

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

Pronounced on: 11th August, 2015

+ LPA 506/2015 & CM No.13852/2015 (stay)

ANI TECHNOLOGIES PVT LTD

.... Appellant

Through: Mr.Sandeep Sethi, Sr.Adv. and
Mr.D.S. Narula, Sr.Adv. along with
Mr.Khalid Arshad, Adv.

Versus

GOVERNMENT OF NCT OF DELHI & ORS.

.... Respondents

Through: Mr. Naushad Ahmed Khan, Addl.
Standing Counsel for R1
Mr.Kirtiman Singh along with
Mr.Gyanesh Bhardwaj and Mr.Waize
Ali Noor, Adv. for R-3 & 4.
Mr.A.N. Haskar, Sr.Adv. along with
Mr.Udayan Jain, Mr.Sonal Jain and
Ms.Heena Sharma, Adv. for R-5.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JUDGMENT

: **Ms.G.ROHINI, CHIEF JUSTICE**

1. This appeal is preferred against the order of the learned Single Judge dated 29.07.2015 in CM No.12160/2015 in W.P.(C) No.6668/2015.

2. By the said order, the learned Single Judge declined the petitioner's prayer to grant stay of operation of the order impugned in the writ petition, i.e., order dated 01.01.2015 passed by the Deputy Commissioner of Transport, GNCTD and to restrain the respondents from in any manner interfering with the business of the petitioner and/or its associated vehicle

operators from conducting their business under the name and style of ‘OLA CABS’ till the disposal of the writ petition.

3. The appellant/writ petitioner is stated to be a technology company registered with the Ministry of Communications & Information Technology under the Information Technology Act, 2000. It is claimed that the appellant/writ petitioner is the registered owner of the trademark “OLA” and “OLACABS” which is a mobile based application as well as a web based service which enables the citizens to have a quick access to taxis. It is also stated that the appellant company is engaged in the business of providing its mobile application services i.e. “OLA” to commercial vehicle owners having a contract carriage permit/all India permits so as to facilitate them to operate the vehicles for hire under the name, style and business module of “OLACABS”.

4. On 08.12.2014, the Transport Department of GNCTD issued a public notice informing the public that except Easy cab, Mega cab, Meru cab, Chanson cab, Yo cab and Air cab which are licensed with the Transport Department for operating radio taxis, all other transport/taxi service providers through web based technology are prohibited from providing such services to public in NCTD.

5. Challenging the said order dated 08.12.2014, the petitioner filed W.P.(C) No.9290/2014 contending that the impugned ban cannot be made applicable to the petitioner which is merely operating a mobile application and is not covered by the provisions of the Motors Vehicle Act, 1988. It was also contended that they were not given an opportunity to make their

representation before imposing the ban. The said writ petition was disposed of by order dated 23.12.2014 holding as under:-

“Since the petitioners have not afforded any opportunity of being heard, I deem it appropriate to set aside the impugned order and direct that the petition be considered as a representation by the appropriate authority and a final decision be taken thereon within a period of ten days from today after affording the petitioner an opportunity of being heard.

The petition is disposed of with the aforesaid directions.”

6. In pursuance thereof, the Deputy Commissioner of Transport, GNCTD passed an order dated 01.01.2015 holding that the petitioner is a “taxi service provider”. The contention that the petitioner is only an intermediary and aggregator and therefore the provisions of Motor Vehicles Act, 1988 are not applicable was rejected and thus it was held that the vehicles being used by the petitioner company without complying with the directions of the Supreme Court in *M.C. Mehta vs. Union of India & Ors.*; W.P.(C) No.13029/1985 with regard to usage of clean fuel i.e. CNG and without complying with the requirement of the stipulated pre-calibrated meters, are not allowed to ply point-to-point taxi services in Delhi.

7. Aggrieved by the same, the petitioner filed W.P.(C) No.6668/2015 with a prayer to quash the order of the Deputy Commissioner of Transport dated 01.01.2015 as well as the consequential orders passed by the respondent Nos.1 to 4 and to declare that the petitioner is entitled to carry on the business and/or render services in terms of its “olacabs” business model and the same is not in contravention of the provisions of the Motor Vehicles Act, 1988 and the rules made thereunder, particularly, the Radio Taxi Scheme, 2006 as modified on 26.12.2014 by GNCTD. The petitioner also

filed CM No.12160/2015 for interim relief seeking stay of the impugned order dated 01.01.2015 passed by the Deputy Commissioner of Transport.

8. It may be mentioned that the said writ petition was filed on 13.07.2015 and the learned Single Judge by the order under appeal dated 29.07.2015 declined to grant the interim relief and accordingly dismissed CM No.12160/2015. The learned Single Judge also directed the GNCTD to enforce the order dated 01.01.2015 qua All India Tourist Permit Taxis operating on diesel on point-to-point basis within the National Capital of Delhi.

9. The said order of the learned Single Judge dated 29.07.2015 is assailed by the writ petitioner in the present appeal preferred under Clause 10 of the Letters Patent.

