

Delhi Abhibhavak Mahasangh & Ors.

Vs.

Govt. of NCT of Delhi & Ors.

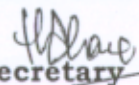
Report of Delhi High Court Committee for Review of School Fee for
November 2018

No.DHCC/2018/199

Dated: 01/01/19

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	2	01.11.2018	Order in respect of MDH International School, Dwarka (B-429) recommending no intervention as the school paid arrears of salary to the staff during the course of hearing itself.
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Place: Delhi



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Delhi High Court Committee for Review of School Fee

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 Delhi High Court Committee For Review of School Fee
 (Formerly Known as Justice Anil Dev Singh Committee For Review of School Fee)
 C-Block, Vikas Bhawan-2, Upper Bela Road, Civil Lines, Delhi-110054

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**BEFORE DELHI HIGH COURT COMMITTEE FOR REVIEW OF
SCHOOL FEE, NEW DELHI**
(Formerly Justice Anil Dev Singh Committee for review of school Fee)

In the matter of:

S.D. Public School, Kirti Nagar, New Delhi-110015 (B-237)

Order of the Committee

Present : Ms.Anjali Magoo, Head of School, Sh. Ramesh Lamba, Manager, Sh.Subhash Kr.Saini, Head Clerk & Sh.Ravi Chauhan, Office Assistant of the school.

The school had submitted copies of its annual returns filed under Rule 180 of Delhi School Education Rules, 1973 for the years 2006-07 to 2010-11 to the Education Officer, Zone-16 of the Directorate of Education under cover of its letter dated 07/02/2012. These were forwarded to this Committee by the Education Officer.

The Committee issued a questionnaire to all the schools (including this school) on 27/02/2012, eliciting information with regard to the arrear fee and fee hike effected by the school pursuant to order dated 11/02/2009 issued by the Director of Education. The school was also required to furnish information with regard to the arrear salary paid and the incremental salary paid to the staff pursuant to the implementation of the recommendations of the 6th pay commission. However, the school did not submit its reply to the questionnaire. Accordingly, a reminder was sent on 27/03/2012 which also met with the same fate.



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It appears that the school subsequently submitted its reply to the questionnaire to the Dy. Director, Distt. West-A of the Directorate of Education under cover of its letter dated 09/10/2012, which was forwarded to the office of the Committee. As per the reply submitted by the school, it implemented the recommendations of VI Pay Commission w.e.f. 01/04/2009. As a result of such implementation, the monthly salary bill of the school rose from Rs. 4,33,711 to Rs. 7,23,484.

With regard to collection of arrear fee for the period 01/01/2006 to 31/03/2009, the school admitted that it had recovered the same and the total collection on this account amounted to Rs. 22,23,478. However, it conceded that it had not paid the arrear salary to the staff for the same period.

Based on its reply to the questionnaire and the audited financials of the school, the Chartered Accountants (CAs) who were deployed with this Committee by the Directorate of Education for assistance, worked out that the school recovered excess fee to the tune of Rs. 30,92,641, which apparently required to be refunded to the students. However, on a review of a calculation sheet by the Committee, it observed that the CAs had based their calculations of funds available with the school before fee hike on the audited balance sheet as on 31/03/2009, which was not proper as the school had by that time recovered part of the arrear fee, whose justifiability was to be



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considered by the Committee. They ought to have taken the base figures on the basis of the audited balance sheet as on 31/03/2008.

The Committee issued a notice dated 13/05/2015, requiring the school to furnish complete break up of fee and salaries for the years 2008-09 to 2010-11 (including arrear fee and arrear salary pursuant to implementation of VI Pay Commission, statement of account of the parent society running the school and details of its accrued liabilities of gratuity and leave encashment. A questionnaire regarding collection and utilisation of development fee and maintenance of earmarked development and depreciation reserve funds was also issued to examine whether the school was complying with the pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School vs. Union of India, (2004) 5 SCC 583.

The school submitted the information vide its letter dated 28/05/2015 as also its reply to the questionnaire regarding development fee. A copy of the circular dated 21/02/2009 issued to the parents was also filed by the school. As per the circular, the parents were advised that the school had hiked the tuition fee by Rs. 300 per month w.e.f. September 2008 for which the arrears for the period 01/09/2008 to 31/03/2009 amounting to Rs. 2100 were required to be paid. Further, an amount of Rs. 3000 per student was also demanded from the parents towards lump sum arrears for the



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period 01/01/2006 to 31/08/2008. It was stated that the aforesaid 000004
hike had been permitted by an order of the Govt. of NCT of Delhi.

In the information chart submitted by the school, it was reiterated that the school had recovered arrear fee to the tune of Rs. 22,23,478. However, with regard to arrear salary, it was now contended that the school had a total liability of Rs. 71,45,113 for payment of arrear salary but due to financial constraints, it had paid arrears of salary only to the extent the arrear fee was recovered from the students.

With regard to development fee, the school stated that it had charged development fee in all the five years for which the information was sought i.e. 2006-07 to 2010-11. Although the development fee was treated as a capital receipt in 2006-07 and 2007-08, it was treated as a revenue receipt in 2008-09 to 2010-11. Further the school conceded that it was not maintaining any separate depreciation reserve fund account.

A notice of hearing was issued on 28/01/2015, requiring the school to appear before it on 26/11/2015 and produce its books of accounts, fee and salary records etc.

On the date of hearing, Sh. S.K. Saini, Accountant of the school appeared but did not produce any authorisation from the Manager or the Head of the School. He simply stated that the arrears had been paid but did not produce any evidence of such payments. The matter

S.D. Public School, Kirti Nagar, New Delhi-110015/ (B-237)/Order Page 4 of 11



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could not be finalized on account of resignation of Justice Anil Dew Singh as Chairman of the Committee. The reconstituted Committee issued a fresh notice of hearing dated 19/09/2017 requiring the school to appear before it on 13/10/2017. On this date, Sh. Ramesh Lamba, Manager of the school appeared with Sh. Subhash Kumar Saini, Accountant and Sh. Ravi Chauhan, an Assistant in the school. They were partly heard by the Committee. Contrary to the averment of the school in its written submissions dated 28/05/2015, the Manager of the school conceded that the school had not paid the arrears of salary even to the extent of the arrear fee collected by it. It was submitted that the arrear fee collected by the school was also utilised for payment of regular salary to the staff. The Committee required the school to produce its latest balance sheet as on 31/03/2017. The same was filed by the school under cover of its letter dated 27/10/2017. On 30/11/2017, which was the next date fixed for hearing, the Manager of the school submitted that the aforesaid amount of Rs. 22,23,478 was shown as an outstanding liability in the balance sheet of the school as on 31/03/2017. He sought some time from the Committee to inform as to how the school proposed to deal with this collection, i.e. whether to pay the arrear salary to the staff or to refund the arrear fee collected from the students. The matter was adjourned to 19/12/2017 at his request. On this date, the Manager submitted a letter stating that the Management of the school was ready to disburse the amount to the



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staff towards part arrears of salary and sought six months time for 000006
doing so. On the reluctance of the Committee to grant so much time,
he requested that time could be granted upto 2nd week of April for
doing the needful. The same was granted by the Committee.

Accordingly, a fresh notice dated 05/04/2018 was issued to the
school to appear on 20/04/2018.

On this date, the school filed two lists showing payments of
arrear salary to the staff to the extent of 15,93,675 out of total arrear
fee amounting to Rs. 22,23,478. The school also submitted a list of
total arrears amounting to Rs. 71,45,113 that were due to the staff
and it was submitted that it would pay arrears proportionate to the
amount of arrear fee collected by it. The Committee, however noticed
that the school had not filed any details showing the proportionate
amount due to the staff members and how much out of that had been
paid. Accordingly, the school was directed to furnish a statement
showing the total amount of arrears due, the total amount payable to
each staff member on proportionate basis, the TDS deducted out of
the arrears payable and the net amount disbursed to the staff, along
with evidence of such payments in the shape of bank statements
showing encashment of the arrears cheques.

The Manager of the school submitted that some arrears were
due to the staff members who had already left the school. The
Committee was of the view that the payments could be made to such



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staff members by account payee cheques and sent to them by speed post. Accordingly, the matter was listed for 05/06/2018 by which time it was expected that the school would complete the process.

On 05/06/2018, the Manager of the school appeared and submitted that the school had since paid the arrear salary to the staff to the extent of 31.12 % of the total amount due, as the arrear fee which was paid by the students amounted to only Rs.22,23,478 and was sufficient for payment only to that extent. The school also filed an employee wise detail of the proportionate amount due and the amount paid alongwith the copies of bank statements showing the encashment of cheques issued to the staff.

The Committee considered the information furnished by the school in response to its notice dated 13/05/2015 along with the details of its accrued liabilities of gratuity and leave encashment as on 31/03/2010. The Committee observed that the school had calculated its liability for leave encashment for a period which was more than even the maximum period for which the leave could be accumulated under the rules. The school had calculated the liability for a maximum period of 480 days of leave, while there is cap of 300 days under the rules. The school was accordingly directed to furnish a fresh statement after making the necessary corrections. The school was also directed to produce on 09/07/2018 its books of accounts in a lap top which were maintained in Tally software.



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Ms.Anjali Magoo, Head of the School, appeared on 09/07/2018 and filed a revised computation statement of its accrued liability of leave encashment as on 31.3.2010. As per the revised computation, the school projected its accrued liability for leave encashment at Rs.15,73,684. The school also furnished evidence of deposit of TDS on the arrear salary paid by it during the course of hearing. The school also produced its books of accounts which is maintained in Tally.

The Committee verified the information with regard to fee receipt/salary paid by the school as furnished by the school vide written submissions dated 28/05/2015. The Committee observed that the school had not accounted for the tuition fee concession given to the students in the years 2008-09 and 2009-10 which amounted to Rs.6,43,526 in 2008-09 and Rs.8,01,962 in 2009-10. The Committee also observed that the school had included a sum of Rs.2,45,371 on account of computer expenses in the figure of regular salary for the year 2008-09. The corresponding figure of 2009-10 was Rs.20,900. In 2009-10. The school had also included a sum of Rs.9,487 representing uniform expenses.

After making necessary adjustments as above, the Committee prepared a calculation sheet to examine the justifiability of fee hike effected by the school considering the funds already possessed by the school before effecting the fee hike. As per the calculations made by



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the Committee, it had available with it a sum of Rs. 5,07,433 as on 31/03/2008 as per the following details:

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<u>Current Assets + Investments</u>		
Cash in Hand	72,476	
Bank of India	133,377	
Fixed Deposits with Bank alongwith accrued interest	1,421,630	1,627,483
<u>Less: Current Liabilities</u>		
Security from students	607,800	
Salary payable	406,688	
Provident Fund	48,276	
Transport Expenses	22,000	
Computer Expenses	21,000	
N K Mahajan & Co.	14,286	1,120,050
Net Current Assets + Investments		507,433

While the arrear fee collected by the school had been disbursed by it as arrear salary, although belatedly, the incremental salary of the school for the year 2009-10 after implementation of the recommendations of VI Pay Commission amounted to **Rs. 35,99,142**, as per following details:

Incremental salary in 2009-10	2008-09	2009-10
Normal/ regular salary & PF	5,618,424	9,217,566
Increase in 2009-10	3,599,142	

Thus the school required to generate additional revenue of **Rs. 30,91,709** (35,99,142 -5,07,433). However, the additional revenue generated by the school by hiking the fee as per order dated 11/02/2009 amounted to only **Rs. 16,76,919** as per the following details:



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Incremental tuition fee in 2009-10	2008-09	2009-10
Gross Normal/ Regular Tuition fee	6,701,731	8,537,086
Less: Fee Concession	643,526	801,962
Net Fee	6,058,205	7,735,124
Increase in 2009-10	1,676,919	

Thus, even without considering the requirement of the school to maintain adequate reserve for meeting its accrued liability of gratuity and leave encashment, the school incurred a deficit of **Rs.14,14,790** (30,91,709 - 16,76,919). The accrued liabilities of the school for gratuity amounted to Rs. 28,82,983 and that for leave encashment amounted to Rs. 15,73,684.

Thus so far as the recovery of arrear fee and incremental tuition fee as per order dated 11/02/2009 of the Director of Education is concerned, no intervention is required to be made.

With regard to development fee for the years 2009-10 and 2010-11, it only needs to be stated that the same amounted to Rs. 12,58,270 and 12,63,600 respectively and the Committee is not examining whether the school was fulfilling the pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School with regard to charging of development fee as in view of the deficit incurred by the school on implementation of the recommendations of VI Pay Commission and the accrued liabilities of the school for gratuity and leave encashment, it would only be an academic exercise.



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Resultantly, the Committee is of the view that no intervention is required to be made either with regard to collection of arrear fee or development fee or with regard to recovery of incremental tuition fee for the year 2009-10. The Committee wishes to record that the school disbursed the arrear salary to the staff to the tune of Rs. 22,23,478 only during the course of hearings before it.

Justice Anil Kumar (R)
(Chairperson)

CA J.S. Kochar
(Member)

Dr. R.K. Sharma
(Member)

Dated: 01/11/2018



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**BEFORE DELHI HIGH COURT COMMITTEE FOR REVIEW OF
SCHOOL FEE, NEW DELHI**
(Formerly Justice Anil Dev Singh Committee for review of school Fee)

In the matter of:

M.D.H. International School, Sector-6, Dwarka, New Delhi-110075 (B-429)

Order of the Committee

Present: Sh.R.N.Raj, Secretary, Sh.R.K.Wadhwa, Manager & Sh.Sarbeswar Nayar, Accountant of the school.


The Committee issued a questionnaire to all the schools (including this school) on 27/02/2012, eliciting information with regard to the arrear fee and fee hike effected by the school pursuant to order dated 11/02/2009 issued by the Director of Education. The school was also required to furnish information with regard to the arrear salary paid and the incremental salary paid to the staff pursuant to the implementation of the recommendations of the 6th pay commission. However, the school did not submit its reply to the questionnaire. Accordingly, a reminder was sent on 27/03/2012 which also met with the same fate.

A revised questionnaire was then issued to the school on 24/07/2013 requiring it to submit replies to the relevant queries besides seeking answers to the queries raised vide questionnaire dated 27/02/2012, the fresh questionnaire also required the school to answer the relevant queries with regard to collection and utilisation of development fee and maintenance of earmarked development and

MDH International School, Dwarka, New Delhi-110075/ (B-429)/Order Page 1 of 17



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depreciation reserve funds in order to examine whether the school was complying with the pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583 with regard to charging of development fee. This mail was also ignored by the school, prompting the Committee to issue a reminder dated 22/08/2013.

The school submitted its reply vide its letter dated 29/08/2013, wherein it contended as follows:

- (a) The school implemented the recommendations of VI Pay Commission w.e.f. 01/07/2009 (However, as per the salary statement enclosed with the reply, the school started paying the increased salary w.e.f. September 2009 and paid arrears for the period 01/07/2009 to 31/08/2009.
- (b) The arrears for the period 01/07/2009 to 31/08/2009 amounting to Rs. 2,76,714, were said to be paid as arrear salary (although it cannot be termed as arrear salary as envisaged in the order dated 11/02/2009 issued by the Director of Education as per which the arrears were required to be paid for the period 01/01/2006 to 31/03/2009).
- (c) The school had not hiked any fee as per the aforesaid order dated 11/02/2009 (although the copy of circular dated 28/02/2009 issued to the parents which was filed by the school categorically stating that the tuition fee for pre



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primary school to class X was enhanced by Rs. 200 per month while for classes XI & XII was enhanced by Rs. 300 per month w.e.f. 01/09/2008 and accordingly arrears of Rs. 1400 for seven months upto 31/03/2009 were demanded from students of pre-school to class X and Rs. 2100 from students of classes XI & XII.

- (d) Besides the aforesaid arrears for the period 01/09/2008 to 31/03/2009, the school also charged lump sum arrear fee from the students of pre-school to class X @ Rs. 2,500 per student and @ Rs. 3,000 per student of classes XI & XII.
- (e) The school charged development fee from the students in all the five years for which the information was sought. In the years 2009-10 and 2010-11, the development fee charged by the school aggregated Rs. 4,40,450 while that for 2010-11, it amounted to Rs. 5,93,025.
- (f) The school utilised development fee for purchase of library books, lab equipments and sports goods etc. In the year 2009-10, the utilisation for these purposes was a bare Rs. 14,235 and in 2010-11, it was Rs. 62,495.
- (g) The school treated development fee as a revenue receipt.
- (h) The school did not maintain earmarked accounts for parking unutilised development fee and depreciation reserve fund.

Thus at the outset itself, the school conceded that it was not fulfilling the pre conditions laid down by the Hon'ble Supreme Court,



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which mandated that the school could charge development fee provided it was treated as a capital receipt and a separate depreciation reserve fund was maintained.

The Committee issued a notice dated 22/05/2015, requiring the school to furnish complete break up of fee and salaries for the years 2008-09 to 2010-11 (including arrear fee and arrear salary pursuant to implementation of VI Pay Commission, statement of account of the parent society running the school and details of its accrued liabilities of gratuity and leave encashment.

The school submitted the information vide its letter dated 10/06/2015

In the information chart submitted by the school, it was stated that the school had recovered arrear fee to the tune of Rs. 5,65,669 for the period 01/01/2006 to 31/03/2009 but had not paid any arrear salary for the corresponding arrear salary. It was also stated that its expenditure on regular salary rose from Rs. 44,05,130 in 2008-09 to Rs. 61,31,558 in 2009-10 on implementation of the recommendations of VI Pay Commission. The school also submitted that its normal tuition fee rose from Rs. 29,85,240 in 2008-09 to Rs. 41,76,558 in 2009-10 as a result of fee hike effected by it pursuant to order dated 11/02/2009. Its accrued liability for gratuity amounted to Rs. 27,22,879 as on 31/03/2010 while that for leave encashment, was Rs. 7,22,685.



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A notice of hearing was issued on 01/08/2016, requiring the school to appear before the Committee on 23/08/2016 and produce its books of accounts, fee and salary records etc.

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On the date of hearing, Sh. R.N. Rai, Secretary and Sh. R.K. Vadera, Manager of the School appeared with Sh. S. Nayak, Accountant.

The Committee considered the circular dated 28/02/2009 issued by the school to the parents of the students in pursuance of order dated 11/02/2009 issued by the Director of Education and the information furnished by the school vide its letter dated 10/06/2015.

However, during the course of hearing, the authorized representatives of the school conceded that no arrears of salary was paid for the period 01/01/2006 to 31/03/2009. However, they submitted that even after the collection of arrear fee for the period 01/01/2006 to 31/03/2009, the school did not have sufficient funds even for the payment of revised salary w.e.f. 01/07/2009.

With regard to development fee, the authorized representatives of the school conceded that not only development fee was treated as a revenue receipt but the utilization of development fee shown in Annexure IV dated 29.08.2013 was also on revenue account.



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While preparing the calculation sheet, it came to the notice of the Committee that the information furnished by the school vide its letter dated 10/06/2015 pertained only to the main school which was from class VI to class XII. No information had been furnished by the school in respect of its junior wing. Accordingly, the school, vide email dated 08/09/2016, was required to furnish the relevant information and its audited financials for its junior wing also. The school furnished the relevant information and the audited financials of its junior wing vide its letter dated 14/09/2016.

Accordingly, the following calculation sheet was prepared by the Committee to examine the justifiability of fee hike effected by the school and the arrears recovered by it pursuant to order dated 11/02/2009 issued by the Director of Education:



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Statement showing Fund available as on 31.03.2008 and the effect of hike in fee as per order dated 11.02.2009 and effect of increase in salary on implementation of 6th Pay Commission Report				
	Particulars	Sec. School	Junior Schl.	Total
	<u>Current Assets</u>			
	Cash in Hand	3,644	24,918	28,562
	Bank Balances net of Overdraft	(246,279)	843,723	597,444
	Inter Unit Balances	(307,505)	307,505	-
	MDH International School, Janakpuri	-	6,578	6,578
	Deposits (FDRs)	736,631	5,694,706	6,431,337
	Total Current assets	186,491	6,877,430	7,063,921
Less	<u>Current Liabilities</u>			
	Caution Money	34,410	364,900	399,310
	Total Current Liabilities	34,410	364,900	399,310
	Net Current Assets	152,081	6,512,530	6,664,611
Less	Funds to be kept in reserve (Combined):			
	for future contingencies equivalent to 4 months salary	2,043,853	1,061,822	3,105,675
	towards accrued liability for Gratuity as on 31.3.2010	2,722,879	592,815	3,315,694
	towards accrued liability for Leave Encashment as on 31.3.10	722,685	57,109	779,794
	Total funds to be kept in reserve	5,489,417	1,711,746	7,201,163
	Excess / (Short) Funds before implementation of 6th CPC	(5,337,336)	4,800,784	(536,552)
Less	Arrear of Salary as per 6th CPC w.e.f. 01.01.06 to 31.03.09	-	-	-
	Incremental Salary as per 6th CPC in 2009-10	1,726,428	797,689	2,524,117
	Excess / (Short) Funds Before Fee Hike	(7,063,764)	4,003,095	(3,060,669)
Add	Tuition Fee Arrear from 01.01.06 to 31.03.09	565,669	678,576	1,244,245
	Development Fee arrear from 01.09.08 to 31.03.09	-	-	-
	Incremental Tuition fee in 2009-10	1,191,318	1,288,412	2,479,730
	Excess / (Short) Funds After Fee Hike	(5,306,777)	5,970,083	663,306

Development fee refundable being treated as a revenue receipt:

For the year 2009-10

For the year 2010-11

Total

Add: Excess of funds after fee hike

Total amount refundable

Sec. School	Junior Schl.	Total
440,450	713,570	1,154,020
593,025	748,200	1,341,225
1,033,475	1,461,770	2,495,245
(5,306,777)	5,970,083	663,306
(4,273,302)	7,431,853	3,158,551

Working Notes:

Secondary School:

Increase in Normal/ regular salary

Normal/ regular salary of Secondary school

Incremental salary in 2009-10

2008-09

2009-10

4,405,130

6,131,558

1,726,428



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Increase in tuition fee	2008-09	2009-10
Regular/ Normal Tuition fee of Secondary school	2,985,240	4,176,558
Incremental tuition fee in 2009-10	1,191,318	

Junior School:

Increase in Normal/ regular salary	2008-09	2009-10
Normal/ regular salary of Junior school	2,387,777	3,185,466
Incremental salary in 2009-10	797,689	

Increase in tuition fee	2008-09	2009-10
Regular/ Normal Tuition fee of Junior school	4,210,433	5,498,845
Incremental tuition fee in 2009-10	1,288,412	

As would be apparent from the above calculation sheet, the Committee, prima facie determined that the fee hike effected by the school and the arrear fee recovered by it pursuant to order dated 11/02/2009 of the Director of Education was excessive in relation to its requirement for implementation of the recommendations of VI Pay Commission, to the extent it implemented. The excess amount provisionally determined by the Committee was Rs. 6,63,306. Further a sum of Rs. 24,95,245 recovered by the school as development fee for the years 2009-10 and 2010-11 pursuant to the aforesaid order of the Director of Education was also liable to be refunded to the students as the development fee had been recovered by the school without fulfilling the essential pre-conditions laid down by the Hon'ble Supreme Court in the case of Modern School (supra). A copy of the above calculation sheet prepared by the Committee was given to the school on 05/10/2016, for rebuttal, if any.



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The school filed its rebuttal vide its written submissions dated 10/11/2016 during the course of hearing held on that date.

The school controverted the addition of development fee charged for the years 2009-10 and 2010-11 in the total amount provisionally calculated as refundable to the students. It was submitted that so far as the surplus generated by the school on account of fee hiked effected in pursuance of order dated 11/02/2009 issued by the Director of Education was concerned, the school had no disagreement with the calculations of the Committee.

However, with regard to the development fee for the years 2009-10 and 2010-11, the school contended that no doubt it was treated as a Revenue receipt in the books of the school, the same had been utilised for the purpose of acquisition of eligible fixed assets i.e. furniture, fixtures and equipments. The school furnished details of utilization of development fee charged in these two years. It was submitted that as against a collection of Rs.11,54,020 in the year 2009-10, the school acquired fixed assets amounting to Rs.13,03,508 in that year. In the year 2010-11, as against a collection of Rs. 13,41,225, the school acquired fixed assets amounting to Rs. 20,21,443. The authorized representatives appearing for the school relied upon the audited financials in support of their contention.



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So far as maintenance of earmarked accounts for depreciation reserve fund and development fund are concerned, the authorized representatives stated that they were not maintained till the financial year 2015-16. 000021

The matter was again taken for hearing on 04/10/2018 primarily to ascertain the position with regard to earmarking of development fund and depreciation reserve fund, which the school had claimed was done in the financial year 2015-16. The authorized representative appearing for the school submitted that one more opportunity may be given to the school to do the needful.

Further during the course of hearing, the authorized representative submitted that even with regard to surplus arising on account of recovery of arrear fee and hike in tuition fee in terms of order dated 11/02/2009 of the Director of Education, no order for refund be made, as the school was willing to pay the amount of arrears to staff to the extent it collected the arrear fee from the students, and after such payment the surplus would be wiped out. He requested for two weeks time to do the needful. The request of the school was granted by the Committee and the school was directed to produce evidence of payment of arrear salary to the staff alongwith with copies of the bank statements of the relevant period and Challan of TDS, if deducted, on the next date of hearing.



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The school filed written submissions dated 01/11/2018 today 000022 during the course of hearing, giving details of disbursement of arrear salary amounting to **Rs.12,44,245** to the staff, which is equal to the amount of arrear fee collected from the students. It is submitted that a sum of Rs.11,30,645 has been paid to the staff members who are still on the rolls of the school, vide direct transfer to their respective bank accounts on 24/10/2018. The school has filed copies of the payment instructions given to the bank, calculation sheet showing the working of the arrear salary and bank statement for the relevant period showing debit of the amount to the account of the school. With respect to two other teachers who have reportedly retired from the service of the school, the school has filed copies of intimations sent to them to collect the cheques from the school. It is submitted that the concerned teachers will collect the cheques tomorrow.


Since the school has disbursed the arrear fee collected from the students to the staff towards partial payment of arrear salary due to them, and after accounting for such payment, no excessive tuition fee as determined by the Committee remains, no refund of tuition fee is recommended.

Development Fee:

The Committee has verified the contention of the school with regard to its submission that though the development fee was treated as a revenue receipt and credited to its Income & Expenditure



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Account, it was not utilised for meeting its revenue expenses but was utilised for acquisition of eligible fixed assets. It is noticed that even if development fee is taken out from the income of the school, there would still remain a cash excess of its income over its revenue expenses. This justifies the submission of the school that the development fee was not utilised for meeting its revenue expenses. There has been acquisition of eligible fixed assets by the school in the years 2009-10 and 2010-11 and the total cost of such assets exceeds the total development fee for these two years. Accordingly, the Committee is of the view that the treatment of development fee as a revenue receipt was merely an accounting error. In substance, the same was treated as a capital receipt and utilised for capital expenditure. No adverse inference can be drawn merely for the school committing an accounting error.

