



न्यायालय मुख्य आयुक्त निःशक्तजन

Court of Chief Commissioner for Persons with Disabilities

सामाजिक न्याय एवं अधिकारिता मंत्रालय

Ministry of Social Justice & Empowerment

निःशक्तता कार्य विभाग / Department of Disability Affairs

Case No.1185/1031/2014

Dated:- 26.05.2014

In the matter of:

Mrs. Rosy Thomas,
House No.252,
Amarpal Apartments,
I.P. Extension,
Delhi-110092.

..... Complainant

Versus

The Principal,
Khrist Raja Secondary School,
1, Bangla Sahib Marg,
New Delhi – 110001.

..... Respondent No.1

Director (Education),
Directorate of Education,
Government of NCT of Delhi,
Old Secretariat,
Delhi-110054.

.... Respondent No. 2

Date of hearing : 09.05.2014

Present :

1. Mrs. Rosy Thomas, complainant alongwith Sh. Ashok Thomas & Miss Akanksha Thomas.
2. Miss Meena Katyal, School Incharge, Sr. Rose Joseph, Sister-in-Charge & Sh. Sanjay Sharma on behalf of respondent No.1.
3. Mrs. Omeshwara Singh, E.O., Zone-26, on behalf of Respondent No.2

O R D E R

The above named complainant, mother of Ms. Akanksha Thomas, a child with 100% hearing impairment filed a complaint dated 02.04.2014 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding denial of admission to her daughter in Class-IX in Khrist Raja Secondary School.

2. The complainant submitted that her daughter, namely, Akanksha Thomas is a special child (deaf and dumb) and studying at Khrist Raja Secondary School as a special child without any navigational aids support from the school. Miss Meena Katyal, School Incharge and Sr. Janet, Manager of the School are refusing admission to her daughter in IX class. They have also not agreed

with disability certificates (LNJU and AIIMS). Sr. Janet says these two hospitals are not government bodies. Hence, she has not given any weightage to the disability certificates. Her child has been deprived of NDP provision also as Sr. Janet and Miss Meena Katyal have refused admission to her. However, as per Gazette of India her child is empowered to get admission. She along with her daughter have been harassed and discriminated on number of occasions by Miss Katyal. She requested to allow admission to her daughter in the same school in IX class and to direct the concerned Board of Education to provide her daughter multiple choice questions (MCQ) during her exams and the school may be directed to arrange special educator and every infrastructure required by her daughter being a disabled child.

3. Section 39 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the 'Act' provides as under:-

"All Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than three per cent seats for persons with disabilities."

4. As per the Right of Children to Free and Compulsory Education Act, 2009, every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education. No child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education. Provided that a child suffering from disability, as defined in clause i) of section 2 of the Persons with Disabilities Act, 1995, shall have the right to pursue free and compulsory elementary education in accordance with the provisions of Chapter V of the said Act.

5. Hon'ble High Court of Delhi vide decision dated 05.09.2012 in W.P.(C) No.4618 of 2011 have, among other things, directed all the recognized aided and unaided private schools in Delhi to appoint Special Educators and to make their buildings/school premises barrier free so as to provide free movement/access to children with disabilities. Hon'ble Court further directed Department of Education, Government of NCT of Delhi to ensure compliance of the said directions and to take action for de-recognition against the erring school. However, schools where children with special needs are already admitted or will be admitted hereafter shall immediately make provision for Special Educator and further ordered that no school shall refuse admission to children with disability for the reason of not employing Special Educators or not providing barrier free access in the school premises.

6. The matter was taken up under section 59 of the Act with the Principal, Khrist Raja Secondary School, New Delhi vide letter dated 02.04.2014.