10. We have heard Shri Sandeep Sethi, the learned Senior Counsel appearing for the appellant and Shri Naushad Ahmed Khan, the learned Additional Standing Counsel for the GNCTD. We have also heard Shri A.N. Haskar, the learned Senior Counsel appearing for the respondent No.5/Association of Radio Taxis.

11. It is vehemently contended by the learned Senior Counsel appearing for the appellant that since the impugned order dated 01.01.2015 is violative of the appellant's fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution of India as well as the right guaranteed under Article 19(1)(g), the learned Single Judge committed a grave error in declining to stay the operation of the said order pending disposal of the main petition. It is also contended that the learned Single Judge failed to appreciate the fact that the impugned order dated 01.01.2015 is ex-facie, illegal and erroneous

in so far as it seeks to bring the appellant within the ambit of the Radio Taxi Scheme which is totally inapplicable to the appellant. The further contention is that the learned Single Judge failed to take into consideration the fact that the directions of the Supreme Court in M.C. Mehta's case did not impose any ban on plying of All India Tourist Permit Vehicles on diesel fuel in NCTD as long as they conform to the prevalent emission norms.

12. Thus, it is sought to be contended that the learned Single Judge ought to have granted the interim relief, as prayed for having regard to the fact that the writ petitioner has made out a good *prima facie* case and the balance of convenience also heavily lies in its favour and moreover in view of the fact that irretrievable injury would be caused not only to the appellant but also to the thousands of All India Tourist Permit operators who ply their vehicles on diesel.

13. Pointing out that while declining to grant interim stay, the learned Single Judge has also directed the GNCTD to enforce the order dated 01.01.2015, the learned Senior Counsel contended that the said direction is unwarranted in view of the fact that the ban imposed vide public notice dated 08.12.2014 was set aside by this Court by order dated 23.12.2014 in W.P.(C) No.9290/2014 and the subsequent order dated 01.01.2015 passed by the Deputy Commissioner of Transport did not impose any ban as such.

14. It may at the outset be mentioned that Radio Taxi Scheme, 2006 has been formulated by GNCTD so as to enable grant of permits to operators of Radio Taxi networks in Delhi under Section 74 of the Motor Vehicles Act, 1988 and the Rules made thereunder. The Scheme contains various terms and conditions subject to which the licenses would be granted to the

operators of the Radio Taxi networks including that the motor cab should be driven on clean fuel; that the motor cab should be fitted with electronic fare meters; that the vehicle should meet emission standards as prescribed from time to time; that the vehicle must be fitted with GPS/GPRS based tracking devices which must be in constant communication with the Central Control Unit while the vehicle is on duty and that the vehicle must be equipped with a mobile radio fitted in the front panel for communication between driver and the main control room of the licensee. By notification dated 26.12.2014, the Radio Taxi Scheme, 2006 has been amended. One of the features of the amended Scheme is that the licensee will be a radio taxi service provider including an aggregator of Radio Taxis and that the licensee will abide by all relevant statutes as may be applicable including the Motor Vehicles Act, 1988 and the Information Technology Act, 2000.

15. Apparently, the impugned ban order by way of public notice dated 08.12.2014 came to be issued by the Transport Department of GNCTD to ensure that all the taxi service providers operating through web based technology are brought within the purview of the Radio Taxi Scheme.

16. As noticed above, the petitioner claims to be a registered company with the MCIT under the Information Technology Act, 2000. It is also claimed that it is registered under the category of “Other Service Provider (OSP)” under the New Telecom Policy, 1999. The specific case of the appellant/writ petitioner is that the Radio Taxi Scheme is not applicable to it since it is not a company owning/hiring/leasing motor cabs or radio cabs. Thus, it is contended there is no need for registration under the said scheme.

17. It is specifically pleaded in the petition that “OLA” in respect of which the petitioner company is possessing a registered trademark, is only a technology brand and the services offered by it merely involves providing a mobile application to the commercial vehicles in the city which enables the citizens to locate and book a cab and that the petitioner neither operates nor owns the cabs provided to the public. It is also pleaded that the cabs provided through the appellant’s mobile application “OLA” are owned by the individual vehicle operators who also possess the requisite statutory licenses and permits.

18. In the light of the averments in the petition, it is contended by the learned Senior Counsel for the appellant/writ petitioner that the appellant is not governed by the provisions of the Motor Vehicles Act, 1988 and therefore, the respondents have no power or authority to regulate its operations.

19. The stand taken by the appellant/writ petitioner that it is not a taxi operator, but it only performs the role of an aggregator for the private taxi operators or tourists taxi operators who have valid permits under the Motor Vehicles Act, 1988 and the assertion that the business of the petitioner/appellant works on an aggregation model was considered and rejected by the Deputy Commissioner of Transport, GNCTD vide order dated 01.01.2015 holding that the petitioner company in fact provides a simple taxi service by transporting people from one point to another through a vehicle driven by a driver for a fee, which is collected by the driver directly from the passenger and thus, the business activity of the petitioner is no different from connecting through simple telephone or mobile or radio. The Deputy Commissioner of Transport had taken into consideration the

admitted facts that the appellant/writ petitioner has been using taxis holding All India Tourist Taxi Permits; that the petitioner entered into Master Service Agreements with the vehicle operators for day to day running and operation of the vehicles on a trip to trip basis and that the appellant/petitioner is also engaged in providing intra-city services to passengers.

