

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Writ Petition No.32628 of 2019 (O&M)
Judgment Reserved on 29.04.2022
Pronounced on : July 07, 2022**

Mehtab and another ...Petitioners

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Parunjeet Singh, Advocate, for the petitioners.

Ms. Tanushree Gupta, DAG, Haryana, for respondents No.1 to 4.

Mr. Vikas Mehra, Advocate for
Ms. Roma Bhagat, Amicus Curiae.

Mr. R.S. Hooda, Advocate,
for respondent No.5.

Mr. Shashank Bhandari, Advocate for
Mr. Shoumendu Mukherji, Advocate,
for respondent No.6.

SUDHIR MITTAL, J.

Earlier, a large number of special children were unable to reach their optimum potential due to lack of understanding and consequent identification of the problem. Today, the issue has been recognized and there is no dearth of legislation on the subject. Statutory rights have been provided for assimilation of special children in society, yet, the executive authorities tasked with implementation of these rights are unable to provide succour because of lack of sensitization. As a result, children as well as their parents

continue to face an uphill task in getting benefit of inclusivity. This case is a typical example.

2. The dictionary meaning of 'special child' is a child who requires special education on account of learning disabilities, intellectual disabilities, physical disabilities or emotional difficulties. Such children require assistance that other children do not need.

3. Mehtab-petitioner No.1 has Down Syndrome. This condition exists due to abnormalities in chromosomes existing in genes. It results in an Oriental facial appearance and mental retardation. Medical reports indicate that Mehtab has mild level of intellectual disability. At the time of filing of this writ petition, he was 13 years old and was studying in the special wing of Little Flower Public School-respondent No.5 (hereinafter referred to as the School) for the last five years. Despite this disability, he is an excellent sportsman and has participated in the Special Olympics in the Sports of Roller Skating and Swimming. He has won medals at the State and National Level in competitions organized for special children. Till May, 2019, there did not appear to be any problems. However, near about that point in time, the Special Educator teaching Mehtab left the school and the Principal was also changed as the Principal is appointed for a specific time period. According to the averments in the writ petition, a representation was made by some parents to the Principal that standard of activities have suffered after the earlier teacher left and efforts should be made to restore the same standards. This was allegedly not taken kindly by the Principal, who in connivance with the incharge of the special wing and special educators orchestrated a campaign to malign Mehtab. Letters were written to Mehtab's

mother stating that his activities in class were detrimental to the safety of other children as he had a tendency to become violent. A request was accordingly made to get psychiatric help which was accordingly taken from Government Rehabilitation Institute for Intellectual Disabilities (GRIID) and the clinic incharge reported insignificant behavioural problem. Further, their appears to have been a tussle between the mother of Mehtab and the school staff regarding Individualized Education Programme (IEP). According to the mother, the school was not following IEP and was in fact denying the existence of any such programme. Thus, information was sought regarding the same from GRIID and the Joint Director responded stating that IEP is developed for each student with special needs. Instruction is planned in a particular sequence formulating long-term goals and short-term goals. The progress is reviewed quarterly and according to the achievements of the student, further goals are re-assessed. The tussle continued back and forth and the Principal sent a communication to the mother to allay her fears stating that students of the special wing are provided facilities for sports, music, yoga and dance etc. but Mehtab is unable to benefit from the same as he comes late to school. His attendance is also not regular. Adequate care is provided to students of the special wing and attendants are available to assist the teachers. IEP is followed for all students but cannot be shared with the parents as parents insist upon teaching as per syllabus meant for regular students. It was further stated that interns from Saket Hospital, Panchkula come to the school regularly to provide physiotherapy and that adequate care is being taken of the students of the special wing. Concerns regarding the safety of other students were however reiterated. Finally, the mother was asked to withdraw Mehtab from the school vide communication dated

30.09.2019. Complaint dated 07.10.2019 was thus made to the District Child Welfare Officer, Panchkula with copies to the Deputy Commissioner, Panchkula, District Child Protection Officer, Panchkula and District Elementary Education Officer, Panchkula. It was requested that suitable action be taken keeping in view the welfare of Mehtab. No action having been taken, the present writ petition was filed. Inclusive education of Mehtab thus came to an end.

4. In support of the contention that Mehtab has no behavioural issues, the mother has placed on record a certificate to this effect issued by the earlier teacher who was looking after Mehtab from October, 2018 to February, 2019. Certificates from the skating coach and swimming coach have also been placed on record.

5. During the pendency of this writ petition, the mother applied for school leaving certificate vide communication dated 23.09.2020 but the same has not been issued till date.

