

Report of Delhi High Court Committee for Review of School
Fee for July 2019

No.DHCC/2019/372

Dated: 27/08/19

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Place: Delhi


Secretary

Delhi High Court Committee for Review of School Fee

HUKAM CHAND
(Secretary)

Delhi High Court Committee for Review of School
(Formerly Known as Justice Anand Singh Committee For Review of School
C-Block, White House-2, Upper Bala Road, Civil Lines, Delhi-11

**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:

**Bala Pritam Guru Harkishan Int. Public School formerly known as
Upras Vidyalaya, Vasant Vihar, New Delhi-110057 (B-628)**

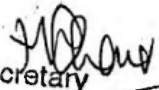
Order of the Committee

Present: Nemo

The Committee issued a questionnaire to all the schools (including this school) on 27/02/2012, which was followed by a reminder dated 27/03/2012, 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 of 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 respond to the questionnaire issued by the Committee or to its reminder.

The copies of annual returns filed by the school under Rule 180 of the Delhi School Education Rules, 1973 for the years 2006-07 to 2010-11 were received from the office of the concerned Dy. Director of Education.

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On prima facie examination of the fee schedules for the years 2008-09 and 2009-10 and the salary statements for those years, it appeared to the Committee that while the school had hiked the fee pursuant to order dated 11/02/2009 issued by the Director of Education, it had not increased the salaries of the staff in accordance with the recommendations of VI Pay Commission. Therefore, in order to verify this limited aspect, the Committee issued a notice dated 07/08/2012 to the school requiring it to produce its fee and salary records for the years 2008-09 to 2010-11 before the Audit Officer of this Committee on 24/08/2012. A copy of the questionnaire dated 27/02/2012 was again sent to the school for its response.

Smt. Neena Kulshrestha, Vice Principal of the school appeared before the Audit Officer and filed the reply to the questionnaire issued to the school. As per the reply filed by the school, it had increased the salaries of the staff with effect from February 2009 and also paid the arrear salary from January 2006 to January 2009. It had also hiked the fee with effect from September 2008 and also collected the lump sum arrear fee for the period January 2006 to August 2008. However, since the reply filed by the school lacked the necessary details, a fresh questionnaire was issued to the school on 06/12/2013 with the direction to give the necessary details. In this questionnaire, the relevant queries with regard to collection and utilisation of

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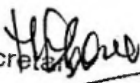


development fee and maintenance of earmarked development/depreciation reserve fund were also included.

The school filed its reply on 09/12/2013, giving the following specific figures:

- (a) The total arrear salary due to the staff from January 2006 to August 2008 was Rs. 59,85,633 out of which only a sum of Rs. 27,53,433 was paid as the amount received from the students (towards arrear fee) was only Rs. 19,46,300.
- (b) The increased regular salary to the staff was being paid with effect from February 2009.
- (c) The fee was actually increased with effect from 01/04/2009 and arrear fee that was collected from the students was Rs. 19,46,300 (however, it was not mentioned whether this amount was the lump sum arrear for the period 01/01/2006 to 31/08/2008 or the arrears of incremental fee for the period 01/09/2008 to 31/03/2009, or both).
- (d) The school was charging development fee in all the five years for which the information was sought. In the years 2009-10 and 2010-11, the school collected Rs. 17,45,675 on this account while in the year 2010-11, the collection was to the tune of Rs. 19,76,515.
- (e) It was not mentioned whether the development fee was treated as a capital receipt or as a revenue receipt. However,

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it was categorically mentioned that "Depreciation reserve fund is not maintained".

In view of the averments made by the school in its reply to the questionnaire, the matter was kept for detailed examination of the justifiability of the hike in fee effected by the school.

The Committee issued a notice dated 26/05/2015, requiring the school to furnish within 10 days, the 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.

In response, the Committee received a letter dated 10/06/2015 from the Manager of the school, which is reproduced herebelow verbatim:

Ref. No.: BPGHIPS/2015/176

Dated:10/08/2015

To

The Secretary
Justice Anil Dev Singh Committee
C Block, Vikas Bhawan-2
Upper Bela Road, Civil Line,
Delhi-54.

Subject: Information for considering the justifiability of fee hike effected by your school, consequent to order dated 11.2.2009 of Director of Education.

Sir,

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Secretary



In response to your reference No. F.JADSC/2015/B-628/444 dated 26.05.2015, I would like to submit that we received your letter dated 31st May 2015. Further, I would like to add that the present management took over the school management w.e.f. 13.10.2011 after the Election as per the Smaavidhan of Uttar Pradesh Samaj, Delhi, conducted by Sh. Kaushal Kishore, SDM, New Delhi as per instruction of the Hon'ble High Court of Delhi under the compromise MOU agreed by both the parties (past executive body lead by Sh. Baleshwar Rai, Janardan Rai and associates & present executive lead by Prof. R.K. Rai, Advocate Mukesh Kher, Dr. S.N. Singh). Most of the records taken away by Sh. Baleshwar Rai and Janardan Rai for which FIR was already been lodged and matter pending in the Hon'ble High Court.

However, whatever records we have, based on those, the desired information are being submitted for your information and perusal.

1. The details of income and expenditure in a consolidated manner, break up of figures as per the format is enclosed as **Annexure-I**.
2. Statement of accounts of the Society running the school has no any book of accounts as such.
3. There were no accrued liabilities of gratuity/leave encashment as on 31.03.2008 and 31.03.2010.
4. No record of any circular issue to the parents regarding hiking of fees for implementation of VI Pay Commission.
5. Audited final accounts for the year, 2010-11 is enclosed as **Annexure-II**.

The advice and suggestions of any kind of improvement in the proper and smooth functioning of the shall always be appreciated.

With grateful regards,

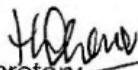
PROF. R.K. RAI

MANAGER

Encl.:As above mentioned (Annexure-I and II)

As per the information furnished in Annexure I of the letter, the school collected a sum of Rs. 22,65,200 towards arrear fee in the year 2008-09 while no collection under this head is shown in the years 2009-10 and 2010-11. Later, it was also mentioned that the

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regular/normal tuition fee received for the year 2009-10 went up to Rs. 1,71,38,678 from Rs. 1,45,86, 607 in 2008-09. The development fee received by the school in 2009-10 was Rs. 17,56,800 and in 2010-11, it was Rs. 21,67,360. Significantly, the collection towards development fee as mentioned in Annexure I of the letter was more than what the school mentioned in its reply to the questionnaire earlier issued by the Committee.

It was also mentioned in Annexure-I that the school paid a sum of Rs. 21,71,019 as arrear salary in the year 2008-09 pertaining to the period 01/01/2006 to 31/08/2008 and Rs. 42,32,251 in the year 2009-10 pertaining to the period 01/09/2008 to 31/03/2009. Further, the regular/normal salary paid by the school rose from Rs. 1,29,67,117 in 2008-09 to Rs. 1,84,47,932 in 2009-10.

However, subsequently Sh. P.K. Shrivastava, Principal of the school addressed a letter dated 09/11/2015, which reads as follows:

Ref. No. BPGHIPS/2015/247

Dated: 09.11.2015

To

The Secretary
Justice Anil Dev Singh Committee,
C Block, Vikas Bhawan-2
Upper Bela Road, Civil Line,
Delhi-110054

Subject: Information for considering the justifiability of Fee hike effected by the school.

Sir,

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The school does not come under the category of fee hike for implementation of VI Pay Commission to pay the arrears and salary of the staff as the school has not issued any kind of circular to parent for additional fee and also has not collected any amount in this regard. However, the present management took over the school management on 13.10.2011 and some of the information which were available have been sent to your good office vide our letter No. BPGHIPS/2015/176 dated 10.06.2015 for your perusal and record.

P.K.Shrivastava,

Principal (O)

Encl.:

1. Photocopy of letter of manager vide letter No. BPGHIPS/2015/176 dated 10.6.2015
2. Photo copy of Annexure- I
3. Photo copy of Annexure- II

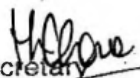
C.C. to: D.D.E., Zone-20, C-4 lane, Vasant Vihar, New Delhi-57 for information.

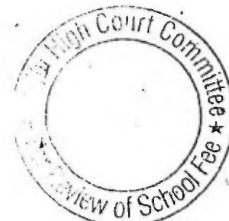
A notice dated 27/12/2016 was issued to the school requiring it to appear before the Committee on 24/01/2017 and produce its accounting records, fee records and salary records for examination by the Committee. The hearing was postponed to 09/03/2017 on account of certain exigencies.

Prof. R.K. Rai, Manager and Sh. P.K. Shrivastava, Principal of the school appeared with Sh. Santosh Kr.Giri, Accounts Clerk.

Both the Manager as well as the Principal of the school were asked to comment upon the two apparently contradictory letters sent by them to the Committee. Sh. P.K. Shrivastava, the Principal of the school again reiterated that the school had not issued any kind of

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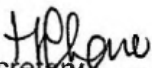

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circular to the parents for additional fee and also had not collected any amount in this regard. He even submitted that the school had not paid any arrears of salary arising on account of implementation of the 6th Pay Commission but only prospectively implemented the recommendations of 6th Pay Commission and that too w.e.f. 01.4.2010. His attention was drawn to the letter dated 9.12.2013 filed by the school wherein the school had stated that it had recovered a sum of Rs. 19,46,300 as arrear fee from the students, and the school had also increased the fee in terms of the order dated 11.2.2009 issued by the Directorate of Education, and that the recommendations of the 6th Pay Commission were implemented w.e.f. Feb. 2009 (the school had even enclosed the details of salary for the months of January 2009 and February 2009 to show the increase in salary on implementation of the recommendations of the 6th Pay Commission and also mentioned that it had paid a sum of Rs. 59,85,633 in June 2009 towards arrears of salary for the period Jan. 2006 to August 2008, Rs. 23,94,253 in May 2010 and further Rs. 3,59,180. His attention was also drawn to the audited Income and Expenditure accounts of the school, which showed the recovery of arrear fee as well as payment of arrear salary. It was pointed out to him that this letter dated 09/12/2013 was also signed by him.

On reconsideration of the position during the course of hearing, Sh. Shrivastava stated that he was not aware of the payment of

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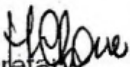


arrear salary or recovery of arrear fee, as these matters were handled directly by the Managing Committee of the school. He further stated that on account of disputes with the successor management, a writ petition was filed in the Hon'ble High Court of Delhi, which appointed a Local Commissioner for handling the financials affairs of the school in 2006 and this arrangement continued upto 2010. Consequently, the arrear fee and arrear salary, if any had been paid or recovered, was during the period when the financial affairs of the school were under the charge of the Local Commissioner. The present management committee had no record of payments of salary or recovery of fee during that period.

The school was directed to file copies of the bank statements of all its accounts starting from 01.4.2008 to 31.3.2010 and also to file the judgment of the Hon'ble High Court and the reports of all inspections carried out by the Directorate of Education.

In compliance with the directions of the Committee, the school, on 3.4.2017, filed copies of its statements of accounts with Union Bank of India Vasant Vihar, New Delhi and copies of judgments of Hon'ble Delhi High Court in various cases involving the school. The school also furnished copies of two reports of inspections carried out by the officials of Directorate of Education. However, on the date of hearing which was scheduled for 27/04/2017, no body appeared on behalf of the school.

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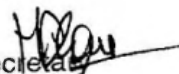


The Committee has perused the copies of judgments of the Hon'ble Delhi High Court. It appears that on expiry of the term of the previous Managing Committee (MC) of "Uttar Pradesh Samaj", the Parent Society of the school, certain litigation had ensued for election of the new MC. The election was conducted under the supervision of SDM, Vasant Vihar on 25/09/2011. It also appears that during the pendency of the litigation, a local Commissioner was appointed to run the affairs of the school. The Hon'ble High Court also ordered an inspection of the school to be carried out by the functionaries of the Directorate of Education.

One of the terms of reference for the inspection team was "*Whether the Books and Accounts of the school are being maintained in accordance with the provisions of DSEA and DSER, 1973*". The inspection team of the Directorate of Education carried out the inspection on 18th and 19th October, 2011 and observed that accounts and records of the Upras Vidyulaya, Upras Nursery School for the years 2010-11 and 2011-12 (upto September 2011) had been test checked and certain discrepancies were observed.

Another inspection was carried out by the officials of the Directorate of Education 07/11/2012. In the part relating to the financial affairs of the school, the inspecting officials mentioned that the school had illegally transferred Rs. 19,04,623 to its Parent Society in the month of June 2011. Further, a sum of Rs. 1,85,049 had been

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paid to the ex security Supervisor of the school for extraneous reasons.

Against a specific head of the inspection report "*Whether the school management is paying salary to the teachers and staff as per the recommendations of VI Pay Commission or it is violating the provision of Section 10(1) of DESR, 1973*", the inspecting team stated "*Yes, but in some case the pay fixation of the school staff seems to be incorrect due to wrong rounding of the amount. However, the grade pay in respect of employees mentioned in report dated 28/10/2011 vide para 9 has been rectified. 60% arrear of VI CPC has been paid on 13/03/2012 by the present Management in respect of left out (7 cases) according to last inspection report i.e. 28/10/11.*"

(Emphasis supplied by us).

The school also placed on record copy of an FIR filed on 06/02/2012, apparently in pursuance of an order passed by the Metropolitan Magistrate under Section 406 of the Indian Penal Code, in which it was reported that the previous Manager of the school and the previous Executive President of the Parent Society had taken away the records of the school including the financial records, cheque books, FDRs etc.

From the above, one thing is clear that the school did implement the recommendations of VI Pay Commission and also paid

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H. D. Gao
Secretary



the arrear salary to the staff. This is also borne out from the inspection reports of the Directorate of Education. It is also apparent from the inspection reports that the Books of Accounts prior to 2010-11 were not available with the school and they checked the accounts for 2010-11 and 2011-12 (upto the date of inspection. The factum of implementation of the recommendations of VI Pay Commission is also coming out from the audited financials of the school for the years 2008-09 and 2009-10.

Although Sh. P.K. Shrivastava, initially denied that the school collected any arrear fee or increased the regular fee pursuant to order dated 11/02/2009 issued by the Director of Education, he subsequently adopted the position that he was not aware of the same as the affairs of the school were then being handled by the Local Commissioner appointed by the Court. The school had admitted in its reply to the questionnaire issued by the Committee, it had hiked the fee w.e.f. 01/04/2009 and also collected the arrear fee pursuant to the said order. The audited financials of the school also showed recovery of arrear fee in the years 2008-09 and 2009-10.

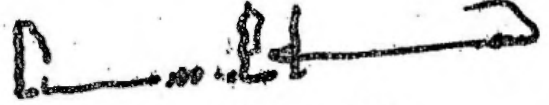
However, it does appear to us that the present Management of the school does not have the relevant records which the Committee needs to examine in order to ascertain whether the fee hike effected by the school and the arrear fee collected by it pursuant to order dated 11/02/2009 was justified or not.

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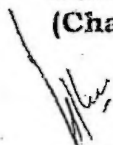
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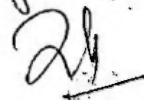
In this view of the matter, the Committee refrains from expressing any opinion whether the fee hike effected by the school was justified or was excessive.



Justice Anil Kumar (R)
(Chairperson)



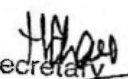
CA J.S. Kochar
(Member)



Dr. R.K. Sharma
(Member)

Dated: 02/07/2019

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

000014

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

In the matter of:

St. Paul's School, Safdarjung Development Area, New Delhi-
110016 (B-180)

Order of the Committee

**Present: Sh. K.K. Khanna, Chartered Accountant with Sh. Jose P
T & Sh. Roy T Thomas, Accountants 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 of salary paid and the incremental salary paid to the staff pursuant to the implementation of the recommendations of the 6th pay commission.

The school furnished its reply under cover of its letter dated 17/03/2012. As per the reply submitted by the school, it implemented the recommendations of VI Pay Commission and started paying the increased salary w.e.f. 01/01/2006 (sic). It also enclosed copies of the acquittance roll for the months of February 2009 and March 2009 to show the impact of implementation of the recommendations of VI Pay Commission, indicating that the school had actually increased the salaries with effect from March 2009. The

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school also enclosed the detail of salary arrears as per VI Pay Commission. It was not indicated whether such arrears had actually been paid or were due to be paid nor the period to which the arrears pertained was indicated. Total amount of arrears as per the details filed was Rs. 1,04,20,321.

With regard to fee hike, the school admitted having hiked the tuition fee w.e.f. 01/09/2008, in pursuance of order dated 11/02/2009 issued by the Director of Education. As per the information furnished by the school, the tuition fee was hiked @ Rs. 300 per month for the classes I to X and also Arts and Commerce streams of classes XI & XII. The hike in respect of Science and Computer Science streams of XI and XII was to the tune of Rs. 400 per month. The school also stated that it had recovered lump sum arrear fee for the period 01/01/2006 to 31/08/2008 at the rate of Rs. 3000 per student of classes I to X and Arts and Commerce streams of classes XI & XII and Rs. 3500 per student of Science and Computer Science streams of XI & XII, in terms of order dated 11/02/2009 issued by the Director of Education. There was no indication whatsoever whether the school had also hiked the development fee or recovered any arrears of incremental development fee.

Preliminary calculations to examine the justifiability of fee hike effected by the school were made by the Chartered Accountants (CAs) deputed by the Directorate of Education to assist this Committee. As per the calculations made by them, prima facie, it appeared that the

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school had recovered more fee to the tune of Rs. 65,84,197 in excess of its requirements. However, the Committee observed that such calculations were made without attempting to reconcile the figures with the audited financials of the school. Accordingly, the Committee did not rely upon these calculations.

The Committee issued a notice dated 13/05/2015, requiring the school to furnish within 10 days, the complete break up of fee and salaries for the years 2008-09 to 2010-11, duly reconciled with its audited financials (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. A supplementary questionnaire was also issued to the school, vide which relevant queries with regard to charging of development fee were raised, to ascertain whether the school was complying with the necessary 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 required information under cover of its letter dated 25/05/2015. The school stated that it collected a sum of Rs. 38,94,713 as arrear fee for the period 01/01/2006 to 31/08/2008. However, it paid a sum of Rs. 99,30,902 towards arrear salary for the same period between financials years 2009-10 to 2011-

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12. It was claimed that the excess amount of Rs. 60,36,189 was paid out of the general reserves of the school. It was further stated that the net deficit of Income and Expenditure Accounts for the years 2008-09, 2009-10, 2010-11 and 2011-12 was Rs. 62,04,148, implying thereby that the fee hike effected by the school was justified. However, the school did not file reply to the supplementary questionnaire regarding development fee.

A notice of hearing was issued to the school requiring it to appear before the Committee on 01/07/2016 to produce its books of accounts, fee and salary records and make submissions in justification of the fee hike effected by it.

Sh. Jose P.T and Sh. Roy T. Thomas, Accountants of the school appeared on the date of hearing and sought adjournment. The request for adjournment was repeated on 19/07/2016 and again on 01/09/2016. The effective hearings in the matter started from 24/10/2016 when Sh. K.K. Khanna and Ms. Ashima Khanna, Chartered Accountants appeared with Sh. Jose P.T. and Sh. Roy T. Thomas, Accountants of the school.

The Committee examined the circular issued by the school regarding fee hike effected by it in pursuance of order dated 11/02/2009 issued by the Director of Education. As per the circular, the parents of students were required to deposit the following sums towards arrear fee:

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Class	Arrear fee (Rs.)
Nursery and Prep.	8,025
I to IV	7,815
V to VIII	7,935
IX & X	8,055
XI & XII (Arts & commerce)	8,055
XII (Science stream)	9,510
XII (Computer Science)	9,690

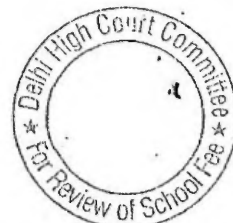
However, the circular did not give any details as to how these amounts were worked out. During the course of hearing, the authorized representative of the school furnished the details as follows:

Class	Arrears of tuition fee for the period 01/09/2008 to 31/03/2009	Lump sum arrear fee for the period 01/01/2006 to 31/08/2008	Development fee	Total
Nursery & Prep.	2100	3000	2925	8025
I to IV	2100	3000	2715	7815
V to VIII	2100	3000	2835	7935
IX & X	2100	3000	2955	8055
XI & XII (Arts & Comm.)	2100	3000	2955	8055
XI & XII (Science)	2800	3500	3210	9510
XI & XII (Computer Science)	2800	3500	3390	9690

Vide order dated 11/02/2009 (clause 15), although the school was authorized to recover the consequential increase in development fee which would arise on account of increase in tuition fee w.e.f. 01/09/2008, the school, in its reply to the questionnaire had made no

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mention of any increase in development fee or recovery of arrears of incremental development fee. The increase in development fee came to the notice of the Committee only during the course of hearing when it examined the fee hike circular issued by the school.

Besides, as would be apparent from the above table, the arrears of incremental development fee recovered were more than even the arrears of incremental tuition fee for the period 01/09/2008 to 31/03/2009.

The authorized representatives of the school were asked to explain the position. They submitted that originally in 2008-09, the school was not charging any development fee. However, after issuance of the order dated 11/02/2009, it recovered the development fee @ 15% of tuition fee for the whole year 2008-09 i.e. for the period 01/04/2008 to 31/03/2009. The order dated 11/02/2009 authorized the schools only to hike the tuition fee w.e.f. 01/09/2008 and also permitted to hike development fee consequent to the hike in tuition fee. The order nowhere authorized the school to introduce development fee w.e.f. 01/04/2008 when the school was not charging any development fee originally.

The Committee put it to the authorized representatives as to how the school could introduce a new head of fee from the mid session and that too retrospectively without obtaining prior approval of the Director of Education, in view of the provisions of Section 17(3)

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of the Delhi School Education Act, 1973. The authorized 000020
representatives could not categorically state whether any prior
approval of Director of Education was taken for introducing a new levy
after the start of the academic year.

The Committee also examined copy of the fee book issued to the
students for deposit of fee for the years 2009-10 and 2010-11. It
observed that in 2009-10 also, while the fee structure, a copy of which
had been filed as part of the annual returns under Rule 180 of the
Delhi School Education Rules, 1973, with the Director of Education
did not show any development fee, the fee actually recovered from the
students included a component of development fee. However, in
2010-11, the school did include development fee in the fee structure
filed with the Director of Education.

The authorized representatives sought some time for
ascertaining whether the specific prior approval of the Director of
Education was taken for introducing development fee in the year
2008-09 after the start of the academic year. The request of the
school was granted by the Committee.

On 01/12/2016, when the matter was taken up for hearing, the
authorized representative of the school made no submission with
respect to the prior approval of the Director of Education, as aforesaid.
However, he filed a letter dated 30/11/2016, signed by the Principal
of the school, contending that:

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- (a) Development fee was charged from April 2008 @ 15% of the tuition fee, as per DOE guidelines. Further, a hike on it was levied from September 2008 as per DOE order No. F.DE/15(56)Act/2009/778 dated 11/02/2009.
- (b) The monthly hike in tuition fee as per DOE order was grossly insufficient to meet the annual increment in basic pay and allowances, half yearly DA increases and to pay MACP dues to retain teachers for quality education. The school had a huge shortfall on payment of salary arrears for the period January 2006 to August 2008 which stood at Rs. 1.04 crores as against the receipt of Rs. 39 lacs.
- (c) There was no increase in fee for 2009-10. The information on fee for this year was submitted to DOE vide letter dated 25/03/2009.

During the course of hearing, the information furnished by the school regarding fee and salary under cover of its letter dated 25/05/2015 was considered. The Committee observed that the information furnished by the school was ex-facie incorrect. The apparent mistakes were pointed out to the authorized representatives of the school, who sought some time to file a revised statement.

The school filed a revised statement of fee and salary, duly reconciled with its audited financials under cover of its letter dated 15/12/2016. The school also filed its reply to the supplementary questionnaire regarding development fee, to which we will advert later.

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The school again filed clarificatory written submissions dated 20/12/2016, explaining how the figures given in the revised statement of fee and salary would reconcile with the audited financials of the school. Details of accrued liabilities of gratuity and leave encashment were also filed by the school.

