

HONOURABLE HIGH COURT OF KARNATAKA AT BENGALURU

W. P. No. /2019 (PIL)

(Original Jurisdiction)

Between,

Dilraj Rohit Sequeira.....Petitioner

AND

Union of India & OthersRespondent

SYNOPSIS

<u>Date</u>	<u>Description</u>
2010	To simplify procedures and expedite justice delivery system, Phase-I Computerization of courts was initiated by the Government Of India, on a mission mode to be supervised by an apex court E-Courts committee.
July 2015	During the phase-1 that ended in March 2015, about 13,670 district and subordinate courts were computerized and Phase II of the E-Courts project began in July 2015.
26/08/2018	Swapnil Tripathi's case was disposed.
04/11/2019	Filing of the writ petition.

FACTS OF THE CASE

It is submitted that, the petitioner filing the present petition as a public interest litigation pro bono publico. The petitioner's sole purpose in filing the present petition is to implement Audio Vedio recording in the courts of the State of Karnataka, which benefits the litigants, advocates and public in many ways. The present petition has not been filed for self-gain or for gain of any other person/institution/body.

Thus, the petitioner has preferred the present petition, under article 226 of the constitution of India, seeking directions to the registrar of the High court of Karnataka, to implement Audio Vedio recording of the proceedings, in court halls, in our courts i.e. court of State of Karnataka.

Had the judgement in Swapnil Thripathi & ors Vs. Supreme Court of India & Ors., AIR 2018 SC 4806, been in an appeal arising from a judgment or decree of a Court subordinate to the Supreme court, the same could have been executed as contemplated in Section 38 of the Civil Procedure Code read with Order XLV Rule 15 thereof. The Supreme Court Rules also does not provide for any provision for execution of the judgments and decrees of an original nature rendered in exercise of its jurisdiction under Article 32, so far as the Petitioners' knowledge goes and the research they could make about it.

The reason is obvious. The Founding Fathers, did not confer any original jurisdiction on the Honourable Supreme Court, where under a declaratory relief could be granted in exercise of its jurisdiction under Article 32. In Charanjitlal Choudhary V/s Union of India, AIR (38) 1951 SC 41, the Honourable supreme Court was pleased to hold so in unmistakable terms. Though it may appear to be blasphemy, under the constitutional scheme, the original civil jurisdiction, which includes the jurisdiction to grant a declaration that, an Act of Parliament or a statutory instrument is void, being violative of the fundamental rights

or express constitutional or statutory provision, is vested in the Civil Court.

However, in actual practice, the Civil Court, which alone has been invested with the original jurisdiction, as a Court of plenary and unlimited jurisdiction, is forgotten and the jurisdiction under Article 32 and 226 is often invoked for obtaining such a declaration. It may not be appropriate to elaborate this in the synopsis and, therefore, the Petitioners do not venture to do so. Suffice to say, there is no mechanism for enforcement of the Honourable Court's judgment in *Swapnil Thripathi & ors V/s. Supreme Court of India & Ors.*, AIR 2018 SC 4806, except to invoke the jurisdiction of this honourable court under article 226 of the constitution of India, Hence, the instant Writ Petition.

Based on the judgment reported in *Swapnil Thripathi & ors V/s. Supreme Court of India & Ors.*, AIR 2018 SC 4806, which was allowed by the Honourable Supreme Court, petitioners in this writ petition contending that, right to life takes within its ambit full access to the proceedings of Courts and Tribunals in the state of Karnataka, including of this Honourable Court, which includes video-recording of Court proceedings and access to copies thereof.

However, the said judgment, though rendered on 26/19/2018 remains to be implemented by Courts and Tribunals, including this Honourable Court. Hence the petitioners are before this honourable

court with this writ petition along with prayer for implementation of Audio-Vedio recording in the courts, tribunal and forum of the state of Karnataka by way of this public interest litigation, to implement the audio Vedio recording of the proceedings of all the court and tribunals in the state of Karnataka, to meet the ends of justice and equity.

Bangalore
26/11/2019

Petitioner
Dilraj Rohit Sequeira
(Party in Person)

AMENDED PETITION

**BEFORE THE HONRABLE HIGH COURT OF KARNATAKA AT
BANGALORE**

*(Memorandum of Petition under article 226 of the Constitution of
India)*

**BEFORE THE HONOURABLE HIGH COURT OF KARNATAKA AT
BENGALURU**

W. P. No. /2019 (PIL)

(Original Jurisdiction)

Between,

Dilraj Rohit Sequeira, B.Sc. LLB.

