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

% *Judgment Delivered on: 24.07.2025*

\+ **W.P.(C) 2567/2025**

AGRASEN PARENTS ASSOCIATION .....Petitioner

Through: Mr. Anjani Kumar Mishra, Mr. Aditya, Mr. Kailash Kumar Jha, Mr. Vipin Kumar and Ms. Pralika Chakraborty, Advs.

versus

MAHARAJA AGRASEN MODEL SCHOOL AND ANR .....Respondents

Through: Mr. Pramod Gupta, Ms. Deepakshi Bhalla, Mr. Umang Dixit and Ms. Himanshi, Advs. for R-1.
Ms. Avni Singh, Adv. for GNCTD.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J

CM APPL. 18333/2025 ***(by the petitioner under Section 151 CPC seeking directions)***

1. The present application has been filed by the petitioner association alleging that respondent no.1 i.e. Maharaja Agrasen Model School [hereafter the 'School'] vide letter dated 22.03.2025, has denied education and other facilities to students who have not paid the increased school fees, although the students are stated to be regularly depositing the school fees as approved by the respondent no.2/Directorate of Education [hereafter 'DoE'].

Therefore, the petitioner association is seeking direction to respondents to refrain from taking any coercive action against the students

2. On 04.04.2025, this Court had directed respondent no.1/School to permit the aggrieved students to attend the classes during the interregnum. The said interim direction is continuing till date.

3. Mr. Anjani Kumar Mishra, learned counsel appearing on behalf of petitioner submits that respondent no.1/School has been allotted land by the Delhi Development Authority (DDA) at concessional rates, thereby obliging it to obtain prior approval from the DoE before increasing the school fees. Reliance has been placed on the decision of Hon'ble Division Bench of this Court in ***Justice for All v. Government of NCT of Delhi & Ors., 2016 SCC OnLine Del 355***, as well as, on the decision of Hon'ble Supreme Court in ***Modern School v. Union of India & Ors., (2004) 5 SCC 583.***

4. On the other hand, Mr. Pramod Gupta, learned counsel appearing on behalf of respondent no.1/School submits that prayer made in the present application is in teeth of the judgment of the Coordinate Bench of this Court in ***Action Committee Unaided Recognized Private Schools v. Directorate of Education, 2019 SCC OnLine Del 7591*** [hereafter referred to as '***Action Committee – I***'].

5. He submits that the said decision was taken in appeal by DoE before the Division Bench in LPA No.230/2019 and *vide* order dated 03.04.2019, the Division Bench only restrained the schools from collecting the amount constituting interim fee hike in terms of order dated 17.10.2017 passed by DoE. However, there was no stay of the judgment in ***Action Committee – I.***

6. He further contends that the judgment in ***Action Committee – I*** has subsequently, been relied upon extensively in order dated 29.04.2024 passed in W.P.(C) 5743/2024 titled as ***Action Committee Unaided Recognized Private Schools v. Directorate of Education, 2024 SCC OnLine Del 3121***, [hereafter referred to as '***Action Committee – II***'], wherein this Court has reiterated exposition of law that no prior approval of DoE is required for the purpose of increasing fee by private unaided schools, whether on government land or otherwise.

7. In rejoinder, Mr. Jha submits that the decision in ***Action Committee I*** has been stayed by the Division Bench of this Court in LPA No.230/2019 and the said interim order has been made absolute subsequently *vide* order dated 27.10.2022. Therefore, the School cannot enhance fees without prior approval from DoE, let alone demand it.

8. I have heard the learned counsels for the parties and have perused the records.

9. The grievance of the petitioner/applicant in the present petition, as well as, the present application is with regard to the actions of respondent no.1/School against the students, whereby the School has alleged persistent default by parents of certain students in respect to the school fees. The case of the applicant is that although, parents have cleared all dues in terms of the fee structure approved by the DoE, however, the School is insistent on the fee structure enhanced by it without prior approval from the DoE, which it ought to have obtained.

