

2025 SCC OnLine Del 6393

In the High Court of Delhi at New Delhi

(BEFORE DEVENDRA KUMAR UPADHYAYA, C.J. AND TUSHAR RAO GEDELA, J.)

LPA 213/2024, CM APPL. 15188/2024, CM APPL. 15189/2024, CM
APPL. 15190/2024 & CM APPL. 54509/2024

Rumana Through Father Mr. Hemant and Others ...
Appellants;

Versus

Bluebells International School Kailash and Another
... Respondents.

With

LPA 316/2024, CM APPL. 23353/2024 & CM APPL. 54601/2024

Directorate of Education ... Appellant;

Versus

Lilawati Vidya Mandir Senior Secondary School ...
Respondent.

And

LPA 669/2024, CM APPL. 41662/2024, CM APPL. 41663/2024 & CM
APPL. 54511/2024

Directorate of Education ... Appellant;

Versus

Bluebells School International Kailash ...
Respondent.

LPA 213/2024, CM APPL. 15188/2024, CM APPL. 15189/2024, CM
APPL. 15190/2024, CM APPL. 54509/2024, LPA 316/2024, CM
APPL. 23353/2024, CM APPL. 54601/2024, LPA 669/2024, CM
APPL. 41662/2024, CM APPL. 41663/2024 and CM APPL.

54511/2024⁵

Decided on October 9, 2025, [Judgment reserved on: 25.08.2025]
Advocates who appeared in this case :

Mr. Khagesh B. Jha, Ms. Shikha Sharma Bagga, Mr. Ankit Mann, Ms.
Jyoti Shokeen and Ms. Amisha Dhariwan.

Mr. Kamal Gupta, Ms. Tripti Gupta, Sparsh Aggarwal, Ms. Madhulika
Singh, Ms. Rakshita Mathur, Advs. Mr. Sameer Vashisht, Standing
Counsel, GNCTD with Mr. Abhinav Sharma, Panel Counsel, GNCTD and
Ms. Harshita Nathrani, Adv.

Mr. Sameer Vashisht, Standing Counsel, GNCTD with Mr. Abhinav
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Mr. Kamal Gupta, Ms. Tripti Gupta, Sparsh Aggarwal, Ms. Madhulika Singh, Ms. Rakshita Mathur, Advs.

Mr. Sameer Vashisht, Standing Counsel, GNCTD with Mr. Abhinav Sharma, Panel Counsel, GNCTD and Ms. Harshita Nathrani, Adv.

Mr. Kamal Gupta, Ms. Tripti Gupta, Sparsh Aggarwal, Ms. Madhulika Singh, Ms. Rakshita Mathur, Advs.

The Judgment of the Court was delivered by

DEVENDRA KUMAR UPADHYAYA, C.J.:— Since these three letters patent appeals assail the validity of one and the same judgment and order dated 07.02.2024 and common questions of law and facts are involved in all these appeals, they have been heard together and are being decided by the common judgment which follows:—

2. *LPA 316/2024* and *LPA 669/2024* have been instituted by the Directorate of Education, Government of National Capital Territory of Delhi (*hereinafter referred to as the 'DoE'*), whereas; *LPA 213/2024* has been instituted by students through their parents, who were interveners in the proceedings of the writ petitions before the learned Single Judge.

3. *W.P.(C) 8794/2018* was filed by Bluebells School International, Kailash, (a school which is privately run and managed and does not receive any aid or grant from the Government and is also not running on a land granted to it by the Government or any of its agencies on allotment/lease) against an order dated 01.08.2018 passed by the DoE, GNCTD whereby, the school was directed not to increase any fees pursuant to the fee hike proposed by the school for the Academic Session 2017-2018 on any count including implementation of recommendations of 7th Central Pay Commission (7th CPC). The said order dated 01.08.2018 also directed the school that if the fees was already increased, the same would be refunded to the parents or adjusted in the fees of subsequent months. The DoE, while passing the order dated 01.08.2018, also provided that the said order shall be communicated through website and notice board of the school and also by a circular informing all concerned about rejection of fee increase as proposed. The aforesaid order dated 01.08.2018 also contained a direction that the fees shall be utilized as per the provisions of Rule 177 of the Delhi School Education Rules, 1973 (*hereinafter referred to as the 'DSER, 1973'*) and in terms of the judgment of Hon'ble Supreme Court in the case of *Modern School v. Union of India*, (2004) 5 SCC 583.

