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NO COERCIVE ACTION ON ACCOUNT OF NON AADHAAR- UAN SEEDING: DELHI HIGH COURT GIVES TEMPORARY RELIEF TO EMPLOYERS

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[Background](#)

Back in June this year, the Employees' Provident Fund Organisation (EPFO) issued a circular (June Circular) mandating seeding of employees' Aadhaar number with their Universal Account Number (UAN) as a pre-condition to filing of electronic challan-cum-return (ECR) by employers in respect of employees' provident fund contributions. Right from the time it became effective (1 June 2021), the June Circular attracted widespread attention and even criticism from certain quarters.

One of the most important concerns raised in respect of the circular is that it tends to conflict with the judgment of the Supreme Court of India in Justice KS Puttaswamy (Retired) v Union of India [(2019) 1 SCC 1] (Puttaswamy). In this judgment, the apex court, while examining the provisions of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, noted that a benefit which is earned by an individual cannot be brought within the ambit of Section 7 of the said statute (which deals with furnishing of Aadhaar number or Aadhaar-based authentication as a pre-condition to receiving a subsidy, benefit, or service), as it is the right of the individual to receive such benefit.

By making Aadhaar-UAN seeding as a prerequisite for effectively making employees' provident fund contributions, the June Circular arguably comes into contradiction with the abovementioned principle. Moreover, the June Circular sought to derive its force from Section 142 of the Code on Social Security, 2020, which section deals with identification of beneficiaries through Aadhaar and was brought into effect on 3 May 2021. Interestingly, the Government of India made a [clarification](#) early on, that the said provision has been notified "only for collection of data of workers including migrant workers", and that "no benefit will be denied to workers for want of Aadhaar". Therefore, reliance on this provision by EPFO while issuing the June Circular has raised several eyebrows. After causing widespread stir, EPFO eventually decided to extend the timeline for mandatory Aadhaar-UAN seeding until 1 September 2021.

[Case before the Delhi High Court](#)

The Association of Industries and Institutions filed a writ petition (Association of Industries and Institutions v Union of India [Writ Petition (Civil) 5952/2021]) before the Delhi High Court, challenging the June Circular on the basis of Puttaswamy and also highlighting the challenges that employers across industries have been facing in the

Aadhaar-UAN seeding exercise (including mismatch between the particulars of the employee as stored in Aadhaar database and those available on EPFO's database).

The Central Government argued that the aspect of Aadhaar-UAN seeding was introduced for the first time not on 1 June 2021 but on 1 October 2017 when employers were advised to commence the process of such seeding, and therefore, there was enough time for employers to complete the exercise. Notably, however, EPFO issued another circular in view of Puttaswamy on 18 October 2018 cautioning the field officers against taking any adverse measures against an employer for failing to seed the Aadhaar number of an employee with his / her UAN. The Central Government argued that such seeding was necessary to curb any malpractices in deposits and withdrawals in respect of employees' provident fund.

Order of the Delhi High Court

In its order dated 17 September 2021 (made available in public domain few days later), the Delhi High Court placed reliance on Puttaswamy and observed that the June Circular will have to be tested against the said judgment of the Supreme Court of India. It then observed that until the said issue is determined, the Central Government cannot exclude the benefits to which the employees are entitled under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The court also noted that the practical challenges in Aadhaar-UAN seeding, particularly the mismatch between Aadhaar data and UAN data of an employee, cannot be lost sight of.

Pursuant to these observations, the Delhi High Court directed that as regards employees in respect of whom the seeding exercise is yet to commence, the date for completion of the same would stand extended until 30 November 2021. Till such time, employers must be allowed to remit employees' provident fund contributions, and no coercive action should be taken against them on account of absence of Aadhaar-UAN seeding.

Comment

The issue of validity of mandatory Aadhaar-UAN seeding for employees' provident fund contributions is far from settled at the moment. However, the order of the Delhi High Court does provide a temporary relief to employers until the matter attains finality. It is hoped that the principles of Puttaswamy are kept in view while examining the issue, particularly the distinction between discretionary benefits and entitlements of the working class under the applicable laws. In the absence of an alternative mechanism for employers to fulfil their obligation of depositing employees' provident fund contributions, the government has a tough task before it viz. plugging the leakages in the provision of benefits to the working class while not disrupting the current flow of benefits to those entitled to the same.

- Anshul Prakash (Partner) and Deeksha Malik (Associate)

For any queries please contact: editors@khaitanco.com

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