

297
25

(25)
GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DIRECTORATE OF EDUCATION
(PRIVATE SCHOOL BRANCH)
OLD SECRETARIAT, DELHI-110054

No. F.DE.15 (655)/PSB/2018 30739-30743

Dated: 19/12/2018

Order

WHEREAS, this Directorate vide its order No. DE.15 (318)/PSB/2016/19786 dated 17.10.2017 issued 'Guidelines for implementation of 7th Central Pay Commission's recommendations in private unaided recognized Schools in Delhi' and directed that the private unaided Schools, which are running on land allotted by DDA/other govt. agencies with the condition in their allotment letter to seek prior approval of Director (Education) before any fee increase, needs to submit their online fee increase proposal for the academic session 2017-18. Accordingly, vide circular no. 19849-19857 dated 23.10.2017, the fee increase proposals were invited from all aforesaid Schools till 30.11.2017 and this date was further extended to 14.12.2017 vide Directorate's order No. DE.15 (318)/PSB/2016/20535 dated 20.11.2017 in compliance of directions of Hon'ble High Court of Delhi vide its order dated 14.11.2017 in CM No. 40939/2017 in WPC 10023/2017.

AND WHEREAS, attention is also invited towards order of Hon'ble High Court of Delhi dated 19.01.2016 in writ petition No. 4109/2013 in the matter of Justice for All versus GNCTD and others wherein it has been directed by the Hon'ble Delhi High Court that the Director of Education will ensure the compliance of conditions, if any, in the letter of allotment regarding prior approval of Director of education for the increase of fee by all the recognized unaided Schools which are allotted land by DDA.

AND WHEREAS, the Hon'ble High Court of Delhi while issuing the aforesaid direction has observed that the issue regarding the liability of private unaided Schools situated on the land allotted by DDA at concessional rates has been conclusively decided by the Hon'ble Supreme Court in the judgment dated 27.04.2004 passed in Civil Appeal No. 2699 of 2001 titled Modern School V. Union of India and others wherein Hon'ble Supreme Court in Para 27 and 28 has held as under:-

"27....

(c) *It shall be the duty of the Director of Education to ascertain whether terms of allotment of land by the Government to the Schools have been complied with...*

28. *We are directing the Director of Education to look into the letters of allotment issued by the Government and ascertain whether they (terms and conditions of land allotment) have been complied with by the Schools.....*

.....If in a given case, Director finds non-compliance of above terms, the Director shall take appropriate steps in this regard."

AND WHEREAS, the Hon'ble Supreme Court in the above said Judgment also held that under section 17(3), 18(4) of Delhi School Education Act, 1973 read with rule

4

172,173,175 and 177 of Delhi School Education Rules 1973, Directorate of Education has the authority to regulate the fee and other charges to prevent commercialization of education.

AND WHEREAS, in pursuance to order dated 23.10.2017 of this Directorate, **Bharat National Public School, Ram Vihar, Karkardooma, Delhi-110092 (School Id: 1001163)** had submitted the proposal for increase in fee for the academic session 2017-18 including the impact on account of implementation of recommendations of 7th CPC with effect from 01.01.2016.

AND WHEREAS, in order to ensure that the proposals submitted by the Schools for fee increase are justified or not, this Directorate has deployed teams of expert Chartered Accountants at HQ level who have evaluated the fee proposals of the School very carefully in accordance with the provisions of the DSEA, 1973, the DSER, 1973 and other orders/ circulars issued from time to time by this Directorate for fee regulation.

AND WHEREAS, necessary records and explanations were also called from the School vide email dated March 28, 2018. Further, School was also provided opportunity of being heard on June 15, 2018 to present its justifications/ clarifications on fee increase proposal including audited financial statements and based on the discussions, School was further asked to submit necessary documents and clarifications on various issues noted.

