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IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Reserved on : 09.02.2022**

**Pronounced on : 22.02.2023**

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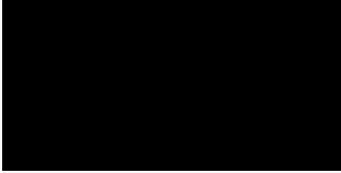
**THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN**

**W.P.No. 24973 of 2022**

**And**

**W.M.P.No. 23909 of 2022**

The Child  
Rep. by her mother



... Petitioner

**..Vs..**

1. State of Tamilnadu  
rep. The Secretary to Government  
Department of School Education  
Secretariat  
Chennai – 600 009.
2. The Tamilnadu State Commission for  
Protection of Child Rights  
Periyar E.V.R. Road  
Poonamallee High Road  
Kilpauk, Chennai – 600 010.



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3. The District Collector  
Sathuvachari  
Vellore – 9,  
Vellore District.
  4. The District Chief Educational Officer  
Collectorate  
Sathuvachari  
Vellore – 9,  
Vellore District.
  5. The Council for the Indian School  
Certificate Examinations rep. by  
The Chief Executive  
Paragati House, 3<sup>rd</sup> Floor,  
47-48, Nehru Place,  
New Delhi – 110 019.
  6. An Educational Institution,  
Rep. by its Principal  
Vellore District.
- ... Respondents

**PRAYER:** Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus directing the respondents 1 to 5 to ensure admission of the petitioner (Special Child with Mild Autism Spectrum disorder) in the 6<sup>th</sup> respondent school for admission in the First Standard based on the Psychological Assessment Report dated 24.09.2020 and in line with the provisions of the Rights of Persons with Disabilities Act, 2016 and the National Trust For Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

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For Petitioner :: Mr. N.Manokaran  
For RR 1, 3 & 4 :: Mr. U.Baranitharan  
Additional Government Pleader  
For 2<sup>nd</sup> Respondent :: Mr. David Sunder Singh  
For 6<sup>th</sup> Respondent :: M/s. S.Ramasubramaniam &  
Associates

### **ORDER**

The Writ Petition had been filed in the nature of Mandamus by a young child, who had been diagnosed as a special child with mild Autism Spectrum disorder, in extreme distress, seeking a direction to the first to fifth respondents, namely, the State of Tamilnadu, represented by the Secretary to Government, Department of School Education, the Tamilnadu State Commission for Protection of Child Rights, Periyar E.V.R. Road, Poonamallee High Road, Kilpauk, Chennai, the District Collector, Vellore, the District Chief Educational Officer, Vellore and the Council for the Indian School Certificate Examinations, New Delhi, to ensure her admission in the 6<sup>th</sup> respondent Educational Institution in Vellore, in the first Standard based on her psychological assessment Report dated 24.09.2020 and in accordance



with the provisions of the Rights of Persons with Disabilities Act, 2016 and the National Trust for Welfare of Persons with Autism, Cerebral palsy, Mental Retardation and Multiple Disabilities Act, 1999.

2. In the affidavit filed by the mother on behalf of the child, it was stated that the child was born on 09.11.2015 and was as good as any other child. She however, had a speech delay which was diagnosed at the age of 2 ½ years. She was taken to a speech therapist at Apollo Hospital. He advised the mother to admit the child in a mainstream school – Gateway International School (CBSE), Padur. The child completed her LKG before Covid-19. During the Covid-19 lock down, the mother found that the child was not at par with other children of her age. She took her daughter to the National Institute for Empowerment of Persons with Multiple Disabilities (NIEPMED) at Kovalam, Chennai.

