



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4282 OF 2023

Trimurti Pawan Pratishthan,
A Registered Educational Trust,
having its Office at Trimurtinagar,
Newasaphata, Taluka Newasa,
District Ahmednagar,
through Secretary,
Mr. Manish Annasaheb Ghadgepatil, ... PETITIONER

VERSUS

1. The State of Maharashtra
through its Secretary,
Higher & Technical Educational
Department, Mantralaya,
Mumbai – 32
2. The Director of Higher & Technical
Education, through its Director,
Central Building, Pune -1.
3. Savitribai Phule Pune University
of Pune, through its Registrar,
Ganesh Khind, Pune-411007
4. Sau. Kausalyabai Raghunath Agale
Bahuddeshiya Pratishthan, Mukindpur,
Tal. Newasa Dist. Ahmednagar
5. Bar Council of India
through its Secretary,
21, Rouse Avenue Institutional
Area, Near Balbhavan
New Delhi - 110002 ... RESPONDENTS

WITH
WRIT PETITION NO.6991 OF 2023

Dr. Mukundrao Keshavrao Pawar
Shaikshanik Pratishthan, Khadke
Newasa Phata,
Tq. Newasa, Dist. Ahmednagar
through its Trustee/Authorized person namely;
Sahebrao Haribhau Ghadge Patil, ... PETITIONER

VERSUS

1. The State of Maharashtra
through its Secretary,
Higher and Technical Education
Department, Mantralaya,
Mumbai – 32
2. Director of Higher and Technical
Education, Maharashtra State,
Pune-01.
3. Savitribai Phule Pune University Pune,
Ganeshkhind, Pune-07
through its Registrar
4. Sau. Kausalyabai Raghunath Agale
Bahuddeshiya Pratishthan,
Gut No.86/3/B and Gat No.86/3/K
Mukindpur, Tq. Newasa
District : Ahmednagar,
through its Secretary/President

... **RESPONDENTS**

...

Advocate for petitioner in WP/6991/2023: Mr. Ankush N. Nagargoje

Advocate for petitioner in WP/4282/2023: Mr. Anand P. Bhandari

AGP for respondent/State in both WP: Mrs. Kalpalata Patil- Bharaswadkar

Advocate for respondent No.3 in both WP: Mr. V.P. Golewar h/f

Mr. A.R. Joshi

Advocate for Resp. No.4 in both WP: Mr. V.D. Sapkal, Senior advocate i/b.

Mr. S.R. Sapkal

Advocate for respondent No.5 in WP/4282/2023 : Mr. Sachin Deshmukh

...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

Reserved on : 04.07.2024**Pronounced on : 12.07.2024****JUDGMENT (PER : MANGESH S. PATIL, J.) :**

In these separate writ petitions, may be for different reasons,
same relief is being claimed, putting up challenge to the Government

Resolution dated 15.06.2023 whereby, the respondent No.1 - State Government, on a recommendation of the respondent No.3 – University granted permission to the respondent No.4 to open a new law college in the light of provision of Section 109 of the Maharashtra Public Universities Act, 2016 (the Universities Act). The petitioner from writ petition No.4282/2023 in whose favour also there was a favourable recommendation of the respondent No.3 – University has been praying additionally a writ of mandamus directing the respondent Nos.1 to 3 to issue letter of intent in its favour, and then the final permission.

2. In order to avoid repetition, with the consent of both the sides, both these matters are heard finally at the stage of admission and are being taken up together for decision.

3. Rule. It is made returnable forthwith.

Factual Matrix :

- i. The respondent No.3 - University by the Government Resolution dated 15.09.2017 prepared a perspective plan under Section 107 of the Universities Act for a period of five years and published an annual plan for academic year 2023-24, for specific location 'Khadke Newasa Phata', by issuing a public notification dated 10.01.2023 for starting a new law college.
- ii. Pursuant to such notification, both these institutes that is the petitioner in writ petition No.4282/2023 and the respondent No.4 submitted their applications. The respondent No.3 – University

forwarded positive recommendations under Section 109 (1). By the impugned Government Resolution the State Government granted permission to the respondent No.4. Hence, aggrieved by the decision, the petitioner from writ petition No.4282/2023 - Institute is challenging the permission granted to the respondent No.4 on various counts.