With regard to earmarking of deprecation reserve fund, the school has filed a note stating that initially the deprecation reserve fund was not kept in earmarked FDRs. However, on receipt of directions from the Directorate of Education, the school has transferred the amount of depreciation reserve fund created from 2002-03 to 2014-15 and the same is now fully kept in earmarked FDRs. The school has also filed audited financials for the year 2016-17 to buttress its arguments.

The note filed by the school reads as follows:



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Maintenance of Depreciation Reserve Fund:

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Since the incorporation of the school i.e. From the F.Y. 2002-03 to F.Y. 2014-15, Depreciation Reserve Fund was not created in the balance sheets although Provision for the same were maintained through FDRs. In the F.Y. 2015-16 Designated Reserve Funds were created and reflected in the Balance Sheet as per the direction of Directorate of Education, Govt. of NCT. While computing the amount of Depreciation Reserve Fund in F.Y. 2015-16, depreciation charged on assets (besides Building) during all these years (from F.Y. 2002-03 to 2015-16) has been taken into consideration. The total amount of depreciation charged during these years is Rs. 1,16,09,238 (as reflected in the Previous Balance Sheets) during the F.Y. 2015-16 Depreciation Reserve Fund, Building Reserve Fund and Transport Reserve Fund were created under the heads Designated Reserve Fund. The details of fund allocated in the balance sheet 2015-16 were as under:

a. Depreciation Reserve Fund	Rs. 8251821.00
b. Transport Reserve Fund	Rs. 2535894.00
Total	1,07,87,715.00

After the F.Y. 2015-16, the amount of Depreciation charged every year is added to the respective reserve Funds. Investments through FDRs have been made for operating and maintaining these Reserves.

Status of Depreciation Amount as on 31-03-2017

As on 01-04-2016	Rs. 1,16,09,238.00
Depreciation charged during the F.Y. 2016-17	Rs. 20,27,035.00
Total	Rs. 1,36,36,273.00

a. Depreciation Reserve Fund	Rs. 9348848.00
b. Transport Reserve Fund	<u>Rs. 2535894.00</u>

Total Amount of Reserve created	Rs. 1,18,84,742.00
Total amount of Depreciation required To be Reserved.	Rs. 1,36,36,273.00
Shortage of Funds	(-) Rs. 17,51,531.00

The Committee notices that as on 31/03/2011, the total bank balances of the junior school were Rs. 1,20,84,898 (26,70,033 in saving bank and Rs. 94,14,865 in FDRs. In the senior school, the same were to the tune of Rs. 18,93,762 (9,16,690 in saving bank and Rs. 9,77,072 in Fixed deposits). Thus, the junior and the senior



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school collectively had 1,39,78,660 in their bank accounts. Though, the same was in excess of the accumulated depreciation reserve, no amount was specifically earmarked against it.

The Committee has verified the submissions made by the school in its note on Maintenance of Depreciation Reserve Fund with reference to its audited financials for the year 2016-17 and finds the same as correct.

The Committee is of the view that though initially the school was not fulfilling the pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School in as much as it was not maintaining an earmarked depreciation reserve fund, it corrected its mistake in the financial year 2016-17 on receipt of directions from the Directorate of Education. Any recommendations with regard to refund of development fee for the year 2009-10 and 2010-11 would mean that the school will have to withdraw the money from its earmarked depreciation reserve fund for this purpose. The Committee does not consider this as a desirable course as the school has regularized its mistake committed earlier.

In **LPA no. 291/2017** in the case of **ST MARKS SR SEC PUBLIC SCHOOL & ANR. versus DIRECTOR OF EDUCATION & ANR**, a similar fact situation arose. The Hon'ble High Court after considering the judgment of the Hon'ble Supreme Court in the case of **Modern School vs. Union of India (2004) 5 SCC 583**, held as follows:

MDH International School, Dwarka, New Delhi-110075/ (B-429)/Order Page 14 of 17



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"30. With regard to the second direction i.e., restraining the Schools from charging any development fee till the amounts claimed as depreciation till 2014 - 15 is deposited by the schools in a separate account in a nationalised bank, it may be seen that the purpose of charging development fee is inter alia to create a Depreciation Reserve Fund for replacement of a Capital Asset. The requirement of the Rules is that the amount, which has been claimed as depreciation, should be separately stated in an Account.

31. As per Modern School (supra), the Management is entitled to create a Development Fund Account and collect development fees. Development fees are to be treated as capital receipt and can be collected only if the school maintains a Depreciation Reserve Fund Account.

32. Even if the argument of the Schools were to be accepted that there is no requirement of opening a separate bank account in a Nationalized Bank, what would be required to be shown by the Schools is that the amount which is credited to the Depreciation Reserve Fund account is available at all points of time and has not been diverted/utilized for any other purpose. In case the amount which is shown as a credit balance in the Depreciation Reserve Fund in the books of account, is not available in the Bank as a credit balance, then the same would remain a mere entry in the books of account and the amount would not be available when required for replacement of the capital asset. The whole purpose of maintaining a Depreciation Reserve Fund would be lost. Further, if the Schools are maintaining a credit balance in their bank account corresponding to the amount standing to the credit in the Depreciation Reserve Fund in their books of account, no prejudice would be caused to the schools if they merely transfer the said amount from the common pool account to a separate account specifically created for the said purpose. We therefore find no infirmity with direction (3) issued by D.O.E. by the impugned letter dated 16.06.2016."

As would be evident from the above extract, vide its order dated 16/06/2016, which was impugned by the school in the above case, the Directorate of Education had directed the school to transfer the amount of depreciation charged by the school till 2014-15 to a separate earmarked account before the school was permitted to



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charge any development fee. The Hon'ble High Court held that if the school had sufficient funds with it to cover the cumulative depreciation charged by it, no prejudice would be caused to the school if the same was transferred to an earmarked account. Accordingly, the Hon'ble High Court upheld the direction of the Directorate of Education to transfer the amount equivalent to the depreciation charged upto 2014-15 to an earmarked fund before the school could charge development fee.

In this case, the school has in fact complied with the direction of the Director of Education to transfer the accumulated depreciation upto 2016-17 to earmarked FDRs. The school, as noticed supra, had at all times funds available with it equivalent to or more than the amount of depreciation charged by it. Following the judgment of the Hon'ble Delhi High Court in LPA No. 291/2017, the Committee is of the view that no recommendation can be made by it with regard to refund of development fee charged by the school in the years 2009-10 and 2010-11 since funds have already been earmarked to the extent of depreciation charged by the school upto atleast 2014-15.

Resultantly, the Committee is of the view that no intervention is required to be made with regard to the arrear fee and/or development fee charged by the school and/or the tuition fee hike effected by the school w.e.f. 01/09/2008, pursuant to order dated 11/02/2009 issued by the Director of Education.



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It needs to be recorded that the school paid arrears of salary to the staff equivalent to the arrear fee recovered by it amounting to Rs. 12,44,245 during the course of hearings before the Committee.

Justice Anil Kumar (R)
(Chairperson)

CA J.S. Kochar
(Member)

Dr. R.K. Sharma
(Member)

Dated: 01/11/2018



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**BEFORE DELHI HIGH COURT COMMITTEE FOR REVIEW OF
SCHOOL FEE, NEW DELHI**
(Formerly Justice Anil Dev Singh Committee for review of school Fee)

In the matter of:

St. Peter's Convent, Vikas Puri, New Delhi-110018 (B-469)

Order of the Committee

Present : Sh.Manmohan Sharma, Chartered Accountant with Sh. Jitendra Kumar Sharma, Accountant of the school.

The school had submitted copies of its annual returns filed under Rule 180 of Delhi School Education Rules, 1973 for the years 2006-07 to 2010-11 to the Dy. Director of Education, Distt. West-B of the Directorate of Education, which were forwarded to this Committee for its consideration.

The Committee issued a questionnaire to all the schools (including this school) on 27/02/2012, eliciting information with regard to the arrear fee and fee hike effected by the school pursuant to order dated 11/02/2009 issued by the Director of Education. The school was also required to furnish information with regard to the arrear salary paid and the incremental salary paid to the staff pursuant to the implementation of the recommendations of the 6th pay commission. However, the school did not submit its reply to the questionnaire. Accordingly, a reminder was sent on 27/03/2012 which also met with the same fate.

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The Committee issued a revised questionnaire on 30/07/2013 which required the school to respond to besides the queries raised vide questionnaire dated 27/02/2012, the relevant queries with regard to charging of development fee, the manner of its utilisation and maintenance of earmarked development and depreciation reserve fund accounts in order to examine whether the school was complying with the pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583 with regard to charging of development fee.

The school submitted its reply under cover of its letter dated 08/08/2013. As per the reply submitted by the school, it implemented the recommendations of VI Pay Commission w.e.f. 01/04/2009. It enclosed a statement showing that the net amount of monthly salary that was paid by the school before implementation of the recommendation of VI Pay Commission was Rs. 4,79,491 but the same rose to Rs. 7,68,216 after its implementation. It also enclosed a statement showing that it had paid a total sum of Rs. 19,53,165 as arrears to the staff for the period 01/01/2006 to 31/03/2009 as a result of implementation of the recommendations of VI Pay Commission.

With regard to collection of arrear fee for the period 01/01/2006 to 31/03/2009, the school admitted that it had received arrear fee to the tune of Rs. 20,86,505 upto 31/03/2013. It also furnished details



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of the hike in tuition fee effected w.e.f. 01/09/2008. As per the statement filed by the school, it increased tuition fee of the students of class I by Rs. 200 per month and in respect of other classes i.e. II to X, the hike was to the tune of Rs. 300 per month.

With regard to development fee, the school admitted that it had charged development fee in all the five years for which the information was sought by the Committee. In particular, it mentioned that for the year 2009-10, it recovered sum of Rs. 20,24,500 as development fee while in the year 2010-11, it recovered sum of Rs. 21,32,498 on this account. The development fee was stated to have been treated as a capital receipt by the school. However, it conceded that the school was not maintaining earmarked depreciation reserve fund or development fund account.

Based on its reply to the questionnaire and the audited financials of the school, the Chartered Accountants (CAs) who were deployed with this Committee by the Directorate of Education for assistance, worked out that the school recovered excess fee to the tune of Rs. 4,01,238, which apparently required to be refunded to the students. However, on a review of a calculation sheet by the Committee, it observed that the CAs had based their calculations of funds available with the school before fee hike on the audited balance sheet as on 31/03/2009, which was not proper as the school had by that time recovered part of the arrear fee, whose justifiability was to be



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considered by the Committee. They ought to have taken the base figures on the basis of the audited balance sheet as on 31/03/2008.

The Committee issued a notice dated 09/07/2015, requiring the school to furnish complete break up of fee and salaries for the years 2008-09 to 2010-11 (including arrear fee and arrear salary pursuant to implementation of VI Pay Commission, bank statements showing payment of arrear salary to the staff statement of account of the parent society running the school and details of its accrued liabilities of gratuity and leave encashment. The school was also given an opportunity of being heard in the matter and directed to appear on 29/07/2015 for this purpose.

On the date of hearing, Ms. Tina Goyal, Chartered Accountant appeared with Sh. Sandeep Puri, and furnished the information required by the Committee. She submitted that although the school hiked the fee as per order dated 11/02/2009 issued by the Director of Education, the arrear fee was not fully recovered by the dates stipulated in the said order. She submitted that the remaining arrear fee was being recovered from the students as and when they leave the school. She also submitted that likewise the payment of salary arrears to the staff was also staggered to match the arrear fee collection. She further submitted that the school would pay arrear salary to the staff only to the extent it is able to recover the arrear fee from the students, irrespective of its total liability on this account.



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It was further contended that the arrear salary was paid mostly by crossed cheques. However, in a few cases where teachers were newly appointed, they were paid in cash. With regard to accrued liability of gratuity and leave encashment, she submitted that though the school had accrued liabilities on these accounts, no provision was made in the books of accounts of the school.

With regard to development fee, she stated that although the same was capitalized and depreciation reserve fund was created in the books, no earmarked accounts were maintained for that purpose. She sought some more time to furnish the information regarding accrued liabilities of gratuity and leave encashment and collection of arrear fee and payment of arrear salary after 31/03/2011 (the school had already submitted the information with regard to these items upto 31/03/2011). The request of the school was granted by the Committee.

On 19/08/2015, the school submitted details of total arrear fee received till 30/03/2015 as also the amount of arrear fee that was still due. As per the statement filed by the school, it had recovered RS. 26,04,965 as arrear fee upto 31/03/2015 and further sum of Rs. 4,93,997 was still due from the students.

Another statement was filed showing that the school had a total liability of Rs. 44,58,197 for payment of arrear salary out of which it had paid Rs. 26,14,265 upto 31/03/2015.



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The school also filed a statement of its accrued liability of gratuity as per which the amount of liability stood at Rs. 9,39,291 as on 31/03/2008 and Rs. 19,94,879 as on 31/03/2011.

While preparing the calculation sheet, the Committee observed that the chart of different component of fee and salary submitted by the school on 29/07/2015 did not tally with the audited financials of the school. Accordingly, the school was directed to furnish a corrected information sheet. The same was furnished by the school on 20/07/2016.

The matter could not be concluded on account of resignation of Justice Anil Dev Singh, as Chairman of the Committee. the reconstituted Committee issued a fresh notice of hearing dated 12/01/2018 requiring the school to appear before it on 21/02/2018.

A representative of the school appeared on the date of hearing. The school furnished a fresh statement showing its accrued liability of gratuity and leave encashment as on 31/03/2010. As per the statement, the school did not have any liability towards leave encashment but a sum of Rs.21,71,054 was projected to be its accrued liability for gratuity.

The Committee observed that the information furnished by the school with regard to different component of fee and salary vide its letters dated 19.8.2015 and 20.8.2016, did not match with the audited financials of the school. Accordingly, the school was directed

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to produce its books of accounts for the years 2006-07 to 2010-11, which were maintained in Tally software, in a lap top. The matter was adjourned to 05/04/2018. A request for adjournment was made by the school on 05/04/2018 on the ground that the school was trying to procure its accounting data for the years 2008-09 to 2010-11 from the agency to which the maintenance of account had been outsourced. The request was granted by the Committee and the matter was adjourned to 08/05/2018.

On this date, Sh. Manmohan Sharma, Chartered Accountant appeared with Ms. Rita Gupta, Office Asstt., Sh. Jitender Kumar, and Sh. Sanjeev Kr. Sharma, Accountants of the school.

The authorized representatives produced the books of accounts of the school in a laptop and also produced its bank statements.

On examination of the revised information sheet filed by the school under cover of its letter 20/07/2016, the Committee observed that the information furnished by the school was only with regard to the years 2008-09 to 2010-11, but the school had claimed that it paid the arrear salary right upto 2016-17.

The authorized representative of the school also submitted that in the subsequent years also, the school had received arrear fee, and the total payment of arrear salary more or less matched with the arrear fee recovered by the school.



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The Committee examined the bank statements of the school and noticed that the arrear cheques purportedly issued to the staff, had been encashed together in batches on different dates. The bank had only mentioned the name of the payee of the cheque in the bank statements, which gave rise to apprehension that the cheques issued might have been bearer in nature.

The school was directed to file a revised information sheet covering all the years in which the arrear fee had been received and arrear salary had been paid. A direction was also given that the payment of arrear salaries ought to be highlighted in the bank statement for quick reference and copies of the same should also be filed along with the arrear payment sheet. The school was also directed to provide a certificate issued by the paying bank, certifying whether the cheques were account payee or paid in cash to the bearers. The matter was adjourned to 14/06/2018.

On the next date of hearing, the school furnished the following documents:

- (a) Revised fee and salary statement for the year 2008-09 to 2016-17.
- (b) A certificate from Canara Bank regarding mode of payment of cheques issued to staff in respect of arrear salary.
- (c) A statement showing arrears of salary actually paid and arrears of salary still outstanding.



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- (d) Statement showing collection of arrears of fee and arrears of fee yet to be collected.

The details filed by the school were examined by the Committee and it observed as follows:

- (a) The school collected a total sum of Rs. 29,53,615 as arrears of fee from 2008-09 to 2016-17. A balance of Rs. 99,025 was still to be collected.
- (b) The school purportedly paid a sum of Rs. 26,42,876 towards arrears of salary from 2009-10 to 2015-16. A sum of Rs. 44,29,586 was still to be paid.

The Committee noted that on 29/07/2015, the authorized representatives who appeared for the school had submitted that the school would pay arrears of salary only to the extent it is able to recover the arrear fee. However, as noticed above, the school still had not paid a sum of Rs. 3,10,739 out of the arrear fee collected, although it had a huge liability of Rs. 44,29,586 still outstanding. The school was accordingly required to show cause as to why the sum of Rs. 3,10,739, ought not be ordered to be refunded to the students.

Further the Committee observed that the entire amount of arrears of salary purportedly paid by the school had not been paid through banking channels. Only a sum of Rs. 17,45,576 out of total amount of Rs. 26,42,876 was claimed to have been paid through banking channel. The remaining amount of Rs. 8,97,300 was claimed



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to have been paid in cash. The Committee also noticed from the certificate issued by Canara Bank that even out of the amounts which were purportedly paid by cheques, a sum of Rs. 6,18,343 had been withdrawn in cash from the bank by way of bearer cheques issued in the names of different staff members and such cheques had been withdrawn together in two batches on 20/07/2009 and 31/07/2009.

The Committee verified the revised fee and salary statement filed by the school with the books of accounts produced by the school in a lap top which appeared to be in order except for a few minor discrepancies.

The Committee examined the audited financials of the school in order to prepare the relevant calculations and observed that the school was apparently diverting its fee revenues for creation of fixed assets. The amount available as capital receipts with the school from 2006-07 to 2009-10 was Rs. 73,48,370. However, the school incurred a total capital expenditure of Rs. 97,08,511. Accordingly, the Committee considered that the remaining amount of Rs. 24,60,141 (97,08,511 - 73,48,370) came from the revenue receipts of the school which is mainly the fee charged from the students. As per the decision of the Hon'ble Supreme Court in the case of Modern School (supra), capital expenditure cannot form part of the fee structure of the school. To put it in other words, the school cannot incur capital expenditure out of its fee revenues, particularly when the school is charging development fee which is exclusively meant for incurring



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capital expenditure. The details of such apparent fee diversion of capital expenditure, as worked out by the Committee are as follows:

Financial Year	Capital Receipts			Capital expenditure		Net Capital Inflow/ (diversion)
	Development fee received	Contribution from Society	Total	Purchase of Fixed Assets	Total	
2006-07	398,110		398,110	461,643	461,643	(63,533)
2007-08	489,355	2,400,000	2,889,355	3,309,824	3,309,824	(420,469)
2008-09	1,159,715	700,000	1,859,715	2,949,972	2,949,972	(1,090,257)
2009-10	401,190	1,700,000	2,101,190	2,987,072	2,987,072	(885,882)
Total	2,448,370	4,800,000	7,248,370	9,708,511	9,708,511	(2,460,141)

The Committee also considered that the sum of Rs. 15,15,643 which the school purportedly paid as arrears to the staff either in cash or by bearer cheques was not actually paid as there was no exigency to pay the arrears which amounted to significantly high amounts, in cash or by bearer cheques when the school had also paid the arrears to some staff members by account payee cheques. Accordingly, the Committee excluded such payments from the total arrear payments as projected by the school.

With the aforesaid adjustments, the Committee prepared the following calculation sheet:



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Statement showing Fund available/ deemed to be available and the effect of hike in fee as per order dated 11.02.2009 and effect of increase in salary on implementation of 6th Pay Commission Report			
	Particulars	Amount (Rs.)	Amount (Rs.)
	<u>Current Assets + Investments as on 31.03.2008</u>		
	Cash in Hand	72,081	
	Cash at Bank	597,563	
	Closing Stock	321,649	
	Advances	10,995	
	Accrued Income	4,670	1,006,958
Less	<u>Current Liabilities as on 31.03.2008</u>		
	Creditors	397,393	
	Expenses payable	6,146	
	Advance Registration fees	4,000	
	TDS (contractors)	1,360	
	Salary payable	416,362	825,261
Add	Net Current Assets + Investments as on 31.03.2008		181,697
	Fee (Other than Development fee) utilised for capital expenditure from 2006-07 to 2009-10 as per Annexure enclosed		2,460,141
Less	Funds deemed to be available for implementation of recommendations of 6th Pay Commission		2,641,838
	Additional Liabilities on implementation of 6th Pay Commission:		
	Arrear of Salary as per 6th CPC (excluding amount paid in cash and through bearer cheques)	1,127,233	
	Incremental Salary for 2009-10 (as per calculation given below)	6,221,001	7,348,284
	Excess / (Short) Fund Before Fee Hike		(4,706,396)
Add	Additional Recovery for 6th Pay Commission :		
	Arrear of tuition fee	2,953,615	
	Incremental tuition fee for 2009-10 (as per calculation given below)	6,138,360	9,091,975
	Excess / (Short) Fund After Fee Hike		4,385,579
Less	Reserves required to be maintained:		
	for future contingencies (equivalent to 4 months salary) for accrued liability towards Leave Encashment as on 31.03.2010	4,237,549	
	for accrued liability towards Gratuity as on 31.03.2010	2,171,054	6,408,603
	Excess / (Short) Fund		(2,023,024)

Development fee refundable (pre-conditions for charging the same not being fulfilled) :

For the year 2009-10	2,024,500
For the year 2010-11	2,132,498
Total	4,156,998
Less: Deficit on implementation of recommendations of 6th Pay Commission	(2,023,024)
Net amount , prima-facie, refundable	2,133,974



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Working Notes:		
Incremental salary in 2009-10	2008-09	2009-10
Normal/ regular salary	6,491,647	12,712,648
Increase	6,221,001	
Incremental tuition fee in 2009-10	2008-09	2009-10
Normal/ Regular Tuition fee	7,411,435	13,549,795
Increase	6,138,360	

As would be apparent from the above calculation sheet, the school had available with it a sum of Rs. 1,81,697 as on 31/03/2008, before effecting the fee hike. As discussed above, the school diverted its fee revenues for capital expenditure to the tune of Rs. 24,60,141 from 2006-07 to 2010-11. Had such diversion not taken place, the school would have had this sum available with it for implementation of recommendations of VI Pay Commission. Thus the Committee considered that the school had a total sum of Rs. 26,41,838 for implementation of the recommendations of VI Pay Commission. The total impact of implementation of the recommendations of VI Pay Commission on the school was Rs. 73,48,234. Thus the school had a shortfall of Rs. 47,06,396 which it needed to bridge by recovering arrear fee and hiking tuition fee in terms of order dated 11/02/2009 issued by the Director of Education. However, the school generated a total sum of Rs. 90,91,975 by resorting to fee hike and recovery of arrear fee. Apparently, the school recovered fee in excess of its requirement for implementation of the recommendations of VI Pay Commission to the tune of Rs. 43,85,579. However, the accrued liability of the school for gratuity has not been considered upto this stage. The same amounted to Rs. 21,71,054, leaving an excess recovery of Rs. 22,14,525. It would be noticeable that

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the Committee upto this stage has also not considered the requirement of the school to maintain a reasonable reserve. The Committee has taken a consistent view in case of all the schools that they ought to retain a sum equivalent to four months salary as a reserve. The same works out to Rs. 42,37,549 in the case of this school as the total expenditure on salary for the year 2009-10 was Rs. 1,27,12,648. If this is considered, the tuition fee hike effected by the school pursuant to order dated 11/02/2009 would be justified.

However, the Committee considers that the development fee recovered by the school for the year 2009-10 and 2010-11 pursuant to order dated 11/02/2009 was not justified as the school was admittedly not complying with the pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School (supra) in as much as the school was admittedly not maintaining any earmarked depreciation reserve fund. The amount recovered by the school as development fee in the years 2009-10 and 2010-11 was Rs. 41,56,998. After setting of the requirement of the school to keep funds in reserve, to the extent the same was not met out of tuition fee, the Committee considered that a sum of Rs. 21,33,974 out of the development fee collected for the years 2009-10 and 2010-11 was not justified and ought to be refunded.

A copy of the above calculation sheet was given to the authorized representative of the school on 23/08/2018 for rebuttal if any.

The school filed written submissions on 07/09/2018 vide which it was contended there was an error in the calculation sheet, in as much



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as the development fee considered by the Committee in the statement of diversion of funds had been taken to be Rs.4,01,190 which was the development fee received from the students of the junior school. The development fee received from the students of senior school amounting to Rs.16,23,310 had been omitted from the calculations. It was submitted that if the above mistake was corrected the amount apparently refundable, as per the calculation sheet, would be Rs.5,10,664.

It was further submitted that the school had made further payment of **Rs.1,56,550** towards arrears to the staff and that also ought to be accounted for by the Committee. It was also submitted that the school had a further liability of Rs.1,54,189 to some other employees who had left the school and intimation had been sent to them to contact the school and collect the arrears.

The Committee was of the view that if the school intended to pay the arrears to the ex employees, it should send the cheques or demand drafts by registered post instead of asking them to contact the school to collect the arrears. The authorized representative of the school requested for some more time to be given for this purpose. Accordingly the matter was adjourned to 14/09/2018.

The school filed a letter dated 14/09/2018 stating that it had made the balance payment of **Rs.1,62,806** as arrear salary to 6 staff members who had left the school. The school also filed copies of the pay orders and bank statements showing debit to the bank account. The



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school also filed copies of the speed post receipts through which the pay orders were dispatched. 000044

Perusal of the speed post receipts showed that all the pay orders were dispatched only one day before. Accordingly, the school was directed to appear again on 05/10/2018 and place on record the delivery track reports of speed posts.

The school filed copies of the speed posts tracking reports in respect of pay orders for arrear salaries which were sent to the staff members who have left the school. The Committee observed that out of 6 pay orders which were sent, 5 had been delivered. Only 1 pay order for Rs.23,033 in the name of Geeta Awasthi had been returned undelivered. The school was directed to try to locate her whereabouts and have the pay order delivered to her. It was submitted that after taking into consideration the payments made to the staff during the course of hearing, the apparent refund which had been determined by the Committee would stand reduced to Rs. 1,91,308, after making the correction in the calculation sheet as submitted by the school on 07/09/2018. It was further submitted that the school was fulfilling all the pre conditions regarding charging of development fee as laid down by the Hon'ble Supreme Court in the case of Modern School except that the funds represented by unutilized development fund and deprecation reserve fund were not lying in the earmarked account but were the part of general pool of the funds of the school.



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However, the submission made by the school was not supported 000045
by the audited financials of the school. The authorized representative
submitted that the development fund as appearing in the balance sheet
represented the gross amount of development fee credited to this account
and did not take into account the utilization of development funds over
the years for purchase of eligible fixed assets. He sought sometime to re
work the balances in the development fund account and depreciation
reserve fund account. As requested the matter was adjourned to
15/11/2018 i.e. today.

Today, the authorized representative of the school submits that
the whereabouts of Smt. Geeta Awasthi, whose pay order had been
received back undelivered by the school, could not be located hence the
amount could not be paid to her. He submits that if the mistake of
omission of Rs,16,23,310 pointed by the school on 07/09/2018 is
corrected and the amount of arrears paid to the staff during the course
of hearing are taken into consideration, a small amount of Rs.3,54,114
would be the amount refundable as per the calculation sheet prepared
by the Committee.

