

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DIRECTORATE OF EDUCATION
(PRIVATE SCHOOL BRANCH)
OLD SECRETARIAT, DELHI-110054

No. F. DE-15/ACT-I/WPC-4109/PART/13/ 868

Dated: 08/08/2017

ORDER

Whereas, the request of Delhi Public School, Vasant Vihar, for increase in fee for the academic session 2016-17 was rejected by Director (Education) vide order No. F.DE.15/Act-1/WPC-4109/PART/13/211-215 dated 26.12.16 with the specific direction to rectify the deficiencies as illustrated in the said order and submit compliance report to Dy. Director of Education concerned within thirty days.

And whereas, the management of said Delhi Public School approached the Hon'ble High Court vide Writ Petition 1720/2017 titled as Delhi Public School Society and Anr. Vs GNCT of Delhi and Anr. challenging the Order of this directorate dated 26.12.2016.

And whereas, during the process of hearing on 27.02.2017, the Hon'ble Court took on record the following submission of Govt. Counsel, Shri S.K. Tripathi.

".....the present petition is premature inasmuch as in terms of the direction no. 3 at page 62 of the paper book, the petitioners shall be at liberty to represent to the concerned Dy. Director Education, who shall consider and pass appropriate orders thereof.

In view of the submission made by Mr. Santosh Kumar Tripathi, Mr. Sandeep Sethi, Learned Senior Counsel states that the petitioner shall file a representation to the concerned Dy. Director (Education) within one week. If that be so, it is directed the said representation shall be considered and appropriate orders shall be passed....."

And whereas, the said writ petition was disposed of by the Hon'ble High Court on the submission made by the Govt. Counsel to decide the representation of the petitioner accordingly.

And whereas, in response to above said order, a representation/ submission dated 03.03.17 was filed by the school before the Directorate of Education.

And whereas, a committee was constituted under the chairmanship of Controller of Accounts, to hear the case of the school in detail with a view to assist the Director of Education to dispose of the representation.

And whereas, the submissions of the schools were heard by the above said committee on 20.03.17 at 12.00 Noon and during the hearing, the issues raised in Impugned Order were discussed at length. The submissions made by the school are analyzed below in accordance with the provisions of

Delhi School Education Act and Rules, 1973 and directions issued there-
under:-

Financial Discrepancies:-

S. No.	Detail of Discrepancy	Submission of School	Remarks
1.	The school has not complied with the provisions of Clause 14 of Order No. F.DE./15(56)/Act/2009/778 dated 11/02/2009 which states that development fee may be charged for supplementing the resources for purchase, upgradation and replacement of furniture fixtures and equipment's. Development Fund collected by the school has been used for meeting revenue shortfall. The school has stopped charging development fee from 1 April 2014, however, operational charges are collected by the school.	School followed the provisions of Clause-14. School collecting operational charges instead of development fund w.e.f. 01.04.14 for meeting revenue expenses for avoiding extra payments by parents.	The School is not supposed to create a new head not provided under DSEAR, 1973 and various circulars issued by this Directorate. Any fee increase should have been in permitted heads of fees. The reason for collecting the fund under head "operational charges" is not justified. However, the contention of the school for not charging development fee is accepted.
2.	The unclaimed caution money, amounting to Rs. 49,953 as on 31 March 2016, is shown as Current Liabilities in books of account instead of treating this as income and has not been taken into account while projecting fee structure for ensuing academic year. This is in contravention to Clause 4 of Order No. F.DE./15(56)/Act/2009/778 dated 11/02/2009.	The amount referred by the auditors is not caution money but security deposits from contractors for doing work. The school is not charging caution money since 01.04.2014.	The school is directed to follow guidelines of DoE regarding use of caution money.

Apart from the above points, the school in its representation pointed out the following shortcomings in the impugned order which challenges the legal validity of it.

- (i) The impugned order is null and void for the reason that it has been issued by Dy. Director of Education whereas the power of regulation of fee vests in Director (Education)
- (ii) The irregularities mentioned in the impugned order does not link with the consideration of proposal for fee hike,

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nonetheless, the alleged irregularities does not exist in context of the submission made in the Annexure 'A'.

