A RAJNEESH KUMAR PANDEY & ORS.

v.

UNION OF INDIA & ORS.

(Writ Petition (Civil) No. 132 of 2016)

B OCTOBER 28, 2021

[A. M. KHANWILKAR, DINESH MAHESHWARI AND C. T. RAVIKUMAR, JJ.]

Rights of Children to Free and Compulsory Education Act, 2009: ss. 2(ee), 2(n), 3(3), 19, 20, 25-28, 25(2) – Rights of Persons C *with Disabilities Act, 2016 – ss. 16-18, 31, 32, 79, 82 – Children with special needs/disabled children (CWSN) – Appointment of special and trained teachers in accordance with the pupil-teacher ratio – Need for – Writ petition on behalf of teachers having B.Ed. (Special) and D.Ed. (Special) degree/diploma courses and fully* D *trained to cater to the requirements of CWSN – Grievance as regards illegality being committed by the concerned State and its Authorities in employing them in recognised schools on contract basis without any certainty of tenure – Direction sought to the respondents to ensure the free and compulsory education to each and every CWSN as per the Rules, Regulation and Schemes stated, by initiating the* E *process of appointment of Special Teachers as per the Teacher-Pupil ratio i.e. 1:5 – Held: There is a dearth of rehabilitation professionals or special teachers recognized and registered by the Council, who alone can impart education and training to handicap person/CWSN – As such need for comprehensive approach by the* F *concerned Authorities – In view thereof, the Central Government to notify the norms and standards of pupil-teacher ratio for CWSN and until then as a stopgap arrangement to adopt the pupil-teacher ratio as 8:1 for children with cerebral palsy; 5:1 for children with intellectual disability, ASD and specific learning disabilities; and 2:1 for deaf-blind and a combination of two or more of the seven* G *disabilities mentioned therein; to create permanent posts as per the just ratio for the rehabilitation professionals/special teachers; to complete appointment process for the posts within the stipulated period; to optimize the resource persons and as a stopgap arrangement, avail services of special trained teachers as itinerant* H *teachers within the school block (cluster schools); to give*

compulsory training and sensitized teachers and staff in the general schools to handle the CwSN; and to merge unviable special schools with relatively viable special schools in the neighbourhood – Issuance of directions to the State Commissioners to ensure that corrective and remedial steps are taken within the specified time – Rehabilitation Council of India Act, 1992 – ss. 2, 11 to 13 – Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 –National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 – Constitution of India – Art. 32.

Issuing directions, the Court

HELD: 1.1 The crucial issue is about the extent of obligation of the recognized schools imparting primary and secondary level education to children below the age of 14 years, and Children/Child with Special Needs in particular (including in the special schools established to impart education and training to CwSN), in light of the central enactments and the schemes governing the pupil-teacher ratio, as propounded by the appropriate authority from time to time, for imparting quality education. The standards to be observed by the schools imparting primary and secondary level education are governed by the municipal regulations and were essentially a State subject. They have been placed in the Concurrent List by the Constitution (Forty- second Amendment) Act, 1976. [Para 11][1169-D-E]

1.2 With a view to address the growing concern about the disadvantages suffered by the handicapped persons in every walk of life including education, the Parliament enacted a law titled "The Rehabilitation Council of India Act, 1992" to provide for the constitution of the Rehabilitation Council of India, for regulating and monitoring the training of rehabilitation professionals and personnel; promoting research in rehabilitation and special education; the maintenance of a Central Rehabilitation Register; and for matters connected therewith or incidental thereto. [Para 12][1169-F-G]

1.3 With the need to have a formalized scheme for imparting quality education to CwSN in absence of any specific law on that

A **subject, the Union framed the 1992 Scheme. The recital of the Scheme itself indicates that there was a phenomenal expansion of educational opportunities in the post-independence period, yet the children with disabilities were left out of that growth in educational facilities. To include CwSN to achieve the goal of education for all, the 1992 Scheme was formulated providing for educational opportunities to CwSN in general schools and to facilitate their retention in the school system. The Scheme further recognized that CwSN who were placed in special schools should also be integrated into general schools, once they acquired the communication and daily living skills at a functional level. Indisputably, concern was felt as a substantial number of persons with disability in India were not able to pursue even primary/ secondary level education much less to complete their basic education in a formal school. To encourage them and to facilitate their retention in the school system, the 1992 Scheme was propounded. The concern is with the regime specified regarding special teachers and in particular, the pupil- teacher ratio to be maintained in the concerned schools and their qualifications and training. On similar lines, Centrally Sponsored Scheme (CSS) of 'Inclusive Education of the Disabled at Secondary Stage (IEDSS)' came to be articulated during the same time. [Paras 16, 17][1173-D-G; 1175-G]**

1.4 The Parliament also enacted a law to deal with persons with disability titled "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995". This Act, however, stood repealed by the Right of Persons with Disabilities Act, 2016, which was enacted as a comprehensive legislation to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto. [Para 18][1175-G-H; 1176-A-B]

1.5 The Parliament also enacted the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 for the constitution of a body at the national level for the welfare of persons with autism, cerebral palsy, mental retardation and multiple disabilities and for matters connected therewith or incidental thereto. The Statement of Objects and Reasons of this

Act mentions that the Government of India has become increasingly concerned about the need for affirmative action in favour of persons with autism, cerebral palsy, mental retardation and multiple disabilities and to secure their rights, constituted a National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities, to discharge the role as promotive, proactive and protectionist in nature so as to uphold the rights, promote the development and safeguard the interests of specified persons and their families. The powers and duties of the Board of trustees, procedure for registration of any association of persons with disability, or any association of parents of persons with disability or a voluntary organisation and setting up of local level committees and related matters, have been spelt out in the 1999 Act. This Act, however, makes no provision regarding the pupil-teacher ratio to be observed by the schools imparting education to CwSN in particular. However, that gap has been filled up by the IEDSS Scheme. Taking cue from the National Policy on Education (NPE), 1986 and the Programme of Action (1992), this Scheme laid down a basic policy framework for education, with emphasis on correcting the existing inequalities. This Scheme adverts to the fact that India has been a signatory to international declarations like the Salamanca Statement and Framework for Action on Special Needs Education (1994); the Biwako Millennium Framework for Action (2002), and the United Nations Convention on the Rights of Persons with Disabilities, 2006 which emphasize upon the need for fundamental educational policy shifts in order to enable general schools to include children with disabilities. The 1992 Scheme stood subsumed in this Scheme (IEDSS). [Paras 19, 20][1176-B-D; 1177-D-G]

1.6 The IEDSS Scheme recognized that as per Census of 2001 about 2 per cent of the total population of India constituted persons with disabilities. Further, children with disabilities constituted one of the largest groups that still remained outside the fold of the general education system. In that backdrop, this Scheme sought to provide all students with disabilities who had completed eight years of elementary schooling, an opportunity to complete four years of secondary schooling (classes IX to XII)

in an inclusive and enabling environment, and to provide educational opportunities and facilities to such students in the general education system at the secondary level. The IEDSS Scheme, inter alia, adverts to the training to be given to the special or general school teachers to make them capable of grooming the CwSN. As per this Scheme, the special teachers were to be trained through regular programmes run by the National Institutes/Apex Institutes of the Council or under any other programmes of the States. Further, inservice training for resource teachers to equip them with handling of other disability area has been emphasized upon. As regards the general teachers at the secondary level, they were to be trained in particular strategies. The appointment of special educators has been specifically mentioned in the IEDSS Scheme. [Paras 21, 22][1177-G-H; 1178-A-B; 1179-E-G]

1.7 The Ministry of Human Resource Development, Department of Elementary Education & Literacy also formulated a separate scheme for universal elementary education titled "Sarva Shiksha Abhiyan 2004", to address the specific concern of CwSN and for encouraging them to take admission in primary schools. The aims and objectives of this Scheme were to provide useful and relevant elementary education for all children in the 6 to 14 age group by 2010, and to bridge social, regional and gender gaps through active participation of the community in the management of schools. This Scheme has been subsumed in the subsequent Scheme propounded for mapping, improvement of infrastructure, upgradation of human resource, and management and facilitating good quality education to CwSN. [Para 24][1180-D-G]

1.8 There was a paradigm shift in the approach of imparting education to children between the age of 6 and 14 years consequent to the enactment of the Right of Children to Free and Compulsory Education Act, 2009. This Act generally applies to all the schools, be it a general school or a special school. Further, rights of all the children between the age of 6 and 14 years are governed by this enactment irrespective of their orientation. This Act attempts to universalise education and to open new vistas for providing free and compulsory inclusive elementary education to all and more importantly quality education

in the neighbourhood school. That is the responsibility not only of the schools run or supported by the appropriate Government, but also of schools which are not dependent on Government's funds. [Para 25][1180-G-H]

1.9 Strikingly, the Schedule of the 2009 Act has not been amended to deal with the aspirations and special needs of the child with disability referred to in Section 2(ee) - an expression which came to be inserted back in 2012. The norms and standards for a school specified in the Schedule do not specifically refer to any special arrangement regarding teachers, which are to be made for CwSN by the concerned schools. In that sense, no specific provision dealing with schools and the norms and standards of the schools governed by the 2009 Act in reference to CwSN has been made by the special law. [Para 32][1186-B-C]

1.10 The pupil-teacher ratio to be observed as a minimum norm in any school (be it a general school or special school) for imparting quality education to CwSN, ought to be different than the norms and standards for imparting education to general children/ child. Had the 2009 Act made specific provisions while inserting expression "child with disability" as Section 2(ee), in regard to the norms and standards and the ratio of admitted CwSN and number of teachers, that ought to have prevailed. In absence of an express law in that regard, the provisions of the special law governing the rights of persons with disabilities or the schemes formulated by the Executive, in that regard, must come into play; and despite it not being specified norms and standards in Section 3 of the 2009 Act, the school(s) would be obliged to fulfil such condition at the time of seeking recognition from the competent authority and for continuing the same. [Para 33][1186-D-F]

1.11 It would be in the fitness of things that the Central Government itself, in exercise of powers under Section 20 of the 2009 Act, take steps to issue a notification to suitably amend the Schedule governing the norms and standards so as to include the ratio for appointing rehabilitation professionals/special teachers in every school admitting CwSN, be it a general school or a special school. This is crucial because Section 25(2) of the

2009 Act postulates that no teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in Section 27. Once Schedule stands amended, the schools would be obliged to comply with the norms and standards to give effect to the intent of the 2009 Act and fill up vacancies of teachers in the manner specified in Section 26 of the 2009 Act. [Para 34][1186-F-H]

1.12 It is imperative to provide for an express norm and standard regarding CwSN - pupil and teacher ratio to be maintained by the schools concerned, so as to discharge the responsibility fastened in terms of Section 29 regarding curriculum and evaluation procedure, in a holistic and effective manner. The norms and standards, in particular regarding pupil-teacher ratio, specified in the Schedule of the 2009 Act, are only to delineate the minimum benchmark. It is open to the State Government, being the appropriate Government, to provide for a higher benchmark for ensuring imparting of quality education by the schools within its jurisdiction. Further, besides the benchmark specified in the Schedule or by the appropriate Government, as the case may be, it is always open to the school management to appoint more teachers on their own than the notified pupil-teacher ratio, if they so desire, for ensuring imparting of quality education to its students. [Paras 35, 36][1187-C-E]

1.13 Until the Schedule of the 2009 Act stands amended, pupil-teacher ratio specified in the enactments governing the rights of the persons with disabilities or the schemes propounded in that regard by the Executive for full participation and inclusive education to be imparted in the neighbourhood school ought to be adhered to. [Para 37][1187-F]

1.14 Just as the 2009 Act ushered in paradigm shift in delivery of right of children to free and compulsory education, the 2016 Act is a comprehensive Act to repeal the 1995 Act and infuse further vigour for accomplishment of rights of persons with disabilities. It takes note of the ratification of the United Nation's Convention on the Rights of Persons with Disabilities (UNCRPD) by India in 2007, which lays down certain principles to be followed

by the signatory States for empowerment of persons with disabilities. It requires the signatory States to make appropriate changes in law, as well as, policy to give effect to the principles of the Convention. The Statement of Objects and Reasons for introducing the law, is a testimony of the commitment of our country to follow the tenets enunciated in the international Convention for empowerment of persons with disabilities. [Para 41][1190-G-H; 1191-A-B]

1.15 The 2016 Act, in a way, is a general enactment for giving effect to the rights of persons with disabilities which includes the CwSN. But, when it comes to subject of education, a separate Chapter has been provided for fastening responsibility coupled with duty upon the appropriate Government, local authorities and the concerned educational institutions in matters specified therein (Sections 16 and 17). The purport of these provisions is to make available a platform to the CwSN to avail the rights of full participation by means of inclusive and quality education in the neighbourhood school. For giving effect to this mandate, it is essential for the concerned authority and more particularly for the schools imparting education to CwSN, to ensure that a just pupilteacher ratio is maintained without exception, including as specified under the law made by the Parliament or the scheme enunciated by the executive in that regard. [Para 42][1197-H; 1198-A-C]

1.16 To effectuate the objectives of imparting free, inclusive and quality education in the neighbourhood school to CwSN in terms of the provisions of the 2009 Act read with the provisions of the 2016 Act, a rehabilitation scheme titled "Deendayal Disabled Rehabilitation Scheme" (revised guidelines with effect from 1.4.2018) has been articulated by the Department of Empowerment for Persons with Disabilities (Divyangjan), Ministry of Social Justice and Empowerment, Government of India. Taking note of the severity of the situation revealed by the Census of 2011 which states that there are about 2.68 crore persons with disabilities in India, constituting 2.21 per cent of the population in the country requiring special education, CwSN in particular, this scheme mentions the model projects to be undertaken for

that purpose. Part-B of the DDRS deals with the "Model Project Profiles". The sub-categories mentioned thereunder are - "Project for Pre-School and Early Intervention and Training" followed by "Special Schools for Children with Disabilities", and its sub- categories, namely, "Special School for the Children with Intellectual Disability"; "Special School for the Children with Hearing & Speech Disability"; and "Special Schools for the Children with Visual Disability". For each of the projects, the strength of each school has been noted, including the pupil-teacher beneficiary ratio range which varies with the severity, in cases of children with multiple disabilities. It recognises the fact that children with multiple disability may require maximum and special education and hence, the ratio may be between 4:1 and 6:1. The DDRS has delineated the ratio for the concerned special schools and it may be commensurately replicated in the general schools corresponding with the number of CwSN admitted or required to be admitted in that school. [Paras 44, 45][1202-A-C, G-H; 1203-A-C]

1.17 The 2009 Act merely attempts to expressly include "child with disability" by inserting Section 2(ee) and Section 3(3) vide the 2012 amendment, but makes no corresponding changes to the "Norms and Standards for a School" specified in the Schedule to the Act. The Central Government in exercise of the enabling power in Section 20, by now, ought to have provided suitable norms and standards for a general school admitting CwSN for providing inclusive, free, and compulsory education in a neighbourhood school, and separately for the special school which also is covered within the expansive definition of schools in Section 2(n) of the 2009 Act. [Para 46][1203-D-E]

1.18 In any case, until such notification is issued by the Central Government or appropriate Government, as the case may be, all concerned are under bounden duty to give effect to the norm regarding pupil-teacher ratio specified in the concerned scheme in vogue including the DDRS and the Samagra Shiksha- an integrated Scheme for School Education (SSS) issued by Department of School Education and Literacy, Ministry of Human Resource Development. [Para 47][1203-F]

1.19 The ratio of pupil-teacher has been mentioned in the stated schemes besides the norms and standards specified in the Schedule to the 2009 Act. Indeed, the Schedule to the 2009 Act makes no distinction between general schools and special schools, but the norms and standards specified for general schools cannot be replicated for special schools, which are governed by special laws in respect of rights of persons with disabilities and the schemes framed therefor. The 2009 Act does clarify the position that the Act applies to all schools including the schools admitting child with disability as defined in Section 2(ee) and gives equal and same rights to such children to pursue free, quality and compulsory education in the neighbourhood school. It further provides children with multiple disabilities and children with severe disabilities may opt for even homebased education. The fact remains that for meaningful and effective imparting of education and training to CwSN, different norms and standards ought to be followed and for that purpose, the concerned schools are obliged to create posts of rehabilitation professionals/special education teachers commensurate to number of (CwSN) students in the given school. [Para 50][1216-H; 1217-A-D]

