

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

No. F.DE.15 (1072) / PSB / 2022 / 10042-10046

Dated: 16/12/22

ORDER

WHEREAS, **Bal Bhavan Public School (School ID-1002277), Pocket-B, Mayur Vihar, Phase-II, New Delhi-110091**, (hereinafter referred to as “**the School**”), run by the Lagan Kala Upvan Regd, Society (hereinafter referred to as “**Society**”), is a private unaided school recognized by the Directorate of Education, Govt. of NCT of Delhi (hereinafter referred to as “**DoE**”), under the provisions of Delhi School Education Act & Rules, 1973 (hereinafter referred to as “**DSEAR, 1973**”). The School is statutorily bound to comply with the provisions of the DSEAR, 1973 and RTE Act, 2009, as well as the directions/guidelines issued by the DoE from time to time.

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

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

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

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

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

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

AND WHEREAS, besides the above, the Director (Education) is also required to examine and evaluate the fee hike proposal submitted by the private unaided recognized schools which have been allotted land by

the DDA/ other land-owning agencies with the condition in their allotment to seek prior approval from Director (Education) before any increase in fee.

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

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

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

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

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

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

AND WHEREAS, accordingly, the DoE vide Order No. F.DE.-15(614)/PSB/2019/3228-33 dated 14.12.2019, directed all the private unaided recognized schools, running on the land allotted by DDA/other land-owning agencies at concessional rates or otherwise, with the condition to seek prior approval of DoE for increase in fee, to submit their proposals, if any, for prior sanction, for increase in fee for the academic session 2022-23.

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

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

B

AND WHEREAS, in the process of examination of the fee hike proposal filed by the aforesaid school, necessary records and explanations were also called from the school through email. Further, the school was also provided an opportunity of being heard on 12.09.2022 to present its justifications/ clarifications on the fee increase proposal and full statement of fees filed under section 17(3) of the DSEA, 1973. Based on the discussion, the school was further asked to submit necessary documents and clarification on various issues noted during personal hearing with the school. During that hearing, the compliance of Order No. F.DE.-15(200)/PSB/2021/3491-3495 dated 10.09.2021 issued for academic session 2019-20 were also discussed and the school's submissions were taken on record.

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

A. Financial Suggestions for Improvement:

1. Para 57 of Accounting Standard 15 (AS-15) 'Employee Benefits' issued by the Institute of Chartered Accountants of India states that *"An enterprise should determine the present value of defined benefit obligations and the fair value of any plan assets with sufficient regularity that the amounts recognized in the financial statements do not differ materially from the amounts that would be determined at the balance sheet date."* Further, Para 7.14 defines the Plan Assets as:
 - (a) *Assets held by a long-term employee benefit fund; and*
 - (b) *Qualifying insurance policies.*

Further, Para 60 of Guidance Note-21 'Accounting by Schools' (2005) issued by the Institute of Chartered Accountants of India states *"A defined benefit scheme is a scheme under which amounts to be paid as retirement benefits are determined usually by reference to employee's earnings and/or years of service"*.

An appropriate charge to the income and expenditure account for a year should be made through a provision for accruing liability. The accruing liability should be calculated according to actuarial valuation. However, if the school employs few employees say less than 50, it may calculate accrued liability by reference to any other rational method. The ensuing amount of provision for liability should then be invested in *"Plan Assets"* as per AS-15 issued by ICAI.

A review of the audited financial statements of FY 2021- 22 revealed that the school recorded total liability of INR 3,41,53,833 towards gratuity and INR 2,66,17,082 towards leave encashment as on 31.03.2022 in accordance with actuarial valuation report.

The Directorate while passing fee hike order for academic session 2019-20, directed the school to make investment in plan assets equivalent to the provision for gratuity and leave encashment in order to protect statutory payment of the staff. However, the school in its representation letter submitted that:

- *"the school is not engaged in any commercial, industrial or business activities and thus, is classified as a level IV entity.*
 - *Proviso to para 116 of the accounting standard 15 states.....accordingly, in the light of the above amendments made by ICAI with effect from FY 2020-21, there is no*

P

requirement for level IV entities to obtain actuarial valuation in respect of its liability towards gratuity and leave encashment”.

