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**(2001) 07 JH CK 0048**  
**In the Jharkhand High Court**  
**Case No : CWJC No. 2529 of 2000 (R)**

Singhwahini Cement Pvt. Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision :** 27-07-2001

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2001) 07 JH CK 0048

**Hon'ble Judges :** M.Y. Eqbal, J

**Bench :** Single Bench

**Advocate :** R.S. Mazumdar, for the Appellant; Rajesh Lala, JC to SC I, for the Respondent

**Final Decision :** Dismissed

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## Judgement

M.Y. Eqbal, J.—Heard the counsel for the parties.

2. In this writ application the petitioner has prayed for issuance of an appropriate writ commanding upon the respondents to sanction electric subsidy for the period April, 1998 to March, 1999 and April, 1999 to March, 2000 under the Industrial Policy, 1993.

3. In the writ petition the petitioner, inter alia, pleaded that the petitioner has a Cement Factory situated at a place named Hesaiong in the District of Hazaribagh engaged in manufacturing portland slag cement. The petitioner was provided H.T. connection having 125 KVA contract demand. The District Industry Centre Hazaribagh has given assurance to the petitioner to provide electric subsidy as per Industrial Policy, 1993 and the same will be given for a period of five years i.e., from 1993 to 1998. It is pleaded that the petitioner commenced production from 7.4.1995. Surprisingly the petitioner received the impugned order dated 20.8.1998 issued under the signature of Director General, District Industry Centre, Hazaribagh to the effect that the electric subsidy is given to the petitioner from April, 1995 to March, 1998 i.e., for a period of three years only

when as per Industrial Policy, 1993 the electric subsidy should have been for five years. The petitioner, thereafter, represented before the authority concerned on 21.8.1999 but despite follow-up action no decision was taken by the respondents for grant of electric subsidy.

4. Curiously enough the petitioner has not disclosed in the writ petition as to when the industry was established, how the petitioner became owner of the industry and what was the source of investment made in the industry.

5. The respondents, when called upon, filed counter affidavit stating the entire history regarding the existence of the industry. It has been stated that the industry was once held and possessed by M/s. Eastern Cement Pvt. Ltd. The assets of M/s. Eastern Cement Pvt. Ltd. was sold by BISICO to the petitioner in 1994. It is further stated that the unit was declared and registered as sick unit in March, 1999 bearing No. IND-Sick Unit/DI/288/99. A certificate to this effect was issued bearing letter No. 1735 dated 27.3.1999 of the Directorate of Industries, Bihar, Patna. It is further stated that in course of review of the sanction claimed for electric subsidy of the petitioner-unit it was found that the claim of the petitioner-unit as State Capital subsidy was considered in the State Level Capital Subsidy meeting held on 31.3.2000. The claim of the petitioner was rejected on the basis of report referred by BICICO vide letter No. 2323 dated 18.2.1999. The said decision of the State Level Committee was communicated to the petitioner vide Industry Deptt. Letter No. 2244 dated 21.7.2000. For better appreciation paras 7 and 8 of the counter affidavit are reproduced hereinbelow :--

"7. That the unit is declared and registered as a sick unit bearing No. IND-Sick Unit/DI/288/99 issued the certificate letter No. 1735 dated 27.3.1999 of the Directorate of Industries, Bihar, Patna.

8. That in course of review of the sanction claimed as electric subsidy of the petitioner unit following facts came before the competent authority :

(a) The claim of the petitioner unit as State Level Capital Subsidy was considered in the State Level Capital Subsidy meeting held on 31.3.2000.

As per decision the claim was rejected on the ground of report referred by BICICO vide letter No. 2323 dated 18.2.1999.

(b) The said decision of the SLC was also communicated to the petitioner vide Industries Deptt. Letter No. 2244 dated 21.7.2000.

(c) As per the application given by the petitioner unit, the unit declared sick and duly registered as sick unit bearing No. IND-Sick Unit/DI/288/99 issued the certificate letter No. 1735 dated 27.3.1999.

That in the light of the above facts the subsidy claimed, therefore, are fit to be rejected."

6. Surprisingly enough the fact regarding declaration of the petitioner unit as a sick unit has not been disclosed in the writ petition. The fact that the claim of

capital subsidy was considered in the State Level Capital Subsidy Meeting and was rejected, has also not been disclosed in the writ application. These two facts have not even been specifically denied by the petitioner by filing reply to the counter affidavit. It is, therefore, a clear case of suppression of facts by the petitioner.

7. It has been for many years, the rule of the court and one of which, it is of great importance to maintain that where an applicant comes to the court to obtain relief on an ex parte statement, he should make full and fair disclosure of material facts. A writ petition, is liable to be dismissed on the ground that the petitioner did not approach the court with clean hands. Suppression of material facts when the petitioner had knowledge of the same, is fatal for maintaining a petition. In this connection reference may be made to a decision of the Apex Court in the case of *The Chancellor and Another Vs. Dr Bijayananda Kar and Others*, ,

8. The contention of Mr. Mazumdar that it is not a suppression of facts as the petitioner has further disclosed the material facts in the rejoinder to the counter affidavit is misconceived. In my opinion disclosing or admitting facts stated in the counter affidavit will not amount to full and frank disclosure of fact rather it will amount to suppression of facts with ulterior motive. In this connection reference may be made to decisions in the case of *R.Vs. Inter London Quarter Session* (1970) All ER 481 and in the case of *O'Reilly v. Maxman* (1982) 3 All ER 680.

9. Besides the above exercising powers under Article 226 of the Constitution for other purposes is discretionary and this Court can refuse to grant relief to the petitioner on the ground of suppression of material facts with an ulterior motive. Reference may be made to a decision of the Supreme Court reported in *Maganlal Chaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, and also *State of Haryana and Others Vs. Karnal Distillery Co. Ltd. and Another*, .

10. Apart from that Clause 6 of the Industrial Policy, 1993 upon which Mr. Mazumdar, learned counsel for the petitioner has put heavy reliance, states that the benefits under the policy shall be available for a period of five years. After, 1993 Industrial Policy, two or three more Industrial Policies have come in force in the State of Bihar, that is to say, Industrial Policies, 1995, 1998 and onwards. Clause 12 of the said Industrial Policy further provides that subsidy in any form will not be available to those industrial units which have been declared sick units.

11. For all these reasons, no relief can be granted to the petitioner. This writ application is, accordingly, dismissed.

12. Writ application dismissed.