On reviewing the calculation sheet, The Committee notices that in
its calculation sheet the development fee for the year 2009-10
amounting to Rs.20,24,500 had been factored in twice. As per the
calculations made by the Committee the same had been factored in by
calculating the amount utilized for incurring capital expenditure. Again
it had been taken as the amount apparently refundable on account of
St. Peter's Convent, Vikas Puri, New Delhi-110018/ (B-469)/Order Page 17 of 18

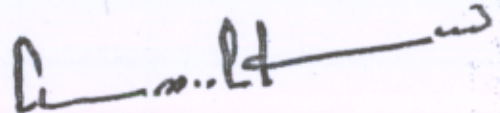


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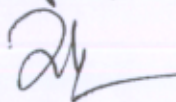
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non fulfillment of the pre conditions prescribed by the Hon'ble Supreme Court in the case of Modern school Vs. Union of India.

The Committee accordingly corrects its preliminary calculations and after taking into account the sum of Rs. 3,19,356 representing arrears of salary paid during the course of hearing, the Committee sees no reason to recommend any refund on account of arrear fee or development fee or incremental fee for the year 2009-10. In view of this, the Committee considers the fee hike effected by the school and arrear fee recovered by it for implementation of the recommendations of VI Pay Commission, to the extent they were implemented, was justified. However, the School ought to find out the whereabouts of Ms. Geeta Awasthy and deliver the pay order to her.


Justice Anil Kumar (R)
(Chairperson)


CA J.S. Kochar
(Member)


Dr. R.K. Sharma
(Member)

Dated: 15/11/2018



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**BEFORE DELHI HIGH COURT COMMITTEE FOR REVIEW OF
SCHOOL FEE, NEW DELHI**
(Formerly Justice Anil Dev Singh Committee for review of school Fee)

In the matter of:

Vishal Bharti Public School, Paschim Vihar, New Delhi-110063 (B-77)

Order of the Committee

Present : Sh. Manu R.G. Luthra, Chartered Accountant, Sh. Sunil Goel, Manager and Sh. Parveen Kumar, Asstt. Accountant of the school.

The Committee issued a questionnaire to all the schools (including this school) on 27/02/2012, eliciting information with regard to the arrear fee and fee hike effected by the school pursuant to order dated 11/02/2009 issued by the Director of Education. The school was also required to furnish information with regard to the arrear salary paid and the incremental salary paid to the staff pursuant to the implementation of the recommendations of the 6th pay commission. However, the school did not submit its reply to the questionnaire. Accordingly, a reminder was sent on 27/03/2012 which also met with the same fate.

It appears that the school had submitted to the Dy. Director, Distt. West-B of the Directorate of Education under cover of its letter dated 21/02/2012, copies of its annual returns for the years 2006-07 to 2010-11(including its audited financials) and copy of circular dated



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17/03/2009 issued to the parents pursuant to fee hike effected by it as per order dated 11/02/2009 issued by the Director of Education. These were forwarded to this Committee.

The Committee issued a notice dated 04/03/2014, requiring the school to furnish complete break up of fee and salaries for the years 2008-09 to 2010-11 (including arrear fee and arrear salary pursuant to implementation of VI Pay Commission, statement of account of the parent society running the school and details of its accrued liabilities of gratuity and leave encashment. A revised questionnaire was also issued to the school vide which, besides eliciting the answers to the queries made vide questionnaire dated 27/02/2012, also included the relevant queries with regard to collection and utilisation of development fee and maintenance of earmarked development and depreciation reserve funds to examine whether the school was complying with the pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583. The school was also given an opportunity to appear on 25/03/2014 to have its say in the matter of fee hike effected by it.

On the date of hearing, Sh. Sunil Goel, Manager appeared with Sh. Parveen Kumar, Accountant of the school. They filed the required information under cover of letter dated 25/03/2014. The school also furnished its reply to the questionnaire, as per which the school implemented the recommendations of VI Pay Commission w.e.f. 1st



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April 2009 and as a result, its monthly salary bill went up from Rs. 5,42,617 to Rs. 8,52,197. It also submitted details showing payment of arrears of salary amounting to Rs. 65,37,690 for the period 01/01/2006 to 31/03/2009.

The school also furnished the details of collection of arrear fee which amounted to Rs. 48,45,980 and the details of hike in monthly fee w.e.f. 01/04/2009. As per the details submitted, the monthly fee of the students of pre primary to class VIII was hiked by Rs. 400 per month and that for students of class IX to class XII was hiked by Rs. 500 per month. The development fee was uniformly hiked from Rs. 140 per month to Rs. 220 per month for students of all the classes.

With regard to regular development fee, the school admitted having charged development fee in all the five years for which the information was sought by the Committee i.e. 2006-07 to 2010-11. As per the information provided by the school, the development fee recovered by it in 2009-10 amounted to Rs. 26,23,721 and in 2010-11, it amounted to Rs. 26,66,770. It was conceded by the school that it treated development fee as a revenue receipt and no earmarked fund accounts was maintained in respect of depreciation reserve. Thus, at the outset itself, the school admitted that it was not fulfilling the pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School (supra) for charging development fee.



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The school also furnished actuarial valuation certificate as per which its accrued liability for gratuity amounted to Rs. 33,96,756 as on 31/03/2010 and that for leave encashment Rs. 20,72,654.

During the course of hearing, it emerged that the school was also running a pre primary school from the same campus. However, the school had not accounted for the revenues and expenses of the pre primary school in its financials. It was submitted that the school prepared a separate balance sheet of the pre primary school. It was however, admitted by the representatives of the school that the school was granted recognition from Pre primary class to Class XII. Accordingly, the Committee required the school to furnish the audited balance sheets of the pre primary school also in order to have an overall view of the matter.

The Committee also observed from the financials of the school that apparently, there was diversion of funds from the "School Fund" for incurring capital expenditure for purchase of buses and repayment of loans taken for their purchase. The apparent diversion noticed by the Committee was to the tune of Rs. 1,87,46,119 from 2006-07 to 2010-11. A calculation sheet showing the apparent diversion of School Fund towards incurring capital expenditure was furnished to the Manager of the school for its response. The school was also directed to file complete audited balance sheets of the Nursery school for the years 2006-07 to 2010-11, fee schedules of the Nursery



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School and statement of account of the Society for the aforesaid period.

The school furnished copies of the audited financials of the Nursery School and other necessary details under cover of its letter dated 07/04/2014, after which the Committee prepared a calculation sheet as per which it prima facie appeared that the fee hike effected by the school as well as the arrear fee recovered by it pursuant to order dated 11/02/2009 was not justified. A copy of the calculation sheet was furnished to the school vide notice dated 11/08/2014 for rebuttal if any.

A fresh notice of hearing was issued on 25/09/2014 for appearance on 21/10/2014. A letter dated 16/10/2014 was received by the Committee requesting for relisting of the matter in November 2014. Accordingly, the hearing was rescheduled for 05/11/2014 when Sh. N.K. Mahajan, Chartered Accountant appeared with Sh. Sunil Goel, Manager and Sh. Parveen Kumar, Accountant of the school. They filed detailed written submissions dated 05/11/2014, disputing the preliminary calculation sheet prepared by the Committee with regard to diversion of School Fund. They were also heard in the matter. It was contended by the school that the capital expenditure on purchase of school buses and repayment of loans for such purchase did not amount to diversion of school Fund because without transportation facilities, the functioning of the school would



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come to a halt and even the safety and security of the students would be in danger. Further the school had been charging transport fee from the students for providing the transportation facility and the school did not earn any surplus out of that. The facilities of transportation of the students by the school was as per the directions/instructions of the Hon'ble Supreme Court and Government of India for safety and security of the school students. The school also disputed a number of other components of calculation sheet and stressed that the school needed to keep funds in reserve for meeting its accrued liabilities of gratuity and leave encashment besides a reasonable reserve, which the Committee had not factored in its calculation sheet. The recommendations in the matter could not be finalized on account of resignation of Justice Anil Dev Singh as Chairman of the Committee. After the Committee was reconstituted, the Committee issued a fresh notice dated 22/06/2017 vide which the format for seeking information from the school was changed in order to accommodate the various issues on which the school had disputed the calculation sheet prepared by the Committee. The school furnished the information as per the revised format under cover of its letter dated 13/07/2017 as per which it claimed that the school did not generate surplus fund by hiking the fee as per order dated 11/02/2009 of the Director of Education. On the contrary, the school was in deficit on implementation of the recommendations of VI Pay Commission and requested the Committee to rectify the situation



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faced by the school. In what manner, the Committee should rectify the situation, was not spelt out by the school. Apparently, the school requested for further fee hike over and above what was permitted to it vide order dated 11/02/2009 issued by the Director of Education in order to meet the deficit on account of implementation of the 6th Pay Commission.

A notice of hearing was issued on 20/03/2018 requiring the school to appear before the Committee on 16/04/2018 along with its books of accounts and other relevant records. Sh. Manu R.G. Luthra, Chartered Accountant appeared with Sh. Sunil Goel and Sh. Parveen Kumar and were partly heard by the Committee.

During the course of hearing, the authorized representative appearing for the school submitted that even if the Committee were to recommend a further fee hike, it would not be possible for the school to recover the same on account of the time lag. Accordingly, he submitted that the school would be satisfied if the Committee approved the fee hike effected by the school.

In order to substantiate its claim that the school incurred a deficit, the school furnished a calculation sheet. However, the Committee observed that the school had based its calculations on the basis of the balance sheet as on 31/03/2009, when it had already hiked the fee and recovered part of the arrear fee in 2008-09 itself. The school had issued the circular on 17th March 2009



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requiring the parents of the students to deposit part of the arrear fee by 31/03/2009 and the books of accounts produced by the school showed that the school had recovered a sum of Rs.13,71,371 towards arrear fee by 31/03/2009. As the Committee is required to examine the funds position of the school before effecting the fee hike the relevant calculations of funds availability had to be on the basis of the latest audited balance sheet prior to fee hike which was effected w.e.f. 01/09/2008. Thus the calculations of funds availability had to be based on the balance sheet as on 31/03/2008. For this reason, the calculation sheet filed by the school was rejected.

The Committee examined the information with regard to the arrear fee, regular fee, arrear salary and regular salary for the years 2008-09, 2009-10 & 2010-11, as furnished by the school, and also the circular dated 17/03/2009 issued by the school to the parents. The Committee observed that the circular was issued to the parents on 17/03/2009 but the school had started receiving the arrear fee as per this circular from 20/02/2009 itself.

The information furnished by the school was verified from the books of accounts produced by the school. The Committee observed that the recovery of arrear fee to the tune of Rs.13,71,371 in the year 2008-09 had been reflected by the school as a Current liability as on 31/03/2009. The same was accounted for as the income of the school in the year 2009-10.



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The Committee also observed that in the figures of regular salary provided by the school for the years 2008-09 and 2009-10, the school had also included the payments made to a certain manpower agency for hiring of staff. As these payments had no relation with the implementation of the recommendations of the 6th Pay Commission, the Committee decided to exclude such payments from its calculations.

On examination of the books of accounts and the information sheet filed by the school, the Committee arrived at the following figures which were relevant for the purpose of making calculations of deficit or surplus that arose after implementation of the 6th pay commission report and fee hike effected by the school.

Particulars	2008-09	2009-10	2010-11
Lump sum arrear fee for the period 1.1.2006 to 31.8.2008	5,66,141	7,10,259	0
Arrear of tuition fee for the period 1.9.2008 to 31.3.2009	6,51,160	21,25,048	2800
Arrear of development fee for the period 1.9.2008 to 31.3.2009	1,54,070	6,35,942	560
Regular tuition fee (Net of fee concession)	2,22,88,220	2,65,21,473	
Arrear salary for the period 1.1.2006 to 31.8.2008		42,19,807	1,82,823
Arrear salary for the period 1.9.2008 to 31.3.2009		21,35,060	
Regular /normal salary for the year (including bonus and PF)	71,18,447	1,15,28,653	



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The corresponding figures the Nursery school were as follows:

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Particulars	2008-09	2009-10	2010-11
Lump sum arrear fee from 1.1.2006 to 31.8.2008	0	34,148	0
Arrear of tuition fee from the period 1.9.2008 to 31.3.2009	18,268	95,422	
Arrear of development fee for the period 1.9.2008 to 31.3.2009	6120	39,860	
Regular tuition fee (Net of fee concession)	18,02,975	16,63,950	
Arrear salary for the period 1.1.2006 to 31.8.2008	0	0	0
Arrear salary for the period 1.9.2008 to 31.3.2009	0	0	0
Regular /normal salary for the year (including bonus and PF)	32,84,613	33,24,762	

The Committee observed that for classes 1st to 8th, the school increased the tuition fee by Rs.400 p.m. w.e.f. 01/09/2008 and accordingly, recovered the arrears for 7 months up to 31.3.2009 @ Rs.2800 per student. However, the corresponding increase in development fee was @ Rs.190 per month per student for class 1st & 2nd, Rs.199 per month for classes 3rd to 5th and Rs. 218 per month for classes 6th to 8th. The rate of hike of development fee was between 47.5% and 54.5% of the corresponding hike in tuition fee. Likewise, the incremental hike of development fee for the period 01/09/2008 to 31/03/2009 for classes 9th to 12th was Rs.249 per month as against the hike in the tuition fee which was Rs.500 per

Vishal Bharti Public School, Paschim Vihar, New Delhi-110063/ (B-77)/Order Page 10 of 18



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month. The hike in development fee for these classes worked out to 49.8% of the hike in tuition fee. As per the decision of the Hon'ble Supreme Court in the case of Modern school vs Union of India (2004) 5 SCC 583, the schools are permitted to charge development fee up to a maximum of 15% of tuition fee. The Committee observed that during the year 2008-09, as per the fee schedule filed by the school as part of its returns under rule 180 , while the school was charging tuition fee at varying rates from the students of different classes between Rs.1780 per month to Rs.2095 per month, development fee charged by the school was a fixed amount of Rs.140 per month which worked out to 7.86% for pre primary class and 6.68% for classes 9th to 12th. The school was required to justify the extra ordinary hike of the rate of incremental development fee w.e.f. 01/09/2008 in view of the fact that the school could have only hiked the development fee which was consequential to the hike in tuition fee as per clause 15 of the order dated 11/02/2009.

The Committee also noticed that the corpus fund of the parents society in the accounts of the school was negative and the entire fixed assets of the school appeared to have been funded out of secured and unsecured loans.

On the next date of hearing, the school clarified that after the receipt of order dated 11/02/2009 by the school, it issued the fee bills for recovery of arrear fee as per this order, in anticipation of the



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approval by the Schools Management Committee. It was submitted that the Management Committee approved the fee hike on 05/03/2009 and the formal circular to the parents was issued after that. In these circumstances, the school came to recover the arrear fee even before the formal circular was issued to the parents. It was submitted that since the arrears were recovered in accordance with the order of the Government, the approval of the Managing Committee was a mere formality which was gone through later.

Although the Committee does not consider the explanation of the school to be in order, since the Committee is basing its calculations on the actual amount of recoveries of the fee pursuant to order dated 11/02/2009, it consider that it would have no material bearing on the calculations and the recovery of arrear fee by the school even before the approval by the Schools Management Committee can be considered to be a technical irregularity.

A fresh Calculation sheet was prepared by the Committee on the basis of the information culled out by the Committee from the books of accounts of the school and its audited balance sheet as on 31/03/2008. As per this calculation sheet, the figure of funds apparently diverted by the school for capital expenditure amounted to Rs. 1,65,73,298 and after considering this amount, as funds which were deemed to be available with the school, the Committee observed that the school apparently generated a surplus of Rs. 18,63,797 on



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account of fee hike as per order dated 11/02/2009, after implementation of the recommendations of VI Pay Commission. Further the school recovered a sum of Rs. 5,49,109 as excess arrears of incremental development fee for the period 01/09/2008 to 31/03/2009 and the recovery of development fee by the school for the years 2009-10 and 2010-11 without fulfilling the pre-conditions laid down by the Hon'ble Supreme Court amounted to Rs.61,64,124. Thus prima facie, the school was required to refund a total sum of Rs.80,27,921. A copy of the calculation sheet was given to the school on 6th July, 2018 for rebuttal, if any. On 27/08/2018, the authorized representatives appearing for the school submitted that in the calculation sheet pertaining to diversion of funds for repayment of loans and incurring capital expenditure, an error had crept in as the amount considered as diversion for capital expenditure did not factor in the fresh loans taken by the school during the years 2006-07 to 2009-10 for meeting such capital expenditure. The authorized representatives further explained that the Receipt and Payment Accounts filed by the school on the basis of which the Committee had prepared this part of the calculation sheet, did not reflect the fresh loans on the Receipt side as the loans had been disbursed by the bank directly to suppliers of fixed assets and were not routed through the bank account of the school. The Committee was of the view that for the very same reason, the amount of capital expenditure for purchase of fixed assets would not appear for the payment side of the Receipt

Vishal Bharti Public School, Paschim Vihar, New Delhi-110063/ (B-77)/Order Page 13 of 18



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and Payment Account as the cost of such fixed assets had also been picked up by the Committee from the same Receipt and Payment Accounts. The school was accordingly directed to file corrected Receipt and Payment Accounts. The school filed the revised Receipt and Payment Accounts on 24/09/2018 after which the Committee again revised its calculation sheet. As per this final calculation sheet that emerged after such revision, the funds utilised for capital expenditure or for transfer to the Society amounted to Rs. 79,89,251. The current assets as on 31/03/2008 amounted to Rs. 40,46,120 while the current liabilities of the school as on that date amounted to Rs. 41,39,012. Thus the Committee inferred that the school had a sum of **Rs. 78,96,359** (79,89,251+40,46,120-41,39,012) available with it. The school required to keep funds in reserve to meet its accrued liabilities of gratuity and leave encashment, which as per the actuarial certificates filed by the school amounted to Rs. 33,96,756 and Rs. 20,72,654 respectively. Thus, the school needed to keep 54,69,410 in reserve for these purposes. The balance amount that was available with the school for implementation of the recommendations of VI Pay Commission was **Rs. 24,26,949**. The total impact of implementation of the recommendations of VI Pay Commission on the school amounted to **Rs. 1,09,88,045**. The additional revenue generated by the school by recovering arrear fee and hiking tuition fee amounted to **Rs. 85,86,744**. Thus, at the first instance, it appeared that the school had hiked more fee than was required to implement the



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recommendations of VI Pay Commission. The excess amount apparently was **Rs. 25,648** (24,26,949 + 85,86,744 – 1,09,88,045). However, it would be observed that upto this stage, the Committee has not factored in the requirement of the school to keep funds in reserve for future contingencies. The Committee has taken a consistent view in the case of all the schools that they must retain an amount equivalent to 4 months salary for future contingencies. The total expenditure of the school (including nursery school) on salary for the year 2009-10 was Rs. 1,48,53,415. Based on this, the requirement of the school to keep funds in reserve for this purpose amounted to **Rs. 49,51,138**. Clearly the school did not generate sufficient funds by way of fee hike and recovery of arrear fee if this factor is taken into account. Accordingly, the Committee is of the view that so far as the permissible arrear fee recovered by the school and the incremental fee recovered by it w.e.f. 01/04/2009 is concerned, the same calls for no interference.

The regular development fee charged by the school in 2009-10 and 2010-11 amounting to **Rs. 56,15,015** was indisputably recovered without fulfilling the pre-conditions laid down by the Hon'ble Supreme Court in the case of Modern School (supra). After considering the requirement of the school to keep funds in reserve for future contingencies, the development fee for these two years apparently refundable by the school amounted to **Rs.6,89,525** (56,15,015-49,51,138 + 25,648). Further, the arrear of incremental development

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fee recovered by the school for the period 01/09/2008 to 31/03/2009 in excess of what was permitted to it by clause 15 of the order dated 11/02/2009, was **Rs. 5,47,282**. Thus the school was show caused as to why the sum of **Rs. 12,36,807** (6,89,525 + 5,47,282) be not ordered to be refunded. A copy of the calculation sheet prepared by the Committee determining this amount was furnished to the school on 09/10/2018 for rebuttal, if any.

Thereafter, the school filed its rebuttal to the calculation sheet prepared by the Committee and the authorized representatives of the school were heard.

The school in its rebuttal has placed a number of objections which inter alia include the following :

- a. The sum of **Rs.7,62,534** represented by the FDRs held by the school and taken by the Committee as part of funds available was in fact not available with the school, as the FDRs were made in the joints names of the school and the Directorate of Education/CBSE. The school also filed a copy of one such FDR of Rs.3,32,203 and submitted that it was trying to locate the 2nd FDR also.
- b. The Committee had not factored in the accrued liabilities of gratuity and leave encashment in respect of the Nursery School . It is submitted that the Committee had not required this information to be furnished, and as such the school did



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not furnish the same earlier. The school has today filed copies of the actuarial valuation certificate in respect of the estimated accrued liability of the school which amounts to **Rs.4,97,925** for gratuity and **Rs.1,90,605** for leave encashment as on 31.3.2010.

It is submitted that if these figures are considered, they would exceed the amount of refund provisionally determined by the Committee.

The Committee has considered the submissions made by the authorized representative of the school and also perused the documents filed by the school. It agrees with the contention of the authorized representative of the school that upon consideration of these documents, the school would not be required to make any refund.

The only issue that remains is whether the amount of unauthorized collection of excess arrear of incremental development fee for the period 01/09/2008 to 31/03/2009 amounting to Rs. 5,47,282 should be ordered to be refunded. It is noteworthy that the school had contended that it had incurred a deficit on implementation of the recommendations of VI Pay Commission and the Committee ought to rectify the situation faced by the school. Although the school did not spell out as to how the situation should be rectified, it is noteworthy that it agreed not to claim a further fee hike for the reason

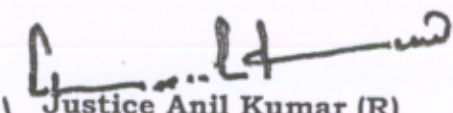



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that it would not be practical at this stage to recover the further fee hike even if allowed by the Committee. However, the Committee cannot close its eyes to the realities. The school utilised the excess amount of arrears of development fee recovered for the purpose of implementation of the recommendations of VI Pay Commission and yet incurred a deficit. The Committee is empowered to recommend a further fee hike if it finds that the fee hike effected by the school in terms of order dated 11/02/2009 of the Director of Education was not adequate, as per the mandate given to it by the judgment of the Hon'ble High Court in WPC 7777 of 2009. In view of the abandonment of its claim to seek a further fee hike, the Committee is of the view that the excess fee recovered by the school on its own amounting to Rs. 5,47,282 which was utilised by it for implementing the recommendations of VI Pay Commission ought to be regularized.

Resultantly, the Committee regularizes the excess fee of Rs. 5,47,282 recovered by the school towards arrears of incremental development fee for the period 01/09/2008 to 31/03/2009. Ordered Accordingly


Justice Anil Kumar (R)
(Chairperson)


CA J.S. Kochar
(Member)


Dr. R.K. Sharma
(Member)

Dated: 15/11/2018

Vishal Bharti Public School, Paschim Vihar, New Delhi-110063/ (B-77)/Order Page 18 of 18



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**BEFORE DELHI HIGH COURT COMMITTEE FOR REVIEW
OF SCHOOL FEE AT NEW DELHI**

(Formerly Justice Anil Dev Singh Committee for review of school Fee)

In the matter of:

ORDER

15.11.2018

ST. GIRI SENIOR SECONDARY SCHOOL, (B-508)

Pocket 25/27, Sector III

Rohini, Delhi 110085.

Present

And in the matter of:

ORDER

2018

order/

2017.

1.

**Application for review dated
31st May, 2018 seeking
review of recommendations
dated 4th October, 2017 in
the matter of school (B-
508).**

ORDER

15.11.2018

Applicati

**Present : K.P.Sunder Rao Advocate & Sh. N.K.
Mahajan CA of the School**

**ORDER ON APPLICATION DATED 31st May,
2018 seeking review of
order/recommendation dated 4th October,
2017.**

1. St. Giri Senior Secondary School (B-508), hereinafter referred as
"The School" has sought review of order dated 4th October, 2017 by
present application for review dated 31st May, 2018. In the misc.



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orders passed on the application it has been mentioned as Review application dated 13.6.2018 by inadvertence.

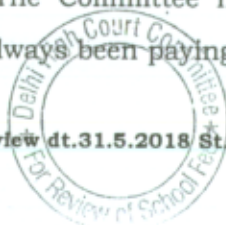
2. 'The School' has sought review of order dated 4th October, 2017 passed by the Committee inter-alia on the grounds that the implementation of the VI CPC to the staff has not been considered by the Committee due to alleged reasons as stated hereinafter:

"It is incomprehensible as to why a school should maintain such heavy cash balances in the disclosed facts and circumstances of the School. The school claims to have implemented the recommendations of 6th Pay Commission w.e.f. 01/04/2009. The Principal of the school Ms. Sanyogita Giri. stated to be a daughter in law of the chairman of the Parent society was shown to have been paid a salary of Rs.56,662. The PGTs were shown to have been paid between Rs. 30,000 and 36,000 and TGTs around Rs. 28,000. There was no justifiable cause for making payments of such amounts by bearer cheques or in cash considering various circumstances pertaining to school. This coupled with the observations of the Committee that the school was maintaining a very large cash balance of around 25 lacs throughout the year, out of which only small amounts were deposited in the bank, leads it to infer that the school in actual fact did not implement the recommendations of the 6th Pay commission and showed its implementation only in its records by showing higher amount of salaries to lower number of teachers.

Since the very raison d'être of allowing the schools to hike fee in excess of 10% which the Directorate of Education normally considers as reasonable, the Committee is of the view that the school ought to refund the entire fee hike effected by it in 2009-10, which is in excess of 10% over the fee charged in the year 2008-09, along with interest of 9% per annum from the date of collection to the date of refund.

3. These inferences were drawn by the Committee after giving adequate reasonable opportunity to 'The School' and after observing as under:

"The Committee noticed that as per its own admission, the school had always been paying salary either in cash or by bearer cheques in both the



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years. Further, there was a drop in staff strength from March 2009 to April 2009 when the school claimed to have implemented the recommendations of the 6th pay commission. The total number of teachers employed in March 2009 were 63 while those shown to have been employed in April 2009 dropped to 57. Further the committee also noticed that the staff statement as on July 2009, which was furnished by the school as part of its annual returns under Rule 180 of the Delhi School Education Rules, 1973, showed that it had 77 staff members out of which 70 were teachers. The school also omitted to give the students strength in 2008-09 and 2009-10 as was required to be given in the format given by the committee. On examining the annual returns filed by the school, the committee observed that the total number of students in 2008-09 was 1594 while in 2009-10 it was 1552. All these factors led to inference by the Committee on the basis of preponderance of probabilities that the school had not actually implemented the recommendations of VI Pay Commission and the implementation was just being manipulated in the records. There was no justification whatsoever for payment of large amount of monthly salaries in cash or by bearer cheques when the school maintained a regular bank account. The inconsistency in the staff strength as reflected in the statement filed with the Committee and that reported in the annual return was also not explained. No cogent and/or believable reasons have been given by the School. Moreover, the slight drop in the student strength in 2009-10 did not justify the reduction in number of teachers employed in 2009-10 when the school claimed to have implemented the recommendations of VI Pay Commission. The Committee has come across a number of schools who ostensibly pay higher amounts of salaries in cash or withdraw by bearer cheques in the names of the teachers but the same is shown as having been paid to a lesser number of teachers at higher amounts corresponding to the revised scales as per the VI Pay Commission. This school also followed the same device to circumvent and manipulate the payment as per revised pay scales."

