



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 10TH DAY OF NOVEMBER, 2023

PRESENT

THE HON'BLE MR JUSTICE S.SUNIL DUTT YADAV

AND

THE HON'BLE MR JUSTICE VIJAYKUMAR A.PATIL

WRIT APPEAL NO. 100406 OF 2023 (GM-RES)

BETWEEN:

1. THE DEPUTY DIRECTOR GENERAL & FAA
CENTRAL PUBLIC INFORMATION OFFICER,
UIDAI, 3RD FLOOR,
SOUTH WING,
KHANIJA BHAVAN, NO.49,
RACE COURSE ROAD,
BENGALURU 560001
2. ASSISTANT DIRECTOR GENERAL,
CENTRAL PUBLIC INFORMATION OFFICER,
UIDAI, 3RD FLOOR SOUTH WING
KHANIJA BHAVAN, NO 49,
RACE COURSE ROAD,
BENGALURU-560001.

...APPELLANTS



(BY SRI.SHIVRAJ S BALLOLI, ADVOCATE)

AND:

1. SMT. P. LAVANYA W/O.P.DINESH RAO
AGED ABOUT 29 YEARS,
OCC:HOUSEHOLD WORK,
RESIDING AT HATEL KRISHNA PRASAD,
MAKANDAR GALLI, NEAR KEB OFFICE,
HUBLI-580 020
DIST-DHARWAD



2. INFORMATION COMMISSIONER,
CENTRAL INFORMATION COMMISSION,
BABA GANGNATH MARG,
MUNIRKA,
NEW DELHI-110067.

...RESPONDENTS

(BY SRI.MALLIKARJUNSWAMY B HIREMATH, ADVOCATE FOR R1)
(R2-SERVED)

THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO SET-ASIDE THE IMPUGNED ORDER DATED 8TH FEBRUARY 2023 PASSED BY LEARNED SINGLE JUDGE OF THIS HONOURABLE COURT IN WP NO.105614/2022 (GM-RES).

THIS APPEAL COMING ON FOR PRELIMINARY HEARING, THIS DAY, **S.SUNIL DUTT YADAV J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed challenging the order of the learned Single Judge dated 08.02.2023 passed in W.P. No.105614/2022.

2. The parties are referred to by their rank before the learned Single Judge for the sake of convenience.

3. This intra-Court appeal is filed by the respondents before the learned Single Judge, who were the Deputy Director General FAA, Central Public Information Officer, UIDAI as well as the Assistant Director General, Central Public Information Officer, UIDAI, calling in question the



correctness of the order dated 08.02.2023 passed in W.P. No.105614/2022, whereby the petition filed by the wife came to be allowed setting aside the endorsements issued by the appellants/Authorities, rejecting the application of the wife seeking for information contained in the Aadhaar Card of her husband under Right to Information (RTI). Further direction was issued remitting the matter back to the third respondent-Assistant Director General, Central Public Information Officer, UIDAI, to issue notice to the petitioner's husband and hear him and thereafter reconsider the application filed by the petitioner/wife seeking information to enable her to enforce the order passed in Crl.Misc.No.312/2012.

4. Brief facts are that the petitioner had entered into wedlock with Sri. P. Dinesh Rao on 18.11.2005 and they have a female child. It is further stated that in connection with the matrimonial dispute between the petitioner and her husband, the petitioner instituted proceedings under Section 125 of Cr.P.C. in Crl.Misc.No.312/2012 before the Family Court, Hubballi, which came to be allowed directing her



husband to pay monthly maintenance of Rs.10,000/- to the petitioner and Rs.5,000/- to their daughter. It is made out that there were difficulties in enforcing the order of the Family Court, as whereabouts of her husband were not ascertainable as he was absconding. Under such circumstances, it is submitted that the petitioner had filed an application under the Right to Information Act, 2005 (for short, 'RTI Act') before the Public Information Officer (UIDAI) seeking information, in particular, the details of address of Sri. P. Dinesh Rao Parampalli as found in the Aadhar Card. In terms of the application filed, information sought for reads as under:-

"REQUIRED INFORMATION"

Kindly provide me the **AADHAR CARD COPY** of said my husband by cross checking by his name in the data maintained your goodself having his name in the records as:

"Parampalli Dinesh Roa"

Or

"P.Dinesh Rao S/o P.Shripathi Rao"

Or

"Dinesh Rao Parrampalli"

Resident of Old-Alwal, Secundearabad, Telangana State

2) kindly provide me personal informations **DATA FORM** furnished by Applicant Mr. P. Dinesh Rao while obtaining AADHAR Card from your goodself office through regional office.



