

In the Court of State Commissioner for Persons with Disabilities
National Capital Territory of Delhi
25- D, Mata Sundari Road, Near Guru Nanak Eye Centre, New Delhi
Phone-011-23216002-04, Telefax: 011-23216005,
Email: comdis.delhi@nic.in
[Vested with powers of Civil Court under the
Rights of Persons with Disabilities Act, 2016]

Case No.564/1121/2018/10/ 9016-9019 Dated: 27/12/2019

In the matter of:
Suo-Motu

Versus

The Secretary
Deptt. of Health and Family Welfare,
Govt. of NCT of Delhi,
9th Level, A-Wing, I.P. Estate,
Delhi Secretariat,
New Delhi-110 002. Respondent No.1

The Medical Director
Dr. Baba Saheb Ambedkar Hospital,
Govt of NCT of Delhi,
Sector-6, Rohini,
Delhi-110085. Respondent no. 2

Administrator,
Office of the Administrator,
Asha Kiran, Deptt. Of Social Welfare,
Govt. of NCT of Delhi,
Avantika, Sector-01,
Rohini, New Delhi-110085. Respondent no. 3

Date of Last Hearing: 23.12.2019

Present: Dr. Yogesh Kataria, Nodal Officer for Respondent No. 1.
Ms. Harsh Bala on behalf of Respondent No. 2.
Dr. Rachna Bhardwaj for Respondent No. 3
Dr. B.K. Tyagi, alongwith Sh. Deepak Singh, Jr. Assistant
for JSS Hospital.

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ORDER

Sh. P.N. Mishra, Administrator, Asha Kiran (Home for Mentally Retarded Persons), Rohini vide his letter dated 15.10.2018 informed that 1250 residents who have their Aadhaar Cards and whose IQ has also been assessed either by IHBAS or by the Clinical Psychologist of Asha Kiran, have not been issued disability certificates. Sh. Mishra requested for intervention of this court to organise a camp in the Auditorium of Asha Kiran Home for issuing disability certificates to the residents.

2. The matter was taken up with Secretary, Health & Family Welfare Department vide DO letter dated 29.10.2018 for arranging a camp in the premises of Asha Kiran Home.

3. As per the minutes dated 11.01.2019 of the meeting held on 07.01.2019 under the Chairmanship of Medical Director, Dr. Baba Saheb Ambedkar Hospital (Dr. BSA Hospital), Rohini, it was decided that the Administrator, Asha Kiran Home may form a schedule and send batches of 10-15 residents after preliminary screening by the House Medical Officer on Wednesdays and Fridays for assessment at Dr. BSA Hospital for disability certificates.

4. It was apparent that even if 30 residents were issued disability certificates every week, it would take nearly 1 year to issue disability certificates to all the 1250 residents. That is too long a period and against Rule 26 (2) of the Delhi Rights of Persons with Disabilities Rules, 2018 which requires the medical boards to issue a disability certificate within a month from the date of receipt of the application.

5. Considering it as an extra ordinary situation where more than 1200 persons with disabilities living in a Govt. Home were without the certificates of disability for many years and thus being deprived of their

entitlements, it warranted emergent and special measures to ensure that all of them were issued certificates of disability within the shortest period of time. It could be possible by organising camps and pooling the required resources including by moving the necessary machinery/equipments to the place of assessment.

6. In light of the above situation, a show cause notice dated 22.02.2019 was issued to the respondents with a copy to the Secretary, Department of Social Welfare, Govt. of NCT of Delhi to show cause why special arrangements should not be made for assessment and issuance of the certificates of disability to the residents of Asha Kiran as far as possible, at the premises of Asha Kiran and in unavoidable cases, at the premises of Dr. BSA Hospital, Rohini within two months in any case by 25.04.2019. Secretary, Health and Family Welfare Department was also directed to submit the proposed action plan for the purpose.

7. Dr. Meenakshi Sidhar, Chairperson, Disability Board vide letter dated 30.01.2019 also informed that the Administrator, Asha Kiran should send 15 inmates on every Wednesday and Friday after assessment of IQ and other psychological assessment by Clinical Psychologist of IHBAS or other GNCT institutes who are to be co-opted as member of Medical Board. For hearing assessment, initially inmates of paediatrics age group may be sent on Wednesday and Friday. Adults may be sent after a period of two weeks till necessary arrangements were made. For visual assessment, supportive assessment for special investigation and expert opinion would be required due to lack of cooperation by intellectually challenged inmates and they may also need a referral to Guru Nanak Eye Centre for which necessary arrangements may be made. She also requested Asha Kiran to coordinate with the neighbouring Hospitals under GNCT of Delhi for timely issuance of certificates of disability. This was done after

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a meeting of all HoDs of Department of Dr. BSA Hospital held on 07.01.2019.