1.20 As a stopgap arrangement until the competent authority formulates a comprehensive action plan including to specify the norms and standards regarding pupil-teacher ratio to be maintained by the concerned schools imparting education to CwSN, this Court is persuaded to adopt the pupil-teacher ratio ascertained in the case of *Ms. Reshma Parveen vs. The Director, Directorate of Education* as 8:1 for children with cerebral palsy; 5:1 for children with intellectual disability, ASD and specific learning disabilities; and 2:1 for deaf-blind and a combination of two or more of the seven disabilities mentioned in the recommendation No. (iii) by the State Commissioner. Indeed, the teachers to be so appointed need to be duly qualified, recognized and registered with the Council in light of s. 13 of the 1992 Act. [Para 52][1221-D-F]

1.21 As regards the appointment of special educators/ special teachers/rehabilitation professionals on itinerant basis under clause 4.3.2 of the SSS, the same may not appear to be in

strict conformity with Section 25(2) of the 2009 Act. However, such teachers are not to be posted in a school as such, but are to render their services in a cluster of schools, which is permissible in the context of the special teachers under the 1992 Act and the 1999 Act. The mandate is that CwSN must be educated and trained only by special teachers being rehabilitation professionals, duly recognized and registered by the Council under the 1992 Act. The operation of the two Acts being Union enactments, need to be harmonized. Further, the schemes formulated for strengthening the mechanism to espouse the cause of CwSN under the special legislations for persons with disabilities must prevail to the extent of special arrangements for imparting education to them and not constricted by the general enactment of 2009 regarding right of children to free and compulsory education. Indeed, a policy or a scheme cannot override the statutory mandate predicated in an Act made by the Parliament. However, schemes for special schools and in respect of the CwSN, in particular, make special provisions and in reference to the legislation such as the 1992 Act and the 1999 Act including the 2016 Act. Those schemes would prevail unless they are found to be in conflict with any of the express provisions of that very special legislation(s). However, the same cannot be assailed as being in conflict with the 2009 Act, which is a general law governing the norms and standards to be observed by the schools which indeed may include a special school. [Para 53][1221-F-H; 1222-A-D]

1.22 The 2009 Act recognizes the special treatment needed for the child with disability by insertion of s.2(ee) and s.3(3), which not only recognize the right of CwSN to get free, quality and compulsory education in neighbourhood school till the completion of their elementary education, but also the right to opt for home-based education if the child is inflicted with multiple disabilities or severe disability, as the case may be. What is absent in the 2009 Act is the modification of the norms and standards originally specified in Schedule I applicable for general schools. Though, later in 2012, the Parliament realized the need to amend the 2009 Act to expressly include the CwSN, it should have also made corresponding changes in Schedule I to provide for suitable norms

for CwSN, by providing distinct dispensation for the general schools admitting CwSN and the special schools catering only to CwSN. That could still be done by the appropriate authority by amending the Schedule in exercise of power u/s.20 and enabling provisions in the 2009 Act. [Para 54][1222-D-F]

1. 23 Indisputably, the schools registered as special schools are also governed by special legislation and the schemes framed therefor and would come under the DEPwD, whereas the general schools come under the Ministry of Education and are governed by the 2009 Act including by the SSS. [Para 55][1222-G]

1.24 As of today, there is a dearth of rehabilitation professionals or special teachers recognized and registered by the Council, who alone can impart education and training to handicap person/CwSN. This disparity will have to be addressed by the National Council of Teachers Education coming under a different department i.e., DSEL. It is for the NCTE to evolve holistic mechanism in collaboration with the Council to enhance the number of special teachers to overcome the deficit. The persons with disabilities in India constitute over 2.21 per cent of the total population of the country, as per the census figures of 2011. At present, there are only 1,20,781 special educators registered with the Council. As per the available data with the Unified District Information System for Education, there are 22.5 lakh CwSN in the country. Further, only 4.33 lakh general teachers have been trained to teach CwSN in addition to teaching general children and only 28,535 special teachers are available for children with special needs/CwSN. [Para 56][1222-H; 1223-A-C]

1.25 A multipronged approach needs to be adopted by the concerned Authorities with immediate effect, *inter alia*, as follows:-

A. The Central Government must forthwith notify the norms and standards of pupil- teacher ratio for special schools and also separate norms for special teachers who alone can impart education and training to CwSN in the general schools; and until such time, as a stopgap arrangement adopt the recommendations made by the State Commissioner, NCT of Delhi in the case of Ms. Reshma Parveen, The Director, Director Gate of Education;

B. To create commensurate permanent posts as per the just ratio to be specified by the competent authority for the rehabilitation professionals/special teachers who can cater to the needs of CwSN;

C. To initiate appointment process to fill-in vacancies for the posts so created for rehabilitation professionals/special teachers for being appointed on regular basis. The same shall be completed within six months from the date of this order or before the commencement of academic year 2022-2023, whichever is earlier;

D. To overcome the shortage of resource persons (rehabilitation professionals/special trained teachers), the training schools/institutions must take steps to augment the number whilst ensuring that the norms and standards specified under the governing laws and regulations including that of the Council for grant of recognition and registration are fulfilled;

E. Until sufficient number of special teachers becomes available for general schools and special schools, the services of special trained teachers can be availed as itinerant teachers as per the SSS within the school block (cluster schools) to optimize the resource persons and as a stopgap arrangement;

F. The other teachers and staff in the general schools be given compulsory training and sensitized to handle the CwSN in the general schools, if admitted; and

G. The authorities may also explore the possibility of merging unviable special schools with relatively viable special schools in the neighbourhood, so as to entail in consolidation of assets and resources for better delivery to the requirements of CwSN. [Para 57][1224-D-H; 1225-A-E]

1.26 The nature of observations made and directions issued, not limited to the States of Uttar Pradesh and Punjab, but would operate across the country (all States and Union Territories). [Para 58][1225-E-F]

1.27 With a view to ensure that the directions are effectively complied with, the State Commissioners in the concerned States/ Union Territories are directed to forthwith initiate *suo motu*

enquiries **regarding compliance and then make recommendation to the appropriate authority (of the concerned State/Union Territory), as may be necessary, so that the authority would be obliged to submit compliance report to the State Commissioner within three months from the date of receipt of recommendation, as mandated under Section 81 of the 2016 Act. The respective State Commissioners may then submit report in respect of compliances/non-compliances within their concerned State/Union Territory to this Court within the specified period. [Para 59][1225-F-H]**

1.28. It is deemed appropriate to issue directions to the State Commissioner(s) (which includes the States of Uttar Pradesh and Punjab), who would be in a better position to ensure that corrective and remedial steps are taken by the concerned State/ Union Territory within the timeline specified in this order. [Para 61][1226-B-C]

Ms. Reshma Parveen vs. The Director, Directorate of Education **Case No. 824/1014/2019/04/9072-84 decided on 31.12.2019 – referred to.**

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No.132 Of 2016.

(Under Article 32 of The Constitution of India)

With

Writ Petition (Civil) No.876 of 2017.

Shoeb Alam, Prashant Shukla, Suyash Srivastava, Ms. Shreya Mishra, Ms. Madhumay Mishra, Satyajeet Kumar, Advs. for the petitioners.

Ms. Madhvi Divan, ASG, R. Bala, Sr Adv., Ms. Priyanka Prakash, Ms. Beena Prakash, G. Prakash, Ms. Rashmi Nandakumar, Akshay Amritanshu, Ms. Vimla Sinha, Ms. Nidhi Khanna, Gurmeet Singh Makker, Vinay Garg, Tanmaya Agarwal, Anuvrat Sharma, Krishnanand Pandeya, Ms. Uttara Babbar, Mrs. B. Sunita Rao, Ms. Deepika Gupta, Ms. Taruna Ardhendumauli Prasad, Piyush Dwivedi, Rohit K. Singh, Mirza Kayesh Begg, Prakhar Srivastav, Pashupathi Nath Razdan, Ravindra Sadanand Chingale, K. V. Jagdishram, Ms. N. P. Haibila, Ms. G. Indira, D. Mahesh Babu, Abhinav Mukerji, Rishi Malhotra, Suhaan Mukerji, Vishal Prasad,

A Nikhil Parikshith, Abhishek Manchanda, Sayandeep Pahari, M/s Plr Chambers And co., Ms. Eliza Bar, Abhimanyu Tewari, Sibo Sankar Mishra, Aravindh S., Ms. Akansha Singh, Ravish Singh, Krishnanand Pandey, Abdul Qadir, Ms. Ritika Singh, Anand S. Jondhale, Sunil Prem Lalla, Gulfeshan Javed, Atiqur Rahman Siddiqui, Abbula Kalam, Dilshad
B Bohra, Ninanda Nair, Satish Pandey, Ms. Ranjeeta Rohatgi, Advs. for the Respondents.

The Judgment of the Court was delivered by

A. M. KHANWILKAR, J.

1. These petitions under Article 32 of the Constitution of India are
C filed in representative capacity, to espouse the cause of teachers having B.Ed. (Special) and D.Ed. (Special) degree/diploma courses and fully trained to cater to the requirements of Children/Child with Special Needs[1] also known as *Divyang,* including to impart them education and make them independent. The thrust of the grievance in the writ petition(s) is
D about the illegality being committed by the concerned State and its Authorities in employing them in recognised schools on contract basis without any certainty of tenure . According to the petitioners, there is a need to appoint 73,888 special teachers on regular basis to teach 3,69,443 CwSN in the State of Uttar Pradesh and equally large number in the State of Punjab so as to fulfil the required pupil-teacher ratio i.e., 5:1.

E 2. It is urged that despite knocking doors of the concerned Authorities repeatedly, no heed has been given to their demands and most of them have been appointed on contractual basis in different schools. This is despite the obligation of the State to ensure that pupil-teacher ratio is maintained in the recognized schools, by appointing
F adequate number of trained teachers on regular post. The principal reliefs prayed in Writ Petition (Civil) No.132 of 2016 are as follows:

> "(a) Issue a writ, order or direction in the nature of mandamus, commanding the respondents to ensure the free and compulsory education to each and every CWSN (Child with Special Need)/
G Disabled Children as per the Rules, Regulation and Schemes stated above by initiating the process of appointment of Special Teachers as per the Teacher-Pupil ratio i.e. 1:5; and/or
>
> (b) Issue a writ, order or direction in the nature of Mandamus, commanding the respondents to reserve and create, at least (sic)

H [1] for short, "CwSN"

two posts or minimum number of posts in each and every schools of the Country/State, as this Hon'ble Court may deem fit in the interest of complete justice for CWSN (Child with Special Need)/ Disabled Children; and/or

(c) Issue a writ, order or direction in the nature of Mandamus, commanding the respondents to reserve a minimum number of posts which this Hon'ble Court may deem fit, in every pending vacancy and future vacancies of the teachers, in the schools of aided by State Government as well as Central Government; and/ or,

....."

Similarly, the reliefs claimed in Writ Petition (Civil) No.876 of 2017, are as follows:

"(a) Issue a writ, order or direction in the nature of mandamus, commanding the respondents to ensure the free and compulsory education to each and every CWSN (Child with Special Need)/ Disabled Children as per the Rules, Regulation and Schemes stated above by initiating the process of appointment of Special Teachers as per the Teacher-Pupil ratio i.e. 1:5; and/or,

(b) Issue a writ, order or direction in the nature of Mandamus, commanding the respondents to reserve and create, atleast two posts or minimum number of posts in each and every schools of the Country/State, as this Hon'ble Court may deem fit in the interest of complete justice for CWSN (Child with Special Need)/Disabled Children; and/or,

(c) Issue a writ, order or direction in the nature of Mandamus, directing the respondents to **create and appoint 18053 Special Teachers for class I to V and 1478 Special Teachers for class IX to XII immediately as they are required to teach disabled children in the Schools of Punjab** particularly under the circumstances, till date not even a single special teacher has been appointed in the schools of State of Punjab to teach physically disabled children/Child with Special Need (CWSN).

(d) Issue a writ, order or direction in the nature of Mandamus, commanding the respondents to reserve a minimum number of posts which this Hon'ble Court may deem fit, in every pending

A vacancy and future vacancies of the teachers, in the schools of aided by State Government as well as Central Government; and/or,

(e) Issue an interim order and direction, commanding the Respondents to use and utilise the skill and eligibility of the writ B petitioners, having requisite training and certificate from the Rehabilitation Council of India, in the welfare and justice of enrolled CWSN (Child with Special Need)/Disabled Children, stated above, and/or;

(f) Grant any other consequential relief admissible under law, in C the facts and circumstances of the case and in the interest of justice."

(emphasis supplied)

3. This Court issued notice to the respondents on 8.3.2016 only in reference to prayer clauses (a) and (b) of Writ Petition (Civil) No.132 of D 2016, reproduced above. As the matter proceeded further, on 14.7.2017, the Court noted thus:

"Mr. D.K. Singh, learned Additional Advocate General for the State of Uttar Pradesh prays for four weeks time to file the counter affidavit.

E

At this juncture, Mr. K. Parameshwar, learned counsel appearing for the petitioners submitted that it is the obligation of the State to conduct a survey with regard to the children with special needs. As we are granting time to the State to file the counter affidavit, it shall carry out the survey with regard to the F children with special needs as far as practicable and put forth the same as a part of the counter affidavit. To explicate, if the State is not in a position to do it for the entire State, at least it may do for one of the Commissionerate to start with.

Let the matter be listed on 21.8.2017."

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4. On the next date, i.e., 21.8.2017, on the basis of submissions made by the learned counsel for the parties, the Court noted thus:

"It is submitted by the learned counsel for the respondent that to impart training to the children with special needs, the State is taking steps to recruit teachers with diploma in special education

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who are eligible to teach the specially abled children. Needless to say, filling up the posts of teachers is one aspect. There are other aspects which are to be taken care of. Learned counsel for the State shall keep in view the order dated 14.7.2017 which mentions with regard to the children with special needs and their requirements. Keeping that in view, a further affidavit be filed by the Secretary of the concerned Department within three weeks hence.

List the matter after three weeks.

Liberty to mention."

5. Again on 18.9.2017, the Court noted the submissions of the learned counsel and observed thus:

"It is submitted by Mr.D.K.Singh, learned Additional Advocate General for the State of U.P. that teachers in certain schools meant for children with special needs and in certain normal schools where the children of that category can come with the mainstream have not been appointed.

In the course of hearing it is submitted that the selection process for more than 1200 teachers is in progress and need for additional schools where children with special needs and the teachers for the said schools and also for normal school children can fit in to the mainstream is a categorical imperative. The Secretary, Primary Education, shall file an affidavit in this regard within two weeks hence. The affidavit to be brought on record shall indicate the nature of advertisement issued for appointment and also the list of appointees, if any.

List on 23rd October, 2017."

6. As the matter proceeded further, on 23.10.2017, the Court recorded the submissions of the parties and observed thus:

"It is submitted by Ms.Aishwarya Bhati, learned Additional Advocate General for the State of Uttar Pradesh that the State is committed to impart education to the children with special needs. On the previous occasion, a statement was made that the State had already commenced the procedure for engaging 12,000 teachers out of which some shall be the teachers for children with special needs.

A Having heard Mr.K.Parameshwar, learned counsel for the petitioner and Ms.Aishwarya Bhati, learned Additional Advocate General for the State of Uttar Pradesh, we are of the *prima facie* view that the children with special needs have to be imparted education not only by special teachers but there has to be special schools for them. Access to education has already been regarded B as a Fundamental Right as per Article 21A of the Constitution. There is a statutory obligation under the Rights of Children to Free and Compulsory Education Act, 2009. It is impossible to think that the children who are disabled or suffer from any kind of disability or who are mentally challenged can be included in the C mainstream schools for getting education. When we say 'disability', we do not mean 'disability' as has been defined in the Rights of Persons with Disabilities Act, 2016. The Rights of Persons with Disabilities Act, 2016 includes certain physical disabilities which may not be a warrant for getting admission in special schools. The students who suffer from blindness, deafness and autism or D such types of disorder may be required to have separate schools with distinctly trained teachers.

