



2024 : DHC : 899



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 23.01.2024
Pronounced on: 07.02.2024

+ W.P.(C) 8794/2018

BLUEBELLS SCHOOL INTERNATIONAL KAILASH

.... Petitioner

Through: Mr. Kamal Gupta, Mr. Sparsh Aggarwal, Ms. Kriti Gupta and Mr. Manish Vashist, Advocates

versus

DIRECTORATE OF EDUCATION

.... Respondent

Through: Mr. Santosh Kumar Tripathi, Standing Counsel (Civil) GNCTD for DoE with Mr. Utkarsh Singh, Adv.
Mr. Khagesh B. Jha & Ms. Shikha Sharma Bagga, Advocates for impleader

+ W.P.(C) 6419/2019

LILAWATI VIDYA MANDIR SR. SECONDARY SCHOOL

..... Petitioner

Through: Mr. Kamal Gupta, Mr. Sparsh Aggarwal, Ms. Kriti Gupta and Mr. Manish Vashist, Advocates

versus

DIRECTORATE OF EDUCATION

.... Respondent

Through: Mr. Santosh Kumar Tripathi, Standing Counsel (Civil) GNCTD for DoE with Mr. Utkarsh Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

07.02.2024

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WP (C) 8794/2018

1. The petitioner Bluebells International School is a private unaided recognised school, established in 1957. Though the school has been constructed on land leased from the Government, there is no condition, either in the allotment letter allotting the land to the petitioner or in the lease deed whereunder the land was leased, requiring the petitioner to obtain prior permission from the Directorate of Education (DoE) before increasing its fee. The present writ petition asserts that the only liability of the petitioner, in that regard, is the requirement of intimating its fee structure to the DoE, as required by Section 17(3)¹ of the Delhi School Education Act, 1973 (“the DSE Act”).

2. On 19 January 2016, a Division Bench of this Court held, in *Justice For All v. GNCTD*², that the DoE was required to ensure that all unaided recognised schools which had been allotted land by the Government or municipal bodies with a clause, in the letter of allotment or in the lease deed, requiring the school to obtain prior approval of the DoE before enhancing its fees (“the land clause”), duly adhered to this requirement and did not increase their fees

¹ 17. **Fees and other charges. –**

(1) No aided school shall levy any fee or collect any other charge or receive any other payment except those specified by the Director.

(2) Every aided school having different rates of fees or other charges or different funds shall obtain prior approval of the prescribed authority before levying such fees or collecting such charges or creating such funds.

(3) The manager of every recognised school shall, before the commencement of each academic session, file with the Director a full statement of the fees to be levied by such school during the ensuing academic session, and except with the prior approval of the Director, no such school shall charge, during that academic session, any fee in excess of the fee specified by its manager in the said statement.

² 227 (2016) DLT 354 (DB)



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without the prior approval of the DoE. This judgment was circulated by the DoE to the heads of all schools, and the managers of Private unaided recognised schools, *vide* Order dated 19 February 2016. On 16 April 2016, the DoE issued another Order, requiring all schools, allotted land by land owning agencies with the land clause, to submit their proposals for increase in tuition fee for the 2016-2017 academic session, if any, online through the website of the DoE, so as to obtain prior sanction before increasing the fee. This was to be done, at the latest, by 31 May 2016. The petitioner points out that this requirement did not apply to it, as it was not allotted land with any attendant “land clause”.

3. The mandate of schools located on land which was allotted or leased with an attendant “land clause” having to take prior approval from the DoE before hiking their fees was reiterated by this Court in order dated 31 May 2016 in *Action Committee Unaided Recognised Private Schools v. Directorate of Education*³. Citing the said decision, the DoE issued Order dated 3 June 2016, extending the time for filing online proposals for fee hike by unaided recognised schools till 31 July 2016.

4. On 19 November 2015, the 7th Central Pay Commission (the 7th CPC) submitted its recommendations regarding revision of pay scales of employees of the government and public sectors. The revision was made retrospectively applicable w.e.f. 1 January 2016. The recommendations were accepted by the Central Government.



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Consequent thereto, the Central Civil Services (Revised Pay) Rules, 2016 [“the CCS (Revised Pay) Rules] were notified on 25 July 2016.

5. By Circular dated 19 August 2016, the DoE adopted the CCS (Revised Pay) Rules and, thereby, implemented the 7th CPC recommendations in respect of its employees.

6. This was followed, however, by a further Circular dated 6 January 2017, directing all private unaided schools not to hold any meeting of their Managing Committees for increase in fee for the 2017-2018 academic session pending any decision by the competent authority, as the decision regarding the manner of implementation of the 7th CPC recommendations in private unaided recognised schools was still under consideration.

7. A further clarificatory circular was issued by the DoE on 27 March 2017, clarifying that managing committees of unaided schools could take decisions regarding revision of fees in normal courses as per established procedure, but were restrained from taking any such decision for revision of fees consequent to implementation of the 7th CPC recommendations. It was further reiterated that schools which were located on land provided by the DDA/government with an attendant “land clause” – which does not apply to the present petitioner – would not be permitted to increase their fee without prior sanction of the DoE.



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8. The Circulars dated 6 January 2017 and 27 March 2017 were challenged by the Action Committee Unaided Recognised Private Schools before this Court by way of W.P.(C) 2637/2017 (*Action Committee Unaided Recognised Private Schools v. DoE*). By an interim order dated 30 March 2017, a learned Single Judge of this Court opined that, *prima facie*, “the unfettered right of the private unaided schools to notify the fee structure after taking into account the major expenditure to be incurred in a year before commencement of the academic session cannot be abridged or whittled down only on the ground that the decision with regard to a major head of expenditure, namely, the increase in salary due to the Seventh Pay Commission, shall be worked out by the Directorate of Education in a few days after commencement of the academic session.” This Court, therefore, permitted the petitioner-schools before it to intimate the revised fee schedule to the DoE within two weeks from the date of implementation of the 7th CPC, in the event the DoE directed implementation of the 7th CPC in private unaided schools, and that the said intimation would be treated as having been filed on 30 March 2017.

9. On 31 March 2017, the petitioner-School, through its statutorily constituted Managing Committee, which included nominees of the DoE, decided the fee structure to be charged by it during the year 2017-2018. The DoE nominees did not object to the proposed fee structure, which was duly intimated to the DoE, as required by Section 17(3) of the DSE Act.



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10. It was only on 17 October 2017 that the DoE came out with an order, containing the “Guidelines for implementation of the 7th Central Pay Commission’s Recommendations in Private Unaided Recognised Schools of Delhi”. In respect of schools which did not have any “land clause” in the documents allotting land for their establishment, the Order stipulated thus:

“1. General Instruction for ALL Private Unaided Recognized Schools, irrespective of land status: –

(a) A fee hike is not mandatory for recognized unaided schools in the NCT of Delhi.

(b) All schools must, first of all, explore the possibility of utilizing the existing reserves to meet any shortfall in payment of salaries and allowances, as a consequence of increase in the salaries and allowances of employees.

(c) The schools should not consider the increase in fee to be the only source of augmenting their revenue. They should also venture upon other permissible measures for increasing revenue receipts.

(d) Interest on deposits made as a condition precedent to the recognition of the schools and as pledged in favour of the Government should also be utilized for payment of arrears in the present case.

(f) Fees/funds collected from the parents/students shall be utilized strictly in accordance with rules 176 and 177 of the Delhi School Education Rules, 1973. No amount whatsoever shall be transferred from the recognized unaided School fund of a school to the society or the trust or any other institution.

(g) The tuition fee shall be so determined as to cover the standard cost of establishment including provisions for D.A., bonus, etc., and all terminal benefits as also the expenditure of revenue nature concerning the curricular



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activities. No fees in excess of the amount so determined or determinable shall be charged from the students/parents.

(i) Every recognized unaided school covered by the Act, shall maintain the accounts on the principles of account applicable to non-business organisation/not-for-profit organization as per Generally Accepted Accounting Principles (GAAP). Such schools shall prepare their financial statement consisting of Balance Sheet, Profit & Loss Account and Receipt and Payment Account every year as per proforma prescribed by the department vide order No. F.DE-15/ACT-I/WPC-4109/Part/13/7905-7913 dated 16/04/2016.

(j) Every recognized unaided school covered by the act, shall file a statement of fees latest by 31st March every year before the ensuing session under section 17(3) of the Act as per proforma prescribed by the department vide order no. F/DE/PSB/2017/16604 dated 03/07/2017.

(k) Though, increase in tuition fee is not the only option to implement the recommendations of 7th Central Pay Commission's Recommendations, nevertheless, if the Managing Committee of the School after exploring exhausting all the possibilities as per the conditions mentioned above feels it necessary to increase the tuition fee, the managing committee of the school shall hold a meeting with the group of teachers and parents which would include at least one parent representative from each section of the school and will present the detailed budget of the school, financial statements of the previous year, requirements of funds for implementation of 7th Central Pay Commission's Recommendations, availability of cash/reserve fund/savings with the School Fund account etc as well as present the proposal for fee hike, if any with justification and with all the documents mentioned in Annexure A. Inputs would be solicited from the parents and teachers' representatives. Either the managing committee can take their suggestions into consideration and revise their proposal, or record their dissent. Director of Education's nominee (DE's Nominee) to remain present in the meeting. The minutes and attendance sheet of this meeting, countersigned by DE's Nominee including details of parents invited for meeting along with photographs of



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the meetings shall be submitted by the School to the DDE (District) concerned.

It is hereby clarified that presentation of the proposal for increase in fee before the representatives of the parents comprising of each section shall not be construed as seeking the approval of the parents representatives in view of the judgment dated 12/08/2011 of Hon'ble High court in WPC 7777/2009 titled as Delhi Abhibhavak Mahasangh Vs. GNCTD.

(1) For the purpose of increase in tuition fee w.e.f. 01/01/2016 in terms of mid-session increase, the approval of the undersigned is not required under sub-section (3) of section 17 of DSEAR, 1973 in light of the order dated 30.03.2017 of Hon'ble High Court in WPC 2637/17 in the matter Action Committee Unaided Recognized Schools Vs Directorate of Education.

The relevant part of Hon'ble High Court Order is as under:-

“Keeping in view the importance and relevance of 31st March, 2017 in section 17(3) if the Act and to balance the equities, this Court directs that in the event the Seventh Pay Commission is directed to be implemented in private unaided schools by the respondent, then petitioner schools would have an option within two weeks from the date of implementation of the Seventh Pay Commission to intimate the revised fee schedule and the same shall be taken as having been filed on 30th March 2017.”

3. Procedure for Increase in Tuition Fees

I. **For Schools running either on Private Land or on DDA/L&DO allotted land NOT having condition to seek prior sanction of Director (Education) before any fee hike.**

a. After complying with the instructions strictly mentioned at Para (1), if any school still feels it necessary to hike the tuition fee, it shall present its case along with detailed financial statements indicating income and expenditure of each account before the managing committee of the school including DE's Nominees.

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b. The school before placing the proposal of increase in tuition fee, shall ensure the compliance of section 18(4), Rule 172, 173, 174, 175, 176 and 177 and other relevant provisions of Delhi School Education Act and Rules, 1973 and guidelines issued by the department from time to time, various judicial pronouncements, and ratio laid down by Hon'ble Supreme Court in *Modern School Case*⁴ and Delhi High Court in the matter of *Delhi Abhibhavak Mahasangh Vs DoE*⁵ (WPC 7777/2009) as well.

e. The managing committee including DE's nominees shall evaluate the proposal of the school for increase in fee taking into consideration the availability of funds/reserves/cash in hand/bank balances/surplus. In case, DE's nominee disagrees with the proposal of increase in tuition fee or agrees to a lesser increase in tuition fee against the proposal on the basis of the relevant provisions of Delhi School Education Act and Rules, 1973, instructions/guidelines issued from time to time and judicial pronouncement in this regard, he/she shall record his/her dissent note in writing citing the provisions and other reasons justifying lesser increase in fee or no increase in fee as the case may be, in the minutes of the meeting and only then sign the minutes of the meeting. DE's Nominee of the school shall forward the minutes of the meeting to Dy. Director of District concerned for information and record in all cases. DE's Nominee shall submit to the DDE concerned a statement of Managing Committee meeting(s) attended by him.

f. The managing committee of the school shall file the full statement of fee under Section 17(3) of DSEAR, 1973 to the DDE concerned in the proforma as circulated by the department vide order dated 03/07/2017.

j. No other head of fee like annual fee, development fee, earmarked levies shall be increased by the school for implementation of 7th Pay Commission's Recommendations, as a corollary to increase in tuition fee."

⁴ *Modern School v. U.O.I., (2004) 5 SCC 583*

⁵ *Delhi Abhibhavak Mahasangh v GNCTD, 2011 SCC OnLine Del 3394*



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11. On 30 November 2017, the School submitted a copy of its fee structure, in compliance with the requirement of implementation of the recommendations of the 7th CPC. The fee structure had been approved by the School's Managing Committee, which included nominees of the DoE. It was also stated that the nominees of the DoE did not raise any objection to the proposed fee structure, which was unanimously approved. As a school which was not subject to any "land clause", the petitioner, asserts that the writ petition was only required to intimate the DoE of its fee structure under Section 17(3) of the DSE Act, which was thus done.

12. On 13 April 2018, the DoE issued another Order, withdrawing the Order dated 17 October 2017 in respect of schools operating on land to which the "land clause" applied. The Order dated 13 April 2018 did not, therefore, apply to the petitioner, in respect of which the earlier Order dated 17 October 2017 continued to operate.

13. Parents of some of the students in the petitioner-School addressed a complaint dated 15 May 2018 to the School, alleging that the School had illegally increased its fee and demanded arrears without prior approval of the DoE, as required by the Order dated 13 April 2018 issued by the DoE. In the circumstances, the complaint sought, from the School, either an order from the DoE authorising increasing of fees and collection of arrears pursuant to the requirement of implementation of the 7th CPC recommendations or a rollback of the fee hike, discontinuation of collection of arrears and refund of the arrears already collected. The complaint was forwarded by the



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Deputy DoE to the School on the same day, i.e. 15 May 2018, seeking a response within three days.

14. The School, in its response dated 17 May 2018, pointed out that it was not subject to any “land clause” and had only increased its tuition fee, with arrears payable in three instalments, and that the increase in fee was in accordance with the DoE Order dated 17 October 2017.

15. The DoE issued Order dated 25 May 2018, ordering the School to immediately revert back the enhanced fees for the academic session 2018-2019 and charge fees in accordance with the quantum which was being charged during 2017-2018, as (i) no approval had been granted by the DoE for any increase in fees by the School pursuant to the 7th CPC and (ii) it appeared, *prima facie*, that the increase in fees by the School was on the higher side, and had to be examined in detail by the DoE.

16. The School responded on 13 June 2018, submitting that the revised fees charged by it during 2017-2018 were in accordance with the DoE Order dated 17 October 2017 and that, insofar as the 2018-2019 academic year was concerned, the Managing Committee of the school, in its meeting dated 13 March 2018, made a modest enhancement of fee by 10% to meet the financial liabilities in the 2018-2019 academic year towards increment, DA, consequential statutory liabilities and inflation. It was further pointed out that the proposed fee schedule for 2018-2019 was immediately forwarded to the DoE and that the parents were duly informed on 4 April 2018. As



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a school which was not situated on land to which any “land clause” applied, it was submitted that there was no requirement for the School to obtain prior approval of the DoE before increasing its fees to meet the financial implications of implementation of the 7th CPC recommendations.

17. Subsequently, vide letter dated 11 June 2018, the DoE sought certain documents from the school, which were provided on 15 June 2018. Thereafter, the School was informed vide letter dated 11 July 2018 of the DoE that a committee had been constituted to inspect the School, and that the inspection would be conducted on 17 July 2018. The inspection was duly conducted and all documents as sought were provided by the School to the Committee. No report of the inspection was ever supplied to the school.

18. The DoE, thereafter, required the school to provide for the documents, vide its letter dated 23 July 2018. Some of the said documents were provided on 26 July 2018, and the remaining were provided on 1 August 2018, along with the representation dated 30 July 2018.

19. On 1 August 2018, the following Order came to be passed by the DOE:

“ORDER

WHEREAS, Blue Bells School International, Kailash, New Delhi is a Private Recognized School functioning under Directorate of Education, GNCT of Delhi and is required to function in accordance with the provisions as contained under Delhi School Education Act, 1973 and Rules made there under and also to

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follow the lawful instruction as issued by Directorate of Education from time to time.

AND WHEREAS, a complaint was received, from the office of the Dy. Chief Minister, Delhi, filed by parents of the students studying in Blue Bells School International, Kailash, New Delhi, especially in relation to the unauthorized fee hike and arrears on account of implementation of 7th CPC recommendations demanded by the school.

AND WHEREAS, the said complaint was forwarded to the school for their comments. On perusal of documents submitted & the reasons given by the school, regarding their fee hike under Section 17(3), it was observed that an opportunity of being heard may be awarded to the School. Accordingly, Principal of the said school was heard on 17.07.18 at the time of inspection of the said school.

AND WHEREAS, certain points have emerged during the analysis of the submission made by the school viz. the Manager of the school stated that the school is on DDA Land without imposing the condition for taking prior approval of Director of Education before hike in fees.

AND WHEREAS, the Chairman/Manager of the School was directed to furnish/produce some relevant documents/information to justify their claim for fee hike. The Inspection Committee has given sufficient opportunity keeping in view of "Natural Justice" vide letter No. DDE/SE/2018-2019/1675 dated 11/07/2018 and further vide letter No. DDE/SE/2018-2019/224 dated 23/07/2018, but all in vain.

AND WHEREAS, the Director Education has already issued the guidelines for implementation of 7th CPC recommendations in Private Unaided Recognized School of Delhi, vide order No. DE15(318)/PSB/201619786 dated 17.10.2017 irrespective of school land status.

