Supreme Court of India
State Of Kerala vs Kumari T. P. Roshana & Anr on 17 January, 1979
Equivalent citations: 1979 AIR 765, 1979 SCR (2) 974
Author: V Krishnaiyer
Bench: Krishnaiyer, V.R.

PETITIONER:
STATE OF KERALA

Vs.

RESPONDENT:
KUMARI T. P. ROSHANA & ANR.

DATE OF JUDGMENT17/01/1979

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
PATHAK, R.S.

CITATION:
1979 AIR 765 1979 SCR (2) 974
1979 SCC (1) 572
CITATOR INFO :
RF 1980 SC1230 (31)
D 1981 SC2045 (12,18)
R 1983 SC 580 (9)
R 1985 SC1495 (127)

ACT:
Constitution of India 1950-Art 14-Medical College admission-Selection of students from different universities with no uniformity of standards-Reservation of seats on territorial basis-Validity-Whether violative of Art. 14.

HEADNOTE:
Articles 32 and 136-When root of the grievance and the fruit of writ are not individual but collective courts power is one of affirmative structuring of redress to make it meaningful and socially relevant-Decisional guidelines to be given.

The State of Kerala appointed a Commission to recommend which sections of the people required special treatment under Art. 15(4) having regard to their social and educational conditions. That Commission recommended equitable allocation of seats on the bais of education backwardness of the Malabar area. Substantially founding

itself on these recommendations the these recommendations the State Government evolved a formula, which by polling all applications for admission to the four medical colleges in the state one consolidated list was prepared and candidates were selected strictly according to the marks secured by them.

This scheme having been struck down by the High Court, a fresh expert committee was appointed to examine the quo modo of admissions to medical colleges. The Government on the basis of these recommendations decided that seats available for the medical course might be distributed for the students of the two-1, Universities of Kerala and Calicut in the ratio of the candidates registered for the pre-degree and B. Sc. course in them.

In a writ petition under Art. 226 the High Court held that the scheme of selection for admission to the medical colleges on an assessment of merits of students drawn from different universities with no uniformity of standards is objectionable and the linkage of the division of seats with the registered student-strength of the universities bears no nexus and is violative of Art. 14 of the Constitution.

On the question of the validity of the scheme of selection for admission to the medical colleges.

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HELD : 1. Current conditions warrant the classification of student community on the zonal basis-not as a legitimation of endless perpetuation but as a transient panacea for a geo-human hadicap which the State must actively strive to undo.[980E]

2.The principal of reservation with weightage for the geographical area of the Malabar district is approved.[980 G]

3 The reasoning of the High Court that there is such substantial difference in the pre-degree courses and evaluations between the sister universities within the same State that the breach of Art. 14 by equal treatment of the marks un-

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equally secured by the examinees in the two Universities may be spelt out. Every inconsequential differentiation between two things does not constitute the vice of discrimination, if law clubs them together ignoring vanial variances. Article 14 is not a voodoo which visits. with invalidation every executive or legislative fusion of things or categories where there are no pronoanced inequalities. Mathematical equality is not the touchstone of constitutionality. [983 E-F]

State of Jammu & Kashmir v. Triloki Nath Khosa & Anr. [1974] 1 SCC 19 at 42 referred to.

4. A large latitude is allowed in this area to the State to classify or declassify based on diverse considerations of relevant pragmatism and the judiciary should not "rush in" where the executive varily treads. [984

A]

5. Many colleges are run by the State or institutional managements where pre-degree or degree courses are undertaken, The teachers move from one university jurisdiction to the other, the teaching material is inevitably of a like nature, the subjects taught must ordinarily be alike. The examiners are usually drawn from within the State or neighbouring States. Even the composition of the academic bodies in the two universities may have common members. The University Act themselves are substantially similar. To surmise discrimination from possibilities is alien to the forensic process in the absence of hand facts. Gross divergences exist amoung Universities affecting the quality of the teaching and the inaiking. the anomalies of grading and the absurdity of equating the end product on the blind assumption that the same marks mean the same excellence. But not glib surmises but solid facts supply the sinews of discriminatory inequality or equality. Some backward universities and colleges have degenerated into degree-dealers bringing rapid discredit to Indian Academic status. [984 D-F]

6. The vagarious element in marking and moderation of marks may be a fact of life, but too marginal to qualify for substantial difference unless otherwise made out Indeed. there may be differences among the colleges under the same University. among the examiners in the same University. Such fleeting factors or eohemeral differences cannot be the solid foundation for a substantial differentiation which is the necessary pre-condition for quashing an executive or legislative act as too discriminatory to satisfy the egalitarian essence of Art 14. [984 H-985 A]

7. The functional validation of the writ jurisdiction is an appropriate examination of the substantiality of the alleged disparity. [985 B]

8. The corner-stone of classification adopted for medical admission. by the Government was University-wise allocation. By itself. this approach had constitutional sanction. [986 C]

