

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

No. F.DE.15 (1232) / PSB / 2022 / 1387-1392

Dated: 10/02/23

ORDER

WHEREAS, BGS International Public School, Sector-5, Dwarka, New Delhi- 110075 (School ID-1821217) (hereinafter referred to as “the School”), run by the Sri Adichunchunagiri Shikshana Trust Regd. (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, every school is required to file a full statement of fees every year before the ensuing academic session under section 17(3) of the Delhi School Education Act, 1973 (hereinafter read as ‘the Act’) with the Director. Such statement will indicate estimated income of the school derived from fees, estimated current operational expenses towards salaries and allowances payable to employees etc in terms of Rule 177(1) of the Delhi School Education Rules, 1973 (hereinafter read as ‘the Rules’).

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 hike 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 enhancement of fee for the academic session 2022-23. Accordingly, this Order dispenses the proposal for enhancement 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 hike proposal filed by the aforesaid school,

necessary records and explanations were called from the school through email. The school was also provided an opportunity to be heard on 27.09.2022, to present its justifications/clarifications on the fee increase proposal. Based on the discussion, the school was asked to submit necessary documents and clarification on various issues noted and discussed during the aforesaid personal hearing. During personal discussion, compliance of Order No. F.DE.-15(179)/PSB/2021/3278-3281 dated 07.09.2021 issued to the school post evaluation of the fee hike proposal for FY 2019-20 were also discussed and the school's submissions were taken on record.

AND WHEREAS, on receipt of further clarifications/ documents as well as the documents uploaded by the school on the web portal of the department, as a result of the personal hearing, were evaluated by the team of Chartered Accountants and key suggestions noted for improvement by the school are hereunder:

A. Financial Suggestions for Improvement:

1. As per clause 2 of 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, Clause (vii) (c) of Order No. F.DE/15/Act/2K/243/KKK/ 883-1982 dated 10.02.2005 issued by DoE states that *"Capital expenditure cannot constitute a component of the financial fee structure."*

Further, Rule 177 of DSER, 1973 states *"Income derived by an unaided recognized School by way of fees shall be utilized 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 utilized by its management committee for meeting capital or contingent expenditure of the School, or for one or more of the following educational purposes, namely award of scholarships to students, establishment of any other recognized School, or 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"*.

Further, 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.

As per Clause 14 of Order No. F.DE. /15(56)/Act/2009/778 dated 11.02.2009 and Clause 7 of Order No. DE 15/Act/Duggal.com/203/99/23033-23980 dated 15.12.1999 stated *"Development fee, not exceeding 15% of the total annual tuition fee may be charged for supplementing the resources for purchase, up gradation and replacement of furniture, fixtures 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 income generated from the investment made out of this fund, will be kept in a separately maintained Development Fund Account."

Therefore, based on the above-mentioned provisions, the cost relating to land and construction of the school building should be borne by the society running the school and school funds, i.e., fees collected from the students should not be used for the purchase of land and construction of the school building. In this regard, it is also important to mention that society was allotted an institutional land at lower cost compared to the price of commercial and residential land in nearby location. The reason for allotment of land at very low cost was the society came up with the offer to do noble work in the field of education and run the school in Delhi on charity and on a "no profit and no loss" basis. In its offer society also undertook to execute this work from its resources or by arranging funds through donations, subscriptions, or any other legal possible manner. Based on the noble grounds, the DoE had recommended to the land-owning agencies for allotment of land to society which would otherwise not be possible for the society to have such a prime land at this cost in such posh location.

Accordingly, if the DoE finds any deviation or non-compliance in any condition of land allotment letter, the society as well as the school are bound to comply and honour that immediately as per the direction of the DoE. Society cannot always claim the protection of Article 19(1)(g), 21 & 30 of the Constitution of India for non-interference by the DoE. Because the main source (i.e., land) which was required to establish and run the school was supported by DoE by recommending to land owning agency to allotment the land to the society. After considering the recommendation of the DoE, a clause was included in the land allotment letter of the school that the school shall not increase the fee without the prior sanction of the Director (Education) and shall follow the provisions of the Delhi School Education Act/Rules, 1973 and other instructions issued by the department from time to time.

