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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3031/2020

RAKESH MALHOTRA

..... Petitioner

In person.

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF  
INDIA AND ORS

..... Respondent

Through: Mr. Satyakam, ASC for the GNCTD  
with Dr. Nutan Mundeja.

Mr. Anurag Ahluwalia, CGSC and Mr. Abhigyan  
Siddhant, Advocate for MoHFW, ICMR and  
CSIR.

**CORAM:**

**HON'BLE MS. JUSTICE HIMA KOHLI**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**ORDER**

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**11.11.2020**

**HEARD THROUGH VIDEO CONFERENCING**

**C.M. No.12106/2020 (by the applicant for directions)**

1. In all this time, the focus of this court in the present petition has been on ramping up of testing in Delhi through RTPCR, CBNAAT, TruNat, besides RAT and the steps that have been taken by all the concerned agencies including Delhi Government to implement the guidelines laid down by the ICMR. The steps that were being taken by the Govt. of NCT were being monitored by this court to ensure that the government keeps abreast of the situation relating to COVID-19 infection and deals with it effectively by ramping up the testing. However, in the past two weeks, the number of

COVID-19 cases has spiralled alarmingly. As on 10.11.2020, Delhi has reported 8593 cases and is still counting, with 4016 Containment zones. That the infection has become rampant in Delhi, is stating the obvious. A city State like Delhi has been reporting far more cases than States like Maharashtra and Kerala. No household has been left untouched. In such circumstances, we would have thought that emergent corrective steps would have been taken and a concerted strategy worked out by the Govt. of Delhi to contain the infection.

2. However, it has been noticed that even in such a critical situation, the Delhi Government has continued to relax the norms relating to movement of the public. This is apparent from the fact that as against an order capping 100 guests at marriage ceremonies, the number of guests has been permitted to be increased to 200. Similarly, as against the permission granted earlier, to occupy alternate seats in public transport, Delhi Government has now permitted the seats in public transport to be fully occupied. Photos flashed on the social media bear a testimony to the market places in Delhi thronging with huge crowds. It is an alarming situation where all caution has been thrown to the winds during this festive season and the public is out in uncontrolled numbers, which itself would become a cause for further spread of the infection. On the one hand, citizens of Delhi have been struggling with the COVID-19 infection and on the other hand, the air pollution in the city is adding to their woes. It is a known fact that the COVID-19 virus can survive for a longer duration in pollution and thereby increase the severity of the disease.

3. As a matter of fact, any of these large gatherings of the public in narrow and constricted streets and spaces would result in becoming super

spreaders of the infection. It is one thing for the Delhi Government to state that till a vaccine is introduced to contain the infection, masks should be treated as a vaccine and another thing to demonstrate how it proposes to enforce such a statement. The situation has surpassed the stage of issuance of Advisories. Strict compliance and deterrent action is the need of the hour. If Delhi Government is serious about implementing its policy/strategy to contain the infection, then we would have thought that by now, there would have been some sanctions through appropriate legislation for enforcing wearing of masks in public places.

4. We have enquired from Mr. Satyakam, learned ASC as to what concrete steps has the Delhi Government taken in the past three weeks in the light of the alarming increase of COVID-19 infection to ensure that there is strict adherence to the norms of wearing a mask and maintaining social distancing, of adhering to norms of adequate hygiene, of preventing crowding at public places/public transports, of making adequate arrangement for hospitalising patients suffering from COVID-19 infection and those who require to be shifted to Care homes.

5. Mr. Rakesh Malhotra, the petitioner himself has logged into today's hearing to state that he has been hospitalized with COVID-19 infection since day before yesterday and is on oxygen support. He states that though he is a resident of West Delhi, despite efforts made by him, he could not manage to get admission in any of the neighbouring private hospital/nursing home and finally, had to move to a nursing home in Dwarka due to his critical condition. We appreciate the effort made by the petitioner to join in the virtual hearing even in this condition. The petitioner is just one among several thousands of persons in Delhi suffering from the infection, who are

struggling to find a bed in hospitals/nursing homes.

6. In the meantime, enclosed with the Status Report filed by the Delhi Government is the Sero-Surveillance Report-4, which shows that infection in the Central District of Delhi has shot up by two and a half times *vis-a-vis* the earlier two Sero-Surveillances conducted in August and September, 2020. The conclusion of the latest Sero-Surveillance Report that relates to samples collected between 15.10.2020 to 21.10.2020, is that Delhi is continuing to report increasing number of cases which is yet to reach its peak and that antibody production among new SARS COVID-II infections occurs over the subsequent 3-4 weeks and amongst asymptomatic cases, are likely to disappear over the next 2-3 months. The positivity rate of the infection in Delhi is 25% which means that out of 100 persons, 25 persons have already got infected with the COVID-19 infection. In other words, 1 out of 4 persons has been infected with COVID-19 infection.

7. In the light of the above situation, the number of tests undertaken by the Delhi Government (in terms of Annexure-E) from 19.10.2020 till date, reveals that testing through RAT is still being relied upon heavily *vis-a-vis* testing through RTPCR and other similar modes. Taking a random example of the testing conducted by the Delhi Government during this period would show that figures of testing through RAT has always and invariably been double of the testing done through RTPCR and similar modes, which is not understood when the situation is as critical as it is now and several asymptomatic persons are turning out to be COVID positive.

8. It is not as if the ICMR has prevented any State from re-strategizing, depending on the fact circumstances of that particular State. Therefore, Delhi Government can no longer claim that it is bound by the Advisories

issued by the ICMR and remain oblivious to the ground reality. In the light of the above and the mounting cases in past two weeks, alarm bell should have rung within the Government to tackle the situation hands on. Though Mr. Satyakam states that Delhi Government has been taking urgent measures to control COVID-19 infection in Delhi, the number of the mounting cases belies the said submission.

9. It is therefore deemed appropriate to enlarge the scope of this petition and direct the Delhi Government to file a Status Report setting out the steps taken by it in the past two weeks to control the COVID-19 infection and the manner in which it proposes to deal with the other issues flagged by this court and referred to herein above. The said Status Report shall be filed by 18.11.2019.

10. List on 19.11.2020.

**HIMA KOHLI, J**

**SUBRAMONIUM PRASAD, J**

**NOVEMBER 11, 2020**  
**TR/NA/rkb**