

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

Thursday, the 8th day of July 2021 / 17th Ashadha, 1943

WP(C) NO. 10997 OF 2021

PETITIONERS:

1. DEVI SCANS (P) LTD, KUMARAPURAM, TRIVANDRUM - 695011, REPRESENTED BY ITS MANAGING DIRECTOR, MR. NISARUDEEN.
2. JEEVA SPECIALTY LABORATORY, M.G. ROAD, THRISSUR, KERALA - 680004, REPRESENTED BY ITS MANAGING PARTNER, MR.C.BALACHANDRAN.
3. MEDIVISION SCAN AND DIAGNOSTIC RESEARCH CENTRE PVT. LTD., GROUND FLOOR, MERCY ESTATE, M.G. ROAD, RAVIPURAM, KOCHI - 682016, REPRESENTED BY ITS DIRECTOR, MR. BERLY CYRIAC.
4. R-CELL DIAGNOSTICS & RESEARCH CENTRE 27/29E, FCC BUILDING, NEAR FEDERAL BANK TOWER, ARAYIDATHUPALAM, KOZHIKODE, KERALA - 673016, REPRESENTED BY ITS MANAGING PARTNER, MR. RUSSEL MOHAMMED.
5. SAROJ DIAGNOSTIC LABORATORY, OLIVE ARCADE, MALAPARAMBA JUNCTION, NEAR ASCENT ENT HOSPITAL, KOZHIKODE, KERALA - 673009, REPRESENTED BY ITS PROPRIETOR, MR. ARUN JYOTHISH K.C.
6. AZA DIAGNOSTIC CENTRE, STADIUM PUTHIYARA ROAD, OPP TO SABHA SCHOOL, CALICUT, KERALA - 673004, REPRESENTED BY ITS PARTNER, MR. JAVED ISLAM.
7. ASWINI DIAGNOSTIC SERVICE, CHINTHAVALAPPU JUNCTION, JAIL ROAD, CALICUT - 673004, REPRESENTED BY ITS PARTNER, MR. A GEERISHAN,
8. JANATHA DIAGNOSTICS, TIRURANGADI P.O, CHEMMAD, MALAPPURAM DISTRICT - 676306, REPRESENTED BY ITS GENERAL MANAGER, MR. ABDUL BASHEER.
9. DANE DIAGNOSTICS PVT.LTD., 18/757, RC ROAD, NEADSHADIMAHAL, PALAKKAD - 678014, KERALA, REPRESENTED BY ITS DIRECTOR, DR.M. SUSHAMA.
10. CENTRAL LABORATORIES, BUND ROAD, KUNJANI, THRISSUR - 680612, REPRESENTED BY ITS MANAGING DIRECTOR, MR. ABILASH K.S.

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY ITS PRINCIPAL SECRETARY, HEALTH AND WELFARE DEPARTMENT, ROOM NO. 603, 6TH FLOOR, ANNEXE II, SECRETARIAT, THIRUVANANTHAPURAM - 695001,
2. UNION OF INDIA, REPRESENTED BY ITS SECRETARY, HEALTH AND FAMILY WELFARE, NIRMAN BHAVAN, NEW DELHI - 110011.
3. INDIAN COUNCIL FOR MEDICAL RESEARCH, V.RAMALINGASWAMI BHAWAN, P.O.BOX NO. 4911, ANSARI NAGAR, NEW DELHI-110 029, REPRESENTED BY ITS SECRETARY AND DIRECTOR GENERAL.
4. KERALA MEDICAL SERVICES CORPORATION LTD., THYCAUD P.O., THIRUVANANTHAPURAM-14, REPRESENTED BY ITS MANAGING DIRECTOR.
5. SANDOR MEDICAIDS PVT. LTD., 8-2-326/5, ROAD NO.3, BANJARA HILLS, HYDERABAD-500 034, REPRESENTED BY ITS MANAGING DIRECTOR.
6. NATIONAL ACCREDITATION BOARD FOR TESTING AND CALIBRATION LABORATORIES, NABL HOUSE, PLOT NO.45, SECTOR 44, GURUGRAM, HARYANA-122 003, REPRESENTED BY ITS CEO.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to

i. stay the operation and implementation of Exhibit P11 and all proceedings pursuant thereto, pending disposal of the writ petition.

ii. stay the operation and implementation of Exhibit. P10, pending disposal of the writ petition.

