
(2019) 02 DEL CK 0042

In the Delhi High Court

Case No : Civil Writ Petition No. 7902 Of 2018, Civil Miscellaneous No.30296 Of 2018

Bal Bharati Public School

APPELLANT

Vs

Directorate Of Education

RESPONDENT

Date of Decision : 04-02-2019

Acts Referred:

Delhi School Education Rules, 1973 — Rule 175, 177, 180
Constitution of India, 1950 — Article 324
Delhi School Education Act, 1973 — Section 17, 17(3), 20, 20(1), 24(3)
Land Acquisition Act, 1894 — Section 17, 18AA(1)
Code of Criminal Procedure, 1973 — Section 133

Citation : (2019) 257 DLT 310 : (2019) 3 AD(Delhi) 469

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Amit Sibal, Kamal Gupta, Pragya Agrawal, Ramesh Singh, Chirayu Jain, Nikita Goyal

Final Decision : Allowed

Judgement

1. The petitioner is a private unaided recognised senior secondary school, which was granted permanent recognition, by the Directorate of Education (hereinafter referred to as the "DOE"), in 1973. The lease deeds, whereby land was allotted, by the Land and Development Office (L&DO) for construction of the petitioner's school, issued in 1955, 1963, 1965, 1974 and 1975 did not contain any stipulation to the effect that, before or after increasing its tuition fee, the school was required to take approval, for the said increase, from the DOE. Section 17 of the Delhi School Education Act, 1973 (hereinafter referred to as the "DSE Act"), which governs charging of fees by schools stipulates, in sub-section (iii), inter alia, that such schools are required to file, with the DOE, a full statement of the fees to be levied by the school during the ensuing academic session and are proscribed from charging any fee in excess thereof, during the ensuing academic session without proper approval of the DOE. For ready reference, Section 17 of

the DSE Act may be reproduced, in extenso, thus :

"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. I may note, here, that it is not disputed, even by learned counsel for the respondents, that prior approval of the DOE was not required, before the petitioner took a decision regarding the fees to be charged by it for the next academic session. Such fees were to be decided, as per the DSE Act, by the Managing Committee of the School, which consisted, inter alia, nominees of the DOE as well as nominees of the Advisory Board of the School. It has also been averred, in the writ petition, that the school has been functioning for over 45 years and that no prior approval, for the fees charged by it, for providing tuition to its students, was ever sought by the DOE.

3. Vide a communication dated 29th March, 2017, addressed to the DOE, and issued in compliance with Section 17(3) of the DSE Act, the school intimated the fee structure, as approved by its Managing Committee for the ensuing academic session i.e. for the academic session 2017-2018. The said communication reads as under:

"Bal Bharati Public School

Ref:108/DOE/BB/2017 March 29, 2017

The Directorate of Education

National Capital Territory of Delhi

Old Secretariat, Delhi.

Dear Sir,

I am pleased to send you the following fee structure as approved by the Managing Committee of the school for the academic session 2017-2018 commencing from 1st April, 2017, in accordance with the proviso of Chapter 6, Section 17(3) of the Delhi Education Act and Rules 1973.

Particulars

Pre-

Pre-

Middle

Secondary

Sr.Sec.

Sr. Sec.

School

Primary to

(VI-VIII)

(IX-X)

(XI-XII)

(XI-

Class V

Arts/

XII)

Commerce

Science

Registration

25

25

25

25

25

25

fee*

Admission

200

200

200

200

200

200

Fee*

Caution

500

500

500

500

500

500

Money*

Tuition Fee

4620

4005

4530

4730

4730

4730

(pm)

Activity Fee

210

210

210

210

210

210

(pm)

Development

695

600

680

710

710

710

Fee (pm)

Science Fee

75

(pm)

Computer Fee

75

(pm)

*Only at the time of admission

Note

? No change in Admission Fee/Registration Fee/Caution Money is as per direction of Department of Education.

? Development Fee is 15% of prerevised Tuition Fee.

? Smart Class Programme fee is to be charged at the rate of Rs. 120/- per month (same as previous year) for classes I to XII.

? Annual charges will be charged at the rate of Rs. 6000/-.

Fee structure was approved by the Managing Committee in its meeting on 27th March 2017. Minutes of the Managing Committee meeting held on 27 March 2017, attended by Secretary, PTA, Teacher Representative and other members are enclosed. With kind regards,

Yours sincerely,

Sd/-

L. V. Sehgal

Principal

Cc: Addl. Director of Education, Act Branch

Cc: Dy. Director of Education, Dist. Centre

Cc: DDE, Zone 28, Plot No.5, Jhandewalan"

4. On 6th January, 2017, a circular was issued by the DOE, prohibiting unaided private schools from holding any meeting of the Managing Committee for increasing fees, for the 2017-18 academic session, till a decision thereon was taken by the competent authority. The said circular read as under:

"Attention of Manager/HoS, of all Private unaided Recognized Schools is invited towards Circular No.30- 3(17)/(12)/VII Pay Comm./Coord/2016/11006-11016 dated 19.08.2016 vide which Directorate of Education, Government of NCT of Delhi adopted the Central Civil Services (Revised Pay) Rules, 2016 and implemented 7th Pay Commission Recommendations in respect of its employees. However, since a decision regarding manner of implementation of 7th Pay Commission Recommendations in Private Unaided Recognized Schools, is yet to be announced by the Competent Authority, therefore, the Manager/HoS of all Private Unaided Recognized Schools are hereby directed not to hold any meeting of Managing Committee regarding increase in fee hike for the session 2017-18 till a decision is taken in this regard at the level of the Competent Authority and requisite guidelines are issued by the department."

5. This was followed by a clarificatory circular, also issued by the DOE on 27th March, 2017, which reads thus:

"In continuation of the circular vide DE.15/PSB/Misc./2016/29 dated 06.01.2017, vide which the Managers/HoS, of all the Private Unaided Recognised Schools were directed not to hold any meeting of Managing Committee regarding increase in fee for the session 2017-18 till a decision is conveyed regarding modalities of implementation of 7th Pay Commission Recommendations in respect of its employees.

Various requests for clarifications are being received in this regard, hence it is clarified that the circular dated 06.01.2017, applies only with respect to 7th Pay Commission benefits, detailed guidelines for which will be issued after decision of competent authority. In the mean-time, managing committee may take decision

in normal course, as per established procedure. However, no fee increase with respect to 7th Pay Commission may be implemented, as modalities are yet to be conveyed.

It is clarified here that the schools running on the DDA/Govt Land owing agencies with a condition of seeking prior sanction of Director (Education) for fee hike, will not increase any fee without prior sanction of the Director(Education).

This issues with the prior approval of the competent authority."

5. The aforementioned circular dated 6th January, 2017, of the DOE, was challenged, by an organisation styling itself the "Action Committee for Unaided Recognised Private Schools", before this Court by way of W.P.(C) 2637/2017. This writ petition was decided, by a learned Single Judge of this Court, vide judgment dated 30th March, 2017. The concluding paragraphs of the said decision, which are self-explanatory in nature may be reproduced thus :

"Prima facie this Court is of the view that 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 a decision with regard to a major head of expenditure, namely, the increase in salary due to Seventh Pay Commission shall be worked out by the Directorate of Education in a few days after commencement of the academic session.

Also to presume that all private unaided recognised schools are making profits would not be correct as this Court is seized of number of contempt petitions against private unaided schools who have not paid the increase in fees of teachers and staff under the Sixth Pay Commission till date.

Keeping in view the importance and relevance of 31st March, 2017 in Section 17(3) of 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 the 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.

It is clarified that this order has been passed without prejudice to the rights and contentions of either of the parties."

6. Guidelines for implementation of the 7th Central Pay Commission (hereinafter referred to as the "7th CPC") by private unaided schools were issued, by the DOE, vide Office Order dated 17th October, 2017; however, vide subsequent order dated 13th April, 2018, the DOE withdrew the said Office Order dated 17th October, 2017 in respect of private schools functioning on land allotted by government land owning agencies, clarifying that such schools were required to seek prior sanction of the DOE before increasing their fee. Inasmuch as the petitioner was not functioning on land allotted by any government land owning

agency, it continued to be covered by the earlier DOE order dated 17th October, 2017.

7. Vide a communication dated 30th November, 2017, the petitioner communicated, to the Deputy Director of Education (hereinafter referred to as the "DDE") in the office of the DOE itself, its revised fee with effect from 1st December, 2017, consequent upon the recommendations of the 7th CPC, and the requirement, thereunder, of payment, by the petitioner, to the teachers and other staff employed by it, in terms thereof. The said letter reads as under:

"No. 135/BB/2017 November 30, 2017

The DD (Zone -28), Directorate of Education Jhandewalan, New Delhi- 110005

Sub- Revised fee w.e.f. 01.12.2017 on account of Implementation of 7th CPC

Dear Sir,

Reference DOE Order No. DE.

