

CASE DETAILS

SARVESH MATHUR

v.

THE REGISTRAR GENERAL HIGH COURT OF
PUNJAB AND HARYANA

(Writ Petition (Criminal) No. 351 of 2023)

OCTOBER 06, 2023

**[DR. D.Y. CHANDRACHUD, CJI, J.B. PARDIWALA AND
MANOJ MISRA, JJ.]**

HEADNOTES

Issue for consideration: Denial of access to video conferencing facilities or hearing through the hybrid mode.

Directions by Supreme Court – Conduction of hearings through video conferencing/hybrid mode – Considerable variation between High Courts in the level of adoption of technology – Position of the tribunals under various ministries of the Union Government:

Held: No High Court shall deny access to video conferencing facilities or hearing through the hybrid mode to any member of the Bar or litigant desirous of availing of such a facility – All State Governments shall provide necessary funds to the High Courts to put into place the facilities requisite for that purpose within the time frame as indicated – High Courts shall ensure that adequate internet facilities, including Wi-Fi facilities, with sufficient bandwidth are made available free of charge to all advocates and litigants appearing before the High Courts within the precincts of the High Court complex – The links available for accessing video conferencing/hybrid hearings shall be made available in the daily cause-list of each court and there shall be no requirement of making prior applications – No High Court shall impose an age requirement or any other arbitrary criteria for availing of virtual/hybrid hearings – All the High Courts shall put into place an SOP within a period of four weeks for availing of access to hybrid/video conference hearings, directions issued for its effectuation – High Courts shall place on the record the details as directed – Union Ministry of Electronics

& Information Technology to coordinate with the Department of Justice to ensure that adequate bandwidth and internet connectivity is provided to all the courts in the North-East and in Uttarakhand, Himachal Pradesh and Jammu and Kashmir to facilitate access to online hearings – High Courts shall ensure that adequate training facilities are made available to the members of the Bar and Bench – Union of India shall ensure that on or before 15.11.2023, all tribunals are provided with requisite infrastructure for hybrid hearings – All Tribunals shall ensure the commencement of hybrid hearings no later than the said date – Directions governing the High Courts shall also apply to the Tribunals functioning under all the Ministries of the Union Government including CESTAT, ITAT, NCLAT, NCLT, AFT, NCDRC, NGT, SAT, CAT, DRATs and DRTs – Additional Solicitor General shall immediately contact the Chairperson of the APTEL and take necessary steps on behalf of the Union of India to ensure that video conferencing/hybrid facilities are made available at APTEL within a period of one month from the date of this order. [Paras 14, 15]

**OTHER CASE DETAILS INCLUDING IMPUGNED
ORDER AND APPEARANCES**

CRIMINAL ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 351 of 2023.

Under Article 32 of The Constitution of India

Appearances:

Petitioner-in-person

K M Nataraj, A.S.G., Nidhesh Gupta, Guru Krishna Kumar, Virender Ganda, Sr. Advs., Arvind Kumar Sharma, Sharath Nambiar, Chitransh Sharma, Shashwat Anand, Amrish Kumar, Abhimanyu Tewari, Ms. Eliza Bar, Tushar Bathija, Siddhant Saroha, Sidhant Awasthy, Praveer Singh, Parth Jain, Kunal Chatterji, Ms. Maitrayee Banerjee, Rohit Bansal, Ms. Kshitij Singh, Varinder Kumar Sharma, Nikhil Goel, P. I. Jose, James P. Thomas, Ravi Sagar, Gaurav Agrawal, Gautam Narayan, Ms. Asmita Singh, Harshit Goel, Siddhant Singh, Sahil Tagotra, Shibashish Misra, Tapesh Kumar Singh, Aditya Pratap Singh, Deepayan Mandal, Naman Varma, Mridul Bansal, K. Parameshwar, Ms. Arti Gupta, Ms. Kanti, Chinmay Kalgaonkar, T. G. Narayanan Nair, Ms. Swathi H. Prasad, Rituraj

