

State of Kerala and anr. Etc. Vs. Miss Rafia Rahim Etc.

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Court : Kerala

Decided On : Feb-24-1978

Reported in : AIR1978Ker176

Judge : V.P. Gopalan Nambiyar, C.J.,; V. Balakrishna Eradi,; George Vadakkal,; K.K. Narendran and;

Acts : [Constitution of India](#) - Articles 14, 15(4) and 226

Appeal No. : Writ Appeal Nos. 309, 312, 314, 315, 317 to 319, 329, 331, 333, 334, 336, 342, 343 and 348 of 1977

Appellant : State of Kerala and anr. Etc.

Respondent : Miss Rafia Rahim Etc.

Advocate for Def. : G. Janardana Kurup,; Panicker,; Potti,;

Advocate for Pet/Ap. : Govt. Pleader,; Adv. General,; P.K. Shamsuddin,;

Judgement :

Gopalan Nambiyar, C.J.

1. These appeals are against the decision of a learned Judge and raise the question of the validity of the prevailing system of admissions to the medical colleges of this State. The grounds of attack raised in writ petitions which have given rise to these appeals, may be classified under two broad heads: attack

against the reservation of a certain proportion of seats to be filled up from the geographical limits of what is generally referred to as the 'Malabar area' of this State; and attack basically against the scheme of admissions to the medical colleges in this State on an assessment of the merit of students drawn from different Universities, stated to be with no uniformity of standards in the matter of syllabus or curriculum of studies, or assessment of results. The learned Judge, to state again broadly, upheld the challenge against the reservation of a proportion of seats to students from the Malabar area, and held that the said reservation was unconstitutional; against which, the State and party-respondent have preferred appeals. Regarding the regulation of admission of students drawn from different Universities with no uniformity of standards, and probably, if not apparently, with no uniformity of syllabus, the learned Judge held that the writ petitioners were well-founded in their submissions about the arbitrariness and inequality of the Rules regulating admissions. After examining the decisions to which reference will be made in the course of this judgment, the learned Judge concluded that the principle of the decisions supported the case of the petitioners. We may well extract the following observations of the learned Judge in paras. 13 and 19 of his judgment:

'13. All the same there is another aspect to the question. To compare the marks obtained by students of two different Universities valued by different examiners on answer papers of different patterns may not 'be the proper mode of determining comparative merit. Even in the case of candidates appearing for the same examination of the same University there may be a cause for complaint in the matter of marks awarded to the candidates. Quite often revaluation has shown that at least in some cases there is Justification for the plea for such revaluation. Different examiners value the answer papers and though there is a Chief Examiner his role is quite limited. But these are inevitable and the marginal errors may have to be ignored. By and large the comparative merits of the candidates will be reflected in the marks they obtain in the examination to which all candidates are uniformly subjected to, But the same could not be said in the case of examinations conducted by two or more Universities. It is well-known that sometimes question papers are tough and sometimes valuation is liberal. Quite often valuation is guided by the percentage of pass expected in an examination. Moderation is also

resort-ed to. While all these may work uniformly on all the candidates appearing for the same examination in the same University that could not be the case with regard to the candidates appearing for the same qualifying examination from another University writing different papers, which are valued by a different set of examiners. When comparison is between two candidates passing out from two Universities taking respective examinations of the Universities the equation of candidates in matters where near-accuracy is called for becomes difficult. May be the examinations are similar and the valuation also is similar, but the other factors cannot be ruled out. If admissions to courses like Medicine and Engineering is to be on the basis that the best talent is to be preferred, where students from more than one University passing the qualifying examination have to compete some method other than comparing their marks should be devised to determine their comparative talent.'

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19. It is true that in all these cases the courts were attempting to sustain the existing rules on the basis that the rules provided for valid classification. The reasoning of the courts in these cases do support the case of the petitioners. The fact remains that courts which had occasion to consider the cases of students passing from different Universities have been of the view that by its very nature the examinations taken by students from different Universities need not necessarily be of the same standard. While pass in these examinations from these Universities may be recognised as equivalent the subtleties involved in the determination of comparative merit between candidates on the basis of marks cannot be justified. Therefore the complaint of the petitioners in these cases that the State Government ought not to have regulated the admission which ought to be- on the basis of talent merely on the basis of marks obtained by the candidates in the examinations conducted by the two Universities appears to be reasonable. The said rule of admission has infringed the equality clause as contended by the petitioners,'

2. There are altogether three Universities operating in this State, namely, the Kerala University, the Calicut University and the Cochin University. The last of

these is not an affiliating University, but only what is called, a federal type of University for all the college in the city of Cochin. The first and second are the Universities with colleges affiliated to each.

3. The learned Judge examined the question whether the prospectus regulating admissions (copy Ext. P2) was a State law or only an executive order. If it was the former, striking it down as violative of Article 14 could, under the present provisions of the Constitution, be done only by a Bench of Five Judges. The learned Judge held that it was only an executive or administrative order, and that he could hold that the selections ought not to have been made in accordance with it. Considering the objection as to nonjoinder of the selected students in the writ petitions the learned Judge was of the view that the same did not preclude the petitioners from obtaining any reliefs, to which they might otherwise be entitled, (vide paragraph 21). This was because, in the first place, the writ petitioners had come to the court before the selections had been finalised and the list of selected candidates published, so that the selections were only, so to say, *pendente lite*. Secondly, there had been interim orders in some of the writ petitions, that the finalisation of the list was to be subject to the result of the writ petitions and that the candidates selected should be informed either before selection or immediately thereafter, that their selection was subject to the result of the writ petitions. In these circumstances, the learned Judge rejected the plea that the writ petitions should fail for non-joinder of parties. (vide para 21). Discussing the question of reliefs to which the petitioners were entitled, the learned Judge pointed out that the petitioners were asking for admissions to be made in the light of valid and properly framed rules, and remarked that the task of framing such rules is not easy, and is bound to take time, for collection of statistics and formulation of the appropriate principles. Having regard to the progress of the academic year, to the disturbance and dislocation likely to be caused in upsetting the selections already made, and to the futility of ordering a new selection under a set of rules to 'be formulated hereafter, so as to benefit the newly selected candidates in the course of the current academic year, the learned Judge felt that beyond declaring that the principle followed in the selection was inequitable, no practical relief could be granted to the petitioners on the facts. This was how the learned Judge concluded:

'Even when grievances urged by the parties before this Court are found to be genuine and it is the function of this Court to protect the rights of parties the circumstances of a case may render it impossible or impracticable to grant any relief to the parties. In such cases the Court after denning the rights of parties will do well to leave the matter there and the decision of the Court, though of no material consequence to the parties to the case, may furnish a guideline for future action. That is the situation here.

23. Possibly, the cases of such of those among the petitioners who would have had a case for selection because of the high marks obtained by them could be considered by the Government and relief granted to them. That the circumstances have contributed to unjust treatment has been indicated. What is to be done in the circumstances is a matter for the Government to consider, for, in the absence of any specific rule in place of Ext. P2 no specific direction by the Court is possible.'

It was in these circumstances, that this batch of writ petitions was dismissed. And the complaint of this batch of writ petitioners is that while they have won the battle, they have been denied the fruits of victory. We shall first take up for consideration, the series of appeals challenging the principle of selection of students drawn from different Universities with no uniform standards. As representative of this class of appeals, we may refer to the facts in W. A. No. 314 of 1977 which was the appeal in regard to which the main arguments were addressed.