The DoE, in its Order No. F.DE.-15(179)/PSB/2021/3278-3281 dated 07.09.2021 issued to the school post-evaluation of the fee hike proposal for FY 2019-20, noted that the school had purchased land amounting to INR 2,91,62,912 in FY 2018-19. The school had purchased the aforesaid land by taking a loan amounting to INR 2,40,00,000 from society, and the remaining amount of INR 51,62,912 was met out of the school fund and development fund. It was also noted that the above expenditure was incurred without complying with the provisions of Rule 177 of the DSER, 1973. In the aforesaid order, the school was directed to treat the amount of an unsecured loan received from society as a capital contribution and recover INR 51,62,912 from society. However, from the record submitted by the school, it has been noted that the school has not yet complied with the above direction.

Therefore, the school is once again directed to recover INR 51,62,912 from the society within 30 days from the date of issue of this order and pass the necessary rectification in its books of account with respect to the unsecured loan taken from society.

2. 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.*"

The Directorate's Order No. F.DE.-15(179)/PSB/2021/3278-3281 dated 07.09.2021 issued to the school post-evaluation of the proposal for enhancement of fees for FY 2019-2020, noted that the school had purchased a bus for INR 11,70,000 in FY 2018-19 out of the school fees collected from the students. It was

also noted that the school had incurred the above expenditure without complying with the provisions of Rule 177 of the DSER, 1973. Therefore, the school was directed to recover INR 11,70,000 from society, which is still pending for recovery.

Post personal hearing the school submitted that *"The aforesaid vehicles are bus and not cars which is used by school staff & students for any of the school purposes like medical emergencies, among many others. Further, the order has taken a very narrow view of the term "equipment's" as envisaged by the Duggal Committee. The Hon'ble Duggal Committee allowed utilization of development fees for purchase, upgradation and replacement of furniture, fixture and equipment's. It is lack of understanding which has led to such a narrow view in regard to utilization of development fees. The competent authorities have failed to get into the definition of vehicles. The dictionary definition of word vehicle is as follows: **Vehicle 1: a means of carrying or transport something/plains, trains and other vehicles such as 1: Motor Vehicle 2: a piece of mechanized.** The dictionary definition of word itself says that it is an equipment. In such a case, disallowing the expenditure of INR 11,70,000 for purchase of school vehicle is entirely against the recommendation of Duggal committee, relevant statutes and established dictionary meaning. Hence the addition of INR 11,70,000 to fund position needs to be reconsidered"*.

In view of the above submission by the school, it appears that the school does not understand the requirement of Rule 177 of the DSER, 1973. Rule 177 (1) of the DSER, 1973, clearly states that *"Income derived by an unaided, utilized school by way of fees shall be utilized in the first instance, for meeting the pay, allowances, and other benefits admissible to the employees of the school."* However, from the record submitted by the school, it was noted that the school has not implemented the recommendation of the 7th CPC in full and has not invested an amount equivalent to the liability for payment of retirement benefits.

Accordingly, the above expenditure of INR 11,70,000 has been included in deriving the fund position of the school, with the direction to the school to recover this amount from society within 30 days from the date of issue of this order. Non-compliance with the above direction will be reviewed seriously, and appropriate action against the school under Section 24(4) of the DSEA, 1973, will be taken without giving any further opportunity.

3. As per clause 2 of 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, Clause (vii) (c) of Order No. F.DE/15/Act/2K/243/KKK/ 883-1982 dated 10.02.2005 issued by DoE states that *"Capital expenditure cannot constitute a component of the financial fee structure."*

Further, Rule 177 of DSER, 1973 states *"Income derived by an unaided recognized School by way of fees shall be utilized 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 utilized by its management committee for meeting capital or contingent expenditure of the School, or for one or more of the following educational purposes, namely award of scholarships to students, establishment of any other recognized School, or 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"*.

Further, 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.

