DELHI HIGH COURT COMMITTEE
FOR REVIEW OF SCHOOL FEE
(Formerly Justice Anil Dev Singh Committee
For Review of School Fee)
C-BLOCK, VIKAS BHAWAN-2, UPPER BELA ROAD,
CIVIL LINES, DELHI-110054

No-F-DHCC/ 2019/ 461 Dated: 30/12/19

To
The Director of Education,
Directorate of Education,
Govt.of NCT of Delhi,
Old Sectt., Delhi-110054

SO-V

DDE(PSB)

31/12/19

Sub: Forwarding of report of Delhi High Court Committee for Review of School Fee for October & November-2019.

Sir,

I am directed to forward herewith a copy of report of Delhi High Court Committee for Review of School Fee for October & November -2019 which was submitted to the Registrar, High Court, Delhi on 26-12-2019 for placing before Hon'ble Division bench in the matter of WP(C) No 7777/2009 titled as Delhi Abhibhavak Mahasangh and others. V/s Directorate of Education, GNCT of Delhi & others, for your kind information and necessary action please.

Yours faithfully,

30/12/19
For Secretary to the Committee

Encl:-As above.

21308/DE
21308/DE
31/12/19

Private School Branch
Diary No 14032
31 DEC 2019
Dte. of Education, GNCT of Delhi

WP(C) 7777/2009
Delhi Abhibhavak Mahasangh & Ors.
Vs.
Govt. of NCT of Delhi & Ors.

Report of Delhi High Court Committee for Review of School Fee for October and November 2019

No.DHCC/2019/460 **Dated:** 26/12/19

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Place: Delhi

For
Secretary
Delhi High Court Committee for Review of School Fee

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

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:

Queen Mary's School, Sector-25, Rohini, Delhi-110085 (B-488)

Order of the Committee

Present: Sh. Vikas Goyal, And Ms. Rooma Jain, Chartered Accountants

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 submit its reply to the questionnaire or to the reminder. A revised questionnaire was issued to the school on 30/07/2013 requiring the school to submit the reply by 09/08/2013. However, even this was not responded by the school. A reminder was sent to the school on 01/10/2013. The school ultimately submitted its reply to the revised questionnaire under cover of its letter dated 07/11/2013.

As per the reply submitted by the school, it implemented the recommendations of VI Pay Commission and started paying the

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increased salary w.e.f. February 2009. It was stated that the total monthly expenditure on salary of regular staff for the month of January 2009 was Rs. 6,24,742, which rose to Rs. 9,35,278 as a result of implementation of the recommendations of VI Pay Commission. It was further stated that the salary arrears for the period September 2008 to January 2009 were paid to the staff in March 2009. As per the Annexure –C enclosed with the reply, the total amount of arrears paid was Rs. 15,04,866.

With regard to fee hike and recovery of arrear fee as per order dated 11/02/2009 of the Director of Education, the school stated that it hiked the tuition fee w.e.f. 01/09/2008 in terms of the said order and also recovered lump sum arrear fee for the period 01/01/2006 to 31/08/2008. It stated that the incremental fee for the period 01/09/2008 to 31/03/2009 was recovered as arrear fee at the rate of Rs. 2100 per student of classes I to V and @ Rs. 2800 per student of classes VI to XII. The lump sum arrear fee from such students was recovered @ Rs. 3000 per student and Rs. 3,500 per student respectively. It was mentioned that the total amount of arrear fee for the period 01/09/2008 to 31/03/2009 recovered from the students upto F.Y. 2009-10 was Rs. 21,84,358 and for the period 01/01/2006 to 31/08/2008, it was Rs.29,69,736.

It was stated that out of the total amount of arrear fee recovered for the period 01/01/2006 to 31/08/2008, arrear salary was paid to

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the staff in installments. However, a sum of about Rs. 9.00 lacs was yet to be paid.

With regard to development fee, the school gave details of development fee recovered from the years 2006-07 to 2010-11. For the years 2009-10 and 2010-11, with which this Committee is primarily concerned, the school stated that the recovery was to the tune of Rs. 34,40,938 for 2009-10 and Rs. 36,24,028 for 2010-11.

It was stated that the development fee recovered by the school was utilised both for incurring capital expenditure on acquisition of fixed assets and revenue expenditure on repairs and maintenance. The development fee was treated as a revenue receipt and not as a capital receipt.

With regard to maintenance of earmarked depreciation reserve fund on assets acquired out of development fee, the school stated that it had opened a depreciation reserve fund account in a scheduled bank by depositing Rs. 2.00 lacs. However, due to shortage of funds, no further amount could be transferred to this account.

The Committee issued a notice dated 25/05/2015, requiring the school to furnish within 10 days, details of different components of fee and salaries for the years 2008-09, 2009-10 and 2010-11, duly reconciled with its Income and Expenditure Account. The school was also required to furnish copies of its banks statements in support of its claim of having paid the arrears of VI Pay Commission, the details

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of its accrued liabilities of gratuity and leave encashment, a statement of the account of its parent society as appearing in its books. The school was also required to furnish the information and audited financials of the pre primary school in case its financials were not incorporated in the financial of the main school.

The school submitted the required information vide its letter dated Nil, which was received in the office of the Committee on 08/07/2015. The school stated that the financial of its pre nursery classes were merged with the financials of its Parent Society i.e. Mittal Educational Society and submitted its audited financials.

A notice of hearing was issued to the school on 20/09/2016, requiring it to appear before the Committee on 05/10/2016 and produce its books of accounts, fee and salary records for the years 2006-07 to 2010-11.

The school sought adjournment on account of indisposition of its financial consultant. Accordingly, the matter was adjourned to 09/11/2016. Again, adjournment was sought on the ground that the school could not submit the details for Staff salary provision for a period of 4 months, Provision for staff gratuity, Provision for staff leave encashment, and other statutory provisions such as those required for CBSE and Department of Education. The school was directed to submit the necessary documents within 10 days and the hearing was adjourned to 02/12/2016. The school submitted certain details

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under cover of its letter 17/11/2016. The particulars of such details are not being given here as the same were substituted by fresh details filed under cover of the school's letter dated 22/04/2017. The hearing scheduled for 02/12/2016 was postponed to 22/12/2016 on account of certain exigency and the school was informed in advance regarding the change of date.

Ms. Rooma Jain, Chartered Accountant appeared with Sh. . Harsh Kumar, Office Asstt. of the school.

The Committee observed that the school had not furnished complete information required by the Committee vide its notice dated 25/05/2015, in as much as copy of the circular issued to the parents intimating them the amount of fee hike and arrears of fee to be paid by them was not filed.

During the course of hearing, the ld. authorized representative of the school explained that there was a primary school by the name of QMS Primary for the purpose of maintaining accounts and financial statements of the QMS Primary were prepared separately while those of pre primary classes of the school were merged with the financials of the Parent Society i.e. Mittal Education Society. Also merged in the balance sheet of the Parent Society were the financials of another unit of the school described as 'Management Section', in which the school receives the transport fee and the expenses of transport were met out of them. However the school did not maintain

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any earmarked transport fund. The information furnished by the school in response to the notice dated 25 May 2015 issued by the Committee pertains only to the main school i.e. QMS Primary.

The authorized representative of the school submitted that she needed to take instructions from the school as to whether the staff employed in the nursery section were paid according to the recommendations of the Pay Commission or not. However, the Committee observed that in the written submissions dated 17/11/2016, the school had submitted that no fee hike was effected for the student of nursery section and no fee arrear was therefore charged from the nursery section students.

The Committee also observed that the school had, alongwith its undated submissions, filed in the office of the Committee on 08/07/2015, furnished fee schedules of nursery section and as per those schedules the tuition fee charged from the students of pre primary was Rs.2475 in the year 2008-09 but Rs. 2950 in the year 2009-10. The school was accordingly required to furnish the consolidated balance sheet of Mittal Educational Society, consolidating all the three accounting units maintained by the school. The committee also observed that the statement of fee and salary filed by the school along with its aforesaid submissions apparently did not match with the details of arrear salary and copies of the bank pass book furnished by the school. The school was accordingly, required to file revised statement, which ought to tally with the information

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Delhi High Court Committee for Review of School Fee

furnished by the school as well as its audited Income and Expenditure accounts.

In the mean time, the term of the Committee expired and the matter could not be pursued further. After, the term of the Committee was extended, the hearing was refixed for 22/03/2017. The school sought adjournment on this date on account of non availability of its Accounts Incharge.

The Committee observed that the school had been seeking adjournment on one ground or other and had not complied with the directions given by the Committee on 22/12/2016. However, in the interests of the justice, no adverse inference was drawn and the hearing was adjourned to 28/04/2017.

In compliance with the directions given by the Committee on 22/12/2016, the school filed the required documents under cover of its letter dated 22/04/2017.

On the date of hearing, Sh. Vikas Goyal, Chartered Accountant appeared with Ms. Rooma Jain, Chartered Accountant & Sh. Harsh Kumar Accounts Assistant of the school.

The Committee perused the statement giving break up of arrear fee and salary for the years 2008-09 to 2010-11. The Committee observed that apparently the figures given in the Statement did not match with the audited financials of the school. The school did not

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bring its books of accounts from which the position could have been verified.

The authorized representative of the school sought some more time for filing the reconciliation between the statement filed with the audited financials.

The Committee further noticed that although the arrear fee was collected by the school in the years 2008-09 and 2009-10, a substantial part of arrear salary was paid only in the years 2011-12, 2014-15 and 2015-16. It also appeared that in one case, the school paid more amount than what was due. The authorized representative submitted that the difference was on account of interest, as the employee had gone to the Court and got a favorable judgment. The school was directed to file a copy of the judgment in the aforesaid case. It also appeared to the Committee that in some cases the school had withheld a part of the arrears payable to the staff. It was submitted by the authorized representative that the amount was withheld as security which was payable by the staff, in pursuance of the decision taken by the management of the school. The school was directed to file a copy of the minutes of meeting at which such decision was taken. On perusal of the balance sheet of the school, the Committee observed that prior to 2011, no such security apparently taken from the staff.

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The school was directed to file a complete list of the arrear fee recovered by it from the students giving the names of the students as well as class and dates of such recovery. The school was also directed to file a statement giving the details of salary arrears payable to the staff as per the recommendations of VI Pay Commission.

On the next date of hearing i.e. 05/06/2017, the Committee observed that the school had not produced its books of accounts on any of the previous dates nor had it done that day. Further, out of the items required to be filed on the last date of hearing, the school had not filed the reconciliation nor the statement giving details of salary payable to the staff as per recommendations of VI Pay Commission.

The Committee observed that even on that date, the school had filed only a statement of detail of salary arrears which were actually paid by the school and not what was payable to the staff. Besides, the school also filed copy of the judgment of the Hon'ble High Court and a copy of the Minutes of the Meeting of school Management Committee held on 16/11/2010. The school also filed a copy of its bank statement/pass book showing the payment of arrear salary and refund of security withheld to certain teachers after 31/03/2011.

Perusal of the judgment of the Hon'ble Delhi High Court in WP(C) 8474/2011 filed by one employee Ms. Sunita Prem John, an Aaya employed by the school showed that the school had treated her as a regular employee only w.e.f. March 2010 while her claim was that

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Delhi High Court Committee for School Fee she was regular employee w,ef. 24/07/2004. As a result of the school recognizing her as a regular employee only w.e.f. March 2010, the school did not pay any arrears that were due to her, consequent to the implementation of the recommendations of VI Pay Commission. The writ petition was allowed by the Hon'ble Delhi High Court and a cost of Rs. 40,000 was imposed on the school. Consequent to the judgment of the Hon'ble Delhi High Court, the school paid a sum of Rs. 6,03,208 to her on 31/03/2016. However, no calculations were filed by the school as to what this amount comprised of. More particularly the arrears on account of implementation of VI Pay Commission were not separately mentioned, which would have been included in the amount paid to her. The authorized representative of the school submitted that he be given some time for doing the needful.

The Committee has also perused the Minutes of the Meeting of the school Managing Committee with regard to change in staff policy. Apparently the Manager was authorized to take necessary step required for the change in staff policy. The Manager of the school Sh. Ved Mittal, who was also the Secretary of the Parent Society i.e. Mittal Educational Society, issued a notification dated 20/12/2010 which amended the staff policy and provided for deposit of a security equivalent to one month salary by the staff and such security would be refunded at the time of their resignation/relieving.

The Committee examined the statement giving break up of fee and salary and noticed certain discrepancies in that. The arrear fee

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for the period 01/01/2006 to 31/08/2008 , which the school treated as a liability was not found to match with the balance appearing in the balance sheet as on 31/03/2010. It appeared that either the school had recovered more arrear fee than what was shown in the statement or the school had made certain additional provisions of arrear salary, which were not discernible from the statement filed. The total collection under the head annual charges when calculated as the percentage of normal tuition fee appeared to be much more than what could have been the collection under this head as per the fee schedules filed by the school. It appeared that the school had collected fees under certain other heads which were not reflected in the fee schedules filed with the Directorate of Education and the same had been clubbed under the head annual charges.

Accordingly, the school was required to file a revised, true and correct statement, which should be filed in respect of all the three sections/divisions of the school i.e. Main School, Management Section and Nursery school. The school was also directed to file copies of balance sheets of the subsequent years upto 31/03/2016, as the school had been making payments of arrear salary in such years also. The school was also directed to produce its complete books of accounts i.e. cash book, bank book, ledgers and journals on the next date of hearing for verification by the Committee.

The school filed the revised details under cover of its letter dated 08/07/2017. However, the school sought adjournment on the date of

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hearing which was scheduled for 11/07/2017 on the ground that non availability of its authorized representative which was granted and the hearing was rescheduled for 18/07/2017. On this date also, the school did not produce its complete books of accounts and produced ledgers of only some of the accounts selectively. A final opportunity wase given to the school to produce its complete books of accounts on 23/08/2017. On this date, the authorized representative of the school produced the books of accounts of the main school as well as nursery school in tally software for the years 2008-09 to 2000-10. The same were perused by the Committee and after examination of the relevant accounts and other information provided by the school, the following figures with regard to fee and salary were culled out from the books of accounts of the Main School and the Nursery School, which were agreed to by the authorized representatives of the school.

Particulars	F.Y. 2008-09	F.Y. 2009-10
Regular tuition fee	2,66,57,703	3,62,08,437
Regular development fee	17,92,100	35,88,113
Regular Salary	1,43,15,551	2,32,14,483

Particulars	Amount
Arrear Fee from 01/01/2006 to 31/08/2008	29,69,736
Arrear Fee from 01/09/2008 to 31/03/2009	21,84,358
Total Arrear Fee	**51,54,094**
Arrear salary from 01/09/2008 to 31/03/2009	21,77,872
Arrear salary from 01/01/2006 to 31/08/2008	26,09,793
Total arrear salary	**47,87,665**

The authorized representative of the school submitted that so far as the figure of development fee for the year 2008-09 was

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concerned, there appeared to be some accounting error as some part of development fee had been wrongly credited to the account of Annual Fee. He sought some time to furnish the correct figures of development fee and annual fee for that year. Liberty was given to do so within one week. The Committee also noticed that the school was paying a sum of Rs. 15,00,000 annually, as royalty to some organization by the name All India Konark. The school was required to provide details of total payments made to this organization in the shape of royalties or otherwise for all the years during which such payments were made. The nature of payments, agreement executed with them and the ownership particulars of this organization were also required to be furnished.

The school filed written submissions dated 07/09/2017 which were considered by the Committee in the hearing held on 18/09/2017.

The Committee noticed that in the written submissions dated 07/09/2017, the figure of development fee and annual charges, which the school claimed, represented the actual recoveries, had been revised. It was submitted that the figures provided earlier suffered from some accounting errors. The school also filed copy of an agreement dated 12th Dec. 2007 between itself and All India Konark Education & Welfare Society, which provided for the use of building for the purpose of running nursery classes of the school on sharing of tuition fee received by the school. As per the agreement the school

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Delhi High Court Committee ★ For Review of School Fee ★

guaranteed to pay 30% of the total tuition fee collected per month for the year 2008—09. The guaranteed amount was to be revised from 2nd year onwards, as mutually decided between the parties. The authorized representative of the school submitted that this arrangement continued only for two years i.e. 2008-09 & 2009-10 and instead of paying the guaranteed 30% of the tuition fee, a fixed amount of Rs. 1,25,000 p.m. was paid in both the years. It was further contended that the agreement was terminated after 31/03/2010, although there was a lock in period of 5 years.. The school was directed to file copy of the termination agreement, if any, and also copies of the correspondence exchanged between the two parties with regard to the termination and payment of Rs.1,25,000 p.m. instead of 30% of the tuition fee.

The school filed a written submission dated 10/10/2017 saying that the school did not have any termination letter of agreement with All India Konark Education Welfare Society and that no further payments like termination fee etc. were paid to the said Society after 31/03/2010.

Having obtained all the relevant information and gone through the audited financials of the school, the Committee prepared a calculation sheet as per which it determined that the school had available with it a sum of **Rs. 77,14,318** as on 31/03/2008 i.e. before effecting the fee hike, as per the following details:

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Delhi High Court Committee For Review of School Fee

Particulars	Amount (Rs.)	Amount (Rs.)
Current Assets + Investments		
Cash in hand	77,272	
Balance in Bank accounts	1,698,796	
FDRs wih accrued interest	1,969,517	
Sundry advances	1,060,200	
Pink Flower Education & Welfare Society	2,550,000	
Mittal Education Society	6,299,678	
Prepaid Expenses	8,739	13,664,202
Less: Current Liabilities		
Caution Money	580,500	
Expenses Payable	1,905,395	
Scholarship Fund	150,789	
Advance Fees	3,313,200	5,949,884
Net Current Assets + Investments (Funds available)		**7,714,318**

As per the details submitted by the school, it had an accrued liability of Rs. 10,51,622 on account of leave encashment as on 31/03/2010. Further the accrued liability on account of gratuity in respect of employees who had completed 5 years of service, which entiltles them to receive gratuity, was Rs. 9,01,094. Thus after providing for these accrued liabilities, the funds available with the school were **Rs. 57,61,602.**

The additional liabilities which the school incurred on implementing the recommendations of VI Pay Commission were determined to be **Rs. 1,36,86,597** upto 31/03/2010. The detailed working of this sum is as follows:

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High Court Committee for Review of School Fee

Additional Liabilities after implementation of 6th CPC:		
Arrear of Salary as per 6th CPC 1.1.2006 to 31.08.2008	2,177,872	
Arrear of Salary as per 6th CPC 1.09.2008 to 31.03.2009	2,609,793	
Incremental Salary for 2009-10 (as per calculation given below)*	8,898,932	13,686,597

Working Notes:

***Incremental Salary for 2009-10**	**2008-09**	**2009-10**
Normal/ regular salary	14,315,551	23,214,483
Incremental salary 2009-10	**8,898,932**	

Thus there was a shortfall of **Rs. 79,25,495** (1,36,86,597 – 57,61,602), which was required to be bridged by the school by recovering arrear fee and hiking the tuition fee in terms of order dated 11/02/2009 issued by the Director of Education.

The additional revenues generated by the school by recovering arrear fee and hiking tuition fee in terms of the aforesaid order amounted to **Rs. 1,47,04,828** as per the following details:

Additional Recovery for implementation of 6th CPC:		
Arrear fee w.e.f 01.01.06 to 31.08.08	2,969,736	
Arrear fee w.e.f 01.09.08 to 31.03.09	2,184,358	
Incremental fee for 2009-10 (as per calculation given below)*	9,550,734	14,704,828

Working Notes:

***Incremental fee for 2009-10**	**2008-09**	**2009-10**
Normal/ Regular Tuition fee	26,657,703	36,208,437
Incremental tuition fee in 2009-10	**9,550,734**	

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Thus, apparently the school recovered more fee than was required to meet the deficit arising on account of implementation of VI Pay Commission to the tune of **Rs. 67,79,333** (1,47,04,828 – 79,25,495). However, when we consider the requirement of the school to keep funds in reserve to meet any unforeseen future contingency, which amount to **Rs. 77,38,161** (which we have considered in case of all the schools as equivalent to four months salary for the year 2009-10), there would be no case for recommending any refund on account of arrear fee and incremental tuition fee recovered by the school in terms of order dated 11/02/2009.

However, the school was not complying with any of the pre conditions 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 development fee recovered by the school for the years 2009-10 and 2010-11 amounted to Rs. 47,07,377 and Rs. 39,35,722 respectively, as per the information furnished by the school on 08/09/2017. Accordingly, the Committee was of the prima facie view that the same amounting to Rs. 86,43,099, ought to be refunded after setting of the notional deficit of Rs. 9,58,328 on account of the requirement of the school to keep funds in reserve for future contingencies. The school was provided a copy of the calculations made by the Committee and given an opportunity to rebut the same.

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Delhi High Court Committee * For Review of School Fee *

The school filed written submission dated 20/11/2017, contended as follows:

(a) The FDR for Rs. 5.00 lacs with an accrued interest of Rs. 84,182 was a designated FD with the Directorate of Education for upgradation of school. As such it ought not to have been considered as part of funds available.

(b) While determining the amount of reserve for future contingencies, the establishment charges paid to a manpower agency by the name of M.S. Agency and security service charges also paid to an outside agency ought to have been included in the base figure of salary.

(c) The Committee ought not to have restricted the accrued liability of gratuity in respect of those employees who had completed 5 years of service but should have considered the accrued liability in respect of all the employees irrespective of the length of the service.

(d) The school utilised development fee for the years 2009-10 and 2010-11 for development of the school for purchase, upgradation and replacement of furniture, fixtures and equipments and the mere technicality of not having open a separate bank account should not result in the refund of the entire development fee. Since the development fee was utilised for the purposes mentioned in DSEAR, the refund thereof cannot be recommended.

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Delhi High Court Committee for Review of School Fee

The authorized representative of the school was heard in the matter on 21/11/2017. However, the recommendations could not be finalized as the term of the Committee again expired in the mean time.

The matter was again fixed for hearing on 11/09/2019 for seeking certain clarification with regard to the pre conditions for charging development fee.

The authorized representative of the school submitted that the development fee charged by the school had been utilized for purchase, upgradation and replacement of furniture fixture and equipments in the years 2009-10 and 2010-11 and merely for a technical reason that the school was not maintaining a separate bank account, it ought not to be ordered to be refundable.

However, during the course of hearing the authorized representative of the school fairly conceded that the school was not maintaining any earmarked depreciation reserve fund equivalent to the amount of depreciation charged on assets acquired out of development fee.

Discussion:

The main issue in this case is with regard to recovery of development fee for the years 2009-10 and 2010-11 without fulfilling the mandatory pre conditions which were prescribed by the Duggal Committee which was constituted by the Hon'ble Delhi High Court when similar fee hike matters on implementation of the recommendations of V Pay Commission arose. Neither the Delhi

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Delhi High Court Committee * Review of School Fee *

School Education Act, 1973 nor the rules framed thereunder have any provision enabling private unaided schools to charge development fee or to prescribe its utilisation. Rule 151 of the Delhi School Education Rules enables only the aided schools to charge development fee. The concept of development fee for unaided schools was introduced for the first time by the Duggal Committee, which made the following recommendations in this regard:

> *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)*

By restricting the usage of Development fee for purchase, upgradation and replacement of furniture, fixtures and equipment, the Duggal Committee was alive to the potential misuse of Development fee for creating permanent Fixed Assets like land and building out of the development fee recovered from the students. In fact, it specifically observed, in para 20 as follows:

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Delhi High Court Committee for Review of School Fee

20. *The schools, should be prohibited from discharging any of the functions, which rightly fall in the domain of the parent society, out of the fee and other charges, collected from the students, or where the parents are made to bear, even in part, the financial burden for the creation of facilities including building, on a land which had been given to the society at concessional rates for carrying out a "philanthropic" activity. One only wonders what then is the contribution of the society that professes to run The School ! (Para 7.24)*

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

7. *Development fee not exceeding 10% of the total annual tuition fee may be charged for supplementing the resources for purchase, upgradation and replacement of furniture, fixtures and equipment. <u>Development Fee, if required to be charged, shall be treated as capital receipt and shall be collected only if the school is maintaining a Depreciation Reserve Fund, equivalent to the depreciation charged in the revenue accounts and the collection under this head along with any income generated from the investment made out of this fund, will be kept in a separately maintained Development Fund account.</u>*

The judgment of Delhi High Court dated October 30, 1998 in the case of Delhi Abhibhavak Mahasangh V Union of India and others

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For Secretary

Delhi High Court Committee ... School Fee by which Duggal Committee was constituted, was challenged before the Hon'ble Supreme Court, inter alia, by Modern School. Since in the meantime, the Duggal Committee had made its recommendations and the Director of Education had also issued order dated 15/12/1999 giving various directions to the Unaided schools in terms of the recommendations of the Duggal Committee, the Supreme Court examined both the recommendations of the Duggal Committee as well as the order issued by the Director of Education.

The Supreme Court rendered its decision in **Modern School vs. Union of India & Ors. (2004) 5 SCC 583** on April 27, 2004.

The Supreme Court specifically admitted the following issue for its determination:

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

On this issue, 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*

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High Court Committee

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."

***Direction no. 7 of the Order dated 15/12/1999 issued by the Director of Education.**

It is obvious from a bare reading of the above judgment that private unaided schools can charge development fee if they fulfill the following conditions:

(a) Development fee is treated as a capital receipt.

(b) It is used for purchase, upgradation and replacement of furniture, fixture and equipments.

(c) The school maintains a specified earmarked depreciation reserve fund.

In the present case, the school admittedly was not treating development fee as a capital receipt nor was it maintaining a specified earmarked depreciation reserve fund. Further, the utilisation of development fee was not exclusively for purchase of furniture fixture or equipment but admittedly was utilised to a large extent on repair and maintenance (refer reply to the questionnaire dated 07/11/2013 submitted by the school). Non fulfillment of the aforesaid pre conditions rendered the school

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Delhi High Court Committee

incapable of charging any development fee in the first place. Therefore, the contention of the school that non maintenance of an earmarked bank account was a mere technicality is rejected. It was an essential pre condition for charging development fee.

With regard to the contention of the school that the FDR for Rs. 5.00 lacs with interest accrued thereon amounting to Rs. 84,183 ought not to be considered as part of funds available on account of the fact that it was held as security by the Directorate of Education for upgradation, the same deserves to be accepted.

With regard to the contention of the school that amounts paid to man power suppliers for security and support staff ought to be considered as part of salaries, the Committee does not agree as at any rate such payments have nothing to do with the recommendations of VI Pay Commission. The Committee has rejected the similar contentions raised by the other schools and cannot make an exception in this case.

With regard to the contention that the accrued liability of gratuity in respect of employees who had not yet completed 5 years of service by 31/03/2010, the Committee is of the view that the contention is self contradictory as no liability for gratuity accrues under the Payment of Gratuity Act unless the employee completes 5 years of service.