4. The school was further directed that it shall utilize the fees collected from the students in accordance with the provisions of Rule 177 of DSER, 1973 and orders and directions which may be issued by DoE from time to time.

5. A similar challenge was made by Lilawati Vidya Mandir, Sr. Secondary School (this school is also privately run and managed and not aided by the Government, neither is it run on land granted or leased by the Government or any of its agencies), which instituted *W.P. (C) 6419/2019*. The challenge in this petition was to an order dated 20.04.2019, passed by the DoE, whereby certain directions were issued to this school as well. The directions issued *vide* order dated 20.04.2019, was to the effect that the school shall not charge any increased fees in pursuance to the full fees statement filed under Section 17(3) of Delhi School Education Act, 1973 (*hereinafter referred to as the 'DSEA, 1973'*) for the Academic Session 2017-2018 and if increased fees had already been charged, the same shall be refunded to the parents or adjusted in the fees for subsequent months. The school was also directed to communicate the said decision of the DoE to the parents of the students.

6. It was further directed that the school shall ensure that salaries and allowances shall come out from the fees, whereas capital expenditure will be a charge on the savings in accordance with the principles laid by the Hon'ble Supreme Court in its judgment in *Modern School* (supra). It was also directed that the school shall not include capital expenditure as a component of the fee structure to be submitted by the school under Section 17(3) of DSEA, 1973 and that the school shall utilize the fees in accordance with the provisions of Rule 177 of DSER, 1973 and orders and directions which may be issued by the DoE from time to time. Another direction contained in the order dated 20.04.2019 was that the school shall remove all the financial and other irregularities as listed in the said order and submit a compliance report within 30 days to the DoE, non-compliance of which shall be dealt with in accordance with provisions of Section 24(4) of the DSEA, 1973.

7. The learned Single Judge while allowing the writ petitions filed by the schools has quashed the orders which were under challenge in the writ petitions to the extent, the said orders prescribed increase of fees by the schools. It was also observed by the learned Single Judge while passing the judgment and order under appeal herein that the DoE shall be at liberty to proceed in accordance with law with respect to the allegations as are reflected in the orders which were impugned in the writ petitions, subject, of course to ensuring that no adverse decision against the schools would be taken without following the requirement of a statute/rules and regulations and applicable guidelines and adhering to the principles of natural justice and fair play. The learned Single Judge also provided that quashing of the orders which were under challenge before him shall not inhibit the DoE from taking any decision in respect of any perceived infraction by the schools of the provisions of DSEA, 1973 or DSER, 1973.

8. The appellants in *LPA 213/2024*, who are the students, were permitted to intervene in the proceedings before the learned Single Judge through their parents and were also heard by the learned Single Judge. Both the writ petitions, namely, *W.P.(C) 8794/2018* and *W.P.(C) 6419/2019* have been decided by the common judgment and order dated 07.02.2024 by the learned Single Judge, which is under appeal herein.

9. Heard the learned counsel for the parties and perused the records available before us on these letters patent appeals.

10. Since the facts leading to filing of the writ petitions before the learned Single Judge have elaborately been mentioned by the learned Single Judge in the judgment and order under appeal, we do not find it necessary to advert to the facts again and proceed to decide the legal issue which has emerged in these appeals.

