



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6256 OF 2022

M/s. Jagruti Foundation, Pune,  
Shiv Ganga 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 City Prade  
Cinema Bibwewadi, Taluka Haveli,  
District Pune.

..Petitioner

Versus

1. The State of Maharashtra  
(summons to be served on the  
Ld. Government Pleader)  
appearing for the State of Maharashtra  
under the Provisions of XXVII Rule 4 of  
Code of Civil Procedure, 1908.
2. The Secretary,  
Higher and Technical Education  
Department, Mantralya, Mumbai  
(summons to be served on the  
Ld. Government Pleader appearing  
for the State of Maharashtra  
under the Provisions of XXVII Rule 4 of  
Code of Civil Procedure, 1908.
3. Director of Higher & Technical  
Department of Education  
State of Maharashtra  
(summons to be served on the  
Ld. Government Pleader)  
appearing for the State of Maharashtra  
under the Provisions of XXVII Rule 4 of  
Code of Civil Procedure, 1908.

4. The Registrar,  
Savitribai Phule Pune University,  
(formerly known as Pune University)  
Ganesh Khind Road, Shivaji Nagar,  
Pune – 411 007.
  5. Dy. Registrar (Affiliation Cell)  
Savitribai Phule Pune University,  
Ganesh Khind Road, Shivaji Nagar,  
Pune – 411 007.
  6. Jaywant Shikshan Prasarak  
Rajashri Shahu Commerce and  
Science Mahavidyalay, having  
Office at Wagholi, Taluka Haveli,  
Dist. Pune.
  7. Loksevak Pratishthan Sr. Colleges  
Phulgaon, Taluka Haveli,  
Dist. Pune.
  8. Sant Tukaram Shikshan Sanstha  
Chandan Nagar, Taluka Haveli,  
Dist. Pune.
- ..Respondents

**WITH  
WRIT PETITION NO.9694 OF 2022**

Sanjay Modak Education Society,  
Through its President,  
Mr. Sanjay Vasant Modak,  
Age 52 years, 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. Loksevak Pratishthan, Lok Seva Senior  
College, Through its President/Secretary,  
having office at Phulgaon,  
Tal. Haveli, District: Pune.
6. Sant Tukaram Shikshan Sanstha,  
Through its President/Secretary,  
having office at Chandan Nagar,  
Tal. Haveli, District: Pune.

..Respondents

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Mr. Prathamesh Bhargude a/w Mr. Sumit Sonare & Mr. Sharad Dhore for  
the Petitioner in WP/6256/2022.

Mr. Nagesh Y. Chavan for the Petitioner in WP/9694/2022.

Mr. N. C. Walimbe, Addl. GP with Ms. Kavita N. Solunke, AGP & Mr. N.  
K. Rajpurohit, AGP for the Respondent (State).

Mr. Rajendra Ambhule for Respondent Nos.4 & 5 in WP/6256/2022 &  
for Respondent No.3 in WP/9694/2022.

Mr. Ajit Anekar with Mr. Anuj Bhatta i/by. Auris Legal for Respondent  
No. 7 In WP/6256/2022 and Respondent No.5 in WP/9694/2022.

Mr. Nitin Dhumal for Respondent No. 8 in WP/6256/2022 and for  
Respondent No.6 in WP/9694/2022.

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**CORAM : A. S. CHANDURKAR &  
JITENDRA JAIN, JJ.**

**RESERVED ON : 2<sup>nd</sup> FEBRUARY 2024  
PRONOUNCED ON: 21<sup>st</sup> FEBRUARY 2024**

**JUDGMENT: (per Jitendra Jain, J.)**

1. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

2. This matter relating to setting up of new college arises from Taluka-Haveli, Pune. Pune is known as “Oxford of East” since decades after decades, it has attracted students not only from all over our country but also from other countries. This has resulted into Pune being a hub of educational institutes. With passage of time and due to growth of the city, there has been huge growth and competition in setting up colleges not only in city of Pune but also around its periphery. Competition as we all know also leads to litigation since every aspirant wants to have its space in such growth and development. This petition is one of such litigation. Although “education” is a pious in our culture but with change in time it has taken a different colour and has become unaffordable. It is the State’s Constitutional responsibility to ensure quality education reaches all the citizens of this country to achieve the growth and development of humanity.

3. The issue raised in both the petitions is identical and,

therefore, they are being decided by this common order. However, we would be discussing facts of the Petitioner in Writ Petition No.6256 of 2022.

4. By this petition under Article 226 of the Constitution of India, the Petitioner has challenged Government Resolution (GR) dated 20<sup>th</sup> April 2022 issued by the Respondent Nos.1 to 3, being the State of Maharashtra and the Education Department of the State, whereby Letter of Intent to start new college was granted to Respondent Nos.6 to 8 and the Petitioner's proposal for grant of Letter of Intent to start new college at Taluka Haveli, Pune was refused vide email dated 4<sup>th</sup> March 2022.

5. This is the second inning by the Petitioner before this Court seeking redressal of its aforesaid grievance and, therefore, it is necessary to narrate the facts.

**Narrative of events:-**

- (i) Respondent No.4 – University prepared a plan for 5 years namely 2018-2019 to 2022-2023 for increasing the number of colleges in the stream of Arts, Commerce and Science in the Districts of Pune, Ahmednagar and Nashik.
- (ii) Pursuant to the above, Respondent Nos.1 to 3 issued a Government Resolution on 15<sup>th</sup> September 2017 seeking application for setting

up new colleges. The said Government Resolution lays down in detail the guidelines for the procedure to be followed for setting up new colleges. As per the said Government Resolution, Respondent No.4 – University would scrutinize the application received for starting new college and conduct site visits and thereafter submit its report to the Vice Chancellor. The said report of Respondent No.4-University along with the list of eligible applicants would then be submitted with its recommendation to Respondent Nos.1 to 3 and thereafter Respondent Nos.1 to 3 would, after scrutinizing the documents issue Letter of Intent for the purpose of setting up a new college.

- (iii) The Petitioner as averred in the petition being a charitable trust involved in the educational training field since last 11 years, submitted its proposal on 15<sup>th</sup> December 2017 to Respondent No.4 – University for establishing a new college in the stream of Arts, Commerce and Science at Taluka-Haveli, Pune. Pursuant to the said application, an expert committee of Respondent No.4 visited the proposed site and prepared a report which was submitted to Respondent Nos.1 to 3 on 14<sup>th</sup> January 2018.
- (iv) On 18<sup>th</sup> January 2018, the Petitioner received a letter from Respondent No.4 – University stating that they were eligible and

given preference no.2 for the purpose of establishing the college at Haveli, Pune.

- (v) Respondent Nos.1 to 3 vide Government Resolution dated 28<sup>th</sup> February 2018 published a list of the institutions to whom Letter of Intent was granted. However, the Petitioner became aware about this Government Resolution only on 15<sup>th</sup> March 2018, whereby it realized that their name does not appear in the list of the Institution to whom Letter of Intent was granted.
- (vi) The Petitioner challenged the aforesaid Government Resolution dated 28<sup>th</sup> February 2018 before this Court in Writ Petition No. 4805 of 2018. This Court vide order dated 2<sup>nd</sup> December 2021 quashed and set aside the communication of Respondent Nos.1 to 3 dated 15<sup>th</sup> March 2018 whereby the Petitioner was informed about the refusal to grant Letter of Intent. This Court quashed the Letter of Intent granted to Respondent Nos.6 to 8 herein to whom the Letter of Intent was granted and remanded the matter back to Respondent Nos.1 to 3 for fresh consideration in accordance with law primarily because no reasons were given for refusing the Letter of Intent to the Petitioner, but were sought to be supplemented in Affidavit-in-reply of Respondent Nos.1 to 3.
- (vii) Pursuant to the above on 4<sup>th</sup> May 2022, the Petitioner received a

communication by email annexing Government Resolution dated 20<sup>th</sup> April 2022 whereby Letter of Intent was granted to Respondent Nos.6 to 8, but the Petitioner was refused the Letter of Intent. It is on this backdrop that the present petition is filed challenging the communication dated 4<sup>th</sup> May 2022 and the Government Resolution dated 20<sup>th</sup> April 2022.

