

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO.70 OF 2017

R.K. KAPOOR, ADVOCATE ... PETITIONER(S)

VS.

UNION OF INDIA & ORS. ... RESPONDENT(S)

O R D E R

1. Application for permission to appear and argue in person is allowed.

2. The issue being agitated on behalf of the petitioner, has already been adjudicated upon by this Court, in Thana Singh Vs. Central Bureau of Narcotics, (2013) 2 SCC 590, wherein, this Court has observed :

"D. Narcotics Laboratories

16. Narcotics laboratories at the national level identify drugs for abuse and their accompanying substances in suspected samples, determine the purity and the possible origin of illicit drugs, carry out drug-related research, particularly on new sources of drugs liable to abuse, and, when required by the police or courts of law, provide supportive expertise in drug trafficking cases. Their role in the effective implementation of the mandate of the NDPS Act is indispensable which is why every State or region must have proximate access to these laboratories so that samples collected for the purposes of the Act may be sent on a timely basis to them for scrutiny. These samples often form primary and clinching evidence for both the prosecution and the defence, making their evaluation by narcotics laboratories a crucial exercise.

17. The numbers of these laboratories speak for themselves and are reproduced here. The numbers for Central Forensic Science Laboratories (CFSL) are as follows: -

<i>Sl.No.</i>	<i>CFSL Location</i>	<i>Status</i>
1.	Chandigarh	In operation
2.	Hyderabad	In operation
3.	Kolkata	In operation
4.	Delhi (Under Central Bureau of Investigation)	In operation
5.	Bhopal	Being established
6.	Pune	Being established
7.	Guwahati	Being established

18. Similarly, numbers for the state and Regional Forensic Science Laboratories (FSL) are as follows:-

<i>Sl.No.</i>	<i>Name of State</i>	<u><i>Existing State Facilities</i></u>	
		<i>Main State FSL</i>	<i>Regional FSL</i>
1.	Andhra Pradesh	1	9
2.	Arunachal Pradesh	1	0
3.	Assam	1	0
4.	Bihar	1	1
5.	Chhattisgarh	1	2
6.	Goa	Being established	0
7.	Gujarat	1	5
8.	Haryana	1	2
9.	Himachal Pradesh	1	0
10.	Jammu & Kashmir	1	1
11.	Jharkhand	1	0
12.	Karnataka	1	4
13.	Kerala	1	2
14.	Madhya Pradesh	1	3
15.	Maharashtra	1	4
16.	Manipur	1	0
17.	Meghalaya	1	0
18.	Mizoram	1	0
19.	Nagaland	1	0
20.	Orissa	1	2

21.	Punjab	1	0
22.	Rajasthan	1	3
23.	Sikkim	0	1
24.	Tamil Nadu	1	9
25.	Tripura	1	0
26.	Uttar Pradesh	1	2
27.	Uttarakhand	1	0
28.	West Bengal	1	2
Union Territories			
1.	Andaman and Nicobar Islands	1	0
2.	Chandigarh	0	0
3.	Dadra & Nagar Haveli	0	0
4.	Daman & Diu	0	0
5.	Lakshadweep	0	0
6.	NCT of Delhi	1	0
7.	Puducherry	0	0
	<i>Total</i>	<i>28</i>	<i>52</i>

19. A qualitative and quantitative overhaul of these laboratories is necessary for ameliorating the present state of affairs, for which, we are issuing the following directions:

19.1 The Centre must ensure equal access to CFSLs from different parts of the country. The current four CFSLs only cater to the needs of northern and some areas of western and eastern parts of the country. Therefore, besides the three in the pipeline, more CFSL's must be established, especially to cater to the needs of southern and eastern parts of the country.

19.2. Analogous directions are issued to the states. Several States do not possess any existing infrastructure to facilitate analysis of samples and are hence, compelled to send them to laboratories in other parts of the country for scrutiny. Therefore, each state is required to establish State-level and regional-level forensic science laboratories. However, the decision as to the numbers of such laboratories would depend on the backlog of cases in the state.

20. The above mentioned authorities must ensure adequate employment of technical staff and

provision of facilities and resources for the purposes of proper, smooth and efficient running of the facilities of forensic science laboratories under them and the Laboratories should furnish their reports expeditiously to the agencies concerned.

21. The Directorate of Forensic Science Services, Ministry of Home Affairs, must take special steps to ensure standardization of equipment across the various forensic laboratories to prevent vacillating results and disallow a litigant an opportunity to challenge test results on that basis.

E. Personnel

22. We have also been apprised of the following vacancies at three CFSs, namely Chandigarh, Kolkata and Hyderabad.

<i>Posts</i>	<i>Sanctioned</i>	<i>Filled</i>	<i>Vacant</i>
Scientific	99	64	35
Technical	45	40	05

Shortage of staff is bound to hamper with the smooth functioning of these laboratories, and hence, we direct the Directorate of Forensic Science Services, Ministry of Home Affairs to address the same on an urgent basis.

23. Further, steps must be taken by the concerned departments to improve the quality and expertise of the technical staff, equipment and testing laboratories.

F. Re-testing provisions

24. The NDPS Act itself does not permit re-sampling or re-testing of samples. Yet, there has been a trend to the contrary; NDPS courts have been consistently obliging to applications for re-testing and re-sampling. These applications add to delays as they are often received at advanced stages of trials after significant elapse of time. NDPS courts seem to be permitting re-testing nonetheless by taking resort to either some High Court judgments [see: *State of Kerala v. Deepak. P. Shah and Nihal Khan v. State (Govt. of NCT Delhi)*] or perhaps to

Section 79 and 80 of the NDPS Act which permit application of the Customs Act, 1962 and the Drugs and Cosmetics Act, 1940. While re-testing may be an important right of an accused, the haphazard manner in which the right is imported from other legislations without its accompanying restrictions, however, is impermissible. Under the NDPS Act, re-testing and re-sampling is rampant at every stage of the trial contrary to other legislations which define a specific time-frame within which the right may be available. Besides, reverence must also be given to the wisdom of the legislature when it expressly omits a provision, which otherwise appears as a standard one in other legislations. The legislature, unlike for the NDPS Act, enacted Section 25(4) of the Drugs and Cosmetics Act, 1940, Section 13(2) of the Prevention of Food Adulteration Act, 1954 and Rule 56 of the Central Excise Rules, 1944, permitting a time period of thirty, ten and twenty days respectively for filing an application for re-testing

25. Hence, it is imperative to define re-testing rights, if at all, as an amalgamation of the above-stated factors. Further, in light of Section 52-A of the NDPS Act, which permits swift disposal of some hazardous substances, the time frame within which any application for re-testing may be permitted ought to be strictly defined."

3. We are satisfied, that the prayer made in the instant petition has been duly answered, and does not need reconsideration.

4. The writ petition is disposed of accordingly.

.....CJI.
[JAGDISH SINGH KHEHAR]

.....J.
[N.V. RAMANA]

New Delhi;
6th February, 2017.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (C) No(s).70/2017

R.K. KAPOOR, ADVOCATE

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln.(s) for permission to appear and argue in person
and office report)

Date : 06/02/2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE N.V. RAMANA

For Petitioner(s) In-person

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

The writ petition is disposed of in terms of the
signed order.

(Sarita Purohit)
Court Master

(Renuka Sadana)
Assistant Registrar

(Signed order is placed on the file)