

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

LD-VC-PUBLIC INTEREST LITIGATION NO.12 OF 2020

Citizen Forum For Equality,

a registered NGO,

vide registration no:-MH/645/11,

through its President Mr. Madhukar Ganpat Kukde,

Flat No:-4-D, Nalanda Apartments,

Tilak Nagar, Amravati Road,

Nagpur.

Mobile No.: 09423104432.

... **Petitioner**

Versus

(1) The State of Maharashtra,

through its Chief Secretary,

Mantralaya,

Madam Cama Road,

Mumbai 400051.

(2) Union of India,

through its Secretary,

Ministry of Health,

Government of India,

4th Floor, A-Wing,

Shastri Bhavan,

New Delhi 110001.

(3) Indian Council for Medical Research,

through its Director General,

Department of Health Research,

Ministry of Health & Family Welfare,

Government of India,

Veer Ramloga Swamy Bhavan,

Ansari Nagar,

New Delhi 110029.

(4) National Disaster Management Authority

(NDMA),

through its President,

having office at NDMA Bhavan,

A-1, Block No.:01,

Nauroji Nagar,

Safdarjang Enclave,
New Delhi 110029.

(5) The District Collector,
Civil Lines, Nagpur.

(6) The Municipal Commissioner,
Nagpur Municipal Corporation,
Civil Lines, Nagpur.

... **Respondents**

Shri Tushar Mandlekar, Advocate for Petitioner.

Shri S.Y. Deopujari, Government Pleader for Respondent Nos.1 and 5.

Shri U.M. Aurangabadkar, Assistant Solicitor General for India for
Respondent Nos.2, 3 and 4.

Shri S.M. Puranik, Advocate for Respondent No.6.

CORAM : R.K. DESHPANDE & AMIT B. BORKAR, JJ.

Date of Reserving the Judgment : 26th May, 2020

Date of Pronouncing the Judgment : 1st June, 2020

JUDGMENT (PER R.K. DESHPANDE, J.) :

1. Heard the learned counsels appearing for the parties.
2. The entire world is under the shadow of unprecedented atmosphere and situation, which has arisen due to COVID-19 (Coronavirus) Pandemic Outbreak. The disease has spread its tentacles all over the world, which is fighting a war against it. The population of the infected persons is on steep rise. Three major challenges are pitted, and those are - (i) to prevent the spread-over of the disease Coronavirus, (ii) to detect the persons infected with

the disease and its source, i.e. contact tracing, and (iii) to treat the patients of the disease Coronavirus. The rigorous efforts are being made by the scientists all over the world to find out the vaccine to protect the people from being infected of such disease or any medicine to cure the disease, but till this date, it has not yet attained the success. The World Health Organization (**WHO**) has issued interim guidance on 19-3-2020 laying down the laboratory testing guiding principles for patients, who meet the suspect case definition and the protocol to meet the aforesaid three challenges. On the similar lines, the Indian Council for Medical Research (**ICMR**) in the Department of Health Research, Government of India, has issued guidelines on 4-4-2020, 9-4-2020, 17-4-2020, 22-4-2020 and 18-5-2020. The guidelines are also issued by the Government of India, Ministry of Health and Family Welfare, on 15-4-2020.

3. The only organ of the Constitution, which has shouldered the responsibility to fight this war, is the Executive, which has formulated its policy of national lock-down on 24-3-2020 by invoking the provisions of the Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897 to overpower the disease and to save and protect the lives of the people of this nation. The Government of India, Ministry of Health and Family Welfare, in exercise of its power conferred by clauses (i) and (l) of sub-section (2) of

Section 10 of the Disaster Management Act, has passed an order on 21-3-2020 directing to strictly follow the guidelines of ICMR and to comply with it. The functioning of the transport, travel, construction - industrial and commercial, and other service-rendering establishments in the country along with the functioning of the two constitutional organs of Legislature and Judiciary is paralyzed, resulting in the structural damage to the economy of the country.

4. To strike balance between the mitigating measures adopted to overcome the disease and to save and protect the downfall of the economy, the policies are framed, which, we believe, are based upon the advice of the Experts in the field. The mode and manner of implementation of such policies is also the prescription based upon the Diagnostic Experts in the concerned fields of health and economy. The Treasury is controlled by the Executive, which has a capacity to build the infrastructural facilities with the aid of warriors and soldiers working in the Departments of Police, Revenue, Medical, Public Health and Local Authorities, like Municipal Corporation, Municipal Council, Zilla Parishad, etc. Its network has spread not only in the big cities and towns but also in the taluka places and small villages to see the implementation of the policies and gain control over the disease.

