

2023 LiveLaw (SC) 100

IN THE SUPREME COURT OF INDIA

EXTRA-ORDINARY/ORIGINAL JURISDICTION

DR. DHANANJAYA Y. CHANDRACHUD; CJI., PAMIDIGHANTAM SRI NARASIMHA; J., J B PARDIWALA; J. Special Leave Petition (Civil) No 3006 of 2023 (D No 2490 of 2023); February 07, 2023

Roppen Transportation Services Pvt Ltd versus Union of India & Ors

Motor Vehicles Act 1988 - Aggregators License - The Guidelines issued by the Central Government in 2020 are only of persuasive value and are not mandatory. The ultimate decision on granting a license and formulating rules lies with the State Government, who may consider the Guidelines while making their decision- 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. (Para 8, 9)

WITH Special Leave Petition (Civil) No 3007 of 2023 (D No 3314 of 2023) Special Leave Petition (Civil) No 3008 of 2023 (D No 5164 of 2023) Writ Petition (Civil) No 95 of 2023 Writ Petition (Civil) No 142 of 2023

For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv. Mr. D.S. Naidu, Sr. Adv. Ms. Fereshte Sethna, Adv. Ms. Anuradha Dutt, Adv. Ms. Suman Yadav, Adv. Mr. Chaitanya Kaushik, Adv. Mr. Abhishek Tilak, Adv. Ms. Praprati Kedia, Adv. Ms. Shivani Sanghavi, Adv. Mr. Suyash Bhave, Adv. Mr. Mohit Tiwari, Adv. Mr. Ashish Mishra, Adv. Mr. Shubham Airi, Adv. Mr. Aman Dutta, Adv. Ms. B. Vijayalakshmi Menon, AOR Mr. Gaurav Agrawal, Adv. Ms. Akriti Chaubey, AOR

For Respondent(s) Mr. Tushar Mehta, SG Mr. Siddharth Dharmadhikari, Adv. Mr. Aaditya Aniruddha Pande, AOR Mr. Shirang B. Varma, Adv. Mr. Abhikalp Pratap Singh, Adv. Mr. Bharat Bagla, Adv. Ms. Kirti Dadheech, Adv. Mr. Shantnu Sharma, Adv. Mr. Bhuvan Kapur, Adv. Mr. Rohit Khare, Adv. Ms. Shreya Saxena, Adv. Ms. Indira Jaising, Sr. Adv. Ms. Gayatri Singh, Sr. Adv. Ms. Nupur Kumar, AOR Mr. Paras Nath Singh, Adv. Ms. Ronita Bhattacharya Bector, Adv. Mr. Rohin Bhatt, Adv. Mr. Anand Dilip Landge, AOR Mr. Akshay Deshmykh, Adv. Mr. Avineesh Jha, Adv.

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 Permission to file the Special Leave Petitions granted.

2 Delay condoned.

3 Special Leave Petition (Civil) No 3006 of 2023 arises from an interim order of the Division Bench of the High Court of Judicature at Bombay dated 7 March 2022. In Writ Petition (Civil) Nos 95 of 2023 and 142 of 2023 under Article 32 of the Constitution, the petitioners seek to challenge the validity of a notification dated 19 January 2023 issued by the State of Maharashtra. Special Leave Petition (Civil) Nos 3007 and 3008 of 2023 arise from a judgment of the High Court of Judicature at Bombay dated 20 January 2023.

4 The Motor Vehicles Act 1988¹ was amended by Amending Act 32 of 2019, *inter alia*, to comprehend aggregators within the scope of its regulatory provisions. The expression “aggregator” has been defined in Section 2(1A) to mean a digital intermediary or market place for a passenger to connect with a driver for the purpose of transportation. Section 93 forms a part of Chapter V which deals with the control of transport vehicles. Section 93 was also amended in 2019 to cover aggregators. Section 93, as amended, reads thus:

“93. Agent or canvasser or aggregator to obtain licence.-

¹ “Act”

(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 custom 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.”

5 The effect of the amended provision is that no person can act as an aggregator without a licence. The licence is to be “from such authority and subject to such conditions as may be prescribed by the State Government”. In terms of the first proviso to Section 93(1), the State Government, while issuing a licence to an aggregator, “may follow” the guidelines issued by the Central Government. Section 96 confers a rule making power on the State Government for implementing the provisions of Chapter V.