15(318)/PSB/2016/1986 dated 17.10.2017. The Managing Committee in its meeting held on 21.11.2017 considered the proposal for increase in fee on account of implementation of 7th CPC as per direction issued by Directorate of Education vide order dated 17.10.2017. The following revised fee structure was unanimously passed:-

Particula

Pre-School

Pre-Primary

Middle

Secondary

Sr. Sec.

Sr. Sec.

rs

to Class V

(VI - VIII)

(IX-X)

(XI-XII)

(XI-XII)

Arts/

Science

Commerce

Pre-

Revis

Pre-

Revis

Pre-

Revis

Pre-

Revis

Pre-

Revis

Pre-

Revis

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500

500

500

Money*

Tuition

4620

5405

4005

4790

4530

5315

4730

5515

4730

5515

4730

5515

Fee (pm)

Activity

210

210

210

210

210

210

210

210

210

210

210

210

Fee (pm)

Develop

695

695

600

600

680

680

710

710

710

710

710

710

ment Fee

(pm)

Science

75

75

Fee (pm)

Computer Fee (pm)

75

75

*Only at the time of admission

Note

No change in Admission Fee/Registration Fee/Caution Money is as per direction of Department of Education Development Fee is 15% of prerevised Tuition Fee Smart Class Programme fee is to be charged at the rate of Rs. 120/- per month (same as previous year) for classes I to XII Annual charges will be charged at the rate of Rs. 6000/-.

Minutes of the Managing Committee meeting dated 21.11.2017 attended by DOE

Nominee & Advisory Board Nominee along with other members is enclosed. Also enclosed are the following documents:-

(i) Full statement of Fee under Section 17(3) of DSEA 1973 as per proforma circulated vide circular No. F/DE/PSB/2017/6604 dated 03.07.2017

(ii) Copy of letter dated 29th March, 2017 regarding fee structure for session 2017-18 duly submitted to your office.

Kindly acknowledge receipt.

Thanking you

Yours sincerely Cc:

The Deputy Director of
Education, of

Directorate of Education, District

Central, Sd/- Jhandewalan, Karol

Bagh, New Delhi-110005

Sd/-

L. V. Sehgal

Principal

Encl. as above."

8. This provoked an e-mail, dated 28th April, 2018 from the DOE castigating the school for having increased its fees without the previous approval of the DOE. The communication also required the petitioner to submit certain documents. For ready reference, the said e-mail, dated 28th April, 2018, from the DOE to the petitioner, may be reproduced thus :

"To

The Manager/HOS,

Bal Bharti Public School,

Ganga Ram Hospital Road, New Delhi.

With reference to the correspondence resting in your office, whereby you have informed that the fee has been increased by your school. It would be needless to mention that the fee has been increased by you without previous approval of Director of Education.

In this connection you are required to submit the following documents within a period of 3 days -

i. Copy of Fee Structure for 2017-18 alongwith statement of section 17(3) of

DSEA 1973 with a copy of Minutes of Meeting of PTA/SMC having consent/disagreement of Director of Education's Nominees.

ii. Details of fee increased during 2017-18 on account of 7th Pay Commission alongwith statement of accounts in its support and a copy of Minutes of Meeting of PTA/ SMC having consent/disagreement of Director of Education's Nominees.

iii. Copy of Fee Structure for 2018-19 alongwith statement of section 17(3) of DSEA 1973 with a copy of Minutes of Meeting of PTA/SMC having consent/disagreement of Director of Education's Nominees

iv. Details of Fee, if any, increased during 2018-19 without approval of Director of Education.

v. A photocopy of allotment/lease deed of land allotted to your school.

The aforesaid information must reach this office within the stipulated period of time of 03 days.

DDE ZONE-28"

9. In deference to the request contained in the afore-extracted e-mail, the petitioner provided the documents sought therein, under cover of its letters dated 28th April, 2018 and 5th May, 2018.

10. On 7th May, 2018, the DDE addressed another email to the petitioner which reads thus:

"Mail ID : 705201800530

Date : 07/05/2018 03:46 pm

From: 5005008 Zone28

To: 2128122 BAL BHARTI PUBLIC SCHOOL

Subject: Requirement of documents for evaluation of fee increase proposal of the Bal Bharti Public School, Sir Ganga Hospital Marg for academic session 2017-18.

Subject Topic: Other

OFFICE OF THE DEPUTY DIRECTOR OF ZONE 28, DISTRICT CENTRAL PLOT NO.5, JHANDEWALAN, NEW DELHI

No. DDE/Z-28/2018/672

Dated 07/05/2018

To,

The Principal/Manager,

Bal Bharti Public School (ID 2128122),

Pusa Road,

New Delhi

Sub: Requirement of documents for evaluation of Fee increase proposal of the Bal Bharati Public School, Sir Ganga Hospital Marg for academic session 2017-18

Madam/Sir,

This is with reference to evaluation of fee hike proposal as submitted by the school for academic session 2017-18. On evaluation of Fee hike proposal of the school, it has been felt to obtain information/documents and clarification from the school.

The List of documents required for examination of fee proposal of the school are as under:

- a) Original fee receipt issued during the financial year 2014-15, 2015-16 and 2016-17 for each class (atleast 2 students for all 12 months).
- b) Please provide the copy of Audited financial statement along with all schedules for the year 2014-15, 2015-16 both unit wise and consolidated statement.
- c) Copy of fee collection registrar for the financial year 2014-15, 2015-16 and 2016-17 for each class.
- d) Details of Free ship students during the financial year 2014-15, 2015-16 for each class.
- e) Staff statement as on 01.04.2017 along with the designation of teachers.
- f) Copy of returns filed under rule 180 of DSER 1973 for the financial year 2014-15, 2015-16 and 2016-17.
- g) Item wise details/break up/justification for the proposed increase (or decrease) for all revenue expenditures and capital expenditures as per budgeted statement for the session 2017-18 against actual expenditures incurred during 2016-17 along with relevant documents to substantiate its claim.
- h) Copy of FDR's certificate maintained by the school as on 31.3.2017.
- i) Clarify the date of implementation of 7th CPC. Also, provide salary payment register (or Pay bill register) for the month of November 2016 and December 2016 and clarify the mode and process/procedure of payment of salary.
- j) Copy of TDS return and PF for the financial year 2016-17.
- k) Statement of surplus of deficit in respect of each Earmarked levies namely Activity funds, Activity Fees for Orientation, skill development, Computer fees, science fees, Smart Class programme Fee, Transport Fee showing collection of fee under these heads and expenditure incurred under that.
- l) Utilization of development fee for the financial year 2014-15, 2015-16 and 2016-17.

- m) Details of secured and unsecured loan, if any, taken by the school during the year 2014-15, 2015-16, 2016-17 are required (nature of Loan, source of repayment, purpose of taking loan etc. also needs to be mentioned)
- n) Details of Inter Unit transaction and Intra Units transactions, including nature of transactions during the financial year 2014-15, 2015-16, 2016-17.
- o) Whether provision for gratuity and leave encashment are made on actuarial basis and if yes, the copy of the report of the actuary needs to be submitted.
- p) Details of Caution money charged/refunded, if any, during the year 2014-15, 2015-16 and 2016-17 together with the sample slip for caution money refund for 2 students per class.
- q) Whether school has deposited the caution money in a separate account in schedule bank, if yes, details of bank and account together with interest earned to be submitted by the school.
- r) Whether the school has filed statement of fee by 31st March for the years 2014-15, 2015-16 and 2016-17 before the commencement of academic session under section 17 (3) of the Act? If yes, please provide the details.
- s) Whether school is collecting donations in any name from the students at the time of admission? If yes, please provide the details.
- t) Detailed calculation of late fees collected during the year 2014-15, 2015-16 and 2016-17.
- u) Reconciliation statement of fee as per Financial statements with Fee structure and student strength (Fee as per Financial statement = No. of fee paying student* Fee per student per month * 12). This calculation should be done for each head of fee charged by the school for the year 2014-15, 2015-16 and 2016-17 and differences, if any, therein should be properly explained.

The school is hereby directed to submit the above mentioned documents/information at the earliest.

In this connection, you are hereby directed not to increase the fee until the scrutiny of said documents/information is done by the Department of Education."