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For Secretary

Delhi High Court Committee for Review of School Fee

Determinations:

In view of the above discussion, the Committee is of the view that the notional deficit incurred by the school on implementation of the recommendations of VI Pay Commission would be Rs. 15,42,511 as against Rs. 9,58,328 provisionally determined, after excluding the FDR and accrued interest as discussed above. The development fee for 2009-10 and 2010-11 amounting to Rs. 86,43,099 ought to be refunded after adjusting the aforesaid notional deficit of Rs. 15,42,511.

Resultantly, the school ought to refund a sum of Rs. 71,00,588 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: 03/10/2019

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Secretary

Delhi High Court Committee For Review of School Fee

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:

Jindal Public School, Dashrath Puri, Palam Road, Dwarka, New Delhi-110045 (B-414)

Order of the Committee

Present: Sh. Naresh K. Mahajan, Chartered Accountant with Shri Anuj Mahajan, Shri Sansar Chand and Shri Banney Singh.

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 submit its reply to the questionnaire or to the reminder. A revised questionnaire was issued to the school on 07/08/2013, requiring the school to submit the reply by 16/08/2013.

The school submitted a short and incomplete reply to the revised questionnaire vide its letter dated 16/08/2013. The reply submitted by the school is reproduced below in its entirety:

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For Secretary

Delhi High Court Committee for Review of School Fee

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JPS/2013/1634 *Date:16/08/2013*

To

Justice Anil Dev Singh Committee for Review of Fee Hike
Ist Floor, C Block, Vikas Bhawan-2
Upper Bela Road,
Delhi-110054

Sir,

With reference to your letter dated 07.08.2013. Please fine the reply point wise:-

1. *Yes*
2. *(i), (ii) & (iii) Relevant documents are enclosed.*

Thanking you,

Principal

Encl: as above.

It is worthwhile to mention that questionnaire issued by the Committee contained six questions. However the school adverted to only two questions in its reply. Alongwith the reply the school enclosed a statement showing salary arrears of Sixth CPC amounting to Rs. 47,39,187 and a copy of the pay bill for the month of march 2009 showing the gross salary to be payable for that moth as Rs. 7,51,416 and copy of pay bill for the month of April showing the gross salary to be payable for that month is Rs. 11,73,746.

No details were furnished nor the relevant questions contained in the questionnaire with regard to arrear fee and incremental fee or development fee were given by the school in its short reply to the questionnaire.

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For Secretary

Delhi High Court Committee For Review of School Fee

The Committee issued a notice dated 22/05/2015, requiring the school to furnish within 10 days, details of different components of fee and salaries for the years 2008-09, 2009-10 and 2010-11, duly reconciled with its Income and Expenditure Account. The school was also required to furnish copies of its banks statements in support of its claim of having paid the arrears of VI Pay Commission, the details of its accrued liabilities of gratuity and leave encashment, a statement of the account of its parent society as appearing in its books. The school was also required to furnish the information and audited financials of the pre primary school in case its financials were not incorporated in the financial of the main school. The school was also directed to submit its complete reply to the revised questionnaire issued by the Committee.

The school submitted the required information vide its letter dated 11/06/2015. The school also submitted its detailed reply to the revised questionnaire.

As per its reply, the school implemented the recommendations of 6th Pay Commission and started paying the increased salary to the staff w.e.f. 01/04/2009. It enclosed a statement showing the details of payment of arrear salary to the staff, the aggregate amount of which was Rs. 49,55,601. The payment of arrears were made starting from 09/04/2009 to 08/09/2011.

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For Secretary

Delhi High Court Committee ★ For Review of School Fee ★

With regard to fee hike, the school stated that it increased the fee w.e.f. 01/04/2009 as per the order dated 11/02/2009 issued by the Director of Education. Although the school stated that the details of arrear fee recovered by it pursuing to the aforesaid order were given in Annexure D to the reply, perusal of the annexure revealed that such details were not given. Only the tuition fee charged by the school from the students of different classes before effecting the fee hike and after the fee hike were given.

With regard to development fee, the school furnished the details of recovery under this head, as per which the school charged development fee in all the five years for which the information was sought i.e. 2006-07 to 2010-11. It categorically stated that development fee was treated as a revenue receipt by the school and the school did not maintain an earmarked depreciation reserve fund or development fund. Thus at the threshold itself, the school conceded that it was not fulfilling any of the pre-conditions laid down by the Hon'ble Supreme Court, which were also included in the fee circulars issued by the Directorate of Education issued to the schools with regard to charging of development fee. It would be useful to reproduce here Clause 14 of the circular dated 11/02/2009 issued by the Director of Education, with which this Committee is concerned. The same reads as follows:

> *"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*

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Delhi High Court Committee ★ of School Fee *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 the income generated from the investment made out of this fund, will be kept in a separately maintained Development Fund Account."*

A notice of hearing was issued to the school on 01/08/2016, requiring it to appear before the Committee on 23/08/2016 and produce its books of accounts, fee and salary records for the years 2006-07 to 2010-11. However, at the request of the school, the hearing was adjourned to 21/09/2016.

Sh. Manava Prem, Chartered Accountant appeared with Sh. Uttam Singh, Principal and Sh. Arvind Kumar Singh, Accountant and Sh. Banne Singh, support staff of the school.

The Committee perused the information furnished by the school vide of its letter dated 11/06/2015 and observed that it was ex-facie incorrect and did not match with the records produced by the school. The authorized representative who appeared for the school sought some time for furnishing a correct statement. He also contended that a sum Rs. 49,55,601 was paid as arrears through individual cheques to the employees. He was directed to furnish a certificate issued by the bank specifying mode of f payment of those cheques.

The Committee also perused the circular dated 26 Feb. 2009 which was issued by the school to the parents regarding fee hike. It appeared that the hike in development fee was much more than 10% of the hike in tuition fee, which the school was charging during the

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Delhi High Court Committee ★ For Review of School Fee year 2008-09. In fact, the arrears of incremental development fee recovered was around 36% of the incremental tuition fee recovered by the school for the period 01/09/2008 to 31/03/2009. The school was directed to furnish the justification for the same. The Committee also observed that the school had not filed any details of accrued liabilities of gratuity and leave encashment as on 31/03/2010. The authorized representative of the school sought time for this purpose also. At the request of the school, three weeks time was granted to the school.

On 09/11/2016, the school furnished a certificate from Oriental Bank of Commerce, Dwarka Branch to the effect that all the arrear payments were made either through bank transfer or through account payee cheques. The school has also furnished details of accrued liabilities of gratuity and leave as on 31/03/2010. It was contended by the authorized representative of the school that these liabilities were not accounted for on accrual basis but accounted for as and when the respective payments were made. However, the school did not furnish the revised and corrected statement of fee and salaryfor which time was sought by it. The authorized representative sought some more time for the purpose. The Committee acceded to the request of the authorized representative.

On 06/12/2016, the school furnished a revised fee and salary statement. However, the Committee observed that even this statement again did not reflect the arrears of tuition fee and arrears of development fee recovered separately for separate periods which

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were mentioned in the notice issued by this Committee on 22nd May 2015. In respect of arrears of salary paid by the school also, the school did not furnish the details year wise and for different periods as per the format given by the Committee. The Committee also observed that the details of arrear salary which the school furnished on 11/06/2015 and that furnished on the date of hearing were also contradictory.

The school also furnished its calculation in respect of the increase in development fee for different classes, which on the face of it was about 36% of the increase in tuition fee for the period 01/09/2008 to 31/03/2009. The Committee observed that as per the calculation submitted by the school, the school also recovered the differential amount of development fee @ 5% for the period 01/04/2008 to 31/08/2008, in addition to the arrears for the period 1st Sept. 2008 to March 2009, which the school could recover as per order dated 11/02/2009. The authorized representative contended that this was done by the school, as the school was originally charging development fee @ 10% in the year 2008-09 but the same was hiked to 15% w.e.f. 01/04/2008 after the issuance of order dated 11/02/2009.

The school again furnished a revised statement of fee and salary on 15/12/2016 which, it claimed, reflected the correct position. As per the fresh statement filed by the school, it recovered bulk of its arrear tuition fee and development fee in the years 2008-09 and 2009-

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Delhi High Court Committee for Review of School Fee

10. However, the arrears of salary that were paid to the staff in these years was a miniscule amount. Bulk of the arrears were paid in the year 2011-12. The authorized representative of the school submitted that there was a lot of confusion at that time as to whether the arrears salaries were required to be paid or not and hence the school initially did not pay the arrears salary upto 31/03/2011. The small amounts paid during the year 2009-10 and 2010-11 were paid to the teachers who left the school in those years.

The school was required to furnish its audited financials and fee schedules for the year 2011-12 also. The matter could not be finalized as the term of the Committee expired in the meantime. After the term of the Committee was extended by the Hon'ble High Court, the Committee issued a fresh notice of hearing on 28/02/2017 requiring the school to appear on 22/03/2017.

While reviewing the audited financials of the school, it appeared to the Committee that the fee hike effected by the school was more than what was permitted by the order dated 11/02/2009 issued by the Director of Education. Moreover, the figures given by the school from time to time were inconsistent. In view of the apparent inconsistencies the school was directed to produce its complete fee, salary and accounting records for the years 2008-09 , 2009-10 and 2011-12 before the Audit officer of the committee for detailed examination on 10.04.2017. The school was also directed to file copies of its fee schedules for the years 2008-09 and 2009-10, which

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were submitted under rule 180 of Delhi School Education Rules to the department as the same were not found to be on record.

The school produced the fee and salary records before the Audit Officer of the Committee for detailed verification on 12/04/2017 and 02/05/2017. After examining the records, the Audit Officer of the Committee recorded that although on the face of it, the tuition fee hiked by the school in 2009-10 was more than that permitted by order dated 11/02/2009, the effective fee hike in tuition fee was in conformity with the hike permitted vide order dated 11/02/2009. This was on account of the fact that till 2008-09, the school was separately charging computer fee, which was discontinued in 2009-10 and merged in tuition fee. This gave an impression that the hike in tuition fee was more than what was permitted by order dated 11/02/2009.

With regard to salary, it was recorded that the confusion arose on account of the fact that the school made a provision of Rs. 49,55,601 towards payment of arrears of VI Pay Commission in 2008-09, which was included in the salary expenditure in the audited financials and not shown separately as arrear salary. Certain other observations were also made regarding use of different accounting heads in different years for payment of salaries to causal staff.

During the course of further hearings before the Committee, the authorized representative of the school submitted that it was not

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Delhi High Court Committee for Review of School Fee

correct that the school hiked the development fee from 10% to 15% of tuition fee w.e.f. 01/04/2008 but he submitted that the hike in percentage of development fee was effected w.e.f. 01/09/2008 only. However, he conceded that as per the fee schedule of 2008-09, the school originally charged development fee @ 10% of tuition fee only.

While preparing the preliminary Calculation Sheet to examine justifiability of fee hike effected by the school, the Committee observed that the Receipts & Payments Accounts of the school for the years 2006-07 & 2007-08 were not on record. The authorized representative who appeared for the school also could not produce the same from the school's records. The Committee also observed that the school had not furnished the audited balance sheet for the year 2011-12 to substantiate its claim of having paid the arrears in that year and that the same was paid out of the arrear fee collected in the years 2008-09 and 2009-10. The school was directed to file the same within one week.

The Committee culled the following figures from the records produced by the school, which were considered relevant for the purpose of making calculations in order to examine the justifiability of fee hike effected by the school pursuant to the order dated 11/02/2009 issued by Director of Education:

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Net Current Assets + Investments as on 31.3.2008	6,79,821
Regular Salary for 2008-09	93,17,591
Regular Salary for 2009-10	1,42,46,681
Regular Tuition Fee for 2008-09	1,85,77,281
Regular Tuition fee for 2009-10	2,60,93,379
Arrear Tuition Fee Collected by the school for 01.01.06 to 31.08.08	33,41,002
Arrear Tuition Fee Collected by the school for 01.09.08 to 31.03.09	23,45,240
Arrear of Development fee collected by the school for 01.09.08 to 31.03.09	8,46,525
Accrued liability of Gratuity as on 31.03.2010	32,74,107
Accrued liability of Leave Encashment as on 31.03.2010	4,81,389

The Committee also observed that prima-facie, the school was diverting part of the fee revenue towards incurring capital expenditure by way of making repayment of loans taken for creation of fixed assets. The school was asked to offer its justification for doing so and also show cause as to why the funds diverted for such purpose for the period 2006-07 to 2009-10 be not considered as deemed to be available to the school for the purpose of meeting its additional expenditure on salaries on account of implementation of recommendations of 6th pay commission particularly in view of the

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Delhi High Court Committee for Review of School Fee

fact that the arrear fee collected by the school in 2008-09 and 2009-10 was not disbursed as arrear salary in those years. The Committee observed that apparently, the funds collected by way of arrear fee were also diverted for meeting its capital expenditure.

The school filed the audited balance sheet for the year 2011-12 on 09/05/2018, as directed by the Committee on the previous date. The Committee prepared the preliminary calculation sheet and observed that prima facie, it showed that the school had collected more fee than was necessary for absorbing the increased expenditure on account of implementation of the recommendations of the 6th pay commission. Moreover, as per its own submissions, the school was not fulfilling the essential pre conditions for charging development fee.

As per the calculations prepared by the Committee for the purpose of determining the fee revenues utilised by the school for incurring capital expenditure, it considered that although the school treated development fee as capital expenditure, the entire amount was not utilised for incurring revenue expenditure and to that extent it was utilised for incurring capital expenditure. This was apparent as the Income & Expenditure Accounts of the school for the years 2005-06 to 2009-10 showed a higher revenue surplus (i.e. excess of income over expenditure, after adjusting the non cash expenditure of depreciation), than the amount of development fee which was treated as a revenue income. Thus the Committee concluded that such excess amount of development fee was utilised for incurring capital

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Delhi High Court Committee For Review of School Fee

expenditure, although it was treated as a revenue receipt. The calculations made by the Committee in this regards, were as follows:

Computation of development fee available for capital expenditure though credited to Income & Expenditure Account					
	2005-06	2006-07	2007-08	2008-09	2009-10
(1) Net profit	(512,963)	9,049	(331,316)	(504,851)	(131,744)
(2) Depreciation Charged	1,633,169	1,669,871	1,472,394	3,131,778	2,060,442
(3) Cash Profit (1+2)	1,120,206	1,678,920	1,141,078	2,626,927	1,928,698
(4) Development fee credited to I & E A/c	1,077,240	1,280,052	1,518,454	1,948,050	4,046,220
(5) Development fee available for capital expenditure (lower of 3 and 4)	**1,077,240**	**1,280,052**	**1,141,078**	**1,948,050**	**1,928,698**

After considering the aforesaid amount of development fee and the contributions received by the school from its parent society, loans raised by the school for purchase of fixed assets and sale proceeds of the fixed assets, the Committee calculated that between 2006-07 and 2009-10, the school raised a total sum of Rs. 1,04,47,666 for incurring capital expenditure as per the following details:

	Capital Receipts				
Financial Year	**Development fee received to the extent available for Capital Expenditure**	**Contribution from Society**	**Loans raised**	**Sale of Fixed Assets**	**Total**
2006-07	1,280,052	50,000	1,122,010	-	2,452,062
2007-08	1,141,078	100,000	2,485,236	-	3,726,314
2008-09	1,948,050	120,000	100,000	-	2,168,050
2009-10	1,928,698	-	-	172,542	2,101,240
Total	**6,297,878**	**270,000**	**3,707,246**	**172,542**	**10,447,666**

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For Secretary

Delhi High Court Committee ★ For Review of School Fee ★

However, the school incurred a total capital expenditure (including transfer of funds to its parent society) from 2006-07 to 2009-10 amounted to Rs. 1,31,53,936, as per the following details:

	Capital Payments/ Expenditure			
Financial Year	**Repayment of Loan and interest**	**Purchase of Fixed Assets (on the basis of Balance Sheet)**	**Payment to Society**	**Total**
2006-07	1,714,855	1,300,393	250,000	3,265,248
2007-08	1,468,179	498,093	260,000	2,226,272
2008-09	2,233,461	6,565,863	-	8,799,324
2009-10	6,008,750	3,302,008	-	9,310,758
Total	**11,425,245**	**11,666,357**	**510,000**	**23,601,602**

Thus, prima facie, the balance of Rs. 1,31,53,936 (2,36,01,602 – 1,04,47,666) incurred by the school on capital expenditure came out its fee revenues as that was the only other source of funds available with the school. As held by the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583, capital expenditure cannot form part of the financial fee structure of the school, the Committee considered that the aforesaid sum of **Rs. 1,31,53,936** ought to be deemed to be considered as available to the school. Added to this, the net current assets + investments of the school, which amounted to **Rs. 6,79,821** as per supra, the Committee considered that the school had available with it a total sum of **Rs. 1,38,33,757**. After accounting for the accrued liabilities of gratuity amounting to Rs. 32,74,107 and leave encashment amounting to Rs. 4,81,389 and a further sum of Rs.

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Delhi High Court Committee For Review of School Fee

47,48,894 which is equivalent to four months salary to be kept as reserve by the school, the Committee calculated that the school had available with it a sum of **Rs. 53,29,367** which it could have utilised for meeting its additional liabilities on account of implementation of the recommendations of VI Pay Commission.

The total financial impact of implementing the recommendations of VI Pay Commission was calculated by the Committee to be **Rs. 98,84,691**, as follows:

Additional Liabilities on implementation of 6th CPC:		
Arrear of Salary as per 6th CPC for 01.01.06 to 31.3.09	4,955,601	
Incremental Salary in 2009-10 (as per calculation below)*	4,929,090	9,884,691

Working Notes:

***Incremental Salary in 2009-10**	**2008-09**	**2009-10**
Normal/ Regular Salary	9,317,591	14,246,681
Incremental salary in 2009-10	**4,929,090**	

Accordingly, the Committee calculated that there was a gap of **Rs. 45,55,324** (98,84,691 – 53,29,367), which the school was required to bridge by hiking the tuition fee and development fee w.e.f 01/09/2008 and recovering the lump sum arrear fee for the period 01/01/2006 to 31/08/2008 as per order dated 11/02/2009 of the Director of Education.

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for Secretary

Delhi High Court Committee ★ For Review of School Fee ★

However, the school generated a sum of **Rs. 1,12,76,165** by hiking fee and recovering arrear fee as per the following details:

Additional Recovery for 6th CPC:		
Arrear of tuition fee recovered for 01.01.06 to 31.08.08	3,341,002	
Arrear of tuition fee recovered for 01.09.08 to 31.03.09	2,345,240	
Arrear of development fee for 01.09.08 to 31.03.09	846,525	
Incremental tuition fee in 2009-10 (as per calculation below)*	4,743,398	11,276,165

Working Notes:

***Incremental tuition fee in 2009-10**	**2008-09**	**2009-10**
Normal/ Regular Tuition fee	18,577,281	26,093,379
Computer fee	2,773,100	400
	21,350,381	26,093,779
Incremental tuition fee in 2009-10	**4,743,398**	

Thus prima facie, the school recovered a sum of **Rs. 67,20,841** (1,12,76,165-45,55,324) in excess of its requirements for implementing the recommendations of VI Pay Commission.

Additionally, the development fee recovered by the school amounting to **Rs. 84,00,772** in 2009-10 and 2010-11 was also considered as refundable to the students as the same was charged without fulfilling the essential pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School (supra).

A copy of the above calculations was given to the school on 31/08/2018 for filing its rebuttal, if any.

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For Secretary

Delhi High Court Committee ★ For Review of School Fee ★

On 13/09/2018, when the matter came up for hearing, the authorized representative of the school submitted that certain additional liabilities had befallen on the school on account of some orders of the Tribunal set up under Delhi School Education Act 1973, in respect of payment of back salaries to some staff members who had been dismissed from the service, as they had been reinstated by the Tribunal. However no copies of the order of Tribunal were filed by him for perusal by the Committee. He requested for a short date to be given for the purpose. The request was acceded to by the Committee and the matter was adjourned for 3rd October 2018. Again adjournment was sought on this date and later on the school abandoned this argument.

On 16/10/2018, the authorized representative who appeared for the school on that date submitted that the calculation sheet prepared by the Committee was based on the Receipt and Payment Accounts of the school, which itself were defective and as such errors have crept in the calculation sheet prepared by the Committee. He sought some time to file correct Receipt and Payment Accounts. It is to be noted that the Receipt and Payment Accounts were filed by the school itself and were not inferential statements drawn up by the Committee. However, the school was given liberty to bring on record the corrected version of the Receipt and Payment Accounts. Accordingly, the matter was adjourned to 28/11/2018. On

26/11/2018, the school filed revised Receipt and Payment Accounts for the year 2006-07 to 2010-11. The Committee revised its preliminary calculations on the basis of the revised Receipt and Payments Accounts filed by the school. The differences between the earlier calculations made by the Committee and the revised calculations were two fold. Firstly the amount of fee revenue considered by the Committee to have been utilised for incurring capital expenditure was reduced from Rs. 1,31,53,936 and secondly the development fee for 2009-10 considered as refundable was reduced from Rs. 40,46,220 to Rs. 21,17,522 as the Committee had already considered the development fee for that year to have been available for incurring capital expenditure to the tune of Rs. 19,28,698. The total effect of these changes was that the amount which the Committee had considered to be prima facie refundable to the students which was earlier calculated to be Rs. 1,51,21,613 was reduced to **Rs. 55,26,027**.

A copy of the revised calculation sheet was given to the authorized representative of the school on 28/11/2018 for a fresh rebuttal, if the school intended to file the same. The matter was adjourned to 13/12/2018 for this purpose. However, on this date, the school sought more time for the purpose. The term of the Committee expired on 31/12/2018 and therefore, matter could not be finalized.

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After the term of the Committee was extended by the Hon'ble High Court, a fresh notice of hearing was issued to the school on 24/04/2019 for appearing on 13/05/2019.

On this date, the school filed written submissions in rebuttal of the revised preliminary calculations made by the Committee. However, the school sought postponement of hearing on account of indisposition of its Chartered Accountant Sh. Naresh K. Mahajan.

03/06/2019, the matter was finally heard when Sh. Naresh K. Mahajan appeared and reiterated the written submissions filed by the school in rebuttal of the calculation sheet.

He contended that the calculation sheet was controverted on the following grounds:

(a) Rs. 54,87,048, which the Committee had considered as diversion of fee towards capital expenditure, ought not to be so considered as the school had only provided the required infrastructure for upgradation/expansion/development of the school, which the Managing Committee of the school was obliged to provide under the law. He invited reference of the Committee to Rules 181 to 185 of the Delhi School Education Rules, 1973. He also contended that the school was entitled to make such capital expenditure as was provided under Rule 177 and such capital expenditure could rightfully be made out of the fee received from the students.

Without prejudice, he submitted that the calculation of Rs. 54,87,048 was erroneous, in as much as, while calculating the development fee received to the extent it was available for capital expenditure, the Committee had inadvertently taken the figure of depreciation charged in 2009-10 as Rs. 20,60,442 instead of Rs. 28,60,442.

(b) While furnishing the figures of arrears of salary for the period 01/01/2006 to 31/03/2009, the school inadvertently mentioned the figure to be Rs. 49,55,601, instead of Rs. 65,66,238. The school had given a supplementary detail of arrears payable to 6 staff members amounting to Rs. 16,10,637 in aggregate, which were omitted from the information given earlier.

(c) The school has a liability of Rs. 12,40,982 towards property tax (vacant land tax upto March 2010) as per the statement enclosed with the written submissions. He submitted that the liability pertained to the period 2003-04 to 2009-10. As per the details submitted, Property tax on vacant land amounted to Rs. 5,15,424 and a sum of Rs. 7,25,558 was shown as payable as interest thereon.

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(d) A sum of Rs. 26,69,950 was the loan outstanding against the FDRs as on 31/03/2008. He submitted that while FDRs had been taken into the computation of funds available with the school, the corresponding liability in respect of loan taken against such FDRs had not been taken into account by the Committee.

Discussion:

Regarding Capital Expenditure out of fee revenues

So far as the factual inaccuracy pointed out in the calculation sheet is concerned, the Committee has verified the position with reference to the audited accounts of the school for the year 2009-10. It finds the contention of the authorized representative of the school to be in order. Accordingly, the necessary rectification to the extent of **Rs. 8,00,000** (28,60,442-20,60,442) will be made while making the final determinations.

However, the Committee does not accept the contention of the authorized representative that the entire amount of capital expenditure incurred out of fee revenues ought not to be deemed to be considered as funds available with the school. The provisions of Rule 177 of the Delhi School Education Rules 1973 have to be considered in the light of its interpretation made by the Hon'ble Delhi High Court in Delhi Abibhavak Mahasangh Vs. Union of India and others AIR 1999 Delhi 124, and by the Hon'ble Supreme Court in case of Modern

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School Vs. Union of India (supra), which was a civil appeal against the said judgment of the Delhi High Court.

It is true that Rule 177 provides for incurring certain capital expenditures out of fee 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 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 be 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. <u>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.</u> 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*

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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.

....

....

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

(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 to 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 affiars.

(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.

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(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.

(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. <u>We do not find merit in the above arguments.</u> 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

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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 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

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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 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."*

This Committee, by its mandate, 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.

The Committee examined the budgets of the school for the years 2007-08 to 2010-11 which were available with it as part of Annual Returns filed by the school under Rule 180. It is noteworthy that the schools fix their fees on the basis of the budgets prepared every year for the estimated expenditure to be incurred in the ensuing year. The Committee observes that the school provided for huge capital

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expenditure to be incurred by the school every year, the details of which are as follows:

Year	Amount of Capital Expenditure provided in the budget (Rs.)
2007-08	79,69,000
2008-09	1,10,15,466
2009-10	1,14,49,717
2010-11	1,16,77,600

The school also provided for recovery of development fee, which is supposed to be utilised for incurring capital expenditure. The budgeted development fee in the aforesaid years was as follows:

Year	Development fee projected in the budgets (Rs.)
2007-08	15,30,767
2008-09	19,31,576
2009-10	42,37,687
2010-11	44,73,885

It is apparent from the above tables that there was a huge gap in the budgeted capital expenditure and budgeted development fee which is specifically recovered for incurring capital expenditure. Obviously, the school had fixed its tuition fee, annual charges and other fees not just to cover its revenue expenses but also to create a saving for incurring the capital expenditure to the extent it was over and above the development fee. Thus, the fee fixed by the school had savings already built into it. They did not arise incidentally or accidently. Thus, the capital expenditure to be incurred by the school was made a component of the fee to be charged from the students. As per the ratios of the judgments of the Hon'ble Delhi High Court and the Hon'ble Supreme Court in the

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above cases, capital expenditure cannot constitute a component of the financial fees structure. Accordingly, the contention raised by the school that capital expenditure incurred out of fee revenues ought not to be considered as deemed to be available as part of funds, is rejected. It is noteworthy that the Committee has given due credit to the school to the extent of development fee recovered by it as also other capital receipts like contribution from the parent society, the loans raised by the school and the sale proceeds of fixed assets, while calculating the net capital expenditure to be treated as part of funds available.

