

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) NO. 99 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH

and

HONOURABLE MR. JUSTICE J.B.PARDIWALA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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Pruthvirajsinh Zala
Versus
High Court of Gujarat

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Appearance:

PARTY IN PERSON(5000) for the Applicant(s) No. 1
for the Opponent(s) No. 1

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CORAM:HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH

And

HONOURABLE MR. JUSTICE J.B.PARDIWALA

Date : 20/07/2020

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1 By this writ application under Article 226 of the Constitution of India, the writ applicant, a 3rd year law student studying with the Nirma University, has prayed for the following

reliefs:

“(a) Your Lordships, during the pendency of this petition be pleased to grant interim relief of open-public access to the virtual hearings of the High Court of Gujarat and frame necessary rules thereof;

(b) Your Lordships, be pleased to admit and allow the petition;

(c) Your Lordships, be pleased to declare that proceedings of High Court of Gujarat be live streamed and necessary steps be taken by the Registry for setting up Live-Streaming mechanism in courtrooms.

(d) Your Lordships, be pleased to frame guidelines or rules to administer live streaming of court proceedings;

(e) Your Lordships, be pleased to grant further relief as deemed just in fact and circumstances of the case in the interest of justice.”

2 The case put up by the writ applicant, in his own words, as pleaded in the memorandum of the writ application, reads thus:

“4.1 The petitioner humbly states and submits that the with the spread of COVID-19 pandemic Hon'ble Court High Court has started hearing cases through virtual mode.

4.2 The petitioner most respectfully submits that e-filing and virtual hearings are welcome steps in furtherance of digitalization of Courts. However, the present set-up of virtual hearings is inaccessible to public at large including litigants, media personnel and law students etc.

4.3 The petitioner further submits that the right of access to justice flows from Article 21 of the Constitution. The concept of justice at the doorstep, would be meaningful only if the public gets access to the proceedings as it would unfold before the Courts and in particular, opportunity to witness live proceedings in respect of matters having an impact on the public at large or on section of people.

4.4 The petitioner further submits that indisputably, open trials and access to the public during hearing of cases before the Court is an accepted proposition and can be traced to provisions such as Section 327 of the Code of Criminal Procedure, 1973 (CrPC) and Section 153-B of the Code of Civil Procedure, 1908 (CPC).

4.5 The petitioner further submits that Live streaming / Open Access of Court proceedings is feasible due to the advent of technology and, in fact, has been adopted in other jurisdictions across the world as well in few other High Courts. Even in normal parlance physical hearings ought to be made more accessible by setting up live-streaming mechanism.

4.6 The petitioner submits that amidst the pandemic restrictions and safety measures United States Supreme Court is conducting hearing through teleconference which is being live streamed in real time. The Supreme Court of United Kingdom live streams its proceedings in normal court and is being continuing to do so at present. The Kerala High Court is live-streaming its hearings. The Bombay High Court had also held open-for-public video-conferencing hearing. Rule 16.1 of High Court of Delhi Rules for Video Conferencing for Courts 2020 states that; "to observe the requirement of an open Court proceedings, members of the public will be allowed to view Court hearings conducted through video conferencing, except proceedings ordered for reasons recorded in writing to be conducted in-camera. The Court shall endeavour to make available sufficient links (consistent with available bandwidth) for accessing the proceedings." Pursuant to Rule 16.1 Delhi High Court on 20th June 2020 vide circular No.01/IT/DHC/2020 ordered that links will be offered for public.

6. That the petitioner made a representation in this regard on 23rd April, 2020 to Hon'ble Chief Justice of Gujarat & other companion Judges of High Court of Gujarat through E-mail."

3 Thus, the writ applicant has raised the issue relating to the Live Streaming / open access of the Court proceedings. It is his case in public interest that the High Court of Gujarat should work out the necessary modalities for the purpose of Live Streaming of its hearings.

4 It is also brought to our notice that a representation in this regard has been addressed to the Chief Justice of the High Court and other companion Judges dated 23rd April 2020.

5 **LEGAL SUBMISSIONS CANVASSED BY THE WRIT APPLICANT IN WRITING:**

“1. That the petitioner has sought interim relief of open-public access to the virtual hearings of the High Court of Gujarat and framing of necessary rules thereof. (Paras 9 & 12(a) of the PIL).

