



\$~1

\*

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

%

*Judgment Delivered on: 01.07.2025*

+

**W.P.(C) 13490/2024 & CM APPL. 56425/2024****AADRITI PATHAK THROUGH HER NEXT FRIEND AND  
NATURAL MOTHER MRS. SADHANA SHARMA .....Petitioner**

Through: Mr. Ashok Agarwal, Mr. Kumar  
Utkarsh, Mr. Manoj Kumar and Ms.  
Ashna Khan, Advs.

versus

**GD GOENKA PUBLIC SCHOOL & ANR. ....Respondents**

Through: Mr. Kamal Gupta and Mr. Sparsh  
Aggarwal, Advs. for R-1.  
Mr. Abhinav Sharma and Ms. Aakriti  
Jain, Advs. for R-2/DoE.

**CORAM:**  
**HON'BLE MR. JUSTICE VIKAS MAHAJAN**

**JUDGMENT****VIKAS MAHAJAN, J**

1. The present petition has been filed seeking following relief:

- i) *issue any appropriate writ, order or direction, directing the respondent GD Goenka Public School to forthwith readmit and allow petitioner, namely, Aadriti Pathak in class 1 or any of the age appropriate class in terms of Section 31 of the Rights of Persons with Disabilities Act, 2016; or in alternative:*



- ii) *issue any appropriate writ, order or direction, directing the respondent GD Goenka Public School to forthwith readmit and allow petitioner, namely, Aadriti Pathak in class 1 or any of the age appropriate class as fees paying student;*
- iii) *issue any appropriate writ, order or direction, directing the respondent Government of NCT of Delhi to take action against respondent school for creating a hostile and unsupportive environment for petitioner to study;*
- iv) *pass any other order or direction or such further orders as may be deemed just and appropriate, in the facts and circumstances of the case and also in the interest of justice, in favour of the petitioner; and*
- v) *allow the present writ petition with costs, in favour of the petitioner.*

2. The case set out in the petition is that the petitioner was born as a normal child on 08.05.2017, with passage of time petitioner experienced delayed milestone in sitting, walking and speech. In November 2019, Dr. Richa Kapoor suspected petitioner to be suffering from Autism and her therapy was started thereafter, but the same was interrupted by Covid-19. The petitioner was admitted to the respondent no.1 school [hereafter the 'school'] in Academic Session 2021-22 under the "Sibling Clause". The parents of the petitioner at the time of admission mentioned the fact of speech delay in the school forms as alleged by the mother of the petitioner.

3. In December 2021, the petitioner was diagnosed with mild autism at Ram Manohar Lohia Hospital, New Delhi, whereafter she was recommended various therapies.

4. Due to onset of Covid-19, classes were conducted online, which were attended by the petitioner, and offline classes resumed in April 2022 when



the petitioner's parents submitted diagnosis and assessment reports of the petitioner to the respondent no.1 school administration.

5. In the petition some incidents have been narrated setting out that school administration had shared its concern about petitioner's behaviour with the parents. Petitioner's mother is stated to have met Principal of the school several times requesting support in the form of a shadow teacher or allowing Special Educator to assist her in the class room, which did not fetch any response. At this stage reference to the mails exchanged between the petitioner's mother and Principal of the school would be apposite.

5.1 *Vide* mail dated 12.12.2022, Principal of the school had flagged behavioural issues of petitioner in the following terms:

*Dear Parent*

*Today you had sent Aadriti to school. As per our last meeting in school we had informed you the problems that we are facing in having Aadriti in the school set up. It was agreed that you would work on the child so that other students, teachers and she herself does not get any harm.*

*This meeting was scheduled after we received complaints from Parents of students and the teachers whom she had been recurrently hitting and sometimes biting. **During the meeting it was made clear to you that upto a certain level that child with special needs can be looked after in school, and beyond that it becomes a limitation and problem for other students.***

*It was thus agreed by you that you would look into the matter and will only send her to school after discussing the improvement.*

*Today in school again she cried very loudly, lying on the floor and running to different corners. It is a matter of concern. She could not be controlled and then you were called to take her back as her own safety too becomes our concern.*



*Please note that we need to be clear on her developmental graph in terms of improvement. And school otherwise is not in a position to compromise on anybody's safety.*

*(emphasis supplied)*

5.2 In response, the petitioner's mother vide email dated 13.12.2022 requested for support from the school and also expressed readiness to give extra support (shadow teacher) to manage the petitioner: The reply email dated 13.12.2022 reads under:

*Dear Madam,*

*Today, I dropped Adriti at 9:00 a.m. and received a call from school at 9:05a.m to take her back. In last meeting you asked us to withdraw Adriti's enrollment from GD Goenka. As we informed you that she had a severe toothache which was operated and done. **Now she is okay to attend her regular school.** Yesterday in school she got some injury in her left ankle and that's why crying badly.*

*Today she was kept in the medical room without offering food. **As discussed, we are also ready to give extra support (Shadow teacher) to manage her. She is now quite progressively improving with little more assistance as shown in the meeting and today I showed to school staff how she was following my instructions. We need some support from your reputed institution.***

*Sending attachment for your kind perusal.*

*(emphasis supplied)*

5.3 Another email received by the petitioner's mother from Principal of the school on 14.12.2022 again points out some behavioural issues of the petitioner and indicates that there was some suggestion from the school for withdrawal and change of petitioner's school ostensibly with an intent to help the child. The mail dated 14.12.2022 reads as under:

*"Dear Parent*

*Today you had sent Aadriti to school. As per our last meeting in school we had informed you the problems that*



*we are facing in having Aadriti in the school set up. It was agreed that you would work on the child so that other students, teachers and she herself does not get any harm.*

*This meeting was scheduled after we received complaints from Parents of students and the teachers whom she had been recurrently hitting and sometimes biting. **During the meeting it was made clear to you that upto a certain level that child with special needs can be looked after in school, and beyond that it becomes a limitation and problem for other students.***

*It was thus agreed by you that you would look into the matter and will only send her to school after discussing the improvement.*

*Today in school again she cried very loudly, lying on the floor and running to different corners. It is a matter of concern. She could not be controlled and then you were called to take her back as her own safety too becomes our concern.*

*Please note that we need to be clear on her developmental graph in terms of improvement. And school otherwise is not in a position to compromise on anybody's safety."*

*(emphasis supplied)*

6. Thereafter, for further guidance, petitioner's parents consulted Dr. Imran Noorani at Ganga Ram Hospital, who assessed the petitioner and assured that she was a capable child who could thrive in an integrated system with appropriate support. The relevant recommendation in the Child Development Report given by Dr. Imran Noorani, reads as under:

*"To explore child's assets and build on them there should be an integrated and multidimensional approach from home, school and the therapists for future goals."*

7. Further case propounded by the petitioner is that due to constant pressure and lack of support from the school, education of the petitioner was



discontinued from 01.01.2023, however, it has been claimed that fee of the petitioner was paid till March 2023.

8. Before filing the present writ petition, the petitioner through her mother/next friend had sent a legal notice to Principal of the school calling upon her to allow the petitioner to resume her classes of Class I in the academic year 2024-25 and further allow her all facilities to which she is entitled to in law being a person with disabilities.

9. The said notice was responded by the school *vide* its letter dated 11.09.2024 wherein it was mentioned that notwithstanding non-disclosure of petitioner's disability in the admission form, the school in line with its inclusive education policy, decided to accommodate the petitioner in all fair means but the petitioner exhibited severe behavioural issues, including aggression towards staff and students, as well as, disruptive behaviour, which did not improve despite several interventions and multiple meetings with her parents. Following these discussions, the parents voluntarily withdrew the petitioner from the school. Accordingly, there was no continuity of petitioner and more particularly for the entire Academic Session 2023-24, which implies that the petitioner was off the school's records and stands withdrawn. Therefore, there is no basis for her to resume studies in Class 1 for the academic year 2024-25, in the school. The relevant text of school's reply letter dated 11.09.2024 reads as under:

***1. Disclosure of Disabilities: Aaditri Pathak was admitted to GD Goenka Public School on March 22, 2021, for the academic session 2021-22 in Grade Nursery. It is pertinent to note that at the time of admission, there was no disclosure of any disabilities in the admission form. The absence of this information would have ordinarily led to a cancellation of admission. Nevertheless, in line with our inclusive education policy, the school decided to***



*accommodate Aaditri Pathak in all fair means.*

xxx

xxx

xxx

**3. Behavioural Issues and Withdrawal:** During her time at school, Aaditri Pathak exhibited severe behavioural issues, including aggression towards staff and students, as well as disruptive behaviour. Despite several interventions and multiple meetings with her parents to address these concerns, her behaviour did not improve. On December 14, 2022, the safety concerns associated with Aaditri Pathak's behaviour were thoroughly discussed with her parents, including the risk of self-harm. Following these discussions, the parents voluntarily withdrew Aaditri Pathak from the school. Accordingly, there was no continuity of Baby Aadriti Pathak since then and more particularly for entire session 2023-24, it clearly implies Baby Aadriti Pathak was off the school records and stands withdrawn accordingly.