11. This was followed by a letter, from the DOE to the petitioner on 11th May, 2018 requiring the petitioner to submit the documents enlisted in its earlier email dated 7th May, 2018, within three days, and reiterating the direction not to increase fees until the said documents were scrutinised by the DOE. The said communication read thus :

"OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION

DISTT.CENTRAL/NEW DELHI, PLOT NO.5,

JHANDEWALAN, NEW DELHI

Phone No. 011-23514063

No.DE.51/DDE/PB/C&ND/2017-18/94

DATED: 11/05/2018

To

The Principal/Manager

Bal Bharati Public School (ID 2128122),

Pusa Road,

New Delhi

Sub.; Requirement of documents for evaluation of fee increase proposal of Bal Bharti Public School, Sir Ganga Hospital Marg for academic session 2017-18

Madam/Sir,

In continuation to DDE Zone- 28, letter bearing No. DDE /Zone-28/2018 dated 07/5/2018 and subsequent reminder dated 11/05/2018 (both emailed) it is observed that the required documents for proper evaluation of fee increase proposal in respect of Bal Bharti Public School for academic session 2017-18 have not been submitted by the school so far. In view of above, it is once again directed to submit the following documents /records /information within a period of 3 days:-

- a) Original fee receipts issued during the financial year 2014-15, 2015-16 and 2016-17 for each class (at least 2 students for all 12 months)
- b) Please provide the copy of Audited financial statements along with all Schedules for the year 2014-2015, 2015-2016 both Unit wise & Consolidated statements
- c): Copy of fee collection registers for the financial year 2014-15, 2015-16 and 2016-17
- d) Details of Free ship students during the financial year 2014-15. 2015-16 for each class
- e) Staff statement as on 01.04.2017 along with the designation of teachers
- f) Copy of returns filed under rule 180 of DSER, 1973 for the financial year 2014-15, 2015-16 and 2016-17.
- g) Item-wise details/breakup/justification for the proposed increase (or decrease) for all revenue expenditures and capital expenditures as per budgeted statement for session 2017-18 against actual expenditure incurred\during 2016-17 along with relevant documents to substantiate its claim
- h) Copy of FDRs certificate maintained by the school as on 31.3.2017

- i) Clarify the date of implementation of 7th CPC. Also, provide salary payment register (or Pay bill register) for the month of November 2016 and December 2016 and clarify the mode and process/ procedure of payment of salary
- j) Copy of TDS return and PF return for the financial year 2016-17
- k) Statement of surplus or deficit in respect of each Earmarked levies namely Activity Fees, Activity Fees for Orientation, Skill development. Computer Fees, Science fee. Smart Class Programme Fee, Transport Fee, showing collection of fee under these heads and expenditure incurred against that
- l) Utilisation of development fee for the financial year 2014-15, 2015-16 and 2016-17
- m) Detail of secured/unsecured loan, if any, taken by the school during the years 2014-15, 2015-16 2016-17 are required (nature of loan source of repayment, purpose for taking loan etc. also needs to be mentioned.)
- n) Details of Inter-unit transactions and Intra-unit transactions, including nature of transactions during the financial year 2014-15, 2015-16, 2016-17
- o) Whether provision for gratuity and leave encashment are made on actual basis and if yes, the Copy of the report of the actuary needs to be submitted
- p) Details of caution money charged/refunded, if any, during the year 2014-15, 2015-16 and 2016-17 together with the sample slip for caution money refund for 2 student per class
- q) Whether the school has deposited the caution money in a separate account in schedule bank, if yes, details of bank account together with interest earned is to be submit by school
- r) Whether the school has filed statement of fees by 31st March for the years 2014-2015, 2015-16 and 2016-17 before the commencement of the academic session under section 17(3) of the Act? If yes, please provide the details
- s) Whether school is collecting donation in any name from the students at the time of admission? If yes, please provide the details?
- t) Detailed calculation of late fee collected during the year 2014-15, 2015-16 and 2016-17
- u) Reconciliation Statement of Fee as per Financial Statements with Fee Structure & Student Strength (Fees as per Financial Statements= No. of fee paying students* Fee per student per month*12). This Calculation should be done for each head of fee charged by the school for the year 2014-15, 2015-16 and 2016-17 and differences, if any, therein should be properly explained.

It is hereby reiterated and made clear that the school shall not increase the fee until the scrutiny of said documents/information is done by this office. The school is further directed to inform the parents accordingly."

12. The petitioner responded, vide letter dated 15th May, 2018, to the DOE, pointing out that all its earlier missives to the petitioner were misconceived, as the petitioner had never sought either prior or ex-post facto permission for increasing its fees for the academic session 2017-18, as Section 17 of the DSE Act did not require it to do so. It was pointed out that the communications, by the petitioner, to the DOE, regarding the hike of fees effected and proposed to be effected by it, were only by way of compliance with the mandate of Section 17(3) of the Act.

13. The DDE responded to the petitioner, vide communication dated 24th May, 2018, refuting the petitioner's submission that it was entitled to increase its fees without permission of the DOE, on the ground that the said contention was contrary to the judgment of the Supreme Court in *Modern School v. Union of India*, (2004) 5 SCC 583, which, according to the DDE, conferred enhanced powers on the DOE to regulate the fees charged by schools, and to examine, inter alia, whether any particular school was increasing its fees without utilising the reserves/surplus available with it, or without maintaining its accounts properly. It was pointed out, in the said letter, that the DDE had received a complaint, dated 18th May, 2018, alleging that the petitioner was forcing parents to pay higher fees, despite the aforementioned directions of the DOE. As such, the petitioner was directed to furnish the documents, requisitioned by the email dated 7th May, 2018 (supra) within one day.

14. The petitioner sought some more time for furnishing the said documents, and it is not in dispute that the documents were submitted by the petitioner on 18th June, 2018.

15. On 30th June, 2018, the DDE addressed yet another email to the petitioner fixing personal hearing, in the above respect, on 7th July, 2018 in the following terms:

"To

The Manager/Principal

Bal Bharati School

Rajinder Nagar

New Delhi

Dear Sir,

You are directed to appear with your accounts personnel for hearing on Monday i.e. July 02, 2018, at 11:00 A.M. in Public School Branch Dte of Education, old Sectt. Delhi, with additional documents/information as mentioned in the letter attached herewith on the subject cited above.

DDE (C/ND)

Name of School: Bal Bharti Public School

Address: Sir Ganga Ram Hospital Marg

School ID: 2128122

I. It was requested vide letter dated May 24, 2018,

school was asked to provide item-wise details/breakup/justification for the proposed increase (or decrease) for all revenue expenditures and capital expenditures as per budgeted statement for session 2017-18 against actual expenditure incurred during 2016-17 along with relevant documents to substantiate its claim, however, school has provided details of revenue expenditure against school fund only. Hence, it is directed that school should provide details of all revenue expenditures and capital expenditures incurred during the FY 2017-18 along with provision trail balance.

II. Copy of contract entered with vendor (if any) along with invoice for the month of March, 2017 and March, 2018 in relation to below mentioned activities;

- a. Transportation
- b. Orientation programme
- c. Skill development program
- d. Smart class program
- e. Housekeeping expenses
- f. Security Expenses
- g. Teachers training expenses

III. Details such as; number of student attended the activity, fee per student, expenditure incurred in detailed format of income holding events for the FY 2014-15, 2015-16 and 2016-17,

- a. Summer Camp
- b. Educational Tour
- c. Carnival

IV. Clarification is required from the school in respect of treating "Development of Campus" under the head "Repair & Maintenance". Ledger for the FY 2014-15, 2015-16 and 2016-17 is required from the school. Below are the details.

- a. FY 2014-15 - Rs. 51,94,070
- b. FY 2015-16 - Rs. 56,06,210
- c. FY 2016-17 - Rs. 81,74,188

V. Clarification is required in respect of professional charges incurred during the FY 2014-15, 2015-16, 2016-17. Ledger for the FY 2014-15, 2015-16 and

2016-17 is required from the school. Below are the details;

a. FY 2014-15 - Rs. 20,51,770

b. FY 2015-16 - Rs. 18,51,519

c. FY 2016-17 - Rs. 31,53,450

VI. Clarification is required in respect of retainer ship fee incurred during the FY 2014-15, 2015-16, 2016-17. Ledger for the FY 2014-15, 2015-16 and 2016-17 is required from the school. Below are the details;

a. FY 2014-15 - Rs. 68,22,547

b. FY 2015-16 - Rs. 64,13,662

c. FY 2016-17 - Rs. 32,61,842

VII. Clarification is required from the school for creation of provision in the name of "Provision for PF and Interest payable" of Rs. 4,63,56,050 out of school fund during the FY 2015-16.

VIII. The School has recoverable balance from inter units, ledger of the below mentioned organization is required from the school.

