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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C).3031/2020 and CM APPL.12106/2020, 12780/2020

RAKESH MALHOTRA Petitioner

Through: Petitioner in person.

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
AND ORS. Respondents

Through: Mr. Satyakam, ASC for GNCTD.
Mrs. Maninder Acharya, ASG with
Mr. Anurag Ahluwalia, CGSC, Mr.
Abhigyan Siddhant and Mr. Viplav
Acharya, Advocates for
ICMR/respondent No.3.
Mr. Ashish Mohan, Mr. Rohit K.
Aggarwal, Ms. Gunjan Sinha Jain,
Advocates for Sir Ganga Ram
Hospital.
Mr. Sidharth Luthra, Senior
Advocate with Mr. Arjun Dewan
and Ms. Aayushi Sharma
Khazanchi, Advocates for Dr.
Dang Labs LLP.
Mr. H.S. Chandhoke and Ms.
Mumtaz Bhalla, Advocates for Dr.
Lal Path Labs Ltd.
Mr. L.K. Bhushan, Ms. Aditi
Awasthy, Advocates for Dr. B.L.
Kapur Memorial Hospital in
CM.No.12106/2020 with applicant
in person.
Mr. Neeraj Yadav, Advocate for
HCMCT Hospital.
Ms. Pratishtha Vij, Advocate for
Sterling Accuris Diagnostic.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER
18.06.2020

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HEARD THROUGH VIDEO CONFERENCING

CM APPL. 12780/2020 (by the petitioner for permission to file amended memo of parties)

1. For the reasons stated in the application, the same is allowed. ICMR is permitted to be impleaded as a co-respondent. The petitioner shall file the amended memo of parties within one week.
2. The application is disposed of.

CM APPL. No.12106/2020 (by the petitioner for directions)

1. On 11th June, 2020, we had taken into consideration the Status Report filed by the Delhi Government wherein it was stated that the combined capacity for undertaking COVID-19 tests both, in the public sector and the private sector was 8600 per day. Further, in view of the submission made by the petitioner that the Delhi Government had disallowed six laboratories from undertaking COVID-19 tests, to satisfy ourselves as to whether testing was being ramped up or not, it was deemed appropriate to issue notice to all the 23 private laboratories mentioned in para 7 of its affidavit for them to state whether they are being permitted to undertake tests for suspected COVID-19 cases by adopting the RT-PCR test or the CB-NAAT test. The private laboratories were also directed to point out if any difficulties were being faced by them on account of bureaucratic red-tapism.
2. Pursuant to the aforesaid order, out of 23 private laboratories, 12 laboratories have filed their affidavits. Some of them have pointed out the

difficulties that are being faced by them. Their affidavits have been distilled by the petitioner and the problems faced have been highlighted as a part of the counter filed to the Status Report of the respondent No.1/GNCTD.

3. One of the prominent issues that have been flagged by the private laboratories is that they are being made to undertake a cumbersome process of contemporaneously uploading patient registration forms on the RT-PCR App, the COVID App, the ICMR Portal and the Integrated Disease Surveillance Portal linked to the office of Chief Minister, Delhi Government. They have stated that all this requires engaging several Data Entry operators so that the information can be provided to multiple government agencies on a daily basis, thereby wasting valuable time and diverting their energies from the testing process. The suggestion made is that the process of furnishing the data be simplified and a Single point agency be designated for all the private laboratories to furnish the requisite information for it to be shared with all the other government agencies.

4. The second grievance raised is that the private laboratories are being told to define patient categories through the Phlebotomists who are required to go on site to collect the samples, when they are not equipped/trained for the said purpose. It is pointed out that the process of collecting the sample takes about half an hour as the said procedure entails the following steps:-

- (i) The Phlebotomists visits the premises of the suspected patient.
- (ii) He is required to generate a number for filling up SRF form.
- (iii) The details of the patient are fed in on the spot, including the patient's symptoms.
- (iv) The remaining fields in the SRM form are also required to be filled in on the spot.

5. It is stated by Mr. Sidharth Luthra, Senior Advocate appearing for Dr. Dang Labs that in this duration, though he is wearing a PPE kit, the Phlebotomist is likely to be exposed to infection, which itself carries a serious risk. Even the mobile phone used by the Phlebotomist is prone to be infected, creating a situation of cross infection.

6. The third issue highlighted by the private laboratories is that for being authorized to collect samples, all the Phlebotomists are required to be registered in the given Districts by applying to the District Magistrate/District Commissioner and there is a duplication in the said process thereby hindering the work of collecting the samples and curtailing the number of Phlebotomists who would otherwise be available to collect the samples. Non-registration of the Phlebotomists also results in his inability to operate the RT-PCR App. thus, reducing the testing capacity.

7. The fourth difficulty expressed by the private laboratories relates to the insistence on the part of NABL that even those private laboratories that are already accredited by it, must seek re-accreditation for undertaking the COVID-19 test which it is stated, is not required in the current emergent situation where the entire focus of the private laboratories ought to be on undertaking maximum tests and submitting timely reports. In any case authorization in this regard is to be given by the ICMR.