7. Manager, Khrist Raja Secondary School vide letter No.KRS/2014/2676 dated 16.04.2014 submitted that a perusal of the said complaint clearly shows the malafide on the part of the complainant, who has concealed the material facts before this Hon'ble Court besides the said complaint is beyond the ambit of appropriate provisions of Right of Children to Free and compulsory Education Act, 2009 and Persons with Disabilities Act, 1995 as mentioned in the abovementioned notice. The respondent further submitted that the said notice and complaint are without any legal

footing and not maintainable as the complainant's daughter, namely, Ms. Akanksha Thomas is not covered under Right of Children to Free and compulsory Education Act, 2009. It is not out of place to mention that the said act is applicable for the children including "Child with disability". As per section 2a(c) of the said Act, "A child means a male or female child of the age of six to fourteen years" which also include child with disability (clause 2d & clause 2e). Further, para 4 of the said notice speaks about the provisions of the said act to provide elementary education to every child. It is not out of place to mention that section 2(f) defines the elementary education as education from first class to eighth class. Furthermore Section 3 of the said Act clarifies the same beyond any doubt that "every child of the age of 6-14 years shall have right to free and compulsory education in a neighborhood school till the completion of his or her elementary education." Quite remarkably to mention here that on both the aspects, the said complaint and notice fails, as the complainant's daughter Akanksha Thomas is aged more than 16 years of age (DOB 25.08.1997) and she is praying for the relief of admission in class IX, whereas section 3 speaks about child right of elementary education i.e. upto class 8th.

8. The respondent has also submitted that it is specifically wrong and denied that the disability certificates issued by AIIMS and LNJP hospitals dated 17.07.2013 and 03.09.2007 were ever refused as alleged, rather the same were submitted by the complainant herself in the school record in 2012/13 after number of requests from respondent to that aspect. Further the said student was never discriminated as alleged, rather she was encouraged to show case her talent on various platforms, wherever possible. As far as denial for admission to class IX, it is noteworthy to mention that the said Khrist Raja School is government aided school and the said student was promoted till now under NDP i.e upto education of elementary level. From Class IX onwards, the NDP is not applicable. Besides, the academic record of the said student is to be perused for her better future. Keeping in view her academic record and abilities, she needs a conducive environment to grow along with the children of the same nature and abilities, which is quite different form their school, in which the student admitted in a special school with the teachers equipped to handle such students, but in vain. Instead she started raising allegations and inflicting threats of dire consequences. In fact the replying respondent/School also apprised the said fact before the Directorate of Education, in order to have their directions, as the school is government aided one. Regarding the complainant's request for direction to the concerned board of education for the provision of multiple choice questions (MCQ), the same is not within the legal parameters of the reply school, though it is noteworthy to mention that there is no such provision/policy by the Directorate of Education for class IX onwards. The curriculum for class IX along with teachers opinion clearly shows the same beyond any doubt. As far as question of Special Educator, though the complainant herself admits of having no need for the Special Educator, it is being reiterated that the Khrist Raja Secondary School is a Government aided school and is subject to post fixation by the education department. In the Post fixation of Govt. aided schools, there is no provision for special educator for one child. Further appointment of Special Educator is not possible in our school as no such special children are studying here, except the said student, who was given admission on compassionate grounds.

9. Regarding claims for five subjects as opted, it is not out of place to mention that the school is not equipped with the teachers, who are trained in possessing sign language to interact with & handle such students with disabilities and the teachers are finding it quite difficult to teach such kind of students. Further in a class of about more than 45 students, who will except one i.e. the said student can interact with teachers freely and understand, whereas the said student with 100% hearing impairment and speech problem could not understand a bit of curriculum. For her own betterment and to have good future, it is always advisable to get her educated in an atmosphere alongwith the similarly placed students. In view of the above submissions and in view of the para 3 to 5 of the said notice, it is clear beyond doubt that it is not possible for the student in question to be enrolled in class IX in their school.

10. The complainant vide her rejoinder dated 21.04.2014, inter-alia, refuted the stand taken by the school and submitted that according to Section 26(a), Chapter V of the PwD Act, every child with disability has to have access to free education in an appropriate environment till he attains the age of eighteen years. The complainant requested this Court to help her in getting admission in the same school in IX standard with the subjects – English, Hindi, Maths, Painting and Home Science.