Name of Organization

Financial Year

Amount

BBPS-Bhopal

2016-17

23,06,474

(NEELBAD)

BBPS - Ludhiana

2016-17

25,00,000

BBPS - Manesar

2015-16

10,00,000

BBPS - Solan

2015-16

32,50,000

BBPS - Brij Vihar

2015-16

2,25,000

BBPS - Noida

2015-16

2,25,000

IX. School need to provide certified copy of bank statement (i.e. certified by bank) for the FY 2016-17 for all the bank accounts maintained.

X. Updated Fixed assets register as on March 31, 2018.

XI. Ledger for the below mentioned expenditure head;

XII. Ledger for building repair and maintenance is required for the FY 2014-15, 2015-16 and 2016-17.

XIII. Ledger for the head of "Other Expenses" is required for the FY 2014-15, 2015-16 and 2016-17.

a. Write off and provisions

b. Misc. Expenses

XIV. Ledger of "Development of Recording Studio", "Disaster Management System" and "Swimming Pool" for the FY 2014-15, 2015-16 and 2016-17 is required from the school, as school has incurred significant addition to the above-mentioned head during the last three year.

XV. Clarification is required from the school in respect of depreciation treatment for the FY 2016-17 School is hereby directed to attend the hearing on July 02, 2018 i.e. by Monday with PE Team, Private School Branch, Directorate of Education, Old Secretariat Delhi-110054 together with all the document mentioned above.

If required, the school may be called for further hearings for clarifications and explanations.

From

PE Team

Private School Branch

Directorate of Education"

16. On receiving the above notice of hearing, from the DoE, the petitioner responded, thus, to the DoE, on 4th July, 2018:

"No. 72/BB/2018-19 July 4th, 2018

The Dy. Director of Education

District Central/New Delhi

Plot No.5, Jhandewalan

New Delhi-110005

Sub: Reply to your e-mail dated 30.6.2018

Dear Madam,

This bears reference to your e-mail dated 30.6.2018 regarding provision of certain documents and clarification. This further bears reference to the earlier correspondence made by your good office with our school, particularly, to your e-mails dated 28.4.2018, 7.5.2018, 11.5.2018 & 24.5.2018.

At the outset, I may most humbly submit that the school has been timely responding to all your e-mails and has also been providing all the necessary documents required/requisitioned by your goodself from the school.

Having stated the above, the school is constrained to point out to your goodself that it is completely unaware and is in fact, in dark as to the nature of the exercise which is being carried on by the Department.

I may now, on behalf of the school, at the outset, once again reiterate and reappraise you of the clear, undisputed and admitted factual and legal position that our school does not have any condition whatsoever, either in the allotment letter or in the lease deed, requiring the school to take any approval whatsoever, much less a prior approval, of the DoE before fixing or enhancing the school fee. However, the school is duty-bound under the provisions of the DSEAR, 1973, to intimate to the department, its fee hike, as decided by a statutorily constituted Managing Committee of the school (which consists of a total of 4 nominees of the department as also of the Advisory Board), at the start of an academic session. The school has been, without fail, complying with the aforesaid requirement of law by timely intimating its fee hike to the department before the start of every academic year.

I may also draw your kind attention to the contents of the Order bearing No. DE.15(318)/PSB/2016/19786 dated 17.10.2017, issued by the Worthy Director of Education herself, whereunder our school is covered and dealt with under para 3 thereof, whereunder fee hike is permitted to be made for the year 2017-

18. I may also point out that the subsequent Order bearing No. DE.15(318)/PSB/2016/23840-23847 dated 13.4.2018, withdraws the earlier Order dated 17.10.2017, only in respect of schools that have a condition of seeking prior sanction of Director of Education before increasing their fee. Thus, clearly, the Order dated 17.10.2017 continues to apply and be in force for a school like ours.

In pursuance to the Order dated 17.10.2017, the school, after fully complying with the requirements and pre-conditions mentioned therein had submitted its

full "Statement of Fee" under Section 17(3) as per the proforma mentioned in the Directorate's Order dated 3.7.2017. Needless to state the said "Statement of Fee" was accompanied by all the documents as are required to be filed along with the proforma.

In addition thereto, the school had also submitted all documents and information as were required to be submitted by the school, to the department in pursuance to the Order dated 17.10.2017. No shortcoming had on account thereto, had ever been pointed out by the school to the department.

It is also pertinent and not out of place to mention that in reference to Para 3(I) (g) of the Order dated 17.10.2017, the "Statement of Fee" submitted under Section 17(3) is required to be analysed by the Dy. Director of Education (District), only in case where the DE nominee has passed a dissent note. As a matter of fact, in our case, all the nominees of the DE have approved the proposal for hike in fee for the year 2017-18. As stated above, in pursuance thereto, the "Statement of Fee" has already been filed with the department.

I may, at this stage, also point out that the Order dated 3.7.2017, specifying the proforma for submitting the full "Statement of Fee" under Section 17 (3), as the date of the Order reveals, was issued many months after the school had already submitted its "Statement of Fee" way back on 27.3.2017. The Order dated 3.7.2017 itself clarifies that the schools that have already submitted their "Statement of Fee" for the current academic year viz. 2017-18, need not submit the same again. However, in pursuance to the order dated 17.10.2017, permitting the school to raise their fee, for the purpose of implementation of 7th CPC, over and above the fee structure already submitted to you, the school, in compliance with para 3 (I) (f) had again submitted the full "Statement of Fee" in the proforma as circulated by the department vide its Order dated 3.7.2017.

As stated hereinabove, since the school not having any condition for seeking prior approval before fixing or enhancing its fee, it, at no point of time, made any "proposal for hike in fee" for the approval of the department, inasmuch as there was no such requirement under the law, as admitted by the department itself. Since there is no "proposal for hike in fee" submitted by the school [except for the "Statement of Fee" submitted under Section 17 (3)], it is not understood as to which proposal for hike in fee for the academic year 2017-18 is sought to be scrutinized by the department. I may also point out that the fee for academic year 2017-18 already stands charged and also duly utilized and spent as per the budgetary allocations. The academic year 2017-18 is long over and the "Statement of Fee" submitted by the school in March, 2017, i.e. more than one year and four months ago, cannot now be sought to be undone, especially when the said statement was prepared and intimated in accordance with the provisions of the DSEAR.

It is also perplexing and confusing to note the contents of the communications dated 7.5.2018, 11.5.2018 & 24.5.2018, wherein our school has been required

not to increase the fee for the year 2017-18, in clear contradiction to the Order dated 17.10.2017, issued by the DoE, as stated above, the said Order dated 17.10.2017 explicitly permits the school like ours to increase its fee, after following the procedure laid down therein. The school having fully complied with the Order dated 17.10.2017, issued by the DoE itself, the fee fixed by the school cannot be interdicted or interfered with, in any manner.

The school wishes to submit that the school has duly complied with all the provisions contained in the Order dated 17.10.2017 and has fixed its fee in strict compliance thereof. Insofar as the year 2018-19 is concerned, again in compliance with the statutory, mandate the school has already filed its full "Statement of Fee" with the department in March, 2018, whereby the school has made an increase of only 3% though as per the accepted norms and normal practice as also keeping in mind the bi-annual increase in D.A. and inflationary pressures, the school was entitled to raise its fee by 10 %.

In the facts and circumstances, narrated hereinabove, your goodself is kindly requested, in the first instance to look into the afore-mentioned factual and legal aspects and be pleased to guide the school accordingly."

17. This was followed by another letter, dated 11th July, 2018, from the petitioner to the DOE, which was by way of continuation to the communication dated 4th July, 2018 supra, and read thus:

"79/BB/2018-19

The Dy. Director of Education

District Central/New Delhi

Plot No. 5, Jhandewalan, Zone 28

Karol Bagh

New Delhi-110005

Sub: Reference to your email dated 30.06.2018 and our reply dated 06.07.2018 vide reference No. 72/BB/2018-19

Dear Madam,

In continuation of our letter dated 06.07.2018 explaining the position regarding your email dated 30.06.2018. We bring to your attention the following most important points for your consideration:-

For the session 2018-19, the duly constituted Statutory Managing Committee of the school including nominees of the Department of Education as well as of the Advisory Board decided to increase the fee by only 3%, though as per accepted norms and normal practice, the school is entitled to increase its fee by 10%.

For the arrear collection with regard to the implementation of 7th Central Pay

Commission (CPC) for which the school followed strictly the procedure laid down in DOE's order dated 17.10.2017, the school divided the entire collection of arrears into easy instalments as per the following schedule:-

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Date of

Second

Date of

Third

Date of

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22.05.1

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22.08.1

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8

I to

11740

5870

20.12.1

2935

22.05.1

2935

22.08.1

V

7

8

8

VI

11740

5870

20.12.1

2935

22.05.1

2935

22.08.1

to

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VIII

IX &

11740

5870

20.12.1

2935

22.05.1

2935

22.08.1

XI

X &

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11470

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XII

The above schedule was intimated to the parents well in advance and the parents by & large accepted and adhered to this schedule.