- *“Additionally, we quote para 42 of the accounting standard 15.....therefore, it is not mandatory for any enterprises to contribute premiums towards a qualifying insurance policy and the same is optional”*

From the above reply, the school has made its intention not to invest amount in plan assets. The school need to understand that gratuity and leave encashment are a statutory obligation that an employer is required to pay to its eligible employees upon their retirement or resignation. Further, Para 7.13 and Para 57 of the accounting standard-15 (employee benefits) clearly states that the school should determine the present value of defined benefit obligations and the fair value of any plan assets with sufficient regularity that the amounts recognized in the financial statements do not differ materially from the amounts that would be determined at the balance sheet date and the school should invest an equivalent amount in Plan assets as defined in AS-15. Further, Rule 177 (2) provides the manner in which ‘Saving’ under Rule 177(1) is determined and in order to determine the above ‘Saving’ the school needs to deduct retirement benefit admissible to the staff at first instances. Accordingly, the school is required to maintain funds equivalent to its present liability year on year basis. In order to make timely payment of retirement benefits, the school is required cash/ bank/ investment. It is also important to mention here that the school is a non-profit-organization and required to maintain its books of accounts in accordance with Generally Accepted Accounting Principles (GAAP) as suggested by the Hon’ble Supreme Court in the matter of Modern School. Further, Duggal Committee report has specified about types of fees that a private unaided recognized school can collected from the parents/ students along with the utilization of the same. Accordingly, if the school is not earmarking separate funds towards retirement benefits, it would be difficult for the school to honor payment of retirement benefits to the staff on time. Therefore, the plea taken by the school for unfunded retirement benefit is not acceptable.

During the persona hearing, this was discussed with the school, the school explained that it has FDRs, of INR 1,30,12,097 as on 31.03.20222 which can be utilized for payment of the gratuity and leave encashment as and when it occurs to the school. The school further, explained that in August 2022, it has invested INR 1,00,00,000 with LIC and submitted the payment receipts thereof. Since, investment with LIC qualifies as plan assets. Therefore, the amount invested by the school with LIC has been considered while deriving the fund position of the school with the direction to the school to invest the remaining amount in plan assets within 30 days from the date of issue of this order.

2. Clause 7.24 of Duggal Committee report states *“school should be prohibited from discharging any of the functions, which rightly fall in the domain of the society out of the fees and other charges collected from the students; or where the parents are made to bear, even in part, the financial burden for the creation of facilities including building, on a land which had been given to the society at concessional rates for carrying out a philanthropic activity. One only wonders what is then the contribution of the society that professes to run the school”.*

Further, Clause No. 2 of the Public Notice dated 04.05.1997 sates *“it is the responsibility of the society who has established the school to raise such funds from their own sources or donations from the other*

associations because the immovable property of the school becomes the sole property of the society". Also, Clause (vii) (c) of Order No. F.DE/15/Act/2K/243/KKK/ 883-1982 dated 10.02.02005 issued by this Directorate states "Capital expenditure cannot constitute a component of the financial fee structure."

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

Further, the aforesaid savings shall be arrived at after providing for the following, namely:

- a) Pension, gratuity and other specified retirement and other benefits admissible to the employees of the school.
- b) The needed expansion of the school or any expenditure of a developmental nature.
- c) The expansion of the school building or for the expansion or construction of any building or establishment of hostel or expansion of hostel accommodation.
- d) Co-curricular activities of the students.
- e) Reasonable reserve fund, not being less than ten percent, of such savings.

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

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



The DoE in its Order No. F.DE.-15(200)/PSB/2021/3491-3495 dated 10.09.2021 issued for academic session 2019-20 and Order No. F.DE.-15(632)/PSB/2018/30532-30536 dated 14.12.2018 issued for academic session 2017-18, noted that the school had utilized school funds of INR 3,15,14,655 i.e., (INR 1,36,74,926 in FY 2014-15, INR 1,50,34,339 in FY 2015-16, INR 25,73,126 in FY 2016-17 and INR 2,32,264 in FY 2017-18) for addition to the school building, lift and playground. In the aforesaid order it was also noted that the above expenditure was incurred by the school without complying with the above-mentioned provisions including Rule 177 of DSER, 1973. Accordingly, the school was directed to recover INR 3,15,14,655 from the society which is still pending for recovery.

It was also noted in the DoE Order No. F.DE.-15(200)/PSB/2021/3491-3495 dated 10.09.2021 issued to the school post evaluation of fee hike proposal for academic session 2019-20, that school had utilised school funds for procurement of various capital items such as computer & software, furniture and fixture, electrical equipment's, musical instruments, etc. for INR 1,21,51,239 i.e., (INR 59,04,157 in FY 2017-18 and INR 62,47,082 in FY 2018-19) without complying with the requirements of Rule 177 of DSER'1973 i.e., without deriving savings.

