

WP(C) 7777/2009

PDF Compressor Free Version

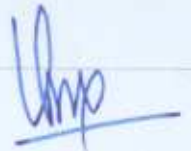
Delhi Abhibhavak Mahasangh & Ors.

Vs.

Govt. of NCT of Delhi & Ors.

**Report of Delhi High Court Committee for Review of School Fee for
August 2016**

Index			
S.N.	Particulars		Page No.
(a)	Cause List of the cases taken up in August 2016 on 02.08.2016, 04.08.2016, 09.08.2016, 11.08.2016, 22.08.2016, 23.08.2016, 24.08.2016 and 29.08.2016		01 to 03
(b)	Miscellaneous/ Interim orders passed in August 2016 on above dates		04 to 72
(c)	Final recommendations/ Review orders passed in the following cases:-		73 to 258
	S.N.	Date	Name of the School
	1	02.08.2016	Recommendation in respect of Rich Harvest Public School, Janak Puri (B-80) recommending refund of unjustified fee alongwith 9% interest
	2	04.08.2016	Review application of Sonia Public School, Durgapuri Extension (B-280) disposed off as not maintainable
	3	11.08.2016	Review application of S.D. Public School, Patel Nagar (B-239) disposed off as not maintainable
	4	11.08.2016	Review application of N. C. Jindal Public School, Punjabi Bagh (West) (B-71) disposed off as not maintainable
	5	11.08.2016	Review application of Himalaya Public Sr. Sec. School, Sector-VII, Rohini (A-49) disposed off as not maintainable
	6	11.08.2016	Review application of Delhi International School, Sector-3, Rohini (C-292) disposed off as not maintainable
	7	11.08.2016	Review application of Saai Memorial Girls School, Geeta Colony (B-305) disposed off as not maintainable
	8	11.08.2016	Review application of Deen Bandhu Public School, Ghevra (A-154) disposed off as not maintainable
	9	22.08.2016	Recommendation in respect of Bal Bharti Public School, Sector-14, Rohini (B-51) recommending refund of unjustified fees alongwith 9% interest
	10	22.08.2016	Recommendation in respect of St. Mary's Sr. Sec. School, Paschim Vihar (B-246) recommending no intervention
	11	22.08.2016	Recommendation in respect of Delhi International School, Sector-9, Rohini (B-61) recommending refund of unjustified fees alongwith 9% interest



12	22.08.2016	Review application of J M International School, Sector-6, Dwarka (B-214) disposed off as not maintainable	170 to 176
13	22.08.2016	Review application of Guru Angad Public School, Ashok Vihar Phase-I (C-98) disposed off as not maintainable	177 to 184
14	22.08.2016	Review application of Cambridge Foundation School, Rajouri Garden (B-192) disposed off as not maintainable	185 to 193
15	22.08.2016	Review application of Oscar Public School, Burari (B-17) disposed off as not maintainable	194 to 201
16	22.08.2016	Review application of Rukmani Devi Jaipuria Public School, Rajpur Road (B-529) disposed off as not maintainable	202 to 210
17	22.08.2016	Review application of Modern Ear Convent, Janak Puri (B-82) disposed off as not maintainable	211 to 218
18	23.08.2016	Review application of Ambience Public School, Safdarjung Enclave (B-126) disposed off as not maintainable	219 to 226
19	23.08.2016	Review application of St. Krishna Bodh Shiksha Sadan, Village Mandoli (B-522) disposed off as not maintainable	227 to 234
20	23.08.2016	Review application of Bharat National Public School, Karkardooma (C-381) disposed off as not maintainable	235 to 242
21	23.08.2016	Review application of Shri Ram Bal Bharti School, Mandoli, Shahdara (A-138) disposed off as not maintainable	243 to 250
22	23.08.2016	Review application of Tagore Public School, Naraina Vihar (B-216) disposed off as not maintainable	251 to 258

Place:

Date:



Secretary

Delhi High Court Committee for Review of School Fee

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

000001

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

PDF Compressor Free Version

Cause List for Tuesday 2nd August 2016

Regular Matters

S. No.	Cat. No.	School Name & Address
1	B-188	The Mother's S.S.School, Sri Aurobindo Marg
2	B-186	Holy Child Auxilium School, Vasant Vihar
3	B-176	Vivekanand School, D- Block, Anand Vihar
4	B-86	Delhi Police Public School, Safdarjung Enclave
5	B-65	Sumermal Jain Public School, Janak Puri
6	B-80	Rich Harvest Public School, Janak Puri
7	B-95	Modern Convent School, Sector 4, Dwarka

Cause List for Thursday 4th August 2016

Regular Matters

S. No.	Cat. No.	School Name & Address
1	B-231	Vivekanand Public School, B-Block, Anand Vihar
2	B-249	G.D. Goenka Public School (Formerly St. Martin's Public School), A-2 Paschim Vihar
3	B-255	Banasthali Public School, Vikas Puri
4	B-435	Ramjas School, Pusa Road
5	B-438	Springdales School, Dhaula Kuan

Review Applications

S. No.	Cat. No.	School Name & Address
1	B-82	Modern Era Convent, Janak Puri
2	C-118	St. Krishna Bodh Public School, West Nathu Colony
3	B-618	Mount Carmel School, Anand Niketan
4	B-388	Mount Carmel School, Dwarka
5	B-685	Daisi Dales Sr. Sec. School, East of Kailash
6	B-280	Sonia Public School, Durgapuri Extension

Cause List for Tuesday 9th August 2016

Regular Matters

S. No.	Cat. No.	School Name & Address
1	B-51	Bal Bharti Public School, Rohini
2	B-187	Balvantray Mehta Vidya Bhawan, Greater Kailash-II
3	B-145	Somerville School, Vasundhara Enclave
4	B-246	St. Mary's Sr. Sec. School, Ambica Vihar
5	B-296	M.M. Public School, Pitam Pura
6	B-441	G.D Salwan Public School, Old Rajinder Nagar

Cause List for Thursday 11th August 2016

Regular Matters

S. No.	Cat. No.	School Name & Address
1	B-525	St. Xavier's Sr. Sec. School, Raj Niwas Marg
2	B-293	St. Xavier's School, Shahbad Daulatpur, Rohini
3	B-156	Ryan International School, Vasant Kunj
4	B-345	Ryan International School, Gharauli, Mayur Vihar
5	B-444	C.L.Bhalla Dayanand Model School, Karol Bagh
6	B-186	Holy Child Auxilium School, Vasant Vihar
7	B-65	Sumermal Jain Public School, Janak Puri

TRUE COPY

Secretary



000032

Review Applications

S. No.	Cat. No.	School Name & Address
1	B-75	Indraprastha World School, Paschim Vihar
2	B-355	Cambridge School, Srinivaspuri
3	B-370	Krishan Lal Kohli Saraswati Bal Mandir
4	B-163	GLT Saraswati Bal Mandir, Nehru Nagar
5	B-88	Bhatnagar International School, Vasant Kunj
6	B-118	Manav Sthali School, New Rajinder Nagar
7	B-10	Universal Public School, Preet Vihar
8	C-397	National Public School, Jhilmil
9		

Review orders for pronouncement

1	B-239	S. D. Public School, West Patel Nagar
2	B-71	NC Jindal Public School, Punjabi Bagh
3	A-49	Himalaya Public Sr. sec. School, Rohini
4	C-292	Delhi International School, Sect. 3 Rohini
5	B-305	Saai Memorial Girls School, Geeta Colony
6	A-154	Deen Bandhu Public School, Ghevra

Cause List for Monday 22nd August 2016**Regular Matters**

S. No.	Cat. No.	School Name & Address
1	B-387	Jinvani Bharti Public School, Sect.4, Dwarka
2	B-389	B.G.S International Public School, Sect.5, Dwarka
3	B-402	Girarattan Jindal Public School, Sect.7, Rohini
4	B-406	Happy School, Darya Ganj
5	B-476	J.D.Tytler School, New Rajinder Nagar
6	B-348	Ahlcon International School, Mayur Vihar Phase-I
7	B-249	G.D. Goenka Public School (Formerly St. Martin's Public School), A-2 Paschim Vihar

Review Applications

S. No.	Cat. No.	School Name & Address
1	B-40	Kulachi Hansraj Model School, Ashok Vihar-III
2	B-23	Modern Public School, Shalimar Bagh

Regular Matter orders for pronouncement

1	B-51	Bal Bharti Public School, Rohini
2	B-246	St. Mary's Sr. Sec. School, Ambica Vihar
3	B-61	Delhi International School, Sect. 9, Rohini

Review orders for pronouncement

1	B-214	J M International School, Dwarka
2	C-98	Guru Angad Public School, Ashok vihar-I
3	B-192	Cambridge Foundation School, Rajouri Garden Ext.
4	B-17	Oscar Public School, Burari
5	B-529	Rukmani Devi Jaipuria Public School, Rajpur Road
6	B-82	Modern Era Convent, Janak Puri

TRUE COPY

Secretary



Cause List for Tuesday 23rd August 2016

Regular Matters

S. No.	Cat. No.	School Name & Address
1	B-428	Public School, Sect.13, Dwarka
2	B-427	Vandana International School, Sect.10, Dwarka
3	B-429	M.D.H. International School, Sect.6, Dwarka
4	B-316	South Delhi Public School, Defence Colony
5	B-317	Vidya Public School, Cannought Place
6	B-318	Navy Children School, Chanakya Puri

Review orders for pronouncement

1	B-126	Ambience Public School, Safdarjang Enclave
2	B-522	Krishna Bodh Shiksha Sadan, Vill. Mandoli, Bank Colony
3	C-381	Bharat National Public School, Karkardooma
4	A-138	Shri Ram Bal Bharti School, Mandoli, shahdara
5	B-216	Tagore Public School, Naraina Vihar

Cause List for Wednesday 24th August 2016

Regular Matters

S. No.	Cat. No.	School Name & Address
1	B-177	Bloom Public School, Vasant Kunj
2	B-300	Adharshila Vidya Peeth, CD Block, Pitampura
3	B-301	Bharti Public School, Kondli, Mayur Vihar
4	B-302	Bharti Public School, Swasthya Vihar
5	B-304	Mother Teresa Public School, Preet Vihar
6	B-171	Poorna Prajna Public School, Vasant Kunj
7	B-336	Arwachin Bharti Bhawan Sr. Sec. School, Vivek Vihar
8	B-341	Starex International School, Vasundhara Enclave
9	B-309	N.K. Bagrodia Public School, Sector 9, Rohini

Cause List for Monday 29th August 2016

Regular Matters

S. No.	Cat. No.	School Name & Address
1	B-449	Bal Bharati Public School, Ganga Ram Hospital Marg
2	B-455	Bosco Public School, Paschim Vihar
3	B-456	Little Angels Sr. Sec. Public School, Paschim Vihar
4	B-474	Green Fields School, Safdarjung Enclave
5	B-132	St. Michael's S.S.School, Pusa Road

TRUE COPY

Secretary



PDF Compressor Free Version Bishu Harvest Public School, Janak Puri, New Delhi.

Present: Mr. Rajesh Vij, Chairman, Ms. Neha Gandhi, Manager and Ms. Neeru, O.S. of the school.

The Committee has perused the circular dated 3rd March 2009 issued by the school to the parents regarding fee hike pursuant to order dated 11/02/2009 issued by the Director of Education. As per the circular, the school hiked the fee w.e.f. 01/09/2008 @ Rs. 200 per month for classes I to V and @ Rs. 300 per month for VI to XII. Besides the school also recovered lump sum arrears @ Rs. 2,500/Rs. 3000 per student.

The Committee has also perused the statement filed by the school giving break up of payment of salary in the years 2008-09 and 2009-10. It is observed that almost 60% of the salary paid by the school in 2008-09 was either through bearer cheques or in cash. In the year 2009-10 also, the same position prevailed. As per the details of arrear payments filed by the school, a substantial part of the same was also paid in cash.

The school has not produced its books of accounts for any of the years before the Committee to support its claim of having implemented recommendations of the VI Pay Commission. The Manager of the school who is present at the time of hearing states that the books accounts were lost some time in 2012. To a query raised by the Committee as to whether any police report was lodged regarding the loss of books of accounts, the Manager replied in negative.

On going through the information and documents furnished by the school vide its letter 07/07/2015, in response to the notice 08/05/2015 issued by the Committee, it is observed that the school had filed the print out of a ledger account of Late Smt. Kaushalaya Devi Memorial Education Society, the parent society of the school, as appearing in the books of accounts of the school for the period 01/04/2005 to 31/03/2011. The print out of the ledger account is from the accounting software "Tally", which facilitates maintenance of accounts of multiple number of years together. Since the ledger account of the parent society is for the period 01/04/2005 to 31/03/2011, the school definitely had available with it the books of accounts for the years 2005-06 to 2010-11. The statement of account was filed by the school under cover of its letter dated 07/07/2015, implying that on that date, the books of accounts of the school were available. This contradicts the position taken by the school during the course of hearing that the books of accounts had been lost some time in 2012.

In the circumstances, the Committee is of the view that the school has intentionally not produced its books of accounts before it. The Committee infers that the school had not implemented the recommendations of VI Pay Commission as such the recovery of lump sum arrear fee and the hike in monthly tuition fee w.e.f. 01/09/2008 was not justified. **Therefore, the school ought to refund the entire of lump sum amount of arrear fee recovered by it and also the incremental tuition fee recovered by it from 01/09/2008 onwards. The refund of lump sum arrear fee and the incremental tuition fee ought to be made for the period starting from 01/09/2008 to the current date along with interest @ 9% per annum from the date of collection of fee to the date of refund.**

TRUE COPY


Secretary



PDF Compressor Free Version


recovery, they submitted that it represented the recovery of Rs. 324 per month w.e.f. 01/09/2008 for which the permission had been sought from the Grievance Redressal Committee, but the same was not granted.


The representatives of the school state that the recovery was approved by Parent Teacher Association of the school. However no document evidencing such approval has been filed by the school.

With regard to the regular development fee recovered by the school, it is conceded in the reply to the questionnaire-issued by the Committee that the school was treating the development fee as a revenue receipt and no separate depreciation Reserve fund was maintained on assets acquired out of the development fund. In the year 2009-10, the school recovered a total amount of Rs. 80,93,494 towards development fee and a sum of Rs. 1,01,17,149 in the year 2010-11.

It is submitted that the school fully implemented the recommendations of VI Pay Commission and all the salary and arrear payments have been made through bank transfer.

The school has also filed copies of the premium receipts paid by it to Life Insurance Corporation of India for a group gratuity policy taken by the school to cover its gratuity liability. As such the school does not have any accrued liability of gratuity. The school submits that the estimated liability on account of leave encashment was Rs. 73,78,280 as on 01/09/2010. However, no employee wise details for this accrued liability have been filed. The representatives of the school seek some time to do that. The same may be filed in the office of the Committee within two weeks. Calculation sheet to be prepared thereafter. The matter will come up for further hearing on 08/09/2016 at 11.00 a.m.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary

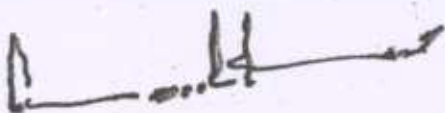


Holy Child Auxilium School, Vasant Vihar, New Delhi

Present Sh. Parmod Sinha, representative of the school. He submits that the break up of arrear of tuition fee and arrear of development fee has been filed by the school on 11th July 2016. Calculation sheet to be prepared. Matter to come up for further hearing on 11th August 2016 at 2.30 p.m.


R.K. SHARMA
MEMBER


J.S.KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY

Secretary



02/08/2016

688007

B-176

PDF Compressor Free Version

Vivekanand School, D Block, Anand Vihar, Delhi.

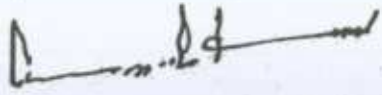
Present: Sh. Pradyumn Ahuja, Manager and Sh. Manu RG Luthra, CA of the school.

The school has filed a statement showing break up of payment of arrear salary paid in cash and through direct bank transfer.

Calculation sheet to be prepared. The matter to come up for further hearing 07/09/2016 at 11.00 a.m.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY 
Secretary



PDF Compressor Free Version Public School, Safdarjung Enclave, New Delhi.

Present: Sh. S.N. Joneja, Executive Secretary, Sh. Mahesh Pandey, Admn. Officer, Sh. Rama Krishnan, Accounts Consultant, Sh. Trilochan Singh, Accountant, Sh. Radha Krishnan, Accounts Assistant of the school.

The authorised representatives of the school have filed a breakup showing the arrear fee for different periods under different heads. They submit that the school recovered the entire amount of arrears under one head and did not maintain separate accounts for recovery under separate heads. As such they have prepared the statement by taking averages based on the components of fee hike.

The authorized representative of the school concede during the course of hearing that the recovery of additional development fee on the existing tuition fee was a mistake committed by the school and was not authorized by the order dated 11/02/2009 issued by the Director of Education. They also concede that since the school was charging development fee at fixed amounts which was not a percentage of tuition fee, there could have been no increase in development fee on account of increase in tuition fee w.e.f. 01/09/2008.

The school has still not filed the period wise break up of payment of arrear salary and the representatives seek some time for doing so. The school has also not furnished the details of its accrued liability of gratuity and leave encashment as on 31/03/2010 on the plea that the same was accounted for as and when they are paid. They seek some time for furnishing these details also. As requested the details may be furnished within two weeks and the matter will come up for further hearing 07/09/2016 at 11.00 a.m.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



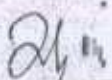
02/08/2016

B-65

Sumermal Jain Public School, Janak Puri, New Delhi

Present: Dr. G.R. Kanwal, Manager, Sh. Rupesh Jaipuria, Accountant,
Sh. Nagender, Accounts clerk and Sh. Deepak Kumar.

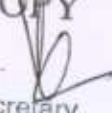
The matter is relisted for hearing on 11th August 2016 at 2.30 p.m.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



B-188

PDF Compressor Free Version

The Mother's S.S. School, Sri Aurobindo Marg, New Delhi.

Present: Sh. Om Prakash, Sh. Keshave, Sh. Anil Jain, office staff of the school.

The chairperson of the Committee has recused in this matter.

The representative of the school have been partly heard and the documents filed by the school have been examined by the Committee. The Committee has examined the circulars filed by the school with regard to the hike in fee pursuant to order dated 11/02/2009 issued by the Director of Education. As per circulars, the school has increased tuition fee for different classes w.e.f 01/04/2008 at different rates depending upon the fee being originally charged in the year 2008-09. For pre primary class hike in tuition fee was @ Rs. 500 per month, for students of class I to XII, the hike was to the tune of Rs. 400 per month. However, the hike in development fee for the period 01/09/2008 to 31/03/2009 was between Rs. 138 and Rs. 299 per month, which obviously was more than 15% of the hike in tuition fee. The representative of the school submit that the school was charging development fee at a rate less than 15% originally but brought the same at the level of 15% of increased tuition fee which resulted in the abnormal increase. Besides, the school also recovered lump sum arrear fee of Rs. 3,500 to recover the arrear salary for the period 01/01/2006 to 31/08/2008, in accordance with the aforesaid order.

It is submitted that the hike in tuition fee as well as the extent of lump sum arrear fee as permitted by the Director of Education vide order 11/02/2009 was not sufficient to implement the recommendation of VI pay Commission and accordingly, the school filed a petition with Grievance Redressal Committee constituted under clause 10 of the aforesaid order dated 11/02/2009. The school sought an additional increase in lump sum fee @ 1541 per student and an additional tuition fee @ Rs. 324 per month w.e.f. 01/09/2008. The Grievance Redressal Committee after considering the submissions of the school and after going through the position of funds available with the school before the fee hike, permitted the school to recover additional arrears to the tune of Rs. 27,30,690. However, the request of the school to be allowed an additional hike of Rs. 324 per month w.e.f. 01/09/2008 was not granted.

In the fee and salary statement filed by the school in response to a notice dated 13/05/2015 issued by the Committee, the school has shown recovery of additional lump sum fee to the tune of Rs. 25,60,953 as against Rs. 27,30,690 which was permitted vide order of Grievance Redressal Committee. However, the school has also shown a recovery of Rs. 1,32,11,276 in the year 2010-11, as arrear of tuition fee for the period 01/09/2008 to 31/03/2009. When the representatives of the school were asked to explain this additional

TRUE COPY

Secretary




02/08/2016

As regards the development fee charged by the school, the authorized representative of the school states that the school started charging the same w.e.f. 01/04/2009 only. In the year 2009-10, a sum of Rs. 28,00,920 was recovered on this account and in the year 2010-11, a sum of Rs. 29,53,805 was recovered. As per the reply to the questionnaire issued by the Committee, which is filed by the school under cover of its letter dated 07/07/2015, it is conceded that the development fee is treated as revenue receipt and as per the details of its utilization filed, the Committee observes that the same is utilized mainly for the purpose of repairs of school building and electrical fittings which expenses are also revenue in nature. No amount is shown to have been utilized for purchase or up-gradation of furniture and fixture.

In view of the foregoing, the Committee is of the view that the school has not complied with any of the pre conditions laid down by the Duggal Committee for charging of development fee which were subsequently affirmed by the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583. As such the Committee is of the view that the development fee charged by the school in 2009-10 and 2010-11 was not justified and the same ought to be refunded along with interest @ 9% per annum from the date of collection to the date of refund.

Recommended accordingly.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



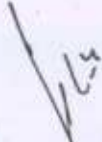
PDF Compressor Free Version
Head of School, Sector-4, Dwarka, New Delhi

Present: Ms. Sheetal Mann, Vice Principal, Sh. Vinay Kaushik, O.S.
and Sh. Sudhir Kumar, LDC of the school.

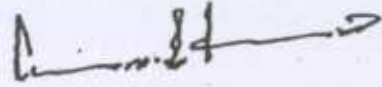
The Committee observes that in the case of this school, there was a complaint by one Sh. Joginder Mann alleging certain irregularities committed by the school having financial implications. A copy of complaint has been given to Head of School who is present today for the response of the school, if any. Office to issue a notice to the complainant to produce any evidence in support of his allegations returnable on 07/09/2016.



R.K. SHARMA
MEMBER




J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary

PDF Compressor Free Version

Vivekanand Public School, Anand Vihar, Delhi

Present : Sh. Sunil Khanna, Manager, Sh. Manu Luthra, C.A., Sh. Kamal Baweja, UDC, Sh. Sudhir Mago, LDC of the school.

The Committee has examined records now produced by the school. On the last date of hearing which was on 8th July 2016 the authorized representatives of the school submitted that the accountant of the school had taken away the relevant documents of the year 2009-10 and FIR to this effect was filed by the school on 26th May 2015, after a few days the school received a notice from the Committee to furnish the desired information. Subsequently the authorized representative of the school changed the position and stated that the accounts of the school were in the computer and printouts of the same could be taken. The matter was adjourned for today to give an opportunity to the school to produce its relevant accounting records.

Subsequently the school filed written submissions dated 21.07.2016 giving the relevant information once again which was sought by the school vide Committee's notice dated 13th May 2015.

The committee while examining audited financials of the school observes that the financials for the year 2008-09 which have been submitted are not signed by the auditors M/s. GK & Associates Chartered Accountant while the financials for all other years are duly signed. Since the school collected the arrear fee and also paid arrear salary in the year 2009-10, the balance sheet of the school as on 31st March 2009 is the most relevant document for the purpose of calculations to examine the justifiability of fee hike by the school. The Committee also observes that the financials submitted by the school as part of its annual returns under Rule 180 of Delhi School Education Rules 1973 were also not signed by the auditors. The authorized representatives of the school Sh. Manu Luthra, C.A. submits that this could be an inadvertent error and the pre audited balance sheet might have been submitted to the Department of Education as well as to this Committee and seeks some time to produce the audited balance sheet. As requested the matter is adjourned to 8th Sept. at 11. 00 A.M.

TRUE COPY

Secretary



04/08/2016

B-249

G.D. Goenka Public School, (Formerly St. Martin's Public School)
Paschim Vihar, Delhi

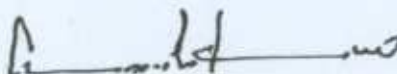
Present^{ly} Sh. Mituen Khatri, C.A. & Sh. Sandeep Chadha, Accountant
of the school.

While perusing the information furnished by the school under cover of
its letter dated 13th July 2015, the Committee observes that the
information submitted by the school is not in terms of the notice
dated 13th May 2016 issued by the Committee.


The authorized representatives of the school submit that probably
the notice dated 15th May 2015 has been over looked. He requests
for a copy of the notice to be given for appropriate compliance. He
has been provided a copy of the notice. The same may be complied
within two weeks. The matter will come up for further hearing on
22.08.2016 at 2.30 P.M.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



PDF Compressor Free Version

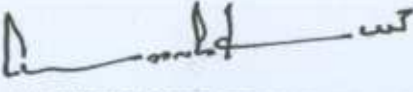
Banasthali Public School, Vikas Puri, Delhi

Present : Dr. V.K. Goyal, Chairman, Ms. Anubha, Vice Principal & Ms. Seema Malik, P.G.T. of the school.

On the basis of the preliminary calculation sheet prepared by the Committee some amount out of arrear fee and incremental tuition fee hiked in pursuance of order dated 11.2.2009 issued by the Directorate of Education appears to be refundable by the school as the same has been collected in excess of its requirements for implementation of Sixth Pay Commission. Besides since the school treats the development fee as a revenue receipt, it does not fulfill the mandatory conditions laid by the Duggal Committee which were affirmed by the Hon'ble Supreme court in the case of Modern school Vs. Union of India (2004) 5SCC 583. A copy of the preliminary calculation sheet has been provided by the Committee to the authorized representatives of the school to have their say on the same. Matter is listed for further hearing on 14th Sept. 2016 at 11.00 A.M.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



Ramjas School, Pusa Road, Delhi

Present : Ms. Mohini Bindra, Principal, Sh. Anil Julka, Head Clerk, Sh. Anil Kumar Saluja, UDC & Sh. Sonu Agarwal, LDC of the school.


The school had issued a circular dated 12.12.2008 to the parents informing them of the impending fee hike for meeting additional expenditure on account of implementation of Sixth Pay Commission recommendations. The authorized representatives of the school state that subsequently no circular was issued after the Directorate of Education issued order dated 11.2.2009 to the schools permitting them to hike the fee. They state that the issue was discussed with the parents and the school hiked the fee only in accordance with the aforesaid order. The parents were issued fee bills for the arrear fee, lump sum fee and incremental fee for the year 2009-10. They have produced copies of fee bills issued to the parents for different classes for the arrear fee and lump sum fee as well as the incremental fee w.e.f. 1st April 2009.

On going through the copies of the fee bills filed by the school during the course of hearing, the Committee observes that the school hiked the tuition fee by Rs.,400 p.m. w.e.f. 1st Sept. 2008 for all the classes. The arrears for the period 1st Sept. 2008 to 31st March 2009 i.e. for 7 months were collected @ Rs.2800 per student. The lump sum fee to cover the period of 1st January 2006 to 31st August 2008 was recovered @ Rs.3500/- per student in two equal installments. The arrears of development fee for the period Sept. 2008 to March 2009 were recovered @ Rs.980/-per student.

On going through the fee schedule for the year 2008-09 filed by the school as part of its returns of the Rule 180. The committee observes that the school charged tuition fee of Rs. 1600/- per month i.e. Rs.19200 per year. The development fee charged was Rs. 1920/- which is 10% of tuition fee. However, the arrears of development fee for the period 1st Sept. 2008 to 31st March 2009 were recovered @ Rs. 980 per student while the arrears of tuition fee for the same period were recovered @ Rs. 2800 per student which works out to 35% of tuition fee.

The authorized representatives of the school are unable to explain this anomaly on the spot and seek some time for proper explanation

TRUE COPY


Secretary


04/08/2016

B-435
000017

with regard to this aspect. The matter is re-listed for 14th Sept. 2016
at 11.00 A.M.

PDF Compressor Free Version

R.K. Sharma
R.K. SHARMA
MEMBER

J.S. Kochhar
J.S. KOCHAR
MEMBER

Anil Kumar
JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY

[Signature]
Secretary




04/08/2016

Springdales School, Dhaula Kuan, DelhiB-438

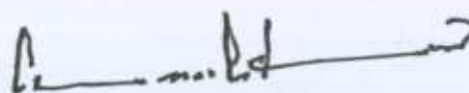
Present : Ms. Tejinder Kaur, Accountant & Sh. Som Datt Accountant
of the school.

ii

An application has been filed on behalf of the school requesting for
adjournment on account of the Manager of the school being unwell.
As requested the matter is adjourned to 7th Sept. 2016.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



09/08/2016

B-51

Bal Bharti Public School, Rohini, Delhi.

Present : Sh. Suraj Prakash, Secretary, Ms. Rekha Sharma, Principal, Sh. Satish Pokhriyal, Finance Manager, Sh. A.B. Chakraborty, Admn. Officer of the school.

The authorized representatives have been heard. They have filed written submissions dated 09/08/2016 enclosing therewith copies of the resolution dated 27/05/2016 passed by the school to deposit the entire arrears of PF contribution w.e.f. 22nd Sept 1997 to 31/03/2011 along with interest, a resolution dated 21/07/2016 passed by Child Education Society which is parent society of the school directing the school not to file any appeal against the demand raised by the PF authorities for payment of differential PF contribution and interest @ 12%. It is further submitted that as per Rule 32 of the Employees' Provident Fund Scheme 1952, the school cannot recover the arrears of employees' contribution from the employee concerned and the school will have to bear this liability also.

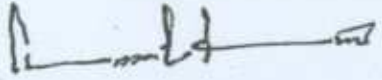
In the written submission dated 27/11/2015 filed by the school, the school had claimed deduction from the funds available with it, amounts payable on account of PF contribution, interest as well as damages.

The authorized representatives of the school submit that as per section 14 (b) of Employees Provident Fund and Misc. Provisions Act 1952, the damages are mandatorily payable by the school and thus ought to be allowed as a deduction from the funds available with the school.


Arguments heard. Recommendations reserved.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



PDF Compressor Free Version

Balvantray Mehta Vidya Bhawan, Greater Kailash-II, New Delhi

Present : GP Capt. S.C. Bahri (Retd) Director, Ms. Geeta Mallick, Admn. Officer, Ms. Alka Sharma, Accountant, Sh. Peeyush Tyagi, Office Supdt. of the school.

The school has furnished a revised set of statements. The authorized representatives submit that these documents are correct statements as required by the Committee's notice dated 13/05/2015. The school has also submitted copies of balance sheet of the parent society running the school as well as copy of an account of the school as appearing in the books of society. The school has also furnished details of its accrued liabilities of gratuity and leave encashment as also comparative statement salary paid in 2008-09 and 2009-10 showing the mode of payment of salary in the two years.

The Committee observes that, ex facie, there is a mistake in the statement of salary showing mode of payment in 2008-09 and 2009-10. The authorized representatives admit that there is an apparent mistake and undertake to file the revised statement within one week.

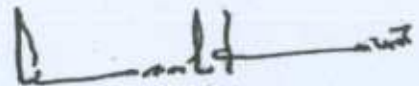
Calculation sheet to be prepared. Matter is listed for further hearing on 20/09/2016 at 11.00 am.



R.K. SHARMA
MEMBER



J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary


09/08/2016

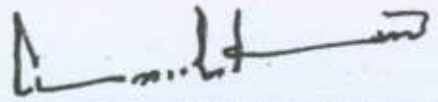
B-145Somerville School, Vasundhara Enclave, New Delhi

Present : Sh. Abraham Mathew, Lolt Carey Buplist Mission, Chief Accountant, Mr. Joby Joseph, Accountant, Mr. Cyril Basil, Office Asstt., Mr. Romy Chacko, Advocate for the school. , Mrs. A.S. Templeton, Ex Principal, Complainant in the matter.


. The second complainant Sh. L.N. Yadav was also served with a notice but is not present. Sh. Romi Chacko, Advocate submits reply to the complaint. A copy thereof has been given to the complainant. She seeks some time to go through the reply. Matter to come up for hearing on 15/09/2016 at 11.00 a.m.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



PDF Compressor Free Version

09/08/2016

B-246

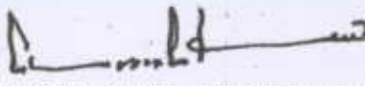
St. Mary's Sr. Sec. School, Ambica Vihar, Paschim Vihar, New Delhi

Present : Smt. Sylvia Paul, Principal, Sh. Ashender Nigam, Clerk, Sh. Sajan Kumar Agarwal, Chartered Accountant for the school.

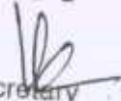
Arguments heard. Recommendations reserved.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



PDF Compressor Free Version

M.M. Public School, Pitam Pura, New Delhi

Present: Ms. Kavita, LDC of the school


An application has been filed on behalf of the school seeking adjournment for 3 weeks. As requested, the matter will come up for hearing 14/09/2016 at 11.00 a.m.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



PDF Compressor Free Version

G.D. Salwan Public School, Old Rajinder Nagar, New Delhi

Present : Sh. J.N. Chopra, Director, Sh. S.N. Dixit, Advisor, Ms. Seema Hamrol, Supdt., Sh. Yogesh Dixit, HC/Asstt., Sh. Manish Dutta, UDC of the school.

The Committee has perused the circulars issued by the school with regard to fee hike effected for the purpose of implementation of VI Pay Commission report. Initially the school issued a circular dated 10/02/2009 vide which a lump sum amount of Rs. 5,500 was demanded from the parents. Subsequently after the issuance of order dated 11/02/2009 by the Director of Education, the school vide circular dated 06/04/2009 provided the break up of the amount of Rs. 5,500 recovered from the students. As per the break up so provided, the school recovered a sum of Rs. 2,800 towards arrears of tuition fee for the period 01/09/2008 to 31/03/2009, Rs. 420 towards arrears of development fee for the same period. The balance of Rs. 2280 was adjusted towards the lump sum fee recoverable by the school to cover the arrears of salary for the period 01/01/2006 to 31/08/2008 out of a total sum of Rs. 3,500 which were recoverable as per the order dated 11/02/2009. The balance of Rs. 1,220 was recovered as second installment of the lump sum fee.

During the course of hearing today, the school has filed a revised statement of fee and salary in place of the one filed earlier vide submissions dated 04/07/2015. It is submitted that the earlier statement was in correct to the extent that the arrears of salary for the period 01/09/2008 to 31/03/2009 were mentioned as nil and instead were included in the figures given as normal salary during 2008-09, the second reason for revision is that in the earlier statement filed, regular development fee was shown as a revenue receipt which is contrary to facts. Actually it was treated as capital receipts in the accounts of the school.