5. Presently, the entire administration in the country is engaged in and concentrating upon the mitigating measures to be taken to overpower the disease in such areas. The people are educated for the self-protection from the disease by repeated hand-washing, using sanitizer, wearing mask, maintaining social distancing, etc. The chain spreading over the disease is sought to be broken by adopting the method of lock-down and quarantining the travellers and visitors from different places and those coming in contact with the persons infected with the disease. The attack of the disease seems to be in the metropolitan and big cities and towns, which are the areas of the job opportunities. The movements of labour force/ migrants on their jobs or for securing jobs in the metropolitan cities, big towns and urban areas away from their hometowns in villages are also restricted. Due to lock-down, the labourers have not only lost their job of earning daily wages to satisfy the daily needs, but they are also stranded at the places away from their family members in the hometowns. The public transportation system by road, railway and air is completely locked-down. The administration is required to provide them shelter, food, water, clothing and the care is also required to be taken of their health, sanitization and hygiene, at the place where they are stranded. There is heavy burden upon the administration not only to take care, protect and save the lives of the ordinary residents, but also of the migrants.

There is a situation of panic amongst the migrants, who are determined to walk hundreds of kilometers along with their children on shoulders, to reach to their hometowns for being in comfort and with the dear ones, to fight the disease and to remain in the rural areas, which is considered to be safer than the urban areas.

6. The thermal screening of the travellers, visitors and labourers is being done to find out the suspects of the disease. The Viral Research and Diagnostic Laboratories (VRDL) are established to conduct two tests - one of Rapid Antibody test and other of Reverse Transcription Polymerase Chain Reaction (RT-PCR) test to find out the persons infected with the disease. We are informed that recently, two more tests seem to have emerged - one is of "Pulse Oxy Meter" technique and another is, "Enzyme-linked Immunosorbent Assay (ELISA) . The steps are taken to find out the source of infection, i.e. contact tracing. It is really a difficult job to detect the disease on clinical examination of the patients, as the disease is said to be asymptomatic. The persons of the age 60 and above are said to be prone to such disease and the special care is required to be taken of them. Though we are not the Experts in the field of medical science, it seems to us that the difficulty in breathing after ruling out the symptoms of heart ailments is a major symptom of this disease, but then the stage becomes critical to treat the patients. The

hospitalization of the patients of Coronavirus is being done by creating the Isolation Wards. Though the doctors, nurses, sanitation workers, paramedical staff, etc. (called as '**frontline workers**') are scared of being infected with this dreaded disease, they are performing their jobs at the cost of their personal life unhesitatingly with full devotion and dedication to treat the patients. All these personnel are provided Personal Protective Equipment (PPE) Kits, masks and the means of sanitization to keep them away from being infected while in association with the patients.

7. The highly infected areas in the metropolitan, big cities, towns and other urban areas are categorized as red and non-red zones for the purposes of lock-down. There are containment zones where the patients of COVID-19 positive are found and these zones are sealed. The movements of the people residing in all these zones are restricted with the help of personnel in the Police Department, State Reserve Police Force and Local Administration (called as '**frontline workers**'), who are completely keeping watch personally for 24 hours, and the surveillance is also done with the help of drones flying over the areas to take photographs or video clips of the movements of the persons. While doing this, care is also required to be taken to see that daily needs of the people in both these areas are satisfied by home delivery of such orders.

The frontline workers engaged in keeping vigil, control the entry and exit of the persons in these areas, the service providers, etc., become prone to such infection. However, all of them are performing herculean task by putting their lives at risk to protect the lives of others. They are the warriors and soldiers in the process.

8. In the aforesaid background, the present writ petition has been filed by the registered Non-Governmental Organization (**NGO**) claiming to be engaged in rendering work for the benefit of the general public and fighting against the illegalities in the Society. The petition claims the reliefs as under :

“a. Issue a writ of Mandamus or any other direction to respondents to immediately conduct the “RT-PCR TEST” of Doctors, Nurses, Paramedical Staff, Pharmacist, Police Personals attending the covid-19 facilities in the larger interest within next one week and further direct ICMR to frame appropriate guidelines for conducting such test on them in a periodic manner to safeguard the lives of citizens u/a 21 of Constitution of India.

b. Issue a Writ of Mandamus or any other appropriate writ to respondents to issue necessary directions with immediate effect to mandatorily start the Rapid Anti Body Test as a screening tool and surveillance tool as advised by ICMR by its advisory dated 04.04.2020, 17.04.2020, 22.04.2020 and immediately start the screening of citizens in “HOT-SPOTS” in

larger Public Interest.

c. Issue a Writ of Mandamus to respondents, particularly ICMR to immediately fix the price of RAPID ANTIBODY TEST KIT for covid-19 immediately as minimum so as to make it affordable to poor person and also direct the ICMR to provide such test kits in a systematic and periodic manner in every district in Maharashtra.

d. Issue a Writ of Mandamus to direct the respondents to release all Covid-19 suspects admitted in Isolation Wards/Quarantine Wards "having tested negative" in RT-PCR TEST with immediate effect.

e. issue a Writ of Mandamus to direct the respondents to make "Rapid Anti Body Test as a first mandatory step" to screen the patients and make it prerequisite to conduct RT-PCR TEST so as to save huge unnecessary expenses on such tests.

f. Issue a Wit of Mandamus to direct the ICMR to provide "Rapid Anti Body Test kits" to all private and government hospitals and Nursing Homes to use it as "screening of non-covid-19" patients as a first mandatory step" and also direct them not to refuse the "non-covid-19" patient to give treatment for want of screening.