**Submissions of the Petitioner in Writ Petition No.6256 of 2022:-**

6. The Petitioner brought to our notice a tabular statement prepared by Respondent Nos.1 to 3 giving reasons for granting Letter of Intent to Respondent Nos.6 to 8 and the reason for refusing the same to the Petitioner. As per the said tabular statement, Respondent Nos.6 to 8 were granted Letter of Intent *inter-alia* on following ground (a) the institutions were old since they were setup in the year 1991-1998, (b) the institutions had various schools and colleges, (c) financial position of the institution was good and (d) Respondent No.6 had accreditation from NAAC. The reasons for refusing the Letter of Intent to the Petitioner were stated to be (a) Petitioner was setup in the year 2005 and is comparatively new institution, (b) compared to other institutions, the petitioner's financial position was less, (c) the number of schools/colleges run by the Institution is NIL however, all the three other



Institutions to which Letter of Intent has been issued, do have schools/colleges in existence and (d) the movable and immovable properties of the Institution are less than that of all the three other Institutions to which Letter of Intent has been issued.

7. The Petitioner took us through report of Respondent No.4 – University dated 13<sup>th</sup> January 2018, whereby the University has recommended to Respondent Nos.1 to 3 that the Petitioner is eligible for grant of Letter of Intent for setting up the college. As per the said report, the financial position of the Petitioner is stated to be very good. The said report further stated that the Petitioner has experience in Engineering Education field, etc. It further stated that 600 students were not granted admission in the last year around the Haveli-Taluka. The Petitioner was given preference no.2 in the said report by Respondent No.4 – University. The Petitioner submits that based on the comparative report prepared by Respondent No.4 – University they were equally and better placed for being granted Letter of Intent. The Petitioner submitted that the reason given for refusing grant of Letter of Intent is not borne out from Section 109(3)(d) of the Maharashtra Public Universities Act, 1960 (for short “MPU Act”) nor do the reasons for rejection appear in any GR or the Rules. The Petitioner submitted that the accreditation by NAAC is to the existing Institution and therefore the said parameter is not

applicable to the Petitioner nor does it appear in the Act, Rules or GR. The Petitioner submits that singling them out compared to the other institutions on irrelevant considerations / extraneous consideration is violative of Article 14 of the Constitution of India.

8. The Petitioner brought to our notice the affidavit of the State-Respondent Nos.1 to 3 filed in the first round in Writ Petition No.4805 of 2018 and specifically emphasised on para no.9 of the said affidavit, wherein the State has stated that they have considered the academic, social status of the institution, experience, financial capacity, financial provision / vision / demand of the students, necessity of local area, etc. and after taking into consideration the discretion vested with the Government as per the provisions of the MPU Act, the Letters of Intent were issued to such institutions. The Petitioner stated that this contention was dealt with by the High Court in its order dated 31<sup>st</sup> March 2021 in para no.5, wherein it is observed that the discretion cannot be absolute arbitrariness, but the decision should be supported with reasons. The High Court further observed that the affidavit filed by the State does not give any reasons. Thereafter, an additional affidavit was filed by the State, wherein a comparative statement regarding merits of each of the proposal was tabulated giving details of each of the proposal and their comments on the parameters listed therein. The

Petitioner submits that in the second round also the State has reiterated the said tabular statement for refusal to give Letter of Intent to the Petitioner. The said Writ Petition No.4805 of 2018 was disposed of vide detailed order dated 2<sup>nd</sup> December 2021 and this Court quashed and set aside the Letter of Intent in favour of the Respondent Nos.6, 7 and 8 herein and also the order dated 15<sup>th</sup> March 2018 refusing to grant of Letter of Intent in favour of the Petitioner for starting new college, since reasons were being sought to be justified in affidavits which was not permissible. The application of the Petitioner and Respondent Nos.6 to 8 were restored to the file of Respondent No.1-State for fresh consideration in accordance with the law and after following provisions of the MPU Act, a direction was given to pass the order within one week from the date of such order and interim relief granted was ordered to be continued for a period of three weeks from the date of communication of the order. The liberty was granted to the parties to take appropriate proceedings, if they are aggrieved by the said order.

9. The Petitioner brought to our notice affidavit-in-reply in present petition dated 9<sup>th</sup> December 2022 of Respondent-State, wherein in Appendix A & B, a tabular statement was prepared giving reasons for grant / refusal of Letter of Intent to various parties including the Petitioner.

10. The Petitioner further submitted that they are located in hilly area and therefore geographically also, their proposal should have been considered favourably since in the vicinity of more than 20 to 30 kms. there is no college. The Petitioner further submitted that on a reading of section 109 of the MPU Act, the parameter of having old institute is not borne out from the said section. It is the submission of the Petitioner that such a parameter is discriminatory, arbitrary and irrelevant for the purpose of granting of Letter of Intent for setting up new college and it would also be contrary the spirit of section 109 of the MPU Act. Reliance was placed by the Petitioner for the said submissions on the decision of the Supreme Court in the case of *Ramana Dayaram Shetty*<sup>1</sup> and our attention was drawn to para no.21 of the said decision, wherein it was observed that though the State is entitled to refuse to enter into relationship with anyone yet but if it does so, it cannot arbitrarily choose any person it likes for entering such relationship and discriminate between the person similarly situated, but it must act in conformity with some standard or principle which passes the taste of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported on some rationale and non-discriminatory ground.

11. The Petitioner relied upon Chapter X of the MPU Act, 2016

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<sup>1</sup> (1979) 3 SCC 489

and more particularly took us through Sections 107 and 109 of the said Act and submitted that the Respondents have acted contrary to the perspective plan prepared by the University and also contrary to the provisions of Sections 107 and 109 of the said Act.

**12.** On a query being raised by the Bench, the Petitioner submitted that although the Petitioner does not have any educational institute, but the Trustees of the Petitioner have vest experience of running the Educational Institutes.

**13.** The Petitioner thereafter challenged the financial capacity of Respondent No.6 by pointing out from the balance-sheet as on 31<sup>st</sup> March 2017 that there are huge liabilities of more than 264 crores and therefore the rejection of the Petitioner's proposal and on the ground of financial incapacity is contrary to the action of Respondent-State *qua* Respondent No.6 who was granted Letter of Intent inspite of such a huge liabilities. The Petitioner further stated that more than 3000 students could not secure admission in the area where they are proposing to set-up the college.

**14.** The Petitioner further submitted that they have specifically averred that the action of Respondent-State to grant Letter of Intent in favour of Respondent Nos.6 to 8 is on account of political consideration

and for this a specific averment is made in para no.28 of its writ petition.

15. The Petitioner lastly relied on Section 109(3)(e) and contended that the Letter of Intent granted by the State shall be valid only upto 31<sup>st</sup> January of the next following year and since said period has expired, the Letter of Intent granted to Respondent Nos.6 to 8 has outlived its life.

