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

+ W.P.(C) 2699/2016 & CM APPL. 11419/2016

SIDDHARTH INTERNATIONAL

PUBLIC SCHOOL

..... Petitioner

Through Mr. R.M. Sinha, Advocate

versus

MOTOR ACCIDENT CLAIM TRIBUNAL

AND ANR

..... Respondents

Through Mr. Ashok Agarwal, Amicus Curiae.
Mr. Shadan Farasat with Mr. Ahmed
Said, Advocates for R-2.
Mr. Yogesh Kumar, DEO Zone VI.

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Reserved on : 17th August, 2016

Date of Decision : 26th August, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Present writ petition has been filed challenging the orders dated 18th January 2016, 5th February 2016 and 14th March 2016 passed by Motor Accident Claims Tribunal (for short "MACT"), whereby it directed the petitioner-school, upon an application being filed by the victim's mother, to admit the victim, Master Priyanshu, who now has a prosthetic leg, under Weaker Section (EWS)/Disadvantaged Group (DG) Category by granting

age relaxation.

2. Mr. R.M. Sinha, learned counsel for petitioner-school submitted that MACT did not have the jurisdiction either to direct the petitioner-school to admit Master Priyanshu or to create seats qua EWS quota more than twenty-five per cent of the general category seats. According to him, MACT could not have directed the petitioner-school to admit the child, as the petitioner-school had no vacant EWS seats.

3. He further submitted that the impugned orders violated the maximum autonomy conferred upon the school management in admission matters. In support of his submission, he relied upon the judgment of the Supreme Court in *TMA Pai Foundation Vs. State of Karnataka, (2002) 8 SCC 481*.

4. Mr. Sinha contended that petitioner-school had not been heard by MACT before passing the direction to admit the child. He submitted that the impugned order is in violation of the principles of natural justice.

5. Learned counsel for petitioner pointed out that Master Priyanshu had two aadhar cards and one birth certificate which show different dates of birth. He submitted that in accordance with Section 14(2) of the Right of Children to Free and Compulsory Education Act, 2009 [for short “RTE Act, 2009”] as well as Rule 13 of the Right of Children to Free and Compulsory Education Rules, 2010 [for short “RTE Rules, 2010”], the birth certificate has to be deemed to be proof of age of a child. He stated that as in the present case the Master Priyanshu’s date of birth, as reflected in the birth certificate, was 15th June, 2006, he has to be admitted in accordance with Section 4 of RTE Act, 2009 in a class appropriate to his age, i.e., Class IV and not Class 1.

6. Mr. Sinha relied upon the Office Order dated 18th December, 2015 passed by the GNCTD under Section 16(1) of the Delhi School Education Act and Rules, 1973 whereby the upper age limit for admission to pre-school, pre-primary and class 1 had been fixed. He contended that if a student of ten years old is directed to be admitted in Class I, it would have disastrous consequences for the general students who are already studying in the said Class.

7. He submitted that a school cannot be directed by any Court to either deploy special educators or provide barrier free environment or hold classes for the physically challenged child on the ground floor only.

8. Learned counsel for petitioner stated that the petitioner-school has no provision for transport from the minor's residential address to the School, which is approximately 4 to 5 kms. distance and that too, in a different State.

9. Mr. Sinha lastly submitted that though the impugned orders may have been motivated by lofty ideals of justice, yet they were contrary to law and deserved to be set aside.

10. Per contra, Mr. Shadan Farasat, learned counsel for respondent no.2-Directorate of Education (for short 'DOE') stated that the total number of students in Grade 1 of the petitioner-school are thirty-four and the DG /EWS category students are only seven.

11. Mr. Farasat submitted that in accordance with Section 12(1)(c) of the RTE Act, 2009 the petitioner-school had to admit in Class 1 at least twenty-five percent of its strength from children belonging to EWS and DG. According to him, the term "strength of that class" referred to overall number of seats in that class. In support of his contention, he referred to Clauses 3 and 4 of the Order of the Govt. of NCT of Delhi dated 7th January,

2011 which are reproduced hereinbelow:-

"3. Free seats for students belonging to weaker section and disadvantaged group:

(a) All Schools shall admit children in class one to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker sections and disadvantaged groups in neighbourhood and provide free and compulsory elementary education till its completion. Provided that where such school imparts pre-school education, the provisions shall apply for admission to such pre-school education.

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4. Manner of admission against free seats - (a) The School shall display the total number of seats, the free seats available at entry level, the date of submission of applications for admissions against free seats in entry level, the date(s) of display of list of eligible candidates for draw, date(s) of draw, date(s) of display of list of successful candidates, date(s) of display of waiting list, date(s) of deposition of fees, last date of admission as per prescribed proforma (Annexure-I enclosed) on the notice board in the school and shall also notify the same to the concerned Dy. Director of Education by the 10th January 2011 and thereafter by 31st December of the year proceeding the academic year for which such admissions are being made.....