W. A. No. 314 of 1977

4. The petitioner has passed the Pre-degree examination from the Calicut University in March 1977. She is from the Malabar area of this State, and has obtained a total of 392 out of 450 marks in the subjects, namely, Physics, Chemistry and Biology and an aggregate of 827 out of 1000 marks. Ext. P1 is a copy of her mark-list. Although she is a Muslim, regarded as a Backward community in this State, she is disentitled to the benefit of what is commonly referred to as the rule of communal reservation, as she is above the economic or income level prescribed for the same. According to Ext. P2 Prospectus, selection of pre-degree students on considerations of merit was to be adjudged by the total number of marks obtained in the three subjects mentioned earlier, irrespective of

the Universities from which the candidates passed their examinations. Herein lies the basis of the attack mounted by the writ petitioner. The challenge was that so long as the Universities have different standards and applied different yardsticks in assessing the merit and worth of the students, to regulate admissions on the 'basis of the results of the University examinations conducted by them, was bound to be productive of inequality and discrimination. To make good the case, the petitioner has alleged, at least as a bare and bald allegation, that the syllabus for the two Universities --Kerala & Calicut -- is not the same; that the pattern of question papers for the examinations was different, the Kerala University allowing multiple choice in all the questions while the CalicutUniversity allows such choice only in theessay question and not for the rest (videthe copies of the question papers produced, Exts. P3 and P4); and that the KeralaUniversity allows a weight age of 5% ofthe marks for proficiency in sports andgames and to the winner of inter-collegiate events -- (vide Ext. P5). The allegation about difference in syllabus, bereftthough of details, and bare and baldthough it be, has not been denied in thecounter affidavit. On the second allegation as to the difference in standards,certain important considerations appearing in the case, have appealed to us.Ext, P6 is a copy of the recommedationsof the Indian Medical Council addressedto the Registrars of all Universities andthe other educational functionaries ofthis country. The relevant part of therecommendations reads:

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II (b) Selection of students.

In States having more than one University/Board/Examining Body conducting the qualifying examination (or where there are more than one Medical College under the administrative control of one authority) competitive entrance examination should be held so as to achieve a uniform evaluation due to the variation on the standard of qualifying examinations conducted by different agencies.'

Ext. P7 is a copy of the Minutes of the Meeting of the Inter-University Consultative Committee held on 27-9-1976. We see that it was attended by distinguished educationists including the Vice-Chan-cellors of the three Universities of thisState. The relevant portion of the Minutes reads;

'ADDITIONAL ITEMS

I. The Committee considered along with the recommendations of the Indian Medical Council, the question of effecting changes in the requirements for admission to M. B. B. S. Course in the Medical Colleges in the State as well as the proposal for the conduct of a common Entrance Test for medical admissions. Dr. K. N. Pai, Dean, Faculty of Medicine, University of Kerala and Dr. (Mrs.) Omana Mathew, Dean, Faculty of Medicine, University of Calicut attended the meeting at this stage and gave to the Committee the benefit of their views.

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In this context, the committee recommended that a common Entrance Test be held for admissions to Medical Colleges in the State. The details of the proposed test may be worked out by the Government in consultation with the Deans of the Faculties of Medicine of the two Universities and the Principals of Medical Colleges in the State.

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Exts. P8 dated 2-5-1977 is from the Secretary of the Medical Council of India, to the Registrars of all Universities, which states;

'Sir,

I am directed to forward herewith a copy of the revised recommendations of the Council on undergraduate Medical Education, (Undergraduate Medical Curriculum) as adopted by the Medical Council of India at its meeting held on 15th and 16th April, 1977, for your guidance and necessary action.

These recommendations have been framed after taking into consideration of the report of the Deans/Principals' Conference of April, 1976 and are for immediate implementation.

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The revised recommendation again, was to hold an entrance examination. These proceedings of high academic bodies, which can safely be trusted to be aware of the developments in the academic sphere, and to bring to bear a dispassionate outlook on them, go a long way to confirm the writ petitioner's case of the inequity in the matter of admission of students drawn from different Universities with no uniform standards of instruction and examination. The writ petitioner would complete the picture of inequality by drawing attention to the results disclosed by the selections this year. In Para 3 of the reply affidavit of the petitioner (in O. P. No, 3661 of 1977) it is stated that out of 45 candidates selected for the Electronics course only one candidate from the Calicut University could find a place on State wise merit. Out of 97 candidates selected on basis of State wise merit for admission to the M. B. B. S. Course in the Pre-degree quota, 83 are from the Kerala University, 10 from the Calicut, and 4 from other Universities. Among the Travancore-Cochin merit quota for Pre-degree holders, out of 17 candidates selected, 13 were from Kerala University and only 4 from Calicut University. Among the Malabar merit quota holders again, out of eleven candidates selected, eight were from Kerala University, and only three from the Calicut University. Even in the reserved quota of admissions for Muslims the proportion as between the Kerala and Calicut and other Universities was 10:5:1 in a total of sixteen. To crown the picture, we are told that the population ratio of the six districts brought under the Kerala University to the five districts under the Calicut University is 11: 10 according to 1971 census; and that the percentage of passes for the Pre-degree examination for Kerala is sixty as against nearly forty two (41.95) for Calicut. These facts were marshalled and flaunted to show that all along the line, the Kerala University students have been dominating the picture and this was not --at least could not be -- an accident borne out of superior merit of standard or caliber, but an inherent weakness and inequality of the system itself. We were reminded that not far back, as noticed by the learned Judge from the complaint In O. P. No, 4661 of 1974, the wind appeared to be blowing in an opposite or different direction; and the picture presented was one of the Kerala University adopting stricter standards and more rigorous tests and the Calicut University emerging more into the fore. The question is not whether one University is superior to the other or maintains higher standards in the matter of syllabus,

examination and evaluation than the other, but whether the operation of different Universities with varying standards of their own is productive of inequality. We are satisfied that this has been proved to be so.

5. And now to the law. The legal position as crystallised from the decisions to which our attention has been drawn, supports the factual basis noticed earlier. Indeed, it would appear as if it was in the light of the observations made in some of the decisions -- and certainly after some, at least, of such observations -- that the Indian Medical Council made its recommendation stressing the need for uniformity of standards and assessment by the different Universities, and the academic bodies proceeded with their follow-up action. In *D. M. Chanchala v. State of Mysore* (AIR 1971 SC 1762), the students whose admission to the Medical Colleges of the State had to be regulated were drawn from three different Universities, namely, Karnataka, Mysore and the Bangalore Universities. All the three had Pre-University course examinations a pass in which made the student eligible for admission to the degree course. But while the Karnataka University required a pass in B. Sc, Part I, leading to the M. B. B. S., as the minimum qualification for admission to the Medical course, the other two required a pass in what is called the pre-professional examination, which was treated as equivalent to B. Sc. Part I leading to the M. B. B. S. degree of the Karnataka University. There were four Medical Colleges in the State; one at Mysore affiliated to the Mysore University, one at Bangalore affiliated to the Bangalore University, and the other two at Hubli and Bellary, affiliated to the Karnataka University. The four colleges together had 765 seats in the aggregate. There were, besides, privately-managed medical colleges at Manipal, Davangere, Belgaum and Gulbarga, with 120 seats in each of them, admission up to 10 per cent therein being under the control of the Government. The Government had framed Rules for admission to the Colleges. Rule 2 (2) provided that out of the available number of seats, after deducting the number of seats set apart under R. 4, 80% of the seats were open to those who had passed the P. U. C. examination and 20% for graduates. Rule 4 set apart a total of 60 seats for different categories of persons, namely, students from Union Territories, and States where there were no medical colleges, students from relatively less-developed Commonwealth countries, cultural scholars and students under T. C. S. of the Colombo Plan and Special Commonwealth

