

Handed over in Court on April 25, 2017

IN THE SUPREME COURT OF INDIA
Writ Petition (Civil) No. 277 of 2017

S. G. Vombatkere & Anr.

Petitioners

Versus

Union of India & Ors.

Respondents

1. The petition deserves to be allowed for the following reasons:
 - a) Biometric information, specifically finger prints and iris scan are intimate parts of a person's body. They belong to the person, *not* the State.
 - b) The recognition of the distinction between an individual or person and the State is the single most important factor that distinguishes a totalitarian State from one that respects individuals and recognizes their special identity and entitlement to dignity. The Indian Constitution does not establish a totalitarian State but creates a State that is respectful of individual liberty and constitutionally guaranteed freedoms. The Constitution of India is *not* a charter of servitude.
 - c) The right to life covers and extends to a person's right to protect his or her body and identity from harm. The right to life extends to allowing a person to preserve and protect his or her finger prints and iris scan. The strongest and most secure manner of a person protecting this facet of his or her bodily integrity and identity is to retain and not part with finger prints/iris scan.

- d) The right to life under Article 21 read with Articles 14 and 19 permits every person to live life to the fullest and to the enjoy freedoms guaranteed as fundamental rights, constitutional rights, statutory rights and common law rights.
- e) The constitutional validity of a statutory provision must be judged by assessing the *effect* the impugned provision has on fundamental rights.
- f) The effect of the impugned provision is to *coerce* persons into parting with their finger prints and iris scan and lodging these personal and intimate aspects of an individual's identity with the State as part of a programme that is in the petitioner's view wholly illegitimate and the validity of which is pending before a Constitution Bench.
- g) The impugned provision in effect treats an individual's finger prints and iris scan as belonging to the State, blurring the distinction between the individual and the State. The impugned provision reduces the voluntary nature of enrolment carried out under the Aadhaar programme and the Aadhaar Act to a mirage. It compels Aadhaar enrolment which is directly in conflict with the Aadhaar programme, the Aadhaar Act and orders passed by this Court.
- h) A statutory provision that completely takes away the voluntary nature of Aadhaar and compels *expropriation* of a person's finger prints and iris scan is per se violative of Article 21. In any event, such coercion cannot be imposed on legitimate tax payers and assesseees who are otherwise willing to and pay income tax.
- i) The State cannot hold an individual citizen *hostage*, by compelling them to part with something that does not belong to the State.

- j) In a digital world, the right to life includes maintaining personal autonomy through informational self determination. An individual must be allowed to limit what he or she wants to put out because otherwise her personal autonomy could get compromised.
- k) The coercion amounts to compelled speech. The freedom of speech includes the right to remain silent. Here, the citizen is being compelled to speak or part with his or her demographic information as well as finger prints and iris scan. The impugned provision violates Article 19(1)(a) and is not saved under Article 19(2).
- l) By visiting a conscientious objector (such as the petitioners) or any other person who does not have an Aadhaar number with severe consequences, the object of the impugned provision is itself discriminatory and violative of Article 14. There is no justification for discriminating against persons who do not wish to part with their sensitive biometric information such as finger prints and iris scan.
- m) The impugned provision is wholly disproportionate and excessive. The so called State interest is miniscule compared to the massive invasion on person liberty and freedom.
- n) The State has no legislative competence either under Entry 82 of List 1 or any other source of legislative power to nationalize and secure dominion over personal and individual finger prints and iris scan.
- o) Whenever a person voluntarily entrusts his finger prints and iris scan to the State, the 'property' and entitlement is retained with that individual throughout his life. The State merely acts as a trustee or fiduciary. The trustee or fiduciary cannot compel the "beneficiary" to part with such sensitive person information.

- p) The framework of the Aadhaar Act and the Aadhaar programme is founded on voluntary enrolment. This is a foundational premise of the programme. According to the State “free informed consent” is the essence of Aadhaar. The State cannot alter this basic premise based on which individuals were asked to enroll.