

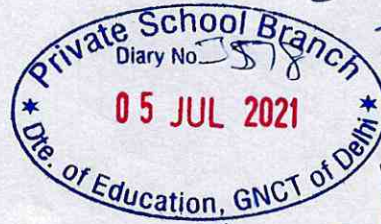
**DELHI HIGH COURT COMMITTEE  
FOR REVIEW OF SCHOOL FEE**  
(Formerly Justice Anil Dev Singh Committee  
For Review of School Fee)  
C-BLOCK, VIKAS BHAWAN-2, UPPER BELA ROAD,  
CIVIL LINES, DELHI-110054

No-F-DHCC/2020/19

Dated:- 23/06/2021

To

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



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SO I / Policy

**Sub: - Forwarding of report of Delhi High Court Committee for Review of School Fee for February and March-2020**

Sir,

I am directed to forward herewith a copy of report of Delhi High Court Committee for Review of School Fee for February and March-2020 which was submitted to the Registrar, High Court, Delhi on 23-06-2021 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,

Encl. As above.

*Consultant (PSB)*

*23/6/21*

Secretary to the Committee

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*(Handwritten mark)*

*WJ*  
13/07/21  
Sandeep



**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 February and March 2020**

No.DHCC/2021/16

Dated: 22/6/2021

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Place: Delhi

Secretary  
Delhi High Court Committee for Review of School Fee

Secretary

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



**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:**

**G.D. Goenka Public School, Sector-22, Rohini, Delhi-110085**

**(B-492)**

**Order of the Committee**

**Present: Shri Manu RG Luthra, Chartered Accountant with Shri Vipul Garg Chairman and Shri Deepak Arora, Accounts Officer 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 6<sup>th</sup> pay commission.

A revised questionnaire was issued to the school on 30/07/2013 vide which the school was required to answer the relevant queries with regard to collection and utilisation of development fee and maintenance of earmarked development and depreciation reserve funds, besides answering the queries already raised vide questionnaire dated 27/02/2012. This too was ignored by the school. Again, a reminder was sent on 01/10/2013 which was

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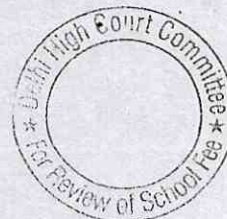


also ignored, prompting the Committee to send another reminder on 19/11/2013. Finally the school responded by submitting its reply vide its letter dated 22/11/2013.

As per the reply submitted by the school, it implemented the recommendations of VI Pay Commission and started paying the increased salary to the staff w.e.f. 01/03/2009. It enclosed an annexure to its reply vide which it was submitted that the monthly expenditure on salary of the school was Rs. 10,10,662 prior to implementation of the recommendations of VI Pay Commission which increased to Rs. 16,86,787 after its implementation. It was further stated that the school paid arrears of salary amounting to Rs. 70,18,554 to the staff starting from 01/04/2007. It was also mentioned that the school had started from 01/04/2007 and was recognised w.e.f. 01/04/2008.

With regard to fee hike, the school stated that the fee was increased w.e.f. 01/09/2008 as per order dated 11/02/2009 of the Director of Education. The school gave details of the additional tuition fee and development fee recovered by the school consequent to implementation of the recommendations of VI Pay Commission. As per the information furnished, the school increased the tuition of all the students by Rs. 500 per month, which resulted in an additional revenue of Rs. 4,22,000 per month. The development fee before implementation of the recommendations of VI Pay Commission was charged @ Rs. 425 per month from all the students, which was

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approximately 10% of the tuition fee. After implementation of VI Pay Commission, the same was raised to Rs. 724 per month for students of classes pre-school to V and to Rs. 742 per month for classes VI & VII which was approximately 15% of the tuition fee (It appears that the school was only upto class VII till 2008-09.). The total additional development fee after implementation of VI Pay Commission was Rs. 2,54,786 per month. However, it was not made clear as to whether the increase in rate of development fee from 10% to 15% of tuition fee was made effective from 01/09/2008 or from 01/04/2009.

The school also gave details of the lump sum arrear fee and the arrears of incremental fee for the period 01/09/2008 to 31/03/2009. As per the details submitted, the school recovered a total sum of Rs. 67,78,626 towards arrear fee.

With regard to development fee, it stated that the school recovered development fee from 2007-08 to 2010-11. Till 2008-09, the development fee was treated as a revenue receipt. However, w.e.f. 2009-10, it was treated as a capital receipt. It also mentioned that it maintained a depreciation reserve fund. However, there was no unutilised development fund and even the depreciation reserve fund had been spent on purchase and upgradation of assets. This was stated in response to the query as to whether depreciation reserve fund and unutilised development fund were kept in earmarked bank accounts or FDRs.

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The school gave an additional reply to the questionnaire vide its  
letter dated 23/12/2013 along with which it submitted employee wise  
information with regard to payment of arrear salary and incremental  
salary after implementation of the recommendations of VI Pay  
Commission.

08/07/15

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.

The school submitted its response vide its letter dated  
08/07/2015. The school, while reiterating the amount of arrear fee  
recovered by it, submitted that it paid a total sum of Rs. 76,34,004  
towards arrear salary, as against Rs. 70,18,554, informed earlier.

The school also filed copies of bank statements showing  
payment of arrear salary and actuarial valuation of its accrued  
liabilities on account of gratuity and leave encashment which were  
estimated to be Rs. 27,01,184 and Rs. 16,34,247 respectively as on  
31/03/2010.

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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.

Sh. Ved Prakash, Administrator of the school appeared and filed an application seeking adjournment on the ground that the Accounts Officer of the school was on medical leave. The application was allowed and the matter was adjourned to 09/11/2016. On that date, Sh. N.K. Mahajan, Chartered Accountant appeared with Sh. Vipul Garg, Chairman & Sh. Deepak Arora, Accounts Officer of the school.

The authorized representative of the school submitted that the school commenced its operations from the financial year 2007-08 but was granted recognition w.e.f. 2008-09. Therefore, the school paid arrears of salary w.e.f. 01/04/2007 instead of 01/01/2006, with effect from which the recommendations of VI Pay Commission became operative. In order to verify this contention, the Committee looked for the Receipt and Payment Account of the school for the year 2007-08 as that would have indicated whether the school had any opening balances of cash and bank as on 01/04/2007. However, the Committee observed that the school never filed its Receipt and Payment accounts for any of the years, which was required to be filed as part of annual returns under Rule 180 of Delhi School

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Education Rules 1973. Accordingly, the school was directed to furnish the same within one week.

The Committee examined the copy of the circular issued by the school to the parents with regard to increase in fee, in pursuance of order dated 11/02/2009 issued by the Director of Education. It was observed that the school recovered arrears of tuition fee amounting to Rs.3500 per student for all the classes i.e. pre- school to 8th class for the period 01/09/2008 to 31/03/2009 @ Rs. 500 per month. The arrears of incremental development fee for the corresponding period amounted to Rs. 2090 for classes pre-school to 5th and Rs. 2220 for classes 6th to 8th. Prima facie, the recovery on account of arrears of development fee was much more than 15% of the incremental tuition fee, in fact it was about 60%. The school was required to justify the recovery of arrears of development fee which was in excess of 15%.

In addition, the Committee observed that the school also recovered Rs.4500 as lump sum arrear fee. However, subsequently it provided credit of Rs. 750 to the students admitted in 2007-08 and Rs.1500 to the students admitted in 2008-09.

The Committee also examined that the valuation report of actuary regarding the accrued liability of the school for gratuity as on 31/03/2010. It was of the prima facie view that since the school was set up in 2007-08 there would be no accrued liability of gratuity as on 31/03/2010, as no employee would have completed 5 years of

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service by that date. Five years is the length of qualifying service in order to be eligible for payment of gratuity.

assets. With regard to development fee, the Committee noted that the school in its reply dated 22/11/2013 to the questionnaire issued to it, had stated that it recovered a sum of Rs.96,72,575 as development fee for the year 2009-10 and Rs.1,26,03,938 in the year 2010-11. It had also stated that the same had been treated as a capital receipt w.e.f. 01/04/2009. It was also stated that the school maintained depreciation reserve equivalent to depreciation charged in the revenue account. However, no earmarked depreciation reserve fund or development fund accounts were maintained. It was stated that the school had utilized the entire amount for creation of the eligible assets. The school had also filed details of utilization of development fee showing the acquisition of furniture, fixtures, equipments and IT equipments amounting to Rs. 81,99,992 in 2009-10 & Rs.1,30,76,521 in 2010-11. It was further stated that the school had not charged any depreciation on assets acquired out of development fee and hence there was no requirement to maintain an earmarked depreciation reserve fund.

The Committee also perused the statement of account of the Parent Society in the books of the school, which showed that the school had been transferring large sums of money to its Parent Society. The authorized representative of the school submitted that the Parent Society had no activity other than running of the school

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and as such, there would be no diversion of funds to the Parent Society for any other purpose. The school was directed to file audited balance sheets of the Parent Society for the years 2007-08 to 2010-11 for verification by the Committee.

Pursuant to the directions given by the Committee, the school filed Receipt and Payment accounts of the school for the years 2007-08 to 2010-11. However, the Committee observed from the Receipt and Payment account for the year 2007-08 that the school had cash and bank balances amounting to Rs. 1,37,21,435 as opening balance from 1st April 2007. This apparently did not support the contention of the school that it started functioning from 01/04/2007. Accordingly, the school was directed to file its complete audited financials (including Receipt and Payment Account) since the year it started collecting funds. The Committee also observed that the school had treated the contribution made by the Parent Society to it for establishment of its infrastructure, as an unsecured loan, and not as Corpus fund. The unsecured loan seemed to have been repaid in the subsequent years. The school was directed to provide the source of repayment of both the secured as well as unsecured loan made by it, from the year of its establishment i.e. the year when it started collecting funds and upto 31/03/2011.

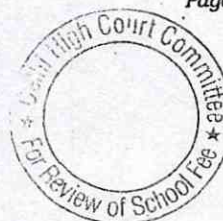
The school also furnished its explanation regarding the arrears of incremental development fee charged for the period 01/09/2008 to 31/03/2009. The Committee noted that vide its written submissions

G.D. Goenka Public School, Sec.-22, Rohini Delhi-85/(B-492)/Order

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dated 23/11/2016, the school had submitted that from 01/04/2008 to 31/08/2008, the school charged a fixed amount of development fee of Rs. 5100 for all the classes i.e. Pre-school to VIII. However, w.e.f. 01/09/2008, it increased the development fee to 15% and recovered the differential amount as arrears for the period 01/09/2008 to 31/03/2009. During the course of hearing, the authorized representative of the school however, clarified that Rs. 5100 was not development fee for the period 01/04/2008 to 31/08/2008 but for the whole year 01/04/2008 to 31/03/2009 which was recovered in advance in the month of April 2008.

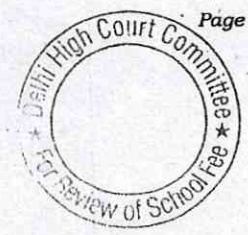
Based on the audited financials of the school and the information given by the school from time to time, the Committee prepared a calculation sheet taking into consideration the decision of the Hon'ble Supreme Court in the case of Modern school Vs. Union of India. The Committee observed that the school had negative net current assets as on 31/03/2008, i.e. its current liabilities exceeded its current assets by **Rs. 1,54,86,686** as on that date. This, when the school was in operation for just one year in which it earned operational revenue surplus (cash) amounting to Rs. 1,33,79,895.

The calculation of the aforesaid negative net current assets is as follows:

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<b><u>Current Assets + Investments</u></b>		
FDR	205,452	
Bank Balance	8,853,966	
Cash in Hand	276,424	
Loans & Advances	441,522	9,777,364
<b><u>Current Liabilities</u></b>		
Caution Money	402,500	
Advance Fee received	21,872,589	
Sundry Creditors	1,591,549	
Expenses payable	1,397,412	25,264,050
<b>Excess of current assets over current liabilities</b>		<b>(15,486,686)</b>

However, The fact that the current liabilities of the school exceeded its current assets despite the school earning a cash operational revenue surplus of Rs. 1,33,79,895 was indicative of the fact that the school was diverting its fee revenues for creating fixed assets or elsewhere. This was also apparent by the fact that as against the advance fee of Rs. 2,18,72,589 recovered by the school in the month of March 2008, the school had just Rs. 91,30,390 in the shape of cash in bank balances. It is noteworthy that the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583 held that capital expenditure cannot form part of the fee structure of the school. However, it was apparent that the school had recovered capital expenditure as part of the fee structure. Accordingly, the Committee was of the prima facie view that the capital expenditure so incurred by the school ought to be treated as funds available with it which could be utilised for payment of increased salaries on implementation of the recommendations of VI Pay Commission. In the first instance, the

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Committee calculated that the school had utilised a total sum of **Rs. 10,02,67,931** out of its fee revenues for incurring capital expenditure in the shape of repayment of loans taken by the school for creating fixed assets and interest paid thereon in the years 2007-08, 2008-09 and 2009-10. The calculation of the aforesaid amount made by the Committee was as follows:

**Funds diverted for repayment of loans taken for capital expenditure and interest paid thereon**

**(As per Receipt & Payments Account)**

**Secured Loans**

	Year	Repayment of Loans	Interest paid	Net outgo of funds
	2007-08	8,900,871	11,290,938	20,191,809
Total	2008-09	21,153,534	10,703,619	31,857,153
	2009-10	22,375,617	9,769,716	32,145,333
	<b>Total</b>	<b>52,430,022</b>	<b>31,764,273</b>	<b>84,194,295</b>

**Un-Secured Loans**

	Year	Fresh Loans	Repayment of Loans	Interest paid	Net outgo of funds
	2007-08	2,485,000	7,314,700	106,439	4,936,139
	2008-09	5,510,000	24,012,610	383,861	18,886,471
	2009-10	27,048,974	19,300,000	-	(7,748,974)
	<b>Total</b>	<b>35,043,974</b>	<b>50,627,310</b>	<b>490,300</b>	<b>16,073,636</b>

**Total**  $8,41,94,295 + 1,60,73,636 = 10,02,67,931$

Factoring the aforesaid amount, the Committee calculated that the school had a sum of Rs. 8,47,81,245 as available with it. Allowing

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Additional  
for funds required to be kept apart for accrued liability of leave  
Comin  
encashment (Rs. 16,34,246) and reserve for future contingencies (Rs.  
1,04,0  
1,29,07,326) equivalent to four months salary, the remaining sum of  
Rs. 7,02,39,673 was considered by the Committee to be available for  
meeting the increased expenditure of the school on implementing the  
\*Increa  
recommendaions of VI Pay Commission.

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The total financial impact of implementing the  
recommendaions of VI Pay Commission by the school was calculated  
to be Rs. 2,46,69,848 as per the following details:

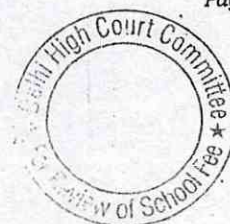
<b>Additional Liabilities after implementation of VIth Pay Commission:</b>		
Arrear of Salary as per 6th CPC for 1.04.07 to 31.3.09	7,634,004	
Incremental Salary for 2009-10 (as per calculation given below)*	17,035,844	24,669,848

<b>*Incremental Salary for 2009-10</b>	<b>2008-09</b>	<b>2009-10</b>
Normal/ regular salary	21,686,133	38,721,977
<b>Incremental salary in 2009-10</b>	<b>17,035,844</b>	

In view of the aforementioned preliminary findings, the Committee was of the view that the school had ample funds of its own and did not require to raise any fee for implementing the recommendations of VI Pay Commission or recover any arrear fee for that purpose. However, the school generated an additional revenue of Rs. 2,69,49,744 by recovering arrear fee and increasing the tuition

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fee and development fee as per order dated 11/02/2009 issued by the  
Director of Education.

Further, prima facie, the school was not complying with the  
substantive pre-conditions of setting apart the depreciation reserve  
fund on assets acquired out of development fee. In fact the school  
bizarrely stated that it did not charge any depreciation on assets  
acquired out of development fee. Accordingly the Committee was of  
the prima facie view that the development fee recovered by the school  
pursuant to order dated 11/02/2009 in the years 2009-10 and 2010-  
11, amounting to **Rs. 2,22,76,513**, ought to be refunded to the  
students.

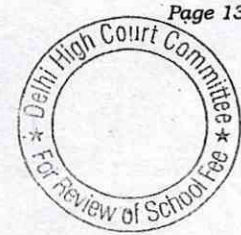
Thus the Committee calculated that prima facie, the school was  
required to refund a total sum of **Rs. 4,92,26,257** ( 2,69,49,744 +  
2,22,76,513).

A copy of the above calculations made by the Committee was  
given to the authorized representative of the school for rebuttal, if  
any.

Sh. Manu RG Luthra, Chartered Accountant appeared on  
21/08/2017 along with Sh.Vipul Garg, Chairman, Sh. Mahavir Goel,  
Vice Chairman and Sh. Deepak Arora, Accounts Officer of the school.  
He filed detailed written submissions dated 18/08/2017, rebutting  
the calculations made by the Committee. Along with the written  
submissions, the school also filed its own calculation sheet, which

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was patterned on the calculation sheet prepared by the Committee.  
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On comparison of the calculations filed by the school and those made  
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By the Committee, it was observed that the school had taken the  
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following figures, which were different from the figures taken by the  
account!

Committee:

11/02/09

Particulars	As per calculation sheet of the Committee	As per calculation sheet of the School	Difference
sum of \$			
FDRs	2,05,452	5,452	2,00,000
Loans and advances	4,41,522	99,770	3,41,752
Reserve for accrued gratuity	0	27,01,184	27,01,184
Arrear salary	76,34,004	55,90,299	20,43,705
Incremental salary on account of implementation of recommendations of 6 <sup>th</sup> pay commission	1,70,35,844	1,12,40,926	57,94,958
Arrear fee	67,78,626	59,85,126	7,93,500
Incremental fee on account of fee hike as per order dated 11/02/2009	2,01,71,118	65,70,000	1,36,01,118

Apart from the above differences, the Committee had taken a sum of Rs.10,02,67,931 as the amount which was utilized by the school for repayment of loans and payment of interest thereon during the years 2007-08 to 2009-10. The school had instead, admitted a sum of Rs.51,54,061 as available out of the savings from tuition and other fee for the years 2008-09 and 2009-10 after setting off capital expenditure incurred in 2009-10.