Assistance Plan, students from Nepal, repatriates from Burma, Ceylon, Mozambique, children of Defence Personnel and the like. Out of the 80 per cent, 15% was to be reserved for Scheduled Castes, 3% for Scheduled Tribes, and 30% to the socially and educationally backward classes. Rule 9 with which we are intimately concerned, provided for distribution of seats among the several colleges. Clause (1) of the said Rule provided that seats from the general pool shall be distributed University-wise, that is, seats in the colleges affiliated to the Karnataka University shall be allotted to persons passing from colleges affiliated to that University, and seats in colleges affiliated to Bangalore and Mysore Universities shall respectively be allotted to persons passing from the colleges affiliated to the two Universities. There was an overriding provision, that not more than 20% of the seats in the colleges affiliated to any University, may, in the discretion of the Selection Committee be allotted to students passing from colleges affiliated to any other University in the State or elsewhere. It was pointed out by the Supreme Court that the Medical Colleges in the State were not -University Colleges but were set up and had been maintained by the State Government from public funds, and as such the Government was entitled to lay down the requirements regarding eligibility for admission. Dealing with Rule 9 (1) of the Rules for admission it was ruled that the principle of University wise distribution of seats could not be equated or compared with the district-wise reservation of seats which was invalidated by the Supreme Court in *Rajendran v. State of Madras* (AIR 1968 SC 1012). Dealing with the arguments presented against University wise distribution of seats, the Court observed:

(in Chanchala's case)

'21'. It will be easily seen that the University-wise distribution of seats in the Government medical colleges has nothing in common with the district-wise or unitwise selection struck down in *Rajendran's case*, 1968-2 SCR 786 : (AIR 1968 SC 1012) and *Periakaruppan's case*, W. Ps. Nos. 285 and 314 of 1970, D/-23-9-1970 : (AIR 1971 NSC 171). In both the cases what was mainly objected to was that the selection would have to be made on the basis either of the place of birth or residence and the candidate was confined to the medical college at or nearest to such a place. Such a basis for selection was (held to have no reasonable nexus

with the object of the rules, namely, to select the most meritorious amongst the candidates to have the ad-vantage of such education. In Peria-karuppan's case, there was a further infirmity, in that, there were several committees for selection resulting in varying standards, thus defeating the very object of screening the candidates with a view to give chance to the best of them. Both these decisions are distinguishable as the basis on which the selection of candidates Js sought to be made under the present rules is quite different in that it is neither districtwise nor unitwise, but is universitywise. Therefore, the infirmities found in the selection rules in those two cases and for which they were struck down cannot be relevant in any scrutiny of the present rules, much less can they be relied upon for an attack on them,

22. The three universities were set up in three different places presumably for the purpose of catering to the educational and academic needs of those areas. Obviously one university for the whole of the State could neither have been adequate nor feasible to satisfy those needs. Since it would not be possible to admit all candidates in the medical colleges run by the Government, some basis for screening the candidates had to be set up. There can be no manner of doubt, and it is now fairly well settled, that the Government, as also other private agencies, who found such centers for medical training, have the right to frame rules for admission so long as those rules are not inconsistent with the University statutes and regulations and do not suffer from infirmities, constitutional or otherwise. Since the universities are set up for satisfying the educational needs of different areas where they are set up and medical colleges are established in these areas, it can safely be presumed that they also were so set up to satisfy the needs for medical training of those attached to those universities. In our view, there is nothing undesirable in ensuring that those attached to universities have their ambitions to have training in specialised subjects, like medicine, satisfied through colleges affiliated to their own universities. Such a basis for selection has not the disadvantage of districtwise or unitwise selection as any student from any part of the State can pass the qualifying examination in any of the three universities irrespective of the place of his birth or residence. Further, the rules confer a discretion on the selection committee to admit outsiders up to 20 per cent of the total available seats in any one of these colleges, i.e. those who have

passed the equivalent examination held by any other university not only in the State but also elsewhere in India. It is, therefore, impossible to say that the basis of selection adopted in those rules would defeat the object of the rules as was said in Rajendran's case, 1968-2 SCR 786 : (AIR 1968 SC 1012) or make possible less meritorious students obtaining admission at the cost of the better candidates. The fact that a candidate having lesser marks might obtain admission at the cost of another having higher marks from another university does not necessarily mean that a less meritorious candidate gets advantage over a more meritorious one. As is well known, different universities have different standards in the examinations held by them. A preference to one attached to one university in its own institutions for post-graduate or technical training is not uncommon. Rules giving such a preference are to be found in various universities. Such a system for that reason alone is not to be condemned as discriminatory, particularly when admission to such a university by passing a qualifying examination held by it is not precluded by any restrictive qualifications, such as birth or residence, or any other similar restrictions. In our view, it is not possible to equate the present basis for selection with those which were held invalid in the aforesaid two decisions. Further, the Government which bears the financial burden of running the Government colleges is entitled to lay down criteria for admission in its own colleges and to decide the sources from which admission would be made, provided of course, such classification is not arbitrary and has a rational basis and a reasonable connection with the object of the rules. So long as there is no discrimination within each of such sources, the validity of the rules laying down such sources cannot be successfully challenged, (see *Ohitra Ghosh v. Union of India*, 1970-1 SCR 413 at p. 418 : (AIR 1970 SC 35). In our view, the rules lay down a valid classification. Candidates passing through the qualifying examination held by a university form a class by themselves as distinguished from those passing through such examination from the other two universities. Such a classification has a reasonable nexus with the object of the rules, namely, to cater to the needs of candidates who would naturally look to their own university to advance their training in technical studies, such as medical studies. In our opinion, the rules cannot justly be attacked on the ground of hostile discrimination or as being otherwise in breach of Article 14.'

(underlining supplied)

The passage that we have underlined assumes as a well-known fact that, different universities have different standards in the matter of their examinations and assessment. The principle of university-wise admission was recognised also in *S.G. Pandit v. State of Maharashtra* (AIR 1972 Bom 242). Rule 2 of the Rules for admission provided that except the seats for the nominees of the Government of India and the seats in the B. J. Medical College, Poona, and the Miraj Medical College, Miraj, all the seats at each medical college are earmarked for the students of the Universities to which the particular medical college is affiliated. For admission to the B. J. Medical College, Poona, and the Miraj Medical College, Miraj, the seats at the two colleges were to be pooled together and distributed between the two colleges in the proportion of the number of students registered for the pre-professional examination. The two Universities in the State were the Poona University, and the Shivaji University, Kolhapur. It was alleged that the Universitywise distribution of seats was arbitrary and irrational. The rule regarding pooling of seats in the Medical Colleges at Poona and Miraj as such was not attacked. (Mark this). But the mode of allocation of seats between the two Universities on the basis of students registered at these Universities was challenged. This, it was complained, had no relation to the object of securing the best students into the Medical Colleges. The submission was rejected, The Court observed :

'The Government of Maharashtra wants to provide fair opportunities to students of the Universities by equitably allotting the seats available at Poona and Miraj. The nature and object of classifying the students into two classes as students of Poona University and Shivaji University cannot be, therefore, assailed as contravening Article 14 or 15 of the Constitution. The classification is based on intelligible differentia and is reasonable having regard to the existence of these two Universities and their history. The basis adopted by the Government has a relevant connection with the object sought to be achieved by the Government, viz., of allocating certain seats in the Poona B. J. Medical College to the students of Shivaji University because the Government is not in a position to provide more seats in the Miraj Medical College for the time being.' (para 1'2) In the result, the

challenge to the rule was repelled. Counsel for the appellant cited the decision in *Subhashini v. State* (AIR 1966 Mys 40) which upheld the Universitywise distribution of seats; and in *H.J. Siddappa v. State of Mysore* (AIR 1967 Mys 67) which followed the above ruling. We do not think it necessary to examine these decisions in detail.

