Supreme Court of India
Income Tax Appellate Tribunal ... vs K .Agarwal & Anr on 17 November, 1998
Bench: Sujata V. Manohar, G.B. Pattanaik

PETITIONER:
INCOME TAX APPELLATE TRIBUNAL THROUGH PRESIDENT

Vs.

RESPONDENT:
K .AGARWAL & ANR.

DATE OF JUDGMENT: 17/11/1998

BENCH:
SUJATA V. MANOHAR, & G.B. PATTANAIK,

ACT:

HEADNOTE:

JUDGMENT:

JUDGMENT Mrs.Sujata, V.Manohar, J,

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A public interest Writ Petition No.2350 of 1996 was filed in the Bombay High Court by the Income-tax Appellate Tribunal Bar Association through its Secretary challenging the validity of a letter dated 5.11.1996 purporting to modify the powers of the President of the Income-tax Appellate Tribunal regarding posting and transfer of Members of the Income-tax Appellate Tribunal. The petitioners contended that they were interstd in fair and impartial administration of the income-tax law and in upholding the independent working of the Income-tax. Appellate Tribunal, the Rule of Law and independence of the income-tax Judiciary. By an interim order, the High Court restrained the Under Secretary, Ministry of Law, Government of India and the Union of India who were respondents 1 and 2 therein from Interfering with the powers of the President of the Income-tax Appellate Tribunal to assign work to any Member, to constitute Benches and to require a Member to sit on any Bench wherever situate, and for such duration, as he may deem necessary. This petition was transferred to this Court. This Court by -its order dated 31.3.1997 conflrmed the Interim order passed by the High Court. Another similar petition filed before the High Court of Andhra Pradesh was also transferred to this Court. Both these petitions are pending.

In the pending petitions the present application is being made Dy the Income-tax Appellate Tribunal through its President. The occasion for making this application has arisen on account of an order dated 23rd of October, 1997 passed by a Bench of the Income-tax Appel late Tribunal consisting of two Members, one judicial and one accountant. The said order was passed in the case of Smt. Neerja Birla v. Assistant Commi ssioner of Income Tax for the assessment year 1992-93. As a result of the said order, the assesses who claimed a benefit amounting to Rs.1,50,00,000 was denied that benefit by the Tri buna. 1 which decided the appeal in favour of the revenue.

Thereafter the President of the Tribunal received a letter dated 30th of December 1997 from Shrl V.K.Agarwal, who was then the Law Secretary, Ministry of Law and Justice, Government of Tncna. Tn the letter, the then Law Secretary, who is tha first respondent before us, referred to the dec is Ion of the Tribunal -in the case of Neerja Birla v. Assistant Commissioner of Income Tax heard and decided by Shri R.V.Easwar, Judicial Member and Shri M.V.R. Prasad, Accountant Member sitting together. He observed that the Judicial Member dictated this judgment in this matter some time in August, 1997 and dul y corrected and signed it. However, a contrary order dated 23rd October, i 997 was pronounced by the Accountant Member which was signed by both the Members. Copies of both the "orders" were enclosed. The first respondent then went on to say, ".....Thus the two orders have taken a contradicting stand. The aforesaid circumstances disclose judicial impropriety of highest degree. It is intriguing as to how two contradicting orders got dictated in the same matter by the two Members, while one order is by the Judicial Member, the other is by the Accountant Member and signed by both. You may like to enquire into the matter and send a report to the Government within 10 days from the date of the receipt of this letter. You may also tiKe to suggest the action that may be taken in the matter and the Members agai nst whom it may be taken. Further, while submitting the report,, a copy of the 'file order sheet' indicating the name of the Menber to whom the case was allotted for writing the judgment may also please be sent to the Government."

On receipt of this letter, the appi icant addressed a letter dated 7th of January, 1988 to both the Members of the said Bench enclosing a copy of the letter he had received from the f-irst respondent, and requesting them to send their comments. Both the Members have separatel y sent their replies to the applicant pointing out that the only order which was passed In the said case is the order dated 23rd of October, 1997 which has been signed by both the Members constituting the Bench on 23.10.1997. The Judicial Member has pointed out. that after hearing the above case, he had prepared a draft order which was in favour of the assessee. When he sent the draft to the Accountant Member, the Accountant Member expressed n-is reservations on the views expressed in the draft order. Thereafter, both the Members met and discussed the issues involved. At the end of the discussion, the Judicial Member agreed with the view taken by the Accountant Member and requested the Accountant Member to prepare an order on those lines. The Accountant Member thereafter sent a draft order signed by him to the Judicial Member. The Judicial Member fully agreed with the draft order sent by the Accountant Member, put his signature on the draft order and the final order dated 23rd of October 1997 was issued with ooth the signatures. Both have stated that there are no two orders. Tne so-called first order was only a draft prepared by the Judicial Member which was not agreed to by the Accountant Member and ultimateiy after discussion a new draft order was prepared by the accountant Member which is signed by both the Members on 23rd October, 1997. This was the only order which was issued and copies were sent to the assessee as well

as to the department. Both the Members also expressed surprise and distress at a confidential document like a draft judicial order reaching the first respondent.

Before the appl-icant could send any reply to the first respondent after ascertaining the views of the concerned Members, on 3rd of February, 1998, the first respondent wrote another letter to the applicant which 1s as follows:

"Please refer to my D.O. letter of even No. dated 30.12.1997 regarding the case of Smt. Neerja Biria Vs. Asstt. Commr. Bombay, disposed of by a bench consisting of Shri R.V. Easwar, JM and Shri M.V.R. Prasad, AM.

The matter involved two contradicting orders being dictated in the same matter by the same members constituting the bench. You were reauested to reply within 10 days of the receipt of the letter. In spite of this, I have not received any report from you in the matter even after a month. You would appreciate that as President of the Tribunal you have the responsibility to ensure that the judicial functions of the Tribunal are discharged by its members properly and in a manner conducive to instilling confidence in the minds of the taxpayers. The irregularity pointed out in my letter relates to a Bench which is functioning at Mumbal, where you, as the head of the Tribunal, have your regular headquarters. Under the circumstances. silence on your part may invits adverse inferences in the metter.

It is threfore reauested that your report in the matter may be sent to the Government without further delay and in any case not later than 6th February, 1998. in case no report -is received from you by that date, it will be presumed that you have nothing to say "in the matter and Government will be constrained to taKe such action in the matter as may be deemed f-tt accordi ng to law.

This may please be accorded TOP PRIORITY.

With kind regards, Yours faithfully, Sd/-

(Dr. V.K. Agarwal) Shri T.V. Rajagopala Rao, Presdent, ITAT, 101, Old DGO Bidg., M.K. Marg, Mumbai - 400 020. "

The appilicant replied to this letter by his letter of 6th of February, 1998 In which he pointed out that there was no impropriety in the passing of the order by the Members of the Income-tax Appellate Tribunal -in the matter of Neerja Biria v. Assistant Commissioner of Income-tax. He went on to state that the appliant's letter amounted to gross interference in the judicial functioning of the Tribunal, and he had no authority to do so. The applicant also stated that the contents of the first respondent's letter pertaining to himself smacked of vindictiveness. The applicant has viewed the letters as serious interference with the administration of justice particularly in the context of the pending petitions. Thereafter the present application has been filed.

A.K. Sonik, Deputy Secretary in the Department, of Legal Affairs, Ministry of Law and Justice has also been made a party-respondent in this application because of the letter dated 29th of December,

1997 received from the Deputy Secretary just before the letter from the first respondent dated 30th December, 1997. In the letter of 29th of December, 1997, the applicant was told that on a perusal of the summary statement showing institution, disposal and pendency of appeals before the Tribunal during the month of October, 1997 it appears that disposal has considerably gone down during the month of October, 1997 and the appi -icant should look into the matter and send a report on the reasons for this. According to the appi -icant the disposals were within the norms, but were less than the previous month. And the letter was merely to intimidate him. The second respondent has, in his affidavit, stated that this letter was issued on the instructions of the first respondent and the letter was handleed by the first respondent directly. IN view of the statements made in his affidavit by the second respondent, the applicant has not pressed the application against the second respondent. In the application, the applicant has requested this court to issue a show cause notice to the first respondent why action should not be taken against him in contempt, inter alia, for interfering with judicial functioning of the Tribunal. He has also prayed for a direction to the first respondent not to interfere in any manner with the independent judicial functioning of the Income-tax appellate Tribunal. On the basis of the application, this Court issued a suo motu contempt notice to both the respondents. Since the application is not being pressed against the second respondent in view of his explanation for the letter of 29th of December, 1997, we have to examine the conduct of the first respondent who was, at the material time, the Law Secretary in the Ministry of Law and Justice. Undoubtedly, in the application before us it was also contended that the two letters can be looked upon as interference with the interim orders of this Court dated 31.3.1997 and 9.5.1997 in the pending petitions. This would then amount to civil contempt. But the basic charge is interference with the judicial functioning of the Tribunal. The prayer in this petition was amended after is was filed to make it clear that the grievance related to interference with administration of justice. The respondents at their request were given sufficient time to reply to the charge of criminal contempt. There can, therefore, be no grievance on this score.

Before examining the conduct of the First respondent. we would like to deal wi th the technical objections which were raised before us on behalf of the first respondent. The first respondent had initially contended that the income-tax Appellate Tribunal was not a court, and was also not a court subordinate to the Supreme Court. Hence the Supreme Court had no Jurisdiction to issue a suo motu notice of contempt in respect of a matter pertaining to the Income-tax Appellate Tribunal. However, subseauently, learned senior counsel for the first respondent conceded that the Income-tax Appellate Tribunal did perform judicial functions and was a court subordinate to the H^gh Court. Hence, there is no need to examine any further, the contention that the said Tribunal is not a court.

Article 129 of the Constitution provides that the Supreme Court shall be a Court of Record and shall have all the powers of such a court including the power to punish for contempt of itself. This Article has come up for consideration on numerous occasions. This Court has consistently held that the Supreme Court has power under this Article to punish, not merely for contemut of itself, but also for contempt of all court and Tribunals subordinate to it. In the case of Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat and Ore. ([1991] 3 SCR 936), this Court examined at length the power of this Court under Article '129 to punish for contempt. This Court first examined the Jurisdiction of the Supreme Court and held, (at page 970) "There is. therefore. no

room for any doubt that this Court has wide power to interfere and correct the Judgment and orders passed by any court or Tribunal in the country. In addition to the appel

-late power the Court has special residuary power to entertain appear against any order of any court in the country. The plenary jurisdiction of this court to grant leave and hear appeals against any order of a court or Tribunal, confers power of judicial superintendence over all the courts and Tribunals in the territory of India including subordinate courts of Magistrate and District Judge. This Court has, therefore, supervisory jurisdiction over all courts in India." Examining the powers of a court, of record, it came to the conclusion tnat a court of record has inherent power to punish for contempt of at 1 courts and tribunals subordinate to it in order to protect these subordinate courts and tribunals. This power to protect is founded on the inherent power of a court of record to correct the judicial orders of subordinate courts. This Court further observed, (pages 976-977, 979.) "The Suprerne Court being a court of record under Article 129 and having wide power of judicial supervision over all the courts in the country, must possess ana exercise similar jurisdiction and power as the High Courts had prior to contempt legislation in 1926. Inherent powers of a superior court of record have remained unaffected even after codification of contempt law..... Article 129 declares the Supreme Court a court of record and it further provides that the Supreme Court shall have all the powers of such a court including the power to punish for contempt for itself. The expression used In Article 129 is not restrictive, instead it is extensive in nature. If the Framers of the Constitution intended that the Supreme Court shall have power to punish for contempt of itself only, there was no necessity for inserting the expression "including the power of punish for contempt of -itself". The Article confers power on the Supreme Court to punish for contempt of itself and in addition, it confers some additional power relating to contempt as would appear from the expression "including". TUe expression "inc1uing" has been -interpreted by courts to extend and widen the scope of the power. The plain language of the Article clearly indicates that this Court as a court of record has power to punish for contempt of Itself and also something else which could fall within the inherent jurisdiction of a court of record. In interpreting the Constitution, it is not permissible to adopt a construction which would render any expression superfluous or redundant. The courts ought not to accept any such construction. While construing Article 129, it is not permissible to ignore the significance and impact of the inclusive power conferred on the Supreme Court. Since, the Supreme Court is designed by the Constitution as a court of record and as the Founding Fathers were aware that a superior court of record had inherent power to indict a person for the contempt of itself as well as of courts inferior to it, the expression "including" was deliberately inserted in the Article. Article 129 recognised the existing inherent power of a cor the contempt of inferior courts".

This view was reiterated and reaffirmed in the case of In re: Vinay Chandra Mishra ([1995] 2 SCC 564) where this Court affirmed the decision in Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat and Ors. (Supra). After quoting extensively from the said judgment this Court held that since this Court has the power of judicial superintendence and control over all the courts and Tribunals functioning in the country, it has a corresponding duty to protect and safeguard the interests of inferior courts to ensure that the flow of the stream of justice in the courts remains unsullied by any interference or attack from any quarter. The amplitude of the power of this Court can not oe curtailed by a law made by the Central or a State Legislature. This Court's

Jurisdiction and power to take action for contempt of subordinate courts is its inherent juriediction, and is protected under Misra has been partially set aside in Supreme Court Bar Association v. Union of India & Anr. ([1998] 4 SCC 409) on the question of power to suspend an advocate's licence under contempt jurisdiction, this part of its basic reasoning is unaffected. In fact it is reaffirmed. There can, therefore, be no doubt that this Court has jurisdiction to punish for contempt of the Income Tax Appellate Tribunal. It was also submitted before us by learned senior counsel for the first respondent that although this Court may have jurisdiction to punish for contempt, that jurisdiction should not be exercised in the present case. The appropriate authority to take action would be the High Court. We do not see much force in this submission. The Income Tax Appellate Tribunal, although It may have Benches in different parts of the country, is a national Tribunal and its functioning affects the entire country and all its Benches. Appeals also lie ultimately to this Court from the decisions and References made by the Tribunal, The mere fact that by this Court taking suo motu cognizance of the contempt, the first respondent would not be able to appeal to any other court, cannot be a ground for not exercising the power to punish for contempt of a national Tribunal. In the present case the President of the Tribunal has sought directions and orders from this Court and has placed all relevant information concerning the conduct of the first respondent before us, on the basis of which this Court has, suo motu, issued notice. Section 15 of contempt of Courts Act which deals with cognizance of criminal contempt, also prescribes that the Supreme Court or the High Court may take action on its own motion. Rule 3(a) of the Supreme Court Rules regulating proceedings for contempt of the Supreme Court, similarly provides for the court taking action suo motu. In the cass of Supreme Court Bar Association v. Union of India and Anr. (1998 (4) SCC 409), after reiterating the posit-ion that Article 129 vests the Supreme Court with power to punish not only for contempt for itself but also contains the -inherent jurisd-iction of the court to punish for contempt of suborch nate courts and Tribunals In order to prevent interference in the due administration of Justice, this Court also clarified the position of a party which brings the contumaci ous conduct of the contemner to the notice of the court. It said (page

429) that the party which brings such conduct to the notice of the court, whether a private person or the subordinate court, is only an informant and does not have the status of a litigant in the contempt of court case. The case of contempt is not stricto seneu a cause or a matterr between the parties, inter se. It is a matter between the court and the contemner.

Whenever an Act adversely affects the aamT-istration of justice or tends to impede its course, or shake public confidence in a judicial institution, the power can be exercised to uphold the dignity of the court of law and protect its proper functioning. It is in the light of these principles that one has to examine Section 2 (c) of the Contempt of Courts Act, 1971. Section 2(c) is as follows:- Section 2(c): "Criminal contempt " means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise ) of any matter or the doing of any other act whatsoever which -

( i ) scandalises or tends to scandal i se, or lowers or tends to lower the authority of any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding ; or

(iii) -interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner".

The et scandalises or tends to scandalise or lowers or tends to lower the authority of any court [Section 2(c)(i)] or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any manner [Section 2(c)(iii)]. Therefore, any act which tends to interfere with the administration of Justice or tends to lower the authority of any court can be punished with contempt.

In the present case the President of the Income Tax Appellate Tribunal has considered the letters of 30th of December, 1997 and 3rd of February, 1998 of the first respondent as interference with the Judicial decision-making process of the Tribunal. The concerned Members of the Tribunal from whom the President invited comments, a1so looked upon the letter of 30th December, 1997 as gross interference in the judicial discharge of their duties; and they were justified in so viewing the letter. The first respondent had jumped to the conclusion that the Judicial Member had issued two contradictory orders or the Tribunal had issued two contradictory orders, and had demanded action against erring members. Coming as it did from a senior officer holding the rank of Law Secretary, the applicant was justified in taking a serious view of the first respondent's conduct.

Learned senior counsel for the first respondent then contended that the two letters were written after the should not be construed as interference with judicial decision-making. This contention is without any merit. It is quite clear that by writing the two letters the first respondent was questioning the judicial decision arrived at by the Tribunal. The first respondent had commented upon the two so-called "orders" and had said that the so-called contradictory orders disclosed judicial impropriety of the highest degree. He had demanded action against the Members of the Tribunal. Questioning of a decision given in a particular case, or the conduct of a Member of the Tribunal in deciding a case by the Law Secretary who has thee power to write confidential reports of the Tribunal Members, is bound to be perceived by the Members as an attempt to affect their decision making. It is a clear threat to their independent functioning. The letter also tends to undermine confidence in the judicial functioning of the Tribunal. In re Hira Lal Dixit and two Ors. (1955 (1) SCR

677), this Court observed that it was not necessary that there should be an actual interference with the course of administration of justice. It is enough if the offending act or publication tends in any way to so interfere. If there are insinuations made which are derogatory to the di'gnity of the court and are calculated to undermine the confidence of the people In the integrity of the Judges, the conduct would amount to contempt. In the case of C.K. Dapntary ana ors. v. O.P. Gupta and Ors. (1971 Supp. SCR 76) this Court negatived the contention that once the case 1s decided, even If the judgment is severely and even unfairly criticised, it should not be treated as contempt. The Court said, "We are unable to agree .,...,.. that a scurrilous attack on a Judge in respect of a judgment or past conduct has no adverse affect on the due administration of justice. This sort of attack in a county like ours has the inevitable effect of undermining the confidence of the public in te judiciary. If confidence in the judiciary goes, the due administration of justice definitely suffers" (page 97).

Our attention was drawn to Section 3 of the Contempt of Courts Act, 1971 which excludes innocent publications as specified in that Section, published when the civil or criminal proceeding concerned is not pending, from the realm of contempt. The present case, however, deals with acts which lower the author-ity of a court and tend to interfere with the administration of justice. Sect-ion 3 has no application in the present case. ^he letters of the first respondent insinuate a d-ishonest conduct on the part of the two mennbe.rs, oresuftiably because the view expressed by the Judicial Member in the first alleged order is changed by him in favour of the revenue when he concurs with the order which was actually pronounced. This kind of an attack based on access to a confidential draft exchanged between the Members of the Bench is bound to affect free exchange of Ideas between the two Members wno have to judicially decode a case. It "is a clear obstruction to proper decision-making and to proper administration of justice. In the case of Delhi Judicial Service Association, Tis Hazari Court, Delhi etc. etc. v. State of Gnjarat and Ors. etc. etc. (Supra) it has been he}d that the defini

-tion of criminal contempt is wide enough to include any act by a person which would tend to interfere with justice or which would lower the authority of a court. The public have a major stake in effective and orderly administration of justice. A letter from a high officer such as the Law Secretary which questions the bona fides of the Members of the Tribunal in deciding a case and asks them to explain the judicial order which they have passed, unfairly tampers with the judicial process and interferes with judicial decision-making.

The first respondent has tried to justi fy his conduct by saying that the letters were written by him bona fide in the exercise of his right to control the functioning of the Tribunal. He has pointed out that the Tribunal functions under the Department of Law and Justice. The Rules of Recruitment prov-ide that the Law Secretary should be a member of the Selection Board which selects the Members of the Tribunal. The confidential reports of the Tribunal's Members are written by the Law Secretary. The Ministry of Law and Justice, Department of Legal Affairs, exercises disciplinary powers over the Members of the Tribunal. The Allocation of Business Rules of the Government of India place the Income Tax Appellate Tribunal under the Department of Legal Affairs, Ministry of Law and Justice. He contends that the two letters were written by him in a legitimate exercise of his power of supervision and control: and these could not be construed as contempt. In this connection, the first respondent has placed reliance upon a decision of this Court in Rizwan-UI-Hasan and Anr. v. The State of Uttar Pradesh (1953 SCR 581) where the Court said that since the alleged contemner had the duty to supervise the work of the trying Magistrate, the alleged contemner was only doing his duty as a superior officer and this would not amount to contempt. In the present case, however, the Rules of A1 location of Business as also the supervisory control of the Department of Legal Affairs over the Income Tax Appellate Tribunal, is administrative supervision and control. It does not extend to control ting or duestloning judicial decisions of the Appellate Tribunal. The entire conduct of the first respondent leaves much to be desired. He claims to have received a pseudonymous complaint dated 15th of November, 1997 from one K. Prassd with which copies of "two separate and conflicting orders passed by the ITAT Mumbai Bench A, in ITA No.9013/Bonn./1995" were enclosed. The pseudonymous complaint stated that while one order was dictated and signed by the Judicial Member in August, 1997, the other order was per pro the Accountant Member and signed by both. The letter says, "The aforesaid circumstances disclose

judicial impropriety of the highest degree". On ths basis of this pseudonymous complaint, and the receipt of copies of two separate orders, the first respondent claims to have written the letter of 30th of December, 1997. Before doing so, he did not check whether there was any person of the name K. Prasad existing at the address given in the letter and whether what had been stated in the letter had any factual basis. He did not even check whether aoth the orders or any of them had been pronounced by the Bench or not. He should have been aware of an Office Memorandum dated 29th of September, 1992 issued by the Department of Personnel and Training, Government of India to all departments, giving instructions about dealing with anonymous and pseudonymous complaints. The Memorandum states that before taking cognizance of such complaints the Chief Vigilance Officer of the Department or organisation concerned should obtain specific orders from the Head of the Department. A copy of all such complaints shal 1 fi rst be made available to the officer concerned for his comments, and only thereafter further action should be taken. Precaution should be taken to take into custody all relevant documents. In the present case the first respondent did not send a copy of the complaint which he had received to the President of the Tribunal for investigation. Although he was the Law Secretary, he seems to be unaware of Rules 34 and 35 of the Income Tax Appellate Tribunal Rules of 1961 which regulate the procedure of the Appellate Tribunal. Under Rule 34 which deals with final orders to be passed, it is provided as follows:-

"34(1): The order of the Bench shal 1 be in writing and shall be signed and dated by the Members constituting it."

Rule 35 provides as follows:

"35: The Tribunal shall, after the order is signed, cause it to be communicated to the assesses and to the Commissioner."

Therefore, unless the order of a Bench i s signed by all Members constituting it and is dated, it is not an order of the Appellate Tribunal. Secondly, this signed and dated order has to be communicated both to the assessee and to the Commissioner. The first respondent has noted in the letter of 30th December 1997, that the first so-called "order" only bears the signature one Member. It is not signed by the second Member, nor does it bear any date. He ought to have verified whether this so called first "order" had been communicated to the assessee or to the Commissioner. Had he done so, so he would have found that such an "order" does not exist and no such order has been communicated either to the assessee or to the Commissioner. Had he been aware of Rule 34, he would have realised that if the copies which werre sent to him were authentic, then the only order which could be construed as an order of the Tribunal was the second order which was signed by both the Members and bore a datge. Had he ascertained from the Commissioner of Income Tax or the assessee which order had been communicated to them, he would have found that the only order which had been communicated was the order signed by both the Members and bearing the date 23rd of October, 1997. Therefore, he should have realised that there could not possibly have been any misunderstanding about the order passed. What appears from the letter is that the first respondent seems have taken umbrage at the fact that the judicial Member, whose initial draft order was in favour of the assessee, was changed and the judicial Member, after discussion with the Accountant Member, ultimately agreed with the view taken by the Accountant Member and decided the appeal

in favour of the Revenue. Certainly, the language of the letter of 30th of December, 1997 is wholly unwarranted. Curiously, the statement fn the letter that, the aforesaid ci rcumstances disclose judicial impropriety of highest degree is reminiscent of the language used in the pseudonymous complaint. Instead of even waiting for an explanation, ho has straightway asked the President to enquire into the matter and send a report to the Government, and that too peremptorily within ten days. All this is wholly unbecoming of a person holding the rank of tha Law Secretary. Moreover, without waiting for some time for a response from the President, immediately on the lapse of a month, he wrote a second letter of 3rd of February, 1998 in an equally peremptory fashion pointing out that although the President was requested to reply within ten days, he had not received any report even after a month! He admonished the President, pointing out that the President had the responsibility to ensure that the judicial functions are discharged properly, he referred to the so called irregularity, and even went to the extent of saying that silence on the part of the President may invite adverse inferences in the matter! He demanded a report from the President not later than 6th of February, 1998, when his letter was dated 3rd of February, 1998. The entire tone of the letter is highly unwarranted, offensive and tends to undermine the dignity of the post of the President of the Appellate Tribunal. It is unbecoming of the Law Secretary to issue such "commands" to the President of the Income Tax Appellate Tribunal ordering him to send reports within a few days and threatening that adverse inferences would be drawn if the report is not so sent - and all this without even bothering to check whather the complaint received by him was a genuine complaint or not! The first respondent, although he received the pseudonymous complaint of 15th of November, 1997, seems to have written a letter to the so-called sender of the complaint only on 12th of January, 1998, and that too asking only for a confirmation whether the complaint was made by that person. When he wrote the letter of 30th December, 1997, he had not even checked the veracity of the complaint. Thereafter, although the first respondent had not received any response to his letter of 12th of January, 1993, he did not hesitate to address the letter of 3rd of February, 1998 to the President of the Tribunal.

In our view this kind of conduct and that, too on the part of the Law Secretary, who is expected to maintain the Independence of the Income Tax Appellate Tribunal and not interfere with its judicial functioning, amounts to gross contempt of court. It is a deliberate attempt on his part to question the judicial functioning of the Tribunal coming as it does from a person of his rank. It is rightly peresived by the President as well as the two concerned Members of the Tribunal as a threat to their independent funct-ioning in the course of deciding appeals coming up before them.

The first respondent has offered his apology to us. However, looking to all the circumstances of the present case we cannot accept the apology offered. He has travelled far beyond exercising administrative control over the Tribunal. He has tried to influence or question the decision-making process of the Tribunal. Anapology, in these circumstances, cannot be accepted. We, therefore, hold the first respondent guilty of contempt of court. Looking, however, to the fact that he has since retired as the Law Secretary and -is not in a position to inflict further damage, the ends of justice will be met if he is fined a sum of Rs.2,000/- as punishment for contempt. We order accordingly.