

Modern School vs Union Of India & Ors on 27 April, 2004

Bench: V.N. Khare, S.H. Kapadia

CASE NO.:
Appeal (civil) 2699 of 2001

PETITIONER:
Modern School

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 27/04/2004

BENCH:
CJI V.N. KHARE & S.H. KAPADIA.

JUDGMENT:

J U D G M E N T WITH CIVIL APPEAL No.2700 OF 2001 The Action Committee Unaided Private Schools & Ors. Versus Director of Education, Delhi & Ors.

WITH CIVIL APPEAL No.2701 OF 2001 New Era Public School Versus Union of India & Ors.

WITH CIVIL APPEAL No.2702 OF 2001 Mahavir Senior Model School Versus Govt. of NCT of Delhi & Anr.

WITH CIVIL APPEAL No.2703 OF 2001 Mater Dei School & Ors.

Versus Director of Education, Delhi & Ors.

WITH CIVIL APPEAL No.2704 OF 2001 Carmel Convent School & Ors.

Versus Director of Education, Delhi & Ors.

WITH CIVIL APPEAL Nos.2705-2706 OF 2001 St. Xavier's School etc. Versus Director of Education, Delhi & Ors.

WITH CIVIL APPEAL No.2707 OF 2001 Apeejay Public School & Ors.

Versus Delhi Abibhavak Mahasangh & Ors.

WITH CIVIL APPEAL No.2708 OF 2001 Bluebells Public School Versus Union of India & Ors.

WITH CIVIL APPEAL No.2709 OF 2001 D.A.V. Public School & Ors.

Versus Director of Education, Delhi & Ors.

AND CIVIL APPEAL No.2710 OF 2001 Mount Carmel School Society & Anr.

Versus Director of Education, Delhi & Ors.

KAPADIA, J.

In this batch of civil appeals, following three points arise for determination:

- (a) Whether the Director of Education has the authority to regulate the quantum of fees charged by un-aided schools under section 17(3) of Delhi School Education Act, 1973?
- (b) Whether the direction issued on 15th December, 1999 by the Director of Education under section 24(3) of the Delhi School Education Act, 1973 stating inter alia that no fees/funds collected from parents/students shall be transferred from the Recognised Un-aided Schools Fund to the society or trust or any other institution, is in conflict with rule 177 of Delhi School Education Rules, 1973?
- (c) 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?

Since the aforesaid three points arise in all the civil appeals the same are taken up together and disposed-of by this common judgment.

INTRODUCTION:

In modern times, all over the world, education is big business. On 18th June, 1996, Professor G. Roberts Chairman of the Committee of Vice-Chancellors and Principals commented:

"The annual turnover of the higher education sector has now passed the \$10 billions mark. The massive increase in participation that has led to this figure, and the need to prepare for further increases, now demands that we make revolutionary advances, in the way we structure, manage and fund higher education."

In the book titled 'Higher Education Law' (Second Edition) by David Palfreyman and David Warner, it is stated that in modern times, all over the world, education is big business. On account of consumerism, the students all over the world are restless. That schools in private sector which charge fees may be charitable provided they are not run as profit-making ventures. That educational charity must be established for the benefit of the public rather than for the benefit of the individuals. That while individuals may derive benefits from an educational charity, the main purpose of the charity must be for the benefit of the public.

At the outset, we hasten to clarify that although we are in agreement with the authors, quoted above, we do not wish to generalize and in the Indian context we may state that there are good schools which even today run keeping in mind laudable charitable objects.

