

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP 15933 of 2013

Date of Decision: March 20, 2017

M/s Hartron Communications Ltd.

.....Petitioner

Vs.

Secretary, Ministry of Labour and Employment etc.

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Gautam Dutt, Advocate
for the petitioner.

Ms.Rajni Narula, Advocate for UOI, respondent No.1.

Mr.Vikas Suri, Senior Standing Counsel
for respondents No.2 and 4.

Mr.Sangram Singh, Advocate for respondent No.3.

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M.M.S. BEDI, J.

M/s Hartron Communications Ltd., a Company through its Managing Director has filed the present petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the inquiry report dated December 27, 2012 (annexure P-12) and office memorandum dated January 30, 2013 (annexure P-13) and also

challenges the inaction on the part of respondent No.4, the Director General, Employees State Insurance Corporation for not taking any disciplinary and criminal action against its officials and employees, as they have admitted to obtain illegal gratification and cheat and defraud the petitioner. The petitioner also seeks a writ in the nature of mandamus directing the official respondents i.e. The Chief Vigilance Commissioner and Director CBI, to take immediate action for prosecuting all the officials and employees of ESI Corporation criminally and departmentally under appropriate provisions of criminal and service laws for misconduct for which the petitioner Company was deliberately and intentionally made to suffer harassment for extraneous consideration of making money.

The grievance of the petitioner is that the officials of the Employees State Insurance Corporation had raised illegal demands despite the fact that the petitioner had deposited ESI contributions on 25% of the bill amount raised by the Contractor treating 25% of the invoice account of the amount spent on labour but M.K. Sharma and other employees of ESI Corporation with malafide intentions with oblique motive to obtain pecuniary benefits from the petitioner, insisted that the petitioner should deposit ESI contribution of 75% of the bill amount of the Contractor which is in complete disregard of the law of the land and contrary to the ESI Corporation instructions and directions. The petitioner firm is covered under the provisions of ESI Act. The petitioner claims that in proceedings before the Employees State Insurance Court, Gurgaon in petition under Section 75

of the ESI Act, it was held that the demand of Rs.3,25,291/- for the period May 1995 to March 1997 and interest amounting to Rs.1,40,772/- totaling Rs.4,66,013/- is illegal and was accordingly quashed. On the basis of the said judgment, it has been urged that any demand made beyond the said amount would constitute an offence warranting action by the Vigilance Bureau. The Central Vigilance Commission is constituted under the Central Vigilance Commission Act, 2003 under Delhi Special Police Establishment to conduct inquiries into the offences alleged to have been committed under the Prevention of Corruption Act by certain categories of the public servants specified or under any Central Act. As per the provisions of Section 6 A of the CVC Act, approval of Central Government to conduct inquiry or investigation is necessary. Functions and powers of the Central Vigilance Commission are enumerated in Section 8 of the above said Act. The functions include the exercise of the superintendence over the functioning of the Delhi Special Police Establishment in so far as it relates to investigation of offence alleged to have been committed under the Prevention of Corruption Act; to give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility under the Delhi Special Police Establishment Act, 1946; inquire or cause an inquiry or investigation on reference made by the Central Government; to inquire or investigate into any complaint against any official belonging to the categories of the officials specified in the Act; and to review the progress of investigations conducted by the Delhi Special Police Establishment etc.

Since approval of Central Government is necessary under Section 6 A of the Act before conducting any inquiry or investigation, petitioner having not sought any such approval, the petition is not maintainable.

The duties of Central Vigilance Commission are akin to the duties and functions of CBI. The scope of investigation by CBI came up for consideration before Hon'ble Supreme Court in **State of West Bengal Vs. The Committee for Protection of Democratic Rights, West Bengal and others**, (2010) 3 SCC 571, wherein it was held that CBI should be directed to investigate a matter merely because a party as levelled some allegations. Relevant extract of the judgment is reproduced as under:-

“46. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be

passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

Considering the facts and circumstances of this case in the light of above said judgment, I do not find any reason to exercise extraordinary inherent jurisdiction under Articles 226 and 227 of the Constitution of India.

The petition is dismissed.

March 20, 2017
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.