**4. No Current Enrolment:** Given the circumstances outlined above, Aaditri Pathak has not been enrolled in any academic session subsequent to her withdrawal. As such, there is no basis for her to resume studies in Class 1 for the 2024-25 academic year at G D Goenka Public School Model Town.

(emphasis supplied)

10. The school has filed a short reply to the petition, in which various averments made in the petition have not been controverted. However, stand taken is that since the parents of the petitioner, as per their own case did not send the child to school during anytime between 01.01.2023 till date, therefore, there is no lien on the seat in favour of a candidate who does not attend school for a long period of more than one year. Further, the petitioner did not pay the school fee for the academic year 2023-24. It is further contended that since parents of the petitioner were the one who withdrew their child from school, there was nothing further required or expected to be



done by the school in this regard. The relevant extract from short reply filed by the school reads as under:

*10. Without prejudice to the above, it is submitted that admittedly and undisputedly, as per their own averments made in the Writ Petition, the parents of the Petitioner did not send their child to the School during any time between 1.3.2023 till date. There is no lien on the seat in favour of a candidate, who does not attend School for a long period of more than one year. The parents of the Petitioner also did not pay the School fees for the year 2023-24. It was a clear act of leaving the School on their part and required nothing to be done by the School. As a matter of fact, since the parents of the Petitioner were the ones, who withdrew their child from the School, there was nothing further required or expected to be done by the School in this regard. The factual story and narration now pleaded by the parents of the Petitioner in the Writ Petition against the School, is absolutely false & frivolous and in any case cannot be gone into in summary writ proceedings. The allegations leveled against the School, stand belied by the email dated 29.8.2024, sent by the mother of the Petitioner to the School, praising the School for the quality education and supportive environment and mentioning that the Respondent No.1 School would be the ideal place for the Petitioner to continue her academic journey. It may however, be noted that the said letter dated 29.8.2024, was written by the mother of the Petitioner after having not succeeded to get admission in the School under the EWS/DG/CWSN category, which is wholly conducted and controlled by the DoE by way of an online draw of lots and there is no special right in favour of any single EWS/DG/CWSN candidate.*

*(emphasis supplied)*

11. During the course of one of the hearings of the present petition held on 19.02.2025, the Principal, as well as, Administrator of the respondent no.1 school had appeared before this court in person and submitted that it is not in the interest and welfare of the petitioner to continue in integrated school and that the petitioner needs to be admitted in a special school. On



the other hand, the mother of petitioner who was also present in person, had submitted that the petitioner may be allowed to continue in the same school and a shadow teacher may be provided. The mother even stated to an extent that they are ready to bear the expenses of such facility. Considering rival contentions, this court directed Inclusive Education Branch under DoE to appoint a Board which would interact with the petitioner and furnish a report stating what is in the best interest of the child – whether she should study in the present school/integrated school or admitted in a special school. Further directions were given that the Board shall interact with the parents of the petitioner and the Principal/Administrator of the respondent no.1 school. The order dated 19.02.2025 reads thus:

***“Ms. Rima C. Ailawadi, Principal of respondent/school and Ms. Bhawna, Administrator have appeared in person and submitted that it is not in the interest and welfare of the petitioner to continue in the integrated school. It has been submitted that the petitioner needs to be admitted in a special school.***

xxx

xxx

xxx

***Without going into all these contentions, Inclusive Education Branch under Directorate of Education is directed to appoint a board who shall give a report after interacting with the petitioner/child that what is in the best interest of the child that she be entitled to study in the present school/integrated school or she should be admitted in a special school. The board shall also interact with the parents of the petitioner and the Principal/Administrator of school.”***  
(emphasis supplied)

12. In deference to the aforesaid directions, a report was furnished by the designated committee, which is reproduced hereinbelow *in extenso*:



### **“Report of the Committee**

*In compliance of Order No. F.580/DDE (IEB)/Admn.cell/Court Case/2024/893-896 dated 25-02-2025 on the directions of Hon'ble High Court in WPC 13490/2024 Cm Appl. 56425 following actions were taken by the committee:*

