2024:DHC:722

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 8061/2017

N C JINDAL PUBLIC SCHOOL ..... Petitioner

Through: Ms. Rashmi Gogoi, Adv., Ms. Tanmaya Mehta and Ms. Riya Rathi, Adv.

versus

DIRECTORATE OF EDUCATION ..... Respondent

Through: Mr. Anuj Aggarwal, ASC with Ms. Arshya Singh, Mr. Yash Upadhyay and Mr. Siddhant Dutt, Advs. for R-1

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

% **31.01.2024**

1. Consequent to the acceptance, by the Government, of the recommendations of the 6th Central Pay Commission (6th CPC), various schools increased the fees chargeable from students in order to meet the financial impact of the 6th CPC, which required them to pay higher amounts to their faculty and staff. This court, *vide* judgment dated 12 August 2011, in W.P.(C) 7777/2009 ***(Delhi Abhibhavak Mahasangh v. Govt. of NCT of Delhi***), constituted a committee headed by Hon'ble Mr. Justice Anil Dev Singh, a retired Judge of this Court and former Chief Justice of the High Court of Rajasthan, to examine the records and accounts of unaided recognised schools in

Delhi who had hiked their fees to meet the increased financial outflow consequent on the 6^{th} CPC. The said Committee has come to be known, therefore, as the Anil Dev Singh Committee (hereinafter, "ADSC").

2. On 11 February 2009, the Directorate of Education (DoE) issued an order directing all recognised unaided private schools in the National Capital Territory of Delhi to implement the recommendations of the 6^{th} CPC w.e.f.[1] the 2008-2009 academic session. The order also permitted the schools to increase the existing tuition fee and to charge development fee not exceeding 15% of the total annual tuition fee to supplement the amounts which were required to be spent for purchase, upgradation and replacement of furniture, fixtures and equipment, if any.

3. Following this, the petitioner school (hereinafter "the School") issued a General Notice dated 24 February 2009, informing everyone that the fees charged by it would stand increased w.e.f. 1 September 2008. The notice reads thus:

N.C. JINDAL PUBLIC SCHOOL

PUNJABI BAGH, NEW DELHI-110026.

<u>GENERAL NOTICE</u>

> Dear Parent,
>
> Recommendations of the Sixth Central Pay Commission have been implemented by the Government. Private Unaided Recognised Public School are also required to implement the same w..e..f. 1.1.2006.The increase in the wage bill of the staff as a result of this

[1] "With effect from"

implementation will be quite substantial and accordingly increase in the fee structure is imperative w.e.f. 1.9.2008.

We are, therefore revising the fee w.e.f. 1.9.2008 in line with the Guidelines issued by Directorate of Education, Govt, on NCT OF Delhi vide its order dated 11.02.2009.

CLASS	Fee as on 31.08.2008	Fee Revised w.e.f. 01.09.2008 (to be paid before 31.3.2009)
Pre School & Pre-Primary	Rs. 800/-	Rs. 1000/-
I to V	Rs. 850	Rs. 1050/-
VI to VIII	Rs. 950/-	Rs. 1150/-
IX to XII	Rs. 1050/-	Rs. 1350/-

Development Charge@10% of the Tuition Fee.
The arrears of fee w.e.f. 1.09.2008 may be deposited by 31.03.2009 positively

Parents are also requested to pay the following lumpsums amount for meeting the requirement of payment of revised salary from 1.1.2006 to 31.8.2008 to the staff:

		1st instalment To be paid by 31.03.2009	2nd instalment To be paid by 30.09.2009	
Pre School& Pre-Primary	Rs. 2500/-	Rs. 1250/-	Rs. 1250/-
I to V	Rs. 2500/-	Rs.1250/-	Rs. 1250/-
VI to VIII	Rs. 2500/-	Rs. 1250/-	Rs. 1250/-
IX to XII	Rs. 3000/-	Rs. 1500/-	Rs. 1500/-

The management, however is fully aware of the financial difficulties, which may be faced by the parents, but in the absence of any other alternative, no option is left out with us, except to enhance the fee. Incidentally, it may also be mentioned that though the wage bill had been increasing with the grant of D.A. arrears, increments and other expenditures during the years 2006 and 2007 but we did not increase the fee considering the financial difficulties of the parents and had managed with existing fee.

We are confident that parents will understand our sincerest intentions behind such as increase.

