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

\+ W.P.(C) 5743/2024 & CM APPL. 23712/2024, CM APPL. 23713/2024

ACTION COMMITTEE UNAIDED RECOGNIZED PRIVATE SCHOOLS ..... Petitioner

Through: Mr. Kamal Gupta, Mrs. Tripti Gupta, Mr. Sparsh Aggarwal, Mr. Karan Chaudhary, Ms. Yosha Dutt, Mr. S.L. Bansal and Mr. Nikhil Kukreja, Advs.

versus

DIRECTORATE OF EDUCATION ..... Respondent

Through: Mr. Santosh Kumar Tripathi, SC (Civil) for GNCTD/DoE with Ms. Prashansa Sharma and Mr. Rishabh Srivastava, Advs.

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

ORDER (ORAL)

% 29.04.2024

CM APPL. 23713/2024 (Exemption)

1. Exemption allowed, subject to all just exceptions.

2. The application is disposed of.

W.P.(C) 5743/2024 & CM APPL. 23712/2024 (*Stay*)

3. The grievance of the petitioner in this case is directed against the following order dated 27 March 2024, passed by the Directorate of Education (DoE):

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

No.F.DE-15(40)/PSB/2019/1433-1440 DATED 27/03/24

ORDER

Whereas as per Section 17 of DSEAR, 1973, it is clear that no private unaided school in Delhi which has been allotted land by the Govt. Agencies shall enhance fee without the prior sanction of the Director of Education.

Now, therefore, all the Head of Schools/Managers of Private Recognized Unaided Schools, allotted land by the land owning agencies on the condition of seeking prior sanction of Director of Education for increase in fee, are directed to submit their proposals, if any, for prior sanction of the Director of Education for increase in tuition fee/fee for the academic session 2024-25, online from 01.04.2024 through website of Directorate and upload the returns and documents mentioned therein latest by 15.04.2024. Any incomplete proposal shall be summarily rejected.

The proposals submitted by the schools shall be scrutinized by the Director through any officer or teams authorized on this behalf. In case, no proposal is submitted by the school in terms of this order, the school shall not increase tuition fee/fee, Such schools are strictly directed not to increase any fee until the sanction is conveyed to their proposal by Director of Education. In case of any complaint regarding increase of any fee without such prior approval will be viewed seriously and will make the school liable for action against itself as per the statutory provisions.

The link of module for submitting the proposals online and uploading the returns and documents shall be uploaded soon on the website of the Directorate at the link school plant->fee structure->proposal for fee hike 2024-25 accessible through school login and password.

This issues with the prior approval of the Competent Authority."

(DAVENDRA MOHAN)
Deputy Director of Education (PSB)"

The decision in ***Action Committee Unaided Recognized Private Schools***, rival submissions in that regard, and analysis thereof

4. Mr. Kamal Gupta, learned Counsel for the petitioner, submits that the impugned order is in the teeth of the judgment of this Court in ***Action Committee Unaided Recognized Private Schools v. DoE***[1] and ***Mt. Carmel School v. DoE***[2] both of which were decided by a common judgment dated 15 March 2019, reported as ***2019 SCC OnLine Del 7591***.

5. He has drawn my attention to paras 95, 96, 125, 132, 182, 184, 187, 196 and 207 of the decision in ***Action Committee Unaided Recognized Private Schools*** which read thus:

> "95. The emphasis, by the Supreme Court, in paragraph 27 of the ***Modern School*** judgment[3], on compliance with the provisions of the DSE Act and the DSE Rules, makes it clear that the Supreme Court intended compliance, with its directions, to be in tandem with the provisions thereof, and not blind thereto. How, then, is that possible, if at all? The answer, quite obviously, is that, if the provisions of the DSE Act and/or the DSE Rules contain anything which harmonizes with paragraphs 16 and 17 of the terms of allotment of the land, those provisions have to be borne in mind while examining whether compliance, with the "land clause", has, or has not, taken place.
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> 96. The submission of Mr. Sunil Gupta, learned Senior Counsel appearing for the petitioner, is that such harmonization is possible only if the requirement of "prior approval", contemplated by Clause 16 of the terms of allotment of the land, is dovetailed into Section 17(3)[4] of the DSE Act. Thus viewed, Mr. Gupta would

[1] WP (C) 4374/2018
[2] WP (C) 13546/2018
[3] **Modern School v. U.O.I., (2004) 5 SCC 583**
[4] (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

submit, the directions issued by the Supreme Court required the schools to furnish their statement of fee, to the DoE, before the commencement of the academic session, and the DoE to examine the same and take a decision thereon before such commencement. The directions contained in ***Modern School*** (supra), Mr. Gupta would exhort us to hold, do not afford a *carte blanche* to the DoE to sit, as it were, over the statement of fees submitted by the schools, thereby preventing them from increasing their fees, and, as a result, trespassing on their right to establish and administer the schools, as guaranteed by Article 26(a) of the Constitution of India. Mr. Gupta would also emphasize, repeatedly, the position - which, he submits, is practically gilt-edged - that, so long as the schools do not charge capitation fee, and do not indulge in profiteering, their decision, qua the fees to be charged by them, cannot brook interference at the hands of any governmental authority, including the DoE.

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125. ***Delhi Abhibhavak Mahasangh-II***[5] (*supra*) is significant, as, for the first time, it signalled a breakaway from the ***Pai***[6]***-Islamic Academy***[7]***-Inamdar***[8]***-Modern School*** regime, in the case of the Order, dated 11 February, 2009 supra, even while otherwise reiterating the principles contained in the said decisions which may, justifiably, be regarded, by now, as fossilised in education jurisprudence. The following principles, as contained in the earlier decisions, of the Supreme Court, to which reference has already been made hereinabove, find iteration in ***Delhi Abhibhavak Mahasangh-II***:

> (i) Schools could not indulge in commercialisation of education. "Commercialisation of education" was equated, by this Court, to "indulging in profiteering".
>
> (ii) For this purpose, the fee structures of schools had to remain within bounds.
>
> (iii) At the same time, a "reasonable surplus" was permissible, for development of the school and for the benefit of the students.

