

'IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2022

CORAM :

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.No.32564 of 2022
and W.M.P.Nos.31960 and 31961 of 2022

M.L.Ravi

.. Petitioner

Versus

1. Additional Chief Secretary to Government,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Principal Secretary/Chairman and
Managing Director,
Tamil Nadu Generation and Distribution
Corporation Limited,
N.P.K.R.R Maaligai,
144, Anna Salai, Chennai - 600 002.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorari to the respondents to call for the records and quash G.O.Ms.No.52, dated 06.10.2022 issued by the first respondent.

For Petitioner : Mr.T.Sivaganansambandan
For Respondents : Mr.R.Shunmugasundaram, Advocate General
Assisted by Mr.P.Muthukumar,
State Government Pleader, for R1
: Mr.P.S.Raman, Senior Counsel
for Mr.D.R.Arun Kumar, for R2

ORDER

D.BHARATHA CHAKRAVARTHY, J.

This Writ Petition is filed challenging GO.Ms.No.52, dated 06.10.2022 issued by the 1st respondent, in and by which, the Government has conveyed its approval directing that a notification under Section 7 of the *Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016* (Central Act 18 of 2016), (hereinafter the “Aadhaar Act”) for use of Aadhaar Authentication services in the 2nd respondent corporation namely, *TANGEDCO*, to be published in the extraordinary issue of the Tamil Nadu Government Gazette, dated 06.10.2022.

2. The Writ Petition is a Public Interest Litigation by *Mr.M.L.Ravi*, claiming himself to be a social activist and President of *Desiya Makkal Sakthi Katchi*, and the petitioner is a practicing Advocate by profession. The grievance expressed by way of the present Writ Petition is that the second respondent namely, *TANGEDCO*, provides electricity connections to domestic consumers and multiple dwelling units in the same

address will have individual meters. Along with the owner of the property, the tenants, who are residing in the dwelling units, are practically the beneficiaries in respect of the scheme for subsidy in respect of the first 100 units. As per the tariff approved by the Tamil Nadu Electricity Regulatory Commission, the subsidy is given upto 100 units as the first 100 units are free of cost. While so, by the impugned G.O, the Aadhaar authentication process is carried out. If the Aadhaar is not linked, the bill payment will not be accepted. If the respondents go ahead with the mandatory linking of Aadhaar, in spite of the scheme that multiple dwelling units in the same address be provided with separate connections with subsidy, the users of the separate dwelling units namely, the tenants/lessees, will be deprived of the benefit of subsidy as normally the additional connections are also taken in the name of the owner and if his Aadhaar is linked, the benefit of the subsidy will be restricted to only one connection.

3. Thus, it is the contention of the writ petitioner that the entire exercise would deprive the deserving persons of the subsidy and also create hardship leading to discrimination in social welfare schemes. It is their further contention that the authentication with Aadhaar number for the scheme is arbitrary. The petitioner has also filed an additional affidavit, in which, it is contended that when the scheme envisages benefits to the

individuals, it deprives firstly the tenants and secondly the people who do not have Aadhaar cards.

4. *Mr.T.Sivaganansambandan*, the learned Counsel for the petitioner, would submit that the tenants would actually lose the subsidy if the respondents go ahead with the Aadhaar authentication scheme. He would submit that when the Hon'ble Supreme Court of India permitted Aadhaar authentication in the judgment in *Justice K.S.Puttaswamy Vs. Union of India*¹, it had permitted only where the scheme is for a targeted deprived class. When the proposed scheme is with reference to all domestic connections, the same is not permitted and as such, the Aadhaar authentication becomes arbitrary.

5. *Per contra*, *Mr.R.Shunmugasundaram*, the learned Advocate General, appearing on behalf of the State, would submit that the impugned G.O is only an order authorizing the publication of the notification in the Gazette, which is in tune with Section 7 of the Aadhaar Act. The Government Order also contains the annexure, in which, the entire notification is reproduced. A perusal of the notification would make it clear that the *TANGEDCO* is implementing the six schemes mentioned in clauses

¹ (2019) 1 SCC 1

(i) to (vi) mentioned in the G.O. It can be seen that only to avail the said subsidiary benefits, any individual desirous of availing the benefits under the scheme, is required to furnish proof of possession of Aadhaar number and those who do not possess have to apply and furnish the same. From the said notification, there can be no room for the apprehension of the petitioner about the tenants or any other person losing the benefits of the subsidy if they are otherwise eligible under the scheme. He would thus submit that the Government Order is issued as per law and the apprehensions of the petitioner are unfounded as even the 100-unit free scheme is made on the criteria of domestic consumer connection and not otherwise.

6. Upon considering the above submissions made on either side and perusing the impugned Government Order and other records of the case, it could be seen as per Section 7 of the Aadhaar Act, the Central Government or the State Government, as the case may be, for the purpose of establishing identity of an individual as a condition for receipt of a subsidy, benefit, or service, for which the expenditure is incurred from or receipt therefrom, forms part of the Consolidated Fund of India or the Consolidated Fund of the State, are enabled to require that such individual undergo authentication or furnish proof of possession of Aadhaar number or in the

case of an individual to whom no Aadhaar number has been assigned, such individual makes an application for enrollment.