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of eligible It was contended that since the school had savings from its  
 tuition and other fees, it was entitled to incur capital expenditure,  
 which had been set off against such savings in terms of Rule 177  
 of Delhi School Education Rules 1973. Only the balance amount of  
 Rs.51,54,061 was available out of such savings which could be  
 considered as available for discharge of the additional liabilities  
 arising on account of the implementation of the recommendations of  
 the 6<sup>th</sup> pay commission.

savings It was further contended that the development fee in 2009-10  
 and in 2010-11 was capitalized and was fully utilized for purchase  
 of eligible capital assets. Hence the school did not have any funds left  
 out from development fee, which could have been put in a earmarked  
 bank account. However, with regard to depreciation reserve fund on  
 assets acquired out of development fee, it was conceded that the  
 same had not placed in any earmarked bank account for  
 investments.

On going through the written submissions filed by the school,  
 the Committee observed that the school had not considered the  
 savings made by it in 2007-08 or the capital expenditure incurred  
 by it in that year. On being queried about it, the authorized  
 representative submitted that this had not been done as the school  
 was unrecognized in that year.

With regard to FDRs, it was contended that the FDRs for Rs. 2  
 lakhs were in the joint name of the school and the Director of

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Education. Only the accrued interest on such FDR amounting to Rs. Rs.5,452 could be considered as available with the school. This contention of the school was accepted by the Committee.

With regard to loans and advances, the Committee observed that the school had excluded the amount of Rs. 3,41,752 representing prepaid expenses. It was contended that the same were in the nature of expenses paid in advance and could not be considered as part of funds available. This contention was rejected, as the Committee had also considered all the current liabilities including expenses which were yet to be paid, as deductions, while working out the funds available with the school.

With regard to accrued liability of gratuity as on 31/03/2010 amounting to Rs. 27,01,184, the authorized representative submitted that the accrued liability was based on actuarial valuation and ought to be deducted from the figure of funds available. However, this contention was also rejected as the school was not even 5 years old as on 31/03/2010 and therefore, no gratuity accrued to any employee as on 31/03/2010. As noted supra, five years service is the minimum that the employees must have to put in, in order to become entitled to gratuity under the Payment of Gratuity Act.

With regard to arrear fee, the authorized representative submitted that only the arrear fee pertaining to the period starting from 01/04/2008 was included in the calculations filed by the school on the premise that the school was not recognized for the academic

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session 2007-08. The Committee observed that the school had actually recovered the arrear fee from 01/04/2007 even though the school was admittedly not recognised in 2007-08. This was a bizarre argument put by the school. For the purpose of recovering the fee from the students, it did not consider as unrecognized but it sought to take advantage of its unrecognized status when confronted with the possibility of refunding the excess fee. Accordingly, this plea and argument was rejected.

Similarly with regard to the arrear salary, the school had excluded the arrears paid for the year 2007-08 from its calculations. In this view of the Committee, since the school had actually paid the arrears of 2007-08 and for that purpose also recovered the arrear fee from the students, it would be liable to take the arrear salary paid for 2007-08 in its calculations. Accordingly, the Committee maintains the figure taken by it in its calculations rather than accept the figure taken by the school.

By excluding the arrear fee as well as arrear salary for the year 2007-08, when it claimed the unrecognized status, from its calculations, the school would have benefitted to the tune of Rs. 12,50,205. The Committee did not accept these arguments for the aforestated reasons.

With regard to incremental salary as well as incremental fee in the year 2009-10 on account of implementation of the recommendations of the 6<sup>th</sup> pay commission, it was submitted on

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behalf of the school that the hike in fee as per circular dated 11/02/2009 would be applicable only to the students who were on the rolls of the school as on 31/03/2009. Similarly, the teachers and other staff who were freshly appointed during the year 2009-10 would enjoy the benefit of the increased salary as per 6<sup>th</sup> pay commission from the very beginning and in their case, there would be no hike in salary on account of the implementation of the recommendation of the 6<sup>th</sup> Pay Commission.

The Committee had taken the total tuition fee received by the school as well as the total salary paid by the school in 2008-09 and 2009-10 and taken their difference as the incremental fee and incremental salary on account of implementation of the recommendations of VI Pay Commission, after eliminating the effect of arrear fee and arrear salary from such totals. Normally there is always a lag of one year as the students of the terminal class of the school who were there in 2008-09 would not be there in 2009-10. Likewise, the students who joined the school in 2009-10 in the entry level class would not have been there in 2008-09. However, since the total fee would be recovered from the students of the same number of classes in both the years, there would not be any material difference in the total collection on account of the difference in identity of the students. However, in this particular case, since the school was upgrading by one class every year and upto 2008-09 was only upto 7<sup>th</sup> class, there would be a difference on account of the number of students in two

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years since there would not be any terminal class. Therefore, this argument of the school was a valid argument. Similar would be the position with regard to the incremental salary as with the addition of one class in 2009-10, the number of teachers would also increase and the difference in total salary paid by the school in the years 2008-09 and 2009-10, would not be a correct measure of the increase in salary on account of implementation of the recommendations of VI Pay Commission.

However, the calculations made by the school were not found to be in accordance with the submissions on its behalf.

The school sought time to file a revised calculation sheet in order to remove the deficiencies/shortcomings in its calculation sheet. The same was granted by the Committee.

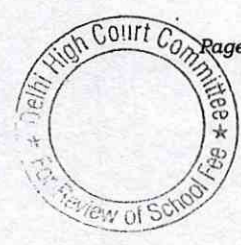
Pursuant to the above observations made by the Committee, the school filed the revised calculation sheet on 05/09/2017. **Vide this sheet, the school accepted the determinations made by the Committee in its calculation sheet with regard to loans and advances, accrued liability of gratuity, arrear fee recovered by the school and arrear salary paid by the school.**

Only the incremental fee and incremental salary for the year 2009-10 were modified by the school from its calculation sheet filed earlier.

The Committee examined the details of new staff employed in March 2009 and later during 2009-10 at the new pay scales with

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reference to the staff statement filed by the school for the year 2008-

09. The same appeared to be in order.

The

showing Thus the final position that emerges with regard to incremental fee and incremental salary for 2009-10 is as follows:

Particulars	As per calculation sheet of the Committee	As per calculation sheet of the School
Incremental salary on account of implementation of recommendations of 6 <sup>th</sup> pay commission	1,70,35,844	1,11,81,339
Incremental fee on account of fee hike as per order dated 11/02/2009	2,01,71,118	50,64,000

The

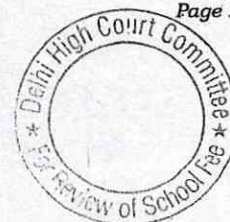
and finds The school submitted another calculation sheet, purportedly showing that the assets acquired as well as the loans and interest paid on such loans which had been taken for acquisition of fixed

assets/construction of building had been sourced from the savings for the years 2008-09 and 2009-10 which the school calculated as per Rule 177 of the Delhi School Education Rules 1973. No such calculation was submitted for the years 2007-08 on the ground that the school got recognition w.e.f. 01/04/2008 only and prior to this if there were any savings, Rule 177 would not be applicable to that.

The Committee has perused the statement filed by the school and finds that as per this statement itself the savings for the years 2008-09 were Rs.1.82 crores while the outflow of capital expenditure

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in the

including repayment of loans and interest was Rs. 1.93 crores.  
Account

Similarly for the year 2009-10 while the saving was of the order of  
reason

Rs.1.60 crores, the capital expenditure was Rs. 2.28 crores.  
purpose

two years The school also filed recasted Income & Expenditure Accounts  
for the years 2008-09 and 2009-10 showing separately the receipt of  
transport charges from the students vis a vis the transport expenses  
incurred by the school( including depreciation on transport vehicles).

These accounts reflected that the school incurred a deficit of Rs.

1,96,859 on transport account in the year 2008-09 and Rs. 8,74,340

in the year 2009-10. No such recasted Income & Expenditure  
Account was filed for the year 2007-08 presumably for the same

reason that in that year, the school was not recognised. Although the  
purpose of filing recasted Income & Expenditure Accounts for these  
two years was not explained, it appears that the school intended to

state that the purchase of transport vehicles and repayment of loans  
taken for their purchase and payment of interest thereon, were

sourced from the transport fee and not from tuition fee or annual  
charges.

No other contention was raised on behalf of the school.

Accordingly, the hearing was closed in the matter. However, while

finalizing the order, certain gaps were observed between the

submissions made on behalf of the school and its audited financials.

In order to clarify the matters, a fresh notice of hearing was issued to

the school on 22/08/2019 requiring it to appear before the Committee

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on 06/09/2019. The authorized representative of the school was asked to reconcile the figures with regard to the amount considered by the school with regard to diversion of tuition and other fees for incurring capital expenditure with its audited financials. He requested for some more time for doing the needful. His requested was acceded to by the Committee. On 15/10/2019, the matter was finally heard when the school filed written submissions alongwith which it enclosed yet another calculation sheet. While the main calculation sheet remained the same which was filed on 05/09/2017, the calculation sheet with regard to capital expenditure incurred out of tuition and other fees was revised by the school. In the calculation sheet filed on 05/09/2017, the school had projected that in 2008-09, a sum of Rs. 11,05,131 (1,93,33,991 - 1,82,28,860) was incurred towards capital expenditure out of the 'Savings as per Income & Expenditure Account', after excluding development fee and transport fee. In the revised calculation sheet, the school admitted that a sum of Rs. 1,49,14,296 was so utilised. In 2009-10, however, the school in its calculation sheet filed on 05/09/2017 had projected that it had incurred Rs. 68,26,017 out of the 'Savings as per Income & Expenditure Account', after excluding development fee and transport fee, in the revised calculation sheet, it projected that the school had raised capital resources and incurred capital expenditure therefrom and in fact generated a capital surplus of Rs. 73,26,859. Thus in the two years, the school projected that a net sum of Rs. 75,87,437

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 G.D. Goenka Public School, Sec.-22, Rohini Delhi-85/(B-492)/Order  
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(1,49,14,296 - 73,26,859) was incurred as capital expenditure out of  
 tuition fee and other fees. However, even this sum of Rs. 75,87,437,  
 which the school itself admitted as having been incurred towards  
 capital expenditure out of its fee revenues, was not included by the  
 school in its main calculation sheet.

The

The Committee has observed that while working out the  
 aforesaid amount of capital expenditure incurred out of fee revenues,  
 the school has considered on the resources side that a sum of Rs.  
 3,42,31,610 was available to the school 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. If this amount is excluded from  
 the resources side, the net result would be that the school incurred a  
 capital expenditure of Rs. 4,18,19,047 out of its fee revenues.

G.D. Goenka The Committee has considered the calculation sheet with regard  
 to the capital expenditure vis a vis its sources on capital account as  
 well as savings projected by the school out of its fee revenues. While  
 the availability of the surplus out of its fee revenues for incurring  
 capital expenditure has to be examined on the touchstone of its  
 reasonableness with reference to the total fees revenue of the school,  
 the correctness of the calculation sheet itself is in doubt as the same  
 does not agree with the Receipt and Payment Accounts filed by the  
 school.

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However, before taking the correct figures from the Receipt and Payment Accounts, two issues need to be settled first.

function

level class Firstly, whether the resources generated by the school in the year 2007-08 when the school was unrecognized can be taken into that year

consideration by the Committee for ascertaining the availability of 343/Z-A

funds with the school for the purpose of payment of increased salaries was in

on implementation of the recommendations of VI Pay Commission. 12/10/7

Secondly, the savings from fees, as projected by the school, which it 2008-C9

claims were available with it for incurring capital expenditure in terms students

of Rule 177 of the Delhi School Education Rules, 1973. of Educa

its staff Coming to the first issue, the school admittedly started

functioning from 01/04/2007 and made the admissions to the entry

level class in probably the last quarter of 2006-07 as its financials for

that year show receipt of advance fee. As per the copy of the letter no.

343/Z-XII dated 01/07/2008 granting recognition to the school which

was filed by it, the school applied for being granting recognition on

12/10/2007. The recognition was granted w.e.f. academic session

2008-09. The school admittedly recovered the arrear fee from the

students in terms of order dated 11/02/2009 issued by the Director

of Education w.e.f. 01/04/2007. The school also paid arrear salary to

its staff w.e.f. 01/04/2007. In case, the school claims that it was not

bound by the provisions of the Act or the Rules in the year 2007-08, it

was neither competent to recover arrear fee for the year 2007-08 nor

liable to pay salaries to the staff as per the recommendations of VI Pay

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Commission for the year 2007-08. Further, it accepted the position that its net current assets ( i.e. current assets – current liabilities) as on 31/03/2008 were in the negative zone to the tune of Rs. 1,56,86,686. That is to say that its current liabilities exceeded its current assets to that extent as on 31/03/2008. The school has no qualms about taking benefit of the same while working out the funds available with it. The negative net current assets as on 31/03/2008 is a result of the fee diverted for capital expenditure in the year 2007-08. If the Committee were to accept that position, the school would neither be able to take advantage of the negative net current assets as on 31/03/2008 nor for any amount to be kept in reserve for future contingencies or for meeting its accrued liabilities on account of leave encashment. The school cannot blow hot and cold at its whims. Accordingly, the Committee holds that the fee revenues utilised by the school for incurring capital expenditure in the year 2007-08 have also to be considered for making the relevant calculations.

Since the statement filed by the school with regard to the working made by it to determine the fee revenues utilised for incurring capital expenditure do not agree with the Receipt and Payment Accounts filed by it, the Committee rejects the calculation made by the school.

The fundamental issue that arises from the contentions made by the school is whether the savings as worked out by the school in terms of Rule 177 of the Delhi School Education Rules, 1973 would be

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available with it for incurring capital expenditure or not. In this connection, what needs to be examined is whether the school provided for capital expenditure while fixing its fee itself. Because in such an event, the savings as envisaged in Rule 177 would already be built in the fee structure of the school, which is not permissible. The savings which are envisaged in Rule 177 are only such savings as incidentally arise (vide *Delhi Abibhavak Mahasangh Vs. Union of India and others* AIR 1999 Delhi 124)

Educational

did not enjoy the mandate in the case of *Modern School & Ors. Vs. Union of India & Ors.* (2004) 5 SCC 583. "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 some 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."

Whether the capital expenditure was already budgeted for the purpose of fixation of fee by the school or not would be ascertainable from the annual budgets of the school which are required to be filed by every recognised school under Rule 180 of the Delhi School Education Rules. However, the Committee observes that the school did not file its budgets for the years 2008-09 and 2009-10 when it enjoyed the status of a recognised school. The budgets are mandatorily required to be filed by the recognised schools.

Before advertent to the decision of the Hon'ble Supreme Court in the case of *Modern School & Ors. Vs. Union of India & Ors.* (2004) 5 SCC 583, which the Committee by its mandate is bound to follow, it

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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, which clarified the judgment in the case of TMA Pai Foundation.

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 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.

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In the background of the aforementioned decisions, the Hon'ble Supreme Court analysed the provisions 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.*

G.D. Goenka

*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 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.*

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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. 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. 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. Therefore, the issue before us is as to what constitutes reasonable surplus in the context of the provisions of the 1973 Act. 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).

Union of

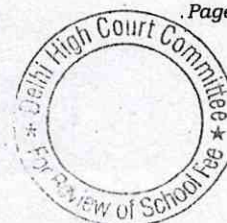
The judgment in T.M.A. Pai Foundation case (T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481) was delivered on 31-10-2002. The Union of India, State Governments and educational institutions understood the majority judgment in that case in different perspectives. It led to litigations in 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 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

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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.

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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.

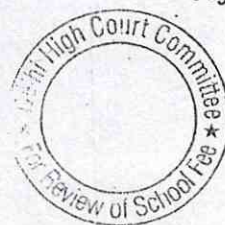
Unaided

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.

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

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school by way of fees, fine, income from rent, income by way of interest, income by way of development fees, etc.

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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.

organise

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.

revenue

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.

linkage

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 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

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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.

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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.

compon

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 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

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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.

As noted supra, the school was charging development fee @ 15% of tuition fee, over and above 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 was already generated by the school by charging development fee from the students. Therefore, sans the development fee, if the school was to be generating any further surplus, it would amount to profiteering.

This Committee has 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.

G.D. Goenka Public School, Sec.-22, Rohini Delhi-85/(B-492)/Order

Account  
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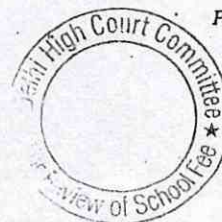


Particulars	2007-08	2008-09	2009-10
Interest:			
Gross Fee (A)	46,547,400	85,714,040	106,411,413
Net Oper			
Development fee included in Gross Fee (B)	3,871,000	4,340,100	-
Arrear Fee included in Gross Fee (C)	-	6,348,956	429,670
Net Regular fee revenue for the year (D)=(A)-(B)-(C)	42,676,400	75,024,984	105,981,743
Operational Expenditure			
Gross Expenditure (E)	57,216,846	88,758,196	107,485,056
Arrear Salary included in operational expenditure (F)	-	3,317,910	4,228,425
Depreciation and other non cash expenditure (G)	12,549,470	14,328,777	5,989,729
Interest on loans for incurring capital expenditure (H)	11,383,491	11,087,480	10,212,324
Net Operational Expenditure for the year (I)=(E)-(F)-(G)-(H)	33,283,885	60,024,029	87,054,578
Operational Revenue surplus (J)=(D)-(I)	9,392,515	15,000,955	18,927,165
Percentage of Operational revenue surplus to Regular fee	22%	20%	18%

The above numbers show that the school generated a revenue surplus of around 20% every year, on an average. This was over and above the development fee charged by the school @ 15% of tuition fee specifically for expansion and development. These numbers show that the school was resorting to profiteering by charging excessive fee over and above the development fee which was specifically charged for the purpose of expansion and development. The school cannot be heard

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to say that the savings made by it from the fee, other than development fee, were available with it for incurring capital expenditure as the Committee has already determined that the school was resorting to profiteering. The school cannot enjoy the fruits of profiteering which is the result of charging excessive fee. The surplus from revenues is available to the school for its expansion and development only if the school generates a reasonable revenue surplus, which has been held to be ranging between 6% and 15%. The expansion and development needs of the school are already met by charging a separate development fee. Over and above that the school generated a revenue surplus of around 20%. In light of these findings, there is no escape from the fact that the school was resorting to profiteering by charging excessive fee.

