

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

No. F.DE.15 (1632)/PSB/2023/9665-9669

Dated: 24/11/23

Order

WHEREAS, **Bal Bhavan Public School (School ID- 1002277), Pocket B, Mayur Vihar, Phase II, Delhi – 110091** (hereinafter referred to as “the School”), run by the **Lagan Kala Upvan Regd., Society** (hereinafter referred to as the “Society”), is a private unaided school recognized by the Directorate of Education, Govt. of NCT of Delhi (hereinafter referred to as “DoE”), under the provisions of Delhi School Education Act, 1973 (hereinafter referred to as “DSEA, 1973”) and the Delhi School Education Rules, 1973 (hereinafter referred to as “DSER, 1973”). The school is statutorily bound to comply with the provisions of the DSEA, 1973, DSER, 1973 and the RTE Act, 2009, as well as the directions/guidelines issued by the DoE from time to time.

AND WHEREAS, every school is required to file a full statement of fees every year before the ensuing academic session under section 17(3) of the DSEA, 1973 with the Directorate. Such statement is required to indicate estimated income of the school to be derived from fees, estimated current operational expenses towards salaries and allowances payable to employees etc. in terms of rule 177(1) of the DSER, 1973.

AND WHEREAS, as per section 18(5) of the DSEA, 1973 read with sections 17(3), 24 (1) and rule 180 (3) of the above DSEA, 1973, responsibility has been conferred upon to the DoE to examine the audited financial Statements, books of accounts and other records maintained by the school at least once in each financial year. Sections 18(5) and 24(1) of the DSEA, 1973 and the rule 180 (3) of DSER, 1973 have been reproduced as under:

Section 18(5): *‘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’*

Section 24(1): *‘every recognised school shall be inspected at least once in each financial year in such manner as may be prescribed’.*

Rule 180 (3): *‘the account and other records maintained by an unaided private school shall be subject to examination by the auditors and inspecting officers authorised by the Director in this behalf and also by officers authorised by the Comptroller and Auditor-General of India.’*

AND WHEREAS, besides the above, the Hon’ble Supreme Court in the judgment dated 27.04.2004 held in Civil Appeal No. 2699 of 2001 titled Modern School Vs. Union of India and others has conclusively decided that under sections 17(3), 18(4) read along with rules 172, 173, 175 and 177, the DoE has the authority to regulate the fee and other charges, with the objective of preventing profiteering and commercialization of education.

AND WHEREAS, it was also directed by the Hon’ble Supreme Court, that the DoE in the aforesaid matter titled Modern School Vs. Union of India and Others in paras 27 and 28 in case of private unaided schools situated on the land allotted by DDA at concessional rates that:

“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 High Court of Delhi vide its judgement dated 19.01.2016 in writ petition No. 4109/2013 in the matter of Justice for All versus Govt. of NCT of Delhi and Others, has reiterated the aforesaid directions of the Hon'ble Supreme Court and has directed the DoE to ensure compliance of terms, if any, in the letter of allotment regarding the increase of the fee by recognized unaided schools to whom land has been allotted by DDA/ land owning agencies.

AND WHEREAS, accordingly, the DoE vide order Nos. F.DE.-15(40)/PSB/2023/1964-1972 dated 01.03.2023 and F.DE.-15(40)/PSB/2023/2685-2692 dated 27.03.2023 for the academic session 2023-24, directing all the private unaided recognized schools, running on the land allotted by DDA/other land-owning agencies on concessional rates or otherwise, with the condition to seek prior approval of DoE for increase in fee, to submit their proposals, if any, for prior sanction, for increase in fee for the academic session **2023-24**.

AND WHEREAS, in pursuance to orders dated 01.03.2023 and 27.03.2023 of the DOE, the school submitted its proposal for fee increase for the academic session **2023-24**. Accordingly, the order dispenses the proposal for fee increase submitted by the school for the academic session **2023-24**.

AND WHEREAS, in order to examine the proposals submitted by the schools for fee increase for justifiability or not, the DoE has evaluated the fee increase proposals of the School carefully in accordance with the provisions of the DSEAR, 1973, and other Orders/ Circulars issued from time to time by the DoE.

AND WHEREAS, in the process of examination of fee increase proposal filed by the aforesaid School for the academic session 2023-24, necessary records and explanations were also called from the school through email. Further, the school was also provided an opportunity of being heard on 16th October 2023 to present its justifications/ clarifications on fee increase proposal including audited financial statements and based on the discussion, school was further asked to submit necessary documents and clarification on various issues noted. During that hearing, the compliance of order no.F.DE.15(1072)/PSB/2022/10042-10046 dated 16.12.2022 issued for the academic session 2022-23 was also discussed and the school submission were taken on record.

AND WHEREAS, on receipt of clarification as well as documents uploaded on the web portal for the fee hike post personal hearing, the fee hike proposal was evaluated by DOE and the key suggestions noted for improvement by the school are hereunder:

A. Financial Suggestions for Improvement

1. Para 57 of Accounting Standard 15 (AS-15) 'Employee Benefits' issued by the Institute of Chartered Accountants of India states that *"An enterprise should determine the present value of defined benefit obligations and the fair value of any plan assets with sufficient regularity that the amounts recognized in the financial statements do not differ materially from the amounts that would be determined at the balance sheet date."* Further, Para 7.14 defines the Plan Assets as:
 - a. *Assets held by a long-term employee benefit fund; and*
 - b. *Qualifying insurance policies.*

Further, Para 60 of Guidance Note-21 'Accounting by Schools' (2005) issued by the Institute of Chartered Accountants of India states *"A defined benefit scheme is a scheme under which amounts to be paid as retirement benefits are determined usually by reference to employee's earnings and/or years of service"*.