In pursuance of the said order a Committee under the Chairpersonship of Dy. Director of Education (South-East) consisting of DDE (Zone-25), ADE(SE) and Account Officer (SE) has examined the fee statement of the school under Section 17(3) of DSEA, 1973 and observed as under-

1. As per clause 14 of order no.F.DE /15(56)/Act/2009/778 dated 11.02.2009, development fee, not exceeding 15% of the total annual tuition fees may be charged for supplementing the resources for purchase, upgradation and replacement of furniture,

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fixture and equipment. However, as per audited financial statements for FY 2014-15, 2015-16 and 2016-17 and its comparative analysis, it is noted that the school is utilizing the development fee for in contravention of aforesaid clause 14. The details of mis-utilization of development fund are as follows:

(Figures in Rs.)

Particulars	2014 -15	20 15- 16	2016-17
Repairs of Furniture and fixtures	5,45,534	1,54,408	3,20,944
Building Repairs and Maintenance	16,38,039	73,60,715	13,05,773
Watch and Wards	10,15,196	-	-
Electrical Goods and Repairs	3,73,319	1,98,010	1,38,161
Computer s Upkeep and Maintenance	13,71,179	1,91,318	20,45,844
Conservancy charges	32,95,365	-	-
Botanical and Science park activities	6,84,579	-	-
General Repairs and Maintenance	1,28,236	-	3,27,266
Multipurpose Hall Repair and replacement	-	-	1,40,545

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Language Lab Equipments Maintenance	-	-	1,24,033
Academic Extension project expenses	3,28,896	-	-
Playground expenses	18,799	-	-
Genset Repairs	1,93,778	-	2,49,519
Library Books	1,36,638	16,991	1,36,755
Sports Material	13,398	1,75,340	97,511
Total	97,42,956	80,96,782	48,86,351

2. As per Rule 180 of DSER, 1973 school is, inter-alia, required to submit copy of receipts and payments account duly audited by chartered accountant. However, school has failed to submit receipts and payments account for FY 2014-15, 2015-16 and 2016-17.

3. It is noted that during FY 2016-17 school has purchased double desks and single desks amounting to Rs.23,43,634 and Rs.20,56,553/- respectively. The details of opening balance of double desks and single desks are not disclosed in the financial statements and it appears these are merged in the block of furniture and fixtures of the school. Further, there were no disposal/sale of furniture and fixtures during the year. As per school submission, as on 15.07.2018 there are 1930 students only. Considering the student's strength of the school and the amount involved in purchase of desks, it is clear that school has not followed due propriety while utilizing school funds.

4. It is noted that the school is collecting transport fee from the students, but not shown in the financial statements of the school till FY 2015-16. As per Rule 175 of DSER, 1973 read with

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section 18(3) of DSEA, 1973 school is required to maintain its accounts so as to exhibit clearly the income accruing to school by way of fee, etc., and therefore, school is in contravention of aforesaid provisions of DSEA & R, 1973 and has been hiding its transport fee collections and related expenditures.

5. On comparison of audited financial statements for FY 2015-16 and 2016-17, differences in opening balance as on 01.04.2016 have been noted. The detail of differences are as follows:

Particulars	Balance as on 31.03.201 6	Balance as on 01.04.201 6
General Fund	- 25,60,181 .00	32,80,886. 00
Depreciation Reserve Fund	5,17,05,3 60.00	5,53,51,57 4.00
Vehicle Replacement Fund	-	8,05,000.0 0
Current Liabilities for services	1,956.00	6,081.00
Fixed assets – Gross value	7,01,40,5 59.00	7,90,46,66 1.00
Investments	1,30,39,6 38.00	1,41,24,74 8.00
Advances to staff	78,263.00	1,03,713.0 0
Advance to contractor	70,194.00	72,271.00
TDS Receivable	3,58,491. 00	4,20,117.0 0
Bank Balances	42,78,598 .00	43,01,460. 00
Interest on bank FDRs	11,87,249 .00	12,75,429. 00
Deposits (other than bank)	5,91,416. 00	6,96,416.0 0

6. School has proposed for expenditure on higher side in its statement of fee filed under 17(3).

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a) Expenditure on fixtures in 2016-17 is nil, estimated expenditure in 2017-18 is Rs.320944/- but proposed expenditure for 2018-19 is Rs.48,38,500/-.

b) Expenditure on purchase of computers in 2016-17 was Rs. 28,73,000/-, in 2017-18 is Rs.50,00,000/- and proposed expenditure for 2018-19 is Rs.10,00,000/-. Computer is a capital asset and lasts for many years. So much expenditure incurred every year not appears to be correct.

c) Expenditure on Teaching Aid during 2016-17 was Rs.1,70,582/- whereas proposed expenditure during 2018-19 is Rs.38,00,000/- and Rs.1,80,000/- for upgradation of Teaching Aid Equipments.

d) Overhead expenditure incurred during 2016-17 is Rs.3,48,76,134/- whereas proposed expenditure during 2018-19 is Rs.5,48,03,790/- which is an increase of 41.33% and as such the same doesn't not appear to be correct.

7. The total funds available for the year 2017-18 amounts to Rs.20,16,52,361/- out of which cash outflow in the year 2017-18 is estimated to be Rs.17,61,95,435. This results in surplus of funds amounting to Rs.2,54,56,926/-. The details are as follows:

Particulars	Amount (Rs.)
Cash and Bank balances as on 31.03.17 as per audited Financial Statements.	86,29,460
Add: Investments as on 31.03.17 as per audited Financial Statements	1,41,87,811
Less: Fixed Deposits for CBSE Reserve Fund	7,63,858
Available Funds	2,20,53,413
Add: Fees for 2016-17 as per audited Financial Statements (we have assumed that the amount received in 2016-17 will at least accrue in 2017-18).	17,80,12,041
Add: Other income for 2016-17 as per audited Financial Statements (we have assumed that the amount received in 2016-17 will at least accrue in	15,86,907

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2017-18)	
Estimated availability of funds for 2017-18	20,16,52,361
Less: Provisional expenses for the session 2017-18 as per receipts and payments account submitted by school vide its letter dated 15.06.2018	17,61,95,435
Net Surplus	2,54,56,926

In view of the above examination, it is evident that the school is having sufficient funds to meet the financial implications for the financial year 2017-18 after meeting its expenditure.

After taking into consideration all the facts and circumstances of the case, the school authority is hereby directed not to increase fee under any head of fee for session 2017-18.

NOW THEREFORE, I, Juhi Aggarawl, Deputy Director of Education in exercise of power conferred upon Director of Education under Section 17(3) and further delegated to the under signed vide order No. DE. 15(318)/PSB/2016/19742 dated 13/10/2017 of Director (Education) and keeping in view of the interest of the parents of school, the Manager/HOS Blue Bells school International, Kailash, New Delhi is hereby directed under Section 24(3) of DSEAR, 1973 to comply with the following directions:

- i. Not to increase any fee in pursuance to the proposed fee hike for the session 2017-18 on any account including implementation of 7th CPC and if the fees is already increased, the same shall be refunded to the parents or adjusted in the fee of subsequent months.
- ii. To communicate through its website, notice board and circular about rejection of fee increase proposed by the School.
- iii. The fee should be utilized as per letter and spirit of Rule 177 of the DSEAR, 1973 and the judgment of the Hon'ble Supreme Court in the case of **Modern School Vs Union of India (2004)**.
- iv. To utilise the fee collected from students should be in accordance with the provisions of Rule 177 of the

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DSER, 1973 and orders and directions issued by this Directorate from time to time.”

20. The present writ petition seeks a writ of *certiorari*, quashing the aforesaid order dated 1 August 2018.

Rival Submissions

21. I have heard Mr. Kamal Gupta, learned Counsel for the petitioner and Mr. Santosh Tripathi, learned Standing Counsel for the GNCTD/DoE, as well as Mr. Khagesh P. Jha, who was permitted to intervene on behalf of some of the parents, at length.

22. Mr. Gupta submits that the issue in controversy is covered by the decisions of this Court in *Ramjas School v. D.O.E.*⁶ and *Mahavir Senior Model School v. D.O.E.*⁷

23. In particular, Mr. Gupta advances the following submissions:

(i) The impugned order has been passed in clear violation of the principles of natural justice. No Show Cause Notice was ever issued to the School by the DoE, enumerating the proposed disallowances, and no opportunity to respond was, therefore, extended. In the circumstances, as the School was unaware of any adverse order in the offing, it could not even seek a Show Cause Notice or any opportunity of hearing.

⁶ 2020 SCC OnLine Del 1776

⁷ 2023 SCC OnLine Del 1587



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(ii) In its counter-affidavits to the present writ petition, the DoE has sought to contend that the law did not require it to extend any opportunity of personal hearing before passing the impugned order. This is contrary to the decisions in *Ramjas School* and *Mahabir Senior Model School*.

(iii) There is no allegation, against the petitioner, of commercialisation of education or of profiteering. In the absence of any such specific allegation, the DoE lacked the jurisdiction to interfere with the manner in which the petitioner had fixed its fee for the coming year. Any such intervention would infract Article 19(1)(g) of the Constitution of India.

(iii) Every school was entitled to maintain a reasonable surplus, and the existence of a surplus did not indicate profiteering or commercialisation.

(iv) The DoE did not possess the jurisdiction to examine the sufficiency of the surplus available with the school or assess whether, in view of the surplus, the school was justified in increasing its fees or not.

(v) Rule 190(6)⁸ of the Delhi School Education Rules, 1973 (“the DSE Rules”) had also been infracted, as the report of the

⁸ 190. Inspection and supervision of schools. –



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inspection of the School had not been provided to it. In the present case, the notice informing the School that it would be inspected was issued on 11 July 2018. The inspection took place on 17 July 2018. Thereafter, on 23 July 2018, the DoE wrote to the School, directing the School to forward information/documents, enumerated under 12 heads, for preparation of the inspection report. There was no further communication with the School prior to the issuance of the impugned order dated 1 August 2018, which, purportedly on the basis of the documents related to the School, arrived at the conclusion that it had a net surplus of ₹ 2,54,56,926/–, which was sufficient to meet the financial implications for the academic year 2017-2018. This procedure was clearly contrary to Rule 190 of the DSE Rules.

Besides, Mr. Gupta has also sought to submit that there are factual inaccuracies or errors in the manner in which the impugned order calculates the surplus available with the School. However, I do not deem it necessary to examine that aspect, for reasons which would presently become apparent.

24. In the context of the above submissions, Mr. Gupta places reliance on the following passages from the judgment of this Court in *Mahavir Senior Model School*:

“11. The present case brings forth a classic tussle between

(6) Every person, other than the Director, inspecting a school, shall, within 15 days from the completion of the inspection, submitted to the Director, the report as to the results of the inspection, and shall simultaneously send a copy of the report to the school concerned.

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autonomy of private schools in fixation of fees and the extent of governmental control thereon, an issue which routinely engages this Court. DoE asserted that notwithstanding the status of “private unaided school”, no fee can be fixed without their prior permission. The schools on the other hand, contended that they enjoy freedom in management of their affairs, which includes fixation of the fees. In that light, what lays for consideration before this Court is whether in passing the impugned order, the DoE has acted in excess of its jurisdiction vested under DSEA and DSER or any other extant rules/regulations, thereby impinging upon the autonomy of petitioner Schools in determination of their fee structure for the Academic Year 2018-2019.

Whether the proposed hike in fee by the schools amounts to profiteering or commercialisation

17. Even though there is no provision found under the DSEA that requires unaided schools to seek prior permission from DoE before fee hike, yet, DoE exercises regulatory control emanating from Sections 17(3) and 18(3) and (4) of DSEA and the DSER. However, while regulating the fee structure, DoE does not act as an appellate body. *It is not vested with the power to analyse the correctness of discretion exercised by the school, but is entitled to ensure that the school does not indulge in commercialisation of education. The bounds of regulatory jurisdiction are limited and restricted, as expounded by the judicial precedents noted hereinafter.*

Understanding the impugned order : Unpacking the legal issues at stake

23. This brings us to the grounds of challenge to the impugned order. Schools have alleged breach of the principles of natural justice due to denial of opportunity to respond to the allegations. This principle of audi alteram partem is the cornerstone of procedural fairness and is vital to ensure a just and equitable outcome in any legal process. *It has been contended that the impugned order was issued without prior notice of proposed disallowances. There is no convincing response to this contention. The court is of the view that purported inconsistencies mentioned in the impugned order should have been revealed to the schools before passing of the impugned order, giving them adequate opportunity to respond.* Adherence to this principle would make



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the decision-making process fair, transparent and would preclude bias or prejudice from influencing the outcome of a case. Thus, *DoE must ensure that the schools are provided all relevant material and information, including the basis for any objections or concerns raised by the regulatory authorities, while scrutinising the statement if fee.* This would allow the schools to present their stand in a meaningful way. That said, in the opinion of the court, instead of remanding the matter back to DoE at this juncture, it would be appropriate to evaluate the validity of the impugned order on its own merits.

29. Next, comes the issue of whether accumulation of surplus funds amounts to profiteering. Firstly, this allegation has been made for the first time before the court in response to the petition. Secondly, DoE's accusation of "commercialisation of education" is premised on mere presence of "sufficient funds to carry on the operation of the school". Thus, *vital questions that emerge for consideration are : (a) whether mere availability of a surplus disqualifies the schools from increasing their fees; and (b) whether DoE has the power to determine the adequacy of funds available with the schools in absence of finding of profiteering. The answers to both of these questions must be given in the negative* for reasons set out below.

30. DoE's power to scrutinise the accounts and other records of private unaided schools finds its source in Section 17(3) of the DSEA (examined hereinabove) r/w Rule 180(3) of the DSER. Under Rule 180(3), accounts and other records maintained by an unaided private school shall be subject to examination by the auditors and inspecting officers authorised by the Director. The Act and Rules specify, in no uncertain terms, that DoE has the authority to seek and examine the accounts of schools. This regulatory power must however, be exercised within the precincts of the law explained in the aforementioned judicial precedents. *Schools are entitled to maintain a reasonable surplus for expansion of the system and development of education. Increase in fee to generate funds for expansion and betterment of educational/infrastructural facilities, as is the case with the Senior School, is permissible in law. It is important for private unaided schools to maintain a surplus for the purpose of further development and honing of their educational facilities and services.* The accumulation of surplus funds is essential for the long-term sustainability and growth of the school which enables them to invest in better infrastructure, equipment, and resources. Private unaided schools may need to invest in building or improving infrastructure, such as construction



of new classrooms, libraries, laboratories, sports facilities or technology upgrades, such as new computers, tablets and software. These increments are generally sourced from the surplus funds and enable the school to stay up-to-date with the latest technologies and provide quality education to its students. Thus, the process of fixation of fee for any given academic year entails consideration of a multitude of factors such as salaries and remunerations to be paid to teaching and non-teaching staff, cost of running the establishment, investments, infrastructure as well as future plans for expansion and development of the institution. Since the unaided schools are entirely dependent on the fee collected by them, they would obviously like to earmark funds for specific purposes and therefore, planning and maintaining a surplus per se cannot be construed as commercialisation of education. *It is only if such funds are being used purely for commercial gain, rather than for improvement and development of the school, can it be construed as a form of commercialisation of education.*

31. *In the present case, DoE has recomputed surplus available with schools and held that the same is sufficient to meet their needs and thus, denied them the right to increase the fee. This approach adopted by the DoE, in the opinion of the court, is incorrect and impermissible.* Determination of what constitutes a “reasonable” surplus would depend on various factors such as the size of the school, the level of infrastructure and facilities provided, salaries of the staff and the overall financial position of the school. *In their statement of fee, Senior School has incorporated a detailed chart of estimated expenses expected to be incurred in the Academic Session 2018-2019 as also the income generated by them. Therefore, there is transparency in their financial operations and they can be held accountable for utilisation of funds.* They have mentioned that the management intends to restructure and revitalise the school plant at an estimated cost of Rs 12 crores, and have even entered into a contract with an architect for said purpose. Since the court would not like to sit in appeal over this issue, it has refrained from examining the veracity of the figures mentioned therein, yet considerable merit is found in Mr Gupta's submission that Senior School, operative since 1983, would require funds for reconstruction and allied activities. DoE must remember that unaided schools possess autonomy in their administration, including, autonomy to envision and plan for its growth and expansion; they cannot impose their own subjective opinion of what is sufficient amount for schools to have in order to meet their aims and objectives. In the instant case, the audited balance sheets and material provided by the schools have been reworked without a valid explanation. The audited balance sheets of private unaided schools are important documents that reflect their financial



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position and performance. These documents provide a clear and transparent picture of school's economic status and help in assessing whether the school has sufficient resources to meet its expenses and whether a fee hike is justified. *DoE cannot act as an appellate body and reject the said financial documents, in absence of any evidence to show that the accounts were not prepared in accordance with applicable accounting standards or were rejected by the tax authorities.* Pertinently, an objection qua format of return and documents submitted by the schools was raised by DoE; however, in response to said query, the schools had clarified that they are following the prescribed format. *In the impugned order, there is no adverse remark on this issue. Therefore, the DoE has undertaken the exercise of reworking the balance sheets without disclosure of justifiable reasons, or a finding of profiteering or commercialisation of education. This exercise reflects DoE's subjective opinion, without any objective criteria, making the entire exercise arbitrary and unreasonable. The right of unaided schools to determine fee to be charged from students cannot be faltered purely only on account of presence of reasonable surplus in their books of account. DoE could have examined the veracity of surplus figures presented by the schools, but in order to deny enhancement of fee, they must, on credible basis, determine that the school has indulged in commercialisation of education, profiteering or levying of capitation fee.* The School Managing Committee had carefully undertaken the exercise of deciding the budget for academic year concerned and *sans a finding of profiteering or commercialisation of education, the DoE has acted in excess of its powers and impinged upon the autonomy of schools, protected by law, in rejecting Senior School's proposed fee hike.*"

(Emphasis supplied)

Mr. Gupta points out that, though the decision in ***Mahavir Senior Model School*** is under challenge in LPA, no interim orders have been passed therein.