10. This Court had an occasion to deal with a similar issue in ***Naya Samaj Parents Association v. Apeejay School Sheikh Sarai & Anr.,***

2025:DHC:4185, which was subsequently followed in order dated 16.05.2025 passed in W.P.(C) 6500/2025 titled ***'Divya Mattey & Ors. v. LG, GNCTD & Ors.***'

11. In ***Naya Samaj*** (supra), this Court had rejected the contention that ***Action Committee-I*** cannot be relied upon since it has been stayed. It was observed as under:

> *"28. The Coordinate Bench of this Court, after examining various decisions of the Hon'ble Supreme Court, as well as, of this Court on the issue, held that what is proscribed is indulgence in profiteering and charging of capitation fee, thereby "commercialising" education, but there is no requirement for the school to take prior approval of the DoE before enhancing its fee. The only obligation on the School under Section 17(3) of the Delhi School Education Act is to submit its statement of fee in terms of the said provision. It was further laid down that if pending the decision of DoE on the School's 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. Incidentally, the judgment in* ***Action Committee I,*** *took note of the decision in* ***Modern School*** *(supra), as well as, decision of this Court in* ***Justice for All*** *(supra).* ***The relevant para from Action Committee I*** *reads thus:*
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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, "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.****"*

(emphasis supplied)

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30. The Coordinate Bench of this Court relying upon the decision in the ***Action Committee I****, vide order dated 29.04.2024 observed that unaided recognised private schools are not required to take prior approval of the DoE before increasing its fee, irrespective of whether the land clause does or does not apply to it. The Court also noted that the operation of the judgment in* ***Action Committee I*** *has not been*

stayed in the intra court appeal carried to the Hon'ble Division Bench against the said judgment in ***LPA 230/2019*** *titled as* ***Directorate of Education vs. Action Committee Unaided Recognised Private Schools****, though, interim order was passed only to the extent that the 'land clause' school would not collect the amount constituting interim fee hike in terms of order dated 17.10.2017 issued by the DoE. The relevant excerpt from the interim order dated 03.04.2019 passed in* ***LPA 230/2019*** *reads thus:*

> *"6. Till the next date of hearing, none of the land clause Schools will proceed to collect the amount constituting the interim fee hike in terms of 17th October 2017 circular issued by Appellant No.1."*
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> *xxx xxx xxx*

34. Further, as noted above an interim order was passed in LPA 230/2019 limited to the aspect that none of the land clause Schools will proceed to collect the amount constituting the interim fee hike in terms of 17th October 2017 circular issued by DoE. It is apparent that the said interim direction was issued to preserve the status quo as regard collection of amount constituting interim fee hike in terms of aforesaid circular, till the matter is finally decided in the said LPA laying down a binding precedent.

35. The fact, however, remains that the judgment in ***Action Committee I*** *has not been quashed or set aside. The law is well settled that even where the operation of a judgment has been stayed or kept in abeyance, the reasoning of the judgment still continues to operate and exist, till the judgment itself is set aside.*

36. In this regard, reference could profitably be made to the decision of the Hon'ble Supreme Court in ***Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, (1992) 3 SCC 1****, wherein the Hon'ble Apex Court observed that a stay on the operation of*

an order only means that the stayed order would not be operative from the date of passing of the order, and it does not mean that the said order has been wiped out from existence. The relevant portion of the decision reads as under:

> *"10..... **While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of passing of the stay order, and it does not mean that the said order has been wiped out from existence**. This means that if an order passed by the appellate authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the appellate authority would be restored and it can be said to be pending before the appellate authority after the quashing of the order of the appellate authority. The same cannot be said with regard to an order staying the operation of the order of the appellate authority because in spite of the said order, the order of the appellate authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the appellate authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the appellate authority by its order dated January 7, 1991 and it*

cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the appellate authority."

(emphasis supplied)

37. The principle enunciated in the aforesaid decision of the Hon'ble Supreme Court has further been employed by the Division Bench of this Court in ***Principal Commissioner of C. Ex., Delhi-I vs. Space Telelink Ltd., 2017 SCC OnLine Del 12910*** *wherein the Division Bench observed as follows:*

"8. The revalue has argued that the Supreme Court has entertained a Special Leave Petition against the judgment of the Gujarat and Madras High Courts and furthermore, granted a stay of proceedings and that in these circumstances, the law declared in those judgments are no longer applicable : This sub mission is fallacious because in Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, (1992) 3 SCC 1, the Supreme Court had observed as follows:

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9. It is apparent therefore, that ***an order keeping in abeyance the judgment of a lower Court or authority does not deface the underlying basis of the judgment itself, i.e. its reasoning.****"*

(emphasis supplied)

38. In regard to the submission of Mr. Jha that the view taken by this Court in ***Action Committee II*** *is only a tentative view and does not have a binding value, it is to be noted that order in* ***Action Committee II*** *has relied upon this Court's earlier judgment in* ***Action Committee I*** *which continues to hold the field. Therefore, the law exposited in* ***Action Committee I*** *that the schools are not required to obtain prior approval for increasing tuition fee irrespective of whether it is land clause school or not, as noted in* ***Action Committee II****, is the extant legal position."*