Regarding arrears of Salary paid by the school

The Committee has re-verified the figure of Rs. 49,55,601 taken by it in the calculation sheet as payment of arrears and observes that the same is in agreement with the audited financials of the school. On being asked to furnish the details and the mode of payment of the additional sum of Rs. 16,10,637, as claimed by the school, the authorized representative of the school conceded that this payment had not yet been made. The Committee cannot consider a hypothetical payment which the school had not even made to be an additional expenditure. Accordingly, this contention of the school is rejected.

Regarding liability for Property Tax

The Committee examined the audited financials of the school during the course of hearing and did not find any liability for property tax having been provided in the balance sheet of the school. On being asked to give the basis of its claim, the authorized representative submitted

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that some other schools were paying the vacant land tax and this school might also have to pay it at a future date. He, however, admitted that so far no demand notice had been received from the Municipal Corporation of Delhi.

The Committee is of the view that the claim of the school is too far fetched and no deduction can be made to provide for this hypothetical liability while calculating the funds available with the school.

Regarding loan against FDRs

The Committee has perused the balance sheet of the school as on 31/03/2008 and observes that the loan against FDR outstanding as on that date was Rs. 21,83,856 and not Rs. 26,69,915 as claimed by the school. Further, the Committee has observed that the capital fund of the school as on 31/03/2008 was in the negative zone to the tune of Rs. 33,32,586. Obviously, the loan against FDRs was not taken for any working capital requirements of the school but to fund the Parent Society. The Parent Society of the school ought to have replenished this negative balance by introducing more funds to the school and in that eventuality there would have been no need to take any loan against FDRs. Accordingly, the contention raised on behalf of the school is rejected.

Determinations

In view of the above discussion, the Committee is of the view that the preliminary calculations made by the Committee to the effect that the school incurred a notional deficit of Rs. 9,46,047 would stand increased

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to Rs. 17,46,047 on account of the error of Rs. 8,00,000 which crept in the preliminary calculations. However, the development fee for 2009-10, to the extent of Rs. 21,17,522, which was utilized for incurring revenue expenses and the entire amount of Development fee for 2010-11 amounting to Rs. 43,54,552, ought to be refunded for non-fulfilment of the essential preconditions laid down by the Hon'ble Supreme Court in the case of Modern School (supra), after setting off the aforesaid notional deficit of Rs. 17,46,047.

Resultantly, the school ought to refund a sum of Rs. 47,26,027 (21,17,522+43,54,552-17,46,047), alongwith interest at the rate of 9% per annum from the date of collection to the date of refund.

Ordered accordingly.

Justice Anil Kumar (R)
(Chairperson)

CA J.S. Kochar
(Member)

Dr. R.K. Sharma
(Member)

Dated: 03/10/2019

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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:

Manav Bharti India International School, Panchsheel Park, New Delhi-110017(B-574)

Order of the Committee

Present: Shri Sanjeev Kapoor, Chartered Accountant with Smt. Mithilesh Chaudhari, Principal and Shri H.P._Mishra, 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.

The school did not submit its reply to the questionnaire or to the reminder. The matter regarding non submission of reply was taken up with the Directorate of Education in respect of all the school who had not responded to the questionnaire. The Committee believes that the Directorate of Education reminded all such schools to furnish reply to the questionnaire to this Committee. However, no compliance was still made by this school in this regard.

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Based on the audited financials of the school and the returns filed by it under Rule 180 of the Delhi School Education Rules, 1973, copies of which were received from the Directorate of Education, preliminary calculations were prepared by the Chartered Accountants (CAs) deputed with this Committee by the Directorate of Education and they provisionally determined that the school had adequate funds of its own and did not need to recover the arrear fee or to increase its tuition fee as was permitted by the order dated 11/02/2009 of the Director of Education to such schools which did not possess sufficient funds of its own for implementing the recommendations of the VI Pay Commission.

The Committee issued a notice dated 25/05/2015, requiring the school to furnish within 10 days, details of different components of fee and salaries for the years 2008-09, 2009-10 and 2010-11, duly reconciled with its Income and Expenditure Account. The school was also required to furnish copies of its banks statements in support of its claim of having paid the arrears of VI Pay Commission, the details of its accrued liabilities of gratuity and leave encashment, a statement of the account of its parent society as appearing in its books. A revised questionnaire was also issued to the school seeking its response to the queries raised vide questionnaire dated 27/02/2012 and also the relevant queries with regard to collection and utilisation of development fee and maintenance of earmarked development/depreciation reserve funds, in order to examine whether

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the school was complying with the pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583 regarding charging of development fee.

The school submitted its response under cover of its letter dated 16/07/2015. It also submitted the reply to the revised questionnaire

As per the reply submitted by the school, it implemented the recommendations of VI Pay Commission and started paying the increased salaries to the staff w.e.f. 01/04/2009. It paid arrear salary to the staff for the period 01/01/2006 to 31/03/2009 in two installments representing 60% and 40% of the total amount due to the staff.

With regard to hike in fee, it admitted that it had hiked the tuition fee pursuant to order dated 11/02/2009 issued by the Director of Education with effect from 01/04/2009 and also recovered the arrear fee from the students for the period 01/01/2006 to 31/03/2009 as provided in the aforesaid order dated 11/02/2009.

With regard to development fee, it was stated that it collected the same in all the five years for which the information was sought by the Committee i.e. 2006-07 to 2010-11. The same was utilised for incurring capital expenditure as well as revenue expenditure.

It categorically stated that the development fee was treated as a 'Revenue Receipt' and not a capital receipt. Further it categorically

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admitted that no separate or earmarked depreciation reserve fund or development fund was maintained by the school.

Thus, at the threshold itself, it is apparent that the school was not entitled to charge any development fee since it was not following any of the pre conditions 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.

A notice of hearing was issued to the school on 27/12/2016, requiring it to appear before the Committee on 23/01/2017 and produce its books of accounts, fee and salary records for the years 2006-07 to 2010-11. However, since in the meantime the term of this Committee expired, the school was advised of the cancellation of hearing scheduled for 23/01/2017. After the term of the Committee was extended by the Hon'ble High Court, a fresh notice of hearing dated 23/01/2017 was issued for hearing on 08/03/2017.

Sh. Sanjeev Kapoor, Chartered Accountant appeared with Sh. Prashant, Administrator of the school and Ms. Shruti Pandey, Sh. H.P. Mishra and Sh. Vijay Maurya, support staff.

The Committee perused the circular issued by the school to the parents regarding fee hike pursuant to order dated 11/02/2009 issued by the Director of Education. As per the circular, the school hiked the tuition fee by Rs. 300 per month for classes I to XII and by Rs. 400 for Nursery and Prep. w.e.f. 01/09/2008. Besides, the school

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also recovered the consequential increase in development fees from 01/09/2008 to 31/03/2009 @ 15% of the tuition fee. Originally also, the school was charging development fee @ 15% of tuition fee approximately. The school also recovered lump sum arrear fee for the period 01/01/2006 to 31/08/2008 @ Rs. 3000 from students of class I to XII and @ Rs. 3500 from the student of for Nursery and Prep.

It was claimed on behalf of the school that the recommendations of VI Pay Commission were fully implemented and the arrears of salary were paid either by direct bank transfer or a/c payee cheques. Copies of bank statements in support of this claim were examined by the Committee.

The Committee noticed that the information furnished by the school in response to notice dated 25/05/2015 with regard to accrued liabilities for gratuity and leave encashment, was vague as it was stated that these liabilities were not applicable. However, during the course of hearing, the authorized representative appearing for the school submitted that these were applicable but were not provided in the books of accounts of the school. He undertook to file actuarial valuation reports of these accrued liabilities as on 31/03/2010.

The Committee noticed that the school had not furnished the statement of account for the Trust/Society running it. The authorized representative undertook to furnish these statements also.

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Subsequently, the school furnished copies of actuarial valuation reports in respect of its accrued liability of gratuity and leave encashment as on 31/03/2010. The respective figures as per the actuarial valuation report were Rs. 89,90,324 for gratuity and Rs. 19,64,954 for leave encashment. The school also furnished statement of its account with Manav Bharti Institute of Child Education and Child Psychology, which is the Parent society of the school. The committee noticed that there were heavy transfer of funds from the school to the Society. When questioned about such transfers, the authorized representative stated that the transfers are of mainly on two accounts.

Firstly, the investments made by the school which were reflected in the books of the school had been transferred to the books of the society on account of certain compliances required to be made. Secondly, the Society also runs a hostel for the students, the fee of which are collected by the school in the installments and subsequently transferred to the account of the Society.

It was submitted that the revenue expenses, assets and liabilities of the hostels are reflected in the balance sheet of the Society.

The Committee deemed it appropriate that for the purpose of making relevant calculations, the consolidated balance sheet of the Society would be considered as it was reported that the Society did

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not have any other activity, apart from running the two schools i.e. Sr. Secondary School and the Nursery School and the hostel.

It was submitted by the authorized representative that the existing funds available with the school were set apart for the purpose of incurring capital expenditure in compliance with section 11 of Income Tax Act 1961, and therefore could not have been utilized for the purpose of meeting the additional liabilities arising on implementation of recommendations of 6th pay commission. However, it was conceded that the School or the Society did not have any other source of funds, apart from the fee received from the students.

The committee also noticed that the investments made by the school were in mutual funds. The authorized representative of the school submitted that the investments in a way, were involuntary, as the bank transfers the money on its own to the mutual fund being administered by one of its subsidiaries.

On the next date, the authorized representative of the school filed detailed break up of amounts appearing as fee and salaries and other income in consolidated Income and Expenditure account .

On perusal of the consolidated Income & Expenditure Account, the Committee observed that the Parent Society, in addition to a Higher Secondary School and the Nursery school, was also running a Teachers Training Institute from the same premises. It was admitted

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by the authorized representative of the school that the land was allotted to the Society for the purpose of running a school only and that the land was allotted on a nominal lease amount. However, he contended that the Consolidated Balance Sheet of the Society, on the basis of which they requested that the relevant calculation be made to examine the fee hike, would take care of the revenues of the nursery school hostel and also the Teachers Training College.

The Committee prepared a calculation sheet to examine the justifiability of fee hike and recovery of arrear fee and development fee pursuant to order dated 11/02/2009 issued by the Director of Education for implementation of the recommendations of VI Pay Commission. As per the calculation sheet, the Committee observed that the school had available with it, a sum of **Rs. 18,67,57,730** as on 31/03/2008, as per the following details:

Current Assets + Investments		
Cash in Hand	477,478	
Bank balance in Current account	8,675,321	
Balances in Fixed Deposits alongwith accrured interest	135,974,183	
Fees recoverable	108,899	
Other advances/ deposits	738,487	
Prepaid Expenses	27,516	
Income Tax refundable	37,366,005	
Investments	3,400,000	
TDS	4,101,130	190,869,019
Less: Current Liabilities		
Duties & Taxes	107,877	
Sundry Creditors	305,004	
Expenses Payable	1,298,729	
Advance Fee received	2,399,679	4,111,289
Net Current Assets + Investments		**186,757,730**

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After setting aside a sum of **Rs. 1,64,85,843** towards accrued liabilities of gratuity, leave encashment and a reasonable reserve (Rs. 55,30,565) equivalent to four months salary, the school still had a sum of **Rs. 17,02,71,887,** which was apparently available for implementation of the recommendations of VI Pay Commission.

The Committee calculated that the total additional expenditure that befell on the school on account of implementation of recommendations of 6th Pay Commission was just **Rs.1,61,34,147** which was worked out as follows:

Arrear of Salary for **Hr. Sec. School** as per 6th CPC for 1.1.06 to 31.3.09	9,302,487	
Arrear of Salary for **Pre-primary** School as per 6th CPC for 1.1.06 to 31.3.09	1,031,621	
Incremental Salary **(Hr. Sec.)** for 2009-10 (as per calculation given below)*	4,937,652	
Incremental Salary **(Pre-primary)** for 2009-10 (as per calculation given below)*	862,387	16,134,147

Incremental salary in 2009-10	**2008-09**	**2009-10**
Hr. Sec. School		
Normal/ regular salary	11,654,044	16,591,696
Incremental salary in 2009-10	**4,937,652**	
Pre-primary School	**2008-09**	**2009-10**
Normal/ regular salary	1,378,660	2,241,047
Incremental salary in 2009-10	**862,387**	

The Committee prima facie observed that the additional expenditure on implementation of the recommendations of VI Pay Commission, could have been easily absorbed by the school out of its

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own funds and there was no need to recover any arrear fee or incremental fee in terms of order dated 11/02/2009 issued by the Director of Education.

The Committee also observed that as per information furnished by the school itself, it generated an additional revenue to the tune of **Rs.1,41,13,384** by recovering arrear fee and the incremental fee during the year 2009-10, which appeared to be wholly unjustified.

Besides, as noted supra, the school was not complying with any of the pre conditions laid down by the Duggal Committee which were subsequently affirmed by the Hon'ble Supreme Court in the case of Modern School (supra), as a result of which the school was not entitled to recover any development fee from the students. The school admittedly recovered a sum of Rs. 36,66,295 as development fee in 2009-10 and Rs. 44,26,080 in 2010-11, pursuant to order dated 11/02/2009 issued by the Director of Education.

Consequently, prima facie, the school was required to refund the following amounts, which were apparently recovered in pursuance of order dated 11/02/2009 but the calculations showed that the recovery was unjustified:

Arrear fee and incremental tuition fee for 2009-10	Rs. 1,41,13,384
Development fee for 2009-10	Rs. 36,66,295
Development fee for 2010-11	Rs. 44,26,080
Total	**Rs. 2,22,05,759**

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It needs to be stated that by its mandate given by the Hon'ble Delhi High Court vide judgment dated 12/08/2011 in WP (C) 7777 of 2009, the Committee is required to follow the principles laid down by the Hon'ble Supreme Court in the case of Modern School (supra)

A copy of the above calculations was provided to the authorized representative of the school for rebuttal, if any.

The school filed written submissions dated 07/07/2017, disputing the calculation sheet made by the Committee.

The Committee considered the written submissions filed by the school and also heard the authorized representative who appeared for the school.

In the written submissions, the school took a position that the Committee ought not to have included the figures related to the Manav Bharti Teachers Training Institute and Manav Bharti Heritage. During the course of hearing, it was pointed out to the authorized representative that the funds available with the Manav Bharti Institute of Child Education and Child Psychology had been included, as this institution was being run from the same building which housed the Manav Bharti International School. The plot of land was allotted to the school at a nominal lease premium of about Rs.38,000 with a yearly ground rent Rs.1625 and this was specifically allotted for the purpose of the running the school only. In the circumstances Committee was of the view that the school was commercially using the

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plot allotted to it on a highly concessional price for running a recognised school and therefore the funds generated by the Society by running this commercial enterprise ought to be considered as available to the school. The authorized representative did not pursue this argument any further and agreed that the funds available to the Teachers Training Institute may be considered to be available with the school.

As regards Manav Bharti Heritage at Village Chand in Bihar, the argument had been raised for the first time before this Committee. However, during the course of hearing, the authorized representative gave up this argument, saying that its effect was too small to have any material difference.

The next argument raised by the school in the written submissions was that contingency funds which the school needed to be maintain ought also to include the expenses other than salary.

The school also stated that prepaid expenditure of Rs. 27,560 ought not to be considered as a part of funds available since they did not represent actual cash.

The school further contended that the amount of Rs.3,73,66,005 which represented income tax refundable ought not be considered as funds available as the refunds were stuck up for long with the Income Tax Department and the issues had still not

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finally settled. The same argument was raised with regard to TDS for the financial year 2007-08 also.

The school further claimed that the sum of Rs.19,69,54,886, which represented accumulation towards building funds over a number of years ought also not be considered as part of funds available with the school on the purpose of discharging its liabilities on account of implementation of the recommendations of the 6th Pay Commission. The argument raised was that the school was more than 40 years old and the building was incomplete as only the ground floor and first floor were completed. During the course of hearing, the authorized representative was asked whether the school had incurred any expenditure on this account. The authorized representative submitted that the matter was still at planning and approval stage and therefore no significant expenditure had so far been incurred.

It was submitted that if all the above factors were taken into account, the result would be that the school was in deficit, despite hiking the fee pursuant to order dated 11/02/2009.

No argument was proffered with regard to the refund of development fee for non fulfillment of the essential pre conditions.

The school was required to furnish details,. giving year wise demands raised by the Income Tax Department upto the year 31.3.2008, the payments made there against and the balance outstanding. The school was also directed to furnish copies of the

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tax challans and evidence of attachment of bank accounts, as claimed by the authorized representative.

The school filed copies of its ledger accounts and some notices received from the Income Tax Department, from which it could not be discerned as to for which assessment year the Income Tax refunds were outstanding and for what reasons.

A fresh hearing was fixed for 09/09/2019 to enable the school to appear and clarify the outstanding issues. The school was also directed to furnish its Receipt and Payment Accounts for the year 2006-07 to 2010-11.

Shri Sanjeev Kapoor, Chartered Accountant appeared with Smt. Mithilesh Chaudhari, Principal and Shri H.P. Mishra, Accountant of the School.

The learned authorized representative submitted that although the refunds of income tax which were outstanding as on 31st March 2008 were either received or adjusted against subsequent years demands, the liquidity position of the school substantially remained the same as the refunds which were due in the subsequent years were also attached.

Accordingly, the school was required to file the following:-

1. Date of receipt/adjustment of refunds which were outstanding as on 31st March 2008 along with documentary evidence.

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2. The details of subsequent years refunds which were pending with Income Tax department along with copies of orders passed by the Appellate authorities. It was submitted that final appellate authority had held in favour of the school, but the refunds had not yet been released by the Income Tax department.

The school filed the details of outstanding amount of income tax refunds that were due to it as on 31/03/2008, which has been treated as part of funds available with the school as on that date. The school also filed copies of the final appellate orders showing that the appeals had been decided in its favour in all the years but the income tax department had not released the refunds fully. It was also submitted that the refunds of subsequent years had also been withheld and the liquidity position of the school had not undergone any substantial change even till date.

The school was required to file copies of its audited financials for the years 2011-12 to 2018-19 in order that the Committee may verify the contentions being raised that refunds equivalent to what was due on 31/03/2008 had always remain blocked.

Today, Shri Anand Singh Goni who was duly authorized by the Principal of the School, appeared and filed the audited balance sheets for the years 2011-12 to 2018-19.

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On examination of the audited balance sheets of the Society for various years, the following position emerges with regard to the outstanding amount of Income Tax Refunds:

Balance Sheet date	Income Tax Refund due (Rs.)
31/03/2008	3,89,42,759
31/03/2009	1,20,31,588
31/03/2010	56,55,436
31/03/2011	25,46,158
31/03/2012	20,33,109

Far from what was contended by the school, the outstanding refund of Income Tax which was Rs. 3,89,42,759 as on 31/03/2008, came down to Rs. 20,33,109 indicating that the school had been regularly receiving the Income Tax Refunds. As such, the contention raised by the school that its liquidity position did not allow the school to implement the recommendations of VI Pay Commission out of its own resources has no substance and is accordingly rejected.

The arguments with regard to prepaid expenditure of Rs. 27,560 and with regard to inclusion of expenses other than salary for the purpose of determining the contingency reserve are too inconsequential to be dealt with in view of the large surplus which the Committee has determined to be available with the school.

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The only substantial argument to be dealt with is with regard to the claim of the school that a sum of Rs. 19,69,54,886 ought to have been allowed to be kept in reserve for raising additional construction. The argument is stated only to be rejected in view of the fact that the school itself admitted that till date of hearing in 2017, no expenditure had been incurred and the matter was still at the proposal stage. Be it noted that the fee was hiked in the year 2008-09 when the school had large surplus and the same only increased with the passage of time till 2017-18 and the matter of construction was still at the proposal stage.

Accordingly, the Committee is of the view that none of the contentions raised by the school merit acceptance and the Committee reaffirms its preliminary finding that the school had more than adequate funds of its own to absorb the additional expenditure incurred by it on implementation of the recommendations of VI Pay Commission and the arrear fee and the incremental fee recovered by it taking undue advantage of order dated 11/02/2009 issued by the Director of Education was wholly unjustified and ought to be refunded along with interest @ 9% per annum from the date of collection to the date of refund.

With regard to refund of development fee for the reason that the school was not fulfilling any of the pre conditions laid down by the Duggal Committee which were affirmed by the Hon'ble Supreme Court as noted above, the school has not even

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contested the issue. Accordingly, the Committee is of the view that the development fee recovered by the school for the years 2009-10 and 2010-11 purportedly in pursuance of order dated 11/02/2009 but without fulfilling the pre conditions as stated in para 14 of the said order, ought also to be refunded along with interest @ 9% per annum from the date of collection to the date of refund.

Summary of recommendations:

In view of the above discussions and findings, the school ought to refund the following sums to the students along with interest @ 9% per annum from the date of collection to the date of refund:

Arrear fee and incremental tuition fee for 2009-10	Rs. 1,41,13,384
Development fee for 2009-10	Rs. 36,66,295
Development fee for 2010-11	Rs. 44,26,080
Total	Rs. 2,22,05,759

Ordered accordingly.

Justice Anil Kumar (R)
(Chairperson)

CA J.S. Kochar
(Member)

Dr. R.K. Sharma
(Member)

Dated: 22/10/2019

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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:

Modern Convent School, Dwarka, New Delhi-110078 (B-95)

Order of the Committee

Present: Shri Manu RG Luthra, Chartered Accountant with Ms. Sheetal Mann, Principal 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 submitted its reply to the questionnaire vide its letter dated 01/03/2012, vide which it was submitted as follows:

(a) The school implemented the recommendations of VI Pay Commission and started paying the increased salary to the staff w.e.f. 01/04/2009.
(b) It paid the arrears of incremental salary for the period 01/01/2006 to 31/03/2009.

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(c) The school increased the fee of the students pursuant to order dated 11/02/2009, w.e.f. 01/09/2008 and also recovered the arrear fee for the period 01/01/2006 to 31/08/2008 as envisaged in the said order.

Along with its reply, the school submitted detailed information by way of Annexures. As per Annexure-B to the reply, the school claimed to have paid a total sum of Rs. 1,73,55,427 as arrears of incremental salary for the period 01/01/2006 to 31/03/2009.

As per Annexure-E, the school claimed to have recovered the arrears of fee as per order dated 11/02/2009 and the total recovery on this account amounted to Rs. 1,00,97,920. Further as per Annexure-C, the school informed about the increase in monthly fee pursuant to order dated 11/02/2009. As per the information furnished, the school hiked the fee for classes pre school to V by Rs. 300 per month, for classes VI to X by Rs. 400 per month and for classes XI & XII by Rs. 500 per month. The school also informed that development fee was increased from 10% of tuition fee to 15% of tuition fee as per para 14 of the order dated 11/02/2009. However, it did not specify whether the increase effected in development fee was prospective from 01/04/2009 or the increase was effected w.e.f. 01/04/2008 or 01/09/2008.

The Committee received a complaint from one Sh. Joginder Mann, vide which it was alleged that the school was showing inflated

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expenditure and fake employees in order to charge more fee. The Committee decided that when the hearing of the school would be taken up, notice would also be issued to the complainant.

Based on the audited financials of the school and the returns filed by it under Rule 180 of the Delhi School Education Rules, 1973, copies of which were received from the Directorate of Education, preliminary calculations were prepared by the Chartered Accountants (CAs) deputed with this Committee by the Directorate of Education and they provisionally determined that the school had negative net current assets as on 31/03/2008 i.e. its current liabilities exceeded its current assets. Taking this as the base, they calculated that the fee hike effected by the school was justified. However, the calculations made by the CAs were outrightly rejected by the Committee as the very fact that the school had negative net current assets indicated that the school was diverting its fee revenues either for creating long term assets or for transfer of funds to related parties. Moreover, the figures taken by the CAs did not reconcile with the audited financials of the school.

The Committee issued a notice dated 13/05/2015, requiring the school to furnish within 10 days, details of different components of fee and salaries for the years 2008-09, 2009-10 and 2010-11, duly reconciled with its Income and Expenditure Account. The school was also required to furnish copies of its banks statements in support of its claim of having paid the arrears of VI Pay Commission, the details

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of its accrued liabilities of gratuity and leave encashment, a statement of the account of its parent society as appearing in its books. A supplementary questionnaire was also issued to the school seeking its response to the relevant 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 complying with the pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583 regarding charging of development fee.

The school submitted its response vide its letter dated 26/05/2015. It also submitted the reply to the supplementary questionnaire

As per the reply to the supplementary questionnaire submitted by the school, with regard to development fee, it was stated that it collected the same in all the five years for which the information was sought by the Committee i.e. 2006-07 to 2010-11. It gave bare figures of utilisation of such development fee, without indicating as to which assets were acquired out of development fee.

With regard to treatment of development fee in its accounts, the school stated that upto 2008-09, it was treated as a 'Capital Receipt' but from 2009-10 onwards, it was treated as a 'Revenue Receipt'.

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However, with regard to the queries whether the school maintained earmarked development/depreciation reserve funds, it categorically stated ' **No**'.

Thus, at the threshold itself, it became apparent that the school was not entitled to charge any development fee since it was not following any of the pre conditions 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.

A notice of hearing was issued to the school on 23/06/2016, requiring it to appear before the Committee on 08/07/2016 and produce its books of accounts, fee and salary records for the years 2006-07 to 2010-11.

Ms. Sheetal Mann, Head of the school, appeared with Sh. Vinay Kaushik, Office Superintendent & Sudhir Kumar, LDC of the school

The Committee noticed that the school claimed that its expenditure on regular salary in 2009-10, more than doubled as compared to 2008-09. As per the information furnished by the school, its expenditure on salary in 2008-09 was Rs. 1,79,99,709 which rose to Rs. 3,73,76,733 in 2009-10, after the recommendations of VI Pay Commission were implemented. Such extent of increase appeared to be excessive. The Committee perused the statement furnished by the school, giving the staff strength and mode of payment of salary for

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years 2008 -09 & 2009-10. It observed that in 2009-10, the number of staff members (other than regular teachers), employed by the school, phenomenally increased as compared to 2008-09.

The Head of the School submitted that in 2008-09 the support staff i.e. Ayas, Sweepers, Bus drivers etc. were outsourced but they were taken on the rolls of the school in 2009-10. It was further submitted that in 2008-09, the support staff were employed through a Manpower agency.

The Committee directed the school to produce its complete salary records, as well as the details of staff employed through Manpower agencies along with the agreements executed with such agencies and details of payment made to them and details of TDS deducted from such payments. Copies of TDS returns were also required to be produced for perusal. The school was also required to give reasons which prompted it to discontinue the arrangement with the manpower agencies and take the staff on its rolls. Further, the school was required to produce its provident fund returns to show the deduction of PF from such staff members in year 2009-10. The audit officer of the Committee was directed to verify these records and report its observations to the Committee.

