

**In the Court of Commissioner for Persons with Disabilities**  
**National Capital Territory of Delhi**  
25- D. Mata Sundari Road, Near Guru Nanak Eye Centre, New Delhi-2  
Phone 23216002-04, Telefax: 23216005  
[Vested with power of Civil Court under the Persons with Disability (Equal  
Opportunity, Protection of Rights and Full Participation) Act, 1995]

Case No. 4/1282/2016-Wel./CD/2605-08(01-04) Dated: 31.3.2017

**In the matter of:**

Sh. Deepak & Others  
E-2, Gali No.04,  
Radhe Puri, New Delhi-51.

..... Complainant

**Versus**

Bharatiya Vidya Bhavan's Mehta Vidyalaya,  
Mehta Sadan, Kasturba Gandhi Marg,  
New Delhi through its Chairman/CEO/Secretary.

..... Respondent No.1

The Director,  
Directorate of Education,  
GNCT of Delhi, Old Sectt.,  
Delhi-110054

..... Respondent No. 2.

The Secretary,  
CBSE, Shiksha Kendra, 2,  
Community Centre, Preet Vihar,  
Delhi-110092.

..... Respondent No.3

Date of hearing: 24.03.2017

Present: Sh. Deepak along with parents of children with disabilities/children with special needs enlisted at Annexure-I for complainant.

Sh. A.S. Awasthi, Registrar, BVB Mehta Vidyalaya, Sh. Brijendra Kulshrestha, Advocate and Ms. Anju Tandon, Principal, Dr. Upendra Kaushik, Manager & Ms. Namita Sharma, Advocate on behalf Respondent No. 1

Sh. Rajpal Singh Yadav, Dy. Education Officer, District(Central/New Delhi) Zone-26 on behalf of Respondent No.2.

None appeared on behalf of Respondent No. 3.

**ORDER**

The parents of the children studying in Special Education Wing, Bharatiya Vidya Bhawan's Mehta Vidyalaya, Kasturba Gandhi Marg, New Delhi, herein after referred to as respondent no.1, filed a representation which was received in the Office of the Commissioner for Persons with Disabilities, Govt. of NCT of Delhi on 18.05.2016. The representation is against inter-alia closure of special wing by respondent no. 1. The representation has been signed by Sh. Deepak and is accompanied by two lists of parents containing 40 and 20 names respectively (12 names have been repeated).

2. The submissions of the complainants are that the Missionaries and visionaries of respondent no. 1, had started education for special children 40 years ago at its school at K.G. Marg, New Delhi. Now that legacy and work of generosity is being diluted gradually and systematically by the present management. They have stopped taking fresh admissions in class 1 and class 2 and are not filling up vacant seats from class 3 onwards for the last two years in the special wing of this school. In April 2016, the School had withdrawn 4 Special Educators out of total 9, which includes HOD of Special Department from the special wing and they have been shifted to main stream classes of the school. The School management has made two classes of special wing to sit together with one class teacher.

3. The complainants have sought the following reliefs:-

- (i) Issue direction to B.V.B.Mehta Vidyalaya, K.G.Marg, New Delhi to continue to take admission in class-1 and class-2 and to fill up vacant seats from class 3 onwards in the Special Wing of the School.
- (ii) Issue direction to B.V.B.Mehta Vidyalaya, to revert back those 4 special educators to the special wing which had been withdrawn from there and shifted to main stream.
- (iii) Direct the School Management not to make two classes to sit together and previous system of having separate class for each standard be followed.

4. The complaint was taken up with the Director, Directorate of Education and Dept of Social Welfare, Govt. of NCT of Delhi vide communication dated 24.05.2016 advising them to look into the representation. The complainants also approached various authorities in the Central Govt. and the Govt. of NCT of Delhi. A copy of the representation was also received through the Court of Chief Commissioner for Persons with Disabilities on 15.09.2016.

