83

99

83

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

No. F.DE.15 (177)/PSB/2019/1075-1079 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.......

992

.....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 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, **Happy English School, Sharad Vihar, Karkardooma, Delhi-110092 (School Id: 1001213)** 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 06, 2018 and June 11, 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 May 4th, 1997, School shall not charge Building fund and Development charges when the Building is complete or otherwise as it is the responsibility of Society who has established the School to raise such funds from their own resources or donations from other associations because immovable property of the School becomes the sole property of the Society. Further, as per Judgement of Hon'ble Supreme Court in the case of

Modern School Vs Union of India and Others, the capital expenditure cannot form part of financial fee structure of the School.

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

However, on review of audited financial statements for FY 2015-16 and 2016-17, it is noted that Rs. 41,02,124 has been utilised out of the school funds for construction of Building and Building Capital work in progress and has not complied with the aforesaid provisions. Therefore, the expenditure incurred by the school is recoverable from the Society. Hence, it has been included in the calculation of fund availability of the school. The details of amount capitalised under the head Building and Capital work in progress are as follows:

(Figures in Rs)

Particulars	**2015-16**	**2016-17**	**Total**
Building	-	10,15,000	10,15,000
Capital work in progress (Building)	28,25,979	2,61,145	30,87,124
Total	**28,25,979**	**12,76,145**	**41,02,124**

Further, the financial statements of FY 2016-17 reflect Building Fund of Rs.1,68,650 which was created out of the Reserves and Surplus in the earlier years as per the school submission. As per aforesaid clause 2 of public notice dated 04.05.1997, Building is the responsibility of the Society and therefore, appropriation of surplus for Building fund is nothing but the part of General reserve. Hence, the Building fund shall be treated as part of General reserve fund.

II. As per section 18(4) of DSEA, 1973 read with Rule 177 of DSER, 1973 Income derived by unaided schools by way of fees shall be utilized only for such educational purposes as may be prescribed. However, it is noted that the School funds was utilised for the purchase of luxury car and for repayment of loan taken for purchase of car and interest on those loans. The school purchased car namely Altis, in FY 2014-15 which cannot be concluded as educational expenditure. Hence, the school funds utilised by the school for purchase of Car including repayment of loan and interest paid on the loan during period under evaluation is recoverable from the Society. Therefore, the same been considered in the calculation of fund availability of the school. Further, The School is directed to not utilise the school funds for repayment of car loan and interest cost in future. The detail of school fund utilised by the school for purchase of Car is as follows.

(Figures in Rs)

Particulars	Amount
Cost of Car	19,63,738
Less: Loan taken for purchase out of loan	13,48,792
School funds utilised for purchase of car (A)	6,14,946
Add: Loan repaid in FY 2015-16 (B)	4,80,920
Add: Loan repaid in FY 2016-17 (C)	5,32,598
Total amount of School funds utilised for purchase of Car (A+B+C)	**16,28,464**

III. 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 expenses and creation of 10% reserve. However, during the FY 2016-17, School has purchased Bus for Rs.30,28,150 by taking loan of Rs. 10,00,000 and the balance amount was paid out of school funds. Thus, the school fund which was utilised by the school for purchase of school bus is in contravention of clause 177 of the DSER 1973. Therefore, Rs. 20,28,150 is recoverable from the society and accordingly has been included in the calculation of fund availability of the school. Further, the School is directed to not utilise school funds for repayment of loan and interest on bus loan. The details of school funds utilised for purchase of buses are as follows:

(Figures in Rs)

Particulars	Amount
Cost of two Buses Purchased	30,28,150
Less: Loan taken for purchase out of loan	10,00,000
School funds utilised for purchase of buses	20,28,150

IV. As per clause 8 of Order No. DE 15/ Act/ Duggal.Com /203 /99 /23033-23980 dated 15.12.1999, no amount whatsoever shall be transferred from the recognised unaided school fund to the society or the trust or any other institution.

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

However, on review of the audited financial statements for the FY 2016-17, it is noted that an amount of Rs. 36,79,384 was recoverable from other branches of the school as on March 31, 2017. Thus, funds have been transferred to the other branches of the School without complying with Rule 177 of DSER, 1973. As per Rule 177, assistance to any other school can only be given if the School has savings in accordance with aforesaid provisions. Accordingly, the same has been considered in the calculation of availability of fund. The details of amount transferred to other branches of the School are as follows:

(Figures in Rs.)