With respect the above finding the school submitted in its representation letter that *Rule 177 categorically permits capital expenditure to be incurred for development, expansion and construction of the school, out of fee received by the school. This is not to be incurred out of savings, but savings are to be arrived at after incurring such capital expenditure*".

The contention of the school is incorrect, as per Clause 2 of Public Notice dated 04.05.1997 and pronouncement of the Hon'ble High Court of Delhi in its judgement dated 30.10.1998 and Clause (vii) (c) of DoE Order No. F.DE/15/Act/2K/243/KKK/ 883-1982 dated 10.02. 2005 and Rule 177 of DSER, 1973, cost relating to construction of school building should be borne by the society and school funds should not be used for same. Moreover, based on the information provided by the school, it was noted the school has been utilizing school funds for creation of assets of the society without complying with the above-mentioned provisions.

Accordingly, the total expenditures of of INR 4,36,65,894 i.e., (INR 3,15,14,655 plus INR 1,21,51,239) incurred by the school in contravention of above-mentioned provisions has been considered as funds available with the school while deriving the fund position of the school with the direction to the school to recover the same within 30 days from the date of issue of this order. Non-compliance with the above direction shall be viewed seriously in accordance with the provision of Section 24(4) of the DSEA, 1973 while evaluating the fee hike proposal for the subsequent academic session.

3. Clause 7.24 of Duggal Committee report states *"school should be prohibited from discharging any of the functions, which rightly fall in the domain of the society out of the fees and other charges collected from the students; or where the parents are made to bear, even in part, the financial burden for the creation of facilities including building, on a land which had been given to the society at concessional rates for carrying out a philanthropic activity. One only wonders what is then the contribution of the society that professes to run the school"*.

Further, Clause No. 2 of the Public Notice dated 04.05.1997 sates *"it is the responsibility of the society who*

has established the school to raise such funds from their own sources or donations from the other associations because the immovable property of the school becomes the sole property of the society". Also, Clause (vii) (c) of Order No. F.DE/15/Act/2K/243/KKK/ 883-1982 dated 10.02.02005 issued by this Directorate states "Capital expenditure cannot constitute a component of the financial fee structure."

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

Further, the aforesaid savings shall be arrived at after providing for the following, namely:

- f) Pension, gratuity and other specified retirement and other benefits admissible to the employees of the school.
- g) The needed expansion of the school or any expenditure of a developmental nature.
- h) The expansion of the school building or for the expansion or construction of any building or establishment of hostel or expansion of hostel accommodation.
- i) Co-curricular activities of the students.
- j) Reasonable reserve fund, not being less than ten percent, of such savings.

Therefore, based on the above-mentioned provisions, the cost relating to land and construction of the school building should be borne by the society running the school and school funds, i.e., fees collected from the students should not be used for the purchase of land and construction of the school building.

The DoE Order No. F.DE.-15(200)/PSB/2021/3491-3495 dated 10.09.2021 issued to the school post evaluation of fee hike proposal for academic session 2019-20 and DoE Order No. F.DE.-15(632)/PSB/2018/30532-30536 dated 14.12.2018 issued to the school post evaluation of fee hike proposal for academic session 2017-18, it was noted that the school reported excessive repair and maintenance building expenditure of INR 7,48,39,658 during FY 2014-15 to FY 2018-19. From ledger account submitted by the school, it was noted that the school incurred the above expenditure on various items like purchase of Cement Sand, PVC Pipes, Tiles, TMT Bars, etc. in bulk quantities, which were not in the nature of repair, rather indicates towards expenditure of development nature on building. Even above expenditure was incurred without complying with the provisions of Rule 177 of DSER, 1973. Given the fact that the school has neither implemented the recommendation of the 7th CPC nor invested an amount equivalent to its liability of retirement benefits in plan assets.

