

ITEM NO.301

Court 5 (Video Conferencing)

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) Nos.10159-10168/2020

(Arising out of impugned final judgment and order dated 18-08-2020 in WP No. 5756/2019 18-08-2020 in WP No. 5764/2019 18-08-2020 in WP No. 5771/2019 18-08-2020 in WP No. 5772/2019 18-08-2020 in WP No. 5773/2019 18-08-2020 in WP No. 5774/2019 18-08-2020 in WP No. 5776/2019 18-08-2020 in WP No. 5792/2019 18-08-2020 in WP No. 5801/2019 18-08-2020 in WP No. 5793/2019 passed by the High Court of Judicature at Madras)

VEDANTA LIMITED

Petitioner(s)

VERSUS

THE STATE OF TAMIL NADU & ORS.

Respondent(s)

(With appln.(s) for IA No. 55831/2021 - CLARIFICATION/DIRECTION, IA No. 57548/2021 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 57547/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 27-04-2021 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Petitioner(s) Mr. Harish N. Salve, Sr. Adv.
Mr. Prashanto Sen, Sr. Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Ninad Laud, Adv.
Mr. Ankur Saigal, Adv.
Mr. Rohan Talwar, Adv.
Mr. Anirudh Bhatia, Adv.
Ms. Mansi Taneja, Adv.
Ms. Aashna Agarwal, Adv.
Mr. E. C. Agrawala, AOR

For Respondent(s) Mr. Tushar Mehta, SG
Mr. Rajat Nair, Adv.
Mr. Kanu Agarwal, Adv.

Mr. G. Ananda Selvam, Adv.
Ms. Lakshmi Ramamurthy, AOR

Mr. C.S. Vaidyanathan, Sr. Adv.
Mr. Balaji Srinivasan, AAG
Mr. M. Yogesh Kanna, AOR
Mr. RajaRajeshwaran S., Adv.
Mr. Siddhant Kohli, Adv.

Mr. A. Yogeshwaran, Adv.
Ms. Poongkhulali B., Adv.
Mr. T. V. S. Raghavendra Sreyas, AOR

Mr. Parijat Kishore, AOR

Mr. Colin Gonsalves, Sr. Adv.
Mr. T.S. Sabarish, AOR
Mr. Jimraj Milton, Adv.
Mr. Vishnu Unnikrishnan, Adv.
Mr. Mohd. Sadiq Noor, Adv.

Mr. B. Vinodh Kanna, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 Vedanta Limited has moved an interim application (IA No 55831 of 2021) seeking the following reliefs:

“a) allow the Applicant to undertake essential care and maintenance of the critical assets and structures of the Applicant's plant at SIPCOT Industrial Complex, Thoothukudi;

b) allow the Applicant to operate its oxygen plants having a total capacity of 1050 TPD for supplying free oxygen to the nearby hospitals; and to support various State Governments regarding the critical requirement of oxygen for treating

Covid-19 patients

c) to restrain the Respondents from preventing the Applicant from acting in accordance with the directions issued by this Hon'ble Court; and

d) grant such further reliefs/directions as may be deemed fit and proper in the facts and circumstances of the case.”

2 During the course of the hearing, the interlocutory application has been confined to the prayer to allow the applicant to operate with a total capacity of 1050 TPD for supplying medical grade oxygen during the Covid-19 pandemic.

3 On 23 April 2021, this Court directed the State of Tamil Nadu to file an affidavit on the issues which are raised in the interlocutory application. A Memo has been filed on behalf of the State of Tamil Nadu indicating that on 23 April 2021, the Collector Tuticorin convened a meeting of all stakeholders. At that stage, public sentiment was against the opening of the plant and the Government apprehended a breach of law and order. The State of Tamil Nadu has, in paragraph 6 of its Memo, stated that in order to meet the extraordinary situation created by a national crisis, the matter was deliberated at the governmental level and an all-party meeting with all registered political parties was convened, following which a consensus has been reached. The course of action which is proposed by the State of Tamil Nadu is set out in the following extracts from the Memo:

“7. Therefore, the State is agreeable to the oxygen plant alone being operated temporarily for a period of 4 months

initially as an extraordinary interim measure to meet the emergency caused by Covid-19 in the larger public interest. However, in light of the great trust deficit created by Vedanta (due to its past conduct), the State needs to ensure sufficient safeguards are in place. It is proposed that:

7.1. The State Government will pass an order immediately allowing the Petitioner to operate its oxygen plant alone, utilising electricity provided by TANGEDCO as a temporary measure till the Covid-19 crisis is over. The Petitioner shall not be permitted to operate the copper smelter, Thermal Power Plant any other plant or carry out any other activity. The Court may direct the Petitioner to adhere to their commitment to start production of oxygen within one week's time.

