सत्यमेव जयते
न्यायालय मुख्य आयुक्त दिव्यांगजन
COURT OF THE CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)
दिव्यांगजन सशक्तिकरण विभाग/**Department of Empowerment of Persons with Disabilities (Divyangjan)**
सामाजिक न्याय और अधिकारिता मंत्रालय/**Ministry of Social Justice & Empowerment**
भारत सरकार/**Government of India**
5वाँ तल, एन.आई.एस.डी. भवन, जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष : (011) 20892364
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Case No. 15745/1031/2024

In The Matter of —

Mr. Shobhit Singh **… Complainant**

Versus

(1) The Secretary,
The Department of Education
Govt. of NCT of Delhi **… Respondent No.1**

(2) The Director,
Directorate of Education,
Govt. of NCT of Delhi **… Respondent No.2**

1. Gist of The Complaint:

1.1 Mr. Shobhit Singh, father of Master Divyansh Singh, a child with visual impairment, filed a complaint dated 11.09.2024 regarding exclusion of Children with Special Needs [CWSN] in the ongoing process of admission to 2nd class onwards in private unaided recognized schools of Delhi.

1.2 The Complainant submitted that his son is suffering from Albino and has 90% visual impairment. He is eligible for admission to Class-II in the present session 2024-25 as per the Circular dated 24.04.2024 issued by the Directorate of Education, Government of NCT of Delhi [GNCT of Delhi] under the EWS/DG Category in respect of private unaided recognized schools (except minority schools) of Delhi. However, the

circular has restricted its application to Entry Level Classes (Pre-school/Nursery, Pre-primary/KG and Primary/Class-1) only. Further, in accordance with notification No. F.19/DDE (IEDSS)/Admi.Cell/PSB/2018/ 26923 dated 23.07.2018, 3% seats are reserved for Children with Disabilities within 25% seats reserved for above said EWS/DG categories. Accordingly, the Complainant claimed that his son, Master Divyansh Singh was eligible for admission in Class II under CwSN quota. The last date for submission of the online application was 15.05.2024. The selection for admission was processed through a computerized draw of lots.

1.3 The Complainant also submitted that the Directorate of Education, GNCT of Delhi recently issued notice dated 29.08.2024 for admission under EWS/ Free ship category in class 2nd onwards against available seats in private unaided recognized schools of Delhi for the academic session 2024-25. However, this opportunity is given to all the above categories except to the Children with Disabilities, which is clear discrimination against Children with Disabilities.

1.4 **Relief Sought**: The Complainant prayed that the Directorate of Education, Delhi may be directed to consider the Children with Disabilities (CWSN) for the online admission process for 2nd classes, or allow his son Master Divyansh Singh for the registration of admission at Entry Level Classes which was closed on 15.05.2024 so that he might apply for the computerized draw for which the last date was 13.09.2024.

2. Notice issued to the Respondents:

2.1 Though the grievance raised by the Complainant fell under the jurisdiction of the Commissioner for Persons with Disabilities under the GNCT of Delhi as per Section 80 (b) of the Rights of Persons with Disabilities Act, 2016 [hereinafter referred to as “the Act”], it was decided to take up the matter as an exceptional case on the following grounds:

(i) Urgency of the matter as it involved the admission of a child where the due date was expiring within two (02) of filing the grievance by the Complainant;

(ii) Vacancy in the position of the SCPD, Delhi;
(iii) Delhi being a Union Territory; and
(iv) Right to access to justice enshrined under section 12 of the Act.

2.2 A notice was accordingly issued to the Respondents on 12.09.2024 as per sections 16, 17 and 31 of the Act for furnishing their comments within 07 days from the date of receipt of the notice.

3. Reply filed by the Respondents:

3.1 No reply was received from the respondents despite a reminder and the lapse of considerable time until a notice for hearing was issued on 04.10.2024.

3.3 Respondent No.2, vide reply dated 08.10.2024, submitted that till the Session 2018-19, the CWSN were given admission under 25% of seats reserved under EWS/DG category. In accordance with the Notification dated 23.07.2018, a 3% reservation was provided to the CWSN within the 25% quota for the EWS/DG in admission to the entry-level classes (Pre-School/Nursery, Pre-Primary/KG & Class-I) in the private unaided recognized schools, since 2019-20. The RTE Act, 2009 only mandates admission under EWS/DG and CWSN at entry-level classes and nowhere does it mandate for admission of a child from a disadvantaged group including CWSN for admission to the private unaided recognized school beyond entry-level class i.e. class 2nd onwards.

3.4 Respondent No.2 further submitted that admissions under free-ship beyond entry-level class is regulated under the land clause applicable to the Private Unaided recognized schools running on the land allotted by DDA or other government land-owning agencies. Citing various judgements of the Hon'ble High Courts in W.P.(C) No. 6439/2011; WP (C) No. 3715/2011; and W.P.(C) No. 4607/2013 and a judgement of the Hon'ble Supreme Court in CA No. 2699 of 2001, the Respondent submitted that the Circular dated 29.08.2024 assailed by the Complainant is fair & transparent.

