

(1984) 01 KL CK 0016
In the High Court Of Kerala
Case No : O.P. No. 8639 of 1983-R

M.A. Andrews

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 18-01-1984

Acts Referred:

Calicut University Act, 1975 — Section 82
Constitution of India, 1950 — Article 226
Kerala University Act, 1974 — Section 82, 82(3), 83, 84

Citation : AIR 1984 Ker 101

Hon'ble Judges : U.L. Bhat, J; P.C. Balakrishna Menon, J

Bench : Division Bench

Advocate : O. Balanarayanan, for the Appellant; A.G., P.K. Appa Nair, P.K. Suresh Kumar, C.P. Sudhakara Prasad and T.P. Kelu Nambiyar, for the Respondent

Final Decision : Allowed

Judgement

Balakrishna Menon, J.—The petitioner, an M.B.B.S. Graduate of the Kerala University having completed a Course of House Surgeoncy in October, 1982, had applied for admission to the post-graduate course in the order of preference to the subjects of Medicine, Gynaecology and Surgery. He seeks to quash the Government Orders Exts. P-8 and P-18 and the Prospectus Ext. P-11 issued by the Government of Kerala for the post-graduate courses commencing in 1982-83 in the Medical Colleges in the State. As per Ext. P-18 the Government adopted the principle accepted in Ext. P-8 and ordered that admission to the postgraduate courses for the year 1982-83 will also be made on the basis of an entrance examination to be conducted before the end of October, 1983 as recommended by the Expert Committee with the exception that Departmental candidates will be selected according to the practice hitherto followed on the basis of seniority in the case of Tutors in Medical Colleges and weightage for service and rural service in the case of Health Services personnel. The petitioner has filed the writ petition in his individual capacity and also purporting to represent all persons interested in opposing the method of selection by entrance test, and seeking admission on

the basis of the marks obtained in the qualifying M.B.B.S. Examination, of the Kerala and the Calicut Universities. He has impleaded respondents 5 and 6 as persons known to be interested in sustaining the entrance test for the purpose of admission to the post-graduate courses in medicine and allied subjects. The petitioner submits that on the basis of the marks obtained by him in the qualifying M.B.B.S. Examination he has a fair chance for admission to the post-graduate course and the entrance test prescribed by the Government is a fetter on his chance of admission.

2. As per Ext. P-8 dated 24-5-1983 the Government accepted the recommendations of an Expert Committee appointed under Ext. R-3 (a) order of Government for holding an entrance test for admission to the post-graduate courses, subject to the alteration that no such test is necessary in the case of Tutors in Medical Colleges and Health Services personnel to be selected on the basis of seniority and weightage for service and rural service. It was further ordered that since admission for the year 1981-82 was made only in January 1983 and if an entrance examination is insisted on for admission for the year 1982-83 that may result in losing one batch of students for the post-graduate course and hence admission for the year 1982-83 will be in accordance with the existing practice of merit adjudged on the basis of marks obtained in the qualifying examination. Ext. P-9 is the prospectus for the year 1982-83 issued in pursuance to Ext. P-8 order of Government. It was in modification of Ext. P-8 that the Government issued Ext. P-10 order as per which admission to the post-graduate courses for the year 1982-83 will also be made on the basis of an entrance examination to be held before the end of October, 1983 except in regard to the Departmental candidates to be selected on the basis of seniority and weightage for service and rural service. As per Exts. P-12 and P-13 orders of the Director of Medical Education, all applications received for admission to the post-graduate courses for the year 1982-83 with last date 16-7-1983 were cancelled and fresh applications are to be submitted for admission on the basis of an entrance examination for general merit with reservation for scheduled castes and scheduled tribes candidates and length of service for candidates under reserved quota for Health Services personnel and Tutors.

3. Before entering into the details of the contentions raised by the petitioner, it is necessary to consider the historical background of the reason why an entrance test was considered necessary for the purpose of admission to the medical courses in the State.

4. A Full Bench of this Court in the decision in *State of Kerala and Another etc. Vs. Miss Rafia Rahim etc.*,) found that a scheme of selection for admission to medical colleges on an assessment of merit on the basis of marks obtained in the qualifying examination by candidates drawn from different Universities with no uniformity of standards is objectionable and is violative of Article 14 of the Constitution. No effective relief was however granted to the petitioner in that case for the reason of the non-joinder of the selected candidates and the futility

of upsetting the selections already made at the very belated stage, when the question involved was decided by the Full Bench. The Full Bench however observed at page 382 (of Ker LT) : (at p. 188 of AIR) :--

"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 Ext. P-7). We direct the State Government to forthwith device 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 in elastically fixing the limits for Government 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."

