



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Special Original Jurisdiction)

Thursday, the Sixth day of May Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice M.S.RAMESH

and

The Hon`ble Mr.Justice B.PUGALENDHI

WP(MD) No.9119 of 2021

A.VERONICA MARY

... PETITIONER

Vs

1 UNION OF INDIA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT,
MINISTRY OF HEALTH AND FAMILY WELFARE,
UNION OF INDIA, NEW DELHI.
Pstohfm@gov.in

2 UNION OF INDIA,
REPRESENTED BY THE PRINCIPAL SECRETARY,
MINISTRY OF HEAVY INDUSTRIES AND PUBLIC ENTERPRISES ROOM,
GOVERNMENT OF INDIA,
ROOM NO.176, UDYOG BHAWAN, NEW DELHI.

3 STATE OF TAMIL NADU,
REPRESENTED BY THE PRINCIPAL SECRETARY,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
STATE OF TAMILNADU, FORT ST. GEORGE, CHENNAI 600 009
hfsec@tn.gov.in

4 BHARAT HEAVY ELECTRICALS LIMITED,
REPRESENTD BY, THE CHAIRMAN AND MANAGING DIRECTOR,
BHARAT HEAVY ELECTRICALS LIMITED,
CORPORATE OFFICE, BHEL HOUSE,
SIRI FORT, NEW DELHI -110 049
cmd[at]bhel[dot]in

5 THE DGM/ OPERATION,
PLANNING AND CONTROL,
SEAMLESS STEEL TUBE PLANT
BHARAT HEAVY ELECTRICALS LTD.
TIRUCHIRAPPALLI -620 014.



6 THE CHAIRMAN,
HLL BIOTECH LIMITED, WWW.LIVELAW.IN
SURVEY NO.192 & 195,
MELERIPAKKAM (POST), THIRUMANI VILLAGE,
THIRUKAZHUKUNDRAM, CHENGALPATTU,
KANCHIPURAM DISTRICT, PINCODE 603 003.
info@hllbiotech.com

... RESPONDENTS

Writ petition filed under Section 226 of Constitution of India praying this Court to issue a writ of Mandamus to direct the Respondent No.2 and 4 to immediately undertake the maintenance procedures for the oxygen plants situated in Respondent No.5 campus and to undertake the production of oxygen in an expedite manner in the campus of Respondent No.5 consequently to direct the Respondent No.1 to give approval for the Covid Vaccine production in 'Respondent No.6 Integrated Vaccine Complex' and to provide all the infrastructures in the Respondent No.6 Integrated vaccine complex in an expedite manner within the time stipulated by this Hon'ble Court.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.ALAGUMANI.R, Advocate for the petitioner and of Mrs.L.Victoria Gowri, Assistant Solicitor General for Respondent Nos.1, 2 & 5 and of Mrs.S.Srimathy, Special Government Pleader for 3rd Respondent the court made the following order:-

[Order of the Court was made by B.PUGALENDHI, J.]

The petitioner, claiming to be a public spirited citizen said to have filed several public interest litigations before this Court, has filed the present public interest litigation for a mandamus,

- to direct the respondents 2 to 4 to undertake the maintenance procedures for the Oxygen plant in Bharat Heavy Electricals Ltd., Trichy / 5th respondent herein; and

- to direct the 1st respondent to give approval for the COVID vaccine production in the 6th respondent Integrated Vaccine Complex, namely, HLL Biotech Ltd, Chengalpattu.

2. The case of the petitioner is that the 5th respondent / Bharat Heavy Electricals Ltd. [BHEL], Trichy, is having the facility of Oxygen production with three Oxygen plants, having capacity of 140 metric cube per hour, but, those plants are shut down since 2003. According to him, those units can be revived in order to meet the demand of Oxygen for the COVID patients.



3. Mr.R.Alagumani, learned Counsel for the petitioner, by referring to a letter written by Thiru.Tiruchi Siva, Member of Parliament, dated 26.04.2021, addressed to the Hon'ble Minister of Heavy Industries & Public Enterprises Room, Government of India, submitted that the MHD Centre at BHEL unit, Trichy, is equipped with three Oxygen plants, each with a production capacity of 140 metric cube per hour and the same can be brought back to operation within 15 to 20 days, if certain maintenance procedures are carried out. The learned Counsel has also referred to about the alleged recent deaths of COVID patients due to shortage of Oxygen in Chengalpattu and in various parts of the Country.

4. Learned Counsel further submitted that a dedicated Integrated Vaccine Complex (IVC) has been established at Chengalpattu in the year 2012, with international standards, which is having the capacity to produce 585 million doses, per year. Though the Government is having its own establishment, the same has not been utilized in order to facilitate the Private Vaccine enterprises. He further submitted that several Members of Parliament have made requests for utilizing the Integrated Vaccines Complex (IVC) in view of the present day COVID situation, for cost effective vaccines and to minimize the demand and supply gap. However, the same has not been utilized even during this pandemic period. He has also relied upon the information, which the petitioner has received from HLL Biotech Limited (HBL) - Integrated Vaccine Complex (IVC), Chengalpattu, under the Right to Information Act, dated 27.04.2020, wherein, the Public Information Officer, HBL, has informed that a revised detailed project report has been submitted for vaccine production and it is under consideration by the Ministry of Health and Family Welfare. For yet another question regarding the details of production of vaccine in the IVC, it is answered that HBL is yet to start the manufacturing activities. Therefore, the learned Counsel prays for appropriate directions.

5. Notice to the respondents returnable by **19.05.2021**. Private notice is also permitted.

6. Mrs.L.Victoria Gowri, learned Assistant Solicitor General of India takes notice on behalf of respondents 1, 2 & 5 / Central Government. Mrs.S.Srimathy, learned Special Government Pleader takes notice on behalf of the third respondent / State Government.

