HIGH COURT OF KARNATAKA

Bench: Justice Suraj Govindaraj

Date of Decision: 27th May 2024

Writ Petition No. 24501 of 2022 (MV)

Writ Petition No. 24486 of 2022 (MV)

UBER INDIA SYSTEMS PRIVATE LIMITED ...Petitioner

Versus

STATE OF KARNATAKA & ORS. ...Respondents

Legislation:

Section 67 of the Motor Vehicles Act, 1988

Section 93 of the Motor Vehicles Act, 1988

Motor Vehicle Aggregator Guidelines, 2020

Karnataka On-demand Transportation Technology Aggregators Rules, 2016 (KODTTA Rules)

Articles 14 and 19(1)(g) of the Constitution of India

Subject: Writ petitions filed by Uber India Systems Private Limited and ANI Technologies Private Limited (operating as OLA) challenging the notification issued by the State of Karnataka fixing fare rates for auto-rickshaws on aggregator platforms and regulating the service charges levied by aggregators.

Headnotes:

Motor Vehicles Act - Fare Regulation by State - Applicability of Central Guidelines - Service Charges by Aggregators - High Court dealt with the validity of the State's notification fixing fare rates for auto-rickshaws on aggregator platforms, including service charges, under Section 67 of the Motor Vehicles Act, 1988. The court examined whether the Central Government's Motor Vehicle Aggregator Guidelines, 2020, were mandatory

for the State to follow and if the fare and service charges could be fixed without adhering to these guidelines.

Mandatory vs. Directory Nature of Central Guidelines - Discretion of State - Held, the Central Government's guidelines under Section 93 of the Motor Vehicles Act, 1988, are persuasive and not mandatory. The State Government has the discretion to consider these guidelines but is not bound to follow them strictly while issuing notifications under Section 67 of the Act.

Estoppel Against the Statute - Aggregator's Participation in Consultative Process - court reiterated the principle that there can be no estoppel against the statute. Participation in the consultative process by aggregators like Uber and OLA does not preclude them from challenging the service charges fixed by the State. Even if they participated, it does not imply acceptance of the terms if they are contrary to statutory provisions.

Service Charges by Aggregators - Legality and Reasonableness - The notification fixing service charges at 5% of the fare was upheld. The court held that aggregators cannot charge surge pricing or dynamic pricing beyond what is permitted by the State, citing the need for transparency and regulation to prevent abuse of the system by aggregators at the expense of drivers and customers.

Absence of Separate License Requirement for Aggregating Auto-rickshaws - The court clarified that a separate license for aggregating auto-rickshaws is not required under the existing license issued to aggregators like Uber, as the license is vehicle-agnostic and covers motor cabs, which includes auto-rickshaws under the Karnataka On-demand Transportation Technology Aggregators Rules, 2016.

No Discrimination Among Aggregators - Uniform Application of Regulations - court addressed the contention of discriminatory treatment against OLA compared to other aggregators like Namma Yatri and RAPIDO. It was held that regulations and notifications apply uniformly, and no selective enforcement was found against any particular aggregator.

Decision: The writ petitions filed by Uber India Systems Private Limited and

ANI Technologies Private Limited (OLA) were dismissed. The State's notification dated 25.11.2022, fixing fare rates and service charges for auto-rickshaws on aggregator platforms, was upheld. The aggregators were allowed to collect service charges as per the impugned notification but were restricted from charging surge pricing beyond the regulated limits.

Referred Cases:

- Roppen Transportation Services Pvt. Ltd. v. Union of India (2020)
- Veeramani & Anr. v. Regional Transport Authority, Bangalore (1980)
- Mohinder Singh Gill v. Chief Election Commr. (1978)
- Captain Sube Singh v. Lt. Governor of Delhi (2004)

Representing Advocates:

Sri K.G. Raghavan, Senior Advocate for Uber
Sri Pradeep Naik, Advocate for Uber
Sri Aditya Sondhi, Senior Advocate for OLA
Sri Shashi Kiran Shetty, Advocate General for the State of Karnataka
Sri Amruthesh N.P., Advocate for intervenors

ORDER

1. M/s Uber India in W.P. No.25401/2022 is before this court seeking the following reliefs:

a. *Issue a writ of certiorari or any other appropriate writ, order, or direction, quashing the Impugned Notification dated 25.11.2022 bearing No.TD 241 TDO 2022 issued by the Respondent No.1 (**Annexure A);***

b. *Pass such other order or direction as this Hon'ble Court may deem expedient, in the interest of justice and equity.*

2. M/s ANI Technologies Private Limited which operates under the Trade Union OLA is before the court in WP 24486/2022 seeking for the following reliefs:

a. *Issue a writ in the nature of certiorari and/or any other appropriate writ, order, or direction in the nature of setting aside/ quashing the Impugned Notification dated 25.11.2022 bearing No. TD 241 TDO 2022*

(ANNEXURE- A) issued by RespondentState as being wholly illegal, arbitrary, mala fide, irrational and therefore, ultra vires the provisions of the MV Act, rules framed thereunder as also the Motor Vehicle Aggregator Guidelines, 2020; and Issue a writ in the nature of mandamus, and/or any other appropriate writ, order, or direction to the Respondents to prescribe fares in relation providing auto-rickshaws on aggregator platforms in the State of Karnataka after properly considering, qualitatively assessing the relevant factors and more importantly, adhering to the Motor Vehicle Aggregator Guidelines, 2020; and

b. Pass any other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

3. In both the above matters, the petitioners are challenging the fare fixed by the state government with respect to autorickshaws on-boarded on their respective platforms, which are accessed by a mobile application.

Submissions of Shri K G Raghavan Learned Senior Counsel on behalf of Uber

4. Sri. K.G. Raghavan learned Senior counsel instructed by Sri. Pradeep Naik, learned counsel for Uber, the petitioner in W.P. No.25401/2022, would submit that;

4.1. Uber is a technology-based aggregator that facilitates transportation services whose platform is known as the Uber App and has been in operation in the country since 2013; with respect to taxis, in the year 2018, it started onboarding and operating autorickshaws on the said platform through the said app.

4.2. On 6.10.2022, respondent No.2-Chairman, Karnataka State Transport Authority and Respondent No.3–Commissioner for Transport and Road Safety issued a notice to Uber followed by an order on 11.10.2022 directing Uber to stop aggregation of autorickshaws since Uber did not have a valid license to aggregate autorickshaws, and further since Uber was in breach of the fare notification dated 6.11.2021 where under fares were fixed for autorickshaws.

4.3. Uber challenged both the notice and order in W.P. No.20437/2022, wherein an interim order of stay was granted on 14.10.2022 subject to Uber following the fare notification dated 6.11.2021 with an addition of 10% and applicable service taxes chargeable towards service /convenience fee of Uber. His submission is that this was only an interim arrangement operational for 15 days until the State government fixes the fare. The said interim arrangement was made on the premise that the State was open and willing to formulate fare fixation within 10 to 12 days by the respondents adhering to Motor Vehicle Aggregator Guidelines 2020. However, the respondents, in variance to the said understanding, issued the impugned notification on 25.11.2022 under Section 67 of the Motor Vehicles Act, 1988 ['M.V. Act' for short] directing the Regional Transport Authorities [RTA] to fix service fees as regards autorickshaw cabs at 5% of the fare transaction, there was no revision of the actual fare itself.

4.4. The State has no power to regulate the service fee, which falls under the sole business domain and expertise of Uber. Insofar as the validity or otherwise of the License of Uber is concerned, it is contended that the same is a subject matter of W.P. No.20437/2022, which is pending and would be subject to the decision of the Division Bench in W.A. No.4787/2016.

4.5. The Scheme of Section 67 of the M.V.Act and that under Section 93 of the M.V.Act is entirely different. Section 93 deals with aggregators, while Section 67 does not. The Central Government has issued specific guidelines with respect to aggregators, which would have to be followed by all the state governments. In the present case, the same is not followed.

4.6. The State government does not have the power to fix service fees that are payable to the aggregators. The service fee is not contemplated under Section 67. Only Section 93 can regulate aggregators, and Section 93 does not contemplate the fixation of a service fee/convenience fee. Thus, it is to be left to the sole discretion of the aggregator. Thus he submits that the service fee also cannot be fixed under Section 93 of the M.V.Act.

4.7. As an alternative to this argument, he submits that if at all any fixing of the service fee or otherwise has to be made under Section 93, then the same would have to be so done in compliance with Section 96, which required the procedure under Section 212 of the M.V.Act to be followed for formulating prescribed Rules.

4.8. In the alternative to this, he submits that the impugned notification suffers from Wednesbury's unreasonableness, and on this ground also the petition is required to be allowed and the impugned notification quashed.

4.9. While arguing on the aspect of service fee fixation, his submission is that so long as the service fee fixed is unreasonable or without authority, the same is required to be quashed, and he does not intend or call upon this Court to fix the service fee.

4.10. He refers to Subsection (12) of Section 2 of the M.V. Act, which defines '**fares**' which is reproduced hereunder for easy reference:

*(12) "**fares**" includes sums payable for a season ticket or in respect of the hire of a contract carriage;*

4.11. By referring to the said provision, he submits that "fare" includes sums payable in respect of the hire of a contract carriage. Thus, the fare will not cover the service fee.

4.12. He refers to Sub-section (7) of Section 2 of the M.V.Act, which defines 'contract carriage' which is reproduced hereunder for easy reference:

*(7) "**contract carriage**" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum—*

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes—

(i) A maxicab; and

(ii) a motor cab notwithstanding that separate fares are charged for its passengers;

4.13. By referring to the above, he submits that a contract carriage means a motor vehicle which carries passengers for hire or reward under a contract, which is entered into by a person with a permit holder in relation to such vehicle.

4.14. Uber not having a permit, the permit being issued to the owner of the autorickshaw, the principles of contract carriage would also not apply to the transaction between Uber and the passenger, and thus no regulation could be made as regards any component/amount which does not relate to contract carriage.

4.15. Uber only provides technology-enabled services; it does not provide transportation services or vehicles, it only provides a platform for a person who wishes to avail of service to contact a person who wishes to provide such service, viz., cab driver/owner of the cab, Uber not being either the owner or the driver, cannot be said to provide transportation service. There is a clear distinction between an aggregator under Subsection (1A) of Section 2 and Section 93 of the M.V. Act as compared to a transporter or transport service contemplated under Subsection (7) of Section 2, Section 66, 67, 73 and 74 of the M.V. Act.

4.16. The taxation and the applicability thereof are also different in as much as 5% GST is payable for transportation services. In contrast, Uber services being a technology-enabled service, Uber is making a payment of 18% GST on the said service fee. He distinguishes the fare and service fee on this basis and submits that, in so far as the fare is concerned 5% GST is payable, in so far as service fee is concerned, the same being a technology-enabled service, GST at 18% is payable by Uber which is the demand made and accepted by the State. The State, having accepted two distinct transactions which are exigible to GST separately at different rates, cannot now contend that the said transaction is one and the same and/or claim that the State can also regulate the service fee/charges that are levied by Uber.

4.17. Based on the above, the submission is that the fare under Section 67 of the MV Act and the service fee for availing the aggregators' services like that of Uber would not come under this definition.

4.18. He relies on the decision of the Hon'ble Apex Court in ***RBI v. Peerless General Finance & Investment Co. Ltd.***[1], more particularly para 31 and 32, which are reproduced hereunder for easy reference;

31. *Much argument was advanced on the significance of the word "includes" and what an inclusive definition implies. Both sides relied on Dilworth case [Dilworth v. Commissioner of Stamps, 1899 AC 99]. Both sides read out the wellknown passage in that case where it was stated: (AC pp. 105-06)*

"The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to shew that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include', and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions."

Our attention was also invited to Ardeshir H. Bhiwandiwala v. State of Bombay, CIT v. Taj Mahal Hotel and S.K. Gupta v. K.P. Jain.

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32. *We do not think it necessary to launch into a discussion of either Dilworth case or any of the other cases cited. All that is necessary for us to say is this: Legislatures resort to inclusive definitions (1) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it, (2) to include meanings about which there might be some dispute, or, (3) to bring under one nomenclature all transactions possessing certain similar features but going under different names.*

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[1] *(1987) 1 SCC 424 : 1987 INSC 20*

Depending on the context, in the process of enlarging, the definition may even become exhaustive. We do not think that by using the word "includes", in the definition in Section 2(e) of the Act, the Parliament intended to so expand the meaning of prize chit as to take in every scheme involving subscribing and refunding of money. The word "includes", the context shows, was intended not to expand the meaning of "prize chit" but to cover all transactions or arrangements of the nature of prize chits but under different names. The expression "prize chit" had nowhere been statutorily defined before. The Bhabatosh Datta Study Group and the Raj Study Group had identified the schemes popularly called 'prize chits'. The Study Groups also recognised that "prize chits" were also variously called benefit/savings schemes and lucky draws and that the basic common features of the schemes were the giving of a prize and the ultimate refund of the amount of subscriptions (vide para 6.3 of the report of the Raj Study Group). It was recommended that prize chits and the like by whatever name called should be banned. Since prize chits were called differently, "prize chits", 'benefit/savings schemes", "lucky draws", etc. it became necessary for the Parliament to resort to an inclusive definition so as to bring in all transactions or arrangements containing these two elements. We do not think that in defining the expression "prize chit", the Parliament intended to depart from the meaning which the expression had come to acquire in the world of finance, the meaning which the Datta and the Raj Study Groups had given it. That this is the only permissible interpretation will also be further evident from the text of the chit and the context as we shall presently see.

4.19. He relies on the decision of the Hon'ble Apex Court in ***Godfrey Phillips India Ltd. v. State of U.P.***[2], more particularly para 73,74 and 82, which are reproduced hereunder for easy reference;

73. *Having rejected the second premise contended for by Mr Salve, the next question is whether the language of Entry 62 List II would resolve the issue. The juxtaposition of the different taxes within Entry 62 itself is in our view of particular significance. The entry speaks of "taxes on luxuries including taxes on entertainments, amusements, betting and gambling". The word "including" must be given some meaning. In ordinary parlance it indicates that what follows the word "including" comprises or is contained in or is a part of the whole of the word preceding. The nature of the included*

[2] *(2005) 2 SCC 515 : 2005 INSC 44*

items would not only partake of the character of the whole, but may be construed as clarificatory of the whole.

74. *It has also been held that the word "includes" may in certain contexts be a word of limitation (South Gujarat Roofing Tiles Manufacturers Assn. v. State of Gujarat [(1976) 4 SCC 601 : 1977 SCC (L&S) 15]). In the context of Entry 62 of List II this would not mean that the word "luxuries" would be restricted to entertainments, amusements, betting and gambling but would only emphasise the attribute which is common to the group. If luxuries is understood as meaning something which is purely for enjoyment and beyond the necessities of life, there can be no doubt that entertainments, amusements, betting and gambling would come within such understanding. Additionally, entertainments, amusements, betting and gambling are all activities. "Luxuries" is also capable of meaning an activity and has primarily and traditionally been defined as such. It is only derivatively and recently used to connote an article of luxury. One can assume that the coupling of these taxes under one entry was not fortuitous but because of these common characteristics.*

82. *Furthermore, where articles have been made the object of taxation, either directly or indirectly, the entries in the legislative lists have specifically said so or the impost is such that the subject-matter of tax follows by necessary implication. In List II itself, the State Legislature has been given the right to levy taxes on the entry of goods under Entry 53, on "carriage of goods and passengers" under Entry 56, on "vehicles" under Entry 57 and on "animals and boats" under Entry 58. There is no instance in any of the legislative lists of a tax being leviable only with reference to an attribute. An attribute as an object of taxation without reference to the object it qualifies would lead to legislative mayhem, blur the careful demarcation between taxation entries and upset the elaborate scheme embodied in the Constitution for the collection and distribution of revenue between the Union and the States. For example, would a luxury vehicle be subjected to tax under Entry 62 or Entry 57 of List II? In the latter case, the levy would be subject to provisions of Entry 35 of List III and hence capable of being overridden by Parliament. If it is referable to Entry 62, there would be no such concurrent power in Parliament.*

4.20. He relies on the decision of the Hon'ble Apex Court in ***Karnataka Power***

Transmission Corpn. Limited and Anr. v. Ashok Iron Works (P) Ltd.[3], more particularly para 14 to 17 and 21, which are reproduced hereunder for easy reference;

14. *The learned counsel also submitted that the word "includes" must be read as "means". In this regard, the learned counsel placed reliance upon two decisions of this Court, namely; (1) South Gujarat Roofing Tiles Manufacturers Assn. v. State of Gujarat and (2) RBI v. Peerless General Finance and Investment Co. Ltd. [(1987) 1 SCC 424]*

15. *Lord Watson in Dilworth v. Stamps Commr. made the following classic statement: (AC pp. 10506)*

"… The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to shew that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include', and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions."

16.*Dilworth and few other decisions came up for consideration in Peerless General Finance and Investment Co. Ltd. [(1987) 1 SCC 424] and this Court summarised the legal position that (Peerless case SCC pp. 449-50, para 32) inclusive definition by the legislature is used:*

"32. … (1) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it; (2) to include meanings about which there might be some dispute; or (3) to bring under one nomenclature all transactions possessing certain similar features but going under different names."

17. *It goes without saying that interpretation of a word or expression must*

[3] *(2009) 3 SCC 240 : 2009 INSC 131*

depend on the text and the context. The resort to the word "includes" by the legislature often shows the intention of the legislature that it wanted to give extensive and enlarged meaning to such expression. Sometimes, however, the context may suggest that word "includes" may have been designed to mean "means". The setting, context and object of an enactment may provide sufficient guidance for interpretation of the word "includes" for the purposes of such enactment.

***21.** Section 2(1)(m), is beyond all questions an interpretation clause, and must have been intended by the legislature to be taken into account in construing the expression "person" as it occurs in Section 2(1)(d). While defining "person" in Section 2(1)(m), the legislature never intended to exclude a juristic person like company. As a matter of fact, the four categories by way of enumeration mentioned therein is indicative, Categories (i), (ii) and (iv) being unincorporate and Category (iii) corporate, of its intention to include body corporate as well as body unincorporate. The definition of "person" in Section 2(1)(m) is inclusive and not exhaustive. It does not appear to us to admit of any doubt that company is a person within the meaning of Section 2(1)(d) read with Section 2(1)(m) and we hold accordingly.*

4.21. He relies on the decision of the Hon'ble Apex Court in ***South Gujarat Roofing Tiles Manufacturers Assn. v. State of Gujarat***[4], more particularly para 5, which is reproduced hereunder for easy reference;

***5.** The contention of MrTarkunde for the appellants is that the articles mentioned in the explanation were intended to be exhaustive of the objects covered by Entry 22. According to MrTarkunde if the legislature wanted to bring within the entry all possible articles of pottery then there was hardly any point in mentioning only a few of them by way of explanation. To this Mr Patel's reply is that it is wellknown that where the legislature wants to exhaust the significance of the term defined, it uses the word "means" or the expression "means and includes", and that if the intention was to make the list exhaustive, the legislature would not have used the word "includes" only. We do not think there could be any inflexible rule that the word 'include' should be read always as a word of extension without reference to the context. Take for instance Entry 19 in the schedule which also has an explanation containing the word "includes". Entry 19 is as follows:*

[4] *(1976) 4 SCC 601 : 1976 INSC 254*

"Employment in any tobacco processing establishment, not covered under Entry 3. Explanation.—For the purpose of this entry, the expression 'processing' includes packing or unpacking, breaking up, sieving, threshing, mixing, grading, drying, curing or otherwise treating the tobacco (including tobacco leaves and stems) in any manner."
Entry 3 to which Entry 19 refers reads: "Employment in any tobacco (including bidi making) manufactory."

It is clear from the explanation to Entry 19 that there could be no other way or manner of "processing" besides what is stated as included in that expression. Though "include" is generally used in interpretation clauses as a word of enlargement, in some cases the context might suggest a different intention. Pottery is an expression of very wide import, embracing all objects made of clay and hardened by heat. If it had been the legislature's intention to bring within the entry all possible articles of pottery, it was quite unnecessary to add an explanation. We have found that the explanation could not possibly have been introduced to extend the meaning of potteries industry or the articles listed therein added ex abundanticautela. It seems to us therefore that the legislature did not intend everything that the potteries industry turns out to be covered by the entry. What then could be the purpose of the explanation. The explanation says that, for the purpose of Entry 22, potteries industry "includes" manufacture of the nine articles of pottery named therein. It seems to us that the word "includes" has been used here in the sense of 'means'; this is the only construction that the word can bear in the context. In that sense it is not a word of extension, but limitation; it is exhaustive of the meaning which must be given to potteries industry for the purpose of Entry 22. The use of the word "includes" in the restrictive sense is not unknown. The observation of Lord Watson in Dilworth v. Commissioner of Stamps which is usually referred to on the use of "include" as a word of extension, is followed by these lines:

"But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include', and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must

invariably be attached to these words or expressions."

It must therefore be held that the manufacture of Mangalore pattern roofing tiles is outside the purview of Entry 22.

4.22. He relies on the decision of the Hon'ble Apex Court in ***State of Bombay v. Hospital Mazdoor Sabha***[5], more particularly para 12, which is reproduced hereunder for easy reference;

12. *It is clear, however, that though Section 2(j) uses words of very wide denotation, a line would have to be drawn in a fair and just manner so as to exclude some callings, services or undertakings. If all the words used are given their widest meaning, all services and all callings would come within the purview of the definition; even service rendered by a servant purely in a personal or domestic matter or even in a casual way would fall within the definition. It is not and cannot be suggested that in its wide sweep the word "service" is intended to include service howsoever rendered in whatsoever capacity and for whatsoever reason. We must, therefore, consider where the line should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in Section 2(j); and* [5]*1960 SCC OnLine SC 44 : 1960 INSC 15 that no doubt is a somewhat difficult problem to decide.*

4.23. By relying on all the above Judgments, he submits that the word 'fare' would include sums payable in respect of hire of a contract carriage, this being inclusive definition, commission/service charges not being mentioned under Subsection (12) of Section 2 the fare fixed under Section 67 cannot include commission/service charges leviable by Uber. He once again submits that the usage of the word 'includes' would be a limited definition and would apply only to the items expressly stated to have been included. The commission/service charges not being included is therefore excluded is the submission.

4.24. Section 67 of the M.V. Act does not apply to aggregators. Aggregators constituting a separate class under the M.V. Act are governed by a distinct chapter under the MV Act, namely Chapter-V, which contains specific provisions relating to aggregators pursuant to the 2019 amendment to the MV Act.

4.25. The definition of fare under Sub-section (12) of Section 2 has not undergone any change post the introduction of aggregators into the MV Act. There is no

amendment to Subsection (12) of Section 2; it is only Section 93, which would be applicable since an aggregator was not contemplated when the MV Act was formulated. Thus, in essence, he submits that the state government does not have any power to regulate, restrict, fix, or otherwise make any provision with respect to service fees payable to the aggregators under Section 67 of the MV Act. Alternatively, he submits that the impugned notification suffers from non-
application of mind.

4.26. He relies on the decision of the Hon'ble Apex Court in ***RBI v. Peerless General Finance & Investment Co. Ltd.***[5], more particularly para 33, which is reproduced hereunder for easy reference;

> ***33.*** *Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression "Prize Chit" in Srinivasa [(1980) 4 SCC 507 : (1981) 1 SCR 801 : 51 Com Cas 464] and we find no reason to depart from the Court's construction.*

4.27. He relies on the decision of the Hon'ble Apex Court in ***Doypack Systems (P)***

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[5] *(1987) 1 SCC 424 : 1987 INSC 20*

Ltd. v. Union of India[6], more particularly para 58 and 59, which are reproduced hereunder for easy reference;

> ***58.*** *The words in the statute must, prima facie, be given their ordinary meanings. Where the grammatical construction is clear and manifest and without doubt, that construction ought to prevail unless there are some strong and obvious reasons to the contrary. Nothing has been shown to warrant that literal construction should not be given effect to. See Chandavarkar S.R. Rao v. Ashalata [(1986) 4 SCC 447, 476] approving 44 Halsbury's Laws of England, 4th Edn., para 856 at page 552, Nokes v. Doncaster Amalgamated Collieries Limited [1940 AC 1014, 1022] . It must be emphasised that interpretation must be in consonance with the Directive Principles of State Policy in Article 39 (b) and (c) of the Constitution.*
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> ***59.*** *It has to be reiterated that the object of interpretation of a statute is to discover the intention of the Parliament as expressed in the Act. The dominant purpose in construing a statute is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole and in its context. That intention, and therefore the meaning of the statute, is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand. In the present case, the words used represent the real intention of the Parliament as we have found not only from the clear words used but also from the very purpose of the vesting of the shares. If we bear in mind the fact that these shares were acquired from out of the investments made by these two companies and furthermore that the assets of the company as such minus the shares were negative and further the Act in question was passed to give effect to the principles enunciated in clauses (b) and (c) of Article 39 of the Constitution, we are left with no doubt that the shares vested in the Central Government by operation of Sections 3 and 4 of the Act. See in this connection the observations of Halsbury's Laws of England, 4th edn. Volume 44, paragraph 856 at page 522 and the cases noted therein.*

4.28. He relies on the decision of the Hon'ble Apex Court in ***Shri Hariprasad Shivshanker Shukla v. A.D. Divelkar and Ors***[7], more particularly para 11, which is reproduced hereunder for easy reference;

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[6] *(1988) 2 SCC 299 : 1988 INSC 42*

[7] *AIR 1957 SC 121: 1956 INSC 72*

11. *There is no doubt that when the Act itself provides a dictionary for the words used, we must look into that dictionary first for an interpretation of the words used in the statute. We are not concerned with any presumed intention of the legislature; our task is to get at the intention as expressed in the statute. Therefore, we propose first to examine the language of the definition and see if the ordinary, accepted notion of retrenchment fits in, squarely and fairly, with the language used. What is the ordinary, accepted notion of retrenchment in an industry? We have had occasion to consider this question in Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union [Civil Appeal No. 247 of 1954 decided on October 23, 1956] where we observed: "But retrenchment connotes in its ordinary acceptation that the business itself is being continued but that a portion of the staff or the labour force is discharged as surplusage and the termination of services of all the workmen as a result of the closure of the business cannot therefore be properly described as retrenchment". It is true that these observations were made in connection with a case where the retrenchment took place in 1951, and we specially left open the question of the correct interpretation of the definition of 'retrenchment' in Section 2(oo) of the Act. But the observations do explain the meaning of retrenchment in its ordinary acceptation. Let us now see how far that meaning fits in with the language used. We have referred earlier to the four essential requirements of the definition, and the question is, does the ordinary meaning of retrenchment fulfill those requirements? In our opinion it does. When a portion of the staff or labour force is discharged as surplus age in a continuing business, there are (a) termination of the service of a workman; (b) by the employer; (c) for any reason whatsoever; and (d) otherwise than as a punishment inflicted by way of disciplinary action. It has been argued that by excluding bona fide closure of business as one of the reasons for termination of the service of workmen by the employer, we are cutting down the amplitude of the expression 'for any reason whatsoever' and reading into the definition words which do not occur there. We agree that the adoption of the ordinary meaning gives to the expression 'for any reason whatsoever' a somewhat narrower scope; one may say that it gets a colour from the context in which the expression occurs; but we do not agree that it amounts to importing new words in the definition. What after all is the meaning of the expression 'for any reason whatsoever'? When a portion of the staff or labour force is discharged as surplusage in a running or continuing business, the termination of service which follows may be due to a variety of reasons;*

e.g., for economy, rationalisation in industry, installation of a new labour-saving machinery, etc. The legislature in using the expression 'for any reason whatsoever' says in effect: "It does not matter why you are discharging the surplus; if the other requirements of the definition are fulfilled, then it is retrenchment". In the absence of any compelling words to indicate that the intention was even to include a bona fide closure of the whole business, it would, we think, be divorcing the expression altogether from its context to give it such a wide meaning as is contended for by learned counsel for the respondents. What is being defined is retrenchment, and that is the context of the definition. It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended. Where, within the framework of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined.

4.29. By relying on the above Judgments, his submission is that the interpretation and or meaning given to the text of a statute has to be contextual in nature. Without the context being appreciated, the text would not have any meaning. Though amendments have been made to the M.V.Act to include the concept of aggregators and several provisions made in the amendment included in the year 2019, there is no amendment made to the definition of 'Fare' under Subsection (12) of Section 2 of the M.V.Act. Thus, fare having been retained to mean and include sums payable in respect of the hire of a contract carriage, it is deemed that the commission/service charges are excluded from the definition of fare.

4.30. When the interim order was passed in WP No.20437/2022, the State had categorically stated that its primary concern is fixing the fare under Section 67 of the M.V. Act and the service fee collected by Aggregators like Uber, which is subject to the contract between aggregators and permit holders. Thus, the State cannot regulate any aspect of the service fee.

4.31. By relying on Section 93 of the MV Act, he submits that the same is also not a complete code for the regulation of aggregators, even Section 93 does not confer power on the State to provide or fix service fees, the State can only include conditions relating to a period for which a license is to be granted, fee payable for license, deposit of security, providing for insurance,

circumstances in which license may be suspended or revoked, and such other conditions as maybe necessary. The impugned notification having been issued under Section 67, the State cannot now take any shelter under Section 93 since the procedure under Section 93 has not been complied with.

