

**(1996) 10 PAT CK 0036**

**Patna High Court**

**Case No:** C.W.J.C. No"s. 602 and 1617/96 (R)

Sushil Kumar Modi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision:** Oct. 17, 1996

**Citation:** (1996) 2 PLJR 939

**Hon'ble Judges:** S.N. Jha, J; S.J. Mukhopadhaya, J

**Bench:** Division Bench

**Advocate:** Ravi Shanker Prasad, Basant Kumar Choudhary and P.K. Shahi, for the Appellant; L.N. Rastogi, V.R. Reddy and Rakesh Kumar for C.B.I and Shashi Anugrah Narain, Ganga Prasad Roy, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

1. Two reports one by Joint Director (East)/CBI and the other by S.P/CBI/ Ranchi have been filed in sealed cover. Another report in sealed cover has been filed by the Income Tax Department. This order is confined to the reports submitted by the C.B.I.

2. We have had the benefit of hearing the submissions of Mr. V.R. Reddy, Additional Solicitor General, on behalf of CBI for sometime. On account of paucity of time (the Bench had to rise early to mourn the death of an Advocate as per the practice of this Court) he could not complete his submissions. Nor, for the same reason, we could record any order except to orally direct that the cases will be on Board on Monday i.e. today for delivering order which we thought appropriate to pass in view of certain disquieting facts which we came across during course of hearing earlier on the day.

3. We asked Dr. U.N. Biswas, Joint Director (East)/CBI as to how a different kind of report-both in tenor and contents from the one which he had filed earlier on 12.9.96, has been filed this time, as if the CBI has suddenly decided to soft-peddle the investigation. The Joint Director stated that the reports submitted by him is not

his report. He stated that pursuant to directives of the Director/QBI, he had sent his report to him for approval. What he has been asked to file is not the report prepared by him but the one prepared by DIG/CBI, Patna Region. He produced, in response to our query, the original reports prepared by him and the DIG as well as other papers. The picture that emerges from perusal of the documents may be summed up as follows.

4. After the Joint Director submitted his report dated 12.9.96 in connection with the hearing of the cases slated for 13.9.96, and the copy thereof was sent to the Director, CBI, the following instruction was issued to him on 22.9.96:

In respect of report filed regarding AHD cases in the Hon"ble High Court at Patna, DCBI has observed that filing of it without getting the approval of the DCBI and without being vetted by legal Division is contrary to Standing Instructions on the subject. Your attention is invited to provisions of para 1/39 of Chapter-11 of CBI Crime Manual 1991. Strict compliance of the same should be ensured.

Similar instruction was issued on 28.9.96 in these words:

DCBI desires that full compliance should be ensured in respect of instruction requiring all reports to be filed in Courts to be got vetted by Head office before they are filed. This applies also to all kinds of reports, chargesheets etc. to be filed in any court in respect of AHD cases which are monitored by the Hon"ble High Court at Patna.

Earlier on 26.9.96 the Director, CBI had issued an order posting Dr. U.N. Biswas at Patna, which if implemented would have deprived him of the entire infra-structure and the facilities at his command as the Joint Director Incharge Eastern Zone. The said order was kept in abeyance on 30.9.96 till further orders. Aware of the fact that pursuant, to order of this Court the Joint Director would be submitting his report on or about 4.10.96, on receipt of the report which was sent to him for his vetting in the light of the instructions referred to above, the following message was faxed on 2.10.96 at 1.20 P.M.:

You are requested to submit to the Court on 3.10.96 the progress in investigation during the period in report. This report should contain only facts concerning the witnesses examined, the searches conducted, documents seized etc. If the case is near finalisation the Court should be informed. No conclusion, no analysis of the evidence should be conveyed to the Court unless the I.O. prepares the FR-I and Law Officer prepares FR-II. The FRs. and also the comments of S.P., DIA and JD are to be sent to Head Office for further processing the orders. The Court will be informed about the final action taken in due course at the earliest.

Another message was faxed to the Joint Director on the same day i.e. 2.10.96. at 10.34 PM. as hereunder:

Refer your fax message No. 19/JD (E)/96 Camp Patna dated 1.10.96 and DIG/CBI Patna's consolidated report dated 27.9.96 regarding AHD cases. The report approved by the DCBI and vetted by a Legal Division is reproduced herewith for filing in the Hon'ble High Court at Patna. Regarding the role of (\*) needs close scrutiny. As such, you should send the relevant records already secured and requisitioning further records, if any, and bring them all along with DIG, S.P. and concerned DIA for scrutiny. Decision on this aspect will be communicated in the quickest possible time of your ensuring compliance to this. (\*Names omitted by us)