Biswas, P. D. Gupta, Ms. Sujaya Bardhan, Mukul Kumar, Sandeep Sudhakar Deshmukh, Nishant Sharma, Tushar D. Bhelkar, Akshay Subhash Jagtap, Swapnil Anil Walde, Sanjai Kumar Pathak, Arvind Kumar Tripathi, Mrs. Shashi Pathak, Apoorv Kurup, Shivansh Dwivedi, Ms. Kirti Dadheech, Ms. Aparna Arun, Ms. Gauri Goburdhun, Akhil Hasija, Himanshu Shekhar, Parth Shekhar, Ms. Ambali Vedasen, Shubham Singh, Ms. Enakshi Mukhopadhyay Siddhanta, Sovon Siddhanta, S. Silambarasan, Ms. Uttara Babbar, Raghavendra S. Srivatsa, Venkita Subramoniam T.R, Likhi Chand Bonsle, Ms. Komal Mundhra, Ms. Anagha N. Sharma, Hari Vishnu Tiwari, Arjun Garg, Aakash Nandolia, Ms. Sagun Srivastava, Ms. Shreya Bansal, Aniket Singh, Vipul Ganda, Vishal Ganda, S.K. Giri, Satyajit A. Desai, Siddharth Gautam, Ms. Akanksha Mathur, Ms. Nirti Dua, Anandeb Mitra, Ms. Anagha S. Desai, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT

ORDER

1. On the last date of hearing, i.e. 15 September 2023, notice was issued to the Registrars General of all the High Courts, the National Company Law Appellate Tribunal,¹ the National Consumer Disputes Redressal Commission,² and the National Green Tribunal.³ They were directed to file an affidavit detailing (i) how many video conferencing hearings have taken place in the last three months; and (ii) whether any courts are declining to permit video conferencing hearings. Further, the Solicitor General was requested to assist the court with data on hybrid hearings in the tribunals under various ministries of the Union Government on the next date of hearing.

2. Pursuant to the order dated 15 September 2023, the following High Courts have filed their affidavits:

- (i) High Court of Judicature at Allahabad;
- (ii) High Court of Judicature at Bombay;

1 “NCLAT”

2 “NCDRC”

3 “NGT”

- (iii) High Court at Calcutta;
- (iv) High Court of Chhattisgarh;
- (v) Gauhati High Court;
- (vi) High Court of Gujarat;
- (vii) High Court of Himachal Pradesh;
- (viii) High Court of Jharkhand;
- (ix) High Court of Karnataka;
- (x) High Court of Kerala;
- (xi) High Court of Madhya Pradesh;
- (xii) High Court of Judicature at Madras;
- (xiii) High Court of Meghalaya;
- (xiv) High Court of Orissa;
- (xv) High Court of Judicature at Patna;
- (xvi) High Court of Punjab and Haryana;
- (xvii) High Court of Rajasthan;
- (xviii) High Court of Sikkim;
- (xix) High Court of Andhra Pradesh;
- (xx) High Court for the State of Telangana;
- (xxi) High Court of Uttarakhand; and
- (xxii) High Court of Jammu & Kashmir and Ladakh

3. Mr Gautam Narayan, counsel appearing on behalf of the High Court of Delhi states that the response would be filed within a week. Permission is granted to do so.

4. The High Court of Manipur and the High Court of Tripura have not filed any response until date. They are granted a further extension of time until 13 October 2023 to file their responses failing which the Registrars General of the High Courts concerned and the Registrars (IT) shall personally remain present on the next date of hearing.

5. Mr Himanshu Shekhar, counsel appearing on behalf of the NGT states that hybrid hearings are being held by the NGT both at the Principal Bench at Delhi and at the Regional Benches. Likewise, it has been stated by Mr K.M. Nataraj, Additional Solicitor General appearing on behalf of the National Consumer Disputes Redressal Commission that the tribunal is holding hybrid hearings.

6. As regards the NCLAT, it has been stated that infrastructural requirements have to be upgraded and funds have been sought from the Union Government. The Additional Solicitor General states that requisite funds shall be made available to the NCLAT. We direct that a joint meeting be held between the Secretaries of the Ministries of Finance and Corporate Affairs with the President of the NCLAT within a period of one week and that all pending issues, including the availability of funds are sorted out so as to enable the NCLAT to conduct hybrid hearings. Simultaneously, a meeting shall also be held with the Chairperson of the National Company Law Tribunal⁴ within a period of two weeks. The NCLAT and NCLT shall ensure that hybrid hearings are made available at the option of the appearing lawyers, or the litigants, as the case may be, within a period of four weeks from the date of this order.

