

## 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/ 16250-254 Dated: 22/6/17

## ORDER

Whereas, the request of Delhi Public School, Dwarka, 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/13/44 dated 23.12.16 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 1719/2017 titled as Delhi Public School Society and Anr. Vs GNCT of Delhi and Anr. challenging the Order of this Directorate dated 23.12.2016.

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 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 3.00 PM 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.	In the proposal for fee increase submitted by the school to Directorate of education, two different financial statements have been given for the F.Y. 2015-16. Further, Written Down	only one set of financial	regrouping necessary clarifications should have been submitted along

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5.	Detail of discrepancy	Submission of School	Remarks
lo.	Value (WDV) of fixed assets in the Balance Sheet amounts to Rs. 7,92,41,322 as on 31 March 2016. However, in the related schedule no. 7, the amount is appearing Rs 15,04,00,792. Also, the amount of expenses payable, other current liabilities and provisions shown in the Balance Sheet are not corroborated with the respective schedules as on 31 March 2016.	on 23.05.16 b) As per uploaded financials, in Balance sheet there is WDV and in Schedule-7 there is Gross value of assets. c) The balance sheet for FY 15-16 is prepared as per new format. Figures are regrouped/ reclassified, wherever required.	
2	Income shown in Financial Statements for the FY 2013-14, 2014-15 and 2015-16 do not corroborate with the fee structure and number of students.	The actual fees received in the financials can never be matched from calculation done on the basis of fee structure and number ostudents.  Reconciliation provided, difference is vermarginal.	have been submitted by the school to clarify the observation. Detailed calculation sheet to support reconciliation may be submitted.
3	As per clause 21 of Order not F.DE. /15 (56)/ Act/ 2009/77 dated 11/02/2009, annual charge can be levied to cover the revenue expenses, not included in the tuition feet. The school has charged annual charge in excess of the expenditure incurred during the FY 2013-14 and 2014-10 of Rs. 1,67,80,120 and Rs.	no. Income figure considered by the auditors are no correct due to twhich surplu annual charge are coming auditor's calculation.	may be submitted.
4	Clause 4 of Order no. F.D.  /15 (56)/ACC/2009///6 dat  11/02/2009 has not be complied with. Unclaim caution money is shown 'Other Current Liabilities' the financial statements a has not been considered income while projecting fee structure for the ensu Academic Year. Caut money outstanding as paya	amount as per audit rep and DoE ord and Further there i guideline refund the more ing to stude	ort complied with by the school.  s a to ney ent; it

S.	Detail of discrepancy	Submission of School	Remarks
No.	as on March 31, 2016 amounts to Rs.34,43,742. Further, clause 18 of Order no. F.DE. /15 (56)/Act/2009/778 dated 11/02/2009 has not been complied with. Bank interest is not refunded along with caution money to the claimant (Students).	as income. Only unclaimed caution money transferred to income as per rules.	
5	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. Transport/ Bus fees and Science fees collected by the school is an earmarked levy and has been collected in excess of the expenditure. However, no separate fund for this charge is maintained. Rs. 48,69,988 has been accumulated as an excess of income over expenses for the Transport Fees.	The observation is not correct. All cost relating to the service is not considered. As per chart enclosed, the school is falling short of the revenue over expenditure.	There is clear surplus in FY 2015-16 as per the submission of school. Moreover, administration and overhead costs cannot be claimed against two different heads of income. School may correct its accounting procedures in this regard.
6	The amount of fine charged on late payment of fees is higher than the amount required to be charged as per the provisions of Section 166 of DSEA, 1973. The School has collected amount of Rs. 14,90,364 as late fees fine during the period under review i.e. from FY 2013-14 to FY 2015-16.	fine charged is just to put a deterrent to the late fee practice. Excess amount collected has been shown as income and to be	
7	Closing balance of Depreciation Reserve Fund for the FY 2013-14 has not been shown as opening balance for FY 2014-15 in Audited Financial Statements.	There was restatement/ regrouping of the balances which	Matter has been clarified in personal hearing.
8	During the FY 2014-15, the school has charged Rs. 1,40,71,503 of tuition fees in excess of the standard cost of establishment, including provisions of DA, Bonus, etc. and all terminal benefits along with expenditure of revenue nature concerning curricular activities in contravention to Clause 19 of Order no. F.DE. /15 (56)/Act/2009/778 dated 11/02/2009.	The amount is not correct. In FY 2014-15, tuition fee collected was Rs 17.95 Crs against establishment expenses of Rs 18.22 Crs. There was Shortfall of Rs. 0.27 Crs	school to clarify the observation, in support of this contention.
9	During the FY 2013- 14,amount of Rs. 94,11,553	The observation by auditors is not	

