

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

No. F.DE.15 (MS)/PSB/2019/1914-1918

Dated: 22/2/2019

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

2363

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, **Vidya Niketan School, D- Block, Saket, New Delhi-110017 (School Id: 1923267)** 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 April 03, 2018. Further, School was also provided opportunity of being heard on July 31, 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

As per Clause 2 of Public Notice dated May 4, 1997 state 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 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 10.02. 2005 issued by this Directorate state that "Capital expenditure cannot constitute a component of financial fee structure". Accordingly, based on the aforesaid Public Notice, High Court Judgment and Oder of the Director of Education, the cost relating to construction of School Building is to be met by the Society and not from the funds of the School.

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

7.364

school, or for one or more of the following educational purposes, namely award of scholarships to students, establishment of any other recognised school, or assisting any other school or educational institution, not being a college, under the management of the same society or trust by which the first mentioned school is run.

Further, the aforesaid savings shall be arrived at after providing for the following, namely:

- a) Pension, gratuity and other specified retirement and other benefits admissible to the employees of the school;
- b) The needed expansion of the school or any expenditure of a developmental nature;
- c) The expansion of the school building or for the expansion or construction of any building or establishment of hostel or expansion of hostel accommodation;
- d) Co-curricular activities of the students;
- e) Reasonable reserve fund, not being less than ten percent, of such savings.

However, on review of the financial statements and other relevant documents submitted by the school, it has been observed that the school has incurred Rs.77,83,202 and Rs.19,23,913 for construction of building in FY 2014-15 and FY 2016-17 without complying with the abovementioned provisions. Therefore, School is directed to recover Rs.97,07,115 from the Society and accordingly the same has been included in the calculation of fund availability of School.

- II. As per Para 99 of Guidance note on "Accounting by School" issued by ICAI state that "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 cognisance from the above para, it has been noted that the School has not created deferred income for the assets purchased out of the development fund. And the assets purchased by the school out of development fund Rs.30,72,025, Rs.22,22,344 and Rs.5,49,298 during FY 2014-15, FY 2015-16 and FY 2016-17 respectively were transferred to general fund resulting overstatement of general fund balance at the end each financial year. Therefore, the School is directed to make appropriate adjustment in general fund and also directed to follow the requirement of Guidance Note- 21.

- III. In respect of earmarked levies, school is required to comply with:
 - a) 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;
 - 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, 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 is charging earmarked levies namely transport fee, science fee and computer fee from the students but these fees are not charged on 'no profit no loss' basis as the school is either earning surplus or incurring deficit from these levies. During the period under evaluation, school has generated surplus on account of all the earmarked levies. Further, the school is not following the fund based accounting. 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 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 levies are to be collected only from the user students availing the facilities and if, the services are extended to all students of the school, a separate charge should not be levied by the school as it would get covered either from the Tuition Fee or from the Annual Charges. Accordingly, the School is directed not to charge a separate levy in the name of Computer fee from the students of class I to X with the immediate effect.

- IV. As per section 18(4) of DSEA, 1973 read with Rule, 176 & 177 of DSER 1973, Income derived by unaided recognised schools by way of fees should be utilized only for such educational purposes as may be prescribed. However, on review of financial statements of the School, it has been noted that the School has purchased car for Rs. 23,08,050 by taking loan of Rs.18,38,000 in FY 2016-17 from the financial institution and remaining amount of Rs.4,70,050 was paid from the school fund. During the year the school has paid Rs.1,24,651 towards principal amount and Rs. 68,399 towards interest thereon. Thus, the school fund utilised for purchase of car amounting to **Rs.6,63,100** is not in accordance with the provisions of DSER, 1973. Accordingly, the same is directed to be recoverable from the society and has been included in the calculation of fund availability of the school. Additionally, the school should not bear the future burden of instalments on the aforesaid loan.
- V. The school made provisions of Rs.19,63,267 in FY 2016-17 as per direction of JADSC report and thus, the school has made this amount of refund as part of its fee structure which is against the true spirit of the committee. Therefore, the amount of this provision has been added back to general reserve. And the school is directed to written off this provision within the stipulated time mentioned in the

order and make refund of this amount by collecting equivalent amount from the society.

