

The High Court Of Madhya Pradesh

WP-8914-2020

(IN REFERENCE (SUO MOTU) Vs UNION OF INDIA AND OTHERS)

WP/08696/2020, WP/14805/2020, WP/20889/2020, WP/02513/2021

18

Jabalpur, Dated : 07-04-2021

Mr. Jubin Prasad, Advocate appeared as *Amicus Curiae* in WP-8914-2020.

Mr. Sanjay Kumar Verma, Advocate for the petitioner in WP-20889-2020.

Mr. Jitendra Kumar Jain, Assistant Solicitor General for the Union of India.

Mr. Swapnil Ganguly, Deputy Advocate General for the respondents/State alongwith Mr. R.K. Thakur, Regional Director, Health Services and Mr. Ratnesh Kurariya, Chief Medical & Health Officer, Jabalpur.

Mr. Shivendra Pandey, Advocate for the Indian Medical Association, Jabalpur Branch (respondent No.5 in WP-8914-2020).

Mr. Shreyas Pandit, Advocate for the Madhya Pradesh Nursing Home Association, Jabalpur (respondent No.8 in WP-8914-2020).

Mohd. Vasif Khan, Advocate for the intervenor in WP-8914-2020.

These matters are listed today for consideration of two Interlocutory Applications filed by the learned *amicus curiae* in **WP-8914-2020** seeking appropriate directions in view of second wave of COVID-19.

IA-3929-2021 has been filed on 31.03.2021 on the premise that the learned *amicus curiae* has learnt from reliable sources that the District Administration, Jabalpur has orally directed all the private labs and hospitals to stop conducting COVID-19 tests from 25.03.2021.

The Chief Medical & Health Officer, Jabalpur (for short "CMHO") present before this Court alongwith learned Deputy Advocate General categorically stated that no such oral instructions have been issued. The District Administration only intended to regulate the rates of the tests to be

charged by the Private Labs and Hospitals and to require them to charge as per the guidelines issued by the Government.

IA-4125-2021 has been filed by the learned *amicus curiae* with the prayer that all the District Administrations of the State of Madhya Pradesh may be in view of second wave of COVID-19 directed to ensure strict compliance with the directions of the State Government issued on 25.03.2021; require all Ayushman Bharat Niramayam empanelled healthcare providers to not to deny treatment to COVID-19 suspected and confirmed patients falling under Ayushman Bharat Niramayam beneficiary category and further require them to reserve minimum 20% beds for COVID-19 patients at all times and designate COVID-19 wards to treat suspected or confirmed COVID-19 patients in their establishment.

Mr. Swapnil Ganguly, leaned Deputy Advocate General for the respondents/State produced a copy of order dated 05.04.2021 issued by the Commissioner (Health)-cum-Officiating Secretary, Directorate of Health Services, Government of Madhya Pradesh for our perusal, whereby rate of RT-PCR Test and Rapid Antigen Test has been prescribed for all the private RT-PCR ICMR & NABL approved Private Laboratories and NABH recognized Private Hospitals. As per said order, they have to mandatorily charge only a sum of Rs.700/- per patient for RT-PCR COVID-19 Test and if the sample is collected by visiting the house of the patient, then they can charge additional sum of Rs.200/-. Similarly, for Rapid Antigen COVID-19 Test, it has been directed that they shall charge a sum of Rs.300/- per patient and if the sample is collected by visiting the house of the patient, then they may charge additional sum of Rs.200/-. It has also been clarified in the said order that the aforesaid additional sum of Rs.200/- includes the expenses incurred towards transportation charges, consumable, PPE kit and other items. It has further been directed in the said order that all the guidelines issued by the Government of India/State Government and ICMR from time to time regarding COVID-19 tests by way of RT-PCR Test and Rapid Antigen

Test shall be followed and protocol thereabout shall be strictly adhered to. It has been directed that the data with regard to name, address, mobile number of the patient shall be upoladed on the RTPCR App and such information shall be kept confidential. The outcome of the test shall be shared on the portal of the ICMR and the same shall be immediately upoladed on the RTPCR App and intimation of the result shall also be given to the patient immediately. If eventually any patient is found COVID-19 positive, the information regarding the same shall be shared with the CMHO and concerned IDNP Cell.