*The designated committee met the Parent (Mother) of the petitioner and petitioner at District Resource Centre SKV, Adarsh Nagar, Delhi on 27/02/2025 for interaction with the parent and doing detailed assessment of the concerned child i.e. Aadriti Pathak which was completed by recommended Clinical Psychologist, Occupational Therapist and PGT-SET. Their detailed findings/case reports are attached from page no. 17 to 23.*

*The committee members also met on 28/02/2025 at District Resource Centre, SKV, Adarsh Nagar Delhi to continue the interaction with the petitioner, her parent (Mother) and concerned school authorities i.e., Ms. Rima C. Ailawadi (Principal- G D Goenka Public School) and Ms. Bhawna/Bhavina (Administrator- G D Goenka Public School) to understand the concerns of both parties. Copies of attendance are attached.*

*The following are the committee's insights/recommendations after interacting with them and conducting the assessment of the child:*

- *Her parent (Mother) wants regular schooling for her daughter in a supportive environment.*
- *School Authorities are looking at child from the view of 2021 when she was at the age of 3 year and not diagnosed with any disability.*

*At present –*

- *The child can follow commands and comprehend the given instructions.*
- *Her attention can be aroused and sustained for the required period of time.*
- *She completes the given task before moving to the next.*
- *The child is doing well academically and cope up with the grade expectations provided intensive educational support is continued at home too.*



- *The parent needs to continue with therapeutic interventions to address child's sensory and behavioral concerns.*
- *To cope up with the school routine and classroom expectations, a Shadow Teacher should be attached with the child during school hours.*

***It is in the best interest of the child that she gets age appropriate class placement to study in the present school along with Shadow Teacher's support. In addition, the school must ensure that the child avails all the accommodations/adaptations, a child with special needs is entitled for.***

*Enclosure:*

1. Copy of Order of DoE.
2. Copy of Hon'ble High Court Order dt 19/02/2025.
3. Copy of child's Medical reports/papers.
4. Copy of child's Disability certificate and UDID card.
5. Copy of Attendance of the members dt. 27/02/2025.
6. Copy of Attendance of the members dt. 28/02/2025.

<b><i>S.No.</i></b>	<b><i>Name of the official</i></b>	<b><i>Designation</i></b>	<b><i>Signature</i></b>
1.	Mrs. Sakshi Arora	Supervisor Inclusive Education District (West A)	-sd-
2.	Sh Ganesh Kumar Verma	Supervisor Inclusive Education Zone (Zone-X, North West A)	-sd-
3.	Sh Parvesh Kumar	PGT-SET	-sd-
4.	Ms Arushi Sikri	Clinical Psychologist	-sd-
5.	Ms. Anushka Tyagi	Occupational Therapist	-sd-

(emphasis supplied)

13. There is another facet to the controversy. During interregnum the petitioner's parents tried for her admission under 'children with special needs' [CWSN] category. The respondent no.2/DoE [hereafter the 'DoE'] had issued a circular dated 24.04.2024 for admissions under the EWS/DG/CWSN category for the Academic Session 2024-25 in entry level



classes, pursuant to which the petitioner applied for online admission in Class I under CWSN Category and opted four schools amongst the choices.

14. As luck would have it, in the draw of lots, the petitioner was allotted seat in the respondent school in Class I for the academic session 2024-25 with Registration ID 20240046691 under the CWSN category. However, the petitioner was not granted admission by the school under CWSN category.

15. The reason for such denial, as put forth by the DoE in its counter-affidavit, is that the school had submitted to the DoE that the petitioner was already studying in the school under the General category having taken admission in the academic session 2021-22, however, the petitioner showed aggressive and unpredictable behaviour.

15.1 The DoE has further stated that the school *vide* its letter dated 03.06.2024 had written to the DoE that it has received names of six (06) students in Class I under the EWS/DG/CWSN category despite having no vacant seats under the said category and accordingly, request was made to withdraw and accommodate said six allotted students.

15.2 Pursuant to request of the school, said six students were adjusted in the second round of draw of lots and were allotted another school of their respective choice. In the process, the petitioner was also allotted another school namely, MaxFort School, Parwana Road, Pitampura, Delhi-110034. However, the candidature of the petitioner was rejected by the allotted MaxFort School as per the status available in the Online MIS Portal of DoE for the reasons that the petitioner did not provide valid documents.