g. Issue a Writ of Mandamus to direct the respondents to issue necessary directions under Epidemic Act 1897 and Disaster Management Act 2005 for strict adherence of "home quarantine" for suspected and positive Covid-19 patients so

that they remain in their own house for quarantine of 15 days so as to prevent contamination of Covid-19 as abundant precaution.

h. Issue a Writ of Mandamus to direct the respondents to frame necessary guidelines to preserve hospital beds in Government and Private Hospitals only for serious and positive Covid-19 patients and direct the respondents to take over at least 50% beds from all registered private hospitals, Private Nursing Homes subject to fulfillment of WHO isolation norms, for treatment of Covid-19 positive patients in a stage wise manner in the national interest.

l. Pass any other such further or other writ, order or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

The basic relief claimed in the petition is to direct ICMR to frame appropriate guidelines for conducting the Rapid Antibody Test and RT-PCR Test of the doctors, nurses, paramedical staff, pharmacists, police personnel, etc. (frontline workers) attending the COVID-19 facilities and accordingly to take such tests to safeguard their lives, which is the guarantee under Article 21 of the Constitution of India. The another relief is to release all the COVID-19 suspects admitted in the Isolation Wards / Quarantine Wards having tested negative in RT-PCR Test with immediate effect. The other reliefs claimed include the fixation of price of the Rapid

Antibody Test Kit for COVID-19 and to supply it to all the private and government hospitals and nursing homes with a direction to take the first step of screening of non-COVID patients before admitting in the hospital. The petition also seeks the directions in respect of home quarantine and reservation of 50% of beds for COVID-19 patients in all the registered private hospitals and nursing homes.

9. There is an application for amendment of the petition filed to enlarge the scope of the petition to include payment of incentives to the police personnel. We allow the said application for amendment. The amendment may be carried out within a period of one week from today. We, however, make it clear that the amendment is being considered only in respect of the prayers made in the initial Public Interest Litigation and we do not want to consider the prayers enlarging the scope of the petition. The petitioner shall be at liberty to file a separate petition, if it is so advised.

10. We now proceed to consider the demand of the petitioner for conducting Rapid Antibody Test of the frontline workers. It is the contention of the petitioner that the test should be undertaken in respect of every person in the containment zones. The stand of the ICMR and the Union of India is that the Rapid Antibody Test is merely for the purposes of surveillance. The learned counsels appearing for

all the parties, after taking instructions from their clients, make a positive statement that the Rapid Antibody Test is not a diagnostic test. The instructions issued by ICMR to conduct the Rapid Antibody Test are not yet implemented by the State Government. The State Government is yet to take decision on this aspect of the matter. We leave it to the State Government to take its own decision on this aspect. We have gone through the reply filed by all the respondents in respect of the demand for conducting Rapid Antibody Test. What we find is that even if the Rapid Antibody Test shows positive result, it is not the conclusive test to hold that the patient is infected with the disease. Similarly, if the test shows negative result, still it cannot be said that the person is not infected with the disease. According to the respondents, the only conclusive test to determine as to whether a person is infected with the disease is the RT-PCR Test. In view of this, we do not find any point in directing the authorities concerned to conduct the Rapid Antibody Test of the frontline workers and to incur the expenditure in respect of it. In view of this, the reliefs claimed in the prayer clauses (b), (c), (e) and (f) do not survive.

11. The relief claimed in prayer clause (d) is to direct the respondents to release all COVID-19 suspects admitted in the Isolation Wards / Quarantine Wards having tested negative in the

RT-PCR Test with immediate effect. We would like to quote the statement made before us in writing and marked as 'X', on behalf of the Commissioner, Nagpur Municipal Corporation, the empowered authority under Section 2 of the Epidemic Diseases Act, 1897, as under :

“ For hospital isolation patient can be discharged after 10 days of symptom onset and no fever for 3 days. There will be no need for testing prior to discharge. At the time of discharge patient will be advised to isolate himself at home and self monitor their health for further 7 days. This is the ICMR guidelines for discharge for hospital admitted patients and are not for institutional quarantine. Institutional quarantine policy is different from hospital discharge policy.”

In view of the aforesaid statement, we do not find that any further directions are required to be issued and we expect the respondents to act in accordance with the aforesaid statement.

12. So far as the reliefs claimed in prayer clause (g) regarding home quarantine and to prevent contamination of COVID-19, and clause (h) regarding reservation of 50% beds in the private hospitals, are concerned, it is a matter of policy, which is to be guided by the instructions issued by the ICMR, Central Government and the State Government, which are required to be followed by the

other respondents and we need not advert to those aspects in this petition. We leave it open to the respondents to take into consideration of the said aspect of the matter and, if found appropriate, to take steps in accordance with law. We also do not find any reason to make a time-bound programme in respect of it. It is a matter of policy and unless there is challenge to any such policy, we need not deal with it.