The basic question before us has been succinctly put earlier by this Court in Unni Krishnan, J.P. & Ors. v. State of A.P. & Ors. [(1993) 1 SCC 645] in following terms: "196. Even so, some questions do arise whether cost-based education only means running charges or can it take in capital outlay? Who pays or who can be made to pay for establishment, expansion and improvement / diversification of private educational institutions? Can an individual or body of persons first collect amounts (by whatever name called) from the intending students and with those monies establish an institution an activity similar to builders of apartments in the cities? How much should the students coming in later years pay? Who should work out the economics of each institution? Any solution evolved has to take into account all these variable factors. But one thing is clear: commercialization of education cannot and should not be permitted. The Parliament as well as State Legislatures have expressed this intention in unmistakable terms. Both in the light of our tradition and from the standpoint of interest of general public, commercialization is positively harmful; it is opposed to public policy. As we shall presently point out, this is one of the reasons for holding that imparting education cannot be trade, business or profession. The question is how to encourage private educational institutions without allowing them to commercialize the education? This is the troublesome question facing the society, the Government and the courts today."

FACTS:

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 the public interest writ petition filed on 8th September, 1997 impleading thirty unaided recognised public schools. The grievance of the Mahasangh was that recognized private unaided schools in Delhi are indulging in large scale commercialization of education which was against public interest. That commercialization has reached an alarming situation on account of failure of the Government to perform its statutory functions under 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 recognized 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, admissions fees and security deposit was justified on account of increase in the expenses and in particular salaries of teachers in compliance of recommendations of 5th Pay Commission.

The key issue before the High Court, therefore, was whether unaided recognized schools were indulging in commercialization 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 utilization of tuition fees for payment of salaries of teachers and employees and also for utilization 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 recognized unaided schools in Delhi. Being aggrieved, the unaided recognized 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 recognized unaided schools in Delhi under section 24(3) read with section 18(4) & (5) of the Act, which directions are the subject matter of the civil appeals herein.

ANALYSIS OF DELHI SCHOOL EDUCATION ACT, 1973:

The Act is enacted to provide for development of school education in Delhi and for matters connected thereto. Section 2(v) defines "school property" to mean all movable and immovable property belonging to, or in possession of, the school including land, building, playground, hostel, cash, reserve funds, investments and bank balances. Section 2(x) defines "unaided minority school" to mean a recognised minority school which does not receive any aid. Section 4 inter alia states that no school shall be recognised unless it has adequate funds to ensure regular payment of salary and allowances to its employees. Section 17(3) inter alia states that every recognised school shall file before the commencement of each academic session with the Director a full statement of fees to be levied during the following academic session and no school shall charge during that academic session any fees in excess of the fees specified in such statement. Section 18(4)(a) inter alia states that income derived by unaided schools by way of fees shall be utilized only for prescribed educational purposes. Similarly, under section 18(4)(b), charges and contributions received by the school shall be utilized only for the specific purpose for which they were received. Under Section 24(3), the Director is empowered to give directions to the management to rectify defects in the working of the school.

At this stage, we quote hereinbelow rules 172, 175, 176 and 177 of Delhi School Education Rules, 1973 (hereinafter for the sake of brevity referred to as "the 1973 Rules"): "172. Trust or society not to collect fees, etc., schools to grant receipts for

fees, etc., collected by it. (1) No fee, contribution or other charge shall be collected from any student by the trust or society running any recognised school; whether aided or not.

(2) Every fee, contribution or other charge collected from any student by a recognised school, whether aided or not, shall be collected in its own name and a proper receipt shall be granted by the school for every collection made by it.

175. Accounts of the school how to be maintained. The accounts with regard to the School Fund or the Recognised Unaided School Fund, as the case may be, shall be so maintained as to exhibit clearly the income accruing to the school by way of fees, fines, income from building, rent, interest, development fees, collections for specific purposes, endowments, gifts, donations, contributions to Pupils' Fund and other miscellaneous receipts, and also, in the case of aided schools, the aid received from the Administrator.

176. Collections for specific purposes to be spent for that purpose. Income derived from collections for specific purposes shall be spent only for such purpose.

177. Fees realized by unaided recognised schools how to be utilized. (1) Income derived by an unaided recognised school by way of fees shall be utilized 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 school may be utilized 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 scholarships to students;

(b) establishment of any other recognised 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."

