

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2116 of 2014

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Shiv Prakash Rai, S/o Late Nageshwar Rai, Resident of : Gali No. -2, Dhobi Ghat,
P.S. - Adarsh Nagar, District - Buxar

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Chief Secretary, Govt. of Bihar, Patna
3. The Principal Secretary-Cum-Commissioner, Department of Food, Civil Supplies and Consumer , Govt. of Bihar, Patna
4. The Principal Secretary, Department of Vigilance, Govt. of Bihar, Patna
5. The Bihar State Food and Civil Supplies Corporation Ltd., Govt. of Bihar, Patna through its Managing Director
6. The Managing Director, Bihar State Food and Civil Supplies Corporation Ltd., Govt. of Bihar, Patna
7. The Inspector General, Bihar State Economic Offences Wing, Govt. of Bihar, Patna

.... Respondents

with

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Civil Writ Jurisdiction Case No. 5264 of 2015

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1. International Human Right Association through Secretary S.A. Najmi son of S.E. Hussain, resident of Alamganj, P.S.- Alamganj, District- Patna.
2. Arti Kumari, Daughter of Late H.N. Gupta, resident of Lohia Nagar, P.S. - Knakarbagh , District- Patna

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Food & Consumer Protection Department , Govt. of

Bihar, Patna.

- 3. The Managing Director, Bihar State Food and Civil Supply Corporation, Sone Bhawan , Birchand Patel Path, Patna.
- 4. The Deputy Chief (Claim), the Bihar State Food & Civil Supply Corporation, Sone Bhawan , Birchand Patel Path, Patna.
- 5. All District Magistrates, Bihar.
- 6. All District Managers, Bihar State Food and Civil Supply Corporation, Bihar.
- 7. The General Manager , regional Officer, Food Corporation of India, Patna.
- 8. The Inspect General of Police, C.I.D., Bihar, Patna.
- 9. The Director General of C.B.I. , Government of India , Bihar Division, Patna.
- 10. The Union of India through Secretary, Dept. of Food and Civil Supply, Govt. of India, New Delhi.

.... Respondents

Appearance :
(In CWJC No. 2116 of 2014)

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| For the Petitioner | : Mr. Madhu Prasun, Adv.
Mr. Sudarshan Kumar, Adv.
Mr. Manish Kumar, Adv.
Mr. Sudarshan Kumar, Adv.
Mr. Pratyush Kumar, Adv. |
| For the State of Bihar | Mr. Lalit Kishore, Pr.AAG Sr. Adv.
Mr. Anil Kumar Sinha, Adv. |
| For the B.S.F.C. | Mr. Anjani Kumar, Sr. Adv.
Mr. Shailendra Kumar Singh, Adv. |
| For the C.B.I. | Mr. Maninder Singh, A.S.G.
Mr. Bipin Kumar Sinha, SC/C.B.I.
Mr. Rohan Jaitley, Adv. |
| For U.O.I. | Mr. Vishwanath Pd. Sinha, Sr. Adv.
Mr. Ravindra Kr. Sharma, C.G.2 |
| For Vigilance | Mr. Arvind Kumar, Adv. |

(In CWJC No. 5264 of 2015)

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| For the Petitioners | : Mr. Shashi Bhushan Kumar, Adv. |
| For the Respondents: | Mr. Roy Shivajee Nath, AAG-3
Ms. Manjari Nath, Adv. |

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 06-05-2015



This writ petition is filed by way of public interest litigation with a prayer to direct the respondents to make appropriate and adequate investigation in the matter of procuring the paddy in the State of Bihar, handing over the same to rice millers for conversion into rice, storing and utilization of rice by the Bihar State Food and Civil Supplies Corporation with specific reference to the illegalities committed in the process. Directions are also sought for entrustment of the investigation into the matter, to Central Bureau of Investigation (C.B.I.).

The petitioner stated that the State of Bihar purchased vast quantities of paddy from farmers from the financial years 2011-12 onwards and as per the agreement with the Food Corporation of India, the paddy was to be handed over to the rice millers for conversion of the same into rice and supply of the resultant rice to the Food Corporation of India. Petitioner stated that he obtained considerable information by filing applications under the Right to Information Act, and as per the one made available to him, it became clear that though the rice millers were under obligation to tender or return the rice to the extent of 68% of the paddy supplied to them, in several cases, either no rice was returned at all or there was huge short-fall or

deficiency. He contends that though large scale corruption and lapses with the collusion between the rice millers and the officials of the Government, resulting in loss to the Government to the tune of about fifteen hundred crores even according to the estimate of the Government, no tangible steps, worth name were taken, to punish the guilty and just a resemblance halfhearted action is pretended.