20. Having taken note of the fact that intra-city services are governed by the provisions of Section 74 of the Motor Vehicles Act, 1988, the Deputy Commissioner of Transport further held in the order dated 01.01.2015:

“The AITP vehicles are not required to carry any calibrated meter as is mandatory for intra city taxis and the specific rates of fares is the sole domain to Regional/State Transport Authorities. Therefore, by failing to adhere to these conditions, that are mandatory for running taxi services within the city limits, the Petitioner Company has clearly violated the provisions of the Act and thus, has been banned for carrying out its business illegally, by operating vehicles that are not complaint to ply within the city limits. Further, it would be not out of place to mention here that as per the M.C. Mehta Vs. Union of India and Others, Writ Petition (C) No.13029 of 1985 (B.N.Kirpal, V.V. Khare JJ.) vide orders dated 05.05.20002 had explicitly banned the usage of non-CNG run Transport Vehicles’ within NCT of Delhi and all the Taxis/Ratio Taxis plying within Delhi run on CNG as per the court orders, whereas the AITP vehicles run on Diesel/Petrol as they have to ply to other states for Tourism related business, for which they are designated and by violating these orders too, the Petitioner Company has committed a grave offence and indulged in an illegal activity.”

21. In the light of the findings of fact recorded by the Statutory Authority, it appears to us that the question whether the business activity of the petitioner falls within the purview of Radio Taxi Scheme and whether the

petitioner is governed by the provisions of the Motor Vehicles Act, 1988 is a larger issue, which requires consideration in the writ petition. The learned Single Judge is therefore justified in issuing notice to the respondents observing that the matter has to be extensively heard after the pleadings have been completed.

22. So far as the grant of interim relief is concerned, the order under appeal shows that during the proceedings before the learned Single Judge, it was proposed to permit the writ petitioner to operate its business activity provided it allows only CNG based cabs to provide services in the NCT of Delhi since the same would ensure compliance with Supreme Court's order in *M.C. Mehta case (supra)*. Since the petitioner did not come forward to comply with the requirement of providing CNG based cabs, the learned Single Judge thought it fit to hear the main petition itself after the completion of the pleadings.

23. While arriving at the said conclusion, the learned Single Judge took note of the fact that the Supreme Court by order dated 28.07.1998 in *M.C. Mehta case (supra)* directed replacement of all pre 1990 autos and taxis with new vehicles on clean fuel and that the same has been reiterated in the later order dated 26.03.2001 making it clear that no commercial vehicle shall ply in Delhi unless converted to single fuel mode of CNG w.e.f. 01.04.2001. In the light of the said orders, the learned Single Judge opined that only those taxis which run on CNG can be permitted to ply in Delhi.

24. The learned Single Judge has also taken into consideration the specific case of the Interveners (Association of Radio Taxis) that a large number of diesel taxis having All India Permits issued in neighbouring

States are carrying out point-to-point transportation within the National Capital Region which has adverse impact on the environment.

25. The learned Senior Counsel for the appellants, however, sought to contend that the restrictions imposed by the Supreme Court in *M.C. Mehta (supra)* are only age related i.e. banning the plying of commercial vehicles which are 15 years old and there is no prohibition as such to ply diesel vehicles as taxis in NCT provided they comply with the emission standards and are registered under the prevailing norms. Thus, it is sought to be contended that the learned Single Judge had proceeded on an erroneous presumption that by virtue of the orders in *M.C. Mehta case (supra)*, only CNG vehicles can be permitted to be plied in NCT.

26. On a careful reading of the various orders passed in *M.C. Mehta (supra)* from time to time, it appears to us that the assertion of the appellant that there is no ban of plying commercial vehicles in Delhi unless they are converted to single fuel mode of CNG is factually incorrect.

27. In the order dated 26.03.2001 in *M.C. Mehta (supra)*, the Supreme Court reiterated that no commercial vehicles shall ply in Delhi unless converted to Single Fuel Mode of CNG with effect from 01.04.2001. The reliance of the learned Senior Counsel for the appellant on the order dated 24.09.1999 to substantiate his contention that the requirement is only to the effect that the diesel driven taxis shall conform to EURO II norm appears to be misplaced in the light of the later orders dated 26.03.2001 and 01.04.2001.

28. Therefore, we do not find any justifiable reason to interfere with the order under appeal. Even the direction that the respondents 1 & 2 shall

enforce the impugned order dated 01.01.2015 qua All India Tourists Permit Taxi operating on diesel on point to point basis within the National Capital of Delhi, according to us, is unexceptionable since the same is intended for the purpose of strict compliance of the directions in *M.C. Mehta (supra)*.

29. For the aforesaid reasons, the appeal is devoid of any merits and accordingly, the same is dismissed.

CHIEF JUSTICE

JAYANT NATH, J.

AUGUST 11, 2015
kks/pmc