And

01. The Union of India,
Represented by
The Secretary,
Department of Legal Affairs,
New Delhi-110 001.Respondent No. 01

02. The State,
Government of Karnataka,
Represented by Chief Secretary,
Vidhana Soudha,
Bangalore-560001.....Respondent No. 02

03. The Registrar General,
High court of Karnataka,
Bangalore-560001.....Respondent No. 03

04. Bar Council of Karnataka,
KGIDA Building,
Bangalore-560001.....Respondent No. 04

**MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA**

It is most respectfully submitted as here below.

01. That, the address of the petitioner for the purpose of service of any notice, summons or a process from this Honourable court is as mentioned in the case title.

02. The address of the respondent for the aforesaid purpose is as shown in the cause title above.

03. That, the petitioner is filing the present petition as a public interest litigation pro bono publico. The petitioners sole purpose in filing the present petition is to implement Audio Vedio recording, in the courts of the State of Karnataka, in pursuance of the judgment reported in Swapnil Thripathi & ors V/s. Supreme Court of India & Ors., AIR 2018 SC 4806, which was allowed by the Honourable Supreme Court, in the courts of the State of Karnataka, which benefits the litigants, advocates and public in many ways. The present petition has not been filed for self-gain or for gain of any other person/institution/body.

04. Thus the petitioner has preferred the present petition, under article 226 of the constitution of India, seeking directions to the registrar of the High court of Karnataka, to implement Audio Vedio recording in our courts i.e. court of State of Karnataka in pursuance of the judgement of the Honourable Supreme Court in Swapnil Tripathi's Case.

05. That, the petitioner is the Citizen of India and an Advocate practicing in the different Courts and Tribunals in the country, including this Honourable Court. The petitioner is the Vice President of National Lawyers' Campaign for Judicial Transparency and Reforms (NLC, for short), Karnataka chapter at Bangalore, an organization of ordinary lawyers, sons and daughters of taxi drivers, farmers, soldiers, fishermen, rickshaw pullers, daily wagers, teachers etc, most of whom are first generation lawyers, with the objective to seek greater fairness and transparency in the justice delivery system.

06. That, the petitioner is filing the present petition as a public interest litigation pro bono publico. The petitioner's sole purpose in filing the present petition is to implement E-filing, in the courts of the State of Karnataka, which benefits the litigants, advocates and public in many ways. The present petition has not been filed for self-gain or for gain of any other person/institution/body.

07. It is submitted that, to the knowledge of the petitioner, no other persons/bodies/institutions are likely to be affected by the prayer sought in the present petition.

08. The petitioner has not filed any other public Interest litigation or similar petition before this Honourable court or before any other court on the present cause of action.

Facts of the case

09. That, Petitioner is seeking implementation of audio video recording of the court proceedings as fundamental rights guaranteed under Part III of the Constitution, particularly Articles 14 and 21, take within its ambit the right to have the proceedings of all Courts and Tribunals video-recorded, so too have access to the proceedings, so recorded inasmuch as that will guarantee far more a deal for them qua the elite class of lawyers, in other words, the rich and super rich, famous and super famous litigants represented by the elite class of lawyers qua the poor men represented by the ordinary, the first generation lawyers. The Honourable Supreme Court, by its judgment dated 26 September, 2018, was pleased to allow the Writ Petition.

10. That, the said judgment has been reported in Swapnil Thripathi & ors Vs. Supreme Court of India &Ors AIR 2018 SC 4806; 2018 (11) SCALE 475; 2018 (4) RCR (Civil) 632 and, therefore, it may not be necessary to annex a copy thereof to the instant petition and the Petitioners crave leave of this Honourable Court to refer the same across the Bar.

11. It is submitted by the petitioner that, though the judgment in Swapnil Thripathi & ors Vs. Supreme Court of India &Ors AIR 2018 SC 4806; 2018 (11) SCALE 475; 2018 (4) RCR (Civil) 632, was delivered in the month of September, 2017, the same remains to be implemented. The fact that, the Petitioners are compelled to invoke the jurisdiction of this Honourable Court under Article 226 to secure implementation of the said judgment speaks volumes of the role of this Honourable Court,

which the Founding Fathers of the constitution of India, have conceived and what it is today, no matter, whether it is good or bad.