The authorized representatives submit that the school, on its own implemented the recommendations of VI Pay Commission w.e.f. 01/09/2008 after they were accepted by the Government. The school did not wait for issuance of order dated 11/02/2009 by the Director of Education. Consequently, technically no arrears were paid for period 01/09/2008 to 31/03/2009 and that is the reason they were shown as nil in the earlier statement filed. However, for the purpose of making relevant calculations to examine the justifiability of fee hike effected by the school pursuant to order dated 11/02/2009, the additional salary paid for the period 01/09/2008 to 31/03/2009 on account of implementation of recommendations of VI Pay Commission, have to be segregated from the normal salary paid for the year 2008-

TRUE COPY

Secretary



St. Xavier's Sr. Sec. School, Raj Niwas Marg, Delhi

Present : Fr. Jose Philip, S.J., Manager & Sh. Sunny Thomas,
Accountant of the school

The Committee has examined the circular dated 7.03.2009 issued by the school to the parents regarding fee hike effected in pursuance of order dated 11.02.2009 issued by the Directorate of Education. As per the circular, the school hiked the tuition fee by Rs.300/- w.e.f. 1st Sept. 2008 and accordingly collected arrears of Rs.2100 per student for seven months upto 31st March 2009. Besides this, lump sum fee of Rs.3000 was also recovered per student to cover the arrears of salary for the period 1st Jan.2006 to 31st August 2008. The authorized representative of the school submit that the school was not charging any development fee upto 31st March 2009 and accordingly did not recover any arrear on account of development for the seven months.

It is submitted that the school implemented the recommendations of 6th pay commission w.e.f. 1st Oct. 2009 and paid the arrears of salary for the period 1st January 2006 to 30th Sept. 2009. Out of the total arrears paid amounting to Rs.3,86,95,453, the arrears for the period 1st Jan. 2006 to 31st March 2009 amounted to Rs. 2,99,82,357. The same has been mentioned in the information furnished by the school under cover of its letter dated 8th June 2015. The arrears of the period 1st April 2009 to 30th Sept. 2009 are included in the regular salary paid for the year 2009-10.

The Committee has examined the balance sheet of the school as on 31.03.2008 in order to determine the funds which were already available with the school before the fee hike. The committee finds that the school had investment in the shape of fixed deposits with banks and government bonds, the aggregate of which was Rs.6.69 crores. The authorized representative of the school stated that these investments are not created only out of surplus arising of the fee of the school but they also represent some other funds like Scholarship funds, etc. The Committee has examined the ledger produced by the school and observes that the miscellaneous income of the school like amounts received from other institutions for conducting entrance exam etc. and fêtes and raffles etc. conducted by the school are credited to the scholarship fund. The authorized representatives also submit that the investments are also maintained to keep funds reserved for the accrued liabilities of gratuity. The

detail of accrued liability of gratuity as on 31st March 2010 which aggregate to Rs. 2,35,00,671. However no detail of accrued liability for leave encashment has been provided by the

Secretary



11/08/2016

B-523
000126

PDF Compressor Free Version

school. The authorized representative of the school request for some time to be given for filing detail of accrued liability of leave encashment as on 31st March 2010. The same may be done within one week. Calculation sheet to be prepared thereafter.

The authorized representatives submit that the parent society of the school has no other activity and as such the balance sheet of the parent society may be considered as the balance sheet of the school.

Matter be listed for further hearing on 15th Sept. 2016 at 11.00 A.M.

✓
Rk

R.K. SHARMA
MEMBER

Jk

J.S.KOCHAR
MEMBER

AK

JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY

Secretary



PDF Compressor Free Version

St. Xavier's School, Shahbad Daulatpur, Rohini, Delhi

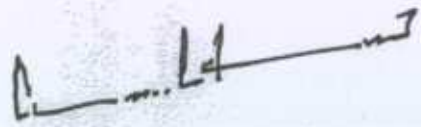
Present : Sh. John Thomas, Accountant, Sh. Vinod Rawat, Accountant & Sh. Balram Pokhrel, Office Asstt. of the school.

The above persons are present without authorization from the competent authority. The statement filed by the school_ alongwith with its letter dated 10th July 2015 is also not signed by anybody. The persons representing the school have not been able to specifically state as to how much of arrears of salary were paid by the school for the period 01st Jan.2006 to 31st Aug.2008 and 1st Sept. 2008 to 31st March 2009. The school is required to file a correct fee and salary statement which ought to be reconciled with the audited financials of the school read with the notes of the balance sheet.

Matter to come up for hearing 15th Sept. 2016.


R.K. SHARMA
MEMBER


J.S.KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



PDF Compressor Free Version

Ryan International School, Vasant Kunj, Delhi

Present : Sh. Louis Rodrogues, Office In charge & Sh. Mukesh Gupta,
Accounts Officer of the school.

In compliance with directions of the Committee the school has furnished the fee schedules for the years 2008-09 & 2009-10 and also the calculations with regard to the hike in development fee @ Rs.153 per month as against hike in tuition fee @ Rs.400 per month. As per the clarifications submitted, the school recovered the differential amount of development fee @15% of tuition fee for the period 01.09.2008 to 31.03.2009 vis- a- vis, the pre hiked development fee which was being charged @ 10% of tuition fee. The school has also furnished the detail of the arrears of salary for the period 01.01.2006 to 31st Aug.2008 paid in the year 2013-14 & 2014-15. The authorized representatives of the school submit that initially the school had not paid full amount of arrear but restricted the same to the amount of arrear fee collected from the students. Subsequently, the aggrieved teachers filed a writ petition No.6470/2011 in the Delhi High Court which was disposed off by order dated 12th August 2013, directing the school to pay the remaining amount of arrears to the teachers along with the interest @ 6% per annum. It is further submitted that in compliance with the order of the Hon^{ble} High court the school paid a total sum of Rs.1,54,74,291 as the balance amount of arrears in the year 2013-14. This includes interest amounting to Rs.7,35,930. A further payment of Rs. 11,11,818 was made in the year 2014-15. The authorized representatives of the school are unable to provide the break up of the arrears salary and interest paid in the payment. They undertake to provide the same with in one week. The Committee also observes that in compliance to the notice dated 13.5.2015 the school had given details of its accrued liabilities of gratuity and leave encashment as on 31.3.2011 instead of 31.03.2010 The details as on 31st March 2010 may also be filed within one week. Calculation sheet to be prepared thereafter.

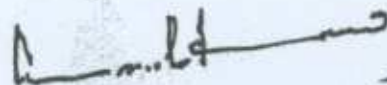
Matter to come up for further hearing on 15th Sept. 2016 at 11.00 A.M.



R.K. SHARMA
MEMBER



J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY



Secretary



PDF Compressor Free Version

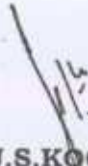
Ryan International School, Gharauli, Mayur Vihar, Delhi

Present : Sh. Louis Rodrogues, Office In charge & Sh. Mukesh Gupta,
Accounts Officer of the school.

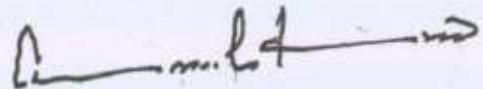
The authorized representatives of the school seek more time to furnish
the required information. It may be furnished within one week.
Matter to come up for hearing on 15th Sept. 2016.



R.K. SHARMA
MEMBER



J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY



Secretary



PDF Compressor Free Version

Dr. Bansi Devanand Model School, Karol Bagh, Delhi

Present : Sharda Rani Principal, Sh. B.K. Awasthi, UDC & Ms. Akansha Sahani.

The Committee has examined the circular dated 3.2.2009 issued by the school to the parents with regard to fee hike. The circular mentions that the DAV College Managing Committee (DAV CMC) has decided to allow the school to raise the tuition fee of the students in the schools run by DAV CMC, @ Rs.300 p.m w.e.f. 01.01.2009 and charge the first installment of Rs.1500 towards arrears also. On a query raised by the Committee as to whether any fee was hiked pursuant to order dated 11.02.2009 issued by the Directorate of Education, the authorized representatives are unable to say anything. As per the fee and salary statement filed by the school in response to the notice dated 25.5.2015 issued by the Committee, the school has mentioned recovery of arrears from 1.1.2006 to 31.8.2008 as well as for the period 1.9.2008 to 31st March 2009. As per the circular filed by the school it demanded the first installment of arrears of Rs.1500 without mentioning as to how much would be the total arrear fee in the next installments. Even the authorized representatives are unable to specifically state as to how much arrear fee was charged or on which period, after examining the books of accounts.

The school has furnished details of arrear salary paid to the staff amounting to Rs.17,93,601 in the year 2008-09. It is submitted that these payments were only part payments. The full amount could not be paid as the school did not have sufficient funds. Subsequently the staff of the school filed a writ petition bearing No.7016/2012 in the High Court which was disposed off by the order dated 19.07.2013 directing the school to pay the full amount of arrears. It is submitted even prospectively the school could not fully implement the recommendations of the Sixth Pay Commission as full DA and benefits of ACP/MACP were not given.. These were also directed to be paid by the Hon'ble high court. It is submitted that the school has since paid the remaining amount of arrears in six installments starting from Nov. 2014 to Jan. 2016, a detail whereof has been furnished by the school. It is also submitted that the student strength of the school is very small and therefore the school could not pay the full amount of arrear and DA initially. On a query raised by the Committee as to how the payment has been made after being directed to do so by the Hon'ble High Court of Delhi, the authorized representatives submit that the funds for the same have been provided by the DAV CMC.

TRUE COPY

Secretary



11/08/2016

PDF Compressor Free Version


B-444
02031

This school is run under the aegis of DAV Managing Committee and follows similar practices and the methodology with regard to transfer of funds to the said organization initially and the expenses of the school are reimbursed by DAV College Committee. Very little funds are left at the disposal of the school as the entire fee collected is transferred to the DAV CMC. Hence any surplus generated by the school gets transferred to DAV CMC.

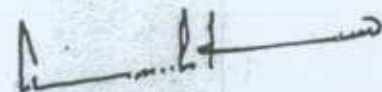
Like in the case of other DAV schools this school also treats the development fee as revenue receipt, which fact is conceded by the school in its reply to questionnaire issued by the Committee, which is filed by the school on 5.6.2015. The same position is also confirmed in the fee and salary statement filed on the same date. It is also mentioned in the questionnaire that the school utilizes the development fund for the purpose of payment of salary to the employees. The school transfers its share of payment to premium paid to LIC for a combined group policy taken by DAV CMC in respect of all the schools for payment of gratuity and leave encashment on annual basis. As such the school has no accrued liability for gratuity and leave encashment.

The school is required to clarify as to how much arrear fee was recovered from the students in separate installments and whether any fresh circular was issued for hiking the fee after issuance of order dated 11.2.2009 by the Directorate of Education. The Committee also observes that the balance sheets filed by the school are without schedules and the school has also not filed the balance sheet of its Boys fund. The necessary detailed clarifications furnished in writing along with full sets of balance sheets of the school as well as Boys fund within one week

Matter will come up for further hearing on 20th Sept. 2016 at 11.00 A.M.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary




PDF Compressor Free Version

11/08/2016

B-186Holy Child Auxilium School, Vasant Vihar, Delhi

Present: Sr. Jersina M.Administrator, Sh. Parmod Sinha, CA for the school.

Arguments heard, Reserved for orders.


R.K. SHARMA
MEMBER


J.S.KOCHAR
MEMBER

JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



11/08/2016

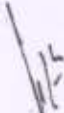
B-65

Sumermal Jain Public School, Janak Puri, Delhi

Present: Dr. G.R. Kanwal, Manager, Sh. Roopesh Jaipuria, Accountant of the school.


The authorized representatives of the school have been provided a copy of the preliminary calculation sheet. The representatives seek some time to go through the same. The matter is listed for further hearing on 20/09/2016 at 11.00 a.m.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER

JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



PDF Compressor Free Version

Jinvani Bharti Public School, Sector-4, Dwarka, New Delhi.

Present: None

The matter was taken up in the morning session, however, no one appeared on behalf of the school. The matter was, therefore, passed over.

The matter has been taken up again in the post lunch session. However, again no one is present. In the interest of the justice no adverse order is passed. The matter is listed for 21st Sept. 2016 at 11.00 A.M. Fresh notice be issued to the school stipulating that in case no one appear in the next date of hearing, the matter will be considered in absence of the school and appropriate orders shall be passed.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY

Secretary



PDF Compressor Free Version

B.G.S. International Public School, Sector-5, Dwarka, New Delhi.

Present: Ms. Punam Gupta, Principal, Sh. Boregowda G.D., Accountant, Sh. Rajesh Kanojiya, Admn. Officer of the school.

The Committee has perused a copy of the circular dated 30/03/2009 issued to the parents regarding fee hike pursuant to order dated 11/02/2009 issued by the Director of Education. As per the circular, the school increased the tuition fee of all the classes by Rs. 400 per month w.e.f. 01/04/2009 and development fee @ 15% thereof. The circular is silent about the recovery of any arrear fee for the period 01/01/2006 to 31/03/2009. The Principal of the school Ms. Punam Gupta who is present, states that the school did ^{not} charge any arrear fee for the aforesaid period and therefore did not pay any arrear salary also for the same period. She submits that the increased salary as per the recommendations of VI Pay Commission was paid to the staff only w.e.f. 1st June 2009. The school has furnished a revised reply dated 22/08/2016 in substitution of the earlier reply dated 11/06/2015.

The Committee has examined the fee schedules filed by the school as part of its annual returns filed under Rule 180 of Delhi School Education Rules, 1973 and observes that in the year 2009-10, the school also started charging 'Annual charge' besides Annual fee. Such charge was to the tune of Rs. 12,000 per student from the new students. However, in the audited financials of the school, the collection under the Head Annual Charge is not separately shown and it is submitted by the Authorized Representative that the same might have been clubbed with annual fee as reflected in the Income and Expenditure Account. They under take to submit the break up of Annual Fee and Annual Charge within seven days.

On perusal of the balance sheets of the school, the Committee also observes that there have been heavy transactions between the school and its parent Trust and its subordinate entities. The Principal of the school submits that its parent trust (Sh. Adichunchunagiri Shikshana Trust (R)) is based at Bangalore and it has about 450 subordinate entities. She is unable to state as to how many transactions were undertaken with subordinate entities since its recognition w.e.f. 01/04/2005. She seeks some time to furnish the details of such entities and the transactions the school had with them (ledger account) since its recognition.

With regard to development fee, the school in its reply dated 19/08/2015 to the questionnaire issued by the Committee, vaguely stated that it was treated as a "revenue receipt was treated as capital receipt in 2009-10". At the time of hearing, the authorized

Secretary

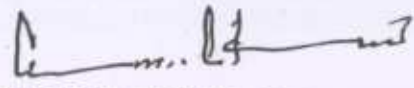


PDF Compressor Free Version

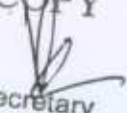
representative has clarified that upto 2008-09 it was treated as a revenue receipt but w.e.f. 2009-10, it was treated as a capital receipt. In the details of utilization of development fee for the years 2009-10 and 2010-11 as furnished by the school along with the reply to the questionnaire, a sum of Rs. 93,52,001 is shown as having been utilized for building construction. The same position prevails in 2010-11 also in which this amount is Rs. 85,60,526. In 2010-11, a further amount of Rs. 9,19,177 is shown as having been utilized for the construction of basket ball court. Also the school has stated that no earmarked fund accounts have been maintained for unspent development fee and depreciation on fixed asset acquired out of such development fee as the school was not left with any money to be put in the earmarked account. Matter will come up for further hearing on 20/09/2016 at 11.00 a.m.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



22/08/2016B-402Girarattan Jindal Public School, Sector-7, Rohini, Delhi.

Present: None

The matter was taken up in the morning session, however, no one appeared on behalf of the school. The matter was, therefore, passed over.

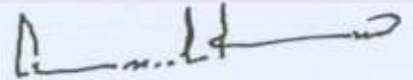
The matter has been taken up again in the post lunch session. However, again no one is present. In the interest of the justice no adverse order is passed. The matter is listed for 21st Sept. 2016 at 11.00 A.M. Fresh notice be issued to the school stipulating that in case no one appears on the next date of hearing, the matter will be considered in absence of the school and appropriate orders shall be passed.



R.K. SHARMA
MEMBER




J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary

PDF Compressor Free Version

Maddur School, Darya Ganj, New Delhi-110002

Present: Sh. Shreesh Sharma, Accountant and Sh. Phool Chand Pardy, Office Incharge of the school.

The Committee has perused a copy of the circular dated 11/02/2009 issued to the parents of the students regarding fee hike effected in pursuance of order dated 11/02/2009 issued by the Director of Education. As per the circular, the school increased the tuition fee @ Rs. 300 per month for all the classes w.e.f. 01/09/2008 and accordingly recovered arrears Rs. 2,100 for the seven months period from Sept. 2008 to March 2009. Besides, the school also recovered lump sum fee @ Rs. 3,000 per student to recover the additional salary payable on account of implementation of VI Pay Commission report w.e.f. 01/01/2006 to 31/08/2008. It is submitted that although the school charges development fee, the same was not hiked w.e.f. 01/09/2008.

The authorized representative of the school submits that the regular salary of the staff was increased w.e.f. Feb. 2009 which was paid in March 2009. The arrears for the period 01/01/2006 to January 2009 were also paid in full. It is further submitted that all the payments of salary as well as arrears were made through direct bank transfers or through individual account payee cheques. They have produced the bank statements in support of their contention.

In response to the notice dated 24/06/2015 issued by the Committee, the school had furnished the detailed information as required by the said notice. One of the statements submitted by the school was the account of the parent society as appearing in the books of the school. The said statement shows only one transaction of 31st March 2008 and that too for a small amount of Rs. 8,216. The authorized representative submits that no funds were transferred to the parent society by the school. The school has not furnished the details of accrued liability of gratuity and leave encashment although the liability of gratuity is provided in the balance sheet of the school. The authorized representatives undertake to furnish the said details as on 31/03/2010 within ten days. Calculation sheet to be prepared thereafter.

With regard to the regular development fee, the school, in its reply dated 30/12/2013, to the questionnaire issued by the Committee has conceded that the same is treated as the revenue receipt in the accounts of the school. The authorized representatives have taken this Committee through the audited financials of the school and concede that the same was utilized also for meeting the revenue expenses. Matter to come up for further hearing on 20/09/2016 at 11.00 a.m.

TRUE COPY

Secretary

R.K. SHARMA
MEMBER

J.S.KOCHAR
MEMBER

JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON



PDF Compressor Free Version

B-476

J.D. Tytler School, New Rajinder Nagar, New Delhi

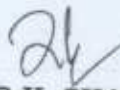
Present: Sh. J.G. Babbar, Chief Accounts Officer, Sh. Manish, Advocate on behalf of the school.

The authorized representative of the school submits that the recommendations of VI Pay Commission were implemented w.e.f. Sept. 2008 even though the order of the Govt. for implementation was issued on 11/02/2009. They further submit that no arrears for the period 01/01/2006 to 31/08/2008 were paid to the staff. They also submit that the school did not recover any fee for payment of arrears either for the period 01/01/2006 to 31/08/2008 or for the period Sept. 2008 to March 2009. The additional burden of salary from Sept. 2008 to March 2009 was borne by the school out of its own funds. It is submitted that the school hiked the regular tuition fee and development fee w.e.f. 01/04/2009 and such hike was @ Rs. 300 per month for all the classes. There was also a corresponding hike in the development fee @ 15% of the tuition fee. However, the authorized representatives have not furnished a copy of the circular issued to the parents with regard to fee hike w.e.f. 01/04/2009. They submit that the circular was indeed issued. They undertake to file the copy of the circular alongwith the other details which are required to be filed.

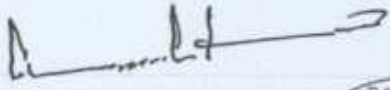
The school had not furnished complete details as asked by the Committee vide dated notice 25/05/2015. In particular, the school has not furnished the details of accrued liabilities of gratuity and leave encashment as on 31/03/2010. The school has also not furnished a copy of the account of the parent society as appearing in its books for the period 01/04/2006 to 31/03/2011. The same be furnished within two weeks.

With regard to development fee, the school has submitted in its reply to the questionnaire that the development fee is treated as a capital receipt and is used for purchase of fixed assets. The school also maintained depreciation reserve fund w.e.f. 01/04/2009. With regard to maintenance of earmarked funds in the bank towards unspent development fund and depreciation reserve fund, the representatives submit that the same are not maintained as the school runs in loss and such losses are partly recouped from development fund.


Calculation sheet to be prepared after the receipt of these details. Matter will come up for further hearing on 21/09/2016 at 11.00 a.m.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



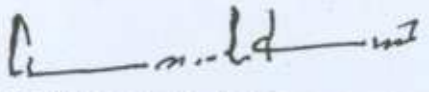
22/08/2016B-348Ahlcon International School, Mayur Vihar Phase-I, Delhi.

Present: Ms. Anita Negi, Asstt. of the school.

She files a letter on behalf of the school seeking adjournment for two weeks. As requested matter will be listed for hearing on 21st Sept. 2016 at 11.00 A.M.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



22/08/2016

B-249

G.D. Goenka Public School (Formerly St. Martin's Public School),
A-2, Paschim Vihar, New Delhi.

Present: Sh. Mithun Khatry, C.A & Sh. Sandeep Chadha, Accountant of the school.

The authorized representatives of the school submit that the school has not paid the full amount of arrears of salary to the staff which became due to them on implementation of Sixth Pay Commission. Only 61.5% of the total amount due has been paid. The Committee has examined the details of arrear payments made to the staff which the school has filed and observes that out of the total of Rs. 61.24 lakhs paid on account of arrears, as much as Rs.34.28 lakhs are admittedly paid in cash. The remaining amount of about 26.96 lakhs is claimed to have been paid by cheques. The Committee has examined the salary records of the school and observes that even in the case of those staff members who have been paid regular salary through bank transfer, have been purportedly paid arrears of salary in cash for the very months on which the arrears have been paid. The Committee has examined a copy of bank statements filed by the school and it appears that a large amount which is claimed to have been paid by cheques, is actually paid by means of bearer cheques. The school is required to furnish certificates from the bank regarding the mode of payment of all the cheques which it claims have been paid as arrear salary.

As per the circular issued by the school to the parents regarding fee hike which has been filed by the school, the school increased the tuition fee of the students @ Rs. 300 per month of classes 1st to 8th w.e.f 1st Sept. 2008 and for classes 9th to 12th it was increased @ Rs.400/- p.m.. Besides this the school also recovered lump sum fee @ Rs. 3000 per student for classes 1st to 8th and Rs.3500 p.m. for classes 9th to 12th. On a query by the Committee regarding the fee hike effected for the pre primary classes, the authorized representative was not able to confirm whether it was hiked or not. However, the Committee finds that the school filed its fee statement for the year 2009-10 as required under section 17 (3) of Delhi School Education Act 1973 on 31st March 2009 and as per the said statement the school hiked the fee of the students of nursery and pre primary also @ 300/- per month w.e.f. 1st Sept. 2008.

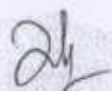
TRUE COPY

Secretary



22/08/2016


The bank certificates as mentioned above may be filed within one week before the next date of hearing. Matter will come up for further hearing on 21st Sept. 2016 at 11.00 A.M.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



PDF Compressor Free Version

Pragati Public School, Sec. 13, Dwarka, Delhi

Present : Sh. Inderpal Singh, Accountant, Sh. Anil Kumar Jain, Authorized Rep., Sh. Rajiv Malik. Authorized Representative, Sh. Manoj Kulshrestha, Adv. Praveen Kapoor & Sh. S.N. Pathak, *Advocate.*

The Committee has perused the circular dated 28.02.2009 issued by the school to the parents of the students regarding fee hike in pursuance of order dated 11.02.2009 issued by the Directorate of Education. As per the circular the school hiked tuition fee @ Rs.300 p.m. and development fee @ Rs. 45 p.m. w.e.f. 01.09.2008. Accordingly a sum of Rs. 2415 was recovered as arrears for the period 01.09.2008 to 31.03.2009 from students of all the classes. Besides, an amount of Rs.3000 was also charged from each student as lump sum fee to cover the arrears salary for the period 01.01.2006 to 31.8.2008.

The school had furnished the information sought by the Committee vide notice dated 22.05.2015 under cover of its letter dated 2nd June 2015. As per the information furnished, the school recovered total amount of Rs.43,67,143 as arrears of fee from 01.01.2006 to 31.3.2009. However, the school paid only a sum of Rs. 23,18,689/- as arrears of salary. Examination of books of accounts of the school shows that the remaining arrear fee collected has been appropriated by the school as its income. Further, the arrears of development fee collected have not been utilized for payment of arrears salary as envisaged vide clause 15 of order dated 11.2.2009 but has been utilized for building repairs. The Committee also observes that the school is transferring large amounts of money to its parent society every year. The school has furnished copies of its parent society as appearing in its books from 01.04.2006 to 31.03. 2011. In reply to a questionnaire issued by the Committee regarding development fee, the school in its letter dated 8.8.2013 conceded that the development fee is treated as a revenue receipt and no earmarked accounts are maintained to park the unutilized fee and depreciation reserve fund.

The statement of monthly salary filed by the school today during the course of hearing is vague as it does not show the break up of amount of salary paid by cash, bearer cheque, account payee cheques and direct bank transfer. Further the school claims to have increased the monthly salary as per the recommendations of Vith Pay Commission w.e.f. 01.04.2009. However, the Committee observes that there was actually a drop in the aggregate amount of salary paid for the month of April 2009 as compared to March 2009. The authorized representatives of the school submit that on account of reduction in the number of teachers from 59 in March to 54

TRUE COPY

Secretary



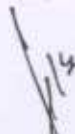
23/08/2016

in April 2009 and out of these, two teachers were on leave without pay. In May 2009 the number of teachers further dropped to 53 out of which one was on leave without pay. Again in June 2009, the number of teachers further dropped to 50 out of which 5 were on leave without pay. The Committee observes that, so far as the students strength is concerned, the same had gone up from 1153 in 2008-09 to 1277 in 2009-10. The school is required to file the monthly salary sheets for the entire 2008-09 and 2009-10, and also show by documentary evidence as to how the payment of salary was made to the staff in these two years.

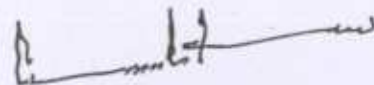
The school has also not furnished the details of its accrued liabilities of gratuity and leave encashment, though it admits that such liabilities exist. The school is also required to file the details of such liabilities as on 31st March 2010. Matter to come up for further hearing on 5th Oct. 2016 at 11.00 A.M.



R.K. SHARMA
MEMBER

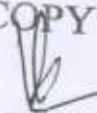


J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary

PDF Compressor Free Version

Vandana International School, Sec. 10, Dwarka, Delhi

Present : Sh. Man Mohan Sharma, C.A, Sh. Sanjeev Kumar, Sh. Rakesh Kumar, Sh. Hitesh, Sh. R.L. Virmani of the school.

The Committee has pursued the circular dated 15.02.2009 issued by the school to the parents of the students regarding fee hike effected in pursuance of order dated 11.02.2009 issued by the Directorate of Education. As per circular the parents were required to deposit fee arrears of seven months i.e. Sept. 2008 to March 2009, calculated @ Rs.400 per month for pre primary classes, Rs. 300 p.m. for class 1 to class 7, Rs.400 p.m. for classes 8 to 10th & Rs.500 for class 11th. Besides this, parents were also asked to deposit lump sum fee as envisaged in order dated 11.02.2009 to cover the salary arrear for the period 01.01.2006 to 31.08. 2008. In reply to the questionnaire issued by the Committee the school had stated that it did not charge development fee. As per the information filed by the school vide letter dated 02.06.2015 in response to the Committee's notice dated 22.5.2015, the school collected a total arrear fee of Rs.61,31,610 while a sum of Rs. 64,30,767 was paid as arrear salary upto 31.03.2009.

The school has produced a bank statement to show that all the arrears were paid through direct bank transfers except to three employees who were paid by bearer cheques. Further, as per the statement filed by the school the normal tuition fee received by the school rose from 3,01,56,011 in 2008-09 to Rs.4,07,72,029 in 2009-10 as a result of hike in fee. The normal salary paid to the staff also rose from Rs.1,62,14,057 in 2008-09 to Rs. 1,88,87,195 in 2009-10. The authorized representatives submit that bulk of the regular salary is paid through direct bank transfers. The school has furnished details of its accrued liabilities of gratuity and leave encashment as on 31.03.2010. The school has furnished also copies of the ledger account of its parent society for the years 2008-09 to 2010-11. Perusal of the same shows that the school has multiple transactions with its parent society. Funds are received as well as paid to the society.

It is submitted by the authorized representatives that on the whole the balance of society in the books of the school has increased every year. And thus no funds can be considered as having been transferred to the society. The school has also furnished the details of its accrued liability for gratuity and leave encashment as on 31.03.2010.

copy given to school

TRUE COPY

Secretary



23/08/2016

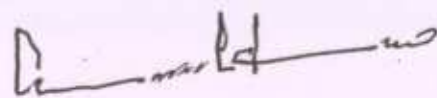
The school is required to submit copies of ledger account of its parent society as appearing in its books from 1.04.2006 to 31.03.2008 within 3 days. Calculation sheet to be prepared. Matter is listed for further hearing on 5th October 2016 at 11.00 A.M.



**R.K. SHARMA
MEMBER**



**J.S. KOCHAR
MEMBER**



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

TRUE COPY



Secretary



PDF Compressor Free Version

B-429

M.D.H. International School, Sec.6, Dwarka, Delhi

Present : Sh. R.N. Rai, Secretary, Sh. R.K. Wadhwa, Manager & Sh. S. Nayak, Accountant of the school.

The Committee has pursued the circular dated 28.02.2009 issued by the school to the parents of the students in pursuance of order dated 11.02.2009 issued by the Director of Education regarding hike in fee as well as recovery of arrear fee for the period 01.01.2006 to 31.03. 2009. The school increased the tuition fee @ Rs.200 p.m. for classes pre school to 9th and @ Rs.300/- for classes 10th & 11th. w.e.f 1.09.2008. Accordingly arrears were recovered for the period 1.09.2008 to 31.03 2009 @ Rs.1400/2100 per student. In addition the school also recovered Rs.2500 /Rs.3000 as lump sum fee to cover the arrears of salary for the period 01.1.2006 to 31.08.2008.

As per the information filed by the school under the cover of its letter dated 20th May 2015, the school has shown recovery of arrear fee to the tune of Rs.5,65,669 for the period 01.1.2006 to 31.03.2009. As against this the school has shown payment of arrear salary amounting to Rs.2,76,714 for the period 01.09.2008 to 31.03.2009. However during the course of hearing the authorized representatives of the school admit that these arrears of Rs.2,76,714 pertained to the months of July & August 2009 as the school implemented the recommendations of the Sixth Pay Commission only w.e.f. 01.07.2009. They concede that no arrear of salary was paid for the period 01.01.2006 to 31.3.2009. However, they submit that even with the collection of arrear fee for the period 01.1.2006 to 31.03.2009 the school did not have sufficient funds even for the payment of revised salary w.e.f. 1.7.2009.

The school has furnished the details of its accrued liabilities of gratuity and leave encashment as on 31.03.2008 as well as 31.03.2010. The school has also furnished copies of the accounts of the trust as appearing in its books for the period 01.4.2006 to 31.03. 2011. It is contended that there was no transfer of funds from the school to its parents society in any of the years.

With regard to development fee, the school, in its submissions dated 29.08.2013 in response to the questionnaire issued by this Committee stated that it was collecting development fee which was treated as a revenue receipt like other fees. The authorized representatives of the school conceded that the utilization of fee shown in Annexure IV dated 29.08.2013 ~~was~~ also on revenue account.

TRUE COPY

Secretary



23/08/2016

B-316

South Delhi Public School, Defence Colony, Delhi

Present: Sh. B.S. Rana, Accounts Officer of the school.

The authorized representative of the school has been provided with a copy of the calculation sheet as per which the school apparently recovered more fee than was required to meet the additional liabilities arising on implementation of the recommendations of VI Pay Commission. He seeks time to respond to the calculation sheet. As requested the matter will come up for final hearing on 07/09/2016 at 11.00 a.m.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



PDF Compressor Free Version
Public School, Connaught Place, Delhi

Present : Sh. N.K. Tiwari

He files an application on behalf of the school seeking adjournment. As requested the matter will come up for hearing on 14th Sept. 2016 at 11.00 A. M.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY

Secretary




23/08/2016

B-318

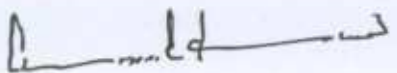
Navy Children School, Chanakya Puri, Delhi

Present. Cmde. Rohtas Singh, Director, Sh. V.S. Bisht, Office Asstt., Sh. Surendra S. Mehra, Accountant, Sh. Sarvjit S. Jaswar, Office Asstt. of the school.

The authorized representatives of the school seek to file some information in compliance with the order of the Committee passed on 19/07/2016 in a disjointed manner. They are directed to file the same with proper indexing, giving page number on the statements/documents sought by the Committee. This may be done within one week. Matter will come up for further hearing on 5/10/2016 at 11.00 a.m.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY

Secretary

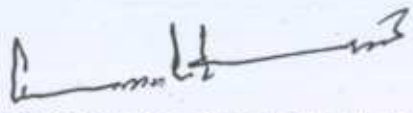


23/08/2016


Calculation sheet to be prepared. Matter to come up for further hearing on 5th October at 11.00 A.M.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



24/08/2016

B-177

Bloom Public School, Vasant Kunj, New Delhi.

Present : Sh. Ashutosh Batta, Principal, Ms. Tarveen Kaur, Incharge Admn., Sh. Vijay Bansal, CA and Sh. Rajesh Gupta, Accountant of the school.

The school has furnished actuarial valuation certificates issued by Sh. M.L. Sodhi, Consulting Actuary and as per the certificates the school had an accrued liability of Rs.33,83,892 in respect of leave encashment and Rs. 80,83,049 on account of gratuity. Further the school claims that its total establishment expenditure of Rs. 3,01,14,151 for the year ending 31/03/2010 which would include the salary of drivers and conductors which are reflected under the head "vehicle expenses" in the receipt and payment account and based on that the reserve for future contingency should be calculated. On a query by the Committee the authorized representatives of the school state that the drivers and conductors are outsourced through a manpower agency and are not employees of the school. *(not to be taken)*

With regard to the funds earmarked for development fund and depreciation reserve funds, the authorized representatives concede that no earmarked accounts are maintained for these fund and the entire funds of the school are kept in either saving bank account or FDR accounts on consolidated basis. Calculation sheet to be prepared. Matter to come up for further hearing on 05/10/2016 at 11.00 a.m.


R.K. SHARMA
MEMBER


J.S.KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



PDF Compressor Free Version

24/08/2016

B-300Adharshila Vidya Peeth, CD Block, Pitampura, Delhi.

