

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 5th September, 2012

+ **W.P.(C) No.4618/2011**

% **SOCIAL JURIST, A CIVIL RIGHTS GROUP Petitioners**

Through: Mr. Ashok Agarwal & Mr. Khagesh
B. Jha, Advs.

Versus

GOVT. OF NCT OF DELHI

..... Respondents

Through: Mr. Nazmi Waziri, Standing Counsel,
GNCTD, Ms. Ruchi Sindhwani,
Addl. Standing Counsel, GNCTD
with Ms. Bandana Shukla, Mr.
Vikrant Pachnanda & Ms. Megha
Bharara, Advs. for R-1.
Mr. Pramod Gupta with Mr. Udit
Gupta, Advs. for R-3.
Ms. Maninder Acharya, Adv. for
MCD.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This petition filed in public interest highlights the deficiency of requisite teaching aids for children with disability and non-availability of special teachers, in the unaided and aided private schools of Delhi and seeks a direction in this regard including to the Govt. of NCT of Delhi (GNCTD) and MCD. It is pleaded that owing to non-availability of Special Educators and the requisite teaching aids, children with disability admitted to the said schools, suffer.

2. It is pleaded in the petition:-

- a. that there are 2039 unaided recognized private schools (1260 recognized by Directorate of Education (DoE), GNCTD and 779 recognized by MCD) and 258 aided recognized private schools (214 aided by DoE, GNCTD and 44 aided by MCD) in Delhi and most of them do not have the provisions of basic physical as well as academic infrastructure, including Special Educators as required for the education of the children with disabilities;
- b. that most of the schools are not even providing barrier free environment;
- c. that there are over 2 lakhs children with disabilities in Delhi and of whom less than 1% are in schools;
- d. that the failure on the part of these schools to have adequate physical and academic infrastructure in place for the education of the children with disabilities has resulted in violation of Right of Children to Free and Compulsory Education (RTE) Act, 2009 of such children as guaranteed under Articles 14,15,21, 21-A & 38 of the Constitution of India read with the

provisions of Delhi School Education Act, 1973, Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, U.N. Convention on Rights of Child (1989) and U.N. Convention on Rights of Persons with Disabilities (2008);

- e. that trained teachers including teachers qualified in sign language and/or Braille are needed as a part of academic infrastructure for these children;
- f. a barrier free environment is needed for free mobility of these children in school premises;
- g. special books and equipments are needed for education of these children;
- h. that the post of Special Educator is required to be sanctioned by the DoE, GNCTD in each and every school;
- i. that a Division Bench of this Court in ***Social Jurist, A Civil Rights Group Vs. Govt. of NCT of Delhi*** 163 (2009) DLT 489 has directed the GNCTD as well schools run by local bodies namely NDMC, MCD and Cantonment Board to ensure that each school shall have at least two special educators and that

necessary teaching aids and reading materials are provided to children with disability;

- j. that since the aforesaid order was limited to schools run by GNCTD, NDMC, MCD and Cantonment Board, a need is felt to seek a direction with respect to unaided and aided schools also;
- k. that the schools are under an obligation to provide special teachers and other requisite material for children with disabilities;
- l. that under the provisions of RTE Act, the unaided and aided schools are also required to provide admission to children belonging to economically weaker sections/disadvantaged group to the extent of 25% of the strength of the class at entry point and children with disabilities are included in the definition of disadvantaged groups – thus children with disabilities would be entitled to admission in the unaided and aided schools who should be prepared by engaging special educators and making provision for other requisite material, to teach them;

m. that in the absence of special trained teachers and other requisite material, there is likely to be a high dropout rate of such students from the schools.

3. The petitioner, besides GNCTD and MCD has also impleaded Action Committee of unaided private schools as a respondent to this petition. Notice of the petition was issued and counter affidavits have been filed by all the three respondents. We also directed the counsel for the GNCTD to file response to the counter affidavit of the Action Committee for unaided private schools and to which a rejoinder has been filed. The counsels have been heard.