He enclosed 11 documents in support of his contentions.

The State filed a counter affidavit. It admitted the factum of there being acute shortfall in the supply of rice by the rice millers in return for the paddy supplied to them. According to the State, the nature of steps taken in this behalf included, filing of F.I.Rs, initiation of certificate proceedings for recovery of dues through the mechanism of the State.

The matter was argued at length on three or four occasions by both the parties. On 06.04.2015, it was brought to the notice of the Court that after filing of the writ petition the Government has recovered a sum of Rs. 160 Crores. It was also admitted that more than thousand crores is due.

We were not at all satisfied with the nature and



action taken by the Government, in the matter where a large scale embezzlement or misappropriation of funds has taken place. We also expressed the view that the scandal of such magnitude cannot take place except with the collusion of the political backing and official patronage. It is in this context, we wanted the learned Senior Standing Counsel for C.B.I. in the Patna High Court to find out whether it would be feasible for the C.B.I. to undertake the investigation into the matter, if entrusted. The C.B.I. was neither a party respondent nor we directed them to file any counter affidavit.

On 21.04.2015, a counter affidavit was filed by the Deputy Inspector General of Police, C.B.I. at Patna expressing not only their disinclination to undertake the investigation into the matter, but also indicating that the case does not merit their consideration. Thereafter, we passed an order on 21.04.2015 expressing our shock about the nature of stand taken by the C.B.I. and to find out whether the same has the approval of the Head Office; and the matter was adjourned to 06.05.2015.

We heard Sri Dhirendra Kumar Sinha, learned counsel for the petitioner, Sri Anjani Kumar, Additional Advocate General for the State and Sri Maninder Singh,

learned Senior Standing Counsel for the C.B.I.

The contents of the writ petition are more than mere allegations. Every averment made in the writ petition was supported by the information furnished by the State itself. The petitioner was able to impress us, not only through pleadings, but also argument across the Bar. The State also conceded that the amount involved in the entire episode is about fifteen hundred crores in respect of procurement of paddy spreadover three years. The stock reply, however, was that notices have been issued and in the same case F.I.Rs were registered. Hardly there is any doubt that the steps initiated by the State are totally inadequate whether one goes by the tardiness with which they are taken or the provisions of law that are invoked. The systematic soft paddling of the issue was adopted obviously with a view to hide the lapses or to cover the actual persons involved in the matter.

Normally, whenever writ petitions of this nature are filed with a prayer to entrust the investigation to C.B.I., there would be serious dispute as to the facts and figures about the amount involved or defalcated, and the State would make every endeavour to downplay the gravity. In the instant case however the facts were clear, and obviously



because the State did not have the opportunity to present any different version, it has conceded the fact that serious irregularities have taken place, and with slight variation the amount involved was also admitted. A clear picture has emerged that a sum about 1500 Crores in a poor State like Bihar was either misappropriated or defalcated. Naturally, the sufferers are the general public. Half of that amount would have been sufficient to upgrade the schools and hospitals and to provide other infrastructures to improve the living conditions of the poor or to feed them.

The C.B.I. has the distinction of unearthing several scandalous deals, whenever the investigation was entrusted to it by the State or Court. Many a time, the top officials had to stake their lives also and face acute pressure from very high ranks of power. On account of meritorious services rendered by them, scandals of very high order came to be exposed. Though it is not possible to eradicate the corruption within a given time, it can be stated without much fear of contradiction that the very fear of the possibility of the investigation being entrusted to C.B.I., is sending shocking signals to those who are indulging in such corrupt practices.