3) kindly provide me the **MOBILE NUMBER** entered in the DATA FORM furnished by Applicant Mr. P. Dinesh Rao while obtaining AADHAR Card from your goodself office through regional office”

5. The said application came to be rejected by an endorsement at Annexure-‘C’ dated 25.02.2021, stating that in terms of Section 33 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits & Services) Act, 2016 (for short, ‘the Aadhaar Act’), there could be no disclosure of such information and matter has to be decided by a Judge of the High Court, amongst other grounds. The same was carried up in statutory appeal before the Appellate Authority, which once again confirmed the earlier order. Further, the petitioner filed second appeal, which also came to be rejected. Aggrieved by the same, the petitioner/wife preferred the aforesaid Writ Petition calling in question the correctness of the refusal to furnish information by the Authorities as sought by her in the RTI application. The petitioner had also sought for issuance of a writ of mandamus seeking direction to the third respondent- Assistant Director General, Central Public Information Officer



(UIDAI) to furnish the details and particulars of Aadhaar Card of Shri P. Dinesh Rao.

6. The said Writ Petition came to be allowed by setting aside the impugned endorsements and remitting the matter to the third respondent-Assistant Director General, Central Public Information Officer (UIDAI) to issue notice to the petitioner's husband and hear him and thereafter reconsider the application filed by the petitioner/wife seeking furnishing of information as sought by her for the purpose of enforcing the order passed in CrI.Misc.No.312/2012. The said order is under challenge before this Court.

7. It is contended by the respondents that the direction of the learned Single Judge is in violation of the mandate under Section 33 of the Aadhaar Act, which provides that no order could be passed by the Court relating to disclosure of information, including the identity information or authentication records without giving an opportunity of hearing to such person. It is also contended that the amendment to Section 33 of Aadhaar Act relating to disclosure of information of Aadhaar number holder as well



as hearing to be made before the order divulging the information of Aadhaar number holder is to be made by a Judge of the High Court. It is submitted that the amendment has been made to Section 33 of Aadhaar Act pursuant to the direction of the Hon'ble Apex Court in **K.S. Puttaswamy (Retired) and Another (Aadhaar) v. Union of India & Another¹ [K.S.Puttaswamy]**. It is submitted that there has to be strict adherence to the procedure for disclosure of Aadhaar information only after hearing the Aadhaar number holder as well as requirement that hearing has to be made by a Judge of the High Court.

8. Learned counsel for the petitioner on the other hand would contend that the information that was sought by the petitioner is as regards her husband and the restrictions placed under RTI Act cannot be made applicable and such restrictions are to be confined to application for information sought for by third person. It is submitted that relationship of husband and wife after marriage results in merging of the identity of both and accordingly, there could be no objection

¹ (2019) 1 SCC 1



for divulging the information of spouse at the instance of other spouse. It is further submitted that the order passed by the learned Single Judge in effect takes care of statutory mandate that the Aadhaar number holder is required to be heard before disclosure of information made and since the matter is remitted back to the third respondent with direction to hear him and accordingly, no prejudice would be caused. Learned counsel further contends that whereabouts of her husband not being available as he was absconding, the only manner of enforcing the order of maintenance is to proceed against him and such rights though substantively affirmed by the order of the Court cannot be effectuated without necessary details of her husband.

9. Heard both sides.

10. Section 33(1) of the Aadhaar Act prior to Amendment by Act 14 of 2019 reads as follows:-

"33. Disclosure of information in certain cases.- (1) Nothing contained in sub-section (2) or sub-section (5) of Section 28 or sub-section (2) of Section 29 shall apply in respect of any disclosure of information, including identity information or authentication records, made pursuant to an order of a court not inferior to that of a District Judge:



Provided that no order by the court under this sub-section shall be made without giving an opportunity of hearing to the Authority."

11. It must be noticed that by virtue of amendment to Section 33 of the Aadhaar Act changes have been brought in the following manner:-

- i) Direction for divulging the information is to be made pursuant to the order of the Court, which is not inferior to that of a Judge of the High Court.
- ii) No order could be made by the Court under sub-section (1) without giving an opportunity of hearing to the concerned Aadhaar number holder.

12. Definition of "Aadhaar number holder" is found in Section 2(b), which reads thus:-

"2(b). "Aadhaar Number Holder" means an individual who has been issued an Aadhaar number under this Act.

13. The legal challenge of the constitutional validity of the Act was dealt with by the Hon'ble Apex Court in ***K.S.Puttaswamy (supra)***. The observations made by the



Hon'ble Apex Court at paragraphs-403 and 404 are extracted as under:-

"403. A close look at sub-section (1) of Section 33 would demonstrate that the sub-section (1) is an exception to Section 28(2), Section 28(5) and Section 29(2) of the Act. Those provisions put a bar on the disclosure of an information thereby protecting the information available with UIDAI in respect of any person. However, as per sub-section (1), such information can be disclosed if there is an order of a court which order is not inferior to that of a District Judge. This provision, therefore, only states that in suitable cases, if court passes an order directing an Authority to disclose such an information, then the Authority would be obliged to do so. Thus, an embargo contained in Sections 28 and 29 is partially lifted only in the eventuality on passing an order by the court not inferior to that of the District Judge. This itself is a reasonable safeguard. Obviously, in any proceedings where the court feels such information is necessary for the determination of controversy that is before the court, before passing such an order, it would hear the parties concerned which will include the person in respect of whom the disclosure of information is sought.