- iii. It is the stand of this petitioner that the application submitted by the respondent No.4 was not compatible with the location that was notified and ignoring that the permission has been granted. The application of the respondent No.4 was non-compliant with the eligibility norms notified in the annual plan. The University had forwarded a positive proposal of both these institutes. The State Government granted permission to the respondent No.4 without even indulging in considering the comparative merits of both these proposals.
- iv. In Writ Petition No.6991/2023 the petitioner is challenging the impugned permission granted to respondent No.4 on the ground that the location notified by the University was not compatible with the perspective plan. It is his stand that location 'Khadke Newasa Phata' rather the entire Newasa Taluka was not indicated to have any law college during the entire five year tenure of the perspective plan and still the permission was granted which is not permissible under Section 107 read with Section 109 of the Act.

Submissions :

4. Learned advocate Mr. Bhandari for the petitioner in Writ Petition No.4282/2023 would take us through the papers and particularly the notification of the annual plan inviting the applications from the prospective colleges. He would point out that the location notified was 'Khadke Newasa Phata', whereas, the application of the respondent No.4 though mentioned the same location, by practising fraud and mischievously a land from revenue village Mukindpur was offered as a place for the proposed college. Even the requisites regarding the extent of the area and the built up area was lacking. When the property was expected to be either owned or taken on lease, the respondent No.4 had offered land which was taken on leave and license basis. All these facts were ignored by the University while recommending the proposal and by the State Government while granting permission. If the land that was offered by the respondent No.4 was not compatible with the location that was notified, it would go to the root of the permission granted to it and the permission is liable to be quashed on that count.

5. Mr. Bhandari would further submit that when there were two positive recommendations, it was imperative for the State Government to have considered them by undertaking a comparative study on their merits.

6. Mr. Nagargoje for the petitioner in writ petition No.6991/2023 would take us through the perspective plan published on

in Government Resolution dated 15.09.2017 and would demonstrate that as far as Newasa taluka is concerned, it did not contain any intention of the University to grant permission to start a law college throughout these five years. The annual plan that was published/notified was not compatible with such perspective plan or rather was inconsistent therewith. The whole purpose of publishing a perspective plan under Section 107 would stand defeated if the action of the University and the State to publish an annual plan for different location and for starting a new law college which was not there in the perspective plan and still to make recommendation and grant permission would be violative of section 107 and Section 109.

7. To our query as to the *locus standi* of the petitioner in his petition, Mr. Nagargoje would submit that he is merely bringing to the notice of this Court the rampant illegalities committed in granting permission. He would further submit that even the timeline prescribed by Section 109 for inviting application was not followed and in a hasty manner, applications were invited depriving the prospective applicants an opportunity of participation.

8. It is necessary to note that such stands of the petitioners are incongruent, the petitioners cannot be allowed to blow hot and cold at the same time, challenging the permission on the ground that the location of the annual plan is not compatible with the perspective plan and still seeking to take a stand that the prospective applicants could not

apply because of the short time that was available for making the applications, Mr. Nagargoje could not give any satisfactory explanation. We, therefore, called upon him to elect the stand to be taken when the matter was being decided finally.

9. It is trite that there could be incompatible and inconsistent pleadings. However, when it comes to soliciting and granting a relief, a person cannot be allowed to persist with such grossly incompatible stands. If the petitioner in Mr. Nagargoje's petition has been questioning the permission granted to the respondent No.4 on the ground that the location in the annual plan is not compatible with the perspective plan, one cannot allow him to persist with the stand that due to absence of sufficient opportunity, the prospective applicants could not get the opportunity to move applications pursuant to the notification issued by the respondent No.3 – University. Mr. Nagargoje thereafter restricted his arguments only to the extent of putting up the former plea.

10. The learned AGP pursuant to the stand being taken in the affidavit-in-reply filed by the officer of the rank of Joint Director of Higher Education admitted that both the colleges were recommended by the University and permission was granted to respondent No.4 for the location 'Khadke Newasa Phata'. The land offered by it was barely 2 to 3 kms from the notified location, even though it is coming under Mukindpur Grampanchayat. Learned AGP would also submit that the land that was offered by respondent No.4 was 3 acres on rent basis and

that the non-agricultural use was merely to the extent of 10 gunthas therefrom.

