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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 12th December, 2022

+ **W.P.(C) 14032/2022**

MANISH LENKA

..... Petitioner

Through: Mr. Sanjay Kumar Singh, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Arunima Dwivedi with Mr. Akash Pathak & Ms. Pinky Pawar, Advocate for R-1&2.

Mr. S. Rajappa, Advocate for R-3 & 4.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. This writ petition has been filed on behalf of the Petitioner - Manish Lenka seeking grant of books, learning materials and assistive devices along with other facilities as provided under the Rights of Persons with Disabilities Act, 2016 (*hereinafter, RPWD Act, 2016*).
3. The Petitioner is a minor child studying in Class VI at the Respondent No. 4 - Kendriya Vidyalaya, Sector - 24, Noida, Uttar Pradesh. He is a child having visual impairment of over 75%. The Petitioner's father is a daily wage technician who is unable to afford the educational requirements of the Petitioner.
4. The case of the Petitioner is that he requires learning material, assistive devices, laptop designed for visually handicap, uniform,

transportation cost waiver, computer fees waiver, etc as per the RPWD Act, 2016. The said facilities were not being granted to the Petitioner by the Respondent No.4, thus the Petitioner filed a complaint before the Chief Commissioner under the RPWD Act, 2016 seeking grant of the same. The Chief Commissioner vide orders dated 13th October 2020 and 22nd October 2020 held that books, learning materials, uniforms etc as provided for under section 17 (g) and (k) of the RPWD Act, 2016, free education under section 31 of the RPWD Act, 2016 as also the facility of scribe/reader/lab assistant shall be granted to the Petitioner. However, despite the aforementioned orders of the Chief Commissioner, the facilities were not granted to the Petitioner. Thus, the Petitioner filed the present writ petition.

5. On the last date of hearing, vide order dated 7th October, 2022, this Court had directed the Respondent No.3 - Kendriya Vidyalaya Sangathan and Respondent No. 4 to file a status report regarding the compliance of the orders of the Chief Commissioner. The said status report has been filed. As per the said status report, the various facilities which have been provided are as under:

**“STATUS REPORT ON BEHALF OF
RESPONDENT Nos. 3 AND 4**

(a) Letter dated 27-03-2021 written by the father of the child/Petitioner acknowledging all the items that he requested the School to provide. Copy of letter dated 27-03-2021 is annexed hereto and marked as Annexure R-1.

(b) Receipt dated 08-04-2022 given by the father of the child/Petitioner wherein he acknowledges receipt of list of items as shown in the document. Copy of receipt dated 08- 04-2022 is annexed hereto and marked as Annexure R-2 and Annexure R-3.

(c) Invoice dated 07-12-2021 reflecting purchase of

Screen Magnifier for cell phone, -3D HD Magnifying Screen Enlarger for Movies, Videos and Gaming. A copy of invoice dated 07-12-021 is annexed hereto and marked as Annexure R-4.

(d) Letter dated 26-02-2022 issued to the father of the child/Petitioner Shri Gautam Lenka providing date sheet of session ending exam of the child/Petitioner. Copy of letter dated 26-02-2022 is annexed hereto and marked as Annexure R-5.

(e) Vide letter dated 01-09-2022 Rs. 9,700/- was reimbursed to the father of the child/Petitioner on account of purchase of device required for low vision persons. Copy of letter dated 01-09-2022 is annexed hereto and marked as Annexure R-6.”

6. It is further submitted by the Respondent No.3 and 4 that scribe/reader was also provided to the Petitioner during offline exams for the session 2021-22 and the same shall be done in future as well.

7. Today, ld. counsel appearing of the Petitioner submits that till date, waiver of uniform fee, computer fee and transportation cost has not been made. Ld. Counsel also highlights that the fundamental responsibility under the RPWD Act, 2016 is that of the Government and not of the Respondent No.3 and 4. Further, in terms of the prescription given by the Dr. Rajendra Prasad Centre for Ophthalmic Sciences, AIIMS the Petitioner requires an assistive device of the following description:

W.P.(C)-14032-2022

ANNEXURE P6

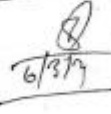
डा० राजेन्द्र प्रसाद नेत्र विज्ञान केन्द्र
Dr. Rajendra Prasad Centre for Ophthalmic Sciences

PRESCRIPTION

Name: Manish Lenka, Id. M
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LVA ft
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Zoomax vide portable magnifier N6

for renew


6/3/22

Signature

Designation

8. Mr. Rajappa, Id. Counsel for Respondent No. 3 and 4 submits that transportation is not provided to the students by the Respondent No. 4. Thus, the waiver of transportation cost cannot be provided to the Petitioner. Insofar as uniform is concerned, the parents are required to buy the uniform for the children. Further, the computer fee which is to be charged is only Rs.100/- per month, as recorded in the order of the Chief Commissioner for Persons with Disabilities.

9. The Court has perused the Section 16 and 17 of the RPWD Act, 2016. The relevant portion of the said sections 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) to (iii)

(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) to (vii)

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

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

10. A perusal of the said provisions show that facilities such as uniform, computer fee and transportation cost are all covered under the statute. In the opinion of this Court these constitute basic facilities for a child such as the Petitioner. Considering the recognition given to the rights of persons with disabilities, there can be no doubt that these facilities ought to be provided especially at Kendriya Vidyalaya Schools which are government schools present all over the country, in order to ensure that children with disabilities are not deprived of proper education. In this background, it is directed as under:

(i) That the Respondent No.4 shall provide uniform free of cost within a

period of two weeks to the Petitioner. Any expense incurred in respect of the same shall be reimbursed to the school by the Respondent Nos. 1 and 2. For the said purpose, appropriate accounting adjustments may be made between the Respondent No.4 and, Respondent Nos. 1 and 2.

(ii) Insofar as computer fee is concerned, since it is only Rs.100/-, the same shall be waived.

(iii) Insofar as transportation cost is concerned, since Respondent No.4 is stated to not provide any transportation facilities, on the next date of hearing, the Id. Counsel for the Petitioner would make a submission as to the transportation cost incurred by the Petitioner for travelling from his residence to the school and back.

11. The Respondent Nos.1 and 2 shall file a status report regarding the measures that are to be taken in regard to the transportation cost and other facilities which are directed in terms of Sections 16 and 17 of the RPWD Act, 2016.

12. A status report regarding the Petitioner's requirement for assistive device shall also be placed on record by the Respondent Nos. 1 and 2.

13. If the Petitioner is not provided the requisite facilities as directed today, he is free to approach the Court by way of an application.

14. List on 22nd March, 2023.

PRATHIBA M. SINGH, J

DECEMBER 12, 2022/Rahul/KJ