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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 17th September, 2021

+ **W.P.(C) 5952/2021 & CM APPLs. 18786/2021 & 32165/2021,
32239/2021**

**ASSOCIATION OF INDUSTRIES AND
INSTITUTIONS**

..... Petitioner

Through: Mr. Sudhir Kumar Gupta & Mr.
Puneet Gupta, Advocates.

versus

UNION OF INIDA & ANR.

..... Respondents

Through: Mr. Siddharth & Mr. Amit Kumar,
Advocates for EPFO/R-2.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.

Brief Facts

2. The Petitioner is an association of various entities and persons stated to be owning and running industrial/commercial establishments, factories, institutions, etc. The Petitioner-Association has filed the present petition challenging the circular dated 1st June, 2021 issued by the EPFO, by which the seeding of Aadhaar number along with the Universal Account Number (*hereinafter* 'UAN'), generated under the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (*hereinafter*, 'EPF Act'), in respect of employees, has been made mandatory.

3. On the last date i.e., 14th September, 2021, Mr. Gupta, Id. Counsel for the Petitioner, sought time to file a list of its members and also file an amended memo of parties, impleading some of its members who are affected by the impugned order of the EPFO dated 1st June, 2021. Parties

were also directed to place on record the circulars being relied upon by them. Further to the last order dated 14th September, 2021, an amended memo of parties has been filed by the Petitioner, impleading three companies who are members of the Petitioner-Association, namely, M/s T C Global India Private Ltd., M/s Jindal ITF Limited and M/s Lifting Equipment Engineer. The said amended memo of parties is taken on record.

4. In August/September, 2020, the Central Government enacted four labour codes, namely:

- (a) Code on Wages, 2019;
- (b) Code on Social Security, 2020;
- (c) Code on Industrial Relations, 2020; and
- (d) Code on Occupational Safety, Health and Working Condition, 2020.

5. The abovementioned Codes were notified but are stated to have not yet come into effect. The Rules etc. under the said Codes are yet to be framed and notified. The only provision in the Code on Social Security, 2020, which has been notified is Section 142.

6. Pursuant to the notification of Section 142 of the Code on Social Security, 2020 on 30th April, 2021, the impugned circular was issued by the EPFO on 1st June, 2021. As per the said circular, the EPFO has made it mandatory that the Aadhaar number of each employee be seeded and verified with the UAN, with effect from 1st June, 2021.

7. It is pertinent to note that under the EPF Act, whenever deposits are made in respect of any employees, an Electronic Challan-cum-Receipt (*hereinafter* "ECR") is generated. The said ECR acts as the proof of deposit of the provident fund (*hereinafter*, "PF"). It is the case of the Petitioners that

if the ECR is not generated, the employer would be liable to pay various penalties and suffer consequences of non-deposit of dues. The impugned circular dated 1st June, 2021 mandated that no PF deposit would be made or accepted without Aadhaar numbers being seeded with the UAN. Thus, in effect, seeding of Aadhaar numbers was made mandatory to obtain an ECR.

8. Pursuant to the impugned notification, the Petitioner-Association made a representation to the Ministry of Labour & Employment, Govt. of India, in view of the various difficulties being faced by employers due to mandatory seeding. It informed the Ministry that though both the employers and employees intend to effectuate the seeding, there are various technical issues being faced due to which, the same is not becoming possible in respect of a large number of people. According to the Petitioner, the EPFO portal rejects the ECR for two reasons:

- (a) Error- Aadhaar being not verified against UAN; and
- (b) Error – Aadhaar not seeded against the UAN.

Submissions

(a) Issues with Aadhaar verification against UAN

9. In the representation made to the Ministry, it was highlighted by the Petitioner-Association that in case of various employees, there is a mismatch between the Aadhaar database and the EPFO database. The mismatch could be in respect of the name/spelling of a person, date of birth, etc. and for getting the same rectified, various documents are demanded by the authorities, which results in delay in deposit of the PF. The Petitioner-Association represented that sometimes the mismatch is a result of Aadhaar data also requiring to be updated. The said updating has also been delayed

