

**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. 514/1032/2018/09/1709-1714

Dated:09.04.2019

In the matter of:

Mohd. Ehsan Khan

F/o Shadaan Khan,
5, Dreams Apartments,
A-4, Abul Fazal, Jamia Nagar,
New Delhi-110025,
M.No. 9958483726
E-mail ID: ek15august@gmail.com

..... Petitioner

Versus

The Principal,

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

.....Respondent No.1

The Director,

Directorate of Education,
Old Secretariat,
Delhi-110054.

.....Respondent No.2

Date of hearing: 07.03.2019

Present: Mohd. Ehsan Khan, Complainant.

Sh. Feroze Khan, Secretary, Smt. Perin Fuller Principal,
Dr. Satyanarain, Spl. Educator and Sh. Wilson John
on behalf of Respondent No. 1

Sh. G.P. Singh, OSD to DDE(SE) and Sh. Shadab Uddin Noor
on behalf of Respondent No.2

ORDER

Sh. Shafiq R. Khan vide his e-mail dated 14.09.2018 informed that YMCA Public School, Nizamuddin had suggested to the parents of a 9 year old boy with Autism, a student of Class-III that he should be admitted in a special school though the doctors of AIIMS, New Delhi advised that the child should be in a mainstream school. The parents of the child decided to keep the child in the school and wrote to Delhi Commission for Protection of Child Rights (DCPCR) which prevented shifting of the child. The school thereafter started harassing the child and the Child Welfare Committee (CWC) was also not supporting. The school called the father of the child and shamed the child and his father. The school also has decided to send the child to the special school. He, therefore, requested a meeting before filing a formal complaint. Sh. Shafiq R. Khan and Sh. Mohd. Ehsan Khan, father of the child Shadaan Khan were given an audience and thereafter the complainant filed complaints dated 19.09.2018 and 22.09.2018.

2. In the said complaints, it has been added that YMCA School, Nizamuddin influenced the CWC, Kalkaji, where the parents had filed a complaint against beating up of Master Shadaan. The CWC also started finding fault with the child and ordered several psychological tests despite the fact that all the reports from the AIIMS, New Delhi had been already provided to CWC. After six months, the CWC declared that the child is not CNCP (Child in need of care or protection). On 14.09.2018, the father of the child was called to the school where a mob of 10-12 persons in the Office of Sh. Firoz Khan, Secretary, YMCA was organised. Two of them whom he could recognise were the parents of Master Shadaan's classmates. The said persons started shouting at him for taking the school to the court. They also threatened him. On 06.04.2018 also, Ms. Perin Fuller, Headmistress had presented his son before two angry men who thrashed his son. Sh. Firoz Khan also told him that he could leave the place unless he gave in writing that he was ready to transfer Master Shadaan to the special school branch of the

school. When he refused, Sh. Firoz Khan ordered the headmistress to transfer Master Shadaan to the special school from coming Monday.

3. The complainant also submitted copy of letter dated 29.05.2018 of Prof. Sheffali Gulati, Department of Paediatrics, AIIMS. In the said letter, it has been stated *that the child was found to have Autism Spectrum Disorders (ASD) with childhood Autism Rating Scale (CARS) score of 34 in March, 2014. After follow up for 4 years in May, 2018, he was found to have CARS score of 29 with significant improvement in Autistic features over the period with behavioural interventions advised to caregivers.*

4. The order dated 17.09.2018 of CWC mentions *that as per the report of the Special Educator, the child's progress is very low.* He needs special education services, therapeutic services (OT), speech and parents counselling. As the progress is slow, CWC directed the school administration to conduct relevant tests and allow the engagement of special educator appointed by parents in the school. CWC also directed the school to cooperate with the child and the parents. The complainant pointed out that even after declaring the child 'not CNCP', the CWC issued orders to buttress the interest of the school which according to the complainant is organised harassment of Master Shadaan. Vide his e-mail dated 09.10.2018, the complainant also requested that CWC should be made a party as their order is anti-child and illegal.