The revised statement of fee and salary filed by the school was examined by the Committee and was reconciled with the audited financials of the school. The Committee noticed that the school had not paid the full amount of arrear salary up to 31/03/2011. A part of the arrear salary was also paid in subsequent years. The final payment came to be made in the year 2014-15. Accordingly, the school was required to furnish the statement of fee and salary for all the years 2008-09 to 2014-15, so as to enable the Committee to make proper calculations.

The Committee considered the written submissions dated 20.12.2016 furnished by the school and the details of the liability for leave encashment as on 31.3.2010. The accrued liability on account of leave encashment as on 31.3.2010 was Rs.11,16,230. The accrued liability on account of gratuity, as projected by the school, was Rs.58,20,724. However, the school furnished a demand by LIC based on the liability as on 01.5.2010, which amounted to Rs.1,01,70,432 out of which the school had paid a sum of Rs. 48,70,025 in the year 2010-11. Therefore, the liability of the school on account of gratuity which remained outstanding out of the total amount due as on

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1.5.2010 was Rs.51,47,407. The authorized representatives appearing for the school submitted that though the school had taken the group gratuity policy, but the total amount of liability had not yet been fully funded and it was for this reason that the liability remained.

The matter could not be pursued further at that stage as the term of the Committee expired in the meantime. After the term of the Committee was extended, the matter was again taken up with the school. The school filed a fresh statement of fee and salary from 2008-09 to 2014-15, as directed by the Committee under cover of its letter dated 04/05/2017.

After considering the relevant information and the audited financials of the school, the Committee prepared a calculation sheet. As per the said calculation sheet, the following position emerged:

- (a) The funds available with the school as on 31/03/2008 i.e. prior to fee hike, amounted to **Rs. 91,06,361**, as per the following details:

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Current Assets + Investments		
Cash in Hand	29,458	
Cash at Bank	751,095	
Fixed Deposits against Scholarship Funds	759,000	
Other fixed Deposits (Excluding those with CBSE and DOE)	7,171,520	
Loans & Advances (excluding Security Deposits with DTC and BSES)	3,005,221	
Bank Interest Receivable	457,004	
TDS	72,696	12,245,994
Less: Current Liabilities		
Security Deposits - Students	1,340,310	
Scholarship Fund	759,000	
Accounts Payable	919,973	
Advance Fee received	120,350	3,139,633
Net Current Assets + Investments (Funds available)		9,106,361

(b) The total financial impact of implementing the recommendations of VI Pay Commission on the school was to the tune of **Rs. 1,74,26,085** as per the following details:

Additional Liabilities after implementation of VIth Pay Commission:		
Arrear of Salary as per 6th CPC for 1.1.06 to 31.8.08	10,152,257	
Arrear of Salary as per 6th CPC for 1.9.08 to 31.3.09	3,976,665	
*Incremental Salary for 2009-10 (as per calculation given below)	3,297,163	17,426,085

Detail of Normal/ regular salary as per Income & Expenditure A/C:	2008-09	2009-10
Salary & allowances	19,461,974	23,576,899
Bonus	157,500	-
PF contribution (Management)	1,811,624	2,388,982
PF Administration Charges	172,864	253,306
EDLI Contribution	37,000	37,000
Gratuity Premium paid to LIC	3,001,683	1,683,621
Total	24,642,645	27,939,808
*Incremental Salary in 2009-10		3,297,163

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(c) Thus the school had a gap of **Rs. 83,19,724** (1,74,26,085 – 91,06,361) which was required to be bridged by recovering arrears of fee and hiking the fee w.e.f. 01/09/2008. The total funds generated by the school by resorting to fee hike and recovering arrears of fee (excluding arrears of development fee), amounted to **Rs. 1,21,54,964**, as per the following details:

Total Recovery for implementation of 6th Pay Commission		
Arrear of tuition fee for 1.1.06 to 31.8.08	3,894,713	
Arrear of tuition fee for 1.9.08 to 31.3.09	2,901,500	
*Incremental tuition fee for 2009-10 (as per calculation given below)	5,358,751	12,154,964

Working Notes:		
Incremental tuition fee for 2009-10	2008-09	2009-10
Normal/ Regular Tuition fee	22,542,566	27,901,317
*Incremental tuition fee in 2009-10	5,358,751	

Thus, prima facie, it appeared that the school had increased more tuition fee (including arrears) than was required to meet its additional liabilities on implementation of the recommendations of VI Pay Commission to the extent of **Rs. 38,35,240** (1,21,54,964 – 83,19,724), it would be observed that in the above calculations, the Committee has not so far factored in the accrued liabilities of the school for leave encashment and gratuity. The accrued liabilities on

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these accounts amounted to Rs. 52,63,637 (11,16,230 + 51,47,407) 000026

When these liabilities are considered, it becomes evident that the school did not generate any surplus by recovering lump sum arrear fee for the period 01/01/2006 to 31/08/2008, arrears of incremental tuition fee for the period 01/09/2008 to 31/03/2009 and by hiking the regular tuition fee for the year 2009-10.

The Committee thus has no hesitation in holding that the arrear tuition fee recovered by the school and the incremental tuition fee for the year 2009-10 recovered by the school were justified.

However, as noticed supra, the school illegally recovered the development fee for the period 01/04/2008 to 31/03/2009 which amounted to Rs. 17,62,932. Any fee or increase in fee i.e. sought to be recovered by the school after the start of the academic year requires specific approval of the Director of Education under Section 17(3) of the Delhi School Education Act, 1973, which in this case had apparently not even been sought. Further, it also appeared that the development fee for the year 2009-10, amounting to Rs. 68,60,573 was also illegally recovered, as apparently, the school had not included development fee in the fee schedule for the year 2009-10 which was filed by it with the Directorate of Education. Hence, a limited notice was issued to the school to respond to these aspects.

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The school filed written submissions dated 11/07/2017 000027
rebutting the observations made by the Committee on 10th June 2017
on development fee illegally recovered for the years 2008-09 & 2010-
11, purportedly in pursuance of order dated 11/02/2009, issued by
the Director of Education. It was submitted as follows:

"It is wrong to assume that development fee has been illegally collected from students. The school introduced a development fee to meet the capital expenditure of the school in the year 2008-09 due to a financial deficit arising out of the implementation of the VI Pay revision. The development fee was collected along with quantum of increase in tuition fees and arrear fees after we had received the order of 11th February 2009 from the Department of Education.

Also, we had submitted the required information of fees and charges for the Academic Session 2009-10 in the beginning of the Academic Year i.e. on 25/03/2009 u/s 17(3) of the Delhi School Education Act, 1973. A copy of the same is attached herewith for your ready reference. We had intimated the same to your Good self through our written submission on 01/12/2016.

The school collected development fee along with the tuition fee increase and the arrear fee as without which it would have been not possible to meet the expenditure on capital equipment. The salary arrears along with the huge increase of salary left the school with no money to meet revenue expenditure fully as also for capital expenditure.

Even after charging of development fee and tuition fees increase of around Rs. 300 per month, our surplus at the end of the said year is negligible and nowhere near the 10% of tuition fees.

Every penny that the school collected by way of development fee has been shown in the audited accounts. As already intimated the amount of development fee collected was as under:-

As at 31 st March 2009	Rs. 17,62,932
As at 31 st March 2010	Rs. 68,60,573
As at 31 st March 2011	Rs. 58,37,590
Total	Rs. 1,44,61,095

The development fee so collected was utilised strictly in accordance with the rules and the same can be referred to in the audited accounts. Also, kindly note that till such time, it was not used

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the same was shown as capital receipt, duly backed by Depreciation Reserve Fund.

000028

Against total development fee collection of Rs. 1,44,61,095 in three years, school had spent Rs. 1,48,55,183 on the acquisition of capital equipment. The details are as under:

2009-2010	Rs. 19,92,768
2010-2011	<u>Rs. 1,28,62,415</u>
Total	<u>Rs. 1,48,55,183</u>

There are two issues involved here. The first is with regard to the recovery of development fee for the whole year 2008-09, purportedly in pursuance of order dated 11/02/2009 issued by the Director of Education. The second issue is with regard to recovery of development fee for the year 2009-10, on account of its non inclusion in the fee schedule filed with the Directorate of Education.

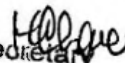
Section 17(3) of the Delhi School Education Act, 1973 is relevant for deciding both the above issues. The same reads as follows:

“Section 17(3)

The manager of every recognised school shall, before the commencement of each academic session, file with the Director a full statement of the fees to be levied by such school during the ensuing academic session, and except with the prior approval of the Director, no such school shall charge, during that academic session, any fee in excess of the fee specified by its manager in the said statement.”

It is undisputed that the fee statement filed with the Director for the academic session 2008-09 did not contain any development fee which the school would charge in that year. The section also stipulates that no school shall charge during that academic session,

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any fee in excess of the fee specified in the said statement, except with
the prior approval of the Director.

000029

The school has not brought on record any approval of the Director for charging development fee for the year 2008-09. The explanation given by the school is that the development fee was introduced to meet the capital expenditure of the school in the year 2008-09 due to a financial deficit arising out of the implementation of the VI Pay revision. The development fee was collected along with quantum of increase in tuition fees and arrear fees after the school received the order of 11th February 2009 from the Department of Education.

It is evident that the school is taking the cloak of order dated 11/02/2009 of the Director of Education to justify the recovery of development fee in 2008-09. No doubt the order dated 11/02/2009 was issued by the Director of Education in exercise of his powers under Section 17(3) of the Act, granting a sort of general permission to the schools to hike the fee for the purpose of meeting of their additional expenditure on account of implementation of the recommendations of VI Pay Commission. However, the hike in fee had to be limited to the hike permitted in the aforesaid order. The order permitted the schools only to hike tuition fee w.e.f. 01/09/2008 at five different slabs, depending upon the existing tuition fee charged by the schools in the year 2008-09. However, since the order was issued on 11/02/2009 and the hike in fee permitted was w.e.f. an anterior date,

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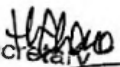


the schools were permitted to recover the differential tuition fee for the year period 01/09/2008 to 31/03/2009 by way of arrears. The order further permitted the schools to recover lump sum arrears, again at five different slabs depending upon the existing tuition fee, to meet the requirement of salary hike from 1st January 2006 to 31st August 2008 as per the recommendations of VI Pay Commission. The order did not permit the schools to recover the development fee for the year 2008-09 where they were not charging the same. Clause 14 of the order permitting school to charge development fee at a rate not exceeding 15% of the annual tuition fee, cannot be construed to be applicable retrospectively for the school to be able to recover development fee w.e.f. 01/04/2008.

However, where the schools were already charging development fee which was recovered as a percentage of tuition fee, there would be an automatic increase in development fee w.e.f. 01/09/2008 on account of increase in tuition fee which was permitted by the aforesaid order. Clause 15 of the order permitted recovery of additional increase in development fee on account of increase in tuition fee and that too for the purpose of meeting any shortfall on account of salary/arrears, although in normal course, development fee is required to be utilised only for purchase, upgradation and replacement of furniture, fixture and equipment.

Thus, the school was already charging development fee in the year 2008-09 at the rate of 15% of tuition fee, which it could, the

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school would have been justified to increase its development fee @ 15% of the increase in tuition fee. To illustrate the position, if hypothetically, the school was charging tuition fee @ Rs. 1000 per month and development fee @ Rs. 150 per month (15% of tuition fee), and the school hiked tuition fee by Rs. 200 per month w.e.f. 01/09/2008, as per order dated 11/02/2009, it could hike the development fee by Rs. 30 per month (15% of Rs. 200). Thus post hike, its tuition fee would have been Rs. 1200 and development fee Rs. 180. The hike of Rs. 230 per month in tuition fee and development fee w.e.f. 01/09/2008 to 31/03/2009 (7 months) amounting to Rs. 1610 could have been recovered by the school. To this extent, the school would have the approval of Director under Section 17(3) by order dated 11/02/2009.

Now, let us see the fee hike/recovery of arrear fee, actually effected by the school. The following table would illustrate the position:

Class	Monthly tuition fee as, originally charged in 2008-09	Monthly development fee as, originally charged in 2008-09	Permitted hike in monthly tuition fee w.e.f. 01/09/2008	Permitted hike in development fee w.e.f. 01/09/2008	Arrears of permitted incremental tuition fee (01/09/2008 to 31/03/2009)	Arrears of permitted incremental development fee (01/09/2008 to 31/03/2009)	Arrears of development fee actually recovered
Nursery & Prep.	1333	0	300	0	2100	0	2925
I to IV	1333	0	300	0	2100	0	2715
V to VIII	1400	0	300	0	2100	0	2835
IX & X	1467	0	300	0	2100	0	2955
XI & XII (Arts & Comm.)	1467	0	300	0	2100	0	2955
XI & XII (Science)	1550	0	400	0	2800	0	3210
XI & XII (Computer Science)	1650	0	400	0	2800	0	3390

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000032

Thus, the Committee is of the view that the school illegally recovered the development fee for the year 2008-09, purportedly in pursuance of order dated 11/02/2009 issued by the Director of Education, which in fact did not permit its recovery. Even if for academic discussion, it is presumed that the school could have recovered arrears of development fee as per clause 15 of the order dated 11/02/2009, the same was required to be applied for paying the salary/arrears to the staff on account of implementation of the recommendations of VI Pay Commission, but the school admittedly did not do so. On the contrary, it contended that *The school introduced a development fee to meet the capital expenditure of the school in the year 2008-09.....*

Hence, looked at from any angle, the school was not justified in recovering the development fee for the year 2008-09. It admittedly recovered a sum of Rs. 17,62,932. The school ought to refund the same to the students along with interest @ 9% per annum from the date of collection to the date of refund.

With regard to development fee recovered in 2009-10, the fee structure filed by the school as part of its annual returns under Rule 180 of the Delhi School Education Rules, 1973, for the year 2009-10, did not contain any development fee. However, during the course of hearing, the school filed a copy of letter dated 25 March 2009 alongwith copy of the fee structure of 2008-09 and 2009-10, which was apparently filed with the Education Officer, Distt. South West-A,

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Office of the Dy. Director of Education, Vasant Vihar, New Delhi. The 000033
fee structure for 2009-10 showed that development fee was proposed to be charged @ 15% of tuition fee (rounded off), for all the classes. The Committee observed that neither the copy of the letter appeared to have any acknowledgement of the office of the Education Officer with whom it was purported to have been filed nor the fee structure of 2008-09 and the proposed fee structure of 2009-10 was signed by anybody on behalf of the school. On the contrary, the fee structure filed as part of the annual returns of the school on 31/07/2009 was duly stamped by the school and copy of the covering letter of the school also bore the stamp and date of receiving by the office of Dy. Director of Education (Act), Directorate of Education, Act Branch, Old Secretariat, Delhi. The school was advised to take a certified copy of the letter dated 25/03/2009 and its enclosure from the office of the Education Officer of the Directorate of Education with whom it was allegedly filed. The school filed a letter dated 27/07/2017 contended as follows:

"In the proceeding note dated 11/07/2017, your honour has stated that:-

- 1. "With regard to development fee recovered in 2009-10, the school has filed a copy of dated 25.03.2009 along with copy of the fee structure of 2009-10 which apparently shows development fee charged @ 15% out of tuition fee. However, neither the copy of the letter appears any acknowledgement of the office of the Education Officer, District South West A of the Directorate of Education".*

As regards the above note, we beg to state the following.

- a. We strictly follow the practice to inform the Education Officer the fee structure/fee revisions of the school before the commencement of the academic year. It is a matter of*

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regret that the copy of the letter of 25th March 2009 in our file does not bear the acknowledgement of the office of the Education Officer. You may take note that the said letter has important enclosures that are mandatory submissions to the Education Officer. 000034

- b. We approached the Education Officer of our Zone (South West A, Zone 19 for a certification of receipt of our letter 25th March 2009/diary note. Based on our letter and personal visits, they have informed us that the files and diary for the period prior to April 2010 are not readily available with them. On our request they have assured us to trace it from their archives for which they have requested more time. We therefore humbly request your honour to kindly extend us an additional time of a month or so to follow up with them to search, trace and file the records.
- c. We have attached a separate affidavit in connection with the same.
- d. We pray that a lenient view be taken.

Although the school requested for an additional time of one month, till today the school has not reverted back.

The question that arises is that in view of the aforesaid facts, whether the version put forth by the school deserves to be accepted or not?

The Committee has given its thoughtful consideration to the facts of the matter. The school in question is a reputed school which has been in operation for very a long period of time. Filing a statement of fee before the start of the academic session is a very important requirement of law and it is inconceivable that the school of such a repute would commit such a mistake of omission of not filing the fee statement before the start of the academic session as mandated under Section 17(3) of the Delhi School Education Act,

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1973. There could be a possibility of omission of reference to 000035
development fee in the fee schedule which is filed as part of the
returns under Rule 180 as such returns are more of copy paste jobs
and not even the due attention they deserve even in the Directorate of
Education. We have hardly come across any query being raised by the
Directorate of Education on the basis of returns under Rule 180. On
the other hand, fee statement filed under section 17(3) of the Act
before the start of academic session, receives serious consideration in
the office of the Director of Education also. Any omission on part of
the school to file such a statement would have invited serious
objection of the Directorate of Education.

The Committee has also verified that the school was fulfilling
the pre conditions laid down by the Hon'ble Supreme Court in the
case of Modern School (supra). The reply to the questionnaire
submitted by the school with regard to development fee states that the
school treated development fee as a capital receipt and earmarked
FDRs were maintained in respect of the unutilised development fund
and depreciation reserve fund. This has been verified by the
Committee from the audited financials of the school.

In view of the foregoing considerations, the Committee is of the
view that no adverse inference is required to be drawn against the
school in respect of the development fee for the years 2009-10 and
2010-11.

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Resultantly, the Committee is restricting its recommendations of refund of development fee illegally recovered by the school retrospectively w.e.f. 01/04/2008 to 31/03/2009, purportedly acting in pursuance of order dated 11/02/2009 issued by the Director of Education when the said order did not authorize the recovery of development fee retrospectively when the school was not originally charging development fee in the year 2008-09. The amount required to be refunded to the students on this account is Rs. 17,62,932 which ought to be done along with interest @ 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:03/07/2019

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

000037

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

In the matter of:

National Public School, Maharani Bagh, New Delhi-110065 (B-439)

Order of the Committee

Present: Sh. Ravi Prakash Goel, Head Clerk of the school.

The Committee issued a questionnaire to all the schools (including this school) on 27/02/2012, which was followed by a reminder dated 27/03/2012, 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 of 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 respond either to the questionnaire issued by the Committee or to the reminder thereto. The Committee issued a fresh questionnaire on 29/07/2013 vide which, besides the queries raised vide questionnaire dated 27/02/2012, the school was also required to answers to specific queries with regard to collection and utilisation of development fee and maintenance of earmarked development/depreciation reserve funds, in order to examine whether the school was fulfilling 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, for charging development fee. However, this was also not responded to. Reminders were issued to the school on 05/09/2013,

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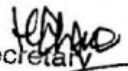
21/10/2013 and again on 05/12/2013. Finally, the school submitted its reply under cover of its letter dated 13/12/2013.

000038

As per the reply submitted by the school, it implemented the recommendations of VI Pay Commission and started paying the increased salary w.e.f. 01/10/2009. It also enclosed copies of the acquittance roll for the months of September 2009 and October 2009 to show the impact of implementation of the recommendations of VI Pay Commission. The school also enclosed the detail of salary arrears as per VI Pay Commission, which were paid to the staff. As per the statement submitted, the school paid a sum of Rs. 31,31,092 in two installments towards arrear salary. However, there was no indication as to which period the arrears of salary pertained.

With regard to fee hike, the school admitted having hiked the tuition fee w.e.f. 01/04/2009, in pursuance of order dated 11/02/2009 issued by the Director of Education. As per the information furnished by the school, the tuition fee was hiked @ Rs. 300 per month for all the classes i.e. Nursery to XII. As per the arrear fee, the school did not mention the total amount recovered as arrear fee as per order dated 11/02/2009 of the Director of Education. However, it enclosed a copy of circular dated 07/03/2009 issued by the school to the parents with regard to payment of arrear fee. As per this circular, the school collected a sum of Rs. 2100 towards arrears of tuition fee and Rs. 315 towards arrears of development fee for the period 01/09/2008 to 31/03/2009 and a sum

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of Rs. 3000 towards lump sum arrear fee for the period 01/01/2006
to 31/08/2008.

000039

The school admitted that it collected development fee in all the five years for which the information was sought by the Committee. The collection in the years 2009-10 and 2010-11, with which this Committee is concerned, amounted to Rs. 25,42,120 and Rs. 27,99,960 respectively. It was stated by the school that the development fee was treated as a revenue receipt by it and the expenditure out of the development fee was also of the revenue nature i.e. building repair and maintenance and property tax.

Thus at the very outset, it became apparent that the school was not fulfilling the pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School (supra). Prima facie, it appeared that the school ought to refund the development fee collected by it in 2009-10 and 2010-11 pursuant to order dated 11/02/2009 of the Director of Education. However, whether ultimately, the school would be required to refund the same or not, would depend upon our findings in respect of the surplus generated/deficit incurred by the school on implementation of the recommendations of VI Pay Commission.

The Committee issued a notice dated 22/05/2015, requiring the school to furnish within 10 days, the complete break up of fee and salaries for the years 2008-09 to 2010-11, duly reconciled with its

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audited financials (including arrear fee and arrear salary pursuant to 000040
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.

No compliance was made by the school to the notice dated
22/05/2015. The Committee issued another notice dated
09/07/2015 requiring the school to appear before it on 30/07/2015
and produce the details of entire fee, salary and accounting records
for the years 2006-07 to 2010-11.

Sh. Ravi Prakash Goel, Head Clerk of the school appeared on
30/07/2015 but did not produce any records for examination by the
Committee. The Committee also noted that the school had not filed
its response to the notice dated 22/05/2015. A final opportunity was
given to the school to comply with both the notices i.e. notice dated
22/05/2015 and 09/07/2015. On 10/08/2015, the school furnished
some of the required information. As the school did not furnish any
details of its accrued liabilities of gratuity and leave encashment. The
Committee presumed that the school had no such accrued liabilities
and on the basis of information furnished by the school and its
audited financials, the Committee prepared a preliminary calculation
sheet which is as follows:

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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

000041

	Particulars	Main School	D&P	Total
	<u>Current Assets</u>			
	Cash & Cheque in hand	561,551	5,517	567,068
	Bank Balance	844,169	(16,908)	827,261
	D&P Welfare Fund	4,311,190		4,311,190
	Mr. Vinod Kumar	17,295		17,295
	TDS on FDR	37,588		37,588
	Fee Receivable	7,280		7,280
	Earnest Money		50,000	50,000
	Prepaid Insurance		17,337	17,337
	Fixed Deposits	3,314,144		3,314,144
	Total Current assets (A)	9,093,217	55,946	9,149,163
Less	<u>Current Liabilities</u>			
	Caution Money	944,425		944,425
	Audit Fee Payable	15,000	5,100	20,100
	TDS payable		1,944	1,944
	Excell service		1,500	1,500
	Telephone Expenses Payable	1,437		1,437
	Electricity Charges	10,434		10,434
	Water Charges	6,140		6,140
	Advance Fee Received	85,340		85,340
	Total Current Liabilities (B)	1,062,776	8,544	1,071,320
	Net Current Assets + Investments (C=A-B)	8,030,441	47,402	8,077,843
Less	Arrear of Salary as per 6th CPC w.e.f. 1.1.2006 to 31.9.2009	5,314,980		5,314,980
	Incremental Salary for 2009-10 (as per calculation given below)	2,705,054		2,705,054
	Total (D)	8,020,034		8,020,034
	Excess / (Short) Fund Before Fee Hike (E=C-D)	10,407	47,402	57,809
Add	Recovery of Arrears of tuition fee w.e.f 01.01.2006 to 31.03.2009	4,107,230		4,107,230
	Recovery of Arrears of development fee w.e.f 01.01.2006 to 31.03.2009	473,380		473,380
	Incremental Tuition Fee in 2009-10 (as per calculation given below)	3,921,232		3,921,232
	Total (F)	8,501,842		8,501,842
	Excess / (Short) Funds After Fee Hike (G=E+F)	8,512,249	47,402	8,559,651
Less	Funds to be kept in reserve: for future contingencies equivalent to 4 months salary	4,535,312		4,535,312
	Total Reserves (H)	4,535,312		4,535,312
	Excess / (Short) Funds (I=G-H)	3,976,937	47,402	4,024,339

Excess tuition fee hike refundable

4,024,339

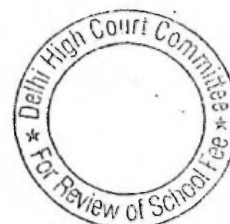
Add: Development fee for 2009-10 and 2010-11 refundable having been treated as revenue receipt:

for 2009-10

2,068,740

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for 2010-11

Total amount refundable

000042

2,799,960

8,893,039

Working Notes:

Main School	2008-09	2009-10
Normal/ regular salary	10,368,943	13,068,456
Add: Provident Fund	531,939	537,480
Total	10,900,882	13,605,936
Incremental salary 2009-10 as per I & E A/c	2,705,054	

Main School	2008-09	2009-10
Regular/ Normal Tuition fee	13,432,315	17,353,547
Incremental tuition fee in 2009-10 as per I & E A/c	3,921,232	

In reply to the questionnaire, the school had mentioned that it recovered a sum of Rs. 25,42,120 towards development fee in the year 2009-10. However, on examination of the audited accounts, it came out that this sum included Rs. 4,73,380 recovered as arrears of differential development fee for the period 01/09/2008 to 31/03/2009. Accordingly, the Committee considered only the balance amount of Rs. 20,68,740 as regular development fee for the year 2009-10 in the above calculation sheet.