12. Further, reference may also be had to the following excerpt from order dated 16.05.2025 passed in ***Divya Mattey*** (supra):

> *"28. Therefore,* ***the law as it stands today, permits the school to fix the fee fees as per its projected expenses without prior approval of the DoE. However, the statement of fee submitted by school before the commencement of each academic session, in terms of Section 17(3) of the DSE Act, is subject to the decision of DoE since under the said provision the DoE has the authority to regulate the quantum of fee charged by unaided schools.*** *Thus, it is open to DoE to see whether such fixation is irrational or arbitrary which results in "profiteering" or "commercialisation". If the DoE finds in affirmative, it can pass an appropriate order, including an order rejecting enhancement of fee with consequent direction to roll back the hiked fee."*
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> (emphasis supplied)

13. Thus, in view of the above, fee structure as submitted by the respondent no.1/School at the commencement of each academic session in terms of Section 17(3) of the DSE Act, 1973 cannot be faulted in absence of any order by DoE in respect of the same.

14. In the present case, the fee structure of respondent no.1/School has been assessed by the DoE for various academic sessions. In its short affidavit dated 01.05.2025, the respondent no.2/DoE has given a convenience chart indicating the decisions of the DoE with regard to the fee hike proposals of the School for the respective academic sessions. The said chart is reproduced hereunder:

Order Dated	**Year**	**Net Surplus/Deficit**	**Fee Hike Proposal Approved/Rejected by the Director (Education)**
03.06.2022	2019-20	The school was in net	Approved by 10% to be

		deficit of Rs.91,34,195/-	effective by 01.07.2022. But the school has increased fee by 19% without any justification.
DoE's General Order dated 01.07.2021 for all the schools	2020-21 and 2021-22	-	No Fee Hike was permitted to any school due to Covid-19 Pandemic Period
18.10.2023	2022-23	The school was having net surplus 4,06,33,899/- which was sufficient to meet out its budgeted expenditure for session 2022-23.	Rejected The school has increased the tuition fee by 19% without obtaining mandatory approval of Director (Education).
No Fee Order issued	2023-24		The school has increased the tuition fee by 15% without obtaining mandatory approval of Director (Education).
No Fee Order issued	2024-25		The school has inter-alia increased the tuition fee by 19% without obtaining mandatory approval of Director (Education).

15. A perusal of the above table suggests that the DoE has taken decision on the fee hike proposals for the academic session 2019-20, 2020-21, 2021-22 and 2022-23. Although, the School is stated to have increased the fees for the academic sessions 2023-24 and 2024-25 by 15% and 19% respectively, however, no order has been passed in regard to the same.

16. On a pointed query posed by this Court, Ms. Avni Singh, learned counsel appearing on behalf of respondent no.2/DoE further affirms that no

decision has been taken with regard to academic sessions 2023-24 and onwards.

17. Since the law as it stands today does not provide for any embargo on charging of hiked fee for the academic sessions with regard to which the DoE has not reviewed the financial statements and given its findings on the touchstone of 'profiteering' and 'commercialisation', therefore, the fee structure of the respondent no.1/School for academic sessions 2023-24 and onwards will be the same as fixed by it. At the same time, the School cannot charge fees over and above the fees determined by the DoE after due assessment of the School's financial statements for academic sessions till 2022-23.

18. Consequently, respondent no.1/School shall not take any coercive action against the students subject to them clearing all dues up till academic session 2022-23 as per the approved fee structure decided by the respondent no.2/DoE and further, paying the fee as per the statement of fees submitted by respondent no.1/School for academic sessions 2023-24 onwards, till the time DoE takes a decision on the same. The aforesaid directions shall be subject to the final outcome of present writ petition.

19. Insofar as the late fee component is concerned, the same is directed to be waived off. Further, regard being had to the fact that the students have not paid the enhanced fee for academic sessions 2023-24 onwards and arrears to that effect may be a considerable amount, liberty is granted to the students/parents to clear their arrears in four equal quarterly installments starting from 01.09.2025. The respondent no.1/School will raise separate fee

bill for such arrears, which shall be paid by the students besides their fee for the ongoing academic session 2025-26.

20. It is also clarified that any excess fee collected or deposited by the students with regard to the academic sessions prior 2023-24, shall be adjusted towards subsequent years.

21. The application stands disposed of in the above terms.

W.P.(C) 2567/2025

22. List on 17.11.2025.

VIKAS MAHAJAN, J

JULY 24, 2025
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