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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.

[5] **Delhi Abhibhavak Mahasangh v. G.N.C.T.D., ILR (2011) 4 Del 247**

[6] **T. M. A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481.**

[7] **Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697**

[8] **P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537**

(iv) In the ultimate eventuate, a balance was required to be struck between the autonomy of the institution and the measures to be taken *in order to avoid commercialisation of education*.

(v) The first right, to fix the fee or increase the fee, was with the schools.

(vi) The DoE could step in and interfere, if the fee was found to be excessive and amounted to "indulging in profiteering". This exercise would be relatable to Section 17(3) of the DSE Act.

(vii) The situation that arose, consequent to their requirement of compliance with the recommendations of the Pay Commission was, however, required to be "judged in a different hue altogether". This was a pan-school phenomenon, covering all aided and unaided recognised schools in Delhi. Conflicting interests came into being, with the schools claiming that the additional burden, which had fallen on their shoulders, could be borne only if they were permitted to increase their fees, and the parents contending, on the other hand, that the financial health of the schools was robust enough to bear the burden, without fee increase - or, at least, without increase to the extent to which it had been effected. Examination of the merits of these rival contentions required going into the financial condition of each school, which would be a time consuming exercise. In such circumstances, it was permissible to allow an "interim fee hike", as was done by the Order dated 11 February, 2009 supra, which would temporarily still the waters, with a cap on the upper limit of fees chargeable. The circumstances being exceptional, it could not be said that the order, allowing such interim fee hike, trespassed on the autonomy of the schools to fix their fees.

(viii) In the normal course, however, the position that, at the time of fixation of fees, by the school at the start of the academic session, no prior permission of the DoE was required, continued to operate. ***Justice for All v. G.N.C.T.D.***[9]"

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132. Specifically in the matter of charging of fees, and the

[9] **2016 SCC OnLine Del 355**

fixation and determination of the quantum thereof, all decisions, at least of the Supreme Court, have been uniform in asserting that maximum autonomy, to unaided educational institutions, whether minority or non -minority, was guaranteed by the Constitution, the only curbs, thereon, being in relation to commercialisation of education, i.e., profiteering and charging of capitation fee. So long as the fees charged by the concerned educational institution(s) did not amount to "commercialisation of education", thus understood, the Constitution clearly advocates a "hands off" approach by the Government, insofar as the establishment and administration of the institution, including the fixation of fees by it, was concerned. This would also immunise the institution from the requirement of being called upon to explain its receipts and expenses, as before a Chartered Accountant.

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182. There is no reference, in the said judgment, to Section 24, and Mr. Ramesh Singh does not dispute this fact. It is a well settled proposition of law that no more can be read into a judgment than is expressly stated therein. Equally well-settled is the ancillary proposition that the judgment is an authority only for what it states, and not for what may be read into the judgment by implication. (Refer: ***Union of India v. Chajju Ram (dead) by LRs[10].***)

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184. I am of the opinion that the attempt, of Mr. Ramesh Singh, to trace the authority of the DoE, in the present case, to withdraw the recognition granted to the petitioner, to Section 24(4) of the DSE Act, is completely misguided. Section 24 constitutes a self-contained scheme, dealing with "Inspection of schools". At the cost of reiteration, the said Section may be reproduced, thus:

> "**24. Inspection of schools.-**
>
> (1) Every recognised school shall be inspected at least once in each financial year in such manner as may be prescribed.
>
> (2) The Director may also arrange special inspection of any school on such aspects of its working as may, from time to time, be considered necessary by him.

[10] **(2003) 5 SCC 568: AIR 2003 SC 2339**

(3) The Director may give directions to the manager to rectify any *defects or deficiency* found *at the time of inspection or otherwise* in the *working* of the school.

(4) *If the manager fails to comply with the direction given under sub -section (3),* the Director may, after considering the explanation or report, if any, given or made by the manager, take such action as he may think fit, including—

(a) stoppage of aid,

(b) withdrawal of recognition, or

(c) except in the case of minority school taking over of the school under section 20."

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187. In the present case, however, it is not necessary for this Court to proceed to that stage as, in my view, sub-section (4) of Section 24 was totally inapplicable. The impugned Order of withdrawal of recognition does not purport to have been passed as a sequel to non-compliance, by the petitioner, which any directions issued under subsection (3) of the DSE Act, following upon an inspection of the School, in accordance with the scheme of Section 24.

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196. The power to make rules conferred by Section 28 of the DSE Act. Sub-section (1) thereof empowers the Administrator to, with the previous approval of the Central Government, and by previous publication by notification, "make rules to carry out the provisions of the Act". This, by itself, indicates that the DSE Rules cannot be so interpreted as to permit something which the DSE Act does not. I have already opined, hereinabove, that the withdrawal of recognition of the petitioner, by the DoE, and the manner in which the said withdrawal was effected, was not in accordance with any provision of the DSE Act, and could not be stated to be authorised thereby. The inevitable corollary would be that the said decision could not be authorised by any provisions of the DSE Rules, either, as, then, the Rules would be infracting Section 28(1) of the DSE Act and would, to that extent, be *ultra vires*.

