

**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-2
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. 228/1121/2018/05/7572-74

Dated: 31.05.2018

In the matter of:

Sh. Rajiv Goel,
367, ASB, Paschim Vihar,
New Delhi-110063.

..... **Complainant**

Versus

The Pr.Secretary,
Deptt. of Health & Family Welfare,
GNCT of Delhi,
9th Level, A-Wing, Delhi Secretariat,
New Delhi-110002.

.....**Respondent**

Date of hearing: 30.05.2018

Present Sh. Rajiv Goel, Complainant.
Dr. A Madhavi, Dy. Director(Disb.)

ORDER

The above named complainant vide his email dated 06.05.2018 submitted that his son Master Kshitij Goel, who is 7.5 years old has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Specific Learning Disability(SLD). He needs a disability certificate to get the benefit of reservation for admission to University. He approached

IHBAS for disability certificate. However, they refused to issue the disability certificate on the ground that as per the guidelines issued by Department of Empowerment of Persons with Disabilities (DEPwD), Ministry of Social Justice and Empowerment vide notification dated 04.01.2018, IHBAS is not competent to issue certificates for SLD. He further submitted that he has met officials at all levels in IHBAS and he has come to know that Govt. of NCT of Delhi has not authorized any hospital in Delhi for issuance of disability certificate for SLD. The guidelines for issuance of disability certificate for SLD mandate the presence of Pediatrician and Pediatric Neurologist as part of medical authority and IHBAS does not have Pediatrician or Pediatric Neurologist on its rolls and hence is unable to issue the certificates of disability for SLD.

2. The complainant requested to direct Govt. of NCT to notify hospitals as per provisions of the DEPwD, Ministry of Social Justice and Empowerment's Notification dated 04.01.2018 and also direct IHBAS to constitute a medical board for the purpose of issuing disability certificate without the presence of a Pediatrician or Pediatric Neurologist.

3. The complaint was taken up with the respondent under the Rights of Persons with Disabilities, 2016 hereinafter referred to as the Act vide letter dated 08.05.2018 detailing therein the request of this

Court regarding designating certifying authorities for specified disabilities including specific learning disability vide letters dated 06.03.2018 and 24.04.2018 and decision in a meeting taken by the State Commissioner on 16.04.2018. As there was no response and the complainant vide his subsequent emails informed that he has not been able to get the disability certificate in respect of his son, a Show-Cause-Cum-Hearing Notice was issued on 24.05.2018. In the said notice, Principal Secretary, Health and Family Welfare Department (H&FW) was directed why the certifying authorities should not be designated in NCT of Delhi for all the specified disabilities in the Act by 29.05.2018. The respondent was also directed to arrange to assess and issue the certificates of disability to all the eligible applicants; and if the same was not done by 29.05.2018, the respondent was directed to appear on 30.05.2018 at 11.30 AM.

4. While the complainant and Dr. A. Madhavi, Dy. Director (Disb.), representing Secretary, Social Welfare Department, to whom the copy of the Notice dated 24.05.2018 also emailed appeared, the respondent i.e. the Health & Family Welfare Deptt. (H&FW) neither submitted any status nor did anyone appear to represent Pr. Secretary (H&FW). Apparently, appropriate action has not been taken by the H&FW Department to ensure assessment and certification of the newly included specified

disabilities despite the fact that the issue of designating certifying authorities had been taken up with that Department and other concerned authorities ever since the Guidelines for assessment of specified disabilities were notified by the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Govt. of India on 04.01.2018.

5. No response/ATR in this case has been received from the respondent. However, Health and Family Welfare Department vide their letter dated 14.03.2018 in response to letter dated 07.02.2018 Department of Social Welfare requested Directorate General Health Services (DGHS), GNCT of Delhi to issue instructions to all medical institutions responsible for grant of certificate of disability to follow the notified guidelines for evaluation and certification of various categories of specified disabilities. DGHS was also requested to conduct workshops to train the medical authorities about the new guidelines to facilitate smooth issuance of certificates of disability in a time bound manner. The department also requested DGHS to implement the recommendation vide their letter dated 11.05.2018 in the meeting taken by State Commissioner on 16.04.2018 and to issue an advisory/directions to all Govt. hospitals that issue disability certificate in the present to continue issuing the disability certificates in accordance with the guidelines

notified by Department of Empowerment of Persons with Disabilities on 04.01.2018 in respect of all the disabilities specified in RPwD Act, 2016. An ATR was also sought to be furnished to this Court within three days under intimation to Health and Family Welfare Department. However, no report has so far been received.

6. In another letter dated 22.05.2018, Health and Family Welfare Department in case no. 139/1121/2018/03, has informed this Court, "*that as per new RPwD Act, 2016, the Hospitals have not been notified by the Delhi Government till yet as the Draft Delhi State Rules under RPwD Act, 2016 has not been finalized by Social Welfare Department, GNCT of Delhi. However, in this regard this office has already requested the DGHS to issue necessary instructions to all medical institutions responsible for grant of certificate of disability to follow the notified guidelines of Govt. of India for RPwD Act, 2016 for evaluation and certification of various categories of specified disabilities vide this office letter dated 14.03.2018*". In response, this Court vide letter no. 139/1121/2018/03/7552 dated 30.05.2018 has informed the respondent that as per Section 57 of the Act, designation of certifying authority for assessment and certification of disability is not dependent on Delhi RPwD Rules. The respondent has therefore been requested to designate the certifying authorities so that persons with disabilities are

assessed and certified as per the guidelines issued by Department of Empowerment of Persons with Disabilities vide notification dated 04.01.2018.

