

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 June 2019**

No.DHCC/2019/340

Dated: 12/7/2019

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	2	03.06.2019	Order of disposal of Review application of Bharti
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Place: Delhi


 Secretary

Delhi High Court Committee for Review of School Fee
 HUKAM CHAND
 (Secretary)

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

000001

**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:

**Sneh International School, New Rajdhani Enclave, Vikas Marg,
Delhi-110092 (B-638)**

Order of the Committee

Present : Sh. Chaitania Luthra, A.R. & Ms. Namita Chopra,
Accountant of the school.

The Committee issued a questionnaire to all the schools (including this school) on 27/02/2012 eliciting information with regard to the arrear fee and fee hike effected by the school pursuant to order dated 11/02/2009 issued by the Director of Education. The school was also required to furnish information with regard to the arrear salary paid and the incremental salary paid to the staff pursuant to the implementation of the recommendations of the 6th pay commission.

The school submitted its reply to the questionnaire issued by the Committee vide its letter dated 30/03/2012.

As per the reply submitted by the school, it implemented the recommendations of VI Pay Commission with effect from 01/04/2009 and also increased the fee of the students in terms of order dated 11/02/2009 issued by the Director of Education. With regard to payment of arrear salary, it stated that it would not pay arrears to the staff because no arrears of fee had been collected from the students. It enclosed the fee structure for the years 2008-09 and 2009-10 to show



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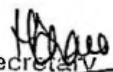
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the extent of fee hike effected by it with effect from 01/04/2009. As 000002
per the fee structure, the school increased the monthly tuition fee of
students of nursery to V class from Rs. 1815 to Rs. 2215 with effect
from 01/04/2009 i.e. a hike of Rs. 400 per month. The fee hike for
students of VI to X class was also hiked by Rs. 400 per month from
Rs. 1850 to Rs. 2250. Besides, the school charged development fee @
15% of tuition fee in both the years and also fixed annual charges of
Rs. 9000 per annum in both the years.

Preliminary calculations were made by the Chartered
Accountants (CAs) deputed by the Directorate of Education to assist
this Committee. They provisionally determined that the fee hike
effected by the school appeared to be in order as the school had
incurred a deficiency to the tune of Rs. 17,44,692. Besides, the funds
available with the school at the threshold as on 31/03/2009 were
already in the negative zone to the tune of Rs. 29,49,872 as its current
liabilities amounting to Rs.36,29,319 were in excess of its current
assets which amounted to just Rs. 6,79,447.

The Committee reviewed the calculations made by the CAs. The
Committee felt that it was impossible for a school to have funds in
negative zone as the schools receive fee in advance and incur its
expenses in arrears. For example the fee for the quarter ending June
would be received either in the last week of March or in the first week
of April. However, the expenditure of the school, mainly salaries to

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staff would be paid only at the end of April, May and June for the
respective months. The funds available with the school at a given
time would be in negative zone only when the school was diverting the
same either to its parent society/trust or was diverting towards
incurring capital expenditure. 0000003

A close analysis of the current assets and current liabilities of
the school as on 31/03/2009 showed that the diversion of funds was
writ large on the face of the balance sheet of the school as the fee
received in advance as on 31/03/2009 was to the tune of Rs.
27,78,193. Had there been no diversion of funds, the cash and bank
balance of the school would have been atleast equal to this amount as
no expenditure would have been incurred out of that. However, the
cash and bank balances available with the school as on that date
amounted to just Rs. 4,85,306. The CAs ought to have taken
cognizance of these figures and tried to work out the amount of funds
diverted by the school. However, they resorted to a simple
arithmetical calculation and arrived at an absurd result. Therefore,
the Committee did not rely on the calculations made by the CAs.

A notice was issued to the school on 26/05/2015, requiring it
to furnish within 10 days, information regarding different components
of fee and salary for the years 2008-09 to 2010-11, duly reconciled
with its audited financials. Besides the school was also required to
furnish the statement of account of the parent society as appearing in

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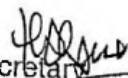
its books, the details of its accrued liabilities of gratuity and leave encashment and a copy of the circular issued to the parents regarding fee hike. 000004

The school furnished the required information under cover of its letter dated 16/06/2015. It was stated that the school did not have any surplus funds as on 11/02/2009. It also stated that the ceiling prescribed by the Director of Education vide order dated 11/02/2009 resulted in the school facing a situation of deficit on account of implementation of VI Pay Commission. It sought appropriate direction from this time to rectify the situation faced by the school.

The school admitted that it had hiked the fee by Rs. 400 per month per student and the same was allowable vide order dated 11/02/2009 issued by the Director of Education. The hike was approved by the Managing Committee, parents and teachers association and had been duly intimated to the Director of Education who raised no objection to the fee hike effected by the school. It further stated that the fee hike was utilised for payment of increased salary to the staff. It was stated that the incremental fee revenue generated in 2009-10 amounted to Rs. 61,48,621 while the burden of incremental salary on account implementation of the recommendations of VI Pay Commission was of the order of Rs. 74,53,152.



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With regard to development fee, the school in reply to the supplementary questionnaire issued by the Committee stated that it had collected development fee in all the five years for which the information was sought from it. In 2009-10, it collected a total sum of Rs. 8,03,295 as development fee which went upto to Rs. 10,97,820 in 2010-11. However, it stated that it had incurred capital expenditure, which was much in excess of the development fee received by it in all the five years. It was further stated that the development fee was treated as a capital receipt in the books and the school was also maintaining earmarked bank accounts for keeping depreciation reserve fund and unutilised development fund.

The school also made an anticipatory submission to the effect that Rule 177 of Delhi School Education Rules, 1973 permitted the schools to incur capital expenditure out of tuition fee.

A notice of hearing was issued to the school on 23/02/2017, requiring it to appear before the Committee on 09/03/2017 and produce its fee records, salary records, books of accounts, TDS returns and provident fund returns for the years 2006-07 to 2010-11.

Sh. Manu Luthra, Chartered Accountant appeared with Ms. Navita Chopra, Accountant of the school and was partly heard by the Committee.

The Committee examined the records produced by the school and also the information available on record. It observed that as per a



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statement filed under cover of its letter dated 16/11/2016, the school had given the student strength for 2008-09 as 563, which increased to 730 in 2009-10. The total tuition fee recovered for the year 2009-10 was Rs. 1,70,43,185, as compared to Rs. 1,08,94,924 in 2008-09, which showed an increase of about 56%. While this appeared to be in order considering the fee effected for that year and the increase in student strength, however, the annual salary paid by the school which rose from Rs. 58,53,435 in 2008-09 to Rs.1,33,06,587 in 2009-10 i.e. an increase of about 127%, did not appear to be in order as the increase in salaries on account of implementation of the 6th pay commission was normally 40 to 50%. The Committee felt that even if the increase in staff strength in the year 2009-10 was factored in, the increase in salary appeared to be on the higher side.

Accordingly, the school was directed to file a comparative statement in respect of each employee, showing the salary drawn prior to implementation of the 6th Pay Commission and subsequent to the implementation of the 6th Pay Commission, giving the increase in absolute terms as well as percentage.

The Committee also observed that the school had not produced its books of accounts for the year 2009-10 when the Sixth Pay Commission was purported to have been implemented. The authorized representative appearing for the school sought some time to produce the same. Accordingly, the matter was adjourned to 10/04/.2017.



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On the next date, the school filed a comparative statement in respect of the salary paid to the employees in 2008-09 and in 2009-10 showing the increment in salaries on account of implementation of recommendations of the 6th Pay Commission w.e.f. 01.04.2009. The statement also showed the percentage increased of salaries which ranged between 56% and 88%. 000007

The Ld. Authorized representative of the school submitted that the abnormal hike in salaries in %age terms was on account of the fact that upto 2008-09, the school was not paying salaries fully even in accordance with the recommendations of the 5th Pay Commission.

The Committee observed that the figures of salary given by the school in its various submissions before the committee was not the same. The figures that appeared in the audited financials of the school were also a different set of figures.

The Committee examined the books of accounts and salary records of the school and observed that the salary paid to the staff for the month of June in both 2008-09 and in 2009-10 was a small fraction of the total salary paid to the staff in other months. In 2008-09 while the average salary paid to the staff was around Rs.4.40 lakhs, the salary paid for the month of June 2008 was just Rs.86,000. Similarly in 2009-10, while the average salary paid to the staff in other months was around Rs.9 lakhs, the salary paid for the



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month of June was just Rs. 4 lakhs approximately. The Committee 000008
also examined the salary registers for both the years 2008-09 and
2009-10 and observed that a large number of teachers were
retrenched by the school in the month of June and in July new
teachers were appointed.

The school was accordingly directed to furnish a statement
showing the salary paid to each staff member, month wise, for the
years 2008-09 and 2009-10.

Complying with the direction of the Committee, the school filed
a detailed salary statement for the years 2008-09 & 2009-10, showing
month wise salary paid to each employee. It was submitted that the
new staff recruited by the school was paid the salary for 11 months
in the year of appointment while from the succeeding year salary for
the full 12 months was paid.

The Committee directed its Audit officer to verify the salary
statements with reference to the copies of the salary register, which
were on record and thereafter make the relevant calculations and put
up the same before the Committee. The audit officer examined the
salary records of the school and made the following observations:

- (a) The school paid salary to its staff for only 11 months in the
year. No salary was paid to most employees for the month of
June. Only seven employees in 2008-09 and 16 in 2009-10
were paid salary for the month June.



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(b) There was a mismatch between the number of employees 000009 who had been paid salary as per the salary register and the number of employees as mentioned by the school in its communication to the Committee. On an average, the number of employees as per the salary register was about 66% of the number of employees which the school stated in its communication to the Committee.

She also prepared a statement showing month wise payment of salary as per the salary register produced by the school. The same is as follows:

Total Salary Expenditure as per Salary Register of the School

	<u>2008-09</u>	<u>2009-10</u>
April	334,847	852,530
May	298,017	841,608
June	86,516	395,504
July	423,945	838,004
August	444,358	835,739
September	444,358	1,022,419
October	432,340	983,603
November	432,790	938,359
December	420,772	960,831
January	420,772	930,668
February	420,772	921,592
March	399,062	902,838
Total Salary for the year	<u>4,558,549</u>	<u>10,423,695</u>

It is noteworthy that the total salary paid in 2008-09 as per the audited financials of the school was Rs. 58,53,435 while that for 2009-10 was Rs. 1,33,06,587. The school stated that the



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housekeeping and temporary staff are not put on the rolls of the school and hence their names do not appear in the salary register. 000010

Be that as it may, since the housekeeping staff and temporary staff are not paid as per the recommendations of VI Pay Commission, the Committee did not consider the full salary as reflected in the financials of the school to be a true indicator of the additional burden on the school on account of implementation of VI Pay Commission. On the contrary, the regular staff whose salaries were increased on implementation of VI Pay Commission, would provide the basis of the incremental financial burden on the school.

Thus the Committee considered the incremental salary on account of the recommendations of VI Pay Commission to be **Rs. 58,65,146** (1,04,23,695 - 45,58,549). The incremental fee revenue generated by the school amounted to **Rs. 61,48,261** on figures admitted by the school i.e. total tuition fee for 2008-09 Rs. 1,08,94,924 while that for 2009-10 Rs. 1,70,43,185. Thus, the school generated a sum of **Rs. 2,83,115** in excess of its additional expenditure on account of implementation of the recommendations of VI Pay Commission.

However, that does not solve the issue. The more fundamental issue is whether the school required to hike the fee for implementation of the recommendations of VI Pay Commission at all. It would be apposite to reproduce clauses 1 and 2 of the order dated 11/02/2009



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of the Director of Education, which permitted a fee hike in deserving cases for implementation of recommendations of VI Pay Commission. 000011

The same read as follows:

1. A Fee hike is not mandatory for recognised unaided schools in the NCT of Delhi.
2. All schools must first of all, explore the possibility of utilising the existing reserves to meet any shortfall in payment of salaries and allowances, as a consequence of increase in the salaries and allowances of employees.

The order makes it clear that where the schools had adequate existing reserves, the same would be utilised for paying the increased salaries. The Hon'ble Delhi High Court in WP (C) 7777 of 2009 in which the validity of various clauses of the aforesaid order were challenged, did not hold the aforesaid two clauses to be invalid, although certain other clauses were held to be so. In paras 65 to 67 of the judgment, the Hon'ble High Court held as under:

65. At this stage, we would like to examine some other Clauses of the orders dated 11.02.2009, validity whereof have been challenged by the schools. Notification dated 11.02.2009 while allowing the increase in existing fee as specified therein also restrains the private schools from increasing fee without seeking approval of PTA (see clause - 3). To our mind, this clause is clearly illegal and is not supported by any statutory or legal provisions. On the contrary, when as per Section 17(3) of the Act even the permission of the DoE is not required, asking the schools to be at the mercy of PTAs for making further increase would clearly be contrary to the said provision. We, thus, hold that this clause is not valid.

66. Likewise, we are of the opinion that even the requirement of seeking approval of the school accounts by PTA would not hold water and is not legally valid.

67. With regard to other Clauses, the directions contained in Interim order dated 28.05.2009 shall prevail.



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and setting out its mandate, the Hon'ble High Court held as under:

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

It is apparent from a combined reading of the two clauses of the order dated 11/02/2009 and the above extract of the judgment of the Hon'ble High Court that the Committee has to first of all determine whether the school had available with it adequate funds out of which it could meet the additional expenditure on salaries on account of implementation of recommendations of VI Pay Commission. If it had adequate funds at that point of time when recommendations of VI Pay Commission were to be implemented, no fee hike was to be effected. It is also clear that the calculation of funds available with the school at that point of time had to be made keeping in view "the principles laid down by the Supreme Court in Modern School and Action Committee Unaided Pvt. Schools as explained in this judgment."

It would be apposite to examine as to how the principles laid down by the Hon'ble Supreme Court in the cases of Modern School and Action Committee Unaided Pvt. Schools were explained by the



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Hon'ble Delhi High Court in the aforesaid judgment. The relevant discussion starts from para 38 of the judgment as follows: 000013

"Our Discussion/Deliberations:

38. The factual matrix taken note of above would clearly reveal that it is a repeat situation of 1998 when similar fee hike pursuant to implementation of 5th Pay Commission had come under hammer from both quarters - parents on the one side and the schools on the other side. That situation was dealt with on judicial side by the judgment of this Court in the case of DAM-1 and in this scenario, naturally, discussion should start from that judgment to find out the legal principles enunciated therein. Of course, that judgment was the subject matter of challenge before the Supreme Court which was decided in the case of Modern School (supra) and matter culminated in the decision rendered in Action Committee Unaided Pvt. Schools & Ors. (supra). Thus in the process, those and other judgments cited will also be pondered over by us.

39. A minute and in-depth analysis of the DAM-1 would bring forth the following pertinent aspect:

(i) Section 17 of the Act which deals with fee and charges gives different treatment to aided schools on the one hand and unaided recognized schools on the other hand. Whereas sub-sections (1) and (2) of Section 17 do not allow the aided schools to collect any other charge or receive any other payment except those specified by the Director, this embargo was not applicable to those recognized private schools, which are unaided. The only duty cast by sub-section (3) of Section 17 of the Act is that such schools are required, before the commencement of each academic session, to file with the Director a full statement of the fees to be levied by such schools during the ensuing academic session and thereafter not to charge any fee in excess of the fee specified in that statement during the academic session, without prior approval of the Director. Thus, the Court held that there was no requirement that the unaided schools seek approval or subsequent approval of Director of Education for enhancement of tuition fee and other charges. Rationale is simple. These unaided private schools are required to generate their own funds and to meet the cost of education, and therefore, need to be given free



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hand, as the main source can only be the funds collected from students which is the concept of "self-financing educational institution", and "cost based educational institution". 000014

(ii) At the same time, it is also to be borne in mind that under the garb of increasing fee, these schools do not indulge in commercialization. This was conceded by the schools themselves, viz., commercialization and exploitation was not permissible. No doubt, it was recognized that the cost of education may vary from institution to institution and in this respect, many variable factors may have to be taken into account, educational institutions were supposed to run on "no profit, no loss basis".

(iii) Thus, while giving leverage to the schools to fix the fees and charges payable by the students coupled with the duty that increase is not such which is exploitative in nature and travels into the arena of commercialization, the Court further held that the Government is equipped with necessary powers to take regulatory measures and check commercialization. The Court referred to Rules 172 to 177 and in particular Rule 177 which prescribes the method and manner in which fees realized by unaided recognized schools are to be utilized. The Court also took into consideration provisions of Section 4 of the 1973 Act dealing with grant of recognition by the Government, Section 3 of the Act which empowers the administration to regulate education in all the schools in Delhi in accordance with the provisions of this Act and the rules made thereunder as well as Section 24 of 1973 Act which deals with inspection of schools.

(iv) On the conjoint reading of these provisions, the Court was categorical that the Government had a requisite power to resort to regulatory measures and control the activities of such institutions to ensure that these education institutions keep playing vital and pivotal role to spread education and not to make money. In this behalf, the Court went to the extent of observing that if it comes to its notice that fee and other charges are excessive, the Government can issue directions to the schools to reduce the same and if such direction is not complied with, other steps like withdrawal of recognition or takeover of the school can be taken. However, before resorting to these extreme steps, the Government could issue directions to the schools to roll back if it was found that the fee and other charges are only unreasonable and



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exorbitant and amount to commercialization. After referring to the principle laid down in various judgments of the Supreme Court on the interpretation of statute, the legal position contained in Section 17 of 1973 Act was some which reads as under:

"42.....When these basic principles are kept in view as also the object of the Act there is no difficulty in concluding that despite the fact that Section 17(1) & (2) of the Act is not applicable to the private recognized unaided schools the government under the Act and the Rules has ample power to regulate fee and other charges to prevent commercialization and exploitation, before considering to take the extreme step of withdrawal of recognition and other harsh steps.

43. The cardinal principle of law is that every law is designated to further ends of justice. The said purpose cannot be frustrated on mere technologies while interpreting a Statute. Its purpose and spirit as gathered from the intendment has to be borne in mind. These aspects are to be kept in mind for the correct interpretation of the Statute and the adjudication of rival submissions..... (emphasis supplied)" xxx xxx xxx

44. In view of the aforesaid legal positions we have no difficulty in rejecting the extreme proposition that Directorate of Education has no power to regulate the fee and other charges levied by private recognized unaided schools.

45.We are also unable to accept the contention that diversion of funds as being objected by petitioners and the administration, would adversely affect the expansion of the education or that the opening of the new schools would be jeopardised. In our view, higher amount of fee and charges cannot be levied on the ground of so called expansion requiring creation of funds. If any amount is to be generated for such a purpose it has to be under a separate head and not compulsive and involuntary payment under the garb of increase in the fee and other charges. Further, nobody stops the Society of the Trust which may have set up the school to generate its own



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funds needed for expansion for opening of new schools 000016
(emphasis supplied)"

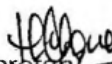
(v) While holding so, the Court specifically rejected the contention of these schools that the stipulation in the Circular issued by the Government to the effect that the first accumulated amount shall be exhausted to meet the additional burden as a result of revising the pay structure, was illegal. It was also held that such stipulation did not amount to diversion of funds for some other purpose or that the expansion of education would be adversely affected and opening of new schools will be jeopardized. The Court also specifically rejected the contention that provisions of statute and Rules provided for a limited scope of regulating and interfering with the use of amounts collected by the schools. In the process, it was also held that the Government can ensure that there is no transfer of amounts from the schools to the society in view of the provisions of Rules and if any new schools are to be opened by the society or educational institute exploited the collection of money had to be in the nature of voluntary donation and for the expansion of education for future generation, unreasonable demand cannot be made from the present students and their parents.

(vi) The autonomy of the schools on the one hand and regulatory power of the Act on the other hand not to permit commercialization of education, is beautifully summarized in para 48 of the judgment, which reads as under:

"48. We have also no difficulty in accepting the proposition that the expenses may have to differ from school to school depending upon the nature of activities in the schools. It is not being suggested that if for legitimate and reasonable activities to be provided to the students, higher expenses are to be incurred the burden of it cannot be placed on the students. Our approach in no manner adversely affects the autonomy of unaided schools. We agree that autonomy of such schools has to be respected. But under the garb of autonomy the commercialization of education cannot be permitted. It cannot be said that because of the autonomy of limit on charging any sum from students can be fixed under any head despite the expenditure under that head.
(emphasis supplied)"



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(vii) In such scenario, the next question which automatically arose for consideration related to the manner and nature of regulation in a particular case. It is re-emphasized that the Court accepted the fact that different schools may have to increase the fee with different proposition depending upon the financial burden on those schools and the actual cost of education which these schools require to bear. It was also emphasized that the quantum increase would depend upon the funds already available with these schools which were to be first utilized to meet the additional financial burden created as a result of revision in pay scale. The Court was, thus, conscious of the fact that there was need to increase the fee, but at the same time whether the parent bodies were justified in their grievance that on the pretext of revision in pay scale, the fee had been increased abnormally. This dichotomy noticed in Para 50 of the judgment is as under:

"50. There can be no doubt that the substantial increase in the fee and charges leads to considerable amount of discontentment amongst a substantial number of parents as it affects their pockets in these days of high inflation. The argument of high inflation is also applicable to schools who have to incur expenses. It cannot be ignored that to meet the increased in the expenses, the schools have necessarily to generate funds by increasing the amount of fee and charges. The present problem has arisen on account of payments to be made as a result of acceptance of the Vth Pay Commission. The increased salaries to the school staff had to be paid. According to schools the fee and charges were increased to meet this additional burden. According to the Parents' Association, however, the schools had huge accumulated amounts wherefrom the additional burden on the schools could easily be met and the schools were only using the recommendations of Vth Pay Commission as an excuse and under that garb the fee has been increased manifold. (emphasis supplied)"

(viii) The Court was of the view that in order to find out as to whether the fee increase was reasonable or not a close examination of facts and figures of each school is necessary. However, the Court was neither fully equipped nor it was possible for the Court to function and undertake each individual school. In the opinion of the Court, such an exercise was to be



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undertaken by the authorities or by an independent committee. 000018
The Court further opined that the matter could be discussed by all concerned and fee increase even as per the impugned order, whereas the schools be given an opportunity to justify the levy of higher charges. In Para 65 of the judgment, the Court summarized the discussed in the following manner:

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

- (i) It is the obligation of the Administrator and or Director of Education to prevent commercialization and exploitation in private unaided schools including schools run by minorities.
- (ii) The tuition fee and other charges are required to be fixed in a validly constituted meeting giving opportunity to the representatives of Parent Teachers Association and Nominee of Director of Education of place their viewpoints.
- (iii) No permission from Director of Education is necessary before or after fixing tuition fee. In case, however, such fixing is found to be irrational and arbitrary there are ample powers under the Act and Rules to issue directions to school to rectify it before resorting to harsh measures. The question of commercialization of education and exploitation of parents by individual schools can be authoritatively determined on thorough examination of accounts and other records of each school.
- (iv) The Act and the Rules prohibit transfer of funds from the school to the society or from one school to another.
- (v) The tuition fee cannot be fixed to recover capital expenditure to be incurred on the properties of the society.
- (vi) The inspection of the schools, audit of the accounts and compliance of the provisions of the Act and the Rules by private recognized unaided schools could have prevented the present state of affairs.
- (vii) The authorities/Director of Education has failed in its obligation to get the accounts of private recognized unaided schools audited from time to time.



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- 000019
- (viii) *The schools/societies can take voluntary donations not connected with the admission of the ward.*
 - (ix) *On the peculiar facts of these petitions there is no per se illegality in issue of the impugned circular dated 10th September 1997.*
 - (x) *An independent statutory Committee, by amendment of law, if necessary, deserves to be constituted to go into factual matters and adjudicate disputes which may arise in future in the matter of fixation of tuition fee and other charges.*
 - (xi) *The Government should consider extending Act and Rules with or without modifications to all schools from Nursery onward. Having bestowed our thoughtful consideration to the submission of counsel for the parties and afore noticed detail facts and circumstances, we are of the view that an independent Committee deserves to be appointed for the period covered by impugned order dated 10th September, 1997 up to start of academic session in the year 1999, to look into the cases of the individual schools and determine, on examination of record and accounts etc. Whether increase of tuition fee and other charges, on facts would be justified or not. Eliminating the element of commercialization and in light of this decision the Committee would determine fee and other charges payable by students of individual schools. We do not think that it would be desirable at present to permit any further increase than what has already been permitted by order dated 11th December, 1997. We would, therefore, extend the aforequoted order dated 11th December, 1997 till decision of cases of individual schools by Committee appointed by this judgment."*

(ix) As, according to the Court, the position in respect of each school warranted to be examined, a committee comprising of Ms. Santosh Duggal (a retired Judge of this Court) as Chairperson with power to nominate two persons in consultation with the Chief Secretary, Government of NCT of Delhi - one with the knowledge of accounts and second from the field of education, was constituted by the Court "to decide the matter of fee and



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other charges leviable by individual school in terms of the said decision." 000020

40. Many schools and associations of unaided private schools challenged this decision before the Supreme Court. Singular and consolidated judgment in all these appeals was pronounced by the Supreme Court on 27.04.2004 in the case of Modern School (supra). It was a divided verdict of the Bench of majority Judgment was authored by Hon^{ble} Mr. Justice S.H. Kapadia (as His Lordship then was), the Hon^{ble} Chief Justice Mr. V.N. Khare concurring therewith. Hon^{ble} Mr. Justice S.B. Sinha gave dissenting opinion. The majority view substantially upheld the aforesaid judgment of this Court. However, some significant discussed, analyzed, touched upon and emphasized in the said judgment need to be highlighted. Therefore, we proceed to take note thereof hereafter.

41. The majority judgment starts by spelling out the issue which were posed before the Court and were to be answered. The Court noted:

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

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

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

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

42. Insofar first question is concerned, the Court affirmed the views of the Division Bench of this Court with the guiding principle, viz., "hence we have to strike a balance between autonomy of such institutions and measures to be taken in avoiding commercialization of education". At the same time, the Court also observed that in none of the earlier cases, the Apex Court had defined the concept of "reasonable surplus, profit,



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income and yield, which are the terms used in various provisions in 1973 Act". For this reason, the Court proceeded to make in-depth analysis of the earlier judgments having aforesaid focus in mind. This analysis is contained in para 15 and 16 of the judgment which is worth a read: 000021

"15. As far back as 1957, it has been held by this Court in the case of *State of Bombay v. R.M.D. Chamarbaugwala* reported in [1957] 1 SCR 874 that education is per se an activity that is charitable in nature. Imparting of education is a State function. The State, however, having regard to its financial constraints is not always in a position to perform its duties. The function of imparting education has been to a large extent taken over by the citizens themselves. In the case of *Unni Krishnan, J.P. v. State of A.P.* (supra), looking to the above ground realities, this Court formulated a self-financing mechanism/scheme under which institutions were entitled to admit 50% students of their choice as they were self-financed institutions, whereas rest of the seats were to be filled in by the State. For admission of students, a common entrance test was to be held. Provisions for free seats and payment seats were made therein. The State and various statutory authorities including Medical Council of India, University Grants Commission etc. were directed to make end or amend regulations so as to bring them on par with the said Scheme. In the case of *TMA Pai Foundation v. State of Karnataka* reported in (2002) 8 SCC 481a, the said scheme formulated by this Court in the case of *Unni Krishnan* (supra) was held to be an unreasonable restriction within the meaning of Article 19(6) of the Constitution as it resulted in revenue short-falls making it difficult for the educational institutions. Consequently, all orders and directions issued by the State in furtherance of the directions in *Unni Krishnan's* case (supra) were held to be unconstitutional. 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. *TMA Pai Foundation's* case 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)



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gives the right to religious and linguistic minorities to establish and administer educational institution of their choice. However, 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 vide para 56 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 was held to be forbidden. Subject to the above two prohibitory parameters, this Court in TMA Pai Foundation's case 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 the TMA Pai Foundation's case.

16. The judgment in TMA Pai Foundation's case 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 reported in AIR 2003 SC 3724 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 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



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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 TMA Pai Foundation's case. In view of rival submissions, four questions were formulated. We are concerned with first question, namely, whether the educational institutions are entitled to fix their own fee structure. It was held that there could be no rigid fee structure. Each institute must have freedom to fix its own fee structure, after taking into account the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must be able to generate surplus which must be used for betterment and growth of that educational institution. The fee structure must be fixed keeping in mind the infrastructure and facilities available, investment made, salaries paid to teachers and staff, future plans for expansion and/or betterment of institution subject to two restrictions, namely, non profiteering and non- charging of capitation fees. It was held that surplus/profit can be generated but they shall be used for the benefit of that educational institution. It was held that profits/surplus cannot be diverted for any other use or purposes and cannot be used for personal gains or for other business or enterprise. The Court noticed that there were various statutes/regulations which governed the fixation of fee and, therefore, this Court directed the respective State Governments to set up 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.

