

In the High Court of Judicature at Madras

Dated : 06.11.2017

Coram

The Honourable Mr.Justice T.S.SIVAGNANAM

W.P.No.28181 of 2017 & WMP.No.30311 of 2017

Mr.Thiagarajan Kumararaja

...Petitioner

Vs

1.Union of India, rep.by the
Secretary, Ministry of Finance,
North Block, New Delhi-110001.

2.The Central Board of Direct Taxes,
rep. by its Chairperson, Ministry
of Finance, 9th Floor, Lok Nayak
Bhavan, New Delhi-110001.

3.The Income Tax Officer, Non
Corporate Ward 1(1), Chennai.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance a Writ of Mandamus directing the third respondent to grant the petitioner permission to file his income tax return for the assessment year 2017-18 either manually or through the appropriate e-filing facility without insisting the petitioner to produce his aadhar number and/or his enrolment ID as defined under Section 139AA of the Income Tax Act, 1961 and further forbear the third respondent or any other authority acting under or on behalf of the third respondent from in any manner taking any coercive steps against the petitioner under the Income Tax Act, 1961 in lieu of any obligation flowing from section 139AA of the Income Tax Act, 1961 for the assessment year 2017-18.

For Petitioner : Mr.V.Prashankiran

For Respondent-1 : Mr.Rabu Manohar, SPCCG

For Respondents 2 & 3 : Mr.G.Rajagopalan, ASG assisted by
Mrs.Hema Muralikrishnan

ORDER

Heard V.Prashanthkiran, learned counsel for the petitioner, Mr.Rabu Manohar, learned Senior Panel Counsel for the Central Government and Mr.G.Rajagopalan, learned Additional Solicitor General assisted by Mrs.Hema Muralikrishnan, learned Standing Counsel appearing for the Income Tax Department. This Court also

heard Mr.Suhrith Parthasarathy, learned counsel, who intervened in the matter, as he had appeared in another writ petition in W.P.No.27826 of 2017 wherein an identical prayer is sought for and an interim order has been granted on 31.10.2017.

2. In fact, the petitioner, in the typed set of papers filed in this writ petition, has enclosed the interim order granted by this Court on 31.10.2017, which is quoted herein below :

"Heard Mr.Suhrith Parthasarathy, learned counsel for the petitioner.

2. The petitioner before this Court is a practicing advocate and she has filed this writ petition praying for a direction to the third respondent to allow her to file income tax returns for the assessment year 2017-18 either manually or through e-filing facility without insisting for production of an aadhar number/card or enrollment identity as defined under Section 139AA of the Income Tax Act, 1961.

3. The petitioner's case rests upon the decision of the Hon'ble Supreme Court in the case of Binoy Viswam Vs. Union of India [reported in (2017) 396 ITR 66] wherein the Hon'ble Supreme Court pointed out that since the impugned provision therein (Section 139AA of the said Act) is yet to be considered on the touchstone of Article 21 of The Constitution including on the debate around the right to privacy and human dignity, etc. as limbs of Article 21, till the aforesaid aspect of Article 21 is decided by the Constitution Bench, a partial stay of the aforesaid proviso is necessary. In respect of those assesseees, who do not have an aadhar card and who do not comply with the provisions of Section 139AA(2), it was held that their PAN cards cannot be treated as invalid for the time being.

4. The matter has now been referred to a Constitution Bench, which is to hear the matter sometime by the end of November 2017. It is seen that in identical circumstances, one of the assesseees by name Prasanth Sugathan moved the High Court of Kerala by filing W.P.(Civil).No.26033 of 2017 (D) wherein a similar relief was sought and the High Court of Kerala, by an order dated 04.8.2017, issued a direction to the third respondent therein to allow the petitioner therein to file income tax returns manually without insisting upon the aadhar number or

card or enrollment number pending disposal of the writ petition. I am inclined to grant a similar relief, since today being the last date for filing the income tax returns. If the income tax returns are filed belatedly and if, ultimately, the matter is decided by the Constitution Bench of the Hon'ble Supreme Court against the petitioner, then she may be liable for payment of interest for belated payment of tax. The balance of convenience is in favour of the petitioner for the grant of appropriate interim order.

5. Accordingly, there will be an interim direction to the third respondent to permit the petitioner to file her income tax returns for the assessment year 2017-18 either manually or through appropriate e-filing facility without insisting for the aadhar number and/or enrollment ID. Notice to the respondents is accepted by Mr. Navin Durai Babu, learned Standing Counsel for the Revenue. He seeks time to get instructions and file counter. List on 18.12.2017."

3. In this writ petition, the petitioner seeks a direction to the third respondent to grant permission to him to file his income tax returns for the assessment year 2017-18 either manually or through appropriate e-filing facility without insisting the petitioner to produce his aadhaar card and/or enrollment ID as defined under Section 139AA of the Income Tax Act, 1961 (hereinafter called the Act) and not to initiate coercive action against the petitioner.