That leaves us to determine as to how much of the capital expenditure was incurred by the school out of its fee revenues, other than the development fee. For the sake of simplicity of calculations, we have considered the total capital expenditure incurred by the school including that incurred out of development fee and on the other side we have considered the development fee as a legitimate source of funding the capital expenditure.

On perusal of the Receipt & Payment Accounts of the school, the Committee has observed that between 2006-07 and 2009-10, the school incurred the following capital expenditures:

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Financial Year	Capital Payments/ Expenditure		
	Repayment of Loan and interest	Purchase of Fixed Assets	Total
2006-07			
2007-08			
2008-09			
2009-10			
<b>Total</b>	<b>124,608,286</b>	<b>20,174,489</b>	<b>144,782,775</b>

excess

These were partly met by raising the following capital resources:  
6,68,98

Financial Year	Capital Receipts		
	Development fee received	Loans raised	Total
2006-07	3,444,000	-	3,444,000
2007-08	3,517,600	5,179,960	8,697,560
2008-09	4,550,520	11,110,000	15,660,520
2009-10	14,133,023	35,948,974	50,081,997
<b>Total</b>	<b>25,645,143</b>	<b>52,238,934</b>	<b>77,884,077</b>

G.D. Goenka

Thus, the capital expenditure incurred by the school was in excess of the capital resources raised by it to the tune of **Rs. 6,68,98,698** (14,47,82,775 - 7,78,84,077). This amount was obviously incurred out of the regular fee revenues of the school as there was no other source available with the school. When looked at in conjunction with the finding of the Committee that the school had fixed its fee in a manner which resulted in profiteering, the Committee considers that this sum was available with the school for the purpose of implementing the recommendations of 6<sup>th</sup> Pay Commission. In the

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preliminary calculations made by the Committee, it had determined account

that the capital expenditure which was sourced out of the fee of the ca

revenues was Rs. 10,02,67,931. However, after considering the

Particular submissions of the school and examining the financials of the school in greater detail, the Committee has revised its preliminary findings as

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As for the rest of the calculations, the school has accepted the same except for the incremental tuition fee and incremental salary for the year 2009-10 and the amount of FDRs as on 31/03/2008. The

Committee has accepted the contentions of the school on these

Final De

accounts. The findings of the Committee with respect to these items

of the calculations are as follows:

Particulars	As calculation sheet of the Committee	per the	As calculation sheet of the School	per the
Incremental salary on account of implementation of recommendations of 6 <sup>th</sup> pay commission	1,70,35,844		1,11,81,339	
Incremental fee on account of fee hike as per order dated 11/02/2009	2,01,71,118		50,64,000	
FDRs as on 31/03/2008	2,05,452		5,452	

### Final Determination

Accordingly, the Committee makes the following determinations:

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Total		
Capital Expenditure incurred out of fee revenues deemed to be available with the school (A)		66,898,698
Increment		
Excess of Current Liabilities over Current Assets, after excluding the FDRs or Rs. 2,00,000 as per the contention of the school (B)		15,686,686
Funds deemed to be available with the school as on 31/03/2008 (C) =(A-B)		51,212,012
Reserves for Leave Encashment and Future contingencies (D)		14,541,572
<b>Funds deemed to be available for implementation of recommendations of 6th Pay Commission (E) =(C-D)</b>		<b>36,670,440</b>
<b>Total financial impact of implementation of 6th Pay Commission</b>		
Arrear of Salary as per 6th CPC for 1.04.07 to 31.3.09	7,634,004	
Incremental Salary for 2009-10 (as per the submissions of the school)	111,81,339	18,815,343

Since, the school already had adequate funds available with it, it did not need to hike any tuition fee nor was it entitled to recover any arrear fee from the students for implementing the recommendations of VI Pay Commission. However, the school admittedly recovered a sum of Rs. 1,18,42,626 towards arrear fee and incremental tuition fee/development fee upto 31/03/2010 (Rs. 67,78,626 towards arrear fee and Rs. 50,64,000 towards incremental tuition fee for the year 2009-10 (as per the calculation sheet submitted by the school).

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of which:

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**Development Fee:**

So far as the development fee recovered by the school for the year 2009-10 is concerned, the Committee has already factored in the same in its calculations while determining the amount of capital expenditure incurred by the school from its fee revenues. Therefore, no separate recommendation for refund is called for on that score.

However, the development fee for the year 2010-11 is refundable by

the school as it was not complying with the substantive pre condition

of maintaining an earmarked depreciation reserve fund, on fulfillment

of which alone the school was entitled to recover development fee, as

per the recommendations of Duggal Committee which were affirmed

by the Hon'ble Supreme Court in the case of Modern School vs. Union

of India (2004) 5 SCC 583 and also the order dated 11/02/2009

issued by the Director of Education. The amount of development fee

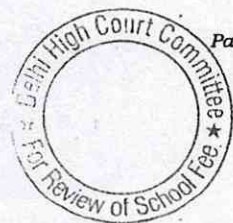
for 2010-11 recovered by the school was admittedly Rs. 1,26,03,513.

However, before passing the order, the Committee tried to ascertain from the school whether it would voluntarily refund the excess fee/development fee charged by it. For this purpose, the Committee issued a fresh notice to the school on 23/01/2020 for hearing on 30/01/2020. The authorized representative who appeared for the school requested for some time to be given to seek instructions.

Accordingly the matter was adjourned for today.

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states that Today the school has filed written submissions bearing date January 15, 2020, inter-alia stating as follows:

In "In case the Hon'ble Committee is about to recommend refund in our case. The school hereby requests the Hon'ble Committee to give a chance to voluntarily refund the amount to students before the Committee delivers a mandate"

However, during the course of hearing, Sh. Manu R.G. Luthra, Chartered Accountant, on instructions from Sh. Vipul Garg, Chairman of the school who is also present at the time of hearing, states that the school is not in a position to refund the excess fee voluntarily and as such the Committee may pass final order.

In the aforesaid written submissions, the school has also submitted that it has fulfilled all the pre-conditions for charging development fee from 2009-10 onwards. However, the school has enclosed the copies of the earmarked Depreciation Reserve Fund account and development fund account maintained with State Bank of India, SME Branch, Rohtak Road Industrial Complex, New Delhi for the year 2017-18. These accounts show that the school had a balance of Rs. 4,71,235 in depreciation reserve fund account and Rs. 12,01,480 in development fee account. No attempt has been made to show that the depreciation reserve fund account has balance equivalent to depreciation charged for the years 2009-10 to 2017-18.

In fact, as noted supra, the school had initially contended that the

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sufficie  
school did not charge any depreciation at all on assets acquired out of  
development fee. Accordingly, no relief can be given to the school in  
respect of development fee for the year 2010-11, which the Committee  
has determined to be refundable.

As per the above discussion, the Committee is of the view  
that the school ought to refund the entire sum of Rs. 1,18,42,626  
recovered by it for implementation of the recommendations of VI  
Pay Commission along with interest @ 9% per annum from the  
date of collection to the date of refund, as the school had  
sufficient funds of its own to absorb the additional financial  
burden. The Committee is also of the view that the school ought  
to refund the development fee for the year 2010-11 amounting to  
Rs. 1,26,03,513 along with interest @ 9% per annum from the  
date of collection to the date of refund as the school collected the  
same without complying with the mandatory pre condition of  
maintaining earmarked depreciation reserve fund and  
development fund accounts.

Ordered accordingly.

Justice Anil Kumar (R)  
(Chairperson)

  
CA J.S. Kochar  
(Member)  
Dr. R.K. Sharma  
(Member)

Dated: 14/02/2020

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

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

**In the matter of:**

Present : **B.G.S International Public School (B-389)**  
Sector 5, Dwarka,  
NEW DELHI 110075.

**And in the matter of:**

**Application for review dated  
9<sup>th</sup> November, 2019 and 9<sup>th</sup>  
December, 2019 seeking  
review of recommendations  
/Order dated 27<sup>th</sup> August,  
2019 in the matter of school  
(B-389).**

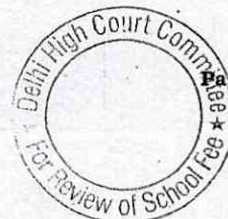
**ORDER**

17.02.2020

Present : N.K.Mahajan CA; Shri Anuj Mahajan,  
Financial Consultant and Shri Rajesh  
Kanojia Admn. Officer of the School.

**ORDER ON APPLICATIONS DATED 9<sup>TH</sup>  
NOVEMBER, 2019 AND 9<sup>TH</sup> DECEMBER, 2019  
SEEKING REVIEW OF RECOMMENDATIONS/  
ORDER DATED 27<sup>TH</sup> AUGUST, 2019 IN THE  
MATTER OF SCHOOL (B-389).**

1. B.G.S International Public School, Sector 5, Dwarka, New Delhi 110075 (B-389), hereinafter referred as 'The School' has sought review of order dated 27<sup>th</sup> August, 2019 by the Application dated 9<sup>th</sup> November,





2019 and 9<sup>th</sup> December, 2019 inter-alia on the grounds as stated hereinafter:

The School' has been duly complying with all the queries and requirements that have been raised by the honourable committee from time to time. Based on our submissions and our last hearing dated 14/05/2019 the honourable court committee announced in "that there was "No Interference" in regard to the fee hiked by the school consequent to the implementation of 6<sup>th</sup> CPC. An affidavit to this effect from the authorised school representative present during the hearing is enclosed for your perusal.

In light of the above, it seems that the aforesaid order has been inadvertently passed with misunderstanding which led to passing of the above-mentioned directions. It is, therefore, requested that the discrepancy may kindly be looked into and necessary order may be kindly passed."

With the application dated 9 December, 2019 The School also filed an affidavit dated 9<sup>th</sup> December, 2019 working as Accounts Officer in the School stating that the committee panel had discussed the matter and informed the accounts officer that there are no extra dues to be refunded by the School. When the application dated 9<sup>th</sup> November, 2019 a photocopy of an affidavit dated 18<sup>th</sup> November, 2019 was filed.

2. The application for review dated 9<sup>th</sup> November, 2019 was put up for hearing on 29<sup>th</sup> November, 2019. The authorized representative of the School who appeared on that date requested for a short time to file the affidavit in support of the application and consequently, the matter was adjourned to 17<sup>th</sup> December, 2019. The matter was, however taken up again on 18<sup>th</sup> December, 2019. The matter was adjourned at the request of the administrative officer of the School on the ground that the Chartered Accountant of the School is pre-occupied with some other matters. The matter was taken up again on 27<sup>th</sup> January, 2020. The pleas and contentions on behalf of the School were heard on the applications of the School and the order was reserved.





3. On the basis of the accounts produced by the school a calculation sheet was prepared by the Committee and a copy thereof was given to the accountant of the school who had appeared on 16<sup>th</sup> November, 2018. It was observed prima facie that the School did not need to hike any fee for implementation of the recommendations of 6<sup>th</sup> pay commission. Time was given to the School to file its objections/rebuttal to the calculations given by the Committee. However, on 28<sup>th</sup> November, 2018 the School sought more time to file its rebuttal to the calculation sheet. On the adjourned date, 14<sup>th</sup> December, 2018 the School sought adjournment again on the ground that it's Chartered Accountant was not available. The matter was taken up again on 14<sup>th</sup> May, 2019 as in between the turn of the Committee had expired. On 14<sup>th</sup> May, 2019 the rebuttal filed by the School was considered and the points of disputes raised by the rapid school were crystallized and noted in the order dated 14<sup>th</sup> May, 2019. The School had also filed its own calculation sheet which was also taken on record and commented on 14<sup>th</sup> May, 2019. On the adjourned date 14<sup>th</sup> June, 2019 the Committee noticed the differences between the figures reflected in the audited Receipts and Payment Account and the revised Receipt and payment account filed on 14<sup>th</sup> June, 2019. As the Committee had already considered its calculation sheet and contents thereof on 14<sup>th</sup> May, 2019, consequently, no other issue arose and the order was reserved.

4. There was no occasion for the Committee to observe during the hearing on any of the dates that considering the accounts produced by the School that no interference by the committee against the School was necessitated. Thereafter the record produced by the school was considered in detail and on the basis of calculation sheet which was prepared by the Committee, a copy of which was also given to the School, a detailed order dated 27<sup>th</sup> August, 2019 was passed. By the detailed

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order dated 27<sup>th</sup> August, 2019 the pleas and contentions raised by the school were rejected and the School was directed to refund the entire amount of additional tuition fee and the annual charges received by the School in 2009 - 2010 and also the development fees charged by the school in 2010 - 2011. Regarding the Tuition fee charged by the school the Committee had held as under:

" As noted supra, this Committee is bound to examine whether the principles laid down by the Hon'ble Supreme Court in the case of Modern School (supra) have been followed or not. When the Hon'ble Supreme Court has interpreted Rule 177 of the Delhi School Education Rules, 1973 and held that capital expenditure cannot constitute a component of the financial fees structure, it is not for this Committee to give its own interpretation of the same. The submission made on behalf of the school that the funds for incurring capital expenditure to be incurred after the Parent Society has created the initial infrastructure, have to come from the students (by way of fee) is made in the teeth of the law laid down by the Hon'ble Supreme Court as noted above and has to be rejected. Accordingly, the Committee rejects the argument of the school that it incurred capital expenditure out of its savings as provided in Rule 177. In fact, the school has not even given as to how the savings as per Rule 177 have been worked out by it."

5. In respect of the recovery of additional Annual charges in 2009 - 10 the Committee had held as under:

"(c) There is no justification for reducing the amount of capital expenditure of Rs. 2,94,15,079 to Rs. 65,71,113, as contended by the school in the alternative, by excluding certain figures which the school has given to be permitted as per Rule 177 (2) and the requirement of keeping 10% reserve fund out of savings from tuition fee as per Rule 177 (2) (e) and the alleged surplus from the transport fee. The school has not given any calculation sheet as to how it has worked out its so called 'savings' as per Rule 177 and the requirement of keeping 10% reserve. For proper appreciation of this argument, it was incumbent upon the school that it had given split Income & Expenditure Accounts showing its Income & Expenditures on curricular activities, co-curricular activities and transportation and then worked out the savings. Merely given certain charts does not give credibility to its arguments. Moreover, as we have held that the fee recovered from the students cannot be for the purpose of incurring capital expenditure, the alternative submission of the school also fails for the same reason."

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6. Even regarding the Development fees for 2010-11 the Committee had passed a detailed order, relevant part of which is as under:

The aforesaid recommendation of the Duggal Committee was affirmed by the Hon'ble Supreme Court in the case of Modern School (supra). It is apparent that the schools were allowed to be charged development fee provided they were maintaining a depreciation reserve fund. The school has itself stated that it was not maintaining any depreciation reserve fund. Therefore, the school was not entitled to charge development fee at the first place. The fact that it has already utilised the development fee for incurring capital expenditure and therefore, it should not be ordered to be refunded would amount to putting a premium on an illegality committed by the school. Accordingly, the Committee rejects this contention of the school."

7. Apparently there was no occasion for the Committee to observe that no interference with the charging of fees by the School shall be required as has been falsely alleged by the School. The calculations which were made by the Committee and a copy of which was given by the Committee to the School, is the basis for passing the recommendation/order dated 27th August, 2019. No anomaly or error has been pointed out by the School in the recommendation/order dated 27th August, 2019. The attempt by the School is to overreach the decision of the Committee and the School has intentionally and willfully made a false allegation and has filed a false affidavit for which the Hon'ble Court may take appropriate action against the school.

8. Neither the committee had made any such oral observation as has been alleged by the School nor the Committee has jurisdiction to make such oral observations as has been alleged by the School. In any case the ground as alleged by the School cannot be termed as procedural lapse in view of the detailed order passed by the Committee. The School has not pointed out and/or canvassed any grounds on merits. The Committee does not have jurisdiction to review the order on merits and in any case

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no grounds have been alleged to review the order dated 27<sup>th</sup> August, 2019 on merits.

9. In the circumstances the applications of the applicant dated 9<sup>th</sup> November, 2019 and 9<sup>th</sup> December, 2019 seeking review are without any merits and liable to be dismissed. Therefore, the applications for review dated 9<sup>th</sup> November, 2019 and 9<sup>th</sup> December, 2019 are dismissed with the observation that the School has filed a false affidavit dated 9<sup>th</sup> December, 2019 for which the school may be liable as may be deemed fit and appropriate by the Hon'ble Court.

**Justice Anil Kumar (R)**  
(Chairperson)

  
**J.S. Kochar**  
(Member)  
**R.K. Sharma**  
(Member)

Review- B.G.S

17.02.2020

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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:**

**Pragati Public School, Dwarka, Delhi-110078 (B-424)**


**Order of the Committee**

**Present: : Shri N.K. Mahajan and Shri Anuj Mahajan Chartered Accountants, with Shri Rajiv Malik and Shri Inder Pal Singh, Accounts Officer 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 6<sup>th</sup> pay commission. However, the school did not respond to the questionnaire or to its reminder.

A revised questionnaire was issued to the school on 30/07/2013, vide which the school was required to answer the relevant queries with regard to collection and utilisation of development fee and maintenance of earmarked development and depreciation reserve funds, besides answering the queries already raised vide questionnaire dated 27/02/2012. This too was ignored by

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the school. The school this time, responded by submitting its reply vide its letter dated 08/08/2013.