25. Mr. Gupta also places reliance on para 117 and of the judgment of the Supreme Court in ***Indian School v. State of Rajasthan***⁹:

"117. As such, it is not open to the State Government to issue directions in respect of commercial or economic aspects of legitimate subsisting contracts/transactions between two private



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parties with which the State has no direct causal connection, in the guise of management of pandemic situation or to provide “mitigation to one” of the two private parties “at the cost of the other”. This is akin to — rob Peter to pay Paul. It is a different matter, if as a policy, the State Government takes the responsibility to subsidise the school fees of students of private unaided schools, but cannot arrogate power to itself much less under Article 162 of the Constitution to issue impugned directions (to school management to collect reduced school fee for the concerned academic year). We have no hesitation in observing that the assertion of the State Government of existence of power to issue directions even in respect of economic aspects of legitimate subsisting contracts/transactions between two private parties, if accepted in respect of fee structure of private unaided schools, is fraught with undefined infinite risk and uncertainty for the State.”
(Emphasis supplied)

26. The expression “capitation fee”, submits Mr. Gupta, now stands defined in clause (b) of Section 2 of the Right of Children to Free and Compulsory Education Act, 2009 (“the RTE Act”) as “any kind of donation or contribution or payment other than the fee notified by the school”. Simultaneously, Section 13(1) of the RTE Act proscribes all schools from, while admitting a child, collecting any capitation fee or subjecting the child or his or her parents or guardian to any screening procedure”. There is no such allegation against the School; ergo, it cannot be alleged that the School is charging capitation fee.

27. Thus, submits Mr. Gupta, the impugned Order dated 1 August 2018 is liable to be set aside as having been issued in excess of the jurisdiction vested in the DoE, in violation of the principles of natural justice and in violation of Rule 190 of the DSE Rules.



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Submissions of Mr. Tripathi and Mr. Jha

28. Mr. Tripathi sought to contend that the decision in *Ramjas School* is distinguishable on facts as, in the present case, the impugned Order emanates from a complaint received by parents. He places reliance on Section 18(4)¹⁰ of the DSE Act, apropos the specific finding, in the impugned Order, that the School was utilising development fee, collected by it, for purposes other than those for which development fee could be utilised.

29. Supplementing the submissions of Mr. Tripathi, Mr. Jha submits that there was no allegation against Ramjas School, akin to the allegations of misutilisation of development fee, non-reflection of transport fee collected from students in the financial statements of the school to the 2015-2016 Financial Year, which amounted to contravention of Rule 175¹¹ of the DSE Rules read with Section 18(3) of the DSE Act and differences in the opening balance as on 1 April 2016, reflected from the audited financial statements of the School for the Financial Years 2015-2016 and 2016-2017, specifically levelled against the petitioner-School in the impugned Order dated 1 April 2018. He also submits that there was no compliance, by the School with the preconditions for increasing the fee mid-section, as contained in the DoE order dated 17 October 2017. Nor, submits Mr. Jha, was

¹⁰ (4) (a) Income derived by unaided schools by way of fees shall be utilised only for such educational purposes as may be prescribed; and

(b) charges and payments realised and all other contributions, endowments and gifts received by the school shall be utilised only for the specific purpose for which they were realised or received.

¹¹ 175. **Accounts of the school to be maintained.** – The accounts with regard to the School Fund or the Recognised Unaided School Fund, as the case may be, shall be so maintain as to Ex. clearly the income accruing to the school by way of fees, fines, income from building, rent, interest, development fee is,



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there compliance with General Instruction 1(b) in the DoE Order dated 17 October 2017 which required all schools to, first of all, explore the possibility of utilising existing reserves to meet any shortfall in payment of salaries and allowances, as a consequence of increase in the salaries and allowances of employees.

30. Mr. Jha submits that “commercialisation” and “capitation fee” are not incantations which have specifically to be alleged in so many words and that, if the allegations in the impugned Order amount to commercialisation of education or charging of capitation fee, that would suffice to justify the Order. He submits that the “surplus” reflected in the impugned Order is surplus generated out of unlawfully collected amounts.

31. Mr. Jha, therefore, echoes the submission of Mr. Tripathi that the present case cannot be analogised to *Ramjas School* or *Mahavir Senior Model School*.

Submissions of Mr. Kamal Gupta in rejoinder

32. Mr. Gupta, in rejoinder, reiterates that, in the absence of any specific finding of commercialisation of education or of charging of capitation fee, the DoE is not entitled to subject the manner in which the school works out the fees to be charged by it to its own subjective assessment. An increase of fee by a recognised unaided school, he submits, can be interdicted by the DoE only if there is profiteering or

collections for specific purposes, endowments, gifts, donations, contributions to Pupils’ Fund and other miscellaneous receipts, and also, in the case of aided schools, the aid received from the Administrator.

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commercialisation of education. The DoE cannot interfere with the decision to increase fees on a mere finding of adequate surplus, absent any allegation of profiteering.

33. Apropos the discrepancies alleged in the impugned order, Mr. Gupta submits that such discrepancies are alleged in every such order, and cannot constitute the basis for the DoE to interfere with the decision of the school to increase its fees so as to meet the additional financial outlay resulting as a consequence of the requirement of having to implement the 7th CPC recommendations.

34. Mr. Gupta draws my attention to paras 85 and 86 of the decision in *Ramjas School*, which read thus:

“85. Adverting, now, to the impugned Order, dated 18th July, 2017 itself, it is possible to compartmentalise the Order into three distinct sections. The impugned Order commences by noting the fact of issuance of the earlier Order, dated 26th December, 2016, the representation, by the petitioner-School, thereagainst, and grant of personal hearing to the petitioner-School. It proceeds, thereafter, to “analyse” the submissions made by the petitioner. This analysis is divided into three sections, the first of which is titled “Financial discrepancies”, the second “other discrepancies”, and the third, though untitled, dealing with the alleged “surplus fund” available with the petitioner-School. The first section sets out three “financial discrepancies”, which merely requires the petitioner to comply with the recommendations, made in that regard, and record its assurance, that it would do so. The second section, dealing with “other discrepancies”, too, records the submission, of the petitioner, that the discrepancies would be rectified, and contemplates compliance therewith, at the time of next fee increase proposal. The controversy, before this Court, is concerned, essentially, with the third section of the impugned Order, which alleges that the petitioner had, with it, “a surplus fund of Rs. 1,18,42,701/-”, and provides a tabular statement in that regard. Having observed thus, the impugned Order proceeds to record a finding that “the school (was) *having sufficient funds* even after meeting all the budgeted expenditure for the financial year 2016-17”. Thereafter, the impugned Order proceeds to issue certain



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directions, to the petitioner, to maintain separate funds for earmarked levies, avoid diversion thereof, and to maintain a separate development fund, before concluding thus:

“And whereas, these recommendations along with relevant materials were put before The Director of Education for consideration and who after considering all the material on record has found that *the school is having sufficient surplus funds to meet the financial implications for the financial year 2016-17* and the representation dated 03.02.2017 and subsequent submissions made thereafter in this regard find no merit in respect of sanction for increase in fee and hereby rejected on the basis of the above-mentioned observations.

Accordingly, it is hereby conveyed that the representations for fee hike of Ramjas School, Sector-IV, R.K. Puram, New Delhi-110022, has been rejected by the Director of Education.”

(Emphasis supplied)

86. The concluding “directions” follow.”

35. Mr. Gupta further submits that there is not even an allegation that the school is commercialising education. In this context, he invites attention to para 156 of the concurring judgment of S.B. Sinha, J., in *Islamic Academy of Education v. State of Karnataka*¹², rendered by a Constitution Bench of the Supreme Court, in which it was opined, apropos the surplus which could be maintained by unaided schools, that “reasonable surplus should ordinarily vary from 6% to 15%, as such surplus would be utilized for expansion of the system and development of education”. Applying this principle, as the returns from the fee charged by the petitioner-School during one year was ₹ 18 crores, ₹ 2.7 crores, as 15% of the fees, would constitute a reasonable surplus whereas, as per the impugned Order, the surplus in the funds of the petitioner-School was only ₹ 2.55



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crores. Even on facts, therefore, it could not be alleged that the petitioner was maintaining any surplus in excess of what was required by it to run its affairs.

36. From the decision in *Ramjas School*, Mr. Gupta emphasises the following passages:

“15. The answers, of the Court, to the issues arising in the above case were enumerated, towards the conclusion of the majority opinion¹³ (authored by B.N. Kirpal, J., as he then was). While dealing with the issue of whether the statutory provisions, regulating facets of administration, like control over educational agencies, control over governing bodies, conditions of affiliation and appointment of staff, employees, teachers and principals, including their service conditions, and regulation of fees, etc., would interfere with the right of administration of unaided educational institutions, the Supreme Court held that “*fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee*”. Similarly, while examining the sustainability of its earlier view, in *J.P. Unnikrishnan*¹⁴, the Supreme Court, while holding the scheme, framed by it in the said decision, to be unconstitutional, held, nevertheless, thus:

“However, the principle that there should not be capitation fee or profiteering is correct. Reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amount to profiteering.”

(Emphasis supplied)

47. *Vide* the impugned Order No F. DE-15/ACT-I/WPC-4109/PART/13/831, dated 18th July, 2017, the DoE has rejected the representation, dated 30th January, 2017 *supra*, submitted by the petitioner, in response to the order, dated 26th December, 2016, issued by the DoE. The impugned Order is studiously, and noticeably, silent regarding the submission, of the petitioner that, as a school, the allotment of land to which was not conditioned by any ‘land clause’, the entire exercise of auditing the petitioner's

¹² (2003) 6 SCC 697

¹³ Of the decision in *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481

¹⁴ *J.P. Unnikrishnan v. State of A.P.*, (1993) 1 SCC 645



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accounts, inspecting its records and issuance of the Order dated 26th December, 2016, was vitiated *ab initio*. The impugned Order proceeds, instead, to justify the rejection of the proposal, of the petitioner, to increase its fees for the academic session 2016-2017, returning, in the process, the following findings:

(Findings are omitted as the entire Order is reproduced hereinafter)

56. The petitioner assails the impugned Order, on the ground of competence as well as on merits. The petitioner has sought to contend that the DoE had no authority or the jurisdiction to sit in appeal over the proposal, by the petitioner, to increase its fees, save and except to the extent of ensuring that the petitioner did not indulge in charging of capitation fee, or in profiteering. The entire exercise of inspecting the petitioner's premises, auditing the accounts, and passing, ultimately, of the Order dated 26th December, 2016 *supra*, it is sought to be submitted, was based on an erroneous assumption that the petitioner was covered by the Orders dated 16th April, 2016 *supra* and 15th July, 2016 *supra*, issued by the DoE. On merits, too, the petitioner has sought to contend that the increase in fee, on its part, was justified, and that, as an unaided recognised school, the petitioner was entitled to some degree of autonomy, regarding the fixation of its fees, which could not be made subject to approval by the DoE. In this context, the petitioner highlights the fact that there is no finding, by the DoE, against the petitioner, either in the Order dated 26th December, 2016, or in the impugned Order, dated 18th July, 2017, of the petitioner indulging in charging of capitation fee or profiteering.

59. Detailed submissions have also been advanced, by the petitioner, both in writing as well as during the course of oral arguments by learned Senior Counsel, regarding the merits of the impugned Order, dated 18th July, 2017, and the manner in which the alleged surplus of Rs. 1,18,42,701/-, has been worked out. The petitioner points out, in this regard, that, inexplicably, the alleged surplus, with the petitioner, as per the DoE, fell, from the figure of Rs. 8,45,05,819/-, in the Order, dated 26th December, 2016 '*supra*', to Rs. 1,18,42,701/-, in the impugned Order dated 18th July, 2017. This, even by itself, submits the petitioner, is manifest of the arbitrary manner in which the DoE was examining the proposal, of the petitioner, to increase its fees for the 2016-2017 academic session.

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67. Detailed submissions, justifying the manner in which the alleged surplus, with the petitioner-School, has been worked out, by the DoE, in the impugned Order, dated 18th July, 2017, have also been placed on record.

77. In the opinion of this Court, therefore, there are no grey areas, insofar as the scope of the power, and authority, of the DoE, to interfere with the fixation of fees, by an unaided educational institution, is concerned. That the DoE does exercise some degree of control, cannot be gainsaid; after all, unaided educational institutions are not islands unto themselves. *The regulatory power of the DoE, however, exists solely for the purpose of prevention of commercialisation of education, by such unaided institutions.* This legal position is, in fact, expressly acknowledged in the Order dated 26th December, 2016, of the DoE itself, which clearly states, in the very third paragraph, that “Directorate of Education has the authority to regulate the fee and other charges to prevent commercialisation of education”. “Commercialisation of education”, according to the Supreme Court, would relate to cases where the institution either charges capitation fees, or indulges in profiteering. A conjoint and holistic reading of the authorities, cited hereinbefore, discloses that the Supreme Court has not conceptualised “commercialisation of education”, insofar as the concept applies to unaided educational institutions, as a specie different, or distinct, from charging of capitation fees, and profiteering. Rather, in the case of such institutions, “commercialization of education” constitutes a distinct genus, consisting of capitation fee and profiteering, as the two distinct species identified and isolated by the Supreme Court. In the case of unaided educational institutions, it is only where they are found to be charging capitation fees, or indulging in profiteering, that they could be held to be guilty of commercialising education, and not otherwise.

79. The DoE has filed, with its counter-affidavit, a tabular statement, setting out the remarks, of the DoE, regarding the particulars of various heads of expenses of the petitioner. Note 6, in the said tabular statement, alleges that the accumulation, by the petitioner, of “reserve of development fund ... by collecting development fee more than its requirement for purchase,

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upgradation and replacements of furniture and fixtures and equipment” was “nothing but the profiteering done by the school over the years”. *In the entire record before us, there is no other reference, to the petitioner indulging in “profiteering”*. The afore-quoted reference to “profiteering”, too, figures in the remarks, filed by the DoE before this Court, regarding the various heads of expenses of the petitioner, and *not* in the impugned Order, dated 18th July, 2017, *or* the Order, dated 26th December, 2016, which it purported to uphold. There is no allegation, in either of the said Orders, to the effect that the petitioner indulged in charging of capitation fee, or in profiteering.

85. Adverting, now, to the impugned Order, dated 18th July, 2017 itself, *it is possible to compartmentalise the Order into three distinct sections. The impugned Order commences by noting the fact of issuance of the earlier Order, dated 26th December, 2016, the representation, by the petitioner-School, thereagainst, and grant of personal hearing to the petitioner-School. It proceeds, thereafter, to “analyse” the submissions made by the petitioner. This analysis is divided into three sections, the first of which is titled “Financial discrepancies”, the second “other discrepancies”, and the third, though untitled, dealing with the alleged “surplus fund” available with the petitioner-School. The first section sets out three “financial discrepancies”, which merely requires the petitioner to comply with the recommendations, made in that regard, and record its assurance, that it would do so. The second section, dealing with “other discrepancies”, too, records the submission, of the petitioner, that the discrepancies would be rectified, and contemplates compliance therewith, at the time of next fee increase proposal. The controversy, before this Court, is concerned, essentially, with the third section of the impugned Order, which alleges that the petitioner had, with it, “a surplus fund of Rs. 1,18,42,701/-”, and provides a tabular statement in that regard. Having observed thus, the impugned Order proceeds to record a finding that “the school (was) having sufficient funds even after meeting all the budgeted expenditure for the financial year 2016-17”. Thereafter, the impugned Order proceeds to issue certain directions, to the petitioner, to maintain separate funds for earmarked levies, avoid diversion thereof, and to maintain a separate development fund, before concluding thus:*

“And whereas, these recommendations along with relevant materials were put before The Director of Education for consideration and who after considering all the material on record has found that the school is having sufficient surplus

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funds to meet the financial implications for the financial year 2016-17 and the representation dated 03.02.2017 and subsequent submissions made thereafter in this regard find no merit in respect of sanction for increase in fee and hereby rejected on the basis of the above-mentioned observations.

Accordingly, it is hereby conveyed that the representations for fee hike of Ramjas School, Sector-IV, R.K. Puram, New Delhi-110022, has been rejected by the Director of Education.”

(Emphasis supplied)

37. Mr. Gupta also cites the following passages from *Mahavir Senior Model School*:

“Re : findings of surplus and availability of sufficient funds

26. The fundamental rationale for rejection of petitioners' request is the existence of surplus and adequacy of funds at the schools' disposal. This is discernible from the following extract of the impugned order :

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

The total funds available for the year 2018-2019 amounting to INR 9,67,96,579 and INR 6,49,46,324 out of which cash outflow in the year 2018-2019 is estimated to be INR 7,48,15,500 and INR 78,03,236 in respect of Mahavir Senior Model School and Mahavir Junior Model School respectively. This results in net surplus of INR 2,19,81,079 and INR 5,71,43,088 for Mahavir Senior Model School and Mahavir Junior Model School respectively.

Per the estimated expenses for Financial Year 2018-2019 submitted by Mahavir Senior Model School along with statement of fees under Section 17(3) of DSEA, 1973, the school had estimated the total expenditure during Financial Year 2018-2019 of INR 9,44,60,500 (including capital expenditure of

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INR 12,05,000 against development fee). This budgeted expense of Financial Year 2018-2019 has been adjusted with the amount of capital expenditure (to be incurred against development fund), provision of retirement benefits (considered separately in table above), and depreciation (non-cash expense), and net expense of INR 7,48,15,500 has been considered in table above. Further in respect of Mahavir Junior Model School, against the total expenditure of INR 1,14,21,270 reported in the provisional financial statements for Financial Year 2017-2018, net amount of INR 78,03,236 has been considered after the adjustment of provision of retirement benefits (considered separately in table above), provision for reserve fund (considered separately in table above) and depreciation (non-cash expense), as budgeted expenses for Financial Year 2018-2019 were not separately submitted by the school.

