

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

**I.A. NO. 55831 OF 2021**

**IN**

**SPECIAL LEAVE PETITION (C) NO.10159-10168 OF 2020**

**IN THE MATTER OF:**

VEDANTA LIMITED

...PETITIONER

VERSUS

STATE OF TAMIL NADU & ORS.

...RESPONDENTS

**ADDITIONAL AFFIDAVIT IN SUPPORT OF**  
**I.A. NO. 55831 of 2021**

I, Satyapriya, aged about 46 years, son of late Arvind Shankar Singh, having office at Core 6, SCOPE Complex, Lodhi Road, New Delhi, do hereby solemnly affirm and state as under:-

1. That I am Authorized Representative of the Petitioner in the aforesaid matter and as such I am well acquainted with the facts and circumstances of the case and am fully competent to swear this affidavit.
2. That the captioned SLP is pending before this Hon'ble Court against the impugned final judgment and order dated 18.08.2020 passed by the High Court of Judicature at Madras in Writ Petition Nos. 5756, 5764, 5771, 5772, 5773, 5774, 5776, 5792, 5793, 5801 of 2019 dismissing the writ petitions filed by the Applicant challenging the orders passed by the Respondent No.2/Tamil Nadu Pollution

Control Board (“**TNPCB**”) and the Respondent No.1/State of Tamil Nadu (“**State Government**”) for permanent closure and sealing of the Copper Smelter Plant of the Applicant/Petitioner.

3. That the Petitioner has also filed I.A. No.55831 of 2021 in the captioned SLP, to (a) undertake care and maintenance of the plant and (b) to allow the operation of oxygen plants of the Petitioner having a total capacity of 1050 tons per day, to supply free of cost oxygen for meeting the demands of the COVID-19 crisis. Though the IA seeks two prayers, for the present the Petitioner is not pressing the first prayer and is restricting itself to the second prayer i.e. for the operation of the oxygen plant.
4. Both Respondents 9 and 10 have wrongly alleged in response to this IA that the relief seeking care and maintenance stands rejected by this Hon’ble Court on 02.12.2021. It appears that the said Respondents have not perused the corrected order dated 02.12.2021 which in fact dismissed IA.119114 of 2020 seeking a trial run of the plant to assess the environmental impact and allegations in that respect. IA No. 101155 of 2020 dealing with care and maintenance continues to remain pending. Nonetheless this unsubstantiated allegation of the said Respondents is irrelevant given that the Petitioner is presently only pressing prayer (b) in the captioned IA.
5. That the present Additional Affidavit is being filed in support of I.A. No.55831 of 2021.

I. **NATIONAL EMERGENCY FOR OXYGEN SUPPLY**

6. That there is an acute national shortage of oxygen supply with States such as Delhi, Telangana, Maharashtra and Madhya Pradesh facing an alarming situation with an abject lack of Oxygen supply. This by all means is a crisis of national proportion. On 25.04.2021, even the State Government (Respondent No.1) has issued a press release regarding the the growing Medical oxygen needs of the State, due to high level of oxygen dependant active cases and the need to ensure adequate oxygen availability in the State of Tamil Nadu with the active case load crossing 1 lakh. The Press Release also states that it is a misconception that the existing oxygen consumption in Tamil Nadu is lower than the manufacturing capacity.

A copy of the Press Release dated 25.04.2021 issued by Respondent No.1 is annexed herewith and marked as **ANNEXURE A-1** (At page 10 to 11).

7. Over the last week, there have been several unfortunate instances of major casualties in Hospitals across the nation due to the shortage of oxygen supply. Therefore, the production of oxygen is the need of the hour.
8. That the Indian Railways has started Oxygen Express Trains across the Country which transport Liquid Medical Oxygen (LMO) from various destinations such as from Vizag to Nagpur/Mumbai. Further, the Indian Airforce is

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airlifting oxygen containers of DRDO from Bangalore for COVID centers in Delhi.

