

191

2159

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

191

No. F.DE.15 (274)/PSB/2019 /1495-1499

Dated: 04/04/19

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, **Tagore Sr sec School, Mayapuri, Delhi (School Id: 1514085)** 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 March 06, 2018. Further, School was also provided opportunity of being heard on June 15, 2018 to present its justifications/ clarifications on fee increase proposal including audited financial statements and based on the

discussions, School was further asked to submit necessary documents and clarifications on various issues noted.

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

Financial Irregularities

- I. As per clause 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. The following observations has been noted in this regard:
 - a) The school has utilised the Development Fee of Rs.59,66,710 for construction of the school building in FY 2015-16 and 2016-17 which is contravention of clause 14 of the above order dated 11.02.2009. Therefore, School is directed to make necessary adjustments in development fund.
 - b) The school was treating the development fee as revenue receipt till the FY 2014-15 in contravention to clause 14 of the order no. F.DE. /15(56)/Act/2009/778 dated 11.02.2009.
- II. As per the Clause 2 of Public notice dated May 4th, 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. Therefore, Rs.91,84,761 incurred by the School for construction of new block, fourth floor, finishing work of basement etc. and showing it under the head "Building" in FY 2014-15, 2015-16 and FY 2016-17 is contravention of aforesaid provisions. Thus, the amount is recoverable from the society and has been included in the calculation of fund availability of the school. The year wise amount capitalised by the school under the head "Building" is as under.

(Figures in Rs.)

| Particulars | Amount |
|--------------|------------------|
| FY 2014-15 | 32,18,051/- |
| FY 2015-16 | 31,09,467/- |
| FY 2016-17 | 28,57,243/- |
| Total | 91,84,761 |

- III. 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, on review of audited financial statements for FY 2014-15, 2015-16 and 2016-17, it has been found that the school is charging earmarked levies namely Transport Fee and Activity Fee from the students but these fees are not charged on 'no profit no loss' basis and has also not maintained separate fund accounts for these earmarked levies. Further, the school has earned surplus from Activity Fee and incurred deficit from Transportation fee. Therefore, School is directed to follow fund based accounting.

IV. Clause 8 of order No. DE 15/ Act/ Duggal.Com /203 /99 /23033-23980 dated 15.12.1999, Clause 23 of Order No. F.DE./15(56)/Act/2009/778 dated 11.02.2009 and Section 18(4) of DSEA, 1973 read along with Rule 176 and 177 of Delhi School Education Rules, 1973 states that "Fees/funds collected from the parents/students shall be utilised strictly in accordance with Rules 176 and 177 of the Delhi School Education Rules,1973. No amount whatsoever shall be transferred from the Recognized Unaided School Fund of a School to the Society or the Trust or any Other Institution."

This above position was subsequently amended by the Supreme Court in the matter of Action Committee, Un-Aided Pvt. Schools & Ors. vs Director of Education, Delhi & Ors. on 07.08.2009, whereby words "except under the management of the same Society or Trust" were added to the last sentence of the above para. Thus, the new para is read as "No amount whatsoever shall be transferred from the Recognized Unaided School fund of a School to the Society or the Trust or any other Institution except under the management of the same Society or Trust."

Accordingly, the Schools cannot transfer any amount from the school fund to the Society for any purpose whatsoever but according to the financial statement of the school, Rs. 4,70,333 was recoverable from the "Tagore Nursery School Branch" as on 31.03. 2017. Accordingly, the same has been added in the calculation of fund availability of the school.

2164

Other Irregularities

- I. As per DOE order No.F.DE.15/Act-I/08155/2013/5506-5518 dated 04.06.2012 as well as s.no. 18 of 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 201-16 and FY 2016-17. The details of total students and EWS students given by the school for the FY 2014-15, 2015-16 & 2016-17 are given below.

| S.NO. | Particulars | 2014-15 | 2015-16 | 2016-17 |
|-------|-------------------|---------|---------|---------|
| 1 | EWS Students | 165 | 160 | 161 |
| 2 | Total Students | 1,625 | 1,625 | 1,586 |
| 3 | % of EWS Students | 10% | 10% | 10% |

- II. 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 required to determine and provide for statutory liability towards gratuity and leave encashment as per the actuarial valuation report as required by AS-15.
- III. During review of financial statement of the FY 2014-15, 2015-16 and 2016-17, following observations were noted in relation to caution money:
- a) 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. However, on review, it has been noted that the School has not considered un-refunded caution money in its budget estimate for the FY 2017-18.

2165

Further, the school has not provided details of those students who left the school in FY 2016-17 therefore, financial impact of the same cannot be ascertained.

- IV. As per clause 18 of order No. F.DE./15 (56) /Act /2009 / 778 dated 11/02/2009, caution money collected from students shall be refunded to students at the time of their leaving the school along with bank interest thereon irrespective of whether he/ she requests for refund or not. However, it has been noted that the caution money along with interest, belonging to many students who left the school has not been refunded as yet.