5. The complainant and Director of Education, the respondent No. 2 were called to appear on 29.12.2016 vide communication dated 30.11.2016. However, none appeared on behalf of the respondent no.2. The hearings had to be postponed on two more occasions thereafter on 28.02.2017 and 17.03.2017.

6. On 24.03.2017, 46 parents of children with disabilities / children with special needs studying in various classes of respondent no. 1 appeared and put-forth their concerns.

7. The primary concern of the parents was that they had admitted their children with disabilities/children with special needs in the school as it has special arrangement for

assisted with the progress of their children and



the services rendered by the school. Since the school was upto XII<sup>th</sup> standard, they had the understanding that their children would study in that school up to XII<sup>th</sup>. Some of the parents also stated that at the initial stage, they did not want to label their children as children with disabilities/children with special needs. Some of them had also admitted their children in main stream schools and shifted them to respondent no. 1 after they were convinced that their children were not be able to cope-up in regular school. All the parents present in the hearing stated with one voice that the arrangement available in the Special Education Wing of the respondent no.1 is the best arrangement for their children to learn and to be educated. They said that their children cannot cope up and learn in main stream schools along with 40-50 children as the teachers would not be able to give the required individual attention to them. They also very strongly expressed that in the name of inclusive education, the education of children with disabilities is being seriously compromised. They alleged that the concept of inclusive education is being misinterpreted by the authorities who are responsible for implementing it. All of them were against shifting their children to main stream classes.

8. Some of the parents also stated that they were being asked to withdraw their children after VIII<sup>th</sup> standard if they did not show reasonable progress up to the level. The parents also insisted that respondent no. 1 should not stop the existing arrangement of Special Education Wing and should allow their children's education under that set up. They further submitted that the final results are going to be declared on 28<sup>th</sup> March, 2017 and, therefore, this Court should direct the school to continue their Special Education Wing till XII<sup>th</sup> standard.

9. Sh. Brijendra Kulshrestha, the learned counsel for respondent no. 1 appeared along with Sh. A.S. Awasthi, Registrar and Ms. Anju Tandon, Principal of the School and submitted a written statement dated 24.03.2017, which is reproduced below:-

**"Most respectfully sheweth :**

*All the contents /allegments of the complaints filed by the complainant are denied except that are specially admitted in the present reply.*

**Preliminary Objections:**

1. That the Petitioner is parent of the child Preksha Gupta who is a 'slow learner' and not "disabled" as per section 2(a)(i) of the Persons with Disabilities Act, 1995.

*The slow learners have below normal "intelligence Quotient" (IQ) i.e. between 75 to 90 range duly certified by the Medical Practitioner, as stated above and do not fall within the definition of disability.*

The Petitioner and the parents of 'slow learners' children have submitted to the School only low I.Q. certificates none of them have submitted certificates of disability from the Medical Practitioner as required under the Act and the Rules there under.

As such, the provisions of the said Act do not cover the category of slow learner. Hence the complaint cannot be entertained before the Hon'ble Authority and liable to be dismissed on this ground only.

2. In the matter of Smt. Meena Singh, Vice Chairperson, PTA, BMV Vs. Principal Bharatiya Vidya Bhavan, K.G. Marg, New Delhi (Case No. 1(156)Grv./10-11/CD/1037-38) filed before the Court of Commissioner for Persons with Disabilities, Women and Child Development Department Complex, 1, Canning Lane, KG Marg, New Delhi-1 in 2011, the Petitioner had sought certain relief for her child and others against the Mehta Vidyalaya in the Court of Commissioner for Persons with Disabilities, on the plea that her child is 'disabled'.

The Commissioner of Persons with Disabilities had taken up the complaint under the section 61 (c) of the said Act under the powers to take steps to safeguard the rights and facilities made available to the persons with disabilities. (Annex.-1)

Bhavan's Mehta Vidyalaya took the plea that her child was a 'slow learner' with I.Q. range of 75-90 as certified by the Medical Practitioner and the 'slow learner' is not covered within the definition of 'disabled' persons under section 2(a)(i) of the Disabilities Act, 1995.