43. The Court, thus, analyzed the judgments of TMA Pai Foundation (supra) and Islamic Academy of Education (supra) by observing that it was held therein that fee to be charged by unaided educational institutions cannot be regulated except that capitation fee and profiteering were forbidden. There could not be any rigid fee structure and each institution must have freedom to fix its own fee structure, after taking into account the need to generate funds to run the institution and



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to provide facilities necessary for the benefit of the students. In the process, such educational institutions were even empowered to generate surplus funds, which must be used for betterment and growth of the educational institutes with clear embargo that these profits/surplus funds cannot be diverted for any other use or purpose and cannot be used for personal gain or any business or enterprise.

44. For fixing the fee structure, following considerations are to be kept in mind:

- (a) The infrastructure and facilities available;
- (b) Investment made, salaries paid to teachers and staff;
- (c) Future plans for expansion and/or betterment of institution subject to two restrictions, viz., non-profitteering and non-charging of capitation fees.

45. The majority view thereafter applied the aforesaid principles in the context of 1973 Act and Rules framed thereunder. It was emphasized that Rule 175 indicates the accrual of income and Rule 177 indicates utilization of that income and answered to the first question by holding that the Director of Education was authorized to regulate fee and other charges to prevent commercialization of educational institutes in the following terms:

"17.....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 authorized to regulate the fees and other charges to prevent commercialization 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 section 18(3)&(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." (emphasis supplied)

46. While answering the second question, the Court held that it was not permissible for the schools to transfer the funds from recognized unaided school funds to the Society or Trust or any other institution. Repelling the contention of these private schools to the contrary, the Court gave the following rationale:



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"20. We do not find merit in the above arguments. Before analyzing the rules herein, it may be pointed out, that as of today, we have Generally Accepted Accounting Principles (GAAP). As stated above, commercialization of education has been a problem area for the last several years. One of the methods of eradicating commercialization of education in schools is to insist on every school following principles of accounting applicable to not-for-profit organizations/ non-business organizations. Under the Generally Accepted Accounting Principles, expense is different from expenditure. All operational expenses for the current accounting year like salary and allowances payable to employees, rent for the premises, payment of property taxes are current revenue expenses. These expenses entail benefits during the current accounting period. Expenditure, on the other hand, is for acquisition of an asset of an enduring nature which gives benefits spread over many accounting periods, like purchase of plant and machinery, building etc. Therefore, there is a difference between revenue expenses and capital expenditure. Lastly, we must keep in mind that accounting has a linkage with law. Accounting operates within legal framework. Therefore, banking, insurance and electricity companies have their own form of balance-sheets unlike balance-sheets prescribed for companies under the Companies Act 1956. Therefore, we have to look at the accounts of non business organizations like schools, hospitals etc. in the light of the statute in question."

47. Substantial skill and dexterity of accounting and economic principles, while analyzing the various provisions of Rules of 1973 Act, is reflected in the discussion that followed in Paras 21 to 23:

"21. In the light of the above observations, we are required to analyze rules 172, 175, 176 and 177 of 1973 rules. The above rules indicate the manner in which accounts are required to be maintained by the schools. Under section 18(3) of the said Act every Recognized school shall have a fund titled "Recognized Unaided School Fund". It is important to bear in mind that in every non-business organization, accounts are to be maintained on the basis of what is known as 'Fund Based System of Accounting'. Such system brings about transparency. Section 18(3) of the Act shows that schools have to maintain Fund Based System of Accounting. The said Fund, contemplated by Section 18(3), shall consist of income by way of fees, fine, rent, interest



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etc. Section 18(3) is to be read with rule 175. Reading the two together, it is clear that each item of income shall be accounted for separately under the common head, namely, Recognized Unaided School Fund. Further, rule 175 indicates accrual of income unlike rule 177 which deals with utilization of income. Rule 177 does not cover all the items of income mentioned in rule 175. Rule 177 only deals with one item of income for the school, namely, fees. **Rule 177(1) shows that salaries, allowances and benefits to the employees shall constitute deduction from the income in the first instance. That after such deduction, surplus if any, shall be appropriated towards, pension, gratuity, reserves and other items of appropriations enumerated in rule 177(2) and after such appropriation the balance (savings) shall be utilized to meet capital expenditure of the same school or to set up another school under the same management.** Therefore, rule 177 deals with application of income and not with accrual of income. Therefore, rule 177 shows that salaries and allowances shall come out from the fees whereas capital expenditure will be a charge on the savings. **Therefore, capital expenditure cannot constitute a component of the financial fees structure as is submitted on behalf of the schools.** It also shows that salaries and allowances are revenue expenses incurred during the current year and, therefore, they have to come out of the fees for the current year whereas capital expenditure/capital investments have to come from the savings, if any, calculated in the manner indicated above. It is for this reason that under Section 17(3) of the Act, every school is required to file a statement of fees which they would like to charge during the ensuing academic year with the Director. In the light of the analysis mentioned above, we are directing the Director to analyze such statements under section 17(3) of the Act and to apply the above principles in each case. This direction is required to be given as we have gone through the balance- sheets and profit and loss accounts of two schools and prima facie, we find that schools are being run on profit basis and that their accounts are being maintained as if they are corporate bodies. Their accounts are not maintained on the principles of accounting applicable to non-business organizations/not-for-profit organizations.



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22. As stated above, it was argued that clause 8 of the order of Director was in conflict with rule 177. We do not find any merit in this argument.

23. Rule 177(1) refers to income derived by unaided recognized school by way of fees and the manner in which it shall be applied/utilized. Accrual of income is indicated by rule 175, which states that income accruing to the school by way of fees, fine, rent, interest, development fees shall form part of Recognized Unaided School Fund Account. Therefore, each item of income has to be separately accounted for. This is not being done in the present case. Rule 177(1) further provides that income from fees shall be utilized in the first instance for paying salaries and other allowances to the employees and from the balance the school shall provide for pension, gratuity, expansion of the same school, capital expenditure for development of the same school, reserve fund etc. and the net savings alone shall be applied for establishment of any other recognized school under rule 177(1)(b). Under accounting principles, there is a difference between appropriation of surplus (income) on one hand and transfer of funds on the other hand. In the present case, rule 177(1) refers to appropriation of savings whereas clause 8 of the order of Director prohibits transfer of funds to any other institution or society. This view is further supported by rule 172 which states that no fee shall be collected from the student by any trust or society. That fees shall be collected from the student only for the school and not for the trust or the society. Therefore, one has to read rule 172 with rule 177. Under rule 175, fees collected from the school have to be credited to Recognized Unaided School Fund. Therefore, reading rules 172, 175 and 177, it is clear that appropriation of savings (income) is different from transfer of fund. Under clause 8, the management is restrained from transferring any amount from Recognized Unaided School Fund to the society or the trust or any other institution, whereas rule 177(1) refers to appropriation of savings (income) from revenue account for meeting capital expenditure of the school. In the circumstances, there is no conflict between rule 177 and clause 8."

48. On the third issue formulated by the Court and noted above, the majority opinion was that the management of the schools was entitled to create Development Fund Account. For creating such a Fund, it could collect development fees as well. Concomitantly, the Court addressed



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the question as to whether directions given by the Government that development fund fee should not exceed 10 - 15% of the total annual tuition fee, was appropriate and valid which was to be charged to supplement the resources for purchase, upgradation and replacement of furniture, fixtures and equipments. The Court was of the opinion that this direction was given with the purpose of introducing a proper accounting practice to be followed by non-business organizations/not-for-profit organizations which was a correct practice being introduced. The Court also held that taking into account the cost of inflation between 15-12-1999 and 31-12-2003 that the ceiling charge of development fee not exceeding 15% of the total annual tuition fees was appropriate. 000028

49. After giving answers to the aforesaid three questions formulated by it in the aforesaid manner, the majority decision summed up the position as under:

"26. To sum up, the interpretation we have placed on the provisions of the said 1973 Act is only to bring in transparency, accountability, expenditure management and utilization of savings for capital expenditure/investment without infringement of the autonomy of the institute in the matter of fee fixation. It is also to prevent commercialization of education to the extent possible.

CONCLUSION:

27. In addition to the directions given by the Director of Education vide order DE.15/Act/Duggal.Com/ 203/99/23989- 24938 dated 15th December, 1999, we give further directions as mentioned hereinbelow: --

(a) Every recognized unaided school covered by the Act shall maintain the accounts on the principles of accounting applicable to non business organization/not-for-profit organization; In this connection, we inter alia direct every such school to prepare their financial statement consisting of Balance-sheet, Profit & Loss Account, and Receipt & Payment Account.

(b) Every school is required to file a statement of fees every year before the ensuing academic session under section 17(3) of the said Act with the Director. Such statement will indicate estimated income of the school derived from fees, estimated current operational expenses towards salaries and allowances payable



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to employees in terms of rule 177(1). Such estimate will also indicate provision for donation, gratuity, reserve fund and other items under rule 177(2) and savings thereafter, if any, in terms of the proviso to rule 177(1);

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(c) It shall be the duty of the Director of Education to ascertain whether terms of allotment of land by the Government to the schools have been complied with. We are shown a sample letter of allotment issued by the Delhi Development Authority issued to some of the schools which are recognized unaided schools. We reproduce herein clauses 16 & 17 of the sample letter of allotment:--

"16. The school shall not increase the rates of tuition fee without the prior sanction of the Directorate of Education, Delhi Admn. and shall follow the provisions of Delhi School Education Act/Rules, 1973 and other instructions issued from time to time.

17. The Delhi Public School Society shall ensure that percentage of free ship from the tuition fee as laid down under rules by the Delhi Administration, from time to time strictly complied. They will ensure admission to the student belonging to weaker sections to the extent of 25% and grant free ship to them."

50. We would like to point out at this stage that after the judgment of the Supreme Court in *Modern School (supra)*, *Seven Judges Bench* revisited the scope and ambit of *Islamic Academy of Education (supra)* as well as *T.M.A. Pai Foundation (supra)* in *P.A. Inamdar & Ors. Vs. State of Maharashtra and Others [(2005) 6 SCC 537]*. For clarifying three issues, matter was referred to the *Seven Judges Bench* in *P.A. Inamdar (supra)* which are as under:

"(i) the fixation of "quota" of admissions/students in respect of unaided professional institutions;

(ii) the holding of examinations for admissions to such colleges, that is, who will hold the entrance tests; and

(iii) the fee structure."

The relevant discussion of the principles emanating from the judgment of Hon'ble Supreme Court in the case of *Action Committee*



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Unaided Private Schools is contained in paras 51 to 55 of the 000030
judgment of the Hon'ble High Court. The same are reproduced as
follows:

51. Emboldened by the view which the Seven Judges Bench had taken in P.A. Inamdar (supra), these private schools as well as Action Committee, Unaided Private Schools field Review Petition seeking review of the judgment rendered in Modern School (supra). This Review Petition has been decided by the Bench comprising of Hon'ble Mr. Justice S.B. Sinha, Hon'ble Mr. Justice S.H. Kapadia (as His Lordship then was) and Hon'ble Mr. Justice Cyprian Joseph. By majority of 2:1, the Review Petition has been dismissed. Justice Sinha who rendered the minority judgment stuck to his view. However, Hon'ble Mr. Justice Joseph agreed with Hon'ble Mr. Justice Kapadia, the author of majority view in Modern School (supra), in dismissing the review petition. The judgment is reported as **Action Committee Unaided Pvt. Schools and Others Vs. Director Education and Others [2009 (11) SCALE 7**. Reading of this judgment would disclose that the Review Petitions raised the following contentions:

(i) In view of the larger bench decision of this Court in P.A. Inamdar (supra), the directions issued by the Director of Education which have been upheld by this Court cannot be sustained as the schools and in particular the minority schools have a greater autonomy in laying down their own fee structure.

(ii) Although collection of any amount for establishment of the school by a trust or a society is forbidden, the transfer of fund by one school to another school under the same management being permissible in terms of Rule 177 of the Rules, the directions prohibiting such transfer by the Director of Education in its order dated 15.12.1999 must be held to be illegal.

(iii) The decision of T.M.A. Pai Foundation (supra) with regard to construction of Article 19(1)(g) of the Constitution of India should be considered in its correct perspective as there exists a distinction between 'profit' and 'profiteering'.

(iv) The status of a minority institution being on a higher pedestal, as has been noticed in T.M.A. Pai Foundation (supra), the impugned directions could not have been issued by the Director of



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Education which would affect the autonomy of the minority institution." 000031

From the aforesaid, it is clear that in Review Petition, thus, the Court considered as to whether T.M.A. Pai Foundation (supra) as clarified by P.A. Inamdar (supra) had made any difference to the conclusions, which were drawn by the Court in Modern School (supra).

52. Hon^{ble} Mr. Justice S.B. Sinha, who was in minority again, took view that even if reasonable restrictions could be imposed on citizen's fundamental right contained in Article 19(1)(g) of the Constitution of India, that could be done only by reason of a Legislative Act. However, the order dated 15.12.1999 issued by the Government giving various directions was not statutory orders. Furthermore, such a statutory order also could not have been issued under the directions of the High Court as the very premise on which such directions had been issued did not survive any longer in view of the decision in T.M.A. Pai Foundation (supra). The minority, thus, held that all the schools and particularly unaided schools may lay down their own fee criteria. Imposition of regulation, however, only is permissible for the purpose of exercising of control over profiteering and not earning of a profit which would include reasonable return of the investment made.

53. On the other hand, Hon^{ble} Mr. Justice S.H. Kapadia (now Hon^{ble} the Chief Justice of India) traced out the history of this particular litigation right from filing of Public Interest Litigation in the High Court by DAM, then extracted the portion of the judgment of Division Bench rendered in 1998 including appointment of Duggal Committee, report of Duggal Committee, filing of SLPs by the schools, etc. against the Division Bench Judgment of this Court and also orders dated 15.12.1999 issued by the Director of Education in terms of the Report of Duggal Committee. Thereafter, decision in Modern School (supra) is taken note of on the three points argued before it. Thereafter, the judgment proceeds with the filing of Review Petitions and notes the argument of the Review Petitioner that the majority view holding the Director of Education (in short "DoE") had power to regulate the fee structure of private unaided schools was not correct and no directions could have been issued by the Court contrary to the statutory Rules in the matter of fee fixation. It was also pointed out that the review petitioners had argued that the directions issued vide orders dated 15.12.1999 by DoE were neither the subject matter before Delhi High Court, nor the subject matter of Special Leave Petition. The basic



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grievance of the review petitioners in this behalf was that Clause 8 of the orders dated 15.12.1999 issued by the DoE was causing administrative difficulties which needed clarification. Under Clause 8, DoE stipulated that "no amount whatsoever shall be transferred from the recognized unaided school fund of a school to the society or the trust or any other institution". It was argued by the review petitioners that a rider needed to be introduced in Clause 8 by mentioning "except under the management of the same society or trust" to subserve the object underlying the 1973 Act. Even the majority view found merit in this particular argument in the following words:

"53 (20). There is merit in the argument advanced on behalf of the Action Committee/Management. The 1973 Act and the Rules framed thereunder cannot come in the way of the Management to establish more schools. So long as there is a reasonable fee structure in existence and so long as there is transfer of funds from one institution to the other under the same management, there cannot be any objection from the Department of Education."

54. However, the contention that the order dated 15.12.1999 of DoE was never challenged and yet, the Court went on validity thereof was rejected. The majority decision also rejected the contention that whereas 1973 Act and Rules thereunder operates, regulation of education would be governed thereby and therefore, the Court cannot impose any other or further restrictions. On this aspect, it was observed that in T.M.A. Pai (supra) and Islamic Academy of Education (supra), the principles for fixing fee structure had been illustrated. However, they were not exhaustive. They did not deal with determination of surplus and appropriation of savings. In Modern School (supra), it was categorically recorded in the majority opinion that the above topics are not dealt with by the 1973 Rules and therefore, Clause 8 was found not to be beyond Rule 177 or in conflict thereto as alleged by the review petitioners. It was categorically ruled that additional directions given in the judgment of majority vide Para 27 do not go beyond Rule 177, but they are a part of gap-filling exercise and discipline needed to be followed by the management. In this behalf, following discussion needs to be extracted:

55 (22).....The Additional Directions given in the Judgment of the Majority vide para 27 do not go beyond Rule 177 but they are a part of gapfilling exercise and discipline to be followed by the management. For example: every school shall prepare balance sheet and profit and loss account. Such conditions do not supplant Rule 177. If reasonable fee structure is the test then



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transparency and accountability are equally important. In fact, as can be seen from Reports of Duggal Committee and the earlier Committee, excessive fees stood charged in some cases despite the 1973 Rules because proper Accounting Discipline was not provided for in 1973 Rules. Therefore, the Further Directions given are merely gap-fillers. Ultimately, Rule 177 seeks transparency and accountability and the Further Directions (in para 27) merely brings about that transparency. Lastly, it may be noted that the matter has come up to the Apex Court from PIL. Hence there is no merit in the above plea.

56 (23). Subject to the above clarification, review petitions stand dismissed with no order as to costs."

55. Hon^{ble} Mr. Justice Cyriac Joseph while agreeing with Hon^{ble} Mr. Justice S.K. Kapadia recorded his note as under:

"58. Though I agree with the view of S.B. Sinha, J. that any direction issued by the High Court or by the rule making authority or any statutory authority must be in conformity with the decision of this Court in the case of T.M.A. Pai Foundation as clarified by the decision of this Court in the case of P.A. Inamdar, in my view, the judgment of S.H. Kapadia, J. does not question or contradict such a legal proposition. On the contrary, it is in recognition of the above legal proposition that modification suggested by the learned Counsel for the review petitioners in respect of Clause 8 of the order dated 15.12.1999 issued by the Director of Education has been accepted by S.H. Kapadia, J."

Before proceeding further, it would be appropriate to discuss as to the purpose and the conditions subject to which the schools were allowed to charge development fee for the purpose of creating the development fund. The Hon^{ble} Supreme Court in the case of Modern School (supra) held as follows:

"The third point which arises for determination is whether the managements of recognised unaided schools are entitled to set up a Development Fund Account.



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In our view, on account of increased cost due to inflation, the management is entitled to create a Development Fund Account. For creating such development fund, the management is required to collect development fees. In the present case, pursuant to the recommendation of the Duggal Committee, development fees could be levied at a rate not exceeding 10% to 15% of total annual tuition fee. **Direction No. 7 further states that development fees not exceeding 10% to 15% of total annual tuition fee shall be charged for supplementing the resources for purchase, upgradation and replacement of furniture, fixtures and equipments. It further states that development fees shall be treated as capital receipt and shall be collected only if the school maintains a depreciation reserve fund. In our view, Direction No. 7 is appropriate.**

If one goes through the Report of the Duggal Committee, one finds absence of non-creation of specified earmarked fund. On going through the Report of the Duggal Committee, one finds further that depreciation has been charged without creating a corresponding fund. Therefore, Direction No. 7 seeks to introduce a proper accounting practice to be followed by non-business organisations/not-for-profit organisations. With this correct practice being introduced, development fees for supplementing the resources for purchase, upgradation and replacements of furniture and fixtures and equipments is justified. Taking into account the cost of inflation between 15-12-1999 and 31-12-2003 we are of the view that the management of recognised unaided schools should be permitted to charge development fee not exceeding 15% of the total annual tuition fee."

(Emphasis supplied by us)

The following principles can be deduced from the judgments of the Hon'ble Supreme Court in the cases of Modern School (supra) and Action Committee (supra).

- (1) The Director of Education has the authority to regulate fees of private unaided schools under section 17(3) of the Delhi School Education Act, 1973.



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(2) It is not permissible for the schools to transfer funds from recognised unaided school fund to its parent society or trust. However subject to there being a reasonable fee structure, funds could be transferred from one institution to another institution under the same management.

(3) Fees shall be utilised in the first instance for payment of salaries allowances and other benefits to the employees. After such deductions, if there is any surplus, it shall be appropriated towards pension, gratuity, reserves and other items of appropriated enumerated in Rule 177(2) of the Delhi School Education Rules, 1973 and after such appropriations, the balance (savings) shall be utilised to meet capital expenditure of the same school or to set up another school under the same management. It has further clarified that capital expenditure cannot constitute a component of the financial fee structure of the schools, but can come out from the savings, if any calculated in the above manner.

(4) The schools can create a development fund and for creating such a fund, it could collect development fees and such development fee would not exceed 15% of the annual tuition fees. Such development fee shall be collected only for the purposes of purchase, upgradation and replacement of furniture, fixtures and equipments. Such development fee



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shall be treated as a capital receipt and shall be collected 000036
only if the school maintains a depreciation reserve fund.

Applying the aforesaid principles laid down by the Hon'ble Supreme Court in the cases of Modern School and Action Committee, which this Committee is mandated to follow, the relevant calculations in the case of this school are required to be made.

As stated supra, on the face of it, the school did not appear to have any funds of its own for the purpose of implementation of the recommendations of VI Pay Commission. On the contrary, it appeared that the school had more current liabilities than its current assets as on 31/03/2008 and such excess of current liabilities over current assets was to the tune of Rs. 29,49,817. The relevant calculations of this amount are as follows:



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<u>Current Assets</u>		
Cash in Hand	62,190	
Cash at Bank	423,118	
FDRs	110,000	
Prepaid Insurance	73,087	
Interest accrued on FDRs	11,054	679,449
<u>Current Liabilities</u>		
Fee received in advance	2,778,193	
Caution Money	290,000	
EFP Payable	3,732	
TDS Payable	111,918	
Salary Payable	382,894	
School Bus Expenses payable	13,857	
Telephone expenses payable	2,970	
Water Expenses payable	991	
Electricity Expenses payable	10,853	
Economic Weaker section grant payable	3,940	
Sundry Creditors	29,918	3,629,266
Excess of current liabilities over current assets		(2,949,817)

It is unfathomable as to how the school can not have sufficient current assets even to cover its current liabilities. Obviously there was something more than met the eye. On a closer examination of the financials of the school for the years 2006-07 to 2010-11, it became apparent that the school was transferring huge amount of funds to its parent society. Besides, it was also incurring capital expenditure when apparently it had no savings as defined in the Rule 177 of the Delhi School Education Rules, 1973. The Committee calculated that between 2006-07 and 2009-10, the school had apparently incurred capital expenditure towards creation of fixed assets to the tune of **Rs. 66,48.356** and transferred a sum of **Rs. 99,32,430** to its parent



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society in the same period. Both these capital expenditure and transfer of funds were in violation of the law laid down by the Hon'ble Supreme Court, as explained above. The Committee was of the view that the school could not take advantage of its own wrong and plead paucity of funds to justify the hike in fee for implementing the recommendations of VI Pay Commission. 000038

Thus the Committee considered the aforesaid capital expenditure/transfer of funds to be available with the school and accordingly calculated that the school had available with it a sum of **Rs. 1,36,30,969** (66,48,356+99,32,430- 29,49,817).

The Committee also took into account the requirement of the school to keep funds in reserves for meeting its accrued liabilities of gratuity as on 31/03/2010 (Rs. 1,13,895), leave encashment (Rs. 4,21,104) and a reasonable reserve (Rs. 34,74,565 which was equivalent to four months salary for the year 2009-10). After setting apart these amounts, the Committee calculated that the school still had a sum of **Rs. 96,21,405** available with it. The total impact of implementing the recommendations of VI Pay Commission amounted to **Rs. 58,65,146**.

Thus the Committee was of the prima facie view that the school did not require to hike any fee for meeting its additional expenditure of implementing the recommendations of VI Pay Commission. All it



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had to do was to get back the funds from its parent society which it had illegally transferred.

Besides the above, the Committee also was of the view that the school could not have collected any development fee as it was not fulfilling the essential pre conditions laid down by the Hon'ble Supreme Court. The development fee collected by the school in 2009-10 amounted to Rs. 8,03,295 while that collected in 2010-11 amounted to Rs. 10,97,820.

A copy of the calculation sheet was given to the authorized representative appearing for the school, with the direction that the school could file its rebuttal.

Rebuttal of the school

The school filed rebuttal to the Calculation Sheet vide its written submissions dated 21.06.2017. The learned Authorized Representative appearing for the school has been heard. The Calculation Sheet prepared by the Committee was disputed by the school on the following grounds:

- (a) There is a double counting of interest paid on secured loans to the tune of Rs.33,68,223 as the same had been included in funds diverted for repayment of loans as well as funds diverted by the school to its parent society. It is submitted that the society had taken the loan for construction of the school



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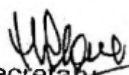

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building. The monthly installments of loan including interest 000040
were first transferred by the school to the parent society which
in turn paid to the bank. The interest portion of the installment
was segregated at the end of the year and charged as an
expense in the books of the school. The authorized
representative of the school produced its ledgers to substantiate
its submissions.

- (b) The next issue raised by the authorized representative is that
the Committee ought to have calculated the contingency reserve
equivalent to four months' salary by including housekeeping
and temporary staff.
- (c) The authorized representative submits that the incremental
salary for 2009-10 after implementation of the
recommendations of 6th Pay Committee has been erroneously
taken by the Committee to Rs.58,65,146 whereas it is
Rs.75,53,027.
- (d) It has been submitted that prepaid insurance amounting to
Rs.73,087 cannot be included to be part of funds available to
the school.
- (e) It is next submitted that the FDRs amounting to Rs.1,10,000
taken by the Committee to be part of funds available are in fact
held in the joint names of the school and the Directorate of
Education/ CBSE and therefore, cannot be considered to be
part of funds available.



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- (f) The next contention raised by the school is that the figure of bank balance amounting to Rs.4,23,118 has been erroneously taken as part of funds available when in fact the same was a negative figure of Rs.4,00,399.
- (g) The next issue raised by the school is with regard to the repayment of loans and interest thereon considered by the Committee to be diversion of fee. It is submitted that the loans taken were mainly for purchase of buses and the same have been funded only out of transport fee charged by the school. It is submitted that the transportation income (net of transportation expenses) was utilized for making repayment of loans and interest. The school has furnished its Receipt and Payment Account of transportation receipts and expenditures for the years 2006-07 to 2010-11.
- (h) It is next submitted that the funds transferred to parent society for repayment of building loan ought not be considered as diversion of funds to the society as Rule 177 of DSER,1973 permits fee income to be utilized for needed expansion of the school or any expenditure of development nature or expansion of school building or for expansion or construction of any building or establishment of hostel or expansion of hostel accommodation.
- (i) It is next contended that the development fee charged by school had been treated as a capital receipt and utilized for permitted



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purposes only. However, since the school was not left with any surplus of Development Fund, the school did not maintain an earmarked Development fund account in the bank.

Findings and reasons of the Committee

(a) The Committee has examined the audited financials of the school as well as ledgers produced by the school and finds that the contention raised by the authorized representative with regard to double counting of interest on loan amounting to Rs.33,68,223 is correct. Accordingly, necessary adjustments on this account will be made in the final determinations.

(b) The Committee observes that the house keeping services are outsourced by the school and during the course of verification of the salary records of the school, the audit officer had recorded that the school paid salary to most of its staff only for 11 months in a year. Only 7 employees in 2008-09 and 16 employees in 2009-10 were paid for the full 12 months. There is no merit in the argument of school that contingency reserve be calculated with reference to the charges paid to the manpower agency/outsourced staff.

(c) The Committee observes that the figures taken by the Committee are based on the salaries paid to the regular staff and do not include the salaries of temporary staff and housing keeping staff, salaries to whom have not been paid at the increased rates at the



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implementation of 6th Pay Commission. Accordingly, the Committee 000043
rejects this argument of the school.

(d) The Committee does not see any justifiable reason to exclude the amount of Rs.73,087 which is prepaid insurance for the next year from the figure of funds available as to that extent the school will be liable to pay a lesser amount on account of insurance in the next year. The amount has been correctly classified as a current asset on the balance sheet date.

(e) The Committee accepts the contention of the school that the FDRs amounting to Rs.1,10,000 if held in the joint names of the school and the Directorate of Education/ CBSE, cannot be considered to be part of funds available with the school for implementing the recommendations of VI Pay Commission. Necessary adjustment to this effect will be made while making the final determinations.

(f) The Committee observes that facially it appeared that the figures of bank balance appearing in the Balance sheet was positive, on a closer look and on reference to the previous year figures in the Balance Sheet, the contention of the school to the effect that it was (-) 4,00,399 and not (+) 423118 is found to be correct. Necessary adjustments will be made in the final determinations.

