

IN THE SUPREME COURT OF INDIA
CIVIL EXTRAORDINARY JURISDICTION

I.A. NO. _____ OF 2020

IN

WRIT PETITION (CIVIL) DIARY NO.10816 OF 2020

IN THE MATTER OF:

Shashank Deo Sudhi

... Petitioner

Versus

Union of India &
Ors.

...Respondents

AND IN THE MATTER OF:

Dr. Kaushal Kant Mishra
729, Sector A, Pocket
B&C, Vasant Kunj,
New Delhi-110070

...Applicant/Intervenor

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ADVOCATE FOR THE APPLICANT: POOJA DHAR

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APPLICATION FOR MODIFICATION OF ORDER DATED

08.04.2020

To

The Hon'ble Chief Justice of India

And His Companion Justices of

The Hon'ble Supreme Court of India

This humble application of the Applicant above named

Most Respectfully Showeth:

- 1.The Petitioner in the present matter had approached this Hon'ble Court seeking a direction

that all labs provide free testing facilities for COVID-19 (Coronavirus). A separate prayer sought the quashing of ICMRs advisory dated 17.03.2020 fixing Rs.1500 for the first step and Rs.3000 for the additional step of COVID-19 tests.

2.By way of an Order dated 08.04.2020 in the present matter, this Hon'ble Court was pleased to direct as follows:

"(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."

A true copy of the Order dated 08.04.2020 is annexed herewith and marked as **Annexure A-1**
(pp.13-16)

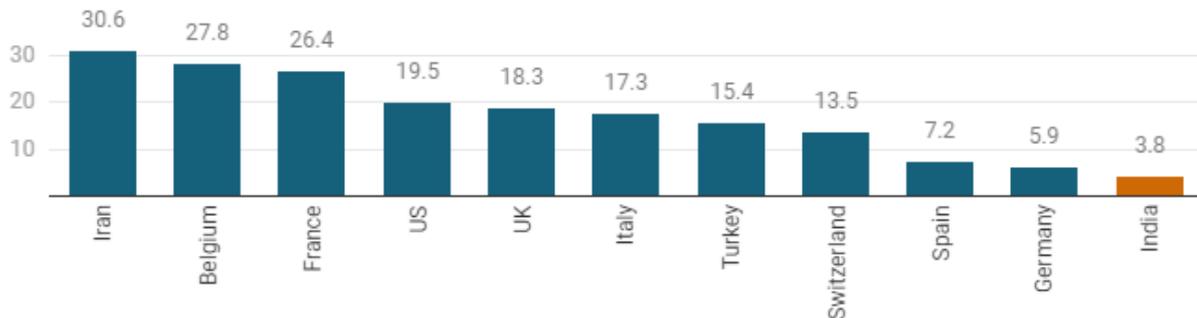
The present application seeks a modification only as far as a part of Direction (i) in the above order is concerned, i.e. the mandate that private laboratories shall test free of cost.

3. The present pandemic numbers in India are gradually increasing, and are likely to see severe spikes in the coming weeks. This is the point at which testing capacities must be at their maximum so that Governmental efforts to contain its spread can be suitably supplemented. More than 11 million tests have been conducted across the world as of 9th April 2020 of which as per ICMR data, about 160,000 tests have been by India. While India's positive cases are about 6,237 meaning only about 3.8% of those tested, in the United States having conducted 2.2 million tests, nearly 20% have shown up positive. Therefore, there is a clear correlation between greater testing and finding positive numbers. The graph below shows that India has among the lowest

rates of confirmed cases which is attributable to the low testing numbers.

Total confirmed cases (as a share of total tests conducted)

Analysis of the top ten countries by the total number of confirmed COVID-19 cases (ex. China) and India.



Footnotes: Calculated on the basis of latest data available. Data for confirmed cases taken for the same day for which the latest data is available for the tests conducted.

Source: [Worldometer](#) • [Get the data](#) • [Created with Datawrapper](#)

4. The message that has been sent out by the WHO Chief as early as the middle of March is to “test, test, test”. He further said “All countries should be able to test all suspected cases, they cannot fight this pandemic blindfolded.”

The Reuters report on this entitled “Test, test, test: WHO chief’s coronavirus message to world” dated 16.03.2020 is annexed here and marked as

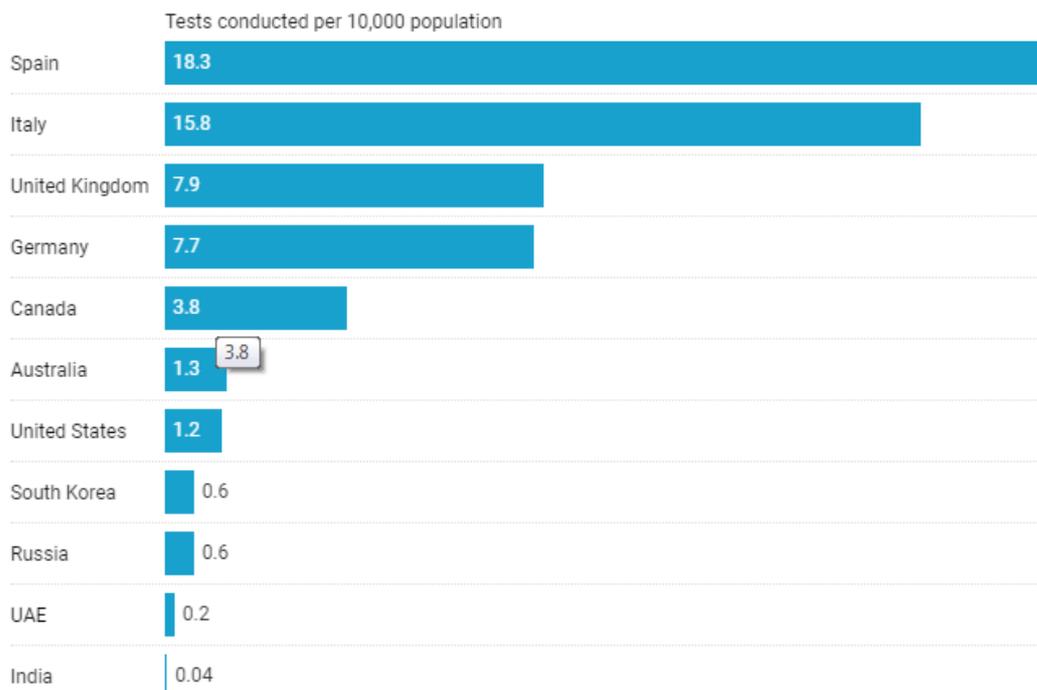
Annexure A-2 (pp.17 - 18)

