

Delhi Rozi-Roti Adhikar Abhiyan vs Union Of India And Ors on 5 April, 2022

Author: Vipin Sanghi

Bench: Navin Chawla, Vipin Sanghi

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 2161/2017

DELHI ROZI-ROTI ADHIKAR ABHIYAN

..... Petitioner

Through: Mr. Sanjay Parikh, Senior Advocate
alongwith Mr. Prasanna S., Mr.Mihir
Samson, Mr. Satwik Parikh and
Mr.Yuvraj Singh Rathore, Advocates.

Versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. B. S. Shukla, CGSC for
respondent No.1/UOI.

Mr. Anuj Aggarwal, Advocate for
respondent No.2/ GNCTD.

Mr. Zoheb Hossain and Mr. Vivek
Gurnani, Advocates for respondent
No. 3/ UIDAI.

Mr. Anuj Chaturvedi, Advocate for
DUSIB.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% 05.04.2022 This application has been filed by the petitioner seeking recall of the order dated 30.03.2022 passed by this Court in the above writ petition, dismissing the same for non-prosecution.

Having perused the contents of the application, the same is allowed and the writ petition is restored back to its original number. W.P.(C) 2161/2017

1. With the consent of the learned counsels for the parties, the petition is taken up for final hearing.

2. The present petition has been filed by the petitioner in public interest praying for the following relief:

"i. Any writ, order or direction in the nature of certiorari and/or any other writ, order or direction quashing the notification issued by Respondent No. 1 dated 08.02.2017.

ii. Any writ, order or direction in the nature of mandamus and/or any other writ, order or direction directing the Respondents to adhere to the orders dated 23.09.2013; 11.08.2015; 15.10.2015 passed by the Hon'ble Supreme Court in batch of writ petitions led by W.P. (Civil) No. 494 of 2012, order dated 24.03.2014 passed by the Hon'ble Supreme Court in SLP (Crl) No. 2524 of 2014 and order dated 28.10.2016 passed by the Hon'ble Supreme Court in batch of writ petitions led by W.P. (Civil) No.797 of 2016.

iii. Any writ, order or direction in the nature of mandamus and/or any other writ, order or direction directing the Respondent No.2 to disburse subsidised food grains to beneficiaries under the National Food Security Act, 2013 without requiring the production of Aadhaar card or undergoing the Aadhaar authentication as a precondition to avail food grain under Public Distribution System Scheme."

3. From the prayers itself, it would be apparent that the petitioner has placed reliance on the various interim orders passed by the Supreme Court inter-alia in Writ Petition (Civil) 494 of 2012, titled K.S. Puttaswamy (Retd) & Anr. vs. Union of India & Anr., which now stands disposed of by way of the judgment reported as (2019) 1 SCC 1.

4. In the order dated 30.03.2022, this Court had noted that the petitioner was to satisfy this Court with regard to the present petition surviving in the light of the judgment of the Constitution Bench of the Supreme Court in K.S. Puttaswamy (supra).

5. The learned senior counsel for the petitioner also confines his submissions on the above aspect, reserving the right of the petitioner to raise other issues and reliefs that were raised or sought in form of applications during the pendency of the writ petition, by way of a separate proceeding.

6. As far as the judgment of the Supreme Court in K.S. Puttaswamy (supra) is concerned, the learned senior counsel for the petitioner submits that the Supreme Court has held that the "benefit" and "service" as mentioned in Section 7 of The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (hereinafter referred to the „Aadhar Act) should be those which have the colour of some kind of subsidies etc., namely, welfare schemes of the Government whereby the Government is doling out such benefits which are targeted at a particular deprived class. He submits that as far as the rights conferred under the National Food Security Act, 2013 (hereinafter referred to the „NFSA) are concerned, these are not subsidies „doled out or given by the Government, but is a right conferred on the citizen of this country under Article 21 of the Constitution of India. It is also a statutory right and, therefore, the exercise of such right can be curtailed and controlled only by way of a law that satisfies the constitutional requirements and/or under the NFSA itself. He submits that the Supreme Court in K.S. Puttaswamy (supra) has not considered the validity of the notification dated 08.02.2017, requiring that individuals eligible to receive the subsidised food grains or cash transfer of food subsidy under the NFSA, to furnish proof of possession of Aadhaar number or Aadhaar authentication. He submits that, therefore, the prayer made in the present petition is not covered by the judgment of the Supreme Court in K.S. Puttaswamy (supra) and needs to be considered by this court.