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S. No.	Detail of discrepancy	Submission of School	Remarks
	was transferred from General reserve to Development Fund and amount of Rs. 98,87,925 shown as transfer back (utilization) from the development fund. Also Rs. 1,54,31,403 shown as transfer from General Reserve to Depreciation Reserve Fund in the FY 2014-15 without calculating its impact.		school to clarify
10	As per the management certificate submitted, funds of Rs, 5,00,000 were transferred to DPS Society in the FY 2013-14 and 2014-15 towards reimbursement of teacher training expenses. However, as per accounting ledger, purpose was mentioned as Maintenance Charges. This is contravention of the Order No. DE/15/Act/ Duggal.Com/203/99/23033-23980. Further there are also some transfers to DPS Society and other schools of the society majorly on account of reimbursement of expenses.	It is not possible to mention a particular events or program organized by the DPS society separately in the Financial statements.	the students, the school is under
	78,50,327 have been made from Income and Expenditure Account to Management Fund in the FY 2015-16 leading to a reduction in surplus for the year. Purpose of this appropriation has not been stated.	unaudited financials to DoE, the school has capital projects in	Fund. The same is not permissible under DSEAR,
12	The School has transferred the amount from the school funds to the Society and Other Group institutes operating under the parent society. This is in contravention of Rule 176 and 177of the Delhi School Education Rules 1973.	Society created a separate building block for hostel. IN unaudited accounts amount of Rs. 1.54 cr appearing under the inter school/society account out of which Rs. 40 lacs pertains to Hostel unit.	The transfer of school fund to any other sources in violation of Rule 177 and directions 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.

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S. No.	Detail of discrepancy	Submission of School	Remarks
13	Following were the observations made on the verification of the top two hundred payments made by the school:  a. Payment for Smart Class Infrastructure was in excess of the invoice amount; Invoice value Rs.1,66,920 but payment made Rs. 2,05,932. b. Invoice amount of school trip Rs. 3,04,500 while payment amounts to Rs. 1,98,000.	are incorrect a) It also includes the previous balance also.	documents have been submitted by the school to clarify the observation.  Accepted in view of non-materiality
	In the budget estimates for F.Y. 2016-17, certain expenses have been considered which are not there in the previous two financial years i.e. 2013-14 and 2014-15: Free books and uniforms for EWS students – Rs. 25,00,000 Purchase of assets including CCTV cameras, solar photo voltaic plant and furniture – Rs.1,12,00,000 (proposed to be spent out of development fund).	Free books and uniforms are provided to EWS students as per instructions from DPS society. Capital expenditure are done for the purchase of furniture and fixtures, replacement of DG set and for solar photo Voltaic plant as per school	The school has claimed to incur Rs. 80.14 Lacs only for railings, stainless steel, etc., renovation of toilets and vehicles from non-earmarked funds and the same has been considered.