The school produced its records before the audit officer of the Committee and after verification, she confirmed that the school had taken the support staff from a manpower agency in 2008-09 and the

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same staff was absorbed in the school in 2009-10. The payments to the manpower agency in 2008-09 were verified with reference to the bills and TDS returns and the absorption of staff by the school in 2009-10 was verified from the provident fund returns for that year.

The Committee considered that the figures of salary alone for 2008-09 and 2009-10 would not reflect the incremental salary in 2009-10 consequent to the implementation of the recommendations of VI Pay Commission w.e.f. 01/04/2009 but the same would have to be moderated by accounting for the payments made to the manpower agency in 2008-09, which amounted to Rs. 33,17,459.

The Committee took cognizance of the complaint filed by Sh. Joginder Mann, and issued notice to him returnable on 07/09/2016. The Committee also gave a copy of the complaint to the school for its comments.

The complainant did not put in his appearance despite service of notice to him. The school filed its reply to the complaint on 07/09/2016. It was submitted that the complainant had not come with clean hands as he happened to be a member of the Parent Trust of the school i.e. Modern Charitable Foundation till 15/04/2010 when he tendered his resignation. However, he again wanted to be a member of the Foundation but was not admitted to its membership and therefore, he filed a false and baseless complaint against the school and its management. It was further submitted that the school

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fee was hiked only after discussion with the parents in PTMs and the proposed fee were regularly sent to the Director of Education under section 17(3) of the Delhi School Education Act, 1973.

The Committee considered the issue and in view of the absence of the complainant from the proceedings of the Committee, after being duly noticed, decided not to lend any credence to the complaint.

On 20/10/2016, when the information furnished by the school was considered by the Committee, it was noticed that the school had not filed copy of the circular issued to the parents regarding hike in fee pursuant to order dated 11/02/2009. This was particularly necessary to examine as the school had not indicated whether the development fee was increased prospectively w.e.f. 01/04/2009 or retrospectively w.e.f. 01/04/2008 or 01/09/2008.

The Head of the School (HoS), Ms. Sheetal Mann, who was present at the time of hearing stated that the school did not issue any circular to the parents regarding fee hike effected consequent to order dated 11.2.2009 issued by the Directorate of Education. However, the details of additional amount of recovery from the students were included in the fee slips issued to them. She also filed a summary of the amounts recoverable from different classes.

On perusing the summary filed by the HoS, it became apparent that the school hiked the tuition fee w.e.f. 01/09/2008 @ Rs. 300 p.m. for classes up to 5th and @ Rs. 400 p.m. for classes 6th

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to 10^{th} and @ Rs. 500 p.m. for classes 11^{th} & 12^{th}. Accordingly the arrears amounting to Rs. 2100/2800/3500 per student were recovered for the period 01/09/2008 to 31/03/2009. Besides the school also recovered arrears of development fee for the same period, purportedly on account of increase in tuition fee. Such arrears were recovered @ Rs. 820 per student for classes upto 5^{th}, Rs. 985 for classes 6^{th} to 8^{th}, Rs. 1035 for classes 9^{th} and 10^{th} and Rs. 1231 for classes 11^{th} & 12^{th} per student. The school also recovered lump sum fee amounting to Rs. 3000/3500/4500 for different classes in accordance with the slabs prescribed by order dated 11/02/2009.

Prima facie, it appeared that the arrears of incremental development fee for the period 01/09/2008 to 31/03/2009 were @ 35% to 40% of the arrears of incremental tuition fee, which were excessive as the school could recover such arrears only @ 10% of incremental tuition fee as the school was charging development fee @ 10% of tuition fee in the year 2008-09. The HoS of the school was asked to explain this apparent anomaly. She admitted that the development fee was originally charged by the school @ of 10% of tuition fee. However, while recovering the arrears for the period 01/09/2008 to 31/03/2009, the school hiked it to 15% of tuition fee, of not only the incremental amount of tuition fee, but also on the tuition fee which had been originally charged.

The Committee also noticed that in reply to the questionnaire issued by the Committee to the school, the school had represented

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that the recommendations of the 6th Pay Commission were implemented w.e.f. 01/04/2009 and the school paid arrears to the staff for the period 01/01/2006 to 31/03/2009. It also filed details of arrears paid employee-wise which amounted to Rs.1,73,55,427. However, as per the subsequent details filed by the school, such arrears amounted to only Rs. 1,67,15,785 and that too included a sum of Rs. 24,33,785 which was paid on 30/03/2013. The HoS had no answer to that.

The Committee perused the copies of Receipt and Payment Accounts of the school for different years. The same showed that the school had taken loans for construction of school building as well as vehicles and further there were transfer of funds to its Parent Trust in different years.

The Committee also noticed that the school had not furnished any details of its accrued liabilities in respect of gratuity and leave encashment as on 31.3.2010. In fact, vide its submission dated 26/05/2015, the school had stated that there were no accrued liabilities on these accounts as on 31/03/2008 or 31/03/2010. However, at the time of hearing, the HoS submitted that this position required to be revisited. The school was required to furnish the details of such accrued liabilities, if it desired that the same be taken into consideration by the Committee.

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The school vide its letter dated 27/10/2016 furnished details of its accrued liabilities of gratuity and leave encashment as on 31/03/2010. As per the details submitted, its accrued liability of gratuity was Rs. 28,57,993 while for leave encashment, it was Rs. 13,31,786.

Based on the audited financials of the school and information furnished by it to the Committee vide its various communications and during the course of hearing, the Committee prepared a calculation sheet in order to examine the justifiability of fee hike effected by the school pursuant to order dated 11/02/2009 issued by the Director of Education for implementing the recommendations of VI Pay Commission. The Committee took notice of the fact that the school had transferred a sum of **Rs. 1,66,49,079** to its Parent Trust i.e. Modern Charitable Foundation in the years 2006-07 and 2008-09. Further, the school had made repayment of loans and interest thereon which were taken for creating capital assets between 2006-07 and 2009-10 and this amounted to **Rs. 54,84,530**. As in view of the judgment of the Hon'ble Supreme Court in the cases of Modern School vs. Union of India (supra) and Action Committee Unaided Pvt. School vs. Director of Education 2009 (11) SCALE 77, which this Committee is bound to follow by its mandate, these payments could not have been made out of the fee revenues of the school, the Committee considered such sums diverted by the school as funds which were

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deemed to be available with it for implementing the recommendations of VI Pay Commission.

The Committee also calculated that the school had negative net current assets + investments as on 31/03/2008, as per the following details:

Current Assets + Investments		
Cash in Hand	90,747	
Bank Balances	393,480	
FDRs	300,000	
Interest accrued on FDRs	80,333	
TDS	9,468	
Accounts receivable	95,916	969,944
Current Liabilities		
Advance Fee	2,203,139	
Accounts Payable	672,830	
Expenses payable	1,354,213	
Transport Security Refundable	344,500	
Caution Money	357,000	4,931,682
Net Current Assets + Investments (Funds available)		**(3,961,738)**

Obviously the negative net current assets were a result of diversion of funds by the school.

The Committee thus calculated that the school was deemed to have available with it, a sum of **Rs. 1,81,71,871** (1,66,49,079+54,84,530-3,961,738).

The requirement of the school to keep funds in reserve for meeting its accrued liabilities of gratuity and leave encashment amounted to **Rs. 41,89,779** (28,57,993 + 13,31,786). Thus effectively, the school had available with it a sum of **Rs. 1,39,82,092**

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(1,81,71,871 – 41,89,779) for implementing the recommendations of VI Pay Commission.

The additional expenditure that befell on the school on implementation of the recommendations of VI Pay Commission amounted to **Rs. 3,27,75,350**, as per the following details:

Additional Liabilities after implementation of 6th Pay Commission:		
Arrear of Salary as per 6th CPC	16,715,785	
Incremental Salary for 2009-10 (as per calculation given below)*	16,059,565	32,775,350

***Incremental Salary for 2009-10**	**2008-09**	**2009-10**
Normal/ Regular Salary		
To Regular Staff	17,999,709	37,376,733
To Outsourced Staff	3,317,459	-
Total Normal/ Regular Salary	21,317,168	37,376,733
Incremental salary in 2009-10	**16,059,565**	

Thus, there was a gap of **Rs. 1,87,93,258** (3,27,75,350 – 1.39.82.092), which was required to be bridged by hiking the tuition fee w.e.f. 01/04/2009 and recovering the arrears of tuition fee/development fee for the period 01/01/2006 to 31/03/2009.

However, by recovering such arrear fee and increasing the tuition fee, purportedly as per order dated 11/02/2009, the school generated an additional revenue of **Rs. 2,48,92,311**, as per the following details:

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Total Recovery after VI th Pay Commission		
Arrear of tuition fee 01.01.06 to 31.8.08	4,845,693	
Arrear of tuition fee for 01.09.08 to 31.3.09	4,073,631	
Arrear of development fee	1,179,912	
Incremental tuition fee for 2009-10 (as per calculation given below)*	14,793,075	24,892,311

Thus, prima facie, the school recovered a sum of **Rs. 60,99,053,** in excess of its requirements, which includes the arrears of incremental development fee for the period 01/09/2008 to 31/03/2009 which were irregularly recovered.

Since the school had conceded at the threshold that it was not fulfilling any of the pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School (supra) for charging development fee, the Committee considered the development fee recovered by the school amounting to **Rs. 1,58,67,920** (63,34,384 + 95,33,536) in 2009-10 and 2010-11, was also prima facie refundable to the students.

Thus in totality, the Committee considered that the school recovered fee in excess of its requirements or in violation of the law laid down by the Hon'ble Supreme Court to the tune of **Rs.2,19,66,973** (60,99,053 +1,58,67,920). However, it would be observed that upto this stage, the Committee has not taken into consideration the requirement of the school to keep funds in reserve for future contingencies. The Committee has taken a consistent view that the school should not denude themselves of all the funds

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available with them while implementing the recommendations of VI Pay Commission but ought to keep a reasonable reserve, which the Committee has quantified to be equivalent to four months salary, for any future contingency.

The requirement of the school for funds to be set apart for future contingencies has been calculated by the Committee to be **Rs. 1,24,58,911.** Taking this into account, the Committee arrived at a prima facie conclusion that the school ought to refund the excess/irregular fee recovered in excess of the aforesaid amount, which amounts to **Rs.95,08,062** (2,19,66,973 – 1,24,58,911).

A copy of the above calculations was given to the school on 22/11/2016 for filing rebuttal, if any.

On 14/12/2016, Sh. Manu R G Luthra, Chartered Accountant appeared with Ms. Sheetal Maan, HoS of the School. He contended that the Committee ought not to have included the funds applied in payment of interest and payment of loan for purchase of fixed assets, as part of funds available with the school. He submitted that Rule 177 of the Delhi School Education Rules, 1973 permitted incurring of capital expenditure by the school out of the savings. However, he did not file any calculations with regard to the savings available with the school as per Rule 177, out of which capital expenditure could be incurred. He sought time to file the calculations as per Rule 177. He further contended that the liability of the school to its Parent Society

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had not been taken into account by the Committee in preliminary calculations. However, in the same breath, he contended that the Society did not have any activity apart from running of the school. When asked about the source of the funds available with the society, he submitted that the Society received donations, which were not in any way, linked to the admission of the students made by the school.

The school filed written submission dated 14/12/2016 in the office of the Committee on 23/12/2016. Principally the school objected to the sums considered by the Committee as part of funds available on account of their having been utilised for repayment of loans for acquisition of capital assets and the funds transferred to the Parent Society by the school. The school also submitted that the Committee had not considered the liability it owed to its Parent Society while working out the funds available with the school. Lastly the school submitted that merely because development fee was treated as a revenue receipt, it ought not to be ordered to be refunded. However, the written submissions made by the school were found to be inconsistent and not legally sustainable. The Committee could not finalise its recommendations for these reasons.

The matter was therefore, relisted for seeking clarifications on the written submissions dated 14/12/2016 filed by the school. The authorized representative of the school was advised to be concise in its submissions and clearly bring out the basis of objections to the calculation sheet prepared by the Committee.

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The Committee noted that the school had objected to the preliminary calculations prepared by the Committee on 4 counts as follows:-

1. The diversion of funds for purchase of fixed assets determined by the Committee to be Rs. 54,84,530, which in the opinion of the school ought not to have been taken into account, as the Committee had not considered that the same were funded out of Capital receipts, which were available during those years.
2. The diversion of funds to the Parent society had been taken in excess of actual amount of transfer as the Committee had also considered transfer made by means of Journal entries, and not by payment entries, in the account of the Parent society.
3. The Committee had not considered an amount of Rs 93,11,831 which the school owed to the Parent society as a current liability.
4. The treatment of Development fee as Revenue Receipt instead of Capital Receipt is merely an accounting error and as such ought not to be held against the school.

The Committee considered the submissions made on behalf of the School and was of the view that the first three objections can be taken care of if the school prepared a comprehensive statement of all its Capital Receipts and Capital payments made by it from 2006-07 to 2009-10.

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So far as the fourth objection was concerned i.e. regarding development fee, the Committee observed that apart from the accounting treatment to be given to the development fee, there were other substantive requirements which were required to be fulfilled by the school in order to be eligible to charge Development Fee i.e.

(a) The Development Fee ought to be utilized for specified capital assets like furniture and fixtures and equipments only, and

(b) earmarked depreciation reserve fund was to be maintained to park the accumulated depreciation on assets acquired out of development fee so that the funds were available at the time their replacement becomes necessary.

The authorized representative requested for some time to prepare the comprehensive statement of Capital receipts and capital payments, which was granted by the Committee.

On 14/10/2019, the school filed fresh written submissions along with which a computation sheet of capital inflows and outflows and based on that, the authorized representative of the school submitted that there was in fact no diversion of fee for incurring capital expenditure.

The Committee noted that the on the resources side the school had taken credit of savings under Rule 177 for the year 2006-07 to 2009-10 which amounted to Rs. 3,36,04,253. The Committee also

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noticed that the budget for the year 2006-07 which had been filed along with the annual returns for 2005-06 was not on record. Accordingly, the school was directed to furnish the same on the next date of hearing.

The school filed copies of annual returns for the year 2005-06 which contained the budget for the year 2006-07.

On perusal of the statement of Capital Account inflows and outflows, the Committee notes that the school has admitted having incurred the following capital expenditures/ transfers from 2006-07 to 2009-10:

Head of Capital Expenditure	**Amount of Capital Expenditure (Rs.)**
Purchase of Fixed Assets	2,56,96,024
Repayment of Loans taken for purchase of Fixed Assets (Other than buses) and Interest thereon	2,87,95,264
Transfers to Parent Society/ Other Entities	3,23,58,975
Total	**8,68,50,263**

The aforesaid capital expenditure was partly funded by raising capital receipts and partly out of fee revenues, which the school claimed was permissible under Rule 177. The details of source of funds for the above capital expenditures, as given by the school is as follows:

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Resources	Amount (Rs.)
Development fee	1,61,69,957
Contribution from the Parent Society	1,66,40,030
Loans raised for Capital Assets (other than buses)	2,36,10,752
Out of normal fee revenues	3,36,04,254
Total	**9,00,24,993**

The budgets for the years 2006-07 to 2009-10 were perused by the Committee. They revealed that the school had already provided for capital expenditure while fixing its fees in all the years. The Learned authorized representative of the school submitted that school was entitled to recover the capital expenditure as part of its fee in view of the provisions of sub rules 1 & 2 of Rule 177 of the Delhi School Education Act. He relied on the judgment of Hon'ble Supreme Court in the case of Modern School vs Union of India (2004) 5 SCC 583 to buttress his argument. He further submitted that the cost of buses and repayment of loans taken for purchase of buses came out of the transport fee for which the school had furnished the details along with its written submissions dated 14/12/2016.

Before adverting to the statement of capital inflows and outflows filed by the school, which includes contributions from the Society and transfers to the Society/other related entities, the argument of the school that it had available with it a sum of Rs. 3,36,04,253 out of its revenues, which it could utilise for incurring capital expenditure,

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needs to be dealt with because if this argument is accepted the other contentions of the school would be only of academic interest.

The school has relied on the judgment of the Hon'ble Supreme Court in the case of Modern School (supra).

Before adverting to the decisions of the Hon'ble Supreme Court in the Modern School case, it is pertinent to mention that an eleven Judge Bench of the Supreme Court considered the issue of autonomy enjoyed by Private Unaided Educational and Professional Institutions in the case of TMA Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 and the case of Islamic Academy of Education & ors. vs. State of Karnataka & ors. (2003) 6 SCC 697.

Broadly, the law laid down by the Hon'ble Supreme Court is that the private unaided Educational & Professional Institutions enjoy autonomy in the matter of fixation of fees but the fee should not be so high as to result in commercialisation of education leading to profiteering. Since education is a charitable activity, the fees have to be reasonable. However, such institutions may fix the fee, not just to recover its revenue expenses but also to generate a reasonable revenue surplus for the development of the Educational Institution. In para 156 of the judgment in case of Islamic Academy of Education (supra), Justice S.B. Sinha, delivering a separate judgment, held that while the Supreme Court had not laid down any fixed guidelines as regards the fee structure, reasonable surplus should ordinarily vary

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from 6% to 15%, as such surplus would be utilised for expansion of the system and development of education. Implied in this finding was that if the revenue surplus exceeded 15% of the fee, it would not be considered reasonable and the school would be considered to be resorting to profiteering.

In the background of the aforementioned decisions, the Hon'ble Supreme Court analysed the provision of the Delhi School Education Act, 1973 and the Rules framed thereunder in the case of Modern School (supra). It would be appropriate to reproduce the relevant extracts from the said judgment which would throw light on the issue in question. It was, inter alia, held as follows:

"At the outset, before analysing the provisions of the 1973 Act, we may state that it is now well settled by a catena of decisions of this Court that in the matter of determination of the fee structure unaided educational institutions exercise a great autonomy as they, like any other citizen carrying on an occupation, are entitled to a reasonable surplus for development of education and expansion of the institution. Such institutions, it has been held, have to plan their investment and expenditure so as to generate profit. What is, however, prohibited is commercialisation of education. Hence, we have to strike a balance between autonomy of such institutions and measures to be taken to prevent commercialisation of education. However, in none of the earlier cases, this Court has defined the concept of reasonable surplus, profit, income and yield, which are the terms used in the various provisions of the 1973 Act.

This Court observed in the said judgment that the right to establish and administer an institution included the right to admit students; right to set up a reasonable fee structure; right to constitute a governing body, right to appoint staff and right to take disciplinary action. T.M.A. Pai

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Foundation case ((2002) 8 SCC 481) for the first time brought into existence the concept of education as an "occupation", a term used in Article 19(1)(g) of the Constitution. It was held by majority that Articles 19(1)(g) and 26 confer rights on all citizens and religious denominations respectively to establish and maintain educational institutions. In addition, Article 30(1) gives the right to religious and linguistic minorities to establish and administer educational institution of their choice. However, the right to establish an institution under Article 19(1)(g) is subject to reasonable restriction in terms of clause (6) thereof.

Similarly, the right conferred on minorities, religious or linguistic, to establish and administer educational institution of their own choice under Article 30(1) is held to be subject to reasonable regulations which inter alia may be framed having regard to public interest and national interest. <u>In the said judgment, it was observed that economic forces have a role to play in the matter of fee fixation. The institutions should be permitted to make reasonable profits after providing for investment and expenditure. However, capitation fee and profiteering were held to be forbidden.</u> Subject to the above two prohibitory parameters, this Court in T.M.A. Pai Foundation case (T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481) held that fees to be charged by the unaided educational institutions cannot be regulated. <u>Therefore, the issue before us is as to what constitutes reasonable surplus in the context of the provisions of the 1973 Act.</u>. This issue was not there before this Court in T.M.A. Pai Foundation case (T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481).

The judgment in T.M.A. Pai Foundation case (T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481) was delivered on 31-10-2002. The Union of India, State Governments and educational institutions understood the majority judgment in that case in different perspectives. It led to litigations in several courts. Under the circumstances, a Bench of five Judges was constituted in the case of Islamic Academy of Education v. State of Karnataka ((2003) 6 SCC 697) so that doubts/anomalies, if any, could be clarified. One of the issues which arose for determination concerned determination of the fee structure in private unaided professional educational institutions. It was submitted on behalf of the managements that such institutions had been given complete autonomy not only as regards admission of students but also as regards determination of their own fee structure.

It was submitted that these institutions were entitled to fix their own fee structure which could include a reasonable revenue surplus for the purpose of development of education and expansion of the institution. It was submitted that so long as there was no profiteering, there could be no interference by the Government. As against this, on behalf of the Union of India, State Governments and some of the students, it was submitted, that the right to set up and administer an educational

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institution is not an absolute right and it is subject to reasonable restrictions. It was submitted that such a right is subject to public and national interests.

It was contended that imparting education was a State function but due to resource crunch, the States were not in a position to establish sufficient number of educational institutions and consequently the States were permitting private educational institutions to perform State functions. It was submitted that the Government had a statutory right to fix the fees to ensure that there was no profiteering. Both sides relied upon various passages from the majority judgment in T.M.A. Pai Foundation case (T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481). In view of rival submissions, four questions were formulated. We are concerned with the first question, namely, whether the educational institutions are entitled to fix their own fee structure. It was held that there could be no rigid fee structure. Each institute must have freedom to fix its own fee structure, after taking into account the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must be able to generate surplus which must be used for betterment and growth of that educational institution.

The fee structure must be fixed keeping in mind the infrastructure and facilities available, investment made, salaries paid to teachers and staff, future plans for expansion and/or betterment of institution subject to two restrictions, namely, non-profiteering and non-charging of capitation fees. It was held that surplus/profit can be generated but they shall be used for the benefit of that educational institution. It was held that profits/surplus cannot be diverted for any other use or purposes and cannot be used for personal gains or for other business or enterprise. The Court noticed that there were various statutes/regulations which governed the fixation of fee and, therefore, this Court directed the respective State Governments to set up a committee headed by a retired High Court Judge to be nominated by the Chief Justice of that State to approve the fee structure or to propose some other fee which could be charged by the institute.

In the light of the judgment of this Court in the case of Islamic Academy of Education (Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697) the provisions of the 1973 Act and the Rules framed thereunder may be seen. The object of the said Act is to provide better organisation and development of school education in Delhi and for matters connected thereto. Section 18(3) of the Act states that in every recognised unaided school, there shall be a fund, to be called as Recognised Unaided School Fund consisting of income accruing to the school by way of fees, charges and contributions.

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Section 18(4)(a) states that income derived by unaided schools by way of fees shall be utilised only for the educational purposes as may be prescribed by the Rules. Rule 172(1) states that no fee shall be collected from any student by the trust/society running any recognised school; whether aided or unaided. That under Rule 172(2), every fee collected from any student by a recognised school, whether aided or not, shall be collected in the name of the school. Rule 173(4) inter alia states that every Recognised Unaided School Fund shall be deposited in a nationalised bank. Under Rule 175, the accounts of Recognised Unaided School Fund shall clearly indicate the income accruing to the school by way of fees, fine, income from rent, income by way of interest, income by way of development fees, etc.

Rule 177 refers to utilisation of fees realised by unaided recognised school. Therefore, Rule 175 indicates accrual of income whereas Rule 177 indicates utilisation of that income. Therefore, reading Section 18(4) with Rules 172, 173, 174, 175 and 177 on one hand and Section 17(3) on the other hand, it is clear that under the Act, the Director is authorised to regulate the fees and other charges to prevent commercialisation of education. Under Section 17(3), the school has to furnish a full statement of fees in advance before the commencement of the academic session. Reading Section 17(3) with Sections 18(3) and (4) of the Act and the Rules quoted above, it is clear that the Director has the authority to regulate the fees under Section 17(3) of the Act.

The second point for determination is whether clause 8 of the Order passed by the Director on 15-12-1999 (hereinafter referred to as "the said Order") under Section 24(3) of the Act is contrary to Rule 177.

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 Recognised Unaided School Fund to the society or the trust or any other institution and, therefore, clause 8 was in conflict with Rule 177.

We do not find merit in the above arguments. Before analysing the rules herein, it may be pointed out, that as of today, we have Generally Accepted Accounting Principles (GAAP). As stated above, commercialisation of education has been a problem area for the last several years. One of the methods of eradicating commercialisation of education in schools is to insist on every school following principles of accounting applicable to not-for-profit organisations/non-business organisations. 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

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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 revenue expenses and capital expenditure. Lastly, we must keep in mind that accounting has a linkage with law. Accounting operates within the 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 organisations like schools, hospitals, etc. in the light of the statute in question.

In the light of the above observations, we are required to analyse Rules 172, 175, 176 and 177 of the 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 recognised school shall have a fund titled "Recognised Unaided School Fund". It is important to bear in mind that in every non-business organisation, 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, Recognised Unaided School Fund. Further, Rule 175 indicates accrual of income unlike Rule 177 which deals with utilisation 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 utilised 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 fee structure as is submitted on**

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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 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 noteworthy that while interpreting Rule 177 of the Delhi School Education Rules,1973, the Hon'ble Supreme Court has held that capital expenditure cannot constitute a component of the financial fee structure. However, it has also held that capital expenditure can be incurred out of the savings made by the school. This is predicated on the ratio of the earlier judgments of the Hon'ble Supreme Court in the cases of TMA Pai (supra) and Islamic Academy (supra) vide which it was held that the schools could fix the fee so as to generate a reasonable revenue surplus for development of education and expansion of the institution. In the case of Islamic Academy (supra), it was held that 6% to 15% could be the measure of reasonableness of the revenue surplus. However, the important point to be noted is that the reasonable surplus was to be utilized for development and expansion of the institution.

When the school is charging development fee ranging from 10% to 15% of tuition fee, <u>over and above</u> the tuition fee and annual charges and other fee for specific purposes, the surplus which the Hon'ble Supreme Court envisaged in the aforesaid judgments is already generated by charging development fee from the students. Sans the development fee, if the school is generating any further surplus, it would amount to profiteering.

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This committeehas examined the audited financials of the school from that perspective also. The following numbers pertaining to the fee and surplus generated by the school, over and above the development fee charged by it for expansion and development of the school, would completely demolish the argument put forth by the school.

Particulars	2006-07	2007-08	2008-09	2009-10
Gross Fee (A)	**35,395,768**	**42,212,020**	**58,423,802**	**81,386,222**
Development fee included in Gross Fee (B)	-	-	-	6,334,384
Arrear Fee included in Gross Fee (C)	-	-		
Net Regular fee revenue for the year (D)=(A)-(B)-(C)	**35,395,768**	**42,212,020**	**58,423,802**	**75,051,838**
Operational Expenditure				
Gross Expenditure (E)	35,409,287	38,188,984	51,508,166	73,580,790
Arrear Salary included in operational expenditure (F)	-	-	-	-
Depreciation and other non cash expenditure (G)	6,590,404	5,068,457	6,068,161	6,515,692
Interest on loans for incurring capital expenditure (H)	2,355,392	1,484,282	931,199	1,183,695
Net Operational Expenditure for the year (I)=(E)-(F)-(G)-(H)	26,463,491	31,636,245	44,508,806	65,881,403
Operational Revenue surplus (J)=(D)-(I)	**8,932,277**	**10,575,775**	**13,914,996**	**9,170,435**
Percentage of Operational revenue surplus to Regular fee	**25%**	**25%**	**24%**	**12%**

The above numbers show that the school generated a revenue surplus of around 25% every year except 2009-10 when it was 12%. This was over and above the development fee charged by the school specifically for expansion and development.

