

**2023 STPL(WEB) 23 SC
SUPREME COURT OF INDIA**

(ANIRUDDHA BOSE AND RAJESH BINDAL, JJ.)

GOVERNMENT OF NCT OF DELHI & ORS.

Appellant

VERSUS

ROPEN TRANSPORTATION SERVICES PVT. LTD. AND OTHERS

Respondent

Civil Appeal No. 4039 of 2023 (Arising out of SLP(Civil) No.12000 of 2023) with Civil Appeal No.4040 of 2023 (Arising out of SLP(Civil) No.12046 of 2023)-Decided on 12-06-2023

Two Wheeler Taxi – High Court Stay on govt order vacated

Advocate(s): Mr. Manish Vashisht, Sr. Advocate, Ms. Jyoti Mendiratta, Advocate, Mr. Samir Vashisht, Advocate, /ASC Civil GNCTD Mr. Rikky Gupta, Advocate, Mr. Aman Singh Bhadoria, Advocate, Mr. Vanshay Kaul, Advocate, Mr. Ravindra Pal Singh, Advocate, Mr. Vedansh Vashisht, Advocate, Mr. Aviral Tripathi, Advocate, for the Appellant;

Mr. Siddharth Bhatnagar, Sr. Advocate, Mr. Hardeep Sachdeva, Advocate, Mr. Abhishek Awasthi, Advocate, Mr. Kamal Shankar, Advocate, Mr. Parag Maini, Advocate, Mr. Raghav Chadha, Advocate, Ms. Nishtha Kumar, Advocate, Mr. Abhyudai Singh, Advocate, Mr. Kshitiz Rao, Advocate, Mr. Neeraj Kishan Kaul, Sr. Advocate, Mr. Mahesh Agarwal, Advocate, Mr. Rishi Agrawala, Advocate, Mr. Manu Krishnan, Advocate, Mr. Pranjit Bhattacharya, Advocate, Ms. Madhavi Agarwal, Advocate, Mr. Toshiv Goyal, Advocate, Ms. Ira Mahajan, Advocate, Mr. E. C. Agrawala, Advocate, Mr. Sanjay Jain, ASG, Mr. Gurmeet Singh Makker, Advocate, Mr. Siddantha Dharamadhikari, Advocate, Mr. Padmesh Mishra, Advocate, Mr. Arkaj Kumar, Advocate, Mr. Sumit Jidani, Advocate, Mr. Anoop Bose, Advocate, Ms. Nishta Kumar, Advocate, for the Respondent.

ORDER

1. Leave granted.

2. The appellants in both these appeals before us are Government of NCT of Delhi and their own transport department and the Commissioner of that department. They assail two interim orders, both dated 26th May 2023 passed by the High Court of Delhi at New Delhi before us. These orders, in effect permit plying of two-wheelers for carrying passengers under a regime operated through aggregators.

3. In the appeal arising out of SLP(C) No. 12000 of 2023, the respondents are Ropen Transportation Services Pvt. Ltd., and one of their officers, who were the writ petitioners before the High Court. The order impugned in this appeal reads:-

"1. Allowed, subject to all just exceptions.

2. The application is accordingly disposed of.

3. Notice issued.

4. Learned Additional Standing Counsel accepts notice on behalf of the respondents and seeks time to file counter affidavit.

5. Let needful be done within six weeks from today with an advance copy to the other side.
6. Rejoinder thereto, if any, be filed within four weeks thereafter.
7. Renotify on 22.08.2023 before Registrar for completion of pleadings.
8. Learned counsel for the petitioners submits that policy is under active consideration. Accordingly, we hereby stay the notice and make it clear that the stay shall operate till the final policy is notified. However, once the final policy is notified, if the petitioners are still aggrieved, they are at liberty to take steps before the appropriate forum."

4. In the other appeal, the respondents-writ petitioners are Uber India Systems Pvt. Ltd., one of their Directors and another corporate entity who appear to be an associate of the former. The order of the Division Bench in this appeal is:-

- "1. Present petition has come on transfer.
2. Counter affidavit filed by the respondents is lying objection as it has been filed after the time granted by this Court.
3. Registry is directed to place the same on record.
4. Rejoinder thereto, if any, be filed within four weeks.
5. Renotify on 22.08.2023 before Registrar for completion of pleadings.
6. Till further orders, no coercive steps shall be taken against the petitioners."