7. Mr K M Nataraj states that a tabulated statement indicating the position of other Tribunals falling under various Ministries of the Union Government shall also be placed on the record by the next date of hearing.

8. During the course of the hearing, we have heard the following counsel on behalf of the High Courts:

- (i) Mr K Parameshar for the High Court of Judicature at Allahabad;
- (ii) Dr Birendra Saraf, Advocate General has appeared on behalf of the State of Maharashtra with Mr Sandeep Deshmukh for the High Court of Judicature at Bombay;
- (iii) Mr Kunal Chatterji for the High Court at Calcutta;
- (iv) Mr Apoorv Kurup for the High Court of Chhattisgarh;

4 "NCLT"

- (v) Mr P I Jose for the Gauhati High Court;
- (vi) Mr Nikhil Goel for the High Court of Gujarat;
- (vii) Mr Tapesh Kumar Singh for the High Court of Jharkhand;
- (viii) Ms Anagha N Sharma for the High Court of Karnataka;
- (ix) Mr T G Narayanan Nair for the High Court of Kerala;
- (x) Mr Arjun Garg for the High Court of Madhya Pradesh;
- (xi) Mr S. Gurukrishna Kumar, senior counsel for the High Court of Judicature at Madras;
- (xii) Mr Sanjai Kumar Pathak, counsel for the High Court of Meghalaya;
- (xiii) Mr Shibashish Misra for the High Court of Orissa;
- (xiv) Mr Gaurav Agrawal for the High Court of Judicature at Patna;
- (xv) Mr Nidhesh Gupta, senior counsel for the High Court of Punjab and Haryana;
- (xvi) Dr Charu Mathur for the High Court of Rajasthan;
- (xvii) Ms Enakshi Mukhopadhyay Siddhanta for the High Court of Sikkim; and
- (xviii) Ms Uttara Babbar for the High Court for the States of Andhra Pradesh and Telangana.

9. From the discussions which have taken place before the Court, it is evident that there is a considerable variation between High Courts in the level of adoption of technology. Some High Courts have made considerable progress and hearings are being provided through the hybrid mode or video conferencing. Other High Courts have stated that facilities are available. However, when the statistics in regard to the actual number of hearings through video conferencing/hybrid mode have been disclosed, it appears that the performances are abysmal. For instance, in one High Court, as few as 3 hearings have been conducted in the virtual mode in the last three months.

10. In most High Courts, the problem is compounded by the absence of a uniform SOP which brings clarity to the manner in which access to the electronic mode of hearing can be obtained. An application for electronic access has to be submitted well in advance, in certain cases, three days before the date of commencement of the hearing. The arbitrariness of the existing SOPs is also borne out by rules such as hearing being allowed in hybrid mode for advocates/parties-in-person who are 65 years of age or above. The age restriction would unfairly disadvantage younger lawyers and restrict access to technology only in the hands of the seniors at the Bar. Such criteria do not bear any nexus to the aim of using technology to increase access to courtrooms.

11. Further, most High Courts do not provide Wi-Fi or internet connectivity to the members of the Bar and litigants within the precincts of the High Court. In the absence of adequate connectivity, it is not possible for the members of the Bar and litigants to access the internet within the precincts of the High Courts. Links for video conferencing hearings are not provided in the cause-list. Many High Courts have not yet adopted online filings which would complement the hearings through video conferencing or in the hybrid mode. We are also concerned about the absence of adequate internet activity in the North-East States.

12. During the course of the hearing, it has also emerged that whereas several High Courts do have facilities for video conferencing, very few High Courts are operating through the hybrid mode of hearing. The infrastructure which is required for conducting hybrid hearings may be of a different order as compared to the infrastructure for video conferencing.

13. Bearing in mind the above situation as it has emerged across the country in the High Courts, we nominate Mr Gaurav Agrawal and Mr K Parameshwar, counsel, as *amici curiae*. The *amici curiae* are requested to collate all the information which has been provided in the affidavits which have been filed before this Court in a tabulated chart so that further effective orders can be passed by this Court. The *amici curiae* may also distribute the work in connection with the High Courts between them and individually contact the Registrars General/Registrars (IT) of the High Courts so that necessary information can be placed

before this Court in that regard. The *amici curiae* shall also place before this Court the steps which have been taken by all the High Courts to facilitate e-filing.