3.5 Respondent No.2 further submitted that the CWSN cannot be extended the benefit under the free ship/EWS scheme under the allotment clause of a private unaided recognized school. But, the Directorate of Education, GNCT OF Delhi is ready to give admission to the Complainant's child in any of its government schools near the residence of the child or in a special school, run by the DoE meant for the CWSN like the Complainant.

4. Hearing:

A hearing was conducted on **21.10.2024** in hybrid mode (offline/online through video conferencing). The following parties/representatives were present during the hearing:

Sl. No.	**Name of the parties/ Representatives**	**Mode of Presence**
From Complainant:		
1	Mr Shobhit Singh, Complainant	Online
From Respondent No.1:		
	None appeared	----
From Respondent No.1:		
1.	Dr. Ajay Singh OSD (IEB), Directorate of Education	Online
2.	Dr. C.S. Verma, Dy. Director of Education (IEB) Directorate of Education	Online

5. Proceedings of the Hearing:

5.1 The Complainant argued that the Directorate of Education provides for free education at the entry-level (nursery, KG, and Class 1) without any income-based criteria, allowing any child, irrespective of financial background, to apply for a free seat. However, for Class 2 onwards, free education is extended exclusively to EWS students, leaving out children with disabilities. He emphasized that this creates an inequitable situation, particularly for children who acquire disabilities later in life, as they are excluded from free seat eligibility despite their challenges.

5.2 The Complainant reiterated his demand for the inclusion of Children with Special Needs (CWSN) in free seat provisions across all grade levels, arguing that the current policy unjustly discriminates against children with disabilities. In a reply to a question, the Complainant submitted that he had applied to the Spring Dale School and the Delhi Public School for admission of his child. If free admission is being given at entry level under the 3% quota, then the respondent should consider giving admission at Class II onwards also.

5.3 The representative of the respondent appearing during the hearing reiterated their reply filed and said that the Directorate of Education, GNCT OF Delhi is ready to give admission to the complainant's child in any of its government schools near the residence of the child or in the special school, run by DoE meant for the CWSN like the Complainant. In a reply to a question, the representative affirmed that in the 25% reserved seats for admission in Class-II onwards, all categories of children including SC/ST are given admission.

6. Observations & Recommendations:

6.1 After hearing the parties it was observed that the EWS category criteria do not apply in this case, as the respondent has pleaded that the child did not qualify under the EWS quota. The soul of the grievance of the Complainant is the denial of admission of his son who is a child with 90% visual impairment (Low Vision) in private unaided recognized schools in the NCT of Delhi.

6.2 The relevant statutory provisions are as under:

> "*16. 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 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.

17.The appropriate Government and the local authorities shall take the following measures for the purpose of section 16, namely:—

(a) to conduct survey of school going children in every five years for identifying children with disabilities, ascertaining their special needs and the extent to which these are being met:

Provided that the first survey shall be conducted within a period of two years from the date of commencement of this Act;

(b) to establish adequate number of teacher training institutions;

(c) to train and employ teachers, including teachers with disability who are qualified in sign language and Braille and also teachers who are trained in teaching children with intellectual disability;

(d) to train professionals and staff to support inclusive education at all levels of school education;

(e) to establish adequate number of resource centres to support educational institutions at all levels of school education;

(f) to promote the use of appropriate augmentative and alternative modes including means and formats of communication, Braille and sign language to supplement the use of one's own speech to fulfill the daily communication needs of persons with speech, communication or language disabilities and enables them to participate and contribute to their community and society;

(g) to provide books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of

cost up to the age of eighteen years;
(h) to provide scholarships in appropriate cases to students with benchmark disability;
(i) to make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as extra time for completion of examination paper, facility of scribe or amanuensis, exemption from second and third language courses;
(j) to promote research to improve learning; and
(k) any other measures, as may be required.
....
.....
31. (1) Notwithstanding anything contained in the Rights of Children to Free and Compulsory Education Act, 2009, 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."

6.3 Section 31 makes it abundantly clear that every child with a benchmark disability between the ages of six to eighteen years shall have the right to free education in a neighbourhood school, or in a special school, of his choice. It is also clear from a reading of the section that any stipulation of the Rights of Children to Free and Compulsory Education Act, 2009 cannot bar the application of Section 31 of the Act. Every such child has a right to education under Section 31. However, this Court is not inclined to conclude that the said right of a child extends with respect to private unaided schools as well. The right to free and compulsory education of a child with disabilities up to the age of 18 years, is secured against any state-run school or in a school which is either funded or supported significantly by the state.

6.4 The Court also does not agree with the claim of the Complainant for a quota for CWSN in school education irrespective of whether the child belongs to an EWS category. The Respondent have cited that the 25% quota given to EWS, which is further categorised under various segments including 3% of CWSN, is regulated under the land clause applicable to the Private Unaided recognized schools running on the land allotted by DDA or other government land-owning agencies. The Complainant has not been able to cite any law or rule providing

reservation or quota for CWSN in private unaided schools.

6.5 In view of the above facts, this Court is not inclined to make any further intervention.

6.6 The case is accordingly disposed of.

Digitally signed by
Rajesh Aggarwal
Date: 14-03-2025
06:45:16

(Rajesh Aggarwal)
Chief Commissioner
for Persons with Disabilities