13. It is the stand taken in the counter-affidavit filed by the respondent Nos.2, 3 and 4, the Union of India, ICMR and the National Disaster Managing Authority that ICMR guidelines already include testing of health-care workers and it is critical to understand that there is globally a very limited availability of testing reagents/kits. Indiscriminate use has to be discouraged. The respondent No.1-State of Maharashtra has also taken a specific stand in Para 2 of the affidavit dated 13-5-2020 that since the State of Maharashtra is strictly following the ICMR guidelines and there are no further guidelines issued specifically for doctors, nurses, paramedical staff, pharmacists, police personnel attending the COVID-19 situation to conduct their RT-PCR Tests independently, the contention of the petitioner that the RT-PCR Tests should be conducted on frontline workers, also cannot be accepted.

14. After going through the aforesaid stand taken by the respondents, the learned Single Judge (Shri Rohit B. Deo, J.) has dealt with this aspect of the matter in Para 10 of the order dated 18-5-2020 as under :

“10. It must be borne in mind that it is well known and accepted that a Covid-19 patient may exhibit symptoms only after 10 to 12 days. The medical and police personnel who discharge duty in the containment zones or discharge duty of such nature as would expose them to infection may be infected through a person who is not symptomatic. The question which the authorities will have to address is whether the guidelines be read narrowly or pedantically or whether the State owes it to the frontline warriors to take additional steps or measures, assuming that the guidelines do not envisage such testing. In my considered view, which of course is a prima facie view, presently the medical and police personnel are doing, what the brave hearts of the armed forces do day in and day out, i.e. answering the call of duty at the risk of falling prey to the deadly virus. The society in general and the State in particular owes it to the frontline warriors to take all possible measures as would minimize if not obliterate the threat of infection, assuming arguendo, that the advisory or guidelines issued by ICMR do not cover the frontline warriors till the symptoms are manifested. The State would expected to take additional measures, going beyond the guidelines, if such measures ensure the minimization of the risk to the medical and police personnel.”

Ultimately, the direction was issued to the District Collector and the Police Commissioner to come with a structured response to the suggestion of pilot project of testing the medical and police personnel, who are engaged in active duty in the two containment zones of Mominpura and Satranjipura, and take a decision either way.

15. In response to the aforesaid directions, a joint pursis dated 21-5-2020 has been filed in Writ Petition LD-VC-CW-12 of 2020 on behalf of the District Collector, Nagpur and the Commissioner of Police, Nagpur enclosing along with it the compliance of the directions given by this Court in Para 9 of the submissions, which is stated as under :

“9. Today, the joint meeting of the Commissioner of Police, Nagpur City and the District Collector of Nagpur is held at 4.00 p.m. during which other officers are present. The District Collector, Nagpur and the Commissioner of Police, Nagpur after examining the facts narrated above arrived at joint decision, that if the number of positive cases in one of the containment zones under question, are 15 or above i.e. the hotspots, in that even it would be appropriate to suggest that medical and police personnel shall undergo RT-PCR Tests in staggered phases. Because these frontline workers are exposed to more infection risks, due to nature of their work, which involves dealing with citizens in these areas, directly.”

It is further stated in Para 11 that the availability of testing infrastructure is also the matter of concern in addition to the new guidelines issued by ICMR dated 18-5-2020 in respect of testing of COVID-19, while suggesting the measures to test these medical and police personnel by RT-PCR tests. The ultimate decision taken by both these parties, is reproduced below :

“The RT-PCR tests of the Medical and Police personnel working or discharging the duty in the two containment zones of Mominpura and Satranjipura are proposed to be conducted, where more than 15 positive cases are found in each of the containment zones in staggered phases.”

16. In the additional affidavit filed by the respondent No.5- the District Collector, Nagpur on 25-5-2020, it is the stand taken in Paras 4 and 5, which are reproduced below :

“4) I humbly submit that in view of the said decision swabs of total 81 Police Personnel were taken and sent for RT-PCR Tests of COVID-19 in Medical Labs and out of which 1 Police Person is found positive and rest of them were found negative. I humbly submit that one Corona positive Patient is referred in Institutional Quarantine for necessary medical treatment.”

“5) I humbly submit that the rests of medical and police personnel are to be referred to the tests of RT-PCR in staggered phases as per above decision dated 21.05.2020.”

17. The respondent No.6- the Commissioner, Nagpur Municipal Corporation takes a stand in the additional affidavit dated 21-5-2020 in Paras 10, 12 and 13 as under :

“(10) It needs to be mentioned here that if frontline workers are using PPE Kits or other protective gears like hand gloves, masks, coat etc then such workers are not required to be tested for “RT-PCR” test as there are very less chances of them being infected. It is further submitted that NMC has already issued directions to all the health workers, Doctors, paramedics etc. to discharge their duties by wearing the respective protective kits even the private medical practitioners and health workers have been directed to attend the ICU patients only by wearing the protective gears and if anyone is found flouting these directions then action against such violators is being taken by NMC.”

