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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
Mr. Chetan Sharma, ASG with Mr. Anurag
Ahluwalia, CGSC, Mr. Abhigyan Siddhant and
Mr. Amit Gupta, Advocates for MoHFW, ICMR
NABL and NCDC with Dr. Nivedita, ICMR and
Dr. Sujeet Kumar Singh, Director, NCDC.
Mr. Sanjeev Sharma, Advocate (applicant in
person) in C.M. No. 12106/2020

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

ORDER
% **16.07.2020**

HEARD THROUGH VIDEO CONFERENCING

C.M. No. 12106/2020 (by the applicant for directions)

1. The ICMR has filed an affidavit in terms of the order dated 02.7.2020 stating *inter alia* that in terms of the additional advisory dated 23.6.2020 issued by the ICMR, all hospitals and laboratories and State Governments

intending to perform Rapid Point of Care (POC) Antigen Detection Test must be registered with the ICMR to enable them to obtain the log in credentials for data entry. It is further stated that as on 14.7.2020, till 01.30PM, the ICMR had received applications from 60 private hospitals in Delhi, of which 28 applications have been approved for conducting the RAT test and 6 of the applicants were previously granted approvals for conducting the RT PCR tests. It has also been clarified that approval granted for conducting RT PCR test automatically applies for conducting the RAT test. In all, a total of 34 laboratories have been approved by the ICMR in Delhi for conducting the RAT test and 26 applications are still pending on account of procedural formalities required to be completed by the applicants.

2. On enquiring from Mr. Chetan Sharma, learned ASG appearing for the ICMR as to how much time has been granted by the ICMR to the remaining 26 applicants for completing the procedural formalities, he states that they have been given a window of one month for this. Considering the fact that as on 15.7.2020, there are total 1,16,993 cases of COVID-19 infection in Delhi out of which 17,807 are active cases and there are 653 containment zones as of today, in our opinion the window of one month given by the ICMR for the applicants to complete the procedural formalities, is too long. As we have been told that the laboratories have to approach the NABL for it to conduct an inspection before completing the requisite formalities, it is deemed appropriate to direct the NABL to hasten the inspection, so that the applicants can complete the formalities required by the ICMR at the earliest. Since Mr. Anurag Ahluwalia, learned CGSC had appeared for the NABL on an earlier date, he shall ensure that the directions passed above are communicated to the NABL and an affidavit filed. ICMR

shall also clarify its stand with regard to the timeline granted to the applicants/private hospitals in Delhi for completing the requisite formalities for being granted approval for conducting the RAT tests.

3. Coming next to the affidavit of the National Centre for Disease Control (in short 'NCDC') filed by Dr. Sujeet Kumar Singh, Director, NCDC the same states that the Anti Body Detection test is utilized during Sero-survey Studies to assess the prevalence of infection at the community level and its primarily used for evidence based public health response. It is further stated that the Sero-surveillance Study by the NCDC is under way and it will take one more week to declare the preliminary results.

4. While taking on record the affidavit of the NCDC, the Centre is directed to file a fresh affidavit before the next date of hearing, placing on record its preliminary results relating to the Sero-Surveillance Study.

5. The respondent No.1/GNCTD has filed an affidavit stating *inter alia* that the number of RAT tests undertaken in Delhi since 18.6.2020 till 15.7.2020, have been enclosed at Annexure-B, which reflects that 2,81,555 RAT tests were conducted and 19,480 persons were found to be COVID positive. The follow up of the RT PCR test was conducted on 1,365 persons, who were found to be positive/symptomatic but had otherwise been declared as COVID negative in the RAT test. Out of aforesaid 1,365 persons, who had undertaken the RT PCR test, 243 persons had turned out to be COVID positive.

6. We have enquired from Mr. Satyakam, learned ASC appearing for the R-1/GNCTD as to why is there such a variation in the figures of the testing done through RT PCR mode when those found positive in the RAT test are to the tune 19,480. Learned counsel seeks to explain that once a person is

tested through the RAT and found to be positive, he or she is then taken to be a COVID true positive patient and no further follow up test through RT PCR is required to be conducted. It is only in the case of those patients, who are found to be symptomatic and turn out to be negative in the RAT test, that they are required to undergo the RT PCR gold standard test. Hence, the variation in the figures.

7. As for the number of tests undertaken by the Delhi Govt. between 11.7.2020 to 14.7.2020, Annexure-A enclosed with the affidavit states as follows:-

COVID 19

Number of Tests Undertaken

A	B	C	D
S. No.	Date	Rapid Antigen Detection Test	RT PCR
1.	11/7/2020	12712	5665
2.	12/7/2020	8311	3668
3.	13/7/2020	15410	5364
4.	14/7/2020	15964	6200

8. Mr. Rakesh Malhotra, the petitioner states that he may be permitted to file an affidavit in response to the previous affidavits and the current affidavit filed by the Delhi Govt. to point out the disparity in the numbers. Needful shall be done within one week.

9. ICMR, NCDC, NABL and Delhi Govt. shall file their respective updated affidavits within one week in terms of the directions issued above.
10. List on 27.7.2020.

HIMA KOHLI, J

SUBRAMONIUM PRASAD, J

JULY 16, 2020

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