Inspite of the above, if any parent has approached the school authorities for further relaxation of time for payment of arrears, the same has been allowed to avoid any hardship to them.

In view of the above facts and circumstances, you will appreciate that the school has been considerate and has taken all steps required to avoid any hardship or burden on the parents and has also followed the orders of the Directorate of Education and the procedure laid down by them for implementation of 7CPC.

I hope you will take a considered decision in the matter & guide us accordingly.

Thanking you & with regards

Yours sincerely

Sd/-

L.V. Sehgal

Principal"

18. The writ petition avers that, almost as a rebound to the above communication, dated 11th July, 2018, addressed to it by the petitioner, the DoE issued the impugned order, dated 9th July, 2018, which issues the following directions:

"9. NOW, THEREFORE the management of the said school 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 proposals submitted by school on any account including implementation of 7th CPC for the academic session 2017-18 and if the fee is already increased and charged for the academic session 2017-18, the same shall be refunded to the parents or adjusted in the fee of subsequent months.

(ii) 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.

(iii) 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 Judgement of Modern School vs. Union of India. Therefore, school not to include capital expenditure as a component of fee structure to be submitted by the school under Section 17(3) of DSEA, 1973.

(iv) 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.

(v) To remove all the financial and other irregularities/violations as listed above and submit the compliance report within 30 days to this office.

(vi) In case of submission of any proposal for increase in fee for the next academic session, the compliance of the above listed financial and other irregularities/violations will also be attached.

(vii) Non-compliance of the order shall be viewed seriously.

(PRATIBHA SAPRA)

DEPUTY DIRECTOR OF EDUCATION

DISTRICT CENTRAL/NEW DELHI

To,

The Manager/HOS,

Bal Bharti Public School,

Ganga Ram Hospital Marg,

New Delhi.

NO.F.DDE/C&ND/Z-28/2017-18/ Dated: 09/07/2018

Copy to:

1. PS to Secretary (Education), Directorate of Education, GNCT of Delhi.
2. PS to Director (Education), Directorate of Education, GNCT of Delhi.
3. PA to Addl. Director of Education (Private School Branch) Directorate of Education, GNCT of Delhi.
4. DDE (FSB), Old Secretariat, Delhi.
5. DDE Zone-28
6. Guard File

(PRATIBHA SAPRA) DEPUTY DIRECTOR OF EDUCATION DISTRICT CENTRAL/NEW DELHI"

19. Aggrieved by the above extracted communication dated 9th July, 2018, the present writ petition seeks issuance of a writ of certiorari, quashing the said order.

20. Arguments have been advanced, on behalf of the petitioner, by Mr. Amit Sibal, learned Senior Counsel and, on behalf of the DOE, by Mr. Ramesh Singh, learned Additional Standing Counsel.

21. Mr. Amit Sibal submits that the impugned order has been passed in clear violation of the principles of natural justice. He draws my attention to the fact that e-mail dated 30th June, 2018 (supra), addressed to the petitioner, by the DOE, which was issued on a Saturday, fixed personal hearing two days immediately thereafter, on Monday, i.e. 2nd July, 2018. He submits that this was clearly unreasonable, especially given the fact that the intervening day was Sunday. Mr. Sibal draws my attention, in this context, to the fact that other schools, who had not turned up for hearing on the first occasion, had been given a second chance and complains that his client was unjustly discriminated against, in that regard. He further draws my attention to the fact that, though the petitioner responded, to the abovementioned notice of hearing dated 30th June, 2018, vide emails dated 4th July, 2018 and 11th July, 2018, there was no reply, by the DOE thereto. Mr. Sibal submits that it was thus, without even being afforded an opportunity of personal hearing, that his client was asked to refund a colossal amount of Rs. 8.23 crores. He draws my attention, in this regard, to the audited balance sheet of the petitioner which, according to him, indicated that, even after increasing its fee by Rs. 8.23 crores, the petitioner was running in a deficit of Rs. 3.43 crores. If the said increase of fee was not allowed, therefore, Mr. Sibal would submit, the petitioner-school would suffer a deficit of approximately Rs. 11.6 crores, which would make it nearly impossible for the petitioner to function. Mr. Sibal also questions, on merits, the tabular statement, contained in para 7(v) of the impugned order and the conclusion therein, that the petitioner had a net surplus of Rs. 11,08,35,824/- and submits that he has demonstrated, by way of a comparative table annexed as Annexure P-18 to the writ petition, as to how the manner in which this "net surplus", as worked out by the DOE, was inherently flawed.

22. Mr. Sibal would also submit that the documents requisitioned from his client by the email dated 30th June, 2018 (supra) were voluminous, and it was impossible to expect his client to furnish the same in less than 48 hours, especially as the intervening day was Sunday.

23. Mr. Sibal further submits that the impugned order fundamentally erred in assuming that the petitioner had submitted, to the DOE, a proposal, proposing increase of its fee and seeking approval thereof. He submits that, by virtue of Section 17 of the DSE Act, his client was not required to take prior approval, before increasing its fee, but was only required to communicate the statement of the proposed fee to the DOE, which is what it did. The entire basis of the impugned order, i.e. that the petitioner had submitted a proposal for increase of fee, seeking prior approval thereof, was therefore, Mr. Sibal, submits, misguided, vitiating, in its entirety, the impugned order itself.

24. Arguing in response to the above submissions of Mr. Sibal, Mr. Ramesh Singh strongly refutes the allegation that the impugned order was passed in violation of the principles of natural justice. Referring to the communication dated 4th July, 2018 (supra), by the petitioner to the DOE, Mr. Ramesh Singh submits that the

petitioner had submitted its response, on merits, to the case of the DOE against it, and had clearly asserted that the fee fixed by the petitioner could not be interdicted or interfered with, in any manner. The said letter, Mr. Ramesh Singh points out, concluded with the request, to the DOE, to look into the factual and legal aspects highlighted in the letter and "to guide the school accordingly". Mr. Ramesh Singh points out that there was no request, in the said letter, for any grant of personal hearing and that, inasmuch as the letter was written as a response to the DOE's notice fixing personal hearing, the DOE was entitled to treat it as an effective waiver of the right of personal hearing and as a request to decide the case on merits, which is what it went on to do.

25. Mr. Ramesh Singh also submits that Section 17(3) of the DSE Act and Rule 180 of the DSE Rules did not set out an adversarial procedure or require any prior opportunity of personal hearing. It required the petitioner to file its return and submit its statement of fee, and required the DOE to examine the same. As such, Mr. Singh would submit, no violation of the law could be alleged to have taken place at the hands of the DOE, even if an opportunity of personal hearing was not extended to the petitioner. Mr. Singh highlights, in this context, the words "reasonable opportunity of showing cause", contained in Section 20(1) of the DSE Act and relies, in this context, on the judgment of this Court in *Preet Public Secondary School v. The Administrator, N.C.T. of Delhi*, (1995) 59 DLT 482 (DB). Mr. Singh also submits that the manner in which the petitioner has worked out its financial position is completely opposed to settled accounting principles and asserts that the decision of the DOE, to the effect that the petitioner had a net surplus of Rs. 11,08,35,824/-, was correct on facts and in law. Mr. Singh would submit, therefore, that no occasion arises, for this Court to interfere with the impugned decision of the DOE.

26. Arguing in rejoinder, Mr. Kamal Gupta, learned counsel appearing for the petitioner submits that the reliance, by Mr. Singh, on Section 20 of the DSE Act, is completely misguided, inasmuch as the impugned order has not been passed under the said provision. Without prejudice thereto, he relies on the judgment of this Court in *Kalka Public School v. Hon'ble L.G. of Delhi*, 2018 (170) DRJ 26, which holds that an opportunity of hearing is necessary before taking a decision under Section 20 of the DSE Act. Mr. Kamal Gupta further submits that, in the present case, the petitioner had not even been extended the courtesy of a prior show cause notice, before the impugned order was passed, as the communication, dated 30th June, 2018 (*supra*) could not be regarded as a show cause notice. He highlights the procedure to be followed in cases of schools which were running on land without the requirement of prior sanction of the DOE before hiking their fees even as contained in the order, dated 17th October, 2017, issued by the DOE and, draws especial attention to the stipulation, in that regard, to the effect that "in case of schools in which DOE's Nominee has passed a dissent note and in case of the schools running on the land allotted by DDA/L&DO/any other Government Land Owning agencies, NOT having the condition to seek prior sanction of Director (Education), if a fee hike is proposed then their

statement of fee submitted under section 17(3) of DSEA, 1973 shall compulsorily be analysed by Dy. Director Education (District)". He further submits that the manner in which the DOE arrived at a conclusion that the petitioner had a surplus of Rs. 11,835,824/- was completely fallacious, and suffered from glaring errors.

