

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 26th OF APRIL, 2024

MISC. PETITION No. 4848 of 2021

BETWEEN:-

**M/S SHRI DEVI HOTEL THR. MANAGER DIPAK
AGARWAL S/O SHRI GANSHYAM AGARWAL
OCCUPATION MANAGER SHRI DEVI HOTEL A/A
53 MAIN ROAD ITARSI DISTRICT
HOSHANGABAD (MADHYA PRADESH)**

....PETITIONER

(BY SHRI RAJESH KUMAR SONI - ADVOCATE)

AND

**DEPUTY DIRECTOR EMPLOYEE STATE
INSURANCE CORPORATION REGIONAL OFFICE
PANCHDEEP BHAWAN NANDA NAGAR INDORE
(MADHYA PRADESH)**

....RESPONDENTS

(BY SHRI GAURAV SHAMRA - ADVOCATE)

“Reserved on : 23.04.2024”

“Pronounced on : 26th.04.2024”

This petition having been heard and reserved for order, coming on for pronouncement this day, the court passed the following:

ORDER

This miscellaneous petition under Article 227 of Constitution of India has been filed seeking the following relief(s):-

“(i) That the order passed by the learned court below dated 12.11 2021 & order passed by the respondents 20.06 200 is liable to be quash and be pleased to allow the present Miscellaneous Petition, in the interest of justice and law full decision of the case.

(ii) This Hon'bel Court be pleased to call the relevant record from the learned Court below.

(iii) Any other order/orders/directions deem fit and proper in favor of the petitioner may kindly be awarded, in the interest of justice.

(iv) That the cost of the petition be also awarded to petitioner”

2. It is the case of the petitioner that it is the proprietorship firm and is running a hotel with lodging facilities having only 8 to 10 employees. The petitioner had never employed 20 or more employees in any calendar year.

3. It is submitted that on 20.06.2000, a notice was issued to the petitioner that on various occasions, the Insurance Inspector had inspected the institution but the record was not made available and accordingly, on 15.04.1996, a demand of Rs.91,348/- was already raised towards the employers contribution and since the petitioner did not deposit the employers contribution as well the contribution return, therefore, a case under Section 85(A and E) of Employees' State Insurance Act was registered. Accordingly, the petitioner was directed to deposit Rs.91,348/- for the period 10.05.1993 to 31.03.1996 and Rs. Rs.1,85,490/- for the period 01.04.1996 to 31.12.1998 total Rs.2,76,767/- as well as to submit the return and also to produce record from the beginning for inspection. It was also made clear that since, the

one time settlement scheme will be coming to an end from 31.07.2000, therefore, thereafter, no such prayer would be acceptable.

4. Thereafter, it appears that the petitioner approached the Labour Court under Section 85 of Employees' State Insurance Act. In the said application, it was mentioned that petitioner is involved in running a hotel with lodging facility only and it has 16 to 17 rooms. The hotel was opened about 20 years back and generally 15 to 16 employees are employed in a calendar year and 20 employees were never employed in the hotel and accordingly, it was prayed that the demand of Rs.2,76,767/- towards the contribution be quashed.

5. The petitioner filed his affidavit under Order 18 Rule 4 of C.P.C. He was cross-examined. In the cross-examination, he admitted that the institution is working since 1985. In the year 1985 only 8 to 9 employees were working. In the year 1985, there were 3 partners but he does not recollect as to whether partnership firm is a registered one or not? He admitted that his institution was inspected by employee of State Insurance Corporation. He expressed that he do not recollect as to whether the said Inspector had seen the record of the institution or not? He admitted that the institution was inspected. He denied that in the year 1996, 26 employees were working. He admitted that an attendance register is maintained, which contains the signatures of the employees employed in the hotel. However, the said attendance register has not been produced. He further admitted that the preliminary inspection report contains the seal of the hotel as well as the signatures but expressed that he cannot identify the signatures and immediately thereafter he tried to explain that the signatures must be of

that employee who sits in the hotel. He admitted that after the inspection, he was called in Indore along with documents for putting forward his case and accordingly, he had produced the account books and ledgers. After two months, again he went to Indore. Hearing was done by one Baraba who expressed that the documents have already been seen and now the letter would be sent but the aforesaid letter has not been received so far. He also admitted that the aforesaid statement is not mentioned in his application under Section 85. He admitted that he has not deposited the amount, which was demanded by the Employees' State Insurance Corporation. He admitted that his hotel has 15 to 16 rooms. He admitted that he has not produced the attendance register as well as the balance sheet for the period when the inspection was carried out. Although, he tried to explain that the said document was given to Shri Rao at Indore but admitted that no acknowledgment was taken.

6. Thus, it is clear that the petitioner was in possession of the attendance register as well as the balance sheet but he did not produce the same before the Labour Court. Even the explanation given by the petitioner that the aforesaid documents were provided to the State Insurance Corporation cannot be accepted that he has not produce any acknowledgment of receipt.

7. It is submitted by counsel for petitioner that since the respondent has not proved the inspection report, therefore, the Labour Court has applied the principle of reverse burden of proof on the petitioner by drawing adverse inference on account of non-production of the documents.

8. In the inspection report, of the year 1994 (Ex.P/1), it is specifically mentioned that documents were not made available by the petitioner. In the show cause notice dated 09.11.1994 (Ex.P/2), it was specifically pointed out that the documents, which are essential under the provisions of Rules 22, 23, 27, 29, 30, and 31 etc. have not been maintained.

9. Thus, it is clear that in spite of the directions given by the authorities, the petitioner deliberately did not provide the record to the authorities for inspection. Thus, it is clear that although, the petitioner was in possession of the best evidence but he deliberately suppressed the same from the authorities as well as from the Court.

10. Under these circumstances, this Court is of considered opinion that the Labour Court did not commit any mistake by drawing an adverse inference against the petitioner.

11. As no jurisdictional error was committed by the Labour Court, therefore, no case is made out warranting interference.

12. The petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

VB*