14. In this backdrop, we issue the following directions:

- (i) After a lapse of two weeks from the date of this order, no High Court shall deny access to video conferencing facilities or hearing through the hybrid mode to any member of the Bar or litigant desirous of availing of such a facility;
- (ii) All State Governments shall provide necessary funds to the High Courts to put into place the facilities requisite for that purpose within the time frame indicated above;
- (iii) The High Courts shall ensure that adequate internet facilities, including Wi-Fi facilities, with sufficient bandwidth are made available free of charge to all advocates and litigants appearing before the High Courts within the precincts of the High Court complex;
- (iv) The links available for accessing video conferencing/hybrid hearings shall be made available in the daily cause-list of each court and there shall be no requirement of making prior applications. No High Court shall impose an age requirement or any other arbitrary criteria for availing of virtual/hybrid hearings;
- (v) All the High Courts shall put into place an SOP within a period of four weeks for availing of access to hybrid/video conference hearings. In order to effectuate this, Justice Rajiv Shadher, Hon'ble Judge of the High Court of Delhi is requested to prepare a model SOP, in conjunction with Mr Gaurav Agrawal and Mr K Parameshwar, based on the SOP which has been prepared by the e-Committee. Once the SOP is prepared, it shall be placed on the record of these proceedings and be circulated in advance to all the High Courts so that a uniform SOP is adopted across all the High Courts for facilitating video conference/hybrid hearings;

- (vi) All the High Courts shall, on or before the next date of listing, place on the record the following details:
 - (a) The number of video conferencing licences which have been obtained by the High Court and the nature of the hybrid infrastructure;
 - (b) A court-wise tabulation of the number of video conference/hybrid hearings which have taken place since 1 April 2023; and
 - (c) The steps which have been taken to ensure that Wi-Fi/internet facilities are made available within every High Court to members of the Bar and litigants appearing in person in compliance with the above directions.
- (vii) The Union Ministry of Electronics & Information Technology is directed to coordinate with the Department of Justice to ensure that adequate bandwidth and internet connectivity is provided to all the courts in the North-East and in Uttarakhand, Himachal Pradesh and Jammu and Kashmir so as to facilitate access to online hearings;
- (viii) All High Courts shall ensure that adequate training facilities are made available to the members of the Bar and Bench so as to enable all practising advocates and Judges of each High Court to be conversant with the use of technology. Such training facilities shall be set up by all the High Courts under intimation to this Court within a period of two weeks from the date of this order; and
- (ix) The Union of India shall ensure that on or before 15 November 2023, all tribunals are provided with requisite infrastructure for hybrid hearings. All Tribunals shall ensure the commencement of hybrid hearings no later than 15 November 2023. The directions governing the High Courts shall also apply to the Tribunals functioning under all the Ministries of the Union Government including CESTAT, ITAT, NCLAT, NCLT, AFT, NCDRC, NGT, SAT, CAT, DRATs and DRTs.

15. Notice shall also be issued to the Registrar In-charge of the Appellate Tribunal for Electricity⁵. Mr K M Nataraj, Additional Solicitor General shall immediately contact the Chairperson of the APTEL and take necessary steps on behalf of the Union of India to ensure that video conferencing/hybrid facilities are made available at APTEL within a period of one month from the date of this order.

16. Above all, it must be noted that technology plays an essential role in securing access to courtrooms and as a result, access to justice for citizens across the country. Lawyers and litigants using electronic gadgets to access files and legal materials cannot be asked to turn the clock back and only refer to paper books. In the march of technology, the Courts cannot remain tech averse. Placing fetters on hybrid hearings, like mandating an age criteria, requiring prior application, and frequent denial of access to virtual participants has the direct effect of discouraging lawyers and litigants to use technology. Not only does this affect the efficiency and access to courts, but it also sends out the misguided message that access to courts can be restricted at whim to those who seek justice.

17. The use of technology by the Bar and the Bench is no longer an option but a necessity. Members of the Bench, the Bar and the litigants must aid each other to create a technologically adept and friendly environment. The above directions must be implemented by all concerned stakeholders in letter and in spirit.

18. List the proceedings on 6 November 2023.

Headnotes prepared by:
Divya Pandey

Directions issued.