4. The petitioner's case rests upon the decision of the Hon'ble Supreme Court in the case of Binoy Viswam Vs. Union of India [reported in (2017) 396 ITR 66]. It is the submission of the petitioner that the Hon'ble Supreme Court granted a partial stay of the Proviso under Sub-Section (2) of Section 139AA of the Act and that the assessee like the petitioner, who have not enrolled under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act 2016 (hereinafter called the Aadhaar Act) and who do not comply with the provisions of Section 139AA(2) of the Act, cannot have their Permanent Account Number (PAN) treated as invalid until the Supreme Court hears and determines the larger challenge, in which, the validity of the Aadhaar Act has been assailed.

5. It is his further submission that on a reading of the judgment of the Hon'ble Supreme Court in the case of Binoy Viswam, it is clear that the respondents cannot insist that persons like the petitioner, who have not enrolled under the Aadhaar Act and who do not wish to enroll themselves, must quote their aadhaar number or their enrollment ID in order to file their income tax returns in accordance with Section 143(1) of

the Act. It is also submitted that without disclosing the aadhaar number, the petitioner would be unable to file his income tax returns and that therefore, the petitioner seeks a direction to the third respondent to permit him to file his returns without production of the aadhaar number.

6. The learned Additional Solicitor General submits that the contention raised by the petitioner is a clear misreading of the judgment of the Hon'ble Supreme Court in the case of Binoy Viswam and that the Hon'ble Supreme Court has not granted stay of Section 139AA(2) of the Act, but its validity has been upheld and the limited stay, which was granted by the Hon'ble Supreme Court, was only to facilitate other transactions, which are mentioned in Rule 114B of the Income Tax Rules, 1962 (hereinafter called the Rules). Therefore, the Hon'ble Supreme Court having upheld the provisions of Section 139AA of the Act, the partial stay granted was only restricted to transactions mentioned in Rule 114B of the Rules and hence, the question of permitting the petitioner to file manual returns without furnishing the aadhaar number is not sustainable and that was not the judgment of the Hon'ble Supreme Court.

7. I have heard the learned counsel on either side and carefully perused the materials available on record.

8. The Hon'ble Supreme Court, in the case of Binoy Viswam, pointed out that on the one hand, the enrollment under aadhaar card is voluntary, however, for the purposes of the Act, Section 139AA makes it compulsory that for assesseees to give aadhaar number, which means that in so far as income tax assesseees are concerned, they have to necessarily enroll themselves under the Aadhaar Act and obtain aadhaar number, which will be their identification number, as that has become the requirement under the Act.

9. It has been further held by the Hon'ble Supreme Court in Binoy Viswam that the contention that since enrollment under the Aadhaar Act is voluntary and cannot be made compulsory under the Act, was rejected. It has also been held that the purpose behind the Act namely the Income Tax Act, 1961 is entirely different and the purpose being to curb black money, money laundering and tax evasion, etc. It has been further held that for achieving such objects, if the Parliament chooses to make the provision mandatory under the Act, the competence of the Parliament cannot be questioned on the ground that it is impermissible only because under the Aadhaar Act, the provision is directory in nature. The Hon'ble Supreme Court also held that it is the prerogative of the Parliament to make a particular provision directory in one Statute and mandatory/compulsory in the other and that by itself cannot be a ground to question the competence of the Legislature.

10. In paragraphs 113 and 114 of the judgment, the Hon'ble Supreme Court, in order to consider the submissions advanced, bifurcated Section 139AA of the Act into two parts and observed as follows :

"113. In order to consider the aforesaid submissions, we may bifurcate Section 139AA in two parts, as follows:

(i) That portion of the provision which requires quoting of Aadhaar number (Sub-Section(1)) and requirement of intimating Aadhaar number to the prescribed authorities by these who are PAN holders (Sub-Section (2)).

(ii) Consequences of failure to intimate Aadhaar number to the prescribed authority by specified date.

114. Insofar as first limb of Section 139AA of the Act is concerned, we have already held that it was within the competence of the Parliament to make a provision of this nature and further that it is not offensive of Article 14 of the Constitution. This requirement, per se, does not find foul with Article 19(1)(g) of the Constitution either, inasmuch as, quoting the Aadhaar number for purposes mentioned in Sub-Section (1) or intimating the Aadhaar number to the prescribed authority as per the requirement of Sub-Section (2) does not, by itself, impinge upon the right to carry on profession or trade, etc. Therefore, it is not violative of Article 19(1)(g) of the Constitution either. In fact, that is not even the argument of the petitioners. Entire emphasis of the petitioners submissions, while addressing the arguments predicated on Article 19(1)(g) of the Constitution, is on the consequences that ensue in terms of proviso to Sub-Section (2) inasmuch as it is argued, as recorded above, that the consequences provided will have the effect of paralysing the right to carry on business/ profession. Therefore, thrust is on the second part of Section 139AA of the Act, which we proceed to deal with, now."

