

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. 815/1032/2019/03/3668 - 3670 Dated: 23/07/2019

In the matter of:

Sh. Ashwani Porwal,
RZ- 6A/230, J-Block West Sagarpur,
New Delhi-110046.

.....Complainant

Versus

The Principal,
Jindal Public School,
Dashrathpuri,
New Delhi-110045.

.....Respondent No.1

The Director,
Department of Education,
GNCT of Delhi,
Old Sectt., Delhi-110054.

.....Respondent No.2

Date of hearing: 18.07.2019

Present: Sh. Ashwani Porwal, Complainant.
Dr. Mukesh, DDE (IEB) for Respondent no. 2.

ORDER

The above named complainant, father of Master Ayush Porwal, a person with moderate intellectual disability with challenging behaviour vide his complaint dated 26.03.2019 submitted that his son is six years and 10 months of age. He has been allotted Jindal Public School, Dashrathpuri under 3% reserved seats for children with disability. He

Court of Commissioner (Disabilities)
National Capital Territory of Delhi
Room No. - 1
25-D, Mata Sundari Road, New Delhi-02

Page 1 of 9

does not want to admit his son in the school as there is no special educator and related staff and equipment. He also submitted that he spoke to the principal on 14.03.2019, who expressed apprehension that his son may harm other children in the school. Therefore he would not send his son to that school. He requested that his son may be admitted in some other regular school in nursery where he can study with children of nursery class and where there are facilities for teaching children with special needs (Autistic) like St. Marry Dwarka or Golden Jubilee, Suborto Park, New Delhi. If it is not possible, he should be exempted from paying Rs. 4125/- to Tamanna Autism Centre where his son currently studies.

2. The complaint was taken up under the provisions of Rights of Persons with Disabilities Act, 2016, hereinafter referred to as "Act" with the respondents vide notice dated 04.04.2019.

3. Principal, Jindal Public School, Dashrathpuri, Dwarka vide his reply letter dated 06.04.2019 submitted as under:

"Sir,

In reply to the Show cause notice, it is submitted that the complaint dated 26.03.2019, is false, frivolous and based on concocted facts. Sh. Ashwini Porwal has intentionally, deliberately and with ulterior motive, has alleged that Sh. Ashwini Porwal met the undersigned and the undersigned has discouraged Sh. Ashwini Porwal from admitting his child in Jindal Public School. It is pertinent to mention that Sh. Ashwini Porwal has never met and/or approached the undersigned in respect to the admission of his ward or in connection to any other matter thereof. As a matter of fact, his ward has allotted to Jindal Public School and the undersigned has always been ready and willing to adhere to the rules and regulations framed by the authorities. In other words, the School has no issues whatsoever, in case, the said child is willing to take admission in our School.

Court of Commissioner (Disabilities)
National Capital Territory of Delhi

Room No. - 1
25-D, Mata Sundari Road, New Delhi-02

Thanking you

*Principal
Jindal Public School"*

4. Vide his rejoinder dated 15.04.2019, the complainant stated that he is rejecting the allotted school on his own due to unavailability of required resources. He reiterated that his son should be admitted to one of the schools mentioned in his complaint where facilities like Tamanna Autism Centre are available or Directorate of Education should get the fee exempted at Tamanna Autism Centre.

5. In view of the rejoinder of the complainant it was decided to close the complainant. However, the complainant vide his letter dated 21.05.2019 insisted that Directorate of Education ignored the requirement of his son and the alternative of allotting his son to some other school. In view of this a hearing was scheduled on 07.06.2019. The complainant reiterated his written submissions and added that before filing a complaint in this Court, he had submitted a representation to Dy. Director, Private School Branch, Directorate of Education on 25.03.2019. The officer of the Private School Branch recorded on his representation that "Candidate shall be admitted as per guidelines issued vide Circular dated 27.02.2019" and marked it to S.O. (Jindal Public School). As he did not want to admit his son to that school even then and as he was not sure about the safety and proper education of his child in that school, he did not submit the representation with the said remarks to the School.

