

UNION OF INDIA AND ORS.
v.
SUSHIL KUMAR MODI AND ORS.

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NOVEMBER 5, 1996

[J.S. VERMA, K. RAMASWAMY AND S.P. BHARUCHA, JJ.]

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Constitution of India, 1950 :

Articles 136 and 226—'Fodder Scam'—Animal Husbandry Department in Bihar—Large scale misappropriation of public funds by authorities in charge—Writ petition before High Court—Directions by High Court to Central Bureau of Investigation to inquire and scrutinise all cases—Supreme Court directing that investigation by CBI should be under overall control and supervision of Chief Justice of Patna High Court—High Court, while considering application of C.B.I. for extension of time, observed that reports of investigation should be submitted directly to it without being sent to Director, CBI—Held, the Director, being head of the agency should be the person accountable for the entire functioning of CBI and in that capacity answerable and accountable to Court for a proper investigation into alleged crimes—Joint Director, CBI would continue to be associated with the investigation till its completion—Overall responsibility of investigation is that of the Director CBI who will ensure the production of all relevant material before High Court at every relevant stage—Care should be taken by Director, CBI to ensure that officers of CBI work in unison and as a cohesive team and the High Court is kept fully apprised of all the relevant facts to enable it to perform its task in the manner required by this Court's order dated 19.3.1996—In case of any difference of opinion between officers of CBI in relation to implication of any Individual in the crimes or any other matter relating to investigation, matter would be determined according to the opinion of Attorney General for India for the purpose of investigation and filing of charge-sheet against any such individual.

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 14164-65 of 1996.

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From the Judgment and Order dated 7.10.96 of the Patna High Court in C.W.J.C. Nos. 1617 and 602 of 1996.

Ashok H. Desai, Attorney General of India, V.R. Reddy, Additional

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A Solicitor General, P. Parneswaran and A. Mariarputham for the Appellants.

Ram Jethmalani, Shanti Bhusan, Santosh Hegde, Arun Jaitley, Dr. Rejeev Dhavan, Ravi Shankar, Ms. Kamini Jaiswal, P.K. Shahi, Ms. Vimla Sinha, Pramod Kumar and Gopal Singh for the Respondents.

B The following Order of the Court was delivered :

Leave granted.

C These appeals by special leave are against the order dated 7.10.1996 passed by the Patna High Court in CWJC. No. 1617 of 1996 and CWJC No. 602 of 1996. The material facts leading to these appeals, in brief, are stated hereafter.

D Writ Petitions numbered as CWJC Nos. 1617 of 1996 and 602 of 1996 were filed in the Patna High Court alleging large-scale misappropriation of public funds to the extent of several hundred crores of rupees by indulging into fraudulent transactions and falsification of accounts in the Animal Husbandry Department in the State of Bihar over a long period between the years 1977-78 to 1995-96 which has come to be known as 'Fodder Scam'. An in-depth investigation into the Fodder Scam was called for. The High Court by an order dated 11.3.1996 directed the investigation to be entrusted to the Central Bureau of Investigation (CBI) and further directed as under:

F "I would accordingly direct the Central Bureau of Investigation (CBI) through its Director to enquire and scrutinise all cases of excess drawals and expenditure in the Deptt. of Animal Husbandry in the State of Bihar during 1977-78 to 1995-96 and lodge cases where the drawals are found to be fraudulent in character and take the investigation in those cases to its logical end as early as possible, preferably, within four months."

G Aggrieved by this order of the High Court, Civil Appeal Nos. 5177 of 1996 and 5178-83 of 1996 were filed by special leave in this Court. This Court disposed of these appeals by order dated March 19, 1996, directing as under:

H *"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. After the investigation is over and reports are finalised, as indicated by the Division Bench of the High Court in the impugned judgment, expeditious follow-up action shall be taken. The High Court and the State Government shall co-operate in assigning adequate number of special judges to deal with the cases expeditiously so that no evidence may be lost.

The order of the Division Bench of the High Court in paragraph 54, to the effect that investigation by the State police in cases already instituted shall remain suspended, is modified. The entire investigation now stands entrusted to the CBI as aforesaid. The CBI is directed to take over the investigation already made by the State police, inclusive of the FIRs, arrests and attachments aforementioned and deal appropriately therewith.”