5. The Supreme Court in the decision in *State of Kerala Vs. Kumari T.P. Roshana and Another*, after considering the Full Bench decision aforesaid stated thus at page 771.

"18. 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 deadlocking 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 today 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 up to assignment of marks at the examinations. Surely either of the proposals is an effective answer to Article 14."

A common entrance examination as in vogue in many States was found to be a better process for selection of candidates for admission to the medical course.

6. A Division Bench of this Court in a batch of writ petitions -- O. P. Nos. 5599 of 1981 etc. after noticing the inequality that would result in a process of evaluation based on marks obtained in the qualifying examinations held by different Universities and also noticing the large scale malpractices adopted by candidates for obtaining high marks in the qualifying examination held that admission to the medical colleges should be based on the results of a common entrance examination. The Division Bench directed the Government to prepare a scheme for a common entrance examination for admission to the 1st Year M.B.B.S. Course for the next academic year 1982-83 sufficiently early, and at any rate before the end of April, 1982 so that admissions next year can be considered at the proper time. For the particular year in question, namely, 1981-82, the Division Bench directed an entrance examination to be held for all the candidates selected on the basis of the marks obtained in the qualifying examination and also for 10% of the number of candidates immediately below them in the merit list and to make a selection eliminating those in the select list already prepared who do not get at least 50% marks in the entrance test. The matter was taken up in appeal before the Supreme Court in Civil Appeals Nos. 264, 285 and 286-A of 1982 and the Supreme Court affirmed the formula evolved by the Division Bench of this Court for the academic years 1982-83 onwards requiring an entrance test for admission and further directed a similar test also for the academic year 1981-82 in accordance with the formula mentioned in its judgment. Thus an entrance test for admission to the M.B.B.S. Course in the various medical colleges in the State has been finally laid down to be the only feasible method for evaluation of merits of candidates drawn from different Universities and also to ensure that no candidate by fraudulent methods and malpractices getting inflated marks will be eligible for admission for the M.B.B.S. Course in the State.

7. The question as to the feasibility of entrance test for the post-graduate course in medicine came up for consideration before a Division Bench of this Court in a batch of writ petitions --O. P. No. 3236 of 1982 etc. and this Court in paragraph 31 of its judgment stated thus:

"31. We are already in December. The Academic Year 1982 will be over in another four months. The entrance examination under these circumstances will be of little utility. Whether an entrance examination is necessary or not is a matter for the Government to decide. If necessary and as to how it should be done it also for the Government to consider. We are told that such entrance examinations are prevalent in at least three or four States, like Bihar, Pondicherry and Andhra Pradesh, and also in the Vellore Medical College. Whether the candidates seeking admission can seek admission for all the specialised subjects or only for one or two is again a matter for the Government to consider. From what we have stated in the judgment there is some confusion about the basis contained in Clause 4 of Ext. P1. A committee with some

knowledgeable persons will have to go into that question. We find that the Government is not averse to having an entrance examination. In para 3 of the counter-affidavit, it is stated that the Government are considering the question of conducting an entrance examination for 1982-83 and that this calls for a discussion at high level. The suggestion in para 3 of the counter-affidavit is that an entrance examination for the year 1981-82 is not feasible since to do so would mean dropping of one year's admission. We understand from these averments an anxiety on the part of the Government to examine the desirability of an entrance examination for the ensuing years if it is found to be the best course after taking into account all the relevant facts based on expert opinion. To the same effect is what the learned Advocate General stated before us. While considering this, the Government will keep in mind the fact that the petitioners did not insist upon an entrance examination for the in-service candidates and Tutors within the quota."