4.
Application

4. "The School" has sought review of order dated 4th October, 2017 contending inter-alia that major portion of the fee is collected in cash that is 75%; the total cash holding of the school is not out of tuition fee only but out of other charges also; the salary has been to the appointed a staff regularly through bearer cheques/cash; the

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5. committee has not been consistent as in case of some other schools despite other schools having high cash balance, has recommended no interference. The review of the order dated 4th October, 2017 it is also sought on the ground that the recommendation of the committee is not a specific towards the amount of fee to be refunded in the subsequent years. According to "The School" the scope of audit of the Committee was limited and restricted to the year 2009 - 10 and not for subsequent years. The applicant/"The School" has relied on a number of orders/recommendations passed by the committee in case of other schools. The order is also impugned in not allowing to keep reserve for gratuity, leave encashment or future contingency and has again relied on the orders/recommendations of the Committee in case of other schools.

5. Regarding the fee hiked by "The School" the Committee had held as under:

"Since the very raison d'être of allowing the schools to hike fee in excess of 10% which the Directorate of Education normally considers as reasonable, the Committee is of the view that the school ought to refund the entire fee hike effected by it in 2009-10, which is in excess of 10% over the fee charged in the year 2008-09, along with interest of 9% per annum from the date of collection to the date of refund.

Since the fee hike in 2009-10 would also be a part of the fee for the subsequent years, the school ought to refund the fee for the subsequent years to the extent it is relatable to the fee hiked in 2009-10 along with interest @ 9% per annum from the date of collection to the date of refund.

As the finding of the Committee is that the School did not implement the recommendation of VI pay commission, therefore, the details of amount of leave encashment and the amounts of gratuity and

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Expenditure for 4 months as has been given in case of other schools, cannot be taken into consideration.

6. Regarding Development Fee the Committee had notices that "The School" had conceded that it was treating development fee as a revenue receipt in the years 2009-10 and 2010-11, with which this Committee is concerned, as the same was charged in pursuance of order dated 11/02/2009 issued by the Director of Education. Further, even with regard to maintenance earmarked development fund and depreciation reserve fund, the school conceded that the same were not maintained. These non-compliances were reiterated by the authorized representatives of the school during the course of hearing before the Committee on 20.3.2017. However, the school claimed that the same was fully utilized for the purchase of fixed assets without relevant data and such facts to establish its allegation. The School claimed that no refund ought be ordered as the school was not left with any funds out of development fee. The plea of "The School" was found to be not sustainable in view of the recommendations of the Duggal Committee, which were affirmed by the Hon'ble Supreme Court in the case of Modern School vs. Union of India & Ors. (2004) 5 SCC 583. The Committee therefore held amount of Rs. 24,82,600 recovered by the school as development fee during the years 2009-10 and 2010-11 ought to be refunded along with interest @ 9% per annum from the date of collection to the date of refund.

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7. Regarding the order of the Committee directing refund of development fee it is contended by the 'school' that it has started following the conditions for collecting the development fee from the year 2017-18 and has produced copy of Bank Statement of Development Account & Depreciation Reserved Fund along with the application for review and has sought reconsideration of the recommendation by the Committee.

8. This is to be noted that the Delhi School Education Act or the Rules make no provision for charging development fee by unaided private schools. Rule 151 of the Rules provides for development fee to be charged only by "Aided schools". The issue of allowing unaided private schools to charge development fee was considered for the first time by Duggal Committee. It had made the following recommendations regarding charging of development fee by unaided schools:

'18. Besides the above four categories, the schools could also levy a Development Fee, as a capital receipt, annually not exceeding 10% of the total annual Tuition Fee, for supplementing the resources for purchase, upgradation and replacement of furniture, fixtures and equipment, provided the school is maintaining a Depreciation Reserve Fund, equivalent to the depreciation charged in the revenue account. While these receipts should form part of the Capital Account of the school, the collected under this head along with any income generated from the investment made out of this fund, should however, be kept in a separate 'Development Fund Account'. (Para 7.21)

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9. Pursuant to the report of the Duggal Committee, the Government of National Capital Territory of Delhi passed an order dated December 15, 1999 in order to give effect to its recommendations. One of the directions (no. 7) given vide the aforesaid order was:

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"Development fee, not exceeding 10% of the total annual tuition fee may be charged for supplementing the resources for purchase, upgradation 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 any income generated from the investment made out of this fund, will be kept in a separately maintained Development fund account."

10. The Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583 admitted, inter alia, the following point for determination

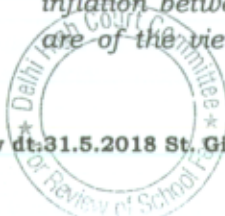
"Whether managements of Recognized unaided schools are entitled to set-up a Development Fund Account under the provisions of the Delhi School Education Act, 1973?"

The Hon'ble Supreme Court, on this issue, held as follows:

25. *In our view, on account of increased cost due to inflation, the management is entitled to create Development Fund Account. For creating such development fund, the management is required to collect development fees. In the present case, pursuant to the recommendation of Duggal Committee, development fees could be levied at the rate not exceeding 10% to 15% of total annual tuition fee. Direction no.7 further states that development fees not exceeding 10% to 15% of total annual tuition fee shall be charged for supplementing the resources for purchase, upgradation and replacement of furniture, fixtures and equipments. It further states that development fees shall be treated as Capital Receipt and shall be collected only if the school maintains a depreciation reserve fund. In our view, direction no.7 is appropriate. If one goes through the report of Duggal Committee, one finds absence of non-creation of specified earmarked fund. On going through the report of Duggal Committee, one finds further that depreciation has been charged without creating a corresponding fund. Therefore, direction no.7 seeks to introduce a proper accounting practice to be followed by non-business organizations/not-for-profit organization. With this correct practice being introduced, development fees for supplementing the resources for purchase, upgradation and replacements of furniture and fixtures and equipments is justified. Taking into account the cost of inflation between 15th December, 1999 and 31st December, 2003 we are of the view that the management of recognized unaided schools*

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should be permitted to charge development fee not exceeding 15% of the total annual tuition fee.(emphasis supplied by us)

It is manifest on reading the aforesaid extract from the judgment of the Hon'ble Supreme Court that unaided private schools were permitted to charge development fee only if the school maintained a depreciation reserve fund.

11.

The requirement of creating a Depreciation Reserve fund is not an empty formality but is meant to ensure that funds are available to the schools to replace the assets created out of development fund when they become worn out or obsolete so that the schools do not resort to collecting the development fee again. Thus development fee can be collected only for purchase of furniture and fixture & equipments subject to the condition that the school maintains a depreciation reserve fund. Maintenance of such a fund would ensure that the school does not charge the development fee once again when the time for replacement of such assets come i.e. when they are worn out. The school cannot be heard to say that since it did not charge any depreciation to the revenue account, it was not required to maintain a depreciation reserve fund. If this contention of the school is allowed, the very purpose of making creation of a depreciation reserve fund as a pre condition for charging development fee would be defeated. Therefore, the Committee rejects the contention of the school that since it was not charging any depreciation to its revenue account, it was not required to maintain a depreciation reserve fund. The Committee is of the view that in the absence of creation of depreciation reserve fund, the school cannot charge development fee at all.

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11.

This cannot be disputed by the 'school' that the Committee had provided a detailed calculation to 'The School' and also gave a reasonable opportunity to 'The School' to rebut the inferences drawn by the Committee. Now reliance of 'The School' on the recommendations/order of the Committee in the matter of some other school is also misplaced. Apparently the facts and circumstances of other schools are distinguishable with that of the applicant School. The order/recommendation of the committee in one case is not a precedent for other cases. However, an uniform practice and



interpretation is followed by the Committee. Even in case of precedents it is no more res integra that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. Considering the present facts and circumstances, it may not be necessary to deal with recommendations/orders of the Committee in detail referred to by the 'school'. The Supreme Court in Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr., AIR 2004 SC 778 had observed:-

12.

" Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

Applicant

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases and disposing of a case by blindly placing reliance on a decision is not proper. Even a minor difference in the factual matrix, may render an earlier decision inapplicable in a later case.

12.

In the application for review the 'school' has contended new facts and circumstances without disclosing any sufficient reason for not producing the same before the order/recommendation was

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passed by the Committee in the case of the 'school'. Subsequent following the conditions for collecting Development Fee from the year 2017-18 cannot be ground to regularize the collection of Development Fee in the earlier years.

13. A review of an order/recommendation is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake of like grave error has crept in earlier judicial fallibility. The review cannot be allowed on the ground that in some other matters the Tribunal had taken a different view. The discovery of new evidence or material by itself is not sufficient to entitle a party for review of an order. A review is permissible on the ground of discovery of new evidence only when such an evidence is relevant and of such a character that if it had been produced earlier it might possibly have altered the order, further, it must be established that the applicant had acted with due diligence and that the existence of the evidence, which he has now discovered, was not within his knowledge when the order was passed. If it is found that the petitioner has not acted with due diligence then it is not open to the Tribunal to admit evidence on the ground of sufficient cause. The party seeking a review should prove strictly the diligence he claims to have exercised. In a review application a party cannot be allowed to introduce fresh documents merely to supplement evidence which might possibly have had some effect on the result. Perusal of the application of the applicant shows that even any averment to this effect has been made. A review cannot be sought merely for fresh hearing or arguments or correction of an erroneous view taken earlier. The power of review can be exercised only for correction of a patent error of law or fact which stays in the face without any elaborate argument being needed for establishing it.



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14. In any case before deciding the application of review of the 'school' on merits, the committee has to consider and decide whether it has power to review its own orders. Hon'ble Supreme Court had held that no review lies on merits unless a statute specifically provides for it. No provision of law or any precedent has been cited before this Committee from which it can be inferred that it has powers to review its own orders. Some other schools namely N.K.Bagrodia Public school, Dwarka, New Delhi; Faith Academy, John L.Dorsey Road, Prasad Nagar and Rukmani Devi Public School, Pitam Pura had filed similar applications for review of orders/recommendations given in their cases. In case of Rukmani Devi, the Committee had also noticed error apparent on the face of record in the Committee's recommendation and therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendations. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

" Kindly place this letter before the Hon'ble Division Bench dealing with the matter, as the Committee seeks urgent directions for grant of permission to rectify our recommendations, which may suffer from errors apparent on the face of the record."

Applicat The Hon'ble High Court, however, by its order dated 19th March, 2014 in W.P (C) 7777/2009 & CM No. 3168 of 2013 only permitted the committee to review the order of Rukmani Devi Public School, Pitam Pura and not of other schools. The Hon'ble Court passed the following order:

"W.P (C) 7777/2009 & CM No. 3168 of 2013

In view of the letter dated 12.02.2014 received from the Committee, we permit the Committee to review the case of Rukmani Devi Public School, Pitam Pura - 110034 only.

The writ petition shall be re-notified on 09.05.2014"



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15. Though there is difference between the procedural review and a review on merits. A procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it, and a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. In Patel Narshi Thakershi & ors. (supra) the Hon'ble Supreme Court had held that no review lies on merits unless a statute specifically provides for it. When a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected 'ex debit a justitiae' to prevent the abuse of its process, and such power inheres in every Court or Tribunal. From these principles it is apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi judicial authority is vested with power of review by express provision or by necessary implication.

16. The procedural review belongs to a different category. In such a review, the Court or Quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or Quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. The party has to establish that the procedure followed by the Court or the

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quasi judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding.

17. Applying these principles it is apparent that where a Court or Quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the Quasi judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or Quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or Quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the Court or the Quasi judicial authority suffered from such illegality that it vitiated the



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proceeding and invalidated the order made therein, inasmuch the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding.

19.

18. Perusal of the pleas and contentions of 'The School' show unequivocally that 'The School' is seeking review on merits and not a procedural review. In Dr. (Smt.) Kuntesh Gupta v. Management of Hindu Kanya Maha Vidyalaya, Sitapur (U.P.) and Ors. MANU/SC/0104/1987 and Patel Narshi Thakershi and Ors. v. Pradyumansinghji Arjunsingji MANU/ SC/ 0433/ 1970 MANU/ SC/ 0433/1970: AIR 1970 SC 1273 the Hon'ble Supreme Court had held that the power of review is not an inherent power and must be conferred by law either expressly or by necessary implication.

Applicant

19.

The Applicant in the present case seeks recall/review of the order passed by the Committee dated 4th October, 2017 not on the ground that in passing the order the committee has committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the order/recommendation of the committee is liable to be recalled. Rather grounds taken by the applicant in the application for review dated 31st May, 2018 are that some matters which ought to have been considered by the committee were not duly considered or apparently considered incorrectly. Apparently the recall or review sought is not a procedural review, but



a review on merits. Such a review is not permissible in the absence of any specific provision or the orders of the Hon'ble Court authorizing review of its orders/recommendations either expressly or by necessary implication.

20. It is also to be noted that a quasi-judicial authority will become functus officio when its order is pronounced, or published/notified or communicated (put in course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the authority will become functus officio. Once an authority exercising quasi judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. P RamanathaAiyar's Advanced law Lexicon (3rd Edition, Vol 2 pp. 1946-47) gives the following illustrative definition of the "functus officio". "Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision." Black's Law Dictionary (6thEdn., p 673) gives the meaning of functus officio as follows:

"Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority"

Consequently after the Committee had made its recommendations and passed the order in the case of Applicant school and notified the same to the Hon'ble High Court, the Committee became functus officio as it had decided the question brought before it.

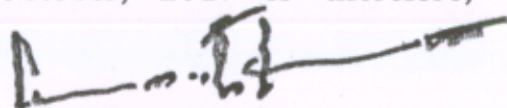


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21. From the above it is apparent that the Committee does not have the powers to review its own orders. Though the Committee had sought permission to review orders having errors, if any, on the face of the record in case of other schools, however, no general permission was granted to the Committee except in the case of Rukmani Devi Public School and consequently the School cannot contend that the Committee has the power to review its order/recommendation. The 'school' is seeking that the order of the Committee directing the 'school' to refund fee hiked and development Fee with interest @ 9% per annum to the students be reviewed. The 'school' also seeks that the finding of the Committee that the school had not implemented the VI Pay Commission which was arrived at on the basis of preponderance of probability be also reviewed after considering all the pleas and contentions on merits. Apparently the Committee does not have such powers as has been invoked by the 'school'.
22. In the circumstances the application of the applicant dated 31st May, 2018 seeking review is not maintainable and is disposed of as not maintainable and the said application for review dated 31st May, 2018 seeking review of order dated 4th October, 2017 is therefore, dismissed.

Applic:


Justice Anil Kumar (R)

(Chairperson)



J.S. Kochhar

(Member)



R.K. Sharma

(Member)

15.11.2018



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**BEFORE DELHI HIGH COURT COMMITTEE FOR REVIEW OF SCHOOL FEE
AT NEW DELHI**

(Formerly Justice Anil Dev Singh Committee for review of school Fee)

In the matter of:

2 **AHLCON INTERNATIONAL SCHOOL, (B-348)**
MAYUR VIHAR, PHASE 1,
DELHI 110091.

And in the matter of:

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Application for review dated
5th May, 2018 seeking
review of recommendations
dated 22nd March, in the
matter of school (B-348).

ORDER

26.11.2018

Present : Sh. Rahul Jain CA; Sh. Nitin Goel CA and
Anita Negi Accountant Assistant. of the
School

**ORDER ON APPLICATION DATED 5th May,
2018 seeking review of
order/recommendation dated 22nd March,
2018.**

1. Ahlcon International School, Mayur Vihar Phase I New Delhi
110091 (B-348), hereinafter referred as 'The School' has sought review



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Application for Review dt.5.5.2018, Ahlcon International School (B-348) (Page 1 of 19)

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of order dated 22nd March, 2018 by present application for review dated 5th May, 2018.

2. The School has sought review of order dated 22nd March, 2018 passed by the Committee inter-alia on the grounds that the Rule 177 (1) contemplates that the income derived from the fees collected may be utilized in the 1st instance for meeting the pay and allowances and other benefits admissible to the employees and the savings if any may be utilized for meeting capital or contingent expenditure or for meeting other educational purposes. Reliance has also been placed on the Rule 177(2) allegedly contemplating that the savings can be utilised for expansion of the school or any other expenditure of developmental nature, establishment or construction of any building or expansion of the school building and co-curricular activities after providing for pension, gratuity and other specified retirement and other benefits. According to the applicant in case of a school which has no savings, 'The School' the school is entitled either to increase the fees or obtain a loan from the bank and in the case of applicant, loan was obtained for expansion of the school building, creation of assets and other academic activities. The plea of 'The School' is that the guidelines of the Department of Education, C.B.S.E and other such bodies require 'The School' to regularly update its functioning and introduce new concepts. Consequently the loan was necessitated for the expansion of the school and 'The School' has utilized the same for creating facilities for educational purposes only as the loan was necessary for the expansion of the school. Refuting the observation of the Committee that the Development fund could not be utilized for payment of salary reliance has been placed on clause 14 of the order of Director of education dated 11 February, 2009. According to 'The School' the said order, however, contemplates that it can charge 15% of the tuition fee as Development charges instead of 10% an additional 5% can be utilized for purpose of meeting any shortfall on account of



salary/salary arrears. With the governments 'The School' has sought review of recommendations/order dated 22nd March, 2018.

3. 'The School' sought many adjournments for arguing its application for review and filed written submission dated 14th June, 2018 reiterating the pleas taken in the application for review and additionally contending that the school was established in the year 2001 and fees for the initial years remained the same and day-to-day expenditure was incurred from the fees realised and there was hardly any savings and consequently the school could not expand and later on had to go for the loans for expansion of building. Additionally, it was contended that in the initial years the school had not made any provision for terminal benefits. The plea of the school's that the repayment of loan is also to come from the fee. 'The School' also disclosed the utilization of development fees for the year ending 31st March, 2009 and 31st March, 2010. It is also contended that though the loan was taken by the society but it was for creation of assets only by 'The School'. By representation dated 10th September, 2018 it has been contended that 'The School' was not in a position to even maintain the statutory reserve due to paucity of funds and the amounts taken into consideration by the Committee are all the figures and are not in fact available. Reliance has also been placed on the orders passed in case of other Schools where actual transfer of funds utilized by other schools for creation of a different school has not been treated as deemed income and it is requested that the same principle be allowed in case of the applicant. The school had also contended that it is seeking legal advice and consequently on certain dates adjournment was sought by 'The School'.

4. On 22nd October, 2018 the Chartered Accountant of 'The School' filed yet another representation seeking review of order dated 22nd March, 2018 which was passed by the Committee contending inter-alia that the statement showing funds available as on 31st March, 2008 suffers with some calculation/arithmetical errors; some are not



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legal submissions were also made in the representation dated 22nd October, 2018 referring to para 82 and 83 of the order of the Hon'ble High Court; treatment of funds utilized for fixed assets as 'diversion' is not called for and is against the law; that the fee may not only be used for payment of salary but also for development and other required capital purposes for the school and for the benefit of the students and 'The School' filed its own revised calculation sheet's allegedly taking into consideration all its allegations and figures.

5. The Committee by its order dated 22nd March, 2018, had held as under:

" While checking the statement of fee and salary given by the school, it was observed that the same was ex-facie incorrect as no recovery of arrear fee in 2009-10 & 2010-11 was shown while the Income and Expenditure account of the school of those years showed the arrear fee had been recovered in those years. Likewise no payment of arrears salary was shown in 2009-10 & 2010-11 which is contrary to what is mentioned in Income and Expenditure accounts and the school's own reply to the questionnaire where in it was stated that arrears have been paid monthly along with the regular salaries. The authorized representatives of the school sought some time to file revised statement, which was granted to them. The school filed the revised statement of fee and salary under cover of its letter dated 03/08/2016.

The Committee also perused the statement of account of Shanti Devi Progressive Education Society (the parent society of the school) for the period 01/04/2006 to 31/03/2011. The same reflected frequent transactions between the school and society. The opening balance of the society in the books of the school was Rs. 7,97,92,646 as on 01/04/2006 which went down to Rs. 6,12,25,553 as on 31/03/2011 as a result of multifarious transactions of receipts and payments, indicating that funds to the tune of Rs. 1,85,67,093 were transferred to the society during this period.

The Committee also examined the details of the accrued liabilities of gratuity of the school as on 31/03/2010. The liability amounted to Rs. 51,82,967. However, the school did not file any details of its accrued liability of leave encashment. The authorized representative sought some more time to file the same, which was granted by the Committee. The school



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furnished these details under cover of its letter dated 30/09/2016. The liability on this account amounted to Rs. 34,85,481 as per the details furnished by the school.

A Calculation sheet was thereafter prepared by the Committee to examine whether the school needed to hike any fee for implementing the recommendations of VI Pay Commission and if yes to what extent. The Committee observed from the audited balance sheet of the school that the school was utilising part of the fee recovered from the students for the purpose of repayment of loans taken by it for fixed assets and also for buying fixed assets out of the fee charged from the students. After taking into account the funds transferred to and from the society, the Committee calculated that from 2006-07 to 2009-10, the school had applied fee to the tune of Rs. 4,52,67,838 for repayment of loans and interest and for purchase of fixed assets. As per decision of the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583, as well as in the Action Committee Unaided Pvt. School &Ors. vs. Directorate of Education &Ors. 2009 (11) SCALE 77, which this Committee had been mandated to follow, the aforesaid amount of Rs. 4,52,67,838 was considered as deemed to have been available with the school for implementation of the recommendations of VI Pay Commission. Further, since the school was admittedly not maintaining any earmarked development fund and depreciation reserve fund, which are a sine qua non for charging development fee, the Committee considered the development fee charged in the year 2009-10 and 2010-11 as having been irregularly charged and added the same to the amount that the Committee considered as surplus after taking into account the funds available with the school as on 31/03/2008, the funds required by the school to be kept in reserves, the additional liabilities of the school on account of implementation of recommendations of VI Pay Commission and the additional revenue generated by the school by way of fee hike w.e.f. 01/09/2008 and recovery of fee arrears for the period 01/01/2006 to 31/08/2008.

6. Before passing the order/recommendation by the Committee dated 22nd March, 2018, the copy of the calculation sheet was given to 'The School' and in reply it was contended that the funds applied in payments of interest and repayment of loans and for purchase of fixed assets and funds diverted to the parents society from 2006 to 2009-10 amounting to Rs.4,52,67,838 ought not to have been included in



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the calculations as the repayment of loans to the banks and to the parents society for repayment of loans taken were applied for creation of fixed assets of the school like building , buses etc. Secondly, it was submitted that the school was fulfilling all the pre conditions for charging the development fees and the same amounting to Rs,64,37,364 in 2009-10 and Rs.77,66,873 in 20010-11 ought not to be considered as amounts refundable to the students.

7. Considering the objections raised by 'The School' the Committee had held as under:

" So far as the first contention is concerned, this committee has held in the cases of various schools that the students are not supposed to provide funds for creation of fixed assets like building, buses etc. The Hon'ble Supreme Court in case of Modern School vs. Union of India (2004) 5 SCC 583 has held that capital expenditure cannot form part of the fee structure of the schools i.e. the fee recovered from the students cannot be applied for incurring any capital expenditure. In a very recent case i.e. W.P.(C) 5784/2016 St. Marks Sr. Sec. Public School & Ors vs. Director of Education and Ors., (Judgment pronounced on March 20,2017) the Hon'ble Delhi High Court, after discussing in detail the judgment of the Hon'ble Supreme Court in the case of Modern School (supra) has held as follows:

- "16. There is no dispute that the Schools have installed the air conditioning system. The air conditioning systems have been financed through a loan from a financial institution. The electricity charges are being claimed, under the head tuition fee. There is also no dispute that the respondent no. 1 is authorized to regulate the fee and other charges. The tuition fee in terms of order dated February 11,2009 and also order dated December 15, 1999 shall be so determined so as to cover the standard cost of establishment including provisions of DA, bonus etc. and all terminal benefits as also the expenditure of revenue nature concerning the curricular activities as distinct from co-curricular activities. The installation of air conditioning system cannot be termed to be connected with curricular activity and co curricular activity. That apart the capital expenditure has to come through savings from the tuition. It is not the case of the petitioners that is on account of savings that they have

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funded the air conditioning system. If that is so, the expenses incurred for electricity charges for running the air conditioning system cannot be by way of increase in tuition fee. It is immaterial if defraying of electrical bills is in the nature of revenue expense but still, cannot be qualified to be met by way of increase in tuition fee, at least in the facts of this case.

17. That apart, the submission of Mr. Sibal that the stand of the respondent no. 1 that electricity and maintenance charges are overheads, must be charged as annual charges is incorrect and misplaced by relying on the recommendations of the Duggal Committee is concerned, the Duggal committee held tuition fee to comprise expenditure of revenue nature for improvement of curricular facilities like library, laboratories, science fee etc. The recommendation does not include air conditioning system, nor as stated above, it qualifies as curricular activity or co-curricular activity. It has been rightly held in the impugned order that the charges for electricity bill can be claimed under the head annual charges as the same cannot be included in tuition fees and overheads, nor it is expenses on play ground, sports equipments, cultural activities etc. and also on co-curricular activities.
18. The plea of Mr. Sibal alternatively that instead of tuition fee, the petitioners could have claimed, the charges under the head annual charges, and as such the action cannot be called as illegal, is concerned, the same does not appeal to this Court, more so when there is a finding in the impugned order that the schools have already increased annual charges in the session 2015-2016. The school could not have further claimed the electricity charges under the head annual charges. The submission of Mr. Narayan that the increase in tuition fee has a cascading effect on, development fee, Annual charges, and the tuition fee of the next academic session is appealing. I find no illegality in direction no. 2."

In the instant case also, the buses and building have been purchased or constructed, not out of savings but out of loans raised from banks or financial institutions. As observed by the Hon'ble Delhi High Court, relying upon the judgment of Hon'ble Supreme Court in the case of Modern School, capital expenditure has to come out of savings and not out of tuition fee.



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Accordingly, the ratio of the above decision of the Hon'ble Delhi High Court squarely applies to the facts of the case. Creation of fixed assets through the medium of loans and their repayment out of tuition fee, amounts to funding of capital expenditure out of tuition fee which, as per the aforesaid decision of the Hon'ble Delhi High Court as well as the decision of the Hon'ble Supreme Court in the case of Modern School (supra) is not permissible.

So far as transfer of funds to the parent society is concerned, there is no shadow of doubt that the same is not permissible as per the decisions of Hon'ble Supreme Court in the case of Modern School (supra) and Action Committee (supra).

Had these funds not been transferred to the parent society or utilised for creation of fixed assets through the medium of loans or otherwise, they would have been available to the school for meeting its additional liabilities that arose on account of implementation of the recommendations of VI Pay Commission. The Committee has taken such utilisation of funds for the years 2006-07 to 2009-10 only as the financials of the school for only these years are available with the Committee. Accordingly, the contention of the authorized representative of the school is rejected.