For all the above reasons, the Committee cannot accept the argument of the school that the amount of Rs. 3,36,04,253 was available with the school out of its normal fee revenues from 2006-07

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to 2009-10, apart from Rs. 1,61,69,957 which was the development fee recovered by the school during those years.

The contention of the school that the balance of loan which the school owed to the Parent Society as on 31/03/2008 ought to have been considered as a current liability while calculating the funds available with the school is stated to be rejected as the school itself has claimed that the amount contributed by the Parent Society was for the purpose of creating fixed assets. The same cannot be treated as a resource for creating infrastructure of the school as well as a current liability. Moreover, on perusal of the Balance Sheet of the school, it is revealed that apart from the sum of Rs. 93,11,831, which the school would like to be treated as a loan from the Parent Society, there is no contribution of the Parent Society towards the corpus of the school.

With regard to the last objection of the school regarding the development fee being considered as refundable by the Committee merely for the reason of an accounting error in treating it as a revenue receipt, the Committee has already considered the development fee for 2009-10 as a source for incurring capital expenditure on the footing that despite treating it as a revenue receipt, it was available for incurring capital expenditure as the cash surplus generated by the school, including the development fee was more than the development fee itself. Therefore, the Committee is of the view that so far as development fee for 2009-10 is concerned, it may not be refunded.

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However, development fee for 2010-11 stands on a different footing as it has not been considered as a resource for capital expenditure as the capital expenditure itself had been considered upto 2009-10. The legality of charging development fee for the year 2010-11 has to be considered on the touch stone of the preconditions for charging development fee laid down by Duggal Committee which were affirmed by the Hon'ble Supreme Court in the case of Modern School (supra). The Duggal Committee, which was constituted by the Hon'ble Delhi High Court when similar matters of fee hike on implementation of 5th Pay Commission were agitated before it. In its report, it made a recommendation with regard to permitting the unaided private schools to charge development fee, over and above the tuition fee and annual charges. Prior to this, the concept of development fee was foreign to the unaided private schools.

However, in order that the schools may not resort to charging Development fee indiscriminately, in a routine manner, it also made recommendations regarding its usage and also prescribed certain pre-conditions on fulfillment of which only, the schools would be able to charge development fee. The exact recommendation of the Duggal Committee, is 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, <u>provided the school is maintaining a Depreciation Reserve Fund, equivalent to the depreciation charged in the revenue account.</u> While these*

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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)

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

7. *Development fee not exceeding 10% of the total annual tuition fee may be charged for supplementing the resources for purchase, upgradation and replacement of furniture, fixtures and equipment. Development Fee, if required to be charged, shall be treated as capital receipt <u>and shall be collected only if the school is maintaining a Depreciation Reserve Fund, equivalent to the depreciation charged in the revenue accounts and the collection under this head along with any income generated from the investment made out of this fund, will be kept in a separately maintained Development Fund account.</u>*

The judgment of Delhi High Court dated October 30, 1998 in the case of Delhi Abhibhavak Mahasangh V Union of India and others, by which Duggal Committee was constituted, was challenged before the Supreme Court, inter alia, by Modern School. Since in the meantime, the Duggal Committee had made its recommendations and the Director of Education had also issued order dated 15/12/1999 giving various directions to the Unaided schools in terms of the recommendations of the Duggal Committee, the Supreme Court examined both the recommendations of the Duggal Committee as well as the order issued by the Director of Education.

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The Supreme Court rendered its decision in **Modern School vs. Union of India & Ors. (2004) 5 SCC 583** on April 27, 2004. One of the issues that the Hon'ble Supreme Court admitted for determination was with regard to development fee. The exact issue framed by the Court was:

> *"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?"*

On this issue, 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*

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High Court Committee ★ Review of School Fee *should be permitted to charge development fee not exceeding 15% of the total annual tuition fee."*

***Direction no. 7 of the Order dated 15/12/1999 issued by the Director of Education.**

Direction No.7 of the order dated 15/12/1999 was repeated verbatim as clause no.14 of the order dated 11/02/2009 issued by the Director of Education except that the cap on the quantum of development fee which the schools could charge was raised from 10% to 15% of the tuition fee in line with the judgment of the Hon'ble Supreme Court.

It would thus be observed that while treating development fee as a capital receipt as distinct from a revenue receipt, is a procedural precondition to be followed by the schools to maintain its accounts, creation of an earmarked depreciation reserve fund for preserving funds for replacement of fixed assets, is a substantive precondition. Without maintaining an earmarked depreciation reserve fund, the schools cannot charge development fee at all. Any levy of development fee without fulfilling this substantive precondition would be illegal and contrary to the law laid down by the Hon'ble Supreme Court.

However, as noted supra, the school itself stated in its reply to the supplementary questionnaire that it was not maintaining any earmarked development/depreciation reserve funds. The Committee has also verified this fact from the audited financials of the school. Accordingly, the Committee is of the view that the development fee

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charged by the school in the year 2010-11 amounting to Rs.95,33,536 ought to be refunded.

Final Determinations

As discussed above, the Committee makes the following final determinations:

(a) The school incurred capital expenditure to the tune of Rs. 8,68,50,263 which were funded out of capital resources to the tune of Rs. 5,64,20,739 (9,00,24,993 – 3,36,04,254). The balance amount of **Rs. 3,04,29,524** was funded by the school out of its revenue surpluses for the year 2006-07 to 2009-10, which was not permissible as the school was resorting to profiteering. Accordingly, the Committee considers this sum as available to the school.

(b) The school had net current assets **in the negative zone** (because it utilised its working capital out of fee revenues for investing in fixed assets) to the tune of **Rs. 39,61,738**, as per the calculations made by the Committee which remain undisturbed.

(c) Thus, the school was deemed to have available with it funds to the tune of **Rs. 2,64,67,786** (3,04,29,524-39,61,738).

(d) The requirement of the school to keep funds in reserve for its accrued liabilities of gratuity, leave encashment and for future

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contingencies was **Rs. 1,66,48,690**, which has not been disputed by the school.

(e) Thus the school had available with it a sum of **Rs. 98,19,096** (2,64,67,786-1,66,48,690).

(f) The total financial impact of implementation of the recommendations of 6th Pay Commission was **Rs. 3,27,75,350** in the shape of payment of arrear salary and incremental salary upto 2009-10.

(g) Thus, the school incurred a deficit to the tune of **Rs. 2,29,56,254** (3,27,75,350-98,19,096), which was required to be bridged by recovering arrear fee and increasing the tuition fee and consequential development fee as per order dated 11/02/2009.

(h) However, the additional fee revenues generated by the school by recovering arrear fee, incremental tuition fee and development fee with effect from 01/09/2008 were **Rs. 2,48,92,311**, which has not been disputed by the school.

(i) Thus, the school recovered more fee to the tune of **Rs. 19,36,057** (2,48,92,311-2,29,56,254) than was required to offset the effect of implementation of the recommendations of 6th Pay Commission, which the school ought to refund to the students.

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For Secretary

Delhi High Court Committee For Review of School Fee

(j) The school also ought to refund a sum of **Rs. 95,33,536** recovered by it as development fee in 2010-11 without fulfilling the essential preconditions for charging development fee.

Summary

The School ought to refund a total sum of Rs. 1,14,69,593 (19,36,057+95,33,536), as determined above, alongwith interest at the rate of 9% per annum from the date of collection to the date of refund.

Ordered accordingly.

Justice Anil Kumar (R)
(Chairperson)

CA J.S. Kochar
(Member)

Dr. R.K. Sharma
(Member)

Dated: 07/11/2019

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Secretary

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:

Lions Public School, Ashok Vihar Phase-I, Delhi-110052(B-295)

Order of the Committee

Present: Sh. Harish Oberoi, Manager 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 did not submit its reply to the questionnaire or to the reminder. However, it appears that the Education Officer, Zone-11 of the Directorate of Education required the school to submit the relevant documents by issuing a circular dated 27/01/2012, in response to which the school submitted copies of its annual returns filed under Rule 180 of the Delhi School Education Rules, 1973, a copy of the circular issued to the parents regarding revision of fee pursuant to order dated 11/02/2009, a statement of collection of arrear fee and payment of arrear salary to staff consequent to implementation of the recommendation of VI Pay Commission and copies of monthly salary sheets in respect of salaries paid prior to the implementation of the

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recommendations of VI Pay Commission and post such implementation. These documents were forwarded to the Committee by the Education Officer.

Perusal of the circular dated 18/02/2009 issued to the parents regarding revision of fee by the school showed that the school raised a demand of Rs. 2,500 per student towards arrear fee for the period January 2006 to August 2008 and increased the monthly tuition fee by Rs. 200 per month w.e.f. September 2008. Further, as per the statement submitted by the school, it collected a sum of Rs. 35,22,185 towards arrear fee from the students but paid a sum of Rs. 63,84,209 towards arrear salary to the staff. Further, it appeared that the monthly expenditure on salary increased by Rs. 2,75,171 on account of implementation of the recommendations of VI Pay Commission.

Preliminary calculations were made by the Chartered Accountants (CAs) deputed with this Committee by the Directorate of Education for assistance. They provisionally determined that the school had increased more fee than was required to meet its additional expenditure on salary on account of implementation of the recommendations of VI Pay Commission. Provisionally it was determined that such excess recovery amounted to Rs. 29,86,695. However, the Committee observed that the CAs had not taken into consideration the requirement of the school to maintain reasonable reserves for future contingencies or to meet its accrued liabilities of gratuity and leave encashment.

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The Committee issued a notice dated 06/05/2015, requiring the school to furnish details of different components of fee and salaries for the years 2008-09, 2009-10 and 2010-11, duly reconciled with its Income and Expenditure Account. The school was also required to furnish copies of its banks statements in support of its claim of having paid the arrears of VI Pay Commission, the details of its accrued liabilities of gratuity and leave encashment, a statement of the account of its Parent Society as appearing in its books. A revised questionnaire was also issued to the school seeking its response to the queries raised vide questionnaire dated 27/02/2012 and also the relevant 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 complying with the pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583 regarding charging of development fee. The school was also given an opportunity of being heard on 14/05/2015.

Sh. Harsh Oberoi, Manager of the school appeared and stated that the school had not received a notice dated 06/05/2015 issued by the Committee but only received an email from the Committee, which did not contain the format in which the information was to be submitted. He was provided with a copy of the notice and directed to file the reply by 20/05/2015.

The school submitted its response vide its letter dated 19/05/2015. It furnished the information regarding different components of fee and salary for the years 2008-09 to 2010-11, copies of bank

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statement showing payment of arrear salary by direct bank transfer. However, specific reply to the queries raised in the revised questionnaire was not given by the school.

A notice of hearing was issued on 19/09/2017, requiring the school to appear before the Committee on 12/10/2017 and produced its entire fee, salary and accounting records for verification by the Committee.

Sh. Harish Oberoi, Manager of the school appeared and was partly heard. The Committee also examined the records produced by the school and the information furnished by the school vide letter dated 19/05/2015.

Inter alia, the school stated that it had not collected any arrears of the differential development fee for the period 01/09/2008 to 31/03/2009. The school did not have any account of its Parent Society in its books. The school was having a policy with LIC of India on account of gratuity payable to the staff and did not have any liability towards leave encashment.

The Committee, however, noticed that as per the circular dated 18/02/2009 issued by the school to the parents regarding fee hike in pursuance of order dated 11/02/2009, the school decided to increase tuition fee @ Rs. 200 p.m. w.e.f Sept 2008 and development fee @ 10% of the annual tuition fee.

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During the course of hearing however, the Manager of the school submitted that the school increased the fee only w.e.f. 1.4.2009 and not 01/09/2008. However, the Committee noticed that as per the statement giving break up of fee and salary for the year 2008-09 and 2009-10, filed by the school, the school recovered arrears of fee for the period 01/09/2008 to 31/03/2009 also, contrary to what was submitted during the course of hearing. The Committee also noticed that the school had not shown any recovery of arrears of development fee for the period 01/09/2008 to 31/03/2009, although apparently, the same was demanded from the parents. The school was required to provide clarity on this aspect.

Further on going through the details submitted by the school, the Committee observed that while bulk of the arrear salary was paid by the school by direct bank transfers to the accounts of the employees, 7 teachers were paid by individual cheques and all these individual cheques had been encashed from the bank on a single date together. The Manager submitted that the school did not issue any bearer cheques.

The school was accordingly directed to furnish a certificate from the bank indicating the mode of encashment of the individual cheques, by which the arrears were alleged to have been paid to such teachers .

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For Secretary

It appeared from the bank statements, which had been filed by the school, that the regular salary was also paid by the school by means of bearer cheques. Accordingly, a proforma sheet was given to the Manager of the school to indicate as to how much salary was paid by which mode in different months of the years 2008-09 and 2009-10. The school was also directed to submit similar information with regard to the payment of arrears.

The school furnished the details and documents which were required to be furnished. The Committee observed that as per the certificates issued by the bank, it was apparent that seven employees, to whom individual cheques were given for an amount of Rs.59,718 each, were paid by bearer cheques on 15/04/2009. The Committee also observed that even the second installment of arrear payments, the cheques given to these employees were bearer cheques.

The Committee calculated that the total amount of payments towards arrear salary through bearer cheques amounted to Rs.4,18,026 out of arrears paid in 2008-09, and Rs.25,245 out of the arrears paid in 2009-10. The circumstances of payment of arrears to these seven employees and the information furnished by the school in this regard, did not inspire confidence and have not been accepted on the basis of preponderance of probabilities. The Committee, therefore, has decided to exclude such payments from the figure of arrear payments made to the staff.

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The Manager of the school clarified that the school did not recover any arrears of development fee for the period 01/09/2008 to 31/03/2009 but the development fee mentioned in the circular was to be recovered w.e.f. 01/04/2009 only

During the course of hearing it emerged that the Parent Society of the school was also running a pre primary school whose financials were separately maintained. The school was required to furnish the information required by the Committee vide its notice dated 06/05/2015 in respect of the pre primary school also. It was also directed that while giving the details of arrears paid to the staff of the pre primary school, the school would specifically mention whether the same had been paid through direct bank transfer or account payee cheques or bearer cheques/cash. The School was also directed to produce the books of accounts, fee records and salary records of the pre primary school.

The Manager of the school filed copies of Income and Expenditure Accounts and Balance Sheets of the Parent Society i.e. Montessori Education Society for the years 2008-09, 2009-10 & 2010-11. He submitted that this represented the consolidated Balance Sheet of the Senior school as well as the Nursery school and the Society had no other activity, apart from running of these two schools.

He has also filed the fee and salary statement for the two schools in a consolidated manner and again submitted that the

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school had taken a group gratuity policy from LIC and as such the school had no accrued liability on account of gratuity. He further submitted that the school, as a matter of policy, did not pay any salary for encashment of leave, and as such its liability on this account might be considered as nil.

The Committee prepared the following calculation sheet on the basis of the audited financials of its Parent Society, as submitted by the school and also the information furnished by it during the course of hearing and verified by the Committee from the books of accounts of the school:

Statement showing Fund available as on 31.03.2008 with the Parent Society running Lions Public School i.e. Montessori Education Society 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.)
	Current Assets + Investments		
	Cash in hand	212	
	Cash at Bank	1,009,406	
	FDRs with Banks other than Pupil Fund	5,264,866	
	HDFC 8% Taxable Bonds	4,900,000	
	Gupta Iron Steel	3,387	
	M R Steel	2,420	
	J R Traders	3,296	
	R C Jawa	2,781	
	TDS receivable	163,992	11,350,360
Less	*Current Liabilities*		
	Caution Money	657,000	
	Sundry Creditors	17,885	674,885
	Net Current Assets + Investments (Funds Available)		**10,675,475**
Less	**Reserves required to be maintained:**		
	for future contingencies (equivalent to 4 months salary)	4,728,188	
	for accrued liability of Gratuity as on 31.03.2010	-	
	for accrued liability of Leave Encashment as on 31.03.2010	-	4,728,188
	Funds available for implementation of 6th CPC		**5,947,287**
Less			
	Additional Liabilities on implementation of 6th Pay Commission:		
	Arrear of Salary as per 6th Pay Commission 1.1.06 to 31.3.09	6,082,184	
	Incremental Salary for 2009-10 (as per calculation given below)	5,363,147	11,445,331
	Excess / (Short) Fund Before Fee Hike		**(5,498,044)**
Add	**Additional Recovery for 6th Pay Commission:**		
	Recovery of Arrear tuition fee w.e.f 01.01.06 to 31.08.08	2,151,185	
	Recovery of Arrear tuition fee w.e.f 01.09.08 to 31.03.09	1,371,000	
	Incremental fee for 2009-10 (as per calculation given below)	2,677,125	6,199,310
	Excess / (Short) Fund After Fee Hike		**701,266**

Development fee refundable as pre-conditions for charging the same not being fulfilled :	**Rs.**
For the year 2009-10	1,080,070
For the year 2010-11	1,853,642
Total	**2,933,712**
Add: Surplus after implementation of 6th CPC	**701,266**
Total amount refundable	**3,634,978**

Working Notes:

	2008-09	2009-10
Normal/ regular salary & PF	8,821,417	14,184,564
Incremental salary in 2009-10	**5,363,147**	
	2008-09	**2009-10**
Regular Tuition fee	11,449,860	14,126,985
Incremental tuition fee in 2009-10	**2,677,125**	

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For Secretary

Delhi High Court Committee

As would be apparent from the above calculation sheet, the Committee provisionally determined that the school recovered excess fee to the tune of Rs. 7,01,266 on implementation of the recommendations of VI Pay Commission. Further, the school collected Rs. 29,33,712 as development fee in 2009-10 and 2010-11, without fulfilling the necessary preconditions of charging the development fee. Accordingly, the Committee considered that the school ought to refund a total sum of Rs. 36,34,978 to the students. A copy of the above calculation sheet was given to the Manager of the school on 05/03/2018, for rebuttal, if any.

On 06/04/2018, the Manager of the school appeared and submitted contrary to what was submitted earlier, that the school did have some liabilities on account of gratuity payable to the employees, who were not covered under group gratuity policy taken by the school and in fact they had been paid the gratuity on their superannuation in the subsequent years. He further submitted that the premium paid on the group gratuity policy was calculated on the basis of basic salary alone while gratuity was actually payable on the aggregate of basic pay and dearness allowance. He submitted that subsequently the school had made a payment of approximately Rs.27 lacs in 2017 to make up the shortfall. He further submitted that LIC had been requested to provide the figure of the differential gratuity up to 31/03/2011, and this information would take some time. At his

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Delhi High Court Committee For Review of School Fee

request, further time was allowed to the school to make its comprehensive rebuttal.

The school filed a written submission dated 14/05/2018 contending that there were six employees who were not covered by the Group Gratuity Policy taken by the school from LIC of India and the school had an accrued liability of Rs.22,04,029 as gratuity payable to them as on 31/03/2010. Further, the school also filed a statement showing that the fund value of the school with LIC of India as on 31/03/2010 was Rs.14,53,348 as against a liability of Rs.27,48,405. Thus, a sum of Rs.12,95,057 was the unfunded liability of gratuity which the school would have to pay out of its own resources. It was further submitted that the school transferred a sum of Rs.6,06,052 from the development fund for meeting the shortfall in the salary account and as such while recommending the refund of development fee for the year 2010-11, the same ought to be deducted.

The Committee considered the submissions made on behalf of the school in rebuttal to the calculation sheet prepared by it projecting that the school would be required to refund a sum of Rs. 36,34,978.

Although the school initially stated that it had no accrued liability of gratuity as it had taken out a group gratuity policy from LIC to fund its accrued liability on this account, later on the school brought on record that it had an accrued liability of Rs. 22,04,029 to six employees who were not covered by the group gratuity policy.

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Delhi High Court Committee For Review of School Fee

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Another sum of Rs. 12,95,057 was the liability to LIC to bridge the accrued liability of gratuity vis a vis its funded value by way of premia.

The Committee does not wish to hold the initial response of the school on this score against it and is of the view that the calculations made by it need to be moderated to account for the liabilities in respect of which the school brought the information on record at a later stage. If these are taken into calculations, it would be apparent that the accrued liability of gratuity to the uncovered employees and towards LIC amounts to Rs. 34,99,086 as against the provisional determination of refund of Rs. 36,34,978.

In this view of the evidence produced and considered by the Committee, it does not recommend/order any amount to be refunded by the School.

Justice Anil Kumar (R)
(Chairperson)

CA J.S. Kochar
(Member)

Dr. R.K. Sharma
(Member)

Dated26/11/2019

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For Secretary

Delhi High Court Committee * For Review of School Fee *

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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:

Hillwoods Academy, Preet Vihar, Delhi-110092 (B-622)

Order of the Committee

Present: S. Nikhil Goel, Chartered Accountant with Ms. Rita Srivastava, Principal of the school.

Soon after the constitution of this Committee, in a meeting held by the previous Chairperson Justice Anil Dev Singh and the other Members of the Committee, with the officials of the Directorate of Education, it was impressed upon the officials that the Committee would need to examine the annual returns filed by the schools under Rule 180 of the Delhi School Education Rules, 1973 for the years 2006-07 to 2010-11, which was the period covered by the order dated 11/02/2009 issued by the Director of Education for implementation of the recommendations of VI Pay Commission w.e.f. 01/01/2006. Consequently, the Director of Education through its zonal heads, advised the schools to furnish copies of returns filed under Rule 180 to it for onward transmission to this Committee.

However, the school merely furnished copies of its Income & Expenditure Accounts and balance sheets for the years 2008-09, 2009-10 and 2010-11 under cover of its letter dated 08/11/2011 to the Dy. Director of Education (Distt. East). No other statements which were required to be submitted, were furnished by the school. Even the

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Delhi High Court Committee For Review of School Fee

Income & Expenditure Accounts and balance sheets which were submitted were without the annexures giving details of various items.

Without even examining whether the documents submitted by the school were complete, the Dy. Director of Education forwarded the same to the Committee.

Meanwhile, 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 addressed a letter dated 25/05/2012 to the school vide which it was directed to send all the returns which were required to be filed under Rule 180.

Instead of responding to the Committee, the school furnished fee statements for 2008-09, 2009-10 and 2010-11, which were purportedly filed by the school with the Director of Education. The school also furnished copies of its Income and Expenditure Accounts

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Delhi High Court Committee For Review of School Fee

and Balance sheets (again without annexures) for the years 2007-08 to 2010-11, although they were termed as annual returns in the covering letter. The school also furnished print outs of its cash book and details of fee collected from the students. These documents were forwarded by the Director of Education to the Committee. However, the Committee observed that these were not documents which the school had been directed to file.

A revised questionnaire was issued to the school on 20/09/2013, vide which besides the queries contained in the questionnaire dated 27/02/2012, the relevant queries with regard to charging of development fee, its utilisation and maintenance of earmarked development and depreciation reserve funds, in order to examine whether the school was fulfilling the pre conditions laid down by 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 was also required to submit complete audited accounts for the years 2006-07 to 2010-11, statement of its student strength for the years 2006-07 to 2010-11 and copy of the circular issued to the parents demanding increased fees and arrear fees as per order dated 11/02/2009.

The school submitted its reply to the Committee for the first time on 30/09/2013 and enclosed therewith its reply to the revised questionnaire, audited final accounts from 2006-07 to 2010-11,

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Delhi High Court Committee For Review of School Fee

student strength for the year 2006-07 to 2010-11 and a copy of the circular issued to the parents regarding fee hike

As per the reply to the questionnaire submitted by the school,

(a) the school implemented the recommendations of VI Pay Commission w.e.f. 01/01/2006 (sic). However, it enclosed copies of the salary statements for April 2009 and June 2009 in support of its contention. Apparently the actual salary increase took place w.e.f. June 2009.

(b) With regard to payment of arrear salary, the school enclosed a certificate signed by its Principal stating that a sum of Rs. 73,48,947 was paid as arrear to the staff in the financial year 2009-10, Rs. 55,000 in 2010-11 and Rs. 1,83,484 in 2012-13. These arrears were paid for the period January 2006 to March 2009.

(c) With regard to fee hike pursuant to order dated 11/02/2009, it was stated that the fee was hiked w.e.f. 01/04/2009. In addition, the arrears were recovered at the rates prescribed as per the said order.

(d) The school charged development fee in all the five years for which the information was sought. As regards its accounting treatment and maintenance of earmarked reserve funds, a certificate signed by the Principal was enclosed. The certificate reads as follows:

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"TO WHOMSOEVER IT MAY CONCERN

This is to certify that the development fee is treated in the accounts as a revenue receipt and the school has not kept any depreciation reserve fund for the depreciation on assets acquired out of development fee.

The school has not kept in earmarked bank account, or FDRs or investments against depreciation reserve fund and unutilised development fund."

The Committee issued a notice dated 26/05/2015, requiring the school to furnish within 10 days, details of different components of fee and salaries for the years 2008-09, 2009-10 and 2010-11, duly reconciled with its Income and Expenditure Account. The school was also required to furnish copies of its banks statements in support of its claim of having paid the arrears of VI Pay Commission, the details of its accrued liabilities of gratuity and leave encashment, a statement of the account of its parent society as appearing in its books.

The school furnished the required information under cover of its letter dated 03/06/2015. It also mentioned that the school did not have any accrued liabilities of gratuity/leave encashment.

A notice of hearing was issued to the school on 27/12/2016 requiring it to appear before the Committee on 24/01/2017 and produce its books of accounts, fee and salary records for the years 2006-07 to 2010-11. The hearing was postponed to 09/03/2017 on account of certain exigencies. On this date, Ms. Richa Bhatia and Ms. Vinita Sharma, Office Executives of the school appeared.

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Delhi High Court Committee for Review of School Fee

The Committee examined the fee and salary statement filed by the school in response to the notice dated 26/05/2015 and observed that it appeared to be ex-facie wrong as the regular tuition fee recovered by the school in 2009-10 as compared to 2008-09 was more than five times. The representatives who appeared for the school were unable to clarify the position. Another opportunity was given to the school to file complete and correct information as required vide notice dated 26/05/2015.

The school filed revised fee and salary statement under cover of its letter dated 21/03/2017.

On 10/04/2017, the Committee examined the revised statement filed by the school. It observed that the revised statement showed the revisions in the figures of arrear tuition fee and regular tuition fee recovered during the year 2009-10 only. The issue of apparent abnormal hike in the aggregate tuition fee recovered in 2009-10 still had not been addressed. The authorized representative appearing for the school submitted that the regular tuition fee for the year 2009-10 was shown at a higher side as the recovery under certain other fee heads was inadvertently added to the tuition fee account.

