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

No. F.DE.15 (184)/PSB/2019 /1060-1064

Dated: 14/3/2019

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 172, 173, 175 and 177 of Delhi School Education Rules 1973, Directorate of Education

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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, **Arwachin Bharti Bhawan Sr Sec School, Vivek Vihar, Delhi - 110095 (School Id: 1001180)** 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 24, 2018. Further, school was also provided opportunity of being heard on June 25, 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. Clause 2 of the Public Notice dated 4 May 1997 states that "It is the responsibility of the society who has established the school to raise funds from their own sources or donations from other associations because the immovable property of the school becomes the sole property of the society". Accordingly, the costs relating to purchase of land and construction of the building should be incurred and borne by the society and not by the school from the school fund. Further, The Hon'ble High Court of Delhi in its Judgment dated 30 October 1998 in case of Delhi Abibhavak Mahasangh concluded that "Tuition Fee cannot be fixed to recover capital expenditure to be incurred on the properties of the Society". Also, clause (vii) of order No. F.DE/15/Act/2k/243/KKK/883-1982 dated 10 February 2005 issued by this Directorate state that "Capital Expenditure cannot constitute a component of financial fee structure".

Further, as per Rule 177 of DSER, income derived by an unaided school by way of fees shall be utilised in the first instance, for meeting the pay, allowances and other benefits admissible to the employees of the school. Provided that savings, if any, from the fees collected by such school may be utilised by its management committee for meeting capital or contingent expenditure of the school, or for one or more of the following educational purposes and the aforesaid savings shall be arrived at after providing for the following, namely:

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

Accordingly, based on the aforesaid provisions and Judgment of Hon'ble High Court, the costs relating to land and construction of the school building has to be met by the society (being the property of the society). However, on review of financial statements of the school, it has been observed that the school has incurred Rs. 99,58,379 in FY 2015-16 and Rs. 1,39,66,558 in FY 2016-17 on construction of Building without complying the aforesaid provisions. Thus, instead of the society meeting its obligation towards construction of building, school funds were utilised for meeting the cost of construction of building resulting in creation of assets from the fee collected from the students. Therefore, the school is directed to recover Rs. 2,39,24,937 from the society towards the expenditure incurred by the school on construction of Building.

- II. Clause 14 of Order No. F.DE./15(56)/Act/2009/778 dated 11.02.2009 and Clause 7 of Order No. DE 15/Act/Duggal.com/203/99/23033-23980 dated 15.12.1999 state that "Development fee, not exceeding 15% of the total annual tuition fee may be charged for supplementing the resources for purchase, up gradation 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. However, on review of the financial statements of the school for FY 2015-16 to 2016-17, the following have been observed.

- a. Development Fund amounting to Rs. 80,80,900 in FY 2015-16 and Rs. 22,66,953 in FY 2016-17 were utilised by the school for revenue expenditure like repairs of building, furniture and computer and the same were not routed through Income and Expenditure Account. Thus, the expenditure of Rs. 1,03,44,853 incurred by the school out of the development fund were in contravention of the aforesaid order. Therefore, the school is directed to make adjustment to development fund account and General Fund for revenue expenditure incurred out of development fund.
- b. In FY 2016-17, school has utilised development fund for purchase of fixed assets amounting to Rs. 1,19,79,906 which has neither reflected on the face of financial statements nor reflected in the fixed assets schedule forming part of the financial statements. It is also noted that the school did not prepare fixed assets schedule in respect of the assets purchased out of the

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development fund which indicates that the school has diverted its funds. Therefore, the school is directed to recover the aforesaid amount from the society.

- 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.

It has been observed that fixed assets that were purchased out of the development fund from FY 2008-09 to 2015-16 were not routed through Development Fund Account whereas the same were shown as additions to fixed assets in the respective years. Due to this, the balance of development fund account which was appearing in the financial statements was more than the actual fund available in the development fund account. However, in FY 2016-17, the school has identified the value of the fixed assets and depreciation charged on these assets. Since, the school was showing its fixed assets at WDV therefore, the amount of depreciation which was charged in earlier years has also been reversed in order to find out the cost of the assets purchased out of the development fund. Further, the school instead of treating the aforesaid utilisation as "Deferred Income" as recommended by para 99 of the GN -21, it has reduced the value of fixed assets in its financial statements. Therefore, the school is directed to comply with para 99 and reinstate its figures in accordance with the Guidance Note-21 issued by ICAI.

- IV. In respect of earmarked levies, school is required to comply with:
- 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;
 - Rule 176 of DSER, 1973, which provides that 'income derived from collections for specific purpose shall be spent only for such purpose';
 - Judgement of Hon'ble Supreme Court of India in the case of Modern School Vs Union of Others, which specifies that schools, being run as non-profit organizations, are supposed to follow fund-based accounting.

