

# **Social Jurist vs. Union of India and others**

**C.M.6736/2000 in C.W. 3956 of 2000 (Delhi HC),**

**Date of filing: 05.08.2000**

**Decided on 29.08.2000**

## **The Facts**

A young disabled adolescent girl child was denied admission in a MCD school despite possessing a valid transfer certificate issued by a recognized private school. The MCD school said that the girl was overage and hence not eligible for admission.

Sholey, aged 14 years has 60 % orthopedic disability with both lower limbs paralyzed. Her father is a rag-picker and lives in a shantytown in the northern region of New Delhi. Sholey completed Grade IV with 81.7% marks from the NLF Public School, Ghaziabad in the year 2000, but during this time she was living in a hostel run by a local NGO. Unfortunately, she had to leave the hostel when she turned 14 as per the rules of the organization.

Sholey took the only option available to her and shifted to her parents home. With the assistance of a Social worker of the area, she then approached the local MCD school for admission into Grade V. The Headmistress turned down her request saying that she was overage for that grade.

The Headmistress did not relent even after she was informed that Sholey was a disabled child and as a consequence entitled to the benefits of the Persons with Disabilities Act (1996), which categorically provides for free and compulsory education to all children with disabilities till the age of 18 years. The attention of the Headmistress was also invited to a letter dated 18.03.2000 in which the Director of Education, Govt. of NCT of Delhi informed all principals not to refuse admission to any child in the new academic session beginning April 2000. But the Headmistress was adamant on her decision.

## **The Appeal**

There is no doubt that Section 16 of the Delhi School Education Act, 1973 prescribes a minimum age of 5 years for admission in Grade I, but does not specify any maximum age for admission. Such a limit is also not provided by any other legislation.

Further, Sholey being a disabled child has the fundamental right to have access to free education in an appropriate environment till she attains the age of 18 years as guaranteed to her under Articles 21 and 45 of the Constitution of India;

And the above as read with the provisions of Section 26 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, where it is the legal duty of the government to provide free educational facilities till the age of 18 years.

## **The Outcome**

This PIL came up for hearing before the High Court on 08.08.2000. The Court directed the counsel for the MCD to have instructions about the same by the next date of hearing. On 10.08.2000, the Headmistress of the MCD School along with some other staff members reached Sholey's residence and asked her to come to school and get admission. The next day the said child was admitted in the school.

In view the fact that the child Sholey gained admission in the school, the High Court disposed of the petition on 29.08.2000.

## **Comments**

There is no doubt that it is usual practice to deny admission to disabled children. According to the Ministry of Human Resource Development's own estimation, less than 1.8% of disabled children in the age group 6 to 14 years are in the school. This estimate speaks for itself - of a society that is indifferent and apathetic towards a disabled child - an unfortunate but hard reality. In fact this is even more distressing when despite the existence of disability friendly provisions in the Constitution of India, legislations and government policies, the State has not given much attention to the disabled child nor the disabled girl child.

The need of the hour is to see that the State ensures honest, sincere and faithful implementation of laws and the policies of the government meant for the benefit of men, women, girls and boys with disabilities. To this effect, the present case by denying admission to a disabled girl child on the grounds of being overage is not only unfortunate but is also in violation of all the fundamental and human rights of a girl child guaranteed to her in the Constitution of India, legislations and the various Conventions on the Rights of the child etc.