6. Sh. Banne Singh, UDC who appeared on behalf of the Jindal Public School, submitted that two children with disabilities were allotted to the school by DoE for admission in 1st standard for the academic year 2019-20. The other child, Master Mohnish S/o Sh. Darshan Singh

Court of Commissioner (Disabilities)
National Capital Territory of Delhi
Room No. - 1

25-D, Mata Sundari Road, New Delhi-02

Page 3 of 9

has been admitted and is attending classes regularly. Master Ayush Porwal has not yet reported for admission. He further submitted that children with disabilities have been allotted to their school for the first time. Presently, the school does not have special educator and other facilities / equipments for teaching / learning of children with disabilities. As per him, now that children with disabilities have started coming for admission, the school will make necessary arrangements like appointment of special educators.

7. The Directorate of Education was directed to submit why the child with Autism was admitted to a school that did not have facilities for teaching such children and how teaching and learning of master Ayush Porwal would be ensured. The Principal of the School was also directed to submit by 21.06.2019, the details of facilities that the school proposed to put in place to ensure that master Ayush Porwal and other children with disabilities are taught on equal basis with other children. The matter was posted for hearing on 11.07.2019, which was rescheduled on 18.07.2019.

8. Deputy Director of Education (IEB), District South West-B, Najafgarh, New Delhi vide letter dated 09.07.2019 submitted that—

"As per RTE Act 2009 and guidelines issued by DOE, 25% seats are reserved for EWS/DG/CWSN category candidates in Private Recognized Unaided Schools. Ayush Porwal s/o Ashwani Porwal was allotted Jindal Public School through Computerized Draw of lots conducted by DoE for EWS/DG including 3% for CWSN category candidates. The school was allotted 25% seats under EWS/DG including 3% CWSN category wherein name of Ayush Porwal appeared in the allotted list of Jindal Public School.

The school has stated that a notice from Disability Commission was received by them and Sh. Banne Singh, UDC of the school attended the hearing on 07.06.2019 in the Disability Commission wherein the complainant himself refused to get

Court of Commissioner (Disabilities)
National Capital Territory of Delhi
Room No. - 1
25-D, Mata Sundari Road, New Delhi-02

admitted his ward in the said school and submitted that since facilities needed for his child is not available at Jindal Public School, his ward may be retained at Tamana Autism Centre with free ship facility.

Under provision of 12 (1) (c) a school specified in sub clause (iii) and (iv) of clause(es) of section shall admit to the extent of at least twenty five percent of the strength for candidates under EWS/DG/CSN and Tamana Autism Centre is not specified in sub clause (iii) and (iv) of clause (n) of section (2).

The complainant has requested for change of school but there is no provision for change of school once allotted under EWS/DG/CWSN category admission. Further, school is ready to admit the child but parent of the child is not willing for the same.

Deputy Director of Education
District South West-B
Najafgarh, New Delhi-43"

9. Deputy Director of Education (IEB) vide letter dated 10.07.2019 has submitted that—

"Master Ayush Porwal is a child with Mental retardation with features of Autism. He was allotted Jindal Public School, Dashrathpuri, Delhi through the online admission process for CWSN and the allotment of schools has been done through computerised system. The unified system of admission of CWSN is being followed in compliance to the order of the Hon'ble High Court of Delhi dated 03.04.2014 in WPC 1225/2014 titled as Pramod Arora Vs Hon'ble LG of Delhi and Ors. Further, based on the judgment in the WPC 1225/2014 dated 21.02.2018 the Directorate of Education (DoE) has reserved 3% of seats under EWS/DG category in Private Un-aided Recognized Schools in Delhi for Children with disabilities with prior approval of the Hon'ble L.G. vide notification dated 23rd July 2018.

In this regard it is also submitted that the DoE has issued directions to all Private un-aided Recognized Schools to appoint

Court of Commissioner (Disabilities)
National Capital Territory of Delhi
Room No. - 1
25-D, Mata Sundari Road, New Delhi-02

Special Education Teachers and provide Barrier free Environment to Children with Disabilities vide order dated 19.02.2013."