Particulars	Amount
Amount recoverable from H. E. School Educational Society Krishna Nagar	22,09,384
Amount recoverable from H. E. School Krishna Nagar	22,70,000
Less: Amount payable to Happy English School, Mahila Colony	(8,00,000)
Balance amount recoverable	**36,79,384**

V. 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 India and Others, which specifies that schools, being run as non-profit organizations, are supposed to follow fund-based accounting.

However, during FY 2014-15, 2015-16 and 2016-17, the school is charging earmarked levies namely transport fee, IT fee, Project and theme fees, annual activity fee and annual events charges but these fees are not charged on 'no profit no loss' basis as school is either earning surplus or incurring deficit from these levies. During the period under evaluation, school has generated surplus on account of IT fee, Project and theme fees, annual activity fee and annual events charges and deficit in respect of transportation charges. Therefore, School is directed make necessary adjustments in the general fund for surplus/deficit on these earmark levies.

VI. On review of audited financial statements, it is noted that the School is not consistent in presenting its fixed assets. It has been presenting the fixed assets purchased out of development fund on gross basis and presenting fixed assets purchased other than development fund on net basis. Thus, the School is not following consistency or uniformity in presenting its fixed assets in the financial statements. The School is directed to follow Guidance Note 21: Accounting by Schools issued by ICAI for preparation of its financial statements.

Other Irregularities:

I. 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 determine at the balance sheet date. On review of Audited Financial Statements, it has been noted that as on 31-03-2017 provisions for Gratuity and Leave Encashment were Rs. 20,87,694 and Rs. 12,18,607 respectively which was based on actuarial valuation report. However, as per said report there were no funded assets/ investments against these provisions. The School is in contravention of AS-15 and is directed to comply the same. Accordingly, FDRs for Gratuity and Leave Encashment are to be treated as part of funds available with School.

II. 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 required to follow the Guidance Note.

III. As per Clause 4 of Order No. DE./15/150/ACT/2010/4854-69 dated 09.09.2010, after the expiry of 30 days, the un-refunded caution money belonging to ex-students shall be reflected as income for the next financial year and it shall not be shown as liability. Further, this income shall also be taken into account while projecting fee structure for ensuing academic year. As per School, it has not been charging any amount from students as caution money since 2004. However, on review of 'Budget estimates of ensuing year 2017-18' submitted with return filled under rule 180(1) of DSER, 1973, it was noted that school has not considered the un-refunded caution money as its receipts. Further, the School has not provided the details of those students who left the school in the FY 2016-17. Hence, the financial impact cannot be ascertained.

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 year 2017-18 amounting to **Rs. 8,70,30,486** out of which cash outflow in the year 2017-18 is estimated to be **Rs. 6,03,66,101.** This results in surplus of funds amounting to **Rs. 2,66,64,385.** The details are as follows:

(Figures in Rs.)

Particulars	Amount	Remark
Cash and Bank balances as on 31.03.17 as per audited Financial Statements	1,26,25,327	
Add: Investments as on 31.03.17 as per audited Financial Statements	1,64,20,566	
Add: Recoverable from other branches of the school	36,79,384	Refer "**Note 1**"
Add: Capital Expenditure on Building	41,02,124	Refer "**Note 2**"
Add: Purchase of car out of School Fund	16,28,464	Refer "**Note 3**"
Add: Purchase of Bus out of School Fund	20,28,150	Refer "**Note 4**"
Less: 4 Months' Salary Reserve	-	Refer "**Note 5**"
Less: Provision for Gratuity and Leave Encashment	-	Refer "**Note 6**"
Less: Development Fund balance as on 31.03.2017	48,08,750	
Less: Caution Money balance as on 31.03.2017	67,000	
Less: Fixed Deposit with Bank in the joint name of DDE and Manager, Happy English School	7,88,830	
Less: Fixed Deposit with Bank in the joint name of Secretary CBSE and Manager, Happy English School	1,16,531	
Total	**3,47,02,905**	
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)	5,12,01,524	
Other income for FY 2016-17 as per audited Financial Statements (we have assumed that the	11,26,057	

998

Particulars	Amount	Remark
amount received in FY 2016-17 will at least accrue in FY 2017-18)		
Estimated availability of funds for FY 2017-18	**8,70,30,486**	
Less: Budgeted expenses for the session FY 2017-18 (after making adjustment)	6,03,66,101	Refer "**Note 7 & 8**"
Net Surplus	**2,66,64,385**	

Adjustments:

Note 1: As per clause 8 of Order No. DE 15/ Act/ Duggal.Com /203 /99/23033-23980 dated 15.12.1999, no amount whatsoever shall be transferred from the recognised unaided school fund to the society or the trust or any other institution. Refer observation no- (IV) under section 2.1 – Financial irregularities.