As per Clause 14 of Order No. F.DE. /15(56)/Act/2009/778 dated 11.02.2009 and Clause 7 of Order No. DE 15/Act/Duggal.com/203/99/23033-23980 dated 15.12.1999 stated "*Development fee, not exceeding 15% of the total annual tuition fee may be charged for supplementing the resources for purchase, up gradation and replacement of furniture, fixtures 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 income generated from the investment made out of this fund, will be kept in a separately maintained Development Fund Account.*"

Therefore, based on the above-mentioned provisions, the cost relating to land and construction of the school building should be borne by the society running the school and school funds, i.e., fees collected from the students should not be used for the purchase of land and construction of the school building. In this regard, it is also important to mention that society was allotted an institutional land at lower cost compared to the price of commercial and residential land in nearby location. The reason for allotment of land at very low cost was the society came up with the offer to do noble work in the field of education and run the school in Delhi on charity and on a "no profit and no loss" basis. In its offer society also undertook to execute this work from its resources or by arranging funds through donations, subscriptions, or any other legal possible manner. Based on the noble grounds, the DoE had recommended to the land owning agencies for allotment of land to society which would otherwise not be possible for the society to have such a prime land at this cost in such posh location.

Accordingly, if the DoE finds any deviation or non-compliance in any condition of land allotment letter, the society as well as the school are bound to comply and honour that immediately as per the direction of the DoE. Society cannot always claim the protection of Article 19(1)(g), 21 & 30 of the Constitution of India for non-interference by the DoE. Because the main source (i.e., land) which was required to establish and run the school was supported by DoE by recommending to land owning agency to allotment the land to the society. After considering the recommendation of the DoE, a clause was included in the land allotment letter of the school that the school shall not increase the fee without the prior sanction of the Director (Education) and shall follow the provisions of the Delhi School Education Act/Rules, 1973 and other instructions issued by the department from time to time.

The Directorate's Order No. F.DE.-15(179)/PSB/2021/3278-3281 dated 07.09.2021 issued to the school post-evaluation of the proposal for enhancement of fee for FY 2019-2020, noted that, the school had utilized school funds/development funds of INR 50,21,342 and INR 1,65,04,804 for upgradation of assets in FY 2016-17 and FY 2018-19. It was also noted that the above expenditure was incurred without complying

with the provisions of Rule 177 of the DSER, 1973. Accordingly, the school was directed to recover INR 2,15,26,146 from society, which is still pending for recovery.

In its reply submitted by the school post personal hearing, the school mentioned that *"The development fees may be charged for supplementing the resources for purchase, up-gradation and replacement of fixed assets i.e., furniture, fixture and equipment. The utilisation of development fees was allowed for purchase of fixed assets of the school as tuition fees was to be utilized for payment of salary as per the Duggal Committee. As such, the utilization of development fees should not be limited to some specific heads of assets but should be taken broader sense. The expense of INR 50,21,342 was towards upgradation and replacement of fixtures and equipment's for the students. Any restriction on development of these would impact quality of education imparted to students. Further, in order to ensure strong foundation in academics, school provides the following facilities i.e., Best quality teachers, Healthy teacher to student ratio, latest study material, skill development by providing several extra-curriculum activities, etc. The school keeps working on providing facilities that prepares the students into future athletes and Olympic gold medallists. In consonance with this view the school has incurred the expenditure of INR 1,65,04,804 for upgradation of playground. It needs to be recognized that India has been lagging behind all major sporting events being conducted around world except cricket and badminton. The competent authority here does not fail in putting all the possible obstacle which prevent from rise of such winners and Olympic gold medallist."*

During the personal hearing, the school further submitted that it should not be recovered from society because DoE fails to understand the significance of such sporting facilities in the school. Therefore, DoE is requested to appoint a qualified valuer who can inspect the said playground and give its assessment of reasonableness. In this regard it is also important to mention that the school is trying all possible way to escape itself from the recovery. But the fact is that the school neither capitalized the above expenditure in its books and accounts nor submitted supporting documents to the department for verification indicating question on the legality of the expenditure by the school.

During the personal hearing the school was once again requested to submit the relevant supporting documents for verification, but the school fail to submit the same. Therefore, in the absence of relevant information such as supporting documents etc., the capital expenditure incurred by the school for playground including upgradation on furniture fixtures amounting to INR 2,15,26,146 (INR 50,21,342 plus INR 1,65,04,804) has been included while deriving the fund position of the school with the direction to the school to recover this amount from 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.