AND WHEREAS, the reply of the School, documents uploaded on the web portal for fee increase and subsequent documents submitted by the School were evaluated thoroughly by the team of Chartered Accountants. The key findings noted are as under:

Financial Irregularities

- I. As per clause 2 of public notice dated 04.05.1997 "Construction of building is the responsibility of the society, who has established the school to raise such funds from their own sources or donations from the other association because the immovable property of the school becomes the sole property of the society". Accordingly, the costs relating to construction of building should have been borne by the society and not by the school. However, on review of the financial statement of the school it has observed that the school had incurred Rs.1,55,87,203 and Rs.1,55,38,257 in FY 2015-16 and 2016-17 respectively for construction of building in contravention of the aforesaid clause 2 of the public notice dated 04.05.1997. Therefore, the school is directed to recover Rs.3,11,25,460 from the society.

Moreover, the School also has Building fund of Rs.67,97,020 as on 31.03.2017 which was created out of the General Reserve. Since this fund was created out of the General Reserve and therefore, this fund would be the part of the General Reserve and accordingly School is directed to make necessary adjustment in the General Reserve Account.

- II. In respect of earmarked levies, school is required to adhere to:
- a) Clause 22 of order dated 11.02.2009, which specifies that earmarked levies shall be charged from user students on 'no profit no loss' basis;
 - b) Rule 176 of DSER, 1973, which provides that 'income derived from collections for specific purpose shall be spent only for such purpose';
 - c) Judgement of Hon'ble Supreme Court of India in the case of Modern School Vs. Union of India & Others, which specifies that schools, being run as non-profit organizations, are supposed to follow fund-based accounting.

On review of audited financial statements for FY 2014-15 to 2016-17, it is observed that the school is charging earmarked levies like Project and Theme Fee, Transportation Charges and Science & Computer Fee from the students but these levies were not charged on 'no profit no loss' basis because the School has either earned surplus or incurred deficit on these levies. During the period under evaluation, school has earned surplus on science and computer fees and incurred deficit on account of Project and Theme fees and Transportation Charges. Therefore, the school is directed to follow fund based accounting for earmarked levies and to adhere the abovementioned provisions. Also, make necessary adjustments in the General Reserve balance.

Moreover, as per the Duggal Committee report, there are four categories of fee that can be charged by a school. The first category of fee comprise of "registration fee and all One Time Charges" which is levied at the time of admission such as Admission and Caution Money. The second category of fee comprise of "Tuition Fee" which is to be fixed to cover the standard cost of the establishment and also to cover expenditure of revenue nature for the improvement of curricular facilities like Library, Laboratories, Science and Computer fee up to class X and examination fee. The third category of the fee should consist of "Annual Charges" to cover all expenditure not included in the second category and the forth category should consist of all "Earmarked Levies" for the services rendered by the school and to be recovered only from the 'User students'. These charges are Transport Fee, Swimming Pool Charges, Horse Riding, Tennis, Midday Meals etc. Based on the aforesaid recommendation, the school is directed to stop collection of project & theme fee from students of all classes and Computer fee (IT Fee) from the students of classes II to X.

Furthermore, on review of fee receipts submitted by the school, it has been noted that the School is charging Annual Fee under two categories which is "Annual Activity Charges and Annual Event Charges" which is not as per the recommendation of the Duggal Committee. Therefore, the school should revisit and decide the amount of annual charges which need to be collected from the student based on the recommendation of the Duggal Committee report and take the appropriate approval from the Directorate of Education.

- III. As per Para 99 of Guidance note on "Accounting by School" issued by ICAI, relating to restricted fund, "Where the fund is meant for meeting capital expenditure, upon incurrence of the expenditure, the relevant asset account is debited which is depreciated as per the recommendations contained in this Guidance Note. Thereafter, the concerned restricted fund account is treated as deferred income, to the extent of the cost of the asset, and is transferred to the

credit of the income and expenditure account in proportion to the depreciation charged every year".

Taking cognizance from the above para, it has been observed that school has not treated the designated fund account as deferred income to the extent of cost of assets purchased out of Development Fund and has not transferred any amount to the credit of Income & Expenditure account in proportion to the depreciation charged. Therefore, the school is directed to follow Guidance Note-21.