6 Following the amendment of the provisions of the Act in 2019, the Union Government in the Ministry of Road Transport and Highways formulated the Motor Vehicle Aggregator Guidelines 2020. The Guidelines commence with a prefatory statement that they have been issued “as guiding framework for State Government for issuance of licenses to transport aggregators and for the purposes of regulating the business conducted by such aggregators”. The guidelines have been issued in terms of the amended provisions of the statute, including Section 93, which 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 of 2020 contain diverse provisions; among them:

- (i) Clause 4 which deals with the eligibility of an aggregator;
- (ii) Clause 5 which provides conditions for the grant of a licence to an aggregator;
- (iii) Clause 7 which lays down compliances with regard to drivers;
- (iv) Clause 8 which enunciates compliances with regard to vehicles;
- (v) Clause 9 which refers to compliances with regard to aggregators’ apps and websites;
- (vi) Clause 10 which stipulates compliances to ensure safety among other provisions; and
- (vii) Clause 13 which makes provisions for the regulation of fares.

7 Clause 15 of the Model Guidelines is extracted below:

“15. Aggregation of non-transport vehicles by Aggregators:

(1) In furtherance of the Central and State Government's objective of reduction in traffic congestion and automobile pollution, and effective asset utilizations, non-transport vehicle pooling may be provided by Aggregator unless prohibited by the State Government. Rationale for such prohibition shall be specified in writing and accessible on the transport portal of the State Government.

(2) In addition to the compliances mentioned above in these guidelines, as may be applicable, the following shall be complied with by the Aggregator seeking to aggregate non-transport vehicles:

(a) A maximum of four ride-sharing intra-city trips on a calendar day and a maximum of 2 ride-sharing inter-city trips per week shall be permitted for each vehicle with the driver, integrated with the Aggregator.

(b) The vehicle integrated under this Clause 15 shall obtain an insurance of at least Rs. 5 lakhs for the ride-sharers in the vehicle, other than the owner or driver integrated with the Aggregator.”

8 Clause 15(1) stipulates that the Central and the State Governments seek to pursue the objective of reducing traffic congestion and automobile pollution as well as effective asset utilization. However, clause 15 also stipulates that the pooling of non-transport vehicles may be provided by the aggregator unless prohibited by the State Government. The rationale for such a prohibition has to be specified in writing by the State Government and has to be accessible on its transport portal.

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.

10 In the present case, the first petitioner in SLP(Civil) No 3007 of 2023 is an aggregator within the meaning of the amended provisions of the statute. The case relates to the claim of the petitioners to provide the services of an aggregator for two wheeler vehicles across the State of Maharashtra. The first petitioner made an application for the grant of a licence. By an order dated 21 December 2022, the Road Transport Officer at Pune², rejected the application on the ground that it did not comply with various terms and conditions of the Guidelines of 2020. The relevant part of the order of the RTO is extracted below:

“Decision:

1. Two Wheeler Bike Taxi Aggregator License: Applicant M/s.. Roppen Transportation Services Pvt. Ltd. for getting his two wheeler bike taxi aggregator license Application dated 30/11/2022 Important matters in Motor Vehicle Aggregate Rules- 2020 viz. 4 (3), 5 (1), 5(2), 5(3), 7(1)(c), 7(1)(1), 7(1)(g) , 7(1)(h), 7(2)(a), 7(2)(b), 7(2)(c), 7(2) (h), 7(2)(k), 7(2) (m), 8(2), 8(3), 8(5), 8(6), 8(10), 9(1), 9(2) , 9(3) and 13 are not complete. After verification, lack of facility of simulator and induction training, operation of app without aggregator license, all submitted undertaking without official signature and stamp, lack of sufficient experience of vehicle drivers, registration of two-wheelers not in transport category, etc. have been found incomplete. Also among the documents submitted are insurance certificate, fitness certificate, license, pollution control certificate, etc. for some vehicles. Legal documents are not attached

² “RTO”

(Please see Table No. 1 on Page No. 5). Also in the State of Maharashtra, no such scheme/ scheme of bike taxi has been implemented by the government or the state transport authority. Also, the bike taxi type of license /license is not issued. Also, there is no fare structure policy for bike taxis.