6. The learned Advocate-General who appeared for the State in these appeals contended that the principle of distribution of seats was unobjectionable and cannot be characterised as inequitable, or violative of the equality clause in the Constitution. He contended that the object was to draw the best talent into the Medical Colleges of the State, irrespective of the University from which the talent was drawn. Stated in that form, the principle is perhaps unobjectionable; but where each University operates under conditions which cannot be said to be equal, the principle of selection is itself bound to create inequalities and work out injustice. This is what has been pointed out by the Indian Medical Council and the Academic bodies of the Universities in Exts. P-6, P-7 and P-8. The learned Advocate-General endeavoured to show by reference to Pradeep Tandon's case (AIR 1975 SC 563) and Chanehala's case (AIR 1971 SC 1762) and S.G. Pandit's case (AIR 1972 Bom 242) that there was nothing wrong in pooling students from different Universities and assessing them on considerations of merit. He emphasised that 20% of the admissions were regulated on this principle in Pradeep Tandon's case and also in Chan-chala's case, and there was pooling together of the seats in the two medical colleges at Poona and Miraj in S. G. Pandit's case. No objection was taken in those cases to the inequities perpetrated or inequalities brought about by different Universities working under different conditions and standards. We are not therefore prepared to read these cases as authorities for the proposition that pooling together of students drawn from different Universities, with different standards of grading and assessment of their performance, is unobjectionable in principle. The decision in *Rajendran's case* (AIR 1968 SC 1012) has no application. In that case the districtwise distribution of seats was held to be offensive and violative of Article 14, as it was found to have no nexus to the principle of selecting the best talent for admission to the colleges, and was even calculated to defeat that purpose. In *State of A. P. v. U. S. V. Balaram*, (AIR 1972 SC 1375) it was ruled that it is open to the State to prescribe the sources from which the

candidates are declared eligible for applying for admission to the Medical Colleges; but once a common Entrance Test has been prescribed as basis for selection, the further provision that 40% of the seats will be allotted to candidates with Higher Secondary Course was discriminatory. It was pointed out that after a common Entrance Test there was no place for any further classification, and assuming there was, the scheme of classification actually adopted had no relation to the object of securing the best talent for admission.

7. Periakaruppan's case (AIR 1971 SC 2303) was concerned with the attempts made by the Tamil Nadu State to evolve a scheme of selection after the district-wise distribution of seats was struck down in Rajendran's case (AIR 1968 SC 1012). There were, at the relevant time, eight Medical Colleges in the State, three in the city of Madras, one in Madurai, one in Chingleput, one in Coimbatore, one in Thanjavur, and one in Tirunelveli, The total seats available in the City Colleges was 500; the seats for the colleges in Madurai, Chingleput, Coimbatore, Thanjavur and Tirunelveli were 200, 50, 100, 200 and 75 respectively. After Rajendran's case, selection was made on Statewise basis in the years 1968-69 and 1969-70, but in 1970-71, the selections were directed on a unit-wise basis. For this purpose the three City Colleges formed one unit, and the remaining five colleges formed a unit each. There were thus six unite in all, with separate Selection Committees for each. The intending applicants could apply to any one of the Committees, but were advised to apply to the one nearest to their place of residence; and if they applied to more than one Committee the Government would forward their applications to one of them. We skip the numerous other details of the selection, which was invalidated, only to notice the complaint made against the constitution of several Selection Committees to assess the candidates. Observed the Court

'It was said that it was not possible for one selection committee to interview all the applicants. Therefore several committees had to be constituted. In the past when applicants were interviewed by several committees there were complaints that the standard adopted by one committee differed from that adopted by others and therefore the applicants' ability was not tested by a uniform standard. Further it was said that when selections were made by several committees there was delay in preparing a consolidated list. We are unable to accept these grounds as being

real grounds for classification. The grievance when selections were made by several committees in a Statewise selection the standard adopted by various committees differed, would continue even when selections are made by several committees in a unit-wise selection. Whether the selection is made by selection committees on State-wise basis or unitwise basis, the standard adopted by various committees is bound to vary. Hence in principle it makes no 'difference. (Para 11)

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The complaint of the petitioners is that unitwise distribution of seats is but a different manifestation of the districtwise distribution sought in 1967-68 has some force though on the material on record we will not be justified in saying that the unitwise distribution was done for collateral purposes. Suffice it to say that the unitwise distribution of seats is violative of Article 14 and 15 of the Constitution. The fact that an applicant is free to apply to any one unit does not take the scheme outside the mischief of Article 14 and 15. It may be remembered that the students were advised as far as possible to apply to the unit nearest to their place of residence.' (Para 12)

We draw attention to the above paragraphs only to show how the assessment by different selection committees with no uniform standard of assessment was held to contravene Article 14.

8. The history of the case-law that we have sketched is enough to show the battle of wits waged between those concerned in devising a scheme of selection, and the candidates for admission, out to expose in each case, the inequity of the scheme. It is interesting to note the number of occasions when the battle has been fought in the courts, especially in the southern States of Tamil Nadu, Karna-taka and Kerala. We think it appropriate to echo the words of the Supreme Court in Chitralekha's case, (AIR 1964 SC 1823), quoted again in para. 14 of Periakaruppan's case (AIR 1971 SC 2303) s

'In the field of education there are divergent views as regards the mode of testing the capacity and calibre of students in the matter of admissions to colleges. Orthodox educationists stand by the marks obtained by a student in the annual

examination. The modern trend of opinion insists upon additional tests, such as interview, performance in extracurricular activities, personality test, psychiatric tests etc. Obviously, we are not in a position to judge which method is preferable or which test is the correct one. If there can be manipulation or dishonesty in allotting marks at interviews, there can equally be manipulation in the matter of awarding marks in the written examination. In the ultimate analysis, whatever method is adopted its success depends on the moral standards of the members constituting the selection committee and their sense of objectivity and devotion to duty. This criticism is more a reflection on the examiners than on the system itself. The scheme of selection, however perfect it may be on paper may be abused in practice. That it is capable of abuse is not a ground for quashing it. So long as the order lays down relevant objective criteria and entrusts the business of selection to qualified persons, this Court cannot obviously have any say in the matter.'

9. The appellant objected to the learned Advocate-General seeking to justify the scheme of distribution of seats as just and fair, as the Government itself had not filed any appeal against this batch of writ petitions against the declaration made by the learned Judge that the scheme of selection and distribution of seats was violative of Article 14. But the learned Judge had dismissed this batch of writ petitions. An appeal by the Government against the order of dismissal was out of the question. In the circumstances, we think it is permissible, on grounds analogous to the principle embodied in Order XLI, Rule 22 of the Civil P. C., to support the judgment of the learned Judge even on grounds which had been decided against the Government. In that sense, the learned Advocate-General was right in seeking to sustain the scheme of selection as valid and proper. But, on the merits, we are against him on this point, and are in agreement with the learned Judges.

10. We turn to the question of the relief to be granted to the petitioners. We have extracted from paras. 22 and 23 of the learned Judge's judgment and detailed the circumstances under which the learned Judge stated that beyond judicially recognising the injustice involved in the selection, no practical relief can be granted in favour of the writ petitioner. All things considered, we think the learned Judge was right in his compulsion. Interference in our jurisdiction under Article 226

should be in the interests of justice. The position disclosed in the lease is that selections to the Medical Colleges have been made and the select-ed students have joined the classes. The academic term has advanced. The formulation of a new basis of selection and the making of a fresh selection in the light of the same are bound to take time; and the newly selected candidates cannot be 'expected to reap any profit or derive any advantage from their late selection and admission to the course. The net result of quashing the selection would be that neither the selected candidates nor those to be substituted for them will benefit by the current year's course of instruction. To avoid such a national waste of budding talent, we think it was a right exercise of discretion by the learned Judge in declining interference by way of quashing the selection. We do not think it necessary to interfere with this part of the learned Judge's judgment.