- IV. As per Rule 177 of DSER, 1973 income derived by an unaided recognised schools by way of fees shall be utilised in the first instance, for meeting the pay, allowance and other benefits admissible to the employee of the school. Provided that savings, if any from the fees collected by such school may be utilised by its managing committee for meeting capital or contingent expenditure of the school or for one or more the specified educational purposes. However, school has utilised its funds for repayment of loan taken for purchase of Bus. During the last three financial years the School has paid Rs.20,09,838 towards repayment of principal amount and Rs.4,41,392 towards interest thereon from the school funds. Thus, the school has spread the burden of such loan including interest thereon on all the students which is in contravention of the Rule 177 of the DSEAR, 1973. Therefore, this amount is directed to be recoverable from the society.

(Figures in Rs.)

| Particulars | ICICI Bus Loan | HDFC Bus Loan | Total |
|---|------------------|------------------|------------------|
| Principal repaid during FY 2014-15 to 2016-17 | 9,71,488 | 10,38,350 | 20,09,838 |
| Interest paid during FY 2014-15 to 2016-17 | 2,30,552 | 2,10,840 | 4,41,392 |
| Total | 12,02,040 | 12,49,190 | 24,51,230 |

- V. As per the condition of Land allotment letter, the School shall not increase the rate of any fee without prior sanction of the Directorate of Education and shall follow the provisions of Delhi Education Act/ Rules, 1973 and other instruction issued from time to time. And accordingly The Directorate of Education sought online proposals from the Schools which was allotted land by Land owning agencies having condition of obtaining prior approval from the Directorate of Education vide Order No. F. DE-15/ACT-I/WPC-5256/16/9352/-9359 dated 16.04.2016. However, on review of the fee receipts it has been observed that the school had increased Tuition Fee, Annual Charges and Development Fee in FY 2016-17 without obtaining prior approval from Directorate of Education in contravention of the order issued by Directorate of Education. The summary of fee increased by the school are as under.

| Categories of Fee | Classes | FY 2015-16 | FY 2016-17 |
|---------------------|---------|------------|------------|
| Tuition Fee | LKG | 4000 | 4500 |
| Tuition Fee | UKG | 3500 | 4000 |
| Annual Charges | LKG | 4500 | 4950 |
| Development Charges | LKG | 4500 | 4950 |

- VI. The school has created provision of Rs.3,21,41,094 for four month's salary reserve in the financial statement of FY 2016-17 but has not invested the same in joint name of the Deputy Director and Manager of the school as required in Form-2 of Right of Children to Free and Compulsory Education Act 2009. Therefore, this amount has been considered as free and the school is directed to earmark investment in the joint name of Manager of the School and Deputy Director (Education) in accordance with provisions of Right to Education Act, 2009.
- VII. In FY 2014-15, the Receipts and Payment Account Rs.9,21,991 was reflecting under "Reduction in Fund" in the payment side. During the discussion the school has explained that this account was created to match the difference of the closing cash and bank balance which is not as per the Generally Accepted Accounting Principle. Therefore, Management of the school is directed to look into this matter.
- VIII. During FY 2016-17, totalling error has been observed in the value of additions made in fixed assets out of development fund. The gross value of fixed assets purchased out of development fund shown by the school in the schedule as well as on the face of the balance sheet is overstated by Rs. 12,32,319. Details of differences are as under:

| Particular | Amount |
|---|------------------|
| Fixed assets purchased during FY 2016-17 as per Financial Statement | 28,19,168 |
| Fixed assets purchased during FY 2016-17 as per our calculation | 15,86,849 |
| Difference | 12,32,319 |

In view of the above, it is construed that, the financial statement submitted by the school for the FY 2016-17 has not been prepared as per the Generally Accepted Accounting Principles as well as in compliance with the Guidance Note. Therefore, school is directed to submit proper explanation/justification for such variances with its next fee hike proposal.

