



\$~36

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 631/2023 & CM APPLs. 47206-07/2023

GOVT OF NCT OF DELHI

..... Appellant

Through: Mr. Santosh Kr. Tripathi, Standing Counsel with Mr. Arun Panwar, Mr. Pradyumn Rao, Mr. Utkarsh Singh, Mr. Kartik Sharma, Ms. Prashansa Sharma and Mr. Rishabh Srivastava, Advocates.

versus

SASHANK YADAV

..... Respondent

Through: Mr. Ayush Agarwala and Mr. Auritro Mukherjee, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

13.09.2023

%

1. The present intra-court appeal originates from an interim order dated 27th July, 2023 in W.P.(C) 9840/2023. This interim order temporarily suspends the enforcement of the Appellant's circulars dated 12th July, 2022, and 02nd February, 2023 [hereinafter, "Circulars"] insofar as they mandated the requirement of an Aadhaar Card or Number for admission to private unaided recognized schools in Delhi under the EWS/DG/CWSN category.

2. Respondent, father of a child aged about 05 years, alleges that his child is unable to participate in the computerised lottery scheme, drawn by the Appellant, for allocation of seats in schools for the academic year 2023-



24, due to lack of Aadhaar Card/ Number. This embargo arises on account of the Circulars, which make it mandatory for the candidate/ child to furnish an Aadhaar Card in their online application. Impugning this requirement entailed in the Circulars, Respondent filed a writ petition before this Court, wherein the order under challenge has been passed.

3. Learned Single Judge has based his decision on the judgement of Supreme Court in *Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors.*¹ In this landmark decision, the Constitution Bench of the Supreme Court has categorically observed that school admission of a child does not fall under Section 7 of the Aadhaar Act, 2016 as it is neither a subsidy nor a service. Furthermore, the Court reasoned that making the submission of an Aadhaar Card or Aadhaar Number mandatory would contravene fundamental rights safeguarded by Article 21 of the Constitution of India, 1950. Any limitation on such a right, imposed in the form of a mandatory Aadhaar Card requirement, cannot be constitutionally justified.

4. Given the unequivocal ruling in the *K.S. Puttaswamy* case, the Learned Single Judge has formed a preliminary opinion that the Circulars appear to be at odds with the Supreme Court's judgement. Consequently, the Judge has temporarily stayed the enforcement of these circulars.

5. Mr. Santosh Tripathi, Standing Counsel for the Appellant, challenges the impugned order on several grounds. He argues that the Learned Single Judge failed to adequately understand the intent and objectives behind the contested Circulars. According to Mr. Tripathi, the requirement for an Aadhaar Card or Aadhaar Number serves a practical purpose and aims to eliminate duplicate applications by using the child's Aadhaar Number as a



unique identifier, thereby ensuring accurate identification. He further states that the decision by the impugned decision is a policy initiative designed to modernize the admission process for EWS/DG category in entry-level classes in private, unaided, recognized schools. He asserts that mandating an Aadhaar Card or Aadhaar Number for child admissions under the Right of Children to Free and Compulsory Education Act, 2009 does not violate the child's right to free and compulsory education. Rather, it serves as a safeguard against fraudulent applications and admissions based on false identities. Lastly, Mr. Tripathi clarifies that the Appellant has no intention of compromising the privacy or security of applicants, and is not accessing the Aadhaar database directly. Thus, there is no infringement of their right to privacy.

6. The Court has considered the afore-noted contentions. In the opinion of the Court, the view taken by learned Single Judge is completely in consonance with the judgment of Supreme Court in ***K.S. Puttaswamy*** (*Supra*), relevant portions whereof has been extracted in the impugned order. The issue of obtaining sensitive personal details of a child, as observed in ***K.S. Puttaswamy*** case, would have the potential of infringing their right to privacy under Article 21 of the Constitution of India. It would thus suffice to state that the impugned Circulars are *prima facie* in conflict with the constitutional provisions, effect whereof has rightly been stayed by learned Single Judge.

7. Since we are only dealing with an interim order and learned Single Judge is yet to take a final view, we do not wish to deliberate further on the issues urged in the appeal.

¹ (2019) 1 SCC 1.



8. In view of the above, we do not find any merit in the present appeal.
9. Dismissed, along with other pending applications.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J

SEPTEMBER 13, 2023

d.negi