**SUPREME COURT OF INDIA**

Bharat Ratna Indira Gandhi

Vs.

State of Maharastra & Ors.

C.A.No.2704 of 2011

(Markandey Katju and Gyan Sudha Misra,JJ.,)

28.03.2011

**ORDER**

SLP.(Civil)No.13944/2009

1. Delay condoned.

2. Leave granted.

3. Heard learned counsel for the parties. These Appeals have been filed against the impugned judgment and order dated 03rd December, 2008 passed by the High Court of Judicature at Bombay, Bench at Nagpur in Writ Petition No.2216 of 2006. At the very outset we may note that in fact there was no petition before the High Court on which the impugned order was passed. The High Court took suo motu action on the basis of some information which has not been disclosed in the impugned order. The cause title in the impugned judgment reads:

> "Court on its own motion vs. State of Maharashtra through its Secretary, Education Department." None of the colleges in respect of which the impugned order was passed were made respondents, nor was notice issued to them, nor were they heard by the High Court. To say the least, this was a strange procedure adopted by the High Court.
>
> In our opinion, such suo motu orders, without even a petition on which they are passed, are ordinarily not justified nor sustainable. Ordinarily, there must be a petition on which the Court can pass an order. In our opinion, the High Court was not justified in taking suo motu action in this case. Judges must exercise restraint in such matters."

4. Moreover, we have perused the impugned order and we are of the opinion that the directions contained in paragraph 7 of the impugned judgment were wholly unwarranted as they amount to judicial legislation.

5. It appears that many private unaided Degree Colleges in Maharashtra did not have permanent Principals, and this is what motivated the High Court to pass the impugned order. By the impugned order, the High Court has directed that if the colleges fail to fill in the post of Principal by 31st May, 2009, the University will issue orders in the first week of June, 2009 prohibiting admissions in the Colleges concerned.

6. In our opinion, no such direction could have been validly given by the High Court. If there is no permanent Principal, obviously the Acting Principal shall officiate as Principal, but that does not mean that in the absence of the permanent Principal, admissions to the college should be prohibited. There is no statutory rule that in the absence of a permanent Principal admissions in the Colleges cannot be made. Thus, the High Court has indulged in judicial legislation, which is not ordinarily permissible to the Courts vide Divisional Manager, Aravali Golf Club & Another vs. Chander Hass & Another (2008) 1 SCC 683. Also, none of these Colleges were made parties before the High Court, and hence the aforesaid direction is violative of the principles of natural justice. Accordingly, we allow these appeals and set aside the impugned order of the High Court. No costs. However, we direct that the process for filling up the posts of Principal may continue in accordance with law, and should be done expeditiously.