11. Precedent is not wanting for this Course. In Rajendran's case (AIR 1968 SC 10121, having held against the validity of the district-wise scheme of selection, the Court observed:

'It is urged that the selected candidates whose number is in the neighbourhood of 1100 have not been made parties in these cases and therefore the cases should be rejected on that ground alone. Learned counsel for the petitioners/appellant, however, accepted that so far as the present selections are concerned, they would not press for quashing them, for in any case it would be too late for these petitioners/appellant to get admission in medical colleges this year. They therefore pray that the points raised may be decided for the future and the selection made this year may not be disturbed. On that basis it is urged on behalf of the petitioners and the appellant that it would not be necessary to make the candidates selected for this year parties. In view of this statement at the bar we propose to decide the points raised in these cases but shall not disturb the selections made this year'. (para 6) We are aware of the recent decisions in *A. Pandurangam Rao v. State of Andhra Pradesh* (AIR 1975 SC 1922) where the selection of District Judges was quashed after the Judges had functioned for quite some time; and in *C. Channabasavaiah v. State of Mysore* (AIR 1965 SC 1293) where the entire selection was quashed. We shall be noticing, while dealing with the next objection raised, the course pursued, and the observations made by the Supreme Court in

Periakaruppan's case (AIR 1971 SC 2303), which are pertinent to this aspect also.

12. The objection was repeated before us by the learned Advocate-General that the writ petition must fail for non-joinder of the selected candidates. The learned Judge was not inclined to regard the objection as fatal. This writ petition -- and many others -- were filed before the selection to the Medical Colleges was made and the selected candidates had appeared on the scene. Interim orders had been obtained in most, if not all of them, that the selections would be subject to the result of the writ petition. In one of the writ petitions, for instance, -- O. P. No. 3867 of 1977 (Ker) which is the subject-matter of W. A. No. 312 of 1977 filed by the State -- the interim order passed in C. M. P. No. 16325 of 1977 (Ker) is to the effect that the selection and admission would be subject to the result of the writ petition and the selected candidates should be expressly informed that this would be so. But this would not be a sufficient substitute for the obligation to make the affected candidates parties to the proceeding and to afford them specific and pointed notice of the same. The invalidation of the selection is a matter which vitally affects their interests, and the same cannot be done in writ proceedings to which they are not parties. In one of the writ petitions no orders were passed on the application filed for impleading the selected candidates (See C. M. P. No. 17721 of 1977 in O. P. No. 3791 of 1977) (Ker). In Periakaruppan's case (AIR 1971 SC 2303), the Supreme Court observed:

'32. For the reasons mentioned above we are of the opinion that the selections impugned in these petitions cannot be held to have been made validly inasmuch as the seats were distributed on unitwise basis and further that the interviews were not held in accordance with the rules. But despite coming to that conclusion we are unable to set aside the selections already made. The selected candidates have not been made parties to these petitions. They have already joined the course and are undergoing training. Their selection cannot be set aside without giving them an opportunity to put forward their case. It is true that the petitioners had filed applications to permit them to have recourse to Order 1, Rule 8, C. P. C. for the representation of the persons interested in opposing these applications but no order has been passed on those applications and it is now too late to have recourse to that procedure even if that procedure is permissible under law. We are

told by the learned Advocate General of Tamil Nadu that 24 seats still remain to be filled up. He has assured us on behalf of the State that these seats will be filled up in accordance with the orders of this Court. There are about 80 persons, who we are told are in the waiting list. Some of the unsuccessful applicants had moved the High Court of Madras for relief similar to that sought by the petitioners herein. But it appears their writ petitions have been dismissed. Some out of them have intervened in these petitions. Other non-selected candidates have evinced no interest in challenging the selections made. Under the circumstances, it is reasonable to assume that they have abandoned their claim and it is too late for them to press their claim. Under these circumstances, after discussion with the Counsel for the parties we have come to the conclusion that these petitions should be allowed subject to the following conditions:

33. The State of Tamil Nadu shall immediately constitute a separate expert committee consisting of eminent medical practitioners (excluding all those who were members of the previous committees) for selection to the 24 unfilled seats. The selection shall be made on Statewise basis. The Committee shall interview only the candidates who are shown in the waiting list, the persons who unsuccessfully moved the High Court of Madras and the two petitioners before this Court. They shall allot separate marks under the five heads mentioned in the rule. The committee shall take into consideration only matters laid down in the rule, exclude from consideration all irrelevant matters and thereafter prepare a gradation list to fill up the 24 seats mentioned earlier. It is ordered accordingly. We think this is a fit case where the petitioners should get their costs from the State of Tamil Nadu.

Order accordingly.'

13. Counsel for the writ petitioner Invited our attention to General Manager South Central Railway. Secunderabad v. A. V. R. Siddhanti (AIR 1974 SC 1755 Para 20) where, under different circumstances, the Supreme Court observed :

'As regards the second objection, it is to be noted that the decisions of the Railway Board impugned in the writ petition contain administrative rules of general application, regulating absorption in permanent departments, fixation of seniority,

pay etc, of the employees of the erstwhile Grain-Shop departments, The respondents-petitioners are impeaching the validity of those policy decisions on the ground of their being violative of Article 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of Government servant is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. In the present case, the relief is claimed only against the Railway which has been impleaded through its representative. No list or order fixing seniority of the petitioners vis-a-vis particular individuals, pursuant to the impugned decisions, is being challenged. The employees who were likely to be affected as a result of the readjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decision of October 16, 1952, were, at the most, proper parties and not necessary parties and their non-joinder could not be fatal to the writ petition', (para. 20) The decision has no application. Differing from the learned Judge, we hold that the writ petition (and the others in this batch) in so far as it seeks to impugn the selection already made should fail for non-joinder of the selected candidates.

14. The learned Advocate-General raised the contention that unless the discrimination is found to be intentional and hostile it cannot be struck down under Article 14 of the Constitution. He cited to us the decisions in *Andhra Industrial Works v. Chief Controller, Imports* (AIR 1974 SC 1539, para 19) and *Twyford Tea Co. v. Kerala State* (AIR 1970 SC 1133, para 19) and many other cases. We do not think it necessary to examine these cases in detail. It was pointed out by the Supreme Court in *The State of West Bengal v. Anwar Ali Sar-kar* (AIR 1952 SC 75 at p. 89) that if the impugned measure is discriminatory it cannot but be hostile,

15. It remains for us to consider the question whether the impugned Rules for selection contained in the Prospectus constitute a 'State Law' within the meaning of Article 366(26-A) (newly added), of the Constitution. The Division Bench of this Court in *State of Kerala v. Jacob Mathew* (1964 Ker LT 298) : (AIR 1964 Ker 316) held that a similar 'Rule' is a law for purposes of Article 14, The purpose of examining the question is only to see that, if it is a State-law, it is struck down, as

required by the Article 228-A(3) of the Constitution, only by a Bench of not less than five Judges. It was to obviate any such objection that the appeal was heard by this Full Bench. The question is therefore academic and need not be dealt with. We express no opinion on the question.

16. As a result of our discussion, we are of the opinion, that the scheme of selection for admission to the Medical Colleges on an assessment of merit of students drawn from different Universities with no uniformity of standards is objectionable and violative of Article 14 of the Constitution. We grant a declaration to the writ petitioner to that effect. We deny effective relief to the writ petitioner on account of non-joinder of the selected candidates, and the futility and ineffectiveness of upsetting the selections and directing fresh admissions at this stage. We consider that the best scheme of selection in the circumstances would be the method of selection of candidates by holding a uniform Entrance Examination to secure uniformity of standards, as recommended by the Indian Medical Council -- vide Exts. P-5 and P-8 --and as endorsed by the University Authorities (vide Ex. P-7). We direct the State Government to forthwith devise a scheme of selection by holding such an Entrance Examination and publish the same within three months from today, so that the candidates, wishing to apply for selection to the Medical Colleges of this State for the next academic year, have due notice of the scheme of selection. The object being to secure uniformity of standards for assessment and evaluation of students drawn from different Universities, our direction should not be understood as unalterably and inelastically fix-ing the limits for Governmental action. Methods for securing uniformity of syllabus, pattern of examination, and mode of evaluation in the different Universities, would well be within the province of the Government to undertake. We allow this writ appeal to the limited extent indicated above. There will be no order as to costs. W. A. No. 334 of 1977

17. The appellant herein is a candidate from the Travancore-Cochin area having obtained a total of 400 out of 450 marks. The last candidate admitted for the Malabar merit quota obtained only 396 marks and the complaint made is that the system of grading and selection of candidates drawn from two different Universities with different standards is productive of inequality. We have examined

the merits of this contention in W. A. No. 314 of 1977. For reasons stated in that judgment, we are unable to give any effective relief to this writ petitioner also, beyond the limited relief granted in the said appeal. This appeal is also allowed to the same limited extent as W. A. No. 314 of 1977 with no order as to costs. W. A. No. 331 of 1977

18. This writ appeal is also allowed to the same limited extent as the other two writ appeals. There will be no order as to costs.