4.32. He relies on the decision of the Hon'ble Apex court in **Mohinder Singh Gill v. Chief Election Commissioner**[8], New Delhi, more particularly para 8, which is reproduced hereunder for easy reference;

> ***8.*** *The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji: "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."*
>
> *Orders are not like old wine becoming better as they grow older.*

4.33. By relying on **Mohinder Singh Gill's case,** he submits that the reasons for passing an order by the Authority, be it judicial, quasi-judicial or administrative, have to be apparent on the face of the order itself. The consideration made by the Authority of various factors is required to be borne out from the order. In the present case, no such reasoning is found in the order, the objection statement is filed, and arguments are advanced by the State. The explanation now offered cannot be accepted nor read into the order is the submission.

4.34. The procedure prescribed under Section 93 contemplates compliance with the rigors of Section 212, which requires the laying of rules before the legislature. This procedure not having been followed, the impugned notification does not satisfy the requirement of Section 212, and for this reason also, Section 93

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[8] *(1978) 1 SCC 405 : 1977 INSC 227*

cannot be invoked by the State in answer to the claim of Wednesbury's unreasonableness.

4.35. Services are provided under 2 stages, First is a contract between Uber and the autorickshaw driver/permit holder, and Second is a contract between the autorickshaw driver and the passenger. His submission is that there is no contract between Uber and the passenger, nor is there a tripartite contract between Uber, the autorickshaw Driver/permit holder and the passenger. Thus, there being no privity of contract between Uber and the passenger as regards services provided by the autorickshaw driver/permit holder to the passenger, the service fee is charged by Uber as regards Uber enabling the passenger to book its ride with the auto-rickshaw driver/permit holder.

4.36. Service fees are required to be charged since Uber provides various value-added services to passengers, including

4.36.1. safety features, that is, background checks of the drivers and riders,

4.36.2. drivers/partners insurance,

4.36.3. in-app leveraging of technology,

4.36.4. making available the details of the driver with name, photo, License number, etc. to the passenger,

4.36.5. all the trips being GPS tracked, riders/passengers can share details of the individual trip to their near and dear ones with up to five persons,

4.36.6. two-way phone anonymisation with the details of the riders and drivers are marked to maintain privacy,

4.36.7. safety tool kits,

4.36.8. 24/7 helpline,

4.36.9. emergency button, safety campaigns, 24/7 support, etc.

4.37. All these require investment and expenditure to be incurred by Uber, and these aspects have not been taken into consideration by the state while fixing the service fee vide the impugned notification.

4.38. By referring to para 17 of the additional affidavit dated 20.07.2023, he submits

that Uber incurs an expenditure of ₹24.19 per trip, the said calculations having been made as per the internal unaudited business profit and loss Statement. These amounts have not been taken into account while fixing the service fees, hence the impugned notification suffers from Wednesbury's unreasonableness inasmuch as the relevant factors have not been taken into consideration by the State.

4.39. His submission is also that while fixing the said service fee, it was the duty of the State to have taken into consideration all the aforesaid aspects, whether Uber gave the said details or not since the State is required to exercise its power in a reasonable and non-arbitrary fashion. Conversely, he submits that without a demand being made there was no requirement for Uber to furnish any details.

4.40. There is no reason which has been provided to fix the maximum limit of service fee at 5%, which is abysmally low and is therefore arbitrary, capricious, and biased, smacking of Wednesbury's unreasonableness.

4.41. He relies on the decision of the Hon'ble Apex Court in **Shri Sitaram Sugar Co. Ltd. v. Union of India**[9], more particularly para 27, 45 to 47, which are reproduced hereunder for easy reference;

> ***27.*** *The petitioners contend that although the government has the discretion to fix different prices for different areas or for different factories, or for different kinds of sugar, such wide discretion has to be reasonably exercised. It is, of course, a wellaccepted principle that any discretion conferred on the executive has to be reasonably exercised.*
>
> *Nevertheless, it is a discretion which the court will not curtail unless the exercise of it is impeachable on well accepted grounds such as 'ultra vires' or 'unreasonableness'.*
>
> ***45.*** *Price fixation is in the nature of a legislative action even when it is based on objective criteria founded on relevant material. No rule of natural justice is applicable to any such order. It is nevertheless imperative that the action of the authority should be inspired by reason: Saraswati Industrial Syndicate Ltd. The government cannot fix any arbitrary price. It cannot fix prices on extraneous considerations: Renusagar.*

[9] *(1990) 3 SCC 223 at page 243 : 1990 INSC 82*

46. *Any arbitrary action, whether in the nature of a legislative or administrative or quasi-judicial exercise of power, is liable to attract the prohibition of Article 14 of the Constitution. As stated in E.P. Royappa v. State of Tamil Nadu [(1974) 4 SCC 3: 1974 SCC (L&S) 165: (1974) 2 SCR 348] "equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch". Unguided and unrestricted power is affected by the vice of discrimination: Maneka Gandhi v. Union of India. The principle of equality enshrined in Article 14 must guide every State action, whether it be legislative, executive, or quasi-judicial: Ramana Dayaram Shetty v. International Airport Authority of India; Ajay Hasia v. Khalid Mujib Sehravardi and D.S. Nakara v. Union of India.*

47. *Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be "reasonably related to the purposes of the enabling legislation". See Leila Mourning v. Family Publications Service [411 US 356: 36 L ed 2d 318]. If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires": per Lord Russel of Killowen, C.J. in Kruse v. Johnson.*

4.42. By relying on the above statement, he submits that 5% commission/service charges have not been fixed in good faith, which is not reasonable or intra vires the power granted. Fare having been fixed under Section 67, it is by way of a separate notification that 5% commission/service charges have been fixed over and above the fare which is not permissible.

4.43. He relies on the decision of the Hon'ble Apex Court in ***Union of India v. Cynamide India Ltd.***[10], more particularly para 31, which is reproduced hereunder for easy reference;

[10] *(1987) 2 SCC 720 : 1987 INSC 100*

31. *We mentioned that the price fixed by the Government may be questioned on the ground that the considerations stipulated by the order as relevant were not taken into account. It may also be questioned on any ground on which a subordinate legislation may be questioned, such as, being contrary to constitutional or other statutory provisions. It may be questioned on the ground of a denial of the right guaranteed by Article 14, if it is arbitrary, that is, if either the guidelines prescribed for the determination are arbitrary or if, even though the guidelines are not arbitrary, the guidelines are worked in an arbitrary fashion. There is no question before us that Para 3 prescribes any arbitrary guideline. It was, however, submitted that the guidelines were not adhered to and that facts and figures were arbitrarily assumed. We do not propose to delve into the question whether there has been any such arbitrary assumption of facts and figures. We think that if there is any grievance on that score, the proper thing for the manufacturers to do is bring it to the notice of the Government in their applications for review. The learned counsel argued that they were unable to bring these facts to the notice of the Government as they were not furnished the basis on which the prices were fixed. On the other hand, it has been pointed out in the counter-affidavits filed on behalf of the Government that all necessary and required information was furnished in the course of the hearing of the review applications and there was no justification for the grievance that particulars were not furnished. We are satisfied that the procedure followed by the Government in furnishing the requisite particulars at the time of the hearing of the review applications is sufficient compliance with the demands of fair play in the case of the class of persons claiming to be affected by the fixation of maximum price under the Drugs (Prices Control) Order. As already stated by us, manufacturers of bulk drugs who claim to be affected by the Drugs (Prices Control) Order, belong to a class of persons who are well and fully informed of every intricate detail and particular which is required to be taken into account in determining the price. In most cases, they are the sole manufacturers of the bulk drug and even if they are not the sole manufacturers, they belong to the very select few who manufacture the bulk drug. It is impossible to conceive that they cannot sit across the table and discuss item by item with the reviewing authority unless they are furnished in advance full details and particulars. The affidavits filed on behalf of the Union of India show that the procedure which is adopted in hearing the review applications is to discuss across the table the various items that have been taken into account. We*

do not consider that there is anything unfair in the procedure adopted by the Government. If necessary it is always open to the manufacturers to seek a short adjournment of the hearing of the review application to enable them to muster more facts and figures on their side. Indeed we find that the hearing given to the manufacturers is often protected. As we said we do not propose to examine this question as we do not want to constitute ourselves into a court of appeal over the Government in the matter of price fixation.

4.44. Based on the above, he submits that there are no guidelines prescribed or followed for fixing the commission/service charges. 5% commission/service charges have been fixed in an arbitrary manner. There is nothing on record to indicate as to why the State has chosen to fix 5% and not any other percentage like 7.5%, 10% or otherwise. The reasons for fixing a particular percentage are not forthcoming from the impugned notification/order.

4.45. He relies on the decision of the Hon'ble Apex Court in **Tata Cellular v. Union of India**[11], more particularly para 77 to 80, which are reproduced hereunder for easy reference;

77. *The duty of the court is to confine itself to the question of legality. Its concern should be:*

1. *Whether a decision-making authority exceeded its powers?*
2. *Committed an error of law,*
3. *committed a breach of the rules of natural justice,*
4. *reached a decision which no reasonable tribunal would have reached or,*
5. *abused its powers.*

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

[11] *(1994) 6 SCC 651 : 1994 INSC 283*

(i) *Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*

(ii) *Irrationality, namely, Wednesbury unreasonableness.*

(iii) *Procedural impropriety.*

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind [(1991) 1 AC 696] , Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

78. *What is this charming principle of Wednesbury unreasonableness? Is it a magical formula? In R. v. Askew [(1768) 4 Burr 2186 : 98 ER 139] , Lord Mansfield considered the question whether mandamus should be granted against the College of Physicians. He expressed the relevant principles in two eloquent sentences. They gained greater value two centuries later:*

"It is true, that the judgment and discretion of determining upon this skill, ability, learning and sufficiency to exercise and practise this profession is trusted to the College of Physicians and this Court will not take it from them, nor interrupt them in the due and proper exercise of it. But their conduct in the exercise of this trust thus committed to them ought to be fair, candid and unprejudiced; not arbitrary, capricious, or biased; much less, warped by resentment, or personal dislike."

79. *To quote again, Michael Supperstone and James Goudie; in their work Judicial Review (1992 Edn.) it is observed at pp. 119 to 121 as under:*

"The assertion of a claim to examine the reasonableness been done by a public authority inevitably led to differences of judicial opinion as to the circumstances in which the court should intervene. These differences of opinion were resolved in two landmark cases which confined the circumstances for intervention to narrow limits. In Kruse v. Johnson [(1898) 2 QB 91 : (1895-9) All ER Rep 105] a specially constituted divisional court had to consider the validity of a bye-law made by a local authority. In the

leading judgment of Lord Russell of Killowen, C.J., the approach to be adopted by the court was set out. Such bye-laws ought to be 'benevolently' interpreted, and credit ought to be given to those who have to administer them that they would be reasonably administered. They could be held invalid if unreasonable : Where for instance bye-laws were found to be partial and unequal in their operation as between different classes, if they were manifestly unjust, if they disclosed bad faith, or if they involved such oppressive or gratuitous interference with the rights of citizens as could find no justification in the minds of reasonable men. Lord Russell emphasised that a bye-law is not unreasonable just because particular judges might think it went further than was prudent or necessary or convenient.

In 1947 the Court of Appeal confirmed a similar approach for the review of executive discretion generally in Associated Provincial Picture Houses Ltd. v. WednesburyCorpn [(1948) 1 KB 223 : (1947) 2 All ER 680] . This case was concerned with a complaint by the owners of a cinema in Wednesbury that it was unreasonable of the local authority to License performances on Sunday only subject to a condition that 'no children under the age of 15 years shall be admitted to any entertainment whether accompanied by an adult or not'. In an extempore judgment, Lord Greene, M.R. drew attention to the fact that the word 'unreasonable' had often been used in a sense which comprehended different grounds of review. (At p. 229, where it was said that the dismissal of a teacher for having red hair (cited by Warrington, L.J. in Short v. Poole Corpn. [(1926) 1 Ch 66, 91 : 1925 All ER Rep 74] , as an example of a 'frivolous and foolish reason') was, in another sense, taking into consideration extraneous matters, and might be so unreasonable that it could almost be described as being done in bad faith; see also R. v. Tower Hamlets London Borough Council, ex p Chetnik Developments Ltd. [1988 AC 858, 873 : (1988) 2 WLR 654 : (1988) 1 All ER 961] (Chapter 4, p. 73, supra). He summarised the principles as follows:

'The Court is entitled to investigate the action of the local authority with a view to seeing whether or not they have taken into account matters which they ought not to have taken into account, or, conversely, have refused to take into account or neglected to take into account matter which they ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that, although the local authority had kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable

that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority has contravened the law by acting in excess of the power which Parliament has confided in them.'

This summary by Lord Greene has been applied in countless subsequent cases.

"The modern statement of the principle is found in a passage in the speech of Lord Diplock in Council of Civil Service Unions v. Minister for Civil Service

'By "irrationality" I mean what can now be succinctly referred to as "Wednesbury unreasonableness". (Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. [(1948) 1 KB 223 : (1947) 2 All ER 680]) It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at.' "

***80.** At this stage, The Supreme Court Practice, 1993, Vol. 1, pp. 849-850, may be quoted:*

"4. Wednesbury principle.— A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. (Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. [(1948) 1 KB 223
: (1947) 2 All ER 680] , per Lord Greene, M.R.)"

4.46. Based on the above decision, he submits that the commission/service charges of 5% fixed are completely arbitrary, and no reasonable person could have arrived at such a fee. The state has not taken into account the relevant factors regarding Uber's expenses. Though initially the impugned notification had been issued without taking into account the relevant factors, this Court vide interim order dated 14.10.2022 had directed the aggregators to submit their representation with accompanying documents, which were so submitted despite which the State has continued to commit the same mistake and even

on the second occasion these documents, data and submissions have not been taken into account by the State. On enquiry as to whether the supporting documents relating to the claim made in the additional affidavit of Uber incurring an expenditure of ₹24.19 per trip were submitted, his submission is that since the state did not ask for it, they were not submitted, he hastens to add that it was the duty of the state to have made necessary enquiries in relation thereto, even if Uber had not provided the documents, state ought to have taken into consideration the expenses incurred and the profit required to be made by Uber.

4.47. The State has not taken relevant factors into account and has taken irrelevant factors into account. The central guidelines issued by the Government of India have not been taken into account while fixing the fares on 6.11.2021. The State had considered the commission paid by auto rickshaw drivers to aggregators at

20%, implying that the State had already accounted for 20% as service fee/commission, whereas by the impugned notification, the same is capped at 5%, which is contrary to economic realities, have not been taken into consideration.

4.48. The principles of laissez-faire ought to have been applied. Uber ought to have been
permitted to levy service fees as it deems fit since it was for the service availer/customer to decide whether he intends to avail of such services by paying the service fee charged by Uber.

4.49. The state has also not taken into consideration the expenses that Uber has incurred for the development of the software, setting up its distribution system, hiring employees, etc. The state has combined autorickshaws, which are run on the Uber platform, with those that run independently, but neither of them can be equated.

4.50. The State has apparently taken into consideration the fare fixed by RTA, Mangalore, without placing on record any basis as to why the same was relevant in Bangalore. All costs, including operational cost, forming part of the service rendered being recoverable by Uber, the State could not have contended that

operational cost is to be borne by Uber and the same cannot be recovered from passengers.

4.51. The fare collected by the autorickshaw Driver cannot be said to be the income of the aggregator inasmuch as the aggregator only derives the benefit of the service fee, and the fare would fall to the account of the autorickshaw Driver/permit holder.

4.52. On the basis of such Wednesbury unreasonableness, he submits that the action of the State is an attempt to deliberately throttle Uber's business. The state is biased against Uber since adverse statements have been made in the statement of objections regarding Uber's approach to this court on several occasions.

4.53. The state is seeking to address overcharging by autorickshaws by imposing restrictions on Uber when there is no such overcharging on Uber's platform. Overcharging, if any, is done by independent auto rickshaw service providers who act outside Uber's platform.

4.54. He relies on the decision of the Hon'ble Apex Court in ***63 Moons Technologies Ltd. v. Union of India***[12], more particularly para 100 to 102, which are reproduced hereunder for easy reference;

> ***100.*** *Valiant attempts have been made by counsel in the High Court as well as counsel in this Court to support the order on grounds which are outside the order, stating that such grounds make it clear that in any case, the government order has been made in public interest. The celebrated passage in Mohinder Singh Gill [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405] states that :*
> *(SCC p. 417, para 8)*
>
> *"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh*

[12] *(2019) 18 SCC 401 : 2019 INSC 597*

reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16 : 1952 SCR 135] : (SCR p. 140 : AIR p. 18, para 9)

'9. … public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.' Orders are not like old wine becoming better as they grow older."

We are of the view that it is the Central Government that has to be "satisfied" that its order is in public interest and such "satisfaction" must, therefore, be of the Central Government itself and must, therefore, appear from the order itself. All these valiant attempts made to sustain such order must be rejected.

***101.** However, the learned Senior Advocates on behalf of the respondents have cited All India Railway Recruitment Board v. K. Shyam Kumar [All India Railway Recruitment Board v. K. Shyam Kumar, (2010) 6 SCC 614 : (2010) 2 SCC (L&S) 293] , which, according to them, renders the judgment in Mohinder Singh Gill [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405] inapplicable where larger public interest is involved. In this judgment, Mohinder Singh Gill [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405] was distinguished thus : (K. Shyam Kumar case [All India Railway Recruitment Board v. K. Shyam Kumar, (2010) 6 SCC 614 : (2010) 2 SCC (L&S) 293] , SCC p. 631, paras 44-45)*

"44. We are also of the view that the High Court has committed a grave error in taking the view [K. Shyam Kumar v. All Railway Recruitment Boards, 2005 SCC OnLine AP 201 : (2005) 4 ALD 411] that the order of the Board could be judged only on the basis of the reasons stated in the impugned order based on the report of Vigilance and not on the subsequent materials furnished by CBI. Possibly, the High Court had in mind the Constitution Bench judgment of this Court in Mohinder Singh Gill v. Chief

Election Commr. [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405]

45. We are of the view that the decision-maker can always rely upon subsequent materials to support the decision already taken when larger public interest is involved. This Court in Madhyamic Shiksha Mandal, M.P. v. Abhilash Shiksha Prasar Samiti [Madhyamic Shiksha Mandal, M.P. v. Abhilash Shiksha Prasar Samiti, (1998) 9 SCC 236] found no irregularity in placing reliance on a subsequent report to sustain the cancellation of the examination conducted where there were serious allegations of mass copying. The principle laid down in Mohinder Singh Gill case [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405] is not applicable where larger public interest is involved and in such situations, additional grounds can be looked into to examine the validity of an order. The finding recorded by the High Court that the report of CBI cannot be looked into to examine the validity of the order dated 4-6-2004, cannot be sustained."

***102.** It will be seen that there is no broad proposition that the case of Mohinder Singh Gill [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405] will not apply where larger public interest is involved. It is only subsequent materials i.e. materials in the form of facts that have taken place after the order in question is passed, that can be looked at in the larger public interest, in order to support an administrative order. To the same effect is the judgment in PRP Exports v. State of T.N. [PRP Exports v. State of T.N., (2014) 13 SCC 692] , SCC para 8. It is nobody's case that there are any materials or facts subsequent to the passing of the final order of the Central Government that have impacted the public interest, and which, therefore, need to be looked at. On facts, therefore, the two judgments cited on behalf of the respondents have no application. Thus, it is clear that no reasonable body of persons properly instructed in law could possibly hold, on the facts of this case, that compulsory amalgamation between FTIL and NSEL would be in public interest.*

4.55. By relying on the above judgment, he submits that subsequent events or documents cannot be relied upon to substantiate or support the impugned decision unless it is required in the public interest. In the present case, firstly,

there is no subsequent event or report that has been placed on record. It is only subsequent reasoning that has been furnished by the State, and the said reasoning cannot be treated as being in the public interest when the matter is entirely commercial in nature.

4.56. He relies on the decision of the Hon'ble Apex Court in ***Mohd. Yasin v. Town Area Committee***[13], more particularly para 9 and 12, which are reproduced hereunder for easy reference;

9. *The learned counsel, however, contends—and we think with considerable force and cogency—that although, in form, there is no prohibition against carrying on any wholesale business by anybody, in effect and in substance the bye-laws have brought about a total stoppage of the wholesale dealers' business in a commercial sense. The wholesale dealers, who will have to pay the prescribed fee to the contractor appointed by auction, will necessarily have to charge the growers of vegetables and fruits something over and above the prescribed fee so as to keep a margin of profit for themselves but in such circumstances no grower of vegetables and fruits will have his produce sold to or auctioned by the wholesale dealers at a higher rate of commission but all of them will flock to the contractor who will only charge them the prescribed commission. On the other hand, if the wholesale dealers charge the growers of vegetables and fruits only the commission prescribed by the bye-laws they will have to make over the whole of it to the contractor without keeping any profit themselves. In other words, the wholesale dealers will be converted into mere tax collectors for the contractor or the respondent Committee without any remuneration from either of them. In effect, therefore, the bye-laws, it is said, have brought about a total prohibition of the business of the wholesale dealers in a commercial sense and from a practical point of view. We are not of opinion that this contention is unsound or untenable.*

12. *Under Article 19(1)(g) the citizen has the right to carry on any occupation, trade or business which right under that clause is apparently to be unfettered. The only restriction to this unfettered right is the authority of the State to make a law relating to the carrying on of such occupation, trade or business as mentioned in clause (6) of that Article as amended by the Constitution (First Amendment) Act, 1951. If, therefore, the License fee*

[13] *(1952) 1 SCC 205 : 1952 INSC 11*

cannot be justified on the basis of any valid law no question of its reasonableness can arise, for an illegal impost must at all times be an unreasonable restriction and will necessarily infringe the right of the citizen to carry on his occupation, trade or business under Article 19(1)(g) and such infringement can properly be made the subject-matter of a challenge under Article 32 of the Constitution.

4.57. Uber provides the service to facilitate the booking of a taxi by providing a platform for both the customer/passenger and permit holder/driver to interact with each other. Uber is entitled to make profits from this. If the fare for a regular auto ride and that for a ride hailed on the App made available by Uber is the same, then there would be no difference. The permit holder/driver, though entitled to the benefit of the App, would be required to make payment of commission/service charges from and out of the fare fixed, thereby depriving the driver of his earnings if the model propounded by the State is accepted. For that reason, he submits that commission/service charges have to be over and above the fare fixed for a particular ride so that the said commission/service charges are paid by the customer/passenger who avails such service.

4.58. The service fee which is demanded by Uber comes within the purview of the Fundamental Right to carry on trade or business under Article 19 (1)(g) of the Constitution of India, and the same cannot be restricted in the manner sought to be done.

4.59. He relies on the decision of the Hon'ble Apex Court in ***O.N.G.C. v. Assn. of Natural Gas Consuming Industries of Gujarat***[15], more particularly para 31 and 35, which are reproduced hereunder for easy reference,

31. *The notion that the cost plus basis can be the only criterion for fixation of prices in the case of public enterprises stems basically from a concept that such enterprises should function either on a no profit — no loss basis or on a minimum profit basis. This is not a correct approach. In the case of vital commodities or services, while private concerns must be allowed a minimal return on capital invested,* [15]*1990 Supp SCC 397*: 1990 INSC 187 *public undertakings or utilities may even have to run at losses, if need be and even a minimal return may not be assured. In the case of less vital, but still basic, commodities, they may be required to cater to needs with a minimal profit margin for themselves. But given a favourable area of operation, "commercial profits" need not be either anathema or forbidden*

fruit even to public sector enterprises.

***35.** In the light of the foregoing discussion, we are of opinion that it would not be right to insist that the ONGC should fix oil (sic natural gas) prices only on cost plus basis. Indeed, its policy of pricing should be based on the several factors peculiar to the industry and its current situation and so long as such a policy is not irrational or whimsical, the court may not interfere.*

4.60. Relying on the above, he submits that when even a Public Sector Undertaking is entitled to make profits, Uber, being a private entity, would also be entitled to make profits from and out of the services offered by Uber, Uber not being in the business of charity.

4.61. He relies on the decision of this Court in ***All India Gaming Federation vs State of Karnataka & Ors.***[16], more particularly para [16]*2022 SCC online Kar 435* XIX(d), which is reproduced hereunder for easy reference; ***XIX.(d)** The online gaming activities played with stake or not do not fall within the ambit of Entry 34 of the State List i.e., 'Betting and gambling', if they predominantly involve skill, judgment or knowledge. They partake the character of business activities and therefore, they have protection under Article 19(1(g). Apparently, the games of skill played online or offline with or without stakes, are susceptible to reasonable restrictions under Article 19(6). The Amendment Act brings in a blanket prohibition with regard to playing games of skill. The version & counter version as to the nature & reasonableness of the restrictions need to be examined in the light of norms laid down by the Apex Court. In a challenge laid to the validity of any legislation on the ground of violation of Fundamental Rights inter alia guaranteed under Article 19(1), on a prima facie case of such violation being made out, the onus would shift to the State to demonstrate that the legislation in question comes within the permissible limits of the most relevant out of clauses(2) to(6). When exercise of Fundamental Right is absolutely prohibited, the burden of proving that such a total prohibition on the exercise of right alone would ensure the maintenance of general public interest, lies heavily upon the State. While adjudging a case of infringement of fundamental rights, what is determinative is not the intent of the legislature but the effect of the legislation. Legislative action that is too disproportionate or excessive, may suffer invalidation on the ground of 'manifest arbitrariness' under Article 14 as discussed infra. **Judge Aharon Barak** of Supreme Court of Israel in his book 'PROPORTIONALITY : CONSTITUTIONAL RIGHTS AND THEIR LIMITATIONS', succinctly puts the doctrine of proportionality:"It requires that a rightslimiting measure should*

be pursuing a proper purpose, through means that are suitable and necessary for achieving that purpose and that there is a proper balance between the importance of achieving that purpose and the harm caused by limiting the right".

4.62. Based on the above judgment, he submits that the act of the State in limiting the commission/service charges to 5% payable to the aggregator is not proportionate to Uber's expenses and efforts. Uber engaging a large number of workers maintaining the software and providing a platform cannot be limited in charging commission/service charges.

4.63. He relies on the decision of the Hon'ble Apex Court in ***Mohd. Faruk v. State of M.P.***[14], more particularly para 8, which is reproduced hereunder for easy reference;

8. *The power to issue Bye-laws indisputably includes the power to cancel or withdraw the Bye-laws, but the validity of the exercise of the power to issue and to cancel or withdraw the Bye-laws must be adjudged in the light of its impact upon the fundamental rights of persons affected thereby. When the validity of a law placing restriction upon e exercise of fundamental rights in Article 19(1) is challenged, the onus of proving to the satisfaction of the Court that the restriction is reasonable lies upon the State. A law requiring that an act which is inherently dangerous, noxious or injurious to public interest, health or safety or is likely to prove a nuisance to the community, shall be done under a permit or License of an executive authority, it is not per se unreasonable and no person may claim a License or permit to do that act as of right. Where the law providing for grant of a License or a permit confers a discretion upon an administrative authority regulated by rules or principles expressed or implied, and exercisable in consonance with rules of natural justice, it will be presumed to impose a reasonable restriction. Where, however, power is entrusted to an administrative agency to grant or withhold a permit or License in its uncontrolled discretion, the law ex facie infringes the fundamental right under Article 19(1). Imposition of restriction on the exercise of a fundamental right may be in the form of control or prohibition, but when the exercise of a fundamental right is prohibited, the burden of proving that a total ban on the exercise of the right alone may ensure the maintenance of the general public interest lies heavily upon the*

[14] *(1969) 1 SCC 853: 1969 INSC 97*

State.

4.64. His submission is that Uber does not require a separate license to aggregate autorickshaws since the license already issued is aggregatorspecific and vehicle-agnostic. Autorickshaw would also come under the purview of a Motorcab/taxi under the Karnataka On-demand Transportation Technology Aggregators Rules, 2016 [in short KODTTA Rules], and as such, would come within the definition of motor cab under Subsection (25) of Section 2 of the M.V. Act. However, he submits that if this court were to be of the opinion that a separate License for autorickshaw cabs is to be obtained, such a License would be obtained, which he further submits would be a subject matter of the other Writ Petition in W.P. No.20349/2022 and not within the scope of the present petition.

4.65. He relies on the decision of this court in ***Veeramani & Anr. Vs. The Regional Transport Authority, Bangalore & Ors***[15], more particularly para 4, which is reproduced hereunder for easy reference;

4. *The definition of "contract carriage" as found in sub-sec. (3) of Section 2 of the Act, reads as follows:*

"Contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum-

(i) on a time basis whether or not with reference to any route or distance, or

(ii) from one point to another, and in either case without stopping to Pick up or set down along the line of route passengers not included in the contract; and includes a motor cab notwithstanding that the passengers may pay separate fares;" (emphasis is supplied).