An appropriate charge to the income and expenditure account for a year should be made through a provision for accruing liability. The accruing liability should be calculated according to actuarial valuation. However, if the school employs few employees say less than 50, it may calculate accrued liability by reference to any other rational method. The ensuing amount of provision for liability should then be invested in *"Plan Assets"* as per AS-15 issued by ICAI.

A review of the audited financial statements of FY 2022-23 revealed that the school recorded liability of INR 3,96,58,490 towards gratuity and INR 2,87,97,636 towards leave encashment as on 31.03.2023 in accordance with actuarial valuation report. Against the aforesaid provisions, the school had invested INR 2,04,64,943 towards gratuity with LIC and submitted the deposit receipts as investment proof against thereof.

It is reiterated that that gratuity and leave encashment are a statutory obligation that an employer is required to pay to its eligible employees upon their retirement or resignation. Further, Para 7.13 and Para 57 of the accounting standard-15 (employee benefits) clearly states that the school should determine the present value of defined benefit obligations and the fair value of any plan assets with sufficient regularity that the amounts recognized in the financial statements do not differ materially from the amounts that would be determined at the balance sheet date and the school should invest an equivalent amount in Plan assets as defined in AS-15.

Therefore, the amount invested by the school, totalling to INR 2,04,64,943, has been considered while determining the fund position of the school, with the direction to the school to invest the remaining amount in the plan asset within 30 days from the date of issue of the order. Also, the school has budgeted INR 85,20,000 as staff retirement benefit reserve for FY 2023-24 and the same has cannot be considered while evaluating fund position of the school.

2. Clause 7.24 of Duggal Committee report states *"school should be prohibited from discharging any of the functions, which rightly fall in the domain of the society out of the fees and other charges collected from the students; or where the parents are made to bear, even in part, the financial burden for the creation of facilities including building, on a land which had been given to the society at concessional rates for carrying out a philanthropic activity. One only wonders what is then the contribution of the society that professes to run the school"*.

Further, Clause No. 2 of the Public Notice dated 04.05.1997 states *"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"*. Also, Clause (vii) (c) of Order No. F.DE/15/Act/2K/243/K.K.KI 883-1982 dated 10.02.02005 issued by this Directorate states *"Capital expenditure cannot constitute a component of the financial fee structure."*

Additionally, Rule 177 of DSER, 1973 states *"Income derived by an unaided recognized school by way of fees shall be utilized 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 utilized 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 recognized 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.

Therefore, based on the above-mentioned provisions, the cost relating to land and construction of the school building should be borne by the society running the school and school funds, i.e., fees collected from the students should not be used for the purchase of land and construction of the school building. In this regard, it is also important to mention that society was allotted an

institutional land at very low cost compared to the price of commercial and as well as residential land of that nearby locality. The reason for allotment of land as such low cost was the society came up with the offer to do noble work in the field of education and run the school in Delhi on charity and on a "no profit and no loss" basis. In its offer the society also undertook to execute this work from its resources or by arranging funds through donations, subscriptions, or any other legal possible manner. Based on the noble grounds, the DoE had recommended to the land-owning agencies for allotment of land to society which would otherwise not be possible for the society to have such a prime land at this cost in such posh location.

Accordingly, if the DoE finds any deviation or non-compliance in any condition of land allotment letter, the society as well as the school are bound to comply and honour that immediately as per the direction of the DoE. Society cannot always claim the protection of Article 19(1)(g), 21 & 30 of the Constitution of India for non-interference by the DoE. Because the main source (i.e., land) which was required to establish and run the school was supported by DoE by recommending to land owning agency to allotment the land to the society. After considering the recommendation of the DoE, a clause was included in the land allotment letter of the school that the school shall not increase the fee without the prior sanction of the Director (Education) and shall follow the provisions of the Delhi School Education Act/Rules, 1973 and other instructions issued by the department from time to time.

The DoE in its Order No. F.DE.-15(200)/PSB/2021/3491-3495 dated 10.09.2021 issued for academic session 2019-20 and Order No. F.DE.-1 5(632)/PSB/2018/30532-30536 dated 14.12.2018 issued for academic session 2017- 18, noted that the school had utilized school funds of INR 3, 15,14,655 i.e., (INR 1,36,74,926 in FY 2014-15, INR 1,50,34,339 in FY 2015-16, INR 25,73,126 in FY 2016-17 and INR 2,32,264 in FY 2017-18) for addition to the school building, lift and playground. In the aforesaid order it was also noted that the above expenditure was incurred by the school without complying with the above mentioned provisions including Rule 177 of DSER, 1973. Accordingly, the school was directed to recover INR 3,15,14,655 from the society which is still pending for recovery.

It was also noted in the DoE Order No. F.DE.- I 5(200)/PSB/2021/3491-3495 dated 10.09.2021 issued to the school post evaluation of fee hike proposal for academic session 2019-20, that school had utilised school funds for procurement of various capital items such as computer & software, furniture and fixture, electrical equipment's, musical instruments, etc. for INR 1,21,51,239 i.e., (INR 59,04,157 in FY 2017-18 and INR 62,47,082 in FY 2018-19) without complying with the requirements of Rule 177 of DSER'1973 i.e., without deriving savings.