7. The above submission of the learned senior counsel for the petitioner is opposed by the learned counsel for the respondent no.1. He has drawn our attention to the various paragraphs from the judgment in K.S. Puttaswamy (supra) to submit that the issues raised by the petitioner is no longer res integra and is fully dealt with by the Supreme Court in the aforesaid judgment.

8. Having heard the learned counsels for the parties, we are in agreement with the submission made by the learned counsel for the respondent no.1. The Supreme Court in K.S. Puttaswamy (supra) has considered the validity of Section 7 of the Aadhaar Act, including in relation to the NFSA. We can do no better than to quote the relevant paragraphs from the majority judgment in the said case:

"314. It may be highlighted at this stage that the petitioners are making their claim on the basis of dignity as a facet of right to privacy. On the other hand, Section 7 of the Aadhaar Act is aimed at offering subsidies, benefits or services to the marginalised sections of the society for whom such welfare schemes have been formulated from time to time. That also becomes an aspect of social justice, which is the obligation of the State stipulated in Part IV of the Constitution. The rationale behind Section 7 lies in ensuring targeted delivery of services, benefits and subsidies which are funded from the Consolidated Fund of India. In discharge of its solemn constitutional obligation to enliven the fundamental rights of life and personal liberty (Article 21) to ensure justice, social, political and economic and to eliminate inequality (Article 14) with a view to ameliorate the lot of the poor and the Dalits, the Central Government has launched several welfare schemes. Some such schemes are PDS, scholarships, mid-day meals, LPG subsidies, etc. These schemes involve 3% percentage of the GDP and involve a huge amount of public money. Right to receive these benefits, from the point of view of those who deserve the same, has now attained the status of fundamental right based on the same concept of human dignity, which the petitioners seek to bank upon.

315. The Constitution does not exist for a few or minority of the people of India, but "We, the People".

The goals set out in the Preamble of the Constitution do not contemplate statism and do not seek to preserve justice, liberty, equality and fraternity for those who have the means and opportunity to ensure the exercise of inalienable rights for themselves. These goals are predominantly or at least equally geared to "secure to all its citizens", especially, to the downtrodden, poor and exploited, justice, liberty, equality and "to promote" fraternity assuring dignity. Interestingly, the State has come forward in recognising the rights of deprived section of the society to receive such benefits on the premise that it is their fundamental right to claim such benefits. It is acknowledged by the respondents that there is a paradigm shift in addressing the problem of security and eradicating extreme poverty and hunger. The shift is from the welfare approach to a rights-based approach. As a consequence, right of everyone to adequate food no more remains based on directive principles of State policy (Article 47), though the said principles remain a source of inspiration. This entitlement has turned into a constitutional fundamental right. This constitutional obligation is reinforced by obligations under International Convention. The Universal Declaration of Human Rights (Preamble,

Articles 22 & 23) and International Covenant on Economic, Social and Cultural Rights to which India is a signatory, also cast responsibilities on all State parties to recognise the right of everyone to adequate food. Eradicating extreme poverty and hunger is one of the goals under the Millennium Development Goals of the United Nations. Parliament enacted the National Food Security Act, 2013 to address the issue of food security at the household level. The scheme of the Act designs a targeted public distribution system for providing foodgrains to those below BPL. The object is to ensure to the people adequate food at affordable prices so that people may live a life with dignity. The reforms contemplated under Section 12 of the Act include, application of information and communication technology tools with end-to-end computerisation to ensure transparency and to prevent diversion, and leveraging Aadhaar for unique biometric identification of entitled beneficiaries. The Act imposes obligations on the Central Government, State Government and local authorities vide Chapters VIII, IX and X. Section 32 contemplates other welfare schemes. It provides for nutritional standards in Schedule II and the undertaking of further steps to progressively realise the objectives specified in Schedule III.

