

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 2104 OF 2004

DIRECTOR, ELEMENTARY EDUCATION & ANR.

Appellant (s)

VERSUS

DIBAKAR PRADHAN & ORS.

Respondent(s)

WITH
Civil Appeal NO. 2105 of 2004
Civil Appeal NO. 2106 of 2004
Civil Appeal NO. 2107 of 2004
(With office report)

Date: 16/02/2010 This Appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE A.K.PATNAIK

For Appellant(s) Mr. P.P.Nayak, Adv.for
Mr. Janaranjan Das,Adv.

For Respondent(s) Ms. Jayasree Singh, Adv.
M/S Fox Mandal & Co.

Mr. Ratnakar Dash, Sr. Adv.
Mr. A.K.Sahu, Adv.for
Mr. Mushtaq Ahmad ,Adv

UPON hearing counsel the Court made the following
O R D E R

The Appeals are allowed in terms of the signed
order. No order as to the costs.

(Parveen Kr. Chawla)
Court Master

(Indu Satija)
Court Master

[Signed Order is placed on the File]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2104 OF 2004

Director, Elementary Education & Anr.

..Appellants

versus

Dibakar Pradhan & Others

..Respondents

WITH

CIVIL APPEAL NO.2106 OF 2004
CIVIL APPEAL NO.2107 OF 2004
CIVIL APPEAL NO.2105 OF 2004

O R D E R

Civil Appeal No.2104 of 2004

Heard learned counsel for the parties.

This Appeal has been filed against the impugned judgment of the High Court of Orissa at Cuttack dated 09th February, 2000 passed in O.J.C. No.2489 of 1993. By the impugned judgment, the High Court has directed the State Government to take over the Primary Schools/Hindi Primary Schools situated in different collieries of the Mahanadi Coalfields Ltd. w.e.f. 1st April, 2000. This direction seems to have been given in view of an order of this Court dated 03rd December, 1999 passed in Civil Appeal No. 7089 of 1999.

We have perused the said order. In our opinion, the direction in the aforesaid appeal was given solely on humanitarian grounds and not on any principle of law and hence it is not a precedent. Apart from this, there is no statute which directs the State Government to take over all

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the Primary Schools/Hindi Primary Schools situated in different collieries of the Mahanadi Coalfields Ltd.

In our view, the Courts are meant only to enforce the law, if it exists, but they cannot create a law and start enforcing it. To make a law is the domain of the Legislature and not of the Courts. It is in the discretion of the State Government to take over a School or not, and it cannot be compelled to do so. After all, taking over a School has financial and other implications.

In view of the foregoing reasons, we allow this appeal, set aside the impugned order of the High Court and remand the matter to the High Court for considering the writ petition on its own merits in accordance with law and in the light of the observations made hereinabove, as expeditiously

as possible. No order as to the costs.

Civil Appeal Nos.2106/2004, 2107/2004 & 2105/2004

In view of our order passed today in Civil Appeal

Nos.2104 of 2004, these appeals are also allowed in the same terms.

.....J.
[MARKANDEY KATJU]

NEW DELHI;J.
FEBRUARY 16, 2010 [A.K. PATNAIK]