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207. Proceeding, now, to the merits of the impugned Order, i.e., to the validity of the objection, by the DoE, regarding non-

> obtaining, by the petitioner, of "prior approval" of the DoE, before enhancing its fees, it would become apparent, from a reading of the discussion hereinabove, and the law laid down by the various decisions cited in that regard, that, in the matter of fixation of fees, the distinction, between the rights of unaided non-minority schools, and unaided minority schools, is practically chimerical. In both cases, the schools are entitled to complete autonomy in the matter of fixation of their fees and management of their accounts, subject only to the condition that they do not indulge in profiteering, and do not charge capitation fee, thereby "commercialising" education. There is no requirement for the school to take "prior approval", of the DoE, before enhancing its fees. The only responsibility, on the School, is to submit its statement of fee, as required by Section 17(3) of the DSE Act. Mr. Gupta is right in his submission that, having done so, the schools could not be expected to wait *ad infinitum*, before the said statement of fees, submitted by them, was examined and verified by the DoE. Any such examination and verification, too, it is clarified, would have to be limited to the issue of whether, by fixing its fees, or enhancing the same, the school was "commercialising" education, either by charging capitation fee or by indulging in profiteering. If, therefore, pending the decision of the DoE on its Statement of Fee, the school decided to commence charging the enhanced fee from the beginning of the next academic session, it cannot be said that the school had, in any manner, infracted the provisions of the DSE Act or the DSE Rules."
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> (Underscoring supplied)

6. Mr. Santosh Kumar Tripathi, learned Standing Counsel for DoE, relies, on the other hand, on paras 139 and 140 of the decision in ***Action Committee Unaided Recognized Private Schools***, which read thus:

> "139. The "land clause" read thus:
>
> > "The school shall not increase the rates of tuition fee without the prior sanction of the Directorate of Education, Delhi Administration…"
>
> 140. The afore-extracted clause, quite clearly, operates as a proscription on the school(s). Schools, the allotment documents in respect where of contained this clause were, by operation thereof, not permitted to increase the rates of tuition fee without the prior

> sanction of the DoE. Even for this simple reason, the entire argument, of Mr. Ramesh Singh, that the issuance of the impugned Order, dated 13 April, 2018, was necessitated as the provision for "interim fee hike", as contained in the Order dated 17 October, 2017, infracted the "land clause", has necessarily to fail. The "interim fee hike", permitted by the Order dated 17 October, 2017, was a dispensation by the DoE itself, which had the imprimatur of the ***Delhi Abhibhavak Mahasangh-II decision.*** It was not an act of increase of fees by the schools. The "land clause", as contained in the allotment documents of the DDA, did not, at any point of time, inhibit the DoE from allowing an interim fee hike."

7. Predicated on the opening sentences in para 140 of ***Action Committee Unaided Recognized Private Schools***, Mr. Tripathi sought to contend that this Court has accorded its imprimatur to the principle that schools which are situated on land, to which the land clause applies, could not increase their fees without prior approval.

8. The primary challenge in ***Action Committee Unaided Recognized Private Schools*** was against the withdrawal, by the DoE, of a Circular dated 17 October 2017, by which unaided private schools were permitted an interim fee hike to cater to the additional expense which they had to incur consequent on the recommendations of the VII Central Pay Commission, which required them to increase the salaries of their teachers and staff. The said circular was withdrawn by the DoE on 13 April 2018, to the extent it applied to schools which were situated on land provided to the schools at concessional rates by public bodies, including a clause, in the lease deed, requiring the school to take prior approval of the DoE before increasing its fees. As such, the issue of whether a school covered by the "land clause" was required to take prior approval before increasing its fees was directly

in issue in ***Action Committee Unaided Recognized Private Schools***.

9. The challenges in the writ petition filed by the Action Committee Unaided Recognized Private Schools ("Action Committee" hereinafter) and Mt. Carmel School ("Mt Carmel" hereinafter) were slightly different on facts.

10. Action Committee challenged the circular dated 13 April 2018 itself, contending that the liability of an unaided recognised school under the Delhi School Education Act, 1973 ("the DSE Act") and the Delhi School Education Rules 1973 ("the DSE Rules"), was only to submit its statement of fee before every financial year under Section 17(3). There was no proscription, in the statue, preventing it from increasing fees without prior approval of the DoE.

11. Mt Carmel, on the other hand, actually increased its fees without the prior approval of the DoE, following which the DoE took action against the school seeking to de-recognise it. Said decision was challenged by Mt Carmel in its writ petition, which also came to be decided by the same judgment.

12. Mr. Gupta is correct in his submission that the running thread, in ***Action Committee Unaided Recognized Private Schools***, is that an unaided recognized school is *not required to take prior approval of the DoE before increasing its fees, irrespective of whether it is situated on land to which the "land clause" does, or does not, apply.*

13. Mr. Tripathi's reading of para 140 of ***Action Committee Unaided Recognized Private Schools*** is flawed. Para 140 only observes that the submission of Mr. Ramesh Singh, who appeared for the DoE in that case, that the withdrawal, of the 17 October 2017 circular by the DoE, by the circular dated 13 April 2018 in the case of "land clause" schools was justified by the land clause itself, was incorrect. This Bench held, dealing with the said argument, that the land clause could not be pressed into service by the DoE to justify the withdrawal of the 17 October 2017 circular by the 13 April 2018 circular, as the land clause only applied to rights of school to increase fees without prior sanction of the DoE, whereas the interim fee hike granted by the circular dated 17 October 2017 was a hike which was *suo motu* granted by the DoE. The withdrawal of the said interim fee hike could not, therefore, be sought to be justified on the basis of the land clause, which had nothing to do with it.

14. Quite clearly, therefore, para 140 of the judgment in ***Action Committee Unaided Recognized Private Schools*** does not accord any judicial imprimatur to the land clause, or to the principle, so assiduously canvassed by Mr. Tripathi that schools which were situated on land to which land clause applies, cannot possibly increase their fees without prior approval of the DoE.

15. The decision in ***Action Committee Unaided Recognized Private Schools*** rules precisely to the contrary.

16. I may observe, here, that the decision in ***Action Committee***

Unaided Recognized Private Schools was taken by this Bench after going through the entire gamut of case law on the subject, including ***Delhi Abhibhavak Mahasangh v. U.O.I.***[11], ***Modern School v. U.O.I.***[12], ***Justice for All v. G.N.C.T.D.***[13], ***Islamic Academy of Education v. State of Karnataka***[14], ***P.A. Inamdar v. State of Maharashtra***[15], ***T.M.A. Pai Foundation v. State of Karnataka***[16] and ***Abhibhavak Mahasangh* v. *G.N.C.T.D.***[17].

