

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

IA No. 55831/2021

IN

SPECIAL LEAVE PETITION (C) 10159-10168 OF 2020

IN THE MATTER OF

Vedanta Limited

Petitioner

vs.

State of Tamil Nadu and Ors.

Respondents

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ADVOCATE FOR THE STATE OF TAMIL NADU:

M. YOGESH KANNA

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**MEMO IN RESPONSE TO IA 55831/2021 ON BEHALF OF THE
STATE OF TAMIL NADU**

1. Vedanta has filed the IA 55831/2020, seeking essentially two reliefs:
 - 1.1.To allow the Petitioner to undertake maintenance of its permanently shut copper smelter its Thoothukudi-prayer (a);
 - 1.2.To allow the Petitioner to operate its oxygen plant having a capacity of 1050 TPD, to supply free Oxygen to nearby hospitals and state governments for treating COVID-19 patients- prayer (b).
2. It is stated, at the outset, that **the State of Tamil Nadu is not treating prayer (b) of the IA as adversarial**. The State is cognizant of the

ongoing crisis and is keen to augment oxygen production capacity to avoid the deaths of Indians.

3. A brief background of the case is necessary, to understand the present stand of the State of Tamil Nadu :

- 3.1. Vedanta, the Petitioner, is a company primarily engaged in mining and processing minerals, oil and gas. Vedanta has a dubitable reputation as a global polluter and has faced run-ins with the law on environmental concerns across jurisdictions. Vedanta ran a copper smelter from 1997 to 2018 in Tuticorin, in which period it substantially polluted the environment, causing deaths and great detriment to lives and livelihoods.

- 3.2. In 2018, an order of permanent closure and sealing was passed against the Petitioner by the Tamil Nadu Pollution Control Board and the State Government. The Hon'ble Division Bench of the High Court of Judicature, Madras, has affirmed these orders passed.

- 3.3. In a detailed 815-page judgment upholding the order of permanent closure, Court below has found that the Petitioner was a chronic polluter and continually non-compliant with consent conditions imposed from time to time. It is this judgment that challenged via SLP before this Court.

- 3.4. This Hon'ble Court has refused interim relief, refused prayers for maintenance on multiple occasions (Mentioned on 22.01.2021, 18.03.2021, and see order dated 02.12.2020), and listed the case for final disposal on 17.08.2021. Now, pleadings are complete.
- 3.5. In this background, the Petitioner has filed the instant IA. During the mentioning on 22.04.2021, the Petitioner's counsel orally prayed that only pressed prayer (b) of the IA and expressly asked the Court to keep prayer (a) aside. Therefore, only prayer (b) is being dealt with in this memo. Needless to state that prayer (a) has already been rejected by this Court previously.
- 3.6. The State and Tamil Nadu Pollution Control Board have filed a detailed counter affidavit on the merits of the matter and established, in great detail, the extent, and the irremediable and irreversible nature, of pollution caused by the Petitioner through its years of operation. The Respondent has further demonstrated the Petitioner's calculated indifference to and wilful non-compliance with consent conditions and repeated attempts at evasion of responsibility.
- 3.7. As demonstrated to (accepted by) the Hon'ble High Court, the Respondent has shown to this Court that the Petitioner is a chronic polluter. It has ruined the environment and ecology of Thoothukudi by polluting the groundwater and dumping hazardous waste in natural waterways. The Petitioner's activities

have directly led to severe health problems for the people of Thoothukudi and have led to the loss of life and livelihood.

4. The IA is consonant with past practice, replete with half facts, misrepresentation, and fails to set out the unit's chequered history objectively. The prayer relating to oxygen production is only contained in the last two paragraphs and is an apparent afterthought.
5. On 23.04.2021, Collector Tuticorin convened a meeting of all stakeholders. In this meeting, public sentiment was against the opening of the Plant for any reason whatsoever. The Government also ascertained a grave issue of law and order in and around the Plant.
6. Nevertheless, in light of this extraordinary situation and the observations made by this Hon'ble Court that why the State Government cannot consider the opening of Oxygen Plant alone.

This matter was deliberated at the Government level and the Government has also conducted an all party meeting with all major registered political parties and a consensus was reached. Accordingly, the State Government has considered the prayer (b) to restart the oxygen plant alone, in the National interest. Given the political consensus reached and considering that our Nation is currently facing an extraordinary crisis, any action that would save lives should be considered and implemented.

THE PROPOSED COURSE OF ACTION

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.

7.10. This order shall be without prejudice to the main case, and no equities would be created in Vedanta's favour.

7.11. This interim arrangement/order may be reviewed in August 2021 by this Hon'ble Court.

8. Therefore, this fact may be taken into consideration while passing order on the proposed interim arrangement.

FILED BY :



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Place: NEW DELHI

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