(g) The Committee has examined the receipt and payment accounts as compiled by the school in respect of transportation receipts and transportation expenses. The Committee observed that the school has very cleverly taken depreciation to be a transportation receipt while



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calculating the cash surplus on account of transportation of fee 000044
 received from the students. Depreciation is nothing but a book entry
 which is passed to recognise the amortization of the value of assets on
 account of wear and tear and lapse of time. It is neither a cash receipt
 nor a cash payment. The amount of cash surplus projected by the
 school out of its transportation fee receipts, after the necessary
 modulation on account of depreciation for the years 2006-07 to 2009-
 10 (2010-11 is not relevant for the purpose) is as follows:

	Financial Year				Total
	2006-07	2007-08	2008-09	2009-10	
Cash surplus/deficit on transportation account	392,915	(29,491)	(118,789)	(166,065)	78,570
Less depreciation considered as cash accrual in the Receipt and Payment Account	373,301	449,778	652,005	691,425	2,166,509
Adjusted cash surplus/deficit	19,614	(479,269)	(770,794)	(857,490)	(2,087,939)

It is noticeable that instead of cash surplus, projected by the
 school, the school incurred cash deficiency in all the years except
 2006-07, when there was a small surplus. Cumulatively, the school
 ran up a huge deficit on account of repayment of bus loans and
 interest thereon from 2006-07 to 2009-10. Accordingly, the
 Committee finds no merit in the argument advanced by the learned
 authorized representative of the school.

(a) With regard to the contention of the school that for funds
 transferred to the parent society for repayment of building loan ought
 not be considered as diversion of funds to the society in view of Rule



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177 which permits fee income to be utilised for needed expansion of the school or any expenditure of development nature etc., the Committee raised a specific query as to when was the school established. The authorized representative of the school submitted that the school was established in the year 2004 only and the loan for construction of building was also taken in that very year. It is obvious that the amount was spent towards construction of the building at the initial stage and was not towards any expansion of the school building. The expenditure to be incurred for creating the initial infrastructure (including building) of the school has to come from its parent society/trust and is not supposed to be funded by the students out of their fee. The Committee accordingly rejects this contention of the school.

(a) With regard to the contention regarding development fee, the Committee raised a specific query, responding to which, the authorized representative of the school conceded that the school was not maintaining any earmarked depreciation reserve fund in the bank. Even otherwise the school did not have any FDRs (other than those in the joint names of the school and DOE/CBSE) which could even theoretically be considered as held against Depreciation Reserve Fund. In view of the law laid down by the Hon'ble Supreme Court in the case of Modern School (supra) as discussed in the earlier part of this order, the contention of the school is without any merit and is accordingly rejected.



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Having dealt with all the contentions raised by or on behalf of 000046
the school, the Committee makes the following determinations:

Particulars		Amount (Rs.)
Funds deemed to be available with the school as on 31/03/2009 as increased by funds diverted to parent society and expanded for capital expenditure, as initial determined by the Committee		96,21,405
Less:		
(a) Double counting of interest, as explained above	33,68,223	
(b) FDR held jointly with Director of Education/CBSE	1,10,000	
(c) Effect of taking wrong bank balance in the initial calculations (4,23,118 + 4,00,399)	<u>8,23,517</u>	<u>43,01,740</u>
Correct amount of Funds deemed to be available as on 31/03/2009 before fee hike		53,19,665

The total impact of implementation of the recommendations of VI Pay Commission on account of increased salaries paid by the school in 2009-10 was to the tune of Rs. 58,65,146.

Thus there was a gap of Rs. 5,45,481 only which the school needed to bridge by hiking the fee w.e.f. 01/04/2009. However, the school resorted to the maximum fee hike which would have been permitted to it considering the existing tuition fee charged by it in 2008-09 as per the order dated 11/02/2009 issued by the Director of Education. Such fee hike resulted in an additional revenue of Rs. 63,43,261.

Accordingly the Committee considers that the school was not justified in hiking the fee to the extent it did and ought to refund a sum of



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Rs.56,02,780 (61,48,261 - 5,45,481), along with interest @ 9% per annum 000047
from the date of collection to the date of refund.

As noticed supra, the school recovered development fee in 2009-10 and 2010-11 pursuant to order dated 11/02/2009 without fulfilling the necessary pre condition for maintaining a depreciation reserve fund, contrary to the law laid down by the Hon'ble Supreme Court in the case of Modern School (supra) as well as clause 14 of the order dated 11/02/2009. Accordingly the Committee is of the view that the school ought to refund the development fee charged in 2009-10 and 2010-11 amounting to Rs. 8,03,295 and 10,97,820 respectively along with interest @ 9% per annum from the date of collection to the date of refund.

Summary of Recommendations:

The school ought to refund the following amounts along with interest @ 9% per annum from the date of collection to the date of refund:

(a) Excess tuition fee hike for 2009-10	Rs. 56,02,780
(b) Development Fee for 2009-10	Rs. 8,03,295
(c) Development Fee for 2010-11	Rs. 10,97,820
Total fee refundable	Rs. 75,03,895

Ordered accordingly.

Justice Anil Kumar (R)
(Chairperson)

CA J.S. Kochar
(Member)

Dr. R.K. Sharma
(Member)

Dated: 03/06/2019



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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:

**BHARTI PUBLIC SCHOOL, (B-301
KONDLI, MAYUR VIHAR PHASE-III
NEW DELHI 110096.**

And in the matter of:

**Application for review dated
27th August, 2018 seeking
review of recommendations
/Order dated 20th March,
2018 in the matter of
school (B-301).**

ORDER

03.06.2019

Present : Shri H.C.Batra, President of the School
with Shri Puneet Batra Advocate for the School.

**ORDER ON APPLICATION DATED 27TH
AUGUST, 2019 SEEKING REVIEW OF
RECOMMENDATIONS /ORDER DATED 20TH
MARCH, 2018 IN THE MATTER OF SCHOOL
(B-301).**

1. Bharati Public School, Kondli Mayur Vihar, Phase III, New Delhi 110096 (B-301), hereinafter referred as 'The School' has sought review of order dated 20th March, 2018 by applications for review dated 27th August, 2018.



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2. The application for review dated 27th August, 2018 was taken up for hearing on 13th September, 2018 on that date after some arguments, the hearing was adjourned at the request of the Council for the applicant. The application for review was again taken for hearing on 16th October, 2018 on which date an application for a judgement was filed by 'The School' on account of indisposition of the counsel for 'The School'. The application for the review was taken up again for hearing on 19 November, 2018. On that date also the adjournment was sort by 'The School' on the ground that the counsel for 'The School' was not available. The application especially about the maintainability of the review application was hurt by this Committee on 14 December 2018 and the recommendation/order was a reserved. The term of the committee had expired on 31st December, 2018 and was extended again in April, 2019.

3. 'The School' has sought review of order dated 20th March, 2018 passed by the Committee inter-alia on the grounds as stated hereinafter:

" That most of the findings and observations made by the Hon'ble Committee in its Report against the School are erroneous and have error apparent on their very face and are thus liable to be reviewed and/or recalled. The Committee failed to take note of the facts which were submitted along with the letter/representations dated on 8.12.2016, 22.12.2016 and 10.11.2016 apart from the circulars of the School issued on 28.2.2009. It is contended that much prior to notification dated 11th February, 2009, the school had a fees of Rs. 1,500/- for the Pre-nursery classes and Rs. 1210/- for the Primary classes and consequently the School was entitled for an increase of Rs. 300/- which is within the permissible limit and there is no increase beyond the said Circular dated 11.2.2009 issued by the DOE and as such this issue has escaped the attention of the Committee. That no charges beyond the directives of the Circular dated 11.2.2009 issued by the Directorate of Education were charged. The School had paid bearer cheques only to the staff who had no account in the bank with the instructions to open a Bank account so that payments may be made by account payee cheques, However, w.e.f. November, 2009, mostly (29 out of 41 teachers), payments to the staff were being made by bank transfers/account payee



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cheques. Hike in salary/payments to the extent of 79% as observed by the Committee was only on account of hike in salary due to additional payments of DA arrears, bonus, annual increment etc. The view taken by the Committee with regard to the mandatory pre-conditions for charging the Development Fee, based on the judgment of the Hon'ble Supreme Court is not correct and is also contrary to the express terms and language of the statutory mandate contained in Rule 177 and allied provisions of the DSEAR. that the savings made. The School from the income derived by way of fees, after having met the liability of payment of salaries and allowances, etc., can utilize for the needed expansion of the School or any expenditure of developmental nature. The said savings are also permitted to be utilized for the expansion of the School building or any other building of the School. The said Rule further permits the utilization of the savings from the fees for meeting even the capital or contingent expenditure of the School e.g. award of scholarships to students; establishment of any other recognized school and 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. Thus interpretation of Modern School (supra) is based on an incorrect assumption that concept of Development Fees has necessarily to be confined to and be limited to being used for purchase or upgradation of furniture, fixtures, equipment. Consequently fixed assets could be purchased by the School from the savings of the fees collected. accounting practice adopted by the School. Showing fixed assets at depreciated value is in no manner erroneous and is in fact only an alternate method of showing assets at their gross value, along with Depreciation Reserve Fund on the liability side. That the Committee itself, in very many cases of other unaided schools, has correctly allowed levy, collection and retention of development fees, charged up to 15% of tuition fees p.a., without there being any separate bank accounts for the development fund and depreciation reserve fund, even without there being any details of the utilization of such fees and funds and without even such schools having implemented 6th Pay Commission Recommendations, The Committee in those cases has only directed refund of a development fee collected over and above 15% of tuition fee, if any, and not the entire development fee itself, as has been done in the case of the applicant School. The Committee does not have jurisdiction to interfere with, in any manner, the levy of fee" or with the "fee structure" already adopted by the private unaided schools. It is contended by the applicant that the Hon'ble Supreme Court of India vide its order dated 16-04-2014 in the matter of D.A.V. College Managing Committee



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versus Laxminaravan Mishra & Ors. In CIVIL APPEAL NO. 4556 OF 2014, considering a similar issue of revision of fee by the DAV Schools in Orissa, on account of implementation of sixth pay commission recommendations held that the schools were entitled to a reasonable return of 10%, profit above the actual expenses as a reasonable return to the institution. The method of linking school fee with available surplus is thus no longer a valid law. Thus the Committee has erred in dealing with issues relating to the fee structure obtaining on or prior to 11-02-2009.

4. The Order/recommendation dated 20th March, 2018 was passed by the Committee after giving adequate opportunity to the school. In its order/recommendation dated 20th March, 2018 the Committee had held as under:

"It was conceded by the school that it did not maintain a depreciation reserve fund in respect of assets acquired out of development fee. Further, no earmarked account was maintained by the school to park the unutilised development fund. In fact, it was contended that the school did not have any unutilised development fund as it was fully spent

The number of teachers employed by the school upto June 2009 were between 42 and 46 but in July 2009, the number of teachers rose to around 62. The component of salary paid in cash or by bearer cheque rose from Rs.1,41,566 in June 2009 out of a total of Rs. 12,54,804 to Rs. 4,14,026 in July 2009 out of a total of Rs. 14,08,157. In October 2009, the component of salary paid in cash or by bearer cheques, further went upto Rs. 6,54,331 out of total of Rs. 19,44,601. Thereafter it remained around Rs. 4.00 lacs per month out of a total of around Rs. 15.00 lacs per month.

The aforesaid tables speak for themselves. Besides the various turn arounds made by the school during the course of hearing, the final picture that emerges is that while the school claims that it implemented the recommendations of VI Pay Commission w.e.f. 01/04/2009 and also paid the arrear salary to the staff for which it recovered the arrear fee as well as hiked the regular fee w.e.f. 01/04/2009, the claim of implementation of the recommendations of VI Pay Commission is seriously in doubt as even after the purported implementation of the recommendations of VI Pay Commission in the year 2009-10, the school continued to pay only a miniscule portion of its salary by account payee cheques or bank transfers as per the statements filed by the school itself. After the implementation of the recommendations of VI Pay Commission, the salary of each individual staff member was not less than Rs. 25,000 per month. It defies logic that when the school could issue cheques to them, why the cheques had to be bearer. In 2008-09, the proportion of salaries that were paid in cash or by bearer cheques was as



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high as 83% of the total salary. Though such proportion decreased to 68% in 2009-10, still it was a very high proportion. Even for the first two installments of payments of arrear salaries, the school issued bearer cheques for as high an amount as Rs. 79,231. In fact, almost the entire amount of Rs. 25,53,755 paid by the school in the first installment of arrear on 28/04/2009 was through bearer cheques. Such actions on part of the school do not lend credibility to the claim of the school that it actually paid the amount that is shown to have been paid to the staff in the books of the school. In the written submissions dated 10/11/2016 filed by the school, while giving the explanation regarding the reason of payment of salary through bearer cheques, it submitted that staff had been paid through bearer cheques till October 2009 as they had no accounts in the banks. This submission is contrary to the submission made by the school on an earlier date of hearing. Further, the explanation given by the school is extra ordinary and incredible as it would be too far fetched to believe that teachers who come from an educated strata of the society and who draw handsome salary, would not have bank accounts of their own. The reasonable inference which can be drawn is that the salaries which are shown to have been paid in the books, were not paid or were paid partially and the recommendations of 6th Pay Commission were not implemented fully by the school.

5. Regarding the fee hiked by "The School" the Committee had held that the School was not fulfilling the pre-conditions laid down by the Hon'ble Supreme Court. The Committee held as under:

" In view of the inference drawn by the Committee on the basis of preponderance of probabilities, in the facts and circumstances of the case it is apparent that the school did not implement the recommendations of the 6th Pay Commission. The Committee is of the view that the fee hike effected by the school w.e.f. 01/04/2009 and the recovery of arrears of tuition fee and development fee for the period 01/09/2008 to 31/03/2009 and also the recovery of lump sum arrear fee for the period 01/01/2006 to 31/08/2008 was not justified as the basis of allowing the school to hike the fee and recover the arrear fee was that the school would implement the recommendations of VI Pay Commission and pay the arrear salary to the staff as per its recommendations. The hike in fee that was allowed to the school was meant for the purpose of meeting its additional expenditure on salaries on account of implementation of the recommendations of 6th Pay Commission. When, in view of the Committee, the recommendations of the 6th Pay Commission were not implemented, the school was not justified in hiking the tuition fee as provided in the aforesaid order. It could have, at best, hiked the tuition fee by 10%, which would have covered additional expenditure on the salary on account of annual increments and increase in other expenses on account of inflation

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



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" In view of the foregoing reasons, the Committee is of the view that the school ought to refund the hiked tuition fee for the year 2009-10, which was hiked in excess of 10% over the fee for the year 2008-09. Further, the school ought to refund the entire amount of arrear fee collected by it for the periods 01/01/2006 to 31/08/2008 and for the period 01/09/2008 to 31/03/2009. All the aforesaid refunds ought to be made alongwith interest @ 9% per annum from the date of collection to the date of refund.

7. Regarding the Development fees also the Committee had considered in detail the plea of the school for the period 01/09/2008 to 31.03.2009. The Committee had held as under:

" The school, of its own showing was not maintaining any earmarked depreciation reserve fund or development fund accounts. These are essential pre requisites for the schools to charge development fee. As per the reply to the questionnaire issued by the Committee, the development fee recovered by the school in 2009-10 amounted to Rs. 36,21,370 while that in 2010-11 it amounted to Rs. 39,05,945. Thus a total amount of Rs. 75,27,315 was charged by the school as development fee in these two years without fulfilling the essential pre conditions. The Committee by its mandate is required to follow the principles laid down by the Hon'ble Supreme Court in the case of Modern School (supra). As the Committee is to examine the issue of fee charged by the school in pursuance of order dated 11/02/2009, it is restricting its recommendations to the development fee charged in the years 2009-10 and 2010-11 only.

Accordingly, the Committee is of the view that the school ought to refund the aforesaid amount of Rs. 75,27,315 charged by it as development fee in the years 2009-10 and 2010-11, along with interest @ 9% per annum from the date of collection to the date of refund. This is in addition to the recommendation of the Committee with regard to refund of lump sum arrear fee for the period 01/01/2006 to 31/08/2008, arrear of tuition fee and development fee for the period 01/09/2008 to 31/03/2009 and the increased tuition fee in the year 2009-10, as recommended supra."

8. It is to be noted that generally speaking, the mere fact that an authority has passed a particular order in the case of person similarly situated can never be the ground for issuing a writ and/or order in favor of an applicant on the plea of discrimination. The applicant cannot take the plea that in case of other school increase in fees has been permitted.



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9. A review of an order/recommendation is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake of like grave error has crept in earlier judicial fallibility. The review cannot be allowed on the ground that in some other matters the Tribunal had taken a different view. The discovery of new evidence or material by itself is not sufficient to entitle a party for review of an order. A review is permissible on the ground of discovery of new evidence only when such an evidence is relevant and of such a character that if it had been produced earlier it might possibly have altered the order. A review cannot be sought merely for fresh hearing or arguments or correction of an erroneous view taken earlier. The power of review can be exercised only for correction of a patent error of law or fact which stays in the face without any elaborate argument being needed for establishing it.

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



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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-petitioned on 09.05.2014"

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



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

13. Applying these principles it is apparent that where a Court or Quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only



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if the Court or the Quasi judicial authority is vested with power of review by express provision or by necessary implication.

14. Perusal of the pleas and contentions of 'The School' show unequivocally that 'The School' is seeking review on merits and 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.

15. The Applicant in the present case seeks recall/review of the order passed by the Committee dated 20th March, 2018 not on the ground that in passing the order the committee has committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the order/recommendation of the committee is liable to be recalled. Rather grounds taken by the applicant in the application for review dated 27th August, 2018 are that some matters which ought to have been considered by the committee were not duly considered or apparently considered incorrectly. Apparently, the recall or review sought is not a procedural review, but a review on merits. Such a review is not permissible in the absence of any specific provision or the orders of the Hon'ble Court authorizing review of its orders/recommendations either expressly or by necessary implication.

16. It is also to be noted that a quasi-judicial authority will become functus officio when its order is pronounced, or published/notified or



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communicated (put in course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the authority will become 'functus officio'. Once an authority exercising quasi judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. P RamanathaAiyar's Advanced law Lexicon (3rd Edition, Vol 2 pp. 1946-47) gives the following illustrative definition of the "functus officio".

"Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision." Black's Law Dictionary (6thEdn., p 673) gives the meaning of functus officio as follows:

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

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

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



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students be reviewed. Apparently the Committee does not have such powers as has been invoked by the 'school'.

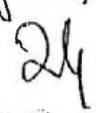
18. In the circumstances the application of the applicant dated 27th August, 2018 seeking review is not maintainable and is disposed of as not maintainable and the said application for review dated 27th August, 2018 seeking review of order dated 20th March, 2018 is therefore, dismissed.



Justice Anil Kumar (R)
(Chairperson)



J.S. Kochar
(Member)



R.K. Sharma
(Member)

03.06.2019



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

In the matter of:

DAV Public School, Kailash Hills, New Delhi-110065 (B-379)

Order of the Committee

Present Sh. S.K. Singhal, Chartered Accountant with Sh. Anshul Patial, Accountant of the school.

The Committee issued a questionnaire to all the schools (including this school) on 27/02/2012, which was followed by a reminder dated 27/03/2012, eliciting information with regard to the arrear fee and fee hike effected by the school pursuant to order dated 11/02/2009 issued by the Director of Education. The school was also required to furnish information with regard to the arrear of salary paid and the incremental salary paid to the staff pursuant to the implementation of the recommendations of the 6th pay commission.

Though the school did not furnish any reply to the questionnaire or to the reminder issued by the Committee, on 30/05/2012, the school submitted to the Education Officer, Zone- S-25 of the Directorate of Education copies of annual returns filed by it under Rule 180 of Delhi School Education Rules, 1973 for the years 2006-07 to 2010-11, details of salary paid to the staff before the implementation of VI Pay Commission and that paid after its



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implementation, details of arrears of differential salary paid to the staff on implementation of recommendations of VI Pay Commission. It stated in its letter that it had paid a total sum of Rs. 1,63,95,256 as arrears of differential salary while its total monthly salary bill rose from Rs. 18,61,415 to Rs. 27,74,523 on implementation of the recommendations of VI Pay Commission.

The school also enclosed copies of two circulars issued to the parents of the students, as per which it demanded arrears of tuition fee amounting to Rs. 2100 for the period 01/09/2008 to 31/03/2009 from students of classes pre school to X and Rs. 2800 from students of classes XI & XII. Besides, a demand was also raised to the tune of Rs. 3000 from the students of classes pre school to X and Rs. 3500 from the students of classes XI & XII towards lump sum arrear of fee for the period 01/01/2006 to 31/08/2008. These demands were raised in terms of order dated 11/02/2009 issued by the Director of Education. These circulars indicated that the school had hiked the tuition fee of students of classes pre-school to X by Rs. 300 per month and for students of classes XI & XII, the hike was to the tune of Rs. 400 per month with effect from 01/09/2008. In the letter, the school also stated that it had recovered a total sum of Rs. 72,22,200 towards arrear fee.

These documents were transmitted by the Education Officer to this Committee. Based on the information contained in these documents, preliminary calculations were made by the Chartered



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Accountants (CAs) deputed by the Directorate of Education to assist this Committee and they determined that prima facie the school had recovered a sum of Rs. 24,70,309 in excess of its requirements for meeting the additional expenditure on account of implementation of the recommendations of VI Pay Commission after taking into account the funds available with the school prior to effecting the fee hike. However, on review of the calculations made by the CAs, the Committee observed that the figures of arrear fee, arrear salary and incremental fee and incremental salary were not reconciled by the CAs with the audited financials of the school. Therefore, the Committee did not rely on the calculations made by the CAs.

The Committee issued a notice dated 22/05/2015, requiring the school to furnish within 10 days, the complete break up of fee and salaries for the years 2008-09 to 2010-11 (including arrear fee and arrear salary pursuant to implementation of VI Pay Commission), copies of bank statements showing payment of arrear salaries, statement of account of the parent society running the school and details of its accrued liabilities of gratuity and leave encashment, The school was also issued a revised questionnaire and was required to submit specific replies to the queries made by the Committee.

The school submitted the required information under cover of its letter dated 15/07/2015. It also submitted reply to the revised questionnaire issued by the Committee.



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As per its reply to the questionnaire, the school implemented the recommendations of VI Pay Commission and started paying the increased salary with effect from 01/01/2006. (sic). The expenditure on monthly salaries prior to implementation of VI Pay Commission was Rs. 18,61,415, which rose to 27,74,923 after its implementation. These are the same figures which the school stated in its letter to the Education Officer. However, with regard to arrears of differential salary, the school now stated that it had paid a total sum of Rs. 1,85,06,309 towards arrears while it had stated the same to be Rs. 1,63,95,256 in its letter to the Education Officer. With regard to arrear fee collected also, the school revised its figure to Rs. 69,39,250 from Rs. 72,22,200.

With regard to development fee, the school stated that it charged development fee in all the five years for which the information was sought by the Committee. It further stated that the development fee was treated as a capital receipt. However, with regard to query regarding maintenance of earmarked bank accounts/FDRs depreciation reserve fund and unutilised development fund, the school vaguely stated that it was kept in general bank account.

A notice of hearing was issued to the school requiring it to appear before the Committee on 09/11/2015 to produce its books of accounts, fee and salary records and make submissions in justification of the fee hike effected by it.



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Sh. R.D. Tyagi and Sh. Nilambar Acharya, Accountants of the school appeared before the Committee and were partly heard. They filed a revised fee and salary statement and also furnished a date wise detail of payment of arrear salary. As per the details submitted by the school, the total amount of arrears paid amounted to Rs. 1,46,58,083.

The accountants of the school also submitted that unlike other DAV schools, this school does not transfer its surplus funds to DAV College Management Committee (DAV CMC) which is its parent body but the funds are retained in the school only. However, the school contributed towards the gratuity and leave encashment funds which are maintained by DAV CMC on a monthly basis and the liabilities to the staff as and when they arise are met by the DAV CMC only.

With regard to development fee, they stated that although it was treated as a capital receipt in the books of the school, no earmarked development fund and depreciation reserve fund were maintained.

During the course of hearing, it emerged that the school like other DAV schools maintained a separate Boys/Pupil Fund Account and a part of fee and other miscellaneous incomes of the school were credited to this account. Accordingly the school was directed to file the audited financials of Boys/Pupil Fund Account also. The school submitted the same on 16/11/2015.

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



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in the meanwhile. The reconstituted Committee issued a fresh notice dated 12/01/2018 to the school to appear on 23/02/2018 and produce its books of accounts, fee and salary records etc.

Sh. Santosh, Assistant Accountant of the school appeared and filed a letter signed by the Principal requesting for another date in mid March 2018 on account of non availability of the Office Superintendent who had since retired. In the meantime, the Committee had prepared a calculation sheet based on the audited financials of the school and the information given by it in response to various communications. The calculation sheet was as follows:

Statement showing Fund available as on 31.03.2008 and the effect of hike in fee as per order dated 11.02.2009 and effect of increase in salary on implementation of 6th Pay Commission Report				
	Particulars	Main School	Pupil Fund	Total
	Amount diverted for repayment of loans and interest thereon from 2006-07 to 2009-10 (A)			8,094,431
	Current Assets			
	Cheques/ Drafts in Hand	1,655,862	-	1,655,862
	Bank Balances in Savings Account	5,472,910	8,036,596	13,509,506
	Fixed Deposits	2,525,000	7,648,309	10,173,309
	Accounts receivable	329,644	-	329,644
	Interest accrued on Investments	178,224	482,266	660,490
	TDS	109,653	361,772	471,425
	Prepaid Expenses	25,194	54,379	79,573
	Current account of DAV CMC	590,790	-	590,790
	PF Loan Account	1,104,775	-	1,104,775
	Intra Institution Balances	(13,720,777)	13,720,777	-
	Advances to Contractors and Suppliers	1,372,613	-	1,372,613
	Total Current assets	(356,112)	30,304,099	29,947,987
Less	Current Liabilities			
	Security Deposits	468,331	1,532,865	2,001,196
	Accounts payable	87,815	2,880	90,695
	Advance Receipts	864,345	1,550	865,895
	Arya Samaj A/c	12,815	-	12,815
	TDS Payable	1,705	-	1,705
	Expenses Payable	256,885	34,068	290,953
	Salary Payable	693,547	-	693,547
	DAV - CMC - Publication	325,377	-	325,377
	Other Current Liability	-	31,050	31,050
	Total Current Liabilities	2,710,820	1,602,413	4,313,233
	Net Current Assets + Investments (B)	(3,066,932)	28,701,686	25,634,754



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	Funds deemed to be available (A+B)	33,729,185
Less	Funds to be kept in reserve for future contingencies equivalent to 4 months salary	9,153,106
	Funds available for implementation of 6th CPC	24,576,079
Less	Arrear of Salary as per 6th CPC w.e.f. 01.01.06 to 31.03.2009	14,658,083
	Incremental Salary as per 6th CPC in 2009-10	2,735,975
	Total additional liability on implementation of 6th CPC	17,394,058
	Excess / (Short) Fund Before Fee Hike	8,240,696
Add	Tuition Fee Arrear for the period from 01.01.06 to 31.03.09	6,939,250
	Incremental Tuition fee in 2009-10	6,980,250
	Total additional fees recovered for implementation of 6th CPC	13,919,500
	Excess / (Short) Funds After Fee Hike	22,160,196

Development fee refundable as pre-conditions for charging the same not being fulfilled:	Rs.
For the year 2009-10	4,816,905
For the year 2010-11	5,343,885
Total	10,160,790
Add: Excess fee recovered	13,919,500
Total amount to be refunded	24,080,290

Working Notes:

	2008-09	2009-10
Increase in Normal/ regular salary		
Normal/ regular salary in Main Account	22,979,093	25,394,346
Normal/ regular salary in Pupil Fund Account	1,744,250	2,064,972
Total	24,723,343	27,459,318
Incremental salary in 2009-10	2,735,975	
Increase in tuition fee		
Regular/ Normal Tuition fee	24,503,390	31,483,640
Incremental tuition fee in 2009-10	6,980,250	

Prima facie it appeared on the basis of the calculations made by the Committee that the school had sufficient funds of its own and did not require to hike any fee for implementation of the recommendations of the 6th Pay Commission and also that the school was not fulfilling the pre-conditions laid down by the Duggal Committee which were affirmed by the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583. Therefore, a copy of the above calculation sheet was given to Sh. Santosh. It was



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directed that the school could file its rebuttal on or before the next date of hearing which was 6th April 2018.

On the next date, Sh. S.K. Singhal, Chartered Accountant appeared with Sh. Inderjeet Singh, A.O. , Sh. Anshul Patial, Accountant of the school.