due to the COVID-19 pandemic and lockdown restrictions. Even online requests for correction of name and date of birth with the EPFO, are not working effectively in the absence of mobile number linked with the UAN or the Aadhaar number seeded with KYC. If the employee is changing the mobile number, he/she is unable to generate the OTP in respect of the change that is to be effected. Further, change of the mobile number is also proving to be quite arduous, as such a request has to be submitted to the EPFO and duly counter-signed by the employer, which usually takes several weeks for updating. This data mismatch has resulted in the ECRs being rejected by the EPFO on the ground of “*Error – Aadhaar not verified against the UAN*”. In effect, therefore, the employees are unable to avail the benefits of PF, if their Aadhaar data is not verified with the UAN. Thus, the Petitioner’s members pray that a specific functionality be provided for uploading the ECRs in cases where the Aadhaar is not verified against the UAN.

(b) *Issues with mandatory seeding of Aadhaar with UAN*

10. The other difficulties faced by the employers as per the writ petition are as under:

- (1) ***Difficulty in availing of Aatmanirbhar Bharat Rozgar Yojana Scheme (“ABRY”), which takes September, 2020 as the base year for the purpose of availing of benefits*** - Under the said scheme, since the seeding is not taking place of all employees, the employers are unable to upload ECRs at one go and are forced to only upload those ECRs, which are seeded with the Aadhaar number. This has resulted in an anomalous situation wherein even

those employees, who are entitled to benefit under the ABRY Scheme, are being forced to make contribution of PF on their own whereas under the said scheme, the Central Government itself is to contribute their share of the PF.

- (2) ***Hardship for employees, who do not have Aadhaar card*** - The employers are being forced to not employ those Workmen/employees, who do not have proper Aadhaar card.
- (3) ***Difficulties of migrant workers*** – Migrant workers who have moved from cities back to their villages or have joined back the employer after the lock down period ended, are unable to arrange for supporting documents for seeding of Aadhaar number with the UAN under the EPFO.

11. Mr. S.K. Gupta, Id. counsel for the Petitioner, submits that enormous prejudice is being caused to the employers due to the mandatory requirement, which has been imposed. According to Id. Counsel for the Petitioner, due to mandatory seeding, enormous prejudice is caused to the employers as under:

“(i) Prejudice caused to the Employers

- A. *Interest u/s 7Q of the EPF Act would be charged for the delayed period;*
- B. *Damages u/s 14-B / 32A of the EPF Act may be imposed;*
- C. *Criminal proceedings may be initiated under u/s 405 of IPC;*
- D. *Criminal prosecution may be initiated u/s 14, 14A of the EPF Act;*
- E. *Employees’ portion of contribution not deposited may be added back to the employer’s income u/s 2(24) (X) /*

36(1)(va) of the Income Tax Act, 1961;

- F. Employers may be embroiled in unnecessary litigation because of non-payment of PF Contribution.*
- G. The employees may not be able to avail of the benefits under Aatmanirbhar Bharat Rozgar Yojana (ABRY) which would result in disincentivizing employers.*
- H. Factories may be reluctant to employ unorganised labour and production shall be affected due to non-availability of unorganized labour.”*

12. He further submits that apart from the consequences of implementation, the employees would also be prejudiced to a considerable extent in the following manner.

“(ii) Prejudice cause to the Employees

- A. Unemployment due to non-implementation of ABRY*
- B. EDLI benefits may be affected, in case of death of the employee.*
- C. Industrial unrest may start due to the termination of employees, not seeded with UAN.”*

13. Mr. Gupta, ld. counsel further highlights the fact that the EPF benefits also have insurance linked benefit under the Employees’ Deposit-Linked Insurance Scheme, 1976 (“EDLI”) where insurance of Rs 2.5 lakhs is also extended to employees. Non-deposit of EPF amount would also result in depriving the employees from the benefits under this scheme.

14. Mr. Gupta, ld. Counsel, highlights the fact that invocation of Section 142, for making seeding mandatory, is itself wholly misplaced as the said

provision can be used only for the benefits “*under this Code or rules, regulations or schemes made or framed thereunder*”. When the Code itself is not notified, the issuance of the impugned circular, under Section 142, is legally unsustainable. He further refers to the fact that under the ESIC scheme/benefit, though Section 142 has been considered, it has not been made mandatory. Reliance is placed upon circular dated 12th May, 2021 and 20th May, 2021.

