

In the Court of State Commissioner for Persons with Disabilities

National Capital Territory of Delhi

25- D, Mata Sundri 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. 371/1031/2018/07/ 10001-06

Dated: 01/10/2018

In the matter of:

Sh. Kaushar Ali,
H.No.486 A, Gali No.2,
Shani Bazar, Kardampuri,
Delhi – 110094.

..... Complainant

Versus

The Commissioner

East Delhi Municipal Commissioner(EDMC),
419, Udyog Sadan Patparganj Industrial Area,
New Delhi-110092.

.....Respondent No.1

The Principal,

Poorvi Dilli Nagar Nigam Prathmic Vidhalaya,
Chuna Bhatti, Near Bheem Rao Ambedkar College,
New Delhi-110094.

.....Respondent No.2

The Director,

State Council of Educational
Research and Training,
Varun Marg, Defence Colony,
New Delhi 110024.

.....Respondent No.3

The Director,

Education Department,
East Delhi Municipal Corporation (EDMC),
419, Udyog Sadan Patparganj Industrial Area,
New Delhi-110092.

.....Respondent No.4

Date of Hearing: 27.09.2018

Present: Sh. Brind Kr. Sinha, School Incharge and Sh. Mini Sharma,
Dy. Director on behalf of Respondent No.1 & 4.

ORDER

The above named complainant, father of Master Danish, a person with 50% intellectual disability vide his email dated 06.07.2018 submitted that he approached Principal, Poorvi Dilli Nagar Nigam Prathmic Vidhyalaya, Near Bheem Rao Ambedkar College Delhi for admission of his son, but the Principal of the School refused to admit him on the ground that there was no arrangement in the school to take care of a child with intellectual disability. He requested that his son and other children with disabilities be admitted in the school.

2. The complaint was taken up with the Commissioner, EDMC and Principal, Poorvi Dilli Nagar Nigam Prathmic Vidhalaya, (respondent No. 1 & 2 respectively) vide Show-Cause-cum-Hearing Notice dated 11.07.2018 under the Rights of Persons with Disabilities Act, 2016 hereinafter referred to as the Act. It was brought to the notice of the respondents that Section 16 of the Act inter- alia provides:

“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;”

Further, Section 31 of the Act also mandates,

“(1) every child with benchmark disability between the age of six to eighteen years shall have the right to free education in a neighbourhood school, or in a special school, of his choice.

(2) The appropriate Government and local authorities shall ensure that every child with benchmark disability has access to free education in an appropriate environment till he attains the age of eighteen years.”

3. Respondent No. 1 & 2 were also directed to show cause why Master Danish should not be admitted and ensured free inclusive education in an appropriate environment and to appear for hearing on 31.07.2018.

4. On 31.07.2018, the complainant did not personally appear. He was contacted on his given telephone number and he submitted that Master Danish, who is more than 12 years of age has been admitted in class-V by the school. However, as per his level of development, he should be in class-I so that he is able to learn something.

5. Sh. Tejpal, teacher In-charge of the school submitted that when the parents first brought Master Danish for admission to the school, they were advised to admit him in a school/facility that has appropriate teaching facilities for children with intellectual disability so that he can learn. However, as the parents wanted the child to be admitted in that school, he had been admitted in class-V on 28.07.2018 as per his age in accordance with the Dte. of Education, GNCT of Delhi Circular No.DE.23(363)/Sch. Br./2016/1553 dated 19.09.2016 regarding age criteria for non-plan admissions in government schools. The said circular inter-alia quotes Section 4 of the Right of Children to Free and Compulsory Education Act, 2009 which is reproduced below:-

“Where a child above six years of age has not been admitted in any school or though admitted, could not complete his or her

elementary education, then he or she shall be admitted in a class appropriate to his or her age”

6. As per the table given in the circular dated 19.09.2016, for class K.G., the age of a child should be 4+ but less than 5 years and for class-I, the child should be 5+ but less than 6 years and so on. Although Master Danish was 12+ as on 31st March, 2018 and the appropriate class for his age is class-VII yet he has been admitted in class-V which is the highest class in a primary school of East DMC.

7. Sh. Tejpal further submitted that there was no appropriate arrangement for teaching Master Danish as there was no special educator or any other facility. After his admission on 28.07.2018 (Saturday), he left the school after attendance on 30.07.2018 (Monday). The school would do its best to retain him in the school and teach him.

8. It was observed that Section 4 of the RTE Act also mandates that in order to be at par with others, a child who is directly admitted in a class appropriate to his age shall have a right to receive special training. The said section and the proviso to it are reproduced below:-

“ Section 4 . Where a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then he or she shall be admitted in a class appropriate to his or her age;

Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time limits, as may be prescribed;

Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.”