The school filed written submissions dated 05/04/2018, controverting the calculation sheet prepared by the Committee. The authorized representative of the school was partly heard on the written submissions filed by the school.

It was contended that as against a sum of Rs.2,21,63,196 determined by the Committee to be surplus available with the school as on 31/03/2010, after effecting the fee hike and implementing the recommendations of the 6th Pay Commission, the actual surplus, if correctly calculated was just Rs. 6,59,531. The school gave its own calculation sheet to arrive at the aforesaid figures of Rs.6,59,531.

In the written as well as oral submissions, the school contended as follows:

- a. The actual amount of arrears of salary paid to the staff for the period 01/01/2006 to 31/01/2009 was Rs.1,93,39,349 as against Rs.1,46,48,083 which had been taken by the Committee in its calculation sheet. It was contended that the figure of Rs.1,46,58,083 given by the school, represented only the net outgo of arrear salary to the staff. However, the total



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amount of arrears included the payment of additional contributions made by the school to the gratuity, leave encashment, employers contribution to provident fund, employee deposit linked insurance also. It was also submitted that these amounts had been shown in their respective heads of establishment expenses as given in Schedule 12 of Income and Expenditure Account. The school also furnished copies of the detailed arrear payment sheets in support of its contention.

The Committee examined the payment sheets produced by the school and observed that the contention raised by the school was correct. It was recorded that appropriate adjustments would be made at the time of final determination.

- b. The school, inadvertently did not provide the information pertaining to the incremental salary paid by the school in the months of February and March 2009 and consequently the same got clubbed with the regular salary paid by the school for the year 2008-09. The amount of differential of these two months amounted to Rs.17,12,777 and in support of that the school furnished a detailed employee wise sheet.

The Committee, after examination of the documents submitted by the school, accepted that differential salary for the months of Feb and March 2009 ought to be accounted for



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separately, besides the payment of arrears for the period 1.1.2006 to 31.1.2009, and the corresponding amount ought to be reduced from the regular salary paid by the school for the year 2008-09. The Committee recorded that necessary adjustments would be made while making the final determination.

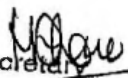
- c. The school next contended that it paid a sum of Rs. 8,04,399 in the month of March 2014 towards arrears of 5th Pay Commission for the period 1.1.1996 to 31.12.1996 and so this amount should also be considered as a liability due as on 31.3.2008 to determine its fund position as on that date. The authorized representative of the school submitted that this liability was not provided in the books as the management had initially not agreed for making this payment

The Committee is of the view that the contention of the school cannot be accepted since the payment had been made in March 2014 and the school had always been generating surplus year after year from 2008 to 2014 and this disputed payment ought to be considered as having come out of the surplus for the subsequent years.

- d. The school claimed that a sum of Rs.7,84,080 which it recovered from the new students admitted during 2009-10



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ought to be excluded from the calculation made by the Committee as the students of 12th class who had left the school in 2009-10 did not contribute any fee .

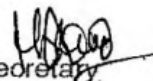
This contention does not appeal to the Committee, as eventually for both the years the total fee recovered from the students of 12 classes plus 2 years pre primary classes, there would always be a gap between identity of the individual students in two consecutive years. Since the Committee is not concerned with the identity of the students but with the funds available or raised by the school for implementation of VI Pay Commission, such an exclusion was not warranted.

- e. With regard to development fee, it was contended that the development fee for the year 2009-10 and 2010-11 ought not to have been considered refundable by the Committee as the school was fulfilling all the preconditions laid down by the Duggal Committee which were affirmed by the Hon'ble Supreme Court in the case of Modern school Vs. Union of India (supra).

The Committee observed that the information furnished by the school in reply to the questionnaire issued by the Committee, in the manner it had done, did not fully support the argument of the school. Accordingly the school was directed to furnish the detailed accounts of development fund recovered year wise from 2006-07 to 2010-11, giving break up of opening



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balance, development fee received during the year, development fee utilized for permitted purposes and the closing balance as on the closing of the year. As against this, the amount of earmarked funds determined by the school ought to be stated alongwith the evidence that they were in fact earmarked. Similar information was also directed to be given in respect of depreciation reserve fund.

- f. The school disputed that the figure of Rs.80,94,431 which had been worked out by the Committee as the amount of fee diverted for repayment of loans and interest thereon from 2006-07 to 2009-10.

The Committee observed that it had arrived at this amount on the basis of Receipt and Payment Accounts filed by the school which were duly audited. The authorized representative submitted that the Receipt and Payment Accounts were incorrectly prepared and did not reflect the correct position with regard to Receipts and Payments under different heads. He submitted that the school be given one more opportunity to reframe the Receipt and Payment Accounts so as to bring out the exact and correct position. The Committee accepted the request of the school in this regard.



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g. The authorized representative submitted that a sum of Rs.11,04,775 had been wrongly mentioned in the Current Assets as PF loan accounts. He submitted that the school got the PF loan from the PF Trust for onward payment to the employees and hence there is a corresponding liability of the school to the PF Trust but inadvertently, this amount had been included in the loan of DAV CMC in the Balance sheet.

The school was directed to produce its books of accounts to substantiate its contention on the next date of hearing, which was fixed for 25/05/2018.

On the next date, the school filed written submissions dated 23.5.2018 vide which it stated that the incremental salary in 2009-10 as given in the calculation sheet prepared by the Committee is also erroneous and the school furnished revised figures in respect of the normal salary for the years 2008-09 and 2009-10. The same were sought to be supported by the books of accounts which were produced for examination by the Committee.

This issue was not raised by the school while controverting the calculation sheet vide its written submission dated 05/04/2018, which had been extensively discussed by the Committee on 06/04/2018 with the authorized representative of the school. Moreover, the figures taken by the Committee emanated from the information provided by the school itself. The authorized



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representative submitted that this was on account of an inadvertent omission on part of the school.

The Committee was not appreciative of this contention being raised at that stage when the calculation sheet had already been discussed, on the previous date of hearing. However, in the interests of justice, the Committee agreed to examine the contention made by the school.

The contention of the school was that the total expenditure of establishment as shown in the Income and Expenditure account in the year 2009-10 was exclusive of the arrears of salary paid by the school in that year, but in the information sheets submitted by the school under cover of its letter dated 15/07/2015, the same had been shown as inclusive of arrears. It was submitted that the arrears paid by the school in the year 2009-10 are shown as a separate item of expenditure in the Income and Expenditure account as "Expenses of exceptional nature/arrear".

The Committee checked the figures of establishment expenses as given by the school in the information chart filed on 15/07/2015 and observed that not only this, the information furnished by the school with regard to financial year 2008-09 was also erroneous. The authorized representative of the school admitted to this mistake also and undertook to re-file revised information chart with regard to different components of fee and salary for the years 2008-09 to



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2011-12. The matter was adjourned for further hearing to 12th June 2018.

When the matter came up for hearing on that date, the authorized representative sought to file a revised detail of expenditure. However, he was not able to show the expenditure shown in the detail from the books of accounts. He sought some more time to file a correct statement which would tally with the books of accounts. In the interests of justice, one more opportunity was provided to the school to do the needful and the matter was posted for further hearing on 05/07/2018.

On the next date, the school filed its own calculation sheet as per which it determined that instead of a refund of Rs.2,40,80,290 which was provisionally determined by the Committee, the school incurred a deficit of Rs.69,51,133. The calculation sheet by the school was accompanied by a number of working statements which were checked by the Committee with reference to the books of accounts, which were produced by the school.

The Committee observed that in its calculation sheet, the school had disputed the following figures taken by the Committee:

- A. It contended that while the provident fund loan given to the staff members amounting to Rs.11,04,775 had been included by the Committee as part of the Current Assets, the corresponding liability owing to the DAV CMC had not been



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taken into account. It was contended that the PF loan payable to DAV CMC was included in the total amount of loan payable to DAV CMC amounting to Rs.25,32,467, as reflected in the balance sheet. It was submitted that this consists of two loans one of which is the provident fund loan.

This contention was also raised by the school earlier and the Committee had required to produce its books of account for verification. The books of accounts were produced by the school and the Committee verified it and found the contention of the school to be correct. Accordingly, it was recorded that necessary adjustments would be made while making the final determinations.

B. The school claimed that out of the total FDRs of Rs.1,01,73,309 held by the school in its school fund and Pupil fund, FDRs of the value of Rs.78,62,173 were held against development fund and depreciation reserve fund.

On perusal of the audited financials of the school the Committee observed that the total amount of FDRs held in the school fund were only Rs.25,25,000. The remaining FDRs were held by the school in its Pupil Fund account. The authorized representative of the school was unable to explain as to how



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the amount which was held in Pupil Fund, could be considered as held against development fund or depreciation reserve fund which were meant for purchase/replacement of furniture and fixtures and equipments. Accordingly, the Committee rejected this contention of the school.

C. The school filed statements showing arrears of salary paid in respect of its liabilities that arose on account of implementation of the Sixth Pay Commission. The school contended that a total sum of Rs.1,93,39,348 was paid as arrears for the period 1.1.2006 to 31.1.2009. The differential salary for the month of February and March 2009 on account of implementation of the recommendations of the sixth pay commission was Rs.17,12,777, thus totaling Rs.2,10,52,125.

The Committee observed that in the calculation sheet prepared by it, the same was taken as Rs.1,46,58,083 and was based on the information furnished by the school itself vide its letter dated 15/07/2015, which was revised during course of hearing on 09/11/2015.

It was contended by the authorized representative that even the revised information furnished by the school was erroneous as the arrears paid in 2009-10 were shown as a



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separate item in the Income and Expenditure account which were not included in the information furnished by the school on the earlier occasions.

The Committee had already verified this aspect on a previous hearing and recorded that appropriate adjustments would be made while making the final determinations.

D. With regard to incremental salary on account of implementation of the recommendations of Sixth Pay Commission, paid in the year 2009-10, the school furnished its calculation which showed that the incremental amount was Rs.85,68,525 as against Rs. 27,35,975 taken by the Committee in its calculation sheet.

As in the case of arrear salary paid by the school, the incremental salary was also calculated by the Committee on the basis of information furnished by the school itself vide the information chart submitted and resubmitted by the school, which it now claimed was erroneous.

The Committee verified the figures given by the school from its books of accounts and found that even the revised figure given by the school was not correct.



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The incremental salary for the month of February and March 2009 had been separately taken by the school as arrears in its computation. However, the same had also been included in the regular salary paid in the year 2008-09. Therefore, the incremental salary for 2009 -10 would stand increased to Rs.1,02,81,302 from Rs.85,68,525 as given by the school. Necessary adjustment to this effect would be made while making the final determinations.

- E. The school claimed a deduction of Rs.8,53,325 from the development fee of 2009-10 on the ground that the same had been utilized for purchase of fixed assets.

The Committee recorded its view that the contention of the school could not be accepted since the school was not fulfilling the substantive pre conditions of maintaining the earmarked development fund and depreciation reserve fund as was conceded by the school in the hearing held on 09.11.2015. In view of this, the school was not entitled to charge any development fee.

- F. The school contended that the contingency reserve equivalent to 4 months salary amounted to Rs. 1,10,97,289, as against Rs. 91,53,106 taken by the Committee based on the salary figures



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given by the school earlier. It was further contended that in view of the fact the final figure of normal salary for the year 2009-10 was determined to be Rs.3,32,91,868, the revised figure would be Rs. 1,10,97,289. The Committee accepted this contention of the school. Necessary adjustments would be made on this account while making the final computation.

No other issue was raised by the school with regard to the calculation sheet prepared by the Committee.

Determinations:

In view of the foregoing discussion, the Committee makes the following adjustments to the surplus arising after recovery of arrear fee and hiking tuition fee as per the order dated 11/02/2009 of the Director of Education, as provisionally determined by it to be Rs. 2,21,60,196:

Adjustments as per above discussion:			
Particulars	Amount originally taken by the Committee	Amount accepted after discussion	Resultant effect on provisional surplus determined
PF Loan Liability due to DAV CMC	-	1,104,775	(1,104,775)
Arrear salary paid to staff	14,658,083	19,339,348	(4,681,265)
Differential salary for February & March 2008	-	1,712,777	(1,712,777)
Incremental salary for 2009-10	2,735,975	10,281,302	(7,545,327)
Reserve for future contingencies	9,153,106	11,097,289	(1,944,183)
Total	26,547,164	43,535,491	(16,988,327)



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Accordingly, Surplus as originally determined by the Committee would stand reduced by **Rs. 1,69,88,327** to **Rs. 51,71,869** (2,21,60,196 - 169,88,327). The Committee is of the view that to the aforesaid extent, the tuition fee hike effected by the school pursuant to order dated 11/02/2009 was excessive and not justified and the same ought to be refunded to the students alongwith interest @ 9% per annum from the date of collection to the date of refund.

Development Fee:

As already discussed supra, the school was not complying with the substantive pre condition of maintaining an earmarked depreciation reserve fund account. The development fee was allowed to be charged by the schools by the Duggal Committee only if the schools maintained earmarked depreciation reserve fund.

The exact recommendation of the Duggal Committee, which was constituted by the Hon'ble Delhi High Court while examining a similar fee hike issue on implementation of the recommendations of V Pay Commission, was as follows:

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



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the investment made out of this fund, should however, be kept in a separate 'Development Fund Account'. (Para 7.21)

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

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

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

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



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

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

The Hon'ble Supreme Court laid down the law on the subject in para 25 of the judgment as follows:

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

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



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The Direction no. 7 of the order dated 15/12/1999 was repeated verbatim as clause no. 14 of the order dated 11/02/2009 issued by the Director of Education with regard to the implementation of VI Pay Commission and permitting hike in fee for that purpose. The only change made in order dated 11/02/2009 was that the cap of development fee was raised from 10% to 15% of annual tuition fee.

In view of the fact that the school was not following the substantive pre condition of maintaining any earmarked depreciation reserve fund/development fund account, the school was not entitled to charge any development fee from its students.

Admittedly the school charged development fee in all the five years for which the information was sought by the Committee. However, since the Committee is mandated to examine the fee charged by the school pursuant to order dated 11/02/2009, it is restricting its recommendations to the years 2009-10 and 2010-11.

The development fee charged by the school in the year 2009-10 amounted to **Rs. 48,16,905** while that charged in 2010-11 was **Rs. 53,43,885**. The Committee is of the view that the aforesaid development fee charged by the school in these two years was not justified and the same ought to be refunded to the students alongwith interest @ 9% per annum from the date of collection to the date of refund.



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Summary of recommendations:

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The school ought to refund the following sums to the students along with interest @ 9% per annum from the date of collection to the date of refund:

Particulars	Amount refundable (Rs.)
Excess Tuition Fee pursuant to order dated 11/02/2009	51,71,869
Development Fee charged in 2009-10	48,16,905
Development Fee charged in 2010-11	53,43,885
Total	1,53,32,659

Ordered accordingly.

Justice Anil Kumar (R)
(Chairperson)

CA J.S. Kochar
(Member)

Dr. R.K. Sharma
(Member)

Dated: 06/06/2019



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

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

In the matter of:

Salwan Public School, Rajinder Nagar, New Delhi-110060 (B-119)

Order of the Committee

Present Maj. Gen. S. Shukla (Retd.), Director of the school with Sh. J.N. Chopra, Financial Advisor, Sh. Sunil Chandra and Ms. Narinder Kaur, Accountants.

The Committee issued a questionnaire to all the schools (including this school) on 27/02/2012, eliciting information with regard to the arrear fee and fee hike effected by the school pursuant to order dated 11/02/2009 issued by the Director of Education. The school was also required to furnish information with regard to the arrear of salary paid and the incremental salary paid to the staff pursuant to the implementation of the recommendations of the 6th pay commission.

The school furnished its reply under cover of its letter dated 06/03/2012. As per the reply submitted by the school, it implemented the recommendations of VI Pay Commission and started paying the increased salary w.e.f. 01/01/2006. It also stated that the school had paid a sum of Rs. 2,48,72,349 on account of arrears of incremental salary. However, the period to which the arrears of salary pertained was not mentioned by the school.

Salwan Public School, Rajender Nagar, Delhi-110060/(B-119)/Order

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With regard to fee hike, the school admitted having hiked the tuition fee as well as development fee w.e.f. 01/09/2008, in pursuance of order dated 11/02/2009 issued by the Director of Education. As per the information furnished by the school, the tuition fee was hiked @ Rs. 400 per month for all the classes across the board. In addition, the development fee was hiked by Rs. 60 per month for all the classes. The school also stated that it had recovered a sum of Rs. 1,00,24,887 as arrear fee from the students in terms of order dated 11/02/2009 issued by the Director of Education.

In the first instance, preliminary calculations were made by the Chartered Accountants (CAs) deputed by the Directorate of Education to assist this Committee and they determined that prima facie the school had recovered a sum of Rs. 1,44,03,181 in excess of its requirements for meeting the additional expenditure on account of implementation of the recommendations of VI Pay Commission after taking into account the funds available with the school prior to effecting the fee hike. However, on review of the calculations made by the CAs, the Committee observed that they had not factored in the requirement of the school to keep funds in reserve for accrued liabilities of gratuity, leave encashment etc. Therefore, the Committee recalculated the requirement of the School on the basis of its accounts..

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



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salaries for the years 2008-09 to 2010-11 (including arrear fee and arrear salary pursuant to implementation of VI Pay Commission), copies of bank statements showing payment of arrear salaries, statement of account of the parent society running the school and details of its accrued liabilities of gratuity and leave encashment, besides copy of the circular issued to the parents regarding fee hike effected by the school.

The school sought extension of time for submission of the required information upto 3rd July 2015. The request of the school was acceded to by the Committee.

The school submitted the required information under cover of its letter dated 02/07/2015. A notice of hearing was issued to the school requiring it to appear before the Committee on 31/01/2017 to produce its books of accounts, fee and salary records and make submissions in justification of the fee hike effected by it. The hearing was postponed to 15/03/2017. In the mean time, vide its letter dated 28/02/2017, the school revised the information submitted by it earlier on 02/07/2015. It was stated that the revision became necessary as certain mistakes were detected in the information submitted which were pointed out to it by its auditors.

On 15/03/2017, Maj. Gen. Sanjeev Shukla (Retd.), Director, Sh. J.N. Chopra, Director (Finance), Sh. S.N. Dixit, Director (Accounts),



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and Sh. Sunil Chandra and Ms. Narinder Kaur, Accountants of the school appeared and were partly heard by the Committee.

The revised information sheet submitted by the school vide letter dated 28/02/2017, in supersession of its earlier reply, was examined by the Committee. It was submitted on behalf of the school that the information furnished earlier was erroneous, in as much as, it pertained only to the morning school whereas the school ran an evening shift also. It was further submitted that the fresh information sheet submitted by the school gave consolidated information in respect of both the morning as well as the evening shift.

The authorized representatives who appeared for the school submitted that the school implemented the recommendations of VI Pay Commission on its own w.e.f. 01/09/2008, without waiting for the order of the Director of Education and for this purpose, a sum of Rs. 5,500 was collected from the students w.e.f. 01/09/2008 on a provisional basis. However, on receipt of order dated 11/02/2009, the school calculated the arrear fee for the period 01/09/2008 to 31/03/2009 in accordance with the order. It was submitted that as per the order dated 11/02/2009 of the Director of Education, the school hiked tuition fee by Rs. 400 per month and development fee by Rs. 60 per month w.e.f. 01/09/2008. Besides, lump sum arrears for the period 01/01/2006 to 31/08/2008 was also recovered. Thus a total recovery of Rs. 6,720 for the period 01/01/2006 to 31/03/2009



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was made out of which the fee collected amounting to Rs. 5,500 on provisional basis was adjusted.

It was further submitted that in the revised fee and salary statement filed, the school had shown the figures which were calculated by it on a hypothetical basis to correspond to the rate of fee hike effected and the arrear fee recovered pursuant to order dated 11/02/2009. Likewise, it was submitted that the arrears of incremental salary for the period 01/09/2008 to 31/03/2009 was also shown only for presentation purposes as the school had already started paying increased salary w.e.f 01/09/2008.

The authorized representative of the school further submitted that even prior to fee hike, the school was charging development fee @ 15% and therefore arrear of recovery of incremental development fee @ 15% was justified.

With regard to regular development fee, the authorized representatives of the school submitted that the school maintained a separate Income & Expenditure account for development fund and kept earmarked bank accounts and FDRs for the same. However, a development fund account was not created and the excess of development fee over the expenses met out of that were credited to the Capital fund account. They, however, submitted that development fee was never utilized for meeting any revenue expenses but only for purchase of eligible fixed assets. In the circumstances, it was



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submitted that the maintenance of an earmarked development fund account, instead of merging it with Capital fund account, could only be considered as an accounting issue, as the school was complying with all the other pre conditions for charging development fee as mandated by the Hon'ble Supreme Court in Modern School vs. Union of India (2004) 5 SCC 583.

In view of the submissions made with regard to development fee, the school was required to furnish a statement showing accretion to Capital account on account of excess of receipt of development fee over the capital expenditure incurred out of it for eligible fixed assets, vis a vis the balances held in the earmarked saving bank and FDR accounts of development fund for the year 2006-07 to 2010-11. It was also directed that the said statement ought to be certified by the Chartered Accountant of the school.

The school filed a copy of the certificate dated 12/04/2017 given by the statutory auditors of the school. However, the certificate given by M/s. S.P. Chopra & Co., Chartered Accountants merely gave the hypothetical figures of the development fund which remained unspent at the end of the financial year and the total bank balances held there against. Neither it was shown that the capital fund, which included the unspent development fund (hypothetical) was a positive figure nor any attempt was made to show that the depreciation reserve fund to the extent of depreciation charged on assets acquired out of development fee was kept in earmarked bank accounts.



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Thus prima facie, it appeared to the Committee that the school was not complying with the necessary pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583. The Committee therefore, prepared the preliminary calculations on this premise.

However, while preparing the preliminary calculations, the Committee observed that despite a specific direction given to the school to furnish details of its accrued liabilities of gratuity and leave encashment, the same were not furnished. Accordingly, the school was issued a fresh notice which was returnable today, with the direction to furnish the details of its accrued liabilities of gratuity and leave encashment as on 31/03/2010.

Sh. J.N. Chopra, Financial Advisor of the school appeared today along with Major Gen. Retd. Sh. Sanjeev Shukla, Manager, and Sh. Sunil Chandra and Ms. Narinder Kaur, Accountants of the school. Sh. Chopra submitted that it was on account of an oversight that the details of accrued liabilities of gratuity and leave encashment were not submitted earlier. He filed copies of actuarial valuation reports of such liabilities in respect of both the senior wing and junior wing of the school. As per the valuation reports, the total accrued liability of the school on account of gratuity amounted to Rs. 1,91,43,752 while that on account of leave encashment amounted to Rs. 89,59,785 as on 31/03/2010. The valuation reports have been perused by the Committee and appeared to be in order.



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Taking into account the audited financials of the school, the information furnished by it from time to time during the course of proceedings before the Committee, the Committee has prepared the relevant calculations.

As per the calculations made by the Committee, the school had available with it, a sum of **Rs. 5,10,50,273** as on 31/03/2008 i.e. before the fee hike was effected. This is calculated in the following manner:

<u>Current Assets + Investments</u>	
<u>RUSF(M):</u>	
Bank Balances with Syndicate Bank	109,336
Syndicate Bank Gratuity Account	92,267
Canara Bank 30320	66,824
PNB(3984)	3,232
Canara Bank 30086	5,187,827
Prepaid Insurance Charges	6,921
Prepaid Expenses	11,709
Interest accrued on investment	437,483
SPS Pupil Fund	1,357,871
Staff Welfare Fund	161,996
TDS recoverable	89,342
Earnest Money deposit	520,000
Advance to Mr. Gulshan Gopal	50,000
Closing Stocks	98,331
Closing Stock of Electric Items	33,507
E/c towards FP	1,109
TDS	10,677
Fees recoverable	42,997
<u>RUSF (A):</u>	
Interest accrued on FDR	2,052,278
TDS on Deposits	381,621
Stock of Stationary	44,267
Prepaid Expenses	12,405
Canara Bank Fee Collection A/c	2,461,042
Syndicate Bank (ISB A/c 60430)	151,223
Advance to Staff	66,446
Canara Bank	1,511,095



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SPS Pupil Fund	745,572	
Fee Receivable	32,895	
Imprest Ms. Saumya Suri	107	
<u>Security (M):</u>		
Canara Bank	342,198	
TDS	121,986	
Interest accrued on FD with CB	551,680	
<u>Security (A):</u>		
Interest accrued on FDR	143,726	
TDS on Deposits	32,885	
Canara Bank	54,707	
Pupil Fund included in Development Fund (M)	500,000	
Pupil Fund included in Development Fund (A)	302,926	
FDRs + Savings Bank Account in Development Fund (in excess of unspent balance)	3,632,817	
Investments (RUSF) (M)	8,055,000	
Investments (RUSF) (A)	23,291,655	
Investments (Security Fund) (M)	5,100,000	
Investments (Security Fund) (A)	900,000	58,769,960
<u>Less: Current Liabilities</u>		
Security Deposit Refundable (M)	2,205,110	
Security Deposit Refundable (A)	934,000	
Fees received in Advance(A)	568,080	
<u>RUSF (M):</u>		
Expenses payable	2,865,143	
Security M/s Hira Lal & Kishor Kumar	8,743	
Advance Admission Fees	800	
Audit Fees payable	44,944	
SPF Fee Collection Account	58,345	
Advance Security Fee	2,000	
Admission fees received in advance	71,943	
Shweta/ Shyamlatra Purdhani Award Fund	895	
Security M/S RS Builders	14,226	
Security M/S Desh Raj	16,836	
TDS	61,359	
<u>RUSF (A):</u>		
Establishment Payable	670,598	
EC towards PF/FP	39,599	
Expenses payable	22,903	
Professional expenses payable	90,319	
MC towards PF & FP	39,599	
Fee received in Excess	4,245	7,719,687
Net Current Assets + Investments (Funds available)		51,050,273



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The accrued liabilities of the school towards gratuity and leave encashment of the staff amounted to **Rs. 2,81,03,537** as per the actuarial valuation reports submitted by the school. The Committee has held that the schools ought to keep sufficient funds in reserve to meet such accrued liabilities. Thus, the school had a sum of **Rs. 2,29,46,736** (5,10,50,273 - 2,81,03,537) in its kitty which was available for meeting its additional liabilities that arose on account of implementation of the recommendations of VI Pay Commission.

The total financial impact of implementation of the recommendations of VI Pay Commission on the school amounted to **Rs. 6,14,12,404** as per the following calculations:

Additional Liabilities after implementation of VIth Pay Commission:		
Arrear of Salary as per 6th CPC for 1.1.06 to 31.8.08	22,991,378	
Incremental Salary as per 6th CPC for 1.9.08 to 31.3.09	12,201,425	
Incremental Salary for 2009-10 (as per calculation given below*)	26,219,601	61,412,404

Working Notes:

*Incremental Salary for 2009-10	2008-09	2009-10
Normal/ regular salary	43,574,083	69,793,684
Incremental salary in 2009-10	26,219,601	

Thus there was a shortfall to the tune of **Rs.3,84,65,668** (6,14,12,404 - 2,29,46,736), which the school required to bridge by raising additional resources by hiking the fee and recovering the arrear fee as per order dated 11/02/2009 issued by the Director of Education.



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The additional resources generated by the school by hiking the fee and recovering the arrear fee as per the aforesaid order of the Director of Education, amounted to **Rs. 1,84,35,169**, calculated in the following manner:

Total Recovery for implementation of 6th Pay Commission		
Arrear of tuition fee and Dev. Fee for 1.1.06 to 31.3.09	10,024,887	
Incremental tuition fee for 2009-10 (as per calculation given below*)	8,410,282	18,435,169

Working Notes:

*Incremental tuition fee for 2009-10	2008-09	2009-10
Normal/ Regular Tuition fee	65,242,719	73,653,001
Incremental tuition fee in 2009-10	8,410,282	

As the school could not fully recover the shortfall that arose on implementation of the recommendations of VI Pay Commission, the Committee is of the view that in so far as the recovery of arrear fee and incremental fee in pursuance of order dated 11/02/2009 issued by the Director of Education is concerned, there is no case for any intervention by the Committee.

Development Fee:

As discussed supra, the Committee is of the prima facie view that the school was not fulfilling the pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School (supra) for charging development fee from the students. However, before going into the details in this regard and the submissions made by the



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school, it would be appropriate to examine the effect of the Committee coming to a conclusive view that the school was not following the pre conditions.

