

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3427 OF 2000

(C.H.Sharma and ors vrs State of Mah and ors)

and

PUBLIC INTEREST LITIGATION NO. 10 OF 2020

(Subhash Jainaqrayan Zanwar vrs Union of India and ors)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri Anup Gilda, Advocate/Amicus Curiae for Petitioner
Shri S.Y.Deopujari, Govt. Pleader assisted by Shri
D.P.Thakre, Asstt. Govt. Pleader for Respondent Nos.1 to 3.
Shri Sudhir Puranik, Advocate for Respondent No. 4
Shri U.M.Aurangabadkar, ASGI for Respondent No.6
Shri Ram Heda, Advocate for Petitioner in PIL 10/2020
Shri Pratik Sharma, Advocate for intervenor
Shri P.H.Jakate, in person for intervenor
Shri R.M.Bhangde, Advocate for Medical Council of India.
Shri Tushar Mandlekar, Advocate for intervenor.
Shri S.S. Sanyal, Advocate for the applicant.

CORAM: N.W.SAMBRE, J.

DATE: 23.04.2020

1] In the affidavit placed on record in compliance to the earlier orders passed by this Court, it has come on record, in Maharashtra there are highest number of COVID-19 cases in the country. So as to deal with the same, A.I.M.S., Nagpur is designated as Mentor Institute for coordinating, facilitating in setting up testing laboratories for COVID-19 cases, except for Bombay and Pune region.

2] In the wake of above, let A.I.M.S., Nagpur, through its Director be added as party

respondent. Amendment be carried out immediately.

3] In the order dated 20th April, 2020, this Court has called upon the I.C.M.R. and the State Government to clarify as to the period within which procedure will be completed in establishing the V.R.D.L. facilities at Yavatmal, Chandrapur, Gadchiroli and Gondia Government Hospitals.

4] In response to the above, affidavit placed on record sworn by Dr. Ajay Kewaliya, Dean, I.G.M.C., Nagpur demonstrates that at Yavatmal and Chandrapur, the V.R.D.L. Lab can be made operational by 20th May, 2020.

5] The reason cited for non-operation of said labs is want of infrastructure. It is informed that necessary machinery required for carrying out V.R.D.L. testing is made available by Haffkine Institute by procuring same from Singapore and shipment is consuming certain time. Let the said Authority take appropriate steps for expeditious delivery of RT-PCR machines.

6] The fact remains that V.R.D.L. labs are required to be made operational at the earliest and the Government appears to have taken steps for establishing said laboratories. It is also required to be noted that once the equipments are received and the labs are installed, the

operation of the same shall not be withhold for want of testing kits and it shall be the duty of the Competent Authority, including the State Government, to make available sufficient number of testing kits for making such labs operational.

7] This Court directs Dr. Manish Shrigiriwar, Professor and Medical Superintendent, A.I.M.S. Hospital, Nagpur, who is present in the Court in response to last order of operation of V.R.D.L. Center by said respondent and also Mentor in setting up V.R.D.L. laboratories, to waive notice for A.I.M.S., Nagpur, added respondent. Accordingly, he waives notice.

8] The Medical Superintendent of A.I.M.S., Nagpur in response to Court's query informs that the Mahatma Gandhi Institute at Sewagram, Dist. Wardha is likely to get approval for operation of V.R.D.L. Center within 48 hours and as such, the samples from Wardha and Yavatmal districts can be sent to these laboratories for testing.

9] I am further informed that samples from Wardha district are tested at V.R.D.L. Center, MAFSU whereas A.I.M.S., Nagpur was testing samples from Yavatmal, Chandrapur and Amravati districts in addition to balance samples from the Nagpur City. It is further informed that the V.R.D.L. Center at Akola is catering

Buldhana, Washim and Akola district whereas G.M.C. and I.G.M.C., Nagpur are catering for Nagpur City and Nagpur (Rural), Bhandara, Gondia and Gadchiroli.

10] As on date, there is hardly any sample which is pending analysis.

11] In response to Court's query, learned Additional Government Pleader has informed that allocation of samples district and laboratory-wise is by order of D.M.E.R.. In case of overload or excess samples received by any laboratory, authority vests with the Divisional Commissioner and Collector, Nagpur to divert the same to laboratory with less workload.

