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

No. F.DE.15 (1118)/PSB/2022/ 465-469 **Dated:** 16/01/23

Order

WHEREAS, **Bharti Public School, Swasthya Vihar, Vikas Marg, New Delhi-110092 (School ID- 1003235)** (hereinafter referred to as " **the School**"), run by the Bharti Educational Trust (hereinafter referred to as "**Society**"), is a private unaided school recognized by the Directorate of Education, Govt. of NCT of Delhi (hereinafter referred to as "**DoE"**), under the provisions of Delhi School Education Act & Rules, 1973 (hereinafter referred to as "**DSEAR, 1973")**. The school is statutorily bound to comply with the provisions of the DSEAR, 1973 and RTE Act, 2009, as well as the directions/guidelines issued by the DoE from time to time.

AND WHEREAS, the manager of every recognized school is required to file a full statement of fees every year for the ensuing academic session under section 17(3) of the DSEAR, 1973 with the Directorate. Such a statement is required to indicate the estimated income of the school to be derived from fees, estimated current operational expenses towards salaries and allowances payable to employees etc. in terms of rule 177 (1) of the DSEAR, 1973.

AND WHEREAS, as per section 18(5) of the DSEAR, 1973 read with sections 17(3), 24 (1) and Rule 180 (3) of the above DSEAR, 1973, responsibility has been conferred upon the DoE to examine the audited financial statements, books of accounts and other records maintained by the school at least once in each financial year. Sections 18(5) and 24(1) and rule 180 (3) of DSEAR, 1973 have been reproduced as under:

Section 18(5): *'the managing committee of every recognized private school shall file every year with the Director such duly audited financial and other returns as may be prescribed, and every such return shall be audited by such authority as may be prescribed'*

Section 24(1): 'every recognized school shall be inspected at least once in each financial year in such manner as may be prescribed'

Rule 180 (3): 'the account and other records maintained by an unaided private school shall be subject to examination by the auditors and inspecting officers authorized by the Director in this behalf and also by officers authorized by the Comptroller and Auditor-General of India'.

Thus, the Director (Education) has the authority to examine the full statement of fees filled under section 17(3) of the DSEA, 1973 and returns and documents submitted under section 18(5) of DSEA, 1973 read with rule 180 (1) of DSER, 1973.

AND WHEREAS, besides the above, the Director (Education) is also required to examine and evaluate the fee increase proposal submitted by the private unaided recognized schools which have been allotted land by the DDA/ other land-owning agencies with the condition in their allotment to seek prior approval from Director (Education) before any increase in fee.

AND WHEREAS, the Hon'ble Supreme Court in the judgment dated 27.04.2004 held in Civil Appeal No. 2699 of 2001 titled Modern School Vs. Union of India and others has conclusively decided that under sections 17(3), 18(4) read along with rules 172, 173, 175 and 177, the DoE has the authority to regulate the fees and other charges, with the objective of preventing profiteering and commercialization of education.

AND WHEREAS, it was also directed by the Hon'ble Supreme Court, that the DoE in the aforesaid matter titled Modern School Vs. Union of India and Others in paras 27 and 28 that in the case of private unaided schools situated on the land allotted by DDA/other land-owning agencies at concessional rates:

"27 (c) It shall be the duty of the Director of Education to ascertain whether terms of allotment of land by the Government to the schools have been complied with...

28. We are directing the Director of Education to look into the letters of allotment issued by the Government and ascertain whether they (terms and conditions of land allotment) have been complied with by the schools.......

.....If in a given case, Director finds non-compliance of above terms, the Director shall take appropriate steps in this regard."

AND WHEREAS, the Hon'ble High Court of Delhi vide its judgement dated 19.01.2016 in writ petition No. 4109/2013 in the matter of Justice for All versus Govt. of NCT of Delhi and Others, has reiterated the aforesaid directions of the Hon'ble Supreme Court and has directed the DoE to ensure compliance of terms, if any, in the letter of allotment regarding the increase of the fee by recognized unaided schools to whom land has been allotted by DDA/ other land-owning agencies.

AND WHEREAS, accordingly, the DoE vide Order No. F.DE-15(40)/PSB/2019/4440-4412 dated 08.06.2022, directed all the private unaided recognized schools, running on the land allotted by DDA/other land-owning agencies at concessional rates or otherwise, with the condition to seek prior approval of DoE for increase in fee, to submit their proposals, if any, for prior sanction, for increase in fee for the academic session 2022-23.

AND WHEREAS, in pursuance to Order dated 08.06.2022 of the DoE, the School submitted its proposal for increase of fee for the academic session 2022-23. Accordingly, this Order dispenses the proposal for increase of fee submitted by school for the academic session 2022-23.

AND WHEREAS, in order to examine the proposals submitted by the schools for fee increase for justifiability or not, the DoE has deployed teams of Chartered Accountants at HQ level who has evaluated the fee increase proposals of the school carefully in accordance with the provisions of the DSEAR, 1973, and other Orders/ Circulars issued from time to time by the DoE.