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318. By no stretch of imagination, therefore, it can be said that there is no defined State aim in legislating Aadhaar Act. We may place on record that even the petitioners did not seriously question the purpose bona fides of the legislature in enacting this law. In a welfare State, where measures are taken to ameliorate the sufferings of the downtrodden, the aim of the Act is to ensure that these benefits actually reach the populace for whom they are meant. This is naturally a legitimate State aim.

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323. It is a matter of common knowledge that various welfare schemes for marginalised section of the society have been floated by the successive Governments from time to time in last few decades. These include giving ration at reasonable cost through ration shops (keeping in view Right to Food), according certain benefits to those who are below poverty line with the issuance of BPL cards, LPG connections and LPG cylinders at minimal costs, old age and other kinds of pensions to deserving persons, scholarships, employment to unemployed under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MGNREGA) Scheme. There is an emergence of socio-economic rights, not only in India but in many other countries world-wide. There is, thus, recognition of civil and political rights on the one hand and emergence of socio-economic rights on the other hand. The boundaries between civil and political rights review as well as socio-economic rights review are rapidly crumbling. This rights jurisprudence created in India is a telling example.

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330. The purpose of citing aforesaid judgments is to highlight that this Court expanded the scope of Articles 14 and 21 of the Constitution by recognising various socio-economic rights of the poor and marginalised section of the society and, in the process, transforming the constitutional jurisprudence by putting a positive obligation on the State to fulfil its duty as per the Charter of

Directive Principles of the State Policy, contained in Part IV of the Constitution. It is to be kept in mind that while acknowledging that economic considerations would play a role in determining the full content of the right to life, the Court also held that right included the protection of human dignity and all that is attached to it, "namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms" (see *Francis Coralie Mullin v. State (UT of Delhi)* [*Francis Coralie Mullin v. State (UT of Delhi)*, (1981) 1 SCC 608 : 1981 SCC (Cri) 212]). It is, thus, of some significance to remark that it is this Court which has been repeatedly insisting that benefits to reach the most deserving and should not get frittered mid-way. We are of the opinion that purpose of the Aadhaar Act, as captured in the Statement of Objects and Reasons and sought to be implemented by Section 7 of the Aadhaar Act, is to achieve the stated objectives. This Court is convinced by its conscience that the Act is aimed at a proper purpose, which is of sufficient importance.

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333. Section 7, which provides for necessity of authentication for receipt of certain subsidies, benefits and services has a definite purpose and this authentication is to achieve the objectives for which the Aadhaar Act is enacted, namely, to ensure that such subsidies, benefits and services reach only the intended beneficiaries. We have seen rampant corruption at various levels in implementation of benevolent and welfare schemes meant for different classes of persons. It has resulted in depriving the actual beneficiaries to receive those subsidies, benefits and services which get frittered away though on papers, it is shown that they are received by the persons for whom they are meant. There have been cases of duplicate and bogus Ration Cards, BPL cards, LPG connections, etc. Some persons with multiple identities getting those benefits manifold. Aadhaar Scheme has been successful, to a great extent, in curbing the aforesaid malpractices. By providing that the benefits for various welfare schemes shall be given to those who possess Aadhaar number and after undergoing the authentication as provided in Section 8 of the Aadhaar Act, the purpose is to ensure that only rightful persons receive these benefits. Non-action is not costly. It is the affirmative action which costs the Government. And that money comes from exchequer. So, it becomes the duty of the Government to ensure that it goes to deserving persons. Therefore, second component also stands fulfilled.