27. In conclusion, Mr. Kamal Gupta submitted that, in case this Court was of the view that the matter required to be reconsidered by the DOE, the impugned order could itself be treated as a show cause notice, so that time would be saved and the matter expedited. He also suggested that this Court could adopt the course adopted by the Division Bench of this Court in *Delhi Abhibhavak Mahasangh v. GNCTD*, 2011 SCC OnLine Del 3394, in which a chartered accountant was appointed to examine the issue and analyse whether the fee hike, claimed by the schools in that case, was justified.

28. Mr. Ramesh Singh was permitted to advance submissions in surrejoinder, in which he took me through the scheme of the DSE Act and submitted, on the basis thereof, that the Act did not contemplate either issuance of a show cause notice or grant of a prior hearing, before a decision was taken on the proposal, of any school, to hike its fee for the coming academic session. He relies, in this context, on paras 20 and 21 of the well known decision of the Supreme Court in *Modern School* (supra). Apropos the decision in *Kalka Public School* (supra), Mr. Singh would submit that the judgments relied upon by the learned Single Judge of this Court, in the said decision, were distinguished only on the ground that, therein, the impugned order had already been passed.

29. Mr. Singh finally places reliance on Section 17(3) of the DSE Act and Rule 175 of the DSE Rules, to support the impugned order.

Analysis and Reasoning

30. Though several arguments were advanced by learned Counsel appearing on both sides, as reflected hereinabove, regarding the requirement of obtaining prior approval of the proposed hiking of fees by the School, as well as the merits of the impugned decision, I do not think it necessary to enter into the said submissions, or examine their merit, as, in my view, the impugned Order cannot sustain even on the ground of violation of the principles of natural justice.

31. The issue of whether an opportunity of personal hearing could be read into a provision which does not, expressly, provide therefor, has come in for judicial scrutiny in a number of cases, of which one may refer, with advantage, to the judgement in *Swadeshi Cotton Mills v. U.O.I.*, (1981) 1 SCC 664, which contains the following incisive exploration into the various facets of the principles of natural justice and fair play and, in particular, the doctrine of *audi alteram partem*:

"25. Before dealing with the contentions advanced on both sides, it will be useful to have a general idea of the concept of "natural justice" and the broad principles

governing its application or exclusion in the construction or administration of statutes and the exercise of judicial or administrative powers by an authority or tribunal constituted thereunder.

26. Well then, what is "natural justice"? The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of a cast-iron formula. Historically, "natural justice" has been used in a way "which implies the existence of moral principles of self-evident and unarguable truth". [Paul Jackson : Natural Justice, 2nd Edn., p 1] In course of time, Judges nurtured in the traditions of British jurisprudence, often invoked it in conjunction with a reference to "equity and good conscience". Legal experts of earlier generations did not draw any distinction between "natural justice" and "natural law". "Natural justice" was considered as "that part of natural law which relates to the administration of justice". Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules.

27. But two fundamental maxims of natural justice have now become deeply and indelibly ingrained in the common consciousness of mankind, as pre-eminently necessary to ensure that the law is applied impartially, objectively and fairly. Described in the form of Latin tags these twin principles are: (i) audi alteram partem and (ii) nemo judex in re sua. For the purpose of the question posed above, we are primarily concerned with the first. This principle was well-recognised even in the ancient world. Seneca, the philosopher, is said to have referred in Medea that it is unjust to reach a decision without a full hearing. In Maneka Gandhi case [(1978) 1 SCC 405 : (1978) 2 SCR 272] , Bhagwati, J. emphasised that audi alteram partem is a highly effective rule devised by the courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power. Hence its reach should not be narrowed and its applicability circumscribed.

28. During the last two decades, the concept of natural justice has made great strides in the realm of administrative law. Before the epoch-making decision of the House of Lords in Ridge v. Baldwin, 1964 AC 140, it was generally thought that the rules of natural justice apply only to judicial or quasi-judicial proceedings; and for that purpose, whenever a breach of the rule of natural justice was alleged, courts in England used to ascertain whether the impugned action was taken by the statutory authority or tribunal in the exercise of its administrative or quasi-judicial power. In India also, this was the position before the decision, dated February 7, 1967, of this Court in Dr Bina Pani Dei case [(1974) 2 SCC 121 : 1974 SCC (Cri) 467 : (1974) 3 SCR 427] ; wherein it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. This supposed distinction between quasi-judicial and administrative decisions, which was perceptibly mitigated in Dr Bina Pani Dei case [(1974) 2 SCC 121 : 1974 SCC (Cri) 467 : (1974) 3 SCR 427] , was further rubbed out to a vanishing point

in *A.K. Kraipak v. Union of India* [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619] , thus: (SCC p. 272, para 20)

"If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries....

Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry."

29. In *A.K. Kraipak case* [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619] , the court also quoted with approval the observations of Lord Parker from the Queen's Bench decision in *In re H.K. (Infants)*, 1965 AC 201; which were to the effect, that good administration and an honest or bona fide decision require not merely impartiality or merely bringing one's mind to bear on the problem, but acting fairly. Thus irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial, a duty to act fairly, that is, in consonance with the fundamental principles of substantive justice is generally implied, because the presumption is that in a democratic polity wedded to the rule of law, the State or the legislature does not intend that in the exercise of their statutory powers its functionaries should act unfairly or unjustly.

30. In the language of V.R. Krishna Iyer, J. (vide *Mohinder Singh Gill case*, (1978) 1 SCC 405: "... subject to certain necessary limitations natural justice is now a brooding omnipresence although varying in its play ... Its essence is good conscience in a given situation; nothing more" but nothing less." (SCC p. 434, paras 47 and 48)

31. The rules of natural justice can operate only in areas not covered by any law validly made. They can supplement the law but cannot supplant it (per Hedge, J. in *A.K. Kraipak*, (1969) 2 SCC 262). If a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. (see *Union of India v. Col. J.N. Sinha*, (1970) 2 SCC 458)

32. The maxim *audi alteram partem* has many facets. Two of them are: (a) notice of the case to be met; and (b) opportunity to explain. This rule is universally respected and duty to afford a fair hearing in Lord Lore-burn's oft-quoted language, is "a duty lying upon everyone who decides something", in the exercise of legal power. The rule cannot be sacrificed at the altar of administrative convenience or celerity; for, "convenience and justice" "as Lord Atkin felicitously put it" "are often not on speaking terms [General Medical

Council v. Spackman, 1943 AC 627, 638]".

33. The next general aspect to be considered is: Are there any exceptions to the application of the principles of natural justice, particularly the audi alteram partem rule? We have already noticed that the statute conferring the power, can by express language exclude its application. Such cases do not present any difficulty. However, difficulties arise when the statute conferring the power does not expressly exclude this rule but its exclusion is sought by implication due to the presence of certain factors: such as, urgency, where the obligation to give notice and opportunity to be heard would obstruct the taking of prompt action of a preventive or remedial nature. It is proposed to dilate a little on this aspect, because in the instant case before us, exclusion of this rule of fair hearing is sought by implication from the use of the word "immediate" in Section 18-AA(1). Audi alteram partem rule may be disregarded in an emergent situation where immediate action brooks no delay to prevent some imminent danger or injury or hazard to paramount public interests. Thus, Section 133 of the Code of Criminal Procedure, empowers the Magistrates specified therein to make an ex parte conditional order in emergent cases, for removal of dangerous public nuisances. Action under Section 17, Land Acquisition Act, furnishes another such instance. Similarly, action on grounds of public safety, public health may justify disregard of the rule of prior hearing.

34. Be that as it may, the fact remains that there is no consensus of judicial opinion on whether mere urgency of a decision is a practical consideration which would uniformly justify non-observance of even an abridged form of this principle of natural justice. In *Durayappah v. Fernando* [(1967) 2 AC 337] Lord Upjohn observed that "while urgency may rightly limit such opportunity timeously, perhaps severely, there can never be a denial of that opportunity if the principles of natural justice are applicable.