5. On 19th February 2023, the Government of NCT of Delhi (henceforth, who shall be described as the appellant) had issued a Public Notice, prohibiting use of two-wheelers by the aggregators, which description fits the respondents/writ petitioners in both these proceedings. The Public Notice specified:

"GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI

TRANSPORT DEPARTMENT

5/9, UNDER HILL ROAD, DELHI-110054

PUBLIC NOTICE

USE OF TWO-WHEELED VEHICLES FOR CARRYING PASSENGERS ON HIRE OR REWARD

It has been brought to the notice that two-wheelers having Non-Transport (Private) registration mark/number are being used to carry passengers on hire or reward which is purely commercial operation and in violation of Motor Vehicles Act, 1988 and rules made thereunder.

The above said violation is a contravention of the registration condition of the vehicle which is punishable under Section 192 of Motor Vehicles Act, 1988 having punishment for the first offence up to Rs.5000/-, and for a second or subsequent offence with imprisonment which may extend to one year with fine up to Rs.10,000/- beside impounding of the vehicle.

In addition to the above punishment, the driving licence of the driver will be suspended for a minimum period of three months under the direction of the Hon'ble Supreme Court committee.

Further, it is also noticed that some digital platforms are facilitating such operations by offering booking through an app thereby engaging themselves as an aggregator in contravention of the provision of Section 93, and shall be punishable with a fine up to one lakh rupees under Section 193 (2) of Motor Vehicles Act, 1988.

Accordingly, it is directed to immediately stop such kind of activities to avoid prosecution and penalty, etc.

Sd-

Special Commissioner, Transport"

6. The respondents-writ petitioners approached the Delhi High Court invoking its constitutional writ jurisdiction and it is in these Writ Petitions filed by them, the aforesaid orders were passed. Subsequent to issue of the Public Notice, Show Cause Notices were issued to the aggregators on 21st and 24th February 2023 alleging breach of the provisions of Section 93 of the Motor Vehicles Act, 1988 ('the 1988 Act') and contemplating action against them. For the purpose of adjudication of the present appeals, we do not consider it necessary to reproduce the Show Cause Notice in detail.

7. Main argument on behalf of the appellant has been that two-wheelers are being facilitated by the aggregators, i.e. the writ petitioners without proper licence or permit and plying of such non-transport vehicles for hire or reward is in violation of registration condition.

8. The requirement for an aggregator to obtain licence is contained in Section 93 of the 1988 Act. This provision stipulates:-

"93. Agent or canvasser or aggregator to obtain licence:-

(1) No person shall engage himself-

(i) as an agent or a canvasser, in the sale of tickets for travel by public service vehicles or in otherwise soliciting customers for such vehicles, or

(ii) as an agent in the business of collecting forwarding or distributing goods carried by goods carriages.

(iii) as an aggregator,

unless he has obtained a licence from such authority and subject to such conditions as may be prescribed by the State Government.

Provided that while issuing the licence to an aggregator the State Government may follow such guidelines as may be issued by the Central Government:

Provided further that every aggregator shall comply with the provisions of the Information Technology Act, 2000 (21 of 2000) and the rules and regulations made there under."

9. The term "aggregator" has been defined in Section 2(1A) of the 1988 Act to mean a digital intermediary or market place for a passenger to connect with the driver for the purpose of transportation. Submission on behalf of the Delhi Government is that they are in the process of

formulation of a policy for giving licences to aggregators both in respect of four-wheeler and two-wheeler vehicles and until such policy is formulated, operating a two-wheeler vehicle would be impermissible, attracting the penal provisions contained in the 1988 Act.