W. A. Nos. 315, 318, 319, 329, 342 and 343 of 1977

19. These writ appeals were left to abide the fate of W. A. No. 314 of 1977, We allow them to the same limited extent to which we allowed W. A. No. 314 of 1977 and grant the same limited relief to the appellants in those writ appeals.

W. A. Nos. 333 of 1977, 336 of 1977 and 348 of 1977

20. These are also appeals whose fate is determined by the decision in W. A. No. 314 of 1977. In the light of our decision in the said writ appeal, we allow these writ appeals also to the same limited extent and in the same manner as Writ Appeal No. 314 of 1977. There will be no order as to costs in these writ appeals.

W. A. Nos. 309 and 312 of 1977

21. We shall now take up the two appeals by the State dealing with reservation of seats for the geographical area of the 'Malabar District' as defined by the States' Reorganisation Act. W. A. No. 309 of 1977 is against O. P. No. 4203 of 1977 and W. A. No. 312 of 1977 is against O. P. No. 3867 of 1977. We may briefly notice the scheme of reservation that was assailed. 20% of the general seats were to be filled up on the basis of merit. This was allocated between the Malabar and the Travancore-Cochin areas of this State in the ratio of 5:8. This was by G. O. (P) 208 of 1966/Edn. Educational (Special) Department dated 2-5-1966. By the said G. O. the Government accepted, broadly and in the main, the recommendations of the Kumara Pillai Commission appointed by the State for making recommendations on the question of reservation for admission to the educational institutions. Recommendation No. 4 and the Government decision thereon are as

follows

'XX XX XX XX

(iv) Recommendation No, 4

In the Medical, Engineering (including Polytechnics), Agricultural and Veterinary Colleges 20% of the General seats may be allocated between the Malabar area and the T. C. Area in the ratio of 5: 8 on the basis of merit.

(vide para 33 of the report)

The statistics of area, population number of educational institutions and number of students in the Travancore-Cochin area and Malabar area furnished in the report show that the Malabar area is educationally backward. There is nothing unconstitutional in making a classification on geographical basis, (i.e. on the basis of 'residence'). Hence the Commission's recommendation regarding reservation on area-basis is acceptable. The educational backwardness in Malabar is due, to a considerable extent, to the presence, in that region, of a large number of Ezhavas, Muslims and other persons belonging to the socially and educationally backward classes for whose advancement reservation is being made under Article 15(4). Government also accept the recommendation to reduce the existing quantum of seats for regional allocation from 50% in the case of Professional Colleges and 40% in the case of Polytechnics uniformly to 20% as reasonable and appropriate. The population of the respective areas is more or less in the ratio of 5: 8. The High Court of Kerala has observed in 'Joseph Thomas' Case' (AIR 1958 Ker 33) that 'the distribution of seats between the two areas on the basis of population is sustainable.' In the circumstances Government accept the recommendation, 'Malabar area' means the Malabar District as denned in Section 5(2) of the States Reorganisation Act.'

22. As recommendation No. 5, the Kumara Pillai Commission recommended that only those residing in the Malabar area for three years prior to the date of application or candidates who have been educated for the qualifying examinations in educational institutions in the Malabar area will be eligible to apply for admission

to the seats allotted for that area. Adverting to this recommendation, the Government ordered:

'Only candidates, whose parents (if both parents are dead, the guardian) have resided in the Malabar area or T.C. area, as the case may be for three years within a continuous period of five years immediately preceding 1-11-1956 or who have owned or possessed landed property or house in the respective areas prior to 1-11-1956 or candidates who have been educated for the qualifying examination in educational institutions in the Malabar area or T. C. area, as the case may be, will be eligible to apply for admission to the seats allotted for the respective area. This will apply to the Medical, Engineering (including Polytechnics), Agricultural and Veterinary Colleges. All applicants shall produce the necessary certificate of 'residence' or 'ownership or possession of landed property or house' from a revenue officer not below the rank of a Taluk Tahsildar and the certificate of 'region of education' from the head of the educational institution concerned, Malabar area means the Malabar district as defined in Section 5(2) of the State Reorganisation Act.'

It is this scheme of reservation that was subjected to attack in the two writ petitions which were allowed by the learned Judge, who held that the reservation was unconstitutional.

23. The reservation for the geographical area of the Malabar District has a history behind it. It is enough to notice the decision in *Joseph Thomas v. State of Kerala* (1957 Ker LT 971): (AIR 1958 Ker 33), which has succinctly explained the principle and the basis of the reservation. A Division Bench of this Court while repelling the attack made against the Government order providing for such reservation, stated:

'It is wellknown that Malabar is educationally more backward than Travancore-Cochin and whatever be the reason for the backwardness -- the indifference of the Government of Madras or the smaller scale of Christian Missionary enterprise -- there can be no doubt that a great leeway has to be made up before parity is established and identity of treatment will not work out in injustice. On the basis of population also the distribution is sustainable the population of Malabar being 5169373 and that of Travancore-Cochin, 8396572.' (para. 10) The above decision

thus makes it clear that the reservation was in favour of a well-defined geographical area of the State, and it was based on either of two historical reasons, first, the apathy and the continued neglect of the Malabar district by the British Government under whose administration it remained so long as it was part of the Madras State, viz. till 1-11-1956; or second, the lesser degree of Christian Missionary enterprise in the cause of education in the Malabar area. We regret to observe that this clear formulation of the principle and basis of the reservation was completely lost sight of by the petitioners in the two writ petitions which have given rise to these appeals. In O. P. No. 3867 of 1977 (Ker), the reservation is attacked as one on the ground of place of birth, and as opposed to Article 15(4) of the Constitution -- vide para 8. Paragraph 9 again, attacks the reservation as unsustainable on the ground of social and educational backwardness and as offending Article 15 of the Constitution. Paragraph 10 sings the same strain of absence of social and educational backwardness in what has been described as 'citizens residing in the Malabar area'; and proceeds to add the general allegation :

'Prior to the re-organisation of States in 1956 if there was any social or educational backwardness in the Malabar area, it is submitted that that has been tapered off and now there exist no circumstances to classify the citizens in that area socially or educationally backward when compared with the citizen of Travancore-Cochin area of the State. The reservation, therefore, on the basis of areas is unconstitutional, void and violative of Article 15 of the Constitution.' (para. 10)

In para 13 after referring to the reservation in favour of the Malabar area and the mark-lists supplied to some of the candidates, there is again a bare allegation that if these two factors were taken into account in making the selection, the petitioners' fundamental rights under Articles 14 and 15 of the Constitution would be infringed. This is how Article 14 has been brought into the pictures, We think the allegations travel very far from the real basis of the principle of reservation for the Malabar area of this State as expounded by the Division Bench ruling referred to supra The allegations in the writ petition which have given rise to the other appeal, are no better. On the fourth and final day of the arguments before us, an application for amendment -- C. M. P. No. 2157 of 1978 was moved in W. A. No. 312 of 1977 alleging additional facts and grounds attacking the reservation. We

rejected the petition, but did not preclude the writ petitioners/respondents from urging any of their contentions. It was argued for the writ-petitioner that the allegation in paragraph 10 of the petition which we have extracted, about the need for reservation for the Malabar area having tapered off, has not been specifically denied in the counter-affidavit. We have made our comment on the allegation. The Government's counter-affidavit has referred to the prior decision of this Court, to the Kumara Pillai Commission Report, and to the Government Order accepting the same; from which, it is clear that the petitioner's allegations have not been accepted.

