

**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-110002
Phone: 011-23216001-002, Telefax: 011-23216005, Email: comdis.delhi@nic.in
[Vested with powers of Civil Court under the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995]**

Case No. 4/627/2014-Wel/CD/ 1845-47

Dated. 25.11.14

In the matter of:

Mr.P.S.Porwal
JF-41, 3rd Floor
Gupta Colony, Khirki Extension
Malviya Nagar,
New Delhi -110017

..... Petitioner

Versus

Ms.Padmini Singla
Director
Directorate of Education,
New Delhi

Dr.Anuradha Joshi
Principal
Sardar Patel Vidyalaya
Lodhi Estate, New Delhi-110003

..... Respondents

ORDER

1. Sh.P.S.Porwal the petitioner submitted application of admission of his daughter baby Yashvi Porwal in pre-school in Sardar Patel Vidyalaya Lodhi Estate New Delhi. However when he contacted the School on 9.4.2014 the School replied that all the seats had already been filled up. The petitioner had applied for admission of his disabled daughter following the directions of the Directorate of Education Government of NCT of Delhi issued to the schools in this regard which inter alia provided reservation of seats for disabled children.
2. After receipt of the representation the Directorate of Education was requested to look into the matter and also to take appropriate action for facilitating the admission of baby Yashvi Porwal in Sardar Patel Vidyalaya. In response to this notice the Principal of the School informed that the petitioner had applied for admission of his disabled daughter online and she was also shortlisted for admission. As the petitioner did not come to the school for verification etc even when the information had been displayed on the Notice Board in the school and also displayed on the website of the school it was not possible to admit the child and therefore the case may be filed.

3. The petitioner was requested to file his response on the reply received from the School. The petitioner stated that he did not get any information for attending the school after the name of his daughter was shortlisted as at the time of submission of application form and fee it was not informed that the list of selected candidates will be displayed on the Notice Board and that information in this regard will not be sent to the individual parents.
4. Since the petitioner had a genuine grievance a hearing was held which was attended by Ms. Anuradha Joshi, Principal alongwith Sh. Rajiv Pant officiating Manager of Sardar Patel Vidyalaya. Ms. Omeshwari Singh Education Officer Zone-26 Directorate of Education also attended the hearing. The Principal of the School and Education Officer filed reply/status report a copy of which was given to the petitioner to file his replication.
5. A perusal of the reply filed by the Principal of the School indicates that the online application of Baby Yashvi Porwal was received on 30.1.14 under the Inclusive Education category. The application was duly considered and her name was shortlisted for verification of documents under the category of Inclusive Education. All the information/instructions were given in the School admission form and the School website and no personal communication were issued about the date of verification. The website of the School gives all the general instructions and also highlights important dates to be remembered by the applicants. A copy of the instructions sheet and other relevant details relating to rules of admission were also filed which clearly shows no individual communication was contemplated. The list of shortlisted candidates was duly uploaded on the website of the School indicating the date and time for parents to attend the Vidyalaya for verification of documents and no parents were in fact informed individually. The name of baby Yashvi Porwal was mentioned at Serial No.16 in the category under which the application was made. As such Sh.Porwal was required to attend the Vidyalaya on 12.2.2014 for verification of documents. Sh.P.S.Porwal did not attend the Vidyalaya on 12.2.2014 for the purpose of verification. The parents of shortlisted applicants who were unable to attend or missed their verification proceedings on the specified date and time had contacted the Vidyalaya subsequently with a request for rescheduling of their appointments and the Vidyalaya had rescheduled their appointments, which were then scheduled for being taken up between 18.2.2014 and 20.2.2014. Sh.Porwal never contacted the School on 9.2.2014 or any date between 9.2.2014 and 20.2.2014 even though it was mentioned on the website that the schedule for verification of documents of the shortlisted candidates would be displayed on the website between 9.2.2014 and the verification of documents would take place between 9.2.2014 and 20.2.2014. After completing the verification procedure the admissions were granted. Sh.Porwal never contacted the Vidyalaya during this entire period. The allegation