However, in FY 2014-15, 2015-16 and 2016-17, school has collected earmarked levies namely i.e. transport fee, and practical fees but these levies are not charged on 'no profit no loss' basis as the school has earned surplus from these levies. Further, the school is not following the fund based accounting in respect of these earmarked levies. Therefore, the school is directed to make adjustment to General Fund for the surplus earned on earmarked levies and to follow fund based accounting in respect of earmarked levies.

- V. 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, allowances and other benefits admissible to the employees of the school:

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

- a) Award of scholarships to students
- b) Establishment of any other recognised school
- c) Assisting any other school or educational institution not being a college under the management of the same society or trust by which the first mentioned school is run

The savings referred to above shall be arrived at after providing for the following, namely-

- a) Pension, gratuity and other specified retirement and other benefits admissible to the employees of the school
- b) The needed expansion of the school or any expenditure of developmental nature
- c) The expansion of the school building or for the expansion or construction of any building or establishment of hostel or expansion of hostel accommodation
- d) Co-curricular activities of the students
- e) Reasonable reserve fund, not being less than ten percent of such savings

The financial statements of the school reflected Rs. 12,09,83,670 under the head "Capital Work in Progress which was related to construction of another school building situated at Pilkhua and run under the management of the same society. The total capital work in progress of Rs. 12,09,83,670 comprised of Rs. 10,97,05,699 related to building infrastructure and Rs. 1,12,77,971 related to furniture and fixtures. As per the school, it has utilised school funds (general fund) for meeting the expenditure related to building infrastructure and has utilised development fund for meeting the expenditure related to furniture and fixture. The aforesaid construction got completed in FY 2016-17, and upon such completion necessary adjustment in general fund and development has been made. During the period under evaluation, the school has incurred Rs. 3,35,92,624, Rs. 2,21,67,667 and Rs. 1,93,59,989 in FY 2014-15, 2015-16 and 2016-17 on construction of the aforesaid school's building without complying the provisions of Rule 177(1) (c) of DSER, 1973. Since, the transfer of the aforesaid capital work in progress happened in the FY 2016-17, therefore, the school is directed to recover Rs. 12,09,83,670 from the society against the funds utilised by the school for the above construction. The details of funds utilised by the school are as under:

(Figures in Rs.)	
Particulars	WIP Classification
Funds utilised out of General Fund	
Building Material	10,96,75,399
Shuttering	30,300
Sub-Total (A)	10,97,05,699
Funds utilised out of Development Fund	

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Particulars	WIP Classification
Air Conditioner	65,000
Computer Hardware	8,78,000
Consultancy	6,79,440
Electrical Equipment	18,46,933
Furniture & Fixtures	59,46,922
Genset	5,90,000
Legal charges	33,708
Lift	9,47,100
Solar plant (installation)	2,90,868
Sub-Total (B)	1,12,77,971
Grand Total (A+B)	12,09,83,670

- VI. In the audited financial statements for FY 2016-17, it is noted that the fixed assets purchased out of the development fund are reflected at the written down value (WDV) and at the same time depreciation reserve fund appeared at the liability side of the financial statements. This implies that General Fund was debited twice with the amount of depreciation, first at the time of charging depreciation on fixed assets and second at the time of creating depreciation reserve fund. Thus, balance of depreciation reserve fund would form part of the General Fund because it was created out of General Fund.

Other Irregularities:

- I. The school has not adjusted gain/ loss on sale of fixed assets in its financial statements. As per the school, it treats the gain/ loss on sale of fixed assets as per the provisions of Income Tax Act, 1961 which is not in accordance with the provisions of Guidance Note-21 and Appendix II of Rule 180 of DSER, 1973. Therefore, the school is directed to prepare financial statements as per Guidance Note-21 issued by ICAI and Appendix II of Rule 180 of DSER, 1973.
- II. 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. 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-IWPC-5256/16/9352/-9359 dated 16.04.2016. However, on review of the fee receipts provided by the school it has been observed that the school had increased the fee in all heads in FY 2016-17 without obtaining prior approval from the Directorate of Education. Therefore, the school is directed to roll back the increase fee or adjust the excess amount collected by the school against the future fee receivable from the students.
- III. As per clause 18 of order no. F.DE. /15(56)/Act/2009/778 dated 11.02.2009 the school is required to refund the caution money along with bank interest to the students at the time of his/ her leaving the school. However, on review of financial statement for the FY 2014-15, 2015-16 and 2016-17, it is noted that the school

has not refunded interest on caution money to ex-students. Therefore, the school is directed to comply with clause 18 of the order dated 11.02.2009.

