

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P (C) 3031/2020

IN THE MATTER OF:

RAKESH MALHOTRA

...PETITIONER

VERSUS

GNCTD OF DELHI & ORS.

...RESPONDENTS

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Ankur Mahindro
Partner/Kred-Jure
Advocates & Legal Consultants

New Delhi
Date: 23.04.2021

W.P (C) 3031/2020

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URGENT APPLICATION

**To,
The Registrar
High Court of Delhi at New Delhi**

Sir,

Kindly treat the accompanying petition as Urgent. The ground of Urgency is the nature of directions sought therein.

Ankur Mahindro
Partner/Kred-Jure
Advocates & Legal Consultants

New Delhi
Date: 23.04.2021

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CM APPL. ____/2021

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**APPLICATION UNDER ORDER 1 RULE 10 CPC
SEEKING INTERVENTION AND AN OPPORTUNITY
TO BE HEARD IN WP(C) 3031/2020**

MOST RESPECTFULLY SHOWETH:

1. The present matter is pending before this Hon'ble Court and is now listed on 26.04.2021.
2. The Applicant is filing the instant application, seeking to intervene in the present petition. The Applicant is an Advocate and an officer of the Court. The Applicant does not have any personal interest or personal gain or private motive or any other oblique reason in filing the instant Application.
3. The Applicant seeks to bring to light, by way of the accompanying application, the plight of persons desirous of getting an RT-PCR test in Delhi and to seek appropriate directions for ramping up the reduced testing in the GNCT of Delhi.

4. It is submitted that in the last 4-5 days, RT-PCR tests being conducted by private laboratories have reduced, even when the positivity rates are at an all-time high of beyond 30%.
5. The disadvantage to low testing or delayed reports is bound to lead to more infection as it is impossible to make containment zones till the time news is received of people testing positive. Containment areas or other measures to curb spread of the virus can only be taken once the reports are received. It is becoming increasingly difficult for the patient to take the Government directive seriously till the time the patient certainly knows about the virus being detected in his body.
6. Thus, it is important that urgent directives are issued to all private laboratories to furnish before this Hon'ble Court, the number of RT-PCR tests conducted in the last 2 weeks and the time taken to deliver the said reports on an average, including detailed breakup of how much time is taken by ICMR to certify the reports. It is further imperative that the laboratories be directed to ramp up testing in this second wave of COVID-19 that the Country finds itself inundated in.
7. In light of the above, it would be expedient and in the interest of justice that this Hon'ble Court allow the instant application and allow the Applicant to intervene in the present petition.
8. The instant application has been moved bona fide and the interest of justice. Irreparable loss shall be caused to litigants at large across Delhi if the instant application is not allowed.

PRAYER

It is therefore, it is humbly prayed that this Hon'ble Court may be pleased to:

- a) Allow the Applicant to intervene and be afforded an opportunity to be heard in the aforesaid matter W.P(C) 3031/2020; and/or
- b) Pass any other/further order(s) as this Hon'ble Court may be pleased to in the present circumstances of this case.

APPLICANT

Ankur Mahindro (D-699/2002)

Partner/Kred-Jure

Advocates & Legal Consultants

New Delhi

Date: 23.04.2021

IN THE HIGH COURT OF DELHI AT NEW DELHI

CM APPL. ____/2021

IN

W.P (C) 3031/2020

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**APPLICATION SEEKING DIRECTIONS REGARDING
AUGMENTATION AND/OR EXPEDITIOUS DELIVERY
OF RESULTS OF RT-PCR TESTS CONDUCTED IN
DELHI FOR DETECTION OF COVID-19 VIRUS**

MOST RESPECTFULLY SHOWETH:

1. The present matter is pending before this Hon'ble Court and is now listed on 26.04.2021.
2. The Applicant has filed an accompanying application seeking intervention in the above captioned matter with the intention of bringing the grave crisis the persons residing in Delhi are facing due to the little to no tests for COVID-19 virus, i.e., RT-PCR tests being conducted in city.
3. It is submitted that the present petition had been filed by the Petitioner, agitating the issue of inadequate testing for COVID-19 in Delhi in May 2020, during the first wave of the corona virus in the Country. At that time, the Government and citizens

alike, were learning on their feet, and with the intervention of this Hon'ble Court, the GNCT of Delhi as well as the ICMR successfully made material changes in its policies and processes qua testing and were able to remove major bottlenecks. Pursuant to this Hon'ble High Court's order dated 11.06.2020, all 23 laboratories then conducting RT-PCR tests were issued notice and thereafter on 18.06.2020, various issues faced by the said laboratories were placed before this Hon'ble Court, inter alia, including the cumbersome process of contemporaneously uploading patient registration forms on multiple portals, the lengthy forms being asked by the Phlebotomists to be filled when collecting the sample, registration of Phlebotomists in every district, suggestion to the effect that the Delhi Government be called upon to make available locations where laboratories can set up their testing facilities for collecting samples, etc. Upon consideration of the said issues, this Hon'ble High Court was informed that a Committee had been constituted by the Lieutenant Governor of Delhi on 12.06.2020, to advise the DDMA on various aspects of COVID-19. As such, said Committee was directed to look into the said issues at the earliest. True copy of the said order passed by this Hon'ble Court dated 18.06.2020 has been appended herewith and marked as **Annexure A-1**.

