

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A.NO 6225 OF 2019

IN

REVIEW PETITION (CIVIL)NO. 377 OF 2019

IN

WRIT PETITION (CIVIL) NO. 342 OF 2017

IN THE MATTER OF: -

SHANTHA SINHA AND ANOTHER

...PETITIONERS

VERSUS

UNION OF INDIA AND ANOTHER

...RESPONDENTS

**BRIEF WRITTEN SUBMISSION BY MR. SHYAM DIVAN, SENIOR
ADVOCATE, ON BEHALF OF THE PETITIONERS**

INDIAN LEGAL NEWS

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ADVOCATE FOR THE REVIEW PETITIONERS

VIPIN NAIR
ADVOCATE-ON-RECORD

NEW DELHI
FILED ON:04.06.2020

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Shantha Sinha and Anr.

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versus

Union of India and Anr.

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**BRIEF WRITTEN SUBMISSION BY MR. SHYAM DIVAN,
SENIOR ADVOCATE, ON BEHALF OF THE PETITIONERS**

1. The present submission seeks to supplement the grounds taken in IA No. 6225/2016, i.e. the Application for grant of personal hearing in the above captioned review petition.
2. The review petition has been filed under Article 137 of the Constitution of India read with Order XLVII Rule 1 of the Supreme Court Rules, 2013, requesting this Hon'ble Court to review the Majority Judgments rendered by it on 26.9.2018 in what is popularly known as the Aadhaar case (*Justice K.S. Puttaswamy v. Union of India*, (2019) 1 SCC 1) [referred to as '**Judgment under review**']. This judgment disposed of a batch of writ petitions filed under Article 32 of the Constitution as well as transfer petitions.
3. The present review petition was filed on **10.01.2019**. Subsequent thereto, certain important

judgments have been passed by this Hon'ble Court, that the Petitioners feel may have a bearing on the outcome of the present review petition.

4. The present review petition has challenged the correctness of the Judgment under review, *inter alia* on the ground that the Aadhaar (Targeted Delivery of Financial and other subsidies, benefits and services) Act, 2016 (**'impugned Aadhaar Act'**) was incorrectly certified as a Money Bill by the Hon'ble Speaker of the Lok Sabha. It is submitted that the Aadhaar failed to meet the strict standard laid out in Article 110(1). For a legislation that has serious implications on the rights of citizens to be passed without consideration of the Rajya Sabha is nothing but a fraud on the Constitution, as the Minority Judgement notes.
5. A 5-Judge Constitution Bench of this Court in its **Judgment dated 13.11.2019** in the case of *Rojer Mathew v South Indian Bank Ltd. & Ors*, CA No. 8588/2019, has doubted the correctness of the Aadhaar judgment, i.e. Judgment under review, and referred the issue relating to interpretation of Article 110 of the Constitution, to a larger bench. The relevant excerpt of the judgment is reproduced herein below for ready reference,

122. Upon an extensive examination of the matter, we notice that the majority in K.S. Puttaswamy (Aadhaar-5) pronounced the nature of the impugned enactment without first delineating the scope of Article 110(1) and principles for interpretation or the repercussions of such process. It is clear to us that the majority dictum in K.S.

*Puttaswamy (Aadhaar-5) did not substantially discuss the effect of the word 'only' in Article 110(1) and offers little guidance on the repercussions of a finding when some of the provisions of an enactment passed as a "Money Bill" do not conform to Article 110(1)(a) to (g). Its interpretation of the provisions of the Aadhaar Act was arguably liberal and the Court's satisfaction of the said provisions being incidental to Article 110(1)(a) to (f), it has been argued is not convincingly reasoned, as might not be in accord with the bicameral Parliamentary system envisaged under our constitutional scheme. **Without expressing a firm and final opinion, it has to be observed that the analysis in K.S. Puttaswamy (Aadhaar-5) makes its application difficult to the present case and raises a potential conflict between the judgements of coordinate Benches.***

*123. Given the various challenges made to the scope of judicial review and interpretative principles (or lack thereof) as adumbrated by the majority in K.S. Puttaswamy (Aadhaar-5) and the substantial precedential impact of its analysis of the Aadhaar Act, 2016, **it becomes essential to determine its correctness.** Being a Bench of equal strength as that in K.S. Puttaswamy (Aadhaar-5), we accordingly direct that this batch of matters be placed before Hon'ble the Chief Justice of India, on the administrative side, **for consideration by a larger Bench.***

Copy of the Judgment dated 13.11.2019 in the case of *Rojer Mathew v South Indian Bank Ltd. &Ors*, CA No. 8588/2019 is attached hereto as **Appendix A**

6. In another case, a 5-Judge Constitution Bench by way of its **Judgment dated 14.11.2019** in the case of

KantaruRajeevaru v. Indian Young Lawyers Assn., (2020) 2 SCC 1, at the stage of hearing review petitions, first granted an open-court hearing, and then upon finding inconsistency with the law laid down with respect to interpretation of Article 25 and 26 of the Constitution, referred the matter to a larger bench of 9-Judges for an authoritative pronouncement on the law. Copy of the Order dated 13.11.2018 allowing open court hearing and the copy of the Judgment dated 14.11.2019 in the case of *KantaruRajeevaru v. Indian Young Lawyers Assn.*, (2020) 2 SCC 1 is attached hereto as **Appendix B and Appendix C respectively**.

7. A 9-Judge Constitution Bench of this Court in its **Judgment dated 11.05.2020** in the case of *KantaruRajeevaru v. Indian Young Lawyers Association and Ors*, Review Petition (C) No. 3358/2018 in WP (C) No. 373/2006, while considering the maintainability of the reference, has held that in review petitions arising out of writ petition, this Court under Article 137 read with Article 141 and 142, has wide powers to correct the position of law. It further held that this Court is not hindered by the limitation of Order XLVII Rule 1 of the Code of Civil Procedure, 1908, since writ petition are not 'civil proceedings' as specified in Order XLVII Rule 1 of the Supreme Court Rules, 2013. Copy of the Judgment dated 11.05.2020 in the case of *KantaruRajeevaru v. Indian Young Lawyers Association and Ors*, Review Petition (C) No.

3358/2018 in WP (C) No. 373/2006 is attached as **Appendix D.**

8. In the above background, it is submitted that important issues relating to the interpretation of the constitution arises in the present case, which requires oral submissions before an open court hearing.
9. In view of the same it is humbly requested that this Hon'ble Court may be pleased to allow the IA No. 6225/2019, and grant the Petitioners an opportunity to make oral submission before an open court, so as to enable them to explain and justify their reasons for reconsideration of the Judgment under review.

DRAWN BY: -
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