

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN**

Thursday, the 10th day of March 2022 / 19th Phalgun, 1943
WP(C) NO. 25046 OF 2021(E)

PETITIONERS:

1. ACCREDITED MOLECULAR TESTING LABORATORIES ASSOCIATION (AMLA), HAVING ITS OFFICE AT: MANIKKATH CROSS ROAD, RAVIPURAM, ERNAKULAM, REP BY ITS SECRETARY MR. BERLY CYRIAC.
2. MEDIVISION SCAN & DIAGNOSTIC RESEARCH CENTRE PVT LTD, GROUND FLOOR, MERCY ESTATE, M.G.ROAD, RAVIPURAM, KOCHI-682 016, REPRESENTED BY ITS DIRECTOR, MR BERLY CYRIAC.

RESPONDENTS:

1. STATE OF KERALA ,REPRESENTED BY ITS PRINCIPAL SECRETARY, HEALTH AND WELFARE DEPARTMENT, ROOM NO 603, 6TH FLOOR, ANNEXE 11, SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. ADDL.R2: KERALA MEDICAL SERVICES CORPORATION LTD. (REPRESENTED HEREIN BY ITS MANAGING DIRECTOR) A COMPANY REGISTERED UNDER THE COMPANIES ACT AND HAVING ITS REGISTERED OFFICE AT KMSCL HEAD OFFICE, STATE INSTITUTE OF HEALTH & FAMILY WELFARE COMPOUND, THYCAUD P.O., THIRUVANANTHAPURAM, PIN - 695014, ADDL. R2 IS IMPLEADED AS PER ORDER DATED 03.03.2022 IN IA NO. 2/2022 IN WPC NO. 25046/2021.

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 stay Exhibit P7 order and all proceedings pursuant thereto, pending disposal of the writ petition.

This petition coming on for order's upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of SRI.PAUL JACOB (P),SRI. SHERU PAUL Advocates for the petitioners, SENIOR GOVERNMENT PLEADER for the respondent 1 (B/0) and of SRI.M.AJAY, STANDING COUNSEL for the respondent 2,the court passed the following:

P.V.KUNHIKRISHNAN, J

W.P.(C.) Nos. 25046 of 2021 & 4904 of 2022

Dated this the 10th day of March, 2022

REFERENCE ORDER

These two writ petitions are connected and therefore, I am passing a common order in these two writ petitions. The prayers in W.P.(C.) No. 25046/2021 are extracted hereunder :

- i. Issue writ in the nature of a declaration or other appropriate writ, order or direction calling for the records leading to Exhibit P7 and quash the same.*
- ii. Issue such other appropriate writ order or direction that may be deemed to be just and equitable in the facts and circumstances of the case. For which favor the petitioner as in duty bound shall ever pray.*

2. The prayers in W.P.(C.) No. 4904/2022 are extracted hereunder :

- i) Issue writ in the nature of a declaration or other appropriate writ, order or direction calling for the records leading to Exhibit. P10 and quash the same;*
- ii) Issue writ in the nature of a declaration or other appropriate writ, order or direction prohibiting the respondent or any person under him from passing any order fixing the rates of products/services of the petitioners covered under the Essential Commodities Act, 1955 and Drugs and Cosmetics Act, 1955, as also under the Drug (Price Control) Orders and more specifically RTPCR tests, unless otherwise specifically authorized in accordance with law by the central government.*

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*iii) Issue such other appropriate writ order or direction that may be deemed to be just and equitable in the facts and circumstances of the case.
For which favor the Petitioner as in duty bound shall ever pray."*

3. W.P.(C.) No. 25046/2021 is filed mainly challenging Ext.P7. Ext.P7 is an order passed by the State Government consequent to Ext.P6 judgment, by which the RT-PCR test rate was fixed as Rs.500/-. After Ext.P7, Ext.P10 produced in W.P.(C.) No.4904/2022 was passed by the Government reducing the RT-PCR test rate further to Rs.300/-. Ext.P10 is challenged in W.P.(C.) No. 4904/2022.

4. The basic judgment in this issue is the judgment in ***Devi Scans (P) Ltd. v. State of Kerala*** [2022 (1) KLT 476]. This Court after considering the provisions of the Travancore Cochin Public Health Act, 1955, the Epidemic Diseases Act, 1897, Disaster Management Act, 2005 and also the Kerala Epidemic Diseases Ordinance, 2020 concluded that none of the statutory provisions relied on by the State authorises to issue an order controlling the rate at which the private laboratories should carry out the RT-PCR tests. Thereafter, the learned

Judge disposed the writ petition with the following directions:

“31. In the result, Exts.P10 and P11 are set aside. The 1st respondent is directed to take a fresh decision regarding the rate at which the RT-PCR tests shall be conducted by the private laboratories in the State after discussing with the owners or representative of such private laboratories, within three weeks from the date of receipt of a copy of this judgment. To facilitate the process of discussion and taking a decision, the order setting aside Exts.P10 and P11 is kept in abeyance for one month. However, the above direction to keep in abeyance Ext.P11 should not be understood to be a permission to take coercive action against the petitioners or similarly situated persons. The writ petitions are disposed of as above.”