Other Irregularities

- I. The school is not complying with the DOE Order No.F.DE.15/Act-I/08155/2013/5506-5518 dated 04-06-2012 as well as condition specified in the serial no. 17 of allotment letter which provides for 25% reservation to children belonging to EWS category. The admission allowed under EWS category in FY 2014-15, FY 2015-16 and FY 2016-17 was as under.

| Particulars | 2014-15 | 2015-16 | 2016-17 |
|-------------------|---------|---------|---------|
| Total Students | 2591 | 2808 | 2524 |
| EWS Students | 145 | 198 | 198 |
| % of EWS students | 5.6% | 7.05% | 7.85% |

Hence, the school is directed to follow the provisions of order No.F.DE.15/Act-I/08155/2013/5506-5518 dated 04.06.2012 along with the conditions specified in the land allotment letter. Further, DD(E)- District is also directed to look into this matter.

- II. In the financial statements, the school has shown its fixed assets under two categories i.e. assets purchased out of development fund and other assets. The fixed assets purchased out of development fund have been shown at gross value whereas the other fixed assets have been shown at written down value in the FY 2014-15, 2015-16 and 2016-17. Therefore, the school is directed to follow Guidance Note-21 "Accounting by School" issued by ICAI.
- III. The school has created provision of Rs.3,21,41,094 for four month's salary reserve in the financial statement of FY 2016-17 but has not invested the same in joint name of the Deputy Director and Manager of the school as required in Form-2 of Right of Children to Free and Compulsory Education Act 2009. Therefore, school is directed to earmark investment in the joint name of Manager of the School and Deputy Director (Education) in accordance with provisions of Right to Education Act, 2009. Also, if the school will fail to earmark its investment the same may be considered as part of free reserve.
- IV. The school has made provisions for Gratuity and leave encashment during FY 2016-17 on the basis of management estimate and not on the basis of actuarial valuation, as required by Accounting Standard (AS) 15 issued by ICAI. Thus, there could be an impact on the financials of the school, had the provision been done on the basis of actuarial valuation. In the absence of the actuarial valuation report, the impact of the financial implication could not be quantified. Therefore, the school is directed to comply with the requirements of AS- 15.
- V. The school is charging depreciation at the rates prescribed by the Income Tax Act, 1961 and not as per the Guidance note on "Accounting by Schools" issued by ICAI. Therefore, the school is directed to follow the Guidance Note- 21.

After detailed examination of all the material on record and considering the clarification submitted by the School, it was finally evaluated/ concluded that:

- i. The total funds available for the FY 2017-18 amounting to **Rs.27,65,16,123** out of which cash outflow in the FY 2017-18 is estimated to be **Rs.19,40,91,485**. This results in net balance of Surplus amounting to **Rs.8,24,24,638** for FY 2017-18 after all payments. The details are as follows:

| Particulars | Amount | (Figures in Rs.) Remarks |
|---|-------------|-----------------------------|
| Cash and Bank balances as on 31.03.17 as per Audited Financial Statements | 3,30,84,904 | |
| Investments as on 31.03.17 as per Audited Financial Statements | 5,71,53,373 | |
| Add: Amount recoverable from the society for construction of building during FY 2015-16 and 2016-17 | 3,11,25,460 | |
| Add: Amount recoverable from the society for repayment of Loan during FY 2014-15 to 2016-17 | 24,51,230 | |

| Particulars | Amount | Remarks |
|---|---------------------|----------------------|
| Less: Development Fund received during the FY 2016-17 | 1,14,42,555 | "Refer Note-1" |
| Less FDR against Security Money | 5,00,000 | |
| Total | 11,18,72,412 | |
| Add: Fees for FY 2016-17 as per Audited Financial Statements (we have assumed that the amount received in FY 2016-17 will at least accrue in 2017-18) | 15,92,99,965 | |
| Add: Other income for 2016-17 as per Audited Financial Statements | 53,43,746 | |
| Estimated availability of funds for FY 2017-18 | 27,65,16,123 | |
| Less: Budgeted expenses for FY 2017-18 (after making adjustment) | 19,40,91,485 | "Refer Note- 2 to 6" |
| Net Surplus | 8,24,24,638 | |

Adjustments:

Note 1: The Supreme Court in the matter of Modern School held that development fees for supplementing the resources for purchase, upgradation and replacements of furniture and fixtures and equipment can be charged from students by the recognized unaided schools not exceeding 15% of the total annual tuition fee. Further, the Directorate's circular no. 1978 dated 16 Apr 2010 states "All schools must, first of all, explore and exhaust the possibility of utilising the existing funds/ reserves to meet any shortfall in payment of salary and allowances, as a consequence of increase in the salary and allowance of the employees. A part of the reserve fund which has not been utilised for years together may also be used to meet the shortfall before proposing a fee increase." Over a number of years, the school has accumulated development fund and has reflected the closing balance of Rs.1,82,48,878 in its audited financial statements of FY 2016-2017. Accordingly, the accumulated reserve of development fund created by the school by collecting development fee more than its requirement for purchase, upgradation and replacements of furniture and fixtures and equipment has been considered as free reserve available with the school for meeting the financial implication of 7th CPC to be implemented by the school. However, development fund equivalent to amount collected in FY 2016-2017 amounting Rs.1,14,42,555 from students has been not considered as fund available with the school.

Note-2: The school has provided for the 4 month's salary reserve amounting Rs.3,21,41,094 in the financial statements of FY 2016-17. Further, in the budget for FY 2017-18 it has proposed for additional salary reserve amounting Rs.3,63,33,333. The amount provided in the Financial statement of FY 2016-17 has already been considered and additional salary reserve proposed in FY 2017-18 cannot be considered. Further, since the sufficient funds are available, the school is directed to maintain FDRs amounting Rs. 3,21,41,094 in the joint name of Manager of the School and Deputy Director (Education) in accordance with provisions of Right to Education Act, 2009.

Note-3: The school has proposed Rs.5,37,15,676 for salary arrear which is 56% of the previous year salaries. The school had not provided salary to staff as per recommendations of 6th CPC as it was paying Dearness Allowance @ 113% of basic salary instead of 125% due to which the amount of 7th CPC arrears is over estimated. Therefore, by taking a lenient view, 30% of previous year salary has been considered as salary arrear for the FY 2017-18 and the excess amount of Rs.2,47,88,692 has been disallowed. [Rs.53715676 – (9,64,23,281*30%)]

Note- 4: Under the following heads the School has proposed expenditure in excess of 10% as compared to the actual expenditure incurred in FY 2016-17 or proposed new head of expenditure for which the school has not offered satisfactory explanation/ Justification. Therefore, keeping in mind that FY 2017-18 is the year of implementation of 7th CPC where the parents/ students are already overburdened, the aforesaid expenditure in excess of 10% over the previous year and/or new head of expenditure have not been considered in the evaluation of fee increase proposal.

| Particulars | FY 2016-17 | FY 2017-18 | Net Increase/ (Decrease) | % Change | Amount disallowed in excess of 10% |
|---------------------------------|------------------|--------------------|--------------------------|----------|------------------------------------|
| Activity Expenses | - | 1,50,00,000 | 1,50,00,000 | 100% | 1,50,00,000 |
| Building repair and Maintenance | 60,18,519 | 1,62,50,000 | 1,02,31,481 | 170% | 96,29,629 |
| Computer Expenses | 10,08,775 | 50,60,000 | 40,51,225 | 402% | 39,50,348 |
| Total | 70,27,294 | 3,63,10,000 | 2,92,82,706 | | 2,85,79,977 |

Note- 5: Interest on Loan proposed by the school amounting Rs.2,34,000 has not been considered for evaluation of fee increase proposal since, the loan was taken for purchase of vehicles in contravention of Rule 177.

Note- 6: The school has proposed Rs.71,00,000 for Electric Sub-Station for the first time. As this is the year of implementation of 7th CPC. Therefore, this proposed expenditure has not been considered in the evaluation of fee increase proposal because this would certainly increase the financial burden of the parents/ students.

- i. The School has sufficient funds to carry on the operation of the School for the academic session 2017-18 on the existing fees structure. In this regard, Directorate of Education has already issued directions to the Schools vide order dated 16/04/2010 that,

"All Schools must, first of all, explore and exhaust the possibility of utilising the existing funds/ reserves to meet any shortfall in payment of salary and allowances, as a consequence of increase in the salary and allowance of the employees. A part of the reserve fund which has not been utilised for years together may also be used to meet the shortfall before proposing a fee increase."

