

Item-1. 05-02-2024

MAT 1343 of 2021
CAN 1 of 2021

sg Ct. 8

All Bengal Fair Price Shop Dealers'
Welfare Association & Anr.
Versus
State of West Bengal & Ors.

Mr. Debabrata Saha Roy, Adv.

Mr. Neil Basu, Adv.

...for the appellants

Mr. Arka Kr. Nag, Adv.

Mr. A. Chatterjee, Adv.

Mr. Ritesh Kr. Ganguly, Adv.

...for the State respondents

1. By consent of the parties, the appeal and the application are taken up together and disposed of by this common order.
2. The writ petitioners challenged the show cause notices issued on the ground that as dealers there was no obligation cast upon them to seed the Aadhaar Cards with the Ration Cards of the consumers and the authorities concerned have committed the jurisdictional error in insisting the members of the Association to authenticate and seed the Aadhaar Cards with Ration Cards as it belongs exclusively to the domain of the Food and Supply Department. The writ petition was dismissed, hence, the appeal.
3. The coordinate Bench by an order dated 22nd December, 2021 passed an interim order in terms of prayers (e) and (f) of the stay application. For the convenience, the said prayers are set out hereinbelow:

(e) An order do issue restraining the respondents from

proceeding further pursuant to the show-cause notices issued against the members of the petitioner no.1;

(f) An order do issued restraining the respondents from taking any coercive action against the members of petitioner no.1, pursuant to the show-cause notices issued against the members of the petitioner no.1;

4. The said interim order is still existing. The effect of the interim order is that the show cause notices are, inter alia, required the members of the appellant no.1 to show cause as to why action should not be initiated against each of the noticees for not complying with the direction of the Food and Supplies Department/the parent department to take steps for authenticating and/or seeding the Ration Cards of the beneficiaries/consumers with their respective Aadhaar Cards was stayed.
5. The contention of Mr. Debabrata Saha Roy, the learned Counsel for the appellants that the pro-active seeding is not contemplated by the statute and accordingly, the direction upon the FPS dealers to pro-actively complete the e-KYC/seeding Aadhaar Cards with Ration Cards is wholly without jurisdiction. The attention of the coordinate Bench was drawn to the Food Control Order of the Department dated 28th March, 2015 (in short ‘the 2015 Control Order’), on the basis of which, it was submitted that such Control Order has been issued in supersession of the earlier 2001 Public Distribution System Control Order (in short ‘the 2001 Control Order’). It was further pointed out that with the supersession of the 2001 Control Order by the 2015 Control Order, only such action which either

requires to be done or was left undone stands excepted. It was further submitted that 2013 Control Order of the Department also derives its basis from the 2001 Control Order. The show cause notices have been issued under the 2013 Control Order which, with the supersession of the 2001 Control Order itself by the 2015 Control Order, is no longer good law.

6. The Hon'ble Division Bench on consideration of the respective submissions held that there is no requirement on the part of the FPS dealers to authenticate and seed the Aadhaar Cards with the Ration Cards. It appears that the 2015 Control Order dealers does not contemplate or give a positive direction upon the FPS of e-linkage of Aadhaar Cards with the Ration Cards. The contents of the order of the Department dated 26th November, 2021 that the specific task of e-linkage was entrusted to the personnel of M/s. Webel Technology. In fact, the personnel of M/s. Webel Technology were allowed to operate at the camp level to link Ration Cards with the Aadhaar Cards. Having regard to the procedure enacted by the order of 26th November, 2021, 69 per cent linkage stood already complete at the time when the show cause notices were issued. It is informed by Mr. Arka Kumar Nag, learned Counsel appearing on behalf of the State has submitted that 98% is complete in terms of the order dated 26th November, 2021.
7. We are in agreement with the submission made by Mr. Saha Roy that the procedure prescribed under 2015

Control Order or under the order dated 26th November, 2021, no role can be ascribed to FPS dealers/ration dealers to link the Ration Cards with Aadhaar Cards. Their role being circumscribed to distribution of food grains in the manner to be directed by the State. The exercise of linkage is a power within the public domain and directly connected with the dealing Food and Supply Department of the State and does not cast upon any obligation upon the FPS dealers/Ration Dealers or any individual entities for such linkage. In this regard we may refer the following observation of the coordinate Bench hereinbelow:

“To the mind of this Court, the reference to FPS dealers/Ration Dealers to pro-actively complete and assist the linkage process is not identical to undertaking the linkage process on their own. This Court also finds that Section 3 of the EC Act, 1955 primarily refers to powers of controlling production, supply, distribution etc. and such powers are bestowed in the Central Government with delegation to the State Government.

It does not appear to this Court on the basis of such powers to control production, supply and distribution read with the delegation provided under Section 5, that the State can permit e-linkage at the level of individual entities such Ration Dealers/FPS owners.”

8. In the supplementary affidavit filed on behalf of the appellants, it has been categorically stated that members of the appellant no.1 have never been insisted to do job of linking of Aadhaar Card with the Ration Cards and in the State of West Bengal total numbers of active ration cards

are 8,90,18,230 and out of that, 8,70,45,221 numbers of ration cards have already been linked with Aadhaar Card and only 19,73,009 numbers of Ration Cards i.e. almost 2% are only left open for linking with the Aadhaar Cards.

These statements are inconsonance with what Mr. Nag has submitted today.

9. In view thereof, the appeal is allowed. The show cause notices are set aside.
10. The State is directed to complete the process at the earliest.
11. We make it clear that this order is only restricted to authentication and seeding of Aadhaar Cards with Ration Cards. All other issues are left open as not required to be decided in view of subsequent developments.
12. The appeal and the application are, accordingly, disposed of.
13. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)