In view of the above examination of the statement of fee for Academic Session 2018-2019 and subsequent submissions and representations of the school, it is evident that the school has sufficient funds for meeting all the budgeted expenditure for the Financial Year 2018-2019.

(ii) The directions issued by the Directorate of Education vide Circular No. 1978 dated 16 Apr 2010 states 'All schools must, first of all, explore and exhaust the possibility of utilising the existing fund/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'. The school has sufficient funds to carry on the operation of the school for the Academic Session 2018-2019 on the basis of existing fees structure[....]"

27. DoE has examined the adequacy of funds mentioned in the schools' statements of fee by categorising them under several heads, and then concluded that there was a surplus of Rs 5,71,43,088 with the Junior School and Rs 2,19,81,079 with the Senior School. On the basis of these accumulated reserves, DoE has rejected the enhanced fee structure. Petitioner Schools have contested the basis of DoE's calculations and both parties have

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submitted comparative charts of available funds. However, court need not inspect the arithmetic workings supporting the figures, which is purely factual in nature, and would confine its scrutiny to the conclusions set forth in the impugned order to determine if the same fall within the scope of DoE's jurisdiction.

30. DoE's power to scrutinise the accounts and other records of private unaided schools finds its source in Section 17(3) of the DSEA (examined hereinabove) r/w Rule 180(3) of the DSER. Under Rule 180(3), accounts and other records maintained by an unaided private school shall be subject to examination by the auditors and inspecting officers authorised by the Director. The Act and Rules specify, in no uncertain terms, that DoE has the authority to seek and examine the accounts of schools. This regulatory power must however, be exercised within the precincts of the law explained in the aforementioned judicial precedents. Schools are entitled to maintain a reasonable surplus for expansion of the system and development of education. Increase in fee to generate funds for expansion and betterment of educational/infrastructural facilities, as is the case with the Senior School, is permissible in law. It is important for private unaided schools to maintain a surplus for the purpose of further development and honing of their educational facilities and services. The accumulation of surplus funds is essential for the long-term sustainability and growth of the school which enables them to invest in better infrastructure, equipment, and resources. Private unaided schools may need to invest in building or improving infrastructure, such as construction of new classrooms, libraries, laboratories, sports facilities or technology upgrades, such as new computers, tablets and software. These increments are generally sourced from the surplus funds and enable the school to stay up-to-date with the latest technologies and provide quality education to its students. Thus, the process of fixation of fee for any given academic year entails consideration of a multitude of factors such as salaries and remunerations to be paid to teaching and non-teaching staff, cost of running the establishment, investments, infrastructure as well as future plans for expansion and development of the institution. Since the unaided schools are entirely dependent on the fee collected by them, they would obviously like to earmark funds for specific purposes and therefore, planning and maintaining a surplus per se cannot be construed as commercialisation of education. It is only if such funds are being used purely for commercial gain, rather than for improvement and development of the school, can it be construed as a form of commercialisation of education.”



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38. Mr. Gupta also points out that, in both these matters, i.e. *Ramjas School* and *Mahavir Senior Model School*, the Court took a conscious decision not to remand the matter to the DoE. He would exhort this Court to do likewise, in the present case.

Mr Jha, in surrejoinder

39. Mr. Jha, in surrejoinder, cites the following para from the judgment of the Supreme Court in *Modern Dental College & Research Centre v. State of M.P.*¹⁵ and from the judgment of the Division Bench of this Court in *St. Mark Senior Secondary Public School v. DOE*¹⁶:

From *Modern Dental College*

“15. Dealing with the challenge to the provisions relating to fixation of fees viz. Sections 4(1), 4(8) and 9 of the Act in question, the High Court recognised the right of these educational institutions, as found in *T.M.A. Pai Foundation*, that decision on the fee to be charged is to be left to private educational institutions. Notwithstanding, the same judgment gives power to the State to regulate the exercise of power of the educational institution to ensure that there is no “*profiteering*” and Sections 4 and 9 of the 2007 Act were aimed at achieving that purpose only. In substance, these provisions empower the Committee to satisfy itself that the fee proposed by a private professional educational institution did not amount to profiteering or commercialisation of education and was based on the factors mentioned in Section 9(1) of the 2007 Act. The Court noted that these factors which were mentioned in Section 9(1) were the relevant factors for fixation of fee as they ensured fixation of such fee which would take into consideration the nature of professional courses, the cost of land and building, the available infrastructure, teaching, non-teaching staff and equipment, the expenditure on administration and maintenance, as well as a reasonable surplus required for growth and development of the professional institutions. This was precisely the mandate

¹⁵ (2016) 7 SCC 353
¹⁶ 2018 SCC OnLine Del 8977 (DB)



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of *T.M.A. Pai Foundation*.

40. It becomes necessary to point out that while treating the managing of educational institution as an “*occupation*”, the Court was categorical that this activity could not be treated as “*business*” or “*profession*”. This right to carry on the occupation that education is, the same is not put on a par with other occupations or business activities or even other professions. It is a category apart which was carved out by this Court in *T.M.A. Pai Foundation*. There was a specific purpose for not doing so. Education is treated as a noble “*occupation*” on “*no profit no loss*” basis. Thus, those who establish and are managing the educational institutions are not expected to indulge in profiteering or commercialising this noble activity. Keeping this objective in mind, the Court did not give complete freedom to the educational institutions in respect of right to admit the students and also with regard to fixation of fee. As far as admission of students is concerned, the Court was categorical that such admissions have to be on the basis of merit when it comes to higher education, particularly in professional institutions.

48. The matter was then considered by a larger Bench of seven Judges in *P.A. Inamdar v. State of Maharashtra*¹⁷. It was held that the two committees for monitoring admission procedure and determining fee structure as per the judgment in *Islamic Academy of Education* were permissible as regulatory measures aimed at protecting the student community as a whole as also the minority themselves in maintaining required standards of professional education on non-exploitative terms. This did not violate Article 30(1) or Article 19(1)(g). It was observed that:

“145. ... Unless the admission procedure and fixation of fees is regulated and controlled at the initial stage, the evil of unfair practice of granting admission on available seats guided by the paying capacity of the candidates would be impossible to curb.”

(emphasis supplied)

On this ground, suggestion of the institutions to achieve the purpose for which committees had been set up by post-audit checks after the institutions adopted their own admission procedure and fee structure, was rejected. The committees were, thus, allowed to continue for regulating the admissions and the fee structure until a



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suitable legislation or regulations were framed by the States. It was left to the Central Government and the State Governments to come out with a detailed well-thought out legislation setting up a suitable mechanism for regulating admission procedure and fee structure. Para 68 in ***T.M.A. Pai Foundation case*** was explained by stating that observations permitting the management to reserve certain seats was meant for poorer and backward sections as per local needs. It did not mean to ignore the merit. It was also held that CET could be held, otherwise merit becomes casualty. There is, thus, no bar to CET being held by a State agency when the law so provides.

71. We may again remind ourselves that though right to establish and manage educational institution is treated as a right to carry on “*occupation*”, which is the fundamental right under Article 19(1)(g), the Court in ***T.M.A. Pai Foundation*** had also cautioned such educational institution not to indulge in profiteering or commercialisation. That judgment also completely bars these educational institutions from charging capitation fee. This is considered by the appellants themselves that commercialisation and exploitation is not permissible and the educational institutions are supposed to run on “*no profit, no loss basis*”. No doubt, it was also recognised that the cost of education may vary from institution to institution and in this respect many variable factors may have to be taken into account while fixing the fee. It is also recognised that the educational institutions may charge the fee that would take care of various expenses incurred by these educational institutions plus provision for the expansion of education for future generation. At the same time, unreasonable demand cannot be made from the present students and their parents. For this purpose, only a “*reasonable surplus*” can be generated.

75. To put it in a nutshell, though the fee can be fixed by the educational institutions and it may vary from institution to institution depending upon the quality of education provided by each of such institutions, commercialisation is not permissible. In order to see that the educational institutions are not indulging in commercialisation and exploitation, the Government is equipped with necessary powers to take regulatory measures and to ensure that these educational institutions keep playing vital and pivotal role to spread education and not to make money. So much so, the Court was categorical in holding that when it comes to the notice of the Government that a particular institution was charging fee or



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other charges which are excessive, it has a right to issue directions to such an institution to reduce the same.

80. The judgment in *P.A. Inamdar*, though sought to review the judgment in *Islamic Academy of Education*, left the mechanism of having the Committees undisturbed. In para 129 of the judgment in *P.A. Inamdar*, this Court observed that the State regulation should be minimal and only to maintain fairness in admission procedure and to check exploitation by charging exorbitant money or capitation fees. In para 140, it has been held that the charging of capital fee by unaided minority and non-minority institutions for professional courses is just not permissible. Similarly, profiteering is also not permissible. This Court went on to observe that (SCC p. 605, para 140) it cannot shut its eyes to the hard realities of commercialisation of education and evil practices being adopted by many institutions to earn large amounts for their private or selfish ends. In respect of Question 3 framed thereunder, which was with respect to the government regulation in the case of private institutions, this Court, in para 141 of the judgment, answered that every institution is free to devise its own fee structure, but the same can be regulated in the interest of preventing profiteering and no capitation fee can be charged. In para 145, the suggestion for post-audit or checks is rejected if the institutions adopt their own admission procedure and fee structure since this Court was of the view that fixation of fees should be regulated and controlled at the initial stage itself.

81. It is in the aforesaid context that we have to determine the question as to whether the provisions relating to fixation of fee are violative of Article 19(1)(g) of the Constitution or they are regulatory in nature, which is permissible in view of clause (6) of Article 19 of the Constitution, keeping in mind that the Government has the power to regulate the fixation of fee in the interest of preventing profiteering and further that fixation of fee has to be regulated and controlled at the initial stage itself. When we scan through Section 9 of the 2007 Act from the aforesaid angle, we find that the parameters which are laid down therein that have to be kept in mind while fixing the fee are in fact the ones which have been enunciated in the judgments of this Court referred to above. It is also significant to note that the Committee which is set up for this purpose, namely, *Admission and Fee Regulatory Committee*, is discharging only a regulatory function. The fee which a particular educational institution seeks to charge from its students has to be suggested by the said educational institution itself. The Committee is empowered with a purpose to satisfy itself that the fee proposed by the educational institution did not amount

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to profiteering or commercialisation of education and was based on intelligible factors mentioned in Section 9(1) of the 2007 Act. In our view, therefore, it is only a regulatory measure and does not take away the powers of the educational institution to fix their own fee. We, thus, find that the analysis of these provisions by the High Court in the impugned judgment [*Assn. of Private Dental and Medical Colleges v. State of M.P.*¹⁸] , contained in para 42, is perfectly in order, wherein it is observed as under:

“42. We are of the view that Sections 4(1) and 4(8) of the 2007 Act have to be read with Section 9(1) of the 2007 Act, which deals with factors which have to be taken into consideration by the Committee while determining the fee to be charged by a private unaided professional educational institution. A reading of sub-section (1) of Section 9 of the 2007 Act would show that the location of private unaided professional educational institution, the nature of the professional course, the cost of land and building, the available infrastructure, teaching, non-teaching staff and equipment, the expenditure on administration and maintenance, a reasonable surplus required for growth and development of the professional institution and any other relevant factor, have to be taken into consideration by the Committee while determining the fees to be charged by a private unaided professional educational institution. Thus, all the cost components of the particular private unaided professional educational institution as well as the reasonable surplus required for growth and development of the institution and all other factors relevant for imparting professional education have to be considered by the Committee while determining the fee. Section 4(8) of the 2007 Act further provides that the Committee may require a private aided or unaided professional educational institution to furnish information that may be necessary for enabling the Committee to determine the fees that may be charged by the institution in respect of each professional course. Each professional educational institution, therefore, can furnish information with regard to the fees that it proposes to charge from the candidates seeking admission taking into account all the cost components, the reasonable surplus required for



growth and development and other factors relevant to impart professional education as mentioned in Section 9(1) of the 2007 Act and the function of the Committee is only to find out, after giving due opportunity of being heard to the institution as provided in Section 9(2) of the 2007 Act whether the fees proposed by the institution to be charged to the student are based on the factors mentioned in Section 9(1) of the 2007 Act and did not amount to profiteering and commercialisation of the education. The word “determination” has been defined in *Black's Law Dictionary*, Eighth Edn., to mean a final decision by the Court or an administrative agency. The Committee, therefore, while determining the fee only gives the final approval to the proposed fee to be charged after being satisfied that it was based on the factors mentioned in Section 9(1) of the 2007 Act and there was no profiteering or commercialisation of education. The expression “fixation of fees” in Section 4(1) of the 2007 Act means that the fee to be charged from candidates seeking admission in the private professional educational institution did not vary from student to student and also remained fixed for a certain period as mentioned in Section 4(8) of the 2007 Act. As has been held by the Supreme Court in ***Peerless General Finance and Investment Co. Ltd. v. RBI***¹⁹, the Court has to examine the substance of the provisions of the law to find out whether provisions of the law impose reasonable restrictions in the interest of the general public. The provisions in Sections 4(1), 4(8) and 9 of the 2007 Act in substance empower the Committee to be only satisfied that the fee proposed by a private professional educational institution did not amount to profiteering or commercialisation of education and was based on the factors mentioned in Section 9(1) of the 2007 Act. The provisions of the 2007 Act do not therefore, violate the right of private professional educational institution to charge its own fee.”

82. Provisions relating to admission of students through government test to be conducted by the State and the provisions relating to fixation of fee by setting up a committee to oversee that



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institutions are not charging a fee which amounts to capitation or profiteering are reasonable restrictions and do not suffer from any constitutional vice. The provisions of the Act and the Rules are, therefore, in tune with the sentiments and directions contained in *P.A. Inamdar*.

87. Regulatory mechanism, or what is called regulatory economics, is the order of the day. In the last 60-70 years, economic policy of this country has travelled from laissez faire to mixed economy to the present era of liberal economy with regulatory regime. With the advent of mixed economy, there was mushrooming of the public sector and some of the key industries like aviation, insurance, railways, electricity/power, telecommunication, etc. were monopolised by the State. Licence/permit raj prevailed during this period with strict control of the Government even in respect of those industries where private sectors were allowed to operate. However, Indian economy experienced major policy changes in early 90s on LPG Model i.e. liberalisation, privatisation and globalisation. With the onset of reforms to liberalise the Indian economy, in July 1991, a new chapter has dawned for India. This period of economic transition has had a tremendous impact on the overall economic development of almost all major sectors of the economy.”

From *St Mark Sr Sec Public School*

“13. The relevant portion of the Duggal Committee report relied on by the parties reads as under: —

“7.19. With a view to overcoming these anomalies, as also for curbing the potential for any likely ‘misuse’ by the schools including those run by minorities, the Committee recommends that the levies charged should be classified under four broad categories as given below.

i) The first category should comprise of the Registration Fee and all ‘One time charges’ levied at the time of the admission of the student such as Admission Fee and Caution Money. While the Admission Fee should not be charged more than once during the entire stay of the student as stipulated under Section 16 of D.S.E. Act, 1973 read with Rules 135, 137 and 138 thereunder, it should be made mandatory for the schools to refund the

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Caution Money with interest thereon at the time of a student leaving the school without the same being claimed by the student/parents.

ii) The second category should comprise of 'Tuition Fee'. This should be so fixed, as to cover the standard cost of establishment including provision for D.A., bonus and all terminal benefits as mentioned under Section 10(1) of the Delhi School Education Act 1973; as also the **all expenditure of revenue nature for the improvement of curricular facilities like Library, Laboratories, Science Fee and Computer Fee up to class X and examination expenses**. The more important parameters for determining standard cost of establishment, inter-alia, could be the pupil-teacher ratio and the ratio of teaching and non-teaching staff in each school.

iii) The third category should be that of 'Annual Charges' - an area in need of maximum discipline. These charges should be so determined so as to be sufficient to cover all expenditure of revenue nature not included in (ii) above, 'over-heads', and **expenses on play grounds, sports equipment, gymnasium, cultural and other co-curricular activities as distinct from curricular activity of the school**.

(iv) The fourth category should consist of all 'earmarked levies' for **services rendered** by the schools, to be recovered only from the 'user' students, in respect of only those facilities availed of by them, such as Transport Fee, Swimming Pool Charges, Horse riding, Tennis, Mid-day meals etc. The income from the earmarked levies, should be spent only for the purpose for which these are collected, with the role of the school, being confined to that of a catalyst or a facilitator for managing the services on a 'no profit no loss' basis.

7.20 All transactions relating to the 'earmarked' activities should from an integral part of the school accounts. Further, to ensure that the Accounts for such services are self-balancing over a period, separate accounts should also be maintained by the school for each of the activity/services."

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Analysis

40. The issue in controversy is, to my reckoning, directly covered by the judgment of this Bench in *Ramjas School* and the judgment of the coordinate Single Bench in *Mahavir Senior Model School*, despite Mr. Tripathi's and Mr. Jha's valiant attempts to convince this Court otherwise.

41. This would become apparent at a plain reading of the relevant text from the impugned orders in *Ramjas School*, in *Mahavir Senior Model School* and the present petition thus:

Impugned order in *Ramjas School*:

Financial discrepancies:-

S. N o.	Detail of discrepancy	Submissions of the school	Remarks
1.	As per DOE Order No. DE.15/Act/Duggal.com/203/99/23033-23980, dated 15/12/1999, Caution money collected from the students, shall be kept deposited in a scheduled bank and shall be returned to the student at the time of his/her leaving the school, along with bank interest thereon. The school is however not following the above guideline. Instead, the interest earned on the caution money deposit is transferred to Student Welfare fund.	In future the caution money will be refunded to the students along with the interest, as per the guidelines of DOE	The school has ensured to comply the same in future.
2.	As per the DOE order No. DE/15/150/Act/2010/4854-69, dated 09/09/2010, in case of ex-students who have not been	It is noted that in future, we will follow the procedure as per	The school has ensured to comply the

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	refunded the caution money, the schools shall inform them at their last shown address in writing to collect the said amount within 30 days. After the expiry of 30 days, the un-refunded caution money belonging to ex-students, shall be reflected as the income for the next financial year and it shall not be shown as liability. The school is however, not following the above guideline. The unrefunded caution money of ex-students is kept in Caution money account & reflected as a liability up to three years. Thereafter, the lapsed caution money is transferred to Student Welfare fund but it is never treated as income.	DOE guidelines.	same in future.
3.	Building and Land are not appearing in the assets of the books of accounts of the school and school has informed that the same is appearing in foundation book, whereas related expenses are booked but income is not booked in the books of school.	The building is appearing in the consolidated Financial Statements of the Ramjas Foundation.	Before applying for next fee increase, proposal certified statement of incomes of current year is to be added to amount recoverable .