We also quote hereinbelow clause (7) and clause (8) of the Order dated 15th December, 1999 issued by the Director under Section 24(3) of the Act in terms of the Duggal Committee report: "7. Development fee, not exceeding ten per cent, of the total annual tuition fee may be charged for supplementing the resources for purchase, upgradation and replacement of furniture, fixtures and equipment. Development fee, if required to be charged, shall be treated as capital receipt and shall be collected only if the school is maintaining a Depreciation Reserve Fund, equivalent to the depreciation charged in the revenue accounts and the collection under this head alongwith and income generated from the investment made out of this fund, will be kept in a separately maintained Development Fund Account.

8. Fees/funds collected from the parents/students shall be utilized strictly in accordance with rules 176 and 177 of the Delhi School Education Rules, 1973. No amount whatsoever shall be transferred from the recognised unaided school fund of a school to the society or the trust or any other institution."

ARGUMENTS:

On behalf of the schools, it has been urged that under above rule 177(1), income derived by unaided schools from fees shall be utilized firstly to meet salaries of employees and the balance could be utilized to establish any other school or to assist any other school or institution under the same management and, therefore, the legislature intended to permit societies/trusts to utilize such savings to meet capital/contingent expenditure or to meet one or more educational purposes which included establishment of any other school under the same management. That rule 177 is a very sensible provision of law. That on account of such provision, societies/trusts have been able to expand their educational institutions. That because of this provision, educational societies/trusts are able to establish other schools in Delhi under the same management. It was submitted that if transfer of funds is prohibited as mentioned in clause 8, it would make big industrial houses to open up schools for the rich classes sacrificing the interest of the middle and lower middle classes, which would be against public interest. It was further submitted that clause 8

was in conflict with rule 177(1)(b), which permits the management to establish any other recognized school and, therefore, clause 8 was bad in law and of no legal effect. 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 utilized 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. It was next submitted that the society/trust was entitled to charge and regulate development fees without any limit and that the Director has no authority to limit such development fees as purported to have been done under clause (7) of the order dated 15th December, 1999.

FINDINGS:

The first point for determination is whether the Director of Education has the authority to regulate the fees of unaided schools?

At the outset, before analyzing the provisions of 1973 Act, we may state that it is now well settled by catena of decisions of this Court that in the matter of determination of the fee structure the unaided educational institutions exercises 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 commercialization of education. Hence, we have to strike a balance between autonomy of such institutions and measures to be taken to prevent commercialization 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 1973 Act.

As far back as 1957, it has been held by this Court in the case of *State of Bombay v. R.M.D. Chamarbaugwala* reported in [AIR 1957 SC 699] that education is per se an activity that is charitable in nature. Imparting of education is a State function. The State, however, having regard to its financial constraints is not always in a position to perform its duties. The function of imparting education has been to a large extent taken over by the citizens themselves. In the case of *Unni Krishnan, J.P. v. State of A.P.* (supra), looking to the above ground realities, this Court formulated a self-financing mechanism/scheme under which institutions were entitled to admit 50% students of their choice as they were self-financed institutions, whereas rest of the seats were to be filled in by the State. For admission of students, a common

entrance test was to be held. Provisions for free seats and payment seats were made therein. The State and various statutory authorities including Medical Council of India, University Grants Commission etc. were directed to make end or amend regulations so as to bring them on par with the said Scheme. In the case of TMA Pai Foundation v. State of Karnataka reported in [(2002) 8 SCC 481], the said scheme formulated by this Court in the case of Unni Krishnan (supra) was held to be an unreasonable restriction within the meaning of Article 19(6) of the Constitution as it resulted in revenue short-falls making it difficult for the educational institutions. Consequently, all orders and directions issued by the State in furtherance of the directions in Unni Krishnan's case (supra) were held to be unconstitutional. This Court observed in the said judgment 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. TMA Pai Foundation's case for the first time brought into existence the concept of education as an "occupation", a term used in Article 19(1)(g) of the Constitution. It was held by majority that Articles 19(1)(g) and 26 confer rights on all citizens and religious denominations respectively to establish and maintain educational institutions. In addition, Article 30(1) gives the right to religious and linguistic minorities to establish and administer educational institution of their choice. However, 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 para 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 was held to be forbidden. Subject to the above two prohibitory parameters, this Court in TMA Pai Foundation's 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. This issue was not there before this Court in the TMA Pai Foundation's case.