that the admission was not granted is therefore patently erroneous and complaint is wholly untenable and is required to be dismissed. Further it has been stated that Sardar Patel Vidyalaya is an unaided private recognized minority public school recognized as such by a Judgment and order of the Hon'ble Delhi High Court. As such the RTE Act and the provision with regard to grant of admission set out thereunder are not applicable to the School as per the recent judgments passed by the Supreme Court of India in society for Unaided Private Schools of Rajasthan Vs Union of India[2012(6) SCC 1] and in judgment dated 6.5.2014 in Writ Petition (C) No.416 of 2012 (Pramati Educational & Cultural Trust). Apart from it the order dated DE-15/Act-I/WPC-1225/14/23871-876 dated 27.5.2014 issued by the Additional Director of Education for reservation of two seats for the children with special needs in Nursery class as directed by the Hon'ble Delhi High Court in Writ Petition No.1225/14 titled Pramod Arora Vs. Lt. Governor of Delhi is also not applicable to the Vidyalaya not being covered by the RTE Act nor is the name of the Vidyalaya covered in the list of schools which were required to reserve the seats by the Hon'ble High Court. The Principal of the School stated that the alleged grievance is wholly misconceived and there is no justification or merit in the representation made by Sh.Porwal and therefore no further action is warranted and the case may be dropped forthwith and the notice discharged.

6. In response to the reply of the School the petitioner further stated that at the time when he applied on line for admission of his daughter on 30.1.14 no such information regarding verification of documents had been put on the website. The petitioner however came to know about the verification of the documents only from the reply of the respondent dated 7.5.14 submitted in the Court of Commissioner for Persons with Disabilities. The petitioner was not aware about the shortlisting of the name of his daughter and verification of documents. No information was sent by the School to the petitioner about the verification etc though full details (land line and e-mail) were provided to the School. The petitioner's contention is that the School should have informed him on telephone or through e-mail and that the orders/guidelines issued by the Directorate of Education are required to be followed by the School which do not prescribe any such guidelines of not informing the parents of the children. The contention of the Principal of the School that petitioner did not contact the school till 9.4.14 is completely wrong and misleading as the petitioner contacted the school on 9.4.14 when he was informed that entire admission process had been completed and classes begun. Further the petitioner stated that as per the order of the Directorate of Education (Act-I Branch) dated 4.4.14 it has been clearly stated **Quote** "The school shall start the admission process immediately keeping in view the directions and complete the admission process in respect of open seats, staff quota, girl's quota and EWS and

disadvantaged group quota by 9.4.14" **Unquote.** It is therefore clear that the process of admission was on till 9.4.14 but when the petitioner contacted the School on 9.4.14 he was informed that the process of the admission had been completed and classes begun. The Education Officer of the Directorate of Education reiterated the submissions made by the Principal of the School word by word which is quite surprising as if the Education Officer of the Directorate of Education does not have anything to comment and it appears that they were following the position taken by the School which is quite intriguing. Further the Deputy Director of Education District Central/New Delhi of Directorate of Education filed a reply which indicates that the School is an unaided minority school (Linguistic) and as per the order of Hon'ble High Court Delhi dated 1.9.14 the order of Government of NCT of Delhi to admit children belonging to EWS Category is not applicable to a minority school.

7. I have gone through the representation of the petitioner and the replies/replication filed by the Principal of the School and Education Officer/Deputy Director of Directorate of Education and the petitioner. The Directorate of Education had issued instructions on 20.1.14 in the matter of LPA No.30/2014 titled Action Committee unaided recognized Private Schools Vs Hon'ble Lieutenant Governor and others and LPA No.31/2014 Forum for Promotion of Quality Education for all Vs Hon'ble Lieutenant Governor and Others vide which the Directorate had announced an admission schedule. The petitioner had accordingly filed the application for admission of his daughter which was in fact considered by the School as per the admission of the Principal of the School in the reply filed in this Court where it is stated that the name of baby Yashvi Porwal was shortlisted for verification. There is confusion about informing the petitioner about the verification which has become a contentious issue with arguments in favour and against whether there is a laid down procedure for informing the parents of the children about the various dates in the process of granting admission in the School. The Principal of the School clarified that instructions had been issued that no individual intimation would be sent and all important dates/activities will have to be collected from the website of the School. The petitioner did not contact the School during the entire process and it is quite surprising that the petitioner who was so anxious to admit his daughter in the School did not bother to find the progress of the process of admission of his daughter in the School even as he appears to be computer suave as he had applied for admission online and therefore he should have accessed the website of the School and checked the details and gone to the school for verification etc.
8. The law is well settled in so far as the minority schools are concerned which inter alia lays down that all minorities whether based on religion or language shall have the fundamental right to establish and administer education institutions of their choice. [Article 30(1)] of the