AND WHEREAS, in the process of examination of the fee increase proposal filed by the aforesaid school, necessary records and explanations were also called from the school through email and the school was also provided an opportunity of being heard on 21.10.2022 to present its justifications/clarifications on the fee increase proposal. Based on the discussion with the school during personal hearing, the school was further asked to submit necessary documents and clarification on various issues noted. In the aforesaid personal hearing, compliance of Order No. F.DE-15(185)/PSB/2021/3441-3445 dated 10.09.2021 issued for academic session 2019-20 were also discussed with the school and school's submissions were taken on record.

AND WHEREAS, on receipt of clarification as well as documents uploaded on the web portal for fee increase, and subsequent documents submitted by the school as a result of the personal hearing on 18.08.2022, were evaluated by the team of Chartered Accountants and the key suggestions noted for improvement by the school are hereunder:

A. **Financial Suggestion for Improvements**

1. Direction no. 2 included in the Public Notice dated 04.05.1997, "*it is the responsibility of the society who has established the school to raise such funds from their own sources or donations from the other associations because the immovable property of the School becomes the sole property of the society*". Additionally, Hon'ble High Court of Delhi in its judgement dated 30.10.1998 in the case of Delhi Abibhavak Mahasangh concluded that "*The tuition fee cannot be fixed to recover capital expenditure to be incurred on the properties of the society.*" Also, clause (vii) (c) of Order No. F.DE/15/Act/2K/243/ KKK/883-1982 dated 10.02.2005 issued by this Directorate states "*Capital expenditure cannot constitute a component of the financial fee structure.*"

   Accordingly, based on the aforementioned public notice and High Court judgement, the cost relating to land and construction of the school building has to be met by the society, being the property of the society and school funds i.e., fee collected from students is not to be utilised for the same.

   The school incurred INR 2,44,26,535 for construction of building, sports auditorium and lift from FY 2014-15 to FY 2018-19 and the same was directed to recover from the society vide Directorate's Order no. F.DE-15(185)/PSB/2021/3441-3445 dated 10.09.2021. However, the School has not complied with the above direction and the aforesaid amount is pending for recovery.

   Therefore, the amount utilised by the school towards construction of building, sports auditorium and lift of INR 2,44,26,535 is hereby again considered as fund available with the school to meet expenditure to pay salary arrears outstanding on implementation of the recommendations of 7th CPC with the direction to the school to recover the same from the society within 30 days from the date of issue of this order.

   Non-compliance with this directive would be taken seriously, and the department would take appropriate action against the school under Section 24(4) of the DSEA, 1973 without giving any further opportunity to the school.

2. Rule 177 of DSER, 1973 states that "income derived by an unaided recognised school by way of fees shall be utilised in the first instance, for meeting the pay, allowances and other benefits admissible to the employees of the school. Provided that savings, if any, from the fees collected by such school may be utilised by its management committee for meeting capital or contingent expenditure of the school, or for one or more of the following educational purposes, namely
   a. *award of scholarships to students,*
   b. *establishment of any other recognised school, or*
   c. *assisting any other school or educational institution, not being a college, under the management of the same society or trust by which the first mentioned school is run.*

   And the aforesaid savings shall be arrived at after providing for the following, namely:
   a. *Pension, gratuity and other specified retirement and other benefits admissible to the employees of the school;*
   b. *The needed expansion of the school or any expenditure of a developmental nature;*

c. *The expansion of the school building or for the expansion or construction of any building or establishment of hostel or expansion of hostel accommodation;*
d. *Co-curricular activities of the students;*
e. *Reasonable reserve fund, not being less than ten percent, of such savings.*

The school incurred INR 1,26,58,144 for construction of branch building from the FY 2016-17 to FY 2018-19 and the same was directed to recover from the society vide Directorate's Order no. F.DE-15(185)/PSB/2021/3441-3445 dated 10.09.2021. However, the School has not complied with the above direction and the aforesaid amount is pending for recovery.

Therefore, the amount utilised by the school towards construction of branch building of INR 1,26,58,144 is hereby again considered as fund available with the school to meet expenditure towards salary arrears on implementation of the recommendations of 7th CPC with the direction to the school to recover the same from the society within 30 days from the date of issue of this order.

Non-compliance with this directive would be taken seriously, and the department would take appropriate action against the school under Section 24(4) of the DSEA, 1973 without giving any further opportunity to the school.

3. Rule 177 of DSER, 1973 states that "income derived by an unaided recognised school by way of fees shall be utilised in the first instance, for meeting the pay, allowances and other benefits admissible to the employees of the school. Provided that savings, if any, from the fees collected by such school may be utilised by its management committee for meeting capital or contingent expenditure of the school, or for one or more of the following educational purposes, namely
   a. *award of scholarships to students,*
   b. *establishment of any other recognised school, or*
   c. *assisting any other school or educational institution, not being a college, under the management of the same society or trust by which the first mentioned school is run.*

   And the aforesaid savings shall be arrived at after providing for the following, namely:
   a. *Pension, gratuity and other specified retirement and other benefits admissible to the employees of the school;*
   b. *The needed expansion of the school or any expenditure of a developmental nature;*
   c. *The expansion of the school building or for the expansion or construction of any building or establishment of hostel or expansion of hostel accommodation;*
   d. *Co-curricular activities of the students;*
   e. *Reasonable reserve fund, not being less than ten percent, of such savings.*

   On review of the audited financial statements, it has been noted that the school has paid donation and charity during FY 2019-20 to FY 2021-22, amounting to INR 2,20,097 (FY 2019-20 – INR 27,102, FY 2020-21 – INR 1,11,051 and FY 2021-22 – 81,944) which is not in accordance with the above-mentioned provisions considering that the school has not complied with the requirements of sub rule 2 of Rule 177.