2. That open-public access to virtual hearings would mean a mechanism wherein litigants, journalists, law students and all other interested persons can access and witness virtual court-proceedings of this Hon’ble Court.

3. That public hearing/open courts/open justice is a fundamental facet of our democracy. While use of technology is necessary in the present extraordinary circumstances, however it cannot compromise the open court principle.

4. That the right to seek and receive information including open-public access of virtual proceedings of the High Court is a fundamental right guaranteed under Article 19(1)(a) of the Constitution.

*5. That Hon’ble Supreme Court in the case of **Secretary, Ministry of Information and Broadcasting, Government of India & Ors., v. Cricket Association of Bengal & Ors. (1995) 2 SCC 161** held in Para 75 that: “...the right to freedom of speech and expression also includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained.”*

*6. That our constitutional fabric is such that we accept the cardinal principle that justice must not only be done but seen to be done and thus it becomes essential that persons that may be affected by the High Court’s decisions be able to access the same vide open-public access to the virtual hearings. **Citizens have a fundamental right under Article 19(1)(a) to receive***

information by way of open-access of virtual proceedings in the High Court of Gujarat.

7. That Hon'ble Supreme Court vide a five-judge bench in **Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545** in Para. 47 held that: "...justice must not only be done but must manifestly be seen to be done...It is the dialogue with the person likely to be affected by the proposed action which meets the requirement that justice must also be seen to be done."

8. That Hon'ble Supreme Court in **Olga Tellis (Supra)** has further noted in Para. 47 that: "The right to be heard has two facets, intrinsic and instrumental. The intrinsic value of that right consists in the opportunity which it gives to individuals or groups, against whom decisions taken by public authorities operate, to participate in the processes by which those decisions are made, an opportunity that expresses their dignity as persons...Whatever its outcome, such a hearing represents a valued human interaction in which the affected person experiences at least the satisfaction of participating in the decision that vitally concerns her, and perhaps the separate satisfaction of receiving an explanation of why the decision is being made in a certain way. Both the right to be heard from, and the right to be told why, are analytically distinct from the right to secure a different outcome; these rights to interchange express the elementary idea that to be a person, rather than a thing, is at least to be consulted about what is done with one. Justice Frankfurter captured part of this sense of procedural justice when he wrote that the "validity and moral authority of a conclusion largely depend on the mode by which it was reached No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Nor has a better way been found for generating the feeling, so important to a popular government, that justice has been done."

9. The principle of open courts has open justice as an integral part of its functioning and has been given constitutional importance in many common-law jurisdictions. In **Attorney General v. Leveller Magazine [1979] AC 440**, Lord Diplock, held that, "The principle of open justice requires that the court should do nothing to discourage fair and accurate reports of proceedings." Open-public access of virtual hearing will eliminate misinformation and disinformation of court proceedings.

10. That the principle of open courts has been expanded upon by Hon'ble Supreme Court in **Mohd. Shahabuddin v. State of**

***Bihar & Ors., (2010) 4 SCC 653* vide a two-judge bench held in Para 215 that, "... even if the press is present, if individual members of the public are refused admission, the proceedings cannot be considered to go on in open courts. In my considered view, an "open court" is a court to which general public has a right to be admitted and access to the court is granted to all the persons desirous of entering the court to observe the conduct of the judicial proceedings."**

11. That open and public functioning of courts is an essential part of building public confidence in the functioning of the courts and in administration of justice.

12. That Hon'ble Supreme court in ***Naresh Shridhar Mirajkar and Ors. v. State of Maharashtra and Another, AIR 1967 SC 1***, vide a nine judge bench remarked that, **"Public confidence in the administration of justice is of such great significance that there can be no two opinions on the broad proposition that in discharging their functions as judicial tribunals, courts must generally hear causes in open and must permit the public admission to the court room."**

13. That in the same judgment, Justice Bachawat articulated the importance of public confidence in the judiciary as in Paras 140 and 141, opined that **"A court of justice is a public forum. It is through publicity that the citizens are convinced that the court renders even handed justice, and it is, therefore, necessary that the trial should be open to the public and there should be no restraint on the publication of the report of the court proceedings. The publicity generates public confidence in the administration of justice."** He adds, quoting from political philosophy, that, **"Hegel in his Philosophy of Right maintained that judicial proceedings must be public, since the aim of the Court is justice, which is universal belonging to all."**

14. That Justice Hidayatullah in the same case remarked in Para 129 that, **"Hearing in open court of causes is of the utmost importance for maintaining confidence of the public in the impartial administration of justice: it operates as a wholesome check upon judicial behaviour as well as upon the conduct of the contending parties and their witnesses. But hearing of a cause in public which is only to secure administration of justice untainted must yield to the paramount object of administration of justice. If excessive**

publicity itself operates as an instrument of justice, the court may not be slow, if it is satisfied that it is necessary to do so to put such restraint upon publicity as is necessary to secure the court's primary object."

