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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR
ON THE 10th OF NOVEMBER, 2022

WRIT PETITION No. 15662 of 2021

BETWEEN:-

LEELA SURANA W/O LATE SHRI ABHAY
SURANA, AGED ABOUT 79 YEARS,
OCCUPATION: HOMEMAKER NATHWADA,
(MADHYA PRADESH)

.....PETITIONER

(BY SHRI RISHI SHRIVASTAVA, ADVOCATE)

AND

- THE STATE OF MADHYA PRADESH
THROUGH PRINCIPAL SECRETARY
1. FINANCE DEPARTMENT VALLABH
BHAWAN (MADHYA PRADESH)
2. COLLECTOR / DISTRICT MAGISTRATE
SHAJAPUR (MADHYA PRADESH)
THE NODAL OFFICER COVID 19, DIST.
3. HOSPITAL COVID 19, DIST. HOSPITAL,
SHAJAPUR (MADHYA PRADESH)
4. DISTRICT EDUCATION OFFICER
SHAJAPUR (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI AKASH SHARMA, GOVT. ADVOCATE)

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*This petition coming on for order this day, the court passed the
following:*

ORDER

The petitioner has filed the writ petition under Article 226 of the Constitution of India, assailing the order dated 09.08.2021 passed by the respondent No.4/The District Education Officer, District-Shajapur (M.P.) whereby, the petitioner's application for grant of the benefit under the Scheme of Chief Minister Covid-19 *Vishesh Anugrah Yojana* (hereinafter referred to as 'the Scheme') has been rejected.

The case of the petitioner is that her daughter-Smt. Bindiya Surana, aged 44 years, who was a Government Teacher, passed away on 14.4.2021, on account of Covid-19 and as she died due to Covid-19, the petitioner applied for the compensation under the aforesaid Scheme. However, the respondent No.4/the District Education Officer, Shajapur has rejected the application, relying upon para 4.1 of the Scheme which mandates RTPCR test of the deceased to prove that he was Covid positive, holding that as the petitioner's daughter was not subjected to RTPCR test and, thus, it is not known whether she suffered from Covid-19 and her death was owing to Covid-19 only.

Counsel for the petitioner has submitted that admittedly, all the family members of the petitioner suffered from Covid-19. The RTPCR reports received through SMS by the family members have also been placed on record including the report of the

petitioner herself. And, thus, it is submitted that as other family members also suffered from Covid-19, the petitioner owing to her symptoms, instead of getting tested for Covid-19 through RTPCR, directly went for herself examining through C.T. Scan test and as per the C.T. Scan report dated 16.4.2021, it has been found that she suffered from Covid -19 CORADS Grade—5, whereas, as per CO-RADS classification, the level of suspicion for CORADS grade 5 is very high typical Covid-19. It is submitted that the aforesaid document itself is more than sufficient to establish that the petitioner's daughter suffered from Covid-19 only and she died on 25.4.2021 in the Shajapur City Hospital, Shajapur.

Counsel for the petitioner has also drawn attention of this Court to another C.T. Scan report of the petitioner's daughter dated 21.4.2021 in which also it is mentioned that her CORADS Grade are 5 and its severity score -12/9 (21/25) and it is also opined that more than 75% of her lungs are involved. Thus, it is submitted that the impugned order be set aside as the daughter of the petitioner did suffer and died on account of Covid-19 only. By way of amendment in the petition the petitioner has also challenged the para 4.1 of the Scheme that the same is *ultra virus* to the Constitution.

Counsel for the respondent/State, on the other hand, has opposed the prayer and a reply to the petition has also been filed

denying the averments made in the petition. Counsel for the respondents has submitted that as per para 4.1 of the Scheme, it is mandatory for a person claiming under the aforesaid Scheme to get the RTPCR test done and since in the present case there is no RTPCR test carried out by the deceased, the benefit of the Scheme cannot be extended to the petitioner.

Heard the counsel for the parties and also perused the record.

From the record, there is not denying the fact that the petitioner's daughter was not put through RTPCR test, however, her C.T. Scan test reports are available on record in which she is said to have suffered from severe Covid-19 as her CORADS Grade is said to be 5 which is as per CORADS Grade classification, has a very high level of suspicion of typical Covid-19. Two such C.T. Scan reports have been placed on record.

It is also found that the other family members of the petitioner, including herself, also suffered from Covid-19 and got their RTPCR test done. On the other hand, in the reply filed by the respondents, there is not a whisper regarding the CT-Scan test which the petitioner's daughter got done and in which her CORADS Grade is said to be 5 which is as per CORADS Grade classification, has a very high level of suspicion of typical Covid-

19 and as such there is no denial of the respondents about the said CT-Scan reports which demonstrate that the daughter of the petitioner did suffer from severe Covid-19. The respondents could also have produced the opinion of an expert Doctor or of the Medical Board that the documents filed by the petitioner are not sufficient to hold that her daughter did not suffer from Covid-19 but no such exercise has been undertaken by the respondents.

In such circumstances, without going into the *virus* of clause 4.1 of the Scheme, this Court is of the considered opinion that in the light of the C.T. Scan report placed on record, demonstrating the fact that the daughter of the petitioner suffered from very high Covid-19, merely because the RTPCR tests were not conducted, the petitioner cannot be denied the benefit of the Scheme. It is true that the State Government must have formulated the Scheme taking into account the various factors involved relating to the Covid-19, but under the attending circumstances, merely because one particular test i.e., RT-PCR was not conducted by the petitioner's daughter, she cannot be denied the benefit of the Scheme when otherwise there is ample, unrebutted evidence on record to prove that she indeed died of Covid-19 only.

Resultantly, the impugned order dated 09.08.2021 cannot be sustained on the anvil of the factual scenario as aforesaid, and the same is hereby quashed. The respondents are directed to grant the

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benefit of the Scheme to the petitioner, who is a widow, aged around 79 years and has lost her daughter aged 44 years. Let the said exercise be completed within a period one month from the date of receipt of the certified copy of this order.

Certified copy, as per rules.

(Subodh Abhyankar)
Judge

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