

**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-110002

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[Vested with powers of Civil Court under the Rights of Persons with Disabilities Act, 2016]

Case No. 3100/1033/2023/07/2580-2583

Dated:21-08-2023

In the matter of:

**Dr. Malika Jain,
M/o Naman Jain**

Email:motherofdmd@gmail.com

..... **Complainant**

Versus

1.The Principal/HOA,
Salwan Public School,
Phases – 3, Mayur Vihar,
Delhi.
Email: principal.spasmayurvihar@salwanschools.com.

2. The Dy. Director (Zone-II),
Directorate of Education,
Shakar Pur, Delhi – 110 092.

3. The Principal,
GBSSS (School ID-1002014)
New Kondli, Delhi-110096

.....**Respondents**

Date of hearing: 18.08.2023

Present: **Complainant** : Dr. Malika Jain and Sh. Rohit Jain, parents of Master Naman Jain.

Respondents :

1. Maj.General, Ajay Khandpur, VSM(Retd.), Director,
Sh. Manish Kumar, UDC & Sh. Sanjeev Sharma, LDC on
behalf Salwan Public School, Mayur Vihar, Ph-3, Delhi.
2. Sh. K.P. Singh, LA/Zone-2, Sh. M.K.Jha, DA on behalf DDE,
Zone-II, Shakarpur, Delhi and Sh. Anil Kaushik, LA (IEB) on
behalf of Inclusive Education Branch of Education Deptt.

3. Sh. N.K. Singh, Principal and Sh. Rajeev Kumar, Teacher on behalf of GBSSS, New Kondli.

ORDER

The above complaint of Dr. Malika Jain, mother of Master Naman Jain, a Child with 85% Locomotor Disability (Duchene Muscular Dystrophy/DMD) was received from the Office of the Chief Commissioner for Persons with Disabilities vide email dated 07.07.2023 for taking appropriate action on her complaint dated 27.06.2023 regarding suppression of facts by preliminary investigating team of Directorate of Education ignoring intentional irregularities and wrongdoings of Salwan Public School, Mayur Vihar, Phase-3, Delhi under influence of Salwan Schools Management against CWSN / CWBD. She was not satisfied with the report of the Investigating Team headed by Sh. N.K. Singh, Principal and Sh. Rajeev Kumar, Teacher of GBSSS, New Kondli, Delhi. She mainly raised following issues:-

- (i) Charging Capitation Fees disguising it as admission fee in 2014.
- (ii) To know as to how many CWSN/CWBD were being extended the benefits under the Disability Act, 2016 of free education and books etc. by the school.
- (iii) Why DOE cannot change category of her son from General to PwD (CWBD) since he was diagnosed with DMD in July, 2015.

2. In this regard, she also attached a copy of Inquiry Report submitted by Principal, GBSSS, New Kondli dated 08.06.2023 addressed to Dy. Director of Education (Zone-II, Shakar Pur) vide which it was concluded that :-

- i) Master Naman Jain was physically fit at the time of getting admission in Class-III in respect of which parents had submitted a certificate of fitness.
- ii) No fee has been charged from the child since April'2021 after submission of Disability Certificate dated 22.10.2020. Further as per the Section 17(g) of the RPwD Act, 2016 the child is being provided books, other learning material and appropriate assistive devices free of cost.

- iii) Complainant did not pay the fee of his younger son (brother of Special Child Master Atin Jain) and he was creating unnecessary pressure on the School Management for refund of the fee of their elder son Special Child or adjust the outstanding in lieu of making refund, which is absolutely invalid.
- iv) The RPwD Act, 2016 came into force from 01.04.2017 and the Certificate of Disability in respect Master Naman Jain was submitted to the School in October'2020, no fee had been charged since then. Therefore, the claim made by complainant for refund of Rs. 5,13,408/- is not justified and stands completely invalid.

3. A hearing with all the respondents was scheduled on 18.08.2023 to redress the grievance of the parents of the CWSN. All parties submitted their respective facts as under:-

4. Complainant reiterated through his written submissions dated 23.05.2023 and 27.06.2023 respectively and added that as per DOE report School is providing books, other learning material and appropriate devices free of cost to CWSN as per Section 17(g) of the RPwD Act, 2016 but their son Master Naman was not provided with the same or any special facility as per his entitlement. Complainant claimed that their son should have been given free education from the date of diagnosis of DMD that was in July' 2015 and his fees, charged by the school should either be returned or adjusted against the outstanding amount / dues of his brother Master Atin Jain. Parents of the child further alleged that school did not address their grievance relating to shifting of class room of Master Naman from third floor to ground floor on time and robbed his walking and standing ability and they have not issued Transfer Certificate in respect of his younger son Master Atin Jain and due to that he is not getting admission in other schools.