11. A representation dated 01.04.2014 of Shri Ashok Thomas, father of Ms. Akanksha Thomas addressed to Director, Department of Disability Affairs was also received vide Department of Disability Affairs' letter dated 21.04.2014. Shri Thomas has inter-alia submitted therein that his daughter, namely, Akanksha Thomas is a special child while having speech and hearing impairment. She is studying at Khrist Raja Secondary School at Bangla Sahib Road, New Delhi which is a govt. aided school. She has always been a burden to Miss Jannet, School Manager, Miss Meena Katyal, School Incharge and their supporters like Mrs. Sujata, Mrs. Anita and Mrs. Pushpa. They all wanted to expel his daughter from the school on one baseless ground or the other. The above mentioned persons always falsely alleged against his wife and the school incharge issues Memo. Just to harass his wife only on account of his daughter who is studying there. Her intentions are malafide and kindly make a note of this case of any untoward happening either with my wife or daughter on account of mental tensions, these all should be held responsible and prosecuted. The result of VIIIth class has been declared and his daughter has been kept under NDP; more so, has not been issued admission form for IX whereas other children have been issued the same. "This has made my child absolutely depressed and she has become nervous. This has made me and my wife in tense who has already been working in the same school for the last over 20 years as Lab. Assistant. His child got admission in the above said school by the graceful intervention of this Court. He provided all documents to the Manager with regard to help the child in all conditions as per the Gazette of India. But the Manager always undermines the presence of such documentary proves. Even certificate of disability issued by AIIMS and LNJP Hospital were not considered by the Manager as she said boldly that these hospitals are not run by the Government. At the end, he requested to direct the concerned authorities in this regard so that his child could get admission in the school in IX class as a special child.

12. Upon considering the reply dated 16.04.2014 of the respondent, complainant's rejoinder dated 21.04.2014 and the representation of Shri Ashok Thomas, a hearing was scheduled on dated 09.05.2014.

13. During the hearing on 09.05.2014, reiterating her written submissions, the complainant stated that after repeated requests to the concerned authorities in the school and directions from Director of Education, NCT of Delhi, the school gave "provisional admission under protest". This has been recorded by the school authorities on the admission form which is against law. A copy of the said admission form with remarks was submitted by her. She further submitted that even after lapse of 40 days of commencement of the academic session of 2014, Miss Akanksha has not received any syllabus from the school. When she asked the Home Science Teacher for the syllabus, she told that there were no instructions with her in that regard. All other children of class-IX have already received the syllabus and the classes are being conducted since 1st April, 2014. The complainant further highlighted the fact that it was the responsibility of the school authorities and the Government of NCT of Delhi to put in place necessary support system in an attempt to provide appropriate environment to students with disabilities. She also mentioned certain instances where she was subjected to harassment. For example by making arrangement for pay of the Music Teacher by the complainant and making the child to re-appear in the first term examination.

14. The representatives of the respondent No.1 submitted that the syllabus which the complainant has referred to, was sent to her on 16.04.2014 vide letter No.KRS/2014/2676 dated 16.04.2014 addressed to this Court with a copy to the complainant by Speed Post. The syllabus is at Annexure A-5 of the said letter. They denied rest of the allegations as well which have been rebutted in their reply dated 16.04.2014 and rejoinder dated 9th May, 2014, a copy of which has been submitted during the hearing. The contents of the letter dated 09.05.2014 are reproduced below :-

"As far as the rejoinder of the complainant dated 21.04.204 is concerned, the same is nothing but false and frivolous averments devoid of any truth, as the same is based on baseless allegations against the Manager of the school.

A bare glance of the said rejoinder clearly shows that the complainant has deviated from her alleged grievances as mentioned in her complaint dated 2.4.2014 and after the receipt of respondent's reply dated 16.04.2014 has left no stone unturned to raise various allegations without any basis against Sr. Janet, Manager or Ms. Meena Katyal of Khrist Raja Secondary School.

The reply in respondent would like to reiterate the submissions mentioned in that reply dated 16.04.2014 as true and correct and various allegations mentioned in the said rejoinder are unfounded and unjustified.