9. It was also observed that the concerned authorities needed to take note of the proviso to Section 4 of RTE Act, Section 16, 17 and 31 of the RPwD Act, 2016 which mandate the appropriate government and local authorities to provide inclusive education to children with disabilities and take various measures to ensure that they receive quality education and improve learning.

10. In case No. 4/1738/2017-Wel/CD/7093-96, this Court vide its order dated 04.05.2018 had recommended that EDMC should take effective steps and fill up all the sanctioned posts of special education teachers on regular/contract basis or as guest teachers within 3 months from the date of receipt of that order and ensure that all the children with disabilities in the schools are provided with the services of special education teachers and all other teaching learning resource material on equal basis with other children.

11. In light of the situation as mentioned above, it was considered that the issue of education of children with disabilities particularly of those who have intellectual / specific learning disabilities needed to be taken seriously in a professional manner as envisaged in the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) and the Rights of Persons with Disabilities Act, 2016 (RPwD Act).

12. There is a need to impart hands on need-based training to all the teachers in EDMC to enable them to handle and teach children with disabilities in their respective schools. The following was therefore recommended vide RoP dated 02.08.2018:

- (i) *State Council of Educational Research and Training (SCERT) should design a training programme and prepare training schedule for all the teachers of the EDMC and submit the same on or before 29.08.2018;*
- (ii) *Director of Education, EDMC should submit on or before 29.08.2018, a plan of action for training the teachers of EDMC in consultation with Director, SCERT;*
- (iii) *The status of appointment and deployment of special education teachers in the schools be also submitted; and*
- (iv) *In the meantime, proper arrangement for teaching/learning of Master Danish should be made which may include a teacher of junior class helping him to learn as envisaged in Section 4 of the RTE Act.*

13. A copy of the RoP dated 02.08.2018 was forwarded to Director (Education), GNCT of Delhi, to take appropriate action with reference to Dte. of Education (School Branch) circular No.DE.23(363)/Sch.Br./2016/1553 dated 19.09.2016 with regard to teaching arrangements of children with disabilities, who are directly admitted in a class appropriate to their age and special training with reference to Para 2 to 4 of the ROP.

14. Joint Director, SCERT vide letter dated 28.08.2018 submitted the copies of the following documents in compliance with the directions issued vide RoP dated 02.08.2018:

- (i) Training Module for HoS / Teachers
- (ii) Tips for Resource Person
- (iii) List of Resource Person (subject Experts)

It has also been submitted by the SCERT that Director, Education Department, EDMC will submit the list of teachers / HoS, Venue of the training programme and dates of the training programme as per availability of the teachers / HoS with in fifteen days to SCERT to conduct the training programme. All expenditure will be borne by the EDMC and SCERT will provide the academic support i.e. TLM etc. As soon as the above information is provided by EDMC, SCERT will arrange training.

15. EDMC vide letter dated 25.09.2018 informed *“as per directions issued by this Court, following course of actions have been taken by the Education Department of the EDMC:*

- *Two days training to the Principals and Incharge of Schools under EDMC is being organized on 27-28 September 2018 by this HQ. Training module as finalized by the SCERT is enclosed herewith for information, please.*
- *From the next month, training is being organized for the teachers i.e. one teacher from each school under EDMC to educate them about the procedure to handle and teach children with disabilities in their respective school.*
This is for your kind information please.

Sd/-

Dy. Director of Education (Admn.)

EDMC”

16. During the hearing on 27.09.2018, Sh. Brind Kr. Sinha, School Incharge, Poorvi Dilli Nagar Nigam Prathmic Vidhyalaya submitted a copy of the Office Order dated 18.09.2018 vide which Sh. Manoj Kumar, Special Educator has been posted to the school with immediate effect. He also added that other arrangements for teaching and learning of Master Danish are also being made. He also stated that Master Danish is not regular in attending classes for which efforts will be made.

17. Dy. Director, Education, EDMC submitted an action taken report dated 25.09.2018, which reiterates the status mentioned above.

18. Sh. Kaushar Ali, complainant was contacted on telephone and informed about the action taken by the respondents. He was also advised to ensure that Master Danish attends the classes regularly.

19. In the light of the action taken by EDMC and SCERT, the complaint is closed. It is hoped that appropriate arrangement for quality education and learning of Master Danish and other children with various disabilities will be made in EDMC schools. All efforts should be made for retention of such children.

20. As no report has yet been received from Directorate of Education, GNCT of Delhi, a copy of this order is endorsed to Director, Education for taking appropriate action with reference to Dte. of Education (School Branch) circular No.DE.23(363)/Sch.Br./2016/1553 dated 19.09.2016 with regard to teaching arrangements of children with disabilities, who are directly admitted in a class appropriate to their age and special training.

21. Given under my hand and the seal of the Court this 28th day of September, 2018.

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

Copy to Director (Education), GNCT of Delhi, Old Sectt., Delhi for action on Para 2 to 4 of the RoP dated 02.08.2018 and Para 20 of this order.