4. As per clause 3 of the public notice dated 04.05.1997 published in the Times of India states *"No security/ deposit/ caution money be taken from the students at the time of admission and if at all it is considered necessary, it should be taken once and at the nominal rate of INR 500 per student in any case, and it should be returned to the students at the time of leaving the School along with the interest at the bank rate."*

Further, Clause 18 of Order no F.DE/15(56)/Act/2009/778 dated 11.02.2009 states *"No caution*



money/security deposit of more than five hundred rupees 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 or not he/she requests for refund."

On review of audited financial statement for the FY 2019-20 to 2021-22, it has been noted that the school has been refunding only principal amount of caution money to the student at the time of leaving from the school, which is not in accordance with clause 18 of Order No. F.DE/15 (56) /Act /2009 / 778 dated 11.02.2009. Therefore, the school is hereby directed to refund the caution money to the student along with accrued interest earned thereon.

Further, review of the audited financial statements for FY 2021-22, it was noted that the school has reported INR 7,60,500 towards caution money refundable which has been considered while deriving the fund position of the school.

5. 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, fixtures and equipment." Thus, the development fee/funds should not be utilized for any other purposes other than those specified in Clause 14 of the Order dated 11.02.2009.

From a review of the audited financial statements of FY 2021-22, it has been noted that the school has reported development fund balance of INR 2,05,23,511 which has been considered while deriving the fund position of the school.

6. As per AS-15 on 'Employee Benefits' issued by the Institute of Chartered Accountants of India (ICAI) states that "Accounting for defined benefit plans is complex because actuarial assumptions are required to measure the obligation and the expense and there is a possibility of actuarial gains and losses." Further, the Accounting Standard defines Plan Assets (the form of investments to be made against liability towards retirement benefits) as:

- a) Assets held by a long-term employee benefit fund; and
- b) Qualifying insurance policies

Para 57 of AS-15 states that "An enterprise should determine the present value of defined benefit obligations and the fair value of any plan assets with sufficient regularity that the amounts recognized in the financial statements do not differ materially from the amounts that would be determined at the balance sheet date."

A review of the audited financial statements of FY 2021-22 revealed that the school has reported liability for retirement benefits (*Gratuity*) of INR 3,27,96,354, in accordance with the actuarial report determined by the actuary. However, the school has not invested any amount in plan assets within the meaning of AS-15 issued by ICAI. It has also been noted that the school has neither got the actuarial valuation report for leave encashment nor report the same in the audited financial statements.

Gratuity is a statutory obligation that employers must pay to eligible employees upon retirement or resignation, as the case may be. However, over the years, the department has noticed that most of the schools have been recording liabilities for retirement benefits in their financial statements without making any investment in Plan Asset, either due to paucity of funds or otherwise. Accordingly, many schools keep the retirement benefit 'unfunded', which is not in the true spirit of the law and also defeats the objectives of maintaining the books of accounts as per Generally Accepted Accounting Principles (GAAP) as directed by the Hon'ble Supreme Court in its landmark judgement titled Modern School vs. Union of India and Ors. Therefore, it has been felt that in order to protect the statutory dues of the employees, instead of disallowing the full liability on account of non-investment in plan assets, it would be rational to spread this liability over the period of 14 years on the assumption that normally a student studies 14 years in the school. This will not only give schools time to gradually invest in Plan Asset, but it will also reduce the sudden financial burden of fees on parents and students due to huge liabilities for retirement benefits.

Accordingly, an amount of INR 23,42,597 (i.e., 1/14 of INR 3,27,96,354) has been considered while deriving the fund position of the school, with the direction to the school to invest the aforesaid amount in plan assets in accordance with AS-15, recognize the liability towards leave encashment based on the actuarial valuation obtained from the valuer and submit the compliance report within 30 days from the date of issue of this order. In case the school fails to comply with the above directions, it shall not be allowed further installments, and the amount so allowed to the school shall be recovered from the society or school management along with interest while evaluating the fee increase proposal for the subsequent year.

B. Other Suggestions for Improvement:

1. Para 99 of Guidance Note on Accounting by Schools (2005) issued by the Institute of Chartered Accountants of India *"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."*

From the review of the presentation of the audited financial statements of FY 2021-22, it has been noted that upon purchase of assets out of the development funds, the school transfers an amount equivalent to the cost of the assets to "Development fund utilized". However, do not writes off in the proportion of depreciation charged on the assets purchased out of development funds. As a result, the closing balances of the development fund utilized account and the depreciation reserve fund do not correspond to the cost of assets purchased with development funds. Therefore, the school is hereby directed to rectify its accounting from the next financial year onward. The compliance with respect to this submission shall be verified while evaluating the fee increase proposal of the next academic session.