Accordingly the Government as per Ext. R3 (a) order dt. 22-3-1983 produced along with the counter-affidavit of the 3rd respondent in this case constituted a Committee consisting, of the Principals of the Medical Colleges of Trivandrum, Kattayam, Alleppey, Calicut and Trichur as members and Smt. Padma Ramachandran, Director, Institute of Management in Government, Trivandrum, as the Chairman to consider the question of feasibility of conducting entrance examination for admission to the post-graduate courses in the Medical Colleges and to submit a report to the Government within a month from the date of issue of the order. The Committee submitted its report, a copy of which is produced along with the original petition as Ext. P7. The Committee considered the absence of uniformity in the standards of examinations conducted by the Universities in the State and outside the State and came to the conclusion that an entrance examination is necessary for a proper evaluation of the comparative merits of the candidates for admission to the Post-Graduate Courses in the Medical Colleges in the State. Accordingly, the Committee recommended entrance examination for all candidates seeking admission for Post-Graduate Courses including Tutors in Medical Colleges and Health Services-personnel. The modalities for conducting the entrance examination are also contained in Ext P7 report of the Committee dated 3-5-1983. The Committee recommended the abolition of weightage of 5% marks to be added to medical graduates of Kerala and Calicut Universities, and also recommended that persons of Kerala origin alone should be eligible for admission to the Post-Graduate Courses in the State, thus eliminating non-Keralite candidates of other Universities from applying for admission to the Post-Graduate Course. The Government however thought that for the academic year 1982-83 it was possible to conduct the entrance examination and hence issued Ext. P8 order and Ext. P9 Prospectus for selection of candidates on the basis of the marks obtained in the qualifying M.B.B.S. Examination of the different Universities. Ext. pg order declining to hold entrance examination for the Post-Graduate Courses commencing in 1982-83 was challenged before this Court in O. P. Nos. 2721 and 2805 of 1983 and a Division

Bench of this Court in paragraph 4 of its judgment posed the question for consideration as follows :

"4. The plea for an entrance test is not a plea merely for adopting a better system but one advanced in support of the case that if the admissions are to be on merit such merit cannot be determined merely on the basis of marks obtained from different Universities in the Medical Degree Examinations. Therefore failure to select by an entrance test would seriously jeopardise those who would otherwise, be entitled to come in on the basis of their merit. The only question before us is whether there is sufficient justification not to introduce -entrance test for the post-graduate admission fox 1982-83. We need advert only to this aspect of the matter".

The plea that if an entrance test Is to be held for the year 1982-83 one batch of students would be lost was overruled and the Division Bench gave a direction that admissions to the Post-Graduate Course for the year 1982-83 in the Medical Colleges in the State will be made of the basis of marks obtained in an entrance test the principle of which was accepted by the Government as per its order Ext. P8 for the subsequent years This Court further directed that all those who are qualified to appear for the test should be allowed to apply afresh and the entrance examination was directed to be held as far as possible in September and if that was not possible in October. 1983.

8. The Medical Colleges in the State are all run by the Government. The Government's power to prescribe norms and standards for admission of students to the Medical Colleges cannot be denied. From among the large number of candidates applying for admission, a process of selection is necessary to make admission oh the basis of merit subject to the rules of reservation in regard to scheduled castes and scheduled tribes candidates. The Supreme Court in the decision in R. Chitralekha and Another Vs. State of Mysore and Others, stated thus at page 1830 :

"8. It is then said that the Mysore University Act conferred power to prescribe rules for admission to Colleges on the University and the Government cannot exercise that power. It is true that u/s 23 of the Mysore University Act 1956, the Academic Council shall have the power to prescribe the conditions for admission of students to the University, and, in exercise of its power, it has prescribed the percentage of marks which a student shall obtain for getting admission in medical or engineering colleges. The orders of the Government do not contravene the minimum qualifications prescribed by the University; what the Government did was to appoint a selection committee and prescribe rules for selection of students who have the minimum qualifications prescribed by the University. The Government runs most of the medical and engineering colleges. Excluding the State aided colleges for a moment, the position is as follows : The Colleges run by the Government, having regard to financial commitments and other relevant considerations can only admit a specific number of students to the said Colleges. They cannot obviously admit all the applicants who have secured

the marks prescribed by the University. It has necessarily to screen the applicants on some reasonable basis. The aforesaid orders of the Government only prescribed criteria for making admissions to Colleges from among students who secured the minimum qualifying marks prescribed by the University. Once it is conceded, and it is not disputed before us, that the State Government can run medical and engineering Colleges, it cannot be denied the power to admit such qualified students as pass the reasonable tests laid down by it. This is a power which every private owner of a College will have, and the Government which runs its own Colleges cannot be denied that power."

