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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. Chetan Sharma, ASG with Mr. Anurag Ahluwalia, CGSC and Dr. Nivedita for ICMR.

Mr. Satyakam, ASC for GNCTD.

Mr. Sidharth Luthra, Sr. Advocate with Mr. Arjun Dewan and Ms. Aayushi Sharma Khazanchi, Advocates for Dr. Dang Labs.

Mr. Rohit K. Aggarwal and Ms. Gunjan Sinha Jain, Advocates for Sir Ganga Ram Hospital.

Mr. Neeraj Grover, Advocate for Dr. P. Bhasin Path Labs. Mr. H.S. Chandhoke and Ms. Mumtaz Bhalla, Advocates for Dr. Lal Path Labs.

Mr. L. K. Bhushan and Ms. Aditi Awasthy, Advocates for Dr. B. L. Kapur Hospital.

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

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14.07.2020

HEARD THROUGH VIDEO CONFERENCING

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

1. Pursuant to the order dated 2.7.2020, an affidavit has been filed by the ICMR through Mr. Anurag Ahluwalia, learned Central Government Standing Counsel and another affidavit has been filed by the Government of NCT of Delhi through Mr. Satyakam, learned Additional Standing Counsel.
2. The affidavit of the Delhi Government filed by the Director General, Health Services states that to augment testing for detecting COVID-19 infection, and to make it more accessible to the general public, all the Delhi Government hospitals have been asked to undertake Point of Care testing in the form of Rapid Antigen Detection Test (in short, ‘**RAT**’) of eligible individuals in terms of an Order issued on 5.7.2020. Further, an order dated 9.7.2020 has been issued to all the private hospitals to ensure that RAT test is conducted in respect of all the eligible individuals. Mr. Satyakam seeks to clarify that ‘eligible individuals’ have been spelt out in the Advisories dated 14.6.2020 and dated 23.6.2020, issued by the ICMR.
3. The affidavit of GNCTD further states that in order to expand COVID-19 testing, an order has been issued on 9.7.2020 wherein, it has been decided that RAT test would be offered in all the Delhi Government run dispensaries and poly clinics on all working days, from 9 AM to 12 noon. Government of NCT has also decided to ensure that the Special Surveillance Groups are tested on priority.
4. We are informed by Mr. Satyakam, learned ASC that the Delhi Government has concluded Sero-surveillance sample collection and is awaiting a report from the National Centre for Disease Control (NCDC),

Ministry of Health and Family Welfare, Government of India. Government of NCT has sent an e-mail dated 11.7.2020 to the NCDC asking for the Sero-surveillance report, but it has not been provided so far. We have enquired from Mr. Chetan Sharma, learned ASG to indicate the status of the said report to be prepared by the NCDC particularly, since Mr. Satyakam states that he had personally called up Mr. Sujit, Director, NCDC on the evening of 12.7.2020 enquiring about the said report, only to be told that he had no business to call him up. The said report shall be placed on record by tomorrow with an advance copy to learned ASC and remaining counsel.

5. As per the affidavit filed by the ICMR, 450 applications have been received from private hospitals and laboratories in Delhi for seeking authorization to undertake the RAT test, out of which 150 applications have been allowed and 300 applications are pending on account of certain procedural formalities required to be completed by the applicants. An updated affidavit shall be filed by the ICMR before the next date.

6. Coming next to the number of tests conducted by the State Government in Delhi from 1.7.2020 to 10.7.2020, the same has been enclosed in a tabulated form at Annexure-G filed with the affidavit of the Director General, Health Services which reveals that 9844 RAT tests were conducted on 1.7.2020 and by 10.7.2020, the said tests increased to 11741. On 1.7.2020, 10697 RT PCR tests were conducted and as on 10.7.2020, the said tests had reduced to 9526. The figures of testing under the CBNAAT and have dwindled from 77 as on 1.7.2020, to 65 on 10.7.2020 and the TrueNat tests have gone down from 204 on 1.7.2020, to 176 on 10.7.2020. Mr. Satyakam, learned ASC states that on 13.7.2020, 15430 RAT tests were conducted in Delhi, and 5361 tests were conducted through RT PCR.

7. Mr. Rakesh Malhotra, the petitioner states that the computed statement filed by the Delhi Government does not reflect as to how many persons who had undergone the RAT tests and turned out to be COVID negative, were made to undergo the RT PCR test. He states that the said figures will correctly reflect the extent of ramping up of tests that Government of NCT claims it has done.
8. Government of NCT of Delhi is directed to file a brief affidavit clarifying the aforesaid position. ICMR shall also file an updated affidavit, as directed above. The affidavit to be filed by the NCDC shall reveal the analysis arrived at on the basis of Sero-surveillance sample testing undertaken all over Delhi.
9. Learned counsel for the private laboratories are discharged for the present as there are no further queries relating to them that are pending consideration in this matter.
10. List on 16.7.2020.

HIMA KOHLI, J

SUBRAMONIUM PRASAD, J

JULY 14, 2020

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