The school submitted in its representation that "the school has diligently classified expenses as capital expenditure and revenue expense based on the actual nature of expense i.e., where development of building is done, it is recognized as fixed assets and where expense were incurred on upkeep of the building, the same has been recognized as revenue expense. Thus, the question remains whether the revenue expenses

recoded were in nature of development of building. The answer is a clear NO as no additional classrooms were constructed nor any additional structure was constructed”

The plea taken by the school is not correct because Para 7 of AS-10 (Property, Plant and Equipment) states:

- *The cost of an item of property and plant and equipment should be recognised as an asset if, and only if:*
 - *It is probable that future economic benefits associated with the item will flow to the enterprises; and*
 - *The cost of the item can be measured reliably.*

Accordingly, if any expenditure which increases the economic life of the assets with the probable future economic benefits, the same should be capitalized. However, from the information submitted by the school, it was noted that the school had made bulk purchased of Cement Sand, PVC Pipes, Tiles, TMT Bars etc. which clearly indicates that the above expenditure was related to construction of school building instead repair and maintenance. The school in order to save itself from disallowance from the department had intentionally reported the same under repair and maintenance of school building. Therefore, the above plea of the school that it was not related to the construction of school building is not correct and legally not sustainable.

Apart from the above, the school has incurred INR 1,03,94,971 in FY 2019-20, INR 18,62,822 in FY 2020-21 and INR 29,46,928 in FY 2021-22 on repair maintenance building. During the personal hearing, nature of these expenditures was discussed with the school and school was asked to submit the ledger account along with the supporting documents. Based on the documents submitted by the school, total expenditure of repair and maintenance in FY 2019-20 was INR 72,18,834 against the reported amount of INR 1,03,94,971 in the audited financial statements and for the reaming amount of INR 31,76,137 the school did not submit any information. Therefore, the school has reported excess of INR 31,76,137 in its audited financial statements. Accordingly, the financial statements prepared and presented by the school do not correspond with the books of accounts maintained by the school.

In view of the above, excess expenditure of INR 31,76,137 reported by the school in its audited financial statements has been considered unauthorized with an intention to manipulate books of accounts and increase deficits in the Income and Expenditure accounts.

Accordingly, the total expenditure of INR 7,80,15,795 i.e., (INR 7,48,39,658 plus INR 31,76,137) incurred by the school without complying with above-mentioned provisions has been considered as funds available with the school while deriving the fund position with the direction to the school to recover the same from the society within 30 days from the date of issue of this order. Non-compliance with the above direction shall be viewed seriously in accordance with the provision of Section 24(4) of the DSEA, 1973 while evaluating the fee hike proposal for the subsequent academic session.

4. As per Clause (vii) (c) of Order No. F.DE/15/Act/2K/243/KKK/ 883-1982 dated 10.02.02005 issued by this Directorate states “*Capital expenditure cannot constitute a component of the financial fee structure.*”



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

Further, the aforesaid savings shall be arrived at after providing for the following, namely:

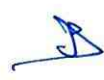
- A. Pension, gratuity and other specified retirement and other benefits admissible to the employees of the school.
- B. The needed expansion of the school or any expenditure of a developmental nature.
- C. The expansion of the school building or for the expansion or construction of any building or establishment of hostel or expansion of hostel accommodation.
- D. Co-curricular activities of the students.
- E. Reasonable reserve fund, not being less than ten percent, of such savings.

The DoE in the Order No. F.DE.-15(200)/PSB/2021/3491-3495 dated 10.09.2021 issued to the school post evaluation of fee hike proposal for academic session 2019-20 and in Order No. F.DE.-15(632)/PSB/2018/30532-30536 dated 14.12.2018 issued to the school post evaluation of fee hike proposal for academic session 2017-18, noted that the school had purchased a luxury car for INR 39,54,559 without complying with above mentioned provisions. Accordingly, the school was directed to recover the same from the society which the school has recovered in FY 2021-22 and reported the same in the audited financial statements of FY 2021-22.

In addition to the above, from review of the audited financial statement for FY 2019-20, it has been noted that the school has incurred additional expenditure of INR 19,60,008 for purchase of vehicle out of school funds and without complying with the above-mentioned provisions and Rule 177 of DSER, 1973 given the fact that the school has yet to implement the recommendation of 7th CPC and invest an amount in plan assets for payment of retirement benefits i.e. gratuity and leave encashment.

Therefore, the amount of INR 19,60,008 incurred by the school for purchase of vehicle out of school funds has been considered as funds available with the school while deriving the fund position with the direction to the school to recover the same from the society within 30 days from the date of issue of this order.

5. Section 13 (1) of the Right to Education Act, 2009 states "no school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure". Further Section 13 (2) states "Any school or person, if in contravention of the provisions of sub-section (1):
 - a. receives capitation fee, shall be punishable with fine which may be extended to ten times the capitation fee charged.



