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

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No. F.DE.15 (217)/PSB/2019/1175-1179 Dated: 29/03/19

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 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 Mandir Sr. Sec. School, Defence Enclave, Vikas Marg, Delhi (School Id: 1003262)** 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.

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 April 02, 2018. Further, School was also provided opportunity of being heard on July 16, 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 14 of order no. F.DE. /15(56)/Act/2009/778 dated 11.02.2009, development fee, not exceeding 15% of the total annual tuition fees may be charged for supplementing the resources for purchase, upgradation and replacement of furniture, fixture 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 depreciation reserve fund, equivalent to the depreciation charged in the revenue accounts and the collections under this head along with income generated from the investment made out of this fund, will be kept separately maintained development fund account". However, on review of the audited financial statement for the FY 2014-15, 2015-16 and 2016-17, the following have been observed:

a) The school has utilised development fee for construction of Building, purchase of library books and for meeting revenue expenditures in contravention of clause 14 of the order dated 11.02.2009. Therefore, the school is directed to make necessary adjustments in the Development Fund Account and General Fund Account. The details of the development fund utilised in the past three financial year is as under.

(Figures in Rs.)

Particulars	**FY 2014-15**	**FY 2015-16**	**FY 2016-17**
Building	-	42,41,152	70,91,709
Library Books	35,337	54,391S	41,147

Particulars	FY 2014-15	FY 2015-16	FY 2016-17
Revenue Expenditure	1,37,737	-	-
Total	**1,73,074**	**47,85,067**	**71,32,856**

b) Clause 14 of order no. F.DE. /15(56)/Act/2009/778 dated 11.02.2009 requires the school to maintain Depreciation Reserve Fund, equivalent to the depreciation charged in the revenue accounts. Further, on review of audited financial statements for FY 2014-15, 2015-16 and 2016-17, it has been noticed that, the school maintains Depreciation Reserve Fund by transferring lump sum amount either from Development Fund account or from General Fund which is not as per the pre-condition specified in clause 14 of the order dated 11.02.2009. Further, the school has not provided the basis for creation of depreciation reserve fund. Therefore, the school is directed to comply with clause 14 of the order dated 11.02.2009. following is the summary of Depreciation Reserve Fund which the school has created in the past three financial years.

(Figures in Rs.)

Particulars	FY 2014-15	FY 2015-16	FY 2016-17
Amount transferred from development fund to depreciation reserve fund	25,50,000	14,50,000	-
Amount transferred from general fund to depreciation reserve fund	16,02,840	-	5,43,120
Total	**41,52,840**	**14,50,000**	**5,43,120**

II. As per Clause 2 of Public Notice dated May 4, 1997 states that "It is the responsibility of the society who has established the school to raise such funds from their own sources or donations from the other associations because the immovable property of the school becomes the sole property of the society". Additionally, Hon'ble High Court of Delhi in its Judgement 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 10.02.2005 issued by this Directorate states that "Capital expenditure cannot constitute a component of financial fee structure".

Moreover, as per Rule 177 of DSER, income derived by an unaided private 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.

Based on the aforesaid Public Notice and Judgement of the Hon'ble High Court, the cost relating to construction of Building has to be met by the Society and not from the fund of the school. Further, Rule 177 states that the school is not allowed to make addition to the building if it does not have savings. However, on review of the financial statements of the school, it has been observed that the school has made addition to building in FY 2015-16 and 2016-17 for Rs. 42,41,152 and Rs.70,91,709 respectively despite of not having enough surplus in the given financial years. Therefore, the school is directed to recover

Rs.1,13,32,861 from the Society and accordingly has been included in the calculation of fund availability of the school.

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 instead of creating Development Utilization Fund, transferred the whole amount of assets purchased out of the Development Fund to General Fund resulting overstatement of General Fund. Therefore, the School is directed to comply with the Guidance Note-21 "Accounting by School" issued by ICAI. The details of the amounts transferred from Development Fund account to General Fund are as under.

(Figures in Rs.)