(Emphasis supplied)

State of Bihar and Anr., v. Ranchi Zila Samta Party and Anr., [1996] 3 SCC 682 at 684-685)

Pursuant to the above order of this Court the CBI has been reporting the progress of the investigation to the Chief Justice of the Patna High Court. The Joint Director of the CBI, Dr. U.N. Biswas, submitted a report of the investigation carried out by him to the Chief Justice of the High Court on 3.10.1996 and also made an application for extension of time since the High Court had directed completion of the investigation preferable within a period of four months in its order dated 11.3.1996. This application for extension of time was listed for hearing before a Division Bench of the High Court (Coram: S.N. Jha and S.J. Mukhopadhyaya, JJ.) on 4.10.1996

A according to the order of the Chief Justice of the High Court. The Division Bench of the High Court in the impugned order dated 7.10.1996 observed that the Director of the CBI is trying to interfere with the investigation and if this is allowed to go on, a fair, honest and complete investigation is not possible. Accordingly, it has directed as under:

B “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 cases except with the prior permission of the Chief Justice.”

D These appeals are preferred against this order of the High Court.

The submission of the learned Attorney General on behalf of the appellants is that the impugned order made by the High Court was on an application for extension of time and, therefor, there was no occasion to make the above observation about the Director, CBI or to exclude the Director, CBI from involvement in the investigation or to produce the report of every officer of the CBI. It was contended that the agency of the CBI functions as a body and the report required to be submitted to the Court is only of the agency and not of any individual officer because the report of the CBI is in fact the final opinion of the agency and not the report of any individual officer of the CBI. It was also contended that in the formation of its opinion about the role of the Director, CBI, the High Court had overlooked another material FAX message sent later on 2.10.1996 which could not be produced before the High Court due to paucity of time at the hearing. In all fairness, the learned Attorney General added that it is open to the High Court to call for any report or document and the CBI is bound to obey any such direction to enable the High Court to discharge its duty according to the order dated March 19, 1996 made by this Court. The main grievance of the learned Attorney General is that the exclusion of the Director, CBI from investigation of the case would disturb the functioning of the CBI and its hierarchy, which is not justified on the existing facts. Shri Ram Jethmalani, learned counsel for the respondents/H writ petitioners submitted that the directions of the High Court are fully

justified and its conclusion that the Director, CBI is trying to interfere with the course of the investigation in an attempt to shield some powerful persons is fully justified. He submitted that no interference with the High Court's order is called for. A

At the hearing of the matter we had expressed our plain view that the CBI with its Director at the helm of affairs is duty bound to make a fair, honest and complete investigation into the accusations and to identify all the culprits involved in the scam and to take the necessary steps in accordance with law for the trial of all accused. The ultimate responsibility to ensure a fair, honest and complete investigation into the accusations is that of the Director, CBI and he is expected to discharge his duty and functions faithfully towards this end. It is also necessary that the Director is not merely to perform his own duty in this manner but he is also to ensure that every officer of the CBI works honestly to achieve this end. This is imperative under the 'rule of law'. The learned Attorney General unhesitatingly accepted this and assured us of the same. It is not necessary for us to elaborate this obvious point any further. B C

We also made it clear at the hearing that the special leave petition is not happily worded and some of its contents appear to be unwarranted and unfair to the Division Bench of the High Court. The jurisdiction of the High Court in the matter is to be determined with reference to the direction of this Court contained in the order dated March 19, 1996 which requires the High Court to ensure that a fair, honest and complete investigation is made into the accusations and all persons against whom a prima facie case for trial is made out are identified and put up for trial in accordance with law. It is, therefore, not correct to suggest that the jurisdiction of the High Court while hearing the matter on the application for extension of time to complete the investigation is limited only to the question of time to be granted and does not extend also to examine the manner in which the investigation is being conducted. Similarly, there is no merit in the contention advanced feebly by the learned Attorney General that it is only the Chief Justice of the High Court and not also the Bench constituted by the Chief Justice to hear the matter which has the authority to go into these questions. The order dated March 19, 1996 made by this Court clearly says that if any directions in the matter of conducting the investigation are required by the CBI, the same would be solicited from the learned Chief Justice who may either post the matter for directions before a Bench presided over by him or constitute any other appropriate Bench. Once the Chief Justice decided to constitute a Bench to hear the application for directions, it was competent for that Bench to go into the entire matter for D E F G H

A deciding the question of extension of time to complete the investigation including all ancillary matters. We have, therefore, no doubt, as was made plain at the hearing of this matter, that the Division Bench of the High Court which made the impugned order was fully competent to examine all matters relating to the investigation by the CBI. The question now is about the merits of the order.

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The first question on merits relates to the exclusion of the Director, CBI from participation in the investigation being conducted by the CBI. In our opinion, it is not only appropriate but necessary that the Director, CBI should continue to remain the person ultimately responsible for proper conduct of the investigation and its early completion. The Director, being
C the Head of the agency, should be the person accountable for the entire functioning of the CBI and in that capacity answerable and accountable to the Court for a proper investigation into the alleged crimes.