5. Representative of Salwan Public School, Mayur Vihar vide reply dated 18.08.2023 submitted that Master Naman Jain was admitted to the Salwan School under Gen, Category on 13 March 2014 in Class III. At the time of admission, the child was physically fit and free from any disease. The school administration after observing his problem in walking, in July 2017 shifted his classroom to the ground

floor and since then his classes continues to be in ground floor. It was on the advice of Special Educator of the School the parents of Naman Jain applied for Disability Certificate, based on which certain exemptions and concessions according to the CBSE norms could be availed. The parents applied for the same and received benefits accordingly. The child was diagnosed with Duchene Muscular Dystrophy. After submission of the disability certificate the school did not levy any fees, however, the parents insisted on complete waiver for their son, under the RTE Act 2009. They stopped paying the fees and would indulge in unpleasant behavior with staff whenever asked for the fee. The school authority vide letter dated 28/06/2022 approached the Directorate of Education, GNCT Delhi to change his category from Gen. to CWSN. The response is still awaited. As an exceptional case, the school managing committee approved full free-ship to master Naman Jain and also waived off the fee arrears of Rs. 61,683/- outstanding since April 2021 onwards. The same was conveyed to the parents vide letter dated 19/11/2022. Since then no fee was being charged from Master Naman Jain. The parents had also stopped paying fees for his younger son Master Atin Jain also studying in class X (session 2022-23) in the same school and they demanded adjustment of fees against reimbursement of their elder son Naman Jain. The fees due in R/o Master Atin Jain since April-2022 amounts to Rs. 87452/-. The school has gone out of its way to provide emotional and physical assistance to Master Naman Jain so that he continue his studies and the school staff have always been helpful to him. The main issue of the parents with school is to force the school to get fees paid by them for their elder son in the past years adjusted against the outstanding fee dues of their younger son, Master Atin Jain, whose name has been struck off from the school roll for non-payment of school fee since 01 April 2023, as per rule 35(1) of DSEAR 1973. On the issue of charging Capitation Fee in 2014, it was informed that that it was institutional fund being charged by all Schools of NCR. Any fee to be charged is decided by the Managing Committee Meeting in the school which comprises of 21 members including two DOE nominees, two teachers and two parents representatives. After due discussions and deliberations that to impart meaningful education and to give individual attention for the development of child and offset financial issues such as RTE requiring 25% of EWS & DG quota it was important to increase institutional development fund paid one time at the time of admission from 40,000/- to 60,000/-

w.e.f. session 2012-13. Accordingly Rs. 60,000/- was charged from all newly admitted students. However, the fee was discontinued w.e.f 2015-16 onwards.

6. Representatives of the Respondent No. 2 & 3 inter-alia submitted that the allegations made by complainant against DE- Nominee / HoS concerned is baseless and fabricated and on going through the facts as submitted by the DE- Nominee / HOS it is clear that the school Managing Committee approved full free ship to Master Naman Jain at their own level without waiting the approval to change the category of Master Naman from General to CWSN Category from the DOE. This clearly show that the school management in the interest of the student has always been in the favour of CWSN Master Naman Jain and at the same time, the school management also waived off the fees arrears of Rs. 61683/- outstanding against Master Naman Jain since April, 2021. They also confirmed that Salwan Public School approached DOE to change the category of Master Naman Jain from General Category to CSWN Category on 28.06.2022 and the same is under process. They further intimated that there was no mention of charging capitation fee as disguised in Admission fee in 2014 (at the time of admission) in the earlier complaint of complainant dated 13.04.2023 thus the same was not covered in the inquiry report.

7. After due deliberations and discussion on the case, the Court directs / recommends as under:-

- i) Court observed that Respondent No. 1 should not and have not charged any fee in respect of Master Naman Jain from the date of issue of Disability Certificate to this CWSN (this should be checked and confirmed) which is justified as per RPwD Act, 2016. Thus, the claim made by parents that their son should be given free education from the date of diagnosis of DMD from July' 2015 and his fees, charged by the school should either be returned or adjusted against the outstanding amount of his younger brother studying in the same school is not tenable as per law. In addition, intervention of this Court is not warranted on this point.
- ii) With regard to complainant's grievance on Charging Capitation Fees disguising it as admission fee in 2014 by Respondent No.1, it is directed

that Respondent No.2 should enquire into the matter and resolve this issue by furnishing appropriate reply to the complainant under intimation to this Court within one month from the date of order.

- iii) Respondent No. 2 is directed to complete the process of changing of category of Master Naman from General to DG/CWSN Category within one month from the date of this Order and acknowledge the same to School and as well as to complainant. ATR in this regard be submitted to this Court by 18.09.2023.
- iv) It is the duty and responsibility of the Respondent No. 1 to provide inclusive education and create barrier free environment for the CWSN/CWBD. Thus it is directed that Respondent No. 1 should check and ensure the classes of such CWSN / CWBD including Master Naman Jain be shifted to ground floor or provision of lift should be there for upper floors. Respondent No. 2 is also directed to inspect the same and send an confirmation in this regard to this Court within one month from the date of this Order.
- v) On the issue of Transfer Certificate in respect of younger son of Master Atin Jain, Court directed that complainant should not club the same with instant case and try to resolve the issue with school authorities amicably.

8. Accordingly, the case is disposed of. ATR on the above recommendations be sent to this Court within prescribed time frame.

9. Given under my hand and the seal of the Court this **21st day of August, 2023.**

(Ranjan Mukherjee)
State Commissioner for Persons with Disabilities