5. It is in this background that the reports in question, referred to above, have been submitted.

6. We are satisfied, in the circumstances, that there is clear attempt on the part of the Director, CBI, to not only interfere with the investigation but also scuttle it. A seemingly innocuous order was passed earlier posting Dr. U.N. Biswas as Joint Director, Patna, to make him ineffective because in that event he would have been deprived of the entire infra-structure at his disposal as the Joint Director Incharge Eastern Zone. The said order has, no doubt, been kept in abeyance "till further orders" but only when hue and cry was raised against the same. Instructions were thereafter issued, as noticed above, not to convey conclusions, analysis of evidence to the Court and to get the reports meant for the High Court vetted by the Director. In our order dated 23.8.96 we had, no doubt, asked the DIG to get the affidavit to be filed by him in the light of the said order vetted by the Director, CBI, the idea being that in future the Director should not back out from the contents of the affidavit. We did not imagine that the Director would withhold facts relating to the progress ,of the investigation from the Court. It is noteworthy that in our subsequent order dated 13.9.96 we directed the Joint Director to submit a report to this Court.

6. The Supreme Court, while disposing of the appeals preferred by the State of Bihar against the main judgment of this Court, gave the following directions:

We are also of the opinion that, to alleviate the apprehensions of the State about the control of the investigation by the CBI, it should be under the overall control and supervision of the Chief Justice of the Patna High Court. The CBI officers entrusted with the investigation shall, apart from the concerned criminal court, inform the Chief Justice of the Patna High Court from time to time of the progress made in the investigation and may, if they need any directions in the matter of conducting the investigation, obtain them from him. The learned Chief Justice may either post the matter for directions before a Bench presided over by him or constitute any other appropriate Bench.

If the investigation is to be monitored by the High Court how can the Director direct the CBI officers entrusted with the investigation to first get the report vetted by him and to withhold the report meant to be submitted before this Court. The action of the Director verges, prima facie, on contempt of Court.

7. It is one thing to edit part of the report, it is another thing to withhold whole of it. The more serious aspect of the matter is that the report of the DIG has been directed to be filed representing the same to be the report of the Joint Director. This Court had directed the Joint Director to give his report to this Court. It was/is none of the business of the Director to withhold the report and to ask the Joint Director to file report prepared by the DIG. The Director owes an explanation to this Court.

8. In the impugned judgment this Court has held that systematic loot of about thousand crores of rupees by way of excess fraudulent withdrawal from treasuries over the years could not be possible without the tacit support of the high-ups at the Government/Secretariat level. The Investigating Agency, in the circumstances, is required to go into the conspiracy aspect of the case. We have examined the two reports to find out if any attempt has been made to go into that aspect. The report of the DIG contains reference to raids, searches and seizure, summary of evidence against individual accused/suspect; it does not reflect at all any awareness that conspiracy part is also required to be gone into in the light of the judicial finding recorded by this Court. The Joint Director, on the other hand, as is evident from his report, has at least tried to go into the conspiracy aspect of the case.

9. We are satisfied, in view of the facts stated above, that the Director is trying to interfere with the investigation and if this is allowed to go on, a fair, honest and complete investigation is not possible.

10. We would, accordingly, direct that all reports by the concerned officers entrusted with the investigation/supervision of the AHD cases be submitted directly to this Court without being sent to the Director, CBI, or any other authority. We would also restrain the Director, CBI, from meddling in any manner in investigation of the AHD cases. The investigation appears to have reached a crucial stage, we would, accordingly, further direct the Director, CBI, or any other competent authority not to shift the officers entrusted with the investigation/supervision of the case except with the prior permission of the Chief Justice.

11. Before we part with this order, we would like to briefly indicate, in order to allay any misgiving in that regard, that we have considered it appropriate to pass positive orders while hearing the application for extension of time for completing investigation, to satisfy ourselves that the prayer is bonafide. Even Mr. V.R. Reddy agreed that the Court would be justified in going into bonafides of the petition. We have already mentioned about the conspiracy aspect. Now, unless we are satisfied that the investigation is going on in the right direction and the conspiracy aspect is also being investigated, how can we extend the period? Any extension of time would then serve no purpose and investigation will be an exercise in futility. Besides, long extension may see disappearance/destruction of evidence. It is to be kept in mind that it is, not a case where illegal payments have been made in individual cases against fake vouchers etc; it is a case where huge amounts were drawn from the treasuries, systematically from year to year, far in excess of the budgetary sanctions,

which could not be possible without the support of the high- ups. We do not want to make further observations at this stage.

12. List these matters on November 1, 1996.

13. Let a copy of this order be handed over to Mr. Rakesh Kumar, counsel for the CBI; Mr. Shashi Anugrah Narain, Additional Advocate General No. 2 for the State; and Mr. Ravi Shanker Prasad, counsel for the Petitioners.