

W.P.Nos.10486, 10812, 11644, 11653 and 11674 of 2021
and W.P.No.12184 of 2020

THE HON'BLE CHIEF JUSTICE
and
SENTHILKUMAR RAMAMOORTHY, J.

(Order of the Court was made by *the Hon'ble Chief Justice*)

Pursuant to the directions issued earlier, Dr.J.Radhakrishnan, Principal Secretary to Government, Health and Family Welfare Department, and Dr.P.Umanath, Managing Director, Tamil Nadu Medical Services Corporation, have appeared in person on the virtual mode to brief the Court as to the steps taken, measures put in place and the further requirements in dealing with the pandemic and the increasing number of cases.

2. The principal area of concern appears to be the supply of oxygen. According to the State officials, Tamil Nadu has a production capacity of about 400 MT per day. In addition, the south-western districts would be served by a Palakkad unit which would supply about 40 MT of oxygen per day. Against the daily requirement now of about

450 MT per day, the Central allocation made last week was to the extent of 280 MT.

3. According to the officials attending the hearing, a meeting was held on Sunday, May 2, 2021, attended by officials from the States of Andhra Pradesh, Telangana and Tamil Nadu, Central Government representatives, manufacturers and others, at which a consensus was arrived at to ensure that 475 MT of oxygen was released to Tamil Nadu on a daily basis. The officials lament that notwithstanding such meeting having been concluded on May 2, 2021, no allocation order qua this State has been issued till date. The officials say that on May 5, 2021 an allocation order was issued, but the same did not include the State of Tamil Nadu.

4. Indeed, it is the further submission of the appearing State officials that at Sunday's meeting, Tamil Nadu agreed to allow at least 25 MT of oxygen to be supplied by a plant in Sriperumbudur to Andhra Pradesh or Telangana in lieu of the supply from Palakkad, Kerala of 40 MT per day being retained for some of the southern and western districts of Tamil Nadu. However, in the subsequent allocation order

that was issued by the empowered committee put in place by the Central Government, not only did Tamil Nadu not figure, but the Sriperumbudur allocation to Andhra Pradesh or Telangana has been recognised therein, but the Palakkad supply to southern and western districts of Tamil Nadu finds no mention. The officials say that it is a critical situation and the reserves have been used up to the extent that there may be a further day's reserve, but there may not be oxygen to supply in adequate quantity on Saturday.

5. Learned Additional Solicitor-General, participating at the hearing, has taken note.

6. In the present state, no directions may be issued, but only an appeal may be made so that there is a broadly equitable distribution of the available resources. No Court of a State or no State can demand all the facilities for itself to the exclusion of others; but there has to be an equitable distribution, reckoning the production capacity in a particular State and the position should not be altered to the detriment of a State, particularly since Tamil Nadu has a production capacity of about 400 MT per day, which with some additional supply may suffice

for its needs. The Union and the empowered committee should take immediate steps in such regard to ensure adequate supply of oxygen to the State of Tamil Nadu to meet the needs. This must be ensured by tomorrow, so that the emergency that the officials speak of – of the reserves supply running out by Saturday – does not happen. It is critical and it requires the attention of the highest offices so that lives are not lost for want of oxygen. The Sterlite unit at Thoothukudi is unlikely to produce oxygen till next week.

7. In addition, it has been noticed that the Defence Research and Development Organisation has installed oxygen generating machines in some hospitals elsewhere at extremely short notice and at costs which are affordable. The State and the Union should facilitate the setting up of such units, if feasible, in this State, particularly in the larger cities, including Chennai, Coimbatore and Madurai.

8. On available beds, the State appears to be doing well, though 95% of the beds having oxygen supply remain occupied. According to the officials, roughly 70% of the overall bed capacity is occupied; but a large proportion of the available beds do not have oxygen supply. The

officials have, however, indicated that measures have been initiated to augment bed capacity, including oxygenated bed capacity and that such augmented bed capacity would be available shortly.

9. On the drug Remdesivir, it is submitted that the allocated quantity for the State since April, 2021 is 1.35 lakh units against the order placed of 2.5 lakh units. The officials say that about 24,000 units have been distributed from the Kilpauk centre upon appropriate documents being produced. Measures are being taken, including at the behest of the Government that is to take charge from tomorrow, to set up centres in other major cities, including Madurai and Coimbatore for release of Remdesivir directly to private hospitals or patient parties.

10. There is another important drug, Tocilizumab, which is used only for critical patients. At present, 315 vials of such drug have been made available to the State, of which 20 have been supplied to private hospitals upon appropriate checking of the details furnished.

11. In respect of vaccination, the State says that the Centre has indicated two vendors from whom vaccines can be obtained. The

State's allocation at present is 10.3 lakh units, out of which 7.65 lakh is to be supplied by one of the vendor and 2.65 lakh units by the other. The vendors, apparently, demanded prior payment and payment for all of the 10.3 lakh units has been made on May 4, 2021 for the State to immediately receive the vaccines and start the universal adult inoculation programme. The Centre and the vendors are requested to ensure prompt supply so that preventive measures may be taken at the earliest to stop the proliferation of cases and the possible third wave that is being talked of.