3. The child was subjected to various assessments and evaluated. By a Psychological assessment report dated 24.09.2020, the child was diagnosed with mild autism. Thereafter, the mother applied for transfer to Vellore. She joined Government Law College as Assistant Officer. Her



husband resigned his job to extend full attention for the child. The child was admitted to CMC Hospital on 08.11.2021 and was thoroughly assessed for five days by the Head of Paediatrics Department along with a speech therapist, occupational therapist and psychologist. They confirmed that she was a special needs child. She was discharged on 12.11.2021. She was diagnosed with 'Autism Spectrum Disorder'. She is under periodic assessment at CMC.

4. The mother further stated that they had originally approached May Flower School at Vellore but the Principal there stated that they had no special educators, the child was allowed to attend classes for UKG. Several other schools were approached but they denied admission stating lack of special educators and supporting teachers. She then approached the 6<sup>th</sup> respondent in March 2022 seeking admission. The 6<sup>th</sup> respondent sent an E-mail calling upon the child to sit for a written examination to be held on 06.04.2022. The child wrote the exam for about an hour. Thereafter, when the Principal was approached, she sought a letter from the Head of Department who had assessed the child in CMC, Vellore. The letter was also issued and produced. The child was then taken to the 6<sup>th</sup> respondent



school for an oral interview on 08.04.2022. She was interviewed by a committee as the last candidate after she was made to wait for atleast three hours. The mother was not allowed to accompany the child. The 6<sup>th</sup> respondent then took a stand that they had no special educators to admit the child.

5. It had been further stated in the affidavit that in the website of the sixth respondent School, it had been very specifically stated that a few of the teachers had joined hands to provide support to students with special educational needs. It was further contended in the affidavit that the rules relating to affiliation of schools state that the affiliation would be withdrawn if it had been established that a school acted in contravention with the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and denies admission to a child owing only to disability.

6. The petitioner then reported the issue to the second respondent, who forwarded the representation to the fourth respondent/ District Chief Educational Officer at Vellore. The fourth respondent addressed a



communication to the sixth respondent. The sixth respondent stated that the child did poorly in her written examination and that they do not have any special educators to cater to the special needs of the child.

7. Thereafter, the fourth respondent had formed a committee of special educators in Vellore District to assess the condition of the child. A two member committee had examined the child and a report had also been submitted. It was stated that she has the ability to acquire education in an inclusive school.

8. On the basis of the report, the fourth respondent had sent a communication on 01.06.2022 to the sixth respondent with a request to admit the child. The sixth respondent sent a further communication on 01.07.2022 reiterating their earlier stand. It was stated that the child did not fare well either in the written test or in the interview. It was further stated that the sixth respondent does not have infrastructure to cater to the requirements of the child.



**9.** Thereafter, the fourth respondent sent a communication dated 06.07.2022 to the second respondent / the Tamil Nadu State Commission for Protection of Child Rights, who in turn addressed the third respondent/District Collector, Vellore, to take steps to admit the child in the 6<sup>th</sup> respondent School.

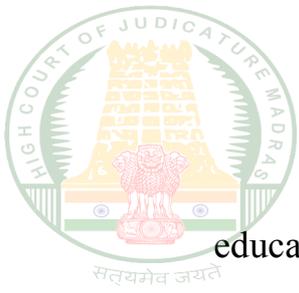
**10.** It had been stated in the affidavit that right to education had been recognised as a fundamental right guaranteed under Article 21 of the Constitution. It had also been stated that the child was diagnosed only with mild autism and is normal in all other respects. It was stated that the object of the law relating to persons with disabilities have been violated by the sixth respondent in refusing to admit the child. It was under those circumstances that the Writ was filed in the nature of a mandamus seeking a direction to ensure admission in the sixth respondent school in the first standard.