In addition to the above, the Section 16 of the Rights of Person with Disabilities Act, 2016 states that the appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognized by them provide inclusive education to the children with disabilities.

In view of the above facts, all private un-aided recognized schools should provide appropriate inclusive education to children with disabilities as provided in Section 16 of the Rights of Persons with Disabilities Act, 2016.

This issues with the prior approval of the Director (Education), GNCTD.

(Dr. MUKESH CHAND)
DEPUTY DIRECTOR OF EDUCATION (IEB)"

10. During the hearing on 19.07.2019, the complainant reiterated his submissions and added that it is not possible for him to produce any evidence in support of his submission about the conversation between him and the Principal as the School does not allow mobile phone inside the company.

11. As the Principal/ his representative was not present and no compliance report had been received, the Principal of the school was contacted on telephone. He informed that the school has appointed a Special Educator and the other child who is also with intellectual disability, is attending the school. Since the father of the child does not want to admit his son in the school, he has no further comments to make.

12. Section 16 of the Act, which mandatory, provides as under:

Court of Commissioner (Disabilities)
National Capital Territory of Delhi
Room No. - 1
25-D, Mata Sundari Road, New Delhi-02

"The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall—

- (i) admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;*
- (ii) make building, campus and various facilities accessible;*
- (iii) provide reasonable accommodation according to the individual's requirements;*
- (iv) provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;*
- (v) ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication;*
- (vi) detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;*
- (vii) monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;*
- (viii) provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs."*

13. In addition to providing inclusive education and the necessary facilities required for it as enumerated in Section 16 of the Act, Govt. of NCT of Delhi has reserved 3% seats for children with disabilities in recognized private schools.

14. It is a fact that all the private or government schools do not have the required facilities as envisaged in Section 16 of the Act for teaching and learning of children with various disabilities especially those with autism spectrum disorder, intellectual disability, learning disability,

Court of Commissioner (Disabilities)
National Capital Territory of Delhi
Room No. - 1
25-D, Mata Sundari Road, New Delhi-02

deafness and blindness, etc. In the circumstances, the following recommendations are made:

- i) Directorate of Education should set a reasonable time frame, in the order of priority, in respect of all the schools for making them fully inclusive schools. Until then, allocation of children with disabilities should be done based on mapping of availability of relevant facilities in the schools.
- ii) While it may not be possible to accept the request of every parent to allocate the school of their choice, flexibility in accommodating the requests for the purpose of ensuring equitable quality education to a child with a particular disability should be adopted subject to reasonable constraints like availability of seats. Provision for such accommodation should be incorporated in the procedure for draw of lots.
- iii) The recommendation for admission to a grade/class should also take care of the existing provision for relaxation in upper age limit upto 9 years in respect of children with disabilities.

15. In view of the assurance by the school and the instructions of the Directorate of Education and the mandatory nature of the provisions of Section 16 of the Act, complainant should admit his son to the allotted school and the school should provide the necessary teaching and learning facilities. It goes without saying that Director of Education would have an appropriate mechanism to monitor provisions in the school and proper implementation. As regards, the apprehension of the complainant about the security of his son in the school, it is the duty of the school to ensure safety and well being of all children. I am sure, the Principal of the school shall assure the parents once the child is admitted and he becomes the student of that school.

Court of Commissioner (Disabilities)
National Capital Territory of Delhi

Room No. - 1
25-D, Mata Sundari Road, New Delhi-02

16. This Court/complainant be informed of the action taken on the recommendation as required under Section 81 of the Act.

17. The complaint is disposed of.

18. Given under my hand and the seal of the Court this 23rd day of July, 2019.



State Commissioner for Persons with Disabilities

T.D. Dhariyal
(T.D. Dhariyal) 23/7/19

Court of Commissioner (Disabilities)
National Capital Territory of Delhi
Room No. - 1
25-D, Mata Sundari Road, New Delhi-02