(Dr. D.K. Panday)
Principal"

4. Subsequently, the managing committee of the School had a meeting on 25 March 2009 in which the impact of the requirement of implementation of the 6th CPC recommendations was deliberated upon. Among the decisions that was taken during the said meeting, the Minutes which have been filed with this writ petition, was a decision to charge development fee @ 10% of the tuition fee for the period 1 April 2008 to 31 March 2009 and to charge development fee @ 15% of the tuition fee w.e.f. 1 April 2009. The relevant paragraphs form the Minutes of the said meeting may be reproduced this:

Statement of Account 2008-2009 & Budget for the year 2009-2010: -

The Principal presented the statement of account for the year 2008-2009 and the Budget for the year 2009-2010 before the Committee. The Managing Committee approved the statement of account for the year 2008-2009. The Managing Committee considered the budget for the financial year 2009-2010 presented by the Principal. It shows a deficit of about Rs. 3.75 Crores mainly on account of (i) Implementation of Sixth pay Commission w.e.f. 01.01.2006 for the staff, (ii) payment of arrears, (iii) Dearness Allowance as announced time to time by the Central Government and (iv) Annual Increments etc. The committee deliberated upon and approved the account statement. The fee structure as decided in the last meeting held on 26.12.2008 was modified in the light o Directorate of Education order No.PA/Addl. D.E.(S)/09/330 dated 21.01.2009.

It was further decided that the Directorate of Education be informed the fee structure before the commencement of the next academic session.
The fee structure approved for academic session 2009-2010 is given below:-

DETAILS OF TUITION FEE SCHEDULE		
Classes		**As per notification dated**

		11.02.2009	
	Session 2008-2009 w.e.f. 1.4.2008 to 31.08.2008	**Session 2008-2009** w.e.f. 01.09.2008 to 31.03.2009	**Session 2009-2010**
PRE-SCHOOL PRE-PRIMARY	800.00	1000.00	1000.00
I TO V	850.00	1050.00	1050.00
VI TO VIII	950.00	1150.00	1150.00
IX TO XII	1050.00	1350.00	1350.00

DETAILS OF FEE SCHEDULE			
PARTICULARS		**As per notification dated 11.02.2009**	
	Session 2008-2009 w.e.f. 1.4.2008 to 31.08.2008	**Session 2008-2009** w.e.f. 1.9.2008 to 31.03.2009	**Session 2009-2010**
REGISTRATION FEE	25.00	25.00	25.00
ADMISSION FEE	200.00.	200.00	200.00
CAUTION MONEY (refundable)	500.00	500.00	500.00
ANNUAL CHARGES	1000.00	1000.00	1000.00
SCIENCE/HOMES SC. FEE XI & XII	40.00 pm	40.00 pm	40.00 pm
DEVELOPMENT FEE	10% of Tuition fee	10% of Tuition Fee	15% of Tuition Fee

It was also decided to make a proper representation before the Deptt. of Education explaining the fund position of the school and to seek necessary guidelines for payment of arrears to teachers/staff."

5. Following this, the School issued a General Notice to all parents, informing them that development fee would be payable @

10% of the tuition fee. Fee bills were also raised on this basis, and the petitioner has filed, along with the writ petition, copies of the following revised bills to that effect:

"PUNJAB NATIONAL BANK REVISED BILL

N.C. Jindal Public School, Punjabi Bagh, New Delhi. (Fee Bill for the Month of *1.09.2008 to 31.03.2009 (Difference amount of fees). Please credit to the A/c No 10001 of N.C. Jindal Public School New Delhi.

Name : SHENA DHINGRA Class & Sec. Pre School B Admn. No. 15114

ADDRESS DETAIL

Tution fee	Rs. 1100.00	SC./ HSc. Fee	Rs. 0.00
Dev.fee	Rs.140.00	Indiscip. Fine	Rs.0.00
Arrears	Rs.1250.00	Absentee fine	Rs.0.00
Bus fee	Rs.0.00	Late fee	Rs.0.00
Comp.fee	Rs.0.00	Dup. Diary fine	Rs.0.00

Total Amount Payable ₹ 2790.00
Amount in words Rs. Two Thousand Seven Hundred Ninety only
By Cash/Cheque No-934169 Dated 31.03.2009.
Drawn on Punjab & Sind Bank, Moti Nagar Branch
Signature of parent
Last Date Cheque/cash-31/03/2009.
Cashier…………"

Punjab National Bank

PUNJAB NATIONAL BANK REVISED BILL

N.C. JINDAL PUBLIC SCHOOL, PUNJABI BAGH, NEW DELHI. FEE BILL FOR THE MONTH OF 1.09.2008 to 31.03.2009 (Difference amount of fees) please credit to the A/c No 10001 of N.C. Jindal Public School New Delhi.