15.3 The relevant excerpts from the counter-affidavit of DoE reads as under:



5. That in pursuant to the Answering Respondent Circular dated 24.04.2024, the Petitioner applied for online admission in class I under “Children with special needs” (CWSN) category and selected four school among the choices and as per availability of seats. That the Respondent No. 1 School was chosen as the only choice among 0-3 kms category while 3 other schools were chosen in the above 6 kms category.

XXXX

XXXX

XXXX

XXXX

7. That the petitioner was allotted seat in respondent no.1/school in Class I for the academic session 2024-25 with registration ID 20240046691 under CWSN category.

8. That the Respondent No. 1 School has submitted to the Answering Respondent that the Petitioner was already studying in the Respondent No. 1 School under the General category having taken admission in the academic session 2021-22 however the Petitioner showed aggressive and unpredictable behavior.

XXXX

XXXX

XXXX

XXXX

13. That due to the allotment of the Petitioner and other students in Class I under EWS/CWSN category, the Respondent No. 1 School vide letter no-GDGPS/EDU/2024-25/012 dated 03.06.2024 submitted to the Answering Respondent that it already has 50 students (25% of the total enrolment in Class I) under the EWS/DG/CWSN category for the academic session 2024-25 and submitted that it received name of 6 students in Class I under EWS/DG/CWSN category despite having no vacant seat under the EWS/DG/CWSN category in Class I and requested to withdraw and accommodate these 6 allotted students accordingly. A True copy of letter dated 03.06.2024 is annexed herewith as ANNEXURE R-2.

XXXX

XXXX

XXXX

XXXX

15. The Respondent No. 1 School vide letter dated 26.06.2024 submitted that its representation letter no-GDGPS/EDU/2024-25/012 dated 03.06.2024 has already been



*submitted to the Answering Respondent. True copy of Respondent No. 1 School letter dated 26.06.2024 is herewith annexed as ANNEXURE R -4.*

***16. That while deciding the representation made by Respondent No. 1 School to the Answering Respondent, the Petitioner and other students who were allotted in Class I in the first computerized draw of lots were adjusted in the second round of adjustment (dated 22/08/24) and were allotted another school of their choice. This was done on account of the fact that the seats in the Respondent No. 1 School had been duly filled and there were no vacant seats for accommodating the said 6 students. Accordingly, the other 6 students were accommodated by way of alternative allotment in terms of the preferences selected by them in their application/registration forms.***

(emphasis supplied)

16. Mr. Ashok Agarwal, learned counsel for the petitioner submits that petitioner was admitted in the school under the general category, on the basis of sibling points, and not under the CWSN quota. He submits that despite payment of full fees up to March 2023, the petitioner's parents were pressurised to withdraw petitioner from the school without any official withdrawal being sought.

17. He submits that autism spectrum disorder (ASD) is a neurodevelopmental condition, not a mental illness or intellectual disability. He submits that the school falsely alleged concealment, and later, despite multiple written requests, refused re-admission or continuation, resulting in two academic years of unjust deprivation.

18. He refers to Section 31 of the Rights of Persons with Disabilities Act, 2016 [hereafter the 'Act'] which mandates the right to free education in a neighbourhood or special school of choice for every child with benchmark



disabilities between 6 to 18 years of age. He also invites attention of the Court to Section 16 and 17 of the Act, which obligate recognized educational institutions to ensure inclusive education and reasonable accommodations, including individual support.

19. He submits that the school failed to appoint or permit a shadow teacher or special educator, despite requests by the parents and recommendations by the Court-appointed expert committee constituted by the Directorate of Education pursuant to this Court's order dated 19.02.2025. He contends that the said committee report dated 25.02.2025 fully supports the continuation of the petitioner in the school with appropriate accommodations, as per statutory rights under the Act and the RTE Act, 2009.

20. He submits that the said committee report is also in consonance with the decision of this Court in ***W.P.(C) No. 6771/2008*** titled as ***Social Jurist v. Govt. of NCT of Delhi***, wherein it was held that all private recognized schools are duty-bound to appoint special educators to provide inclusive education and cannot deny admission to children with disabilities.

21. *Per contra*, Mr. Kamal Gupta, learned counsel appearing on behalf of the school, submits that the petitioner is not entitled to the reliefs sought in the present writ petition as there exists no vacancy in Class-I of the school, either in the General or CWSN category, for the academic years 2024-25 or 2025-26. In support of his contention, he placed reliance on the Circular dated 17.01.2024 issued by the Directorate of Education (DoE), which clearly states that there are no available seats in the said categories for the relevant academic years.