The total development fee recovered by the school pursuant to order dated 11/02/2009 issued by the Director of Education in the years 2009-10 and 2010-11 was Rs. 2,37,24,760 as follows:

For 2009-10	11,108,390
For 2010-11	12,616,370
Total	<u>23,724,760</u>

The school was in deficit to the tune of **Rs. 2,00,30,499** (3,84,65,668 - 1,84,35,169) after implementation of the recommendations of VI Pay Commission. It would be noticeable that while working out the aforesaid deficit, the Committee has not considered the requirement of the school to maintain a reasonable reserve for future contingencies. The Committee has consistently held in case of all the school that they ought to maintain a reasonable reserve with them and the quantum of reasonable reserve determined by the Committee is a sum equivalent to four months' expenditure on salary for the year 2009-10. In the case of this school, the aforesaid sum is **Rs. 2,32,64,561**.

Keeping in view the deficit incurred by the school on implementation of the recommendations of VI Pay Commission (Rs. 2,00,30,499) and the requirement of the school to keep funds in



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reserve (2,32,64,561), the Committee is not inclined to order refund of the development fee amounting to Rs. 2,37,24,760 collected by the school in 2009-10 and 2010-11 pursuant to order dated 11/02/2009 issued by the Director of Education. In view of this, the Committee is not undertaking the academic exercise of arriving at a definite conclusion as to whether the school is fulfilling the pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School (supra) for charging of development fee.

Resultantly, the Committee is of the view that no interference is called for in the matter of fee hike effected by the school or the arrear fee and the development fee collected by it in pursuance of order dated 11/02/2009 issued by the Director of Education.

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

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

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

Dated:10/06/2019



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000098

**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:

**Hansraj Smarak Sr. Sec. School, Dilshad Garden, New Delhi-
110095 (B-277)**

Order of the Committee

Present Sh.Sanjeev Mahajan, Sh.Saurab Rohatgi, Chartered Accountants & Sh. Rajiv Gupta, Accountant of the school.

The school, vide its letter dated 28/01/2012, submitted to the Dy. Director of Education (DDE), Distt. North East, Delhi, copies of its annual returns filed under Rule 180 of the Delhi School Education Rules, 1973 and copies of fee statements for the years 2006-07 to 2010-11, on a requisition made by the DDE. The school also submitted salary sheets showing the salary paid to the staff immediately before the implementation of VI Pay Commission Report and after its implementation (including arrears) and also a copy of the circular issued to the parents demanding the increased fee (including arrears). These documents were transmitted to the office of the Committee by the DDE.

On prima facie examination of these documents submitted by the school, it appeared that the school actually increased the salary with effect from May 2009 and paid arrears of incremental salary for the period September 2008 to April 2009. No arrears appeared to have been paid for the period January 2006 to August 2008.



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The tuition fee also appeared to have been revised from September 2008 and the arrears of incremental fee were recovered for the period September 2008 to March 2009. No arrear fee appeared to have been recovered for the period January 2006 to August 2008.

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

A revised questionnaire was issued to the school vide letter dated 16/07/2013 vide which the school was directed to furnish its response by 26/07/2013. The revised questionnaire, besides containing the queries which were raised in the first questionnaire, also contained queries with regard to charging of development fee, its utilisation, its treatment in the accounts and maintenance of earmarked development fund/depreciation reserve fund in order to examine whether the school was complying with the essential pre conditions laid down by the Hon'ble Supreme Court in the case of



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Modern School vs. Union of India (2004) 5 SCC 583 for charging development fee.

The school filed its response vide letter dated 25/07/2013. As per the reply received from the school, it was confirmed that the school started paying the increased salary as per the recommendations of VI Pay Commission with effect from May 2009 and paid arrears of incremental salary for the period 01/09/2008 to 30/04/2009. It was also confirmed that the school increased the fee of the students with effect from 01/09/2008 by recovering the arrears of incremental fee for the period 01/09/2008 to 31/03/2009 and increasing the fee with effect from 01/04/2009.

With regard to development fee, the school admitted having recovered the development fee in all the five years for which the information was sought i.e. 2006-07 to 2010-11. It conceded that the development fee was treated as a revenue receipt by the school and no earmarked development fund/depreciation reserve fund was maintained. From the detail of utilisation of development fee, as submitted by the school, it was apparent that the same was mainly utilised for meeting its revenue expenses and a small amount was stated to have been utilised for purchasing furniture and fixtures and equipments etc.

Thus, at the very outset, it became evident that the school was not complying with any of the essential pre conditions laid down by



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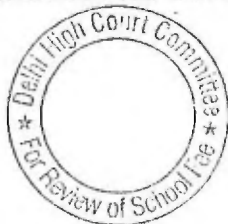
the Hon'ble Supreme Court in the case of Modern School (supra) and therefore, the school was not entitled to charge any development fee.

The Committee issued a notice dated 27/04/2015, requiring the school to furnish within 10 days, the complete break up of fee and salaries for the years 2008-09 to 2010-11 (including arrear fee and arrear salary pursuant to implementation of VI Pay Commission), copies of bank statements showing payment of arrear salaries, statement of account of the parent society running the school and details of its accrued liabilities of gratuity and leave encashment. The school was also afforded an opportunity of being heard by the Committee on 07/05/2015.

Sh. Rakesh Kumar, office assistant of the school appeared and filed a request letter seeking more time to furnish the information sought by the Committee vide its notice dated 27/04/2015. The request was acceded to by the Committee.

The school furnished the required information under the cover of its letter dated 19/05/2015.

On examination of the documents submitted by the school, it appeared that the school was also running a nursery school, whose financials were not merged in the financials of the main school. Accordingly, the school was issued another notice on 15/07/2015 to furnish the relevant information with regard to its nursery school also. The school again sought more time and ultimately submitted the



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required information with regard to its nursery school on 21/08/2015. The matter could not be proceeded further on account of the resignation of Justice Anil Dev Singh, as Chairman of the Committee. 000102

After the reconstitution of the Committee, a notice of hearing was sent to the school requiring it to appear on 10/10/2017.

Sh. Rajiv Gupta, Accountant of the school appeared with Sh. Rakesh Kumar Mahajan, UDC .

The Committee examined the circular dated NIL that was reportedly issued to the parents regarding fee hike w.e.f. 01.09.2008 in pursuance of order dated 11.2.2009 issued by the Director of Education. It noted that as per the circular, the school collected a sum of Rs.1400/- per student of classes pre-primary to X and Rs.2100/- from the students of Class XI & XII for the period 01/09/2008 to 31/03/2009, indicating a fee hike of Rs.200 p.m. and Rs.300 p.m. for these classes. It was submitted that the school did not increase any development fee pursuant to order dated 11/02/2009. It was further submitted that the school neither recovered the arrear of fee for the period 01/01/2006 to 31/08/2008 nor paid any arrear of salary for that period.

The Committee noted that as per the information furnished by the school, it had recovered arrears of incremental tuition fee amounting to Rs. 10,57,600 in 2008-09 and Rs.11,93,600 in 2009-10



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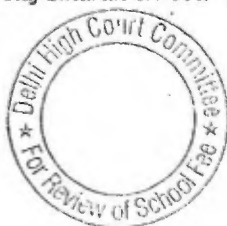

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for the period 01/09/2008 to 31/03/2009. It was also noted that the 000103
total arrear salary paid by the school was Rs.18,74,004 in 2009-10.
The Committee also noted that as per the information furnished by
the school, the normal tuition fees rose from Rs.1,24,39,569 in 2008-
09 to Rs.2,01,28,465 in 2009-10. The gross salary also rose from Rs.
95,14,753 in 2008-09 to Rs. 1,54,19,100 in 2009-10 as per the
information furnished by the school.

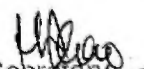
The Committee also took note of the fact that as per the
information furnished by the school, it recovered a total sum of Rs.
22,43,540 in 2009-10 and Rs. 28,19,785 in 2010-11 as development
fee which was concededly treated as a revenue receipt without
maintaining any earmarked development fund/depreciation reserve
fund.

The Committee examined the books of accounts produced by
the school, which were maintained in tally software. However, the
Committee noticed that the figures, as furnished by the school along
with written submissions dated 19/05/2015, did not reconcile with
the print outs of the relevant ledger accounts, particularly tuition fee.
The authorized representative of the school submitted that it
included the arrear fee as well as 'Other charges' recovered by the
school.

The Committee examined the 'Other charges' account of the
school and observed that heavy amounts had been shown to have



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been received on certain date, as compared to nominal amounts on the other dates.

Accordingly, the school was directed to produce its books of accounts along with the tally software in a laptop for the years 2008-09 to 2010-11 for examination by the Committee.

On the next date, the school produced its books of accounts, which were maintained in tally software, in a laptop.

On verifying the same with the information furnished by the school with regard to Fee and Salary under cover of its letter dated 19/05/2015 and 20/08/2015, the Committee observed that the figures were at variance with the amounts which the school collected as fee under different heads as per its books of accounts. Further, the Committee went through the annual returns filed by the school under Rule 180 of the Delhi School Education Rules 1973 and observed that the school had not given complete detail of the fee charged by it to the Director of Education. It gave information with regard to tuition fee alone while the school charged fees under various other heads like admission charges, annual charges, development charges, exam fee, lab fee, other charges, registration fee and transport fee, besides the tuition fee. The Committee also observed that the information furnished by the school was also incomplete as many heads of fee were not reflected in the information chart.



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Accordingly, the school was required to furnish the complete and full details of fee charged under different heads during the years 2008-09 to 2010-11.

Similarly in respect of salary payments, the school was directed to furnish complete details in the same chart.

On the next date of hearing, the school filed a letter dated 18/12/2017, alongwith which it furnished the revised statements of different components of fee and salary in respect of the Sr. school only. The information with regard to nursery school was not filed. The school was directed to file the revised figures of different components of fee and salary in respect of the nursery school also on actual basis, which ought to tally with its books of accounts. The school was directed to file this information and produce the books of accounts before the Audit officer of the Committee, who was asked to verify the same.

The Audit Officer examined the books of accounts of the school along with the information in respect of nursery school which was provided by the school on 27/12/2017. She recorded that separate books of accounts of nursery school were prepared only till 2008-09. From 2009-10, the accounts of nursery and senior school were merged together. She extracted the relevant information with regard to fee and salary for the years 2008-09 and 2009-10. She also recorded that the parent society was running two nursery schools at



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Dilshad Garden and Krishna Nagar and the accounts of the nursery school for 2008-09 contained the financials of both these schools.

On 22/01/2018 when the matter was posted for hearing before the Committee, the authorized representative appearing for the school submitted that upto 2008-09 the nursery school was preparing independent Balance Sheet but in the year 2009-10, the Income and Expenditure of the nursery school was merged in the Income and Expenditure account of the senior school at Dilshad Garden. However the Assets and Liabilities continued to be reflected in the Balance Sheet of the nursery school. They were transferred to the Balance Sheet of the senior school at Dilshad garden only in the year 2010-11.

Accordingly, the Committee was of the view that for the purpose of making relevant calculations, the nursery school in its entirety ought to be treated as a branch of the senior school at Dilshad Garden while the middle school at Krishna Nagar would be treated on standalone basis.

Accordingly, the Committee prepared a preliminary calculation sheet, as per which, the funds available with the school as on 31/03/2008 i.e. before the fee hike, were determined to be **Rs. 61,92,011**, as follows:



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Particulars	Main School	Nursery	Total
<u>Current Assets + Investments</u>			
Cash at Bank	489,462	459,744	949,206
FDRs with Banks	4,721,142	1,959,498	6,680,640
Imprest (HRS Nursery School)/ HRSS Dilshad Garden	25,000 (318,672)	- 318,672	25,000 -
HRSS Krishna Nagar	188,930	(37,450)	151,480
Publicity & Sales Promotion	50,000	-	50,000
TDS receivable	10,109	-	10,109
Total	5,165,971	2,700,464	7,866,435
<u>Current Liabilities</u>			
CBSE Payment received in advance	10,000	-	10,000
PF Payable	114,942	-	114,942
Expenses payable	128,299	15,400	143,699
Salary payable	569,226	49,421	618,647
TDS payable	8,597	-	8,597
Indian security Force	7,611	-	7,611
Sigma Service Regd.	22,967	-	22,967
Students Security	449,860	298,101	747,961
Total	1,311,502	362,922	1,674,424
Net Current Assets + Investments (Funds Available)	3,854,469	2,337,542	6,192,011

It came out during the course of hearings that the school had taken group policies from Life Insurance Corporation of India (LIC) to cover its liabilities for gratuity and leave encashment and the school made contribution to its gratuity/leave encashment funds maintained with the LIC on an annual basis. Therefore, the school did not have any accrued liabilities of gratuity or leave encashment. However, as held by the Committee in the case of other schools, the schools ought not to denude itself of the entire funds available with it for implementing the recommendations of VI Pay Commission but ought to retain adequate reserve for future contingencies, which the Committee has determined to be equivalent to salary expenditure for four months. Based on the annual salary expenditure of Rs. 1,35,45,096 for the year 2009-10, the Committee determined the



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school ought to maintain a reserve of **Rs. 45,15,032** out of the funds available with it. Thus, as per the preliminary calculations of the Committee, the school had available with it a sum of **Rs. 16,76,979** (61,92,011 - 45,15,032) which it could utilise for implementing the recommendations of VI Pay Commission.

The total financial impact of implementing the recommendations of VI Pay Commission on the school was determined to be **Rs. 55,40,523**, as follows:

Additional Liabilities on implementation of 6th CPC:	
Arrear of Salary for the period from 1.9.08 to 31.3.09	1,874,004
Incremental Salary for 2009-10 (as per calculation given below*)	3,666,519
Total additional liability	5,540,523

*Nursery + Sr. Section (A/cs merged in 2009-10)	2008-09	2009-10
Normal/ regular salary	9,878,577	13,545,096
Incremental salary in 2009-10	3,666,519	

Thus, for implementing the recommendations of VI Pay Commission, to the extent it implemented (the school did not pay the arrears of incremental salary for the period 01/01/2006 to 31/08/2008), there was a gap of **Rs. 38,63,544** (55,40,523 - 16,76,979), which the school needed to bridge by hiking the fee and recovering arrear fee for the period 01/09/2008 to 31/03/2009.

The fee hike and the arrear fee collected by the school resulted in an additional revenue of **Rs. 69,01,066**, as calculated below:



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Additional Recovery for 6th CPC:	
Recovery of Arrear tuition fee w.e.f 01.09.08 to 31.03.09	1,481,200
Incremental fee for 2009-10 (as per calculation given below*)	5,419,866
Total additional recovery	6,901,066

*Incremental fee for 2009-10	2008-09	2009-10
Regular Tuition fee	14,655,249	20,075,115
Incremental tuition fee in 2009-10	5,419,866	

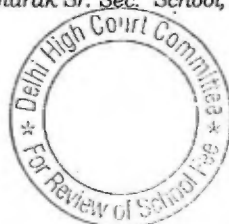
Thus, prima facie, the school recovered excessive fee to the tune of **Rs. 30,37,522** (69,01,066 – 38,63,544).

Since the school was admittedly not fulfilling the pre conditions laid down by the Hon'ble Supreme Court for charging development fee, the Committee was of the prima facie view that the development fee collected by the school in the years 2009-10 and 2010-11 in pursuance of order dated 11/02/2009 was not justified. The amount recovered by the school on this account in these two years was **Rs. 50,63,325** (Rs. 22,43,540 in 2009-10 and Rs. 28,19,785 in 2010-11).

Thus, the Committee was of a prima facie view that the school ought to refund a sum of Rs. 81,00,847 (30,37,522 + 50,63,325) to the students.

A copy of the above calculation sheet was furnished to the authorized representative of the school on 21/02/2018 to file its rebuttal, if any. The matter was posted for hearing on 05/04/2018.

The school requested for some more time and accordingly the matter was adjourned to 28th May 2018. On this date, Sh.Sanjeev



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Mahajan, and Sh. Saurab Rohatgi, Chartered Accountants appeared for the school along with Sh. Rajiv Gupta, Accountant. After arguing for some time the authorized representative of the school stated that he needed to file a revised Calculation Sheet. Accordingly, the matter was adjourned to 13th June 2018.

The school filed its own calculation sheet on 13/06/2018 with the help of which it rebutted some of the figures taken by the Committee in its calculation sheet.

As per the calculation sheet filed by the school, the school admitted that a sum of Rs.2,34,486 was recovered by it in excess on account of tuition fee hike effected by it pursuant to order dated 11/02/2009 and the incremental developmental fee for the year 2009-10. As noticed above, the amount which the Committee had prima facie determined to be refundable was Rs.81,00,847.

On comparing the calculation sheet filed by the school with that prepared by the Committee, the following facts are emerged :

- A. The school had not disputed the funds available with it as on 31.3.2008, which the Committee determined to be 61,92,011.
- B. The school had also not disputed the figures of arrear salary, arrear tuition fee and incremental tuition fee for the year 2009-10.
- C. The school had taken the requirement of reserve equivalent to four months' salary to be Rs.60,45,596 as against Rs.45,15,032



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taken by the Committee. In justification, the authorized representative submitted that while calculating the requirement of reserve, not just the salary paid by the school is required to be considered, but also provident fund contribution, medical insurance of staff, contributions paid to Life Insurance Corporation in respect of the annual payments of group gratuity and leave encashment policies ought also be taken into consideration.

D. The school calculated the incremental salary for 2009-10 to Rs.54,39,270 as against a sum of Rs.36,66,519 determined by the Committee. Here also, the authorized representative contended that the provident fund contribution, leave encashment, medical for staff and gratuity ought to be considered as part of salary and accordingly the incremental salary ought to be worked out. However, during the course of arguments, the learned authorized representative submitted that the contribution for gratuity which the school had claimed in its calculation sheet to be part of salary may not be taken, as the figures given by the school were not accurate, as they represented the payments made on adhoc basis and not on actual demands raised by LIC. A further submission was made orally, although not reflected in the calculation sheet prepared by the school, that while in 2008-09 the Committee had included the expenditure under the Head teaching and



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coaching for Sr. school and nursery school which represented payments made to contractual staff, the same had not been included in the figure of salary in 2009-10.

- E. The authorized representative contended that since the school treated development fee as a revenue receipt, it ought to be considered on the same footing as tuition fee and accordingly only the incremental development fee recovered by the school in 2009-10, which amounted to Rs.5,00,279 be considered while making the relevant calculation of the amount refundable by the school. The authorized representative submitted that at any rate the development fee recovered in the year 2010-11 ought not be ordered to be refunded as the terms of reference of the Committee would not permit it to consider the fee charged in 2010-11.

The Committee has considered the submissions made by the learned authorized representative. With regard to the submission as recorded at (C) above the Committee observes that the relevant calculations made by it were on the basis of the information furnished by the school itself under cover of its letter dated 18.12.2017. The school did not include the PF contribution, gratuity and leave encashment as part of its expenditure on salary. Moreover, the requirement of the school to keep funds in reserve which the Committee had considered in cases of all the schools is premised on the assumption that in case any unforeseen event took place



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which necessitated closure of the school, the school would have to incur certain winding up costs, which might include salary to the staff for three months and provision for one month more was considered to be reasonable for covering other winding up expenses. In view of this, the Committee does not consider it appropriate to include the contributions for gratuity and leave encashment as part of salary for the purpose of calculating the reserve, as once the services of the staff cease, there would be no further liability on this account. However, with regard to contribution for provident fund, the Committee is in agreement with the submission made by the learned authorized representative that contribution to provident fund ought to be considered as part of salary for calculating the requirement of reserve. The amount of yearly provident fund contribution for the year 2009-10 as given by the school in its calculation sheet is Rs. 8,51,692. Accordingly, the figure of reserve for future contingencies would stand increased by Rs. 2,83,897 to **Rs. 47,98,929**. Necessary adjustment will be made in the amount of fee refundable by the school while making the final determination.

With regard to the submission recorded at (D) above , the Committee observes that while the school had a group gratuity policy in 2008-09 which continued in 2009-10, the school took the policy for leave encashment only in 2009-10 and paid premium for the first time in that year. Hence the figures of 2008-09 and 2009-10, as submitted by the school in its calculation sheet, are not comparable.



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Accordingly, the Committee will consider the payment for premium of group policy for leave encashment as a liability as on 31.3.2010 only for the purpose of making the calculations and the same will be reduced from the funds available with the school. The outstanding liability on this account as on 31/03/2010 was Rs. 16,60,971, as submitted by the authorized representative of the school during the course of hearing. Accordingly, the funds available with the school which could have been utilised for implementing the recommendations of VI Pay Commission, would stand reduced by **Rs. 16,60,971**. Necessary adjustment to this effect will be given in the final determinations.

The Committee accepts the submission of the school that the expenditure shown under the head teaching and coaching be either considered for 2009-10 also or be excluded from the reckoning in 2008-09. Since the expenditure under the Head Teaching and Coaching represents salary paid to temporary/adhoc staff to whom VI Pay Commission does not apply, it would be apt to exclude the expenditure on teaching and coaching which the Committee had inadvertently included in the figure of regular salary in 2008-09. The amount on this account is Rs. 72,500 for nursery school and Rs. 8,34,073 in respect of senior school. If these are excluded, the total salary for 2008-09 would be **Rs. 36,66,519** and consequently the incremental salary for the year 2009-10 would stand increased by Rs.



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9,06,573. Necessary adjustment to this effect will be made in the final determinations.

With regard to the submission recorded at (E) above, the Committee is of the view that the development fee cannot be treated on the same footing as tuition fee as the school can charge development fee only subject to fulfillment of certain pre conditions like its treatment as capital receipt, its utilization for purchase or upgradation of furniture and fixtures and creation of earmarked development fund and depreciation reserve fund. The Committee has examined the audited financials of the school and observes that the school was treating development fee as a revenue receipt and no earmarked development fund or depreciation reserve fund were maintained. Even if the accounting treatment as revenue receipt instead of capital receipt is ignored as the school showed a higher surplus in its Income and Expenditure accounts than the amount of development fee charged in the years 2009-10 & 2010-11, the school was not complying with the other substantive pre conditions like maintenance of earmarked fund and depreciation reserve fund. The learned authorized representative appearing for the school also conceded to these facts.

Final Determinations:

The Committee had provisionally determined that the school recovered excess fee to the tune of Rs. 30,37,522 for implementing the



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recommendations of VI Pay Commission. Besides, it prima facie, determined that the school ought to refund a sum of Rs. 50,63,325 recovered by it as development fee for the years 2009-10 and 2010-11 without fulfilling the necessary pre conditions as laid down by the Hon'ble Supreme Court.

The upshot of the foregoing discussion is that the determination of refund on account of excess tuition fee charged by the school pursuant to order dated 11/02/2009, requires to be moderated as follows:

Particulars	Amount as taken by the Committee in the preliminary calculations (Rs.)	Correct Amount as per the above discussion (Rs.)	Effect on the amount of refund provisionally determined (Rs.)
Reserve for future contingencies	4,515,032	4,798,929	(283,897)
Reserve for liability for leave encashment	-	1,660,971	(1,660,971)
Incremental salary for 2009-10	3,666,519	4,573,092	(906,573)
Total	8,181,551	11,032,992	(2,851,441)

Thus the final determination of the amount of excess tuition fee charged by the school is **Rs. 1,86,081** (30,37,522-28,51,441). However, there is no change so far as the refund of development fee, provisionally determined by the Committee to be **Rs. 50,63,325**.



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The Committee is therefore of the view that the school ought to refund a sum of Rs. 52,49,406 (1,86,081 + 50,63,325) to the students alongwith interest @ 9% per annum from the date of collection to the date of refund.

Ordered accordingly.

Justice Anil Kumar (R)
(Chairperson)

CA J.S. Kochar
(Member)

Dr. R.K. Sharma
(Member)

Dated: 10/06/2019



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

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

In the matter of:

St. Thomas' School, Mandir Marg, New Delhi-110001 (B-656)

Order of the Committee

Present: Sh. R.K. Khanna, Chartered Accountant with Sh. Vinod Kumar, Accountant of the school

The Committee issued a questionnaire to all the schools (including this school) on 27/02/2012 which was followed by reminder dated 27/03/2012, eliciting information with regard to the arrear fee and fee hike effected by the school pursuant to order dated 11/02/2009 issued by the Director of Education. The school was also required to furnish information with regard to the arrear of salary paid and the incremental salary paid to the staff pursuant to the implementation of the recommendations of the 6th pay commission.

However, the school did not respond to the questionnaire issued by the Committee nor to the reminder. A complaint against the school was received from "Sanskriti NGO, 318 Mohalla Kot, Sonipat 131001" which was signed by an alleged authorized signatory without disclosing its name. The signatures were also illegible and no authorization document was filed. On the face of it, it appeared to be a motivated complaint where the identity of the complainant was not



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known nor was it understandable as to how the alleged NGO situated in Sonipat was interested in the affairs of the school. No registration number of the so called NGO was mentioned on its letter head. No one had also appeared on behalf of the alleged NGO. Accordingly, no cognizance was taken of this complaint by the Committee.

As the school had not submitted its reply to the questionnaire issued by the Committee, a fresh questionnaire was issued to the school on 06/05/2013, requiring the school to answer the queries raised by the Committee as per its questionnaire dated 27/02/2012 and also additional queries regarding charging of development fee, the manner of its utilisation, maintenance of earmarked development/ depreciation reserve funds.

The school furnished its reply under cover of its letter dated 17/05/2013. As per the reply submitted by the school, it implemented the recommendations of VI Pay Commission and started paying the increased salary w.e.f. 01/03/2009. Further, it stated that arrears of salary as per Sixth Pay Commission for the period 1st September 2008 to 28th February 2009 were paid along with salary for the month of March 2009. However, the amount of such arrears was not mentioned. It also stated that the school had paid a sum of Rs. 1,44,82,326 in two instalments in October 2009 and May 2010. Presumably this pertained to the period 01/01/2006 to 31/08/2008.



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With regard to fee hike, the school admitted having hiked the tuition fee w.e.f. 01/09/2008, in pursuance of order dated 11/02/2009 issued by the Director of Education. As per the information furnished by the school, the tuition fee was hiked @ Rs. 300 per month for all the classes across the board. The school also stated that it had recovered a sum of Rs. 96,23,710 as arrear fee from the students in terms of order dated 11/02/2009 issued by the Director of Education.

With regard to development fee, the school submitted a chart showing development fee charged by it in different years. As per the chart, it charged regular development fee in the years 2009-10 and 2010-11 to the tune of Rs. 67,69,125 and Rs. 77,83,136 and till 2008-09, it had not recovered any development fee. However, it was mentioned that the school recovered development fee arrears to the tune of Rs. 8,59,690 in 2008-09 and Rs.26,57,345 in 2009-10, presumably pursuant to order dated 11/02/2009 issued by the Director of Education.

It further stated that development fee was treated as a revenue receipt in the accounts of the school and no depreciation reserve fund account had been maintained by it. It was stated that depreciation reserve fund would be opened shortly.

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



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salaries for the years 2008-09 to 2010-11, duly reconciled with its audited financials (including arrear fee and arrear salary pursuant to implementation of VI Pay Commission), copies of bank statements showing payment of arrear salaries, statement of account of the parent society running the school and details of its accrued liabilities of gratuity and leave encashment, besides copy of the circular issued to the parents regarding fee hike effected by the school. The school was also directed to furnish the relevant information with regards to its pre-primary school.

The school sought extension of time for submission of the required information till 2nd week of July 2015 as the school was closed for summer holidays. The request of the school was acceded to by the Committee.

The school submitted the required information under cover of its letter dated 07/07/2015. A notice of hearing was issued to the school requiring it to appear before the Committee on 27/06/2016 to produce its books of accounts, fee and salary records and make submissions in justification of the fee hike effected by it.

Shri R.K. Khanna Chartered Accountant appeared with Shri Vinod Dayal, Accountant of the school and were partly heard by the Committee.

The information furnished by the school under cover of its letter dated 07/07/2015 was perused by the Committee. The



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Committee observed that as per the circular issued by the school to the parents regarding fee hike w.e.f. 01/09/2008 pursuant to the order dated 11/02/2009 issued by the Director of Education, the school hiked the tuition fee by Rs. 300 per month for all the classes. In addition, the school also recovered arrears of incremental development fee for classes nursery and KG @ Rs. 263 per month, for classes I to VIII @ 253 per month and for classes IX to XII @ Rs. 241 per month for the period 01/09/2008 to 31/03/2009. The Committee also observed that as per the original fee schedule for the year 2008-09, the school was not charging any development fee at all. This was also confirmed by the school vide the chart of development fee submitted by it in response to the questionnaire issued by the Committee, which showed that the school was not charging any regular development fee up the year 2008-09.

The authorized representative appearing for the school was not able to explain the basis of charging incremental development fee w.e.f. 01/09/2008 and sought some time for doing so.