Note 2: School funds were utilized for construction of building in contravention of clause 2 of the public notice dated May 4th, 1997. Refer observation no- (I) under section 2.1 – Financial irregularities.

Note 3: School has utilised it fund for the purchase of cars and repayment of loan and payment of interest on loan taken by the school for the purchase of car namely Altis. Refer observation no- (II) under section 2.1 – Financial irregularities.

Note 4: In the FY 2016-17, School has utilised its fund for the purchase of Bus amounting of Rs. 20,28,150 in contravention of Rule 177. Refer observation no- (III) under section 2.1 – Financial irregularities.

Note 5: School has not made any provisions for 4 months' salary reserve. As per audited financial statements for FY 2016-17, investments in the form of FDR have been made with Rs. 71,64,547. Since, School has neither made any provision for the salary nor the investments were made in the joint name of Dy. Director, Education and Manager of the School and therefore, aforesaid investments have not been considered in above calculations.

Note6: As per actuary valuation report, no funded assets have been made against the Provision for Gratuity and Leave encashment. Thus, investments against Gratuity and Leave encashment as on 31.03.2017 has not been considered in above calculations. Refer observation no. I under Section 2.1 – Other Irregularities.

Note 7: The school has proposed Rs. 1,20,16,670 for Salary Reserve equivalent to 4 months' of salary. Since this is year of implementation of 7th CPC therefore, the allowance for creation of such reserve would give additional burden on the parents/ student. Therefore, it has not been considered in above calculations. Further, School has proposed increase in salary amounting Rs. 3,60,50,000 which is more than 19%

and has also proposed arrears of salary due to 7th CPC amounting Rs. 2,17,29,436, which is 71% of the salaries for FY 2016-17. The School has failed to provide any justification for increase in salaries and on impact of 7th CPC on salary. Thus, increase in Salaries has been considered upto 10% and amount of arrears of salaries has been considered upto 30% only. The balance amount has been disallowed. The details of the same are as follows:

(Figures in Rs.)

Particulars	FY 2016-17	FY 2017-18	Net Increase	% Change	Disallowance
Salary – Teaching	2,52,36,194	3,60,50,000	56,58,436.00	19%	26,19,279.60
Salary – Non-teaching/ Support Staff & Security	51,55,370				
Impact of 7th CPC on salary	-	2,17,29,436	2,17,29,436	71%	1,26,11,967
Total	**3,03,91,564**	**5,77,79,436**	**2,73,87,872**		**1,52,31,246**

Note 8: Under the following heads the School has proposed expenditure in excess of 10% as compared to the actual expenditure incurred in the FY 2016-17 or has proposed new head of expenditures which was not there in the FY 2016-17, for which the school has neither provided any reasons for such unusual increase nor it has provided any explanation/ justification. Since FY 2017-18 is the year of implementation of 7th CPC where the parents/students are already overburdened, therefore, the aforesaid expenditure in excess of 10% and expenditure under new heads has/have not been considered in the evaluation of fee increase proposal.

(Figures in Rs.)

Particulars	FY 2016-17	FY 2017-18	Net Increase	% Change	Disallowance
Swimming Expenses	9,32,755	14,00,000	4,67,245	50%	3,27,332
Science Lab Expenses	12,004	29,00,000	28,87,996	24059%	28,86,195
Composite establishment Expenses*	-	23,00,000	23,00,000	100%	23,00,000
Building Repair and Maintenance	9,43,830	23,00,000	13,56,170	144%	12,14,596
Total					67,28,123

*These expenses are related to the new earmark levy proposed in the budget. Hence, neither income from the earmark levy nor the expenditure has been considered in above calculations.

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 utilizing 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 utilized 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 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 funds have been used for construction of building, purchase of bus, purchase of car and assistance to other branches of the School amounting Rs. 41,02,124, Rs. 20,28,150, Rs. 16,28,464 and Rs. 36,79,384 respectively in contravention with the provisions of Rule 177 of DSER,1973 and clause 2 of public notice dated 04.05.1997. Therefore, the school is directed to recover **Rs.1,14,38,122** 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 the 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 **Happy English School, Sharad Vihar, Karkardooma, Delhi-110092 (School Id: 1001213)** 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/violations 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 utilise 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 issues 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
Happy English School,
Sharad Vihar, Karkardooma, Delhi-110092 (School Id: 1001213)

1002

No. F.DE.15 (177)/PSB/2019 / 1075-1079 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