11. The learned AGP would submit that as indicated in Clause (d) of Sub-Section 3 of Section 109, the State Government has absolute discretion in the matter of granting permissions. It can take into account relevant factors and examine suitability of a management seeking Letter of Intent and consider state level priority. It is in view of such power vested in the State Government under the Universities Act, the discretion has been exercised in granting permission to respondent No.4 and there is no illegality.

12. Learned Senior advocate Mr. Sapkal for respondent No.4 would at the outset castigate the petitioners with the allegations that they are hellbent to oppose the permission granted to respondent No.4 with an ulterior motive. He would vehemently argue that the petitioner in writ petition No.6991/2023 is holding the torch for the other petitioner institute. He was its secretary, albeit, stated to have subsequently resigned. He would also take us through various representations made on behalf of the institute which has filed writ petition No.4282/2023. In spite of such resignation he was still signing such correspondence in the capacity of its secretary, not in a case or two but consistently over a period of reasonable time, till the recent past. These circumstances are indicative of fact that initially the institute preferred the first petition. Since it could not have questioned the permission on the ground that the

annual plan was not compatible with the perspective plan, having ones participated in the process, that the subsequent petition has been preferred raising such a ground. This very conduct is clearly demonstrative of the fact that every attempt has been made by the petitioners to practise fraud upon this Court and he would strenuously pray that an action be initiated against the petitioner from Writ Petition No.6991/2023 under Section 340 of the Code of Criminal Procedure.

13. So far as the merits are concerned Mr. Sapkal would take us through the perspective as well as annual plan to demonstrate that the place notified 'Khadke Newasa Phata' does not exclude the location falling in Mukindpur revenue Tahsil, Khadke is a different revenue village, Newasa Phata is merely a location having a popular name and is not an independent village. When the land offered by respondent No.4 was barely at a distance of 2 to 3 kms, no fault can be found with its proposal/application and consequently, the permission granted to it. He would submit that all other norms were duly complied with and the proposal of respondent No.4 was meritorious.

14. Mr. Sapkal would submit that subsequent affiliation granted by respondent No.3 – University has not been challenged, for want of which the petitions would not be sustainable.

15. Mr. Sapkal would then tender across the bar order dated 01.02.2024 passed by the Sub-Divisional Officer, Ahmednagar. Thereby granting temporary permission for converting 21400.00 sq.mtrs of land

from Gut No.86/3/B of village Mukindpur Tal. Newasa for non-agricultural use for a period of one year. He would submit that even this order would overcome the objection being raised by the petitioners regarding the extent of the land and the condition regarding permission for non-agricultural use.

16. Mr. Bhandari would counter this latter argument by submitting that the document is being produced across the bar and cannot be allowed to be taken into consideration. He would submit that even if this document is looked into, it would substantiate the stand of the petitioners that respondent No.4 was not possessing the requisite extent of land and that too with NA permission. He would rely upon the decision in the matter of **Dhananjay R. Kulkarni and Ors. Vs. State of Maharashtra and Ors; AIR 1999 Bombay 287, Adarsh Education Society Vs. The State of Maharashtra and Ors.; WP No.6366/2018 and connected writ petitions (Aurangabad Bench) decided on 07.06.2019 and Gurukul Bahuuddeshiya Sevabhavi Pratishthan Vs. State of Maharashtra and Ors.; 2022 (2) Mah LJ 419.**

REASONS :

17. We would prefer to first take up the stand of respondent No.4 to demonstrate that both these petitions are collusive. As was pointed out by Mr. Sapkal, indeed there is voluminous correspondence, wherein, the petitioner from writ petition No.6991/2023 had indulged into, for and on behalf of the writ petitioner - Institute in writ petition

No.4282/2023. As is pointed out, all such correspondence *ex facie* bears his signatures under the stamp of Secretary of that petitioner institute. If it is the stand of the petitioners about petitioner Sahebrao in writ petition No.6991/2023 was earlier holding the post of Secretary but subsequently resigned and even the change report to that effect was certified by the Deputy Charity Commissioner, Ahmednagar, he continued to hold the batten for the petitioner from the writ petition No.4282/2023.

18. While submitting applications soliciting information from the public information officer of the respondent No.3 – University in respect of various information pertaining to the selfsame dispute he had shown his address as that of the institute, that is petitioner from writ petition No.4282/2023, not on one occasion but many times. Besides, even it was fairly conceded in response to our query that the present secretary of the petitioner institution in writ petition No.4282/2023 is none other than the nephew of petitioner Sahebrao from writ petition No.6991/2023.

