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

\+ W.P.(C) 3031/2020

RAKESH MALHOTRA ..... Petitioner

Through: In person.

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI & ORS. .... Respondents

Through : Mr. Satyakam, ASC for R-1/GNCTD with Dr. Nutan Mundeja, DGHS, GNCTD.
Mr. Chetan Sharma, ASG and Mr. Anurag Ahluwali, CGSC with Mr. Abhigyan Siddhant, Mr. Sahaj Garg, Mr. Amit Gupta and Mr. RV Prabhat for Union of India & ICMR.
Mr. Chinmoy Pradip Sharma, Advocate with Mr. Kush Sharma, applicant in person in C.M. No. 22815/2020

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

O R D E R

% **16.09.2020**

HEARD THROUGH VIDEO CONFERENCING

C.M. No. 22816/2020 (Exemption)

Allowed, subject to all just exceptions.

C.M. No. 22815/2020 (under Order I Rule 10 of CPC for intervention/impleadment)

1 Mr. Chinmoy Pradip Sharma, learned counsel for the applicant states that he may be permitted to withdraw the present application, while reserving the right of the applicant to file an independent petition which is in

the nature of a Public Interest Litigation raising all the issues raised in the present application.

2 Leave, as prayed for, is granted.

3 The application is disposed of.

CM No. 12106/2020 (for directions)

1 A fresh Status Report has been filed by Dr. Mundeja, Director General Health Services, Directorate of Health Service, Government of NCT of Delhi stating *inter alia* that pursuant to the order dated 08.09.2020 whereunder it was directed that self testing through RT-PCR be permitted for residents of Delhi without any prescription from a Doctor by filing up of the form prescribed by the ICMR accompanied by the Aadhar Card, Delhi Government had issued an Office Order on the very next date, i.e., on 09.09.2020 dispensing with the requirement of a doctor's prescription for COVID-19 testing copy whereof has been enclosed with the Status Report. On perusing the Office Order dated 09.09.2020, we notice that a condition has been imposed by the Delhi Government in the second para, which this court had not imposed while passing the order on 8.9.2020. The second para of the aforesaid Office Order reads as follows :

> *"However, tests will be conducted in accordance with the strategy/advisory issued by the Indian Council of Medical Research and as per the orders issued by Govt. of NCT of Delhi from time to time."*

2. A specific direction was issued to the Delhi Government to dispense with any prescription from the doctor for undergoing self-testing for COVID-19. The second para of the Office Order dated 09.09.2020, runs

contrary to the said order and is directed to be deleted. A fresh order shall be issued by the Delhi Government strictly in compliance with the order passed on 08.09.2020.

3 As regards availability of mobile facilities in Delhi, it is stated that the Delhi Government has constituted 79 mobile teams active in 11 districts. A tabulated chart relating to the number of mobile teams in each district has been enclosed as Annexure B to the Status Report.

4 Coming to mapping of locations of various testing facilities in Delhi for easy access of people who may need testing to be done at prominent places including entry and exit points of Metro Stations, it has been stated that Delhi Government has appointed Geospatial Delhi Limited to undertake mapping of fixed site testing facilities for COVID-19 and the said map shall be shared by Geospatial Delhi Limited with the Delhi Government in a few days.

5 On inquiring from Dr. Mundeja as to how many Mohalla clinics have been set up in Delhi, she states that there 435 Mohalla clinics out of which 400 are presently functional and about 50-60 of the said Mohalla clinics have been conducting COVID-19 tests after OPD consultation is over. We are of the opinion that not only Mohalla clinics, even Community Centres situated in residential colonies should be roped in for setting up facilities for COVID-19 testing particularly when the number of cases are shooting up on a daily basis. As of yesterday, 4473 fresh COVID-19 cases have been detected in Delhi. Delhi Government shall ensure that while getting the mapping done, the density of the population in a particular District and the number of Containment zones in a District are taken into consideration and wherever there is quite a distance between the facilities presently set up for

testing purposes, the dots shall be connected with the intervention of Mohalla clinics and Community Centres of the area. Necessary compliances in this regard shall be made at the earliest. Requisite number of Mohalla clinics and Community Centres shall be identified in each District and included in the mapping being undertaken by Geospatial Delhi Limited. A copy of the map finally prepared shall be placed on record along with the next Status Report.

6 The report of Sero Surveillance-3 has not been placed on record. Mr. Satyakam, learned ASC states that the results are still being compiled and more time will be required to finalise the report. It has been noticed that on the previous occasions too, such a submission was made on behalf of the Delhi Government and we had accommodated learned ASC only to find that the Sero Surveillance report was made public on the very next date. Till the said report is finalized and the analysis of the sero surveillance-3 *vis-a-vis* the previous two Sero Surveillances is placed on record, the same shall not be declared.

7 Coming next to the number of tests undertaken by the Delhi Government between 08.09.2020 to 15.09.2020, the records reveals that 43438 RAT tests were conducted on 08.09.2020 which figure had shot up to 51318 as on 15.09.2020 whereas 11087 RT-PCR and similar tests were conducted on 08.09.2020 and the said number has remained in the same range till 15.9.2020 with only one exception on 13.9.2020, when testing through RT-PCR had increased to 14078. As on date, the data of the week commencing on 08.9.2020 and ending on 15.9.2020, shows that testing through RT-PCR is less than 1/4th of the total testing conducted in Delhi.

8 Having regard to the fact that the results of the tests conducted through RAT are accurate only to the extent of 60% thus leaving a great doubt about infection being carried by those persons who are asymptomatic, we are of the firm view that RT-PCR should be the way forward. For this, in our opinion, Delhi Govt. ought to focus on shoring up the capacity of testing through RT-PCR, so that testing through RT-PCR is scaled up substantially. Only on enhancing the testing capacity can more persons be tested through RT-PCR. Since an Expert Committee has been constituted by the Lt. Governor, GNCTD, the said Committee is requested to convene a meeting on priority to consider the extent to which capacity building for RT-PCR testing is required in the current scenario. The Committee shall also identify the areas of focus in Delhi for conducting testing through RT-PCR. The report of the Expert Committee shall be filed along with the Status Report to be filed by the Delhi Govt. before the next date of hearing.

9. A copy of this order shall be placed before the Chief Secretary, Delhi Government for perusal and compliance of the directions issued in para 8 above.

10. List on 30.9.2020.

HIMA KOHLI, J

SUBRAMONIUM PRASAD, J

SEPTEMBER 16, 2020
AP/A