Present : Sh. Byomakesh Mishra, Principal, Sh. Vijay Kumar Sharma, Accountant, Ms. Ruchika Khattar, TGT, Ms. Pooja Aggarwal, Consultant, Ms. Dipali Garg, Chartered Accountant of the school.

The Committee has perused the circulars dated 24/02/2009, 28/02/2009, 02/03/2009 and 06/03/2009 issued to the parents regarding hike in fee in pursuance of order dated 11/02/2009 issued by the Director of Education. As per the circulars the school hiked the tuition fee wef 01/09/2008 of pre primary classes @ Rs. 400 per month and development fee @ Rs. 60 per month. The correspondent hike for other classes were Rs. 500 per month and Rs. 525 per month for class I to XI. The hike in development fee as a percentage of the hike in tuition fee effected by the school w.e.f. 01/09/2008 was 15% whereas the school was originally charging development fee @ 12% of the tuition fee. The school has filed revised statement of fees and salary today in the substitution of statement filed 01/06/2015 and submitted that statement filed today is in agreement with audited financials of the school. In response to the questionnaire issued by the Committee, the school had filed its reply on 01/06/2015 stating therein that the recommendations of VI Pay Commission were implemented w.e.f. 01/04/2009 and the staff was paid the arrears from 01/01/2006 to 31/03/2009. However, on perusal of the details filed by the school, the Committee observes that no details in respect of payment of arrears to individual staff member have been filed. Only the aggregate amounts are mentioned. On examination of the books of accounts of the school, the Committee finds that the school has not maintained any separate accounts for arrear salary as such the details furnished by the school with regard to arrear salary and regular salary paid during 2008-09, 2009-10 and 2010-11 are not verifiable, although the school claims to have paid the entire amount of arrear salary as well as regular salary through bank transfer. It is submitted by the authorized representative of the school that the arrears were paid in 8-9 installments. The school is required to furnish the employee wise detail of the arrear salary and the regular salary for the years 2008-09 and 2009-10.

TRUE COPY


Secretary



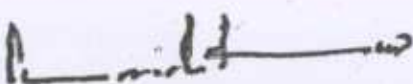
PDF Compressor Free Version

24/08/2016

As regards regular development fee, the school in its reply to the questionnaire issued by the Committee has stated that the school was charging development fee in all the five years for which the information was sought. The amounts collected on this account were Rs. 33,27,868 in 2008-09, Rs. 43,06,080 in 2009-10 and Rs. 67,71,023 in 2010-11. It is submitted that these figures include the arrears of increased development fee for the period 01/09/2008 to 31/03/2009. The school is required to furnish the break up of regular development fee and the arrears recovered in the years 2008-09 and 2009-10. The school has not furnished the details of utilization of development fee but only given the aggregate figures. The school is required to furnish these details also. It is further submitted that the development fee is treated as a capital receipt in the books and earmarked FDRs are maintained for unutilized development fund and depreciation reserve fund. However, the authorized representative has not been able to pin point the earmarked FDRs from the balance sheets. On a specific query by the Committee, the authorized representatives state that there were no earmarked FDRs. The authorized representative submit that although the school maintains sufficient amount of FDRs to cover the unutilized development fund and depreciation reserve fund, they were not specifically earmarked against development fund and depreciation reserve fund. The school is required to furnish the details as mentioned earlier within two weeks. Matter to come up for further hearing 06/10/2016 at 11.00 a.m.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



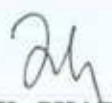
24/08/2016


B-301**Bharti Public School, Kondli, Mayur Vihar, Delhi.**

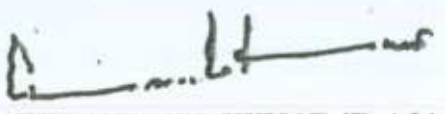
Present : Sh. Puneet Batra, Advocate, Sh. Mridul, A.O., Sh. H.C. Batra, President, Sh. Devender, Accounts Asstt. of the school.

The school was required to give the details of new teachers appointed during the year 2009 as per the Committee's order dated 18/07/2016. However the same has not been done. The school seeks further time to furnish the detail as far as the abnormal increase in number of teachers in July 2009 has reflected in the statement filed by the school, the explanation given on the last date was that the school got upgraded on 10th to 12th in this year and consequent to this required more teachers. However, the authorized representative of the school today state that it was an incorrect explanation as the school was upgraded in the year 2006-07 itself. As such the explanation regarding the abnormal increase in teachers has still not been furnished. The school seeks time to do the same. Further on examination of bank statement of the school for the period in which arrears have been paid, the Committee observes that two teachers were paid through direct bank transfer. The remaining teachers were purportedly paid through individual cheques. The competent authority of the school will state on affidavit as to whether the individual cheques to teachers were bearer to account payee. Affidavit shall be accompanied with certificates issued by bank regarding the mode of withdrawal of money in respect of these cheques. These details and affidavits may be filed within two weeks. Matter will be come up for further hearing 06/10/2016 at 11.00 a.m.

See copy
 Encl
 15/9/16


R.K. SHARMA
 MEMBER


J.S. KOCHAR
 MEMBER


JUSTICE ANIL KUMAR (Retd.)
 CHAIRPERSON

TRUE COPY


 Secretary



PDF Compressor Free Version

24/08/2016

B-302

Bharti Public School, Swasthya Vihar, Delhi

Present : Sh. Puneet Batra, Advocate, Sh. Mridul, A.O., Sh. H.C. Batra, President, Sh. Devender, Accounts Asstt. of the school.

The Committee has perused the circular 28/02/2009 issued by the school to the parents regarding fee hike in pursuance of order dated 11/02/2009 issued by the Director of Education. As per the circular, the school hiked tuition fee w.e.f. 01/09/2009 for pre primary classes to VII @ Rs. 300 per month and development fee @ Rs. 45 which is 15% of the hike in tuition fee. For classes IX to XII, the hike was @ Rs. 400 per month in tuition fee and Rs. 60 per month for development fee. Besides, the school also recovered lump sum fee @ Rs. 3,000/3,500 per student for payment of arrears for the period 01/01/2006 to 31/08/2008.

The Committee has perused the original fee schedule for the year 2008-09. As per fee schedule filed by the school, in the year 2008-09, the school was originally charging development fee @ 10% of tuition fee. The authorized representatives of the school admit that this is the fact position.

So far as the payment of arrear salary to the teachers, the school has filed details showing the mode of payment thereof. While a substantial amount of salary have been paid through direct bank transfer, others have been paid by way of individual cheques. The bank statement produced by the school do not show the exact mode of payment of the individual cheques. . The competent authority of the school will state on affidavit as to whether the individual cheques to teachers were bearer to account payee. Affidavit shall be accompanied unted with certificates issued by bank regarding the mode of withdrawal of money in respect of these cheques. These details and affidavits may be filed within two weeks.

With regard to regular development fee, the school in its reply to the questionnaire issued by the Committee has stated that in the year

TRUE COPY


Secretary



PDF Compressor Free Version

24/08/2016

2008-09, the development fee was treated as a revenue receipt. However, in the year 2009-10 and 2010-11, the same was treated as a capital receipt. The amount of development fee recovered in 2009-10 and 2010-11 was 58,70,020 and Rs. 70,75,477 respectively. In the detail of utilization of development fee, the school has submitted that the total capital expenditure incurred by it in 2009-10 Rs. 57,79,222 out of which a sum of Rs. 29,38,772 was utilized for up gradation of school building. The remaining amount was utilized for purchase of furniture, fixture and equipments. The entire amount of development fee received in 2010-11 is shown to have been utilized for the amount utilized for purchase of furniture fixture amounting to Rs,25,91,433 the remaining amount has been utilized for purchase of land. The authorized representative state in response to a query by the Committee that the land was purchased in Noida Extension. The school has also stated in reply that no earmarked fund accounts are maintained for development fund and depreciation reserve fund as the capital expenditure incurred by the school is more than development fee receipt and no amount remains unutilized.

The school has not furnished details of its accrued liabilities of gratuity and leave encashment. It seeks time to file the same. The school shall file the affidavit and bank certificate as mentioned above and also detail of its accrued liabilities within two weeks. Matter will come up for further hearing on 6/10/2016 at. 11.00 a.m.

Res. Copy
 15/9/16

R.K. Sharma
R.K. SHARMA
MEMBER

J.S. Kochhar
J.S.KOCHAR
MEMBER

Anil Kumar
JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY
[Signature]
 Secretary



24/08/2016

B-304

Mother Teresa Public School, Preet Vihar, Delhi

Present : Sh. Ashok K. Jethy, Chairman, Ms. Neeta Jethy, Manager, Sh. Piyush Jain, CA, Sh. S.N. Dixit, Advisor, Sh. S. Soni, Accounts Officer of the school.

The Committee has examined the circular dated 3.3.2009 issued by the school to the parents of the students in pursuance of order dated 11.02.2009 issued by the Directorate of Education. As per this circular the school recovered a sum of Rs. 3500 as arrear fee for the period 01.09.2008 to 31.3.2009, besides recovering lump sum fee of Rs.3000 per student to cover the payment of arrears of salary for the period 01.01.2006 to 31.08.2008.

The recovery of arrears of Rs.3500 for the period 01.09.2008 to 31.03.2009 implies a hike of Rs.500 p.m. w.e.f. 01.09.2008.

The Committee has examined the original fee schedule for the year 2008-09 as well as the fee schedule for the year 2009-10. The fee schedule for these two years show the fee hike of Rs. 300/- p.m. in the year 2009-10. Therefore, the fee hike actually effected by the school is only Rs.300 per month and the school ought to have recovered of Rs. 2100/- for the year 01.09.2008 to 31.03. 2009. It appears that the school recovered a sum of Rs. 1400 per student in ^{excess} of what was permitted to it by order dated 11.02.2009. The school has furnished all the details that were required to furnish vide notice dated 14.05.2015 issued by the Committee. Perusal of the same shows that the school recovered a total amount of Rs.1,34,13,300 as arrear fee for the year 01.01.2006 to 31.03.2009. As against this the total arrears paid to the staff were Rs. 1,05,29,743. The school had opened a separate bank account for collection of arrear fee and payment of arrear salary. The said bank account had a balance of Rs. 1,73,908 as on 02.02.2011 which was transferred to the main account of the school. The balance sheet of the school as on 31.03.2011 shows an unpaid amount of Rs.28,08,759 towards the

TRUE COPY

Secretary



PDF Compressor Free Version

24/08/2016

arrear salary. The authorized representatives submit that some of the staff members have not yet claimed the arrear salary as they left the school. The school has furnished a detail of its accrued liability towards gratuity and leave encashment as on 31.03.2010. A sum of Rs. 79,54,535 was its estimated liabilities on account of gratuity and Rs. 47,80,040 on account of leave encashment. The school has not filed a copy of the statement of account of its parent society for the period 01.04.2006 to 31.03.2011. The representatives of the school seek time to file the same. The school has furnished its own calculation sheet and based on that the authorized representatives state that the fee hike was justified as the school did not have sufficient funds to maintain the reserves on account of accrued liabilities, gratuity, leave encashment and future contingencies.

As regards development fee the school in its reply to the questionnaire issued by the Committee mentioned that in the year 2008-09 the school was not charging any development fee, but in the year 2009-10 it recovered a sum of Rs. 49,49,800 and in the year 2010-11 it recovered Rs. 60,19,580. It further stated that the development fee was treated as a revenue receipt. However the authorized representatives contend that the development fee although treated as revenue receipt was utilized for purchase of fixed assets and renovation/up gradation of building and other repairs and it was fully utilized. Hence no earmarked account was maintained for depreciation reserve fund or development fund.

The matter will come up for further hearing on 06 Oct. 2016 at 11.00 A.M.

24
R.K. SHARMA
MEMBER

J/S
J.S. KOCHAR
MEMBER

JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY

Secretary



*Recd. copy
R.K. Sharma
20/09/2016*

24/08/2016


PDF Compressor Free Version

B-171

Poorna Prajna Public School, Vasant Kunj, New Delhi

Present : Sh. Rattan Singh, Manager, Sh. Narayan, Office Supdt., Ms. Sandhya Gupta, UDC, Sh. Dinesh Kumar, UDC & Sh. N.K.Bhat, C.A. of the school.

The school has filed revised statement of fee and salary, after making some correction. The school has also filed the audited balance sheet of Poorna Prajna Play House which was earlier a feeder school but was subsequently closed, as per the submission made by the authorized representatives of the school. However the assets and liabilities of the pre primary school were not merged with the assets and liabilities of main school. The Committee observes that funds were diverted to Poorna Prajna Education Centre, Sada Shiv Nagar to the tune of Rs. 2 lakhs and Admar Mutt Education Council, Bangalore to the tune of Rs. 14 lakhs as on 31.3.2008. These funds were obviously generated from the fee of the students. The school has also furnished the details of its accrued liabilities for gratuity for the year 31.03.2010 which it has estimated at Rs. 51,27,126. However ^{No} the detail in respect of liability of leave encashment has been filed presumably as no such liability exist. The school has still not filed copy of the account of the parent society in its books for the years 2006-07 to 2010-11. The school is required to furnish the same within one week otherwise adverse view will be taken against them. After the receipt of the statement of account of the parent society calculation sheet to be prepared and the matter will come up for further hearing on 7th October 2016 at 11.000 A.M.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER

JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



PDF Compressor Free Version

24/08/2016

B-336Arwachin Bharti Bhawan Sr. Sec. School, Vivek Vihar, Delhi

Present : Sh. Anurup Sharma, Director, Sh. Dinesh Chawla, C.A. & Sh. Vicky Sumby, C.A. of the school.

The school has not filed the circular that was issued to the parents of the students regarding fee hike in pursuance of order dated 11.02.2009 issued by the Directorate of Education. However, from the copy of the fee schedule for the year 2008-09 and 2009-10 it appears that the school hiked the monthly tuition^{fee} which is 300 p.m. for primary and middle classes and Rs. 400 p.m. for secondary and senior secondary classes. Besides, the school hiked the annual charges from Rs. 1400 in 2008-09 to Rs.2200 in 2009-10. The annual development fee was also increased from Rs.1300 in 2008-09 to Rs.2200 in 2009-10.

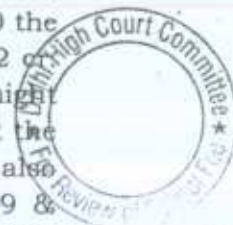
The authorized representatives submit that the school did not recover any arrear fee for the period 1.1.2006 to 31.3.2009 and consequently did not pay even arrear salary to the staff for this period.

On a query by the Committee the authorized representatives of the school state that the parent society also has a pre primary school which is a entry level school for the students. And its financials are separately prepared. The school has not filed copies of its balance sheets. The school is required to file copies of the audited financials of the pre primary school for the years 2006-07 to 2010-11. The information sought by the Committee vide notice dated 14.05.2015 as well as the fee schedules for the years 2006-07 to 2010-11 may also be furnished with regard to the pre primary school. Copies of the circulars issued regarding fee hike for implementation of the 6th pay commission report issued by the pre primary school as well as the main school have also to be furnished by the school.

As per the information filed by the school under cover of its letter dated 29.5.2015, the total fee revenue of the school other than development fee increased from Rs.4.69 cr. to 6.19 cr. In 2009-10 the expenditure of the salary for the same period increased from 1.92 cr. to Rs. 2.96 Crores. On the face of it appears that the school might have hiked the fee more than which was required to implement the recommendations of the 6th pay commission. This position is also reflected by the balance sheets of the school as on 31.3.2009 & 31.03.2010. The net current assets and investments were

TRUE COPY

Secretary




PDF Compressor Free Version

24/08/2016

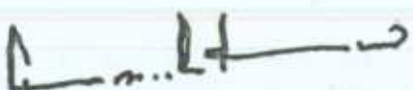
Rs.52.42 lakhs as on 31.03.2009 and Rs. 208.67 lakhs as on 31.03.2010. There appears to be no induction of funds in the year 2009-10 apart from the fee received from the schools. The authorized representatives of the school submit that the school had an outstanding liability of Rs. 134.06 lakhs on account of gratuity as on 31.3.2010 and another Rs. 76.93 lakhs on account of leave encashment. As such the fee hike was not excessive.

With regard to development fee, school in its reply to questionnaire issued by the Committee has furnished the information regarding development fee under cover of its letter dated 21.05.2013 as per which the school collected sum of Rs.77.90 lakhs in 2009-10 in this account, and which was fully utilized for development activities by building renovation/up gradation and for fixed assets. Similarly in the year 2010-11 the school stated that a sum of Rs.91.52 lakhs was recovered on account of development fee which was fully utilized for development activities like building renovation/up gradation and for fixed assets. However, the details of utilization are not furnished by the school. On perusal of the balance sheet of the school, as on 31.3.2010, the Committee observes that the total addition of fixed assets in the year 2009-10 was Rs. 28.00 lakhs out of which Rs.13.22 lakhs represents the purchase of new vehicles. Similarly in the year 2010-11 the total addition to fixed assets was Rs. 57.01 lakhs, out of which a sum of Rs. 1.50 lakh represents addition to building. Further in its reply to questionnaire the school has stated that up to 2007-08 the development fee was received as a revenue receipt but thereafter it was treated as a capital receipt. It is also stated that no depreciation reserve fund was maintained by the school and no earmarked bank account or FDRs were maintained for development fund since it was fully utilized.

The school may file the documents and furnish the information as mentioned above within two weeks, and such other information for justification as may be deemed prepared by the school for justify the hike in fee may also be furnished. After the receipt of these documents, calculation sheet to be prepared by taking the balance sheet as on 31.03 .2009 of the main school and the pre primary school. Matter to come up for further hearing 7th October 2016 at 11.00 A.M.


R.K. SHARMA
MEMBER


J.S.KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
TRUE CHAIRPERSON


Secretary




24/08/2016

B-341

East Point School
(Formerly known as Starex International School, Vasundhara
Enclave, Delhi.

An application is received on behalf of the school seeking adjournment for date in October. As requested the matter will come up for hearing on 6th October 2016 at 11.00 A.M.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER

JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



PDF Compressor Free Version

24/08/2016

B-309**N.K. Bagrodia Public School, Sector-9, Rohini, Delhi.**

Present : Sh. Prashant Parashar, Principal, Sh. S.K. Gulati, C.A. & Sh. Vinod Goel, Accountant of the school

The Committee has perused the circular issued by the school to the parents of the students in pursuance of order dated 11.2.2009 issued by the Directorate of Education. As per the circular the school hiked the tuition fee of Rs. 300 per month. Accordingly recovered a sum of Rs.2100 as arrears of tuition fee for the period 01.09.2008 to 31.03.2009. However, the arrears of the development fee for the same period was recovered @ Rs. 700 per student for classes 1 to 10 and @ Rs. 770 per student for classes 11 & 12th. The hike in development fee as the percentage of the hike in tuition was more than 33% for all the classes. Besides the school also recovered a sum of Rs.3000 as lump sum fee of the period 1.1.2006 to 31.08.2008.

The authorized representatives of the school shall submit in writing the justification for this abnormal hike in development fee.

The school has apparently submitted all the information which has been required vide Committee's notice dated 14.5.2015 issued to it. Today the school has furnished the comparative figures of the month wise salary for 2008-09 & 2009-10 giving the mode of payment thereof. It is contended that bulk of the salary is paid by direct bank transfer and only for few teachers the same is paid by account payee cheques. Calculation sheet to be prepared. Matter is to be listed for further hearing on 7th October 2016 at 11.00 A.M.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary



PDF Compressor Free Version

29/08/2016

B-449Bal Bharti Public School, Ganga Ram Hospital Marg, New Delhi-60

Present: Sh. L.V. Sehgal, Principal, Sh. J.L. Maini, Ex. Officer, Ms. Deepika Bhola, Manager-Accounts, Ms. Sumita Arya, Data Entry Operator, Sh. Anoop Handa, UDC of the school.

The Committee has perused the circulars dated 12 feb. 2009 and 13th Feb. 2009 issued by the school to the parents of the students in pursuance of order dated 11/02/2009 issued by the Director of Education. As per the circulars, the school increased the tuition fee for all the classes w.e.f. 01/09/2008 by Rs. 400 per month. Accordingly arrears of tuition for the period 01/09/2008 to 31/03/2009 were recovered @ Rs. 2,800 per student. However, the arrears of development fee were recovered @ Rs. 770 for the pre school, Rs. 735 for pre primary to class V, for Rs. 805 for Rs. VI to IX and XII. Besides the school also recovered lump sum fee to cover the arrears of salary for the period 01/01/2006 to 31/08/2008, as provided in the order of the Directorate of Education.

Facially, the arrears of development recovered by the school are at a percentage of around 30% of the tuition fee. The authorised representative of the school seeks some time to provide the calculation as to how this amount has been arrived at, particularly when the outside cap of charging development fee is 15% of tuition fee.

In response to the Committee's notice dated 25/05/2014, the school had furnished the detailed information regarding arrear fee, regular fee, arrear salary and regular salary for the years 2008-09, 2009-10 and 2010-11. It is submitted that the entire salary as well as arrear salary has been paid either through direct bank transfer or through account payee cheques. The school has also furnished copies of its bank statements in support of this contention. It is submitted that the school increased the salary of its staff to conform the recommendations of VI Pay Commission w.e.f. Feb. 2009, and arrears of salary were paid for the period 1st Jan. 2006 to 31 Jan. 2008.

The authorized representatives of the school also submit that although the school is running pre primary school, its financials are already merged in the financial of main school. The school has also furnished copies of the statement of account of the parent society namely Child Education Society as appearing in the books. Perusal of the same along with the audited balance sheets of the school shows that the school has transferred sum of Rs. 59,89,883 over a number of years as the same balance appears in the balance sheets of all the years from 31st march 2006 to 31st march 2011. It is submitted that the transfer of funds might have been taken place long time back.

With regard to regular development fee, the authorized representatives of the school submit that development fee is treated as a capital receipt in the accounts of the school and a separate set of account is maintained for development fund with a separate bank account. It is also submitted that the unutilized development fund and depreciation reserve fund on assets acquired out of development fund are kept in earmarked bank account or investments. The school shall furnish the justification of recovery of arrears of development fee @

Secretary



PDF Compressor Free Version

29/08/2016

around 30% of tuition fee for period 01/09/2008 to 31/03/2009 in writing within one week. Thereafter calculation sheet to be prepared. The matter will come up for further hearing on 07/10/2016 at 11.00 a.m.


R.K. SHARMA
MEMBER


J.S.KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY

Secretary



PDF Compressor Free Version

29/08/2016

B-455Bosco Public School, Paschim Vihar, New Delhi

Present: Sh. Raju Duggal, V. Principal, Sh. Shyam Sunder Verma,
Accounts Clerk of the school.

The Committee has perused the circulars dated 28 feb. 2009 issued by the school to the parents of the students regarding fee hike in pursuance of order dated 11/02/2009 issued by the Director of Education. As per the circular, the school hiked the tuition fee @ Rs. 300 per month for students of class Nursery to VIII and @ Rs. 400 per month for students of classes IX to XII. Accordingly, arrears of tuition fee amounting to Rs. 2100/2800 were recovered for the period 01/09/2008 to 31/03/2009. However, the arrears of development fee were recovered @ Rs. 840 for students of classes Nursery to VIII and @ Rs. 980 for students of classes IX to XII. Besides, the school also recovered lump sum fee to cover the payment of arrears of salary from 01/01/2006 to 31/08/2008, as provided in the aforesaid order.

On the face of it, the recovery of arrears of development fee is @ 40% of the arrears of tuition fee. The authorized representatives seek some time to provide the calculation and justification of recovering of arrears of development fee in excess of 15% of arrears of tuition fee.

The Committee has also perused the information furnished by the school vide its submission dated 25/06/2015. As regards payment of arrear salary, the Committee has examined the bank statements of the school and observed that payment of 1st instalment of arrears in March 2009 is made by individual cheques while the school makes payment of regular salary through a single cheque for a consolidated amount. It also appears that the narration used by the bank for payment of different cheques to the staff is also different in cases of the payment made to individual cheques. The school is required to furnish a certificate from the bank in respect of all the payment made through individual cheques which ought to give the mode of withdrawal of those cheques from the bank.

The Committee has perused the copies of account of Bosco Educational Welfare Society, the parent society of the school, appearing in the books of the school. It is observed that there have been regular transfer of funds to and from the society.

The school has also furnished the statement of its accrued liability of gratuity as on 31/03/2008 and 31/03/2010. As per the statement filed, the accrued liability as on 31/03/2010 was Rs.

TRUE COPY

Secretary



PDF Compressor Free Version


29/08/2016

37,61,786. The accrued liability for leave encashment as on same date was Rs. 25,15,816.

As regards development fee, the school in its reply to the questionnaire issued by the Committee, has filed submission dated 08/08/2013 conceded that the development fee is treated as a revenue receipt in the accounts of the school. The same position also break up of fee as filed by the school on 25/06/2015 and its audited financials. The authorized representative of the school also conceded to this position during the course of hearing.

The justification of recovery of arrears of development fee and certificate from the bank as mentioned above may be filed within seven days. Calculation sheet to be prepared thereafter. Matter will come up for further hearing on 07/10/2016 at 11.00 a.m.

Copy given
to school.


R.K. SHARMA
MEMBER


J.S. KOCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY

Secretary



29/08/2016

PDF Compressor Free Version

B-456

Little Angels Sr. Sec. Public School, Paschim Vihar, New Delhi.

Present: Ms. Manisha Sengar, Principal, Sh. Dilip Kumar Lal, Accountant, Sh. Naveen Bhardwaj, PGT (Phy. Edn.), Sh. Amit Goyal, Chartered Accountant of the school.

The authorized representative of the school have not produced the bank statements of the account of the school. There is a complaint from one Sh. Sameer Chauhan alleging inter alia that salary of teachers are paid from cheques but the payment is obtained by the school from the bank although the cheque is drawn in the name of teacher or the bearer. A copy of the complaint has been given to the Principal of the school who is present today. The school shall furnish its reply to the complaint before the next date of hearing. Notice be also issued to the complainant returnable on 17/10/2016 at 11.00 a.m.

24
R.K. SHARMA
MEMBER

11/5
J.S.KOCHAR
MEMBER

11/5
JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

*Letter to
Complainant
received back
undelivered.*

TRUE COPY

11/5
Secretary



29/08/2016


PDF Compressor Free Version

B-474

Green Field School, Safdarjung Enclave, New Delhi

Present: Sh. Sabh Sebastihn, Accountant and Sh. A Ghosh, A.O. of the school.

The school has not filed copies of the all the circulars issued by it, in pursuant to order dated 11/02/2009 issued by the Director of Education. Further, the information regarding arrear fee and arrear salary etc. filed by the school vide submission dated 10/06/2015 does not match with the audited financials of the school. The complete details as required by the Committee vide its notice dated 25/05/2015 have also not been furnished by the school. The authorized representative seeks some time to furnish the complete details. They also contend that even after 31/03/2011, some payment of arrear salary was made. The school shall furnish the details of such payment arrear salary in the subsequent years along with copy of bank statement for that period. The school shall also furnish the details of any arrear fee recovered after 31/03/2010. The necessary details may be filed within two weeks. Matter will come up for hearing again on 17/10/2016 at 11.00 a.m.


R.K. SHARMA
MEMBER


J.S.KQCHAR
MEMBER


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY

Secretary



29/08/2016

PDF Compressor Free Version

B-132

St. Michael's S.S. School, Pusa Road, New Delhi.

Present : Sh. J.A. Martins, C.A. & Sh. Divender Kumar, Accountant of the school.

The Committee has pursued the circular dated 24.2.2009 and 23.09.2009 regarding fee hike effected by the school, pursuant to the order dated 11.2.2009 issued by the Directorate of Education. The Committee has also examined the fee schedules for the years 2008-09, 2009-10 & 2010-11 which were filed by the school as part of its annual returns under Rule 180 of Delhi School Education Rules 1973.

The school had seven different slabs of charging the fee from the students depending upon the various concessions, which have not been spell out in the fee schedules. The school is required to furnish the basis of charging different fee from different students of the same class. The school was also charging development fee. The highest slab the development fee was around 9.5% of the tuition fee. Even the fee that was hiked pursuant to the order dated 11.2.2009 issued by the Directorate of Education was not uniform for all slabs. It appears that at the highest slab the school hiked the tuition fee at the rate of Rs.300 p.m. for all classes except 11th for which the hike was Rs.400 p.m.. Accordingly, the arrear fee for the year 1.9.2008 to 31.3.2009 was recovered at Rs. 2100 or Rs. 2800 per student. In the initial circular issued on 24.2.2009 there was no mention any hike of development fee w.e.f 1.09.2008. However, the school subsequently issued another circular on 23.9.2009, whereby arrears of development fee were demanded from parents @ Rs.490 per student for the period 01.09.2008 to 31.3.2009. Apparently the hike of development fee vis. a vis hike in tuition fee we.f. 1.09. 2008 was more than 15% which was the maximum development fee, any school can charge. The school is required to furnish the basis of arriving at Rs.490 as arrear of development fee as well as furnish explanation on the development fee from certain category of students which is more than even 15% of the tuition fee.

The information furnished by the school in response to the notice dated 13.5.2015 also does not appear to be correct as the school actually implemented the recommendations of VI pay commission w.e.f Sept. 2009 but the arrears of salary are shown to have been paid only on 31.3.2009. During the course of hearing the authorized representatives of the school state that the date has been wrongly mentioned and it should be read as 31.08. 2009 instead of 31.03.2009. The school will furnish the details of arrears paid for the period 1.9.2008 to 31.3.2009 and 1.4.2009 to 31.Aug.2009 separately. The payment of arrears for the period 1.4.2009 to 31.08. 2009 is required to be shown as regular salary for the year 2009-10. The

TRUE COPY

Secretary



arrears for the period 1.4.2009
as regular salary for the year

29/08/2016

PDF Compressor Free Version

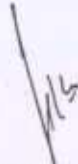
authorized representatives seek sometime to furnish a corrected statement.

With regard to regular development fee, the school in its reply to the questionnaire filed under cover of its letter dated 29.5.2014 has conceded that development fee is treated as a revenue receipt in the accounts of the school and no separate depreciation reserve fund is maintained. However, the school claims that the development fee although treated as a revenue receipt is utilized for additional assets or capital repairs.

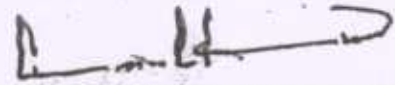
The school has furnished the employee wise details of its accrued liabilities on account of gratuity and leave encashment as on 31.3.2008 as well as 31.3.2010. As on 31.3.2010 the aggregate accrued liabilities for gratuity as worked out by the school was Rs. 74,85,881 and for leave encashment, it was Rs.27,92,807. The authorized representatives submit that the liabilities as provided in the balance sheet are short of the actual liabilities by about Rs. 18 lakhs. The revised documents for details as mentioned earlier may be filed by the end of first week of October 2016. Matter to come up for further hearing on 17th October 2016 at 11.00 A.M.



R.K. SHARMA
MEMBER



J.S. KOCHAR
MEMBER



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON

TRUE COPY


Secretary

PDF Compressor Free Version

**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:

**Rich Harvest Public School, A1 Block Janak Puri, New Delhi-
110058**

Recommendations of the Committee

Present: Mr. Rajesh Vij, Chairman, Ms. Neha Gandhi, Manager and Ms. Neeru, O.S. of the school.

The Committee has perused the circular dated 3rd March 2009 issued by the school to the parents regarding fee hike pursuant to order dated 11/02/2009 issued by the Director of Education. As per the circular, the school hiked the fee w.e.f. 01/09/2008 @ Rs. 200 per month for classes I to V and @ Rs. 300 per month for VI to XII. Besides the school also recovered lump sum arrears @ Rs. 2,500/Rs. 3000 per student.

The Committee has also perused the statement filed by the school giving break up of payment of salary in the years 2008-09 and 2009-10. It is observed that almost 60% of the salary paid by the school in 2008-09 was either through bearer cheques or in cash. In the year 2009-10 also, the same position prevailed. As per the details of arrear payments filed by the school, a substantial part of the same was also paid in cash.

The school has not produced its books of accounts for any of the years before the Committee to support its claim of having implemented recommendations of the VI Pay Commission. The Manager of the school

Rich Harvest Public School, Janak Puri, New Delhi/Recommendations/B-80

TRUE COPY

[Signature]
Secretary



PDF Compressor Free Version

who is present at the time of hearing states that the books accounts were lost some time in 2012. To a query raised by the Committee as to whether any police report was lodged regarding the loss of books of accounts, the Manager replied in negative.

On going through the information and documents furnished by the school vide its letter 07/07/2015, in response to the notice 08/05/2015 issued by the Committee, it is observed that the school had filed the print out of a ledger account of Late Smt. Kaushalaya Devi Memorial Education Society, the parent society of the school, as appearing in the books of accounts of the school for the period 01/04/2005 to 31/03/2011. The print out of the ledger account is from the accounting software "Tally", which facilitates maintenance of accounts of multiple number of years together. Since the ledger account of the parent society is for the period 01/04/2005 to 31/03/2011, the school definitely had available with it the books of accounts for the years 2005-06 to 2010-11. The statement of account was filed by the school under cover of its letter dated 07/07/2015, implying that on that date, the books of accounts of the school were available. This contradicts the position taken by the school during the course of hearing that the books of accounts had been lost some time in 2012.

In the circumstances, the Committee is of the view that the school has intentionally not produced its books of accounts before it. The

PDF Compressor Free Version

Committee infers that the school had not implemented the recommendations of VI Pay Commission as such the recovery of lump sum arrear fee and the hike in monthly tuition fee w.e.f. 01/09/2008 was not justified. **Therefore, the school ought to refund the entire of lump sum amount of arrear fee recovered by it and also the incremental tuition fee recovered by it from 01/09/2008 onwards. The refund of lump sum arrear fee and the incremental tuition fee ought to be made for the period starting from 01/09/2008 to the current date along with interest @ 9% per annum from the date of collection of fee to the date of refund.**

As regards the development fee charged by the school, the authorized representative of the school states that the school started charging the same w.e.f. 01/04/2009 only. **In the year 2009-10, a sum of Rs. 28,00,920 was recovered on this account and in the year 2010-11, a sum of Rs. 29,53,805 was recovered.** As per the reply to the questionnaire issued by the Committee, which is filed by the school under cover of its letter dated 07/07/2015, it is conceded that the development fee is treated as revenue receipt and as per the details of its utilization filed, the Committee observes that the same is utilized mainly for the purpose of repairs of school building and electrical fittings which expenses are also revenue in nature. No amount is shown to have been utilized for purchase or up-gradation of furniture and fixture.