D. N. Chanchala v. State of mysore & Ors. etc. [1971] Supp. SCR 608; relied on

9. The discriminatory vice,if University-wise classification and consequential allocation of seats were resorted to, was pressed therein but repelled. The fundamental `educational realities and resultant resolution of the legal imbrogliro are instructively presented therein, which have special relevance to the instant case because the social facts, constitutional confrontations and administrative answers in the Kerala and Karnataka litigations are similar. [986 D, 986 H-987 A]

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10.The injection of the University-wise student strength is drawing the redherring across the trail-an irrelevance that invalidates the scheme. There is no nexus

between the registered student strength and the seats to be allotted. The fewer the colleges the fewer the pre-degree or degree students. And so, the linkages of the division of seats with the registered student strength would make an irrational inroad into the University-wise allocation. Such a formula would be a punishment for backwardness, not a promotion of the advancement. The discriminatory paring down based on unreason cannot be upheld. [990 G-H]

11. Law is not unimaginative, especially in the writ jurisdiction where responsible justice is the goal. The court cannot adopt a rigid attitude of negativity and sit back after striking down the scheme of Government leaving it to the helpless Government caught in a crisis to make-do as best as it may, or throwing the situation open to agitational chaos to find a solution by demonstrations in the streets and worse. In the instant case unable to stop with merely declaring that the scheme of admission accepted by Government is ultra vice and granting the relief to the petitioner of admission to the medical colleges, the need for controlling its repercussions calls for judicial response. [991 H-992 A]

12. An incisive study of the exercise of the writ power in India may reveal that it limits its actions by quashing or nullifying orders proceeding on a violation of law, but stops short of a reconstruction whereby a valid scheme may replace a void project. This is symptomatic of an obsolescent aspect of the judicial process, its remedial shortcomings in practice and the need to innovate the means, to widen the base and to organise the reliefs so that the Court actualises social justice even as it inhibits injustice. [978 A-B]

13. This community perspective of the justice system explains why the Court has resorted to certain unusual directions and has shaped the ultimate complex of orders in these proceedings in a self-acting package. Chronic social disability cannot be amenable to instant administrative surgery and law shall not bury its head, ostrich fashion, in the sands of fiction and assume equality where the opposite is the reality. [978 C, 980 C]

14. The rule of law runs close to the rule of life and where socieal life, as between one part of the State and another, is the victim of die-hard disparties, the constitutional mandate of equal justice under the law responds to it pragmatically and permits classification geared to eventual equalisation.

15. The writ of this Court binds the parties on record who must abide by the directions issued necessitated by the exigency of the situation and the need to do justice. [993 D]

16. The court system belongs to the people and must promote constructive justice; and all institutions, including the Governments and Universities, likewise belong to the people. This commitment is the whet-stone for doing

justice in the wider context of social good. [993 E-F]

17. Leaving the Judgment of the High Court in the conventional form of merely quashing the formula of admission the remedy would have aggravated the malady, confusion, agitation, paralysis. The root of the grievance and the fruit of the writ are not individual but collective and while the "adversary system" makes the Judge a mere umpire, traditionally speaking, the community orientation of the judicual function, so desirable in the Third World remedial juris-
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prudence, transforms the courts' power into affirmative structuring of redress so as to make it personally meaningful and socially relevant. Frustration of invalidity is part of the judicial duty; fulfilment of legality is complementary. This principle of affirmative action is within the court's jurisdiction under Art 136 and Art. 32 and the present cases deserve its exercise. Decisional guidelines given.[994 B-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2297 of 1978.

Appeal by Special Leave from the Judgment and Order dated 13-11-78 of the Kerala High Court in O.P. No. 3239/78.

AND WRIT PETITION NO. 4705/78 M. M. Abdul Khader, Adv. Genl. for Kerala, V. J. Francis and Mustafa K. Rowter for the Appellant in C.A. 2297/78 and Respondents in W.P. 4705/78.

P. V. Govindan Nair, N. Sudhakaran and Mrs. Baby Krishnan for the Petitioner in W.P. No. 4705/78 and Respondent No. 1 in CA 2297/78.

Dr. V. A. Sayid Muhammad, S. K. Mehta, P. K.

Shamshuddin, P. N. Puri and E. M. Sarul for the Interveners.

A. S. Nambiar for Respondent No. 3 in CA 2297/78. The Judgment of the Court was delivered by KRISHNA IYER, J.-The dynamics of the writ jurisdiction and the potential for affirmative court action, as part of remedial jurisprudence, constitute the key thought which animates the ultimate decision and direction we give in this couple of cases which have come up by Special Leave and under Art. 32 to this Court, aware as we are of a host of like proceedings which pend in the High Court.

The State of Kerala is the appellant in the civil appeal and 1st respondent in the Writ Petition but the collective litigation springs from a traditional type of action and typical kind of relief granted in

exercise of its writ jurisdiction by the High Court striking down a transitory scheme of admission to the medical colleges of the State evolved by the Government but invalidated.by the High Court on the ground of discrimination in the distribution of seats among the eligible students drawn from two disparate regions of the State. Of course, the instant repercussion of the decision is apt to be confusion in the admission to the academic courses which have hardly commenced and this desperate situation has driven the Government to this Court seeking reversal of the Judgment under appeal. Law promotes order, not anomie.