   In view of the above, expenditure amounting to INR 29,800 towards charity and donation budgeted in FY 2022-23 by the school has not been considered while deriving the fund position of the school for FY 2022-23.

4. Para 7.14 of AS-15 "*Employee Benefit*" issued by the Institute of Chartered Accountants of India (ICAI) states 'Plan Assets as:

   a. assets held by a long-term employee benefit fund; and
   b. qualifying insurance policies."

   Further, the para 57 of the AS-15 states "*an enterprise should determine the present value of defined benefit obligations and the fair value any plan assts with sufficient regularity that the amounts recognised in the financial statements do not differ materially from the amounts that would be determined at the balance sheet date.*"

The review of the audited financial statements for the FY 2021-22 revealed that the school has provided provision for gratuity and leave encashment (i.e INR 3,34,31,426 towards gratuity and INR 50,68,387 towards leave encashment) equivalent to the actuarial liability determined by the actuary.

Based on the information provided by the school, it has been noted that INR 2,00,00,000 was invested by the school in plan assets before 31.03.2022 and INR 2,10,58,132 was invested by the school after 31.03.2022 but before finalization of audited financial statements. However, the school has reported total investment of INR 4,10,58,132 in its audited financial statements. Therefore, the position of investment reported by the school in audited financial statements is not correct.

In view of the above, it appears that the school has not correctly reported cash and bank account and investment in the audited financial statements for FY 2021-22. Therefore, the school is hereby directed to report correct balance of investment and cash and back account in the audited financial statements henceforth.

Since, the school has already invested of INR 4,10,58,132 in plans assets withing the meaning of AS-15. Therefore, amount invested by the school has been considered while deriving the fund position of the school.

B. Other Suggestion for Improvements

1. Clause 19 of Order No. F.DE. /15(56)/Act/2009/778 dated 11.02.2009 states *"The tuition fee shall be so determined as to cover the standard cost of establishment including provisions for DA, bonus, etc., and all terminal, benefits as also the expenditure of revenue nature concerning the curricular activities."*

   Clause 21 of Order No. F.DE. /15(56)/Act/2009/778 dated 11.02.2009 states *"No annual charges shall be levied unless they are determined by the Managing Committee to cover all revenue expenditure, not included in the tuition fee and 'overheads' and expenses on play-grounds, sports equipment, cultural and other co-curricular activities as distinct from the curricular activities of the school."*

   Clause 22 of Order No. F.DE /15(56)/ Act/2009/778 dated 1.02.2009 states *"Earmarked levies will be calculated and collected on 'no-profit no loss' basis and spent only for the purpose for which they are being charged."*

Clause 6 of Order No. DE 15/ Act/ Duggal.Com /203 /99 /23033-23980 dated 15.12.1999 states *"Earmarked levies shall be charged from the user student only."*

Rule 176 states *"Collections for specific purposes to be spent for that purpose' of the DSER, 1973 states "Income derived from collections for specific purposes shall be spent only for such purpose."*

Sub-rule 3 of Rule 177 of DSER, 1973 states *"Funds collected for specific purposes, like sports, co-curricular activities, subscriptions for excursions or subscriptions for magazines, and annual charges, by whatever name called, shall be spent solely for the exclusive benefit of the students at the concerned school and shall not be included in the savings referred to in sub-rule (2)." Further, Sub-rule 4 of the said rule states "The collections referred to in sub-rule (3) shall be administered in the same manner as the monies standing to the credit of the Pupils Fund as administered."*

Also, earmarked levies collected from students are form of restricted funds, which, according to Guidance Note-21 'Accounting by Schools' issued by the Institute of Chartered Accountants of India, are required to be credited to a separate fund account when the amount is received and reflected separately in the Balance Sheet.

Further, the Guidance Note-21 lays down the concept of fund-based accounting for restricted funds, whereby upon incurrence of expenditure, the same is charged to the Income and Expenditure Account and a corresponding amount is transferred from the concerned restricted fund account to the credit of the Income and Expenditure Account.

From the information provided by the school post personal hearing, it has been noted that school charges earmarked levies in the form of smart class fees, science and computer fees, transport fees and accidental insurance fees from the students. However, the school has maintained separate fund accounts for these earmarked levies except for the accidental insurance fees. The surplus/deficit generated by the school from these earmarked levies in last three financial years are as under:

(Amount in INR)

Particulars	**Accidental Insurance Fees**
For the year 2019-20	
Fee Collected during the year (A)	10,48,290
Expenses during the year (B)*	10,55,000
Difference for the year (A-B)	**(6,710)**
For the year 2020-21	
Fee Collected during the year (A)	4,10,360
Expenses during the year (B)	4,16,500
Difference for the year (A-B)	**(6,140)**
For the year 2021-22	
Fee Collected during the year (A)	9,40,550
Expenses during the year (B)	9,72,120
Difference for the year (A-B)	**(31,570)**
Total (Surplus)	**(44,420)**

*Smart class fees, Science and computer fees and accidental insurance fees (collected from all students)

In view of the above the earmarked levies are to be collected only from the user students availing the services, and if any service/facility has been extended to all the students at the school, a separate charge cannot be levied towards these services by the school as the same would get covered either from tuition fee (expenses on curricular activities) or annual charges (expenses other than those covered under tuition fee). Accordingly, charging earmarked levies in the name of smart class fees, science and computer fees and accidental insurance fees from all the students loses its character of earmarked levy. Thus, the school is directed not to charge smart class fees, science and computer fees and accidental insurance fees as earmarked levy with immediate effect and should incur the expenses relating to these from tuition fee and/or annual charges.