7.2. The Government of Tamil Nadu will constitute a Monitoring Committee comprising of;

- a. The Collector, Tuticorin, as Chairman,
- b. Superintendent of Police, Tuticorin,
- c. Sub Collector, Tuticorin,
- d. The District Environmental Engineer, TNPCB,
- e. TWO Government officers with technical knowledge of oxygen plants,
- f. THREE local Community/Environmental/NGO representatives/anti-plant activists.

This Committee will supervise the entire functioning of the Oxygen plant and also decide on the operation of the oxygen plant. Further be empowered to take decisions concerning the operation of these Plants. Vedanta shall provide operational manpower and other expertise, as well as bear all expenses related thereto.

7.3. The Petitioner has stated before this Court that it can produce 1050 MT of Oxygen per day, entirely diverted to medical use, free of cost. It is ascertained that it can supply 35 MTs of liquid Medical Grade Oxygen immediately and subsequently increase supply of Liquid Oxygen and Gaseous Oxygen which can be transported to hospitals filled in cylinders.

7.4. The oxygen plant will need power and water supply, and other statutory permissions (labour, fire, factories, etc.) to start operating. The State will, on a suitable application, expedite these permissions as a one-time extraordinary measure. Vedanta shall clear outstanding dues, if any, to these utilities including TANGEDCO.

7.5. Only those required technical staff of Sterlite who are directly related with production of oxygen, will be permitted with appropriate passes. Adequate protection would be provided and all safety measures would be ensured by the Government. Under no circumstances, the units other than the oxygen producing plant would be permitted to function.

7.6. Tamil Nadu's current Medical Oxygen consumption of 325 MTs is fully using up the total manufacturing capacity of 330 MTs. Given the recent trend of accelerated increase of cases. Consumption is likely to exceed the capacity shortly. So, Tamil Nadu needs the Oxygen output of the plant if it is allowed to operate. Therefore, priority shall be given to meet Tamil Nadu's need for medical oxygen from the Oxygen produced in the Plants.

7.7. The Court may issue direction that the Oxygen produced in Tamil Nadu shall be used to fulfil the oxygen requirements in the state. The oxygen produced in excess of requirement in Tamil Nadu may be supplied to other States.

7.8. Vedanta shall give delivery guarantees on quantity, quality and time for the supply of Oxygen free of cost to the Committee within 48 hours.

7.9. All operations would be at Vedanta's own risk and cost."

- 4 During the course of the proceedings, we have heard Mr Harish N Salve, learned senior counsel appearing on behalf of the applicant, Mr C S Vaidyanathan, learned senior counsel for the State of Tamil Nadu, Mr Tushar Mehta, learned Solicitor General of India, Mr Colin Gonsalves, learned senior counsel appearing on behalf of the tenth respondent and Mr A Yogeshwaran, learned counsel appearing on behalf of the ninth respondent.
- 5 During the course of the hearing, Mr Salve submitted that (i) the applicant will run only the oxygen plant for the purpose of catering to the national demand of medical grade oxygen; (ii) the applicant shall not run either the copper smelting plant and its associated facilities or the power plant; (iii)

electricity for the purpose of running the plant shall be purchased from TANGEDCO, as proposed in the Memo filed by the State of Tamil Nadu. It has been submitted that in about ten days, the applicant would be in a position to commence producing about 200 metric tons daily of liquid oxygen.