16. The Petitioner after going through the file of Respondent Nos.1 to 3 submitted that they were similarly placed as that of Respondent No.8 with regard to finance, infrastructure, etc. and therefore has wrongly been singled out in the process of selection.

17. On the direction of the Court, the Petitioners were given inspection of the files of the Respondent No.1 by which the impugned decision was taken for granting the Letter of Intent to Respondent Nos.6 to 8 and refusing to grant of Letter of Intent to the Petitioners. The Petitioners brought to our notice the documents which were filed by Respondent Nos.6 to 8 for grant of Letter of Intent. One of the documents which the the Applicant is required to file for consideration of the proposal for setting up the College is the Project Report. The Petitioners took through the project reports filed by Respondent Nos.7

and 8 and submitted that both these project reports are identically worded with the similar figures and even the name of one of the Respondent appears in the project report of the another Applicant. The Petitioners further submitted that Respondent No.8 in Schedule A in details of the location of the College gave address which was within Municipal Corporation whereas the advertisement was for outside Municipal Corporation. The Petitioners further pointed out the details required with respect to area of the land in Schedule B where in Item No.20, the area of land required was minimum 3 acres which Respondent No.8 stated in affirmative. However, leave and license agreement which was filed with Respondent Nos.1 to 3 by Respondent No.8 was for an area which was not specified in the leave and license agreement. The leave and license agreement only stated that the said license is for 5 rooms and adjacent area, but there is no mention of the adjacent area as to how many acres the said area was. The Petitioners further stated that the building shown in the balance-sheet of Respondent No.8 was the school building which was under construction and not ready to use building as contended. The Petitioners, therefore, submitted that there has been a total non-application of mind by Respondent Nos.1 to 3 in granting Letter of Intent. The Petitioners, therefore, submitted that the decision making process is vitiated and, therefore, the Letter of Intent granted to Respondent Nos.6 to 8 is

required to be quashed and set aside.

**Submissions of the Petitioner in Writ Petition No.9694 of 2022:-**

18. The Petitioner in Writ Petition No.9694 of 2022 adopted the arguments of the Petitioner in Writ Petition No.6256 of 2022 and stated that they have made the proposal within the extended period provided by Ordinance No.XXVIII of 2017. The Petitioner in Writ Petition No.9694 of 2022 relied on para nos.42 to 44 of the decision passed by this Court in the first round of petition in support of its submissions that the petition be allowed. The Petitioner brought to our attention that they were already running the educational institute upto class 12<sup>th</sup> and by this proposal they were only proposing to add degree college of Arts, Commerce and Science. The Petitioner also submitted that they were given first preference by the University and further reiterated that there is no educational institute in around 20 kms. The Petitioner stated that the land on which the junior college is running and on which the degree college is proposed is owned by the Petitioner themselves. The Petitioner in Writ Petition No.9694 of 2022, therefore, sought for allowing the petition in terms of prayer clause as prayed for in the petition.

**Submissions of the Respondent No.4-University:-**



19. The counsel for the University-Respondent No.4 submitted that perspective plan under Section 107 of the MPU Act was for whole of Taluka-Haveli and therefore whether a particular institute is located in and around hilly area was not relevant, but any institute in any part of the said Haveli was eligible to make the proposal. The Petitioner further stated that when the proposal of the Petitioner was considered they had given preference based on various parameters, but this practice was discontinued recently. The counsel for the University stated that Respondent No.1-State had issued a Government Resolution dated 15<sup>th</sup> September 2017 giving detailed guidelines for evaluating the proposal on the parameters listed in schedule 'A' to the said Government Resolution and more particularly the parameters relating to financial capacity, number of students, etc. It is submitted that based on these parameters they had evaluated all the proposals and gave their recommendations to Respondent No.1-State whereby they had recommended the Petitioner under Section 109(3)(c) of the MPU Act. The counsel for the University, therefore, submitted that their evaluation was in accordance with and in confirmity with the G.R. issued by Respondent No.1-State and therefore, the petition should be disposed of after considering the said aspect.

**Submissions of the Respondent Nos.1 to 3-State:-**

20. The counsel for Respondent No.1-State submitted that the Petitioner has provided a certificate from Gram Panchayat to certify that the region is hilly. It is submitted that Gram Panchayat is not a competent authority for granting such a certificate and therefore the submissions made that the Petitioner's proposed college would be in hilly area should be rejected. The Respondent No.1-State, thereafter, referred to their affidavit dated 9<sup>th</sup> December 2022 and more particularly the tabular statement for giving reasons for grant of Letter of Intent to Respondent Nos.6 to 8 and for refusing the Letter of Intent to the Petitioner. The Respondent No.1-State also brought to our attention the budget proposal of the Petitioner and submitted that the Petitioner is proposing to fund the setting up educational institute by way of collecting fees which indicates that financially the Petitioner is not in a position to set-up the education institute. Respondent No.1 also produced original file and gave inspection of the same to all the parties.

**Submissions of the Respondent Nos.6 to 8-Private Parties:-**

21. The counsel for Respondent No.8 submitted that the Petitioner made an application on 15<sup>th</sup> December 2017 giving its proposal for setting up the college. Respondent No.4-University visited the site of the Petitioner on 8<sup>th</sup> January 2018 and the first decision by Respondent

No.1-State was taken on 28<sup>th</sup> February 2018 which was subject matter of challenge in Writ Petition No.4805 of 2018, which was filed in April 2018. The certificate of Gram Panchayat enclosed by the Petitioner in the present petition certifying the topography of the site is dated 22<sup>nd</sup> November 2018, which is an afterthought and in any case the said certificate is not issued by the competent authority and therefore, the same cannot be considered for evaluating the proposal of the Petitioner. Respondent No.8 took us through the proposal submitted by the Petitioner and stated that the Petitioner's cash/bank balance was Rs.7 lakhs & Rs.8,04,496/-. This indicates that the Petitioner did not have economic viability to start the college. Respondent No.8 further taking us through the said proposal stated that the Petitioner themselves have stated that they are operating from a rental premises which also indicates that the Petitioner does not have adequate infrastructure to set-up the college. Respondent No.8 further submitted that the Petitioner in their proposal have admitted that they do not have recognition from NAAC. Respondent No.8 brought to our notice an undertaking given by the Petitioner dated 14<sup>th</sup> December 2017, wherein the Petitioner have admitted that within 5 years from getting recognition they would procure the land. This also indicates that the Petitioner did not have its own land. Respondent No.8 further stated that in the budget for proposal to start the college, the Petitioner has stated that the trust has

reserved fund of only Rs.15 lakhs and once the college starts a small percentage of fees will be transferred to reserve fund account for buying and upgrading building, library, computers, etc. Respondent No.8, therefore, submitted that the Petitioner had neither financial capability nor infrastructure nor educational experience which is the consideration required for the proposal to be considered under Section 109 3(d) of the MPU Act and therefore, Respondent No.1-State was justified in not granting the Letter of Intent to the Petitioner. Respondent No.8 with respect to the Petitioner in Writ Petition No.9694 of 2022 stated that the said Petitioner is only running a secondary school, whereas Respondent Nos.6 to 8 have experience in running degree colleges. Furthermore the financial condition of Respondent No.8 is much better and stronger than the Petitioner in Writ Petition No.9694 of 2022. Respondent No.8, therefore, submitted that the Respondent No.1 has considered the parameters appropriately for coming to a conclusion to whom the Letter of Intent should be granted and therefore this Court should not interfere in the decision making process adopted by Respondent No.1-State. Respondent No.8 supported the stand taken by the Respondent No.1 in its affidavit dated 1<sup>st</sup> December 2023 and justified the action of Respondent No.1.