8. Sh. P.N. Mishra, Administrator, Asha Kiran referring to the meeting held on 07.01.2019 informed that 60 residents had been sent to Dr. BSA Hospital. But Asha Kiran had not received any certificate of disability. He also submitted that with that speed, it would take decades to issue certificates of disability to all the residents. He also mentioned that all the residents have intellectual disability and their IQ is below 70%. They have at least 50% disability on account of intellectual disability alone and therefore are entitled to benefits given by Govt. to persons with Benchmark Disabilities.

9. Vide letter dated 28.03.2019 respondent no. 2 informed that 104 residents had been presented for assessment of disability related to Eye/ENT/Ortho. It was also pointed out that there was no Clinical Psychologist in Dr. BSA Hospital. All the patients inquiring mental/psychological assessment were being referred to IHBAS and that Department of Social Welfare/Women and Child Development have Psychologist who may be utilized for IQ and psychological assessment.

10. Upon considering the replies of respondent no. 2 & 3, a hearing was scheduled on 26.04.2019 which was re-scheduled to 29.05.2019.

11. During the hearing on 29.05.2019, it transpired that Asha Kiran had applied for certificates of disability of the residents on Swavalamban portal which is being used for UDID (Unique Disability Identity Card), project of Govt. of India. The applications need to be submitted to the Certifying Authority. Thereafter the person is examined/ assessed for the extent of disability and, if eligible, the certificate is issued.



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12. Dr. M.M. Kohli, Medical Director and Dr. Dinesh Tyagi, HoD (Psychiatry) submitted that 67 persons were presented to the visiting psychiatrist till 28.05.2019 at Asha Kiran and all of them had been examined and the disability certificates issued to 29 persons.

13. After detailed discussion, the parties agreed to segregate all the residents of Asha Kiran into three categories- (i) those with only intellectual disability; (ii) those with intellectual disability and mental illness; and (iii) those with intellectual disability and/or mental illness plus any other disability. Medical Director, Dr. BSA Hospital stated that the persons falling in the category (i) could be issued disability certificates within one week, if they had been assessed for their IQ.

14. With regard to the doubt on whether the IQ tests conducted at IHBAS could be used for issuing a disability certificate or not, the attention of the parties was drawn to the fact that IQ of the persons who have been assessed as "profound" and "severe" was not likely to vary considerably by using the tools prescribed in Ministry of Social Justice and Empowerment's notification dated 04.01.2018 namely, VSMS for adaptive functioning and BKT/MISIC for IQ test. Moreover, Rule 20 of the RPwD Rules, 2017 and Rule 28 of Delhi RPwD Rules, 2018 provide that the certificate of disability issued under the Persons with Disabilities Act, 1995 shall continue to be valid after the commencement of the Rights of Persons with Disabilities Act, 2016. Before coming into force of the RPwD Act, 2016, the disability certificates for mental retardation and intellectual disability were to be issued in accordance with the guidelines notified by Ministry of Social Justice and Empowerment vide notification no. 16-18/97-NI I dated 1st June, 2001.

15. In view of the above, the Certifying Authority in Dr. BSA Hospital could issue the disability certificates in respect of those who have been


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assessed as "profound" and "sever" and whose IQ test was conducted at the age of 18 years or above without reassessment of their IQ.

16. After hearing the parties, the following recommendations were made vide R.O.P dated 31.05.2019:

- i) *"Asha Kiran shall segregate the existing 1155 residents into the above mentioned three categories and send the list to Medical Director, Dr. BSA Hospital by 04.06.2019. (Administrator, Asha Kiran has intimated the numbers through SMS, which are as under:*
 - (1) Only ID – 355,
 - (2) ID+MI – 301,
 - (3) ID+Ortho – 186,
 - (4) ID+ENT – 202, and
 - (5) ID+Vision – 111)
- ii) *The Certifying Authority in Dr. BSA Hospital shall issue the disability certificates in respect of the persons having only intellectual disability and intellectual disability plus mental illness within one week from the date of receipt of the list alongwith the application (Ref. Para 3 (i), (ii) and para 5).*
- iii) *Health and Family Welfare Department (respondent no. 1) shall issue necessary communication to the neighbouring Bhagwan Mahavir Hospital and Sanjay Gandhi Memorial Hospital by 04.06.2019 for assessment of hearing impairment, visual impairment and locomotor disability of the persons with intellectual disability and /or mental illness having additional disabilities.*
- iv) *Asha Kiran will send by 04.06.2019 the list of persons referred to at (iii) above to the two hospitals who shall assess the extent of the above mentioned disabilities within*

a reasonable time and provide the reports to the representative of Asha Kiran who will submit the said reports in original alongwith the application to the Certifying Authority in Dr. BSA Hospital for calculating the percentage of disability and issuance of disability certificates."