Other Irregularities

- I. The school is charging depreciation as per rates prescribed by Income Tax Act, 1961 and not as per depreciation rates prescribed by the Guidance note on "Accounting by Schools" issued by ICAI. Therefore, the school is directed to follow Guidance Note- 21.
- 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 amount recognised in the financial statement do not differ materially from the amount that would be determine at the balance sheet date. On review of financial statements for the FY 2016-17, it is noted that the school has provided **Rs.85,70,077** towards gratuity provision on the basis of actuary report but the value of planned assets was nil. Further, the school has not provided any amount towards leave encashment. Therefore, the school is directed to follow requirement of Accounting Standard -15.
- III. As per clause 18 of order no. F.DE. /15(56)/Act/2009/778 dated 11.02.2009, Caution money collected shall be kept deposited in a Scheduled Bank in the name of the concerned school and shall be returned to the student at the time of his/her leaving the school along with interest thereon. However, it is observed that the school is being refunding only principal amount of caution money without interest thereon which is in contravention of clause 18 of the order dated 11.2.2009. Thus, the school is directed to comply with the requirement of clause 18 of the order dated 11.02.2009.
- IV. 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 amount of un-refunded caution money belonging to ex-students shall be reflected as income in the next financial year and it shall not be shown as liability. Further, this income shall also be considered while projecting fee structure for ensuing academic year. However, the school has not considered the amount of un-refunded cation money as income in its proposed budget. The school is directed to comply with clause 4 of the order dated 09/09/2010.
- V. 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 land allotment letter which require to provide 25% reservation to children belonging to EWS category. Since the school is not complying with the aforesaid order therefore, concerned DDE District is directed to look into the matter. The admission allowed under EWS category in the budget of FY 2017-18 is as under:

Particulars	FY 2017-18
Total strength	1,077
EWS	175
% EWS students to total students	16.25%

2.567

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. 9,32,05,976** out of which cash outflow in the FY 2017-18 is estimated to be **Rs. 5,41,10,824**. This results in net balance of Surplus amounting to **Rs. 3,90,95,152** for FY 2017-18 after all payments. The details are as follows:

(Figures in Rs.)

Particulars	Amount
Cash and Bank balances as on 31.03.17 as per Audited Financial Statements	38,53,048
Investments as on 31.03.17 as per Audited Financial Statements	3,12,96,807
Add: Amount recoverable from the society for construction of building in FY 2014-15 and FY 2016-17 (Refer Observation I of Financial Irregularity)	97,07,115
Add: Amount recoverable from the society for purchase of luxury car in FY 2016-17 (Refer Observation IV of Financial Irregularity)	6,63,100
Less: Outstanding balance of Security Fund as on 31-03-2017	13,28,461
Less: Development Fee received during FY 2016-17 (Refer Note- 1)	32,34,300
Less: Fixed Deposit in the joint name of Secretary, CBSE and Manager of School	4,08,162
Total	4,05,49,147
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)	5,02,44,890
Add: Other income for FY 2016-17 as per Audited Financial Statements	24,11,939
Estimated availability of funds for FY 2017-18	9,32,05,976
Less: Budgeted expenses for the session 2017-18	5,41,10,824
Net Surplus	3,90,95,152

* Since sufficient funds are available with school after meeting all expenditures for the year 2017-18, the school is hereby directed to make equivalent investments against the provision for Gratuity with LIC (or any other agency) within 90 days of the receipt of this order, so as to protect statutory liabilities.

Adjustments:

Note- 1: The Supreme Court in the matter of Modern School held that development fees for supplementing the resources for purchase, upgradation and replacements of furniture and fixtures and equipment can be charged from students by the recognized unaided schools not exceeding 15% of the total annual tuition fee. Further, the Directorate's circular no. 1978 dated 16 Apr 2010 states "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." Over a number of years, the school has accumulated development fund and has reflected the closing balance of Rs.37,57,858 in its audited financial statements of FY 2016-2017. Accordingly, the accumulated reserve of development fund created by the school by collecting development fee more than its requirement for purchase, upgradation and replacements of furniture and fixtures and equipment has been considered as free reserve available with the school for meeting the financial implication of 7th CPC to be implemented by the school. However, development fund equivalent to amount collected in FY 2016-2017 amounting Rs.32,34,300 from students has not been considered as fund available with the school.

- i. 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 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 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 Rs.97,07,115 for construction of building which is in contravention of clause 2 of public notice dated 04-05-1997 read with Rule 177. Further, the school has purchased a luxury car in FY 2016-17 for which it has utilised school fund of Rs.6,63,100. Therefore, the school is directed to recover Rs.1,03,70,215 from the society. The amount of receipts along with copy of bank statements showing receipt of above mentioned amount should be submitted with DoE, in compliance of the same, within sixty days from the date of the order. Non-compliance of this shall be taken up as per DSEA&R, 1973.

Accordingly, it is hereby conveyed that the proposal of fee increase of **Vidya Niketan School, D- Block, Saket, New Delhi-110017 (School Id: 1923267)** is


2369

ejected 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 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 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.
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 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

2370

To

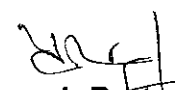
The Manager/ HoS
Vidya Niketan School,
D- Block, Saket, New Delhi-110017 (School Id: 1923267)

No. F.DE.15 (145)/PSB/2019 / 1914-1918

Dated: 22/2/2019

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