The Committee observed that with regard to regular development fee recovered by the school 2009-10 and 2010-11 also, the school had conceded in its reply to the questionnaire that the development fee was treated as a revenue receipt and consequently no separate depreciation reserve fund or development fund account were maintained by the school. The authorized representative of the



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school submitted that the information furnished by the school was correct in this respect.

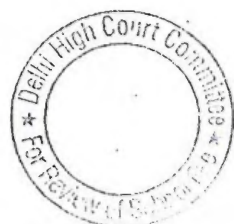
The school was accordingly, directed to furnish the basis of charging incremental development fee, as mentioned supra. and also furnish the mode of its utilization.

The school filed a letter dated 04/07/2016, stating that the school had charged arrears of development fee at the rate of 15% of tuition fee of seven months that is 01/09/2008 to 31/03/2009 and the same was utilised for paying arrears of 6th Pay Commission.

The Committee observed that the school had charged development fee for the period 01/09/2008 to 31/03/2009, not just on the incremental tuition fee of Rs. 300 per month but on the total amount of increased tuition fee w.e.f. 01/09/2008. To illustrate the position the hike in tuition fee and the so called hike in development fee w.e.f. 01/09/2008 to 31/03/2009 is given in the following table:

Class	Hike in Tuition Fee per month (Rs)	Hike in Development Fee per month (Rs)	Percentage of hiked development fee to hiked tuition fee
Nursery and KG	300	263	87.66%
Ist to 8 th	300	223	74.33%
9 th to 12 th	300	241	80.33%

The Committee is of the view that since the school was not charging any development fee originally in the year 2008-09, there



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could have been no incremental development fee on account of increase in tuition fee with w.e.f. 01/09/2008. The order dated 11/02/2009 did not authorize the schools to increase any development fee or start charging the development fee w.e.f. 01/09/2008 when the school was not charging any development fee. The order primarily was a general approval granted to all the schools to hike the tuition fee from mid session as per the provisions of Section 17(3) of the Delhi School Education Act, 1973. It did not authorize any increase in development fee or any fresh levy of development fee in the mid session. Clause 15 of the aforesaid order only permitted the schools to recover any consequential increase in development fee as a result of increase in tuition fee. However, the question of consequential increase in development fee arise, where the schools were charging development fee as a percentage of tuition fee. In case the schools were not charging any development fee at all, there would be no consequential increase in development fee as a result of increase in tuition fee. The recovery of development fee for the period 01/09/2008 to 31/03/2009 was clearly in contravention of Section 17(3) and the order dated 11/02/2009 of the Director of Education and hence was an illegal recovery.

Based on the audited financials of the school and the information furnished by it in response to various communications issued by the Committee, the Committee prepared the following preliminary calculation sheet:



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Statement showing Fund available as on 31.03.2008 and the effect of hike in fee as per order dated 11.02.2009 and effect of increase in salary on implementation of 6th Pay Commission Report				
	Particulars	Main School	P P School	Total
	<u>Current Assets</u>			
	Bank Balances in Savings Account	1,604,835	-	1,604,835
	Fixed Deposits of School Funds	26,409,531	-	26,409,531
	Current assets, loan and advances	12,899	80,748,573	80,761,472
	Total Current assets	28,027,265	80,748,573	108,775,838
Less	<u>Current Liabilities</u>			
	Earnest Money payable	221,186	24,306	245,492
	School Caution Money	2,323,258	291,000	2,614,258
	Fees received in advance	-	3,512,465	3,512,465
	St. Thomas School, Sr. Section	(18,000,000)	18,000,000	-
	Total Current Liabilities	(15,455,556)	21,827,771	6,372,215
	Net Current Assets + Investments	43,482,821	58,920,802	102,403,623
Less	Funds to be kept in reserve (Combined):			
	for future contingencies equivalent to 4 months salary			15,528,509
	towards accrued liability for Gratuity as on 31.3.2010			22,208,438
	towards accrued liability for Leave Encashment as on 31.3.10			8,893,647
	Total Funds to be kept in reserve			46,630,594
	Excess / (Short) Funds before implementation of 6th CPC			55,773,029
Less	Arrear of Salary as per 6th CPC w.e.f. 01.01.06 to 31.08.08			17143943
	Arrear of Salary as per 6th CPC w.e.f. 01.09.08 to 31.03.09			7,013,455
	Incremental Salary as per 6th CPC from 01.04.09 to 31.03.10			14,080,139
	Total financial impact of implementation of 6th Pay Commission			38,237,537
	Excess / (Short) Funds Before Fee Hike			17,535,492
Add	Tuition Fee Arrear from 01.01.06 to 31.03.09			10,478,710
	Development Fee arrear from 01.09.08 to 31.03.09			3,863,775
	Incremental Tuition fee in 2009-10			9,208,461
	Excess / (Short) Funds After Fee Hike			41,086,438

<u>Development fee refundable, having been treated as a revenue receipt:</u>	Rs.
For the year 2009-10	8,478,020
For the year 2010-11	9,578,556
Total	18,056,576

<u>Summary of Fee Refundable</u>	
Tuition Fee Arrear from 01.01.06 to 31.03.09	10,478,710
Development Fee arrear from 01.09.08 to 31.03.09	3,863,775
Incremental Tuition fee in 2009-10	9,208,461
Development Fee for 2009-10	8,478,020
Development Fee for 2010-11	9,578,556
Total amount refundable	41,607,522

<u>Working Notes:</u>		
Increase in Normal/ regular salary	2008-09	2009-10
Normal/ regular salary of Main+ PP School	32,505,388	46,585,527
Incremental salary in 2009-10	14,080,139	
Increase in tuition fee	2008-09	2009-10
Regular/ Normal Tuition fee of Main+ PP School	56,716,850	65,925,311
Incremental tuition fee in 2009-10	9,208,461	



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As per the above calculation sheet, the Committee determined that prima facie, the school would be required to make a refund of Rs. 4,16,07,522. A copy of the calculation sheet was furnished to the school on 20/07/2016. The authorized representatives of the school sought time to rebut the calculation sheet. They were given liberty to file written submissions before the next hearing which was fixed on 6th Sept. 2016.

The school requested for further time to file its objections to the calculations. The same was granted by the Committee.

The school filed objections to the calculation sheet vide its written submission dated 18/10/2016. The Committee observed that practically the school had revised almost the entire information/figures which were given by it earlier vide letter dated 07/07/2015. It was stated that the revision had been made mainly on account of the fact that the school did not factor in MACP (Modified Assured Career Progression) and the employer's share of Provident Fund on arrears as well as the regular salary paid to the employees by the school.

As virtually the entire calculation sheet would need to be reframed, the school was required to furnish afresh, correct and complete information which was earlier asked for by the Committee vide its notice dated 26/05/2015. It was also directed that the school ought to furnish the revised information in respect of both the senior school and the pre primary school. The school was also directed to produce the bank statements showing payment of revised salary on account of MACP as well as Provident Fund challans showing payment of provident fund on arrear salary as well



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as regular salary. It was clarified by the Committee that in case of MACP, only the amount due upto 31/03/2010 would be taken into consideration.

The school filed the revised information along with its written submissions vide its letter dated 26/10/2016 (filed in the office of the Committee on 04/11/2016). The Committee observed that the school had revised the following figures in its submissions dated 26/10/2016, as compared to the figures given vide its submissions dated 07/07/2015:

Particulars	As per submissions dated 7.7.15	As per submissions dated 26.10.16	Difference
Arrears of Salary for the period 1.1.06 to 31.8.08	1,71,43,943	1,90,36,639	18,92,696
Arrears for the period 1.9.08 to 31.3.09	70,13,455	75,69,309	5,55,854
Incremental Salary for 2009-10	1,40,80,139	1,57,69,756	16,89,617
Reserve for Gratuity	2,22,08,438	2,65,84,483	43,76,045
Reserve for Leave Encashment	88,93,647	2,02,16,409	1,13,22,762
Reserve for Future Contingencies	1,55,28,509	2,32,36,770	77,08,261

The authorized representative of the school was asked to justify these differences. The Committee also observed that the school had made the following additional claims :

1. Contingency Reserve @ 2% of total expense as on 31.3.2010
Rs.15,70,040.
2. Depreciation Fund for 3 years Rs.1,02,26,683.
3. Amount utilised for the development of the school Rs.1,66,79,205.

He submitted that so far as arrears of salary for the period 1.1.2006 to 31.08.2008 and 01.9.2008 to 31.3.2009 were concerned the difference



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was on account of the fact that in the figures given earlier, management share of Provident Fund was not included. The same explanation has been given for the figures given for the regular salary of 2008-09 and as well as 2009-10.

With regard to reserve for gratuity and leave encashment, he contended that earlier the figures were given on estimated basis without actually making calculations in respect of individual employees. The figures given subsequently were supported by detailed calculations employee-wise, the details of which were filed. With regard to reserve for future contingencies, he contended that the actual salaries, Bonus, PF and MACP, as well as salary paid to outsourced staff had also been considered while giving the revised figures, while the Committee had calculated the same on monthly average of the actual salary paid during 2009-10.

The school was required to file the details of arrears of MACP paid for the period 01.9.08 to 31.3.09 and for the period from 01.4.2009 to 31.3.2010, as the Committee observed that the information filed by the school with regard to the same was on a consolidated basis for the period 01.9.2008 to 30.11.2011.

The school filed the details of MACP arrears paid for the period 01/09/2008 to 31/03/2010 vide its written submission dated 29/11/2016. It also filed its own calculation sheet as per which it calculated that the surplus generated by the school after fee hike as per order dated 11/02/2009 was to the tune of Rs. 23,68,064 and a further amount of Rs. 13,77,371 was the balance remaining with it out of development fee charged



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for the years 2009-10 and 2010-11 after applying a part of it for the development of the school.

Based on the revised information furnished by the school, the Committee recalculated the amount which the school would be required to refund on account of the excess fee recovered by it and the development fee charged by it in 2009-10 and 2010-11 without fulfilling the pre conditions laid down by the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583. As per the revised calculations made by the Committee, the school recovered a sum of Rs. 2,07,35,943 in excess of its requirements for implementing the recommendations of VI Pay Commission, which included a sum of Rs. 38,63,775 recovered by it as incremental development fee for the period 01/09/2008 to 31/03/2009, which the Committee has held to have been illegally recovered. Besides, the school was also liable to refund a sum of Rs. 1,80,56,576 recovered by it as regular development fee in the years 2009-10 and 2010-11. The following is the detailed revised calculation sheet prepared by the Committee:

Statement showing Fund available as on 31.03.2008 and the effect of hike in fee as per order dated 11.02.2009 and effect of increase in salary on implementation of 6th Pay Commission Report				
	Particulars	Main School	P P School	Total
	<u>Current Assets</u>			
	Bank Balances in Savings Account	1,604,835	-	1,604,835
	Fixed Deposits of School Funds	26,409,531	-	26,409,531
	Current assets, loan and advances	12,899	80,748,573	80,761,472
	Total Current assets	28,027,265	80,748,573	108,775,838
Less	<u>Current Liabilities</u>			
	Earnest Money payable	221,186	24,306	245,492
	School Caution Money	2,323,258	291,000	2,614,258
	Fees received in advance	-	3,512,465	3,512,465
	St. Thomas School, Sr. Section	(18,000,000)	18,000,000	
	Total Current Liabilities	(15,455,556)	21,827,771	6,372,215
	Net Current Assets + Investments (Funds available)	43,482,821	58,920,802	102,403,623



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Less	Funds to be kept in reserve (Combined): for future contingencies equivalent to 4 months salary towards accrued liability for Gratuity as on 31.3.2010 Additional amount of Gratuity as per submissions dated 26.10.2016 towards accrued liability for Leave Encashment as on 31.3.10 Additional amount of Leave Encashment as per submissions dated 26.10.2016 Total Funds to be kept in reserve	16,683,270 22,208,438 4,376,045 8,893,647 11,322,762 63,484,162
	Excess / (Short) Funds before implementation of 6th CPC	38,919,461
Less	Arrear of Salary as per 6th CPC w.e.f. 01.01.06 to 31.08.08 Differential amount on account of Provident Fund on above as per submissions dated 26.10.2016 Arrear of Salary as per 6th CPC w.e.f. 01.09.08 to 31.03.09 Differential amount on account of Provident Fund on above as per submissions dated 26.10.2016 MACP Arrears including PF upto 31.3.2010 Incremental Salary as per 6th CPC from 01.04.09 to 31.03.10 Total financial impact of implementation of 6th Pay Commission	17,143,943 1,892,696 7,013,455 555,854 906,561 14,221,955 41,734,464
	Excess / (Short) Funds Before Fee Hike	(2,815,003)
Add	Tuition Fee Arrear from 01.01.06 to 31.03.09 Development Fee arrear from 01.09.08 to 31.03.09 Incremental Tuition fee in 2009-10 Excess / (Short) Funds After Fee Hike	10,478,710 3,863,775 9,208,461 20,735,943

Development fee refundable, having been treated as a revenue receipt:

	Rs.
For the year 2009-10	8,478,020
For the year 2010-11	9,578,556
Total	18,056,576
Add: Excess tuition fee and arrears recovered	
Total amount refundable	20,735,943
	38,792,519

Working Notes:

	2008-09	2009-10	
Increase in tuition fee			
Regular/ Normal Tuition fee of Main+ PP School			
	56,716,850	65,925,311	
Incremental tuition fee in 2009-10	9,208,461		
Salary		2008-09	
As per Income & Expenditure A/c	Main School	PP	Total
Salary	33,126,656	6,392,187	39,518,843
Provident Fund	3,302,508	575,812	3,878,320
MACP not considered as the year-wise break-up is not provided			
Total	36,429,164	6,967,999	43,397,163
Less: Arrears separately considered			7,013,455
Less: PF on arrears separately considered	5,883,485	1,129,970	555,854
	555,854		
Salary (net of arrears) for the year	29,989,825	5,838,029	35,827,854



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As per Income & Expenditure A/c	2009-10		
	Main School	PP	Total
Salary			53,340,001
Provident Fund	44,697,934	8,642,067	5,356,978
MACP not considered as the year-wise break-up is not provided	4,512,073	844,905	
Total	49,210,007	9,486,972	58,696,979
Less: Arrears separately considered		999,906	6,754,474
Less: PF on arrears separately considered	5,754,568		1,892,696
Salary (net of arrears) for the year	1,892,696		
	41,562,743	8,487,066	50,049,809

Incremental Salary in 2009-10

14,221,955

A Copy of the revised calculation sheet as above was given to the authorized representatives of the school. The school was given a fresh opportunity to file its rebuttal. The matter was posted for hearing on 22/12/2016. On this date, the school requested for an adjournment on the ground of non availability of its Chartered Accountant. The matter could not be proceeded further as in the meantime the term of the Committee expired. After the term of the Committee was extended, the school was given a notice of hearing on 23/03/2017. However, on this date also, the school requested for adjournment. The matter was heard on 01/05/2017 when Sh. R.K. Khanna and Sh. Vinod Kumar appeared for the school.

The school filed its written submissions dated 01/05/2017, disputing the revised calculation sheet prepared by the Committee. The school again filed its own calculation sheet as per which it calculated that the excess fee recovered by it pursuant to order dated 11/02/2009 was Rs. 17,60,133 as against Rs. 23,68,064 calculated by it vide its calculation sheet submitted under cover of its letter dated



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29/11/2016. Further, the school did not admit that it had to refund any part of the regular development fee charged by it in the years 2009-10 and 2010-11.

Perusal of the calculation sheet filed by the school, the Committee observed that it had not disputed that on account of hike in tuition fee and recovery of arrears in pursuance of the aforesaid order it had recovered a total sum of Rs.1,04,78,710 as tuition fee arrears and Rs. 38,63,775 as arrears of development. Also the school had not disputed that as a result of hike in tuition fee, the school generated additional revenue of Rs. 92,08,461 by way of incremental fee in the year 2009-10.

The Committee observed that the variances in the calculations prepared by the Committee and those prepared by the school were as follows :-

- a. The school had claimed that the Reserve required to be maintained for future contingencies equal to 4 months salaries, ought to have been calculated on the basis of salary actually paid for the months of April to July 2010, instead of the 4 months average salary for the whole year 2009-10. It was contended that if the reserves were calculated in this manner, it would amount to Rs. 2,17,06,635, instead of Rs. 1,66,83,270 calculated by the Committee.



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- b. The school ought to have been allowed a further sum of Rs.15,70,040 as contingency reserve, which is equivalent to 2% of total expenditure (other than salary) for the year 2009-10.
- c. Depreciation fund for 3 years which is Rs.1,02,26,683 ought also to have been allowed to be retained for acquisition or replacement of fixed assets. The school furnished a copy of its fixed assets schedules for the years 2007-08 to 2009-10 in support of its claim.
- d. The school had claimed the incremental salary on account of implementation of recommendations of the 6th pay commission was Rs.1,63,77,677 instead of Rs.1,42,21,955 as taken by the committee. It was submitted that the Committee ought to have taken the total figure as per Income and Expenditure accounts in the two years instead of making adjustments to that.
- e. The development fee ought not to have been included in the amount provisionally to be refundable by the Committee solely for the reason that development fund and depreciation reserve fund were not created by the school. The school filed hypothetical balance sheet showing the development fund and depreciation reserve fund which could have appeared in the balance sheet had they been created. The calculation sheet is not disputed on any other ground.



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The Committee has heard the authorized representative of the school and has gone through the written submissions filed by the school disputing the calculations made by the Committee.

Determinations and Reasons:

After due consideration, the Committee has arrived at the following conclusions:

- (a) The school had available with it funds to the tune of **Rs. 10,24,03,623** as on 31/03/2008 i.e. before effecting the fee hike as per order dated 11/02/2009 of the Director of Education. The school has not disputed this figure.
- (b) The accrued liabilities of the school on account of gratuity and leave encashment as on 31/03/2010, amounted to **Rs. 4,68,00,892** (2,22,08,438 + 43,76,045+ 88,93,647+ 1,13,22,762) . This figure has been given by the school itself and has been accepted by the Committee. Thus after accounting for these accrued liabilities, the school had available with it a sum of **Rs. 5,56,02,731.**
- (c) The total financial impact of the implementation of the recommendations of VI Pay Commission on the school upto 31/03/2010 was **Rs. 4,17,34,464**, after taking into account the additional liability of arrear salary, provident fund on arrear salary and MACP arrears including PF and incremental salary for the year 2009-10 on account of implementation of the



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recommendations of VI Pay Commission. The school has not disputed any of the figures, except incremental salary for the year 2009-10. The Committee calculated the same to be Rs. 1,42,21,955, while the school calculated the same to be Rs. 1,63,77,677. The school has simply taken the difference in the salary for the years 2008-09 and 2009-10, as appearing in its Income & Expenditure Accounts for these years. On the other hand, the Committee has broken down the consolidated figures as appearing in the Income & Expenditure Accounts. No infirmity has been pointed out by the school in any of the broken down figures taken by the Committee. Accordingly, the Committee rejects the contention of the school on this ground and holds that the figure of Rs. 1,42,21,955 taken by it as incremental salary for the year 2009-10 is correct.

- (d) The school thus had adequate funds of its own available with it out of which it could have easily met its additional expenditure on account of implementation of the recommendations of VI Pay Commission. Even after implementing the recommendations of VI Pay Commission out of its own funds, the school would still have a surplus of **Rs. 1,38,68,267** (5,56,02,731 - 4,17,34,464). There was apparently no reason for the school to have resorted to any fee hike or to recover the arrear fee as per order dated 11/02/2009.



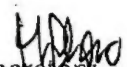
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- (e) The tuition fee and development fee hiked by the school w.e.f. 01/09/2008 and the arrears of fee recovered by it for the period 01/01/2006 to 31/08/2008 resulted in an additional revenue of the school, which amounted to Rs. **2,35,50,946**. The fee hike effected by the school and the arrear fee recovered by it pursuant to order dated 11/02/2009 were wholly unjustified. However, keeping in view that the surplus available with the school to the tune of Rs. 1,38,68,267 (without accounting for the fee hike) was less than the reserve for future contingencies which the Committee determined to be Rs. 1,66,83,270 (equivalent to four months average salary for 2009-10) by **Rs. 28,15,003**, the Committee is inclined to give an allowance to this extent and is not recommending refund of the entire fee hike of Rs. 2,35,50,946 but of the remaining amount of **Rs. 2,07,35,943** only (2,35,50,946 - 28,15,003) , which the Committee has determined as per the revised calculation sheet. The Committee rejects the submission of the school that it be allowed to retain a higher reserve. The Committee cannot discriminate in favour of this school on this account as it has taken a consistent view in the case of all other schools that they can retain the reserves equivalent to four months average salary for 2009-10.
- (f) The Committee rejects the contention of the school that merely because the school was not maintaining a depreciation reserve



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fund, the school should not be ordered to refund the development fee charged in 2009-10 and 2010-11. It is to be noted that the school was not charging any development fee till 2008-09. It started charging development fee in 2009-10 pursuant to order dated 11/02/2009 of the Director of Education. Clause 14 of the aforesaid order clearly ordained that the school could charge development fee only if the school was maintaining a depreciation reserve fund equivalent to the depreciation charged in revenue accounts of the school. This clause was a repetition of direction no. 7 of the order dated 15/12/1999 issued by the Director of Education which was upheld by the Hon'ble Supreme Court in the case of Modern School (supra). The Committee by its mandate is bound to make determinations keeping in view the principles laid down by the Hon'ble Supreme Court in the case of Modern School. Since the school was admittedly not fulfilling the basic and substantive pre conditions of treating development fee as a capital receipt (it conceded that the same was treated as a revenue receipt by the school) and maintenance of earmarked depreciation reserve fund, the school was not entitled to charge any development fee in the first place. The mere fact that the school invested some of the amount charged as development fee in some fixed assets, would not validate the charge itself. Consequently, the Committee is of the view that the school



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ought to refund the development fee amounting to Rs. 84,78,020 charged in 2009-10 and Rs. 95,78,556 charged in 2010-11.

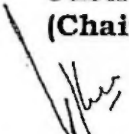
Summary of Recommendations:


As discussed supra, the school ought to refund the following amounts along with interest @ 9% per annum from the date of collection to the date of refund:

Particulars	Amount (Rs.)
Excess recovery of arrear tuition fee, arrear development fee, lump sum arrear fee and incremental tuition fee for 2009-10, as per order dated 11/02/2009	2,07,35,943
Development fee for 2009-10	84,78,020
Development fee for 2010-11	95,78,556
Total	3,87,92,519

Ordered accordingly.


Justice Anil Kumar (R)
(Chairperson)

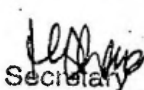

CA J.S. Kochhar
(Member)


Dr. R.K. Sharma
(Member)

Dated:11/06/2019



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000139

**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:

Tagore International School, East of Kailash, New Delhi-110065
(B-660)

Order of the Committee

Present: Sh. Vedant Verma, Advocate with Sh. Sandeep, Chartered Accountant, Sh. Nalin Chester, Admn. Manager and Sh. Rajiv Agarwal, Accountant of the school.

The Committee issued a questionnaire to all the schools (including this school) on 27/02/2012 which was followed by reminder dated 27/03/2012, eliciting information with regard to the arrear fee and fee hike effected by the school pursuant to order dated 11/02/2009 issued by the Director of Education. The school was also required to furnish information with regard to the arrear of salary paid and the incremental salary paid to the staff pursuant to the implementation of the recommendations of the 6th pay commission.

However, the school did not respond to the questionnaire issued by the Committee nor to the reminder. But the school submitted to the Dy. Director of Education -South (DDE), copies of its annual returns filed under Rule 180 of Delhi School Education Rules, 1973 and copies of fee statements for the years 2006-07 to 2010-11 alongwith a detail of the monthly salary paid to staff for the month of February 2009 as well as March 2009 relating to the period prior to



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implementation of the recommendations of VI Pay Commission and 000140
after its implementation respectively. The school also submitted a
detail of arrear salary paid to the staff for 32 months (January 2006
to August 2008), and copies of circulars issued to the parents of the
students regarding fee hike effected by the school pursuant to order
dated 11/02/2009 issued by the Director of Education, vide its letter
dated 27/02/2012. These documents were transmitted to this
Committee for its consideration by the DDE.

The Committee observed that as per the circulars issued to the
parents, the school hiked the tuition fee of the students of classes KG
to X by Rs. 400 per month w.e.f. 01/09/2008 and also collected lump
sum arrears of fee amounting to Rs. 3500 per student for the period
January 2006 to August 2008. The hike in fee for students of classes
XI & XII was Rs. 500 per month and the lump sum arrear of fee was
Rs. 4,500 per student. Since the fee was actually hiked with effect
from April 2009 the incremental fee for the period September 2008 to
March 2009 was also collected by way of arrears for seven months
amounting to Rs. 2,800/3,500 per student.

As the school had not submitted its reply to the questionnaire
issued by the Committee, a fresh questionnaire was issued to the
school on 12/09/2013, requiring the school to answer the queries
raised by the Committee as per its questionnaire dated 27/02/2012
and also additional queries regarding charging of development fee, the
manner of its utilisation, maintenance of earmarked development/



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depreciation reserve funds. The school, initially did not respond to this questionnaire also. The Committee issued two reminders on 30/09/2013 and 06/12/2013. Ultimately, the school responded and submitted its reply under cover of its letter dated 13/12/2013.

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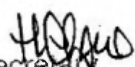
As per the reply submitted by the school, it implemented the recommendations of VI Pay Commission and started paying the increased salary w.e.f. 01/03/2009. Further, the school furnished the details of arrears of salary as per Sixth Pay Commission for the period January 2006 to August 2008 and September 2008 to February 2009. As per the details submitted, the total amount of arrear salary paid for the period January 2006 to August 2008 was Rs. 97,07,244 and that for the period September 2008 to February 2009 was Rs. 47,32,466.

With regard to fee hike, the school admitted having hiked the tuition fee w.e.f. 01/04/2009 and having recovered arrear fee at the rates which have been noticed above. However, the school did not furnish the total amount of arrear fee recovered by it.

With regard to development fee, the school submitted a chart showing development fee charged by it in different years. As per the chart, it started charging development fee from 2009-10 only. The total amount collected on this account was Rs. 5,30,000 in 2009-10 and Rs. 11,82,750 in 2010-11.



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It further stated that though development fee was treated as a capital receipt in the accounts of the school, no earmarked depreciation reserve fund account had been maintained by it. 000142

The Committee issued a notice dated 26/05/2015, requiring the school to furnish within 10 days, the complete break up of fee and salaries for the years 2008-09 to 2010-11, duly reconciled with its audited financials (including arrear fee and arrear salary pursuant to implementation of VI Pay Commission), copies of bank statements showing payment of arrear salaries, statement of account of the parent society running the school and details of its accrued liabilities of gratuity and leave encashment, besides copy of the circular issued to the parents regarding fee hike effected by the school.

The school sought extension of time for submission of the required information till 10th July 2015 as its Chartered Accountant who was maintaining the financial records of the school was not available.

The school submitted the required information under cover of its letter dated 23/07/2015. A notice of hearing was issued to the school on 27/12/2016, requiring it to appear before the Committee on 25/01/2017 to produce its books of accounts, fee and salary records and make submissions in justification of the fee hike effected by it. However, the hearing was postponed to 10/03/2017 on account of certain exigencies.



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Shri Rajiv Agarwal, Accounts Incharge of the school appeared but requested for an adjournment on account of some personal reasons. The matter was adjourned to 12/04/2017 when Ms. Nidhi Riwari, Accounts Assistant of the school appeared and again sought adjournment as its Administrative Officer was indisposed as he had undergone a surgical procedure.

The Committee observed that the information filed by the school in response to the notice dated 26/05/2015 vide its letter dated July 15, 2015 was scanty and incorrect on the face of it. It observed that as per copy of the circulars which were issued to the parents regarding fee hike, the school collected arrear fee for the period Sept. 2008 to March 2009 as well as lump sum fee for the period January 2006 to August 2008. However, in the fee and salary statement which was unsigned and filed by the school, it had not shown any arrear fee for the period 01/09/2008 to 31/03/2009. Further, the audited financials of the school did not give any detail in the schedules for in the annexures. It also observed that the information regarding accrued liabilities of gratuity and leave encashment, as furnished by the school, were mere figures without any calculations. Accordingly, the school was directed to file a correct response to the notice dated 26/05/2015 issued by the Committee. The matter was adjourned to 15/05/2017. However, the school did not file its corrected reply to the notice dated 26/05/2015. Ms. Nidhi Rewari who appeared on the previous date and was present on that day also stated that she did not



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understand what the Committee had required to file. The matter was accordingly adjourned to 02/06/2017 for filing correct information in response to the notice of the Committee.

