
(2018) 05 DEL CK 0123

In the Delhi High Court

Case No : LPA 291 of 2017 & C.M. 14915, 17187, of 2017

ST. MARKS SR. SEC PUBLIC SCHOOL &

APPELLANT

Vs

DIRECTOR OF EDUCATION & ANR.

RESPONDENT

Date of Decision : 11-05-2018

Acts Referred:

Delhi School Education Act, 1973 — Section 17(3), 16, 10(1)

Citation : (2018) 05 DEL CK 0123

Hon'ble Judges : S. RAVINDRA BHAT, SANJEEV SACHDEVA

Bench : Division Bench

Advocate : Sandeep Sethi, Vedanta Varma, Akhil Kumar Gola, Vibhor Kush, Apoorva Pandey, Gautam Narayan, R.A. Iyer, Manish Garg, Hitesh Kr. Bagri

Final Decision : Disposed Of

Judgement

,

SANJEEV SACHDEVA, J.",

1.The Appellants in LPA No.291/2017 â?" St. Marks Senior Secondary Public School (hereinafter referred to as â??the Public School?) and St.,

Marks Girls Senior Secondary School (hereinafter referred to as â??the Girls School?) (both schools hereinafter collectively referred to as â??the,

Schools?) impugn order dated 20.03.2017, whereby the Writ Petition (W.P.(C) No. 5784/2016) filed by the Schools impugning the order passed by the",

Respondent â?" Directorate of Education (hereinafter referred to as â??the D.O.E.?) was dismissed.,

2.Though the order of the D.O.E. dated 16.06.2016 issued several directions, the Appellants are aggrieved by Directions (2) & (3) contained therein",

whereby it has been held that 15% additional increase in the Tuition Fee for the Session 2015 â?" 16 for Air Conditioning Plants is illegal and liable to,

be refunded/adjusted and further that no development fee shall be charged by the Schools from the parents from Session 2015-16 onwards unless,

the amounts claimed under depreciation till 2014-15, are deposited by the Schools in a separate account in a Nationalized Bank.",

3.LPA No.340/2017 has been filed by the D.O.E. impugning an interim order dated 02.05.2017 passed by the learned Single Judge in W.P. (C),

3840/2017 staying the impugned order/notice dated 28.04.2017. The impugned order/notice dated 28.04.2017, had been issued by the D.O.E. for a",

fresh inspection pursuant to representations received from some of the parents regarding fee hike. The Schools assailed the impugned notice on the,

ground that inspection had been carried out consequent to which order dated 16.06.2016 had been issued and there was no cause for a fresh,

inspection.,

4.It is contended by the Schools that in 2014, the Managing Committees of the Schools convened a Meeting, comprising of the representatives of the",

parents, D.O.E. nominees, teachers and the Managing Committee. In the meeting, it was unanimously decided that a centralized air conditioning",

system/heating system should be installed for which finances would be obtained from financial institutions.,

5.In the year 2015, the Managing Committee unanimously resolved that in addition to the yearly 10% increase, the fee of the Schools should be",

increased in order to meet a 15% increase in the revenue expenditure towards electricity and maintenance cost because of installation of the Air,

Conditioning Plant. As per the Schools, there was to be no increase in the fee to recover the cost of the installation of the air-conditioning but the",

increase was solely for meeting increase in the revenue expenditure.,

6.It is contended that in compliance of Section 17(3) of the Delhi School Education Act, 1973, intimation regarding increase in the fee was sent to the",

D.O.E., and the D.O.E. never raised any objection to the increase in fee; thereby the said fee structure attained finality.",

7.It is contended that an Inspection Team of the D.O.E. conducted an inspection on 30.03.2015 and 04.04.2015 of the two Schools respectively.,

