

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 14TH DAY OF JANUARY 2021 / 24TH POUSHA, 1942

WP(C).No.255 OF 2021(F)

PETITIONERS:

- 1 R-CELL DIAGNOSTICS AND RESEARCH CENTRE
27/29E, FCC BUILDING, NEAR FEDERAL BANK TOWER,
ARAYIDATHUPALAM, KOZHIKODE, KERALA-673 016,
REPRESENTED BY ITS MANAGING PARTNER,
MR. RUSSEL MOHAMMED.
- 2 AZA DIAGNOSTIC CENTRE,
STADIUM PUTHIYARA ROAD, OPP. TO SABHA SCHOOL,
CALICUT, KERALA-673 004, REPRESENTED BY ITS CHIEF
OPERATING OFFICER, MR. JAVED ISLAM.
- 3 ASWINI DIAGNOSTIC SERVICE,
CHINTHAVALAPPU JUNCTION, JAIL ROAD, CALICUT 673
004, REPRESENTED BY ITS MANAGING PARTNER,
MR. A. GEERISHAN.
- 4 SAROJ DIAGNOSTIC LABORATORY,
OLIVE ARCADE, MALAPARAMBA JUNCTION, NERA ASCENT ENT
HOSPITAL, KOZHIKODE, KERALA-673 009, REPRESENTED BY
ITS MANAGING DIRECTOR, MR. ARUN JYOTHISH K.C.
- 5 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.
- 6 JEEVA SPECIALTY LABORATORY,
M.G. ROAD, THRISSUR, KERALA-680 004, REPRESENTED BY
ITS MANAGING DIRECTOR, MR. C. BALACHANDRAN.
- 7 DANE DIAGNOSTICS PVT. LTD,
18/757, RC ROAD, NEADSHADIMAHAL, PALAKKAD-678 014,
KERALA REPRESENTED BY ITS DIRECTOR, DR. M.SUSHAMA.

BY ADVS.

SRI.PAUL JACOB (P)

SMT.SHERU JOSEPH

RESPONDENTS :

- 1 STATE OF KERALA
 REPRESENTED BY ITS PRINCIPAL SECRETARY, HEALTH AND
 WELFARE DEPARTMENT, ROOM NO. 603, 6TH FLOOR, ANNEXE
 II, SECRETARIAT, THIRUVANANTHAPURAM-695 001.

- 2 UNION OF INDIA,
 REPRESENTED BY ITS SECRETARY, HEALTH AND FAMILY
 WELFARE, NIRMAN BHAVAN, NEW DELHI-110 011.

- 3 INDIAN COUNCIL FOR MEDICAL RESEARCH,
 V. RAMALINGASWAMI BHAWAN, P.O.BOX NO.4911, ANSARI
 NAGAR, NEW DELHI-110 029, REPRESENTED BY ITS
 SECRETARY AND DIRECTOR GENERAL.

R1 BY SRI.RANJITH THAMPAN,ADDL.ADVOCATE GENERAL
R2 BY ADV. SHRI.P.VIJAYAKUMAR, ASG OF INDIA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
14.01.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 14th day of January 2021

Petitioners are National Accreditation Board for Testing and Calibration Laboratories (NABL) accredited diagnostic laboratories and research centres conducting various kinds of Covid 19 tests including RT-PCR tests. They are aggrieved by Ext.P6 order by which the Government reduced the charges for the tests for diagnosis of Covid. The charges for RTPCR (open test) was reduced from Rs.2100/-to Rs.1,500/-.

2. Petitioners point out that Government had fixed the maximum cost for the RTPCR test initially as Rs.4500/- which was reduced to Rs 2750/-as per Ext.P1 order dated 02.07.2020; it was reduced to Rs.2100/ as per Ext.P2 order on 21.10.2020. It is stated that the said fee was fixed taking into consideration of various factors like costs, including Accreditation costs, calibration, maintenance of equipment, labour, quality of test kits etc. It is stated that there are six types of tests and the expenditure being incurred by petitioners to maintain quality standards is more than

the cost now fixed. It is also their case that premium customers, who travel abroad and who can afford to avail such quality services come to private labs. It is pointed out that private labs cannot be compared to those under the Government as they had to create for separate facilities and had to engage highly qualified personnel for conducting these tests. Explaining the expenditure involved for conducting these tests and the persons who are attending and undertaking tests in their Laboratories, the petitioners have pointed out that the reduction of the maximum charges for the tests is unreasonable as well as without authority.

