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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 (21)/PSB/2019 / 922-926

Dated: 22-01-2019

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

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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, **Bal Bhavan Public School, A Block, Swasthya Vihar, Delhi- 110092 (School Id: 1003215)** 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 27, 2018. Further, School was also provided opportunity of being heard on June 08, 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 the Clause 2 of Public notice dated May 4, 1997, "Schools are not allowed to charge Building Fund and Development Charges when the building is complete or otherwise as it is the responsibility of the society. Society means the trust or institution who has established the school. Society should raise such fund from their own sources because the immovable property of the school become the sole property of the society. Therefore, the students should not be burdened by way of collecting the building fund or development charges". 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 Feb 2005 issued by this Directorate states "Capital Expenditure cannot constitute a component of financial fee structure". Accordingly, based on the aforementioned public notice, High Court Judgment and Order of the Directorate, the expenditure relating to construction of Building is to be met by the society and not from the funds of the School.

On review of the financial statement of the school it has been noted that the school has incurred capital expenditure of Rs.67,98,354 and capitalised the same under the head "Building WIP" in FY 2016-17 in contravention of the aforesaid provisions. Therefore, the school is directed to recover Rs.67,98,354 from the society.

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II. 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 & others, which specifies that schools, being run as non-profit organizations, are supposed to follow fund-based accounting.

On review of audited financial statements of the FY 2014-15, 2015-16 and 2016-17, it has been observed that the school has collected earmarked levies namely Student Fund from the students but this fee was not charged on 'no profit no loss' basis because school has either earned surplus or incurred deficit from these earmarked levies. During the period under evaluation, school has earned surplus from this earmarked levy. Further, school is not following fund based accounting for the earmarked levy. 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 only four categories of fee that can be charged by a school. The first category of fee comprises 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 provisions, earmarked are to be collected only from the user students availing the services. And if the services/facilities are extended to all the student of the school, a separate charge should not be levied by the school as it would get covered either form the Tuition Fee or from Annual Charges. Therefore, the school is directed to stop the collection of separate charges in the name of "Student Fund" since it was collecting the same from all the students.

III. On comparison of fee receipts and fee collection register submitted by the school, it has been observed that the Tuition fee and Student fund collected by the school as per fee receipts and as per fee collection register is not matching. The school has collected higher amount of tuition fee and student fund from the students and has issued fee receipts for lesser amount. Therefore, it is clear that, the school has increased Tuition Fee and Student Fund in FY 2016-17 without obtaining prior approval from DOE in contravention of the order dated 19.01.2016 issued by the Hon'ble High Court of Delhi. Details of Tuition Fee and Student Fund shown by the school in the Fee Receipts and Fee Collection Register are as under:

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Particulars	Class	As per Fee Receipts	As per Fee Collection Register	Excess Fee Charged
Student Fund	Nur	400	440	40
	KG	330	440	110
	I to VIII	330	360	30
Tuition Fee	Nur	4100	4500	1285
	KG to IV	3215	3535	320
	I to VIII	2885	3535	650

Further, in FY 2016-17 the school has split its annual charges into annual charges and miscellaneous charges and thereby has increased the annual charges by Rs.2400 in totality. However, as per the reply of the school, it has collected increased fee only in the first quarter of 2016-17 whereas, as per the fee collection register, the school has charged the increased fee throughout the session. The summary of Annual fee increased by the school is as under.

Categories of Fee	Classes	FY 2015-16	FY 2016-17
Annual Charges	Nursery	24000	11880
Miscellaneous Charges	Nursery	-	14520
	Total	24000	26400
Annual Charges	KG to VIII	10800	11880

- IV. As per Section 18(4) of DSEA, 1973, income derived by Unaided Recognised School by way of fees should be utilized only for educational purposes as prescribed under Rules 176 and 177 of the DSER, 1973. However, on review of audited financial statements, it has been observed that the school has purchased a luxury car of Rs.50,65,492 in FY 2014-15 which cannot be construed as expense for education purpose. Therefore, the School is directed to recover the same from the society.