**11.** A counter affidavit had been filed on behalf of the sixth respondent. The Principal, claimed that she was well acquainted with the facts of the case. She was also authorised to file the counter affidavit on behalf of the sixth respondent. She however stated that all the averments



made in the affidavit filed in support of the Writ Petition were false. She stated that the sixth respondent was affiliated to the Council for the Indian School Certificate Examinations / fifth respondent. She stated that all the rules and regulations have been complied with by the sixth respondent. She ironically stated that the sixth respondent was managed by an Association said to have been started for charitable purposes. She also stated that the school's mission and vision was to provide affordable and top quality education. She stated that the teachers take initiative to undertake voluntary special classes for children, who need special attention in limited subjects. She was gracious enough to later admit that the petitioner had applied for admission in the first standard though in the earlier paragraph, she had stated that all the statements made in the affidavit filed in support of the Writ Petition were false, vexatious and baseless.

**12.** She also stated that the child wrote the exam on 06.04.2022 but did not score reasonable marks and was still called for an interview purely on compassionate grounds. She also stated that the child did not do well in the interview. Therefore, taking into consideration the interest of the child, a decision was made not to select the child for admission. It was very specifically claimed that the school had never advertised they had special



educators to cater to the special needs of a child with disability.

**WEB COPY 13.** She specifically stated that the petitioner was informed that special educators/trainers and resources persons to take care of the special needs of children were only to help the students to cope with difficulties in English and Mathematics. She specifically denied that a fitness certificate was sought from a Doctor at CMC Hospital. She stated that the letter of the said Doctor neither indicated nor suggested anything regarding the fitness of the child. She stated that the child was not discriminated. She reiterated that the child did not do well in the written examination and also in the interview. She further reiterated that the sixth respondent cannot and was not able to facilitate the request of the petitioner for admission.

**14.** During the course of hearing, taking into consideration the denial of the sixth respondent to admit the child into school, the learned Additional Government Pleader was requested to find out the schools in Vellore District which offer education for special children. It was also made clear that if the sixth respondent had deliberately withheld admission to the child strictures would be passed. This was by a noting dated 22.12.2022.



**15.** Thereafter, when the matter came up again on 20.01.2023, the

sixth respondent was called upon to file a counter affidavit to clarify whether they had, at any point of time held out in their website, that they offered education through educators for special children.

**16.** An additional counter affidavit was then filed by the Principal of the sixth respondent school. She stated that the statement made in the website only meant that whenever a child is found to lag in studies or in co-curricular activities, they were attended to by teachers after the regular school hours and given special education. She specifically stated that it does not mean / interpreted that the school provides training for children with disability like that of the petitioner. She stated that the sixth respondent cannot admit the child and it was also emphasised that they had never held out that they would offer admission to the child.

**17.** The learned Additional Government Pleader had forwarded instructions from the District Chief Educational Officer at Vellore / the fourth respondent wherein it was stated that though an enquiry was made with the sixth respondent, the School Management did not extend co-



operation. It was stated that three schools, have been identified in Vellore and that the child can be admitted in anyone of the three schools.

**18.** Heard arguments advance by Mr.N.Manokaran, learned counsel for the petitioner, Mr.U.Baranitharan, learned Additional Government Pleader, appearing for the first, third and fourth respondents, Mr.David Sunder Singh, learned counsel for the second respondent and Mr.Krishna Srinivas, learned Senior Counsel for M/s. S.Ramasubramaniam & Associates for the sixth respondent.

**19.** Even before could commence, Mr.Krishna Srinivas wanted to inform the Court about a few steps taken by the sixth respondent, but it was felt audience to the learned Senior Counsel can be advanced after hearing the learned counsels for the petitioner and the other respondents.

**20.** Mr.N.Manokaran, learned counsel for the petitioner first pointed out the explanation given by the sixth respondent for not taking the child for admission. They had stated that they had no special educators to cater children with significant learning needs. The learned counsel then



pointed out to the assessment report given by the two member committee by

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the fourth respondent wherein they had stated that after 45 minutes of assessment, the communication skill of the child was good and she responded to appropriate questions and her speech and language was good. She was also able to communicate both in Tamil and in English. Her eye contact was good. Her reading and writing skills were good. She was able to write her name as well as the names of her parents without any prompt or support. She was able to recite tables in Maths. She expected rewards after every activity. She had no sensory issues. She enjoyed playing with her age group children and loved eating all kinds of food. She was able to name foods, she remembered names and the places she had visited. It was finally concluded that she had the ability to cope up with education in an inclusive school.

