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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.987 OF 2024

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Bharat Diamond Bourse

... Petitioner

V/s.

The Deputy Director, Employees
State Insurance Corporation

... Respondent

Mr. Pradhyuman M. Bhagat for the petitioner.

Mr. Shailesh S. Pathak for the respondent.

CORAM : AMIT BORKAR, J.

DATED : 21 MARCH, 2024

RC.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner is challenging order dated 24 October 2023 passed by the Employees Insurance Court, Mumbai (“ESI Court” for short) rejecting petitioner’s application bearing Application ESI No.35 of 2018 for appointment of Court Commissioner for carrying out inspection (re-verification) of the documents of the petitioner in a proceeding under Section 75 of the Employees State Insurance Act, 1948 (“the said Act” for short).

2. The petitioner is a company incorporated to establish a world-class Diamond Bourse for its members. It is not in dispute that the petitioner is covered under the provisions of the said Act. The Social Security Officer of the respondent/Corporation called

upon the petitioner to submit records for the year 2011-2012, and accordingly, the petitioner submitted a balance sheet and profit and loss account for the financial year 2011-2012 and other documents as required for verification.

3. On 9 October 2015, the petitioner received a show-cause notice proposing to determine the ESI contribution amount of ₹25,41,77,923/- on several heads as stated in part B of the notice and called upon the petitioner to appear before the respondent on 26 October 2015. The petitioner appeared before the respondent and submitted several documents during the hearing. On 20 June 2016, the respondent passed an order under Section 45A of the said Act holding a contribution of ₹24,50,83,048/- for the financial year 2011-2012 from the petitioner.

4. Aggrieved by the order passed under Section 45A of the said Act, the petitioner applied Section 75 of the said Act. The petitioner deposited 50% of the amount with the ESI Court.

5. When the matter was fixed for evidence by the ESI Court, the petitioner on 12 April 2023 filed an application seeking direction to the respondent to carry out an inspection of documents and records for the years 2009-2010, 2010-2011 and 2011-2012 and submit a report to the Court. The petitioner sought inspection *inter alia* on the ground that to determine the petitioner's liability; the petitioner must produce several documents and records from the previous year. The petitioner will need help to produce all the documents before the Court. Another reason was that the expenses, based on which order under Section

45A was passed, were incurred in the previous year; therefore, re-inspection was necessary.

6. The respondent contested the application by pointing out that no provision enables the petitioner to file such an application. All relevant records pertaining to the dispute are in the petitioner's custody. The amount arrived at by the Corporation was based on the best judgment assessment; therefore, the petitioner needs to lead evidence before the Court.

7. The ESI Court rejected the application by order dated 24 October 2023. Hence, the petitioner has filed the present writ petition.

8. The learned advocate for the petitioner submitted that it is impossible for the petitioner to produce a voluminous record before the Court. The respondent/Corporation failed to inspect before arriving at a conclusion under Section 45A of the said Act. The expenses referred to in the order under Section 45 had been incurred in earlier years. He submitted that such expenses are necessary in the interest of justice.

9. Per contra, the learned advocate for the respondent/Corporation submitted that there is no provision in the said Act for appointing a Court Commissioner. The contribution determination was made based on documents produced by the petitioner during a personal hearing. The nature of jurisdiction exercised by the ESI Court is original jurisdiction. Under the garb of appointment of the Court Commissioner, the petitioner intends to make a re-assessment, which is impermissible in law.

10. I have heard advocates for both sides and considered the material on record. It is not in dispute that the respondent/ Corporation passed an order under Section 45A of the said Act after giving the petitioner an opportunity to hear. The petitioner was represented by his representative, who furnished all relevant material before the Corporation.

11. The grounds mentioned in the application seeking re-verification are (i) documents necessary for adjudication of dispute are voluminous and (ii) the expenses based on which order under Section 45A of the said Act was passed were incurred in the earlier years.

12. The grounds mentioned in the application are insufficient to direct the re-verification of the documents in possession of the petitioner. They will amount to adjudication of inquiry under section 45A, which, in the facts of the case, is not necessary. The petitioner shall have the opportunity to produce all relevant material before the ESI Court in support of his contention that the amount adjudicated in the exercise of power under section 45A is not in accordance with the law as the matter is fixed for leading evidence of the petitioner. Therefore, the ESI Court was justified in rejecting the applications. No error is apparent on the face of the record, nor does the impugned order suffer from any legal infirmity.

13. The writ petition accordingly stands dismissed. No costs.

(AMIT BORKAR, J.)