6. In the detailed written statement filed on behalf of the school stress has been laid on the unruly and violent behaviour of Mehtab and the safety of other special children has been cited as the reason for his withdrawal. In this regard, reference has been made to various complaints submitted by parents of other special children. According to the written statement, the situation arising out of Mehtab's alleged violent behaviour was also brought to the notice of the Deputy Commissioner, Panchkula, District Education Officer, Panchkula and District Council for Child Welfare, Panchkula. Accordingly, a meeting was held in the school on 30.05.2019 in the presence of the Principal, Special Wing Incharge, two Special Educators,

Sports Teacher, Psychologist from Civil Hospital, Panchkula, Mehtab's mother and some complainant parents. The minutes of this meeting record that video clippings exhibiting the aggressive behaviour of Mehtab were shown to the psychologist and the mother. The psychologist advised the mother that necessary behavioural therapy be provided to Mehtab, but she was not convinced. The meeting did not yield the expected result. Further, it has been stated that to review the behaviour of Mehtab, the District Council for Child Welfare, Panchkula constituted a committee comprising of two Special Educators and an Instructor Child Development from Haryana State Commission for child welfare. It opined that behaviour of Mehtab was normal except that his interaction with other children was 'irritating' sometimes. It was thus, recommended that no harm would be caused by getting the child checked by a Child Psychiatrist. The Principal also sent a communication dated 03.08.2019 to the District Child Protection Commission bringing to its notice the behavioural issues of Mehtab. A perusal of this letter shows that there was disagreement between the school staff and the mother regarding activities in which Mehtab should be engaged. The mother was insisting upon greater academic activity whereas according to the school the child should have been engaged in games and other activities. Vide communication dated 11.09.2019, Mehtab's behaviour was also brought to the notice of the Deputy Commissioner, Panchkula.

7. On behalf of the State, a short written statement has been filed. According to the same, the Deputy Commissioner, Panchkula has taken cognizance of complaint dated 07.10.2019 submitted by the mother and has constituted a committee comprising of Deputy District Education Officer,

Panchkula, Block Education Officer and Principal, GSSS, Dhatogra for inquiring into the matter. The committee submitted a report dated 29.11.2019 stating that the child needed special care. Dis-satisfied with this report, the District Child Protection Officer, Panchkula was asked to inquire into the matter and a committee comprising District Programme Officer, Panchkula, District Child Welfare Officer, Panchkula, District Child Protection Officer, Panchkula and Legal-cum-Probation Officer, Panchkula was constituted which submitted a report dated 16.04.2021 that the aggressive behaviour of Mehtab was the cause for discontinuation of his studies.

8. The Council for Indian School Certificate Examinations (CISCE) was impleaded as respondent No.6 vide order dated 16.12.2021. Counter affidavit on its behalf has been filed, according to which communications have been sent to all affiliated schools in accordance with Section 16 of The Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as the Disabilities Act) that action should be taken to detect specific learning disabilities before children complete the age of nine years. The rules for affiliation also provided that in case of denial of admission to a special child, the affiliation can be withdrawn. The regulations for conducting examinations provide for assistance to special children depending on the nature and the degree of the disability such as additional time, exemption from study of second language, use of a reader/writer etc.

9. From the above narration, it transpires that Mehtab has been experiencing difficulties in school ever-since the previous teacher left and a new Principal was appointed. There also appears to be disagreement

between the mother and the school regarding the academic content of the education. It appears that the mother is unable to come to terms with the fact that Mehtab suffers from 'Down Syndrome' and has a low IQ bordering on mental retardation. At the age of 13 years, hormonal changes would be taking place in Mehtab resulting in some kind of aggression. According to the school authorities, the same could be channelized by participation in games and other similar activities but the mother wants Mehtab to study like a normal child. Thus, conflict has arisen and the same remains unresolved despite intervention of the District Authorities tasked by various statutes to ensure welfare of special children and their inclusive education. The school has also not been able to handle the problem with the required sensitivity.

10. Right to education has been included as a fundamental right for all children of the age group 06 to 14 years by way of Constitution (86th Amendment) Act, 2002. This has led to the enactment of The Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as Right to Education Act) (as amended from time to time). Section 2(ee) defines "child with disability" as a child with "disability" as defined in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 as well as a child with "disability" and "severe disability" as defined in the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. Section 2(c) defines "child" as a male or female child of age six to fourteen years. A child with disability is included in the definition of "child belonging to disadvantaged group" given in Section 2(d). Every such child has the right to free and compulsory education and it is the duty of the

appropriate Government (in this case the State Government) to ensure completion of elementary education. It also provides that no child shall be expelled from a school till completion of elementary education. The relevant provisions are reproduced below:

Section 2- Definitions--

(a) “appropriate Government” means—

(i) xxxx

(ii) in relation to a school, other than the school referred to in sub-clause (i), established within the territory of—

(A) a State, the State Government;

(B) a Union territory having legislature, the Government of that Union territory;

(b) xxxxxx

(c) “child” means a male or female child of the age of six to fourteen years;

(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.

(e) xxxxxx

(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) 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).]

(f) xxxxxx

Section 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.]

(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.

[(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):

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.]

Section 8 Duties of appropriate Government—*The appropriate Government shall—*

(a) provide free and compulsory elementary education to every child:

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his

or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school.

