IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.8669 of 2019
and W.M.P.No.9207 of 2019

Nityanand Jayaraman .. Petitioner

Vs.

1. Union of India,
   Ministry of Finance
   (Department of Revenue),
   No.137, North Block,
   New Delhi - 110 001.
   Represented by its Secretary (Revenue)

2. Central Board of Direct Taxes,
   Represented by its Chairperson,
   Ministry of Finance, 9th Floor,
   Lok Nayak Bhavan,
   New Delhi - 110 001.

3. Unique Identification Authority of India,
   Bangla Sahib Road,
   Behind Kali Mandir, Gole Market,
   New Delhi - 110 001.
   Represented by its Chairperson .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Mandamus, forbearing the respondents from in any manner insisting that the petitioner must link his PAN with his Aadhaar on or before 31.03.2019 or otherwise, until such time the respondents put in place constitutionally justifiable safeguards for data security and privacy by framing appropriate regulations in this regard.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondents : Mr.J.Narayanaswamy
SSCIT
for R1 and R2

O R D E R

(Order of this Court was made by S.MANIKUMAR, J.)

Petitioner has sought for a Writ of Mandamus, forbearing the respondents from in any manner insisting that the petitioner must link his PAN with his Aadhaar on or before 31.03.2019 or otherwise, until such time the respondents put in place constitutionally justifiable safeguards for data security and privacy by framing appropriate regulations in this regard.

2. Earlier, petitioner has sent a representation dated 07.03.2019 to the Chairman, Central Board of Direct Taxes (CBDT), Ministry of Finance, New Delhi, 2nd respondent herein and it reads thus.

> "... We, therefore, request you to kindly withdraw your order mandating the linking of PAN and Aadhaar, or, in the alternative, extend the deadline for the linking of the two until such time sufficient safeguards are installed to protect our fundamental right to privacy. We consider that a White Paper on IT-PAN linking with aadhaar should be issued urgently, especially since many people have been compelled to link the number already, and the protection of their data is opaque.
>
> We also request you to respond to the queries raised in this massive, so we may know
>
> - our rights and remedies, as also how to protect our privacy interest,
> - who is liable for a data breach, identity fraud generated from the information you hold, including the aadhaar number
> - the manner in which you are securing our data
> - the purpose for which you are taking our data
> - whether any private entity will have access to our data, and, if yes, who, and on what terms and conditions.
> - how you will inform us about data breaches
>
> and other questions arising raised in this letter."

3. We find from the enclosures in the typed set of papers, a Hon'ble Division Bench of this Court, in a batch of writ petition W.P.Nos.18618 to 18623 & 18671 to 18673 of 2018 dated 24.07.2018, after hearing the learned counsel for the parties therein, at paragraph No.10, ordered as hereunder:

> "10. We find force in the submissions made by the learned Senior counsel for the petitioners. There is a subsequent decision rendered by the Apex Court after

the earlier one in BINOY VISWAM VS. UNION OF INDIA ((2017) 396 ITR 66). That is the reason why, subsequent orders have been passed by five different High Courts. This has been taken note of by the first respondent itself resulting in the order dated 30.06.2018 having been passed. Admittedly, orders have been reserved by the Apex Court. The interim order passed on 15.10.2015 referred supra, stands as of now. Further more, no prejudice would be caused to the respondents by permitting the petitioners to file income-tax returns for the assessment year 2018-2019 manually. After all it is nothing but a temporary arrangement. Any order passed by this Court would ofcourse be subject to the decision of the Apex Court on the larger issue. In such a view of the matter, we are inclined to pass the following order.

(i) All the petitioners are permitted to file their respective income-tax returns for the assessment year 2018-2019 manually.

(ii) These returns will have to be filed on or before 31.07.2018, which is the last date for filing the returns. As and when the petitioners file their income tax returns, the Assessing Officer concerned shall deal with them as in the other cases, which have been done electronically.

(iii) These orders are passed subject to the orders to be passed by the Apex Court.

(iv) In the event of the Apex Court upholding the validity of Section 139AA of the income tax Act, 1961, the petitioners shall file their returns once again by linking their Aadhar number of Aadhar Enrollment ID with the PAN Card.

(v) These directions are to be applied only to the petitioners before us alone."

4. Clauses (iii) and (iv) of paragraph No.10 of the common order makes it clear that in the event of the Hon'ble Apex Court upholding Section 139AA of the Income Tax Act, 1961 the petitioners therein shall file their returns onceagain by linking their Aadhar number or Aadhar Enrollment ID with the PAN card. Though the present petitioner is not a party to the common order, we have no hesitation to say that the common order applies to all the persons, similarly placed. What is sought for, in the representation, even after the pronouncement of the judgment by the Hon'ble Supreme Court, which upheld the validity of Section 139AA of the Income Tax Act, cannot be directed to be considered. That apart, directions, if any issued by this Court to consider the representation of the petitioner dated 07.03.2019 for the above said prayers would also be contrary to the order of the Hon'ble Division Bench in the batch of writ

petitions, stated supra. Petitioner has no right to seek for his representation to be considered in the manner sought for. For the said reasons, writ petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary (Revenue)
   Union of India,
   Ministry of Finance
   (Department of Revenue),
   No.137, North Block,
   New Delhi - 110 001.

2. Chairperson,
   Central Board of Direct Taxes,
   Ministry of Finance, 9th Floor,
   Lok Nayak Bhavan,
   New Delhi - 110 001.

3. The Chairperson,
   Unique Identification Authority of India,
   Bangla Sahib Road,
   Behind Kali Mandir, Gole Market,
   New Delhi - 110 001.

+1 cc to Mr.J.Narayanaswamy, Advocate, S.R.No.28643

W.P.No.8669 of 2019 and
W.M.P.No.9207 of 2019

KS(CO)
SSM(03/05/2019).