“(12) In view of the above submissions it is clear that answering respondent is strictly following the guidelines issued by the ICMR regarding “RT-PCR” test and it is not necessary to conduct the “RT-PCR” test on each and every frontline warriors of Covid-19 as they are discharging their duties with due precautionary measures and do not fall within the ambit of “high Risk Contact”. “

“(13) It is further respectfully submitted that if it is directed to conduct the “RT-PCR” test on all the frontline warriors of Covid-19 then it would cost the State Exchequer heavily and NMC will be require to deploy man power for conducting such test. As it is the man power of NMC has been stretched thin while fighting with the pandemic. It is submitted that the answering respondent is also conscious about the wellbeing of its warriors including medical and police personnel and assures this Hon’ble Court it will take proper and timely care of all its warriors.”

18. We now summarize the stand taken by all the respondents to oppose the claim of the petitioner to conduct the RT-PCR Tests of frontline workers as under :

1. There is globally a very limited availability of testing reagents/kits. Indiscriminate use has to be discouraged. (Reply of the respondent Nos.2, 3 and 4).
2. There are no guidelines issued specifically for doctors, nurses, paramedical staff, pharmacists, police personnel, etc., (**frontline workers**) attending the COVID-19 situation to conduct their RT-PCR Tests independently. (Reply of the respondent Nos.2, 3 and 4).
3. If the frontline workers are using PPE Kits or other protective gears, like hand-gloves, masks, coats, etc., then such workers are not required to be tested on RT-PCR method, as there are very less chances of them being infected. (Reply of the respondent No.6).

4. It is not necessary to conduct the RT-PCR Test on each and every frontline worker of COVID-19, as he/she is discharging his/her duties with due precautionary measures and does not fall within the ambit of “high risk contact”. (Reply of the respondent No.6).

5. As per SOP of ICMR, a “high risk contact” is a person, who lives in the same household as of positive patient of COVID-19, anyone in close proximity within one meter of the confirmed case, without precaution. (Reply of the respondent No.6).

6. If all the frontline workers of COVID-19 are to be tested on RT-PCR method, then it would cause the State Exchequer heavily and the Nagpur Municipal Corporation will be required to deploy more manpower for conducting such test. (Reply of the respondent No.6).

It is the claim of the respondents that the aforesaid stand is based upon the guidelines issued by WHO and ICMR. Hence, we proceed to consider the said guidelines.

19. The WHO has issued the interim guidance on 19-3-2020 in respect of the laboratory testing for Coronavirus disease (COVID-19) in the suspected human cases; the relevant portion of which is reproduced below :

“Laboratory testing guiding principles for patients who meet the suspect case definition.

*The decision to test should be based on clinical and epidemiological factors and linked to an assessment of the likelihood of infection. **PCR testing of asymptomatic or***

mildly symptomatic contacts can be considered in the assessment of individuals who have had contact with a COVID-19 case. Screening protocols should be adopted to the local situation. The case definitions are being regularly reviewed and updated as new information becomes available. For the WHO suspected case definition see: Global Surveillance for human infection with coronavirus disease (COVID-19).

Rapid collection and testing of appropriate specimens from patients meeting the suspected case definition for COVID-19 is a priority for clinical management and outbreak control and should be guided by a laboratory expert. **Suspected cases should be screened for the virus with nucleic acid amplification tests (NAAT), such as RT-PCR.**

If testing for COVID-19 is not yet available nationally, specimens should be referred. A list of WHO reference laboratories providing confirmatory testing for COVID-19 and shipment instructions are available.

If case management requires, patients should be tested for other respiratory pathogens using routine laboratory procedures, as recommended in local management guidelines for community-acquired pneumonia. Additional testing should not delay testing for COVID-19. **As co-infections can occur, all patients that meet the suspected case definition should be tested for COVID-19 virus regardless of whether another respiratory pathogen is found.**

In an early study in Wuhan, the mean incubation period for COVID-19 was 5.2 days among 425 cases, though it varies widely between individuals. Virus shedding patterns are not yet well understood and further investigations are needed to better understand the timing, compartmentalization, and quantity of viral shedding to inform optimal specimen collection. Although respiratory samples have the greatest yield, the virus can be detected in other specimens, including stool and blood. Local guidelines on informed consent should

be followed for specimen collection, testing, and potentially future research.”

20. The ICMR has also prescribed the strategy for COVID-19 Testing on 9-4-2020, which is reproduced below :

**“ INDIAN COUNCIL OF MEDICAL RESEARCH
DEPARTMENT OF HEALTH RESEARCH**

**Strategy for COVID-19 testing in India
(Version 4, dated 09/04/2020)**

1. *All symptomatic individuals who have undertaken international travel in the last 14 days.*
2. *All symptomatic contacts of laboratory confirmed cases.*
3. *All symptomatic health care workers.*
4. *All patients with Severe Acute Respiratory illness (fever AND cough and/or shortness of breath).*
5. *Asymptomatic direct and high-risk contacts of a confirmed case should be tested once between day 5 and day 14 of coming in his/her contact.*