The school is also directed to maintain separate fund account depicting clearly the amount collected, amount utilised and balance amount for accidental insurance fees collected from students. Unintentional surplus/deficit, if any, generated from earmarked levies must be utilized or adjusted against earmarked fees collected from the users in the subsequent year. Further, the school should evaluate costs incurred against each earmarked levy and propose the revised fee structure for earmarked levies in the subsequent proposal of fee increase by ensuring that the proposed levies are calculated on no-profit no-loss basis and not to include fee collected from all students as earmarked levies.

The act of the school of charging unwarranted fee or any other amount/fee under head other than the prescribed head of fee and accumulation of surplus fund thereof tantamount to profiteering and commercialization of education as well as charging of capitation fee in other form.

2. Appendix II to Rule 180(1) of DSER, 1973, the school is required to submit final accounts i.e., receipts and payment account, income and expenditure account and balance sheet of the preceding year duly audited by a Chartered Accountant by 31st July.

On account of number of complaints received by the Institute of Chartered Accountants of India (ICAI) regarding signatures of Chartered Accountants (CAs) are being forged by non-CAs and corresponding findings by ICAI that financial documents/certificates attested by third person misrepresenting themselves as Chartered Accountants (CA) are misleading the Authorities and Stakeholders, ICAI, at its 379th Council Meeting, made generation of Unique Document Identification Number (UDIN) mandatory for every signature of Full time Practicing Chartered Accountants in phased manner for the following services:

- All Certificates with effect from 1 Feb 2019
- GST and Income Tax Audit with effect from 1 Apr 2019
- All Audit and Assurance Functions with effect from 1 Jul 2019

Therefore, generation of UDIN has been made mandatory for all audit and assurance functions like documents and reports certified/ issued by practicing Chartered Accountants from 1 July 2019. The UDIN System has been developed by ICAI to facilitate its members for verification and certification of the documents and for securing documents and authenticity thereof by Regulators.

Further, ICAI issued an announcement on 4 June 2019 for the attention of its members with the requirement of mentioning UDIN while signing the Audit Reports effective from 1 Jul 2019, which stated "*With a view to bring uniformity in the manner of signing audit reports by the members of ICAI, it has been decided to require the members of ICAI to also mention the UDIN immediately after the ICAI's membership number while signing audit reports. This requirement will be in addition to other requirements relating to the auditor's signature prescribed in the relevant law or regulation and the Standards on Auditing.*"

However, on review of the audited financial statements for the FY 2021-22 submitted by the school, it was observed that the financial statements of the school were certified by the Chartered Accountant without mentioning the UDIN as required by the council. This being the procedural observation therefore, the school management are directed to ensure this compliance from the Auditor of the school.

3. According to the Directorate of Education Order No F. DE.-15/Act-I/WPC-4109/Part/13/7905-7913 dated 16.04.2016, in exercise of the powers confirmed by Clause (xviii) of Rule 50 and Rule 180 of the Delhi School Education Rules, 1973, the Director specified that the format of return and documents to be submitted by schools under Rule 180 read with Appendix-II of the Delhi School Education Rules, 1973 shall be as per format specified by the Institute of Chartered Accountant of India, established under Chartered Accountant Act 1949 (38 of 1949) in Guidance Note on Accounting by the Schools (2005).

As per the documents submitted by the school, it has been noted that the school is not preparing Receipt and Payment account as a part of the financial statements during FY 2019-20 to FY 2021-22. Therefore, school is directed to prepare the Receipt and Payment Accounts in accordance with format specified in Appendix-II of the Directorate of Education order dated 16.04.2016. Non-compliance of the above direction shall be reviewed seriously at the time of evaluation of proposal for enhancement of fee for subsequent year.

4. Section 13 (1) of the Right to Education Act, 2009 states that *"no school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure"*.

Section 13 (2) of the Right to Education Act, 2009 states that *"Any school or person, if in contravention of the provisions of sub-section (1),-*

a. *receives capitation fee, shall be punishable with fine which may be extended to ten times the capitation fee charged.*

b. subjects a child to screening procedures shall be punishable with a fine which may extend to twenty-five thousand rupees for the first contravention and fifty thousand rupees for each subsequent contravention.

And section 2(b) of the Right to Education Act, 2009 states *"capitation fee" means any kind of donation or contribution or payment other than the fee notified by the school.*

Further, the Supreme Court in its Judgement dated 02 May 2016 in the matter of Modern '*Dental College and Research Centre Vs. State of Madhya Pradesh [Medical Council of India]*' held that education is a noble profession and emphasized that:

"*Every demand of capitation fee by educational institutions is unethical & illegal. It emphasized that commercialization and exploitation are not permissible in the education sector and institutions must run on a 'no-profit-no-loss' basis*".