**22.** Respondent No.7 in Writ Petition No.6256 of 2022 adopted

the arguments of Respondent No.8 and submitted that in case of multiple proposal for one point, there would always be a pick and choose and unless the said decision is shown to be arbitrary, this Court should not interfere in the exercise of the discretion of Respondent No.1-State which is also in accordance with the provisions of Section 109(3) (d) of the MPU Act. Respondent No.7, therefore, prayed for dismissal of the Petition. Respondent No.7 in Writ Petition No.6256 of 2022 is Respondent No.5 in Writ Petition No.9694 of 2022 and submitted that his contention in Writ Petition No.9694 of 2022 remains the same.

**Rejoinder of the Petitioners in Writ Petition Nos.6256 of 2022 and 9694 of 2022:-**

23. The Petitioner in Writ Petition No.6256 of 2022 contended that in the first round before this Court in Writ Petition No.4805 of 2018, the Petitioner had in Rejoinder dated 2<sup>nd</sup> July 2021 stated that the Petitioner is located at village Arvi, which is situated in the southern side of Pune in the hilly area. It was further stated in the said Rejoinder that in the radius of around 10 to 12 kms. in the vicinity of the proposed side, there are no other colleges. In the present petition also, in paragraph 20 averment to the same effect is made with respect to the topography. This has not been rebutted by the Respondent Nos.1 to 3-State at any point of time and the only objection taken across the bar is with respect to the competent authority to issue the certificate. The

Petitioner had earlier obtained certificate from Gram Panchayat. However, the Petitioner in response to the said objection on the competent authority to issue such certificate has now obtained a certificate from Talathi certifying that the proposed site is a hilly area. The Petitioner submits that as per Government Resolution dated 15<sup>th</sup> September 2017, one of the criteria for evaluation of the proposal is the hilly area. The Petitioner further submitted that as per the Government Resolution dated 15<sup>th</sup> September 2017 paragraph 1.2, the University was required to give the preferential rank and in pursuant thereto, the University has given various preferential ranking to the proposals received for setting up the new college. However, Respondent Nos.1 to 3 have submitted in their reply dated 9<sup>th</sup> December 2022 that since the proposals were received before extension and after the extension and there were confusion with respect to preferential number given to the proposals received before and after extension, the said preferential numbers were not considered at all. The Petitioner submitted that this is contrary to the Government Resolution dated 15<sup>th</sup> September 2017. The Petitioner further submitted that Respondent No.4-University vide letter dated 13<sup>th</sup> January 2018 addressed to the Respondent Nos.1 to 3 have stated that the State should consider the proposals after going through all the documents submitted along with the application and the recommendation. The Petitioner further submitted that schedule 'A' to

Government Resolution dated 15<sup>th</sup> September 2017 was to be submitted before September as per paragraph 1.6 as per Section 109(3)(a). The Petitioner further submitted that the undertaking given on 14<sup>th</sup> December 2017 with respect to acquiring land was to be considered only after the affiliation granted under Section 110 of the MPU Act and therefore that cannot be a ground for refusal at the time of deciding, whether to grant Letter of Intent or not. This stage would come only after the Letter of Intent is granted and before the final approval. The Petitioner further submitted that the Trustees themselves have given land to the Petitioner on leave and license basis for a period of 5 years as per the agreement annexed and further this cannot be a ground for refusing the Letter of Intent since it is neither relevant nor borne out from reading of Section 109(3)(d) of the MPU Act. The land is more than 1 Acre and, therefore, sufficient for setting up the new educational college. The Petitioner further submitted that schedule 'A' is to be furnished as per paragraph 3.2 of the Government Resolution dated 15<sup>th</sup> September 2017 at the time of final approval and, therefore, schedule 'A' cannot be considered at the time of grant of Letter of Intent. Similarly with respect to other compliances and undertaking, same would be applicable only at the time of final approval under Section 109(3)(g) and not at the stage of Section 109(3)(d) which provides for grant of Letter of Intent. The Petitioner further contended that with respect to

the funding they had explained that it will be through donations and loans from the Trustees and, therefore, this parameter cannot be a ground for refusal of Letter of Intent. The Petitioner further contended that reasons for rejection on the basis of no NAAC accreditation is unreasonable and if the contentions of the Respondent-State is accepted then now new institute would ever be able to start educational college. The Petitioner further submitted that the proposal was called for by the Respondent Nos.1 to 3 based on perspective plan for the year 2017-2023 and since we are in January 2024, the Letter of Intent granted has become time barred. The Petitioner has relied upon the decision in the case of *Valsala Kumari Devi Vs. Director, Higher and Secondary Education & Ors*<sup>2</sup>. for interpreting the phrase “suitability” used in section 109(3)(d) of the MPU Act, 2016. The Petitioner also filed written submissions contending that they were identically placed as that of Respondent No.8 and, therefore, impugned action vitiates the decision making process.

**24.** We have heard the learned counsel for the Petitioner and the learned counsel for the Respondents and with their assistance have perused the pleadings, documents and affidavits-in-reply filed by various Respondents.

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2 (2007) 8 SCC 533



**Analysis and Conclusion:-**

25. Before we analyse the facts of the Petitioner's case, it is relevant to understand the scheme of MPU Act with respect to permission, affiliation and recognition of the colleges and/or institutions.

**Object of the MPU Act:-**

26. The MPU Act is enacted to provide for academic autonomy and excellence, adequate representation through democratic process, transformation, strengthening and regulating higher education and for matters connected therewith or incidental thereto.

**Scheme of Setting-up College, recognition and affiliation:-**

27. Insofar as permitting setting up of new education colleges are concerned, the relevant provisions can be found in Chapter X. Chapter X of the Act consists of Sections 107 to 124. The scheme of permission, affiliation and recognition is analysed herein:

- (a) Section 107 of the Act provides that the university shall prepare a comprehensive perspective plan for every 5 years and get the same approved by the Commission. Such plan is prepared for the location of colleges and institutions in a manner ensuring

comprehensive equitable distribution of facilities for higher education having due regard to the needs of unserved and underdeveloped areas within the jurisdiction of the Universities. The perspective plan is prepared taking into consideration the social and economic needs of the vision, job opportunities available, etc. and is as per the national policy for higher education. The perspective plan would also factor the demand for the colleges and institutions in different regions including factoring gross enrollment ratio, hilly and inaccessible areas, inclusive growth, value education, etc. The university is required to prepare annual plan every year for the location of colleges and institution of higher learning in consonance with the perspective plan and shall publish it before the end of academic year preceding the year in which the proposals for the opening of new colleges are to be invited. The University also undertakes field survey within the geographical jurisdiction of the University and the findings of such survey would be used for preparing the perspective plan of the university.

- (b) Section 108 provides for conditions of affiliation and recognition. It provides for compliance of various conditions namely the provisions of the Acts and Statutes of the University and the State Government, number of students to be admitted, availability of

suitable and adequate physical facilities such as buildings, libraries, books, hostels, etc., financial resources of the college or institution, strength and qualifications of teachers and non-teaching staff, prohibition on shifting of location of the college without prior permission of the University, provision for closure of the college, etc.

