

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/13/14550-14555 Dated: 27-4-17

ORDER

Whereas, the request of Delhi Public School, Vasant Kunj, 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/13/391-395 dated 27.12.17 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 1028/2017 titled as Delhi Public School Society and Anr. Vs GNCT of Delhi and Anr. challenging the Order of this directorate dated 27.12.2016.

And whereas, during the process of hearing on 07.02.2017, the Hon'ble Court taken on record the following submission of Govt. Counsel, Shri S.K. Tripathi.

"4.....He by drawing my attention to the direction at Sl.No.4 would submit that the petitioner school would be at liberty to send a proposal for increase in fee for the next academic session, so long as the said proposal does not include the increase of fee on account of the implementation of the 7th Pay Commission recommendations. According to him, a decision with regard to implementation of the 7th Pay Commission recommendations in the Private Un-aided Schools has to be decided by the respondent, Directorate of Education. The aforesaid submissions, of Mr. Tripathi are taken on record.

5. In view of the submission made by Mr. Santosh Kumar Tripathi, Mr. Sandeep Sethi, Learned Senior Counsel for the petitioner would submit that the petitioner shall represent against the order dated 27.12.2016 and would impress upon the authority that no deficiencies exists. The said representation shall be made within four weeks."

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

And whereas, in response to above said order, a representation/ submission dated 17.02.17 has been filed by the school before the Directorate of Education.

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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 off the representation.

And whereas, the submissions of the schools were heard by the above said committee on 20.03.17 at 11.00 AM and during the hearing, the issues raised in Impugned Order were discussed at length. The submissions made by the school is analyzed below in accordance with the provisions of Delhi School Education Act and Rules, 1973 and directions issued there-under:-

Financial irregularities:-

S. No.	Detail of irregularity	Submission of School	Remarks
1.	On review of the financials, it was observed that the financial statement for F.Y. 2015-16 submitted by the school to DoE used for PMU assessment is incomplete as many annexures and schedules are absent which can impact the opinion and recommendation.	Financial are given in format provided by DoE. Same are also uploaded on Website. Neither any letter received nor pointed out by auditors for missing annexure.	Considered.
2.	The school has transferred funds at regular interval to DPS Shiksha Kendra, Vasant Kunj, which is operated for providing education to poor neighbouring girls in the vicinity. However DPS Shiksha Kendra, Vasant Kunj closed its operation in FY 2015-16 and all the funds were returned to the school and there appears a nil balance on the financials. Some instances were noted wherein other schools have undertaken some activities for the students throughout the year, which are cleared at the end of the financial year and there stands nil balance.	School had Shiksha Kendra earlier with financial balances. All balances transferred to main school at the time of merger.	The transfer of school fund to any other sources in violation of Rule 177 and direction issued by the Department vide order dated 15/12/1999 is illegal, hence the transferred fund is required to be taken back into the school account.
3.	The school has not followed AS-15-"Employee Benefits" issued by the Institute of Chartered Accountants of India. The Statutory Auditors have pointed out the same in their report dated 2.9.2015 on the financials of FY 2014-15.	Actual valuation is better than actuarial valuation. The school also got actuarial valuation as advised by	The report of actuarial valuation is required and based on this, the financial statements should be

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	<p>The same issue was mentioned by the statutory auditors in the report pertaining to FY 2013-14 also. The school is creating provisions for employee benefits on the basis of arithmetic calculation based on salary and number of years in service. A comparison of Balance sheet for F.Y. 2015-16 and 2014-15 reveals a first time creation of liability for Gratuity of Rs.1595.89 lakhs & Leave Encashment of Rs.466.11 lakhs in the F.Y. 2015-16. It is observed that the provision is not based on actuarial valuation (as required by AS 15 and GN-21 issued by ICAI). The total provision of Rs.2062.00 lakhs has material impact on the financial results of the school for F.Y. 2015-16 and also in accumulation.</p>	<p>auditors which shows very minor difference of 0.7% which is insignificant.</p>	<p>restated/ resubmitted for considerations.</p>
4.	<p>The school has decided to amortize the leasehold land over the lease period during FY 2015-16, due to which depreciation charged on leasehold land worth Rs. 75,66,452 was of prior period; i.e., related to earlier than FY 2015-16.</p>	<p>Amortization in FY 2015-16 done as per auditor advise. No material impact, the amount shown as prior period expenses in Financial Statements.</p>	<p>Needs further examination.</p>
5.	<p>On examination of the records produced and information gathered, caution money worth Rs.49, 62,115 for the year 2015-16 is refundable. Complete information of the students to whom these are payable was not provided by the school. During the starting phase of the school at Vasant Kunj, school was operated from R.K. Puram and all the student data pertaining to that period is unverified. However the school is in the process of gathering and verifying the student data in order to ascertain the actual payable.</p>	<p>School is maintaining full records and caution money/ security deposits are refunded in time. The practice followed by the school is as per guidance note issued by ICAI. DoE instructions are at variance with GN by ICAI.</p>	<p>Instructions issued by the DoE in this regard are to be complied with by the school.</p>