After the number of hearings before the Hon'ble Commissioner the Court did not decide the case in favour of the petitioner and only passed an oral order dismissing the petition.

Thus the plea taken by Mehta Vidyalaya stands sustained.

3. The Section 2(i) of "the Persons with Disabilities (equal opportunities, protection of rights and full participation) Act, 1995" wherein the definition of "Disability" is as under:-

Means:-

- i) Blindness;
- ii) Low vision;

- iii) Leprosy-cured;
- iv) Hearing impairment;
- v) Locomotor disability;
- vi) Mental retardation;
- vii) Mental illness

The slow learners are not covered under the aforesaid categories; the child of the complainant is under the category of slow learners thereby no provisions of aforesaid Act are applicable to the applicant. Therefore the present complaint is liable to be dismissed on this ground alone.

The same is Annexed as Annexure-II

4. Bhavan's Mehta Vidyalaya is complying with the provisions of the Right to Education Act, directions of the Directorate of Education, Govt. of NCT, Delhi and CBSE, the affiliating Board for Mehta Vidyalaya.

**The right of Children to Free and Compulsory Education Act, 2009.**

As per Section 2, sub-section ee(A)(B) and (C) read with section 3 (3) of the Right of Children to Free and Compulsory Education Act, 2009, children have the right to pursue compulsory elementary free education with children with disability under the provision of Chapter V of the Persons with Disabilities Act, 1995.

Rule 11 of the Children to Free and Compulsory Education Act, 2009, states that: "(1) The School referred to in clauses (iii) and (iv) of clause (n) of section 2 shall ensure that children admitted in accordance with **clause (c) of sub-section (1) of section 12 shall not be segregated from the other children in the class rooms nor shall their classes be held at places and timings different from the classes held for the other children**"

"(2)" The school referred to in clauses (iii) and (iv) of clause (n) of section 2 shall ensure that children admitted in accordance with clause (c) of the sub-section (1) of section 12 shall not be **discriminated** from the rest of the children in any manner pertaining to entitlements and facilities such as text books, uniforms, library and information, Communication and technology (ICT) facilities, extra-curricular and sport.

**Directorate of Education, GNCT of Delhi.**

For this purpose vide circular No. DE-15/ACT-I/WPC-1225/2014/25415-25416 dated 4.3.2014 and Reminder No. DE-15/ACT-I/WPC-1225/2014/25959 dated 28.08.2014 the Directorate of Education has also



issued directions to all the Schools – Govt. and recognized un-aided private schools to appoint Special Educators to provide guidance and assistance in their education to these children and to further equal and inclusive education amongst children.

**Central Board of Secondary Education.**

The CBSE vide their circular No. 45/ACAD/Inclusive Education/2008 dated 29<sup>th</sup> October, 2008 have issued directions for **Integration** of children with special needs and further vide their Circular No. 65-GM/CBSE/ACAD/HEALTH/2009 dated 24<sup>th</sup> December, 2009 have issued guidelines to all the schools for inclusive education of children with disabilities.

Further the Central Board of Secondary Education to which Mehta Vidyalaya is affiliated in the Affiliation bye-laws, Chapter 2, norms of affiliation, Miscellaneous Rule No. 11 provide the following:

"Every school shall promote inclusion of student with disabilities/special needs in the normal schools as per provisions of the 'Persons with disabilities Act, 1995 and Inconformity with National Policy of Education';

Bhevan's Mehta Vidyalaya in compliance with the Act and the directions/guidelines of Directorate of Educations and the CBSE Affiliation Rules, is not making any discrimination in admission of children and is admitting all the children who apply to the school as per the procedure approved by the Directorate of Education and is following the government orders and guidelines for "Inclusive Educations".

It is due to these factors that the Mehta Vidyalaya is gradually shifting the 'slow learner' children in the normal classes as appropriate to their I.Q.

Since the procedure is gradual, the special needs of the children are continued to be attended to and have not been stopped by the school.