11. The issue which needs our consideration and determination, as can be culled out from the pleadings available on record of these letters patent appeals and the competing submissions made by learned counsel for the respective parties are as under:—

(i) What is the extent of power of the Government (DoE) to regulate the fees charged by an unaided privately managed school from its students under DSEA, 1973?; in other words, whether, in the facts of the present case, DoE can be said to be possessed with necessary power and jurisdiction to prohibit the privately run and unaided schools from increasing its fees in terms of the provisions contained in Section 17(3) and 18(4) of the DSEA, 1973 read with Rule 172 to 179 falling under Chapter XIV of DSER, 1973, and if the fees were already increased by such a school, whether the DoE is empowered to direct the school to refund the fees charged in excess of what the DoE considers to be the maximum fees chargeable from the students.

12. It has been argued on behalf of the learned counsel for the appellants that the learned Single Judge has erred in law in returning a categorical finding that under the provisions of Section 17 and 18 of DSEA, 1973 read with the rules framed there under the DoE is not empowered to regulate the fees to be charged by unaided schools for the reason that such a finding is contrary to what has been held by Hon'ble Supreme Court in the case of *Modern School* (supra). Further submission on behalf of the appellants is that the finding recorded by the learned Single Judge to the effect that the orders under challenge before him were passed in violation of principles of natural justice is also erroneous for the reason that the said orders were passed after giving adequate opportunity to the school management and accordingly, in the facts of the case such finding returned by the learned Single Judge is not sustainable.

13. Mr. Sameer Vashisht, learned Standing Counsel representing GNCTD has drawn our attention to paragraph no. 17 of the judgment in *Modern School* (supra), which, according to him, clearly laid down that the DoE has the authority to regulate fees under Section 17(3) of DSEA, 1973. He has further argued that the said conclusion was arrived at in *Modern School* (supra) by Hon'ble Supreme Court on a detailed consideration of the legal principles as laid down in *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481, *Unni Krishnan, J.P. v. State of A.P.*, (1993) 1 SCC 645 and *Islamic Academy of Education v. State of Karnataka*, (2003) 6 SCC 697. According to Mr. Vashisht, the conclusion that DoE has the authority to regulate the fees to be charged by unaided schools flows from Section 17(3) of the DSEA, 1973, read with Section 18(3) and 18(4) of the said Act. He has also drawn our attention to Rules 172, 173, 175 and 177 of the DSER, 1973, and has thus submitted that the learned Single Judge has completely ignored the dictum of the Hon'ble Supreme Court in *Modern School* (supra) and has incorrectly held that the DoE lacks the authority to regulate the fees to be charged by unaided schools.

14. Mr. Khagesh B. Jha, learned counsel appearing for the appellants in *LPA 213/2024* while adopting the submissions made by Mr. Vashisht, has also relied upon the judgment of Hon'ble Supreme Court in *Modern Dental College & Research Centre v. State of M.P.*, (2016) 7 SCC 353. He has specifically drawn our attention to the observations made in paragraph no. 75 of the said judgment wherein, according to him, it has been laid by Hon'ble Supreme Court that the Government is equipped with necessary powers to take regulatory measures and ensure that educational institutions keep playing a vital and pivotal role to spread education and not to make money. He has also relied upon *T.M.A. Pai Foundation* (supra) and *Islamic Academy of Education* (supra), as also on *P.A. Inamdar v. State of Maharashtra*, (2005) 6 SCC 537. Mr. Jha has thus submitted that when it comes to the notice of the Government that a particular institution is charging fees or other charges which are excessive, it has a right to issue directions to such an institution to reduce the same.

15. On behalf of the appellants, reliance has also been placed on *Delhi Abibhavak Mahasangh v. Union of India*, 1998 SCC OnLine Del 809, *Delhi Abibhavak Mahasangh v. Union of India*, 2002 SCC OnLine Del 46, *Unaided Private Schools of Delhi v. Director of Education*, (2009) 10 SCC 1, and *Union of India v. Moolchand Kharaiti Ram Trust*, (2018) 8 SCC 321.

