someone.

(c) Under Section 109(3)(d) of the said Universities Act, the State Government has to consider all relevant factors, stability of Management seeking Letter of Intent, State Level Priority with regard

to the location of the institutions of higher learning. Even while exercising discretion by the State Government under Section 109(3)(d), the Government has to take into account the factors stated in Section 109(3)(d) itself. The absence of reasons vitiates the order passed by the authority in and while exercising discretion.

(d) In the absence of any reason, any order can be said to be an order in breach of principles of natural justice. Any order of the judicial, quasi-judicial or administrative authority has to be a reasoned order. It should be self-explanatory order and should not keep the Court guessing for reasons. Reasons provide link between conclusion and evidence. The reason is a manifestation of mind of the adjudicature and given an opportunity to the Court to see whether or not the order is passed on relevant consideration to the material on record. In identical facts a Division Bench of this Court has quashed and set aside the identical order with cost quantified at Rs.25,000/- to be paid by the State Government to the petitioner with liberty to recover the same from the officer concerned.

32. In case of *Anjuman Moinut Tulba v/s. The State of*

Maharashtra (supra) in a similar situation a Division Bench of this Court was inclined to set aside the order passed by the State Government thereby granting permission to the contesting respondent to start a new college without recording any reasons as to why the application of the petitioner was rejected and remanded the proposal with a direction to scrutinize the proposal afresh in accordance with provision of law.

33. In our view, though State Government is vested with discretionary power under Section 109(3)(d) to grant Letter of Intent in favour of the institution whose name is not recommended by the University for issuance of Letter of Intent, if the Government is otherwise satisfied after taking into account, the relevant factors, the stability of the management seeking Letter of Intent, State Level Priority with regard to location of institution of higher learning in an exceptional case, the State Government has to record reasons as to whether any such exceptional case is made out by such applicant for issuance of Letter of Intent. The State Government has to record reasons as to why the name of the applicant which is recommended by the University is not preferred in comparison to the applicant whose

name is not recommended. The discretion vested in the State Government cannot be exercised, arbitrarily, capriciously and without application of mind.

34. The Court is not required to make any guess work and to probe into the mind of the Government or such authority as to why the application of an applicant duly recommended by the University was overlooked or rejected and preference was given to another applicant whose application was not recommended by the University. The exercise of discretion by the State Government vested under Section 109(3)(d) has to be exercised judiciously. The State Government however in this case has totally failed to exercise such discretion in favour of respondent nos. 5 to 7 judiciously. The impugned order thus discloses perversity and complete non-application of mind. The impugned order is in gross violation of the principles of law elucidated in the earlier paragraphs of this judgment and also *ex-facie* contrary to the proviso to Section 109(3)(d).

35. A perusal of the order passed by this Court on 31st March 2021 would clearly indicate that at one stage the Court had expressed

its views to set aside the impugned order and to remand the matter to the respondent no.1 for reconsideration. The concerned authority however had proposed to give hearing to all the applicants including the applicants who had not even impugned the decision of the State Government though affected. Even when these two matters were heard, time and again this Court made such suggestion to the learned counsel for the respondents, whether the order in question could be set aside by consent in view of the order disclosing no reasons and being patently illegal with a direction to reconsider the applications of the petitioner and the contesting respondents *de novo*. The respondents however did not accept the suggestion. In our view, the impugned order being in gross of violation of principles of natural justice and contrary to proviso to Section 109(3)(d) of the Universities Act, deserves to be quashed and set aside and the applications of the petitioners and the contesting respondents who were present before this Court, can be decided *de novo*.

36. Insofar as the submission of Mr. Anturkar, learned senior counsel for the respondent nos. 5 to 7 in Writ Petition No. 4805 of 2018 that the petitioners' applications for issuance of Letter of Intent

also could be considered independently instead of setting aside the Letter of Intent in favour of his clients is concerned, in our view, this argument is totally devoid of merit.