Inspection was carried out pursuant to a complaint filed by some parents; later on, the complaint was dismissed as withdrawn. It is contended that a",

different set of parents filed Writ Petition (W.P.(C) No.2435/2016) before this

Court.,

8.By order dated 21.03.2016, in the said Writ Petition, the Court directed the D.O.E. to dispose of the representation dated 07.01.2015 filed by some",

of the parents.,

9.The Schools responded to the representation and informed the D.O.E. that 15% increase in tuition fee was made towards running cost of Air,

Conditioning Plant being revenue expenditure and not towards its installation, which would have represented capital expenditure. Inspection of books",

of Account was also provided. The D.O.E, after inspection, passed the order dated 16.06.2016, impugned in the Writ Petition directing the Schools to",

refund/adjust the 15% additional increase in the tuition fee for the year 2015 â?"

16. With regard to the direction to the Schools not to charge any,

development fee from the parents for the Session 2015 â?" 16 onwards unless the amount of ₹ 1,58,74,628/- claimed under the head of Depreciation",

by the Public School and ₹ 1,21,92,707/- by the Girls School is deposited in a separate account in a Nationalized Bank, learned senior counsel for the",

petitioner contended that there was no requirement under the Delhi Education Act and Rules to open a separate bank account; what is required is to,

have a separate account in the Books of Account clearly depicting the amount, which has been credited to the Depreciation Reserve Fund Account in",

the Books.,

10.By the impugned judgment dated 20.03.2017, learned Single Judge was of the view that installation of the Air Conditioning System could not be",

termed as connected with the curricular activity and cocurricular activity. The capital expenditure has to be incurred from the savings from the tuition,

fee and it was not the case of the Schools that it was from the savings that they have funded the Air Conditioning System and if that were so, the",

expenses incurred for electricity charges for running the Air Conditioning System could not be by way of increase in tuition fee. Even if defraying of,

electricity bill was revenue expenditure, the same could not be qualified to be met by increase in tuition fee.",

11.Relying on the recommendations of the Duggal Committee, learned Single Judge was of the view that the direction of D.O.E. that electricity and",

maintenance charges could be charged as annual charges, could not be termed to be incorrect or misplaced. Further, reliance was placed by the",

learned Single Judge on the Direction No.(vii) in order dated 15.12.1999 and Direction No.(xiv) in order dated 11.02.2009, which had permitted the",

Schools to levy development fee only if they maintained Depreciation Reserve Fund equivalent to the depreciation charges in the revenue accounts,

and the collection under this head along with income generated from investments made out of this fund were to be kept in a separately maintained,

Development Fund Account.,

12.For determining the challenge raised to the first direction i.e. the increase in Tuition Fee, it would be necessary to refer to the Duggal Committee",

report.,

13.Â The relevant portion of the Duggal Committee report relied on by the parties reads as under:- â??7.19. With a view to overcoming these,

anomalies, as also for curbing the potential for any likely â??misuse? by the schools including those run by minorities, the Committee recommends that",

the levies charged should be classified under four broad categories as given below.,

i) The first category should comprise of the Registration Fee and all â??One time charges? levied at the time of the admission of the student such as,

Admission Fee and Caution Money. While the Admission Fee should not be charged more than once during the entire stay of the student as stipulated,

under Section 16 of D.S.E. Act, 1973 read with Rules 135, 137 and 138 thereunder, it should be made mandatory for the schools to refund the Caution",

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

ii) The second category should comprise of â??Tuition Fee?. This should be so fixed, as to cover the standard cost of establishment including provision",

for D.A., bonus and all terminal benefits as mentioned under Section 10(1) of the Delhi School Education Act 1973; as also the all expenditure of",

revenue nature for the improvement of curricular facilities like Library, Laboratories, Science Fee and Computer Fee up to class X and examination",

expenses. The more important parameters for determining standard cost of establishment, interalia, could be the pupil-teacher ratio and the ratio of",

teaching and non-teaching staff in each school.,

iii) The third category should be that of â??Annual Charges? - an area in need of maximum discipline. These charges should be so determined so as to,

be sufficient to cover all expenditure of revenue nature not included in (ii) above, "over-heads", and expenses on play grounds, sports equipment",

gymnasium, cultural and other co-curricular activities as distinct from curricular activity of the school.",

