

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2019
In R/SPECIAL CIVIL APPLICATION NO. 17329 of 2017**

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BANDISH SAURABH SOPARKAR
Versus
UNION OF INDIA

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Appearance:

MR SN SOPARKAR, SENIOR ADVOCATE with MRS SWATI SOPARKAR for the PETITIONER(s) No.

for the RESPONDENT(s) No.

MR MR BHATT, SENIOR ADVOCATE with MRS MAUNA M BHATT for the RESPONDENT(s) No.

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CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI
and
HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

Date : 27/12/2019

IA ORDER

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. By this application, the applicant (original petitioner) seeks a declaration that he would not be in default in any proceedings only for the reason that the permanent account number is not linked with Aadhaar or Aadhaar number is not quoted; and that pending the petition, the petitioner may not be subjected to the proviso to sub-section (2) of section 139AA of the Income Tax Act, 1961 (hereinafter referred to as the "Act").

2. Mr. S. N. Soparkar learned counsel for the applicant submitted that the very fact that the judgment of the Supreme Court in **Justice K.S. Puttaswamy (Retd) (2019) 1 SCC 1**, has been referred to the Larger Bench shows that the applicant has a prima facie case for not linking his permanent account

number (PAN) with Aadhaar. It was submitted that the applicant will be facing absolutely irreparable injury should the proviso to sub-section (2) of section 139AA of the Act be made operative against him inasmuch as the applicant would not be able to transact as mentioned in rule 114B of the Income Tax Rules and also not upload the return of income. Such restrictions, therefore, will not only cause grave injury to the applicant but the applicant will also face financial and criminal consequences for the same. It was contended that once the applicant reveals the biometrics and other information that he would be required to provide to enroll for Aadhaar, an irreversible situation would be created. Therefore, the balance of convenience lies entirely in favour of the applicant because the respondent is not likely to face any adverse consequence for non-linking of Aadhaar with the permanent account number and will be able to recover all the tax dues from the applicant simply on the basis of the PAN; and the linking will not add any additional value to the respondent, whereas the applicant would suffer irreparable injury. It was, accordingly, urged that pending the petition, the applicant's PAN number should not be made inoperative and the applicant should be permitted to use his PAN number.

2.1 It was submitted that applicant has filed his return of income regularly and the only issue is that by virtue of the proviso to section 139AA of the Act, his PAN would become inoperative. It was submitted that if the applicant's PAN is suspended, he would not be able to operate his accounts. It was submitted that since the result of the reference would have a direct impact on the controversy involved in the main petition, the main petition cannot be decided till the Supreme

Court decides the reference. It was, accordingly, urged that until the Larger Bench of the Supreme Court decides the issue of validity of Aadhaar Act, the special civil application be kept in abeyance and it be declared that the applicant would not be in default in any proceedings only for the reason that the permanent account number is not linked with Aadhaar or Aadhaar number is not quoted; and that pending the petition, the applicant may not be subjected to the proviso to sub-section (2) of section 139AA of the Act.

3. On the other hand, Mr. M.R. Bhatt, Senior Advocate, learned counsel invited the attention of the court to the relevant paragraphs of the decision of the Supreme Court in the case of **Justice K.S. Puttuswamy** (Retd.) (supra), to submit that in that decision, the five Judge Bench has taken into account all the facets of section 139AA of the Act. It was submitted that today this is the law of the land and has to be abided by. It was submitted that the judgment gives a complete quietus to the issue raised in the petition and that reference to the Larger Bench has been made only on the question of Money Bill. It was submitted that once a provisions of section 139AA of the Act have been upheld, the High Court ought not to stay the operation thereof. In support of such submission, the learned counsel placed reliance upon the decision of the Supreme Court in **Director of Settlements, AP. v. M.R. Apparao**, (2002) 4 SCC 638, wherein the court held thus:-

“5. Bearing in mind the host of decisions cited by Mr. Rao and on examining the judgment of this Court dated 6.2.1986 in Civil Appeal No. 398 of 1972, we have no doubt in our mind that the conclusion of the Court that the amendments are constitutionally valid and the view

expressed by the Andhra Pradesh High Court is erroneous is a conscious decision of the Court itself on application of mind to the provisions of the Act. It is no doubt true that the counsel for the respondent Venkatagiri had indicated that the respondent will have no objection to the judgments and orders of the High Court under appeal, being set aside. But that by itself would not tantamount to hold that the judgment is a judgment on concession. Even after recording the stand of the counsel appearing for Venkatagiri when the Court observed "we are also of the view that the two amendments referred to above, are constitutionally valid", the same is unequivocal determination of the constitutional validity of the Amended Act, it cannot be dubbed as a conclusion on concession, nor can it be held to be a conclusion without application of mind, particularly when the very constitutionality of the Amendment Act was the core question before the Court. It is also apparent from the further direction when the Court holds

'we further make it clear that the period during which interim payments are payable under the above said Act ends with the date of the original determination by the Director under Section 39(1) thereof.