36. In *Mohinder Singh Gill* case, (1978) 1 SCC 405, the appellant and the third respondent were candidates for election in a Parliamentary Constituency. The appellant alleged that when at the last hour of counting it appeared that he had all but won the election, at the instance of the respondent, violence broke out and the Returning Officer was forced to postpone declaration of the result. The Returning Officer reported the happening to the Chief Election Commissioner. An officer of the Election Commission who was an observer at the counting, reported about the incidents to the Commission. The appellant met the Chief Election Commissioner and requested him to declare the result. Eventually, the Chief Election Commissioner issued a notification which stated that taking all circumstances into consideration the Commission was satisfied that the poll had been vitiated, and therefore in exercise of the powers under Article 324 of the Constitution, the poll already held was cancelled and a repoll was being ordered in the constituency. The appellant contended that before making the impugned order, the Election Commission had not given him a full and fair hearing and all that he had was a vacuous meeting where nothing was disclosed. The Election

Commission contended that a prior hearing had, in fact, been given to the appellant. In addition, on the question of application of the principles of natural justice, it was urged by the respondents that the tardy process of notice and hearing would thwart the conducting of elections with speed, that unless civil consequences ensued, hearing was not necessary and that the right accrues to a candidate only when he is declared elected. This contention, which had found favour with the High Court, was negatived by this Court. Delivering the judgment of the Court, V.R. Krishna Iyer, J., lucidly explained the meaning and scope of the concept of natural justice and its role in a case where there is a competition between the necessity of taking speedy action and the duty to act fairly. It will be useful to extract those illuminating observations, in extenso: (SCC p. 434, para 48)

"Once we understand the soul of the rule as fair play in action" and it is so" we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation; nothing more" but nothing less. The 'exceptions' to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case."

37. After referring to several decisions, including the observations of Lord Upjohn in *Durayappah v. Fernando*, the court explained that mere invocation or existence of urgency does not exclude the duty of giving a fair hearing to the person affected: (SCC p. 437, paras 56 & 57)

"It is untenable heresy, in our view, to lock-jaw the victim or act behind his back by tempting invocation of urgency, unless the clearest case of public injury flowing from the least delay is self-evident. Even in such cases a remedial hearing as soon as urgent action has been taken is the next best. Our objection is not to circumscription dictated by circumstances, but to annihilation as an easy escape from a benignant, albeit inconvenient obligation. The procedural pre-condition of fair hearing, however minimal, even post-decisional, has relevance to administrative and judicial gentlemanliness....

We may not be taken to ... say that situational modifications to notice and hearing are altogether impermissible.... The glory of the law is not that sweeping rules are laid down but that it tailors principles to practical needs, doctors remedies to suit the patient, promotes, not freezes, life's processes, if we may mix metaphors...."

38. The court further emphasised the necessity of striking pragmatic balance

between the competing requirements of acting urgently and fairly, thus: (SCC p. 439, paras 62-63)

"Should the cardinal principle of 'hearing' as condition for decision-making be martyred for the cause of administrative immediacy? We think not. The full panoply may not be there but a manageable minimum may make-do.

In *Wiseman v. Borneman* [(1976) 3 All ER 665] there was a hint of the competitive claims of hurry and hearing. Lord Reid said: "Even where the decision has to be reached by a body acting judicially, there must be a balance between the need for expedition and the need to give full opportunity to the defendant to see material against him."

(emphasis added)

We agree that the elaborate and sophisticated methodology of a formalised hearing may be injurious to promptitude so essential in an election under way. Even so, natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances. To burke it altogether may not be a stroke of fairness except in very exceptional circumstances."

The court further pointed out that the competing claims of hurry and hearing can be reconciled by making situational modifications in the *audi alteram partem* rule: (SCC pp. 439 & 440, paras 63 & 66) "(Lord Denning M.R., in *Howard v. Borneman*, summarised the observations of the Law Lords in this form.) No doctrinaire approach is desirable but the court must be anxious to salvage the cardinal rule to the extent permissible in a given case. After all, it is not obligatory that counsel should be allowed to appear nor is it compulsory that oral evidence should be adduced. Indeed, it is not even imperative that written statements should be called for disclosure of the prominent circumstances and asking for an immediate explanation orally or otherwise may, in many cases be sufficient compliance. It is even conceivable that an urgent meeting with the concerned parties summoned at an hour's notice, or in a crisis, even a telephone call, may suffice. If all that is not possible as in the case of a fleeing person whose passport has to be impounded lest he should evade the course of justice or a dangerous nuisance needs immediate abatement, the action may be taken followed immediately by a hearing for the purpose of sustaining or setting aside the action to the extent feasible. It is quite on the cards that the Election Commission, if pressed by circumstances may give a short hearing. In any view, it is not easy to appreciate whether before further steps got under way he could have afforded an opportunity of hearing the parties, and revoke the earlier directions....

All that we need emphasize is that the content of natural justice is a dependent variable, not an easy casualty.

Civil consequences undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary

damages. In its comprehensive connotation everything that affects a citizen in his civil life inflicts a civil consequence."

(emphasis added)

39. In *Maneka Gandhi*, [(1978) 1 SCC 405 : (1978) 2 SCR 272], it was laid down that where in an emergent situation, requiring immediate action, it is not practicable to give prior notice or opportunity to be heard, the preliminary action should be soon followed by a full remedial hearing.

40. The High Court of Australia in *Commissioner of Police v. Tanos*, (1958) 98 CLR 383 held that some urgency, or necessity of prompt action does not necessarily exclude natural justice because a true emergency situation can be properly dealt with by short measures. In *Heatley v. Tasmanian Racing & Gaming Commission*, 14 Aus LR 519, the same High Court held that without the use of unmistakable language in a statute, one would not attribute to Parliament an intention to authorise the commission to order a person not to deal in shares or attend a stock exchange without observing natural justice. In circumstances of likely immediate detriment to the public, it may be appropriate for the commission to issue a warning-off notice without notice or stated grounds but limited to a particular meeting, coupled with a notice that the commission proposed to make a long-term order on stated grounds and to give an earliest practicable opportunity to the person affected to appear before the commission and show why the proposed long-term order be not made.

41. As pointed out in *Mohinder Singh Gill v. Chief Election Commissioner* and in *Maneka Gandhi v. Union of India* such cases where owing to the compulsion of the fact-situation or the necessity of taking speedy action, no pre-decisional hearing is given but the action is followed soon by a full post-decisional hearing to the person affected, do not, in reality, constitute an "exception" to the *audi alteram partem* rule. To call such cases an "exception" is a misnomer because they do not exclude "fair play in action", but adapt it to the urgency of the situation by balancing the competing claims of hurry and hearing.

42. "The necessity for speed", writes Paul Jackson: "may justify immediate action, it will, however, normally allow for a hearing at a later stage". The possibility of such a hearing" and the adequacy of any later remedy should the initial action prove to have been unjustified" are considerations to be borne in mind when deciding whether the need for urgent action excludes a right to rely on natural justice. Moreover, however, the need to act swiftly may modify or limit what natural justice requires, it must not be thought "that because rough, swift or imperfect justice only is available that there ought to be no justice": *Pratt v. Wanganui Education Board*.

43. Prof. de Smith, the renowned author of *Judicial Review* (3rd Edn.) has at p. 170, expressed his views on this aspect of the subject, thus: "Can the absence of a hearing before a decision is made be adequately compensated for by a hearing *ex post facto*? A prior hearing may be better than a subsequent hearing, but a

subsequent hearing is better than no hearing at all; and in some cases the courts have held that statutory provision for an administrative appeal or even full judicial review on the merits are sufficient to negative the existence of any implied duty to hear before the original decision is made. The approach may be acceptable where the original decision does not cause serious detriment to the person affected, or where there is also a paramount need for prompt action, or where it is impracticable to afford antecedent hearings."

44. In short, the general principle" as distinguished from an absolute rule of uniform application" seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude. In short, this rule of fair play "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

(Emphasis supplied)

32. So illuminating, and instructive, indeed, are the above-extracted passages from *Swadeshi Cotton Mills* (supra), that any attempt at a paraphrasing thereof would border on blasphemy. Suffice it to state that the law, as enunciated in the said decision, continues to hold the field till date, and continues to guide the Supreme Court, in a plethora of authorities.

33. Applying the principles so enunciated, I am unable to subscribe to the submission, of Mr. Ramesh Singh, that there has been no fatal infraction of the principles of natural justice, in the present case. A re-look at the sequence of correspondence, between the petitioner and the DOE, would make this apparent. The fee structure of the petitioner was submitted, by it, to the DOE, on 30th November, 2017. On 28th April, 2018, the DOE wrote to the petitioner, seeking certain documents, which was applied on 5th May, 2018. Further documents were sought, by the DOE, on 7th May, 2018 and 11th May, 2018. These, according to the petitioner, were again submitted on 15th May, 2018. On 24th May, 2018, the petitioner wrote, to the DOE, clarifying that it had never sought

any prior approval from the DOE, for the enhancement of fee, as its case fell under Section 17(3) of the DSE Act. The School, therefore, has all along been adhering to the stand that it was merely submitting its statement of proposed fee, for the next academic session, as was required by the said sub-section, and was not seeking prior approval. This was reiterated, by the petitioner, in its further communication, dated 28th May, 2018. On 30th June, 2018, the DOE again wrote to the petitioner, seeking further documents, which, at a plain glance, would run into several pages, directing them to appear for personal hearing at less than 48 hours' notice. On 4th July, 2018, the petitioner wrote back, to the DOE, pointing out that it had already provided the documents sought in the earlier emails, dated 28th April, 2018, 7th May, 2018, 11th May, 2018 and 24th May, 2018, of the DOE. In these circumstances, the petitioner requested the DOE to look into the matter and "guide the school accordingly". The DOE proceeded, on 9th July, 2018, to pass the impugned Order.