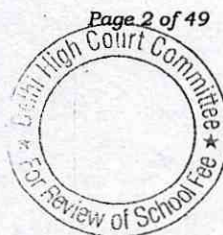
As per the reply submitted by the school, it implemented the recommendations of VI Pay Commission and started paying the increased salary to the staff w.e.f. 01/01/2006 (sic). However, it enclosed a statement of salaries for the month of August 2008 and another statement showing salaries for the month of September 2008, without indicating their significance. It also enclosed a statement indicating that it had paid a sum of Rs. 23,18,689 as arrears of salary, again without indicating the period to which they pertained.

In response to the question as to whether the school had increased the fee consequent to implementation of the recommendations of VI Pay Commission, as permitted by order dated 11/02/2009 of the Director of Education, the school stated "**The school has not increased fee**". Accordingly, the school did not submit any information with regard to fee hike effected by it or the arrear fee collected by it pursuant to order dated 11/02/2009, although the documents directly received by the Committee from the Directorate of Education, included a circular dated 28/02/2009 issued by the school to the parents of the students which indicated that the school had not only recovered the arrear fee as permitted by the Director of Education but also hiked the tuition fee and development fee w.e.f. 01/09/2008. Thus it is apparent that the school from the very beginning tried to mislead this Committee.

Pragati Public School, Dwarka, Delhi-78/(B-424)/Order

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In response to the queries regarding charging and utilisation of development fee and maintenance of earmarked reserve funds for unutilised development fee and depreciation, the school admitted that it had recovered the development fee in all the five years for which the information was sought by the Committee i.e. 2006-07 to 2010-11. The school also furnished details of expenditure incurred out of development fee in those years but did not indicate the head of expenditure. **Significantly, the school admitted the development fee was not treated as a capital receipt but as a revenue receipt and further admitted that no separate depreciation reserve fund was maintained nor any earmarked bank account or FDRs were maintained.** Thus, at the very outset, the school conceded that it was not following any of the pre conditions on fulfillment of which alone the school would have been entitled to charge development fee as per the recommendations of Duggal Committee which were affirmed by the Hon'ble Supreme Court in the case of Modern School vs. Union of India ( 2004) 5 SCC 583 and as laid down by various orders issued by the Directorate of Education regarding recovery of development fee right from the order dated 15/12/1999 to 11/02/2009.

In the first instance, the Chartered Accountants deputed by the Directorate of Education to assist this Committee, made preliminary calculations and concluded that the school had recovered more fee than was required to meet its increased expenditure on salaries on implementation of recommendations of VI Pay Commission. However,

Pragati Public School, Dwarka, Delhi-78/(B-424)/Order

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on review of these calculations, the Committee was of the prima facie view that their calculations understated the amount of excess fee recovered by the school. Accordingly, the same were not accepted by the Committee.

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 submitted its response vide its letter dated 02/06/2015. Contrary to its response to the questionnaire issued by the Committee, the school furnished the details of arrears of tuition fee and development fee recovered by it for the period 01/01/2006 to 31/03/2009. The school also enclosed a copy of the circular dated 28/02/2009 issued to the parents regarding recovery of arrear fee and increase in tuition and development fee w.e.f. 01/09/2008. It was the same circular which had earlier been filed with the Directorate of Education. Thus the school virtually made a volte face with regard to the recovery of arrear fee and increase in tuition fee and development fee as per order dated 11/02/2009 of the Director of Education. However, the school did not give any details of its accrued liabilities of

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gratuity and leave encashment on the ground that no provisions in respect thereof were made in the balance sheet.

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.

Sh. Manoj Kulshrestha, and Sh. S.N. Pathak, Advocates appeared with Sh. Inderpal Singh, Accountant and Sh. Anil Kumar Jain, Sh. Rajiv Malik.

The Committee perused the circular dated 28/02/2009 issued by the school regarding fee hike in pursuance of order dated 11/02/2009 issued by the Directorate of Education. It noted that the school hiked tuition fee @ Rs.300 p.m. and development fee @ Rs. 45 p.m. w.e.f. 01/09/2008. Accordingly a sum of Rs. 2415 was recovered as arrears for the period 01/09/2008 to 31/03/2009 from students of all the classes. Besides, an amount of Rs.3000 was also charged from each student as lump sum fee to cover the arrears salary for the period 01/01/2006 to 31/08/2008.

The Committee also noted that as per the information furnished by the school, it had recovered total amount of Rs.43,67,143 as arrears of fee from 01/01/2006 to 31/03/2009. However, the school paid only a sum of Rs. 23,18,689 as arrears of salary. Examination of books of accounts of the school by the Committee showed that the

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remaining arrear fee collected had been appropriated by the school as its income. Further, the Committee noted that the arrears of development fee collected had not been utilized for payment of arrear salary as was envisaged vide clause 15 of order dated 11/02/2009 but had been utilized for building repairs.

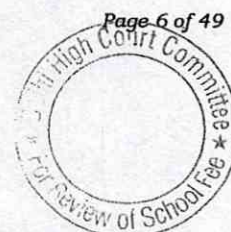
The Committee also observed that the school was transferring large amount of money to its Parent Society every year.

The Committee also noted that statement of monthly salary filed by the school was vague, as it did not show the break of amount of salary paid by cash, bearer cheque, account payee cheques and bank draft.

Further, the Committee noted that although the school claimed to have increased the monthly salary as per the recommendations of Vith Pay Commission w.e.f. 01.04.2009, there was actually a drop in the aggregate amount of salary paid for the month of April 2009 as compared to March 2009. The authorized representatives who appeared for the school submitted that this was on account of reduction in the number of teachers from 59 in March to 54 in April 2009 and out of these too, two teachers were on leave without pay. In May 2009, the number of teachers further dropped to 53, out of which one was on leave without pay and again in June 2009 the number of teachers further dropped to 50, out of which 5 were on leave without pay. The Committee further observed that so far as the

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students strength was concerned, the same had gone up from 1153 in 2008-09 to 1277 in 2009-10. It appeared that the school was not putting all the facts truly and therefore the Committee required it to file the monthly salary sheets for the entire years 2008-09 and 2009-10. The school was also directed to show by documentary evidence the mode of payment of salary.

During the course of hearing, the school admitted that it did have accrued liabilities of gratuity and leave encashment but had not provided the details as it had made no provision in the balance sheet. The school was advised to file these details in its own interest.

The school furnished the details as were required by the Committee. However the school did not produce its books of accounts for the years 2008-09 and 2009-10 to substantiate the details furnished. As per the details furnished by the school, its accrued liability for gratuity as on 31/03/2010 was Rs. 17,86,029 while that for leave encashment, was Rs. 2,45,994.

The school was directed to produce its books of accounts for verification by the Committee. However, on 08/12/2016, when the matter was fixed for further hearing, the school sought adjournment, which was reluctantly granted by the Committee and the matter was posted for 21/12/2016. However, on this date too, the school sought adjournment. As the term of the Committee was to expire on 31/12/2016, the matter was adjourned till after renewal of the term of the Committee.

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After the term of the Committee was extended, a fresh notice of hearing was issued to the school requiring it to appear on 23/03/2017.

The authorized representative of the school appeared and produced the books of accounts of the school. The Committee observed that the payment of arrears of salary had not been cross referenced with the bank statements filed by the school. The school was directed to file a detailed statement showing salary paid to the staff, employee wise, for different months of 2008-09 and 2009-10 and to mention against each, the mode and date of payment.

After the school filed the statements as above, the Committee directed its Audit Officer to verify the same with reference to the books of accounts of the school. She recorded that though the number of teachers on rolls of the school decreased in the months of April May, and June 2009 after the implementation of the recommendations of VI Pay Commission, there was an increase in the month of July 2009 in which the staff strength rose to 89 and further to 95 in January 2010 as compared to 83 in March 2009. She also recorded that there appeared to be some increase in the monthly salary of the regular teachers from April 2009 but there was no increase in the salary of non permanent employees, office staff and class IV staff. However, she noted that the school was paying salary either through bank transfer or through account payee cheques and very insignificant amount was paid through cash or bearer cheques. She also noted that

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the arrears of VI Pay Commission amounting to Rs. 23,18,689 had been paid through account payee cheques, as verified from the bank statements.

The Committee was of the view that it appeared that the school had not fully implemented the recommendations of VI Pay Commission in respect of all the employees. However, since the payment of regular salaries as well as the payment of arrear salary was made by direct bank transfer or through account payee cheques, the incremental expenditure on account of such partial implementation of the recommendations of VI Pay Commission had to be factored in for examining whether the fee hike was justified or not. Accordingly, the Committee prepared the following calculation sheet:

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Statement showing Fund available as on 31.03.2008 with the school and the effect of hike in fee as per order dated 11.02.2009 and effect of increase in salary on implementation of 6th Pay Commission Report			
	Particulars	Amount (Rs.)	Amount (Rs.)
	<u>Current Assets + Investments</u>		
	Cash in Hand	350,972	
	Cash at Bank in Current account	455,439	
	Advance recoverable in cash or kind	90,868	
	TDS	16,169	
	Fixed Deposits	1,128,000	2,041,448
<b>Less</b>	<u>Current Liabilities</u>		
	Caution Money refundable	675,750	
	Book Overdraft	812,495	1,488,245
	<b>Net Current Assets + Investments</b>		<b>553,203</b>
<b>Add</b>	<b>Funds Transferred to the Parent Society from 2006-07 to 2010-11</b>		<b>20,698,232</b>
	<b>Total funds deemed to be available</b>		<b>21,251,435</b>
<b>Less</b>	<b>Reserves required to be maintained:</b> for future contingencies (equivalent to 4 months salary)		<b>5,384,365</b>
	<b>Funds available for implementation of 6th Pay Commission before Fee hike</b>		<b>15,867,070</b>
<b>Less</b>	<b>Additional Liabilities after implementation of Vith Pay Commission:</b>		
	Arrear of Salary as per 6th CPC for 1.1.06 to 31.8.08	774,000	hike in fee as per 6th Pay
	Arrear of Salary as per 6th CPC for 1.9.08 to 31.3.09	1,544,689	
	Incremental Salary for 2009-10 (as per calculation given below)	4,849,475	7,168,164
	<b>Excess / (Short) Fund Before Fee Hike</b>		<b>8,698,906</b>
<b>Add</b>	<b>Total Recovery for implementation of 6th Pay Commission</b>		
	Arrear of tuition fee for 1.1.06 to 31.8.08	2,082,264	
	Arrear of tuition fee for 1.9.08 to 31.3.09	1,968,839	
	Arrear of development fee for 1.9.08 to 31.3.09	316,040	
	Incremental tuition fee for 2009-10 (as per calculation given below)	5,391,029	9,758,172
	<b>Excess / (Short) Fund After Fee Hike</b>		<b>18,457,078</b>

**Development fee refundable being treated as revenue receipt:**

For the year 2009-10	3,293,615	1,488,245
For the year 2010-11	3,712,784	553,203
Total	7,006,399	20,698,232
Add: Excess fee recovered	9,758,172	21,251,435
<b>Total amount refundable</b>	<b>16,764,571</b>	<b>5,384,365</b>

**Working Notes:**

Normal/ regular salary	2008-09	11,303,621	15,867,070
<b>Incremental salary in 2009-10</b>		<b>4,849,475</b>	<b>2009-10</b>
			16,153,096
Normal/ Regular Tuition fee	2008-09	15,987,804	2009-10
<b>Incremental tuition fee in 2009-10</b>		<b>5,391,029</b>	21,378,833
			7,168,164
			8,698,906

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9,758,172  
18,457,078



**Funds transferred to Society**

2006-07	2,439,136
2007-08	3,526,310
2008-09	7,581,725
2009-10	7,151,061
<b>Total</b>	<b><u>20,698,232</u></b>

As is apparent from the above calculation sheet, the Committee considered the amount of Rs. 2,06,98,232, which the school transferred to its Parent Society from 2006-07 to 2009-10, as available with it for implementing the recommendation of VI Pay Commission following the ratio of the judgment of the Hon'ble Supreme Court in the case of Action Committee Unaided Pvt. Schools vs. Directorate of Education 2009 (11) SCALE 77. After such consideration, the Committee arrived at a prima facie finding that the school had a surplus of Rs. 86,98,906 after taking into account the increased expenditure on account of implementation of the recommendations of VI Pay Commission which further increased to Rs. 1,84,57,078 after the fee hike and recovery of arrear fee and therefore, the school did not need to hike any fee for this purpose which only added to the surplus of the school and thus the entire fee hike effected by the school as also the arrear fee recovered by it pursuant to order dated 11/02/2009, aggregating Rs. 97,58,172 was liable to be refunded to the students in terms of the mandate of the Hon'ble Delhi High Court in WP (C) 7777 of 2009. Moreover, since the school was not fulfilling any of the pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School (supra)

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regarding charging of development fee, the school was also required to refund a sum of Rs. 70,06,399 which was recovered by it in 2009-10 and 2010-11.

A copy of the above calculation sheet was given to the school on 24/05/2017 for rebuttal, if any.

The school filed its rebuttal in writing on 02/06/2017 in the office of the Committee. In its rebuttal, the school disputed some of the figures taken by the Committee, without producing any evidence in respect of the same.

As per the written submissions filed by the school, the amount of funds transferred to the Parent Society of the school from 2006-07 to 2009-10 was only Rs. 29,60,036 as against Rs. 2,06,98,232 considered by the Committee as per the calculation sheet. It was submitted that the school had also been taking loans from its Parent Society, which it was paying back every year and the repayments have been considered by the Committee to be funds transferred by the school to the Parent Society. It was submitted that if both the funds received from the Society and paid back to it were considered, the net result would be that only a sum of Rs. 29,60,036 was transferred by the school to the Society from 2006-07 to 2009-10.

Secondly, it was submitted that the arrear of tuition fee for the period 01/01/2006 to 31/08/2008 was Rs. 19,74,503 as communicated to the Committee vide letter dated 20/06/2015,

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instead of Rs. 20,82,264 taken by the Committee. However, the arrear of tuition fee for the period 01/09/2008 to 31/03/2009 was Rs. 20,76,600, as against 19,68,839 taken by the Committee.

Thirdly, it was submitted that out of the total incremental fee of Rs. 53,91,029 for the year 2009-10 taken by the Committee, a sum of Rs. 41,51,000 was due to the increase in number of students in 2009-10. Further, the arrears of development fee amounting to Rs. 3,16,040 were included in the regular development charges for 2008-09, and therefore, the same ought to be excluded from the calculations made by the Committee.

Fourthly, it was submitted that the school had spent the development fee partly by adding its fixed assets and partly on repair and maintenance in the year 2008-09 and 2009-10 and accordingly, the amount which had already been spent ought not to be considered for refund.

Lastly, it was submitted that the school had a sum of Rs. 36,07,080 as other liabilities and Rs. 36,03,944 was the outstanding loan against vehicle as on 31/03/2008 and these ought also to be considered while making the relevant calculations.

The authorized representatives of the school submitted that they would file the necessary evidence within two days. Hearing was closed in the matter subject to the school filing the necessary evidences.

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The school filed a letter dated 08/06/2017 on 09/06/2017 in the office of the Committee along with which it filed self prepared (which were not audited) details of 'Other liabilities' as appearing in the balance sheets of the school. It was submitted that the loan outstanding to its Parent Society i.e. Pragati Educational & Welfare Society, was appearing as "PEWS" in the detail of other liabilities. The school reiterated that Rs. 41,51,000 out of the total incremental fee taken by the Committee for 2009-10 at Rs. 53,91,029 was on account of increase in the strength of fee paying students (net of EWS) in that year. It also submitted that out of incremental salary of Rs. 48,49,475 taken by the Committee in 2009-10, a sum of Rs. 12,56,350 was on account of increase in the strength of staff between March 2009 and March 2010.

After the hearing in the matter was closed, the Committee received a representation from the school on 31/08/2017, requesting for one more hearing as the school wanted to place some additional facts/make some additional submissions. Acceding to the request of the school, in the interest of justice, the matter was refixed for hearing on 03/10/2017. In the meantime, the school filed written submissions dated 27th Sept. 2017, purportedly placing some additional facts.

When the matter came up for fresh hearing, the Committee perused the written submissions dated 27/09/2017 filed by the school and observed that the only additional submission which the

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school made pertained to non consideration of the accrued liability of gratuity and leave encashment as on 31/03/2010, which amounted to Rs.17,86,029 and Rs.2,45,994 respectively. The Committee revisited the calculation sheet prepared by it and observed that these liabilities were indeed omitted from the consideration while working out the funds available with the school. The Committee also perused the statements of accrued liabilities of gratuity and leave encashment which were filed by the school under cover of its letter dated 10/11/2016 and observed that in so far as the accrued liability of gratuity was concerned, most of the employees had not completed 5 years of service as on 31/03/2010 and thus in their cases there was no accrued liability of gratuity as on that date.

The school also filed its own calculation sheet vide which it was claimed that the school was in deficit to the tune of Rs.1,51,36,627 after implementing the recommendations of the 6th Pay Commission and further that the school incurred more expenses out of development fee towards repair and maintenance of buildings and other assets and purchase of new assets, than the development fee recovered in the year 2009-10 and 2010-11. At the same time it was conceded that the school treated development fee as revenue receipt.

However, while preparing and finalizing the recommendations to be made in this case, the Committee observed that in order to test the veracity of the submissions made by the school that the school had also been receiving funds from its Parent Society which it was

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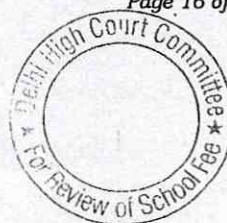
subsequently repaying and therefore, the amount transferred by the school to the Parent Society was substantially less than what was considered by the Committee, the Committee sought to examine the Receipt and Payment Accounts of the school, which would have revealed the true picture of funds movement from and to the Society as also the source of incurring capital expenditure by the school in the shape of addition to fixed assets and repayment of loans taken for acquiring fixed assets. However, the Committee found that the school had not been filing its Receipt and Payment Accounts as part of its annual returns under Rule 180 of the Delhi School Education Rules, 1973. Accordingly, the Committee issued a notice dated 28/11/2018, requiring the school to file copies of audited Receipt and Payment Accounts for the years 2006-07 to 2010-11.

