

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 328 of 2011

Project Girls High School, Deori, P.O. and P.S. Deori, District Giridih through its Headmaster, Raj Narayan Choudhary, son of late Prayag Choudhary, resident of village-Ghaskaridih, P.O. and P.S. Deori, District-Giridih

.....Petitioner

1. The State of Jharkhand through its Chief Secretary, Project Bhawan, P.O. and P.S. Dhurwa, District-Ranchi
2. Secretary, Human Resources Development Department, Jharkhand, Ranchi, Project Bhawan, P.O. and P.S. Dhurwa, District-Ranchi
3. Director, Secondary Education, Jharkhand, Ranchi, Project Bhawan, P.O. and P.S. Dhurwa, District-Ranchi
4. Jharkhand Academic Council, Gyandeeep Campus, Bargawan, P.O. and P.S. Namkum, District Ranchi through its Chairman
5. Secretary, Jharkhand Academic Council, Gyandeeep Campus, Bargawan, P.O. and P.S. Namkum, District Ranchi.

With

W.P.(C) No. 1674 of 2010

Project High School, Tisia, P.O. Tisia, P.S. Kisko, District Lohardaga through the Principal-Buddu Oraon, son of late Lakha Oraon, resident of village and P.O. Tisia, P.S. Kisko, District-Lohardaga

.....Petitioner

1. The State of Jharkhand
2. Jharkhand Academic Council, through its Chairman, officiating at Namkum, P.O. and P.S. Namkum, District Ranchi
3. Secretary, Jharkhand Academic Council, officiating at Namkum, P.O. and P.S. Namkum, District Ranchi
4. Director, Secondary Education, Jharkhand, Government of Jharkhand, officiating at Project Building, HEC Township, Dhuwa, P.O. and P.S. Dhurwa, District Ranchi.

With

W.P.(C) No. 5920 of 2010

Project Girls High School, Tisri, Giridih, through its Headmaster Gouri Rai, son of Bajo Rai, resident of village Bhanepur, P.O. Taranakho, P.S. Raj Dhanwar, District-Giridih

.....Petitioner

1. The State of Jharkhand
2. The Commissioner-cum-Secretary, Human Resources Development Department, Project Building, Dhurwa, P.O. and P.S. Dhurwa, District-Ranchi
3. The Director, Secondary Education, Human Resources Development Department, Telephone Bhawan, P.O. and P.S. Dhurwa, District-Ranchi
4. Regional Dy. Director, Hazaribagh, P.O. and P.S. Hazaribagh, District-Hazaribagh
5. The District Education Officer, Giridih, P.O. and P.S. Giridih,

District-Giridih

With

W.P.(C) No. 5983 of 2010

Project Girls High School, Masaliya, Dumka, through the Headmaster Satish Manjhi, son of late Narayan Manjhi, resident of village and P.O. Masaliya, P.S. Masaliya, District-Dumka

.....Petitioner

1. The State of Jharkhand
2. The Commissioner-cum-Secretary, Human Resources Development Department, Project Building, Dhurwa, P.O. and P.S. Dhurwa, District-Ranchi
3. The Director, Secondary Education, Human Resources Development Department, Telephone Bhawan, P.O. and P.S. Dhurwa, District-Ranchi
4. Regional Dy. Director, Santhal Pargana, P.O. and P.S. Dumka, District-Dumka
5. The District Education Officer, Dumka, P.O. and P.S. Dumka, District-Dumka
6. The Jharkhand Academic Council, Ranchi

With

W.P.(C) No. 5985 of 2010

Project Yamuna Devi Girls High School, Bishrampur, Palamau, through the Headmaster Aroon Kumar Singh son of Rambilash Singh, resident of village-Bishrampur, P.O. and P.S. Bishrampur, District-Palamau

.....Petitioner

1. The State of Jharkhand
2. The Commissioner-cum-Secretary, Human Resources Development Department, Project Building, Dhurwa, P.O. and P.S. Dhurwa, District-Ranchi
3. The Director, Secondary Education, Human Resources Development Department, Telephone Bhawan, P.O. and P.S. Dhurwa, District-Ranchi
4. Regional Dy. Director, Palamu, P.O. and P.S. Palamu, District Palamu
5. The District Education Officer, Palamu, P.O. and P.S. Palamu, District-Palamu
6. The Jharkhand Academic Council, Ranchi