On the second issue, the committee has examined the audited financials of the school as well as reply to the questionnaire furnished by the school with regard to development fee. The development fee collected in that year was Rs. 23,95,000. However, no amount of that is utilized for purchase of furniture or fixtures. As per the pre-conditions laid down by the Duggal Committee for charging development fee, which was subsequently affirmed by the Hon'ble Supreme Court in case of Modern School (supra). The entire amount of Rs. 23,95,000 was to be kept in a designated development fund in the bank.'s Similar is the case in the subsequent years in 2007-08. Out of the total collection is 36,52,000, only a sum of Rs.7,74,919 was utilized for eligible purposes. In 2008-09 out of Rs. 19,45,099 collected only a sum of Rs. 2,71,780 was utilized . In 2009-10 out of Rs.64,37,362, only a sum of Rs. 22,03,594 was utilized . However, this amount included utilization for the purpose of building to the tune of Rs. 2,57,594 and for payment of salary to the tune 18,62,000. The development fee could not have been used for these purposes. In 2010-11 out of a total collection of Rs.77,66,873, the school utilized Rs. 50,87,301 and this amount too includes Rs. 17,98,091 as an expenses towards building and revenue expenses on printing stationary, fee refund, education seminar etc. Admittedly the school has not maintained any designated



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depreciation reserve fund or the development fund in which the unutilized development fund over the years is to be deposited. In the case of Modern School(supra), the Hon'ble Supreme Court held as follows:

25. In our view, on account of increased cost due to inflation, the management is entitled to create Development Fund Account. For creating such development fund, the management is required to collect development fees. In the present case, pursuant to the recommendation of Duggal Committee, development fees could be levied at the rate not exceeding 10% to 15% of total annual tuition fee. Direction no.7 further states that development fees not exceeding 10% to 15% of total annual tuition fee shall be charged for supplementing the resources for purchase, upgradation and replacement of furniture, fixtures and equipments. It further states that development fees shall be treated as Capital Receipt and shall be collected only if the school maintains a depreciation reserve fund. In our view, direction no.7 is appropriate. If one goes through the report of Duggal Committee, one finds absence of non-creation of specified earmarked fund. On going through the report of Duggal Committee, one finds further that depreciation has been charged without creating a corresponding fund. Therefore, direction no.7 seeks to introduce a proper accounting practice to be followed by non-business organizations/not-for-profit organization. With this correct practice being introduced, development fees for supplementing the resources for purchase, upgradation and replacements of furniture and fixtures and equipments is justified. Taking into account the cost of inflation between 15th December, 1999 and 31st December, 2003 we are of the view that the management of recognized unaided schools should be permitted to charge development fee not exceeding 15% of the total annual tuition fee.

The Hon'ble Delhi High Court in the aforesaid decision of St. Marks Sr. Sec. Public School, following the aforesaid decision of the Hon'ble Supreme Court has held in paragraph 20 & 21 as follows:

"20 From the perusal of the above directions, it is clear that schools are permitted to levy development fee only if they maintain Depreciation Reserve Fund equivalent to the depreciation charges in the revenue accounts and the collection under this head along with income generated from investments made out of this fund are kept in a separately maintained Development Fund Account.

21. That apart in Para 27 of the judgement in Modern School vs. Union of India (Supra), the Supreme Court had approved the direction No. 7 as appropriate. The Supreme court has in Para 27 gave directions over and above the directions given by the Director of Education in its order dated December 15, 1999. If that be so, the plea of the petitioners that no other account except Recognised Unaided School Fund under various accounting heads/funds need to be maintained is rejected. The underlying object of direction No.s 7 and 14 is to promote transparency in the matter of Accounts. I agree with the submission of Mr. Narayan, that no prejudice is caused to the School if such an Account is maintained.
22. In view of the above, the plea of Mr. Sibal that the Depreciation Reserve Fund has been maintained by the petitioners School as evident from the audited balance sheet from the year 2014-15 onwards, is not appealing and rejected. His submission, the fund has been increased to Rs. 1,58,74,628 and Rs. 1,21,92,707 in compliance with the order of the Director of Education also does not appeal to this Court. I do not see any merit in the writ petition. The same is dismissed. No costs."

In view of this the Committee is of the view that the school was not fulfilling even the basic requirement of maintaining a depreciation reserve fund. As such the submission made by the authorized representative is rejected."

8. Regarding the order of the Committee directing refund of development fee it is contended by the 'school' that it has been following the conditions for collecting the development fee except the condition of maintaining Depreciation Reserve fund (DRF). According to the 'school' it has now opened the Depreciation Reserve fund (DRF) and the school is regularly operating the said account. The 'school' has also now produced the documents to show that the school is operating Depreciation Reserve fund' (DRF). With these facts the 'school' has sought reconsideration as according to the 'school' in case of other schools where Depreciation Reserve fund (DRF) was open subsequently, the other schools have not been held to have violated the preconditions for the Development Fee. It will be further relevant

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to note the observation made in respect of Duggal Committee which are as under:

" Pursuant to the report of the Duggal Committee, the Government of National Capital Territory of Delhi passed an order dated December 15, 1999 in order to give effect to its recommendations. One of the directions (no. 7) given vide the aforesaid order was:

"Development fee, not exceeding 10% of the total annual tuition fee may be charged for supplementing the resources for purchase, upgradation 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 any income generated from the investment made out of this fund, will be kept in a separately maintained Development fund account."

The Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583 admitted, inter alia, the following point for determination

"Whether managements of Recognized unaided schools are entitled to set-up a Development Fund Account under the provisions of the Delhi School Education Act, 1973?"

The Hon'ble Supreme Court, on this issue, held as follows:

25. *In our view, on account of increased cost due to inflation, the management is entitled to create Development Fund Account. For creating such development fund, the management is required to collect development fees. In the present case, pursuant to the recommendation of Duggal Committee, development fees could be levied at the rate not exceeding 10% to 15% of total annual tuition fee. Direction no.7 further states that development fees not exceeding 10% to 15% of total annual tuition fee shall be charged for supplementing the resources for purchase, upgradation and replacement of furniture, fixtures and equipments. It further states that development fees shall be treated as Capital Receipt and shall be collected only if the school maintains a depreciation reserve fund. In our view, direction no.7 is appropriate. If one goes through the report of Duggal Committee, one finds absence of non-creation of specified earmarked fund. On going through the report of Duggal Committee, one finds further that depreciation has been charged without creating a corresponding fund. Therefore, direction no.7 seeks to introduce a proper accounting practice to be followed by non-business organizations/not-for-profit organization. With this correct*

practice being introduced, development fees for supplementing the resources for purchase, upgradation and replacements of furniture and fixtures and equipments is justified. Taking into account the cost of inflation between 15th December, 1999 and 31st December, 2003 we are of the view that the management of recognized unaided schools should be permitted to charge development fee not exceeding 15% of the total annual tuition fee.(emphasis supplied by us)

It is manifest on reading the aforesaid extract from the judgment of the Hon'ble Supreme Court that unaided private schools were permitted to charge development fee only if the school maintained a depreciation reserve fund.

The requirement of creating a Depreciation Reserve fund is not an empty formality but is meant to ensure that funds are available to the schools to replace the assets created out of development fund when they become worn out or obsolete so that the schools do not resort to collecting the development fee again. Thus development fee can be collected only for purchase of furniture and fixture & equipments subject to the condition that the school maintains a depreciation reserve fund. Maintenance of such a fund would ensure that the school does not charge the development fee once again when the time for replacement of such assets come i.e. when they are worn out. The school cannot be heard to say that since it did not charge any depreciation to the revenue account, it was not required to maintain a depreciation reserve fund. If this contention of the school is allowed, the very purpose of making creation of a depreciation reserve fund as a pre condition for charging development fee would be defeated. Therefore, the Committee rejects the contention of the school that since it was not charging any depreciation to its revenue account, it was not required to maintain a depreciation reserve fund. The Committee is of the view that in the absence of creation of depreciation reserve fund, the school cannot charge development fee at all.

9. This cannot be disputed by the 'school' that the Committee had provided a detailed calculation to 'The School' and also gave a reasonable opportunity to 'The School' to rebut the inferences drawn by the Committee. Now reliance of 'The School' on the recommendations/order of the Committee in the matter of some other school, though the exact particulars have not been provided but such reliance is also misplaced. Apparently, the facts and circumstances of other schools will be distinguishable with that of the applicant School.

The order/recommendation of the committee in one case is not a precedent for other cases. However, a uniform practice and interpretation is followed by the Committee. Even in case of precedent it is no more res integra that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. Considering the present facts and circumstances, it may not be necessary to deal with recommendations/orders of the Committee in detail referred to by the 'school'. The Supreme Court in *Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr.*, AIR 2004 SC 778 had observed:-

" Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases and disposing of a case by blindly placing reliance on a decision is not proper. Even a minor difference in the factual matrix, may render an earlier decision inapplicable in a later case.

10. In the application for review dated 5th May, 2018 and subsequent representations the 'school' has contended some new facts and figures without disclosing any sufficient reason for not

producing the same before the order/recommendation was passed by the Committee in the case of the 'school'. A review of an order/recommendation is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake of like grave error has crept in earlier judicial fallibility. The review cannot be allowed on the ground that in some other matters the Tribunal had taken a different view. The discovery of new evidence or material by itself is not sufficient to entitle a party for review of an order. A review is permissible on the ground of discovery of new evidence only when such an evidence is relevant and of such a character that if it had been produced earlier it might possibly have altered the order, further, it must be established that the applicant had acted with due diligence and that the existence of the evidence, which he has now discovered, was not within his knowledge when the order was passed. If it is found that the petitioner has not acted with due diligence then it is not open to the Tribunal to admit evidence on the ground of sufficient cause. The party seeking a review should prove strictly the diligence he claims to have exercised. In a review application a party cannot be allowed to introduce fresh documents merely to supplement evidence which might possibly have had some effect on the result. Perusal of the application of the applicant shows that even any averment to this effect has been made. A review cannot be sought merely for fresh hearing or arguments or correction of an erroneous view taken earlier. The power of review can be exercised only for correction of a patent error of law or fact which stays in the face without any elaborate argument being needed for establishing it.

11. ***In any case before deciding the application of review the 'school' on merits in details, the committee has to consider and decide whether it has power to review its own orders.*** Hon'ble Supreme Court had held that no review lies on merits unless a statute specifically provides for it. No provision of law or any precedent has been cited before this Committee from which it can be inferred that it



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has powers to review its own orders. Some other schools namely N.K.Bagrodia Public school, Dwarka, New Delhi; Faith Academy, John L.Dorsey Road, Prasad Nagar and Rukmani Devi Public School, Pitam Pura had filed similar applications for review of orders/recommendations given in their cases. In case of Rukmani Devi, the Committee had also noticed error apparent on the face of record in the Committee's recommendation and therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendations. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

" Kindly place this letter before the Hon'ble Division Bench dealing with the matter, as the Committee seeks urgent directions for grant of permission to rectify our recommendations, which may suffer from errors apparent on the face of the record."

The Hon'ble High Court, however, by its order dated 19th March, 2014 in W.P (C) 7777/2009 & CM No. 3168 of 2013 only permitted the committee to review the order of Rukmani Devi Public School, Pitam Pura and not of other schools. The Hon'ble Court passed the following order:

"W.P (C) 7777/2009 & CM No. 3168 of 2013

In view of the letter dated 12.02.2014 received from the Committee, **we permit the Committee to review the case of Rukmani Devi Public School, Pitam Pura - 110034 only.**

The writ petition shall be re-notified on 09.05.2014"

12. Though there is difference between the procedural review and a review on merits. A procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it, and a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. In Patel Narshi Thakershi & ors. the Hon'ble

Supreme Court had held that no review lies on merits unless a statute specifically provides for it. When a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every Court or Tribunal. From these principles it is apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi judicial authority is vested with power of review by express provision or by necessary implication.

13. The procedural review belongs to a different category. In such a review, the Court or Quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or Quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. The party has to establish that the procedure followed by the Court or the quasi judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order



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passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding.

14. Applying these principles it is apparent that where a Court or Quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the Quasi judicial authority is vested with power of review by express provision or by necessary implication.
15. Perusal of the pleas and contentions of 'The School' show unequivocally that 'The School' is seeking review on merits and not a procedural review. In Dr. (Smt.) Kuntesh Gupta v. Management of Hindu KanyaMaha Vidyalaya, Sitapur (U.P.) and Ors. MANU/SC/0104/1987 and Patel Narshi Thakershi and Ors. v. PradyumansinghjiArjunsingjiMANU/SC/0433/1970MANU/SC/0433/1970: AIR 1970 SC 1273 the Hon'ble Supreme Court had held that the power of review is not an inherent power and must be conferred by law either expressly or by necessary implication.
16. The Applicant in the present case seeks recall/review of the order passed by the Committee dated 22nd March, 2018 not on the ground that in passing the order the committee has committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the order/recommendation of the committee is liable to be recalled. Rather grounds taken by the applicant in the application for review dated 5th May, 2018 and subsequent representations are that some matters which ought to have been considered by the committee were not duly considered or apparently considered incorrectly. Apparently the recall or review sought is not a procedural review, but a review on merits. Such a review is not permissible in the absence of any specific provision or

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the orders of the Hon'ble Court authorizing review of its orders/recommendations either expressly or by necessary implication.

17. It is also to be noted that a quasi-judicial authority will become functus officio when its order is pronounced, or published/notified or communicated (put in course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the authority will become functus officio. Once an authority exercising quasi judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. P Ramanatha Aiyar's Advanced law Lexicon (3rd Edition, Vol 2 pp. 1946-47) gives the following illustrative definition of the "functus officio". "Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision." Black's Law Dictionary (6th Edn., p 673) gives the meaning of functus officio as follows:

"Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority"

Consequently after the Committee had made its recommendations and passed the order in the case of Applicant school and notified the same to the Hon'ble High Court, the Committee became functus officio as it had decided the question brought before it.

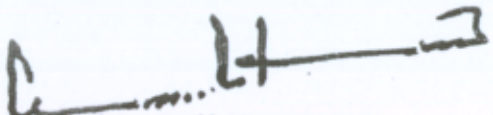
18. From the above it is apparent that the Committee does not have the powers to review its own orders. Though the Committee had sought permission to review orders having errors, if any, on the face of the record in case of other schools, however, no general permission

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was granted to the Committee except in the case of Rukmani Devi Public School and consequently the School cannot contend that the Committee has the power to review its order/recommendation. The 'school' is seeking that the order of the Committee that the amount as originally determined to be refundable amount to Rs.1,64,9,814 ought to be refunded to the students alongwith interest @ 9% from the date of collection to the date of refund. Apparently the Committee does not have such powers as has been invoked by the 'school'.

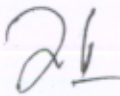
19. In the circumstances the application of the applicant dated 5th May, 2018 seeking review is not maintainable and is disposed of as not maintainable and the said application for review dated 5th May, 2018. seeking review of order dated 22nd March, 2018 is therefore, dismissed.


Justice Anil Kumar (R)

(Chairperson)


J.S. Kochar

(Member)



R.K. Sharma

(Member)

26.11.2018



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**BEFORE DELHI HIGH COURT COMMITTEE FOR REVIEW
OF SCHOOL FEE AT NEW DELHI**

(Formerly Justice Anil Dev Singh Committee for review of school Fee)

In the matter of:

**SARASWATI MODEL SCHOOL, (B-679)
SECTOR 10, DWARKA
NEW DELHI 110075.**

And in the matter of:

**Application for review dated
2nd APRIL, 2018 seeking
review of recommendations
/Order dated 14th March,
2017 in the matter of
school (B-679).**

ORDER

27.11.2018

Present : K.P.Sunder Rao Advocate & Sh. N.K.
Mahajan CA of the School

**ORDER ON APPLICATION DATED
2nd April, 2018 seeking review of
order/recommendation dated 14th
March, 2017.**

1. Saraswati Model School, Sector 10 Dwarka, New Delhi (B-679), hereinafter referred as 'The School' has sought review of order dated 14th March, 2017 by present application for review dated

2nd April, 2018. In the misc. orders passed on the application it has been mentioned as Review application dated 20.4.2018 by inadvertence.

2. 'The School' has sought review of order dated 14th March, 2017 passed by the Committee inter-alia on the grounds as stated hereinafter:

"That the conclusion drawn by the Committee that the tuition fee has been utilized for payment of loan for a school bus is not correct, as the school bus has been a facility provided for the transportation of the students to and from the school; the purchases had been made by taking loan from banks/financial institutions due to financial constraints which is evident from the audited accounts; the school has been charging transport fee from the students however, no surplus is earned out of that; facilities of transportation by the school is pursuant to the direction/instruction of the Supreme Court and Government of India for the safety and security of his school students; the school had not taken any loan for a school funds and the increased tuition fee has not been utilized for payment of loan taken for the school buses. The Committee has not taken into consideration the increase in salary in 2009 - 10 while recommending the refund of fee hike and the increase in liquid fund has been due to fee other than tuition fee i.e Admission fee, annual charges, transportation charges and therefore the influences of the Committee that the increase in liquid fund is due to fee hike as per VIth CPC is not correct and is a mistake at print on record. The review is also sought by 'The School' on the ground that the Committee itself in number of schools have allowed the partial implementation of VIth CPC through cash/bearer cheques and has given the instances of some of the schools. In the circumstances the inferences drawn by the Committee that 'The School' has not implemented VI CPC is apparently not correct and is a mistake on record. The review of order/recommendation dated 14th March, 2017 it is also sought on the ground that the tolerance limit applies to all the schools who were found to have implemented the recommendations of the VI Pay Commission, irrespective of the categories in which they had been placed by the Committee and in the case of 'The School' it has not been permitted and thus the school has been discriminated without any rational and the error is apparent on the record.

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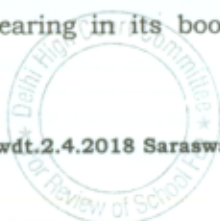
3. In continuation of the application for review dated 2nd April, 2018, 'The School' file another representation dated 20th April, 2018 raising similar pleas as had been raised in the application for review. It has been contended that there is no restriction under the provisions of Income Tax Act for payment made in cash by Charitable or religious trust or institutions. Reliance has been made in case of a number of schools alleging that the Committee has allowed partial implementation of VI CPC though the payments were made in cash/bearer cheque. It has also been averred that the recommendations/order of the committee is not specific towards the amount of fee to be refunded in subsequent years. The scope of corded by the Committee is also alleged to be limited to the year 2009 - 10 and not for subsequent years which has been accepted by the Committee in case of many other schools where refund of fee hike in subsequent years has not been recommended/ordered.

4. These inferences were drawn and the order/recommendations have been passed by the Committee after giving adequate reasonable opportunity to 'The School' and after observing as under:

"Be it noted that the school was reselling from its position of not having increased any fee for implementation of VI Pay Commission. The reply to the questionnaire submitted to the Committee was at variance with the certificate given by the Principal of the school to the Dy. Director of Education.

The Committee issued a notice dated 26/05/2015, requiring the school to furnish the aggregate figures of arrear tuition fee, regular tuition fee, arrears of development fee, regular development fee, arrear salaries and regular salaries for the years 2008-09, 2009-10 and 2010-11, in a structured format, duly reconciled with the audited Income & Expenditure Accounts. The school was also required to file a statement of account of the Society, as appearing in its books, details of accrued liabilities of gratuity and leave

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encashment, a copy of the circular issued to the parents regarding the fee hike. The school was also issued a questionnaire regarding development fee.

In response to the notice dated 26/05/2015 issued by the Committee, the school vide its letter dated 03/06/2015 furnished the required information and documents. Surprisingly, the school now enclosed copy of a circular dated 30/03/2009 that was purportedly issued to the parents regarding hike in tuition fee in pursuance of order dated 11/02/2009 issued by the Director of Education. This after having given a certificate to the Dy. Director of Education that the school had not issued any circular regarding fee hike for implementation of the recommendations of VI Pay Commission.

5. Regarding the fee hiked by "The School" the Committee had held as under:

"The documents furnished by the school from time to time were examined by the Committee and the authorized representatives appearing for the school have been heard. The Committee has examined copy of the circular dated 30/03/2009, purportedly issued to the parents regarding fee hike in pursuance of order of dated 11/02/2009 issued by the Director of Education. As per the circular, the school increased tuition fee by Rs. 200 per month in 2009-10 for all the classes. The amount by which the fee was increased is not mentioned in the circular. Further no mention is made regarding recovery of any arrear fee from the students.

As stated supra, the school had given a certificate dated 30/01/2012 signed by its Principal which stated that no fee was increased including arrears by the school after implementation of VI Pay Commission report and no circular was issued to the student/parents demanding the increased fee. The authorized representatives appearing for the school are unable to clarify the two conflicting stands taken by the school. They submit that the tuition fee was indeed increased by Rs. 200 per month w.e.f. 01/04/2009.



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Further in response to a communication dated 20/10/2015 sent by the committee, the school filed a statement giving the mode of payment of salaries to the staff in the years 2008-09, 2009-10, the school submitted that it was paying salary to all the teachers/staff by individual account payee cheques in both the years. The Committee examined the bank statements produced by the school and finds that all the cheques of salary are being encashed together from the bank on the same date and this phenomena appears month after month. Had the salary been paid by account payee cheques to entire staff which numbers 16 to 18 in the year 2009-10, it would be a too big coincidence that all the cheques are being put through clearing on the same date. More likely is the position that the cheques would be bearer in nature and some representative from the school would be getting them encashed together on the same date. When asked to explain this position, the authorized representatives of the school concede that the salary cheques issued to staff were indeed bearer cheques and not crossed payee cheques.

The Committee has also examined the balance sheet of the school as on 31/03/2009 and 31/03/2010 and observes that the school had taken loans for the purchase of buses and school lands, which were serviced out the fee receipt of the students.

Further the total liquid funds available with the school also increased by Rs. 6,51,779 as on 31/03/2010 as compared to 31/03/2009. The total additional fee collected by the school by way of fee hike in the year 2009-10 was 8,06,400. This only shows that the fee hike was utilized by the school to build up its own reserves. Moreover, the Committee is of the view that in view of the vacillating position taken by the school with regard to fee hike, issuance of circular to the parents and the mode of payment of salary to the staff, the school is not coming clean and has not implemented the



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recommendations of VI Pay Commission for which it increased the fee by Rs. 200 per month w.e.f. 01/04/2009.

6. In these circumstances and with this background the Committee has recommended/ordered as under:

"In view of the foregoing discussion, the committee is of the view that the fee hiked by the school by Rs. 200 per month w.e.f. 01/04/2009 purportedly for the purpose of meeting its additional liabilities on account of implementation of the recommendation of VI Pay Commission was not justified and the same ought to be refunded along with interest @ 9% per annum from the date of collection to the date of refund.

As the fee increased in 2009-10 would also be part of the fee for the subsequent years. The fee for the subsequent year to the extent it relates to the fee hike in 2009-10 also ought to be refunded along with interest @ 9% per annum.

As the school did not recover any arrear fee and does not recover any development fee even till date, no recommendation is required to be made in respect of these. For the record, it may be stated that school was recognized on w.e.f. 10/04/2008 and as such there was no accrued liability for gratuity up 31/03/2010.

7. This cannot be disputed by the 'school' that the Committee had provided a detailed calculation to 'The School' and also gave a reasonable opportunity to 'The School' to rebut the inferences drawn by the Committee. Now reliance of 'The School' on the recommendations/orders of the Committee in the matter of some other school is misplaced. Apparently, the facts and circumstances of other schools are distinguishable with that of the applicant School.

The order/recommendation of the committee in one case is not a precedent for other cases. However, an uniform practice and interpretation is followed by the Committee. Even in case of precedents it is no more res integra that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. Considering the present facts and circumstances, it may not be necessary to deal with recommendations/orders of the Committee in detail referred to by the 'school'. The Supreme Court in Bharat Petroleum Corporation Ltd and ors. v. N.R.Vairamani and ors., AIR 2004 SC 778 had observed:-

" Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases and disposing of a case by blindly placing reliance on a decision is not proper. Even a minor difference in the factual matrix, may render an earlier decision inapplicable in a later case.



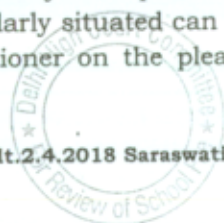
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8. It is also to be noted that generally speaking, the mere fact that an authority has passed a particular order in the case of person similarly situated can never be the ground for issuing a writ and/or order in favour of an applicant on the plea of discrimination. The order in favour of other person might be legal and valid or it might not be. This has to be investigated 1st before it can be directed to be followed in the case of the applicant. If the order in favour of other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such unwarranted and irregular order cannot be made the basis of issuing a writ of compelling and authority to repeat the illegality or to pass another unwarranted order. In Chandigarh Admn. Vs Jagjit Singh, (1995) 1 SCC 745 at page 751 it was that merely because an authority has passed 1 illegal/unwarranted order does not entitle any Court to compel the authority to repeat that illegality over again and again the illegal/unwarranted action must be corrected, if it can be done according to law wherever it is possible and the Court should direct the appropriate authority to correct such a wrong orders in accordance with law. Even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. It is also to be noted that by refusing to direct the authority to repeat the illegality, the Court is not condoning the earlier illegal act/order no can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest which will be a negation of law and the rule of law. The Hon'ble Supreme Court had held as under:

" We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other

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person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law — indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law — but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course — barring exceptional situations — would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises.)

9. A review of an order/recommendation is a serious step and reluctant resort to it is proper only where a glaring omission or patent



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mistake of like grave error has crept in earlier judicial fallibility. The review cannot be allowed on the ground that in some other matters the Tribunal had taken a different view. The discovery of new evidence or material by itself is not sufficient to entitle a party for review of an order. A review is permissible on the ground of discovery of new evidence only when such an evidence is relevant and of such a character that if it had been produced earlier it might possibly have altered the order, further, it must be established that the applicant had acted with due diligence and that the existence of the evidence, which he has now discovered, was not within his knowledge when the order was passed. If it is found that the petitioner has not acted with due diligence then it is not open to the Tribunal to admit evidence on the ground of sufficient cause. The party seeking a review should prove strictly the diligence he claims to have exercised. In a review application a party cannot be allowed to introduce fresh documents merely to supplement evidence which might possibly have had some effect on the result. Perusal of the application of the applicant shows that even any averment to this effect has not been made. A review cannot be sought merely for fresh hearing or arguments or correction of an erroneous view taken earlier. The power of review can be exercised only for correction of a patent error of law or fact which stays in the face without any elaborate argument being needed for establishing it.

10. **In any case before deciding the application of review of the 'school' on merits, the committee has to consider and decide whether it has power to review its own orders.** Hon'ble Supreme Court has held that no review lies on merits unless a statute specifically provides for it. No provision of law or any precedent has been cited before this Committee from which it can be inferred that it has powers to review its own orders. Some other schools namely N.K.Bagrodia Public school, Dwarka, New Delhi; Faith Academy, John



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L.Dorsey Road, Prasad Nagar and Rukmani Devi Public School, Pitam Pura had filed similar applications for review of orders/recommendations given in their cases. In case of Rukmani Devi, the Committee had also noticed error apparent on the face of record in the Committee's recommendation/order, Therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendation/order. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

" Kindly place this letter before the Hon'ble Division Bench dealing with the matter, as the Committee seeks urgent directions for grant of permission to rectify our recommendations, which may suffer from errors apparent on the face of the record."