Therefore, for the above reasons the regional transport authority decided to reject Rappen's two-wheeler bike taxi application. The said decision should be informed to the Applicant (M/s. Rappen Transportation Services Pvt. Ltd.)

According to Sections 89, 90 of the Motor Vehicle Act, 1988 and Rule 97 of the Maharashtra Motor Vehicle Rules, 1989, an appeal can be submitted to the State Transport Appellate Tribunal, Mumbai (The State Transport Appellate Tribunal) within 30 days.

2. Three Wheeler Taxi Aggregator License : Applicant M/s Ropan Transportation Services Pvt Ltd. His application dated 30/11/2022 for obtaining three wheeler taxi aggregator license important points in Motor Vehicle Aggregator Rules 2020 viz point No.4 (3), 5 (1), 5 (2), 5(3) , 7 (1) (b), 7 (1) (c), 7 (1) (d), 7 (1) (e), 7 (1) (f), 7 (1) (g), 7 (1) (b), 7 (2) (3), 7 (2) (b), 7 (2) (c), 7 (2) (h), 7 (2) (k), 7 (2) (m), 8 (2), 8 (3), 8 (5), 8 (6), 8 (10), 9 (1), 9 (2), 9 (3) and 13 are not perfect. Absence of simulator and induction training facility after application verification, App running without activator license, All submitted undertaking without official signature and stamp, Insufficient experience of drivers, No GPS system in vehicles, approved by Regional Transport Authority, Pune Information not provided as per fare basis, etc. imperfections have been found. Also, in the documents submitted, some legal documents such as insurance certificate, vehicle license, fitness certificate, license, public transport service badge, pollution control certificate, etc. are not attached. (Please refer Table No. 2 on Page No.9)”

11 The petitioners instituted a writ petition before the High Court of Judicature at Bombay in order to challenge the legality of the decision of the RTO. During the course of the hearing, the High Court was apprised of the fact that on 19 January 2023, the State Government had issued a notification bearing on the issue.

12 The notification issued by the State Government on 19 January 2023 is extracted in its entirety below:

“Home Department
Madam Cama Marg
Hutatma Rajguru Chowk,

Mantralaya, Mumbai 400 032. Dated the 19th January 2023.

No.MVR-0821/C.R.95/TR-2

Whereas, the Government of India has, vide Ministry of Road Transport and Highways (Transport), Letter No. F. No. 1601119/2019-T, dated the 27th November 2020, issued the Motor Vehicle Aggregator Guidelines, 2020 (hereinafter referred to as "the said Guidelines"), under the proviso to sub-section (1) of section 93 of the Motor Vehicles Act, 1988 (59 of 1988);

And whereas, clauses 11 and 15 of the said Guidelines provides for ride pooling and aggregation of nontransport vehicles by aggregators, respectively. Subclause (1) of said clause 15 empowers the State Government to provide 'Rationale' for prohibition of nontransport vehicles pooling by aggregators;

And whereas, it is observed that, use of non-transport vehicles (including two wheelers, three wheelers and four wheelers) as transport vehicles is on the rise enormously and raises serious practical and security concerns of the passengers and which may cause serious threat to the road safety of general public and passengers, at large;

And whereas, the number of vehicles registered in the non-transport category is very large, therefore the nontransport vehicles registered outside the State of Maharashtra may also be used for the purpose of vehicle aggregation and may affect the economic viability of the vehicles operating on valid permits in the State of Maharashtra;

And whereas, the issue of whether non-transport vehicles can be permitted to be used as transport vehicles, including for aggregation and ride pooling thereof requires detailed consideration regarding terms and conditions, framework and guidelines thereof. Therefore, the State Government has constituted the committee to study the said issues and to give recommendations thereof;

And whereas, the Government considers it expedient to prohibit the pooling of non-transport vehicles by aggregators in order to ensure road safety of the general public and passengers at large in the State of Maharashtra;

Now, therefore, the Government of Maharashtra, in pursuance of clause 15 of the Motor Vehicle Aggregator Guidelines, 2020, hereby prohibits the use of nontransport vehicles (including two wheelers, three wheelers and four wheelers) for the purposes of aggregation and ride -pooling thereof.