On 19/12/2018, which was the date of hearing fixed in the matter, the authorized representative of the school submitted that the school had never filed the Receipt and Payment Accounts and there had never been any objection from the Directorate of Education.

The Committee observed that filing of Receipt and Payment Accounts was a statutory requirement under Rule 180 of Delhi School Education Rules 1973 read with Appendix II. Accordingly, the school was directed to file its Receipt and Payment Accounts for the year 2006-07 to 2010-11.

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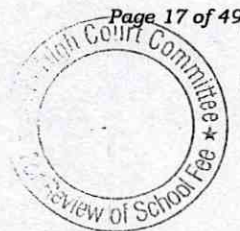
The school filed its Receipt and Payment Accounts for the years 2006-07 to 2010-11 on 13/05/2019. The matter was adjourned to 28/05/2019 for providing a revised calculation sheet to the school. However, while preparing the revised calculation sheet considering the submissions made by the school controverting the calculation sheet earlier prepared by the Committee, it was observed that the submissions made by the school with regard to transfer of funds to and from the society, did not match with the Receipt and Payment Accounts filed by the school. When the matter was put to the authorized representative appearing for the school, he submitted that the school had resorted to netting of the Receipts and Payments under certain heads and that is why the amounts transferred to and from the Society are not distinctly reflected in the Receipt and Payment Accounts.

The submission made by the authorized representative indicated that the Receipt and Payment Accounts had not been prepared correctly as they ought to reflect the gross amount of inflow and outflow of funds. The authorized representative sought some more time to file the corrected Receipt and Payment Accounts. Accordingly the matter was adjourned to 10/06/2019.

The school filed revised Receipt and Payment accounts giving the gross figures of loans and advances given, receipt and recovered from different parties. The figures in so far as they relate to

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the inter se transactions between the school and Society were distinctly shown in the Receipts and Payments account.

Based on the audited financials and the unaudited Receipt and Payment Accounts which the school had prepared on the directions of the Committee and based on the information furnished by the school from time to time during the course of hearings, the Committee prepared a revised calculation sheet. In the revised calculations, the Committee also considered not only the funds which the Parent Society had provided to the school but also the capital expenditure incurred by the school in the shape of purchase of fixed assets and repayment of loans taken by the school for their purchase, since the Committee was of the view that the issue of transfer funds from and to the Parent Society could not be considered in isolation as the funds provided by the Parent Society would also be invested in creating fixed assets and making repayment of loans by the school.

As per the revised calculations prepared by the Committee, the end result was not different from the provisional determination made by the Committee vide its original calculations. Even as per the revised calculations, the Committee arrived at a finding that the school would be required to refund the entire arrear fee and incremental tuition fee recovered pursuant to order dated 11/02/2009. Besides, the school would be required to refund the entire development fee for the years 2009-10 and 2010-11 recovered by it without fulfilling the prescribed pre conditions for recovery of

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development fee. There were only two differences between the original calculation sheet of the Committee and the revised calculation sheet. These were as follows:

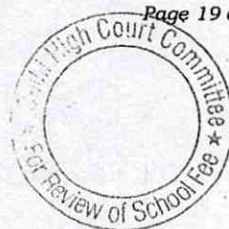
- (a) The Committee had considered a sum of Rs. 10,47,769 (2,45,994 +8,01,775) as accrued liability of gratuity and leave encashment as on 31/03/2010.
- (b) Instead of considering Rs. 2,06,98,232 as transfer of funds to the Parent Society, the Committee considered a sum of Rs. 2,04,37,612 as the total fee revenues diverted by the school to its Parent Society and for incurring capital expenditure.

These two factors marginally reduced the surplus after fee hike calculated by the Committee from Rs. 1,84,57,078 to Rs. 1,71,48,689. Since the fee hike and arrear fee recovery was to the tune of Rs. 97,58,172 which got embedded in this surplus, the revision in calculations did not affect the final result, which the Committee prima facie arrived at after making the earlier calculations.

The amount of Rs. 2,04,37,612 considered by the Committee as capital expenditure incurred out of the fee revenues of the school, which is prohibited as per the judgement of the Hon'ble Supreme Court in the case of Modern School, was calculated in the following manner:

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Financial Year	Capital Payments/ Expenditure			
	Repayment of Loan and interest	Purchase of Fixed Assets	Diversion to Society/ Other entities	Total
2006-07	1,425,174	1,114,133	2,439,136	4,978,443
2007-08	1,323,103	3,395,145	3,526,310	8,244,558
2008-09	1,389,677	3,561,233	7,581,725	12,532,635
2009-10	1,913,693	1,823,654	7,151,061	10,888,408
<b>Total</b>	<b>6,051,647</b>	<b>9,894,165</b>	<b>20,698,232</b>	<b>36,644,044</b>

Financial Year	Capital Receipts			
	Contribution from Society	Loans raised	Sale of Fixed Assets	Total
2006-07	2,473,000	-	-	2,473,000
2007-08	1,155,728	1,982,367	-	3,138,095
2008-09	4,460,488	2,656,712	-	7,117,200
2009-10	2,375,600	1,102,537	-	3,478,137
<b>Total</b>	<b>10,464,816</b>	<b>5,741,616</b>	<b>-</b>	<b>16,206,432</b>

Excess of capital expenditure over capital receipts

Rs.2,04,37,612 (3,66,44,044 - 1,62,06,432)

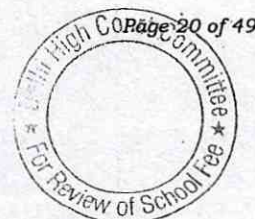
Since the Committee had considered the capital resources which the school raised (including contribution from the Parent Society) for incurring capital expenditure, the Committee calculated that the school incurred a sum of Rs. 2,04,37,612 out of its fee revenues, as the school had no other source of receipt.

However, in the interests of justice and fair play, a copy of the revised calculation sheet was provided to the school, for rebuttal if any.

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The school filed its rebuttal dated 19/08/2019 to the Revised Calculation Sheet prepared by the Committee. The school also filed its own Calculation Sheet to show that instead of Rs.1,71,48,689 which the Committee had worked out to be the amount of surplus generated by the school after hiking fee pursuant to order dated 11/02/2009, the school actually had a deficit of Rs. 63,31,523. On comparing the revised calculation sheet prepared by the Committee with the calculation sheet filed by the school, it became apparent that school disputed only two figures in the revised calculation sheet prepared by the Committee. These were as follows:-

1. The School did not agree that a sum of Rs. 2,04,37,612 was diverted out of its fee revenues towards meeting its capital expenditure, repayment of loans for purchase of its assets and the amount diverted to its parent society.
2. The school disputed the amount of incremental tuition fee for the period 2009-10. As against the sum of Rs.53,91,029 which was worked out by the Committee, the school admitted only Rs.23,48,429 as its incremental tuition fee in the year 2009-10.

In respect of the sums disputed by the school as above, the school sought to justify the same on the following grounds:-

- (a) After the Society had provided the initial infrastructure of the school like building, furniture and fixtures and equipments, it had no role to play with regard to the expansion of such infrastructure. The school was supposed to generate its own

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funds for expansion of such infrastructure which could only be out of the fee charged by the school from the students. It was further submitted that Rule 177 of the Delhi School Education Rules permitted the savings from fees to be utilized for meeting its capital expenditure.

(b) With respect to particular items of capital expenditure, diversions which were considered by the Committee, the school submitted that the repayment of vehicle loan and interest thereon to the extent of Rs. 42,82,869 came out of its transport surplus in the years 2006-07 to 2009-10. The purchase of other fixed assets to the extent of Rs. 69,82,976 came out of development fee for the years 2006-07 to 2009-10, which the Committee had not factored in its calculations presuming it was treated as revenue receipt by the School. It was further submitted that though it was treated as revenue receipt, it was available for incurring capital expenditure as the revenue surplus including the development fee had always been more than the cash profit of the school.

(c) The net payments made to the Society by the school from 2006-07 to 2009-10 were Rs. 29,60,036 instead of Rs. 1,02,33,416 (2,06,98,232- 1,04,64,816) taken by the Committee. It was submitted that the Committee apparently did not take into account the fact that the school owed a sum of Rs. 72,73,379 to the society as on 01/04/2006.

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(d) With regard to incremental tuition fee for the year 2009-10, the school submitted that the fee recovered from the new students admitted in the year 2009-10 which amounted to Rs.30,42,600 ought not to have been considered as incremental fee.

(e) The school submitted that the collection of development fee in the year 2009-10 and 2010-11 amounting to Rs. 70,06,399 ought not to have been considered as refundable merely for the reason that the same had been treated as a revenue receipt instead of a capital receipt. However, the authorized representative of the school conceded that the school did not maintain any earmarked development fund and depreciation reserve fund in respect of fixed assets acquired.

The Committee observed that while calculating the cash profit, the school had taken the net profit as per its Income and Expenditure account and added non cash depreciation charged to its revenue. However, it had not reduced the net transport surplus which it claimed to have been utilized for repayment of vehicle loans. Further, the calculation of net transport surplus had also not been furnished for any of the years. The authorized representative sought some more time to make up for the deficiencies as noted. The request of the authorized representative was acceded by the Committee and it was afforded more time to give the necessary details and clarifications.

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The School filed written submissions dated 20<sup>th</sup> September 2019, vide which it again revised certain figures with regard to diversion of fee for capital expenditure. As per the new chart filed by the school it appeared that there was no such diversion, if the development fee received by the school and the surplus in the transport fund were factored in.

Taking a cue from the observation made by the Committee on the previous hearing, the school submitted that the incremental salary for the year 2009-10 was only Rs. 35,93,125 instead of Rs. 48,49,475 taken by the Committee in its calculations.

The authorized representative of the school was heard on the written submissions dated 20/09/2019 filed by the school. It was 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 was permitted under Rule 177(2) of Delhi School Education Rules, 1973. It was further submitted that out of the total repayment of transport loans amounting to Rs. 60,51,647, a sum of Rs. 16,64,391 came out of the surplus generated out of the transport fee. The Committee observed that on the resources side, the school accounted for a sum of Rs. 68,65,413 which was received as development fee as a capital receipt. It was submitted that although the same was treated as revenue receipt in the books of accounts, the same was still available for incurring capital expenditure as the cash

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surplus on revenue account exceeded the development fee. The school filed a computation to demonstrate the same.

The Committee further observed that the school had also taken a sum of Rs.72,73,379 on the resources side which was the net cumulative funds contributed by the Society upto 31/03/2006. However, the school had not taken into account the capital expenditure which was incurred upto 31/03/2006, out of the said sum.

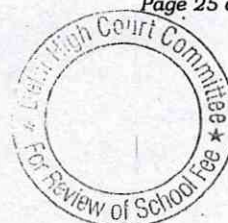
**Discussion and Determinations:**

After considering the submissions made by the school in response to the revised calculation sheet prepared by the Committee, the following issues need to be determined:

- (i) Whether the Committee correctly calculated the sum of Rs. 2,04,37,612 as capital expenditure incurred by the school out of its fee revenues and not out of the capital resources raised by the school? If not, what was the correct amount?
- (ii) Whether the amount of such Capital Expenditure was to be deemed to have been available with the school for payment of increased salaries for implementation of the recommendations of VI Pay Commission in view of the law laid down by the Hon'ble Supreme Court in the case of Modern School (supra) to the effect that capital

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expenditure cannot form part of the fee structure of the school.

- (iii) Whether the Committee correctly determined the incremental tuition fee for the year 2009-10 to be Rs. 53,91,029 as against Rs. 23,48,429 determined by the school? If not what was the correct amount of the incremental tuition fee for the year 2009-10?
- (iv) What was the correct amount of the incremental salary paid by the school in the year 2009-10 after implementation of the recommendations of VI Pay Commission?

Taking the third and fourth issues first, the Committee had considered the total tuition fee received by the school in the year 2009-10 (exclusive of arrear fee), which represented the increased fee as per order dated 11/02/2009, the increase having been effected w.e.f. 01/04/2009, on one hand and the total tuition fee received by the school (exclusive of arrear fee) in the year 2008-09, which represented the pre hike fee. The difference between the two was considered as the incremental fee on account of the hike effected by the school pursuant to order dated 11/02/2009.

Likewise, the Committee had considered the total salary paid by the school in the year 2009-10 (exclusive of arrear salary) which represented the salary after implementation of the recommendations of VI Pay Commission vis a vis the total salary paid by the school for

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the year 2008-09 (exclusive of the arrear salary). The difference between the two was considered to be the incremental salary for the year 2009-10.

The school has not disputed these figures taken by the Committee. However, the stand of the school is that the student strength (fee paying) rose by 217 in the year 2009-10. For the purpose of calculating the incremental fee collection, the fee collected from the additional number of students in the year 2009-10 ought to be excluded as the same cannot be considered as incremental fee.

Initially the school did not address similar issue with regard to salary. However, later on, it submitted that the incremental salary by excluding the salary of the new teachers appointed in the year 2009-10 would be Rs. 35,93,125 instead of Rs. 48,49,475.

The two issues have to be considered together. The net effect on the calculations made by the Committee would be as follows:

Particulars	As taken by the Committee	As submitted by the school
Incremental fee for the year 2009-10	5,391,029	2,348,429
Incremental salary for the year 2009-10	4,849,475	3,593,125
Net additional revenue generated by the school	541,554	(1,244,696)

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Although on both the issues, the school took varying positions at different stages of proceedings, the final submissions made by the school appear to be in order, considering the details submitted by the school. Necessary adjustment to the tune of **Rs. 17,86,250** (5,41,554 + 12,44,696) will be made while making the final determinations.

So far as the first issue is concerned, the Committee made available the calculations made by it to the school. The school filed its own calculation sheet as Annexure A to its submissions dated 20/09/2019. The school did not dispute any of the figures taken by the Committee. However, it contended that a sum of **Rs. 98,94,165** which the Committee had taken into consideration as purchase of fixed assets was permissible as per Rule 177 (2). Further, out of **Rs. 60,51,647** taken by the Committee as repayment of loan and interest, a sum of **Rs. 16,64,391** was available with the school on account of surplus generated by the school from its transport fee. Further, the Committee had not taken into consideration that portion of the development fee amounting to **Rs. 68,65,413**, which was available to it for incurring capital expenditure, even though it had been treated as a revenue receipt in the books of accounts. Lastly, the opening balance of contribution from the Parent Society as on 01/04/2006, which amounted to **Rs. 72,73,379** was not considered by the Committee as an available resource for incurring capital expenditure. In nutshell, it was contended that the school had available with it a sum of **Rs. 2,56,97,348** which fully covered the amount of **Rs.**

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2,04,37,612 (excess of capital expenditure over capital receipts considered by the Committee as diversion of fee). Therefore, it could not be considered as funds deemed to be available with the school for payment of increased salaries on account of implementation of the recommendations of VI Pay Commission.

The Committee has considered the aforesaid submissions made by the school. At outset, the last submission with regard to the sum of Rs. 72,73,379 representing the opening balance of contribution from the Parent Society as on 01/04/2006 deserves to be rejected as the said sum was not available with the school for incurring capital expenditure in the years 2006-07 to 2009-10, the same having already been invested in the fixed assets of the school as on 01/04/2006. Perusal of the audited financials of the school for the year 2006-07 shows that as on 01/04/2006, the cost of fixed assets acquired by the school till that date was Rs. 84,33,229. Therefore, the entire amount appearing as opening balance in the account of the Parent Society as on that date, already stood invested by 01/04/2006.

For the purpose of considering the remaining submissions of the school, the Income & Expenditure Account of the school would require to be analysed in greater detail. On analysis of the Income & Expenditure Accounts for the years 2006-07 to 2009-10, the Committee finds that the submissions with regard to availability of development fee to the tune of Rs. 68,65,413 for incurring capital expenditure is correct, despite the development fee having been

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treated as a revenue receipt. The contention with regard to availability of transport surplus to the tune of Rs. 16,64,391 for repayment of loans and interest is also accepted. However, the contention that a sum of Rs. 98,94,165 for purchase of Fixed Assets under Rule 177 (2) needs to be examined in the context of the law laid down by the Hon'ble Supreme Court in the case of Modern School (supra)

The school in its written submissions dated 19/08/2019 dwelt with this issue in detail. For the sake of ready reference, the written submissions made on this issue are reproduced herebelow verbatim:

**"Purchase of fixed assets of Rs. 98,94,165/-"**

The school, established in 2001, provides state of the art facilities to its students which are 2030 at present along with about 113 staff members. The school's building is built over a plot area of 3.953 acres of which over 1.581 acres is for the school building and about 2.372 acres is for the playground. The students who are studying in the school are accommodated in spacious classrooms, state of the art facilities, activity rooms, computer rooms, science labs, library, playground etc. for their all round development. The following table summarizes the infrastructural facilities of the school:

<b>Infrastructure Particulars</b>	
Total plot area of school	3.953 acres
Total Built up Area of School	1.581 acres
Total Covered Area of School	8395.72 sq. mtrs.
Total Area of playground	2.372 acres
No. of classrooms	60
No. of Laboratories	8
School has Web services	Yes
School has CCTV Cameras	Yes
No. of Computers on Computer Lab.	55
No. of classes with Smart Class	53
No. of washroom for male staff	4
No. of washroom for female staff	4

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School has guards employed for safety	Yes
Safe drinking water	Yes
Fire Fighting System	Yes
Rain Water Harvesting System	Yes

In order to sustain the quality of education being provided to the students, the school's managing committee needs to incur expenditure towards upgradation/expansion/development (incl. fixed asset purchase) of the school.