19. It is also important to note that writ petition No.4282/2023 was filed first in point of time by the institute which had participated in the process and it is quite apparent that it could not have sought to challenge the permission granted to respondent No.4 on the ground that the annual plan was not compatible with the perspective plan, having already participated in the process. There is every room to believe that sensing such impediment ingenious method was adopted to resort to

separate challenge by way of a subsequent writ petition No.6991/2023 racking up that stand of incompatibility of the annual plan with that of the perspective plan. All these circumstances, in our considered view are clearly demonstrative of the fact that these are collusive petitions.

20. However, as regards the request of Mr. Sapkal of initiating an action under Section 340 of the Code of Criminal Procedure, in our considered view, the request is being made orally and ex tempore. When Section 340 expects some procedure to be followed, in our considered view this cannot happen abruptly at the eleventh hour when the matters are being heard finally. We are, therefore, not inclined to entertain this plea of Mr. Sapkal.

21. Turning to the merits of the matter, even if the submission of Mr. Sapkal that the petitions being collusive and mischievous and disentitling the petitioners of seeking any writ under Article 226 of the Constitution of India is accepted, in our considered view the petitions cannot be brushed aside lightly particularly when serious issues are being raised regarding grant of permission to start a new college in the light of provisions of Sections 107 and 109 of the Universities Act. Indiscretion or mischief of the petitioners cannot be allowed to be resorted to by the respondents to justify the impugned decision. If it is a matter of implementation of the provision of Universities Act and the aims and objects thereof, this Court cannot turn a blind eye if glaring illegalities are perpetrated by the State and a public body like University. It is,

therefore, imperative as a constitutional Court for us to examine the objections being raised in both the petitions touching the permission granted to the respondent No.4.

22. As regards the sanctity of the perspective plan as contemplated under Section 107 is concerned, reading of Section 107 alone would not suffice. It is also necessary to understand the process which is required to be followed before any public university prepares a perspective plan, tenure of which is five years. As indicated therein the plan has to be approved by the Commission constituted under Section 76, which means the Maharashtra State Commission for Higher Education and Development. It comprises the Chief Minister as the Chairman and Minister for Higher and Technical Education as the Vice-Chairman. There are Secretaries of as many as seven departments of the State, Educationist, Vice-Chancellors, Principals, eminent teachers, five other Ministers, Leaders of Opposition, Members of the Legislative Council and Assembly as its members. Section 77 lays down the functions and duties of the Commission and clauses (a) and (b) of Sub-Section 1 of Section 77 expressly lays down and empowers the Commission to prepare guidelines for perspective plan for each University, for the location of the colleges and institution of higher learning in a manner ensuring equitable distribution or facilities for higher education and to approve the comprehensive perspective plans submitted by the universities.

23. The Tasks of preparing a perspective plan is imposed upon

the board of Deans. Even it has to prepare the annual plan. Even before it is placed before the commission for final approval, the draft goes through the scrutiny by the academic council, Senate and Management Council. If such is the meticulous and detail procedure to be followed before the comprehensive perspective plan for a period of five years is prepared and becomes final, one need not overemphasize its sanctity and importance.

24. No provision is pointed out by the learned advocate particularly the learned AGP and the learned advocate representing the University to demonstrate as to if such a perspective plan prepared by the University is susceptible to any concession/leeway either in respect of the institutes/new colleges to be opened, new courses to be started or for changing the location. Even Sub-Section 4 of Section 107 requires preferences to be given to the districts where gross enrollment ratio is less than the national average and also to the tribal, hilly and inaccessible areas besides quality bench mark, inclusive growth, social relevance and value education. This is clearly demonstrative of the fact that several factors are to be taken into consideration before finalizing a perspective plan. Every consideration would have its own sanctity and importance. Consequently in our considered view, it is necessary that any such perspective plan is followed strictly by all the stake holders else the purpose and object of preparing a perspective plan would be lost.