7. Two issues have been raised by the petitioner in this writ petition. One is with regard to utilizing the Oxygen plants available in BHEL, Trichy, for production of Oxygen to meet the present distress situation. Another one is with regard to utilizing the services of Integrated Vaccines Complex (IVC), Chengalpattu, for production of vaccines.



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8. HLL Biotech Ltd (HBL) is a Government of India Enterprise under the Ministry of Health and Family Welfare. On the directions of the Government, a dedicated state-of-art vaccine manufacturing unit, namely, Integrated Vaccine Complex (IVC) at Thirukalukundram, Chengalpattu was established to produce life saving and cost effective vaccines primarily to minimize the demand-supply gap and to support the Government in the Universal Immunization program. This complex came into existence on 12.03.2012, on a proposal moved by the Ministry of Health and Family Welfare, for establishing a centralized vaccine manufacturing facility with international standards, at an estimated cost of Rs.594/- Crores and it was, in fact, declared as a "Project of National Importance". But, the reply provided under the Right to Information Act, dated 27.04.2020, reveals that the said complex is yet to start the manufacturing activities. Literally speaking, a complex, which is declared as Project of National Importance and established with an estimated cost of around Rs.594/- Crores, is lying idle for the past nine years, since 2012.

9. India is one of the pioneers in the production of vaccine, before COVID and the World's largest exporter of vaccines. Now, only two private Indian vaccine manufacturers are in the field of producing vaccines for COVID, namely, Serum Institute of India (SII) and Bharat Biotech. On a query posed by this Court, it was informed across the Bar that apart from King Institute of Preventive Medicine & Research, Guindy, Tamil Nadu, there are several public sector undertakings in the field of production of vaccines, namely, Central Research Institute (CRI), Himachal Pradesh; BCG Vaccine Laboratory (BCGVL), Tamil Nadu; Pasteur Institute of India (PII), Tamil Nadu; HLL Biotech - Integrated Vaccine Complex (IVC), Tamil Nadu; Bharat Immunologicals and Biologicals Corporation Limited, Uttar Pradesh; Haffkine Bio-Pharmaceutical Corporation Limited, Maharashtra; and Human Biologicals Institute, Telangana.

10. It is also represented that the manufacturing licenses of four units, namely, Pasteur Institute of India in Tamil Nadu, Haffkine Bio-Pharmaceutical Corporation in Mumbai, BCG Vaccines in Tamil Nadu and Central Research Institute (CRI) in Himachal Pradesh have been cancelled for not adhering to the good manufacturing practise (GMP) standards. Though the veracity of this representation is not known, one thing is clear that at present, the Government is procuring COVID vaccines, namely, COVAXIN from Bharat Biotech and COVISHIELD from Serum Institute of India, which are private enterprises, meaning thereby, the vaccines manufacturing institutes owned by the Government are not at all utilized. Of course, the vaccine COVAXIN, being developed by Bharat Biotech, is a product of publicly funded research in India. It is based on the SARS-CoV-2 strain, which was isolated in the National Institute of Virology, Pune - an institute under the Indian Council for Medical Research.



11. As on date, Serum Institute of India (COVISHIELD) has quoted Rs.150/- per dose for the Central Government and Rs.300/- per dose for the State Governments and Bharat Biotech (COVAXIN) has quoted Rs.150/- per dose for the Central Government and Rs.600/- per dose for the State Governments. The population of our Country is approximately 136 Crores and on a simple calculation for procurement of the vaccines to cover all the citizens, the Government has to spend large sums of money. This Court is not finding fault with the Government's action in procuring the vaccines from private enterprises or the deliberations with regard to the fixation of price, but, our anguish is that when the Government itself is having the vaccines manufacturing institutes, such institutes [dying public sector undertakings] may be revived and they may be put into effective use, so that the Government may be in a position to cover all the citizens, besides will not be in a position to bargain with the private institutes at this difficult time.

12. In view of the foregoing discussions, this Court raises the following queries to be answered by the respondents:

i) Whether Bharat Heavy Electricals Ltd. [BHEL], Trichy, is having the facility for production of Oxygen with three Oxygen plants, having capacity of 140 metric cube per hour, as claimed by the petitioner?

ii) What are the steps taken by the Government of India pursuant to the letter said to be written by the Member of Parliament (referred supra), dated 26.04.2021?

iii) When the Government of India has supported the reopening of M/s.Vedanta Ltd. (Sterlite Corporations), Tuticorin, for the purpose of production of Oxygen to meet out the exigency, what are all the steps taken by the Government to work out the possibility of production of Oxygen from BHEL, Trichy?

iv) How many Government owned Vaccines Manufacturing Institutes are available in India and the details thereof, including their date of commencement of operation, production capacity and the present status of such Institutes?

v) When was the Integrated Vaccines Complex [IVC], Chengalpattu established, what is the production capacity and the present status?

vi) If the vaccine, COVAXIN, is developed by Bharat Biotech, with the assistance of Indian Council for Medical Research [ICMR] - National Institute of Virology [NIV], why these vaccines are developed only at a private institute, instead of utilizing the services of the existing Government Vaccine Manufacturing Institutes?

vii) The details as to the amount incurred by the Government of India for procuring the vaccines, including COVID vaccine, per year, for the past five years?

viii) When the Government of India is spending huge amount for procuring the vaccines from the private enterprises, what are the steps taken by the Government to revive the existing Vaccine Institutes owned by them?



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13. Post the matter on **19.05.2021**, for the response affidavit of the respondents.

sd/-
06/05/2021

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/ /2021

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

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ORDER IN
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TR/VR(06.05.2021) 6P 6C

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