

<By e-mail/ Without Prejudice>

To

Shri. Pinarayi Vijayan,
Chief Minister of Kerala,
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Shri. K. Gopalakrishna Bhat IAS,
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Re: Legal Notice in reference to Order No (സം.ഉ. (കൈ) നം.7/2020/ഉ.ഭ.പ.വ) dated 11.06.2020 issued by the Kerala Personnel & Administrative Reforms Department mandating Aadhaar verification for public sector employment

Respected Chief Minister,

I write to you to express my concern regarding the recent order issued by the Kerala Personnel & Administrative Reforms Department, requiring applicants and recent appointees for state government jobs, to submit to Aadhaar verification.

1. According to news reports, this order ([Order No (സം.ഉ. (കൈ) നം.7/2020/ഉ.ഭ.പ.വ) dated 11.06.2020 mandates Aadhaar verification for applicants and newly appointed government employees. The circular states that appointments through Kerala Public Service Commission shall be regularized only after obtaining a “verification report”, issued only after the identity of the candidate is verified through Aadhaar Biometric Verification. This is supposedly required during One Time Verification, Service Verification, Online Examinations and Interviews. This would apply to applicants and newly appointed State government employees.

2. As you may be aware, this is against the order of the Supreme Court relating to Aadhaar. The Supreme Court's order in *KS Puttaswamy v Union of India* (2019 10 SCC 1) ("Puttaswamy judgement") has specified that mandating the use of Aadhaar numbers, whether for verification or any other purpose, was only constitutionally valid for two reasons: linking with PAN numbers and for obtaining welfare benefits which are in the nature of a subsidy. The judgement also explicitly ruled out mandating Aadhaar numbers for pensions related to work, stating,

"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."

[Para 322, Majority judgment]

3. Furthermore, the Hon'ble Supreme Court in that case has also read down Section 57 of the Act (as it then stood) permitted use of Aadhaar by the State other than for Section 7 purposes, if and only if such use satisfies the following conditions:
- a. There is primary legislation i.e. law authorising the State's use of Aadhaar for such purpose (i.e. purpose other than for delivery of subsidy or welfare benefit under Section 7 where such subsidy or benefit in the nature of subsidy is funded from the Consolidated Fund of India)
 - b. And such use is on a purely voluntary basis.
4. The Aadhaar project, at the best of times, does not work. It is riddled with problems, the very least of which is the inclusion of wrong names, birth dates, addresses and incorrectly entered details. The requirement for verification of applicants to public service jobs cannot and should not be linked to Aadhaar.
5. The purpose of preventing fraud cannot and should not be approached by breaches to privacy, dignity and autonomy of individuals, especially in the absence of any clear basis in law. As a constitutional body, the KPSC is bound to uphold the rule of law and judgements of the Supreme Court.
6. As per the Government of Kerala's 2017 IT policy, which is prior to the Supreme Court's Aadhaar judgement, "However in the absence of Aadhaar the services shall be given to citizens on the basis of other basic documents. No government services shall be declined for want of Aadhaar. (Page 17) In its preamble, the Chief Minister also says, "At the same time e-Services of government would not be denied to citizens for want of Aadhaar and it will be ensured through other basic proofs of identity." Changing this position, and

that too after the Supreme Court has expressly limited the use of Aadhaar authentication, is unwarranted.

7. I therefore urge you to rescind the order dated 11.06.2020 as per the reasons stated below:

- a. That it is against the judgement of the Supreme Court in *Justice Puttaswamy (Retd.) v. Union of India &Anr. W.P. (Civil) 494 of 2012 & Related Matters (2019) 1 SCC 1* which restricts Aadhaar authentication to subsidies, benefits and services category relatable to the Consolidated Fund of India.
- b. That it is contrary to the provisions of the Aadhaar Act (Targeted Delivery of Financial and Other Services, Benefits and Services) Act, 2016 which requires consent before asking for Aadhaar numbers, which is rendered meaningless if the requirement is mandatory. Section 8(c) mandates that the requesting entity provide the person being asked for their Aadhaar number be provided alternative means of verifying their identity.
- c. That Aadhaar authentication is in any case an imperfect system, riddled with mistakes, and should not be the sole basis for verification of identities for public employment.

7. I request you to take the following steps:

- a. Withdraw the order mandating Aadhaar for applicants and appointees to the Kerala state public services.
- b. Clarify that Aadhaar numbers are not required for enrolment into the Kerala state public services by prominently issuing a public notice in 2 newspapers having wide circulation.
- c. Remove Aadhaar dependency for One Time Verification issued to candidates qualified for appointment for posts within the government sector to produce to the concerned department.

With thanks,



Kalyani Menon Sen