16. Opposing these appeals, Mr. Kamal Gupta, learned counsel appearing for the respondent/schools has, at the outset, stated that a learned Single Judge of this Court is dealing with a batch of 150 matters filed by schools and parents dealing with orders passed by DoE

on the proposals of fee hike which have been submitted by schools running on the land allotted/leased to them by the Government/its agencies, which is pending, and therefore, any decision in the present cases which may be rendered should be clarified that it will be applicable in the facts and circumstances of these cases alone and should have no bearing or effect whatsoever on the proceeding pending before the learned Single Judge. It has further been argued on behalf of the respondent/schools that if the learned Single Judge has taken a plausible or reasonable view, in the letters patent appeals no interference would be warranted with the judgment of the learned Single Judge only on account of the fact that this Division Bench is unable to agree with the findings of the learned Single Judge, unless it is found that the view taken by the learned Single Judge is perverse or patently illegal.

17. It is also the submission on behalf of the respondent/schools that giving liberty to the DoE to re-open the issue of fee structure that was established and charged 8-10 years ago will not be justified, nor shall it be reasonable. Relying upon *V.C., Banaras Hindu University v. Shrikant*, (2006) 11 SCC 42, *K.I. Shephard v. Union of India*, (1987) 4 SCC 431, *Siemens Ltd. v. State of Maharashtra*, (2006) 12 SCC 331, and *H.L. Trehan v. Union of India*, (1989) 1 SCC 764. It has been argued further that re-hearing of any matter on remand may not be ordered in this case for the reason that any such exercise would not yield any different result, and in such a situation, remitting the matter back to DoE will only be an exercise in futility. Reliance has also been placed in this regard on behalf of the respondent/schools on *Ashwinkumar K. Patel v. Upendra J. Patel*, (1999) 3 SCC 161, *Ashwinkumar K. Patel v. Upendra J. Patel*, (1999) 3 SCC 161, *Maya Devi v. Raj Kumari Batra*, (2010) 9 SCC 486 and *Karam Chand v. Union of India*, (2002) 3 SCC 631. On the aforesaid counts, these appeals have been opposed by the learned counsel representing the respondent/schools.

18. We have given our thoughtful consideration to the arguments made on behalf of the parties.

19. So far as the issue as set out above is concerned, reliance placed by the learned counsel for the appellant on *Modern School* (supra) appears to be highly misplaced for the reason that the Hon'ble Supreme Court in the said case, after reviewing the entire law regarding the extent of power of the Government to regulate the fees to be charged by unaided schools, has clearly concluded that such regulation is permissible, however, only to the extent of checking profiteering, commercialization and charging of capitation fee by the schools.

20. The observations made in paragraph no. 17 of the report in

Modern School (supra) cannot be read in isolation only to mean that “the director has the authority to regulate the fees under Section 17(3) of the DSEA, 1973”. The discussions made by the Apex Court in *Modern School* (supra) in paragraphs preceding the paragraph no. 17 would clearly demonstrate that *T.M.A. Pai Foundation* (supra) brought in the concept of education as an occupation, which is a term occurring in Article 19(1)(g) of the Constitution of India.

21. The discussion in *Modern School* (supra) by Hon'ble Supreme Court also shows that the proposition of law which emerged on pronouncement of judgment in *Islamic Academy of Education* (supra) is that the schools should have freedom to fix their own fee structure after taking into consideration various relevant aspects such as the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and betterment of institution, however, such power of fixing fee available to the school was subject to two restrictions, namely, non-profiteering and non-charging of capitation fee. The *Modern School* (supra) further notices the observations made in *Islamic Academy of Education* (supra) to the effect that the surplus/profit can be generated but that shall be used for the benefit of the educational institution and cannot be diverted for any other purpose or use; neither can such surplus/profit be used for personal gains or for other business or enterprise. Paragraphs 16 and 17 in *Modern School* (supra) are relevant to be extracted here which read as under:—

“16. *The judgment in T.M.A. Pai Foundation case [(2002) 8 SCC 481] 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 [(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 the 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 T.M.A. Pai Foundation case [(2002) 8 SCC 481]. In view of rival submissions, four questions were formulated. We are concerned with the 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 a 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.