4. On 25.06.2020, this Hon'ble Court was informed that the Committee had decided to agree to avoid duplication of data entries in multiple portals, and to relax norms of filling the Sample Requisition forms. On the other aspects of ensuring speedier delivery of test results and sample processing, the Committee directed the Delhi Government to augment the

number of data entry operators at the labs to facilitate entry on the ICMR portals and further recommended that to ensure samples were processed in a maximum period of 48 hours, private laboratories were advised to not accept samples beyond their processing capacity. True Copy of the said order passed by this Hon'ble Court dated 25.06.2020 has been appended herewith and marked as **Annexure A-2**.

5. Vide order dated 02.07.2020, it was informed that avoiding duplication of data entries in multiple portals and timelines for making the data entries was made concrete, the request for providing additional Data Entry Operators to private laboratories was left for requests to be made by a private laboratory requiring such additional manpower to make a request which shall be considered on various parameters. It was evident that even then, when COVID-19 cases were on the rise, no solution was forthcoming from the Delhi Government about providing additional manpower to private laboratories. True Copy of the said order passed by this Hon'ble Court dated 02.07.2020 has been appended herewith and marked as **Annexure A-3**.

6. The whole Country is witnessing that with the onset of the second wave of COVID-19, cases have increased multi-fold, with as high as 30% of the persons being tested, the outcome being positive. What is alarming is that in the midst of this crisis, rather than conducting rampant testing, testing all over the city has virtually come to a standstill.

7. Upon the Applicant's inquiry with all major and other local laboratories, the Applicant has gathered the following

information qua the official and unofficial statements of said laboratories on why testing has drastically reduced:

S. No.	Name of the Lab	Official Statement	Unofficial Statement
1.	Lal Pathlabs	Backlogged due to increased samples and short staffed. Earliest slot available for May 2021, report in 2-3 days.	Government has asked to reduce sampling. ICMR not verifying reports within stipulated time.
2.	SRL Diagnostics	Backlogged due to increased samples. No tests available till 30.04.2021, report in 3-4 days.	Government has not been cooperating with testing. Police stopping technicians on the road and refusing to let them travel occasionally.
3.	Star Lab	No tests available for this week. Refused to give any reason. Reports taking 3-4 days to reach the patient.	Pressure from Government to reduce sampling.
4.	Dr. Dang Path Lab	No testing available except Drive Thru. Report taking 2-3	

		days to reach the patient.	
5.	Thyrocare	Refused testing/home collection. Report to take 4 days atleast.	
6.	Hindustan Wellness Labs	No home collection. Report shall take atleast 3-4 days.	
7.	Gagan Labs	No testing available for the next 3-4 days.	Government has directed to reduce sampling.
8.	Sheetal Chhaya Diagnostics	No testing available, backlogged.	Technicians not being allowed to travel. ICMR not certifying reports.
9.	Multiple Independent agents/freelancers who have tie ups with 3-4 laboratories	No slots available for testing across Delhi.	Even if laboratories do take the samples, it shall keep lying there for 2 days before processed, essentially hampering the quality of sample and rendering results unreliable.

8. In fact, all online laboratories who had been taking online bookings for home collection have been a put an end to. Almost every website is carrying a disclaimer about delayed testing and

delayed results due to surge in COVID-19 cases. Further, it is pertinent to note that some labs have even arbitrarily restricted the testing to only permanent residents of Delhi. Screenshots of many such disclaimers on the websites of said laboratories have been appended herewith and marked as **Annexure A-4 (Colly)**.

9. It is further submitted that this Hon'ble Court has observed during the course of proceedings that amongst private laboratories, Lal Pathlabs is the biggest facility available for RT-PCR testing. When the Applicant made an endeavour to book a home collection sample for a colleague, the Applicant received the shocking news of the next slot being available on 02.05.2021 at 6:00 am. It is pertinent to note that the said inquiry was made in the afternoon of 22.04.2021 telephonically. After a hold of almost 30-35 minutes, the Applicant was successful in booking a test for 10 days ahead. Upon asking as to when will the report be received, time of 24-72 hours was promptly informed. A screenshot of the said booking for RT-PCR test made by the Applicant on 22.04.2021 has been appended herewith and marked as **Annexure A-5**.
10. Moreover, it is submitted that the wait of 10 days for testing and thereafter 3 days for the report may be detrimental to the point of being fatal as the patient cannot receive treatment for COVID-19 even though the patient has all symptoms and is in poor health. Even if the patient would try to seek treatment, lack of a test report, coupled with the extreme shortage of medicines, and available only on production of prescription and test report, the patient would only return empty handed.