- (c) Section 109 of the Act provides for procedure for permission for opening new college or new course, subject, faculty or division. The proposal shall be invited and considered by the University and the application for the same should be in confirmative with the perspective plan prepared under section 107 of the Act. The management is required to make an application in a prescribed format to the University for seeking a Letter of Intent for opening a new college. The University would process this application and make recommendation and, thereafter, the State Government would consider granting a Letter of Intent after taking into account the relevant factors, suitability of the management seeking Letter of Intent, State level priority with regard to location etc. and the same would be communicated by the State Government to the University. The role of the University is only recommendatory and assisting the State in selection process out of many proposals received. The State

Government is also empowered to grant Letter of Intent to those institutions which are not recommended by the University, subject to the reasons to be recorded in writing. The management is required to submit a compliance report to the University with respect to the infrastructure facilities and readiness to start the institution with required documents for final approval. The said report is thereafter scrutinised by the Board of Deans and forwarded to the State Government with the approval of the Management Council which recommendation should contain relevant reasons. After considering the report of the University, the State Government may grant final approval to such management as it may consider fit and proper in its “absolute discretion” taking into account the budgetary resources and other relevant factors. The State Government by notification may lay down the procedure to be followed for the purpose of opening new college or new course, subject, faculty or division.

- (d) Section 110 deals with procedure for affiliation after the receipt of the permission from the State Government for opening new college. Section 111 provides for procedure of recognition of institution engaged in conducting research and specialised studies. Section 112 provides for procedure for recognition of private education

provider and Section 113 provides for recognition to empower autonomous skill development colleges.

- (e) Sections 114 to 116 provides for continuation, extension and permanent affiliation and/or recognition of the college/institution and the procedure to be followed for the same. Section 117 deals with inspection of colleges and preparation of the report of the said inspection. Section 118 deals with shifting of college location and section 119 provides for transfer of management. Section 120 deals with withdrawal of affiliation or recognition and section 121 deals with closure of the affiliated college or recognised institution. Sections 122 to 124 deals with provisions for grant of autonomous status to the affiliated college or recognised institutions.

**28.** Insofar as the present writ petition is concerned, the relevant provision that fall for our consideration would be Sections 107 to 109 and more particularly the provisions of Section 109 and the relevant sub-sections of the said provision reads thus:-

**“109. Procedure for permission for opening new college or new course, subject, faculty, division.**

(1) .....

(2) .....

(3) (a) *The Management seeking a Letter of Intent for opening a new college or institution of 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 ;*

(b) .....

(c) .....

(d) *out of the applications recommended by the university, the State*

*Government may grant a Letter of Intent on or before 31<sup>st</sup> 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, or 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;*

*(e) .....*

*(f) .....*

*(g) after considering the report of the university under clause (f), the State Government may grant financial approval to such management as it may consider fit and proper in its absolute discretion, taking into account the State Government's budgetary resources, and other relevant factors, the suitability of management seeking permission to open new institution, etc. The final approval under this clause may be granted on or before 15<sup>th</sup> June, of the year in which such new college or institutions are proposed to be started. Such approval from the State Government shall be communicated to the university. Approvals granted thereafter shall be given effect by the university only in the subsequent academic year."*

*(emphasis supplied)*

### **Scope of Judicial Review:-**

29. We may observe that validity of the provisions of the MPU Act relied upon by the Petitioner and especially Sections 107, 109, etc. are not under challenged in the present petition. The Petitioners have challenged the decision of Respondent No.1 to grant Letter of Intent to Respondent Nos.6 to 8 and refusal to grant Letter of Intent by Respondent No.1 to the Petitioner. As per the scheme of the MPU Act analysed above, the Petitioner seeks the Court's intervention for judicial review of the decision making process. There is no doubt that provisions

relating to setting up of new colleges/institutions are policy based decision of Respondent No.1-State. The scope of judicial review in such cases is very limited and restricted only to the decision making process and not to the merits of the decision. This Court cannot review the decision of the State in granting the Letter of Intent as this Court is not sitting as an appeal Court while exercising power of judicial review under Article 226 of the Constitution of India. However, although this Court cannot interfere with the policy decision of the State in granting/refusing Letter of Intent which pertains to the policy matter, but whether the said decision/action is vitiated by arbitrariness, unfairness, illegality or irrationality or unreasonableness can certainly be looked into by this Court. If the decision taken by the Respondent No.1-State is such as no reasonable prudent person on proper application of mind would take such a decision, then certainly this Court would intervene to set the decision making process right. However, if this Court finds that the decision making process has passed the test of Article 14, then it would not substitute its own opinion for that of the State. It is a settled position that mere power to choose cannot be termed arbitrary and the Respondent No.1-State is the best authority to select the best. This Court would not interfere in the administrative matters and decision taken by the Respondent No.1-State, if the selection or rejection is not arbitrary. It is not the function of this Court to act as a superboard

or schoolmaster substituting its judgment for that of the administrator. It is only when a decision making authority exercising its powers or breaches the rules of natural justice or abuses its powers or reaches a decision which no reasonable person would have reached, it is only in such cases that this Court would intervene. This Court is certainly not an expert in the education policy matters. The Supreme Court has repeatedly emphasised that in matters relating to academic institutions, the Courts' scrutiny in judicial review has to be careful and circumspect unless shown to be plainly arbitrary or discriminatory. The Court would defer to the wisdom of administrators to run the academics.

### **Analysis of Section 109:-**

30. We would now examine the decision making process whereby the Petitioner has been refused the grant of Letter of Intent *qua* Respondent Nos.6 to 8 who have been granted the Letter of Intent and which is the subject matter of the present writ petition. But before we examine the facts of the Petitioner, it is apt to dissect the relevant provisions.

31. In our view Section 109(3)(d), although uses the phrase "absolute discretion" to the State Government to grant a Letter of Intent, it does not mean that a discretion can be exercised arbitrarily. It is nonetheless a discretion to be exercised with reference to the true



position and with perhaps even a greater sense of responsibilities in that it is within limits final. The phrase “absolute discretion” used in Section 109(3)(d) is followed by the phrase “taking into account the relevant factors, suitability of the management, State level priority with regard to location, etc”. In our view, the phrase “absolute discretion” gets diluted by the words following the said phrase in clause (d) and, therefore, it cannot be said that the discretion is absolute in abstract, but the discretion is to be exercised taking into account the factors specified/parameters specified therein. It is also important to note that the phrase “absolute” should be read with the authority, who can take the decision to grant Letter of Intent. This is so because the words preceding to “absolute” is the State Government and, therefore, the word “absolute” goes with the authority and also with the discretion moreso, because discretion is further followed by the factors to be considered and, therefore, it is contrary to the word “absolute” when read with the factors to be considered.

**32.** Clause (d) of sub-section (3) of Section 109 gives a discretion to the State Government to grant a Letter of Intent and the said discretion is clear from the word “may” used in the said sub-clause (d). Respondent No.1 State has been given discretion after taking into account the relevant factors, suitability of the management seeking

Letter of Intent, state level priority with regard to location of institutions of higher learning, etc. Similar phraseology is also used in Section 109(3)(e) for financial approval. Therefore, scheme of “absolute direction” is guided by factors provided in the very provision and it cannot be at whims and fancy of the State. Even the proviso to Section 109(3)(d) dealing with non-recommendary proposal requires the State to record reasons. Therefore, there are sufficient in-built mechanism engrafted in the scheme of Section 109 of the Act to test and control the actions of the State. The factors enumerated in section 109(3)(d) are illustrative and it is well left to the State to consider the other factors relevant for educational institute.