With respect the above finding the school submitted in its representation letter that *Rule 177 categorically permits capital expenditure to be incurred for development, expansion and construction of the school, out of fee received by the school. This is not to be incurred out of savings, but savings are to be arrived at after incurring such capital expenditure*".

The contention of the school is incorrect, as per Clause 2 of Public Notice dated 04.05.1997 and pronouncement of the Hon'ble High Court of Delhi in its judgement dated 30.10.1998 and Clause (vii) (c) of DoE Order No. F.DE/15/Act/2K/243/KKK./883-1982 dated 10.02.2005 and Rule 177 of DSER, 1973, cost relating to construction of school building should be borne by the society and school funds should not be used for same. Moreover, based on the information provided by the school, it was noted the school has been utilizing school funds for creation of assets of the society without complying with the above mentioned provisions.

The aforesaid irregularities were already stated to the school vide order no.F.DE.15(1072)/PSB/2022/10042-10046 dated 16.12.2022 issued for the academic session 2022-23 and it was directed the school to recover the aforesaid amounts from the society. Thus, the DoE in its Order No. F.DE.15(1072)/PSB/2022/10042-10046dated 16.12.2022 issued for the academic session 2022-23, the school was directed to recover of INR 4,36,65,894 i.e., (INR 3,15,14,655 plus INR 1,21,51,239) incurred by the school in contravention of above-mentioned provisions. During personal hearing, the school has submitted that it has recovered INR 89,54,559 from the society and has shown the same in the financial statements.

Accordingly, the total amount of INR 3,47,11,335 i.e., (3,15,14,655 plus INR 1,21,51,239 less INR 89,54,559) incurred by the school in contravention of above-mentioned provisions has been considered as funds available with the school while deriving the fund position of the school with the direction to the school to recover the same within 30 days from the date of issue of the order. Non-compliance with the above direction shall be viewed seriously in accordance with the provision of Section 24(4) of the DSEA, 1973 while evaluating the fee hike proposal for the subsequent academic session.

3. Clause 7.24 of Duggal Committee report states *"school should be prohibited from discharging any of the functions, which rightly fall in the domain of the society out of the fees and other charges collected from the students; or where the parents are made to bear, even in part, the financial burden for the creation of facilities including building, on a land which had been given to the society at concessional rates for carrying out a philanthropic activity. One only wonders what is then the contribution of the society that professes to run the school"*.

Further, Clause No. 2 of the Public Notice dated 04.05.1997 states *"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"*. Also, Clause (vii) (c) of Order No. F.DE/15/Act/2K/243/K.KK/ 883-1982 dated 10.02.02005 issued by this Directorate states *"Capital expenditure cannot constitute a component of the financial fee structure."*

Additionally, Rule 177 of DSER, 1973 states *"Income derived by an unaided recognized school by way of fees shall be utilized 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 utilized 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 recognized 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.*

Therefore, based on the above-mentioned provisions, the cost relating to land and construction of the school building should be borne by the society running the school and school funds, i.e., fees collected from the students should not be used for the purchase of land and construction of the school building.

The DoE Order No. F.DE.-15(200)/PSB/2021/3491-3495 dated 10.09.2021 issued to the school post evaluation of fee hike proposal for academic session 2019-20 and DoE Order No. F.DE.-15(632)/PSB/2018/30532-30536 dated 14.12.2018 issued to the school post evaluation of fee hike proposal for academic session 2017-18, it was noted that the school reported excessive repair and maintenance building expenditure of INR 7,48,39,658 during FY 2014-15 to FY 2018-19. From ledger account submitted by the school, it was noted that the school incurred the above expenditure on various items like purchase of Cement Sand, PVC Pipes, Tiles, TMT Bars, etc. in bulk quantities, which were not in the nature of repair, rather indicates towards expenditure of development nature on building. Even above expenditure was incurred without complying with the provisions of Rule 177 of DSER, 1973. Given the fact that the school has neither

implemented the recommendation of the 7th CPC nor invested an amount equivalent to its liability of retirement benefits in plan assets.

The school submitted in its representation that considering student safety and compliance of statutory requirements it needs to incur these revenue expenditures of INR 7,48,39,658. It helps in extending of lifespan of the building and improves overall learning environment. The amounts are presented in the income and expenditure account of the school as revenue expenditure and were duly audited by the school's auditor and considered them revenue expenditure without any qualification in their report. The items used for repairs will definitely tend to be similar as were used at the time of initial construction of the building. Moreover, there will be no increase in life of the assets just because of use of construction material used in the repairs thereof. The submission of the school has been taken on record and considered.

Further, vide order no.F.DE.15(1072)/PSB/2022/10042-10046 dated 16.12.2022 it was noted that the school incurred INR 1,03,94,971 in FY 2019-20, INR 18,62,822 in FY 2020- 21, INR 29,46,928 in FY 2021-22 on repair maintenance building. During the personal hearing, nature of these expenditures was discussed with the school and school was asked to submit the ledger account along with the supporting documents. Based on the documents submitted by the school, total expenditure of repair and maintenance in FY 2019-20 was INR 72,18,834 against the reported amount of INR 1,03,94,971 in the audited financial statements and for the remaining amount of INR 31,76,137 the school did not submit any information. Therefore, the school reported excess of INR 31,76,137 in its audited financial statements. Accordingly, the financial statements prepared and presented by the school not corresponded with the books of accounts maintained by the school. In view of the above, excess expenditure of INR 31,76,137 reported by the school in its audited financial statements was considered unauthorized with an intention to manipulate books of accounts and increase deficits in the Income and Expenditure accounts.