The same view is expressed in the decision in *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, at page 1767 :

"17. Since the Government has set up these colleges and maintains them, it has prima facie the power to regular, admission in its own institutions. Counsel for the petitioner pointed out to us no provision from the University Acts which deprives the Government of the power of making rules for admission in its own colleges. That being so, it cannot be said that the Government has no power to regulate admission in its own colleges or that because a student is eligible for admission under the University ordinances, he automatically gets a right to admission which he can enforce in a court of law".

It is further stated :

"So long as the rules for selection applicable to the colleges run by the Government do not suffer from any constitutional or legal infirmity, they cannot be challenged as the Government can regulate admission to its own institutions. The objection that it cannot, by such rules provide for requirements over and above those laid down by the Universities for eligibility cannot be sustained".

This decision follows an earlier decision of the Supreme Court in Civil Appeals Nos. 2161 A, 2161 B of 1970 reported in *State of Andhra Pradesh and Another Vs. Lavu Narendranath and Others etc.*, . The same view is expressed in the decisions in *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, ; *Minor P. Rajendran Vs. State of Madras and Others*, and in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, .

9. A mode of selection on merit adjudged by an entrance test had been in the contemplation of the Government for some time past and the same was implemented as per Ext. P8 order of Government made applicable for selection from 1983-84 onwards. An entrance test was found not feasible for the year 1982-83 as the Government thought there was no sufficient time to hold the test for the particular academic year. Ext. P8 order directed selection for 1982-83 on the basis of merit determined with reference to the marks obtained in the qualifying M.B.B.S. Examination as had been the method hitherto followed for selection of candidates for the Post-Graduate Course in the State. A Division Bench of this Court in the decision in *O. P. Nos. 2721 and 2805 of 1983* found that having accepted the principle of selection based on an entrance

examination, there is no reason why the same should not be implemented for the year 1982-83 also and hence issued directions for holding such a test for the year 1982-83.

10. Learned counsel for the petitioner submits that selection on the basis of a common entrance examination is violative of Chapter XLII of the Kerala University First Statutes 1972 issued by the Government in exercise of powers conferred on it by the Kerala University Act. 1969 (Act 9 of 1969). According to the learned counsel, Chapter XLII of the 1972 Statutes continues in force even after the repeal of the Kerala University Act 1969 by the Kerala University Act 1974 and a selection in violation of the First Statutes of 1972 cannot be sustained in law. Statutes 1 to 6 of Chap. XLII of the Kerala University First Statutes 1972 are extracted below ;

"Selection of Students for Courses:--

1. Admission of students.-- The students shall be admitted to the various courses of study in a College from a selection list prepared for the purpose.

2. Selection Committee.-- For every subject for which admission is sought for there shall be a Selection Committee in every college with the Principal as the Chairman and the Head of the Department in the subject concerned for degree and post-graduate courses and such other members as the Governing Body or the Managing Council, as the case may be, may decide for the purpose.

3. Selection List.-- The Selection Committee shall prepare the selection list for each subject from the applications received.

4. Merit.-- Subject to any rules of reservation that the University may make for the purpose, the selection shall be on the basis of merit.

5. Assessment of merit.-- The merit of a candidate shall be assessed on the basis of the marks obtained by him in the qualifying examination for admission to the particular course subject to such criteria as may be prescribed by the University. In assessing merit the Selection Committee shall be competent to award marks for extra-curricular activities like sports, N.C.C. etc. of the students. These marks shall also be added to the marks obtained for the qualifying examination in drawing up the selection list.

6. Savings.-- Notwithstanding anything contained in the above Statute the selection of students in Government Colleges shall also be governed by the rules framed by Government from time to time with the concurrence of the University in respect of such admissions".

According to the learned counsel, selection for admission to the Post-Graduate Course in Colleges affiliated to the Kerala University can only be in accordance with the above procedure prescribed by the Kerala University First Statutes 1972. Act 9 of 1969 under which the First Statutes of 1972 were issued was repealed by the Kerala University Act 17 of 1974. As per Section 19 of the Act the Senate

shall be the Supreme Authority of the University and shall have power to determine what degrees, diplomas and other academic distinctions shall be granted by the University. It has power to make, amend or repeal Statutes. Section 34 enumerates matters in respect of which the Senate may make Statutes, and such power of the Senate extends to all matters required to be provided for by Statutes under the Act. Section 25 enumerates the powers and duties of the Academic Council to be exercised subject to the provisions of the Act and the Statutes. Clause (vi) of Section 25 empowers the Academic Council to make provision for admission of students to the various courses of study on the basis of merit, in order to maintain proper standards of education, Section 84 repeats Kerala Act 9 of 1969 and Sub-section (3) of Section 82 contains the following provision :

"The Statutes, Ordinances, Regulations rules, bye-laws and orders in force immediately before the commencement of this Act shall in so far as they are not inconsistent with the provisions of this Act, continue to be in force until they are replaced by the Statutes, Ordinances, Regulations, Rules, bye-laws or orders framed under this Act".