The Hon'ble High Court, however, by its order dated 19th March, 2014 in W.P (C) 7777/2009 & CM No. 3168 of 2013 **only permitted the committee to review the order of Rukmani Devi Public School, Pitam Pura and not of other schools.** The Hon'ble Court passed the following order:

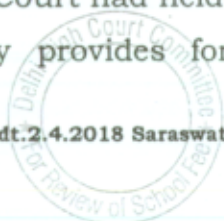
"W.P (C) 7777/2009 & CM No. 3168 of 2013

In view of the letter dated 12.02.2014 received from the Committee, **we permit the Committee to review the case of Rukmani Devi Public School, Pitam Pura - 110034 only.**

The writ petition shall be re-notified on 09.05.2014"

11. Though there is difference between the procedural review and a review on merits. A procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it, and a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. In Patel NarshiThakershi & ors. the Hon'ble Supreme Court had held that no review lies on merits unless a statute specifically provides for it. When a review is sought due to a

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procedural defect, the inadvertent error committed by the Tribunal must be corrected 'ex debit a justitiae' to prevent the abuse of its process, and such power inheres in every Court or Tribunal. From these principles it is apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi judicial authority is vested with power of review by express provision or by necessary implication.

12. The procedural review belongs to a different category. In such a review, the Court or Quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or Quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. The party has to establish that the procedure followed by the Court or the quasi judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to



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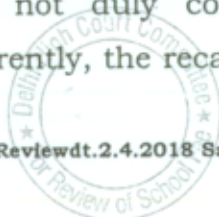
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be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding.

13. Applying these principles it is apparent that where a Court or Quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the Quasi judicial authority is vested with power of review by express provision or by necessary implication.

14. Perusal of the pleas and contentions of 'The School' show unequivocally that 'The School' is seeking review on merits and not a procedural review. In Dr. (Smt.) Kuntesh Gupta v. Management of Hindu KanyaMaha Vidyalaya, Sitapur (U.P.) and Ors. MANU/SC/0104/1987 and Patel NarshiThakershi and Ors. v. PradyumansinghjiArjunsingji MANU/SC/0433/1970MANU/SC/0433/1970: AIR 1970 SC 1273 the Hon'ble Supreme Court had held that the power of review is not an inherent power and must be conferred by law either expressly or by necessary implication.

15. The Applicant in the present case seeks recall/review of the order passed by the Committee dated 14th March, 2017 not on the ground that in passing the order the committee has committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the order/recommendation of the committee is liable to be recalled. Rather grounds taken by the applicant in the application for review dated 2nd April, 2018 are that some matters which ought to have been considered by the committee were not duly considered or apparently considered incorrectly. Apparently, the recall or review sought is not a procedural review, but



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a review on merits. Such a review is not permissible in the absence of any specific provision or the orders of the Hon'ble Court authorizing review of its orders/recommendations either expressly or by necessary implication.

16. It is also to be noted that a quasi-judicial authority will become functus officio when its order is pronounced, or published/notified or communicated (put in course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the authority will become 'functus officio'. Once an authority exercising quasi judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. P RamanathaAiyar's Advanced law Lexicon (3rd Edition, Vol 2 pp. 1946-47) gives the following illustrative definition of the "functus officio". "Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision." Black's Law Dictionary (6thEdn., p 673) gives the meaning of functus officio as follows:

"Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority"

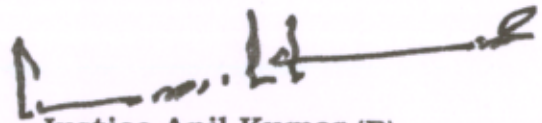
Consequently after the Committee had made its recommendation and passed the order in the case of Applicant school and notified the same to the Hon'ble High Court, the Committee became functus officio as it had decided the question brought before it.



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17. From the above it is apparent that the Committee does not have the powers to review its own orders. Though the Committee had sought permission to review orders having errors, if any, on the face of the record in case of other schools, however, no general permission was granted to the Committee except in the case of Rukmani Devi Public School and consequently the School cannot contend that the Committee has the power to review its order/recommendation. The 'school' is seeking that the order of the Committee directing the 'school' to refund fee hiked with interest @ 9% per annum to the students be reviewed. Apparently the Committee does not have such powers as has been invoked by the 'school'.

18. In the circumstances the application of the applicant dated 2nd April, 2018. seeking review is not maintainable and is disposed of as not maintainable and the said application for review dated 2nd April, 2018. seeking review of order dated 14th March, 2017 is therefore, dismissed.



Justice Anil Kumar (R)

(Chairperson)



J.S. Kochar

(Member)



R.K. Sharma

(Member)

27.11.2018

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**BEFORE DELHI HIGH COURT COMMITTEE FOR REVIEW OF
SCHOOL FEE, NEW DELHI**

000115

(Formerly Justice Anil Dev Singh Committee for review of school Fee)

In the matter of:

Happy School, Darya Ganj, New Delhi-110002 (B-406)

Order of the Committee

Present : Sh. S.C. Pandey, Office Incharge and Sh. Shreesh Sharma,
Accountant of the school.

The Committee issued a questionnaire to all the schools (including this school) on 27/02/2012, eliciting information with regard to the arrear fee and fee hike effected by the school pursuant to order dated 11/02/2009 issued by the Director of Education. The school was also required to furnish information with regard to the arrear salary paid and the incremental salary paid to the staff pursuant to the implementation of the recommendations of the 6th pay commission. However, the school did not submit its reply to the questionnaire. Accordingly, a reminder was sent on 27/03/2012 which also met with the same fate.

The school submitted copies of its annual returns filed under Rule 180 of Delhi School Education Rules, 1973 for the years 2006-07 to 2010-11 to the Education Officer, Zone-27 of the Directorate of Education under cover of its letter dated 28/05/2012. These were forwarded to this Committee by the Education Officer.

The Committee issued a revised questionnaire to the school on 07/08/2013 vide which the school, besides answering queries to the



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questionnaire dated 27/02/2012, was also required to furnish specific replies to the relevant questions regarding charging of development fee, its utilisation and maintenance of earmarked development and depreciation reserve funds, in order to examine whether the school was fulfilling the essential pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583 regarding charging of development fee. This was also followed by two reminders dated 21/10/2013 and 05/12/2013 as the school did not respond. Finally, the school informed vide its letter dated 12/12/2013 that the replies to the queries were under preparation and would be submitted by the end of the month.

The school ultimately submitted its reply to the questionnaire vide its letter dated 30/12/2013. As per the reply submitted by the school:

- (a) It implemented the recommendations of VI Pay Commission w.e.f. 01/01/2006(sic). As a result of such implementation, the monthly salary bill of the school rose from Rs. 18,15,661 to Rs. 26,68,206.
- (b) A total sum of Rs. 1,74,39,506 was paid as arrears to the staff for the period 01/01/2006 to 31/01/2009.
- (c) The tuition fee was increased by the school w.e.f. 01/09/2008 by Rs. 300 per month for all the classes.



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(d) A total sum of Rs. 53,15,000 was recovered as arrear fee upto 31/03/2010.

(e) The school collected development fee in all the five years for which the information was sought by the Committee. In the year 2009-10, it collected Rs. 19,58,000 as development fee and in 2010-11, the collection on this account was Rs. 20,17,000.

(f) The development fee was treated as a revenue receipt in the accounts of the school.

(g) The school maintained separate depreciation reserve fund and invested the same to the tune of Rs. 31,58,142 in FDRs with Union Bank of India.

The Committee issued a notice dated 22/05/2015, requiring the school to furnish complete break up of fee and salaries for the years 2008-09 to 2010-11 (including arrear fee and arrear salary pursuant to implementation of VI Pay Commission), copies of bank statements showing payment of arrear salaries, statement of account of the parent society running the school and details of its accrued liabilities of gratuity and leave encashment, besides copy of the circular issued to the parents regarding fee hike effected by the school.

The school submitted the information vide its letter dated 03/07/2015. Copies of circulars dated 11/02/2009 and 12/02/2009 issued to the parents was also filed by the school.



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A notice of hearing was issued on 18/07/2016, requiring the school to appear before the Committee on 22/08/2016 and produce its books of accounts, fee and salary records etc.

Sh. Phool Chand Pardy, Office Incharge and Sh. Shreesh Sharma, Accountant of the school appeared on the date of hearing.

The Committee perused Circulars dated 11/02/2009 and 12/02/2009 issued by the school to the parents of the students regarding fee hike effected in pursuance of order dated 11/02/2009 issued by the Director of Education. As per the circular, the school increased the tuition fee @ Rs. 300 per month for all the classes w.e.f. 01/09/2008 and accordingly recovered arrears Rs. 2,100 for the seven months period from Sept. 2008 to March 2009. Besides the school recovered lump sum fee @ Rs. 3,000 per student to pay the additional salary payable on account of implementation of VI Pay Commission report w.e.f. 01/01/2006 to 31/08/2008. It was submitted by the representatives of the school that although the school charged development fee, the same had not been hiked w.e.f. 01/09/2008.

The representatives of the school submitted that the regular salary of the staff was increased w.e.f. Feb. 2009 which was paid in March 2009. The arrears for the period 01/01/2006 to 31/01/2009 were also paid in full. It was further submitted that all the payments of salary as well as arrears were made through direct bank transfers



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or through individual account payee cheques. Bank statements were produced in support of this contention. The representatives of the school further submitted that no funds were transferred by the school to its parent society by the school and drew attention of the Committee to the statement of Society's account as appearing in the books of the school.

However, the Committee noticed that the school had not furnished the details of its accrued liabilities of gratuity and leave encashment, although the liability of gratuity was provided in the balance sheet of the school. The representatives of the school undertook to furnish the said details within ten days.

With regard to the regular development fee, the Committee observed that the school in its reply dated 30/12/2013 to the questionnaire issued by the Committee had conceded that the same was treated as the revenue receipt in the accounts of the school. The representatives reiterated the same position during the course of hearing and took the Committee through the audited financials of the school. They also conceded that the development fee was utilized also for meeting the regular revenue expenses.

The school filed details of its accrued liabilities of gratuity and leave encashment as on 31/03/2010. As per the details filed, the accrued liability of gratuity amounted to Rs. 1,68,65,591 while that for leave encashment, it was Rs. 70,51,407.



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Based on the information furnished by the school and its audited financials, the Committee prepared a calculation sheet to examine the justifiability of fee hike effected by the school pursuant to order dated 11/02/2009 issued by the Director of Education. As per the calculations prepared by the Committee, the school had available with it a sum of **Rs. 4,13,17,455** as at 31/03/2008 as per the following details:

<u>Current Assets + Investments</u>		
Cash in hand	8,958	
Bank Balances	599,977	
Investments	45,499,416	
TDS receivable	13,342	
Water Harvester (WIP)	75,456	
Happy School's Society	8,260	46,205,409
<u>Less: Current Liabilities</u>		
Caution Money Fund	1,608,400	
Fees in advance	1,343,500	
Salary Payable	1,669,494	
Provident Fund Payable	127,370	
TDS payable	61,055	
Other liabilities	58,135	
Security deposit	20,000	4,887,954
Net Current Assets + Investments (Funds available)		41,317,455

The school required to keep a sum of **Rs. 2,39,16,998** in reserve to meet its accrued liabilities of gratuity and leave encashment, leaving it with **Rs. 1,74,00,457**. The Committee has taken a consistent view that the schools ought not to drain themselves of their entire funds while implementing the recommendations of VI Pay Commission but ought to keep a reasonable reserve which the Committee has determined to be equivalent to four months salary, in



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the absence of the calculations with regard to reserve required to be kept by the schools as per Rule 177 (2) (e) of the Delhi School Education Rules, 1973. The requirement of the school to keep funds in reserve has been quantified by the Committee to be **Rs. 1,02,85,332**, based on the total expenditure on regular salary for the year 2009-10, which amounted to Rs. 3,08,55,996. Thus the funds which the school could have utilised for implementing the recommendations of VI Pay Commission amounted to **Rs.71,15,125** (1,74,00,457 - 1,02,85,332).

The total financial impact of implementation of the recommendations of VI Pay Commission on the school was **Rs. 2,60,57,663** as per the following details:

Arrear of Salary as per 6th CPC	17,439,506	
Incremental Salary for 2009-10 (as per calculation given below*)	8,618,157	26,057,663

*

Incremental salary in 2009-10	2008-09	2009-10
Normal/ regular salary	22,237,839	30,855,996
Increase in 2009-10	8,618,157	

Thus the school had a gap of **Rs.1,89,42,538** (2,60,57,663 - 71,15,125) on implementation of the recommendations of VI Pay Commission, which was required to be bridged by recovering arrear fee and hiking tuition fee w.e.f. 01/09/2008 in accordance with order dated 11/02/2009 issued by the Director of Education.



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The arrear fee recovered by the school and the fee hike effected 000122 by it yielded a total additional revenue of **Rs. 1,63,71,350**, as per the following details:

Total Recovery for implementation of 6th Pay Commission:		
Arrear of tuition fee	9,149,600	
Incremental tuition fee for 2009-10 (as per calculation given below*)	7,221,750	16,371,350

*

Incremental tuition fee in 2009-10	2008-09	2009-10
Normal/ Regular Tuition fee	26,559,300	33,781,050
Increase in 2009-10	7,221,750	

Thus the school, prima facie, incurred a deficit of **Rs. 25,71,188** on implementation of the recommendations of VI Pay Commission, albeit notionally (as the above deficit has been worked out after setting aside a reserve for future contingencies).

The school was concededly treating development fee as a revenue receipt and utilising the same also for its revenue expenses. This is contrary to the condition subject to which it was permitted to charge development fee as per the judgment of the Hon'ble Supreme Court in the case of Modern School (supra). Hence, prima facie, the development fee recovered by the school for the years 2009-10 and 2010-11, pursuant to order dated 11/02/2009, was required to be refunded. The same amounted to **Rs. 39,75,000** for the two years.



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After setting of the notional deficit of Rs. 25,71,188 incurred by the school on implementation of the recommendations of VI Pay Commission, prima facie, the Committee was of the view that the school ought to refund the balance of **Rs. 14,03,812.**

A copy of the above calculations was given to the representative of the school on 08/11/2016 for rebuttal, if any.

The school filed written submissions dated 15/12/2016, claiming that the Committee had not factored in development expenses amounting to Rs.12,58,581, spent out of development fee and charged to its revenue account. It was further stated that if these expenses were taken into consideration, the amount refundable to the students could be only Rs. 1,45,231 instead of Rs.14,03,812 as determined by the Committee. The school repeated the same submission on 27.11.2018

The Committee has examined the audited Income and Expenditure accounts for the years 2009-10 & 2010-11 and observed that the development expenses claimed by the school having been spent out of development fee are sanitation and cleaning, building maintenance, furniture maintenance, garden maintenance, electric maintenance, other equipment maintenance and generator maintenance, all of which are revenue expenses. The Committee is of the view that since the school was admittedly treating development fee as revenue receipt and utilising it also for routine revenue



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expanses like sanitation and cleaning, building maintenance, 000124
furniture maintenance, garden maintenance, electric maintenance
and other equipment maintenance and generator maintenance, it
was neither fulfilling the pre conditions laid down by the Hon'ble
Supreme Court in the case of Modern School, for collection of
development fee nor the purpose of which development fee is allowed
to be collected by the school that is purchase and up gradation of
furniture, fixtures and equipments was being fulfilled. The
development fee is required to be treated as a capital receipt for the
aforesaid purposes and further the development fee can be charged
provided the school is maintaining depreciation reserve fund in
respect of depreciation charged on assets acquired out of
development fee. Since assets were admittedly acquired out of
development fee there is no question of maintaining depreciation
reserve fund of the school.

Accordingly, the Committee is of the view that the school was
not fulfilling any of the pre conditions laid down by the Hon'ble
Supreme Court for charging development fee. In normal course, we
would have recommended the refund of entire amount of
development fee recovered by the school in 2009-10 and 2010-11
which amounting to Rs. 39,75,000. However, since the Committee
has determined that the school incurred a deficit of Rs.25,71,188,
albeit notionally, as the aforesaid deficit has been worked out after
allowing the school to retain a sum of Rs.1,02,85,332 as reserve for



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future contingencies, the Committee is not recommending the refund of the entire amount of development fee but only the remaining amount of Rs.14,03,812 after setting off the aforesaid deficit.

Resultantly, the school ought to refund a sum of Rs.14,03,812 recovered as development fee without fulfilling the pre conditions laid down by the Hon'ble Supreme Court. The aforesaid amount of refund ought to be refunded alongwith the interest of @9% per annum from the date of collection to the date of refund.

Ordered accordingly.

Justice Anil Kumar (R)
(Chairperson)

CA J.S. Kochar
(Member)

Dr. R.K. Sharma
(Member)

Dated: 27/11/2018



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**BEFORE DELHI HIGH COURT COMMITTEE FOR REVIEW
OF SCHOOL FEE AT NEW DELHI**

(Formerly Justice Anil Dev Singh Committee for review of school Fee)

In the matter of:

**MAMTA MODERN SCHOOL, (B-560)
H BLOCK, VIKAS PURI
NEW DELHI 110018.**

And in the matter of:

**Application for review dated
8TH March, 2018 20th March,
2018 and 7th April,
2018 seeking review of
recommendations /Order
dated 2nd June, 2017 in the
matter of school (B-560).**

ORDER

28.11.2018

Present : Pramod Gupta Advocate; Manoj Sharma
Manager; R.S.Sharma Vice Chairman &
Rajesh Sharma Accountant of the School.

**ORDER ON APPLICATIONSDATED 8th March,
2018; 20th March, 2018 and 7th April,
2018 seeking review of
order/recommendation dated 2nd June,2017.**

1. Mamta Modern School, H Block, Vikas Puri, New Delhi 110018 (B-560), hereinafter referred as 'The School' has sought review of order dated 2nd June, 2017 by present applications for review dated 8th March, 2018; 20th March, 2018 and 7th April, 2018.

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2. 'The School' has sought review of order dated 2nd June, 2017 passed by the Committee by filing an one page application dated 8th March, 2018 alleging that the order dated 2nd June, 2017 has been passed on the basis of wrong calculations which are inconsistent with the submission made on record and produced by 'The School'. Thereafter, another application dated 20th March, 2018 was filed seeking review confined to the direction of the Committee directing refund of Incremental tuition fee in the year 2009 - 2010 4 ₹ 3,274,284. Another affidavit/application dated 7th April, 2018 has been filed by 'The School' alleging that the recommendation/order dated 2nd June, 2017 was not in the knowledge of 'The School' till February, 2018 and the applications for review had been filed within 30 days and there is no negligence or delay on the part of 'The School' seeking review of recommendation/order dated 2nd June, 2017. 'The School' primarily has sought review of the direction of the Committee directing 'The School' 2 refund incremental tuition fee in the year 2009 - 2010. By recommendations/order dated 2nd June, 2017 the Committee had held as under:

"The Committee observes that although the school collected bulk of the arrear fee in lump sum in the very first year i.e. 2008-09 (as much as Rs. 31,32,434 out of total of Rs. 46,33,214), it did not pay the arrear salaries in lump sum but chose to spread over the payment of arrear salaries through monthly installments along with regular salary. Further, on perusal of the details of monthly salary as claimed to have been paid by the school, the Committee finds that while the recommendations of the Sixth Pay Commission had not been fully implemented, the school was showing some part of the regular salary as payment towards arrears of salary for the period 01/01/2006 to 31/03/2009. The regular salary of the staff was not increased in terms of the recommendations of the 6th pay commission. The authorized representatives appearing for the school conceded during the course of hearing on 23/12/2016 that the school in actual fact, was not paying the full amount of DA.

On examination of the bank statements of the school along with its salary registers, the Committee found that almost about 40% of the salary was paid through bearer cheques.

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On examination of the ledger accounts of the parent society of the school i.e. Mamta Modern Education Society the Committee found that the school had been having transactions with its Parents Society and as on 31/03/2010, the accumulated amount that had been transferred over the years was Rs. 26,15,984.50. The authorized representatives merely stated that it was a one time transfer to the Society sometime in the year 1998 and the school was now recovering the same in installments.

In view of the position as detailed above, the Committee is not satisfied that the school implemented the recommendations of VI Pay Commission or paid any arrear salary to the staff. What it apparently did was that some incremental salary was paid on a monthly basis w.e.f. April 2009, and the differential amount was shown as having been paid against the liability for payment of arrear salary, in order to justify the collection of arrear fee to the extent of Rs. 46,33,214. This would be apparent when we juxtapose the figures of collection of arrear fee vis a vis the alleged payment of arrear salary in different years. The following table would show the position:

Year	Balance B/F from previous year	Arrear fee collected (Rs.)	Arrear salary purportedly paid (Rs.)	Balance retained by the school
2008-09	0	31,32,434	7,30,000	24,02,434
2009-10	24,02,434	4,25,600	7,65,000	20,63,034
2010-11	20,63,034	2,93,100	3,65,000	19,91,134
2011-12	19,91,134	2,27,850	8,32,000	13,86,984
2012-13	13,86,984	1,82,870	7,16,000	8,53,854
2013-14	8,53,854	1,84,130	7,01,923	3,36,061
2014-15	3,36,061	1,86,230	5,79,792	0
Total	46,33,214	46,89,715		

It would be apparent from the above table that the school did not pay the arrears even to the extent of collection of arrear fee in different years and always retained large sums of money out of the arrear fee collected. Further, as observed by the Committee, the school did not infact implement the recommendations of VI Pay Commission but chose to show the incremental salary as payment towards arrear salary. This coupled with the fact that the school apparently paid 40% of the monthly salary by bearer cheques or in



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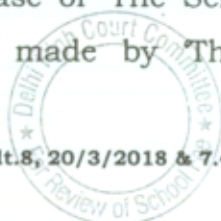
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cash and the fact that it transferred huge sum of money to its Parent Society, further strengthens the view of the Committee that it did not implement the recommendations of VI Pay Commission. However, it recovered the arrear fee, may be not fully but nevertheless a substantial sum and also hiked the regular tuition fee to the maximum extent that was permitted vide order dated 11/02/2009 issued by the Director of Education.

In view of the aforesaid findings of the Committee, the school took undue advantage of the fee hike allowed to the school by the Director of Education vide order dated 11/02/2009. The recovery of arrear and hike in regular fee was specifically allowed in order to enable the school to meet its increased liabilities on implementation of the recommendations of VI Pay Commission. Since, the reason d'être of the hike in fee was absent in this case, the Committee is of the view that the school was not justified either in recovery of arrear fee or in hiking the regular fee w.e.f. 1st April 2009. The school admittedly recovered a total sum of Rs. 46,33,214 as arrear fee in different years. The Committee is of the view that the school ought to refund the entire arrear fee along with interest @ 9% per annum from the date of collection to the date of refund.

So far as the incremental amount of regular tuition fee in the year 2009-10 is concerned, the school has furnished the figures vide its submission dated 05/06/2015. As per the figures furnished by the school, the regular tuition fee recovered by the school was Rs. 2,08,15,571 in 2008-09 and Rs. 2,59,72,962 in 2009-10. Besides, in 2009-10, the school also recovered fee under a new head i.e. 'Other charges' and the total sum recovered was Rs. 1,98,450. Therefore the total incremental fee recovered by the school in 2009-10 was Rs. 53,55,841 (2,59,72,962+1,98,450-2,08,15,571). In the absence of the implementation of the recommendations of VI Pay Commission, the Committee considers that the school could have recovered an additional fee to the tune of 10% over the fee charged in the previous year i.e. 2008-09. In that year the total tuition fee recovered was Rs. 2,08,15,571. The Committee considers that the hike in fee to the extent of Rs. 20,81,557 would be justified. The fee recovered in excess i.e. Rs.32,74,284 (53,55,841- 20,81,557) was not justified and ought to be refunded along with interest @ 9% per annum from the date of collection to the date of refund.

3. According to 'The School' a calculation error has crept in while dealing with the case of 'The School' on the issue of 'incremental fee'. The allegations made by 'The School' are that the recommendations



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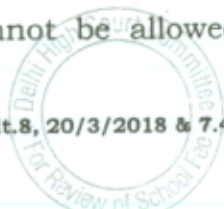
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besides being contrary to the record, is also emanating from calculation error committed by the Committee. The reason attributed by 'The School' is that the Committee did not include free component of ₹ 200 and ₹ 300 per month which was allegedly increased in terms of order dated 11th February, 2009 which was allegedly recovered over a period of 7 years. The ground for review as alleged by 'The School' is that to arrive at the current figure for the whole year the Committee ought to have included the notional prone to fee increase for 5 months from 1st April, 2008 to 31st August, 2008 amounting to ₹ 2,023,000. The allegation of 'The School' it is that the Committee has taken the wrong base value for the year 2008 - 2009 and this has resulted in huge discrepancies for the subsequent years also. **In circumstances it is contended that the actual fee basis for 2008 - 09 should have been ₹ 25,044,801 and not as has been taken by the Committee.** These inferences were drawn and the order/recommendations have been passed by the Committee after giving adequate reasonable opportunity to 'The School'.

4. The next plea of 'The School' is that committee fell into a patent error by including the tuition fee on account of an increase in the student strength of the school by approximately 21 students in the year 2009 - 10, thereby inflating the same and enlarging the gap of the fee, in the earlier years. 'The School' has impugned the inferences of the Committee and has alleged that to maintain proportion, new addition on account of increased strength should not have been included in the fee for the year 2009 - 10 and the fee for the year 2009 - 10 should have been calculated on the same list student strength as for the year 2008 - 09 to arrive at the correct figure of incremental increase of tuition fee, if any from 2008 - 09 to 2009 - 10

5. A review of an order/recommendation is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake of like grave error has crept in earlier judicial fallibility. The review cannot be allowed on the ground that the alleged error is

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apparently on account of wrong calculation. A review cannot be sought merely for fresh hearing or arguments or correction of an erroneous view taken earlier. The power of review can be exercised only for correction of a patent error of law or fact which stays in the face without any elaborate argument being needed for establishing it.

6. **In any case before deciding the application of review of the 'school' on merits, the committee has to consider and decide whether it has power to review its own orders.** Hon'ble Supreme Court has held that no review lies on merits unless a statute specifically provides for it. No provision of law or any precedent has been cited before this Committee from which it can be inferred that it has powers to review its own orders. Some other schools namely N.K.Bagrodia Public school, Dwarka, New Delhi; Faith Academy, John L.Dorsey Road, Prasad Nagar and Rukmani Devi Public School, Pitam Pura had filed similar applications for review of orders/recommendations given in their cases. In case of Rukmani Devi, the Committee had also noticed error apparent on the face of record in the Committee's recommendation/order, Therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendation/order. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

" Kindly place this letter before the Hon'ble Division Bench dealing with the matter, as the Committee seeks urgent directions for grant of permission to rectify our recommendations, which may suffer from errors apparent on the face of the record."