(iv) The fourth category should consist of all "earmarked levies" for services rendered by the schools, to be recovered only from the "user",

students, in respect of only those facilities availed of by them, such as Transport Fee, Swimming Pool Charges, Horse riding, Tennis, Mid-day meals",

etc. The income from the earmarked levies, should be spent only for the purpose for which these are collected, with the role of the school, being",

confined to that of a catalyst or a facilitator for managing the services on a "no profit no loss" basis. 7.20 All transactions relating to the,

"earmarked" activities should form an integral part of the school accounts. Further, to ensure that the Accounts for such services are self-balancing",

over a period, separate accounts should also be maintained by the school for each of the activity/services",

14. As per the Duggal Committee report, there are four categories of fee that can be charged by a school. The first category of fee that can be",

charged by a School should comprise of the Registration Fee and all "One time charges" levied at the time of the admission of the student such,

as Admission Fee and Caution Money. The second category of fee should comprise of "Tuition Fee", which is to be fixed so as to cover the",

standard cost of establishment including provision for D.A., bonus and all terminal benefits, and also to cover all expenditure of revenue nature for the",

improvement of curricular facilities like Library, Laboratories, Science Fee and Computer Fee up to class X and examination expenses. The third",

category of fee should be that of "Annual Charges" to cover all expenditure of revenue nature not included in the second category, "over-",

heads", and expenses on play grounds, sports equipment, gymnasium, cultural and other cocurricular activities as distinct from curricular activity of",

the school. The fourth category of fee should consist of all "earmarked levies" for services rendered by the schools, to be recovered only from",

the "user" students, in respect of only those facilities availed of by them, such as Transport Fee, Swimming Pool Charges, Horse riding, Tennis",

Midday meals etc.,

15.The contention on behalf of the schools is that only the cost of running the Air Conditioning plants is sought to be recovered by increase in Tuition, Fee. It is contended that the revenue expenditure in running the Air Conditioning Plant would be covered in the cost of establishment. On the other, hand, the contention on behalf of the D.O.E. is that if Tuition Fee is increased, it leads to a consequential cascading increase in the Development fee," which is 15% of Tuition Fee, and the Annual Charge, which is 10% of the Tuition Fee. It is contended that income derived from Tuition Fee can only", be utilised for defraying expenses on account of salary, allowances and benefits to employees; expenses for needed expansion of the school or of a", developmental nature can be defrayed from any saving that may remain thereafter. It is contended that the annual charge could be levied to meet, revenue expenses not included in tuition fee, facilities, expenses on playgrounds, sports equipment and other co-curricular activities as distinct from", curricular activities.,

16.With regard to the increase in Tuition Fee, learned Single Judge held as under: 17. Insofar as the direction No.2 in the impugned order dated June", 16, 2016 is concerned, as noted above, the Director of Education has held that 15% additional increase in tuition fee for the session 2015-2016 by the", Schools for air conditioning system is illegal and liable to be refunded / adjusted. There is no dispute that the Schools have installed the air conditioning, system. The air conditioning systems have been financed through a loan from a financial institution. The electricity charges are being claimed, under", the head tuition fee. There is also no dispute that the respondent no.1 is authorized to regulate the fee and other charges. The tuition fee in terms of, the order dated February 11, 2009 and also order dated December 15, 1999, shall be so determined so as to cover the standard cost of establishment", including provisions of DA, bonus etc. and all terminal benefits as also the expenditure of revenue nature concerning the curricular activities as distinct", from cocurricular activities. The installation of air conditioning system cannot be termed to be connected with curricular activity and co-curricular, activity. That apart the capital expenditure has to come through savings from the tuition. It is not the case of the petitioners that it is on account of, savings that they have funded the air conditioning system. If that is so, the expenses incurred for electricity charges for running the air conditioning",

