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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:
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[Vested with powers of Civil Court under the
Rights of Persons with Disabilities Act, 2016]

Case No. 1078/1121/2019/08/ 9052 - 9054

Dated: 31/12/2019

In the matter of:

Suo-Motu

Versus

Sh. Uttam Kumar Das
Small Industries Corporation,
10 Pologround, Industrial Estate,
Indore, Madhya Pradesh-452015
E-mail ID: boindore@nsic.co.in

.....Respondent No.1

The Chairperson,
Child Welfare Committee-I,
(East Delhi), Nursery Primary School,
For Deaf & Dump Building (CWC-I)
Mayur Vihar, Phase-I, Delhi-110091

.....Respondent No. 2

Ms. Gita Das
Maternal Grandmother of Madhusmita Das
Flat No. 20C, Pocket A, Mayuri Enclave,
DDA SFS Flats, Mayur Vihar Phase 3,
New Delhi-110096.

.....Respondent No. 3

Last Date of Hearing: 21.11.2019

Present: Ms. Barnali Das on behalf of Respondent No. 1.
Ms. Gita Das, Respondent No. 3 in person alongwith
Sh. Prasanta Kr. Das.

ORDER

Through an email dated 04.09.2019, it was learnt that Ms. Madhusmita Das, the daughter of Sh. Uttam Kumar Das (Respondent No. 1) is a student of class-IX in Bharti Public School, Mayur Vihar, Phase-III and is having developmental delays. She is not getting appropriate and sustained medical, educational and psychological

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support due to her family circumstances. She needs immediate comprehensive medical and psychological assistance, proper diagnosis, assessment of disability and academic support. Based on the information, a Suo-Motu case was registered.

2. Respondent No. 1 was directed to show-cause why he should not arrange for assessment of disability and its certification in respect of Ms. Madhusmita Das from any of the certifying authorities in the following authorised hospitals for Mayur Vihar, Delhi within a week of receipt of the notice. He was further directed to submit an action taken report including outcome of such assessment by 20.09.2019.

1. Chacha Nehru Bal Chikitsalya, Geeta Colony, Delhi-110031

2. Institute of Human Behaviour and Allied Sciences (IHBAS),
Dilshad Garden, Delhi-110095

3. Chairperson, Child Welfare Committee-I (East Delhi) (Respondent No. 2) was requested to submit a report on the condition of Ms. Madhusmita Das by 20.09.2019.

4. Ms. Barnali Das w/o Sh. Uttam Kumar Das appeared before the State Commissioner and submitted that her husband and she are taking care of their daughter. Sh. Uttam Kumar Das vide his email dated 24.09.2019 informed that he was posted at Indore and suffering from Slip-Disc problem and therefore he should be exempted from personal appearance. Subsequently, on the request of Ms. Gita Das, Maternal Grandmother of Ms. Madhusmita Das, she was impleaded as respondent No. 3.

5. Hearings in the matter were held on 27.09.2019, 30.10.2019 and 21.11.2019. Ms. Barnali Das submitted a copy of certificate of disability in respect of Ms. Madhusmita Das. As per the permanent disability certificate, she has 60% locomotr disability in whole body.

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6. On 21.11.2019, Ms. Barnali Das submitted a copy of certificate of disability of 60% locomotor disability of her daughter alongwith the medical treatment papers from reputed Doctors like Professor Veena Kalra, Prof. & Ex HOD (Paediatrics), AIIMS, Dr. Harsh Bhargava, MS (Orth.) Indraprastha Apollo Hospitals, Primus Super Speciality Hospital, OT4Kids, VIMHANS, St. Stephen's Hospital and Amar Jyoti Rehabilitation & Research Centre. She also submitted that the said documents were enough to prove that proper medical care of Madhusmita was being taken by her parents. The trained Physiotherapist and Occupational Therapist visit her daughter and provide professional rehabilitation service/training. She was going to school till last year in 9th standard and alleged that because of the interference of her brother and mother, she is not attending the school this year.

7. During the hearing, Ms. Barnali Das also made the State Commissioner speak to the occupational therapist who said that while there is improvement in the condition of Ms. Madhusmita, it could have been better had she got proper occupational and physical therapy treatment earlier.