**21.** The learned counsel then drew the attention of the Court to the communications between the fourth and sixth respondents and the responses wherein again the sixth respondent had stated that the child did not do well either in the written examination or in her interview and that therefore, they are not able to take her in their fold. The learned counsel



then pointed out the communication between the second and third respondents dated 01.08.2022 wherein it had been stated that the District Collector was requested to ensure that the child was admitted to the School.

**22.** The learned counsel then took the Court through the provisions of the Rights of Persons with Disabilities Act 2016 and with the provisions of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 and also with the rules for affiliation of the Council for Indian School Certificate Examinations under which the sixth respondent had been affiliated.

**23.** The learned counsel then took the Court through the Psychological Assessment Report – NIEPMD dated 24.09.2020 wherein they had stated that the child had a corresponding SQ of 72 indicating borderline socio-adaptive functioning and that the score had been attributed to understands poor communication and social skills. It had been further stated that she understands the form concepts and could place shapes in appropriate position. It was however stated that she had poor attention while doing the test and needed repeated persuasion and instructions. Her



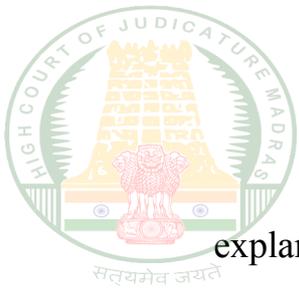
score was given as 98 indicating mild autism. It was finally stated that she

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has mild autism with borderline socio-adaptive functioning. It was recommended that she should continue education in an inclusive school setting with adequate motivation and support.

**24.** The learned counsel also took the Court through the certificate issued by the Doctor at CMC dated 08.04.2022, wherein he had opined that it would be beneficial for the child to join school to improve communication skills.

**25.** Placing all these facts, Mr.N.Manokaran lamented that the sixth respondent school had taken an aggressive stand and had refused to admit the child. He stated that the parents have been running from pillar to post keeping in mind the welfare of the child. He also pointed out that they belonged to the same community and religion as that of the administrations of the sixth respondent school, but still they were treated poorly and rejected at the threshold itself. The learned counsel reiterated that the statement in the website of the sixth respondent projected and indicated that they would offer education to a child with special needs and did not accept the



explanation that the words special needs would indicate a child with poor learning capacity and not a child with special needs as is indicated in the normal sense, namely, a child with disability. The learned counsel stated that it was quite distressing to observe the attitude of the sixth respondent and therefore, was insistent that a Mandamus must be issued.

**26.** Mr.U.Baranidharan, learned Additional Government Pleader appearing for the respondents 1, 3 and 4 stated that the State Government has no direct control over the sixth respondent which was affiliated under the fifth respondent. He stated that every effort had been taken by the District Educational Officer to persuade the sixth respondent to admit the child. He also pointed out that a separate assessment of the child was also made. He pointed out that options to admit the child in three separate schools had been given and stated that the State Educational Authorities would take every step to ensure that the child is given good education in any one of the three schools as chosen by the petitioner/mother. He stated that the intention of the State Government was to provide education to special children in an inclusive atmosphere and there was never intention to exclude such children from main stream education.



**WEB COPY 27.** Mr. Krishna Srinivas, learned Senior Counsel was then heard.

I must admit that there was a heated exchange with the learned Senior Counsel. The learned Senior Counsel remonstrated that he should have been heard first since he wanted to place on record the instruction that the sixth respondent had change in attitude and had conducted interview for special educators and would be appointing them on the role of the school. He also stated that they would admit the child in their school. He expressed grief that opportunity to place that fact was not granted in the first instance and that information was not stated on the earlier hearing dates because he was not instructed to state so. The learned Senior Counsel stated that he was now instructed to state that the sixth respondent had indeed take steps and shall take further steps to ensure that there are special educators placed in the school. He also stated that an affidavit in that regard shall also be filed. However, the said affidavit was not filed by the closure of the arguments and the matter was then reserved for orders.