Accordingly, in view of the aforesaid provisions and subsequent submissions of the school, it is clear that the school has incurred expenditure of INR 31,76,137 i.e., (INR 7,80,15,795 less INR 7,48,39,658 without complying with above-mentioned provisions has been considered as funds available with the school while deriving the fund position with the direction to the school to recover the same from the society within 30 days from the date of issue of the order. Non-compliance with the above direction shall be viewed seriously in accordance with the provision of Section 24(4) of the DSEA, 1973 while evaluating the fee hike proposal for the subsequent academic session.

4. As per Clause (vii) (c) of Order No. F.DE/I 5/Act/2K/243/KKK/ 883- I982 dated 10.02.02005 issued by this Directorate states "*Capital expenditure cannot constitute a component of the financial fee structure.*"

Additionally, Rule 177 of DSER, 1973 states "*Income derived by an unaided recognized school by way of fees shall be utilized 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 utilized 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 recognized 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.

The DoE in its Order No. F.DE.15(1072)/PSB/2022/10042-10046 dated 16.12.2022 issued for the academic session 2022-23, noted that the school has incurred additional expenditure of INR 19,60,008 for purchase of vehicle out of school funds in FY 2019-20 and without complying with the above-mentioned provisions and Rule 177 of DSER, 1973 given the fact that 'the school has yet to implement the recommendation of 7th CPC and invest an amount in plan assets for payment of retirement benefits i.e. gratuity and leave encashment. Therefore, directed to the school to recover the amount of INR 19,60,008 from the society, which is still pending.

Therefore, the amount of INR 19,60,008 incurred by the school for purchase of vehicle out of school funds has been considered as funds available with the school while deriving the fund position with the again direction to the school to recover the same from the society within 30 days from the date of issue of the order.

5. Section 13 (1) of the Right to Education Act, 2009 states *"no school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure"*. Further Section 13 (2) states *"Any school or person, if in contravention of the provisions of sub-section (1):*
- a. *receives capitation fee, shall be punishable with fine which may be extended to ten times the capitation fee charged.*
 - b. *subjects a child to screening procedures shall be punishable with a fine which may extend to twenty five thousand rupees for the first contravention and fifty thousand rupees for each subsequent contravention.*

Additionally, Section 2(b) of the Right to Education Act, 2009 states "capitation fee" means any kind of *donation or contribution or payment other than the fee notified by the school.*

Further, the Supreme Court in its Judgement dated 02.05.2016 in the matter of *"Modern 'Dental College and Research Centre Vs. State of Madhya Pradesh [Medical Council of India]"* held that education is a noble profession and emphasized that *"Every demand of capitation fee by educational institutions is unethical & illegal. It emphasized that commercialization and exploitation are not permissible in the education sector and institutions must run on a 'no-profit-no-loss' basis"*.

The Hon'ble Supreme Court categorically held that *"though education is now treated as an 'occupation' and, thus, has become a fundamental right guaranteed under Article 19(1) (g) of the Constitution, at the same time shackles are put in so far as this particular occupation is concerned, which is termed as noble. Therefore, profiteering and commercialization are not permitted, and no capitation fee can be charged. The admission of students has to be on merit and not at the whims and fancies of the educational institutions,"*

Further, the Hon'ble High Court in LPA 196/2004 in the matter of *'Rakesh Goyal Vs. Montfort School and Section 13(1) of RTE Act, 2009*, no school or person shall, while admitting a child, collect any Capitation fee/ Donation from the parents. Any school or person who contravenes this provision and receives capitation fee, shall be punishable with a fine which may extend to ten times the capitation fee charged.

In this regard, it is also important to mention here that the school has been allotted land by the land-owning agency only on the recommendation of the DoE. Therefore, the school is bound to follow all the instruction/direction issued by the DoE under the obligation of land allotment letter.

Additionally, Rule 50 of DSER, 1973 states *"the school is not run for profit to any individual, group or association of individual or any other person' and 'the managing committee observes the provisions of the Act and Rules made there under"*.

Based on the provisions mentioned above and the pronouncement of the Hon'ble Supreme Court and High Court. The term 'Capitation' is very wide and extensive, and it cannot be restricted only to the amount/contribution received at the time of admission only but also includes any kind of

collection or donation other than the notified head of fees or collection of unwarranted fee or introduction of new head of fee in the fee structure whether at the time of the admission of the students or otherwise.

In this regard the Directorate vide *Order No. DE1/Act/Duggal.com/203/99/23033-23980 dated 15.12.1999* has already specified the head of fees that a recognized private school can collect from the students/parents. Accordingly, the School cannot introduce any new head of fee in its fee structure or collect any unwarranted fee from the students/ parents otherwise than the specified head of fees.

Therefore, any demand of capitation fee or introduction of the new head of fee in the fee structure other than the notified head of fees shall be considered as *commercialization of education*, which cannot be permitted at any cost.

The DoE in its Order No. F.DE.15(1072)/PSB/2022/10042-10046 dated 16.12.2022 issued for the academic session 2022-23 has reiterated that in evaluation of fee hike proposal for academic session 2019-20 and academic session 2017-18, it was noted that the school was collecting of INR 25,000 in the name of one-time miscellaneous charges at the time of admission from the students which was latterly merged with annual charges. This reflects the intention of school of profiteering and commercialization of education, which is in contravention of above-mentioned provisions. Accordingly, the school was directed not to collect this charge from the students with immediate effect.