15. The Petitioner and its members are, therefore, requesting for an extension of 3-4 months before the circular dated 1st June, 2021 is implemented. The prayers in the writ petitions are as under:

“[a] Issue a writ in the nature of mandamus or any other appropriate writ, order or direction in the nature of mandamus or any other writ or order or direction or granting interim relief against the impugned order No.BKG.27/07/2020 – G/Pt. File dated 01.06.2021 passed by the ACC (F&A), Employees’ Provident Fund Organisation Delhi.

[b] Or in the alternative, Issue a writ in the nature of mandamus or any other appropriate writ, order or direction commanding the respondents to extend the implementation of Annexure P1 directives by 6 months, enabling remittance of contributions by employers in respect of their employees, under the Employees’ Provident Fund and Miscellaneous Provisions Act 1952, for the period from 01.06.2021 onwards, without liability for interest, damages or penalty as also without incurring any disentitlement to any benefits under ABRY Scheme and PMRPY Scheme;

[c] Issue a writ in the nature of mandamus or any other appropriate writ, order or direction commanding the respondents to extend the due dates for remittance of contributions under the Employees' Provident Fund and Miscellaneous Provisions Act 1952 by six months so the provisions of Income Tax 1961 may not give adverse effect as per Section 36(1)(va) read with Section 2(24)(x) of Income Tax Act,1961;

[d] Grant such other and further reliefs as are deemed just and necessary in the facts and circumstances of the case including the costs of this proceedings; as also the following:”

16. On the other hand, Mr. Siddharth, Id. counsel appearing on behalf of the EPFO, submits that on 11th September, 2021, a further circular has been circulated, giving some benefits in the following manner:

“

(a) Considering the low Aadhaar penetration in the EPFO's administrative Zone of North East Region comprising of States of Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland & Tripura, time for mandatory seeding of Aadhaar in UAN for filing ECR is extended till 31.12.2021.

(b) Considering the concentration of establishments in remote localities & in areas affected by insurgency, frequent change in work sites of the workers and other attendant constraints in the Classes of establishments- Beedi making, Building and Construction and Plantation industries (Tea, Coffee, Cardamom, Pepper, Jute, Rubber, Cinchona, Cashewnuts etc.) time for mandatory seeding of

Aadhaar in UAN for filing ECR is extended till 31.12.2021.

(c) *For areas and industries/class of establishments other than above, delay in filing of ECRs for wage months of August, 2021 & September, 2021 only in respect of EPF members due to non-seeding of Aadhaar in the UANs should not be presumed as employer's default for levy of penal damages u/s 14B of the EPF & MP Act, 1952.*"

17. He submits that beyond the above benefits, no further extension can be granted in general for those employees whose Aadhaar is not seeded with the UAN, inasmuch as adequate time has already passed since the first notification dated 1st October, 2017 when the Government had asked the employers to begin the process of seeding the employee's accounts with the Aadhaar number. Ld. counsel submits that almost four years have passed, and in the past four years, the accounts of a substantial number of employees have already been validated. The total number of employees whose validation is yet to be done is only 29,26,479.

18. Ld. counsel further submits that the EPF Act is for the benefit of employees and not a single employee has come forward before this Court challenging the seeding. The employer is merely a conduit. Despite four years having been granted, there is non-cooperation by the employers. Thus, adequate time has been granted by the Government for the process of seeding to be completed.

19. In response to the submission regarding Section 142, Mr. Siddharth places reliance upon two judgments i.e., ***K.S. Puttaswamy (Retired) and Ors. v. Union of India & Ors., (2015) 10 SCC 92*** and ***Binoy Viswam v. Union of India & Ors., (2017) 7 SCC 59***. On the strength of the ruling in

K.S. Puttaswamy (supra), he submits that the provident fund scheme was added as one of the schemes for which Aadhaar could be used, in terms of the orders of the Supreme Court dated 11th August, 2015 and 15th October, 2015. He further relies upon the judgment in *Binoy Viswam (supra)* to argue that the restrictions being imposed for seeding with Aadhaar are in the interest of the employees themselves, as this ensures that the benefits under the scheme of the EPF Act are extended purely to the employees and are not in any manner diverted and pilfered by employers or any unverified persons.