Rich Harvest Public School, Janak Puri, New Delhi/Recommendations/B-80

TRUE COPY

Secretary



PDF Compressor Free Version

In view of the foregoing, the Committee is of the view that the school has not complied with any of the pre conditions laid down by the Duggal Committee for charging of development fee which were subsequently affirmed by the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583. As such the Committee is of the view that the development fee charged by the school in 2009-10 and 2010-11 was not justified and the same ought to be refunded along with interest @ 9% per annum from the date of collection to the date of refund.

Recommended accordingly. Pronounced in the open court at the close of hearing.

Justice Anil Kumar (R)
(Chairperson)

CA J.S. Kochar
(Member)

Dr. R.K. Sharma
(Member)

02/08/2016/B-80

TRUE COPY

Secretary



PDF Compressor Free Version

**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:

SONIA PUBLIC SCHOOL (B-0280),

Gali No.4, Durgapuri Extension,

New Delhi 110093

And in the matter of

Application/representation dated

12th July, 2015 to review the order

Dated 4th October, 2013 passed by the

Committee in respect of the School.

Present: Shri R.V.Sharma, Manager of the School.

ORDER

The School, Sonia Public School, is recognized by Delhi Administration and has classes from I to VIII. The school was issued a questionnaire on 27th February, 2012. Returns of the school were obtained which were filed by the school under Rule 180 of Delhi School Education Rules, 1973. The school was issued a notice dated 18th July, 2013 directing it to appear on 8th August, 2013. On that date manager of the school appeared and contended that the school had implemented the report of sixth pay commission partially. The plea of the school was that it could not implement the report of sixth pay commission fully on account of paucity of resources. It was also pleaded by the school that it did not charge any development fee. From the documents produced by the school which were perused by the committee and the submissions made on behalf of the school, it became apparent that that

Application/representations dated 12.07.2015 Sonia Public School (B-0280)

Page 1 of 7

TRUE COPY

Secretary



PDF Compressor Free Version

school hiked the fee beyond the permissible limit in terms of the order of Directors of Education by notification dated 11th February, 2009. In the circumstances it was held that the claim of the school to hike the fee for partial implementation of sixth pay commission was not justifiable. The committee also noticed that the school had hiked the fees beyond the limit of 10%. In the circumstances it was held that the fee hike beyond 10 person in 2009 - 10 could not be done and therefore, it was ordered/recommended that hike in fee beyond 10% ought to be refunded along with interest at 9% per annum. Since subsequent year fee hike was also relatable to the fee hike the 2009 - 10, therefore, it was also ordered/recommended that the fee hiked in subsequent years is also to be in refunded with interest at @ 9% per annum.

The school has sought review of the order dated 4th October, 2013 by filing an application/representation dated 12th July, 2015. The review of the order/recommendation of the committee has been sought principally on the ground that the fee structure from 2006 - 2009 was very nominal; the fee was hiked from Rs. 400 to Rs.550 for class I -V and from Rs.400 to Rs.580 for class VI to VIII, however on account of paucity of funds and despite the increase in fee, the recommendations of sixth pay commission could not be implemented fully; though the hike in fee was against the order of the Director of Education but as the order was to implement the recommendations of sixth pay commission, therefore, the fee was hiked beyond 10%; the recommendations of sixth pay commission could be implemented on hiking the fees excessively as the fee structure was very nominal and that the management does not have access funds to refund the fee as has been ordered/recommended by the committee and therefore, it has been prayed that the order dated 12th July, 2015 be reviewed and the school be exempted from refunding the fees.

The school has sought review of the order/recommendation of the committee dated 4th October, 2013 on merits of the order passed by the Committee. In the circumstances the committee has to first consider and adjudicate whether the Committee has such powers or not which are in

TRUE COPY

[Signature]
 Secretary



PDF Compressor Free Version

by the School to review/reconsider its order dated 4th October, 2013. In the circumstances this cannot be disputed by the School that the Committee has become functus officio after it passed the order dated 4th October, 2013. Though after partial arguments on 19th July, 2016, the school had sought time to produce relevant law to contend that the Committee has power to review its order on merits. The school, however, has not produced any law or precedent or any rule or order of the Hon'ble Court giving power to the Committee to review its orders on merits.

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

"Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision."

Black's Law Dictionary (6th Edn., p 673) gives the meaning of functus officio as follows:

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

Consequently after the Committee had made its recommendations and passed the order in the case of Applicant school and notified the same to the



PDF Compressor Free Version

Hon'ble High Court, the Committee became functus officio as it had decided the question brought before it.

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 and therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendations. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

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

The Hon'ble 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. 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 renotified on 09.05.2014"

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

PDF Compressor Free Version

to review orders having errors on the face of the record, however, no general permission was granted to the Committee.

From the perusal of the application/representation dated 12th July, 2015 of the school, it is apparent that the applicant/school has sought review/reconsideration of recommendations of the Committee on merits. The applicant is not seeking review on account of any lapse in procedure or procedural defect as contemplated under the concept 'Procedural lapse'. This is also no more *res integra* that no review lies on merits unless a statute specifically provides for it. In *Dr. (Smt.) Kuntesh Gupta v. Management of Hindu KanyaMahaVidyalaya, Sitapur (U.P.) and Ors.* MANU/SC/0104/1987 and *Patel NarshiThakershi and Ors.v. Pradyumansinghji Arjunsingji 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. There is a difference between the procedural review and a review on merits. The procedural review is which is either inherent or implied in a Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it. But the review on merits is when the error sought to be corrected is one of law and facts and is apparent on the face of the record. In *Patel Narshi Thakershi & ors. (supra)* 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 debita justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal.

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



PDF Compressor Free Version

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 vitiates the proceeding and invalidate 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. The school was issued notices and was given ample opportunities and the representative of the school had appeared and produced voluminous record which considered and the pleas and contentions of the school taken into consideration before passing the order/recommendations dated 4th October, 2013.

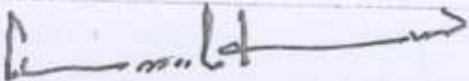
Applying these principles it is apparent that where a quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the quasi-judicial authority is vested with power of review by express provision or by necessary implication.

The Applicant in the present case seeks recall/review of the order passed by the Committee dated 4th October, 2013 on merits on various grounds. It is not alleged that in passing the order, the committee has committed any

PDF Compressor Free Version

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 are that matters have been apparently considered incorrectly and the school/applicant is seeking review of its order pertaining to the case of the School. Apparently the recall or review or reopening 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 the Committee to review its orders/recommendations either expressly or by necessary implication.

The application/representation dated 12th July, 2015 seeking recalling/revoking of the order dated 4th October, 2013 and passing the order/recommendation again is not maintainable as this Committee does not have such powers nor it can exempt the school from refunding the fee which has been ordered/recommended by the Committee. The applications/representations dated 12th July, 2015 by the school seeking review of the order/recommendation dated 4th October, 2013 is, therefore, disposed of as not maintainable


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON


J.S. KOCHAR
MEMBER


Dr. R.K. SHARMA
MEMBER

Date: 4th August, 2016



PDF Compressor Free Version

**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:

S.D.PUBLIC SCHOOL (B-0239),

Patel Nagar,

New Delhi 110008

And in the matter of

Applications/representations dated

9th October, 2014 and 13th July, 2016

and 20th July, 2016 to review the order

Dated 5th May, 2014 passed by the

Committee in respect of the School.

Present: Shri Manish Gupta, Accountant of the School.

ORDER

The school, S.D. Public School, was sent a questionnaire dated 27th February, 2012 which was not replied by the school and thereafter a reminder dated 27th March, 2012 was sent. The school by its letter dated 9 October 2012 had sent a reply to the office of Education Officer, Zone 16 which was forwarded to the committee. The reply was found to be vague and lacking in particulars. As the reply was evasive, it was considered appropriate to verify the same by calling the records of the school. Another notice dated 8th July, 2013 was issued following its records for fees, salary records, books of

Application/representations dated 9.10.14 & 13.7.16 S.D.Public School (B-0239)

TRUE COPY

Secretary

Page 1 of 8



PDF Compressor Free Version

accounts, bank statements, provident fund returns and TDs returns. The questionnaire regarding development fee was also issued to the school. The school did not produce the record as had been directed on various grounds. Pursuant to last opportunity given to the school, Ms. Rita Sachdeva, Office Superintendent appeared on 24th October, 2013 but did not produce the relevant records and sought further time. Consequently another opportunity was given to the school and it was directed to appear and produce all the records on 27th November, 2013. On that date some record was produced and thereafter, another opportunity of hearing was given to the school to appear on 11th February, 2014. The committee also perused the returns filed by the school with the Director of Education.. The committee found that the school had hiked the fees in 2009 - 10 and 2010 - 11 by 10%. Since the fee hike was found to be within the permissible limit, therefore, no intervention was recommended by the committee. Regarding development fee it transpired that it was received as revenue receipts in the accounts. No depreciation reserve fund was maintained. The school created the development fee as revenue receipt and spent the same on revenue expenditure which was not the purpose for which the school was allowed to charge development fees. Relying on the report of an earlier committee and judgment of Hon'ble Supreme Court it was observed that the school could charge development fee on fulfilling the precondition, one being that it had to treat it as the capital receipt and it had to maintain the depreciation reserve fund. The school could utilize development fee only for purchase or upgradation of furniture and fixtures and equipment. The committee therefore, ordered that the school ought to refund the development fee of Rs.21,33,800/- charged 2009 - 10 and Rs.43,82,300/-



PDF Compressor Free Version

charged in 2010 - 11 along with interest @9% per annum from the date of collection to the date of referral.

The school has filed representations/applications dated 9th October, 2014 and 13th July, 2016 seeking review of the order/recommendation of the committee dated 9th October, 2014. The school has sought review contending inter-alia that in principle it does not agree with the observations and decision of the committee. The school has been incurred too much expenditure for the benefit of the students which has not been taken into consideration. Therefore, the decision of the committee is not acceptable to the school and therefore, no amount is refunded to the students. The school therefore, has sought review of the findings of the committee. It is also contended that Action Committee of unaided public schools has also filed a case before the Delhi High Court against the finding of the committee which is pursued by the Action Committee. On 20th July, 2016, the date the school was heard, another representation of the same date was filed contending inter-alia that increases in fee as permitted by order dated 11th February, 2009 was not sufficient leading deficit on that account. The increase in fee was utilized by the school entirely and exclusively for the payment of salaries and arrears. Alternatively was also contended that committee has only made recommendations which can be accepted by the Department after application of mind. Therefore a show cause notice and hearing is required by the Department. In violation of principles of natural justice no show cause notice has been given nor any hearing has been given to the school. The school also complained about



PDF Compressor Free Version

certain principle flaws in the recommendation of the committee. In this background the school has sought review of order dated 5th May, 2014.

The school has sought review of the order/recommendation of the committee dated 5th May, 2014 on merits. In the circumstances the committee has to first consider and adjudicate whether the Committee has such powers or not which are invoked by the School to review/reconsider its order dated 5th May, 2014. This cannot be disputed by the School that the Committee has become functus officio after it passed the order dated 5th May, 2014. After passing the order which is sought to be reviewed whether the committee will still have the power to review/reconsider its said order/recommendation is to be adjudicated first

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

"Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision."

Black's Law Dictionary (6th Edn., p 673) gives the meaning of functus officio as follows:



PDF Compressor Free Version

"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 recommendations 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.

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 and therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendations. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

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

The Hon'ble 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. 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**.



PDF Compressor Free Version

The writ petition shall be renotified on 09.05.2014¹¹¹ powers to review is own orders and though the Committee had sought permission to review orders having errors on the face of the record, however, no general permission was granted to the Committee.

From the perusal of the applications/representations dated 9th October, 2014 and 13th July, 2016 of the school it is apparent that the applicant/school has sought review/reconsideration of recommendations of the Committee on merits. The applicant is not seeking review on account of any lapse in procedure or procedural defect. This is also no more *res integra* that no review lies on merits unless a statute specifically provides for it. 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: 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. There is a difference between the procedural review and a review on merits. The procedural review is which is either inherent or implied in a Tribunal to set aside a palpably erroneous order passed under a misapprehension by it. But the review on merits is when the error sought to be corrected is one of law and facts and is apparent on the face of the record. In *Patel Narshi Thakershi & ors. (supra)* 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.

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.



PDF Compressor Free Version

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 vitiates the proceeding and invalidate 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.

Applying these principles it is apparent that where a 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 quasi-judicial authority is vested with power of review by express provision or by necessary implication.

The Applicant in the present case seeks recall/review of the order passed by the Committee dated 5th May, 2014 on merits on various grounds. It is not alleged that in passing the order, the committee has committed any procedural illegality or mistake of the nature which vitiates the proceeding itself and consequently the order/recommendation of the committee is liable to be recalled. Rather grounds taken by the applicant are that matters have been apparently considered incorrectly and the school/applicant is seeking review of

TRUE COPY



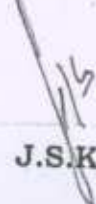
[Handwritten signature]


PDF Compressor Free Version

its order pertaining to the case of the School. Apparently the recall or review or reopening 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 the Committee to review its orders/recommendations either expressly or by necessary implication.

The applications/representations dated 9th October, 2014 and 13th July, 2016 and 20th July, 2016 seeking recalling/revoking of the order dated 5th May, 2014 and passing the order/recommendation again is not maintainable as this Committee does not have such powers. The applications/representations dated 9th October, 2014 and 13th July, 2016 and 20th July, 2016 by the school seeking review of the order/recommendation dated 5th May, 2014 are, therefore, disposed of as not maintainable


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON


J.S.KOCHAR
MEMBER


Dr. R.K. SHARMA
MEMBER

Date: 11/08/2016

TRUE COPY


Secretary



PDF Compressor Free Version

**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:

N.C.JINDAL PUBLIC SCHOOL (B-0071),

Road No. 73, Punjabi Bagh (West).

New Delhi 110026

And in the matter of

Application/representation dated

10th July, 2015 to review the order

Dated 13th August, 2013 passed by the

Committee in respect of the School.

Present: Dr. A.K.Pandey, Principal; Sh.K.S. Jindal, Accounts Consultant and Shri Amit Kumar, Accounts clerk of the School.

ORDER

The Committee had passed the order dated 13th August, 2013 in respect of the school namely N.C.Jindal Public School. Before passing orders a questionnaire was issued to the school to ascertain whether the school had implemented the recommendations of sixth pay commission or not. Preliminary examination of the financials of the school was carried out by the Chartered Accountants detailed with this committee. The audited balance sheet of the school as on 31st March, 2008 was taken as the basis for calculation. Thereafter the school was issued a notice dated 20th February, 2013.

Application/representations dated 11.7.2015 N.C Jindal Public School (B-0071)

Page 1 of 8

TRUE COPY

Page 1 of 8

Secretary



PDF Compressor Free Version

providing the school and a porch and 80 of being heard as prima facie it appeared that the school had increased fee more than what was required to meet the additional burden on account of implementation of sixth pay commission. It also transpired that the school did not maintain an earmark bank account or FDRs or investments for development fee. Depreciation reserve was also maintained only in books. No separate fund was maintained.. The school was also directed to provide details of accrued liabilities of gratuity and leave encashment along with actuarial valuation. After considering the pleas and contentions and written submissions of the school it was inferred that the school had not seriously contested the figures of the funds have been able as on 31st March, 2008 as was worked out by the Chartered Accountants with the committee. The contentions of the school on account of increased expenditure on provident fund contribution, deposit linked insurance, administrative charges and security and housekeeping expenses were found to be not supported by the financials of the school. The expenditure of the school under these heads had actually come down in 2009 - 10 and therefore, the plea of the school on this ground was not accepted. Since the liability for gratuity and leave encashment had already been taken into account on accrual basis, therefore, the deduction was not considered as the school could not be allowed to take double benefit. They school was found to be in deficit of Rs.2,50,03,015/-after implementation of sixth pay commission. Regarding development fee, though the Committee inferred that was not in accordance with the law laid down by the Court, it did not recommend refund on account of large shortfall. The Committee however, recommended/ordered refund of the axis development fee arrears charged for the period 1st September, 2008 2/31 March, 2009 as it was charged without obtaining the permission/specific approval of the Director of Education. The Committee has ordered/recommended refund along with interest @9% per annum.



PDF Compressor Free Version

The school has sought review of the order/recommendation dated 13th August, 2013/interim report dated 29th October, 2013 by its application/representation dated 10th July, 2015 contending inter-alia that the school had not charged excessive amount as was held by the Committee and relied on the detailed explanation which were submitted to the Deputy Director of Education by letter dated 8th September, 2014. According to the school since it had not charged more than 10% which was permitted under law, therefore, there is an error apparent on the face of the record which needs to be rectified and the interim report in this regard needs to be reviewed. Consequently the school is not liable to refund any amount and is also not liable to pay any interest.

The school has sought review of the order/recommendation of the committee dated 13th August, 2013 on merits of the order passed by the Committee. In the circumstances the committee has to first consider and decide whether the Committee has such powers or not which are invoked by the School to review/reconsider its order dated 13th August, 2013. Apparently the Committee became 'functus officio' after it passed the order dated 13th August, 2013. The school has not produced any law or precedent or any rule or order of the Hon'ble Court giving power to the Committee to review its order on merits.

It cannot be disputed by the School/applicant that a quasi-judicial authority will become functus officio when its order is pronounced, or published/notified or communicated (put in course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the authority will become functus officio.

Application/representations dated 11.7.2015 N.C Jindal Public School (B-0071)

Page 3 of 8

TRUE COPY

Page 3 of 8

Secretary



PDF Compressor Free Version

officio. Once an authority exercising quasi judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. P Ramanatha Aiyar's Advanced law Lexicon (3rd Edition, Vol 2 pp. 1946-47) gives the following illustrative definition of the "functus officio".

"Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision."

Black's Law Dictionary (6th. Edn., p 673) gives the meaning of functus officio as follows:

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

Consequently after the Committee had made its recommendations 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.

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 and therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendations. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

" Kindly place this letter before the Hon'ble Division Bench dealing with the matter, as the Committee seeks urgent directions for



PDF Compressor Free Version

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 permitted the committee to review the order of Rukmani Devi Public School **only**. 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 renotified on 09.05.2014"

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 on the face of the record, however, no general permission was granted to the Committee.

From the perusal of the application/representation dated 10th July, 2015 of the school, it is apparent that the applicant/school has sought review/reconsideration of recommendations of the Committee on merits. The applicant is not seeking review on account of any lapse in procedure or procedural defect as contemplated under the concept 'Procedural lapse'. This is also no more res integra that no review lies on merits unless a statute specifically provides for it. In Dr. (Smt.) Kuntesh Gupta v. Management of Hindu Kanya Maha Vidyalaya, Sitapur (U.P.) and Ors. MANU/SC/0104/1987 and Patel N. Keshi Thakershi and Ors. v. Pradyumansinghji Arjunsingji MANU/SC/0433/1970; AIR 1970 SC 1273 the Hon'ble Supreme Court had held the Court Committee



PDF Compressor Free Version

the power of review is not an inherent power and must be conferred by law either expressly or by necessary implication. There is a difference between the procedural review and a review on merits. The procedural review is which is either inherent or implied in a Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it. But the review on merits is when the error sought to be corrected is one of law and facts and is apparent on the face of the record. In *Patel Narshi Thakershi & ors. (supra)* the Hon'ble Supreme Court had held that no review lies on merits unless a statute specifically provides for it. When a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito a justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal.

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 vitiates the proceeding and invalidate 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



PDF Compressor Free Version

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. The school was issued notices and was given ample opportunities and the representative of the school had appeared and produced voluminous record which considered and the pleas and contentions of the school taken into consideration before passing the order/recommendations dated 13th August, 2013.

Applying these principles it is apparent that where a 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 quasi-judicial authority is vested with power of review by express provision or by necessary implication.

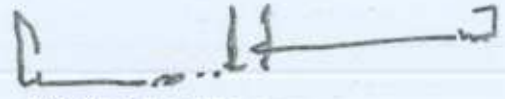
The Applicant in the present case seeks recall/review of the order passed by the Committee dated 13th August, 2013 on merits on various grounds. It is not alleged that in passing the order, the committee has committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the order/recommendation of the committee is liable to be recalled. Rather grounds taken by the applicant are that matters have been apparently considered incorrectly and the school/applicant is seeking review of its order pertaining to the case of the School. Apparently the recall or review or reopening 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 the Committee to review its orders/recommendations either expressly or by necessary implication.

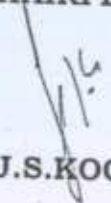
The application/representation dated 10th July, 2015 seeking recalling/revoking of the order dated 13th August, 2013 and passing the order/recommendation again is not maintainable as this Committee does not



PDF Compressor Free Version

have such powers nor it can exempt the school from refunding the fee which has been ordered/recommended by the Committee. The application/representation dated 10th July, 2015 by the school seeking review of the order/recommendation dated 13th August, 2013 is, therefore, disposed of as not maintainable


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON


J.S.KOCHAR
MEMBER


Dr.R.K. SHARMA
MEMBER

Date: 11/8/2016

TRUE COPY


 Secretary



PDF Compressor Free Version

**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:

HIMALAYA PUBLIC Sr.SEC.SCHOOL (A-0049),

D-12, SECTOR - VII

ROHINI

Delhi 110085

And in the matter of

Application/representation dated

8TH July, 2016 to review the order

Dated 19TH November, 2014 passed by the

Committee in respect of the School.

Present: Shri Sanjay Kumar Garg, consultant/authorized representative on behalf the School.

ORDER

The basic question before the committee was whether or not the school had implemented the recommendations of sixth pay commission and if so, whether or not the fee was hiked for the purpose of implementation thereof. Information was sought from the school and a questionnaire was sent. The school did not respond and did not furnish the information. The committee however, obtained the returns filed by the school under Rule 180 from Directors of Education. The fee hike was found to be in accordance with the order of the director of education dated 11th February, 2009, however, it also transpired that the school had not implemented the recommendations of sixth pay commission. With a view to verify the correctness of the returns, the school was directed to appear on 25th July, 2012 its fee and salary records for the

Application/representations dated 8.7.2016 Himalaya Public School (A-0049)

Page 1 of 8

TRUE COPY Page 1 of 8

Secretary



PDF Compressor Free Version

years 2008-09 to 2010-11. The school was also directed to furnish its reply to the questionnaire issued by the Committee. On the scheduled date a LDS appeared filed a letter alleging that the letter of the committee was not received and another date be given. The school was given a final opportunity and the matter was adjourned to 3rd August, 2012. The LDC again appeared on the adjourned date and could not explain the queries put to him. Reply to questionnaire was also not filed. Another opportunity was given to the school to produce the records on 14th August, 2012. On the adjourned date again the records were not produced by the school. At the instance of the school a final opportunity was given and the matter was enjoyed 25th August, 2012. On that date one UDC and one LDC appeared and produced the records and also filed a reply to the questionnaire issued by the committee. The record produced were got examined by the Committee from its audit officer. It was noticed that after implementation of the recommendations of the sixth pay commission, the school had not been paying the salaries according to the recommendations of the sixth pay commission. Till January, 2011 the sixth pay commission had not been implemented fully. The opinion of the audit officer of the Committee was given to the school in the matter was adjourned to 30th April, 2014. On that date a representative of the Chartered Accountant appeared and filed written submission. On the basis of the records available with the Committee, preliminary calculation sheet was prepared which reflected that the school hiked more fee than was required even to partially implement the recommendations of sixth pay commission. The Committee rejected the contention of the school that it had any accrued liability on account of gratuity as in the written submission dated 30th April, 2004 it was categorically stated by the School that it had no such liability. The Committee therefore recommended refund of a sum of Rs.9,95,543/-out of the arrears fee recovered by it and entire amount of Rs.47,40,159/-which was incremental fee of 2009 - 10 along with interest. On the basis of the records and considering the pleas and contentions of the school it was also ordered/recommended that the school was not justified in charging the development fee and the same ought to



PDF Compressor Free Version

be refunded with interest. In reasoned order/recommendation dated 19th November, 2014 was passed on the basis of pleas and contentions of the school after giving due opportunity.

The school has filed a representation/application dated 8th July, 2016 seeking review of order dated 19th November, 2014 contending inter-alia that the school could not collect the arrears from the students and the school has followed the proper procedure. The order of the committee has been impugned on the ground that it did not consider the liability of gratuity. Refund of development fee with interest was also challenged on the ground that the school had charged less than 15% of the annual tuition fee and thus had charged the development fee within the prescribed limits of order dated 11th February, 2009. According to school the expenditure was made on ad hoc teachers of art and craft, sports, upgradation of the furniture and buses. The school has asserted that hiring of buses from contactors was neither trustworthy not economical and thus it was decided to purchase they school buses. It Is prayed that the surplus shown by the Committee be reconsidered and review the matter as the school is not indulging profiteering or commercialization of education.

The school has sought modification/review of the order/recommendation of the committee dated 19th November, 2014 on merits of the order passed by the Committee. In the circumstances the committee has to first consider and decide whether the Committee has such powers or not which are invoked by the School to review/reconsider its order dated 19th November, 2014. Apparently the Committee became 'functus officio' after it passed the order dated 19th November, 2014. The school has not produced any law or precedent or any rule or order of the Hon'ble Court giving power to the Committee to review its order on merits.



PDF Compressor Free Version

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

"Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision."

Black's Law Dictionary (6th Edn., p 673) gives the meaning of functus officio as follows:

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

Consequently after the Committee had made its recommendations 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.

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



PDF Compressor Free Version

Committee had also noticed error apparent on the face of record in the Committee's recommendation and therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendations. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

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

The Hon'ble High Court, however, by its order dated 19th March, 2014 in W.P (C) 7777/2009 & CM No. 3168 of 2013 permitted the committee to review the order of Rukmani Devi Public School **only**. 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 renotified on 09.05.2014"

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 on the face of the record, however, no general permission was granted to the Committee.

From the perusal of the application/representation dated 8th July, 2016 of the school, it is apparent that the applicant/school has sought review/reconsideration of recommendations of the Committee on merits

TRUE COPY

Secretary



PDF Compressor Free Version

applicant is not seeking review on account of any lapse in procedure or procedural defect as contemplated under the concept 'Procedural lapse'. This is also no more res integra that no review lies on merits unless a statute specifically provides for it. In Dr. (Smt.) Kuntesh Gupta v. Management of Hindu KanyaMahaVidyalaya, Sitapur (U.P.) and Ors. MANU/SC/0104/1987 and Patel NarshiThakershi and Ors.v. Pradyumansinghji Arjunsingji 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. There is a difference between the procedural review and a review on merits. The procedural review is which is either inherent or implied in a Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it. But the review on merits is when the error sought to be corrected is one of law and facts and is apparent on the face of the record. In Patel Narshi Thakershi & ors. (supra) 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 debita justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal.

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



PDF Compressor Free Version

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 vitiates the proceeding and invalidate 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. The school was issued notices and was given ample opportunities and the representative of the school had appeared and produced the record which was considered and the pleas and contentions of the school taken into consideration before passing the order/recommendations dated 19th November, 2014.

Applying these principles it is apparent that where a 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 quasi-judicial authority is vested with power of review by express provision or by necessary implication.

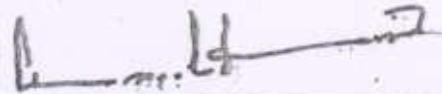
The Applicant in the present case seeks recall/review of the order passed by the Committee dated 19th November, 2014 on merits on various grounds. It is not alleged that in passing the order, the committee has committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the order/recommendation of the committee is liable to be recalled. Rather grounds taken by the applicant are that matters have been apparently considered incorrectly and the school/applicant is seeking review of



PDF Compressor Free Version

its order pertaining to the case of the School. Apparently the recall or review or reopening 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 the Committee to review its orders/recommendations either expressly or by necessary implication.

The application/representation dated 8th July, 2016 seeking recalling/revoking of the order dated 19th November, 2014 and passing the order/recommendation again is not maintainable as this Committee does not have such powers nor it can exempt the school from refunding the fee which has been ordered/recommended by the Committee. The applications/representations dated 8th July, 2016 by the school seeking review of the order/recommendation dated 19th November, 2014 is, therefore, disposed of as not maintainable



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



J.S.KOCHAR

MEMBER



Dr.R.K.SHARMA

MEMBER

Date: 11/8/2016

TRUE COPY



Secretary



PDF Compressor Free Version

**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:

DELHI INTERNATIONAL SCHOOL (C-0292),

Pocket B-5, Sector-3.

(Near Jaipur Golden Hospital)

Rohini, Delhi 110085

And in the matter of

Application/representation dated

27th February, 2015 to review the order

Dated 24th April, 2014 passed by the

Committee in respect of the School.

Present: Shri Ashok Tyagi, Accountant and Shri Rakesh Garg AR of the school.

ORDER

The School, Delhi International School, was directed to produce the fee and salary records, besides its books of accounts and bank statements by committee by notice dated 13th July, 2012. No one appeared on behalf of the school, however, letters dated 26 July 2012 were received signed by The Headmistress. It was alleged that the school was under construction and therefore, it was not possible to produce the records. On behalf of the school 15 - 20 days time was sought for production of the relevant records. The school also contended that on account of lower strength of students and shortage of funds, sixth pay commission recommendation had not been implemented and



PDF Compressor Free Version

the school was considering it and would be implementing it. Later on the record was produced and was perused by the committee. The committee made certain observations on the basis of the record which were endorsed by the Headmistress who stated that the observations made were as per the record of the school produced. It had transpired that the school had filed different fee structures at different times. It also transpired that the fee was drastically reduced when the work of construction of building was started. After hearing the pleas and contentions of the school and perusing the record of the school it was inferred that the school had tried its best to hoodwink the committee by putting contradictory and different stands at different times. It was noticed by the Committee that earlier also the school had filed wrong fee schedule with its annual returns. It was inferred that the school did not implement the sixth pay commission report and did not pay arrears of salary, however, the school collected lump-sum arrears of fee and also high the fee prospectively. The school had apparently utilized the arrears of fee collected and the hiked fee for partly financing the construction of the new building. It was thus concluded that the school was wholly unjustified in recovering the arrears and hiking the regular monthly fee. It was thus recommended that the school should return the arrears of fee collected by it and should also return the hiked fee with interest @9% per annum. The school had been treating the development fee as a revenue receipt and no separate development fund or the depreciation reserve fund were maintained. Thus none of the conditions laid down by earlier committee for charging development fee and the judgment of Hon'ble Supreme Court was followed by the School. Therefore, the school was directed to refund the development fee with interest @ 9% per annum from the date of collection to the date of its refund.

The school has sought review of the order dated 24th April, 2014 by filing an application/representation dated 27th February, 2015. The review of the order/recommendation of the committee has been sought principally on the

PDF Compressor Free Version

ground that it was not correct to recommend the refund of tuition fee as the tuition fee charged and the arrears recovered were not sufficient to meet the payment of salary to the staff and thus the committee has erred in recommending/ordering to the school to refund the tuition fees with interest. The observation of the Committee that the school apparently utilized arrears fee collected and the hiked fee, partly for the construction of the school building. The school has contended that the Committee cannot impose penalty to refund the development fee so charged on account of procedural lapse on the part of the school. It has also been prayed that the development fee charged by the school may be allowed to be set off against the deficit in payment of salary. The school by the said application has sought setting aside of Earlier order dated 24th April, 2014.

The school has sought review of the order/recommendation of the committee dated 24th April, 2014 on merits of the order passed by the Committee. In the circumstances the committee has to first consider and decide whether the Committee has such powers or not which are invoked by the School to review/reconsider its order dated 24th April, 2014. In the circumstances this cannot be disputed by the School that the Committee has become functus officio after it passed the order dated 24th April, 2014.

It cannot be disputed by the School/applicant that a quasi-judicial authority will become functus officio when its order is pronounced, or published/notified or communicated (put in course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the authority will become functus officio. Once an authority exercising quasi judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such

PDF Compressor Free Version

review. P Ramanatha Aiyar's Advanced law Lexicon (3rd Edition, Vol 2 pp. 1946-47) gives the following illustrative definition of the "functus officio".

"Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision."

Black's Law Dictionary (6th Edn., p 673) gives the meaning of functus officio as follows:

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

Consequently after the Committee had made its recommendations 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.

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 and therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendations. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

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



PDF Compressor Free Version

The Hon'ble 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. 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 renotified on 09.05.2014"

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 on the face of the record, however, no general permission was granted to the Committee.

From the perusal of the application/representation dated 27th February, 2015 of the school, it is apparent that the applicant/school has sought review/reconsideration of recommendations of the Committee on merits. The applicant is not seeking review on account of any lapse in procedure or procedural defect as contemplated under the concept 'Procedural lapse'. This is also no more res integra that no review lies on merits unless a statute specifically provides for it. In Dr. (Smt.) Kuntesh Gupta v. Management of Hindu KanyaMahaVidyalaya, Sitapur (U.P.) and Ors. MANU/SC/0104/1987 and Patel NarshiThakershi and Ors.v. Pradyumansinghji Arjunsingji 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. There is a difference between the procedural review and a review on merits. The procedural review is which is



PDF Compressor Free Version

either inherent or implied in a Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it. But the review on merits is when the error sought to be corrected is one of law and facts and is apparent on the face of the record. In *Patel Narshi Thakershi & ors. (supra)* 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 debita a justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal.

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 vitiate the proceeding and invalidate 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.



PDF Compressor Free Version

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. The school was issued notices and was given ample opportunities and the representative of the school had appeared and produced voluminous record which considered and the pleas and contentions of the school taken into consideration before passing the order/recommendations dated 24th April, 2014.

Applying these principles it is apparent that where a 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 quasi-judicial authority is vested with power of review by express provision or by necessary implication.

The Applicant in the present case seeks recall/review of the order passed by the Committee dated 24th April, 2014 on merits on various grounds. It is not alleged 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 are that matters have been apparently considered incorrectly and the school/applicant is seeking review of its order pertaining to the case of the School. Apparently the recall or review or reopening 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 the Committee to review its orders/recommendations either expressly or by necessary implication.

The application/representation dated 27th February, 2015 seeking recalling/revoking of the order dated 24th April, 2014 and passing the



PDF Compressor Free Version

order/recommendation again is not maintainable as this Committee does not have such powers nor it can exempt the school from refunding the fee which has been ordered/recommended by the Committee. The applications/representations dated 27th February, 2015 by the school seeking review of the order/recommendation dated 24th April, 2014 is, therefore, disposed of as not maintainable

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

**J.S.KOCHAR
MEMBER**

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

Date: 11/8/2016

TRUE COPY

Secretary



PDF Compressor Free Version

**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:

SAAI MEMORIAL GIRLS SCHOOL (B-0305),

Sai Bhawan, F.C. Centre

Geeta Colony, near Petrol Pump,

Delhi 110031

And in the matter of

Application/representation dated

21st November, 2015 to review the order

Dated 25th May, 2015 passed by the

Committee in respect of the School.