2. As per para 67 of the Guidance Note on Accounting by Schools issued by the Institute of Chartered Accountants of India, "The financial statements should disclose, inter alia, the historical cost of fixed assets."



On review of audited financial statements for the FY 2019-20, FY 2020-21 and FY 2021-22, it is noted that the school has presented its fixed assets purchased out of school funds at Written Down Value (WDV) which is not consistent with the Guidance Note. Thus, the school is hereby directed to comply with the requirements of Guidance Note issued by ICAI

3. 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 02.05.2016 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 15.12.1999 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
- b. Admission Fee:
- c. Caution Money
- d. Tuition Fee
- e. Annual Charges
- f. Earmarked Levies
- g. Development Fee

Based on the provisions mentioned above, charging of ' Virtual & Internet Fees and Robotics lab fees' from the students is in the nature of capitation fee only. Additionally, if the school is charging unwarranted fee under different heads or introduce new head of fee other than the prescribed heads of fee and accumulates surplus fund out of it, it is also prima-facie considered to be a collection of capitation fee in other manner and form.

Accordingly, the collection of Virtual & Internet Fees and Robotics lab fees indicates that the school is engaged in profiteering and commercialization of education.

As per Section 27 of the DSEA, 1973, the manager of the school is responsible to look after the operation of the school smoothly and to ensure compliance with the provision of the DSEAR, 1973 including the compliance of the High Court/Supreme Court and orders/circulars issued by the Directorate of Education from time to time in this regard. As the manager and principal have been bestowed with the power to ensure the school's proper functioning, including ensuring the admission process transparently are jointly as well as in their personal capacity be responsible for levy and collection of capitation fee and any another unauthorized fee collected by the school.

Therefore, the school is directed to not charge capitation as mentioned above with immediate effect and submit the compliance within 30 days from the date of issue of this order. Non- compliance with this direction would be reviewed seriously and a necessary action against the school will be initiated U/s 24(4) of the DSEA, 1973 by the department.

4. *Section 18(5) of the DSEA, 1973 states "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 returns shall be audited by such authority as may be prescribed".*

Further, Rule 180 (1) of DSER, 1973 states *"every recognized private school shall submit returns and documents in accordance with Appendix-II"*.

Point No. (2) of the Appendix-II requires final accounts i.e., receipts and payments account, income and expenditure account and balance sheet of the preceding year should be duly audited by the Chartered Accountant.

Accordingly, DoE specified vide Order No. F.DE-15/ACT-I/WPC-4109/Part/13/7905-7913 dated 16.04.2016, the format of returns and other documents required to be submitted by the private unaided recognized schools. The aforesaid order also specified format for the financial statements to be such as specified by the Institute of Chartered Accountants of India (ICAI), established under Chartered Accountants Act, 1949 (38 of 1949) in Guidance Note-21 'Accounting by Schools (2005)' as amended from time to time.

Based on the aforesaid provisions, every private unaided recognized school is required to get its accounts audited by a Chartered Accountant before submitting a return under Rule 180(1) of DSER, 1973. The documents submitted by the school for evaluation of the fee hike proposal were taken on record. Review of the audited financial statements including the Independent Auditors Report of FY 2021-22 revealed that:

- a. The Independent Audit Report was not issued in the format prescribed by Standard on Auditing 700 (SA-700), as defined by the Institute of Chartered Accountants of India (ICAI). Because the majority of the content of the Independent Auditors' Report was missing, such as the auditors' and management's responsibilities.

In light of the foregoing, the school is hereby directed to strengthen its process for preparation and presentation of financial statements in accordance with the above-mentioned provisions. However, the audited financial statements submitted by the school have been considered for the evaluation of the fee hike proposal of the school.