20. Mr. Siddharth, ld. counsel for the EPFO further submits by way of a supplementary affidavit that the entire issue is only limited to those employees who were on the rolls of the EPFO prior to 1st October, 2017. He submits that approximately 30 lakh workmen's Aadhaar has not been seeded with their UANs. However, he highlights the fact that the process of seeding has, in fact, revealed that there are approximately 3.67 crore UANs which are found to be surplus, and could either be duplicate in nature or persons who are completely unverified. Ld. counsel draws the attention of this Court to paragraph 3 of the Employees' Pension Scheme, 1995. The said provision reads as under:

“3. Employees' Pension Fund. - (1) From and out of the contributions payable by the employer in each month under Section 6 of the Act or under the rules of the Provident Fund of the establishment which is exempted either under clauses (a) and (b) of sub-section (1) of Section 17 of the Act or whose employees are exempted under either paragraph 27 or paragraph 27-A of the Employees' Provident Fund Scheme, 1952, a part of contribution representing 8.33 per cent. of the Employee's pay shall be remitted by the employer to the Employees' Pension Fund within 15 days of the

close of every month by a separate bank draft or cheque on account of the Employees' Pension Fund contribution in such manner as may be specified in this behalf by the Commissioner. The cost of the remittance, if any, shall be borne by the employer.

(2) The Central Government shall also contribute at the rate of 1.16 per cent. of the pay of the members of the Employees' Pension Scheme and credit the contribution to the Employees' Pension Fund :

Provided that where the pay of the member exceeds fifteen thousand rupees per month the contribution payable by the employer and the Central Government be limited to the amount payable on his pay of fifteen thousand rupees only.

(3) Each contribution payable under sub-paragraphs (1) and (2) shall be calculated to the nearest rupee, fifty paise or more to be counted as the next higher rupee and fraction of a rupee less than fifty paise to be ignored.

(4) The net assets of the Family Pension Scheme, 1971 shall vest in and stand transferred to the Employees' Pension Fund.”

He thus submits that the Central Government makes a substantial contribution to the EPF Pension scheme and the related Fund. Thus, it is submitted that in order to curb any malpractice in respect of EPFO deposits and withdrawals, considering the large amount of contribution which is also made by the Central Government, the seeding of Aadhaar is required.

21. On a query put to Mr. Siddharth, ld. counsel, in respect of the judgment of the Supreme Court in *K.S. Puttaswamy (Retd) & Anr. v. Union of India & Ors., (2019) 1 SCC 1 ('Aadhaar 5J')*, ld. counsel takes the Court through paragraphs 371 to 379 to argue that considering that the

Central Government contributes a substantial amount in the pension scheme, which amount is derived from the Consolidated Fund of India, the seeding of Aadhaar with the UAN being made mandatory does not fall foul of the said judgment.

(c) **Issues with new portal**

22. Mr. S.K. Gupta, Id. counsel for the Petitioner, has also placed before the Court the circular dated 1st June, 2021, by which the seeding of Aadhaar with the UANs was made effective from 1st June, 2021. He submits that the portal was activated on that very date i.e., 1st June, 2021 and ECRs were generated only if the seeding was done with the Aadhaar. Representations were made by several members of the Petitioner-Association and other industry members. Subsequent to the said representations, another circular dated 15th June, 2021 was issued by the Ministry of Labour & Employment modifying the deadline for compliance to 1st September, 2021. On 15th June, 2021, the software was amended to permit deposits of provident fund without the seeding of Aadhaar. Id. counsel therefore submits that a large number of members of the Petitioner-Association have been unable to deposit the provident fund for the period 15th May, 2021 to 30th May, 2021, which was due on 15th June, 2021, in a timely manner i.e., the same was deposited with some delay. He submits that the consequences of the delay are enormous inasmuch as interest and damages would be levied against the members of the Petitioner-Association. It is submitted that since the new software came into effect only on 1st June, 2021 and in light of the circular dated 15th June, 2021, a relaxation of five days ought to be granted to the employers for the belated deposit of provident fund dues in respect of the

amounts which were due on 15th June, 2021.