Wherever slow learner children have been included in the normal classes, the Special Educators are assisting and guiding these children in the normal classes. As per the Govt. directions quoted above, every school – aided-unaided has to appoint two Special Educators. However, Mehta Vidyalaya has 9 Special Educators to meet the requirement of all the children covered by the above Acts and Rules.

5. That present complaint is false and frivolous which is apparent from the facts that the complainant has stated in paragraph 8 that "Bharatiya Vidya

Bhavan, Mehta Vidyalaya/Answering Respondent is in receipt of land from Delhi Development Authority at concessional rate and has also received funds from Directorate of Education, GNCT of Delhi, in respect of students of EWS. In fact, the Answering Respondent has not received land as grant from the D.D.A. or any funds from Dte. of Education under EWS Scheme till date. Hence, the present complaint being false and is liable to be dismissed on this ground alone".

10. During the hearing on 24.03.2017, the representatives of respondent No. 1 reiterated that the Commissioner of for Persons with Disabilities has no jurisdiction to deal with this case as none of the parents of the children in question, had submitted disability certificates issued by the competent authority under the Persons with Disabilities Rules made under the Persons with Disabilities Act, 1995. For this very reason, while dealing with case No 1(156) Grv./10-11/CD, this court had appreciated the limitation and did not pass any order.

11. They further submitted that as per the directions of Directorate of Education, GNCT of Delhi and CBSE, all the children including children with disabilities / special needs have to be included into the main stream education. Therefore, the children who are studying in Special Education Wing of respondent no.1, would need to be gradually shifted to the main stream classes. They have 09 Special Education Teachers who will be assisting the children with disabilities / children with special needs and other children of main stream. The school will make all efforts to arrange for Special Educators so that the children with disabilities / special needs get quality education. No discrimination would be done against such children. The Principal also stated that while the respondent no.1 is doing its best for education of children with low IQ/special needs, they would like the concerned authorities to ensure that every school in the country shares this responsibility and make appropriate arrangement for quality education of children with disabilities/special needs.

12. The representative of the respondent no. 2 submitted a letter dated 23.03.2017 which reads as under:-

*"In this connection, the Principal of the school submitted that vide their letter dated 4.5.2016 that:-*

*"The Mehta Vidyalaya is affiliated to the CBSE and is admitting students with special needs along with general category students on the principle of inclusive education. The school is finding it difficult to accede to their request and maintain a separate establishment.*



However, for the session 2016-17, the management has decided to continue the status quo."

The HOS has again submitted vide their mail dated 11.01.2017 that :-

"With the implementation of RTE in 2010, admission is carried out in the main school at the entry level through lottery system. Abiding by the directives of the Government and CBSE no child with special needs is denied admission in mainstream education. No fresh admission is being taken in classes Nursery-II in the special education wing of Bharatiya Vidya Bhawan as all type of students are directly enrolled in mainstream education through lottery as per government guidelines. Ref. Clause 2(f) of Circular No. F. DE/15/Act-I/08/155/2013/5506-5518 dated 29.12.2015 of GNCTD.

The existing class-wise enrollments of the students in special education are as follows (inclusive education primary):-

Class III -	5
Class IV -	3
Class V -	8
Class VI -	9
Class VII -	8
Class VIII -	7
Class IX -	4

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However, the School Authority has directed to provide the clear status of their "Special Wing" whether closed or running vide this Office mail dated 10.03.2017 and have been directed to appear in hearing on 17.03.2017 along with the current and clear status on whether the said special wing for CWSN children "running or closed" as no specific reply to our this query has been received so far".