Mr. Swapnil Ganguly, leaned Deputy Advocate General produced a copy of another order dated 05.04.2021 issued by the Secretary, Government of Madhya Pradesh, Bhopal in its Department of Public Health and Family Welfare, whereby the Government upon taking note of the large number of grievances raised by the people regarding exorbitant amount of money being charged by the Diagnostic Centres registered under the Madhya Pradesh Upcharyagriha Tatha Rujopchar Sambnadhi Sthapnaye (Registrikan Tatha Anugyapan) Adhiniyam, 1973 and in furtherance to earlier notification dated 18.03.2020, issued under Sections 50 and 51 of the Madhya Pradesh Public Health Act, 1949 and in exercise of powers under Section 51 of the Disaster Management Act, 2005, has directed all Private Hospitals/Nursing Homes/Diagnostic Centres to charge maximum sum of Rs.3,000/- for Chest CT/HRCT scan from COVID-19 suspects/patients. It has been specifically pointed out that this order shall remain effective/operative upto 30.04.2021.

Further, the learned Deputy Advocate General, on instructions from the officers present before the Court, submits that if any complaint is received within the State of Madhya Pradesh by any CMHO or the District Administration against any Private Hospital/Nursing Homes/Diagnostic Centres of overcharging the COVID-19 suspects/patients for RT-PCR Test, Rapid Antigen Test and Chest CT/HRCT Scan, appropriate action shall be immediately taken against such Private Hospitals/Nursing Homes/Diagnostic

Centres to ensure compliance with the aforesaid directions issued by the State Government in exercise of its powers under Sections 50 and 51 of the Madhya Pradesh Public Health Act, 1949 and Section 51 of the Disaster Management Act, 2005.

Mr. Swapnil Ganguly, learned Deputy Advocate General also informed the Court that there are in the State of Madhya Pradesh total 769 hospitals presently empanelled under the Ayushman Bharat-Madhya Pradesh 'Niramayam' Yojana (for short the "Yojana"), out of which 320 are Private Hospitals and remaining 449 are Government Hospitals. But, only 81 out of 320 Private Hospitals are presently approved for COVID-19 treatment under the aforesaid Yojana. As far as Jabalpur is concerned, it has been informed that out of total 31 Private Hospitals empanelled under the Yojana, only 13 have been approved for treatment of COVID-19 suspects/patients.

Mr. Shivendra Pandey, learned counsel appearing for the Indian Medical Association and Mr. Shreyas Pandit, learned counsel appearing for the Madhya Pradesh Nursing Home Association on instructions submit that a joint meeting of Indian Medical Association and Madhya Pradesh Nursing Home Association was conducted at Jabalpur on 06.04.2021 and it was jointly decided by them to comply the orders passed by the State Government prescribing the charges for RT-PCR Test, Rapid Antigen Test and Chest CT/HRCT Scan from COVID-19 suspects/patients. They further informed this Court that in the State of Madhya Pradesh there are approximately 3000 Private Hospitals, who are registered with the Indian Medical Association and there are around 3000 Members or the Private Nursing Homes, but only negligible number of them are empanelled in the Yojana.

We appreciate the stand taken by both the Indian Medical Association and the Madhya Pradesh Nursing Home Association but at the same time observe that their members in the time of the current crisis faced by the country following the second wave of COVID-19, should desist from

exploiting the situation by overcharging the affected persons. At the same time, we also direct the Secretary, Government of Madhya Pradesh in its Department of Public Health and Family Welfare, Bhopal to give wide publicity to the orders which the Government has issued with regard to prescription of the rates for RT-PCR Test, Rapid Antigen Test and Chest CT/HRCT Scan from COVID-19 suspects/patients throughout the State by all the available modes i.e. print and electronic media and by any other means as possible, so that all the persons may be made aware about such rates/charges.

We further direct the respondents/State Government to empanel all such Private Hospitals and Private Nursing Homes in the State who fulfill the relevant criterion prescribed by the Central Government for treatment of COVID-19 suspects/patients under the Yojana so as to increase the reach of the beneficial scheme to maximum number of people in the State, who are eligible for treatment under the said Yojana.

With aforesaid observations, **IA-3929-2021 & IA-4125-2021 stand disposed of.**

In order to see further progress in the matter, list these matters on **19.04.2021.**

**(MOHAMMAD RAFIQ)
CHIEF JUSTICE**

**(SANJAY DWIVEDI)
JUDGE**