In hotspots/cluster (as per MoHFW) and in large migration gatherings/evacuees centres

(6) *All symptomatic ILI (fever, cough, sore throat, runny nose) :*

(a) *within 7 days of illness - rRT-PCR.*

(b) *After 7 days of illness - Antibody test (if negative, confirmed by rRT-PCR)."*

21. The advice of WHO, which we find, is that the RT-PCR testing can be of symptomatics as well as asymptomatics in contact with mildly symptomatics or the cases of contact with co-infections; described as "suspected case". The ICMR guidelines also require asymptomatics in direct and "high risk contact" of confirmed cases to be tested on RT-PCR method. ICMR has made two categories - (i) asymptomatic direct contact of a confirmed case, and (ii) asymptomatic high risk contact of a confirmed case. According to the respondents, the ICMR guidelines exclude asymptomatics in contact with mildly symptomatics or the cases of contact with co-infections, covered by the definition of "suspected cases" in the guidelines of WHO and the respondents are bound to follow the guidelines of ICMR only.

22. It is not the case of any of the respondents that the cases of frontline workers are not covered by the definition of "suspected cases" in the guidelines of WHO. In our view, the cases

of frontline workers are covered by such definition of “suspected cases” We are also of the view that the cases of asymptomatic direct and high risk contacts of confirmed cases of frontline workers are also covered by guideline No.(5) of the ICMR guidelines, relied upon by the respondents. Its operation cannot be restricted to the “households of a positive patient without protection” and the cases “in close proximity within one meter of a confirmed case”. We have not been pointed out any valid basis for the rider of “households of a positive patient without protection” and the cases “in close proximity within one meter of a confirmed case”, as is stated in the affidavit filed by the respondent No.6- the Commissioner, Nagpur Municipal Corporation. We do not find such rider in the guidelines of ICMR, placed on record. There is no guarantee that the frontline workers using PPE Kits and other protective gears, like hand-gloves, masks, coats, etc., have no chances of getting infected. We, therefore, subscribe to the prima facie view expressed by the learned Single Judge that the guidelines cannot be read narrowly or pedantically and we confirm it. It is, therefore, not possible for us to agree with the stand taken by the respondents that the guidelines of ICMR do not cover the frontline workers for RT-PCR testing.

23. During the course of argument, we tried to ascertain whether COVID-19 disease of Coronavirus is symptomatic or asymptomatic. We put a specific question to the learned counsels appearing for all the respondents to point out to us even a single statement made on affidavit filed by any of the respondents stating that COVID-19 disease of Coronavirus is symptomatic or asymptomatic. In reply, it is informed that in none of the affidavits filed by the respondents, any such statement is appearing. It is a fact that COVID-19 patients, without any symptom, have died and their testing on RT-PCR method gave the positive results. In the affidavit filed by the respondent No.5- the District Collector, Nagpur on 25-5-2020, it is disclosed that the swabs of total 81 police personnel were taken and sent for RT-PCR testing of COVID-19 disease in the medical labs as per the order passed by this Court on 18-5-2020 and out of which, one police personnel is found positive and rest of them were found negative.

24. In view of above, we are of the view that COVID-19 disease of Coronavirus is symptomatic as well as asymptomatic. It may be that an asymptomatic patient carries the disease. Hence, there cannot be any distinction between all symptomatic contacts of laboratory confirmed cases, including those of health-care workers and of asymptomatic direct and high risk contacts of health-care

workers with the laboratory confirmed cases. We, therefore, confirm the prima facie view expressed by the learned Single Judge that all frontline workers coming in contact of laboratory confirmed cases are entitled to be tested on RT-PCR method, irrespective of the fact that they were wearing the protective gears and discharging their duties under the precautionary measures. This shall be in tune with the guidelines of WHO .

25. On 21-5-2020, a pursis has been filed under the signature of the Dean, Indira Gandhi Government Medical College and Hospital, Nagpur, which runs as under :

“ That the Respondent No.1, through Shri Ajay Kewaliya, Dean, Indira Gandhi Medical College, Nagpur submits as under :-

1] That all the symptomatic patient referred from the Nagpur Municipal Corporation in quarantine area and people attending the fever O.P.D. admitted in isolation area are examined and tested by R.T.P.C.R. Method for diagnosis of COVID-19 virus.

2] That, symptomatic as well as asymptomatic contacts referred from High Risk Area and kept in quarantine are also tested by RT-PCR Method. Similarly, all Health Personnel and Police Personnel posted in Hot Spot Areas in containment zones in Nagpur City are also in process of testing by RT-PCR test as per the decision dated 21.05.2020 of a Committee of Collector, Nagpur and Commissioner of Police, Nagpur.

3] *That all the RT-PCR tests are conducted free of cost in the Nagpur City in following institutions.*

- A) *Government Medical College & Hospital, Nagpur.*
- B) *Indira Gandhi Medical College, Nagpur.*
- C) *National Environment & Engineering Research Institute, Nagpur (NEERI).*
- D) *All India Institute of Medical Science, Nagpur (AIIMS).*
- E) *Maharashtra Animal & Fishery Sciences University, Nagpur (MAFSU), Veterinary College, Nagpur.*

4] *That each test approximately cost of Rs.4,500/- per head and State Government and Central Government procure kits as well as provide funds to procure kits for these Government Institutions.*

Hence this Pursis.”