17. A copy of the record of proceedings was also sent for necessary action to Secretary, Department of Social Welfare and Medical Superintendent of Bhagwan Mahavir Hospital, and Medical Superintendent, Sanjay Gandhi Memorial Hospital.

18. On the next date of hearing on 02.07.2019, Sh. P.N. Mishra, Administrator, Asha Kiran informed that a segregated list of residents comprising (i) ID 328, (ii) ID+MI 189, (iii) ID+Ortho 206, (iv) ID+ENT 343 and (v) ID+Vision 55 total 1121 had been provided to Dr. BSA hospital on 26.06.2019. Till then, IQ assessment had been done by clinical psychologist in respect of 324. Out of them, 234 had been examined by the visiting psychiatrist.

19. Asha Kiran had received disability certificate in respect of 28 persons. Applications in respect of remaining residents out of 234 whose IQ as well as psychological assessment had already been done, would be submitted to BSA Hospital within 2-3 days. He further stated that segregation of those who had "profound" and "severe" intellectual disability might take some time as each file and IQ report would need to be scrutinized and the concerned staff was on leave and therefore that would also be done by 16.07.2019 and the list would be sent to BSA Hospital alongwith applications.

20. Dr. Yogesh Kataria submitted that the information received from Asha Kiran had been transmitted to BSA Hospital, Bhagwan Mahavir

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Hospital and Sanjay Gandhi memorial Hospital for assessment and necessary action as per the directions dated 29.05.2019 of this Court.

21. Dr. Meenakshi Sidhar confirmed receipt of the segregated lists of residents numbering 1121. She also stated that disability certificates in respect of all those whose applications had been received which was around 95, had already been issued. The disability certificates in respect of 54 persons were issued on 01.07.2019 and no application was pending as on 01.07.2019.

22. Keeping in view the huge backlog, it was directed that after receipt of the applications in respect of those with only Intellectual Disability and Intellectual + Mental Illness for disability certificates from Asha Kiran by 10.07.2019, BSA Hospital should issue disability certificates within two weeks i.e. by 24.07.2019. Bhagwan Mahavir Hospital and Sanjay Gandhi Memorial Hospital were also directed to assess and submit the assessment reports in respect of those with Intellectual Disability + Ortho or vision disability to BSA Hospital by 17.07.2019 and the BSA Hospital should issue disability in respect of such persons by 24.07.2019.

23. It was also directed that the assessment of those who with hearing impairment, should be completed by 24.07.2019 by Bhagwan Mahavir Hospital and Sanjay Gandhi Memorial Hospital and submit the assessment including the audiometry reports etc. to BSA Hospital by 29.07.2019 and BSA Hospital should issued disability certificates by 31.07.2019. All the respondents were directed to submit a report by 14.08.2019.

24. On 11.09.2019, Sh. P.N. Mishra, Administrator, Asha Kiran gave the status of the Disability Certificates issued as on 09.09.2019, as per which the total strength of the inmates was 999 and they had received


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385 certificates from the Dr. B.S.A Hospital against the total 719 forms submitted by Asha Kiran. He also informed that 150 Disability Certificates had been approved which were lying pending for want of printed formats of Disability Certificates. He was satisfied with the progress. As per him it was likely to take 1-2 months as 33 inmates needed BERA test which, besides time consuming, could be done only at Dr. B.S.A. Hospital and around 280 inmates needed to be assessed for their I.Q. at Asha Kiran itself where there was only one Clinical Psychologist posted on diverted capacity and was available only for four days in a week. He also stated that Dr. Meenakshi Sidhar, Chairman, Medical Board of Disability, Dr. B.S.A. Hospital had informed him that 350 additional Disability Certificates had been approved for issuance and the same would be issued as soon as the printed formats of Disability Certificates were received by the hospital.

25. The parties were advised to make efforts to issue the Disability Certificates in respect of the remaining inmates within one month. If necessary, Secretary, Department of Health and Family Welfare should issue necessary instructions for deploying the required number of Specialists/ equipments at Asha Kiran/ Dr. B.S.A. Hospital as the case may be. A status report was sought to be submitted by 31.10.2019.