(emphasis supplied)

12. Mr. Farasat stated that his submission was fortified by Clause 2(d) of the Guidelines for Admission to Entry Level Classes in Private Unaided Recognized Schools of Delhi for the Session 2016-17 which reads as under:-

"(d) 25% admissions to children belonging to Economically Weaker Section & Disadvantaged Group category at entry level classes i.e. pre-school, pre-primary and Class-I, wherever fresh

admissions are made, shall be granted by the Private Unaided Recognized Schools of Delhi. They shall ensure the admissions of 25% children belonging to EWS/DG Category at all entry level classes on the existing strength of students in respect of entry level classes at any given point of time."

(emphasis supplied)

13. He emphasized that the EWS seats are being calculated in the entire NCT of Delhi on the total strength of the class and not on the basis of twenty-five per cent of the General category seats. Therefore, according to him, a seat in EWS category is available in the petitioner-school.

14. Mr. Farasat stated that the petitioner-school is within the prescribed distance from the residence of Master Priyanshu. He stated that pursuant to the orders of this Court, the respondent no.2-DOE had sent a Field Officer to the residence of Master Priyanshu. He referred to an affidavit filed by respondent no.2-DOE in which it had been confirmed that the residence of Master Priyanshu is House No.D-149, Rajnagar, Block D-1, Loni, Thana Loni, District Ghaziabad and two neighbours had given testimonials that Master Priyanshu and his mother Babli had been residing at the said address as tenants for the last five years. It is further stated in the affidavit that the said house though situated in Ghaziabad is right on the border of Delhi-Ghaziabad. According to him, the field visit confirmed that there is a nearby and direct pathway from the house to the petitioner-school. He also stated that subsequent to the Court hearing, his colleague and co-counsel Mr. Ahmed Said, Advocate (Regn No: D-3911/2015) went to the residence of Master Priyanshu and walked from his house to the petitioner-school, measuring the distance with a pedometer on his iphone and the exact

distance measured was 2.34 kms.

15. Mr. Farasat further stated that as per self-declaration of the mother given to the officer of the respondent no.2-DOE, the date of birth of the child is 1st January, 2010, which means he is aged six years as on 1st April, 2016. He pointed out that as per Section 14(1) of the RTE Act, 2009 and Rule 12 of the Delhi Right of Children to Free and Compulsory Education Rules, 2011, "declaration of the age of child by the parent or guardian" is one of the accepted modes of proof of age. He stated that if this age is taken, then Master Priyanshu is fully eligible to be admitted in Class 1. He submitted that as per Clause 2(g) of the Circular of the GNCTD dated 29th December, 2015, relaxation of one year is permissible in the upper age limit for disabled children. According to him, with this relaxation Master Priyanshu is further eligible to be admitted in Class 1, even if his age is assumed to be seven years as on 1st April, 2016.

16. Mr. Ashok Aggarwal, learned amicus curiae submitted that in view of Sections 2(ee), 3(3) of RTE Act, 2009 and Section 26(a) of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [for short "Act, 1995"] a disabled child is entitled to free and compulsory education in an appropriate environment till he attains the age of eighteen years instead of fourteen years as prescribed for able-bodied students. The said sections are reproduced hereinbelow:-

a) Sections 2(ee) and 3(3) of the RTE Act, 2009

"2[(ee) "child with disability" includes,—

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

(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) 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).]

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3. Right of child to free and compulsory education.—

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(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)"

a) Section 26(a) of the Act, 1995

"26. Appropriate Governments and local authorities to provide children with disabilities free education, etc.—The appropriate Governments and the local authorities shall—

(a) ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years;"

17. Mr. Aggarwal submitted that a Division Bench of this Court in ***Social Jurist Vs. Govt. of NCT of Delhi, W.P(C) 4618/2011*** decided on 5th

September, 2012 has held that the deployment of special educators and provisions for barrier free environment cannot be deferred till the school decides to admit students with special needs.

18. Having heard learned counsel for the parties and upon a perusal of the papers, this Court finds that admittedly the total number of students in Grade 1 in the petitioner-school are thirty-four, whereas the number of students admitted in the EWS category are only seven. The petitioner-school's own letter dated 3rd May, 2016 intimating the respondent no.2-DOE the number of seats in Grade 1 is reproduced hereinbelow:-

"SUB: INFORMATION IN R/O ENQUIRY

Madam

With reference to your personal visit on 03.05.2016 in r/o enquiry, I am submitting the following as detailed below pointwise:

		<i>Ist</i>	<i>ENTRY LEVEL Pre-Sch</i>
1.	<i>Total No. of Students in class Entry Level, Ist in session 2016-17 :</i>	<i>34</i>	<i>18</i>
2.	<i>Total No. of Students General admitted in class Entry Level, Ist in session 2016-17 :</i>	<i>27</i>	<i>13+1 (Repeater/ transfer from K.G.)</i>
3.	<i>Total No. of Students EWS admitted in Entry Level, Ist in session 2016-17 :</i>	<i>07</i>	<i>04</i>

4. *Vacant Seats in General and EWS Category session 2016-17 in class Ist and Entry Level in session 2016-17.* NIL NIL

*Submitted for information.
Thanking you,
Yours faithfully,
Vice Principal"*

19. Clauses 3 and 4 of the Order of the Govt. of NCT of Delhi dated 7th January, 2011 and Clause 2(d) of the Guidelines for Admission to Entry Level Classes in Private Unaided Recognized Schools of Delhi for the Session 2016-17 leave no room for doubt that number of EWS seats are to be calculated not on the strength of General category seats, but on the total strength of the class i.e. the overall number of seats in that class.

20. Twenty-five percent of the total strength is 8.5. Consequently, this Court is in agreement with the submission of Mr. Shadan Farasat, learned counsel for respondent no.2-DOE that there is a vacancy of at least one seat in the EWS/DG Category in petitioner-school, which can be given to Master Priyanshu. In fact, once a seat is assigned to Master Priyanshu, the strength of Grade 1 will be thirty-five and the EWS/DG seats will be eight, which is 22.85% of the strength of the class.

21. In any event, the obligation under Section 12(1)(c) of the RTE Act, 2009 is to "*admit in Class 1, to the extent of at least twenty-five percent of the strength of that class*" students from EWS category. Consequently, there is no bar on a private unaided school from admitting more than twenty-five per cent students in EWS category, provided the appropriate government agrees to pay for such extra seats under Section 12(2) of the RTE Act, 2009

- which the respondent no.2-DOE is willing to do in the present case.

22. This Court also finds that the affidavit filed by respondent no.2-DOE as well as the report of the co-counsel for respondent no.2-DOE giving precise distance of 2.34 kms. between the petitioner-school and the residence of Master Priyanshu have not been controverted. Clause 2(c) of the Circular of GNCTD dated 29th December, 2015 reads as under:-

"2. For Private Unaided Schools Recognized by this Directorate under Right to Education (RTE) Act, 2009 and Private Schools regulated by Local Authorities.

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c) Admissions of the children belonging to Economically Weaker Section & Disadvantaged Group Category shall be made by the private unaided recognized schools on the following neighbourhood criteria.

(i) Admission shall first be offered to eligible students belonging to EWS and Disadvantaged Group residing within 1 KM of the specific school.

(ii) In case the vacancies remain unfilled, students residing within 3 KM of the school shall be admitted....."

23. Consequently, as there is a seat vacant in EWS category, it can be allocated to Master Priyanshu as he resides within three kilometres distance of the petitioner-school.

24. This Court is further of the opinion that discrepancy in date of birth of Master Priyanshu in the present case is due to poverty, ignorance and backwardness of his relatives.

25. It is significant to note that Master Priyanshu, not only belongs to the DG Category, but is also a person with disability and in accordance with Section 2(d) read with Section 2(ee) of the RTE Act, 2009, he is entitled to

free education till he attains the age of eighteen years instead of fourteen years as mandated under the RTE Act, 2009 for able bodied students.

26. This Court is not required to return a final finding on a child's date of birth as Section 14(2) of the RTE Act, 2009 states that "*No child shall be denied admission in a school for lack of age proof*". Sections 8(c) and 12 clearly show that the RTE Act, 2009 is for the benefit of the child and meant to ensure he/she gets access to elementary education, despite any technical difficulties.

27. Further, Section 4 of the RTE Act, 2009 permits admission of child in an appropriate class, irrespective of age. Section 4 of the RTE Act, 2009 provides that "*Where a child above six years of age has not been admitted in any school..... he or she shall be admitted to a class appropriate to his or her age.*"

28. In ***Kumari Uzma Bano Vs. GNCTD & Anr., 172 (2010) DLT 34*** it has been held by this Court that Section 4 of RTE Act, 2009 does not prescribe a mandatory rule connecting a class to age and the expression in Section 4 cannot be read as "*in a class to which others of his age are studying*". It was further held that it is open to the authorities to determine the appropriate class to which a child of older age may be admitted.

29. It is pertinent to mention that this Court in ***Suman Mishra vs. GNCT of Delhi, W.P.(C) 962/2016*** has stayed the Office order dated 18th December, 2015 issued by the GNCT of Delhi fixing the upper age limit for admission in different classes.

30. In the opinion of this Court, if the submission of learned counsel for petitioner is accepted, then those children who had either not been admitted to a school initially or had left studies midstream would never be able to

join/rejoin any school and make use of their fundamental right to free and compulsory education.