The judgment in TMA Pai Foundation's case was delivered on 31.10.2002. The Union of India, State Governments and educational institutions understood the majority judgment in that case in different perspectives. It led to litigations in several courts. Under the circumstances, a bench of five Judges was constituted in the case of Islamic Academy of Education v. State of Karnataka reported in [(2003) 6 SCC 697] so that doubts/anomalies, if any, could be clarified. One of the issues which arose for determination concerned determination of the fee structure in private unaided professional educational institutions. It was submitted on behalf of the managements that such institutions had been given complete autonomy not only as regards admission of students but also as regards determination of their own fee structure. It

was submitted that these institutions were entitled to fix their own fee structure which could include a reasonable revenue surplus for the purpose of development of education and expansion of the institution. It was submitted that so long as there was no profiteering, there could be no interference by the Government. As against this, on behalf of Union of India, State Governments and some of the students, it was submitted, that the right to set-up and administer an educational institution is not an absolute right and it is subject to reasonable restrictions. It was submitted that such a right is subject to public and national interests. It was contended that imparting education was a State function but due to resource crunch, the States were not in a position to establish sufficient number of educational institutions and consequently the States were permitting private educational institutions to perform State functions. It was submitted that the Government had a statutory right to fix the fees to ensure that there was no profiteering. Both sides relied upon various passages from the majority judgment in TMA Pai Foundation's case. In view of rival submissions, four questions were formulated. We are concerned with first question, namely, whether the educational institutions are entitled to fix their own fee structure. It was held that there could be no rigid fee structure. 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 non- charging of capitation fees. It was held that surplus/profit can be generated but they shall be used for the benefit of that educational institution. It was held that 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 Court noticed that there were various statutes/regulations which governed the fixation of fee and, therefore, this Court directed the respective State Governments to set up committee headed by a retired High Court Judge to be nominated by the Chief Justice of that State to approve the fee structure or to propose some other fee which could be charged by the institute.

In the light of the judgment of this Court in the case of Islamic Academy of Education (supra) the provisions of 1973 Act and the rules framed thereunder may be seen. The object of the said Act is to provide better organization and development of school education in Delhi and for matters connected thereto. Section 18(3) of the Act states that in every recognized unaided school, there shall be a fund, to be called as Recognized Unaided School Fund consisting of income accruing to the school by way of fees, charges and contributions. Section 18(4)(a) states that income derived by unaided schools by way of fees shall be utilized only for the educational purposes as may be prescribed by the rules. Rule 172(1) states that no fee shall be collected from any student by the trust/society running any recognized school; whether aided or unaided. That under rule 172(2), every fee collected from any student by a recognized

school, whether aided or not, shall be collected in the name of the school. Rule 173(4) inter alia states that every Recognized Unaided School Fund shall be deposited in a nationalized bank. Under rule 175, the accounts of Recognized Unaided School Fund shall clearly indicate the income accruing to the school by way of fees, fine, income from rent, income by way of interest, income by way of development fees etc. Rule 177 refers to utilization of fees realized by unaided recognized school. Therefore, rule 175 indicates accrual of income whereas rule 177 indicates utilization of that income.

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 authorized to regulate the fees and other charges to prevent commercialization 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 section 18(3)&(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.

The second point for determination is whether clause (8) of the Order passed by the Director on 15th December 1999 (hereinafter referred to as "the said Order") under section 24(3) of the Act is contrary to rule 177?