A copy of the above calculation sheet was given to the school for rebuttal if any. The school filed written submissions dated 30/11/2015 and rebutted the calculations made by the Committee.

It is not necessary to record the various issues raised by the school. It would be suffice to say that the school provided details of its accrued liabilities of gratuity and leave as on 31/03/2010 as per which a sum of Rs. 1,29,44,854 was the accrued liability of gratuity

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and a sum of Rs. 29,70,446 was its accrued liability of leave encashment as on 31/03/2010.

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The Committee has verified the details and they appear to be in order. These had not been taken into account by the Committee in its preliminary calculation sheet as the school had failed to provide such details when it was specifically asked to provide the same. However, since the school has subsequently provided the details, the Committee sees no reason not to factor the same in its calculations.

As noticed supra, the Committee provisionally determined the amount refundable by the school to be Rs. 88,93,039 including the development fee for the years 2009-10 and 2010-11. The accrued liabilities of the school on account of gratuity and leave encashment amount to Rs. 1,59,15,300. In view of these facts, the Committee recommends no intervention either in the matter of recovery of arrear fee or development fee or in the matter of fee hike effected by the school for the year 2009-10 pursuant to order dated 11/02/2009 issued by the Director of Education.

Justice Anil Kumar (R)
(Chairperson)

CA J.S. Kochar
(Member)

Dr. R.K. Sharma
(Member)

Dated: 05/07/2019

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000044

**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:

Bhai Parmanand Vidya Mandir, Surya Niketan, Delhi-110092 (B-335)

Order of the Committee

Present: Sh.Rahul Jain and Sh. Nitin Goel, Chartered Accountants with Sh. Brij Ojha, Accountant of the school.

The Committee issued a questionnaire to all the schools (including this school) on 27/02/2012, which was followed by a reminder dated 27/03/2012, 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 of 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 respond either to the questionnaire issued by the Committee or to the reminder thereto. The Committee issued a fresh questionnaire on 06/05/2013 vide which, besides the queries raised vide questionnaire dated 27/02/2012, the school was also required to answers to specific queries with regard to collection and utilisation of development fee and maintenance of earmarked development/depreciation reserve funds, in order to examine whether the school was fulfilling 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, for charging development fee. The school vide its letter

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H. Ojha
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dated 30/05/2013 requested for some more time to submit the reply as the school was closed for summer vacation. Finally, the school submitted its reply under cover of its letter dated 01/07/2013.

As per the reply submitted by the school, it implemented the recommendations of VI Pay Commission and started paying the increased salary w.e.f. March 2009. It stated that the monthly expenditure on salary prior to implementation of the recommendations of VI Pay Commission was Rs. 6,81,578 which rose to Rs. 10,31,987 after its implementation. It also stated that it paid a sum of Rs. 17,43,091 as arrears to the staff. However, it did not state the period to which the arrear salary related.

With regard to fee hike, the school admitted having hiked the tuition fee w.e.f. 01/04/2009, in pursuance of order dated 11/02/2009 issued by the Director of Education. As per the information furnished by the school, the tuition fee was hiked @ Rs. 300 per month for classes Nursery to X. The hike in fee for classes XI and XII was Rs. 400 per month. It also stated that it recovered a sum of Rs. 16,29,630 as arrear fee from the students. Here, it was specifically stated that the arrear fee pertained to the period 01/09/2008 to 31/03/2009.

The school admitted that it collected development fee in all the five years for which the information was sought by the Committee. The collection in the years 2009-10 and 2010-11, with which this

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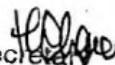
Committee is concerned, amounted to Rs. 13,38,810 and Rs. 33,77,926 respectively. It was stated by the school that the development fee was treated as a revenue receipt upto 31/03/2007 but thereafter it was treated as a capital receipt. As per the details submitted, the development fee was utilised for purchase of furniture, fixtures and equipments. With regard to maintenance of earmarked depreciation reserve fund, it was stated that the school was maintaining the same.

Thus, as per the reply given by the school, it was apparently fulfilling the pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School (supra).

While perusing the annual returns filed by the school under Rule 180 of the Delhi School Education Rules, 1973, the Committee observed that the school never filed any schedules to the balance sheet in any of the years. Accordingly, the school was issued notice dated 06/11/2013 to file complete balance sheets along with schedules. However, the school did not do so within the stipulated period as a result of which the Committee had issued a reminder. The school ultimately filed the schedules to the balance sheets for the years 2006-07 to 2010-11 under cover of its letter dated 20/11/2013.

The Committee issued a notice dated 09/07/2015, requiring the school to appear before the Committee on 29/07/2015 and also produce its accounting fee and salary records. The notice also

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required the school to furnish complete break up of fee and salaries for the years 2008-09 to 2010-11, duly reconciled with its audited financials (including arrear fee and arrear salary pursuant to implementation of VI Pay Commission) in a structured format, 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.

Sh. Rahul Jain, Chartered Accountant appeared with Sh. P.K. Shrivastava, Administrative Officer and Sh. Brij Bhushan, Accountant of the school. The school filed written submissions dated 29/07/2015, furnishing the required information. On perusal of the information furnished by the school, the Committee observed that the school had neither paid the arrear salary for the period 01/01/2006 to 31/08/2008 nor had recovered any arrear fee for that period as per the order dated 11/02/2009 of the Director of Education. The Committee also observed that the annual fee charged by the school rose from Rs. 35.89 lacs in 2008-09 to Rs. 105.85 lacs in 2009-10 while, as per the fee schedules of the school for these years, the rate of annual fee charged from the students remained the same. The Committee also observed that the development fee rose from Rs. 13.38 lacs in 2009-10 to Rs. 33.77 lacs in 2010-11. The school did not produce the books of accounts from which the reason for such huge

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increase could be ascertained. Accordingly, the school was required to produce its books of accounts, fee records, salary records and bank statements before the Audit Officer of the Committee on 11/08/2015, who was directed to examine the same and record her observations and put them before the Committee.

The authorized representatives of the school appeared before the Audit Officer of the Committee on the designated date and produced its records. She made the following observations after examining the records of the school:

- (a) The fee had been charged by the school at the rates which were mentioned in the fee schedules for the years 2008-09, 2009-10 and 2010-11.
- (b) Upto 2009-10, development fee was charged only from the new students but in 2010-11, development fee was charged from all the students. Further, differential rates of development fee were adopted from the old students as compared to the new students. New students were charged more.
- (c) The authorized representative of the school informed that in 2008-09, certain sums received towards annual fee were wrongly booked under the head tuition fee in the accounting software. As per the student strength and the rate of annual fee, the total collection under this head ought to have been Rs. 81,96,000 but in the accounts, it was reflected at Rs.

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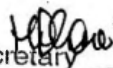
35,89,794 on account of the aforesaid wrong entries. However, in 2009-10, the annual fee was correctly recorded in the accounts at Rs. 1,05,85,675 and the increase over 2008-09 was commensurate with the increase in student strength.

The school filed a letter dated 17/08/2015 in the office of the Committee vide which it confirmed the observations of the Audit Officer that the abnormal increase in development fee in 2010-11 was on account of the fact that till 2009-10, development fee was charged only from the new students but from 2010-11, it was charged from all the students. With regard to the abnormal increase in annual fee from Rs. 35,89,794 in 2008-09 to Rs. 1,05,85,675 in 2009-10, the school merely reiterated what was stated before the audit officer i.e. the mistake was on account of wrong accounting of annual charges in other heads of fee.

The matter could not be pursued further at that stage on account of resignation of Justice Anil Dev Singh, as Chairman of the Committee. After reconstitution of the Committee, a fresh notice of hearing was issued on 13/11/2017 requiring the school to appear on 22/11/2017.

Sh. Rahul Jain, Chartered Accountant appeared and was partly heard by the Committee.

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He submitted that as per the previous order of the Committee, the discrepancies in the accounting of annual charges in the year 2008-09 were explained to the Audit officer which had been verified by her. However, on perusal of the note dated 11/08/2015 of the Audit officer, the Committee observed that the actual discrepancies in the accounting were not gone into detail but only hypothetical calculations filed by the school based on the fee structure and the student strength were verified by her.

The Committee felt that this exercise would not be sufficient for the purpose of making the relevant calculations to examine the justifiability of fee hike pursuant to order dated 11/02/2009 of the Director of Education. The school should have pinpointed the specific entries of annual charges which had wrongly been booked under the head tuition fee in its books of accounts. The school was accordingly directed to file a revised Annexure 1 of its letter dated 29/07/2015, incorporating therein the correct amount of tuition fee and annual charges.

On 10/01/2018, the authorized representative appearing for the school submitted that it was not possible to pinpoint the exact entries of annual charges, which were wrongly credited to tuition fee or vice versa in 2008-09 and 2009-10. In the circumstances, the Committee observed that for the purpose of making relevant calculations, the Committee would club the tuition fee and annual charges and other miscellaneous fees received by the school in 2008-

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09 and 2009-10 and also club the expenditure incurred by the school on salaries and other normal over heads. This course of action was also agreed to by the authorized representative of the school.

While preparing the calculation sheet, the Committee observed that the school did not have any funds of its own before the fee hike. In fact, as per the balance sheet of the school as on 31/03/2008, the funds available with the school were in the negative zone as its current liabilities were Rs. 44,33,883 against which the current assets of the school were just Rs. 15,28,932. The following position emerged on examining the audited balance sheet of the school as on 31/03/2008 with regard to its current assets and liabilities:

<u>Current Assets + Investments</u>		
Cash in hand	23,656	
Cash at Bank	153,714	
Advance to staff	46,300	
Loans and Advances	51,480	
Closing Stock of Lab Consumables	52,327	
TDS refund	16,579	
FDRs with Banks	1,184,876	1,528,932
<u>Current Liabilities</u>		
Sundry Creditors	2,869,469	
Security Payable	325,150	
M/s BVM Books & Uniform Shop	716,096	
Expenses Payable	73,874	
Cheques issued but not presented for payment	449,294	4,433,883
Net Current Assets + Investments (B)		(2,904,951)

It is unfathomable as to how the school could not have sufficient current assets even to cover its current liabilities. Obviously

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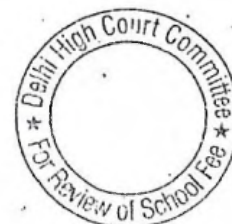
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there was something more than met the eye. On a closer examination of the financials of the school for the years 2006-07 to 2010-11, it became apparent that the school was incurring capital expenditure by way of making repayment of loans and purchasing fixed assets out of its fee revenues, when apparently it had no savings as defined in the Rule 177 of the Delhi School Education Rules, 1973. The Committee calculated that between 2006-07 and 2009-10, the school had apparently incurred capital expenditure towards creation of fixed assets to the tune of Rs. 1,11,55,501 and made repayment of term loans for purchase of fixed assets to the tune of Rs. 60,71,410 (Rs.57,52,303 towards principal and Rs. 3,19,107 towards interest) . Incurring of capital expenditure out of the fee revenue of the school was in violation of the law laid down by the Hon'ble Supreme Court, as explained above. The Committee was, accordingly, of the view that the school could not take advantage of its own wrong and plead paucity of funds to justify the hike in fee for implementing the recommendations of VI Pay Commission. The Committee considered the aforesaid capital expenditure of **Rs. 1,72,26,911** to be available with the school and accordingly calculated that the school had available with it a sum of **Rs. 1,43,21,960** (1,72,26,911- 29,04,551). This calculation was made after taking into consideration the development fee charged by the school for purchase of fixed assets and to that extent, the cost of fixed assets was reduced as the amount

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of diversion towards capital expenditure was required to be calculated only from the tuition fee and annual charges.

The financial impact of implementing the recommendations of VI Pay Commission on the school, to the extent it implemented (it did not pay the arrear salary for the period 01/01/2006 to 31/08/2008), was of the order of **Rs. 1,19,21,929** as per the following details:

Additional Liabilities on implementation of 6th CPC:		
Arrear of Salary from 1.9.08 to 31.3.09	1,743,091	
Incremental Expenditure on Salary and normal overheads for 2009-10 (as per calculation below)	* 10,178,838	11,921,929

Working Notes:

Salary and other Overheads	2008-09	2009-10
Total Expenditure on Salary and other overheads	22,285,218	33,642,573
Less:		
Gratuity	(72,000)	(171,059)
Leave Encashment	(51,934)	(33,448)
Bank Charges & Interest paid	(181,031)	(12,903)
Interest on Property Tax	(14,763)	-
Internal Audit Expenses	(240,000)	(315,720)
Depreciation	(2,585,100)	(3,469,131)
Transfer to Building Fund	-	(100,000)
Cost of Porta Cabin	-	(123,024)
Splash Pool Expenses	-	(98,060)
	19,140,390	29,319,228
*Incremental Expenditure in 2009-10	10,178,838	

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The additional revenue generated by the school for implementing the recommendations of VI Pay Commission and for incurring other increased over head expenditure amounted to **Rs. 1,38,15,421** as per the following details:

Additional Recovery for 6th CPC:		
Arrear tuition fee w.e.f 01.09.08 to 31.03.09	1,629,630	
Incremental fee for 2009-10 (as per calculation below)	*12,185,791	13,815,421

Working Notes:		
Additional Recovery for 6th CPC:	2008-09	2009-10
Tuition Fee	18,442,012	23,631,922
Annual Charges	3,589,794	10,585,675
Total Fees	22,031,806	34,217,597
Incremental fee in 2009-10	12,185,791	

Thus, prima facie, the school generated a surplus by hiking fee pursuant to order dated 11/02/2009 issued by the Director of Education, when it already had a substantial amount of funds of its own, which it chose to apply towards capital expenditure. After taking into account, the requirement of the school to keep funds in reserve for meeting its accrued liabilities of gratuity and leave encashment and also for maintenance of reasonable reserve equivalent to four months salary, which the Committee calculated to be Rs. 63,97,821, the Committee arrived at a prima facie conclusion that the fee hike effected by the school in 2009-10 was unjustified to the tune of **Rs. 98,17,631** as per the following calculations:

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Funds deemed to be available with the school prior to fee hike		1,43,21,960
Less: funds required to be kept in reserve for		
(a) Accrued liability of gratuity	9,37,248	
(b) Accrued liability of leave encashment	3,97,471	
(c) Reasonable reserve for future contingencies	<u>50,63,102</u>	63,97,821
Balance		79,24,139
Add: Additional revenue generated by school by fee hike		1,38,15,421
Total		2,17,39,560
Less: Additional expenditure on salary and other overheads after implementation of the recommendations of VI Pay Commission		1,19,21,929
Surplus on account of fee hike		98,17,631

Besides, although as per the reply to the questionnaire filed by the school, it appeared that the school was fulfilling the necessary pre conditions for charging development fee, on examination of the audited financials of the school, it appeared that it may not be so. Therefore, the Committee included the development fee for 2009-10 amounting to Rs. 13,38,810 and Rs. 33,77,926 for 2010-11 in the amount provisionally determined to be refundable by the school besides the sum of Rs. 98,17,631 as determined above.

A copy of the calculation sheet was given to the authorized representative of the school. The school was provided with an opportunity to rebut the aforesaid calculations.

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H. Singh
Secretary



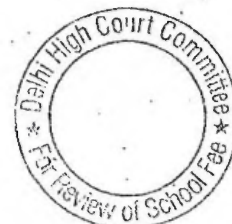
The school filed written submissions dated 05/03/2018 in rebuttal to the calculation sheet prepared by the Committee. The written submissions are reproduced verbatim as follows:

"With reference to statement showing fund available as on 31/03/2018 and the effect of hike in fee as per order dated 11.02.2009 and effect in increase in salary on implementation of the 6th pay commission report (calculation sheet) provided in last hearing on the subject cited above, we hereby respectfully submitted that:

1. *School has implemented recommendation of VI apy Commission w.e.f. April 2009 and collected arrears of fee & increase in fee as per the guidelines issued by the Department of Education. Further school has utilised its fund as per rule 177 of Delhi School Education Rules, 1973 and not violated any provisions of DSER, 1973.*
2. *An amount of Rs. 1,72,26,911 is shown as funds which appear to be diverted in the preliminary calculation sheet, committee is requested to please provide the basis on which the mentioned funds of Rs. 1,72,26,911 appears to be diverted so that school can give justification for the same accordingly.*
3. *Further as evident from the audited financial statement there has been a revenue loss till 2005-06 which was made from temporary loan. The temporary loan to that extent become a current liability, without prejudice to our request that the whole of unsecured so qualifies for current liability while computing the current surplus.*
4. *That school has collected development fee and fulfilled all pre conditions for collecting development fee. School has treated development fees as capital receipt and also created depreciation reserve fund as evident from the audited financials statements of the school for the F.Y. 2009-10 & 2010-11. Further school maintains separate ledger account for development fees and depreciation reserve fund in the books of accounts. Further school has already submitted that if any balance remains untutilised at end of the year, school creates fixed deposit of the same. During the year 2009-10 and 2010-11 school received total development fees of Rs. 47,16,736 and entire fees was utilised in acquiring in permitted fixed assets. Therefore, you are requested to please consider that school is fulfilling all pre conditions require to collect development fees.*

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We request that above points may please be considered and an opportunity may be granted to clarify the above points. We assure our full cooperation to the Committee."

The authorized representative appearing of the school was heard in the matter and was informed that the basis on which the Committee arrived at the figure of Rs. 1,72,26,911 was already provided to the school along with the calculation sheet and the figures were taken by the Committee from the Receipt and Payment accounts of the school. The Committee noted that apparently the school had nothing to say to controvert this figure.

The hearing was accordingly concluded and the order in the matter was reserved. However, subsequently, the school filed another letter dated 09/04/2018 requesting for one more opportunity to be provided to the school to make its submissions. In the interest of justice, the hearing was reopened and the matter was listed for 01/06/2018. On 31/05/2018, Sh. Pramod Gupta, Advocate, filed additional written submissions on behalf of the school. On the date of hearing, he appeared alongwith Ms. Khushboo Aggarwal, Advocate Sh. Rahul Jain, Chartered Accountant, Sh. A.K. Sharma, Manager of the school and Sh. Brij Bhushan Ojha, Accountant of the school. He was partly heard in the matter.

One mistake which Sh. Gupta pointed out in the preliminary calculation sheet which was not brought forth by the school in its rebuttal was that while calculating the incremental tuition fee taken by the Committee, it has erroneously included the arrear fee of

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Secretary

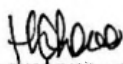


Rs.14,62,730 which was received by the school in 2009-10. It was submitted that the same ought to have been included in the fee for 2008-09 as it pertains to that year but was received in the year 2009-10.

The Committee revisited the Calculation Sheet and observed that the regular tuition fee for the year 2009-10 had indeed included the aforesaid sum of Rs.14,62,730 and the same had also been separately added as arrear tuition fee for the period 01/09/2008 to 31/03/2009. The mistake being apparent, will be corrected in final determinations. However, the same cannot be included as part of regular tuition fee for the year 2008-09, as contended by the Ld. Counsel for the reason that it has already been separately dealt with in the calculation sheet as part of the arrear fee.

The Ld. Counsel further contended that the Committee ought to have considered the fee on accrual basis for the years 2008-09 and 2009-10 or the actual number of students who were on roll of the school in 2008-09 as the incremental fee would have been recovered from them only. The Committee noted that by the same token the incremental salary in 2009-10 would have been paid only to the staff who were employed during the year 2008-09 and to whom the arrear salary for the period 01/09/2008 to 31/03/2009 had been paid. Accordingly the school was directed to file separate statements

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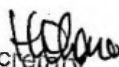

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showing the student wise recovery of arrear fee for the period 01/09/2008 to 31/03/2009 and the regular fee actually received from the students in the years 2008-09 and 2009-10 in respect of only those students who were on the rolls of the school in 2008-09 in tabular form. The school was also directed to file separate statements showing the payment of arrear salary for the period 01/09/2008 to 31/03/2009 and the regular salary paid to such teachers in the year 2008-09 and 2009-10 in tabular form. The school was also directed to produce its books of accounts for the years 2008-09 to 2010-11 in a laptop.

After a couple of adjournments, on 26/11/2018, Sh. Nitin Goyal and Sh. Rahul Jain, Chartered Accountants appeared with Sh. Braj Bhushan, Accountant of the school. They submitted that firstly, 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 go through the mandate given by the Hon'ble Delhi High Court in WPC 7777 of 2009. Alternatively it was 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 was 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. However, in the year 2010-11, the utilization fell short of the collection. It was further submitted that the development fee

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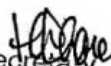


was treated as a capital receipt in the books and depreciation reserve was also created in the books. However, it was conceded that the school was not maintaining any earmarked depreciation reserve fund and even the amount of non earmarked FDRs was not equivalent to the accumulated amount in the depreciation reserve as per the books of the accounts.

The next submission of the authorized representative was with regard to the amount of capital expenditure in the shape of repayment of secured loans and fixed assets created by the school out of school fund i.e. over and above the development fund. It was 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 did not furnish any calculation with regard to the savings in the manner prescribed under Rule 177, as interpreted by the Hon'ble Supreme Court in case of Modern School (supra). It was submitted that if the capital expenditure amounting to Rs. 1,72,26,911, which the Committee had determined to have been incurred out of school fund, was excluded from the relevant calculations, the school would not be liable to refund any fee as the provisionally determined by the Committee showed that the total amount apparently refundable was Rs. 1,45,34,367.

In order to examine the tenability of this argument, the Committee tried to examine the budgets of the school, on the basis of which, the fee was calculated by the school. However, it found that

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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, 1973. The authorized representatives undertook to furnish copies of the budgets for the years 2006-07 to 2010-11 within a couple of days. The school was directed to furnish the same.

The school filed copies of its budgets for the years 2006-07 to 2009-10. However, the authorized representatives appearing for the school were not able to correlate the fee schedule of the school with the budgets. The school also did not file any calculations of savings as per Rule 177 to support its contention that the capital expenditure could have been incurred out of the school fund. The hearing was concluded. However, the school was given liberty to file the calculations of savings as per rule 177 in the light of the judgment of the Hon'ble Supreme Court in the case of Modern school.

The school filed a letter dated 17/12/2018 along with which two annexures were enclosed. Annexure-1 was a calculation of savings, purportedly as per Rule 177 of Delhi School Education Rules, 1973 read with the judgment of the Hon'ble Supreme Court in the case of Modern School (supra). Annexure-2 was a statement showing source of capital expenditure vis a vis savings as per Rule 177.