31. The petitioner-school's submission that it cannot be directed by any Court to either deploy special educators or to hold classes for physically challenged children on ground floor or to provide barrier free environment, is untenable in law. Section 26(a) of the Act, 1995 specifically mandates that every child with a disability has to have access to free education in an 'appropriate environment'.

32. Moreover, as rightly pointed out by learned Amicus Curiae, the said facilities cannot be deferred till the school decides to admit students with special needs. A Coordinate Bench of this Court in ***Social Jurist*** (supra) has held as under:-

"13. 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.

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15. 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 Police 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."

33. Though, this Court is in agreement with the submission of learned counsel for the petitioner-school that the MACT had no jurisdiction to direct the petitioner-school to grant admission to a victim and the said direction could not have been passed without giving an opportunity of hearing to the petitioner-school, yet it is of the opinion that the impugned direction to

admit Master Priyanshu is warranted in the facts and circumstances of the present case.

34. This Court finds that Master Priyanshu lost his left leg below the knee, when he met with an accident with a bus. Below the left leg, Master Priyanshu now has a prosthetic leg.

35. Father of Master Priyanshu died a few months after Master Priyanshu's accident on account of cancer.

36. The mother of Master Priyanshu, Ms. Babli works in a local factory/workshop that manufactures plastic spoons. Her job is to pack the manufactured spoons in boxes. In addition, she does some sewing work on duppattas etc. from her home for the residents of the area. She claims that from both these jobs put together she makes Rs.5,000 to Rs.6,000 in a month.

37. According to reports filed by the Field Officer and co-counsel for respondent no.2-DOE, Master Priyanshu speaks conversational Hindi and can understand and answer all questions in Hindi. He can also count in Hindi from numeral 1 till numeral 30 and he remembers the English alphabets A to Z. According to respondent no.2-DOE's Field Officer the child will pick up education quite quickly, if he is admitted in Class 1.

38. Since the petitioner-school did not grant Master Priyanshu admission, as an interim measure, he was admitted in Class 1 in a local municipal school. Master Priyanshu informed the Field Officer and co-counsel for respondent no.2-DOE that he enjoys attending classes in Grade 1 and is comfortable with his fellow students and what is being taught.

39. This Court is of the view that as Master Priyanshu has not had any prior formal education, Class 1 which is the first class for formal education

is the ideal class for him to begin his education. This view is also in consonance with the reports filed by the Field Officer and co-counsel for the respondent no.2-DOE.

40. The petitioner-school's contention that admission of Master Priyanshu would have disastrous consequences for the General students already studying in Class 1, is ill-founded. On the contrary, Master Priyanshu's admission would make the general students more sensitive and humane as they would appreciate the challenges faced by a student with disability and poverty.

41. Since today the orders and directions are being passed by a Constitutional Court after giving the petitioner's an elaborate hearing, the petitioner's grievances with regard to jurisdiction and violation of principle of natural justice do not survive.

42. It is settled law that this Court has extremely broad jurisdiction under Article 226 of the Constitution and under the said Article it can pass whatever orders are necessary for doing equity and justice. The Supreme Court in *N S Mirajkar Vs. State of Maharashtra, 1966 3 SCR 744* has held that "*unlike a inferior court, in respect of a High Court, which is also a Court of Record, it is assumed that every action is within its jurisdiction, unless expressly shown otherwise.*"

43. Further, the judgment in *T.M.A. Pai* (supra) has no relevance as the present case pertains to admission in EWS/DG Category. In any event, the said judgment does not restrain the power of Constitutional Courts to issue orders and directions in the facts of a case to do complete justice.

44. Consequently, though this Court is of the opinion that the impugned orders have been passed by the President Officer, MACT, with intent to do

substantial justice and to give the victim of motor accident real succour, yet as they are without jurisdiction, they are set aside. However, as Master Priyanshu belongs both to EWS/DG as well as a person with Disability Category and a seat under EWS/DG Category is available in one of the better educational institutions in the immediate neighbourhood, this Court in Article 226 jurisdiction and in accordance with Section 12(c) of the RTE Act, 2009, adopts the impugned orders and disposes of the present writ petition and pending application by directing the petitioner-school to grant admission to him in Class 1.

45. This Court places on record its appreciation for the empathy and sensitivity displayed by the Presiding Officer, MACT, as well as officials of Directorate of Education and both the learned counsel for respondent No.2-DOE as well as the learned Amicus Curiae.

46. This Court reiterates that the directions in the present case have been passed to rehabilitate an accident victim who also belongs to an EWS/DG Category. There is nothing to suggest that in present case that justice and law cannot dwell together. After all, one should not forget that the purpose of all law is justice.

MANMOHAN, J

AUGUST 26, 2016

js/rn