17. Mr. Tripathi requests the Court to note the fact that, in answer to the decision in ***Action Committee Unaided Recognized Private Schools***, he places reliance on the judgment of the Supreme Court in ***Modern School***. According to him, ***Modern School*** specifically holds that schools which are subject to the "land clause" have to take prior approval of the DoE before enhancing their fees.

18. This amounts to an attempt to re-argue what was argued, *ad nauseam*, in ***Action Committee Unaided Recognized Private Schools***, and discussed at length. Apropos the judgment of the Supreme Court in ***Modern School***, the following passages from ***Action Committee Unaided Recognized Private Schools*** are relevant:

> "***Modern School v. U.O.I., (2004) 5 SCC 583***, rendered by a bench of 3 Hon'ble Judges on 27th April, 2004

[11] **AIR 1999 Del 124**
[12] **(2004) 5 SCC 583**
[13] **(2016) 227 DLT 354 (DB)**
[14] **(2003) 6 SCC 697**
[15] **(2005) 6 SCC 537**
[16] **(2002) 8 SCC 481**
[17] **ILR (2011) 4 Del 247**

76. This judgment, or, more particularly, paragraph 27 thereof, constitutes the sheet-anchor to employ a time-worn cliché of the respondents' case.

77. ***Modern School (supra)***, as already noted hereinabove, was an appeal from ***Delhi Abhibhavak Mahasangh-I (supra)***.

78. The constitution of the bench which decided ***Modern School (supra)*** is significant, constituting, as it did, of V.N. Khare, the Hon'ble Chief Justice, S. B. Sinha, J. and S. H. Kapadia, J. (as he then was). The judgment was authored by Kapadia, J., for himself and Khare, C. J., with Sinha, J., penning a dissent. This is significant because Khare, C. J., was also part of the bench which decided ***T.M.A. Pai (supra)*** and ***Islamic Academy of Education (supra)*** and was, in fact, the author of the majority judgment in ***Islamic Academy (supra).*** It would be reasonable, therefore, to presume that ***Modern School (supra)*** could not be interpreted as breaking away from the legal position as enunciated in ***T.M.A. Pai (supra)*** and ***Islamic Academy (supra)***. The attempt has, at all times, therefore, to be to harmonize these decisions, and read them as a cohesive whole, representing the law on the issue.

79. The Supreme Court, in this case, framed the following questions, as arising for its consideration:

> "(1) Whether the Director of Education has the authority to regulate the quantum of fees charged by unaided schools under Section 17(3) of the Delhi School Education Act, 1973?
>
> (2) Whether the direction issued on 15-12-1999 by the Director of Education under Section 24(3) of the Act stating *inter alia* that no fees/funds collected from parents/students shall be transferred from the Recognised Unaided School Fund to the society or trust or any other institution, is in conflict with Rule 177 of the Delhi School Education Rules, 1973 ("The Rules")?
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> (3) Whether managements of recognised unaided schools are entitled to set up a Development Fund Account under the provisions of the Delhi School Education Act, 1973?"

80. Of these, only Issue (a) concerns the present controversy.

81. The Supreme Court distilled the judgment of this Court in ***Delhi Abhibhavak Mahasangh-I (supra)*** thus (in paragraphs 7 and 8 of the report):

> "7. Delhi Abibhavak Mahasangh, a federation of parents' association moved the Delhi High Court by Writ Petition No. 3723 of 1997 challenging the fee hike in various schools in Delhi. It was a public interest writ petition filed on 8-9-1997 impleading thirty unaided recognised public schools. The grievance of the Mahasangh was that recognised private unaided schools in Delhi are indulging in large-scale commercialisation of education which was against public interest. That commercialisation has reached an alarming situation on account of failure of the Government to perform its statutory functions under the Delhi School Education Act, 1973 (hereinafter for the sake of brevity referred to as "the Act"). One of the serious charges in the writ petition against the said unaided recognised schools was transfer of funds by the said schools to the society/trust and/or to other schools run by the same society/trust. In this connection, it was alleged that there was excess of income over expenditure under the head "Tuition fee" and further interest-free loans of huge amount have been taken from parents for giving admissions to the children. It was also alleged that huge amounts collected remained unspent under the head "Building fund". On the other hand, before the High Court, it was submitted on behalf of the schools that the above increase in fees, annual charges, admission fees and security deposit was justified on account of increase in the expenses and in particular, salaries of teachers in compliance with recommendations of the Fifth Pay Commission.
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> 8. The key issue before the High Court, therefore, was whether unaided recognised schools were indulging in commercialisation of education. The High Court found from the reports submitted by the inspection teams appointed by the Government that there were irregularities in the management of the accounts. Therefore, by the impugned judgment, directions were given regarding utilisation of tuition fees for payment of salaries of teachers and employees and also for utilisation of the surplus under the specific head of tuition fees. By the impugned judgment, the High Court declared that the said Act and the Rules framed thereunder prohibited transfer of funds from the schools to the society/trust or to other schools run by the same society/trust. By the impugned judgment, the

> High Court appointed a committee headed by Ms. Justice Santosh Duggal (hereinafter referred to as "the Duggal Committee") to examine the economics of each of the recognised unaided schools in Delhi. Being aggrieved, the unaided recognised schools and the Action Committee of Unaided Private Schools have come by way of appeal to this Court. During the pendency of the civil appeals, the Duggal Committee submitted its report which has been accepted by the Government of National Capital Territory of Delhi (Directorate of Education), consequent upon which the Director of Education has issued directions to the Managing Committees of all recognised unaided schools in Delhi under Section 24(3) read with Sections 18(4) and (5) of the Act, which directions are the subject-matter of the civil appeals herein."

82. The dispute which engaged this Court in ***Delhi Abhibhavak Mahasangh*** (supra) – and, consequently, the Supreme Court in ***Modern School (supra)*** – was whether schools were indulging in "commercialisation of education" by charging fees which were excessive and disproportionate in comparison to their requirement, and whether, therefore, the DoE had acted within, or in excess of, the jurisdiction vested in it, by issuing directives to control the same.