Other discrepancies

S. No.	Detail of discrepancy	Submissions of the school	Remarks
1.	Original Receipt against the fee collection are not preserved and are destroyed after closing/completion of audit except the receipts for caution money, admission fee and registration fee.	Once the audit is completed, fee pay-in-slips as we have all records in the fee register and bank statements	Considered

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2.	Fixed Assets registers are not properly maintained and also not reconciled with the finance record. In many cases assets identification number and their location are not mentioned.	Fixed Assets register are properly maintained and identification numbers are duly mentioned.	There are no supporting to substantiate this claim of school. Compliance shall be verified at the time of next fee increase proposal of the school, if any.
3.	Purchase procedure through tendering and their limitation if any has not been found to be formulated by the management.	We are properly following the purchase procedure through tenders only and will further strengthen the system in future.	Compliance shall be verified at the time of next fee increase proposal of the school, if any.
4.	Experience mentioned in application form of appointment are not supported by documentary evidence and school management are also not asking for the same.	The concerned institutions are contacted, for verification and in future, the correspondence will be documented.	Compliance shall be verified at the time of next fee increase proposal of the school, if any.
5.	School makes contracts on plain paper instead of judicial stamp paper.	From FY 2016-17 onwards, all contracts will be made on judicial stamp papers	Accepted by school.

And whereas, after going through the representations dated 30.01.2017 and submissions made by the school during the hearing held on 12.05.2017 as well as financial statements/budget of the school available with this Directorate, it emerges that:-

The school is having a surplus fund of ₹ 1,18,42,701/- as per the following details:-

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Particulars	Amount (Rs.)
Cash and bank balances as on 31.03.2016 as per audited Financial Statements	37,33,902
Investment as on 31.03.2016 as per audited Financial Statements	12,12,42,543
Total	12,49,76,445
Less: Development Fund as per audited Financial Statements	4,63,02,138
Less: Depreciation Reserve Fund as per audited Financial Statements	1,05,11,284
Less: Provision for Gratuity*	3,48,36,745
Less: Provision for Leave Encashment*	98,62,301
Available Funds	2,34,63,977
Fees for 2015-16 as per financial statement (we have assumed that the amount received in 2015-16 will at least accrue in 2016-17)	8,40,95,053
Other income for 2015-16 as per financial statement	9,27,671
Estimated availability of funds for 2016-17	10,84,86,701
Less: Budget expenses for the session 2016-17 as submitted by school management (revenue)	9,66,44,000
Net Surplus	1,18,42,701

*The school is hereby directed to make earmarked equivalent investments against provision for Retirement Benefits with LIC (or any other agency) within 90 days of the receipt of this order, so as to protect the statutory liabilities. And provisions for gratuity and leave encashment should be based on actuarial valuation.

And whereas, in view of the above examination, it is evident that the school is having sufficient surplus funds even after meeting all the budgeted expenditure for the financial year 2016-17.

And whereas, as per clause 22 of Order No.F.DE./15 (56)/Act/2009/778 dated 11/02/2009, user charges should be collected on no profit and no loss basis and should be used only for the purpose for which these are collected. Accordingly, the school is advised to maintain separate fund in respect of each earmarked levies charged from students in accordance with the DSEA & R,

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197 and orders, circulars, etc, issued there under. If there are large surpluses under any earmarked levy collected from the students, the same shall be considered or-adjusted for determining the earmarked levy to be charged in the next academic session.

And whereas, as, per clause No. 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 fee 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 receipt and shall be collected only if the school is maintaining a depreciation reserved fund, equivalent to the deprecation 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. Accordingly, school is advised to maintain separate development fund and utilized the same strictly in accordance with the DSEA & R, 1973 and orders, circulars, etc., issued there under.

And whereas, these recommendations alongwith relevant materials were put before Director of Education for consideration and who after considering all the material on the record has found that the school is having sufficient surplus funds to meet the financial implications for the financial year 2016-17 and the representation dated 03.02.2017 and subsequent submissions made thereafter in this regard find no merit in respect of sanction for increase in fee and hereby rejected on the basis of above mentioned observations.

Impugned Order in *Mahavir Senior Model School-*

And whereas, all the submissions made by the school are taken on record and analyzed in accordance with the provisions of Delhi School Education Act and Rules, 1973 and directions Issued there-under.

S. No.	Observations	Submissions of the school	Remarks
1.	As per the Order no 15072-15871 dated 23-03-1999 " <i>All pre-primary schools being run by the registered society/trust in Delhi as Branches of the recognized schools by</i>	The junior school was established in the year 1991 but this objection has been taken by the office of the directorate for the first time. The applicant school	Based on representation and submissions made by the school and explanations provided during the personal

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	<i>the appropriate authority in or outside the school premises shall be deemed as one institution for all Purposes.</i>"Further As per details available 92 out of 106 (i.e. 86.7%) students admitted in Mahavir Senior model school are from the Mahavir Junior Model School, However, financial information including fee structure of Mahavir Junior Model School was not included in the "statement of fees U/s 173 of DSEA 1973" submitted to Directorate. Further, Separate Sets of Books of accounts and financial statements are prepared by the school instead of combined financial statements.	though now has prepared a combined fund statement of both Mahavir Senior Model School and Mahavir Junior Model School showing correct figures of fund available as against the figures arrived by the respondent. Further, during personal hearing, the school management explained that the condition for seeking prior approval of Directorate before increasing fee is mentioned in the land allotment of Mahavir Junior Model School and not in the land allotment letter of Mahavir Senior Model School. Thus, prior approval of Directorate for increasing fee of senior school would not be applicable	hearing, the fund position of the school has been updated and enclosed in the laterpart of this order. After going through clause 15 of land allotment letter issued by DDA dated 02-11-1987 in respect of Mahavir Junior Model School, which states "The school shall not Increase the rates of tuition fees without prior sanction of the Director of the Education Delhi Adrin and shall follow the provisions of Delhi school Mahavir Senior Model School, education Act/Rules, 1973 and other instructions issued from time to time". It was noted that the junior school has been increasing fee without seeking prior approval of the Directorate. Accordingly, Mahavir Junior Model School is hereby directed refund/adjust to the increased fee collected from students during FY 2016-2017 (year since when proposals were required to be submitted by the
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			schools having the condition in their land allotment letter for seeking prior approval before increasing fee) and thereafter. Further, Mahavir Junior Model School is directed not to increase any fee/charge without prior approval of the Directorate.
2	As per Clause 2 of Public Notice dated 04.05.1997 " <i>The school shall not charge building fund from the students as it is sole responsibility of the society who has established the school to raise such funds from their own sources of donation from the other associations because the immovable property of the school becomes the sole property of the society.</i> Further, Rule 177 of the DSEA& R 1973 mentions that the school is not allowed to make additions to the building if it does not have enough surplus. However, the school has planned for the construction of Mahavir Senior Model School from the tuition fees, for which the school has paid INR 4,53,000 to "Architects and site survey" during FY 2016-17 and 2017-18. The school has also proposed INR 12,79,04,645 for construction of the school building. School should prepare and submit statement showing computation of savings as per rule 177	It is clarified that the school has never charged the building fund from the students. It is pointed out that in case of Mahavir Model Senior School the building was constructed by the society namely Mahavira foundation in the year 1980 to 1983 and was handed over to the managing committee of Mahavir Senior Model School to run the school by the name and title of Mahavir Senior of Model School. The school started functioning from the academic session of 1983. It is further pointed out that the society and the school are one as the same entity. The property constructed by the society from the funds generated by it remains the property of the society and its reflected in the books of accounts as such as on the asset side. On the other hand, if	Based on the explanation the and submissions by the school, the school is directed to ensure compliance of Rule 177 of DSER, 1973 before incurring any capital expenditure on the building/infrastructure else the society should bear the cost of construction of building.

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	of DSEA&R 1973 to the directorate, in case of no savings as per Rule 177 the should not incur any capital expenditure in building.	some portion/block or facilities are created by the school under rule 177 sub clause 2 (b) & (C) of the Delhi school education Rules 1973 from the incidental savings and the same is reflected and shown as an asset in the Balance sheet of the school under the head Building or library, laboratory facilities or Conference Hall or by any other name because the same has been created to provide facilities to the students so they are able to get the necessary support in their education pursuits by way of infrastructure. The society as well as the management of the Applicant school, have been contemplating to renovate and upgrade the building which was constructed in the year 1982 and make a modern building which will be fully compliant with the present rules and regulations of authorities and commensurate with the requirements if the present times. The school has submitted the computation of the saving from FY 1986 to 2018.	
3	As per clause 18 of Order No. F.DE/15(56) Act/2009/778 dated 11/2/2009, “<i>The caution money thus collected</i>	It may be noted out here that: -There is no specific fixed deposit or	Based on the explanation of the school that it will stop collecting caution money

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	<i>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 the bank interest thereon irrespective of whether or not he/she requests for refund". However, the school has not deposited the caution money in scheduled bank. The school should follow directions in this regard issued different orders of the directorate from time to time.</i>	savings deposit in the scheduled bank against the head of caution money. -The school is maintaining ledger accounts of caution money and a register for this purpose with details of each student -All the sums of money of the school are parked in the savings/fixed deposits a/c in scheduled bank and the caution money is included in the deposits made by the school in such account. -The school has refunded the amount due to each student at the time of his/her leaving and has kept a chart ready with the information of amount returned to each students -Thus, the requirement of caution deposited money to be in scheduled bank is being fully complied with by the applicant school. All the caution money and other funds are deposited in scheduled bank and are in the name of the school by way of fixed deposits. It is clear from the above extract that in LPA 291/2017 in the matter of St. Marks Sr. Sec School, the Hon'ble High Court vide judgment dated 11.05 2018 has held that it is not required	and refund/adjust total caution money to existing students during FY 2019-2020, compliance shall be validated in subsequent year.
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		to have a separate fixed deposit account for each and every Fund. Further, during personal hearing, the school explained that it will stop collecting caution money from students from FY 2019-2020. Also, the caution money collected from existing students against will be adjusted in FY 2019-2020.	
4	As per Order No. F.DE-15/ACT-I/WPC-4109/Part/13/7905-7913 dated 16 April 2016 <i>"The Director hereby specify that the format of return and documents to be submitted by schools under rule 180 read with Appendix-II of the Delhi School Education Rules, 1973 shall be as per format specified by the Institute of Chartered Accountants of India, established under Chartered Accountants Act, 1949 (38 of 1949) in Guidance Note on Accounting by Schools (2005) or as amended from time to time by this Institute."</i> Further, para 58(i) of the Guidance Note States "A school should charge depreciation according to the written down value method at rates recommended in Appendix I to the Guidance note."	So far the requirement of returns in a particular format is concerned, the same has always been complied with by the school. As far as the rates of depreciation are concerned, the school is following the rates as prescribed under the relevant provisions of the Income Tax Act. There is a very marginal difference between rates prescribed by the Income Tax Act and the rates recommended in Appendix-1 to the guidance note. Further, during personal hearing the explained that the school in its audited financial statements for FY 2017-18 has charged depreciation at the rates prescribed under Guidance note 21.	Based on the explanation provided by the school that it has charged depreciation at the rates prescribed in the Guidance Note, compliance shall be validated in subsequent year.
5	<u>Assets Purchased against Development fund:</u> As per order No.	The school building was constructed in the year 1994-1995	The contention of the school is not in accordance

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	F.DE./15 (56)/Act 2009/778 dated- 2/11/2009 “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, fixtures 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 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. However, the school has purchased all the assets out of development fund except school bus (Tata DL-1PC-3702), which includes the following assets that does not qualify to be purchased from the development fund. Accordingly, the school has not complied with the directions above.			from savings of the school from the year 1983 to the year 1994-1995 and interest earned on savings and not from development fund. Please note that boundary wall expense involves a small amount of INR 76,695/- and was spent on repairs of boundary walls the boundary was already constructed in the year 1982-83 when the school building was constructed. It appears that this amount was inadvertently and wrongly capitalised and therefore appears in Balance sheet, which can now be rectified by writing it off from the books of account. The library books are the essential part of the school. Library books being a capital asset cannot be purchased from the tuition fee or from the annual charges as per order dated 15.12.1999. There is no contradiction in utilizing development fund towards purchase of library books. Library books are also not building therefore cannot be provided and therefore cannot be provided by the society. Thus, library books can only be purchased from development fund			withprovisions of a well settled issue of development fund and its interpretation by the Hon'ble Supreme Court of India. Capital expenditure other than purchase, up-gradation replacement of furniture, fixture and equipment cannot be made from development fund. Thus, the school is directed to comply with the directions issued by the Director with regard to correct utilisation of development fund.		

Sr. N o.	Particulars	Amount (Gross Block)
1	School Building	1,23,01,906
2	Construction of Boundary Wall	76,695
3	Library Books	6,69,265
4.	Vehicles	18,39,678

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		and has to be treated as capital assets and capital expenditure. The school vehicle have been purchased from time to time and depreciated and written-off after their useful life is over. The vehicles can only be purchased from development fund and nowhere else as provided in the provisions of order dated 15.12.1999 whereby it has been specified how to use development fund that is to supplement resources for purchase, up-gradation and replacement of furniture, fixture and equipment. Furniture, fixture and equipment have not been defined and have been construed to include a large number of assets, which will be required by the school from time to time and the framers of law have kept the list un-exhaustive so that new assets can be added as per the requirements of the school as per the needs of the times and purchases from development fund.	
6	It was observed that Library books, Science equipment's teaching Aids, Newspaper and magazine, Educational Video and Audio CD have been charged to standard cost of Establishment. These are	Library books, Science equipment's, teaching Aids, Newspaper and magazine, Educational Audio, and Audio CD are essential part of curricular activities	The school in its response to this observation and observation no. 5 above mentioned that library books were/should be purchased from development

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	not part of the establishment cost and thus been excluded from the computation of tuition fee, but considered part of Annual charges	of the school and thus have been charged to the standard cost of establishment. Please note that the items listed above are all in the nature of curricular activities, except library books. All these items are consumables and have a useful life of one year and therefore there is every justification that they should be charged against the tuition fees. The library books, as explained in earlier point are of capital nature and thus have to be charged from the development fees. The provision with regard to annual charges makes it amply clear that annual charges will cover all revenue expenditure overheads and expenses on playground, sports equipment, cultural and other co-curricular activities as distinct from the curricular activities of the school. Thus, the above items are part of the curricular activities of the school.	fund, the school has also charged library books against tuition fee. Thus, there is inconsistency in accounting of library books in the accounting records of the schools. By the very name, Science Equipment and teaching aids appear as capital expenditure and must not be charged as revenue expense from tuition fee. Also, newspapers and magazines are not directly related to curricular activities of the school. The school did not submit details and nature of educational video and audio CDs regarding their usage for curricular activities. Though the above does not have any impact on the fund position of the school as the same could have been apportioned against annual charges/development fund, the school is directed to comply with Clause 19 of Order No. F.DE/15(56)/Act/2009/778 dated 11 Feb 2009 which states "<i>The tuition fee shall</i>
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			<i>be so determined as to cover the standard cost of establishment including provisions for DA, bonus, etc., and all terminal benefits as also the expenditure of revenue nature concerning the curricular activities.”</i> Thus, expense only of revenue nature resting to establishment expenses and curricular activities should be charged against tuition fee and other expenses should be allocated towards Annual Charges in accordance with clause 21 of the aforesaid order, which states “<i>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.”</i>
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7	As per the information submitted, the school is collecting around 5 lakhs in a financial year as development fee from the students. However the school has shown 5.32 crores as opening balance as on 1 April 2017, which seems to be inconsistent with the amount collected. The school is required to provide the reconciliation of the development fund collected, utilized and balance derived as on 31 st March 2017 along with the subsequent submission of "statement of fees U/s 17(3) of DSEA 1973"	The school has furnished reconciliation of the development fund collected, utilised and balance derived as on 31 March 2017. The reconciliation statement clearly establishes that there is no inconsistency between the opening balance shown as 5.32 crores as on 01.04.2017 with the amount collected.	Considered.												
8	<table><tr><td colspan="2">High Pupil teacher ratio at Mahavir Junior Model School as derived below:</td></tr><tr><td>Particulars</td><td>Number</td></tr><tr><td>No. of selection (all classes)(A)</td><td>6</td></tr><tr><td>Teacher staff (B)</td><td>5</td></tr><tr><td>Number of students enrolled (C)</td><td>235</td></tr><tr><td>Pupil: Teacher Ratio (D)= (C/B)</td><td>47:1</td></tr></table> As per the details provided by the school there are 5 teachers against 6 sections	High Pupil teacher ratio at Mahavir Junior Model School as derived below:		Particulars	Number	No. of selection (all classes)(A)	6	Teacher staff (B)	5	Number of students enrolled (C)	235	Pupil: Teacher Ratio (D)= (C/B)	47:1	It is clarified that Mahavir Junior Model school has some teachers on contractual basis. It so happened that on December 31 st 2017, the contract of some of the teachers expired and therefore they left. This was a temporary phase for only about two months in the months of January and February. From April 1, 2018 the full complement of staff is there. Even in the intervening period of Jan & Feb 2018, we had parent volunteers, teachers, resource person and trained coaches from Sports Guru.	Based on the explanation and documents submitted by the school and taken on record, while the school made temporary arrangement for a couple of months, the school must ensure that such situation does not occur on a regular/frequent basis and adequate teaching staff is hired to ensure that quality of education is not compromised.
High Pupil teacher ratio at Mahavir Junior Model School as derived below:															
Particulars	Number														
No. of selection (all classes)(A)	6														
Teacher staff (B)	5														
Number of students enrolled (C)	235														
Pupil: Teacher Ratio (D)= (C/B)	47:1														