However, neither the details of the so called inadvertent increase were given nor the school produced its books of account before the Committee. The statement of fee and salary filed earlier with the Committee on 03/06/2015 showed the fee recovered by the junior

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Delhi High Court Committee

school, besides the main school. But the same was not shown in the revised statement. The authorized representative submitted that although the total arrear collection of the school ought to have been Rs. 1,14,15,900, in actual fact, it was able to recover only 87,51,734.

With regard to payment of arrear salary, the Committee observed that the school had furnished copies of the bank statements and the instruction sheets to the bank for payment thereof. All the arrear payments were claimed to have been made through direct bank transfer and this claim was supported by copies of bank statements which were placed on record by the school. The authorized representative also submitted that the regular salary was also paid through direct bank transfers only and month wise sheet showing such payment was filed and the bank statements to show the relevant debits were produced for verification of the Committee.

The Committee noticed that the school, in its submissions dated 03/06/2015, had stated that there were no accrued liability of gratuity and leave encashment as on 31/03/2010. However during the course of hearing, it was submitted that the school may be given some time to furnish the details of such liabilities which definitely existed as the school was 35 years old.

With regard to development fee, the school submitted that it was treated as a revenue income in its books and no earmarked development fund or depreciation fund are maintained. This was the same position which the school had taken earlier when the Principal submitted a certificate which has been reproduced above.

The Committee noticed that the school recovered a sum of Rs. 19,05,821 as development fee in 2009-10 while in the year 2010-11, it recovered a sum of Rs. 15,21,147 on this account.

With regard to issuance of circular regarding fee hike and arrear fee recovered by the school pursuant to order dated 11/02/2009, the authorized representatives of the school submitted that although the fee was increased w.e.f. 01/09/2008 in accordance with the aforesaid order but no circular was issued to the students to that effect. However, the parents were intimated of the increased fee by issuing supplementary fee bills which were raised on 21/09/2009, copies of which were placed on record.

The Committee observed that as per the supplementary fee bills, the tuition fee was increased by Rs.300 p.m. for classes 1st to 10th and Rs. 400 p.m. for class 11th & 12th, although the rate mentioned in the supplementary bills was Rs.300 p.m. This appeared to be a typographical error as the school was entitled to increase the fee @ Rs.400 p.m. for these classes. Besides, the school also recovered lump sum fee @ Rs. 3000 per student for classes 1st to 10th & Rs. 3500 for classes 11th & 12th . The supplementary fee bills did not mention about any increase in development fee. The authorized

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Delhi High Court Committee For Review of School Fee

representatives of the school submitted that there was no increase in development fee w.e.f. 01/09/2008.

The school was directed to file a revised statement of fee and salary incorporating therein the figures of junior school as well and also to produce its books of accounts and fee receipts before the Committee for verification of its claim that in the year 2008-09 that some tuition fee was wrongly booked under other heads.

On the next date of hearing, the school filed an application for adjournment. The Committee noticed that the school had not produced its books of accounts and the same were also not produced during the last two hearings. Accordingly, a last opportunity was given to the school to furnish the required details and produce its books of accounts on 18/05/2017. During the course of hearing on this date, the authorized representative who appeared for the school, suddenly took ill. Accordingly, the matter was not taken up for hearing and was adjourned to 7th June 2017.

On this date, Sh. Nikhil Goel, Chartered Accountant appeared with Ms. Ranjana S. Rautela, Sh. Ashutosh, and Ms. Richa Bhatia, employees of the school.

The school filed a revised fee and salary statement, consolidating the figures of the junior as well as senior wing of the school, a calculation showing the liability of gratuity as on

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31/03/2010 to be Rs. 46,03,193. The school also produced its book of accounts and filed written submissions.

In its written submission, the school stated that both the senior and junior wings are just a symbolic bifurcation done by the Chartered Accountant but the school management was not having any specific bifurcation, as both the schools are running from the same building.

The Committee examined this contention of the school and found the same to be preposterous .

The Committee observed that the school files only the balance sheet of its senior wing with the Department of Education as part of its returns filed under Rule 180 of Delhi School Education Act, 1973. These returns were transmitted by the Directorate of Education to this Committee for examining the issue of fee hike as per the mandate of the Hon'ble Delhi High Court in WP (C) 7777 of 2009.

Even when specific directions were given by the Committee through the Dy. Directors of respective districts for submission of documents to the Committee including the audited financials. The school merely furnished copies of the covering letters of the returns filed by the school under Rule 180 for different years. The covering letters did not mention the details of documents which were filed by the school. It was only during course of hearing that the Committee noticed the account of the junior school in the balance sheet of the

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Delhi High Court Committee

senior school and it was revealed that the school was preparing a separate balance sheet of the junior school. The Committee finds that this was being done with definite purpose of hiding the true state of affairs of the school. This would be apparent from the fact that in the junior wing, the school had a strength of 240 students out of which only 213 were fee paying students. The school charged annual charges (reflected as activity charges) in the audited financials @ Rs. 300 per month i.e. Rs. 3,600 for the whole year. Going by the student strength, the activity charges ought to have been around Rs. 7,66,800 in the junior wing. However, the audited Income & Expenditure account of the junior wing showed a receipt of Rs. 28,44,800 as activity charges.

When asked to explain this apparent anomaly, the authorized representatives of the school admitted that a part of the activity charges received from the students of the senior wing were accounted for in the books of junior wing. Similar was the position in the previous years as well as the subsequent years.

The Committee has perused the audited balance sheets of the senior as well as junior wing of the school in order to examine the funds that were available with the school prior to the decision to hike the fee was taken.

From the audited balance sheets as on 31/03/2008, the following position manifested itself.

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Delhi High Court Committee For Review of School Fee

	Particulars	Junior wing	Senior wing	Total
	Current Assets + Investments	–		
	Cash in Hand	11,427	31,154	42,581
	Bank Balances	2,066,748	5,901,747	7,968,495
	FDRs with banks	3,712,260	38,693,616	42,405,876
	Loans and advances		37,000	37,000
	Inter unit balance	1,000,000	(100,000)	900,000
	Loan to Harvard India Society (the Parent Society of the school)	4,274,693		4,274,693
	Total Current Assets + Investments	**11,065,128**	**44,563,517**	**55,628,645**
Less	*Current Liabilities*			
	Advance Fee	6,894,224	18,520,669	25,414,893
	TDS Payable	4,401	51,530	55,931
	Salary payable	162,499	696,188	858,687
	Provident Fund payable	7,180	66,620	73,800
	Caution Money	54,250	360,998	415,248
	Total Current Liabilities	**7,122,554**	**19,696,005**	**26,818,559**
	Net Current Assets + Investments (Funds available)	**3,942,574**	**24,867,512**	**28,810,086**

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Delhi High Court Committee ★ For Review of School Fee ★

As per the above statement drawn up from the audited balance sheets of the junior and the senior school, the school had available with it a sum of Rs. 2,88,10,086 as on 31/03/2008 i.e. before the fee hike was effected by the school w.e.f. 01/09/2008.

The Committee observed that the balance sheet of the school as on 31/03/2008 showed Sundry Creditors amounting to Rs. 48,17,223 but on examination of the books of accounts for the year 2008-09 by the Committee, the Committee found that out of the aforesaid amount, a sum of Rs. 47,18,565 alongwith a sum of Rs. 78,483 which was shown as Expenses Payable had been adjusted by transferring the same to the following fee accounts:

Bus Fees	Rs. 20.00 lacs
Development Fees	Rs. 10.00 Lacs
Examination Fees	Rs. 10.00 Lacs
Tuition Fee	Rs. 7,97,048.

Thus it was apparent that these were fictitious liabilities created by the school, which had been taken to the revenue account in 2009-10. Therefore, the Committee did not consider the aforesaid sum of Rs. 47,18,565 as current liabilities of the school in the year 2007-08 and consequently, the same has not been taken into consideration while calculating the funds available with the school.

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Delhi High Court Committee For Review of School Fee

To the aforesaid extent, the fee for the year 2008-09, as shown by the school under different heads, had been exaggerated by the school and was modulated for the purpose making the relevant calculations. Accordingly the fee for the year 2008-09 under different heads that was considered by the Committee is as follows:

Head of Fee	**Fee received as claimed by the school**	**Fee actually received**
Normal Tuition Fee	3,00,89,601	2,92,92,553
Bus Fee	61,94,038	41,94,038
Development Fee	33,06,843	23,06,843
Examination Fees	12,78,225	2,78,225

Perusal of the books of accounts of the school for the years 2008-09, 2009-10 and 2010-11 showed that the school had transferred funds to its Parent Society to the tune of Rs. 59,42,113 upto 31/03/2009 from the junior school. In the year 2010-11, a further sum of Rs. 5,00,000 was transferred to the Society. From the senior wing, the school had transferred sum of Rs. 64,000 in 2009-10 and a further sum of Rs. 13,88,016 in 2010-11. Thus, the school had transferred a total sum of Rs. 78,94,129 to its Parent Society upto March 2011.

In order to examine the ultimate utilisation of funds by the Parent Society, the school was required to produce the audited financials of the Parent Society and also to produce its books of accounts. The school was given an opportunity to rebut the

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Delhi High Court Committee

preliminary calculations of funds available with the school as on 31/03/2008, as provisionally determined supra.

However, on the next date of hearing i.e. 11/07/2017, the school sought adjournment on account of pre occupation of its Chartered Accountant. Neither the audited financials of the Parent Society nor its books of accounts were produced.

The matter could not be concluded on account of the expiry of the term of the Committee in the mean time. After the term of the Committee was extended by the Hon'ble Delhi High Court, the hearing was fixed again for 11/09/2019. Again the school sought adjournment.

In view of the repeated failure of the school to produce the books of accounts and audited financials of its Parent Society, the hearing was closed. However, the Committee received a letter from the Principal of the school on 13/09/2019 seeking a personal hearing as there was some misunderstanding on part of the school regarding the directions given by the Committee. Accordingly another opportunity was given to the school to appear on 16/09/2019 and comply with the directions of the Committee.

Ms. Rita Srivastava, Principal of the school appeared with Sh. Nikhil Goel, Chartered Accountant, but did not produce the Receipt and Payment Account of the Parent society or its books of accounts

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Delhi High Court Committee For Review of School Fee

despite the fact that the hearing was refixed on her own application dated 13/09/2019.

The Principal of the School submitted that there was some misunderstanding regarding producing of records. She was directed to go through the orders and the matter was posted for hearing on 18/09/2019. It was made clear to her that no further adjournment would be granted under any circumstances.

On the next date, the school filed copies of the audited financials of its parent society i.e. Harvard India Society/Hillwood India Society for the years 2006-07 to 2010-11.

On perusal of the audited financials of the Parent Society, the Committee observed that the funds transferred from the school to its Parent Society, had been invested for purchase of land at Greater Noida and partially for construction of building at Greater Noida for establishing the school. A sum of Rs.72,90,551 had been invested in land in Greater Noida.

The balance sheet of the Parent society also revealed that the school had collected large amount of donations. The school was required to file a detail of the persons from whom the donations had been received by the Parent Society from 2006-07 to 2010-11 and also to produce the copies of the receipts issued to the donors along with the ledger account of donations received.

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Delhi High Court Committee

A submission was made by the Principal of the School that the school was permitted to invest its savings for expansion and establishment of other recognized schools and as such there was no infirmity in investing its saving for the establishment of school at Greater Noida. It was further submitted that there was no transfer of funds from the school to the society for establishment of school at Greater Noida. The funds had gone directly from the school fund for establishment of school at Greater Noida. Only the accounting entries have been routed through the Parent Society.

However, no rebuttal to the provisional determination of funds made by the Committee was made by the school.

On the next date, the school filed details of donation received by Parents Society for the years 2006 to 2010-11 along with copies of the letter of the donors. It was submitted that donations were not linked with the admissions of the students but were received from unconnected persons including some business houses. The Committee noticed that the position of funds available with the school as on 31/03/2008 were determined by it and recorded long back in its order dated 07/06/2017. The school was given an opportunity to rebut the preliminary findings made by the Committee. However, in none of the subsequent hearings the school rebutted any of the findings. Accordingly, the Committee considered that the school had nothing to say in rebuttal and accepted the preliminary determinations made by the Committee. However, at the request of

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the Principal of the School, liberty was given to the school to file written submissions within three days in rebuttal of the findings of the Committee as recorded on various dates of hearing.

The school filed its written submissions dated 22/10/2019, pointing out an error in the calculation of funds available with the school as on 31st March 2008. It was submitted that the amount of inter unit balances, as per the balance sheet of the senior wing of the school is minus Rs. 10,00,000 while the Committee had taken it as minus Rs. 1,00,000.

The Committee verified the position from the balance sheet of the school and concurred with the contention raised by the school.

It was further contended in the written submissions that the school was more than 30 years old and the total funds available, as worked out by the Committee was approximately Rs. 2.88 crores, which were inclusive of the funds required by the school to meet its accrued liabilities of gratuity and leave encashment besides keeping in reserve a reasonable fund for meeting any contingency. It was submitted that while making the final determinations, the Committee should take into account these factors.

These contentions raised on behalf of the school were considered to be valid and the Committee agreed to make appropriate adjustments on these accounts while determining the funds which

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could have been utilised for implementation of the recommendations of VI Pay Commission.

It was further submitted that the school required funds for future development, and an appropriate provision should be made therefor, while calculating the funds available with the school.

This contention was rejected as the order dated 11/02/2009 issued by the Director of Education stipulated in no unclear terms that fee hike was not mandatory for implementation of the recommendations of 6th Pay Commission and the school must first of all utilize its existing reserves for meeting the additional expenditure for implementation of the recommendations of 6th Pay Commission. Payment of salaries and arrears as per the said recommendations had to have precedence over the plans of the school for future development.

One more contention of the school raised during the course of previous hearings, needs to be dealt with. It was contended that the school had not transferred any funds to its Parent Society but had invested in buying land and constructing a building for another school. Only the accounting entries were routed through its Parent Society. It was submitted that the school could legitimately utilise its savings for constructing or developing another school under the same Management.

Delhi High Court Committee

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The admitted position in this regard is that the other school in which funds of this school were invested was situated in Greater Noida, Uttar Pradesh. Clause (c) of the proviso to sub rule (1) of Rule 177 of Delhi School Education Rules, 1973 provides that the savings from the fee collected by the school can be utilised for "*assisting any other school or educational institution, not being a college, under the management of the same society or trust by which the first mentioned school is run*".

The moot point is whether this applies to a school which is located outside the Union Territory of Delhi to which alone the applicability of the Delhi School Education Act, 1973 (the Act) under which the rules have been framed, extends.

Admittedly, the assistance was given by the school to another school and not to any other educational institution. In this context, it becomes necessary to examine the scheme of the Act and the its purpose.

The preamble to the Act says that it is "*An Act to provide for better organization and development of school education in the Union Territory of Delhi and for matters connected therewith or incidental thereto.*"

Vide sub-section (2) to Section 1 of the Act, the Act extends to the whole of Union Territory of Delhi.

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"School" is defined by section 2 (u) as follows:

"School includes a pre-primary, primary, middle and higher secondary school, and also includes any other institution which imparts education or training below the degree level, but does not include an institution which imparts technical education."

Section 3 of the Act provides that the 'Administrator' may regulate education in all schools of Delhi in accordance with the provisions of this Act and the Rules made thereunder and may establish and maintain any school in Delhi or permit any person or local authority to establish and maintain any school in Delhi. The term 'Administrator' is defined under section 2(a) of the Act as the administrator of the Union Territory of Delhi appointed by the President under Article 239 of the Constitution.

Section 4 of the Act provides that the 'appropriate authority' may recognize any private school. 'Appropriate authority' is defined under Section 2(e) of the Act to mean,-

(i) *In the case of a school recognised or to be recognised by an authority designated or sponsored by the Central Government, that authority;*
(ii) *In the case of a school recognised or to be recognised by the Delhi Administration, the Administrator or any other officer authorized by him in this behalf;*
(iii) *In the case of a school recognised or to be recognised by the Municipal Corporation of Delhi, that Corporation;*
(iv) *In the case of any other school, the Administrator or any other officer authorized by him in this behalf;*

It is clear from the aforesaid provisions of law that this statute i.e. the Delhi School Education Act, 1973, was enacted to regulate the establishment and functioning of the schools situated in the Union

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Delhi High Court Committee

Territory of Delhi only. Therefore any reference to a 'school' anywhere in the Act or the Rules framed thereunder i.e. the Delhi School Education Rules, 1973, would refer to a school situated in the Union Territory of Delhi alone. A school which is situated in Greater Noida beyond the boundaries of the Union Territory of Delhi is not covered under Rule 177, as contended by the school.

The Committee is, therefore, of the view that the school was not entitled to utilise its savings for establishing a school in Greater Noida, as contended by it and illegally diverted funds belonging to this school to the tune of Rs. 78,94,129 and the same have to be considered as funds available with the school.

Determinations:

Having dealt with all the contentions raised on behalf of the school, the Committee makes the following determinations:

(A) Funds available as on 31/03/2008

Funds provisionally determined as per supra	2,88,10,086
Less: Mistake in taking Inter unit balances (10,00,000 – 1,00,000)	9,00,000
Funds available	**2,79,10,086**

(B) **Funds transferred to school at Greater Noida Rs. 78,94,129**

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Out of the above, the Committee has determined that the school needed to keep a sum of Rs. **1,60,40,065** in reserve to meet its accrued liabilities of gratuity and for any unforeseen contingency. The school, thus had a sum of Rs. 1,97,64,150 available with it which could have been utilised for meeting its additional expenditure on account of implementation of the recommendations of VI Pay Commission.

The total additional expenditure that befell on the school on account of implementation of the recommendations of VI Pay Commission was Rs. **2,10,08,167.** Thus the school was in deficit to the tune of **Rs. 12,44,017** after implementation of the VI Pay Commission which it needed to bridge by hiking the fee in terms of order dated 11/02/2009 of the Director of Education.

However, the school utilised this order to generate an additional revenue of **Rs. 5,13,49,074,** which is in excess of its requirements by **Rs. 5,01,05,057.**

The Committee is of the view that the school ought to refund the aforesaid sum of Rs. 5,01,05,057 along with interest @ 9% per annum from the date of collection to the date of refund. Additionally, the school recovered a sum of Rs. 34,26,968 as development fee in the years 2009-10 and 2010-11, pursuant to order dated 11/02/2009 of the Director of Education, without admittedly fulfilling the pre conditions prescribed by the Hon'ble

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For Secretary

Delhi High Court Committee For Review of School Fee

Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583. The school ought to refund the aforesaid sum of Rs. 34,26,968 apart from the Rs. 5,01,05,057 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: 28/11/2019

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For Secretary

Delhi High Court Commission For Review of School Fee

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

CAUSE LIST FOR OCTOBER 2019

Cause List for Thursday, 3rd October 2019

S. No.	Cat. No.	School Name & Address
1	B-356	Notre Dame School, Badarpur
2	B-488	Queen Mary's School, Sect.25, Rohini
3	414	Jindal Public School, Dashrath Puri

Cause List for Friday, 4th October 2019

S. No.	Cat. No.	School Name & Address
1	B-148	Venkateshwar International School, Dwarka
2	B-492	G.D. Goenka Public School, Sector-22, Rohini
3	B-639	Nutan Vidya Mandir, Dilshad Garden

Cause List for Monday, 14th October 2019

S. No.	Cat. No.	School Name & Address
1	B-95	Modern Convent School, Dwarka
2	B-684	Lovely Public School, Priya darshini Vihar
3	B-286	Mount Abu Public School, Sect.5, Rohini

Cause List for Tuesday, 15th October 2019

S. No.	Cat. No.	School Name & Address
1	B-151	G D Goenka Public School, Vasant Kunj
2	B-424	Pragati Public School, Dwarka
3	B-492	G.D. Goenka Public School, Sector-22, Rohini

Cause List for Wednesday, 16th October 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
3	B-95	Modern Convent School, Dwarka

Cause List for Friday, 18th October 2019

S. No.	Cat. No.	School Name & Address
1	B-622	Hillwood Public School, Preet Vihar
2	B-574	Manav Bharti India Intl. School, Panchsheel Park
3	B-151	G D Goenka Public School, Vasant Kunj

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for Secretary

Delhi High Court Committee for Review of School Fee

Cause List for Monday, 21st October 2019

S. No.	Cat. No.	School Name & Address
1	B-640	The Srijan School, North Model Town
2	B-639	Nutan Vidya Mandir, Dilshad Garden
3	B-574	Manav Bharti India Intl. School, Panchsheel Park
4	B-151	G D Goenka Public School, Vasant Kunj

Cause List for Tuesday, 22nd October 2019

S. No.	Cat. No.	School Name & Address
1	B-148	Venkateshwar International School, Dwarka
2	B-596	Vikas Bharti Public School, Rohini
3	B-684	Lovely Public School, Priya darshini Vihar
4	B-286	Mount Abu Public School, Sect.5, Rohini
5	B-120	The Heritage School, Vasant Kunj
6	B-60	The Heritage School, Sector-23, Rohini
7	B-574	Manav Bharti India Intl. School, Panchsheel Park

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

CAUSE LIST FOR NOVEMBER 2019

Cause List for Thursday, 07th November 2019

S. No.	Cat. No.	School Name & Address
1	B-151	G D Goenka Public School, Vasant Kunj
2	B-95	Modern Convent School, Dwarka

Cause List for Friday, 15th November 2019

S. No.	Cat. No.	School Name & Address
1	B-640	The Srijan School, North Model Town

Cause List for Thursday, 21st November 2019

S. No.	Cat. No.	School Name & Address
1	B-639	Nutan Vidya Mandir, Dilshad Garden
2	B-596	Vikas Bharti Public School, Rohini

Cause List for Friday, 22nd November 2019

S. No.	Cat. No.	School Name & Address
1	B-148	Venkateshwar International School, Dwarka

Cause List for Monday, 25th November 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
3	B-684	Lovely Public School, Priya darshini Vihar
4	B-286	Mount Abu Public School, Sect.5, Rohini

Cause List for Tuesday, 26th November 2019

S. No.	Cat. No.	School Name & Address
1	B-682	Hillwood Academy, Preet Vihar
2	B-295	Lions Public School, Ashok Vihar

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For
Secretary

Delhi High Court Committee for Review of School Fee

Cause List for Thursday, 28th November 2019

S. No.	Cat. No.	School Name & Address
1	B-640	The Srijan School, North Model Town
2	B-120	The Heritage School, Vasant Kunj
3	B-682	Hillwood Academy, Preet Vihar

Cause List for Friday, 29th November 2019

S. No.	Cat. No.	School Name & Address
1	B-151	G D Goenka Public School, Vasant Kunj
2	B-389	BGS International Public School, Dwarka

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Delhi High Court Committee

03/10/2019

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B-356

Norte Dame School, Badarpur, New Delhi

Present: Shri Sunil Thomas A.O and Shri J.A. Martins C.A. of the School.

The matter was re-fixed in order to seek certain clarifications from the school on the written submissions dated 23.03.2017 filed by it. The issues have been clarified by the learned authorized representative appearing for the school. The jist of submissions is as follows:-

1. While there is no error in the calculation of surplus of Rs. 1,50,8671 determined by the Committee in its calculation sheet on the existing reserves of the school ought not to have been considered as available for meeting the additional expenditure on account of implementation of 6th Pay Commission. Hence Rule 177 of the Delhi School Education Rules provide for maintenance of reasonable reserve fund of not been less than 10% of the savings calculated in the manner provided therein. The school building is about 30 years old and there is urgent need of refurbishment and renovation. The reserves are being maintained by the school for this purpose.

2. As required vide para 2 of order dated 11.02.2009, the school did explore the possibility of utilizing the existing reserve to meet the shortfall in payment of salaries on implementation of recommendation of 6th Pay Commission. However, in view of the requirement of the school to renovate its building, the same was not considered feasible.

3. The school is a minority institution protected by Article 30 of the Constitution of India and thus the fee hike effected by the school cannot be questioned. In this connection, the learned authorized representative rely on the single bench judgement of Hon'ble High Court of Delhi in the WPC 13546 of 2018.

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For Secretary

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03/10/2019

4. The school was complying with the pre-conditions for charging development fee and as such the same may not be ordered to be refunded. Further the development fee for the period 2009-10 that was received by the school amounting to Rs. 35,70,690 and not Rs. 37,95,400 which has been taken by the Committee in its calculation sheet.

Argument heard. Recommendations ~~resolved.~~ reserved.

Dr. R.K. SHARMA
MEMBER

J.S.KOCHAR
MEMBER

JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

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Secretary

04/10/2019

B-148

Venkateshwar Int. School, Dwarka, New Delhi

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

Based on the submissions made by the school after the matter was fixed for re-hearing, The Committee has prepared a fresh calculation sheet in which a comprehensive calculations with regard to diversion of school fee for incurring capital expenditure have been made particularly taking into account the submissions made by the school, The purchase of buses and repayment of loans taken for that purpose have been funded from transport fee received by the school. A copy of the revised calculation has been furnished to the authorized representative appearing for the school for its response. It is desirable that a consolidated response on all the issues on which the school disagrees with the calculation made by the Committee be submitted. For this purpose the matter is adjourned to 22nd October 2019 at 11.00 a.m.

Dr. R.K. SHARMA	**J.S.KOCHAR**	**JUSTICE ANIL KUMAR (Retd.)**
MEMBER	**MEMBER**	**CHAIRPERSON**

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Fr Secretary

04/10/2019

B-492

G.D. Goenka Public School, Rohini, Delhi

Present: Shri Manu RG Luthra, CA, Shri Vipul Garg, Chairman and Shri Deepak Arora, Accounts Officer of the School.

After arguing for some time the learned authorized representative appearing for the school seeks some more time to prepare the chart showing net inflow/outflow on capital account giving bifurcation of the capital payments met out of transport fee and those met from the other capital receipts. The request of the authorized representative is allowed. The matter will come up for further hearing on 15th October 2019 at 11.00 am.

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

J.S. KOCHAR **MEMBER**

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

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Secretary

04/10/2019

B-639

Nutan Vidya Mandir, Dilshad Garden, Delhi

Present: Shri Pramod Kumar Singhal, Accountant, Shri Rajkumar, Assistant Accountant and Shri Devendra Kumar Sharma, Advocate of the School.

The school has filed statement showing that it has now paid arrears of salary to the tune of Rs. 14,88,543 i.e. to the extent it collected the arrear fee from the students. The school has also filed a copy of its bank statement with Corporation Bank to show that the cheques paid towards arrear salary have been encashed from its bank accounts. On perusal of the same, the Committee observes that all the cheques have been paid either on 28.08.2019 or on 29.08.2019. It is not discernable from the bank statement as to whether the cheques were bearer in nature or were account payee. It is submitted that the regular salary is paid by the school by direct transfers to the accounts of the employees. The school will file a certificate from the Corporation Bank which would indicate whether all these cheques were bearer in nature or were account payee.

The Committee has gone through the previous submissions made by the school and finds that the submissions made on various dates are inconsistent. Accordingly, the school is directed to produce its books of accounts for the years 2006-07 to 2010-11 in a laptop as the same are reported to have been maintained in tally software. The needful will be done on 21st October 2019 at 11.00 am.