8. On the other hand, Smt. Gita Das and Prasanta Kumar Das, mother and elder brother of Ms. Barnali Das reiterated the written submissions that Madhusmita is not being given proper care and medical attention. Over the years, there has been deterioration in her condition which shows that the medical and other care is not proper and adequate. Ms. Gita Das also stated that Ms. Madhusmita Das is being kept at home for hours whenever her daughter, Ms. Barnali Das goes out. She herself needs medical care and does not allow her to visit Ms. Madhusmita and take her care.

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9. After hearing the parties, State Commissioner decided to visit Ms. Madhusmita alongwith Welfare Officer, Ms. Nidhi Chauhan, Ms. Savitri Bhakuni, Sr. Assistant and Ms Barnali Das.
10. On reaching the house of respondent No. 1, it was found that Ms. Madhusmita alongwith her younger sister, who is stated that she was studying in class 6th in Amity International School and had taken leave for the day to give company to her elder sister Ms. Madhusmita Das, was watching TV. Ms. Madhusmita said she is happy and has no issues and complaints against her mother, father or sister. A number of physiotherapy and occupational therapy equipments were also seen in the house.
11. An email dated 22.11.2019 was received from Ms. Gita Das stating that she could not convey her points during the hearing and will email the same by 25.11.2019.
12. Vide her email dated 24.11.2019, she has made the following submissions:

"1. IMMEDIATE Comprehensive medical, physical, psychological, neurological and intellectual ASSESSMENT as on date by reputed speciality Institutions under the guidance and direction of your esteem office upto my satisfaction along with video recording of the present status for future reference. The commencement of this critical request is irrespective of completion of proceedings of this case to avoid any further delay for Madhusmita.

Supporting reasons for immediate assessment:

- a. *The extent of disability and recoverable status of disability cannot be ascertained by occasional consultations or irregular physiotherapy done in the recent past without any proper comprehensive plan of recovery along with a detailed roster of treatment followed for considerable period of*

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time. Proper medical attention has been grossly neglected for long in this case.

b. As per our clear understanding and very close observations, Madhusmita is considerably intelligent and calm girl who progressed during July 2014 till May 2015 when a senior physiotherapist, private teachers in Mathematics, Hindi and Musical Keyboard were employed during her stay at my place from around 2.30pm to 8pm everyday while Barnali had joined for work.

While considerable progress was visible, unfortunately Madhusmita was stopped all of the above as well as Barnali was forcibly stopped to work due to all types' abuse and domestic violence by Uttam Kumar Das. Since then Madhusmita has been stopped to interact with the outside world as well as kept inside the flat including locked alone for long hours when Barnali has to go outside. This was other than irregular brief period in the school till last year which was just used as crèche without providing and monitoring the academic activities.

c. Madhusmita being in the end of teens, and can communicate, she also needs to be consulted for her input independently without pressure from her parents after stabilizing her for 10 -15 days away and without influence from parents for genuine discussions with her and even periodically after.

d. Madhusmita has been devoid of free movements within her flat while confined to a small height wooden chair in the corner of the room and a bed without a walkable space. She has been devoid of all facilities and fundamental rights including choice of clothes, choice of food, right to visit outside home and right to speak or receive phone calls.

e. Further, there are few instruments being used over the years which are completely detrimental with continuous use and will cause irreversible damage without a proper advice.

f. Extreme fear of expression inside house – Madhusmita is devoid of the freedom of expression, happiness and under constant fear in the house as she has seen all types' violence by her father from childhood.

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g. Abnormal Nutrition Input and Schedule – Madhusmita is devoid of right proper diet and diet schedule without any advice from a nutritionist including complete negligence and devoid of guidance.

2. REVIEW of Assessment reports, **DIAGNOSIS** and **FASTEST COMPREHENSIVE RECOVERY PLAN (Physical, Neurological, Medical)** by Doctors without any influence from parents, without any prejudice or apprehensions of financial or logistical implication of treatment and only looking into the best interest of Madhusmita for **EARLIEST RECOVERY** to compensate the number of years wasted.

