

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

No. F.DE.15 (673)/PSB/2018/ 30848 - 52

Dated: 24/12/2018

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, **Mamta Modern Sr. Sec School, H-Block, Vikaspuri, New Delhi – 110018 (School Id: 1618183)** 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 July 04, 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 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, up-gradation and replacement of furniture, fixture and equipment. Development fee, if required to be charged shall be treated as capital receipts 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 in separately maintained development fund account." However, on review of audited financial statements for the year 2014-15, 2015-16 and 2016-17, following observations have been noted:

- a) The school was treating development fee as revenue receipts in the FY 2014-15 and 2015-16 in contravention of clause 14 of the order dated 11.02.2009.

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- b) In FY 2016-17 the development fund amounting to Rs. 18,88,808 was utilised for Repair and Maintenance in contravention to the provisions of clause 14 of order dated 11.02.2009. School is directed to make necessary adjustment in Development Fund and General Fund in accordance with aforesaid order.
- II. As per 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 to the society or the trust or any other institution."

The above position was subsequently amended through judgement of 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, revised sentence can be 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.*" However, the financial statement of the school of FY 2016-17 reflecting Rs.22,48,332 recoverable from 'Mamta modern Education Society' in contravention of the aforesaid provisions. Thus, this amount is to be recovered from society and has been considered as fund available with the school.

- 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 is observed that the school has collected earmarked levies in the name of Science fees, Transport Fee, Student Medical Insurance, Air Conditioner Charges, Library Fees, Software Fees, Painting Fee and Edusmart class and Computer Fee from the students but these levies were not charged on 'no profit no loss' basis. The school has either earned surplus or incurred deficit from these levies. During the period under evaluation, school has earned surplus from science fees, transport fee, student medical insurance, air conditioner charges and incurred deficit from Library Fees, Software Fees, Painting Fee and Edusmart class and Computer fee. And also the school is not following fund-based accounting as prescribed by the Guidance

Note-21 "Accounting by School". Therefore, school is directed to make necessary adjustments on account of surplus/deficit accrued from these earmarked levies in the General Fund of the School.

Further, 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" 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. This recommendation has been considered by the Directorate while issuing order No. DE.15/Act/Duggal.com/203/99/23033-23980 dated 15.12.1999 and order No. F.DE. /15(56)/Act/2009/778 dated 11.02.2009.

However, it is noticed that Student Medical Insurance, Air Conditioner Charges, Library Fees, Software Fees, Painting Fee and Edusmart class and Computer Fee have been charged from each student in the school and thus, school has contravened the aforesaid recommendation and orders. Thus, school is directed to stop the collection of these fees as these cannot be treated as earmarked levies.

- IV. As per AS-15 'Employee Benefit' issued by ICAI. "An entity should determine the present value of defined benefit obligations and their fair value of any plan asset so that the amounts recognised in the financial statement do not differ materially from the amounts that would be determine at the balance sheet date. As per financial statement of FY 2016-17 total liability for Leave Encashment was Rs. 91,17,786 and for Gratuity was Rs. 2,35,32,622 which was provided for on the basis of Actuarial Valuation Report but has not earmarked any investment against these liability. Therefore, the same has not been considered in the calculation of fund availability of the school. Further, as per the actuarial valuation report the total liability for Gratuity was Rs. 2,48,63,679 but the school has provided for only Rs. 2,35,32,622 in its financial statement. Therefore the school is required to follow the requirement of AS-15 completely.
- V. As per DOE order no. F.DE.-15/Act-I/WPC-4109/Part/13/7914-7923 dated 16.04.2016, "all the HoS(s)/ Managers of Private Unaided Recognised Schools, allotted land by the land owning agencies on the condition of seeking prior sanction of Director of Education for increase in fee, are directed to submit their proposals, if any, for prior sanction of the Director of Education for increase in Tuition Fee/ Fee for the academic session 2016-17". However, as per fee structure submitted by the school for FY 2015-16 and 2016-17, it has been noted that fee was increased Development Fee and Annual Charges in FY 2016-17 without obtaining prior

approval from the Directorate of Education. Further, during FY 2016-17 Director of Education called for proposal from the Private Unaided Recognised Schools running on the Government School having condition to seek prior approval before increase in fee but the school did not submit its fee increase proposal for FY 2016-17. Thus, the school has contravened the aforesaid order of the DOE. School is directed to refund or adjust the excess fee received from students in FY 2016-17 in contravention of aforesaid order. The class-wise comparative fee charged by the school from the students are given below:

(Figures in Rs.)

Class	Development Fee (Yearly)		Annual Charges (Yearly)	
	2015-16	2016-17	2015-16	2016-17
Prep.	3600	4680	3100	4400
I	2600	3960	3100	3400
II	1900	2800	3100	3400
III	1900	2100	3100	3400
IV	1900	2100	3100	3400
V	1900	2100	3100	3400
VI	1900	2100	3100	3400
VII	1900	2100	3100	3400
VIII	1900	2100	3100	3400
IX	2500	3000	3600	4100
X	3100	3400	3600	4100
XI	3100	3600	3600	4100
XII	3100	3800	3600	4100

- VI. 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.13,20,806 incurred by the School for Construction "Building" in FY 2015-16 is violation of the aforesaid provisions. Therefore, this amount is recoverable from the society and accordingly has been included in the calculation of fund availability of the school.