The State shall file an affidavit keeping our observations in view within four weeks. Needless to say that the affidavit shall also mention when the State is going to meet this obligation.

E List on 27.11.2017."

7. Further, on 4.12.2017, the Court after referring to the affidavit filed by the Special Secretary, Primary Education, Government of Uttar Pradesh and the submissions made across the Bar, noted thus:

F "In pursuance of our earlier order, an affidavit has been filed by the Special Secretary Primary Education, Government of U.P., Lucknow.

It is stated in the affidavit that the State of U.P. is keen to have special schools having special teachers for imparting G education to the disabled children who cannot be imparted education in normal schools. Ms. Aishwarya Bhati, learned Additional Advocate General appearing for the State of U.P. relying on the affidavit and the instructions has submitted that sixteen special schools have already been established and the teachers have been appointed and presently the schools are H

functional. The special schools are imparting education to visually impaired, hearing and speech impaired, mentally disabled and physically disabled children. It is submitted by her that the schools have residential facilities and they also admit students who belong to non-residential category. A chart has been filed indicating to the said effect.

We have been apprised that seven schools for visually impaired are situated in Lucknow, Gorakhpur, Banda, Saharanpur and Meerut and five schools for hearing and speech impaired in Gorakhpur, Bareilly, Agra, Farukhabad and Lucknow. As far as the mental disability is concerned, there are two schools which are running at Allahabad and Lucknow. There are two special schools for the physically disabled at Lucknow and Pratapgarh. That apart, submits Ms. Bhati that seventeen more schools are under construction.

At this juncture, learned counsel for the petitioners have drawn our attention to Section 2(m) of the Rights of Persons with Disabilities Act, 2016 (for short, 'the 2016 Act'). The said provision defines "inclusive education", which reads as follows:-

> "'inclusive education' means a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities".

Learned counsel have also commended us to Section 16, which reads as follows:-

> "16. *Duty of educational institutions*.- 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;

A (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
B 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
C 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."

D Stress is laid on Sections 16(i) and (iv).

Section 17 of the 2016 Act provides for specific measures for promotion and facilitation of inclusive education so that the students who have been suffering from any kind of disability are not kept away from the main stream of education.

E Ms. Aishwarya Bhati shall apprise this Court on the next date of hearing by way of an affidavit how the State is going to work out the provisions of the Act by providing inclusive education in the State. The affidavit shall be filed by the Secretary, Department of Education, Government of U.P. The said authority
F while filing the affidavit shall keep in view the language employed in Section 3 of the Act which deals with equality and non-discrimination. The affidavit shall also contain the number of disabled children in the State of U.P. and the categories of the disability.

G Though an affidavit has been filed with regard to the establishment and imparting of education to the disabled students who requires special teaching, yet we think it appropriate to get the same verified by a two Member Committee and, accordingly, we nominate Mr. Rishi Malhotra and Mr. Gopal Shankaranarayanan, learned counsel, as the members of the
H Committee, who shall visit the schools and file a report within six

weeks hence. The State of U.P. shall make all arrangements for the visit and assessment by Committee.

List the matter in the third week of January, 2018."

On this day, the Court appointed an *Amicus Curiae* to visit the schools and file a report within six weeks. Pursuant to that order, learned *Amicus Curiae* submitted a detailed report on the basis of factual position noted during his visit to the concerned schools. He also handed over a chart highlighting the problems or deficiencies noticed by him in the respective schools concerning class strength, teachers' ratio and other facilities, that has been taken note of by this Court in the order dated 7.3.2019, which reads thus:

"Mr. Rishi Malhotra, learned Amicus Curiae has handed over a chart highlighting the problems or deficiencies noticed by him in the respective schools concerning the Class strength, teachers' ratio and other facilities. The same reads thus:

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

RAJNEESH KUMAR PANDEY & ORS.

Vs.

UNION OF INDIA & ORS.

WRIT PETITION (CIVIL) NO.132 OF 2016

CHART

Sr. No.	School	Problem/ suggestion	Class/strength	Teacher's Ratio
1.	Visually Impaired School, Meerut (Boys)	1. No Medical Aid Room 2. Not a single regular computer Teacher 3. Not a single Bus/Van	90 out of 100 residential students studying from Class I to Class XII	18 out of 24 sanctioned Teachers
2.	Visually Impaired School, Saharanpur (Girls)	1. No Medical Aid Room 2. Not a single regular computer Teacher 3. No chairs and desks for studying in the classroom 4. 6 rooms as classrooms, 6 rooms as residential rooms and 6 rooms used as Kitchen, store, Mess, Principal Office and Music room	25 out of 75 residential students studying from Class I to Class X	9 out of 24 sanctioned Teachers

3.	Hearing and Speech Impaired School, Bareilly (Co-Ed.)	1. No separate Hostel building for girls students 2. Inadequate Teaching Staff 3. No Medical Room 4. No Bus/Van 5. No Hostel Warden 6. No Hearing Impaired Specialized Teacher 7. Demand for less-cum-modified syllabus 8. Only 4 classrooms for 145 students	145 out of 340 residential students studying from Class I to Class VIII	Only 3 Teachers available
4.	Hearing & Speech Impaired School, Agra (Co-Ed.)	1. 156 students and only 2 teachers 2. There are no classrooms as there is no schools own building 3. At the moment students are studying in adjoining building of skill centre temporarily which also has only 3 classrooms 4. Requirement for separate Hostel building for girls 5. No Medical Room 6. No Bus/Van 7. No Hostel Warden 8. No Hearing Impaired specialized Teachers 9. No geysers 10.Need for less modified syllabus	156 out of 150 residential students studying from Nursery to Class X	Only 2 Teachers
5.	Hearing & Speech Impaired School, Farukhabad (Co-Ed.)	1. 94 students and only 2 teachers 2. There are only 2 classrooms 3. Requirement for separate Hostel building for girls 4. No Medical Room 5. No Bus/Van 6. No Hostel Warden 7. No Hearing Impaired specialized Teachers 8. No geysers	94 out of 100 residential students studying from Nursery to Class VIII	Only 2 Teachers
6.	Hearing & Speech Impaired School, Lucknow (Boys)	1. 117 students and only 5 teachers 2. No Medical Room 3. No Bus/Van 4. No Hearing Impaired specialized Teachers 5. Need for less modified syllabus 6. Need for Vocational Training Courses	117 out of 100 residential students studying from I to Class VIII	Only 5 Teachers

7.	Visually Impaired School, Lucknow (Girls)	1. No Medical Room 2. No Bus/Van 3. No Women Warden in the Hostel 4. Not a single regular Computer Teacher 5. Last maintenance of the building done in the year 2006 6. Need for Plex Talk 7. Demand for increase of Braillers from 3 to 30	96 out of 100 residential students studying from I to Class VIII	20 out of 24 Teachers
8.	Visually Impaired School, Lucknow (Boys)	1. No Medical Room 2. No Hostel Warden 3. Not a single regular Computer Teacher 4. Need for Plex Talk 5. Demand for increase of Braillers	127 out of 200 residential students studying from I to Class VIII	14 out of 20 Teachers
9.	Mentally Challenge School, Lucknow (Girls)	1. No Education set up 2. Only an Orphanage 3. No Schooling System 4. No Nurse-cum-Doctor 5. No Psychiatrist available 6. No Superintendent 7. No Bus/Van 8. No Building of its own	19 out of 50 girls	Only 2 Teachers
10.	Physically Impaired School, Lucknow (Boys)	1. No Physiotherapist 2. No Prosthetic Aid 3. No Artificial limbs 4. No Bus/Van 5. No Medical Room 6. No option to study after class X 7. No Vocational Course available 8. No Computer Teacher 9. No Sports Teacher	38 out of 50 residential students studying from I to Class X	4 out of 8 sanctioned Teachers
11.	Physically Impaired School, Pratapgarh (Boys)	1. No Physiotherapist 2. No Prosthetic Aid 3. No Artificial limbs 4. No Bus/Van 5. No Medical Room 6. No option to study after class X 7. No Vocational Course available 8. No Building of school (just 2 make shift false converted into classrooms) 8. No Computer Teacher 9. No Sports Teacher	24 out of 50 residential students studying from I to Class X	3 out of 6 sanctioned Teachers

12.	Mentally Challenge School, Allahabad (Boys)	1. No Education set up 2. Only an Orphanage 3. No Schooling System 4. No Nurse-cum-Doctor 5. No Psychiatrist available 6. No Superintendent 7. No Bus/Van	20 out of 50 Boys	Only 1 Assistant Teacher, 1 P.T. Trainer, 1 Lab Assistant, 1 Pharmacist and other Assistants totalling 10 in number
13.	Hearing & Speech Impaired School, Gorakhpur (Co-Ed.)	1. 100 students and only 2 teachers 2. No Medical Room 3. No Bus/Van 4. No Hearing Impaired specialized Teachers 5. Need for less modified syllabus 6. Need for Vocational Training Courses 7. Need for new building as the existing one in dilapidated condition 8. No education material 9. only 4 classrooms	100 out of 100 residential students studying from I to Class IX	Only 2 out of 3 Teachers
14.	Visually Impaired School, Gorakhpur (Girls)	1. No Medical Room 2. No Women Warden 3. Need for 20 Plex Talk 4. Demand for increase of 30 Braillers 5. No Bus/Van 6. Not a single Computer Teacher	100 out of 100 residential students studying from I to Class XII	16 out of 31 Teachers
15.	Visually Impaired School, Gorakhpur (Boys)	1. Not a single regular Computer Teacher 2. Need for 10 Plex Talk	100 out of 000 residential students studying from I to Class XII	20 out of 27 Teachers

Learned Additional Advocate General for the State of U.P., on instructions, submits that some of the deficiencies have already been cured and steps are being taken to address all other problems noted in this Chart and including other matters for strengthening the concerned schools for specially abled students. She submits that some more time is required to report compliance to this Court. We have no difficulty in acceding to the request made by the learned counsel. However, we direct the Chief Secretary, State of U.P. to file an affidavit providing for timelines within which all the deficiencies in the concerned sixteen special schools would be redressed. The timelines should be realistic and ensure that

the schools are made fully functional in all respects before the next academic year. The affidavit be filed within three weeks.

Needless to mention that the essential facilities can be put in place only if adequate fund allocation is made in that regard. Since the Chief Secretary has been directed to file an affidavit of compliance and to provide timelines within which the deficiency will be cured, we have no manner of doubt that even that issue will be addressed by the Chief Secretary appropriately.

Besides the proposed affidavit, the Chief Secretary must take measures to set up a nodal authority which would continually supervise and monitor the progress of work within the timelines specified in the affidavit. The nodal authority may consist of high ranking officials of the concerned Departments such as Finance Department, Education Department and Divyang Jan Sashaktikaran Department.

List the matter on 03.04.2019."

8. The Court had granted time to the respondent-State(s) to take corrective measures. When the matter was notified on 4.4.2019, it was reported that substantial measures have been taken in terms of the Scheme of Integrated Education for the Disabled Children 1992[2]. The order reads thus:

"We have perused the affidavit dated 01.04.2019 filed by the Chief Secretary, State of Uttar Pradesh in pursuance to our order dated 07.03.2019.

We are happy to note that, effective measures have been provided for as indicated in the Scheme of Integrated Education for the Disabled Children 1992 and the plan for implementation thereof.

We have no difficulty in giving two months' time to the State Government to comply with the assurance given to the Court on affidavit. However, we expect the Chairman of the nodal Committee to submit periodical report to this Court on monthly basis.

List the matters on 10th July, 2019.

[2] for short, "1992 Scheme"

A We are conscious of the fact that some of the time-lines transcend beyond two months but we deem it appropriate to list the matters on 10th July, 2019 as the progress already done can be reviewed and appropriate directions be given, if required."

9. As the matter proceeded further, on 4.10.2019, learned *Amicus* B *Curiae* informed the Court about further steps taken by the Uttar Pradesh State Government. The same was recorded in the following words:

"Learned counsel for the State has tendered compliance affidavit. An advance copy of the compliance affidavit was served on the learned Amicus Curiae.

C Learned Amicus Curiae submits that, on perusal of the compliance affidavit, it is evident that substantial compliance has been done except in respect of two schools i.e. Mentally Challenged School Girls, Lucknow and Hearing and Speech Impaired School Gorakhpur. Details about further course of action D with regard to those two schools has not been mentioned in the compliance affidavit.

We expect the competent authority to place on record the follow up steps taken in regard to the two schools before the next date.

E List the matter after four weeks."

10. Another relevant order passed in the proceedings, which needs to be adverted to, is order dated 4.2.2021, the same reads thus:

"Heard learned counsel for the petitioner, Mr. Shoeb Alam and Mr. Rishi Malhotra, learned Amicus Curiae.

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Amongst other issues, the central point urged by the petitioners is about the obligation of the schools, including of the concerned State Government to ensure appointment of duly qualified special teachers to impart quality training to the child with disability in the ratio enunciated in the central enactments as G also the schemes propounded by the Central Government from time to time and service conditions of such teachers.

The incidental issue that needs to be examined is whether the central scheme(s) relied upon by the State can be taken forward if the same is not in consonance with the subsequent enactments

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in the form of the Right of Children to Free and Compulsory Education Act, 2009, the Rights of Persons with Disability Act, 2016 and the Rehabilitation Council of India Act, 1992.

Needless to observe that the interpretation of the provisions of the stated acts and of the central scheme(s) may have bearing on dispensation to be provided by all the States and the Union Territories.

Resultantly, we deem it appropriate to issue notice to the learned Attorney General for India, returnable on 23.02.2021."

In this order, the Court articulated the central issue that needs to be addressed at the outset. The arguments made by the learned counsel appearing for the parties were considered.

11. The crucial issue is about the extent of obligation of the recognized schools imparting primary and secondary level education to children below the age of 14 years, and CwSN in particular (including in the special schools established to impart education and training to CwSN), in light of the central enactments and the schemes governing the pupil-teacher ratio, as propounded by the appropriate authority from time to time, for imparting quality education. The standards to be observed by the schools imparting primary and secondary level education are governed by the municipal regulations and were essentially a State subject. They have been placed in the Concurrent List by the Constitution (Forty-second Amendment) Act, 1976.

12. With a view to address the growing concern about the disadvantages suffered by the handicapped persons in every walk of life including education, the Parliament enacted a law titled "The Rehabilitation Council of India Act, 1992"[3] to provide for the constitution of the Rehabilitation Council of India[4], for regulating and monitoring the training of rehabilitation professionals and personnel; promoting research in rehabilitation and special education; the maintenance of a Central Rehabilitation Register; and for matters connected therewith or incidental thereto. The expressions relevant for consideration of this case, as defined in the said Act when enacted, read thus:

"**2. Definitions**.—(1) In this Act, unless the context otherwise requires, —

[3] for short, "1992 Act"
[4] for short, "Council"

A (c) "handicapped"[5] means a person-

(i) visually handicapped;

(ii) hearing handicapped;

(iii) suffering from locomotor disability; or

B (iv) suffering from mental retardation;

(d) "hearing handicap"[6] means deafness with hearing impairment of 70 decibels and above, in the better or total loss of hearing in both ears;

C (e) "locomotor disability"[7] means a person's inability to execute distinctive activities associated with moving, both himself and objects, from place to place and such inability resulting from affliction of either bones, joints, muscles or nerves;

D (h) "mental retardation" means a condition of arrested or incomplete development of mind of a person which is specially characterised by sub-normality of intelligence;

(k) "recognized rehabilitation qualification" means any of the qualifications included in the Schedule;

E (n) "rehabilitation professionals" means—

(i) audiologists and speech therapists;

(ii) clinical psychologists;

(iii) hearing aid and ear mould technicians;

F (iv) rehabilitation engineers and technicians;

(v) special teachers for educating and training the handicapped;

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[5] Stands substituted by Rehabilitation Council of India (Amendment) Act (38 of 2000), S. 3 (Recd. President's assent on 4-9-2000) to the following effect: -

G (c) "handicapped" means a person suffering from any disability referred to in clause (i) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996)

[6] Omitted by Rehabilitation Council of India (Amendment) Act (38 of 2000), S. 3 (Recd. President's assent on 4-9-2000)

[7] Omitted by Rehabilitation Council of India (Amendment) Act (38 of 2000), S. 3 (Recd. President's assent on 4-9-2000)

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(vi) vocational counsellors, employment officers and placement officers dealing with handicapped;

(vii) multi-purpose rehabilitation therapists, technicians; or

(viii) such other category of professionals as the Central Government may, in consultation with the Council, notify from time to time;

(o) "Visually handicapped"[8] means a person who suffers from any of the following conditions, namely: —

(i) total absence of sight;

(ii) visual acquity (acuity) not exceeding 6/60 or 20/200 (snellen) in the better eye with the correcting lenses; or

(iii) limitation of the field of vision subtending and angle of degree or worse."

