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

+ W.P.(C) 3031/2020

RAKESH MALHOTRA Petitioner

In person.

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
INDIA AND ORS Respondent

Through Mr. Satyakam, Additional Standing
Counsel with Dr. Gautam.

Mr. Chetan Sharma, ASG with Mr. Anurag
Ahluwalia, CGSC, Mr. Abhigyan Siddhant, Mr.
Amit Gupta, Advocates for UOI

Dr. Sujeet Singh, Director, NCDC.

Dr. Nivedita Gupta, Scientist F, Epidemiology and
Communicable Diseases, ICMR with Mr. Citnu
Baisya, Legal Advisor.

Mr. Vikas Chopra, Advocate for NABL.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **27.07.2020**

HEARD THROUGH VIDEO CONFERENCING

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

1. Pursuant to the order dated 16.7.2020, affidavits have been filed by the ICMR, NABL, Delhi Government and the NCDC and a reply affidavit has been filed by the petitioner.

2. As per the affidavit filed by the NCDC, it has been stated a study was conducted from 27.6.2020 to 10.7.2020 by collecting 21837 samples from 11 districts of Delhi, as a part of the Seroprevalence studies. The said

samples were tested for gathering information about the past infection due to SARS COV-2 in individuals who tested positive for IgG antibodies. The analysis has revealed that the highest prevalence has been found in Shahdara, Central District and North-East District, whereas the lowest prevalence is in South-West District, followed by South District.

3. Dr. Sujeet Singh, Director, NCDC, who is present in the hearing submits that the aforesaid prevalence of cases goes to indicate that higher the density of population in a district, larger the number of cases of COVID-19 infection. On enquiring from him as to the short-term recommendations made by NCDC to Delhi Government to tackle the infection, Dr. Singh states that the recommendation is to increase the testing through the RT PCR mode for the public rather than the RAT. However, for those who are to be admitted or propose to undergo surgical/non-surgical procedures in Hospitals, the order of testing should be RAT followed by RT PCR with the idea that the RAT results are faster and therefore, the follow up treatment can be expedited.

4. Coming next to the Status Report filed by the Delhi Government, the same states that the total number of cases of COVID-19 detected as on 23.7.2020, are 1,27,364, out of which 14,544 are active cases and 1,09,065 patients have recovered. The rate of testing per million in Delhi as on 24.7.2020, is 47,828. We have enquired from Mr. Satyakam, learned ASC as to the number of Containment zones in Delhi as on date. He informs us that there are 714 Containment zones in Delhi as on 26.7.2020. He further states that as per Annexure –A enclosed with the Status Report, between 15.7.2020 to 23.7.2020, 121950 RAT tests have been conducted in Delhi, 47276 tests have been conducted through RTCPR, 703 tests through CBNAAT and 2405 tests through TrueNat.

5. Considering the fact that the combined capacity of the private sector and public sector laboratories in Delhi is 54 and as per Dr. Gautam, who is present in the hearing on behalf of the GNCTD, approximately 11000 tests through RT PCR can be conducted on a daily basis, we may note that the number of RT PCR tests conducted between 15.7.2020 to 23.7.2020 are below 6000. In other words, almost 50% capacity of the RT PCR tests are not being conducted in Delhi. The focus seems to be mainly on testing through RAT whereas RT PCR is the gold standard test.

6. Dr. Nivedita Gupta, Scientist F, ICMR, who is present in the hearing, seeks to clarify that it was never the stand of the ICMR that the RT PCR test which is considered the gold standard test, be replaced with the RAT. In fact, the advice of the ICMR was that wherever RT PCR test cannot be conducted, RAT be resorted to, but keeping in mind the low sensitivity of the RAT, RT PCR test is particularly recommended for persons who intend to undergo surgical/non-surgical procedures, over and above the RAT test.

7. We have also perused NABL's affidavit where it has been explained at some length that there has been no delay on the part of the NABL in issuing accreditation to laboratories for undertaking the RTPCR test on their completing all the requisite formalities and that there are some deficiencies at the end of the labs relating to management systems that has caused the delay. Mr. Vikas Chopra, learned counsel for the NABL assures the court that all applications that are received by the NABL, shall be processed expeditiously.

8. Mr. Anurag Ahluwalia, learned counsel for the ICMR states that NABL is not required to give any accreditation to laboratories for undertaking the RAT and the State Governments/UTs have been authorised to permit RAT to be conducted in Government and private laboratories.

9. Mr. Malhotra, the petitioner, who appears in person, states that contrary to the Advisories dated 14.6.2020 and 23.6.2020, issued by the ICMR, the Delhi Government has issued orders dated 5.7.2020 and 9.7.2020, directing that RAT should be conducted on certain high risk group of individuals who visit Health care facilities, which includes patients admitted with Severe Acute Respiratory Infection (SARI). The petitioner states the Advisory of the ICMR is clear in this regard and states in so many words that the recommendation is to conduct RAT in Containment zones/Host spots and Health care settings, but it nowhere states that the testing through RT PCR should be dispensed with. Dr. Nivedita Gupta, Scientist F, ICMR confirms the said position and states that RAT is not required to be conducted on patients suffering from SARI and they are to be tested directly through RT PCR. Delhi Government is directed to amend the orders dated 05.07.2020 and 09.07.2020 forthwith by deleting any reference to the patients admitted with SARI, requiring them to undergo the RAT.

10. We have further been informed by Dr. Gautam, appearing for Delhi Government that on 1.7.2020, the ICMR and the Ministry of Health have jointly issued a Circular informing the State Governments/UT's that testing through RT PCR does not require any prescription from a government doctor/government hospital and even a private doctor. Not just that, the laboratories have been advised that they are free to entertain a person who approaches them for undergoing the RT PCR test.

11. Mr. Anurag Ahluwalia, learned counsel for the ICMR vehemently disputes the said submission and states that the aforesaid submission is incorrect and this fact was brought to the notice of the learned Single Judge in WP(C) 4209/2020 and it was clarified that ICMR has not dispensed with the requirement of a prescription from a doctor for undergoing the RT PCR

test. ICMR has only clarified that not only doctors from the government sector, but doctors from the private sector are also empowered to prescribe the RTPCR test subject to the Advisory issued by the ICMR.

12. In the course of the hearing, we have requested Mr. Rakesh Malhotra and Dr. Gautam to go on the website of Delhi Government and state as to whether the above information has been uploaded, only to be informed that the Circular dated 01.07.2020, jointly issued by the ICMR and the Ministry of Health is not available on the website of the Delhi Government, which is rather surprising. The least we expect Delhi Government to do is to regularly update its website and upload all the Advisories, Circulars etc. issued by the ICMR, NCDC and other authorities, relating to COVID-19 news, to keep the public well informed. Press alone cannot be the medium for disseminating information. This is not to state that the press has not played a positive role in publicizing information relating to COVID-19.

13. Since the ICMR has stated that it proposes to issue a fresh Advisory very soon and the Delhi Government has informed the court that NCDC and Delhi Government are going to conduct a meeting soon to plan further strategies for ramping up the testing to contain COVID-19 infection. ICMR, NCDC and the Delhi Government shall file fresh Status Reports before the next date of hearing while exchanging copies with each other.

14. List on 04.08.2020.

HIMA KOHLI, J

SUBRAMONIUM PRASAD, J

JULY 27, 2020
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