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W.P.No.26205 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 17.10.2024**

**CORAM :**

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

**Writ Petition No.26205 of 2024**  
**and WMP Nos.28633 to 28635 of 2024**

R.Kaliyappan

.... Petitioner

-Vs-

1.The State of Tamil Nadu

Rep.by its Principal Secretary to Government  
School Education Department  
Fort.St. George  
Chennai 600 009.

2.The Director of School Education

DPI Campus, College Road  
Chennai 600 006.

3.Teachers Recruitment Board

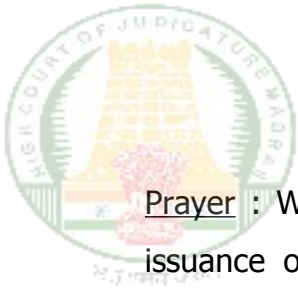
4<sup>th</sup> Floor, DPI Campus  
College Road  
Chennai 600 006.

4.State Commissionerate for Welfare of the Differently Abled,

Rep. by the Director for Welfare of the Differently Abled  
No.5, Kamarajar Salai,  
Lady Willingdon College Campus  
Chennai 600005.

..Respondents

(R4 is suo motu added as the 4<sup>th</sup> respondent  
in this writ petition)



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Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 3<sup>rd</sup> respondent in publishing the ineligible list for the subject Tamil in S.No.5 dated 23.08.2024 insofar as petitioner herein is concerned and to quash the same as being illegal and unsustainable in law and for a consequential direction to the respondents to appoint the petitioner in the post of Graduate Teacher/BT Assistant-Tamil under B.Ed (Spl.Edu.-Mentally Retarded) category in IEDSS pursuant to the recruitment notification No.3/2023 dated 25.10.2023.

For Petitioner : Mrs.N.Kavitha Rameshwar

For Respondents : Mrs.Mythreye Chandru  
Special Government Pleader  
for R1 and R2

Mr.R.Neelakandan  
Additional Advocate General  
Asst.by  
Mr.M.Alagu Goutham  
Standing Counsel  
for R3

Mr.P.Balathandayutham  
Special Government Pleader  
for R4

### **ORDER**

State Commissionerate for Welfare of the Differently Abled, represented by the Director for Welfare of the Differently Abled, No.5, Kamarajar Salai, Lady Willingdon College Campus, Chennai 600005, is suo motu added as the 4<sup>th</sup> respondent in this writ petition.

2.This writ petition has been filed challenging the ineligible list published by the



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3<sup>rd</sup> respondent dated 28.03.2024 insofar as adding the name of the petitioner in that list and for a consequential direction to the respondents to appoint the petitioner to the post of Graduate Teacher/BT Assistant-Tamil under B.Ed (Spl.Edu.-Mentally Retarded) category in IEDSS under recruitment Notification No.3 of 2023, dated 25.10.2023.

3.When the matter came up for hearing on 06.09.2024, this Court passed the following order:

The subject matter of challenge in the present writ petition pertains to the name of the petitioner added at S.No.5 in the ineligible list dated 23.08.2024 and for a consequential direction to the respondents to appoint the petitioner to the post of Graduate Teacher/B.T. Assistant-Tamil under special education in Mentally Retarded category in Inclusive Education for Disabled at Secondary Stage (IEDSS).

2.The petitioner had submitted the application for the post of Graduate Teacher-Tamil and the petitioner belongs to the SC category. The petitioner has specifically claimed for posting under the category of IEDSS. The only area of dispute in the present case is that the Addendum dated 15.11.2023, provides the qualification in which it is stated that the candidate must possess B.Ed., (Special Education) degree with specialisation in Visual Impairment/Hearing Impairment/Mentally Retardation. According to the Teachers Recruitment Board, the petitioner does not possess the qualification



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of B.Ed., special education and whereas, the petitioner only possesses a Senior Diploma which is not enough to consider the candidature of the petitioner under IEDSS category. According to the Board, the Senior Diploma possessed by the petitioner, at the best will enable the petitioner to participate only in those vacancies notified for the Schools run by the Directorate for Welfare of Differently Abled Persons Department.

3.The petitioner has primarily raised two grounds and they are:

- a) The Board is trying to make an artificial distinction between persons who teach differently abled children in the Schools run by the Department for differently abled and those run under IEDSS. According to the petitioner, in both cases, the Special Educator with the respective specialisation alone can teach the differently abled students. Therefore, it is contended that the Senior Diploma possessed by the petitioner is sufficient to consider the candidature of the petitioner under IEDSS.
- b) It is also brought to the notice of this Court that 59 earlier appointments were made under IEDSS Schools and as many as eight candidates who were appointed only possessed Senior Diploma Certificates. The relevant Government Order dated 17.09.2019 along with the Annexure was placed before this Court to substantiate this submission.