<https://www.reuters.com/article/us-healthcare-coronavirus-who/test-test-test-who-chiefs-coronavirus-message-to-world-idUSKBN2132S4>

5. With the Indian population of over 1.3 billion, the per capita levels of testing are again extremely low at this very critical time. The below graph shows how modest the Indian figures are:

Covid-19 tests conducted per capita

Analysis of the top ten countries by the number of tests conducted along with India.



Source: [Worldometer](#) · [Get the data](#) · Created with [Datawrapper](#)

A true copy of the article entitled "Covid-19: Are we testing enough? Here's how India fares versus others" dated 09.04.2020 as published in the Business Standard is annexed here and marked as **Annexure A-3 (pp.19 - 21)**

https://www.business-standard.com/article/health/covid-19-are-we-testing-enough-here-s-how-india-fares-versus-others-120040901595_1.html

6. On 09.04.2020, the ICMR issued a list of 67 private labs that were authorized to test for COVID-19. It is not becoming apparent that quite a few of them have reservations about going ahead with testing unless it is clear about where the funding for the same would come from. There does not appear to be a clear commitment from the Governments, either Central or State to take on any extent of the burden. As per the report in the Indian Express on 10.04.2020, Mumbai based Thyrocare has already said that it is putting its

COVID-19 testing on hold until there is further clarity on the finances.

A true copy of the list of private labs as notified by ICMR is annexed here and marked as **Annexure A-4 (pp.22 - 24)**. A true copy of the article in the Indian Express entitled "Pvt. Labs endorse SC order on free tests, want to know: Who will cover cost?" dated 10.04.2020 is annexed here and marked as **Annexure A-5 (pp.25 - 27)**

7.As recently as on 08.04.2020, the Government sources have been quoted as saying that the coming week is a make-or-break week as far as testing is concerned, and admitting that the private labs have far greater mobility and reach because they are making money. A true copy of the article in the Indian Express entitled "As case count crosses 5000, Govt plans big testing push in make-or-break week" dated 08.04.2020 is annexed here and marked as **Annexure A-6 (pp.28 - 29)**.

8. In addition to all the above facts, several citizens have now been admitted and confined in hospitals and other facilities as COVID-19 suspects, but their test results remain pending for long periods, putting a strain on the system as well putting each of them at risk being in an environment where the virus may be at large. Even the present capacity of the labs, both Government and Private appear to be woefully insufficient to obtain accurate data and control the pandemic.

9. The consequence of all the above is that at a time when testing across the country has to be ramped up and the nation enters the most critical phase, the private labs have been emburdened with offering free testing, ignoring the fact that the few pathogen labs which are well equipped at the time of the disaster would be actually disincentivized to continue to function. It may be noted that in the UK, private labs are charging as much as \$425 per test, which is equal to Rs.32,500. Of course, for those below the

poverty line or the EWS categories, the private labs could be directed to carry out free testing provided that the same is reimbursed by the Government.

10. In addition, it is necessary that all Governments start installing pathogen labs in local municipal and panchayat areas so that free testing by the Government can be increased to manage the capacity.

11. It is for these reasons that the Applicant prays for this Hon'ble Court's indulgence and presents this application which is filed in good faith and in the interests of equity and justice.

PRAYER

It is most respectfully prayed that this Hon'ble Court may be pleased to:

1. **MODIFY** the Order dated 08.04.2020 to allow private labs to carry out COVID-19 testing as per the rates stipulated in the ICMR Advisory dated 17.03.2020 but allowing the tests to be free for

the EWS categories with immediate reimbursement by the Government;

2. **MODIFY** the Order dated 08.04.2020 to direct the Respondents to forthwith set up testing labs in all Municipalities and Panchayat areas;

3. **GRANT** any other relief that this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

Filed By:

Date: 10 April 2020

Pooja Dhar

Place: New Delhi

Advocate for the Applicant

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AFFIDAVIT

I, Dr. Kaushal Kant Mishra, s/o K.K. Mishra, r/o Flat No.729, Sector A Pocket B&C, Vasant Kunj, New Delhi-110070, aged about 45 years, do hereby solemnly swear and affirm as under:

- 1.That I am well versed with the facts of the present matter. As such I am fully competent to swear to this Affidavit.

2. That I have read and understood the contents of the present Application for Directions which has been drafted by my advocate under my instructions. I say that the contents thereof are true to the best of my knowledge and belief and nothing material has been concealed therefrom.

3. That the documents annexed to the present Application are true copies of their respective originals.

DEPONENT

Dr. Kaushal Kant Mishra

VERIFICATION

Verified on the 10th day of April, 2020 at New Delhi that the contents of the above affidavit are true to the best of my knowledge and belief and nothing material has been suppressed therefrom.

DEPONENT

Dr. Kaushal Kant Mishra