6 Mr Colin Gonsalves and Mr A Yogeshwaran, learned counsel appearing on behalf of the tenth and ninth respondents have fairly stated that they accept the need for supplying oxygen during the course of the current pandemic and that all necessary efforts will be taken to support the national requirement. They have, however, highlighted certain concerns which have been formulated thus:

- (i) In the past, the assurances which were held out by the applicant have not been fulfilled;
- (ii) An application before the coordinate Bench for restarting the entire plant has not been allowed and hence should not be allowed;
- (iii) A seven member expert Committee was constituted to ensure the scientific removal of sludge and chemical waste within the premises of the copper smelting plant and some part of the toxic waste remains to be removed;
- (iv) The number of persons to be brought in for the purpose of operating the oxygen plant should be no more than what is essential for running the plant;

(v) The plant has been closed for a period of three years and it is unlikely that it would be in a viable position to run the plant and produce oxygen. Mr Gonsalves has submitted that in order to assuage the concerns of the community, it will be appropriate that the Government of Tamil Nadu takes over the operation of the entire plant.

7 Mr Tushar Mehta, learned Solicitor General has submitted that the oxygen produced by the stand-alone oxygen plant of the applicant will enhance the availability of oxygen for meeting the medical requirements during the Covid-19 pandemic and support the national endeavour in that regard. He submitted that as a matter of fact, it would be appropriate if suitable directions are issued by this Court to ensure that the entire generation of oxygen in the plant is handed over to the Central Government for being allocated in terms of the national priorities evolved.

8 We are inclined to allow the prayer for permitting the operation of the oxygen plant on a stand-alone basis for meeting the national requirements during the pandemic. This shall not create any equities in favour of the applicant to demand or expect the running of the plant as a whole in the future. The present order is being passed only in view of the present need to enhance the availability of medical grade oxygen at this time. We accept the Memo which has been filed on behalf of the State of Tamil Nadu, subject to the following modifications:

(i) The committee proposed in paragraph 7.2 of the Memo, shall comprise of (a) the Collector, Tuticorin as Chairperson (b) the Superintendent of

Police, Tuticorin (c) the Sub Collector, Tuticorin (d) the District Environmental Engineer, TNPCB (e) One government officer having technical knowledge of oxygen plants (f) Two environmental experts to be chosen by the tenth respondent from a panel proposed by the Union Ministry of Environment, Forests and Climate Change. The MOEF shall indicate the proposed names for the panel to the State of Tamil Nadu within a period of four working days. The tenth respondent shall be at liberty to indicate its choice of any two members from the panel drawn up by the MOEF, within two days thereafter, failing which, the names of the two experts shall be nominated by the State of Tamil Nadu from out of the panel;

- (ii) The plant shall be operated only for the purpose of producing medical grade oxygen and for no other purpose;
- (iii) The applicant shall not under the present order be entitled to enter upon the copper smelting plant or any of its appurtenant facilities, including for maintenance;
- (iv) The applicant shall abide by all previous directions which have been issued by this Court, save and except for the present modification permitting it to operate only the oxygen plant;
- (v) The role of the Committee which is to be nominated by the State Government shall be to oversee the proper functioning of the oxygen plant in compliance with the above directions. The oxygen plant shall be run and managed by the applicant subject to such directions as may be

issued by the Committee constituted by the State Government to secure compliance with environmental and safety norms;

(vi) Before allowing the entry of any of the workers into the plant, the applicant shall submit to the Committee a plan indicating the number of workers and other technical and non-technical staff essential for running the oxygen plant. The Committee shall on due verification take a decision on the number of persons to be permitted within the premises of the plant for the purpose only of managing and conducting the oxygen production facility;

(vii) The Committee which has been appointed in terms of the above directions shall be at liberty to engage with the residents of the area so as to redress any legitimate concern in regard to the nature or modalities for operating the oxygen plant on a stand-alone basis. The Committee will be at liberty to have a safety audit conducted before the operations commence and to issue suitable directions to ensure safety of operations;

(viii) The applicant shall not under the garb of the present order be permitted to commence operations of the copper smelting plant nor shall any application be entertained in that regard.

9 The present order for permitting the operation of the oxygen plant on a stand-alone basis shall remain in force until 31 July 2021, at which point of time, a decision will be taken based on the current state of the pandemic at

that time. The State of Tamil Nadu shall expedite the grant of necessary permissions for obtaining electricity and other utilities to ensure the expeditious commencement of the generation of medical grade oxygen.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Court Master