4.Insofar as the first issue that was raised by the learned counsel for the petitioner, the submissions made on behalf of the



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petitioner and the Board was heard in length.

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5. Insofar as the second issue is concerned, the learned Standing Counsel shall take instructions and report before this Court. It is seen from records that till now, the post has not been filled up due to non-availability of a candidate.

6. Post this writ petition at the end of the motion list on 17.09.2024.

4. The matter was thereafter listed for hearing on 20.09.2024 and the following order was passed by this Court.

When the matter was taken up for hearing today, learned counsel for petitioner brought to the notice of this Court the schedule to The Rehabilitation Council of India Act, 1992, which specifically gives the list of approved institutions and starting from Sl.No.656 institutions in Tamil Nadu have been dealt with. The petitioner has undergone the senior diploma course at Bala Vihar Training School, which is also one of the approved institutions under this Act. That apart, learned counsel for petitioner also brought to the notice of this Court the NCTE Notification dated 23.08.2010. Even in this notification, at Clause 2, it has been provided as follows:

"2. Diploma/Degree Course in Teacher Education.- For the purposes of this Notification, a diploma/degree course in teacher



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education recognized by the National Council for Teacher Education (NCTE) only shall be considered. However, in case of Diploma in Education (Special Education) and B.Ed. (Special Education), a course recognized by the Rehabilitation Council of India (RCI) only shall be considered."

2. Learned counsel for petitioner also drew the attention of this Court to the notification of the Rehabilitation Council of India (RCI) which has developed the guidelines for the minimum requirement of RCI approved qualification for appointment of Special Education Teachers. Insofar as secondary and senior secondary levels, one of the qualification that has been prescribed is senior diploma apart from the other qualifications recognised.

3. Finally, the learned counsel also brought to the notice of this Court the IEDSS guidelines wherein it is seen that the Central Government provides 100% assistance and the State Government is only expected/required to make provisions for the disabled children. The rationale behind these guidelines is that the children with disabilities constitute one of the largest groups that are still outside the fold of the General Education System. Hence, the scheme wants these children with disabilities to have proper access to secondary education and therefore, under the scheme, every school is proposed to be made disabled-friendly.

4. In the IEDSS guidelines, while prescribing for the qualification of the Special Teachers, the following option has also been specifically prescribed and the same is extracted hereunder:

"(vii) Prescribed qualifications should be adhered to. In case qualified special teachers are not available, teachers with short



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training courses recognised by the Rehabilitation Council of India (RCI) may be appointed with the condition that they will complete the full course within three years of appointment. Special allowance for these teachers will be admissible only after completion of the full course."

5. Learned counsel for petitioner urged this Court to consider the above materials and to grant the relief sought for by the petitioner.

6. Learned Standing Counsel appearing on behalf of third respondent seeks for some more time to take instructions on the query posed by this Court in the earlier order passed on 06.09.2024.

7. Learned Special Government Pleader appearing for respondents 1 and 2 and learned Standing Counsel appearing for third respondent shall take instructions regarding the materials placed before this Court today at the time of hearing.

Post this writ petition at the end of the motion list on 30.09.2024.

5. When the matter was taken up for hearing today, the learned Special Government Pleader appearing on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> respondents filed the written instructions received from the Joint Director [Personnel] Directorate of School Education. On going through the same, it is seen that the official respondent has taken a stand that the petitioner does not have the required qualification prescribed under the Notification issued by the 3<sup>rd</sup> respondent and therefore, the petitioner cannot be considered for selection under this Notification. Insofar as the query that



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was raised by this Court in the earlier order passed on 20.09.2024, the Joint Director has taken the following stand;

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10.If candidates with the qualification prescribed in the Teachers Recruitment Board notification are not available in open market then the Teachers Recruitment Board will inform the same to the user department namely the Directorate of School Education while preparation of final selection list. Then only the Senior Diploma qualified candidates may be considered for selection after getting necessary permission from the Government. Hence the prayer of the petitioner at this point of time is premature.

6.Mr. Neelakandan, learned Additional Advocate General appearing on behalf of the 3<sup>rd</sup> respondent submitted that the Teachers Recruitment Board is yet to send the provisional selection list to the 2<sup>nd</sup> respondent. Only while sending this provisional selection list, the final picture regarding the non-filling of the relevant posts will get more clearer and thereafter, it will be left open to the 1<sup>st</sup> and 2<sup>nd</sup> respondents to take a decision. The learned Additional Advocate General further submitted that till date the relevant posts have not been filled up due to non-availability of candidates possessing the necessary qualification as prescribed under the Notification.

7.Heard Mrs.N.Kavitha Rameshwar, learned counsel for the petitioner, Mrs.S.Mythreye Chandru, learned Special Government Pleader for R1 and R2,



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Mr.R.Neelakandam, learned Additional Advocate General for R3 and

Mr.P.Balathandayutham, learned Special Government Pleader for R4.