This petition again coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 07.05.2021 and upon hearing the arguments of M/S. P.RAVEENDRAN (SENIOR ADVOCATE), PAUL JACOB, SHERU PAUL & ADHIL HARIS , Advocates for the petitioners, SRI.GOPALAKRISHNA KURUP, ADVOCATE GENERAL for R1, and of SRI.M.AJAY for R4, the court passed the following:



APPENDIX OF WP(C) 10997/2021

EXHIBIT P10

**TRUE COPY OF G.O(RT) NO.980/2021/H & FWD DATED
30.04.2021 REVISING THE COST FOR RT PCR TEST TO RS.
500/-**



T.R.RAVI, J.

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Dated this the 8th day of July, 2021

ORDER

This writ petition has been filed challenging Ext.P10 order whereby the Government fixed the rates at which an RTPCR test should be conducted by the private laboratories at ₹500/-. At the time of admission, the petitioners have sought for a stay of the order which was denied by a learned single Judge. The order of the learned Judge was taken up in appeal before a Division Bench and the Division Bench by order dated 21.06.2021 dismissed the appeal leaving open the legal and factual contentions to be raised before the single Judge hearing the writ petition.

2. I have heard Sri.P.Raveendran, Senior Advocate instructed by Sri.Paul Jacob on behalf of the petitioners, Sri.Gopalakrishna Kurup, the learned Advocate General on behalf of the State and Sri.M.Ajay on behalf of the 4th respondent.

3. The legal contentions that need to be answered on the basis of the arguments advanced by the counsel on either side are (i) whether the Government has power/authority to regulate the price at which a private laboratory should make available their services like conducting an RTPCR test, (ii) if the Government is

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found to have such a power what is the manner in which such a power should be exercised and (iii) whether the power can be exercised only after hearing the State holders like the petitioners.

4. One of the reasons which has weighed with the Government while issuing Ext.P10 is that the cost of the kits and consumables for the purpose of carrying out the RTPCR test have come down and that for similar test the rates charged in States like Haryana, Telengana, Uttarakhand and Odisha are comparable with the rates fixed as per Ext.P10. The order says that the Government has examined the current market rates of VTM, RNA extraction kits, PCR test kits and other consumables for RTPCR test and compared the cost in private labs for RTPCR in other States. As a justification for arriving at the rate of ₹500/-, it was stated that the rates arrived by the 4th respondent for doing RTPCR test through static and mobile RTPCR labs is ₹448.20 per test.

5. The contention raised by the petitioners is that placing reliance on the rates arrived at by the 4th respondent is not justified since the 4th respondent who is making purchases in bulk will be able to get the necessary materials at a much lesser cost than the price at which the petitioners will be able to procure, for the reason of differences in volume. During the hearing, this Court had asked the counsel for the 4th respondent and the learned

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Advocate General whether it will be possible to supply the necessary materials for conducting the RTPCR test to the petitioners at reasonable rates by the 4th respondent so that the cost presently fixed as per Ext.P10 could be commercially viable for the petitioners also. The counsel for the 4th respondent, with reservations regarding taking of policy decisions on such issues, submits that the suggestion can be considered. According to him, since the 4th respondent is not presently supplying to private institutions and is set up only with the purpose for procuring for Government, a policy decision would be required for permitting them to make such supplies. When the above suggestion was put to the learned Advocate General, he submits that since the suggestion has come during the course of hearing, he will not be able to give a ready reply and it is for the Government to consider the suggestion and take a final decision on it. The learned Senior counsel appearing for the petitioners submits that if the rates at which the 4th respondent may be able to supply to them are considerably less so as to make the testing commercially viable, the petitioners also will not have any serious reservations.

6. In the above circumstances, respondents 1 & 4 are directed to consider the above stated proposition and submit before the Court about the possibility of the 4th respondent

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supplying the materials and the cost at which they will be able to do so. The petitioners may submit a list of the materials that they would require for conducting the RTPCR test to the 4th respondent and the approximate volumes that would be required so that the 4th respondent will also be able to arrive at a competitive price.

Post for further hearing after 2 weeks.

Hand over.

Sd/-

T.R.RAVI, JUDGE

Pn

