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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6004/2015 & CM APPL. 10895/2015

UBER INDIA TECHNOLOGY

PRIVATE LIMITED & ORS

..... Petitioners

Through

Mr. Rajiv Nayar, Senior Advocate
with Mr. Ajay Bhargava, Mr. Mohit
Abraham and Mr. Arvind Kumar Ray,
Advocates

versus

GOVERNMENT OF NCT OF DELHI & ANR Respondents

Through

Mr. Naushad Ahmed Khan, Addl.
Standing Counsel (Civil) for GNCTD
with Mr. Jaspal Singh, MLO,
Transport Dept and SI Udai Singh,
Traffic/HQ.
Mr. A.N. Haksar, Senior Advocate
with Mr. Udyan Jain, Mr. Sonal Jain,
Ms. Sarvodaya Lakshmi and
Ms. Heena Sharma, Advocates for
Intervener/Association of Radio
Taxis.

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Date of Decision : 8th July, 2015**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****J U D G M E N T****MANMOHAN, J: (Oral)**

1. Present writ petition has been filed challenging the order dated 3rd June, 2015 passed by the respondent no. 1 rejecting petitioner no. 1's

application for licence under Modified Radio Taxi Scheme, 2006 as well as seeking an order restraining respondents from obstructing the petitioner and its AITP vehicle operators from conducting their business and providing services under the name 'Uber'.

2. At the outset, Mr. Rajiv Nayar, learned senior counsel for petitioners states that at this stage he is not pressing prayer (b) of the petition seeking an order restraining the respondents from obstructing the petitioners and its AITP vehicle operators from conducting their business and providing services under the name 'Uber'.

3. The statement made by Mr. Rajiv Nayar is accepted by this Court and prayer (b) of the present writ petition is dismissed as withdrawn at this stage with liberty to agitate the same in a subsequent proceeding in accordance with law, if petitioners so desire.

4. Mr. Rajiv Nayar refers to the judgment and order dated 11th June, 2015 passed by a Coordinate Bench of this Court in ***Apra Cabs India Pvt. Ltd. & Ors. Vs. Government of NCT of Delhi & Ors., W.P.(C) 5965/2015*** whereby a similar impugned order was set aside.

5. Since considerable emphasis was laid on the aforesaid judgment in ***Apra Cabs India Pvt. Ltd. & Ors.*** (supra), the relevant portion of the same is reproduced hereinbelow:-

“5. The brief background to the petition is that a Public Notice was issued on 8th December, 2014 by the Transport Department of the Government of NCT of Delhi (GNCTD) that other than the licensed cab services, taxi service providers Using web based technology are prohibited from providing such services till they get a licence from the Transport Department. That General Notice was challenged by ANI Technologies Private Limited (ANI), which runs 'OLA Cabs' principally on the

ground that the said ban order was passed without affording it an opportunity of being heard. Upholding that plea, the Court on 23rd December, 2014, passed an order in WP (C) No.9290/2014 filed by ANI and directed that its petition be considered as a representation by the appropriate authority and a final decision taken thereon within a period of ten days. Pursuant thereto an order was passed on 1st January, 2015, which, as already noted, is sought to be separately challenged by ANI.

6. As far as Petitioner Nos.1 and 2, i.e. APRA Cabs India Private Limited (APRA) and Serendipity Info Labs Pvt. Ltd. (Serendipity), are concerned they are aggrieved by the communications dated 3rd June, 2015 issued to each of them. The said notices refer to the applications filed on 24th & 7th January, 2015 respectively by APRA and Serendipity. The notice to APRA states that it is an associate of OLA Cabs and its application has been rejected by the competent authority since “you have failed to submit the sworn affidavit declaring therein that company named M/s. OLA CABS is complying with the ban order imposed upon it, in letter & spirit, in pursuance of letter of even numbers dated 24/03/2015 already issued to you.”

7. As far as Serendipity is concerned, the notice dated 3rd June 2015 states that it is a subsidiary of Taxi for Sure Cabs (TFS) and its application has been rejected by the competent authority “since you have failed to submit the sworn affidavit declaring therein that company named M/s. Taxi For Sure Cab (TFS) is complying with the ban order imposed upon it in letter & spirit, in pursuance of letter of even numbers dated 17/04/2015 already issued to you.”

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10. As already noted the order dated 8th December 2014, has already been set aside by this Court since it was a general ban order passed without affording the parties affected an opportunity of being heard. Therefore, this cannot be a valid

ground to reject the application made Petitioner Nos.1 and 2 for grant of licence. In any event neither notice dated 24th March, 2015 issued to APRA nor notice dated 17th April, 2015 issued to Serendipity required them to submit any sworn affidavit declaring that either OLA Cabs or TFS is complying with the ban order imposed upon them.

11. No document has been shown to the Court whereby the Transport Department has informed either Petitioner No.1 or Petitioner No.2 that they have failed to comply with any other deficiency pointed out for the purposes of grant of licence. The only reason given in the impugned orders dated 3rd June 2015 for rejecting the application for licences is that they failed to submit sworn affidavit, in terms of the earlier letters dated 24th March, 2015 (in case of APRA) and 14th April, 2015 (in case of Serendipity). As already observed, those notices do not call upon the Petitioners to submit any affidavit. Consequently, the Court is of the view that the reason given by the Transport Department for rejecting the application of APRA and Serendipity for issuance of licence, is not valid.