4. The GNCTD in its counter affidavit has, informed that in compliance of the directions in the judgment aforesaid, 926 posts of Special Educators have already been created to address the educational needs of visually impaired, hearing impaired, mentally or physically challenged students of the various schools of GNCTD and schemes for providing other facilities to them in the schools, have also been introduced. It is further pleaded that Section 3 of the RTE Act confers a right to free and compulsory education on every child of the age of 6 to 14 years and children with special needs are also covered under the provisions of RTE Act and all facilities are to be

provided to them; that vide Circular dated 6th August, 2010 all recognized unaided schools have already been directed to remove architectural barriers from the school premises so as to facilitate the movement of disabled students under the provisions of Disabilities Act; that as per the provisions of RTE Act, private unaided schools are to be reimbursed expenditure in respect of children admitted under the EWS norms to the extent of per child expenditure incurred by the State or the actual amount charged from the child, whichever is less and all the facilities which the Government is required to and is providing to the children in its schools have to be provided by the unaided recognized schools also including Special Educators for children with special needs who may seek such admission to these schools.

6. GNCTD has filed another affidavit dated 16th May, 2012 on the issue of reimbursement of salary of Special Educators and appointment of Special Educators in Government aided schools. It is stated therein that as per Section 12(2) of the RTE Act unaided private schools providing free and compulsory elementary education are to be reimbursed expenditure so incurred by them to the extent of per child expenditure incurred by the State or the actual amount charged from the child, whichever is less, with such

reimbursement not exceeding per child expenditure incurred by a Government school; that under Section 19(2) of the RTE Act, schools established before the commencement of the Act and not fulfilling the norms and standards specified in the Schedule are required to take steps to fulfill such norms and standards at their own expense within a period of three years from the date of commencement of the Act; that the Schedule to the RTE Act lists a 'barrier free access' as one of the norms and standards which all schools are required to fulfill; that unaided private schools are reimbursed the expenditure incurred on EWS students including students with special needs, which presently is up to Rs.1,190/- per student per month and no other reimbursement is obligated to the States; that the process for making provision for Special Educators in Government aided schools is also underway.

7. The respondent no.2 MCD also in its counter affidavit has informed that 1741 posts of Special Educators in the MCD schools had been created and the process of filling up the said posts was underway. It is also informed that MCD has provided ramps in all schools which are newly constructed and made provision for requisite toilets for the children with disability.

8. The respondent no.3 Action Committee in its counter affidavit has

admitted lack of physical and academic infrastructure in private unaided recognized schools of Delhi, required for education of children with disabilities like blindness, hearing impairment and mental retardation. It is further pleaded that the constitutional responsibility of providing education to the children with disability primarily lies with the Government and Government should first direct the Government schools to provide more seats for children with disabilities and the Government schools have sufficient scope for enrolling all the children having disability; that when the Government, in spite of its vast resources and limitless financial backing, is still struggling to provide basic amenities in its schools, the private unaided recognized schools, the only sources of whose revenue is tuition fee from their pupil, should not be burdened with additional costs; that provision for physical and academic infrastructure for children with disability in the form of ramps, lifts and architectural changes in the existing building would require a huge investment and cannot be done immediately; that the private unaided recognized schools have in compliance of the Circular dated 6th August, 2010 already taken the initiative and a large number of schools have carried out substantive improvements and changes in their infrastructure to provide the facilities to children with disability; though, the need for Special

Educators is admitted but their scarcity and high cost of hiring is highlighted; it is further stated that the schools may be required to employ more than two Special Educators also depending upon the needs of the children. Time of two years was sought to comply with the Circular dated 6th August, 2010.

9. The Action Committee in its response to the affidavit dated 16th May, 2012 of the GNCTD has pleaded:-

- (i). that Section 12(2) of the RTE Act casts a duty on the State to reimburse the unaided schools to the extent of per child expenditure so incurred by the State, or the actual amount charged from the child, whichever is less; the said provision does not make a further classification in the nature of expenditure under the heads 'Capital' and 'Recurring' thereby meaning that whatever the per child expenditure incurred by the State or the amount charged by the schools, is to be reimbursed to the unaided schools;
- (ii). that no basis for arriving at the per child expenditure of Rs.1,190/- per month has been stated;
- (iii). that the responsibility under the Disabilities Act is of the

Government;

- (iv). that in computing Rs.1,190/- per child per month, the additional expenditure which has to be incurred by the Government in discharge of its obligations under the Disabilities Act, has not been considered;

10. GNCTD has responded to the aforesaid pleas of the Action Committee contending that its financial responsibility is limited to reimburse the expenditure incurred which presently is up to Rs.1,190/- per child per month; that it is not obligated to reimburse any other amount; that the obligation for capital expenditure in unaided schools lies with the schools and not with the GNCTD; that per child expenditure includes all recurring expenditure i.e. salary of teachers and allied staff, books, uniforms, scholarships, laboratories, computers, libraries, administrative, teaching and learning aids etc. as also expenditure incurred on sports.

