

**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.843/1033/2019/04/5009-5010**

**Dated: 29/08/2019**

In the matter of:

Mohd. Ehsan Khan,  
 F/o Shadaan Khan, 5 Dreams Apartments,  
 A-4, Abul Fazal, Jamia Nagar,  
 New Delhi-110025.  
 Email ID: ek15august@gmail.com

....Complainant

Versus

The Principal,  
 YMCA Public School,  
 Nizamuddin (East)  
 New Delhi-110013.

...Respondent

### ORDER

Mohd. Ehsan Khan father of Master Shadaan Khan, a person with 50% Autism Spectrum Disorder (ASD) vide his email dated 09.04.2019 submitted that the respondent's school had withheld the result of his son who has been studying in the respondent's school since April'2013. His class and bus-mates informed him that the teacher had

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asked them to inform the parents of his son that Master Shadaan Khan has not been promoted to Class-V on account of his low attendance. He further submitted that the low attendance was because the school shifted Master Shadaan Khan to its Special Education Wing contrary to the advice of the doctors. The complainant also submitted that he sent back his son to the school from 21.01.2019 after the intervention of this Court with direction for assurance of safety to be provided by the school in case No. 514/1032/2018/09 filed by him. The complainant alleged that the decision not to promote the child on account of low attendance is violation of section 16 of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act). He therefore requested to intervene to safeguard the rights of his son Master Shadaan Khan.

2. As per Section 16 of the RTE Act, 2009 *"No child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education"*. Therefore the complaint was taken up with the respondent under the Rights of Persons with Disabilities Act, 2016 hereinafter referred to as an Act vide Show Cause-Cum-Hearing Notice dated 18.04.2019 and a hearing was scheduled on 14.05.2019.

3. The respondent vide reply dated 10.05.2019 denied all the allegations against the Principal of the School except those which are

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matters of record. Referring to the Hon'ble Supreme Court's judgement in case of Pramati Educational and Cultural Trust & Ors. Vs. Union of India & Anr.(2014) 8 SCC1 in which it was decided that the provisions of the RTE Act, 2009 are not applicable to the minority schools (both aided and unaided), the respondent submitted that reliance on Section 16 of the RTE Act, 2009 was legally misplaced and the school has informed the complainant about the same. In view of the settled legal position and the undisputed fact that the YMCA Public School Nizamuddin East is a minority school, the respondent submitted that the case should be dismissed.

4. During the hearing on 14.05.2019 it was pointed out that irrespective of the RTE Act, 2009 there has to be some rule/guideline/instruction based on which a student with disability of Class-IV can be detained. After the hearing, the parties were advised to sort out the matter as the education and overall development of Mater Shadaan Khan was being adversely affected because of the dispute between the parties. Respondent was also directed to supply a copy of his/her reply dated 10.05.2019 to the complainant to enable him to file his rejoinder, if any. The complainant was also advised to resubmit the cheque for fee alongwith an application for exemption / concession of

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fee to the Principal for consideration of the management so that all the issues were sorted out in the best interest of the child.

5. Complainant filed his rejoinder dated 28.05.2019 submitting that despite order dated 09.04.2019 of this Court in case No. 514/1032/2018/09 which directs the respondent to assure the complainant about the safety and security of the child and to put in place mechanism for responsibility and accountability, they detained his son in Class-IV and did not give any information about it to the parents. He also alleged that the parents had no information that their child was asked to sit away from the other children of Class-IV. The complainant pointed out that the judgement of Hon'ble Supreme Court, which has been referred to by the respondent, specifically pointed out that Section 12(1)(b) read with Section 2(n) (iii) of the RTE Act, 2009 that contravenes the rights of minorities in managing their educational institutions. Hence its applicability is limited to that extent. It was further stated that the RTE Act, 2009 got amended in 2012 and regulatory provisions like prohibition of holding back and corporal punishment which do not affect the right of educational institutions to administer, are applicable to the minority institutions also. Therefore, detention of his son in Class-IV was illegal.