Issues:

Broadly the calculations made by the Committee have been disputed on the following grounds:

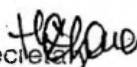
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- (1) The regular fee for 2009-10 that had been taken by the Committee in its calculation was excessive by Rs. 14,62,730 and to that extent the surplus generated by the school as determined by the Committee would stand reduced.
- (2) Although the school conceded that it was not maintaining any earmarked depreciation reserve fund, the Committee was not justified to consider the issue of development fee as it was beyond its mandate. At any rate, the Committee ought to have considered only the incremental amount of development fee for 2009-10 and not the full amount.
- (3) The capital expenditure was incurred by the school out of its savings and the same was permissible as per Rule 177, and as such ought not to have been considered as amount of fee diverted for such expenditure.
- (4) Although the school stated that the incremental fee for the year 2009-10 ought to have been calculated only in respect of the students who were on its rolls in 2008-09, the school did not press this argument when the Committee observed that by the same token, the incremental salary for 2009-10 ought also be considered in respect of the staff who were employed in 2008-09 and directed the school to furnish information in respect of both the above aspects.

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Discussion:

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- (1) So far as the first issue is concerned, the Committee has already recorded that the issue raised by the school is correct and necessary adjustments will be made while making the final determinations.
- (2) In order to examine the second issue raised by the school, it would be apposite to reproduce the relevant portion of the judgment of the Hon'ble Delhi High Court in **WP (C) 7777 of 2009**. A reading of para 82 of the judgment, which is reproduced hereunder would clarify as to what is the mandate of this Committee. The same reads as follows:

82. *If and when such measures are adopted that may provide lasting solution to the problem. However, even when the Government is willing this process is likely to take substantial time. In the integerrum, neither the deserving schools who need to increase fee but are not permitted, nor the poor parents who may be coughing out much more fee than what is justified and charged by certain schools cannot be left in lurch. Since we have held that fee hike in the orders dated 11.02.2009 is to be construed as an interim measure, to resolve the matter finally, this exercise is to be completed and taken to its logical end. We are, therefore, of the opinion that for this purpose, a Committee be constituted in the same manner in which this Court had earlier appointed Justice Santosh Duggal (Retired). Accordingly, we appoint a Committee of Three Members, which shall comprise of Justice Anil Dev Singh, retired Chief Justice, Rajasthan High Court. He will be assisted by Shri J.S. Kochar, Chartered Accountant *** and another Member can be from the field of Education, who shall be nominated by the Chief Secretary, Govt. of NCT, Delhi. All the schools shall render full cooperation to the Committee in order to enable the Committee to undertake its job effectively and speedily. This Committee will be for the*

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period covered by the impugned order dated 11.02.2009 and specifically looking into the aspect as to how much fee increase was required by each individual schools on the implementation of the recommendation of VIth Pay Commission, i.e., it would examine the records and accounts, etc. of these schools and taking into consideration the funds available, etc. at the disposal of schools at that time and the principles laid down by the Supreme Court in Modern School and Action Committee Unaided Pvt. Schools as explained in this judgment.

It is apparent that this Committee was constituted to carry out the following exercises:

- (i) To determine whether the fee hike effected by the schools was justified keeping in view the funds available at the disposal of the school at that time (i.e. when the decision to hike fee was taken) and the additional expenditure which the schools would incur on implementation of the recommendations of VI Pay Commission.
- (ii) To see whether the principles laid down by the Hon'ble Supreme Court in the cases of Modern School and Action Committee Unaided Private Schools, were followed or not.

Now let us examine as to what were the principles laid down by the Hon'ble Supreme Court in the case of Modern School.

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The Supreme Court at the very outset noted as follows: 000065

"1. In this batch of civil appeals, following three points arise for determination:--

(a) Whether the Director of Education has the authority to regulate the quantum of fees charged by un-aided schools under section 17(3) of Delhi School Education Act, 1973?

(b) Whether the direction issued on 15th December, 1999 by the Director of Education under section 24(3) of the Delhi School Education Act, 1973 stating inter alia that no fees/funds collected from parents/students shall be transferred from the Recognized Un-aided Schools Fund to the society or trust or any other institution, is in conflict with rule 177 of Delhi School Education Rules, 1973?

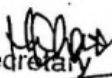
(c) Whether managements of Recognized unaided schools are entitled to set-up a Development Fund Account under the provisions of the Delhi School Education Act, 1973?"

It would also be in order to reproduce here below clause 14 of the order dated 11/02/2009 issued by the Director of Education which was the impugned order in WP(C) 7777 of 2009. The same reads as under:

14. Development fee, not exceeding 15% of the total annual tuition fee, may be charged for supplementing the resources for purchase, upgradation and replacement of furniture, fixtures and equipment. 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.

In view of the fact that the principles laid down by the Hon'ble Supreme Court in the case of Modern School (supra)

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have to be taken into account by the Committee and one of the issues dealt with by the Hon'ble Supreme Court in this case was with regard to setting up of a development fund account (by charging development fee), and further the order dated 11/02/2009 of the Director of Education was the impugned order before the Hon'ble Delhi High Court, contained a direction/permission to the school to charge development fee subject to fulfillment of certain pre conditions (which were prescribed by the Duggal Committee and affirmed by the Hon'ble Supreme Court in the case of Modern School), there is no gainsaying the fact that the issue of development fee does not come under the mandate of this Committee. The Committee holds that examination of the issue of development fee is very much within its purview.

An alternative submission was made that the Committee should confine itself only to the incremental development fee and not the entire amount of development fee charged by the school. This submission ignores the fact that the order dated 11/02/2009 of the Director of Education, dealt with separately the incremental development fee and the regular development fee charged by the schools. We have already reproduced clause 14 of the said order which deals with the regular development fee. Clause 15 of the order deals with the incremental

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development fee. For immediate reference, the same is reproduced as follows:

15. *However, the additional increase in Development Fee on account of increase in Tuition Fee shall be utilised for the purpose of meeting any shortfall on account of salary/arrears only.*

Hence the Committee holds that examination of both the incremental development fee and the regular development fee charged by the school is within its purview.

On merits, the school has not seriously contended that it was fulfilling the required pre conditions for charging development fee and has in fact conceded that the school was not maintaining earmarked depreciation reserve fund, which is the basic requirement for the school to maintain if it is to charge the development fee as mandated in clause 14 of the aforesaid order dated 11/02/2009, which was nothing but a reproduction of the pre conditions prescribed by the Duggal Committee and affirmed by the Hon'ble Supreme Court. Further, there is no merit in the argument that since the school had already utilised the development fee charged in 2009-10, it ought not be ordered to be refunded. The issue of utilisation of development fee would arise only if the development fee had been charged in accordance with the law laid down by the Hon'ble Supreme Court. Accordingly, the Committee holds that the school ought to refund the development fee charged by it in 2009-10 and 2010-11, purportedly in pursuance of order dated 11/02/2009

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of the Director of Education but in actual fact, it was charged without fulfilling the necessary pre conditions for charging development fee.

(3) The school contended that the amount of capital expenditure incurred by it, which was considered by the Committee as diversion from tuition fee and annual charges and therefore, included as part of funds available with the school, was not justified as Rule 177 permitted incurring of such capital expenditure out of the savings from fee revenues of the school. It further gave details of its savings vis a vis capital expenditure from 2006-07 to 2009-10.

The school was required to furnish copies of its budgets (on the basis of which it fixes the fee to be recovered from the students). The examination of the budgets of the five years which was submitted by the school showed no correlation between the budgets and the fee fixed by the school. It is true that Rule 177 provides for incurring certain capital expenditures if the schools have generated some savings from its fee revenues. However, as held by the Hon'ble Delhi High Court in **Delhi Abibhavak Mahasangh Vs. Union of India and others AIR 1999 Delhi 124**, such savings must be incidental and not created savings. In other words, the fee fixed by the school cannot provide for creation of such savings in order to be able to incur capital expenditure. That

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is to say that capital expenditure should not form part of the fee structure but if incidentally there is some savings from the fee, it can be used for incurring capital expenditure. It would apt to cite the relevant part of the judgment of the Hon'ble Delhi High Court in the above case. The same is as follows:

47. *The forceful submission put forth on behalf of the schools by Mr. Jaitley and by Mr. Gopal Subramaniam that what can be regulated and interfered with is the use of the amounts collected by the schools from the students and not the quantum also deserve to be rejected. It is same argument that only end use of the amount collected is the relevant consideration and not whether the amount collected for one head is spent on another. The scheme of the Act and the Rules is that there should be no diversion of funds and what is collected shall be spent for same purpose barring accidental savings. The incidental use of sums collected for some ancillary purpose may be different but not the deliberate levy for one purpose knowing that for the said purpose the amount required may be much less and knowing that the excess amount is levied and collected and later used for another purpose. We do not think that the object of the Act would stand satisfied on simply showing that the amounts collected were spent for educational purposes. There may be some stray cases of such diversion of funds taking place. The approach relating to such stray cases may be different. The approach would, however, be different when one finds a continuous pattern of such diversion which is not permissible under the Act and the Rules and cannot be permitted under the garb of spreading education. But these are some of the aspects to be examined on facts in each case.*

.....

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65. *In view of the aforesaid discussion our conclusions may be summaries as under:-*

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(i) It is the obligation of the Administrator and or Director of Education to prevent commercialisation and exploitation in private unaided schools including schools run by minorities.

(ii) The tuition fee and other charges are required to be fixed in a validly constituted meeting giving opportunity to the representatives of Parent Teachers Association and Nominee of Director of Education of place their viewpoints.

(iii) No permission from Director of Education is necessary before or after fixing tuition fee. In case, however, such fixing is found to be irrational and arbitrary there are ample powers under the Act and Rules to issue directions to school to rectify it before resorting to harsh measures. The question of commercialisation of education and exploitation of parents by individual schools can be authoritatively determined on thorough examination of accounts and other records of each school.

(iv) The Act and the Rules prohibit transfer of funds from the school to the society or from one school to another.

(v) The tuition fee cannot be fixed to recover capital expenditure to be incurred on the properties of the society.

(vi) The inspection of the schools, audit of the accounts and compliance of the provisions of the Act and the Rules by private recognised unaided schools could have prevented the present state of affairs.

(vii) The authorities/Director of Education has failed in its obligation to get the accounts of private recognised unaided schools audited from time to time.

(viii) The schools/societies can take voluntary donations not connected with the admission of the ward.

(ix) On the peculiar facts of these petitions there is no per se illegality in issue of the impugned circular dated 10th September 1997.

(x) An independent statutory Committee, by amendment of law, if necessary, deserves to be constituted to go into factual matters and adjudicate disputes which may arise in future in the matter of fixation of tuition fee and other charges.

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(xi) *The Government should consider extending Act and Rules with or without modifications to all schools from Nursery onward.*

The aforesaid judgment of the Delhi High Court was challenged in the Supreme Court by way of civil appeal and the judgment of the Hon'ble Supreme Court is reported as *Modern School & ors vs. Union of India & ors. (2004) 5 SCC 583*. The capital expenditure to be forming part of the fee structure was specifically dealt with by the Hon'ble Supreme Court as follows:

"19. *It was argued on behalf of the management that rule 177 allows the schools to incur capital expenditure in respect of the same school or to assist any other school or to set up any other school under the same management and consequently, the Director had no authority under clause (8) to restrain the school from transferring the funds from the Recognized Unaided School Fund to the society or the trust or any other institution and, therefore, clause (8) was in conflict with rule 177.*

20. *We do not find merit in the above arguments. Before analyzing the rules herein, it may be pointed out, that as of today, we have Generally Accepted Accounting Principles (GAAP). As stated above, commercialization of education has been a problem area for the last several years. One of the methods of eradicating commercialization of education in schools is to insist on every school following principles of accounting applicable to not-for-profit organizations/ non-business organizations. Under the Generally Accepted Accounting Principles, expense is different from expenditure. All operational expenses for the current accounting year like salary and allowances payable to employees, rent for the premises, payment of property taxes are current revenue expenses. These expenses entail benefits during the current accounting period. Expenditure, on the other hand, is for acquisition of an asset of an enduring nature which gives benefits spread over many accounting periods, like purchase of plant and machinery, building etc. Therefore, there is a difference between*

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revenue expenses and capital expenditure. Lastly, we must keep in mind that accounting has a linkage with law. Accounting operates within legal framework. Therefore, banking, insurance and electricity companies have their own form of balance-sheets unlike balance-sheets prescribed for companies under the Companies Act 1956. Therefore, we have to look at the accounts of non-business organizations like schools, hospitals etc. in the light of the statute in question.

21. In the light of the above observations, we are required to analyse rules 172, 175, 176 and 177 of 1973 rules. The above rules indicate the manner in which accounts are required to be maintained by the schools. Under section 18(3) of the said Act every Recognized school shall have a fund titled "Recognized Unaided School Fund". It is important to bear in mind that in every non-business organization, accounts are to be maintained on the basis of what is known as 'Fund Based System of Accounting'. Such system brings about transparency. Section 18(3) of the Act shows that schools have to maintain Fund Based System of Accounting. The said Fund. contemplated by Section 18(3), shall consist of income by way of fees, fine, rent, interest etc. Section 18(3) is to be read with rule 175. Reading the two together, it is clear that each item of income shall be accounted for separately under the common head, namely, Recognized Unaided School Fund. Further, rule 175 indicates accrual of income unlike rule 177 which deals with utilization of income. Rule 177 does not cover all the items of income mentioned in rule 175. Rule 177 only deals with one item of income for the school, namely, fees. Rule 177(1) shows that salaries, allowances and benefits to the employees shall constitute deduction from the income in the first instance. That after such deduction, surplus if any, shall be appropriated towards, pension, gratuity, reserves and other items of appropriations enumerated in rule 177(2) and after such appropriation the balance (savings) shall be utilized to meet capital expenditure of the same school or to set up another school under the same management. Therefore, rule 177 deals with application of income and not with accrual of income. Therefore, rule 177 shows that salaries and allowances shall come out from the fees whereas capital expenditure will be a charge on the savings. Therefore, capital expenditure cannot constitute a component of the financial fees structure as is submitted on behalf of the schools. It also shows that salaries and allowances are revenue expenses incurred during the current year and, therefore, they have to come out

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of the fees for the current year whereas capital expenditure/capital investments have to come from the savings, if any, calculated in the manner indicated above. It is for this reason that under Section 17(3) of the Act, every school is required to file a statement of fees which they would like to charge during the ensuing academic year with the Director. In the light of the analysis mentioned above, we are directing the Director to analyse such statements under section 17(3) of the Act and to apply the above principles in each case. This direction is required to be given as we have gone through the balance-sheets and profit and loss accounts of two schools and prima facie, we find that schools are being run on profit basis and that their accounts are being maintained as if they are corporate bodies. Their accounts are not maintained on the principles of accounting applicable to non-business organizations/not-for-profit organizations."

As noted supra, this Committee is bound to examine whether the principles laid down by the Hon'ble Supreme Court in the case of Modern School (supra) have been followed or not.

On facts, the Committee finds that the fee revenue generated by the school had no correlation with the budgets, which provided for only a small amount of capital expenditure each year. However, the school actually incurred a phenomenal amount on capital expenditure. The details as culled out from the information provided by the school in the shape of budgets and the details of fee etc.

Year	Budgeted Capital expenditure (Rs.)	Actual Capital Expenditure (Rs.)
2006-07	450,000	9,192,412
2007-08	748,290	5,587,672
2008-09	Nil	4,394,574
2009-10	Nil	5,362,661

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Year	Budgeted				Actual			
	Tuition Fee	Annual Charges	Development Fee	Total	Tuition Fee	Annual Charges	Development Fee	Total
2006-07	4,500,000	2,050,000	450,000	7,000,000	5,369,615	4,192,610	710,050	10,272,275
2007-08	7,240,200	2,909,680	748,290	10,898,170	8,860,661	4,635,133	654,100	14,149,894
2008-09	11,827,000	5,100,000	-	16,927,000	18,251,500	3,589,794	3,057,572	24,898,866
2009-10	20,164,075	3,840,230	-	24,004,305	23,444,268	10,585,675	1,338,811	35,368,754

The above table shows that while ostensibly the school did not provide for any capital expenditure and accordingly budgeted for lower fee revenues, in actual fact it fixed and recovered higher fee so as to create savings for incurring capital expenditure. This is evident from low capital expenditure budgeted vis a vis very high capital expenditure actually incurred and from the low fee revenues budgeted and very high fee revenues actually generated.

Accordingly, the Committee rejects the argument of the school that it incurred capital expenditure out of its savings as provided in Rule 177. In fact, savings were created by the school by fixing a higher level of fee so as to be able to incur capital expenditure.

Determinations:

In view of the above discussion, the Committee makes the following determinations:

Amount of refund provisionally determined	Rs.98,17,631
Less: Incremental fee for 2009-10 taken in excess in the provisional calculations	Rs.14,62,730
Amount of refund finally determined	Rs.83,54,901

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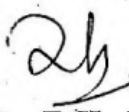
Accordingly, the Committee is of the view that the school ought to refund a sum of Rs.83,54,901, which comprises of development fee of Rs.13,38,810 for 2009-10, Rs.33,77,926 for 2010-11 and the remaining amount of Rs.36.38,165 out of the incremental tuition fee for the year 2009-10. All these sums ought to be refunded alongwith interest @ 9% per annum from the date of collection to the date of refund.



Justice Anil Kumar (R)
(Chairperson)



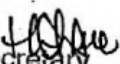
CA J.S. Kochar
(Member)



Dr. R.K. Sharma
(Member)

Dated: 08/07/2019

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

000076

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

In the matter of:

Jain Bharti Model School, Rohini, New Delhi-110089 (B-630)

Order of the Committee

Present: Sh. Gajendra Kumar Chartered Accountant with Sh. Sanjeev Kumar. Jain, Manager of the school and Ms. Priyanka Kaushal, office staff.

The Committee issued a questionnaire to all the schools (including this school) on 27/02/2012, which was followed by a reminder dated 27/03/2012, 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 of salary paid and the incremental salary paid to the staff pursuant to the implementation of the recommendations of the 6th pay commission.

The school did not respond either to the questionnaire issued by the Committee or to the reminder thereto. However, it appears that the school filed its reply to the questionnaire with the Education Officer, Zone-13 of the Directorate of Education, which was subsequently transmitted to the office of this Committee.

As per the reply submitted by the school, the school implemented the recommendations of VI Pay Commission and started paying the increased salary w.e.f. 01/07/2009. The annual expenditure on salary rose from Rs. 66,49,673 to Rs. 99,48,274 as a

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result of implementation of the recommendations of VI Pay Commission. It was further stated that the school recovered a total sum of Rs. 9,82,438 as arrear fee in 2009-10 and out of that paid a sum of Rs. 9,80,650 in the same year. Besides, the school also increased regular fee w.e.f. 01/04/2009. The quantum of increase was Rs. 200 per month for classes I to X and Rs. 300 per month for classes XI & XII.

However, on examination of the annual returns filed by the school under Rule 180 of the Delhi School Education Rules, 1973, it appeared prima facie, that the school had not implemented the recommendations of VI Pay Commission but had hiked the fee pursuant to order dated 11/02/2009 issued by the Director of Education and also recovered the arrear fee. To verify these limited aspects, the Committee issued a notice dated 08/08/2012 to the school to produce fee and salary records for the years 2008-09 to 2010-11 before the Audit Officer of the Committee.

Sh. S.K. Jain, Manager of the school appeared before the Audit Officer of the Committee on 27/08/2012 and produced the fee and salary records before him..

The Audit Officer, after examination of the records observed that the school had paid arrear salary amounting to Rs. 9,80,650 on lump sum basis at uniform rates and that too in cash. However, no salary sheet or acquittance roll was produced in support of such payment.

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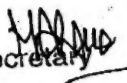
He also observed that the school had not produced its bank statements, although it claimed that the regular salary was paid to the staff through bank. He also observed that the school was collecting development fee from 2009-10 onwards but was not maintaining development fund or depreciation reserve fund. With regard to collection of fee arrears, he confirmed the statement made by the school in its reply to the questionnaire that it had collected a sum of Rs. 9,82,438 from the students in the year 2009-10. The school also had collected fee arrears in 2010-11 as per its audited financials but the school had not produced any record for that year. He recorded that the school started paying increased salary w.e.f. 01/07/2009.

Vide letter dated 17/10/2013, the school was asked to furnish complete detail of recovery of arrear fee for the period 01/01/2006 to 31/03/2009, irrespective of the year of receipt.

The school vide letter dated 22/10/2013 furnished the details of arrear fee and arrear salary for the years 2009-10 and 2010-11 as per which besides Rs. 9,82,438 which was admittedly recovered by the school in 2009-10, it also recovered a further sum of Rs. 29,260 as arrear fee in the year 2010-11. Likewise, the school submitted that besides the arrear salary of Rs. 9,80,650 paid in 2009-10, the school paid a further sum of Rs. 5,20,875 as arrear salary in 2010-11.

The Committee issued a notice dated 26/05/2015, requiring the school to furnish within 10 days, complete break up of fee and

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salaries for the years 2008-09 to 2010-11, duly reconciled with its audited financials (including arrear fee and arrear salary pursuant to implementation of VI Pay Commission) in a structured format, 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. A supplementary questionnaire was also issued to the school requiring it to furnish details of collection and utilisation of development fee and maintenance earmarked development fund and depreciation reserve fund accounts to examine whether the school was complying with the necessary pre conditions for collection of development fee as laid down by the Duggal Committee which were affirmed by the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583.

The school furnished the required information and also submitted reply to the supplementary questionnaire. In its reply to the supplementary questionnaire, the school admitted that it had recovered Rs. 17,91,000 as development fee in 2009-10 and Rs. 19,33,300 in 2010-11. It further stated that the development fee was recognised as capital receipt and used for development of students/school. It was also stated that since the school was running in loss, depreciation reserve fund had not been maintained. It will be

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H. H. Rao
Secretary



maintained when the school started earning profits and had sufficient funds.

It is noticeable that while the school claimed that it recognised development fee as a capital receipt, its audited financials reflected otherwise. It was observed that development fee was treated as a revenue receipt and was utilised for meeting the revenue expenses of the school.

Besides giving the information regarding fee and salary in the structured format, the school stated that it had no accrued liabilities on account of gratuity and leave encashment.

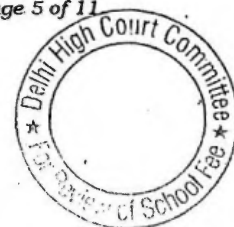
A notice of hearing was issued to the school requiring it to appear before the Committee on 24/01/2017 and also to produce its accounting records, fee and salary records, bank statements, TDS Returns and Provident Fund Returns for the years 2006-07 to 2010-11. The hearing was rescheduled for 09/03/2017.

Sh. S.K. Jain, Manager appeared with Ms. Priyanka Kaushal and Sh. Kamaljeet, Office staff of the school. He furnished detail of mode of payment of salary and arrears of salary. However, the books of accounts were not produced by the school. Accordingly the matter was adjourned to 27/04/2017 with the direction that the school ought to produce its books of accounts.

On this date, an office boy of the school appeared and filed a letter dated 27/04/2017 signed by the Principal of the school stating

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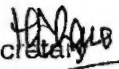


that the Manager of the school was out of Delhi. The Committee noted that the school had been dilly dallying the production of books of accounts. They were not produced initially before the Audit Officer and subsequently also, in spite of a specific direction given by the Committee in the notice of hearing. Though the Committee was inclined to draw an adverse inference against the school, it gave one more opportunity to the school to produce its records on 24/05/2017.

On 24/05/2017, Sh. Gajender Kumar, Chartered Accountant appeared with Sh. Sanjeev Kumar Jain, Manager of the school and the other support staff. The school produced its books of accounts and salary records and also filed written submission dated 24/05/2017, which were merely a summary of the submission made by the school in response to earlier notices.