17. In the light of the judgment of this Court in the case of Islamic Academy of Education [(2003) 6 SCC 697] the provisions of the 1973 Act and the Rules framed thereunder may be seen. The object of the said Act is to provide better organisation and development of school education in Delhi and for matters connected thereto. Section 18(3) of the Act states that in every recognised unaided school, there shall be a fund, to be called as Recognised 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 utilised

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 recognised school; whether aided or unaided. That under Rule 172(2), every fee collected from any student by a recognised school, whether aided or not, shall be collected in the name of the school. Rule 173(4) inter alia states that every Recognised Unaided School Fund shall be deposited in a nationalised bank. Under Rule 175, the accounts of Recognised 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 utilisation of fees realised by unaided recognised school. Therefore, Rule 175 indicates accrual of income whereas Rule 177 indicates utilisation 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 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.”

22. Thus, the observations made in paragraph no. 17 to the effect that “the director has the authority to regulate the fees under Section 17(3) of the DSEA, 1973” is to be read in conjunction with the observations made in paragraph no. 16 as extracted above. Accordingly, we are unable to agree with the submissions made by learned counsel representing the appellants that *Modern School* (supra) gives unbridled power or authority to the State to regulate the fees chargeable by unaided schools. As a matter of fact, such an authority or power of the GNCTD under Section 17(3) of the DSEA, 1973, is to ensure that the fees being charged by schools do not result in profiteering or commercialisation of education or in charging of capitation fees. The powers and authority, thus, available to the GNCTD under Section 17(3) of the DSEA, 1973 is to the said extent and also to ensure that profit/surplus generated by schools is not diverted for any other use or purpose; neither can it be used for personal gain or for other business or enterprise.

23. In our considered opinion, therefore, the reliance placed by learned counsel for the appellants to impeach the judgment and order passed by the learned Single Judge in these appeals on the basis of observations made in paragraph no. 17 of *Modern School* (supra) is highly misplaced. As a matter of fact, the issue concerning the extent

of power and authority of the State to regulate the fees charged by privately run and managed unaided schools is no more *res integra*. It is not that the fees to be charged by the schools cannot be regulated by the Government; however, regulation is permitted only to ensure that such schools do not indulge in profiteering or commercialization of education or in charging capitation fee. The regulatory measures which can be adopted by the Government would also encompass in its folds the measures to check that unaided schools do not utilize the profits/surplus for a purpose other than for the benefit of educational institution and that such fee structure must be fixed keeping in mind the infrastructure and other facilities available, salaries to be paid to the teachers and staff and future plans of expansion or betterment of the institution.

24. Regard may be had at this juncture to a later judgment of the Hon'ble Supreme Court in *Modern Dental College* (supra) where the Hon'ble Supreme Court referring to the previous judgments, including *Modern School* (supra), has emphasised the need for regulatory mechanism, keeping in view the modern trend of how the economies function; the State at the same time cannot remain a mute spectator and has to necessarily step-in in order to prevent exploitation, privatization and commercialization by private schools.

25. Paragraph no. 75 in *Modern Dental College* (supra) categorically holds that in order to see that educational institutions are not indulging in commercialization and exploitation, the Government is equipped with necessary powers to take regulatory measures and to ensure that these educational institutions keep playing a vital and pivotal role to spread education and not to make money. Paragraph no. 75 of the said judgment is extracted hereunder:—

“75. To put it in a nutshell, though the fee can be fixed by the educational institutions and it may vary from institution to institution depending upon the quality of education provided by each of such institutions, commercialisation is not permissible. In order to see that the educational institutions are not indulging in commercialisation and exploitation, the Government is equipped with necessary powers to take regulatory measures and to ensure that these educational institutions keep playing vital and pivotal role to spread education and not to make money. So much so, the Court was categorical in holding that when it comes to the notice of the Government that a particular institution was charging fee or other charges which are excessive, it has a right to issue directions to such an institution to reduce the same.”