**28.** I have carefully considered the arguments advanced and perused the materials available on record.



**WEB COPY 29.** The child was born on 09.11.2015. She had speech delay at the age of 2 ½ years. She was taken to a speech in Pathologist and Therapist. She was given speech therapy. She was advised to join in an inclusive school. She joined LKG in Gateway International School (CBSE), Padur. She completed her LKG before the onslaught of covid-19 pandemic.

**30.** During covid-19 pandemic lock down, her mother found that she was not on par with other children of her age. Her mother took her to the National Institute for Empowerment of Persons with Multiple Disabilities (NIEPMED) at Kovalam, Chennai. The child was subjected to various assessments and evaluations and an assessment report dated 24.09.2020 was given. In that report, it was stated that she had mild autism with borderline socio-adpative functioning. The recommendations were:-

- \* To provide adequate stimulation to improve her communication and social skills.*
- \* To increase her play time in natural environment and decrease her gadget exposure;*
- \* To involve her in group play activities*



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*\* To offer therapeutic interventions to improve her communication and social skills.*

*\* To continue education in an inclusive school setting with adequate motivation and support.*

**31.** Thereafter, the parents denied that their child could be referred to Christian Medical College and Hospital at CMC at Vellore. The mother obtained a transfer to Vellore Government Law College. The father resigned his job to extend help for the child. It is seen that the parents took not just a small step but deeply appreciable decisions keeping in mind the welfare of their daughter. The mother had taken a decision to change her work environment. The father had resigned his job to be with child.

**32.** The child was then admitted to CMC Hospital on 08.11.2021. She was assessed for 5 days. She was assessed by a team of specialist including the Head of Paediatrics Department along with a Speech Therapist and Occupational therapist and a Psychologist. She was discharged on 12.11.2021. A discharge summary was given. It was stated as follows:-

*“Childhood Autism rating Scale – Second Edition (CARS-2) was scored based on the*



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*observation during the session and report from the parents. The score of 35.5 obtained from the score was classified under having mild to moderate symptoms of Autism.”*

**33.** Suggestions were also given. They were:-

- “- structure her day*
- use visuals for scheduling, social skills, learning, safety and independency*
- sensory play activities*
- social stories (customized)*
- Activity based learning*
- Imaginary play with real life scenarios*
- Peer group interaction – adult mediated – with purposeful games.”*

**34.** The recommendations included the medicines to be given and more importantly recommendations 4 and 5 were as follows:-

- “4. Training as suggested*
- 5. To continue schooling”*

**35.** Thus it was recommended that she should be encouraged to have interactions with other children and receive education. The final



diagnosis was given as Autism Spectrum Disorder.

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**36.** In the National Trust For Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, autism has been defined as follows:-

*“Autism – means a condition of uneven skill development primarily affecting the communication and social abilities of a person, marked by repetitive and ritualistic behaviour.”*

**37.** In the Rights of Persons with Disabilities Act, 2016, the following terms had been defined as under:-

*“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.”*

**38.** The Schedule to Section 2(zc) defines 'autism spectrum



disorder' as under:-

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*“Autism Spectrum disorder means a neuro – developmental condition typically appearing in the first three years of life that significantly affects a person's ability to communicate, understand relationships and relate to others, and is frequently associated with unusal or stereotypical rituals or behaviours.”*

**39. Section 16(i) – 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.”*

**40. Discrimination was explained as follows:-**



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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.*

41. The further definitions are as follows:-

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.*

2(y) *reasonable accommodation means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure*



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*to persons with disabilities the enjoyment or exercise of rights equally with others. ”*

**42.** Section 3 is as follows:-

*“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. ”*



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43. Section 16 is as follows:-