25. Having borne in mind, the sanctity and importance of the

perspective plan it is imperative that any annual plan which is published every year is strictly in accordance with and should be compatible with the perspective plan. Looked at from this angle, as is pointed out by Mr. Nagargoje the perspective plan that was published by the respondent No.3 - University, by Government Resolution dated 15.09.2017 which was for a period of five years, did not indicate any plan for starting a new law college in entire Newasa Taluka. We, therefore, have no manner of doubt that the annual plan pursuant to which both these institutes had applied in response to the notification issued by the respondent No.3 – University, is clearly in violation of the perspective plan and for this reason alone the entire process of issuing notification dated 10.01.2023 inviting application for the location ‘Kharde Newasa Phata’, which is not at all traceable to the perspective plan, becomes illegal.

26. We cannot approve of rather would deprecate the practise of the respondent No.3- University in not being consistent in upholding the sanctity of a perspective plan and rather indulging in illegalities by coming out with an annual plan inconsistent with the perspective plan to the extent of the location in dispute and starting of a new law college which is not traceable to the perspective plan. In our considered view, this in itself is sufficient to quash the permission granted to respondent No.4 - Institute under the impugned GR. Obviously, this will obviate any consideration of any other objection being raised in both these petitions questioning sustainability and legality of the permission granted to

respondent No.4. However, by way of precaution, we would examine even that aspect.

27. As far as the location 'Khadke Newasa Phata' is concerned, to our mind it is not a misnomer as is being sought to be demonstrated by Mr. Sapkal. Though parties are unanimous that Newasa Phata *per se* is not a separate village and is merely a popular description of a particular junction. When the location has been published with such a description, no leeway or any deviation would be permissible. The very stand of the Government in its affidavit-in-reply trying to justify the permission by pointing out that the distance between the land offered by respondent No.4 and the location 'Khadke Newasa Phata' is 2 to 3 kms, leaves no manner of doubt to reach a conclusion that even the State admits the fact that the land offered by respondent No.4 was not at the desired location 'Khadke Newasa Phata'. We, therefore, have no hesitation in accepting the stand of the petitioners that the land that was being offered by respondent No.4 was not for the exact location that was notified by the University and on this count it was not eligible.

28. Similarly, as far as the requisite for extent of land and its source including the further specification as regards the extent of land having non-agricultural use permission, the land offered by respondent No.4 was clearly deficient. As per the mandate of guideline, the requisite was 3 acres of land either owned or acquired by way of lease as distinguished from leave and license. It further required the lease deed

to be registered one. As per the Clause 6 of Schedule 'C' and Clause 13 of Schedule 'B' the land should have been converted to non-agricultural use. However, the land that was offered by respondent No.4 was merely having NA permission to the extent of 10 Gunthas. It is thus apparent that the application of respondent No.4 was clearly deficient and noncompliant as far as the land, its extent and nature.

29. The aforementioned inferences are again sufficient to quash and set aside the permission granted to the respondent No.4 since it was non-compliant with the basic requisites, apart from the deviation as regards the exact location that was notified.

30. As far as the stand of the respondents to justify the permission granted by the State Government is concerned, certainly, Clause (d) of Sub-Section 3 of Section 109 of the Universities Act confers a discretion upon the State in the matter of grant of letter of intent. Even if there is no favourable proposal/recommendation by the University still it can grant letter of intent and conversely even if there is a positive recommendation, it has the power to reject such recommendations and refuse permission. This precisely seem to be the stand of the respondent Nos.1 and 2 in the affidavits-in-reply filed on their behalf. Even the learned AGP toed the same line.

31. However, one cannot lose sight of the fact that any discretion to be exercised by the State cannot be unfettered. When a statute gives a discretion to the State or public functionaries it is imperative that the

discretion is exercised judiciously which in turn mandates some parameters to be followed to demonstrate that the discretion is based on some objective material and referring to some decisive factors. Even a plain reading of Clause (d) of Sub-Section 3 of Section 109 clearly demonstrates that though adjective 'absolute' is used before 'discretion', the subsequent words indicate that relevant factors, suitability of the management, state level priority with regard to the location, are the factors to be looked into. It is well nigh clear that even the statute mandates the discretion to be exercised only by taking into account these considerations. It cannot be arbitrary and according to the whims and fancies. The discretion exercised by the State in matters in hand is suffering from the vice of being arbitrary and capricious. There is absolutely nothing either in the impugned Government Resolution or in the affidavit-in-reply filed on behalf of respondent Nos.1 and 2 to demonstrate that the decision to grant permission to respondent No.4 was preceded by any objective scrutiny of matters which are required to be taken into consideration as indicated in Clause (d) of Sub-Section 3 of Section 109.