23. Mr. Gupta, ld. counsel further submits that whenever there was a glitch etc. in the past, the grace period has also been given by the department. Reliance is placed upon two communications dated 12th January, 2017 and circular issued on 15th April, 2020, that 30 days' grace period was given at the outbreak of the Covid-19 pandemic. He assures the Court that all the employers will still make attempts to seed the Aadhaar with the UAN, if time is granted till 31st December, 2021.

Analysis & Findings

24. There are several factual and legal issues which have been raised in this petition. Pleadings are yet to be completed. However, in view of the various difficulties which have been highlighted, the interim relief, if any, is to be considered at this stage.

25. The first issue that would be required to be considered is whether Section 142 of the Code on Social Security, 2020 can form the basis of the seeding of the UAN with Aadhaar. There were four Codes which were introduced in and are stated to have been passed by Parliament in August/September, 2020. It is not disputed that the provisions of the four Codes have not come into effect. The only provision which has been notified is Section 142 of the Code on Social Security, 2020. Section 142 reads as under:

*“142. (1) An employee or unorganised worker or any other person, as the case may be, for—
(a) registration as member or beneficiary; or
(b) seeking benefit whether in kind, cash or medical sickness benefit or pension, gratuity or maternity benefit or any other benefit or for withdrawal of fund;
or*

(c) availing services of career centre; or
(d) receiving any payment or medical attendance as Insured Person himself or for his dependants, **under this Code or rules, regulations or schemes made or framed thereunder**, shall establish his identity or, as the case may be, the identity of his family members or dependants through Aadhaar number and for such purpose the expression "Aadhaar" shall have the meaning as defined in clause (a) of section 2 of the Aadhaar (The Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016:

Provided that any foreigner employee shall obtain and submit Aadhaar number for establishing his identity, as soon as possible, on becoming resident within the meaning of clause (v) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.

(2) For the purposes of sub-section (1), the Aadhaar number issued to an individual shall be in accordance with the provisions of section 3 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016."

26. A perusal of the above provision shows that the provision seeks to make Aadhaar mandatory in order to establish the identity of the member, as also the identity of his/her family members or dependents. The issue raised by the Petitioners, is that this provision would be applicable only in respect of the benefits under the Code on Social Security, 2020 and not otherwise. The Petitioners argue that since the other provisions of the Code on Social Security, 2020 have not been notified, Section 142 cannot be made applicable in this manner.

27. The second issue that arises is whether the mandatory seeding of the UAN with the Aadhaar is permissible considering the various judgments of

the Supreme Court culminating in *K.S. Puttaswamy (Retd) & Anr. v. Union of India & Ors., (2019) 1 SCC 1* (hereinafter “Aadhaar 5J”).

28. In *K.S Puttaswamy & Anr. v. UOI & Ors., (2015) 10 SCC 92* the Supreme Court had observed with respect to linking of Aadhaar for the EPFO as under:

“1. This Bench is constituted only for the purpose of deciding the applications filed by the Union of India seeking certain clarification/modification in the orders passed by a Bench of three learned Judges of this Court dated 11.08.2015.

2. We have heard Shri Mukul Rohtagi, learned Attorney General for India, Shri Shyam Divan, Shri Soli Sorabjee and Shri Gopal Subramaniam, learned senior counsels in extenso.

3. After hearing the learned Attorney General for India and other learned senior counsels, we are of the view that in paragraph 22.3 of the Order dated 11.08.2015, if we add, apart from the other two Schemes, namely, P.D.S. Scheme and the L.P.G. Distribution Scheme, the Schemes like The 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) for the present, it would not dilute earlier order passed by this Court. Therefore, we now include the aforesaid Schemes apart from the other two Schemes that this Court has permitted in its earlier order dated 11.08.2015.

4. We impress upon the Union of India that it shall strictly follow all the earlier orders passed by this Court commencing from 23.09.2013.

5. We will also make it clear that the Aadhaar card

Scheme is purely voluntary and it cannot be made mandatory till the matter is finally decided by this Court one way or the other.

6. All the applications for intervention and impleadment be heard along with the respective main matters.

7. Application(s) for modification/ clarification filed by Union of India/UIDAI is/are disposed of.

8. Since there is some urgency in the matter, we request the learned Chief Justice of India to constitute a Bench for final hearing of these matters at the earliest. Ordered accordingly.”