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8.The issue that has been raised in this writ petition does not merely confine to the non-selection of the petitioner to the concerned post viz., Graduate Teacher/B.T. Assistant-Tamil under Special Education in mentally retarded category. There is a larger issue that is involved in the present writ petition and this Court has to necessarily go into that issue since it involves the over all rights of differently abled children to undergo inclusive education.

9.The convention on the rights of persons with disabilities that was issued by the United Nations specifically deals with Education under Article 24 of the Convention. For proper appreciation, the entire Article is extracted hereunder:

#### **Article 24**

#### **Education**

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

a. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;



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b. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

c. Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;

b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

c) Reasonable accommodation of the individual's requirements is provided;

d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;



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b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deaf blind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

10.The Rights Of Persons with Disabilities Act, 2016 [hereinafter referred as 'the Act'] was brought into force to give effect to the Unit Nations convention on the rights of persons with disabilities and for matters connected therewith. Three provisions which directly touches upon the education to children with disabilities has to be taken note of by this Court. They are Sections 16, 17 and 31 of the Act. For proper appreciation, these provisions are extracted hereunder:

**16.Duty of educational institutions.** — The appropriate Government



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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.

**17. Specific measures to promote and facilitate inclusive education.—**



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The appropriate Government and the local authorities shall take the following measures for the purpose of section 15, namely:—

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

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

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

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

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

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

(f) to promote the use of appropriate augmentative and alternative modes including means and formats of communication, Braille and sign language to supplement the use of one's own speech to 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) to provide books, other learning materials and appropriate assistive



devices to students with benchmark disabilities free of cost up to the age of eighteen years;

(h) to provide scholarships in appropriate cases to students with benchmark disability;

(i) to make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as extra time for completion of examination paper, facility of scribe or amanuensis, exemption from second and third language courses;

(j) to promote research to improve learning; and

(k) any other measures, as may be required.

### **31. 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.

11. On a combined reading of the United Nations Convention and the provisions of the Act, it is seen that the States are mandated to recognise the right of persons with disabilities to education. The State has to ensure that the persons with disabilities are



not excluded from the general education system on the basis of their disability and that they should be given free and compulsory Primary Education and Secondary Education. The State must also ensure that the persons with disabilities are able to access general tertiary education, vocational training, adult education etc., without discrimination on equal basis with others.

12.Taking cue from the UN Convention, the Act also mandates the appropriate Government and local authorities to ensure that all the educational institutions are funded and recognised to provide inclusive education to the children with disabilities. While doing so, the appropriate Government and local authorities must take specific measures like training and employing 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. The Act also makes special provision for free education for children with benchmark disabilities between the age of 6 to 18 years.

13.It is therefore clear from the above that more sensitivity is required insofar as providing inclusive education to children suffering disabilities and also to have sufficient teachers who are specially trained in the syllabus, to be recruited for this purpose.

14.On the materials placed before this Court, it is seen that many posts under the special category are remaining vacant for a long period of time. The statistics



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shows that nearly 38% of the sanctioned posts have been lying vacant in nearly 22 Government Schools since March 2022. The unfilled vacancies has accumulated over a period of time. This has virtually defeated the very object of bringing the Act into force pursuant to the UN Convention. In view of the same, the Government of Tamil Nadu must initiate steps to ensure that appropriate qualification is prescribed and the special teachers are appointed in all the Government Schools which are expected to provide inclusive education to children suffering from disability.

15. In the case in hand, it is seen that the qualification that has been prescribed under the Notification issued by the 3<sup>rd</sup> respondent, is not in line with the qualification prescribed by the NCTE Notification dated 23.08.2010. In fact, the petitioner in this case had undergone the diploma course in a training school which is an approved institution under the Rehabilitation Council of India Act, 1992. It was also noted in the earlier order that the Rehabilitation Council of India [RCI] has prescribed the guidelines for the minimum requirement of RCI approved qualification for appointment of Special Education Teachers which also includes the completion of the diploma course apart from the other qualifications. This Court also took note of the IEDSS guidelines whereby the State Government is getting 100% assistance from the Central Government to make provisions for the disabled children. This facility is given to ensure that the children with disabilities have proper access to secondary education and therefore, under the Scheme, every school is proposed to be made disabled-friendly. Even under these guidelines, the qualification prescribed by the RCI has



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been recognised for appointment of Special Education Teachers.

