

Siddharth International Public School vs Motor Accident Claim Tribunal & Anr on 21 September, 2016

Author: Sangita Dhingra Sehgal

Bench: Chief Justice, Sangita Dhingra Sehgal

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Pronounced on: September 21, 2016
+ LPA 517/2016 & C.M.No.34123/2016 (stay)
SIDDHARTH INTERNATIONAL
PUBLIC SCHOOL Appellant
Through: Mr.R.M.Sinha, Adv. with
Mr.Sandeep Khatri, Mr.P.M.Sinha, Ms.Namita
Sinha, Advs.

Versus
MOTOR ACCIDENT CLAIM
TRIBUNAL & ANR Respondents

Through: Mr.Shadan Farasat, Adv. with Mr.Ahmed Said, Adv. for R-2.

CORAM:

HON'BLE THE CHIEF JUSTICE HON'BLE MS. JUSTICE SANGITA DHINGRA
SEHGAL : Ms. G. ROHINI, CHIEF JUSTICE

1. This appeal is preferred against the order of the learned Single Judge dated 26.08.2016 in W.P.(C) No.2699/2016. The writ petitioner is the appellant before us.

2. We have heard the learned counsel for both the parties.

3. As could be seen from the material available on record, Master Priyanshu, aged about 7 years, was injured in a motor accident and his left leg was amputated below knee. In the petition (MACT No.123/11) for compensation pending before Motor Accidents Claims Tribunal (MACT), NE, Karkardooma Courts, the mother of the injured boy moved an application seeking a direction that the boy be admitted in a school under the 'Economically Weaker Section' (EWS Category) stating that he was unable to go to the school as the financial condition of the family was not good. On 18.01.2016, MACT passed an order directing Siddharth International Public School (the writ petitioner/appellant herein), which is nearby to the residence of the injured boy, to consider the admission of Master Priyanshu in the EWS Category. By order dated 14.03.2016, it was further directed by MACT that Master Priyanshu shall be admitted in Ist Standard.

4. Assailing the said order passed by MACT, Siddharth International Public School (hereinafter referred to as 'the appellant school') filed W.P.(C) No.2699/2016 contending inter alia that Master Priyanshu is not eligible for admission since he crossed the upper age limit prescribed under the statutory rules for admission to Class I. It was also contended that MACT did not have the jurisdiction to direct admission of Master Priyanshu in the appellant school, more particularly, in the absence of vacant EWS seats in the appellant school.

5. After hearing both the parties, the learned Single Judge held that the direction by MACT to admit in the appellant school under EWS Category is without jurisdiction and accordingly set aside the same. However, in exercise of the jurisdiction under Article 226 of the Constitution and in accordance with Section 12(c) of the Right to Education Act, 2009 (for short 'RTE Act'), the learned Single Judge disposed of the writ petition reiterating the direction that the appellant school shall grant admission to Master Priyanshu in Class I. The relevant portion of the order of the learned Single Judge dated 26.08.2016 may be reproduced hereunder for ready reference:

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

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

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

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

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

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

39. This Court is of the view that as Master Priyanshu has not had any prior formal education, Class 1 which is the first class for formal education is the ideal class for him to begin his education. This view is also in consonance with the reports filed by the Field Officer and co-counsel for the respondent no.2- DOE.

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

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

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

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

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

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

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

6. The said order is assailed in the present appeal by the appellant school.

7. It is vehemently contended by Shri R.M. Sinha, the learned counsel appearing for the appellant that the finding of the learned Single Judge that one seat is vacant under EWS Category in the First Standard of the appellant school is erroneous and factually incorrect. While submitting that there were only seven seats under the EWS Category i.e. 25% of total number of students of the First Standard and all the said seats were already filled up and that the complete list of EWS students for the Session 2016-17 was also sent to the Directorate of Education, it is contended by the learned counsel that the direction of the learned Single Judge virtually amounted to compelling the appellant school to act contrary to the mandatory provisions of RTE Act by exceeding the statutory limit of 25% of the strength of the particular Class under EWS Category. It is also contended that since the child had already been admitted in Class I in local municipal school and the object of RTE Act has been fulfilled, the direction to admit him in the appellant school is unwarranted and unjustified.

8. We have also heard Shri Shadan Farasat, the learned counsel appearing for the Government of NCTD/respondent No.2.

9. The contention that there were only seven seats under EWS Category was considered and negated by the learned Single Judge in the light of Clauses 3 and 4 of the order of the Government of NCT of Delhi dated 07.01.2011 and Clause 2(d) of the Guidelines for Admission to Entry Level Classes in Private Unaided Recognized Schools of Delhi. It is relevant to note that the Deputy Education Officer, Zone-VI, Directorate of Education, GNCTD filed an affidavit dated 05.04.2016 in the writ petition stating that -

"In case of the Petitioner Siddharth International Public School, the said Petitioner School had a total of thirty-eight (38) seats for the academic year 2015-16 in the pre-primary class. Thus, as per the statutory mandate, a total of nine (9) seats had to be reserved for EWS category students. However, as per records submitted by the Petitioner School itself for the academic year 2015-16, in pre-school, only seven (7) students were admitted for EWS category. Thus, at least two (2) EWS Category seats were vacant in pre-primary category for the year 2015-16. As the students of Pre-primary Grade for 2015-16 will get promoted to Class I for the academic year 2016-17, there are at least two vacancies in EWS Category in Class I for the year 2016-17. A True Copy of the Chart Showing the Total Class- wise and Category-wise enrolment of students in the Petitioner School for 2015-16 is annexed herewith as Annexure A-5 at page 13."

10. In the light of the said affidavit, we do not find any substance in the contention of the appellant that there are no vacancies under the EWS Category and that the appellant school had already satisfied the 25% requirement mandated under RTE Act.

11. Even assuming that the plea of the appellant that the 25% seats under EWS Category were already filled up is correct, in our considered opinion, the same cannot be a ground to interfere with the direction of the learned Single Judge. According to us, 25% admission to children belonging to EWS under the RTE Act cannot be held to be the upper limit. It appears to us that the intendment of the Act is to provide admission to the children belonging to weaker sections in all schools to the extent of at least 25%. Therefore, the contention that there can be no direction to admit Master Priyanshu since the same would result in exceeding the limit of 25% is misconceived and untenable.

12. We have also taken note of the submission of the learned counsel for GNCTD that in terms of sub-Section (2) of Section 12 of RTE Act, the unaided schools which provided free and compulsory elementary education to the children belonging to weaker section and disadvantaged group in the neighbourhood, including the appellant school would be reimbursed the expenditure so incurred and that no prejudice would be caused to the appellant school by complying with the directions in the order under appeal.

13. Admittedly, this is a case where Master Priyanshu is not only a child belonging to weaker section but he is also a differently abled child with a prosthetic leg. It is also not in dispute that the appellant school is located in the locality where the boy resides. Therefore, the learned Single Judge was fully justified in directing the appellant school to admit Master Priyanshu in Ist Standard.

14. We are also of the view that the appellant school cannot be allowed to escape from the statutory mandate merely on the ground that during the pendency of the writ petition, the boy was admitted in a local municipal school.

15. For the aforesaid reasons, we do not find any justifiable reason to interfere with the order under appeal. Accordingly, the appeal is dismissed.

CHIEF JUSTICE SANGITA DHINGRA SEHGAL, J SEPTEMBER 21, 2016 kks