11. Another shocking aspect that the Applicant has unearthed in his efforts to bring before this Hon'ble Court the real picture. The Applicant has been informed that while the private laboratories have collected samples, the reports are taking 3-4 days to be delivered due to the sample being left unattended for 1-2 days at a stretch as there is either no slot empty in the machine for being processed or no manpower to process it. Consequently, there is a possibility of the swab being rendered useless as any virus on it may have died by the time the sample is processed.
12. Thus, it is evident that only is the report for a patient delayed, it is also a false negative in the said case. The patient, as a result may not continue isolating and infect others around him, or adversely affect his own health by not taking proper treatment causing grave harm to himself and others around him.
13. It is further submitted that a sample requires 6 hours approximately in the machine to be processed and then a computerized report is generated for each sample. However, before a lab can release the report to the patient, labs are mandatorily required to submit the report to ICMR, who first certify the report and then only can the report be shared with the patient tested.
14. However, now ICMR has not been certifying the reports readily, taking more than 2 days to deliver the certified reports back. So essentially, what was a 1 day job for the laboratories and the report was being delivered in 24 hours, due to the aforementioned delay on ICMR's part, the test report is delivered to the patient only in atleast 3 days.

15. From the above conspectus, the current position as seen is that if a person develops symptoms today and wants to get tested, it will require atleast 4-5 days for him to actually get tested. Thereafter, another 3-4 days for the report to be delivered to the individual. As such, the person is left in a limbo of 8-10 days where he cannot proceed with covid treatment but is suffering from all symptoms. It is submitted that it is the first week which is most crucial for any COVID patient as right treatment received in the first week saves a patient from falling critically ill.
16. No one today is ignorant of the fact that finding a hospital bed is increasingly becoming impossible. A critically ill individual who is looking for a bed cannot even admit himself without a COVID report. As such, an already deteriorating patient, even if by some stroke of luck is able to find a bed, he will have to wait for a COVID report before he can get admitted.
17. Qua government testing, it is submitted that testing is only taking place on the prescription of a doctor of the Mohalla Clinic, who have been directed to only give out a prescription for test when the patient is critically ill. As such, it is important that figures of testing for the past 2 weeks are called for by this Hon'ble Court to verify as to the number of tests being conducted.
18. It is submitted that the testing capacity in Delhi is more well beyond 1.20 lakhs samples per day, however only 75,000-80,000 tests are being conducted for the past few days. As it can be seen from the following table, that in the past upto 1.15 lakhs

tests have been done, however, the numbers are self-explanatory for the past few days:

Date	Number of Tests	Number of positive cases	Positivity Rate
09/04/2021	1,09,398	8,521	7.8%
10/04/2021	77,374	7,897	10.2%
11/04/2021	1,14,288	10,774	9.4%
12/04/2021	92,397	11,491	12.4%
13/04/2021	1,02,460	13,468	13.1%
14/04/2021	1,08,534	17,282	15.9%
15/04/2021	82,569	16,699	20.2%
16/04/2021	98,957	19,486	19.7%
17/04/2021	99,230	24,375	24.6%
18/04/2021	85,260	25,462	29.7%
19/04/2021	90,696	23,686	26.1%
20/04/2021	86,526	28,395	32.8%
21/04/2021	78,768	24,638	31.3%

19. It would be pertinent to note that the above table makes it clear that a percentage calculation of number of people testing positive makes it clear that the positivity rate is only increasing, but despite that the Government has made no efforts to increase testing. On the other hand, testing has been brought to virtually a standstill. True copies of articles showing the immense surge in positive cases and the simultaneous shut down of testing labs has been appended herewith and marked as **Annexure A-6 (Colly)**.

20. The disadvantage to low testing or delayed reports is bound to lead to more infection as it is impossible to make containment zones till the time news is received of people testing positive. Containment areas or other measures to curb spread of the virus can only be taken once the reports are received. It is becoming increasingly difficult for the patient to take the Government directive seriously till the time the patient certainly knows about the virus being detected in his body.

21. Therefore, it is important that urgent directives are issued to all private laboratories to furnish before this Hon'ble Court, the number of RT-PCR tests conducted in the last 2 weeks and the time taken to deliver the said reports on an average, including detailed breakup of how much time is taken by ICMR to certify the reports. It is further imperative that the laboratories be directed to ramp up testing in this second wave of COVID-19 that the Country finds itself inundated in.

22. The instant application has been filed bonafide and in the interest of justice.

PRAYER

It is therefore, it is humbly prayed that this Hon'ble Court may be pleased to:

- a) Pass an order directing the private laboratories to furnish to this Hon'ble Court, the number of RT-PCR tests conducted in the last 2 weeks and the time taken to deliver the said

reports on an average, including detailed breakup of how much time is taken by ICMR to certify the reports; and

- b) Pass an order directing the GNCT of Delhi to cooperate with the private laboratories in order to ramp up conducting of RT-PCR tests in Delhi; and/or
- c) Pass any other/further order(s) as this Hon'ble Court may be pleased to in the present circumstances of this case.

APPLICANT

Ankur Mahindro (D-699/2002)

Partner/Kred-Jure

Advocates & Legal Consultants

New Delhi

Date: 23.04.2021