37. A perusal of Section 76(5) of the said Universities Act clearly indicates that the State Government is incharge and responsible for the higher education in the State and has to plan, monitor, coordinate and evaluate and shall act as think tank for higher education. The commission has to create synergy between various stakeholders namely the State Government, public and private universities, private skills education providers and industries. The composition of the Commission prescribed in the said provision is of large number of experts. Under Section 77 of the said Universities Act, the said commission has duty to prepare guidelines for perspective plan for five years for each university for the location of colleges and institutions of higher learning in a manner ensuring equitable distribution of facilities for higher education, in consultation with the respective universities, to approve comprehensive plan submitted by the university.

38. Under 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 the Commission. Such plan has to be prepared for the location of colleges and institutions of higher learning in a manner ensuring comprehensive equitable distribution of facilities for higher education. While preparing such perspective plan, the university has to give due regard to the needs of unserved and under developed areas within the jurisdiction of the University. Such perspective plan has to include the new courses and faculties to be permitted by studying the social and economic needs of the region, job opportunities available and requirements of the industry and should be as per policies of and in conformity with the plans of the State Government and National Policy for Higher Education for achieving National and State objectives of higher access, quality, excellence research, relevance and quality.

39. The said provision prescribes the other factors to be considered including the number of new divisions, satellite centres to be permitted to the colleges and institutions of higher learning in different regions after factoring in the demand for the same and shall

be in conformity with the plans of and after the approval of Commission. In the perspective plan, preference shall be given to the districts where Gross Enrolment Ratio is less than the national average and also to the tribal, hilly and inaccessible areas besides quality benchmarks, inclusive growth, social relevance and value education. After undertaking systemic field survey within the geographical jurisdiction of the University, every five years, University while granting permission for opening of new colleges or institutions of higher learning or for starting new courses for study, subjects, faculties, additional divisions or satellite centres, a detailed procedure is prescribed under Section 109 of the said Universities Act.

40. A perusal of Section 109 read with Sections 107, 76 and 77 makes it clear that the perspective plan has to be prepared by the University after considering various relevant factors set out in those provisions. The paramount consideration for preparing such perspective plan is to consider the interest of the students for granting Education Facilities even in the inaccessible rural area and also in the hilly and other regions. We are afraid that we cannot accept the submission of Mr. Anturkar, learned senior counsel for the respondent

nos. 5 to 7 that every applicant who submits a proposal for starting new college in any locality shall be granted permission so as to avoid any monopoly in favour of the institutions who were granted such permission and that with a view to give wide range of option to the student to select one or the other college according to the services that would be offered by large number of institutions.

41. In our view, the purpose of perspective plan is not to promote the private interest of the institutions for a cut throat competition with the rival institutions in the same locality whether such number of institutions in the same locality. If the arguments of the learned senior counsel are accepted, in every street, there would be mushrooming of dubious fly by night operators like bubble companies making a mockery of the entire education system leading to exploitation and certainly not education. In our view, the submission advanced by the learned senior counsel is *ex-facie* contrary to the provisions of the said Universities Act and thus deserves to be rejected.

42. Insofar as the submission of the learned senior counsel for the respondent nos. 5 to 7 that the writ petition filed by these petitioner

are not maintainable on the ground that their applications were not filed within the original time prescribed in the advertisement issued by the University or that the ordinance issued by the State Government having lapsed after expiry of six weeks is concerned, in our view, this submission of the learned senior counsel is devoid of merit. The ordinance was issued on 28th November, 2017. On 11th December, 2017, the Maharashtra Public Universities (Amendment) Bill, 2017 came to be issued. On 21st December, 2017, the said bill was passed by the Legislative Assembly and transmitted to the Legislative Council. The said six weeks period came to an end on 22nd January, 2018 from 11th December, 2017.

43. On 20th January, 2018, another Maharashtra Ordinance No. I of 2018 was published. The Budget session commenced on 26th February, 2018. On 6th April, 2018, Maharashtra Act No. 27 of 2018 was notified. Section 1(2) of the amending Act clearly provided that the said amendment was deemed to have come into force on 28th November, 2017. It was provided that upon the reassembling of the State Legislative on 11th December, 2017, the Maharashtra Public Universities (Amendment) Bill, 2017 for converting the said ordinance

into an Act was published by the Maharashtra Legislative Assembly on 21st December, 2017 and was transmitted to the Maharashtra Legislative Council.