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

The total funds available for the year 2018-2019 amounting to INR 9,67,96,579 and INR 6,49,46,324 out of which cash outflow in the

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year 2018-2019 is estimated to be INR 7,48,15,500 and INR 78,03,235 in respect of Mahavir Senior Model School and Mahavir Junior Model School respectively. This results in net surplus of INR 2,19,81,079 and INR 5,71,43,088 for Mahavir Senior Model School and Mahavir Junior Model School respectively. The details are as follows:

Particulars	Amount (INR)		
	Mahavir Senior Model School (A)	Mahavir Junior Model School (B)	Total(C=A+B)
Cash and Bank Balance as on 31 March 2018 (as per provisional financial statements of FY 2017-18)	2,88,20,887	64,73,475	3,52,94,362
Investments (Fixed deposits and deposit with LIC) as on 31 March 2018 (as per provisional financial statements of FY 2017-18)	12,72,09,287	2,15,09,764	14,87,19,051
Total Liquid Funds available with the school as on 31 Mar 2018	15,60,30,173	2,79,83,239	18,40,13,413
<u>Add:</u> Estimated Fees and other incomes for FY 2018-19 based on provisional financial statement of FY 2017-18 of the school (Refer#)	8,71,75,117	1,75,11,126	10,46,86,243
<u>Add:</u> Amount recoverable from Mahavira Foundation (Society) (as per provisional financial statement of FY 2017-18 of the school)(Refer*)	-	3,52,45,744	3,52,45,744
Gross Estimated available funds for FY 2018-19	24,32,05,290	8,07,40,109	32,39,45,400
Less: FDR Against Specific Funds/Under Lien(Refer^)	1,59,26,780	15,170	1,59,41,950
Less: Development	5,59,84,513	1,13,09,266	6,72,93,779

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Fund balance as on 31 Mar 2018 (as per provisional financial statements of FY 2017-18)			
Less: Caution Money balance as on 31 Mar 2018 (as per provisional financial statements of FY 2017-2018)	10,81,491	9,56,000	20,37,491
Less: Depreciation Reserve Fund (Refer~)	-	-	-
Less: Salary Reserve (Refer**)	1,41,50,000	16,50,000	1,58,00,000
Less: Staff Requirement Benefits-Gratuity & Leave Encashment (Refer^^)	5,92,65,927	18,63,349	6,11,29,276
Net Estimated available funds for FY 2018-2019	9,67,96,579	6,49,46,324	16,17,42,904
Less: Budgeted Expenses for FY-2018-2019 (Refer ##)	7,48,15,500	78,03,236	8,26,18,736
Estimated Surplus as on 31 Mar 2019	2,19,81,079	5,71,43,088	7,91,24,168

#Fee and income as per provisional financial statements of FY 2017-2018 submitted by the school has been considered with the assumption that the amount of income during FY 2017- 2018 will at least accrue during FY 2018-2019. However, interest income from LIC & Income Tax have not been included in figures above, being non-recurring incomes, while interest on bank account & deposits against depreciation reserve have been included, being available with the school for utilization.

*As per the Directorate's Order No. DE 15/Act/Duggal.com/203/99/23033-23980 dated 15 Dec 1999, the management is restrained from transferring any amount from the recognized unaided school fund to society or trust or any other institution. The Supreme Court also through its judgement on a review petition in 2009 restricted transfer of funds to the society. The provisional financial statements of Mahavir Junior Modes School for FY 2017-2018 reflected a receivable balance of NR 3,52,45,744 from Mahavira Foundation (Parent Society), which the school explained is a deposit with the Society against which interest is earned by the school. This amount of INR 3,52, 45,744

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is hereby added to the fund position of the school, considering same as funds available with the school and with the direction to the school to recover this amount from the Society.

^Though the school represented that it has a combined liability towards refund of fees to students as determined by Justice Anil Dev Singh Committee together with interest thereon of INR 3.42 crores. However, the matter is sub-judice in the Hon'ble High Court of Delhi, against which the school has deposited fixed deposit with bank of INR 1.5 crores under lien with the Hon'ble High Court of Delhi. Accordingly, only the amount of INR 1.5 crores kept under lien of The Hon'ble High Court of Delhi has been considered. In addition, the Senior school has specific earmarked funds totalling to INR 9,26,780 and the junior school has specific funds of INR 15,170 which have also been considered. Accordingly based on submissions by the school, the amount of INR 1,59,41,950 has been adjusted while deriving the fund position of the school.

~On evaluation of depreciation reserve, it was noted that the school had charged depreciation on fixed assets and had transferred the same to depreciation reserve on liabilities side of the Balance Sheet of the school. Also, the school is charging development fund from students for purchase, up-gradation and replacement of furniture, fixture and equipment. Though Development, fund maintained by the school (both Senior and Junior) as per provisional financial statement for FY 2017-2018 has been adjusted for deriving the fund position of the school, depreciation reserve (that is to be created equivalent to the depreciation charged in the revenue accounts as per clause 14 of Order No. F.DE./15 (56)/Act/2009/778 dated 11 Feb 2009) is more of an accounting head for 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, it is not considered in table above.

**The school has sufficient funds to create a salary reserve fund in the form of Fixed Deposit in the joint account in the name of Manager of the school and Deputy Director of Education (District concerned) equivalent to 3 months salary of staff. Accordingly, amount of INR 1.58 crores (INR 1,41,50,000 for senior school and INR 16,50,000 for junior school, which is approximate to 3 months salary expense of the schools) has been considered while deriving the fund position of the school with the direction to the school to submit fixed deposit with a scheduled bank equivalent to the

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amount mentioned above in the joint names of the Manager of the school and Deputy Director of Education.

^^Mahavir Senior Model School submitted actuarial valuation reports in respect of its liability as on 31 Mar 2018 towards gratuity and leave encashment totalling to INR 5,92,65,927. Further the school budgeted an additional amount of INR 1,71,72,000 towards retirement benefits during FY 2018-2019. In respect of the junior school, actuarial valuation of the liability towards retirement benefits has not yet been obtained. However, the junior school has recorded provision towards retirement benefit as on 31 Mar 2018 of INR 47,51,312 and has budgeted an additional amount of INR 28,86,479 towards retirement benefits during FY 2018-2019. Against the provisions created by the schools, only INR 1,81,25,883 and INR 18,63,349 have been secured by Senior School and Junior School respectively towards the liability for staff retirement benefits in 'plan-assets' as defined under Accounting Standard-15 i.e. group gratuity scheme of LIC. Thus, based on the available details, amount of liability determined by the actuary in respect of Mahavir Senior Model School has been considered, as the amount budgeted by the school for FY 2018-2019 towards retirement benefits of INR 1.71 crores appears excessive. In respect of Mahavir Junior Model School, in absence of actuarial valuation of liability towards retirement benefits, the amount deposited with LIC has been considered. Accordingly, Mahavir Junior Model School is directed to get its liability towards retirement benefits measured by an actuary match the provision towards the same in its books of account and financial statements and deposit an amount equivalent to the amount determined by the actuary within 30 days from the date of this order. Mahavir Senior Model School is directed to deposit the remaining balance of INR 4,11,40,044 towards group gratuity and leave encashment schemes with LIC (or other insurer) to protect the statutory liabilities towards staff of the school

##Per the estimated expenses for FY 2018-2019 submitted by Mahavir Senior Model School along with statement of Fees u/s 17(3) of DSEA, 1973, the school had estimated the total expenditure during FY 2018-2019 of INR 9,44,60,500 (including capital expenditure of INR 12,05,000 against development fee). This budgeted expense of FY 2018-2019 has been adjusted with the amount of capital expenditure (to be incurred against development fund) provision of retirement benefits (considered separately in table above) and depreciation (non- cash expense) and net expense of INR 7,48,15,500 has been considered in table above Further, in respect of Mahavir Junior Model school, against the total expenditure of INR 1,14,21,270 reported in the provisional

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financial statements for FY 2017-2018, net amount of INR 78,03,236 has been considered after the adjustment of provision of retirement benefits (considered separately in table above), provision for reserve fund (considered separately in table above) and depreciation (non-cash expense), as budgeted expenses for FY 2018-2019 were not separately submitted by the school.

In view of the above examination of the statement of fee for academic session 2018-2019 and subsequent submissions and representations of the school, it is evident that the school has sufficient funds for meeting all the budgeted expenditure for the financial year 2018-2019.

ii. The directions issued by the Directorate of Education vide 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.”* The school has sufficient funds to carry on the operation of the school for the academic session 2018-2019 on the basis of existing fees structure.”

42. In each of these cases, it is apparent that the order contains various allegations of impropriety against the concerned school. Ultimately, however, in each case, the decision that has been taken is to prohibit the school from increasing its fees without the prior permission of the DoE. Also, in each case, the said decision is immediately preceded by the finding that the surplus in the accounts of the school is sufficient to meet the additional financial outlay following as a consequence of the requirement of the implementation of the 7th CPC recommendations.

43. The issue before the Court is whether the DoE possessed the jurisdiction to prohibit the school from increasing its fees and, if the fees already stood increased, to direct the school to refund the fees



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charged in excess of what the DoE considered to be the optimum fees that the school could charge.

44. The issue is no longer *res integra*. This Court has, in ***Ramjas School*** and ***Mahavir Senior Model School***, examined the issue in depth and has, after referring to various earlier judicial pronouncements on the subject, arrived at the categorical conclusion that the power of the DoE to regulate the affairs of an unaided recognized school does not extend to regulating the manner in which the school fixes its fees. So long as the school is not engaged in the *commercialization of education by charging of capitation fee or profiteering*, the DoE does not possess the jurisdiction to regulate the fees which the school can charge.

45. ***Ramjas School*** considered the decisions of the Supreme Court in ***T.M.A. Pai Foundation, Islamic Academy of Education, Modern School, P.A. Inamdar*** and ***Cochin University of Science & Technology v. Thomas P. John***²⁰. The relevant extracts from these decisions, which chart the course of judicial thought on the issue may be provided thus:

From ***T.M.A Pai***

“35. It appears to us that the scheme framed by this Court and thereafter followed by the Governments was one that cannot be called a reasonable restriction under Article 19(6) of the Constitution. Normally, the reason for establishing an educational institution is to impart education. The institution thus needs qualified and experienced teachers and proper facilities and equipment, all of which require capital investment. The teachers



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are required to be paid properly. As pointed out above, the restrictions imposed by the scheme, in *Unni Krishnan*²¹ case made it difficult, if not impossible, for the educational institutions to run efficiently. Thus, such restrictions cannot be said to be reasonable restrictions.

36. The private unaided educational institutions impart education, and that cannot be the reason to take away their choice in matters, *inter alia*, of selection of students and fixation of fees. Affiliation and recognition has to be available to every institution that fulfils the conditions for grant of such affiliation and recognition. The private institutions are right in submitting that it is not open to the Court to insist that statutory authorities should impose the terms of the scheme as a condition for grant of affiliation or recognition; this completely destroys the institutional autonomy and the very objective of establishment of the institution.

55. The Constitution recognizes the right of the individual or religious denomination, or a religious or linguistic minority to establish an educational institution. If aid or financial assistance is not sought, then such institution will be a private unaided institution. Although, in *Unni Krishnan* case the Court emphasized the important role played by private unaided institutions and the need for private funding, in the scheme that was framed, restrictions were placed on some of the important ingredients relating to the functioning of an educational institution. There can be no doubt that in seeking affiliation or recognition, the Board or the university or the affiliating or recognizing authority can lay down conditions consistent with the requirement to ensure the excellence of education. It can, for instance, indicate the quality of the teachers by prescribing the minimum qualifications that they must possess, and the courses of study and curricula. It can, for the same reasons, also stipulate the existence of infrastructure sufficient for its growth, as a prerequisite. But the essence of a private educational institution is the autonomy that the institution must have in its management and administration. There, necessarily, has to be a difference in the administration of private unaided institutions and the government-aided institutions. Whereas in the latter case, the Government will have greater say in the administration, including admissions and fixing of fees, in the case of private unaided institutions, maximum autonomy in the day-to-day administration has to be with the private unaided institutions. Bureaucratic or governmental interference in the administration of such an institution will undermine its



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independence. While an educational institution is not a business, in order to examine the degree of independence that can be given to a recognized educational institution, like any private entity that does not seek aid or assistance from the Government, and that exists by virtue of the funds generated by it, including its loans or borrowings, it is important to note that the essential ingredients of the management of the private institution include the recruiting students and staff, and the quantum of fee that is to be charged.

56. An educational institution is established for the purpose of imparting education of the type made available by the institution. Different courses of study are usually taught by teachers who have to be recruited as per qualifications that may be prescribed. It is no secret that better working conditions will attract better teachers. More amenities will ensure that better students seek admission to that institution. One cannot lose sight of the fact that providing good amenities to the students in the form of competent teaching faculty and other infrastructure costs money. It has, therefore, to be left to the institution, if it chooses not to seek any aid from the Government, to determine the scale of fee that it can charge from the students. One also cannot lose sight of the fact that we live in a competitive world today, where professional education is in demand. We have been given to understand that a large number of professional and other institutions have been started by private parties who do not seek any governmental aid. In a sense, a prospective student has various options open to him/her where, therefore, normally economic forces have a role to play. The decision on the fee to be charged must necessarily be left to the private educational institution that does not seek or is not dependent upon any funds from the Government.

57. We, however, wish to emphasize one point, and that is that inasmuch as the occupation of education is, in a sense, regarded as charitable, the Government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. Since the object of setting up an educational institution is by definition “charitable”, it is clear that an educational institution cannot charge such a fee as is not required for the purpose of fulfilling that object. To put it differently, in the establishment of an educational institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution.

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61. It is in the interest of the general public that more good quality schools are established; autonomy and non-regulation of the school administration in the right of appointment, admission of the students and the fee to be charged will ensure that more such institutions are established. The fear that if a private school is allowed to charge fees commensurate with the fees affordable, the degrees would be “purchasable” is an unfounded one since the standards of education can be and are controllable through the regulations relating to recognition, affiliation and common final examinations.

66. In the case of private unaided educational institutions, the authority granting recognition or affiliation can certainly lay down conditions for the grant of recognition or affiliation; these conditions must pertain broadly to academic and educational matters and welfare of students and teachers – but how the private unaided institutions are to run is a matter of administration to be taken care of by the management of those institutions.”

From *Islamic Academy of Education*

“7. So far as the first question is concerned, in our view the majority judgment is very clear. There can be no fixing of a rigid fee structure by the Government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. *They must also be able to generate surplus which must be used for the betterment and growth of that educational institution.* In paragraph 56 of the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits/surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise. As, at present, there are statutes/regulations



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which govern the fixation of fees and as this Court has not yet considered the validity of those statutes/regulations, we direct that in order to give effect to the judgment in *T.M.A. Pai case* the respective State Governments/concerned authority shall set up, in each State, a committee headed by a retired High Court Judge who shall be nominated by the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short “MCI”) or the All India Council for Technical Education (in short “AICTE”), depending on the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee should be free to nominate/co-opt another independent person of repute, so that the total number of members of the Committee shall not exceed five. Each educational institute must place before this Committee, well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure all relevant documents and books of accounts must also be produced before the Committee for their scrutiny. The Committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. The Committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute. The fee fixed by the Committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. If any other amount is charged, under any other head or guise e.g. donations, the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider framing appropriate regulations, if not already framed, whereunder if it is found that an institution is charging capitation fees or profiteering that institution can be appropriately penalised and also face the prospect of losing its recognition/affiliation.”

From *Modern School*

14. At the outset, before analysing the provisions of the 1973 Act, we may state that it is now well settled by a catena of decisions of this Court that in the matter of determination of the fee structure unaided educational institutions exercise a great autonomy as they, like any other citizen carrying on an occupation, are entitled to a reasonable surplus for development of education and expansion of the institution. Such institutions, it has been held, have to plan their investment and expenditure so as to generate

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profit. What is, however, prohibited is commercialisation of education. Hence, we have to strike a balance between autonomy of such institutions and measures to be taken to prevent commercialisation of education. However, in none of the earlier cases, this Court has defined the concept of reasonable surplus, profit, income and yield, which are the terms used in the various provisions of the 1973 Act.