(emphasis supplied)

13. The Council established under the 1992 Act has been endowed with certain functions predicated in Chapter III under heading 'Functions of the Council'. Section 11 of the 1992 Act deals with recognition of qualifications granted by University, etc., in India for rehabilitation professionals. As noted earlier, special teachers for educating and training the handicapped form part of the definition of "rehabilitation professionals" in Section 2(1)(n) reproduced above.

14. Section 12 of the 1992 Act empowers the Council to recognize qualifications granted by institutions outside India. What is crucial for our purpose is Section 13, which delineates the rights of persons possessing qualifications included in the Schedule to be enrolled and recognized by the Council. The same reads thus:

> "**13. Rights of persons possessing qualifications included in the Schedule to be enrolled**.—(1) Subject to the other provisions contained in this Act, any qualification included in the Schedule shall be sufficient qualification for enrolment on the Register.

[8] Omitted by Rehabilitation Council of India (Amendment) Act (38 of 2000), S. 3 (Recd. President's assent on 4-9-2000)

A (2) **No person, other than the rehabilitation professional who possesses a recognised rehabilitation qualification and is enrolled on the Register**,—

(*a*) shall hold office as rehabilitation professional or any such office (by whatever designation called) in Government or in
B any institution maintained by a local or other authority;

(*b*) **shall practice as rehabilitation professional anywhere in India**;

(*c*) shall be entitled to sign or authenticate any certificate required by any law to be signed or authenticated by a
C rehabilitation professional;

(*d*) shall be entitled to give any evidence in any Court as an expert under section 45 of the Indian Evidence Act, 1872 of any matter relating to the handicapped:

D Provided that if a person possesses the recognised rehabilitation professional qualifications on the date of commencement of this Act, he shall be deemed to be an enrolled rehabilitation professional for a period of six months from the commencement, and if he has made an application for enrolment on the Register within said period of six months, till such application
E is disposed of.

(2A) Notwithstanding anything contained in sub-section (2), any person being a doctor or a paramedic in the field of physical medicine and rehabilitation, orthopaedics, ear, nose or throat (ENT), ophthalmology or psychiatry, employed or working in any
F hospital or establishment owned or controlled by the Central Government or a State Government or any other body funded by the Central or a State Government and notified by the Central Government, may discharge the functions referred to in clauses (a) to (d) of that sub-section.

G (3) **Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both**."

H (emphasis supplied)

15. Two aspects emerge from this provision. The first is that a rehabilitation professional who possesses prescribed qualification and is so recognized by and enrolled on the Register of the Council alone can practice as rehabilitation professional anywhere in India, including as a special teacher. That is to say that no other person (not possessing such recognition and not being registered with the Council) can engage himself in serving the handicapped persons, CwSN in particular, or impart education to them, for that would be a contravention and punishable under Section 13(3) reproduced above. Indeed, this enactment in a way is a general law, but would still govern the special teachers engaged by any school/institution for imparting education and training to CwSN. They must fulfil this requirement over and above the qualifications prescribed under the special law concerning registration and recognition of schools and maintaining minimum standards for imparting quality education.

16. With the need to have a formalized scheme for imparting quality education to CwSN in absence of any specific law on that subject, the Union framed the 1992 Scheme. The recital of the Scheme itself indicates that there was a phenomenal expansion of educational opportunities in the post-independence period, yet the children with disabilities were left out of that growth in educational facilities. To include CwSN to achieve the goal of education for all, the 1992 Scheme was formulated providing for educational opportunities to CwSN in general schools and to facilitate their retention in the school system. The Scheme further recognized that CwSN who were placed in special schools should also be integrated into general schools, once they acquired the communication and daily living skills at a functional level. Indisputably, concern was felt as a substantial number of persons with disability in India were not able to pursue even primary/secondary level education much less to complete their basic education in a formal school. To encourage them and to facilitate their retention in the school system, the 1992 Scheme was propounded. We are not so much concerned with the other features of the Scheme for deciding the matter in issue, except to advert to the regime specified regarding special teachers and in particular, the pupil-teacher ratio to be maintained in the concerned schools and their qualifications and training. The same reads thus:

"**11. Special Teacher Support**

Except for children with locomotor disabilities, special education teachers may be appointed in schools where the scheme is in operation to provide specific attention to the disabled children.

A **12. Appointment of Special Teachers**

12.1 **The teacher-pupil ratio for special education teachers envisaged under the scheme is 1:8. This ratio will be the same for normal classes as well as for preparatory pre-school classes. The same teachers will provide counselling to the**
B **parents. In accordance with this ratio the requisite number of special teachers may be appointed in schools (or for a cluster of schools) for children requiring special teacher support**.

12.2 ***Qualifications***

C Special teachers so appointed should possess the following qualifications:-

(a) ***Primary*** : Academic qualifications as prevalent in the States and Union Territories with one year course, preferably multi-
D category, in special education or with specialization in teaching any type of disabled children depending upon the category of children enrolled in the IEDC Units. Such teachers can be oriented subsequently in the education of other categories of disability.

(b) ***Secondary***: Graduates with B. Ed. (Special Education) or
E any other equivalent professional training in special education.

Prescribed qualifications should be adhered to. In case qualified special teachers are not available, teachers with short training course may be appointed with the condition that they will complete the full course within three years of appointment, special
F allowances for these teachers will be admissible only after completion of the full course. Teachers with single disability professional courses will be encouraged to take courses in other disabilities to improve viability in rural areas.

Since teachers with experience in Non-Formal Education
G (NFE) and Adult Education (AE) are likely to have a better understanding of local environment and need, they could also be identified for training under the scheme and appointed as special teachers.

12.3 ***Scale of pay*** : The same scales of pay as available to the
H teachers of the corresponding category in that State/UT will be

given to special teachers. Considering the special type of duties, these teachers will be given a special pay of Rs. 150 per month in urban areas and Rs. 200 per month in rural areas. The State Education Department may recruit such teachers for this purpose following the normal recruitment procedures.

13. Training of Special Teachers

The facilities for the training of special teachers are readily available in the Regional Colleges of Education (RCEs), Regional Training Centres being run by the National Institute for the Handicapped, Special Education Departments in the universities and selected colleges for Education. The training facilities are being further expanded. The State Government may prepare an estimate of the requirements of teachers under each category of disability and send it to the Regional Colleges of Education/District Institutions of Education and Training (DIETs), National Institutes for the Handicapped and the University Grants Commission under intimation to the NCERT. Since the appointment of fully trained, full-time resources teachers is an essential input for the successful implementation of the Scheme, the State-Government/UT Administration must ensure appointment of such teachers on priority basis.

Under the scheme, grant is available through UGC for instituting full-time training courses for special teachers. The university/training institutes are expected to utilize the existing infrastructural facilities and other resources to the extent possible. The cost of the additional aids/equipment/space, and the additional faculty members will be met from the funds under this scheme. DIETs should organize in-service training courses for general teachers and refresher courses for resource teachers."

(emphasis supplied)

17. On similar lines, Centrally Sponsored Scheme (CSS) of 'Inclusive Education of the Disabled at Secondary Stage (IEDSS)'[9] came to be articulated during the same time.

18. The Parliament also enacted a law to deal with persons with disability titled "The Persons with Disabilities (Equal Opportunities,

[9] for short, "IEDSS Scheme"

Protection of Rights and Full Participation) Act, 1995"[10]. This Act, however, stood repealed by the Right of Persons with Disabilities Act, 2016[11], which was enacted as a comprehensive legislation to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto.

19. The Parliament also enacted the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999[12] for the constitution of a body at the national level for the welfare of persons with autism, cerebral palsy, mental retardation and multiple disabilities and for matters connected therewith or incidental thereto. The Statement of Objects and Reasons of this Act mentions that the Government of India has become increasingly concerned about the need for affirmative action in favour of persons with autism, cerebral palsy, mental retardation and multiple disabilities and to secure their rights, constituted a National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities[13], to discharge the role as promotive, proactive and protectionist in nature so as to uphold the rights, promote the development and safeguard the interests of specified persons and their families. The expression "autism" has been defined in Section 2(a), "cerebral palsy" in Section 2(c), "mental retardation" in Section 2(g), "multiple disabilities" in Section 2(h), "person with disability" in Section 2(j) and "severe disability" in Section 2(o). The objects of the Trust are spelt out in Section 10, which read thus:

"*CHAPTER III*

OBJECTS OF THE TRUST

10. Objects of Trust.—The objects of the Trust shall be—

(a) to enable and empower persons with disability to live as independently and as fully as possible within and as close to the community to which they belong;

(b) to strengthen facilities to provide support to persons with disability to live within their own families;

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[10] for short, "1995 Act"
[11] for short, "2016 Act"
[12] for short, "1999 Act"
[13] for short, "Trust"

(c) to extend support to registered organisations to provide need based services during the period of crisis in the family of persons with disability;

(d) to deal with problems of persons with disability who do not have family support;

(e) to promote measures for the care and protection of persons with disability in the event of death of their parent or guardian;

(f) to evolve procedure for the appointment of guardians and trustees for persons with disability requiring such protection;

(g) to facilitate the realisation of equal opportunities, protection of rights and full participation of persons with disability; and

(h) to do any other act which is incidental to the aforesaid objects."

20. The powers and duties of the Board of trustees, procedure for registration of any association of persons with disability, or any association of parents of persons with disability or a voluntary organisation and setting up of local level committees and related matters, have been spelt out in the 1999 Act. This Act, however, makes no provision regarding the pupil-teacher ratio to be observed by the schools imparting education to CwSN in particular. However, that gap has been filled up by the IEDSS Scheme. Taking cue from the National Policy on Education (NPE), 1986 and the Programme of Action (1992), this Scheme laid down a basic policy framework for education, with emphasis on correcting the existing inequalities. This Scheme adverts to the fact that India has been a signatory to international declarations like the Salamanca Statement and Framework for Action on Special Needs Education (1994); the Biwako Millennium Framework for Action (2002), and the United Nations Convention on the Rights of Persons with Disabilities, 2006 which emphasize upon the need for fundamental educational policy shifts in order to enable general schools to include children with disabilities. The 1992 Scheme stood subsumed in this Scheme (IEDSS).

21. The IEDSS Scheme recognized that as per Census of 2001 about 2 per cent of the total population of India constituted persons with disabilities. Further, children with disabilities constituted one of the largest groups that still remained outside the fold of the general education system. In that backdrop, this Scheme sought to provide all students with disabilities who had completed eight years of elementary schooling, an

A opportunity to complete four years of secondary schooling (classes IX to XII) in an inclusive and enabling environment, and to provide educational opportunities and facilities to such students in the general education system at the secondary level. The objectives of this Scheme were to ensure that:

B "2. **Aims and Objectives**

.....

The objectives of the scheme will be to ensure that

- Every child with disability will be identified at the secondary level and his educational need assessed.

C

- Every student in need of aids and appliances, assistive devices, will be provided the same.
- All architectural barriers in schools are removed so that students with disability have access to classrooms, laboratories, libraries and toilets in the school.

D

- Each student with disability will be supplied learning material as per his/her requirement
- All general school teachers at the secondary level will be provided basic training to teach students with disabilities within a period of three to five years.

E

- Students with disabilities will have access to support services like the appointment of special educators, establishment of resources rooms in every block.

F

- Model schools are set up in every state to develop good replicable practices in inclusive education."

The Target Group identified in this Scheme have been noted thus:

"3. Target Group

G The scheme will cover all children of age 14+ passing out of elementary schools and studying in secondary in Government, local body and Government-aided schools, with one or more disabilities as defined under the Persons with Disabilities Act (1995) and the National Trust Act (1999) in the age group 14+ to 18+ (classes IX to XII), namely

H

- Blindness
- Low vision
- Leprosy cured
- Hearing impairment
- Locomotor disabilities
- Mental retardation
- Mental illness
- Autism
- Cerebral Palsy

And may eventually cover (i) Speech impairment and (ii) Learning Disabilities, etc.

Girls with disabilities will receive special focus and efforts would be made under the scheme to help them gain access to secondary schools, as also to information and guidance for developing their potential."

22. The IEDSS Scheme, inter alia, adverts to the training to be given to the special or general school teachers to make them capable of grooming the CwSN. As per this Scheme, the special teachers were to be trained through regular programmes run by the National Institutes/ Apex Institutes of the Council or under any other programmes of the States. Further, in-service training for resource teachers to equip them with handling of other disability area has been emphasized upon. As regards the general teachers at the secondary level, they were to be trained in particular strategies like making educationally useful assessments, planning an individualized and need-specific curriculum, teaching styles which include audiovisual aids, appropriate instructional strategies, etc. The appointment of special educators has been specifically mentioned in the IEDSS Scheme as follows:

"5. Components of the Scheme

5.1 …..

5.2.II Costs of non-beneficiary-oriented components like teacher training, construction and equipping of resource rooms, creating model schools, research and monitoring, etc. will be covered separately. These components would be as follows:

(i) to (v) …..

(vi) **Appointment of Special Educators: Support from special educators will differ at the secondary level from that at the elementary level. Special Educators will be appointed in the ratio 1:5. Ideally every school where disabled children are enrolled should have the services of at least one special teacher. If the numbers of children are less, this teacher could also work for other schools in the cluster**. For note on Appointment of Special Educators/Resource Teachers see Appendix III. (Sr.No.II.1 of Appendix-I).

….."

(emphasis supplied)

23. It is unnecessary to dilate on other aspects of the IEDSS Scheme, as the core issue to be answered by us for the time being is about pupil-teacher ratio to be maintained by the schools concerned.

24. The Ministry of Human Resource Development, Department of Elementary Education & Literacy also formulated a separate scheme for universal elementary education titled "*Sarva Shiksha Abhiyan* 2004"[14], to address the specific concern of CwSN and for encouraging them to take admission in primary schools. The aims and objectives of this Scheme were to provide useful and relevant elementary education for all children in the 6 to 14 age group by 2010, and to bridge social, regional and gender gaps through active participation of the community in the management of schools. Clause 4.4 of this Scheme specifically deals with education of CwSN to accomplish the goals set out therein. Planners checklist has been delineated in Clause 4.4.1 with appraisers checklist for education of CwSN in Clause 4.4.2. This Scheme has been subsumed in the subsequent Scheme propounded for mapping, improvement of infrastructure, upgradation of human resource, and management and facilitating good quality education to CwSN.

25. There was a paradigm shift in the approach of imparting education to children between the age of 6 and 14 years consequent to the enactment of the Right of Children to Free and Compulsory Education Act, 2009[15]. This Act generally applies to all the schools, be it a general

[14] for short, "SSA 2004"

[15] for short, "2009 Act"

school or a special school. Further, rights of all the children between the age of 6 and 14 years are governed by this enactment irrespective of their orientation. This Act attempts to universalise education and to open new vistas for providing free and compulsory inclusive elementary education to all and more importantly quality education in the neighbourhood school. That is the responsibility not only of the schools run or supported by the appropriate Government, but also of schools which are not dependent on Government's funds.

26. The expression "child" has been defined in Section 2(c) to mean a male or female child of the age of 6 to 14 years. The expression "child belonging to disadvantaged group" has been defined in Section 2(d) as follows:

> "**2. Definitions.—**In this Act, unless the context otherwise requires,—
>
> (d) "child belonging to disadvantaged group" means **a child with disability** or a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification;"
>
> (emphasis supplied)

The expression "child belonging to weaker section" has been defined in Section 2(e) as under:

> "**2. Definitions.—**In this Act, unless the context otherwise requires,—
>
> e) "child belonging to weaker section" means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification;"

Further, the expression "child with disability" has been defined in Section 2(ee), which came into force with effect from 1.8.2012. The same reads thus:

> "**2. Definitions.—**In this Act, unless the context otherwise requires,—

A (ee) "**child with disability**" includes,—

(A) a child with "disability" as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);

B (B) a child, being a person with disability as defined in clause (j) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999);

C (C) a child with "severe disability" as defined in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999)."

