

Pdp

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**PUBLIC INTEREST LITIGATION (L) NO. 9775 OF 2020**

Savina R. Crasto .. Petitioner

Vs.

Union of India & Ors. .. Respondents

Ms. Savina R. Crasto, petitioner-in-person, present.  
Mr. Rajshekar V. Govilkar for respondent no.1.  
Ms. Jyoti Chavan, AGP for respondent-State.  
Mr. Janak Dwarkadas, Senior Advocate a/w Mr. Ankit Lohia,  
Ms. Sita Kapadia, Mr. Shashwat Rai, Mr. Akash Loya and Ms.  
Tvishi Pant i/by Keystone Partners for respondent nos.3 and 4.

**CORAM: DIPANKAR DATTA, CJ &  
VINAY JOSHI, J.**

**DATE: MARCH 7, 2022**

**PC:**

1. In terms of the order dated 20<sup>th</sup> December, 2021 passed on this Public Interest Litigation, separate affidavits have been filed.
2. One of the prayers in this Public Interest Litigation is for a direction on the respondents 1 and 2 (the Union of India and the State of Maharashtra, respectively) to ensure implementation of the Motor Vehicle Aggregator Guidelines-2020 (hereafter "the 2020 Guidelines", for short).
3. Respondent 3 is described by the petitioner as a 'Transportation Aggregator' launched in 2013 under the name

Uber Technologies, Inc., popularly known as UBER. Respondent no.4 has been included in the array of respondents by the petitioner, upon obtaining leave from the Court, after noticing the contents of an affidavit filed by the respondent no.3. We shall refer to the respondents 3 and 4 hereafter as "UBER".

4. Sub-section (1) of section 93 of the Motor Vehicles Act, 1988 (hereafter "the Act", for short), which is part of Chapter V titled "Control of Transport Vehicles" requires, *inter alia*, an aggregator to obtain a license from such authority and subject to such conditions as may be prescribed by the State Government. The first proviso to sub-section (1) of section 93 provides that while issuing license to an aggregator, the State Government may follow such guidelines as may be issued by the Central Government. Sub-section (2) of section 93 refers to the matters which could be included as conditions of such license.

5. There is no dispute that UBER is an aggregator within the meaning of section 2(1-A) of the Act. It is further not in dispute that the Central Government, in exercise of the power conferred on it, has framed the 2020 Guidelines. Also not in dispute is the fact that in a meeting held on 5<sup>th</sup> March, 2021, chaired by the Joint Secretary (Transport), Ministry of Road Transport & Highways, UBER raised certain objections to the 2020 Guidelines. It is reported that since no final decision has been taken on such objections, UBER has not yet applied for license under the 2020 Guidelines.

6. On behalf of the respondent no.2, an affidavit has been filed. It has been pleaded therein that draft rules have been framed in exercise of power conferred by section 96 of the Act and on the basis of the 2020 Guidelines, titled "the Maharashtra Regulation of Aggregators Rules 2021" and that the same are pending consideration and approval of the concerned authority. It is, however, the stand of the respondent no.2 that until the rules framed by it are put into operation, the aggregators like UBER would be governed by the 2020 Guidelines in terms of the first proviso to sub-section (1) of section 93 of the Act and that such aggregators are required to act in accordance with the 2020 Guidelines which have been put in place by the Central Government.

7. Appearing on behalf of UBER, Mr. Dwarkadas, learned senior advocate, has contended that so long the Ministry of Road Transport & Highways takes a decision on the objections raised in the meeting held on 5<sup>th</sup> March, 2021, there could be no compulsion for UBER to obtain a license of the nature referred to in sub-section (1) of section 93 of the Act, more particularly when sub-section (1) refers to conditions that could be prescribed by the State Government under the Rules which are yet to be finalized. It is also his submission that UBER is not required to obtain a license since by an order dated 30<sup>th</sup> June, 2017 of a coordinate bench of this Court, the effect of the Maharashtra City Taxi Rules, 2017 cannot be given.