Present: Shri Dr. Meenakshi Keshwani, Principal with Manu RG Luthra CA of the School.

ORDER

Saai Memorial Girls School, hereinafter referred to as 'The School', in reply to the questionnaire issued to the school had stated that it had implemented the recommendations of the sixth pay commission from May, 2009 and the details had been submitted to the school. The details of fee hike and the arrears recovered were submitted to the Director of Education but not to the Committee. The information given by the school was requisitioned along with annual returns submitted by the school under Rule 180 of Delhi School Education Rules, 1973 for the years 2006 - 07 to 2010 - 11. One perusal of the documents, prima facie it appeared that the school had recovered more fee than was required by it. Notice for hearing was given to the school for hearing was given to the school for hearing

Application/representations dated 21.11.2015 Saai Memorial Girls School (B-0305)

Page 4 of 8

Page 4 of 8

Secretary



PDF Compressor Free Version

on 14th May, 2015. The school had claimed that lump-sum arrears of Rs 3000./- per student was demanded which was resisted by the parents and therefore, ultimately was not recovered. The school recovered arrears of incremental fee for seven months, a total amount of Rs.49,41,194/-. The regular fee was also hiked from 1st April, 2009 and additional amount of Rs.72,75,705/- was recovered by the school. Regarding implementation of payment of recommendation of sixth pay commission it transpired that the entire payment was allegedly made in cash. Huge amount of arrears were paid in cash without any rational justification as the school operates regular bank accounts. On the basis of documents and considering the pleas and contentions of the school it was, therefore, inferred that the school did not make payment of arrears and had merely shown them as paid in the books of accounts. Even the regular salary for the year 2009 - 10 to the extent of 62.89% was paid in cash. In the circumstances it was inferred that without paying the arrears, the school took advantage of order dated 11th February, 2009 of the Director of Education. The committee therefore, ordered/recommended return of incremental fee charged during the year 2009 - 10 which was in excess of 10% over that charged in 2008 - 09. It was also recommended to return the fee for subsequent years to the extent it was relatable to the fee determined to be refundable for the year 2009 - 10 with interests. It had also transpired that the development fee was treated as capital receipt in the books. The depreciation reserve fund was also maintained till 31st March, 2008 only though maintenance of depreciation reserved fund is a precondition for charging the development fee. In the circumstances the Committee also ordered/recommended return of development fee with interest by order/recommendation dated 25th May, 2015.

The school has sought review of the order dated 4th October, 2013 by filing an application/representation dated 25th May, 2015 and has sought that since all the directions of the Directorate of Education directly or indirectly and were not intended to be violated, therefore, the order/recommendation of the



PDF Compressor Free Version

committee for illegitimate fee hike be dropped. According to school the recommendation/order of the Committee has a huge gap with the pleas and contentions of the school which could be due to paucity of time and limited explanation offered by the school which did not suffice for reaching the appropriate inferences. According to the school if it has made out a case for higher increase, that it should have been permitted by the Committee. According to the school it is exempted from precondition to create the depreciation reserve & earmarking such investments for future acquisition of fixed assets. The school thus contended that it has not contravened the requirements of Director of Education and had fulfilled the mandatory preconditions to charge the development fee from the students. The plea of the school is that the accounting treatment and presentation in financial statements of transactions and events should be governed by their substance and not merely by the legal form and thus the order/recommendations of the Committee are not sustainable. There is no legal requirement for creation of depreciation fund though financial it is prudent to do so and in the circumstances, adverse inference could not be taken against the school. The application/representation of the School with annexures runs into forty five pages.

The school has sought review of the order/recommendation of the committee dated 25th May, 2015 on merits of the order passed by the Committee. In the circumstances the committee has to first consider and decide whether the Committee has such powers or not which are invoked by the School to review/reconsider its order dated 25th May, 2015. Apparently the Committee became 'functus officio' after it passed the order dated 25th May, 2015. The school has not produced any law or precedent or any rule or order of the Hon'ble Court giving power to the Committee to review its order on merits.

It cannot be disputed by the School/applicant that a quasi-judicial authority will become functus officio when its order is pronounced published/notified or communicated (put in course of transmission)



PDF Compressor Free Version

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

"Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision."

Black's Law Dictionary (6th Edn., p 673) gives the meaning of functus officio as follows:

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

Consequently after the Committee had made its recommendations 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.

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 and therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendations. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

PDF Compressor Free Version

" 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 permitted the committee to review the order of Rukmani Devi Public School **only**. 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 renotified on 09.05.2014"

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 on the face of the record, however, no general permission was granted to the Committee.

From the perusal of the application/representation dated 21st November, 2015 of the school, it is apparent that the applicant/school has sought review/reconsideration of recommendations of the Committee on merits. The applicant is not seeking review on account of any lapse in procedure or procedural defect as contemplated under the concept 'Procedural lapse'. This is also no more res integra that no review lies on merits unless a statute specifically provides for it. In Dr. (Smt.) Kuntesh Gupta v. Management of Hindu KanyaMahaVidyalaya, Sitapur (U.P.) and Ors. MANU/SC/0104/1987 and Patel NarshiThakershi and Ors.v. Pradyumansinghji Arjunsingji MANU/SC/0433/1970: AIR 1970 SC 1273 the Hon'ble Supreme Court had held that



PDF Compressor Free Version

the power of review is not an inherent power and must be conferred by law either expressly or by necessary implication. There is a difference between the procedural review and a review on merits. The procedural review is which is either inherent or implied in a Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it. But the review on merits is when the error sought to be corrected is one of law and facts and is apparent on the face of the record. In Patel Narshi Thakershi & ors. (supra) 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.

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 vitiate the proceeding and invalidate 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



PDF Compressor Free Version

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. The school was issued notices and was given ample opportunities and the representative of the school had appeared and produced voluminous record which considered and the pleas and contentions of the school taken into consideration before passing the order/recommendations dated 4th October, 2013.

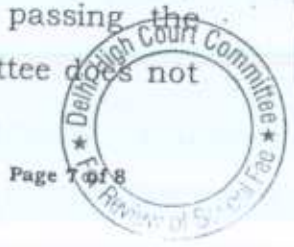
Applying these principles it is apparent that where a quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the quasi-judicial authority is vested with power of review by express provision or by necessary implication.

The Applicant in the present case seeks recall/review of the order passed by the Committee dated 25th May, 2015 on merits on various grounds. It is not alleged 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 are that matters have been apparently considered incorrectly and the school/applicant is seeking review of its order pertaining to the case of the School. Apparently the recall or review or reopening 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 the Committee to review its orders/recommendations either expressly or by necessary implication.

The application/representation dated 21st November, 2015 seeking recalling/revoking of the order dated 25th May, 2015 and passing the order/recommendation again is not maintainable as this Committee does not

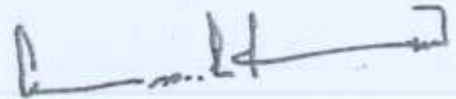
TRUE COPY

Secretary



PDF Compressor Free Version


have such powers nor it can exempt the school from refunding the fee which has been ordered/recommended by the Committee. The applications/representations dated 21st November, 2015 by the school seeking review of the order/recommendation dated 25th May, 2015 is, therefore, disposed of as not maintainable



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



**J.S.KOCHAR
MEMBER**



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

Date: 11/8/2016

TRUE COPY



Secretary



PDF Compressor Free Version**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:

DEEN BANDHU PUBLIC SCHOOL (A-0154),

Ghevra

Delhi 110081

And in the matter of

Application/representation dated

22nd July, 2015 to review the order

Dated 20th March, 2015 passed by the

Committee in respect of the School.

Present: Shri M.L.Arora, Vice Principal of the School.

ORDER

The basic question before the committee was whether or not the school had implemented the recommendations of sixth pay commission and if so, whether or not the fee was hiked for the purpose of implementation thereof. Information was sought from the school and a questionnaire was sent. The school did not respond and did not furnish the information. The committee however, obtained the returns filed by the school under Rule 180 from Directors of Education. The fee hike was found to be in accordance with the order of the director of education dated 11th February, 2009, however, it also transpired that the school had not implemented the recommendations of sixth pay commission. With a view to verify the correctness of the returns, the school



PDF Compressor Free Version

was directed to appear on 19th September, 2012. No one appeared on behalf of the school on that date and therefore, another notice was issued. Again no one appeared on behalf of the school on 15th October, 2012. After the examination of the record, returns of the school, by the officials of the Committee the matter was listed on 10th January, 2014. A letter was received for adjournment and therefore, the matter was adjourned to 5th February, 2014. On that date Chairman and chartered accountant of the school appeared. From the record of the school which was obtained from the Director of Education it became apparent that increase in fee for all classes during the year 2009 - 10 was in excess of permissible limit of 10%. During the year 2010 - 11 also the school hiked the fee by more than 10%. The school also charged the development fee. However, the school had not implemented the recommendations of sixth pay commission. The school had also charged the development fee, ignoring the conditions prescribed in this regard. In the circumstances by order dated 20th March, 2014, the committee recommended that the Director of Education should order a special inspection of the school as per the rules to ascertain the true state of affairs. In case on inspection it is found that they school is liable to return amounts charged in excess of what has been recommended by the Commit, it will be for the Director of Education to take such action as permissible in the facts and circumstances.

The school filed a representation/application dated 22nd July, 2015 contending inter-alia that it is correct that the school had not made any development to the building during the academic year 2009 - 2010 but in the later years the school spent huge sum on the maintenance of the school building which will be appellants from the balance sheet of the school. It is also contended that the school allegedly spent on development of playground, seesaw, RO water plant etc. The development fund collected during 2009 - 10 was therefore completely utilized and was not collected in later years. The school has shown its inability to return the money to the students. The



PDF Compressor Free Version

has also alleged that it is losing around 60 to 75 students every year. The school contended that despite reduction in the stands of the students, the school paid the recommendation of the sixth pay commission from 1st April, 2015. In the circumstances it is contended that hike in fee was necessary and it is not possible for the school to bear the cost of the staff and it will also not be possible for the school to refund the money to the students.

The school has sought modification/review of the order/recommendation of the committee dated 20th March, 2014 on merits of the order passed by the Committee. In the circumstances the committee has to first consider and decide whether the Committee has such powers or not which are invoked by the School to review/reconsider its order dated 20th March, 2014. Apparently the Committee became 'functus officio' after it passed the order dated 20th March, 2014. The school has not produced any law or precedent or any rule or order of the Hon'ble Court giving power to the Committee to review its order on merits.

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



PDF Compressor Free Version

"Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision."

Black's Law Dictionary (6th Edn., p 673) gives the meaning of functus officio as follows:

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

Consequently after the Committee had made its recommendations 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.

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 and therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendations. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

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



PDF Compressor Free Version

The Hon'ble High Court, however, by its order dated 19th March, 2014 in W.P (C) 7777/2009 & CM No. 3168 of 2013 permitted the committee to review the order of Rukmani Devi Public School **only**. 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 renotified on 09.05.2014"

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 on the face of the record, however, no general permission was granted to the Committee.

From the perusal of the application/representation dated 22nd July, 2015 of the school, it is apparent that the applicant/school has sought review/reconsideration of recommendations of the Committee on merits. The applicant is not seeking review on account of any lapse in procedure or procedural defect as contemplated under the concept 'Procedural lapse'. This is also no more res integra that no review lies on merits unless a statute specifically provides for it. In Dr. (Smt.) Kuntesh Gupta v. Management of Hindu KanyaMahaVidyalaya, Sitapur (U.P.) and Ors. MANU/SC/0104/1987 and Patel NarshiThakershi and Ors.v. Pradyumansinghji Arjunsingji 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. There is a difference between the procedural review and a review on merits. The procedural review is which



PDF Compressor Free Version

either inherent or implied in a Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it. But the review on merits is when the error sought to be corrected is one of law and facts and is apparent on the face of the record. In Patel Narshi Thakershi & ors. (supra) 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 debita a justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal.

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 vitiate the proceeding and invalidate 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



PDF Compressor Free Version

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. The school was issued notices and was given ample opportunities and the representative of the school had appeared and produced the record which was considered and the pleas and contentions of the school taken into consideration before passing the order/recommendations dated 20th March, 2014.

Applying these principles it is apparent that where a 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 quasi-judicial authority is vested with power of review by express provision or by necessary implication.

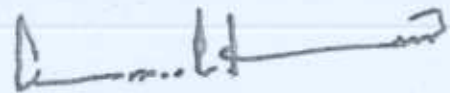
The Applicant in the present case seeks recall/review of the order passed by the Committee dated 20th March, 2014 on merits on various grounds. It is not alleged that in passing the order, the committee has committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the order/recommendation of the committee is liable to be recalled. Rather grounds taken by the applicant are that matters have been apparently considered incorrectly and the school/applicant is seeking review of its order pertaining to the case of the School. Apparently the recall or review or reopening 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 the Committee to review its orders/recommendations either expressly or by necessary implication.

The application/representation dated 22nd July, 2015 seeking recalling/revoking of the order dated 20th March, 2014 and passing the



PDF Compressor Free Version

order/recommendation again is not maintainable as this Committee does not have such powers nor it can exempt the school from refunding the fee which has been ordered/recommended by the Committee. The applications/representations dated 22nd July, 2015 by the school seeking review of the order/recommendation dated 20th March, 2014 is, therefore, disposed of as not maintainable

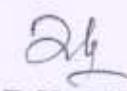


**JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON**



J.S.KOCHAR

MEMBER



Dr.R.K. SHARMA

MEMBER

Date: 11/8/2016

TRUE COPY



Secretary



PDF Compressor Free Version

**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:

Bal Bharti Public School, Sector-14, Rohini, Delhi-110085
(B-51)

Recommendations of the Committee

Present : Sh. Suraj Prakash, Secretary, Ms. Rekha Sharma, Principal, Sh. Satish Pokhriyal, Finance Manager, Sh. A.B. Chakraborty, Admn. Officer of the school.

In order to elicit the relevant information from the schools to arrive at proper conclusions with regard to the necessity of fee hike effected by the schools pursuant to order dated 11/02/2009 issued by the Director of Education, the Committee issued a questionnaire dated 27/02/2012 to all the unaided recognised schools in Delhi (including the present school). The school submitted its reply under cover of its letter dated 03/03/2012, vide which it stated as follows:

- (a) The School had implemented the recommendations of VI Pay Commission and the increased salary of the staff were being paid w.e.f. 01/09/2008.
- (b) The school had also paid arrears consequent to implementation of VI Pay Commission report.
- (c) The school had increased the fee in terms of order dated 11/02/2009 issued by the Director of Education w.e.f. 01/09/2008.
- (d) The school had also recovered arrears of fee, as permitted by the aforesaid order dated 11/02/2009.

TRUE COPY

Secret



PDF Compressor Free Version

The details of salary paid to the staff for the month of January 2009 and Feb. 2009 were furnished to show the incremental expenditure. A summary of arrear paid by the school on account of implementation of VI Pay Commission report was also furnished. The school also furnished the details of fee hike effected by it pursuant to order dated 11/02/2009 issued by the Director of Education. As per the details submitted, the hike in tuition fee for different classes was as follows:

Class	Incremental Tuition Fee per month	Incremental Development Fee per month
Pre school	400	110
Primary upto V	400	105
VI to VIII	400	115
IX & X	400	115
XI & XII	400	115

The Committee issued a notice dated 30/12/2014, requiring the school to furnish the aggregate figures of arrear tuition fee, regular tuition fee, arrears of development fee, regular development fee, arrear salaries and regular salaries for the years 2008-09, 2009-10 and 2010-11, in a structured format, duly reconciled with the audited Income & Expenditure Accounts. The school was also required to file a statement of account of the Society, as appearing in its books, details of accrued liabilities of gratuity and leave encashment, a copy of the circular issued to the parents regarding the fee hike. The school was also issued a questionnaire regarding development fee. The date of hearing fixed was 09/01/2015.



PDF Compressor Free Version

On the scheduled date, no one appeared on behalf of the school. However, after the close of hearing, a letter was received from the Principal of the school expressing regret and requested for another date. Accordingly a fresh notice was issued for hearing on 06/02/2015. On this date, Sh. Suraj Prakash, Manager of the school appeared with Ms. Rekha Sharma, Principal, Sh. Pankaj Ahuja, Accountant, Sh. A.B. Chakraborty, A.O. and Sh. Ashok Garg, Accounts Officer of the school. They filed written submissions dated 05/02/2015 giving the necessary information. They were heard by the Committee and the details furnished by them were verified with reference to their audited financials. The school also furnished actuarial valuation report in support of its claims that it had an accrued liability of Rs. 93,30,643 towards gratuity and Rs. 52,50,028 towards leave encashment as on 31/03/2010.

During the course of hearing, the Committee observed that the school prepares a separate balance sheet for development fund but the same had not been filed as part of returns filed under Rule 180 of Delhi School Education Rules, 1973, Even the balance sheets of the school fund which were filed were without schedules. However, the school filed the complete balance sheets for the years 2008-09 to 2010-11 during the course of hearing. The representatives of the school were asked to justify the hike in development fee which was almost 27.5 % of the hike in tuition fee for the period 01/09/2008 to 31/103/2009. The school further contended that there was a matter



TRUE COPY

Secretary

PDF Compressor Free Version

of differential provident fund for which the anticipated liability was Rs. 1,19,91,371 and the same was sub judice. However, when asked to file the papers of the Court case, it conceded that the litigation was in case of Bal Bharti Public School, Pitam Pura and not this school. However, the representatives stated that they were apprehending similar action by the Provident Fund authorities.

The school was issued a questionnaire eliciting its response on the issue of charging and utilisation of development fee and the attendant conditions attached to the charging of development fee. The preliminary hearing was concluding with these directions.

In response to the directions issued by the Committee, the school filed its reply to the questionnaire regarding development fee wherein it was contended that the development fee charged was treated as capital receipt and was also kept in a separate bank account and was being utilised for permitted purposes only i.e. purchase of furniture and fixture & equipments. Separate fund accounts were maintained for development fund and depreciation reserve fund.

The school also furnished its justification for hiking development fee consequent to order dated 11/02/2009. It stated that prior to revision of fee, development fee was charged at the rate of 12% of tuition fee i.e. @ 210 per month on the tuition fee of Rs. 1740 per month. However, post revision, it increased the development fee to 15% of tuition fee i.e. Rs. 320 per month on a tuition fee of Rs. 2140

TRUE COPY

Secretary




PDF Compressor Free Version

per month. The school submitted that the hike was in accordance with the mandate of order dated 11/02/2009 of the Director of Education.

The school also furnished a note on the anticipated liability towards provident fund and contended that in case the writ petition filed by Bal Bharti Public School, Pitam Pura was decided against it, this school would also be required to pay the arrears of provident fund on grounds of parity.

On the basis of the audited financials of the school and the information furnished by way of reply to questionnaires and notices issued by the Committee and also that furnished during the course of hearing, the following preliminary calculation sheet was prepared, a copy of which was furnished to the school for its comments. The Committee fixed 04/11/2015 as the next date of hearing the school on the calculation sheet:

TRUE COPY


Secretary

PDF Compressor Free Version

Statement showing Fund available as on 31-03-2008 and the effect of hike in fee as per order dated 11.02.2009 and effect of increase in salary on implementation of 6th Pay Commission Report			
	Particulars	Amount (Rs.)	Amount (Rs.)
	<u>Current Assets + Investments</u>		
	Cash in hand		
	Cash at Bank	7,688,809	
	Fixed Deposits	47,527,310	
	Accrued Interest	2,071,017	
	Advance	10,000	
	TDS Recoverable	248,636	
	Recoverable from Transport Fund	3,431,246	60,977,018
Less	<u>Current Liabilities</u>		
	Students' Refundable Caution Money	3,289,300	
	Estab. Arrears	41,864	
	TDS Payable	61,775	
	Expenses Payable	126,686	
	Advance Fee	4,209,100	7,728,725
	Net Current Assets + Investments (Funds Available)		53,248,293
Less	Reserves required to be maintained:		
	for future contingencies (equivalent to 4 months salary)	14,051,664	
	for Gratuity as on 31.03.2010	9,330,643	
	for Leave Encashment as on 31.03.2010	5,220,028	28,602,335
	Funds available for implementation of 6th Pay Commission prior to fee hike		24,645,958
Less	Additional Liabilities on implementation of VIth Pay Commission:		
	Arrear of Salary as per VI th Pay Commission 1.1.2006 to 31.8.2008	17,921,133	
	Arrear of Salary for the period from 1.9.08 to 31.3.09	6,729,957	
	Incremental Salary for 2009-10 (as per calculation given below)	16,299,557	40,950,647
	Excess / (Short) Fund Before Fee Hike		(16,304,689)
Add	Total Recovery after VI th Pay Commission		
	Recovery of Arrear fee w.e.f 01.01.06 to 31.08.08	7,761,180	
	Recovery of Arrear Tuition fee w.e.f 01.09.08 to 31.03.09	6,738,200	
	Recovery of arrear Development fee from 01.09.2008 to 31.3.2009	2,041,467	
	Incremental fee for 2009-10 (as per calculation given below)	11,335,035	27,875,882
	Excess / (Short) Fund After Fee Hike		11,571,193

Working Notes:

Normal/ regular salary

2008-09

2009-10

Incremental salary in 2009-10

25,855,435

42,154,992

16,299,557

Regular Tuition fee

2008-09

2009-10

Incremental tuition fee in 2009-10

47,569,325

58,904,360

11,335,035

As would be apparent from the above calculation sheet, the school had a sum of Rs. 5,32,48,293 available with it as on 31/03/2008. After allowing provision for funds to be kept in reserve

TRUE COPY

Secretary



PDF Compressor Free Version

for accrued liabilities for gratuity, leave encashment and for future contingencies, the school still had Rs. 2,46,45,958 available with it for the purpose of meeting its additional liabilities arising on implementation of the recommendations of VI Pay Commission. The total additional liabilities which befell on the school after implementation of recommendations of VI Pay Commission report were Rs. 4,09,50,647. Thus the school could not have fully absorbed the additional liabilities out of the funds available with it and a fee hike was imminent. The gap to be bridged by recovering arrear fee and hiking the normal fee was Rs. 1,63,04,689. However, the school generated a sum of Rs. 2,78,75,882 by effecting the fee hike pursuant to order dated 11/02/2009 issued by the Director of Education. Thus apparently, the fee hiked by the school, to the extent it did, was partially unjustified.

On 4/11/2015, Ms. Rekha Sharma, Principal of the school appeared with Sh. Suraj Prakash, Secretary Sh. Satish Pokhriyal, Finance Manager, Sh. A.B. Chakraborty, Administrative Officer and Sh. Pankaj Ahuja, Accountant. They filed detailed written submissions dated 27/11/2015 and were heard by the Committee. During the course of hearing, so far as the preliminary calculation sheet is concerned, they disputed the same only on the issue of fixed deposits taken as part of funds available with the school. It was contended that FDRs to the extent of Rs. 16,28,324 were held by the Director of Education as security deposit.

TRUE COPY

Secretary



PDF Compressor Free Version

However, the school also claimed that the increase in expenditure (other than salary) in the year 2009-10 ought also be factored in.

Further, with regard to the additional liability on account of provident fund, the school stated that from 1997 to 2010-11, the school was deducting and contributing provident fund @ 10% while the employees provident fund organization was demanding the contribution @ 12%. Similar situation prevailed in the sister school run by Child Education Society at Pitampura, Rohini and Ganga Ram. This school also received a letter dated 07/04/2010 from the Employees Provident Fund Organisation that it was deducting contribution @ 12%. Similar letters were received by the Ghaziabad and Noida schools run by the same society. The Management Committee decided that only one school shall approach the Court and the orders of the Court will be followed by all the schools run by the Society. The school further stated that the matter came to a conclusion by the judgment of the Hon'ble High Court of Delhi in LPA 636/2015 by which the appeal filed by Bal Bharti Public School, Pitampura was dismissed. Accordingly the school is saddled with a further liability of Rs. 2,25,27,707, besides payment of interest and damages. The school has given year wise detail of its additional liabilities on account of the differential provident fund on employee's share, employer's share, interest and damages. As per the calculation submitted by the school, the liability on account of employees and

TRUE COPY

Secretary



PDF Compressor Free Version

employer share is Rs. 96,40,963, on account of interest, it is Rs. 32,45,781 and on account of damages payable, it is Rs. 96,44,963. These liabilities have been worked out upto 31/03/2011. Upto 31/03/2010, the total liability shown as Rs. 1,82,19,674.

The matter was heard by the Committee on 30/11/2015 and the recommendations of the Committee were reserved. However, the then Chairperson of the Committee resigned before the recommendations were finalized. In order to give an opportunity of being heard by the reconstituted Committee, the school was issued a fresh hearing notice for hearing on 08/07/2016. On this date, the school sought further time to make fresh submissions. On 22/07/2016, the matter was partially heard. The school filed written submissions dated 22/07/2016, reiterating that the liabilities of Provident Fund dues amounted to Rs. 2.25 crores upto the year 2010-11. Subsequent to the judgment of Hon'ble High Court in the case of the sister school, it was contended that this school had also received a notice dated 1st April 2016 from the Employees Provident Fund organization vide which the school has been directed to comply with the directions by the Hon'ble High Court in the case of the sister school.

It was submitted that the Managing Committee of the society had accepted the said judgment of the Hon'ble Delhi High court and had not filed any appeal in the Supreme Court. It was also submitted that the Managing Committee of the school has accepted the

TRUE COPY

Secretary



PDF Compressor Free Version

liability of Provident Fund etc. and is not contesting the same. However, on a query by the Committee, the authorized representative of the school conceded that the liability had not yet been discharged. On a query raised by the Committee as to why the burden of employees' share of provident fund, interest and damage charges which are payable to the Provident Fund authorities should be passed on to the students, it was submitted that as per the Employees Provident Fund Act, the school could not recover employees share from the employees. However, the specific provision barring such recovery was not brought to the notice of the Committee. With regard to interest and damage charges it was submitted that the school had no other source of income except the fee received from the students. As such the interest and damage charges had also to be paid out from the funds of the school which are available as saving out of the prior year fees.

The school was required to file copies of the resolutions passed by the Managing Committee of the Parent Society vide which the judgment of the division bench of the Hon'ble High Court in the case of the sister school had been accepted and also the decision of the Managing Committee accepting the liability of their school to unconditionally pay the amount of arrears of provident fund etc. The matter was directed to be listed on 09/08/2016 for further hearing.

On 09/08/2016, the authorized representatives of the school were finally heard. They filed written submissions enclosing therewith

TRUE COPY

Secretary



PDF Compressor Free Version

copy of the resolution dated 27/05/2016 passed by the school to deposit the entire arrears of PF contribution w.e.f. 22nd Sept 1997 to 31/03/2011 along with interest, a resolution dated 21/07/2016 passed by Child Education Society which is the Parent society of the school directing the school not to file any appeal against the demand raised by the PF authorities for payment of differential PF contribution and interest @ 12%. It was further submitted that as per Rule 32 of the Employees' Provident Fund Scheme 1952, the school cannot recover the arrears of employees' contribution from the employee concerned and the school will have to bear this liability also.

It was further submitted that the damages were also mandatorily payable by the school in terms of Section 14B of Employees Provident Fund and Misc. Provisions Act 1952 and therefore ought to be allowed as a deduction from the funds available with the school.

Discussion:

The Committee has considered the various contentions raised by the school. With regard to the contention of the school that FDRs to the extent of Rs. 16,28,324 should not be considered as part of funds available, the Committee has no difficulty in accepting the same as they were not actually available with the school having been pledged with the Director of Education.

TRUE COPY

Secretary



PDF Compressor Free Version

With regard to the contention of the school that increase in expenditure under the heads other than salary be factored, the Committee is of the view the same cannot be accepted since the school is also charging fee under other heads like Annual Charges which are primarily meant to cover the expenditure under the heads other than salary. The tuition fee is charged only to cover the expenditure on salaries.

With regard to the contention of the school that it required funds to be kept in reserve to meet the liability on account of short deduction of provident fund @ 10% instead of 12% since 1997, the Committee is of the view that the matter having reached finality with the judgment of the Hon'ble Delhi High Court, and acceptance of the same by the school, the school was justified in keeping funds in reserve to meet the anticipated liability. For the purpose of making relevant calculations to examine the justifiability of fee hike effected by the school pursuant to order dated 11/02/2009, which covers the fee upto the financial year 2009-10, the amount which the school ought to keep in reserve has to be only upto 31/03/2010. However, this has to be restricted to the principal amount of short deduction on account of employer's contribution. The employees' contribution which, as per the submission of the school, cannot be recovered from the employees themselves, has to be considered as a penalty leviable on the school for being non compliant with the law. The damage charges, contrary to the submissions of the school, are not

TRUE COPY

Secretary



PDF Compressor Free Version

mandatorily recoverable. Section 14B only gives power to the Central Provident Fund Commissioner or such other officer authorized by the Central Govt. to recover damages in appropriate cases as a penalty which may go upto the amount of arrears of Provident Fund. The school has not even received any show cause notice from the Provident Fund Authorities as to why damages may not be imposed on it. The show cause notice dated 01st April 2016, received by the school is also silent about the levy of any damages under Section 14B of the Provident Fund Act. In fact the notice merely requires the school to comply with the directions given in the judgment dated 19/08/2015 passed by the Hon'ble High Court of Delhi in WP (C) 7342/2000. The Committee has perused copy of the aforesaid judgment filed by the school. There are no directions to the writ petitioner to pay any damages under Section 14B of the Provident Fund Act. The operative part of the judgment is extracted below:

"For the foregoing reasons, I find no force in the pleas of the petitioner and find no merit in the writ petition. The petitioner is directed to deposit the entire arrears within four weeks from today and then continue to pay its contribution regularly without default. The petition is hereby dismissed with these directions."

In fact, as would be apparent from para 1 of the judgment, the petitioner sought quashing of the order dated 02/08/2000, whereby it was directed to deposit the provident fund @ 12% w.e.f. 22/09/1997. The damages were not even levied and there is no whisper in the judgment about any damages to be payable by the school. In view of these facts, the contention of the school to also factor in the damages that might be imposed on the school in future is preposterous.

Bal Bharti Public School, Sector-14, Rohini, Delhi-85/Recommendations/B-51 Page 15 of 16

TRUE COPY

Secretary



PDF Compressor Free Version

As regards interest on the provident fund arrears, no doubt the same is a statutory liability as it is mandatorily payable under Section 7Q of the Act, the Committee is of the view that the school cannot be permitted to factor in the same for the purpose of working out the funds which were available with the school as on 31/03/2008 are even 31/03/2010 for the purpose of implementation of the recommendations of VI Pay Commission as the liability arose on account of a default committed by the school and the students cannot be saddled with the same by way of fee hike.

The principal amount of arrears of employer's contribution, as quantified by the school itself upto 31/03/2010, as submitted by the school is Rs. 38,46,108 upto 31/03/2010. At best, the school can claim to be allowed to keep in reserve out of the funds available with the school.

Determinations:

In view of the foregoing discussion, following adjustments are made to the preliminary calculation sheet prepared by the Committee:

- (a) FDRs amounting to Rs. 16,28,324 will not be considered as part of the funds available with the school for implementation of the recommendations of VI Pay Commission.
- (b) A sum of Rs. 38,46,108 representing the employers' contribution to the arrears of provident dues be considered

TRUE COPY

Secretary



PDF Compressor Free Version

as a liability to be factored in for the purpose of making relevant calculations for determining the amount that the school might be required to refund on account of excessive charge of fee pursuant to order dated 11/02/2009 issued by the Director of Education.

As per the preliminary calculations, the Committee had determined that the school collected excess fee to the tune of Rs. 1,15,71,193. If these two items are deducting from the surplus calculated by the Committee, the remaining surplus would be Rs. 60,96,761.

Recommendations:

In the above premises, the Committee is of the view that the school ought to refund this sum of Rs. 60,96,761 to the students along with interest @ 9% per annum from the date of collection to the date of refund. The Committee is not making separate recommendation for refund of any part of additional development fee, which the school recovered as the total amount of such fee charged is Rs. 20,41,463 and it is already subsumed in the aforesaid sum of Rs. 60,96,761, although the school recovered the same unauthorisedly @ 15% of additional tuition fee when it was recovering the same @ 12% of tuition fee as per its original fee schedule for the year 2008-09. The Committee also notes that the school was fulfilling the pre conditions for charge of regular development fee as laid down by Duggal

TRUE COPY

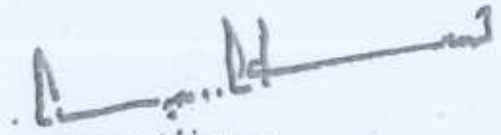
Secretary



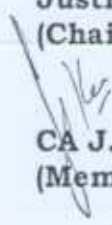
PDF Compressor Free Version

Committee which were affirmed by the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583.

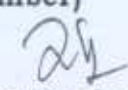
Recommended accordingly.



Justice Anil Kumar (R)
(Chairperson)



CA J.S. Kochar
(Member)



Dr. R.K. Sharma
(Member)

22/08/2016

TRUE COPY


Secretary

PDF Compressor Free Version

**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. Mary's Sr. Sec. School, Ambica Vihar, Paschim Vihar, New
Delhi-110087 (B-246)**

Recommendations of the Committee

Present: Ms. Sylvia Paul, Principal, Sh. Sajan Kr. Agarwal, C.A. & Sh. Ashender Nigam, Clerk of the school.

In order to elicit the necessary information to examine whether the fee hiked by the school pursuant to order dated 11/02/2009 issued by the Director of Education for implementation of recommendations of VI Pay Commission was justified, the Committee issued a questionnaire dated 27/02/2012 to all the private unaided schools (including this school). This was followed by a reminder dated 27/03/2012. The school did not respond to any of these communications from the Committee. However copies of annual returns filed by the school for the years 2006-07 to 2010-11 were received by the Committee from the office of the Dy. Director of Education, Distt. West-B, on being requisitioned by the Committee.

The Committee issued a notice dated 13/05/2015 to the school, requiring it to furnish the information regarding the aggregates of arrear fee, normal tuition fee as well as development fee charged by the school in the years 2008-09, 2009-10 and 2010-11. Similarly the information

St. Mary's Sr. Sec. School, Ambica Vihar, Paschim Vihar, New Delhi/Recommendation

Page 1 of 8

TRUE COPY

Secretary



PDF Compressor Free Version

was also sought with regard to payment of arrear salary and normal salary in these years. The information was sought in a structured format to facilitate the relevant calculations to be made by the Committee. The school was also required to furnish copies of bank statements to support its claim of having paid the arrear salary, statement of account of the parent trust or society running the school, as appearing in the books of accounts and to examine whether the school had diverted any funds to its parent society. The school was also issued a revised questionnaire seeking information with regard to development fee and maintenance of development fund and depreciation reserve fund to examine whether the school was complying with the pre conditions laid down by the Duggal Committee which were subsequently affirmed by the Hon'ble Supreme Court in the case of Modern School vs. Union of India (2004) 5 SCC 583. A copy of the circular issued to the parents with regard to fee hike in pursuance of order dated 11/02/2009 was also required to be filed. The school was also required to furnish the details of its accrued liabilities on account of gratuity and leave encashment payable to the employees on their superannuation.