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

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

Further, the Supreme Court in its Judgement dated 02.05.2016 in the matter of "*Modern 'Dental College and Research Centre Vs. State of Madhya Pradesh [Medical Council of India]*" held that education is a noble profession and emphasized that "*Every demand of capitation fee by educational institutions is unethical & illegal. It emphasized that commercialization and exploitation are not permissible in the education sector and institutions must run on a 'no-profit-no-loss' basis*".

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

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

In this regard, it is also important to mention here that the school has been allotted land by the land-owning agency only on the recommendation of the DoE. Therefore, the school is bound to follow all the instruction/direction issued by the DoE under the obligation of land allotment letter.

Additionally, Rule 50 of DSER, 1973 states "*the school is not run for profit to any individual, group or association of individual or any other person' and 'the managing committee observes the provisions of the Act and Rules made there under*".

Based on the provisions mentioned above and the pronouncement of the Hon'ble Supreme Court and High Court. The term 'Capitation' is very wide and extensive, and it cannot be restricted only to the amount/contribution received at the time of admission only but also includes any kind of collection or donation other than the notified head of fees or collection of unwarranted fee or introduction of new head of fee in the fee structure whether at the time of the admission of the students or otherwise.

In this regard the Directorate vide Order No. DE15/ Act/Duggal.com/203/99/23033-23980 dated 15.12.1999 has already specified the head of fees that a recognized private school can collect from the students/parents. Accordingly, the School cannot introduce any new head of fee in its fee structure or collect any unwarranted fee from the students/ parents otherwise than the specified head of fees.

Therefore, any demand of capitation fee or introduction of the new head of fee in the fee structure other than

the notified head of fees shall be considered as *commercialization of education*, which cannot be permitted at any cost.

The DoE in the Order No. F.DE.-15(200)/PSB/2021/3491-3495 dated 10.09.2021 issued to the school post evaluation of fee hike proposal for academic session 2019-20 and Order No. F.DE.-15(632)/PSB/2018/30532-30536 dated 14.12.2018 issued to the school post evaluation of fee hike proposal for academic session 2017-18, noted that the school was collecting of INR 25,000 in the name of 'one time miscellaneous charges at the time of admission from the students which was latterly merged with annual charges. This reflects the intention of school of profiteering and commercialization of education, which is in contravention of above-mentioned provisions. Accordingly, the school was directed not to collect this charge from the students with immediate effect.

The school submitted in its reply that "*collecting annual charges from students cannot be interpreted as profiteering and commercialization especially in light of the expenses incurred by the school on the general administration and administration of school, which are more than the collection against annual charges*"

The plea taken by the school in this regards is incorrect because the above direction was given to the school with respect to the collection of one time charges from the students at the time of admission not for the collection of annual charges. It is important to mention here that initially, the school introduced illegal fee in its fee structure and when it was pointed out by the department the school had merged this with the annual charges which is not only illegal but also involvement of the school in profiteering and commercialization of the education. Therefore, the school is hereby directed to immediately stop collection of 'one-time charges' and 'student fund' merged with annual charges from the students.

Section 27 of the DSEA, 1973 states that the manager of the school is responsible for smooth operations of the school and ensuring compliance with the provisions of DSEAR, 1973, including the direction of the High Court/Supreme Court and other directions/circulars issued by the DoE from time to time. As the manager and principal have been bestowed with the power to ensure the proper functioning of the school including admission process is transparently. They are jointly and severally responsible in their personal capacity for the levy and collection of the capitation fee and any other unauthorized fee. Therefore, non-compliance by the school with this direction within the stipulated time frame shall be viewed seriously and necessary action against the school shall be initiated without providing any further opportunity to be heard.

6. The Hon'ble High Court of Delhi dated 19.01.2016 in WPC no 4109/2013 in the matter of *Justice for All vs. GNCT of Delhi and others* indicated that every recognized private unaided school to whom land was allotted by DDA shall not increase the rate of fees without the prior sanction of Directorate of Education. Accordingly, the Directorate vide order No. F.DE.15(40)/PSB/2019/2698-2707 dated 27.03.2019, directed that all the Private Unaided Recognized Schools running on the land allotted by DDA/other Govt. agencies on concessional rates or otherwise, with the condition to seek prior approval of Director of Education for increase in fee, to submit their proposals, if any, for approval from the Director of Education for the academic session 2018-19 and 2019-20. Moreover, as per the directions of the Supreme Court in *Modern School vs. Union of India & ORs.* (supra), a Circular dated 16.04.2010 has been issued which is as under:

- a) It is reiterated that annual fee-hike is not mandatory.