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Complete information of actual payables with respect to caution money is unavailable with the school. Hence the refundable caution money has not been reflected as income for the next financial year and has not been taken into consideration for projecting fees for ensuing academic year, therefore non-compliance to Clause 18 Order No. F.DE./15 (56) /Act /2009/ 778.

Further, the school is not refunding the interest received on security deposit to the students which is non-compliance to Clause 18 of Order No. F.DE./15 (56) /Act /2009 / 778 which states that the caution money thus collected shall be returned to the student at the time of his/her leaving the school along with the bank interest thereon irrespective of whether or not he/she requests for a refund.

Other irregularities:-

S. No.	Detail of irregularity	Submission of School	Remarks
1.	The school is conducting the process of physical verification of fixed assets and are in process of reconciliation of item wise details of such fixed assets as per financial records but the exercise has not been concluded and the effect, if any, on the financial statements has not be quantified.. This issue has been qualified by the statutory auditors in their report dated 2.9.2015 for the financials of FY 2014-15.	Physical verification alongwith tagging and bar code done. No material difference impacting the Income & Expenditure account found.	The compliance is considered and will be confirmed at the time of next fee hike proposal examination.

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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

- (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, 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

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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. Hence, it is arrived that the school is indulged in profiteering and commercialization of education.

And Whereas, in the meantime, another representation (to supplement their earlier representation dated 17.02.2017) dated 27.03.2017 has been received from the school, in which details of expenditure proposed to be 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 17.02.17, 20.03.17, 27.03.17, 12.04.17 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 34,66,27,047/- While computing these reserves of 34,66,27,047/-, the amount of Gratuity fund amounting Rs. 15,95,89,295/- and Employees Leave Encashment fund of Rs. 4,66,11,862/- 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 reserve of Rs 34,66,27,047/- 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:	16,63,74,284/-
Development Fund:	11,78,52,633/-
Student Welfare fund:	41,06,518/-
Building Fund:	1,13,40,898/-
Management Fund:	4,18,02,804/-
CBSC Fund:	6,93,553/-
PTA Fund:	44,56,357/-
Total :	34,66,27,047/-

- (ii) The school is having a surplus fund of Rs.33,35,44,917/- as per the following details:

Particulars	Amount(Rs)
Cash and Bank balances as on	1,31,44,495

31.03.16 as per unaudited financial statement	
Investment as on 31.03.16 as per unaudited financial statement (Investment value computed does not comprise investments towards gratuity and Leave Encashment)	30,69,01,476
Total	32,00,45,971
Fees for 2015-16 as per unaudited financial statement (We have assumed that the amount received in 2015-16 will atleast accrue in 2016-17)	37,27,31,898
Other income for 2015-16 as per unaudited financial statement	5,35,58,048
Estimated availability of funds for 2016-17	74,63,35,917/-
Less budget expenses for the session 2016-17 as submitted by school management	41,27,91,000/-
Surplus fund	33,35,44,917/-

- (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 factor this amount. 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.7.25 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 19.54 cr. subsequent to the impugned order dated 27.12.16, 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 sanction of the Competent Authority for extension of benefits of 7th pay commission to the employees of private Unaided Recognized Schools. The aforesaid computations of reserve amount Rs 34,66,27,047/- and surplus fund of Rs 33,35,44,917/- have been arrived at after taking into account the impact of 7th pay commission.

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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 17.02.17 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.

Further, in exercise of the powers conferred upon me under section 24(3) of Delhi School Education Act and Rules, 1973, the management of Delhi Public School, Vasant Kunj is hereby directed to comply with the directions as mentioned in the order dated 27.12.16

Non compliance of the orders shall be viewed seriously.



(SAUMYA GUPTA, IAS)
Director of Education

Directorate of Education, GNCT of Delhi

To

The Manager/ HoS
Delhi Public School
Sector-C Pocket-5 Vasant Kunj
New Delhi-110070

No. F. DE-15/ACT-I/WPC-4109/PART/13/14 550-14555 Dated: 27-4-17

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.

Copy received.



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