on 30th November, 2006 (Annexure P—10) is well reasoned order and has been passed keeping in view the rules relating to the promotion of Headmaster/ Headmistress of the Middle School for the post of Headmaster/Headmistress of High School. It has been categorically stated in the rules that the Headmaster of a High School is a Class II post and in which the reservation policy is not applicable. Reservation policy is applicable only in Class III and Class IV posts and not in Class I and Class II posts.

(12) In the light of our aforesaid discussion, we do not find any merit in this writ petition and the same is hereby dismissed.

R.N.R.

Before Vijender Jain, C.J. & Mahesh Grover, J.

AMRITSAR SWADESHI TEXTILE CORPORATION PVT. LTD.,—*Appellant*

versus

VINOD KRISHAN KHANNA & OTHERS,—*Respondent*

Company Appeal No. 2 of 2007.
In Company Application No. 479 of 2006
In Company Petition No. 61 of 2006

30th July, 2007.

Companies Act, 1956—Ss. 433 (f) & 439—Company (Court) Rules, 1959—Rls. 9 & 31—Respondents seeking winding up of appellant-company—Company Judge asking appellant to show cause as to why petition be not admitted—Respondents making publication in newspapers and writing letters to various organizations and trying to project non-existent proceedings and orders of High Court—Abuse of prosess of Court—Appellant seeking dismissal of petition for winding up—Order or Company Judge accepting apology and condoning overtly blantant conduct of respondents is erroneous—Company Judge failing to record any finding regarding abuse of process of Court—Appeal accepted, petition for winding up of appellant-company dismissed.

Held, that the intention of the respondents to over-reach the Court is manifestly clear when they got the publication made in the newspapers and wrote subsequent letters to the Government of India, Ministry of Commerce and Industry, Export Promotion Council and the Union Bank of India and tried to project non-existent proceedings and orders of the Court. Their conduct, both prior to and after the presentations of the petition for winding up, is deplorable and has resulted not only in abuse of the process of the Court, but has also caused immense damage to the appellant. The order of the learned Company Judge is erroneous as despite the affirmative material before him, he failed to record any finding regarding the abuse of the process of Court which was manifestly clear from the above-mentioned conduct of the respondents, as also the communications written by them, which are on record.

(Paras 20 and 21)

Further held, that the learned Company Judge went on to accept the apology and condoned the overtly blatant conduct of the respondents in abusing the process of the Court. A person, who by his conduct, seeks to subvert the process of law, does not deserve any indulgence as he, in the process, not only questions the rule of law, but also undermines the authority of law.

(Para 25)

S.N. Soparkar, Senior Advocate with Ms. Jaishree Thakur, Advocate, *for the appellant*.

Ashok Aggarwal, Senior Advocate with Anand Chhibber, Advocate, *for the respondents.*

VIJENDER JAIN, CHIEF JUSTICE

(1) This appeal under Section 483 of the Companies Act, 1956 (for short, 'the Act') is directed against order, dated 12th October, 2006 passed by the learned Company Judge dismissing. Company Application No. 479 of 2006 in Company Petition No. 61 of 2006.

(2) The respondents filed the aforesaid company petition for winding up of the appellant—company by invoking the provisions of Section 433 (f) read with Section 439 of the Act. The learned company Judge passed

an order on 27th April, 2006 asking the appellant to show cause as to why the petition be not admitted. The said order reads as under :—

> "Learned counsel for the petitioner states that he has the instructions to state that Civil Suit Annexure P-17 will be withdrawn within one week from today.
>
> In view of the said statement, let notice of the petition be issued to the respondents for 25th May, 2006 to show cause as to why the petition be not admitted.
>
> Any alienation of any of the assets of the respondent—Company, except in due course of the business of the Company, during the pendency of the present petition, shall be subject to the final order passed by this Court."

(3) Thereafter, the respondents caused an advertisement to be published in the newspapers and one such publication appeared in 'The Tribune" dated 2nd June, 2006, which is as follows :—

> "PUBLIC NOTICE
>
> It is hereby brought to the notice of General Public that,—*vide* order dated 27th April, 2006 passed in Company Petition No. 61/06 under Section 433 (f) of the Companies Act for winding up the Company on 27th April, 2006 by Hon'ble Mr. Justice Hemant Gupta, Judge, Punjab and Haryana High Court, Chandigarh. Re : Vinod Krishan Khanna and others *Versus* Amritsar Swadeshi Textile Corporation (P) Ltd. and others, it has been ordered that "any alienation of any of the assets of the respondent company except in due course of the business of the company, during the pendency of the present petition, shall be subject to the final order passed by this Court." Any person disrearding this notice shall do so at his own risk and responsibility.

31st May, 2006

Vinod Krishan Khanna,
Vimal Krishan Khanna
121, Race Course Road,
Amritsar."

(4) A similar advertisement also appeared in Punjab Kesari on 1st June, 2006.

(5) The respondents also wrote to various organizations, such as the Government of India, Ministry of Commerce and Industry; Export Promotion Council and Union Bank of India advertising the winding up petition.

(6) The appellant, who allegedly suffered numerous losses, moved Company Application No. 479 of 2006 under Rule 9 read with Rule 31 of the Companies (Court) Rules, 1959 (hereinafter described as 'the Rules') seeking dismissal of the petition for winding up, *inter-alia*, on the ground that the respondents had abused the process of law by resorting to publication without the orders or the Court and that subsequent communications to various organizations had a disastrous effect on its affairs. However, that application has been dismissed by the learned Company Judge,—*vide* the impugned order and the conduct of the respondents in resorting to the publication without the orders of the Court has been condoned after they tendered an apology and subject to payment of Rs. 10,000 as costs.

(7) Assailing the order of the learned Company Judge, Shri S. N. Soparkar, learned Senior Counsel appearing for the appellant contended that the action of the respondents was a flagrant abuse of the process of the law which could not have been condoned as they had not only tried to overreach the Court, but had also, by their conduct, caused immense damage to the appellant, both pecuniary and monetary in terms, To support his contention, he placed relianced on **Satelite Television Asian Region Limited** *versus* **Kunvar Ajay Designer Saree (P) Ltd. (1)** and **The National Conduits (P) Ltd.** *versus* **S. S. Arora (2)**

(8) Shri Ashok Aggarwal, learned Senior Advocate for the respondents admitted that the conduct of the respondents was, indeed, questionable, but pleaded that the learned Company Judge had accepted the apology and put them to terms by way of payment of costs and that in view of this, substantial justice has been done and hence, the impugned order, in the circumstances, is just and equitable.

(1) 2004 (118) Company Cases 609 (Gujarat)

(2) AIR 1968 S.C. 279

(9) We have heard the learned counsel for the parties at some length and have perused the record.

(10) Part -III of the Rules deals with the winding up petitions and their hearing by the Court. It consists of Rules 95 to 338. Rule 96 pertains to the admission of petitions and directions as to advertisement. The same reads as under :—

> "96. Upon the filing of the petition, it shall be posted before the Judge in Chambers for admission of the petition and fixing a date for the hearing thereof and for directions as to the advertisements to be published and the persons, if any, upon whom copies of the petitions are to be served. The Judge may, if he thinks fit, direct notice to be given to the company before giving directions as to the advertisement of the petition."

(11) As per the provisions of Rule 96, when the Company Judge proceeds to exercise his jurisdiction and issue show cause notice as to why the petition be not admitted, the company petition is at a nascent stage with no order authorising the publication. Thus, the respondents, in this case, have clearly transgressed the dictates of the order passed by the learned Company Judge on 27th April, 2006, when they got a publication done in the newspapers.

(12) The conduct of the respondents becomes more reprehesible as they chose to write to the Government of India, Ministry of Commerce and Industry; Director General of Foreign Trades and bankers of the appellant—company separately completely misrepresenting the facts and distorting the order of the learned Company Judge. It was sought to be projected by them that interim orders had been passed restraining the alienation of the assets of the appellant—company. The relevant extracts of letter dated 14th June, 2006 written by the respondents to the Wool Industry Export Promotion Council are as follows :—

> "Enclosed herewith for your information is a copy of Public Notice published in The Tribune, Chandigarh, dated 2nd June, 2006 regarding M/s Amritsar Swadeshi Textile Corporation Pvt. Ltd.

As you may be aware we have filed a civil suit in the Court of Sh. Sumit Ghai, Civil Judge, at Amritsar for declaration that the incorporation of the said company was illegal and fraudulent.

A criminal complaint,—*vide* FIR No. 137/2005 Police Station, Civil Lines, Amritsar under section 406, 465, 467, 468, 471 and 120-B IPC, against Shri Sri Krisan Khanna and others has also been filed, which is under investigation.

Further, a petition has now been filed under section 433 (f) of the Companies Act in the Punjab and Haryana High Court for winding up this illegally and fraudulently incorporated company.

The matter is being heard by the Hon'ble Court. Meanwhile, the court has ordered that there shall not be any alienation of the assets of the said company.

This is for your information. You deal with the company at your own risk and responsibility."

(13) It may not be out of place of mention here that in the aforesaid letter, the filing of the civil suit and its pendency have also been wrongly represented by the respondents as the civil suit is said to have been withdrawn on 5th May, 2006, whereas the communication is dated 14th June, 2006.

(14) Similarly, a letter was written to the bankers of the appellant, namely, Union Bank of India on 4th August, 2006. In this communication also, the respondents chose to describe the status of the winding up petition as having been admitted by the Company Judge and went on to describe the appellant as a company borne out of fraud which had no existance in the eyes of law. The relevant extract of letter dated 4th August, 2006 is reproduced below :—

"The purpose of writing this letter to you is to give you an update and inform you that we have filed a petition now the matter is before

the High Court of Punjab and Haryana for winding up the illegal and fraudulently formed Company, under section 433 (f) of the Companies Act.

Admitting the petrition, the Hon'ble High Court issued notice to the Company and passed the following restraint order which is for your information and action considered appropriate :

Any alienation of assets of the respondent company except in due course of the business of the company during pendency of the present petition shall be subject to the final order passed by this Court."

It may be mentioned that a company owned by fraud is non-est' i.e. it does not and never existed. Any order/decree/ registration of charge on a company based on fraud is thus rendered void *ab-initio.*

It is brought to your notice that in the case of the incorporation of the Company being declared void/illegal/fraudulent the amounts advanced to the company by the bank would be jeopardized, notwithstanding the fact that the charges have been registered. In these circumstances for any action based on fraud including advances to the company before the issue of its legality is settled, would also be highly questionable.

In spite of overwhelming evidence that the incorporation of the company is illegal and fraudulent, and there is every likelihood of the court decision going against the fraudulently formed company, the banks' officials at the local level, for their own reasons are going out of their way to support the present management, unmindful of the fraud committed and jeopardy to which the funds of the bank are being put."

(15) In our considered opinion, the respondents had, by getting the publication done in the newspapers and by writing the aforementioned letters, clearly committed flagrant and serious breach of the process of law. The mandate of the law being unambiguous, the conduct of the respondents reflects their scant respect for its process.

(16) In **Re Signland Ltd., (3),** Slade, J. observed as under : —

"…….it seems to me to have been a flagrant and serious breach and one of a type which the court must take every step to discourage ……….To advertise before presentation of the petition appears to me not only an infringement of the rules but a serious abuse of the whole process of advertisement."

(17) In **Re Doreen Boards Ltd. (4),** Laddie, J. held as follows :—

"It seems to me that to engage in premature advertisement is at least as likely to be an abuse of process in relation to contributories' petitions as it is in the case of creditors' petitions. To engage in advertisement in advance of the court having had an opportunity to determine, in accordance with R. 4.23 (1) (c), whether there should be any advertisement at all appears to me to be *prima facie* an abuse. The fact that there is not a rule which expressly prohibits advertisement before the return date is of no significance. As I read *Re Signland Ltd.* the judge based his decision not simply on the fact that there was in that case an infringement of the rules but on his finding that there was serious abuse of the whole process of advertisement.' So, in the case of contributories' petitions, it is inherent in the rules that there shall be no advertisement before the return date. To advertise before then is an abuse of the whole process of advertisement as it applies to those petitions."

(18) In National Conduits (P) Ltd.'s case (supra), their Lordships of the Supreme Court made the following observations :—

"Once a petition for the compulsory winding up of a company is admitted, the court is not bound forthwith to advertise the

(3) (1982) 2 All. E.R. 609

(4) (1996) 1 B.C.L.C. 501

petition. In an appropriate case the court has the power to suspend advertisement of a petition for winding up, pending disposal of an application for revoking the order of admission of the petition.

In answer to a notice to show cause why a petition for winding up be not admitted, the company may show cause and contend that the filing of the petition amounts to an abuse of the process of the court. If the petition is admitted, it is still open to the company to move the court that, in the interest of justice or to prevent abuse of the process of the court, the petition be not advertised. Such an application may be made where the court has issued notice under the last clause of rule 96 of the Companies (Court) Rules, 1959, and even when there is an unconditional admission of the petition for winding up."

(19) In view of the law laid down in the aforementioned judgments, it is clear that under no circumstance, the publication can be done without the specific directions of the Court.

(20) In the instant case, the intention of the respondents to over-reach the Court is manifestly clear when they got the publication made in the newspapers and wrote subsequent letters to the Government of India, Ministry of Commerce and Industry, Export Promotion Council and the Union Bank of India and tried to project non-existent proceedings and orders of the Court. Their conduct, both prior to and after the presentation of the petition for winding up, is deplorable and has resulted not only in abuse of the process of the Court, but has also caused immense damage to the appellant.

(21) The order of the learned Company Judge, to our mind, is erroneous as despite the affirmative material before him, he failed to record any finding regarding the abuse of the process of Court which was manifestly clear from the above mentioned conduct of the respondents, as also the communications written by them, which are on record.

(22) The learned Company Judge has also gone wrong in observing that the publication was merely with a view to inform the general public about the interim order of the Court.

(23) We are afraid, the contents of the publication do not show such an intent. Besides, in our opinion, the order passed by the learned Company Judge saying that "any alienation of the assets of the respondent-company except in due course of business of the company during the pendency of the present petition shall be subject to the final order passed by this Court" is not an interim direction indicating any restraint except cautioning the appellant and all concerned that all actions taken by it to alienate any of its assets except in due course of business shall be subject to the decision of the petition.

(24) We are also of the view that the learned Company Judge failed to return any finding regarding the conduct of the respondents which was material and imperative in view of the categoric stand of the appellant and also in view of the specific material which established gross abuse indulged into by them.

(25) The learned Company Judge went on to accept the apology and condoned the overtly blatant conduct of the respondents in abusing the process of the Court. In our opinion, a person, who by his conduct, seeks to subvert the process of law, does not deserve any indulgence as he, in the process, not only questions the rule of law, but also undermines the authority of law.

(26) We also deem it appropriate to note here that one of the respondents is a retired Chief Secretary from the State of Punjab and it is not expected of a person, who had occupied such a high office, to show ignorance of the process of law.

(27) On the basis of the above discussion, we accept the appeal and set aside order dated 12th October, 2006 passed by the learned Company Judge dismissing Company Application No. 479 of 2006. Resultantly, the said application is accepted and Company Petition No. 61 of 2006 filed for winding up of the appellant-company is dismissed.

R. N. R.