15. That the right of access to justice demands that current technology of live streaming be used to further this right which is considered a fundamental right under the expansive ambit of Article 21 of the Constitution of India.

16. That the importance of the right to access justice has been recognised by this Hon'ble Supreme Court vide a five-judge bench in **Anita Kushwaha v. Pushap Sudan (2016) 8 SCC 509** has held in Para. 29 that : **"access to justice is and has been recognised as a part and parcel of right to life in India and in all civilised societies around the globe. The right is so basic and inalienable that no system of governance can possibly ignore its significance, leave alone afford to deny the same to its citizens. The Magna Carta, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, 1966, the ancient Roman jurisprudential maxim *ubi jus ibi remedium*, the development of fundamental principles of common law by judicial pronouncements of the courts over centuries past have all contributed to the acceptance of access to justice as a basic and inalienable human right which all civilised societies and systems recognise and enforce"**.

17. That at present no one except Hon'ble Judges and Ld. Advocates are able to access the virtual hearings of this Hon'ble Court.

18. That the Hon'ble Supreme Court of Appeal of South Africa, in **The NDPP v Media 24 Limited & others and HC Van Breda v Media 24 Limited & Others, (425/2017) [2017] ZASCA 97 (21 June 2017)**, vide a fivejudge bench expanded on the principle of open justice in Para 46 by holding that, "It is thus important to emphasize that giving effect to the principle of open justice and its underlying aims now means more than merely keeping the courtroom doors open. It means that court proceedings must where possible be meaningfully accessible to any member of the public who wishes to be timeously and accurately apprised of such proceedings. Broadcasting of court proceedings enables this to occur."

19. That Hon'ble Supreme Court has acknowledged the power of media in spreading education and awareness, significant for a functioning democracy, vide judgment in **Life Insurance Corporation of India v. Professor Manubhai D Shah, (1992) 3 SCC 637**, vide a two judge bench in Para 8 held, "The print media, the radio and the tiny screen play the role of public educators, so vital to the growth of a healthy democracy... It cannot be gainsaid that modern communication mediums advance public interest by informing the public of the events and developments that have taken place and thereby educating the voters, a role considered significant for the vibrant functioning of a democracy. Therefore, in any set up, more so in a democratic set up like ours, dissemination of news and views for popular consumption is a must and any attempt to deny the same must be frowned upon unless it falls within the mischief of Article 19(2) of the Constitution."

20. That open-public access to the virtual proceedings of this Hon'ble Court would completely negate the chances of any misreporting, errors or second hand information that may be disseminated from such proceedings, and thereby limit any obstruction to administration of justice.

21. That this Hon'ble Court in **Narottamdas L. Shah vs State Of Gujarat & Anr. 1971 GLR 894, 1971 eGLR_HC 1000894** held that; "...**The most important and probably the most valuable limb of it is that the trial shall be held in open Court in public gaze.** Public trial in open Court is the essence of administration of justice. In view of the decision in **Naresh Shridhar Mirajkar v. State of Maharashtra**, we need not dilate on this point. **If there is one point on which both the majority and minority judgments are agreed it is on the point that all cases brought before the Court whether civil, criminal or others must be heard in open Court.**"

22. That this Hon'ble Court (in Supra) further went on to note that; "Professor Wade has at one place observed that lawyers have learned by centuries of experience that it is of the essence of justice that it should be dispensed in public. **The seat of justice is in the market place.** Or, if you prefer, all the dirty linen must be washed in public. Lord Atkins once said that justice was not a cloistered virtue, that the path of criticism was a public way and that the wrong headed were permitted to err therein."

23. That this Hon'ble Court (in Supra) held that; **"it appears well-settled that a case brought before the Court must be**

heard in open Court.” It also held that, “it appears clearly well settled that the trial of a case shall be in public.”