The school submitted its reply to the notice dated 13/05/2015 issued by the Committee vide written submissions dated 27/05/2015 along with reply to the questionnaire issued by the Committee. In its reply to the questionnaire, the school stated that it had implemented the

St. Mary's Sr. Sec. School, Ambica Vihar, Paschim Vihar, New Delhi/Recommendations/B-246

Page 2 of 2

TRUE COPY

Secretary



PDF Compressor Free Version

recommendations of VI Pay Commission w.e.f. 01/02/2009 and as a result of its implementation, the total monthly salary paid by the school, for the month of January 2009 which was Rs. 3,23,555 rose to Rs. 4,66,068. It was also stated that the school had paid a sum of Rs. 17,24,893 as arrear salary for the period 01/09/2008 to 31/03/2009. As against this, the arrear fee collected by the school was slightly more at Rs. 18,12,485. With regard to development fee, it was stated that the school had recovered development fee in all the five years for which the information was sought. Development fee was treated as a capital receipt in its books. However, it was contended that since the school was not charging any depreciation on its fixed assets, it was not required to maintain any depreciation reserve fund.

A notice dated 29/06/2016 was issued to the school to afford it an opportunity of being heard in the matter. On 15/07/2016, the authorized representatives of the school were heard by the Committee.

The Committee perused the circular dated 27.02.2009 issued by the school regarding hike in the fee pursuant to order dated 11.02.2009 issued by the Director of Education. As per the circular the school has increased tuition fee @ Rs. 300/- p.m. w.e.f. 1st Sept. 2008 for all the classes. Besides, the lump sum fee to cover the payment of arrears of salary for the period 1.1.2006 to 31st August 2008, as provided in the order dated 11.02.2009, was also recovered. The school

St. Mary's Sr. Sec. School, Ambica Vihar, Paschim Vihar, New Delhi/Recommendations to COWET Committee

Page 3 of 8

TRUE COPY

Secretary



PDF Compressor Free Version

claimed that although the school was charging development fee in the year 2008 -09, it did not hike the same w.e.f. 01st Sept. 2008.

The school also claimed that it had implemented the recommendations of the 6th Pay Commission w.e.f. from the month of Feb. 2008, the salary of which was paid in March 2008. The school also furnished the details of arrears salary paid for the period 1.1.2006 to 31st March 2009, which were paid in the years 2008-09, 2009-10 & 2010-11.

The Committee perused the bank statements filed by the school in support of payment of arrear salary. The arrears have been paid by individual cheques issued to the staff members. The Principal of the school stated that all the cheques were account payee and nothing was paid in cash or by bearer cheques, except to two teachers of the nursery school who were paid by bearer cheques.

The Committee noticed that the school also had a separate nursery school, which is entry level school for the students. The balance sheets of the nursery school are prepared separately. The school had furnished the balance sheets of the nursery school for the years 2008-09 to 2010-11. A circular bearing no. 15072-15871 (Act Branch) dated 23/03/1999 was issued by the Directorate of Education, Govt. of Delhi, in pursuance of directions of the Hon'ble High Court of Delhi in CWP No. 3723/97 with regard to treatment of the pre primary

St. Mary's Sr. Sec. School, Ambica Vihar, Paschim Vihar, New Delhi/Recommendations (B-746)

TRUE COPY

Secretary



PDF Compressor Free Version

schools as part of the main school. The said circular has a statutory flavour as it is issued under sub section (1) of Section 3 of the Delhi School Education Act, 1973, read with Rule 43 of the Delhi School Education Rules, 1973. The circular reads as follows:

"In pursuance of the directions of the Hon'ble High Court of Delhi in CWP No. 3723/97, to curb the commercialisation, to check the malpractices and to streamline the education at pre-primary level, I, S.C. Poddar, Director of Education in exercise of the powers so conferred upon me under sub-section (1) of section 3 of the Delhi Education Act, 1973, read with rule 43 of Delhi School Education Rules, 1973 order with immediate effect that:

1. All pre-primary schools being run by the registered societies/trusts in Delhi as branches of recognised schools by the appropriate authority in or outside the school premises shall be deemed as one institution for all purposes.
2. All such pre-primary schools running as branches of recognised schools shall comply with the directions of the Hon'ble High Court in CWP No. 3723/97, provisions of Delhi Schools Education Act, 1973 and the Rules made thereunder and the directions/instructions issued by the Directorate of Education from time to time.
3. No student shall be admitted in pre-primary classes by what so ever name it may be called unless he has attained the age of 4 years as on 30th September of the academic year in which admission is sought."

(emphasis supplied by us)

Accordingly, a calculation sheet was prepared by the Committee by taking the balance sheet of the main school as well the nursery school as on 31.03.2008 to work out the funds availability with the school prior to fee hike as well as the requirement of the school to meet the additional expenditure. The calculation sheet was as follows:

St. Mary's Sr. Sec. School, Ambica Vihar, Paschim Vihar, New Delhi/Recommendations/B/46

Page 5 of 8

TRUE COPY

Secretary



PDF Compressor Free Version

Rs. 24,17,201. After setting apart funds to cover the accrued liabilities of the school for gratuity, leave encashment and future contingencies, the school did not have any funds for bearing the additional expenditure on account of implementation of recommendations of VI Pay Commission. In fact the school had a short fall of Rs. 13,74,338 at the outset. The total financial impact of the implementation of recommendations of VI Pay Commission was Rs. 44,76,200 upto 31/03/2010. Thus the school needed to hike the fee as well as recover the arrear fee to bridge the gap. The total revenues generated by the school by hiking the tuition fee and recovering the arrear fee was Rs. 30,23,178. Thus the school had a total deficiency of Rs. 28,27,360 after taking into the account the deficiency at the threshold.

So far as regular development fee is concerned, the total amount recovered by the school in the years 2009-10 and 2010-11 was Rs. 19,68,600. In view of the fact that the school had a deficiency of Rs. 28,27,360, consideration of the justifiability of charging development fee and compliance with the pre conditions laid down by the Duggal Committee, would only be academic exercise.

In view of the foregoing discussion, the Committee is of the view that the fee hike effected by the school w.e.f. 01/09/2008 as well as the

St. Mary's Sr. Sec. School, Ambica Vihar, Paschim Vihar, New Delhi/Recommendation S/B/246

Page 7 of 8

TRUE COPY

Secretary



PDF Compressor Free Version

recovery of arrear fee in pursuance of order dated 11/02/2009, was justified and there is no case for recommending any refund.

Recommended accordingly.

Justice Anil Kumar (R)
(Chairperson)

CA J.S. Kochar
(Member)

Dr. R.K. Sharma
(Member)

22/08/2016

TRUE COPY

Secretary



PDF Compressor Free Version

**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:

Delhi International School, Sector-09, Rohini, Delhi-110085
(B-61)

Recommendations of the Committee

In order to elicit the relevant information from the schools to arrive at proper conclusions with regard to the necessity of fee hike effected by the schools, the Committee issued a questionnaire dated 27/02/2012 to all the unaided recognised schools in Delhi (including the present school). The school submitted its reply under cover of its letter dated 03/03/2012, vide which it stated as follows:

- (a) The School had implemented the recommendations of VI Pay Commission and the increased salary of the staff were being paid w.e.f. 01/01/2006 (sic).
- (b) The school had also paid arrears consequent to implementation of VI Pay Commission report.
- (c) The school had increased the fee in terms of order dated 11/02/2009 issued by the Director of Education w.e.f. 01/09/2008.
- (d) The school had also recovered arrears of fee, as permitted by the aforesaid order dated 11/02/2009.

The details of salary paid to the staff for the month of September 2006 and April 2009 were furnished to show the incremental expenditure. A summary of arrear paid by the school on account of

TRUE COPY

Secretary



PDF Compressor Free Version

Implementation of VI Pay Commission report was also furnished. The school also furnished details of tuition fee and development fee charged for the periods April 2008 to August 2008 and September 2008 to March 2009. The details of tuition fee and development fee as furnished by the school for the aforesaid two periods are as follows:

Class	April 2008 to August 2008		September 2008 to March 2009	
	Tuition Fee (Rs.)	Development Fee (Rs.)	Tuition Fee (Rs.)	Development Fee (Rs.)
I	1870	180	2270	340
II	1870	180	2270	340
III	1935	180	2335	350
IV	1935	180	2335	350
V	1935	180	2335	350
VI	1990	180	2390	350
VII	1990	180	2390	350
VIII	1990	180	2390	350
IX	2050	180	2550	380

It is evident that for classes I to VIII, the school hiked the tuition fee @ Rs. 400 per month w.e.f. 01/09/2008. As regards development fee, the school was charging the same at a fixed amount of Rs. 180 per month upto 31/08/2008, irrespective of the amount of tuition fee. That is to say the development fee charged by the school was not linked to the tuition fee but the same was within the permissible limit of 15% of tuition fee. However w.e.f. 01/09/2008, the school linked the development fee to tuition fee which was recovered @ 15% of the increased tuition fee.

In the first instance, the preliminary calculations with regard to funds available with the school and the justification for hike in fee were done by the Chartered Accountants assisting this Committee. However, on a review of the calculations by the Committee, it was found that the

TRUE COPY

Secretary



PDF Compressor Free Version

same were not based on the audited financials of the school but were done by extrapolating the monthly differences in fee and salary consequent to implementation of recommendations of VI Pay Commission. Therefore, the Committee chose not to rely on those calculations.

The school was issued a notice to produce its books of accounts, PF returns, TDS returns as well as fee and salary records for verification. A questionnaire seeking specific information with regard to development fee was also issued in order to verify compliance with 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.

The school produced its books of accounts and other records which were examined by an audit officer of this Committee. He found the information given by the school to be in order. However, he recorded that the school was not maintaining any cash book as all the expenditures were incurred through bank.

The school also filed reply to the questionnaire regarding development fee. It was stated that although the school was treating development fee as a capital receipt, no earmarked accounts or FDRs or investments were maintained for unutilised development fund or depreciation reserve fund.

The Committee issued a notice dated 01/04/2015, requiring the school to furnish the aggregate figures of arrear tuition fee, regular

TRUE COPY

Secretary



PDF Compressor Free Version

development fee, arrears of development fee, regular development fee, arrear salaries and regular salaries for the years 2008-09, 2009-10 and 2010-11, in a structured format, duly reconciled with the audited Income & Expenditure Accounts. The school was also required to file a statement of account of the Society, as appearing in its books, details of accrued liabilities of gratuity and leave encashment, a copy of the circular issued to the parents regarding the fee hike. The school was also issued a questionnaire regarding development fee. The date of hearing fixed was 10/04/2015.

On the scheduled date, Sh. Vipin Bhatia, Manager of the school appeared with I. Sen Gupta, Accounts Officer and Ms. Manisha Santani, Accounts Assistant. They filed written submissions dated 10/04/2015 giving the necessary information. They were heard by the Committee and the details furnished by them were verified with reference to their audited financials.

During the course of hearing, the authorized representatives of the school submitted that the audit officer of the Committee had misconstrued the submission of the school. The school does maintain the cash book in its accounting software. They produced the cash book for perusal by the Committee. They submitted that the school did not have any accrued liability on account of gratuity and leave encashment as it was granted recognition only on 01/04/2007. They reiterated the replies given by the school in response to the questionnaire regarding development fee.

TRUE COPY

Secretary



PDF Compressor Free Version

The Committee examined copies of circulars dated 28/02/2009 issued to parents of different classes demanding the fee hike, purportedly in accordance with order dated 11/02/2009 issued by the Director of Education. While the lump sum arrears charged by the school for the period 01/01/2006 to 31/08/2008 and the hiked tuition fee w.e.f. 01/09/2008 were in accordance with the circular dated 11/02/2009, the Committee observed that the arrears of development fee for this period were not in accordance with the said circular. This would be evident from the following table:

Class	Fee hiked w.e.f. 01/09/2008 (Rs.)		Percentage of hiked Development Fee to hiked tuition fee
	Tuition Fee	Development Fee	
I to II	400	160	40%
III to VIII	400	170	42.5%
IX	500	200	40%

In accordance with the law laid down by the Hon'ble Supreme Court, the development fee can at best be charged @ 15% of tuition fee. Accordingly, the incremental development fee as a percentage of tuition fee can also not exceed 15%. That too would be permissible in case the development fee was actually charged as a percentage of tuition fee. However, as mentioned above, the school was charging a fixed amount of development fee at Rs. 180 per month irrespective of the amount of tuition fee. In other words, development fee was not charged as a percentage of tuition fee. Consequently, any increase in tuition fee would not automatically entitle the school to increase the development fee. The issue was put to the representatives of the school, who contended that

TRUE COPY

Secretary



PDF Compressor Free Version

part 14 of the order dated 11/02/2009 entitled it to increase the development fee to 15% of tuition fee.

Based on the audited financials of the school and the information provided in response to the notices issued by the Committee and that provided by the school during the course of hearing, the Committee prepared a preliminary calculation sheet 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	Amount (Rs.)	Amount (Rs.)
	<u>Current Assets + Investments</u>		
	Cash in hand	213,920	
	Bank Balance	703,118	
	TDS Payable	3,201	
	FDRs with accrued interest	727,874	1,648,113
Less	<u>Current Liabilities</u>		
	Current Liabilities	394,119	
	Fee received in advance (Less concessions)	914,675	
	Student security	182,500	1,491,294
	Net Current Assets + Investments (Funds Available)		156,819
Add	Funds apparently diverted in payment of interest and repayment of loans from 2008-09 to 2009-10		1,383,506
	Funds available before implementation of 6th Pay Commission report		1,540,325
Less	Total Liabilities after implementation of VIth Pay Commission		
	Arrear of Salary as per VI th Pay Commission from 1.1.2006 to 31.3.2009	4,574,997	
	Incremental Salary in 2009-10 (as per working notes given below)	4,976,378	9,551,375
	Excess / (Short) Fund Before Fee Hike		(8,011,050)
Add:	Total Recovery after VI-th Pay Commission		
	Arrear of tuition fee for the period 1.1.2006 to 31.3.2009	2,874,345	
	Incremental Tuition Fee in 2009-10 (as per working notes given below)	6,598,096	9,472,441
	Excess /,(Short) Fund After Fee Hike		1,461,391
Less	Reserve required to be maintained:		
	for future contingencies (equivalent to 4 months salary)	4,052,242	
	for Gratuity as on 31.03.2010		
	for Leave Encashment as on 31.03.2010		4,052,242
	Excess / (Short) Fund		(2,590,851)

TRUE COPY

Secretary



PDF Compressor Free Version

	Rs.
Development fee refundable	
2009-10	2,855,190
2010-11	3,344,710
	<u>6,199,900</u>
Less: Shortfall on implementation of 6th CPC report	<u>(2,590,851)</u>
Net Amount refundable	<u>3,609,049</u>

Working Notes:

	2008-09	2009-10
Salary	<u>7,180,349</u>	12,156,727
Incremental Salary in 2009-10	<u>4,976,378</u>	

	2008-09	2009-10
Tuition Fee	<u>12,155,700</u>	18,753,796
Incremental Tuition Fee in 2009-10	<u>6,598,096</u>	

	Loan repayment	Interest
2008-09		326,196
2009-10		<u>1,057,310</u>
Total Funds diverted		<u>1,383,506</u>

	Amount	inc. (dec.)
Loan		
2007-08		
2008-09	7,239,014	7,239,014
2009-10	<u>8,637,363</u>	<u>1,398,349</u>

While preparing the preliminary calculation sheet, the Committee also considered the repayment of loans taken by the school for capital expenditure and the interest paid thereon, as part of funds available with the school in view of the principles laid down by the Hon'ble Supreme Court in the case of Modern School (supra). In the said judgment, the Apex Court has laid down that the capital expenditure cannot form part of the fee structure of the school. A copy of the above calculation sheet was furnished to the school vide notice dated 01/12/2015 to enable the school to have its say thereon. The school vide its submissions dated 10/12/2015 stated that the development fee was charged in accordance with the order dated 11/02/2009 and was not treated as revenue receipt. With regard to

TRUE COPY

Secretary



PDF Compressor Free Version

the repayment of loans considered as part of funds available by the Committee, the school stated that the loans were taken for the purpose of construction of additional class rooms and for purchase of school buses and therefore should not be considered as part of funds available. Further the school submitted that it had collected arrears of only Rs. 28,74 lacs against which it had disbursed arrears of salary amounting to Rs. 45.75 lacs and therefore, the school ought not be required to refund any amount.

Discussion:

The Committee has considered the submissions of the school. The preliminary calculation sheet has only been disputed with regard to funds diverted for payment of interest and repayment of loans for capital expenditure. Whether development fee has been charged in accordance with the order dated 11/02/2009 and the law laid down by the Hon'ble Supreme Court, is a legal issue.

So far as the amount of repayment of loans taken for incurring capital expenditure is concerned, the issue was first considered by the Hon'ble Delhi High Court in **Delhi Abibhavak Mahasangh v. Union of India and others AIR 1999 Delhi 124**. After adverting to the rival contentions, it, inter alia, observed as follows:

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

TRUE COPY

Secretary



PDF Compressor Free Version

The judgment of Delhi High Court dated October 30, 1998 in the case of Delhi Abhibhavak Mahasangh V Union of India and others (supra) was challenged before the Supreme Court. The Supreme Court on April 27, 2004 rendered its decision in **Modern School vs. Union of India & Ors. (2004) 5 SCC 583**. While examining as to what expenses/expenditure could be recovered from the students by way of fee, the Hon'ble Apex Court held:

"Section 18(3) is to be read with Rule 175. Reading the two together, it is clear that each item of income shall be accounted for separately under the common head, namely, Recognised Unaided School Fund. Further, Rule 175 indicates accrual of income unlike Rule 177 which deals with utilisation of income. Rule 177 does not cover all the items of income mentioned in Rule 175. Rule 177 only deals with one item of income for the school, namely, fees. Rule 177(1) shows that salaries, allowances and benefits to the employees shall constitute deduction from the income in the first instance.

*That after such deduction, surplus if any, shall be appropriated towards pension, gratuity, reserves and other items of appropriations enumerated in Rule 177(2) and after such appropriation the balance (savings) shall be utilised to meet capital expenditure of the same school or to set up another school under the same management. Therefore, Rule 177 deals with application of income and not with accrual of income. Therefore, Rule 177 shows that salaries and allowances shall come out from the fees whereas capital expenditure will be a charge on the savings. **Therefore, capital expenditure cannot constitute a component of the financial fee structure as is submitted on behalf of the schools.** It also shows that salaries and allowances are revenue expenses incurred during the current year and, therefore, they have to come out of the fees for the current year whereas capital expenditure/capital investments have to come from the savings, if any, calculated in the manner indicated above.*

In view of the law laid down by the Hon'ble Supreme Court, the contention of the school is not tenable and is here by rejected.

TRUE COPY

Secretary



PDF Compressor Free Version

So far as the issue of arrears of development fee for the period 01/09/2008 to 31/03/2009 is concerned, the school relies on para 14 of the order dated 11/02/2009, which reads as follows:

14. Development fee, not exceeding 15% of the total annual tuition fee may be charged for supplementing the resources for purchase, upgradation and replacement of furniture, fixtures and equipment. Development Fee, if required to be charged, shall be treated as capital receipt and shall be collected only if the school is maintaining a Depreciation Reserve Fund, equivalent to the depreciation charged in the revenue accounts and the collection under this head along with and income generated from the investment made out of this fund, will be kept in a separately maintained Development Fund Account.

It is apparent that para 14 of the order has nothing to do with the fee hike for implementation of recommendations of VI Pay Commission. It envisages development fee for supplementing the resources for purchase, upgradation and replacement of furniture, fixtures and equipments. This would apply to normal development fee, the charge of which was recommended by the Duggal Committee subject to the pre conditions that the school would maintain a Depreciation Reserve Fund and the collection under this head along with income generated from the investment made out of this fund will be kept separately maintained Development Fund Account.

So far as the recovery of arrears of incremental development fee, which would arise as a result of increase in tuition fee for implementing the recommendations of VI Pay Commission are concerned, para 15 of the circular is relevant. The same reads as follows:

TRUE COPY

Secretary



PDF Compressor Free Version

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

It is apparent that the additional increase in development fee would arise only if the development fee being charged by the school was a fixed percentage of tuition fee. However, as stated above, the school was charging a fixed amount of Rs. 180 per month as development fee, irrespective the amount of tuition fee. Hence any increase in tuition fee could not have entitled the school to increase the development fee as development fee was not charged as a percentage of tuition fee.

The school not only charged additional development fee for the period 01/09/2008 to 31/03/2009 but also raised the percentage thereof to 15% of tuition fee, which was wholly unjustified and not in accordance with the mandate of the order dated 11/02/2009. The Committee is of the view that the school ought to refund the additional development fee recovered for the period 01/09/2008 to 31/03/2009.

So far as the regular development fee is concerned, para 14 of the order dated 11/02/2009 actually carries out the mandate of the Duggal Committee as regards the pre conditions to be fulfilled for charging development fee. These were affirmed by the Honble Supreme Court in the case of Modern School (supra). The Duggal

TRUE COPY

Secretary



PDF Compressor Free Version

in its report, while introducing the fee with the head Development Charges made the following recommendations:

18. Besides the above four categories, the schools could also levy a **Development Fee**, as a capital receipt, annually not exceeding 10% of the total annual Tuition Fee, for supplementing the resources for purchase, upgradation and replacement of furniture, fixtures and equipment, provided the school is maintaining a Depreciation Reserve Fund, equivalent to the depreciation charged in the revenue account. While these receipts should form part of the Capital Account of the school, the collected under this head along with any income generated from the investment made out of this fund, should however, be kept in a separate 'Development Fund Account'. (Para 7.21)

The Hon'ble Supreme Court in the case of Modern School (supra) admitted, inter alia, the following point for determination

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

The 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**

TRUE COPY

Secretary



PDF Compressor Free Version

seeks to introduce a proper accounting practice to be followed by non-business organizations/not-for-profit organization. With this correct practice being introduced, development fees for supplementing the resources for purchase, upgradation and replacements of furniture and fixtures and equipments is justified. Taking into account the cost of inflation between 15th December, 1999 and 31st December, 2003 we are of the view that the management of recognized unaided schools should be permitted to charge development fee not exceeding 15% of the total annual tuition fee.

It is apparent that maintenance of earmarked depreciation reserve fund and development fund are pre requisites to be fulfilled for charging development fee. Admittedly the school was not maintaining earmarked fund accounts to park unutilised development fee and depreciation reserve fund. The contention of the school for not requiring it to refund development fee is therefore rejected.

As regards the contention of the school that it had paid more arrears of salary than the arrear fee collected by it, the Committee has also determined a shortfall of Rs. 25,90,851 which the school incurred in implementing the recommendations of VI Pay Commission. The school has been allowed a set out of this shortfall from the development fee for the years 2009-10 and 2010-11 which it unauthorisedly recovered. The total recovery of development fee in these two years was Rs. 61,99,900 and after allowing the shortfall on account of implementation of VI Pay Commission report, the net amount that is required to be refunded is Rs. 36,09,049.

The school was issued a fresh notice dated 05/07/2016 for hearing on 19/07/2016 consequent to the change in constitution of

TRUE COPY

Secretary



PDF Compressor Free Version

the Committee. On this date, the matter was reheard by the Committee. The authorized representative of the school submitted that after the close of earlier hearing on 09/12/2015, the school had filed written submissions dated 10/12/2015 for which it was given liberty. It was stated that the school was not treating development fee as a revenue receipt, as mentioned in the preliminary calculation sheet. It was contended that the same was treated as a capital receipt and a separate development fund account was shown in the balance sheet. However, no mention was made with regard to the maintenance of earmarked development fund and depreciation reserve fund. The contention with regard to diversion of funds in the shape of repayment of loans and payment of interest thereof was reiterated. During the course of hearing, the authorized representatives of the school conceded that no earmarked depreciation reserve fund or development fund was maintained by the school. However they sought liberty to file details of accrued liabilities of gratuity and leave encashment as on 31/03/2010. They submitted that these details were not furnished earlier under a mistaken belief that no liabilities on these accounts would accrue as the school was granted recognition w.e.f. 01/04/2007. They submitted that the school was established w.e.f. 01/04/2005, through granted recognition w.e.f. 01/04/2007 and as such the liabilities on these accounts would definitely accrue and since they are statutory liabilities they ought to be taken into account. The hearing was concluded and the school was given liberty

TRUE COPY

Secretary



PDF Compressor Free Version of accrued liabilities of gratuity and leave encashment within one week.

The school furnished these details under cover of its letter dated 22/07/2016 and as per the details filed, the school had an accrued liability of Rs. 3,03,816 on account of gratuity and Rs. 6,78,293 on account of leave encashment as on 31/03/2010. Hence it was claimed that the school had a total liability of Rs. 9,82,109 and the same ought to be factored in the calculations made by the Committee.

The Committee finds merit in the contention of the school that the accrued liabilities on account of gratuity and leave encashment, being statutory in nature, ought to be considered for the purpose of making the relevant calculations. The Committee accepts the contention of the school that these details could not be furnished earlier on account of a mistaken belief.

In view of the foregoing, the initial calculation made by the Committee with regard to the amount to be refunded by the school out of development fees for the years 2009-10 and 2010-11 is modified to factor in the accrued liabilities of gratuity and leave encashment. That still leaves the balance of Rs. 26,26,940. The same ought to be refunded out of the development fee for the year 2010-11 charged by the school.

TRUE COPY

Secretary


PDF Compressor Free Version
Recommendations:

In view of the foregoing discussion, the school is required to refund a sum of Rs. 26,26,940 out of the development fee recovered for the year 2010-11, along with interest @ 9% per annum from the date of collection to the date of refund.

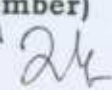
Recommended accordingly.



Justice Anil Kumar (R)
(Chairperson)



CA J.S. Kochar
(Member)



Dr. R.K. Sharma
(Member)

Date: 22/08/2016

TRUE COPY



Secretary



PDF Compressor Free Version**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:

J M INTERNATIONAL SCHOOL (B-0214),

Sector 6, Dwarka,

New Delhi 110075

And in the matter of

Application/representation dated

20th July, 2016 to review the order

Dated 6th February, 2014 passed by the

Committee in respect of the School.

Present: Shri Yogesh Gupta, Director and Sh. Vinod K. Gupta C.A for the School.

ORDER

The Committee passed the order/recommendation dated 6th February, 2014 in respect of J M International School, Sector 6, Dwarka, hereinafter, referred to as 'The School' directing the school to refund the development fee of Rs.8,66,727/- along with interest @ 9% per annum. The Committee had issued questionnaire to the school and after giving a notice and hearing and on perusal of the documents, it had transpired that the fee charged by the school was in accordance with the fee schedule filed by the school and no adverse feature was noticed in maintaining of the accounts. The Committee by notice dated 23rd October, 2013 had direct the school to produce its books of accounts, salary records, TDS and Provident Fund returns in order to verify the implementation of VI pay commission report. It had transpired that the school



PDF Compressor Free Version

did not hike the tuition fee in accordance with the order dated 11th February, 2009. Though the school contended that it had not charged the development fee but the school recovered development charges for overall development of the students the development charges were credited Income and Expenditure Account and used for meeting the routine the revenue expenses. The plea of the School that it had acquired fixed assets which were of more value than the development fee charged was rejected as the fixed assets were acquired out of loans taken by the school. It was also noticed that the school did not maintain the development fund or depreciation reserve fund. They school was not following any of the conditions in respect of development fund. After working out the various amounts, the committee ordered/recommended that the amount as stated here in above be refunded by the school along with interest @ 9 % per annum.

The school has sought review of the order dated 6th February, 2014 by filing an application/representation dated 20th July, 2016. The review of the order/recommendation of the committee has been sought on the ground that the observations and inferences drawn by the Committee are not correct. It is asserted that they school had taken loan for the purchase of buses only which was also the partial amount as the balance amount was funded by the school from internal accrual/sources contributed by the Society. The other assets (excluding buses) were purchased by the school from its internal accruals only. According to school the purchases were over and above the expenses incurred for repairs and restoration of assets. On the basis of these please, they school has sought review of order dated 6th February, 2014 and amendments/modification of the findings/order of the Committee.

The school has sought review of the order/recommendation of the committee dated 6th February, 2014 on merits of the order passed by the Committee. In the circumstances the committee has to first consider and adjudicate whether the Committee has such powers or not which are invoked by the School to review/reconsider its order dated 6th February, 2014

Application/representations dated 20.7.2016 J M International School (B-0214)

TRUE COPY

Secretary



PDF Compressor Free Version

apparent that the Committee has become functus officio after it passed the order dated 6th February, 2014. The school has not produced any law or precedent or any rule or order of the Hon'ble Court giving power to the Committee to review its orders on merits.

It is no more res integra that a quasi-judicial authority will become functus officio when its order is pronounced, or published/notified or communicated (put in course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the authority will become functus officio. Once an authority exercising quasi judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. P Ramanatha Aiyar's Advanced law Lexicon (3rd Edition, Vol 2 pp. 1946-47) gives the following illustrative definition of the "functus officio".

"Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision."

Black's Law Dictionary (6th Edn., p 673) gives the meaning of functus officio as follows:

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

Consequently after the Committee had made its recommendations 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.



PDF Compressor Free Version

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 and therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendations. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

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

The Hon'ble 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. 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 renotified on 09.05.2014"

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 on the face of the record, however, no general permission was granted to the Committee.



PDF Compressor Free Version

From the perusal of the application/representation dated 20th July, 2016 of the school, it is apparent that the applicant/school has sought review/reconsideration of recommendations of the Committee on merits. The applicant is not seeking review on account of any lapse in procedure or procedural defect as contemplated under the concept 'Procedural lapse'. This is also no more *res integra* that no review lies on merits unless a statute specifically provides for it. In *Dr. (Smt.) Kuntesh Gupta v. Management of Hindu KanyaMahaVidyalaya, Sitapur (U.P.) and Ors.* MANU/SC/0104/1987 and *Patel NarshiThakershi and Ors.v. Pradyumansinghji Arjunsingji 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. There is a difference between the procedural review and a review on merits. The procedural review is which is either inherent or implied in a Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it. But the review on merits is when the error sought to be corrected is one of law and facts and is apparent on the face of the record. In *Patel Narshi Thakershi & ors. (supra)* 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.

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



PDF Compressor Free Version

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 vitiates the proceeding and invalidate 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. The school was issued notices and was given ample opportunities and the representative of the school had appeared and produced voluminous record which considered and the pleas and contentions of the school taken into consideration before passing the order/recommendations dated 6th February, 2014.

Applying these principles it is apparent that where a 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 quasi-judicial authority is vested with power of review by express provision or by necessary implication.

The Applicant in the present case seeks recall/review of the order passed by the Committee dated 6th February, 2014 on merits on various grounds. It is not alleged 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 are that matters have been apparently considered incorrectly and the school/applicant is seeking review of

TRUE COPY

 Secretary



PDF Compressor Free Version

its order pertaining to the case of the School. Apparently the recall or review or reopening 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 the Committee to review its orders/recommendations either expressly or by necessary implication.

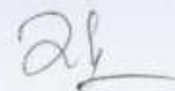
The application/representation dated 20th July, 2016 seeking recalling/revoking of the order dated 6th February, 2014 and passing the order/recommendation again is not maintainable as this Committee does not have such powers as has been prayed by the School. The applications/representations dated 20th July, 2016 by the school seeking review of the order/recommendation dated 6th February, 2014 is, therefore, not maintainable and it is disposed of as not maintainable



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



**J.S.KOCHAR
MEMBER**



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

Date: 22/8/16

TRUE COPY



Secretary



PDF Compressor Free Version

**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:

GURU ANGAD PUBLIC SCHOOL (C-0098),

Gurudwara Complex,

Ashok Vihar, Phase I,

Delhi 110052

And in the matter of

Application/representation dated

15th December, 2014 to review the order

Dated 14th August, 2013 passed by the

Committee in respect of the School.

Present: Shri Jagmohan Singh Advocate with Shri Waryam Singh, Chartered Accountant for the School.

ORDER

The Committee passed the order/recommendation dated 14th August, 2013 in respect of Guru Angad Public School, hereinafter, referred to as 'The School' directing the school to refund the tuition fee (including Computer fee) received in 2009-10, in excess of the fee for 2008-09 as adjusted for 10% hike along with interest @ 9 % per annum. The school was directed to refund the tuition fee for subsequent years also to the extent it related to the unjustified fee hike in 2009-10. The Development fee charged during the year 2009-10 @ Rs.70 per month and during year 2010-11 @ Rs.80 per month for classed pre school to X and Rs.2250/- per annum for classes XI and XII was

Application/representations dated 15.12.2014 Guru Angad Public School Ashok Vihar (C-0098)

TRUE COPY

Secretary



PDF Compressor Free Version

ordered/recommended to be returned with interest @ 9% per annum. The school had not replied to the questionnaire which was sent to it on 27th February, 2012. The annual returns of the school were received from the office of the Deputy Director, North West B, District of the Directorate of Education. On preliminary examination of the records it had transpired that the school had not hiked the fee in accordance with the order dated 11th February, 2009 nor had implemented the recommendations of sixth pay commission. Pursuant to notice issued to the school, office staff of the school had appeared on 31st May, 2012 and had also produced the records. The records pertaining to the school were got examine from the audit officer of the Committee. A notice dated 25th April, 2013 was issued directing the school to appear on 9th May, 2013. On that date staff of the school had appeared and it had transpired during the hearing that the recommendation of sixth pay commission or not implemented. They school had conceded that it treated the development fee as revenue receipt and no development fund or depreciation reserved fund was maintained. After hearing the school it was inferred that the Computer fee which was claimed to be earmarked levy passed to be treated as a part of tuition fee as the Computer education could not be put on a pedestal different from general education. The Committee therefore, considered the tuition fee and computer fee for calculating tuition fee hike. In these facts and circumstances the Committee ordered/recommended refund of fees as detailed hereinabove by the order/recommendation dated 14th August, 2013.