Any incisive study of the exercise of the writ power in India may reveal that it limits its action to quashing or nullifying orders proceeding on a violation of law, but stops short of a reconstruction whereby a valid scheme may replace a void project. This is no reflection on the High Court's ruling but is symptomatic of an obsolescent aspect of the judicial process, its remedial shortcomings in practice and the need to innovate the means, to widen the base and to organise the reliefs so that the court actualises social justice even as it inhibits injustice. This community perspective of the Justice System explains why we have resorted to certain unusual directions and have shaped the ultimate complex of orders in these proceedings in a self-acting package. With this exordium we proceed to narrate briefly the necessary facts and developments revelatory of the course of events and the cause of action, the impact of the High Court's judgment and the compulsions which have brought the State in appeal to this Court.

The Kerala State, notwithstanding its striking demographic, cultural, linguistic and political integrality and educational advance, has certain historical hangovers of academic disparity and developmental maldistribution which have survived for two decades as this case testifies. We are not concerned with the etiological enquiry into this malady but recognise it as a reality since the authentic materials from Commission reports and prior rulings of the High Court concurrently so establish. Broadly speaking, this `composite' State may be dichotomised as Travancore-Cochin and Malabar regions woven into one fabric by the States Reorganisation Act, 1956. Gaping disparities of development cannot be wished away by political fusion into one State and determined efforts at equalisation of human conditions, economic and cultural, alone lend living validity to geo- political homogeneity. Malabar being admittedly laggard in the educational field, the State endeavoured to wipe out this weakness by starting or supporting new colleges in this neglected segment; and one such institution was the medical college at Calicut. Indeed, the drive to upgrade the educational status of this backward region persuaded the State to set up the Calicut University to which were affiliated all the colleges in that Cindrella area, including the Calicut Medical College. An adjoining district, Trichur, was also tacked on, for convenience, maybe.

The cynosure of attention in this litigation is the scheme of admission to medical colleges in the State; and so we may adjust the forensic lens to focus on the struggle for seats in the four medical colleges in the State-all run by Government but providing for five hundred and odd students, as against several thousands of applicants. This `musical chair' situation naturally led to many qualified claimants being rejected and litigative adventures being inaugurated on grounds of discrimination. One such writ petition having been allowed, the State has, by special leave, come up in appeal. The points raised in the writ petition under Art. 32 are identical.

A sensitive appreciation of the grievance successfully ventilated by the writ petitioners in the High Court is possible only if we unfold a fuller conspectus of the facts. Cognizance of some essential circumstances is necessitous as the first step. There are three Universities in the State but we are concerned only with two-the,Kerala and the Calicut Universities-to which the four medical colleges are affiliated, three of which are under the jurisdiction of the first and the fourth under the latter. Broadly speaking, the latter caters to the academic requirements of the Malabar segment plus a neighbouring district and the former to the rest of the State.

The Malabar area has been regarded as notoriously backward from the point of view of collegiate education so much so, the number of colleges which provide pre-degree courses necessary by way of qualification for entrance into the medical colleges, are relatively fewer and, on the contrary, the remaining part of the State thanks to many factors, has been on a higher level, with colleges more numerous and pre-degree students more prolific. Geographic justice, a component of social justice, has to take note of these comparative imbalances. Rightly, therefore, the State Government, based on certain reports of Commissions, considered the two territorial divisions as separate units and regulated seat allocations to medical colleges in the State on an equitable basis. The social thrust of the classification, based on geographical dissimilarities, was the core factor in fomulation of that scheme of admissions. This principle found favour with the High Court in its Full Bench ruling in Rafia Rahim's(1) case. While over the years, amelioration produced by State Plans has reduced the degree of backwardness, the fact remains that substantial equalisation of opportunities between the two areas is a "consummation devoutly to be wished." We agree with the High Court that "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 Government 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 auto matically spring back into a progressive or forward class of people or tract. It is useful to recall the observations made by this Court is State of Kerala v. Jacob Mathew (1964 KL T 298).

"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."(1) If we may add, chronic social disability cannot be amenable to instant administrative surgery and law shall not bury its head, ostrich fashion, in the sands of fiction and assume equality where the opposite is the reality.

The rule of law runs close to the rule of life and where societal life, as between one part of the State and another, is the victim of die-hard disparities the constitutional mandate of equal justice under the law responds to it pragmatically and permits classification geared to eventual equalisation. We, therefore, agree with the High Court that current conditions warrant the classification of the student community on the Zonal basis- not as a legitimation of endless perpetuation but as a transient panacea for a geo-human handicap which the State must actively strive to undo.