Dr. R.K. SHARMA	**J.S.KOCHAR**	**JUSTICE ANIL KUMAR (Retd.)**
MEMBER	**MEMBER**	**CHAIRPERSON**

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Secretary

14/10/2019

B-95

Modern Convent School, Dwarka, Delhi

Present: Shri Manu RG Luthra, CA and Ms Sheetal Mann, Principal of the School.

The school has filed written submission dated 14.10.2019 along with which a computation sheet of capital inflows and outflows has been filed and based on that it is submitted that there was in fact no diversion of fee for incurring capital expenditure.

The Committee notes that the on the resources side the school has taken credit of savings under Rule 177 for the year 2006-07 to 2009-10 which amounts to Rs. 3,36,4,253. The Committee notices that the budget for the year 2006-07 which have been filed along with the annual returns for 2005-06 is not on record. The school is directed to furnish the same on the next date of hearing. The matter is adjourned to 16.10.2019 at 11.00 am.

Dr. R.K. SHARMA **MEMBER**	**J.S.KOCHAR** **MEMBER**	**JUSTICE ANIL KUMAR (Retd.)** **CHAIRPERSON**

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Secretary

Delhi High Court Committee

14/10/2019

B-684

Lovely Public School, Priya darshni Vihar Delhi

Present: Shri Saurabh Malhotra, CA, Shri Puneet Batra, Advocate and Ms. Monika, Accounts Officer of the School.

The school seeks to file a set of statements showing yearwise accumulation of depreciation reserve fund from 2008-09 to 2018-19 and contends that the school has since earmarked the entire amount of depreciation reserve fund in an account with Axis Bank. However, the Committee notices that the said set of statements does not indicate the amount of development fee recovered by the school in the respective years vis-à-vis the amount utilized for permitted capital expenditure. The depreciation reserve calculations are also sought to be filed only for three years i.e. 2008-09 to 2010-11.

Since it is not possible to ascertain whether the entire amount of unutilized development fee and depreciation reserve fund on assets acquired out of development fund have been earmarked or not. The learned counsel appearing for the school submits that he will file a fresh set of statements to take care of these aspects. The matter is accordingly adjourned to 22nd October 2019 at 11.00 am.

Dr. R.K. SHARMA	**J.S.KOCHAR**	**JUSTICE ANIL KUMAR (Retd.)**
MEMBER	**MEMBER**	**CHAIRPERSON**

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For Secretary

Delhi High Court Committee

14/10/2019

B-286

Mount Abu Public School, Sec-5 Rohini, Delhi

Present: Shri Puneet Batra, Advocate and Shri Bharat Arora, Treasurer of the School.

The school has filed written submissions dated 10.10.2019 giving details of increase in salaries (exclusive of arrears) in the year 2009-10 vis-a vis those paid for the year 2008-09 to show the quantum of additional expenditure incurred by the school on implementation of recommendation of 6th Pay Commission. On perusal of the details filed the Committee observes that the increase in salary in the year 2009-10 was in some cases more than even 100%. In other cases also the increase was to the tune of 80 to 90%. The Learned counsel appearing for the school submits that figures given are on the basis of actual records of the school. However, the reason for such phenomenal increase in 2009-10 after implementation of recommendations of 6th Pay Commission have not been given when on an average the implementation of the recommendations of 6th Pay Commission by the school resulted in an increase of 40 to 50% of salaries.

No justification has been provided for a mere 10% increase in the total collection of tuition fee in the year 2009-10,when the fee that was hiked by the school pursuant to order dated 11.02.2009 of Directorate of Education was about 25% besides there being an increase of about 10%. The Learned counsel appearing for the school submits that the school caters to the students coming from the lower strata of the society and there is a high incident of fee defaulters amongst the students. If that be so the defaulters would be in both the years 2008-09 and that should not affect the figure of incremental fee of 2009-10 alone. As recorded in the proceeding sheet dated 12.01.2018 the school accounts for the fee in its books of accounts on gross basis without any break up fee collected under different heads. The income and expenditure account of the school for the two years i.e. 2008-09 and 2009-10 shows the gross fee receipts by the school as follows:-

Year	Gross Fee	Arrears	Net fee for the year
2008-09	3,77,70,318	28,55,261	3,49,15,057
2009-10	3,75,49,546	15,59,466	3,59,90.080
Increase in 2009-10			10,75,023
Percentage increase in 2009-10			3.08%

The school did not produce the daily collection register which it claimed would have given the break up of fee under different heads as it claimed that it was stolen on 21.07.2018 i.e. during the course of hearings before this Committee.

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Secretary

14/10/2019

The total tuition fee that the school would have recovered based on its students strength in the years 2008-09 and 2009-10 and the fee schedules of the school for these two years is as follows:-

Tuition fee recoverable as per Students strength					
2008-09					
Class	Total No. of Students	EWS & Concession Students	Net Fee Paying Students	Monthly Tuition Fee	Total Monthly Fee Recoverable
PP	160	21	139	1500	208,500
I	125	18	107	1320	141,240
II	156	19	137	1295	177,415
III	155	27	128	1295	165,760
IV	133	25	108	1295	139,860
V	145	19	126	1295	163,170
VI	165	21	144	1340	192,960
VII	125	27	98	1340	131,320
VIII	137	21	116	1340	155,440
IX	159	19	140	1375	192,500
X	127	17	110	1525	167,750
XI	160	10	150	1850	277,500
XII	107	8	99	1850	183,150
Total	**1854**	**252**	**1602**		**2,296,565**

Annual Tuition Fee in 2008-09 **27,558,780**

Tuition fee recoverable as per Students strength					
2009-10					
Class	Total No. of Students	EWS & Concession Students	Net Fee Paying Students	Monthly Tuition Fee	Total Monthly Fee Recoverable
PP	143	21	122	1800	219,600
I	187	26	161	1620	260,820
II	129	23	106	1620	171,720
III	159	35	124	1595	197,780
IV	162	26	136	1595	216,920
V	140	30	110	1595	175,450
VI	157	19	138	1640	226,320
VII	160	27	133	1640	218,120
VIII	134	25	109	1640	178,760
IX	207	24	183	1675	306,525
X	147	24	123	1925	236,775
XI	176	26	150	2250	337,500
XII	144	12	132	2250	297,000
Total	**2045**	**318**	**1727**		**3,043,290**

Annual Tuition Fee in 2009-10 **36,519,480**

Incremental Tuition fee in 2009-10 **8,960,700**

TRUE COPY

Secretary

Delhi High Court Committee

14/10/2019

In view of the inconsistencies noticed above, the incremental tuition fee for the period 2009-10 as worked out by taking the students strength and the monthly tuition fee paid by them amounting to Rs.89,60,700 would be taken for the purpose of making the relevant calculations. The effect of the students in default of fee would be negligible in the amount of incremental tuition fee as the default would be there in both the years i.e. 2008-09 and 2009-10. The Committee has to resort to this method of calculating the incremental tuition fee as the school has not been able to substantiate the break-up which has been given by it neither does such a break-up appear in its books of accounts.

Calculation Sheet to be prepared. The matter is adjourned to 22nd October 2019 at 11:00 AM.

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

J.S.KOCHAR **MEMBER**

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

TRUE COPY

For Secretary

Delhi High Court Committee

15/10/2019

000162

B-151

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

Present: Shri Jitendra Singh, Sr. Accountant of the School.

The school has filed an application seeking adjournment on the ground of non availability of its counsel today. As requested the matter is adjourned to 18th October 2019 at 11.00 am.

Dr. R.K. SHARMA
MEMBER

J.S.KOCHAR
MEMBER

JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

18/10/19

TRUE COPY

For Secretary

Delhi High Court Committee

15/10/2019

000163

B-424

Pragati Public School, Dwarka Delhi

Present: Shri N.K. Mahajan, Consultant CA, Shri Anuj Mahajan Consultant CA, Shri Rajiv Malik, authorized representative, Shri Inder Pal Singh, Accounts Officer of the School.

The authorized representatives appearing for the school have been heard on the written submissions dated 20.09.2019 filed by the school. It is submitted that there was no diversion of fee revenues for incurring capital expenditure as the purchase of fixed assets by the school out of the fee is permitted under Rule 177(2) of Delhi School Education Rules. It is further submitted that out of the total repayment of transport loan amounts to Rs. 60,51,647, a sum of Rs. 16,64,391 came out of the surplus generated out of the transport fee. On the resources side the school has accounted for a sum of Rs. 68,65,413 which was received as development fee. Although the same was treated as revenue receipt, the school has filed a computation showing that the development fee was still available for incurring capital expenditure as its cash surplus on revenue account exceeded the development fee. The school has also taken a sum of Rs.72,73,379 on the resources side which was the net cumulative sum contributed by the society upto 31.03.2006. However, the school has not taken into account the capital expenditure which was incurred upto 31.03.2006 out of the said sum.

Arguments heard. Recommendations reserved.

Tej Karan
Lawrence Japan
Adv.
22/10/19

Dr. R.K. SHARMA	J.S.KOCHAR	JUSTICE ANIL KUMAR (Retd.)
MEMBER	MEMBER	CHAIRPERSON

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Secretary

Delhi High Court Committee

B-492

G.D. Goenka Public School, Sec-22 Rohini, Delhi

Present: Shri Manu RG Luthra, CA, Shri Vipul Garg Chairman and Shri Deepak Arora, Accounts Officer of the School.

The school has filed written submissions dated 15.10.2019 alongwith which it has enclosed its own calculation sheet projecting that the school incurred deficit after implementing the recommendations of 6th Pay Commission. The school has also enclosed a statement showing inflow and outflow of funds on account of capital for the years 2008-09 and 2009-10 only as per which it admits that during these two years the capital expenditure exceeded the capital receipt to the tune of Rs. 75,87,437. On the resources side, the school has shown that during these two years a sum of Rs. 3,42,31,610 was available for incurring capital expenditure as per rule 177 of the Delhi School Education Rules. The aforesaid figure of Rs. 75,87,437 has been arrived at after accounting for the said sum of Rs. 3,42,31,610. In the main calculation sheet submitted by the school a revenue deficit of Rs. 3,72,976 has been projected after implementation of recommendations of 6th Pay Commission and after setting apart a sum of Rs. 1,29,7,326 towards reserve for future contingencies. However, no effect of even the admitted amount of diversion towards capital expenditure amounting to Rs. 75,47,436 has been taken in main calculation sheet.

Arguments heard. Recommendations reserved.

Dr. R.K. SHARMA	J.S.KOCHAR	JUSTICE ANIL KUMAR (Retd.)
MEMBER	MEMBER	CHAIRPERSON

Received
20/11/19
Virender Singh
Office Asstt

TRUE COPY

Secretary

Delhi High Court

16/10/2019

B-120

<u>The Heritage School, Vasant Kunj, Delhi</u>

Present: Shri Puneet Batra, Advocate and Shri K.P.Sunder Rao Advocate of the School.

The Learned Counsel appearing for the school request for an adjournment as the required documents/information are still being compiled. As requested the matter is adjourned to 22nd October 2019 at 11.00 am.

Dr. R.K. SHARMA	**J.S.KOCHAR**	**JUSTICE ANIL KUMAR (Retd.)**
MEMBER	**MEMBER**	**CHAIRPERSON**

TRUE COPY

For Secretary

16/10/2019

B-60

The Heritage School, Rohini, Delhi

Present: Shri Puneet Batra, Advocate and Shri K.P.Sunder Rao Advocate of the School.

The Learned Counsel appearing for the school request for an adjournment as the required documents/information are still being compiled. As requested the matter is adjourned to 22nd October 2019 at 11.00 am.

Dr. R.K. SHARMA	**J.S.KOCHAR**	**JUSTICE ANIL KUMAR (Retd.)**
MEMBER	**MEMBER**	**CHAIRPERSON**

TRUE COPY

For Secretary

Delhi High Court Committee for Review of School Fee

16/10/2019

B-95

Modern Convent School, Dwarka Delhi

Present: Shri Manu RG Luthra, CA and Ms. Sheetal Mann, Principal of the School.

The school has filed copies of annual returns filed by it for the year 2005-06 which contains the budget for the year 2006-07. Perusal of the budget of the school for 2006-07 to 2009-10 reveals that the school had already provided for capital expenditure while fixing its fees in all the years. The Learned authorized representative appearing for the school submits that school is entitled to recover the capital expenditure as part of its fee in view of the provisions of Sub-Sections 1 & 2 of Rule 177 of the Delhi School Education Act. It relies on the judgement of Hon'ble Supreme Court in the case of Modern School to buttress his argument. He further submits that the cost of buses and repayment of loans taken for purchase of buses came out of the transport fee for which the school has furnished the details along with its written submissions dated 14.12.2016.

Arguments heard. Order reserved.

Dr. R.K. SHARMA **MEMBER**	**J.S.KOCHAR** **MEMBER**	**JUSTICE ANIL KUMAR (Retd.)** **CHAIRPERSON**

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Secretary

Delhi High Court Committee

18/10/2019

B-622

Hillwood Public School, Preet Vihar, Delhi

Present: Ms. Rita Srivastava, Principal and Shri Nikhil Goel, CA of the School.

The school has filed details of donation received by parents society for the years 2006 to 2010-11 along with copies of the letter of the donars. It is submitted that donations are not linked with the admissions of the students and received from unconnected persons including some business houses.

The Committee had recorded the position of funds available with the school as on 31.03.2008. On examination of its audited financials in its order dated 7.06.2017 the school was given an opportunity to rebut the findings made by the Committee. However, in none of the subsequent hearings the school has rebutted any of the findings. As such they are taken to have been accepted by the school. The final determinations will be made keeping in view the funds available as on 31.03.2008 and the financial impact of the recommendations of 6th Pay Commission and further availability of funds with the school by way of fee hike and recovery of arrear fee in terms of order dated 11.02.2009 issued by Directorate of Education.

Order reserved. At the request of the Principal of the School liberty is given to the school to file written submissions within three days in rebuttal of the findings of the Committee as recorded on various dates of hearing.

Received
for
Nikhil Goel

Dr. R.K. SHARMA MEMBER	J.S.KOCHAR MEMBER	JUSTICE ANIL KUMAR (Retd.) CHAIRPERSON

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for Secretary

Delhi High Court Committee for Review of School Fee

Manav Bharti India Int. School, Panchsheet Park Delhi

Present: Ms. Mithlesh Chaudhari Principal, Shri Anand Singh, LDC Accounts, and Shri Sanjeev Kapoor, CA of the School.

The school has filed the details of outstanding amount, income tax refund that was due to it as on 31.03.3008 which has been treated as part of funds available with the school as on that date. The school has also filed copies of the final appellate orders showing that the appeals have been decided in its favour in all the years but the income tax department has not released the refunds fully. It is also submitted that the refunds of subsequent years have also been withheld and the liquidity position of the school has not undergone any substantial change even till date. The school is required to file copies of its audited financials for the years 2011-12 to 2018-19 in order that the Committee may verify the contention being raised that refunds equivalent to what was due on 31.3.2008 have always remain blocked.

The matter is adjourned to 21st October 2019 at 11.00 am.

Dr. R.K. SHARMA	**J.S.KOCHAR**	**JUSTICE ANIL KUMAR (Retd.)**
MEMBER	**MEMBER**	**CHAIRPERSON**

TRUE COPY

Secretary

18/10/2019

000170

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.

At the request of the Learned counsel appearing for the school, the matter is adjourned to 21st October 2019 at 11.00 am.

Dr. R.K. SHARMA **MEMBER**	**J.S.KOCHAR** **MEMBER**	**JUSTICE ANIL KUMAR (Retd.)** **CHAIRPERSON**

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Secretary

Committee for Review of School Fee ★ Delhi High Court

21/10/2019

B-640

The Srijan School, Model Town, Delhi

Present: Shri Dewashish Tewary, Admn Officer, Ms. Sweta Bansal, Accountant and Shri Amit Kukreja, Accountant of the School.

A copy of the preliminary calculation sheet has been given to the Administrative Officer appearing for the school. The school may file its rebuttal to the calculation sheet or on before the next date of hearing. The matter is adjourned to 15th November 2019 at 11.00 am subject to the term of the Committee being extended by the Hon'ble High Court of Delhi.

Dr. R.K. SHARMA	**J.S.KOCHAR**	**JUSTICE ANIL KUMAR (Retd.)**
MEMBER	**MEMBER**	**CHAIRPERSON**

TRUE COPY

Fr Secretary

21/10/2019

B-639

Nutan Vidya Mandir, Dilshad Garden, Delhi

Present: Shri Jitendra Sirohi, Advocate of the School.

The Learned counsel appearing for the school request for an adjournment on grounds of personal difficulty today. The matter is adjourned to 21st November 2019 at 11.00 am subject to the term of the Committee being extended by the Hon'ble High Court of Delhi.

Dr. R.K. SHARMA **MEMBER**	**J.S. KOCHAR** **MEMBER**	**JUSTICE ANIL KUMAR (Retd.)** **CHAIRPERSON**

TRUE COPY

For Secretary

21/10/2019

B-574

<u>Manav Bharti India Int. School, Panchsheet Park Delhi</u>

Present: Shri Anand Singh, LDC, Accounts of the School.

On the request of the representative appearing for the school, the matter is adjourned to 22nd October 2019 at 11.00 am.

Dr. R.K. SHARMA **MEMBER**	**J.S.KOCHAR** **MEMBER**	**JUSTICE ANIL KUMAR (Retd.)** **CHAIRPERSON**

TRUE COPY

Secretary

21/10/2019

B-151

G.D. Goenka Public School, Vasant Kunj

Present: Shri Birender Singh, AO and Shri Jitendra Singh Sr. Accountant of the School.

The Learned counsel appearing for the school request for an adjournment on grounds of personal difficulty today. The matter is adjourned to 7th November 2019 at 11.00 am subject to the term of the Committee being extended by the Hon'ble High Court of Delhi.

Dr. R.K. SHARMA **MEMBER**	**J.S.KOCHAR** **MEMBER**	**JUSTICE ANIL KUMAR (Retd.)** **CHAIRPERSON**

TRUE COPY

For Secretary

B-148

Venkateshwar International School, Dwarka,Delhi

Present: Shri Kamal Solanki, Director (Finance), Shri Gori Shankar Goel, Accountant and Shri Manu RG Luthra, CA of the School.

The school has filed a comprehensive rebuttal to the revised calculation sheet that was prepared by the Committee. The same has been disputed on the following grounds:-

1. Interest accrued on FDRs amounting to Rs, 1,16,456 ought not to have been considered as part of funds available when the FDRs themselves had not been considered as part of funds available on account of there being held in the joint names of Director of Education.
2. Development fee charged for the year 2009-10 ought to have been considered as a resource ~~of income~~ for incurring capital expenditure while calculating the amount of funds diverted for capital expenditure.
3. Pre-paid insurance amounting to Rs. 4,92,336 ought not to have been considered as part of funds available on account of the same being a non-cash asset.
4. The incremental tuition fee ought to have been considered only in respect of the existing students as on 31.03.2009. The fee recovered from the new students in 2009-10 ought not to have been taken into consideration.
5. The reserve for future contingency also ought to have been calculated in respect of contractual staff.
6. Certain payments had been made by the parent society on behalf of the school which ought to have been deducted while calculating the funds available.
7. The Committee ought to have considered the savings as per Rule 177 which the school could have utilized for incurring capital expenditure.
8. The development fee for 2009-10 and 2010-11 may not be ordered to be refunded merely for the reason that the school treated as a revenue receipt as the same was merely an accounting error.

So far as the first ground is concerned, the Committee is in agreement with the contention raised by the school.

TRUE COPY

For Secretary

22/10/2019

The committee has examined the income and expenditure account of the school for the year 2009-10 and observes that the school generated a revenue surplus of Rs. 10, 70,419 after charging a depreciation of Rs. 84, 54,925 . The transport surplus which forms part of the above ~~figures~~ figure for that year ~~amounting~~ amounted to Rs. 46,2,060. Thus the net cash surplus that was available with the school for incurring capital expenditure for Rs. 49,23,284. The school charged development fee amounting to Rs. 83,82,536 in that year which was treated as a revenue. Hence, only a sum of Rs. 49,23,284 out of the development fee for 2009-10 can be considered as a resource for incurring capital expenditure.

So far as pre-paid insurance is concerned, the contention raised by the School is not tenable for the reason that to the extent the insurance relates to the period beyond 31st March, the liability for premium for the next year would stand reduced.

While the school has submitted that only the incremental tuition fee for the existing students ought to be considered in the calculations, the school is silent about the similar ~~issues~~ issue with regard to incremental salary. The school has provided no details in respect of the incremental salary for the existing staff.

The Committee has not accepted that reserve for future contingency ought to be calculated in respect of contractual staff in the cases of other schools. No exception can be made in respect of this school.

The Committee is not in agreement with the intention that the payments made by the parent society on behalf of the school ought to have been deducted by calculating the funds available as the calculation sheet has been prepared on the basis of consolidated balance sheet of the school and the society. The payment made by the society on behalf of the school have therefore already been taken care of. The authorized representative appearing for the school submits that while the main calculation sheet has been prepared on the basis of the consolidated balance sheet of the society, the statement of funds diversion for capital expenditure has been prepared on the basis of Receipt and Payment Accounts of the school. It is submitted that all the calculations ought to be made on the basis of one set of financials. If the consolidated balance sheet of the society is taken as the basis, the contribution from the society and transfer to the society as taken by the Committee in the statement of diversion of funds for capital expenditure would get eliminated. The contention made on behalf of the school has force in it. However, the Committee finds that while the consolidated income and expenditure accounts and balance sheets are on record, the consolidated receipt and payment accounts are not on record. The School is directed to furnish the same for the year 2006-07 to 2010-11 within three weeks.

TRUE COPY

For Secretary

22/10/2019

The contention with regard to savings as per Rule 177 being available for utilization as capital expenditure needs to be examined with reference to the budget of the school and the manner of fee fixation. The students strength which the school has filed has part of annual returns does not give detail of fee paying students and students enjoying concession of fee. The same may also be filed for all the five years within three weeks.

With regard to the development fee for 2009-10 and 2010-11, the Committee observes that not just the accounting treatment of the same, the school was not complying with the other pre-conditions laid down by the Hon'ble Supreme Court i.e. with regard to maintaining earmarked development and depreciation reserve funds. The school may if so advised furnish an explanation as to how all the pre-conditions for charging development fee were being compiled.

The matter is adjourned to 22nd November 2019 at 11.00 am.

Dr. R.K. SHARMA **MEMBER**	**J.S.KOCHAR** **MEMBER**	**JUSTICE ANIL KUMAR (Retd.)** **CHAIRPERSON**

TRUE COPY

For Secretary

Delhi High Court Committee

22/10/2019

B-596

Vikas Bharti School, Rohini, Delhi

Present: Shri Anoop Singh Solanki, Manager of the School.

The matter was re-fixed to examine the calculations in regard to diversion of fee for the purpose of capital expenditure as previous calculations, the committee had only considered the repayment of loans and interest out of fee and not considered the other capital expenditures nor the source of incurring the capital expenditure. The revised calculation sheet is not yet ready. The matter is adjourned to 21st November 2019 at 11:00 am.

Dr. R.K. SHARMA **MEMBER**	**J.S.KOCHAR** **MEMBER**	**JUSTICE ANIL KUMAR (Retd.)** **CHAIRPERSON**

B-596

TRUE COPY

Fr Secretary

22/10/2019

B-684

Lovely Public School, Priyadarshani Vihar, Delhi

Present: Shri Puneet Batra, Advocate, Shri Saurabh Malhotra, CA and Ms. Monica Kamra Accountant of the School

The Learned Counsel submits that the school needs a little more time to fully earmark the un-utilized development fund, the substantial part of which has already been earmarked. At his request the matter is adjourned to 25th November 2019 at 11.00 am.

Dr. R.K. SHARMA	**J.S.KOCHAR**	**JUSTICE ANIL KUMAR (Retd.)**
MEMBER	**MEMBER**	**CHAIRPERSON**

TRUE COPY

For Secretary

22/10/2019

B-286

Mount Abu Public School, Sec-5 Rohini

Present: Shri Puneet Batra, Advocate of the School.

The calculation sheet requires to be checked. The matter is accordingly adjourned to 25th November 2019 at 11.00 am.

Dr. R.K. SHARMA **MEMBER**	**J.S.KOCHAR** **MEMBER**	**JUSTICE ANIL KUMAR (Retd.)** **CHAIRPERSON**

TRUE COPY

Fr Secretary

22/10/2019

B-120

<u>The Heritage School, Vasant Kunj</u>

Present: Shri Puneet Batra, Advocate, Shri Parveen Kumar Jain CA and Shri Vikas Gupta, CA of the School.

On the request of the Counsel appearing for the school the matter is adjourned to 25.11.2019 at 11.00 am.

Dr. R.K. SHARMA **MEMBER**	**J.S.KOCHAR** **MEMBER**	**JUSTICE ANIL KUMAR (Retd.)** **CHAIRPERSON**

TRUE COPY

for Secretary

22/10/2019

B-60

The Heritage School, Sec-23, Rohini

Present: Shri Puneet Batra, Advocate, Shri Parveen Kumar Jain CA, Shri Vikas Gupta CA, Shri Ajay Gupta CA and Shri K.P. Sundar Rao,Advocate of the School.

On the request of the Counsel appearing for the school the matter is adjourned to 25.11.2019 at 11.00 am.

Dr. R.K. SHARMA **MEMBER**	**J.S.KOCHAR** **MEMBER**	**JUSTICE ANIL KUMAR (Retd.)** **CHAIRPERSON**

TRUE COPY

Secretary

Delhi High Court Committee

22/10/2019

B-574

Manav Bharti India Int. School, Panchsheel Park

Present: Shri Anand Singh, LDC (Accounts) of the School.

Shri Anand Singh Goni duly authorized by the Principal of the School appears and files the audited balance sheets for the years 2011-12 to 2018-19 which the Committee had directed the school to file to examine the position of outstanding income tax refund in various years.

Hearing is closed in the matter. Order reserved.

Dr. R.K. SHARMA **MEMBER**	**J.S.KOCHAR** **MEMBER**	**JUSTICE ANIL KUMAR (Retd.)** **CHAIRPERSON**

TRUE COPY

For Secretary

Delhi High Court Committee For Review of School Fee

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

Present: Shri Birender Singh, AO, Shri Jitendra Singh, Sr. Accountant and Shri Kamal Gupta, Advocate of the School.