The school has sought review of the order dated 14th August, 2013 by filing an application/representation dated 15th December, 2014. The review of the order/recommendation of the committee has been sought on the ground that during the hearing the representative of the school could not furnish the relevant and material information for proper adjudication of the case. By the application for review of the school sought permission to furnish additional relevant and material information. According to school it had been charging tuition fee as well as computer fee under different heads. They school had tied



PDF Compressor Free Version

up with various companies for computer education. They school has produced the bill raised by them as a proof of payment made by the school to these companies. The school has contended that the computer education was imparted exclusively to all the students of the school who are poor and downtrodden of the neighbourhood area in order to make them competent to adjust in the society. The contention of the school is also that it is an unaided minority school and the fee charged by it cannot be regulated by the State. The school has also produced a certificate showing that the school is a minority educational institution within the meaning of sec 2 (g) of the National Commission for Minority Educational Institute Act, 2004. According to school it can charge fee as per its wish and the same cannot be regulated. Regarding the development fee being shown as revenue receipt it is contended that the representative of the school was not aware about the factual position. The school allegedly had opened the depreciation reserve fund on 10.02.2011. The School has also given now the year wise expenditure of Development Fund. With these contentions the school has sought another opportunity of hearing and to review the order dated 14th August, 2013 and allow the application for review dated 15th December, 2014.

The school has sought review of the order/recommendation of the committee dated 14th August, 2013 on merits of the order passed by the Committee. In the circumstances the committee has to first consider and adjudicate whether the Committee has such powers or not which are invoked by the School to review/reconsider its order dated 14th August, 2013. It is apparent that the Committee has become functus officio after it passed the order dated 14th August, 2013. The school has not produced any law or precedent or any rule or order of the Hon'ble Court giving power to the Committee to review its orders on merits.



PDF Compressor Free Version

It is no more res integra that a quasi-judicial authority will become functus officio when its order is pronounced, or published/notified or communicated (put in course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the authority will become functus officio. Once an authority exercising quasi judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. P Ramanatha Aiyar's Advanced law Lexicon (3rd Edition, Vol 2 pp. 1946-47) gives the following illustrative definition of the "functus officio".

"Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision."

Black's Law Dictionary (6thEdn., p 673) gives the meaning of functus officio as follows:

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

Consequently after the Committee had made its recommendations 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.

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

PDF Compressor Free Version

Committee had also noticed error apparent on the face of record in the Committee's recommendation and therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendations. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

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

The Hon'ble 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. 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 renotified on 09.05.2014"

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 on the face of the record, however, no general permission was granted to the Committee.

From the perusal of the application/representation dated 15th December, 2014 of the school, it is apparent that the applicant/school has sought

Application/representations dated 15.12.2014 Guru Angad Public School Ashok Vihar (C-0098)

TRUE COPY

Secretary



PDF Compressor Free Version

review/reconsideration of recommendations of the Committee on merits. The applicant is not seeking review on account of any lapse in procedure or procedural defect as contemplated under the concept 'Procedural lapse'. This is also no more *res integrata* that no review lies on merits unless a statute specifically provides for it. 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: 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. There is a difference between the procedural review and a review on merits. The procedural review is which is either inherent or implied in a Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it. But the review on merits is when the error sought to be corrected is one of law and facts and is apparent on the face of the record. In *Patel Narshi Thakershi & Ors. (supra)* the Hon'ble Supreme Court had held that no review lies on merits unless a statute specifically provides for it. When a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito a justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal.

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

Application/representations dated 15.12.2014 Guru Angad Public School Ashok Vihar (C.0098)

TRUE COPY

Secretary

Page 6 of 8



PDF Compressor Free Version

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 vitiate the proceeding and invalidate 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. The school was issued notices and was given ample opportunities and the representative of the school had appeared and produced voluminous record which considered and the pleas and contentions of the school taken into consideration before passing the order/recommendations dated 14th August, 2013.

Applying these principles it is apparent that where a 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 quasi-judicial authority is vested with power of review by express provision or by necessary implication.

The Applicant in the present case seeks recall/review of the order passed by the Committee dated 14th August, 2013 on merits on various grounds. It is not alleged 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

Application/representations dated 15.12.2014 Guru Angad Public School Ashok Vihar (C-0098)

TRUE COPY

Secretary



PDF Compressor Free Version

be recalled. Rather grounds taken by the applicant are that matters have been apparently considered incorrectly and the school/applicant is seeking review of its order pertaining to the case of the School. Apparently the recall or review or reopening 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 the Committee to review its orders/recommendations either expressly or by necessary implication.

The application/representation dated 15th December, 2014 seeking recalling/revoking of the order dated 14th August, 2013 and passing the order/recommendation again is not maintainable as this Committee does not have such powers as has been prayed by the School. The applications/representations dated 15th December, 2014 by the school seeking review of the order/recommendation dated 14th August, 2013 is, therefore, not maintainable and it is disposed of as not maintainable

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

**J.S. KOCHAR
MEMBER**

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

Date: 22/8/16



TRUE COPY

Secretary

PDF Compressor Free Version

**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:

CAMBRIDGE FOUNDATION SCHOOL (B-0192),

Rajouri Garden,

Delhi 110027

And in the matter of

**Application/representation dated
28th January, 2015 to review the order**

**Dated 29th May, 2014 passed by the
Committee in respect of the School.**

Present: Shri N.K.Mahajan Chartered Accountant for the School.

ORDER

The Committee passed the order/recommendation dated 29th May, 2014 in respect of Cambridge Foundation School, Rajouri Garden, hereinafter, referred to as 'The School' directing the school to refund the development fee of Rs.80,58,540/- recovered by the school in 2009-10 and Rs.77,52,105/- recovered in 2010-11 along with interest @ 9% per annum. The committee also recommended the special inspection of the school. It was held that in case on the special inspection the deficit is found on account of tuition fee in implementation of sixth pay commission, the school will be entitled to meet such deficit out of development fee for 2009-10 and 2010-11. The committee also ordered/recommended that till the time of the special inspection the

Application/representations dated 28.1.2015 Cambridge Foundation School (B-0192)

Page 1 of 9

Secretary

Page 1 of 9



PDF Compressor Free Version

School ought to refund a sum of Rs.1,58,10,645 + interest @ 9% per annum. It was also held that it will be for the Director of Education to look into development fee charged for the year 2006 - 07, 2007 - 08 and 2008 - 09 and to pass appropriate order as the development fee was not utilized as per the decision of the Hon'ble Supreme Court. The order/recommendation dated 29th May, 2014 was passed after issuing a questionnaire to the school and giving ample opportunity of being heard. The Deputy Director of Education had also forwarded the record pertaining to school along with the complaints received by him. Though the complaints were made to Director of Education, however no one had approached the committee with the complaints against the school despite the public notices given by the Committee in all leading newspapers. The committee noted that the school had been tempering its books of accounts as the school first tried to show that it was maintaining a separate depreciation reserve account in the bank by making fictitious entries in its books. It had resulted in showing a bank account in the balance sheet of the school which in fact did not exist. There was a huge difference of cash balance between the cash book of the school and as reflected in the balance sheet. The school had tried to show it as an accounting error but it was observed by the Committee that mere accounting errors could not result in difference in cash in hand and as appearing in the books with that appearing in the balance sheet because cash has to be held physically and is not a mere book balance. It had also transpired that the school was making entries in respect of transactions which had not even taken place. In the circumstances it was held that no reliance could be placed on the accounts and/or audited balance sheets of the school. The Committee also noted the complaints of parents Association that the school was charging fee for certain activities without issuing receipts and in the circumstances it was recommended to have a special inspection of the school. In these circumstances the Committee did not consider the projected shortfall for implementation of sixth pay commission report. This was also on account of non-payment of full arrears of salary and non-payment of even retirement dues and leave encashment on retirement. It had also been observed by the

TRUE COPY

 Secretary



PDF Compressor Free Version

Committee that the school had treated the development fee as capital receipt but no separate development fund account was maintained. Though it was stated that the depreciation reserved fund was maintained but it was not in an earmarked bank account or FDR or investment. It also came to the notice of the Committee that the school was not utilizing the development fee for the specific purpose for which it was charged. The development fee was not to be used to meet the expenditure on repairs, maintenance and salaries to the staff. In the circumstances it was held that development fee charged by the school was not in accordance with the law.

The school has sought review of the order dated 29th May, 2014 by filing an application/representation dated 28th January, 2015. The review of the order/recommendation of the committee has been sought on the ground that the committee disregarded the explanations given by the school. The Committee did not give cognizance to the justification submitted by the school. According to school there is denial of principles of natural justice in the facts and circumstances. According to school it has followed and complied with each and every point as detailed and contemplated in the order dated 11th February, 2009. The reasons as recorded by the committee are not correct and are required to be reconsidered. From the facts apparent on the record it has to be inferred that the school is in deficit of funds on account of implementation of sixth pay commission. Payment of gratuity and leave encashment by post dated cheques also reflect that the school has deficit of funds. It has also been prayed that as the school has utilized the development fee to maximum towards expenditure under a specific head, therefore, no amount was kept in a separately maintained development fund account. The plea of the school seeking review is that to make transport facilities available is essential obligatory on the part of the school management which could not be ignored. It has been alleged that the procedural lapse in the accounting of the development fee does not mean that the school is not entitled to charge the development fee. According to school, the Education Department has not



PDF Compressor Free Version

provided or specified the pro forma for preparing the financial statement. It has been contended that the Committee cannot impose penalty to refund the development fee so charged, due to procedural lapse. In the circumstances it is contended that the order/recommendation dated 29th May, 2014 be reviewed.

The school has sought review of the order/recommendation of the committee dated 29th May, 2014 on merits of the order passed by the Committee. In the circumstances the committee has to first consider and adjudicate whether the Committee has such powers or not which are invoked by the School to review/reconsider its order dated 29th May, 2014. It is apparent that the Committee has become functus officio after it passed the order dated 29th May, 2014. The school has not produced any law or precedent or any rule or order of the Hon'ble Court giving power to the Committee to review its orders on merits.

It is no more res integra that a quasi-judicial authority will become functus officio when its order is pronounced, or published/notified or communicated (put in course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the authority will become functus officio. Once an authority exercising quasi judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. P Ramanatha Aiyar's Advanced law Lexicon (3rd Edition, Vol 2 pp. 1946-47) gives the following illustrative definition of the "functus officio".

"Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision."

PDF Compressor Free Version

Black's Law Dictionary (6th Edn., p 673) gives the meaning of functus officio as follows:

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

Consequently after the Committee had made its recommendations 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.

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 and therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendations. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

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

The Hon'ble 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



PDF Compressor Free Version

the order of Rukmani Devi Public School, Pitam Pura. 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 renotified on 09.05.2014"

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 on the face of the record, however, no general permission was granted to the Committee.

From the perusal of the application/representation dated 28th January, 2015 of the school, it is apparent that the applicant/school has sought review/reconsideration of recommendations of the Committee on merits. The applicant is not seeking review on account of any lapse in procedure or procedural defect as contemplated under the concept 'Procedural lapse'. This is also no more res integra that no review lies on merits unless a statute specifically provides for it. In Dr. (Smt.) Kuntesh Gupta v. Management of Hindu KanyaMahaVidyalaya, Sitapur (U.P.) and Ors. MANU/SC/0104/1987 and Patel NarshiThakershi and Ors.v. Pradyumansinghji Arjunsingji 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. There is a difference between the procedural review and a review on merits. The procedural review is which is either inherent or implied in a Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it. But the review on merits is when the



PDF Compressor Free Version

error sought to be corrected is one of law and facts and is apparent on the face of the record. In *Patel Narshi Thakershi & ors. (supra)* 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 debita a justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal.

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 vitiates the proceeding and invalidate 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



PDF Compressor Free Version

went to the root of the matter and invalidated the entire proceeding. The school was issued notices and was given ample opportunities and the representative of the school had appeared and produced voluminous record which considered and the pleas and contentions of the school taken into consideration before passing the order/recommendations dated 29th May, 2014.

Applying these principles it is apparent that where a 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 quasi-judicial authority is vested with power of review by express provision or by necessary implication.

The Applicant in the present case seeks recall/review of the order passed by the Committee dated 29th May, 2014 on merits on various grounds. It is not alleged 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 are that matters have been apparently considered incorrectly and the school/applicant is seeking review of its order pertaining to the case of the School. Apparently the recall or review or reopening 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 the Committee to review its orders/recommendations either expressly or by necessary implication.

The application/representation dated 28th January, 2015 seeking recalling/revoking of the order dated 29th May, 2014 and passing the order/recommendation again is not maintainable as this Committee does not have such powers as has been prayed by the School. The



PDF Compressor Free Version

applications/representations dated 28th January, 2015 by the school seeking review of the order/recommendation dated 29th May, 2014 is, therefore, not maintainable and it is disposed of as not maintainable

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

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

Date: 22/8/16

TRUE COPY

Secretary

PDF Compressor Free Version

**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:

OSCAR PUBLIC SCHOOL (B-0017),

(A Unit of Star Educational & Social

Welfare Society (Regd.),

Kaushik Enclave, Burari,

Delhi 110084

And in the matter of

Application/representation dated

23rd January, 2015 to review the order

Dated 23rd November, 2014 passed by the

Committee in respect of the School.

Present: Ms. Sunita Kaut, Principal with Anil Gupta Auditor for the School.

ORDER

The Committee passed the order/recommendation dated 23rd November, 2014 in respect of Oskar Public School, Kaushik Enclave, Burari, Delhi hereinafter, referred to as 'The School' directing the school to refund the excess amount of fee charged as registration fee and admission fee from the new students in the years 2009 - 10 and 2010 - 11, over and above the amount was as per order dated 11 February 2009 with the interest @ 9% per annum from the date of collection to the date of refund. They school has

Application/representations dated 23.01.2015 Oscar Public School, Burari (B-0017)

TRUE COPY

Page 2 of 8

Secretary



PDF Compressor Free Version

been directed to refund the development fee amounting to Rs.5,47,050 which are passed in 2009 - 10 and Rs. 7,43,425 charged in 2010 - 11 with interest @ 9% per annum. It was held that no intervention was required as far as the tuition fee was concerned before passing the order/recommendation dated 23rd November, 2014 hearing was given to the school. The school produced its books of accounts, fee and salary records, bank statements, provident fund returns and TDS returns. The information regarding the company and utilization of development fee and maintenance of development and the depreciation reserve fund was also sought. The record produced by the school was also examined by audit officer of the Committee. It had transpired that the fee charged by the school was in accordance with the fee structure submitted by the school. It was contended on behalf of the school that the original fee receipts were damaged by termite. The fee for the year 2008 - 09; 2009 - 10 and 2010 - 11 were produced which were found to be properly maintained. On the basis of the record the Committee had recommended that the fee hike by the school in 2009 - 10 was in excess of the tolerance limit of 10% in respect of classes IX and X. It also transpired that the school was not charging registration fee and admission fee uniformly for all the new students. In the facts and circumstances and after considering the pleas and contentions of the school, it was ordered/recommended that the admission fee and registration fee as indicated hereinabove should be returned with interest. The the school was not charging hiked development fee but it did not fulfil any of the preconditions for charging development fee. The school treated the development fee as a revenue receipt without maintaining any earmarked funds for the development fee and depreciation reserve. In the circumstances the school has been ordered to refund the depreciation feeAs detailed hereinabove.

The school has sought review of the order dated 23rd November, 2014 by filing an application/representation dated 23rd January, 2015. The review



PDF Compressor Free Version

the order/recommendation of the committee has been sought on the ground that the observations and inferences drawn by the Committee are not correct. It is asserted that the refund of development fund only be possible at the expense of hike in tuition fee which will mean a huge burden on the whole procedure. According to school it does not have surplus with present fee structure and any refund as ordered by the Committee will lead to hike of fees of more than 20%. The school's plea is that the development fee was used to pay salaries to the staff so that the burden of deficit arising from the tuition fee does not transfer to the parents. The school has however, not contended anything about the admission fee and registration fee charged from new students which was also not uniform. The school has also not contended as to how it complied with the preconditions of development fee.

The school has sought review of the order/recommendation of the committee dated 23rd November, 2014 on merits of the order passed by the Committee. In the circumstances the committee has to first consider and adjudicate whether the Committee has such powers or not which are invoked by the School to review/reconsider its order dated 23rd November, 2014. It is apparent that the Committee has become functus officio after it passed the order dated 23rd November, 2014. The school has not produced any law or precedent or any rule or order of the Hon'ble Court giving power to the Committee to review its orders on merits.

It is no more res integrata that a quasi-judicial authority will become functus officio when its order is pronounced, or published/notified or communicated (put in course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified



PDF Compressor Free Version

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 recommendations 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.

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 and therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendations. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:



PDF Compressor Free Version

“ 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 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. 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 renotified on 09.05.2014”

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 on the face of the record, however, no general permission was granted to the Committee.

From the perusal of the application/representation dated 23rd January, 2015 of the school, it is apparent that the applicant/school has sought review/reconsideration of recommendations of the Committee on merits. The applicant is not seeking review on account of any lapse in procedure or procedural defect as contemplated under the concept ‘Procedural lapse’. This is also no more res integrata that no review lies on merits unless a statute specifically provides for it. In Dr. (Smt.) Kuntesh Gupta v. Management of Hindu Kanya Maha Vidyalaya, Sitapur (U.P.) and Ors. MANU/SC/0104/1987.



PDF Compressor Free Version

and Patel NarshiThakershi and Ors.v.PradyumansinghjiArjunsingji 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. There is a difference between the procedural review and a review on merits. The procedural review is which is either inherent or implied in a Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it. But the review on merits is when the error sought to be corrected is one of law and facts and is apparent on the face of the record. In Patel NarshiThakershi&ors. (supra) 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 debita a justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal.

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 vitiate the proceeding and invalidate the order made therein, inasmuch as



PDF Compressor Free Version

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. The school was issued notices and was given ample opportunities and the representative of the school had appeared and produced voluminous record which considered and the pleas and contentions of the school taken into consideration before passing the order/recommendations dated 23rd November, 2014.

Applying these principles it is apparent that where a 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 quasi-judicial authority is vested with power of review by express provision or by necessary implication.

The Applicant in the present case seeks recall/review of the order passed by the Committee dated 23rd November, 2014 on merits on various grounds. It is not alleged 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 are that matters have been apparently considered incorrectly and the school/applicant is seeking review of its order pertaining to the case of the School. Apparently the recall or review or reopening 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




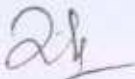
PDF Compressor Free Version

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

The application/representation dated 23rd January, 2015 seeking recalling/revoking of the order dated 23rd November, 2014 and passing the order/recommendation again is not maintainable as this Committee does not have such powers as has been prayed by the School. The applications/representations dated 23rd January, 2015 by the school seeking review of the order/recommendation dated 23rd November, 2014 is, therefore, not maintainable and it is disposed of as not maintainable



JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON


J.S. KOCHAR
MEMBER


Dr. R.K. SHARMA
MEMBER

Date: 22/8/16

TRUE COPY


Secretary



PDF Compressor Free Version

**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:

RUKMANI DEVI JAIPURIA PUBLIC SCHOOL (B-0529),

23- Rajpur Road,

Delhi 110054

And in the matter of

Application/representation dated

20th November, 2015 to review the order

Dated 1st May, 2015 passed by the

Committee in respect of the School.

Present: Shri Rajan George A.R with Shri Punit Batra Advocate for the School.

ORDER

The Committee passed the order/recommendation dated 1st May, 2015 in respect of Rukmani Devi Jaipuria Public School, hereinafter, referred to as 'The School' directing the school to refund the arrear of fee from 1st January, 2006 to 31st August, 2008 amounting to Rs.32,48,000/-; arrears of fee for the period 1st September, 2008 to 31st March, 2009 amounting to Rs.25,37,135/-; incremental tuition fee for the year 2009 - 10, amount Rs.56,90,375/-; development fee for that year 2009 - 10, amount Rs.8,30,640/-; Development fee for the year 2010 - 11, amount Rs.8,31,000/-. The school was also directed to pay interest on all the amounts @ 9% per annum from the date of receipt till the date of payment. Before passing the order/recommendations the



PDF Compressor Free Version

questionnaire was sent to the school to elicit information. The school was also given notice for hearing and annual returns filed by the school under Rule 180 of Delhi School Education Rules 1973 one regulation from the office of the Deputy Director of Education. A revised questionnaire was also issued to the school and direction was given to produce its fee records, salary records, books of accounts and TDS and Provident Fund returns. The records produced by the school were got verified from the account officer of the committee. It transpired that the school had implemented the recommendations of sixth pay commission. The salary was paid by the school by direct bank transfer. It was also observed that the school had hiked the fee uniformly for all the classes. The school had also collected the arrears of fee within the tolerance limit of 10%. The school was issued notice for hearing on 29th December, 2014. During the hearing it transpired that the besides the hike in fee in 2009 - 10, the school had also hiked computer hobby fee substantially during the same period. This fee was not included by the school in the fee structure which was furnished to Directorate of Education under section 17 (3) of Daily The school Education Act, 1973. It also transpired and was admitted by the representative of the school that the Development was treated as the revenue received and no earmarked development fund or depreciation reserved fund was maintained. On the basis of all this data, a preliminary calculation sheet was prepared and a copy of the same was also given to the school. The school had taken contradictory stand as it claimed to have kept funds in reserve for establishment of another school and also contended that a sum of Rs.488.08 had already been spent on purchase of a plot of land. It also transpired that they school had generated. Taking all the facts into consideration the committee had inferred that the school was being run on commercial line. The contention regarding exclusion of Rs.17.92 lacs which had been claimed by the employees from the funds available was also rejected as no documentary evidence was furnished nor the period was disclosed. The plea of exclusion of Rs.17.94 lacs for payment of property tax was also not accepted. The plea of increase in administrative expenses was also rejected after perusal of



PDF Compressor Free Version

accounts. In the circumstances the committee recommended/ordered for refund of arrears of fee as detailed hereinabove. Since the maintenance of earmarked development fund and the depreciation reserved fund are sine qua non for discharging development fee and the school is also required to treat the development fee as a capital receipt rather than revenue receipt and the school was required you to utilize it for specified capital assets, it was held that the school was not justified in charging the development fee. They school was thus ordered/recommended to return the development fee by order dated 1st May, 2015.

The school has sought review of the order dated 1st May, 2015 by filing an application/representation dated 20th November, 2015. The review of the order/recommendation of the committee has been sought alleging that the school was run with utmost economy, by prudent financial management and expenditure control which had resulted in savings. The savings were made for the expansion of the school for the spread of quality education. Substantial help of manpower and equipment was provided by Trustees at no cost to the school so that maximum savings would be made. The school has alleged that in the circumstances it is unjust to penalize they school who had controlled unnecessary expenses and utilize such savings for further spread of education. It has also been contended that the funds available with the school were not free funds but encumbered/committed funds and the school was obliged to use the accumulated funds for the expansion/establishment of the school. According to school there is no stipulation under the Act or Rules that surplus of a school cannot be used by the same trust for establishing/expansion of the schools in the NCRT of Delhi. Reliance has also been placed by the school to a response to a RTI by Ministry of Human Resources Development, Department of School Education and Literacy. According to school there is no bar in Delhi Schools opening schools in NCRT of Delhi. The school has also impugned the refund of Development Fee ordered by the committee with interest. According to



PDF Compressor Free Version

to school the order/recommendation of the committee is incorrect. In the circumstances the school has contended that the order/recommendation impugned by the school dated 1st May, 2015 be set aside and the application/representation dated 20th November, 2015 be allowed.

The school has sought review of the order/recommendation of the committee dated 1st May, 2015 on merits of the order passed by the Committee. In the circumstances the committee has to first consider and adjudicate whether the Committee has such powers or not which are invoked by the School to review/reconsider its order dated 1st May, 2015. It is apparent that the Committee has become functus officio after it passed the order dated 1st May, 2015. The school has not produced any law or precedent or any rule or order of the Hon'ble Court giving power to the Committee to review its orders on merits.

It is no more res integra that a quasi-judicial authority will become functus officio when its order is pronounced, or published/notified or communicated (put in course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the authority will become functus officio. Once an authority exercising quasi judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. P Ramanatha Aiyar's Advanced law Lexicon (3rd Edition, Vol 2 pp. 1946-47) gives the following illustrative definition of the "functus officio".

"Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision."

PDF Compressor Free Version

Black's Law Dictionary (6th Edn., p 673) gives the meaning of functus officio as follows:

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

Consequently after the Committee had made its recommendations 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.

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 (another branch of applicant 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 and therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendations. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

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

The Hon'ble 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. The Hon'ble Court passed the following order:

PDF Compressor Free Version

"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 renotified on 09.05.2014"

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 on the face of the record, however, no general permission was granted to the Committee.

From the perusal of the application/representation dated 20th November, 2015 of the school, it is apparent that the applicant/school has sought review/reconsideration of recommendations of the Committee on merits. The applicant is not seeking review on account of any lapse in procedure or procedural defect as contemplated under the concept 'Procedural lapse'. This is also no more res integra that no review lies on merits unless a statute specifically provides for it. In Dr. (Smt.) Kuntesh Gupta v. Management of Hindu KanyaMahaVidyalaya, Sitapur (U.P.) and Ors. MANU/SC/0104/1987 and Patel NarshiThakershi and Ors.v. Pradyumansinghji Arjunsingji 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. There is a difference between the procedural review and a review on merits. The procedural review is which is either inherent or implied in a Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it. But the review on merits is when the error sought to be corrected is one of law and facts and is apparent on the face of the record. In Patel Narshi Thakershi & ors. (supra) the Hon'ble Supreme Court had held that no review lies on merits unless a statute specifically



PDF Compressor Free Version

provides for it. When a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debita a justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal.

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 vitiates the proceeding and invalidate 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. The school was issued notices and was given ample opportunities and the representative of the school had appeared and produced voluminous record which considered

Application/representations dated 20.11.2015 Rukmani Devi Jaipuria School (B/3529)

Page 7 of 9

TRUE COPY

Secretary

Page 7 of 9



PDF Compressor Free Version

and the pleas and contentions of the school taken into consideration before passing the order/recommendations dated 1st May, 2015.

Applying these principles it is apparent that where a 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 quasi-judicial authority is vested with power of review by express provision or by necessary implication.

The Applicant in the present case seeks recall/review of the order passed by the Committee dated 1st May, 2015 on merits on various grounds. It is not alleged 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 are that matters have been apparently considered incorrectly and the school/applicant is seeking review of its order pertaining to the case of the School. Apparently the recall or review or reopening 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 the Committee to review its orders/recommendations either expressly or by necessary implication.

The application/representation dated 20th November, 2015 seeking recalling/revoking of the order dated 1st May, 2015 and passing the order/recommendation again is not maintainable as this Committee does not have such powers nor it can exempt the school from refunding the fee which has been ordered/recommended by the Committee. The applications/representations dated 20th November, 2015 by the school seeking



PDF Compressor Free Version

review of the order/recommendation dated 1st May, 2015 is, therefore, not maintainable and it is disposed of as not maintainable

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

**J.S.KOCHAR
MEMBER**

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

Date: 22/8/2016.

TRUE COPY

Secretary



PDF Compressor Free Version**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:

MODERN ERA CONVENT (B-0082),

B-1 Block, Janak Puri,

New Delhi 110058

And in the matter of

Applications/representations dated

13th October, 2014 and 14th July, 2016

and 4th August, 2016 to review the order

Dated 23rd January, 2013 passed by the

Committee in respect of the School.

Present: Shri K.Gopal, Manager; Shri M.K.Jain, Chartered Accountant and Shri A.K.Sharma, Chartered Accountant for the School.

ORDER

The School, Modern Era Convent, had filed a reply dated 1 March 2012 to the notice issued to it contending that it had implemented the sixth pay commission and had also paid arrears on account of retrospective application of the sixth pay commission. The school also gave the details of the fee hiked for different classes. After scrutinizing the accounts submitted by the school, a notice was issued providing an opportunity of hearing to the school. On 18 December, 2012, the school was provided a copy of preliminary calculations prepared by the Chartered Accountants with the committee. The hearing was adjourned to 27th December, 2012. The school was directed to disclose specifically as to how the development fee was stated in its accounts.

Application/representations dated 13.10.14; 14.7.16 Modern Era Convent (B-0082)

Secretary

Page of 8



PDF Compressor Free Version

school was also directed to disclose whether separate development fund and depreciation reserve fund were maintained in the bank or not. The school had filed the written submission contending that arrears of had not been received from all the students. The plea of the school was that it had exempted certain students. Consequently the school was asked to file details of such students along with basis of such exemption. The school had not disputed the payment of arrears of salary of Rs.18,04,150/-. According to school the total amount available with the school was not sufficient to meet the liability of gratuity, leave encashment et cetera. The committee also noticed that the school had not disputed the figure of Rs.69,13,652/- total funds available with the school on 31.3.2008. The school however, disputed the arrears of fee recovered, increased fee for the period 1.9.2008 to 31.03.2010 and the increased salary for the year 2009-10 on account of implementation of VI pay commission. The committee after considering all the facts and figures and pleas and contentions held that figures were extrapolated by the school and its chartered Accountant and were not correct and therefore, the additional burden on account of implementation of VI pay commission was taken to be Rs.12,71,117/-. The committee made an allowance of Rs.11,18,452/- for gratuity and not as claimed by the school. It was held that the school recovered a sum of Rs.38,13,332/- in excess of the amount that was required which was not justified and directed the refund of said amount with interest @ 9% per annum. The school was also directed to refund the development fee charged by the school in 2009-10 and 2010-11 amounting to Rs.2,09,420 and Rs.2,16,480 respectively with interest @ 9% per annum by order dated 23rd January, 2013.

The school has sought review of order/recommendation dated 23rd January, 2013 by filing the representations/applications dated 13th October, 2014 and 14th July, 2016 and 4th August, 2016. It is contended that the order/recommendation of the committee has apparent errors in the facts and figures. According to the School the provisions of gratuity should be Rs.48,33,745/- in place of Rs.11,18,452/-. It is contended that though



PDF Compressor Free Version

school in its balance sheet of relevant years has not made provisions of leave encashment, however, the actual liability of the school should be Rs.20,33,264/-. The school produced the valuation report and also the detailed regarding employees liability for the total arrears of Rs. 64,61,600/-. The school contended that the development fund collected by the school ought not to be recommended for refund with interest. It has been also alleged that school be allowed the recovery of an amount as may be deemed appropriate by the committee to bridge shortfall arising out of implementation of sixth pay commission. During arguments on 4th August, 2016 another set of submission of the same date had been filed with a number of annexures. It is contended that the oral communications made during the hearing had led to circumstances of obscurity. According to the school key points of disagreement are due to lack of clarity over what information was required to be submitted by the school. And it was extremely harsh on the part of the committee to pass such an adverse recommendation/order. The school deserves a fair and just treatment and therefore, it is highly amenable to review the order dated 23rd January, 2013.

The school has sought review of the order/recommendation of the committee dated 23rd January, 2013 on merits though in one of the representations dated 4th August, 2016 it is also averred that there is a procedural lapse. However, in the facts and circumstances it cannot be inferred that there is any procedural lapse. In the circumstances the committee has to first consider and adjudicate whether the Committee has such powers or not which are invoked by the School to review/reconsider its order dated 5th May,2014. This cannot be disputed by the School that the Committee has become functus officio after it passed the order dated 23rd January, 2013 After passing the order which is sought to be reviewed whether

PDF Compressor Free Version

the committee will still have the power to review/reconsider its said order/recommendation is to be adjudicated first.

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

"Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision."

Black's Law Dictionary (6th Edn., p 673) gives the meaning of functus officio as follows:

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

Consequently after the Committee had made its recommendations 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.

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

Application/representations dated 13.10.14; 14.7.16 Modern Era Convent (B-0082)

TRUE COPY

Secretary



PDF Compressor Free Version

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 and therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendations. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

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

The Hon'ble 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. 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 renotified on 09.05.2014"

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 on the face of the record, however, no general permission was granted to the Committee.

From the perusal of the applications/representations dated 13th October, 2014 and 14th July, 2016 and 4th August, 2016 of the school it is apparent that the applicant/school has sought review/reconsideration of recommendations of the Committee on merits. The applicant is not seeking review on account of any lapse in procedure or procedural defect as contemplated under procedural



PDF Compressor Free Version

lapse. This is also no more res integra that no review lies on merits unless a statute specifically provides for it. In Dr. (Smt.) Kuntesh Gupta v. Management of Hindu KanyaMahaVidyalaya, Sitapur (U.P.) and Ors. MANU/SC/0104/1987 and Patel NarshiThakershi and Ors.v. Pradyumansinghji Arjunsingji 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. There is a difference between the procedural review and a review on merits. The procedural review is which is either inherent or implied in a Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it. But the review on merits is when the error sought to be corrected is one of law and facts and is apparent on the face of the record. In Patel Narshi Thakershi & ors. (supra) 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 debita a justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal.

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

Application/representations dated 13.10.14; 14.7.16 Modern Era Convent (B-0082)

TRUE COPY

Secretary



PDF Compressor Free Version

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 vitiates the proceeding and invalidate 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.

Applying these principles it is apparent that where a 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 quasi-judicial authority is vested with power of review by express provision or by necessary implication.


The Applicant in the present case seeks recall/review of the order passed by the Committee dated 23rd January, 2013 on merits on various grounds. It is not alleged 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 are that matters have been apparently considered incorrectly and the school/applicant is seeking review of its order pertaining to the case of the School. Apparently the recall or review or reopening 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 the Committee to review its orders/recommendations either expressly or by necessary implication.

The applications/representations dated 13th October, 2014 and 14th July, 2016 and 4th August, 2016 seeking recalling/revoking of the order dated


PDF Compressor Free Version

23rd January, 2013 and passing the order/recommendation again is not maintainable as this Committee does not have such powers. The applications/representations dated 13th October, 2014 and 14th July, 2016 and 4th August, 2016 by the school seeking review of the order/recommendation dated 23rd January, 2013 are, therefore, disposed of as not maintainable


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON


J.S.KOCHAR

MEMBER


Dr. R.K. SHARMA

MEMBER

Date: 22/8/16

TRUE COPY

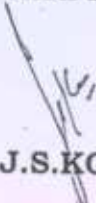

 Secretary



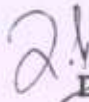
PDF Compressor Free Version

23rd January, 2013 and passing the order/recommendation again is not maintainable as this Committee does not have such powers. The applications/representations dated 13th October, 2014 and 14th July, 2016 and 4th August, 2016 by the school seeking review of the order/recommendation dated 23rd January, 2013 are, therefore, disposed of as not maintainable


JUSTICE ANIL KUMAR (Retd.)
CHAIRPERSON


J.S.KOCHAR

MEMBER


Dr. R.K. SHARMA

MEMBER

Date: 22/8/16

TRUE COPY


 Secretary



PDF Compressor Free Version**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:

AMBIENCE PUBLIC SCHOOL (B-0126),

A-1, Safdarjung Enclave

New Delhi 110 029

And in the matter of

Application/representation dated

8th January, 2015 to review the order

Dated 3rd June, 2014 passed by the

Committee in respect of the School.

Present: Shri Vikas Bhatia, Director, with Manu RG Luthra, Chartered Accountant of the School.