The school submitted in its reply that "*collecting annual charges from students cannot be interpreted as profiteering and commercialization especially in light of the expenses incurred by the school on the general administration and administration of school, which are more than the collection against annual charges*"

The plea taken by the school in this regard is incorrect because the above direction was given to the school with respect to the collection of one-time charges from the students at the time of addition not for the collection of annual charges. It is important to mention here that initially, the school introduced illegal fee in its fee structure and when it was pointed out by the department the school had merged this with the annual charges which is not only illegal but also involvement of the school in profiteering and commercialization of the education. Therefore, the school is hereby directed to immediately stop collection of 'one-time charges' and 'student fund' merged the with annual charges from the students.

Section 27 of the DSEA, 1973 states that the manager of the school is responsible for smooth operations of the school and ensuring compliance with the provisions of DSEAR, 1973, including the direction of the High Court/Supreme Court and other directions/circulars issued by the DoE from time to time. As the manager and principal have been bestowed with the power to ensure the proper functioning of the school including admission process is transparently. They are jointly and severally responsible in their personal capacity for the levy and collection of the capitation fee and any other unauthorized fee. Therefore, non compliance by the school with this direction within the stipulated time frame shall be viewed seriously and necessary action against the school shall be initiated without providing any further opportunity to be heard.

6. The Hon'ble High Court of Delhi dated 19.01.2016 in WPC no 4109/2013 in the matter of *Justice for All vs. GNCT of Delhi and others* indicated that every recognized private unaided school to whom land was allotted by DDA shall not increase the rate of fees without the prior sanction of Directorate of Education. Accordingly, the directorate vide order No. F.DE.15(40)/PSB/2019/2698-2707 dated 27.03.2019, directed that all the private unaided recognized schools running on the land allotted by DDA/other Govt. agencies on concessional rates or otherwise, with the condition to seek prior approval of Director of Education for increase in fee, to submit their proposals, if any, for approval from the Director of Education for the academic session 2018-2019 and 2019-2020. Moreover, as per the directions of supreme court in *Modern school vs. Union of India & ORs.* (supra), a circular dated 16.04.2010 has been issued which is us under:

- a. It is reiterated that annual fee-hike is not mandatory.
- b. school shall not introduce any new head of account or collect any fee thereof other than those permitted. Fee/funds collected from the parents/students shall be utilized strictly in accordance with rules 176 and 177 of the Delhi School Education Rules, 1973.
- c. If any school has collected fee in excess of that determined as per the procedure prescribed here above, the school shall refund/adjust the same against subsequent installments of fee payable by students.

The DoE in its Order No. F.DE.15(1072)/PSB/2022/10042-10046 dated 16.12.2022 issued for the academic session 2022-23 stated that vide order No. F.DE.-15(200)/PSB/2021/3491-3495 dated 10.09.2021 issued to the school post evaluation of fee hike proposal for academic session 2019-20 it was noted that the school had collected increased fee from students of class KG in FY 2016-17, Class KG & 1st in FY 2017-18, Class KG to 2nd in FY 2018-19 and class KG to 3rd in FY 2019-20 without obtaining prior approval from the Director Education.

As the fee hike order of the school, has been rejected by the department, the school is hereby directed to calculate the excess fee collected from the student from FY 2016-17 to FY 2019-20 and immediately refund/adjusted the excess fee collected.

The submission of the school that there is no additional burden on the parents as they continue to pay what they were paying earlier is out of context and illegal. In the absence of the necessary information, the school is once again directed to compute the excess fee collected by it from the students and refund/ adjust the same against future dues from the students within 30 days from the date of the issue of the order. Non compliance with this direction shall be viewed seriously while evaluating the fee hike proposal of the subsequent year for initiating appropriate action against the school U/s 24(4) of the DSEA, 1973.

B. Other Suggestions for Improvement:

1. As per Clause 19 of Order No. F.DE/15(56)/ Act/2009/778 dated 11.02.2009 *"The tuition fee shall be so determined as to cover the standard cost of establishment including provisions/or DA, bonus, etc., and all terminal, benefits as also the expenditure of revenue nature concerning the curricular activities."*

Further clause 21 of the aforesaid order *"No annual charges shall be levied unless they are determined by the Managing Committee to cover all revenue expenditure, not included in the tuition fee and 'overheads and expenses on play-grounds, sports equipment, cultural and other co-curricular activities as distinct from the curricular activities of the school."*

And as per clause 22 of Order No. F.DE. /15(56)/ Act/2009/778 dated 11.02.2009 *"Earmarked levies will be calculated and collected on 'no-profit no loss' basis and spent only for the purpose for which they are being charged."*

As per Rule 176 of the DSER, 1973 *"Income derived from collections for specific purposes shall be spent only for such purpose."*

Further, sub-rule 3 of Rule 177 of DSER, 1973 provides *"Funds collected for specific purposes, like sports, co-curricular activities, subscriptions/or excursions or subscriptions/or magazines, and annual charges, by whatever name called, shall be spent solely for the exclusive benefit of the students of the concerned school and shall not be included in the savings referred to in sub-rule (2)."* And, Sub-rule 4 of the said rule states *"The collections referred to in sub-rule (3) shall be administered in the same manner as the monies standing to the credit of the Pupils Fund as administered."*

However, as per audited financial statements of FY 2019-20 to FY 21-22, it has been noted that the school charges earmarked levies in the form of Transport Fees, CBSE Exam Fees, Medical insurance without maintaining separate funds accounts for that. If the school generates surplus

from any of the earmarked levy, the same is used to meet other expenditure of the school while in case of deficit the school funds is used to meet earmarked expenditure of the school which is not correct.