The school furnished a revised statement of fee and salary on 1st June 2017. However, the Committee observed that even this statement did not reflect the correct picture. The total fee as shown in this statement did not match with the individual components of arrear fee regular tuition fee, development fee and fee under other heads. The information furnished with regard to arrear salary and regular salary also was at variance with the books of accounts produced before the Committee.

After detailed scrutiny, the Committee extracted and arrived at the following figures as reflected in the books of accounts of the school:

Fee	2008-09	2009-10	2010-11	Total
Arrear Fee for the period from 01/01/2006 to 31/08/2008	37,55,710	19,40,299	15,091	57,11,100
Arrear of tuition fee for the period from 01/09/2008 to 31/03/2009	0	44,03,900	15,300	44,19,200
Regular development fee	0	5,30,000	11,82,750	
Regular/Normal Tuition fee received for the year	3,71,43,371	4,49,87,513	5,23,79,095	
Fee under other heads (Please specify head wise) (Annual Fee)	37,37,100	40,96,455	45,45,450	
Total Fees as per Income & Expenditure Account	4,46,36,181	5,59,58,167	5,81,37,686	



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Salary	2008-09	2009-10	2010-11	Total
Arrear salary for 01/01/2006 to 31/08/2008	91,73,768	28,86,201	0	1,20,59,969
Arrear salary for 01/09/2008 to 28/02/2009				
Regular/Normal Salary paid for the year	2,10,08,970	3,48,72,229	3,81,64,938	
Total Salary as per Income & Expenditure Account	2,82,02,738	3,77,58,430	3,81,64,938	

000145

On examination of the salary records of the school, the Committee observed that the school had been paying salaries to two Trustees of the Parent Trust namely Sh. Deepak Sen and Sh. Nalin Chester. The authorized representatives of the school submitted that Sh. Deepak Sen is the Director of school while Sh. Nalin Chester, is the Sr. Administrative Officer of the school. They further submitted that there is a regular Principal of the school and the Director functions over and above the Principal.

The Committee examined the staff statement filed by the school under Rule 180 for the years 2006-07 to 2010-11 and observed that none of these two gentlemen are reported to the Directorate of Education as working in the school. The school was required to file complete details of payments made to these two gentlemen from 2006-07 to 2010-11. It was also directed that in case the school was making payment of any other nature to any member of the Trust, information in respect of such payments would also be filed.



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On perusal of the audited balance sheet of the school for the year ended 31st March 2008, the Committee observed that a sum of Rs. 1,31,59,098 was reflected on the asset side as Securities and Deposit. However, no detail of such Securities and Deposit had been furnished by the school. The school was directed to furnish the same. 000146

With regard to development fee, the Committee observed that the school, in its reply to the questionnaire issued by the Committee, had stated that development fee was treated as a Capital receipt. However, it was conceded in the aforesaid reply itself that neither any earmarked development fund account was maintained nor the depreciation reserve fund account was maintained. However, the Committee observed that even the treatment of development fee in the accounts was also as a revenue receipt and not a capital receipt, as contended by the school. During the course of hearing, the authorized representatives of the school conceded this position also.

The school filed its detailed written submissions on 27/06/2017. It furnished copies of salary registers extracts from Provident Fund Records and TDS Certificates issued to Sh. Deepak Sen and Sh. Nalin Chester in different years.

The school also furnished details of its "Securities and Deposit" as on 31/03/2008. Included in this amount were fixed deposit with Bank of Baroda and Oriental Bank of Commerce amounting to Rs.



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4,63,677 and investments and mutual funds amounting to Rs. 000147
1,25,00,000.

On 07/07/2017, Sh. Nalin Chester, Sr. Administrative Officer appeared with Ms. Dipali, Chartered Accountant and Ms. Nidhi, Accounts Assistant of the school.

The Committee observed that from the documents filed by the school, it could not be ascertained as to how much had been the amount of the total funds of the school, which had been secreted by way of salaries to these two gentleman since they joined the school. Accordingly, the school was required to file year wise detail of gross payments to them since the date of their appointment upto 31st March 2010.

The school filed details of salaries paid to Sh. Deepak Sen and Sh. Nalin Chester from 2003-04 to 2010-11. As per the details filed, Sh. Deepak Sen was paid a total salary of Rs. 43,90,940 from 2003-04 to 2009-10 while Sh. Nalin Chester was paid a total salary of Rs. 24,00,163 during the same period. Thus, a total sum of Rs. 67,91,103 was paid to the Trustees of the Parent Trust. Neither their employment in the school nor the details of payments to them were disclosed by the school to the Directorate of Education through its Staff Statement which it files every year as part of its annual returns under Rule 180. The Committee was of the prima facie view that this was a stratagem employed by the school to indirectly transfer the



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school funds to the Trustees of the school. As the school could not have transferred its funds to its parent trust in light of the decision of the Hon'ble Supreme Court in the cases of Modern School & ors vs. Union of India (2004) 5 SCC 583 and Action Committee Unaided Pvt. Schools vs. Director of Education & ors. 2009 (11) SCALE 77, the Committee considered that such transfer of funds ought to be considered as available with the school.

The Committee also observed that the school had been incurring capital expenditure in the shape of cost of fixed assets and repayment of loans taken for purchase of fixed assets, out of the fee received from the students. The school purchased fixed assets amounting to Rs. 1,07,66,551 from 2006-07 to 2009-10 and repaid loans to the tune of Rs. 18,02,132 during the same period. As per the decision of the Hon'ble Supreme Court in the case of Modern School (supra) such capital expenditure cannot form part of fee structure.

Thus, the total amount of funds either applied for capital expenditure or indirectly diverted to the Parent Trust by way of salaries to the Trustees amounted to Rs. 1,93,59,786 (67,91,103 +1,07,66,551+18,02,132). The Committee was, therefore, of the prima facie view that such capital expenditure incurred out of the fee of the students and funds transferred to the Parent Trust ought to be notionally considered as funds available with the school.



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The total funds actually available with the school were 000149
determined to be Rs. 1,13,57,808, as per the following details:

<u>Current Assets + Investments</u>		
Cash & Bank Balances	534,230	
Loans & Advances	1,130,883	
FDRs	463,677	
Investment in reliance Diversified Power Sector Fund	7,500,000	
Investment in Sundaram BNPPEO energy Fund	5,000,000	14,628,790
<u>Less: Current Liabilities</u>		
Expenses payable	3,270,982	3,270,982
Net Current Assets + Investments (Funds available)		11,357,808

Thus the Committee considered that the school had available with it a sum of **Rs. 3,07,17,594** (1,93,59,786 + 1,13,57,808).

The accrued liabilities of the school for gratuity and leave encashment as on 31/03/2010 amounted to Rs. 96,84,766, as per the information given by the school. Further, the Committee has also held that the schools ought to retain with them a reasonable reserve for future contingencies and ought not to utilise the entire funds available with it for implementing the recommendations of VI Pay Commission. The Committee has quantified the reasonable reserve to be equal to average expenditure on four months salary in the year 2009-10. The requirement of the school to keep funds in reserve for this purpose amounted to Rs. 1,16,24,076. Thus, the Committee determined that the school ought to keep a total sum of **Rs. 2,13,08,842** (96,84,766 + 1,16,24,076) in reserve



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for future contingencies and to meet its accrued liabilities of gratuity and leave encashment.

000150

Thus the funds which were available and deemed to be available with the school for implementing the recommendations of VI Pay Commission amounted to **Rs. 94,08,752** (3,07,17,594 - 2,13,08,842).

The total financial impact of implementing the recommendations of VI Pay Commission was **Rs. 2,59,23,228** (Rs. 1,20,59,969 paid as arrear salary and Rs. 1,38,63,259 being the incremental salary for 2009-10).

Thus, prima facie, there was a shortfall of **Rs. 1,65,14,476** (2,59,23,228 - 94,08,752), which the school needed to bridge by way of fee hike and recovering arrear fee in terms of order dated 11/02/2009 issued by the Director of Education.

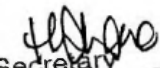
The total additional revenue generated by the school by recovering arrear fee and increasing tuition fee amounted to **Rs. 1,79,74,442** (57,11,100 as arrear fee for the period 01/01/2006 to 31/08/2008, Rs. 44,19,200 as arrear fee for the period 01/09/2008 to 31/03/2009 and Rs. 78,44,142 as incremental fee for the year 2009-10).

Thus, the school appeared to have been recovered a sum of **Rs. 14,59,966** (1,79,74,442 - 1,65,14,476) in excess of its requirement and to this extent the fee hike effected by the school was apparently not justified.

The school also collected development fee without fulfilling the mandatory pre conditions, as discussed supra, on fulfillment of which



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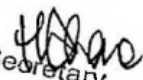

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only it could have recovered development fee from the students. It 000151
started charging development fee in 2009-10 after the issuance of order
dated 11/02/2009. Clause 14 of the aforesaid order clearly ordained
that the school could charge development fee only if the school was
maintaining a depreciation reserve fund equivalent to the depreciation
charged in revenue accounts of the school. This clause was a repetition
of direction no. 7 of the order dated 15/12/1999 issued by the Director
of Education which was upheld by the Hon'ble Supreme Court in the
case of Modern School (supra). The Committee by its mandate is bound
to make determinations keeping in view the principles laid down by the
Hon'ble Supreme Court in the case of Modern School. Since the school
was concededly not fulfilling the basic and substantive pre conditions of
treating development fee as a capital receipt and maintenance of
earmarked depreciation reserve fund, the school was not entitled to
charge any development fee in the first place. The Committee was thus,
of the prima facie view that the development fee charged by the school
amounting to Rs. 5,30,000 in 2009-10 and Rs. 11,82,750 in 2010-11
was contrary to the law laid down by the Hon'ble Supreme Court and
therefore, was not justified.

Accordingly, as per the calculations made by the Committee, the
school was apparently required to refund the excess fee recovered by it
for implementing the recommendations of VI Pay Commission and the
development fee charged by it in 2009-10 and 2010-11 and the aggregate
of such refund was Rs. 31,72,716 (14,59,966 +5,30,000+11,82,750).



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A copy of the calculation sheet prepared by the Committee was given to the school on 23/08/2017 for rebuttal if any.

000152

The school filed its written submissions in rebuttal of the calculation sheet on 10/10/2017. In the written submissions, the school contended as follows:

- (a) The Committee ought not to have considered the salary paid to Mr. Deepak Sen, Director and Mr. Nalin Chester, Administrative Officer of the school as diversion of funds to the parent society as they are whole time employees of the school and rendering useful services to it. On this issue, the submissions made by the school are reproduced verbatim hereunder:

"It will be worthwhile to mention here that there is no bar on member of the managing committee being nominated as members of the school managing committee. Furthermore, it is admitted that no member of the managing committee is entitled to any allowance or remuneration for being a member of the managing committee. However, there is no bar to employ a member of the managing committee on full time basis, for efficient and smooth functioning of the day to day and other related matter of the school.

That it is submitted that the autonomy of the Private Unaided Recognised Schools have been recognised by the Hon'ble Supreme Court of India in TMA Pai's case & other decided cases and Unaided Private Schools have been granted greater autonomy, in day to day functioning.

Private schools are comparatively competitive to give better and quality education to the children, so as to draw the parents to get their children enrolled in such schools. To achieve this goal, apart from maintaining the standard cost of establishment by engaging required/adequate teaching and non-teaching staff in relation to the strength of the students, the managing committee of the school has to strive to get the professional held to introduce the best methodology for disseminating education amongst their students, so to excel them every field including the curricular and co curricular activities.



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It is once again reiterated that regular teaching staff and principals of the schools are primarily engaged with their assignment to complete the syllabus and they are not generally aware about the changes in education system at the wider/world level scenario, therefore, professionals are employed in the school system by the MC of the school for this purpose. The academic staff alone is not ample to provide required impetus to the institution. Therefore, MC of the school had employed Sh. Deepak Sen, Director and Sh. Nalin Chester, Senior Administrative Officer for the purpose as elaborated above.

Mr. Deepak Sen, Director appointed in 1996 on a full time basis, is functioning like a second principal looking after the overall current and future plannings, the finance administration and legal issues, leaving the principal to be able to concentrate on the academics. Similarly, Sh. Nalin Chester was appointed as the Administrative Officer/Office In-charge of the school in the year 2001 on a full time basis and is looking after the day to day activities of the school which are vast in number requiring a full time dedicated staff. For your information, given below are details of the schools Administrative Staff, and attached at Annexure 1 is a list of the duties and role of the administrative officer of the school along with a list of some specific and important duties assigned to Sh. Nalin Chester requiring a great deal of responsibility....."

- (b) The Committee had overlooked a sum of Rs. 19,06,250 which is the amount of fee concession given to the students for the period 2006-07 to 2009-10.
- (c) The Committee had not included the salaries paid to transport staff, housekeeping staff and security staff engaged in the school while determining the requirement of reasonable reserve for future contingencies. The total salaries paid to such staff in 2009-10 amounted to Rs. 10,05,100.
- (d) The Committee had not included the PF contribution amounting to Rs. 11,99,957 in the year 2009-10 as part of salary for the purpose of determining the requirement of reserve for future contingencies.



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(e) The Committee had overlooked the secured loans to the tune of 000154 Rs. 16,38,131 which was reflected in the balance sheet of the school as on 31/03/2007.

(f) The Committee ought not to have added the cost of fixed assets to the amount of funds deemed to be available for implementation of the recommendations of VI Pay Commission as Rule 177 of the Delhi School Education Rules, 1973 provides for application of savings to meet the capital expenditure of the school.

Sh. Vedant Verma, Advocate, appeared on behalf of the school and was heard in the matter.

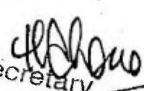
He restricted the challenge to the calculation sheet prepared by the Committee on the following grounds only :

A. The funds applied for capital expenditure and indirect diversion to the parent society amounting to Rs. 1,93,59,786 ought not to be added to the funds actually available for the purpose for the implementation of the recommendations of the 6th pay commission for the following reasons :

1. The repayments of loans and interest thereon Rs. 18,02,132 represented the repayments and interest of loans taken for purchase of one bus and two cars, which were purchased in usual course of the purposes of the school .
2. The salary paid to Mr. Deepk Sen and Mr. Nalin Chester amounting to Rs. 67,91,103 ought not to be considered as



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indirect transfer to the Parent Trust as these two gentlemen were 000155
on the regular pay rolls of the school and were performing useful
functions. Further, the salary paid to them was commensurate
with their qualifications, capability and functions.

3. The cost of fixed assets amounting to Rs.1,07,67,551 which the
Committee had included in the funds available ought not be so
considered, as Rule 177 of Delhi School Education Rules 1973
permitted the savings to be applied for capital expenditure.

B. It was also contended that the liability of the school with respect of
secured loans outstanding as on 31/03/2008 amounting to Rs.
5,48,921 ought also be considered while working out with the funds
available with the school for meeting its liabilities that arose on account
of implementation of the recommendations of the 6th pay commission.

C. It was further contended that the amount which the Committee
had estimated as reasonable reserve for future contingencies equal into
4 months' salary for the year 2009-10, ought also be calculated in
respect of a contractual employees and in respect of the expenditure of
employees provident fund, which are a part of salary but shown
separately in the Income and Expenditure account.

D. Lastly with regard to development fee it was conceded that the
school was not fulfilling the prescribed pre conditions like maintenance of
earmarked development fund and depreciation reserve funds, but it was
submitted that the school was treating the same as a Capital receipt and
had been more or less utilized by it for purchase of furniture fixture and



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school equipments and to the extent it was so utilized, the school ought to be given necessary relief. Further with regard to the refund of development fee for the year 2010-11, it was contended that this ought not be recommended as this Committee does not have jurisdiction to consider the fee for the year 2010-11.

000156

Determinations & Reasons:

Before discussing the contentions raised by the school in its written submissions and the oral submissions made by the Ld. Counsel who appeared for the school, it needs to be stated that as per the preliminary calculations of the Committee, the school was, prima facie, required to refund a sum of Rs. 31,72,716 on account of excess fee hiked and the development fee recovered by the school in 2009-10 and 2010-11.

In view of the fact that the Committee is inclined to accept the submissions made by the school with regard to the salary paid to Sh. Deepak Sen and Sh. Nalin Chester amounting to Rs. 67,91,103 from 2003-04 to 2009-10, which the Committee considered as indirect diversion of funds to the Trust running the school in its preliminary calculations, the other submissions made and contention raised by and on behalf of the school, the Committee need not be discussed as the result of the acceptance of the submissions on this issue would result in the school not having to make any refund.



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We give below the reasons for not considering the salaries paid to the aforementioned persons as indirect transfer of funds to the Parent Trust.

The transfer of funds to the parent society or trust running the school is prohibited vide the judgments of the Hon'ble Supreme Court in the cases of Modern School (supra) and Action Committee Unaided Pvt. School (supra) as it was considered that such transfers would be resulting in profiteering by the Schools or the Societies or Trusts running them.

In this case, there is no direct transfer of funds from the school to the parent trust. What has happened is that two of the Trustees have been paid salaries out of the school fund. The Ld. Counsel is right in contending that there is no bar under the law on employment of a member of the Managing Committee (Trustee) in the school. What has to be guarded is that the school funds may not go into the coffers of the persons who are running the trust or the society. If the trustees are properly qualified and are paid remuneration which is commensurate to their qualification and they are rendering useful services to the school, no objection can be taken to payment of salary to them merely for the reason that they happen to be the trustees of the parent trust. However, if it is found that the transfer of funds to the trust is being disguised as salary to the trustees who render no service to the school, such payments would be considered as disguised transfers.



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The school has submitted that they are rendering useful services to it in the field of administration and management for which the academic staff may not be so competent. The Committee agrees with this submission. In fact, Sh. Nalin Chester had appeared before this Committee on a number of occasions and was found to be well versed with the affairs of the school and did not appear to be a dummy employee. Moreover, the amount of salaries paid to Sh. Sen and Sh. Chester in different years do not appear to be fantastic as would be the case if they were merely used as conduits for transfer of funds to the trust. Sh. Deepak Sen was paid an average salary of Rs. 31,000 per month in 2003-04 which rose to about Rs. 52,000 per month in 2008-09. Likewise, Sh. Nalin Chester was paid an average salary of Rs. 18,000 per month in 2003-04 which rose to about Rs. 30,000 per month in 2008-09. The salaries paid to them are reasonable and proper deductions have been made for provident fund and Income Tax.

Although, the Committee does not agree with the contention of the school that their details were not required to be given in the staff statement which is filed by the school as part of annual returns under Rule 180, such omission can at best be termed to be a technical default on part of the school for which the Director of Education is the competent authority to take appropriate action. Such a default on part of the school cannot be a reason to disregard the payment of salary to them.

In view of the foregoing discussion, the Committee is of the view that no intervention is required to be made with regard to the arrear fee recovered by the school, the fee hike effected by it and



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the development fee charged by it in the years 2009-10 and 2010-11
pursuant to order dated 11/02/2009 issued by the Director of
Education.

000159

Justice Anil Kumar (R)
(Chairperson)

CA J.S. Kochar
(Member)

Dr. R.K. Sharma
(Member)

Dated:14/06/2019



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

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

In the matter of:

Deep Public School, Vasant Kunj, New Delhi-110070 (B-446)

Order of the Committee

Present Sh. Lal Chand Aggarwal, Asstt. Accountant of the school.

The Committee issued a questionnaire to all the schools (including this school) on 27/02/2012, which was followed by a reminder dated 27/03/2012, eliciting information with regard to the arrear fee and fee hike effected by the school pursuant to order dated 11/02/2009 issued by the Director of Education. The school was also required to furnish information with regard to the arrear of salary paid and the incremental salary paid to the staff pursuant to the implementation of the recommendations of the 6th pay commission.

The school did not respond either to the questionnaire issued by the Committee or to the reminder sent by the Committee. However, in the meantime, the annual returns filed by the school under Rule 180 of the Delhi School Education Rules, 1973 were received by the Committee from the office of the concerned Dy. Director of Education. The Committee issued a notice dated 31/05/2013 to the school requiring it to produce copies of fee structures, fee receipts, books of accounts, banks statements, salary payment registers and copies of Provident Fund and TDS returns for the years 2008-09 to 2010-11, before the Audit Officer of the Committee. The school was also issued a revised questionnaire containing all the queries as



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per the original questionnaire dated 27/02/2012, besides additional queries relating to collection and utilisation of development fee and maintenance of earmarked development/depreciation reserve funds in order to ascertain whether the school was complying with the necessary pre conditions for charging development fee as laid down by the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583.

In response to the notice issued by the Committee, Sh. Gulshan Gopal, Admn. Officer and Sh. Prakash Verma, Manager of the school appeared before the Audit Officer of the Committee and produced the records which were asked for. The school also filed its reply to the revised questionnaire issued by the Committee, to which we will advert to a little later.

The records produced by the school were examined by the Audit Officer of the Committee and the observations recorded by him are not considerable as he merely reproduced what was stated by the school in its reply to the revised questionnaire.

As per its reply to the questionnaire, the school implemented the recommendations of VI Pay Commission and started paying the increased salary with effect from 01/04/2009. It also admitted having increased the fee with effect from 01/04/2009 pursuant to order dated 11/02/2009 issued by the Director of Education. It also enclosed an Annexure showing that it had recovered arrear fee to the tune of Rs. 33,40,905 upto 31/03/2011, but had paid arrear salary to the staff only to the extent of Rs. 11,62,000 till that date. However, it claimed to have paid a further sum of



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Rs. 21,98,557 from 01/04/2011 upto the date of giving reply to the questionnaire i.e. 27/06/2013. While it enclosed bank statements for the years 2009-10 and 2010-11 showing payment of arrears to the staff in those years, no bank statements were filed in respect of its claim of having paid Rs. 21,98,557 between 01/04/2011 and 27/06/2013.

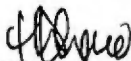
With regard to development fee, the school stated that it charged development fee in all the five years for which the information was sought by the Committee. It further stated that the development fee was treated as a revenue receipt. However, with regard to query regarding maintenance of earmarked bank accounts/FDRs depreciation reserve fund and unutilised development fund, the school vaguely stated that depreciation reserve fund was maintained by the school and funds were utilised from time to time for purchase of new assets. However, the same as also the development fee had been fully utilised for creation of fixed assets by the school. However, as per the details of utilisation of development fund which were furnished by the school, it transpired that the same had been utilised for meeting its revenue expenses like repair and maintenance of school building and other assets. The development fee collected by the school in the years 2009-10 and 2010-11, with which this Committee is concerned, amounted to Rs. 9,19,800 and Rs. 13,05,700 respectively.

Based on the information furnished by the school and its audited financials, preliminary calculations were made by the Chartered Accountants (CAs) deputed by the Directorate of Education to assist this Committee and they determined that prima facie the school possessed



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sufficient funds of its own and did not need to recover any arrear fee or hike any tuition fee for meeting its increased expenditure on salary of staff on implementation of recommendations of VI Pay Commission. Consequently, the school; prima facie, was not justified in recovering arrear fee to the tune of Rs. 33,40,905 and incremental fee for the year 2009-10, to the tune of Rs. 42,73,200.

The Committee issued a notice dated 09/09/2014, requiring the school to furnish within 10 days, the complete break up of fee and salaries for the years 2008-09 to 2010-11 (including arrear fee and arrear salary pursuant to implementation of VI Pay Commission), copies of bank statements showing payment of arrear salaries, statement of account of the parent society running the school and details of its accrued liabilities of gratuity and leave encashment, and a copy of the circular issued to the parents regarding fee hike. The school was also required to appear before the Committee on 23/09/2014 and produced its accounting records, fee records and salary records for the years 2006-07 to 2010-11 for examination by the Committee. The Committee also forwarded a copy of the preliminary calculation sheet prepared by the CAs attached to this Committee for rebuttal, if any.

Sh. Sushil Mittal, Chartered Accountant appeared with Sh. Prakash Verma, Manager and Sh. Gulshan, Administrative Officer of the school. They filed written submissions dated 23/09/2014 in rebuttal of the preliminary calculation sheet and were partly heard by the Committee.

They raised the following contentions:



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a. The Committee had calculated the increase in tuition fee on the basis of total students studying in the school without excluding the students under EWS category. If such students were excluded the incremental fee in 2009-10 would be Rs. 37,70,400 (instead of Rs. 42,73,200) taken by the Committee.

b. The incremental salary in 2009-10 had been taken by the Committee by extrapolating for 12 months, the monthly difference in salary for the month of March 2009 and April 2009 (when the recommendations of VI Pay Commission were implemented). The method adopted by the Committee was not appropriate and the Committee ought to have taken the difference in salary and PF contribution for the years 2008-09 and 2009-10 as per the audited financials of the school. Had such difference been considered the incremental salary in 2009-10 would have been Rs. 46,27,286 instead of Rs. 28,17,948 taken by the Committee. The preliminary calculations made by the CAs were not disputed on any other score.

During the course of hearing, the Committee observed that the school had not furnished the information that was required by the Committee vide notice dated 09/09/2014. Further, it came out during the course of hearing that the school had let out a part of its building to a bank and its rent was being diverted to the Parent Society and was not coming to the coffers of the school. The school was required to furnish the details by 15/10/2014.

The school filed the details as per notice dated 09/09/2014 vide its letter dated 15/10/2014. The following figures which are relevant for the



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purpose of the necessary calculations are extracted from the details furnished by the school:

Particulars	2008-09 (Rs.)	2009-10 (Rs.)	2010-11 (Rs.)	Total (Rs.)
Arrear fee received	6,10,735	15,07,730	12,22,440	33,40,905
Arrear salary paid	0	3,89,000	7,73,000	11,62,000

Particulars	2008-09 (Rs.)	2009-10 (Rs.)	Increase in 2009-10
Regular fee	2,36,21,940	2,53,95,235	17,73,295
Regular Salary	1,13,04,422	1,59,31,708	46,27,286

Besides, the school also furnished the details of the rent received by the Society from the bank. As per the details furnished, the society received a total amount of **Rs. 1,59,180** as rent in the year 2008-09, **Rs. 1,59,180** in 2009-10 and **Rs. 1,75,096** in 2010-11.

The school also filed copies of the account of the Parent Society as appearing in its books. As per the statements filed, the school transferred a sum of **Rs. 18,00,188** (net in 2008-09) and **Rs. 1,19,416** (net in 2009-10) to its parent society Sh. Kundan Lal Memorial Education Society. Like wise, a sum of **Rs. 2,74,931** was transferred to its sister school i.e. Deep International School in 2008-09 and **Rs. 4,61,030** in 2009-10. In 2009-10, a sum of **Rs. 7,10,914** was also transferred to Deep International College for Education, another sister institution.

The school also filed details of its accrued liability of gratuity which was projected at **Rs. 41,91,389** as on 31/03/2010.



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It is noticeable that as per the reply to the questionnaire filed by the school, it claimed that a sum of Rs. 33,60,557 was paid as arrear salary to the staff but as per the information furnished vide letter dated 15/10/2014, the total amount paid as arrear salary was Rs. 11,62,000 upto 31/03/2011. No supporting evidence was filed by the school to show that the remaining amount of Rs. 21,98,557 had been paid to the staff after 31/03/2011. The authorized representatives of the school sought some more time to furnish the required evidence.

Strangely, the school vide its letter dated 13/01/2015 claimed that the total arrears paid to the staff till that date were Rs. 55,84,613 and a further sum of Rs. 30,67,153 was still payable. It was also mentioned that the aforesaid amount included a lump sum payment of Rs. 20.00 lacs which was paid to Ms. Shobha Upadhyay (TGT) as per the Supreme Court order on account of her present and future dues, a copy of the Supreme Court order was placed on record). However, a detail showing gross amount of arrears due vis a vis the payment made and balance due, which was enclosed with the letter showed that the gross amount of arrears was Rs. 61,28,285 out of which a sum of Rs. 30,61,132 had been paid and Rs. 30,67,153 was still outstanding. The detail did not include any amount due to Ms. Shobha Upadhyay.

However, the matter could not be concluded on account of resignation of Justice Anil Dev Singh as Chairman of the Committee.

After reconstitution of the Committee and in view of the apparent contradictions in the stand taken by the school from time to time, a fresh



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notice of hearing was issued on 22/06/2017. No body appeared in response to the notice but the school filed a letter dated 07/07/2017 stating that the school suffered loss of documents, furniture etc. as the store room of the school had got fire. The incident of fire was reported to the Police. A copy of a letter dated 16/03/2015 addressed to the SHO Vasant Kunj was also filed stating that there was a fire in the store room of the school on 14/03/2015 due to a short circuit in which school records and furniture were destroyed (including accounts record/documents (mainly bills/vouchers/salary statement etc.).

A fresh notice of hearing was issued to the school on 20/02/2018 requiring it to appear before the Committee on 21/03/2018.