12. The Petitioner hold the learned Advocate General in the highest of esteem. However, in the event, if the Advocate General expresses his view that, this Honourable Court's role should be confined to as a constitutional Court and not as a final Court of appeal, the Petitioners feel constrained to disagree with him. The framers of the Constitution conceived the ordinary Civil Court as the constitutional Court. Before the Constitution of India came into existence, the virus of a statute or statutory instrument was open to challenge and the forum was the Civil Court.

13. It is further submitted by the petitioner that, in the year 1942, Order XXVII was enacted in the Civil Procedure Code (CPC) to make it obligatory that, in a suit where the statute is concerning the Federal Government, the Attorney General should be heard and if it is concerning the Provincial Government, the Advocate General. After the Constitution came into existence, the CPC was amended to substitute the words "Government of India Act" by the words "Constitution of India". In the year 1951, by Codes of Civil Procedure and Criminal Procedure (Amendment) Act, 1951 (No. XXIV of 1951)., a proviso was added to Section 113 CPC making it obligatory to the subordinate Courts to refer a suit involving the validity of a statutory provision or a statutory instrument to the High Court for its decision. However, where High Courts like Bombay, Madras and Calcutta continued to be

invested with the ordinary civil jurisdiction, obviously no question of reference was required and it could decide such issue.

14. It is further submitted by the petitioner that, the Petitioner began to submit that, Civil Courts were Courts of record with plenary jurisdiction and the Civil Courts were competent to adjudicate a suit involving the constitutionality of an Act of Parliament or a statutory instrument, subject to the reference, as aforesaid, to the High Court. The role of the Supreme Court under the constitutional scheme was that of a Court of final appeal. Article 32 was an exception inasmuch as it provided for institution of original proceedings for the enforcement of fundamental rights, empowering it to grant the five writs named therein. The framers of the Constitution did not contemplate the Civil Courts to be bypassed and original proceedings could be instituted invoking Article 32, as is the current practice, to seek declaratory remedies. Today if the Petitioners were to suggest that the Honourable Supreme Court has no jurisdiction to grant a declaration to the effect that, an Act of Parliament is unconstitutional and such a remedy ought to be sought from a Civil Court, it would be taken as blasphemy.

15. It is further submitted by the petitioner that, the reason why the Petitioner has chosen to submit as above is to bring to the notice of this Honourable Court, so too, to the public domain, the difficulty a litigant, who invokes the jurisdiction of this Honourable Court under Article 226 to seek a declaration, faces in execution of the remedies so granted

by this Honourable Court. Petitioner Nos. 1 and 2 in their Writ Petition mentioned above sought a declaration from this Honourable Court that, Part III of the Constitution, particularly Articles 14 and 21 thereof, confer in them, a right to have the proceedings of this Honourable Court and of the Courts and Tribunals in the country, video recorded and to have access to the proceedings so recorded, not only in cases, where they are the parties, for the advocates for the litigants or where they themselves are parties, but of all cases, except where providing of such copies would be against public interest.

16. It is further submitted by the petitioner that, Petitioner, as aforesaid, to repeat for emphasis, the Honourable supreme court has held Swapnil Thripathi & ors Vs. Supreme Court of India &Ors AIR 2018 SC 4806; 2018 (11) SCALE 475: 2018 (4) RCR (Civil) 632. Such a declaration made by the hands of Honourable Supreme Court, the declaration so granted is not implemented. Much less the Courts and Tribunals within the territory of India or in the Courts and Tribunals within the supervisory jurisdiction.

17. It is further submitted by the petitioner that, the difficulty faced by the petitioner is, what is the means to secure enforcement of the declaration they could obtain? The Constitution, so far the Petitioner understanding goes, does not provide for any express provision for execution of the declaration, for an order obtained under Article 32 of the constitution of India.

18. It is further submitted by the petitioners that, Order-XLV-Rule-15 of the CPC read thus:

15. Procedure to enforce orders of the Supreme Court-(1) whoever desires to obtain execution of any decree or order of the Supreme Court shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to the Supreme Court was preferred. Such Court shall transmit the decree or order of the Supreme Court to the Court which passed the first decree appealed from, or to such other Court as the Supreme Court by such decree or order may direct and shall upon the application of weather party give such directions as may be required for the execution of the same; and the Court to which the said decree or order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.”