Thus, from the aforesaid definition of 'contract carriage' it is clear that it includes a motor cab. Subsection (15) of Section 2 of the Act, defines 'motor cab' as follows:

"motor cab" means any motor vehicle constructed, adapted or used to carry riot more than six passengers excluding the driver, for hire or reward;"

[15] *(1980) ILR Kar 1112*

From the aforesaid definition of 'motor cab it is clear that an autorickshaws falls within the definition of "motor cab", inasmuch as in the autorickshaws less than six passengers excluding the driver are carried either for hire or reward. The Karnataka Contract Carriages (Acquisition) Act, 1976 excludes the motor cab from the definition of contract carriages for the purpose of that Act as per Section 3(9) of that Act. Thus, it is clear that even after the coming into force of the Karnataka Contract Carriages (Acquisition) Act, 1976, one can have the permit for running a motor cab, which falls within the category of contract carriage. Therefore, it is necessary to find out whether the reservation made in the impugned resolution of the R.T.A. in respect of the permits falling in the category of contract carriage permits is supported by any of the provisions contained in the Act, as it stood either on the date of the resolution or after the coming into force of the Motor Vehicles (Amendment) Act*, 1978* (Central Act*, 47 of 1978).*

4.66. He relies on the decision of this Court in ***Divisional Manager, National Insurance Co. Ltd. v. Prakash***[19], more particularly para 7 and 8, which are reproduced hereunder for easy reference;

7. *To examine this argument, one has to necessarily look into the definition of 'transport vehicle', as is found in sub-section (47) of section 2 of the Act reading that it means a public service vehicle and a goods carriage, an educational institution bus or a private service vehicle. A 'public service vehicle' is defined in sub-section (35) of section 2 of the Act and it means "any motor vehicle used or adapted to be used for carriage of passengers for hire or reward, and includes a maxicab, a motor-cab, contract carriage, and stage carriage". A 'contract carriage' is defined in sub-section (7) of section 2 of the Act, which means "a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of number of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum, and expressly includes a motorcab". A motorcab, in turn, is defined in subsection (25) of section 2 of the Act, which means any motor vehicle constructed or adapted for carrying not more than six passengers excluding the driver for hire or reward.*

[19]*2011 SCC OnLineKar3873*

8. *However, even according to learned counsel for the appellant, the vehicle is one which is constructed to carry three passengers with driver and, therefore, it necessarily fits into the definition of 'motorcab'. If a person is authorised to drive a transport vehicle, it inevitably amounts that the License also permits the holder of the License to drive a motorcab like the auto cab; that the licensee is also authorised to drive a motorcab apart from the variety of other vehicles as noticed above.*

4.67. He relies on the decision of the Hon'ble Bombay High Court in ***Sunmitra Auto Rickshaw Sahakari Sangh Ltd. v. Director of transport***[20], more particularly para 3, which is reproduced hereunder for easy reference;

3. *There are certain vehicles expressly excluded with which we are not here concerned. It is thus clear that a motor cab is a motor vehicle except for the fact that it is constructed, adapted or used to carry not more than six passengers for hire or reward. The limitation laid down in the permit granted to petitioner No. 2 is that he shall not carry more than two passengers. If he were permitted even to carry more than two passengers upto six passengers the vehicle will still be classed as a motor cab. Therefore the limitation of passengers to two only would bring the vehicle all the more within the definition of motor cab. In our opinion, an auto-rickshaw clearly falls within the definition of motor cab under the Motor Vehicles Act.*

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[20]*1966 SCC OnLineBom 61*

4.68. By relying on all the above judgments, he submits that when an autorickshaw is also a motor cab and therefore, the License which has been issued to Uber, which is pending renewal in respect of motor cab, would include not only four-wheeler taxi but also three-wheeler autorickshaw.

4.69. The validity of the KODTTA Rules having been challenged before the Division Bench in W.A. No.4787/2016, it is the Division Bench which is required to decide on the requirement or
otherwise of the License.

4.70. As regards the various issues raised by the intervenors, his submission is that they are beyond the scope of the present writ petition. Guideline (7) of the Central Guidelines is not mandatory, and as such, there is no requirement for any compliance on the part of Uber. The State itself having contended that the guidelines are not mandatory, and hence it is not required for Uber to follow the Central guidelines.

4.71. He relies on the decision of the Hon'ble Apex Court in ***Uber India Technology Private Limited & Ors. vs. Government of NCT Delhi & Anr.***[21], more particularly para 9, which is reproduced hereunder for easy reference;

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.*

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[21] *2015 SCC Online 10241*

4.72. His submission is that Uber neither owns nor operates vehicles in which transportation services are provided and does not employ or control the drivers/permit holders; therefore, it is not involved in providing transportation services. The contract carriage/transportation services are exclusively between the customer and the drivers/permit holders.

4.73. Uber acts only as a limited collection agent on behalf of drivers/permit holders for online payments since all payments made online are collected by Uber on behalf of the drivers/permit holders and credited to them in accordance with the law. Though no written contract is entered into between the drivers/permit holders and passengers/customers, his submission is that they are the only parties to the contract regarding providing transportation services. Uber is in no manner connected to or part of such a contract. This, he contends, is similar to a contract that the passenger would

have with the drivers/permit holders of an auto-rickshaw, if he were to hail the autorickshaw in the street without the intervention of Uber. Uber is in no manner concerned with the service of offering a contract of carriage for hire or reward, and hire charges in respect of that can be fare in terms of Section 67 of the M.V Act and not the charges of Uber.

4.74. He, however, submits that there is a contract between Uber and the drivers/permit holders where only a request for transportation services in terms of leads are provided to such drivers/permit holders. It is up to the drivers/permit holders to accept the lead or not. The drivers/permit holders would have access to the software deployed by Uber on account of the drivers/permit holders being onboarded onto Uber's platform.

4.75. The passenger is liable to pay the fare for the transportation service to the drivers/permit holders.

4.76. The service fee is liable to be paid by the passenger/customer to Uber, this being in terms of the bilateral contract between Uber and the passenger/customer. The passenger would also be entitled to several other valueadded services, as indicated above.

4.77. There is no tripartite agreement between Uber, drivers/permit holders and the passenger/customer. There is no obligation on Uber to provide transportation services, nor does it provide, represent, or imply that it provides or is involved in transportation services. In fact, drivers/permit holders and passengers/customers have agreed to the driver terms and rider terms, respectively, by clicking on the agree button in the Uber App. It is for the driver and or the rider to accept the said terms or not. It is always possible for either of them to refuse the terms of the Uber App.

4.78. Since Uber is not involved in transportation service and there is no tripartite agreement, there being a separate agreement between Uber and drivers/permit holders on the one hand and Uber and passengers/customers on the other, Uber is only an aggregator in terms of Subsection (1A) of Section 2 read with Section 93 of the M.V. Act.

4.79. Uber follows a similar methodology in 70 countries and about 100 cities within India. Since the Uber App is used in all 70 countries, as also 100 cities in India, it is submitted that Uber is unable to give a mathematically exact granular breakup of the costs for each hire of an autorickshaw cab facilitated by the Uber App in the State of Karnataka. On enquiry as to whether it is the

same application/platform which is used in those 70 countries and 100 cities in India, he submits that though it is the same application/platform, there are some variations in the app depending on the location of operations.

4.80. Uber, though attempted to quantify the cost, was unable to do so, but it estimates that the cost incurred on a particular short trip of 2 km is Rs.32.2 and for a longer trip of 7 km, it is Rs.34.3.On enquiry as to what are the heads of accounts, he refers to para 17 of the affidavit of Mr.Sharath Shetty, the authorized signatory of Uber dated 20.07.2023 and the table appended thereto. The said table is reproduced hereunder for easy reference:

Cost components (FY 21-22)	**Cost to Uber (Per trip INR)**
Support service	4.7
Credit/ Debit card payment fee	0.75
Insurance fee	0.36
Technology/ Network cost	3.63
SMS Service/ WhatsApp for OTP, needed for Matching and for safety etc.	1.13
Maps for routing and Optimising Rider cost by having the fastest and the least traffic routing	1.22

Driver onboarding cost (including background verification)	2.86
Employee cost	3.77
Global engineering and produce cost	1.32
Marketing cost	2.2
Losses that the Petitioner bears to protect service providers (i.e., the drivers/permit holders) from passengers who do not settle trip fare partially or completely	2.25
Total cost	24.19

4.81. On enquiry as to on what basis these amounts have been apportioned for each of the above heads of account, he submits that it is an estimate by Uber based on experience and there is no particular data set which is available to indicate each such apportionment. The said figures have been worked out as per the unaudited profit and loss account.

4.82. Again, based on the very same affidavit, his contention is that Uber requires at least 23%, if not 27%, of the fare for each trip as a service fee to provide the services. These details were not provided to the State since the State did not ask for them, but estimated costs have been provided in various meetings.

4.83. The State government not having framed any Rules and Regulations in terms of Section 93 of the M.V.Act, Uber is seeking for any License for autorickshaws. Without such regulations being made under Section 93, the same cannot be implemented. However, Uber has applied for a License under the KODTTA Rules, which was initially granted for a period of five years on 31.12.2016, renewal application filed on 24.12.2021 is still pending consideration.

4.84. He relies on the decision of the Hon'ble Apex Courtin ***A.C. Jose v. Sivan Pillai***[16], more particularly para 38, which is reproduced hereunder for easy reference;

> ***38.*** *Lastly, it was argued by the counsel for the respondents that the appellant would be estopped from challenging the mechanical process because he did not oppose the introduction of this process although he was present in the meeting personally or through his agent. This argument is wholly untenable because when we are considering a constitutional or statutory provision there can be no estoppel against a statute and whether or not the appellant agreed or participated in the meeting which was held before introduction of the voting machines, if such a process is not permissible or authorised by law he cannot be estopped from challenging the same.*

4.85. He relies on the decision of the Hon'ble Apex Court in ***State of U.P. v. U.P. Rajya Khanij Vikas Nigam Sangharsh Samiti***[17], more particularly para 42 to 44, which are reproduced hereunder for easy reference;

> ***42.*** *There is yet one more reason. In the High Court, the Corporation filed an application stating therein that regarding absorption of employees, statutory rules had been framed by the State Government in exercise of power under the proviso to Article 309 of the Constitution. A prayer was, therefore, made to allow the application to bring statutory rules on record and to consider them. The Court, however, rejected the prayer. In our opinion, the High Court was not right in rejecting such prayer. If there were statutory rules and such rules provide for absorption of employees on certain grounds and on fulfilment of some conditions laid down in those*

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[16] *(1984) 2 SCC 656 at page 672: 1984 INSC 52*

[17] *(2008) 12 SCC 675 : 2008 INSC 573*

rules, it was the duty of the High Court to consider those rules and to decide whether under the statutory rules, such absorption could be ordered.

43. *After all, the High Court was considering the prayer of the petitioners to grant a writ in the nature of mandamus. It was, therefore, expected of the High Court to keep in view the relevant provisions of law. The High Court mainly relied upon an assurance said to have been given by the Secretary on behalf of the Corporation that excess employees would be absorbed either in the government departments or in other public sector undertakings. From the record it appears that it was the case of the Secretary of the Corporation that no such assurance was given by him to the Court. But even if he had given such assurance, it was of no consequence since in the teeth of statutory rules, such assurance had no legal efficacy. Moreover, an application was made on affidavit by the Secretary of the Corporation clarifying the position and praying for modification of the earlier order passed by the High Court in which such statement on behalf of the Corporation appeared. The High Court, however, rejected even that application. In our considered opinion, even on that ground, the High Court ought not to have issued final directions.*

44. *It is settled law that there can be no estoppel against a statute. If the field was occupied by statutory rules, the employees could get right only under those rules. The High Court was equally bound to consider those rules and to come to the conclusion whether under the statutory rules, the retrenched employees were entitled to absorption either in government department or in any other public sector undertaking. Statement, assurance or even undertaking of any officer or a counsel of the respondent Corporation or of the Government Pleader of the State is irrelevant. The High Court, in our view, ought to have considered the prayer of the Corporation and decided the question if it wanted to dispose of the matter on merits in spite of availability of alternative remedy to the employees.*

4.86. In the alternative to the above, he submits that even though Uber participated in the meetings with the Authorities and provided the details for the fixation of suitable commission/service charges, Uber can always challenge the commission/service charges fixed on grounds available to it. Participation by Uber in the consultative process would not debar Uber from challenging the same. There can be no estoppel against the statute merely on account of participating in the meeting.

4.87. Based on all the above his submission is that the Writ Petition filed by Uber is required to be allowed and reliefs sought for be granted. ***Submissions of Shri Aditya Sondhi Learned Senior Counsel on behalf of Ola.***

5. Sri. Aditya Sondhi learned Senior counsel appearing for the petitioner-M/s ANI Technologies Private Limited in W.P. No.24486/2022, which provides aggregation services under the name and style 'OLA' submits that:

5.1. Initially, the State had, by an undated order received by OLA on 12.10.2022, directed OLA to stop the operation of autorickshaw services on the ground that autorickshaws would not come within the scope of taxi, which has been challenged in W.P. No.20349/2022.

5.2. In this regard, his submission is that Autorickshaw would also fall within the definition of 'motor cab'; as such, the artificial distinction now sought to be made by the respondent-State is contrary to the applicable law. In this regard, he also relies upon the decision of this court in the case of ***Veeramani v. Regional Transport Authority, Bangalore[24],*** more particularly para in 3 and 4, which are reproduced hereunder for easy reference:

3. *The contentions of Sri H.B. Datar, the learned Counsel appearing for the petitioners, are: (i) that 'autorickshaw' falls within the definition of 'motor cab' which falls within the category of 'contract carriages' as defined in the Motor Vehicles Act, 1939 (hereinafter referred to as the Act,) and a motor cab is excluded from the purview of the Karnataka Contract Carriages (Acquisition) Act, 1976, as such there was no bar whatsoever for granting permits to the petitioners and intervening respondents; (ii) that there was no provision contained in the Act, on the date of passing of the impugned Resolution enabling the R.T.A. to reserve the permits in question to certain class and category of persons as shown in the impugned resolution and that even the Amendment Act 47 of 1978 which provides for certain percentage of reservation of stage carriage and public carrier permits to certain class and category of persons, does provide for reservation of permits relating to motor cabs falling within the category of contract carriages to the persons belonging to Scheduled Caste and Scheduled Tribes and also to the other categories mentioned in the impugned resolution.*

4. *The definition of "Contract carriage" as found in sub-sec. (3) of Sec. 2 of the Act, reads as follows:*

"contract carriages" means a motor vehicle which, carries a passenger or passengers for

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[24] *1980 SCC OnLineKar 130*

Lire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum—

(i) on a time basis whether or not with reference to any route or distance, or

(ii) from one point to another, and in either case without stopping to pick up or set down along the line of route passengers not included in the contract; ***and includes a motor cab not with standing that the passengers may pay separate fares****;"*

(emphasis is supplied)

Thus, from the aforesaid definition of 'cantract carriage', it is clear that it includes a motor cab. SubSec. (15) of Sec. 2 of the Act, defines 'motor cab' as follows:

'motor cab' means any motor vehicle constructed, adapted or used to carry not more than six passengers excluding the driver, for hire or reward." From the aforesaid definition of 'motor cab', it is clear that an autorickshaw falls within the definition of 'motor cab', in as much as in the autorikshaw less than six passengers excluding the driver are carried either for hire of reward. The Karnataka Contract Carriages (Acquisition) Act, 1976 excludes the motor cab from the definition of contract carriages for the purpose of that Act as per Sec. 3(g) of that Act. Thus, it is clear that even after the coming into force of the Karnataka Contract Carriages (Acquisition) Act, 1976, one can have the permit for running a motor cab which falls within the category of contract carriages, Therefore, it is necessary to find out whether the reservation made in the impugned resolution of the R.T.A. in respect of the permits falling in the category of contract carriages permits is supported by any of the provisions contained in the Act, as it stood either on the date of the resolution or after the coming into force of the Motor Vehicles (Amendment) Act, 1978 (Central Act, 47 of 1978).

5.3. He also relies on the Judgment of Hon'ble Bombay High Court in ***Sunmitra***

Auto Rickshaw Sahakari Sangh Ltd. v. Director of Transport[25], more particularly para 2 and 3, which are reproduced hereunder for easy reference:

2. *Three points have been raised by Mr. Adik on behalf of the petitioners. The first is that autorickshaws are not "motor cabs" within the meaning of the definition in s. 2(15) of the Motor Vehicles Act. "Motor cab" is defined in that section to mean "any motor vehicle constructed, adapted or used to carry not more than six passengers excluding the driver, for hire or reward". The auto-rickshaw of petitioner No. 2 has been granted a permit which limits the number of passengers to be carried to two only. He, therefore, says that his auto-rickshaw will not fall within the definition of "motor cab" in s. 2(15). The proper ambit of the definition of "motor cab" may be clarified if one considers the definition of "motor vehicle" in s. 2(18) of which "motor cab" is only a species. "Motor vehicle" is defined to mean*

"…any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer…;"

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[25] 1966 SCC OnLine Bom 61

3. *There are certain vehicles expressly excluded with which we are not here concerned. It is thus clear that a motor cab is a motor vehicle except for the fact that it is constructed, adapted or used to carry not more than six passengers for hire or reward. The limitation laid down in the permit granted to petitioner No. 2 is that he shall not carry more than two passengers. If he were permitted even to carry more than two passengers up to six passengers the vehicle will still be classed as a motor cab. Therefore the limitation of passengers to two only would bring the vehicle all the more within the definition of motor cab. In our opinion, an auto-rickshaw clearly falls within the definition of motor cab under the Motor Vehicles Act.*

5.4. The reasoning in ***Veeramani***'s case (*supra*) has been approved and relied upon in the interim order dated 14.10.2022 in W.P. No.20349/2022. Whether an autorickshaw falls within the definition of a motor cab or not is no longer *res integra,* and the artificial difference and distinction sought to be made out

is contrary to the applicable law.

5.5. It is after accepting that an autorickshaw would also come within the definition of a motor cab that, vide order dated 14.10.2022, this Court directed OLA to follow the rates fixed by the State in terms of the notification dated 6.11.2021 along with an additional 10% commission with applicable taxes. The respondent-State accepting the said order, vide the impugned notification dated 25.11.2022, fixed the amount which an aggregator can charge, thereby accepting that the autorickshaw would also be covered under a License issued for a motor cab to OLA, thereby accepting the legality of the auto-rickshaw operations carried out by OLA. The impugned notification dated 25.11.2022 is a malafide exercise of power, attempting to restrict the commission at 5%, though this Court vide order dated 14.10.2022 had apped the commission at 10%.

5.6. This restriction is sought to be imposed under Section 67 of the M.V. Act, which only deals with fixing fares and freight for contract carriages and does not deal with service charges that an aggregator could levy.

5.7. Any condition or restriction cannot be imposed under Section 67; that can only be done under Section 93 r/w Section 96(2)(xxviii) of the M.V Act by framing appropriate Rules and placing them before the legislature. The powers under Sections 67 and 93 are qualitatively different. Under Section 67, the State Government may issue notifications, but under Section 93, Rules have to be framed, which would have to be done in terms of Sub-Section (32) of Section 2, which relates to prescribed by Rules.

5.8. The contention of OLA is not that the State does not have legislative competence; it is only that the impugned notification could not have been issued under Section 67 but should have been issued in terms of Section 93 of the M.V. Act by framing appropriate Rules. His further submission is that the procedure prescribed under Section 212, in respect of Rules, ought to have been followed which has not been followed. The power and authority would have to be exercised in the manner prescribed or not at all. Any such exercise of power or authority contrary to the applicable law would be *nonest.* In this regard, he relies upon the Judgment of the Hon'ble Apex Court in ***Captain Sube Singh v. Lt. Governor of Delhi***[18], more particularly para 28 to 30, which are reproduced hereunder for easy reference:.

[18] (2004) 6 SCC 440 : 2004 INSC 329

28. *The contention of the respondents that by reason of the aforesaid condition of permit the concessional passes issued by DTC would automatically become* ***enforceable*** *and binding upon private operators who were issued stage carriage permits, does not appear to be sustainable.*

29. *In Anjum M.H. Ghaswala a Constitution Bench of this Court reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said*

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authority has to exercise it only in the manner provided in the statute itself. (See also in this connection Dhanajaya Reddy v. State of Karnataka. The statute in question requires the authority to act in accordance with the rules for variation of the conditions attached to the permit. In our view, it is not permissible to the State Government to purport to alter these conditions by issuing a notification under Section 67(1)(d) read with sub-clause (i) thereof.

30. *The contention of the respondents is that the power to enforce the binding nature of the concessional passes issued by DTC on the private stage carriage operators can be spelled from the provisions of Section 67(1)(d) of the Act. In our view, such a power cannot be subsumed under the powers of the State Government to fix fares and freights for stage carriages having regard to the desirability of preventing uneconomic competition among holders of permits. Permit condition 13 merely stipulates that the permit-holder shall ensure that concessional passes issued to various sections authorised for these buses shall be honoured. The authorisation has to come from STA. In other words, only concessional passes which are authorised by STA would be binding on the operators. We see no power in Section 67(1)(d) of the Act or otherwise by which a concessional pass issued by DTC could be made binding upon private stage carriage operators, particularly when there was no such condition imposed in the permit issued. Hence, we are of the view that paragraph 3(b) of the impugned notification is clearly ultra vires the powers of the State Government under Section 67 of the Act and, therefore, liable to be quashed and set aside*

5.9. The powers under Section 67 and 93 are qualitatively different; under Section 67, the State government can issue notification, while under Section 93, the power insofar as aggregator can only be exercised by way of Rules. By referring to Section 93 of the Act, he submits that the phrase ‘such

conditions as may be prescribed' will have to be read in conjunction with Subsection (32) of Section 2, which means prescribed by Rules made under the Act, that is, by following all and necessary procedures. In this regard, he relies upon the decision of the Hon'ble Supreme Court in **Uber India Systems (P) Ltd. v. Union of India**[19], more particularly para 2, which is reproduced hereunder for easy reference:

> ***2.*** *The petitioners claim to be aggregators within the meaning of Section 2(1-A) of the Motor Vehicles Act, 1988 ("the Act"), as amended by Act 32 of 2019. An "aggregator" is defined to mean a digital intermediary or marketplace for a passenger to connect with a driver for the purpose of transportation. Section 93 was amended by the amending Act so as to encompass the business of aggregators. Sub-section (1) of Section 93, inter alia, stipulates that no person shall engage himself as an aggregator unless he has obtained a License from such authority and subject to such conditions as may be prescribed by the State Government. As in the case of other statutes, Section 2(32) defines the expression "prescribed" to mean prescribed by rules made under the Act. The State Government is conferred with a rule-making power, inter alia, by Section 96(1) in terms of which it may make rules for the purpose of carrying into effect the provisions of Chapter.*

5.10. By relying on the above, he submits that Section 67 is an Omnibus power. His submission is also that there is an acknowledgement on the part of the State that Section 67 of the Act is applicable to aggregators. He substantiates by stating that reliance has been placed by the State on Subsection (7) of Section 2, read with Section 67 and not under Section 93. The State does not have any power to regulate an aggregator or the fees receivable by an aggregator under Section 67 of the M.V Act. On that basis, he submits that the undertaking given by the learned Advocate General in WP No. 20349/2022 is an acknowledgement by the State that it does not have power under Section 67 and that by itself is sufficient to quash the impugned notification dated 25/11/2022.

5.11. Under Section 67, the interface of the State is with the permit holder sans the aggregator since the services provided by the aggregator do not form part of Section 67. The interface under Section 93, as contemplated under the statute, is between the State and the aggregator, and it is thus required that the powers under Section 93 have to be exercised in terms of clause (xxviii)

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[19] *(2024) 1 SCC 438 : SLP(C) 5705/2022*

of Subsection (2) of Section 96. Unless and until the above is done, the State has no power to regulate an aggregator, much less under Section 67. Thus the impugned notification under Section 67 fixing the service fee is without any power or jurisdiction.

5.12. The action of the State is contrary to the arguments which have been advanced; the State has fixed the fare under Section 67, as also a commission of 5% on the said fare under Section 67. In terms of clause (2) of Rule 9 of the KODTTA Rules, the fare, including any other charges, could not be higher than the fare fixed by the government from time to time, which contemplates only one fare and not a fare and commission separately. Thus, the stand of the State is contrary to clause (2) of Rules 9 is an absurdity.

5.13. The KODTTA Rules have been challenged and the same is pending before the Division Bench of this court. The said Rules were formulated before the introduction of Section 93, in which recognition is granted to transport technology aggregators, the Rules having been formulated in the year 2016, recognition having been granted in the year 2019 the KODTTA Rules would not apply. The central government issued Motor Vehicle Aggregator Guidelines in the year 2020; thus, it is the Guidelines of the Central government which will apply since it has been issued after the statutory recognition in furtherance of the 2019 amendment and not the KODDTTA Rules framed in the year 2016. As such, he submits that the State cannot refer to or rely upon the KODDTTA Rules.

5.14. He contends that the State is not an expert in the tariff fixation of aggregators, which is a new business. The State itself has stated in paragraphs 19, 30, 31, 32 and 35 of the statement of objection that the aggregators failed to provide necessary information/make disclosures, and therefore, the State has acted on the basis of the information available. This submission itself is sufficient to establish that the exercise of the State suffers from arbitrariness, irrationality and non-application of mind, is excessive and disproportionate based on a pre-conceived notion in order to make auto-rickshaw operations unviable. Any Authority has to fix the price in accordance with the statutory provision. The State has not complied with statutory provisions, nor has it applied its mind properly, nor has it taken into consideration the relevant criteria. As such, the said price fixation is arbitrary. In this regard, he relies upon the decision in ***Karnataka Industrial Areas Development Board v.***

***Prakash Dal Mill*[20], more particularly para 19 and 20, which are reproduced hereunder for easy reference;

19. *We have considered the submissions made by the learned counsel. It is true that under Clause 7(b), the Board reserved to itself the right to fix the final price of the demised premises as soon as it may be convenient to it and communicate the same to the lessee concerned. Upon communication of the price, the lessee is required to pay the balance of the value of the site. Determination of the price by the Board is binding on the lessee. In our opinion, the aforesaid clause would not permit the Board to arbitrarily or irrationally fix the final price of the site without any rational basis. The power of price fixation under Clause 7 being statutory in nature would have to be exercised, in accordance with the statutory provisions, it cannot be permitted to be exercised arbitrarily. Undoubtedly, as observed by this Court in PremjiBhaiParmarcase , the courts would not reopen the concluded contracts.*

20. *Ms.Suri had placed reliance on the observations made by this Court in SCC para 10 of the judgment, which are as follows:*

"10. Pricing policy is an executive policy. If the Authority was set up for making available dwelling units at reasonable price to persons belonging to different income groups it would not be precluded from devising its own price formula for different income groups. If in so doing it uniformly collects something more than cost price from those with cushion to benefit those who are less fortunate it cannot be accused of discrimination. In this country where weaker and poorer sections are unable to enjoy the basic necessities, namely, food, shelter and clothing, a body like the Authority undertaking a comprehensive policy of providing shelter to those who cannot afford to have the same in the competitive albeit harsh market of demand and supply nor can afford it on their own meagre emoluments or income, a little more from those who can afford for the benefit of those who need succour, can by no stretch of imagination attract Article 14. People in the MIG can be charged more than the actual cost price so as to give benefit to allottees of flats in LIG, Janata and CPS. And yet record shows that those better off got flats comparatively cheaper to such flats in open market. It is a well-recognised policy underlying tax law that the State has a wide discretion in selecting the persons or objects it will tax and that the statute is not open to

[20] *(2011) 6 SCC 714 : 2011 INSC 273*

attack on the ground that it taxes some persons or objects and not others. It is only when within the range of its selection the law operates unequally, and this cannot be justified on the basis of a valid classification, that there would be a violation of Article 14. Can it be said that classification income-wise-cum-scheme-wise is unreasonable? The answer is a firm no. Even the petitioners could not point out unequal treatment in same class. However, a feeble attempt was made to urge that allottees of flats in MIG scheme at Munirka which project came up at or about the same time were not subjected to surcharge. This will be presently examined but aside from that, contention is that why within a particular period, namely, November 1976 to January 1977 the policy of levying surcharge was resorted to and that in MIG schemes pertaining to period prior to November 1976 and later April 1977 no surcharge was levied. If a certain pricing policy was adopted for a certain period and was uniformly applied to projects coming up during that period, it cannot be the foundation for a submission why such policy was not adopted earlier or abandoned later."

In our opinion, these observations would not be applicable in the facts of this case. The appellants are required to fix the price within the stipulated parameters contained in the statute and the Board Regulations.