Other Irregularities:

- I. As per DOE Order No.F.DE.15/Act-I/08155/2013/5506-5518 dated 04-06-2012 and as per land allotment letter, the school is required to provide 25% reservation to children belonging to EWS/DG categories at the entry level. However, as per the student enrolment detail provided by the school along with return filed under rule 180, the total number of students and admission allowed under EWS/ DG categories are as under:

Particulars	2014-15	2015-16	2016-17
Total no. of students in school	2044	2067	2203
Total EWS students	181	182	228
% of EWS students to total no. of students	8.86%	8.81%	10.35%

The DDE, District is to look into this matter.

- II. As per section 18 (5) DSEA,1973, "the managing committee of every recognised private school shall file every year with the Director such duly audited financial and other returns as may be prescribed, and every such return shall be audited by such authority as may be prescribed". However, the financial statements submitted by the school for the purpose of fee increase proposal was signed by the auditor by putting note as "Compiled from Books of Accounts Produced before us". Therefore, the financial statement submitted by the school is not comply with the requirement of section 18(5) of DSEA, 1973.
- III. As per sub Section (1) of section 13 of Right to Education Act, 2009, no school shall, while admitting a child, collect any capitation fee. However, on review of fee structure submitted by the school of the FY 2016-17, it has been observed that the school has collected one-time Orientation Charges from the students at the time of admission in contravention of the aforesaid clause. Therefore, school may be directed to stop such kind of collection from the students. The details of orientation fee collected by the school are as under:

(Figures in Rs.)

Particulars	Amount
Orientation and Smart School Nursery (one time charges at the time of admission)	3500
Orientation and Smart School Preparatory (one time charges at the time of admission)	4200
Orientation and Smart School 1st onward new admission (one time charges at the time of admission)	2500

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

- i. The total funds available for the year 2017-18 amounting to Rs. 10,80,39,590 out of which cash outflow in the year 2017-18 is estimated to be Rs. 9,53,21,273. This results in surplus of funds amounting to Rs. 1,27,18,318. The details are as follows:

(Figures in Rs.)	
Particulars	Amount
Cash and Bank balances as on 31.03.17 as per audited Financial Statements	13,33,231
Investments as on 31.03.17 as per audited Financial Statements	2,16,86,795
Add: Recoverable from society on account of addition made in building during the financial year 2015-16	13,20,806
Add: Recoverable from society (balance outstanding as on 31.03.2017)	22,48,332
Less: Development Fund as on 31.03.2017	12,28,438
Less: Fixed Deposit with Bank in the joint name of Chairman of School and Secretary of CBSE	3,96,079
Total	2,49,64,647
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)	8,13,88,131
Other income for FY 2016-17 as per audited Financial Statements	16,86,812
Estimated availability of funds for FY 2017-18	10,80,39,590
Less: Budgeted expenses for the session 2017-18 (after making adjustment) (Note 1, 2 and 3)	9,53,21,273
Net Surplus	1,27,18,318

Adjustment:

Note 1: School has proposed Rs. 5,21,93,953 as salary for FY 2017-18 which is more than 22% in comparison to total salary expenditure incurred during FY 2016-17. However, the school has not provided detailed information or its working for arriving at this figure. Further, school has proposed Rs. 3,07,02,327 as salary arrear due to 7th CPC for FY 2017-18. However, the school has not provided detailed information or its working for arriving at this figure despite multiple opportunities provided to school. Therefore, in the absence of proper explanation/ justification by school budgeted increase in salaries is considered to the extent of 10% of the expenditure of FY 2016-17 and salary arrears is considered to the extent of 30% of the expenditure of FY 2016-17. The provision for Gratuity and leave encashment of Rs. 30,10,509/- and Rs. 25,51,813/- respectively has not been considered in the budget for FY 2017-18, since the same are not supported by actuarial valuation report. The details of expenditure not considered in the fee evaluation is as follows:

(Figures in Rs.)					
Particulars	As per audited Income and Expenditure Account for F.Y. 2016-17	As per budget for fee increase submitted by school for F.Y. 2017-18	Net Increase/ Decrease	% Change	Disallowed
Salary	4,26,80,002	5,21,93,953	95,13,951	22%	52,45,951
Salary arrear due to 7th				100%	

Particulars	As per audited Income and Expenditure Account for F.Y. 2016-17	As per budget for fee increase submitted by school for F.Y. 2017-18	Net Increase/ Decrease	% Change	Disallowed
CPC	-	3,07,02,327	3,07,02,327		1,78,98,326
Provision for gratuity	30,10,509	30,10,509	-	100%	30,10,509
Provision for leave encashment	25,51,813	25,51,813	-	100%	25,51,813
Total	4,82,42,324	8,84,58,602	4,02,16,278		2,87,06,599

Note 2: School has proposed substantial increase in expenses as shown below during the financial year 2017-18, however school was not able to explain the basis on which such increase was estimated. Also, school was asked to provide the provisional Trial Balance for the financial year 2017-18 but has provided incomplete Provisional Trial Balance. Hence, after allowing reasonable increase of 10% in expenses actually incurred during the financial year 2016-17, balance has been disallowed. Details of disallowances are as follows:

(Figures in Rs.)