**33.** The phrase “absolute discretion” came up for consideration before the Supreme Court in case of *State of Gujarat Vs. M/s.Krishna Cinema & Ors.*<sup>3</sup>. The issue before the Supreme Court was in relation to Rule 5(2) of the Bombay Cinema Rules, 1954 which authorised the Government on consideration of the report of licensing authority, in its “absolute discretion” to grant permission for the issue of “no objection certificate” to grant or to refuse to grant the same. The Supreme Court in paragraph 11 observed that by the use of expression “absolute discretion,” it is not intended to invest the licensing authority with arbitrary power so as to destroy the limitations to which it is subject to

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<sup>3</sup> AIR 1971 SC 1650

by its inherent nature. The said Act did not purport to confer the arbitrary authority upon the licensing authority or the State Government and by use the rule “absolute discretion,” legislative intent disclosed by the Act cannot be superseded. Applying the ratio of the said decision to Clause (d) of sub-section (3) of Section 109 of the MPU Act, in our view, “absolute discretion” phrase used would certainly not mean unbridled or arbitrary exercise of power, moreso because of the word following the phrase “absolute discretion” in the said sub-clause which refers to taking into account the relevant factors specified therein. Therefore, the very provision limits the operation of the phrase “absolute discretion.” The same has to be exercised in a manner that would enable to object of the MPU Act being achieved.

**Government Resolution of 15<sup>th</sup> September 2017:-**

34. On 15<sup>th</sup> September 2017, Respondent No.1-State issued Government Resolution under Section 109(9) of the MPU Act laying down the details, procedure and guidelines which were required to be considered while processing the application for setting up a new college or institution under Sections 109(1), 109(2) and 109(3). This Government Resolution lays down the role which Respondent No.4-University has to play for recommendation of the proposal received for setting up a new college.

**35.** Schedule A to the aforesaid Government Resolution provides for various information to be submitted by the proponents of the new college and based on this information, the proposal will be evaluated by the University for further recommendation to Respondent No.1-State. The information required in Schedule A relates to various requirements which the entity setting up new colleges/institutions should possess like number of students in region, educational experience of the institution in the past, information pertaining to the other educational institutions in the vicinity of 15 kms., financial information, information relating to the building and other infrastructure, capacity of intake of the students, number of students clearing 12<sup>th</sup> standard exam in the stream of Commerce, Arts and Science, source of funding for setting up etc.

**36.** It is important to note that this Government Resolution of 15<sup>th</sup> September 2017 is not under challenge in the present petition and, therefore, the parameters specified in the said Government Resolution for evaluating the proposal by the University under Section 109 of the MPU Act cannot be questioned by the Petitioner nor the action of Respondent No.1 to take a decision based on these parameters. However, whether these parameters have been appropriately applied in the decision making process for granting/refusing Letter of Intent can be examined which we propose to do hereinafter.

**Application of above analysis to the facts:-**

37. On 6<sup>th</sup> November 2017, the University prepared a perspective plan under Section 107 of the MPU Act and after considering all the parameters provided in Section 107 of the MPU Act, for setting up new colleges within its jurisdiction, insofar as Taluka Haveli, Pune is concerned 3 colleges for the stream of Arts, Commerce and Science were decided to be set up. There is no challenge to the said recommendation by the University for setting up only 3 colleges in Taluka Haveli and, therefore, the Petitioner's contention that the Petitioner as well as Respondent Nos.6 to 8 all could have been accommodated in the said Taluka is required to be rejected because as against the number of colleges to be set-up, the proposal received were more.

38. On 15<sup>th</sup> December 2017, the Petitioner made an application to Respondent No.4 University for considering its proposal to set up a new college in the name of 'Shivganga College of Science, Commerce and Arts' at Haveli, Pune. It is important to analyse various information which the Petitioner submitted along with the application. The population of the area where college was proposed to be set up is 10,000. 1500 students passed out from 12<sup>th</sup> standard exam from that area from Arts, Commerce and Science stream. The Petitioner specified

only 680 sq.ft. as an area for setting up the Educational Institution. With regard to financial position as on 31<sup>st</sup> March, the Petitioner specified that they do not have any immovable property. The Petitioner held a fixed deposit of Rs.7 lakhs and had a bank balance of Rs.8,04,496/-. There were no loans taken by the Petitioner. The Petitioner further replied in negative against the information required with respect to the provisions for contingent and unexpected expenses. The Petitioner further specified that they have taken the property on lease for setting up a new educational college since they did not own any immovable property. The Petitioner also stated that they do not have laboratory, etc. Against the information relating to the budgeted expenditure with respect to construction and expenses of teaching and non-teaching staff, the answer given by the Petitioner was 'No.' The Petitioner also stated that they do not have a NAAC accreditation. In the Memorandum of Association annexed to the application, the occupation of the founding members was specified as business, farmers and retired Deputy Collector. The Petitioner also filed tentative balance sheet, income and expenditure account for the year ending 31<sup>st</sup> March 2018. The tentative balance-sheet specified the loan from trustees approximately of Rs.66 lakhs and against which the assets comprised of cash and bank balance of Rs.9,000/-, furniture and fixtures of Rs.4000/-, fixed deposit of Rs.7 lakhs and addition to the building of

Rs.60 lakhs. As per the tentative income and expenditure account, the surplus after reducing the expenses from the income received was shown as only Rs.2,324/-. The Petitioner also filed an undertaking dated 14<sup>th</sup> December 2017 stating that they will acquire immovable property within 5 years from the date of getting approvals for setting up Educational Institution. The Petitioner also filed a document stating experience in the field of education and training of Mr.Madhav Dandavate, Mr.Vinay Kunwar and Mr.Sameer Ghuge. The Petitioner stated that they will meet the expenditure from the fees received, donations and loans and advances from various peoples and the reserved fund will be further enhanced by transferring certain part of the fees to the said funds. The Respondent No.1 has taken these information into account for rejecting the proposal of the Petitioner because as per Respondent No.1 on all counts Respondent Nos.6 to 8 had an edge over the Petitioner.

**39.** Respondent No.1-State in their affidavit dated 17<sup>th</sup> October 2023 have given reasons Institution-wise for grant of Letter of Intent and for rejection of proposal. On perusal of the original file of Respondent No.1 we extract following table as translated in English giving reasons for the decision taken by Respondent No.1 for the purpose of issuing Letter of Intent with respect to the Petitioner, the

reasons given by Respondent No.1 State for rejecting the proposal are as under:-

**“APPENDIX – B**

Savitribai Phul Pune University, Pune

Sr. No.	Name of Society/ College	Faculty	Reasons for not granting of Letter of Intent
1	-	-	-
2	Jagruti Foundation Shivganga College of Science, Commerce and Arts, Arvi Tq. Haveli Dist. Pune.	Arts and Commerce	Norms are fulfilling however, 1. the Society established in 2005 and is established after the Societies to whom the letter of Letter of Intent has been issued. 2. Society's other school/College nil. However, letter of Intents issued to other Institutions have been running Schools/Colleges. 3. Less moveable and immovable properties of the Society comparatively to other Institutions.
3	-	-	-

40. In contrast to the said reasons, Respondent No.1 gave the following reasons for grant of Letter of Intent to Respondent Nos.6 to 8. The table reproduced in the reply of the Respondent No.1 has not correctly reproduced original Marathi version. However, we have gone through the original record and are reproducing the correct version as under :

**“APPENDIX – A**

Sr. No.	Name of Society/ College	Reasons for grant of Letter of Intent
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1	2	3
Savitribai Phul Pune University, Pune		
1	Jaywant Shikshan Prasarak Mandal's Rajarshree Shahu Commerce and Science college Wagholi Tq. Haveli 2.	1. The present Society established in 1998 and is old one. 2. NAAC accreditation available 3. Institution runs 5 schools, 1 college and 19 other colleges. 4. Financial condition satisfactory.
2	Shri. Sant Tukaram Shikshan Sanstha Chandan Nagar Tq. Haveli, Dist. Pune.	1. The present Society was established in the year 1991 and is old. 2. Society's running 4 Schools and one Junior College.
3	Lokseva Praatisthan Lokseva Senior College, Phulgaon, Tq. Haveli	1. The present Society established in 1996 and is old one. 2. The Society is running 3 Junior Colleges and one Pharma College.