10. Mr. Neeraj Kishan Kaul, learned senior counsel has appeared for respondent-Uber India Systems Pvt. Ltd. and the other co-respondents whereas Mr. Sidharth Bhatnagar, learned senior counsel and Mr. Anoop Bose, learned counsel have argued on behalf for the respondents-Roppen Transportation Services Pvt. Ltd. The main grievance spelt out by the respondents-writ petitioners is that in spite of the Central Government policy pertaining to the operation of aggregators in the transport sector having been formulated in the year 2020, the Delhi government has not yet come out with their own policy and in such circumstances, it was well within the jurisdiction of the Delhi High Court to stay the operation of the notices and prevent coercive measures against the operators of the two-wheeler vehicles under the aegis of the respective aggregators. Further submission on behalf of the respondents has been that a large number of two-wheeler owners are at present plying their respective vehicles through the aggregation mechanism and if the banning Notice is revived at this stage, their livelihood would be at stake. It is also the case of the aggregators that in terms of Section 41(4) of the 1988 Act, two-wheelers have been permitted to be used as transport vehicles and no prejudice would be caused to the general public, whose interest the Delhi Government is meant to represent and protect, if these vehicles are permitted to be operated pending formulation of policy of the Delhi Government becoming operational and licences are granted in pursuance thereof.

11. When these matters were taken up for hearing on 9th June 2023, we had directed copies of these petitions to be served upon the learned Solicitor General so that this Court would have the benefit of the views of the Union of India on the subject-controversy, as both the Union of India and the Delhi Government have proceeded in these matters on the basis that the subject-head comes within List III of the 7th Schedule to the Constitution of India.

12. On this point, the respondents-writ petitioners had raised the plea that the question of regulating aggregators came within the first list of the same schedule against Entry 31 and hence the State is not empowered to lay down any guidelines or policy decision. But we are not addressing this question in detail in this judgment as in passing the interim order, it does not appear that the Division Bench of the Delhi High Court had examined this aspect of the controversy. Such consideration is not reflected in the interim orders assailed in these appeals. We are proceeding in this matter with our prima facie view that it is within the legislative competence of the State to prescribe conditions for obtaining licence as an aggregator as stipulated in Section 93 of the 1988 Act.

13. Mr. Sanjay Jain, learned Additional Solicitor General has appeared on behalf of the Union of India and his submission before us is that facilitating operation of two-wheelers through the aggregators also require licences under Section 93 of the 1988 Act. His attention was drawn to Section 66 of the 1988 Act on the question as to whether an owner of a two-wheeler having private registration mark/number could be permitted to use the vehicles for hire or reward through the aggregators. Mr. Jain wants to take further instructions on this point. Since these Writ Petitions are pending before the High Court, we do not want to make any comment on this point, as this provision also does not appear to have been considered by this High Court at the interim stage. The impugned order does not reflect that this point was urged before the High Court at the interim stage, when the interim orders were passed.

14. Two judgments of this Court were referred to on behalf of the respondents-writ petitioners being the case of Uber India Systems Pvt. Ltd. and another vs. Union of India and Others in SLP(Civil)No.5705/2022 passed by a three judge Bench of this Court presided over by His Lordship the Hon'ble the Chief Justice of India on 13th February 2023 and the case of Roppen Transportation Services Pvt. Ltd. vs. Union of India & Others (SLP(Civil)No.3006/2023) decided on 7th February, 2023. Both these matters came to this Court from the Bombay High Court and the question of operation of the aggregators without a licence under Section 93 of the 1988 Act was under consideration. We enquired from the learned counsel appearing for the parties as to whether the

subject of controversy in these judgments were confined to operation of two-wheelers or not and it was submitted that the subject-dispute out of which the aforesaid petitions arose related to operation of the aggregators as a whole and not confined to two-wheelers.

15. So far as Delhi is concerned, we enquired from the learned senior counsel representing the respondents-writ petitioners as to whether four-wheelers were being permitted to operate without licence under Section 93 of the 1988 Act or not and the answer was in the affirmative from the side of the respondents. In neither of the two decisions of this Court which have been relied before us, it has been held or observed that the aggregators could continue to operate without licence under Section 93 of the 1988 Act. In the case of Uber India Systems Private Limited (supra), it was held and observed by this Court:-

"11. We are of the view that it would not be appropriate to continue with the present proceedings, which arise from an interlocutory order of the High Court. As correctly observed by the Division Bench of the High Court, in view of the statutory regime which has come into force with the amendment of Section 93 by the Amending Act of 2019, no person can continue as an aggregator in the absence of a licence. We accordingly permit the petitioners to apply for a licence within a period of three weeks, that is, on or before 6 March 2023. Within the aforesaid period, it would be open to the petitioners to submit a representation to the State Government in regard to the conditions which were imposed while granting a provisional licence to the petitioners. The State Government shall, within a period of two weeks from the date of the submission of the representation, take a considered view on the grievance which has been set forth in the representation of the petitioners. We clarify that we have not expressed any observations on the merits of such a grievance. Thereafter, the State Government may take an appropriate decision so that pending the finalization of the rules, an appropriate decision is taken in regard to the applications for the grant of licence in terms of the provisions of Section 93(1) of the Act. If the petitioners have any subsisting grievance, it would be open to them to move the High Court of Judicature at Bombay either in the pending Public Interest Litigation or independently so that the merits of their grievance(s) can be considered by the High Court."