32. Suffice for the purpose to refer to and rely upon the aforementioned two decisions of the coordinate benches one of which was under the Maharashtra State Universities Act, 1994, under Section 82 which was *pari materia* with Section 109 of the Universities Act and the other decision being under Section 109 of the Universities Act.

Paragraph Nos. 9 and 10 from the decision in the matter of **Dhananjay R. Kulkarni** (supra) and paragraph No.9 from the decision in the matter of **Adarsh Education Society** (supra) are relevant and substantiate our view.

Relevant paragraphs in **Dhananjay R. Kulkarni** (supra) read as under :

- “9. *All applications filed by the managements within the period stipulated by section 82(3) seeking permission to open new Colleges or institutions of higher learning are required to be scrutinised by the Board of College and University Development and forwarded to the State Government with the approval of the Management Council with such recommendations as are deemed appropriate by the Management Council. The State Government, out of the applications recommended by University, may grant permission to such institutions as it may consider right and proper in its absolute discretion, as stipulated by sub-section (5). Thus, under sub-section (5), the State Government has wide discretion to even decline permission to such institution, application of which may have been recommended by the University. Under proviso to this sub-section, the State Government has power to grant approval for starting new College or institution of higher learning, even though University may not have recommended the grant of such approval, but that power vests in the State Government only in exceptional cases where reasons for grant of such approval are required to be recorded in writing.*
10. *It is clear from the aforesaid provisions that such applications, which are not in conformity with the perspective plan and thus are outside the purview of the University for consideration, are also to be scrutinised by the Board of College and University Development and the same are also required to be forwarded to the State Government. These applications are only scrutinised under sub-section (4), but are not considered, in view of the bar contained in sub-section (2) of section 82. The language of the proviso, on which strong reliance has been placed by the learned Advocate-General, provides that in respect of the applications not recommended by the University the State has powers in exceptional cases, on reasons to be recorded in writing, to grant approval for starting a new College. The proviso, to our minds, deals with such applications which are considered by*

the University and then not recommended and in respect of such applications, the State Government has overriding power to grant approval in exceptional cases. It does not postulate a power to grant approval in respect of the applications which the University is even debarred to consider. This interpretation is also in consonance with the entire scheme of section 82, including the bar contained in sub-section (2) and sub-section (6) of section 82. The proviso, on which reliance has been placed on behalf of the State Government, is proviso to sub-section (5) and not in the nature of a non-obstante clause to the entire section. When applications are filed by the managements, section 82 contemplates three situations.:—

- (1) Applications not considered by the University.*
- (2) Applications considered and recommended by the University, and,*
- (3) Applications considered and not recommended by the University.*

The power of the State Government under this proviso is in respect of the applications which are considered and not recommended, and not in respect of the applications which are not even considered. The power of the State Government in respect of the applications recommended by the University are found in substantive sub-section (5). From the mere fact that all applications, which are scrutinised, including those which are not considered, are required to be sent to the State Government, it is not possible to reach the conclusion that, even in respect of such not considered applications, the State Government has power under the proviso to grant approval. It is possible that, when such applications which are not considered are forwarded to the State Government, the State Government may find that the University was wrong in not considering the applications on the ground that the same are not in conformity with the Perspective Plan and, in those circumstances, it may require University to consider such applications. We may also briefly notice certain other provisions of the Act which lend support to only conclusion on the scope of power of State Government under proviso to section 82(5).

Relevant paragraph in **Adarsh Education Society** (supra) reads us under :

9. *The Government has a discretion in granting permission to a particular college if there are two or more eligible proposals. However, the discretion that exist with the Government is not merely an ordinary discretion, but a discretion that has to be exercised judiciously and not capriciously. It would be found that, the respondent-State has not come with the case that though petitioners were eligible to be considered for the grant of permission and their proposals were also complete in all respects, still the proposal of respondent was much better or that the respondent had better facilities and experience. The petitioner's proposal are turned down only on the ground that they are eligible but letter of intent is issued to respondent no.5. The proposals of petitioners were also recommended within stipulated time. In such case, the State Government ought to have evaluated all the proposals and ought to have granted permissions to the more deserving institutions. The Government is required to arrive at a subjective satisfaction based on objective assessment of the proposals. The Government ought to have evolved a particular criteria for exercise of discretion. We had called for the record of the State Government. From the record it appears that, the case of respondent was considered alongwith other proposals and says that on merits and as per Section 109(3)(g), the letter of intent is issued to respondent-society. However, in fact the respondent-State has not justified as to how the proposal of the respondent was more meritorious than that of the petitioner.”*