In terms of Para 2 of the aforesaid pursis, it is agreed that symptomatics as well as asymptomatics referred from high risk areas and kept in quarantine shall be tested by RT-PCR method and all health personnel and police personnel posted in hotspot areas in containment zones in Nagpur City are also in the process of testing by RT-PCR method. We accept such statement.

26. We now proceed to find out the extent of fundamental right under Article 21 of the Constitution of India, which deals with the protection of life and personal liberty. It states that no person shall be deprived of his life or personal liberty, except according to the

procedure established by law.

27. In the decision of the Apex Court in the case of *State of Punjab and others v. Ram Lubhaya Bagga and others*, reported in (1998) 4 SCC 117, it is held that right of one person correlates to a duty upon another, individual, employer, Government or authority. The right of one is an obligation of another. Hence, the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizens as its primary duty. It is further held that the Government is rendering this obligation by opening Government hospitals and health centres, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another hospital.

28. In the another decision of the Constitution Bench of the Apex Court in the case of *Navtej Singh Johar and others v. Union of India, through Secretary, Ministry of law and Justice*, reported in (2018) 10 SCC 1, it is held that the right to health and health-care is the facet of right to life under Article 21 of the Constitution of India. It is held in Paras 494 and 495 of the said decision as under :

“494. The right to health is not simply the right not to be unwell, but rather the right to be well. It encompasses not just the absence of disease or infirmity, but “complete physical, mental and social well-being”, and includes both freedoms such as the right to control one’s health and body and to be free from interference (for instance, from non-consensual medical treatment and experimentation), and entitlements such as the right to a system of healthcare that gives everyone an equal opportunity to enjoy the highest attainable level of health.”

“495. The jurisprudence of this Court, in recognising the right to health and access to medical care, demonstrates the crucial distinction between negative and positive obligations. Article 21 does not impose upon the State only negative obligations not to act in such a way as to interfere with the right to health. This Court also has the power to impose positive obligations upon the State to take measures to provide adequate resources or access to treatment facilities to secure effective enjoyment of the right to health.”

Article 21 of the Constitution of India imposes negative as well as positive ‘obligation’ upon the State not to interfere with the right to health, but also to take positive steps to provide adequate resources or access to treatment facilities to secure effective enjoyment of right to health. Even in the dissenting judgment, it is held that the right to health and access to health-care are also crucial facets of right to life guaranteed under Article 21 of the

Constitution of India.

29. In the light of the aforesaid position of law, we look into the object and purpose of the Epidemic Diseases Act, 1897, which is to provide for the better prevention of the spread of dangerous epidemic disease. Section 2 of the said Act, dealing with the power to take special measures and prescribe regulations as to dangerous epidemic diseases, states in sub-section (1) that when at any time the State Government is satisfied that the State or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, it may take such measures and prescribe such temporary regulations to be observed by the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed. We noticed that the Commissioner, Nagpur Municipal Corporation, is the “Empowered Officer” under the provisions of this Act by the State Government and accordingly the notifications are issued from time to time by him to secure the object and purpose of the enactment.

30. The object and purpose of the Disaster Management Act, 2005 is to provide for the effective management of disasters and for

matters connected therewith or incidental thereto. Clauses (d) and (e) of Section 2 under the said Act define “disaster” and “disaster management” and the same are, therefore, reproduced below :

“2. Definitions.--In this Act, unless the context otherwise requires,--

...

(d) “disaster” means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.

...

(e) “disaster management” means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for--

- (i) prevention of danger or threat of any disaster;*
- (ii) mitigation or reduction of risk of any disaster or its severity or consequences;*
- (iii) capacity-building;*

- (iv) preparedness to deal with any disaster;*
- (v) prompt response to any threatening disaster situation or disaster;*
- (vi) assessing the severity or magnitude of effects of any disaster;*
- (vii) evacuation, rescue and relief;*
- (vii) rehabilitation and reconstruction.”*

Clause (i) under Section 2 defines “mitigation” means measures aimed at reducing the risk, impact or effect of a disaster or threatening disaster situation.