16. In the case of Roppen Transportation Services Pvt.Ltd. (supra) it was held by this Court:

"9. Government of Maharashtra has not formulated any rules in relation to aggregators for the purpose of enforcing the provisions of Chapter V, more particularly, Section 93(1). The first proviso to Section 93 stipulates that while issuing a licence to an aggregator, the State Government may follow such guidelines as may be issued by the Central Government. The Guidelines which have been issued by the Central Government have a persuasive value. They are not mandatory. When the State Government formulates rules in pursuance of its power under Section 96, it may also bear in mind the Guidelines which have been framed by the Union Government in 2020. Both in terms of the first proviso to Section 93(1) and the plain terms of the Guidelines, it is evident that while these Guidelines have to be borne in mind, the ultimate decision is to be arrived at by the State Government while considering whether to grant a licence and in regard to the formulation of rules in pursuance of the general rule making power under Section 96."

17. In the case of Uber India Systems Private Limited (supra), an interim order granted by this Court, which was operating since 21st April 2022 was directed to be extended till 20th April 2023 in order to enable the operators to apply for licence.

18. So far as the present proceedings are concerned, the distinguishing feature is that the public notice prohibits operation of two-wheelers under the aggregation mechanism for transport of passengers and no prohibition has been imposed on four-wheeler vehicles.

19. As would be evident from the public notice dated 19th February 2023, one of the factors that weighed with the State Government was that the two-wheelers having non-transport registration were being used for hire and reward, which bears the characteristic of a public service vehicle in terms of Section 2(35) of the 1988 Act. This again is our prima-facie view. In the two decisions of this Court cited before us, this factor does not appear to have had come up for consideration before this Court.

20. In relation to these two appeals, the prohibition order came on 19th February, 2023 and the interim order of the High Court was passed on 26th May 2023. Thus, the operators were under prohibition till 25th May 2023. The factual situation of the present two appeals do not fit with the two Special Leave Petitions from the orders of the Bombay High Court to justify permitting the aggregators to continue with two-wheeler operations without licence under Section 93 of the 1988 Act. Moreover, the prohibition in these two proceedings are in fact confined to two-wheelers only with private registration. We have dealt with this aspect in the preceding paragraph.

21. On behalf of the Delhi Government Mr. Manish Vashisht, learned Senior Counsel assisted by Mr. Samir Vashisht has submitted that the policy of the Delhi Government in respect of the two-wheelers of the Delhi Government in respect of the two-wheelers would be in place and the licencing regime will become operational from 31st July 2023.

22. Under these circumstances, in our opinion, interim orders ought not to have been passed staying whole scale operation of a statutory regime till the finalisation of the policy. We have already expressed our prima-facie view as regards power of the Delhi Government to issue the banning order. Solely on consideration of balance of convenience, such interim stay on a public notice ought not to have been granted. We have also taken note of the submission of probable suffering of large number of two-wheeler owners who might have to undergo suffering because of the public notice of 19th February 2023. But they are not the writ petitioners before the High Court. We cannot suspend, for that reason alone operation of what appears to us prima-facie statutory provisions. Further, the Delhi Government has assured this Court of formulating the policy for two-wheeler aggregators by 31st July 2023.

23. We accordingly direct permanent stay on operation of the impugned orders passed by the Delhi High Court, which were interim in nature. The parties are given liberty to apply before the High Court for early hearing of the Writ Petitions. We have no doubt that on formulation of the Policy, each application for licence/permit in respect of two-wheelers to be operated through the regime of aggregators, shall be dealt with expeditiously in a time-bound manner.

24. Having held so, we do not think any purpose would be served in keeping these appeals alive. We dispose of both the appeals with our observation that any comment or opinion expressed in this order shall not bind the Delhi High Court in final disposal of the writ petitions.

25. No order as to costs.