With

W.P.(C) No. 5989 of 2010

Project Girls High School, Sikaripara, through its Headmaster Gulam Rasul, son of late Tabrej Ansari, resident of village Kocha Bazar P.O. Kocha Bazar, P.S. Shikaripara, District-Dumka

.....Petitioner

1. The State of Jharkhand
2. The Commissioner-cum-Secretary, Human Resources Development Department, Project Building, Dhurwa, P.O. and P.S. Dhurwa, District-Ranchi

3. The Director, Secondary Education, Human Resources Development Department, Telephone Bhawan, P.O. and P.S. Dhurwa, District-Ranchi
4. Regional Dy. Director, Santhal Pargana, P.O. and P.S. Dumka, District-Dumka
5. The District Education Officer, Dumka, P.O. and P.S. Dumka, District-Dumka
6. The Jharkhand Academic Council, Ranchi

With

W.P.(C) No. 5990 of 2010

Project Girls High School, Ramgarh, Dumka, through its Headmaster Ram Prasad Pandit, son of late Butan Pandit, resident of village Kurmichak, P.O. and P.S. Dumka, District-Dumka

.....Petitioner

1. The State of Jharkhand
2. The Commissioner-cum-Secretary, Human Resources Development Department, Project Building, Dhurwa, P.O. and P.S. Dhurwa, District-Ranchi
3. The Director, Secondary Education, Human Resources Development Department, Telephone Bhawan, P.O. and P.S. Dhurwa, District-Ranchi
4. Regional Dy. Director, Santhal Pargana, P.O. and P.S. Dumka, District-Dumka
5. The District Education Officer, Dumka, P.O. and P.S. Dumka, District-Dumka
6. The Jharkhand Academic Council, Ranchi

With

W.P.(C) No. 6010 of 2010

Project Sumitra Devi Girls High School, Mahuatand, Latehar through its , Headmaster Ajit Kumar, son of late Ram Vilas Mahato, resident of village-Oriya, P.O. Garhwa, P.S. Lesliganj, District-Palamu

.....Petitioner

1. The State of Jharkhand
2. The Commissioner-cum-Secretary, Human Resources Development Department, Project Building, Dhurwa, P.O. and P.S. Dhurwa, District-Ranchi
3. The Director, Secondary Education, Human Resources Development Department, Telephone Bhawan, P.O. and P.S. Dhurwa, District-Ranchi
4. Regional Dy. Director, Palamu Division, P.O. and P.S. Daltonganj, District Palamu
5. The District Education Officer, Latehar, P.O. and P.S. Latehar, District-Latehar
6. The Jharkhand Academic Council, Ranchi

With

W.P.(C) No. 6065 of 2010

Thakur Tulsi Narayan Singh Project Girls High School, Pokharia, through its Headmaster Harihar Prasad Singh, son of late Nandlal Singh, resident of village Pokhariya (Baliya), P.O. Baliya, P.S. Birni, District-Giridih

.....Petitioner

1. The State of Jharkhand
2. The Commissioner-cum-Secretary, Human Resources Development Department, Project Building, Dhurwa, P.O. and P.S. Dhurwa, District-Ranchi
3. The Director, Secondary Education, Human Resources Development Department, Telephone Bhawan, P.O. and P.S. Dhurwa, District-Ranchi
4. Regional Dy. Director, Hazaribagh, P.O. and P.S. Hazaribagh, District-Hazaribagh
5. The District Education Officer, Giridih, P.O. and P.S. Giridih, District-Giridih.