(emphasis supplied)

D 27. The 2009 Act guarantees right of child to free and compulsory education in a neighbourhood school till the completion of his or her elementary education between the age group of 6 and 14 years. Section 3 as amended vide Act 30 of 2012, reads thus:

"**3. Right of child to free and compulsory education.**— (1) Every child of the age of six to fourteen years, including a child referred to in **clause (d)** or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.

E

(2) For the purpose of sub-section (1), 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.

F

(3) **A child with disability** referred to in sub-clause (A) of clause (ee) of section 2 shall, without prejudice to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), and a child referred to in sub-clauses (B) and (C) of clause (ee) of section 2, **have the same rights to pursue free and compulsory elementary education which children with disabilities have under the provisions of Chapter V of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996)**:

G

H

Provided that **a child with "multiple disabilities"** referred to in clause (h) and a child with "severe disability" referred to in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999) **may also have the right to opt for home-based education.**"

(emphasis supplied)

28. The extent of a school's responsibility for free and compulsory education within the meaning of the 2009 Act has been spelt out in Section 12. The crucial provision for dealing with the core issue is Section 19. The same reads thus:

"**19. Norms and standards for school**.— (1) **No school shall be established, or recognized, under section 18, unless it fulfils the norms and standards specified in the Schedule**.

(2) Where a **school established before the commencement of this Act** does not fulfil the norms and standards specified in the Schedule, it **shall take steps to fulfil such norms and standards at its own expenses, within a period of three years from the date of such commencement**.

(3) **Where a school fails to fulfil the norms and standards** within the period specified under sub-section (2), **the authority** prescribed under sub-section (1) of section 18 **shall withdraw recognition granted to such school** in the manner specified under sub-section (3) thereof.

(4) With effect from the date of withdrawal of recognition under sub-section (3), no school shall continue to function.

(5) Any person who continues to run a school after the recognition is withdrawn, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues."

(emphasis supplied)

29. The Schedule referred to in Section 19 is part of the 2009 Act, which reads thus:

A

"THE SCHEDULE

(*See* Sections 19 and 25)

NORMS AND STANDARDS FOR A SCHOOL

Sl.No.	Item	Norms and Standards	
1.	**Number of teachers:**		
	(a) For first class to fifth class	**Admitted children**	**Number of teachers**
		Up to Sixty	**Two**
		Between sixty-one to ninety	**Three**
B		**Between Ninety-one to one hundred and twenty**	**Four**
		Between One hundred and twenty-one to two hundred	**Five**
		Above One hundred and fifty children	**Five plus one Head-teacher**
C		**Above Two hundred children**	**Pupil-Teacher Ratio (excluding Head-teacher) shall not exceed forty.**
	(b) For sixth class to eighth class	**(1) At least one teacher per class so that there shall be at least one teacher each for —** **(i) Science and Mathematics;** **(ii) Social Studies;** **(iii) Languages.** **(2) At least one teacher for every thirty-five children** **(3) Where admission of children is above one hundred —** **(i) a full time head-teacher;** **(ii) part time instructors for —** **(A) Art Education;** **(B) Health and Physical Education;** **(C) Work Education.**	
D			
2.	Building	All-weather building consisting of— (i) at least one class-room for every teacher and an office-cum-store-cum-Head teacher's room; (ii) barrier-free access; (iii) separate toilets for boys and girls; (iv) safe and adequate drinking water facility to all children; (v) a kitchen where mid-day meal is cooked in the school; (vi) Playground; (vii) arrangements for securing the school building by boundary wall or fencing	
E			
F			
3.	Minimum number of working days/instructional hours in an academic year	(i) two hundred working days for first class to fifth class; (ii) two hundred and twenty working days for sixth class to eighth class; (iii) eight hundred instructional hours per academic year for first class to fifth class; (iv) one thousand instructional hours per academic year for sixth class to eighth class.	
G 4.	Minimum number of working hours per week for the teacher	forty-five teaching including preparation hours.	
5.	Teaching learning equipment	shall be provided to each class as required.	
6.	Library	There shall be a library in each school providing newspaper, magazines and books on all subjects, including story-books.	
7.	Play material, games and sports equipment	shall be provided to each class as required."	

H (emphasis supplied)

30. It may be useful to also advert to Sections 25, 27 and 28 of the 2009 Act, which read thus:

> "**25. Pupil-Teacher Ratio**.—(1) **Within three years from the date of commencement of this Act, the appropriate Government and the local authority shall ensure that the Pupil-Teacher Ratio, as specified in the Schedule, is maintained in each school**.
>
> (2) For the purpose of maintaining the Pupil-Teacher Ratio under sub-section (1), **no teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in section 27**.
>
> **27. Prohibition of deployment of teachers for non-educational purposes**.— **No teacher shall be deployed for any non-educational purposes other than the decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament, as the case may be**.
>
> **28. Prohibition of private tuition by teacher**.—No teacher shall engage himself or herself in private tuition or private teaching activity."
>
> (emphasis supplied)

31. In the context of obligation of schools to maintain pupil-teacher ratio, it may be apposite to advert to Rule 22 of the Right of Children to Free and Compulsory Education Rules, 2010[16], which reads thus:

> "**22. Maintaining pupil-teacher ratio**.— (1) The sanctioned strength of teachers in a school shall be notified by the Central Government, appropriate Government or the local authority, as the case may be, within a period of three months of the appointed date:
>
> Provided that the Central Government, appropriate Government or the local authority, as the case may be, shall, within three months of such notification, redeploy teachers of schools having strength in excess of the sanctioned strength prior to the notification referred to in sub-rule (1).

[16] for short, "2010 Rules"

A (2) If any person of the Central Government, appropriate Government or the local authority violates the provisions of sub-section (2) of section 25, he or she shall be personally liable for disciplinary action."

32. Strikingly, the Schedule has not been amended to deal with
B the aspirations and special needs of the child with disability referred to in Section 2(ee) — an expression which came to be inserted back in 2012. The norms and standards for a school specified in the Schedule do not specifically refer to any special arrangement regarding teachers, which are to be made for CwSN by the concerned schools. In that sense, no
C specific provision dealing with schools and the norms and standards of the schools governed by the 2009 Act in reference to CwSN has been made by the special law.

33. It is unnecessary to underscore that the pupil-teacher ratio to be observed as a minimum norm in any school (be it a general school or special school) for imparting quality education to CwSN, ought to be
D different than the norms and standards for imparting education to general children/child. Had the 2009 Act made specific provisions while inserting expression "child with disability" as Section 2(ee), in regard to the norms and standards and the ratio of admitted CwSN and number of teachers, that ought to have prevailed. In absence of an express law in that regard,
E the provisions of the special law governing the rights of persons with disabilities or the schemes formulated by the Executive, in that regard, must come into play; and despite it not being specified norms and standards in Section 3 of the 2009 Act, the school(s) will be obliged to fulfil such condition at the time of seeking recognition from the competent authority and for continuing the same.

F

34. In light of the above, it would be in the fitness of things that the Central Government itself, in exercise of powers under Section 20 of the 2009 Act, take steps to issue a notification to suitably amend the Schedule governing the norms and standards so as to include the ratio for appointing rehabilitation professionals/special teachers in every school
G admitting CwSN, be it a general school or a special school. This is crucial because Section 25(2) of the 2009 Act postulates that no teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in Section 27. Once Schedule stands amended, the schools will be obliged to comply
H with the norms and standards to give effect to the intent of the 2009 Act

and fill up vacancies of teachers in the manner specified in Section 26 of the 2009 Act, which reads thus:

> "**26. Filling up vacancies of teachers**.—The appointing authority, in relation to a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or by a local authority, shall ensure that vacancy of teacher in a school under its control shall not exceed ten per cent. of the total sanctioned strength."

35. It is imperative to provide for an express norm and standard regarding CwSN - pupil and teacher ratio to be maintained by the schools concerned, so as to discharge the responsibility fastened in terms of Section 29 regarding curriculum and evaluation procedure, in a holistic and effective manner.

36. Needless to observe that the norms and standards, in particular regarding pupil-teacher ratio, specified in the Schedule of the 2009 Act, are only to delineate the minimum benchmark. It is open to the State Government, being the appropriate Government, to provide for a higher benchmark for ensuring imparting of quality education by the schools within its jurisdiction. Further, besides the benchmark specified in the Schedule or by the appropriate Government, as the case may be, it is always open to the school management to appoint more teachers on their own than the notified pupil-teacher ratio, if they so desire, for ensuring imparting of quality education to its students.

37. As aforesaid, until the Schedule of the 2009 Act stands amended, pupil-teacher ratio specified in the enactments governing the rights of the persons with disabilities or the schemes propounded in that regard by the Executive for full participation and inclusive education to be imparted in the neighbourhood school, ought to be adhered to.

38. More or less on the same lines, a press release was issued by the Ministry of Human Resource Development on 9.9.2010, which reads thus:

> "Press Information Bureau
> Government of India
> Ministry of Human Resource Development
>
> ==========
>
> 09-September-2010 13:13 IST

A **Aligning Sarva Shiksha Abhiyan Norms with the Right of Children to Free and Compulsory Education Act, 2009**

The Cabinet Committee on Economic Affairs today approved revision of the existing norms of the SSA programme to conform with the RTE Act (Right of Children to Free and
B Compulsory Education Act).

The Sarva Shiksha Abhiyan (SSA) Programme, a major flagship programme of the Government of India to universalize elementary education in the country, will be the main vehicle for the implementation of the RTE Act.

C The revisions are as follows:

(i) Revision of SSA norms, including provisions for teachers and classrooms, support for academic supervision, research, evaluation and monitoring, opening of Kasturba Gandhi Balika Vidyalayas (KGBVs) to bring them in conformity with the
D provisions of the RTE Act and implement the combined RTE-SSA programme. New norms under SSA for uniforms, transportation costs and residential schools to implement the combined RTE-SSA programme have also been included.

(ii) Revision of the funding pattern for the combined RTE-SSA
E programme between the Centre and the States in the ratio of 65:35 for all States/UTs; in the case of eight States of NER the existing sharing pattern of 90:10 would however be continue."

39. Another press release came to be issued on 6.12.2010 by the
F Ministry of Social Justice & Empowerment, which reads thus:

"Press Information Bureau
Government of India
Ministry of Social Justice & Empowerment

G 06-December-2010 15:53 IST

Educational Rights of Children with Disabilities

The steps taken by the Government of India for implementing educational rights of the children and the disabled
H section of the society are as under-

The Right of Children to Free & Compulsory Education (RTE) Act, 2009 has come into force w.e.f. 1st April, 2010. The RTE Act provides for free & compulsory education to children in the age group of 6-14 years at elementary level in a neighbourhood school. Government of India has since aligned the Sarva Shiksha Abhiyan (SSA) norms with the provisions of Right of Children to Free and Compulsory Education Act, 2009 and has committed a funding of Rs. 2,31,233 crore for implementation of the combined RTE-SSA programme during the next five years in partnership with the States.

SSA ensures that every child with special needs, irrespective of the kind, category and degree of disability, is provided meaningful and quality education. Hence, SSA has adopted a zero rejection policy. This means that no child having special needs should be deprived of the right to education and taught in an environment, which is best, suited to his/her learning needs.

SSA provides upto Rs. 3000 per child for the inclusion of disabled children, as per specific proposal, per year. District plan for children with special needs is formulated within the Rs. 3000 per child norm, with Rs. 1000 earmarked exclusively for engagement of resource teachers. The interventions under SSA for inclusive education are identification, functional and formal assessment, appropriate educational placement, preparation of Individualised Educational Plan, provision of aids and appliances, teacher training, resource support, removal of architectural barriers, research, monitoring and evaluation and a special focus on girls with special needs.

A centrally sponsored scheme of "Inclusive Education for Disabled at Secondary Stage" (IEDSS) has been implemented since 1-4-2009 in place of CSS of Integrated Education for Disabled Children (IEDC). The objective of the IEDSS scheme is to enable the disabled children who have completed eight years of elementary education to continue their education at the secondary stage (class IX to XII) in an inclusive environment in regular schools.

This information was given by Shri. D. Napoleon, the Minister of State for Social Justice & Empowerment, in a written reply to a question in the Lok Sabha today."

40. This is significant in light of the just stand taken by the Council to ensure that special education teachers with proper qualification, as approved and registered by the Council, are employed by the schools. The communication issued on 11.1.2012 reinforces that assertion, which reads thus:

"**REHABILITATION COUNCIL OF INDIA**

(A Statutory Body under the Ministry of Social Justice and Empowerment)

No.7-91/RCI-2011/ Date 11.01.2012

SPEED POST

Address as list

Sub: Minimum requirement of RCI approved qualification for appointment of Special Education Teachers: reg.

Madam/Sir,

This is to inform you that the Council has developed the guidelines for minimum requirement of RCI approved qualification for appointment of Special Education Teachers (copy enclosed). These guidelines supercede previous circulars/orders issued by the Council and shall come into force with immediate effect.

Thanking you,

Yours faithfully
Sd/-
(Dr. J.P. Singh)
Member Secretary

Encl as above"

The above communication has appended guidelines as to minimum requirement of the Council approved qualification for appointment of special education teachers, which need not be reproduced.

41. Just as the 2009 Act ushered in paradigm shift in delivery of right of children to free and compulsory education, the 2016 Act is a comprehensive Act to repeal the 1995 Act and infuse further vigour for accomplishment of rights of persons with disabilities. It takes note of the ratification of the United Nation's Convention on the Rights of Persons

with Disabilities (UNCRPD) by India in 2007, which lays down certain principles to be followed by the signatory States for empowerment of persons with disabilities. It requires the signatory States to make appropriate changes in law, as well as, policy to give effect to the principles of the Convention. The Statement of Objects and Reasons for introducing the law, is a testimony of the commitment of our country to follow the tenets enunciated in the international Convention for empowerment of persons with disabilities. The same reads thus: -

"**STATEMENT OF OBJECTS AND REASONS**

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was enacted to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. The Act defines Persons with Disabilities as those having not less than forty percent, disability and identified seven categories of disabilities, namely, blindness, low vision, hearing impairment, locomotor disability, mental retardation, mental illness and leprosy-cured.

2. **Over a period of time, the conceptual understanding of the rights of persons with disabilities has become more clear and there has been worldwide change in approach to handle the issues concerning persons with disabilities**. The United Nations adopted its Convention all, the Rights of Persons with Disabilities laying down the principles to be followed by the States Parties for empowerment of persons with disabilities. India signed the said Convention and subsequently ratified the same on the 1st day of October, 2007. The Convention came into effect on the 3rd day of May, 2008. Being a signatory to the Convention, India has an international obligation to comply with the provisions of the said Convention which required an entirely new legislation.

3. In 2010, an Expert Committee constituted under the chairmanship of Dr. Sudha Kaul, Vice-Chairperson, Indian Institute of Cerebral Palsy, Kolkata submitted its report in 2011, suggesting a Draft Bill relating to the Rights of Persons with Disabilities. The draft Bill was extensively debated upon at various levels involving State Governments and Union territories and various stakeholders.

4. The salient features of the Rights of Persons with Disabilities Bill, 2014, *inter alia*, are:

A **(i) Nineteen specified disabilities have been defined**;

(ii) the persons with disabilities enjoy various rights such as right to equality, life with dignity, respect for his or her integrity, etc., equally with others;

B **(iii) duties and responsibilities of the appropriate Government have been enumerated**;

(iv) all educational institutions funded by appropriate Government shall provide inclusive education to the children with disabilities;

C (v) a National Fund is proposed to provide financial support to persons with disabilities;

(vi) stakeholders' participation in the policy making through Central and State Advisory Boards;

(vii) increase in reservation in posts from existing three percent, D to five percent, in the vacancies for persons or class of persons with benchmark disabilities in every establishment and reservation of seats for students with benchmark disabilities in higher educational institutions;

(viii) setting up of National Commission and State Commission E to act as Grievance Redressal Mechanism, monitor implementation of the proposed legislation replacing the Chief Commissioner and State Commissioners for persons with disabilities, respectively;

(ix) guidelines to be issued by the Central Government for F issuance of certificates of specified disabilities;

(x) penalties for offences committed against persons with disabilities; and

(xi) Court of Session to be designated as Special Court by the State Government in every district to try offences.