Other Irregularities:

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 Land allotment letter which provides for 25% reservation to children belonging to EWS category. Since the school is not complying with the aforesaid order of the DOE therefore, the concerned DDE is directed to look into the matter. The admission allowed by the school under EWS category in FY 2014-15, FY 2015-16 and FY 2016-17 was as under:

Particulars	FY 2014-15	FY 2015-16	FY 2016-17
Total Students	568	622	654
EWS Students	125	140	146
% of EWS students	22%	23%	22%

- II. On review of audited financial statement for the FY 2016-17 it has been noted that the school has incurred 51% of expenditure towards establishment expenses and 49% towards other expenditure whereas the major expenditure of the school should be for payment of salaries and staff related expenses. Therefore, the school is directed to incur the expenditure necessitate towards educational purpose and limits its expenditure on other admin purposes.

- III. 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. However, the school has not provided any amount towards the gratuity and leave encashment in its financial statement during the FY 2014-15 to 2016-17. Therefore, the school is directed to determine and provide for statutory liability towards Gratuity and Leave encashment as per the actuarial valuation report as required by AS-15.
- IV. The school is charging depreciation at the rates prescribed by the Income Tax Act, 1961 and not as per the Guidance Note-21 "Accounting by Schools" issued by ICAI. Therefore, the school is required 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 year 2017-18 amounting to **Rs.4,40,15,836** out of which cash outflow in the year 2017-18 is estimated to be **Rs.3,13,32,775**. This results in surplus of funds amounting to **Rs.1,26,83,061**. The details are as follows:

(Figures in Rs.)	
Particulars	Amount
Cash and Bank balances as on 31.03.17 as per Audited Financial Statements	12,51,455
Investments as on 31.03.17 as per Audited Financial Statements	21,51,374
Add: Amount recovered from the society for additions made in Building WIP during FY 2016-17 (Refer observation I of financial irregularity)	67,98,354
Add: Amount recoverable from the society for purchase of Luxury Car in FY 2014-15 (Refer observation IV of financial irregularity)	50,65,492
Total	1,52,66,675
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)	2,83,97,231
Add: Other income for FY 2016-17 as per Audited Financial Statements	3,51,930
Estimated availability of funds for FY 2017-18	4,40,15,836
Less: Budgeted expenses for the session 2017-18 (after making adjustment) " Refer Note- 1 "	3,13,32,775
Net Surplus	1,26,83,061

Adjustments: -

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Note- 1: Proposed Establishment Expenditure Not Considered

(Figures in Rs.)

Particulars	FY 2016-17	FY 2017-18	Net Increase	% Change	Amount disallowed in excess of 10% over the Previous year
Salary	1,46,96,985	1,73,60,000	26,63,015	18%	11,93,317
Arrear Salary*	-	26,65,260	26,65,260	100%	15,02,168
Gratuity**	-	26,40,000	26,40,000	100%	26,40,000
Total	1,46,96,985	2,26,65,260	79,68,275		53,35,485

***Calculation for excess Arrear Salary proposed**

(Figures in Rs.)

Particulars	Salary Dec 2017 to Mar 18	Arrear Salary from Dec 2017 to Mar 18	% increase	Disallowed in excess of 30% over the last 4 months' salary of FY 2016-17
Salary	3876972	26,65,260	69%	15,02,168

Note- Initially the School did not propose any amount against salary arrears. Further, as per the minutes of meeting of Management Committee of Bal Bhavan Public School held on 29-11-2017, the school agreed to pay arrears salary from December 2017 onwards, because the parents were reluctant not to bear additional burden for arrears salary. Therefore, proposed arrears for the period from 01-12-2017 to 31-03-2018 has been considered subject to maximum of 30% over the salary paid in the corresponding months of FY 2016-17.

******The proposed provision towards Gratuity for Rs.26,40,000 has not been considered for evaluation of fee increase proposal because it was not supported by actuarial valuation report.

- 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 has incurred capital expenditure of Rs.67,98,354 for Building WIP and Rs.50,65,492 for purchase of Luxury Car. Therefore, the school is directed to recover Rs.1,18,63,846 from the society on account of the aforesaid expenditure. 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 **Bal Bhavan Public School, A Block, Swasthya Vihar, Delhi- 110092 (School Id: 1003215)** 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

Bal Bhavan Public School,

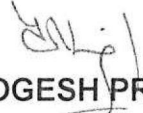
A Block, Swasthya Vihar, Delhi- 110092 (School Id: 1003215)

No. F.DE.15 (21)/PSB/2019/922-926

Dated: 22/01/2019

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

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