*“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;*



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(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.”*

44. In the schedule to Section 2, Intellectual disability has been defined as-

*“ a condition characterised by significant limitation both in intellectual functioning (reasoning, learning, problem solving) and in adaptive behaviour which covers a range of every day, social and practical skills, including -*

*(a) Specific spectrum disability means a heterogeneous group of conditions wherein there*



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*is a deficit in processing language, spoken or written, that may manifest itself as a difficulty to comprehend, speak, read, write, spell, or to do mathematical calculations and includes such conditions as perceptual disabilities, dyslexia, dysgraphia, dyscalculia, dyspraxia and developmental aphasia;*

*(b) autism spectrum disorder means a neuro-development condition typically appearing in the first three years of life that significantly affects a person's ability to communicate, understand relationships and relate to others and is frequently associated with unusual or stereotypical rituals or behaviours.*

**45.** It is an admitted fact that in the website of the sixth respondent as stated in their counter affidavit, it had been held out as follows:-

*“The teaching methodology adopted by the teachers prepare our children to excel both intellectually and emotionally. Few of the teachers have also joined hands to provide support from students with special educational*



*needs.”*

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**46.** The issue now before this Court is whether the Court can call upon the sixth respondent consequent to the aforementioned statement in their website to comply with their statutory obligation to admit the child with the aforementioned disabilities.

**47.** The sixth respondent had refused to do so. They claimed that she did not do well in her written exam and did not impress them in personal interview. They washed their hands off her. This stand was reiterated atleast two hearing dates and in the counter affidavit and in the additional affidavit. This stand was quite distressing.

**48.** The sixth respondent is quite pathetically and ironically named after a third-generation American Medical Missionary in India. It makes me wonder whether those in administration today are riding on that name without following her principles or the core conduct which the noble lady adhered to.

**49.** I hope my apprehensions are not correct and that some remedial steps would be undertaken by those in administration . This is



required not to improve their outlook of children but not to defame the name of the noble Missionary.

**50.** The Noble Missionary lived between 1870 and 1960, and had dedicated her life to assuage the plight of Indian women and worked tirelessly helping those afflicted with bubonic plague, cholera and leprosy. All three are infectious diseases, but those unfortunate persons, who were so afflicted by such terrible infectious diseases, were embraced by her who worked to alleviate their grievances. She scarified herself in the true spirit of her Mission and kept her vow.

**51.** Very very unfortunately, her name is used by an institution which had taken a conscious decision to drive away a child and her parents, who had sought refuge and admission. Even though, the learned Senior Counsel remonstrated that the sixth respondent had taken steps to interview prospective teachers, who were trained to impart education to children with special needs, there was a touch of hollowness in the said submission. It had come a little too late in the day. Such an offer should have given voluntarily. It should be from the heart. It should be in spirit and not in mere expression



of words alone. I hold that the statement about willingness to appoint teachers trained to teach children with special needs had been stated only to brush under the carpet the earlier stand of refusal to look after those children. It is just white washing. There was no real intent. Such a statement could have been appreciated if in the interregnum days between the hearing dates the sixth respondent had reached out to the mother and offered to take the child in the roll of the school. They had not done so. They only stated in the Court to project a false impression that they actually intend to admit the child. The question which begs an answer is how the sixth respondent would treat the child and how they would wipe away the trauma in the minds of the mother and in the child, who had already been rejected. I hold the said statement by the school is a materialistic statement as a last gasp to justify using the name of the noble Missionary.