The aforementioned Guidance Note-21 also lays down the concept of fund-based accounting for restricted funds, whereby upon incurrence of expenditure, the same is charged to the Income and Expenditure Account ('Restricted Funds' column) and a corresponding amount is transferred from the concerned restricted fund account to the credit of the Income and Expenditure Account ('Restricted Funds' column). However, the school has not been following fund-based accounting in accordance with the principles laid down by the aforesaid Guidance Note.

Based on the above provisions, the school is required to maintain a separate fund account depicting clearly the amount collected, amount utilised and balance amount for each earmarked levy collected from students. Unintentional surplus, if any, generated from earmarked levies has to be utilized or adjusted against earmarked fees collected from the users in the subsequent year. Further, the school should evaluate costs incurred against each earmarked levy and propose the revised fee structure for earmarked levies during subsequent proposal for enhancement of fees, ensuring that the proposed levies are calculated on a no-profit no-loss basis and not to include fees collected from all students as earmarked levies. Accordingly, the school is directed to comply with the above-mentioned provisions.

2. On review of the audited financial statement, it has been noted that the school has not prepared Fixed Asset Register (FAR). The fixed asset register normally includes basic details such as asset description, date, supplier name, invoice number, manufacturer's serial number, location, purchase cost, other costs incurred, depreciation, asset identification number, etc. to facilitate identification of assets and documenting complete details of assets at one place.

The DoE in its order No. F.DE.15(1072)/PSB/2022/10042-10046 dated 16.12.2022 issued for the academic session 2022-23 directed the school to prepare and submit the fixed assets register for verification. The same is not submitted by the school post personal hearing for verification. The school is directed to prepare and submit the fixed assets register and enclose the same with the compliance report for verification.

3. 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 the conditions specified in the land allotment letter require to provide 25% reservation for children belonging to a EWS category. Therefore, the school is directed to ensure admission in accordance with the aforesaid order. From the records provided by the school, the percentage of EWS has been calculated below:

Particulars	FY 2022-23
Total Students	3,225
EWS Students*	985
% of EWS students	31%

* includes non fee paying and EWS students

After detailed examination of all the material on record and considering the clarification submitted by the School, it has been finally evaluated/ concluded that:

- i. The total funds available with the school for FY 2023-24 amounting to INR **24,46,50,979** out of which estimated expenditures (i.e., outflow) for the FY 2023-24 is to be INR **26,79,16,774**. This results in net deficit amounting to INR **2,32,65,795** for the FY 2023-24 after making all payments. The details are as follows:

Particulars	Amount (in INR)
Cash and Bank balances as on 31.03.23 as per Audited Financial Statements	1,49,95,038
Investments as on 31.03.23 as per Audited Financial Statements	4,22,35,717

Liquid Funds as on 31.03.2023	5,72,30,755
Add: Amount recoverable from Society for Construction of building and incurring capital expenditure (Refer Financial Suggestion No. 2)	3,47,11,335
Add: Amount recoverable from Society for incurring expenditure of development nature of building out of school funds (Refer Financial Suggestion No. 3)	31,76,137
Add: Amount recoverable from Society for purchase of vehicle (Refer Financial Suggestion No. 4)	19,60,008
Add: Fees for FY 2022-23 as per Audited Financial Statements (Refer Note 1)	18,95,91,609
Add: Other Income for FY 2022-23 as per Audited Financial Statements (Refer Note 1)	32,25,171
Total Available Funds for FY 2023-24	28,98,95,015
Less: FDR in the joint name of Manager, School and Dy. Director of Education as on 31.03.2023 (Refer Note 2 Below)	31,86,467
Less: Development Fund as on 31.03.2023 as per Audited Financial statements of FY 2022-23 (amount available in bank account and FDRs separately maintained against the development fund)	2,15,92,626
Less: Depreciation reserve fund (Refer Note 3 below)	-
Less: Amount deposited with LIC in plan assets for Gratuity and leave encashment liabilities (Refer Financial Suggestion No. 1)	2,04,64,943
Net Available Funds for FY 2023-24 (A)	24,46,50,979
Less: Budgeted expenses for the session 2023-24 (Refer Note 4 below)	23,83,65,000
Less: Impact of 7 th CPC on salaries in FY 2023-24	2,95,51,774
Total Estimated Expenditure for FY 2023-24 (B)	26,79,16,774
Net Deficit (A-B)	2,32,65,795

Note 1: All the fee and other income as per financial statements for the FY 2022-23 has been considered with the assumption that the amount received in FY 2022-23 will at least accrue during FY 2023-24.

Note 2: The details of fixed deposit held by the school as per the audited financial statements of FY is provided below:

Particulars	Amount (in INR)	Remarks
FDR in the joint name of DoE and the Manager, School	27,66,360	FDR in the joint name of Manager, School and the Dy. Director of Education (District) hence, the same has been deducted while calculating the fund position of the school.
FDR in the joint name of Secretary, CBSE and the Manager, School	4,20,107	FDR in the joint name of Manager, School and the Secretary, CBSE hence, the same has been deducted while calculating the fund position of the school.
Towards Gratuity Provision	29,04,444	Refer financial suggestion no. 1
FDR against Development fund	1,56,79,863	Considered above.
Total	4,22,35,717	

Note 3: As per the Duggal Committee report, there are four categories of fees that can be charged by a private unaided school. The first category of fee comprised of "Registration fee and all one Time Charges" levied at the time of admissions such as admission charges and caution money. The second category of fee comprises 'Tuition Fee' which is to be fixed to cover the standard cost of the establishment and to cover the 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 fourth category consist of all 'Earmarked Levies' for the services rendered by the school and 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. I 5/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.