9. In a similar way, the Petitioner is in a position to provide support for supplying oxygen across the country and augment the oxygen supply in several States. This is possible by allowing the running of Petitioner's Oxygen Plants located within the copper smelter complex, Tuticorin.
10. That the Petitioner has oxygen plants with the capacity **1050 MT per day**, which was established in the year 1998 and 2004. ("**the Oxygen Plant/ the Petitioner's Plant**") The quantity of oxygen produced by the Petitioner's Plants is significant which can be seen in contrast to the entire oxygen produced in the Country which is approximately 7500 MT per day.
11. That there is no raw material required for the production of oxygen apart from the atmospheric air that is required as an input for producing oxygen. The air separation plant has been provided with front end adsorption system and Temperature Swing absorption (TSA) system and the final product i.e. oxygen, is produced by cryogenic distillation. The Oxygen Plant is controlled, supervised and operated by trained personnel as per well-defined Standard Operating Procedures (SOPs).
12. It is clarified that there will be no pollution whatsoever from the operation of the Oxygen Plant. The fact that this is a non-polluting process can be seen from the fact that it

is not enlisted in Schedule 1 of the Environmental Impact Assessment Notification (EIA), dated 14.09.2006.

13. The only intent of the petitioner in running the Oxygen Plant is to initiate the production within 7-14 days, in order to cater to states which are in need of oxygen supply for treating the COVID patients. As the Oxygen Plant was not operated for the past three years, detailed inspection and maintenance by professionals is critical and it involves ensuring availability of spares, repair/replacement and certification while ensuring safety of the equipment and personnel.

**II. OPERATION OF THE OXYGEN PLANT WILL NOT IN ANY WAY LEAD TO OPERATION OF THE COPPER SMELTER**

14. The Oxygen Plant is a separate plant and can be operated independently and there is no chance for any kind of pollution from the oxygen producing plant.
15. Further, the Petitioner undertakes that it will not carry out any kind of production activities apart from the production of oxygen under the directions of this Hon'ble Court.

**III. THE STATE GOVERNMENT SHOULD NOT BE ALLOWED TO TAKE OVER THE OXYGEN PLANT UNDER SECTION 65 OF THE DISASTER MANAGEMENT ACT, 2005**

16. That Sec 65(1) of the Disaster Management Act, 2005 *inter-alia* provides for requisitioning of:
  - (a) *any resources with any authority or person are needed for the purpose of prompt response;*

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*(b) any premises are needed or likely to be needed for the purpose of rescue operations;*

17. While Sec 65(1)(b) is circumscribed by the use of premises for rescue operations, the State it appears is seeking to rely on the words “any resources” which is defined to include any immovable property.
18. However, it is submitted that the Oxygen Plant should not be allowed to be run by the Tamil Nadu Government, as:
  - a. The Oxygen Plant requires a total man power of 45 trained personnel to operate it at its full capacity. The Plant can be operated by engineers having the expert domain knowledge and by those who are competent and trained over a period of time with an experience of at least 10 years.
  - b. It is further submitted that the Oxygen Plant has been constructed at a cost of Rs. 150 Crores and the average annual maintenance cost for this plant is Rs. 2 Crores. That being the case, it is not practically possible or advisable to let any inexperienced personnel to operate the plant. Keeping in mind the aforesaid, it is just beyond the competency and financial ability of the government to run this oxygen plant.
  - c. It is respectfully submitted that the State Government does not have the requisite expertise or personnel for the maintenance and operation of the oxygen plants, whereas the Petitioner has the competent personnel ready to

maintain and operate the oxygen plant. Even for the personnel of the Petitioner to take over the plant when it first started, it took a period of 2-3 months of intensive training involving experts in order to get complete familiarity with the standard operating procedure required for running the oxygen plant.

- d. In light of the above, the running of the oxygen plant by the State Government is likely to pose grave danger not only to the assets but to the personnel deployed for operation, as the operation critically involves the operation of high pressure vessels, heavy duty compressors, high voltage equipment and proprietary control systems. There is a high probability that if untrained personnel were to operate the oxygen plant, the quality of oxygen produced can be substandard and may not be safe for use.
  - e. The State Government is an interested party and are in adversarial proceedings against the Petitioner and thus have all along willfully refused to allow the Petitioner to carry out even the basic care and maintenance of the plant.
17. If necessary, the Petitioner is ready and willing to operate the oxygen plant for such period as maybe permitted under the supervision of an independent body such as the Central Pollution Control Board (CPCB) or the Ministry of Environment, Forest and Climate Change (MoEF) or such

other authority/agency as may be deemed fit by this Hon'ble Court.

18. The Copper Smelting Plant of the Petitioner has been sealed pursuant to the Order of the TNPCB dated 28.05.2018 which has been impugned in the present Appeal. Pursuant to the above said Order dated 28.05.2018, the Plant/Unit of the Petitioner has merely been sealed by the District Collector pursuant to directions of the TNPCB (Respondent No.2), however, it has not been taken over by the State Government.