The learned counsel appearing for the school has been heard on the written submissions made by the schools vide e mail dated 15.12.2014. With regard to advances recoverable in cash and kind amounting to Rs. 5,42,54,837 which had been included by the Committee as part of funds available with the school, he submits that the school is disputing the inclusion of Rs. 4,48,11,739 only out of the aforesaid figure. He submits that the same represents payments made to Shri Bal Kishan Education and Social Welfare Society towards construction of building by the said society, which later on merged with the parents society of the school i.e. G.R. Goenka Education Society. It is submitted that upon merger of the two societies, all the assets and liabilities of the Shri Bal Kishan Education Society were transferred to G.R. Goenka Education Society and the former society cease to exist. After such merger the advance to the parent society in the book of school amounted to only Rs. 86,25,520 as on 31st March 2011. The learned counsel submits that this represented the accumulated loss of Shri Bal Kishan Education Society upto the date of merger. It is further submitted that this loss was retained in the books of G.R. Goenka Education Society and was not transferred to the books of G.D. Goenka Public School. Accordingly, it is submitted that the sum of Rs. 4,48,11,739 ought not to be considered as part of funds available in the school. As the school acquired fixed assets against such sum.

It was put to the learned counsel as to whether on merger of the two societies the immovable properties of the merged society would automatically vest in the other society in view of the provisions of the transfer of property Act and the registration Act. Further, whether the merger was pursuant to Section 92 of the Court of civil procedure. The learned counsel seeks sometime to address these issues. The school will also produce its own accounts and accounts of the parent society for the year 2010-11 in which the merger took place as also the approval given by the Registrar of Societies and scheme of merger of two societies and also the pre-merger and post merger balance sheet of the two societies.

TRUE COPY

Secretary

07/11/2019

000185

As requested the matter is adjourned to 29th November 2019 at 11.00 am.

Dr. R.K. SHARMA
MEMBER

J.S.KOCHAR
MEMBER

JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY

Fn. Secretary

15/11/2019

000186

B-640

The Srijan School, Model Town, Delhi

Present: Shri Arpit Srivastava, Asstt. Accountant of the School.

The Committee has received a letter from the school dated 15/11/2019 requesting for more time to submit reply on the calculation sheet. As requested the matter is adjourned to 28/11/2019 at 11.00 am.

Dr. R.K. SHARMA **MEMBER**	**J.S.KOCHAR** **MEMBER**	**JUSTICE ANIL KUMAR (Retd.)** **CHAIRPERSON**

TRUE COPY

Secretary

Delhi High Court Committee ★ For Review of School Fee ★

21/11/2019

B-639

Nutan Vidya Mandir, Dilshad Garden, Delhi

Present: Shri Raj Kumar, Asstt. Accountant and Shri Jitender Sirohi, Advocate of the School.

The learned counsel appearing for the school submits that Corporation Bank on which the cheques purportedly paid to the staff towards payment of arrears salaries were drawn, has refused to issue a certificate indicating whether the cheques were bearer in nature or were account payee. The Committee observes that the school issued the cheques to the staff on 10.07.2019 and all the cheques were encashed from the bank in two batches on 28th August 2019 and 29th August 2019.

Further, the learned counsel submits that the books of accounts of the school for the year 2006-07 to 2010-11 are neither available in the telly software nor any printout thereof are available. The record of the previous hearings show that the school has always been shy of producing the relevant documents, whenever it was asked to produce them.

The hearing is closed as no useful purpose will be served by giving more time to the school.

Order reserved.

Dr. R.K. SHARMA
MEMBER

J.S.KOCHAR
MEMBER

JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY

For Secretary

21/11/2019

B-596

Vikas Bharti Public School, Rohini, Delhi

Present: Shri Anoop Singh Solanki, Manager of the School.

A copy of the revised calculation sheet has been given to the Manager of the school. As per the revised calculation sheet it appears that the school would still have to refund a sum of Rs. 4,20,43,860. Previously the provisional refund was ascertained at Rs. 4,97,22,500. The school is given another opportunity to rebut the revised calculation sheet, if it so desires. The matter will come up for further hearing on 9th December 2019.

Dr. R.K. SHARMA **MEMBER**	**J.S.KOCHAR** **MEMBER**	**JUSTICE ANIL KUMAR (Retd.)** **CHAIRPERSON**

B-596

TRUE COPY

For Secretary

Delhi High Court Committee For Review of School Fee

Venkatateshwar Int. School, Dwarka, Delhi

Present: Shri Manu RG Luthra, CA, Shri Kamal Solanki, and Shri Gori Shankar Goel, Accountant of the School.

In compliance with the directions of the Committee, the school had filed the Receipt and Payment account of the Parent society under cover of its letter dated 13.11.2019. Along with this, the school has also filed a statement of the capital receipts and capital expenditure for the years 2006-07 to 2009-10, projecting that instead of any diversion of fee revenues for incurring capital expenditure, the school had generated resources on capital account for funding the capital expenditure. In the resources side, the school had taken credit of development fee for the year 2008-09 (advance against development fee for 2009-10) and 2009-10. The school has also taken credit of the surplus on revenue account which it contends was available for capital expenditure in terms of rule 177 of the Delhi School Education Rules 1973. It is contended that if the diversion of fee revenue for capital expenditure is excluded from the calculations, the net result would be that the school does not have to refund any fee out of the arrear fee on development fee and incremental tuition fee for the year 2009-10 which was recovered by it in terms of order dated 11.02.2009 of the Director of Education.

Subject to final determination as to whether the school had any surplus out of its fee revenues which could have been utilized for incurring capital expenditure, it needs to be noted that if the contention of the school were to be accepted, the school would not be entitled to any reserve for future contingencies which the Committee has allowed in its provisional calculation sheet.

Hearing is concluded. Order reserved.

Dr. R.K. SHARMA MEMBER	J.S.KOCHAR MEMBER	JUSTICE ANIL KUMAR (Retd.) CHAIRPERSON

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Secretary

Delhi High Court Committee For Review of School Fee

25/11/2019

B-120

The Heritage School, Vasant Kunj, Delhi

Present: Shri Manu RG Luthra, CA, Shri Vikas Gupta, CA, Shri Parveen Kumar Jain, CA and Shri Ajay Gupta CA of the school.

The authorized representatives appearing for the school have not been able to substantiate the contention raised by the school that the sum of Rs. 62,98,174 which is the over draft taken against the FDRs were not utilized for incurring any capital expenditure as the school has not produced its books of accounts. The authorized representative submits that one more date be given to be school for doing the needful. The matter will come up for hearing on 28th November 2019 at 11.00 am. when the school will produce its accounts for all the five years i.e. 2006-07 to 2010-11 in a laptop as the same are maintained in telly software.

Dr. R.K. SHARMA
MEMBER

J.S. KOCHAR
MEMBER

JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

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For Secretary

25/11/2019

B-60

The Heritage School, Rohini, Delhi

Present: Shri Manu RG Luthra, CA, Shri Ajay Gupta, CA, Shri Parveen Kumar Jain CA and Shri Vikas Gupta, CA of the School.

The learned authorized representative appearing for the school have been partly heard. After arguing for some time he submits that the statements which he has prepared need to be revised. As such a request for short date.

The authorized representative advised to go through the order sheet of all the previous hearings as the school was earlier represented by different chartered accountants and advocates. The submissions made ought to be consistent with the submissions already made only if a glaring inconsistency is found in the earlier submissions, the Committee will entertain fresh submissions on those issues. The school may also produce its books of accounts for the years 2006-07 to 2010 - 11 in a laptop as the accounts are maintained in telly software. At the request of the authorized representative the next date of hearing is fixed for 10th December 2019.

Dr. R.K. SHARMA	J.S.KOCHAR	JUSTICE ANIL KUMAR (Retd.)
MEMBER	MEMBER	CHAIRPERSON

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Secretary

Delhi High Court Committee For Review of School Fee

25/11/2019

B-684

Lovely Public School, Priya Darshini Vihar

Present: Shri Punit Batra, Advocate and Shri Saurabh Malhotra, CA of the School.

The learned counsel appearing for the school has filed written submissions dated 25.11.2019 with regard to the issue of development fee. It is contended that the school has since earmarked the unutilized development fund and placed the same in an earmarked saving bank account with Axis Bank. The amount so earmarked is Rs. 3,15,84,359. Another sum of Rs. 1,21,17,351 has been earmarked in another account representing the depreciation reserve fund. The school has filed the latest audited balance sheet as on 31st March 2019 in which the accounting entries with regard to development fee and depreciation reserve have been corrected. The learned counsel relies on the judgement of Hon'ble High Court in LPA No. 291/2017 and LPA No. 340/2017 in the case of Saint Marks Sr. Secondary School to contend that what is to be looked into is whether the school had sufficient funds earmarked and no prejudice would be caused if the funds are transferred from the common pool account to a separate account specifically created for this purpose.

So far as the preliminary determination of the Committee with regard to excess tuition fee charged for the purpose of implementing the recommendations of 6th Pay Commission are concerned, he stands by the arguments advanced on behalf of the school on 22.8.2017 and has nothing more to say in the matter.

It is observed that the Committee had provisionally determined that excess fee charged by the school was to the sum of Rs. 1,1,61,118. The Committee had accepted that there was an inadvertent error in the calculation so made to the extent of Rs. 30, 74,321 with regard to the amount required to be set apart for future contingency. The Committee had also considered the details filed by the school with regard to its accrued liabilities of gratuity and leave encashment and the submission of the school that the information furnished by it earlier on these issues was on the basis of the provisions made in the balance sheet which were less than its accrued liabilities. Accordingly, the Committee had determined that a sum of Rs. 35,80,949 required to be reduced from the sum which the Committee had provisionally determined to be refundable. The total effect of these adjustments is Rs. 66,55,261.

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Delhi High Court Committee For Review of School Fee

25/11/2019

The learned counsel appearing for the school submits that the school is agreeable with the provisional determination made by the Committee subject to the aforesaid adjustment. Accordingly, a sum of Rs. 35,5,857 is determined to be refundable by the school out of the arrear tuition fee and incremental tuition fee for the year 2009-10 recovered by it pursuant to order dated 11.02.2009 of Director of Education. Dr. Bhavna, the Principal of the School who is present at the time of hearing submits that the school will refund the aforesaid amount of its own but needs about two months time to organize the fund for making the refund. Accordingly, the school is granted time till 31st January 2020 to do so and file evidence of having made the refunds by account payee cheques only and by no other means. Necessary evidence showing the dispatch of cheques as well as the bank statement showing the encashment thereof would also be filed.

With regard to issue of development fee the matter is reserved. The next date of hearing in the month of February 2020 will be intimated to the school in due course.

Dr. R.K. SHARMA **MEMBER**	**J.S.KOCHAR** **MEMBER**	**JUSTICE ANIL KUMAR (Retd.)** **CHAIRPERSON**

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For Secretary

25/11/2019

B-286

Mount Abu Public School, Rohini

Present: Shri Punit Batra, Advocate of the School.

A copy of the calculation sheet is given to the learned counsel appearing for the school for rebuttal if any. The school may file its rebuttal on or before the next date of hearing. The matter is accordingly, adjourned to 20th December 2019 at 11.00 am.

Dr. R.K. SHARMA
MEMBER

J.S.KOCHAR
MEMBER

JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

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For Secretary

Delhi High Court Committee For Review of School Fee

26/11/2019

B-682

Hillwood School, Preet Vihar, Delhi

Present: Ms. Rita Srivastava Principal and Shri Nikhil Goel, CA of the School.

The hearing in the matter was concluded on 18.10.2019 and while reserving the order the school was given liberty to file written submissions within three days to rebut any of the findings of the Committee as recorded on various dates of hearings. The school filed a written submission dated 22.10.2019 pointing out an error in the calculation of funds available with the school as on 31st March 2008. It is submitted that the amount of inter unit balance as per the balance sheet of the senior wing of the school is minus ten lakhs while the Committee has taken it as minus one lakh. The Committee has verified the position from the balance sheet of the school and it is in agreement with the contention raised on behalf of the school. Necessary corrections will be made for this accounting while making the final determinations.

It has further been contended in the written submissions that the school is more than 30 years old and the total fund available, as worked out by the Committee is approximately 2.88 crores, which is inclusive of the funds required by the school to meet its accrued liabilities of gratuity and leave encashment besides keeping in reserve a reasonable fund for meeting any contingency. It is submitted that while making the final determinations, the Committee should take into account these factors. The contentions raised on behalf of the school are valid and will be duly addressed while making the final determinations.

It is further submitted that the school requires funds for development. Also an appropriate provision should be made therefore, while calculating the funds available with the school. The order dated 11.02.2009 issued by the director of Education stipulated that fee hike was not mandatory for implementation of the recommendations of 6th Pay Commission and the school must first of all utilize the existing

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For Secretary

Delhi High Court Committee for Review of School Fee

reserve for meeting the additional expenditure for implementation of the recommendations of 6th Pay Commission. In view of this the contention of the school that appropriate provision should be made for future development of the school while calculating the funds available cannot be acceded to.

No other contention has been raised. Order reserved.

Dr. R.K. SHARMA	**J.S.KOCHAR**	**JUSTICE ANIL KUMAR (Retd.)**
MEMBER	**MEMBER**	**CHAIRPERSON**

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For Secretary

Delhi High Court Committee For Review of School Fee

28/11/2019

B-640

<u>The Srijan School, Model Town, Delhi</u>

Present: Mr. Devashish Tewary, Admin Officer and Ms. Sweta Bansal, Accountant of the School.

The school has filed written submissions dated 25th November 2019 in rebuttal of preliminary calculations made by the Committee. The same are taken on record. The matter is adjourned to 13th December 2019 at 11.00 am for hearing on written submissions filed by the school.

Dr. R.K. SHARMA **MEMBER**	**J.S.KOCHAR** **MEMBER**	**JUSTICE ANIL KUMAR (Retd.)** **CHAIRPERSON**

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for Secretary

Delhi High Court Committee For Review of School Fee

28/11/2019

B-120

The Heritage School, Vasant Kunj, Delhi

Present: Shri Manu RG Luthra, CA, Shri Ajay Gupta, CA, and Shri Vikas Gupta, CA of the School.

This case has chequered history. The hearing in the matter commenced on 21.04.2014 when the school was represented by Shri Parveen Kumar Jain and Shri Vikas Gupta Chartered Accountants. Subsequently the school was represented by Shri Pulkit Malhotra and Ms.Namita Mathews, Advocates along with Shri Ajay Gupta, Shri Parveen Jain and Shri Vikas Gupta, Chartered Accountants. Thereafter the school was represented by Shri Kamal Gupta Advocate and then by Shri Vedant Verma besides the aforesaid Chartered Accountants. Shri Vedant Verma was heard at length on 23.08.2019 and three or four outstanding issues vis-a vis the calculation sheet prepared by the Committee was crystallized. However, the school again changed its representative and Shri KPS Rao and Shri Punit Batra, Advocates appeared on behalf of the School. Now, Shri Manu RG Luthra, Chartered Accountant has appeared and has made extensive submissions disputing the calculation sheet prepared by the Committee.

Every advocate and Chartered Accountants who had appeared on behalf of the school has made submissions which are later on retracted and contradicted by the subsequent representative. Shri Manu RG Luthra was advised on the last date of hearing that the submissions to be made by him ought to be restricted to the issues which were crystallized while hearing Shri Vedant Verma on 23.08.2019.

It needs to be noted that during the course of hearing Shri Vedant Verma had filed a calculation sheet prepared by the school itself in rebuttal of calculation sheet prepared by the Committee. Now, the school seeks to disown the calculation sheet prepared on its own by again filing a fresh calculation sheet. In the calculation sheet filed on 23.08.2019 by the school it had admitted that funds from fee revenues applied for incurring capital expenditure by the school were to the tune of Rs. 1,33,34,396 as against the sum of Rs. 4,23,72,758 calculated by the Committee. However, in the calculation sheet filed today, the school has gone back on its own admission and contends that there was actually no diversion of funds for capital expenditure. Likewise in the calculation sheet filed by the school 23.08.2019 it had admitted that the

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Secretary

Delhi High Court Committee For Review of School Fee

28/11/2019

school held FDRs for Rs. 74,52,288. This figure has been revised to Rs. 70,00,000 in the calculation sheet filed today by contending that FDRs worth Rs 4,52,288 were held in the joint names of school and Secretary, CBSE.

Likewise the school admitted funds availability to the extent Rs. 3,12,110 representing pre-paid expenses which have been altogether omitted by the school in the calculation sheet filed today. The accrued liability for gratuity was admitted by the school to be Rs. 31,30,163 which is now sought to be projected at Rs. 55,85,995. The school had accepted the figure taken by the Committee in respect of arrear salary paid by it to be Rs. 1,16,25,126 which itself was based on the information provided by the school but in the calculation sheet filed today the same has been taken to be Rs. 1,27,31,755. In the calculation sheet filed on 23.08.2019 the school had admitted that a sum of Rs 20,88,216 representing arrears of incremental developmental fee for the period from 1.9.2008 to 31.03.2009 to have been recovered in excess of what it could recover in term of clause 15 of the order dated 11.02.2009. Likewise it had accepted that a sum of Rs. 69,84,511 was recovered as development fee in 2009-10 was refundable on account of the fact that it was treated as a revenue receipt in the accounts. Likewise it had accepted that the sum of Rs. 64,72,477 recovered as development fee in 2010-11 was refundable on account of non fulfillment of the preconditions for charging development fee. However, in the calculation sheet filed today the school had omitted the refunds on account of development fee. The issues which were crystallized during the course of hearing on 23.08.2019 are as follows:-

(a) The school had claimed that a sum of Rs, 62,98,174 which was the balance in the overdraft account taken against FDRs, ought to have been be taken as a current liability and it was incorrectly shown as a secured loan in the balance sheet. The school was asked to produce its books of account to substantiate its claim that the same represented a current liability and was not utilized for creating any fixed assets.

(b) The school had disputed the incremental salary for 2009-10 which was taken by the Committee to be Rs.1,12,51,363. The claim of the school was that it should be taken as 1,36,25,481. The Committee had observed that the school had also included the salary paid to the contractual staff in these two year and required the school to substantiate its claim. The salary was also paid at the scale prescribed by the Pay Commission in these two years.

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Delhi High Court Committee For Review of School Fee

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(c) The school had disputed the reserve for future contingencies taken by the Committee at Rs. 1,03,42,601. The school had contended that the same ought to have been taken to the Rs. 1,15,75,572 by including the salary paid to the contractual staff in the base figure.

(d) The school had disputed the figure of Rs. 4,23,72,758 which was taken by the Committee as funds diverted for incurring the capital expenditure out of fees. As noted above the school had filed its own calculation sheet to show that such diversion was only Rs, 1,33,34,396.

(e) With regard to development fee, while in the calculation sheet filed by it, the school had admitted that the development fee recovered for the year 2009-10 and 2010-11 was refundable on account of non fulfillment of preconditions laid down by Hon'ble Supreme Court. In the oral submission made by the learned counsel by Shri Vedant Verma, the school had taken a position that the school was fulfilling the pre-conditions and as such development fee ought not be ordered to be refunded. The Committee had observed that the school had merely filed copy of certificate issued by Bank of Maharashtra certifying that two separate accounts were opened such as development fund and depreciation reserved fund on 15.05.2008 and 4.09.2008 respectively. However, the school had not filed the bank statements for these accounts to show that the balances in these accounts were equal to the un-utilized development fund and depreciation reserve fund.

The Committee is not going to re-open the issues which already stand concluded by the admissions made by the school in the calculation sheet filed by it on 23.08.2019. The Committee is considering the submissions made only on the issues that were crystallized during the course of hearing on 23.08.2019.

(a) With regard to over draft against FDRs, the Committee has verified from the books of accounts produced by the school that transfers from and to this account were only made to the main current account of the school out of which all the payments whether on revenue account or on capital account were made. As such the committee is of the view that whatever amounts have been utilized for incurring capital expenditure would stand included in the computation of capital expenditure incurred out of fee revenues, which has been separately made and included in the main calculation sheet. Accordingly, the Committee accepts that the balance of over draft account ought to be reduced while working out the funds available with the school as the Committee had already included the full amount of FDRs as part of funds available.

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For Secretary

Delhi High Court Committee For Review of School Fee

000201

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(b) With regard to incremental salary for the year 2009-10, as noted above, the Committee had taken the figure of Rs. 1,12,51,363 but the school in its calculation sheet filed on 23.08.2019 had taken this to be Rs.1,36,25,481. In the submission filed today the school has taken the same to be Rs. 1,26,26,397. However, during the course of hearing the authorized representative of the school submits that the earlier figure taken by the school at Rs. 1,36,25,481 is correct as he submits that while working out the revised figure he has wrongly calculated the incremental salary paid to the non scale staff.

(c) With regard to reserve for future contingencies, in the earlier calculation sheet the school had claimed that the reserve for future contingencies ought to have been taken at Rs. 1,15,75,572 as against Rs. 1,3,42,601 taken by the Committee. In the submissions made today, the school claims the same to be Rs. 1,14,83,466 and the authorized representative of the school submits that this is the correct figure which has been worked out by taking the employers contribution to provident fund and salary paid to non scale (contractual staff).

(d) With regard to the funds utilized for incurring capital expenditure of fee revenues, as per the calculation sheet filed on 23.08.2019 the school had admitted the diversion amounting to Rs. 1,33,34,396. In the submissions made today, the school has revised the figure of diversion to Rs.14,05,252. The difference between the two calculation sheets filed by the school is on account of the following:

(i) The school submits that a sum of Rs. 59,62,470 was the surplus generated by the school in the years 2006-07, 2007-08 and 2009-10 from the transport fee which was available with the school for purchase of buses. However, the Committee notes that as per detailed working given by the school itself, the same was Rs. 43,70,048 if the deficit on transport account incurred by the school in the year 2008-09 is also considered.

(ii) The school has reduced the repayment of loans in the year 2009-10 from Rs. 1,45,64,447 to Rs. 85,97,773 and contends that the balance of Rs. 59,66,674 was the repayment of overdrafting against FDR which ought not to have been taken into consideration. However, the school has included the amount of Rs. 62,98,174 which the school took as overdraft in the year 2007-08 as a capital resource for incurring capital expenditure. In view of the Committee, both the figures ought to be omitted from the resource side as well as payment side.

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For Secretary

Delhi High Court Committee For Review of School Fee

28/11/2019

(iii) With regard to development fee, the authorized representative submits that although in the previous calculation sheet filed by the school, the development fee was shown as refundable by the school on account of non fulfillment of the pre conditions for charging development fee, the same had been contradicted by the Ld. Counsel who appeared for the school during the course of oral arguments before the committee, he submitted that the school was fulfilling all the pre conditions for charging the development fee.

In 2009-10, although initially, the development fee was credited to the Income and Expenditure Account, the same was transferred to development reserve at the end of the year and hence was treated as capital receipt. In the written submissions filed today, the school has furnished details of collection and utilization of development fee for the years 2006-07 to 2010-11. The Committee observes that the utilization of development fee are not strictly for the purpose for which development fee is meant i.e. purchase or upgradation of equipments and furniture and fixtures. Moreover, with regard to the development fee collected by the school in 2009-10 and 2010-11, with which this Committee is concerned, the school itself has shown that it had unutilized development fee amounting to Rs. 37,30,251 in 2009-10 and Rs. 21,96,019 in 2010-11 which ought to have been kept in an earmarked bank account. The school is maintaining an earmarked bank account for development fund with Bank of Maharashtra. However, the balance in the account as on 31/03/2010 was just Rs.52,635 and as on 31/03/2011, it was just Rs. 31,072. The balance in the earmarked account ought to have been at least Rs. 59,26,270. Moreover, although the school has shown acquisition of fixed assets amounting to Rs. 2,08,98,620 out of development fund in the years 2006-07 to 2010-11 on which, even on a conservative basis, the accumulated depreciation would have been about Rs. 50.00 lacs, the balance in the earmarked depreciation

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For Secretary

Delhi High Court Committee For Review of School Fee

28/11/2019

reserve fund also maintained with Bank of Maharashtra was just Rs. 9,682 as on 31/03/2011. Accordingly, the committee is of the view that the school was not fulfilling the essential pre condition for charging development fee.

Hearing is concluded. Recommendations reserved.

Dr. R.K. SHARMA
MEMBER

J.S.KOCHAR
MEMBER

JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

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Secretary

Delhi High Court Committee For Review of School Fee

29/11/2019

000204

B-151

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

Present: Shri Birender Singh, Account Officer and Shri Jitendra Singh, Sr. Accountant of the School.

The school has filed copies of the order dated 26.04.2011 passed by the Registrar of Societies, Delhi approving the merger of Shri Bal Kishan Education and Social Welfare Society(SBESWS) with G.R. Goenka Education Society along with a copy of the scheme of merger. The school has also filed pre-merger balance sheet of SBESWS as on 31.07.2010 and the balance sheet G.R. Goenka Education Society as on 31.03.2011 to show that all the assets and liabilities of SBESWS were transferred to G.R. Goenka Education Society upon merger. The school has also produced the general book showing the general entries made in the books of G.R. Goenka Education Society upon merger.

It is discernable from the pre-merger balance sheet of SBESWS that this Society had a negative corpus fund to the tune of Rs. 75,16,288. It is submitted that this represented accumulated loss of the society and the same was also taken over by G.R. Goenka Education Society. It is submitted that the loss was not passed on to G.D. Goenka Public School but was retained by the society. Only the tangible assets i.e. land and building at Vasant Kunj and security deposit with BSES Rajdhani Ltd were transferred to the school from the Parent society.

Shri Birender Singh, Accounts officer representing the school submits that the legal question raised by the Committee on the last date of hearing will be addressed by Shri Kamal Gupta, Advocate who is pre-occupied in some matter in the High Court and requests that another date be given for the purpose. As requested the matter is adjourned to 13th December 2019 at 11.00 am.

Dr. R.K. SHARMA	**J.S.KOCHAR**	**JUSTICE ANIL KUMAR (Retd.)**
MEMBER	**MEMBER**	**CHAIRPERSON**

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For Secretary

Delhi High Court Committee * For Review of School Fee *

29/11/2019

000205

B-389

B.G.S. Int. Public School, Sec-5 Dwarka Delhi

Present: Shri N.K. Mahajan, CA, Shri Anuj Mahajan Financial Consultant and Shri Boregowda G.D. Consultant of the School.

The school has filed an application dated 19th November 2019 seeking review of the order dated 27.08.2019 by which the Committee after detailed discussion had come to the conclusion that the school ought to refund the entire amount of tuition fee and annual charges charged by it in 2009-10 amounting to Rs. 101,50,856 and also the development fee charged by it in 2010-11 amounting to Rs. 4406,044 along with the interest at the rate of 9% per annum from the date of collection to the date of refund.

The review application has been filed on the ground that during the course of hearing held on 14.05.2019, this Committee had announced in open court that there was no interference in regard to fee hike by the school consequent to the implementation of 6th CPC. Although it is stated that an affidavit to this effect is enclosed with the application. However, on perusal of the same it is observed that it is the photocopy of the affidavit. It is submitted that the original affidavit has been filed with the Directorate of Education. The authorized representative appearing for the school seeks some time to file the affidavit in support of the application. As requested the matter is adjourned to 17th December 2019 at 11.00 am.

Dr. R.K. SHARMA **MEMBER**	**J.S.KOCHAR** **MEMBER**	**JUSTICE ANIL KUMAR (Retd.)** **CHAIRPERSON**

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For Secretary