7. Dr. A. Madhavi, Dy. Director (Disb.), informed that the draft Delhi Rights of Persons with Disabilities Rules have been notified in the Delhi's e-Gazette inviting suggestions / objections from the people within a period of 30 days. The said draft Rules which were circulated to all the Departments including the Health and Family Welfare Department, also provide that the H&FW shall designate the certifying authorities and notify their jurisdiction. Thereafter the rules will be finalized and notified with the approval of Hon'ble Lt. Governor. However, absence of Rules does not prohibit the Department of Health and Family Welfare from designating the certifying authorities. As regards the jurisdiction, the notification dated 12.02.2014 for the purpose stands. She further submitted that it is not possible for the Social Welfare Department to identify the certifying authorities in the existing hospitals in NCT of Delhi. This can be done only by the H&FW Department.

8. Reiterating his written submissions, the complainant submitted that admissions in the Universities in Delhi are going to start from 18th June, 2018 and the students with disabilities seeking admission against the 5% reserved seats for them must have a disability certificate as per

the requirement of the concerned universities. His son, Master Kshitij Goel, who has been diagnosed with Specific Learning Disability has passed class 12th exam and he needs a valid disability certificate to be able to apply for admission against the reserved seats.

9. It may be recalled that while disposing off case No. 106/1121/2018/02 filed by Ms. Simmi Copra, vide Para 14 of the Order dated 19.03.2018, it was recommended that Pr.Secretary Health and Family Welfare should take immediate action and issue detailed guidelines and directives on the process of assessing and issuing disability certificates by various hospitals / certifying authorities in the NCT of Delhi so that persons with disabilities and their family members are able to get the disability certificates within the time frame prescribed in the Rules and they are not harassed. It was specifically advised that it should be done on top priority as the admissions to schools in Delhi will also commence and many young people with disabilities would approach the hospitals for certificates of disability.

10. It may be also be recalled that anticipating the difficulties and perceived complications, Office of State Commissioner convened a meeting with the officers of Health and Family Welfare Department, Department of Social Welfare and all the existing designated hospitals for certification of various disabilities on 16.04.2018. In that meeting,

one of the decisions was that as the existing notifications dated 12.02.2014 and 10.09.2014 of Deptt. of Social Welfare, Govt. of NCT of Delhi stand, Health and Family Welfare Department will issue a circular to all the concerned hospitals / certifying authorities by 30.04.2018 so that people with disabilities including the newly included ones are assessed and certified. This essentially required identification of the certifying authorities / specialists and the hospitals that have the specialists and can assess and certify the newly included specified disabilities.

11. However, it appears from the letters dated 14.03.2018 and 11.05.2018 of Health and Family Welfare Department and 22.05.2018 referred to in Para 5&6 that the appropriate certifying authorities and the hospitals for assessment and certification of specific learning disability and other newly included specified disabilities have not been identified and designated. Apparently, the concerned hospitals are not able to assess and issue disability certificates.

12. Section 57 of the Act provides as under:

“57. (1) The appropriate Government shall designate persons, having requisite qualifications and experience, as certifying authorities, who shall be competent to issue the certificate of disability.

(2) The appropriate Government shall also notify the jurisdiction within which and the terms and conditions subject to which, the certifying authority shall perform its certification functions”.

Section 101 of the Act also does not require the State Govt. to frame the rules for implementation of Section 57 of the Act. Thus, designation of certifying authorities is not dependant on notification of Delhi Rights of Persons with Disabilities Rules. Health and Family Welfare Department could therefore have designated the certifying authorities immediately after notification dated 04.01.2018 of the Department of Empowerment of Persons With Disabilities.

13. The line of action seems abundantly clear to me and therefore, it is recommended that the Health and Family Welfare Deptt., GNCT of Delhi should immediately identify the certifying authorities / specialists in different hospitals as notified vide notifications dated 12.02.2014 and 10.09.2014 keeping in view the availability of specialists by **08.06.2018** indicating their jurisdiction and issue instructions to the concerned certifying authorities to ensure that all the applicants for certification are assessed and if eligible, be issued certificates of disability by **15.06.2018** so that they are in possession of the certificates of disability before applying for admission to the universities / colleges. A meeting by Principal Secretary, Health and Family Welfare Department and DGHS

with the Heads of all the concerned hospitals in NCT of Delhi including those under the Central Government and local authorities and Secretary, Department of Social Welfare may facilitate resolution of the issue. This should be done on top priority as the eligible persons with newly included specified disabilities will be deprived of their right to seek admission against the reserved seats for persons with benchmark disabilities for the second academic year as the Act had been brought into effect with effect from 19.04.2017, albeit without putting in place the guidelines until 04.01.2018 and due to not designating the certifying authorities in NCT of Delhi till date. This recommendation is being made to protect the rights of eligible persons with disabilities to admission against reserved seats for them under Section 32 of the Act.

14. An Action Taken Report shall be submitted to this Court by **15.06.2018**. If the respondent decides not to accept the recommendation, the reasons for non-acceptance of the recommendation be conveyed to this court as required under Section 81 of the Act.

15. The complaint is disposed off accordingly.

16. Given under my hand and the seal of the Court this 31th day of May, 2018.

(T.D. Dhariyal)
State Commissioner for Persons with Disabilities

Copy to the Secretary(Social Welfare), Deptt. of Social Welfare, GLNS Complex , Delhi Gate, New Delhi for information.