3. The petitioners pointed out that the Supreme Court had in Ext.P3(a) order dated 13.04.2020 in Writ Petition (Civil) Diary No.(s).10816/2020 ordered that the private labs can continue to charge payment for testing of Covid-19 from persons who are able to make payment of testing fee as fixed by ICMR. Therefore, the contention of the petitioners is that the State Government has no authority to pass Ext.P6 order reducing the maximum charges further. According to Sri. Paul Jacob, the learned Counsel for the petitioners,

even the ICMR does not have any authority to fix the testing fee, but for the order passed by the Supreme Court. It is also pointed out that the Government has taken such a decision without ascertaining their views or giving them an opportunity of hearing. It is stated that even though they had submitted Ext.P5 representation before the Government, Ext.P6 order was issued on 01.01.2021.

4. The 1st respondent has filed a statement. It is stated that the rate was re-fixed after considering various factors including cost of re-agents and kits required for the test and the rates prevailing in other States. It is stated that the kits which had to be imported initially have become sufficiently available in the State after the total lock down was lifted and more manufacturers started manufacturing kits and ICMR approved different types of tests. It is stated that the Secretaries of the Department of Health and Family Welfare and that of Department of Health research of Government of India and Director General of ICMR had, in Annexure R1(a) letter dated 01.07.2020 while issuing instructions relating to testing, asked the State

Governments to finalise the rate for RTPCR test by private labs. It is stated that the orders fixing and revising the rates for the tests were issued thereafter. According to the respondents, common man is benefited by the revision and reduction of rates and more and more persons are approaching private labs for the tests though the tests in Government hospitals and laboratories are done free of cost. It is stated that the rates are revised gradually after a meticulous market analysis is done through the Medical Services Corporation with due regard to the cost involved. Furnishing a comparative chart showing the costs for different tests from January, 2020 to January, 2021, it is stated that the orders are issued reducing the charges taking into consideration of the said cost of kits, consumables etc. It is also stated that the Government has got every authority to fix the rates of Covid-19 diagnosis and the ICMR has given the authority to finalise the rates for RT-PCR tests for private labs.

5. Though the petitioners are challenging the authority of the Government as well as ICMR, I am of

the view that the contentions raised by the petitioners require consideration by the Government as admittedly, their views are not ascertained before fixing/reducing the rate of charges from Rs.2,100/- to Rs.1,500/- and it is seen that Ext.P1 order was passed after a meeting was held with them on 19.06.2020.

Therefore, the Writ petition is disposed of with a direction to the 1st respondent to consider the grievance of the petitioners against Ext.P6 order, including Ext.P5 representation and to take a decision after affording them an opportunity of hearing within a period of three weeks from the date of receipt of a copy of the judgment. Hearing can be held through electronic media. Till such time, the petitioners shall be permitted to realise charges in accordance with Ext.P2. The question of jurisdiction raised by the petitioners is left open.

sd/-

P . V . ASHA
JUDGE

APPENDIX

PETITIONERS' EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE GOVERNMENT ORDER DATED 02.07.2020 AND NUMBERED AS G.O(RT) NO. 1326/2020/H&FWD ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P2 A TRUE COPY OF THE GOVERNMENT ORDER DATED 21.10.2020 AND NUMBERED AS G.O(RT) NO. 1935/2020/H&FWD ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P3 A TRUE COPY OF THE ORDER DATED 08.04.2020.
- EXHIBIT P3 (a) A TRUE COPY OF THE ORDER DATED 13.04.2020.
- EXHIBIT P4 A TRUE COPY OF THE EMAIL DATED 28.12.2020 SENT TO THE CHIEF MINISTER.
- EXHIBIT P4 (a) A TRUE COPY OF THE EMAIL RESPONSE DATED 28.12.2020 FROM THE OFFICE OF THE CHIEF MINISTER.
- EXHIBIT P5 A TRUE COPY OF THE EMAIL-DATED 31.12.2020 TO THE 1ST RESPONDENT.
- EXHIBIT P6 A TRUE COPY OF THE GOVERNMENT ORDER DATED 01.01.2021 AND NUMBERED AS G.O(RT) NO. 12/2021/H&FWD ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P7 A TRUE COPY OF A NOTICE INVITING QUOTATION DATED 2.11.2020.
- EXHIBIT P8 A TRUE COPY FOR TAX INVOICE DATED 24.12.2020.
- EXHIBIT P9 A TRUE COPY FOR TAX INVOICE DATED 04.01.2021.
- EXHIBIT P10 A TRUE COPY OF TAX INVOICE DATED 18.07.2020.
- EXHIBIT P11 A TRUE COPY OF THE COST SHEET DATED 12.1.2021.

RESPONDENTS' EXHIBITS

- ANNEXURE R1 (a) TRUE COPY OF THE COMMUNICATION DATED 01.07.2020.