41. The Petitioner has not challenged the factors considered by Respondent No.1 State and the reasons given for grant of Letter of Intent to Respondent Nos.6 to 8. The facts which are recorded for grant of Letter of Intent to Respondent Nos.6 to 8 are not found to be incorrect or false nor it is alleged by the Petitioner. Respondent No.1-State on comparative analysis of the proposal sent by Respondent Nos.6 to 8 and the Petitioner came to a conclusion that Respondent Nos.6 to 8 are better placed proponents as compared to the Petitioner based on the experience of the proponents in educational fields, financial capacity, infrastructure, availability, etc. which are also the factors provided in Section 109(3)(d) of the MPU Act and the Government Resolution dated 15<sup>th</sup> September 2017.

42. It is important to note that as per the perspective plan

prepared by Respondent No.4-University, only 3 colleges were to be granted approval in the stream of Arts, Commerce and Science in Haveli Taluka whereas the number of persons making the proposal and recommended by Respondent No.4 were more than 3. It was thereafter for the State to consider all the 5 recommendations made by Respondent No.4 in exercise of its powers under Section 109(3)(d) of the MPU Act.

**43.** The reasons given for rejection of the Petitioner's proposal and for granting Letter of Intent to Respondent Nos.6 to 8 being based on educational experience, financial position, etc. cannot be said to be an extraneous to the factors required to be considered and specified under Clause (d) of sub-section (3) of Section 109 of the MPU Act. The reasons given for accepting/rejecting the proposal, in our view, are inextricably linked with the parameters required for considering the proposal to set up Educational Institution. It cannot be said that the discretion exercised by Respondent No.1-State is perverse or by taking into consideration irrelevant materials or factors. Therefore, in our view, the decision making process adopted by Respondent No.1-State after taking into account overall parameters of all the proponents for taking decision of granting Letter of Intent to Respondent Nos.6 to 8 cannot be held to be unreasonable or arbitrary or unfair to strike down the same on the touch stone of Article 14 of the Constitution of India. This Court

is certainly not an expert body to substitute its decision in place of the decision taken by Respondent No.1-State in the facts of the present case.

44. In our view, the reasons given by Respondent Nos.1 to 3 for granting Letter of Intent and for refusing the same cannot be said to be perverse or extraneous to the provisions of Section 109(3)(d) of the Act. The parameters specified under Section 109(3)(d) are only illustrative in nature and it cannot be construed that the parameters which are not specified therein if considered would violate the provisions of Article 14 of the Constitution of India, unless such parameters are such which could have never been considered in making the decision. Insofar as the reasons given by the Respondent Nos.1 to 3-State are concerned, what is considered is the age of the proponent in the field of education, number of schools/colleges run by the said proponent, the infrastructure of the proponents, financial capacity of the proponents, etc. In our view, these factors are very much relevant in deciding which proposal is required to be granted Letter of Intent and which proposal is to be refused. The factors stated in the reasons are germane for deciding the suitability of the institution proposing to set up the educational institution. For example, if one proponent has its own land and another proponent has a land which is taken on leave and license for a period of 5 years and the person owning the land is treated by the State has more suitable then in

our opinion, no fault can be found in such a decision on the ground that it violates Article 14 of the Constitution of India. Similarly, if the State after considering the financial position of the proponent comes to a conclusion that a particular proponent is better financially placed to run an education institute than other, then in such case, this Court cannot find any fault, *moreso*, when these facts are not shown as incorrect. For any education institute to be set-up or run the nature of the land, financial availability, infrastructure, etc. is certainly very crucial factor to be considered. We do not agree with the contention of the Petitioner that the availability of the land, financial, etc. should be considered at the time of final approval. In our view, on a true and proper reading of the scheme of Section 109, these are the factors which can be considered even at the stage of grant of Letter of Intent, so as to narrow down the process of selection at the stage of grant of final approval under clause (g) of Section 109(3). The factors which have gone into the decision making process, in our view, certainly cannot be treated as irrelevant, extraneous or perverse for us to intervene in exercise of the jurisdiction under Article 226 of the Constitution of India in policy matters. It cannot be said that no reasonable man would ever take into consideration the aforesaid factors.

**45.** It is also important to note that the proposal was made by the

Petitioner for setting up Educational college on 15<sup>th</sup> December 2017. Respondent No.1-State took first decision to reject the Petitioner's application on 15<sup>th</sup> March 2018. This decision was the subject matter of challenge in the first round before this Court in Writ Petition No.4805 of 2018 which came to be finally decided on 2<sup>nd</sup> December 2021 whereby this Court remanded the matter back to the file of Respondent No.1 to consider afresh all the proposals including that of Respondent Nos.6 to 8. The physical inspection at the site of the Petitioner was taken by Respondent No.4 University prior to 15<sup>th</sup> March 2021. In the Writ Petition No.4805 of 2018, there was no averment made by the Petitioner with respect to the topography of the Petitioner's site proposed to be set up but only in rejoinder an averment was made. It is only on 22<sup>nd</sup> November 2018 in the remand proceedings, the Petitioner filed a certificate of Gram Panchayat certifying that the area is a hilly area. In our view, this appears to be an afterthought since no convincing reason has been given for producing such certificate after the first round of litigation was over. In any view of the matter, it is also a factor which Respondent No.1 has considered while evaluating the 5 proposals for 3 colleges which cannot be faulted with.

**46.** The Petitioner contended that the perspective plan was for 5 years prepared by Respondent No.4-University ending 2023 and the

proposals of the Petitioner and Respondent Nos.6 to 8 were in pursuant to this perspective plan. The Petitioner submitted that since 2023 has already expired, on a conjoint reading of Section 107 read with Section 109(3)(e), the Letter of Intent granted has become time barred. In our view, this submission of the Petitioner cannot be accepted, since the Petitioner itself had obtained a stay order from this Court in the first round of litigation in Writ Petition No.4805 of 2018, which was filed in the year 2018 and final order on the said petition was passed in December 2021. The Petitioner was granted protection after the remand proceedings in the said order. Thereafter, the present petition is filed and stay has been obtained on 25<sup>th</sup> May 2022. In our view, a person inviting and obtaining stay order cannot be heard to take the plea that since the period for which the perspective plan was prepared has come to an end, the Letter of Intent granted is to be required to be quashed. On same reasoning the contention of Respondent No.1 that the present proceedings related to annual plan for the year 2018-2019 and said period having expired the writ petition has become infructuous also cannot be accepted.

47. The Petitioner further contended that his proposal should have been considered atleast for the purpose of granting Letter of Intent and the parameters of infrastructure, finance, etc. ought to have been

considered at the stage of final approval under Section 109(3)(g). In our view, on a perusal of the scheme of Section 109, the legislature has engrafted 3 steps of filtering, the first step of filtering the proposal happens when under Section 109(3)(a) to (3)(c), applications are processed and evaluated by Respondent No.4-University. The filtered proposal by the University are, thereafter, forwarded to Respondent No.1-State under Section 109(3)(d), where the State Government after taking into account the factors specified therein decides to grant Letter of Intent. Thereafter, the Letter of Intent is issued with necessary conditions on which compliance report is sought by the proponents and the said compliance report is thereafter scrutinised by the Respondent No.4 and forwarded to the Respondent No.1-State. The 3<sup>rd</sup> and the last stage is provided under Section 109(3)(g) in which after considering the report of the University under Section 109(3)(f), the Respondent No.1-State after taking into account the Government's budgetary resources and other relevant factors grants final approval.