26. If, we thus examine the regulatory measures which can be put to service by the DoE in the instant case under Section 17(3), 18(3) and 18(4) of DSEA, 1973 what we find is that the extent of such

authority or power of the DoE is limited to ensure that profiteering, commercialisation and exploitation of education is kept under check so as not to permit the schools to earn profits and also to check that surplus is not used for a purpose other than education.

27. Section 17(3) of DSEA, 1973, mandates that management of every school shall file a full statement of fees to be levied by such school during the ensuing academic session, and except with the prior approval of the DoE, no such school shall charge any fee in excess of the fee specified by the management in such statement. Such a statement of fees to be levied by schools is to be filed before the commencement of each academic session. Section 17 of DSEA, 1973 is quoted here under:—

“Delhi School Education Act, 1973

17. Fees and other charges.—(1) No aided school shall levy any fee or collect any other charge or receive any other payment except those specified by the Director.

(2) Every aided school having different rates of fees or other charges or different funds shall obtain prior approval of the prescribed authority before levying such fees or collecting such charges or creating such funds.

(3) The manager of every recognised school shall, before the commencement of each academic session, file with the Director a full statement of the fees to be levied by such school during the ensuing academic session, and except with the prior approval of the Director, no such school shall charge, during that academic session, any fee in excess of the fee specified by its manager in the said statement.”

28. Section 18 of the DSEA, 1973, mandates that every school shall maintain a fund to be called ‘School Fund’. It further provides that the school fund and all the other funds shall be accounted for and operated in accordance with the rules made under the Act. Section 18(3) of DSEA, 1973 provides that every recognised unaided school shall maintain a fund to be known as the ‘Recognised Unaided School Fund’. Section 18(4) of the DSEA, 1973 provides that income derived by unaided schools by way of fees shall be utilized only for such educational purposes as may be prescribed and further that other payments realised and all other contributions, endowments and gifts received by the school shall be utilised for the specific purpose for which they are realised or received. Section 18(5) of the DSEA, 1973, mandates that every managing committee of every recognised school shall file with the DoE every year duly audited financial and other returns as may be prescribed, and every such return shall be audited by such authority as may be prescribed. Section 18 of DSEA, 1973 reads as under:—

“18. School Fund.—(1) In every aided school, there shall be a fund, to be called the “School Fund”, and there shall be credited thereto—

- (a) any aid granted by the Administrator,*
- (b) income accruing to the school by way of fees, charges or other payments, and*
- (c) any other contributions, endowments and the like.*

(2) The School Fund and all other funds, including the Pupils' Fund, established with the approval of the Administrator, shall be accounted for and operated in accordance with the rules made under this Act.

(3) In every recognised unaided school, there shall be a fund, to be called the “Recognised Unaided School Fund”, and there shall be credited thereto income accruing to the school by way of—

- (a) fees,*
- (b) any charges and payments which may be realised by the school for other specific purposes, and*
- (c) any other contributions, endowments, gifts and the like, (4)*
(a) Income derived by unaided schools by way of fees shall be utilised only for such educational purposes as may be prescribed; and (b) charges and payments realised and all other contributions, endowments and gifts received by the school shall be utilised only for the specific purpose for which they were realised or received.

(5) The managing committee of every recognised private school shall file every year with the Director such duly audited financial and other returns as may be prescribed, and every such return shall be audited by such authority as may be prescribed.”