404. *We, therefore, clarify that provisions of sub-section (1) of Section 33 by reading into the provisions that an individual whose information is sought to be released shall be afforded an opportunity of hearing. There is a reasonable presumption that the said court shall take into consideration relevant law including Article 20(3) of the Constitution as well as privacy rights or other rights of that person before passing such an order. Moreover, a person in respect of whom order is passed shall also be heard and will have right to challenge the order in a higher forum. Not only this, proviso to Section 33(1) puts an additional safeguard by providing that even UIDAI shall be heard before an order is passed to this effect by the court. In that sense, the Authority is to act as trustee and it may object to passing of the order by the court. Such a happening is actually taken place. We have already noticed that against the order of the High Court of Bombay in some criminal proceedings, order was passed directing the Authority to give biometric information of a person, the Authority had filed Special Leave Petition (Criminal) No. 2524 of 2014 challenging the said order on the ground that giving of such biometric information was contrary to the provisions of the Aadhaar Act as the information was confidential. This Court stayed the operation of the said order which depicts that there are sufficient safeguards provided in sub-section (1) of Section 33 itself.”*



14. It is submitted that amendments have been made to the Aadhaar Act, in particular, to Section 33 to strengthen the regime of privacy pursuant to the observations of the Apex Court in ***K.S. Puttaswamy (supra)***.

15. In light of the above, the contention of the learned counsel for the appellants that there must be strict adherence of Section 33(1) of the Aadhaar Act is to be accepted. The requirement as contemplated under the proviso to Section 33(1) is an order for disclosure to be made by a Judge of the High Court. If that were to be so, learned Single Judge has grossly erred in directing the Assistant Director General, Central Public Information Officer (UIDAI) to issue notice to a person whose information sought to be divulged and to decide whether such information is to be divulged. Such power of passing an order to divulge the information is conferred on a Court not inferior to that of a Judge of the High Court in terms of Section 33(1) of the Aadhaar Act. It is a settled principle that, if the Act provides that particular act is to be made in a particular manner, it should be done in such manner or not at all. Accordingly,



the learned Single Judge could not have remitted the matter to the third respondent-Central Public Information Officer (UIDAI).

16. It is also to be noted that by virtue of the observations made by the Hon'ble Apex Court in ***K.S. Puttaswamy (supra)***, a person whose information is sought to be divulged has right to put-forth his case before such disclosure in terms of Section 33(1) of the Aadhaar Act. The right to privacy of Aadhaar number holder preserves the autonomy of the individual's right to privacy which is conferred primacy and admits of no exception under the statutory scheme. The relationship by marriage which is a union of two partners does not eclipse the right to privacy which is the right of an individual and the autonomy of such individual's right stands recognized and protected by the procedure of hearing contemplated under Section 33. The marriage by itself does not do away with the procedural right of hearing conferred under Section 33 of Aadhaar Act.

17. Consideration of case of the Aadhaar card holder is to be by a responsible Authority as stipulated under the



Aadhaar Act, which lays emphasis on the importance to the right to privacy and the same cannot be diluted by delegating the same to an inferior Authority. The hearing and decision conferred under Section 33 is a non-delegable duty.

18. The above discussion would clearly lead to a conclusion that a person whose information is to be divulged is to be arrayed as respondent to the proceedings before the learned Single Judge. Accordingly, we remit the matter to the learned Single Judge, wherein the husband of the petitioner is to be arrayed as respondent. An undertaking is made by the petitioner/wife that necessary amendment would be carried out to array the husband as respondent in a writ proceedings. Taking note of such undertaking, the order of the learned Single Judge dated 08.02.2023 passed in W.P.No.105614/2022 (GM-RES) is set-aside and the matter is remitted to the learned Single Judge for reconsideration by the learned Single Judge afresh taking note of the above observations.



19. Before concluding, it is necessary to observe that the rights conferred under Section 33 of Aadhaar Act requires order to be passed by a Court not inferior to that of a High Court Judge and to facilitate such right, the High Court is required to make appropriate provision in the applicable regime for such exercise of right which is a statutory right.

With the above observations, Writ Appeal stands disposed off.

A copy of the order is to be marked to the Registrar, High Court of Karnataka, Bengaluru for necessary attention.

**Sd/-
JUDGE**

**Sd/-
JUDGE**