For the enforcement/execution of the declaration Swapnil Thripathi & ors Vs. Supreme Court of India &Ors AIR 2018 SC 4806; 2018 (11) SCALE 475: 2018 (4) RCR (Civil) 632, as aforesaid, the above provisions are of no help. The Petitioners are thus left with no option than to seek a writ in the nature of mandamus at the hands of this Honourable Court, represented by the Registrar General, to implement the judgment of the Honourable Supreme Court in Swapnil Thripathi & ors Vs. Supreme Court of India & Ors AIR 2018 SC 4806; 2018 (11)

SCALE 475: 2018 (4) RCR (Civil) 632, in respect of E-Filing and Audio Video Recording of the court proceedings as well as the proceedings of the tribunals and forums in the state of Karnataka.

19. It is further submitted by the petitioner that, so far as the petitioners' knowledge goes, there is no provision either in the Constitution of India or in the Supreme Court Rules, which deals with execution of a judgment or decree of the Supreme Court, on its Original Side as the instant one passed under Article 32 of the Constitution. The reasons are not far to seek. As demonstrated in brief above, only the Civil Courts are vested with the jurisdiction to grant declarations and the jurisdiction of the Supreme Court is only with respect to the five writs named in Article 32. This is what, the petitioners understand to be the constitutional scheme as conceived by the Founding Fathers. The nature of the remedies, namely, the five writs contemplated under Article 32 and under Article 226 are executory in nature and, therefore, there was no need for any provision for execution of the judgments and decrees passed under the said five jurisdictions. Declaratory judgments are on a different footing. A party who has secured a declaratory remedy, if the declaration could not be implemented, is required to institute an execution proceeding.

20. It is further submitted by the petitioner that, the jurisdiction under the Contempt of Courts Act cannot be a substitution for an execution proceeding because contempt of Court proceedings can be initiated only, where there is a wilful disobedience of the order passed

by the courts. It is difficult for a litigant, who has obtained a declaratory judgment, to complain of contempt of Court, where the judgment is not executed. The aforesaid being the legal position, so far as the Petitioners' understanding of the law goes, the judgment rendered by the Honourable Supreme Court reported in *Indira Jaising v. Supreme Court of India & Ors.*, (2017) 9 SCC 766, is incapable of execution, for, there is no express provision for execution of a declaration obtained under Article 32. Order XLV Rule 15 CPC too, is of no avail, for, that provision is applicable, where the order rendered by Honourable Supreme Court is one in an appeal against an order of a High Court. Therefore the Petitioners are left with no option than to knock at the door of this Honourable Court invoking its jurisdiction under Article 226, namely, to institute a further Writ Petition there under to secure implementation of the declaration obtained in an earlier Writ Petition under Article 32, which is certainly an unenviable scenario, but that is the truth. Hence, the instant Writ Petition under Article 226 of the Constitution on the following, amongst other, grounds to be urged at the time of arguments.

21. The petitioner has no equally efficacious remedy other than approaching this Honourable court for the reliefs claimed in this petition.

22. The petitioner has not challenged the validity of any state or central enactment in this petition.

23. The petitioner has not filed any writ on other proceedings nor is there any suit or other proceedings pending before any court of law in respect of the reliefs claimed in this petition.

GROUNDS

24. Grounds in support of the reliefs sought for are fairly elaborated in the statement of facts above and hence are not repeated. The Petitioners respectfully submits that, paragraphs 01 to 24 hereinabove may be read and treated as the grounds in support of the instant Writ Petition.

25. Nonetheless, the Petitioner begs to submit that, since the declaration passed at the hands of the Honourable Supreme Court, is not capable of being executed, for, there is no provision available, so far as their understanding of law goes, for execution of a judgment and decree in a proceeding under Article 32 of the Constitution, the Petitioner is left with no other option, than to invoke the jurisdiction of this Honourable Court once under Article 226, namely, for a writ in the nature of mandamus.

26. The Petitioner considera that, recourse to the Contempt of Courts Act, which is often used as a tool to secure implementation of the judgments of the Honourable Courts rendered under Article 32 or 226, would be inappropriate.

27. That, viewed from any angle, a petition under Article 32 or 226 would lie either before the Honourable Supreme Court or before this Honourable Court, so far as its administrative functions are concerned.