5. The complainant sought the following reliefs:-

- (i) Restoration of the dignity of Master Shadaan Khan in the school.
- (ii) Appropriate action against Ms. Fuller and Sh. Firoz Khan for harassing and branding the child among the stakeholders of the school.
- (iii) Any monetary compensation for discriminating against a 9 year old child with disability for the last 4 years.

(iv) Any other relief which is best for the benefit of the child.

6. The complaint was taken up with the respondents vide show cause cum hearing notice dated 11.10.2018 under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the Act.

7. Ms. Perin Fuller, the Headmistress, YMCA Public School, the Respondent No.1 vide reply dated 30.10.2018 submitted that the RPwD Act is being misused by the complainant. It has inter-alia been stated that the complainant's ward Master Shadaan Khan is a 9 year child with disability for the last 4 years and was recommended for treatment of ASD as the doctor observed that he did not mix with other children and also had sensory issues, difficulty in sustained conversation which affects learning and therefore to improve his developmental disabilities, it was found appropriate that the ward may be placed in the special school run in the same premises of YMCA where special care and attention to modify and rectify his social behaviour with special emphasis on therapy of the ward could be given. She denied that the child was ever discriminated on the ground of disability and the school authorities have taken appropriate measures of achieving legitimate aim. Keeping in view the educational need of the child, the complainant was called on 14.09.2018 to apprise him of the conduct of his son in the class room and also to discuss appropriate measures to be taken so that such incidents are not repeated. The parents of the children who had been thrashed by the complainant's ward refused to send their children to the school unless appropriate action was taken against the complainant's ward. It has further been stated that there had been instances in the past also of the rude behaviour by the complainant's ward and also caused physical and mental aberrations to other students of the class and in the bus.

8. It has also been alleged that the complainant is in the habit of filing false and frivolous complaints before different authorities and the hearings of all the forums remain inconclusive as the complainant keeps filing complaints on one reason or the other. It has also been stated that the CWC, Kalkaji did not find that complainant made out any case. While the complaint is still being inquired into by the CWC, the complainant filed fresh complaint before the Dte. of Education and now the State Commissioner for Persons with disabilities. She also denied that any mob was organised by Sh. Firoz Khan. Factually, a meeting of the parents of class students, Sh. Firoz Khan, Secretary, Ms. Ms. Perin Fuller, Headmistress, Ms. Deepti, Class Teacher of Class-IV and Sh. Ehsaan Khan, father of Master Shadaan Khan was called to settle the disputes of the children and their parents with the complainant. This was done as the school had received complaints from parents alleging that the complainant's ward had poked below the eye of Master with sharp edged pencil point due to which the child was in pain. The parents of the Master continued saying that they stand the risk of loosing the sight of the eye.

9. As regards the transfer of Master Shadaan Khan to the special school from 16.09.2018, it has been stated that the same was not correct. Infact, Master Shadaan Khan is still in YMCA Public School and has been continuously absent. A letter was also sent to the complainant on 05.10.2018. Therefore, the allegation regarding denial of education to the complainant's ward is false. As per the CWC order, the child was placed with special educators, therapists to monitor his behaviour and progress. Therefore the right of child's dignified life has not been deprived. The respondent has also enclosed copies of the complaints dated 18.09.2018, 19.02.2018 and 21.08.2018 of some parents against the conduct of Master Shadaan Khan requesting the safety of their children. A copy of the complaint dated 09.09.2014 of the KG Class Teacher to the headmistress about the Master Shadaan Khan affecting other children has also been enclosed.