Particulars	**FY 2014-15**	**FY 2015-16**	**FY 2016-17**
Transferred from Development fund to General Fund	51,17,956	90,11,427	95,85,279

IV. In respect of earmarked levies, school is required to comply with:

a) Clause 22 of order no. F.DE. /15(56)/Act/2009/778 11.02.2009, specifies that earmarked levies shall be charged from user students only 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 and others, specifies that schools, being run as non-profit organizations, are supposed to follow fund-based accounting.

On review of audited financial statements for the FY 2014-15, 2015-16 and 2016-17, it has been observed that the school is charging earmarked levy namely IT Fee from the students which is not charged on 'no profit no loss' basis. The school earned surplus of **Rs. 2,24,652** in FY 2015-16 and incurred loss of **Rs. 13,32,741** and **Rs. 1,839** in FY 2014-15 and 2016-17 respectively. Moreover, the school is also not following fund based accounting in respect of the earmarked levies collected by it. 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.

Further, on review of financial statements submitted by the school, it has been observed that the school was charging Excursion Fund from the students of each class. However, as per the Duggal Committee report, there are 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 recommendation, the school is directed to stop the collection of Excursion Fund from students of all classes.

V. As per section 18(4) of DSEA, 1973, Income derived by unaided recognised schools by way of fees should be utilized only for such educational purposes as prescribed. Additionally, as per Rule, 177, income derived 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 school may be utilised by its management committee for meeting capital or contingent expenditure of the school. On review of the financial statements of the School, it has been observed that the school has purchased a car for Rs.25,43,224 in FY 2014-15 by taking loan of Rs.20,00,000 from the Bank while the remaining amount of Rs.5,43,224 was paid from the school fund. However, the school has not provided any calculation to justify the compliance of Rule 177 in relation to purchase of car. And the school has paid Rs.10,44,210 towards principal repayment & Rs.4,51,790 towards interest cost on loan during the FY 2014-15 to 2016-17. Therefore, total expenditure of Rs.20,39,224 (Rs. 5,43,224 + Rs. 10,44,210 + Rs. 4,51,790) incurred by the school for purchasing the car (including repayment of loan and interest cost) is not in accordance with the abovementioned provisions of the DSEAR, 1973. Thus, the total expenditure of Rs.22,21,410 has been included in the calculation of fund availability of the school and accordingly the school is directed to recover this amount from the society.

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 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	**FY 2014-15**	**FY 2015-16**	**FY 2016-17**
Total Students	2511	2569	2597
EWS Students	170	181	181
% of EWS students	6.77%	7.05%	6.97%

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.

II. The school was not charging depreciation to the income and expenditure account in the financial year 2014-15, 2015-16 and 2016-17 which is not as per the Guidance Note on "Accounting by Schools" issued by ICAI. Therefore, the school is directed to follow Guidance Note.

III. The total liability appearing in the financial statement towards Gratuity and Leave Encashment were Rs. 3,52,42,366 as on 31,03,2017 which was provided on the basis of actuarial valuation report and against which the school did not have any plan asset as per requirements of AS-15 – Employee Benefits issued by the Institute of Chartered Accountants of India (ICAI). Therefore, the same has not been considered in the calculation of fund available with the school.

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.12,01,71,107 out** of which cash outflow in the FY 2017-18 is estimated to be **Rs.12,80,90,435.** This results in deficit of **Rs.79,19,328**. The details are as follows:

(Figures in Rs.)