By order and in the name of the Governor of Maharashtra

(R.M. Holkar)

Joint Secretary to Government”

13 By the above decision, the State Government has noted that the issue of whether non-transport vehicles ought to be permitted to be used as transport vehicles including for aggregation and ride pooling requires consideration. A Committee was constituted by the State Government on 12 January 2023. Pending the decision of the Committee, the State Government has prohibited the pooling of non-transport vehicles by aggregators “in order to ensure road safety of the general public and passengers at large” in the State of Maharashtra. The Committee which has been constituted by the State Government on 12 January 2023 is chaired by a former IAS officer consisting, *inter alia*, of the Additional Director General of Police and representatives of the Transport Department and the Maharashtra State Road Transport Corporation.

14 The High Court adjudicated upon the challenge to the order of the RTO dated 21 December 2022. The High Court recorded that counsel appearing on behalf of the petitioners informed the Court that they would consider whether or not to challenge the notification dated 19 January 2023 separately and at that stage, the challenge was confined to the order of 21 December 2022 issued by the RTO. The High Court has also proceeded to observe that the Guidelines of 2020 leave a certain degree of latitude to the State Government and there is no policy of the State Government at the present point on the basis of which the petitioners would have an unrestricted right to obtain a licence.

15 Mr Mukul Rohatgi, senior counsel appearing on behalf of the petitioners, submitted that many of the requirements of the Guidelines of 2020 on the basis of which the application for a licence was rejected are unworkable. This has been seriously in contest since Mr Tushar Mehta, Solicitor General appearing on behalf of the State of Maharashtra, has urged that the Central Guidelines are intended to ensure, above all, the safety of the passengers and drivers for which purpose certain requirements have been introduced.

16 The correctness of the order of the RTO rejecting the application for a licence on 21 December 2022 is now overshadowed by the subsequent decision of the State

Government arising out of its notification dated 19 January 2023. The State Government has categorically taken a decision that the issue as to whether non-transport vehicles should be permitted to be used as transport vehicles including for aggregation and ride pooling merits detailed consideration. Pending the decision of the Committee, the State Government has taken a decision to prohibit the use of non-transport vehicles for the purpose of aggregation.

17 There was no challenge before the High Court to the notification dated 19 January 2023. Two petitions have now been instituted before this Court under Article 32 of the Constitution for the purpose of challenging the notification of the State Government. We are not inclined to entertain the challenge to the notification dated 19 January 2023 of the Home Department of the State Government in proceedings under Article 32 of the Constitution. The petitioners would be at liberty to pursue the alternate remedy under Article 226 of the Constitution before the High Court. The correctness of the order of the RTO dated 21 December 2022 stands subsumed by the decision which has been taken by the High Court to entrust the examination of the entire issue by the Committee, before it decides on the use of non-transport vehicles for the purposes of aggregation and ride pooling.

18 During the course of the hearing, Mr Mukul Rohatgi submitted that while, on the one hand, the observations in paragraph 57 of the impugned judgment of the High Court reserve liberty to the petitioners to challenge the notification dated 19 January 2023, the observations in a subsequent part of the judgment, namely, paragraph 59 would preclude such a challenge.

19 In order to allay the above grievance, it needs to be clarified that while considering a challenge to the notification dated 19 January 2023, the High Court shall not consider itself bound by its observations in paragraph 59. At any rate, the latter observations are only in the context of the challenge to the decision of the RTO dated 21 December 2022 which alone was a subject matter of the proceedings before the High Court.

20 In the above backdrop, we grant liberty to the petitioners to move the High Court under Article 226 of the Constitution for the purpose of challenging the notification of the State Government dated 19 January 2023. The High Court shall consider any such challenge uninfluenced by the observations contained in the impugned judgment and order dated 20 January 2023.

21 The order of the RTO dated 21 December 2022 indicates that it has been passed on the ground that the provisions of the Guidelines of 2020 were not complied with. Once the State Government takes a final decision on the submission of the report of the Committee, the petitioners would be entitled to pursue their legal remedies after complying with such terms and conditions as may be prescribed in the decision of the State Government. The State Government shall take a final decision on or before 31 March 2023. The Committee shall take its final decision on or before 15 March 2023 so as to leave time to the State Government to take a considered decision by the end of March 2023.

22 The petitions are accordingly disposed of.

23 Pending applications, including application for intervention, stand disposed of.