In Kerala, as in some other States, reservation policies of Governments and `equal protection' pronouncements of courts have chased each other. A happy harmony among the great instrumentalities for accomplishment of constitutional goals by complementary action is the desideratum for developing countries, if we may say so respectfully.

The principle of reservation with weightage for the geographical area of the Malabar District has our approval in endorsement of the view or the High Court. An earlier decision of the Kerala High Court (1964 KLT 298) gave rise to a Commission appointed to recommend which sections of the people required special treatment under Art. 15(4) of the Constitution, having regard to their social and educational conditions. That Commission, inter alia accepted the educational backwardness of the Malabar area and recommended equitable allocation of seats on that footing. Substantially founding itself on these recommendations but modifying them in some measure Government hummered out a formula, a basic feature of which was pooling together the applications for admission to the four medical colleges in the State in one consolidated list and selecting students for medical courses strictly according to the marks secured-of course, making allowance for seats reserved for a limited percentage of students from outside and the customary bonus of reservation of seats for Scheduled Castes, Scheduled Tribes and backward classes. This part of the 'selection calculus' is beyond cavil before us, as the nation with all its social engineering boasts and all its tumultuous bungling, is distances away from human justice through human law. The rough and tumble of academic life, based on the Pooling System seemed to run smooth for some years when a new attack was mounted on it in the High Court with constitutional artillery from the inexhaustible armoury of Art. 14. A Full Bench hit the scheme fatally this time, not with the familiar but fruitless archery of geographical discrimination but with the weaponry of 'reverse discrimination' in a different mani festation.

The strategy of attack was neatly expressed by the learned Single Judge whose judgment on this point was endorsed by the Full Bench. Discrimination was discovered by the Court in attributing parity to the markes of examinees in pre-degree and degree courses of the Calicut University with those of the candidates of the Kerala University. The Full Bench framed the question, tell-tale fashion:

> "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.'(1) The descriptive presentation of this discriminatory facet was given by the learned single Judge in the same case:
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> "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 in 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 exami-

nation 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 some times 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 resorted 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."(1) The Full Bench agreed with this anathematization of equal treatment of 'unequals' and voided the Selection Process. The Court, with helpful realism, concluded by adding a positive guideline to the declaration of nullification:(2) "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 Art. 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 admission 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. P5 and P8-and as endorsed by the University authorities (vide Ex. P7). 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 fixing 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."

In the end, the writ petitioner won the battle but lost the war, for she got an abstract declaration that her exclusion was invalid but was denied the concrete direction to be admitted into the college.

We are not impressed much with the surmise which colours the reasoning of the Full Bench and the learned Single Judge that there is such substantial difference in the pre-degree courses and evaluations between the sister universities within the same State that the breach of Art. 14 by equal treatment of the marks unequally secured by examinees in the two universities may be spelt out. It is trite law that every inconsequential differentiation between two things does not constitute the vice of discrimination, if law clubs them together ignoring venial variances. Art. 14 is not a voodoo which visits with invalidation every executive or legislative fusion of things or categories where there are no pronounced inequalities. Mathematical equality is not the touchstone of constitutionality. This Court in Triloki Nath Khosa cautioned:

> "Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality."

In the same ruling there was a caveat entered by Chandrachud, J (as he then was) against "a charter for making minute and microcosmic classifications." What is more, a large latitude is allowed in this area to the State to classify or declassify based on diverse considerations of relevant pragmatism, and the judiciary should not "rush in" where the executive warily treads. The core question is whether there is such substantial differentiation between the two universities in regard to the pre-degree or degree courses and system of examinations as too glaring to imperil the equal protection clause. The presumption is in favour of the vires of legislative and executive action where Art. 14 is the basis of challenge. We see no factual disparities disclosed in the Full Bench ruling to reach the result of substantial difference in the syllabi, in the pattern of examinations, in the marking systems or in the choice of the examiners so as to warrant invalidation on account of equal regard being accorded to the marks secured by the examinees from the two universities. We cannot forget that many colleges are run by the State or institutional managements where pre-degree or degree courses are undertaken. The teachers move from one university jurisdiction to the other, the teaching material is inevitably of a like nature; the subjects taught must ordinarily be alike. The examiners are usually drawn from within the State or neighbouring States. Even the composition of the academic bodies in the two universities may have common members. The University Acts themselves are substantially similar. To surmise discrimination from possibilities is alien to the forensic process in the absence of hard facts. We are aware that there are Universities and Universities, that gross divergences among them exist affecting the quality of the teaching and the marking, the anomalies of grading and the absurdity or equating the end products on the blind assumption that the same marks mean the same excellence. But not glib surmises but solid facts supply the sinews of discriminatory inequality or equality. Going by vague reports, some backward universities and colleges have degenerated into degree-dealers bringing rapid discredit to Indian academic status.

The Indian Medical Council Act, 1956 has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to regulate their observance. Obviously, this high-powered Council has power to prescribe the minimum standards of medical education. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Thus there is an overall invigilation by the Medical Council to prevent sub-standard entrance qualifications for medical courses.