AND WHEREAS, in the light of above evaluation which is based on the provisions of DSEA, 1973, DSER, 1973, guidelines, orders and circulars issued from

time to time by this Directorate, it was recommended by the team of expert Chartered Accountants that prima facie there are financial and other irregularities and also, sufficient funds are available with the School to meet its budgeted expenditure for the academic session 2017-18 including the impact of implementation of recommendations of 7th CPC, the fee increase proposal of the School may not be accepted.

AND WHEREAS, recommendations of the team of expert Chartered Accountants along with relevant material were put before the Director of Education for consideration and who after considering all the material on the record, found that sufficient funds are available with the School to meet its budgeted expenditure for the academic session 2017-18 including the impact of implementation of recommendations of 7th CPC. Therefore, Director (Education) has rejected the proposal of fee increase submitted by the said School.

AND WHEREAS, it is also noticed that the school has incurred capital expenditure of Rs.3,11,25,460 for construction of Building and Rs.24,51,230 for repayment of loan. Therefore, the school is directed to recover Rs.3,35,76,690 from the society. The amount of receipts along with copy of bank statements showing receipt of above mentioned amount should be submitted with DoE, in compliance of the same, within sixty days from the date of order. Non-compliance of this shall be taken up as per DSEA&R, 1973.

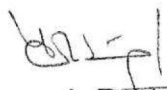
Accordingly, it is hereby conveyed that the proposal of fee increase **Bharat National Public School, Ram Vihar, Karkardooma, Delhi-110092 (School Id: 1001163)** is rejected by the Director of Education. Further, the management of said school is hereby directed under section 24(3) of DSEAR 1973 to comply with the following directions:

1. Not to increase any fee in pursuance to the proposal submitted by School on any account including implementation of 7th CPC for the academic session 2017-18 and if the fee is already increased and charged for the academic session 2017-18, the same shall be refunded to the parents or adjusted in the fee of subsequent months.
2. To communicate the parents through its website, notice board and circular about rejection of fee increase proposal of the School by the Directorate of Education.
3. To rectify all the financial and other irregularities as listed above and submit the compliance report within 30 days to the D.D.E (PSB).
4. To ensure that the salaries and allowances shall come out from the fees whereas capital expenditure will be a charge on the savings in accordance with the principles laid down by Hon'ble Supreme Court of Delhi in its Judgment of Modern School vs Union of India. Therefore, School not to include capital expenditure as a component of fee structure to be submitted by the School under section 17(3) of DSEA, 1973.

5. To utilize the fee collected from students in accordance with the provisions of Rule 177 of the DSER, 1973 and orders and directions issued by this Directorate from time to time.
6. In case of submission of any proposal for increase in fee for the next academic session, the compliance of the above listed financial and other irregularities/violations will also be attached.

Non-compliance of this order or any direction herein shall be viewed seriously and will be dealt with the provision of section 24(4) of DSEA, 1973 and DSER, 1973.

This is issued with the prior approval of the Competent Authority.


 (Yogesh Pratap)
 Deputy Director of Education
 (Private School Branch)
 Directorate of Education, GNCT of Delhi

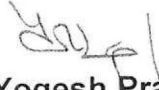
To
 The Manager/ HoS
 Bharat National Public School,
 Ram Vihar, Karkardooma, Delhi-110092 (School Id: 1001163)

No. F.DE.15 (655)/PSB/2018/30739-30743

Dated: 19/12/2018

Copy to:

1. P.S. to Secretary (Education), Directorate of Education, GNCT of Delhi.
2. P.S. to Director (Education), Directorate of Education, GNCT of Delhi.
3. P.A. to Addl. Director of Education (Private School Branch), Directorate of Education, GNCT of Delhi.
4. DDE concerned
5. Guard file.


 (Yogesh Pratap)
 Deputy Director of Education
 (Private School Branch)
 Directorate of Education, GNCT of Delhi