8. We are not impressed by such submission advanced on behalf of UBER. Sub-section (1) of section 93 is couched in

negative language. Once it is the statutory mandate that no person shall engage himself as an aggregator unless a license is obtained, it is absolutely inappropriate for the respondent no.2 to allow such person to continue as an aggregator without he/it obtaining such a license. No doubt, the rules framed are still at the draft stage but till such time the said draft rules are finalized for being complied with, the 2020 Guidelines framed by the Central Government would hold the field and any person willing to operate as an aggregator, must follow the regulatory framework brought about by such guidelines. Also, nothing turns on the order dated 30<sup>th</sup> June, 2017 referred to by Mr. Dwarkadas. Section 93 of the Act has been amended in 2019 by the Parliament whereby any person proposing to carry on operations as an aggregator has been mandated to obtain a license. Also, the 2020 Guidelines are subsequent to the order dated 30<sup>th</sup> June, 2017 and such order, which records only a statement of the Additional Government Pleader, cannot have the effect of stultifying the operation of statutory guidelines framed by the Central Government.

9. We are pained to observe that despite new statutory provisions having been brought into force in 2019 by amending section 93 and the guidelines having been framed in November 2020, the respondent no.2 has permitted an aggregator like UBER to operate in Maharashtra without insisting for compliance of the statutory requisite. At the same time, we are conscious that making an order restraining UBER, which has not yet obtained the statutory license, to

operate would work to the immense prejudice and detriment of the passengers who avail of the services provided by it. In such view of the matter and for the present, instead of restraining UBER from operating in the State of Maharashtra, we are inclined to grant an opportunity to it as well as other unlicensed aggregators to apply for licence as required by sub-section (1) of section 93 of the Act before the competent authority to be empowered by the State Government to issue license under sub-section (1) of section 93 of the Act.

10. For such purpose, we direct the Transport Department of the State Government to issue appropriate notification in the Official Gazette forthwith and not later than 9<sup>th</sup> March, 2022 empowering each and every Regional Transport Authority in the State of Maharashtra to act as the Licencing Authority for grant of license under sub-section (1) of section 93 of the Act. Since the 2020 Guidelines also refer to an Appellate Authority in paragraph 18, it would be prudent for us to direct that the provisions of section 89 of the Act, which is also part of Chapter V, may be followed in such a case. The State Transport Appellate Tribunal or similar such authority, by whatever name called, shall be the Appellate Authority. We are informed that the Chairman of the Motor Accident Claims Tribunal, Maharashtra, functions in the State as the State Transport Appellate Tribunal and, therefore, such Tribunal shall also be notified to be the Appellate Authority for the purposes of the 2020 Guidelines. In the notification to be published in terms of this order, the Transport Department shall indicate that all the aggregators operating in the State of

Maharashtra may apply for license by 16<sup>th</sup> March, 2022. If any application is received by any Regional Transport Authority from the prospective licensees, earnest endeavour shall be made to convene urgent meeting of such Transport Authority to consider such application, as early as possible but not later than a fortnight from date of receipt thereof. In the event the concerned aggregator/prospective licensee agrees to comply with the conditions laid down in the 2020 Guidelines, issuance of license in its favour shall not be unnecessarily delayed. In the event any application is rejected, the concerned aggregator shall be at liberty to file an appeal under section 89 of the Act read with paragraph 18 of the 2020 Guidelines before the empowered Appellate Authority.

11. It is made clear that if no application is made before 16<sup>th</sup> March, 2022 by any aggregator or an application for license is rejected by the Licensing Authority, such unlicensed aggregator shall not be permitted to carry on further operations in the State of Maharashtra till such time an appropriate license is obtained by him/it. This condition should also form a part of the notification to be issued in terms of this order.

12. List this PIL petition on **4<sup>th</sup> April, 2022** for reporting developments.

**(VINAY JOSHI, J.)**

**(CHIEF JUSTICE)**