29. Section 24 of DSEA, 1973, provides for inspection of schools, sub-Section (4), whereof provides that if the management of a school fails to comply with any direction, the DoE may take such action as it may deem fit, including withdrawal of recognition. Section 24 of DSEA, 1973 reads as under:—

“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.

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

(4) If the manager fails to comply with any direction given under subsection (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 a minority school, taking over of the school under section 20.”*

30. Thus, what we find from a perusal of the scheme contained in Section 17, 18 and 24 of DSEA, 1973 read together, in the light of the law laid down by the Hon'ble Supreme Court in the aforementioned judgments, is that the DoE has the authority and power to regulate the fees to be charged by the unaided schools, however, such power or authority cannot travel beyond the measures to curb commercialisation, profiteering and indulgence in charging capitation fee.

31. Accordingly, we are in complete agreement with the finding recorded by the learned Single Judge in the judgment under appeal to the effect that the scope of interference of DoE with the fixation of fees charged by an unaided recognised school is restricted to a case in which the school engages in charging of capitation fee or indulges in profiteering.

32. Having observed as above, we now proceed to consider the submission made by learned counsel for the respondent/school that the matter ought not to be remitted to the DoE for proceeding afresh in accordance with law with respect to certain allegations and further for taking any decision in respect of perceived infractions by the schools of the DSEA, 1973 and DSER, 1973.

33. We would again advert to provisions of Section 17(3), 18(3) and 18(4) of the DSEA, 1973. The purpose of the requirement to file a statement of the fees to be levied with the DoE by the management of every recognized school is to ensure that provisions of Sections 17 and 18 are followed by such schools. It is not in dispute that Sections 17, 18 as also Section 24 of DSEA, 1973, are applicable not only to the aided institutions but also to the unaided institutions provided these are recognised institutions. If the DoE, on examination of the statement of fees, finds any infraction of the provisions contained in the Act, action under Section 24 of the DSEA, 1973 may follow. The purpose, which appears from a perusal of the scheme of the Act of filing such a statement of fees is to ensure that the fees being charged by recognised unaided schools is spent only for the purpose for which such spending is permissible under law and not for any other purpose.

34. Accordingly, if on examination of the statement of fees to be filed by the schools, the DoE finds that the spending of the amount

collected by the schools is not as per the provisions of DSEA, 1973 or the Rules made thereunder, appropriate action is permissible against the school which may be taken by the DoE. Such an action is also to ensure that the school concerned does not indulge in profiteering or commercialisation or charging of capitation fee, and further that the profits/surplus generated by the school is spent only for betterment of the school and such other purposes related to education and is not diverted for any other business or personal use of the management.

35. Learned Single Judge, while allowing the writ petitions, has not entered into the particulars and merits or demerits of the allegations contained in the orders passed by DoE, which were under challenge before him, for the reason that while quashing the impugned orders, liberty has been given to DoE to proceed afresh in accordance with law.

36. Having held that the DoE is will within its authority and power available to it under Sections, 17, 18 and 24 of the DSEA, 1973 and the rules framed thereunder to curb profiteering and commercialisation and indulgence in charging capitation fee and also to ensure that money, including the fees being received by the schools is spent only for the purposes of education, if we accede to the prayer made by learned counsel for the respondent/schools of not remitting the matter back to the DoE, we will be curtailing the authority of the DoE which is otherwise statutorily available to the DoE.

37. For the reasons stated above, we reiterate the observations made by the learned Single Judge in the impugned judgment and order to the effect that it will be open to the DoE to proceed afresh in accordance with law, of course after giving opportunity of hearing to the schools, to determine as to whether there has been any infraction of the provisions of DSEA, 1973 and DSER, 1973 by the schools.

38. In view of the aforesaid, we do not find any good ground to take a view other than the view taken by the learned Single Judge while passing the judgment and order under appeal.

39. The appeals thus fail and are hereby dismissed along with pending applications.

40. However, there will be no order as to costs.

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