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. 5,93,34,526** out of which cash outflow in the FY 2017-18 is estimated to be **Rs. 5,97,61,941**. This results in deficit of **Rs. 4,27,415**. The details are as follow:

(Figures in Rs.)

| Particulars | Amount |
|--|--------------------|
| Cash and Bank balances as on 31.03.17 as per audited Financial Statements | 15,87,513 |
| Investments as on 31.03.17 as per audited Financial Statements | 12,81,103 |
| Add: Recoverable from Tagore Nursery School branch of the school | 4,70,333 |
| Add: Construction on building (Recover from the society) | 91,84,761 |
| Less: Fixed Deposit with Bank in the joint name of DDE and Manager, Tagore Sr. Sec. School | 5,31,730 |
| Less: Security Deposit (refundable) | 13,25,022 |
| Total | 1,06,66,958 |
| Fees for 2016-17 as per audited Financial Statements (we have assumed that the amount received in 2016-17 will at least accrue in 2017-18) | 4,52,35,909 |
| Other income for 2016-17 as per audited Financial Statements (we have assumed that the amount received in 2016-17 will at least accrue in 2017-18) | 34,31,659 |
| Estimated availability of funds for 2017-18 | 5,93,34,526 |
| Less: Budgeted expenses for the session 2017-18 (after making adjustment) (Refer Note 1, 2 and 3) | 5,97,61,941 |
| Estimated Deficit | 4,27,415 |

2166

Adjustments:

Note 1: The school has budgeted the salary expenditure including the impact of recommendations of 7th CPC which comes to 87% of the actual salary expenditure incurred by the school in FY 2016-17 for which the school have not provided any satisfactory reason for such higher increase. Thus, the normal increase in annual salary has been considered upto 10% and increase in salary arrears has been considered upto 30% of the actual salary paid in the FY 2016-17. The balance amount has been disallowed the summary of which is as under.

(Figures in Rs.)

| Particular | Amount (FY 2016-17) | Amount (FY 2017-18) |
|--|---------------------|---------------------|
| Salary | 3,27,66,587 | 3,59,45,004 |
| Salary arrear due to 7th CPC | | 1,18,54,449 |
| Total | 3,27,66,587 | 4,77,99,453 |
| Increase in salaries | | 1,50,32,866 |
| Percentage increase in salaries | | 46% |
| Expenditure allowed (40% increase allowed) | | 4,58,73,222 |
| Expenditure disallowed | | 19,26,231 |

Note 2: On review of the budgeted expenditure it has been observed that under the following the school has either proposed higher expenditure as compared to the previous year and for which the school has not provide any satisfactory explanation or justification. Therefore, the following expenditure has been restricted to 110% of the actual expenditure incurred by the school in FY 2016-17 considering to cover the rate of inflation. The summary of these expenditures are as follow:

(Figures in Rs.)

| Particulars | Amount as per audited Financial Statements for FY 2016-17 | Amount as per the budget provided by school for FY 2017-18 | Increase | % change | Amount disallowed |
|-------------------------------|---|--|----------|----------|-------------------|
| Vehicle Running & Maintenance | 2,25,172 | 3,00,000 | 74,828 | 33% | 52,311 |
| Insurance | 31,851 | 40,000 | 8,149 | 26% | 4,964 |
| Student Welfare | 1,79,394 | 1,50,000 | 74,828 | 42% | 56,889 |
| Internet Expenses | 14,399 | 40,000 | 25,601 | 178% | 24,161 |
| Newspaper & Periodicals | - | 40,000 | 40,000 | - | 40,000 |
| Water Charges | 11,169 | 25,000 | 13,831 | 124% | 12,714 |
| Legal & Professional Expenses | 3,41,463 | 6,00,000 | 2,58,537 | 76% | 2,24,391 |
| Conveyance Expenses | - | 50,000 | 50,000 | - | 50,000 |

h.

| Particulars | Amount as per audited Financial Statements for FY 2016-17 | Amount as per the budget provided by school for FY 2017-18 | Increase | % change | Amount disallowed |
|------------------|---|--|-----------------|----------|-------------------|
| Building | 5,47,028 | 6,75,000 | 1,27,972 | 23% | 73,269 |
| Computer | 63,470 | 1,00,000 | 36,530 | 58% | 30,183 |
| Diesel Generator | 2,19,686 | 2,50,000 | 30,314 | 14% | 8,345 |
| Others | 7,49,042 | 9,90,000 | 2,40,958 | 32% | 1,66,054 |
| Total | 23,82,674 | 32,60,000 | 9,81,548 | - | 7,43,281 |

Note 3: Proposal of the school to utilise Rs. 15,00,000 for construction of building has not been considered in the evaluation of fee increase proposal as per clause 2 of the public notice dated 4th May 1997. Further school has also proposed expenditure for purchase of other fixed assets but details of which was not provided by the school. Further, School has proposed for other fixed assets amounting Rs. 6,25,000 but has not provided details of such fixed assets and accordingly, the same has not been considered and thus, disallowed in fee evaluation of the School.

- 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 5% from 01 April, 2019.

AND WHEREAS, it is also noticed that the school funds have been utilized for construction of building amounting Rs. 91,84,761 in contravention of provisions of DSER, 1973 and other orders issued by the departments from time to time. Also, an amount of Rs. 4,70,333 was recoverable from the society. Total amount to be recovered by the school from society is Rs. 96,55,094. 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 for academic session 2017-18 of **Tagore Sr sec School, Mayapuri, Delhi (School Id: 1514085)** 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 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

Tagore Sr sec School, Mayapuri, Delhi (School Id: 1514085)

No. F.DE.15 (274)/PSB/2019/1495-1499

Dated: 04/04/19

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