**52. In *W.P.(MD).No. 10707 of 2021 [K.R.Raja Vs. Union of India and others]* dated 29.06.2021, the Division Bench of the Madurai Bench of Madras High Court, while examining a writ under Article 226 of the Constitution of India to issue a Mandamus to ensure inclusion of differently abled children under the Right of Children to free and**



Compulsory Education (RTE) Act 2009, had observed as follows:-

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*“5.Learned Counsel for the petitioner pointed out that there is a specific mandate under Section 16 of the Rights of Persons with Disabilities Act, 2016, [‘the Act’ for brevity], wherein the appropriate Government and the local authorities should endeavour that all educational institutions funded or recognised by them provide inclusive education to the children who are differently abled. It is pointed out that from the information secured under RTI, the petitioner has come to know that in several districts, number of differently abled students admitted in private schools is very low and in most cases it is nil. Therefore, it is submitted that the Court should intervene and issue appropriate direction.*

*6. Though we appreciate the cause and the concern shown by the petitioner to ensure strict implementation of the provisions of the Act, more particularly, Section 16 of the Act, we are unable to infer from the statistics provided in the*



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*affidavit filed in support of this writ petition that in the schools whether aided or recognized by the Government are refusing to admit students who are differently abled. Therefore, if the petitioner seeks for such relief, atleast sample instances of denial of admission should be placed before this Court and more particularly, the concerned institution should be made as parties. In such circumstances, there will also be interest of the candidate involved apart from the larger interest.*

*8. Thus, the Government has taken serious note of the mandate under Section 16 of the Act and issued guidelines and the guidelines state that before random selection is made for admission in such schools, the persons who have been identified as disadvantaged group category should be given admission first. Therefore, the endeavour of the petitioner is to focus on the aspect as to whether there has been any denial of the admission and his pursuit should be in that angle. Hence, at this juncture, we cannot issue a Writ of Mandamus, as sought for.*



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*However, we preserve the liberty to the petitioner to conduct further research in the matter for ascertaining the matter that the Government Orders are strictly implemented and whether disadvantaged group have not reaped the benefit of the Government Order or there has been any nonfulfillment of the obligation cast upon the authorities and the institutions under Section 16 of the Act. ”*

**53. The Delhi High Court in W.P.(C).No. 4618 of 2011 [ Social Jurist, A Civil Rights Group Vs. Government of NCT of Delhi, had observed as follows:-**

*“This Petition filed in public interest highlights the deficiency of requisite teaching aids for children with disability and non-availability of special teachers, in the unaided and aided private schools of Delhi and seeks a direction in this regard including to the Government of NCT of Delhi (GNCTD) and MCD. It is pleaded that owing to non-availability of Special Educators and the requisite teaching aids, children with disability admitted to the said schools, suffer.”*



54. In 2021 SCC OnLine 1112 [ Avni Prakash Vs. National

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*Testing Agency and Others*], the Hon'ble Supreme Court had observed as

follows:-

***“D.2.2. Right to Inclusive Education***

45. *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. Section 2(m) defines inclusive education as:*

*“(m) "inclusive education" means a*



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*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;”*

48. Above all, the RPwD Act 2016 contains provisions mandating reasonable accommodation. The expression “reasonable accommodation” is defined in Section 2(y), which reads as under:

*“2(y)reasonable accommodation” means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;*

54. One way of looking at the matter, as the first respondent would have the Court do, is to accept that in a competitive entrance examination such as the NEET, a large body of candidates appears across the country. According to



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*the viewpoint espoused by the first respondent, individual cases of prejudice caused by an improper application of the norms governing the examination constitute an acceptable, though unfortunate, consequence. The other way of looking at the problem is that while the first respondent must utilise the experience gained in conducting the NEET process to proactively take steps to fill up deficiencies, the examination process must continue to account for the need to rectify injustice caused to a student, who played no role in causing such injustice. The number of cases where such injustices take place maybe a few or more than that (the Court has not been apprised of the statistical figure); but it cannot be ignored that for a student who is made to suffer, the consequence is indeed serious. The entire course of a career depends upon the proper conduct of the NEET and, as in the present case, the application of a binding norm prescribed by the Ministry of Social*