24. We think it necessary also to refer to the decision in *Joshi v. M. B. State* (AIR 1955 SC 334), where it was emphasised by the Supreme Court that citizenship and domicile represented two different conceptions. The Court there sustained the exemption of Madhya Bharat students from payment of capitation fee for admission to the Medical Colleges as a reasonable classification based on considerations of residence or - domicile and not on place of birth, and therefore not violative of Article 15(1) of the Constitution. The Court stated :

'But that apart, what has to be noted is that whether the expression used in 'domicile of origin' or 'domicile of birth', the concept involved in it is something different from what the words 'place of birth' signify. And if 'domicile of birth' and 'place of birth' cannot be taken as synonymous, then the prohibition enacted in Article 15(1) against discrimination based on place of birth cannot apply to a discrimination based on domicile.' (para. 6)

25. In *State of Kerala v. Jacob Mathew* (1964 Ker LT 298): (AIR 1964 Ker 316). the scheme of reservations for admission to the Medical Colleges in this State again came up for judicial review. A learned Judge, in the first instance, had quashed the scheme of reservations vide *Jacob Mathew v. State of Kerala* (AIR 1964 Ker 39). On appeal, a Division Bench sustained the reservation in favour of Muslims, Ezhavas and Latin Catholics on the ground that they constituted socially and educationally backward classes of citizens. In the course of the judgment, the Division Bench stated :

'20. We roust, however, point out that the paucity of up-to-date data has been a source of considerable worry. It is impossible to say that our conclusion has not been influenced, to some extent at any rate, by our own experience of life and work in this State.

21. An enduring conclusion, however, should not be based on data that is not absolutely up-to-date or on judicial experience which such data may disprove or modify. We think it is essential that the State should immediately embark upon a fact finding enquiry into matters that are relevant and frame appropriate orders in the light of that enquiry. We direct the State to do so.

22. It may not be possible to have the enquiry completed before the beginning of the academic year 1964-65. But there is no reason why it should not be completed before the beginning of the academic year 1965-66.'

In accordance with the suggestion or direction thus given in the judgment, the State appointed a Commission presided over by Shri C. Kumara Pillai, a Retired Judge of this Court to recommend which sections of the people required special treatment under Article 15(4) having regard to their present social and educational conditions. The Commission was to enquire into the social and educational conditions of the people and report on what sections of people in the State of Kerala (Other than Scheduled Castes and Scheduled Tribes) should be treated as socially and educationally backward and therefore deserving of special treatment by way of reservation of seats in educational institutions. We have set out earlier, recommendations 4 and 5 of the Commission and the Government orders thereon. These deal with the reservations in favour of the geographical area of the Malabar District, The Commission found that the Malabar area was educationally backward andrecommended that the principle of allocation of seats between Malabar and Travancore-Cochin area on the basis of population be continued for some more years (page 74). In its final form, the recommendation made was that the allocation be allowed for a period of 10 years (see page 76). The G. O. (P) 208/66 dt. 2-5-1966 noticed in the opening paragraph of the judgment in these two appeals was passed in pursuance of the recommendations of the Commission. The complaint made by the petitioner is that the period of 10 years for which the

reservation was made in favour of the Malabar area has expired on 2-5-1976; and thereafter, without any data or materials, or consideration and assessment, the Government have merely, by two executive orders, directed that the reservation in favour of the Malabar area be continued. The learned Judge observed :

'8. The object of reservation under Article 15(4) or a classification giving preferential treatment to a particular class is to protect the interest of the specific section in whose favour the special provision is made. By its very nature it could not be perennial. The provisions enabling the weaker section to obtain preferential treatment are intended to bring them to a par with other classes. Therefore such provisions have necessarily to be transitory. Consequently there must be a take off stage, when, by reason of the protection given, the community, class or section reaches the normal level. Essentially therefore a decision readied as to the educational backwardness of a class of people is bound to be reviewed from time to time with a view to assess the position of such class or section after they had obtained the benefit of protection of the special provision for a reasonable period. In the absence of such review it is possible that continuance of such special provision to benefit them would be conferring a privilege or a benefit to the detriment of the rest. This is sufficient to underline the absolute need for a periodical review without which there will be no justification to maintain status quo in regard to the provisions of reservation and other beneficial treatment. I am particularly referring to reservation only in this context because that alone is relevant for the purpose of this case though promotion of educationally weaker sections conceives of many benefits other than reservation of seats.

9. Educational backwardness of the people of the Malabar area -- I am using this term to denote those of the Malabar area whom the rule of allocation or reservation benefits -- was assessed by the Kumara Pillai Commission in 1965 based on statistics made available to the Commission then. Recommendation of the Commission was that the rule of allocation based upon its recommendation should be applied for a period of 10 years. Evidently it was conceived by the Commission that in the normal course the Malabar area will reach the take-off stage in a period of 10 years from then. Government also 'has accepted this view by specifying the benefit of allocation of 20 per cent of seats as for a period of 10

years. Without anything more one may assume that on the expiry of a period of 10 years if nothing further was shown the special provision for reservation must come to an end. The Government could well anticipate that the period of 10 years envisaged in its order accepting the report of the Kumara Pillai Commission with modifications would expire before the commencement of the academic year 1976-77. Prudence should have dictated the need for devising some machinery for assessing the situation again unless it be that the Government was convinced that as conceived by the Kumara Pillai Commission the period of 10 years was sufficient to bring the Malabar area in line with Travancore-Cochin area. If that view was not taken by the Government the one and only course available to the Government was to take proper steps to study the problem again possibly by the appointment of a fresh commission unless it be that some other equally efficacious process was known to it. Having heard counsel for the State I could say without fear of contradiction that absolutely nothing was done excepting to extend the period for one more year for the academic year 1976-77 by an executive order of the Government and again a further year by another similar executive order of the Government passed in May 1977. It is strange that Government should assume that the matter is one where Government could pass an order extending the period of special treatment. To so extend is not an exercise depending on the volition of the Government. Existence of circumstances justifying such action alone could warrant such action. Such circumstances are not indicated by any material in the files. The background of the order for the current year as reflected in the files were made available to me for perusal, But I find therein nothing but a mechanical decision to extend the special provision in regard to allocation of seats between Malabar and Travancore-Cochin as if it is a matter of course. If by reason of a classification the special treatment has been extended to Malabar area and there is no material to justify such special treatment as indicated here this Court is constrained to state that such special treatment would be discriminatory and illegal. If candidates who, on the basis of their merit as reflected by the marks are entitled to admission do not get admission only because of the application of a rule which is not supportable on the basis of reasonable classification it is the duty of this Court to declare any such rule as invalid. It is not contended that it is by any statutory rule that the provision for allocation of seats between Malabar and

Travancore-Cochin areas has been extended for the current year. Evidently it is not. It is merely an executive order. Therefore, there is nothing barring this court from striking down that order if it is discriminatory.'

