

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF JUNE, 2020



PRESENT

THE HON'BLE MR. ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE NATARAJ RANGASWAMY

WRIT PETITION NO.8420/2020 (GM-RES-PIL)

BETWEEN

SRI. RAJADITHYA SADASIVAN
S/O N. SADASIVAN,
AGED 36 YEARS,
NO.8/26, CHANDRA VILAS
BASAVANAGUDI,
BANGALORE-560 004.
EMAIL ID:rajadithya@rsassociate.org

PETITIONER

(SRI. RAJADITHYA SADASIVAN, PARTY-IN-PERSON)

AND

1. HIGH COURT OF KARNATAKA
REPRESENTED BY REGISTRAR GENERAL,
BANGALORE-560 001.

2. THE STATE OF KARNATAKA
REP. BY CHIEF SECRETARY,
VIDHANA SOUDHA,
BENGALURU-560001.

3. THE UNION OF INDIA
REP BY ITS SECRETARY,

MINISTRY OF LAW AND JUSTICE,
4TH FLOOR, A-WING,
SHASTRI BHAVAN,
NEW DELHI-110 001.

4. THE KARNATAKA STATE BAR COUNCIL
REP BY ITS CHAIRMAN,
BENGALURU-560001.

5. THE KARNATAKA STATE
LEGAL SERVICES AUTHORITY,
REP BY ITS MEMBER SECRETARY,
NYAYA DEGULA, FIRST FLOOR,
SIDDAIAH ROAD,
BENGALURU-560 027.

RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE ALL PROVISIONS OF THE IMPUGNED SOP IN RESPECT OF LISTING MATTERS FOR PHYSICAL HEARING OR ARGUMENTS BEFORE COURT AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS THROUGH VIDEO CONFERENCING THIS DAY, CHIEF JUSTICE MADE THE FOLLOWING:

ORDER

The petitioner is a member of the Bar who has standing of 14 years. From 24th March 2020, when total lockdown was declared, the functioning of the Courts across the nation was adversely affected and therefore, within the limitation created by pandemic of COVID-19, attempts were made to find out workable solutions so that the limited functioning of the Courts can continue. From 1st June 2020, a limited functioning (including

physical hearing) of all the Courts in the State of Karnataka including the High Court was commenced. The limited functioning of the Courts was governed by the Standard Operating Procedures (for short 'SOPs') issued for High Court as well as the District Courts which were amended from time to time.

2. As we are dealing with a very extraordinary situation created by the spread of pandemic of Covid-19, it is impossible to find a perfect solution which will be liked by all the stakeholders for running the Courts.

3. At this stage, we may make useful reference to the order of the Apex Court dated 6th April 2020 in *Suo Motu Writ (Civil) No.5/2020 (In Re: guidelines for Court functioning through video conferencing during Covid-19 pandemic)*. Paragraphs 4 and 5 of the said order are material which read thus:

"4. The use of technology found judicial recognition in precedent of this Court in State of Maharashtra v Praful Desai (2003) 4 SCC 601. This Court held that the term 'evidence' includes electronic evidence and that video conferencing may be used to record evidence. It observed that developments in technology have opened

up the possibility of virtual courts which are similar to physical courts. The Court held:

“Advances in science and technology have now, so to say, shrunk the world. They now enable one to see and hear events, taking place far away, as they are actually taking place... Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you i.e. in your presence... In fact he/she is present before you on a screen. Except for touching one can see, hear and observe as if the party is in the same room. In video conferencing both parties are in presence of each other... Recording of such evidence would be as per “procedure established by law”.”

5. Faced with the unprecedented and extraordinary outbreak of a pandemic, it is necessary that Courts at all levels respond to the call of social distancing and ensure that court premises do not contribute to the spread of virus. This is not a matter of discretion but of duty. Indeed, Courts throughout the country particularly at the level of the Supreme Court and the High Courts have employed video conferencing for dispensation of Justice and as guardians of the Constitution and as protectors of individual liberty governed by the rule of law. Taking cognizance of the measures adopted by this court and by the High Courts and District Courts, it is necessary for this court to issue directions by taking recourse to the

jurisdiction conferred by Article 142 of the Constitution.”

(Underline supplied)

Thereafter, in paragraph 6, the Apex Court issued various directions under Article 142 of the Constitution of India. The directions in Sub-clauses (i) and (ii) of paragraph 6 are material for consideration which read thus:

“i. All measures that have been and shall be taken by this Court and by the High Courts, to reduce the need for the physical presence of all stakeholders within court premises and to secure the functioning of courts in consonance with social distancing guidelines and best public health practices shall be deemed to be lawful;

ii. The Supreme Court of India and all High Courts are authorized to adopt measures required to ensure the robust functioning of the judicial system through the use of video conferencing technologies; and”

(Underline supplied)

In view of clause (i) of paragraph 6, the Apex Court has conferred deemed legality on the steps taken by the High Courts. SOPs issued by the High Courts will constitute the steps taken by the High Courts.

4. Now, coming to the SOPs, for formulating the same,

two different Committees were appointed by this Court and at every stage, there were consultations with the Bar Associations, with Bar Council, with the learned Advocate General, the learned Additional Solicitor General of India. By publishing notice on website, suggestions were invited from the members of the Bar. Those suggestions were placed before the Committees and that is how the SOPs were revised from time to time after consulting all the stakeholders at every stage. In fact, one online meeting was addressed by the Chief Justice which was attended by the office bearers of the District and Taluk Court Bar Associations on the provisions of SOPs. The SOPs are not static. In fact, the record available on the website of this Court will show that from time to time, SOPs underwent changes.