- b) School shall not introduce any new head of account or collect any fee thereof other than those permitted. Fee/funds collected from the parents/students shall be utilized strictly in accordance with rules 176 and 177 of the Delhi School Education Rules, 1973.
- c) If any school has collected fee in excess of that determined as per the procedure prescribed here-above, the school shall refund/adjust the same against subsequent instalments of fee payable by students.

The DoE in the Order No. F.DE.-15(200)/PSB/2021/3491-3495 dated 10.09.2021 issued to the school post evaluation of fee hike proposal for academic session 2019-20, noted that the school had collect increased fee from students of class KG in FY 2016-17, Class KG & 1st in FY 2017-18, Class KG to 2nd in FY 2018-19 and class KG to 3rd in FY 2019-20 without obtaining prior approval from the Director Education.

As the fee hike order of the school, has been rejected by the department, the school is hereby directed to calculate the excess fee collected from the student from FY 2016-17 to FY 2019-20 and immediately refund/adjusted the excess fee collected.

During the personal hearing, this was discussed with the school and school was asked to provide the impact of such increased fee which the school has not provided. In the absence of the necessary information, the school is once again directed to compute the excess fee collected by it from the students and refund/ adjust the same against future dues from the students within 30 days from the date of the issue of this order. Non-compliance with this direction shall be viewed seriously while evaluating the fee hike proposal of the subsequent year for initiating appropriate action against the school U/s 24(4) of the DSEA, 1973.

B. Other Suggestions for Improvement:

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

Further clause 21 of the aforesaid order *"No annual charges shall be levied unless they are determined by the Managing Committee to cover all revenue expenditure, not included in the tuition fee and 'overheads and expenses on play-grounds, sports equipment, cultural and other co-curricular activities as distinct from the curricular activities of the school."*

And as per clause 22 of Order No. F.DE. /15(56)/ Act/2009/778 dated 11.02.2009 *"Earmarked levies will be calculated and collected on 'no-profit no loss' basis and spent only for the purpose for which they are being charged."*

As per Rule 176 of the DSER, 1973 *"Income derived from collections for specific purposes shall be spent only for such purpose."*

Further, sub-rule 3 of Rule 177 of DSER, 1973 provides *"Funds collected for specific purposes, like sports, co-curricular activities, subscriptions for excursions or subscriptions for magazines, and annual charges, by*

whatever name called, shall be spent solely for the exclusive benefit of the students of the concerned school and shall not be included in the savings referred to in sub-rule (2).” And, Sub-rule 4 of the said rule states “The collections referred to in sub-rule (3) shall be administered in the same manner as the monies standing to the credit of the Pupils Fund as administered.”

However, as per audited financial statements of FY 2019-20 to FY 21-22, it has been noted that the school charges earmarked levies in the form of Transport Fees, CBSE Exam Fees, Medical insurance without maintaining separate funds accounts for that. If the school generates surplus from any of the earmarked levy, the same is used to meet other expenditure of the school while in case of deficit the school funds is used to meet earmarked expenditure of the school which is not correct.

The aforementioned Guidance Note-21 also lays down the concept of fund-based accounting for restricted funds, whereby upon incurrence of expenditure, the same is charged to the Income and Expenditure Account (‘Restricted Funds’ column) and a corresponding amount is transferred from the concerned restricted fund account to the credit of the Income and Expenditure Account (‘Restricted Funds’ column). However, the school has not been following fund-based accounting in accordance with the principles laid down by the aforesaid Guidance Note.

Based on the above provisions, the school is required to maintain a separate fund account depicting clearly the amount collected, amount utilised and balance amount for each earmarked levy collected from students. Unintentional surplus, if any, generated from earmarked levies has to be utilized or adjusted against earmarked fees collected from the users in the subsequent year. Further, the school should evaluate costs incurred against each earmarked levy and propose the revised fee structure for earmarked levies during subsequent proposal for enhancement of fees, ensuring that the proposed levies are calculated on a no-profit no-loss basis and not to include fees collected from all students as earmarked levies. Accordingly, the school is directed to comply with the above-mentioned provisions.

2. On review of the audited financial statement, it has been noted that the school has not prepared Fixed Asset Register (FAR). The fixed asset register normally includes basic details such as asset description, date, supplier name, invoice number, manufacturer's serial number, location, purchase cost, other costs incurred, depreciation, asset identification number, etc. to facilitate identification of assets and documenting complete details of assets at one place.