Name VASUDHA DUDHORIA Class & Sec. VI B Admn. No. 13982

ADDRESS DETAIL

Tuittion fee	Rs. 1400.00	sc./ HSc. Fee	Rs. 0.00
Dev.fee	Rs. 140.00	Indiscip. Fine	Rs.0.00
Arrears	Rs. 1250.00	Absentee fine	Rs.0.00
Bus fee	Rs.0.00	Late fee	Rs.0.00
Comp.fee	Rs.0.00	Dup. Diary fine	Rs.0.00

Total Amount Payable ₹ 2790.00
Amount in words Rs.Two Thousand Seven Hundred Ninety Only.
By Cash/Cheque No-031094 Dated 06.03.2009.
Drawn on Corporation Bank
Signature of parent
Last Date Cheque/cash-31/03/2009.

Cashier…………..”

“PUNJAB NATIONAL BANK REVISED BILL
N.C. JINDAL PUBLIC SCHOOL, PUNJABI BAGH, NEW DELHI. FEE BEIL FOR THE MONTH OF 1.09.2008 to 31.03.2009 (Difference amount of fees) please credit to the A/c No 10001 of N.C. Jindal Public School New Delhi.

Name : NUPUR GUPTA Class & Sec. IX D Admn. No. 11472

ADDRESS DETAIL

Tution fee	Rs. 2100.00	sc./ HSc. Fee	Rs. 0.00
Dev.fee	Rs. 210.00	indiscip. Fine	Rs.0.00
Arrears	Rs.1500.00	Absentee fine	Rs.0.00
Bus fee	Rs.0.00	Late fee	Rs.0.00
Comp.fee	Rs.0.00	Dup. Diary fine	Rs.0.00

Total Amount Payable ₹ 3810.00
Amount in words Rs. Three Thousand Eight Hundred Ten Only.
By Cash/Cheque No-018726 Dated 13.03.2009.
Drawn Bank of Baroda
Signature of parent
Last Date Cheque/cash-31/03/2009.

Cashier……………”

It is apparent from a bare glance at the afore-extracted fee bills raised by the petitioner that it was charging development fee only @ 10% of the tuition fee in each bill.

6. In this context, it is worthwhile, at the cost of repetition, to note that the order dated 11 February 2009 *supra* issued by the DoE, permitted development fee to be charged @ 15% of the tuition fee.

7. Section 17 of the Delhi School Education Act 1973 ("the DSE Act") deals with fees and other charges which could be charged by schools. Sub-section (3) thereof stipulates, *inter alia*, that, except with prior approval of the DoE, no school would charge, during any academic session, fee in excess of the fee specified by the manager in the Statement of Fees submitted to the DoE before the commencement of that academic session. Simply stated, if a recognised school desired to increase the fee mid-session, it would have to seek prior approval of the DoE before doing so.

8. On 27 February 2012, the ADSC issued a questionnaire to the School, seeking information. The response to the questionnaire was submitted by the School on 2 March 2012.

9. Thereafter, *vide* notice dated 20 February 2013, the ADSC required the petitioner to appear before it on 20 March 2013.

10. The petitioner did so, and pointed out that, *vide* communication dated 16 March 2013 that it started charging development fee @ 15% of the tuition fee only w.e.f. 1 April 2009, in conformity with the order dated 11 February 2009 *supra* issued by the DoE. It was clearly pointed out that, for the period prior to 1 April 2009, the petitioner was charging development fee only @ 10% of the tuition fee.

11. On 13 August 2013, the ADSC proceeded to pass the main order on which the petitioner is aggrieved.

12. The aspects of tuition fee and development fee were separately addressed by the said order. On the aspect of tuition fee, the ADSC arrived at a finding that the financial liability consequent to the requirement of implementation of the 6th CPC recommendation had indeed resulted in the school being in deficit to the tune of ₹ 2,50,03,015. The ADSC, thereafter, examined the aspect of charging of development fee by the petitioner as one of the means of alleviating the financial distress that had resulted consequent on the need to implement the recommendations of the 6th CPC.