G

5. The Bill seeks to achieve the above objects."

(emphasis supplied)

One of the salutary provisions of the 2016 Act which may have bearing on the issue under consideration, is the definition clause. The H expression "barrier" is defined in Section 2(c); "care-giver" in Section

2(d); "discrimination" in Section 2(h); "high support" in Section 2(l); "inclusive education" in Section 2(m); "person with benchmark disability" in Section 2(r); "person with disability having high support needs" in Section 2(t); "public facilities and services" in Section 2(x); "rehabilitation" in Section 2(za) and "specified disability" in Section 2(zc). As regards the subject of education, the same can be discerned from Chapter III under the heading "Education". Section 16 deals with "Duty of educational institutions", which reads thus: -

"*CHAPTER III*

EDUCATION

16. Duty of educational institutions. — 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."

(emphasis supplied)

A Section 17 envisages specific measures to promote and facilitate inclusive education, which reads thus: -

"**17. Specific measures to promote and facilitate inclusive education.—** The appropriate Government and the local authorities shall take the following measures for the purpose of
B 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:**

C **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**;

D

(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**;

E (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 (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 fulfil the daily communication needs of persons with speech, communication or language disabilities and enables them
G 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

(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."

(emphasis supplied)

Section 18 casts obligation on the appropriate Government and local authorities to make arrangements to promote, protect and ensure participation of persons with disabilities in adult education and continuing education programmes equally with others. Chapter VI of the 2016 Act deals with special provisions for persons with benchmark disabilities. Section 31 under the said Chapter envisages free education for children with benchmark disabilities. The same reads thus: -

"*CHAPTER VI*

SPECIAL PROVISIONS FOR PERSONS WITH BENCHMARK DISABIITIES

31. Free education for children with benchmark disabilities.— (1) Notwithstanding anything contained in the Rights of Children to Free and Compulsory Education Act, 2009 (35 of 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.

(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."

Another significant provision is reservation of seats in higher educational institutions being Section 32, which reads thus: -

"**32. Reservation in higher educational institutions.—** (1) All Government institutions of higher education and other higher

A education institutions receiving aid from the Government shall reserve not less than five per cent. seats for persons with benchmark disabilities.

(2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher
B education."

To ensure that the concerned authorities discharge their responsibilities in the spirit of the provisions of the 2016 Act, Section 74 provides for the appointment of Chief Commissioner and Commissioners by the Central Government, and Section 79 empowers the State
C Government to appoint State Commissioner in concerned State. The functions of the Chief Commissioner and State Commissioners are more or less similar. For the sake of convenience, we may advert to Section 80 of the Act, which reads thus: -

"**80. Functions of State Commissioner.—** The State
D Commissioner shall—

(a) **identify, *suo motu* or otherwise, provision of any law or policy, programme and procedures, which are in consistent with this Act, and recommend necessary corrective steps**;

E (b) **inquire, *suo motu* or otherwise deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the State Government is the appropriate Government and take up the matter with**
F **appropriate authorities for corrective action**;

(c) review the safeguards provided by or under this Act or any other law for the time being in force for the protection of rights of persons with disabilities and recommend measures for their effective implementation;

G (d) **review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures**;

(e) undertake and promote research in the field of the rights of persons with disabilities;

H

(f) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;

(g) monitor implementation of the provisions of this Act and schemes, programmes meant for persons with disabilities;

(h) monitor utilisation of funds disbursed by the State Government for the benefits of persons with disabilities; and

(i) perform such other functions as the State Government may assign."

(emphasis supplied)

Section 81 is another significant provision which implicitly mandates the State authority to take necessary action on the basis of recommendation made by the State Commissioner, referred to therein and to submit action taken report within three months from the date of receipt of the recommendation. This is a peremptory tenet mandating the concerned authority to give effect to the recommendation made by the State Commissioner unless it does not accept it for reasons to be so recorded and conveyed to the State Commissioner for Persons with Disabilities within three months and also informing the aggrieved person. Section 81 reads thus: -

"**81. Action by appropriate authorities on recommendation of State Commissioner.—** Whenever the State Commissioner makes a recommendation to an authority in pursuance of clause *(b)* of section 80, that authority shall take necessary action on it, and inform the State Commissioner of the action taken within three months from the date of receipt of the recommendation:

Provided that where an authority does not accept a recommendation, it shall convey reasons for nonacceptance to the State Commissioner for Persons with Disabilities within the period of three months, and shall also inform the aggrieved person."

The State Commissioner has been endowed with the powers referred to in Section 82 of the 2016 Act to enable him/her to discharge the functions specified in Section 80 of the Act.

42. The 2016 Act, in a way, is a general enactment for giving effect to the rights of persons with disabilities which includes the CwSN.

But, when it comes to subject of education, a separate Chapter has been provided for fastening responsibility coupled with duty upon the appropriate Government, local authorities and the concerned educational institutions in matters specified therein (Sections 16 and 17). The purport of these provisions is to make available a platform to the CwSN to avail the rights of full participation by means of inclusive and quality education in the neighbourhood school. For giving effect to this mandate, it is essential for the concerned authority and more particularly for the schools imparting education to CwSN, to ensure that a just pupil-teacher ratio is maintained without exception, including as specified under the law made by the Parliament or the scheme enunciated by the executive in that regard.

43. It has been noticed that to give effect to the spirit of the 2016 Act, a communication bearing No. CBSE/AFF/Circular 13/2017 dated 13.6.2017, had been sent by the Deputy Secretary (Affiliation) of the Central Board of Secondary Education[17] to all concerned, directing to follow the provisions of the 2009 Act by appointing special educators to ensure quality education for all children including CwSN. The Circular reads thus: -

"**CENTRAL BOARD OF SECONDARY EDUCATION**

No/CBSE/AFF/Circular 13/2017

Date: 13.06.2017

SUB: **MANDATORY APPOINTMENT OF SPECIAL EDUCATOR IN ALL SCHOOLS- REG**

(Ref.- Circular No. CBSE/ACAD/JS&IC(A&T)/2015: dated 25.06.2015)

This is in continuation to CBSE circular No. CBSE/ACAD/JS&IC(A&T)/2015 dated 25.06.2015. As per Rule No.13.11 of Affiliation Bye-Laws of Board in which direction was issued to all the **affiliated schools to mandatory appoint SPECIAL EDUCATORS to ensure quality education for all children including children with special needs** as per Section 3, 8(c) and 9(c) of the Right to Education Act, 2009 to facilitate effective and meaningful inclusion of children with disabilities in schools.

[17] for short, "CBSE"

However, it has been observed that many schools affiliated with CBSE are not adhering to the provision concerning appointment of Special Educators. In this connection, your attention is invited to Rule 13(11) of Affiliation Byelaws which provides to promote inclusion of students with disabilities/special needs in the normal school as per provisions of the "Persons with disabilities Act 1995" and in conformity with National Policy of Education.

In view of above, **the Management and the Head of the CBSE affiliated schools are hereby directed to strictly follow the above provisions and make arrangement immediately to appoint special educators in their respective school(s)**. The above provision may be brought to the knowledge of School Managing Committee for strict compliance.

(Jaiprakash Chaturvedi)
Deputy Secretary (Affiliation)"

(emphasis supplied)

Even the Chief Commissioner for Persons with Disabilities had issued similar communication to all concerned on 25.10.2016 bearing F.No. 11-9/CCD/2016/R4755, which reads thus: -

"**COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES**

Department of Empowerment of Persons with Disabilities
Ministry of Social Justice and Empowerment
Government of India

F.No.11-9/CCD/2016/R4755 Dated 25.10.2016

To,
The Chief Secretary/Administrator,
All States/Union Territories
(As per list)

Sub: Practice by unqualified person in the field of Disability rehabilitation- reg.

Sir,

A representation has been received from President, Orthotics & Prosthetic Association of India (OPAI) regarding practice by unqualified persons in the field of disability (photocopy enclosed).

2. It is to apprise that programmes in the field of Prosthetic & Orthotics such as Diploma, Degree and Masters are offered by the institution only after approval from Rehabilitation Council of India (RCI). After completion of RCI approved courses, the candidates are registered in Central Rehabilitation Register (CRR) of RCI which authorizes then to practice in the relevant field President. OPAI has requested the Council to take appropriate action against ineligible, unqualified persons practising in the field of Prosthetic and Orthotics and providing services to persons with disability.

3. It is to bring to your kind notice that RCI have been allocated 16 Categories of professionals under Section 2(n) of RCI Act 1992. At present Council has 54 programmes from certificate to Doctorate level are being offered at RCI approved Institutes throughout the Country. Some of the programmes such as Prosthetic & Orthotics, Clinical Psychology, Speech & Hearing etc. are required to deliver specialized consultation at grass root level. **If the Services are delivered by untrained or unqualified individuals to persons with disabilities, it may in turn harm the persons with disabilities. Hence, there is urgent need to take action against such persons so that practice by unprofessional/unqualified persons may be restricted**.

4. I am enclosing a list of 54 Courses approved by Rehabilitation Council of India being offered in 16 categories with a request to direct Secretaries and Commissioners of your State/Union Territory to take cognizance of such matter under Section 13 & Section 25 of Rehabilitation Council of India Act, 1992; and Section 61 & Section 62 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 so that practice by unqualified professionals may be curbed.

Yours faithfully,
Sd/-
(Dr. Kamlesh Kr. Pandey)
Chief Commissioner for
Persons with Disabilities

Encl: as above"

(emphasis supplied)

It is also significant to advert to the communication-cum-statutory warning issued by the Member Secretary of the Council on 14.5.2019, making it amply clear that only persons (rehabilitation professionals/special teachers) duly qualified, recognised and registered with the Council be allowed to impart education and training to CwSN keeping in mind the mandate of Section 13 of the 1992 Act, breach whereof would entail in criminal action and imprisonment for a term which may extend to one year. The said communication reads thus: -

"**REHABILITATION COUNCIL OF INDIA**

A Statutory Body under the Ministry of Social Justice and Empowerment Department of Empowerment of Persons with Disabilities (Divyangjan)

STATUTORY WARNING

Practicing without RCI Registration

In Govt./Non Govt. Organization and by any Private Practitioner is an offence under section 13(3) of RCI Act No.34 of 1992.

It has been observed by the Council that Children with Disabilities (Divyangjan) are being trained/served by Quacks/Unqualified/Non-registeredPersonnel/ Professionals.

If anyone found serving "Persons with Disabilities (Divyangjan)", without having RCI Certification, shall be prosecuted before the Court of Law under Section 13(3) of RCI Act, 1992 as under:

"Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both".

General Public is requested to report such instances to the Council along with documentary evidence by post/fax/ email to enable the Council to take appropriate action such as filing of FIR against such persons.

"This Statutory Warning is issued in public interest".

(Dr. Subodh Kumar)
Member Secretary
Dated: 14.05.2019"

(emphasis supplied)

A 44. To effectuate the above objectives of imparting free, inclusive and quality education in the neighbourhood school to CwSN in terms of the provisions of the 2009 Act read with the provisions of the 2016 Act, a rehabilitation scheme titled "Deendayal Disabled Rehabilitation Scheme"[18] (revised guidelines with effect from 1.4.2018) has been articulated by the Department of Empowerment for Persons with
B Disabilities (*Divyangjan*), Ministry of Social Justice and Empowerment, Government of India[19]. Taking note of the severity of the situation revealed by the Census of 2011 which states that there are about 2.68 crore persons with disabilities in India, constituting 2.21 per cent of the population in the country requiring special education, CwSN in particular,
C this scheme mentions the model projects to be undertaken for that purpose. It is noted thus: -

> **"3.3 MODEL PROJECTS**
>
> **3.3.1 The following are the model projects to be funded under the scheme**
>
> D
>
> **I.** Pre-Schools and Early Intervention and Training
>
> **II.** Special Schools for Children with Disabilities for
>
> a. Intellectual Disability
>
> E b. Hearing & Speech Disability
>
> c. Visual Disability
>
> **III.** Project for children with Cerebral Palsy
>
> **IV.** Rehabilitation of Leprosy Cured Person
>
> F **V.** Half Way Home for Psycho-Social Rehabilitation of Treated and Controlled Mentally III persons
>
> **VI.** Home-Based Rehabilitation and Home Management.
>
> **VII.** Community Based Rehabilitation Programme
>
> G **VIII.** Low Vision Centres
>
> **IX.** Human Resource Development"

Part-B of the DDRS deals with the "Model Project Profiles". The sub-categories mentioned thereunder are - "Project for Pre-School

[18] for short, "DDRS"

H [19] for short "DEPwD"

and Early Intervention and Training" followed by "Special Schools for Children with Disabilities", and its sub-categories, namely, "Special School for the Children with Intellectual Disability"; "Special School for the Children with Hearing & Speech Disability"; and "Special Schools for the Children with Visual Disability". For each of the projects, the strength of each school has been noted, including the pupil-teacher beneficiary ratio range which varies with the severity, in cases of children with multiple disabilities. It recognises the fact that children with multiple disability may require maximum and special education and hence, the ratio may be between 4:1 and 6:1.

45. Suffice it to note that the DDRS has delineated the ratio for the concerned special schools and it may be commensurately replicated in the general schools corresponding with the number of CwSN admitted or required to be admitted in that school.

46. As aforesaid, the 2009 Act merely attempts to expressly include "child with disability" by inserting Section 2(ee) and Section 3(3) vide the 2012 amendment, but makes no corresponding changes to the "Norms and Standards for a School" specified in the Schedule to the Act. The Central Government in exercise of the enabling power in Section 20, by now, ought to have provided suitable norms and standards for a general school admitting CwSN for providing inclusive, free, and compulsory education in a neighbourhood school, and separately for the special school which also is covered within the expansive definition of schools in Section 2(n) of the 2009 Act.

47. In any case, until such notification is issued by the Central Government or appropriate Government, as the case may be, all concerned are under bounden duty to give effect to the norm regarding pupil-teacher ratio specified in the concerned scheme in vogue including the DDRS and the *Samagra Shiksha* — an integrated Scheme for School Education[20] issued by Department of School Education and Literacy, Ministry of Human Resource Development[21].

48. Chapter 2 of the SSS gives the background in which the scheme has been formulated to cover all children from the age of 4 to 18 years and has a scope across all levels of school education from pre-school to senior secondary on universal basis to ensure the education of all children.

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[20] for short, "SSS"

[21] for short, "DSEL"

A Chapter IV of the scheme deals with the topic – "Inclusion of Children with Special Needs in Education" specifically. The relevant extract of Chapter IV of the SSS reads thus: -

"**CHAPTER 4 – INCLUSION OF CHILDREN WITH SPECIAL NEEDS IN EDUCATION**

B **4.1 Background and Rationale**

4.1.1 The NPE, 1986 and POA, 1992 gives the basic policy framework for education, emphasizing on correcting the existing inequalities, it stresses on reducing dropout rates, improving learning achievements and expanding access to students who have not had an easy opportunity to be a part of the general system. The NPE, 1986 envisaged some measures for integrating of children with physical and mental handicap with the general community as equal partners, preparing them for their normal growth and development and enabling them to face life with courage and confidence.

D 4.1.2 India has also been signatory to international declarations like the Salamanca Statement and framework for action on special needs education (1994) and Biwako Millennium Framework for Action (2002) and the UN Convention on the Rights of Persons with Disabilities, 2006 that emphasize the need for fundamental educational policy shifts to enable general schools to include children with disabilities. The NCF-2005 recommends making the curriculum flexible and appropriate to accommodate the diversity of school children including those with disabilities in both cognitive and non-cognitive areas.

F 4.1.3 The Centrally Sponsored Scheme of Integrated Education for the Disabled Children was introduced in 1992 with a view to providing educational opportunities for children with disabilities in general schools, to facilitate their retention in the schools system. It provided for facilities to students with disabilities including expenses on books and stationery, expenses on uniforms, transport allowance, reader allowance, escort allowance, hostel accommodation and actual cost for equipments. The scheme also supported the appointment of special teachers, provision for resource rooms and removal of architectural barriers in schools.