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362. In the aforesaid backdrop, this Court is called upon to find out whether the Aadhaar Act strikes a fair balance between the two rights. In this context, we have to examine the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional rights. Insofar as importance of achieving the proper purpose is concerned, that has already been highlighted above. To reiterate some of the important features, it is to be borne in mind that the State is using Aadhaar as an enabler for providing deserving section of the society their right to food, right to livelihood, right to receive pension and other social assistance benefits like scholarships, etc. thereby bringing their right to life to fruition. This necessity of Aadhaar has arisen in order to ensure that such benefits are given to only genuine beneficiaries. The Act aims at efficient, transparent and targeted delivery of subsidies, benefits and services. In the process, it

wants to achieve the objective of checking the corrupt practices at various levels of distribution system which deprive genuine persons from receiving these benefits. There have been reports relating to leakages in PDS as well as in fuel subsidies and also in working of MGNREGA Scheme.....

363. As against the above larger public interest, the invasion into the privacy rights of these beneficiaries is minimal. By no means it can be said that it has disproportionate effect on the right holder.

364. Intensity of review depends upon the particular context of question in a given case. There is yet another significant angle in these matters, which has to be emphasised at this stage viz. dignity in the form of autonomy (informational privacy) and dignity in the form of assuring better living standards, of the same individual. In the instant case, a holistic view of the matter, having regard to the detailed discussion hereinabove, would amply demonstrate that enrolment in Aadhaar of the unprivileged and marginalised section of the society, in order to avail the fruits of welfare schemes of the Government, actually amounts to empowering these persons. On the one hand, it gives such individuals their unique identity and, on the other hand, it also enables such individuals to avail the fruits of welfare schemes of the Government which are floated as socio-economic welfare measures to uplift such classes. In that sense, the scheme ensures dignity to such individuals. This facet of dignity cannot be lost sight of and needs to be acknowledged. We are, by no means, accepting that when dignity in the form of economic welfare is given, the State is entitled to rob that person of his liberty. That can never be allowed. We are concerned with the balancing of the two facets of dignity. Here we find that the inroads into the privacy rights where these individuals are made to part with their biometric information, is minimal. It is coupled with the fact that there is no data collection on the movements of such individuals, when they avail benefits under Section 7 of the Act thereby ruling out the possibility of creating their profiles. In fact, this technology becomes a vital tool of ensuring good governance in a social welfare State. We, therefore, are of the opinion that the Aadhaar Act meets the test of balancing as well."

9. In its „Summary and Conclusion , the majority judgment has recorded its findings inter-alia as under:

"511. (2) Whether the Aadhaar Act violates right to privacy and is unconstitutional on this ground? Answer:

511.1. After detailed discussion, it is held that all matters pertaining to an individual do not qualify as being an inherent part of right to privacy. Only those matters over which there would be a reasonable expectation of privacy are protected by Article 21.

This can be discerned from the reading of paras 341 to 346 of the judgment.

511.2. The Court is also of the opinion that the triple test laid down in order to adjudge the reasonableness of the invasion to privacy has been made. The Aadhaar Scheme is backed by the statute i.e. the Aadhaar Act. It also serves legitimate State aim, which can be discerned from the Introduction to the Act as well as the Statement of Objects and Reasons which reflect that the aim in

passing the Act was to ensure that social benefit schemes reach the deserving community. The Court noted that the failure to establish identity of an individual has proved to be a major hindrance for successful implementation of those programmes as it was becoming difficult to ensure that subsidies, benefits and services reach the unintended beneficiaries in the absence of a credible system to authenticate identity of beneficiaries. The Statement of Objects and Reasons also discloses that over a period of time, the use of Aadhaar number has been increased manifold and, therefore, it is also necessary to take measures relating to ensuring security of the information provided by the individuals while enrolling for Aadhaar card.