system cannot be by way of increase in tuition fee. It is immaterial if defraying of electrical bills is in the nature of revenue expense but still, cannot be",

qualified to be met by way of increase in tuition fee, at least in the facts of this case. 17. That apart, the submission of Mr. Sibal that the stand of the",

respondent no.1 that electricity and maintenance charges are overheads, must be charged as annual charges is incorrect and misplaced by relying on",

the recommendations of the Duggal Committee is concerned, the Duggal Committee held tuition fee to comprise expenditure of revenue nature for",

improvement of curricular facilities like library, laboratories, science fee etc. The recommendation does not include air conditioning system, nor as",

stated above, it qualifies as curricular activity or co-curricular activity. It has been rightly held in the impugned order that the charges for electricity bill",

can be claimed under the head annual charges as the same cannot be included in tuition fees, and overheads, nor it is expenses on play ground, sports",

equipment, cultural activities etc. and also on cocurricular activities. 18. The plea of Mr. Sibal alternatively that instead of tuition fee, the petitioners",

could have claimed; the charges under the head annual charges, and as such the action cannot be called as illegal, is concerned, the same does not",

appeal to this Court, more so when there is a finding in the impugned order that the schools have already increased annual charges in the session",

20152016. The school could not have further claimed the electricity charges under the head annual charges. The submission of Mr. Narayan that the,

increase in tuition fee has a cascading effect on, development fee, Annual charges, and, the tuition fee of the next academic session is appealing. I",

find no illegality in direction No. 2.â??,

17.The D.O.E. has permitted the recovery of the revenue expenditure i.e. the running cost of the Air Conditioning Plant from the Annual Charges,

being raised by the School. However, for the subject year; 2015 â?" 16, since the Schools had already increased the Annual Charges, direction has",

been issued to refund the increased tuition fee.,

18.The stand of the Schools is that what they are seeking to recover is only the revenue expenditure towards running the Air Conditioning facility. The,

cost of setting up of the equipment has been borne by the Schools from their own funds.,

19.It is the settled position of law that: â??in the matter of determination of the

fee structure unaided educational institutions exercise a great, autonomy as they like and are entitled to a reasonable surplus for development of education and expansion of the institution. They are permitted to, make reasonable profits after providing for investment and expenditure. However, capitation fee and profiteering are forbidden. Each institute must", have freedom to fix its own fee structure, after taking into account the need to generate funds to run the institution and to provide facilities necessary", for the benefit of the students. They must be able to generate surplus, which must be used for betterment and growth of that educational institution.",

The fee structure must be fixed keeping in mind the infrastructure and facilities available, investment made, salaries paid to teachers and staff, future", plans for expansion and/or betterment of institution subject to two restrictions, namely, non-profiteering and noncharging of capitation fees.",

Profits/surplus cannot be diverted for any other use or purposes and cannot be used for personal gains or for other business or enterprise. The,

Director is authorised to regulate the fees and other charges to prevent commercialisation of education. School has to furnish a full statement of fees, in advance before the commencement of the academic session. All operational expenses for the current accounting year like salary and allowances, payable to employees, rent for the premises, payment of property taxes are current revenue expenses. These expenses entail benefits during the", current accounting period. Expenditure, on the other hand, is for acquisition of an asset of an enduring nature, which gives benefits spread over many", accounting periods, like purchase of plant and machinery, building, etc. Therefore, there is a difference between revenue expenses and capital", expenditure. Each item of income should be accounted for separately under the common head, namely, Recognised Unaided School Fund. Salaries", allowances and benefits to the employees shall constitute deduction from the income in the first instance. after such deduction, surplus if any, shall be", appropriated towards pension, gratuity, reserves and other items of appropriations and after such appropriation the balance (savings) shall be utilised to",