13. The contention of respondent no.1 that the issue involved is not within the jurisdiction of Commissioner for Persons with Disabilities on the ground that none of the parents of the children in question had submitted the disability certificate issued by medical board and that on this very ground, case No. 1(156)Grv./10-11/CD was not decided in favour of the complainant by the then Commissioner for Persons with Disabilities, has been examined in the light of the provisions of relevant legislation and executive instructions, guidelines etc. There is no denying the fact that the



Commissioner for Persons with Disabilities can take up the matters pertaining the rights of the persons with disabilities as defined under Section 2 (t) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. As per the said Section, a person with disability means a person suffering from not less than forty per cent of any disability as certified by a medical authority. The procedure for issue of disability certificate is contained in Rule 4 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Amendment Rules, 2009. The said Rules also prescribe forms of disability certificate and a disability certificate can be issued by a single doctor / specialist except for multiple disabilities. It is observed that the disability certificate in respect of Ms. Vijayanti Khanna and Master Abhay Sharma, which were produced by their parents during the hearing, have been issued by the appropriate medical authorities namely Guru Govind Singh Govt. Hospital, New Delhi and All India Institute of Medical Sciences, New Delhi. Therefore, the undersigned does have the jurisdiction to take up the matter as it involves the right to education of children with disabilities in an appropriate environment under the current Persons with Disabilities Act, 1995. At this point it is relevant to take note of the provisions of the Rights of Persons with Disabilities Act, 2016 which, though has not yet come into force, all concerned need to be prepared for its implementation in the very near future. Section 2 (s) of the said Act provides that a person with disability means a person with long term physical, mental, intellectual or sensory impairment, which hinders his full and effective participation in society equally with others. The said Act also includes specific learning disability as one of the specified disabilities. The persons with disabilities, who are not with bench mark disability i.e. 40% of any specified disability, are also entitled to certain rights including those relating to education. Be that as it may, as indicated above, there are children with disabilities involved in this case, the Commissioner for Persons with Disabilities is mandated to take up their case and do all that is necessary to protect their rights.

14. With regard to the contention of respondent no. 1 that they need to follow the instructions of CBSE and the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and implement inclusive education, it should be noted that the current Persons with Disabilities Act, 1995 as well as Section 31(1) of the Rights of Persons with Disabilities Act, 2016 provide for giving choice to children with disabilities to study in an integrated or inclusive or special set-up. The intention of the legislation is to provide a choice to children with disabilities so that they get quality education and the learning happens in true sense of the term.

15. Having said that, Government's policy is to promote inclusive education in the country. Extensive provisions have also been made in the Rights of Persons with Disabilities Act, 2016 for providing inclusive education to children with disabilities. Section 16 of the said Act provides that the appropriate Government and the local

authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall—

- (i) admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;
- (ii) make building, campus and various facilities accessible;
- (iii) provide reasonable accommodation according to the individual's requirements;
- (iv) provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;
- (v) ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication;
- (vi) detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;
- (vii) monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;
- (viii) provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs.

Section 17 of the said Act also requires that the appropriate Government and the local authorities shall take the following measures for the purpose of Section 16, namely:—

- (a) to conduct survey of school going children in every five years for identifying children with disabilities, ascertaining their special needs and the extent to which these are being met;

Provided that the first survey shall be conducted within a period of two years from the date of commencement of this Act;

- (b) to establish adequate number of teacher training institutions;
- (c) to train and employ teachers, including teachers with disability who are qualified in sign language and Braille and also teachers who are trained in teaching children with intellectual disability;
- (d) to train professionals and staff to support inclusive education at all levels of school education;
- (e) to establish adequate number of resource centres to support educational institutions at all levels of school education;
- (f) to promote the use of appropriate augmentative and alternative modes including means and formats of communication, Braille and sign language to supplement the use of one's own speech to fulfil the daily communication needs of persons with speech, communication or language disabilities and enables them to participate and contribute to their community and society;
- (g) to provide books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of cost up to the age of eighteen years;
- (h) to provide scholarships in appropriate cases to students with benchmark disability;



(i) to make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as extra time for completion of examination paper, facility of scribe or amanuensis, exemption from second and third language courses,

(j) to promote research to improve learning; and

(k) any other measures, as may be required.