The learned Judge allowed the two Original Petitions which have given rise to these appeals and directed that the petitioners therein are entitled to admission to the Medical Colleges and shall be admitted forthwith. The writ-petitioner/respondent in W. A. No. 312 of 1977 has secured 401 marks in subjects. The writ-petitioner-Respondent in the other Writ Appeal has secured 401 marks,

26. We notice that the discussion by the learned Judge in the Judgment has also proceeded on the basis of Article 15 which is not the real basis or principle underlying the reservation for the geographical area of the Malabar district. That a geographical classification based on historical reasons is permissible under Article 14, has been well-recognised by judicial decisions. A geographical or territorial reservation even unrelated to historical reasons has also been sustained. The learned Advocate-General cited to us the decisions in *Kumari Chitra Ghosh v. Union of India* (AIR 1970 SC 35 -- paras. 6 to 8), *Khandige Sham Bhat v. Agricultural Income-tax Officer, Kasaragod* (AIR 1963 SC 591'), *Gopal Narain v. State of Uttar Pradesh* (AIR 1964 SC 370) and *Kishan Singh v. State of Rajasthan* (AIR 1955 SC 795, 797) as cases where reservations on a territorial basis, were, for various reasons, and for different purposes, upheld as not violative of Article 14. He also cited the decision in *O. M. Chan-chala v. State of Mysore* (AIR 1971 SC 1762 -- para 43) where a reservation in favour of a politically backward class was upheld under Article 14 although it could not fall within the purview of Article 15(4). The principle of the decision was commended to us to show that Article 15(4) is not the sole repository of effecting reservations for purposes of admission to educational institutions; and that, a reasonable classification having relation to the object of maintaining the excellence of educational standards, and attracting variegated and best talents in the educational institutions, has been upheld as not violating Article 14. The principle of these decisions supports the contentions of the learned Advocate-General. We are of the opinion that, on principle, the reservation of seats in favour of the geographical area of the Malabar district, especially for the reasons explained by the Division Bench of this Court in *State of*

Kerala v. Jacob Mathew (1964 Ker LT 298): (AIR 1964 Ker 316) is valid and must be sustained.

27. We cannot accept the contention of the respondents/writ petitioners or the finding of the learned Judge, that the recommendations of the Kumara Pilial Commission and the acceptance of the said report by the Government were to last only for a period of 10 years, and that after the lapse of the said period, there was no continuing justification for extending the benefit of the reservation without independent reflection and assessment. The learned Advocate-General made available to us the relevant file to show that the question of appointing a fresh Commission to go into the question of reservations was considered and decided upon by the Cabinet of Ministers and the maintenance of status quo was ordered in view of the unavoidable delay in the appointment of the Commission and the submission of its report. In the light of the material disclosed, we are not prepared to say that there was no advertence of the mind of the Government at all to the question. That apart, in considering the question of the educational backwardness of a particular class of people, or a particular tract of territory of this State, we cannot forget that the evolution of human society and its march from backwardness to progress must essentially be a slow and gradual process. It is not as if, by a Governmental or executive fiat, a class of people or a bit of territory has been condemned to backwardness, and with the lifting of the ban by efflux of time or otherwise, they automatically spring back into a progressive or forward class of people or tract. It is useful to recall the observations made by this Court in *State of Kerala v. Jacob Mathew* (1964 Ker LT 298): (AIR 1964 Ker 316) at para 9:

'9. In these regions of human life and values the clear-cut distinctions of cause and effect merge into each other. Social backwardness contributes to educational backwardness; educational backwardness perpetuates social backwardness; and both are often no more than the inevitable corollaries of the extremes of poverty and the deadening weight of custom and tradition.'

A contention was mooted in that case that there was no longer any justification for regarding Ezhavas as socially and educationally backward in view of the Travancore Temple Entry Proclamation of 1112 M.E., the Cochin Temple Entry

Proclamation of 1123 M.E., the Madras Temple Entry Authorisation Act of 1947, and Article 17 of the Constitution, all of which have bettered the status and altered the ancient character of the Ezhava community, so as to disentitle them any longer to be regarded as backward. In repelling the contention, the Division Bench observed (at p. 318 of AIR):

'It is true that at certain times, and in certain countries, society has given the lead to law. In India, however, it has been the other way about. In his introduction to 'Some Aspects of Indian Law Today' Mr. M. C. Chagla says:

'It is true that at certain times society has given the lead to law; but in India at least it is the other way about. Law has given the lead to society, and law has placed before society ideals and values to which people should conform.'

13. Conformity in such cases does not synchronise with the promulgation of statutory enactments or constitutional documents. Time has to play its part, and time alone transmutes the ideals of the law into the realities of everyday life. No one can say that the introduction of progressive measures is the end, and not the beginning, of a process of amelioration. : Habits of thought die hard and slow, and occupations like toddy tapping carry their social stigma from one generation to another and through decades of conduct and behavior.'

We are accordingly of the opinion that there was no justification for the learned Judge to hold that the reservation of seats in favour of the Malabar area of this State for admission to the Medical Colleges cannot stand scrutiny under Article 14 of the Constitution. We would point out that the writ-petitioners --and we venture to think, the learned Judge himself -- seem to ignore that on the reasoning that the reservation cannot be continued after the expiry of ten years (from 1966), without independent review, the entire scheme of reservations including that in favour of the socially and educationally backward classes, will have to fail, as these were also ordered to 'be made by the same G. O. for the identical period of ten years alone, and on the basis of the same assessment -- or lack of it -- thereafter.

28. For the writ-petitioners/respondents it was strongly contended that the Government orders on recommendation No. 5 of the Kumara Pillai Commission for

implementing the reservation in favour of the geographical area of Malabar had no relation or nexus to residence in the Malabar area and was meant to defeat the very purpose of the reservation. We think there is no substance in this contention. The three tests accepted by the Government after considering recommendation No. 5 of the Kumara Pillai Commission, namely, (1) residence of the parents or guardian in the area for three years within five years before 1-11-1956; (2) ownership or possession of landed property or house in the area prior to 1-11-1956; or (3) education in the qualifying examination in the educational institutions of the area, are related to the object sought to be achieved, of providing guidelines for admission on considerations of residence, or nexus with the area or territory involved. It is well settled that the mere possibility of abuse is not a ground for striking down a provision as discriminatory, although it may well provide an occasion for relieving against individual cases of abuse (vide *Pannalal Binraj v. Union of India* (AIR 1957 SC 397)).

29. We allow these appeals and set aside the judgment of the learned Judge and direct that the two writ petitions, O. P. Nos. 3867 of 1977 and 4203 of 1877(Ker) shall stand dismissed. We make no order as to costs. We consider it essential that the Government should form an enduring conclusion in regard to the continuance of the existing scheme of reservations in this State in regard to the admissions to educational institutions, by immediately embarking upon a fact-finding enquiry. Following the course adopted by this Court in *Jacob Mathew's case* (1964 Ker LT 298): (AIR 1964 Ker 316), we direct the State to do so.

30. Regarding the admission of the writ-petitioners/respondents, directed by the learned Judge, we only wish to state that as the appeals have been allowed and the direction issued by the learned Judge has been vacated, the respondents in these appeals would not be entitled to admission on the strength only of the directions issued by the learned Judge. Whether they are entitled to admission or to retain the seats if already offered to them, *de hors* the said direction, is not for us to say.

W. A. No. 317 of 1977

31. This appeal is by the 3rd respondent in O. P. No. 3867 of 1977 (Ker) against which the State has filed W. A. No. 312 of 1977. The appellant got 396 marks in the special subjects and got admission in the Medical College in the Malabar quota. He got the last among the 11 seats reserved for the Malabar area. The learned Judge directed the admission of the writ petitioner/respondent, as a result of which, the appellant herein stands in danger of being displaced.

32. For reasons stated while dealing with W. A. No. 312 of 1977, We hold that the reservation of seats in the Medical Colleges for the geographical area of the Malabar District, is valid and constitutional. We accordingly allow this appeal and direct that O. P. No. 3867 of 1977 (Ker) will stand dismissed. There will be no order as to costs. The petitions for stay and direction are dismissed..

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