The Hon'ble Supreme Court categorically held that "*though education is now treated as an 'occupation' and, thus, has become a fundamental right guaranteed under Article 19(1) (g) of the Constitution, at the same time shackles are put in so far as this particular occupation is concerned, which is termed as noble. Therefore, profiteering and commercialization are not permitted, and no capitation fee can be charged. The admission of students has to be on merit and not at the whims and fancies of the educational institutions,*"

Further, the Hon'ble High Court in LPA 196/2004 in the matter of *'Rakesh Goyal Vs. Montfort School and Section 13(1) of RTE Act, 2009'* states "*no school or person shall, while admitting a child, collect any Capitation fee/Donation from the parents. Any school or person who contravenes this provision and receives a capitation fee, shall be punishable with a fine which may extend to ten times the capitation fee charged*".

Further, The Directorate of Education, vide Order No. DE15/ Act/Duggal.com/203/99/23033-23980 dated 1 5.12.1999 and Order No.F.DE./15(56)/ Act/2009/778 dated 11.02.2009, indicated the following types of Fee that a recognised private unaided school can collect from the students/ parents:

a. **Registration Fee:** Registration fee INR 25 per student prior to admission, shall be charged.

b. **Admission Fee:** No admission fee of more than 200/- per student, at the time of the admission shall be charged. The admission fee shall not be charged again from any student who is once given admission as long as he remains on the rolls of the school. Further, Clause 4 of the Public notice dated 04.05.1997 states "*admission fee can be charged only at the nominal rate but not exceeding INR 200 in any case. It should not be made a regular practice. Once a student is admitted in the school, he should not be asked to pay admission fee again at middle or secondary or senior secondary stage*".

c. **Caution Money:** No Caution Money/ Security Deposit of more than INR 500 per student shall be charged. The caution money thus collected shall be kept deposited in a Scheduled Bank in the name of the concerned school and shall be returned to the student at the time of his/her leaving the school along with the bank interest thereon irrespective of whether he/she requests for a refund. Thus, it is not an income of the school, but a deposit/ liability which is to be refunded at the time of students leaving the school.

d. **Tuition Fee:** It is required to be determined so as to cover the standard cost of the establishment including provisions for DA, bonus etc. and all terminal benefits, as also the expenditure of revenue nature concerning curricular activities. No fee shall be charged in excess of the amount so determined.

e. **Annual Charges:** Annual charges are expected to cover all revenue expenditure not included in tuition fee and overhead and expenditure on playgrounds, sports equipment, cultural and other co-curricular activities as distinct from curricular activities of the school.

f. **Earmarked Levies:** Earmarked levies are required to be charged from the user students only. Earmarked levies for the services rendered are to be charged on no profit no loss basis in respect of facilities provided to the user students involving additional expenditure in the provision of the same.

g. **Development Fee**: It is to be treated as capital receipts and utilized towards purchase, upgradation and replacement of furniture, fixture and equipment.

Based on the provisions mentioned above, charging of "Activity fee" from the students of the nursery class at the time of admission is nothing but is in the nature of capitation fee only. Additionally, not only the charging of one-time fee at the time of admission is tantamount to capitation fee but also charging unwarranted fee under different heads or introduction of any new head in the fee structure other than the prescribed heads of fee and accumulation of surplus funds out of it is prima-facie considered to be a collection of capitation fee in other manner and form.

Accordingly, the collection of one-time fees from the students at the time of admission indicates that the school is engaged in profiteering and commercialization of education. Also, charging of fees in the name of Smart class fees, science and computer fees and accidental insurance from the students of all classes losses the character of earmarked levies and is another form of charging capitation fee and involvement in the profiteering and commercialization of the education.

As per Section 27 of the DSEA, 1973, the manager of the school is responsible for looking after the smooth operation of the school and ensuring compliance with the provisions of the DSEAR, 1973, including the compliance of directions of the Hon'ble High Court and Supreme Court as well as the orders/circulars issued by the Directorate of Education from time to time in this regard. The manager and principal have been bestowed with the power to ensure the school's proper functioning, including ensuring the admission process transparently, jointly as well as in their personal capacity, be responsible for the levy and collection of capitation fees and any other unauthorised fees collected by the school.

Therefore, the school is directed to not charge activity fees (as capitation fee) as mentioned above with immediate effect. The school is also directed to submit compliance with this direction within 30 days from the date of issue of this order. Noncompliance with this directive would be taken seriously, and the department would take appropriate action against the school under Section 24(4) of the DSEA, 1973 without giving any further opportunity to the school.

5. Clause 24 of DoE Order dated 11.02.2009 states "*Every recognized unaided school covered by the Act, shall maintain accounts on the principles applicable to a non-business organization/ not-for-profit organization as per Generally Accepted Accounting Principles (GAAP). Such schools shall prepare their financial statement consisting of a Balance Sheet, P&L Account and Receipt & Payment account every year.*"

Further, Appendix-III (Part-I-General instructions and accounting principles) of Guidance Note-21 states:

1. "the financial statement of the Schools should be prepared on accrual basis.