15. As far back as 1957, it has been held by this Court in the case of *State of Bombay v. R.M.D. Chamarbaugwala*²² that education is *per se* an activity that is charitable in nature. Imparting of education is a State function. The State, however, having regard to its financial constraints is not always in a position to perform its duties. The function of imparting education has been to a large extent taken over by the citizens themselves. In the case of *Unni Krishnan, J.P. v. State of A.P.*²³ looking to the above ground realities, this Court formulated a self-financing mechanism/scheme under which institutions were entitled to admit 50% students of their choice as they were self-financed institutions, whereas rest of the seats were to be filled in by the State. For admission of students, a common entrance test was to be held. Provisions for free seats and payment seats were made therein. The State and various statutory authorities including the Medical Council of India, University Grants Commission, etc. were directed to make and/or amend regulations so as to bring them on a par with the said Scheme. In the case of *T.M.A. Pai Foundation* the said scheme formulated by this Court in the case of *Unni Krishnan* was held to be an unreasonable restriction within the meaning of Article 19(6) of the Constitution as it resulted in revenue shortfalls making it difficult for the educational institutions. Consequently, all orders and directions issued by the State in furtherance of the directions in *Unni Krishnan* case were held to be unconstitutional. This Court observed in the said judgment that the right to establish and administer an institution included the right to admit students; right to set up a reasonable fee structure; right to constitute a governing body, right to appoint staff and right to take disciplinary action. *T.M.A. Pai Foundation* case for the first time brought into existence the concept of education as an “occupation”, a term used in Article 19(1)(g) of the Constitution. It was held by majority that Articles 19(1)(g) and 26 confer rights on all citizens and religious denominations respectively to establish and maintain educational institutions. In addition, Article 30(1) gives the right to religious and linguistic minorities to establish and administer educational institution of their choice. However, the right to establish an institution under Article 19(1)(g) is subject to reasonable restriction

²² AIR 1957 SC 699

²³ (1993) 1 SCC 645



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in terms of clause (6) thereof. Similarly, the right conferred on minorities, religious or linguistic, to establish and administer educational institution of their own choice under Article 30(1) is held to be subject to reasonable regulations which *inter alia* may be framed having regard to public interest and national interest. In the said judgment, it was observed (vide para 56) that economic forces have a role to play in the matter of fee fixation. The institutions should be permitted to make reasonable profits after providing for investment and expenditure. However, capitation fee and profiteering were held to be forbidden. Subject to the above two prohibitory parameters, this Court in ***T.M.A. Pai Foundation case*** held that fees to be charged by the unaided educational institutions cannot be regulated. Therefore, the issue before us is as to what constitutes reasonable surplus in the context of the provisions of the 1973 Act. This issue was not there before this Court in ***T.M.A. Pai Foundation case***.

From ***P.A Inamdar***

“121. Affiliation or recognition by the State or the Board or the university competent to do so, cannot be denied solely on the ground that the institution is a minority educational institution. However, the urge or need for affiliation or recognition brings in the concept of regulation by way of laying down conditions consistent with the requirement of ensuring merit, excellence of education and preventing maladministration. For example, provisions can be made indicating the quality of the teachers by prescribing the minimum qualifications that they must possess and the courses of studies and curricula. The existence of infrastructure sufficient for its growth can be stipulated as a prerequisite to the grant of recognition or affiliation. However, there cannot be interference in the day-to-day administration. The essential ingredients of the management, including admission of students, recruiting of staff and the quantum of fee to be charged, cannot be regulated.

141. Our answer to Question 3 is that every institution is free to devise its own fee structure but the same can be regulated in the interest of preventing profiteering. No capitation fee can be charged.

142. Most vehement attack was laid by all the learned counsel appearing for the petitioner applicants on that part of ***Islamic Academy*** which has directed the constitution of two Committees dealing with admissions and fee structure. Attention of the Court was invited to paras 35, 37, 38, 45 and 161 (answer to Question 9)

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of *Pai Foundation* wherein similar scheme framed in *Unni Krishnan* was specifically struck down. Vide para 45, Chief Justice Kirpal has clearly ruled that the decision in *Unni Krishnan* insofar as it framed the scheme relating to the grant of admission and the fixing of the fee, was not correct and to that extent the said decision and the consequent directions given to UGC, AICTE, MCI, the Central and the State Governments, etc. are overruled. Vide para 161, *Pai Foundation* upheld *Unni Krishnan* to the extent to which it holds the right to primary education as a fundamental right, but the scheme was overruled. However, the principle that there should not be capitation fee or profiteering was upheld. Leverage was allowed to educational institutions to generate reasonable surplus to meet cost of expansion and augmentation of facilities which would not amount to profiteering. It was submitted that *Islamic Academy* has once again restored such Committees which were done away with by *Pai Foundation*.”

From *Cochin University*

“11. At the very outset, it must be observed that the dispute pertains only to two years and as of today there appears to be no difficulty, as the fee structure is now devised by committees set up under the orders of the Supreme Court in the aftermath of the judgment in *T.M.A. Pai case*. We are also of the opinion that the matter relating to the fixation of a fee is a part of the administration of an educational institution and it would impose a heavy onus on such an institution to be called upon to justify the levy of a fee with mathematical precision. The Supreme Court has laid down several broad principles with regard to the fixation of fees and as of today, those principles are being adopted by the committees set up for the purpose.

12. It must be understood at the outset that an educational institution chalks out its own programme yearwise on the basis of the projected receipts and expenditure and for the court to interfere in this purely administrative matter would be impinging excessively on this right. From this, however, it should not be understood that the educational institution has a carte blanche to fix any fee that it likes but substantial autonomy must be left to it. Mr Rao has very candidly admitted that it was undoubtedly open to an educational institution to fix its fee but subject to certain broad principles. We have accordingly gone through the affidavits filed by the appellant University and they reveal that the University had set up the new course in the year 1995-1996 for which funds were required for infrastructure development, the development of a faculty, which would mean making provision for adequate salary for the teaching and supporting staff so as to attract the best minds.

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It has also been emphasised in the second affidavit that the fees had been first increased and subsequently reduced as experience had shown that the amount of US \$5000 per year was excessive and left out of consideration a large number of NRI students who could not afford the fee and in order to make the course available to a larger segment amongst this category, the fee had been reduced. We are of the opinion that no contradiction or fault can be found with the University in taking these two stances in the two affidavits as they supplement each other and make out a justification for the initial increase in the fee and subsequent downward revision.”

46. *Mahavir Senior Model Secondary School* adopts the same view. The following passages from the decision merit reproduction:

“17. Even though there is no provision found under the DSEA that requires unaided schools to seek prior permission from DoE before fee hike, yet, DoE exercises regulatory control emanating from Sections 17(3) and 18(3) and (4) of DSEA and the DSER. However, while regulating the fee structure, DoE does not act as an appellate body. It is not vested with the power to analyse the correctness of discretion exercised by the school, but is entitled to ensure that the school does not indulge in commercialisation of education. The bounds of regulatory jurisdiction are limited and restricted, as expounded by the judicial precedents noted hereinafter.

22. The judgments discussed above have extensively elucidated the interplay between self-governance of private unaided educational institutions in their management and administration and the extent of governmental supervision that is permissible. However, this discussion would be deficient without reference to the verdict in *Modern School case* [*Modern School v. Union of India*, (2004) 5 SCC 583] which discusses the width and scope of DoE's jurisdiction in regulating the amount of fees charged by unaided schools. Therein, the Supreme Court emphasised that unaided schools have the right to a reasonable surplus for the growth and advancement of the institution and DoE has the authority to regulate the fees and other charges to prevent commercialisation of education. If a private unaided school is not involved in the commercialisation of education, it should be allowed to decide its fee structure, and its autonomy under the DSEA should be respected and upheld.

23. This brings us to the grounds of challenge to the impugned order. Schools have alleged breach of the principles of natural

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justice due to denial of opportunity to respond to the allegations. This principle of audi alteram partem is the cornerstone of procedural fairness and is vital to ensure a just and equitable outcome in any legal process. It has been contended that the impugned order was issued without prior notice of proposed disallowances. There is no convincing response to this contention. The court is of the view that purported inconsistencies mentioned in the impugned order should have been revealed to the schools before passing of the impugned order, giving them adequate opportunity to respond. Adherence to this principle would make the decision-making process fair, transparent and would preclude bias or prejudice from influencing the outcome of a case. Thus, DoE must ensure that the schools are provided all relevant material and information, including the basis for any objections or concerns raised by the regulatory authorities, while scrutinising the statement of fee. This would allow the schools to present their stand in a meaningful way. That said, in the opinion of the court, instead of remanding the matter back to DoE at this juncture, it would be appropriate to evaluate the validity of the impugned order on its own merits.

27. DoE has examined the adequacy of funds mentioned in the schools' statements of fee by categorising them under several heads, and then concluded that there was a surplus of Rs 5,71,43,088 with the Junior School and Rs 2,19,81,079 with the Senior School. On the basis of these accumulated reserves, DoE has rejected the enhanced fee structure. Petitioner Schools have contested the basis of DoE's calculations and both parties have submitted comparative charts of available funds. However, court need not inspect the arithmetic workings supporting the figures, which is purely factual in nature, and would confine its scrutiny to the conclusions set forth in the impugned order to determine if the same fall within the scope of DoE's jurisdiction.

31. In the present case, DoE has recomputed surplus available with schools and held that the same is sufficient to meet their needs and thus, denied them the right to increase the fee. This approach adopted by the DoE, in the opinion of the court, is incorrect and impermissible. Determination of what constitutes a "reasonable" surplus would depend on various factors such as the size of the school, the level of infrastructure and facilities provided, salaries of the staff and the overall financial position of the school. In their statement of fee, Senior School has incorporated a detailed chart of estimated expenses expected to be incurred in the Academic Session 2018-2019 as also the income generated by them. Therefore, there is transparency in their financial operations and

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they can be held accountable for utilisation of funds. They have mentioned that the management intends to restructure and revitalise the school plant at an estimated cost of Rs 12 crores, and have even entered into a contract with an architect for said purpose. Since the court would not like to sit in appeal over this issue, it has refrained from examining the veracity of the figures mentioned therein, yet considerable merit is found in Mr Gupta's submission that Senior School, operative since 1983, would require funds for reconstruction and allied activities. DoE must remember that unaided schools possess autonomy in their administration, including, autonomy to envision and plan for its growth and expansion; they cannot impose their own subjective opinion of what is sufficient amount for schools to have in order to meet their aims and objectives. In the instant case, the audited balance sheets and material provided by the schools have been reworked without a valid explanation. The audited balance sheets of private unaided schools are important documents that reflect their financial position and performance. These documents provide a clear and transparent picture of school's economic status and help in assessing whether the school has sufficient resources to meet its expenses and whether a fee hike is justified. DoE cannot act as an appellate body and reject the said financial documents, in absence of any evidence to show that the accounts were not prepared in accordance with applicable accounting standards or were rejected by the tax authorities. Pertinently, an objection qua format of return and documents submitted by the schools was raised by DoE; however, in response to said query, the schools had clarified that they are following the prescribed format. In the impugned order, there is no adverse remark on this issue. Therefore, the DoE has undertaken the exercise of reworking the balance sheets without disclosure of justifiable reasons, or a finding of profiteering or commercialisation of education. This exercise reflects DoE's subjective opinion, without any objective criteria, making the entire exercise arbitrary and unreasonable. The right of unaided schools to determine fee to be charged from students cannot be faltered purely only on account of presence of reasonable surplus in their books of account. DoE could have examined the veracity of surplus figures presented by the schools, but in order to deny enhancement of fee, they must, on credible basis, determine that the school has indulged in commercialisation of education, profiteering or levying of capitation fee. The School Managing Committee had carefully undertaken the exercise of deciding the budget for academic year concerned and sans a finding of profiteering or commercialisation of education, the DoE has acted in excess of its powers and impinged upon the autonomy of schools, protected by law, in rejecting Senior School's proposed fee hike."

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47. Apropos unaided schools which are situated on land without any attendant “land clause” in the Lease Deed or other document by which the land was allotted to the school, the above decisions uniformly hold that the DoE does not possess the jurisdiction to regulate the fees of the school or arrive at its own subjective decision that the surplus in the accounts of the school is sufficient to meet the additional liabilities which it has to bear. Absent any finding of charging of capitation fees or profiteering as would amount to commercialization of education, the DoE cannot restrain the school from increasing its fees.

48. Unaided schools, it must be borne in mind, survive on the fees that they receive from parents. It would be facile to expect quality education to be imparted by unaided schools if one has to be tightfisted when it comes to the fees that they can legitimately charge from parents.

49. The definitions of “capitation fees” and “profiteering” already stand defined by statute or precedent. S.B. Sinha, J., in his concurring judgment in *Islamic Academy of Education* adopted, with approval, the definition of “profiteering”, as contained in Black's Law Dictionary, as “taking advantage of unusual or exceptional circumstances to make excessive profits”. “Capitation fees”, for its part, is defined in Section 2(e) of the RTE Act as “any kind of donation or contribution or payment other than the fee notified by the school”.



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50. There is no allegation, in the impugned order in the present case, that the petitioner is engaged in charging of capitation fees or in profiteering.

51. Mr. Jha sought to contend that, even if the words “capitation fee” or “profiteering” are not specifically used in the impugned order, if the allegations in the impugned order set out the ingredients of capitation fee or profiteering, that would suffice to justify its issuance.

52. I am unable to agree with this submission. The Supreme Court has repeated, not once but times without number, that the scope of interference, by the DOE, with the fixation of fees by an unaided recognized school is restricted to a case in which the school engages in charging of capitation fee or in profiteering. These words cannot, therefore, be regarded as mere incantations. They are specific expressions, which have specific legal connotations. If the DoE is of the view that an educational institution is charging capitation fee or is indulging in profiteering, it has to specifically so allege. The absent any such allegation, in those very words, the DoE would not possess the jurisdiction to interfere with fixation of fees by the school concerned.

53. That apart, in the present case, it is clear that there is no allegation either of charging of capitation fee or of profiteering. There is no allegation that the school was charging fees in excess of fees notified by it. Exaction of capitation fee, in its essence, amounts



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almost to corrupt practice. It involves a school, or an educational institution, notifying the fees that it would charge in a manner, which would be made known to public and, under the table so to speak, taking excess amounts from the students or their parents or guardians. There is no such allegation against the petitioner.

54. Nor is there any allegation that the petitioner was engaging in profiteering. Indeed, insofar as the profit earned by the petitioner is concerned, the impugned order merely alleges that the petitioner was in possession of sufficient surplus to tide over the additional financial burden that the 7th CPC had cast on it. There is no allegation that the petitioner was taking advantage of any exceptional circumstances to earn excessive profits.

55. There is, therefore, neither any overt nor any covert, allegation, in the present case, of charging of capitation fee or of profiteering against the petitioner.

56. The decisions that have been cited *supra* clearly indicate that the concept of “commercialization of education” is circumscribed by the consideration of capitation fee and profiteering. If, therefore, there is no material to indicate that the school is charging capitation fee or that the school is indulging in profiteering, it cannot be said that the school is commercializing education.

57. The case, therefore, falls within the peripheries of the law laid down by the Supreme Court in the decisions cited hereinabove and



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incapsulated by this Court in its judgments in *Ramjas School* and *Mahavir Senior Model School*.

58. There is also substance in the contention of Mr. Kamal Gupta that the impugned Order has been passed in violation of the principles of natural justice which, as per the judgments in *Ramjas School* and *Mahavir Senior Model School*, were required to be scrupulously followed before passing the impugned Order. The petitioner was neither put to notice regarding the allegations contained in paras 1 to 7 of the impugned Order, nor given any opportunity to satisfy the DoE that it was, in fact, required to increase its fees as it had proposed to meet its additional financial outlay. As I have already held, the DoE could not, even otherwise, have rejected the petitioner's proposed fee hike on the ground that, in its view, the petitioner was in possession of *sufficient* surplus to meet its needs.

59. It was also sought to be pointed out, by Mr. Jha, that the impugned order contains other allegations against the petitioner such as non-entry of transport allowance in its accounts, discrepancy between its opening and closing balances, utilization of development fee for the purposes other than those notified by the DoE. These are not considerations on the basis of which the DoE could have restrained the petitioner from raising its fees. As Mr. Kamal Gupta correctly pointed out, such allegations are present in nearly every order. A perusal of the order under challenge in *Ramjas School* and *Mahavir Senior Model School*, reveals that, in those cases, too, various financial discrepancies were alleged before coming down to



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the meat of the matter, which was the purported “sufficiency” of the surplus in the schools’ accounts to meet additional financial burden cast on it by the requirement of complying with the 7th CPC recommendations.

60. Needless to say, given the limited remit of this Court in the present case, I am not entering into the particulars or the merits or demerits of the allegations contained in paras 1 to 7 of the impugned order. The DoE shall be at liberty to proceed in accordance with law with respect to the said allegations subject, of course, to ensuring that no decision adverse to the petitioner would be taken without following the requirement of the statute, rules and regulations and applicable guidelines and adhering to the principles of natural justice and fair play.

Conclusion

61. In view of the above, the impugned order, to the extent it proscribes increase of fees by the petitioner-school, cannot sustain on facts or in law. The impugned order dated 1 August 2018 is, therefore, quashed and set aside to the said extent, with no order as to costs.

W.P.(C) 6419/2019

62. The facts of this case are largely identical in so far as the legal position is concerned with the facts of W.P.(C) 8794/2018. The impugned order in this case reads thus :

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**“OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION
DISTT. NORTH,
Lucknow Road, Timarpur, Delhi -110054**

No. DDE(N)/Pr. Br./2019/188-192

Dated: 20/04/19

ORDER

WHEREAS, Lilawati Vidya Mandir Sr. Sec. School, Shakti Nagar, Delhi-110007 is an Unaided Recognized School running under jurisdiction of District North of Directorate of Education, GNCT of Delhi, and is bound to comply with the provisions as contained under Delhi School Education Act, 1973 and Delhi School Education Rules, 1973 made there under and also to follow the lawful Instruction as issued by Directorate of Education from time to time.

AND WHEREAS, Each and every school is required to furnish full statement of fee under Section 17(3) of DSEAR, 1973 and vide order no. DE.15(318)/PSB/2016/19742 Dated 13-10-2017, Director of Education in exercise of her powers conferred by sub section (g) of section 2 of DSEAR, 1973 authorized "the Dy. Director of Education (District) to exercise the powers and perform the functions of the Director of Education GNCT of Delhi within the meaning, extent and scope of Section 17(3) of DSEAR, 1973, subject to the limitations and conditions as imposed under the provisions of the aforesaid section in respect of regulating the fee collected or to be collected by the Private Unaided Recognised school from the parents by scrutinizing the full statement of fee filed by the school under sub section (3) of Section 17 of the Act and pass necessary directions to the schools with regard to reduce/modify or refund the excess fee, in case of excess fee charged by the school," as well as in compliance to order of the Hon'ble Supreme Court in the case of Modern School in 2004.

AND WHEREAS, a complaint was filed by parents on 27/04/2017 that the School had increased the tuition fee of the said session.