5. In other words, after finding that the State Government has no source of power to decide the rate of RT-PCR tests, the learned Judge directed the State Government to pass appropriate orders in discussion with the private laboratories Management.

6. After going through the above judgment in detail and also the provisions of the Travancore Cochin Public Health Act, 1955, the Epidemic Diseases Act, 1897, Disaster Management Act, 2005 and the Kerala Epidemic Diseases Ordinance, 2020, I respectfully disagree with the finding in case about the source of power of the State Government to regulate the price rate of

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RT-PCR tests. The Advocate General produced a new Ordinance (Kerala Public Health Ordinance, 2021). As per the above ordinance, the Madras Public Health Act, 1939 existing in force in the Malabar District referred to in sub-section (2) of the States Reorganisation Act, 1956 shall cease to operate in the said area. The Travancore-Cochin Public Health Act, 1955 is also repealed.

7. The learned Judge considered Sec.2(1) of the Epidemic Diseases Act, 1897, which is extracted hereunder :

"2. Power to take special measures and prescribe regulations as to dangerous epidemic disease.—(1) When at any time the State Government is satisfied that the State or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the State Government, if it thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed."

8. The learned Judge also considered the provisions of the Disaster Management Act, 2005 and other provisions. Thereafter, the learned Judge observed that a reading of the

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section shows that it does not deal with any price fixation or price control, but deals with action to be taken for stopping the spread of any dangerous epidemic disease. The learned Judge also said that testing of persons to ascertain whether they are affected by the epidemic is also an ancillary step for stopping the spread of disease. But it is observed that, that would take in only imposing conditions as to compulsorily testing etc., but not price fixation of such tests conducted by private individuals or private laboratories.

9. With great respect, I cannot accept the above observation. The State was facing a pandemic situation. The State Government was doing its level best to do the needful to see that the general public is not affected. In such situation, the Government took certain steps to control the price fixation of RT-PCR tests. In such situation, this Court ought not have taken such a stand is my considered view. After going through the relevant statutory provisions, I am of the firm opinion that, there is sufficient source of power to the State Government to regulate the price rate of RT-PCR tests. It is an admitted fact

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that, rate for RT-PCR tests was originally fixed as Rs.4,500/-. Thereafter, it was reduced to Rs.2700, then to Rs. 1,700/-. The ultimate person who affects because of the fluctuation in the rate of RT-PCR is the poor citizens of this country. The 2nd respondent in W.P.(C.) No. 4904 of 2022 has filed a detailed counter affidavit in this case. The relevant portion of the counter affidavit is extracted hereunder :

“It may also be noted that Devi Scan, the first petitioner in WP(C) No.10997/21 first quoted Rs.410/- per RTPCR test, the highest quote received. M/s Neuberg Diagnostic (P) Ltd, the 12th petitioner in WP(C) 11632/21 quoted Rs.224/- per RTPCR test and Rcell Diagnostic & Research Centre, the first petitioner in Exhibit P7 judgment quoted Rs.190/- per test. When the offers were sought to match the L1 rate of Rs.139/- per RTPCR test, 7 private laboratories offered to do so including Rcell Diagnostic & Research Centre. Devi Scan, Rcell Diagnostic & Research Centre, and Neuberg Diagnostic are listed as members of the first petitioner Association in Exhibit P1.”

This shows that, some of the petitioners in these cases itself quoted reduced rate for RT-PCR tests. In such situation, according to me, a detailed consideration of these aspects by a Division Bench is necessary, especially about the source of power of the State Government to regulate the price of RT-PCR tests, for which a reconsideration of ***Devi Scans (P) Ltd's*** case

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(supra) is necessary. Therefore, the Registry will place these cases before the Hon'ble Chief Justice for appropriate orders, in accordance to law.

Sd/-
P.V.KUNHIKRISHNAN,
JUDGE

SKS



APPENDIX OF WP(C) 25046/2021

Exhibit P6

**TRUE COPY OF COMMON JUDGMENT OF THIS HON'BLE COURT
DATED 04.10.2021 IN WPC NO 10997 OF 2021 AND WPC NO
11632 OF 2021**

Exhibit P7

**TRUE ORDER DATED 01.11.2021 AND NUMBERED AS GO(RT) NO
2381/2021/H &FWD ISSUED BY THE 1ST RESPONDENT**