Explanation.—The term “compulsory education” means obligation of the appropriate Government to—

(i) provide free elementary education to every child of the age of six to fourteen years; and

(ii) ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years;

Section 16. Examination and holding back in certain cases:-

(1) xxxxx

(2) xxxxx

(3) xxxxx

(4) No child shall be expelled from a school till the completion of elementary education.

11. The aforementioned Act supplemented the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act 1 of 1996). The said Act was repealed and replaced by the Disabilities Act. Section 2(m) defines “inclusive education” to mean a system of education wherein students with disability learn together with students without disability and the system is suitably adapted to meet the needs of different types of students. Section 2(s) defines “person with

disability” which includes a person with long term intellectual or sensory impairment. This Act also ensures that persons with disabilities are not discriminated against and that the appropriate Government should provide conducive environment for them. Such persons shall have the right to live in a community and the appropriate Government should take specific measures to promote and facilitate inclusive education. The relevant provisions of the Disabilities Act are reproduced below:

Section 2(m) *“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.*

Section 2(s) *“person with disability” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.*

Section 3. Equality and non-discrimination.—

(1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

(2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.

Section 5 Community life.—

(1) The persons with disabilities shall have the right to live in the community.

(2) The appropriate Government shall endeavour that the persons with disabilities are,—

(a) not obliged to live in any particular living arrangement; and

(b) given access to a range of in-house, residential and other community support services, including personal assistance necessary to support living with due regard to age and gender.

Section 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 section 16, namely:—*

(a) xxxxxx

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

(c) to train and employ teachers, including teachers with disability who are qualified in sign language and Braille and

also teachers who are trained in teaching children with intellectual disability;

(d) xxxxx

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

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

(g) xxxxx

(h) xxxxx

(i) xxxxx

(j) to promote research to improve learning; and

(k) xxxxx.

12. From the above, it is abundantly clear that special children have a fundamental right to elementary education and the right to grow up in society up to their optimum potential. This conclusion is irresistible by virtue of the definition clause of the Right to Education Act. A “child” is every child of the age of six to fourteen years. Some of these children are disadvantaged or have disabilities. They are special children as they need special assistance. They continue to be part of the larger definition of “child” and every “child” has the fundamental right to elementary education. The

State is thus duty bound to ensure that education of such children is not prematurely interrupted and that adequate facilities are made available to them as well as to the schools in accordance with the statutory provisions. Elementary education for special children would mean education commensurate with their physical and mental capabilities and this would include the concept of “inclusive education” as defined in the Disabilities Act. Towards this end, the State has to provide counseling facilities for parents as well so that they may be made to adjust to the limitation of their children and accept their development commensurate with the disabilities. The facts of this case, however, reveal a sorry state of affairs. The mother is unable to adjust to the limitation of her child and the school is unable to sensitize her. Officials of the appropriate Government are not in a position to smoothen out the wrinkles, probably because they themselves lack adequate training and sensitization. They have conducted inquiries in a purely bureaucratic manner and have placed the blame squarely on the child without realizing that the child needs special assistance and that it is their job to provide such assistance or at least make the same available. Resultantly, Mehtab has been excluded from the community and has been deprived of his right to inclusive education.

13. In this entire episode, Mehtab is the loser and so is his mother. The school has been completely remiss in performing its obligations. Keeping in view the fundamental right to education of special children, a very onerous responsibility is cast upon the school which is to provide inclusive education. If difficulties are experienced by the child or by other children due to interaction between them, the school must ensure that

professional guidance is made available for their solution. A school cannot lay the blame on the child or the parent and absolve itself of its responsibilities because it has been set up for the purposes of imparting education and it is its duty to impart such education even in the face of problems. The State should have been aware of all this and should have taken pro-active steps to ensure the continued inclusive education of Mehtab. Instead, the officials adopted a purely bureaucratic attitude and conducted inquiries oblivious of the fact that Mehtab was being deprived of his fundamental right. The actions show that the State remained blissfully unaware of its duties which include provision of necessary infrastructural support such as resource centers and research institutions. Instead, it has supported the school in blaming the child. The actions of the school and the State deserve to be deprecated in the strongest terms.

14. What relief is to be granted under such circumstances? Mehtab has not attended school for the last three years. His mother has sought a school leaving certificate as far back as on 23.09.2020 without success. It is directed that Mehtab be taken back in school. As a penalty, it is directed that till the time Mehtab remains in school, he shall not be charged for his education. It is, however, clarified that in case the mother wants to move him to another institution, school leaving certificate shall be made available on demand. Thus, the writ petition is partly allowed.

15. The appropriate Government cannot be let off so easily as it has miserably failed to fulfil its duties. Let the matter be listed on 15.07.2022 at 2.00 PM when the learned Advocate Generals for the States of Haryana and Punjab as well as the learned Senior Standing Counsel for the Union

Territory, Chandigarh are requested to assist the Court on the issue of making the system more responsive in situations such as the present one.

16. Pending miscellaneous application, if any, stand disposed of.

July 07, 2022
'Ankur Goyal'

(SUDHIR MITTAL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>