## Other discrepancies:

S. No.	Detail of discrepancy	School	Remarks
1.	Financial Statements for the year 2013-14 and 2014-15 were not prepared as per the format prescribed under the Guidance Note on Accounting by Schools issued by ICAI in the Year 2005: Following are the key findings: Classification of funds into "restricted and unrestricted fund" not shown in FY 2013-14 and 201415. The provision for Gratuity and Compensated Absence has been computed on arithmetical basis for the FY 2013-14, 2014-15 and 2015 - 16 instead of an actuarial basis as per AS – 15: Employee Benefits. The school	a) (c) & (d) This year DOE has provided the prescribed format which has been followed. Depreciation has been booked as per the rates provided in GN issued by ICAI. B) Actual valuation is better than actuarial valuation. The school also got actuarial	The report of Actuarial Valuation is required and based on this,

	is charging Depreciation rat which is different from the rate prescribed as per the Guidance Note (GN 21) of Accounting by Schools, issued by the Institute of Chartered Accountants of India Amortization of the Leasehold Land was done in the books of accounts for the first time in FY 2015-16.	auditions whi e shows very min f difference d 2.57% which insignificant.	by should be restated resubmitted for consideration.
	a) Restricted and unrestricted fund not shown in FY 2013-14 & 2014-15 b) Provisions not as per AS-15 for FY 13-14, 14-15 & 15-16 c) Rate of depreciation different from GN-21 as per ICAI, d) Amortization done for first time in FY-2015-16		
18	e. Services of bus vendor and Invoices are not matching with the agreement.  f. Committee report for	done after measuremen t.  i) It is not possible, society has centralized expert committee j	sustainable on

- provides for Rs. 165/per student plus Service Tax.
- h. Delays in the payment of statutory dues like Service Tax, TDS and TDS VAT has been observed during the period under review.
- I. Selection Committee did not consisted of 'Chairman of the Managing Committee' or 'any other member of the Managing Committee (nominated by the Chairman of the Managing Committee)' as required by Rule 96 of Delhi School Education Rules, 1973.
- j. Cash basis of Accounting followed for the accounting of Bonus during FY 2013-14, Bonus amount of Rs. 23,54,570 paid and recognised as expenses in FY 2014-15 for the FY 2013-14.
- k. Receipt and payment account was not prepared in the Financial Year 2013-14, 2014-15 and 201516. This is a violation of clause 24 of Order No F. DE./15/Act/ 2K/243 / KKK/883-1982 dated 10.02.2005

- a difference as the route is dependent on the number is student availing the bus facility and location of their residence.
- f) Approval
  was taken
  from the
  chairman,
  managing
  committee
  for renewal
  of the
  contract.
- g) The observation is not correct, as per agreement it is 165/- ( all inclusive of taxes)
- h) Some
  occasions it
  happens but
  the same
  has been
  duly
  deposited
  with interest
  and penalty.
- i) It is incorrect, the details of selection committee meeting was given in school representati on dated 03.03.2017 to DOE.
- j) As per auditor, the school started making the provision for bonus from FY 2014-15.
- k) The same is prepared as per format prescribed by DOE and uploaded in the link provided by the DOE.

The school is also required to get certify all the financial documents from the statutory auditor of the school.

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, nonetheless, the alleged irregularities does not exist in context of the submission made in the
- (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 03.03.2017) 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 03.03.17, 20.03.17, 27.03.17 and submissions made by the school during the hearing held on 20.03.17 as

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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 38,85,75,322/-. While computing these reserves of Rs 38,85,75,322/-, the amount of Gratuity fund amounting Rs. 8,57,09,501/- and Employees Leave Encashment fund of Rs. 3,43,32,448/- 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 38,85,75,322/-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:

18,76,17,498/-

Development Fund:

17,93,30,631/-

Management Fund\*:

2,16,27,193/-

Total:

38,85,75,322/-

- \* Management Fund: The schools are not allowed to collect any fee from the students in the name of management fund. Accordingly the school is hereby directed not to maintain and/ or collect any fee from the students under the head Management Fund. The available balance under management fund should be transferred to general fund.
- (ii) The school is having a surplus fund of Rs. 114,221,619/-as per the following details:

Particulars		Amount(Rs)
Cash and Bank balances as on 31.03.16 as per School s	ubmission	36,372,224
Investment as on 31.03.16 as per school Submission	July Board Buse?	443,544,406
Add: Inter-unit balances (recoverable)		11,400,000
Total		491,316,630
Less: Development Fund (As per School Submission)		179,100,000
Less: Depreciation Reserve Fund (As per School Submis	ssion)	22,000,000
Less: Provision for Gratuity		85,709,501
Less: Provision for Gracuity  Less: Provision for Leave Encashment		34,332,448
Available Funds		170,174,681
Fees for 2015-16 as per unaudited financial statem assumed that the amount received in 2015-16 will at 2016-17)	least accide in	282,462,445
Other income for 2015-16 as per unaudited financial st	atement	56,562,252
Estimated availability of funds for 2016-17		509,199,378
Less: Budget expenses for the session 2016-17 as school management (Revenue)	submitted by	
A. School Expenses (excluding Appropriations)	332,245,000	
B. Hostel Expenses	13,830,000	CONTRACT OF STREET
C. Transport Expenses	40,888,000	
Total Revenue Expenditure (A+B+C)		386,963,000
Less: Capital Expenditure for 2016-17, as per sch (actual)	ool submission	
**Net Surplus	The T	114,221,619

<sup>\*</sup>The school is hereby directed to make earmarked equivalent investments against provision for Gratuity & Leave Encashment with LIC (or any other agency) within 90 days of the receipt of this order, so as to protect the statutory liabilities.

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 38,85,75,322/-. While computing these reserves of Rs 38,85,75,322/-, the amount of Gratuity fund amounting Rs. 8,57,09,501/- and Employees Leave Encashment fund of Rs. 3,43,32,448/- 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 38,85,75,322/-is exclusive of funds created on account of committed liabilities towards employees, under relevant Act/Statutes. The breakdown of the same is given under:

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C. Transport Expenses	40,888,000	
Total Revenue Expenditure (A+B+C)		386,963,000
Less: Capital Expenditure for 2016-17, as per sch (actual)	nool submission	
**Net Surplus	11/2	114,221,619

\*The school is hereby directed to make earmarked equivalent investments against provision for Gratuity & Leave Encashment with LIC (or any other agency) within 90 days of the receipt of this order, so as to protect the statutory liabilities.

\*\*As sufficient funds are available with the school, it is hereby directed that the School shall create 3 months' salary provision in accordance with the provisions of Right to Education Act, 2009 and to submit FDRs in joint name of Dy. Director (Education) and Manager of the School with DoE within 30 days of receipt of this Order.

(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 after considering the amount of Rs.6 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 31.08 cr. subsequent to the impugned order dated 23.12.16, 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 7<sup>th</sup> 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 7<sup>th</sup> Pay Commission to the employees of private Unaided Recognized Schools. The aforesaid computations of reserve amount Rs 38,85,75,322/- and surplus fund of Rs 114,221,619/- have been arrived at after taking into account the impact of 7<sup>th</sup> 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 7<sup>th</sup> Pay Commission.

Now therefore, the representation dated 06.03.17 and subsequent submissions made in this regard find no merit in respect of sanction for increase in fee and are 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.

And the school is also advised to create appropriate provisions for Gratuity and Leave Encashment based on actuarial valuation.

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.

 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.

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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. Director of Education Directorate of Education, GNCT of Delhi To The Manager/ Hos Delhi Publie School Sector C Pocket-5 Dwarka New Delhi-110070 Dated: 22/1/17 No. F. DE-15/ACT-I/WPC-4109/PART/13/16250-SY 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 The Manayor 14108 Delhi Public School. Sector-III, Phose-I, Dwarka, New Ddn. 78