5.15. The decision of the Hon'ble Apex court in ***Reliance Infrastructure Ltd. v. State of Maharashtra***[21], more particularly para 37 and 38, which are reproduced hereunder for easy reference;

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37. *Tariff fixation is a complex exercise involving a careful balance between numerous considerations. The "shall be guided" prescription under Section 61 requires the appropriate Commission to bear those considerations in mind. Deducing past performance on the basis of historical data, balancing diverse policy objectives and evaluating the comparative weight to be ascribed to the interests of stakeholders is a scientific exercise which is carried out by the Commission. The nature of judicial review that is exercisable in a given subject area depends in a significant measure on the nature of the area and the body which is entrusted with the task of framing subordinate legislation. In A.P. Transco v. Sai Renewable Power (P) Ltd. a two-Judge Bench of this Court held thus :*

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[21] *(2019) 3 SCC 352 : 2019 INSC 63*

"36. Fixation of tariff is, primarily, a function to be performed by the statutory authority in furtherance to the provisions of the relevant laws. We have already noticed that fixation of tariff is a statutory function as specified under the provisions of the Reform Act, 1998; the Electricity Regulatory Commissions Act, 1998 and the Electricity Act, 2003. These functions are required to be performed by the expert bodies to whom the job is assigned under the law…

38. *… The functions assigned to the Regulatory Commission are wide enough to specifically impose an obligation on the Regulatory Commission to determine the tariff. The specialised performance of functions that are assigned to Regulatory Commission can hardly be assumed by any other authority and particularly, the courts in exercise of their judicial discretion. The Tribunal constituted under the provisions of the Electricity Act, 2003, again being a specialised body, is expected to examine such issues, but this Court in exercise of its powers under Article 136 of the Constitution would not sit as an appellate authority over the formation of opinion and determination of tariff by the specialised bodies. …*

40. … This Court has consistently taken the view that it would not be proper for the Court to examine the fixation of tariff rates or its revision as these matters are policy matters outside the purview of judicial intervention. The only explanation for judicial intervention in tariff fixation/revision is where the person aggrieved can show that the tariff fixation was illegal, arbitrary or ultra vires the Act. It would be termed as illegal if statutorily prescribed procedure is not followed or it is so perverse and arbitrary that it hurts the judicial "conscience" of the court making it necessary for the court to intervene. Even in these cases the scope of jurisdiction is a very limited one.

38. *MERC is an expert body which is entrusted with the duty and function to frame regulations, including the terms and conditions for the determination of tariff. The Court, while exercising its power of judicial review, can step in where a case of manifest unreasonableness or arbitrariness is made out. Similarly, where the delegate of the legislature has failed to follow statutory procedures or to take into account factors which it is mandated by the statute to consider or has founded its determination of tariffs on extraneous considerations, the Court in the exercise of its power of judicial review will ensure that the statute is not breached. However, it is no part of the function of the Court to substitute its*

own determination for a determination which was made by an expert body after due consideration of material circumstances.

5.16. The decision of the Hon'ble Apex court in ***Mohd.Faruk v. State of M.P.(supra[17]),*** more particularly para 8 and 10, which are reproduced hereunder for easy reference;

8. *The power to issue Bye-laws indisputably includes the power to cancel or withdraw the Bye-laws, but the validity of the exercise of the power to issue and to cancel or withdraw the Bye-laws must be adjudged in the light of its impact upon the fundamental rights of persons affected thereby. When the validity of a law placing restriction upon the exercise of fundamental rights in Article 19(1) is challenged, the onus of proving to the satisfaction of the Court that the restriction is reasonable lies upon the State. A law requiring that an act which is inherently dangerous, noxious or injurious to public interest, health or safety or is likely to prove a nuisance to the community, shall be done under a permit or License of an executive authority, it is not per se unreasonable and no person may claim a License or permit to do that act as of right. Where the law providing for grant of a License or a permit confers a discretion upon an administrative authority regulated by rules or principles expressed or implied, and exercisable in consonance with rules of natural justice, it will be presumed to impose a reasonable restriction. Where, however, power is entrusted to an administrative agency to grant or withhold a permit or License in its uncontrolled discretion, the law ex facie infringes the fundamental right under Article 19(1). Imposition of restriction on the exercise of a fundamental right may be in the form of control or prohibition, but when the exercise of a fundamental right is prohibited, the burden of proving that a total ban on the exercise of the right alone may ensure the maintenance of the general public interest lies heavily upon the State.*

10. *The impugned notification, though technically within the competence of the State Government, directly infringes the fundamental right of the petitioner guaranteed by Article 19(1)(g) and may be upheld only if it be established that it seeks to impose reasonable restrictions in the interests of the general public and a less drastic restriction will not ensure the interest of the general public. The Court must in considering the validity of the impugned law imposing a prohibition on the carrying on of a business or profession, attempt an evaluation of its direct and immediate impact upon the fundamental rights of the citizens affected thereby and the larger public*

interest sought to be ensured in the light of the object sought to be achieved, the necessity to restrict the citizen's freedom, the inherent pernicious nature of the act prohibited or its capacity or tendency to be harmful to the general public, the possibility of achieving the object by imposing a less drastic restraint, and in the absence of exceptional situations such as the prevalence of a state of emergency national or local — or the necessity to maintain essential supplies, or the necessity to stop activities inherently dangerous, the existence of a machinery to satisfy the administrative authority that no case for imposing the restriction is made out or that a less drastic restriction may ensure the object intended to be achieved.

5.17. The State had earlier exercised powers under Section 67 and fixed the fare for taxis operating through the aggregator platform in terms of the KODTTA Rules. Such fare having been fixed at that time, the State did not take up any contention that it lacked empirical data or information from the aggregators. It is only now as an afterthought that such a contention has been taken up to justify the arbitrary and irrational directions issued with respect to autorickshaws.

5.18. He, however submits that pursuant to the interim order dated 14.10.2022 passed by this court, the petitioner furnished all necessary details/information as requested by its representation dated 28.10.2022, and therefore, it cannot be contended that there is a lack of disclosure or availability of data. The State has never ever asked for any particular data; it is for the first time that in the present matter, in the Statement of objection at para 19 and 34, certain specific items of data have been pointed out, which the State could have done earlier.

5.19. The State was required to follow and be guided by the Motor Vehicles Aggregator Guidelines 2020; if it felt that it lacked empirical data, the central Government, having conducted a study and having issued the guidelines, following the said guidelines would have put the State in compliance with the requirements. Though the Hon'ble Apex court in SLP No.5075/2020 has observed that the guidelines are persuasive character and are not mandatory, his submission is that those guidelines cannot be utterly disregarded but would have to be taken into consideration. In this regard, he refers to and relies upon the decision of the Hon'ble Apex Court in **Roppen Transportation Services Pvt. Ltd vs. Union of India**[22], more particularly

[22] *SLP 3006 of 2023 : 2023 INSC 102*

para 9 thereof, which is reproduced hereunder for easy reference:

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 License 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 License and in regard to the formulation of rules in pursuance of the general rule making power under Section 96.*

5.20. He also relies upon the Judgment of the Hon'ble Apex Court in ***Preeti Srivastava (Dr.) v. State of M.P.***[23], more particularly para 105 and 116 thereof, which are reproduced hereunder for easy reference:

105. *The next question that falls for consideration that even assuming that Article 335 cannot be pressed into service while considering the question of admission of eligible and qualified candidates for enabling them to pursue courses of postgraduate medical studies can the guidelines laid down by the Medical Council of India pursuant to the regulations made under Section 33 of the Indian Medical Council Act, even though persuasive in nature and not mandatory, be totally bypassed or ignored by the State authorities concerned with shortlisting of candidates for admission to limited seats available in medical institutions imparting postgraduate medical education? The answer obviously would be in the negative. The guidelines laid down by the Medical Council of India though persuasive have to be kept in view while deciding as to whether the concession or facility to be given to such reserved category of candidates should remain within the permissible limits so as not to amount to arbitrary and unreasonable grant of concessions wiping out the concept of merit in its entirety. Consequently, it cannot be said that even though shortlisting of eligible candidates is permissible to the State authorities, while doing so, the State authorities can completely give*

[23] *(1999) 7 SCC 120 : 1999 INSC 316*

a go-by to the concept of merit and can go to the extent of totally dispensing with the qualifying marks for SC, ST and OBC candidates and can shortlist them for being considered for admission to reserved categories of seats for them in postgraduate studies by reducing the qualifying marks to even zero. That was rightly frowned upon by this Court in Sadhana Devi case [(1997) 3 SCC 90] as that would not amount to shortlisting but on the contrary would amount to completely longlisting of such reserved category candidates for the vacancies which are reserved for them and on which they would not be entitled to be admitted if they did not qualify according to even reduced benchmarks or qualifying marks fixed for them. As seen earlier, keeping in view the ratio of the Constitution Bench of this Court in M.R. Balaji case [AIR 1963 SC 649 : 1963 Supp (1) SCR 439, 466-467] it must be held that along with the permissible reservation of 50% of seats for the reserved category of candidates in institutions imparting postgraduate studies, simultaneously, if further concessions by way of facilities are to be given for such reserved category of candidates so as to enable them to effectively occupy the seats reserved for them, such concessions by way of dilution of qualifying marks to be obtained at the entrance test for the purpose of shortlisting, can also not go beyond the permissible limits of 50% of the qualifying marks uniformly fixed for other candidates belonging to the general category and who appear at the same competitive test along with the reserved category of candidates. It is found from the records of these cases that qualifying marks at the entrance test for the general category of candidates are fixed at 50%. In fact such is the general standard of qualifying marks suggested by the Medical Council of India even at the stage of entrance examination to the MBBS course which is at the grass-root level of medical education after a student has completed his secondary education. Thus it would be proper to proceed on the basis that minimum qualifying marks for clearing the entrance test by way of shortlisting for getting admitted to postgraduate medical courses uniformly for all candidates who appear at such examination should be 50% but so far as the reserved category of candidates are concerned who are otherwise eligible for competing for seats in the postgraduate medical courses, 50% reduction at the highest of the general benchmarks by way of permissible concession would enable the State authorities to reduce the qualifying marks for passing such entrance examination up to 50% of 50% i.e. 25%. In other words, if qualifying marks for passing the entrance examination for being admitted to postgraduate medical courses is 50% for a general

category candidate, then such qualifying marks by way of concession can be reduced for the reserved category candidates to 25% which would be the maximum permissible limit of reduction or deviation from the general benchmarks. Meaning thereby, that a reserved category candidate even if gets 25% of the marks at such a common entrance test he can be considered for being admitted to the reserved vacancy for which he is otherwise eligible. But below 25% of benchmarks for the reserved category of candidates, no further dilution can be permitted. In other words, concession or facility for the reserved category of candidates can remain permissible under Article 15(4) up to only 50% of benchmarks prescribed for the general category candidates. The State cannot reduce the qualifying marks for a reserved category candidate below 25% nor can it go up to zero as tried to be suggested by Shri P.P. Rao, learned Senior Counsel for the State of Madhya Pradesh as that would not amount to the process of shortlisting but would in fact amount to longlisting or comprehensive listing of such reserved category of candidates as seen earlier. Any such attempt to further dilute the qualifying marks or benchmarks for the reserved category of candidates below 25% of the general passing marks would be violative of the provisions of Article 15(4) as laid down by the Constitution Bench in M.R. Balaji case [AIR 1963 SC 649 : 1963 Supp (1) SCR 439, 466-467] and would also remain unreasonable and would be hit by Article 14 of the Constitution of India. Within this sliding scale of percentages between 25% and 50% passing marks appropriate benchmarks for passing the entrance test examination can be suitably fixed for SC/ST and OBC candidates as the exigencies of the situation may require. But in no case the qualifying marks for any of these reserved categories of students can go below 25% of the general passing marks. Any reserved category candidate who gets less than 25% of marks at the entrance examination or less than the prescribed reduced percentage of marks for the category concerned between 50% and 25% of passing marks cannot be called for counselling and has to be ruled out of consideration and in that process if any seat reserved for the reserved categories concerned remains unfilled by candidates belonging to that category it must go to the general category and can be filled in by the general category candidate who has already obtained 50% or more marks at the entrance examination but who could not be accommodated because of lesser percentage of marks obtained by him qua other general category candidates in the limited number of seats available to them in a given institution in postgraduate studies.

116. *In the light of the aforesaid discussion, the following conclusions emerge:*

(1) It is permissible to the State authorities which are running and/or controlling the medical institutions in the States concerned to shortlist the eligible and qualified MBBS doctors for being considered for admission to postgraduate medical courses in these institutions. For the purpose of such shortlisting full play is available to the State authorities to exercise legislative or executive power as the field is not occupied till date by any legislation of Parliament on this aspect in exercise of its legislative powers under Entry 25 of List III of the Constitution of India and this topic is also not covered by any legislation under Entry 66 of List I of the Constitution.

(2) The Indian Medical Council Act and the regulations framed thereunder do not cover the question of shortlisting of admission of eligible and duly qualified MBBS doctors who seek admission to different medical institutions imparting postgraduate education run or controlled by the States concerned.

(3) The regulations and guidelines given by the Medical Council of India in this connection, though persuasive and not having any binding force, cannot be totally ignored by the State authorities but must be broadly kept in view while undertaking the exercise of shortlisting of eligible candidates for being admitted to postgraduate medical courses.

(4) While shortlisting candidates having basic qualifications of MBBS for being considered for admission to a limited number of vacancies in postgraduate courses available at the medical institutions in the States, it is permissible for the State authorities to have common entrance tests and to prescribe minimum qualifying marks for passing such tests to enable the examinees who pass such test to be called for counselling. That would be in addition to the basic qualification by way of MBBS Degree. The performance of the candidate concerned during the time he or she undertook the study at MBBS level for ultimately getting the MBBS Degree also would be a relevant consideration for the State authorities to be kept in view.

(5) It is equally permissible for the State authorities while undertaking the aforesaid exercise of shortlisting to fix 50% minimum qualifying marks at the entrance test for the general category of candidates and to dilute and

prescribe lesser percentage of passing marks for the reserved category of candidates as the exigencies of situation may require in a given year but in no case the minimum qualifying marks as reduced for the reserved category of candidates can go below 25% of passing marks for such reserved category of candidates. In other words, a play is available to the State authorities to prescribe different minimum passing marks for SC/ST and OBC eligible candidates between 50% and 25% as the prevailing situation at a given point of time may require. In such categories for SC, ST and OBC candidates different diluted passing marks can be prescribed, but this exercise has to be within the permissible limits of less than 50% and up to minimum 25% passing marks for each of such reserved categories. No eligible candidate belonging to the reserved category who does not obtain minimum per cent of passing marks as diluted for such category of candidates by the State authorities can be considered to be eligible for undertaking postgraduate medical courses in a given year for which he has offered his candidature and if any seat reserved for such categories of candidates remain unfilled due to non-availability of such eligible reserved category candidates to fill up such seat, then the said seat would go to general category candidates and will be available in the order of merit in the light of marks obtained by such wait-listed general category candidates having obtained the requisite passing marks who otherwise could not get admitted due to non-availability of general category seats earlier. The ratio of various decisions of this Court considered hereinabove will have to be implemented in the light of the aforesaid conclusions to which I have reached. The aforesaid practice has to be followed and should hold the field from year to year so long as Parliament does not pass any legislation for regulating admission to postgraduate medical courses either by separate legislation or by appropriately amending the Indian Medical Council Act by empowering the Medical Council of India to prescribe such regulations.

5.21. The State could not have ignored the Central guidelines when a specific submission was made by the State and the direction issued by this court vide order dated 14.10.2023 in **W.P. No. 24486/2022** at para 19 thereof which is reproduced here under for easy reference:

19. *However, in view of the submission made by learned Advocate General, that the State Government is open and willing to formulate fare fixation, this Court is of the view that the Guidelines referred to above will also be adhered to during the process of fare fixation. However, since the*

said process would take a period of ten to fifteen days as submitted, in the interregnum, considering the submissions made by the petitioners as well as the learned Advocate General, this Court is of the considered view that the petitioners/aggregators be put on terms.

5.22. Learned Advocate General has stated that the State government is open and willing to formulate fare fixation, and this Court has opined that the guidelines referred to would also be adhered to; it was but required for the State to take into consideration the guidelines and then properly fix the fares, and same not having been done the impugned notification is contrary to the directions issued by this court. Thus, he submits that the impugned notification is in derogation of the statutory scheme, commitment made to this court and noncompliance with the directions issued by this court, and hence the price fixation is arbitrary since even according to the State, the empirical data was not available with the State.

5.23. The interim order dated 14.10.2022 prescribed a 10% commission as an interim arrangement made so as to enable the State to comply with the applicable law, despite which the State has not so complied, has issued an impugned notification fixing the commission at 5% of the fare, which is less than what was prescribed by this court. The same not having been done in terms of Section 93 is unsustainable, and therefore, it is required that the direction be issued to the State to comply with Section 93.

5.24. Hiring auto-rickshaws on the app of OLA would mean that the auto rickshaws would be available at the doorstep of the passenger/customer for pick-up, which would require payment to be made to the driver for travelling to the doorstep sometimes that location being in remote areas, pick up cost have not been taken into consideration by the State. On enquiry if Ola pays the drivers onboarded on its platform regarding the above and if any documents have been produced in relation thereto, his submission is that no documents have been produced.

5.25. The first proviso to Section 93 mandates that while issuing a License to the aggregator, the State government should follow guidelines as may be issued by the Central government. This Court having already expressed its opinion that guidelines will have to be taken into consideration, he submits that the word ‘may’ has to be treated as ‘shall’, and if the guidelines are not taken into consideration, the entire action on the part of the State will suffer

from legal infirmity. In this regard, he refers to para 28 of the order dated 14.10.2023 in **W.P. No.24486/2022,** which is reproduced hereunder for easy reference:

28. *It is clear and forthcoming that the scheme of operation of Section 67 of the MV Act is entirely different from what is contemplated under Section 93 of the MV Act. The notification dated 25.11.2022 having been issued without taking into consideration that the power of the State Government was required to be exercised as contemplated under Section 93 of the MV Act and the Motor Vehicle Aggregator Guidelines – 2020 issued by the Central Government, I am of prima facie view that said notification dated 25.11.2022 is required to be stayed pending consideration of these writ petitions.*

5.26. And para 19 of the order dated 14.10.2023 in **W.P. No.20349/2022,** which is reproduced hereunder for easy reference:

19. *However, in view of the submission made by learned Advocate General, that the State Government is open and willing to formulate fare fixation, this Court is of the view that the Guidelines referred to above will also be adhered to during the process of fare fixation. However since the said process would take a period of ten to fifteen days as submitted, in the interregnum, considering the submissions made by the petitioners as well as the learned Advocate General, this Court is of the considered view that the petitioners/aggregators be put on terms.*

(emphasis supplied)

5.27. By referring to clause (13) of the Central Government aggregator guidelines, 2020, he submits that the driver is entitled to 80% of the fare applicable on each ride, which would mean that even the Central Government has contemplated that 20% of the fare would have to be paid to the aggregator as commission. He submits that this is required because the average fare for an autorickshaw is 60% of the four-wheeler taxi, and in order to provide service under the OLA platform, Ola would require 20% of the fare as the service fee. The guidelines of 2020 recognised surge pricing, which is based on market forces of demand and supply during periods of congestion and high demand, the surge price having received acceptance the world over, and the fare fixation under Section 67 not having taken into account the peak

factor for surge price, would only indicate the arbitrariness of the said price fixation. The concept of fare in respect to the service provided on the aggregator platform has to be understood in the background of the 2019 amendment to the M.V. Act and the guidelines, 2020.

5.28. The facilities provided by OLA are at a huge cost of research and development, app maintenance, and overheads. OLA, being an internet-based common operator/aggregator, is a separate class of service provider. Subsection (12) of Section 2 would not apply to such a service provider. In this regard, he relies upon the Judgment of the Hon'ble Apex Court in ***Printers (Mysore) Ltd. v. CTO***[24], more particularly para 18 thereof, which is reproduced hereunder for easy reference:

18. *Now coming back to the amendment of the definition of "goods" in Section 2(d) of the Central Sales Tax Act, the said amendment, brought in with a view to bring the said definition in accord with the amendments brought in by the Constitution Sixth (Amendment) Act (referred to hereinbefore) was actuated by the very same concern, viz., to exempt the sale of newspapers from the levy of Central Sales Tax. The amendment was not intended to create a burden which was not there but to remove the burden, if any already existing on the newspapers — a policy evidenced by the enactment of the Taxes on Newspapers (Sales and Advertisements) Repeal Act, 1951. This concern must have to be borne in mind while understanding and interpreting the expression "goods" occurring in the second half of Section 8(3)(b). Now, the expression "goods" occurs on four occasions in Section 8(3)(b). On first three occasions, there is no doubt, it has to be understood in the sense it is defined in clause (d) of Section 2. Indeed, when Section 8(1)(b) speaks of goods, it is really referring to goods referred to in the first half of Section 8(3)(b), i.e., on first three occasions. It is only when Section 8(3)(b) uses the expression "goods" in the second half of the clause, i.e., on the fourth occasion that it does not and cannot be understood in the sense it is defined in Section 2(d). In other words, the "goods" referred in the first half of clause (b) in Section 8(3) refers to what may generally be referred to as raw material (in cases where they were purchased by a dealer for use in the manufacture of goods for sale) while the said word "goods" occurring for the fourth time (i.e., in the latter half) cannot obviously refer to raw material. It refers to manufactured "goods",*

[24] *(1994) 2 SCC 434 at page 444 : 1994 INSC 51*

i.e., goods manufactured by such purchasing dealer — in this case, newspapers. If we attach the defined meaning to "goods" in the second half of Section 8(3)(b), it would place the newspapers in a more unfavourable position than they were prior to the amendment of the definition in Section 2(d). It should also be remembered that Section 2 which defines certain expressions occurring in the Act opens with the words: "In this Act, unless the context otherwise requires". This shows that wherever the word "goods" occurs in the enactment, it is not mandatory that one should mechanically attribute to the said expression the meaning assigned to it in clause (d). Ordinarily, that is so. But where the context does not permit or where the context requires otherwise, the meaning assigned to it in the said definition need not be applied. If we keep the above consideration in mind, it would be evident that the expression "goods" occurring in the second half of Section 8(3)(b) cannot be taken to exclude newspapers from its purview. The context does not permit it. It could never have been included by Parliament. Before the said amendment, the position was — the State could not levy tax on intra-State sale of newspapers; the Parliament could but it did not and Entry 92-A of List I bars the Parliament from imposing tax on interState sale of newspapers; as a result of the above provisions, while the newspapers were not paying any tax on their sale, they were enjoying the benefit of Section 8(3)(b) read with Section 8(1)(b) and paying tax only @ 4% on non-declared goods which they required for printing and publishing newspapers. Their position could not be worse after the amendment which would be the case if we accept the contention of the Revenue. If the contention of the Revenue is accepted, the newspapers would now become liable to pay tax @ 10% on non-declared goods as prescribed in Section 8(2). This would be the necessary consequence of the acceptance of Revenue's submission inasmuch as the newspapers would be deprived of the benefit of Section 8(3)(b) read with Section 8(1)(b). We do not think that such was the intention behind the amendment of definition of the expression "goods" by the 1958 (Amendment) Act. Even apart from the opening words in Section 2 referred to above, it is well settled that where the context does not permit or where it would lead to absurd or unintended result, the definition of an expression need not be mechanically applied.

5.29. The fare in terms of M.V. Act and the fare in terms of the guidelines have not been adequately appreciated. It is the fare in terms of guidelines which has to be considered, which is defined as *'total charges debited by the aggregator to the rider pursuant to the latter booking a ride through the*

aggregator's app and completion of such ride'. This, he submits, is at the total discretion of the service provider, and the State has no role to play.

5.30. Lastly, he submits that OLA has been discriminated against inasmuch as the violations of two other app-based service providers, namely Namma Yatri and RAPIDO, have not been covered under the notification.

5.31. Namma Yatri is run by a private entity, which has developed its own pricing/payment mechanism in violation of the fare notification dated 6.11.2021 and the order dated 14.10.2023. The said service provider is charging separate amounts under driver pick-up charges, customer tips, optional driver requests, etc, which is not covered under the fare fixation under Section 67.

5.32. Similarly, RAPIDO service is charging by the name of Auto Plus more than the fare prescribed by this court and/or impugned notification, and no action has been taken against them. Only OLA has been targeted.

5.33. On these grounds, he submits that the Writ Petition No.24486/2022 is required to be allowed and relief sought to be granted. ***ubmissions of Sri. Prabhuling K.Navadagi, and thereafter by his successor, Sri. Shashi Kiran Shetty, the learned Advocate Generals on behalf of the State.***

6. On behalf of the State, initially, arguments were advanced by the then-learned Advocate General Sri. Prabhuling K.Navadagi, and thereafter by his successor, Sri. Shashi Kiran Shetty, the learned Advocate Generals submitted that;

6.1. The aggregators are plying autorickshaws in breach of license Rules in terms of the KODTTA Rules; hence, on 11.10.2022, an order was issued directing aggregators to stop plying autorickshaws on their platform without obtaining any license and at a price higher than that fixed by the State government without providing any details of the operating autorickshaws to the concerned authorities, the same having been challenged in W.P. No.20349/2022 and 20437/2022 the petitioners therein were permitted to charge 10% towards the services rendered by them over and above the fare fixed, and directed that no coercive steps would be taken against them by the respondents.

6.2. The petitioners therein could apply for a new license or renew their license in accordance with the law. His submission is that the said order continues to be in force and has not been challenged.

6.3. In pursuance of the order of this court, the State had invited the petitioners for discussion, taking into account that an app was already being used in the State of Karnataka for the purpose of Taxi, and there is no additional cost incurred in respect of the said app and services covered under the said app by the mere addition of autorickshaws to the said platform. Many of the heads of account under which Uber and Ola have sought higher amounts are not those that are exclusive to autorickshaws, nor are they exclusive to Bangalore or India, since these applications and the features thereof are used across the world. In terms of the impugned notification, the service charges were fixed at 5% above the fare for an autorickshaw, excluding GST.

6.4. The petitioners not having obtained the license for autorickshaws, no action has been taken in terms of the directions/protection afforded by this court vide order dated 14.10.2022, though it was entitled to do so, since even as of today, there is no particular license granted to the petitioners to provide service in respect of autorickshaw, without obtaining such license and without providing details of autorickshaws as required in terms of license, the petitioner cannot challenge the policy decision of the State.

6.5. In terms of the KODTTA Rules, which are notified by the State to regulate and ensure greater integrity of process and operation of on-demand technology aggregator platforms, which came to be challenged in WP No. 30191/2016, 30917/2016 and 31673/2016, the constitutional validity of the KODTTA Rules were upheld except in respect of Rule 5(3), 6(A), 10(O), 10(c), 10(v), 11(1e) and Rule 14, which came to be challenged in W.A. No.4787/2016, 4789/2016 and 47109/2018, wherein it has been noted that the appellants therein had agreed that they shall not charge surge prices from the commuters vide order dated 7.12.2016. Subsequently, on 13.12.2016, it was directed that the petitioners therein would obtain a license, which would be the subject matter of the writ appeal, and the authorities would not take any coercive action for violation of the KODTTA rules.

6.6. The application for a grant of license for a four wheeler Taxi was made by Uber on 18.04.2016, attaching the list of four-wheeler vehicles, and the same was granted. Similarly, Ola filed an application on 28.06.2021 enclosing its list of four-wheelers, which was granted. Neither Uber nor Ola had enclosed the list of autorickshaws at that time. Thus, the said license does not cover autorickshaws. They, however, submit that a list of all the four-wheelers onboarded on the platforms of Uber and Ola has not been furnished.

6.7. Their submission is also that autorickshaws are distinct from four-wheelers,

being threewheelers and they being a separate class, a separate license is required to be obtained in respect of an autorickshaw as regards an aggregator. The requirement of providing a list of vehicles is mandatory for obtaining a license, the License would be restricted only to the list of vehicles provided and would not extend beyond that list, this being in terms of form-3 of Central Guidelines, 2020, which, according to the petitioners is applicable, which requires a separate license to be granted and obtained by the aggregators. Thus, their submission is that a single license is not sufficient to run various categories of vehicles.

6.8. No application to date has been filed for a license in respect to autorickshaws enclosing the list of autorickshaws; thus, no license has been granted by the State with respect to autorickshaws. Insofar as the power of the State government under Section 67, their submission is that Section 67 confers power on the State government to control road transport by issuing necessary directions regarding fixing fares, freight for stage carriages, contract carriages and goods carriages. The fixing of fare can only be made under Section 67, and such fare would include any and all charges that the transportation vehicles can collect from its passengers/customers. In this regard, they placed reliance on the decision of the Hon'ble Apex court in ***Sree Gajanana Motor Transport Co. Ltd. v. State of Karnataka***[25], more particularly para 5 to 7 thereof, which are reproduced hereunder for easy reference:

> ***5.*** *Learned Counsel for the appellant contends that the power of the Government to issue directions relating to "freights" does not include imposition of charges for carrying postal goods as conditions of permits which the Regional Transport Authority grants in exercise of its quasi-judicial powers. The attack on the validity of the government direction is thus twofold : firstly, that it falls outside the scope of Section 43(1) of the Act as charges for carrying mail are not "freight" on goods carried; and, secondly, that no directions could be given to a quasi-judicial authority as to how it should perform its functions.*
>
> ***6.*** *So far as the first argument is concerned, we do not find much substance in it. The term "charge" is a broad one. As used here, it is not a technical term and has not been denied by the Act. It has, therefore, its ordinary dictionary meaning. It means any amount which may be demanded*

[25] *(1977) 1 SCC 37 : 1976 INSC 229*

as a price for the rendering of some service or as price of some goods. The argument of the learned Counsel for the appellant that the Act uses the term "freight" to indicate the charge made on carriage of goods, whereas the term "fare" is used for the charge made for carrying passengers, itself rests on the assumption that the term charge is a wide one. It includes both freights and fares. It is true that the term "fare" is used in relation to charges made for carriage of passengers and the term freight is used for charges made for the carriage of goods. Nevertheless, both are charges. It may be that stage carriages are meant for the carriage of passengers. But, as is a matter of common knowledge, they also carry the luggage of passengers. In other words, they also carry some goods incidentally. The mailbags in which the postal goods are sent are only a type of goods which are not so bulky as to require trucks or special vans. It is possible to carry them in stage carriages together with the luggage of the passengers. In any case, this is a condition which is probably imposed only in those areas where mail vans of the State are not found to be necessary or economical to run. In the villages in the interior of some rural areas, there may not be so much mail to carry as to justify sending a mail van. Therefore, power is given to the Regional Transport Authority to attach the condition that postal goods should be carried in stage carriages at rates fixed by the Government. The real grievance of the operators is not that they have to carry postal goods as a condition of their permits but that the rates fixed are too low. The proper remedy for such a grievance is, as the High Court rightly pointed out, to apply to the Government for revision of rates fixed.