24. That the High Courts of Kerala & Delhi have allowed open-public access to the virtual hearings. Bombay High Court also allowed public-open access to virtual hearings. In its 231-year history, United States Supreme Court for the first time allowed real-time live-stream broadcast of its virtual teleconference hearings.

25. That the Hon’ble Supreme Court in **Swapnil Tripathi v. Supreme Court of India (2018) 10 SCC 639** held in para 9 that; “Live streaming of Court proceedings is feasible due to the advent of technology and, in fact, has been adopted in other jurisdictions across the world. Live streaming of Court proceedings, in one sense, with the use of technology is to “virtually” expand the Court room area beyond the physical four walls of the Court rooms. Technology is evolving with increasing swiftness whereas the law and the courts are evolving at a much more measured pace. **This Court cannot be oblivious to the reality that technology has the potential to usher in tangible and intangible benefits which can consummate the aspirations of the stakeholders and litigants in particular. It can epitomize transparency, good governance and accountability, and more importantly, open the vista of the court rooms, transcending the four walls of the rooms to accommodate a large number of viewers to witness the live Court proceedings. Introducing and integrating such technology into the courtrooms would give the viewing public a virtual presence in the courtroom and also educate them about the working of the court.**”

26. That the Hon’ble Supreme Court (in Supra) further held in para 50 that “To consummate their aspirations, use of technology to relay or publicize the live court proceedings can be a way forward. **By providing “virtual” access of live court proceedings to one and all, it will effectuate the right of access to justice or right to open justice and public trial, right to know the developments of law and including the right of justice at the doorstep of the litigants. Open justice, after all, can be more than just a physical access to the courtroom rather, it is doable even “virtually” in the form of live streaming of court proceedings and have the same effect.**”

27. That the Hon'ble Supreme Court (in Supra) further held in Para 64 that, "In **R (Binyam Mohamed) vs. Secretary of State for Foreign and Commonwealth Affairs**, Lord Judge CJ draws a link between open justice and democratic values: "...**the principle of open justice represents an element of democratic accountability, and the vigorous manifestation of the principle of freedom of expression. Ultimately it supports the rule of law itself.**"

28. That the Hon'ble Supreme Court (in Supra) further held in Para 73 that, "**Public confidence in the judiciary and in the process of judicial decision making is crucial for preserving the rule of law and to maintain the stability of the social fabric. Peoples' access to the court signifies that the public is willing to have disputes resolved in court and to obey and accept judicial orders. Open courts effectively foster public confidence by allowing litigants and members of the public to view courtroom proceedings and ensure that the judges apply the law in a fair and impartial manner.**"

"1. That the Hon'ble High Court of Kerala allows public access to its videoconference proceedings by publishing the court-wise zoom link and ID-Passwords. A separate videoconferencing page has been setup on the official website of the court. A screenshot of the page is hereinafter attached for convenience sake. Public can easily click the link and join the Zoom meeting and witness the court proceedings.

HIGH COURT OF KERALA

Video Conferencing

Date	Court	Time	Meeting ID	VC platform	VC link
17-07-2020	SB-A.K.JAYASANKARAN NAMBIAR J.	10.15 AM	Meeting ID 881 4830 2004 Password 668025	ZOOM	ZOOM VC
17-07-2020	SB-ANU SIVARAMAN J.	10.15 AM	Meeting ID 884 4343 4873 Password 099496	ZOOM	ZOOM VC
17-07-	SB -SHIRCY V.J.	10.15	Meeting ID 816	ZOOM	ZOOM

2020		AM	9110 7306 Password 029947		VC
17-07-2020	SB-ASHOK MENON J.	10.15 AM	Meeting ID 881 5431 0889 Password 511755	ZOOM	ZOOM VC
17-07-2020	SB -V.G. ARUN J.	10.15 AM	Meeting ID 835 9228 7440 Password 044228	ZOOM	ZOOM VC
17-07-2020	SB- N.NAGARESH J.	10.15 AM	Meeting ID 834 5468 9417 Password 158484	ZOOM	ZOOM VC
17-07-2020	SB- C.S. DIAS J.	10.15 AM	Meeting ID 898 8911 5035 Password 305463	ZOOM	ZOOM VC
17-07-2020	SB-P.V. KUNHIKRISHNAN J.	10.15 AM	Meeting ID 842 7669 9058 Password 04554	ZOOM	ZOOM VC

2. That the Hon'ble High Court of Delhi allows public access to its virtual proceedings by providing links. The High Court of Delhi Rules for Video Conferencing for Courts, 2020 permit public viewing of court proceedings. Pursuant to Rule 16.1 thereof, a circular has been published on 20th June, 2020 (**Annexure A** of the petition) which lays down the procedure for public viewing. All those interested can obtain links for viewing court hearings from concerned court masters. The link easily allows access to the Cisco Webex Portal through which hearings take place.