**Society's Responsibility:** The responsibility of the society is in the initial stage i.e. to purchase school land and construct building thereon to start the school. Once the school is started and building is used for study of students, the year to year upgradation/ expansion/ development (incl. fixed asset purchase) is to be borne by managing committee of the school to ensure to provide feasible environment for the students to provide them proper growth and development. Once the building, after the construction of the same by the society, has been handed over to the school for its use, all the statutory expenses and year to year upgradation/expansion/development (incl. fixed asset purchase) is to be borne by the school from its own sources .

**Duties and responsibilities of the Managing Committee of the Recognized Private Unaided Schools:** As per the rule 181 to 185 of DSER, 1973:

#### Chapter XV

#### Other Duties And Responsibilities Of Managers And Managing Committees Of Schools

**181. Managing committee how to run schools-** Every managing committee shall run the school managed by it in the best interests of education of children and for the better organisation and development of school education in Delhi.

**182. Managing committee not to create adverse situations-** Every managing committee shall allow a school managed by it to function normally and smoothly and shall not cause any situation by which, or due to which, the normal and smooth functioning of the school may be hampered nor shall it interfere in the day-to-day affairs of the school.

**183. Managing committee to comply with the rules regarding recognition of schools, receipt and utilisation of**

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**the aid, etc.** -Every managing committee shall comply with the provisions of the Act and these rules with regard to the recognition of the schools and shall also comply with the provisions of these rules with regard to the receipt and utilisation of aid and shall maintain in accordance with these rules, proper accounts of all fees and contributions received by it.

**184. Managing committee to offer facilities for inspection-** Every managing committee shall provide all reasonable facilities for the inspection of the school and also for the inspection of its account books, registers and other documents required by these rules to be maintained by such schools.

**185. Managing committee not to act adversely to the interests of the school-** The managing committee shall not conduct the affairs of the school in such a way as to adversely affect the interests of the school.

As per above rules, it is the responsibility of the managing committee to run the school in the "best interest of education of children {Rule 181}, shall not cause any situation by which the normal and smooth functioning of the school is hampered {Rule 182} and "shall not conduct affairs in such a way to adversely affect the interest of the school {Rule 185}.

In the present scenario, there have been constant instructions and directions from the Department of Education, C.B.S.E., DCPCR and Hon'ble Court decisions that the School Management has to ensure:-

- Safe and secure journey of the students from home to school and vice versa.
- To provide facilities of safety and security of students in school, viz.;
- Building premises should be safe and secure through its regular redevelopment
- Fully equipped fire system
- To provide clean and safe drinking water to all
- To maintain health and hygiene facilities
- Proper Rain Water Harvesting System.
- Various others alike

**Thus, it is the obligation of the Managing Committee of the school for upgradation/expansion/development (incl. fixed asset purchase) of the school which is safe and secure for the students.**

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**Rule 177, DSER 1973:** Further in accordance with provision of rule 177 of DSER, 1973, fees after utilisation in the first instance for meeting the Pay, allowances and other benefits admissible to the employees of the School, may be used in the following manner.

**177. Fees realised by unaided recognised schools how to be utilized**

(1) Income derived by an unaided recognised schools by way of fees shall be utilised in the first instance, for meeting the pay, allowances and other benefits admissible to the employees of the school:

Provided that savings, if any from the fees collected by such school may be utilised by its managing committee for meeting capital or contingent expenditure of the school, or for one or more of the following educational purposes, namely:—

- (a) award of scholarships to students;
- (b) establishment of any other recognised school, or
- (c) 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.

(2) The savings referred to in sub-rule (1) shall be arrived at after providing for the following, namely :—

- (a) pension, gratuity and other specified retirement and other benefits admissible to the employees of the school;
- (b) the needed expansion of the school or any expenditure of a developmental nature;
- (c) the expansion of the school building or for the expansion or construction of any building or establishment of hostel or expansion of hostel accommodation;
- (d) co-curricular activities of the students; (e) reasonable reserve fund, not being less than ten per cent, of such savings.

From above, it can be deducted that Rule 177 (2) allows for "expansion of school or any expenditure of development nature". The expense incurred for purchase of fixed assets has been for the development of the school infrastructure. Moreover, it should

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be noted here that the school is allowed to assist other schools under the same management (as per sub rule 1(c) above). In such a scenario, the school should be allowed to utilize its fees on the expenses of developmental nature on its own infrastructure.

In compliance to the Sub rule 2(b) and 2(c) of rule 177 DSER, 1973 (excerpt above), the school management utilised the schools funds towards purchase of fixed assets which were for the upgradation/development of the school infrastructure. This is in compliance and as per the responsibilities of the school's managing committee outlined in Rule 181, 182 and 185 of the DSER, 1973.

Hence, the utilisation of the school funds towards purchase of fixed assets for the period 2006-07 to 2009-10 is in compliance to Rule 177(2), DSER 1973 and as per the duties of the managing committee as prescribed in Rule 181 to Rule 185, DSER, 1973.

There is no quarrel with the proposition that it is the responsibility of the managing committee of the school to administer the school in the best interest of education of the children. There is also no quarrel with the proposition that for the purpose of imparting quality education and providing facilities to the students, the school would constantly need to expand and upgrade its infrastructure and incur capital expenditure for that purpose. However, the question that is to be determined is whether the cost of such expansion or upgradation has to be recovered entirely from the students by including the entire capital expenditure in the fee of the students, as contended by the school. The answer is a categorical NO. The very purpose of allowing the schools to charge development fee from the students was to acquire and upgrade their infrastructure by incurring capital expenditure. Of course, levy of development fee was made conditional upon the school fulfilling certain pre conditions like

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maintenance of earmarked development and depreciation reserve funds. Maintenance of such funds was mandated so that the schools might not divert the development fee for purposes other than for which it was collected. The familiar argument often repeated by various schools is that the schools can generate a reasonable revenue surplus for its expansion and development by selectively quoting from the judgment of 11 Judge Bench of the Hon'ble Supreme Court in the case of TMA Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 and such revenue surplus can be generated only by including the capital expenditure in its fee, ignoring the fact that the same judgment also laid down that imparting education was a charitable activity and the educational institutions could not resort to profiteering by charging excessive fee. Further the raison d'être of permitting the schools to generate a reasonable revenue surplus was that besides meeting the regular revenue expenditure for imparting education, the educational institutions could have some funds to partly fund its expansion or development needs. To this extent, the schools could build in a surplus while fixing their fee structures. In the subsequent case of Islamic Academy of Education & ors. vs. State of Karnataka & ors. (2003) 6 SCC 697, in which a 5 judge Bench was constituted by the Hon'ble Supreme Court to clarify the ratio of the judgment in the case of TMA Pai, the Hon'ble Supreme Court held that a 6% to 15% surplus could be considered reasonable and that too was for the purpose of meeting the expansion and development needs of the

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institution. When the school is already charging an earmarked levy under the head development fee which is @ 15% of the tuition fee for the purpose of expansion and development, the school cannot be heard to say that it can further generate a revenue surplus by including the capital expenditure in its fee structure to fund its development needs.

The school has placed heavy reliance on Rule 177 of the Delhi School Education Rules, 1973 to contend that it can include capital expenditure as part of its fee structure.

Therefore, the fundamental issue that arises from the contentions made by the school is whether in terms of Rule 177, Delhi School Education Rules, 1973 would be available with it for incurring capital expenditure or not. In this connection, what needs to be examined is whether the school provided for capital expenditure while fixing its fee itself. Because in such an event, the savings as envisaged in Rule 177 would already be built in in the fee structure of the school, which is not permissible. The savings which are envisaged in Rule 177 are only such savings as incidentally arise (*vide Delhi Abibhavak Mahasangh Vs. Union of India and others AIR 1999 Delhi*

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*"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."*

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The school has not disputed the fact that the capital expenditure, as determined by the Committee was included in the fee structure. In fact it has sought to justify such inclusion.

The Hon'ble Supreme Court in the case of Modern School & ors. vs. Union of India & ors. (2004) 5 SCC 583, which was a civil appeal against the judgment of the Delhi High Court in the case of Delhi Abhibhavak Mahasangh (supra) and which this Committee by its mandate is bound to follow, analyzed the provisions of Rule 177 and returned a finding that capital expenditure could not form part of the fee structure of the school. While doing so, the Hon'ble Supreme Court duly considered the law laid down by the earlier 11 judge bench in the case of TMA Pai & 5 judge bench in the case of Islamic Academy. By the same judgment, it endorsed the recommendation of the Duggal Committee, which recommended that schools could charge development fee @ 10% of tuition fee for meeting its capital expenditure for expansion and development. In fact, it enhanced the cap of 10% of tuition fee to 15%. 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*

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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.

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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 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. 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. 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. Therefore, the issue before us is as to what constitutes reasonable surplus in the context of the provisions of the 1973 Act. 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

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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 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

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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.

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

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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 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

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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 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

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to be noted is that the reasonable surplus was to be utilized for development and expansion of the institution.

As noted supra, the school was charging development fee @ 15% of tuition fee, over and above 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 was already generated by the school by charging development fee from the students. Therefore, with the development fee, if the school was generating any further surplus, it would amount to profiteering.

The school itself has contended in para 3 of its written submissions that it generated a cash profit of Rs. 12,17,821 in 2006-07, Rs. 37,52,868 in 2007-08, Rs. 75,39,344 in 2008-09 and Rs. 95,85,057 in 2009-10. However, this included development fee which was credited to Income & Expenditure Account. After deducting the development fee, the resultant figures for the aforesaid 4 years are Rs. 3,50,887, Rs. 24,95,214, Rs. 59,74,571 and Rs. 62,91,442 respectively. These work out to 3%, 15%, 31% and 20% of the total annual fee (after deducting the development fee and transport fee). As the school has separately charged development fee which is 15% of the tuition fee, the aforesaid revenue surpluses generated by the school can in no manner be considered as reasonable, and the school was clearly resorting to profiteering.

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Accordingly, the contention of the school that it had available with it Rs. 98,94,165 out of its revenue surplus which was rightly utilised by it for incurring capital expenditure is rejected as the said surplus was a result of profiteering by the school.

In light of the above discussion, the Committee makes the following determination with regard to the amount of capital expenditure which the school illegally raised from the students through fees from 2006-07 to 2009-10.

Total Capital Expenditure and funds transferred to the parent society from 2006-07 to 2009-10		3,66,44,044
Less: Capital expenditure incurred out of legitimate capital receipts:		
(a) Contribution from parent society	1,04,64,816	
(b) Loans raised	57,41,616	
(c) Development fee	68,65,413	
(d) Transport fee	16,64,391	2,47,36,236
<b>Balance Capital Expenditure recovered by charging excessive fee from students</b>		<b>1,19,07,808</b>

The Committee had originally considered a sum of Rs. 2,04,37,612 as capital expenditure funded by excessive fee. However, after considering the submissions of the school, the same stands moderated to Rs. 1,19,07,808.

So far as issue no. (ii) is concerned, the Committee is of the view that the school cannot take advantage of its own wrong. Having determined that the aforesaid sum of Rs. 1,19,07,808 was invested by

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the school in incurring capital expenditure and the same was the result of profiteering resorted to by the school, it has to be held that the aforesaid sum of Rs. 1,19,07,808 was deemed to be available with the school for meeting its increased financial commitments on account of implementation of the recommendations of VI Pay Commission. Accordingly, adjustment to the tune of **Rs. 85,29,804** (2,04,37,612-19,07,808) will be made in the final determinations.

**Development Fee:**

So far as the development fee recovered by the school for the year 2009-10 is concerned, the Committee has already factored in the same in its calculations while determining the amount of capital expenditure incurred by the school from its fee revenues. Therefore, no separate recommendation for refund is called for on that score. However, the development fee for the year 2010-11 is ordered to be refunded by the school as it was, of its own, not complying with any of the pre conditions of maintaining an earmarked depreciation reserve fund, on fulfillment of which alone the school was entitled to recover development fee, as per the recommendations of Duggal Committee which affirmed by the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583 and also the order dated 11/02/2009 issued by the Director of Education. The amount of development fee for 2010-11 recovered by the school was admittedly **Rs.37,12,784.**

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While this order was almost finalized, the Committee received a letter dated 02/01/2020 from the school stating "In the matter, it is humbly submitted that surplus, if any, in the development fund as may be determined by the Committee for refund shall be appropriated by us under the guidance of the Committee".

The Committee issued a notice on 16/01/2020 requiring the school to appear on 31/01/2020 in view of the fresh letter received from the school. The authorized representative who appeared for the school was asked to elaborate as to what exactly was sought to be conveyed by the school and whether the school would voluntarily refund the amount that may be determined by the Committee. He sought some time to take instructions in the matter. Accordingly the matter was posted for final hearing on 14/02/2020. However, at the time of hearing on that date, school filed fresh written submissions, seeking to reagitate the matters on which the hearing had already been concluded. There was not even a whisper in the written submissions as to whether the school would voluntarily refund the excess fee/development fee that may be determined by the Committee to be refundable. Accordingly the Committee recorded that it would proceed to pronounce its recommendations soon. However, again the Committee received a letter dated 17/02/2020, vide which it stated as follows:

" With reference to the last hearing in the above matter on 14<sup>th</sup> February 2020 by the Hon'ble Committee, we hereby inform the

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Committee that the school shall refund the amount of fee as determined the Committee under its guidance.

However, we request the Committee that we shall be allowed time to comply with the order of refund so that the normal working of the school is not adversely affected."

Since the letter was signed on behalf of the school by some person who had neither mentioned his name nor his designation, the Committee required the Principal and/or Manager of the School to be present on 19/02/2020 to clarify the matter.

However instead of Principal or Manager of the school putting an appearance, on 19/02/2020 also, the school sent a letter dated 18/02/2020 through one Sh. T.K. Saraswat, General Assistant of the school, which again was signed by some unknown person who did not mention his name or designation. Vide this letter, the school purportedly stated that its earlier letter dated 17/2/2020 might be treated as withdrawn.

Since the authenticity of the letters dated 17/02/2020 and 18/02/2020 was in doubt, the Committee insisted that either the Manager or the Principal of the school be present today.

Today Dr. Poonam Manshani, Manager of the school is present and submits that the letter dated 18/02/2020 vide which the earlier letter dated 17/02/2020 was withdrawn, was signed by her and that may be taken as the final submission of the school.

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The Committee wishes to record its strong disapproval at the manner in which the school has been playing hide and seek and trying to postpone the adverse order, which it clearly anticipated. We refrain from saying anything more in the matter.

**Final Determinations with regard to arrear fee and incremental tuition and development fee w.e.f. 01/09/2008:**

In light of the above discussion on various issues, the Committee makes the following determinations:

Surplus as calculated by the Committee vide its revised calculations		17,148,689
Difference on account of incremental fee and incremental salary, as per the submissions of the school	(1,786,250)	
Difference on account of determinations capital expenditure recovered by charging excessive fee	(8,529,804)	(10,316,054)
<b>Final surplus as determined</b>		<b>6,832,635</b>

The total additional revenue generated by the school by recovering arrear fee and incremental tuition fee and development fee w.e.f. 01/09/2008, was Rs. 97,58,172. Recovery of this additional fee resulted in generating a surplus of **Rs. 68,32,635** as per the above determinations. To this extent, the Committee is of the view that the fee hike effected by the school pursuant to order dated 11/02/2009 was excessive and the same ought to be refunded to the students with interest @ 9% per annum from the date of collection to the date of refund.

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**Summary of Recommendations:**

The school ought to refund the total sum of Rs. 1,05,45,419 along with interest @ 9% per annum from the date of collection to the date of refund, as per the following details:

Arrear fee and incremental tuition fee for the year 2009-10	Rs. 68,32,635
Development Fee for the year 2010-11	Rs. 37,12,784
<b>Total</b>	<b>Rs. 1,05,45,419</b>

Ordered accordingly.

Justice Anil Kumar (R)  
(Chairperson)

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CA J.S. Kochar  
(Member)

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Dr. R.K. Sharma  
(Member)

2,635

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Dated: 04/03/2020

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

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

**In the matter of:**

**St. Mary School (B-137)  
Safdarjung Enclave,  
NEW DELHI 110029.**

**And in the matter of:**

**Application for review dated  
30<sup>th</sup> January, 2020 seeking  
review of recommendations  
/Order dated 18<sup>th</sup> July, 2019  
in the matter of school (B-  
173).**

**ORDER**

05.03.2020

Present : Nikhil Philip, Manager and Sh. P.A. Sivichen,  
AO of the School

**ORDER ON APPLICATION DATED 17<sup>TH</sup>  
NOVEMBER,2019 SEEKING REVIEW OF  
RECOMMENDATIONS/ORDER DATED 23<sup>RD</sup>  
AUGUST,2019 IN THE MATTER OF SCHOOL (B-  
137).**

1. St. Mary School, Safdarjung Enclave, New Delhi 110029 (B-137),  
hereinafter referred as 'The School' has sought review of order dated how  
17<sup>th</sup> November, 2019 inter-alia on the grounds as stated hereinafter:

" That the Committee has committed an error apparent on the face of the  
order as though the arrears of fees has been paid with effect from January, 2006  
as VI Pay commission was retrospective and the committee has taken that the  
school paid the fees with effect from March, 2009. The School has also  
challenged the amount collected by the school as mentioned in the order. It is

Review- St. Mary School, Safdarjung Enclave (B-0137)

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contended that the school had collected ₹ 1, 02, 27, 274 whereas Committee has observed that the school had collected ₹ 1, 53, 41, 025. The School has also challenged the findings of the Committee regarding Development Fees relying on the precedent of the Supreme Court. It is contended that the amount of Development Fees was collected with the approval of Parent Teachers Forum and Management Committee. It is also contended that the Supreme Court had permitted to collect Development Fees @15% with effect from December, 2003 therefore, the fees as collected by the school was not unauthorized. The applicant, School has also challenged the order of the Committee on the ground that the number of students considered by the Committee is incorrect as in the year 2008-09 the School had 1416 students including 73 students on full free ships. In the circumstances the School was collecting fees only from 1343 students but in the order which is challenged by the School number of students has been taken as 1458.