5. We may note here that no one can claim that what is devised by way of SOPs is perfect. The reason is that situation is abnormal. It is not ideal. In fact, several changes were required to be made to SOP of the District Courts depending upon the spread of epidemic of Corona virus. We are conscious of the fact that some members of the Bar may not like video conferencing. Some members of the Bar may not like e-filing. At the same time, some

members of the Bar may not like the idea of physical filing which is being permitted after fixing prior appointments. Therefore, the procedure adopted by way of SOPs will not satisfy all the stakeholders. SOPs have been devised to deal with a situation which is not normal. That is how it cannot become perfect.

6. In this background, we are shocked to note that a member of the Bar has filed a writ petition under Article 226 of the Constitution of India by way of a Public Interest Litigation (for short 'PIL') for setting aside the provisions of the impugned Standard Operating Procedure (for short 'SOP') in respect of listing of matters for physical hearing or arguments before the Court.

7. One of the submissions made by the petitioner appearing in person is that though the High Court Administration invited suggestions of the members of the Bar on the SOPs, the same have not been considered as the Advocates have not received reply intimating them the decision taken on their suggestions. The second submission of the petitioner appearing in person is that by SOP, the High Court has subjected Court staff and Judicial Officers to the dangers of epidemic. His third submission is that in the SOP, certain categories of matters have

been excluded. He submits that the cross-examination by video conferencing is not effective. He submits that in the Trial Courts, most of the stages can be taken care of by sending e-mails. He submits that instead of allowing Advocates to appear physically and make oral submissions or allowing Advocates to participate in Video Conferencing hearing, video clips of submissions should be permitted to be forwarded by e-mail. He submits that the Trial Courts mostly function on the basis of written arguments and hence, oral arguments in most of the cases are not necessary. He states that everything including marking of documents can be done by e-mail. He criticizes that clause of the SOP for District Courts which provides that Judicial Officers, as far as possible, should not decide the matters in the absence of the members of the Bar. He submitted that undue advantage is being taken of this fact. He submitted that by the impugned SOP, neither members of the Bar nor litigants have been benefitted. He has also prayed for setting aside of the provisions of the impugned SOP that discriminate between cases based on the different stages of the case. Another prayer is for setting aside the provisions in paragraph 6A of the SOP permitting cross-examination to be conducted by video conferencing. He has prayed for setting aside

the practice of “first round calling” in trial Courts.

8. We may note that as far as the second last substantive prayer directing framing of Rules regarding service of summons and notice by way of email and the other modes of electronic communication is concerned, the High Court has already constituted a Committee to prepare a draft of the Rules regarding service of notice by e-mail as well as service through courier under Rule 9 of Order V of the Code of Civil Procedure, 1908 and the work of drafting of Rules is under progress. The last prayer is regarding framing of Rules as required under Sections 6, 7 and 10 of the Information Technology Act.

9. After having heard the petitioner appearing in person, we fail to understand in what manner the SOPs are illegal. The SOPs have been evolved after a continuous process of consultation with the stakeholders such as Bar Council, Bar Associations, learned Advocate General and the learned Additional Solicitor General of India. The SOPs have been devised by the Committees appointed by the Chief Justice and the same have been approved from time to time by the Full Court. The submissions made by the petitioner appearing in

person show that in substance, he wants the SOPs to be drafted in a particular manner. As noted earlier, several individual members of the Bar will have their own opinions or objections. However, the institution of the Courts cannot run on the basis of the opinions of individual Advocates. The ultimate object of SOP is to ensure that the limited functioning of the Court continues in a best possible manner without the Courts becoming the source of spreading the pandemic of Novel Corona Virus.

10. The petitioner also criticized that he was not allowed to intervene in the *Suo Motu* Writ Petition No.7338/2020. A perusal of the orders passed in the *suo motu* PIL from time to time will show that efforts were made to reconcile the existing provisions of law to ensure more efficient functioning of the Courts during the period of limited functioning. For example, directions were issued in the said PIL with a view to ensure that the litigants get the amount due and payable to them under the Decrees and Awards even without visiting the respective Courts. The *suo motu* PIL, as can be seen from the orders passed from time to time, has been initiated to ensure that the Courts function in a more effective manner and more litigant friendly manner in the days of

pandemic.

11. In fact, it was not necessary for us to go into the details of the submissions made by the petitioner appearing in person as even if the submissions are taken as correct, no illegality can be attributed to the SOPs. The petitioner appearing in person has not liked the idea of conducting cross-examination through video conferencing, but the submissions which he has made run contrary to the law laid down by the Apex Court in the case of ***State of Maharashtra vs. Dr. Praful B. Desai***¹.

12. Hence, suffice it to say that this Public Interest Litigation is not worthy of entertaining at all. This is not a case which could have been brought to the Court by way of a writ petition in the nature of PIL. In fact, this is a fit case where exemplary costs should be imposed on the petitioner, who himself is a member of the Bar. There are urgent matters waiting in the queue and the Court cannot be forced to devote such a long time for dealing with a PIL filed by a member of the bar challenging certain provisions of the SOPs. Though this is a fit case where

¹ (2003) 4 SCC 601

costs quantified at an amount not less than Rs.1,00,000/- (Rupees one lakh) should be imposed on the petitioner, we are not doing so. The reason is that if mercy and leniency is to be shown, it is to be shown by the Judges, who are occupying Constitutional posts. Therefore, we exercise our jurisdiction by showing mercy and we are not imposing any costs on the petitioner.

13. The petitioner is under a wrong impression that the High Court Administration should have given him a hearing on suggestions and replied to him after considering his suggestions. This contention is based on misconception about how the High Court functions on the administrative side.

14. For the aforesaid reasons, we dismiss the Writ Petition filed by way of a Public Interest Litigation. There will be no order as to costs.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**