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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 Respondent
no.1/GNCTD with Dr. Nutan Mundeja, DGHS,
GNCTD.

Mr. Anurag Ahluwalia, CGSC, Mr. R.V. Prabhat,
Mr. Amit Gupta and Mr. Sahaj Garg and
Advocates for MoHFW, ICMR and NCDC.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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20.10.2020

HEARD THROUGH VIDEO CONFERENCING

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

1. Pursuant to the order dated 30.09.2020, a Status Report has been filed by the Government of NCT of Delhi stating *inter alia* that the Expert Committee had met on the testing strategy in Delhi and a Report as submitted on 06.10.2020. The said Report records that at present, over 80% tests are conducted through RAT and in a few districts, about 90-95% tests are conducted through RAT. The current test positivity by RAT is 4.3% and by RTPCR is 20.33%. A majority of the testing has been conducted in camp settings and the people tested were asymptomatic. Testing in the

Containment zones and testing of contacts of positive and symptomatic patients has been very limited to 20% of the total testing conducted. The recommendations made by the Expert Committee regarding the testing is as follows:

“1. Whom to test? All high risk contacts “irrespective of symptoms”, all symptomatic contracts, all ILI/SARI patients, all elderly and those suffering with co-morbidities (in containment zones).

2. When to test? Between the 5th to 10th Day (since the last contact) if asymptomatic or as soon as symptoms starts.

3. Which test to use? RAT preferable for CZs, symptomatic HCWs and PoE screening; RT-PCR at Health Facilities and re-testing of RAT negative symptomatic.

4. Timing of the test should be strictly as per the recommendations (i.e. between 5th – 10th day of the last exposure or immediately, if symptomatic).

5. Turn around time of testing with results to be < 24 hours for timely decision (till the test result – suspected case should be ensured for strict isolation).

6. Utilisation of Labs for RT-PCR: all the symptomatic visiting flu/fever clinics should be tested by RT-PCR and optimum utilisation of all labs for RT-PCR testing must be ensured.

7. Scaling up of testing-RT-PCR.

Criteria for scaling up of testing should be based on positivity in each district (preferably ward) vis-a-vis the total no. of samples tested. It has been specifically observed that in around 6/8 districts where TPR is high but the number of samples collected are quite low.”

2. The Report concludes by observing as follows:

“Testing should not be target driven rather it should be guided by the surveillance in containment zones, number of positive and their symptomatic contacts identified and number of symptomatic persons identified at screening sites. Increase in the number of tests should be reflected in

increased case finding. Merely increasing the number of tests to reduce the positivity rate would not be appropriate. District authorities should be maximally encouraged to report positive cases.

Minimum test criteria of 'test per million > 140 per day' and positivity below 5% to be adhered".

3. Coming to the 5th recommendation made by the Expert Committee as extracted above, relating to the turnaround time of testing, it has been recommended that the results of the testing should be out in less than 24 hours and till the tests results are declared, the suspected case should be kept in strict isolation. However, the said recommendation is being followed more in violation than in compliance. There have been repeated instances brought to our notice where the turnaround time for declaring the results has been crossing four days, which is most unacceptable when a person tested is required to be isolated in that duration. There have been occasions when the samples collected by the Delhi Government are sent to laboratories that do not entertain any queries for the reports, least over Saturdays and Sundays, leaving the persons concerned in a quandary more so when the Government has declared Un-lockdown 0.5 which requires all employees to report for work regularly; nor can the self-employed persons/professionals be expected to remain in isolation unnecessarily. The turnaround time for declaring the results is far exceeding 24 hours and in fact extending to 84 hours.

4. Delhi Government shall look into the aforesaid position and state in the next Status Report to be filed as to how the system is being streamlined to ensure that the turnaround time for declaring the results is strictly adhered to and the results, whichever way they may be, are conveyed to the person

tested within 24 hours. The aforesaid direction is also considered necessary in the light of the fact that in most cases, where the samples are collected and sent to laboratories for testing, the person tested is not given any information about the result unless he/she tests positive. In other words, the person tested remains completely in the dark and is not informed about the outcome of the test undertaken. If the mobile number of every person tested is taken at the time of the testing, there is no good reason why the result should not be communicated on the said mobile number within 24 hours of the samples being sent to the lab for testing. There is obviously a lag that must be addressed at the earliest.

5. Coming next to the tabulated statement of the number of tests undertaken by the Delhi Govt. between 06.10.2020 and 19.10.2020, updated statistics have been filed by the learned ASC on 19.10.2020, which show that the number of tests conducted through RAT on 06.10.2020 were 42,439 and the same had plunged to 25,685 on 18.10.2020 and gone upto 42,340 on 19.10.2020. As for the testing through RT-PCR and similar tests, as on 06.10.2020, 9,068 tests were conducted which went upto 15,664 on 15.10.2020 and 14,253 tests were conducted on 18.10.2020. The number of Containment zones in Delhi on 06.10.2020 were 2,702 and as on 19.10.2020, have gone upto 2,782. The testing capacity through RT-PCR has been ramped upto 20,000. It must be utilized by Delhi Government to the hilt.

6. The mapping of Delhi required to be done by the Delhi Govt. is stated to have conducted and placed in public domain. The status with regard to the said mapping and the results achieved shall be placed on record along with the next Report to be filed.

7. Mr. Satyakam, learned ASC for GNCTD has informed the court that the Sero-surveillance 4 in Delhi will conclude by day after tomorrow when all the samples shall be collected and it will take at least three weeks for the samples to be processed and the Report collated. The Report of Sero Surveillance-4 shall be filed before it is made public through a preliminary/tentative reports of any nature.
8. Mr. Rakesh Malhotra, the petitioner submits that despite the fact that the Drug Control Authority has granted its approval to a test called 'FELUDA' on 20.09.2020, the same has not come out in the market due to the pendency of approvals at the end of ICMR/CSIR.
9. Mr. Ahluwalia, learned CGSC states that he may be permitted to obtain instructions as to the reasons for the approval to have remained pending at the end of ICMR/CSIR, if at all. Both ICMR and CSIR are directed to file affidavits in this regard within two weeks with a copy to the petitioner and learned ASC for the GNCTD.
10. An updated Status Report shall also be filed by the Delhi Govt. well before the next date of hearing.
11. List on 11.11.2020.

HIMA KOHLI, J

SUBRAMONIUM PRASAD, J

OCTOBER 20, 2020

pst/ap/rkb