

PLEA IN SUPREME COURT

Govt can make Aadhaar mandatory in non-benefit services: Supreme Court

Like opening a bank account, filing tax return, which is not a benefit, says CJI

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IN A tacit approval of the government's move to make Aadhaar mandatory for services such as bank accounts, I-T returns and PAN cards, the Supreme Court Monday ordered that Aadhaar can be "pressed" for all "non-benefit" plans where questions of entitlements do not occur.

"If we understand the previ-

ous orders in the right context, we think you cannot enforce it (Aadhaar) for extending benefits but you can do it otherwise...something like opening a bank account...it is not a benefit, so Aadhaar can be pressed," said Chief Justice of India JS Khehar.

The bench, also comprising Justices DY Chandrachud and Sanjay K Kaul, said: "Let us take Income Tax returns. Is this a benefit? No, we don't think so. You

can ask someone to have a bank account on the basis of Aadhaar. That is not a benefit. But if you want to make it mandatory for a poor person in a village to get his meagre pension, that could mean extending a benefit."

The CJI further said: "For benefits, it (Aadhaar) cannot be pressed...for non-benefits, it can be done."

The court's observations came as it declined to fix the

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clutch of matters relating to validity of Aadhaar on a fixed date, given the fact that the government was coming up with notifications one after the other, making Aadhaar mandatory for different services and schemes.

On January 5, too, the CJI had refused to expedite the matter "for the time being".

Senior advocate Shyam Divan, who was appearing for the first petitioner in the case — retired Karnataka High Court judge Justice K S Puttaswamy, had mentioned the matter before the CJI to secure an early and fixed date of hearing so that the applications questioning the government's actions could be heard.

Divan recalled the judicial history of the case since 2012, underlining there have been three orders in the last three years clearly stating that "no person should suffer for not getting the Aadhaar card" and added that people have to get it "voluntarily".

He added that the orders have been modified to enable the government to link Aadhaar with some social welfare schemes but always with a rider that no person would suffer for not having the UID card.

"The court orders are being breached," complained Divan as he urged the bench to give a date for hearing the applications, and later fix the main matter for a hearing by a Constitution Bench in accordance with August 2015 order of a three-judge bench.

But the CJI turned down both the pleas. "IAs (interim applications) and interim orders are not the solution...disposal of this case is. We think this will have to go to a seven-judge bench. It is going to take us some time to spare seven judges. And then there is already an adequate protection to you by way of previous interim orders," said Justice Khehar.

Divan responded that there was some urgency in the matter since the government has prescribed deadlines for linking various schemes and services with Aadhaar. His repeated requests failed to cut much ice with the CJI, who said that no order could be passed on either retaining this matter for a hearing on a particular date or setting up a larger bench.

Justice Khehar said that Justice J Chelameswar, who was heading the three-judge bench when he referred the issue to a Constitution Bench, has been consulted on the larger bench but he has prioritised the hearing of different cases. "There are three matters which are to be heard by Justice Chelameswar. We had put it before him and he has decided that he would hear the cases one after another," the CJI told Divan.

When Divan asked the CJI whether he could mention this matter before Justice Chelameswar and request for a hearing, Justice Khehar said: "You should not...he (Justice Chelameswar) has already referred it

to a larger bench."

The main plank of the clutch of petitions on Aadhaar is that it infringes upon citizen's right to privacy, which flows from Article 21 that deals with the fundamental right to life. The petition underlined that people are required to part with biometric information, iris and fingerprints while there is no system to ensure that all this data will be safe and not be misused by the private collecting agencies.

On August 11, 2015, the three-judge bench noted that right to privacy was the focus of the controversy surrounding the validity of Aadhaar, and that in the wake of conflicting judgments by smaller benches on this subject, a Constitution Bench should determine it finally.

In October 2015, a five-judge bench was set up only for the purpose of deciding the government's application on letting it use Aadhaar for services in addition to public distribution schemes (PDS) as well as LPG cylinder distribution.

The application was allowed by the court, permitting the government to use Aadhaar for Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS), National Social Assistance Programme (Old Age Pensions, Widow Pensions, Disability Pensions) Prime Minister's Jan Dhan Yojana (PMJDY) and Employees' Provident Fund Organisation (EPFO).