10. In his rejoinder dated 08.11.2018, the complainant submitted that the report dated 29.05.2018 was given by AIIMS on the orders of CWC. The respondent No.1 has selectively chosen the concerns written in the AIIMS report dated 12.09.2018 but ignored the advice in the same report that the ***child should be placed in the main stream school*** and decided on her own that Master Shadaan may be placed in the special school run in the same premises. Respondent No.1 has no expertise to over rule the expert opinion of the doctors of AIIMS. He has alleged that the respondent No.1 did not give information to the officers of the Dte. of Education who had visited the school on the order of DCPCR. Sh. Firoz Khan in his letter dated 17.09.2018 to Chairperson, CWC clearly mentioned that he had requested the principal of the school to place the child in the special education wing so that he could be given therapy, counselling and behaviour medication plan could be adopted against him which was contrary to the medical advice of AIIMS. The complainant has also questioned the true intention of respondent No.1 in transferring his son to the special wing for providing him the therapies against the advice of the specialist doctor. Thus, they violated the child's right for dignified life. As per him it was an pre-organised and the school managed the order from CWC that the child needed some therapies.

11. Upon considering the written submissions of the parties, a hearing was scheduled on 12.11.2018. As the State Commissioner was away, Deputy Commissioner heard the parties who reiterated their respective written submissions. The complainant also stated that the special educator was trying to give therapies that were not in the best interest of the child as AIIMS had prescribed only behavioural intervention. The representatives of the school stated that the complainant should send his child to the school and they will ensure that the prescribed therapies are given by the special educator. They will ensure safety of the child at all costs and will bring any incidence immediately to the knowledge of the parents. The complainant demanded cctv footage as evidence for organising a mob, which the school

authorities agreed to supply on the next date of hearing. The complainant also submitted that Master Shadaan Khan may be given admission in some other school. To this, he was advised to contact Dte. of Education. The complainant was finally advised to send his son to the school regularly and school authorities were directed to ensure safety and well being of the child. After the hearing, the complainant vide his letter dated 12.11.2018 submitted that he was verbally ordered in the hearing to send his child to the school without formulating any mechanism for the safety of the child. His concern was that since the school men organised the mob against the child, he is compelled not to send his son to the school until the next date of hearing.

12. The complainant vide his another letter dated 27.11.2018 submitted that Cambridge School is near his home and therefore requested for help to get his son admitted in Class-IV in that school. His application was forwarded to Cambridge School for consideration of his request vide letter dated 27.11.2018.

13. On 20.12.2018, after hearing the parties, the complainant stated that as he had no confidence in the school about the safety and security of his son, he did not send his son to the school. On the other hand, the representative of respondent No.1 stated that the school authorities will ensure care, protection and safety of the child Master Shadaan. They will also organise classes for his all round development as per the advice of AIIMS. They denied the allegation about discrimination. They also stated that the parents have not paid the fee for the last 2-3 months. While the complainant confirmed non-payment of fee, it was not paid as his son was not going to school. He therefore requested that the same should be waived. The complainant agreed to send his son to the school on the condition that the school authorities should ensure safety of his son and environment should be improved. In view of the statements of the school and the complainant, the Deputy Commissioner who heard the parties, disposed of the matter vide

Record of Proceedings dated 20.12.2018 though the State Commissioner for Persons with Disabilities had not heard the parties.

14. The complainant vide his e-mail dated 31.12.2018 disputed the contents of the Record of Proceedings dated 20.12.2018. As per him, he had agreed to send his son to the school on the condition that the school either gave in writing that his son would be safe and the school principal and secretary would not organise mob/people against his son in future or this court ordered them not to organise mob against his son as they did in the past. He also objected to the alleged observation of the Deputy Commissioner that the school might strike the name of the child for not paying fee for 2-3 months ignoring the fact that he had approached this court on 19.09.2018 as the school had thrown his son out of the school on the basis of his disability and that as per the RPwD Act, 2016, appropriate Government and Authorities are required to ensure free education of children with benchmark disability upto 18 years of age. He also took objection to the ROPs of both the hearings taken by the Deputy Commissioner not mentioning his arguments that school had organised people against his son. He requested to incorporate his arguments in the record of proceedings. He also pointed out that as the ROP showed that the parties had reached a settlement, it would estop him from taking further action against the school. He therefore requested that his legitimate grievance should be redressed. The complainant vide his letter dated 22.01.2019 also requested to pursue the matter of admission of his son with Cambridge School, New friends Colony, New Delhi. In view of the said representation of the complainant dated 31.12.2018, the matter was scheduled for another hearing on 07.03.2019.

