

WP Nos.20774 & 20214 of 2018
and WMP Nos.17128, 17135, 17139, 17140, 17145,
17149, 17162, 17164, 24351 & 24358 of 2019

S.MANIKUMAR, J.,
AND
SUBRAMONIUM PRASAD, J.,

[Order of the Court was made by S.MANIKUMAR, J.]

In WP No.20774 of 2018, Mr.Antony Clement Rubin, has sought for a writ of mandamus, directing the respondents to declare that linking of Aadhaar or anyone of the Government authorized identity proof as mandatory for the purpose of authentication while obtaining any email or user account (Social Media Accounts - Facebook, Instagram, YouTube and Twitter or Utility Accounts, Paytm, Uber, Ola, Gmail, yahoo and Hotmail) thereof and to appoint a special and skilled task force to monitor into the rising instances of all sorts of cyber defamations and cyber stalking and to protect the innocent victimized E-Citizens of India every day.

2. In WP No.20214 of 2018, Mrs.Janani Krishnamurthy, has sought for a similar prayer.

3. Responding to the notices ordered in the above writ petitions, Additional Commissioner of Police, Central Crime Branch, Chennai in his Counter affidavit, submitted that though request has been made by Cyber

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Crime Cell Commissionerate of Chennai, to furnish details, for the purpose of investigation, Social Media companies have not furnished the details sought for and in many cases, rejected the request sought for.

4. Having regard to the affidavits in support of the writ petitions and counter affidavit, filed by the Additional Commissioner of Police, Central Crime Branch, Chennai and *prima facie* observing that the provisions of the Information Technology Act, 2000 and the rules made thereunder have to be implemented in letter and spirit, we decided to enhance the scope of the writ petitions. Thus, we observed that Social Media viz., Facebook, Twitter, YouTube, Whatsapp and Goggle from whom information is sought for, for investigation, have to be heard and thus, on 28.08.2018, we issued notices to the above Social Media companies.

5. Responding to the notices and submitting to the jurisdiction of this Court, Social Media companies have filed their respective counter affidavits, *inter alia* making preliminary objections to the maintainability of the writ petitions.

6. Thereafter, on 24.07.2019, we passed the following order.

"Learned counsel appearing for social media, viz., Facebook, Twitter, Whatsapp, Google, You Tube etc., have

submitted their reports with documents and copies have been furnished to the Government, and Mr.Suhrith Parthasarathy, learned counsel appearing for the intervener.

2. Government to respond. On behalf of Dr.V.Kamakoti, Professor, Indian Institute of Technology, Chennai, his team comprising C.S.Madhusudhanan, Adjunct Faculty, Indian Institute of Technology, Chennai appeared before this Court and submitted that the difficulties expressed by social media, viz., Facebook, Twitter, Whatsapp, Google, You Tube etc., to provide information regarding originator, can be solved. Remarks/views of Dr.V.Kamakoti, Professor, Indian Institute of Technology, Chennai, and his team have to be submitted in writing, so that the same can be furnished to the learned counsel appearing for social media, viz., Facebook, Twitter, Whatsapp, Google, You Tube etc.,

3. Hence, we direct Dr.V.Kamakoti, Professor, Indian Institute of Technology, Chennai, and his team to submit their views on or before 31.07.2019. Government of Tamil Nadu, shall furnish the said information to the learned counsel on record for social media, viz., Facebook, Twitter, Whatsapp, Google, You Tube etc., respectively. They shall forthwith forward the same to the above.

4. Social Media, stated supra, shall respond to the Government on or before 14.08.2019. Mr.Suhrith Parthasarathy, learned counsel for the intervener has also submitted his report.

Post on 21.08.2019."

7. Material on record discloses that Dr.V.Kamakoti, Professor, Indian Institute of Technology, Chennai and his team have submitted their views to

the Social Media companies and that response from Whatsapp and Google, respectively, have also been filed.

8. On this day, when the matter came up for further hearing, inviting the attention of this Court to an order made in a Transfer Petition(s)(Civil) No(s).1943-1946/2019, Mr.Mukul Rohatgi, learned Senior Advocate submitted that in the above transfer petitions, while ordering notice to the unserved respondents through e-mail at their e-mail addresses, returnable by 13.09.2019, the Hon'ble Supreme Court ordered as hereunder.

"In the meantime, hearing before the Madras High Court may go on but no effective order be passed till further order."

9. Pointing out the above, Mr.Mukul Rohatgi, learned Senior Advocate submitted that when notices have been ordered in the transfer petitions, returnable on 13.09.2019, and directions have been issued by the Hon'ble Supreme Court that no effective order can be passed, High Court may not proceed further. Learned Senior Advocate further submitted that all the interim orders passed by this Court were brought to the notice of the Hon'ble Supreme Court.