29. However, this order has thereafter culminated in the final judgment of the Court in **Aadhaar 5J**. The findings of the Supreme Court in **Aadhaar 5J** are as under:

“371. We understand and appreciate that execution of the Aadhaar scheme, which has otherwise a laudable objective, is a ‘work in progress’. There have been substantial improvements in the system over a period of time from the date of its launch. It was stated by the learned Attorney as well as Mr. Rakesh Dwivedi, at the Bar, that whenever difficulties in implementation are brought to the notice of the respondents, remedial measures are taken with promptness. Cases of denial of services are specifically looked into which is very much needed in a welfare State and there can be a genuine hope that with the fine tuning of technology, i.e. the mode of advancement at rapid pace, such problems and concerns shall also be completely taken care of.

372. In fairness to the petitioners, it is worth mentioning that they have referred to the research

carried out by some individuals and even NGOs which have been relied upon to demonstrate that there are number of instances leading to the exclusion i.e. the benefits are allegedly denied on the ground of failure of authentication. The respondents have refuted such studies. These become disputed question of facts. It will be difficult to invalidate provisions of Parliamentary legislations on the basis of such material, more particularly, when their credence has not been tested.

373. That apart, there is another significant and more important aspect which needs to be highlighted. The objective of the Act is to plug the leakages and ensure that fruits of welfare schemes reach the targeted population, for whom such schemes are actually meant. This is the larger purpose, and very important public purpose, which the Act is supposed to subserve. We have already held that it fulfills legitimate aim and there is a rational connection between the provisions of the Act and the goals which it seeks to attain. The Act passes the muster of necessity stage as well when we do not find any less restrictive measure which could be equally effective in achieving the aim. In a situation like this where the Act is aimed at achieving the aforesaid public purpose, striving to benefit millions of deserving people, can it be invalidated only on the ground that there is a possibility of exclusion of some of the seekers of these welfare schemes? Answer has to be in the negative. We may hasten to add that by no means, we are accepting that if such an exclusion takes place, it is justified. We are only highlighting the fact that the Government seems to be sincere in its efforts to ensure that no such exclusion takes place and in those cases where an individual who is rightfully entitled to benefits under the scheme is

not denied such a benefit merely because of failure of authentication. In this scenario, the entire Aadhaar project cannot be shelved. If that is done, it would cause much more harm to the society.

XXX

375. We have already highlighted above as to how the Aadhaar project is aimed at serving a much larger public interest. The Authority has claimed that biometric accuracy is 99.76% and the petitioners have also proceeded on that basis. In this scenario, if the Aadhaar project is shelved, 99.76% beneficiaries are going to suffer. Would it not lead to their exclusion? It will amount to throwing the baby out of hot water along with the water. In the name of 0.232% failure (which can in any case be remedied) should be revert to the pre-Aadhaar stage with a system of leakages, pilferages and corruption in the implementation of welfare schemes meant for marginalised section of the society, the full fruits thereof were not reaching to such people? The Aadhaar programme was conceived and conceptualised by Mr. Nandan Nilekani under the leadership of then Prime Minister, a great economist himself. It went through rigorous process of testing about its effectiveness before it was launched. This has been stated in the beginning. The entire aim behind launching this programme is the 'inclusion' of the deserving persons who need to get such benefits. When it is serving much larger purpose by reaching hundreds of millions of deserving persons, it cannot be crucified on the unproven plea of exclusion of some. We again repeat that the Court is not trivialising the problem of exclusion if it is there. However, what we are emphasising is that remedy is to plug the loopholes rather than

axe a project, aimed for the welfare of large section of the society. Obviously, in order to address the failures of authentication, the remedy is to adopt alternate methods for identifying such persons, after finding the causes of failure in their cases. We have chosen this path which leads to better equilibrium and have given necessary directions also in this behalf.

376. Another facet which needs examination at this stage is the meaning that is to be assigned to the expression 'benefits' occurring in Section 7 of the Aadhaar Act, along with 'subsidies' and 'services'. It was argued that the expression 'benefits' is very loose and wide and the respondents may attempt to bring within its sweep any and every kind of governmental activity in the name of welfare of communities, which would result in making the requirement of Aadhaar virtually mandatory. It was pointed out that by issuing various circulars the Government has already brought within the sweep of Section 7, almost 139 such subsidies, services and benefits.