7. *Coming to the second submission, we may observe that, although, there is ample authority for the proposition that the grant of stage carriage permits is a quasi-judicial function, with which the State Government cannot interfere by giving directions which may impede the due performance of such functions, yet, when Section 48(3) speaks of the power to attach conditions after the decision to grant the permit, it really deals with what lies past the quasi-judicial stage of decision to grant the permit. At that stage, the decision to grant the permit is already there and only conditions have to be attached to the permit, such as the necessity to carry postal goods on certain routes at rates fixed by the Government. On the face of it, these rates cannot be properly determined by the Regional Transport Authority. They have to be uniform throughout the State. A decision on what they should be must rest on considerations of policy and on facts which are not quite relevant to the grant of stage carriage permits. In any case, it is the*

State Government which has the data, and the legal power, under Section 43(1) of the Act, to fix freights for carriage of postal goods in various types of carriages, mentioned there, including stage carriages. We think that such charges are merely a species of freight on postal goods about which the State Government can issue appropriate directions to the State Transport Authority. The Regional Transport Authority has only to annex the condition automatically in areas where such a condition may be required to be annexed to the permits granted.

6.9. The State has, under Section 67 of the Act, fixed the fare in respect of four-wheeler taxis operating on aggregator platforms like Uber and Ola on 1.4.2021, which has been accepted and followed by both Ola and Uber, no challenge having been made to the power of the State to fix such fare, it is only now in respect of autorickshaws such a challenge has been made. Uber and Ola cannot have two different stands for these vehicles, especially when the same app is used for both services. The fare fixed for four-wheelers not having been challenged is deemed to be accepted. Thus, the power of the State under Section 67 has been accepted by both Uber and OLA with respect to the fixation of fares. They cannot now contend otherwise with respect to the fares fixed under Section 67 for an autorickshaw.

6.10. Section 93 is not one that covers the power to fix fares; it only covers the procedure of how an aggregator is granted a license and what the requirements are to be satisfied by the aggregator. Fare is not an item that comes under Section 93; it is already covered under Section 67. The fare has been fixed by the State, taking into consideration all and every aspect that is required to be so taken into consideration.

6.11. Price fixation, being a legislative activity, is not justiciable, and this court cannot determine its validity or otherwise. In this regard, he relies on the decision of the Hon'ble Apex court in **Cynamide India Ltd.(supra[11])**, more particularly para 4, 5 and 7 thereof, which are reproduced hereunder for easy reference:

4. *We start with the observation, "Price fixation is neither the function nor the forte of the court". We concern ourselves neither with the policy nor with the rates. But we do not totally deny ourselves the jurisdiction to enquire into the question, in appropriate proceedings, whether relevant considerations have gone in and irrelevant considerations kept out of the*

determination of the price. For example, if the legislature has decreed the pricing policy and prescribed the factors which should guide the determination of the price, we will, if necessary, enquire into the question whether the policy and the factors are present to the mind of the authorities specifying the price. But our examination will stop there. We will go no further. We will not deluge ourselves with more facts and figures. The assembling of the raw materials and the mechanics of price fixation are the concern of the executive and we leave it to them. And, we will not re-evaluate the considerations even if the prices are demonstrably injurious to some manufacturers or producers. The court will, of course, examine if there is any hostile discrimination. That is a different "cup of tea" altogether.

5. *The second observation we wish to make is, legislative action, plenary or subordinate, is not subject to rules of natural justice. In the case of Parliamentary legislation, the proposition is selfevident. In the case of subordinate legislation, it may happen that Parliament may itself provide for a notice and for a hearing — there are several instances of the legislature requiring the subordinate legislating authority to give public notice and a public hearing before say, for example, levying a municipal rate — in which case the substantial non-observance of the statutorily prescribed mode of observing natural justice may have the effect of invalidating the subordinate legislation. The right here given to rate payers or others is in the nature of a concession which is not to detract from the character of the activity as legislative and not quasi-judicial. But, where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it will not be permissible to read natural justice into such legislative activity.*

7. *The third observation we wish to make is, price fixation is more in the nature of a legislative activity than any other. It is true that, with the proliferation of delegated legislation, there is a tendency for the line between legislation and administration to vanish into an illusion. Administrative, quasi-judicial decisions tend to merge in legislative activity and, conversely, legislative activity tends to fade into and present an appearance of an administrative or quasijudicial activity. Any attempt to draw a distinct line between legislative and administrative functions, it has been said, is "difficult in theory and impossible in practice". Though difficult, it is necessary that the line must sometimes be drawn as different legal rights and consequences may ensue. The distinction between the two has usually been expressed as "one between the general and the particular". "A*

legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy". "Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases." It has also been said: "Rule-making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class" while, "an adjudication, on the other hand, applies to specific individuals or situations". But, this is only a broad distinction, not necessarily always true. Administration and administrative adjudication may also be of general application and there may be legislation of particular application only. That is not ruled out. Again, adjudication determines past and present facts and declares rights and liabilities while legislation indicates the future course of action. Adjudication is determinative of the past and the present while legislation is indicative of the future. The object of the rule, the reach of its application, the rights and obligations arising out of it, its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help in drawing the line between legislative and non-legislative acts. A price fixation measure does not concern itself with the interests of an individual manufacturer or producer. It is generally in relation to a particular commodity or class of commodities or transactions. It is a direction of a general character, not directed against a particular situation. It is intended to operate in the future. It is conceived in the interests of the general consumer public. The right of the citizen to obtain essential articles at fair prices and the duty of the State to so provide them are transformed into the power of the State to fix prices and the obligation of the producer to charge no more than the price fixed. Viewed from whatever angle, the angle of general application, the prospectiveness of its effect, the public interest served, and the rights and obligations flowing therefrom, there can be no question that price fixation is ordinarily a legislative activity. Price fixation may occasionally assume an administrative or quasi-judicial character when it relates to acquisition or requisition of goods or property from individuals and it becomes necessary to fix the price separately in relation to such individuals. Such situations may arise when the owner of property or goods is compelled to sell his

property or goods to the Government or its nominee and the price to be paid is directed by the legislature to be determined according to the statutory guidelines laid down by it. In such situations the determination of price may acquire a quasi-judicial character. Otherwise, price fixation is generally a legislative activity. We also wish to clear a misapprehension which appears to prevail in certain circles that price fixation affects the manufacturer or producer primarily and therefore fairness requires that he be given an opportunity and that fair opportunity to the manufacturer or producer must be read into the procedure for price fixation. We do not agree with the basic premise that price fixation primarily affects manufacturers and producers. Those who are most vitally affected are the consumer public. It is for their protection that price fixation is resorted to and any increase in price affects them as seriously as any decrease does a manufacturer, if not more.

6.12. Fare is a final payment made by any customer. Their submission is that the same is inclusive of all charges excluding taxes and, therefore, is within the power of the state government under Section 67 to regulate. Though the KODTTA Rules of 2016 have been introduced prior to the amendment to M.V.Act, his submission is that those Rules are one which is contemplated under Section 93, 95(1) and 96(1), and all the formalities in respect of the said provisions have been complied with, the KODTTA Rules would have to be taken into consideration, whose validity has already been upheld by the Coordinate Bench.

6.13. In terms of Rule 9 of the KODTTA Rules, an aggregator is not entitled to charge a fare higher than that fixed by the state government. The fare fixed under Section 67, with 5% of the said fare being the service fee, it would have to be complied, and the distinction drawn by Uber and Ola that fare under Rule 9 is one single composite fare and a separate service fee cannot be included is only a distinction without any difference.

6.14. Section 67 provides omnibus power to the State government to give directions as regards the ceiling of fare, keeping in view the passenger convenience, economically competent price, prevention of overcrowding and road safety, such power having been exercised by the State cannot be so questioned by the petitioner in the manner done before this court. In the present case, no one has challenged the fare perse, but the challenge is to the service fee, which cannot be raised today on the basis of the petitioners

being entitled to make profits.

6.15. The fare fixation made on 6.11.2021 is binding on the service providers. The service providers being entitled to 5% of the said fare as service charges by the impugned notification is in compliance with the order dated 14.10.2022 passed by this court, and same cannot be found fault with.

6.16. Their submission is that the fare fixed includes a service fee, the power thereof being drawn from a conjoint reading of Sections 67 and 68 of the M.V. Act. Subsection (3) of Section 68 provides for the State Transport Authority and every Regional Transport Authority to give effect to directions issued under Section 67. Section 67 provides that the State government could issue directions to both the State Transport Authority and every Regional Transport Authority regarding competitive fares. Section 67 was amended in the year 2019, before such amendment it read as follows:

67. Power to State Government to control road transport.-

(1) *A State Government, having regard to-*

(a) *the advantages offered to the public, trade and industry by the development of motor transport,*

(b) *the desirability of co-ordinating road and rail transport,*

(c) *the desirability of preventing the deterioration of the road system, and*

(d) *the desirability of preventing uneconomic competition among holders of permits.*

may, from time to time, by notification in the Official Gazette, issue directions both to the State Transport Authority and Regional Transport Authority-

(i) *regarding the fixing of fares and freights (including the maximum and minimum in respect thereof) for stage carriages, contract carriages and goods carriages:*

(ii) *regarding the prohibition or restriction, subject to such conditions as may be specified in the directions, of the conveying of long distance goods traffic generally, or of specified classes of goods by goods carriages;*

(iii) *regarding any other matter which may appear to the State Government necessary or expedient for giving effect to any agreement entered into with the Central Government or any other State Government or the Government of any other country relating to the regulation of motor transport generally, and in particular to its coordination with other means of transport and the conveying of long distance goods traffic:*

Provided that no such notification in respect of the matters referred to in clause (ii) or clause (iii) shall be issued unless a draft of the proposed directions is published in the Official Gazette specifying therein a date being not less than one month after such publication, on or after which the draft will be taken into consideration and any objection or received has, in consultation with the State Transport Authority, suggestion which may be been considered after giving the representatives of the interests affected an opportunity of being heard.

(2) *Any direction under sub-section (1) regarding the fixing of fares and freights for stage carriages, contract carriages and goods carriages may provide that such fares or freights shall be inclusive of the tax payable by the passengers or the consignors of the goods, as the case may be, to the operators of the stage carriages, contract carriages or goods carriages under any law for the time being in force relating to tax on passengers and goods.*

6.17. Section 67 post the amendment in the year 2019, reads as under:

67. Power to State Government to control road transport.—

*[**(1)** A State Government, having regard to—*

(a) the advantages offered to the public, trade and industry by the development of motor transport;

(b) the desirability of co-ordinating road and rail transport;

(c) the desirability of preventing the deterioration of the road system, and

(d) promoting effective competition among the transport service providers,

may, from time to time, by notification in the Official Gazette issue directions both to the State Transport Authority and Regional Transport Authority

regarding the passengers' convenience, economically competitive fares, prevention of overcrowding and road safety.]

(2) *Any direction under sub-section (1) regarding the fixing of fares and freights for stage carriages, contract carriages and goods carriages may provide that such fares or freights shall be inclusive of the tax payable by the passengers or the consignors of the goods, as the case may be, to the operators of the stage carriages, contract carriages or goods carriages under any law for the time being in force relating to tax on passengers and goods:*

[Provided that the State Government may subject to such conditions as it may deem fit, and with a view to achieving the objectives specified in clause (d) of subsection (1), relax all or any of the provisions made under this Chapter.]

*[**(3)** Notwithstanding anything contained in this Act, the State Government may, by notification in the Official Gazette, modify any permit issued under this Act or make schemes for the transportation of goods and passengers and issue Licenses under such scheme for the promotion of development and efficiency in transportation—*

(a) last mile connectivity;

(b) rural transport;

(c) reducing traffic congestion;

(d) improving urban transport;

(e) safety of road users;

(f) better utilisation of transportation assets;

(g) the enhancement of economic vitality of the area, through competitiveness, productivity and efficiency;

(h) the increase in the accessibility and mobility of people;

(i) the protection and enhancement of the environment;

(j) the promotion of energy conservation;

(k) improvement of the quality of life;

(l) enhance integration and connectivity of the transportation system, across and between modes of transport; and

(m) such other matters as the Central Government may deem fit.

***(4)** The scheme framed under sub-section (3), shall specify the fees to be charged, form of application and grant of a License including the renewal, suspension, cancellation or modification of such License.]*

6.18. After the amendment, the scope of power of the state government increased. Prior to the amendment, the State government could only issue directions regarding fixing of fares, freight charges for stage carriages, contract carriages and good carriages. After the amendment, the scope includes the issuance of directions to fix economically competitive fares without any limitation regarding any class of vehicle. The fare as fixed is a policy decision, and the scope of judicial review in relation thereto is very limited. In this regard, he relies upon the decision of this court in **Canara Bus Operators Association vs. The Principal Secretary to the Transport**[34], more particularly para 5 and 6 thereof, which are reproduced hereunder for easy reference:

***5.** In this context, it is relevant to note the observations of the Supreme Court in the case of ASSOCIATION OF INDUSTRIAL ELECTRICITY USERS v. STATE OF A.P. reported in AIR 2002 SC 1361 which reads thus:-*

"We also agree with the High Court that the judicial review in the matter with regard to fixation of tariff has not to be as that of an appellate authority in exercise of its jurisdiction under Article 226 of the Constitution. All that the High Court has 2011 SCC Online Kar 888 to be satisfied is that the commission has followed the proper procedure and unless it can be demonstrated that its decision is on the face of its arbitrary or illegal or cantrary to the Act the Court will not interfere. Finding the tariff and providing for cross-subsidy is essentially a matter of policy and normally Court would refrain from interfering with the policy decision unless the power exercised is arbitrary or ex facie had in law."

***6.** Hence the impugned notification Annexrure-E cannot be said to be illegal as the same is in consonance with the notification issued by the State Government vide Annexure-B dated 3.11.2010. The same need not he*

interfered with. However, the first respondent may be directed to consider the representation filed by the petitioner association as per Annexure-F submitted on 24.9.2011 seeking enhancement of fare in accordance with law and on merits, as early as possible, but not later then outer limit of three months from the date of receipt of this order.

6.19. They rely on the decision in ***Kerala State Electricity Board v. Sir Syed Institute for Technical Studies***[35], more particularly para 18 thereof, which is reproduced hereunder for easy reference:

18. *If any appeal is preferred in relation to any specific case, the Commission would then have to justify fixing a tariff rate in such a case. The duty to disclose reason would crystallise then only, in a situation where a particular tariff fixing proposal goes without any objection after its draft publication. Not having gone to the appellate forum, the writ* **2020 SCC OnLine SC 229 : 2020 INSC 218** *petitioners approached the writ court. Before the writ court, such tariff fixation was open to challenge in the same way tariffs fixed in exercise of quasilegislative or administrative power are subjected to judicial review. Thus, in our opinion, in the absence of any statutory provision to the contrary, once tariff proposal is published and goes unobjected to before the State Commission, the question of disclosure of reason for such fixation would not arise at the stage of finalisation of tariff. If such tariff orders are later challenged before the appellate forum or the writ court, the Commission would have to defend its decision the same way an administrative or quasilegislative decision on fixing of tariff is defended. Since we have taken this view, we do not consider it necessary to deal with the authorities which lay down the dictum of law that a quasi-judicial authority is required to disclose reasons in support of its decision.*

6.20. Placing reliance on the above, they submit that merely because tariff fixation notification did not contain any reasons, it cannot be faulted with. Even a tariff fixation without reasons can be defended in a court of law in the same way as an administrative or quasi-legislative decision. Fixing of fares is a quasi-legislative function as held by the Hon'ble Apex Court in ***Pawan Alloys & Casting (P) Ltd. v. U.P. SEB***[26], more particularly para 25 and 26 thereof, which are reproduced hereunder for easy reference: *However Shri Dave, learned Senior Counsel appearing for the Board, vehemently pressed into service a decision of a three-Judge Bench of this Court in the case of Ashok*

[26] (1997) 7 SCC 251 at page 272 : 1997 INSC 569

Soap Factory v. Municipal Corpn. of Delhi [(1993) 2 SCC 37] . In that case the

Court was concerned with the power exercised by the

Delhi Municipal Corporation under Section 283 of the Delhi Municipal Corporation Act, 1957 to levy charges for the supply of electricity at such rates as may be fixed from time to time by the Delhi Municipal Corporation in accordance with law. The dispute centred round the question of levying minimum consumption guarantee charges for large industrial power consumers and tariff revision in connection therewith. The Court upheld the revision of minimum demand charges but while doing so in para 29 of the Report observed that apart from that, the fixation of tariff was a legislative function and the only challenge to the fixation of such levy could be on the ground of unreasonableness or arbitrariness and not on demonstrative grounds in the sense that the reasons for the levy of charge must be disclosed in the order imposing the levy or disclosed to the court, so long as it was based on objective criteria.

25. *We fail to appreciate how those observations made in connection with entirely a different challenge based on different statutory scheme can be straightaway pressed into service for contending that even grant of rebate of electricity charges as a part of permissible incentive scheme would also be a legislative function. It has to be kept in view that the Board exercises its statutory powers under Section 49(1) of the Act by fixing uniform rates of tariff for electricity charges. When it fixes general tariffs, it may be said to be exercising delegated legislative power. But while doing so, it also in exercise of its statutory power can grant rebate to a given class of consumers under Section 49 sub-sections (2) and (3) read with Section 78-A of the Act. Once the uniform tariffs are fixed the statutory function of quasilegislative nature gets fructified. Dehors such rates if some concession by way of rebates is to be given the same would still remain in the field of statutory exercise of power. On this aspect we may usefully refer to a decision of this Court in the case of Bihar SEB v. Usha Martin Industries [(1997) 5 SCC 289] rendered by a Bench of two learned Judges wherein one of us (K.T. Thomas, J.) was a member. Dealing with the very same Section 49(1) the following pertinent observations were made by Sen, J. speaking for the Bench: (SCC pp. 294-95, para 17)*

"17. Moreover, the tariff is fixed by exercise of statutory power. It is not fixed as a result of any bargaining by and between the Board and the consumers.

It is a uniform tariff which every consumer will have to pay for the electricity consumed by him. In fact, the consumer has no option but to pay the tariff fixed by the Board in exercise of power conferred by Section 49."

For the purpose of the present discussion we may proceed on the basis that while fixing general tariffs and making them subject to the schemes of rebate, the Board exercises delegated legislative function flowing from the statute. However once incentive rebate is granted in the general rate of tariffs on directions by State under Section 78-A, the said incentive rebate offered by the Board would remain in the realm of exercise of statutory power-cumduty. In the exercise of the same power the Board in its discretion can grant rebate in appropriate cases within the four corners of Sections 49 and 78A of the Act. Of course this exercise will be subject to legally permissible limits and subject to the said concessional rates being found reasonable on the touchstone of Article 14 of the Constitution of India. It is, therefore, not possible to countenance the submission of Shri Dave that there cannot be any promissory estoppel against the Board when it exercises its powers under Section 49(1) of the Act whatever may be the settings for exercise of this power and even if it is exercised as a part of a scheme of incentive package required to be offered to new industries as enjoined on the Board as per statutorily binding directions issued by the State to the Board under Section 78-A of the Act.

6.21. They reiterate that the State Government has fixed minimum and maximum (fare) for fourwheeler taxi services, which also include the aggregator fee, vide notification dated 1.04.2021 issued under Section 67 of the MV act. The power under Section 67, as also the tariff which has been fixed, has been accepted and implemented by Uber and Ola, as such similar exercise now done under Section 67 in respect of autorickshaws cannot be found fault with. The uniform fare structure has been prescribed, taking into account the payment to be made by the consumer, merely because there is an aggregator who acts as a middleman, and the fare with or without an aggregator cannot be different.

6.22. Any commission that an aggregator wishes to charge would have to be within the fare, and no amount greater than the fixed fare can be charged. Sections 67 and 68 of the M.V. Act have to be read along with Rule (9) of the KODTTA Rules, which would make it clear that the fare is all-inclusive, and there cannot be any amount charged over and above the fare.

6.23. Insofar as the Central Motor Vehicle Guidelines 2020 is concerned, they submit that the same is directory (discretionary) and not mandatory since the words used are "the State government **may follow** the central guidelines and **may issue** a license to the aggregator…". This aspect has already been considered by the Hon'ble Apex Court in **Roppen Transportation Services (P) Ltd. v. Union of India**[27]**,** wherein it has been held that guidelines are persuasive, relevant paras 9 and 10, which are reproduced hereunder for easy reference,

9. *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 utilisation. 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.*

10. *The 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 License 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 License and in regard to the formulation of rules in pursuance of the general rule-making power under Section 96.*

6.24. The Hon'ble Apex Court has also held that unless there is a proper license for specific vehicles, the aggregation of such vehicles cannot be allowed, and in this regard, he relies upon the decision dated 12.06.2023 in Civil Appeal No.4040/2023.

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[27] *(2023) 4 SCC 349 : 2023 INSC 102*

6.25. As regards Sub-rule 4 of Rule 13 of the guidelines, they submit that what is stated therein is that a driver should receive at least 80% of the fare. The same does not indicate that the aggregator will have to receive 20% of the fare. There is no vested right carved out in sub-rule (4) of rule 13 entitling an aggregator to 20% of the fare.

6.26. It is up to Uber and Ola to enter into such an agreement with the permit holder/Cab driver as agreeable between the parties. Even as per the Central Government Guidelines, there is no specific distinction between fare and service fee, what is stated is that the driver would be entitled to at least 80% of the amount collected by the aggregator.

6.27. The State has fixed the fare, taking into consideration the end user/consumer who is required to know exactly how much is to be paid and he pays the amount expected while doing so, the state has also taken into consideration all aspects affecting the permit holder, including the expenses incurred which in turn includes the commission to be paid to the aggregators, the state has taken all relevant factors into account while fixing the fare, the same cannot be contended to be arbitrary as done in the present petitions.

6.28. A challenge to the KODTTA Rules, 2016, having been made before this court, a Single judge having upheld most of the provisions. The central guidelines are persuasive, and most of the issues covered under the central guidelines are covered under the KODTTA Rules. Uber and Ola cannot seek the implementation of guidelines as a matter of right. It is left to the State to decide which part of the guidelines would apply and to what extent.

6.29. Uber and Ola have been contending that they are entitled to 20% or 25% of the fare as the service fee. Many times, they have also contended that they are entitled to a surge fee despite having undertaken before the division bench that they would not charge a surge fee, and thus, the service fee is now proposed to be charged on the surge fee also, which is not permissible. Despite several requests having been made by the State to Uber and Ola to place on record the expenses incurred by them, since it is they who are in the full know of the charges and expenses incurred, more so in view

of the interim order passed by this court on 14.10.2022, neither Uber nor Ola have placed all the details on record. There is absolutely no transparency in the actions of Uber and Ola, not having furnished the details, they cannot now contend that the fixation made by the state is arbitrary or irrational.

6.30. The State has taken into consideration the available material, in order to safeguard the interest of the consumer's viz., the passengers of the autorickshaws as also the permit holders. Uber and Ola were asked to clearly place on record the cost component under each head of account if they intended to claim any such amount.

6.31. The State has not taken any action against Uber and Ola despite several violations that they have committed during the pendency of the

above petitions due to the orders passed by the Division Bench. Uber and Ola have been misusing the order dated 13.12.2016 passed by the Division Bench. Firstly, they are aggregating the taxis, and now they are aggregating the autorickshaws without obtaining a License. They are required to obtain a specific license for a specific vehicle for each type of vehicle by giving particulars of the vehicle, number of vehicles, etc. both Uber and Ola, not having done the needful, have violated the KODTTA Rules and M.V Act, and continue to do so day on day.

6.32. Autorickshaws and four-wheeler motor Taxis are treated differently. In a country like India, autorickshaws are used by the common, lower middle class and below, whereas four-wheeler taxis are used by the middle class and above. It is the interest of those persons belonging to the lower middle class and later which are to be protected. Autorickshaws form a backbone of transport activities; there being several issues relating to overcharging, fare has been fixed for autorickshaws, which can be enforced by the concerned authorities. The meter fixed as also calibration thereof is also done by State authorities to see that the passenger is not cheated or taken advantage of.

6.33. The service fee that Uber and Ola are demanding to be fixed is far from the fare fixed under Section 67, and the reasons given by the said service providers are that the vehicle will come to the doorstep, and the passenger is not required to go in search of the vehicle, and there are several other value-added services which are provided. The driver coming to the doorstep is a service rendered by the driver/permit holder and not by Uber/Ola; hence, the question of claiming any amount would not arise. At the most, the driver/permit holder would be entitled to an additional amount to come to the pick-up point or to the location; neither Uber nor Ola can charge any money for the same.

6.34. Autorickshaws, being ubiquitous and forming a part of the urban landscape, is the cheapest mode of travel for people belonging to the lower middle class, and later, if the claims of Uber and Ola are accepted, then the said customer will be forced to pay more money than the fare fixed, which will impinge upon his rights.

6.35. The decision relied upon by Sri. K.G.Raghavan, learned Senior counsel in **Mohinder Singh Gill's case (supra[9]),** has been distinguished in ***All India Railway Recruitment Board v. K. Shyam Kumar***[28], more particularly para 16 thereof which is reproduced hereunder for easy reference:

16. *We heard the learned counsel on either side at length and we have also gone through the extract of the vigilance report which appears in para 15 of the judgment of the High Court. The report indicated that 100 to 200 candidates were suspected to have obtained answers for the questions three hours before the examination through some middleman who had arranged the answers by accepting huge bribe. Apart from the serious allegations of impersonation in respect of 62 candidates it was stated on close scrutiny of the answer sheets, at least six candidates had certainly adopted unfair means to secure qualifying marks in the written test. The report says that investigation prima facie established leakage of question papers to a sizable number of candidates for the examination held on 23-11-2003. Further, it was also noticed that leakage of question paper was preplanned and widespread and the possibility of involvement of the Railway/RRB staff and also outsiders could not be ruled out and hence, recommended that the matter be referred to CBI.*

6.36. A distinction has also been made in ***PRP Exports v. State of T.N.[39],*** more particularly para 8 thereof, which is reproduced hereunder for easy reference:

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8. *Shri Harish Salve, learned Senior Counsel appearing for the petitioner, submitted that he is more concerned with the first question and arguments were advanced by him as well as Shri C. Sundaram, learned Senior Counsel appearing for the State, on that point. In our view, the Division Bench of the High Court is right in examining the subsequent events as well*

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[28] (2010) 6 SCC 614 : 2010 INSC 283 [39] (2014)13 SCC 692 :

in a case where larger public interest is involved.

"45. We are of the view that the decision-maker can always rely upon subsequent materials to support the decision already taken when larger public interest is involved. This Court in Madhyamic Shiksha Mandal, M.P. v. Abhilash Shiksha Prasar Samiti [(1998) 9 SCC 236] found no irregularity in placing reliance on a subsequent report to sustain the cancellation of the examination conducted where there were serious allegations of mass copying. The principle laid down in Mohinder Singh Gill case [(1978) 1 SCC 405] is not applicable where larger public interest is involved and in such situations, additional grounds can be looked into to examine the validity of an order. The finding recorded by the High Court that the report of CBI cannot be looked into to examine the validity of the order dated 4-6-2004, cannot be sustained."

6.37. Thus, they submit that the fare fixed under Section 67 is proper and correct. There are no particular Rules that are to be framed under Section 93 when the State has exercised statutory power under Sections 67 and 68 of the M.V. Act, and the writ petitions have to be dismissed.

Submissions on part of Intervenors:

7. There were several applications filed for impleading, and this Court, being of the considered opinion that those persons or entities are not strictly proper and necessary parties, has brought them on record as intervenors to assist this court. Submissions were heard from the counsels representing the intervenors.

7.1. Sri. N.P.Amruthesh, learned counsel who appears for Bharath Transport Association, submitted that: The said association is an organization for the welfare of taxi and autorickshaws (service providers) who have been providing taxi and autorickshaw services in Bangalore for several years.