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16.The 3<sup>rd</sup> respondent will have to necessarily take into account all the above factors while fixing the qualification for Special Education Teachers whenever a Notification is issued. The Notification should not prescribe such qualification for which there are no eligible candidates. As a result, the 3<sup>rd</sup> respondent is not able to find candidates to fill up the posts and the post continues to remain vacant and ultimately, it is the special children who are not able to get the advantage of qualified teachers. This defeats the object of inclusive education that is contemplated under the Act. This issue requires serious consideration and going forward, the qualification that is prescribed under the Notification issued by the Teachers Recruitment Board must be in line with the qualification prescribed under the NCTE Notification dated 23.08.2010 and also the qualification prescribed by the RCI. This is in view of the fact that the State Government is getting the assistance from the Central Government to make provisions for the disabled children under IEDSS and even the IEDSS guidelines recognises that the prescribed qualification recognised by the RCI should be considered and if in case qualified specialist teachers are not available, short training courses recognised by RCI undergone by teachers can also be appointed with a condition that they must complete the full course within three years from the date of appointment. Thus, while fixing the qualification, the 3<sup>rd</sup> respondent must keep in mind the special requirements of the differently abled children and their right for inclusive education which has been ensured under the Act.



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17.The impleaded 4<sup>th</sup> respondent should also ensure that these directions issued by the Court are followed up whenever such recruitments are made for Special Education Teachers. The impleaded 4<sup>th</sup> respondent shall also follow up and ensure that all the vacancies that are yet to be filled up in the Government Schools are filled up with qualified Special Education Teachers and the differently abled children are brought into the mainstream and provided an inclusive education as contemplated under the Act.

18.It is seen from the provisional selectional list dated 23.08.2024, issued by the 3<sup>rd</sup> respondent that the various posts under the IEDSS starting from Sl.Nos.505 to 517 has not been filled up for want of candidates since they do not fulfil the required qualification as prescribed under the Notification. In view of the same, once again the same situation will continue and the posts for the Special Education Teachers will go unfilled.

19.The written instructions received from the Joint Director, makes it clear that when the 3<sup>rd</sup> respondent informs the 2<sup>nd</sup> respondent that no candidates are available, thereafter steps will be taken to consider the candidates who are qualified with senior diploma seniority list after getting necessary permission from the Government.

20.In the light of the above discussion, this writ petition is disposed of with the following directions:



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(a) The 3<sup>rd</sup> respondent is directed to send individual communication to the 2<sup>nd</sup> respondent with respect to the unfilled posts falling under IEDSS category for all subjects within a period of three weeks from the date of receipt of copy of the order.

The 3<sup>rd</sup> respondent is yet to send the finalised provisional selection list in some of the subjects due to the various cases that are pending before this Court. However, this communication will have nothing to do with the pending cases before this Court since in this category, there are no candidates who are eligible as per the qualification prescribed under the Notification and therefore the 3<sup>rd</sup> respondent need not wait till sending the finalised provisional selection list for all subjects.

(b) On receipt of the communication received from the 3<sup>rd</sup> respondent, the 2<sup>nd</sup> respondent shall coordinate with the 1<sup>st</sup> respondent and the impleaded 4<sup>th</sup> respondent and fill up the vacancies with Special Education Teachers, who possess the senior diploma qualification as prescribed under the NCTE Notification dated 23.08.2010 and Clause (vii) of IEDSS guidelines r/w the RCI Notification dated 11.01.2012. This process shall be completed within a period of twelve weeks thereafter. While undertaking this exercise, the candidature of the petitioner in this writ petition under the category of mental retardation under SC category and the candidature of the petitioner in Review Application No.175 of 2024 under visual impairment in MBC category III locomotor disability, shall be considered. and ;

(c) The 2<sup>nd</sup> respondent who is the appointing authority shall ensure that the



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qualification is prescribed for the Special Education Teachers in line with NCTE Notification dated 23.08.2010 and Clause (vii) of IEDSS guidelines r/w the RCI Notification dated 11.01.2012, for the future recruitment and such qualification shall be prescribed in the future Notification that is issued by the 3<sup>rd</sup> respondent for appointment to the post of Special Education Teachers.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Post this writ petition under the caption 'for reporting compliance' on **18.12.2024.**

**17.10.2024**

Index : Yes  
NCS : Yes  
KP

To

1.Principal Secretary to Government  
State of Tamil Nadu  
School Education Department  
Fort.St.George  
Chennai 600 009.

2.The Director of School Education  
DPI Campus, College Road  
Chennai 600 006.

3.Teachers Recruitment Board



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4<sup>th</sup> Floor, DPI Campus  
College Road  
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4.State Commissionerate for Welfare of the differently abled,  
Rep.by the Director for Welfare of the Differently Abled  
No.5, Kamarajar Salai,  
Lady Willingdon College Campus  
Chennai 600005.

**N.ANAND VENKATESH, J.**

KP



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**Writ Petition No.26205 of 2024**  
**(for reporting compliance on 16.12.2024)**

**17.10.2024**