The vagarious element in marking and moderation of marks may be a fact of life, but too marginal to qualify for substantial difference unless otherwise made out. Indeed, there may be differences among the colleges under the same University, among the examiners in the same university. Such fleeting factors or ephemeral differences cannot be the solid foundation for a substantial differentiation which is the necessary pre-condition for quashing an executive or legislative act as too discriminatory to satisfy the egalitarian essence of Art.

14. The functional validation of the writ jurisdiction is an appropriate examination of the substantiality of the alleged disparity. We do not, however, proceed finally to pronounce on this point with reference to the two universities since nothing is available before us, or, for that matter, was before the High Court to warrant a fair conclusion on the issue. We are persuaded to make these observations for future guidance, so that academic schemes may not be struck down as arbitrary or irrational save where some sound basis has been laid.

We get back to where we left off before this divagation into the Full Bench decision's ratio on discrimination as between the two universities. The sole question that survives is of allocation of seats on a university wise classification. Following upon the Full Bench decision which struck down the pool scheme of selection, a constitutionally viable process had to be evolved. Government, therefore, appointed a fresh expert committee to examine and report the quo modo of admissions to medical colleges in the light of the directives contained in the Full Bench decision. Two solutions were seriously considered by the Committee, namely (1) a common entrance examination such as is in vogue in many States and has the approval of the Medical Council of India; and (2) the standardization of the syllabi uniformly for the two universities and the elimination of different yardsticks in regard to the setting of question papers, marking systems and the like. The first one, though the better, was given up as productive of public and student resistance. However wise a measure may be, its viability depends on its acceptance by the consumers, namely, the student community and the parent community. Agitational opposition or determined dead-locking may make it unwise to inflict it on an unwilling constituency. Of course, by a gradual process of enlightenment the wisdom of such a measure may dawn. What is rejected to-day may be greeted tomorrow. The Committee jettisoned the first proposal of a common entrance examination partly scared of its impracticability at the moment. So it opted for the second, namely uniformity of standards, from the formulation of syllabi upto assignment of marks at the examinations. Surely either of the proposals is an effective answer to Art. 14. Even so, when the Committee's recommendations were placed before the Government it reflected carefully on the pragmatics of implementation and reached the conclusion that it would take some time to fulfil the pre- requisites to give effect to that formula. Time runs, university applications rush in, admissions must begin, courses must start and administrative paralysis in decision- making is no alibi. Implementational

dilatoriness cannot stall the flow of medical education. Caught in this crisis, caused, in part, by the court ruling, Government fabricated a quick scheme of admission to the four medical colleges, which, again, has now been struck down by the High Court resulting in the appeal before us.

The corner-stone of classification adopted for medical admissions by the Government this time was universitywise allocation. By itself, this approach had constitutional sanction, having regard to the ratio in Chanchala's case.

The ratio in Chanchala concludes the dispute in this case. The discriminatory vice, if university-wise classification and consequential allocation of seats were resorded to, was pressed but repelled. Shelat, J. speaking for the Court, formulated the contention thus:

> "The next contention was that r.9(1), which prescribes university-wise distribution of seats results in discrimination for it lays down a classification which is neither based on any intelligible differentia, nor has a rational nexus with the object of the rules. The argument was that although there is one selection committee for all the Government medical colleges in all the three universities and for the said 59 seats in private colleges, students passing from colleges affiliated to a particular university are first admitted in Government medical colleges affiliated to that university and only seats upto 20% in each of such medical colleges can be allotted to outsiders in the discretion of the committee. The result is that a student having higher marks than the last admitted student is deprived of a seat only for the reason that he had passed his P.U.C. examination from a college affiliated to another university. According to counsel such a classification has no rational basis and has no reasonable nexus with and is in fact inconsistent with the very object of establishment of Government medical colleges, namely, to train in medicine the most meritorious amongst the candidates seeking admission."

The fundamental educational realities and resultant resolution of the legal imbroglio are instructively presented in Chanchala's case, which have special relevance to our case because the social facts, constitutional confrontations and administrative answers in the Kerala and Karnataka litigations are similar. Shelat J. observed:

> "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 centres 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 those 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 such 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 upto 20% 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..... 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..... 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 bass 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 Chitra Ghosh v. Union of India] In our view, the rules lay down a valid classification. Candidates passing through the qualifying examinations 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 Art. 14:

We do not mean to lay down, as an inflexible dogma of universal application, that under utterly different social and educational environs university-based grouping of candidates for specialised courses will, willy-nilly, be valid. But the basic identity of pertinent circumstances bearing on the university-centred descrimen in Chanchala and here constitutionalize the scheme of selection adopted by Government grouping all eligibles from colleges affiliated to each University as separate units. The High Court's perspective in this regard is impeccable.

It is an interesting sidelight that in Chanchala as much as 20% of the total seats were thrown open to 'outsiders' i.e. 'those who have passed the equivalent examination held by any other university not only in the State but also elsewhere in India. The underlying unity of syllabus and broad agreement on evaluation are assumed in this pool system, confined to 20% but open to several universities.