A copy of the Order dated 28.05.2018 issued by the TNPCB/Respondent No.2 is annexed herewith and marked as **ANNEXURE A-2** (At page 12 to 13).

**IV. ALLEGED LAW AND ORDER PROBLEMS CAN BE STEMMED BY THE STATE GOVERNMENT IN THE LARGER PUBLIC INTEREST**

19. It is submitted that there were no law and order problems till the morning of 23.04.2021. On the same day, the District Collector called for a public hearing of a select group of people, most of whom were curiously known vocal opponents of the Petitioner and many of them even Respondents in the present case. Such a congregation on the very day of the court hearing was bound to involve heated and heightened voices. This however cannot be said to be reflective of the public sentiment to the operation of the oxygen plants for the free supply of oxygen in these trying times. It is humbly submitted that opposition by those opposed to the Petitioner's plant cannot be reflective

of a law and order problem which can override the national emergency for oxygen supply.

20. That even otherwise, the State Government holds the sacrosanct responsibility and duty to maintain law and order, particularly when there is a national emergency and critical shortage of oxygen supply, impacting human lives, which shortage the Petitioner is willing to ameliorate free of cost.
21. The present affidavit is *bona-fide* and filed in the interest of justice.
22. In light of the above, it is humbly prayed that the relief as sought in IA No. 55831 of 2021 be granted.

**DEPONENT**

**VERIFICATION:**

I, the abovenamed Deponent, do hereby verify that the contents stated herein above are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

Verified at New Delhi on the 25<sup>th</sup> day of April, 2021.

**DEPONENT**

Text of DO letter from Thiru Edappadi K.Palaniswami, Hon'ble Chief Minister of Tamil Nadu addressed to Shri Narendra Modi, Hon'ble Prime Minister of India dated 25.4.2021

I would like to draw your kind attention to the growing Medical oxygen needs of the State, due to high level of oxygen dependant active cases and the need to ensure adequate oxygen availability in the State of Tamil Nadu.

The State is taking all efforts to reduce the positive cases but considering the current trends, the State would require 450 MTs shortly which would be more than our production capacity of 400 MTs. As compared to the maximum active case number of around 58,000 during the previous surge in 2020, the active caseload has already increased to over a lakh today. This has increased the oxygen demand as stated above. All efforts are being made to provide uninterrupted and adequate oxygen supply.

In the meanwhile, in the latest National Medical Oxygen allotment plan allocation for Tamil Nadu has been fixed at 220 MTs and based on this wrong allotment, 80 MTs of liquid oxygen has been diverted from the manufacturing facilities located at Sriperumpudur, Tamil Nadu to Andhra Pradesh, and Telangana. This is based on the wrong position that the existing oxygen consumption in Tamil Nadu is lower than the manufacturing capacity. On this issue, I wish to bring to your kind notice that as per Petroleum and Explosives Safety Organisations (PESO) data, the consumption of oxygen in Tamil Nadu has already reached 310 MTs as against the inadequate allotment made to the State of only 220 MTs.

Also, the States to which the allotment has been made have lower number of active cases than us and also have major steel industries located within the their State/close to their States. Hence, the diversion from Sriperumpudur plant which supplies to Chennai City with the second biggest case load in South India seems to have no justification. This needs to be immediately corrected. While Tamil Nadu has never imposed any restrictions so far and is always ready to

support other States, such mandatory diversion of liquid oxygen from the needs of our State can lead to major crisis in Chennai and other districts.

Hence, I request that diversion of 80 KL from Sriperumpudur plant, in Tamil Nadu may immediately be cancelled.

**Issued By: - DIPR, Secretariat, Chennai - 9.**



## TAMILNADU POLLUTION CONTROL BOARD

Proceeding No.: TS1 /TNPCB /F.0212/TTN/RL/ W&A / 2018 , dated: 28.05.2018

**Sub.:** TNPC Board – Industries – **Directions** issued to seal the premises of the unit of M/s. Vedanta Limited -Copper Smelter, S.F.No. 1 to 7, 1220 to 1225, etc, Meelavittan Part 1 village, Thoothukkudi Taluk and Thoothukkudi District as per the G.O.Ms.No 72 Dt.28.05.2018, E&F (EC3). – Orders issued – Regarding.