With

W.P.(C) No. 6069 of 2010

Project High School, Chandna, Godda, through its Headmaster Ashok Kumar Singh, son of late Ganesh Prasad Singh, resident of village and Mohalla Gangta, P.O. and P.S. Godda, District-Godda

.....Petitioner

1. The State of Jharkhand
2. The Commissioner-cum-Secretary, Human Resources Development Department, Project Building, Dhurwa, P.O. and P.S. Dhurwa, District-Ranchi
3. The Director, Secondary Education, Human Resources Development Department, Telephone Bhawan, P.O. and P.S. Dhurwa, District-Ranchi
4. Regional Dy. Director, Santhal Pargana, P.O. and P.S. Dumka, District-Dumka
5. The District Education Officer, Godda, P.O. and P.S. Godda, District-Godda
6. The Jharkhand Academic Council, Ranchi

With

W.P.(C) No. 6077 of 2010

Project Girls High School, Pathna, Sahibganj, through its teacher Shiv Nandan Pandit, son of Sri Bhola Nath Pandit, resident of village Kendua, P.O. Bishanpur, P.S. Ranga, District-Sahibganj

.....Petitioner

1. The State of Jharkhand
2. The Commissioner-cum-Secretary, Human Resources Development Department, Project Building, Dhurwa, P.O. and P.S. Dhurwa, District-Ranchi
3. The Director, Secondary Education, Human Resources Development Department, Telephone Bhawan, P.O. and P.S. Dhurwa, District-Ranchi
4. Regional Dy. Director, Santhal Pargana, Dumka, P.O. and P.S. Dumka, District-Dumka
5. The District Education Officer, Sahibganj, P.O. and P.S. Sahibganj, District-Sahibganj

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Mr. Ajit Kumar, Sr. Advocate
Mr. Subodh Kumar Pandey, Advocate
(in W.P.C. Nos. 1674, 5920, 5989, 5990, 6010, 6065, 6069. 6077 of 2010)
Mr. A.K. Sahani, Advocate
(in W.P.C. 328/2011)
Mr. Bijay Kumar Pandey, Advocate
Mrs. Anjana Kumari, Advocate
(In W.P.C. Nos. 5983/2010 and 5985 of 2010)

For the State : Mr. Sachin Kumar, A.A.G.-II
Mr. Sushant Kumar, Advocate
Mr. Shivam Singh, Advocate
Mr. Uttam Kumar Das, Advocate

29/Dated: 11/07/2025

In all these writ petitions common question of fact and law are involved and in view of that all these writ petitions are being heard together with consent of the parties.

2. Heard Mr. Ajit Kumar, learned senior counsel for the petitioners (in W.P.C. Nos. 1674, 5920, 5989, 5990, 6010, 6065, 6069. 6077 of 2010), Mr. A.K. Sahani, learned counsel for the petitioner in W.P.(C) No. 328 of 2011 and Mr. Bijay Kumar Pandey and Mrs. Anjana Kumari, learned counsel for the petitioner in W.P.(C) Nos. 5983/2010 and 5985 of 2010) and Mr. Sachin Kumar, learned A.A.G-II and Mr. Sushant Kumar and Mr. Uttam Kumar Das, learned counsel for the State in all the writ petitions and Mr. Richa Sanchita learned counsel for the respondent-Jharkhand Academic Council.

3. In all these petitions prayer has been made for direction upon the respondent-State to accept the application form/recognition for registration of regular students of Class -IX of the petitioners school for appearing in the matriculation examination for the session 2010-11. Further prayer has been made for direction upon the respondents to

allow the schools to take examination and recognition provided by the Jharkhand Academic Council.

4. During pendency of these writ petitions order dated 02.11.2010 was further challenged which was allowed by way of amendment in W.P.(C) No. 1674/2010 whereby the claim of the petitioners has been rejected however, said letter is already challenged in other main writ petition.

5. Mr. Ajit Kumar, learned senior counsel appearing on behalf of the petitioners in W.P.C. Nos. 1674, 5920, 5989, 5990, 6010, 6065, 6069. 6077 of 2010 submits that by impugned order dated 02.11.2010, the Director, Secondary School, Government of Jharkhand arbitrarily rejected the claim of the petitioners by a non speaking order. He submits although in the said order it has been recorded hearing opportunity has been provided but no reason has been assigned and not even a single document has been considered to decide the *lis* of the petitioners. By way of drawing the attention of the to Circular No. 1115 dated 27.5.1981, he submits that a scheme drawn by the then State of Bihar issued under the signature of Director, Secondary Education-cum-Special Secretary, Government of Bihar which provided that that 650 project schools would be established under the education policy decision of Education Department and priority was to be given to the regions of Santhal Parganas and Chhotgangapur which are backward areas. By way of placing the said documents he submits that a recommendation was also made to open four schools in each block out of which one should be girls' high school and pursuant to that projects schools have been opened in three phases i.e. 1981-82, 1984-85 and 1988-89. He further submits that so far controversy with regard to two phases i.e 1981-82, 1984-85 are concerned, that has travelled upto the Hon'ble Supreme Court

however, the controversy with regard to phase 1988-89 on which the cases of all these petitioners are established, has not been decided as yet. He then submits that by letter no. 1003 and letter no. 1004 dated 26.08.1988, it has been decided by the State to open project girls schools in different blocks as a result whereof petitioners schools have been opened in line of schools established in the phase 1984-85. He submits that Project Schools have been established pursuant to Circular no. 1115 dated 27.05.1981 in three phases in the aforesaid manner. The Jharkhand Academic Council has issued letter dated 10.05.2006 for registration of students of Project Schools for matriculation examination directly from the schools along with said letter a list of project schools established was also provided. He submits that schools established in phases 1982-82, 1984-85 have been given the status of project schools which is evident from the judgment of Hon'ble Supreme Court in the case of "**State of Bihar and others Vs. Project Suchcha Vidya, Sikshak Sangh and others**" reported in **(2006) 2 SCC 545** as well as from the judgement of the Patna High Court in the case of "**Rabindra Kumar Vs. The State of Bihar and others**" reported in **1988 SCC Online Pat 423** and in the case of "**Kumud Kumari Srivastava and others Vs. The State of Bihar and others**" reported in **1995 SCC Online Pat 183**. He submits that entire scheme of 1981 with regard to project school has been considered by the Single Judge of the Patna High Court in the case of **Rabindra Kumar (supra)** wherein it has been recorded that in the year 1981 -1982 number of blocks 150, 1982-1983 number of blocks 200, 1983-1984 number of blocks 200 and 1984-1985 number of blocks 100. He submits that in the meantime another writ petition, reference was made pursuant to that the Full Bench of Patna High Court had considered that aspect of the matter in the case of "**Project Uchcha Vidyalaya Shikshak Sangh Vs State**" reported in **2000(1) PLJR 287** and the Full Bench in the light of finding recorded therein disposed of the

writ petitions with direction to the respondent authority to examine the claim of the petitioners of that case for recognition/absorption of their services with regard to two phases project schools i.e 1981-82, 1984-85. He submits that the matter further travelled upto the Hon'ble Supreme Court in the case of "***State of Bihar and others Vs. Project Uchcha Vidya, Sikshak Sangh and others***" reported in ***(2006) 2 SCC 545***. By way of drawing the attention of the Court to para no. 80, he submits that the Hon'ble Supreme Court has directed to constitute a three member committee requesting the Chief Secretary of State of Bihar to constitute a committee comprising of two officers and one educationist of repute and/or a retired judicial officer and in the event of a judicial officer is appointed as a member of the committee he would be the Chairman thereof. He submits in the light of that Three Man Committee was further constituted by the State of Bihar and the Committee has been pleased to recognize for affiliation of the schools and the name of all the schools are . included therein except the block of Tisiya. In this background he submits that once a committee has been constituted and the documents have been produced before the authority concerned, they were required to consider the dispute in the light of documents produced and hearing made however by a cryptic order the claim of the petitioner has been rejected. To buttress this argument he relied in the case of "***Chairman, Life Insurance Corporation of India and others Vs. A. Masilamani***" reported in ***(2013) 6 SCC 530***. He refers to para 19 of the said judgment which is as under :-

"19. The word "consider" is of great significance. The dictionary meaning of the same is, "to think over", "to regard as", or "deem to be". Hence, there is a clear connotation to the effect that there must be active application of mind. In other words, the term "consider" postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority should reflect intense application of mind with reference to the material available on record. The order of the authority itself should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority and proceed to affirm its order.

order. (Vide (Vide Indian Oil Corpn. Ltd. v. Santosh Kumarts and Bhikhubhai Vithlabhai Patel v. State of Gujarat.)"

6. On the same line further he relied in the cases of "**Allahabad Bank and others Vs. Krishna Narayan Tewari**" reported in (2017) 2 **SCC 308**. He refers to para 7 of the said judgment which is as under :-

" 7. We have given our anxious consideration to the submissions at the Bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a departmental authority on the basis of evidence available on record. But it is equally true that in a case where the disciplinary authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty-bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the enquiry officer or the disciplinary authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment. The High Court has, in the case at hand, found all these infirmities in the order passed by the disciplinary authority and the appellate authority. The respondent's case that the enquiry was conducted without giving a fair and reasonable opportunity for leading evidence in defence has not been effectively rebutted by the appellant. More importantly the disciplinary authority does not appear to have properly appreciated the evidence nor recorded reasons in support of his conclusion. To add insult to injury the appellate authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the findings of the disciplinary authority. All told, the enquiry officer, the disciplinary authority and the appellate authority have faltered in the discharge of their duties resulting in miscarriage of justice. The High Court was in that view right in interfering with the orders passed by the disciplinary authority and the appellate authority."

7. Further he relied in the case of "**Dr. Rabindra Nath Singh Vs. State of Bihar and others**" reported in **1982 SCC Online 137**. He refers to para 9 and 10 of the said judgment which is as under:-

9. The word 'consider' fell for consideration by the Supreme Court in Barium Chemical Limited v. A.J. Rana. (1972) 1 SCC 240 (A.I.R) 1972 Supreme Court 591) though it was in different context. H.R. Khanna, J., speaking for the Supreme Court observed as follows:-
"The words 'considers it necessary' postulate that the authority concerned has thought over the matter deliberately and with care and it

has been found necessary as a result of such thinking to pass the order. The dictionary meaning of the word 'consider' is to attentively survey, examine, inspect (arch), to look attentively, to contemplate mentally, to think over, mediate on, give heed to, take note of, to think deliberately, to think oneself, to reflect, (vide shorter Oxford Dictionary). According to words and phrases-permanent Edn. Vol. 8-A to 'consider' means to think with care. It is also mentioned that to 'consider' is to fix the mind upon with a view to careful examination, to ponder, study; mediate upon think or reflect with care."

10. Similar observation has been made by the Supreme Court in the case of The Divisional Personnel Officer, Southern Railway v. T.R. Challappaa ((1976) 3 SCC 190: A.I.R. 1975 Supreme Court 2216) where the Supreme Court was considering Rule 14 of the Railways Services (Disciplinary and Appeal) Rules 1968, Fazl Ali, J., speaking for the Court, observed:

"The rule making authority deliberately used the word 'consider' and not 'determine' because the word 'determine' has a much wider scope. The word 'consider' merely connotes that there should be active application of the mind by the Disciplinary Authority for considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employees....."

8. Relying on the above judgments, he submits that in the light of tenor of the impugned order 02.11.2010 cannot sustain in the eye of law. He further submits that even there is violation of principles of natural justice and to buttress this argument, he relied in the case of "**Kranti Associates Pv. Ltd. and Anr. Vs. Masood Ahmed Khan and others**" reported in **(2010) 9 SCC 496** and in the case of "**Mohinder Singh Gill and Anr. Vs. The Chief Election Commission, New Delhi**" reported in **(1978) 1 SCC 405**.

9. Relying on the above judgments, he submits that by way of impugned order the schools which are running since long their right has been rejected and a large number of students will be affected if the recognition is not provided for the examination. He submits that however by way of interim order of this Court the examination is being conducted which is recognized by the Jharkhand Academic Council and students are passing through the concerned schools. On these grounds, he submits that the impugned order may kindly be set aside and proper direction may kindly be issued.

10. Mr. Subodh Kumar Pandey, learned counsel for the petitioners

adopted the argument of Mr. Ajit Kumar, learned senior counsel however, he added in his argument that in the light of letter no. 6577 dated 25.10.1991 the two schools i.e. Meral and Bishrampur were recommended for the concerned block however, in Meral School teacher and others have been provided the benefit of the recognition and at the same time Bishrampur Block school claim has been rejected without giving any cogent reason and in view of that discrimination has been made by the State of Jharkhand. He further submits that in the light of letter dated 10.05.2006 which is the document issued by the Jharkhand Academic Council, Ranchi for the project schools of 1984-85 and 1988-89 the names of petitioners schools have been figured however, the claim has been arbitrarily rejected. On these grounds he submits the impugned order may kindly be set aside and appropriate direction may kindly be issued.

11. Mr. A.K. Sahani, learned counsel appearing on behalf of the petitioner in W.P.(C) No. 328 of 2011 submits that Project School, Deori has been found to be established in Deori Block and further by way of referring supplementary counter affidavit filed Annexure-A page 31 he submits that report of the committee is there which suggests that Government teachers have been transferred in the said school and were working there. He submits that so far the case of the petitioner is concerned, that is on better footing and government has also recognized the Project Girls School, Deori. On these grounds he submits that the writ petition may be allowed.

12. Per contra, Mr. Sachin Kumar, learned A.A.G.-II appearing on behalf of the respondent-State submits that in all the writ petitions, the prayers made by the petitioners are misconceived one. According to him the scheme was of 1981 and it was in the fifth years Project Plan and the said has already been effected in two phases i.e. 1981-82 to 1984-1985. He submits that this aspect of the matter has been considered by the Singh Bench

of Patna High Court in the case of "**Rabindra Kumar** " (*supra*) and wherein the learned Single Judge has found the dispute of 1988-1989 is disputed one and in view of that there is no direction so far the claim of the petitioners with regard to alleged phase 1988-89 is concerned. He submits that so far letter nos. 1003 and 1004 on which much reliance has been placed by the learned counsels for the petitioners that letters are with regard to girls schools wherein the petitioners have tried to interpret that two letters are meant for project girls schools. He submits that in the light of the scheme 56 blocks were identified and however no school was established or recognized. He draws the attention of the court to the judgment of Full Bench of Patna High Court in **Project Uchcha Vidyalaya Shikshak Sangh** (*supra*) and submits that this aspect has already been considered by the Full Bench particularly in para 11 and 12 of the judgment. By way of referring the said paragraphs he submits that in the light of scheme the State Government was to provide 650 project schools in different blocks of the State and selection of 150 project schools were made during the financial year 1981-82 and next batch of 300 schools were selected in the year 1984-85. He further submits that however, the Full Bench of Patna High Court has clarified that when the appointments/recognition are being made pursuant to the said scheme the State cannot be allowed to take two stand for the same and in the light of that the direction has been issued to the State Government take fresh decision so far the petitioners who were before the Patna High Court in second phase project school. He further submits that before the Hon'ble Supreme Court also this aspect of the matter has been considered and the Hon'ble Supreme Court has been pleased to appoint Three Man Committee which has been appointed and thereafter process has already been completed. He submits that even in the light of observations made by the Hon'ble Supreme Court the petitioners herein have not applied before three Man Committee for consideration of their

case and in view of that the case of the petitioners have been rightly rejected by the State. He submits that they were never recognized and the selection was over by 85-86. He further submits that it is the right of the Government to take a decision for the welfare of the citizen of the State and if there is no policy and in the policy decision the High Court can exercise the judicial review power under Article 226 of the Constitution of India which is very limited. He further submits that so far argument of the learned counsel for the petitioners of principles of natural justice is concerned that requires to be considered in the light of facts and circumstances of each case. He further submits that no prejudice is caused to the petitioners and in view of that only on the ground of principle of nature justice, no relief can be extended to the petitioners. He submits that so far Meral Block of Garhwa district is concerned, that was not selected for project school in 1984-85 but in the year 1988-89 Government transferred a unit from the block of Gopalganj district and selected the school in Meral Block however, this argument of the learned senior counsel for the petitioners is refuted by Mr. Pandey by way of submitting that when the said was cancelled by the letter dated 18.07.1989. Mr. Sachin Kumar further submits that the claim of 87 project schools of second phase were before the "Allam Committee" in which the petitioners case was not before the "Allam Committee" and in view of that these petitioners are not eligible as such these writ petitions are fit to be dismissed.

13. Mrs. Richa Sanchita, learned counsel for the respondent-Jharkhand Academic Council in all these writ petitions by way of referring supplementary counter affidavit submits that pursuant to direction of this Court the Jharkhand Academic Council made an enquiry and even the facts and figures in tabular chart are annexed with the said affidavit with regard to the petitioners school and even in the lower classes very lesser students have been found wherein higher classes a large number of students have

been identified. She submits that so far two of the petitioners are concerned, teaching and non teaching staffs have not been found. She submits that so far Jharkhand Academic Council is concerned, the Jharkhand Academic Council is only examination taking body and in view of 2008 rules, the recognition has been provided by the Jharkhand Academic Council. She submits that the schools are being identified by the Government in view of section 19 of the Bihar Non Government Secondary School (taking over control and management) Act, 1981. She submits that Jharkhand Academic Council has no document in its office to suggest as to whether petitioners schools have been recognized or notified as project or government school by the Government of Bihar/Jharkhand. She submits in the light of that there is no merit in all these petitions and the said writ petitions may kindly be dismissed.

14. In view of above submissions of the learned counsel for the parties the court has gone through the materials on record. In the light of judgment of the Patna High Court in the case of "**Rabindra Kumar**" (*supra*), it transpires that the said scheme came into light in the year 1981. In two phases the schools were recognized i.e. 1981-82 and 1984-85 and the Single Judge of Patna High Court in clear terms has held in that writ petitions that so far phase 1988-89 are concerned, that is in dispute and in view of that decision with regard to 1988-89 was not taken by the Patna High Court. In the matter before the Full Bench of the Patna High Court and the Full Bench has also noted the fact that scheme is already completed however, the State action of taking a second parameters so far second phase is concerned, has been found arbitrary and in view of that the Patna High Court has directed the State to take fresh decision so far petitioners who were before the Full Bench of Patna High Court and that matter travelled up to the Hon'ble Supreme Court and the Hon'ble Supreme Court has been pleased to direct the State to constitute Three Man Committee, pursuant to that State has constituted Three

Man Committee headed by the judicial officer. Thus, it appears that so far controversy before this Court of the phase 1988-89 are concerned, that has not been decided in the earlier proceeding either by the Single Judge of Patna High Court or by the Full Bench of Patna High or by the Hon'ble Supreme Court.

15. From the enquiry made by the Jharkhand Academic Council which has been brought on record by way of supplementary counter affidavit, it transpires that so far the Project Girls High School, Shikaripara, Dumka is concerned, one acre 51 decimals land has been donated in the name of the Governor of the State and with regard to the lands of other petitioners are also disclosed how much land and how it has been taken over for running the schools. In most of the schools it appears that land has been transferred in the name of the Governor. From the letter nos. 6577 dated 25.10.1991 it appears that two schools Meral and Bishrampur were recommended for the blocks and it was argued that Meral has been recognized however Bishramapur has been refused. It was further controverted by Mr. Sachin Kumar by way of referring the letter that it was cancelled however by the another letter it has been contended by Mr. Pandey that it was further cancelled. The Secretary, Jharkhand Academic Letter dated 10.05.2006 further suggests the list of the of project schools 1984-85, 1988-89 wherein the names of all these schools have been reflected which *prima facie* suggests that certain right in the light of these documents has accrued in favour of the petitioners as these are the documents of the State officials. The Court has looked into the impugned order dated 02.11.2010 by which decision has been taken for turning down the prayer of the petitioners. The said impugned has been passed pursuant to earlier direction of the High Court in W.P.(C) No. 2091/2010, 2076/2010, 2106/2010, 2111/2010, 2112/2010, 1979/2010 and 101/2010. Although it has been stated therein that hearing has been made and the submissions and documents relied by the petitioners have been not

considered by the authority concerned which clearly suggests that is non speaking order by which the claim of the petitioners has been rejected. If the controversy of 1988-89 project school was not decided in the earlier proceeding by the Patna High Court or before the Hon'ble Supreme Court, the said was required to be decided by a reasoned order by the State of Jharkhand as there are documents on the record issued under the signature of State officials that these schools are existing in the State of Jharkhand. However, to recognize or give the affiliation the parameters framed by the State of Jharkhand is required to be considered. All these aspects have not been considered by the authorities concerned who have passed the impugned order. Further the State particularly for the area in the Santhal Parganas is required to be taken special care and that view of the matter the State is further required to consider the educational need in the locality.

16. The Government can by taking refuge under a policy decision or lack of it refuse to sanction a school in an area where there is admitted educational need. If that is permitted, then that would amount to defeating the constitutional mandates of Articles 21-A, 41, 45 and 46 of the Constitution of India. It is like saying that although people of an area is suffering from acute scarcity of water, because of a policy decision, Government will not provide water to the people of that area. When Constitution mandates that citizens have a fundamental right for something, the Government cannot simply refuse them their constitutional rights in the name of a Government policy or lack of it. The right to education is a fundamental right guaranteed by the Constitution of India. When educational need in an area is found as a matter of fact, the Court is of the view that the Government cannot deny that fundamental right to the citizens of the locality on the ground that Government have not taken a policy decision to grant new schools in the State or have taken a policy decision not to grant. To part of a area where these schools are running said to be

socially, economically and educationally backward area where the large number of population consists of scheduled castes and scheduled tribes. When Article 46 of the Constitution of India mandates that State shall promote with special care the educational and economic interests of the weaker sections of the society, and in particular, scheduled castes and scheduled tribes, the denial of right to education to the people of that area would be a social injustice to them and would amount to violation of the constitutional mandate.

17. Article 21-A of the Constitution provides that the State shall provide free and compulsory education to all children of the specified age in such manner as the State may, by law, determine. Thus, the primary obligation to provide free and compulsory education to all children of the specified age is on the State. However, the manner in which this obligation will be discharged by the State has been left to the State to determine by law. The State may do so through its own schools or through aided schools or through private schools, so long as the law made in this regard does not transgress any other constitutional limitation.

18. What has been discussed hereinabove particularly the 1981 Scheme , the State has come forward with such scheme only considering the constitution aspect so far the education is concerned. The documents on record further suggest that schools are running that is found in the enquiry report none other than the report of Jharkhand Academic Council itself.

19. Once the matter was remanded by the High Court to take fresh decision by the authority concerned, it was required to consider by the authority by way of application of mind. The word 'consider' has been considered by the Hon'ble Supreme Court in the case ***of Life Insurance Corporation of India (supra)*** relied by the learned counsel for the petitioners.

20. Looking into the tenor of the impugned order, the Court finds

that the said order is not supported with any evidence and even the documents hereinabove has not been considered. As such the impugned order will not sustain in the eye of law. Accordingly, the impugned order dated 02.11.2010 is hereby quashed. The matter is remitted back to the Director, Secondary Education, Department of School Education and Literacy, Government of Jharkhand who will take a fresh decision after providing an opportunity of hearing to all the petitioners separately and the authority will decide the case of each of the petitioners separately. The Court further directs the authority to consider all the documents of the individual petitioners and decide the same in accordance with law by a reasoned order.

21. Since by the interim order the examinations are being taken by the Jharkhand Academic Council, Jharkhand Academic Council will maintain the said process till the final decision is taken by the concerned officials of the State.

22. The petitioners will file their separate representation before the authority concerned.

23. The authority shall take the decision within six months from the date of receipt/production of a copy of this order.

24. All these writ petitions are allowed in above terms and disposed of. Pending I.A, if any, stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Satyarthi/-A.F.R.