This conclusion is possible only after application of mind to the provisions of Section 39 as well as other provisions and the Amendment that was brought into the statute book. In the aforesaid premises, our answer to the first question is that the decision of this Court dated 6.2.1986 must be held to be a 'law declared' within the ambit of Article 141 of the Constitution and the constitutional validity of the Amendment Act 1971 is not open to be re-agitated and that the judgment of Andhra Pradesh High Court holding the Amendment Act to be constitutionally invalid had been set aside by this Court. "

3.1 It was submitted that the issues which are already determined cannot be re-agitated and that the main petition itself is required to be disposed of in the light of the present position. It was submitted that the State is entitled to recover dues based on the existing statutory provisions and granting

any relief to the applicant would tantamount to granting stay against the operation of the Supreme Court decision. Moreover, granting any relief to the applicant would have wide repercussions in the entire country.

4. In rejoinder, Mr. S.N. Soparkar, learned counsel for the applicant submitted that in view of the reference to the Larger Bench, it is not correct to say that the issue is final and conclusive inasmuch as the issue is at large before the Supreme Court. It was urged that all that the applicant is asking is that he be excused from the evil effects of the provisions of section 139AA of the Act.

5. In this case, the relief claimed in the main petition is to direct the respondents No.2 and 3 to accept the return of income of the applicant for assessment year 2017-18 furnished electronically under section 139(1) of the Income Tax Act, 1961; and to declare that section 139AA of the Act violates article 21 of the Constitution of India. Pursuant to interim order passed by this court, the applicant has already filed the return of income for assessment year 2017-18; however, during the pendency of this petition, the validity of section 139AA of the Act has been upheld by the Supreme Court in Justice K.S. Puttuswamy's case (supra). The challenge to the constitutional validity of section 139AA of the Act must therefore, necessarily fail.

6. However, as pointed out by the learned counsel for the applicant, on the question as to whether the Aadhaar Act was rightly introduced as a "Money Bill", the Supreme Court vide

it's judgment and order dated 13th November, 2019 made in the case of **Rojer Mathew v. South Indian Bank Ltd.** rendered in Civil Appeal No.8588 of 2019, has referred the issue for consideration by a larger Bench. The validity of the Aadhaar Act therefore, has not attained finality. In the event, the larger Bench holds that the Aadhaar Act could not have been introduced as a Money Bill, section 139AA of the Act would be rendered redundant. Therefore, if the applicant is directed to abide by the provisions of section 139AA of the Act, in the event the challenge to the Aadhaar Act being introduced as a Money Bill were to succeed, it would not be possible to turn the clock back as the applicant would be required to provide all the necessary information for obtaining an Aadhaar card and the claim of privacy of the applicant would be lost for all times to come. Under the circumstances, in the opinion of this court, with a view to balance the equities, the applicant needs to be protected by directing that his PAN shall not be declared inoperative and the applicant may not be subjected to the proviso to sub-section (2) of section 139AA of the Act till the judgment of the Supreme Court in **Rojer Mathew v. South Indian Bank Ltd.** is delivered and available. In the opinion of this court, grant of such interim relief in favour of the applicant can in no manner have wide repercussions as is sought to be contended on behalf of the revenue.

7. In the light of the above discussion, the application succeeds and is, accordingly, allowed to the following extent:

It is ordered that PAN of the applicant shall not be declared inoperative and the applicant would not be in default in any proceedings only for the reason that the permanent

account number is not linked with Aadhaar or Aadhaar number is not quoted and the applicant shall not be subjected to the proviso to sub-section (2) of section 139AA of the Act till the judgment of the Supreme Court in the ***Rojer Mathew v. South Indian Bank Ltd. and others*** in Civil Application No.8588 of 2019 is delivered and available. Rule is made absolute accordingly to the aforesaid extent.

(HARSHA DEVANI, J)

(SANGEETA K. VISHEN, J)

Z.G. SHAIKH