It was argued on behalf of the management that rule 177 allows the schools to incur capital expenditure in respect of the same school or to assist any other school or to set up any other school under the same management and consequently, the Director had no authority under clause (8) to restrain the school from transferring the funds from the Recognized Unaided School Fund to the society or the trust or any other institution and, therefore, clause (8) was in conflict with rule 177.

We do not find merit in the above arguments. Before analyzing the rules herein, it may be pointed out, that as of today, we have Generally Accepted Accounting Principles (GAAP). As stated above, commercialization of education has been a problem area for the last several years. One of the methods of eradicating commercialization of education in schools is to insist on every school following principles of accounting applicable to not-for-profit organizations/ non- business organizations. Under the Generally Accepted Accounting Principles, expense is different from expenditure. 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. Lastly, we must keep in mind that accounting has a linkage with law. Accounting operates within legal framework. Therefore, banking, insurance and electricity companies have their own form of balance-sheets unlike balance-sheets prescribed for companies under the Companies Act 1956. Therefore, we have to look at the accounts of non-business organizations like schools, hospitals etc. in the light of the statute in question.

In the light of the above observations, we are required to analyse rules 172, 175, 176 and 177 of 1973 rules. The above rules indicate the manner in which accounts are required to be maintained by the

schools. Under section 18(3) of the said Act every recognised school shall have a fund titled "Recognised Unaided School Fund". It is important to bear in mind that in every non-business organization, accounts are to be maintained on the basis of what is known as 'Fund Based System of Accounting'. Such system brings about transparency. Section 18(3) of the Act shows that schools have to maintain Fund Based System of Accounting. The said Fund, contemplated by Section 18(3), shall consist of income by way of fees, fine, rent, interest etc. Section 18(3) is to be read with rule 175. Reading the two together, it is clear that each item of income shall be accounted for separately under the common head, namely, Recognised Unaided School Fund. Further, rule 175 indicates accrual of income unlike rule 177 which deals with utilization of income. Rule 177 does not cover all the items of income mentioned in rule 175. Rule 177 only deals with one item of income for the school, namely, fees. Rule 177(1) shows that salaries, allowances and benefits to the employees shall constitute deduction from the income in the first instance. That after such deduction, surplus if any, shall be appropriated towards, pension, gratuity, reserves and other items of appropriations enumerated in rule 177(2) and after such appropriation the balance (savings) shall be utilized to meet capital expenditure of the same school or to set up another school under the same management. Therefore, rule 177 deals with application of income and not with accrual of income. Therefore, rule 177 shows that salaries and allowances shall come out from the fees whereas capital expenditure will be a charge on the savings. Therefore, capital expenditure cannot constitute a component of the financial fees structure as is submitted on behalf of the schools. It also shows that salaries and allowances are revenue expenses incurred during the current year and, therefore, they have to come out of the fees for the current year whereas capital expenditure/capital investments have to come from the savings, if any, calculated in the manner indicated above. It is for this reason that under Section 17(3) of the Act, every school is required to file a statement of fees which they would like to charge during the ensuing academic year with the Director. In the light of the analysis mentioned above, we are directing the Director to analyse such statements under section 17(3) of the Act and to apply the above principles in each case. This direction is required to be given as we have gone through the balance- sheets and profit and loss accounts of two schools and prima facie, we find that schools are being run on profit basis and that their accounts are being maintained as if they are corporate bodies. Their accounts are not maintained on the principles of accounting applicable to non-business organizations/not-for-profit organizations.

As stated above, it was argued that clause 8 of the order of Director was in conflict with rule 177. We do not find any merit in this argument.