22. He submits that admissions of Children with Special Needs (CWSN) in private unaided recognized schools are to be conducted solely through a centralized computerized draw of lots managed by the DoE, as held by a Division Bench of this Court in ***W.P.(C) 1225/2014*** titled as ***Pramod Arora v. Hon'ble Lieutenant Governor of Delhi, 2014 SCC OnLine Del 1402***.

23. He submits that the petitioner was admitted in the general category in March 2021 on the basis of sibling points, but without disclosing her disability, which had been suspected as early as 2019, therefore, the admission stands vitiated on account of withholding of material information.

24. He submits that after the petitioner ceased to attend the school from January 2023, and there was a complete lack of communication for over 20 months, including non-payment of fees. In the meanwhile, the petitioner herself participated in the DoE-conducted draw of lots for CWSN category in 2024 and was allotted Maxfort School, Pitampura. The petitioner's belated communication on 29.08.2024 came only after the failure to secure admission elsewhere, and cannot revive any entitlement in the school.

25. He submits that the petitioner's right to education has not been denied, but rather fulfilled through a valid allotment made by the competent authority in accordance with due process. The reason cited by the petitioner to contend that the allotted "Maxfort School" is not appropriate, is not legally tenable, particularly when admission was made through a transparent lottery system applicable to all applicants alike.

26. He submits that the right to education in a neighbourhood or special school under Section 31 of the Act is contingent upon availability and suitability, and cannot override seat limitations or institutional readiness. There is no statutory mandate for over-enrolment in a particular private



school to accommodate every preference, especially where other options have been offered.

27. He further submits that the petitioner cannot claim a lien on the general category seat, having been absent for over two academic sessions without any fee payment or active engagement. The seat could not have been kept vacant indefinitely, and no School Leaving Certificate was issued, as the school treated child's exit as a *de facto* withdrawal. Without prejudice, Mr. Gupta contends that the core issue is whether the withdrawal was forced or voluntary, which raises disputed question of fact not suitable for adjudication under writ jurisdiction.

28. Mr. Abhinav Sharma, learned counsel appearing on behalf of Respondent No.2/Directorate of Education (DoE), has argued on the lines of counter affidavit filed by DoE.

29. He further submits that DoE is open to advising the school to give due preference to the petitioner in the event a vacancy arises in a future academic session, keeping in mind the fact that she was previously enrolled there and considering her individual needs.

30. In rejoinder, Mr. Agarwal, on instructions from mother of the petitioner, confined his submission to the prayers in clauses (ii) and (iii), as quoted in opening paragraph of the judgment, and gave up relief sought for admission and free education under the CWSN category in terms of Section 31 of the Act read with Right to Education Act, 2009.

31. Having heard the rival contentions, the only surviving controversy in the present petition is whether any direction as prayed can be given for petitioner's admission in Class I, or any of the age-appropriate class, of the respondent school, as fee paying student.



32. For exploring the answer to the aforesaid question, the following provisions of the Act needs to be adverted to:

**Section 2(h) “discrimination”** in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation;

XXXX

XXXX

XXXX

XXXX

**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;

XXXX

XXXX

XXXX

XXXX

**2(r) “person with benchmark disability”** means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;

**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;

XXXX

XXXX

XXXX

XXXX

**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.*

XXXX

XXXX

XXXX

XXXX

***Section 16. Duty of educational institutions.—The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall—***

***(i) admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;***

*(ii) make building, campus and various facilities accessible;*

*(iii) provide reasonable accommodation according to the individual's requirements;*

***(iv) provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;***

*(v) ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication;*

*(vi) detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;*

*(vii) monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;*

*(viii) provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs.*



***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) 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.

XXXX

XXXX

XXXX

XXXX

**Section 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.**

33. One of the salient features of the Act provided in the statement of objects and reasons of the Act is that *‘the persons with disabilities enjoy various rights such as right to equality, life with dignity, respect for his or her integrity, etc., equally with others.’* Section 16 of the Act makes it obligatory on part of ‘appropriate government’<sup>1</sup> and local authorities to make an endeavour that all educational institutions funded or recognized by them provide inclusive education to the children with disabilities. It further provides that to achieve said end, the schools shall admit such children without discrimination and provide education and opportunities for sports and recreation activities equally with others.<sup>2</sup> There is further mandate that the educational institutions shall provide necessary support individualized or

<sup>1</sup> Section 2(b) “appropriate Government” means,— (i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 2006 (41 of 2006), the Central Government;

<sup>2</sup> Clause (i) of Section 16 of the Act.



otherwise in environments that maximize academic and social development consistent with the goal of full inclusion.<sup>3</sup>

34. Clause (vii) of the Section 16 makes it obligatory on part of the educational institutions to monitor participation, progress in terms of the attainment levels and completion of education in respect of every student with disability. Likewise, clause (viii) of the section makes it imperative for the educational institutions to provide transport facilities to the children with disabilities, as well as, for the attendant of the children with disabilities having high support needs.