The Committee examined the books of accounts and salary records produced by the school. The Committee took on record copies of the relevant ledger accounts. It observed that the arrear salary which was claimed to have been paid to the staff, had been paid entirely in cash, except for the payment of Rs. 1.00 lac to Mrs. Mamta Jain, Principal of the school. Ms. Jain is the wife of the General Secretary of the Parent Society who himself was also the Manager of the school. The Committee also noticed that the regular salary paid to the teachers to whom the arrears had been purportedly paid, was paid by bank transfers.

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Further, the school claimed to have implemented the recommendations of the VI Pay Commission w.e.f. 1st July 2009 but perusal of the salary account of the school for the year 2009-10 showed that while for all other months of 2009-10, salary was paid by bank transfers, for the months of June and July 2009, the entire salary was paid in cash.

The Committee perused the cash book of the school vis a vis its bank account. The Committee observed that the school was maintaining heavy cash balances with it, which were much in excess of its needs, indicating that cash was being utilised elsewhere. The cash in hand as at the end of the month, as reflected in the cash book of the school, vis a vis its bank balance at the end of month was as follows:

Month end	Cash in hand	Cash at bank
30 April 2009	Rs. 18,86,153	Rs. 224
30 May 2009	Rs. 15,67,202	Rs. 1,023
30 June 2009	Rs. 38,79,623	Rs. 685
31 July 2009	Rs. 28,78,265	Rs. 1,320
31 August 2009	Rs. 32,68,421	Rs. 6,371
30 Sept. 2009	Rs. 19,03,366	Rs. 826
30 October 2009	Rs. 25,96,618	Rs. 1,363
30 November 2009	Rs. 12,05,344	Rs. 276
31 December 2009	Rs. 16,75,781	Rs. 1,772
30 January 2010	Rs. 4,73,347	Rs. 1,894
27 Feb. 2010	Rs. 12,52,766	Rs. 198
31 March 2010	Rs. 79,987	Rs. 35,194

Sh. Sanjeev Kumar Jain, Manager of the school who was present at the time of hearing, submitted that this had happened on account of carelessness.

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Discussion:

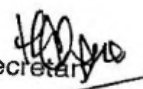
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The Committee has examined the audited financials of the school, and considered the reply to the questionnaires and information furnished by the school from time to time.

The moot question before the Committee is whether the school actually implemented the recommendations of VI Pay Commission w.e.f. 01/07/2009 and whether it actually paid the arrears of salary to the staff, as claimed by it.

On issue of fee, the school has fairly admitted that it recovered a total sum of Rs. 10,11,698 as arrear fee partly in 2009-10 and partly in 2010-11. There is also no dispute about the fact that the school hiked the regular tuition fee w.e.f. 01/04/2009 by Rs. 200/300 per month for different classes pursuant to order dated 11/02/2009 issued by the Director of Education. There is also no dispute that the school recovered development fee of Rs. 17,91,000 in 2009-10 and Rs. 19,33,300 in 2010-11. The school itself conceded that it was not maintaining any development fund or depreciation reserve fund. Although the school claimed that development fee was recognised as a capital receipt by it, the audited financials of the school belied this claim also. Hence the school had not complied with any of the pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School (supra).

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However, with regard to payment of arrear salary and incremental salary w.e.f. 01/07/2009, the Committee finds the explanation of the school to be colorable and not acceptable. It is surprising that the school paid regular monthly salary by means of bank transfers, when it came to payment of arrear salary, it resorted to making cash payments. However, when it came to payment of arrear salary to the Principal of the school who happens to be the wife of the Manager of the school and who happens to be the General Secretary of the Parent Society of the school, the school paid by account payee cheque. This puts a serious question mark on the claim of the school that it paid any arrear salary to the staff. Further, as noticed above, the school was maintaining heavy cash balances with itself while the balance in its bank account at times was not even Rs. 1,000. In the circumstances it can easily be inferred that the school was being run as a family concern and the cash of the school was being utilised elsewhere. It is also surprising that the school, while for all other months paid salary by bank transfers, for the months of June and July 2009, it allegedly paid salary to the staff in cash. In the months of June and July, the teachers and students of the schools are off for summer vacation, and it is a common practice, especially among family run schools that the school does not pay any salary for the duration of summer vacations. On the basis of preponderance of probabilities, the Committee is of the view that the school did not pay any salary to the staff in June and July 2009 and

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for the remaining 10 months of the year, it paid increased salary to show that it had implemented the recommendations of VI Pay Commission.

Conclusion:

In view of the above discussion, the Committee is of the view that while the school increased the tuition fee w.e.f. 01/04/2009 in pursuance of order dated 11/02/2009 issued by the Director of Education and also recovered arrear fee in accordance of that order, it did not implement the recommendations of VI Pay Commission. Resultantly, the Committee is of the view that the school ought to refund the entire amount of arrear fee amounting to Rs. 10,11,698 recovered partly in 2009-10 and partly in 2010-11.

The school ought also to refund the incremental tuition fee for the year, 2009-10 which was increased by Rs. 200/300 per month w.e.f. 01/04/2009 to the extent such incremental fee was in excess of 10% of the tuition fee charged by the school in 2008-09, as the Committee has taken a view in other cases that irrespective of whether the schools have implemented the recommendations of VI Pay Commission or not, the increase upto 10% is not required to be interfered with as the Committee considers it to be reasonable.

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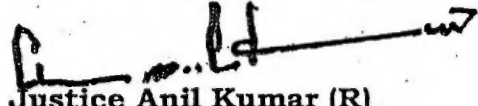



Since the increase in tuition fee in 2009-10 would also form part of the tuition fee for the subsequent years, the school ought also to refund the fee of the subsequent years to the extent it is relatable to the fee hike in 2009-10 in excess of 10% as above.

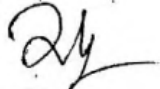
Further since the school was not complying with any of the pre conditions laid down by the Duggal Committee, which were affirmed by the Hon'ble Supreme Court in the case of Modern School (supra), the school ought also to refund the development fee of Rs. 17,91,000 charged in 2009-10 and Rs. 19,33,300 charged in 2010-11.

All the aforesaid refunds ought to be made along with interest @ 9% per annum from the date of collection to the date of refund.

Ordered accordingly.

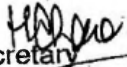

Justice Anil Kumar (R)
(Chairperson)


CA J.S. Kochar
(Member)


Dr. R.K. Sharma
(Member)

Dated: 09/07/2019

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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:

Sachdeva Public School, Rohini, Delhi-110085 (B-49)

Order of the Committee

Present: Sh. Anup Mehrotra and Shri Rakesh Goel AO 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 of salary paid and the incremental salary paid to the staff pursuant to the implementation of the recommendations of the 6th pay commission.

The school furnished its reply to the questionnaire under cover of its letter dated 05/03/2012, stating that it had implemented the recommendations of VI Pay Commission and the increased salary was being paid with effect from March, 2009. It also stated that the school had paid arrears of differential salary for the period 01/01/2006 to 28/02/2009.

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H. S. Goel
Secretary



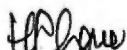
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With regard to hike in fee, the school admitted that it had hiked the fee with effect from 01/09/2008 and also recovered the arrear fee for the period 01/01/2006 to 31/08/2008 at the rates prescribed vide order dated 11/02/2009 issued by the Director of Education.

It enclosed annexures with its reply as per which the monthly salary expenditure rose from Rs. 24,59,246 in February 2009 to Rs. 41,24,820 in March 2009 as a result of implementation of the recommendations of VI Pay Commission. As per another annexure, the school gave details of payment of arrear salary to the staff, as per which it paid Rs. 3,08,31,039 as arrear salary and another sum of Rs. 10,26,243 was due to the employees who had left the school. Vide another annexure, the school furnished details of the demand of arrear fee from the students pursuant to order dated 11/02/2009, as per which it demanded a sum of Rs. 1,24,06,800 as arrear of differential tuition fee for the period September 2008 to March 2009, Rs. 48,66,540 as arrears of differential development fee for the aforesaid period and Rs. 1,51,83,350 as lump sum arrear fee for the period 01/01/2006 to 31/08/2008. After giving effect to an order dated 29/02/2009 (presumably issued by Director of Education), the school stated that the demand for arrear fee was reduced by Rs. 12,42,755 and thus the net arrear fee that was demanded from the parents was Rs. 3,12,13,935. The school, however, stated that the amount actually recovered as arrear fee was Rs. 2,79,24,650 as against the aforesaid demand.

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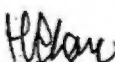
It is immediately noticeable that the demand for arrears of differential development fee was 39.22% of the differential tuition fee for the period 01/09/2008 to 31/03/2009.

In the first instance, the relevant calculations were made by the Chartered Accountants (CAs) who had been deputed by the Directorate of Education to assist this Committee. However, on consideration of the calculations made by the CAs, the Committee observed many factual inaccuracies as well as the fact that the CAs had based their calculations on the basis of monthly differences in salary and fee and extrapolated them to 12 months without attempting any reconciliation with the audited financials of the school. Therefore, the Committee did not rely on the calculations made by the CAs.

The Committee issued a notice dated 05/01/2015 requiring the school to furnish the information regarding the aggregate amounts of fee and salaries for the years 2008-09 to 2010-11, duly reconciled with the financials of the school. Besides, the school was also required to produce the statement of account of the parent society/Trust, details of accrued liability of gratuity and leave encashment and copy of the circular issued to the parents regarding fee hike. A supplementary questionnaire to specifically elicit the response of the school with regard to charge of development fee, its utilisation and maintenance of earmarked development fund and depreciation reserve fund, was also issued to the

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school. An opportunity of being heard was also provided to the school and it was directed to appear before the Committee on 23/01/2015.

On the date of hearing, Sh. Yash Pal Rawla, Chartered Accountant appeared along with Sh. Arup Mehrotra, Accounts Officer of the school. The school also filed its reply to the Committee's notice dated 05/01/2015. The school also furnished its reply to the questionnaire regarding development fee charged by it for the period 2006-07 to 2010-11. For the years 2009-10 and 2010-11, with which this Committee is concerned, the school stated that it had recovered a sum of Rs. 1,65,89,605 as development fee in 2009-10 and Rs. 1,59,66,480 in 2010-11. It also submitted details of utilisation of development fee. It vaguely stated that the development fee was treated as capital/revenue receipt in the accounts. Although, it gave the total expenditure vis a vis the development fee receipt, it did not furnish any details as to on what the expenditure had been incurred. The school also vaguely stated that it was maintaining a separate depreciation reserve fund but no earmarked bank account or FDRs were kept for unutilised development fund or depreciation reserve fund as it was fully utilised. How it was utilised, was not stated.

During the course of hearing, the authorized representative who appeared for the school submitted that the school prepared a separate balance sheet for development fund with a separate bank account.

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However, it conceded that the expenditure incurred out of development fund was both on capital as well as revenue account.

With regard to the apparent excess recovery of arrears of development fee for the period 01/09/2008 to 31/03/2009, which as we have noticed supra, were recovered @ 39.22% of arrears of tuition fee as against the cap. of 15%, the authorized representative submitted that originally the school was charging development fee @ 10% of tuition fee. However, w.e.f. 01/09/2008, the school increased the same to 15% of tuition fee and this resulted in the apparent anomaly.

During the course of hearing, the Committee came across a complaint dated 29/12/2014 received from one Sh. Rajesh Kumar stating that the school was collecting a sum of Rs. 3000 to Rs. 6000 from the students on account of VI Pay Commission after a span of five years and the payment was being collected through "Better Future Sachdeva Junior School" and the collection at that stage was unjustified and illegal. A copy of the complaint was given to the authorized representative of the school for its response.

The school submitted its response to the complaint of Sh. Rajesh Kumar, stating that the "referred school" was not run by Sh. Laxman Dass Sachdeva Memorial Educational Society (Regd.) and therefore, Sachdeva Public School, Sector-13, Rohini was not related to the "referred school".

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The matter could not be dealt with further at that stage on account of resignation of Justice Anil Dev Singh, as Chairman of Committee. After reconstitution of the Committee, a fresh notice of hearing dated 18/08/2017 was issued, requiring the school to appear on 28/08/2017. On this date, the authorized representatives of the school again appeared and were partly heard.

A query was put to the authorized representatives appearing for the school about the complaint received from Sh. Rajesh Kumar but they denied the contents of the aforesaid complaint. The Committee directed that the school should file its reply which should be accompanied by an affidavit by the Manager of the school verifying the contents of the reply. A notice was also directed to be issued to the complainant. The school was also directed to justify the collection of arrears of incremental development fee for the period Sept. 2008 to March 2009 @ about 40% of the arrears of incremental tuition fee. The Committee observed that the school did not appear to have filed its fee schedule for the year 2008-09 as part of its annual returns for that year. The school was accordingly directed to file the same so that it could be ascertained as to what was the rate of development fee that the school was originally charging. The authorized representative of the school also submitted that some arrear fee was recovered subsequent to 31/03/2011 also and likewise some arrear salary was also paid after that date. The school was

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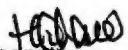
directed to furnish details of such arrears of fee recovered and arrears of salary that was paid after 31/03/2011.

On 03/10/2017, the school filed an affidavit of Sh. Sanjay Sachdeva, Manager of the school and he averred that "Better Future Sachdeva Junior School" was not running under Sachdeva Public School, Rohini and that Sachdeva Public School Rohini never collected or raised demand for collection of arrears in the name of "Better Future Sachdeva Junior School".

The complainant Sh. Rajesh Kumar, who had been served notice by speed post, did not appear before the Committee. The Committee observed that he had not filed any documentary evidence in support of his claim that the school had raised any demand in the name of "Better Future Sachdeva Junior School". Further, the Manager of the school Sh. Sanjay Sachdeva had denied on affidavit that "Better Future Sachdeva Junior School" was running under this school or that this school had raised any demand in the name of "Better Future Sachdeva Junior School". The Committee also noted that earlier also, the school had filed a letter dated 30/01/2015, vide which it had stated that the above mentioned school was not run by Sh. Laxman Dass Sachdeva Memorial Education Society (Regd.), which is the parent society. Accordingly, the Committee did not take any further cognizance of the complaint.

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The school furnished the details of arrear fee collected from the students in the years 2011-12 to 2016-17 and also the details of arrear salary paid during those years.

With regard to the justification for collection of arrears of development fund for the period Sept. 2008 to March 2009 which were apparently recovered @ 40% of the arrears of the tuition fee for the same period, the school filed a chart showing the working of the arrears of development fee for the above mentioned period. With the assistance of this chart, the authorized representative who appeared for the school tried to explain that the arrears of development fee for the aforesaid period were only 15% & not 40% as observed by the Committee.

For appreciating the submissions made by the authorized representative, the following figures were culled out by the Committee from the chart submitted by the school.

Class	Tuition Fees actually charged for the period 01.04.2008 to 31.8.2008	Development fee charged as per the fee schedule for the period 01.04.2008 to 31.8.2008.	Tuition fee actually charged for the period 01.09.2008 to 31.03.2009	Development fee charged for the period 01.09.2008 to 31.03.2009	Percentage of development fee to tuition fee for the period 01.09.2008 to 31.03.2009
I & II	10,000	1000	16,800	2520	15%
III to V	10,450	1000	18,130	2695	14.86%
VI to VIII	10,900	1000	18,760	2800	14.92%
IX & X	11,250	1000	19,250	2800	14.54%
XI & XII	11,125	1000	19,075	2800	14.67%

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H. Laloo
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Accordingly it was contended that the arrears of development fee that was recovered were 15% of the arrears of tuition fee or near about it.

The Committee considered the aforesaid submissions made by the school. It was apparent that as per the fee schedule for the year 2008-09 filed by the school under section 17(3) of the Delhi School Education Act, 1973 with the Directorate of Education, a copy of which was filed by the school, the school was charging development fee at a fixed rate of Rs. 200 per month, irrespective of amount of tuition fee charged from the students of different classes. As such the development fee charged by the school was not linked to the tuition fee.

The schools are entitled to recover development fee at the rate which is not in excess of 15% of the annual tuition fee. 15% is the upper cap at which the development fee can be recovered. However, the schools are at liberty to charge development fee at a rate which is less than 15% of annual tuition fee. The schools can also charge development fee at a fixed rate i.e. which is not linked with the tuition fee. The only rider being that the amount of annual development fee should not exceed 15% of the amount of annual tuition fee. This is apparent from the recommendations of the Duggal Committee which was constituted by the Hon'ble Delhi High Court to examine the issue of fee hike in fee consequent to the implementation the recommendations of V Pay Commission and which for the first time introduced the concept of

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charging development fee by private unaided recognised schools in Delhi.

The recommendation of the Duggal Committee was as follows:

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)

The recommendations of Duggal Committee were considered by Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583. Affirming the above recommendation, the Hon'ble Supreme Court held as follows:

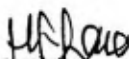
25. In our view, on account of increased cost due to inflation, the management is entitled to create Development Fund Account. For creating such development fund, the management is required to collect development fees. In the present case, pursuant to the recommendation of Duggal Committee, development 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.

It is apparent from the above that the schools are free to charge development fee at a rate which is less than 15% of the annual tuition fee. In this case, the school was charging development fee w.e.f. 01/04/2008, at a fixed rate which was not linked to the tuition fee but was within the overall cap of 15% of the annual tuition fee. The order dated 11/02/2009, vide which the schools were authorized to increase the tuition fee for the purpose of implementation of the recommendations of VI Pay Commission, at five different slabs, depending upon the existing tuition fee being charged by the schools w.e.f. 01/09/2008. It did not authorize to increase in development fee. However, since development fee, if charged as a percentage of tuition fee, would automatically go up at the same percentage at which the school was charging development fee prior to 01/09/2008, the order dated 11/02/2009 took cognizance of this fact and vide clause 15, it authorized the schools to increase the development fee which would be sequitor to increase in tuition fee, with the rider that the same would be used for paying increased salaries as per the recommendations of VI Pay Commission. Clause 15 of the order reads as under:

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"However, the additional increase in development fee on account of increase in tuition fee shall be utilised for the purpose of meeting any shortfall on account of salary/arrears only."

There was no authority to the school to increase the rate of development fee to 15% of tuition fee where the schools were charging development fee at a rate which was less than 15% of tuition fee or where the amount of development fee was not linked to the amount of tuition fee at all.

The authorized representative submitted that the meeting of the Managing Committee, which authorized the fee hike, was attended by a representative of the Directorate of Education and he did not raise any objection to the fee hike that was proposed. Be that as it may, the fact that the representative of Directorate of Education did not raise any objection to the proposal which was contrary to the order dated 11/02/2009 cannot be a ground to justify an illegal proposal. Accordingly the Committee holds that the recovery of arrears of so called incremental development fee for the period 01/09/2008 to 31/03/2009 was wholly unjustified, unauthorized and illegal. The total amount recovered by the school on this account was **Rs. 48,32,740**. The school ought to refund this sum to the students along with interest @ 9% per annum from the date of collection to the date of refund.

To examine the justifiability of the recovery of arrear fee and incremental tuition fee w.e.f. 01/09/2008, the Committee prepared a

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calculation sheet. However, the Committee observed that the funds available with the school as on 31/03/2008 were in the negative zone as its current liabilities were more than the aggregate of its current assets and investments. This was an indication that the school had been diverting its revenues for capital expenditure or was transferring funds to its parent society. On a close examination of the financials of the school, this became evident. The Committee observed that the school was servicing its loans taken for creation of fixed assets and was also transferring funds to the parent society. The following statement depicts the funds so transferred or utilised for capital expenditure between 2006-07 and 2009-10:

Diversion of Funds for capital expenditure/transfer to society				
Year	Loan repayment	Int. on V. Loan	Int. on S. loan	Transfer to Society
2006-07	130,851	21,741	1,882,810	9,972,582
2007-08	11,725,593	8,727	2,394,632	-
2008-09	12,616	100	2,130,400	5,546,898
2009-10	3,298,604	147,354	1,276,193	-
Total	15,167,664	177,922	7,684,035	15,519,480
Total Diversion 38,549,101				

The Hon'ble Supreme Court in the case of Modern School vs. Union of India (supra) has laid down that capital expenditure cannot be part of fee structure. It can only be incurred out of the savings as defined under Rule 177 of the Delhi School Education Rules, 1973 which would be the amount left after payment of salaries and other revenue

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expenditure. Likewise, no amount of fee revenue can be transferred to the parent society of the school. The very fact that the aggregate of current assets and investments was less than the current liabilities of the school is an indication of the fact that the capital expenditure was not being met from the savings. The Committee therefore, was of the prima facie view that such diversion of fee revenues for incurring capital expenditure or making transfer to the parent society was unjustified and to the extent out of such expenditure/transfer, the school ought to be considered as in possession of funds which could be utilised for implementation of the recommendations of VI Pay Commission. With this premises, the Committee prepared the following calculation sheet to examine the justifiability of hike in fee:

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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	Amount (Rs.)	Amount (Rs.)
	Funds diverted from 2006-07 to 2009-10 as per annexure 1 (A)		38,549,101
	<u>Current Assets + Investments</u>		
	Cash in hand	23,794	
	Bank Balance	1,294,429	
	Staff Advance	(310)	
	Interest on FDRs recievable	35,942	
	TDS recievable	7,083	
	Advance to Supplier	510,000	
	Inter Balance (Development Fund)	67,321	1,938,259
Less	<u>Current Liabilities</u>		
	Security Account	1,482,100	
	Fee Received in advance	2,002,385	
	EPF Payable	133,218	
	Salary Payable	2,405,372	
	TDS Payable	89,655	
	Stale Cheques	142,728	
	Audit fee Payable	222,127	
	VPF	37,100	6,514,685
	Net Current Assets (B)		(4,576,426)
	Funds deemed to be available (A+B)		33,972,675
Less	Additional Liabilities after implementation of 6th CPC:		
	Arrear of Salary as per 6th CPC w.e.f. 1.1.06 to 31.3.09	30,945,557	
	Incremental Salary in 2009-10	25,030,664	55,976,221
	Excess / (Short) Fund Before Fee Hike		(22,003,546)
Add	Arrear of tuition fee from 01.01.06 to 31.08.08	14,675,250	
	Arrear of tuition fee from 01.09.08 to 31.03.09	12,273,670	
	Arrear of Development Fee for the period from 1.9.08 to 31.3.09	4,832,740	
	Incremental Tuition fee in 2009-10	34,086,690	65,868,350
	Excess / (Short) Fund after Fee Hike		43,864,804
Less	Reserves required to be maintained:		
	for future contingencies (equivalent to 4 months salary)	23,825,575	
	for Gratuity as on 31.03.2010 in r/o employees with 5 or more years service	10,553,419	
	for Leave Encashment as on 31.03.2010	2,440,583	36,819,577
	Excess / (Short) Fund		7,045,227

Development fee refundable as preconditions for charging the same not being fulfilled:

	Rs.
2009-10	16,589,605
2010-11	15,966,480
Total	32,556,085
Add: Excess Tuition fee recovered	7,045,227
Total Amount refundable	39,601,312

Working Notes:

	2008-09	2009-10
Normal/ regular salary	46,446,062	71,476,726
Incremental salary 2009-10	25,030,664	
	2008-09	2009-10
Regular Tuition fee	77,335,195	111,421,885
Incremental tuition fee in 2009-10	34,086,690	

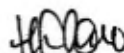
A copy of the calculation sheet was given to the authorized representative of the school for rebuttal, if any.

The school filed its rebuttal dated 15/12/2017. The authorized representative of the school was heard on 18/12/2017 on the written submissions filed by the school in rebuttal of the calculation sheet. The school contended as follows:

- A. While the Committee had considered the net amount transferred to the parent society in the years 2006-07 and 2008-09, as also the repayments of loans and interest thereon during the years 2006-07 to 2009-10 as diversion of funds from the school to the society or for incurring capital expenditure, the Committee had not taken into consideration the sources out of which the

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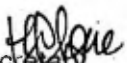


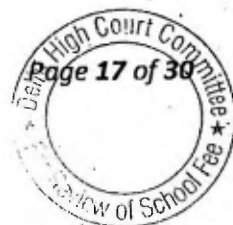
aforesaid funds came into the hands of the school. In this connection it was submitted that in the year 2006-07 a sum of Rs.43,82,910 was received by the school in the shape of increased overdraft from bank, in the year 2007-08 a sum of Rs. 34,88,456 was inducted into the school by the society and further in 2008-09 a sum of Rs.1,01,34,723 accrued to the school in the shape of increased overdraft and a secured loan taken for purchase of buses.