The purpose of each head of the fee has already been defined and it is nowhere defined the usage of development fee or any other head of fee for investments against depreciation reserve fund. Further, Clause 7 of order No. DE.15/Act/Duggal.com/203/99/23033-23980 dated 15.12.1999 and clause 14 of the order no F.DE./1 5(56)/Act/2009/778 dated 11.02.2009, "*development fee, not exceeding 15% of the total annual tuition fee 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 a Depreciation Reserve Fund, equivalent to the depreciation charged in the revenue accounts and the collection under this head along with and income generated from the investment made out of this fund will be kept in a separately maintained Development Fund Account*". Thus, the above direction provides for:

- Not to charge development fee for more than 15% of tuition fee.
- Development fee will be used for purchase, upgradation and replacement of furniture, fixtures, and equipment.
- I
- Development fee will be treated as capital receipts.
- Depreciation reserve fund is to be maintained.

Thus, the creation of the depreciation reserve fund is a pre-condition for charging of development fee, as per above provisions and the decision of Hon'ble Supreme Court in the case of Modern School Vs Union of India & Ors.: 2004(5) SCC 583. Even the Clause 7 of the above direction does not require to maintain any investments against depreciation reserve fund. Also, as per para 99 of Guidance Note-21 'Accounting by School' issued by the Institute of Chartered Accountants of India states "*where the fund is meant for meeting capital expenditure, upon incurrance 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.*"

Accordingly, the depreciation reserve (that is to be created equivalent to the depreciation charged in the revenue account) is mere of an accounting head for the appropriate accounting treatment of depreciation in the books of account of the school in accordance with Guidance Note -21 issued by the Institute of Chartered Accountants of India. Thus, there is no financial impact of depreciation reserve on the fund position of the school. Accordingly, the depreciation reserve fund as reported by the school in its audited financial statements for the FY 2022-23 has not been considered while deriving the fund position of the school.

Note 4: All budgeted expenditure proposed by the school has been considered while deriving the fund position of the school except the following.

Head of Expenditure	2023-24 (in INR)	(in INR)	Amount disallowed (in INR)	Remarks
Staff retirement Benefits reserve	85,20,000		85,20,000	Refer financial suggestion for improvement no. 1
Salary Arrear (7th CPC)	25,01,73,674		25,01,73,674	Considered separately. Refer note 5 below
Staff workshop	22,24,000		5,52,132	Restricted to 110% of expenditure

Newspaper & periodical Expenses	10,43,000	1,65,053	incurred in FY 2021-22.
Rain water harvesting pit	27,95,000	7,67,217	
Depreciation	1,15,10,000	1,15,10,000	Depreciation being non-cash expenditure, has not been considered in the calculation of funds availability position of the school.
CBSE Registration	14,30,000	14,30,000	Neither Income nor expense has been considered on the assumption that earmarked levies are collected on no profit no loss basis
EWS Expenses	6,34,000	6,34,000	
Total	27,83,29,674	27,37,52,076	

Note 5: In accordance with Section 10(1) of Delhi School Education Act 1973, scales of pay and allowance, medical facilities, pension gratuity, provident fund, and other prescribed benefits of the employees of a recognized private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority.

Further, Directorate of Education has adopted the Central Civil Serviced (Revised Pay) Rules, 2016 vide Circular No 30-3(17)/(12)/VII pay Comm./2016/11006-11016 dated 19.08.2016 and No. 30-3(17)/(12)/VII pay Comm./Coord./2016/12659-12689 dated 14.10.2016 for employees of Government Schools.

Further, in exercise of the powers conferred under clause (xviii) of Rule 50 of the Delhi School Education Rules, 1973, vide Competent Authority order No DE.15 (318)/PDB/2016/18117, dated 25.08.2017, the managing committees of all Private unaided Recognized Schools have already been directed to implement central Civil Services (Revised Pay) Rule, 2016 in respect of the regular employees of the corresponding status with effect from 01.01.2016 (for the purpose of pay fixation and arrears). Further, guidelines/detailed instructions for implementation of 7th CPC recommendations in Private Un-aided Recognized Schools of Delhi has been issued vide DOE order dated 17.10.2017.

The school was allowed 7th CPC salary arrears upto 31st March 2023 in Directorate order No. F.DE.15(1072)/PSB/2022/10042-10046 dated 16.12.2022 issued for the academic session 2022-23. Also, school has submitted that in the year 2023-24, the impact of 7th CPC would be INR 2,95,51,774. As stated above, the school has been allowed 7th CPC arrears in each previous orders issued by the directorate and it would not be inappropriate if whole amount of arrears is allowed to the school again. Based on facts produced before and the considering the financial implication on parents and the teachers' salaries, the impact of 7th CPC on salary payments for FY 2023-24 has been dealt in the order. The school is also directed to ensure to disclose its full liability for 7th CPC arrears in the audited financial statements and no impact of salary arrears will be allowed unless the same is disclosed/presented as liability of the school in the financial statements duly audited by the independent auditor.

