

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) Diary No(s). 10816/2020

SHASHANK DEO SUDHI

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

O R D E R

The Court convened through Video Conferencing.

This Court by order dated 03.04.2020 had directed the petitioner to serve a copy of the petition to learned Solicitor General of India.

Notice.

Two weeks time is allowed to respondents to file an affidavit in reply.

This writ petition under Article 32 of the Constitution of India filed as Public Interest Litigation seeks a direction to the respondents for ensuring to provide free of cost testing facility of COVID-19 (Coronavirus) by all testing Labs whether private or Government. The petitioner has also challenged the Advisory dated 17.03.2020 issued by Indian Council of Medical Research Department of Health Research, insofar as it fixed Rs.4500 for screening and confirming COVID-19. The petitioner also prays that a direction be issued that all the tests relating to COVID-19 must be carried out

under NABL accredited Labs or any agencies approved by WHO or ICMR. Even before the COVID-19 was declared a pandemic by WHO on 11.03.2020, it had spread in several countries. As of now, more than 200 countries are suffering from this pandemic. The number of patients suffering from COVID-19 is rapidly increasing Worldwide with death toll rising rapidly. In our country, in spite of various measures taken by the Government of India and different State Government/Union Territory the number of patients and death caused by it is increasing day by day. Our country has a very large population.

The Indian Council of Medical Research Department of Health Research has notified the details of operative Government Laboratories and Private Laboratories to test COVID-19.

We find *prima facie* substance in the submission of petitioner that at this time of national calamity permitting private Labs to charge Rs.4500 for screening and confirmation test of COVID-19 may not be within means of a large part of population of this country and no person be deprived to undergo the COVID-19 test due to non-payment of capped amount of Rs.4500. It is submitted before us that insofar as Government Laboratories are concerned the COVID-19 test is conducted free of cost.

The private Hospitals including Laboratories have an important role to play in containing the scale of pandemic by extending

philanthropic services in the hour of national crisis. We thus are satisfied that the petitioner has made out a case for issuing a direction to the respondents to issue necessary direction to accredited private Labs to conduct free of cost COVID-19 test. The question as to whether the private Laboratories carrying free of cost COVID-19 tests are entitled for any reimbursement of expenses incurred shall be considered later on. We further are of the view that tests relating to COVID-19 must be carried out in NABL accredited Labs or any agencies approved by ICMR.

We, thus, issue following interim directions to the respondents:

(i) The tests relating to COVID-19 whether in approved Government Laboratories or approved private Laboratories shall be free of cost. The respondents shall issue necessary direction in this regard immediately.

(ii) Tests relating to COVID-19 must be carried out in NABL accredited Labs or any agencies approved by WHO or ICMR.

.....J.
[ASHOK BHUSHAN]

.....J.
[S. RAVINDRA BHAT]

NEW DELHI;
APRIL 08, 2020

ITEM NO.8

VIRTUAL COURT

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

WRIT PETITION (CIVIL) Diary No(s). 10816/2020

SHASHANK DEO SUDHI

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date : 08-04-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Petitioner(s) Petitioner-in-person

For Respondent(s) Mr. Tushar Mehta, SG

UPON hearing the counsel the Court made the following

O R D E R

The Court convened through Video Conferencing.

Issue notice.

Two weeks time is allowed to respondents to file an affidavit in reply.

The Court issued the following interim directions to the respondents, in terms of the signed order:

(i) The tests relating to COVID-19 whether in approved Government Laboratories or approved private Laboratories shall be free of cost. The respondents shall issue necessary direction in this regard immediately.

(ii) Tests relating to COVID-19 must be carried out in NABL accredited Labs or any agencies approved by WHO or ICMR.

(ANITA RANI AHUJA)
COURT MASTER(ASHA SUNDRIYAL)
ASTT. REGISTRAR-cum-PS

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA
CIVIL EXTRAORDINARY JURISDICTION
WRIT PETITION NO. _____ OF 2020
(D. NO.10816/2020)

Shashank Deo Sudhi

... Petitioner

Versus

Union of India and Ors.

... Respondents

O R D E R

I.A. No.48265/2020, Application for Intervention is allowed.

Heard Mr. Gopal Shankarnarayan, learned counsel for the intervenor.

By I.A. No.48266/2020, the applicant has prayed for modification of the order dated 08.04.2020. Another IA has been filed by one Mr. Bijon Kumar Mishra seeking impleadment and directions to ensure the treatment of COVID-19 infected patients free of cost in all hospitals. Mr. Bijon Kumar Mishra is permitted to intervene.

Mr. Mukul Rohatgi, learned senior counsel has appeared on behalf of several laboratories to put their point of view with regard to charging of fee as

prescribed by the ICMR and conducting of the free test of COVID-19. Shri Rohatgi submits that the ICMR has fixed Rs.4,500/- on a moderate side to cover the expenses of Labs for conducting the COVID-19 test. He submits that insofar as the persons covered under the Pradhan Mantri Jan Aarogya Yojana, popularly called as Ayushman Bharat Yojana, the Labs are conducting free of cost COVID-19 test. He submits that in the event, the Labs are not to charge any fee for the tests, it will be impossible for them to carry on the test in due to financial constraint and other relevant factors. He further submits that the kits which are utilized in the test are imported kits involving substantial expenses.