Having held in the earlier Full Bench case that university-wise categorisation for seats allocation was good the High Court, in the impugned judgment, still struck down the new scheme as discriminatory. The vice was traced to a certain feature which went beyond mere universitywise allocation and made further modifications governed by the propor tion of the number of students presented by the two universities for the pre-degree and B. Sc. examinations. 'Ay, there's the rub'.

The Committee's long range proposal of uniformity between the two universities was unexceptionable and, if adopted, would end apprehensions of injustice stemming from dissimilarities flowing from divergent syllabi and examination methodology. Indeed Government has accepted it as the long-term solution and rightly. The relevant G.O. dated July 14, 1978, sums up the Committee's unification solution thus :

> "As a long teirm solution Government may move the Universities of Kerala and Calicut to unify the curriculum and courses of study for pre-degree course and form Inter University Board for the conduct of examination. When such a scheme is established pre- degree will be the only qualifying examination for selection to all courses in the medical colleges. The Committee has pointed out that unification of the syllabus, course of study and examination in the four disciplines of B.Sc., viz., Physics, Chemistry, Zoology and Botany would be impossible and thus the reservation now given to graduate candidates for selection to Medical and dental colleges will have to be abolished."

And the decision of Government is in these terms:

> "Government.....have accepted the recommendation of the committee to have unified curriculum and course of study and common board for conduct of examinations for the Kerala and Calicut Universities. But Government consider that unification of syllabus and method of examination should be made also at degree level in respect of the 4 disciplines of Physics Chemistry, Zoology and Botany and that the reservation now given to the graduates for admission to the medical and dental colleges should be continued. The Universities concerned are being requested to take further action in the matter."

But the modus operandi for unification of syllabi and what not are incapable of instant execution by unilateral declaration, since it is the business of the Universities. And Universities are self-consciously autonomous and often politicised, with the result that the writ of Government may not run there. Moreover, administrative slow-motion is the genius of governmental and university processes. Universities, with plural bodies, many voices and contradictory cerebrations, may meet and debate, appoint sub-committees and discuss their reports, await reactions of other organs and hold joint meetings to consider academic issues in all their dimensions and act generally only after leisurely reflect on. Academies cannot be hustled and often hasten slowly. Meanwhile, the year rolls on, students stagnate and medical education grinds to a halt.

These painful realities apparently induced the Government to fabricate in its secretariat foundry a transitory strategy for the current year.

This short-run project adopted each University as a unit which, as we have earlier explained, was good so far as it went. But a dubious rider was added which invited the judicial Waterloo. That is the bone of contention and so we excerpt the relevant portion:

> "After considering the proposal in all its aspects Government have decided that the seats available for MBBS course after deducting the seats for mandatory admission may be distributed for the students of the two Universities in the ratio of the candidates registered for the pre-degree and B.Sc. course in the two Universities, taking the average of the number of candidates registered for the pre-degree and B.Sc. degree courses with eligibility for admission to Medical Colleges for the last three years as the basis."

This operated as a cut back on the total 'Calicut' seats as wholly available for the Calicut University students and, indeed, as urged by counsel for the respondent, subtly subverted the criterion of 'Malabar' backwardness.

The Calicut Medical College and the Calicut University were created as the purpose-oriented mechanisms for progressive elimination of educational backwardness in that territory. This objective would be fulfilled if the entire number of seats of the Calicut Medical College were exclusively made the entitlement for eligible students from colleges affiliated to that University. A further slice knifed out of the cake would spell reversal of policy.

We agree with the High Court that the injection of the university wise student-strength is drawing the red-herring across the trail-an irrelevance that invalidates the scheme. We cannot see the nexus between the registered student- strength and the seats to be allotted. The fewer the colleges the fewer the pre-degree or degree students. And so, the linkage of the division of seats with the registered student-strength would make an irrational inroad into the university-wise allocation. Such a formula would be a punishment for backwardness, not a promotion of their advancement. We cannot uphold the discriminatory paring down based on unreason.

Once this premise is reached the calculus is non- controversial.

The three medical colleges affiliated to the Kerala University have a total strength of 345 students and the only college affilated to the Calicut University has a student strength of 180. On these basic figures, the arithmatic worked out on the principles of deduction is beyond controversy. 42 students form the reserved quota and have to be apportioned between the two universities in the ratio of their student strength. Making available of seats for candidates from other universities is also common ground. Both sides agree that the net number of seats available to be filled up, if we proceed solely on the principle of university-wise allocation, will be 166 for the Calicut University students and 317 for the Kerala University students. The admissions, even on these agreed figures, will be subject to the die-hard rule of Communal reservation. The further division of seats in the ratio of 60: 40 as

between the graduates and pre-degree candidates also has to be maintined. No question of complicating the numbers by any further injection of the population ratio between Malabar and Travancore-Cochin arises because the new formula takes care of the backwardness of Malabar and there cannot be double benefits.