- B. A sum of Rs.49,72,042 was taken as loan from Sachdeva Public School, Pitampura in the years 2006-07 and 2007-08, a part of which, that is to the tune of Rs. 44,04,977 was repaid in 2008-09, but the Committee had not considered that a sum of Rs.5,67,065 became available to the school out of such loan.
- C. The school had only a sum of Rs.17,89,598 out of the tuition fee for the years 2006-07 to 2009-10 which ought to have been considered as funds available with the school for the purpose of implementation of the recommendations of the 6th pay commission.
- D. The school has filed an actuarial report as per which the estimated liability of gratuity and leave encashment of the school is Rs.2,42,64,573 as on 31.3.2010 instead of Rs.1,29,94,002, as taken in the calculation sheet by the Committee.

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It was further submitted that the development fee received in 2009-10 and 2010-11 had been fully utilized for purchase/up gradation of fixed assets. The authorized representative of the school drew the attention of the Committee to the schedule of development fund account in these two years which formed part of the balance sheet, in support of its contention.

The Committee considered the submissions made by the school in its written submissions as well as the oral arguments of the authorized representatives appearing for the school.

So far as the source of funds which the school claimed with regard to the diversions made in the years 2006-07 and 2007-08, the Committee was in agreement with the contention of the school. However for the year 2008-09, the Committee observed that the sum of Rs.1,01,34,723 comprised of two figures namely Rs.83,89,399 as accretion to the overdraft account of the school and Rs.17,45,323 which the school took as loan for purchase of buses. The Committee observed that it had also not taken into consideration the cost of buses purchased out of the loan taken by the school for this purpose. This amounted to Rs. 26,39,000. Thus, the contention raised by the school required to be moderated to this extent.

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So far as the contention with regard to the receipt of funds from Sachdeva Public School, Pitampura amounting to Rs.5,67,065 was concerned, the Committee accepted the contention raised by the school.

With regard to the availability of funds out of tuition fee head only which the authorized representative submitted that should be taken as funds available for the purpose of implementation of the recommendations of the 6th pay commission, the Committee has not agreed with the contention of the school. The Committee observed that it had taken into account the overall funds available with the school as on 31/03/2008, and not just from one head of fee that is tuition fee. The Committee also went through the computation of the figures given by the school in this connection and observed that the school had arrived at such figures, after accounting for the capital expenditure on purchase of fixed assets. Moreover, this computation did not take into account the funds that the school actually had as on 31/03/2008, but only took into consideration the funds generated by the school in 4 years from 2006-07 to 2009-10. The same ignored the reserves available with the school out of the earlier years revenues.

With regard to the accrued liabilities of gratuity and leave encashment, the Committee observed that it had taken the figures in the calculation sheet which were based on the detailed calculations of

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the accrued liabilities employee wise, considering the date of joining, length of service and the qualifying service for ascertaining the accrued liability of gratuity as per the provisions of the Payment of Gratuity Act. The only adjustment made by this Committee was in respect of the employees who had not completed 5 years of service. When such detailed calculations were available in which no mistakes had been pointed out by the school, the actuarial valuation could not be considered as that is only an estimate based on future projections of the rate of return, life expectancy etc. which may or may not hold good.

With regard to development fee, the Committee observed that in the schedule of development fee annexed to the balance sheet, the school had given aggregate figures of the amounts utilized for additional, alteration/up gradation of certain furniture and fixtures for equipments without giving any details and without specifying whether they were capital expenditures or revenue expenditures. Moreover, it was conceded at the time of hearing by the authorized representative of the school that since the fixed assets acquired out of development fee had not been capitalized, there would be no question of any depreciation reserve fund in respect thereof. It was also conceded that the school was not maintaining any earmarked bank accounts of investment for development fee or depreciation reserve fund.

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The authorized representative of the school submitted that the school would furnish an explanation with regard to the difference between the calculations made by the school and those made by the actuary in respect of accrued liabilities of gratuity and leave encashment. The hearing was closed but the school was given liberty to furnish the statement of differences as prayed for within 7 days.

The school filed the letter dated 23/12/2017 to explain the difference between the accrued liabilities of gratuity and leave encashment as worked out by the school on actual basis versus those certified by the actuary. It was submitted that the statutory auditors of the school were not agreeable to the estimated provisioning made by the management of the school and therefore, the actuarial valuation was got done. It was also submitted that actuarial valuation was recognised by the Institute of Chartered Accountants of India also as a proper method for making provision of gratuity and leave encashment as per Accounting Standard 15 (AS 15):

Payment of Gratuity is a statutory liability of the school under the Payment of the Gratuity Act 1972. It is payable to an employee who has completed atleast 5 years of continuous service at the time of his super annuation, retirement or resignation or death. The manner of calculation of gratuity is given in the Act itself. It is 15 days salary last drawn multiplied by completed years of service. There is no

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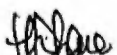
complication or ambiguity in its calculation as on a particular date. The Committee has considered the cut off date to be 31st March 2010 as it is examining the issue of fee for the year ended 31st March 2010, besides the arrear fee recovered for payment of arrear salary on implementation of the recommendations of VI Pay Commission. The school initially carried out this exercise quite meticulously and worked out the accrued liability as on 31st March 2010 to be Rs. 1,22,10,977. However, it included in its calculation the liability to such employees who had not completed 5 years of service till that date. As such employees would not have been entitled any gratuity if they left the service on or before 31st March 2010, the Committee excluded the amount which was shown as liability to such employees and accepted the remaining amount of Rs. 1,05,33,419. Likewise, the benefit of earned leave encashment was meticulously calculated by the school to be Rs. 24,40,583 as on 31/03/2010. The Committee accepted this figure without any variation.

Subsequently, the school filed actuarial valuation reports in respect of its estimated liabilities on account of gratuity and leave encashment, which projected the accrued liability of gratuity to be Rs. 2,00,24,194 and Rs. 42,40,379 respectively.

Surprisingly the actuarial valuation of gratuity and leave encashment were more than the actual calculations made by the school. The actuarial calculations are made on the basis of a discounted rate as

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the actual liability for payment of gratuity and leave encashment arises many years later, normally at the time of retirement of employees. They cannot be more than the actual calculations which are made without any discounting as they are premised on the basis that the gratuity of employees would become due immediately on 31/03/2010. Precisely for these reasons, the Committee had preferred the actual calculations made by the school in which no discrepancies were pointed out as compared to the actuarial valuation.

Before the final order could be passed in the matter, the school gave a further representation on 12/06/2018. In the interests of justice, the hearing was reopened and a notice dated 01/05/2019 was served upon the school specifically to consider the written submissions dated 23/12/2017 and 12/06/2018.

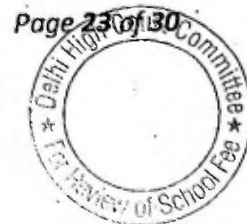
Sh. Anup Mehrotra and Sh. Rakesh Goel, Accounts Officers of the school appeared and were partly heard.

The school filed fresh written submissions in which the issues raised by the school earlier had been reiterated. All the issues which the school raised, had been raised earlier also and the same had been duly recorded in the order sheet dated 18/12/2017. Only one fresh issue was raised by the school with regard to incremental tuition fee in the year 2009-10. It was submitted that the Committee, in its calculations had taken the incremental tuition fee to be Rs. 3,40,86,690 for the year 2009-10, which was not correct as a sum of Rs. 1,22,73,670 included in the

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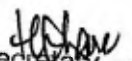
incremental tuition fee pertained to the period 01/09/2008 to 31/03/2009 and as such ought to have been included in the tuition fee for that year. It was thus submitted that the incremental tuition fee for the year 2009-10, as was taken earlier by the Committee, was excessive to that extent.

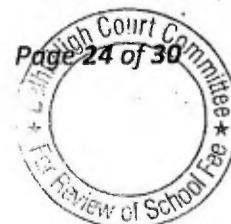
The Committee again went through the calculation sheet as well as audited financials of the school and the information furnished by the school regarding break up of regular fee and arrear fee for the year 2008-09 and 2009-10. The Committee found no infirmity in its calculation on this particular aspect as the same was based on the audited financials of the school as well as detailed information furnished by the school vide its letter dated 23/01/2015. The incremental tuition fee for the year 2009-10 had to be calculated by taking the tuition fee for the year 2008-09 at pre revised rates and that for 2009-10 at the post revised rates, which the Committee did. The incremental tuition for the period 01/09/2008 to 31/03/2009 amounting to Rs. 1,22,73,670 had been taken by the Committee separately as arrear fee. The information furnished by the school was duly reconciled with its audited financials and called for no correction as contended by the school.

With regard to the contention of the school that certain capital receipts had not been taken into consideration while taking the amount diverted, the Committee had itself considered this aspect in its order

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dated 18/12/2017. Accordingly, the Committee deemed it appropriate to prepare a fresh calculation sheet to take the submissions of the school on board.

Accordingly the Committee prepared a revised calculation sheet. In order to calculate the amount of fee revenues diverted by the school for incurring capital expenditure for transfer of funds to the society, the manner of calculation was revised to take on board the submissions of the school that a part of such capital expenditure was incurred out of induction of fresh funds on capital account or long terms loans. As per the revised calculations, it prima facie appeared that the school had diverted a sum of Rs. 4,63,55,890 towards capital expenditure/transfer of funds out of its fee revenues. The revised calculations are as follows:

Capital Receipts					Capital Payments/ Expenditure				Net Inflow (Outflow) Capital Acc
Development fee received	Contribution from Society/PP School	Loans raised	Sale of Fixed Assets	Total	Repayment of Loan and interest	Purchase of Fixed Assets	Diversion to Society/ Other entities	Total	
	3,647,042	4,382,810	-	8,029,852	2,035,402	1,970,164	9,972,582	13,978,148	(5,948,29
	4,813,456	-	-	4,813,456	14,128,952	3,024,519	-	17,153,471	(12,340,0
	-	10,134,722	-	10,134,722	2,143,116	4,376,507	9,951,875	16,471,498	(6,336,77
16,589,605	-	-	265,000	16,854,605	4,722,151	33,863,257	-	38,585,408	(21,730,8
16,589,605	8,460,498	14,517,532	265,000	39,832,635	23,029,621	43,234,447	19,924,457	86,188,525	(46,355,8

With these figures and data, the remaining calculations to examine the justifiability of the fee hike were made as follows:

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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	Amount (Rs.)	Amount (Rs.)
	Funds diverted for repayment of loans taken for capital expenditure and interest paid thereon as per Annexure (A)		46,355,890
	<u>Current Assets + Investments</u>		
	Cash in hand	23,794	
	Bank Balance	1,294,429	
	Staff Advance	(310)	
	Interest on FDRs recievable	35,942	
	TDS recievable	7,083	
	Advance to Supplier	510,000	
	Inter Balance (Development Fund)	67,321	1,938,259
Less	<u>Current Liabilities</u>		
	Security Account	1,482,100	
	Fee Received in advance	2,002,385	
	EPF Payable	133,218	
	Salary Payable	2,405,372	
	TDS Payable	89,655	
	Stale Cheques	142,728	
	Audit fee Payable	222,127	
	VPF	37,100	6,514,685
	Net Current Assets (B)		(4,576,426)
	Funds deemed to be available (A+B)		41,779,464
Less	Additional Liabilities after implementation of 6th CPC:		
	Arrear of Salary as per 6th CPC w.e.f. 1.1.06 to 31.3.09	30,945,557	
	Incremental Salary in 2009-10	25,030,664	55,976,221
	Excess / (Short) Fund Before Fee Hike		(14,196,757)
Add	Arrear of tuition fee from 01.01.06 to 31.08.08	14,675,250	
	Arrear of tuition fee from 01.09.08 to 31.03.09	12,273,670	
	Arrear of Development Fee for the period from 1.9.08 to 31.3.09	4,832,740	
	Incremental Tuition fee in 2009-10	34,086,690	65,868,350
	Excess / (Short) Fund after Fee Hike		51,671,593
Less	Reserves required to be maintained:		
	for future contingencies (equivalent to 4 months salary)	23,825,575	
	for Gratuity and Leave Encashment as on 31.03.2010	24,264,573	48,090,148
	Excess / (Short) Fund		3,581,445

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Development fee refundable as preconditions for charging the same not being fulfilled:

	Rs.
2009-10	16,589,605
2010-11	15,966,480
Total	<u>32,556,085</u>
Less: Excess fee recovered	<u>3,581,445</u>
Total Amount apparently refundable	<u>36,137,530</u>

Working Notes:

	2008-09	2009-10
Normal/ regular salary	<u>46,446,062</u>	71,476,726
Incremental salary 2009-10	<u>25,030,664</u>	
	2008-09	2009-10
Regular Tuition fee	<u>77,335,195</u>	111,421,885
Incremental tuition fee in 2009-10	<u>34,086,690</u>	

A copy of the above revised calculation sheet was given to the authorized representative of the school, with the directions that the school may file its supplementary written submissions in case it did not agree with the revised calculations prepared by the committee.

The school has filed written submissions dated 2/07/2019 vide which it disputed the revised calculation sheet only on one ground. It was contended that while calculating the amount of funds diverted for incurring capital expenditure, the Committee had inadvertently taken the figure of purchase of fixed assets in the year 2009-10 as Rs. 3,38,63,257

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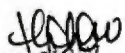


by adding the cost of fixed assets acquired out of development fee to the total amount of fixed assets acquired during that year which already included the cost of fixed assets acquired out of development fee. It was thus contended that there had been a double counting to the extent of Rs. 1,57,81,071 which represented the cost of fixed assets acquired out of development fee. No other contention was raised by the School in its written submissions or during the course of hearing by the authorized representative who appeared for the school. The rest of the calculation sheet remains undisputed.

The Committee perused the revised calculation sheet and the audited financials for the year 2009-10 and observed that the mistake as pointed out by the School had indeed occurred. If the mistake as pointed out by the school is corrected, the result would have been that instead of Rs. 3,61,37,530, the school would be required to refund Rs. 2,03,56,459 to the students.

However, while finalizing the order, the Committee noticed that while it had rejected the submission of the school that the actuarial valuation of gratuity and leave encashment should be adopted in preference to the actual calculations of these liabilities as on 31/03/2010, in the revised calculation sheet, the Committee had inadvertently factored in the actuarial valuations which it had rejected.

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The school was put on notice that there was an anomaly in respect of the accrued liability of gratuity and leave encashment and a fresh hearing was fixed for today. Sh. Anup Mehrotra, Accounts Officer of the school appeared before the Committee and submitted that the school had already made submissions in this regard and had nothing more to say in the matter.

If the accrued liabilities of gratuity and leave encashment are taken on actual basis, as held by the Committee, the result would be that instead of Rs. 2,03,56,459 as determined above, the school would be required to make a refund of **Rs. 3,16,27,030** (2,03,56,459 + (2,42,64,573-1,29,94,002))

We have already made a recommendation of refund amounting to Rs. 48,32,740 on account of illegal recovery of arrears of so called incremental development fee for the period 01/09/2008 to 31/03/2009. That leaves a sum of Rs. 2,67,94,290 for refund of which a further recommendation is required to be made.

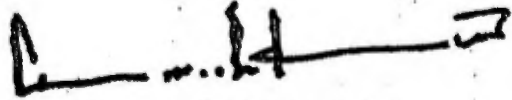
The effect of our recommendations would be that the school has to refund Rs. 48,32,740 which it recovered as arrears of incremental development fee for the period 01/09/2008 to




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31/03/2009, Rs. 1,59,66,480 on account of development fee for the year 2010-11 and Rs. 1,08,27,810 out of development fee for the year 2009-10. All these sums ought to be refunded along with interest @ 9% per annum from the date of collection to the date of refund.

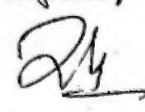
Ordered accordingly.



Justice Anil Kumar (R)
(Chairperson)



CA J.S. Kochar
(Member)



Dr. R.K. Sharma
(Member)

s
Date: 12/07/2019



**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. Gregorious School, Sector-11, Dwarka, New Delhi-110075 (B-202)

Order of the Committee

Present: Shri K.K. Khanna, Chartered Accountant with Shri Sandeep Khanna, Chartered Accountant and Shri Cyril K. Philip, Accountant of the school and Shri K.B. Kutty, representative of the Managing Committee of the School.

The Committee issued a questionnaire to all the schools (including this school) on 27/02/2012 which was followed by a reminder dated 27/03/2012, 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 of salary paid and the incremental salary paid to the staff pursuant to the implementation of the recommendations of the 6th pay commission.

The school furnished its reply under cover of its letter dated 28/03/2012. As per the reply submitted by the school, it implemented the recommendations of VI Pay Commission and started paying the increased salary w.e.f. 01/01/2009. It also enclosed copies of the acquittance roll for the months of September 2008 and May 2009 to show the impact of implementation of the recommendations of VI Pay Commission. The school also enclosed



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copies of two payment instructions dated 18/05/2009 and 16/03/2010 issued to the bank for crediting the amount of net arrear salary to the staff to their respective accounts. The total amount so disbursed was Rs. 47,87,745 (18,46,243 + 29,41,502).

With regard to fee hike, the school admitted having hiked the tuition fee w.e.f. 01/09/2008, in pursuance of order dated 11/02/2009 issued by the Director of Education. It also enclosed copies of circulars issued to the parents regarding fee hike and recovery of arrear fee. As per the circulars, the school collected a sum of Rs. 3000 per student towards lump sum arrear fee for the period 01/01/2006 to 31/08/2008 and Rs. 2100 towards arrears of incremental fee for the seven months period from 01/09/2008 to 31/03/2009 @ Rs. 300 per month. However, the school collected Rs. 2800 from the students of class XII @ Rs. 400 per month for this period. The school did not collect any arrears of incremental development fee presumably for the reason that the school was not charging any development fee from the students at all. The school also enclosed a statement showing that it had collected a total sum of Rs. 38,20,570 towards lump sum arrear fee and Rs. 26,53,470 towards arrears of incremental tuition fee. Thus the total arrear fee collected by the school was stated to be Rs. 64,74,040.

Preliminary calculations to examine the justifiability of fee hike effected by the school were made by the Chartered Accountants (CAs) deputed by the Directorate of Education to assist this Committee. As



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per the calculations made by them, prima facie, it appeared that the school had sufficient funds of its own to fully absorb the impact of implementation of the recommendations of VI Pay Commission and did not need to recover any arrear fee or hike any tuition fee. However, the Committee observed that such calculations were made without attempting to reconcile the figures with the audited financials of the school. Accordingly, the Committee did not rely upon these calculations.

The Committee issued a notice dated 13/05/2015, requiring the school to furnish within 10 days, the complete break up of fee and salaries for the years 2008-09 to 2010-11, duly reconciled with its audited financials (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. A supplementary questionnaire was also issued to the school, vide which relevant queries with regard to charging of development fee were raised, to ascertain whether the school was complying with the necessary 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 directed to furnish information with regard to the pre primary school in case its financials were not incorporated in the financials of the main school.



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The school vide its letter dated 23/05/2015 sought extension of time for submitting its reply due to non availability of office staff during summer vacation. However, even after the vacations were over, the school did not furnish the information sought. The Committee issued a fresh notice dated 20/08/2015 requiring the school to furnish the required information as also to appear before the Committee on 01/09/2015.

On the date of hearing, Sh. M. Boyaz, Principal of the school appeared with Sh. Sam Samuel, Accountant. He filed the information sought by the Committee vide letter dated 01/09/2015. However, the information relating to the accrued liabilities of gratuity and leave encashment and the financials of the pre primary school was not filed. The school was directed to file the same within one week.

In the aforesaid letter dated 01/09/2015, the school stated that the VI Pay Commission was announced at a time when the liquid funds of the school were not adequate to implement its recommendations. Accordingly it had to increase its fee and also have recovered the arrear fee as per the order dated 11/02/2009 issued by the Director of Education. It was also stated that the school did not charge any development fee.

The school furnished the information relating to its pre primary school under cover of its letter dated 21/09/2015 but did not furnish any details of the accrued liabilities of gratuity and leave encashment.



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The matter could not be pursued further on account of resignation of Justice Anil Dev Singh as Chairman of the Committee.

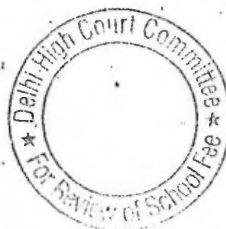
After reconstitution of the Committee, the Committee issued a fresh notice of hearing on 25/08/2017, requiring the school to appear on 11/09/2017.

The Principal and Accountant of the school appeared and filed the employee wise details of its accrued liabilities of gratuity and leave encashment as on 31/03/2010 in respect of the main school as well as the pre primary school.

The Committee also considered the submission of the school that at the time when the recommendations of VI Pay Commission was announced, the school did not have adequate funds of its own to absorb the financial impact of implementing the same. The Committee observed that this was not borne out from the financials of the school. Besides, the Committee also observed that the school had been transferring substantial funds to its Parent Society, besides repaying loans taken by it for purchase of fixed assets out of the fee revenues of the school.

For proper consideration of the matter, the Committee prepared a preliminary calculation sheet by taking the funds available with the main and pre primary school as per audited balance sheets of the school as on 31/03/2008 which was the latest financial statement before the school resorted to fee hike on the ground that it did not

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have adequate funds of its own. As per the calculations prepared by the Committee, the school had available with it, a sum of Rs. 1,44,53,413 as on 31/03/2008 as per the following details:

Particulars	Main School	Pre-Primary	Total
Current Assets			
Cash in Hand	1,412	1,622	3,034
Bank Balances in Savings Account	256,965	204,851	461,816
Fixed Deposits	8,636,272	3,063,909	11,700,181
TDS	1,878		1,878
Advance to Staff	149,000		149,000
Prepaid Expenses	30,053	7,411	37,464
SB Graphics Account	548	582	1,130
Printsite Account	612	102	714
Inter Unit Balances- Gregorian Orthodox Church Society	4,051,532		4,051,532
Interest accrued on Fixed Deposits	410,321	74,588	484,909
Total Current assets (A)	13,538,593	3,353,065	16,891,658
Less: Current Liabilities			
Security Deposits	879,000	276,800	1,155,800
Audit Fee payable	20,814	10,408	31,222
Fee refundable	-	27,540	27,540
Fees received in advance	-	897,100	897,100
Eco Club Grant	6,630	-	6,630
St. Michael's Security	50,420	18,110	68,530
PF Payable	146,389	22,311	168,700
TDS Payable	11,102	2,814	13,916
Electricity Charges	15,398	9,912	25,310
Telephone Expenses	8,332	4,063	12,395
Water Charges	25,123	-	25,123
Office Automation	4,071	1,153	5,224
CBSE Board Exam Center Expense	755	-	755
Total Current Liabilities (B)	1,168,034	1,270,211	2,438,245
Net Current Assets ((Funds Available) (A-B)	12,370,559	2,082,854	14,453,413

After taking into account the accrued liabilities of gratuity and leave encashment as on 31/03/2010, which were admittedly Rs. 43,23,048 and Rs. 16,16,564 respectively, the school had available with it Rs. 85,13,801. The Committee also observed that prima facie, the school transferred a sum of Rs. 1,00,00,000 to its parent society between 2005-06 and 2009-10, which was illegal as per the



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ratio of the judgments of the Hon'ble Supreme Court in the cases of Modern School (supra) and Action Committee 2009 (11) SCALE 77, which the Committee is bound to follow by the mandate given to it by the judgment of the Hon'ble Delhi High Court in WP (C) 7777 of 2009. The Committee felt that the school could not take advantage of its own wrong and the aforesaid sum of Rs. 1,00,00,000 should also be considered as funds available with it. All that was required to be done was to take back the money from its parent society. Accordingly, the Committee considered the total funds available with the school to be **Rs. 1,85,13,801** (85,13,801 + 1,00,00,000).