2. a statement of all significant accounting policies adopted in the preparation and presentation of the balance sheet and income and expenditure account should be included in the School's Balance sheet……………

3. accounting policies should be applied consistently from one financial year to the next. Any change in the accounting policies which has a material effect in the current period, or which is reasonably expected to have a material effect in later periods should be disclosed…. ".

On review of the audited financial statements for the FY 2019-20 to 2021-22, it has been noted that school has recording income on cash basis while expenses are being recoded on accrual basis. Thus, the school is not following Generally Accepted Accounting Principles (GAAP). The same was also discussed with the school at the time of personal hearing and the school accepted this fact. It also raises serious concern over reliability on financial records submitted by the school to the Directorate for fee increase evaluation propose.

Therefore, the school is hereby directed, to maintain its books of account in accordance with GAAP from subsequent financial years and made necessary adjustment in its books of accounts accordingly. The compliance with this direction shall be verified while evaluating the fee increase proposal of the subsequent year.

After detailed examination of all the material on record and considering the clarification submitted by the school, it was finally evaluated/ concluded that:

i. The total funds available for the FY 2022-23 is INR **18,13,45,642** out of which the expected expenditures of the school would be INR **16,69,87,748** resulting in net surplus of INR **1,43,57,894** for the FY 2022-23. The detailed calculation is as under:

Particulars	**Amount (in INR)**
Cash and Bank balances as on 31.03.22 as per Audited Financial Statements	1,69,46,551
Investments as on 31.03.22 as per Audited Financial Statements **(Refer Note 1 Below)**	8,19,76,533
Liquid Funds as on 31.03.2022	**9,89,23,084**
Add: Recovery from society for additions to building **(Refer Financial Suggestion No. 1)**	2,44,26,53s5
Add: Recovery from society towards construction of branch building **(Refer Financial Suggestion No. 2)**	1,26,58,144
Add: Recovery from society towards incurred on charity and donation **(Refer Financial Suggestion No. 3)**	2,20,097
Add: Fees for FY 2021-22 as per Audited Financial Statements **(Refer Note 2 Below)**	9,65,68,057
Add: Other income for FY 2021-22 as per Audited Financial Statements **(Refer Note 3 Below)**	93,62,671
Total Available Funds for FY 2022-23	**24,21,58,588**
Less: FDR in the name of DoE & Manager for salary reserve as on 31.03.2022 **(Refer Note 4 Below)**	1,81,23,955
Less: Gratuity and Leave Encashment Fund with LIC as on 31.03.2022 **(Refer Financial Suggestion No. 4)**	4,10,58,132
Less: Development Fund as on 31.03.2022 **(Refer Note 5 Below)**	16,30,859
Less: Depreciation Reserve Fund as on 31.03.2022 **(Refer Note 6 Below)**	-
Less: FDR jointly with DoE **(Refer Note 1 Below)**	-
Net Available Funds for FY 2022-23 - (A)	**18,13,45,642**
Less: Budgeted expenses for the session 2022-23 **(Refer Note 7 Below)**	12,44,15,088
Less: Salary arrears on account of implementation of 7th CPC **(Refer Note 8 Below)**	4,25,72,660
Total Expected Expenditure for FY 2022-23 - **(B)**	**16,69,87,748**

Net Surplus (A-B)	1,43,57,894

Note 1: The detail of fixed deposits held by the school as per the audited financial statements of FY 2021-22 is provided below:

Particulars	Amount (in INR)	Remarks
Gratuity Fund	3,54,64,723	Investment in LIC
Leave Encashment Fund	55,93,409	Investment in LIC
Working Reserve	1,88,93,223	Refer Note 4 Below
FDR jointly with DoE	2,89,746	FDR in the name of school, hence it has not been considered.
Depreciation Reserve Fund	2,17,35,432	Refer Note 6 Below
Total	**8,19,76,533**	

Note 2: The Department vide its Order No.F.No.PS/DE/2020/55 dated 18.04.2020 and Order No.F.No.PS/DE/2020/3224-3231 dated 28.08.2020 had issued guidelines regarding the chargeability of fees during the pandemic COVID 2019. The department in both the above-mentioned orders directed to the management of all the private schools not to collect any fee except the tuition fee irrespective of the fact whether running on the private land or government land allotted by DDA/other land-owning agencies and not to increase any fee in FY 2020-21 till further direction.

The department in pursuance of the order dated 31.05.2021 in WPC 7526/2020 of Single Bench of the Hon'ble High Court of Delhi and interim order dated 07.06.2021 in LPA 184/2021 of the Division Bench of Hon'ble High Court of Delhi and to prevent the profiteering and commercialization, again directed to the management of all the petitioners private unaided recognized schools through its Order No. F. No. DE.15 (114) /PSB /2021 /2165-2174 dated 01.07.2021:

(i) *"to collect annual school fee (only all permitted heads of fees) from their students as fixed under the DSEAR, 1973 for the academic year 2020-21, but by providing deduction of 15% on that amount in lieu of **unutilized facilities** by the students during the relevant period of academic year 2020-21"*. And if the school has collected the fee in excess to the direction issued by the Hon'ble Court, the same shall be refunded to the parents or adjusted in the subsequent month of fee or refund to the parents.

(ii) The amount so payable by the concerned students be paid in six equal monthly instalments w.e.f. 10.06.2021.