Decoding the rules in simplex form, what we get in arithmatical terms is that the Calicut University students who have now been alloted under the Government formula 136 seats will be eintitled to an extra 30 seats.

If we rigidly direct that these additional seats be assigned to the students emerging from the colleges under the Calicut University an equal number may have to be expelled from the students already admitted from out of the Kerala University quota. This consequence becomes ccmpulsive since the total strength sanctioned for the four medical colleges fixed by the two Universities and approved by the Medical Council of India is 525 seats.

Here comes the play of processual realism in moulding the relief in the given milieu. The rule of law should not petrify life or be inflexibly mulish. It is tempered by experience, mellowed by principled compromise, informed by the anxiety to avoid injustice and softens the blow within the marginal limits of legality. That is the karuna of the law.

Nor is law unimaginative, especially in the writ jurisdiction where responsible justice is the goal. The court cannot adopt a rigid attitude of negativity and sit back after striking down the scheme of Government, leaving it to the helpless Government caught in a crisis to make-do as best as it may, or throwing the situation open to agitational chaos to find a solution by demonstrations in the streets and worse. We are, therefore, unable to stop with merely declaring that the scheme of admission accepted by Government is ultra vires and granting the relief to the petitioner of admission to the medical college. The need for controlling its repercussions calls for judicial response. After all, law is not a brooding omnipresence in the sky but an operational art in society.

The High Court's ultimate direction is: "We allow this writ petition and quash Exh. P2 G.O. to the extent to which it accepts alternative proposal of the committee referred to in Exh. P.1". The Court also observes: "We think it will be unfair in the circumstances to deny effective relief to the writ petitioner....." The relief claimed was admission to the medical college.

The upshot of the judgment, in terms of student impact, government policy, college admissions and potential for agitation, may be envisioned for a while. We may also take note of the gregarious trend of one writ petition being followed by many when the grievance is common and the first case is in essence a test case and class action. What is granted to the petitioner has to be granted to others who follow her. In terms of numbers several candidates may have to be admitted into the medical colleges. More than that is the chaotic consequence of the pro tempore project of the Government being struck down with no alternative methodology of selection. Governments have no magic remedies to tide over sudden crisis. Their processes are notoriously slow and the temper of the student community is notoriously inflammable. Thus the negative stroke of voiding the G.O. and granting relief to the petitioner is to throw out a number of students already undergoing their course

and to incite unwittingly student unrest of magnitude, apart from leaving the academic algebra for admissions in a state of vacuum. One thing is certain. If the syndrome of campus chaos is to be obviated, the court should come to the assistance of the Kerala University students already admitted and undergoing their medical course who might otherwise have to be jettisoned. We, therefore, do not think it right to force into the medical colleges any students who may be qualified for admission by virtue of our order at the expense of another who has already been admitted and is undergoing the medical course. This means that 30 students from the colleges affiliated to the Calicut University will have to be provided for ab extra. But how to find accommodation for 30 more students ?

The Universities concerned have the power to increase the streghth ad hoc when gripped by a crisis such as has occurred here. The Medical Council of India has an overall control in this field, being the statu-

tory body created under the Indian Medical Council Act, 1956. Thus, the concurrence of the Calicut and the Kerala Universities and the Medical Council of India becomes necessary for working out effective reliefs in terms of adding to the strength on a temporary footing, with a sense of equity and anxiety to do justice to the existing entrants.

Unfortunately, neither the Universities concerned nor the students affected are parties. The presence of the Medical Council of India also has to be secured. Confronted by this situation, we directed, as a measure of emergency issuance of notice to the two Universities and made them party to the record. A similar step was taken in the case of the Medical Council of India. At short notice, all the three parties entered appearance. Although Shri A. S. Nambiar, appearing for the University, expressed inability to consent to any course of addition of strength, he agreed that the concerned academic bodies were likely to meet shortly and the Universities themselves would abide by any directions this Court issued in the interests of Justice. The learned Advocate General had earlier represented that the Universities were likely to agree to a temporary addition of strength, provided the Medical Council of India would also approve of the course. We need hardly say that the writ of this Court binds the parties on record and all the three bodies are before us and must abide by the directions we issue necessitated by the exigency of the situation and the need to do justice.

After all, the Court system belongs to the people and must promote constructive justice; and all institutions, including the Governments and Universities, likewise belong,to the people. This commitment is the whet stone for doing justice in the wider context of social good. The Universities, as we gather from counsel representing all the parties, may not find it difficult to accommodate 30 students more, apportioned among the four medical colleges of the State. This addition is compelled by the critical condition set out above. This need will not survive this academic year and, in that sense, no long term trauma for academic standards will be inflicted by each of the colleges accommodating a few more students for their courses this year. After all, not much time has passed since the teaching session began. Compared to their existing strength, the additions are negligible. The Medical Council of India, through the learned Additional Solicitor General, has expressed that it has no objection to this proposal for a miniscule addition confined to this acadcmic year. We see no ground for either University to plead inability to help the cause of Justice. The insistence on standards, measured by marks, is not being relaxed, so much so the quality of the admission of

additional students does not suffer. A marginal strain in the matter of teaching and perhaps extra burden in regard to the practicals may have to be endured. We are, therefore sure that the Universities, the colleges concerned, the teaching community and the alumni themselves will appreciate the goal and cooperate in the success of the direction we make.