83. The appellant, before the Supreme Court, is a well known private unaided recognized school. It sought to fault the judgment, of this Court in *Delhi Abhibhavak Mahasangh-I* (supra), and the contention advanced, in this regard, stands precisely distilled, in paragraph 12 of the report, thus:

> "It was urged on behalf of the management that in the impugned judgment the High Court had erred in holding that tuition fees should be ordinarily utilised for payment of salaries and if incidental surplus remained, it could be used for other educational purposes but that would not empower the management to levy higher tuition fees. It was submitted on behalf of the management that the Government has no authority to regulate the fees payable by the students of unaided schools as indicated by Section 17(3) of the Act which required the management only to submit to the Director a full statement of fees leviable during the ensuing academic session. In this connection, Section 17(3) was contrasted with Section 17(1) and Section 17(2) of the Act, which empower the Government to regulate the fees payable by the students of aided schools."

84. "The first point for determination", says the judgment in paragraph 13, "is whether the Director of Education has the authority to regulate the fees of unaided schools". Having thus got, straightaway as it were, to the meat of the matter, the judgment proceeds, in paragraph 14, to hold thus:

> "At the outset, before analysing the provisions of the 1973 Act, we may state that it is now well settled by a catena of decisions of this Court that *in the matter of determination of the fee structure unaided educational institutions exercise a great autonomy as they, like any other citizen carrying on an occupation, are entitled to a reasonable surplus for development of education and expansion of the institution. Such institutions, it has been held, have to plan their investment and expenditure so as to generate profit.* ***What is, however, prohibited is commercialisation of education.*** Hence, *we have to strike a balance between autonomy of such institutions and measures to be taken to prevent commercialisation of education.* However, in none of the earlier cases, this Court has defined the concept of reasonable surplus, profit, income and yield, which are the terms used in the various provisions of the 1973 Act."
>
> (Emphasis supplied)

85. The emphasis, in these opening words of the Supreme Court, on "commercialisation of education", is of paramount significance. The balance that is required to be struck - as postulated in the above-extracted passage - is *not* between the autonomy of the institutions and *the power of the DoE to regulate*, but between the autonomy of the institutions and *measures to be taken to prevent commercialization of education*. In so holding, ***Modern School (supra)*** reiterates what ***T.M.A. Pai (supra)*** so painstakingly clarified - viz., that the regulatory power of the DoE was to be directed at *preventing commercialization of education*. It was not, therefore, a regulatory power to be exercised in such a manner as to take over the autonomy of the schools in the matter of fixation of their fees, or even appropriation of their financial resources. Paragraph 15 of the report, in fact, goes on to note that, in ***T.M.A. Pai (supra)***, the Supreme Court "observed … that the right to establish and administer an institution included the right to admit students; *right to set up a reasonable fee structure*; right to constitute a governing body, right to appoint staff and right to take disciplinary action."

86. What falls for consideration is, therefore, the extent to which, given the right of the unaided educational institution to "set up a reasonable fee structure", and, for the said purpose, to fix its

fees, the DoE could exercise its regulatory jurisdiction, and the point at which the exercise of such jurisdiction overstepped its legitimate boundaries and transgressed into the domain of the discretion vested in the institution.

87. In this context, paragraph 15 of the report goes on to note thus:

> "However, the right to establish an institution under Article 19(1)(g) is subject to reasonable restriction in terms of clause (6) thereof. Similarly, the right conferred on minorities, religious or linguistic, to establish and administer educational institution of their own choice under Article 30(1) is held to be subject to reasonable regulations which *inter alia* may be framed having regard to public interest and national interest. In the said judgment, it was observed (vide paragraph 56) that economic forces have a role to play in the matter of fee fixation. The institutions should be permitted to make reasonable profits after providing for investment and expenditure. However, capitation fee and profiteering were held to be forbidden. Subject to the above two prohibitory parameters, this Court in ***T.M.A. Pai Foundation case*** held that fees to be charged by the unaided educational institutions cannot be regulated. Therefore, *the issue before us is as to what constitutes reasonable surplus in the context of the provisions of the 1973 Act*."
>
> (Emphasis supplied)

88. The above extracted passage clarifies two important aspects, which have necessarily to be borne in mind while appreciating the judgment in ***Modern School (supra)***, viz. that (i) the position, in law, emanating from ***T.M.A. Pai (supra)***, that private unaided educational institutions should be permitted reasonable profits after providing for investment and expenditure, subject to a proscription against charging of capitation fee and profiteering, was noted and, needless to say, approved, and (ii) the issue, with which the Supreme Court engaged itself, was "as to what constitutes reasonable surplus", in the context of the DSE Act.

89. Proceeding, thereafter, to deal with the judgment in ***Islamic Academy (supra)*** in the light of the provisions of the DSE Act and the DSE Rules, the Supreme Court held, in paragraph 17 of the report, thus:

> "Therefore, reading Section 18(4) with Rules 172, 173, 174, 175 and 177 on one hand and Section 17(3) on the

> other hand, it is clear that *under the Act, the Director is authorised to regulate the fees and other charges* ***to prevent commercialisation of education***. Under Section 17(3), the school has to furnish a full statement of fees in advance before the commencement of the academic session. Reading Section 17(3) with Sections 18(3) and (4) of the Act and the Rules quoted above, it is clear that the Director has the authority to regulate the fees under Section 17(3) of the Act."
>
> (Emphasis supplied)

90. Here, again, the Supreme Court is at pains to emphasize that the authority of the DoE, to regulate fees and other charges, is "to prevent commercialisation of education". "Commercialisation of education", and the necessity of preventing it at all costs, *for which* regulatory power vests in the DoE, therefore, runs as the constant undercurrent behind the surface of the DSE Act and the DSE Rules, and the rights and powers conferred on various entities thereby and thereunder. It is also significant that the Supreme Court localizes this regulatory power and authority, of the DoE, to Section 17(3) of the DSE Act. The parameters and peripheries of Section 17(3) must, therefore, necessarily inform any examination of the balance of powers conferred by the said provision.