- ii. In view of the above examination, it is evident that the school does not have adequate funds for meeting all the operational expenditure for the academic session 2023-24. 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 the provisions of DSEA, 1973, DSER, 1973, guidelines, orders and circulars issued from time to time by this Directorate, the proposal of the school for the session 2023-24 have been evaluated and certain financial suggestions have been identified

(appropriate financial impact has been taken on the fund position of the school) and certain procedural suggestions which were also noted (appropriate instruction against which have been given in the order) that the sufficient funds are not available with the school to carry out its operations for the academic session 2023-24.

AND WHEREAS, while evaluating the fee hike proposal, department considers that how much liquid funds would require the school for a particular session considering the budgeted expenditures for smooth operation without compromising with the quality of education. Thus, while deriving the fund position of the school all legitimate expenditures revenue as well as capital in accordance with the provisions DESAR, 1973 and pronouncement of Courts judgment have been considered. Therefore, balance of the other current assets other and current liabilities has not been considered. Because it is clear that the current assets, loans and advances and current liabilities are cyclic in nature and the same have already been considered in the form of budgeted income and expenditure of the school in the earlier years. Thus, current assets, loans and advances and current liabilities will always reflect in the financial statements at the end of the financial year.

AND WHEREAS, it is noticed that the school has utilized INR 3,98,47,480 (INR 3,47,11,335 plus INR 31,76,137 plus INR 19,60,008) in contravention of the provisions of DSEAR, 1973 and other orders issued by the departments from time to time. Therefore, the school is directed to recover the aforesaid amount from the society. The receipts along with copy of bank statements showing receipt of the above-mentioned amount should be submitted with DoE, in compliance of the same within 30 days from the date of issue of the order. Non-compliance with this direction shall be viewed seriously as per the provision of the DSEA, 1973 and the DSER, 1973 without providing any further opportunity of being heard.

AND WHEREAS, the fee proposal of the school along with relevant materials were put before the Director of Education for consideration and who after considering all the material on the record, and after considering the provisions of section 17(3), 18(5), 24(1) of the DSEA, 1973 read with Rules 172, 173, 175 and 177 of the DSER, 1973 has found that sufficient funds are not available with the school for meeting financial implication for the academic session 2023-24. Keeping this in view, and exercising the powers conferred under Rule 43 of DSER, 1973, the Director (Education) has accepted the proposal submitted by the school and allowed an increase in fee **by 12% to be effective from 01 April 2023.**

AND WHEREAS, considering the financial situation and existing deficiencies and keeping in view that salary and other employee's benefits can be paid to the teachers and staff smoothly, the fee hike is allowed to the school with the suggestions for improvement. Further, school is hereby directed that the additional income received on account of increase fee should be utilized at first instance only for payment of salary and salary arrears and submit the compliance report within 30 days from the date of issue of the order.

AND WHEREAS, the act of the school of charging unwarranted free or any other amount/fee under head other than the prescribed head of fee and accumulation of surplus fund thereof tantamount to profiteering and commercialization of education as well as charging of capitation fee in other form and thus, school should ensure to charge fee only under the prescribed heads and utilized the fees collected for the defined purposes in accordance with the provisions of the DSEA, 1973 and the DSER, 1973.

AND WHEREAS, the school is directed, henceforth to take necessary corrective steps on the financial and other suggestion noted during the above evaluation process and submit the compliance report within 30 days from the date of issue of the order to the D.D.E (PSB).

Accordingly, it is hereby conveyed that the proposal for fee hike of **Bal Bhavan Public School (School ID-1002277), Pocket-B, Mayur Vihar, Phase-II, New Delhi-110091** filed by the school in response to the order Nos. F.DE.-15(40)/PSB/2023/1964-1972 dated 01.03.2023 and F.DE.-15(40)/PSB/2023/2685-2692 dated 27.03.2023 for the academic session 2023-24, is accepted by the Director (Education) with the above conclusion and suggestions and the school is allowed to increase the fee by **12% for session 2023-24 to be effective from 01.04.2023.**

Further, the management of said School is hereby directed under section 24(3) of DSEA, 1973 and the provisions of DSER, 1973, to comply with the following directions:

1. To increase the fee only by the prescribed percentage from the specified date i.e., 01.04.2023.
2. To ensure payment of salary is made in accordance with the provision of Section 10 (1) of the DSEA, 1973. Further, the scarcity of funds cannot be the reason for non-payment of salary and other benefits admissible to the teachers/ staffs in accordance with section 10 (1) of the DSEA, 1973. Therefore, the Society running the school must ensure payment to teachers/ staffs accordingly.
3. 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. Further, the management of said School is hereby directed under section 24(3) of DSEA, 1973 to comply with the following directions:

Non-compliance of the order or any direction herein shall be viewed seriously and will be dealt with in accordance with the provisions of section 24(4) of Delhi School Education Act, 1973 and Delhi School Education Rules, 1973.

This is issued with the prior approval of the Competent Authority.



(JAI PARKASH)
Dy. Director of Education
(Private School Branch)
Directorate of Education, GNCT of Delhi

To:
The Manager/ HoS
Bal Bhavan Public School
School ID-1002277
Pocket B, Mayur Vihar, Phase II,
Delhi - 110091

No. F.DE.15(1632)/PSB/2023/9665-9669

Dated: 24/11/23

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. DDE concerned
4. In-charge (I.T Cell) with the request to upload on the website of this Directorate.
5. Guard file.



(JAI PARKASH)
Dy. Director of Education
(Private School Branch)
Directorate of Education, GNCT of Delhi