**48.** In our view, at various stages, various considerations are required to be taken into account by the Respondent Nos.1 to 4 and it is they who filter the applications at various stages. The process of filtration is to select the best out of all the proposals. Therefore, the Petitioner is not justified in contending that atleast at the stage of Letter

of Intent, they should have been considered favourable.

49. The Petitioner has also alleged that there is political involvement in the grant of Letter of Intent to Respondent Nos. 6 to 8. Except the averments made in the writ petition, there is no other material filed by the Petitioner. The Petitioner themselves have obtained recommendation letter of sitting MLA on 26<sup>th</sup> November 2018 and, therefore, the Petitioner cannot contend otherwise when it comes to Respondent Nos.6 to 8.

50. We had called for the file of the Respondent No.1-State with respect to the Letter of Intent qua Taluka Haveli with which we are presently concerned. The Petitioners were also given inspection of the same. On perusal of the said file, we did not find any perversity in the decision of the Respondent No.1-State in granting Letter of Intent in favour of Respondent Nos.6 to 8 and refusing the same to the Petitioner since the State has considered common denominator across all the proposals for coming to the decision to grant/refuse the Letter of Intent. Whenever there are more proposals than numbers of colleges to be set-up, there are bound to be rejections and if the acceptance/rejections are based on reasons (passing the test of Article 14) relevant to such a decision then this Court would not travel further in case of any challenge.



51. We may now deal with the Petitioners' contention on the project report of Respondent Nos.7 & 8. There is no doubt that the project report was annexed by Respondent Nos.7 & 8 along with their proposal to Respondent No.4 University.

52. On a perusal of two reports, the same are identically worded and also figures of Respondent No.7 and the name of Respondent No.7 are appearing in the project report of Respondent No.8 under the head of "Faculty Requirement and Phase Wise Recruitment". With regard to paragraph 1.26 of the report dealing with Overall Teaching and Non-teaching Staff Requirements, also the figures appear to be the same. The area and break-up of various rooms in both the reports are also identical. This definitely is an infirmity in the report of Respondent Nos.7 and 8 which the University ought to have considered. However, the impugned action before us of Respondent No.1 pursuant to the directions of this Court in Writ Petition No.4805 of 2018 is concerned, the tabular statement which we have extracted earlier and on a perusal of the original record of Respondent No.1, the said project report has not formed the basis for grant or refusal of Letter of Intent. The reasons given for grant/refusal is the time when the Institution was established, financial condition, existing Schools/Colleges, etc. None of these reasons which Respondent No.1 has considered in arriving at the decision to

grant or to refuse the Letter of Intent is out of the project report of Respondent Nos.7 & 8 under consideration. Since the said project report has not formed the basis of the said decision, it would not be proper for us to hold that the decision making process has been vitiated on account of similarity of both the reports.

53. The Petitioner has relied upon the judgment of the Supreme Court in case of *Ramana Dayaram Shetty Vs. International Airport Authority of India & Ors.*<sup>4</sup>, and more particularly the observations made by the Supreme Court in paragraph 21 for the proposition that the State cannot discriminate between like persons and test of reasonableness and a non-discriminatory approach has to be followed by the State. We do not dispute the said proposition of law but in the present case as observed by us above, the reasons given by Respondent No.1-State in evaluating 5 proposals for 3 sites by factoring various economic, financial, infrastructure, experience factors cannot be said that all the proponents were situated identically and, therefore, this decision is of no assistance to the Petitioner.

54. The reliance placed by the Petitioner on the decision of the Supreme Court in the case of **Valsala Kumari Devi (supra)** is not applicable to the facts of the present petition. The phrase 'suitability'

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4 (1979) 3 SCC 489

although used in two different Acts cannot be interpreted in the same way. The interpretation has to be in the context of the Act and the provision in which it is used. Insofar as the decision of the Supreme court is concerned, same was dealing with service law, where the candidates were similarly placed and the issue of suitability and eligibility arose. In the present petition, we are concerned with Section 109(3)(d) which deals with grant of Letter of Intent by the State Government after taking into account the relevant factors, suitability of the management seeking Letter of Intent, State level priority with regard to location, etc. The scheme of Section 109 and the MPU Act, 2016 is not at par with the service law jurisprudence and, therefore, the word “suitability” interpreted by the Supreme Court cannot be de hors the context with which the present writ petition is concerned so as to further the case of the Petitioner.

**55.** On inspection of the relevant file maintained by Respondent No.1-State, the Petitioner submitted that even Respondent No.8 had taken premises on leave and license basis, building shown under construction is Rs.2.40 Crore and their Fixed Deposit is also Rs.7 Lakhs and while explaining source of funds they too have stated as fees and donations. The Petitioner, therefore, submitted that its facts were also similar and, therefore, Respondent No.1 ought to have granted Letter of

Intent to it. In our view, if the parameters of Respondent No.8 and Petitioner are similar and Respondent No.1 has chosen Respondent No.8 over the Petitioner after considering the same then this Court would not sit in review over the judgment of Respondent No.1 and direct the Respondent No.1 to grant the Letter of Intent to the Petitioner.

**56.** We appreciate the assistance given by the counsels for the Petitioner and the Respondents and more particularly Mr. Prathamesh Bhargude, Advocate who did not leave any stone unturned to pursue the cause of the Petitioner till the end of the hearing.

**57.** We may observe that if the existing Institute having experience in the field of education is only to be considered then in that scenario, it would lead to monopolistic situation where the entry of new Institution would be barred. However, the experience of running of educational institution is very important to decide whether such Institute is capable of setting up a new educational institution. The same should however be balanced to avoid any monopolistic situation coming into existence. Therefore, the State should consider a level playing field to all the applicants or at least there should be some consideration of new entrants being considered by comparing the same in a practical manner. However, it is for the State to take a decision on this aspect.

**58.** We may also observe that there should be fixed parameters

based on the report of the University on the basis of which the Applicants are considered for grant of Letter of Intent. One way could be granting certain points for each of the parameters and thereafter aggregating the same to come to a conclusion that a particular Institution is eligible for grant of Letter of Intent. However, these are mere observations made by us and it is best left to the Respondent-State to act upon the same for achieving higher excellence and better standards in education benefitting all the Students.

**59.** To conclude, in view of above discussion this Court is not inclined to exercise its jurisdiction under Article 226 of the Constitution of India in the facts of the present case and, therefore, the writ petition is dismissed with no order as to costs.

**60.** Insofar as the Writ Petition No.9694 of 2022 is concerned, the contentions being similar, the reasons given in the order in Writ Petition No.6256 of 2022 would equally apply and, therefore, on the same reasons, Writ Petition No.9694 of 2022 is also dismissed with no order as to costs.

**(JITENDRA JAIN, J.)**

**(A. S. CHANDURKAR, J.)**

**61.** At this stage, the counsel for the petitioner requested for stay of the operation of this judgment for a period of two weeks since the

interim protection was in operation.

**62.** We accept such request and stay the operation of this judgment for a period of two weeks.

**(JITENDRA JAIN, J.)**

**(A. S. CHANDURKAR, J.)**