The total financial impact of implementing the recommendations of VI Pay Commission on the school was **Rs. 1,07,28,010** i.e. Rs. 62,86,364 payable towards arrears salary and Rs. 44,41,646 payable as incremental salary in 2009-10. Even after providing for a reasonable reserve for future contingencies, amounting to **Rs. 57,73,014** equivalent to four months salary, the school had adequate funds from which it could have paid the additional sums payable to the staff on implementation of the recommendations of VI Pay Commission. However, the school recovered a total sum of Rs. 70,39,840 towards arrear fee (Rs. 64,74,040 in senior school and Rs. 5,65,800 in pre primary school). Further the incremental fee recovered by the school in 2009-10 amounted to Rs. 92,45,195 (Rs. 75,52,385 in senior school and Rs. 16,92,810 in junior school).



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Thus, prima facie, it appeared that the entire amount of arrear fee and incremental fee recovered by the school amounting to Rs. 1,62,85,035 (70,39,840 + 92,45,195) was required to be refunded to the students.

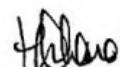
A copy of the calculation sheet prepared by the Committee was given to the Principal of the school. The school was given an opportunity to rebut the above calculations.

On 21/11/2017, Sh. K.K. Khanna, Chartered Accountant appeared with the Accounts Officer of the school and filed written submissions dated 10/11/2017 in rebuttal of the calculation sheet prepared by the Committee. The authorized representatives of the school were heard.

It was contended that the Committee ought not to have taken the transfer of funds to the Society for the years 2008-09 and 2009-10 as the funds position has been taken as on 31/03/2008 for the purpose of ascertaining the availability of funds with the school. It was further contended that the Committee had not taken into account the liability of Rs. 20 lacs payable to the Parent Society which was reflected in the Balance Sheet as on 31/03/2008. Further contention of the school was that the Committee ought to have taken into consideration the amount of Rs. 37,61,110 for the year 2008-09 and Rs. 40,50,670 for the year 2009-10 while working out the normal fee as these represent concessions to EWS students and scholarships.



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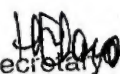
While the matter was under consideration of the Committee, it was observed that the school had not filed its Receipts and Payment Accounts for any of the years, as part of its annual returns filed under Rule 180 of the Delhi School Education Rules, 1973. Accordingly vide notice dated 28/11/2018, the school was directed to file its Receipt and Payment Accounts.

Initially the school contended that since it was maintaining accounts on mercantile system of accounting, it was not preparing Receipt and Payment Accounts. The Committee drew the attention of the authorized representatives appearing for the school that as per Rule 180 of the Delhi School Education Rules read with Appendix II, the school was obliged to file its Receipt and Payment Account, irrespective of the method of accounting followed by it. Ultimately, the school filed its Receipt and Payment accounts on 14/05/2019. The Committee checked the same in relation to the written submissions filed by the school on 10/11/2017 and observed certain discrepancies therein. The authorized representative of the school sought some time to explain the same.

On 12/07/2019, the school filed written submissions explaining the discrepancies observed on the previous date of hearing. It was explained that the funds which were transferred from the Pre Primary school to the Parent society in the year 2006-07 were in fact only Rs. 7 lacs and not Rs. 27 lacs as taken by the Committee in its preliminary calculations. It was submitted that balance Rs. 20 lacs



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represented only a book entry transfer from the Income and Expenditure account to the account of the Society. Likewise it was submitted that for the year 2009-10, the entire amount of Rs. 25 lacs taken by the Committee in the preliminary calculation represented a book entry transfer. It was further submitted that since there was no real transfer of money from the School to the Parent Society, the same ought not to be taken into calculations by the Committee. It was also submitted that precisely for these reasons the amounts of transfer of funds to the Parent Society were reflected as Rs. 7,00,000 in 2006-07 and nil in 2009-10 in the Receipt and Payment accounts for these years.

Importantly, along with the written submissions the School also filed its own calculation sheet which projected that the School generated surplus funds to the tune of Rs.1,55,06,866 in the Senior school and the Pre-Primary school taken together as a result of fee hike and arrear fee recovery as per order dated 11/02/2009 issued by the Director of Education.

It is noticeable that the total amount of arrear fee and the incremental fee recovered by the School for the year 2009-10 pursuant to order dated 11/02/2009 of the Directorate of Education amounted to Rs. 1,59,95,475. It was submitted that though the School recovered the fee in excess of its requirements for implementing the recommendations of VI Pay Commission, the



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Committee may not order its refund as the school required funds for its expansion and for upgradation of infrastructure.

The Committee has considered the submissions of the school as also the calculation sheet filed by the school in which it has admitted that it recovered fee in excess of its requirements to give effect to the recommendations of VI Pay Commission. The only difference between the calculations of the Committee and the calculation submitted the school is that while the Committee considered the entire fee hike and arrear fee of Rs. 1,59,95,475 to be unreasonable, the calculations submitted the school show that the fee hiked which was in excess of its requirements was Rs. 1,55,06,866.

The matter needs no further discussion and the Committee accepts the calculations made by the school and accordingly orders that the excess fee of Rs. 1,55,06,866 recovered by the school by recovering arrear fee and hiking regular tuition fee in the year 2009-10 be refunded to the students along with interest @ 9% per annum from the date of collection to the date of refund. The Committee rejects the contention of the school that it be allowed to retain the surplus for expansion and upgradation of its infrastructure as the fee hike permitted vide order dated 11/02/2009 was specifically for the purpose of augmenting the resources of the schools to enable them to implement the recommendations of VI Pay Commission

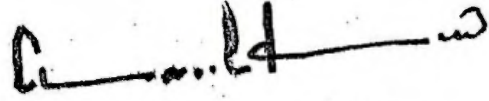


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where the funds available with the school were not adequate for the purpose.

Ordered accordingly.



Justice Anil Kumar (R)
(Chairperson)



CA J.S. Kochar
(Member)



Dr. R.K. Sharma
(Member)

Dated: 16/07/2019



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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:

Hans Raj Model School, Punjabi Bagh, New Delhi-110026 (B173)

Order of the Committee

Present Sh. S.K. Singhal, Chartered Accountant, Sh. R.K. Tyagi, OSD, Ms. Suman Chawla, Sr. Asstt., Ms. Geetanjali Bhatia, UDC & Sh. Jai Malhotra UDC 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 of salary paid and the incremental salary paid to the staff pursuant to the implementation of the recommendations of the 6th pay commission.

The school furnished its reply under cover of its letter dated 12/03/2012. As per the reply submitted by the school, it implemented the recommendations of VI Pay Commission and started paying the increased salary w.e.f. 01/09/2008. It also enclosed a statement showing the detail of salary arrears paid to the staff with effect from January 2006 to December 2008. The total amount claimed to have been paid towards arrear salary was mentioned to be



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Rs. 6,34,73,018. (Obviously, the school did not start paying the increased salary as per the recommendations of VI Pay Commission w.e.f. 01/09/2008 as it claimed to have paid arrears upto December 2008.)

With regard to fee hike, the school admitted having hiked the tuition fee w.e.f. 01/04/2009, in pursuance of order dated 11/02/2009 issued by the Director of Education. As per the information furnished by the school, the tuition fee was hiked @ Rs. 300 per month for all the classes across the board. Further, the school admitted having collected a sum of Rs. 1,00,80,000 as arrear of incremental fee for the period 01/09/2008 to 31/03/2009 and Rs. 1,46,34,100 for the period 01/01/2006 to 31/08/2008, from the students in terms of order dated 11/02/2009 issued by the Director of Education.

In the first instance, preliminary calculations were made by the Chartered Accountants (CAs) deputed by the Directorate of Education to assist this Committee and they determined that prima facie the school had recovered a sum of Rs. 25,92,454 in excess of its requirements for meeting the additional expenditure on account of implementation of the recommendations of VI Pay Commission after taking into account the funds available with the school prior to effecting the fee hike. However, on review of the calculations made by the CAs, the Committee observed that they had not reconciled the



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figures with audited financials of the school. Therefore, the Committee did not rely upon the calculations made by the CAs.

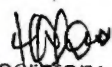
The Committee issued a notice dated 13/05/2015, requiring the school to furnish within 10 days, the complete break up of fee and salaries for the years 2008-09 to 2010-11 (including arrear fee and arrear salary pursuant to implementation of VI Pay Commission), copies of bank statements showing payment 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. A supplementary questionnaire regarding recovery and utilisation of development fee and maintenance of earmarked development/depreciation reserve fund was also issued to the school in order to examine whether the school was complying with the essential pre conditions for charging development fee as laid down by the Duggal Committee which were subsequently affirmed by the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583.

The school submitted the required information under cover of its letter dated 11/08/2015. It also submitted reply to the supplementary questionnaire issued by the Committee.

As per the reply to the supplementary questionnaire, the school was charging development fee in all the five years for which the



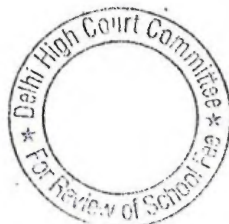
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information was sought i.e. 2006-07 to 2010-11. In particular, the development fee charged by the school in the years 2009-10 and 2010-11 pursuant to order dated 11/02/2009 issued by the Director of Education was Rs. 2,22,42,126 and Rs. 1,98,61,508 respectively. It was stated that the school treated development fee as a revenue receipt and no separate accounts for expenditure out of development fund were maintained by it as the development fee was treated as like any other revenue receipt. It was also admitted that no separate depreciation reserve fund was maintained by the school and for certain reasons proper accounting procedure could not be followed. It was also admitted that no separate bank account or Fixed deposits or investments were maintained for unutilised development fund as generally most of the amount of development fund was utilised by the school.

A notice of hearing was issued to the school requiring it to appear before the Committee on 17/10/2015 to produce its books of accounts, fee and salary records and make submissions in justification of the fee hike effected by it.

Sh. R.K. Tyagi, OSD appeared with Ms. Suman Bala, Ms. Geetanjali Bhatia and Sh. Jai Malhthora, support staff. They contended that the school fully implemented the recommendations of VI Pay Commission and also hiked the fee in accordance with the order dated 11/02/2009 issued by the Director of Education. It was further submitted that the fee hike effected by the school was



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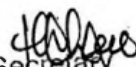
justified. The matter could not be concluded on account of resignation of Justice Anil Dev Singh, Chairman of the Committee. After reconstitution of the Committee, the matter was taken up for further proceedings. The Committee observed that the school had not furnished the audited financials of its Pupil Fund. It had been observed by the Committee that all the schools run by DAV College Management Committee (DAVCMC) credited a part of its fee revenues to the account of their Pupil Fund although such fee was not supposed to be utilised for the welfare of the Pupils. Since this school is also run by DAVCMC, the Committee considered it appropriate to call for the audited financials of the Pupil Fund of the school.

The school submitted the audited financials of its Pupil Fund under cover of its letter dated 28/07/2016. A notice of hearing was issued to the school on 10/07/2017 requiring it to appear before the Committee on 20/07/2017. In the meantime, the Committee prepared a preliminary calculation sheet based on its audited financials and the information furnished by the school vide its letter dated 11/08/2015, to examine whether the fee hike effected by the school was justified or not.

The authorized representatives of the school appeared. The Committee considered the preliminary calculation sheet which showed that the school was apparently in deficit to the tune of Rs. 1,31,89,932 after implementing the recommendations of VI Pay Commission, although such deficit was notional as it was worked out



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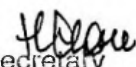

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after setting apart an amount of Rs. 3,97,97,660, which is equivalent to four months salary, for any future contingencies. The Committee has taken a consistent view that the schools ought not to denude themselves of the entire funds available with them on implementation of the recommendations of VI Pay Commission, but must keep in reserve an adequate amount to meet its accrued liabilities of gratuity and leave encashment besides maintaining a reasonable reserve to meet any future contingencies. The Committee considers a sum equivalent to four months salary to be a reasonable reserve which ought to be maintained by the school. However, no reserve was considered necessary for meeting the liabilities of the school in respect of gratuity and leave encashment, as the school contributes on a monthly basis to gratuity and leave encashment funds which are maintained by DAVCMC, out of which such liabilities are met when they arise.

The school having admitted of its own accord, that it was not fulfilling any of the pre conditions laid down by the Duggal Committee which were affirmed by the Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583, the Committee considered that the amount of development fee recovered by the school in 2009-10 and 2010-11 amounting to Rs. 4,21,03,634 was not justified and after setting off the notional deficit of Rs. 1,31,89,932 on implementation of the recommendations of VI Pay Commission, the



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school was prima facie required to refund a sum of Rs. 2,89,13,702.

The calculation sheet prepared by the Committee is as follows:

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	Main School	Pupil Fund	Total
	Current Assets + Investments			
	Cash/ Cheques/ Drafts in Hand	117,690	-	117,690
	Bank Balances in Savings Account	(4,991,975)	13,749,031	8,757,056
	Fixed Deposits	54,092,920	25,519,675	79,612,595
	Reserve Fund with DAV CMC	9,700,000	-	9,700,000
	Imprest to Staff	-	48,945	48,945
	Advance to Staff	406,245	436,890	843,135
	Advance Salary	201,854	-	201,854
	Amount recoverable	-	1,075,750	1,075,750
	Loan to Institutions	238,047	70,000	308,047
	Accounts receivable	3,411,719	324,889	3,736,608
	Total Current assets	63,176,500	41,225,180	104,401,680
Less	Current Liabilities			
	Security Deposits - Contractor/Transport	488,391	369,500	857,891
	Refundable Students Security	5,494,900	279,482	5,774,382
	Account payable to parties	6,201,220	1,351,622	7,552,842
	Other Current liabilities	-	3,420,189	3,420,189
	Bank OD	707,288	-	707,288
	Total Current Liabilities	12,891,799	5,420,793	18,312,592
	Net Current Assets + Investments	50,284,701	35,804,387	86,089,088
Less	Funds to be kept in reserve for future contingencies equivalent to 4 months salary	39,797,660	-	39,797,660
	Funds available for implementation of 6th CPC	10,487,041	35,804,387	46,291,428
Less	Arrear of Salary as per 6th CPC w.e.f. 01.01.06 to 31.03.09 *	58,756,153	-	58,756,153
	Incremental Salary as per 6th CPC from 01.04.09 to 31.03.2010	44,793,502	-	44,793,502
	Total	103,549,655	-	103,549,655
	Excess / (Short) Fund Before Fee Hike	(93,062,614)	35,804,387	(57,258,227)
Add	Tuition Fee Arrear for the period from 01.01.06 to 31.03.09	14,625,003	-	14,625,003
	Incremental Tuition fee in 2009-10	29,443,292	-	29,443,292
	Total	44,068,295	-	44,068,295
	Excess / (Short) Funds After Fee Hike	(48,994,319)	35,804,387	(13,189,932)

Regular Development fee refundable having been treated as a revenue receipt:	Rs.
For the year 2009-10	22,242,126
For the year 2010-11	19,861,508
Total	42,103,634
Less: shortfall in tuition fee	(13,189,932)
Net amount refundable	28,913,702



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<u>Working Notes:</u>	2008-09	2009-10
Basic Pay	39,073,817	81,804,736
Dearness Allowance	17,128,585	18,605,446
Permissible Allowance	20,992,272	26,568,841
Dearness Pay	9,097,898	31,781
Other Allowances	364,450	-
EDLI Contribution	355,211	504,289
PF Expenditure	7,894,284	12,027,283
Administrative Charges	1,651,255	3,209,233
Total	96,557,772	142,751,609
Less: Arrears of 6th Pay Commission	21,958,295	23,358,630
Net Salary for the year	74,599,477	119,392,979
Incremental salary 2009-10	44,793,502	
Regular/ Normal Tuition fee	84,236,243	113,679,535
Incremental tuition fee in 2009-10	29,443,292	

A copy of the above calculation sheet was given to the authorized representatives for rebuttal, if any.

The school disputed the preliminary calculations made by the Committee and filed written submissions in rebuttal. The calculations were disputed in the following respects:

A. It was contended that in the calculation sheet prepared by the Committee, the following liabilities of the school had not been considered :

1. Suspense balance of Rs.1,85,200 which represented the aggregate amount of cheques which had not been encashed from the bank as at the balance sheet date, but had been subsequently encashed.
2. Amount owed to DAVCMC, which was Rs.20,26,640. It is contended that since the Committee had taken the reserve fund which was lying with the DAVCMC amounting to Rs.97 lakhs



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(approx) in its calculations, the liability ought also be taken into consideration

3. An advance loan of Rs.11,52,000 which was taken temporarily from the canteen and book shop contractors in the Pupil Fund account ought also have been considered, as the school was in temporarily needs of funds for meetings its revenue expenses.

B. The school paid a sum of Rs.1,53,07,498 towards arrear salary in the year in 2011-12, which had not been considered in the calculations as the school itself omitted to give this information when it was called for. Besides it was also submitted that a sum of Rs.15,10,092 was paid to the retired/nominees of deceased employees in the year 2011-12.

C. The incremental salary in 2009-10 was Rs.4,69,55,104 instead of Rs.4,47,93,502, which had been considered by the Committee. The difference was due to the fact that the Committee had not considered the incremental amount of the school's contributions for gratuity and leave encashment, which are remitted to DAVCMC, which maintains these funds and also the Committee did not consider the incremental amount of bonus (which in fact had decreased in 2009-10 compared to 2008-09). The authorized representative fairly stated that when the full amount of incremental salary is duly considered, the decrease under one particular head may also be considered.



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D. The school incurred capital expenditure amounting to Rs. 66,71,040 in 2009-10 & 2010-11. It was contented that since the school was fulfilling all the pre conditions laid down by the Duggal Committee which were affirmed by the Hon'ble Supreme Court in the case of Modern School Vs. Union of India, the Committee ought to have considered the refund of development fee only to the extent of shortfall in the funds earmarked against development fund and depreciation reserve fund. It ought to have allowed the capital expenditure which had been incurred in eligible assets out of development fee.

During the course of hearing itself, the Committee considered the submissions made by the authorized representatives of the school and observed that :

- a. The school had filed no evidence of the payment of arrears in 2011-12 as claimed by it. The authorized representatives sought time to furnish the same.
- b. The Committee agreed with the submissions made by the school that the incremental gratuity, leave encashment and bonus in 2009-10 as compared to 2008-09 ought to be considered in its calculations.
- c. The issue of capital expenditure out of development fee in 2009-10 and 2010-11 cannot be considered in isolation for these two years only. The Committee had examined the balance sheet of some of the years and found that the capital expenditure incurred out of

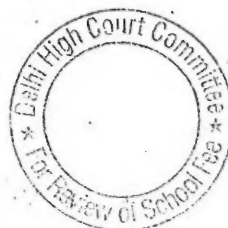


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development fee had not actually been reduced from the development funds as it appeared in the balance sheet of the school and as such the entire development fund as reflected in the balance sheet might not be available with the school. The authorized representatives submitted that they would prepare a chart showing year-wise collection of development fee, year wise utilization and year wise balance remaining at the end of the year against which the investments were to be held. The Committee observed that this ought to be prepared with effect from the year the school started charging development fee as the maintenance of development and depreciation reserve fund were mandated by the order dated 15.12.1999 issued by the Director of Education consequent to the acceptance of the recommendations of the Duggal Committee. The school was also directed to produce its accounts from 2008-09 to 2011-12 in a lap top.

On 06/09/2017, Sh. S.K. Singhal, Chartered Accountant appeared with the authorized representatives of the school and made submissions. The school also filed written submissions dated 30th August 2017 alongwith details of payment of arrear salary amounting to Rs.15,10,092 plus Rs.1,53,07,498 in the year 2011-12 alongwith copies of the bank advices and bank statement in evidence of such payments. The school also filed a chart showing the details of movement in the development fund from the year 2003 to 2010-11, alongwith the amount of FDRs purportedly held against the



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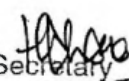
H. Singh
Secretary

development fund and depreciation reserve fund. It was contended that the school had depreciation reserve funds in its books, amounting to Rs.5,26,26,241.79 as on 31.3.2011 and the balance of unutilized development fund amounting to Rs.5,07,68,666. It was further contended that the FDRs held against these two funds were short of the required FDRs to maintained by Rs.2,82,12,830. It was submitted by the authorized representatives appearing for the school that the development fee at all is to be considered refundable, the refund ought to be restricted the aforementioned shortfall in maintenance of FDRs.

The Committee examined the books of accounts maintained by the school in the software MARG which were produced by the school in a laptop. The Committee also examined the audited balance sheets of the school and observed that the school did not maintain any earmarked development fund or depreciation reserve fund either in the shape of a saving bank account or in the shape of FDRs. All the FDRs held by the school were general FDRs which were withdrawable by the school for any purpose and not necessarily for purchase of fixed assets. In fact the school had actually withdrawn funds from these FDRs for partially meeting its liability for implementation of the recommendations of the 6th pay commission. This position was conceded too by the authorized representatives appearing for the school.



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Secretary

In the circumstances the Committee is of the view that the school was not complying with any of the pre conditions laid down by the Duggal Committee which were affirmed by the Hon'ble Supreme court in the case of Modern school and was thus not entitled to charge any development fee. The Committee had arrived at a similar conclusion after examining the reply of the school to the supplementary questionnaire issued to it specifically regarding development fee and fulfillment of the pre conditions for charging development fee.

The Committee reserved its order.

The Committee accepts the contention of the school that the amount it owed to DAV CMC amounted to Rs.20,26,640 ought to be considered as the liability of the school while calculating the funds available with it. The Committee also accepts that the amount of uncashed cheques as on 31/03/2008 which were subsequently encashed, ought also be considered as a liability. However, the Committee is unable to accept the contentions of the school that the loan taken by it from its book shop in the Pupil Fund be accounted for while calculating the funds available with it for the reason that the Balance Sheet of Pupil Fund does not give any particulars as to from whom this loan was taken nor has the school produced any evidence that it took a temporary loan for meeting its day to day expenses from the book shop or anyone else.



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Secretary

However, while finalizing its order, the Committee observed that the information furnished by the school vide its letter dated 19/08/2015, based on which the Committee had prepared its preliminary calculations, was inconsistent with the initial reply dated 12/03/2012 given by the school to the questionnaire issued by the Committee. In the initial reply given by the school, it had categorically stated that it recovered a sum of Rs. 1,00,80,000 from the students towards arrear fee for the period 01/09/2008 to 31/03/2009 and another sum of Rs. 1,46,34,100 for the period 01/01/2006 to 31/08/2008. However, in the information submitted by the school vide its letter dated 19/08/2015, it was mentioned that the school collected only a sum of Rs. 1,46,25,003 as arrear fee for the entire period of 01/01/2006 to 31/03/2009. In order to clarify the issue, a specific notice with regard to this apparent inconsistency was issued to the school on 11/06/2019. The matter was posted for hearing on 09/07/2019.

Sh. S.K. Singhal appeared in response to the fresh notice along with other officials of the school. He filed a letter dated 2nd July 2019 signed by Sh. Adarsh Kohli, Manager of the school stating that the school had not stated in its reply dated 12/03/2012 that it collected Rs. 1,46,34,100 plus Rs. 1,00,80,000 but had only given the figure of Rs. 1,46,34,100 as the total collection which also was erroneous as the actual amount collected by the school was Rs. 1,46,25,003, which was duly supported by its books of accounts.



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[Signature]
Secretary

The Committee again confronted the authorized representatives of the school with its initial reply dated 12/03/2012 as well as the circular regarding recovery of arrear fee issued by the school, which clearly stated that the students were required to pay Rs. 2100 (300x7) as arrears of incremental fee for the period 01/09/2008 to 31/03/2009, besides a sum of Rs. 3000 towards lump sum arrear fee for the period 01/01/2006 to 31/08/2008. Thus a total sum of Rs. 5,100 per student was required to be paid by them towards arrear fee and since the student strength of the school was about 4,800, the total collection on account of arrear fee would have been around Rs. 2.45 crores, which appeared to be in line with the figure of Rs. 2,47,14,100 (1,46,34,100 + 1,00,80,000) as given by the school vide its reply dated 12/03/2012. The authorized representatives of the school sought some time to verify the same from the books of accounts and revert back to the Committee.