10. Mr.Vijay Narayan, learned Advocate General, prayed for hearing of the writ petitions and on completion to reserve the same for orders.

According to him, if hearing does not take place, then it would amount to the Social Media indirectly achieving, what in the transfer petitions they sought for.

11. Transfer Petition(s)(Civil) No(s).1943-1946/2019, have been filed in the Hon'ble Supreme Court contending inter alia that there is a common prayer, in all the writ petitions to link Aadhar information to Social Media Accounts.

12. For brevity prayers sought for, in the writ petitions filed in other Courts are extracted.

"PIL No.147 of 2018 titled "Sagar Rajabhau Suryawanshi Vs. Union of India and Ors." pending before the Hon'ble Bombay High Court ("Suryawanshi"). The Suryawanshi petition, inter alia, seeks a "writ of certiorari, writ of mandamus, order, direction or any other appropriate, writ, order, directing the Respondent No.1 (Union of India) and Respondent No.2 (MeitY) to set up proper mechanism to make it sure that all the users of Facebook and other such sites are linked with Aadhaar in India and responsibility of foreign nationals identification be shouldered upon the social sites including Facebook to verify so that no person should be subjected to fraud or hatred through its fake members / users."

W.P.No.13076 of 2019 titled "Amitabha Gupta Vs. Union of India & Ors.", pending before the Hon'ble High Court of Madhya Pradesh at Jabalpur ("Gupta"). The Gupta petitioner seeks an order

that "Facebook must ensure that an individual attempting to open an account with facebook provide atleast one number issued by some statutory authority associated with his identity viz., Aadhaar number, driving license number or voter ID number."

13. Common question framed by the transfer petitioners in the petitions filed before the Hon'ble Supreme Court are as hereunder.

3.1 Whether it should be mandatory that Aadhaar (or any government authorized mechanism used to verify a person's identity) be linked to social media accounts (e.g., Facebook), which would potentially allow for the attribution of content to the person who posted such content.

3.2 Whether such mandatory linking to Aadhaar (or any government authorized mechanism to verify a person's identity) is contrary to the principles set forth by the Constitution Bench of this Hon'ble Court in *K.S.Puttaswamy Vs. Union of India (2019) 1 SCC 1*.

14. Though prayers in WP.Nos.20774 and 20214 of 2018 are for a direction to the respondents therein to direct linking of Aadhaar or any other identity proof, as mandatory with the social media, after going through the contents of the counter affidavit, filed by the Additional Commissioner of Police, Central Crime Branch, Chennai and the need to have effective implementation of the provisions of the Information Technology Act, 2000 and the rules framed thereunder, towards effective and proper investigation, we expanded the scope of the writ petitions, and decided not

to address the prayers as such in the writ petitions, more so, taking note of the decision of the Hon'ble Supreme Court in *K.S.Puttaswamy Vs. Union of India* reported in (2019) 1 SCC 1.

15. Though Mr.Vijay Narayan, learned Advocate General prayed that hearing may go on, Hon'ble Supreme Court has issued notices to the respondents in the transfer petitions returnable on 13.09.2019 and in the meantime directed that hearing before the Madras High Court may go on, but no effective order be passed.

16. As rightly contended by Mr.Mukul Rohatgi, learned Senior Advocate that Hon'ble Supreme Court has left to the discretion of this Court to hear the writ petitions, but then, no effective order can be passed.

17. We are of the view that when the Hon'ble Supreme Court is seized of the matter regarding transfer, propriety demands to wait till the Hon'ble Supreme Court decides the transfer petitions, returnable on 13.09.2019.