Particulars	**Amount**
Cash and Bank Balances as on 31.03.2017 as per Audited Financial Statements	15,62,269
Investments as on 31.03.2017 as per Audited Financial Statements	9,07,574
Add: Amount recoverable from the society for construction of Building **(Refer observation II of financial irregularities)**	1,13,32,861
Add: Amount recoverable from the society for repayment of loan taken for purchase of luxury car **(Refer observation V of financial irregularities)**	20,39,224
Less: Development fund balance as on 31-03-2017	4,809
Total	**1,58,37,119**
Add: Fees for FY 2016-17 as per audited Financial Statements (including capital receipts)	10,34,23,290
Add: Other income for FY 2016-17 as per audited Financial Statement	9,10,698

Particulars	Amount
Estimated availability of funds for FY 2016-17	**12,01,71,107**
Less: Budgeted expenses for FY 2017-18 (after making adjustment) **Refer Note- 1 & 2**	12,80,90,435
Estimated Deficit	**79,19,328**

Adjustments:

Note-1, The proposed expenditure towards Gratuity and Leave encashment amounting to Rs.1,03,20,000 has not been considered in the evaluation of fee increase proposal because it has not been provided for on the basis of actuarial valuation report.

Note-2. Under the following heads the School has proposed expenditure in excess of 10% as compared to the actual expenditure incurred in FY 2016-17, for which the school has not provided any justification for such unusual increase.

Since, the FY 2017-18 is the year of implementation of 7th CPC where the parents/students are already overburdened. Therefore, the expenditures in excess of 10% have not been considered in the evaluation of fee increase proposal. Details are as under:

2(a) Revenue Expenditure Disallowed

(Figures in Rs.)

Particulars	FY 2016-17	FY 2017-18	Increase	% Change	Expenditure disallowed
Education and Excursion Expenses	-	12,50,000	12,50,000	100%	12,50,000
Functions and Prizes Expenses	3,95,483	27,50,000	23,54,517	595%	23,14,969
Lab Consumables Expenses	2,71,426	8,50,000	5,78,574	213%	5,51,431
Total	**6,66,909**	**48,50,000**	**41,83,091**		**41,16,400**

2(b) Capital Expenditure disallowed

(Figures in Rs.)

Particulars	FY 2016-17	FY 2017-18	Increase	% Change	Expenditure disallowed
Building (Amphitheatre Block)		95,00,000.00	95,00,000	100%	95,00,000
Finishing and Furnishings		17,00,000	17,00,000	100%	17,00,000
Smart Class Equipment's	3,38,625	18,00,000	14,61,375	432%	14,27,513
Sports Arena	35,200	7,50,000	7,14,800	2031%	7,11,280
Total	**3,73,825**	**1,37,50,000**	**1,33,76,175**		**1,33,38,793**

ii. It seems that the School may not be able to meet its budgeted expenses from the existing fees structure and accordingly, it should utilise its existing funds/ reserves. In this regard, Directorate of Education has already issued directions to the Schools vide circular no. 1978 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 Chartered Accountants that though certain financial irregularities exist (appropriate financial impact of which has been taken on the fund position of the School) and certain procedural finding noted (appropriate instruction against which have been given in this order), the fee increase proposal of the School may be accepted.

AND WHEREAS, recommendations of the team of 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 it appropriate to allow the increase in tuition fee by 12.5% from 01 April, 2019.

AND WHEREAS, it is also noticed that the school has incurred capital expenditure of Rs.1,13,32,861 for construction of Building and Rs.20,39,224 for repayment of principal amount of loan taken for Luxury Car and interest thereon. Therefore, the school is directed to recover Rs.1,33,72,085 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 for academic session 2017-18 of **Bal Mandir Sr. Sec. School, Defence Enclave, Vikas Marg, Delhi (School Id: 1003262)** has been accepted by the Director of Education with effect from April 01, 2019 and the School is hereby allowed to increase the tuition fee by 12.5%. Further, the management of said school is hereby directed under section 24(3) of DSEAR 1973 to comply with the following directions:

1. To increase the tuition fee only by the prescribed percentage from the specified date.
2. To rectify all the financial and other irregularities as listed above and submit the compliance report within 30 days from the date of this order to the D.D.E (PSB).
3. To ensure implementation of recommendations of 7th CPC in accordance with Directorate order dated 25.08.2017.
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 and others. 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.

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
Bal Mandir Sr. Sec. School,
Defence Enclave, Vikas Marg, Delhi (School Id: 1003262)

No. F.DE.15 (217)/PSB/2019/ 1175-1179 Dated: 29/03/19

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