7. Regulation 12 of the Aadhaar (Enrollment and Update)

Regulations, 2006, provides as follows:

“12. Agencies requiring Aadhaar as condition for receipt of service, etc.—Any Central or State department or agency which requires an individual to undergo authentication or furnish proof of possession of Aadhaar number as a condition for receipt of any subsidy, benefit or service pursuant to Section 7 of the Act, shall ensure enrolment of its beneficiaries who are yet to be enrolled [or update their Aadhaar details], through appropriate measures, including co-ordination with Registrars and setting up enrolment centres at convenient locations or providing enrolment facilities by becoming a Registrar itself.”

8. The Unique Identification Authority of India (UIDAI) has also issued a circular in No.23011/Gen/2014/Legal-UIDAI requiring the appropriate governments which plan to use Aadhaar for delivery of services, benefits, and subsidies to publish a notification under Section 7 of the Act read with Regulation 12 so that wide publicity is given in respect thereof. It has also provided the necessary contents which the notification should

contain. Therefore, it can be seen accordingly the above Government Order is passed approving the publication of the notification in the Gazette.

9. The Hon'ble Supreme Court of India in ***Justice K.S.Puttaswamy v. Union of India*** (cited supra), while dealing with the issue, had categorically held that Aadhaar authentication cannot be insisted upon only to such of the benefits earned by the individual and can be insisted upon for welfare schemes under which benefits, subsidies, or services provided to intended recipients. It is useful to extract paragraph No.379 which reads as hereunder:

“ 379. We also make it clear that a benefit which is earned by an individual (e.g. pension by a government employee) cannot be covered under Section 7 of the Act, as it is the right of the individual to receive such benefit. At the same time, we have gone through the list of notifications which are issued under Section 7 of the Aadhaar Act. We find that most of these notifications pertain to various welfare schemes under which benefits, subsidies or services are provided to the intending recipients. Moreover, in order to avail the benefits, only one-time verification is required except for few services where annual verification is needed. It is only in respect of fertiliser subsidy where authentication is required every time the fertiliser is disbursed. However, it is clarified that fertiliser is also given on the basis of other documents such as Kisan Credit Card, etc. At the same time, we hope that the respondents shall not unduly

expand the scope of “subsidies, services and benefits” thereby widening the net of Aadhaar, where it is not permitted otherwise. Insofar as notifications relating to children are concerned, we have already dealt with the same separately. We, thus, conclude this aspect as under:

379.1. “Benefits” and “services” as mentioned in Section 7 should be those which have the colour of some kind of subsidies, etc. namely, welfare schemes of the Government whereby Government is doling out such benefits which are targeted at a particular deprived class.

379.2. The expenditure thereof has to be drawn from the Consolidated Fund of India.

379.3. On that basis, CBSE, NEET, JEE, UGC, etc. cannot make the requirement of Aadhaar mandatory as they are outside the purview of Section 7 and are not backed by any law.”

(emphasis supplied)

10. It can be seen that the schemes, as mentioned in the notification contained in the annexure to the impugned Government Order, are as follows:

- (i) First 100 units free bimonthly in all slabs and reduction in tariff above 100 units upto 200 units bimonthly for domestic consumers consuming upto 500 units bimonthly;
- (ii) Free supply of electricity for Hut consumers;

- (iii) Free supply of electricity for Agriculture purpose in respect of Low Tension and High Tension Lift Irrigation;
- (iv) For all Low Tension Actual Places of Public Worship, reduction in tariff upto 120 units bimonthly;
- (v) For newer loom. consumers, first 7.50. units free bimonthly and reduction in tariff for above 750 units bimonthly;
- (vi) For handloom consumers, first 200 units free bimonthly and above 200 units bimonthly, the corresponding slab in the Domestic tariff will apply;

As such these schemes, clearly qualify the above parameters under Section 7 of the Aadhaar Act and the dictum of the Hon'ble Supreme Court of India in ***Justice K.S.Puttaswamy*** (cited supra).

11. The apprehension expressed by the petitioner, relating to tenants is unfounded as there is nothing in the impugned Government Order and the notification regarding the actual scheme of subsidy. The clauses in the notification does not in any manner alter or deal with the scheme as such. Thus, whoever is entitled to the subsidy under the Scheme is not deprived of by the impugned order. This apart, the Learned Advocate General has also submitted that as per the scheme relating to grant of

subsidy for 100 units, it is based on the domestic consumer connection and therefore the apprehension is unfounded.

12. Thus, when the Aadhaar authentication is required from such persons who want to avail the benefits under the Schemes and such schemes being social welfare schemes to be paid out of the Consolidated Fund of the State, there is no illegality whatsoever in the impugned Government Order warranting interference by this court in this public interest litigation.

13. We find that even in respect of the individuals who do not possess Aadhaar number, if they still want to avail the benefit, provision is given to enrol for Aadhar and enrolment identity slip can also be provided to continue to avail the subsidy.

14. In the result, finding no merits, this Writ Petition stands dismissed. However, there shall be no order as to costs.

(T.R., ACJ.) **(D.B.C., J.)**
21.12.2022

Index : yes
Speaking order
grs

To

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