Shri Tushar Mehta, learned Solicitor General of India, referring to the affidavit filed on behalf of the ICMR dated 12.04.2020, submits that the Government is taking all necessary steps for conducting the COVID-19 test. It is submitted that as on date, 157 Government Labs and 67 private Labs are conducting COVID-19 test. He submits that all Government hospitals and Government Labs are conducting COVID-19 test free of cost. As per the protocol of the ICMR, any affected person on recommendation of a Medical Practitioner can avail the

benefit of free test available in Government hospitals and Government Labs. He submits that insofar as the test by private Labs are concerned, the ICMR has fixed the amount of Rs.4,500/- after considering all relevant factors. He submits that under the Ayushman Bharat Yojana, about 10.7 crore poor and vulnerable families which means approximately 50 crores beneficiaries are covered under the scheme and they can avail the benefit of free of cost COVID-19 test even in the private labs. He submits that beneficiaries under the scheme would get cashless COVID-19 test in private labs. He further submits that an affidavit would be filed disclosing the number of persons/families actually covered by the scheme. The affidavit may be filed within two weeks from today.

Shri Tushar Mehta further submits that the Ministry of Family Welfare has issued various orders from time to time under which test and treatment for all COVID-19 test under the Ayushman Bharat Yojana also covers the COVID-19 test in any private Labs.

Mr. Shashank Deo Sudhi, the petitioner who appears in person, submits that there are large sections of society who at present are unable to afford the payment of

Rs.4,500/- for COVID-19 test. He submits that the Government has to take responsibility of getting every person tested. In the event one person in a family is tested positive, the entire family requires testing. He submits that Government hospitals are over-crowded, hence, such persons may be permitted testing of COVID-19 in private Labs free of cost.

Having heard, learned counsel for the parties, we are satisfied that sufficient cause has been made out to clarify and modify our order dated 8th April, 2020.

The order dated 08.04.2020 intended to make testing in private Labs of COVID-19 free for economically weaker sections of the society who were unable to afford the payment of testing fee as fixed by ICMR for COVID-19. We further clarify that the order never intended to make testing free for those who can afford the payment of testing fee fixed by the ICMR for COVID-19.

In the affidavit filed by ICMR dated 12.04.2020 it has been stated that according to directive issued by the National Health Authority under the Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana, the testing fee for COVID-19 will be free of cost under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana in all private

Laboratories. Thus, free testing with regard to one category of people i.e. those covered under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana was already in place when we passed order dated 08.04.2020. We make it clear that the benefit of free testing by a person can be availed only when he or she is covered under any scheme like Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana. We are also of the view that looking to the plight of persons belonging to economically weaker sections of the society, the Government may consider as to whether any other categories of persons belonging to economically weaker sections of the society can be extended benefit of free testing of COVID-19. We are conscious that framing of the scheme and its implementation are in the Government domain, who are the best experts in such matters.

In view of the foregoing discussion, the order dated 08.04.2020 is clarified and modified in the following manner:

- (i) Free testing for COVID-19 shall be available to persons eligible under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana as already implemented by the Government of India, **and**

any other category of economically weaker sections of the society as notified by the Government for free testing for COVID-19, hereinafter.

- (ii) The Government of India, Ministry of Health and Family Welfare may consider as to whether any other categories of the weaker sections of the society e.g. workers belonging to low income groups in the informal sectors, beneficiaries of Direct Benefit Transfer, etc. apart from those covered under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana are also eligible for the benefit of free testing and issue appropriate guidelines in the above regard also within a period of one week.
- (iii) The private Labs can continue to charge the payment for testing of COVID-19 from persons who are able to make payment of testing fee as fixed by ICMR.
- (iv) The Government of India, Ministry of Health and Family Welfare may issue necessary guidelines for reimbursement of cost of free testing of COVID-19 undertaken by private Labs and necessary mechanism to defray expenses and reimbursement to the private Labs.
- (v) Central Government to give appropriate publicity to the above, and its guidelines to ensure coverage to all those eligible.

Application for modification is, accordingly,
allowed.

.....J.
(Ashok Bhushan)

.....J.
(S. Ravindra Bhat)

New Delhi;
April 13, 2020

to intervene.

In view of the foregoing discussion, the order dated 08.04.2020 is clarified and modified in the following manner:

- (i) Free testing for COVID-19 shall be available to persons eligible under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana as already implemented by the Government of India, and any other category of economically weaker sections of the society as notified by the Government for free testing for COVID-19, hereinafter.
- (ii) The Government of India, Ministry of Health and Family Welfare may consider as to whether any other categories of the weaker sections of the society e.g. workers belonging to low income groups in the informal sectors, beneficiaries of Direct Benefit Transfer, etc. apart from those covered under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana are also eligible for the benefit of free testing and issue appropriate guidelines in the above regard also within a period of one week.
- (iii) The private Labs can continue to charge the payment for testing of COVID-19 from persons who are able to make payment of testing fee as fixed by ICMR.
- (iv) The Government of India, Ministry of Health and Family Welfare may issue necessary guidelines for reimbursement of cost of free testing of COVID-19 undertaken by private Labs and necessary mechanism to defray expenses and reimbursement to the private Labs.

- (iv) Central Government to give appropriate publicity to the above, and its guidelines to ensure coverage to all those eligible.

Application for modification is, accordingly, allowed.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(SANTOSH KUMAR)
COURT MASTER