Section 83 empowers the Government to make the First Statutes and First Ordinances of the University under the Act. The Government has issued the Kerala University First Statutes 1977 In exercise of power vested in it u/s 83 of the Kerala University Act 1974. The First Statutes of 1977 issued by the Government under the 1974 Act contains exhaustive provisions for all matters required to be provided for by Statutes under the Act. The 1972 First Statutes issued under the repealed 1969 Act are replaced by the First Statutes issued in exercise of power vested in the Government u/s 83 of the repealing Act 17/1974. It is clear from Sub-section (3) of Section 82 of the latter Act that the 1972 Statutes issued under the repealed Act can have no force after they are replaced by the First Statutes issued under the repealing Act. The contention of the learned counsel for the petitioner is that since there are no provisions in the 1977 Statutes similar to the provisions contained in Chapter XLII of the First Statutes of 1972 it should be held that Chapter XLII of the 1972 Statutes is still in force by virtue of the provisions of Sub-section (3) of Section 82 of the repealing Act. We are not able to accept this argument. Sub-section (3) of Section 82 is clear in its terms that the Statutes issued under the repealed Act shall have force only up to such time as they are replaced by Statutes issued under the repealing Act. The absence of provisions in the 1977 First Statutes similar to those contained in Chapter XLII of the 1972 First Statutes can only be understood as a deliberate omission apparently for the reason that those provisions are no longer found necessary for incorporation in the First Statutes. We cannot therefore accept the argument that Chapter XLII of the 1972 First Statutes survives even after its replacement by the First Statutes issued under the 1974 Act.

11. Even assuming that Chapter XLII of the 1972 First Statutes is still in force

that does not preclude the Government who runs medical colleges in the State from issuing executive orders for selection of candidates on the basis of a common entrance examination of qualified persons drawn from different Universities. There is nothing in the First Statutes of 1972 providing for a common selection of candidates for admission to the medical colleges in the State of persons qualified from different Universities. Statute 5 of Chapter XLII itself provides that the merit of a candidate can be assessed on the basis of the marks obtained by him in the qualifying examination for admission to the particular course subject to such criteria as may be prescribed by the University. In the absence of such criteria prescribed by the University, the executive power of Government under Article 162 of the Constitution extends to such matters as are not specifically provided for in the Act and the rules or Statutes issued thereunder. It is thus clear that even if Chapter XLII of the Kerala University First Statutes of 1972 is held to be still in force the Government has power to issue executive orders providing for an entrance examination for selection of candidates to the Post-Graduate Courses provided for in its colleges affiliated to the Calicut and Kerala Universities especially when such a process of selection has been found to be the most suited in respect of candidates drawn from different Universities with different curricula and standards of examinations at the qualifying level.

12. It is next submitted that a common selection for the post-graduate courses of study of candidates drawn from the two Universities is opposed to Statutes 4 and 7 of Chapter 16 of the First Statutes 1977 issued u/s 82 of the Calicut University Act 5 of 1975. Statute 4 relates to the degree of Doctor of Medicine (M.D.) and Statute 7 relates to the degree of Master of Surgery (M.S.) of the Calicut University. Both the Statutes are similarly worded. Statute 4 is extracted below :

"4. Doctor of Medicine

Save as otherwise provided, candidates for the Degree of Doctor of Medicine (M.D.) shall be required:--

(i) to have passed the M.B.B.S. Degree Examination of this University or an examination accepted by the Academic Council as equivalent thereto; and thereafter been a House Surgeon in a teaching hospital maintained by or affiliated to this University for a period of not less than 12 months of which six months at least have been spent in the medical ward or has been in the active practice of the profession for a period of not less than three years;

(ii) (a) to have worked as a post-graduate student for two years in a teaching hospital maintained by or affiliated to this University in General Medicine or specialty, or (b) to have worked as a member of the teaching staff of a teaching hospital maintained by or affiliated to this University or in the Department concerned in the case of non-clinical subjects for a period of at least two years; and

(iii) to have passed the prescribed examination :

Provided, however, that the period of two years mentioned in (ii) (a) above may be reduced to one year in the case of candidates who have selected Branch I -- General Medicine and who have continuous active practice for a period of not less than five years."