377. No doubt, the Government cannot take umbrage under the aforesaid provision to enlarge the scope of subsidies, services and benefits. 'Benefits' should be such which are in the nature of welfare schemes for which resources are to be drawn from the Consolidated Fund of India.

378. Therefore actions by CBSE, NEET, JEE and UGC requirements for scholarship shall not be covered under Section 7, unless it is demonstrated that the expenditure is incurred from Consolidated Fund of India. Further, the expression 'benefit' has to be read ejusdem generis with the preceding word 'subsidies'.

379. We also make it clear that a benefit which is earned by an individual (e.g. pension by a government employee) cannot be covered under Section 7 of the Act, as it is the right of the individual to receive such benefit. At the same time, we have gone through the list of notifications which are issued under Section 7 of the Aadhaar Act. We find that most of these notifications pertain to various welfare schemes under which benefits, subsidies or services are provided to the intending recipients. Moreover, in order to avail the benefits, only one time verification is required except for few services where annual verification is needed. It is only in respect of fertilizer subsidy where authentication is required every time the fertilizer is disbursed. However, it is clarified that fertilizer is also given on the basis of other documents such as Kisan Credit Card, etc. At the same time, we hope that the respondents shall not unduly expand the scope of 'subsidies, services and benefits' thereby widening the net of Aadhaar, where it is not permitted otherwise. Insofar as notifications relating to children are concerned, we have already dealt with the same separately. We, thus, conclude this aspect as under:

379.1. 'Benefits' and 'services' as mentioned in Section 7 should be those which have the colour of some kind of subsidies etc., namely, welfare schemes of the Government whereby Government is doling out such benefits which are targeted at a particular deprived class.

379.2. The expenditure thereof has to be drawn from the Consolidated Fund of India.

379.3. On that basis, CBSE, NEET, JEE, UGC etc. cannot make the requirement of

Aadhaar mandatory as they are outside the purview of Section 7 and are not backed by any law.”

This Court would therefore have to examine as to whether the seeding of the UAN with Aadhaar achieves the objectives which are being stated by the EPFO i.e., to plug leakages and to ensure that the welfare schemes properly reach the concerned population. Thus, until and unless the issue of whether mandatory seeding is legally valid or not is determined, as per *Aadhaar 5J*, there cannot be any exclusion of benefits to employees under the Act, due to failure to authenticate or verify with Aadhaar.

30. The supplementary affidavit which has been filed by the EPFO today reveals the following data:

“6. The following table explains the status of UANs generated up to 30.09.2017.

<i>Sl.</i>	<i>Description</i>	<i>No. of UANs</i>
<i>1.</i>	<i>UAN allotted prior to 01-10-2017 but exited from membership</i>	<i>4,71,15,897</i>
<i>2.</i>	<i>UAN allotted prior to 01-10-2017 not exited from membership but contributions not received for last year</i>	<i>52,09,799</i>
<i>3</i>	<i>UANs amalgamated in Aadhaar seeded UANs</i>	<i>3,67,17,295</i>
<i>4.</i>	<i>UAN allotted prior to 01-10-2017 not exited from membership & contributions received in last one year (*)</i>	<i>2,73,39,648</i>
<i>5.</i>	<i>Total UAN allotted prior to 01-10-2017</i>	<i>11,63,82,639</i>

7. The break-up of the abovementioned 2,73,39,648 UAN allotted prior to 01-10-2017 and contributions received during last one year are described as follows (*)

<i>Sl.</i>	<i>Description</i>	<i>No. of UANs</i>
1	<i>UAN with Aadhaar seeding</i>	<i>2,44,13,169</i>
2	<i>UAN not seeded with Aadhaar</i>	<i>29,26,479</i>
3	<i>Total</i>	<i>2,73,39,648</i>

The above data shows that there are a large number of persons whose UANs have already been seeded with their Aadhaar. However, there are also a substantial number of members whose UANs are not seeded with their Aadhaar yet. The Government, vide circular dated 15th June, 2021 had initially extended the time for seeding till 1st September, 2021. Thereafter, on 11th September, 2021, extensions have been given in respect of States of the North-East. However, in general, the seeding has been made mandatory with effect from 1st September, 2021.