91. Paragraphs 18 to 26 of the report, thereafter, go on to discuss the second and third issues framed by the Supreme Court, as extracted hereinabove. Inasmuch as these issues do not concern the controversy in the present petition, these paragraphs need not detain us.

92. Then follows the "Conclusion", as set out in paragraph 27 of the judgment, which constitutes the essential basis of the submissions of Mr. Ramesh Singh, and would, as he would seek to contend, provide sublime justification for all subsequent actions of the DoE, including the issuance of the impugned order dated 13th April, 2018. The said paragraph reads thus:

> "27. In addition to the directions given by the Director of Education vide Order No. DE.15/Act/Duggal. Com/203/99/23989-24938 dated 15-12-1999, we give further directions as mentioned hereinbelow:
>
> (a) Every recognised unaided school covered by the Act shall maintain the accounts on the principles of accounting applicable to non-business organisation/not-for-profit organisation.
>
> In this connection, we *inter alia* direct every such school to prepare their financial statement

consisting of the balance sheet, profit-and-loss account, and receipt-and-payment account.

(b) Every school is required to file a statement of fees every year before the ensuing academic session under Section 17(3) of the said Act with the Director. Such statement will indicate estimated income of the school derived from fees, estimated current operational expenses towards salaries and allowances payable to employees in terms of Rule 177(1). Such estimate will also indicate provision for donation, gratuity, reserve fund and other items under Rule 177(2) and savings thereafter, if any, in terms of the proviso to Rule 177(1).

(c) *It shall be the duty of the Director of Education to ascertain whether terms of allotment of land by the Government to the schools have been complied with.* We are shown a sample letter of allotment issued by the Delhi Development Authority issued to some of the schools which are recognised unaided schools. We reproduce herein clauses 16 and 17 of the sample letter of allotment:

> "16. The school shall not increase the rates of tuition fee without the prior sanction of the Directorate of Education, Delhi Administration and shall follow the provisions of the Delhi School Education Act/Rules, 1973 and other instructions issued from time to time.
>
> 17. The Delhi Public School Society shall ensure that percentage of freeship from the tuition fee, as laid down under the rules by the Delhi Administration, is from time to time strictly complied with. They will ensure admission to the student belonging to weaker sections to the extent of 25% and grant freeship to them."

28. *We are directing the Director of Education to look into letters of allotment issued by the Government and ascertain whether they have been complied with by the schools.* This exercise shall be complied with within a period of three months from the date of communication of this judgment to the Director of Education. *If in a given*

case, the Director finds non-compliance with the above terms, the Director shall take appropriate steps in this regard."

(Emphasis supplied)

93. The above extracted paragraphs 27 and 28 of the report direct the DoE to *ascertain whether the terms of allotment of land by the Government to the schools have been complied with*, and to *look into the letters of allotment* for the said purpose. Among the conditions of allotment, as extracted verbatim by the Supreme Court, is the proscription on increasing the rates of tuition fee without the *prior sanction* of the DoE.

94. A holistic and conjoint reading of the above directions, with the earlier decision in ***T.M.A. Pai (supra)***, would make it clear that the Supreme Court could not have intended the implementation of its directions to have been undertaken either *de hors* the provisions of the DSE Act and the DSE Rules, or in the teeth of the ***Pai*** pronouncement. ***T.M.A. Pai (supra)*** conferred complete autonomy, on private unaided schools, in the matter of fixation of their fees. The only limitation - if one may call it that - to the sweep of this right is in the stipulation that the fees fixed should not be in the form of capitation, or amount to profiteering. Absent these interdictions, it is clearly not open to the DoE to entrench on the territory of the schools, insofar as the matter of fixation of their fees is concerned.

95. The emphasis, by the Supreme Court, in paragraph 27 of the ***Modern School*** judgment, on compliance with the provisions of the DSE Act and the DSE Rules, makes it clear that the Supreme Court intended compliance, with its directions, to be in tandem with the provisions thereof, and not blind thereto. How, then, is that possible, if at all? The answer, quite obviously, is that, if the provisions of the DSE Act and/or the DSE Rules contain anything which harmonizes with paragraphs 16 and 17 of the terms of allotment of the land, those provisions have to be borne in mind while examining whether compliance, with the "land clause", has, or has not, taken place.

96. The submission of Mr. Sunil Gupta, learned Senior Counsel appearing for the petitioner, is that such harmonization is possible only if the requirement of "prior approval", contemplated by Clause 16 of the terms of allotment of the land, is dovetailed into Section 17(3) of the DSE Act. Thus viewed, Mr. Gupta would submit, the directions issued by the Supreme Court required the schools to furnish their statement of fee, to the DoE, before the commencement of the academic session, and the DoE to examine

the same and take a decision thereon *before* such commencement. The directions contained in *Modern School* (supra), Mr. Gupta would exhort us to hold, do not afford a *carte blanche* to the DoE to sit, as it were, over the statement of fees submitted by the schools, thereby preventing them from increasing their fees, and, as a result, trespassing on their right to establish and administer the schools, as guaranteed by Article 26(a) of the Constitution of India. Mr. Gupta would also emphasize, repeatedly, the position - which, he submits, is practically gilt-edged - that, so long as the schools do not charge capitation fee, and do not indulge in profiteering, their decision, qua the fees to be charged by them, cannot brook interference at the hands of any governmental authority, including the DoE.