11. We have bestowed due consideration to the matter. As far as the argument of the Action Committee, of the constitutional obligation to provide education being of the State only, is concerned, the same has already been negatived in *Society for Un-aided Private Schools of Rajasthan Vs. U.O.I.* 2012 (4) Scale 272.

12. This petition as aforesaid, is concerned with a direction for appointment of Special Educators and for provision of requisite aids in the recognized unaided and aided private schools, Delhi. Directors in this regard, qua the schools of GNCTD and MCD have already been issued, as aforesaid and informed to be also implemented.

13. The necessity for Special Educators in all schools stands admitted by the GNCTD as well as Action Committee in their respective counter affidavits. The counsel for the Action Committee however during the hearing urged that two Special Educators may not be required in all the schools in as much as all the schools may not even have children with disabilities and the recognized unaided private schools should be permitted to make appointments of Special Educators and provision for special aids on a need based basis. It is also argued that the schools be allowed to share the Special Educators amongst themselves.

14. The aforesaid plea has been opposed both by the counsel for the GNCTD as well the counsel for the petitioner. While the counsel for the GNCTD has contended that if such liberty is granted, the schools without incurring expenditure on the salaries of Special Educators would claim reimbursement per child as being paid to schools who employ such Special

Educators, the counsel for the petitioner has contended that the absence of Special Educators and other special provisions for disabled in the school would act as a deterrent to children with disability seeking admission thereto and would become a vicious cycle. It is further argued that the Special Educators can be of assistance not only to children with disability but to other children as well and for this reason also it is essential for the schools to have them.

15. The RTE Act as amended in May, 2012 vests a child with “disability” as defined in the Disabilities Act or in the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 with the same rights to pursue free and compulsory elementary education, which children without such disabilities have. Even prior to the said amendment, the Delhi School Education (Free seats for Students belonging to Economically Weaker Sections and Disadvantaged Group) order 2011 had included a child with special needs and suffering from disability, as defined in the Disability Act, in the definition of child belonging to disadvantaged group. Though the need for Special Educators in the schools as aforesaid stands admitted but we are also of the view that just like the Government/Municipal and Cantonment Board schools have been

directed to have Special Educators irrespective of whether any children with disability are admitted therein or not, recognized unaided private schools as well as aided schools are also required to employ minimum of two Special Educators in each school and appointment of such Special Educators cannot be made dependent on admission of children needing Special Educators. Similarly, each of such schools has to have provision for special aids for such children and is required to provide a barrier free movement. Absence today of any such children in the school cannot be an excuse for not providing such facilities.

16. The counsel for the Action Committee has next contended that the schools be permitted to, if they so desire, have their existing teachers/staff trained as Special Educators instead of being required to engage new staff. We find merit in the said plea. If the existing staff/teachers in the school are surplus and/or the student strength or the student-teacher ratio of the school so permits, the schools can have their existing staff trained to teach children with disability, instead of engaging separate Special Educators. However, this would be subject to as aforesaid existing staff being surplus and being in a position to devote time with children with special needs.

17. We find merit in the contention of the counsel for the GNCTD that

the deployment of Special Educators cannot be deferred till the admission of children with special needs and the schools have to be in a state of readiness and preparedness to receive children with special needs.

18. Reference at this stage may be made to the National Policy for Persons with Disabilities of the year 2006 of the Government of India. With respect to education for persons with disabilities the said Policy *inter alia* states:-

“II. B. Education for Persons with Disabilities.