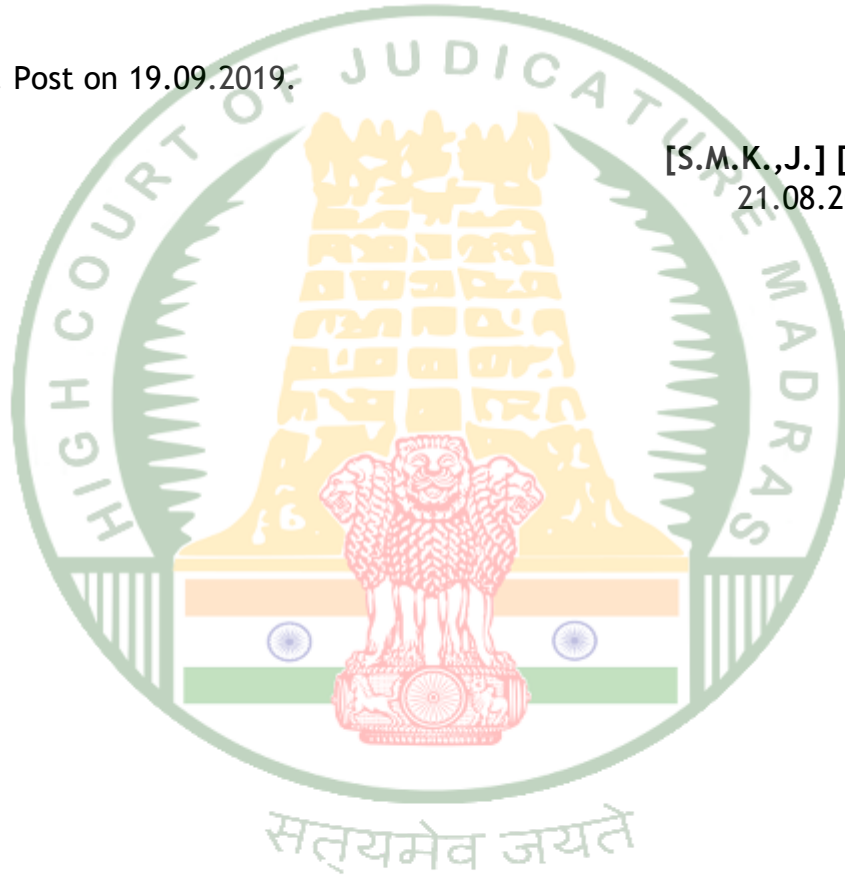
18. While clarifying that the scope of the instant writ petitions has been expanded for effective implementation of the provisions of

Information Technology Act, 2000 and the rules made thereunder, insofar as prevention and detection of crimes and investigation and not as prayed for in WP Nos.20774 and 20214 of 2018, we deem it fit to adjourn the hearing of the writ petitions.

19. Post on 19.09.2019.

[S.M.K.,J.] [S.P., J.]
21.08.2019

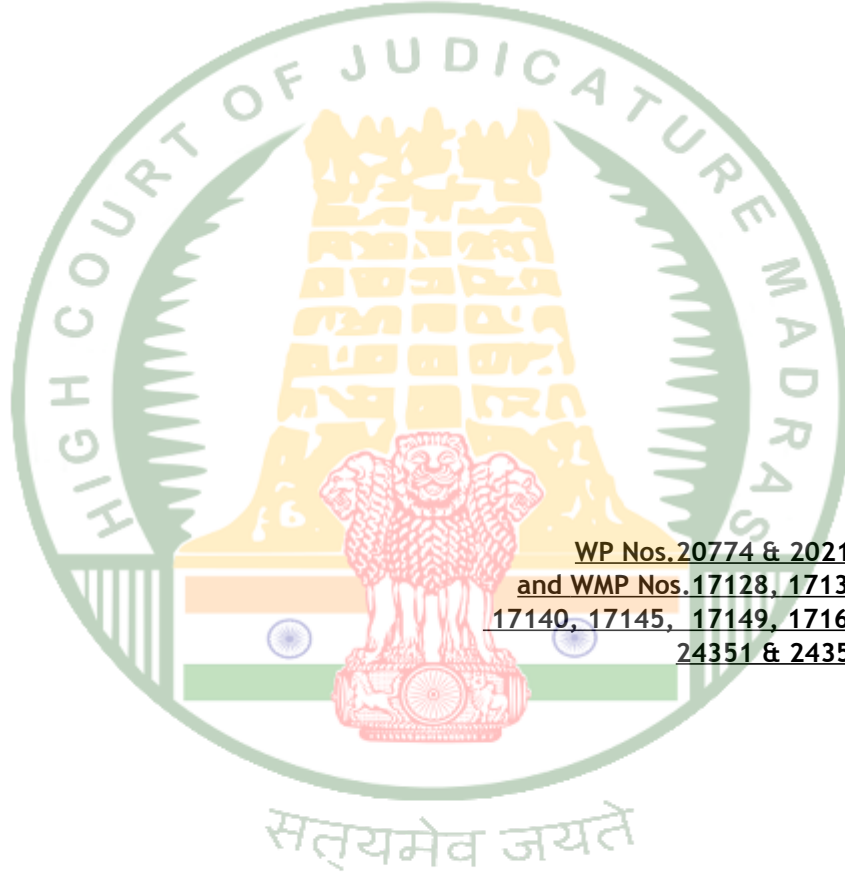
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