13. The ADSC first arrived at the finding that the recovery of development fee by the petitioner was not in accordance with the procedure to be followed in that regard. However, the ADSC refrained from directing any refund of the development fee on that ground keeping in view the colossal financial deficit of ₹ 2,50,03,015/- which the petitioner was suffering.

14. The ADSC, however, went on to note, on the aspect of increase in development fee by the school, thus:

> "However, there is another aspect to the issue of development fee. During 2008-09, the school, as per the fee schedule submitted to the Directorate, was charging development fee at the rate of 10% of tuition fee. However, while recovering the arrears for the period

01/09/2008 to 31/03/2009, the school recovered the same at the rate of 15% of tuition fee. While the school can legitimately charge development fee at the rate of 15% of tuition fee w.e.f. 01/04/2009, the school cannot recover the arrears of development fee at the rate of 15% of tuition fee when the development fee originally charged during the period to which the arrears pertained was at the rate of 10%.This would amount to hiking the development fee retrospectively during the middle of the year which is not permissible in view of the provisions of section 17 (3) of the Delhi School Education Act, 1973 which requires that no school shall charge a fee in excess of what has been intimated to the Director of Education before 31st March every year, without the prior approval of the Director. The development fee charged by the school which formed part of the total fee for the year 2008-09 which was intimated to the Director of Education before 31st. March 2008 was at the rate of 10% of tuition fee. Therefore, the school was not competent to charge any development fee in excess of 10% for the year 2008-09, whether originally or by way of arrears for any period forming part of that year." Any such excess charge would require prior approval from the Director which the school has admittedly not taken. The Committee, is therefore of the view, that the arrears of development fee recovered by the school at the rate of 5% (i.e. 15%-10%) of tuition fee for the period 01/09/2008 to 31/03/2009 were not justified. The school at best could have recovered the arrears at the rate of 10% of the hike in tuition fee. <u>The excess recovery of 5% was wholly unjustified and in fact illegal.</u> While the total amount of arrears of development fee for the period 01/09/2008 to 31/03/2009 has not been separately given by the school, based on the information furnished in reply to the questionnaire the same is worked out as follows:

class	Number of students	Monthly Tuition fee as hiked w.e.f. 01/09/2008 to 31/03/2009 (Rs.)	5% if hiked tuition fee (Rs.)	Total amount excess recovered per month (Rs)
Pre school and pre primary	431	1,000	50	21,550
I to V	1230	1,050	52	63,960

VI to VIII	796	1,150	58	46,168
IX to XII	891	1,350	68	60,588
Total	3348			1,92,266

Total amount excess recovered for seven month (192266 x 7) = 13,45,862.

Recommendations: –

The Committee, although is of the view, that the school even after taking into account the fact that the development fee recovered by it was not in accordance with the law laid down by the Hon'ble Supreme Court, is not recommending refund thereof in view of fact that the school had a large shortfall after payment of VI Pay Commission dues to the staff which is much more than the development fee which was unauthorizedly recovered. The Committee is also not recommending any hike in fee over and above that effected by the school as the school has not made any such claim. However, the Committee recommends that the school ought to refund the excess development fee arrears charged for the period 01/09/2008 to 31/03/2009 amounting to Rs. 13,45,862 as the same has been illegally charged without obtaining of the specific approval of the Director of Education as required under section 73(3) of Delhi School Education Act 1973.The refund ought to be made along with interest @ 9% per annum. Recommended accordingly."

15. Following the above, the ADSC directed the school to refund the excess development fee of ₹ 13,45,862/- which it had found the school to have charged during the period 1 September 2008 to 31 March 2009.

16. A bare reading of the passage from the ADSC recommendation extracted *supra* makes is apparent, as Ms. Gogoi, learned Counsel for the petitioner has pointed out, that the ADSC was proceeding on the erroneous premise that the petitioner had hiked its development fee to 15% w.e.f. 1 September 2008.

17. Proceeding from this fundamentally mistaken impression, the ADSC faulted the petitioner for having thus increased the development fee charged by it mid-session without obtaining prior approval of the DoE. Though the petitioner has contested the issue of whether prior approval of the DoE was at all required before development fee could be hiked mid-session, this aspect is not of any serious significance as the petitioner had not, in fact, increased its development fee mid-session, but had increased the development fee only w.e.f. 1 April 2009.

18. A further communication was issued by the Additional Director of Education on 21 October 2014 in response to which, once again, the school wrote on 19 November 2014, clarifying that it had charged development fee till 31 March 2009 only @ 10% and had charged development fee @ 15% only w.e.f. 1 April 2009 as was permitted by the DoE order dated 11 February 2009 *supra*.