Constitution of India. While Article 29(1) enables the minority to maintain its language or script, the present clause enables them to run their own educational institution, so that the State cannot compel them to attend any other institutions, not to their liking. By the 1978 amendment, favourable treatment has been accorded to such minority educational institutions in the matter of compensation for compulsory acquisition of property by the State. While, by reason of repeal of Article 31 all persons have lost their constitutional right to compensation for acquisition of their property by the State, including educational institutions belonging to the majority community, educational institutions established by a minority community lie entrenched in this behalf. Their property cannot be acquired by the State without payment of such compensation as would safeguard their right to exist, as is guaranteed by Article 30 (1A). Further it has been clearly laid down under Article 30(2) **Quote** "The State shall not in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority" **Unquote**. It may also be relevant to mention that even though there is no constitutional right to receive State aid, if the State does in fact grant aid to educational institutions, it cannot impose such conditions upon the right to receive such aid as would, virtually, drive the members of a religious or linguistic community of their right under Article 30(1). While the State has the right to impose reasonable conditions, it cannot impose such conditions as will substantially deprive the minority community of its rights guaranteed by Article 30(1). Surrender of fundamental rights cannot be exacted as the price of aid doled out by the State. Thus the State cannot prescribe that if an institution, including one entitled to the protection of Article 30(1) seeks to receive State aid, it must subject itself to the condition that the State may take over the management of the institution or to acquire it on its subjective satisfaction as of certain matters for such condition would completely destroy the right of the community. It may therefore be seen that the fundamental right of the minority cannot be abrogated by anybody. The Hon'ble High Court of Delhi in Writ Petition (c) 131/2004 in the case of St.Columbas School Vs Lieutenant Governor of Delhi has held that State cannot abrogate the rights of the minorities to establish and administer schools of their choice, then by a covenant in a lease deed Government certainly cannot appropriate the right to nominate non-minority EWS students to a minority school and that the Constitutional mandate will prevail de hors any alleged provision in the lease deed.

9. The requirement in this case however is different. As may be seen the Principal of the School has stated that the name of baby Yashvi Porwal was shortlisted and since the parents did not attend for the verification etc the daughter of the petitioner could not be considered for the admission. Further the order of Hon'ble High court of Delhi relates to non-minority

EWS category and not to persons with disabilities. The Directorate of Education Government of NCT of Delhi, instead of filing replies without understanding the basic issue, should have examined the rights of the persons with disabilities and the observation of Hon'ble Supreme Court of India in the case of Justice Sunanda Bhandare Foundation Vs UOI Writ petition (Civil) No.116 of 1998 in which it has been observed as follows **Quote** "Be that as it may the beneficial provisions of the 1995 Act cannot be allowed to remain only on paper for years and thereby defeating the very purpose of such law and legislative policy. The Union, States, Union Territories and all those upon whom obligation has been cast under the 1995 Act have to effectively implement it. As a matter of fact, the role of the governments in the matter such as this has to be proactive. In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic. A little concern for this class who are differently abled can do wonders in their life and help them stand on their own and not remain on mercy of others. A Welfare State, that India is must accord its best and special attention to a section of our society which comprises of differently abled citizens. This is true equality and effective conferment of equal opportunity" **Unquote**. The case of baby Yashvi Porwal was required to be considered notwithstanding the timelines as prescribed in the schedules etc. The fact that the School is inclined to be a partner in the efforts of the Society in providing Inclusive Education to disabled children only shows their intent and therefore taking a line now that the school is protected by Constitutional provision being a minority institution does not augur well particularly when even the order of the Hon'ble High Court of Delhi passed on 1.9.14 i.e after the due date of admission etc deals with the cases of admission of EWS students to a minority school and not of admission of disabled children. The efforts of the Society towards Inclusive Education would only get strengthened if all the institutions irrespective of whether they are from majority or minority categories participate voluntarily. There is a need therefore to look into this case in the light of the discussion above and facilitate consideration of application filed by the petitioner for admission of baby Yashvi Porwal in Sardar Patel Vidyalaya Lodhi Estate New Delhi.

10. Ordered accordingly.



Given under my hand and the seal of the Court this 25th day of November, 2014.

(K.S. Mehra)
Commissioner

Court of Commissioner (Disabilities)
National Capital Territory of Delhi
Room No. - 1
25-D, Mata Sundari Road, New Delhi-02