Therefore, the school is directed to prepare and submit the fixed assets register at the earliest. The same shall be verified at the time of evaluation of the fee proposal of the school for the next academic session.

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

JB

Particulars	FY 2022-23
Total Students	3,239
EWS Students*	760
% of EWS students	23.46%

* Includes non-fee paying and EWS students

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

- i. The total funds available with the school for FY 2022-23 amounting to **INR 31,95,20,128** out of which estimated expenditures for the FY 2022-23 is to be **INR 25,99,98,296**. This results in net surplus amounting to **INR 5,95,21,832** for the FY 2022-23 after making all payments. The details are as follows:

Particulars	Amount (INR)
Cash and Bank balances as on 31.03.2022 as per Audited Financial Statements of FY 2021-22	2,89,75,988
Investments as on 31.03.2022 as per Audited Financial Statements of FY 2021-22	2,60,79,996
Liquid Fund as on 31.03.2022	5,50,55,984
Add: Amount recoverable from society for construction of building and incurring capital expenditure (Refer Financial Suggestion No. 2)	4,36,65,894
Add : Amount recoverable from the Society for incurring expenditure of development nature of building out of school funds (Refer Financial Suggestion No. 3)	7,80,15,795
Add: Amount recoverable from society for purchase of vehicle (Refer Financial Suggestion No. 4)	19,60,008
Add: Fee as per Audited Financial Statements of FY 2021-22 (Refer Note No. 2 Below)	17,74,45,491
Add: Other income as per Audited Financial Statements of FY 2021-22 (Refer Note No. 2 below)	87,51,764
Add: Additional income of annual charges and development fund (Refer Note No. 2 Below)	81,02,442
Less: Arrear of annual charges and development fees for FY 2020-21 recorded in FY 2021-22	2,29,33,652
Less: Deferral income (being notional in nature)	34,21,917
Total Available Funds for FY 2022-23	34,66,41,809
Less: FDR in the Joint Name of School Manager and DoE/CBSE as per Audited Financial Statements of FY 2021-22	30,40,680
Less: Gratuity and leave encashment- LIC as per Audited Financial Statements of FY 2021-22 (Refer Financial Suggestion No. 1)	1,00,00,000
Less: Depreciation reserve fund (Refer Note No. 3 Below)	-
Less: Development Fund as on 31.03.2022 as per Audited Financial Statement of FY 2021-22	1,40,81,001
Net Available Funds for FY 2022-23	31,95,20,128
Less: Budgeted Expenditure for FY 2022-23 (Refer Note No. 4 & 5 Below)	20,00,49,340
Less: Salary Arrears (Refer Note No. 6 Below)	5,99,48,956
Estimated Surplus	5,95,21,832

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

Particulars	Amount (in INR)	Remarks
FDR towards gratuity	1,30,12,098	Available with the school for utilization.
FDR in the joint name of DoE/CBSE and Manager	30,40,680	Deducted while deriving the fund position of the school. .
FDR for development fund	1,00,27,218	Refer Note No. 3
Total	2,60,79,996	

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

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

1. "to collect annual school fee (only all permitted heads of fees) from their students as fixed under the DSEAR, 1973 for the academic year 2020-21, but by providing deduction of 15% on that amount in lieu of unutilized facilities by the students during the relevant period of academic year 2020-21". And if the school has collected the fee in excess to the direction issued by the Hon'ble Court, the same shall be refunded to the parents or adjusted in the subsequent month of fee or refund to the parents.
2. The amount so payable by the concerned students be paid in six equal monthly instalments w.e.f. 10.06.2021.
3. The above arrangement will also be applicable with respect to collection of fees for academic session 2021-22.

From review of the audited financial statements of FY 2021-22 and based on the further information provided by the school, it has been noted that the school has reported 85% of the annual charges and development fee in the audited financial statements for FY 2021-22. Therefore, the income collected by the school during the FY 2021-22 with respect to annua charges and development fee has been grossed up in order to make comparative income with the FY 2022-23. The detailed calculation has been provided below:

B

Particulars	Income as per AFS of FY 2021-22	Income Considered in the Above Table	Remarks
Tuition Fee	10,73,16,000	10,73,16,000	
Annual Charges	3,39,44,998	3,99,35,280	The school recorded 85% of the income. Therefore, this has been grossed up.
Development fund	1,19,68,851	1,40,81,001	