12. Consequently, this Court has no hesitation in setting aside the orders dated 3rd June, 2015.

13. Mr. Naushad Ahmed Khan, learned counsel for the GNCTD submitted that there may be other requirements that the Petitioners may have to satisfy in order for them to be granted licences. As far as this submission is concerned, it is made clear that it will be open to the Respondents to write to the Petitioner Nos.1 and 2 without undue delay, and in any event not later than ten days from today, the requirements that they have to satisfy, within a time frame. If the GNCTD is not satisfied with the response, it will give the Petitioners one opportunity to further be heard and give clarification. A decision will thereafter be taken on the application made by Petitioner Nos.1 and 2 and communicated to them not later than four weeks thereafter.

14. The Court accordingly quashes the impugned notices dated 3rd June 2015 issued to Petitioner Nos.1 and 2 by the Transport Department of GNCTD. The consequent coercive action taken by the Transport department pursuant to the General Public Notice dated 8th December, 2014, the order dated 2nd January, 2015 and the impugned notices dated 3rd June, 2015, are also hereby declared as invalid. Any vehicles of Petitioner Nos.1 and 2 that may have been impounded by the Respondents shall be released to them forthwith.”

6. Mr. Naushad Ahmed Khan, learned additional standing counsel for GNCTD contends that petitioners must comply with the Radio Taxi Scheme 2006 as modified on 26th December, 2014 and the provisions of Section 74 of the Motor Vehicles Act, 1988 as well as the directions given by the Supreme Court in **M.C. Mehta**’s case wherein it has been directed that all commercial vehicles would have to run on CNG.

7. Mr. A.N. Haksar, learned senior counsel appearing for the Association of Radio Taxi adopts the arguments of learned counsel for GNCTD and also asserts that the petitioners have no locus standi to file the present writ petition. He submits that the application in the present case was filed with the GNCTD by M/s. ResourceExpert India Private Ltd. through one Mr. Ankit Goyal and not by the petitioners herein. He also emphasises that the applicant is only an aggregator of the vehicles and he has nowhere undertaken that he would ply vehicles with clean fuel.

8. In rejoinder, Mr. Rajiv Nayar points out that in the initial application filed by M/s. ResourceExpert India Private Ltd., they had stated that it is a subsidiary of Uber International Services Holding BV., the petitioner no. 3 herein.

9. Having heard learned counsel for parties, this Court is of the view that a total prohibition or a blanket ban on the right to carry on any trade, business or profession should be imposed in the rarest of rare or in exceptional circumstances. In the first instance, an endeavour should be made by the State to allow everyone to carry on trade, business or profession without any restriction. However, if that is not possible, then the same should be allowed subject to reasonable restrictions. It is settled law that restrictions must not be arbitrary or of excessive nature so as to go beyond the requirement and interest of the general public. It is only in rare and exceptional circumstances that a blanket ban or a prohibition should be imposed on an individual's right to carry on trade, business or profession.

10. This Court is also of the view that the petitioners have the locus standi to maintain the present writ petition as the applicant M/s. ResourceExpert India Private Ltd. in its initial application dated 27th January, 2015 had candidly disclosed that it was the subsidiary of Uber International Services Holding BV. The present writ petition is supported by an affidavit of Mr. Ankit Goyal who had applied on behalf of M/s. ResourceExpert India Private Ltd. It is further settled law that holding and subsidiary companies are one single economic entity and they are to be treated as one concern. (See *DHN Food Distributors Ltd. and Others v. London Borough of Tower Hamlets* [1976] 3 ALL ER 462 and *Scottish Co-operative Wholesale Society Ltd v Meyer*, [1958] 3 ALL ER 66) Consequently, the objection raised by the Association of Radio Taxis is untenable.

11. The objections raised by Mr. Naushad Ahmed Khan, learned additional standing counsel for GNCTD are not reflected in the impugned

order. In fact, they are not the grounds on which the petitioners have been denied the licence. Accordingly, the validity and legality of the aforesaid submissions need not be examined in the present proceedings. In any event, even if the submissions advanced by Mr. Naushad Ahmed Khan are accepted, then also at the highest they warrant imposition of restrictions and not a blanket ban or a prohibition.

12. Consequently, this Court is of the opinion that as the facts and the issue in the present case are similar to that of the case of ***Apra Cabs India Pvt. Ltd. & Ors.*** (supra) decided by a Coordinate Bench of this Court on 11th June, 2015, the petitioners are entitled to the relief as directed in the said order.

13. It is pertinent to mention that the impugned order in the present writ petition is also identical to the impugned order in the case of ***Apra Cabs India Pvt. Ltd. & Ors.*** (supra). In fact, the sole ground mentioned in the impugned order, namely, that the petitioners are not complying with the ban order, was found to be legally untenable in ***Apra Cabs India Pvt. Ltd. & Ors.*** (supra). Accordingly, the impugned order dated 3rd June, 2015 is set aside. The consequent coercive action taken by the Transport department pursuant to the General Public Notice dated 8th December, 2014 and the impugned order dated 3rd June, 2015, are also hereby declared as invalid. Any vehicles of the petitioners that may have been impounded by the respondents shall be released to them forthwith.

14. However, in accordance with the order of the Coordinate Bench of this Court in ***Apra Cabs India Pvt. Ltd. & Ors.*** (supra), it is made clear that it will be open to the respondents to write to the petitioners without undue delay, and in any event not later than ten days from today, the requirements

that they have to satisfy, within a time frame. If the GNCTD is not satisfied with the response, it will give the Petitioners one opportunity to further be heard and give clarification. A decision will thereafter be taken on the application made by petitioners and communicated to them not later than four weeks thereafter. It is also made clear that the respondents shall be entitled to impose any condition in accordance with law in the event they are inclined to grant licence to the petitioners.

15. With the aforesaid observations and directions, present writ petition and application stand disposed of.

MANMOHAN, J

JULY 08, 2015

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