15. During the hearing on 07.03.2019, the complainant submitted that he actually requested for waiver of the fee in respect of his son for the period that he did not attend the school since as per him, the school removed his son from the school and he was fearing about his security. He also objected to the

school returning the cheque submitted by him towards payment of fee for the entire period and asking him to submit it alongwith a request to be considered by the management. He also stated that he issued the cheque for Rs. 19, 500/- as the school had intimated him that the charges towards transport/conveyance for 3 months and the late fee charges only would be waived subject to approval of the competent authority. The complainant contended that if based on the documents submitted by the parties to this court it is proved that Master Shadaan Khan was removed from the school then full fee should be waived. This was the first concern of the complainant.

16. The second issue of concern was regarding safety of the child who had started attending the school from 21.01.2019.

17. The representatives of the respondent submitted that care, protection and safety of the child was always the concern of the school and the same was ordered to be ensured in the ROP dated 20.12.2018 also. The necessary system for the safety of the children were in place and they assured that the same would continue to be provided. They contended that the complainant should send his child to the school regularly, cooperate and extend support which will be reciprocated by the school. They vehemently denied the allegation that the child was ever removed from the school. Master Shadaan Khan has always been a part of the inclusive education and was given necessary therapies in the special wing. They reiterated that the complainant has to make an application for waiver of fee to the principal of the school which will be considered by the management for a decision.

18. As per Secretary, YMCA's letter dated 17.09.2018 to Chairperson, CWC (District South), *"Due to Shadaan's aggressive behaviour, some children have got hurt and recently one boy almost lost an eye. These injuries are happening even after constant monitoring by the class teacher. We are under tremendous pressure by other parents in this class, as they are concerned*

about their ward's safety. I have requested the principal to place him under our Special Education Wing so that he can be given therapy, counselling, personal attention and behaviour modification plan could be adopted for him. They will report the follow up on his case after two weeks and will further be reviewed. This was a necessary requirement as other 39 children are at risk due to his aggressive behaviour. Copy of complaint letter from parents, is enclosed herewith." So, it is about shifting the child to the Special Education Wing and not removing him from the school and as per the statement of the representatives of Respondent No.1, the child was actually not shifted. As suggested by them, the management of the school is advised to consider the request of the complainant for waiver of fee.

19. Sh. G.P. Singh, OSD to DDE(SE), the representative of the Dte. of Education submitted that Sh. Ahsan Khan had also filed a complaint before the DCPCR who referred the same to Dte. of Education. Following that, inspection was carried out. Based on the inspection report and information submitted by the school, Dte. of Education has decided that the school be closed as the proposal for recognition to the school was rejected by the competent authority. The same has been conveyed vide order dated 01.03.2019. To this, representatives of the Respondent No.1 submitted that they had not received the copy of the said order and will take appropriate steps after receipt of the same. Sh. G.P. Singh also clarified that YMCA school has never been a recognised school and hence would not be covered under RTE.

20. The facts and circumstances of this case throw up the following important issues and challenges relating to the education and handling of the children with disabilities, particularly of those on whom the impact of the disability is high:-

- (i) What kind of settings are most suitable for children with varying severity of different disabilities and what specific facilities are essential for them to be able to learn and who should decide it?
- (ii) Who would decide the need for various therapies or even approaches to teach and handle such children – doctor or a special educator or any other teacher or the parents?
- (iii) Control, regulation and monitoring of schools which have children with disabilities particularly those with intellectual and learning disabilities.
- (iv) Should the CWC essentially ensure availability of an expert/specialist with rehabilitation qualification while looking into the complaints concerning the children with disabilities?