7.2. The drivers who are members of the said association are normally not educated, come from village areas, they had been eking out a livelihood by providing taxi and autorickshaw services. Once Uber and OLA started their business as aggregators, these drivers were constrained to enrol themselves with Uber and OLA, hoping that they would get good revenue as per the promise held out by Uber and Ola had also promised

incentives over and above the fare for being onboarded. It is on that basis that many joined these aggregators; with the passage of time, the incentives promised have all but vanished.

7.3. He submits that Uber and OLA started exploiting and are now exploiting the drivers and owners of taxis and autorickshaws because of the monopoly they enjoyed. Customers and passengers have also been exploited in making payments for minimum fares way above the fare fixed by the transport authority, apart from GST, service charges, surge charges, maintenance charges, etc.

7.4. Despite several complaints by drivers, owners, and respective associations, neither Uber nor OLA has mended themselves, nor has the state taken any action. Despite the Members of Parliament having written to the Chief Minister about such exploitation, the Government has not taken action.

7.5. On repeated follow-ups, a notice came to be issued to OLA and M/s **Roppen Transport Services,** who runs the services by the name Rapido. Thereafter, the Transport Minister addressed a press meeting by directing the authorities to seize the autorickshaws that were demanding more than the minimum fare fixed by the government. However, the government authorities, being hand in glove with Uber and OLA, have been mute spectators and have not taken any action. The State having called for a meeting with Uber and OLA, several deliberations have been held, and no mutual agreement having been arrived at; the State took a decision to ban Uber and OLA on 11.02.2022, which indicates that the action taken by the State is to protect the interest of both the drivers and owners of the vehicles as also passengers/customers.

7.6. His further submission is that when Permit Holders/Drivers complain about the actions of the Aggregators, they are blacklisted and not allowed to be onboarded once again, which amounts to use of the dominant position of the aggregators. He adds that there is cartelization amongst the aggregators; if Uber blacklists a driver, he is not onboarded by Ola, and vice versa. The information about blacklisting is communicated amongst the aggregators. On that basis, he submits that there is also cooperation amongst these two aggregators, who are the largest in the aggregating business, having a market share of more than 90%; it is only now that there are new entrants like Rapido and Namma Yatri.

7.7. As far as the surge price is concerned, he submits that no amount is paid to the Permit Holder/Driver; it is retained by the Aggregator.

7.8. Though much arguments have been advanced by the aggregators as regards the vehicles offering the services of doorstep pick up, his submission in this regard is that such services are offered by the Permit Holder/Driver and not by the aggregators; the aggregators do not make payments of any amounts on this head of account to the permit holder/driver. Thus, it is

the permit holder/driver who provides these services at their cost, as regards which the aggregators want to charge a fee, which is completely dishonest and, again, an
exploitation of the permit holder/driver. He, therefore, submits that what has been fixed is proper and that the petitions have to be dismissed.

8. Sri. Nataraj Sharma Learned Counsel representing M/s G.Narayanaswamy, president of Karnataka Chalakara Okkoota, who has also been brought on record as intervenor, submitted that:

8.1. The Karnataka Chalakara Okkoota is a registered association of taxi drivers and autorickshaws running in the State of Karnataka, and more than 10,000 drivers are registered.

8.2. The drivers and owners of autorickshaws before the advent of Uber and OLA had been strictly following the fare fixed by the RTA, which fare was arrived at on the basis of mutual discussions between the authority, association, Unions, State transport department, Technical department, etc.

8.3. The price earlier fixed was on a scientific basis, taking into account the price of the vehicle, maintenance cost and fuel cost by the expert committee.

8.4. Once Uber and OLA entered the business, the rate cards which had been fixed by the State/RTAs were thrown to the wind, and they started collecting charges in an exorbitant manner, which caused harassment to the passengers/customers, which was required to be answered by the drivers, since there was no representative of Uber and OLA who was available, when the questions were posed to the drivers.

8.5. His submission is that neither the drivers/permit holders nor passengers/customers can interact with the officials of

Uber and OLA on the App or otherwise, constraining the driver/permit holders to bear the brunt of the complaints made by the customers, which complaints have been brought to the notice of Uber and OLA by the drivers/permit holders.

8.6. The autorickshaws owners are the persons who invest in the vehicle, maintain the vehicles, pay EMI as regards the loan borrowed for the purchase, bear the cost of fuel/LPG/CNG, the salary of the drivers if drivers are engaged, insurance cost and all other cost relating to the autorickshaws.

8.7. Uber and OLA, being only brokers and middlemen, are seeking more money than they are entitled to, which increases the fare and adversely affects drivers and permit holders. His submission is that the aggregators are charging more money than the Permit holder/driver of the vehicle earns.

8.8. The bill being exorbitant would either be automatically deducted from the account of the passenger without the passenger having any say in the matter, or the passengers/customers would have to make payment of the amounts, which many a time they refuse to make payment contending that it is exorbitant.

8.9. His further submission is that when demands for the amount are made by the drivers/permit holders, the passengers/customers have also filed police complaints, thus putting the life and liberty of the drivers at risk.

8.10. The autorickshaw drivers/owners are required to take permits, whereas Uber and OLA are not required to; they do not even have a license but are making more money than the driver/owner since there are no expenses incurred by Uber and OLA for the purchase of and or running of an autorickshaw. The only service offered is for connecting the passenger/customer with the permit holder/driver on the aggregator platform through an application that can be installed on mobile phones; the number of employees engaged by Uber and OLA is also very low.

8.11. The persons using the autorickshaws, most of them being below the poverty line, the driver/owners are unable to answer the queries of such passengers/customers regarding the increase in the fare as compared to the fare which was charged earlier before Uber and OLA came into the

picture. His submission is that apart from the drivers/owners, the passengers/customers are also suffering.

8.12. His submission is also that none of the facilities indicated by Uber and OLA is provided to the passengers/owners/permit holders of the autorickshaws. No training has been provided to any of the drivers. Drivers and owners are not allowed to interact with Uber and OLA employees. It is only when they want to contact the drivers/owners that they approach them. In the event of the driver/owner approaching the employees of Uber and OLA for any problems they face, they are not permitted to interact, and there is nobody to assist or cater to their problems or solve them.

8.13. Uber and OLA do not carry out any verification of the drivers; they on-board anyone and everyone since they want more and more drivers and vehicles to be part of Uber and OLA so as to get more and more commission from the rides. While so on-boarding no verification is being done; there are several persons with not-so-good track records who are on-boarded and do not abide by the applicable law, bringing disrepute to the other good drivers of taxi and autorickshaws.

8.14. Most drivers do not know in what manner surge pricing is calculated and charged, they are not aware of the amounts received by Uber and OLA, no accounts are being furnished, and the drivers are forced to accept whatever amount is transferred by Uber and OLA to their respective accounts.

8.15. Any driver who is on-boarded has to reach the doorstep of the customer for which he does not get paid either by Uber or OLA; the cost of fuel/LPG/CNG for travel from where the vehicle is parked to the pickup point is borne by the driver, and the claim made by Uber/OLA that they incur the cost for the taxi and autorickshaws to reach the pickup point is completely false. Uber and OLA do not provide these services. The drivers and owners of the autorickshaws are forced to bear this cost.

8.16. There is no helpline provided to the drivers/owners of the autorickshaws; the driver bears the insurance cost for the vehicle, and Uber or OLA do not bear such cost. The drivers/owners do not have any method of resolving their grievances. All the service costs for that vehicle are borne by the drivers/owners; there is no engineering support provided by Uber and OLA. There is no legal or

otherwise assistance provided by Uber and OLA to the drivers/owners if any action is taken by the passengers. Uber and OLA have abused and misused their monopoly by mistreating the drivers/owners.

8.17. His submission is that Uber and OLA do not make payment of the amounts falling to the credit of the driver in time, though they collect all the amounts from passengers/customers immediately upon completion of the ride. Payments are released only after repeated follow-ups by the drivers/owners. The autorickshaw drivers and owners are satisfied with the fare fixed by the government; they are not seeking any enhancement. Uber and OLA are trying to make use of the situation to seek for enhancement of fare and thereby the service charges, as also surge pricing/dynamic pricing, it all enures to the benefit of Uber and OLA, and it is to the detriment of the passengers/customers firstly and thereafter drivers/owners of the vehicles.

8.18. Uber and OLA are asking for a 25% commission on the fare, disregarding the earnings of the driver/owner. For a fare of Rs.30/- for 2 km Uber and OLA want 25% commission which amounts to Rs.7.5, whereas the earning of the driver who runs the autorickshaws for himself, the net earning is stated to be Rs.5.4/km, the owner gets Rs.10.80 for two kilometres, whereas Uber/OLA wants to get Rs.7.5 for two kilometres which indicates the gross abuse of the system on the part of Uber/OLA. Thus, he submits that, in so far as the surge price demanded by Uber/OLA, out of such surge amount collected, no amount would come to the driver/owner.

8.19. Lastly, he submits that Uber and OLA want to make money from and out of driver/owners' vehicles without suitably rewarding the said driver/owner, who actually works and in the bargain, the cost for passengers/customers is increasing, thereby adversely affecting the passengers/customers for autorickshaws, most of whom are below the poverty line.

8.20. Based on all the above, he submits that the writ petitions filed by the aggregators are to be dismissed, and action is required to be taken against the aggregators for all the lapses and violations.

9. Sri. Gowrishankar, learned counsel who had filed an application in IA-2/2023 for being impleaded, has been allowed to assist this Court as an intervenor; his submission is that:

9.1. Both the state and aggregators like Uber and Ola are acting contrary to the interests of the general populace. Though the learned Advocate General had assured this court while passing order dated 14.10.2022 that all concerns of the general public would be addressed and the suggestions from the general public would be taken into consideration, no advertisement has been published inviting public opinion or public concerns, the involvement of the public not being there, it is only the State who has chosen to decide on its own.

9.2. Consultative meetings did not include the general public; the general public, being victims, are the ones who have suffered since it is the general public who has to pay the fare, whether including the service fee or not.

9.3. His submission is that the fares have to be as low as possible, and companies like Uber and OLA ought not to be permitted to charge unreasonable amounts of money, making the choice of transport for a poor man impossible to afford.

10. Heard Sri. K.G. Raghavan learned Senior Counsel for the petitioner in W.P. No.24501/2022, Sri.Aditya Sondhi, learned Senior Counsel for the petitioner in W.P. No.24486/2022; Sri.Shashi Kiran Shetty, learned Advocate General for respondents-State and Sri.Amruthesh.N.P, learned counsel and Sri.S.Nataraj Sharma, learned counsel for intervenors. Perused papers.

11. Having heard all the learned counsels, the following points arise for consideration:

1) Is it mandatory for a State to prepare Regulations under Section 93 of the M.V.Act, or is it optional?

2) Are the guidelines issued by the Central Government in the year 2000 mandatory for the State to follow, or is it directory?

3) Whether without exercising powers under Section 93 of the M.V.Act, could the fare of an autorickshaw payable to the Permit Holder/Driver as also the service/convenience fee payable to the aggregator be fixed by the transport authority under Section 67 of the M.V. Act?

4) Would the fare fixed under Section 67 of the M.V.Act include the service fee or convenience fee charged by an aggregator?

5) Can the State fix the service fee charged by an aggregator, or can it be left to the exclusive discretion of the aggregator?

6) Whether an aggregator who has accepted the fare fixed for four-wheeler taxis under Section 67 of the M.V.Act can now contend that the State/authority does not have the power to fix the fare and/or service fee under Section 67 of the M.V.Act for autorickshaw?

7) Could the interim order dated 14.10.2022 make the Central guidelines applicable to an aggregator requiring the authority to

fix the fare and the service fee accordingly?

8) Was it required for the State/authority to specifically ask for information or was it a duty on part of the aggregator to furnish all the information required to fix the service fee?

9) Does the service fee of 5% fixed by the transport authority fall foul of Wednesbury's principles of arbitrariness?

10) Is the fare fixation and/or service fee fixation a legislative activity that was not justiciable before this Court?

11) Whether there is a separate License required for an autorickshaw under KODTTA Rules distinct from the License for a four-wheeler?

12) Whether UBER is responsible for providing transport services by the permit holders/driver of the vehicle or is the responsibility of an aggregator restricted to the booking of the vehicle on the aggregator platform or, in other words, whether there is a tripartite contract between the aggregator, driver/permit holder and passengers/customer or is it only a bilateral contract between:

a)aggregator and permit holder; b)aggregator and passenger/customer;

c)customer/passenger and permit holder.

13) Have the aggregators made use of their dominant position to prevail upon the permit holders/drivers to onboard with themselves on the terms and conditions fixed by the aggregator requiring the matter to be referred to the competitive Commission?

14) Can the aggregators charge surge pricing in view of the undertaking provided by them to the Division Bench in W.P.No.4287/2016, 4789/2016 and 47109/2018 as observed vide order dated 07.12.2016?

15) What orders?

13. I answer the above points as under:

14. **<u>Answer to Point No.1:</u> Is it mandatory for a State to prepare Regulations under Section 93 of the M.V.Act, or is it optional?**

14.1. Section 93 reads as under:-

93. Agent or canvasser or aggregator to obtain License.—

(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 License from such authority and subject to such conditions as may be prescribed by the State Government.

[Provided that while issuing the License 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 thereunder.]

(2) *The conditions referred to in sub-section (1) may include all or any of the following matters, namely:—*

(a) the period for which a License may be granted or renewed;

(b) the fee payable for the issue or renewal of the

License;

(c) the deposit of security—

(i) of a sum not exceeding rupees fifty thousand in the case of an agent in the business of collecting, forwarding or distributing goods carried by goods carriages;

(ii) of a sum not exceeding rupees five thousand in the case of any other agent or canvasser, and the circumstances under which the security may be forfeited;

(d) the provision by the agent of insurance of goods in transit;

(e) the authority by which and the circumstances under which the License may be suspended or revoked;

(f) such other conditions as may be prescribed by the State Government.

***(3)** It shall be a condition of every License that no agent or canvasser to whom the License is granted shall advertise in any newspaper, book, list, classified directory or other publication unless there is contained in such advertisement appearing in such newspapers, book, list, classified directory or other publication the License number, the date of expiry of License and the particulars of the authority which granted the License.*

14.2. A perusal of the above provision indicates that no person shall engage himself as an aggregator unless he has obtained a License from such authority subject to such conditions as may be prescribed by the State Government.

14.3. The proviso indicates that while issuing the License to an aggregator, the State Government may follow such guidelines as may be issued by the Central Government. In terms of Sub-Section (2), the conditions referred to in Sub-Section (1) may include all or any of the items stated therein. In terms of Sub-Section (3), the licensee would be required to publish the License number, the date of expiry of the License and particulars of the authority which granted the License in all advertisements and publications made. The contention of the learned counsel for the petitioners is that it is mandatory for regulations to be prepared under Section 93. Section 93, as observed above, relates to the issuance of a License to an aggregator, and it is only in regard

thereto that the condition mentioned under Sub-Section (2) of Section 93 be taken into consideration.

14.4. In the present case, the contention of the learned counsel for the petitioners is that no License is required since the petitioner's business is not related to transport services. They are not required to obtain any License, and the issue of License or requirement thereof is pending before the Division Bench of this Court.

14.5. The Hon'ble Apex Court in ***Roppen Transportation Services Private Limited vs. Union of India***[29] more particularly at Para 5 has held as under:-

5. *The effect of the amended provision is that no person can act as an aggregator without a License. The License 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 License 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.*

14.6. The Hon'ble Apex Court has concluded that no person or entity can act as an aggregator without a License. A License is to be issued by such authority and subject to such conditions as may be prescribed by the State Government. In terms of the first proviso to sub-Section (1) of Section 93, the State Government, while issuing a License to the aggregator, may follow the guidelines issued by the Central Government. Section 96 confers rule-making power on the state government to implement Chapter V.

14.7. A reading of the above para would indicate that the Hon'ble Apex Court has categorically held that no person can conduct the business of an aggregator without a License. Thus, the contention of the learned counsel for the petitioner that the matter is now pending before the Division Bench and the Division Bench is required to decide on the aspect of requirement or otherwise of a License has been rendered academic with the Hon'ble Supreme Court has categorically held that such a License is required.

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[29] *(2023) 4 SCC 349*

14.8. The License is required to be issued by such authority and subject to such conditions as may be "prescribed" by the State Government. The word "prescribed" is sought to be interpreted by the counsel for the petitioners by referring to Sub-Section (32) of Section 2 of the Act reads as under:-

*"Section 2(32) "**prescribed**" means prescribed by rules made under this Act;"*

14.9. By relying on the above, it is contended that "prescribed" would be prescribed by Rules made under the Act. By referring to Section 96, it is contended that any rules made for the purpose of carrying into effect the provisions of Chapter V of the Act can only be made under Section 96, which can be so made only by following the procedure detailed under Section 212 of the Act.

14.10. Thus, it is contended that in terms of proviso to sub-Section (1) to Section 93, the conditions that could be imposed by the State Government can only be made in terms of Rules made under Section 96 of the Act.

14.11. The restrictions under Section 93 can be divided into two parts, i.e., (i) no person shall engage himself as an aggregator unless he has obtained a License from such authority, (ii) no person shall engage himself as an aggregator without obtaining a License from such authority and subject to such conditions as may be prescribed by the State Government.

14.12. The first part would indicate that a License is absolutely required to be obtained. The second part deals with conditions that could be imposed by the State Government, and such conditions would have to be as prescribed by the State Government and are relatable to subSection (32) of Section 2, Section 96, and Section 212. Thus, insofar as the requirement of the License is concerned, there would be no rules or regulations that are required to be formulated by the State. However, while issuing a License, if a condition were to be imposed, then no condition can be imposed unless rules are formulated under Section 96 by following the procedure under Section 212.

14.13. In the present case, when the earlier License was issued to the petitioner, no condition had been imposed that would come within the purview of Section 96 or Section 212. The conditions are more fully set out in sub-Section (2) of

Section 93, which has been extracted hereinabove. Thus, for any of the conditions detailed in sub-Section (2) to be imposed,
Rules would have to be framed.

14.14. **Therefore, I answer Point No.1 by holding that for an aggregator to run its business, the aggregator has to obtain the necessary License; for the State to impose any condition under sub-Section (2) of Section 93, it would be mandatory for Rules to be made under Section 96 by complying with the requirements under Section 212. However, if no such condition is imposed, there would be no requirement for Rules to be formulated.**

15. **Answer to Point No.2**: **Are the guidelines issued by the Central Government in the year 2000 mandatory for the State to follow, or is it directory?**

15.1. The submission of Sri. K.G. Raghavan learned Senior Counsel and Sri. Aditya Sondhi, learned Senior counsel appearing for the petitioners is that the Central government guidelines are mandatory to be followed, and without following the said guidelines, the service fee or convenience fee cannot be fixed.

15.2. In this regard, Sri. Aditya Sondhi relies upon the decision of **Roppen Transportation Service's case** to contend that the guidelines have to be borne in mind by the State government. These guidelines have been issued by the central government in terms of Section 93, and it is mandatory for the state government to apply the said guidelines for any decision to be taken in relation thereto. By relying on **Preethi Srivatsava's case,** he submits that even if the guidelines were held to be persuasive and not having binding force, the State cannot act contrary to such guidelines. State authorities must keep in view the guidelines issued while undertaking any exercise covered by such guidelines.

15.3. He also relies on the interim order dated 14.10.2022 in W.P. No.24486/2022, more particularly para 19 thereof, to contend that this Court, having observed that the State would have to follow the guidelines, the guidelines would have to be applicable, the State not having followed the said guidelines, the service fee or convenience fee fixed by the State is not proper.

15.4. Again, by relying on para 28 of the order dated 14.10.2022 in W.P. No.24486/2022, it is contended that this court has observed that the notification dated 25.11.2022 would not be issued without following the requirements of Section 93.

15.5. This question is no longer *res integra*. The Hon'ble Apex Court in **Roppen Transportation Services Pvt. Ltd's case (supra[31])** at Para 9 thereof has categorically held that the State Government is not bound to follow guidelines issued by the Central Government and that they are only guiding factors having a persuasive value. Said Para 9, is reproduced hereunder once again for easy reference:-

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 License 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 License and in regard to the formulation of rules in pursuance of the general rule making power under Section 96.*

15.6. The Hon'ble Apex Court having categorically held that the Motor Vehicle Aggregator Guidelines, 2022 not being mandatory but being only persuasive, the contention of learned counsel for the petitioners that the State of Karnataka would mandatorily have to follow the Guidelines 2020 is not sustainable.

15.7. The Hon'ble Apex Court, having held that the guidelines have a persuasive value and it is not mandatory, it cannot now be contended by the aggregators that without the guidelines being followed, no service fee or convenience fee can be fixed. Insofar as the observations made in the interim order dated 14.10.2022, the said observation is a prima facie observation made by a co-

ordinate bench of this Court on the basis of the submissions made by the counsels.

15.8. This court had directed the State to consider the representation submitted by the aggregators and fix the service fee or convenience fee within a period of 15 days. In pursuance thereof, the aggregators submitted their representation, which was considered and the impugned notification was issued.

15.9. It is now contended by the aggregators that guidelines not only have to be followed, but while following them, Rules have to be made by following the procedure prescribed under Sections 96 and 212; without doing so, no service fee or convenience fee can be fixed. Such a submission, in my opinion, is a completely paradoxical statement and contention made by the aggregators.

15.10. On 14.10.2022, the aggregators were of the opinion that it would take less than 15 days for the State to consider the representation and fix the service fee. If the procedure under Section 96, read with Section 212, were to be followed for the purposes of fixing service fees or convenience fees, it is clear that the said procedure could not have been completed within 15 days.

15.11. At that point in time, there was no contention raised by the aggregators that requirements of Sections 96 and 212 were to be followed before the State was to fix the service fee or convenience fee on the basis of the representation made by the aggregators. It cannot, therefore, now be contended that the prima facie opinion expressed by this court while passing the interim order on 14.10.2022 would make it mandatory for the State to follow the guidelines issued by the Central government in a mandatory manner and formulate Rules under Section 96 by following the procedure under Section 212.

15.12. **As such, I answer point No.2 by holding that the Motor Vehicles Aggregator Guidelines, 2020, issued by the Central Government, are not mandatory for the State Government to follow; the State can consider the said Guidelines which have persuasive value to form its**

own regulations as and when so formed under Section 93 of the M.V. Act.

16. **Answer to Point No.3**: **Whether without exercising powers under Section 93 of the M.V.Act, could the fare of an autorickshaw payable to the Permit Holder/Driver as also the service/convenience fee payable to the aggregator be fixed by the transport authority under Section 67 of the M.V. Act?**

16.1. The contention of learned counsel for the petitioners is that fare can only be fixed under Section 93, and that too by Rules satisfying the requirement of Section 96 and Section 212. As afore-stated, the conditions which could be imposed while issuing a License are more particularly contained under sub-Section (2) of Section 93, which is once again reproduced hereunder for easy reference:-

section 93(2) - *The conditions referred to in subsection (1) may include all or any of the following matters, namely:—*

(a) the period for which a License may be granted or renewed;

(b) the fee payable for the issue or renewal of the License;

(c) the deposit of security—

(i) of a sum not exceeding rupees fifty thousand in the case of an agent in the business of collecting, forwarding or distributing goods carried by goods carriages;

(ii) of a sum not exceeding rupees five thousand in the case of any other agent or canvasser, and the circumstances under which the security may be forfeited;

(d) the provision by the agent of insurance of goods in transit;

(e) the authority by which and the circumstances under which the License may be suspended or revoked;

(f) such other conditions as may be prescribed by the State Government.

16.2. A perusal of Sub-Section (2) would indicate that the conditions that may be imposed could include all or any of the matters stated therein under clause (a) to (f) thereof. None of those conditions relate to fare as sought to be contended by the learned senior counsels for the petitioners.

16.3. Fare is defined under sub-section (12) of Section 2, which reads as under:-

*(12) "**fare**" includes sums payable for a season ticket or in respect of the hire of a contract carriage;*

16.4. Section 67 of the Act reads as under:-

67. Power to State Government to control road transport.—

*[**(1)** A State Government, having regard to—*

(a) the advantages offered to the public, trade and industry by the development of motor transport;

(b) the desirability of co-ordinating road and rail transport;

(c) the desirability of preventing the deterioration of the road system, and

(d) promoting effective competition among the transport service providers,

may, from time to time, by notification in the Official Gazette issue directions both to the State Transport Authority and Regional Transport Authority regarding the passengers' convenience, economically competitive fares, prevention of overcrowding and road safety.]

***(2)** Any direction under sub-section (1) regarding the fixing of fares and freights for stage carriages, contract carriages and goods carriages may provide that such fares or freights shall be inclusive of the tax payable by the passengers or the consignors of the goods, as the case may be, to the operators of the stage carriages, contract carriages or goods carriages under any law for the time being in force relating to tax on passengers and goods:*

[Provided that the State Government may subject to such conditions as it may deem fit, and with a view to achieving the objectives specified in clause

(d) of subsection (1), relax all or any of the provisions made under this Chapter.]

*[**(3)** Notwithstanding anything contained in this Act, the State Government may, by notification in the Official Gazette, modify any permit issued under this Act or make schemes for the transportation of goods and passengers and issue Licenses under such scheme for the promotion of development and efficiency in transportation—*

(a) last mile connectivity;

(b) rural transport;

(c) reducing traffic congestion;

(d) improving urban transport;

(e) safety of road users;

(f) better utilisation of transportation assets;

(g) the enhancement of economic vitality of the area, through competitiveness, productivity and efficiency;

(h) the increase in the accessibility and mobility of people;

(i) the protection and enhancement of the environment;

(j) the promotion of energy conservation;

(k) improvement of the quality of life;

(l) enhance integration and connectivity of the transportation system, across and between modes of transport; and

(m) such other matters as the Central Government may deem fit.

***(4)** The scheme framed under sub-section (3), shall specify the fees to be charged, form of application and grant of a License including the renewal, suspension, cancellation or modification of such License.]*

16.5. By referring to the decision in **Captain Sube Singh's** case, submission of Sri. Aditya Sondhi, learned Senior counsel is that Sections 67 and 93 provide different powers which are qualitatively different. Section 67 does not contemplate fixation of service fee or convenience fee, same cannot be so fixed by contending that service fee or convenience fee are part of the fare fixed under Section 67.

16.6. Similar is the submission of Shri K G Raghavan, learned Senior Counsel, who further submits that service/convenience fee cannot even be fixed under Section 93 of the Act since the said provision does not contemplate any powers vested with the state to fix such service/convenience fee charged by an aggregator.

16.7. It is under Section 67 of the Act that a State Government having regard to the factors stated therein may, from time to time by notification in the official gazette, issue directions to both the State Transport Authority and Regional Transport Authority regarding passengers' convenience, economically competitive fare, prevention of overcrowding and road safety.

16.8. In terms of sub-section (2) of Section 67, any direction issued under sub-section (1) provides for fixing of fares and freights for contract carriages and goods carriages and may provide that such fares or freights shall be inclusive of the tax payable by the passengers or the consignors of the goods as the case may be to the operators of the Stage carriages, Contract carriages and Goods carriages and any law for the time being in force.

16.9. In my considered opinion, it is only Section 67 which provides power to the State Government to fix fares from time to time by notifying in the official gazette to issue directions both to the STA and RTA having regard to the passengers/customers' convenience, economically competitive fares, prevention of overcrowding, road safety, etc.

16.10. The fixation of the said fare in terms of Subsection (2) of Section 67 relates to all stage carriages, contract carriages and goods carriages.

16.11. Stage carriage is defined under Subsection (40) of Section 2, which reads as under:

*(40) "**stage carriage**" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;*

16.12. Contract carriage is defined under Subsection

(7) of Section 2, which reads as under:

*(7) "**contract carriage**" means a motor vehicle which carries a passenger or passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum— (a) on a time basis, whether or not with reference to any route or distance; or (b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes— (i) a maxicab; and (ii) a motor cab notwithstanding that separate fares are charged for its passengers;*

16.13. Goods carriage is defined under Subsection (14) of Section 2, which reads as under:

*(14) "**goods carriage**" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;*

16.14. A motor cab is defined under Subsection (25) of Section 2, which reads as under:

*(25) "**motorcab**" means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward;*

16.15. A motor car is defined under Subsection (26) of Section 2, which reads as under:

(26) "motor car" means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage;

16.16. In the present case, we are not concerned with goods carriage since what is in issue is the carriage of passengers. We are also not concerned with stage carriages because, in the present case, we are dealing with an autorickshaw, which has a carrying capacity of 2 or 3 persons, while a stage carriage would apply to a vehicle carrying more than 6 passengers, excluding the driver for hire or reward at separate fare paid for individual passengers.

16.17. What would be relevant is contract carriage under Sub-section (7) of Section 2, which means a motor vehicle which carries passenger/s for hire or reward and is engaged under a contract, whether express or implied, for use of such vehicle as a whole for carriage of passengers mentioned therein and entered into with a holder of a permit in relation to such vehicle or any person authorized in this behalf on a fixed or agreed rate, on a time basis from one point to the other, etc.