(iii)

The powers of regulation of fee by Director (Education) as enshrined in Section 17(3) read with rule 176 and 177 is subject to the principle laid down by the Hon'ble High Court and Supreme Court in the various judgement in this field and recently in WPC 4109/2013 wherein it was held that Director of Education is competent to interfere if the fee hike by a particular school is found to be excessive and perceived as indulging in profiteering. None of the alleged irregularities in the Impugned Order leads to a charge of profiteering or commercialization of education. Therefore, the representation of the school has to be evaluated on the basis of principles laid down in the orders of various courts referred above and the statutory provisions contained in section 17(3) of DSEA, 1973 and Rules 176 and 177 of DSER, 1973.

In the above context, it is to be noted that:

The impugned order is valid in the eye of law as the same has been issued with the approval of Director (Education) and it is specifically mentioned in the impugned order therefore the contention of the school in this regard has no merit.

The irregularities figured in the order is not limited to general violation like appointment of teachers, lack of infrastructure and other facility as prescribed in the act and rules but related to the mis-utilization of school fund in violation of Rule 177 and direction dated 15.12.1999, 10/05/2005, 11/02/2009 and 16/04/2010 of the department which impacts on the quantum of fee to be collected from the parents. The order dated 16/04/2010 is very specific that fee hike is not mandatory and all schools must first of all explore and exhaust the possibility of utilising the existing funds/reserves to meet any shortfall in payment of salary and allowances, as a consequence of increase in the salary and allowances of the employees.

Further, the term of Tuition Fee is already defined in the order dated 15.12.1999 reiterated in the order dated 11.02.2009 that the Tuition fee shall be so determined as to cover the standard cost of establishment including provisions of DA, Bonus, etc and all terminal benefits as also the expenditure of revenue nature concerning the curricular activities. All fees charged in excess of the amount so determined or determinable shall be refunded to the students to the parents. The accumulation of huge reserve in General Reserve Fund indicates that the tuition fee prescribed by the school on yearly basis is not in accordance with the said definition of collection of tuition fee. Further, the quantum of fee in other heads/earmarked levies are to be charged on the actual basis of requirement as per rule 176 and 177 (2) of DSEAR, 1973 and accumulation of fund under these heads leads to profiteering.

And Whereas, in the meantime, another representation (to supplement their earlier representation dated 03.03.2017) dated 27.03.2017 has been received from the school, in which details of expenditure proposed to be

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incurred in next 3-4 years along with details of Capital Expenditure already incurred till date during F.Y. 2016-17 has been given.

And whereas, after going through the representations dated 03.03.17, 20.03.17, 27.03.17 and submissions made by the school during the hearing held on 20.03.17 as well as financial statements/budget of the school available with this Directorate, it emerges that:

- (i) As per the balance sheet of the school for year 2015-16, the school is having reserves of Rs 13,88,47,030/-. While computing these reserves of Rs. 13,88,47,030/-, the amount of Gratuity fund and Employees Leave Encashment fund amounting to Rs. 8,19,26,190/- has not been considered for the said computation and this has been treated as a designated fund for the payment of liability to the employees. The aforesaid revised reserve of Rs 13,88,47,030/- is exclusive of funds created on account of committed liabilities towards employees, under relevant Act/Statutes. The breakdown of the same is given under:

General Fund:	48,17,642/-
Development Fund:	73,894,056/-
Depreciation Reserve Fund:	15,152,391/-
Management Fund:	4,49,82,941/-
Total :	13,88,47,030/-

- (ii) The school is having a surplus fund of Rs. **4,71,44,033/-** as per the following details:

Particulars	Amount(Rs)
Cash and Bank balances as on 31.03.16 (from School proposal documents)	40,188,843
Investment as on 31.03.16 (from School proposal documents)	147,580,007
Other Receivables as on 31.03.16 (from School proposal documents)	65,583,975
Total	253,352,825
Less: Development Fund#	73,894,056
Less: Depreciation Reserve Fund	15,152,391
Less: Provision for Retirement Benefits*	81,926,190
Available Funds	82,380,188
Fees for 2015-16 as per unaudited financial statement(We have assumed that the amount received in 2015-16 will at least accrue in 2016-17)	102,582,181
Other income for 2015-16 as per unaudited financial statement	10,646,664
Estimated availability of funds for 2016-17	195,609,033
Less: Budget expenses (Revenue) for the session 2016-17 as submitted by school management (Budgeted Salaries, etc., are as per 6th Pay Commission recommendations)	123,065,000
Less: Establishment expenses (Impact of 7th Pay Commission)	25,400,000
Net Surplus	4,71,44,033

Capital expenditure of Rs 904,349/- has been allowed from the amount of development fund.