The takeaway from ***Modern School (supra)***

97. From ***Modern School (supra)***, the following propositions emerge:

> (i) The issue for consideration, before the Supreme Court, was whether schools were indulging in "commercialisation of education", by charging excessive and disproportionate fees and whether, therefore, the DoE had acted within its jurisdiction in issuing directives to control the same.
>
> (ii) Unaided educational institutions enjoyed greater autonomy, in the matter of determination fee structure, and were also entitled to a reasonable surplus for development of education and expansion of the institution. Such institutions are to be allowed to plan their investment and expenditure, so as to generate profit. Reasonable profit, after providing for investment and expenditure, was permissible.
>
> (iii) In the garb thereof, however, these institutions could not be permitted to engage or indulge in "commercialisation of education". Charging of capitation fees, and profiteering, could not be allowed. The Government was, therefore, justified in taking measures to prevent this malady.
>
> (iv) A balance, therefore, was required to be struck between autonomy of the institutions and measures to be taken to prevent commercialisation of education. The prevalent undercurrent of the discussion and conclusion, in *Modern School* (supra) was, therefore, that

"commercialisation of education" had, at all costs, to be prevented. It is this "commercialisation of education" which, according to the Supreme Court, had to be curbed, and for the curbing whereof, regulatory measures could legitimately be put in place by the Government. These regulatory measures have, however, to operate, and be operated, within the parameters and peripheries of Section 17(3) of the DSE Act.

(v) These regulatory measures could not, however, be permitted to trespass on the autonomy of the unaided educational institutions, or take it over, in the matter of fixation of fees, or even appropriation of financial resources. The right to set up a reasonable fee structure, therefore, transcendentally remained with the unaided educational institution concerned.

(vi) The right to establish and administer minority educational institutions, while independently conferred, on such institutions, by Article 30(1) of the Constitution, was subject to reasonable regulations, in public and national interest.

(vii) Subject to the prohibitory parameters, regarding charging of capitation fee and profiteering, fees chargeable by unaided educational institutions could not be regulated.

(viii) The "issue before it", as encapsulated by the Supreme Court, was "as to what constitutes reasonable surplus in the context of the provisions of the 1973 Act".

(ix) Among the directions, issued to the DoE at the conclusion of the judgment, was the direction to "ascertain whether terms of allotment of land by the Government to the schools have been complied with, by the schools". In the event of non-compliance being detected, the DoE was directed to take "appropriate steps in that regard".

These findings completely answer the reliance, placed by Mr. Tripathi, on ***Modern School.***

Order of Division Bench in LPA in ***Action Committee Unaided Recognized Private Schools***

19. The decision in ***Action Committee Unaided Recognized Private Schools*** was carried in appeal to the Division Bench in LPA 230/2019 (***Directorate of Education v. Action Committee Unaided Recognised Private Schools***).

20. On 3 April 2019, notice was issued by the Division Bench on the said LPA. The only interim order which was passed was that land clause schools would not collect the amount constituting interim fee hike in terms of the 17 October 2017 order issued by the DoE.

21. *There was, therefore, no interference, interlocutory or otherwise, with the decision, in the judgment in* ***Action Committee Unaided Recognized Private Schools*** *that, before hiking fees, unaided recognised school is not required to obtain prior approval of the DoE.*

Circular dated 27 March 2019 and decision in WP (C) 4897/2019

22. Mr. Gupta also points out that, on 27 March 2019, an identical circular had been issued by the DoE, which was challenged by Action Committee before this Court by way of WP (C) 4897/2019 in which, in para 6, the DoE made a specific statement to the effect that the said Circular would not apply to schools who have filed statement of fees within the prescribed period in terms of Section 17(3) of the Act for the Academic Session 2018-2019 and 2019-2020 whether offline or online.

23. The circular dated 27 March 2019 and the order dated 9 May

2019 may be reproduced thus:

Circular dated 27 March 2019

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

No.F.DE-15(40)/PS8/2019/2698-2707 Dated: 27/03/2019

ORDER

Whereas Hon'ble High Court of Delhi vide judgment dated 19.01.2016 in the writ Petition No 4109/2013 in the matter of "Justice for All versus GNCTD and others" has directed the Director of Education to ensure the compliance of the terms, if any, in the letter of allotment regarding the increase of the fee by all the Private Recognized Unaided Schools which are allotted land by DDA/Other land owning agencies.

Now, therefore, all the Head of Schools/Managers of Private Recognized Unaided Schools, allotted land by the land owning agencies on the condition of seeking prior sanction of Director of Education for increase in fee, are directed to submit their proposals, if any, for prior sanction of the Director of Education for increase in tuition fee/fee for the academic session 2018-19 and 2019-20 (through the separate link on the online module), online from 30.03.2019 through website of Directorate and upload the returns and documents mentioned therein latest by 30.04.2019. Any incomplete proposal shall be summarily rejected.

Further, the schools are directed to submit complete set of documents/financial records as well as subsequent clarifications timely, in one go, so that the fee hike proposals of the schools can be disposed in time bound manner.

The proposals submitted by the schools shall be scrutinized by the Director of Education through any officer or teams authorized in this behalf. In case, no proposal is submitted by the school in terms of this order, the school shall not increase the tuition fee. All Such schools are strictly directed not to increase any fee until the sanction is conveyed to their proposal by Director of Education. Any complaint regarding increase of any fee without such prior approval will be viewed seriously and will make the school liable for action as per the statutory provisions and

directions of Hon'ble Court.

The link of module for submitting the proposals online and uploading the returns and documents shall be uploaded soon on the website of the Directorate at the link school plant->Proposal for fee hike for DDA Land Schools, through school login and password.

This issues with prior approval of the Competent Authority.

(Yogesh Pratap)
Deputy Director of Education
Private School Branch"

Order dated 9 May 2019

"**W.P.(C) 4897/2019**

3. This writ petition is directed against the orders dated 15th February, 2019 and 27th March, 2019, which have been issued by the Directorate of Education (DOE).

4. Mr. Sunil Gupta, learned Senior Counsel appearing for the petitioner had concluded his submissions. *Mr. Ramesh Singh in response, submits that the impugned orders are intended to apply only to those schools who have not filed their statement of fees for the academic session 2018-19 and 2019-20, even offline till date.*

5. The petitioners in this case submits that they have filed their statement of fees in accordance with Section 17(3) of the Delhi School Education Act, 1973, within the period prescribed therefor.