16.18. Thus, whenever a passenger contracts with a permit holder in relation to such vehicle or any person authorized by the permit holder, the same would amount to a contract carriage. In the present case, if any person were to make use of an autorickshaw to travel from one point to the other or use an autorickshaw on a time basis, the autorickshaw being plied by a driver and a permit having been issued to the said autorickshaw for such plying, any amount paid for such service would be covered under contract carriage.

16.19. The fixed or agreed rate sum would be a fare in terms of Sub-section (12) of Section 2, which includes a sum payable for a season ticket or in respect to the hire of a contract carriage.

16.20. Thus, under Section 67, the state government has the power to fix the fare, including or otherwise, of tax and for fixing such fare, the state can consider all relevant factors. No power is conferred on the State under subsection (2) of Section 93 to impose any fare condition on a passenger/customer vis-a-vis an aggregator. This, in my opinion, would be a natural, harmonious, and proper reading of the said two provisions.

16.21. What is required to be fixed by the State is the fare and freight for Stage Carriages, Contract Carriages and Goods Carriages, which would mean the amounts to be paid by the passenger/s or consigner/s of the goods.

The said passenger/s is required to know what is the fare required to be paid if he or she were to use the service. Thus, the concept of fare would be an all-inclusive amount, which can only be fixed under Section 67 of the Act, and Section 93 does not provide for the same. When such a fare is fixed, unless the state were to indicate that the fare includes tax, the fare would have to be held to be excluding the tax applicable, which will have to be calculated on the basis of the applicable laws and collected.

16.22. In so far as service/convenience fees are concerned, neither Section 67 nor Section 93 speak of such service/convenience fees; there is no distinction made between fare on the one hand and service/convenience fees on the other. Fare, being an all-inclusive amount as observed above, would also be deemed to include a service/convenience fee, which is dealt with in detail in answer to the next point. Though in the present case by the impugned notification, the service fee/convenience fee is fixed by a separate notification under Section 67, there is no infirmity in the same; the service/convenience fee also forming part of the fare, it could be so fixed either by a single notification or multiple notifications, the power to fix the same being conferred on the state in term of Section 67.

16.23. **I answer Point No.2 by holding that Subsection (2) of Section 67– categorically states that any direction under Subsection (1) of Section 67 regarding the fixing of fares for contract carriages can be issued; it is clear that the fare of a contract carriage can only be fixed by a State government under Section 67 of the MV Act, there being no such provision under Section 93, no fare can be fixed under Section 93 of the MV Act. The service/Convenience fee or any fee charged on such carriage by any name whatsoever will have to be part and parcel of the fare and cannot be over and above the fare, which can be so fixed under Section 67 as a single notification or multiple notifications.**

17. **ANSWER TO POINT NO.4 AND 5:**

(4) ANSWER TO POINT NO.4 : Would the fare fixed under Section 67 of the M.V.Act include the service fee or convenience fee charged by an aggregator? and

(5) ANSWER TO POINT NO.5: Can the State fix the service fee charged by an aggregator, or can it be left to the exclusive discretion of the aggregator?

17.1. By referring to the decision of the Hon'ble Apex Court rendered in **Uber India Systems Pvt. Ltd. -v- Union of India** 2024(1) SCC 438, the submission of Sri. Aditya Sondhi is that the State does not have any power to regulate an aggregator or the fees receivable by the aggregator under Section 67 of the M.V. Act. By referring to the decision of the Hon'ble Apex Court in **Prakash Dal Mill's case,** his submission is that any price, fare, charge or the like would have to be fixed within the stipulated parameters contained in the statute. Section 67 does not deal with service fees or convenience fees; the same could not be fixed by the State under Section 67 of the Act. By referring to **Reliance Infrastructure's** case, he submits that since the statutorily prescribed procedure under Sections 96 and 212 has not been followed. Any price or tariff that has been fixed would be ultra vires and is, therefore, required to be set aside.

17.2. By relying on ***Mohd. Faruk's case***, his submission is that the service fee or convenience fee fixed by the State is violative of Article 19(1G) inasmuch as it imposes a fixed amount to be received by the aggregators which do not suffice to meet the expenses incurred by the aggregators.

17.3. As dealt with in answer to point No.2 above, the fare for contract carriage would have to be fixed under Section 67, which has been reproduced hereinabove. Section 67 also underwent an amendment in 2019 under the Motor Vehicles Amendment Act 2019, by virtue of which Section 93 was also amended to introduce an aggregator. Subsection (1) has been substituted by way of amendment, and Subsection (3) has been inserted.

17.4. Subsection (1), as indicated above, provides power to the State government to issue directions to both STA and RTA regarding the passengers' convenience, economically competitive fare, overcrowding and road safety. Sub-section (2) provides for any direction issued regarding fare and may provide that such fares be inclusive of tax paid by passengers/customers under any law for the time being in force relating to tax on passengers and goods. Subsection (3) provides for modification of any permit issued under the Act or making schemes for the transportation of goods and passengers and issuing Licenses under such scheme for the promotion, development and efficiency of transportation, taking into account several factors therein.

17.5. The petitioners provide a platform for the permit holders/drivers to enroll and for the passenger to book a ride using the said platform on such vehicle that has been enrolled. If not for the said platform, the methodology of the passenger and permit holder/driver to contact each other is only by physical methodology.

17.6. Sri. K.G. Raghavan learned senior counsel would submit that there is only a bilateral contract between Uber and the permit holder/driver on the one hand and Uber and the passenger on the other hand, and there is no tripartite contract. His submission is that since there are two separate bilateral agreements, Uber is not involved in any act of transportation, and as such, the fare would not be applicable to Uber; the fare is one between the permit holder and the passenger.

17.7. Invoking the principles of Laissez-faire and freedom of economy, he submits that a service provider like Uber can levy any charge it deems fit on the passenger or the permit holder, which cannot form part of the fare nor can it be controlled or regulated by authorities.

17.8. I am unable to agree with Sri. K.G. Raghavan, who learned senior counsel. An aggregator cannot seek to deny its liability or responsibility or its obligation. A passenger is essentially booking a ride on the aggregator app to go from one place to another or to hire a vehicle for a particular period of time or to go to multiple places.

4.1 Certain value-added services are claimed to be provided by the aggregator platform; it is claimed that the following services are provided (as per the representation filed by Uber) ***Value added services provided by Aggregator Platforms*** *Aggregator platforms also enable the provision of value-added services such as, (i)GPS tracking & Routing; (ii) 24x7 safety Helpline; (iii) In-app panic / emergency button; (iv) 24x7 support, including phone-call support and in-person support backed by 600+ support agents, (v) Digital payments (credit cards, debit cards, wallets and UPI) (all digital payments except UPI require aggregators to pay a fees to the payment gateways); (vi) Driver background checks; (vii) Rider and driver on-trip insurance; (viii) Data backup, Engineering support to match riders and drivers and provide the best-inclass point-to-point transport service and new products (for e.g WhatsApp booking); (ix) Phone number anonymization; (x) Law enforcement response assistance: (xi) Marketing to*

generate more demand for drivers covering but not limited to performance marketing, brand campaigns, new rider and driver incentives, gift cards etc.; (xii) Other physical infrastructure and support

4.2 *It has been observed that launch of aggregator platforms and the associated services has also led to a significant reduction in refusal of trips by auto rickshaw drivers.*

4.3 *The above-mentioned services enhance the safety and reliability of a trip for a passenger. Aggregator platforms incur a significant amount of cost in the provision of such value added services and it is, therefore, imperative that such platforms be allowed to charge a fee ("Platform/Technology Fee") for the services provided by them. Without such a Platform/Technology Fee it will not be cost effective for aggregator platforms to provide aggregation services.*

4.4 *It may further be noted that the Motor Vehicle Aggregator Guidelines, 2020 published by the Ministry of Road Transport and Highways, in addition to recognizing that auto rickshaws can be aggregated by aggregator platforms has also allowed for a 20% commission to be charged by such platforms. This commission, however, is based on the fact that pricing is dynamic and not static and that the aggregator platforms can charge surge pricing up to 1.5 times the base fare determined for passenger transportation in a particular state.*

17.9. A perusal of the above would indicate that the aggregator platform provides for digital payments which payments are collected by the platform from the passengers/customers and thereafter distributed to the drivers/permit holder.

17.10. The platform claims to have conducted a driver background check, insured both rider and driver for the trip, provides engineering support to drivers and provides best-in-class service from point to point and new product marketing to generate more demand for drivers, other physical infrastructure and support, among others.

17.11. Item No.8 - ***(viii) Data backup, Engineering support to match riders and drivers and provide the best-in-class point-to-point transport service and new products (for e.g. WhatsApp booking).*** A reading of this would

indicate that there are three parts to it. Firstly, data backup; secondly, engineering support to riders and drivers; thirdly, ***to provide best-in-class, point-topoint transport service; and lastly, for new products***. There is, therefore, a clear and categorical admission made that the best pointto-point transport service is being provided as regards which a higher service fee is claimed; it, therefore, fails to reason as to how it can be contended before this court that Uber is not providing transport service.

17.12. When a categorical assertion has been made that there is a driver background check, rider and driver trip insurance, matching of riders and drivers, providing best-in-class service from point to point, marketing, providing physical infrastructure, etc., in my considered opinion, it cannot be said that there are only bilateral contracts and or that aggregator is not involved in any transport activity. All the above value-added services are provided with respect to the service of transport; without transport, none of the above value-added services are required or have any role.

17.13. The permit holder/driver enrols on the aggregator's platform on the promise held out by the aggregator that passengers/customers would hail the vehicle for transport purposes and that the aggregator would make payment of the due amounts collected from the passengers/customers.

17.14. The passengers/ customers download the application of the aggregator and book/s a ride on the said app on the express promise held out by the aggregator that the driver background check has been done; there is insurance provided, best-in-class transport service from point to point is provided, apart from other things which have been mentioned hereinabove.

17.15. The action taken by the aggregator in bringing together the permit holder and the passengers/customers facilitating the contract being entered into between them through the aggregator is a contract between the three parties. The Permit Holder/driver and the passenger, each of them acting on the representation of the other, would indicate the interdependence on the representations made by each other. Merely because the aggregator enters into two separate contracts, one with the passenger and the other with the permit holder/driver, it cannot be said that there are two different bilateral contracts and there is no privity of contract or that there is no tripartite contract. The privity of contract exists in both contracts, which are dependent and interdependent on each other. Neither of the

contracts can exist or be of use without the other. A common factor in both the contracts is the aggregator, and the common focus in both the agreements is hailing a ride for transport from one place to another or for a particular period, as the case may be as regards which payment is made by the passenger/customer which is collected by the aggregator and paid to driver, retaining the service/convenience fee. Thus, looked at from any angle, it is a tripartite contract entered into between the three parties. The artificial distinction now sought to be brought out by the aggregator to distance themselves from their responsibilities cannot be countenanced either in law or facts.

17.17. Having held that there is a tripartite agreement and also having held that fare can be fixed under Section 67 of the Act. Amendments having been carried out to Section 67 in the year 2019 and Section 93 not referring to fare, fare under Subsection (2) of Section 67 being inclusive of tax, fare as defined under Subsection (12) of Section 2 being sums payable for a season ticket or in respect of the hire of a contract carriage, contract carriage being a fixed or an agreed rate or sum payable on a time basis whether or not with reference to any route or distance or from one point to another, I am of the considered opinion that the fare fixed under Section 67 would be an allencompassing amount which is payable by a passenger for the said journey and as such, the contention of both the Senior counsels for the petitioners that service fee is different and over and above the fare is not acceptable.

17.18. For this purpose, what is required also to be seen is the intent and purport of Section 67. Essentially, the intent and purport, in my considered opinion, on examination of the Act would be for the State to determine and fix the fare payable by a passenger for a contract carriage and other forms of carriages so that the passenger is aware of the amount payable by the passenger/customer on such a carriage and that the passenger is not taken by surprise by demand made for a higher amount, the services being offered being essential transport services.

17.19. An aggregator app like Uber and Ola being introduced recently and service being provided by Uber and Ola for ride-hailing or booking, I am of the considered opinion that they, being aware of the statutory requirement under Section 67, would have to conduct their business in such a manner that the final fare required to be paid by the passenger does not exceed the fare fixed

under Section 67.

17.20. The service fee chargeable by the aggregator from either the passenger or the driver/permit holder can only be within the fare fixed under Section 67. Irrespective of what name is given by the aggregators to the fee, be it service fee or, convenience fee or the like, the fee is to form part of the fare, more so when in terms of Subsection (2) of Section 67, even tax can form part of the fare.

17.21. **Thus, I answer Point No.4 by holding that the fare fixed under Section 67 of the MV Act would include a service fee or convenience fee charged by an aggregator; it is for the aggregator and the permit holder/driver to arrive at what is the service fee or convenience fee that the aggregator can claim from and out of the fare.**

17.22. **I answer Point No.5 by holding that fare being inclusive of the service fee or convenience fee, the ultimate amount payable by the passengers/customers would be fixed under Section 67; the State cannot fix the service fee or convenience fee since said service fee or convenience fee is to be received by the aggregator from and out of the fare fixed under Section 67. It is for the aggregator and the permit holder to arrive at an agreement as to what a service fee or convenience fee payable to the aggregator would be. This being a contract between the aggregator and the permit holder/driver, cannot be said to be at the exclusive discretion of the aggregator. <u>ANSWER TO POINT NO.6:</u> Whether an aggregator who has accepted the fare fixed for four-wheeler taxis under Section 67 of the M.V.Act can now contend that the State/authority does not have the power to fix the fare and/or service fee under Section 67 of the M.V.Act for autorickshaw?**

18.1. An interesting argument addressed by the learned Advocate General is that insofar as four-wheelers are concerned, the fare has been fixed by the State under Section 67 for the four-wheeler, which has not been challenged by the aggregators; it is only in respect of autorickshaws when the fare has been fixed, the aggregators are contending that the State has no power to fix the fare under Section 67 but ought to be under Section 93.

18.2. The argument of Sri.K.G.Raghavan is that the aggregators do not have any grievance as regards the fare fixed for four wheelers, which they find it to be as per the market condition; however, insofar as the fare fixed for

autorickshaws, they being aggrieved by the rate fixed are before this Court, since it is not as per market condition and does not take into consideration the expenses incurred by the aggregator among other grounds indicated above.

18.3. It is not required for a litigant to challenge any action taken by the State, and merely because an earlier challenge is not made, it cannot be contended that there is acquiescence on the part of the litigant. However, the manner in which the aggregators have accepted the fare fixed for four-wheelers but have now challenged the fare fixed for autorickshaws would only indicate that the aggregators are following double standards.

18.4. A fare, if fixed under Section 67 for motorcars being valid, accepted, and implemented, the conduct on the part of the aggregators challenging the fare fixed under the very same provision for autorickshaws cannot also be sustained.

18.5. On the one hand, Sri. K.G. Raghavan, learned Senior counsel, submits that without Regulations being framed under Section 93, no fare could be fixed regarding autorickshaws. However, based on the facts of the conduct of the aggregators, it is established that without regulation, the aggregator has accepted the fixed fare. A challenge to the exercise of power by the State cannot only be on the basis of monetary terms but has to be on constitutional terms.

18.6. The manner in which the aggregators are seeking to take different stands and different arguments, on the one hand contending that no License is required, on the other hand contending that no License can be made mandatory without regulations under Section 93 and third without regulations, no fare can be fixed, however accepting the fare fixed under Section 67 for four-wheelers without there being regulations under Section 93 would disentitle the petitioners from claiming any reliefs insofar as the power of the State to fix the fare under Section 67. If that is eschewed, the only ground that remains is regarding the expenses incurred by the aggregator, which cannot be the basis of a challenge to validly exercise power by the state.

18.7. **Thus, I answer Point No.6 by holding that the aggregators who have accepted the fare for four-wheelers under Section 67 of the MV Act cannot now contend that the State does not have the power to fix service fees under Section 67 of the M.V. Act for autorickshaws.**

19. **<u>ANSWER TO POINT NO.7:</u> Could the interim order dated 14.10.2022 make the Central guidelines applicable to an aggregator requiring the authority to fix the fare and the service fee accordingly?**

19.1. Both the learned Senior counsel appearing for the petitioners sought to contend that an interim order dated 14.10.2022 has not been followed by the State while fixing the fare. It is also contended that in the interim order, this court, having recorded the submission of the learned Advocate General, that guidelines issued by the Central Government would be followed, the said Guidelines have also not been followed.

19.2. The interim order dated 14.10.2022 was passed in the circumstances as then existed and was so passed to provide temporary relief and or temporary arrangement for the parties. The said interim order cannot be said to have attained a finality to be taken into consideration at the time of passing final orders. Merely because the learned Advocate General had indicated that the Guidelines would be taken into consideration would not make the Guidelines applicable and or make it mandatory. Whether the State followed the Guidelines at the time when the fare was fixed or not, this Court, during the final hearing, is required to consider all aspects and pass orders on merits. Any remedy that the Petitioners have regarding the alleged violation of a submission is distinct from what is required to be considered by this court on merits at this stage.

19.3. The aspect of whether the guidelines are mandatory or directory has already been answered hereinabove. I have also held that the fare fixed under Section 67 would include a service fee or convenience fee or any other fee proposed to be levied. The fare is fixed for the knowledge of the passengers/customers since it is he/she who would be making payment of the said amounts. Thus, in my opinion, the submission of the learned Advocate General regarding the Guidelines being taken into consideration while fixing the fare would not make it binding on this Court, which would have to be independently assessed and answered.

19.4. The observation made by this Court while passing interim order on 14.10.2022 was only a prima facie view, the pleadings having been completed and the matter having been taken up for final hearing, arguments on all aspects having been addressed by all concerned, this Court would have to examine the matter on merits and not on the basis of the prima facie

view at the interlocutory stage. The interim order dated 14.10.2022, as aforesaid, was only a prima facie view expressed.

19.5. The Hon'ble Apex Court has concluded that the guidelines are not mandatory but only persuasive; the prima facie finding in the interim order dated 14.10.2022 cannot make the guidelines applicable to all aggregators requiring the Authority to follow the said guidelines in a mandatory manner.

19.6. **Hence, I answer Point No.7 by holding that the interim order dated 14.10.2022 will not make the guidelines mandatory and applicable to the aggregators. This aspect having been considered by the Hon'ble Apex Court and answered in the negative, I have also considered this aspect, taking into consideration all the facts, law, and arguments at the final hearing and I'am of the considered opinion that the guidelines are only persuasive in nature and as such there is no requirement for the state to follow the same while fixing the fare.**

20. **ANSWER TO POINT Nos.8, 9 and 10:**

(8) ANSWER TO POINT Nos.8: Was it required for the State/authority to specifically ask for information or was it a duty on part of the aggregator to furnish all the information required to fix the service fee?

(9) ANSWER TO POINT Nos.9: Does the service fee of 5% fixed by the transport authority fall foul of Wednesbury's principles of arbitrariness?

(10) ANSWER TO POINT Nos.10: Is the fare fixation and/or service fee fixation a legislative activity that was not justiciable before this Court?

20.1. All the above points are related to each other and taken up for consideration together.

20.2. Sri.K.G.Raghavan, learned Senior counsel by referring to the decision of the Apex Court in ***Shri Sitaram Sugar Co. Ltd's*** case, contends that the fare has not been fixed in good faith, more so the service fee is not fixed in good faith, it is not a reasonable fee, not intravires the power vested with the State and is, therefore required to be quashed.

20.3. By relying on ***Cynamide India's*** case, he submits that there are no guidelines available under Section 67 for fixing the commission/service charges, and the said commission/service charges could only be fixed under Section 93. There is no justification that the State has made out as to why 5% service fee has been fixed. By relying on ***Tata Cellular's case***, the submission of Sri. K.G. Raghavan learned Senior Counsel is that the service fee/commission charge, which is fixed at 5%, is completely arbitrary, and no reasonable person could have fixed such a fee. Even according to the State, the State did not have the necessary details to fix the commission/service fee. Thus, the said fee has been fixed without considering the relevant criteria, as it also has been fixed by considering irrelevant material. By relying on ***63 Moon Technology's case***, he submits that it is only before this Court that the State has sought to provide some justification. The said justification cannot be considered at this stage. The order by itself ought to have reflected the reasons for passing such an order restricting the service fee/convenience fee to 5%. By relying on ***Mohammed Yasin's case***, he submits that Uber is entitled to make profits from its operation. Uber, not being in the business of charity, it should be permitted for Uber to fix such rate of service fee/convenience fee as it deems fit, the State not having any role to play in relation thereto. By referring to the ***Association of National Gas Consuming Industries of Gujarat's case***, his submission is that the Hon'ble Apex Court has recognized the right of a public sector entity to make profit. The petitioner/Uber, being a private entity is also entitled to make profits. By referring to ***All India Gaming Federation's Case*****,** he submits that 5% payable to the aggregator as a service fee/convenience fee is not proportionate to the expenses and efforts of Uber, and, as such, the same being meagre cannot be sustained. By referring to ***Pillai's*** **case and** ***U.P. Rajya Khanij Vikas Nigam Sangharsh Samiti's*** **case**, he submits that irrespective of the aggregator having participated in the meeting called for by the authority pursuant to the interim order dated 14.10.2022, the aggregators can question the methodology adopted to fix the service fee/convenience fee. As such, he submits that whether Uber furnished necessary documents or not, it was for the State to have ascertained the facts and figures and thereafter fixed the service charges/convenience fee, which not having been done renders the entire process and procedure fallacious, requiring it to be quashed.

20.4. The contention of both the Senior counsels for the petitioners is that the service fee of 5%, which the Transport authority has fixed, falls foul of Wednesbury

principles and is, therefore, arbitrary.

20.5. What is important to consider is that the petitioners are not challenging the fare but are aggrieved by the service fee fixed. Initially, no particular service fee component had been fixed; only a fare in terms of Section 67 was fixed. Subsequently, in terms of the interim order dated 14.10.2022, a separate amount was fixed as a service fee. This fixation at 5% is contended to be arbitrary by both learned Senior counsel on the ground that the State has not taken into consideration the relevant criteria and has taken into consideration

irrelevant factors.

20.6. Though I have come to the conclusion that the service fee also would have to be part of the fare and it cannot be a different component, since extensive arguments have been advanced on the above issues, these issues would also have to be dealt with lest it is contended that they have not been.

20.7. The contention of Sri.K.G.Raghavan, learned Senior counsel who has appeared for Uber, is that the State has not taken into consideration the distinct service provided by autorickshaws on aggregator platforms vis-à-vis the street hailed autorickshaws inasmuch as the autorickshaws from the aggregator platform provided doorstep pick up facility and as such, the same does not adequately compensate the additional distance travelled and service provided in picking up passengers from the doorstep. This argument, in my considered opinion, would amount only to a charge that could be levied by the autorickshaw permit holder/driver from the point where he was to the pickup location, which is required to enure to the benefit of the driver/owner of the vehicle rather than aggregator since in this regard the aggregator is not providing any service. The expenses involved in travelling from the location where the autorickshaw is parked or situated to the doorstep of the customer, such as fuel charges, time, wear and tear of the vehicle, etc., are all to the account of the permit holder/driver. Uber only provides locations to be ascertained to enable the driver to travel to the pick-up location. Thus, though it is contended is a service which is available only on the aggregator platform, what would also have to be seen is this service is not provided essentially by the aggregator, but it is the service provided by the permit holder/driver/owner of the autorickshaw at his cost, this cannot enure to the benefit of the aggregator. The intervenors have also taken up this issue and contended that it is at their cost; they are arriving at the

doorstep, and the aggregator cannot charge for it as part of its commission.

20.8. A perusal of the challans which have been produced would also indicate that there is no particular charge levied by Uber on this aspect, but it is now sought to be contended that this is part of the service rendered by Uber. For all the aforesaid reasons, I reiterate that there is no service rendered by Uber in this regard for Uber to be entitled to charge any amount as service fee or commission.

20.9. The other value-added services claimed by Uber is that the aggregator platforms provide for:

i. **GPS tracking and routing:** On enquiry with learned Senior counsel if there is a separate app developed for Bangalore or it is a common app for Karnataka, India and the rest of the world, he fairly submitted that the app is common with few modifications. Thus, the GPS tracking and routing involved cannot be exclusively attributed to the service being delivered by autorickshaws in the city of Bangalore. It is the same facility provided for four-wheelers, as regards which Uber acts as an aggregator. Furthermore, the GPS software essentially used is Google Maps, which is available for free in the public domain; a few modifications or customization to the same will not make it the GPS software of Uber. The app used by both Uber and Ola is the same for all vehicles; further, it is the same across India and in so many other countries, it is similar. There is nothing specific that is customized or created for aggregating the autorickshaws except for making a separate item/section for autorickshaws and calculating the total fare as per the fare fixed for autorickshaws.

ii. The application being used is the same for all classes of vehicles; as such, there is nothing substantial or specific that can be attributable to Autorickshaws, nor is any documentation placed on record in relation thereto. Conversely, if this submission is accepted, the fare fixed for four-wheeler taxis would have to be reduced, considering the amortization of costs between fourwheeler taxis and autorickshaws.

iii. **24x7 safety helpline:** this is also a common feature in the app, which is available worldwide; merely because the phone number in Bangalore is different and or customer service executives are different would not make it a separate service rendered by Uber. Be that as it may, in so far as Bangalore is concerned,, the helpline numbers for both four-wheeler taxis

and autorickshaws are the same. There is no specific value that could be attributed to it nor is it provided.

iv. **In-app panic/emergency button:** this, again, is a part of the common app developed and used across the world for different classes of vehicles, and there is no specific value that could be attributed to, nor a value has been provided.

v. **24x7 support including phone call support in-person support back by 600+ support agents:** On enquiry whether these agents are exclusively based in Bangalore and provide service exclusively to

autorickshaws, firstly learned Senior counsel is unable to state as to whether they are based in Bangalore, but however submits that the same agents are also used for four wheeler taxis. These services are provided across the country for both four-wheelers and autorickshaws; there is no specific value that could be attributed to them, nor is it provided. 600 agents for an aggregator who claims to be running lakhs of rides a day would indicate the severe shortage of agents and give credence to the interveners' submission that they cannot reach customer service.

vi. **Digital payment, Debit card, credit card, wallet payment-** this is a mode of payment adopted by aggregators to receive payment. Though the same may be a beneficial feature for the passengers/customers, it cannot be said to be a separate service provided by the aggregator. Today, we have a vegetable vendor using UPI. UPI payment could also be made at a tea stall or small grocery store; Courts have also enabled digital payments. Digital payments are a necessity for conducting a business as an aggregator on an online platform using an app. Therefore, the same cannot be a service offered by an aggregator to the customer or driver. As far as the driver is concerned, the amounts collected by the aggregator from the customer are paid by the aggregator to the driver/permit holder. There is no service provided by the aggregator to the driver on this account. Thus, providing a digital payment methodology cannot be said to be a service requiring Uber to claim a service fee or convenience fee. As far as wallet is concerned, Uber has not created any wallets. In so far as Ola is concerned, though a wallet has been created, the said wallet is not only used for autorickshaws but also for all other classes of vehicles and other services provided by Ola. There are no particulars provided to indicate the amortization of costs in relation to this with reference to autorickshaws.

vii. **Driver background checks:** though much was sought to be made about driver background checks. There are no documents placed on record in relation thereto, the nature of checks conducted, or costs incurred in relation thereto. It was sought to be contended by Sri.K.G.Raghavan, learned Senior counsel, that there is no tripartite agreement, Uber has separate agreements with passenger and driver, and as such, Uber is not responsible for the providing of transport or any action or inaction on the part of the driver, which is a separate contract between the driver and the customer/passenger. Though I have not accepted the said contention, when Uber has made such categorical statements and submissions to deny their liability towards the driver for his actions or inactions, the question of conducting a driver background check for the benefit of the customer is not a service provided to the customer, at the most, it could be a background check by Uber to onboard drivers or owners on to its platform. If at all an aggregator were to base a claim for receipt of monies as a service fee, such service is required to be provided. The aggregator has to assume responsibility, vicarious or otherwise, for the action and inaction on the part of the driver/permit holder/owner; Uber has sought to disown any responsibility which would disentitle Uber from collecting any amounts on this head of account. I have however come to a conclusion hereinabove that the aggregator would be responsible for all actions and inactions on part of the driver/permit holder till the completion of the trip, as also in association with the trip.

viii. **Rider and Driver in trip insurance:** On enquiry as to whether it is part of the fare, part of the service fee or convenience fee, it is submitted that while booking an app, a feature is available for a rider to insure his trip, i.e. to say this amount is over and above the fare and the service fee. Hence, the question of rider and driver in trip insurance being provided for which Uber would be entitled to service fee/convenience fee cannot be accepted since a separate fee is already being charged for the same.

ix. **Data backup and engineering support to match riders and drivers and provide the best in class point-to-point transport service and new products:** though this aspect has been claimed in the letter dated 28.10.2022 at Annexure-U to the petition, a categorical statement has been made across the Bar that Uber does not provide transport service, and there is no tripartite contract. When there is no tripartite contract, the question of matching riders and drivers and providing the best-in-class transport service goes against the submissions made repeatedly across the Bar, and there is a repeated denial of Uber being involved in any transport business. The

actions and submissions are contradictory, and I refrain from calling them dishonest, though that may not be far from the truth of the matter. Hence, the aggregator would not be eligible for any amounts as a service fee on this account since no services are provided, according to them. I have, however, held that the aggregators are in the business of providing transport service.

x. **Phone number anonymization –** This, again, is a common factor in the app, which is available across the world, and in India, it is a common feature for all classes of vehicles. There are no particular details of expenses incurred on this head of account for autorickshaws provided hence the same cannot be considered.

xi. **Law enforcement response assistance:** the response is admittedly by law enforcement authority and not by Uber. Uber would be required to assist the law enforcement agency in the event of any such circumstances arising; assisting law enforcement agencies, which is a duty cast on Uber, cannot be said to be a service rendered entitling Uber for any amount. It is not required for rendering such assistance on all rides; there are no details placed on record indicating the number of times such assistance was rendered and the costs incurred in relation thereto. Any amount can be charged only when such response or assistance is provided and not on a ride where no such service is provided. Hence, Uber's alleged entitlement to this head of account cannot be considered, let alone countenanced.

xii. **Marketing to generate more demand for drivers covering but not limited to performance marketing, brand building, new rider and driver incentives, gift card, etc.:** This again is an expense incurred by Uber to market and brand its business. Even otherwise, a reading of the above would indicate that it is a service provided to the driver, not to a customer. These are expenses incurred by Uber to develop the business of the aggregator and can not be burdened on the passenger/customer since it is from the passenger/customer that amounts are sought to be collected as service fees/charges. Thus, Uber cannot charge a service fee or convenience fee on this head of account. Service fees/charges, as the name itself indicates, can only be charged for services rendered or availed.

xiii. **Other physical infrastructure and support: -**the physical infrastructure which is created, solely enures to the benefit of and belongs to Uber and does not in any manner directly benefit the customer. Uber cannot seek for the customer/passenger to make payment for the

physical assets that Uber intends to create for itself. Hence, this again would not be a ground to levy a service fee or convenience fee. Furthermore, no details in relation thereto have been placed on record for consideration.