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6. On the next date of hearing on 28.06.2019, the complainant submitted that he has received two letters dated 19.06.2019 and 26.06.2019 from the school for clearing the outstanding dues. Before taking any action on that, he would like to know the grounds for detaining the child. He also stated that in the meantime he has decided to withdraw the child from the school and would admit him to some other school. He sought a week's time to submit written submissions. Ms. Mehak Khurana, Advocate representing the respondent was also advised to submit a short synopsis within a week thereafter.

7. The complainant vide his email dated 04.07.2019 reiterated his contention in his complaint and the rejoinder and alleged that the school was harassing his son and violated the order dated 09.04.2019 of this Court by not putting in place robust mechanism of responsibility and safety. He reiterated that he has already decided to withdraw his child from the school and will admit him in another school.

8. The respondent sought additional time of one week for filing the synopsis vide application dated 19.07.2019 after receiving an advance copy of the written statement from the complainant as directed vide RoP dated 01.07.2019. From the email dated 04.07.2019 of the complainant it seems that a copy of the same has not been supplied to the respondent. This was also confirmed by Ms. Mehak Khurana, Advocate

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who appeared for the respondent on the last date of hearing on 28.6.2019, when she was contacted on telephone before writing this order. Although she requested for some more time to file synopsis after obtaining the copy of the submission dated 04.07.2019 of the complainant, as the matter has considerably been delayed and in view of the complainant's decision to admit his son to some other school, it is considered expedient to dispose of the complaint based on the available record.

9. It is also observed that a copy of the order dated 25.07.2019 of Child Welfare Committee (CWC), South East Delhi in case No. 138/18 filed by Sh. Ehsan Khan has also been received, though it is not clear whether it was received from CWC or sent by one of the parties. Be that as it may, as per the Order, **"the child cannot be treated as CNCP, (Child in Need of Care and Protection) as well as deprived from education. Child is not appearing and stated no complaints"**. The Committee, therefore, has closed the case for now. It would however reopen the case if its intervention is required regarding the child's welfare.

10. The issues before this Court are whether (i) Master Shadaan Khan son of the complainant could be detained in Class-IV for non-payment of fee by the parents / or for being absent for long; and (ii)

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whether the minority status of the institute could permit the respondent's school to detain the child in class IV which is against Section 16 of the RTE Act in view of the judgement of Hon'ble Supreme Court referred to by the respondent.

11. The complainant has been contending that the child was not sent to the school because of the wrong decision by the school to shift him to special wing instead of allowing him to study in the mainstream class. That issue was examined as to who should decide about the appropriate setting for a child with disability and a recommendation in this regard among others was made by this Court vide order dated 09.04.2019 in case No. 514/1032/2018/09 filed by the complainant. The action taken report on the recommendations made vide para 23 of the said order is yet to be received from Directorate of Education and Ministry of Human Resource Development, Govt. of India who are being requested to do the needful.

12. According to the complainant, the decision not to send his son to the school was forced upon him by the school itself and hence the school should not demand fee from him. Keeping in view the submissions made by the parties in the earlier complaint of the complainant, his demand for continuation of his son in the school without paying the fee may not be justified. However, since the

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respondent had retained Master Shadaan Khan in the school rolls and no rule / law under which a child can be detained in class-IV has been produced by the respondent, the school should promote the child to the next standard in accordance with the provisions of Section 16 of the RTE Act, 2009 as amended in 2012 subject to payment of the fee or exemption thereof. In my opinion, this has nothing to do with the administration of a minority institution.

13. It is also relevant to place on record that the school should have informed the parents of the child about its decision to detain him in class-IV instead of conveying the message through other children. As the complainant has already decided to withdraw the child and admit him elsewhere, the respondent school should note this for compliance in future.

14. The complaint is disposed of.

15. Given under my hand and the seal of the Court this 29<sup>th</sup> day of August, 2019.



  
(T.D. Dhariyal)

State Commissioner for Persons with Disabilities

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