Relevant paragraphs in **Gurukul Bahuuddeshiya Sevabhavi Pratishthan** (supra) read as under :

- “13. *The Government can exercise the powers in exceptional circumstances and for the reasons to be recorded in writing while approving the proposal for grant of Letter of Intent to the college or the institution of higher learning though not recommended by the University.*
14. *The general rule appearing in section 109(3)(d) is that out of applications recommended by the University the State Government may grant Letter of Intent. Proviso to Clause (d)*

of sub-section (3) of section 109 carves out an exception viz. in exceptional cases the Government may grant Letter of Intent though not recommended by the University for the reasons to be recorded in writing. According to Webster's International Dictionary of English Language "Exceptional which is itself an exception and so is out of ordinary, that is, exceptional, to which exception may be taken". According to Murray's New English Dictionary Exceptional means "of the nature of forming exception; out of the ordinary course, unusual, special." The Government has to arrive at the conclusion that exceptional circumstances exist to overrule the negative recommendations of the University. The University while negating the proposals of the respondents amongst other objections had observed that students of the region would not suffer. The Government while considering such proposal ought to have arrived at subjective satisfaction based on objective assessment that exceptional circumstances still exist for establishing new college on the said location for the welfare of the students. The same ought to be supported by relevant statistics.

15. *For meeting out an exceptional case strong reasons have to be recorded in writing that would outweigh the negative recommendations of the University. The rule requiring recording of reasons must be observed in letter and spirit. Mere pretence of compliance by vague and general words is not enough. Reasons are the lifeline of any order. The order should reflect the application of mind of the authority while passing the order and it is the reasons which would depict the same. The obligation to record reasons operates as a deterrent against the possible arbitrary action. Reasons are link between the materials on which certain conclusions are based and the actual conclusion. Reasons discloses how the mind is applied to the subject matter for a decision. The reason should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. In the present case the reasons recorded should demonstrate carving out an exceptional case to be considered though negatively recommended by the University."*

33. It is thus evident that the permission granted to the respondent No.4 is grossly illegal. To sum up, the location and starting of

law college at that place as notified in the Annual Plan is not in accordance with the perspective plan and therefore the University ought not to have issued any notification at the first place inviting the applications. Besides, the proposal of respondent No.4 was deficient in many respect. Further, the impugned permission granted by the State is demonstrative of lack of several important considerations. It has exercised the discretion arbitrarily and granted permission to the respondent No.4. Lastly, nothing has been placed before us and the affidavit-in-reply filed by the State is absolutely silent as regards the parameters applied by the State in preferring respondent No.4 to the petitioner from writ Petition No.4282/2023, demonstrating as to what factors had weighed with it in giving the preference when there were positive recommendations in respect of both.

34. Before parting, we would be failing in our duty if we do not comment on the conduct of the respondent No.3 University. In spite of such serious issues being raised in both these petitions, its conduct in not even filing any reply is demonstrative of its lack of interest or incapacity to manage the affairs of the University in such serious matters. Either it is doing so due to incompetence of the persons manning it or could be with an ulterior motive to push the illegalities under carpet.

35. The writ petition No.4282/2023 is allowed partly.

36. The writ petition No.6991/2023 is allowed.

37. The impugned Government Resolution dated 15.06.2023

granting permission to respondent No.4 to open a new law college is quashed and set aside.

38. The writ petition No.4282/2023 seeking direction to the respondent Nos.1 to 3 to issue letter of intent and final permission to the petitioner is dismissed.

39. Rule is made absolute in the above terms.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

40. After pronouncement of the judgment, Mr. S.R. Sapkal, for respondent No.4, requests for staying operation of this judgment and order for a reasonable time to enable it to approach the Supreme Court.

41. The learned advocates for the petitioners oppose the request by saying that this Court may grant stay but respondent No.4 shall not admit any student and shall maintain *status quo*, as is obtaining today.

42. The operation of the judgment and order is stayed for a period of three weeks. However, respondent no. 4, shall maintain *status quo*, as is obtaining today, in respect of admitting the students.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE