Summons at the drop of a hat

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A dealer was issued with an attachment order by the Sales Tax department. The dealer approached the High Court in writ petition. While the writ was pending, the dealer managed to get the order of attachment vacated by the Chief Secretary. They filed a miscellaneous petition in the High Court to withdraw the writ petition. The judge wanted to know why they wanted to withdraw the petition. He was told that the attachment was withdrawn by the Secretary, Commercial Taxes on a direction from the Chief Secretary and, therefore, the writ petition has become infructuous. The judge was furious,
"How can the Chief Secretary and Commercial Taxes Secretary withdraw the attachment, especially when the matter is pending in the High Court?"
, he fumed and directed that the Chief Secretary and the Commercial Taxes Secretary appear before him in the next hearing. After a few hearings in which the Chief Secretary and the Commercial Taxes Secretary did not attend due to several reasons, the judge exempted the Chief Secretary but asked the Secretary, Commercial Taxes to attend the next hearing. After a few hearings in which the Commercial Taxes Secretary could not attend due to various reasons, the Judge observed that the secretary was abroad and may not come back till this case was over and it would cost the State hugely to keep the Secretary abroad and away from the Court. So, he asked whether anybody from the Commercial Taxes Department was present. There was a Commercial Tax Officer present. The Court directed him to realise at least 10 percent of the dues and be present in the next hearing. By the time of the next hearing, this Judge was changed and the case came up before a new Bench. The new Judge asked what the case was. The Counsel submitted that he had prayed for withdrawal of the writ. The judge said, ***"writ petition dismissed as withdrawn at the request of the Counsel"*** and thus ended the story! Happily, for everyone.

What happened to the summons to the top bosses of the tax department? Nothing!

In another case, the High Court summoned the Chief Secretary and four other Secretaries. The Advocate General submitted that the Chief Secretary was busy on some important State affairs, but the other secretaries are present. The Judge said,
"okay, but let them all be present in the next hearing."
The Advocate General submitted that the Chief Secretary should be exempted and the High Court could hear the secretaries. The judge agreed but wanted the secretaries to be present next week.

A High Court summoned the Director General of Police of a State and asked him to read Section 151 of the CrPC in the court.

In a recent judgement dated 9th July 2021 - ***The State of Uttar Pradesh & Ors. Vs Dr. Manoj Kumar Sharma***
- Civil Appeal No. 2320 of 2021, the Supreme Court observed,

> A practice has developed in certain High Courts to call officers at the drop of a hat and to exert direct or indirect pressure. The line of separation of powers between Judiciary and Executive is sought to be crossed by summoning the officers and in a way pressurizing them to pass an order as per the whims and fancies of the Court.
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> The public officers of the Executive are also performing their duties as the third limbs of the governance. The actions or decisions by the officers are not to benefit them, but as a custodian of public funds and in the interest of administration, some decisions are bound to be taken. It is always open to the High Court to set aside the decision which does not meet the test of judicial review but summoning of officers frequently is not appreciable at all. The same is liable to be condemned in the strongest words.
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> Thus, we feel, it is time to reiterate that public officers should not be called to court unnecessarily. The dignity and majesty of the Court is not enhanced when an officer is called to court. Respect to the court has to be commanded and not demanded and

> the same is not enhanced by calling public officers. The presence of public officer comes at the cost of other official engagement demanding their attention. Sometimes, the officers even have to travel long distance. Therefore, summoning of the officer is against the public interest as many important tasks entrusted to him gets delayed, creating extra burden on the officer or delaying the decisions awaiting his opinion. The Court proceedings also take time, as there is no mechanism of fixed time hearing in Courts as of now. The Courts have the power of pen which is more effective than the presence of an officer in Court. If any particular issue arises for consideration before the Court and the Advocate representing the State is not able to answer, it is advised to write such doubt in the order and give time to the State or its officers to respond.

In **2008-TIOL-1135-CESTAT-KOL**, the CESTAT, Kolkata Bench observed,

> Since Shri B.K.Gupta, Member of the Board has failed to file a proper affidavit as earlier directed; and as the deposition of the Officer deputed by him does not meet the requirement of law; and further, as the reason given by Shri Gupta for exemption from personal appearance is far from satisfactory, Shri B.K.Gupta, Member is directed to appear in person and depose before this Bench on the next date of hearing on 20.8.2008.

This order was written by a Member (T) who was a Commissioner in the Department earlier and he directed the Member of the Board to appear before him. In a hierarchically rigid department, this was sacrilege. What? A Member appearing before a former Commissioner! No way. How could they solve this problem?

The Revenue filed a miscellaneous application before the Principal Bench presided over by the President praying for recall of the order dated 14.07.2008 by which the East Regional Bench of the Tribunal directed personal appearance of Shri B.K. Gupta, Member, Central Board of Excise & Customs, to depose in the case.

The Principal Bench headed by the President ordered ***inter alia***: - **2009-TIOL-203-CESTAT-DEL**

> we are of the view that there was no occasion to direct personal appearance of a Member of the Board, much less for the purpose of ***"deposition"***. The order dated 14.07.2008 is accordingly recalled.

This order had a couple of twists:

> 1. In a later decision, the same Kolkata Bench held that the decision of the Presidential Bench suffered from legal infirmity being ***per incuriam.*** (not on the issue of summons to Member)
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> 2. In 2014, another Presidential Bench (***Narmada Drinks***
>) held that the above decision does not reflect the correct position of law. (not on the issue of summons to Member)

This raised several questions:

> 1. Can the Presidential Bench recall an order passed by a Regional Bench?
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> 2. Can a Regional Bench declare that an order passed by the Principal Bench is ***per incuriam***.?
>
> 3. Can a later Presidential Bench declare that the previous Bench's order does not reflect the correct position of law?

Well, we were on summons, but the above issue arose only because a Board Member was summoned by the Tribunal.

On 17.12.2015, the Allahabad High Court summoned the Revenue Secretary to appear before it on 05.01.2016. The Revenue Secretary did not attend but filed an affidavit. The High Court observed, "The exemption application of Sri Hasmukh Adhia (Revenue Secretary) is allowed. **TIOL-DDT 2762 11 01 2016**

Fourteen years ago, the Supreme Court in ***State of Gujarat Vs Turabali Gulambussain*** - **2007-TIOL-223-SC-MISC** observed:

> - A large number of cases have come up before this Court where we find that learned Judges of various High Courts have been summoning the Chief Secretary, Secretaries to the government (Central and State), Director Generals of Police, Director, CBI or BSF or other senior officials of the government. There is no doubt that the High Court has power to summon these officials, but in our opinion that should be done in very rare and exceptional cases when there are compelling circumstances to do so.Â
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> - Such summoning orders should not be passed lightly or as a routine or at the drop of a hat.
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> - Judges should have modesty and humility.
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> - Judges should realize that officials like the Chief Secretary, Secretary to the government, Commissioners, District Magistrates, senior police officials etc. are extremely busy persons who are often working from morning till night.Â
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> - Frequent, casual and lackadaisical summoning of high officials by the Court cannot be appreciated.Â
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> - We are constrained to make these observations because we are coming across a large number of cases where such orders summoning high officials are being passed by the High Courts andÂ
> often it is nothing but for the ego satisfaction of the learned Judge.
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> - Such senior officials need not be made to stand all the time when the hearing is going on, and they can be offered a chair by the Court to sit. They need to stand only when answering or making a statement in the Court.
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> - The senior officials too have their self-respect and if the Court gives them respect, they in turn will respect the Court. Respect begets respect.
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> - The Secretary General of this Court is directed to circulate a copy of this judgment to the Registrar Generals/Registrars of all the High Courts, who shall circulate copies of the said judgment to all Hon'ble Judges of the High Courts.

This judgement was authored by Justice Markandey Katju and Justice Katju had the unique honour of being the only former judge of the Supreme Court to be summoned by the Supreme Court to appear before it (in another case, of course)!

Wrong Summons:

In - **2013-TIOL-927-CESTAT-BANG**
, a Superintendent was summoned by the CESTAT, which was apparently happy with the liveried presence of the Superintendent, but it seems the summons was wrong! The CESTAT observed,

> ***The Superintendent of Central Excise and Customs, Kakinada came all the way to Bangalore and stayed in the city overnight in order to answer our summons. He is present before us in his official uniform and has been introduced to us by the Commissioner (AR). He has been constrained to keep away from his official duties for two days on account of the reprehensible conduct of the appellant. From the submissions made before us, we are satisfied that the Superintendent's presence in the Court today was not warranted in the correct facts and circumstances of this case. It has been occasioned by the misfeasance of the appellant. This apart, as already noted, a material fact was suppressed before us on behalf of the appellant on 18/03/2013. In such circumstances, the appellant has got to pay costs of the respondent. Accordingly, we direct the appellant to deposit a sum of Rs.10,000/- (Rupees ten thousand only) with the Government under the appropriate head, within seven days from today and report complianceâ€¦. The witness is discharged.***

Once in a way summoning a senior officer to personally attend before the Court may have the desired effect in spurring ***babudom*** into action, but frequent and unnecessary summoning will only cause damage to public good and when a senior officer is summoned, he doesn't come alone but with a battalion of officers to assist him. And the citizens who want the services of these babus are told that all of them are in Court!

And the babus who feel humiliated when they are summoned by the Courts have absolutely no qualms in summoning senior functionaries of mega corporations even without the proverbial drop of a hat. Long ago, a Commissioner summoned ITC Chairman Deveshwar to a remote small town, not connected by air. His request for hearing in a nearby city was not considered. And CBIC had issued any number of instructions on summons.

But hats do get dropped and summons continue â€¦

Until Next Week.