28. It is further submitted that, this system is not only restricted to advocates but also to the Party-in-Person. Even the Party-in-person, could make an account online on the website and could submit his/her case in the most transparent way possible.

29. It is further submitted by the petitioner that, the instant Writ is not barred by the doctrine of Estoppel Res Judicata.

30. The instant Writ Petition seeking a writ in the nature of mandamus directing the respondents to implement the judgment of this Honourable Supreme Court in Swapnil Thripathi & ors Vs. Supreme Court of India & Ors AIR 2018 SC 4806; 2018 (11) SCALE 475; 2018 (4) RCR (Civil) 632, which is a matter of primordial importance, in upholding the independence of judiciary and inducing transparency into it.

31. That, the public confidence in the system is very much important and is the foundation of its existence, more importantly for the judiciary. Hence the above petition is urgent in its nature, lest great inequity will be the fate accompli.

32. That the Petitioner craves leave to add, amend or alter any of the foregoing grounds with the permission of this Honourable Court.

33. The Petitioner has not filed any other petition, appeal or application other than the one mentioned in this petition, before this Honourable Court or any other Court seeking similar reliefs as are sought in this Writ Petition.

PRAYERS

It is, therefore, most respectfully prayed that, this Honourable Court may graciously be pleased to:

- a. issue a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the Respondent No. 01, 02 and 03 to implement the judgment of the Honourable Supreme Court in Swapnil Thripathi & ors Vs. Supreme Court of India & Ors AIR 2018 SC 4806; 2018 (11) SCALE 475: 2018 (4) RCR (Civil) 632, so that, the proceedings of this Court and of the Courts and Tribunals subordinate to it are video-recorded and copies thereof could be made available to the Petitioners, litigants and public at large, except where to do so will be against public interest, so too to provide for streaming of such proceedings and live telecast of matters of public interest.

- b. Issue a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the Respondent No. 01 and 02 to provide infrastructure for the purpose of Audio-Vedio recording in the courts, tribunal and forums of state of Karnataka.

- c. The hearing of the instant petition may be video recorded.
- d. To pass any other order, relief/reliefs as this Honourable Court may deem just and proper in the interest of justice, in the facts and circumstances of the present case

Bangalore
26/11/2019

Petitioner
Dilraj Rohit Sequeira
(Party in Person)

Address for Service:

Dilraj Rohit Sequeira
(Kar 1029/2002)
No. 09, 1st Floor
Hennur Bagalur Main Road,
Kothanoor,
Bangalore-560077
9845687076
dilroja@yahoo.co.in

HONOURABLE HIGH COURT OF KARNATAKA AT BENGALURU

W. P. No. /2019 (IT-PIL)

(Original Jurisdiction)

Between,

Dilraj Rohit SequeiraPetitioner

AND

Union of India & OthersRespondent

AFFIDAVIT

I, Dilraj Rohit Sequeira, Aged about 48 years, S/o Late Rober Sequeira, Having office at No. 09, Petra Comple, First Floor, Hennur Kothanoor

Main Road, Kothanoor, Bangalore-560077, do hereby solemnly state and affirm as here below,

01. I am the Petitioner, in the above case as I am aware of the facts of the petition I am swearing to this affidavit.

02. I submit that, the statements made in the above para 01 to 33 and the Annexures A to B of the above Petition are true and correct to the best my knowledge belief and information.

03. I submit that, the contents of the main petition may kindly be read as part and parcel of this affidavit to avoid repetition of facts.

04. I say that, I have duly instructed my advocate to draft this writ petition as well as this petition.

All this is true

Identified by me

Deponent

Advocate

HONOURABLE HIGH COURT OF KARNATAKA AT BENGALURU

W. P. No. /2019 (PIL)

(Original Jurisdiction)

Between,

Dilraj Rohit Sequeira.....Petitioner

AND

Union of India & OthersRespondent

INDEX

<u>Sl. No.</u>	<u>Description</u>	<u>Page No.</u>
----------------	--------------------	-----------------

01.	Synopsis	
02.	Memorandum of Petition under section Article 226 of Constitution of India.	
03.	Affidavit.	
04.	The I.D. card issued by the bar council of Karnataka and the Aadhar card of the petitioner No. 01 ~ Annexure-A .	
05.	Vakhalat	

Bangalore
26/11/2019

Petitioner
Dilraj Rohit Sequeira
(Party in Person)