31. The affidavit filed by the EPFO claims that there are 29,26,479 persons whose contributions have been received in the last one year but whose UANs are yet to be seeded with their Aadhaar. Thus, the figure cited by Mr. Gupta of approximately 1.10 crores is disputed by Mr. Siddharth, Id. counsel. Irrespective, this is a substantial number of persons. The Petitioner No.1- claims to be representing various industries whose workers' Aadhaar numbers are yet to be obtained or verified. This Court cannot ignore the fact that mismatch between the Aadhaar data and the UAN data would require time to be corrected since the names of persons, their date of birth, addresses, phone numbers, etc. would need to be properly verified to ensure that the data matches. The non-deposit of provident fund or the

belated deposit of provident fund has enormous consequences for both the employees as well as the employers.

32. On 11th September, 2021, the EPFO has already granted extensions till 31st December, 2021 in respect of States of the North-East. Extension has also been given in respect of certain classes of establishments where there could be unorganized labor such as *beedi* making, Building and Construction and Plantation industries (Tea, Coffee, Cardamom, Pepper, Jute, Rubber, Cinchona, Cashewnuts etc.) However, for the third category of establishments and industries, the only benefit which is sought to be given is exemption from the levy of penal damages under Section 14B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. Considering that the legal issues which have been raised above are yet to be examined and adjudicated by this Court, as per the judgement of the Supreme Court, exclusions cannot be permitted, especially from benefits under a social welfare legislation such as the EPF Act and benefits thereunder. Accordingly, subject to adjudication of the legal issues which have been raised in this petition, the following interim directions are issued:

- a) Insofar as the employees *qua* whom Aadhaar numbers have already been provided to the EPFO are concerned, the provident fund shall be permitted to be deposited by the employers without awaiting verification from the Unique Identification Authority of India. The process of verification shall however continue;
- b) Insofar as those persons for whom the Aadhaar number seeding is yet to take place are concerned, the date for completing the seeding and verification shall stand extended till 30th November, 2021. In the meantime, employers shall be permitted to deposit the provident funds

in respect of employees for whom seeding has not taken place and no coercive measures shall be taken against them for non-seeding of Aadhaar numbers with UANs. During this period, the EPFO would appoint a Grievance Redressal Officer who can be contacted by the Petitioner's members or any other employer, to ensure that the deposits are not delayed and are made in a timely manner, in terms of the provisions of the Act and the Scheme.

c) Insofar as the difficulties which were faced by the employers during the period from 1st June, 2021 to 15th June, 2021 during which period the software was amended, are concerned, no coercive measures shall be taken against the employers for the time being in respect of such belated payments until final decision in the present writ petition.

33. Details of the Grievance Redressal Officer who can be contacted by the Petitioner's members or any other employer, to ensure that the deposits are not delayed have been emailed on behalf of the EPFO to the Court Master today. The officer's details are as follows:

Mr. Harsh Kaushik, Deputy Director (Information Services).

Email ID: ecr.help@epfindia.gov.in

34. The documents, affidavits, judgements filed by parties through email to the Court Master shall be filed properly with the Registry and brought on record. The following details of the members of the Petitioner-Association shall be provided by the Petitioner:

a) Names of the entity/firm/company along with details of their constitution i.e., sole proprietary firm, partnership firm or registered company;

- b) Details of the registered office address of the entity/firm/company;
- c) The email address, as also the mobile number of the relevant contact person in the entity/firm/company;
- d) The provident fund code of the entity/firm/company and the number of employees.

35. An application placing the above details on record shall be filed within a period of two weeks, with an advance copy to the Respondents. Parties are permitted to file any additional affidavits or synopsis for the purposes of addressing the legal issues which have been captured in this order, within a period of four weeks.

36. The EPFO shall place on record the complete data relating to the verification/seeding of Aadhaar at least one week before the next date of hearing.

37. This shall be treated as a part-heard matter.

38. List on 10th November, 2021.

**PRATHIBA M. SINGH
JUDGE**

SEPTEMBER 17, 2021

Rahul/dj/T/MS

(corrected & released on 22st September, 2021)