On the basis of these Statutes it is contended that unless a candidate has House Surgeoncy Course for a period of 12 months in a teaching hospital maintained by or affiliated to the Calicut University he will not be eligible for admission to the Post-Graduate Course provided for by the Calicut University. Neither the Calicut University Act, nor the Statutes issued thereunder, provide for affiliation of hospitals to the University. There is no hospital maintained by the Calicut University. The Calicut Medical College Hospital is maintained by the Government, and there is no question of affiliation of a hospital to the University. Statutes 4 and 7 requiring a course of house surgeoncy for the candidates otherwise qualified for the degree of Doctor of Medicine or Doctor of Surgery in a teaching hospital maintained by or affiliated to the Calicut University do not make much sense and these Statutes require amendment to make it clear that the course of house surgeoncy for a period of twelve months required need only be in a hospital attached to a medical college as a requisite qualification for admission to the Post-Graduate Course. Even assuming that the words employed would mean that the house surgeoncy referred to therein is required to be in the Calicut Medical College Hospital that is a condition for the award of the post-graduate degree as is clear from Sub-clause (3) which requires the candidates to have passed the prescribed examination for the concerned degree. In other words the qualification of House Surgeoncy in a teaching hospital maintained by or affiliated to the Calicut University referred to in Clause (1) of Statutes 4 and 7 of Chapter 16 does not relate to the stage of admission to the Post-Graduate Course, but can relate only to the stage when the post-graduate degree is to be conferred on a candidate who has already passed the examinations held in that behalf.

13. The next point urged is that the petitioner had submitted his application on the basis of the representation contained in Ext. P9 Prospectus and the respondents are estopped from introducing an entrance test for admission to the post-graduate course applied for by the petitioner. It is however admitted that the petitioner had applied afresh after the Government passed Ext. P10 order and issued Ext. P11 prospectus as per which admission is based on merit adjudged on the results of an entrance test. The petitioner was aware of the circumstances under which the Government passed Ext. P10 order and issued Ext. P11 Prospectus requiring an entrance test, for admission to the post-graduate course. Ext. P8 itself had accepted the principle of an entrance test for admission, but since it was thought there was hardly time to hold a test for admission, the Government had as per the said order allowed the existing practice to be followed for admission for the year 1982-83. It was in the context

of the directions issued by this Court in O. P. No. 2721 and 2805 of 1983 that the Government was obliged to introduce a test also for the year 1982-83. In the decision of the Supreme Court in *The Jumma Masjid, Mercara Vs. Kodimaniandra Deviah*, , it is held that there will be no question of estoppel when all the facts are known to both parties. The principle of promissory estoppel operating against the State was explained by Bhagwati, J. In *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*,), as follows (at p. 631):

"The true principle of promissory estoppel therefore seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not."

The view expressed in the above decision that the plea of executive necessity is no answer to a plea of promissory estoppel has been noticed in a later decision of the Supreme Court in *.Titram Shiv Ku-mar v. State of Haryana* (AIR 1980 SC 1285) and apparently, there are some reservations expressed in this latter decision. It is not however necessary for us to consider that aspect of the matter in this case, as in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*,) itself it is stated as follows (at p. 644) :

"If it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the court would not raise an equity in favour of the promises and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it".

For the aforesaid reasons, we overrule the plea of promissory estoppel urged by the learned counsel for the petitioner.

14. It was next contended that Ext. P10 order based on Ext. P7 recommendation of the Expert Committee is vitiated by mala fides and the Prospectus Issued thereunder as well as the order itself are liable to be quashed as not issued in bona fide exercise of power by the Government. The Expert Committee that went into the question of feasibility of conducting an entrance test, for admission to the Post-Graduate Courses in the State was constituted as per Ext. R3 (a) order of Government dated 22-3-1983. The Committee consisted of the Principals of the Medical Colleges at Trivandrum, Kottayam, Alleppey, Calicut and Trichur as members and Smt. Padma Rama-chandran, Director of Institute of Management

in Government, Trivandrum as its Chairman. The Principal of the Medical College, Trivandrum, was the Convener, of the Committee, It is averred in the original petition that Smt Padma Ramachandran is disqualified from sitting as a Member of the Committee or as its Chairman because of personal bias, the reason being that her daughter had passed the M.B.B.S. Examination from a Medical College in Tamil Nadu and having, completed a course of House Surgeoncy, was seeking admission to the Post-Graduate Course in Kerala. It is further stated that she does not have the least chance for admission on the basis of marks obtained in the qualifying examination and is not entitled to weightage being an outside candidate. Similarly the daughter of Sri Samu Iyer, Principal, Medical College, Alleppey, is also an aspirant for the post-graduate admission in Kerala which she cannot get under the existing Rules. Smt. Padma Ramachandrau has filed a counter-affidavit wherein she has stated :

