

SUPREME COURT OF INDIA

In re:Guidelines for Court Functioning through video
Conferencing during Covid-19 Pandemic

Vs.

Suo Motu Writ(Civil)No.5/2020

(S.A.Bobde, D.Y.Chandrachud and L.Nageswara Rao, JJ.,)

06.04.2020

ORDER

1. The recent outbreak of COVID-19 (Coronavirus) in several countries, including India, has necessitated the immediate adoption of measures to ensure social distancing in order to prevent the transmission of the virus. The Supreme Court of India and High Courts have adopted measures to reduce the physical presence of lawyers, litigants, court staff, para legal personnel and representatives of the electronic and print media in courts across the country and to ensure the continued dispensation of justice.

2. Every individual and institution is expected to cooperate in the implementation of measures designed to reduce the transmission of the virus. The scaling down of conventional operations within the precincts of courts is a measure in that direction. Access to justice is fundamental to preserve the rule of law in the democracy envisaged by the Constitution of India. The challenges occasioned by the outbreak of COVID-19 have to be addressed while preserving the constitutional commitment to ensuring the delivery of and access to justice to those who seek it. It is necessary to ensure compliance with social distancing guidelines issued from time to time by various health authorities, Government of India and States. Court hearings in congregation must necessarily become an exception during this period.

3. Modern technology has enabled courts to enhance the quality and effectiveness of the administration of justice. Technology has facilitated advances in speed, accessibility and connectivity which enable the dispensation of justice to take place in diverse settings and situations without compromising the core legal principles of adjudication. Indian courts have been proactive in embracing advancement in technology in judicial proceedings. The Indian judiciary has incorporated Information and Communication Technology systems through the e-Courts Integrated Mission Mode Project (e-Courts Project) as part of the National e- Governance Plan (NeGP). The robust infrastructure in place has reduced conventional impediments and legal uncertainty surrounding the use of virtual courts. ICT enabled infrastructure is available across all courts including the district judiciary which constitutes the initial interface of the court system with the citizen.

4. The use of technology found judicial recognition in precedent of this Court in *State of Maharashtra v Praful Desai*¹. 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.

6. Therefore, in exercise of the powers conferred on the Supreme Court of India by Article 142 of the Constitution of India to make such orders as are necessary for doing complete justice, we direct that:

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

iii. Consistent with the peculiarities of the judicial system in every state and the dynamically developing public health situation, every High Court is authorised to determine the modalities which are suitable to the temporary transition to the use of video conferencing technologies;

iv. The concerned courts shall maintain a helpline to ensure that any complaint in regard to the quality or audibility of feed shall be communicated during the proceeding or immediately after its conclusion failing which no grievance in regard to it shall be entertained thereafter.

v. The District Courts in each State shall adopt the mode of Video Conferencing prescribed by the concerned High Court.

vi. The Court shall duly notify and make available the facilities for video conferencing for such litigants who do not have the means or access to video conferencing facilities. If necessary, in appropriate cases courts may appoint an amicus-curiae and make video conferencing facilities available to such an advocate.

vii. Until appropriate rules are framed by the High Courts, video conferencing shall be mainly employed for hearing arguments whether at the trial stage or at the appellate stage. In no case shall evidence be recorded without the mutual consent of both the parties by video conferencing. If it is necessary to record evidence in a Court room the presiding officer shall ensure that appropriate distance is maintained between any two individuals in the Court.

viii. The presiding officer shall have the power to restrict entry of persons into the court room or the points from which the arguments are addressed by the advocates. No presiding officer shall prevent the entry of a party to the case unless such party is suffering from any infectious illness. However, where the number of litigants are many the presiding officer shall have the power to restrict the numbers. The presiding officer shall in his discretion adjourn the proceedings where it is not possible to restrict the number.

7. The above directions are issued in furtherance of the commitment to the delivery of justice. The cooperation of all courts, judges, litigants, parties, staff and other stakeholders is indispensable in the successful implementation of the above directions to ensure that the judiciary rises to face the unique challenge presented by the outbreak of COVID-19. These directions shall operate until further orders.

8. List the matter after four weeks.

Judgment Referred.

¹(2003) 4 SCC 0601