Rule 177(1) refers to income derived by unaided recognized school by way of fees and the manner in which it shall be applied/utilized. Accrual of income is indicated by rule 175, which states that income accruing to the school by way of fees, fine, rent, interest, development fees shall form part of Recognized Unaided School Fund Account. Therefore, each item of income has to be separately accounted for. This is not being done in the present case. Rule 177(1) further provides that income from fees shall be utilized in the first instance for paying salaries and other allowances to the employees and from the balance the school shall provide for pension, gratuity, expansion of the same school, capital expenditure for development of the same school, reserve fund etc. and the net savings alone shall be applied for establishment of any other recognized school under rule 177(1)(b). Under accounting principles, there is a difference between appropriation of surplus (income) on one

hand and transfer of funds on the other hand. In the present case, rule 177(1) refers to appropriation of savings whereas clause 8 of the order of Director prohibits transfer of funds to any other institution or society. This view is further supported by rule 172 which states that no fee shall be collected from the student by any trust or society. That fees shall be collected from the student only for the school and not for the trust or the society. Therefore, one has to read rule 172 with rule 177. Under rule 175, fees collected from the school have to be credited to Recognized Unaided School Fund. Therefore, reading rules 172, 175 and 177, it is clear that appropriation of savings (income) is different from transfer of fund. Under clause 8, the management is restrained from transferring any amount from Recognized Unaided School Fund to the society or the trust or any other institution, whereas rule 177(1) refers to appropriation of savings (income) from revenue account for meeting capital expenditure of the school. In the circumstances, there is no conflict between rule 177 and clause 8.

The third point which arises for determination is whether the managements of recognised unaided schools are entitled to set up a Development Fund Account?

In our view, on account of increased cost due to inflation, the management is entitled to create Development Fund Account. For creating such development fund, the management is required to collect development fees. In the present case, pursuant to the recommendation of Duggal Committee, development fees could be levied at the rate not exceeding 10% to 15% of total annual tuition fee. Direction no.7 further states that development fees not exceeding 10% to 15% of total annual tuition fee shall be charged for supplementing the resources for purchase, upgradation and replacement of furniture, fixtures and equipments. It further states that development fees shall be treated as Capital Receipt and shall be collected only if the school maintains a depreciation reserve fund. In our view, direction no.7 is appropriate. If one goes through the report of Duggal Committee, one finds absence of non-creation of specified earmarked fund. On going through the report of Duggal Committee, one finds further that depreciation has been charged without creating a corresponding fund. Therefore, direction no.7 seeks to introduce a proper accounting practice to be followed by non-business organizations/not-for-profit organization. With this correct practice being introduced, development fees for supplementing the resources for purchase, upgradation and replacements of furniture and fixtures and equipments is justified. Taking into account the cost of inflation between 15th December, 1999 and 31st December, 2003 we are of the view that the management of recognized unaided schools should be permitted to charge development fee not exceeding 15% of the total annual tuition fee.

To sum up, the interpretation we have placed on the provisions of the said 1973 Act is only to bring in transparency, accountability, expenditure management and utilization of savings for capital expenditure/investment without infringement of the autonomy of the institute in the matter of fee fixation. It is also to prevent commercialization of education to the extent possible.

CONCLUSION:

In addition to the directions given by the Director of Education vide order DE.15/Act/Duggal.Com/ 203/99/23989- 24938 dated 15th December, 1999, we give

further directions as mentioned hereinbelow:

(a) Every recognized unaided school covered by the Act shall maintain the accounts on the principles of accounting applicable to non-business organization/not-

for-profit organization;

In this connection, we inter alia direct every such school to prepare their financial statement consisting of Balance-sheet, Profit & Loss Account, and Receipt & 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 recognized unaided schools. We reproduce herein clauses 16 & 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 Admn. and shall follow the provisions of 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 rules by the Delhi Administration, from time to time strictly complied. They will ensure admission to the student belonging to weaker sections to the extent of 25% and grant freeship to them."

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 of the above terms, the Director shall take appropriate steps in this regard.

All civil appeals stand disposed of in terms of the above judgment, with no order as to costs.