12] In the aforesaid background, it is noticed, at V.R.D.L. laboratory of MAFSU Nagpur, which was made operational from 16th April, 2020, till date, testing of only 40 samples is carried out. As such, said V.R.D.L. Center is underutilized. It is also noted that at Mahatma Gandhi Institute of Medical Science V.R.D.L. Center will be made operational.

13] In the aforesaid background, if these centers are made operational within Nagpur Divisional Commissioner's jurisdiction, it will be appropriate, in my opinion, to direct the Divisional Commissioner, Nagpur to take every day stock of number of pending samples in each

of the laboratory and shall pass all consequential orders of diversion of samples where the capacity of the V.R.D.L. Center is underutilized or the pendency is comparatively less.

14] It is also informed by *Amicus Curiae* Mr. Gilda that there are Real-Time Polymerase Chain Reaction Machines (RT-PCR) available with NEERI, Nagpur, Department of Microbiology of Nagpur University and additional machines with MAFSU.

15] The Divisional Commissioner in the aforesaid background, will be competent to take appropriate decision in the matter of utilization of these RT-PCR machines in consultation with the Medical Superintendent of A.I.M.S. in case such occasion arises, like rise in the number of cases in any of the districts, or failure of any of the centers because of the non-operation or failure of machines etc.. Let steps taken in this regard be placed before this Court by next date.

16] It is expected that similar testing facilities can be made operational at private Medical Colleges which are armed with proper academic staff, provided such staff is given training of testing and if contingency arises, samples even can be allocated to these private colleges. The only impediment in making operational V.R.D.L. Centers at Private Medical Colleges as informed by Mr. Heda, learned

Counsel for petitioner and Mr. Gilda, learned *Amicus Curiae*, is the non-grant of accreditation by the National Accreditation Board and Calibration for Laboratories (N.A.B.L.) because of its stringent norms. It is informed that the said Authority works under the supervision of Central Government.

17] It is expected that the Central Government to step into this arena so as to expedite the accreditation of V.R.D.L. Centers of private Medical Colleges, if such request is made, or pending with said Authority. The said Authority i.e. N.A.B.L. may consider of setting up Devoted Portal only for the purpose of expeditiously dealing with request of such V.R.D.L. Centers for grant of accreditation.

18] Shri Aurangabadkar, learned A.S.G.I. has graciously consented that if such occasion arises i.e. if such pendency of proposal with N.A.D.L. is brought to the notice of office of respondent, appropriate steps for expediting the proposal will be taken and the issue will be taken to its logical end.

19] As far as the use of Rapid Antibody Test Kits are concerned, the procurement of the same at the Central Government level was completed in part, however, use of the same is put on hold in view of divergent outcome of the result of some sample tests.

20] I am informed that these kits are used only for surveillance and the same cannot be used for V.R.D.L. Centers.

21] Be that as it may, in response to Court's query, the learned A.S.G.I. has placed on record a pursis intimating that the Rapid Antibody Kits, which are procured are at the disposal of the I.C.M.R., will be distributed as per the demand made by the State Government.

22] The Additional Government Pleader, on instructions, informs that if not already submitted, the appropriate demand for the Rapid Antibody Test Kits will be lodged with I.C.M.R., if so required within 72 hours after collecting the requirement from Local Bodies like Nagpur Municipal Corporation, Zilla Parishad etc..

23] Let the State, if required, raise its demand for requirement for Rapid Antibody Test Kits with I.C.M.R. within 72 hours. The I.C.M.R. shall deal with such demand made by the State Government expeditiously. The learned A.S.G.I. so also the State Government shall place on record the steps, if any, taken on the aforesaid issue before this Court by next date of hearing.

24] This Court is sensitive to the fact that the use of the Rapid Antibody Test Kits is kept on hold and the learned A.S.G.I. informs that by

today night I.C.M.R. will be taking appropriate decision in the matter and change of protocol, if any, in the use of such kits.

25] Stand over to **30th April, 2020.**

JUDGE

Tambaskar.