6. In this view of the matter, it is not necessary for any interim orders to be passed at this point of time, in view of the statement made by Mr. Ramesh Singh, to the effect that the impugned orders dated 15th February, 2019 and 27th March, 2019 would not apply to schools who have filed their statement of fees, within the prescribed period, in terms of Section 17(3) of the Act for the academic session 2018-19 and 2019-20 whether offline or online.

7. Accordingly, let notice issue to the respondents on the writ petition as well as the application for interim directions.

8. Mr. Santosh Kr. Tripathi accepts notice on behalf of the respondent.

9. Counter affidavit be filed by the respondent within four weeks with advance copies to the petitioner who may file rejoinder thereto, if any, within two weeks thereof.

10. Renotify on 9th July, 2019."

(Emphasis supplied)

24. The reliance, by Mr. Gupta, on the above order dated 9 May 2019 is also, *prima facie*, well placed. The DoE cannot be permitted to adopt contrasting stances in similar cases. Having conceded, in WP (C) 4897/2019, that the operation of the Circular 27 March 2019 – which is identical to the impugned Circular – would not apply to schools which had filed their statement of fees within the period prescribed in Section 17(3), it is difficult to understand how they could have issued the impugned Circular dated 27 March 2024 at all, much less sought to defend it in these proceedings.

Yashvir Singh Chauhan and order passed therein

25. Mr. Gupta also places reliance on order dated 7 September 2020 passed by a coordinate Bench in ***Master Yashvir Singh Chauhan v. Bal Bharti Public School***[18]. It was sought to be contended by the petitioners in that case, who were students, that the respondent-school had been increasing its fees every year without prior approval of the DoE, which was mandatory.

26. The Coordinate Bench has placed reliance, in para 7 of the

[18] Order dated 7 September 2020 in WP (C) 6053/2020

order, on the judgment of this Bench in ***Action Committee Unaided Recognized Private Schools***, specifically on para 207 thereof (which, in the copy of the judgment as uploaded on the website of this Court, was numbered as "para 192")

27. Para 8 of the order in ***Master Yashvir Singh Chauhan***, after quoting the aforesaid para, observed that, in the said paragraph, the responsibility of respondent school was to file an appropriate application for fee enhancement prior to the academic year and further observed that if the GNCTD was unable to deal with the said application for some reason, the school was free to increase its fees. The principle that no requirement of prior approval was required before an unaided recognised increased its fee was, therefore, impliedly recognised by the interim order in ***Master Yashvir Singh Chauhan*** as well.

28. The aforesaid interim order dated 7 September 2020 in ***Master Yashvir Singh Chauhan*** was carried in appeal to the Division Bench by way of LPA 260/2020, which was also dismissed by order dated 21 September 2020.

Extant legal position

29. The resultant legal position, as it exists today, following ***Action Committee Unaided Recognized Private Schools***, is that an unaided recognized private school is not required to take prior approval of the DoE before increasing its fees, irrespective of whether the land clause

does, or does not, apply to it.

30. I am constrained, at this stage, to enter a somewhat unhappy comment.

31. Respect for judicial pronouncements is one of the pillars of the edifice of the rule of law. The principle that private unaided schools do not have to seek prior approval before enhancing their fees, so long as they do not indulge in profiteering or commercialization of education by charging capitation fees, as well as the proposition that there is a distinction between "commercialization of education" and making of profits, as enunciated in ***Action Committee Unaided Recognized Private Schools***, remains undisturbed till date, though the decision is under challenge before the Division Bench. The only interim direction that has been passed, in order dated 3 April 2019 of the Division Bench in LPA 230/2019 (***DOE v. Action Committee Unaided Recognised Public Schools***) is against collection, by the school, *of the interim fee hike as allowed by the DoE Circular dated 17 October 2017*. On the prayer for stay of the decision in ***Action Committee Unaided Recognized Private Schools***, the Division Bench, in its order dated 8 April 2019 in LPA 230/2019, has observed that the matter would need detailed consideration, and proceeded to fix a series of dates for hearing the issue. That hearing, however, has not taken place, and no interim stay of the operation of the judgement in ***Action Committee Unaided Recognized Private Schools*** has, therefore, been granted.

32. The DoE, howsoever, dissatisfied it may be with the judgment of this Court in ***Action Committee Unaided Recognized Private Schools*** has to respect it, so long as it stands. The attitude of the DoE in continuously issuing Circulars threatening recognized unaided schools with action in the event of their increasing their fees without obtaining prior approval of the DoE is objectionable, and cannot be allowed.

33. Nor can the DoE issue such Circulars, in the teeth of the decision in ***Action Committee Unaided Recognized Private Schools*** and, when they are challenged, seek to re-argue the points which were canvassed and considered in ***Action Committee Unaided Recognized Private Schools***. Schools cannot be driven to litigation thus. The grievances against the decision in ***Action Committee Unaided Recognized Private Schools*** have, if at all, to be ventilated before the Division Bench before which the appeal is pending. So long as there is no interdiction, interlocutory or otherwise, by the Division Bench, with the principle in ***Action Committee Unaided Recognized Private Schools*** that no prior approval of the DoE is required before an unaided recognised school increases in its fees, even if situated on land to which "land clause" applies, it is the decision in ***Action Committee Unaided Recognized Private Schools*** that would apply, and the DoE is required to respect that position.

34. There can be no gainsaying the fact that the impugned order is directly contrary to the law laid down in ***Action Committee Unaided Recognized Private Schools***.

35. In that view of the matter, issue notice on the writ petition to show cause as to why rule *nisi* be not issued as well as issue notice on the application for interim relief.

36. Notice is accepted on behalf of respondent by Mr. Santosh Kumar Tripathi, learned Standing Counsel.

37. Counter-affidavit, if any, be filed within four weeks with an advance copy to learned counsel for the petitioner who may file rejoinder thereto within four weeks thereof.

38. Till the next date of hearing, the operation of the impugned circular dated 27 March 2024 issued by the DoE shall stand stayed.

39. Re-notify on 31 July 2024.

C.HARI SHANKAR, J

APRIL 29, 2024
dsn

Click here to check corrigendum, if any