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

+ W.P.(C) 5986/2020

MOUNT CARMEL SCHOOL & ANR. Petitioner

Through Mr.Sunil Gupta, Senior Advocate
along with Mr.Kamal Gupta and Mr.Vedanta
Varma Advs.

versus

DIRECTORATE OF EDUCATION Respondent

Through Mr. Ramesh Singh (SC, GNCTD) and
Mr. Gautam Narayn, ASC, GNCTD with
Ms. Dacchita Shahi (Adv) for Respondent (DOE)

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **04.09.2020**

This hearing is conducted through Video Conferencing.

CM No.21644/2020

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 5986/2020 & CM No.21643/2020

1. This Writ Petition is filed by the petitioner seeking to impugn the order dated 01.06.2020 passed by the respondent/Directorate of Education against the petitioner school. The case of the petitioner pertains to the fees structure for the year 2017-18. On 6.12.2018 the respondent had withdrawn recognition granted to the petitioner. Following thereto a Writ Petition was filed by the petitioner being WP(C)13546/2018 where a co-ordinate bench of this court vide order dated 15.03.2019 quashed the aforesaid order withdrawing the recognition of the petitioner school. Directions were also



passed that where prior approval of the fee structure is required by a school, the same requirement is satisfied in case the school files an appropriate application before the academic year. In case the respondent does not raise any objections the school is free to implement the revised proposed fee.

2. Against the aforesaid order of the co-ordinate Bench of this court dated 15.3.2019 respondents filed an LPA before the Division Bench. The Division Bench on 3.4.2019 noted the contention of learned counsel for the petitioner that without prejudice to their rights and contentions, the Department of Education can proceed to determine the justification for fee hike of respondent No.1 resulting from the recommendation of the 7th Central Pay Commission.

3. Based on the said liberty that was granted by the Division Bench, the present impugned order has been passed dated 01.06.2020.

4. Learned senior counsel for the petitioner has relied upon various paragraphs of the judgment of the co-ordinate Bench of this court dated 15.3.2019 to contend that the petitioner was justified in enhancing the fees for the year 2017-18 as no approval was forthcoming from the respondents. He has also pointed out that there are certain entries in the calculations done by the respondent which are erroneous. One such entry relates to certain alleged capital expenditure that has been disallowed and it has been directed to be recovered from the society. He pleads that this amount was only spent on renovations and doing up the building in question and is clearly permissible under Rule 177 of the Delhi School Education, Rules.

5. Learned standing counsel for Govt. of NCT of Delhi has, however, opposed the present petition stating that the same should be dismissed, at this stage itself. He relies upon judgments of the Supreme Court in **Modern**



School vs. Union of India, (2004) 5 SCC 583; Delhi Abhibhavak Mahasang & Ors. vs. Union of India, (1999) 49 DRJ 766 and also judgment in the case of *Action Committee, unaided Private Schools & Ors Vs. Department of Education (2009) 10 SCC 1* to plead that capital expenditure in any form cannot be recovered from the school fees and that the impugned order has rightly directed the petitioner to recover the said amount of approximately above Rs.6 crores from the society in question.

6. In my opinion, these are aspects which will have to be gone into at the time of hearing of the matter. The respondent has prima facie taken quite some time to give an approval for the fees in question for the year 2017-18. That apart, I may look at Rule 177 of the Delhi School Education Rules which reads as follows:-

"Rule 177. Fees realized by unaided recognized schools how to be utilised.- (1) Income derived by an unaided recognised school by way of fees shall be utilised in the first instance, for meeting the pay, allowances and other benefits admissible to the employees of the school:

Provided that savings, if any from the fees collected by such schools may be utilised by its managing Committee for meeting capital or contingent expenditure of the school, or for one or more of the following educational purposes, namely:-

(a) award of scholarship to students;
(b) establishment of any other recognized school; or
(c) assisting any other school or educational institution, not being a college, under the management of the same Society or trust by which the first mentioned school is run.

(2) The savings referred to in sub-rule (1) shall be arrived at after providing for the following, namely:



- (a) pension, gratuity and other specified retirement and other benefits admissible to the employees of the school;
- (b) the needed expansion of the school or any expenditure of a developmental nature;
- (c) the expansion of the school building or for the expansion or construction of any building or establishment of hostel or expansion of hostel accommodation;
- (d) co-curricular activities of the students;
- (e) reasonable reserve fund, not being less than ten per cent of such savings.

(3) Funds collected for specific purposes, like sports, co-curricular activities, subscriptions for excursions or subscriptions for magazines and annual charges, by whatever name called, shall be spent solely for the exclusive benefit of the students of the concerned school and shall not be included in the savings referred to in sub-rule (2).

(4) The collections referred to in sub-rule (3) shall be administered in the same manner as the monies standing to the credit of the Pupils Fund as administered.”

7. Rule 177(2) which defines savings provides for needed expansion of the school or any expenditure of a developmental nature to be conducted before arriving at the savings in question.

8. The plea as to whether the expenditure incurred by the petitioner school on refurbishing and renovation of the school building can be paid from the revenues of the school from the fees would have to be gone into apart from other issues which have been raised by learned counsel for the parties.

9. Issue notice to the respondent. Learned counsel for respondent accepts notice. Till the next date of hearing the direction in the impugned order dated 1.6.2020 to refund fees to the students and to recover any stated



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amount from the society in question shall remain stayed.

10. Counter-Affidavit be filed within three weeks. Rejoinder thereto if any be filed within three weeks thereafter.

11. List on 17.11.2020.

JAYANT NATH, J

SEPTEMBER 4, 2020/n