Expenditure	Actual (2016-17)	Budgeted (2017-18)	Percentage increase	Expenditure allowed	Disallowed
Co-curricular Activities	5,75,581	8,50,000	48%	6,33,139	2,16,861
Smart school expenses	10,35,488	32,00,000	209%	11,39,037	20,60,963
Science lab expenses	1,09,095	2,50,000	129%	1,20,005	1,29,996
Seminar and workshop expenses	20,560	1,25,000	508%	22,616	1,02,384
Car Running and maintenance	2,16,805	4,00,000	84%	2,38,486	1,61,515
Advertisement and publicity	2,40,580	3,50,000	45%	2,64,638	85,362
Building repair and maintenance	6,60,715	15,00,000	127%	7,26,787	7,73,214
Electrical repair and maintenance	1,04,060	2,00,000	92%	1,14,466	85,534
General repair and maintenance	1,39,849	2,00,000	43%	1,53,834	46,166
Vehicle repair and maintenance	8,97,066	16,50,000	84%	9,86,773	6,63,227
Vehicle insurance	4,03,268	6,50,000	61%	4,43,595	2,06,405
Total					45,31,626

Note 3: As per clause 2 of public notice dated 04.05.1997 the school is not allowed to utilise its funds for construction of buildings. Further, as per judgement in Modern School case the capital expenditure cannot form part of fee structure of the school and should be a charge on savings. During the financial year 2017-18, school has budgeted for capital expenditure under head solar plant and building amounting to Rs. 45,00,000 and Rs. 24,00,000 respectively and same has not been considered for fee increase proposal for the financial year 2017-18.

- ii. The school has sufficient funds to carry on the operation of the school for the academic session 2017-18 on the existing fees structure. In this regard, Directorate of Education has already issued directions to the schools vide order dated 16/04/2010 that,

"All schools must, first of all, explore and exhaust the possibility of utilising the existing funds/ reserves to meet any shortfall in payment of salary and allowances, as a consequence of increase in the salary and allowance of the employees. A part of the reserve fund which has not been utilised for years together may also be used to meet the shortfall before proposing a fee increase."

AND WHEREAS, in the light of above evaluation which is based on the provisions of DSEA, 1973, DSER, 1973, guidelines, orders and circulars issued from time to time by this Directorate, it was recommended by the team of expert Chartered Accountants that prima facie there are financial and other irregularities and also, sufficient funds are available with the school to meet its budgeted expenditure for the academic session 2017-18 including the impact of implementation of recommendations of 7th CPC, the fee increase proposal of the school may not be accepted.

AND WHEREAS, recommendations of the team of expert Chartered Accountants along with relevant material were put before the Director of Education for consideration and who after considering all the material on the record, found that sufficient funds are available with the school to meet its budgeted expenditure for the 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 has been utilized for construction of building and advance given to the society in contravention of provisions of DSER, 1973 and other orders issued by the departments from time to time. Total amount to be recovered by the school from society is Rs. 35,69,138. The amount of receipts along with copy of bank statements showing receipt of above-mentioned amount should be submitted with DoE, in compliance of the same, within sixty days from the date of issuance of this order. Non-compliance of this shall be taken up as per DSEA&R, 1973.

Accordingly, it is hereby conveyed that the proposal of fee increase of **Mamta Modern Sr. Sec School, H-Block, Vikaspuri, New Delhi – 110018 (School Id: 1618183)** 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:

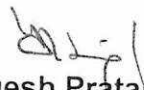
1. Not to increase any fee in pursuance to the proposal submitted by school for the academic session 2017-18 and if, the fee is already increased and charged for the



- 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 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.
 4. 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.
 5. To remove all the financial and other irregularities as listed above and submit the compliance report within 30 days to the D.D.E (PSB).
 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 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 order is issued with the prior approval of the Competent Authority.


 (Yogesh Pratap)
 Deputy Director of Education
 (Private School Branch)
 Directorate of Education, GNCT of Delhi

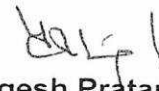
To
 The Manager/ HoS
 Mamta Modern Sr. Sec School,
 H-Block, Vikaspuri,
 New Delhi – 110018 (School Id: 1618183)

No. No. F.DE.15 (673)/PSB/2018/ 30848-52

Dated: 24/12/2018

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