20.10. Thus, on the basis of the above, in proposal (a), Uber contends that the current static meter fares are to be done away with as regards autorickshaws operating on aggregator platforms and allow autorickshaws to operate with dynamic pricing within the fare cap minimum and maximum and aggregators being allowed to charge upto 25% of the fare as platform/technology fee. In the alternative in proposal (b) it is contended that Uber should be allowed to charge 2X of the fare with 25% as a platform technology fee, and in terms of proposal (c), it is contended that the minimum fare has to be increased from Rs.15 to 17 and minimum from Rs.30 to 35/- with a pick up charge of Rs.30/- and platform fee of 25%. These being the proposals furnished on the basis of the so-called services rendered by Uber, it is contended by Sri.K.G.Raghavan, learned Senior counsel, that fixation of service fee of 5% falls foul of Wednesbury's principles of arbitrariness, on the ground that all the above services and costs have not been taken into account and consideration by the State. Relevant criteria not having been considered and irrelevant criteria being considered, the impugned notification is required to be quashed.

20.11. On enquiry as to whether the details as regards the heads of account and expenses incurred in respect thereto as regards autorickshaws have been provided to the authorities concerned, his submission is that it was for the State/authorities to specifically ask for information, whatever has been asked has been provided, and as such, the fact that the State did not have all information in its possession would indicate that relevant aspects have not been taken into consideration. I am unable to agree with the said contention, inasmuch as Uber is the entity in possession of the details, including heads of accounts and monies and expenses involved. It was for Uber to have provided all these details to the State whether it was asked for or not since the meeting had been called for all the stake holders to arrive at a fare, etc., to be fixed.

20.12. Uber, which has chosen to retain all this information for itself, cannot now be heard contending that the action of the State is arbitrary or unreasonable since the decision of the State is allegedly without having the necessary information. Even during the course of arguments, when the

counsels were called upon to place on record the details of expenses which have been incurred for app development, how the expenses have been amortized across the world or within India or within Bangalore, the specific expenses which Uber incurs in respect of autorickshaws in Bangalore, no details have been forthcoming. As observed above, no details or documents have been placed on record for consideration of this court despite sufficient and more opportunities having been provided to do so. Those details not having been furnished to the State nor to this Court, a person or entity who seeks to maintain secrecy and or, for lack of a better word, suppresses the heads of expenses and quantum of expenses cannot be heard to say that these have not been taken into consideration by the State. A litigant who comes to court is indeed required to do so with clean hands; Uber not having placed the documents and details for consideration before the authorities, cannot now be heard to say that the state has not considered it when all such details are in the exclusive custody of Uber. This contention and submission cannot be accepted by me since Uber is seeking to take advantage of its own wrongs, which is not permissible.

20.13. Insofar as Ola is concerned, it has submitted a representation dated 7/10/2022, it was contended by Sri.Aditya Sondhi, learned Senior counsel, that Ola is a mobile-based aggregator service company which allows the customer to book a taxi service from the available options of four Wheeler or three Wheeler, enabling them to enjoy the comfort of doorstep pickup, which is an advantage for the customer. Ola also claims to provide services for ensuring safety of the customer by providing GPS tracking, a digital billing facility, and customer care services. In its representation dated 28.10.2022, it is contended that separate regulations for three Wheeler aggregator services have to be made. It is contended that if the collection on the part of the aggregator is significantly low, the same would impact the additional services or benefits to the drivers and may affect their performance, and as such, 20% of the commission has to be fixed.

20.14. Thus, even OLA has more or less contended the same as contended by Uber; hence, the reasoning given by me regarding Uber's claim will also equally apply to Ola's claim. Ola has also not placed any documents and details on record before the authorities or before this court for consideration.

20.15. Ola has additionally contended that if lesser commission is allowed to be charged, the services being offered by the driver would be adversely

affected. These statements on behalf of Ola as regards drivers are contradicted by the intervenors, who are associations of drivers and owners of autorickshaws. Their contention has been that both Uber and Ola are not paying due amounts to the drivers, are keeping the lion's share of the money and are making use of their dominant status in the industry to force the drivers to come on board at the terms dictated by Uber and Ola, which therefore *exfacie* is contrary to the statement of Ola that they are charging for the benefit of the drivers.

20.16. Insofar as this usage of dominant position is concerned, in terms of the Competition Act 2002, it would be for the Competition Commission to conduct necessary enquiry into the matter, ascertain the manner and methodology of operation of Uber and Ola and take necessary steps in that regard after due enquiry. This Court cannot go through the same, they being seriously disputed questions of facts requiring a detailed enquiry to ascertain the truth. The Registrar (Judicial) is directed to forward a copy of this order to the Chairperson, Competition Commission at New Delhi, to take such action as the Chairperson deems fit.

20.17. Both Uber and Ola are seeking to contend that they are entitled to make profits. There can be no two thoughts on the same. Any aggregator, be it Ola or Uber or any other person who is not before this Court, would be entitled to make a profit in a commercial venture. However, the said entity, private or otherwise, cannot seek the State to fix its income in this case by way of receipt of convenience fee/service charges at a rate that would make the business profitable.

20.18. Any business entity would have to conduct its business in a prudent manner to make profits, and towards that end, the said business entity must follow financial discipline in such a way that the expenses incurred are lesser than the income. Merely because the expenses are higher, the state would not be required to fix commissions on the basis of such a quantum of expenses.

20.19. In the present case, Uber and Ola are seeking to contend that they have spent huge amounts of money in promoting the business, spend money on technology network costs, spend money on driver onboarding, employee costs, labour engineering costs and marketing costs, amongst others. On that basis, it is contended by Uber in the affidavit of Sri. Sharath Shetty, that

an amount of Rs.24.19 is incurred as cost by Uber per trip. Much of the expenses stated therein are relating to support services, technology services, etc.

20.20. It is contended that the driver onboarding cost is Rs.2.86, the employee cost of Uber is Rs.3.77, and the marketing cost is Rs.2.2. These expenses can not be expenses which can be mulcted upon the passenger/customer inasmuch as these amounts are one's which are to be borne by Uber for conducting its own business if it wants to do so. Driver onboarding is an essential part of the business, the same cannot be passed on to the customer. The marketing cost incurred by Uber cannot also be passed on to the customer. These expenses are to be incurred by Uber in a prudent manner.

20.21. Merely because Uber deems it fit to spend certain amounts of money on a particular aspect, the same cannot be said to be part of the cost entitling the same to be collected as a service fee/charge.

20.22. Be that as it may, despite repeated enquiry the details of the expenses incurred by Uber for services provided in Bangalore, in the State of Karnataka, in the Republic of India and in the world for different classes of vehicles and how the same has been amortised and calculated in the table at Para 17 of the affidavit of Sri.Sharat Shetty, has not been made available to this Court.

20.23. Uber being in the custody of all the relevant documents, financial statements, etc., having chosen to only broadly give the statement without supporting documents, the same not having been certified by a Chartered Accountant, the Books of Account not being placed, these figures cannot be accepted to be true.

20.24. Be that as it may, for the purpose of arguments, even if it is assumed that the amounts which have been stated are costs incurred by Uber. As afore observed, merely because Uber incurs certain costs, the same cannot be passed on to the customer with the blessing of the State to be collected as a service fee/charge. The State cannot be a tool in the hands of a private entrepreneur or a business entity to fix rates in such a manner as to make such a private entity profitable.

20.25. There is no obligation imposed on the State to make any business, let alone the business of Uber or Ola, profitable. Uber or Ola should operate within the fare fixed by the State in a prudent manner to make profits and not call upon the State to fix a separate commission amount, which, according to Uber and Ola, will make the business feasible and profitable. If such a contention were to be accepted, every other business entity, private or public would seek for fixation of prices in such a manner as to make it profitable for such private or public entity.

20.26. Be that as it may, Uber and Ola being in the business of providing aggregation services, it is for them to organize their affairs in such a manner that it provides profitability to the service providers. A businessman cannot be heard saying that since he is in the business of providing aggregator service and the service is of public importance, a minimum fee has to be fixed for such a businessman to be profitable and in operation. A fare having been fixed under Section 67, it is for businessmen/business entities like Uber and Ola to arrange their business in such a manner that within the fare fixed, they charge such amounts as service fee and/or Commission as agreeable between the drivers and Uber/Ola and not call upon the customer to make payment of more than the fare that has been fixed. If it is not profitable for Uber and Ola to carry out their business, there is no compulsion for them to render such services. As aforesaid, they cannot seek a fixation of the fare and/or service fee/convenience fee to suit their convenience and attain profitability. It is however made clear that Uber and Ola would be entitled to make such profits as they can within the fare fixed, as regards which none can have any dispute.

20.27. An autorickshaw being used by a common man and woman to reach from point A to point B, it is required that fare for such autorickshaw be fixed at such price and at such rate so as to be economical for a citizen of a country and to not make it so uneconomical that such person cannot afford to travel by autorickshaw which is the lowest form of and least expensive transport available for hire. The State, in my opinion, has taken all factors that are relevant to fix the fare as fixed in the present matter.

20.28. The State has taken into consideration the value of the vehicle, registration fee, renewal of fitness certificate, vehicle insurance, hypothecation fee, LPG cost, price of spare parts, the house rent, day-to-day need of, education fee, rate of fuel, situation during lockdown period,

commission to be paid by the autorickshaw drivers, rate of interest on borrowed loans, etc., these in my considered opinion being relevant factors would not fall foul of Wednesbury principles of arbitrariness as sought to be contended.

20.29. **In view of the above, I answer point No.8 by holding that it was not required for the State or a Transport authority to specifically ask for information from the aggregator; on the contrary, it was the duty of the aggregator like Uber and Ola to furnish all requisite information in its possession without so being asked since the matter relates to a fare fixation, as also fixation of service fee, convenience fee chargeable by the aggregator.**

20.30. Having come to the conclusion that the service fee is part of the fare, the 5% service fee fixed by the State in pursuance of the interim order passed by this Court will also form a part of the fare whether fixed under a single notification or multiple notifications. The same does not fall foul of the Wednesbury's principle of arbitrariness, since the alleged relevant details and information have not been furnished by the aggregators.

20.31. Though it is contended by the learned Advocate General that fixation of fare is a legislative activity and not justiciable, in the present case, the fare has been fixed by the executive action, and as such, the said fare which has been fixed will not get the protection as a legislative act.

20.32. **Thus, I answer point No.9 by holding that the fixing of service fee/convenience fee at 5% by way of the impugned notification does not fall foul of Wednesbury principles of unreasonableness.**

20.33. **I answer point No.10, by holding that the fare fixed by an executive action is justiciable before this Court.**

21. **<u>ANSWER TO POINT NO.11:</u> Whether there is a separate License required for an autorickshaw under KODTTA Rules distinct from the License for a four-wheeler?**

21.1. By referring to ***Veeramani's case, Prakash's case and Sumitra Autorickshaw Sahakari Sangh Ltd.'s case***, the submission of Sri.K.G.Raghavan, learned Senior counsel is

that there is no distinction between fourwheeler and three-wheelers, both of them coming under the definition of 'motor cab' a single License would be sufficient for both these vehicles since the law does not recognize both of

them to be different.

21.2. Sri. Aditya Sondhi, learned Senior counsel, also refers to and relies on the very same decisions and makes the very same submission. In addition, he submits that the State has not insisted on a separate license.

21.3. The fixation of fare made under Section 67 as also the service fee earlier made at the rate of 10% on 6.11.2021, now at 5% on 25.11.2022, the State has accepted that autorickshaw would also be a motor cab, and there is no further or separate License required for an autorickshaw to be onboarded on the platform of the petitioners to provide ride-hailing services.

21.4. The contention of both learned Senior counsels is that one single License would be sufficient for both four-wheelers and three-wheelers. It is on that basis it is contended that the License which has been obtained by Uber and Ola for fourwheelers would suffice for three-wheelers since three-wheelers would also come under the definition of motor cab under Subsection (25) of Section 2, which reads as under:

*(25) "**motorcab**" means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward;*

21.5. His submission in this regard is that any vehicle adapted to carry not more than six passengers would be a motor cab, and a License issued for a motor cab autorickshaw carrying less than six passengers would also cover an autorickshaw.

21.6. The submission of both the Senior counsels is that the Guidelines 2020 are mandatory and are required to be followed. Though I have held the same to be only persuasive and not required to be followed, a perusal of Form-3 of the said Guidelines would indicate that a License to operate as an aggregator under M.V. Act, is issued to the following and in column No.5, it is indicated no. of autorickshaw/Erickshaw/motor cab/ motorcycle/bus (as per the list indicated) by aggregator in Form No.1 and 2 as may be applicable.

21.7. This would indicate that the License has to be separate for each of the above types of vehicles, and one License would not suffice for all kinds of vehicles. Furthermore, a list of all the vehicles is required to be enclosed by the aggregator in Form No.1 when initially applying for a License and in Form No.2 when seeking renewal. Row 7 of Form No.1 would indicate the

number of (type of vehicle) proposed to be operated (enclose a separate list containing vehicle no. and permit particulars of each vehicle). When row 7 indicates the type of vehicle, said type of vehicle read in consonance with Form-3 would mean either an autorickshaw/e-rickshaw/motor cab/ motorcycle individually and not all jointly.

21.8. On enquiry, if a separate list containing vehicle no. and permit particulars have been provided, both the Senior counsels submit that a partial list has been provided since the onboarding is dynamic, and the number of vehicles keeps changing on a day-to-day basis.

21.9. The whole purpose of the Guidelines appears to be that all the details are to be made available to the authorities concerned, and these details

are also to the knowledge of the aggregators. This aspect has been violated, and action would have to be taken if the Guidelines had been adopted in the State of Karnataka. If the same had not been adopted, this aspect would not be of much relevance. Be that as it may, even as per the arguments advanced by learned senior counsels, the Guidelines of 2020 are applicable, and that a single License would cover autorickshaws is not borne out by the Guidelines 2020.

21.10. What is applicable in the State of Karnataka is the Karnataka On-demand Transportation Technology Aggregator Rules 2016. These rules, having been issued in the year 2016 have only contemplated a taxi and not an autorickshaw. Thus, there is no distinction made between a four-wheeler taxi and an autorickshaw under KODTTA Rules, 2016.

21.11. Form No.1 of Appendix 1, row 6 indicates that a separate list containing vehicle no. and permit particulars for each vehicle is required to be provided. Apparently, no list has been provided by Uber or Ola regarding all the vehicles, including autorickshaws onboarded on their platform. Hence, suitable action would have to be taken by the concerned authorities in this regard, which the authorities have contended that they are unable to take in view of the directions issued by the Hon'ble Division Bench of this Court in W.A. No.4787/2016 wherein they have been restrained from taking any coercive steps.

21.12. It is for the respondent state to bring the violations on the part of Uber and Ola to the notice of the Hon'ble Division bench to seek permission to take action against the offending

party since any violation by the offending party has an adverse effect on the citizens in general.

21.13. **Hence, I answer Point No.11 by holding that under KODTTA Rules, the aggregator has to provide the full list of all vehicles along with permit details, and there would be no requirement to obtain a separate License under KODTTA Rules for autorickshaws.**

22. **ANSWER TO POINT NO.12: Whether UBER is responsible for providing transport services by the permit holders/driver of the vehicle or is the responsibility of an aggregator restricted to the booking of the vehicle on the aggregator platform or, in other words, whether there is a tripartite contract between the aggregator, driver/permit holder and passengers/customer or is it only a bilateral contract between: a)aggregator and permit holder; b)aggregator and passenger/customer; c)customer/passenger and permit holder.**

22.1. Many of the aspects relating to this matter have already been considered in answer to the Points above; the contention of Sri.K.G.Raghavan, learned Senior counsel, is that there is no tripartite agreement/contract between the aggregator, driver/permit holder and passenger/customer and that are only bilateral contracts. This aspect having been considered above, I have also adverted to the fact of whether Uber provides transport services or not.

22.2. Admittedly, there is a contract between the aggregator and permit holder/driver, and admittedly, there is a contract between the aggregator and the permit holder/driver, and admittedly, there is an agreement between the aggregator and the passenger/customer. The agreement between the passengers/customers and permit holders/drivers is arrived at on the Uber platform. If not for the platform, neither the permit holder/driver can contact the passenger/customer nor can the passenger/customer contact the permit holder/driver.

22.3. The purpose of establishing the platform by the aggregator is to enable the passenger/customer to avail of the transport service and for the permit holder/driver to provide transport service. Though it is contended that Uber is only an aggregator and does not provide transport service, if not for Uber, there is no transport service which could be availed of by passenger/customer from permit holder/driver, nor could such permit holder/driver render service to passenger/customer.

22.4. Uber, being an aggregator, would have to be distinguished from intermediaries like ecommerce web portals, viz., Amazon or Flipkart. On those intermediary websites, there are innumerable services and goods provided by different vendors to the customer. There is no particular representation made by Amazon, Flipkart, Myntra or the like as regards the merchantability of the goods or services, whereas, in respect of Uber, there is a specific representation made that Uber does a background check of the drivers and pairs the drivers with passenger/customer. Thus, this pairing is done at the end of Uber, and Uber has a choice of either the driver or the customer, whereas on Amazon or Flipkart, the customer gets to choose the product that the customer intends to buy and from whom he intends to buy. Amazon does not select the product or pair the customer with the vendor/service provider. Thus, the concept of an aggregator vis-à-vis an e-commerce website would stand on a different footing than that of an aggregator like Uber or Ola.

22.5. Not only is there a booking of the vehicle made by a customer on the app of the aggregator, but the said booking is made vis-à-vis the permit holder/driver who has been paired with the passenger/customer, as regards which passenger/customer has no choice, there are no options made available to the Passenger/customer to choose a particular driver for that particular class of vehicle only choice made available is for choosing the class of vehicle and not the driver. He can either accept by booking or reject the booking and do a search again, which would probably give the same result. Thus, all the background activity is done by the aggregator, the only input provided by the passenger/customer being a location where she is to be picked up and/or dropped (though, of course, there is a choice made available as regarding the nature of the vehicle whether it is Uber go, Uber premier, Uber auto, Uber XL, Uber go sedan, etc in case of Uber and in case of Ola the choices being Auto, Bike, Mini, Hourly Rental, Prime SUV, Prime

Sedan, PrimePlus, Parcel, ebike).

22.6. Insofar as autorickshaws is concerned, there is one choice Uber Auto in the case of Uber and Ola Auto in the case of Ola with the permit holder/driver being paired in the background with the passenger/customer, since this automatic pairing occurs in the background. 22.7. The aggregator has made a specific representation that a background check was done on the driver and further provides for emergency service, SOS services, panic button, etc. The passenger/customer help desk and service centre, which the aggregator has referred to in their proposal, are concerned with the services provided by both the aggregators regarding the app and the services provided by the permit holder/driver.

22.8. It is also made clear that assistance would be provided by the aggregator with respect to law enforcement agencies if and when required. Thus, to contend that the only responsibility of the aggregator is restricted to onboard the autorickshaw or taxi on the platform of the aggregator, in my considered opinion, is a very narrow approach by the aggregators to only deny and escape any responsibility of the aggregator to either the customer/passenger or to the driver, while at the same time, contending that it is on account of the services being offered to the passenger/customer and driver, that the aggregator is entitled to charge a hefty service fee or convenience charge. Though the aggregator may not own the autorickshaws or taxis, essentially all the services provided by the aggregator are transport services that the passenger/customer wishes to avail themselves of and that the driver wishes to provide.

22.9. **Hence, I answer Point No.13, holding that the aggregator is responsible for providing transport services, and the responsibility is not restricted to the booking of vehicles on the aggregator platform. I also hold that there is a tripartite contract that is entered into between the aggregator, passenger/customer, and permit holder/driver for such transport services.**

23. **<u>ANSWER TO POINT NO.13:</u> Have the aggregators made use of their dominant position to prevail upon the permit holders/drivers to onboard with themselves on the terms and conditions fixed by the aggregator requiring the matter to be referred to the competitive Commission?**

23.1. This aspect has also been briefly considered while answering Point No.8 above. This issue has arisen on account of the intervenors, who are the Association of permit holders/drivers having categorically contended that the

aggregators are abusing their dominant position and prevailing upon the permit holder/drivers to accede to any terms and conditions imposed by the aggregators and further that payments which have been collected by the aggregators from the passenger/customer simultaneously with the ending with the trip are not settled with the permit holder/driver for long periods of time and that there are unexplained and unnecessary deductions made in relation to the said payments and on an enquiry, the permit holder/drivers are often not given any valid answers but are given a choice to exit the aggregator platform under a threat that they will be blacklisted, and they will not be permitted on board in any other aggregator platform and or re-board with the aggregator from which the permit holder has exited.

23.2. Learned Senior counsels, in reply to the allegations made, would submit that there is no such restriction on the permit holder/driver to exit the aggregator platform; on-boarding or de-boarding is the exclusive option of the permit holder/driver. The aggregator does not in any manner take any action against permit holders/drivers who have de-boarded themselves.

23.3. The aggregators settle the accounts of the permit holder/drivers within reasonable periods of time after the reconciliation of accounts; as such, it is contended that all allegations made by permit holder/drivers are bereft of merit and are required to be disregarded.

23.4. These are factual aspects that this Court cannot consider. The allegations made by the said permit holder/driver require an enquiry and evidence to be led and would come within the purview of the Competition Act, 2002, and the amendments made thereto.

23.5. If the submissions made by the intervenors is correct, then there is a cartelization which is resorted to by the aggregators who would be enterprises within such definition of the Competition Act, which has resulted in an anticompetitive agreement by abusing their dominant position in combination with each other which would have to be enquired by the Competition Commission.

23.6. The Competition Commission is a specialization agency that has been established for such purposes. This Court neither has jurisdiction nor the wherewithal to ascertain if the allegations made by the intervenors and the defences made out by the Petitioners are correct or not. The intervenors

would always be at liberty to approach the Competition Committee. The Registrar (Judicial) of this Court is directed to forward a copy of this order to the Chairperson, Competition Commission of India, for information and action, if any required.

23.7. It is made clear that this Court has not expressed any opinion on the allegations made by the intervenors and the defence that the aggregators may have regarding any such allegations.

24. **ANSWER TO POINT NO.14: Can the aggregators charge surge pricing in view of the undertaking provided by them to the Division Bench in W.P.No.4287/2016, 4789/2016 and 47109/2018 as observed vide order dated 07.12.2016?**

24.1. In the proposal that has been submitted by the aggregators regarding the fare to be calculated, both the aggregators have categorically indicated that they should be allowed to charge surge pricing.

24.2. Uber, in its proposal (a) submitted, has sought to allow the autorickshaws to operate with dynamic pricing with the aggregator platform being allowed 25% of the fare; proposal (b) indicates a dynamic pricing of 2X's government mandatory fare and proposal (c) does not indicate any such dynamic pricing insofar as Uber is concerned.

24.3. Ola, in its proposal, has termed the surge price as a peak factor and sought for levy of peak factor @ 2X's of the rate card during heavy demand.

24.4. Thus, both Uber and Ola have sought to contend that they should be permitted to charge peak factor/surge price/dynamic price, which is a factor or multiple of the fixed fare.

24.5. The intervenors contend that though an undertaking has been provided by the aggregators to the Division Bench in W.A. No. 4787/2016 on 07.12.2016, the aggregators are still continuing to charge surge pricing and this amount as surge price is not passed on to the permit holder/driver but retained with the aggregator. Despite the same having been brought to the notice of the concerned authorities, no action has been taken by the authorities.

24.6. In view of the undertaking furnished by Uber and Ola to the Division Bench of this Court in W.A. No. 4787/2016 on 07.12.2016 which has been recorded in the order sheet, both Uber and Ola have categorically stated that they would not be charging surge pricing. Though this undertaking was issued in respect of motor cabs or four-wheelers, since the submission of both the senior counsels is that a single License will apply to both motor cars and autorickshaws, said undertaking given in respect of motor taxis [four-wheelers] would equally apply to an autorickshaw. Thus, the aggregator cannot charge dynamic pricing, peak pricing, surge pricing, or the like by any name. If any surge charge were to be levied by whatever name called, the State would have to take necessary action in relation thereto, including initiating contempt proceedings.

24.7. The directions of the Division bench not to take coercive action is only in respect of the License, and an undertaking having been provided by the aggregators that they would not be charging surge pricing if at all they are resorting to charging peak pricing, dynamic pricing or surge pricing it was for the concerned authorities to take action in relation thereto, not having done so is an abdication of the duties of the concerned officers which will require superior authorities to take necessary action against the errant officers.

24.8. Peak pricing, dynamic pricing or surge pricing is apparently charged due to non or low availability of vehicles on the app of the aggregator. In my considered opinion, the same cannot be a basis of charge by the aggregator, the aggregator having held out to the passenger/customer that vehicles would be available for hire/hailing; it is on account of the non-availability or low availability of the vehicles on the aggregator app that the above charges called as Peak pricing, dynamic pricing or surge pricing are sought to be levied.

24.9. Essentially, these Peak pricing, dynamic pricing or surge pricing charges are sought to be levied since no vehicles are available on the app, which is an obligation of the aggregator; the aggregator not having made available the requisite number of vehicles cannot charge Peak pricing, dynamic pricing or surge pricing charges. The same would amount to taking advantage of the aggregator not being able to provide the requisite number of vehicles, no premium can be collected by the aggregator for is own defaults.

24.10. Looking at it from another angle, according to the aggregators, they are not offering/providing or being involved in any transport services; there is

nothing done by an aggregator; thus, in that regard, an aggregator cannot claim to be entitled to any amounts on account of making available a vehicle.

24.11. If at all, the Peak pricing, dynamic pricing or surge pricing can only fall to the share of the Permit holder/Driver and not the aggregator.

24.12. I am also of the considered opinion having considered all relevant aspects that if such Peak pricing, dynamic pricing or surge pricing is permitted, there is a possibility of the aggregator falsely claiming these amounts when there is a surge or peak, since all the actions on the part of the Aggregators are couched in secrecy and it not being placed on record as to the basis of such charge and in what manner the same would be considered and or calculated. Details of the total number of vehicles onboarded, the number of vehicles in operation at a given time, and the number of vehicles in operation in a given area is not made available by the aggregator to ascertain if there are indeed lesser vehicles.

24.13. In respect of taxis or autorickshaws operating in the physical world i.e., apart from the aggregator app, the driver cannot refuse a fare when on road, in the event of refusal, criminal action can be taken against such driver. It is necessary that all vehicles onboarded by the aggregator are available for hire; if not so available, the aggregator cannot claim additional amounts in the form of surge pricing, peak pricing or dynamic pricing as regards the same.

24.14. **Hence, I answer Point no. 13 by holding that the aggregators cannot charge surge pricing in view of the undertaking given to the Division Bench in W.A.No. 4787/2016, 4789/2016 and 47109/2018 as observed vide order dated 07.12.2016, as also for the reasons mentioned above.**

25. **<u>ANSWER TO POINT NO.14:</u> What Order?**

25.1. Given my finding concerning all the points above, no grounds have been made out; the writ petitions are ***<u>dismissed</u>***.

25.2. It is, however, made clear that the aggregators would be entitled to collect 5% service charges as per the impugned notification now upheld, over and above the fare fixed.