8. A fifth aspect highlighted by the private laboratories is that some of the symptoms of COVID-19 like loss of smell and taste do not find mention in the advisory for testing or in the forms that are required to be filled up by the Phlebotomist, leading to some confusion. This aspect would need a response from the ICMR.

9. The sixth suggestion made is that the Delhi Government be called upon to make available locations where the private laboratories can set up their testing facilities for collecting the samples so that that time spent on sending Phlebotomists to the residence of the suspected cases, can be saved. Instead, persons wanting to undergo the test can go to the temporary facility, closest to their home. The suggestion made is that a viable location be identified by the Delhi Government for the said purpose.

10. The seventh suggestion is that the number of the testing kits vendors identified by the Delhi Government, may be increased in proportion to the tests required to be undertaken. It is submitted that Delhi Government be requested to have an interface with the vendors who sell the testing kits approved by the ICMR for the COVID-19 test so that upfront 100% payment is not demanded and a reasonable time given to the private laboratories to make the payment, as a large number of testing kits are required to be procured to cater to the current need of the ramping up of the testing. It is sought to be explained that when samples are sent by the government to the private labs, it takes some time for the payments to be released but they are expected to pay the vendors upfront.

11. Mr. Satyakam, learned Additional Standing Counsel, GNCTD states that he has e-mailed a Status Report only this morning with copies to the other counsel. We are surprised that when the order was passed on 11.06.2020, i.e., a week ago, the Delhi Government has woken up and forwarded the Status Report to its counsel only this morning and he has in turn, mailed it to the Court Master in the course of the hearing.

12. As per the Status Report of the Delhi Government, the number of public laboratories equipped to undertake COVID-19 tests have been increased from 17 to 18 and for the private laboratories, from 23 to 25 in number. Public and

private sector laboratories have now been ramped up to collectively undertake 10,700 tests per day, as against the previous capacity of 8,600 tests per day. Besides, as recommended by the ICMR, on 14.06.2020, Delhi is going to undertake Point of care rapid antigen detection test that will quickly augment testing capacity in various containment zones and health facilities.

13. We have enquired from the learned ASC as to the number of tests that are actually undertaken on a daily basis, as against the capacity of 10,700 tests per day, mentioned in the affidavit. He states that he does not have the exact figure. As per the updation on the website of Delhi Government, testing on a daily basis is not more than 7000, which means that the available capacity of 3700 is not being utilized, which is most unacceptable. The conclusion is that the testing facilities of the private laboratories are not being used to their optimum capacity, though they have not expressed any hesitation in ramping up the number of testing.

14. We have also enquired from Mr. Satyakam, learned ASC as to whether the rate charged for the COVID-19 test which is presently pegged at Rs.4500/-, has been further reduced. He states that as he is speaking, a meeting has taken place between the Lieutenant Governor, Delhi and the Chief Minister, Delhi and the decision taken shall be made public soon.

15. We are further informed that under the directions of the Lieutenant Governor, Delhi, a Committee has been constituted on 12.06.2020, to advise the DDMA on various aspects of COVID-19, comprising of several experts including Mr. Krishna Vatsa and Mr. Kamal Kishore, Members of the National Disaster Management Authority, Mr. Balram Bhargav, Director General, ICRMR, Dr. Randeep Guleria, Director, AIIMS, Dr. Ravindran, Additional

DDG, Directorate General of Health Services and Dr. Sujit Kumar Singh, Director, NCDC.

16. We are of the opinion that many of the issues highlighted above, can be resolved by the said Committee particularly, those relating to duplication of data which is resulting in loss of valuable time for private laboratories, better spent on collecting samples and giving timely reports. All the issues highlighted above must be addressed at the earliest.

17. It is, therefore, deemed appropriate to direct the Delhi Government to forward a copy of this order to the Chairperson of the aforesaid Committee today itself for it to examine and address the issues raised by the private laboratories. In view of the urgency in the matter and being mindful of the fact that the number of COVID-19 cases in Delhi have shot up to 47,102, as of yesterday, it is imperative that the Committee takes an emergent decision and communicates the same to the court, through the Delhi Government well before the next date.

18. The Delhi Government will not only place on record the decision taken by the Committee, as directed hereinabove, it shall also file an additional affidavit as certain material aspects have not been dealt with in the Status Report filed electronically today. Needful shall be done on or before 20.6.2020 with copies to the other counsel. A senior officer shall be deputed on the next date to assist the learned ASC with all the relevant documents.

19. We find that the ICMR has not filed an affidavit in terms of our last order. An affidavit shall be filed by the ICMR within two days with advance copies to the remaining counsel.

20. As Mr. Anurag Ahluwalia, CGSC is present and is being led by Ms. Acharya, learned ASG, it is deemed appropriate to direct the learned counsel to

appear for and obtain instructions from the NABL in respect of the new procedure that they have decided to adopt for re-accreditation of private laboratories to undertake the COVID-19 test. A separate affidavit shall be filed by the NABL on or before 20.2.2020.

21. List on 22.6.2020, at the end of the Board.

HIMA KOHLI, J.

SUBRAMONIUM PRASAD, J.

JUNE 18, 2020

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