ORDER

The Committee passed the order/recommendation dated 3rd June, 2014 in respect of Ambience Public School, A-1 Safdurjung Enclave, New Delhi referred to as 'The School' directing the school to refund the development fee amounting to Rs.18,37,372/- which was charged in which was charged during 2010-11 with interest @ 9% per annum as the school had not complied with any of the pre-requisite for the Development Fee. The Committee also ordered/recommended that the tuition fee hiked by the school in 2009-10 amounting to Rs.24,29,903/- be refunded with interest @ 9% per annum. Before passing the order/recommendation dated 3rd June, 2014, the reply of the school to the questionnaire sent by the Committee and the record produced by the school were considered. The school had contended that it had



PDF Compressor Free Version

implemented the recommendation of sixth pay commission and the increase salary of the staff was paid with effect from 1st July, 2009. The tuition fee was hiked by Rs. 200 per month for classes I to VIII and by Rs.300 per month for classes IX to XII. The school was issued a notice dated 23rd December, 2013 providing it an opportunity of being heard on 24th January, 2014. A preliminary report prepared by the Committee on the basis of the record submitted by the school. On the date fixed, the chartered accountants and the accountant and the assistant accountant of the school had appeared. The school had also prepared its calculations and filed before the Committee. The school had also filed written submissions taking inconsistent pleas regarding payment of arrears and the period for which they were paid. On the basis of the record of the school and the calculation sheet prepared by the Committee and the school it was inferred that the school had hiked more fee than was required to meet its additional liabilities arising out of implementation of sixth pay commission. The access fee hiked had resulted in an additional revenue of Rs.24,49,903/-which had been ordered to be refunded with interest. It was also noticed that the school had recovered the bulk of arrear fee in March, 2009 while it paid the arrear salary in August, 2011. In the circumstances it was ordered that the school should pay the interest for 30 months on the amount of arrear fee collected. The school had charged the development fee from the students. The maintenance of earmarked development fund and depreciation reserve fund is a condition precedent for charging the development fee. These conditions were not fulfilled by the school. The school had treated the Development fee as revenue receipt and no separate bank account was maintained. The contentions of the school were found to be self-contradictory. In view thereof it had been held that the levy of development fee was improper and unjustified.

The school has sought review of the order dated 3rd June, 2014 by filing an application/representation dated 8th January, 2015. The school contended that the recommendations of the committee are required to be reviewed



PDF Compressor Free Version

following the concept of natural justice. It is contended that a reasonable opportunity of being heard was not given to the school. The assertion of the school is that it followed the procedural aspect as well as complied with other formalities of order dated 11th February, 2009 of Directorate of Education. The availability of surplus in other collection apart from the tuition fee, thus, could not be made to be utilized to meet out the expenses for implementation of the recommendation of the sixth pay commission. The fixed deposit of Rs.1,19,54,210/-has not been taken as fund available because the same has not been created out of collection from tuition fee. The additional increased liabilities of gratuity and leave encashment should have been allowed separately which reflects the error apparent on the record. The school has also produced an annexures along with their application/representation seeking review of order dated 3rd June, 2014.

Apparently the school has sought review of the order/recommendation of the committee dated 3rd June, 2014 on merits of the order passed by the Committee. In the circumstances the committee has to first consider and adjudicate whether the Committee has such powers or not which are invoked by the School to review/reconsider its order dated 3rd June, 2014. It is apparent that the Committee has become functus officio after it passed the order dated 3rd June, 2014. The school has not produced any law or precedent or any rule or order of the Hon'ble Court giving power to the Committee to review its orders on merits.

It is no more res integra that a quasi-judicial authority, will become functus officio when its order is pronounced, or published/notified or communicated (put in course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it



PDF Compressor Free Version

for valid reasons. But once the order is pronounced or published or notified or communicated, the authority will become functus officio. Once an authority exercising quasi judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. P Ramanatha Aiyar's Advanced law Lexicon (3rd Edition, Vol 2 pp. 1946-47) gives the following illustrative definition of the "functus officio".

"Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision."

Black's Law Dictionary (6th Edn., p 673) gives the meaning of functus officio as follows:

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

Consequently after the Committee had made its recommendations 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.

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 and therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendations. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

" Kindly place this letter before the Hon'ble Division Bench dealing with the matter, as the Committee seeks urgent directions for Court Committee



PDF Compressor Free Version

grant of permission to rectify our recommendations, which may suffer from errors apparent on the face of the record."

The Hon'ble 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. 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 renotified on 09.05.2014"

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, if any, errors on the face of the record, however, no general permission was granted to the Committee.

From the perusal of the application/representation dated 8th January, 2015 of the school, it is apparent that the applicant/school has sought review/reconsideration of recommendations of the Committee on merits. The applicant is not seeking review on account of any lapse in procedure or procedural defect as contemplated under the concept 'Procedural lapse'. This is also no more res integra that no review lies on merits unless a statute specifically provides for it. In Dr. (Smt.) Kuntesh Gupta v. Management of Hindu KanyaMahaVidyalaya, Sitapur (U.P.) and Ors.MANU/SC/0104/1987 and Patel NarshiThakershi and Ors.v. Pradyumansinghji Arjunsingji 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



PDF Compressor Free Version

either expressly or by necessary implication. There is a difference between the procedural review and a review on merits. The procedural review is which is either inherent or implied in a Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it. But the review on merits is when the error sought to be corrected is one of law and facts and is apparent on the face of the record. In Patel Narshi Thakershi & ors. (supra) the Hon'ble Supreme Court had held that no review lies on merits unless a statute specifically provides for it. When a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito a justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal.

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 vitiate the proceeding and invalidate 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



PDF Compressor Free Version

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. The school was issued notices and was given ample opportunities and the representative of the school had appeared and produced voluminous record which considered and the pleas and contentions of the school taken into consideration before passing the order/recommendations dated 3rd June, 2014.

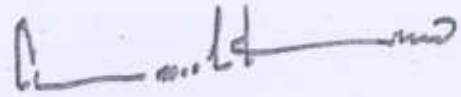
Applying these principles it is apparent that where a quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the quasi-judicial authority is vested with power of review by express provision or by necessary implication.

The Applicant in the present case seeks recall/review of the order passed by the Committee dated 3rd June, 2014 on merits on various grounds. It is not alleged 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 are that matters have been apparently considered incorrectly and the school/applicant is seeking review of its order pertaining to the case of the School. Apparently the recall or review or reopening 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 the Committee to review its orders/recommendations either expressly or by necessary implication.



PDF Compressor Free Version

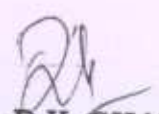
The application/representation dated 8th January, 2015 seeking recalling/revoking of the order dated 3rd June, 2014 and passing the order/recommendation again is not maintainable as this Committee does not have such powers as has been prayed by the School. The applications/representations dated 8th January, 2015 by the school seeking review of the order/recommendation dated 3rd June, 2014 is, therefore, not maintainable and it is disposed of as not maintainable



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




**J.S.KOCHAR
MEMBER**



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

Date: 23/8/16

TRUE COPY



Secretary



PDF Compressor Free Version**BEFORE DELHI HIGH COURT COMMITTEE FOR REVIEW OF SCHOOL FEE
AT NEW DELHI**

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

In the matter of:

St. KRISHNA BODH SHIKSHA SADAN (B-0522),

Village Mandoli

Delhi 110032

And in the matter of

Application/representation dated

8th April, 2015 to review the order

Dated 10th October, 2014 passed by the

Committee in respect of the School.

Present: Mr. Pramod Kumar Sharma, Manager with Manu RG Luthra,
Chartered Accountant of the School.

ORDER

The Committee passed the order/recommendation dated 10th October, 2014 in respect of St. Krishna Bodh Shiksha Sadan, Village Mandoli, referred to as 'The School' directing the school to refund the development fee amounting to Rs.3,27,430/- which was charged in 2009 - 10 to 2010-11 with interest @ 9% per annum as the school had not complied with any of the pre-requisite for the Development Fee.. It was held that no intervention was required as far as the tuition fee was concerned as the hike was less than 10% and the school had not utilized the order dated 11.02.2009 for enhancing the tuition fee. The school had not responded to the questionnaire which was issued by the Committee. The committee however, obtained the returns filed by

Application/representations dated 8.4.2015 St.Krishna Bodh Shiksha Sadan (B-0522)

TRUE COPY

Secretary

Page 1 of 6



PDF Compressor Free Version

the school under Rule 180 from Directors of Education. The fee hike was found to be in accordance with the order of the director of education dated 11th February, 2009. It also transpired that the school had implemented the recommendations of the sixth pay commission. The school had been asked to produce the record pertaining to fee, salary and accounts for the year 2008 - 2009 to 2010 - 11. On 24th September, 2013 the manager and Vice Principal of the school appeared and filed the reply. The school had charged the development fee from the students. The development fee, however, had been treated as a revenue receipt and no separate depreciation reserved fund has development fund had been maintained by the school. In the circumstances by order/recommendation dated 10th October, 2014 the above noted recommendations were made for refund of development fee.

The school has sought review of the order dated 10th October, 2014 by filing an application/representation dated 8th April, 2015. It has been contended by the School that due to paucity of time, limited explanation was offered by the school which did not suffice and consequently the committee has made certain recommendation which could be favorable, had the school explained better and in a clear manner. The contention of the school is that it charged depreciation fee to revenue accounts up to 2008 - 09 and was creating depreciation fund in due compliance. However, the school stopped the practice of charging depreciation to revenue accounts and thus dispensed with the condition to maintain the depreciation reserved fund. It is further asserted by the School that since the school is not charging depreciation from General Fund, therefore, the school is exempted from the precondition to create Depreciation Reserve and earmarking such investments for future acquisition of fixed assets. The plea of the school is also that there is no prescribed format for financial statement from Directorate of Education, Delhi and in the circumstances the development fee is treated as capital receipt and then utilized for acquisition of fixed assets. It is also contended in the same breath that development fee is treated as revenue receipt and utilized in accordance



PDF Compressor Free Version

with the prescribed guidelines. In the circumstances the contention is that the purpose has been met by the school and there has not been any diversion from the ultimate goal and as such there is no violation of the directions by the Directorate of Education. In the circumstances it is prayed that the order/recommendation be reviewed and the direction to refund the development fee be set aside.

The school has sought review of the order/recommendation of the committee dated 10th October, 2014 on merits of the order passed by the Committee. In the circumstances the committee has to first consider and adjudicate whether the Committee has such powers or not which are invoked by the School to review/reconsider its order dated 10th October, 2014. It is apparent that the Committee has become functus officio after it passed the order dated 10th October, 2014. The school has not produced any law or precedent or any rule or order of the Hon'ble Court giving power to the Committee to review its orders on merits.

It is no more res integra that a quasi-judicial authority will become functus officio when its order is pronounced, or published/notified or communicated (put in course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the authority will become functus officio. Once an authority exercising quasi judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. P Ramanatha Aiyar's Advanced law Lexicon (3rd Edition, Vol 2 pp. 1946-47) gives the following illustrative definition of the "functus officio".



PDF Compressor Free Version

"Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision."

Black's Law Dictionary (6th Edn., p 673) gives the meaning of functus officio as follows:

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

Consequently after the Committee had made its recommendations 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.

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 and therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendations. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

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



PDF Compressor Free Version

The Hon'ble 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. 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 renotified on 09.05.2014"

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 on the face of the record, however, no general permission was granted to the Committee.

From the perusal of the application/representation dated 8th April, 2015 of the school, it is apparent that the applicant/school has sought review/reconsideration of recommendations of the Committee on merits. The applicant is not seeking review on account of any lapse in procedure or procedural defect as contemplated under the concept 'Procedural lapse'. This is also no more res integra that no review lies on merits unless a statute specifically provides for it. In Dr. (Smt.) Kuntesh Gupta v. Management of Hindu KanyaMahaVidyalaya, Sitapur (U.P.) and Ors. MANU/SC/0104/1987 and Patel NarshiThakershi and Ors.v. Pradyumansinghji Arjunsingji 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. There is a difference between the procedural review and a review on merits. The procedural review is which is

PDF Compressor Free Version

either inherent or implied in a Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it. But the review on merits is when the error sought to be corrected is one of law and facts and is apparent on the face of the record. In Patel Narshi Thakershi & ors. (supra) 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 debita a justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal.

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 vitiates the proceeding and invalidate 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



PDF Compressor Free Version

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. The school was issued notices and was given ample opportunities and the representative of the school had appeared and produced voluminous record which considered and the pleas and contentions of the school taken into consideration before passing the order/recommendations dated 10th October, 2014.

Applying these principles it is apparent that where a 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 quasi-judicial authority is vested with power of review by express provision or by necessary implication.

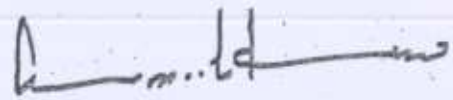
The Applicant in the present case seeks recall/review of the order passed by the Committee dated 10th October, 2014 on merits on various grounds. It is not alleged that in passing the order, the committee has committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the order/recommendation of the committee is liable to be recalled. Rather grounds taken by the applicant are that matters have been apparently considered incorrectly and the school/applicant is seeking review of its order pertaining to the case of the School. Apparently the recall or review or reopening 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 the Committee to review its orders/recommendations either expressly or by necessary implication.

The application/representation dated 8th April, 2015 seeking recalling/revoking of the order dated 10th October, 2014 and passing the



PDF Compressor Free Version

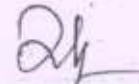
order/recommendation again is not maintainable as this Committee does not have such powers as has been prayed by the School. The applications/representations dated 8th April, 2015 by the school seeking review of the order/recommendation dated 10th October, 2014 is, therefore, not maintainable and it is disposed of as not maintainable



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



**J.S.KOCHAR
MEMBER**



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

Date: 23/8/16

TRUE COPY



Secretary



PDF Compressor Free Version

**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:

BHARAT NATIONAL PUBLIC SCHOOL (C-0381),

Ram Vihar, Karkardooma,

Delhi 110092

And in the matter of

Application/representation dated

22nd July, 2015 to review the order

Dated 22nd April, 2014 passed by the

Committee in respect of the School.

Present: Shri Punit Batra Advocate with Shri Kanwaljit Khungar, Principal of the School.

ORDER

The Committee passed the order/recommendation dated 22nd April, 2014 in respect of Bharat National Public School, hereinafter, referred to as 'The School' directing the school to refund the tuition fee hiked by the School in 2009-10 to the tune of Rs.74,96,108/- along with interest @ 9 % per annum. The school had not replied to the questionnaire which was sent to it on 27th February, 2012 nor had filed the copies of the returns which were filed by it with the Director of Education under Rule 180 of Delhi School Education Rules, 1973. The school was directed to produce its records on 6th November, 2012. The date for production was adjourned at the request of the school to 20th November, 2012. On that date the principal of the school had appeared

Application/representations dated 22.7.2015 Bharat National Public School (C-0381)

TRUE COPY

Secretary

Page 5 of 8



PDF Compressor Free Version

and had produced some records and had also filed the reply to the questionnaire. In the reply it was contended by the School that it had implemented the recommendations of sixth pay commission. The records were examined by the Committee. It had transpired that the school had hiked the fee in 2009 - 10 ranging from Rs.282 to Rs.640 per month for different classes. The school had the surplus funds of its own however, the funds were not utilized by the school for implementation of the recommendations of the sixth pay commission. They school hiked the fee in 2009 - 10 and 2010 - 11 but did not collect the arrears of fee nor paid any arrears which were payable on account of retrospective application of sixth pay commission with effect from 1st January 2006. On conclusion of hearing the school was given liberty to file the detailed of its accrued liabilities for gratuity and leave encashment as on 31st March, 2010. The school had filed a letter dated 24th February, 2014 contending that the liability will be in lakhs. It was contended that part of the surplus had been kept for development of building while another part was kept gratuity and leave encashment. On the basis of the records it was inferred that they school had unjustifiably hiked the fee which had resulted in generation of additional revenue of Rs.74,96,108/-. In the circumstances the Committee had recommended/ordered refund of fees with interest.

The school has sought review of the order dated 22nd April, 2014 by filing an application/representation dated 22nd July, 2015. The review of the order/recommendation of the committee has been sought on the ground that during the hearing the school could not place on record the actuarial valuation of gratuity and leave encashment for the consideration of contingent liability of the school at the time of calculation of circular sheet but had submitted the lump sum amount and annexed the copy of the same. The school produced summary of results; summary of membership data; actuarial assumptions; actuarial method; plant assets; scale of benefits; actuarial value; expected best estimate of expense for the next Annual reporting period and by filtration of PBO current and non-current liability. In the representation seeking review of



PDF Compressor Free Version

orders/recommendation dated 22nd July, 2015 the school did not give any cogent reason as to why it could not produce all this material earlier now produced with the application for review except contending that by inadvertance it could not be produced earlier.

The school has sought review of the order/recommendation of the committee dated 22nd April, 2014 on merits of the order passed by the Committee. In the circumstances the committee has to first consider and adjudicate whether the Committee has such powers or not which are invoked by the School to review/reconsider its order dated 22nd April, 2014. It is apparent that the Committee has become functus officio after it passed the order dated 22nd April, 2014. The school has not produced any law or precedent or any rule or order of the Hon'ble Court giving power to the Committee to review its orders on merits.

It is no more res integra that a quasi-judicial authority will become functus officio when its order is pronounced, or published/notified or communicated (put in course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the authority will become functus officio. Once an authority exercising quasi judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. P Ramanatha Aiyar's Advanced law Lexicon (3rd Edition, Vol 2 pp. 1946-47) gives the following illustrative definition of the "functus officio".

"Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision."

Black's Law Dictionary (6th Edn., p 673) gives the meaning of functus officio as follows:

PDF Compressor Free Version

"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 recommendations 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.

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 and therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendations. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

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

The Hon'ble 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. The Hon'ble Court passed the following order:

PDF Compressor Free Version

"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 renotified on 09.05.2014"

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 on the face of the record, however, no general permission was granted to the Committee.

From the perusal of the application/representation dated 22nd July, 2015 of the school, it is apparent that the applicant/school has sought review/reconsideration of recommendations of the Committee on merits. The applicant is not seeking review on account of any lapse in procedure or procedural defect as contemplated under the concept 'Procedural lapse'. This is also no more res integra that no review lies on merits unless a statute specifically provides for it. In Dr. (Smt.) Kuntesh Gupta v. Management of Hindu KanyaMahaVidyalaya, Sitapur (U.P.) and Ors.MANU/SC/0104/1987 and Patel NarshiThakershi and Ors.v. Pradyumansinghji Arjunsingji 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. There is a difference between the procedural review and a review on merits. The procedural review is which is either inherent or implied in a Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it. But the review on merits is when the error sought to be corrected is one of law and facts and is apparent on the face of the record. In Patel Narshi Thakershi & ors. (supra) the Hon'ble Supreme Court had held that no review lies on merits unless a statute specifically



PDF Compressor Free Version

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.

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 vitiates the proceeding and invalidate 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. The school was issued notices and was given ample opportunities and the representative of the school had appeared and produced record which was considered and the



PDF Compressor Free Version

pleas and contentions of the school taken into consideration before passing the order/recommendations dated 22nd April, 2014. No cogent reason has been disclosed by the school as to why it could not produce the material now produced before the passing of order dated 22nd April, 2014.

Applying these principles it is apparent that where a 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 quasi-judicial authority is vested with power of review by express provision or by necessary implication.

The Applicant in the present case seeks recall/review of the order passed by the Committee dated 22nd April, 2014 on merits on various grounds. It is not alleged 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 are that matters have been apparently considered incorrectly and the school/applicant is seeking review of its order pertaining to the case of the School. Apparently the recall or review or reopening 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 the Committee to review its orders/recommendations either expressly or by necessary implication.

The application/representation dated 22nd July, 2015 seeking recalling/revoking of the order dated 22nd April, 2014 and passing the order/recommendation again is not maintainable as this Committee does not have such powers as has been prayed by the School. The applications/representations dated 22nd July, 2015 by the school seeking



PDF Compressor Free Version

review of the order/recommendation dated 22nd April, 2014 is, therefore, not maintainable and it is disposed of as not maintainable

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

**J.S.KOCHAR
MEMBER**

Date: 23/8/16

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

TRUE COPY

Secretary

PDF Compressor Free Version**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:

SHRI RAM BAL BHARTI SCHOOL (A-0138),

Shwa Dham Marg

Mandoli, Shahdara

Delhi 110093

And in the matter of

Application/representation dated

28th October, 2013 to review the order

Dated 20th March, 2015 passed by the

Committee in respect of the School.

Present: Shri Manu RG Luthra, Chartered Accountant with Dheeraj Ahuja,
Manager of the School.

ORDER

The question before the committee was whether or not the school had implemented the recommendations of sixth pay commission and if so, whether or not the fee was hiked for the purpose of implementation thereof. Information was sought from the school and a questionnaire was sent. The school did not respond and did not furnish the information. The committee however, obtained the returns filed by the school under Rule 180 from Directors of Education. The fee hike was found to be in accordance with the order of the director of education dated 11th February, 2009, however, it also transpired that the



PDF Compressor Free Version

school had not implemented the recommendations of sixth pay commission. With a view to verify the correctness of the returns, the school was directed to appear on 29th August, 2012. On that day the manager of the school attended the office of the Committee has produced the record of the school. According to reply the school had neither hiked the fee nor had implemented the recommendations of sixth pay commission. In order to provide an opportunity of hearing to the school by another notice it was directed to appear on 14th August, 2013 along with its fee and accounting records. The manager of the school had appeared however, he could not produce any record. He however, filed a reply to the questionnaire regarding development fee. Since the school had not implemented the recommendations of the sixth pay commission but had increase the fee in excess of tolerance limit of 10%, it was inferred that school is liable to refund the excess fee. Therefore it was ordered/recommended that the school should refund the fee hike by the school in 2009 – 10 in excess of 10% along with interest @ 9 % per annum. For subsequent year also it was ordered/recommended to refund the fees in excess of 10% charged by the school had interest @ 9% per annum. The development fee had been treated as the revenue receipt and no separate depreciation reserved fund had been maintained, therefore, it was held that the school had not complied with the preconditions and thus was ordered/recommended to refund the development fee of Rs.76,600.00/- charged during the year 2009 – 10 to 2010 – 11 with simple interest @ 9% per annum by order/recommendation dated 28th October, 2013.

The school filed a representation/application dated 22nd June, 2015 seeking review of order/recommendations dated 28th October, 2013 contending inter-alia that the school had been is spending more than 115% of the tuition fee and being dependent on aid from the society to cover its deficits was compelled to increase the fees beyond the tolerance level. The school has given detailed facts to contend it did not have any surplus funds and the ceiling provided by Directorate of Education is unreasonable and unlawful. According



PDF Compressor Free Version

to the school it is not charging depreciation from revenue accounts since 2009 - 10 and therefore, the liability to create depreciation reserved fund and utilizing such funds does not arise. It is contended that since the school is not charging Depreciation from Gentle Fund, the school is exempted from the precondition to create depreciation reserved and earmarking such investments for future acquisition of fixed assets. The assertion of the school is that in absence of any prescribed format for financial statements from the Directorate of Education, they school's point of view to adopt the accounting policies suited the best to their requirements are to be accepted. Click save his the circumstances it is contended that all directions of the Directorate have been met directly or indirectly and not intended to be violated, the allegation of fee hike be dropped.

The school has sought modification/review of the order/recommendation of the committee dated 28th October, 2013 on merits of the order passed by the Committee. In the circumstances the committee has to first consider and decide whether the Committee has such powers or not which are invoked by the School to review/reconsider its order dated 28th October, 2013. Apparently the Committee became 'functus officio' after it passed the order dated 28th October, 2013. The school has not produced any law or precedent or any rule or order of the Hon'ble Court giving power to the Committee to review its order on merits.

It cannot be disputed by the School/applicant that a quasi-judicial authority will become 'functus officio' when its order is pronounced, or published/notified or communicated (put in course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced



PDF Compressor Free Version

or published or notified or communicated, the authority will become functus officio. Once an authority exercising quasi judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. P Ramanatha Aiyar's Advanced law Lexicon (3rd Edition, Vol 2 pp. 1946-47) gives the following illustrative definition of the "functus officio".

"Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision."

Black's Law Dictionary (6th Edn., p 673) gives the meaning of functus officio as follows:

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

Consequently after the Committee had made its recommendations 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.

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 and therefore, the Committee by communication dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendations. The Committee had made the following



PDF Compressor Free Version

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 permitted the committee to review the order of Rukmani Devi Public School **only**. 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 renotified on 09.05.2014"

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 on the face of the record, however, no general permission was granted to the Committee.

From the perusal of the application/representation dated 22nd June, 2015 of the school, it is apparent that the applicant/school has sought review/reconsideration of recommendations of the Committee on merits. The applicant is not seeking review on account of any lapse in procedure or procedural defect as contemplated under the concept 'Procedural lapse'. This is also no more res integra that no review lies on merits unless a statute specifically provides for it. In Dr. (Smt.) Kuntesh Gupta v. Management of



PDF Compressor Free Version

Hindu KanyaMahaVidyalaya, Sitapur (U.P.) and Ors. MANU/SC/0104/1987 and Patel NarshiThakershi and Ors.v. Pradyumansinghji Arjunsingji 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. There is a difference between the procedural review and a review on merits. The procedural review is which is either inherent or implied in a Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it. But the review on merits is when the error sought to be corrected is one of law and facts and is apparent on the face of the record. In Patel Narshi Thakershi & ors. (supra) the Hon'ble Supreme Court had held that no review lies on merits unless a statute specifically provides for it. When a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debit a justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal.

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



PDF Compressor Free Version

vitate the proceeding and invalidate 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. The school was issued notices and was given ample opportunities and the representative of the school had appeared and produced the record which was considered and the pleas and contentions of the school taken into consideration before passing the order/recommendations dated 28th October, 2013.

Applying these principles it is apparent that where a 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 quasi-judicial authority is vested with power of review by express provision or by necessary implication.

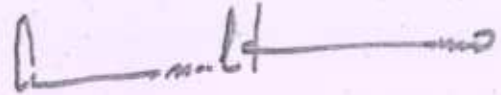
The Applicant in the present case seeks recall/review of the order passed by the Committee dated 28th October, 2013 on merits on various grounds. It is not alleged that in passing the order, the committee has committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the order/recommendation of the committee is liable to be recalled. Rather grounds taken by the applicant are that matters have been apparently considered incorrectly and the school/applicant is seeking review of its order pertaining to the case of the School. Apparently the recall or review or reopening 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 order



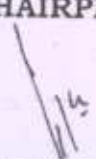
PDF Compressor Free Version

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


The application/representation dated 22nd June, 2015 seeking recalling/revoking of the order dated 28th October, 2013 and passing the order/recommendation again is not maintainable as this Committee does not have such powers nor it can exempt the school from refunding the fee which has been ordered/recommended by the Committee. The applications/representations dated 22nd June, 2015 by the school seeking review of the order/recommendation dated 28th October, 2013 is, therefore, disposed of as not maintainable



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



**J.S.KOCHAR
MEMBER**



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

Date: 23/8/16

TRUE COPY



Secretary



PDF Compressor Free Version**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:

TAGORE PUBLIC SCHOOL (B-0216),

'D' Block, Naraina Vihar,

New Delhi 110 028

And in the matter of

Application/representation dated

25th February, 2015 to review the order

Dated 6th February, 2014 passed by the

Committee in respect of the School.

Present: Shri Vikas Bhatia, Director, with Manu RG Luthra, Chartered Accountant of the School.

ORDER

The Committee passed the order/recommendation dated 6th February, 2014 in respect of Tagore Public School, 'D' Block Naraina Vihar, New Delhi referred to as 'The School' directing the school to refund the development fee amounting to Rs.12,18,900/- which was charged in 2009 - 10 and Rs.14,96,100/- which was charged during 2010-11 with interest @ 9% per annum as the school had not complied with any of the pre-requisite for the Development Fee. The Committee also ordered/recommended that the tuition fee hiked by the school in 2009-10 in excess of 10% be refunded with interest @ 9% per annum. The tuition fee for subsequent years to 2009 - 2010 to the extent it is relatable to the amount of fee recommended to refunded for 2009-2010, also was directed to be refunded along with interest @ 9% per annum.



PDF Compressor Free Version

Before passing the order/recommendation dated 6th February, 2014, the reply of the school to the questionnaire sent by the Committee and the record produced by the school were considered. The school had contended that it had implemented the recommendation of sixth pay commission in order to entitle it to hike the fee in pursuance of order dated 11th February, 2009 of the Director of Education. The representative of the school had conceded before the Committee that except for the Principal of the school, all other staff members were paid salary in cash after withdrawal from the bank. The claim of the school was doubted by the Committee and was not accepted. It was inferred that the school resorted to a hike of around 20% for all classes except IX. in the circumstances it was held that the hike of fee of more than 10% was not justified and was liable to be refunded. The school had charged the development fee from the students. The maintenance of earmarked development fund and depreciation reserve fund is a condition precedent for charging the development fee. These conditions were not fulfilled by the school admittedly and therefore, it had been held that the levy of development fee was improper and unjustified.

The school has sought review of the order dated 6th February, 2014 by filing an application/representation dated 25th February, 2015. The school contended that it is not charging depreciation from the revenue accounts since 2009 - 10, therefore, the liability to create depreciation reserved fund and utilizing such funds does not arise. It is contended that in the facts and circumstances of the school it is exempted from precondition to create depreciation reserve and earmarking such investment for future acquisition of fixed assets. It is also asserted that in absence of any prescribed format for financial statement from the Director of Education, the school was entitled to adopt the accounting policies suited to its requirement. It is also contended that in the facts and circumstances of the school and for the foregoing reasons, they school has not contravened with the requirements of Directorate of Education and has fulfilled mandatory conditions for charging the

TRUE COPY

Secretary



PDF Compressor Free Version

Development fee: It is contended that the total Development fee by the school had been utilized in accordance with the provisions of the law and in fact there is deficit in each year regarding the utilization of Development fee. According to the school the net effect of the Director of Education and of the school are the same and there has not been any diversion from the ultimate goal and the only difference is the routing of the transactions. In any case it is the assertion of the School that the development fund has been duly spent for its designated purpose, acquisition of fixed assets. The plea of the school is also that since it does not have any surplus, the unutilized Development fee could not be kept as earmarked investment. The contention of the school is also that the income of the school is governed by section 11 and 12 of the Income Tax Act, 1956 and is out of the purview of the sections of profits and gains from the business and profession. The income of the school is the income from other sources as voluntary contributions. In the circumstances it is contended that the inferences as has been drawn by the committee while passing the order dated 6th February, 2014 were not justified. In any case the fee collected from the students has been spent for payment of salaries to the staff.. The fee hike and collected by the school was approved by the Management Committee and the Parents Teachers Association of the school. In the circumstances the review of the order/recommendation dated 6th February, 2014 has been sought by the school.

Apparently the school has sought review of the order/recommendation of the committee dated 6th February, 2014 on merits of the order passed by the Committee. In the circumstances the committee has to first consider and adjudicate whether the Committee has such powers or not which are invoked by the School to review/reconsider its order dated 6th February, 2014. It is apparent that the Committee has become functus officio after it passed the order dated 6th February, 2014. The school has not produced any law or precedent or any rule or order of the Hon'ble Court giving power to the Committee to review its orders on merits.



PDF Compressor Free Version

It is no more res integra that a quasi-judicial authority will become functus officio when its order is pronounced, or published/notified or communicated (put in course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the authority will become functus officio. Once an authority exercising quasi judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. P Ramanatha Aiyar's Advanced law Lexicon (3rd Edition, Vol 2 pp. 1946-47) gives the following illustrative definition of the "functus officio".

"Thus a judge , when he has decided a question brought before him, is functus officio, and cannot review his own decision."

Black's Law Dictionary (6th Edn., p 673) gives the meaning of functus officio as follows:

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

Consequently after the Committee had made its recommendations 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.

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 and therefore, the Committee by communication



PDF Compressor Free Version

dated 12th February, 2014 addressed to the Registrar had sought permission to rectify errors in its recommendations. The Committee had made the following prayers before the Hon'ble Court in its communication dated 12th February, 2014:

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

The Hon'ble 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. 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 renotified on 09.05.2014"

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 on the face of the record, however, no general permission was granted to the Committee.

From the perusal of the application/representation dated 25th February, 2015 of the school, it is apparent that the applicant/school has sought review/reconsideration of recommendations of the Committee on merits. The applicant is not seeking review on account of any lapse in procedure or procedural defect as contemplated under the concept 'Procedural lapse'. This is



PDF Compressor Free Version

also no more res integra that no review lies on merits unless a statute specifically provides for it. In Dr. (Smt.) Kuntesh Gupta v. Management of Hindu KanyaMahaVidyalaya, Sitapur (U.P.) and Ors. MANU/SC/0104/1987 and Patel NarshiThakershi and Ors. v. Pradyumansinghji Arjunsingji 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. There is a difference between the procedural review and a review on merits. The procedural review is which is either inherent or implied in a Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it. But the review on merits is when the error sought to be corrected is one of law and facts and is apparent on the face of the record. In Patel Narshi Thakershi & ors. (supra) 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.

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



PDF Compressor Free Version

the Court or the quasi-judicial authority suffered from such illegality that it vitiates the proceeding and invalidate 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. The school was issued notices and was given ample opportunities and the representative of the school had appeared and produced voluminous record which considered and the pleas and contentions of the school taken into consideration before passing the order/recommendations dated 6th February, 2014.

Applying these principles it is apparent that where a 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 quasi-judicial authority is vested with power of review by express provision or by necessary implication.

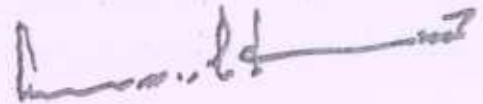
The Applicant in the present case seeks recall/review of the order passed by the Committee dated 6th February, 2014 on merits on various grounds. It is not alleged that in passing the order, the committee has committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the order/recommendation of the committee is liable to be recalled. Rather grounds taken by the applicant are that matters have been apparently considered incorrectly and the school/applicant is seeking review of its order pertaining to the case of the School. Apparently the recall or review or reopening sought is not a procedural review, but a review on merits. Such a




PDF Compressor Free Version

review is not permissible in the absence of any specific provision or the orders of the Hon'ble Court authorizing the Committee to review its orders/recommendations either expressly or by necessary implication.

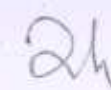
The application/representation dated 25th February, 2015 seeking recalling/revoking of the order dated 6th February, 2014 and passing the order/recommendation again is not maintainable as this Committee does not have such powers as has been prayed by the School. The applications/representations dated 25th February, 2015 by the school seeking review of the order/recommendation dated 6th February, 2014 is, therefore, not maintainable and it is disposed of as not maintainable



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



**J.S.KOCHAR
MEMBER**



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

Date: 23/8/16

TRUE COPY



Secretary