The finding of the Committee regarding utilization of the Development Fee is also challenged by the School. The ground for seeking review is that the school had actually had to spend ₹ 31, 69, 941 and ₹ 50, 61, 365 for providing facilities for the students and for the betterment of the School. According to the School disallowing the actual expenditure on the basis of a pure technicality is very unfair and unjust.

Though the school was given the final calculations as computed by the Committee and a reasonable opportunity to rebut and/or to challenge the same, however, the school is seeking review of the order on the ground that the figure of ₹ 14, 75, 237 arrived at by the Committee is to be corrected and the School has given its own calculations. The school has admitted that it does not have earmarked bank accounts/FDR/Investments due to non-availability of funds and has challenge the order/recommendation of the Committee dated 23<sup>rd</sup> August, 2019 though in the application for review the school is seeking to reconsider the order dated 19<sup>th</sup> September, 2019.

2. The Order/recommendation dated 23<sup>rd</sup> August, 2019 were passed by the Committee after giving adequate opportunity to the school. In its order/recommendation dated 23<sup>rd</sup> August, 2019 the Committee had held as under:

Review- St. Mary School, Safdarjung Enclave (B-0137)

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Page 2 of 11



the school,  
" With regard to maintenance of earmarked development fund and depreciation reserve funds, he stated that depreciation reserve was maintained in the books of the school but no earmarked bank accounts of FDRs of investment were kept for unutilized against the same. He also submitted that the school did not have unutilized development fund as whatever funds were available were utilized for the purpose of construction of new building. He submitted that at that time there was an earthquake and old building developed cracks, consequently it was demolished and a new building was constructed and all the funds available with the school, including the development fund, were utilized for the construction of building. He further submitted that the school could not have implemented the recommendations of the 6th pay commission out of its own funds which were available, as at that time the building was under construction and for the purpose of meeting the additional expenditure on account of implementation of 6th pay commission, fee hike was necessary.

On 06/09/2016, the school filed a letter which contained its own calculation sheet, as per which it was projected that the school was in deficit after implementation of the recommendations of VI Pay Commission. It was emphasized that on 8th October 2005, there was an earthquake as a result of which the building of the school developed major cracks and it was advised that the school building should be reconstructed. The reconstruction was started in the year 2006-07. As the school did not have adequate funds of its own, it was imperative for it to have hiked the fee for implementing the recommendations of VI Pay Commission.

The authorized representative of the school was provided with a copy of the calculation sheet prepared by the Committee for rebuttal, if any.

3. The facts and figure submitted during the hearing by the School were not complete and not filed along with schedule. No information was provided with regard to the accrued liability of gratuity and leave encashment despite being specifically asked vide the committee's notice dated 13/05/2015. For these reasons the calculation sheet prepared by the Committee did not take into account the contentions of the school as have again been raised now. While dealing with the pleas of the school, the Committee had held as under:

" The Committee also noted that the school sought exclusion of Rs. 1,13,21,482 on account of earmarked funds in the Student Welfare account. However, the balance in the Welfare fund account as on 31/03/2008 was only Rs. 95,73,718, indicating that the school had spent money for the purpose of welfare of students out of its revenues from fee instead of drawing upon earmarked FDRs or earmarked saving bank account. Accordingly, the school

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The Committee does not accept the contention of the school that a sum of Rs. 31,69,941 and Rs. 50,61,365, which the school spent out of development fee in 2009-10 and 2010-11 ought to be deducted from the development fee for those years, as the amount was no longer available with the school. The Committee is of the view that the development fee collected by the school was not justified and in accordance with the law laid down by the Hon'ble Supreme Court as the school did not fulfill the essential pre condition for charging development fee as laid down by the Duggal Committee which was affirmed by the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583.

4. The Committee specifically referred to the judgment of the Supreme Court and even quoted the relevant part as under:

7.21: Provided a school is maintaining a depreciation reserve fund equivalent to depreciation charged in the revenue accounts, schools could also levy, in addition to the above four categories, a Development fee annually, as a capital receipt not exceeding 10% of the total annual tuition fee for supplementing the resources for purchase, upgradation and replacement of furnitures, fixtures and equipment. At present these are widely neglected items, notwithstanding the fact that a large number of schools were levying charges under the head 'Development Fund'.

7.22 Being capital receipts, these should form a part of the Capital Account of the school. The collection in 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 with the balance in the fund carried forward from year to year. "

Review- St. Mary

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As a follow up to the recommendations of the Duggal Committee, the Director of Education issued an order dated 15/12/1999 giving certain directions to the schools. Direction no. 7 was as follows:

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 and shall be collected only if the school is maintaining a depreciation reserve fund equivalent to 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.

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The details of development fee charged by the school and expenditure out of such development fee that was incurred by the school from 2006-07 to 2010-11 as furnished by the school in its reply to the questionnaire is as follows:

Year	Development Fee received (Rs.)	Development Fee utilised (Rs.)	Surplus out of development fee (Rs.)
2006-07	20,90,030	1,95,183	18,94,847
2007-08	27,79,160	26,12,485	1,66,675
2008-09	36,28,080	8,52,634	27,75,446
2009-10	57,83,680	31,69,941	26,13,739
2010-11	63,00,940	50,61,365	12,39,575

It is apparent that the entire development fee received by the school was not utilised in toto in any of the five years for which the information was sought. The unutilised development fee was required to be kept in an earmarked development fund account.

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

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Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

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

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

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

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

The writ petition shall be re-notified on 09.05.2014"

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





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review by express provision or by necessary implication. Though this committee was created by an order of the Court, however, no power of review was given and when the Committee approached the Court seeking to review orders/recommendations of a number of schools, the Court only permitted the Committee to review the order only in case of one of the school.

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7.

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

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or mistake which went to the root of the matter and invalidated the  
entire proceeding.

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

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

10. The Applicant in the present case seeks recall/review of the order  
passed by the Committee dated 23<sup>rd</sup> August, 2019 not on the ground  
that in passing the order the committee has committed any procedural  
illegality or mistake of the nature which vitiated the proceeding itself and  
consequently the order/recommendation of the committee is liable to be  
recalled. Rather grounds taken by the applicant in the application for  
review dated 30<sup>th</sup> January, 2020 are that some matters which ought to  
have been considered by the committee were not duly considered or  
apparently considered incorrectly. Apparently, the recall or review sought  
is not a procedural review, but a review on merits. Such a review is not  
permissible in the absence of any specific provision or the orders of the

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

11. It is also to be noted that a quasi-judicial authority will become functus officio when its order is pronounced, or published/notified or communicated (put in course of transmission) to the party concerned.

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

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

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

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

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School and consequently the School cannot contend that the Committee has the power to review its order/recommendation. The 'school' is seeking that the order of the Committee directing the 'school' to refund fee hiked with interest @ 9% per annum to the students be reviewed. Apparently the Committee does not have such powers as has been invoked by the 'school' .

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14.03.2020 In the circumstances the applications of the applicant dated 17<sup>th</sup> November, 2019 seeking review is not maintainable and is disposed of as not maintainable and the said applications for review dated 17<sup>th</sup> November, 2019 seeking review of order dated 23<sup>rd</sup> August, 2019 is, therefore, dismissed.

**Justice Anil Kumar (R)**  
(Chairperson)

**J.S. Kochhar**  
(Member)

**R.K. Sharma**  
(Member)

05.03.2020

Review- St. Mary School, Safdarjung Enclave (B-0137)

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**Secretary**

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

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

(B-173),  
certain

**In the matter of:**

11.03.2020

**Hans Raj Model School (B-173)**

Present : S.K. Singhal, CA;

**Punjabi Bagh,**

Bhatia, UDC and

**NEW DELHI 110026.**

**And in the matter of:**

Application for review dated  
30th January, 2020 seeking  
review of recommendations  
/Order dated 18th July, 2019  
in the matter of school (B-  
173).

**Application for review dated  
30<sup>th</sup> January, 2020 seeking  
review of recommendations  
/Order dated 18<sup>th</sup> July, 2019  
in the matter of school (B-  
173).**

**ORDER**

11.03.2020

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

**ORDER ON APPLICATION DATED 30<sup>TH</sup>  
JANUARY, 2020 SEEKING CORRECTION OF  
ARITHMETICAL ERRORS AND OMISSIONS IN  
THE ORDER DATED 18<sup>TH</sup> JULY, 2019 IN THE  
MATTER OF SCHOOL (B-173).**

1. Hans Raj Model School, Punjabi Bagh, New Delhi 110026 (B-173), hereinafter referred as 'The School' has sought correction of certain

Review- Hans Raj Model School (B-0173)

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arithmetical errors and omissions in the order dated 18<sup>th</sup> July, 2019 by an application dated 30<sup>th</sup> January, 2020 inter-alia on the the following grounds:

" That the Committee had allowed Contingency Fund of Rs.3,97,97,660 equivalent to 4 month salary, which in fact should be Rs.,27,55,257. This is evident from statement of salary paid during 2009-10 annexed (Annexure A). This statement has been accepted by the Committee. The total salary paid during 2009-10 is Rs.12,82,65,771 excluding arrears of VI Pay and 4 month salary works out to Rs.4,27,55,257. The details of salary payment were furnished during the course of hearing and verified by the Committee. However, the computation of four month salary towards Contingency Fund continued based on original salary details and hence this anomaly has happened. Thus there is short allowance of ₹ 29, 57, 597 which needs rectification.

The school has incurred capital expenditure of ₹ 66,71,040 during 2009-10 and 2010-11 and ₹ 97, 98, 270 towards renovation of a school building which had become in dilapidated condition due to ageing. The school is more than 50 years old and required renovations to safeguard building and for the safety of the students. The School has been maintaining Development Fund and also Depreciation Reserve Fund as required by Duggal Committee. The school has also been keeping Fixed Deposits to cover the Development Fund. Hence, the amount of capital expenditure ought to be reduced from the Development fee of ₹ 4,21, 03, 634 collected by the school during 2009-10 and 2010-11. The Committee has erroneously added back total amount of Development Fee for these two years instead of adjusting Capital expenditure of these years amounting to ₹ 66, 71, 040. Annexure B showing details of capital expenditure of ₹ 66, 71, 040 has been enclosed by the School. It is contended that such Development Fee of these 2 years need to be reduced by ₹ 66, 71, 040.

2. It is apparent that no arithmetical errors and omissions in the order dated 18<sup>th</sup> July 2019 passed by the Committee have been pointed out by the applicant. The application is essentially an application for review on merits of the Order/recommendation dated 18<sup>th</sup> July, 2019 passed by the Committee after giving adequate opportunity to the school.

Review- Hans Raj Model School (B-0173)

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In its order/recommendation dated 18<sup>th</sup> July, 2019 the Committee had held as under:

" It is apparent from the above calculation sheet that the school incurred a deficit of Rs.3,10,19,001 on implementation of the recommendations of 6th Pay Commission, although such deficit is notional as it has been worked out after allowing a sum of Rs.3,97,97,660 to be kept by the school in reserve for future contingencies. However, since the school was not fulfilling any of the preconditions for charging development fee as laid down by the Hon'ble Supreme Court which were also made a part of the order dated 11/02/2009 issued by the Director of Education, the Committee is of the view that the development fee recovered by the school in 2009-10 and 2010-11, pursuant to the said order, was not justified and ought to be refunded after adjusting the notional deficit incurred by the school on implementation of the recommendations of 6th Pay Commission. The development fee recovered by the school in these two years amounted to Rs.4,21,03,634 and after adjusting the notional deficit, there remains a balance of Rs.1,10,84,633. The school ought to refund the said sum of Rs.1,10,84,633 to the students alongwith interest @ 9% per annum from the date of collection to the date of refund.

3. The facts and figure submitted during the hearing by the School and many anomalies which were pointed out to the school. The School had sought time to clarify the same in respect of which the Committee had held as under:

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

Today, Sh. Singhal has appeared along with other authorized representatives of the school and has filed a letter dated 17/07/2019 again

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the school deficit is Rs.3,10,19,001. However, charging which were Director of the School committee

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

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

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

After taking on board all the submissions and admissions made by the school, the Committee has prepared a revised calculation sheet, a copy of which was provided to the School and after hearing in detail, of the recommendations/order as detailed hereinabove was passed.

4.

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

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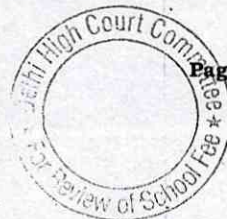
Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

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

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

"W.P (C) 7777/2009 & CM No. 3168 of 2013  
In view of the letter dated 12.02.2014 received from the Committee, **we permit the Committee to review the case of Rukmani Devi Public School, Pitam Pura - 110034 only.**  
The writ petition shall be re-notified on 09.05.2014"

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





only if the Court or the quasi judicial authority is vested with power of review by express provision or by necessary implication. Though this committee was created by an order of the Court, however, no power of review was given and when the Committee approach the Court seeking to review orders/recommendations of a number of schools, the Court only permitted the Committee to review the order only in case of one of the school.

6.

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

Secretary





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

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

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

9. The Applicant in the present case seeks recall/review of the order passed by the Committee dated 18<sup>th</sup> July, 2019 not on the ground that in passing the order the committee has committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the order/recommendation of the committee is liable to be recalled. Rather grounds taken by the applicant in the application for review dated 30<sup>th</sup> January, 2020 are that some matters which ought to have been considered by the committee were not duly considered or

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held that referred by

the order



When an order published or correcting it *apparently considered incorrectly*. Apparently, the recall or review sought is not a procedural review, but a review on merits. Such a review is not permissible in the absence of any specific provision or the orders of the Hon'ble Court authorizing review of its orders/recommendations either expressly or by necessary implication.

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

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

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

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Secretary





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

12. In the circumstances the applications of the applicant dated 30<sup>th</sup> January, 2020 seeking review is not maintainable and is disposed of as not maintainable and the said applications for review dated 30<sup>th</sup> January, 2020 seeking review of order dated 18<sup>th</sup> July, 2019 is, therefore, dismissed.

**Justice Anil Kumar (R)**  
(Chairperson)

**J.S. Kochar**  
(Member)

**R.K. Sharma**  
(Member)

11.03.2020





**CAUSE LIST FOR FEBRUARY 2020**

**Cause List for Friday, 14th February 2020**

S. No.	Cat. No.	School Name & Address
1	B-564	Columbia Foundation School, Vikas Puri -Review
2	B-640	The Srijan School, North Model Town
3	B-424	Pragati Public School, Dwarka
4	B-492	G.D. Goenka Public School, Sector-22, Rohini

**Cause List for Monday, 17th February 2020**

S. No.	Cat. No.	School Name & Address
1	B-202	St. Gregorios School, Dwarka
2	B-389	BGS International Public School, Dwarka -Review

**Cause List for Tuesday, 18th February 2020**

S. No.	Cat. No.	School Name & Address
1	B-596	Vikas Bharti Public School, Rohini
2	B-151	G D Goenka Public School, Vasant Kunj

**Cause List for Wednesday, 19th February 2020**

S. No.	Cat. No.	School Name & Address
1	B-632	St. Columbo Public School, Pitampura - Review
2	B-424	Pragati Public School, Dwarka

**Cause List for Friday, 21st February 2020**

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

**Cause List for Monday, 24th February 2020**

S. No.	Cat. No.	School Name & Address
1	B-684	Lovely Public School, Priya darshini Vihar

**Cause List for Thursday, 27th February 2020**

S. No.	Cat. No.	School Name & Address
1	B-596	Vikas Bharti Public School, Rohini
2	B-151	G D Goenka Public School, Vasant Kunj

**Cause List for Friday, 28th February 2020**

S. No.	Cat. No.	School Name & Address
1	B-137	St. Mary's School, Safdarjung Enclave - Review

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

000118

CAUSE LIST FOR MARCH 2020

Cause List for Wednesday, 4th March 2020

S. No.	Cat. No.	School Name & Address
1	B-424	Pragati Public School, Dwarka

Cause List for Thursday, 5th March 2020

S. No.	Cat. No.	School Name & Address
1	B-632	St. Columbo Public School, Pitampura - Review
2	B-137	St. Mary's School, Safdarjung Enclave

Cause List for Wednesday, 11th March 2020

S. No.	Cat. No.	School Name & Address
1	B-177	Bloom Public School, Vasant Kunj

Cause List for Monday, 16th March 2020

S. No.	Cat. No.	School Name & Address
1	B-56	St. Angel's School, Sector-15, Rohini

Cause List for Wednesday, 18th March 2020

S. No.	Cat. No.	School Name & Address
1	B-474	Green Fields School, Safdarjung Enclave

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14/02/2020

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B-564

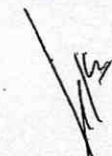
**Columbia Foundation School, Vikas Puri Delhi**

Present: Shri N.K. Mahajan, CA, Shri Anuj Mahajan, Financial Consultant and Shri Pradeep Singh, Head clerk of the school.

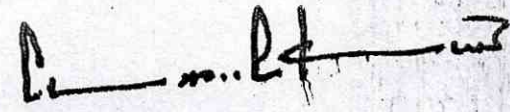
Arguments heard. Order reserved.



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



**J.S. KOCHAR  
MEMBER**



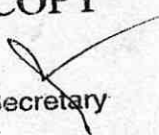
**JUSTICE ANIL KUMAR (Retd.)  
CHAIRPERSON**

B-564

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AR (Retd.)  
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Secretary





14/02/2020

000120

B-640


**The Srijan School, North Model Town, Delhi**

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

The authorized representative appearing for the school submit; that the management of the school is not inclined to voluntarily refund the amount that is determined by the Committee. Accordingly the hearing is closed in the matter.


Order reserved.