Note 3: As per the Duggal Committee report, there are four categories of fees that can be charged by a private unaided school. The first category of fee comprised of "Registration fee and all one Time Charges" levied at the time of admissions such as admission charges and caution money. The second category of fee comprises 'Tuition Fee' which is to be fixed to cover the standard cost of the establishment and to cover the expenditure of revenue nature for the improvement of curricular facilities like library, laboratories, science, and computer fee up to class X and examination fee. The third category of the fee should consist of 'Annual Charges' to cover all expenditure not included in the second category and the fourth category consist of all 'Earmarked Levies' for the services rendered by the school and be recovered only from the 'User' students. These charges are transport fee, swimming pool charges, Horse riding, tennis, midday meals etc. This recommendation has been considered by the Directorate while issuing order No. DE.15/Act/Duggal.com/203/99/23033-23980 dated 15.12.1999 and order No. F.DE. /15(56)/Act/2009/778 dated 11.02.2009.

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

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

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

to the credit of the income and expenditure account in proportion to the depreciation charged every year.”

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

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

Heads	Amount (INR)	Reasons
Depreciation	45,00,000	Being a non-cash expense
Education Tour and Picnic	10,00,000	please allow this as well
Salary arrears	12,86,86,258	Considered separately.
Transportation Charges	60,00,000	Income and expenses related to earmarked levies have not been considered in the above calculation.
Medical insurance	30,00,000	

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

Note 6: The Salary arrears of INR 5,99,48,956 belongs to FY 2020-21 and FY 2021-22 has been considered while deriving the fund position.

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

“All schools must, first of all, explore and exhaust the possibility of utilizing the existing funds/ reserves to meet any shortfall in payment of salary and allowances, as a consequence of increase in the salary and allowance of the employees. A part of the reserve fund which has not been utilized for years together may also be used to meet the shortfall before proposing a fee increase.”

D

AND WHEREAS, in the light of above evaluation which is based on the provisions of DSEA, 1973, DSER, 1973, guidelines, orders and circulars issued from time to time by this Directorate, it was recommended by the team of Chartered Accountants along with certain financial suggestions that were identified (appropriate financial impact has been taken on the fund position of the school) and certain procedural suggestions which were also noted (appropriate instructions against which have been given in this order), that the sufficient funds are available with the School to carry out its operations for the academic session 2022-23. Accordingly, the fee increase proposal of the school may be rejected.

AND WHEREAS, it is noticed that the school has incurred expenditure of INR 12,16,81,689 in contravention of Clause 2 of Public Order dated 11.02.2009 and Rule 177 of DSER'1973. The School has incurred expenditure of INR 19,60,008 in contravention of Rule 177 of DSER'1973 and other orders issued by the departments from time to time. Therefore, the school is directed to recover the aforesaid amount from society/ management. The receipts along with copy of bank statements showing receipt of the above-mentioned amount should be submitted with DoE, in compliance of the same, within 30 days from the date of issue of this order. Non-compliance with this direction shall be viewed seriously as per the provision of DSEAR, 1973 without providing any further opportunity of being heard.

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

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

Accordingly, it is hereby conveyed that the proposal for fee hike of **Bal Bhavan Public School (School ID-1002277), Pocket-B, Mayur Vihar, Phase-II, New Delhi-110091** filled by the school in response to the Order No. F.DE.-15(40)/PSB/2019/4440-4412 dated 08.06.2022 for the academic session 2022-23, is rejected by the Director (Education) with the above conclusion and suggestions.

Further, the management of said School is hereby directed under section 24(3) of DSEAR 1973 to comply with the following directions:

1. Not to increase any fee/charges during FY 2022-23. In case, the school has already charged increased fee during FY 2022-23, the school should make necessary adjustments from future fee/refund the amount of excess fee collected, if any, as per the convenience of the parents.
2. To ensure payment of salary is made in accordance with the provision of Section 10(1) of the DSEA, 1973. Further, the scarcity of funds cannot be the reason for non-payment of salary and other benefits admissible to the teachers/ staffs in accordance with section 10 (1) of the DSEA, 1973. Therefore, the Society running the school must ensure payment to teachers/ staffs accordingly.

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

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

This is issued with the prior approval of the Competent Authority.

Nandini

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

To
The Manager/ HoS
Bal Bhavan Public School (School ID-1002277),
Pocket-B, Mayur Vihar, Phase-II,
New Delhi-110091

No. F.DE.15 (1072)/PSB/2022 / 10042-10046

Dated: 16/12/22

Copy to:

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

Nandini

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