19. On 10 July 2015, the petitioner addressed an application to the ADSC, pointing out that the ADSC had erred in presuming that the petitioner had increased development fee charged by it to 15% w.e.f. 1 September 2008 whereas it had actually done so w.e.f. 1 April 2009.

20. The said application was, however, rejected by the ADSC on the ground that it had no power to review its decision. The petitioner, thereupon, moved this Court by way of W.P.(C) 9532/2016 (***N.C. Jindal Public School v. GNCTD***), which was disposed of by a learned

Single Judge of this Court *vide* the following order dated 14 December 2016:

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 9532/2016, CM No. 38125/2016

N C JINDAL PUBLIC SCHOOL ..... Petitioner
Through: Mr. Rajiv Bansal & Ms. Uma Lohray,Advs.

Versus

GOVT OF NCT OF DELHI AND ANR ..... Respondents
Through: Mr. Santosh Kumar Tripathi, ASC with Mr. Rizwan, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **14.12.2016**

File taken up today as 12th December, 2016 was declared holiday on account of Milad-Un-Nabi.

Learned counsel for the respondents states he has taken instructions. According to his instructions, the petitioner would be at liberty to file a rectification application of orders dated August 11, 2016 and August 13, 2013 before the Fee Anomaly Committee. The said statement is taken on record.

In view of the statement made by the learned counsel for the respondents, Mr. Rajiv Bansal seeks to withdraw the writ petition to approach the Fee Anomaly Committee by way of a rectification application. The petition as well as connected application is dismissed as withdrawn.

The petitioner shall be at liberty to seek such remedy, as available in law, if the petitioner is still aggrieved by the order of the Fee Anomaly Committee.

Sd/-

V. KAMESWAR RAO, J

DECEMBER 14, 2016/ak"

21. In accordance with the liberty granted to the petitioner by the aforesaid order, the petitioner moved yet another application before the ADSC, seeking reconsideration of the matter.

22. The ADSC, however, once again rejected the application on the ground that it could not review its decision and was *functus officio*.

23. It was in these circumstances that the petitioner has approached this Court by means of the present writ petition, seeking a writ of *certiorari*, setting aside the decision of the ADSC to the extent it proceeded on the premise that the petitioner had increased its development fee to 15% w.e.f. 1 September 2008 and consequently, seeking quashing of the order dated 13 August 2013, 11 August 2016 and 30 August 2017.

24. In the counter affidavit filed by way of response to this writ petition, the respondent has not questioned, on facts, the assertion in the petition that the petitioner had in fact charged development fee @ 15% only w.e.f. 1 April 2009. Even otherwise, the Management Committee decision dated 25 March 2009, the General Notice issued by the School consequent thereto and the fee bills raised by the School, none of which have been questioned by the respondent, clearly indicate that, till 30 March 2009, the petitioner was charging development fee only @ 10% and had started charging development fee @ 15% only w.e.f. 1 April 2009.

25. There can, therefore, be no dispute about the fact that the petitioner had, in fact, commenced charging development fee @ 15 % only w.e.f. 1 April 2009. The petitioner was clearly entitled to do so in view of the order dated 11 February 2009 *supra* issued by the DoE, which permitted development fee to be charged by unaided recognised school @ 15% of the tuition fee w.e.f. 1 April 2009.

26. Clearly, therefore, the ADSC had erred in proceeding on the premise that the school was charging development fee @ 15% of the tuition fee w.e.f. 1 September 2008. In fact, till 31 March 2009, the school was charging development fee only @ 10 % and it was only w.e.f. 1 April 2009 that it had increased the development fee to 15%.

27. The direction for refund of development fee as contained in the impugned order dated 13 August 2013 cannot, therefore, sustain and is accordingly set aside.

28. In that view of the matter, no further orders are required to be passed with respect to the subsequent orders dated 11 August 2016 and 30 August 2017 passed by the ADSC as this Court has itself set aside the order dated 13 August 2013, to the extent it directed the petitioner to refund development fee erroneously found to have been charged in excess by the petitioner. The order dated 11 August 2016 and 30 August 2017 refusing the petitioner's request for a reconsideration of the said decision would also, consequently perish.

29. The writ petition accordingly succeeds and is allowed, with no orders as to costs.

C. HARI SHANKAR, J.

JANUARY 31, 2024

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Click here to check corrigendum, if any