It does appear that the directions given by the Director, CBI which
D led to presentation of an incomplete picture of the material collected during the investigation upto that stage before the Division Bench hearing the matter gave rise to the impression in the Division Bench that the Director, CBI was withholding some material information from the High Court. The proper course for the Director, CBI was to ensure that the High Court was informed at the hearing that the CBI report presented to it was
E incomplete as it did not deal with some additional material which was till then under scrutiny by the agency. If this care had been taken by the Director while issuing instructions regarding production of the CBI report to the High Court at the hearing, the impression created in the High Court that the Director, CBI was attempting to withhold some material information from the High Court or to interfere with the investigation, could have
F been avoided. The explanation given before us at the hearing by the learned Attorney General who placed before us both the FAX messages dated 2.10.96 sent by the CBI, Headquarter at New Delhi, if available to the High Court, could have avoided the impression of the High Court that the CBI Director had made an attempt to interfere with the investigation. We
G also find that the first FAX message of 2.10.1996 sent from the Head Quarter at New Delhi does appear to be a complete message and a part thereof gives the impression of a direction to withhold some material from the Court. It is unnecessary to go into the reasons which led to this situation because of the lack of proper care of the agency in presenting the full upto date picture before the High Court. It is sufficient to observe that
H care should be taken hereafter by the Director, CBI to ensure that the

officers of the CBI work in unison and as a cohesive team and the High Court is kept fully apprised of all the relevant facts to enable it to perform its task in the manner required by this Court's order dated March 19, 1996. It is needless to add that the High Court also would take the necessary precaution of requiring the production of all the relevant material before setting out any concluded opinion on any aspect of the investigation, including its fairness.

We deem it proper to emphasise that every officer of the CBI associated with the investigation has to function as a member of a cohesive team which is engaged in the common pursuit of a fair, honest and complete investigation into the crimes alleged. It is needless to further emphasise that the exercise has to be performed objectively and fairly, mindful of the fact that the majesty of law has to be upheld and the 'rule of law' preserved, which does not discriminate between individuals on the basis of their status, position or power. The law treats everyone as equal before it and this has to be kept in view constantly in every State action to avoid violation of the 'right to equality' guaranteed in Article 14 of the Constitution.

We have been assured that Dr. U.N. Biswas, Joint Director, CBI continues to be associated with the investigation and his participation in the investigation team in this capacity would continue till the completion of the investigation. Subject to any direction given hereafter by the High Court in this behalf, Dr. U.N. Biswas will continue to participate in the investigation, of which the overall responsibility is that of the Director, CBI, who will ensure the production of all relevant material before the High Court at every relevant stage. The investigation should be continued in this manner till its completion with the filing of the charge-sheet in the competent court to enable the trial of the accused persons in accordance with law. The High Court would continue its task in the manner indicated by the earlier order dated March 19, 1996 passed by this Court till the completion of the task with the filing of the chargesheet in the competent court.

We make it clear that in case of any difference of opinion between the officers of the CBI in relation to the implication of any individual in the crimes or any other matter relating to the investigation, the final decision in the matter would not be taken by the Director, CBI himself or by him merely on the opinion of the Legal Department of the CBI and in such a situation, the matter would be determined according to the opinion of the Attorney General of India for the purpose of the investigation and filing

A of the charge-sheet against any such individual. In that event, the opinion would be sought from the Attorney General after making available to him all the opinions expressed on the subject by the persons associated with the investigation as a part of the materials.

B It appears necessary to add that the Court, in this proceeding, is concerned with ensuring proper and honest performance of its duty by the CBI and not the merits of the accusations being investigated, which are to be determined at the trial on the filing of the chargesheet in the competent court, according to the ordinary procedure prescribed by law. Care must, therefore, be taken by the High Court to avoid making any observation which may be construed as the expression of its opinion on merits relating to the accusation against any individual. Any such observation made on the merits of the accusation so far by the High Court, including those in Para 8 of the impugned order are not to be treated as final, or having the approval of this Court. Such observations should not, in any manner influence the decision on merits at the trial on the filing of the chargesheet. The directions given by this Court in its aforesaid order dated March 19, 1996 have to be understood in this manner by all concerned, including the High Court.

E As a result of the aforesaid discussion, the impugned order dated 7.10.1996 passed by the High Court is modified to the above extent. The High Court would now determine the period of extension considered appropriate and give the required directions for completing the investigation expeditiously.

The appeals are disposed of accordingly. No costs.

F R.P.

Appeals disposed of.