35. The provisions of the Act have been referred to hereinabove to highlight that the law provides for creating a level playing field for the children with disability in so far as the imparting education to them is concerned. It is thus, the statutory duty of the educational institutions funded and recognized by the government to provide best educational environment to the children with disabilities and to motivate them to achieve their dreams like any other normal child.

36. The Courts have also been sensitive to the children with special needs and had taken sympathetic view in number of judgments. Illustratively, reference may had to the decision in *Avni Prakash v. National Testing Agency (NTA) and Others, (2021) SCC OnLine SC 1112*, wherein the Hon'ble Supreme Court while examining a writ under Article 226 of the Constitution of India in which the petitioner was seeking effective implementation of the provisions of the Act for ensuring participation of the students with disabilities in the society, observed as under:

---

<sup>3</sup> Clause (iv) of Section 16 of the Act.



*“40. Education plays a key role in social and economic inclusion and effective participation in society. **Inclusive education is indispensable for ensuring universal and non-discriminatory access to education. The Convention on Rights of Persons with Disabilities recognises that inclusive education systems must be put in place for a meaningful realisation of the right to education for PwD. Thus, a right to education is essentially a right to inclusive education. In India, the RPwD Act, 2016 provides statutory backing to the principle of inclusive education.**”*

(emphasis supplied)

37. Also in *Social Jurist, A Civil Rights Group v. Govt. of NCT of Delhi and Anr., 2009 SCC OnLine Del 2939*, a division bench of this Court emphasis that no disabled child can be denied admission on the ground that the school does not have necessary facilities. The relevant para is reproduced as under:

*“8. It is brought to our notice that in some cases the disabled children are being denied admission on the ground that the school do not have the necessary facility. This is clearly contrary to our order dated 19.2.2009. It is made clear that no disabled child shall be refused admission in any of the schools either run by the State Government or the local bodies.”*

38. In *Rajneesh Kumar Pandey v. Union of India, (2021) 17 SCC 1*, the Court as a stopgap arrangement directed that schools imparting education to children with special needs must maintain appropriate pupil-teacher ratio. The relevant para reads as under:

*“67. As a stopgap arrangement until the competent authority formulates a comprehensive action plan including to specify the norms and standards regarding pupil-teacher ratio to be maintained by the schools concerned imparting education to CwSN, we are persuaded to adopt the pupil-teacher ratio*



*ascertained in this decision as 8 : 1 for children with cerebral palsy; 5:1 for children with intellectual disability, ASD and specific learning disabilities; and 2 : 1 for deaf-blind and a combination of two or more of the seven disabilities mentioned in Recommendation No. (iii) noted above. Indeed, the teachers to be so appointed need to be duly qualified, recognised and registered with the Council in light of Section 13 of the 1992 Act.”*  
(emphasis supplied)

39. As noted above, the petitioner is no more pressing for her admission under the CWSN category for which she was allotted the seat by DoE; rather the prayer which is being pressed is for re-admission in the school as fee paying student, therefore, the contentions of the parties concerning admission under the CWSN category need not be adverted to. However, it appears that the petitioner had tried for admission under the CWSN category only when doors of the school were shut on her. Even when the petitioner was coincidentally allotted respondent no.1/school under CWSN category through draw of lots, it seems that the respondent school betraying the hope of the petitioner apprised DoE that the petitioner was already studying in the Respondent No. 1 School under the General category having taken admission in the academic session 2021-22, however, she showed aggressive and unpredictable behaviour. Subsequently, on the request of the school, the said allotment was also withdrawn and the reason put forth by the respondents is that there was no vacancy in the school under the category of EWS/DG/CWSN.

40. Insofar as Mr. Gupta's submission that petitioner's parents had withdrawn the petitioner from school and thereafter she had not attended the school for one complete academic session i.e. 2023-24, it is noticed that reply dated 11.09.2024 sent by the school in response to the legal notice, as



well as, the order of this Court dated 19.02.2025 suggests the stance of the school was not to continue the petitioner citing petitioner's behavioural issues and safety concerns associated therewith. Indubitably, the petitioner had to stop attending school from January 2023, but the record makes it abundantly clear that this was not due to a desire to withdraw, but due to the school's unwillingness to meaningfully accommodate her evolving needs.