"This respondent has no intention to recommend an Entrance Examination for the purpose of enabling her daughter to get admission to the post-graduate medical course and nobody can predict also whether she will get admission through Entrance Examination or not."

There is a similar counter-affidavit by Sri Samu Iyer, the Principal of the Medical College, Alleppey. As per the Rules for admission prior to Ext. P10 order as contained in Ext. P9 Prospectus a weightage of 5% marks is to be added to the total percentage of marks obtained in the qualifying examination in the case of M.B.B.S. Graduates of the Kerala and Calicut Universities. The Committee as per Ext. P7 report recommended the deletion of the aforesaid weight age in favour of the Calicut and Kerala University candidates and instead recommended an entrance examination to adjudge the comparative merits of candidates seeking admission to the Post-Graduate Courses in the State. The Committee had also recommended that only candidates of Kerala origin alone will be eligible for admission to the Post-Graduate Courses in the State. These recommendations were accepted by the Government as per its order Ext. P10. Since the comparative merits of candidates drawn from different Universities are to be adjudged on the basis of marks obtained in an entrance test there was no need for weightage in favour of M.B.B.S. Graduates of the Kerala and Calicut Universities. The abolition of weightage cannot therefore be questioned as in any way unjustified, on the facts and circumstances of the case. As per the Rules contained in Ext. P9 Prospectus candidates holding M.B.B.S. Degree of any recognised University were eligible to apply for admission to the Post-Graduate Courses in the State, whether they are of Kerala origin or not. As per Ext- P10 order of Government admission is confined to candidates of Kerala origin only. Whether such a restriction on geographical basis is permissible or not is a different matter with which we are not concerned in this writ petition. The petitioner has no complaint against the restriction confining admission to candidates of Kerala origin only. As a matter of fact, the petitioner stands benefited as the field of competition is reduced considerably confining admission to candidates of Kerala origin only.

15. Learned counsel for the petitioner relies on the decision of the Supreme Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others,) wherein it is stated thus at paragraph 21-

"21. It was next urged by the learned Attorney-General that after all the selection board was only a recommendatory body. Its recommendations had first to be considered by the Home Ministry and thereafter by the U.P.S.C. The final recommendations were made by the U.P. S.C. Hence grievance of the petitioners have no real basis. According to him while considering the validity of administrative actions taken, all that we have to see is whether the ultimate decision is just or not. We are unable to agree with the learned Attorney General that the recommendations made by the selection board were of little consequence. Looking at the composition of the board and the nature of the duties entrusted to it we have no doubt that its recommendations should have carried considerable weight with the U.P.S.C. If the decision of the selection board is held to have been vitiated it is clear to our mind that the final recommendations made by the Commission must also be held to have been vitiated. The recommendations made by the Union Public Service Commission cannot be dissociated from the selections made by the selection board which is the foundation for the recommendations of the Union Public Service Commission. In this connection reference may be usefully made to the decision in Reg. v. Criminal Injuries Compensation Board 1967 2 QB 364.

16. We have already noticed that in the context of an entrance test, a weight-age in favour of candidates holding M.B. B.S. Degree of the Kerala and Calicut Universities was unnecessary and would work as discriminatory against candidates holding similar degree from other Universities. The recommendation of the Committee accepted by the Government confining the field of competition to candidates of Kerala origin, has only benefited the petitioner, as qualified candidates of non-Kerala origin are totally ex-eluded from seeking admission to the post-graduate courses in the State we may however observe that in the context of the personal interest that Smt. Padma Ramachandran and Sri Samu Iyer had in the matter of admission to the Post-Graduate Courses in the State, they would have done well had they not participated in the deliberations of the Committee.

For the aforesaid reasons, we do not see any merit in this writ petition. It is accordingly dismissed. There will however be no order as to costs.