11. After rendering the above finding, it was observed that though the PAN is issued under the provisions of Section 139A of the Act, its function is not limited to giving this number in the income tax returns or for other acts to be performed under the Act as mentioned in Sub-Sections (5), (5A), (5B), 5(C), 5(D) and (6) of Section 139A. It was further observed that Rule 114B of the Rules mandates quoting of this PAN in various other documents pertaining to different kinds of transactions listed therein. It was also observed that for doing many activities of day to day nature, including in the course of business, the PAN

is to be given and in the absence of a PAN, it will be impossible to undertake any of the activities, though its requirement is aimed at curbing the tax evasion. It was further observed that if the PAN of a person is withdrawn or is nullified, it definitely amounts to placing restrictions on the right to do business.

12. Then, the Hon'ble Supreme Court proceeded to frame the question as to whether these restrictions are reasonable and meet the requirement of Clause (6) of Article 19. After referring to the decision in the case of Modern Dental College and Research Centre Vs. State of Madhya Pradesh [reported in 2016 (7) SCC 353], proceeded to discuss as to whether the restrictions, which would result in terms of the Proviso to Sub-Section (2) of Section 139AA of the Act, are reasonable or not. On this question, it would be beneficial to refer to certain paragraphs viz. paragraphs 122, 124 and 125 of the decision in the case of Binoy Viswam, as under :

"122. While considering the aforesaid submission of the petitioners, one has to keep in mind the aforesaid purpose of the impugned provision and what it seeks to achieve. The provision is aimed at seeding Aadhaar with PAN. We have already held, while considering the submission based on Article 14 of the Constitution, that the provision is based on reasonable classification and that has nexus with the objective sought to be achieved. One of the main objectives is to de-duplicate PAN cards and to bring a situation where one person is not having more than one PAN card or a person is not able to get PAN cards in assumed/fictitious names. In such a scenario, if those persons who violate Section 139AA of the Act without any consequence, the provision shall be rendered toothless. It is the prerogative of the Legislature to make penal provisions for violation of any law made by it. In the instant case, requirement of giving Aadhaar enrolment number to the designated authority or stating this number in the income tax returns is directly connected with the issue of duplicate/fake PANs.

....
"124. Therefore, it cannot be denied that there has to be some provision stating the consequences for not complying with the requirements of Section 139AA of the Act, more particularly when these requirements are found as not violative of Articles 14

and 19 (of course, eschewing the discussion on Article 21 herein for the reasons already given). If Aadhar number is not given, the aforesaid exercise may not be possible.

125. Having said so, it becomes clear from the aforesaid discussion that those who are not PAN holders, while applying for PAN, they are required to give Aadhaar number. This is the stipulation of sub-section (1) of Section 139AA, which we have already upheld. At the same time, as far as existing PAN holders are concerned, since the impugned provisions are yet to be considered on the touchstone of Article 21 of the Constitution, including on the debate around Right to Privacy and human dignity, etc. as limbs of Article 21, we are of the opinion that till the aforesaid aspect of Article 21 is decided by the Constitution Bench a partial stay of the aforesaid proviso is necessary. Those who have already enrolled themselves under Aadhaar scheme would comply with the requirement of sub-section (2) of Section 139AA of the Act. Those who still want to enrol are free to do so. However, those assesseees who are not Aadhaar card holders and do not comply with the provision of Section 139(2), their PAN cards be not treated as invalid for the time being. It is only to facilitate other transactions which are mentioned in Rule 114B of the Rules. We are adopting this course of action for more than one reason. We are saying so because of very severe consequences that entail in not adhering to the requirement of sub-section (2) of Section 139AA of the Act. A person who is holder of PAN and if his PAN is invalidated, he is bound to suffer immensely in his day to day dealings, which situation should be avoided till the Constitution Bench authoritatively determines the argument of Article 21 of the Constitution. Since we are adopting this course of action, in the interregnum, it would be permissible for the Parliament to consider as to whether there is a need to tone down the effect of the said proviso by limiting the consequences."

13. On a reading of the above quoted paragraphs in the decision in the case of Binoy Viswam, it would clearly show that the Hon'ble Supreme Court has not stayed the Proviso to Sub-

Section (2) of Section 139AA of the Act and the partial stay would be applicable only to facilitate the other transactions, which are mentioned in Rule 114B of the Rules, which pertains to transactions, in relation to which, PAN is to be quoted in all documents for the purpose of Clause (C) of Sub-Section (5) of Section 139A of the Act. Therefore, to state that the partial stay granted by the Hon'ble Supreme Court would enure to the benefit of the petitioner even for filing income tax returns is a plea, which is not sustainable and is liable to be rejected.

14. For all the above reasons, this Court finds no grounds to entertain the writ petition and grant the relief sought for.

15. Accordingly, the writ petition is dismissed. No costs. Consequently, the above WMP is also dismissed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

1.The Secretary to Union of India, Ministry of Finance, North Block,
New Delhi-110001.

2.The Chairperson, Central Board of Direct Taxes, Ministry of Finance, 9th
Floor, Lok Nayak Bhavan, New Delhi-110001.

3.The Income Tax Officer, Non Corporate Ward 1(1), Chennai.

+ 1 cc to Mrs.Hema Muralikrishnan Advocate,SR.78489

+ 1 cc to Mr.Rabu Manohar, Advocate,SR.78398

+ 1 cc to M.V.Swaroop, Advocate, SR.78469

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WMP.No.30311 of 2017

GP(CO)
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