44. By the said ordinance, time to make an application was extended till 15th December, 2017. The petitioner admittedly had made an application on or before the extended date and was accordingly considered by the University. The University in its affidavit filed before this Court has confirmed these facts. The respondent nos. 5 to 7 have not impugned the validity of the said Amending Act or the ordinance. In any event, the right to apply under the ordinance within the extended period for Letter of Intent had already occurred in favour of both the petitioners. Such rights could not have been taken away once having vested and exercised.

45. Be that as it may, by the Amending Act, the Maharashtra Public Universities (Amendment) Bill, 2017 was deemed to have come into force on 28th November, 2017. Applications thus filed by both the petitioners for Letter of Intent was within the time prescribed. The said ordinance did not lapse as sought to be canvassed by the learned senior

counsel for the respondent nos. 5 to 7. The applications thus filed by both the petitioner for Letter of Intent were rightly considered by the respondent no.1. The submission made by the learned senior counsel that applications filed by the petitioners were not within the time prescribed and could not have been considered by the respondent no.1 is without merit.

46. Insofar as the reasons recorded by the State Government in various affidavits filed before this Court are concerned, in our view, the reasons recorded in the impugned order cannot be supplanted or introduced for the first time by filing affidavits. The Hon'ble Supreme Court in case of ***Mohinder Singh Gill and Anr. v/s. Chief Election Commissioner, New Delhi and Ors., (1978) 1 SCC 405*** has considered this issue and has held that the action of an authority has to be judged by the reasons stated while making order. The Court has to exclude the supplementary reasons recorded in the shape of affidavits. The Hon'ble Supreme has held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavits or otherwise, otherwise, an order bad in the

beginning may, by the time, it comes to Court on account of a challenge, get validated by additional grounds later brought out.

47. It is held that the orders are not like old wine becoming better as they grow older. The principles laid down by the Hon'ble Supreme Court in case of ***Mohinder Singh Gill and Anr.*** (supra) applies to the facts of this case. The respondent no.1-State not having recorded any reasons as to why the applications of the petitioners were not considered for grant of letter of intent and as to why the applications of respondent nos. 5 to 7 were considered for grant of Letter of Intent cannot be permitted to supplant reasons in affidavits filed before this Court for the first time. The reasons recorded by the respondent no.1 for the first time in various affidavits are thus required to be ignored.

48. In our view, the petitioners have made out a case for quashing and setting aside of the impugned order and for remand of the applications filed by the petitioners and the contesting respondents who are before this Court for *de novo* consideration.

49. We therefore pass the following order :-

- (a) The impugned order dated 15th March, 2018 refusing to grant Letter of Intent in favour of the petitioners for starting new college and granting Letter of Intent in favour of the respondent nos. 5 to 7 for the roster point of Haveli at Serial Nos. 46, 47 and 48 is quashed and set aside.
- (b) The applications of the petitioners and respondent nos. 5 to 7 are restored to file before the respondent no.1-State. The State Government shall reconsider the applications of the petitioners and respondent nos. 5 to 7 afresh in accordance with the law and after following the provisions of the Maharashtra Public Universities Act, 2016 and shall pass a fresh order within four weeks from the date of communication of this order without being influenced by the impugned order/ communication dated 15th March, 2018, which is quashed and set aside, by recording reasons.
- (c) The order that would be passed by the respondent no.1 shall be communicated to the petitioners as well as the respondent nos. 5 to 7 within one week from the date of passing of such order. Interim relief granted by this Court on 17th April, 2018 to continue till fresh order is passed by the respondent no.1 and for a period of three weeks from the date of communication of the order, if the said order is adverse against the petitioners or against the respondent

nos. 5 to 7. The aggrieved party shall be at liberty to file appropriate proceedings.

- (d) Writ Petition is allowed in aforesaid terms. There shall be no order as to costs.
- (e) Parties to act on an authenticated copy of this order.

(ABHAYAHUJA, J.)

(R.D. DHANUKA, J.)