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*The school is hereby directed to make earmarked equivalent investments against provision for retirement benefits with LIC (or any other agency) within 90 days of the receipt of this order, so as to protect the statutory liabilities. And provisions for gratuity and leave encashment should be based on actuarial valuation.

- (iii) As per condition of recognition letter and clause 10 of form 2 of Right of Children to Free and Compulsory Education Act, 2009, the schools are required to maintain the liquidity in the form of investment for 03 month salary and this investment should be in the joint name of Dy. Director (Education) and Manager of the School. But, the financial statements provided for evaluation of fee hike prepared for 2016-17 did not provide any such proof. Secondly, the school has to prove with proper documents/certificates that the amount has been invested in joint names of Dy. Director (Education) and Manager of the school for admissibility of this provision in their financial statements. It should be further noted that even we consider the amount of Rs. 2.82 Cr, there is still surplus available and there is no case of fee hike.
- (iv) Since the school has proposed a capital expenditure of Rs 128.12 cr. subsequent to the impugned order dated 26.12.16, this matter is out of scope and has not been considered here.
- (v) It should also be noted that the impact of expenditure on account of 7th Pay Commission has already been accounted for by the school management in their financial statements submitted to this department. This is beyond the instructions issued by this Directorate, which has yet to convey modalities for fee increase, if needed, for extension of benefits of 7th Pay Commission to the employees of private Unaided Recognized Schools. However, the aforesaid computations of reserve amount Rs 13,88,47,030/- and surplus/ total available funds of Rs 4,71,44,033/- have been arrived at after taking into account the impact of 7th Pay Commission.

In view of the above examination, it is evident that the school is having sufficient reserve funds to meet the financial implications for the financial year 2016-17 even after absorbing the financial impact of 7th Pay Commission.

Now therefore, the representation dated 03.03.17 and subsequent submissions made in this regard find no merit in respect of sanction for increase in fee and hereby rejected on the above observations.

And whereas, as per clause 22 of Order No. F.DE./15 (56) /Act /2009 / 778 dated 11/02/2009, user charges should be collected on no profit and no loss basis and should be used only for the purpose for which these are collected. Accordingly, the school is advised to maintain separate fund in respect of each earmarked levies charged from students in accordance with the DSEA & R, 1973 and orders, circulars, etc., issued there under. If there are large surpluses under any earmarked levy collected from the students, the same shall be considered or adjusted for determining the earmarked levy to be charged in the next academic session.

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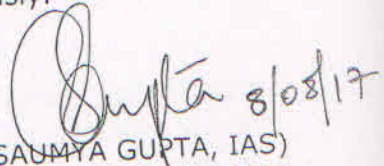
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Further, in exercise of the powers conferred upon me under section 24(3) of Delhi School Education Act and Rules, 1973, the management of said school is hereby directed under section 24(3) of DSEAR 1973 to comply with the following directions:

1. Not to increase fee for the session 2016-17. If, in case, increased fee has already been charged from the parents, the same shall be refunded/adjusted.
2. Compliance of all the instructions mentioned in the order dated 26.12.16 will be seen/examined during the scrutiny of fee hike proposal for session 2017-18, if any.
3. The fee should be utilised as per letter and spirit of Rule 177 of the DSEA & R, 1973 and the judgement of the Hon'ble Supreme Court in the case of Modern School Vs Union of India (2004).

Non compliance of the order shall be viewed seriously.


(SAUMYA GUPTA, IAS)

Director of Education
Directorate of Education, GNCT of Delhi

To

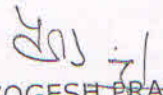
The Manager/ HoS
Delhi Public School , Vasant Vihar,
Through:
DPS , Sector-XII, R.K. Puram,
New Delhi

No. F. DE-15/ACT-I/WPC-4109/PART/13/ 868

Dated: 08/08/2017

Copy to:-

1. P.S. to Secretary (Education), Directorate of Education, GNCT of Delhi.
2. P.S. to Director (Education), Directorate of Education, GNCT of Delhi.
3. P.A. to Addl. Director of Education (Private School Branch), Directorate of Education, GNCT of Delhi.
4. DDE concerned
5. Guard file.


(YOGESH PRATAP)

Deputy Director of Education-1
(Private School Branch)
Directorate of Education, GNCT of Delhi