5. From a review of documents submitted by the school post personal hearing, the following has been noted with respect to the Fixed Asset Register (FAR) maintained by the school:

- No tagging of the assets has been done in Fixed Assets Register (FAR) and location is not identified due to which assets could not be physically verified.
- Depreciation for the individual assets is not recorded in the FAR, only cost of the assets is available in the FAR and WDV of the assets is not available.
- Invoice number, manufacturer's serial number and location of the asset is not mentioned in the fixed assets register.

Therefore, the School is hereby directed to prepare a FAR, which should include details such as asset description, purchase date, supplier name, invoice number, manufacturer's serial number, location, purchase cost, other costs incurred, depreciation, asset identification number, etc. to facilitate identification of asset and documenting complete details of assets at one place. The school is further directed to comply with the directions for preparing FAR with relevant details mentioned above according to the process for periodic physical verification of assets and documenting the results of physical verification of assets. The same shall be verified at the time of evaluation of the fee hike proposal for subsequent years. This being a procedural finding, no financial impact is warranted on the fund position of the school.



6. The School is not complying with the DoE Order No.F.DE.15/Act-I/08155/2013/5506-5518 dated 04.06.2012 as well as the conditions specified in the land allotment letter require to provide 25% reservation for children belonging to a EWS category. Therefore, the school is directed to ensure admission in accordance with the aforesaid order. From the records provided by the school, the percentage of EWS has been calculated below:

Particulars	FY 2022-23
Total Students	2,035
EWS Students*	414
% of EWS students	20.34%

*EWS includes non-fee paying students also.

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

- i. The total funds available with the school for FY 2022-23 amounting to **INR 21,15,69,017** out of which the expected expenditures for FY 2022-23 to be **INR 16,12,39,800**. This results in net surplus of **INR 5,03,29,217** for the FY 2022-23. The details calculation is provided below:

Particulars	Amount (INR)
Cash and Bank balances as on 31.03.2022 as per Audited Financial Statement of FY 2021-22	5,76,69,687
Investments as on 31.03.2022 as per Audited Financial Statement of FY 2021-22	10,16,324
Liquid fund as on 31.03.2022	5,86,86,011
Add: Recovery from society with respect to school fund utilized for purchase of land (Refer Financial Suggestion No. 1)	51,62,912
Add: Recovery from society towards school fund utilized for purchase of vehicle (Refer Financial Suggestion No. 2)	11,70,000
Add: Recovery from the society for expenditure incurred on construction of the school building (Refer Financial Suggestion No. 3)	2,15,26,146
Add: Fees for FY 2021-22 as per Audited Financial Statements (Refer Note No. 2 Below)	13,94,69,752
Add: Other income for FY 2021-22 as per audited Financial Statements (Refer Note No. 2 Below)	14,18,854
Add: Additional income of annual charges and development fund (Refer Note No. 2 Below)	87,78,274
Less: Arrears of fee recorded in FY 2021-22 related to FY 2020-21. (Refer Note No. 2 Below)	-
Total available funds for FY 2022-23	23,62,11,949
Less: FDR in joint name with DOE	5,08,919
Less: FDR in joint name with CBSE	5,07,405
Less: Student Security Deposit (Refer Financial Suggestion No. 4)	7,60,500
Less: Development Fund as per Audited Financial Statements of FY 31.03.2022 (Refer Financial Suggestion No. 5)	2,05,23,511
Less: Investment made with LIC against provision made for retirement benefits (Refer Financial Suggestion No. 6)	23,42,597
Less Depreciation reserve fund as on 31.03.2022 (Refer Note No. 3 Below)	-

Particulars	Amount (INR)
Estimated Available Funds for FY 2022-23	21,15,69,017
Less: Budgeted Expenditure for FY 2022-23 (Refer Note No. 4 and 5 Below)	16,12,39,800
Less: Arrears of 7th CPC as provided by the school (Refer Note No. 6 Below)	-
Estimated Surplus	5,03,29,217

Note 1: The detail of fixed deposit held by the school as per the audited financial statements of FY is provided below.

S. No.	Particulars	Amount (INR)	Remarks
1	FDR in Joint name of Manager and CBSE	5,07,405	Considered separately.
2	FDR in Joint name of Manager and Directorate of Education	5,08,919	Considered separately.
	Total	10,16,324	

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.

