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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 3031/2020

RAKESH MALHOTRA Petitioner

Through: Petitioner in person

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF

INDIA AND ORS

..... Respondents Through: Mr. Sandeep Sethi, Senior Advocate

with Mr. Satyakam, ASC for the GNCTD

Mr. Anurag Ahluwalia, CGSC with Mr. Abhigyan Siddhant, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

O R D E R 19.11.2020

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HEARD THROUGH VIDEO CONFERENCING C.M. No. 12106/2020

(by the applicant for directions)

1. Vide order dated 11.11.2020, the scope of the present petition had to be extended by this court in the light of the fact that Delhi has been reeling under COVID-19 infection since the very beginning of November, 2020 and the daily figure of the infection had mounted to 8,593 cases as on 10.11.2020, with 4016 Containment zones.

2. We had also enquired from learned counsel for the Delhi Government as to why were the norms relating to movement of the public being relaxed in the light of such a critical situation, knowing very well that the festive

season was in full swing and due to the extremely poor quality of the air in Delhi, the COVID-19 virus would survive for a longer duration thereby increasing the severity of the disease. We had also called upon Delhi Government to point out the concrete steps taken by it to ensure strict adherence to the norms of wearing a mask, maintaining social distancing, adhering to norms of adequate hygiene, preventing crowding at public places/ public transports, making adequate arrangement for hospitalization of patients suffering from COVID-19 infection and others who require to be shifted to care homes.

3. A Status Report dated 18.11.2020, has been filed by Delhi Government in compliance of the directions issued on 11.11.2020.

4. Mr. Sandeep Sethi, learned Senior Advocate appearing with Mr. Satyakam, learned ASC for the Govt. of NCT of Delhi states that the Delhi Disaster Management Authority (D.D.M.A.) has been passing orders from time to time, based on the Guidelines issued by the Ministry of Home Affairs (MHA), Govt. of India, after assessing the local situation and that there are several activities that may have been permitted by the Govt. of India but have not been allowed by the Delhi Government till date in view of the severity of the COVID-19 situation in Delhi. The activities that have not been permitted so far have been enlisted in para 3 of the Status Report. The activities where modifications and additions have been made by the Delhi Government in terms of the Guidelines of the MHA, Govt. of India have been listed in para 4 of the Status Report.

5. It is submitted by learned Senior Advocate that based on the local assessment, Govt. of Delhi has decided to implement additional stringent measures during the festival season that had commenced in the month of

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October, 2020 and orders have been issued in this regard on 11.10.2020. As for the restrictions on the number of persons who can participate during marriage ceremonies, it is submitted that vide order dated 30.10.2020, the ceiling limit was increased from 50 to 200 persons but only yesterday, vide order dated 18.11.2020, the cap of 50 persons that was imposed earlier, has been restored. Similarly, an order was passed on 10.11.2020, disallowing the Chhatpuja festival/celebrations at public parks/spaces and bursting of crackers during Diwali in the month of November, 2020.

6. Mr. Sandeep Sethi, learned Senior Advocate further states that after this court had passed an order on 11.11.2020, Govt. of Delhi had approached Govt. of India for seeking permission to close down certain

markets and other places on a case to case basis. A request in this regard, was made on 17.11.2020 and necessary sanctions from the Central Government are awaited.

7. As for the enforcement of the norms of social distancing, wearing of masks and appropriate behaviour during the COVID-19 times, it is stated that dedicated multi-organizational mobile teams have been constituted and fines have been imposed on those not adhering to the norms. A perusal of the chart filed with the Status Report indicating the nature of violations and the action taken on the violations (Annexure-T) shows that there are a total of 119 Enforcement vehicles and 134 Enforcement teams in place in Delhi. Considering that Delhi has a population of over two crores, it appears that the number of Enforcement vehicles and the Enforcement teams are insufficient. Learned counsel explains that besides the teams created by the Delhi Government, it is the Delhi Police that has mainly been challaning persons for violating the norms relating to not wearing of face masks in

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public places, not maintaining social distancing, congregating in public places, spitting in public places, consuming liquor, pan etc. in public places etc.