16. As per Section 2 (m), "inclusive education" means a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities.

17. The intention of the policies, executive orders and the legislations is thus crystal clear to promote inclusive education to children with various disabilities and to that end the appropriate governments and local authorities are mandated to provide necessary facilities, infrastructure etc. Therefore, it will be against the existing provisions in the legislation and the executive orders to resist the initiative to teach children with disabilities in the main stream classes. However, provision of the necessary facilities and infrastructure would have to be a prerequisite for it. As is clear from the provisions in the existing policies and the legislations, specific arrangements for some children with disabilities may have to be made to enable them to learn in an appropriate environment as per their / their parents' choice. If such arrangement is already in place, it goes without saying that it would not be in the best interest of such children to withdraw the facilities.

18. As has happened in this case, it is likely that the parents and the children with disabilities / special needs may have apprehension and fear against a sudden change in the teaching / learning arrangement. The concerned authority which, in this case is Directorate of Education, Govt. of NCT of Delhi, would need to appreciate this concern of parents and the children with disabilities / children with special needs and handle the situation in the most professional manner keeping in view the larger issue of ensuring quality education of children with disabilities.

19. Upon examining all the submissions of the parties, the provisions in relevant legislations and executive orders, the following is recommended:-

- (i) Children with disabilities who have been receiving education under the Special Education Wing of respondent no. 1, should not be suddenly shifted to different arrangement without consulting their parents and ensuring that



their educational performance / outcome, social and emotional development is not anyway adversely affected by such a change. The Choice of the parents and the children with disabilities / special needs should be paramount for a decision about any change in the existing arrangement.

- (ii) Respondent no. 1 and 2 may arrange a few sessions for interaction of the parents of children with disabilities / special needs with the experts on inclusive and special education so as to enable the parents to have extensive discussion with them on their concerns and solutions to the same.
- (iii) Respondent no. 1 & 2 should ensure that an appropriate environment, infrastructure and other teaching and learning facilities are provided for children with disabilities / special needs who choose to shift to mainstream classes and ensure that they receive quality education on equal basis with other children.
- (iv) It is not within the powers of Commissioner for Persons with Disabilities, Govt. of NCT of Delhi to direct respondent no.1 to continue the Special Education Wing for class-1 and class-2. However, the children with disabilities who are already studying in the said arrangement should not be denied the facility till class XII<sup>th</sup> unless they opt for it.
- (v) Keeping in view the concerns of the parents of the children with disabilities / children with special needs about the quality of education under the inclusive set up without putting in place the appropriate and sufficient facilities on the one hand and that of schools like respondent no.1 including Govt. schools about the mandate to implement the provisions in the legislation and executive orders on inclusive education, Chief Commissioner for Persons with Disabilities / Department of Empowerment of Persons with Disabilities, Govt. of India may take up with Ministry of Human Resource Development for organising an extensive consultation with the experts and advocates of inclusive education, special education and home based education where a cross section of parents of children with disabilities / children with special needs are also present from across the country. Thereafter, appropriate guidelines may be issued to all concerned for implementation uniformly

across the country. This recommendation is being made as the issue of ensuring quality education to children with disabilities / children with special needs concerns not only the children in the National Capital Territory of Delhi but in the entire country.

20. The matter is disposed of accordingly.



Given under my hand and the seal of the Court this 31st day of March, 2017.

(J.D. Dhariyal)

Commissioner for Persons with Disabilities  
Court of Commissioners for Persons with Disabilities  
National Capital Territory of Delhi

Room No. - 1

25-D, Mafa Sundari Road, New Delhi

Copy to:- CD/2605-(01-04)

1. Secretary, Department of Empowerment of Persons with Disabilities, M/o Social Justice and Empowerment, Govt. of India, 5<sup>th</sup> Floor, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi-110003.
2. Chief Commissioner for Persons with Disabilities, Deptt. of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Govt. of India, Sarojini House, 6 Bhagwan Dass Road, New Delhi.
3. Secretary, Elementary & School Education, Ministry of Human Resource Development, Govt. Of India, Shastri Bhawan, New Delhi-110001.
4. Chief Secretary, Govt. Of NCT of Delhi, 5th Floor, Delhi Secretariat, New Delhi for information please.

Received & Hand  
Delivered After  
24/4/17  
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