AND WHEREAS, the said parents have also filed a writ petition no. 10804/2017 to Hon'ble High Court of Delhi dated 20/11/2017. Accordingly, it was decided to do the scrutiny of full fee statement of fee filed by the school under section 17(3) of DSEAR, 1973 for the year 2017-18.

AND WHEREAS, accordingly the Manager/HOS of Lilawati Vidya Mandir Sr. Sec. School, Shakti Nagar, Delhi, school was

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directed to produce on financial documents pertaining to the year 2017-18 vide office order dated 02-08-2018, 06-08-2018 and 23-02-2019.

AND WHEREAS, keeping in view of the natural justice, the Chairman/Manager of the School was provided an opportunity of personal hearing and accordingly was directed vide order No.198/VII to attend the office of Deputy Director Education, at 4:00 p.m. on 20/02/2019 and also, to furnish/produce documents/information and clarifications on various issues noted 23/02/2019 and the School failed to attend the office of Deputy Director Education, at 4:00 p.m. on 23/02/2019 and also, has not submitted any documents and clarifications on the issues noted.

AND WHEREAS, the School failed to submit the documents/clarification on the ibid issues noted and therefore, a Show cause notice was issued on 23/03/2019 and subsequently, a reminder vide no. 305 dated 03/04/2019 was also issued, asking the school authorities to submit the clarifications for not submitting the required documentary proofs in support of their stand. In its reply to the reminder, the school finally submitted a reply vide letter no. 5594/LVM dated 15-04-2019 with some records and clarifications.

AND WHEREAS, the submissions of the School have been evaluated that the documents and clarifications submitted by the school is incomplete. Point wise analysis of School's reply has been given under:

S. No.	Requirements	School's reply/submission	Remarks
Part A			
1.	Copy of Actuarial valuation report for Gratuity and leave encashment, if any, taken by the School for FY 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19;	Provision for gratuity and leave encashment has been made as per central government service rules and investment against the fund has been earmarked.	School has not submitted actuarial report for gratuity and leave encashment. It seems that the provisions for the same have been made on management estimate basis.
2.	If any investments have been made against the aforesaid provisions with LIC (or any other agency)?	The investments in form of FDRs against gratuity amounting Rs.1,56,25,852.	Further, School has not been maintaining investments against such provisions with LIC (or any other

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			agency).
3.	Copy of Audited Financial Statements for the FY 2017-18 (complete set) along with auditor's report;	Copy of audited balance sheet for FY 2017-18 is enclosed.	Taken on record
4.	Copy of budgeted receipts and payment account for FY 2018-19 filed with the department at the time of submission of return filed under rule 180 of DSER, 1973;	Copy of budget estimates for FY 2017-18 is enclosed.	Taken on record
5.	Please provide reasonable justification for increase/decrease in proposed expenditure for session 2018-19 vis-à-vis actual expenditure for session 2017-18.	Justification for increase and decrease of expenditures is enclosed.	Taken on record
6.	Please provide reasonable justification for increase/decrease in proposed income for session 2018-19 vis-à-vis actual expenditure for session 2017-18.		
7.	Please bring the copy of RC and invoice of car, buses maintained/purchased by the School during FY 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19.	Copy of registration of certificate of school vehicle is enclosed.	It is not clear from the submission of the School that how many buses and cars are available with the School. School is directed to submit the complete required details.
8.	Please bring the copy of FDRs as on today. Also share the details of FDRs like maintained against which fund.	List of FDRs enclosed along with corresponding use.	Accepted.
Part (B)			
1.	Please define the process of payment of salaries. Whether payments are being made to staff through cash mode or through banking;	Mode of payment of salaries is through bank transfer in respective account of staff members.	Taken on record
2.	Whether School is making payments to vendors in excess of Rs. 20,000 in cash during the year. If yes, what is the quantum of such transactions;	Payment exceeding Rs.20000 in cash has not been made during the year.	Taken on record
3.	In the Income and Expenditure account, amount is debited in		No clarification or justification

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	the name of ‘Contribution to Pupil Fund and Staff Benevolence fund A/c. The purpose and nature of such expenditure need to be submitted. The details of such transaction are as follows: <table><tr><th>S. No.</th><th>Particulars</th><th>Amount</th></tr><tr><td>1.</td><td>FY 2012-13</td><td>20,00,000</td></tr><tr><td>2.</td><td>FY 2013-14</td><td>20,00,000</td></tr><tr><td>3.</td><td>FY 2014-15</td><td>25,00,000</td></tr><tr><td>4.</td><td>FY 2015-16</td><td>5,00,000</td></tr><tr><td>5.</td><td>FY 2016-17</td><td>5,00,000</td></tr><tr><td colspan="2">Total</td><td>75,00,000</td></tr></table>	S. No.	Particulars	Amount	1.	FY 2012-13	20,00,000	2.	FY 2013-14	20,00,000	3.	FY 2014-15	25,00,000	4.	FY 2015-16	5,00,000	5.	FY 2016-17	5,00,000	Total		75,00,000		submitted. School is directed to submit proper details with explanation.
S. No.	Particulars	Amount																						
1.	FY 2012-13	20,00,000																						
2.	FY 2013-14	20,00,000																						
3.	FY 2014-15	25,00,000																						
4.	FY 2015-16	5,00,000																						
5.	FY 2016-17	5,00,000																						
Total		75,00,000																						
4.	During FY 2012-13, School has purchased car amounting Rs. 18,01,694. School is to submit the detail of car purchased such as copy of RC, copy of invoice, user of such car, expenses incurred for maintenance of such car in FY 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19.	School has submitted RCs of 2 cars and 1 bus	It is not clear from the submission of the school that how many buses and cars are available with the School. Copy of invoice of car purchased not provided. It is not clear who is using the said car.																					
5.	School has donated Rs.37,100 in FY 2013-14. The purpose of such donations along with copy of receipts is to be provided. It is to explain by School why this expenditure is to be considered as eligible expenditure for educational purposes.	No response.	The school has failed to submit any explanation for this expenditure.																					
6.	During FY 2015-16 and 2016-17, school funds have been utilized for building amounting Rs.13,78,982 and Rs.5,29,850. School is to explain why this expenditure is not recovered from the Society as the construction of building is the responsibility of the society.	No response	The school has failed to submit any explanation for this expenditure. As per clause 2 of public notice dated May 04, 1997																					

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			“School should not to charge Building Fund and Development Charges when the building is complete or otherwise, as it is the responsibility of society who has established the School to raise such funds from their own resources or donations from other associations because immovable property of the School becomes the property of the Society. Thus, it is clear that building is the responsibility of the Society and therefore, this amount should be recovered from the Society.”
7.	School has incurred expenditure for installation of Solar plant in FY 2015-16 and 2016-17. The total amount expended is Rs.73,08,894. School is to justify the reason for such huge expenditure	No clear response by the School. It has submitted the copy of 4 invoices only.	School need to submit what cost saving it earned after such installation.
8.	It is noted that the expenditures incurred by the School are generally inconsistent as either there was substantial increase or substantial decrease. School need to provide complete justification with proper documents for such increase or decrease in various expenditures mentioned in Table-C below:	School has not provided any justification for the expenditures asked for such as why there are inconsistent movement in the expenses of the School. It has submitted the copies of bills.	No justification for movement in expenditures has been provided.

Table-C

(Figures in Rs.)

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S. No.	Particulars	2012-13	2013-14	Increase / (decrease) %	2014-15	Increase / (decrease) %	2015-16	Increase / (decrease) %	2016-17	Increase / (decrease) %
1	Teaching staff salary	4,34,47,918	4,84,41,420	11%	5,16,85,846	7%	5,45,44,358	6%	5,52,80,972	1%
2	Helping staff salary	15,31,140	12,74,968	-17%	19,04,286	49%	20,52,778	8%	21,77,868	6%
3	Ministerial staff salary	26,13,587	20,89,219	-20%	30,71,629	47%	29,70,389	-3%	29,60,000	0%
4	Computer Education	40,28,456	40,74,820	1%	41,87,668	3%	37,68,808	-10%	46,48,500	23%
5	Digital interactive program fee	33,16,000	28,56,000	-14%	28,56,000	0%	28,56,000	0	30,76,110	8%
6	Functions and festivals	9,95,230	20,28,914	104%	12,86,914	-37%	27,15,652	111%	2,56,640	-91%
7	Contributions to pupils and staff benevolence fund	20,00,000	20,00,000	0%	25,00,000	25%	5,00,000	-80%	5,00,000	0%
8	Security service charges	11,18,205	15,31,854	37%	16,68,068	9%	21,07,904	26%	24,46,025	-16%
9	Wages payments to workers/contract staff	10,40,984	24,47,077	135%	32,92,277	35%	51,14,041	55%	77,03,664	51%
10	Sanitation and Conservancy	11,82,273	19,71,545	67%	28,85,625	46%	25,43,563	-12%	23,68,882	-7%
11	Electricity Expenses	11,76,280	13,92,060	18%	15,96,310	15%	21,06,287	32%	7,81,110	-63%
12	Vehicle Running and Maintenance	6,38,034	6,71,925	5%	6,35,555	-5%	5,59,277	-12%	6,32,648	13%
13	Repair and maintenance	24,04,946	24,45,727	2%	47,99,653	96%	49,45,333	3%	92,55,198	87%
14	Whitewash expenses	9,80,560	8,03,272	-18%	19,97,495	149%	28,69,180	44%	25,83,158	-10%
15	Canteen Day Expenses	-	-	0%	-	0%	26,65,350	0%	38,97,643	46%
	Total	6,64,73,813	7,40,28,811		8,43,67,326		9,23,18,900		9,85,68,418	

AND WHEREAS, the statement of accounts submitted by the school and other material correspondence available on record have been carefully evaluated and detailed findings are as under:

Financial Irregularities:

1. As per clause 2 of public notice dated May 04, 1997 "School should not to charge Building Fund and Development Charges when the building is complete or otherwise, as it is the responsibility of society who has established the School to raise such funds from their own resources or donations from other associations because Immovable property of the School becomes the property of the society. Therefore, the students should not be burdened by way of collecting Building Fund or Development Charges"

Moreover, as per Rule 177 of DSER, 1973 Income derived by an

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unaided recognized Schools by way of fees shall be utilised at the first instance, for meeting the pay, allowances and other benefits admissible to the employees of the School. Provided that savings, if any from the fees collected by such School may be utilised by its management committee for meeting capital or contingent expenditure of the School, or for one or more of the following educational purposes, namely award of scholarships to students, establishment of any other recognised School, or assisting any other School or educational Institution, not being a college, under the management of the same society or trust by which the first mentioned School is run.

And, the savings referred to above shall be arrived at after providing for the following:

- i. Pension, gratuity and other specified retirement and other benefits admissible to the employees of the School;
- ii. The needed expansion of the School or any expenditure of a developmental nature;
- iii. The expansion of the School building or for the expansion or construction of any building or establishment of hostel or expansion of hostel accommodation;
- iv. Co-curricular activities of the students;
- v. Reasonable reserve fund, not being less than ten percent, of such savings.

Therefore, construction of building is the responsibility of the Society and shall not be charged from the school's fund. Therefore, School funds utilised for building amounting Rs. 78,86,032 during FY 2016-17 is in contravention of public notice dated 04.05.1997 and Rule 177 of DSER, 1973. This amount has been considered as part of fund available with the School with the direction to school to recover this amount from the society.

Further, School funds have also been utilised for building amounting Rs. 5,50,65,084 In FY 2017-18 in contravention of aforesaid provisions. This amount is to be recovered from the Society by School.

2. As per Para 99 of Guidance note on "Accounting by school" issued by ICAI, relating to restricted fund, "Where the fund is meant for meeting capital expenditure, upon Incurrence of the expenditure, the relevant asset account is debited which is depreciated as per the recommendations contained in this Guidance Note. Thereafter, the concerned restricted fund account is treated as deferred Income, to the extent of the cost of the asset, and is

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transferred to the credit of the income and expenditure account in proportion to the depreciation charged every year”.

Taking cognisance from the above para, School should have considered the Development fund utilisation account as deferred income to the extent of cost of assets purchased out of Development fund and have transferred the amount to the credit of Income & Expenditure account in proportion to the depreciation charged from this deferred Income account. However, it is noted that School has not created ‘Development Fund Utilization Account’ for the assets purchased out of the Development fund and thus, has not transferred any amount from this utilisation account to the credit of Income and Expenditure account in proportion of depreciation charged during the year. Thus, the School has not followed aforesaid para 99 of the Guidance Note-21: Accounting by Schools as Issued by ICAI and may be instructed to follow the same.

3. The school has made provisions for gratuity and leave encashment on management estimation basis and not on actuarial valuation basis, as required by Accounting Standard (AS) 15 Issued by ICAI. There could be an Impact on the financials of the school, had the provisions been done actuarial valuation basis. In the absence of the actuarial valuation report, the same could not be quantified.

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.23,72,57,471 out of which cash outflow in the FY 2017-18 is estimated to be Rs.14,86,71,332. This results in net surplus of Rs. 8,85,86,139. The details are as follows:

Particulars	Amount	Remarks
Cash and Bank balances as on 31.03.17 as per audited Financial Statements	1,09,23,435	
Add: Investments as on 31.03.17 as per audited Financial Statements	14,71,11,538	
Add: Amount recoverable from society for building construction	19,08,832	
Less: Arrears for 7 th CPC as per audited balance	1,16,87,834	

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sheet for FY 2016-17		
Less: Investment against DDA	35,000	
Less: Caution Money balance as on 31.03.2017	23,75,750	
Less: Investments against Provision for Gratuity and Leave Encashment as on 31.03.2017	3,71,87,586	Note 1
Less: Development Fund	1,44,82,845	Note 2
Available Funds	9,41,74,790	
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)	14,21,07,563	
Add: Other income 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)	9,75,118	
Estimated availability of funds for 2017-18	23,72,57,471	
Less: Actual Expenses for the session 2017-18 as per audited financial statements submitted by school vide its letter dated 15.04.2019 (including capital expenditure)	14,86,71,332	Note 3
Estimated Surplus	8,85,86,139	

Note 1: The provisions for gratuity and leave encashment has not been maintained as per the report of the actuary. However, since the School has sufficient funds available with it, the actual amount invested as per audited financial statements for the FY 2016-17 against these provisions have been considered. Further, the School is directed to get the actuarial valuation of gratuity and leave encashment and invest the aforesaid amount with LIC (or any other agency) within 90 days from the date of order.

Note 2: The Supreme Court in the matter of Modern School held

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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.7,13,17,041 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. However, development fund equivalent to amount collected in FY 2016-2017 amounting Rs. 1,44,82,845 from students has not been considered as fund available with school.

Note 3: The total expenditure budgeted/proposed by the School for FY 2017-18 was Rs. 15,38,30,000 which includes capital expenditure of Rs. 1,51,30,000. Further, as per audited financial statements for FY 2017-18 the actual total expenditure before depreciation and additions to building comes to Rs. 14,86,71,332. Since, FY 2017-18 has already been passed therefore actual expenditure has been considered in the above table. The details of outflow against actual expenditure are as follows:

(Figures in Rs.)	
Particulars	2017-18
Salaries	9,54,26,227
School education expenses	1,47,99,501
Admin and General	1,20,57,086
Repairs and Maintenance	2,01,10,894
Other expenses	7,397
Total revenue expenditure	14,24,01,105
Less: Depreciation	(1,13,45,214)
Sub-total (A)	13,10,55,891
Capital Expenses	7,26,80,525
Less: Addition in Building	(5,50,65,084)

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Sub-total (B)	1,76,15,441
Total Expenditure (A+ B)	14,86,71,332

In view of the above examination, it is evident that the school is having sufficient funds to meet the final implications for the financial year 2017-18 after meeting its expenditure and there was no need to increase the fee for the year 2017-18.

After taking into consideration all the facts and circumstances of the case, the school authority is hereby directed to comply with the following directions under intimation to the undersigned.

1. Not to charge any increased fee in pursuance to the full fee statement filed under section 17(3) of DSEAR, 1973 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 v/s 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.

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.

Sd/-
20.04.2019
Neelam Yadav
DDE(NORTH)"

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63. As in the case of the orders under challenge in *Ramjas School*, *Mahavir Senior Model School* and *Bluebells International School*, the above order also contains initial allegations against the petitioner/school and follows up the allegations by a meticulous dissection of the manner in which the petitioner has worked out the fees that it intends to charge as well as analyzes of the accounts of the petitioner, with a comparison of income against expenditure and profit against loss. The conclusion is the same at which the DoE arrived in *Ramjas School* and *Mahavir Senior Model School* and at which DoE has arrived in the case of *Bluebells International School* which is that the “*school is having sufficient funds to meet the financial implications for the financial year 2017-2018 after meeting its expenditure and there was no need to increase the fee for the year 2017-2018.*”

64. As has already been noted by this Court in *Ramjas School* and *Mahavir Senior Model School* and as already noted hereinabove, the DoE did not possess the jurisdiction, absent any element of commercialization of education by charging of capitation fee or profiteering, to come to its own subjective decision regarding the sufficiency of the funds available with the school to meet its financial liabilities. Such a decision clearly impinges the autonomy that the school enjoys – an exercise which stands castigated by the Supreme Court from as far as back as *T.M.A. Pai*.

65. The reasoning in W.P.(C) 8794/2018, therefore, applies *mutatis mutandis* to the present case.



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Conclusion

66. The impugned order to the extent it proscribes increase of fees by the petitioner – school is, therefore, quashed and set aside.

67. This, however, shall not inhibit the DoE from taking any decision in respect of any perceived infraction by the school of the provisions of the DSE Act or the DSE Rules, in accordance with law as has been permitted in the case of Bluebell International School.

Overall Conclusion

68. Both the aforesaid writ petitions, therefore, stand allowed to the extent indicated in paras 61 and para 66 *supra* with no orders as to costs.

C. HARI SHANKAR, J.

FEBRUARY 7, 2024

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