(iii) The above arrangement is also applicable for collection of fee for FY 2021-22.

From review of the audited financial statements of FY 2021-22 and based on the further information provided by the school, it has been noted that the school has reported tuition fees, annual charges and development charges at 100% and has also been noted that the school is recording its income on receipts basis. Thus, the school is not maintaining its books and accounts in accordance with GAAP (Generally Accepted Accounting Principles).

The detailed calculation has been provided below:

Particulars	Income as per AFS of FY 2021-22	Income Considered in the Above Table	Remarks
Tuition Fee	7,15,10,509	7,38,89,580	Tuition Fees, Annual Charges and Development Fees has been considered as per reconciliation of FY 2021-22 provided by the school
Annual Charges	1,31,35,777	74,24,640	
Development Fees	1,59,08,049	97,86,237	
Total	**10,05,54,335**	**9,11,00,457**	

Note 3: All the other income as per audited financial statements of FY 2021-22 has been considered with the assumption that the amount received in FY 2021-22 will at least accrue during FY 2022-23 except Depreciation on DF Assets amounting to INR 76,16,070 being a non-cash item.

Note 4: As per clause 10 of Form-II of Right of Children to Free and Compulsory Education Act 2009, the schools are required to maintain liquidity equivalent to 3 months' salary and this amount should be invested in the joint name of Dy. Director (Education) and manager of the school. Generally, it is done in the form of FDR in any scheduled bank.

The balance of Salary Reserve as on 31.03.2022 is INR 1,84,94,776 as per audited financial statements of the school for FY 2021-22. However, the school has earmarked investment in the joint name of the Dy. Director and Manager of the school of amounting INR 1,81,23,955. Hence, the same has been considered while calculating the fund position of the school.

Further, the school has proposed provision of 4 month's salary reserve for the FY 2022-23 amounting to INR 4,22,34,200. However, the school has not earmarked equivalent investment of reserve already outstanding in the books on 31st March, 2022. Hence, Provision amounting to INR 4,22,34,200 has not been considered while calculating the fund position of the school.

Note 5: As per audited financial statement for the FY 2021-22, the development fund balance as on 31.03.2022 was INR 16,30,859 and the same has been maintained in a separate bank account by the school. Hence, amounting to INR 16,30,859 has been considered while calculating the fund position of the school.

Note 6: As per the Duggal Committee report, there are four categories of fees that can be charged by a private unaided school. The first category of fee comprised of "*Registration fee and all one Time Charges*' levied at the time of admissions such as admission charges and caution money. The second category of fee comprises '*Tuition Fee*' which is to be fixed to cover the standard cost of the establishment and to cover the expenditure of revenue nature for the improvement of curricular facilities like library, laboratories, science, and computer fee up to class X and examination fee. The third category of the fee should consist of *'Annual Charges'* to cover all expenditure not included in the second category and the fourth category consist of all *'Earmarked Levies'* for the services rendered by the school and be recovered only from the 'User' students. These charges are transport fee, swimming pool charges, Horse riding, tennis, midday meals etc. This recommendation has been considered by the Directorate while issuing order No. DE.15/Act/Duggal.com/203/99/23033-23980 dated 15.12.1999 and order No. F.DE. /15(56)/Act/2009/778 dated 11.02.2009.

The purpose of each head of the fee has already been defined and it is nowhere defined the usage of development fee or any other head of fee for investments against depreciation reserve fund. Further, Clause 7 of order No. DE.15/Act/Duggal.com/203/99/23033-23980 dated 15.12.1999 and clause 14 of the order no F.DE./15(56)/Act/2009/778 dated 11.02.2009, *"development fee, not exceeding 15% of the total annual tuition fee may be charged for supplementing the resources for purchase, upgradation and replacement of furniture, fixture and equipment. Development fee, if required to be charged, shall be treated as capital receipt and shall be collected only if the school is maintaining a Depreciation Reserve Fund, equivalent to the depreciation charged in the revenue accounts and the collection under this head along with and income generated from the investment made out of this fund will be kept in a separately maintained Development Fund Account"*. Thus, the above direction provides for:

- Not to charge development fee for more than 15% of tuition fee.
- Development fee will be used for purchase, upgradation and replacement of furniture, fixtures, and equipment.
- Development fee will be treated as capital receipts.
- Depreciation reserve fund is to be maintained.

Thus, the creation of the depreciation reserve fund is a pre-condition for charging of development fee, as per above provisions and the decision of Hon'ble Supreme Court in the case of Modern School Vs Union of India & Ors.: 2004(5) SCC 583. Even the Clause 7 of the above direction does not require to maintain any investments against depreciation reserve fund. Also, as per para 99 of Guidance Note-21 'Accounting by School' issued by the Institute of Chartered Accountants of India states *"where the fund is meant for meeting capital expenditure, upon incurrence of the expenditure, the relevant asset account is debited which is depreciated as per the recommendations contained in this Guidance Note. Thereafter, the concerned restricted fund account is treated as deferred income, to the extent of the cost of the asset, and is transferred to the credit of the income and expenditure account in proportion to the depreciation charged every year."*

Accordingly, the depreciation reserve (that is to be created equivalent to the depreciation charged in the revenue account) is mere of an accounting head for the appropriate accounting treatment of depreciation in the books of account of the school in accordance with Guidance Note -21 issued by the Institute of Chartered Accountants of India. Thus, there is no financial impact of depreciation reserve on the fund position of the school. Accordingly, the depreciation reserve fund as reported by the school in its audited financial statements for the FY 2021-22 has not been considered while deriving the fund position of the school.