511.3. It may be highlighted that the petitioners are making their claim on the basis of dignity as a facet of right to privacy. On the other hand, Section 7 of the Aadhaar Act is aimed at offering subsidies, benefits or services to the marginalised section of the society for whom such welfare schemes have been formulated from time to time. That also becomes an aspect of social justice, which is the obligation of the State stipulated in Part IV of the Constitution. The rationale behind Section 7 lies in ensuring targeted delivery of services, benefits and subsidies which are funded from the Consolidated Fund of India. In discharge of its solemn constitutional obligation to enliven the fundamental rights of life and personal liberty (Article 21) to ensure justice, social, political and economic and to eliminate inequality (Article 14) with a view to ameliorate the lot of the poor and the Dalits, the Central Government has launched several welfare schemes. Some such schemes are PDS, scholarships, mid-day meals, LPG subsidies, etc. These schemes involve 3% of the GDP and involve a huge amount of public money. Right to receive these benefits, from the point of view of those who deserve the same, has now attained the status of fundamental right based on the same concept of human dignity, which the petitioners seek to bank upon. The Constitution does not exist for a few or minority of the people of India, but "We, the People". The goals set out in the Preamble of the Constitution do not contemplate statism and do not seek to preserve justice, liberty, equality and fraternity for those who have the means and opportunity to ensure the exercise of inalienable rights for themselves. These goals are predominantly or at least equally geared to "secure to all its citizens", especially, to the downtrodden, poor and exploited, justice, liberty, equality and "to promote" fraternity assuring dignity. Interestingly, the State has come forward in recognising the rights of deprived section of the society to receive such benefits on the premise that it is their fundamental right to claim such benefits. It is acknowledged by the respondents that there is a paradigm shift in addressing the problem of security and eradicating extreme poverty and hunger. The shift is from the welfare approach to a right-based approach. As a consequence, right of everyone to adequate food no more remains based on directive principles of State policy (Article 47), though the said principles remain a source of inspiration. This entitlement has turned into a constitutional fundamental right. This constitutional obligation is reinforced by obligations under International Convention.

xxxx 511.9.2. There needs to be balancing of two competing fundamental rights, right to privacy on the one hand and right to food, shelter and employment on the other hand. Axiomatically both the rights are founded on human dignity. At the same time, in the given context, two facets are in conflict with each other. The question here would be, when a person seeks to get the benefits of welfare schemes to which she is entitled to as a part of right to live life with dignity, whether her sacrifice to the right to privacy, is so invasive that it creates imbalance?

511.10. In the process, sanctity of privacy in its functional relationship with dignity is kept in mind where it says that legitimate expectation of privacy may vary from intimate zone to the private zone and from the private to public arena. Reasonable expectation of privacy is also taken into consideration. The Court finds that as the information collected at the time of enrolment as well as authentication is minimal, balancing at the first level is met. Insofar as second level, namely, balancing of two competing fundamental rights is concerned, namely, dignity in the form of autonomy (informational privacy) and dignity in the form of assuring better living standards of the same individual, the Court has arrived at the conclusion that balancing at the second level is also met. The detailed discussion in this behalf amply demonstrates that enrolment in Aadhaar of the unprivileged and marginalised section of the society, in order to avail the fruits of welfare schemes of the Government, actually amounts to empowering these persons. On the one hand, it gives such individuals their unique identity and, on the other hand, it also enables such individuals to avail the fruits of welfare schemes of the Government which are floated as socio-economic welfare measures to uplift such classes. In that sense, the scheme ensures dignity to such individuals. This facet of dignity cannot be lost sight of and needs to be acknowledged. We are, by no means, accepting that when dignity in the form of economic welfare is given, the State is entitled to rob that person of his liberty. That can never be allowed. We are concerned with the balancing of the two facets of dignity. Here we find that the inroads into the privacy rights where these individuals are made to part with their biometric information, is minimal. It is coupled with the fact that there is no data collection on the movements of such individuals, when they avail benefits under Section 7 of the Act thereby ruling out the possibility of creating their profiles. In fact, this technology becomes a vital tool of ensuring good governance in a social welfare State. We, therefore, are of the opinion that the Aadhaar Act meets the test of balancing as well.

