

**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 8<sup>th</sup> 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