3. For **MONITORING** the progress and treatment with **REPORTING** twice-a-week along with video reports on the compliance before a monitoring team including your office and myself.


4. EDUCATION & Creating Atmosphere for overall growth: No Admission to any school is required at present without academic assessment of present status and creating a proper academic plan with following understanding.

a. Present priority is to make Madhusmita physically independent with the best efforts put up as per the above plan along with aided education requirement duly assessed.

b. I also request your kind office to seek detailed Academic Assessment Reports including mark sheets, class diaries, and attendance register for 13-14 years of study from Bharti Public School, Mayur Vihar Phase 3, New Delhi from Nursery admission till Class IX along with the reasons to discontinue to ascertain and plan the future educational need of the child.

c. Any action to put on fresh assessment and admission to any other school including special or inclusive, whether private or government would be on the basis of her present mental and physical condition to cope up the speed of learning as well as availability of alternate modern education with clear road map adjudging all options available at present. This cannot be tick mark activities.

d. There are other advanced education available appropriate to her capacity and capability by digital and


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scientific means of education (Including home schooling, online skill based virtual and video conference) without compromising her medical progress and keeping the continuity of the learning she has acquired in the last 13 years from Bharti Public School

e. This will also require involvement of properly skilled resources, teachers and mentors to manoeuvre her educational need without compromising her health and progress without stress with a clear academic plan and settlement independently.

f. We unconditionally undertake to organise the above requirement in the form of a comprehensive academic plan for Madhusmita so that she can lead her life with dignity and pride independently.

5. A full time (Morning 7AM – 9PM) para-medically qualified attendant is immediately required for Madhusmita to provide full attention.

6. Looking into the stress and medical requirement of my daughter Barnali, the respondent No 1, should personally appear for the proceedings. Barnali had gone through severe domestic violence and abuse since marriage and had compromised everything in life.


7. The father of the child has to provide undertaking to ensure congenial atmosphere without any type of abuse at home with immediate effect.

8. We request to provide us the copy of the documents submitted by Respondent No. 1 and Respondent No 2.

9. Any attempt for manipulative compliance by her father will again be a serious injustice to Madhusmita as has been observed in the past many times.

10. Finally, once again I pledge my unconditional commitment to bear all financial and logistical requirements/expenses towards counselling, medical, psychological, educational and all sustained needs of Madhusmita and even for my daughter Barnali Das."

13. As Ms. Barnali Das has got Ms. Madhusmita Das assessed and issued a disability certificate as directed by this court, this court has no


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role to interfere in the family matters of Respondent No. 1 and Respondent No. 3.

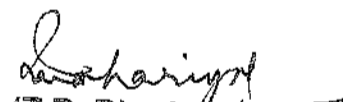
14. Since Madhusmita Das, who is a person with disability seemed satisfied with the arrangements made by her parents, this court can not interfere in the matter and direct as Ms. Gita Das has requested. However, the parents of Ms. Madhusmita Das should make appropriate and regular arrangement for her treatment and stabilise it rather than continue consulting different doctors. There should be continuity and stability in the treatment and administration of various therapies. Equally important is to admit her in a school inclusive or otherwise. Respondent No. 1 must admit her in a neighbourhood school or a special school as per choice and ensure that she receives education in an appropriate environment as envisaged in Section 16 and 31 of the Act.

15. Respondent No. 1 should apply to his employer for transfer to Delhi/NCR immediately. His employer (Small Industries Corporates) should transfer him to Delhi/NCR in accordance with DoP&T's OM No. 36035/02/2017-Estt.(Res) dated 15.01.2018 on top priority so that proper care and education of Ms. Madhusmita Das is taken care of. Respondent No. 1, if required, may submit a copy of this order for the purpose of seeking transfer. He is directed to submit an action taken report about the admission of Ms. Madhusmita Das in a school and application for transfer to Delhi/NCR within a month of receipt of this order as required under Section 81 of the RPwD Act.

16. The matter is disposed of.

17. Given under my hand and the seal of the Court this 31st day of December 2019.




(T.D. Dhariyal)

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