xxxx 511.12. The entire aim behind launching this programme is the "inclusion" of the deserving persons who need to get such benefits. When it is serving much larger purpose by reaching hundreds of millions of deserving persons, it cannot be crucified on the unproven plea of exclusion of some. It is clarified that the Court is not trivialising the problem of exclusion if it is there. However, what we are emphasising is that remedy is to plug the loopholes rather than axe a project, aimed for the welfare of large section of the society. Obviously, in order to address the failures of authentication, the remedy is to adopt alternate methods for identifying such persons, after finding the causes of failure in their cases. We have chosen this path which leads to better equilibrium and have given necessary directions also in this behalf viz:"

10. A reading of the above judgment would clearly show that the submissions made by the learned senior counsel for the petitioner cannot be accepted. The above judgement in K.S. Puttaswamy (supra) has considered in detail the requirement of Aadhaar authentication under the NFSA. The Supreme Court has held that Section 7 of the Aadhaar Act is aimed at offering subsidies, benefits or services to the marginalised sections of the society for whom such welfare schemes have been formulated from time to time. That also becomes an aspect of social justice, which is the obligation of the State stipulated in Part IV of the Constitution of India. It has held that the rationale behind Section 7 of the Aadhaar Act lies in ensuring targeted delivery of services, benefits and subsidies which are funded from the Consolidated

Fund of India. In discharge of its solemn constitutional obligation to enliven the fundamental rights of life and personal liberty (Article 21) to ensure justice, social, political and economic and to eliminate inequality (Article 14) with a view to ameliorate the lot of the poor and the Dalits, the Central Government has launched several welfare schemes. Some such schemes are the Public Distribution System, scholarships, mid-day meals, LPG subsidies, etc. The right to receive these benefits, from the point of view of those who deserve the same, has now attained the status of a fundamental right based on the same concept of human dignity. The Supreme Court further took specific note of the NFSA and Section 12, which in sub-section (c) thereof, requires the Central and State Governments to endeavour to progressively undertake necessary reforms in the Targeted Public Distribution System, including leveraging Aadhaar for unique identification, with biometric information of entitled beneficiaries for proper targeting of benefits under the NFSA. The Supreme Court held that by providing that the benefits for various welfare schemes shall be given to those who possess an Aadhaar number and after undergoing the authentication as provided in Section 8 of the Aadhaar Act, the purpose is to ensure that only rightful persons receive these benefits. The Supreme Court therefore, upheld the insistence on Aadhaar for availing benefits under the NFSA.

11. The submission of Mr. Parikh that the disbursement of subsidized foodgrains to the beneficiaries under the NFSA is not a „dole , since the same has been elevated to a statutory right under the NFSA, in recognition of the right to life under Article 21 of the Constitution of India, has no merit. As a welfare State, the Parliament has enacted the NFSA to fulfil the requirement of food of the targeted beneficiaries at subsidized rates. Therefore, even though a statutory right has been created in favour of the targeted beneficiaries to receive rations/food articles under the NFSA, such benefits do not lose their character of being welfare measures undertaken by the State for the needy and downtrodden.

12. We may also observe that the judgments of the Supreme Court cannot be read as Statutes and, therefore, it would not be proper to pick out one word „dole from the observations made by the Supreme Court, and to found a submission on that basis.

13. In view of the above, we find that the issue raised in the present petition no longer survives. The writ petition is accordingly disposed of.

VIPIN SANGHI, ACJ NAVIN CHAWLA, J APRIL 05, 2022/Arya/AB