20. Education is the most effective vehicle of social and economic empowerment. In keeping with the spirit of the Article 21A of the constitution guaranteeing education as a fundamental right and Section 26 of the Persons with Disabilities Act, 1995, free and compulsory education has to be provided to all children with disabilities up to the minimum age of 18 years. According to the Census, 2001, fifty-one percent persons with disabilities are illiterate. This is a very large percentage. There is a need for mainstreaming of the persons with disabilities in the general education system through Inclusive education.

24. There will be concerted effort on the part of the government to improve identification of children with disabilities through regular surveys, their enrollment in appropriate schools and their continuation till they successfully complete their education. The Government will endeavor to provide right kind of learning material and books to be children with disabilities, suitably trained and sensitized teachers and schools which were accessible and disabled friendly.”

With respect to children with disabilities the Policy *inter alia* provides:-

“IV. Children with Disabilities.

32. *Children with disabilities are the most vulnerable group and need special attention. The Government would strive to:-*

- a. Ensure right to care, protection and security for children with disabilities;*
- b. Ensure the right to development with dignity and equality creating an enabling environment where children can exercise their rights, enjoy equal opportunities and full participation in accordance with various statutes.*
- c. Ensure Inclusion and effective access to education, health, vocational training along with specialized rehabilitation services to children with disabilities.*
- d. Ensure the right to development as well as recognition of special needs and of care, and protection of children with severe disabilities.*

V. Barrier-free environment

33. *Barrier-free environment enables people with disabilities to move about safely and freely, and use the facilities within the built environment. The goal of barrier free design is to provide an environment that supports the independent functioning of individuals so they can participate without assistance, in everyday activities. Therefore, to the maximum extent possible, buildings/places/transportation system for public use will be made barrier free.”*

The policy sets a goal of providing access to appropriate pre-school, primary and secondary level education to every child with disability by the year 2020 and emphasizes on an inclusive education system i.e. education of children with disability along with children without disability, as far as possible.

19. Though in the aforesaid state of affairs, the writ petition ought to have been allowed and directions sought issued but the Action Committee has

raised some other pleas as to the expenditure on the works required to be carried out by schools to make their buildings barrier free and suitable for free movement of children with disability. It has been vehemently contended that the amount of Rs.1,190/- per child per month arrived at by the GNCTD is towards recurring expenditure only and not towards capital expenditure required to be incurred by the schools to make changes to their buildings. With reference to the provisions of the RTE and the Disability Acts it is contended that the responsibility and liability therefor is of the Government and the Government should reimburse the same.

20. The counsel for the GNCTD however has as aforesaid invited our attention to Section 19 of the RTE Act which requires all schools, as a condition for their recognition, to provide a barrier free access in their buildings. We are thus satisfied that such capital expenditure on making the school building and premises barrier free so as to allow free movement to children with disability has to be incurred by the schools from their own coffers and is not reimbursable by the Government.

21. Though the counsel for the Action Committee has also sought to raise a grievance about the rate of reimbursement of Rs.1,190/- per child per month but we are afraid that is not within the ambit of the present petition.

He has lastly contended that the same is not inclusive of the emoluments to be paid to the Special Educators. The counsel for the GNCTD, under instructions, has fairly stated that as and when the Government appoints Special Educators for Government schools, the total salary expenditure of the Government will increase and hence per child expenditure will also increase and consequent increase would be made in the amount of Rs.1,190/- also.

22. We accordingly allow this petition and direct all the recognized aided and unaided private schools in Delhi to appoint Special Educators and to make their buildings/school premises barrier free so as to provide free movement/access to children with disabilities. We further direct the DoE, Govt. NCT of Delhi to ensure compliance of the directions issued by this Court and to take action for de-recognition against the erring schools. We however grant time up to 31st March, 2013 to the said schools to, if not have already done, make their school premises barrier free/access free. We have granted the said time having regard to the fact that Section 19 of the RTE Act has given time of three years from 1st April, 2010. We further grant time of two years to appoint Special Educators. However, schools where children with special needs are already admitted or will be admitted hereafter shall

immediately make provision for Special Educators and further ordain that no school shall refuse admission to children with disability for the reason of not employing Special Educators or not providing barrier free access in the school premises.

The petition is disposed of. No costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

SEPTEMBER 5, 2012

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