41. As regards Mr. Gupta's contention that there was non-disclosure of material fact by the parents of the petitioner at the time of seeking admission, which vitiates the admission, it is important to note that it is the case of the petitioner that petitioner at the time of birth was a normal child. On account of delayed milestone in sitting, walking and speech, Dr. Richa Kapoor in November 2019 had suspected the petitioner to be suffering from autism after which therapy was started but the same was interrupted by Covid-19. However, in December 2021, it was finally diagnosed at Ram Manohar Lohia Hospital, New Delhi that the petitioner was a case of mild autism. Therefore, at time of petitioner's admission for the session 2021-22, she had not been finally diagnosed to be a patient of mild autism. Further, since the school in its reply to the legal notice dated 05.09.2024 has taken a stand that despite non-disclosure of petitioner's disability in the admission form, the school in line with its inclusive education policy, decided to accommodate the petitioner in all fairness, the question of school now again raising an objection of non-disclosure does not arise.

42. Mr. Gupta's contention that there existed no vacancy in Class I of the school either in General or CWSN category for the Academic Session 2024-25 or 2025-26, cannot be accepted. The school cannot be allowed to defeat petitioner's right to inclusive education by raising technical issues. No



provision of law has been pointed out, and there exists none which provides that class strength or size, is rigid and inflexible not admitting an extra student. At the same time, the right to inclusive education under the Act is not symbolic but an enforceable right, and no child can be deprived merely due to the institutional unwillingness to adapt.

43. Further, the designated committee pursuant to the order of this Court has opined that it is in the best interest of the child that she gets age appropriate class placement to study in the present school along with shadow teacher's support. In addition, the committee has also recommended that the school must ensure that the child avails all accommodations / adaptations, a child with special needs is entitled for.

44. Clearly, the petitioner is a child with abilities that can flourish in the right environment. She has to be integrated into the school community. Her behaviour flagged by the school, rather invoking apprehension should have triggered support. Instead, school's response seems to have been one of distancing, resulting in what was effectively a deprivation of petitioner's statutory rights, *albeit* without justifiable premise. The actions of the school reveal an institutional approach that failed to evolve in consonance with the needs of the petitioner, as person with disabilities. At the cost of repetition, it is reiterated that the statutory obligations under the Act are enforceable duties meant to ensure full and effective participation of children with disabilities in all walks of life, particularly in education.

45. The parents' repeated communications, willingness to provide a shadow teacher, and continued readiness to pay fees even without attendance demonstrate unwavering intent to secure the petitioner's right to



education in an inclusive environment of the school, where her elder sibling is also studying.

46. Even if the petitioner was later allotted another school through the draw of lots under the CWSN category, that was part of a separate admission process, which the petitioner was possibly constrained to resort, when she did not get support from the school. But that does not extinguish her right to continue her education as a general category, fee-paying student in the very school she had already been admitted to, especially in the absence of any formal withdrawal or issuance of School Leaving Certificate.

47. It needs no emphasis that ‘inclusive education’ is not merely about access to education; it is about belongingness. It is also about recognising that every child has a place in the classroom not because they are the same, but because they are different, and that difference enriches the learning environment for all.

48. In view of the above discussion, and regard being had to the report of the committee, this Court is of the considered opinion that ends of justice would be met by permitting the petitioner to resume her education in the respondent no.1/school in an inclusive setup. Accordingly, the following directions are issued:

- i) The respondent no.1/school is directed to readmit the petitioner, Aadriti Pathak, in Class I or in an age-appropriate class, as a fee-paying student, within two weeks from the date of this judgment.
- ii) The petitioner shall be permitted to attend school with the assistance of a parent-appointed shadow teacher, subject to the school’s basic norms of decorum and safety.



- iii) The DoE shall monitor the reintegration of the petitioner and ensure that the school provides an inclusive and non-discriminatory environment in accordance with Sections 3 and 16 of the Act.
- iv) The respondent no.1/school shall file a compliance affidavit within four weeks, detailing steps taken to accommodate and support the petitioner as directed.
49. The petition, alongwith pending application, is disposed of.

**JULY 01, 2025/dss**

**VIKAS MAHAJAN, J**