The Hon'ble High Court, however, by its order dated 19th March, 2014 in W.P (C) 7777/2009 & CM No. 3168 of 2013 **only permitted the committee to review the order of Rukmani Devi Public School, Pitam Pura and not of other schools.** The Hon'ble Court passed the following order:



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"W.P (C) 7777/2009 & CM No. 3168 of 2013

In view of the letter dated 12.02.2014 received from the Committee, **we permit the Committee to review the case of Rukmani Devi Public School, Pitam Pura - 110034 only.**

The writ petition shall be re-notified on 09.05.2014"

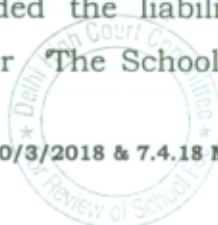
7. Though there is difference between the procedural review and a review on merits. A procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it, and a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. In Patel Narshi Thakershi & ors. the Hon'ble Supreme Court had held that no review lies on merits unless a statute specifically provides for it. When a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected 'ex debit a justitiae' to prevent the abuse of its process, and such power inheres in every Court or Tribunal. From these principles it is apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only, if the Court or the quasi judicial authority is vested with power of review by express provision or by necessary implication.

8. The procedural review belongs to a different category. In such a review, the Court or Quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or Quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the

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ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. The party has to establish that the procedure followed by the Court or the quasi judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding.

9. Applying this principle it is apparent that where a Court or Quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the Quasi judicial authority is vested with power of review by express provision or by necessary implication. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. 'The School' has not acknowledged any error of procedure or mistake which goes to the root of the matter and invalidates the entire proceedings. The allegation that the alleged mistake is a calculation error is also not correct as the increase in tuition fee for increase the strength of the students has been taken into consideration for the years in which the students who are not in 'The School'. The grievance of 'The School' is also that while considering the liabilities and reserves the Committee has not included the liability of gratuity, leave encashment and reserve fund for 'The School'. The contraction for the review is also

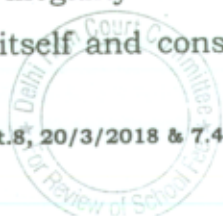


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that the majority of cases The Committee has allowed reserve fund equivalent to 4 months salary. 'The School' has given its alleged liability for gratuity payable up to 31st March, 2010; leave encashment payable up to 31 March 2010 and the other to reserve fund for the 4 months and if these liabilities are considered than it has to be inferred that the school in fact was in deficit. In the back of these allegations it cannot be inferred in any manner that the order/recommendation suffers from any procedural lapse as has been defined by the Courts. The attempt by 'The School' to a large the college calculation error as a procedural error is without any legal and factual basis in the facts and circumstances and it cannot be contended that the Committee has power to review in the facts and circumstances. This may be a case for review on merits but by an application of law as enunciated by the Courts it cannot be held that there is a procedural lapse and the Committee has power to review its recommendations/order dated 2nd June, 2017 in the facts and circumstances.

10. Perusal of the pleas and contentions of 'The School' show unequivocally that 'The School' is seeking review on merits and not a procedural review. In Dr. (Smt.) Kuntesh Gupta v. Management of Hindu Kanya Maha Vidyalaya, Sitapur (U.P.) and Ors. MANU/SC/0104/1987 and Patel Narshi Thakershi and Ors. v. Pradyumansinghji Arjunsingji MANU/SC/0433/1970MANU/SC/0433/1970: AIR 1970 SC 1273 the Hon'ble Supreme Court had held that the power of review is not an inherent power and must be conferred by law either expressly or by necessary implication.
11. The Applicant in the present case seeks recall/review of the order passed by the Committee dated 2nd June, 2017 not on the ground that in passing the order the committee has committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the order/recommendation of the



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committee is liable to be recalled. Rather grounds taken by the applicant in the applications for review dated 8th March, 2018; 20th March, 2018 and 7th April, 2018 are that some matters which ought not to have been considered by the committee have been considered or apparently considered incorrectly. Apparently, the recall or review sought is not a procedural review, but a review on merits. Such a review is not permissible in the absence of any specific provision or the orders of the Hon'ble Court authorizing review of its orders/recommendations either expressly or by necessary implication.

12. It is also to be noted that a quasi-judicial authority will become functus officio when its order is pronounced, or published/notified or communicated (put in course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the authority will become 'functus officio'. Once an authority exercising quasi judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. P RamanathaAiyar's Advanced law Lexicon (3rd Edition, Vol 2 pp. 1946-47) gives the following illustrative definition of the "functus officio". "Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision." Black's Law Dictionary (6th Edn., p 673) gives the meaning of functus officio as follows:

"Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority"

Consequently after the Committee had made its recommendation and passed the order in the case of Applicant school and notified the same to the Hon'ble High Court, the Committee



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became functus officio as it had decided the question brought before it.

13. From the above it is apparent that the Committee does not have the powers to review its own orders. Though the Committee had sought permission to review orders having errors, if any, on the face of the record in case of other schools, however, no general permission was granted to the Committee except in the case of Rukmani Devi Public School and consequently the School cannot contend that the Committee has the power to review its order/recommendation. The 'school' is seeking that the order of the Committee directing the 'school' to refund fee hiked with interest @ 9% per annum to the students be reviewed. Apparently the Committee does not have such powers as has been invoked by the 'school'.

14. In the circumstances the applications of the applicant dated 8th March, 2018; 20th March, 2018 and 7th April, 2018 seeking review are not maintainable and are disposed of as not maintainable and the said applications for review dated 8th March, 2018; 20th March, 2018 and 7th April, 2018 seeking review of order dated 2nd June, 2017 are therefore, dismissed.

Justice Anil Kumar (R)

(Chairperson)

J.S. Kochar

(Member)

R.K. Sharma

(Member)

28.11.2018



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Delhi High Court Committee for Review of School Fee
(Formerly Justice Anil Dev Singh Committee for Review of School Fee) 000137

CAUSE LIST FOR NOVEMBER 2018

Cause List for Thursday, 1st November 2018

S. No.	Cat. No.	School Name & Address
1	B-429	M.D.H. International School, Dwarka
2	B-304	Mother Teresa Public School, Preet Vihar
3	B-237	S.D. Public School, Kirti Nagar
4	B-402	Gitarattan Jindal Public School, Sect.7, Rohini
5	B-650	St. Columba's School, Ashok Place

Cause List for Friday, 2nd November 2018

S. No.	Cat. No.	School Name & Address
1	B-151	G D Goenka Public School, Vasant Kunj
2	B-172	Ganga International School, Saavda Ghevra
3	B-677	Ganga International School, Hiran Kudna
4	B-285	Mann Public School, Holambi Kalan

Cause List for Thursday, 15th November 2018

S. No.	Cat. No.	School Name & Address
1	B-309	N K Bagrodia Public School, Sect.9, Rohini
2	B-469	St. Peter's Convent, Vikas Puri
3	B-77	Vishal Bharti Public School, Paschim Vihar
4	B-290	Kasturi Ram International School, Narela
5	B-427	Vandana International School, Dwarka

Review orders for pronouncement of Judgment

1	B-508	St. Gira Sr. Sec. School, Rohini
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Cause List for Friday, 16th November 2018

S. No.	Cat. No.	School Name & Address
1	B-389	BGS International School, Dwarka
2	B-296	M.M. Public School, Pitampura
3	B-302	Bharti Public School, Swasthya Vihar
4	B-474	Green Fields School, Safdarjung Enclave
5	B-406	Happy School, Darya Ganj



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Cause List for Monday, 19th November 2018

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S. No.	Cat. No.	School Name & Address
1	B-301	Review - Bharti Public School, Kondli, Mayur Vihar
2	B-602	Review - VSPK International School, Sector-13, Rohini
3	B-120	The Heritage School, Vasant Kunj
4	B-60	The Heritage School, Sector-23, Rohini
5	B-176	Vivekanand School, D-Block, Vivek Vihar
6	B-402	Gitarattan Jindal Public School, Sect.7, Rohini

Cause List for Monday, 26th November 2018

S. No.	Cat. No.	School Name & Address
1	B-564	Columbia Foundation School, Vikas Puri
2	B-335	Bhai Parmanand Vidya Mandir, Surya Niketan
3	B-304	Mother Teresa Public School, Preet Vihar
4	B-290	Kasturi Ram International School, Narela

Review orders for pronouncement of Judgment

1	B-348	Ahlcon International School, Mayur Vihar
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Cause List for Tuesday, 27th November 2018

S. No.	Cat. No.	School Name & Address
1	B-146	Vishwa Bharti Public School, Dwarka
2	B-286	Mount Abu Public School, Sect.5, Rohini
3	B-309	N K Bagrodia Public School, Sect.9, Rohini
4	B-296	M.M. Public School, Pitampura
5	B-406	Happy School, Darya Ganj

Review orders for pronouncement of Judgment

1	B-679	Saraswati Model School, Dwarka
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Cause List for Wednesday, 28th November 2018

S. No.	Cat. No.	School Name & Address
1	B-541	Review - Sant Nirankari Public School, Nirankari colony
2	B-414	Jindal Public School, Dashrathpuri
3	B-151	G D Goenka Public School, Vasant Kunj
4	B-172	Ganga International School, Saavda Ghevra
5	B-389	BGS International School, Dwarka

Review orders for pronouncement of Judgment

1	B-560	Mamta Modern School, Vikas Puri
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[Signature]
Secretary

M.D.H. International School, Dwarka, Delhi

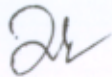
Present: Sh.R.N.Raj, Secretary, Sh.R.K.Wadhera, Manager & Sh.Sarbeswar Nayar, Accountant of the school.

The school has filed written submissions dated 1.11.2018 giving details of disbursement of arrear salary amounting to Rs.12,44,245 to the staff, which is equal to the amount of arrear fee collected from the students. It is submitted that a sum of Rs.11,30,645 has been paid to the staff members who are still on the rolls of the school, ~~via~~ direct transfer to their respective accounts on 24.10.2018. The school has filed copies of the payment instructions given to the bank, calculation sheet showing working of the arrear salary and bank statement for the relevant period showing debit of the amount to the account of the school. With respect to two other teachers who have reportedly retired from the service of the school, the school has filed copies of intimations sent to them to collect the cheques from the school and it is submitted that the concerned teachers will collect the cheques tomorrow.

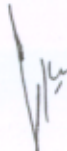
With regard to earmarked of deprecation reserve fund, the school has filed a note stating that initially the deprecation reserve fund was not kept in earmarked FDRs. However, on receipt of directions from the Directorate of Education, the school has transferred the amount of deprecation reserve fund created from 2002-03 to 2014-15 and the same is now fully kept in earmarked FDRs. The school has also filed audited financials for the year 2016-17 to buttress its arguments.

The Committee has verified the documents filed by the school and in view of the submissions made and the documents filed, it does not consider it to be a fit case where refund of any fee should be ordered.

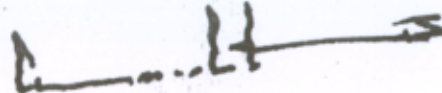
Detailed order to be passed separately.



Dr. R.K. SHARMA
MEMBER



J.S.KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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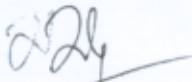
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B-304

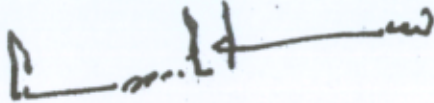
Mother Teresa School, Preet Vihar, Delhi

Present: Sh.Ashok K. Jethy, Chairman & Ms. Neeta Jethy, Manager of the school.

The Chairman of the school Sh.Ashok Jethy submits that the Chartered Account appearing for the school Sh.Manu Luthra is pre occupied with the matter of justifying the requirement of the school for fee hike pursuant to implementation of 7th pay commission, before the Directorate of Education and accordingly requests for short date. As requested the matter is adjourned to 26th November 2018 at 11.00 A.M.


Dr. R.K. SHARMA
MEMBER


J.S.KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary


01/11/2018

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B-237

S.D.Public School, Kirti Nagar, Delhi

Present : Sh.S.K. Saini, Accountant of the school.

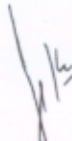
The Committee has prepared the calculation sheet to examine the justifiability of fee hike effected by the school and recovery of arrear fee pursuant to order dated 11.2.2009 issued by the Director of Education. The calculations reveal that the school incurred a deficit on implementation of the recommendations of the 6th pay commission. The consideration of justification of recovery of development fee for the years 2009-10 and 2010-11 would only be of academic interest as the deficit incurred by the school is more than the aggregate amount of development fee recovered by the school in these years.

Accordingly, the Committee is of the view that no intervention is required of fee hike or recovery of arrear fee.

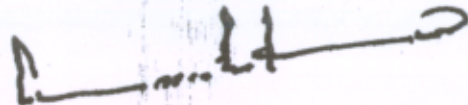
Detailed order to be passed separately.



Dr. R.K. SHARMA
MEMBER



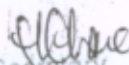
J.S.KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

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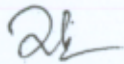
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B-402

Gitarattan Jindal Public School, Rohini, Delhi

Present: Sh.R.N.Jindal, Chairman, Sh. Kamal Gupta, Advocate & Ms. Niti Tandon, A.O. of the school.

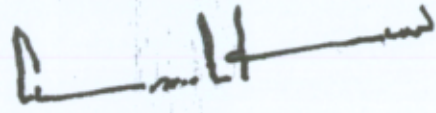
The counsel appearing for the school requests that the matter be taken up on 19.11.2018 as he needs to verify certain calculations/documents submitted by the school. The matter is accordingly adjourned for 19th November 2018 at 11.00 A.M.



Dr. R.K. SHARMA
MEMBER



J.S. HOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

St.Columba's School, Ashok Vihar, Delhi

Present: Sh.Samuel George, Accountant, Ms. Renu Rana, P.A. & Sh. J.S. Martins, C.A. of the school.

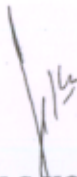
The school has filed a written submission dated 1.11.2018 signed by its principal, vide which it is stated that after considering the matter, the school has decided to voluntarily refund the excess fee charged by it amounting to Rs.2,07,96,452. It is further stated that it did not have any mala fide intention in recovering the aforesaid amount of fee pursuant to order dated 11.2.2009 of the Directorate of Education but the recovery was made due to incorrect appreciation of the contents of the circular.

The authorized representative appearing for the school submits that the process of refund will start from November but keeping in view the large number of students it will take more time to complete it.

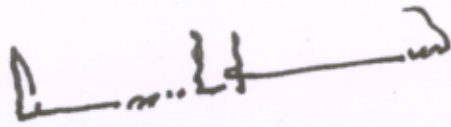
The matter is adjourned to 17 December 2018 at 11.00 A.M. when the school will furnish details of refund made alongwith the documentary evidence.



Dr. R.K. SHARMA
MEMBER



J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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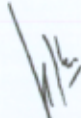
G.D.Goenka Public School, Vasant Kunj, Delhi

Present: Sh.Birender Singh, A.O., Sh.Jitendra Singh, Sr. Accountant & Sh. Kamal Gupta, Advocate of the school.

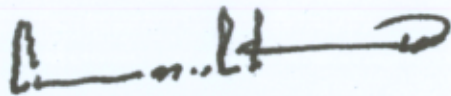
After arguing for sometime the learned counsel appearing for the school requests for another date to be given after 15th Nov. when the matter is listed before the Hon'ble Delhi High Court. As requested the matter is adjourned to 28th November 2018 at 11.00 A.M.



Dr. R.K. SHARMA
MEMBER



J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

02/11/2018

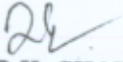
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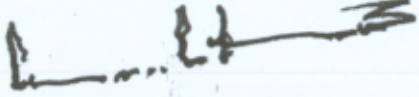
Ganga International School, Saavda Ghevra, Delhi

Present: Sh.Kamal Gupta, Advocate & Sh.Harbans Singh, Accountant of the school.

The learned counsel appearing for the school seeks some more time for filing written submissions. As requested the matter is adjourned for 28th November 2018 at 11.00 A.M.


Dr. R.K. SHARMA
MEMBER


J.S.KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

02/11/2018

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B-677

Ganga International School, Hiran Kunda, Delhi

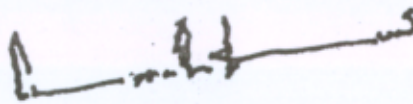
Present : Sh.Kamal Gupta, Advocate, Sh. R.K. Narang, Accounts Officer & Sh. Sunil Bhatia, Accountant of the school.

The learned counsel appearing for the school submits that in the calculation sheet showing diversion of funds for capital expenditure, the Committee has inadvertently included the figures of 2010-11, which amounts to Rs.64,16,612. He further submits that while the Committee has taken the sum of Rs.53,40,317 as diversion for capital expenditure in 2009-10, the same to the extent of Rs.45,17,419 is covered by the development fee which also has been taken into calculations while working out the amount refundable by the school. To this extent he submits that the amount has been taken twice and ought to be excluded from the amount of refund worked out by the Committee. He further submits that if these amounts are taken out from the amount which is determined to be refundable, the calculations would show that the school incurred a deficit to the extent of Rs.39,57,253 and requests that the school may be permitted to bridge this deficit by raising further fee over and above the fee which the school hiked. He further submits that although the school is not in full agreement with the calculation sheet, he is not disputing the other figures as on the face of it the calculation shows that the school incurred a deficit.

Arguments heard. Recommendations reserved.


Dr. R.K. SHARMA
MEMBER


J.S.KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

02/11/2018

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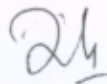
Mann Public School, Holambi Kalan, Delhi

Present: Sh. Bharat Rattan, C.A. & Sh. Brijesh Kumar Sharma,
Accountant of the school.

The school has filed written submissions dated 2.11.2018 disputing the calculation sheet prepared by the Committee. The school has also filed its own calculation sheet showing that instead of sum of Rs.4,07,77,744 which has been worked out by the Committee as surplus available with the school after implementation of the recommendations of the 6th pay commission, the school was actually in deficit to the tune of Rs.1,57,89,445. The only item disputed by the school is the funds apparently diverted for incurring capital expenditure, which the Committee had taken to be Rs.5,65,67,189.

At page 3 of the written submissions the school has stated that the hostel is a separate entity and is located on a private land which has not been allotted by Delhi Development Authority or by any other government owned agency. The tuition fee charged from the students availing of the hostel facility has already been including in the income of the school. It submits that the bulk of funds available with the school which has been considered by this Committee to be available for implementation of the recommendations of the 6th pay commission have come from the hostel, which is a separate entity and therefore ought not to have been included in the calculations. If the stand alone figures of the school were to be considered by the Committee, the calculations would show that the school incurred a deficit after implementation of the recommendations of the 6th pay commission.

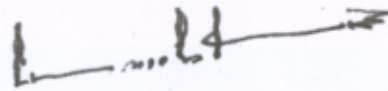
Arguments heard. Recommendations reserved.



Dr. R.K. SHARMA
MEMBER



J.S.KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

15/11/2018

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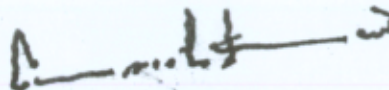
N.K. Bagrodia Public School, Rohini, Delhi

Present: Sh. Vinod Goel, Accountant of the school.

An application has been filed by the school seeking adjournment due to pre-occupation of its CA today. As requested the matter is adjourned to 27th Nov. 2018 at 11.00 A.M.


Dr. R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

15/11/2018

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B-469


St. Peter's Convent, Vikas Puri, Delhi

Present: Sh. Manmohan Sharma, C.A. & Sh. Jitendra Kumar Sharma,
Accountant of the school.

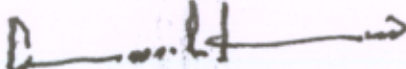
The authorised representative of the school submits that the whereabouts of Smt. Geeta Awasthi, whose pay order has been received back undelivered by the school, could not be located hence the amount could not be paid to her. He submits that if the mistake of omission of Rs. 16,23,310 pointed by the school on 7.09.2018 is corrected and the amount of arrears paid to the staff during the course of hearing are taken into consideration, small amount of Rs. 3,54,114 would be the amount refundable as per the calculation sheet prepared by the Committee.

The Committee notices that in its calculation sheet the development fee for the year 2009-10 amounting to Rs. 20,24,500 has been factored in twice. Although the school was treating it as a revenue receipt, as per the calculations made by the Committee the same has been factored in by calculating the amount utilized for incurring capital expenditure. Again it has been taken as the amount apparently refundable on account of non fulfillment of the pre conditions prescribed by the Hon'ble Supreme Court in the case of Modern school Vs. Union of India. This is an error apparent from the calculation sheet prepared by the Committee and if this is corrected the school would not be required to make any refund of fee.

Detailed order to be passed separately.


Dr. R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

B-77**Vishal Bharti Public School, Paschim Vihar, Delhi**

Present : Sh.Manu R.G.Luthra, C.A., Sh.Sunil Goel, Manager & Sh.Parveen Kumar, Asstt. Accountant of the school.


The school has filed its rebuttal to the revised calculation sheet prepared by the Committee. As per the revised calculation sheet the Committee had provisionally determined that the school would be required to make a refund of Rs.12,36,807. The school in its rebuttal has placed a number of objections which inter alia include the following :

- a. The FDRs of Rs.7,62,534 taken by the Committee as part of funds available were in fact not available with the school as they were made in the joint name of the school and the Directorate of Education/CBSE. The school has filed a copy of one such FDR of Rs.3,32,203 and submits that it is trying to locate the 2nd FDR also.
- b. The Committee has not factored in the accrued liabilities of gratuity and leave encashment in respect of the nursery school. It is submitted that the Committee had not required this information to be furnished. And as such the school did not furnish the same earlier. The school has today filed copies of the actuarial valuation certificate in respect of the estimated accrued liability of the school which amounts to Rs.4,97,925 for gratuity and Rs.1,90,605 for leave encashment as on 31.3.2010.

It is submitted that if these figures are considered, they would exceed the amount of refund provisionally determined by the Committee.

The Committee has considered the submissions made by the authorized representative of the school and also perused the documents filed by the school. It agrees the contention of the authorized representative of the school that upon consideration of these documents, the school would not be required to make any refund.

Detailed order to be passed separately.


Dr. R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

15/11/2018

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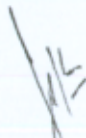
Kasturi Ram International School, Narela, Delhi

Present: Sh.Vicky Grant, Asstt. Accountant of the school.

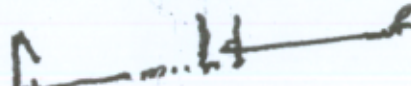
An application has been filed by the school seeking some more time for submission of record of Receipt and Payment Accounts as required by the Committee on 9.10.2018. As requested the matter is adjourned to 26.11.2018 at 11.00 A.M.



Dr. R.K. SHARMA
MEMBER



J.S.KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

15/11/2018

000152

B-427


Vandana Internatinal School, Dwarka, Delhi

Present: Sh.Manu RG Luthra, C.A., Sh.Hitesh, Accountant, Sh.Harsh, A.O. & Sh.Sanjeev Kumar, Accountant of the school.

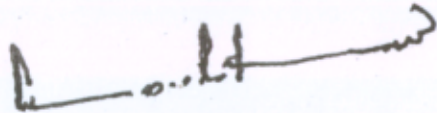
The authorized representative of the school had raised a contention on 15.10.2018 that while the Committee had considered the re payment of loans and interest thereof as diversion of fee, the Committee had not factored the contributions made by the parent society for incurring the capital expenditure.

On a review of calculation sheet the Committee finds that while the contention raised by the school was correct, the Committee had also inadvertently omitted the capital expenditure incurred on purchase of fixed assets from 2006-07 to 2009-10. Accordingly a revised calculation sheet has been prepared by the Committee which indicates that the diversion for capital expenditure was much more than what has been taken by the Committee in the original calculation sheet. When the corrected calculations are taken into account, the result would lead to the inference that the school did not require to recover any arrear of tuition fee or incremental tuition fee for implementing the recommendations of the 6th pay commission and the entire amount recovered by the school amounting to Rs.1,67,47,528 would be refundable.

A copy of the revised calculation sheet has been furnished to the authorized representative appearing for the school. The school may file its rebuttal to the calculation sheet on or before the next date of hearing. The matter is adjourned to 5th Dec.2018 at 11.00 A.M.


Dr. R.K. SHARMA
MEMBER


J.S.KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

16/11/2018

000153

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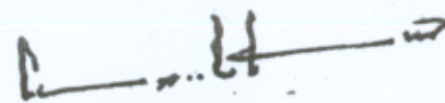
BGS International School, Dwarka, Delhi

Present: Sh.Boregowda G.D., Accountant of the school.

A copy of the calculation sheet has been given to the school as prima facie it appears that the school did not need to hike any fee for implementation of the recommendations of the 6th pay commission. The school may file its rebuttal to the calculation sheet on or before the next date of hearing. The matter will come up for further hearing on 28th November 2018 at 11.00 A.M.


Dr. R.K. SHARMA
MEMBER


J.S.KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

16/11/2018


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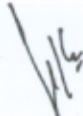
M.M. Public School, Pitampura, Delhi

Present: Sh.Puneet Batra, Advocate & Sh. S.R. Pathak, Manager of the school.

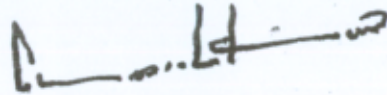
The school is directed to quantify the amount of fee recovered in excess of the fee as prescribed in order dated 11.2.2009 in respect of classes 1st to 5th for the period 1.9.2008 to 31.3.2010. The school is also required to quantify the recovery of excess arrears @ Rs.500 per student for classes 1st to 5th. The necessary details will be provided class-wise on or before the next date of hearing. The matter is adjourned to 27th Nov. 2018 at 11.00 A.M.



Dr. R.K. SHARMA
MEMBER




J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

Bharti Public School, Swasthya Vihar, Delhi

Present : Sh. Puneet Batra, Advocate & Sh. H.C. Batra, Chairman of the school.