Today, Sh. Singhal has appeared along with other authorized representatives of the school and has filed a letter dated 17/07/2019 again signed by Sh. Adarsh Kohli, Manager vide which the school has taken a complete volte face and admitted that the school did collect a sum of Rs. 1,00,80,000 as arrear fee for the period 01/09/2008 to 31/03/2009 and another sum of Rs. 1,46,25,003 (instead of 1,46,34,100) for the period 01/01/2006 to 31/08/2008. The aggregate amount of arrear fee collected by the school has been admitted to be Rs. 2,47,05,003.



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[Signature]
Secretary

It is also submitted that certain other discrepancies also crept in while furnishing the information. During the course of hearing, the final figures admitted by the school and also confirmed by its authorized representatives by signing on the order sheet are as follows:

Total arrear fee collected	Rs. 2,47,05,003
Tuition fee for the year 2008-09	Rs. 8,25,55,353
Tuition fee for the year 2009-10	Rs. 10,52,80,425
Incremental tuition fee in 2009-10	Rs. 2,27,25,072
Total Arrear salary paid upto 2011-12	Rs. 7,55,73,560
Incremental arrear salary for the year 2009-10	Rs. 4,69,55,104

After taking on board all the submissions and admissions made by the school, the Committee has prepared a revised calculation sheet, which is as follows:



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[Signature]
Secretary

Revised Calculation Sheet				
	Particulars	Main School	Pupil Fund	Total
	Current Assets + Investments			
	Cash/ Cheques/ Drafts in Hand	117,690	-	117,690
	Bank Balances in Savings Account	(4,991,975)		8,757,056
	Fixed Deposits	54,092,920	13,749,031	79,612,595
	Reserve Fund with DAV CMC	9,700,000	25,519,675	9,700,000
	Imprest to Staff	-	48,945	48,945
	Advance to Staff	406,245	436,890	843,135
	Advance Salary	201,854	-	201,854
	Amount recoverable	-	1,075,750	1,075,750
	Loan to Institutions	238,047	70,000	308,047
	Accounts receivable	3,411,719	324,889	3,736,608
	Total Current assets	63,176,500	41,225,180	104,401,680
Less	Current Liabilities			
	Security Deposits - Contractor/Transport	488,391	369,500	857,891
	Current Account DAVCMC+DAVCMC General Account	2,026,640		2,026,640
	Suspense Account	185,200		185,200
	Refundable Students Security	5,494,900	279,482	5,774,382
	Account payable to parties	6,201,220	1,351,622	7,552,842
	Other Current liabilities	-	3,420,189	3,420,189
	Bank OD	707,288	-	707,288
	Total Current Liabilities	15,103,639	5,420,793	20,524,432
	Net Current Assets + Investments	48,072,861	35,804,387	83,877,248
Less	Funds to be kept in reserve for future contingencies equivalent to 4 months salary	39,797,660	-	39,797,660
	Funds available for implementation of 6th CPC	8,275,201	35,804,387	44,079,588
Less	Arrear of Salary as per 6th CPC w.e.f. 01.01.06 to 31.03.12	75,573,560	-	75,573,560
	Incremental Salary as per 6th CPC from 01.04.09 to 31.03.2010	46,955,104	-	46,955,104
	Total	122,528,664	-	122,528,664
	Excess / (Short) Fund Before Fee Hike	(114,253,463)	35,804,387	(78,449,076)
Add	Tuition Fee Arrear for the period from 01.01.06 to 31.03.09	24,705,003	-	24,705,003
	Incremental Tuition fee in 2009-10	22,725,072	-	22,725,072
	Total	47,430,075	-	47,430,075
	Excess / (Short) Funds After Fee Hike	(66,823,388)	35,804,387	(31,019,001)

Regular Development fee refundable	Rs.
For the year 2009-10	22,242,126
For the year 2010-11	19,861,508
Total	42,103,634
Less: shortfall in tuition fee	(31,019,001)
Net amount refundable	11,084,633

It is apparent from the above calculation sheet that the school incurred a deficit of Rs.3,10,19,001 on implementation of





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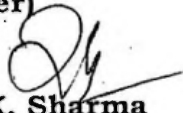
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Secretary

the recommendations of 6th Pay Commission, although such deficit is notional as it has been worked out after allowing a sum of Rs.3,97,97,660 to be kept by the school in reserve for future contingencies. However, since the school was not fulfilling any of the preconditions for charging development fee as laid down by the Hon'ble Supreme Court which were also made a part of the order dated 11/02/2009 issued by the Director of Education, the Committee is of the view that the development fee recovered by the school in 2009-10 and 2010-11, pursuant to the said order, was not justified and ought to be refunded after adjusting the notional deficit incurred by the school on implementation of the recommendations of 6th Pay Commission. The development fee recovered by the school in these two years amounted to Rs.4,21,03,634 and after adjusting the notional deficit, there remains a balance of Rs.1,10,84,633. The school ought to refund the said sum of Rs.1,10,84,633 to the students alongwith interest @ 9% per annum from the date of collection to the date of refund.

Ordered accordingly.


Justice Anil Kumar (R)
(Chairperson)

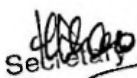

CA J.S. Kochar
(Member)


Dr. R.K. Sharma
(Member)

Dated:18/07/2019



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Secretary

000147

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

CAUSE LIST FOR JULY 2019

Cause List for Tuesday, 2nd July 2019

S. No.	Cat. No.	School Name & Address
1	B-49	Sachdeva Public School, Sect.13, Rohini
2	B-148	Venkateshwar International School, Dwarka
3	B-628	Bala Pritam Guru Harkishan Int. Public School (formerly Upras Vidyalaya), Vasant Vihar

Cause List for Wednesday, 3rd July 2019

S. No.	Cat. No.	School Name & Address
1	B-424	Pragati Public School, Dwarka
2	B-302	Bharti Public School, Swasthya Vihar
3	B-180	St. Paul's School, Safdarjung Dev. Area

Cause List for Friday, 5th July 2019

S. No.	Cat. No.	School Name & Address
1	B-614	Holy Cross School, Najafgarh
2	B-439	National Public School, Kalindi Colony

Cause List for Monday, 8th July 2019

S. No.	Cat. No.	School Name & Address
1	B-290	Kasturi Ram International School, Narela
2	B-335	Bhai Parmanand Vidya Mandir, Surya Niketan

Cause List for Tuesday, 9th July 2019

S. No.	Cat. No.	School Name & Address
1	B-173	Hans Raj Model School, Punjabi Bagh

Cause List for Friday, 12th July 2019

S. No.	Cat. No.	School Name & Address
1	B-202	St. Gregorious School, Dwarka
2	B-148	Venkateshwar International School, Dwarka
3	B-49	Sachdeva Public School, Sect.13, Rohini



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000148

Cause List for Tuesday, 16th July 2019

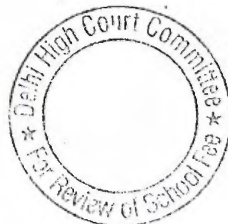
S. No.	Cat. No.	School Name & Address
1	B-120	The Heritage School, Vasant Kunj
2	B-60	The Heritage School, Sector-23, Rohini

Cause List for Thursday, 18th July 2019

S. No.	Cat. No.	School Name & Address
1	B-151	G D Goenka Public School, Vasant Kunj
2	B-286	Mount Abu Public School, Sect.5, Rohini
3	B-290	Kasturi Ram International School, Narela
4	B-173	Hans Raj Model School, Punjabi Bagh

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H. N. Singh
Secretary



02/07/2019

000149

B-49

Sachdeva Public School, Sec-13 Rohini, Delhi

Present: Shri Anup Mehrotra AO and Shri Rakesh Goel AO of the School.

The school has filed written submissions dated 2/07/2019 vide which it has disputed ~~that~~ ^{the} revised calculation sheet prepared by the Committee only on one ground. It is contended that while calculating the amount of funds diverted for incurring capital expenditure, the Committee has inadvertently taken the figure of purchase of fixed assets in the year 2009-10 as Rs. 3,38,63,257 by adding the cost of fixed assets acquired out of development fee to the total amount of fixed assets acquired during that year which already included the cost of fixed assets acquired out of development fee. It is thus contended that there has been a double counting to the extent of Rs. 1,57,81,071 which represents the cost of fixed assets acquired out of development fee.

The Committee has perused the revised calculation sheet and the audited financials for the year 2009-10 and observes that the mistake as pointed out by the School has indeed occurred. The same will be rectified while making the final determinations with regard to refund which the school will be required to make.

No other contention has been raised by the School in its written submissions or during the course of hearing by the authorized representative appearing for the school.

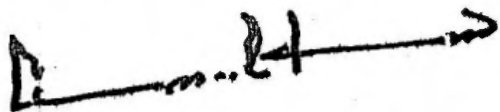
Order reserved.



Dr. R.K. SHARMA
MEMBER



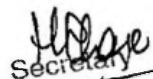
J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

02/07/2019

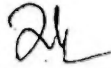
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B-148

Venkateshwar International School, Dwarka Delhi

Present: Shri Harish Sharma, Administrative Officer of the School.

The School has filed an application for adjournment on the ground that the School has reopened only yesterday after summer vacation. As requested the matter is adjourned for 12th July 2019 at 11.00 am.



Dr. R.K. SHARMA
MEMBER




J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

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03/07/2019

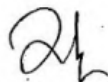
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B-424

Pragati Public School, Dwarka, Delhi

Present: Shri Rajiv Malik, Authorised representative and Shri Inderpal Singh, Accounts Executive of the School.

A copy of the revised calculation sheet has been given to the authorized representative of the school for rebuttal, if any. The school may file its written submissions in rebuttal of the revised calculation sheet on or before the next date of hearing. The matter will come up for further hearing on 19th August 2019 at 11.00 am.



Dr. R.K. SHARMA
MEMBER



J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

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Secretary



03/07/2019

000152

B-302

Bharti Public School, Swasthya Vihar, Delhi

Present: Shri Punit Batra, Advocate and Shri H.C.Batra, President of the School.

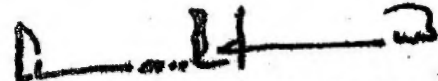
The Learned Counsel of the school submits that it will take about two weeks to get the final audited balance sheet as on 31st March 2019. The matter is accordingly adjourned to 20th August 2019.



Dr. R.K. SHARMA
MEMBER




J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

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Secretary



05/07/2019

000153

B-614

Holy Cross School, Najafgarh, Delhi

Present: Sr. Maria Fernandes, Principal and Shri Vikash Kr. Pal, Accountant of the School.

The School has filed detail of development fund with copies of earmarked FDRs and the audited financials for 2014-15 to 2017-18. It is submitted that the school started treating development fee as capital receipt w.e.f. 2014-15. However, the development fee received in the prior years was also transferred to the development fund. The depreciation charged for the last eight years has also been transferred to the depreciation reserve fund and to the extent it remained unutilized, it was put in the earmarked FDRs. It is accordingly, submitted that since the School has rectified the mistake in the subsequent years and also put money into earmarked funds, no order for refund of development fee charged in the year 2009-10 and 2010-11 be made.

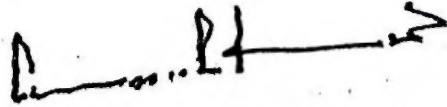
Matter heard. Recommendations reserved.



**Dr. R.K. SHARMA
MEMBER**



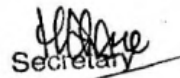
**J.S. KOCHAR
MEMBER**



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

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Secretary

08/07/2019

000154

B-290

Kasturiram International School, Narela, Delhi

Present: Shri Manoj, I.T. of the School.

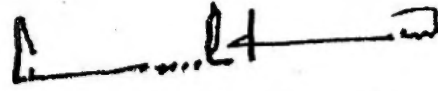
An application has been filed by the School seeking adjournment on the ground of non-availability of Manager of the school today. In the past also the School has been granted number of adjournments. However, every time the school makes one excuse or the other. One last opportunity is being given the school to appear before the Committee and produce the records which was directed to produce on 4/6/2019. The matter is accordingly adjourned for 18th July 2019.



Dr. R.K. SHARMA
MEMBER



J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

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Secretary



09/07/2019

000155


B-173

Hans Raj Model School, Punjabi Bagh, Delhi

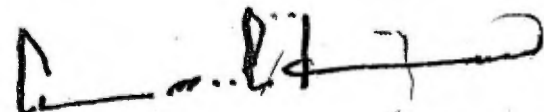
Present: Sh. S.K. Singhal, OSD, Sh. R.K. Tyagi, OSD, Ms. Geetanjali Bhatia and Sh. Jai Malhotra, UDCs of the school.

The school has filed a letter dated 2/07/2019. It is submitted that the school collected a total sum of Rs. 1,46,25,003 as arrear fee and has enclosed copies of ledger account styled as VI Pay Arrear in support of its submission. However, the authorized representative appearing for the school is unable to reconcile the submission now made vis a vis the submissions made in reply to the questionnaire which was issued by the Committee wherein it was stated that the school collected a total sum of Rs. 1,46,34,100 towards lump sum arrear @ Rs. 3000 per student and a further sum of Rs. 1,00,80,000 towards arrears of differential tuition fee for the period 01/09/2008 to 31/03/2009 @ 2100 per student. Going by the student strength of about 4800, the school ought to have collected a sum of Rs. 2.45 crores approximately. It appears that the initial reply submitted by the school to the questionnaire was correct. The authorized representative seeks some time to verify the same from the books of accounts of the school and revert back to the Committee.

As requested, the matter is posted for further hearing on 18/07/2019. It is expected that the school will produce all the relevant records including daily collection register and bank statements to satisfy the committee about the exact amount of arrears collected by the school.


Dr. R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

12/07/2019

B-202


St. Gregorious School, Dwarka, Delhi

Present: Shri K.K. Khanna, Auditor, Shri Saneep Khanna, Auditor, Shri Cyril K. Philip, Accountant and Shri K.B. Kutty, representative of the Managing Committee of School.

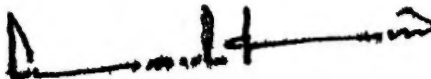
The school has filed a written submission dated 12/07/2019 vide which it was explained that the funds which were transferred from the Pre Primary school to the Parent society in the year 2006-07 were infact only Rs. 7 lacs and not Rs. 27 lacs as taken by the Committee in its preliminary calculations. It is submitted that balance Rs. 20 lacs represented a book entry transfer from the income and expenditure account to the account of the society. Likewise it is submitted that from the year 2009-10 the entire amount of Rs. 25 lacs taken by the Committee in the preliminary calculation represented a book entry and a book entry transfer. It is submitted that since there was no real transfer of money from the School to the Parent Society, the same ought not have been taken into calculations. It is further submitted that precisely for these reasons the amounts of transfer of funds to the Parent Society are reflected as Rs. 7,00,267 and nil in 2009-10 in the receipt and payment account for the respective years.

Along with the written submissions the School has filed its own calculation sheet which projects that the School generated surplus funds to the tune of Rs.1,55,6,866 in the senior school and the Pre-Primary school taken together. It is noticeable that the total amount of arrear fee recovered by the School and the incremental fee for the year 2009-10 pursuant to order dated 11.2.2009 of the Directorate of Education amounting^{ed} to Rs. 1,59,95,475. It is submitted that the School required funds for expansion and for upgradation of infrastructure and therefore, the surplus was required by the School.

Matter heard. Order reserved.

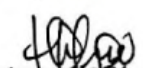

Dr. R.K. SHARMA
MEMBER


J.S.KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

12/07/2019

B-148

Venkateshwar International School, Dwarka

Present: Shri Kamal Sharma, Director (Finance), Shri Harish Sharma, Administrative Officer and Shri Gauri Shankar, Accounts Officer of the School.

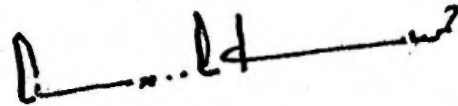
The School has filed a modified detail of its income and expenses relating to transportation of students. The revised calculation sheet to be prepared. Matter is adjourned to 22nd August 2019.



Dr. R.K. SHARMA
MEMBER



J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

12/07/2019


B-49

Sachdeva Public School, Rohini, Delhi

Present: Shri Anup Mehrotra, Accounts Officer of the School.

While finalizing the order it came to the notice of the Committee that in the original calculation sheet the Committee had taken the liabilities of gratuity as Rs. 1,5,53,490 which was based on the calculations of actual liability submitted by the School, as moderated for the employees who had not completed five years of service. Likewise the two liabilities for leave encashment was taken as Rs. 24,40,583 which were based on the statement of actual accrued liability submitted by the School. Subsequently the school filed actuarial valuation reports which projected the accrued liability of gratuity and leave encashment as Rs. 2,42,64,573. The issue had been discussed by the committee in its order dated 18/12/2017 and for the reasons stated therein the submission of the School to take into account actuarial valuation instead of the actual calculations submitted by the School in which no mistakes were pointed out, was rejected. However, while preparing the revised calculation sheet after taking into account the submissions made by the School, the Committee inadvertently took the accrued liability of gratuity and leave encashment as per the actuarial valuation. A notice in this regard was issued to the School on 05/07/2019. Shri Anup Mehrotra, Accounts Officer of the School was present at the time of hearing submits that the school had already made submission in this respect, which were recorded in the order dated 18/12/2017 and has nothing more to say in this matter.

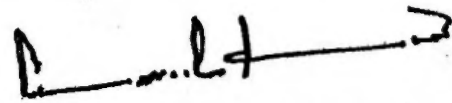
Order reserved.



Dr. R.K. SHARMA
MEMBER



J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

16/07/2019

000159

_B-120

The Heritage School, Vasant Kunj, Delhi

Present: Ms. Mannat Sandhu, Advocate of the School.

The Learned Counsel appearing for the school seeks adjournment on the ground that there has been a change in the Counsel of the School and Shri Vedanta Varma would henceforth would be appearing for the School. She seeks to file the vakalatnama on the next date of hearing. As requested the matter is adjourned to 23rd August 2019 at 11.00 am.



**Dr. R.K. SHARMA
MEMBER**



**J.S. KOCHAR
MEMBER**



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

TRUE COPY


Secretary



16/07/2019

000160

B-60

The Heritage School, Rohini, Delhi

Present: Ms. Mannat Sandhu, Advocate of the School.


The Learned Counsel appearing for the school seeks adjournment on the ground that there has been a change in the Counsel of the School and Shri Vedanta Varma would henceforth would be appearing for the School. She has filed the vakalatnama. As requested the matter is adjourned to 30th August 2019 at 11.00 am.



Dr. R.K. SHARMA
MEMBER



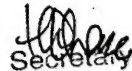
J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



TRUE COPY



Secretary

18/07/2019

B-151

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

Present: Shri Birender Singh, Accounts Officer, Shri Jitender Singh, Sr. Accountant and Shri Kamal Gupta, Advocate of the School.

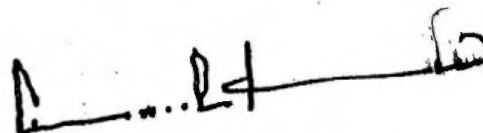
After arguing for some time the learned Counsel appearing for the school request for an adjournment. The matter was accordingly adjourned to 22nd August 2019.



Dr. R.K. SHARMA
MEMBER



J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary

18/07/2019

B-286

Mount Abu Public School, Sec-5 Rohini, Delhi

Present: Shri Kamal Gupta, Advocate, and Shri Punit Batra, Advocate of the School.

The school has filed a copy of the letter dated 16th July 2019 submitted to the Branch Manager, State Bank of India, Rohini requesting for certification of the information relating to the clearance of 26 cheques issued to the ex-staff members in payment of arrears salary due to them. However, neither there is any certification by the bank, nor copy of any bank statement has been filed showing encashment of the cheques. The school has also filed a detail of the amount which was due to the ex-staff towards arrear salary amounting to Rs. 29,83,275 vis.a vis. the payments made to them. As per the details filed out of the total amount of Rs. 29,83,275, only a sum of Rs. 14,53,274 is shown to have been paid. A sum of Rs. 11,48,741 is shown to have been adjusted "against notice period as per DOE". Another sum of Rs. 3,81,260 is shown to have been withheld for "other reason". During the course of hearing on 13.12.2018, the school had submitted that a sum of Rs 8,93,917 had been adjusted on account of three months salary of the teachers who left without notice to the school. However, as per the statement filed today, the amount on this account is shown as Rs. 11,48,741. The school had cited rule 96 (3b)(1) (H) of the Delhi School Education Rules 1973 which, it claims, authorized such deductions. The Committee has perused the rule and it seems that the same has no application to the matter. It could be a case of mis-quoting of the rule. The Learned Counsel appearing for the school submits that he will clarify the matter on the next date of hearing. However, during the course of hearing the Learned Counsel concedes that the adjustment of salary against notice period had not been made in the years in which the staff had left and the full amount continued to be shown as liability in the books of the school. The school will produce records showing the dates on which the teachers left the school purportedly without serving notice and its books of accounts in a laptop for all the years subsequently before 31st March 2011.

Despite direction given to the school on 12th January 2018, the school has not filed the statement of fees for the year 2008-09 and 2009-10 which would have been filed with the Directorate of Education under Section 17(3) of the Act of 1973, although the matter has come up for hearing on 14 dates after that. The Learned Counsel submits that one opportunity may be given to the school.



TRUE COPY

[Signature]
Secretary

18/07/2019

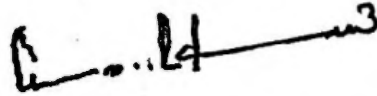
Although the Committee is not inclined to give any more opportunity to the school, in the interest of justice one last opportunity is given. Matter is adjourned to 22nd August 2019.



Dr. R.K. SHARMA
MEMBER



J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



TRUE COPY


Secretary

18/07/2019


B-290

Kasturi Ram International School, Narela, Delhi

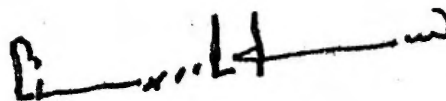
Nobody appeared on behalf of the School. A fresh notice be issued returnable on 26th August 2019 mentioning therein that if nobody appears on that date the Committee will proceed on the basis of records already filed by the School.



Dr. R.K. SHARMA
MEMBER



J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary

18/07/2019

B-173

Hans Raj Model School, Punjabi Bagh, Delhi

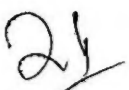
Present: Shri R.K. Tyagi, OSD, Shri S.K. Singhal, CA, Shri Jai Malhotra, UDC and Mrs. Geetanjali Bhatia, UDC of the School.

The school has filed a letter dated 17th July 2019 vide which it has admitted that the figures with regard to arrear fee which were given earlier by it were erroneous. The school has admitted that apart from Rs.1,46,25,003 which it collected as arrears for the period 1.1.2006 to 31.08.2008, the school also collected a sum of Rs.1,00,80,000 as arrears for the period 1.9.2008 to 31.3.2009. Thus it is submitted that the school collected a total amount of Rs.2,47,05,003 as arrear fee. It is also submitted that the sum of Rs.1,00,80,000 as mentioned above was credited to the tuition fee account in the year 2008-09 and the net tuition fee for the year 2008-09, without accounting for the arrears w.e.f. 1.09.2008 was Rs.8,25,55,353. With regard to regular tuition fee for the year 2009-10, it is submitted that the same amounted to Rs.10,52,80,425 as the total amount of tuition fee as credited in the ledger amounting to Rs.11,98,97,928 included a sum of Rs.1,46,17,503, which is the amount of arrear fee collected for the period 01.01.2006 to 31.08.2008.

With regard to salary, the school submits that the total arrear salary paid upto 2011-12 amounted to Rs.7,55,73,560 while the incremental salary for the year 2009-10 amounted to Rs.4,69,55,104.

It is finally submitted that the Committee may make its recommendations taking into account the aforesaid figures which are correct.

Order reserved.


Dr. R.K. SHARMA
MEMBER




J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON




Secretary

We agree with the figures mentioned herein.



18/7/19