21. It is difficult to believe or disbelieve the claims and counter claims of the complainant and the functionaries of the school whether the school organised the parents of other children to file complaints against the son of the complainant. However, it is a reasonable expectation on the part of the parents that school should handle such situations in a more professional and amicable manner at the early stage before its escalation to such proportions. While it is not possible for this court to recommend action against the functionaries of the school and monetary compensation as prayed by the complainant, every concerned person and the school is obligated under the Act and therefore directed to ensure that the dignity and the right of Master Shadaan Khan is protected.

22. The above discussion also brings to the force the question whether all schools are professionally equipped and have the necessary infrastructure and the expertise to handle and impart education to children with disabilities of varying severity. **DOE therefore should deliberate on this issue in consultation with not only experts but also with a cross section of parents of children with disabilities.** This court has suggested this vide

order dated 31.03.2017 also while disposing of the complaints of a large number of parents in case No. 4/1282/2016/Wel/CD – Shri Deepak and others.

23. Many parents of children with disabilities face such situations without much relief as their concerns do not get reflected in the policies and the schools lack the necessary wherewithal. The situation calls for immediate indulgence of the Dte. of Education, GNCT of Delhi as-well-as Ministry of Human Resource Department, GOI as the issue not only concerns NCT of Delhi but the entire country. In light of this, the following recommendations are made:-

- (i) Clear policy guidelines specifying the evidence based pedagogy for children with different disabilities, mandatory infrastructure required for teaching and learning of such children, the roles and responsibilities of various stakeholders must be mandated and circulated to each school. Awareness about it and strict monitoring of its implementation should also be ensured.
- (ii) The role of various stakeholders including the experts/ professionals and parents in deciding the therapies and approaches to teach and handle children with various disabilities particularly those with intellectual, neurological, multiple disabilities etc. should be specified and awareness about the same amongst the teachers, school functionaries and the parents should be ensured.
- (iii) The fact that many children with disabilities (e.g. children with Autism Spectrum Disorder) may not be comfortable in a class having 30-40 students must be kept in view while admitting such children in a class. A group of professionals, parents and teachers should decide about the teaching/learning arrangement and inclusion of such children in a particular setting.

- (iv) Dte. of Education in consultation with Department of Social Welfare should frame comprehensive guidelines for setting up and running of schools who have children with disabilities and prescribe the mandatory norms for such schools and ensure effective monitoring.
- (v) Dte. of Education should organise awareness and sensitisation programmes not only for the members and management of the schools, principals, teachers and other functionaries of the schools but also the parents of children studying in the school in general and the parents of children without disability in particular from time to time.
- (vi) Training on techniques of handling children with disabilities should be organised for all the teachers.
- (vii) As regards the issue concerning Master Shadaan Khan, if the YWCA School continues to be run despite the order dated 01.03.2019. of the Dte. of Education for its closure, the school must ensure safety and well-being of the child and assure the complainant about it besides putting in place a robust mechanism for responsibility and accountability to ensure the security, safety and well being of the child. The complainant should send the child to the school and trust the institution.
- (viii) Child Welfare Committees (CWCs) should involve the experts/ specialists preferably with relevant rehabilitation qualification whenever any issue concerning a child with disability comes up for consideration. Chairman, DCPCR is requested to issue an appropriate advisory to all the members of the CWCs in Delhi.

24. Action taken on the recommendations made in para number 23 be intimated to this court within 3 months from the date of receipt of this order.

25. The case is disposed of with above recommendations.

26. Given under my hand and seal of the Court this 9th day of April, 2019.

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

Copy to:

1. The Secretary, Ministry of Human Resource Development, Govt. of India, Shastri Bhawan, New Delhi.
2. The Chairperson, DCPCR, 5th Floor, ISBT Building , Kashmere Gate, Delhi -110006.
3. The Secretary, Department of Social Welfare, GLNS Complex, Delhi Gate, New Delhi-110002.