Unfortunately in this case the C.B.I. has totally



disappointed this Court. We would have certainly appreciated the difficulties expressed by the C.B.I. that it is understaffed or is over burdened with many cases on its hand. However, the deponent of the affidavit has gone an extra mile and in a way has chosen to give sermons to this Court as to when it can think of entrusting the matter to C.B.I. and when not. He mentioned that the subject matter of the writ petition does not have any Inter-State, National or International dimensions, the amount is not phenomenal and thereby it does not deserve to be investigated by the C.B.I. As though that is not sufficient, he has given a sort of warning may be in innuendo by citing a judgment of the Hon'ble Supreme Court. The relevant paragraph reads as under,

“It is submitted that perusal of the records annexed with the Counter Affidavit filed by the State Government before the Hon'ble Court indicates that the cases involve similar allegations and cover all districts across the State of Bihar. The extent of purported defrauded amount ranges from less than rupees one crore to 21 crores approximately. As such, the cases do not have inter-state, national or international ramifications and there does not appear to be any exceptional situation to merit a probe by the CBI. In this regard, attention of the Hon'ble Court

is drawn towards the judgment of the Apex Court in the case of State of West Bengal –v- Committee for Protection of Democratic Rights, West Bengal (reported in AIR 2010 Supreme Court – Page 1476 at Paragra 46).”

After extracting the relevant portion of the order of the Supreme Court. It is stated that,

“It is humbly submitted before this Hon’ble Court that the cases under consideration fall within the State of Bihar and involving limited defrauded amount and it does not appear to merit a CBI investigation in terms of the directions of the Hon’ble Supreme Court referred above.”

More surprising is the fact that the Head Office also endorsed the same view.

When this is the attitude of the CBI with specific reference to the case on hand, virtually our option to entrust the investigation of the matter to CBI is closed. May be at one place in the counter affidavit as well as in the course of argument it is stated that inspite of all these, if the Court is inclined to entrust the matter, they have no alternative except to take up the investigation, lack of sincerity on their part is evident from the other part of the counter affidavit, which reads,

“That, it is submitted to this Hon’ble Court that CBI is already seized of investigation of numerous mega scam cases like Coal Scam, National Rural Health



Scheme Scam, MNREGA Scam, Saradha & other Chit Fund Scams and Ponzi Cases apart from several high profile cases involving thousands of crores of public money. Majority of the cases have been referred by the Hon'ble Supreme Court which also require investigation on priority and subject to the satisfaction of the Hon'ble Apex Court as per directions received. The CBI has limited resources of investigating manpower which is already engaged in carrying out complex investigations on directions of Hon'ble Supreme Court of India.

That it is stated and further submitted that the Hon'ble Court may kindly consider about the burden of cases already registered with voluminous documents and also consider shortage of investigating officers before passing orders in this matter. It is submitted that the investigating agency is not having sufficient manpower to attend the proposes cases going to be entrusted by the High Court."

There is not even a remote inclination, leave alone enthusiasm to take up the investigation. We feel that a halfhearted investigation undertaken by the CBI if the matter is entrusted to it would not lead as any where. It may even prove to be counter productive. We feel that the option of entrusting this matter to CBI is virtually closed.

We examined another feasibility of getting the matter enquired into through specially constituted vigilance



cell comprising of senior officials of the State. On this proposal, learned counsel for the petitioner submitted that his client is not at all inclined to accept the investigation into the matter by the officials of the State of Bihar. Thus, we find ourselves in a very helpless situation. The investigation into matters of this nature on basis of public interest litigation needs certain amount of deviation from the ordinary principles of adjudication. That can be resorted to if only there is unstinted cooperation from the petitioner on one hand and the desired investigating agency on the other. Unfortunately, in this case for their own reasons the investigating agency as well as the petitioner are far from inclined to play the roles expected of them.

A war cannot be fought when the soldiers are either unwilling or lacking in enthusiasm. If the captain still persists, he will only provide an opportunity for such soldiers, to celebrate his martyrdom. We are aware of the fact that this Court acquired pristine glory in matters of this nature, in all probability next only to that of the Supreme Court. That was possible on account of the dedicated team of officials of the CBI, who carried out their duties and implemented the directions issued from time to time. We do not intend to permit such glory to suffer, even after we

notice a perceptible change in the approach of the prime investigating agency from dedicated service to career protection. Any effort by this Court, under these circumstances may prove to be misadventure and the result may have its own impact upon the system.

Therefore, we regretfully close the writ petition expressing our inability to order any enquiry into an otherwise apparent illegality. Though there is every likelihood of branding our conclusions as abdication of power, we choose to be called as such, than to be driven out of an exercise which is prone to be halfhearted, halfbaked and unending, and which may not augur well for an institution like the High Court.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

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