Item, Expenditure (Rs.)

a) Electricity Expense, "Â 88,95,053/-

b) Diesel Expense, "Â 11,36,830/-

c) Maintenance Charges,"Â 15,55,988/-

d) Depreciation,"1,21,99,951/-

e) Interest,"88,77,787/-

Â Â Â Total,"3,26,65,609/-

30.With regard to the second direction i.e., restraining the Schools from charging any development fee till the amounts claimed as depreciation till 2014",

â?" 15 is deposited by the schools in a separate account in a nationalised bank, it may be seen that the purpose of charging development fee is inter",

alia to create a Depreciation Reserve Fund for replacement of a Capital Asset. The requirement of the Rules is that the amount, which has been",

claimed as depreciation, should be separately stated in an Account.",

31.As per Modern School (supra), the Management is entitled to create a Development Fund Account and collect development fees. Development",

fees are to be treated as capital receipt and can be collected only if the school maintains a Depreciation Reserve Fund Account.,

32.Even if the argument of the Schools were to be accepted that there is no requirement of opening a separate bank account in a Nationalized Bank",

what would be required to be shown by the Schools is that the amount which is credited to the Depreciation Reserve Fund account is available at all,

points of time and has not been diverted/utilized for any other purpose. In case the amount which is shown as a credit balance in the Depreciation,

Reserve Fund in the books of account, is not available in the Bank as a credit balance, then the same would remain a mere entry in the books of",

account and the amount would not be available when required for replacement of the capital asset. The whole purpose of maintaining a Depreciation,

Reserve Fund would be lost. Further, if the Schools are maintaining a credit balance in their bank account corresponding to the amount standing to the",

credit in the Depreciation Reserve Fund in their books of account, no prejudice would be caused to the schools if they merely transfer the said amount",

from the common pool account to a separate account specifically created for the said purpose. We therefore find no infirmity with direction (3) issued,

by D.O.E. by the impugned letter dated 16.06.2016.,

33.In view of the above, LPA No.291/2017 filed by the Schools is disposed of with a direction that an inspection team shall be constituted by the",

D.O.E. which shall examine the accounts and records of the Schools and furnish a report to the D.O.E. with regard to the direct expenditure for,

running the Air Conditioning Plant and the proportionate increase that would be permissible in the Annual Charge. No interference is called for with,

regard to direction (3) contained in D.O.E. letter dated 16.06.2017 i.e. restraining the Schools from charging any development fee till the amounts,

claimed as depreciation till 2014 â?" 15 is deposited by the schools in a separate account in a nationalised bank.,

34.LPA No.340/2017 filed by the D.O.E. impugns the interim order dated 02.05.2017 passed by the learned single judge in W.P. (C) 3840/2017,"

staying the impugned order/notice dated 28.04.2017, whereby the D.O.E. had directed a fresh inspection of account for the period 2010 â?" 11 to",

2015 â?" 16, pursuant to representations received from some of the parents regarding fee hike. Since we have already directed a fresh inspection of",

the accounts for the period 2015 â?" 16 for the purposes of ascertaining the direct expenditure for running the Air Conditioning Plant and the,

proportionate increase that would be permissible in the Annual Charge, we are of the view that no prejudice would be caused to the schools in case",

the inspecting team also examines the accounts for the period 2010 â?" 11 to 2015 â?" 16.,

35.We, however, direct that the report of the inspecting team and further decision of the D.O.E. based on the report, on issues other than the ones",

relating to the year 2015 â?" 16 (for the purposes of ascertaining the direct expenditure for running the Air Conditioning Plant and the proportionate,

increase that would be permissible in the Annual Charge), would be subject to further orders to be passed by the learned single judge in W.P. (C)",

3840/2017.,

36.The appeals are disposed of in the above terms. No orders as to costs.,

37.Order Dasti under signatures of Court Master.,