

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

**LD-VC-CW(PIL)-12 OF 2020**

(Citizen Forum for Equality..vs..The State of Mah, thr its Chief Secretary, Mumbai and ors.)

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

*Court's or Judge's orders.*

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Shri Dr. Tushar Mandlekar, counsel for petitioner.  
Shri U.M. Aurangabadkar, ASGI for Union of India.  
Shri S.Y. Deopujari, GP for respondent / State.  
Shri S.M. Puranik, counsel for respondent Corporation.

**CORAM: ROHIT B. DEO, J.**  
**DATE:19.05.2020.**

Hearing was conducted through video conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. Civil Application (LD-VC-CA-89/2020) seeking permission to amend the petition and to incorporate additional prayers and array additional parties, is allowed. At the request of the learned Government Pleader Shri Sumant Deopujari, time is granted to the State to file an affidavit in response to the amended pleadings. The learned Government Pleader waives service for newly added respondents 7 & 8.

3. The issue which is addressed by the learned counsel for the petitioner Dr. Tushar Mandlekar concerns conducting "RT-PCR Test" of

the frontline warriors in the war against Covid-19 which include doctors, nurses, para-medical staff, pharmacists and police personnel.

4. Dr. Tushar Mandlekar, the learned counsel would submit that the frontline warriors must be treated, without any exception, as high risk contacts, if the doctors and other medical staff and policemen are discharging duty in containment zones or in institutional quarantine centres or covid wards or are otherwise required to come in close contact with suspected covid cases.

5. Dr. Tushar Mandlekar invites my attention to the order dated 30.4.2020 (Coram : Manish Pitale, J.) and in particular paragraphs 6 and 7 of the order which read thus:

*“6. The learned ASGI also submitted that he would take specific instructions regarding guidelines for conducting RT-PCR tests of doctors, health workers and Police personnel attending to COVID-2019 facilities and further as to what could be the strategy for undertaking surveillance tests through the Rapid Antibody Tests on citizens and residents of the hot-spot areas.*

*7. This Court finds that lockdown was imposed at a nationwide level so as to break the cycle of spread of COVID-*

*2019 and to ensure that community spread would not take place. It appears that such lockdown was part of the strategy to ensure that COVID-2019 did not spread rapidly and exponentially as found in certain countries where lockdowns were not imposed. It appears that the Union of India as well as the State of Maharashtra need to now seriously consider the issue of undertaking RT-PCR tests of citizens, residents, doctors, health workers and Police personnel at the forefront of the war against COVID-2019 and further to consider undertaking Rapid Antibody Tests as the matter of surveillance on citizens and residents of hot-spot areas so that those infected by COVID-2019 are identified and quarantined, thereby helping in the war against Pandemic of Covid-2019. Specific instructions be taken by the learned ASGI and the learned Government Pleader in this regard.”*

6. Dr. Tushar Mandlekar would submit that while the State Government is insisting that the guidelines issued by the ICMR are scrupulously followed, the guidelines may not be read narrowly or pedantically. Dr. Tushar Mandlekar would submit that in any event, the fact that the State follows the guidelines issued by the ICMR would not preclude the State from taking an additional measure to ensure the safety of the medical and police personnel who are risking their lives day in and day out.

7. Shri Sumant Deopujari, the learned Government Pleader would submit that the State is more than alive to the obligation to protect the health of the frontline warriors. The learned Government Pleader asserts that the State is scrupulously adhering to the guidelines issued by the ICMR. The learned Government Pleader would emphasize that every precaution is taken by the State to ensure that the medical and police personnel who are working in the containment zones and areas which are high risk areas are given necessary equipment for self protection.

8. Both Dr. Mandlekar, the learned counsel and Shri Sumant Deopujari, the learned Government Pleader have laboriously taken me through the guidelines issued by ICMR from time to time. Suffices it to refer to the guidelines dated 18.5.2020 which purport to strategies for Covid-19 testing in India. The relevant portion of the guidelines dated 18.5.2020 reads thus:

*“1. All symptomatic (ILI symptoms) individual is with history of international travel in the last 14 days.  
2.all symptomatic (ILI symptoms) contacts of laboratory confirmed cases.  
3. All symptomatic (ILI symptoms) health care workers / frontline workers involved in containment and mitigation of COVID 19.*

*4. All patients of Severe Acute Respiratory infection (SARI).*

*5. Asymptomatic direct and high risk contacts of a confirmed case to be tested once between day 5 and day 10 of coming into contact.*

*6. All symptomatic ILI within hotspots/containment zones.*

*7. All hospitalized patients who develop ILI symptoms.*

*8. All symptomatic ILI among returnees and migrants within 7 days of illness.*

*9. No emergency procedure (including deliveries) should be delayed for lack of test. However, sample can be sent for testing if indicated as above (1-8), simultaneously.”*

9. At first blush, it does appear that guideline 3 recommends that only symptomatic health care workers / frontline workers involved in containment and mitigation of Covid-19 be tested. A slightly closer consideration would reveal that guideline 5 refers to asymptomatic direct and high risk contacts of a confirmed case. The stand of the State appears to be that health care workers / frontline workers are required to be tested only if guideline 3 comes into play. In essence, the stand of the State appears to be that unless the health care workers / frontline workers manifest symptoms, it would not be appropriate to burden the limited testing infrastructure.

10. It must be borne in mind that it is well

known and accepted that a Covid-19 patient may exhibit symptoms only after 10 to 12 days. The medical and police personnel who discharge duty in the containment zones or discharge duty of such nature as would expose them to infection may be infected through a person who is not symptomatic. The question which the authorities will have to address is whether the guidelines be read narrowly or pedantically or whether the State owes it to the frontline warriors to take additional steps or measures, assuming that the guidelines do not envisage such testing. In my considered view, which of course is a prima facie view, presently the medical and police personnel are doing, what the brave hearts of the armed forces do day in and day out, i.e. answering the call of duty at the risk of falling pray to the deadly virus. The society in general and the State in particular owes it to the frontline warriors to take all possible measures as would minimize if not obliterate the threat of infection, assuming arguendo, that the advisory or guidelines issued by ICMR do not cover the frontline warriors till the symptoms are manifested. The State would expected to take additional measures, going beyond the guidelines, if such measures ensure the minimization of the risk to the medical and police personnel.

11. Ordinarily, the Courts ought to refrain from treading in territory and domain reserved for the policy makers. The restraint is not self imposed. The doctrine of separation of power envisages that the judiciary shall ordinarily not venture into the domain of the executive. It would be appropriate if the District Collector and the Commissioner of Police, Nagpur take an appropriate decision on conducting such tests on the medical and police personnel working or discharging duty in the two containment zones of Mominpura and Satranjipura, as a pilot project. The decision, either way, shall be taken in 48 hours.

12. Lest the observations supra be misunderstood as a peremptory direction, it is made clear, that at least at this stage all that is expected of the District Collector and the Police commissioner is to take a decision on the lines indicated, and the decision shall be taken uninfluenced by any observation herein.

13. This order is in no way a reflection on the sincerity of the intent or efforts of the Government machinery. The citizens of Nagpur appear to be broadly appreciative of the role of the bureaucracy which is handling the extraordinary

situation and the only anxiety is that the District Collector and the Police Commissioner come with a structured response to the suggestion of pilot project of testing the medical and police personnel who are engaged in active duty in the two containment zones of Mominpura and Satranjipura, and take a decision either way, which decision shall be considered in the next hearing.

14. Stand over to 22.5.2020.

15. The order be communicated to the Counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

**Judge**