The school has filed its rebuttal dated 16.11.2018 and the learned counsel appearing for the school has been heard. The school has disputed the calculations sheets prepared by the Committee on the following grounds :-

- a. The Committee has not taken into consideration the provisions/reserves amounting to Rs.1,58,32,501. The detail of which is at page 2 of the submissions filed by the school. These are basically funds kept in reserve by the school for development of the computer lab, purchase of transport vehicles, water cooler, water reservoir, working capital, depreciation fund and infrastructure development fund.
- b. The Committee ought not to have excluded the amount of arrears paid to the staff by way of bearer cheques or in cash as the same were paid at the specific request of the teachers. It is submitted that some of the teachers were not having bank account at the time of payment of 1st installment of arrears. By the time the 2nd installments of arrears were paid most of them had opened the bank accounts and accordingly 2nd installment to such teachers was paid by bank transfer. It is further submitted that by the time of payment of 3rd installment, almost all the teachers had opened the bank accounts and accordingly the amounts were paid by bank transfers. The learned counsel appearing for the school rely on the bank certificates filed by the school on 28.9.2016 to support his contention. He further contends that even the regular salary was paid to such teachers in similar manner at that time. Further, the school deducted TDS even from the arrears paid to the staff in cash or by bearer cheques.
- c. The Committee has not taken into consideration the accrued liability of gratuity and leave encashment as on 31.3.2010 as initially the school did not provide this information when it was called upon to do so. However the actuarial valuation certificates had been filed by the school on 6.12.2016 and as such should be factored in the calculations.
- d. With regard to development fund the learned counsel contends that although it was treated as a revenue receipt upto 31.3.2009, from 2009-10 onwards it was treated as a capital receipt and was utilized for accusation of permitted capital assets only. To the extent it remains unutilized it was reflected as part of the



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H.C. Batra
Secretary

16/11/2018

000153

development fund. The learned counsel further contends that the school has provided depreciation in the books. However, the unutilized development fund and depreciation reserve fund had not been kept in earmarked accounts but they formed part of the general FDRs which the school had. He relies upon the judgment of the Division Bench of Hon'ble Delhi High Court in LPA 291/2017 and LPA 340/2017 in the case of St. Marks Sr. Sec. Public School to contend that if the schools are maintaining a credit balance in their bank account corresponding to the amount standing to the credit of Depreciation Reserve Fund in their books of account, no prejudice would be caused to the schools if they merely transfer the said amount from the common pool account to a separate account specifically created for the said purpose. He submits that the school has already opened a separate bank account for Depreciation Reserve Fund but the balance in the said fund account has been transferred only in respect of the years 2014-15 onwards. He submits that the school is ready to transfer the remaining amount of depreciation from 1.4.2006 to 31.3.2014 from its general pool funds. He seeks sometime to do so.

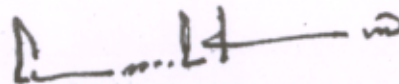
Accordingly the matter is adjourned to 14th December 2018 at 11.00 A.M.



Dr. R.K. SHARMA
MEMBER




J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

16/11/2018

000157

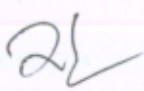
B-474

Green Fileds School, Safdarjung Enclave, Delhi

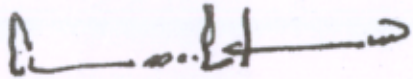
Present: Sh.Sabu Sebastian, Accountant of the school.

An application has been filed by the school seeking adjournment on account of non availability of the Manager and Auditor of the school today. The Committee observes that the only issue left for discussion was the claim of the school that although the school has not created Deprecation Reserve Fund in the years 2009-10 and 2010-11 but the same had been created in the subsequent year. Accordingly, the school was directed to produce its audited financials for the year in which the depreciation reserve fund was created. The authorized representative appearing for the school has produced the copy of the Balance Sheet as on 31.3.2016 in which the Depreciation Reserve Fund amounting to Rs.91,64,341 appears. However, the Committee notes that this amount is the depreciation charged to the revenue for the year 2015-16 alone. The Depreciation Reserve Fund for the previous years particularly 2009-10 and 2010-11 has not been created nor the amount has been earmarked in a separate bank account or FDR. As there is no other issue which requires to be discussed, the request for adjournment filed by the school is declined.

Order reserved.


Dr. R.K. SHARMA
MEMBER


J.S.KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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16/11/2018

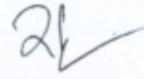
000158

B-406

Happy school, Daryha Ganj, Delhi

Present: Sh.Shreesh Sharma, Accountant & Sh.P.C. Pandey, Office In charge of the school.

The matter was adjourned for today to enable the authorized representative to get instructions from the school as to whether the refund of Rs.14,03,812 provisionally determined by the Committee would be made during the course of hearing. Today the school has filed a letter dated 16.11.2018 contending that it would like to make further submissions in the matter. Accordingly, the matter is adjourned to 27.11.2018 at 11.00 A.M.


Dr. R.K. SHARMA
MEMBER


J.S.KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

19.11.2018

000159

**BEFORE DELHI HIGH COURT COMMITTEE FOR REVIEW OF
SCHOOL FEE AT NEW DELHI**

(Formerly Justice Anil Dev Singh Committee for review of School Fee)

In the matter of

**Bharti Public School
Mayur Vihar, Delhi (B-302)**

And in the matter of

Application dated 27.08.18 for
reconsideration / review of
recommendations dated 20.03.18
in the matter of school.

Present: Sh. Mridul Batra, Admn. Officer of the school.

A request for adjournment is made by the school on account of its
counsel being not available today. As requested, the matter is adjourned
to 14/12/2018.

JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

J.S. KOCHAR
MEMBER

R.K. SHARMA
MEMBER



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Secretary

19.11.2018

000160

**BEFORE DELHI HIGH COURT COMMITTEE FOR REVIEW OF
SCHOOL FEE AT NEW DELHI**

(Formerly Justice Anil Dev Singh Committee for review of School Fee)

In the matter of

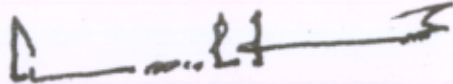
**VSPK International School
Rohini, Delhi (B-602)**

And in the matter of

**Application dated 28.01.18 for
reconsideration / review of
recommendations dated 17.04.18
in the matter of school.**

Present: Sh. Sandeep Kumar, Caretaker of the school.

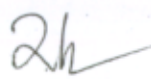
An application has been received from the school seeking adjournment on account of its CA being pre occupied. On perusal of the file, the Committee notices that the school vide letter dated 23/10/2018 had merely stated that it had decided to file a review application before the Committee on technical grounds. However, till date, no review application has been filed by the school. As such, there is no question of granting any adjournment for hearing on the review application. The matter is accordingly closed.



**JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON**



**J.S. KOCHAR
MEMBER**



**R.K. SHARMA
MEMBER**



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Secretary

19.11.2018

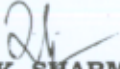
00 0161

B-120

The Heritage School, Vasant Kunj, Delhi

Present: Sh. Kamal Gupta, Advocate, Sh. Parveen Kumar Jain, Chartered Accountant and Sh. Ajay Gupta, Chartered Accountant of the school.

The Ld. Counsel appearing the school had made some submissions regarding the differences in calculation sheet which the school precedes, are prejudicial to it. However, after arguing for some time, he submits that he requires to have a fresh look at calculations he submitted and seeks some time. Accordingly, the matter is adjourned to 05/12/2018.


Dr. R.K. SHARMA
MEMBER


J.S.KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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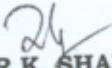
19.11.2018

000162
B-60

The Heritage School, Rohini, Delhi

Present: Ms. Namitha Mathews, Advocate and Sh. Pulkit Malhotra,
Advocate of the school.

The Ld counsel appearing for the school submits that the matter for stay on proceeding of this Committee was listed on 15/11/2018 before the Division Bench of the High Court but the hearing has been postponed to 20/11/2018. Accordingly she seeks an adjournment after 20/11/2018. As requested, the matter is adjourned to 12/12/2018.

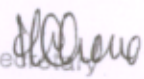

Dr. R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary


19.11.2018

000163

B-176

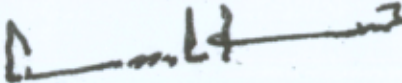
Vivekanand School, D-Block, Vivek Vihar, Delhi

Present: Sh. Manu RG Luthra, Chartered Accountant and Sh. Pradyumn Ahuja, Chairman of the School.

The calculation sheet requires reconsideration. Accordingly, the matter is adjourned to 05/12/2018.


Dr. R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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19.11.2018

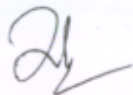
000164

B-402

Gitarattan Jindal Public School, Rohini, Delhi

Present : Sh. Kamal Gupta, Advocate, Sh. R.N.Jindal, Chairman, Ms. Niti Tandon, A.O. of the school.

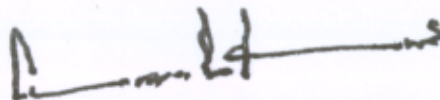
The Ld Counsel appearing for the school seeks to dispute the calculations sheet prepared by the Committee by referring to the Receipt and Payment accounts of the junior school for the years 2008-09 and 2009-10 and also Receipt and Payment Account of the senior school from 2006-07. However these documents are not on record of the committee. In the past also, the school has filed various documents in a very disjointed manner. It would be preferable that all the audited financials for the five years i.e. 2006-07 to 2010-11 be filed in one folder. The counsel for the school submits that the same may be done within two days. Let them be filed on 22/11/2018. Further hearing will be taken on 05/12/2018.



Dr. R.K. SHARMA
MEMBER



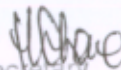
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MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

26/11/2018

B-564


Columbia Foundation School, Vikas Puri, Delhi

000165

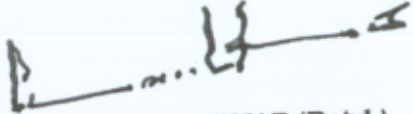
Present: Sh. N.K. Mahajan, Chartered Accountant and Sh. Anuj Mahajan, CA Associate, Sh. Pradeep Singh, Head Clerk of the school.

The school has filed written submissions dated 26/11/2018 giving justification for its claim that the amount of Rs. 1.09 Crores that is payable to DDA for allotment of 0.5 acres of adjoining plot ought to be kept in reserve and to that extent the funds available with the school ought not be considered as available for implementation of the recommendations of VI Pay Commission. The learned authorized representative appearing for the school has also been heard on the issue.

Recommendations reserved.



Dr. R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

B-335**Bhai Parmanand Vidya Mandir, Surya Niketan, Delhi**

Present: Sh. Nitin Goyal, Chartered Accountant, Sh. Rahul Jain, Chartered Accountant and Sh. Braj Bhushan, Accountant of the school.

The authorized representatives appearing for the school have been partly heard. They submit that Sh. Mohinder Singh Advocate, who was to appear before the Committee, will not now be appearing and the matter may be concluded after the hearing them. It is firstly submitted that the consideration of issue of development fee for the year 2009-10 and 2010-11 does not strictly fall in the domain of this Committee if one were to go through the mandate given by the Hon'ble Delhi High Court in WP(C) 7777 of 2009. Alternatively it is submitted that the Committee ought to have considered only the incremental development fee for the year 2009-10 and not full amount of development fee. It is also submitted that the school had already utilized the development fee recovered by it in the years 2006-07 to 2009-10 for permitted purposes. Only in the year 2010-11, the utilization fell short of the collection. It is further submitted that the development fee is treated as a capital receipt in the books and depreciation reserve is also created in the books. However, it is conceded that the school was not maintaining any earmarked depreciation reserve fund and even the amount of non earmarked FDRs were not equivalent to the accumulated amount in the depreciation reserve as per the books of the accounts.

The next submission of the authorized representative is with regard to the amount of capital expenditure in the shape of repayment of secured loans and cost of fixed assets created by the school out of School Fund i.e. over and above the development fund. It is submitted that the school could legitimately incur capital expenditure out of its savings, determined as per rule 177 of the Delhi School Education Rules, 1973. However, the school has not furnished any calculation of their savings in the manner prescribed under Rule 177. It is submitted that if the capital expenditure amounting to Rs. 1,72,26,911, which the Committee has determined to have been incurred out of School Fund is excluded from the relevant calculations, the school would not be liable to refund any fee as the provisional determination of the Committee shows the total amount apparently refundable to be Rs. 1.45 crores.

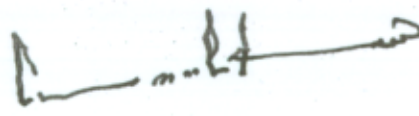
In order to examine the validity of this argument, the Committee tried to examine the budgets of the school on the basis of which the fee is calculated by the school. However, it finds that apparently the school was not filing copies of the budgets as part of its annual returns prescribed under Rule 180 of the Delhi School Education Rules. The authorized representatives undertake to furnish copies of the budgets for the years 2006-07 to 2010-11 within a couple of days. The school will furnish the same within one week and the matter will come up for further hearing on 06/12/2018.



Dr. R.K. SHARMA
MEMBER



J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

Mother Teresa Public School, Preet Vihar, Delhi

Present : Sh. Manu RG Luthra, Chartered Accountant with Sh. Ashok K. Jethy, Chairman, Ms. Neeta Jethy, Manager, Sh. S.N. Dixit, Advisor Admn., Sh. Rahul Kaushal, Asstt of the school.

The school has filed written submissions in rebuttal of the calculation sheet prepared by the Committee and has also filed its own calculation sheet. It is submitted that the deficit after implementation of the recommendations of VI Pay Commission was actually Rs. 1,41,55,495 instead of Rs. 1,23,73,242, as provisionally determined by the Committee. The difference of Rs. 17,82,253 is claimed to be arising on account of the following factors.

- (a) The FDRs held by the school as on 31/03/2008 ought to have been taken as Rs. 51,78,522 instead of Rs. 53,45,955 taken by the Committee as FDR for sum of Rs. 1,67,433 was held in the joint name of the school and CBSE. (The Committee observed that the value of this FDR was Rs. 1,34,967 and not Rs. 1,67,433 as claimed by the school.)
- (b) The calculation regarding accrued liability of gratuity, as submitted by the school earlier was erroneous for the reason that the maximum gratuity was kept at Rs. 3.50 lacs while the upper limit of gratuity payable had been revised to Rs. 10.00 lacs on coming into force of Office Memorandum dated 2nd Sept. 2008 issued by the Ministry of Personal Public Grievances and Pension, Govt. of India vide which the maximum limit for the enhancement to Rs. 10.00 lacs w.e.f. 01/01/2006. Secondly, the calculations were made in accordance with the provisions of CCS Pension Rules 1972 as per which the gratuity was to be calculated by applying a factor of 15/30 to the monthly salary but the Department of Education by an order issued in 2013 stipulated that the provision of payment of gratuity act would be applicable to all the unaided recognized schools and as per this the gratuity is required to be calculated by applying a factor of 15/26. (However, the school has not produced a copy of the order issued in 2013 by the DOE.) The difference on account of the increased liability of gratuity now claimed is Rs. 14,14,766.
- (c) A sum of Rs. 2,00,054 was paid towards arrears of VI Pay Commission to Ms. Anju Saxena in 2012, which had not been included in the details of arrear paid which was submitted by the school earlier.

The authorized representative appearing for the school submits that he will produce the order issued by the Directorate of Education in



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Secretary

26/11/2018

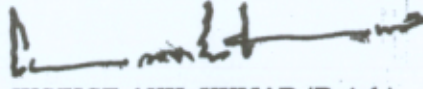
000168

2013 regarding gratuity in a couple of days. The same may be furnished within 7 days.

Recommendations reserved.

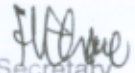

Dr. R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

26/11/2018

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B-290

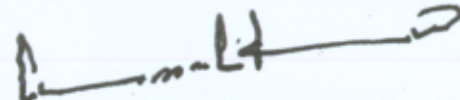
Kasturi Ram International School, Narela, Delhi

Present: Sh. Vicky Grant, Jr. Accountant of the school.

The authorized representative appearing for the school seeks to file Receipt and Payment Accounts of the school for the years 2006-07 to 2010-11 which are ex facie incorrect as they show huge receipt of funds from sundry creditors, which is illogical. The school is given the last opportunity to file correct Receipt and Payment Accounts showing the sources of receipt of money and the heads under which the payments have been made/expenditure incurred. Matter will come up for hearing on 06/12/2018.



Dr. R.K. SHARMA
MEMBER


J.S.KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

27/11/2018B-146Vishwa Bharti Public School, Dwarka, Delhi

Present: Sh.K.K. Kundan, Accountant of the school.

The school has not furnished the audited financials for the period 2016-17 or the copies of FDRs earmarked in that year against Development Reserve Fund reportedly created by it.

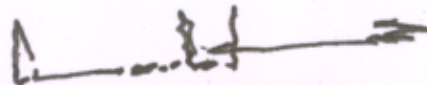
However, the contentions raised by the school on 05.10.2018 to the extent they affected the Calculations made by the Committee earlier have been taken on board and as a result of which the provisional refund which the Committee had determined earlier to be Rs.99,38,997 stands reduced to Rs.55,56,234. Copy of the Revised Calculation Sheet has been furnished to the authorized representative of the School for verification and comments. The matter will come up for further hearing on 12th Dec. 2018.



Dr. R.K. SHARMA
MEMBER



J.S.KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

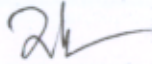
27/11/2018

B-286

Mount Abu Public School, Sec.-05, Rohini, Delhi

Present: Sh.Puneet Batra, Advocate of the school.

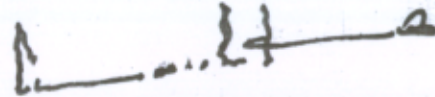
The learned counsel appearing for the school requests for adjournment on the ground of non availability of the manager of the school today. Accordingly the matter is adjourned for 13th December 2018 at 11.00 A.M.



Dr. R.K. SHARMA
MEMBER



J.S.KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

27/11/2018B-309N.K. Bagrodia Public School, Sec.09, Rohini, Delhi

Present : Sh.S.K. Gulati, C.A. of the school.

The authorized representative appearing for the school has filed a letter dated 27.11.2018 stating that the arrears received by the school on account of development fee amounting to Rs.13,66,680 were utilized for payment of salary arrears to staff in the year 2010-11. A copy of the ledger account of development fee arrear and salary arrears has also been filed. The authorized representative has also filed a copy of salaries account for the year 2010-11 as per which a total sum of Rs.31,00,752 has been paid as salary to a few persons who were referred to as activity staff by the authorized representative. The arrears of development fee have been utilized for payment to such staff and to the regular staff. Further, these payments are in respect of the regular salary paid to the so called activity staff and have nothing to do with the payment arising on account of implementation of 6th pay commission. The Committee also observes that a sum of Rs.17,17,832 has also been utilized from the development fund account for payment to these persons. Obviously the development fund at least to this extent has not been utilized for the permitted purposes that is purchase or up gradation of furniture and fixtures or equipments.

The Committee also observes that in reply to the questionnaire regarding development fee, the school has merely mentioned the amounts of year wise utilization of development fund without mentioning the manner of utilization. The school will furnish a statement regarding utilization of development fund for the years 2006-07 to 2010-11 indicating the nature of expenditure incurred out of development fund. The matter is adjourned to 12th December 2018 at 11.00 A.M. for the this purpose.


Dr. R.K. SHARMA
 MEMBER


J.S.KOCHAR
 MEMBER


JUSTICE ANIL KUMAR (Retd.)
 CHAIRPERSON

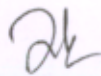

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 Secretary

27/11/2018B-296M.M. Public School, Pitampura, Delhi

Present: Sh.Puneet Batra, Advocate and Ms. Kavita Garg, LDC of the school.

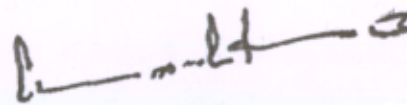
The school has filed a detail of excess collection of arrear fee as well as regular fee for the period 1.9.2008 to 31.3.2010 from the students of class 1 to class 5. The total amount that the school admitted to have recovered in excess of what was permitted by order dated 11.2.2009 of the Director of Education amounts to Rs.2,99,150. After taking direction from the manager of the school, the learned counsel appearing for the school submits that the school will refund such excess collection of fee on its own and the needful would be done within 2 weeks. The matter is accordingly adjourned to 13.12.2018 at 11.00 A.M. when the school will produce the detail and evidence of refund of the fee to the concerned students.



Dr. R.K. SHARMA
MEMBER




J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

27/11/2018B-406Happy School, Daryaganj, Delhi

Present: Sh.P.C. Pandey, Office In charge & Sh.Shreesh Sharma, Accountant of the school.

The school has filed a letter dated 27.11.2018 contending that the development fee amounting to Rs.14,03,812 which the Committee provisionally determined to be refundable after setting off the notional deficit incurred by the school, cannot be refunded as it was not collected as refundable fee from the students.

The Committee considers that since the school was admittedly treating development fee as revenue receipt and utilising it also for routine revenue expanses like sanitation and cleaning, building maintenance, furniture maintenance, garden maintenance, electric maintenance and other equipment maintenance and generator maintenance, it was neither fulfilling the pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School, for collection of development fee nor the purpose of which development fee is allowed to be collected by the school that is purchase and up gradation of furniture, fixtures and equipments. The development fee is required to be treated as a capital receipt for the aforesaid purposes and further the development fee can be charged provided the school is maintaining depreciation reserve fund in respect of depreciation charged on assets acquired out of development fee. Since no assets were admittedly acquired out of development fee there is no question of maintaining depreciation reserve fund of the school.

Accordingly, the Committee is of the view that the school was not fulfilling any of the pre conditions laid down by the Hon'ble Supreme Court for charging development fee and in normal course we would have recommended the refund of entire amount of development fee recovered by the school in 2009-10 and 2010-11 which amounts to Rs. 39,75,000. However, since the Committee has determined that the school incurred a deficit of Rs.25,71,188 albeit notionally as the aforesaid deficit has been worked out after allowing the school to retain a sum of Rs.1,02,85,332 as reserve for future contingencies, the Committee is not recommending the refund of the entire amount of development fee but only the remaining amount of Rs.14,03,812 after setting off the aforesaid deficit.

The Committee is of the view that the school ought to refund a sum of Rs.14,03,812 recovered as development fee without fulfilling the pre conditions laid down by the Hon'ble Supreme Court. The aforesaid



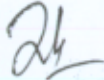
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Secretary

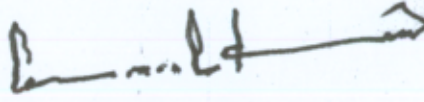
27/11/2018

amount of refund ought to be refunded alongwith the interest of @9% per annum from the date of collection to the date of refund.

Detailed order to be passed separately


Dr. R.K. SHARMA
MEMBER


J.S.KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERS



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Secretary

28/11/2018

000176

**BEFORE DELHI HIGH COURT COMMITTEE FOR REVIEW OF
SCHOOL FEE AT NEW DELHI**

(Formerly Justice Anil Dev Singh Committee for review of School Fee)

In the matter of

Sant Niranakari Public School

Nirankari Colony, New Delhi(B-541)

And in the matter of

**Application dated 20/8/2018 for
reconsideration / review of
recommendations dated 21.03.2018
in the matter of school.**

Present: Ms. Madhu Manocha, Accountant of the school


A number of opportunities have been given to the school to make submissions on the review application.

Today also adjournment is prayed on the ground that the Department of Education has been approached by the school for the calculation. This is not a sufficient ground to adjourn the matter.

The order of the review application is therefore, reserved.


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON


J.S. KOCHAR
MEMBER


R.K. SHARMA
MEMBER



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28/11/2018

B-414

Jindal Public School, Dashrathpuri, Delhi

Present: Mrs. Banne Singh, UDC & Sh.Sansar Katoch, Accountant of the school.

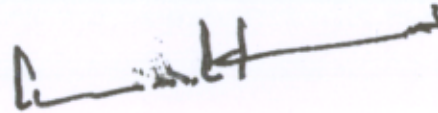
Copy of the revised calculation sheet has been given to the authorized representative appearing for the school. The matter is fixed for further hearing on 13th December 2018 at 11.00 A.M. The school may file its rebuttal to the calculation sheet on or before that date.



Dr. R.K. SHARMA
MEMBER



J.S.KOCHAR
MEMBER

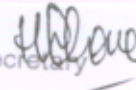


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary



28/11/2018B-151G.D.Goenka Public School, Vasant Kunj, Delhi

Present : Sh. Birendar Singh, A.O., Sh. Jitendra Singh, Sr. Accountant,
Sh. Kamal Gupta, Advocate & Sh. Satish C.A. of the school.

Arguments have been partly heard on the issue of funds applied for capital expenditure which the Committee has considered to be part of funds available with the school. Learned counsel has relied upon the judgments of the Hon'ble Supreme Court in the case of Modern School and the judgment of the Hon'ble Delhi High Court in the case of Delhi Abhibhavak Mahasangh (DAM -II) He submits that Rule 177 permits the surplus remaining with the school after payment of salaries and other over heads from the fee revenues for incurring capital expenditure and as such the amount applied for capital expenditure out of revenue of the school ought not be considered as funds available with the school.

The other item disputed by the school is the sum of Rs.4,48,11,739 which appears as a loan to the parent society of the school in the balance sheet as on 31.3.2008. The learned counsel submits that he needs to go into the detail as to how the loan arose in the first place and for that he seeks sometime.

The learned counsel also disputes the reserve for future contingences which the committee has taken to the equivalent of the four month salary for 2009-10 at Rs.2,24,24,971. He submits that the correct amount would be Rs.2,79,31,923. The Committee has verified it from the calculation sheet and agrees with the submissions of Learned Counsel.

The learned counsel also submits that a liability of Rs.6,76,229 towards bonus for the year 2007-08 was not provided in the balance sheet and that ought to be taken into account while working out the funds available with the school. He submits that the detail of unprovided liability was furnished to the committee vide submissions dated 15.01.2016 (Annexure-III A). The Committee observes that the school has not filed the complete schedule of notes of accounts for this year. The learned counsel submits that needful will be done within a couple of days.

With regard to development fee for the year 2009-10 learned counsel submits that since the amount utilized for capital expenditure upto 2009-10 has already been included in the figure of funds available with the school, the development fee charged for the year 2009-10 amounting to Rs.1,14,47,125 would be covered by that. He submits that this argument is in the alternative and may be

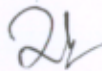
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Secretary

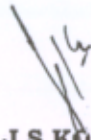
28/11/2018

considered by the committee if it arise at a conclusion that the capital expenditure was not covered by the surplus available with the school calculated in the manner specified in Rule 177. With regard to development fee for the year 2010-11 he submits that the same was permissible to be charged de hors the circular dated 11.2.2009 issued by the Director of Education and as such was not being charged in pursuance of the circular.

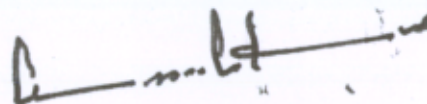
At the request of the learned counsel the matter is adjourned for further hearing on 14th December 2018 at 11.00 A.M. In the meantime the learned counsel will file reasons in writing in support of his arguments and also furnish a soft copy thereof to the Committee.



Dr. R.K. SHARMA
MEMBER



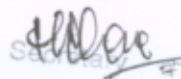
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MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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28/11/2018

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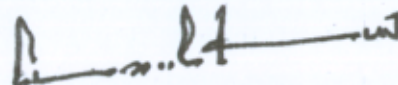
Ganga International School, Savda Ghevra, Delhi

Present: Sh.Kamal Gupta, Advocate & Sh. Harbans Singh, Accountant of the school.

At the request of the counsel appearing for the school, the matter is adjourned for 14th December 2018 at 11.00 A.M.


Dr. R.K. SHARMA
MEMBER


J.S.KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERS



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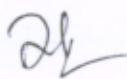
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B-389

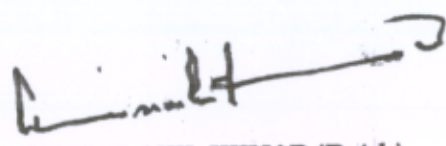
BGS International School, Dwarka, Delhi

Present: Sh. Boregowda GD, Accountant of the school.

An application has been received from the school seeking more time to file its rebuttal to the calculation sheet. As requested the matter is adjourned to 14th December 2018 at 11.00 A.M.


Dr. R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERS



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