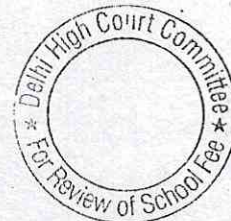
  
**Dr. R.K. SHARMA**  
**MEMBER**

  
**J.S.KOCHAR**  
**MEMBER**

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

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Secretary



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



14/02/2020

000121

B-424

**Pragati Public School, Dwarka Delhi**

Present: Shri N.K. Mahajan, Authorized representative, Shri Anuja Mahajan Financial Consultant, Shri Inderpal Singh, Accounts Incharge, Shri Rajiv Malik, Authorized representative of the School.

The arguments were finally heard in the matter on 15.10.2019 and the recommendations were reserved. A copy of the order dated 15/10/2019 was taken by the authorized representative of the school on 22/10/2019. Subsequently the school submitted a letter dated 2/01/2020 stating "In the matter it is humbly submitted that surplus if any, in the development fund as may be determined by the Committee for refund shall be appropriated by us under the guidance of the Committee"

Accordingly, the Committee issued a notice dated 16/01/2020 to the school for 30.01.2020 to ascertain categorically whether the School would be inclined to refund the excess fees voluntarily or not. On this date the authorized representative appearing for the school was asked to give in writing whether the school would voluntarily refund the amount which may be determined by the Committee. Authorized representative of the School had sought some time to take instructions and accordingly the matter was listed for today for school to communicate whether the School would refund the excess fee voluntarily or not.

However, today the school has filed a written submission dated 14.02.2020 re-agitating some of the issues on which the hearing had already been concluded and the recommendations had been reserved. The school has not categorically stated whether the amount as may be determined by the Committee would be voluntarily refunded or not by the school.

Consequently, the committee shall proceed to pronounce its recommendations soon.

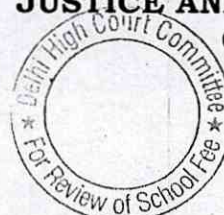
  
Dr. R.K. SHARMA  
MEMBER

  
J.S.KOCHAR  
MEMBER

  
JUSTICE ANIL KUMAR (Retd.)  
CHAIRPERSON

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Secretary





14/02/2020

000122

B-492

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

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

The authorized representative appearing for the school submits that the school is not in a position to make refund of excess fee voluntarily and as such the Committee may pass the final order.

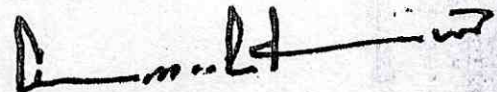
Hearing is closed.



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



**J.S. KOCHAR  
MEMBER**



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

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17/02/2020

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B-202

St. Gregorios School, Dwarka Delhi

Present: Shri Romy Chacko, Advocate, Shri K.B. Kutty, Representative of the School and Shri K.C. Abraham, Representative of the School.

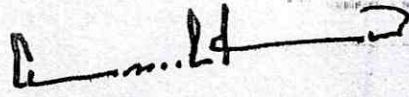
Arguments heard. Order reserved.



Dr. R.K. SHARMA  
MEMBER



J.S. KOCHAR  
MEMBER



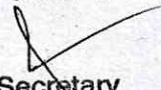
JUSTICE ANIL KUMAR (Retd.)  
CHAIRPERSON

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18/02/2020

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B-596

**Vikas Bharti Public School, Rohini Delhi**

Present: Shri Vaibhav Mehra, Advocate of the School.

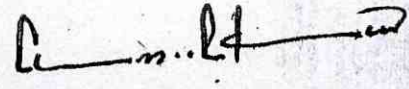
The counsel of the school Shri Kamal Gupta has filed an application seeking adjournment on ground of personal difficulty in appearing before the Committee today. As requested the matter is adjourned to 27<sup>th</sup> February 2020 at 11.00 am.



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



**J.S. KOCHAR**  
MEMBER



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


B-596

application  
appearing  
adjourned to

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JUSTICE ANIL KUMAR (Retd.)  
CHAIRPERSON



18/02/2020

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B-151

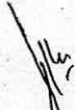
G.D. Goenka Public School, Vasant Kunj, Delhi

Present: Shri Vaibhav Mehra, Advocate of the School.

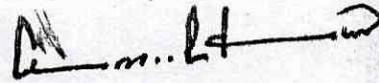
The counsel of the school Shri Kamal Gupta has filed an application seeking adjournment on ground of personal difficulty in appearing before the Committee today. As requested the matter is adjourned to 27<sup>th</sup> February 2020 at 11.00 am.



Dr. R.K. SHARMA  
MEMBER



J.S. KOCHAR  
MEMBER



JUSTICE ANIL KUMAR (Retd.)  
CHAIRPERSON

Application  
for adjournment  
is allowed to

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19/02/2020

000126

B-632

St. Columbo Public School, Rohini Delhi

Present: Shri Ramesh Wadhwa, clerk of the School.

The school has filed a request letter to provide another date of hearing as their lawyer is not available today. As requested the matter is adjourned to 5<sup>th</sup> March 2020 at 11.00 am.

  
Dr. R.K. SHARMA  
MEMBER


  
J.S. KOCHAR  
MEMBER

  
JUSTICE ANIL KUMAR (Retd.)  
CHAIRPERSON

B-632

date of hearing  
the matter is

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Secretary





Pragati Public School Dwarka Delhi

Present: Shri T.K. Saraswat, G.Astt. of the School.

On the last date of hearing i.e. 14/2/2020, the Committee after hearing Shri N.K. Mahajan CA who was assisted by Shri Rajiv Malik CA, Shri Anuj Mahajan, CA and Shri Inderpal Singh, Accounts Incharge of the School had passed the following order:

*The arguments were finally heard in the matter on 15.10.2019 and the recommendations were reserved. A copy of the order dated 15/10/2019 was taken by the authorized representative of the school on 22/10/2019. Subsequently the school submitted a letter dated 2/01/2020 stating " In the matter it is humbly submitted that surplus if any, in the development fund as may be determined by the Committee for refund shall be appropriated by us under the guidance of the Committee"*

*Accordingly, the Committee issued a notice dated 16/01/2020 to the school for 30.01.2020 to ascertain categorically whether the School would be inclined to refund the excess fees voluntarily or not. On this date the authorized representative appearing for the school was asked to give in writing whether the school would voluntarily refund the amount which may be determined by the Committee. Authorized representative of the School had sought some time to take instructions and accordingly the matter was listed for 14.02.2020 for school to communicate whether the School would refund the excess fee voluntarily or not.*

*However, on 14.02.2020 the school has filed a written submission dated 14.02.2020 re-agitating some of the issues on which the hearing had already been concluded and the recommendations had been reserved. The school has not categorically stated whether the amount as may be determined by the Committee would be voluntarily refunded or not by the school.*

*Consequently, the committee shall proceed to pronounce its recommendations soon."*

Subsequently the Committee received a letter on 17.02.2020 from the school, giving reference to the hearing held on 14<sup>th</sup> February 2020, stating as follows:-

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*the school on a letter dated 14.02.2020 re-agitating some of the issues on which the hearing had already been concluded and the recommendations had been reserved. The school has not categorically stated whether the amount as may be determined by the Committee would be voluntarily refunded or not by the school.*



19/02/2020

000128

" with reference to the last hearing in the above matter on 14<sup>th</sup> February 2020 by the Hon'ble Committee, we hereby inform the Committee that the school shall refund the amount of fee as determined the Committee under its guidance.

However, we request the Committee that we shall be allowed time to comply with the order of refund so that the normal working of the school is not adversely affected."

The letter was signed on behalf of the school by some person who had neither mentioned his name nor his designation. Accordingly, the Committee required the Principal and/or Manager of the School to be present today to clarify the matter.

Today again a letter has been received from the school which again is signed by some person who has not mentioned his name or designation. The letter states that earlier letter dated 17/2/2020 filed with the Committee may be treated as withdrawn.

The Committee hereby direct the Manager and/or Principal of the school to be present on the next date of hearing which is 4<sup>th</sup> March 2020 at 11.00 am.

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

**J.S. KOCHAR**  
MEMBER

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

of the school

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B-173

Hansraj Model School, Punjabi Bagh Delhi

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

The Committee has heard the authorized representative appearing for the school on its application dated 30.1.2020 seeking review to correct certain arithmetical errors and omissions in the order dated 18.07.2019. However, no error or omission in the order has been specifically pointed out in the application. The school is essentially seeking a review on merits. The Committee is not invested with any power to entertain application for review on merits. Accordingly, the application is being disposed of being not maintainable.

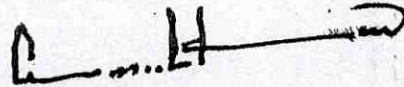
Detailed order to be passed separately.



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




**J.S. KOCHAR**  
MEMBER

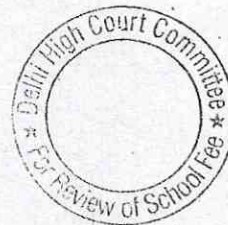


**JUSTICE ANIL KUMAR (Retd.)**  
CHAIRPERSON

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Secretary





B-684

Lovely Public School, Priyadarshini Vihar, Delhi

Present: Sh. Puneet Batra, Advocate appeared with Sh. Saurabh Malhotra, Chartered Accountant, Dr. Bhawna Malik, Principal of the school and Ms. Monica, Assistant of Chartered Accountant.

The school has filed written submissions dated 22/02/2020 along with which it is enclosed copies of the list of students to whom the refund cheques had to be issued, receipts of courier company and speed post showing the dispatch of refund cheques to the students. It is submitted that the school had to refund a sum of Rs. 35,05,857 to 2801 students out of which cheques have been issued to 1850 students. The school has also enclosed copy of the bank statements showing encashment of some of cheques issued to the students. It is further submitted that the entire process of issuance of cheques to the remaining students would be completed about in a weeks time.

Accordingly the matter is adjourned to 23 March 2020 when the school will file evidence of dispatch of cheques to the remaining students and also copy of bank statement upto that date showing encashment of cheques.

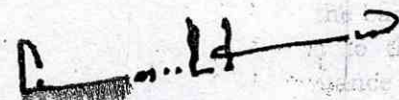
There was a typographical mistake in the order dated 25/11/2019. On the first page of the said order, Rs. 1,01,61,118 was inadvertently mentioned as Rs. 1,1,61,118 in the last para. Further, at the second page of the said order, the amount which the Committee had determined as refundable by the school was incorrectly mentioned as Rs. 35,5,857 instead of 35,05,857. The mistakes have been brought to the notice of the Ld. Counsel appearing for the school and have been corrected without any objection from him.



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



**J.S. KOCHAR**  
MEMBER

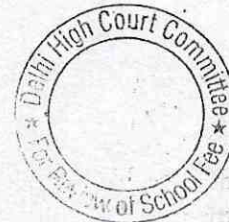


**JUSTICE ANIL KUMAR (Retd.)**  
CHAIRPERSON

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27/02/2020

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B-596

**Vikas Bharti Public School, Rohini, Delhi**

Present: Sh. Kamal Gupta, Advocate appeared with Sh. Naresh Pahwa, Chartered Accountant, Sh. Anoop Singh Solanki, Manager and Ms. Rachna, Accountant of the school.

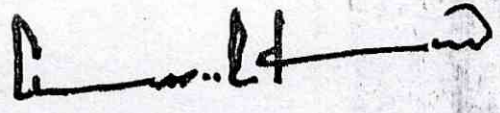
The school has filed written submissions in the matter on 14/02/2020 in the office of the Committee. The Ld. Counsel appearing for the school has been heard on the written submissions. Hearing is closed. Order reserved.



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



**J.S. KOCHAR  
MEMBER**




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

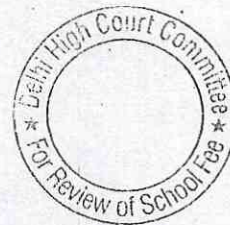
Naresh Pahwa,  
Manager and Ms.

the matter on  
counsel appearing  
as. Hearing is

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**CHAIRPERSON**



27/02/2020

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B-151

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

Present: Sh. Kamal Gupta, Advocate appeared with Sh. Birendar Singh, Accounts Officer and Sh. Jitendra Singh, Sr. Accountant of the school.

The school has filed written submissions in the matter on 14/02/2020 in the office of the Committee. The Ld. Counsel appearing for the school has been heard on the written submissions. Hearing is closed. Order reserved.

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

  
**J.S. KOCHAR**  
**MEMBER**

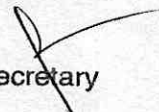
  
**JUSTICE ANIL KUMAR (Retd.)**  
**CHAIRPERSON**

Delhi

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



28/02/2020

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12/11

B-137

**St. Mary's School, Safdarjung Enclave, Delhi**

Present: Sh. Nikhil Philip, Manager and Sh. P.A. Sivichen, A.O. of the school.

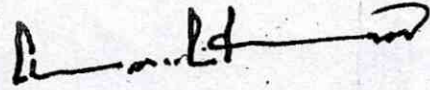
Arguments heard. Order reserved.



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



**J.S. KOCHAR**  
**MEMBER**




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

12/11

B-137

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(Retd.)



**Pragati Public School, Dwarka, Delhi**

Present: Shri N.K.Mahajan, CA, Shri Anuj Mahajan, authorized representative, Shri Rajiv Mohle, authorized representative and Dr. Poonam Manshani, Manager of the School.

The hearing was fixed on conflicting letters received from the school regarding voluntary refund of the fee that would be determined by the Committee. Moreover, the letter did not bear the name or designation of the person who had signed. Dr. Poonam Manshani, Manager of the School is present at the time of the hearing today and submits that the letter dated 18.02.2020 vide which the earlier letter dated 17.02.2020 was withdrawn, is signed by her and that may be taken as the final submission of the school.

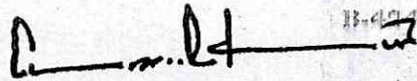
Order reserved.



**Dr. R.K. SHARMA  
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**J.S. KOCHAR  
MEMBER**



**JUSTICE ANIL KUMAR (Retd.)  
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05/03/2020

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B-632

St. Columbo Public School, Pitampura Delhi


Present: Shri Kamal Gupta, Advocate and Shri Vaibhav Mehra, Advocate of the School.

After arguing for sometime the learned counsel appearing for the school submits that he will file a chart showing that the surplus generated by the school every year from 2006 -07 to 2009-10 was reasonable vis-a vis the fee income of the school.

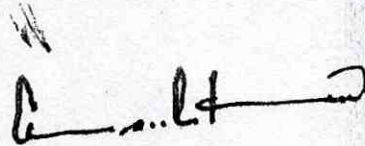
As requested, another opportunity is given to the school to file the aforesaid chart and the matter is adjourned to 24<sup>th</sup> March 2020 at 11.00 am.



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

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B-177

Bloom Public School, Vasant Kunj Delhi

Present: Ms. Tarveen Kaur, Manager of the School.

The matter was re-fixed for seeking certain clarifications on the written submissions filed by the school with regard to earmarked FDRs and Depreciation Reserve fund. Ms. Tarveen Kaur manager of the School has appeared and filed a letter dated 11<sup>th</sup> March 2020 clarifying that FDRs with State Bank of India are held against school fund and not against the Depreciation Reserve Fund. Only the FDRs held with ICICI Bank are earmarked against depreciation reserve fund. She further submits that the school has requested the Bank to provide Balance Confirmation Certificate in respect of FDRs held against Depreciation Reserve Fund as on 31<sup>st</sup> March 2011. However, the Bank is taking time to provide the same.

At her request the matter is adjourned to 24.03.2020 at 11.00 am by which time, she submits that the certificate should be available.

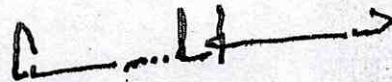
B-177



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



**J.S. KOCHAR**  
**MEMBER**



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

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16/03/2020

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B-56

**St. Angel School, Sec- 15 Rohini, Delhi**

Present: Shri Archit Bhardwaj, CA and Shri Shashi Kumar Supervisor of the School.

In response to notice dated 19.02.2020 vide which the Committee had required the school to file the status report of various litigations pending/concluded with the staff members of the school regarding payment of salaries. The school has filed letter dated 16.03.2020 giving the status of the trial proceedings in respect of two FIRs registered against it. The school has also been directed to file copies of latest/final order in these cases but the same have not been filed.

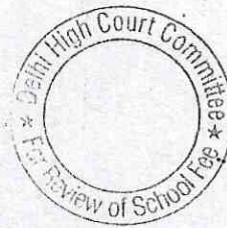
The authorized representative appearing for the school seeks a short date to file copies of the latest order. The same may be filed on or before the next date of hearing. The matter is adjourned to 01.04.2020 at 11.00 am.

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

**J.S. KOCHAR**  
**MEMBER**

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



B-474

**Green Fields School, Safdarjung Enclave, Delhi**

Present: Shri Sabu Sebastian, Chief Accountant, Shri Kamal Gupta, Advocate and Shri Anil Khanna, Chairman of the School.

The hearing in the matter was re-fixed for today to enable the school to show that it had earmarked the Depreciation Reserve Fund for the years 2009-10 and 2010-11, subsequent to that year as it was contended by the school that the school has started earmarking the Depreciation Reserve Fund from 2015-16 onwards. The school had not filed any evidence at that stage of having earmarked the Depreciation Reserve Fund in separate FDRs and saving bank accounts.

Today the school has filed a copy of audited balance sheet as on 31<sup>st</sup> March 2019 wherein it is reflected that the total Depreciation Reserve Fund up to this date was Rs. 4,43,44,974 and the FDRs held against Depreciation Reserve Fund as on that date amounting to Rs. 2,98,47,080. The school has also filed copies of such earmarked FDRs.

However, the Learned Counsel appearing for the school submits that he would like to make submissions on some of <sup>the other</sup> these issues also and since the matter is still at large, it would be in the interest of justice that another opportunity is given to the school.

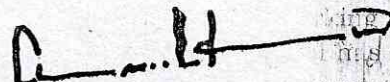
As requested one more opportunity is given to the school to make submissions. The matter is accordingly adjourned to 24.03.2020 at 11.00 am.



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

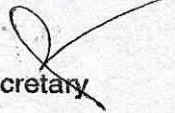


**J.S. KOCHAR**  
MEMBER



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

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