4.1.4 The Centrally Sponsored Scheme of SSA of 2001 had set time-bound targets for the achievements of UEE. With "zero

rejection' as its cornerstone, the programme provided support for the inclusion of children with disabilities in general schools at the elementary level. The SSA norms were further strengthened by the RTE Act, 2009 which talks about free and compulsory elementary education to children without any discrimination on the basis of caste, gender, disability etc.

4.1.5 While the RTE Act mandates inclusion of CWSN, some may be unable to attend school despite specific interventions designed for their education. The amendment of RTE Act (in August 2012) has included CWSN in the definition of disadvantaged groups. It includes children with severe - multiple disabilities with the right to opt for Home Based Education (HBE), thus creating an enabling environment for all children.

4.1.7 As SSA supported inclusion of children with special needs at the elementary education level, a need was felt for a scheme for the disabled children at secondary stage. The IEDSS scheme was, therefore implemented to enable all children and young persons with disabilities to have access to secondary education and to improve their enrolment, retention and achievement in the general education system. Under the scheme every school was proposed to be made disabled-friendly. The Centrally Sponsored IEDSS Scheme aimed at enabling all students with disabilities completing eight years of elementary schooling an opportunity to complete four years of secondary schooling (classes IX to XII) in an inclusive and enabling environment and provided educational opportunities and facilities to students with disabilities in the general education system at the secondary level (classes IX to XII).

4.1.8 **Samagra Shiksha aims to look at education of all children including CWSN in a continuum from pre-school to class XII. The scheme will cover all children with special needs with one or more disabilities as mentioned in the schedule of disabilities of the Right of the Persons with Disabilities (RPwD) Act, 2016 studying in Government, Government-aided and local body schools**.

4.1.9 **The scheme stresses on working in convergence with all the line Departments/ Ministries and intends to provide relevant holistic support for effective and appropriate services for education of CWSN**.

A 4.1.10 **The objectives of the scheme** are:

- To enable all children and young persons with disabilities to have access to inclusive education and improve their enrolment, retention and achievement in the general education system.

B

- Identification of children with disabilities at the school level and assessment of her/his educational needs.
- Provision of aids and appliance and assistive devices, to the children with special needs as per requirement.

C

- Removal of architectural barriers in schools so that students with disability have access to classrooms, laboratories, libraries and toilets in the school.
- **Supplying appropriate teaching learning materials, medical facilities, vocational training support, guidance and counselling services and therapeutic services to children with special needs as per their requirement in convergence with line departments**.

D

- **General school teachers will be sensitized and trained to teach and involve children with special needs in the general classroom. For existing special educators, capacity building programmes will be undertaken.**

E

- **CWSN will have access to support services through special educators, establishment of resource rooms, vocational education, therapeutic services and counselling**.

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THE GAZETTE OF INDIA EXTRAORDINARY

THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

CHAPTER III

G EDUCATION

16.[22]

17.[23]

[22] Section 16 reproduced in paragraph 41 above.

H [23] Section 17 reproduced in paragraph 41 above

4.2 Target Group

4.2.1 The scheme will cover all children from pre-school to senior secondary stage studying in Government, local body and Government-aided schools, with one or more disabilities as defined under the Rights of Persons with Disabilities Act (2016) namely:

1. Blindness
2. Low-vision
3. Leprosy Cured persons
4. Hearing Impairment (deaf and hard of hearing)
5. Locomotor Disability
6. Dwarfism
7. Intellectual Disability
8. Mental Illness
9. Autism Spectrum Disorder
10. Cerebral Palsy
11. Muscular Dystrophy
12. Chronic Neurological conditions
13. Specific Learning Disabilities
14. Multiple Sclerosis
15. Speech and Language disability
16. Thalassemia
17. Hemophilia
18. Sickle Cell disease
19. Multiple Disabilities including deaf blindness
20. Acid Attack victim
21. Parkinson's disease

4.2.2 **Girls with disabilities will receive special focus and efforts would be made under the scheme to help them gain access to schools, as also to provide motivation and guidance for developing their potential**.

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4.2.3 All the enrolled CWSN will be covered through UDISE/ SDMIS and will eventually be linked with Aadhaar, ultimately facilitating the State/UT to track CWSN of both systems i.e. those that are in school and those with Home based. The UDISE will have the relevant details of children. Further an extensive database will be developed which will cover all the particulars of children including the type of disability, degree of severity, medical needs, emergency contacts and all other relevant details that will help the School management to cater to the needs of the CWSN.

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4.3 **Components of the Scheme**

C

The Scheme will include assistance for two kinds of components:

4.3.1 **Student oriented component**

The student oriented component may be utilized for specified items like:-

D

(i) Identification and assessment of children with disabilities.

(ii) Provision of aids and appliances, medical services, diagnostic services etc.

(iii) **Access to and development of teaching learning material as per requirement etc**.

E

(iv) Provision of facilities like transport/escort facilities for children with severe disabilities, hostel facilities, scholarship, assistive devices, support staff (readers, amanuensis) etc.

(v) Provision of large print text book, Braille books and uniform allowance.

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(vi) Stipend for Girl Students @ Rs. 200 per month for 10 months to encourage their participation in the school system for all girls with disabilities studying in Classes-I to XII.

(vii) The use of ICT to increase access to a vast amount of information not otherwise available.

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(viii) Awareness and motivation camps for increasing enrolment and retention.

(ix) Provision of Home Based Education for children with severe multiple disabilities with a view to mainstream them in the general education system.

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4.3.2 **Resource support**

For providing resource support to CWSN, the existing human resource appointed under SSA and RMSA will be rationalized and the remaining vacancies may be filled through fresh appointment as per the norms provided at Annexure-III. All special educators should be registered with Rehabilitation Council of India (RCI). These educators should mandatorily be available for all CWSN including the children with high support needs as well. The educators may be posted at the block or cluster level or as per the requirement and can operate in an itinerant mode, covering a group of schools where children with special needs are enrolled so that each child with special need is adequately covered.

4.4 **Key areas of the Inclusive Education Component**

Education for CWSN involves multiple aspects above and beyond the financial support. Many areas have to be looked upon manifestly that will ensure proper implementation and effective inclusion. The highlights of the components are discussed below.

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4.5 **Education of teachers and other stakeholders**

Intensive teacher education programme will be undertaken to sensitize and build capacity of the regular teachers and resource teachers on meeting learning needs of all teachers to provide quality education to CWSN and improve their

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learning outcomes. This teacher education programme will be recurrent at block/cluster levels and integrated with the on-going in-service teacher education/training schedules in DIETs and other Institutions. Teacher education modules at SCERT, DIET and BRC level should include suitable components on education of children with special needs. Training of educational administrators including headmasters, all other staff & relevant personnel of school education should be regularly organized. Special focus should be given on mechanisms for safety and security of children with special needs.

C

D

4.6 **Curricular access**

The curriculum must be inclusive as envisioned in NCF-2005. It should ensure that the same curriculum be followed for children with and without special needs, but with adaptations/modifications if required in learning content, teaching learning processes, teaching

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learning materials/aids and in evaluation, etc. Provision will be made to provide text books and curriculum in accessible formats to CWSN.

Exam reforms need to be made by Central and State Boards for conducting exams of CWSN. Guidelines issued in this regard by

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the Department of Disability Affairs are enclosed at **Annexure-IV**. The modifications may be made disability specific, (for example, oral exam for children with specific learning disability, extra time for children with visual impairment, low vision and cerebral palsy etc). A regular audit of existing textbooks from

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CWSN lens will be a priority for an apt curriculum.

4.7 **Individualized Educational Plan (IEP)**

IEP will be undertaken in context of the RPwD Act, as "Individualized Support" (as mentioned in Chapter 3 of RPwD Act, 2016). Its implementation will be monitored from time to

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time. **The Individualized Support should review the**

effectiveness of various strategies and support services used by children with special needs periodically, after developing indicators.

4.8 **Building synergy with special schools**

4.8.1 **In case of non-availability of resources required for education of children with special needs and training of teachers teaching CWSN, assistance from special schools may be taken. These special schools can work as resource centers for providing resources like development of curricular materials and TLMs, providing support services to CWSN and training of teachers etc**.

4.8.2 **In some cases, special schools can also impart special training to CWSN for facilitating age appropriate placement in the classroom for a specified period of time**. NGOs working on education of children with chronic health impairments like leukemia, heart diseases and cancer etc, may also provide resource support for pertinent care and health related needs and capacity building of teachers.

4.9 **Research and Development**

The Integrated Scheme will encourage research and development activities in all areas of education of children with special needs including action research, researches to improve learning of CWSN, especially focusing on children with high support needs (Thalassemia, Hemophilia, Sickle Cell disease and Chronic neurological conditions etc), eventually leading to concrete learning outcomes. For this, convergence with different Ministries like Ministry of Health and Family Welfare, MoWCD, Ministry of Social Justice and Empowerment, Ministry of Sports and Youth Affairs, private organizations with Corporate Social Responsibility (CSR) funds etc.

4.10 **Social Access to CWSN**

Ensuring social access to CWSN is a greater challenge as compared to providing physical access as it requires an in-depth understanding of the various educational needs of CWSN. A very important dimension of social access is discrimination. CWSN are subjected to many forms of discrimination. Teachers and peers have a very important role to play in this context. Social access could include the following:

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i. Parental training

ii. Peer sensitization

iii. Awareness building of different stakeholders across all levels

B

iv. Special emphasis will be given to education of girls with disability

4.11 **Monitoring & Evaluation:**

On-going monitoring and evaluation should be carried out to refine the programme from time to time. For this, appropriate monitoring C mechanisms and tools are to be devised at every level and field tested at regular intervals.

ANNEXURE-III

GUIDELINES FOR APPOINTMENT OF SPECIAL EDUCATORS

D

1. Minimum Educational Qualifications for becoming an Educator for Classes preschool-V (Pre School to Primary Stage)

(a) Classes I-V: Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Education E (Special Education).

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

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2. Minimum Qualifications for becoming an Educator for Classes VI-VIII (Elementary stage)

(a) Graduation with at least 50% marks and 1-year B.Ed. (Special Education)[24]

Or

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Graduation with at least 50% marks and 2- year B. Ed. (Special Education)[25]

[24] For candidates who have graduated in B.Ed. (Special Education) in/before 2015-16 i.e. the 1 year course.

[25] For candidates who have graduated in B.Ed. (Special Education) after 2015-16 i.e. the 2 years course (in regular or distance mode).

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(b) Pass in Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

3. Minimum Qualifications for becoming an Educator for Classes IX-XII: (Secondary stage)

• All Special Educators must be registered with the Rehabilitation Council of India (RCI).

• Educators with Qualifications in single disability area will be encouraged to specialize in other disability areas to take care of a wide range of diversities in a general school.

• Relaxation up to 5% in the qualifying marks in the minimum Educational Qualification for eligibility shall be allowed to the candidates belonging to reserved categories, such as SC/ST/ OBC/Differently abled.

• Training to be undergone: A person with D. Ed. (Special Education) or B. Ed. (Special Education) qualification shall undergo, after appointment an NCTE recognized 6-month Special Programme in Elementary Education."

(emphasis supplied)

49. Besides the above-mentioned scheme, the Ministry of Education (formerly, the Ministry of Human Resource Development), Government of India has formulated National Education Policy, 2020 dealing with a gamut of aspects including the strengthening of the dispensation to deliver free, inclusive and quality education in the neighbourhood school to all between the age group of 4 to 18 years. While referring to the teaching for children with disabilities/*Divyang* in the middle and secondary level school, it is noted as follows: -

"**Special educators**

5.21. **There is an urgent need for additional special educators for certain areas of school education. Some examples of such specialist requirements include subject teaching for children with disabilities/*Divyang* children at the Middle and Secondary school level, including teaching for specific learning disabilities. Such teachers would require not only subject-teaching knowledge and understanding of subject-**

A **related aims of education, but also the relevant skills for understanding of special requirements of children. Therefore, such areas could be developed as secondary specializations for subject teachers or generalist teachers, during or after pre-service teacher preparation**. They will be offered as certificate courses, in the pre-service as well as in-service mode, either full time or as part-time/blended courses - again, necessarily, at multidisciplinary colleges or universities. **Greater synergy will be enabled between the course curriculum of NCTE and RCI to ensure adequate availability of qualified special educators who can handle subject teaching as well**."

(emphasis supplied)

Another relevant portion of this Scheme is clause 7, dealing with efficient resourcing and effective governance through school complexes/ clusters. The relevant portion thereof reads thus: -

"**7. Efficient Resourcing and Effective Governance through School Complexes/Clusters**

7.1. While the establishment of primary schools in every habitation across the country-driven by the Sarva Shiksha Abhiyan (SSA), now subsumed under the Samagra Shiksha Scheme and other important efforts across the States - has helped to ensure near-universal access to primary schools, it has also led to the development of numerous very small schools. According to U-DISE 2016–17 data, nearly 28% of India's public primary schools and 14.8% of India's upper primary schools have less than 30 students. The average number of students per grade in the elementary schooling system (primary and upper primary, i.e., Grades 1–8) is about 14, with a notable proportion having below 6; during the year 2016–17, there were 1,08,017 single-teacher schools, the majority of them (85743) being primary schools serving Grades 1–5.

7.2. These small school sizes have rendered it economically suboptimal and operationally complex to run good schools, in terms of deployment of teachers as well as the provision of critical physical resources. Teachers often teach multiple grades at a time, and teach multiple subjects, including subjects in which they may

have no prior background; key areas such as music, arts, and sports are too often simply not taught; and physical resources, such as lab and sports equipment and library books, are simply not available across schools.

7.3. The isolation of small schools also has a negative effect on education and the teaching-learning process. Teachers function best in communities and teams, and so do students. Small schools also present a systemic challenge for governance and management. The geographical dispersion, challenging access conditions, and the very large numbers of schools make it difficult to reach all schools equally. Administrative structures have not been aligned with the increases in the number of school or with the unified structure of the Samagra Shiksha Scheme.

7.4. **Although consolidation of schools is an option that is often discussed, it must be carried out very judiciously, and only when it is ensured that there is no impact on access**. Such measures are nevertheless likely to result only in limited consolidation, and would not solve the overall structural problem and challenges presented by the large numbers of small schools.

7.5. **These challenges will, by 2025, be addressed by State/UT governments by adopting innovative mechanisms to group or rationalize schools. The objective behind this intervention would be to ensure that every school has: (a) adequate number of counsellors/trained social workers and teachers (shared or otherwise) for teaching all subjects including art, music science, sports, languages, vocational subjects, etc; (b) adequate resources (shared or otherwise), such as a library, science labs, computer labs, skill labs, playgrounds, sports equipment and facilities, etc.; (c) a sense of community is built to overcome the isolation of teachers, students, and schools, through joint professional development programmes, sharing of teaching-learning content, joint content development, holding joint activities such as art and science exhibitions, sports meets, quizzes and debates, and fairs; (d) cooperation and support across schools for the education of children with disabilities; and (e) improved governance of the schooling system by devolving all finer decisions, to Principals, teachers, and**

A **other stakeholders within each group of schools and treating such a group of schools, which range from the foundational stage through the secondary stage, as an integrated semi-autonomous unit**.

7.6. **One possible mechanism for accomplishing the above** B **would be the establishment of a grouping structure called the school complex, consisting of one secondary school together with all other schools offering lower grades in its neighbourhood including Anganwadis, in a radius of five to ten kilometers**. This suggestion was first made by the Education Commission (1964–66) but was left unimplemented. **This Policy** C **strongly endorses the idea of the school complex/cluster, wherever possible. The aim of the school complex/cluster will be greater resource efficiency and more effective functioning, coordination, leadership, governance, and management of schools in the cluster**.

D 7.7. **The establishment of school complexes/clusters and the sharing of resources across complexes will have a number of other benefits as a consequence, such as improved support for children with disabilities, more topic-centred clubs and academic/sports/arts/crafts events across** E **school complexes, better incorporation of art, music, language, vocational subjects, physical education, and other subjects in the classroom through the sharing of teachers in these subjects including use of ICT tools to conduct virtual classes, better student support, enrolment, attendance, and performance through the sharing of social** F **workers and counsellors, and School Complex Management Committees (rather than simply School Management Committees) for more robust and improved governance, monitoring, oversight, innovations, and initiatives by local stakeholders. Building such larger communities of schools,** G **school leaders, teachers, students, supporting staff, parents, and local citizens would energize and empower the schooling system, and in a resource-efficient manner**."