34. That the petitioner was not, in fact, heard, before the impugned Order, dated 9th July, 2018, was passed, is an irrefutable fact. Mr. Ramesh Singh, however, submits that, in the first place, the scheme of the DSE Act did not require any such prior hearing to be granted to the petitioner, before the passing of the impugned Order and, secondly, that the communication, dated 4th July, 2018, effectively waived the opportunity of personal hearing, as extended by the DOE on 30th June, 2018, and exhorted the DOE to take a decision, on the matter, on merits. The two questions that arise for consideration are, therefore, (i) whether the DSE Act, and the DSE Rules, empowered the DOE to do away with the requirement of prior hearing, before the passing of impugned Order dated 9th July, 2018 and (ii) whether the communication, dated 4th July, 2018, from the petitioner, to the DOE passing the impugned order without any opportunity of hearing to the petitioner, amounted to a waiver, by the petitioner, of such opportunity.

35. Both these issues, in my opinion, would be required to be answered against the DOE, and in favour of the petitioner.

36. The normal principle to be applied is against jettisoning of the audi alteram partem requirement. The paragraphs, from Swadeshi Cotton Mills (supra), extracted hereinabove, highlight the importance of the said principle, as a cardinal principle of natural justice and fair play of considerable vintage. It is noticed that the audi alteram partem principle is devised by the court, to ensure that a just decision was arrived at, and operates as a healthy check on abuse or misuse of power and that, therefore, its reach should neither be narrowed nor circumscribed. The said principle, it is further noted, applies, equally, to administrative and quasi-judicial acts. Exclusion of the principle is to be inferred only where such exclusion is to be found, either specifically or by necessary implication, in the provisions of the statute. In such cases, no doubt, the Court is proscribed from ignoring the mandate of the legislature. In examining, however, whether the statute excludes the audi alteram partem principle, either expressly

or by necessary implication, the court is to be guided by (i) the language of the statute, (ii) the basic scheme of the provision, (iii) the nature of the power, (iv) the purpose of conferment of the power and (v) the effect of exercise of the power. Urgency can be cited as a ground to avoid compliance with the audi alteram partem rule, in the sense of grant of a prior opportunity of hearing before taking of the decision, only where the situation is emergent, and calls for immediate action, failing which imminent danger, injury or hazard to paramount public interest can be foreseen. Other circumstances, in which the audi alteram partem principle, in the form of a prior opportunity of hearing, may not be mandatory are where considerations of public safety or public health are involved to the extent that "the clearest case of public injury flowing from the least delay is self-evident". In all other circumstances, it would be impermissible to do away with the requirement of a prior opportunity of hearing, before taking of a decision, on the grounds of urgency. The concept of "civil consequences" has also, significantly, been explained, as covering "infraction of not merely property or personal rights, but of civil liberties, material deprivation and non-pecuniary damages and, in its comprehensive connotation, (covering) everything that affects a citizen in his civil life". Holistically seen, the judgment cautions courts from excluding the requirement of a pre-decisional hearing, even if it is to be minimal. It is only when "viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude", that the principle can be jettisoned. Every effort has to be made to salvage the applicability of the audi alteram partem principle, at the pre-decisional stage.

37. Thus seen, it cannot be regarded, in my opinion, that the situation was such as justified the passing of the impugned Order, dated 9th July, 2018, without grant of an opportunity of hearing to the petitioner. Several issues arose, which required a personal audience in the matter. The petitioner has, from the very beginning, been questioning the very requirement of a prior approval, before enhancing its fees, and has been adhering to its stand that it was never seeking prior approval, but was only submitting a statement of fees, as required by Section 17(3) of the DSE Act, before actually enhancing its fees. The issue of whether, were it not permitted to enhance its fees, the petitioner would suffer an unbearable loss, or was operating with a surplus, was also a thorny issue of fact, on which the petitioner ought to have been heard. A reading of the impugned Order indicates that the DOE has proceeded to analyse the accounts of the petitioner, in its own manner, to arrive at the conclusion that the petitioner was having a net surplus of Rs. 11,08,35,824/-. As against this, the petitioner's contention was that it was already suffering a deficit, and that the deficit would be increased, were the petitioner to be saddled with the burden of having to provide, from its own resources, the additional pay, to be paid to the teachers under the 7th CPC. The consequence of the decision of the DOE was that, inter alia, the petitioner was directed to refund the enhanced fees for the 2017-2018 academic session, or adjust the fees for the subsequent months - which, in effect, would lead to the same result, i.e., that the petitioner would

have to bear the said amount from its own resources, rather than recover the same from the parents of the students studying in its institution. Given the fact that the petitioner was an unaided school, and is, therefore, largely dependent on the fees charged from its students, this aspect assumes importance.

38. The above observations are not intended to represent an exhaustive delineation of all the issues that arise for consideration. Needless to say, the petitioner would be entitled to place, before the DOE, all materials justifying the proposed increase of fee for the 2017-2018 academic session, as already recovered by the petitioner. The petitioner would also be entitled to contend that no prior approval of the DOE was required, before the fees were so enhanced, and to make submissions on the applicability, in this context, of the judgment of the Supreme Court in *Modern School (supra)*, on which the DOE relies.

39. Inasmuch as the matter is being remanded for reconsideration, I refrain from entering any observations, even tentative, on any of these aspects, all of which are left open, to be canvassed by the petitioner and decided by the DOE. For the purposes of this judgment, suffice it to state, that the impugned Order dated 9th July, 2018, cannot be said to have been passed in consonance with the principles of natural justice. It cannot be said that the letter dated 4th July, 2018, (or even 11th July, 2018, though the said letter was issued after the passing of the impugned Order) waives the requirement of a personal hearing. Waiver of the opportunity of personal hearing is not something to be readily inferred, unless it is expressly so stated. Mr. Sibal is correct in contending that his client had, in its communication dated 4th July, 2018, only sought guidance from the DOE, and not invited a decision behind its back, without an opportunity of hearing. The decision of the DOE, to treat the said letter as amounting to waiver of the opportunity of personal hearing, which had been granted by it on 2nd July, 2018, borders, I am constrained to say, on perversity.

40. Principles of natural justice are required to be applied in a pragmatic, rather than a dogmatic, manner. The various communications, addressed by the DOE to the petitioner, reveal, clearly, that a mass of information, involving several documents, had been requisitioned thereby. Even given the sheer volume of the material sought from the petitioner, the petitioner ought to have been extended an opportunity of personal hearing, in order to explain the said material, before the DOE proceeded, on its own, to analyse the material in the manner it thought best. After all, the records of the institution could best be explained by the institution itself, irrespective of whether such explanation meets with the approval of the authority, taking the ultimate decision, or not. Such an opportunity, in the present case, has, clearly, not been extended, by the DOE, to the petitioner, thereby vitiating the impugned Order, dated 9th July, 2018, even on that score.

41. The suggestion, of learned Senior Counsel appearing for the petitioner, to refer the matter to a Chartered Accountant, in my view, does not merit acceptance at this juncture. Mr. Ramesh Singh has pointed out that the DOE

does, where required, take expert opinion from M/s Ernst & Young, which is a well-known and reputed firm, involving experts in the field. It is not necessary, therefore, for this Court to nominate, at this stage, any independent Chartered Accountant, to examine the matter. Needless to say, however, should the DOE seek the assistance of any such professional, the petitioner would be within its rights to question the said decision and, in that regard, lead expert evidence on its own. Lest the proceedings are prejudiced, I do not wish to say anything more on this aspect of the matter.

Conclusion

42. In view of the above discussion, the impugned Order, dated 9th July, 2018, is quashed and set aside. The matter stands remanded to the DoE, for consideration de novo, in the light of the observations made hereinabove. All questions of fact and law are left open. The proceedings shall be deemed to recommence from the date when the notice dated 30th June, 2018, was issued to the petitioner by the DoE.

43. The DoE is directed to take a decision as expeditiously as possible and, at any rate, within 6 months from the date of pronouncement of this judgment in court.

44. The writ petition stands allowed to the above extent. There shall be no order as to costs.