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*Justice and Empowerment for the benefit of students suffering from disabilities. It is no answer for an authority bound by the dicta of law and the Constitution, to throw up its hands in despair, instead of attempting to remedy the injustice which is caused to a student. A judge cannot ignore that behind the statistics is a human face, reflecting the aspirations, joy and tears of a student and her family.*

*55. In the present case, the appellant does not claim misfeasance on the part of the first respondent but plain and simple negligence in complying with the rights and entitlements provided to PwDs under the RPwD Act 2016. For effective participation of the students with disabilities in the society, which undoubtedly is the salutary object of the legislation, the safeguards which are provided by the law must be duly enforced and any breach of entitlement must be answerable at law. Responsibility and*



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*power without accountability are an anathema to our Constitution. ”*

**55.** It is thus seen that the Courts have always been sensitive to children with special needs. They have expressed hope that educational institutions would not betray children with special needs. They have called upon educational institutions to rise to the occasion and extend their arms to those children. Education signifies pulling up from the depth a child and motivate him or her to achieve his or her dream. The sixth respondent has failed not only in this duty but also betrayed the name of the noble Missionary and extremely, extremely distressingly their Christian faith.

**56.** In view of the above reasons, I would rest the issue to the conscience of the sixth respondent. The mother has been offered a helping hand by the State Government. They have identified three separate schools wherein the child can be admitted. The sixth respondent has now stated that they are also prepared to admit the child.



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**57.** Let me not stand in the way of any decision making by the mother as she would have to assess the best educational environment for her child. If at all the mother decides to admit the child in the sixth respondent, I hope and I pray that the sixth respondent would not hold out against the child for this litigation and the burden which this litigation has cast on the sixth respondent in appointing special educators which is a financial strain on the sixth respondent administrators and would not hold against the child during her years of study. I hope that if at all the mother takes a decision to admit the child in the sixth respondent, they would prove false my words expressed above and if they do so, I shall be the most satisfied person. The entire issue is in their hands.

**58.** The Court can only express its views. The Court cannot thrust any child on any school but can only open the hearts of those, who project to impart education, an education which is inclusive in nature. I would leave the options open.

**59.** I must express distress that there has been no representation on behalf of the fifth respondent. Let a copy of this order be forwarded to the



fifth respondent and that if they seek to justify the salary paid to the officials in their department they must take necessary correcting steps.

**60.** In the course of this order, the name of the petitioner had not been stated to protect the identity of the child. The name of the sixth respondent had also not been stated, certainly not out of any consideration to the administrators of the school, but only bowing down to the noble Missionary, whose name has been defiled by the sixth respondent, but shall not be done so by this Court.

**61.** Registry may therefore issue the order copy but in the cause title they may only state “The child, represented by her mother” so far as the petitioner is concerned and as 'The Educational Institution” represented by its Principal' so far as the sixth respondent is concerned.

**62.** The Writ Petition stands disposed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

22.02.2023

vsg



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Index: Yes/No  
Internet: Yes/No  
Speaking / Non Speaking Order  
To

1. The Secretary to Government  
State of Tamilnadu  
Department of School Education  
Secretariat  
Chennai – 600 009.
2. The Tamilnadu State Commission for  
Protection of Child Rights  
Periyar E.V.R. Road  
Poonamallee High Road  
Kilpauk, Chennai – 600 010.
3. The District Collector  
Sathuvachari  
Vellore – 9,  
Vellore District.
4. The District Chief Educational Officer  
Collectorate  
Sathuvachari  
Vellore – 9,  
Vellore District.
5. The Council for the Indian School  
Certificate Examinations rep. by  
The Chief Executive  
Paragati House, 3<sup>rd</sup> Floor,  
47-48, Nehru Place,  
New Delhi – 110 019.



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6.

The Principal  
An Educational Institution,  
Vellore District.

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**C.V.KARTHIKEYAN, J.,**

vsg

**Pre-Delivery Order made in**

**W.P.No. 24973 of 2022**

**And**

**W.M.P.No. 23909 of 2022**



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**22.02.2023**