Had we left the Judgment of the High Court in the conventional form of merely quashing the formula of admission the remedy would have aggravated the malady- confusion, agitation, paralysis. The root of the grievance and the fruit of the writ are not individual but collective and while the 'adversary system' makes the Judge a mere umpire, traditionally speaking, the community orientation of the judicial function, so desirable in the Third World remedial jurisprudence, transforms the court's power into affirmative structuring of redress so as to make it personally meaningful and socially relevant. Frustration of invalidity is part of the judicial duty; fulfilment of legality is complementary. This principle of affirmative action is within our jurisdiction under Art. 136 and Art. 32 and we think the present cases deserve its exercise We direct the State Government to admit 30 more willing students who are qualified under the rules and who are students from the colleges affiliated to the Calicut University-in order of the marks secured. They will be distributed by the Selection Committee among the four medical colleges of Government in an equitable way and their decision will be final. The Kerala and the Calicut Universities will be bound to expand the strength of the medical colleges concerned for this year in obedience to this direction of the Court and the respective bodies under the Universities will act accordingly.

The selection of these 30 students will not be confined to those who have moved this Court or the High Court by way of writ proceedings or appeal. The measure is academic excellence, not litigative persistence. It will be thrown open to the first 30, strictly according to merit measured by marks secured. The apportionment as between graduates and pre-degree students and the application of the communal reservation will apply to these 30 to be selected. The Selection Committee will make its decision on or before the 31st January 1979. The Universities concerned will convey their approval to the Government for the nceessary addition to the student strength in obedience to the direction of this Court on or before the 27th January 1979.

We direct the State Government for the coming academic year 1979-80, to allot 166 seats for the students from the colleges affiliated to the Calicut University and 317 seats to the students from the colleges affiliated to the Kerala University, the formula regarding every other aspect being as indicated in this Judgment such as for the mandatory admissions, the apportionment between pre-degree students and the degree holders and other reservations.

Another imperative step we cast on the two Universities, which are parties before us, and are, therefore, bound by this Order deserves to be clearly expressed. Having regard to the utter confusion in medical studies that may be produced by keeping the unification of syllabi and methodology of examinations in a flux we think it absolutely essential to fix a time target for the University bodies to act. Government will issue necessary directions to its representatives on these bodies to accelerate the pace. We expect both the Universities to implement the proposal made by the Committee and accepted by the Government regardnig the uniform curricula and common examination system and allied matters in such manner that there will be no inequality as between

students emerging from one University and the other within the State. This process shall be completed on or before 31st May 1979.

We are aware that these various directions and orders call for high pressure activisation. Perhaps, we may emphasise the need for guarding against the slow march of bureaucratic movement embodied in Lord Curzon's lament respecting the administration of his time, a state of affairs wholly opposed to the dynamic fulfilment of the imperatives cast by the Constitution upon the nation and its institutions. Said Lord Curzon in a despatch to the Secretary of State:

> "Your despatch of August 5th arrived. It goes to Foreign Department. Thereupon Clerk No 1 paraphrases and comments upon it over 41 folio pages of print of his own composition, dealing solely with the Khyber suggestions in it. Then comes Clerk No. 2 with 31 more pages upon Clerk No. 1. Then we get to the region of Assistant Secretaries, Deputy Secretaries and Secretaries. All these gentlemen state their werthless views at equal length. Finally we get to the top of the scale and we find the Viceroy and Military Member, with a proper regard for their dignity, expanding themselves over a proportionate space of print. Then these papers wander about from Department to Department and amid the various Members of Council. I am grappling with this vile system in my own department, but it has seated itself like the Old Man of the Sea upon the shoulders of the Indian Government and every man accepts, while deploring the burden."(1) Hopefully, we part with this case with the thought that there will be no occasion for any party to move for extension of time or to prove that the curse Lord Curzon spelt out still haunts the wheels of administration. The appeal is allowed; so also the writ petition-in the manner and to the extent we have directed. The parties will bear their costs. The decisional guidelines herein given will, we dare say, so help dispose of the many Writ Petitions pending in the High Court. The journey to the Supreme Court is not always necessitous for final justice.

ORDER While there is agreement that thirty seats more have to be added as has been indicated in the judgment making the total number of seats allocable to the students of the Calicut University to 166, there is some dispute regarding the number of seats available for the students belonging to the Kerala University. We have mentioned in the judgment that it is 317. It is open to the State Government or to the concerned Universities to bring it to the notice of the court in case there is any clarification necessary.

N. V. K. Appeal & Petition allowed.