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 85% of the annual charges and development charges in its audited financial statements of FY 2021-22. Therefore, the income collected by the school during the FY 2021-22 with respect to annual charges and development fee has been grossed up in order to make comparative income with the FY 2022-23. 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	8,96,55,746	8,96,55,746	
Annual Charges *	2,92,38,774	3,43,98,558	The school recorded 85% of the income in the audited financial statements. Therefore, it has been grossed up.
Development fund*	2,05,04,779	2,41,23,269	

* No bifurcation of arrears for FY 2020-21 received in FY 2021-22 has been provided. Accordingly, annual charges & development received in FY 2021-22 has been grossed up and included while calculating fund position.

Note 3: 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 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 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 has not been considered while deriving the fund position of the School.

Note 4: All budgeted expenditure proposed by the school has been considered while deriving the fund position of the school except the followings:

Heads	Proposed Amount (INR)	Amount Disallowed	Reasons
Transportation Fund expense	1,52,00,000	1,52,00,000	Neither income nor expenditure related to transport facility has been considered.

Note 5: While evaluating the fee hike proposal, the department considers how much liquid funds schools would require for a particular session for smooth operation without compromising the quality of education. Thus, while deriving the fund position of the school, all legitimate revenue as well as capital nature expenditures in accordance with the provisions of DESAR, 1973 and the pronouncement of Courts judgment have been considered. Therefore, the balance of the other current assets and other current liabilities has not been considered because these are cyclic in nature, as the same would have been part of the budgeted income and expenditure of the school in earlier years. Although it is reflected in the financial statements at the end of the financial year.

Note 6: The school has implemented the recommendation of 7th CPC from 01.11.2017 onwards. Further, the school has claimed salary arrears of INR 1,84,14,746 for the period 01.01.2016 to 31.10.2017 which was already considered in previous fee hike order for academic session 2019-20. Hence, not considered again while deriving the fund position of academic session 2022-23.

- ii. In view of the above examination, it is evident that the school have adequate funds for meeting all the operational expenditures for the FY 2022-23. In this regard, the directions issued by the Directorate of Education vide circular no. 1978 dated 16 April 2010 states.

"All schools must, first of all, explore and exhaust the possibility of utilizing 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 utilized 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 along with certain financial suggestions that were identified (appropriate financial impact has been taken on the fund position of the school) and certain procedural suggestions which were also noted (appropriate instructions against which have been given in this order), 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, it is noticed that the school has paid INR 2,78,59,058 towards, purchase of land, construction of playground and purchase of cars incurred in contravention of the provisions of DSEAR, 1973 and other orders issued by the departments from time to time. Therefore, the school is directed to recover the aforesaid amount from society/ management. The receipts along with copy of bank statements showing receipt of the above-mentioned amount should be submitted with DoE, in compliance of the same, within 30 days from the date of issue of this order. Non-compliance with this direction shall be viewed seriously as per the provision of DSEAR, 1973 without providing any further opportunity of being heard.

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 funds are available with the school for meeting financial implication for the academic session 2022-23. Hence, for smooth payment of salaries and other employee's benefit, the fee hike is not required to the school.

AND WHEREAS, the school is directed, henceforth to take necessary corrective steps on the financial and other suggestion noted during the above evaluation process and submit the compliance report within 30 days from the date of issue of this order to the D.D.E (PSB).

Accordingly, it is hereby conveyed that the proposal for fee hike of **BGS International Public School, Sector-5, Dwarka, New Delhi- 110075 (School ID-1821217)** filled by the school in response to the Order No. F.DE.-15(40)/PSB/2019/4440-4412 dated 08.06.2022 for the academic session 2022-23, is rejected by the Director (Education) with the above conclusion and suggestions.

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/charges during FY 2022-23. In case, the school has already charged increased fee during FY 2022-23, the school should make necessary adjustments from future fee/refund the amount of excess fee collected, if any, as per the convenience of the parents.
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
BGS International Public School, (School ID-1821217)
Sector-5, Dwarka,
New Delhi- 110075

No. F.DE.15 (1232)/PSB/2022 / 1387 - 1392
Copy to:

Dated: 10/02/23

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. DDE (South West-B) to ensure the compliance of the above order by the School Management.
4. DE's nominee concerned.
5. In-charge (I.T Cell) with the request to upload on the website of this Directorate.
6. Guard file.

Nandini

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