3. That the United States Supreme Court is hearing cases through teleconference. US Supreme Court provides a live audio feed of the arguments to FOX News (the network pool chair), the Associated Press, and C-SPAN, and they in turn provide a simultaneous feed for the oral arguments to livestream on various media platforms.

4. That in Zoom Platform which this Hon'ble Court is using for videoconference hearings, Youtube Live Streaming of meeting can be easily enabled. The detailed procedure on enabling Youtube Live Streaming can be accessed at the following URL, <https://support.zoom.us/hc/en-us/articles/360028478292>-

*Streaming-a-Meeting-or-Webinar-on-YouTube-Live#h_a89a9e22-ecd9-4941-b478-7905baf8e663. **Youtube livestreaming of Zoom Meeting will easily make the court proceedings publicly accessible without causing any disturbance or impediments. Hon'ble Judges, Ld. Advocates and Party-in-person shall only be the part of Zoom Meeting, however litigants and public at large will be able to witness the proceedings on Youtube. Each Bench which has its own Zoom Meeting will simultaneously have its own Youtube Livestream, thus enabling open-access.***

5. That alternatively, an approach like that of Hon'ble Kerala & Delhi High Courts may be adopted. Public may be allowed to be a part of the Zoom Meeting itself, however their microphone be kept default mute and their camera be kept default off, for the purposes of maintaining decorum.

6. That a comparative chart of various courts in various jurisdictions w.r.t. Live streaming/open access methodology is hereinafter attached;

Court	Live Streaming / open access methodology
High Court of Kerala	Publishing Zoom Links & allowing public in Zoom meeting
High Court of Delhi	Sharing Links on demand & allowing public in Cisco Webex meeting
US Supreme Court	Real Time Live Stream of Teleconference Audio through broadcasters
UK Supreme Court	Live Video Link of Court proceedings on its official website
UK Court of Appeal (Civil Division)	Youtube Live Streaming of videoconference proceedings
International Criminal Court	Live Video Link of Court proceedings on its official website"

6 Having heard the writ applicant appearing in person and having gone through the materials on record, we may only say that to observe the requirement of an open Court proceedings, the members of the public should be allowed to view the Court hearings conducted through the video conferencing, except the proceedings ordered for the reasons recorded in writing to be conducted in-camera. As held by the Supreme Court in **Naresh Shridhar Mirajkar (supra)**, the public confidence in the administration of justice is of such great significance that there can be no two opinions on the broad proposition that in discharging their functions as judicial Tribunals, the Courts must generally hear the causes in open and must permit the public admission to the Court room.

7 The right to know and receive information is one of the facets of Article 19(1)(a) of the Constitution and for which reason, the public is entitled to witness the Court proceedings involving the issue having an impact on the public at large or a section of the public, as the case may be.

8 The writ applicant before us appearing in person is a bright young 3rd year law student of the Nirma University. He has taken up this cause in public interest and has assisted this Court very ably furnishing important materials. We appreciate the efforts put in by the writ applicant appearing in person in public interest.

9 In the Course of the hearing of this matter, we brought to the notice of the writ applicant that the High Court of Gujarat on its administrative side has taken up this issue. We also brought

to the notice of the writ applicant that for the purpose of working out the modalities to facilitate the people at large including the media to watch the virtual hearing, a Committee of two Honourable Judges of this High Court has been constituted pursuant to the decision taken by the Standing Committee in its meeting held on 25th June 2020.

10 The Committee, as referred to above, is working on the modalities and would be placing its report in the near future. Once the report is received, the further action to allow access to the public at large including the media persons of print digital and electronic media shall be finalized.

11 With the above observations, this writ application stands disposed of.

12 As the issue is being looked into by the High Court on its Administrative Side, one copy of this order be placed before the Hon'ble members of the Committee constituted for the purpose of working out the modalities.

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

CHANDRESH