8. We may note the chart filed reflects that between 07.09.2020 to 16.09.2020, only five persons have been arrested for violating the norms laid down by the Delhi Government (2 each in the Central and East District and 1 in the North District). While South, South-West and West districts have been seriously affected by the rise in the Covid-19 infection, the fines imposed in the said Districts for failure to adhere to the norms of social distancing and of wearing masks is proportionately very small. Even the fine imposed, i.e., Rs.500/- for the first violation and Rs.1,000/- for the second violation is hardly a deterrent.

9. Coming to Annexure Y that reflects the number of tests undertaken by the Delhi Government between 09.11.2020 to 17.11.2020, the same demonstrates that as against 2,98,553 tests undertaken through RAT, Delhi Government has conducted 1,53,025 tests through RTPCR and other similar modes, which is just about 50% of the total testing undertaken in this period. Mr. Satyakam, learned ASC informs the court that on 18.11.2020, 40,370 tests were conducted through RAT, 21,303 tests were conducted through RTPCR. In all, 23,067 tests were conducted through RTPCR and other modes, whereas a total of 28,000 samples were collected for testing through RTPCR.

10. Having regard to the fact that this court had been time and again emphasizing that the number of asymptomatic persons in Delhi are huge and the rate of positivity had been slowly climbing up, having reached 14% as on date, Delhi Government ought to have been alive to the fact that testing

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through RAT has not been serving the purpose and the answer lies in increasing testing through RTPCR and other similar modes. Even in the period between 09.11.2020 to 17.11.2020, the maximum number of testing done through RTPCR and other similar modes has remained well below 20,000 per day whereas testing through RAT in the same duration has crossed 40,000 per day. The need to increase testing through RTPCR cannot be over emphasized.

11. On our enquiring from Mr. Sandeep Sethi, learned Senior Advocate, he states on instructions that a new testing kit, namely 'Feluda' which has come in the market recently, shall also be considered as another option for ramping up testing in view of the shorter time that it takes to obtain a report on collecting a sample. He further states that a 5th Sero-Surveillance has not started in Delhi as the city is still reeling under the third wave of COVID-19 infection.

12. However, the statements made in the press by Ministers and high ranking officers of the Delhi Government appear to be contrary to the above. The stand taken is that the third wave has already peaked in Delhi and cases of COVID-19 infection are gradually going down, though the same is not borne out from the daily reported cases of the infection.

13. It is disheartening to note that the daily number of deaths in Delhi have steadily climbed from 71 as on 09.11.2020 to 131 as on 18.11.2020 with new cases having climbed up to 7,486 as on 18.11.2020. Looking at the spurt of cases, there is bound to be immense pressure on the health facilities available in the State, which is an equal matter of concern.

14. Mr. Sethi, learned Senior Advocate states on instructions that Delhi Government has approached the Ministry of Home Affairs, Govt. of India

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for assistance and they have been assured that 750 ICU beds would be made available as early as is possible and out of the said number, 250 ICU beds would be made available by the beginning of next week. On its

part, Delhi Government is proposing to increase the strength of ICU beds to about 663. The same shall be implemented by next week and the next Status Report shall indicate so.

15. We may note that the Status Report does not throw any light on the steps taken by the Delhi Government to create facilities of Care homes to shift those who are infected. The next Status Report shall indicate the steps taken in this direction. The aforesaid direction is considered necessary in view of the fact that there are several families living in small and confined spaces and any person infected within the family, would hardly have any space to self-isolate and necessarily need a Care home instead of hospitalisation to overcome the infection and recover safely without being exposed to cross-infection, if admitted in a hospital.

16. Further, though a submission was made on behalf of the Delhi Government in LPA No. 267/2020, that details of the 33 private hospitals where 80 per cent ICU beds have been requisitioned, would be given adequate publicity, no such advertisement has been noticed in the press or in the electronic media till date. Delhi Government shall ensure that details of the 33 private hospitals where ICU beds have been requisitioned by it are available on its website and made public through notices in the press and in all other manner so that the public knows which hospital can be approached in case of an emergency, without loss of time.

17. In the course of submissions, it has been stated on behalf of the Delhi Government that steps are being taken to invite the public at large to make

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19. List on 26.11.2020.

NOVEMBER 19, 2020

tr/hsk/dy/rkb

HIMA KOHLI, J SUBRAMONIUM PRASAD, J

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