31. By invoking the provisions of the Epidemic Diseases Act and the Disaster Management Act, the State Government as well as the Central Government, in our view, have taken upon themselves an obligation and the responsibility under Article 47, as a part of guarantee under Article 21 of the Constitution of India to save and protect the lives of the people of this nation, more particularly the frontline workers, from COVID-19 (Coronavirus) Pandemic Outbreak. In the cluster of rights under Article 21 of the Constitution of India, the right to save and protect the life, which includes the persons’

animal existence, is on the top and in this pandemic situation, neither the Central Government nor the State Government can keep the fate of the frontline workers hanging and compel them to perform their jobs and discharge the duties without fear or assurance of safety and protection of their own life and the lives of the family members. Their life is more precious, because they are the warriors and saviours, compromising or putting their own life at stake to save the lives of others, by relentlessly working on a call for duty. We cannot afford to lose them, because our own life depends upon their fitness to work without any stress or tension. There cannot be any compromise in respect of it. If they are infected with the disease, the lives of their family members, dear-ones, friends and neighbourers go in peril. To prevent the spread of disease is the obligation or duty of the State under Article 47 of the Constitution of India. The disease being asymptomatic also, the timely care attains significance and in such a situation to wait for the symptoms of the disease to be manifested, would amount to failure to discharge the constitutional obligation under Article 47 and denial of guarantee under Article 21 of the Constitution of India. We endorse and confirm the prima facie view expressed by the learned Single Judge that the State owes its duty to the frontline warriors to take additional steps or measures, even if the guidelines do not envisage such testing.

32. We have no hesitation to adopt the views expressed in the order dated 18-5-2020 that the medical and police personnel are doing, what the brave hearts of the armed forces do day in and day out, i.e. answering the call of duty at the risk of falling prey to the deadly virus. The Society in general and the State in particular owe it to the frontline warriors to take all possible measures as would minimize if not obliterate the threat of infection, assuming *arguendo*, that the advisory or guidelines issued by ICMR do not cover the frontline warriors till the symptoms are manifested. In our view, the State would be duty bound to take additional measures and ensure the minimization of the risk to the medical, police personnel and all frontline workers, to protect the fundamental right to life under Article 21 read with the duty under Article 47 of the Constitution of India.

33. We have not been pointed out any basis for the claim that there is globally a very limited availability of RT-PCR testing reagents/kits. It is the stand gathered from the reply of the respondents that RT-PCR testing of frontline workers in direct and high risk contacts of laboratory confirmed case is nothing but indiscriminate use of RT-PCR Kits, which has to be discouraged. It is also the stand taken by the respondent No.6- the Commissioner,

Nagpur Municipal Corporation that if the frontline workers of COVID-19 are to be tested on RT-PCR method, then it would cause the State Exchequer heavily and the Nagpur Municipal Corporation will be required to deploy more manpower for conducting such tests and that the frontline workers are discharging their duties under the protective gears and hence the claim for testing on RT-PCR method cannot be accepted. In our view, such a stand is not only ridiculous, but it reflects the conduct, contemptuous of the fundamental right under Article 21 of the Constitution of India.

34. Now we come to the reliefs claimed in this Public Interest Litigation. We have already held that the reliefs claimed in prayer clauses (b), (c), (e) and (f) do not at all survive. The relief in prayer clause (d) is covered by the statement, marked as 'X', made on behalf of the respondent No.6- the Commissioner, Nagpur Municipal Corporation. The reliefs in terms of prayer clauses (g) and (h) pertain to a policy matter and its implementation and we have left it to be decided by the appropriate authorities. The petitioner is entitled to a relief in terms of prayer clause (a), which is to direct ICMR to frame appropriate guidelines for conducting such test on all such frontline workers, as are described in this Public Interest Litigation, who are in direct contact of laboratory confirmed cases, irrespective of the fact that they are asymptomatic. The relief

cannot be restricted to the frontline workers at Nagpur, but it extends to the entire Vidarbha region in the jurisdiction of the Nagpur Bench of the Bombay High Court. We also accept the statement made in the pursis filed on 21-5-2020 before us under the signature of the Dean, Indira Gandhi Government Medical College and Hospital, Nagpur and direct the compliance of the steps proposed to be taken in Paras 1 and 2 of the said pursis, which are already reproduced.

35. For the reasons stated above, this Public Interest Litigation is partly allowed and the following order is passed :

(1) We hold that all asymptomatic frontline workers, as are described in this Public Interest Litigation, working in the hospitals and the containment zones declared by the District Collectors or the Commissioners, Municipal Corporation or the Chief Officers, Municipal Councils or such other competent authorities in the entire Vidarbha region, shall be entitled to be tested for COVID-19 disease of Coronavirus on RT-PCR method on expressing their willingness, if they are found to be in direct and high risk contact of laboratory confirmed cases.

(2) The respondent No.3- Indian Council for Medical Research (ICMR) is directed to frame the appropriate policy and prescribe the protocol for periodical testing of the frontline workers in the entire Vidarbha region, as are described in this Public Interest Litigation, on RT-PCR method within a period of one week from today.

(3) The respondent No.1- the State of Maharashtra, the District Collectors or the Commissioners, Municipal Corporations or the Chief Officers, Municipal Councils or the competent authorities in the entire Vidarbha region are directed to start immediately the testing of the frontline workers on RT-PCR method for COVID-19 disease of Coronavirus, upon expressing their willingness for it, in accordance with the guidelines and protocol to be prescribed by the respondent No.3- Indian Council for Medical Research (ICMR).

36. The Public Interest Litigation stands disposed of in the aforesaid terms. No costs.

(AMIT B. BORKAR, J.)

(R.K. DESHPANDE, J.)