**Ref.:** 1.Proceeding No.: TS1 /TNPCB /F.0212/TTN/RL/ W&A / 2018, dated: 23.05.2018  
2.Environment and Forest (EC.3) Department G.O.Ms.No 72 Dt.28.05.2018,

Whereas, the unit of M/s. Vedanta Limited- Copper Smelter Plant, S.F.No. 1 to 7, 1220 to 1225, etc .of Meelavittan Part-1 Village, SIPCOT Industrial Complex, Thoothukudi Taluk and District has been issued with Closure and disconnection of EB power supply vide reference first cited subject to the violations as stated therein

Now the Government vide reference second cited has endorsed the above said closure direction issued by the Tamilnadu Pollution control Board and directed the TNPCB to seal the unit and close the plant permanently.

In the light of the above said facts it is decided, that in exercise of the powers conferred under Section 33A of Water (Prevention and Control of Pollution) Act, 1974 as amended and under Section 31A of Air (Prevention and Control of Pollution) Act, 1981 as amended, to issue Directions to seal the premises of the unit M/s. Vedanta Limited -Copper Smelter, S.F.No.1 to 7, 1220 to 1225, etc, Meelavittan Part 1 village, Thoothukkudi Taluk and Thoothukkudi District.

Now, therefore, in exercise of the powers conferred under Section 33A of Water (Prevention and Control of Pollution) Act, 1974 as amended and under Section 31A of Air (Prevention and Control of Pollution) Act, 1981 as amended, it is hereby directed to seal the premises of the unit M/s. Vedanta Limited -Copper Smelter, S.F.No. 1 to 7, 1220 to 1225, etc, Meelavittan Part 1 village, Thoothukkudi Taluk and Thoothukkudi District with immediate effect.

The receipt of this proceeding shall be acknowledged.

**To:**  
1.The District Collector,  
Thoothukudi.

Chairman (FAC)



## TAMILNADU POLLUTION CONTROL BOARD

**Copy to:**

(1) The Joint Chief Environmental Engineer (M),  
TNPC Board, Tirunelveli.

(2) The District Environmental Engineer,  
TNPC Board, Thoothukudi.

✓ (3) Associate Vice President,  
M/s.VEDANTA LIMITED - COPPER SMELTER,  
SIPCOT Industrial Complex, Madurai Bypass Road,  
Thoothukudi - Pin: 628002.

(4) Technical file.

*[Signature]*  
For Chairman

*[Signature]*  
28/5/18  
JCEE

T-C

POLLUTION PREVENTION PAYS

சுமம் தடுப்பை வலியுறுத்து! சுமம் தடுப்பை வலியுறுத்து!

**IN THE MATTER OF:**

M/S. VEDANTA LTD.

...PETITIONER

VERSUS

STATE OF TAMIL NADU &amp; ORS.

...RESPONDENTS

**APPLICATION FOR EXEMPTION FROM FILING  
ORIGINAL NOTARIZED ADDITIONAL AFFIDAVIT**

TO

THE HON'BLE THE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUDGES OF THE

SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE  
PETITIONER ABOVENAMED:**MOST RESPECTFULLY SHOWETH:**

1. That the Petitioner has filed the aforesaid Special Leave Petition against the impugned final judgment and order dated 18.08.2020 passed by the Hon'ble High Court of Judicature at Madras in Writ Petition Nos. 5756 of 2019, 5764 of 2019, 5771 of 2019, 5772 of 2019, 5773 of 2019, 5774 of 2019, 5776 of 2019, 5792 of 2019 and 5801 of 2019.

2. The Petitioner craves leave to refer to and rely upon the facts stated in the accompanying rejoinder and the same may be read as part and parcel of this application.

3. In light of the prevailing situation concerning the global pandemic COVID-19, the captioned application to bring on record additional documents is being filed without original notarized affidavits. The Petitioner undertake to file the same as soon as the court functioning resumes.

4. The present application is being filed bona fide and in the interest of justice.

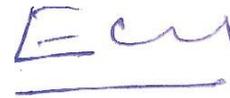
**PRAYER**

It is therefore most respectfully prayed that this Hon'ble Court may be pleased to: -

- a) Allow the present application and exempt the Petitioner from filing the original notarized affidavits along with the present application for the time being; and
- (b) pass such other and further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY



**(E.C. AGRAWALA)**  
ADVOCATE FOR THE PETITIONER

FILED ON: 22.04.2021  
NEW DELHI