- IV. As per AS-15 'Employee Benefit' issued by ICAI, "An entity should determine the present value of defined benefit obligations and their fair value of any plan asset so that the amounts recognised in the financial statement do not differ materially from the amounts that would be determined at the balance sheet date. The school has taken group schemes from LIC towards payment of gratuity and leave encashment in FY 2017-18. As per the premium receipts submitted by the school, it is noted that the school has paid Rs. 1,50,00,000 in FY 2017-18 against the total liability of Rs. 3,00,00,000 towards gratuity and leave encashment determined by LIC (as per school submission). Thus, the actual payment of Rs. 1,50,00,000 made by the school to LIC has been considered in the evaluation of fee increase proposal.
- V. As per DOE order No.F.DE.15/Act-I/08155/2013/5506-5518 dated 04.06.2012 as well as DDA land allotment letter, the school shall provide 25% reservation to children belonging to EWS category. However, the school has not complied with above requirement in the FY 2014-15, FY 2015-16 and FY 2016-17. Therefore, DDE District is directed to look into the matter. The details of total students and EWS students for the FY 2014-15, 2015-16 & 2016-17 are given below:

Particulars	2014-15	2015-16	2016-17
Total Students	3244	3224	3324
EWS Students	223	258	298
% of EWS Students	7%	8%	9%

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

- i. The total funds available for the year 2017-18 amounting to Rs. **34,95,29,411** out of which cash outflow in the year 2017-18 is estimated to be Rs. **22,14,47,727**. This results in net surplus of amounting to Rs. **12,80,81,684**. The details are as under:

Particulars	Figures (Rs.) Amount
Cash and Bank balances as on 31.03.17 as per audited Financial Statements	2,20,91,132
Add: Amount recoverable from society against utilisation of funds by the school for construction of another school's building (Point V of Financial irregularities)	12,09,83,669
Add: Additions to building in contravention of Clause 2 of Public notice dated May 4th, 1997 in the FY 2015-16 and FY 2016-17 should be recoverable from the society (Point I of Financial irregularities)	2,39,24,937
Add: Amount recoverable from society against utilisation of development fund for purchase of fixed assets, not shown in fixed assets schedule (Point II (b) of Financial irregularities)	1,19,79,906

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Particulars	Amount
Less: FDR in name of director of Education and school	6,19,984
Less: Premium paid to LIC towards gratuity and leave encashment	1,50,00,000
Less: Development Fund as on 31.03.2017	22,88,552
Less: caution money as on 31.03.2017	29,93,620
Total	15,80,77,488
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 FY 2017-18)	18,80,95,366
Add: Other income 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 FY 2017-18)	33,56,557
Estimated availability of funds for FY 2017-18	34,95,29,411
Less: Budgeted expenses for the session 2017-18 (after making adjustment) Refer Note 1	22,14,47,727
Net Surplus	12,80,81,684

Note 1: The school has proposed Rs. 1,82,65,868 under "Computer aided learning charges" in its budget for FY 2017-18 which is 84% higher than the actual expenditure incurred in FY 2016-17. Therefore, this expenditure has been restricted to Rs. 1,09,40,339 (i.e. 110% of Rs. 99,45,763) considering the cost of inflation and accordingly the excess amount of Rs. 73,25,528 (1,82,65,868-99,45,763) has not been considered in the evaluation of fee increase proposal.

- ii. 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

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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 noticed that the school has incurred Rs.15,68,88,512 out of its funds in contravention of provisions of DSER, 1973 and other orders issued by the departments from time to time. Therefore, the school is directed to recover the aforesaid amount 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 issuance of this order. Non-compliance of this shall be taken up as per DSEA&R, 1973.

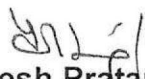
Accordingly, it is hereby conveyed that the proposal of fee increase of **Arwachin Bharti Bhawan Sr Sec School, Vivek Vihar, Delhi - 110095 (School Id: 1001180)** is rejected by the Director of Education. Further, the management of said school is hereby directed under section 24(3) of DSEAR 1973 to comply 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 charge fee as per the existing fee structure of the school
4. 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).
5. 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.
6. 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.
7. 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.

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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 order 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

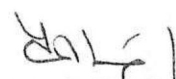
To
The Manager/ HoS
Arwachin Bharti Bhawan Sr Sec School,
Vivek Vihar, Delhi – 110095, (School Id: 100180)

No. F.DE.15 (184)/PSB/2019 | 1060-1064

Dated: 14/3/2019

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