(emphasis supplied)

50. Be it noted that the ratio of pupil-teacher has been mentioned H in the stated schemes besides the norms and standards specified in the

Schedule to the 2009 Act. Indeed, the Schedule to the 2009 Act makes no distinction between general schools and special schools, but the norms and standards specified for general schools cannot be replicated for special schools, which are governed by special laws in respect of rights of persons with disabilities and the schemes framed therefor. The 2009 Act does clarify the position that the Act applies to all schools including the schools admitting child with disability as defined in Section 2(ee) and gives equal and same rights to such children to pursue free, quality and compulsory education in the neighbourhood school. It further provides children with multiple disabilities and children with severe disabilities may opt for even home-based education. The fact remains that for meaningful and effective imparting of education and training to CwSN, different norms and standards ought to be followed and for that purpose, the concerned schools are obliged to create posts of rehabilitation professionals/special education teachers commensurate to number of (CwSN) students in the given school.

51. Somewhat similar issue was pursued before the Court of State Commissioner for Persons with Disabilities, National Capital Territory of Delhi in the case of ***Ms. Reshma Parveen vs. The Director, Directorate of Education***[26]. The said Forum established under the 2016 Act was called upon to consider the following two questions: -

> "(i) What should be the basis for creating the posts of Special Education Teachers at different levels namely i.e. Pre-school/ Nursery (For children in the age group 4-6 years); Primary and Upper Primary (For Classes I-VIII); Secondary/High School (For Classes IX-X) and Senior Secondary/Intermediate (For Classes XIXII). RCI was once again advised to facilitate and suggest, preferably in consultation with RCI's concerned expert committee members, **the criteria for determining the category and number of Special Education Teachers at different levels** before the next date of hearing. DoE and other respondents could also submit their suggestion.
>
> (ii) The strategy for deployment of Special Education Teachers of different categories and at different levels as mentioned in sub para (i) above, so that the children with various disabilities get the services of Special Education Teachers

[26] Decided on 31.12.2019 in Case No. 824/1014/2019/04/9072-84

A in whichever school they may be as it was contended that it may not be possible to create such posts and appoint Special Education Teachers of different specialty in every school."

(emphasis supplied)

B After analyzing the relevant provisions and the schemes, the State Commissioner made following recommendations: -

"62. After going through the submissions of the parties, the views of the experts and based on my interactions with the parents of children with disabilities and my experience while dealing with their complaints, the following recommendations are made:

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i) As an immediate measure, Director, DoE; Commissioner, North DMC; Commissioner, SDMC; Commissioner, EDMC; Chairman, New Delhi Municipal Council and CEO, Cantonment Board **should create at least two posts of Special Education Teachers per school an appropriate mix of various specialisations**.

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ii) Respondents no. 1 to 6 **should make provision for appointment of Special Education Teachers in Autism Spectrum Disorder, Intellectual Disability, Learning Disability, Deaf-Blind, Visual Impairment, Hearing Impairment and Cerebral Palsy which are RCI approved Teacher Training Courses**.

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F **iii)** **Since the number of students with different disabilities in schools is dynamic, provision of Special Education Teachers per school would not have any rationale to continue for long and hence will not be a reasonable criterion. The number of Special Education Teachers in a particular disability should be determined based on the generally accepted pupil teacher ratio of 1:8 for children with Cerebral Palsy, visual impairment and hearing impairment, 1:5 for children with intellectual disability, ASD and Specific learning disabilities; and 1:2 for Deaf-Blind and a**

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combination of two or more of the seven disabilities mentioned above.

iv) Respondent no.1 to 6 within one month of receipt of this order, should obtain the number of children with different disabilities in the schools under their respective jurisdictions and determine the number of Special Education Teachers required in different disciplines based on the criteria at (ii) above. They should also make an estimation of out of school children with disabilities, which was 28.07% for all India and 7.28% for Delhi as per National Sample Survey: Estimation of Out-of-School Children in the Age 6-13: Social & Rural Research Institute & Technical Support Group for SSA, Ed CIL, 2014 and 54% of children with multiple disabilities (CwMDs) never attended an educational institution as per Census 2011.

v) **After determining the number of Special Educators for preprimary level/primary level, upper primary level, secondary and Sr. Secondary level, respondents no. 1 to 6 should initiate action to create or convert the existing posts of general teachers into the required number of Special Education Teachers of the appropriate specialities at different levels including at primary level. The minimum requirement of RCI approved qualification should be as prescribed by RCI. This should be done within 3 months from the date of receipt of this order. It should be noted that there cannot be different criteria for the schools of DoE and that of the Corporations**.

vi) Respondents no. 1 to 6 should either set up resource centre in each school or for a cluster of closely located schools, not beyond a radius of 2-3 KMs where all teaching, learning material/resources including the Special Education Teachers of different speciality should be available for deployment in the schools as per need to ensure that every child with any disability is ensured quality education on equal basis with others. Equality as well as equity must be ensured.

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vii) The conditions of service and the Recruitment Rules for Special Education Teachers should also clearly prescribe that they may be required to teach not only children with disabilities but also children without disability in mainstream schools so that full utilization of their services is ensured. NCTE should issue necessary notification about their eligibility to teach children without disabilities at appropriate level as per their qualification within three months from the date of receipt of this order. It should also be ensured that Special Education Teachers are treated at par with mainstream teachers in terms of service conditions such as pay, etc.

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viii) It is a matter of concern that NCTE (respondent no. 8) neither responded nor submitted any comments/advice with regard to the eligibility of Special Education Teachers at secondary/ higher secondary level. **NCTE should incorporate in the curriculum of teacher training programmes, mandatory papers on handling children with disabilities, basic sign language and Braille, if not already done, as otherwise children with disabilities will be deprived of their right to quality education on equal basis with other children which is a mandate of the Rights of Persons with Disabilities Act, 2016 as well as RTE Act, 2009 as amended in 2012**.

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ix) All in-service mainstream teachers at all levels, i.e. Pre-Primary, Upper Primary, Secondary and Sr. Secondary Level must be exposed to the needs of children with different disabilities by mandatory training of a given duration. DoE should do it in consultation with RCI within three months from the date of receipt of this order and respondent No1 to 6 should plan the training of their respective mainstream teachers in a time bound manner and complete the training within a reasonable period of time.

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x) **NCERT should include a compulsory module on teaching of children with disabilities in its online digital platform 'Swayam' for training of In-service teachers**.

xi) DoE, Govt. NCT of Delhi should develop guidelines for the inclusive education and inclusive schools in NCT of Delhi in Govt. as well as Private Schools in consultation with the experts in the field, the parents of children with disabilities belonging to different strata of the Society and put in place a robust mechanism to ensure its implementation by all concerned.

xii) Ministry of HRD, Govt of India should also issue model guidelines and the quality indicators for inclusive education and inclusive schools for adoption/adaptation as per local conditions at the earliest."

(emphasis supplied)

52. As a stopgap arrangement until the competent authority formulates a comprehensive action plan including to specify the norms and standards regarding pupil-teacher ratio to be maintained by the concerned schools imparting education to CwSN, we are persuaded to adopt the pupil-teacher ratio ascertained in this decision as 8:1 for children with cerebral palsy; 5:1 for children with intellectual disability, ASD and specific learning disabilities; and 2:1 for deaf-blind and a combination of two or more of the seven disabilities mentioned in the recommendation No. (iii) noted above. Indeed, the teachers to be so appointed need to be duly qualified, recognized and registered with the Council in light of Section 13 of the 1992 Act.

53. As regards the appointment of special educators/special teachers/rehabilitation professionals on itinerant basis under clause 4.3.2 of the SSS, the same may not appear to be in strict conformity with Section 25(2) of the 2009 Act. However, such teachers are not to be posted in a school as such, but are to render their services in a cluster of schools, which is permissible in the context of the special teachers under the 1992 Act and the 1999 Act. The mandate is that CwSN must be educated and trained only by special teachers being rehabilitation professionals, duly recognized and registered by the Council under the 1992 Act. The operation of the two Acts being Union enactments, need

A to be harmonized. Further, the schemes formulated for strengthening the mechanism to espouse the cause of CwSN under the special legislations for persons with disabilities must prevail to the extent of special arrangements for imparting education to them and not constricted by the general enactment of 2009 (the 2009 Act) regarding right of children to free and compulsory education. Indeed, a policy or a scheme B cannot override the statutory mandate predicated in an Act made by the Parliament. However, schemes for special schools and in respect of the CwSN, in particular, make special provisions and in reference to the legislation such as the 1992 Act and the 1999 Act including the 2016 Act. Those schemes would prevail unless they are found to be in conflict C with any of the express provisions of that very special legislation(s). However, the same cannot be assailed as being in conflict with the 2009 Act, which is a general law governing the norms and standards to be observed by the schools which indeed may include a special school.

54. As a matter of fact, the 2009 Act recognizes the special D treatment needed for the child with disability/CwSN by insertion of Section 2(ee) and Section 3(3) in the Act, which not only recognize the right of CwSN to get free, quality and compulsory education in neighbourhood school till the completion of their elementary education, but also the right to opt for home-based education if the child is inflicted with multiple disabilities or severe disability, as the case may be. What is E absent in the 2009 Act is the modification of the norms and standards originally specified in Schedule I applicable for general schools. Though, later in 2012, the Parliament realized the need to amend the 2009 Act to expressly include the CwSN, it should have also made corresponding changes in Schedule I to provide for suitable norms for CwSN, by F providing distinct dispensation for the general schools admitting CwSN and the special schools catering only to CwSN. That could still be done by the appropriate authority by amending the Schedule in exercise of power under Section 20 and enabling provisions in the 2009 Act.

55. Indisputably, the schools registered as special schools are also G governed by special legislation and the schemes framed therefor and would come under the DEPwD, whereas the general schools come under the Ministry of Education and are governed by the 2009 Act including by the SSS.

56. As of today, there is a dearth of rehabilitation professionals or special teachers recognized and registered by the Council, who alone H can impart education and training to handicap person/CwSN. This disparity

will have to be addressed by the National Council of Teachers Education[27] coming under a different department i.e., DSEL. It is for the NCTE to evolve holistic mechanism in collaboration with the Council to enhance the number of special teachers to overcome the deficit. As aforesaid, the persons with disabilities in India constitute over 2.21 per cent of the total population of the country, as per the census figures of 2011. At present, there are only 1,20,781 special educators registered with the Council. As per the available data with the Unified District Information System for Education, there are 22.5 lakh CwSN in the country. Further, only 4.33 lakh general teachers have been trained to teach CwSN in addition to teaching general children and only 28,535 special teachers are available for children with special needs/CwSN. These figures are stated in the affidavit of Mr. Anil Gairola, Under Secretary in the Ministry of Education, dated 12.7.2021. The State-wise number of special educators has been furnished at page 190 of the written note filed on behalf of the Union of India. The same reads thus: -

State-wise number of Special Educators	
State/UT	**Special Teachers**
A & N ISLANDS	13
ANDHRA PRADESH	8101
ARUNACHAL PRADESH	215
ASSAM	413
BIHAR	2804
CHANDIGARH	396
CHHATTISGARH	888
DADRA & NAGAR HAVELI	10
DAMAN & DIU	2
DELHI	6741
GOA	723
GUJARAT	5596
HARYANA	4218
HIMACHAL PRADESH	1500
JAMMU & KASHMIR	143
JHARKHAND	940
KARNATAKA	2436
KERALA	8249
LAKSHADWEEP	33
MADHYA PRADESH	2877

[27] for short, "NCTE"

MAHARASHTRA	17934
MANIPUR	394
MEGHALAYA	270
MIZORAM	96
NAGALAND	10
ORISSA	5966
PUDUCHERRY	110
PUNJAB	1880
RAJASTHAN	6126
SIKKIM	25
TAMIL NADU	8202
TELANGANA	2340
TRIPURA	250
UTTAR PRADESH	20173
UTTARAKHAND	637
WEST BENGAL	10070
TOTAL	**120781**

57. In view of the above, a multipronged approach needs to be adopted by the concerned Authorities with immediate effect, *inter alia,* as follows: -

A. The Central Government must forthwith notify the norms and standards of pupil-teacher ratio for special schools and also separate norms for special teachers who alone can impart education and training to CwSN in the general schools; and until such time, as a stopgap arrangement adopt the recommendations made by the State Commissioner, NCT of Delhi in the case of ***Ms. Reshma Parveen***[28] reproduced in paragraph 51 above;

B. To create commensurate permanent posts as per the just ratio to be specified by the competent authority for the rehabilitation professionals/special teachers who can cater to the needs of CwSN;

C. To initiate appointment process to fill-in vacancies for the posts so created for rehabilitation professionals/special teachers for being appointed on regular basis. The same shall be completed within six months from the date of this

[28] supra at Footnote No. 28

order or before the commencement of academic year 2022-2023, whichever is earlier;

D. To overcome the shortage of resource persons (rehabilitation professionals/special trained teachers), the training schools/institutions must take steps to augment the number whilst ensuring that the norms and standards specified under the governing laws and regulations including that of the Council for grant of recognition and registration are fulfilled;

E. Until sufficient number of special teachers becomes available for general schools and special schools, the services of special trained teachers can be availed as itinerant teachers as per the SSS within the school block (cluster schools) to optimize the resource persons and as a stopgap arrangement;

F. The other teachers and staff in the general schools be given compulsory training and sensitized to handle the CwSN in the general schools, if admitted; and

G. The authorities may also explore the possibility of merging unviable special schools with relatively viable special schools in the neighbourhood, so as to entail in consolidation of assets and resources for better delivery to the requirements of CwSN.

58. For the nature of observations made and directions issued, it is not limited to the States of Uttar Pradesh and Punjab, but will operate across the country (all States and Union Territories).

59. With a view to ensure that the directions are effectively complied with, we direct the State Commissioners appointed under Section 79 of the 2016 Act in the concerned States/Union Territories to forthwith initiate *suo motu* enquiries regarding compliance and then make recommendation to the appropriate authority (of the concerned State/Union Territory), as may be necessary, so that the authority will be obliged to submit compliance report to the State Commissioner within three months from the date of receipt of recommendation, as mandated under Section 81 of the 2016 Act. The respective State Commissioners may then submit report in respect of compliances/non-compliances within their concerned State/Union Territory to this Court by end of February,

A 2022, so that further directions, as may be necessary, can be issued by this Court State/Union Territory wise.

60. We are making it amply clear that we are not deciding on the working conditions of the special teachers and the class of persons represented by the petitioners before this Court.

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61. Further, we deem it appropriate to presently issue directions to the State Commissioner(s) (which includes the States of Uttar Pradesh and Punjab), who would be in a better position to ensure that corrective and remedial steps are taken by the concerned State/Union Territory within the timeline specified in this order. If that happens, the relief C claimed by the petitioners before this Court would substantially stand redressed. However, we may not be understood to have expressed any final opinion in that regard.

62. The matter be notified in the first week of March, 2022 on a non-miscellaneous day, for consideration of the reports received from D the concerned State Commissioners. The Registry shall provide copy of the reports received by it from time to time to the learned *Amicus Curiae* Mr. Rishi Malhotra, Advocate-on-Record who may prepare appropriate chart/table to be presented to the Court on the next date of hearing.

63. Copy of this order be forwarded to the State Commissioner of E all the States/Union Territories through email forthwith, for information and necessary action. Copy of this order be also forwarded to the Chief Secretary/Lieutenant Governor/Administrator of the States/Union Territories through email, for information and necessary action.

64. We also issue notice to the Secretary of Department of F Empowerment of Persons with Disabilities (DEPwD) – Ministry of Social Justice and Empowerment; and Secretary, Ministry of Education, both Government of India, New Delhi, returnable in the first week of March 2022. They are also expected to take necessary corrective and remedial steps in light of this decision, to the extent applicable, including to issue directions to all concerned for reporting compliance.

Nidhi Jain Directions Issued.