- *It is specifically wrong and denied that the claim of the Manager of replying school is discriminatory as alleged or she is bent upon to expel the child of petitioner or violating any directives or provisions or directions as alleged in the para under reply. The same seems to be "new creation" of petitioner's mind, rather the fact is that the said child has already been given admission in class IX provisionally, on the advice of Directorate of Education vide their letter dated 23.05.2014.*
- *The petitioner's malafide becomes further more clear, when she merely placing on record the report card of child from class 2nd to 6th but never mentions about class 7th or 8th, where her academic performance is much below average.*

- *Para 2 to 11 of the said rejoinder clearly shows the allegations without any basis. The petitioner be put to the strict proof about her averments. Merely raising allegations without any proof do not bring any fruitful results. Further Section 26(a) of Persons with Disabilities Act, 1995 is not denied to the extent that it says about the appropriate Government and local authorities shall ensure....."In appropriate environment" and it is being reiterated that for the proper growth and good future of the said child, she is to be provided conducive and appropriate environment, wherein she can interact and understand the teachers which is not happening in our school due to the reasons mentioned in the reply dated 16.04.2014. It is not denied that our school – a missionary institute is a government aided school under Directorate of Education.*
- *Para 12 to 14 as stated are wrong and denied, rather the reply dated 16.04.2014 is being reiterated. It is only after the photographs of the complainant's child is placed on record, a new version – as mentioned in para 12 herein has been placed on record – which is unfounded and uncalled for. The same shows her malafide intentions, otherwise the same would have been mentioned in the complaint itself. It is wrong and denied that the Manager of the school is making mockery of the laid down regulations but is following the rules and regulations drawn by Directorate of Education. The same is further clear from the various letters written to DOE and the National Trust (u/Ministry of Social Welfare...) by the replying respondent to advise and clarify i.e. letters dated 26.03.2014, 09.04.2014, 03.05.2014. At the outset, I would like to reiterate that the said notice seems to be based on the wrongful information provided by the complainant and the impugned complaint dated 02.04.2014 and rejoinder dated 21.04.2014 are absolutely false, frivolous and devoid of any truth."*

15. The representatives of the respondent no.1 also submitted that the school has already given admission to the child on the advice of /direction of Directorate of Education, NCT of Delhi and after that the school has also sent reminders to their earlier letters to Directorate of Education with regard to various issues relating to the infrastructure, Special Educator, facilities for the Teachers with sign language as well as regarding provision of the Teacher of Home Science and Painting.

16. Sister-Incharge of the respondent school expressed apprehension as to how the child could be taught in an appropriate environment without adequate infrastructure and support system. She also lamented that the complainant has been telling a host of lies against the School Manager and School Incharge. She also stated that even her attempts to show impassion to the complainant's daughter has often been mis-corroborated and wrongly understood . She is more concerned about the personal allegations made against the sister.

17. Reiterating her written statement submitted in the Court during the course of hearing, the representative of Director Education (Respondent No.2) highlighted the fact that the Directorate of Education, NCT of Delhi had asked respondent No.1 to admit complainant's daughter and, therefore,

she was surprised that the complainant's daughter was admitted only "provisionally". Besides, she also expressed further surprise that admissions from Class I to IX should have been automatic and that it would not be a case of re-admission and re-registration. She also expressed the view that since the complainant's daughter has been studying in that school from Class-II, the school authorities should have sent necessary proposal to the Directorate of Education, NCT of Delhi and should have appointed Special Educator from the very beginning.

18. As per Section 26 of the Act,, the appropriate Governments and the local authorities are mandated to ensure that every child with a disability has access to free education in an appropriate environment among other things upto the age of 18 years. As per Right of Children to Free and Compulsory Education Act, 2009, the provisions of Right to Children to Free and Compulsory Education Act do not overrule the provisions of Persons with Disabilities Act. In the light of the said provisions, the provisional admission granted to Ms. Akanksha Thomas be regularized and action to provide for appropriate environment and support system which will ensure level playing field to the complainant's daughter to the extent possible including the Special Educator within a reasonable time frame be ensured by the appropriate Government, namely, Directorate of Education, Government of NCT of Delhi.

19. The matter stands disposed off with the above directions.

Sd/-

(P.K. Pincha)
Chief Commissioner
for Persons with Disabilities