26. On the next date of hearing on 31.10.2019, Sh. P.N. Mishra, Administrator, Asha Kiran informed that 300 more disability certificates had been received on 29.10.2019. As on 31.10.2019, 785 out of about 1000 inmates had been issued the disability certificates. However, 215 applications were still pending with the Dr. BSA Hospital. Sincere efforts were being made by Asha Kiran as well as Dr. BSA Hospital to assess and issue the disability certificates to rest of the inmates in the next few days.

27. Sh. Mishra also stated that besides Asha Kiran Home, there are 2 sister Homes one at Jail Road, Hari Nagar named as Asha Jyoti Home

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housing 120 residents and the other at Gandhi Ashram Road, Narela named as Asha Deep Home housing 106 inmates. The Disability Certificates have to be issued to those residents also by Super Specialty Hospital Janakpuri and Dr. BSA Hospital respectively. Sh. Mishra informed that clinical psychologist was being deployed in Asha Jyoti Home for assessment of IQ and hopefully it would take around 3 weeks to complete the IQ assessment of the residents there. After that, he would be deployed in Asha Deep Home at Narela for IQ assessment of the residents which would also take around 3 weeks.


28. Ms. Harsh Bala from Dr. BSA Hospital submitted the following month wise status report;

Sl No.	Month	Total No. of Application Received	Total no. of Certificate issued	Remarks if any
a	b	c	d	e
1	Apr-19	29	29	
2	May-19	0	0	
3	Jun-19	63	0	
4	Jul-19	409	348	
5	Aug-19	44	0	
6	Sep-19	176	0	
7	Oct-19	180	400	
	Total	901	777	

Pending Files

Pending Files (C-D)	124
Note 114 files RIO due to not attested documents by Suptt. Asha Kiran on dated 30/10/2019	114
Pending at our side	10

29. As per the report, only 10 applications were pending at their end. They had returned 114 applications which were to be attested by Suptt. of Asha


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Kiran. The parties were directed to reconcile the variation in the data of Asha Kiran and the BSA Hospital.


30. On 15.11.2019, separate cases were registered case no. 1280/1121/2019/11 and case no. 1281/1121/2019/11 in respect of inmates of Asha Deep Home, Jail Road, Hari Nagar and at Gandhi Ashram Road, Narela respectively.

31. During the hearing on 23.12.2019, Dr. Rachna Bhardwaj, Superintendent, Asha Kiran who appeared for Administrator (the respondent No. 3) submitted that the assessment of all the residents of Asha Kiran had been completed. However, issuance of disability certificate in respect of 214 residents only remained. All the relevant documents and reports had been submitted to Dr. BSA Hospital.

32. Dr. Yogesh Kataria, Nodal Officer for disability, the Directorate General of Health Services stated that he would advise Medical Director, Dr. BSA Hospital to issue the certificate of disability on priority.

33. Ms. Harsha Bala who appeared on behalf of Medical Director, Dr. BSA Hospital little later, submitted a letter dated 23.12.2019, as per which only 11 certificates remained to be issued to the inmates of Asha Kiran. She informed that this would be done within a few days. Out of 11, Asha Kiran has to submit additional documents in respect of 7. Only 4 were pending with the hospital. She stated that as soon as the details in respect of the said 7 inmates are received, the certificates to them would be issued.

34. Respondent no. 3 is advised to complete the requirements in respect of the 7 inmates and on receipt of the same, respondent no. 2 should issue the certificates of disability to all the inmates by 31.12.2019 and submit a report to this Court.


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35. I would like to place on record the appreciation for the sincere efforts made by the concerned functionaries of Asha Kiran Home and the concerned doctors and other functionaries of Dr. BSA Hospital led by Sh. P.N. Mishra, Administrator, Dr. M.M. Kohli, Medical Director and Dr. Meenakshi Sidhar, Chairperson Disability Board respectively. This case is unique because, more than 1000 persons with intellectual/multiple disabilities, who had been without certificates of disabilities for years, have got the certificates and would be able to avail all their entitlements and hopefully will find themselves among the persons with benchmark disabilities in NCT of Delhi and the County.

36. The matter is disposed of

37. Given under my hand and the seal of the Court this 27th day of December, 2019.



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(T.D. Dhariyal)

State Commissioner for Persons with Disabilities

Copy to: Secretary, Department of Social Welfare, GNCT of Delhi,
GLNS Complex, Delhi Gate, New Delhi-110002: For
Information.

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