Note 7: All budgeted expenditure proposed by the school has been considered while deriving the fund position of the school except following:

Head of Expenditure	Budgeted Expenditure in FY 2022-23	Amount Disallowed	Remarks
Salary Arrear	10,62,94,430	10,62,94,430	7th CPC arrears has been considered separately
4 Months' Salary reserve	4,22,34,200	4,22,34,200	Refer Note 4
Depreciation	1,06,87,282	1,06,87,282	Expense being a non-cash item
Transport Expenses against Transport fees	1,24,53,921	1,24,53,921	Neither income nor expenditure has been considered while calculating the fund position of the school for FY 2022-23 on the assumption that earmarked levies are collected on no profit/no loss basis.
Computer and Smart Class Expenses	45,48,100	45,48,100	
Computer Lab Consumables Expenses	12,50,000	12,50,000	
Liveries	2,50,000	2,50,000	
Science Lab Expenses	7,50,000	7,50,000	
Charity and Donations	29,800	29,800	Refer Financial Suggestion No. 3
Total	**17,84,97,733**	**17,84,97,733**	

Note 8: During the personal hearing, the school explained that they have not implemented 7th CPC yet. In the previous order no. F.DE.15(185)/PSB/2021/3441-3445 dated 10.09.2021, the school was allowed Salary to Staff as per 7th CPC and 7th CPC arrears for the period January 2016 to March,2020.

Further, post personal hearing the school submitted calculation of 7th CPC arrears for the period January 2016 to March,2022 out of which arrears for the period January 2016 to March 2020 had already considered in the previous order. Hence, arrears for the period of April 2020 to March 2022 amounting to INR 4,25,72,660 has been considered in the fund position of the school.

ii. The school has sufficient funds to carry on its operation for the academic session 2022-23 on the existing fee structure. In this regard, Directorate of Education has already issued directions to the schools vide order dated 16.04.2010 that,

> *"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 allowance of the employees. A part of the reserve fund which has not been utilised for years together may also be used to meet the shortfall before proposing a fee increase."*

AND WHEREAS, in the light of above evaluation which is based on the provisions of DSEA, 1973, DSER, 1973, guidelines, orders and circulars issued from time to time by this Directorate, it was recommended by the team of Chartered Accountants that along with certain financial and other irregularities, that the sufficient funds are available with the school to carry out its operations for the academic session 2022-23. Accordingly, the fee increase proposal of the school may be rejected.

AND WHEREAS, recommendation of the team of Chartered Accountants along with relevant materials were put before the Director of Education for consideration and who after considering all the material on the record, and after considering the provisions of section 17 (3), 18(5), 24(1) of the DSEA, 1973 read with Rules 172, 173, 175 and 177 of the DSER, 1973 has found that the school has sufficient funds for meeting financial implication for the academic session 2022-23. Therefore, Director (Education) has rejected the proposal submitted by the school to increase the fee for the academic session 2019-20.

Accordingly, it is hereby conveyed that the proposal of fee increase of **Bharti Public School, Swasthya Vihar, Vikas Marg, New Delhi-110092 (School ID- 1003235),** is rejected by the Director of Education. Further, 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 any fee in pursuance to the proposal submitted by school on any account for the academic session 2022-23 and if the fee is already increased and charged for the academic session 2022-23, the same shall be refunded to the parents or adjusted in the fee of subsequent months.

2. To ensure payment of salary is made in accordance with the provision of Section 10(1) of the DSEA, 1973. Further, the scarcity of funds cannot be the reason for non-payment of salary and other benefits admissible to the teachers/ staffs in accordance with section 10 (1) of the DSEA, 1973. Therefore, the Society running the school must ensure payment to teachers/ staffs accordingly.

3. To utilize the fee collected from students in accordance with the provisions of Rule 177 of the DSER, 1973 and orders and directions issued by this Directorate from time to time.

Non-compliance of this order or any direction herein shall be viewed seriously and will be dealt with in accordance with the provisions of section 24(4) of Delhi School Education Act, 1973 and Delhi School Education Rules, 1973.

This is issued with the prior approval of the Competent Authority

Nandini

(Nandini Maharaj)
Additional Director of Education
(Private School Branch)
Directorate of Education, GNCT of Delhi

To:
The Manager/ HoS
Bharti Public School, Swasthya Vihar,
Vikas Marg, New Delhi-110092
School ID- 1003235

No. F.DE.15 (118)/PSB/2022/ 465-469

Dated: 16/01/23

Copy to:

1. P.S. to Principal Secretary (Education), Directorate of Education, GNCT of Delhi.
2. P.S. to Director (Education), Directorate of Education, GNCT of Delhi.
3. DDE (East) ensure the compliance of the above order by the school management.
4. In-charge (I.T Cell) with the request to upload on the website of this Directorate.
5. Guard file.

Nandini

(Nandini Maharaj)
Additional Director of Education
(Private School Branch)
Directorate of Education, GNCT of Delhi