12. On the other fronts, the appearing officials say that an inquiry has been directed to be conducted into the Chengalpattu incident, where at least 12 patients died yesterday. An indication has been given as to what happened, but it is better to wait for the report.

13. There must be constant coordination, and the District Collectors may be given additional responsibility in such regard, leaving their revenue and other duties to others, to monitor and coordinate the measures taken, facilities available, including the supply and distribution of oxygen and the like.

14. As to the black-marketing of drugs, certain measures have been taken as indicated by the officials. There must be strict control in such regard and absolutely no let-up.

15. It is recorded that in addition to the submission made on behalf of the State by the aforesaid officials, a status report has also been filed.

16. A status report has been filed by the Director of Health and Family Welfare Services, Puducherry, in respect of the facilities available, the measures put in place and the situation prevailing in the Union Territory. According to such report, there are adequate beds and there is sufficient supply of oxygen, since the production capacity is in excess of 80 MT and the daily requirement is about 20 MT. Measures must be taken in advance so that even if the daily requirement is larger in the near future, there is no dearth of oxygen over the next week or so.

17. However, a discordant note is struck on behalf of the

Puducherry residents to the effect that the website run by the Union Territory does not indicate available beds or beds with oxygen supply and ordinary citizens have to run from pillar to post for treatment. It is hoped that information as to availability of beds would be made known through the website or other media on a real-time basis, so that there is no further confusion.

18. Both the State of Tamil Nadu and the Union Territory of Puducherry have indicated that additional measures have been taken such that even though a formal lockdown may not have been clamped, many restrictions have been put in place, including in the running of the suburban trains and the like, to ensure that over the next two weeks or so the contact may be less and the spread of the virus at an alarming rate may be arrested.

19. Several suggestions have been made on behalf of the petitioners who have filed petitions, imploring the Court to direct certain measures to be put in place. Copies of these petitions have been served and some of the suggestions that may be found to be appropriate may be adopted. One of the acceptable suggestions is to

immediately rejuvenate two vaccine centres for production of vaccines, which may not only supply to Tamil Nadu, but also to the neighbouring States. However, it is not necessary to impose conditions on beleaguered officials and administration at this stage and to allow them to function as freely as possible and without directions of Court confusing matters. It is only an appeal that the citizens' needs be met and for such purpose whatever is in the power of the authorities may be done to prevent further suffering.

20. The matter will next appear on May 12, 2021 at 2.15 pm, if not required by any other untoward circumstances earlier. It is hoped that all stakeholders would put their heads together to ensure the proper supply of the facilities and amenities, particularly oxygen at the earliest.

सत्यमेव जयते (S.B., CJ.) (S.K.R., J.)
06.05.2021

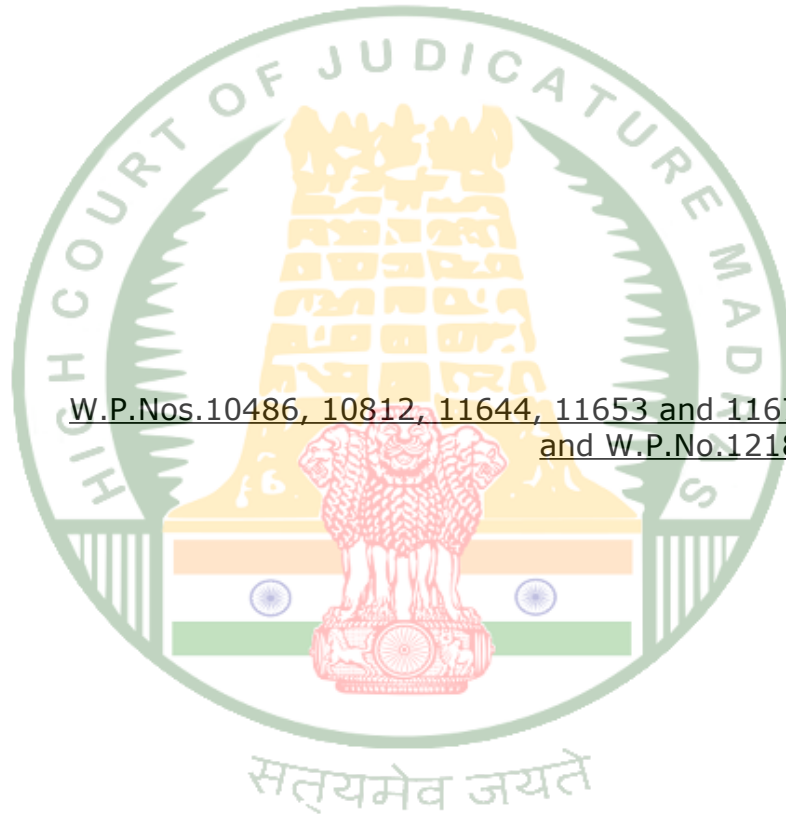
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