**(1996) 11 PAT CK 0033**

**In the Patna High Court**

**Case No :** C.W.J.C. No. 1617 of 1996 (R)

Sushil Kumar Modi and Brishan Patel and Others APPELLANT

Vs

The State of Bihar and Others RESPONDENT

**Date of Decision :** 13-11-1996

**Acts Referred:**

**Citation :** (1996) 2 PLJR 951

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

**Bench :** Division Bench

**Advocate :** Ravi Shankar Prasad, Basant Kumar Choudhary and P.K. Shahi, for the Appellant; D.K. Sinha, L.N. Rastogi, Shashi Anurag Narain and Gangh Prasad Roy, for the Respondent

## Judgement

1. Reference may be made to the order of the Supreme Court dated 5.11.96 in Civil Appeal Nos. 14164-65 to 1996 [reported in 1996 (2) PLJR (SC) 218]. By the said order . the Supreme Court has clarified that the jurisdiction of this Bench is not confined to considering the extension petition filed by the C.B.I, and examining their bonafides, it also extends to monitoring the investigation. That should be sufficient to allay any misgiving in the minds of the persons about the competence of the Bench to pass orders regarding course of investigation.

2. In its aforesaid order the Supreme Court noticed the submissions of the Attorney General to the effect that it is open to the High Court to call for any report or document and the C.B.I, is bound to obey any such direction to enable the High Court to discharge its duty according to the order dated March 19, 1996 [reported in 1996(1) PLJR (SC) 97], and the main grievance of the Attorney General was as to the exclusion of the Director, C.B.I., from the investigation of the case on the ground that it will disturb the functioning of the C.B.I, and its hierarchy, and held:

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 acordance with law. The High Court would continue its task in the manner indicated in the earlier order dated March 19, 1996 passed by this Court till the completion of the task with the filing of the charge-sheet in the competent court.

3. We have reffered to the afore quotes portions of the Supreme Court order in view of the instructions given by the Director CBI, vide CBI''s report dated 11.11.96 the relevant part of which states, "it was also decided that the progress reports to the Hon''ble High Court, Patna, shall, continue to be submitted by the J.D. (East) after getting the same vetted by the H.O./Legal Division and approved by the Director. We wonder whether in terms of the order of the Supreme Court holding the Directqr duty bound to produce "all relevant materials before the High Court at every relevant stage", it is open to him to edit a part of the report submitted by the Joint Director and/or other officers, and submit a truncated report before the Court: Surely, the High Court is not supposed to monitor the investigation on the basis of incomplete/truncated reports and, therefore, according to us no part of the report submitted before the Director can be withheld by him from this Court.

4. There is Anr. aspect of the matter. The Supreme Court in its aforementioned order also observed that in case of any difference of opinion between the officers of the CBI in relation to implication of any individual in the crimes or any other matter relating to the investigation, the final decision in the matter will 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 sitation, the matter would be determined according to the opinion of the Attorney General for the purpose of investigation and filing of the charge-sheet against any such individual. In that event, the opinion would be sought for from the Attoreny General after making available to him al the opinions expressed on the subject by the persons associated with the investigation as a part of the materials.

5. The Supreme Court has not laid down the modality of making refernce to the Attorney General in case of difference of opinion. What if the Director does not make the refernce on his own. According to us, this can be sorted out by asking the Director, CBI, to submit the complete report(s) submitted by the Joint Director and/or other investigating officers so that in the event Court finds that there is difference of opinion, which requires resolution by the Attorney General, the same may be referred to him.

6. From the report dated 11.11.96 (supra) it appears that the Director, CBI, ir course of discussions held on 8.11.96 directed the officers to make "full and further verification" of "all aspects" without in dicating which aspect is to be fully and further verified. While we appreciate the anxiety of the Director to submit fool-proof charge-sheets, as far as possible, and not weak charge-sheets, at the same time we would like to be satisfied that in the name of "further verification",

 

investigation is no unnecessarily delayed. The report does no indicate what further verification is required. We would also ask the Director to submit a time bound schedule for completion of the investigation-setting out broad details.

7. The aforesaid aspects of the matter as also other aspects, which were briefly mentioned during the course of hearing today, can be more properly and effectively discussed in the presence of the Director CBI, himself. He is also to be told about the import of the Supreme Court''s orders. We are, therefore, of the opinion that the next hearing should take place in his presence.

8. This matter will be on Board for further hearing on 27.11.96 at 2.15 P.M. in Court.

9. On that date, the Director, CBI, shall personally appear in Court.

10. In his report dated 31.10.96 the Joint Director (East), CBI, has mentioned about possible attempts by persons in volved in the scam to get their tax liability under the Income Tax Act settled through the Settlement Commission. Mr. L.N. Rastogi, Standing Counsel income tax Department, stated that he will take necessary instructions. In the meantime, we will direct that settlement proceedings, if any, relating to so-called income from the Animal Husbandry Department in whaterver form, shall not be disposed of till further orders.

11. Let a copy of this order be handed over to counsel for CBI, income tax Departments State as well the Petitioners.

 