Sh. Lal Chand Aggarwal, Asstt. Accountant of the school appeared and filed a letter dated 21/03/2018, reiterating what had been stated by the school in its letter dated 07/07/2017. He was asked by the Committee as to whether the Police had registered FIR on the complaint of the school. He stated that he was not aware of the same. He further submitted that appropriate decision may be taken on the basis of the records that had been produced by the school on the previous occasions.

Discussion and Determinations:

The moot point which arises for determination by the Committee is how much were the funds already available with the school before effecting the fee hike. Further, it is required to be determined as to how much was the additional expenditure incurred by the school by way of payment of



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arrear salary and incremental salary for the year 2009-10 and what was the extent of fee hike to which the school could resort by way of recovering the arrear fee from the students and hiking the regular fee with effect from 01/04/2009. As against this, how much was the arrear fee actually recovered by the school from the students and how much was the incremental fee recovered in 2009-10. Another factor which is to be determined by the Committee is whether the school was entitled to recover any regular development fee and whether the school was fulfilling the essential pre conditions laid down by the Hon'ble Supreme Court for collection of development fee.

Funds already available with the school before fee hike:

As per the preliminary calculations prepared by the CAs, the school had a sum of **Rs. 90,63,895** available with it as on 31/03/2008, as per the following details:

<u>Current Assets + Investments</u>		
Cash in hand	823,698	
Cash at Bank	1,611	
Fixed Deposits	210,092	
Loan to Shri Kundan Lal Edn. Society & Deep Intl. School	11,497,789	
Loans & Advances	809,386	13,342,576
<u>Less: Current Liabilities</u>		
Security from Students, Canteen and Uniform	1,492,655	
Amount Payable	2,499,106	
Sundry Creditors	260,270	
Overdraft from UBI	26,650	4,278,681
Net Current Assets + Investments (Funds Available)		9,063,895



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This calculation has not been disputed by the school at any stage. This was also in consonance with the audited balance sheet as on 31/03/2008. The Committee accordingly determines that the school had available with it funds to the tune of Rs. 90,63,895 as on 31/03/2008.

Funds transferred to the parent society and other sister institutions:

It would be observed from the above table that the school had given out loans to its parent society Sh. Kundan Lal Education Society and a sister school i.e. Deep International School. The aggregate amount of loans to these two entities as on 31/03/2008 was Rs. 1,14,97,789. This had already been taken into account while working out the funds available with the school as on that date. Further, as noticed supra, the school transferred a sum of Rs. 18,00,188 (net in 2008-09) and Rs. 91,19,416 (net in 2009-10) to its parent society. A sum of Rs. 2,74,931 was also transferred to its sister school i.e. Deep International School in 2008-09 and Rs. 4,61,030 in 2009-10. In 2009-10, a sum of Rs. 7,10,914 was also transferred to Deep International College for Education, another sister institution. Thus in 2008-09 and 2009-10, the school transferred a total amount of Rs. 1,23,66,479 either to its parent society or to its sister institutions, including a college. As per the judgment of the Hon'ble Supreme Court in the case of Modern School (supra), the school could not have done so. Accordingly, the Committee will consider that the school had available with it a further sum of Rs. 1,23,66,479 which could have been utilised for meeting its additional liabilities on implementation of the recommendations of VI Pay Commission.



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Diversion of rental income of the school to its parent society:

Any income accruing on account of use of the school building accrues to the school. However, the rental income from letting out a portion of the school building to a bank was diverted at source to the parent society. The amount so diverted in 2008-09 and 2009-10 was **Rs. 3,18,360** as noticed above. The Committee would consider this amount also to be available with the school.

Arrear Fee:

So far as the arrear fee is concerned, there is no dispute that the school recovered a total of **Rs. 33,60,557** on this account and the whole of it had been recovered by 31/03/2011.

Arrear Salary:

However, with regard to payment of arrear salary, the stand taken by the school at various stages of the proceedings is contradictory. In reply to the questionnaire, the school submitted that it had paid a sum of Rs. 33,60,557 till date i.e. the date of reply which was 27/06/2013. Till 31/03/2011, it admittedly paid only Rs. 11,62,000. This was stated in reply to the questionnaire dated 27/06/2013 as well as in its letter dated 15/10/2014. The same also agrees with the audited financial of the school.

With regard to payment of arrear salary after 31/03/2011, the school in its reply to the questionnaire stated that it had paid Rs. 21,58,557 from 01/04/2011 to 27/06/2013. However, vide its letter dated 13/01/2015, it



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furnished details of total arrear payments which amounted to Rs. 30,61,132 till that date. Excluding the amount of Rs. 11,62,000 which the school had paid upto 31/03/2011, the payment made by the school after 31/03/2011 amounted to Rs. 18,99,132 as per its own submission. It defies logic that when it had paid Rs. 21,58,557 upto 27/06/2013, how the amount paid upto 13/01/2015 got reduced to Rs. 18,99,132. Moreover, despite repeated opportunities, the school did not produce any evidence of payment of arrear salary after 31/03/2011. It neither produced its bank statements for the period after 31/03/2011 showing such payments nor its audited financials nor its books of accounts for the years after 2010-11. The school tried to create confusion by filing the order of the Hon'ble Supreme Court in the case of Ms. Shobha Upadhyay and filing copies of the demand draft paid to her in view of the settlement recorded with her in the Supreme Court, as this payment was neither towards arrears of VI Pay Commission nor was included by the school in the details of arrear payments filed by it on 13/01/2015. Even if the contention of the school regarding destruction of its records in a fire that took place on 14/03/2015 is accepted (although the Committee believes that it was a merely a cover up action on part of the school to lodge a non cognizable report with the police regarding fire), nothing prevented the school from procuring duplicate copies of the statements of its accounts from the bank. Moreover, there is no explanation from the school that when it had collected arrear fee to the tune of Rs. 33,60,557 by 31/03/2011, why it did not pay arrear salary to the staff atleast to that extent by 31/03/2011. The Committee, therefore, of the



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opinion that for the purpose of calculations, the arrear salary paid by the school has to be taken to be **Rs. 11,62,000** only.

Incremental Fee:

The school in its response dated 23/09/2014 to the preliminary calculation sheet, disputed the calculations made by the CAs attached to this Committee on the ground that the fee of EWS students had not been excluded. It gave its own calculations as per which the annual increase of tuition fee in 2009-10 was **Rs. 37,70,400** as against 42,73,200 taken by the CAs. The Committee accepts the contention of the school and the figure of incremental fee given by it.

Incremental Salary:

The school in its letter dated 23/09/2014 which was filed in rebuttal of the preliminary calculation sheet prepared by the CAs contended that the net increase in salary for the year 2009-10 was Rs. 46,27,286 instead of Rs. 28,17,948 taken by the CAs by disputing the method adopted by the CAs of extrapolating for 12 months the monthly difference in salary for the month of March 2009 and April 2009. It stated that the actual figures of increase in salary as reflected in the Income & Expenditure Accounts of 2008-09 and 2009-10 ought to be considered. The same was reiterated by the school vide its letter dated 15/10/2014. The Committee accepts the contention of the school and the incremental salary for 2009-10 would be taken as **Rs. 46,27,286** in the final calculations.

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Conclusion:

The school had available with it a sum of Rs. 90,63,895 at the threshold as on 31/03/2008. A further sum of Rs. 1,23,66,479 is also deemed to have available with the school in 2008-09 and 2009-10 on account of transfer to its parent society and sister institutions. A further amount of Rs. 3,18,360 also became available with the school in 2008-09 and 2009-10 on account of diversion of rental income to the parent society. Thus the school had available with it a sum of **Rs. 2,17,48,734** (90,63,895+1,23,66,479+3,18,360). As against this, the school had accrued liabilities on account of gratuity to the staff to the tune of **Rs. 41,91,389**. Further, the Committee has taken a consistent view that the schools ought to maintain a reasonable reserve equivalent to four months average expenditure on salary in 2009-10, for any future contingency. The requirement of the school for such a reserve was to the tune of **Rs. 53,10,569**

Thus, the school could have utilised the balance amount of **Rs. 1,22,46,776** (2,17,48,734 - 41,91,389 - 53,10,569) for meeting its additional liabilities on account of implementation of the recommendations of VI Pay Commission.

The additional liabilities that befell on the school on account of implementation of the recommendations of VI Pay Commission amounted to Rs. 11,62,000 towards arrear salary and Rs. 46,27,286 towards incremental salary for 2009-10, totaling **Rs. 57,89,286**. Even if the claim of the school that it paid Rs. 30,61,132 as arrear salary and not Rs. 11,62,000, the school



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had ample funds of its own to meet the additional expenditure on implementation of the recommendation of VI Pay Commission.

Thus the Committee is of the view that the recovery of arrear fee and fee hike effected by the school pursuant to order dated 11/02/2009 issued by the Director of Education was wholly unjustified. The school recovered additional fee to the tune of **Rs. 71,30,957** (33,60,557 as arrear fee and Rs. 37,70,400 as incremental fee for 2009-10). The school ought to refund this amount to the students along with interest @ 9% per annum from the date of collection to the date of refund.

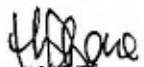
Development Fee:

The school did not treat the development fee as a capital receipt but merely as an additional source of revenue and the same was also utilised for incurring revenue expenses as per the school's own submissions. The development for unaided private schools was allowed to be charged pursuant to an order dated 15/12/1999 issued by the Director of Education on acceptance of the recommendations of Duggal Committee which was constituted to examine a similar issue of fee hike consequent to implementation of the recommendation of V Pay Commission. The report of the Duggal Committee was considered by the Hon'ble Supreme Court in the case of Modern School (supra).

One of the issues admitted by the Hon'ble Supreme Court for determination was with regard to development fee. The exact issue framed by the Court was:



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

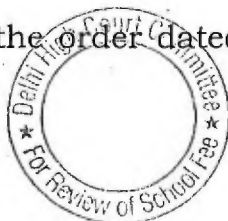
The Hon'ble Supreme Court held as follows:

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

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

It is evident from a bare reading of the above extract that development fee could be collected by the school only for purchase/upgradation of furniture and fixtures and equipments and had to be treated as a capital receipt. It was not allowed to be charged as an additional source of revenue to the school for incurring revenue expenditure.

The Direction No. 7 of order dated 15/12/1999 was repeated verbatim as clause no. 14 of the order dated 11/02/2009 issued by the Director of



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Education which is relevant for the present purpose. The only change that was made in clause no. 14 of the order of 11/02/2009 was that instead of 10%, the schools were permitted to charge development fee upto a maximum of 15% of tuition fee.

The Committee is therefore of the view that the development fee charged by the school in 2009-10 and 2010-11 pursuant to order dated 11/02/2009 was not justified. As noticed supra, the amount of development fee recovered in these two years was **Rs. 9,19,818** and **Rs. 13,05,700** respectively.

Summary of recommendations:

The school ought to refund the following sums to the students along with interest @ 9% per annum from the date of collection to the date of refund:

Particulars	Amount refundable (Rs.)
Arrear Fee and incremental fee pursuant to order dated 11/02/2009	71,30,957
Development Fee charged in 2009-10	9,19,818
Development Fee charged in 2010-11	13,05,700
Total	93,56,475

Ordered accordingly.



Dated: 18/06/2019

Justice Anil Kumar (R)
(Chairperson)

CA J.S. Kochar
(Member)

Dr. R.K. Sharma
(Member)

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000177

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

CAUSE LIST FOR JUNE 2019

Cause List for Monday, 3rd June 2019

S. No.	Cat. No.	School Name & Address
1	B-414	Jindal Public School, Dashrathpuri
2	B-614	Holy Cross School, Najafgarh
3	B-638	Sneh International School, New Rajdhani Enclave
4	B-301	Review - Bharti Public School, Mayur Vihar

Cause List for Tuesday, 4th June 2019

S. No.	Cat. No.	School Name & Address
1	B-202	St. Gregorious School, Dwarka
2	B-290	Kasturi Ram International School, Narela

Cause List for Thursday, 6th June 2019

S. No.	Cat. No.	School Name & Address
1	B-49	Sachdeva Public School, Sect.13, Rohini
2	B-379	DAV Public School, East of Kailash (Kailash Hills)

Cause List for Monday, 10th June 2019

S. No.	Cat. No.	School Name & Address
1	B-119	Salwan Public School, Rajinder Nagar
2	B-424	Pragati Public School, Dwarka
3	B-277	Hans Raj Smarak Sr. Sec. School, Dilshad Garden

Cause List for Tuesday, 11th June 2019

S. No.	Cat. No.	School Name & Address
1	B-148	Venkateshwar International School, Dwarka
2	B-656	St. Thomas' School, Mandir Marg

Cause List for Friday, 14th June 2019

S. No.	Cat. No.	School Name & Address
1	B-389	BGS International School, Dwarka
2	B-660	Tagore International School, East of Kailash



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Cause List for Monday, 17th June 2019

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S. No.	Cat. No.	School Name & Address
1	B-151	G D Goenka Public School, Vasant Kunj
2	B-286	Mount Abu Public School, Sect.5, Rohini

Cause List for Tuesday, 18th June 2019

S. No.	Cat. No.	School Name & Address
1	B-302	Bharti Public School, Swasthya Vihar
2	B-446	Deep Public School, Vasant Kunj



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Jindal Public School, Dashrathpuri, Delhi

Present: Sh. Naveen K. Mahajan, FCA, Sh. Banney Singh, UDC, Sh. Sansar Chand, Accountant and Sh. Anuj Mahajan, CA (Associate) of school.

The Ld. Ar appearing for the school has been heard on the written submissions dated 13/05/2019 made by the school controverting that the calculation sheet prepared by the Committee. The calculation sheet has been controverted on the following grounds:

- (a) Rs. 54,87,048 which the Committee has considered as diversion of fee towards capital expenditure, ought not be considered as diversion as the school has only provided the required infrastructure for upgradation/expansion/development of the school, which the managing committee of the school is obliged to provide under the law. (In this connection, reference has been made to Rules 181 to 185 of the Delhi School Education Rules, 1973. It is also contended that the school is entitled to make such capital expenditure as provided under Rule 177 and such capital expenditure can rightfully be made out of the fee received from the students. Without prejudice, it is stated that the calculation of Rs. 54,87,048 is erroneous, in as much as by calculating the development fee received to the extent available for capital expenditure, the Committee has inadvertently taken the figure of depreciation charged in 2009-10 as Rs. 20,60,442 instead of Rs. 28,60,442.

The Committee has verified the factual in accuracy pointed out in the calculation sheet with reference to the audited accounts of the school for the year 2009-10 and accepts the contention of the school. The necessary rectification will be made while making the final recommendations.

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

The Committee has reverified the figure of Rs. 49,55,601 taken by it in the calculation sheet as payment of arrears and observes that the same is in agreement with the audited financials of the school. On being asked to furnish the details and the mode of payment of the aforesaid sum of Rs. 16,10,637, the authorized representative of the school concedes that this payment has not yet been made.

- (c) It is contended that the school has a liability of Rs. 12,40,982 towards property tax (vacant land tax upto March 2010) in the statement giving details of such liability, the school claims that from 2003-04 to 2009-10, Property tax amounting to Rs.



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H. J. Jha
Secretary


5,15,424 was due and a sum of Rs. 7,25,558 is payable as interest thereof. On being asked to provide the basis of this liability as it is not reflected in the audited balance sheet of the school, the authorized representative submits that some other schools are paying the vacant land tax and this school may also have to pay at a future date although it is admitted that so far no demand notice have been received from the Municipal Corporation of Delhi.

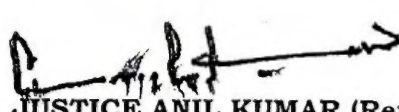
- (d) In the calculation sheet submitted by the school, it has claimed that a sum of Rs. 26,69,950 was the loan outstanding against the FDR as on 31/03/2008. It is submitted that while FDRs taken into the computation of funds available with the school, the corresponding in respect of loan against such FDRs has not been taken into account by the Committee.

The Committee has perused the balance sheet of the school as on 31/03/2008 and observes that the loan against FDR outstanding as on that date was Rs. 21,83,856 and not Rs. 26,69,915 as claimed by the school. Further, the Committee has observed that the capital fund of the school as on 31/03/2008 was in the negative zone to the tune of Rs. 33,32,586 as on 31/03/2008. The parent society of the school ought to have replenish this negative balance by inducting more funds to the school and in that eventuality they would have been no need to take any loan against FDRs.

No other submission has been made. Accordingly the hearing is concluded and orders are reserved.

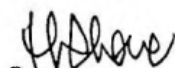

Dr. R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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03/06/2019

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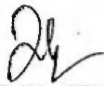
B-614

Holy Cross School, Najafgarh, Delhi

Present: Sr. Veronica Fernandes, Principal and Mr. Vikesh Ku. Pal, Accountant of the school.

The Committee has prepared a revised calculation sheet taking into account the submission made by the school vide its written submission dated 19/09/2017. The amount which the school transferred to the society by way of maintenance charges which the Committee took into its calculation earlier amounted to Rs. 43,20,000. The same has been revised to Rs. 37,90,000 on the submission made by the school. Accordingly the amount apparently refundable by the school stands reduced from Rs. 65,59,301 to Rs. 60,29,301. The principal of the school who is present at the time of hearing submits that she needs to check with the Finance department of the school whether the school rectified the accounting of development fee from revenue receipt to capital receipt in the subsequent years and also whether development/depreciation reserve fund had been earmarked in the subsequent years so as to cover the years 2009-10 and 2010-11. She accordingly requested for an adjournment.

The matter is adjourned to 5th July 2019 at 11.00 a.m. for the limited purpose of ascertaining the aforesaid aspect.



Dr. R.K. SHARMA
MEMBER



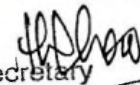
J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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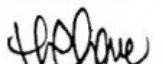
St. Gregorious School, Dwarka, Delhi

Present: Sh K.K. Khanna, Chartered Accountant, Sh. Sameer Khanna, Chartered Accountant and Sh. Cyril K. Philip, Accountant of the school.

The school filed Receipts and Payments accounts for the years 2006-07 to 2010-11 on 14/05/2019. The written submissions filed by the school on 10/11/2017 have been checked with reference to the calculation sheet which was supplied to the school and the Receipts and Payments Accounts which have now been filed. The Committee observes certain discrepancies for explanation of which the Ld. authorized representative appearing for the school seeks some time. The discrepancies are broadly as follows:

- (1) In the calculation sheet prepared by the Committee which were based on the Balance Sheet of the school and pre primary school as consolidated with the Balance Sheet of the society, the Committee had considered the funds transferred by the pre primary school to the parent society between 2005-06 and 2009-10 which aggregated Rs. 1.00 cr. Included in this was Rs. 27.00 lacs in 2006-07 and Rs. 25.00 lacs in 2009-10 besides Rs. 25.00 in 2005-06. While the amount for the year 2005-06 is not verifiable as the school has not filed the Receipts and Payments account for that year. The figure of Rs. 27.00 lacs for 2006-07 does not match with the Receipts and Payments Account which shows only Rs. 7.00 lacs. Similarly for 2009-10, the figure of Rs. 25.00 lacs does not match with Receipts and Payments Account which shows no funds transferred at all.
- (2) The school had submitted that the Committee has overlooked the figure of Rs. 25.00 lacs which the pre primary school has to transfer to the society against amount spent by society from time to time for and on behalf of the pre primary school. The Committee observes that the school has not filed Balance Sheet of the independent pre school unit and calculations have been made by the Committee based on the break up available in the consolidated Balance Sheet of the society, which shows no such liability of pre primary school. The school will file Balance Sheets of the independent pre primary unit for the years 2006-07 to 2009-10 along with a statement of ledger accounts of the society as appearing in the books of pre primary school covering the period in which the transaction of Rs. 25.00 lacs took place.
- (3) The school has contended that while calculating the incremental tuition fee for the year 2009-10, the fee concession for EWS students amounting to Rs. 37,61,110 has not been taken into account by the Committee. The Committee notes that this sum of Rs. 37,61,110 pertains to the year 2008-09, the corresponding figure for 2009-10 amounts to Rs. 40,50,670. The Committee will

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04/06/2019

000183

factor in both the above amounts while making the final calculations.

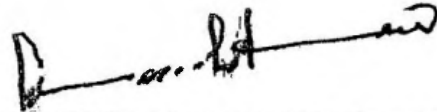
At the request of the authorized representative of the school, the matter is adjourned to 12/07/2019 at 11.00 a.m.



Dr. R.K. SHARMA
MEMBER



J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Kasturi Ram International School, Narela, Delhi

Present: Sh. Sunny Bansal, Manager of the school.

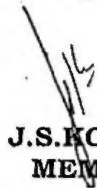
The school has produced the print outs of its books of accounts maintained in tally software for the year 2009-10 only. The Committee had directed the school to produce the print outs for both the years 2008-09 and 2009-10. Primarily the books for 2008-09 were required to be verified to test the veracity of the submission of the school that it had not charged any development fee in 2008-09 despite the fact that the fee schedule of the school for that year contained a charge of development fee. In the fee and salary statement filed by the school on 20/07/2015 also, the school had reflected a receipt of Rs. 4.00 lacs towards development fee in 2008-09. The Manager of the school who is present at the time of hearing submit that even the print outs of 2008-09 are not available. However, the Committee observes that the school had filed a copy of the ledger account of arrears of VI Pay Commission which were recovered in the year 2008-09 along with the fee and salary statement filed on 20/07/2015. It appears that the school is intentionally not producing the books of accounts for the year 2008-09 to conceal some information.

The Committee observes that the school had filed a ledger account of salary arrears (VI Pay Commission) showing a total outgo of Rs. 37,38,318 on this account. However, the school did not file copies of its bank statements to show that the payments had been made through banking channel. The school is directed to produce its complete bank statements for the years 2008-09 and 2009-10 on the next date of hearing.

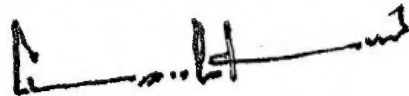
While going through the books of accounts for the year 2009-10, the Committee has observed that certain amount of revenue of the school were diverted to Kasturi Ram KG International School. The Manager of the school admits that the financials of the main school do not include the financials of KG school. The school will file the audited financials of the KG school and also the information pertaining to fee and salary and other information as detailed in the notice dated 14/05/2015. The needful may be done on or before the next date of hearing. The matter is adjourned to 08/07/2019 at 11.00 a.m.



Dr. R.K. SHARMA
MEMBER



J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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06/06/2019

000185

B-49

Sachdeva Public School, Rohini, Delhi

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

The authorized representative appearing for the school submits that the school stands by its written submissions dated 17.5.2019 and the calculations made by the committee may be revised in light of the submissions made.

The Committee has accordingly prepared a revised calculation sheet, a copy of which has been given to the authorized representative of the school. The school may file supplementary written submissions in case it does not agree with the revised calculations prepared by the committee. The same may be done on or before the next date of hearing.

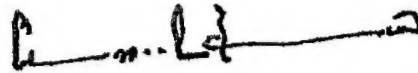
The matter is adjourned to 2nd July 2019 at 11.00 am.



Dr. R.K. SHARMA
MEMBER



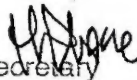
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MEMBER



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CHAIRPERSON



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Secretary

10/06/2019

000186
B-119

Salwan Public School, Rajinder Nagar, Delhi

Present: Maj Gen Sanjeev Shukla, Director/Manager, Mr. J.N.Chopra, Financial Advisor, Shri Sunil Chandra, Accountant, Shri Narinder Kaur, Accountant of the School.

The school has filed actuarial valuation reports in respect of its accrued liabilities of gratuity and leave encashment on 31.3.2010. As per the valuation reports, the accrued liabilities of gratuity stood at Rs. 1,91,43,752 while that the leave encashment was Rs. 89,59,785 as on that date. The valuation reports have been perused and appear to be in order. Necessary effect of these liabilities will be given in final determination to be made by the Committee.

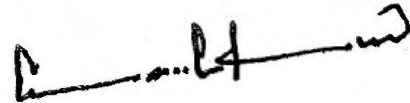
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Dr. R.K. SHARMA
MEMBER




J.S. KOCHAR
MEMBER



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Secretary

10/06/2019

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B-424

Pragati Public School, Dwarka, Delhi

Present: Shri Inderpal Singh, Accounts Incharge and Shri Rajiv Malik,
Chartered Accountant of the School.

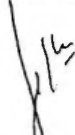
The school has filed a revised Receipts and Payments account giving the gross figures of loans and advances given, ^{received} receipt and recovered from different parties. The figures, in so far as they relate to the inter se transactions between the school and society are now distinctly shown in the Receipts and Payments account.

Revised calculations sheets to be prepared to take on board the submissions made by the school controverting the calculation sheet prepared by the Committee. In case the revised calculations also show that some amount is refundable by the school to the students, copy of the revised calculations will be given to the school for rebuttal.

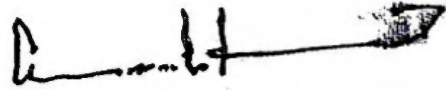
Matter to come up for further consideration on 3rd July 2019.



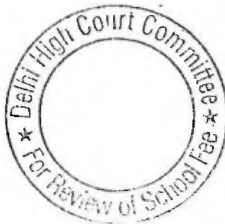
Dr. R.K. SHARMA
MEMBER



J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

Venkateshwar International School, Dwarka, Delhi

Present: Shri Harish Sharma, Administrative Officer and Shri Gauri Shankar Garg, Accounts Officer of the School.

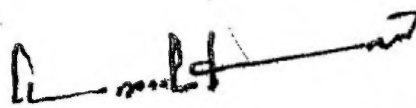
While preparing the revised calculation sheet in view of the submissions made by the school disputing the original calculation made by the Committee, it is observed that the claim of the school that the repayment of vehicle loans and interest thereof came out of the transport fee and not out of tuition fees is not fully verifiable as the school has not furnished the figures of the salaries of the transport staff which are stated to be out-sourced by the school. The authorized representative of the school seeks time to furnish the same. Let a revised chart of transport fund be filed on or before the next date of hearing. The matter will come up for further hearing on 2nd July 2019.



Dr. R.K. SHARMA
MEMBER



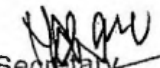
J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

BGS International School, Dwarka, Delhi

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

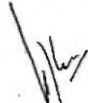
The school has filed revised Receipts and Payments Account for the year 2010-11 which shows that an amount of Rs. 44,06,044 was received towards development fee in that year. As per the audited Receipts and Payments Account and the Income and Expenditure Account which was filed earlier, the development fee which was shown to have been received was Rs. 42,39,704. There are some other differences also between the figures reflected in the audited Receipt and Payment Account and the revised Receipt and Payment Account filed today.

The school has already filed its rebuttal to the provisional calculation sheet prepared by the Committee and the same had been discussed on the last date of hearing i.e. 14/05/2019. No other issue remains.

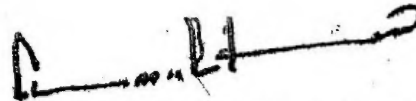
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Dr. R.K. SHARMA
MEMBER



J.S. KOCHAR
MEMBER



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17/06/2019

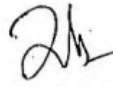
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B-151

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

Present: Shri Birender Singh, Accounts Officer of the School.

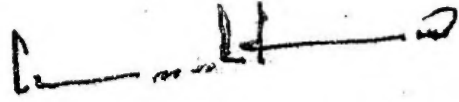
A request has been received from the school seeking adjournment on the ground of non-availability of Shri Kamal Gupta, Advocate today. On the specific request of the school, the matter is adjourned to 18th July 2019.



Dr. R.K. SHARMA
MEMBER



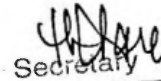
J.S. KOCHAR
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JUSTICE ANIL KUMAR (Retd.)
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17/06/2019

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B-286

Mount Abu Public School, Rohini Delhi

Present: Shri Arvind from Administration of the School.

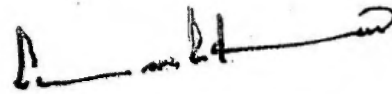
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Dr. R.K. SHARMA
MEMBER



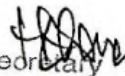
J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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Secretary

Bharti Public School, Swasthya Vihar, Delhi

Present: Shri Punit Batra, Advocate of the School

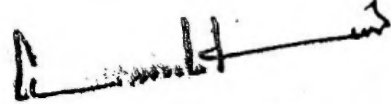
The Learned Counsel appeared ^{ing} on behalf of the School submits that *the* balance sheet as on 31st March 2019 is not yet ready. He seeks some more time to furnish the same. On his specific request the matter is adjourned for 3rd July 2019.



Dr. R.K. SHARMA
MEMBER



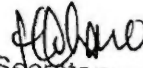
J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



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