

Satish N Vs. State of Karnataka

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Court : Karnataka

Decided On : Nov-10-2016

Judge : Raghvendra S.Chauhan

Appeal No. : WP 30917/2016

Appellant : Satish N

Respondent : State of Karnataka

Advocate for Def. : Mr. Sajan Poovayya

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE10H DAY OF NOVEMBER 2016 BEFORE THE HONBLE MR. JUSTICE RAGHVENDRA S. CHAUHAN WRIT PETITION No.30917/2016 & WRIT PETITION Nos.31359-31361/2016 (MV) c/w WRIT PETITION No.30191/2016 (MV) c/w WRIT PETITION Nos.31673-31674/2016 (MV) IN WRIT PETITION No.30917/2016 & WRIT PETITION Nos.31359-31361/2016 BETWEEN:

1. SATISH N. S/O. NARAYAN, AGED ABOUT27YEARS, RESIDING AT999 6TH CROSS, 12TH MAIN, RAJENDRA NAGAR, KORAMANGALA, BANGALORE - 560047. K. MURALI S/O. K. NARAHARI, AGED ABOUT31YEARS, RESIDING AT:

31. NETRAVATHI EXTENSION, DEVASANDRA, K. R. PURAM, BANGALORE - 560036.

2.

3. MOHAMMED RIAZ PASHA S/O. ABDUL GAFFAR, AGED ABOUT 47 YEARS, RESIDING AT:

8. PATEL DOWN, 5TH CROSS, 5TH MAIN ROAD, RAHMAT NAGAR, R. T. NAGAR POST, BANGALORE - 560 032. 2 ABHINAYA KHATAVKAR S/O. RAMESH, AGED ABOUT 36 YEARS, RESIDING AT:

67. 6TH A MAIN, 15TH CROSS, J.

C. NAGAR, MAHALAKSHMIPURAM, BANGALORE-560086. ... PETITIONERS 4 (BY MR. UDAYA HOLLA, SENIOR ADV. FOR MR. VIKAS N. MAHENDRA, ADV.) AND:

1.

2. STATE OF KARNATAKA REPRESENTED BY ITS PRINCIPAL SECRETARY, VIDHANA SOUDHA, BENGALURU-560001. COMMISSIONER FOR TRANSPORT AND ROAD SAFETY, 1ST FLOOR, A BLOCK, TTMC BUILDING, SHANTINAGAR, BENGALURU-560027.

3. UBER INDIA TECHNOLOGIES PRIVATE LIMITED HAVING ITS REGISTERED OFFICE AT: E-15, MAIN MARKET, HAUZ KHAS, NEW DELHI-110016, REPRESENTED BY ITS DIRECTOR. ANI TECHNOLOGIES PRIVATE LIMITED HAVING ITS REGISTERED OFFICE AT: REGENT INSIGNIA, #414, 3RD FLOOR, 4TH BLOCK, 17TH MAIN, 100 FEET ROAD, KORAMANGALA, BANGALORE-560034, REPRESENTED BY ITS DIRECTOR.

4.

5. ASSOCIATION OF RADIO TAXIS REGISTERED OFFICE AT 261 GROUND FLOOR, OKHLA INDUSTRIAL ESTATE, PHASE III, NEW DELHI-110020, THROUGH ITS AUTHORISED REPRESENTATIVE ... RESPONDENTS 3 (BY MR.

A. S. PONNANNA, ADDL. ADVOCATE GENERAL & MR. D. ASHWATHAPPA, AGA FOR R-1 & R-2 MR. SAJAN POOVAYYA, SENIOR ADV. FOR Ms. ANUPAMA G. HEBBAR, ADV., FOR KEYSTONE PARTNERS, FOR R-3 MR. FAISAL SHERWANI, ADV. FOR R-4 MR. S. S. NAGANAND, SENIOR ADV. FOR MR. VIJAY KUMAR DESAI, Ms. VEENA RAJES & MR. ZERIC DASTUR, ADVS., FOR J.

SAGAR ASSOCIATES, FOR R-5) THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO STRIKE DOWN THE IMPUGNED RULES NOTIFIED DATED 24.2.2016 ISSUED BY R-1 AT ANNEXURE-A AS BEING ULTRA VIRES OF THE MOTOR VEHICLES ACT, 1988 AND VIOLATIVE OF ARTICLES 14 19(1)(G) AND 301 OF THE CONSTITUTION OF INDIA AND ETC. IN WRIT PETITION No. 30191/2016 BETWEEN: M/S. HELION TECHNOLOGIES PVT. LTD. REPRESENTED BY ITS DIRECTOR, MR. VISHAL KUMAR, HAVING ITS OFFICE AT SECOND FLOOR, 81/37, THE HULKUL, LAVELLE ROAD, BANGALORE-560001. ... PETITIONER (BY MR. ANISH MUNU B., ADV.) AND:

1. THE GOVERNMENT OF KARNATAKA REPRESENTED BY THE PRINCIPAL SECRETARY, DEPARTMENT OF TRANSPORT, GOVERNMENT OF KARNATAKA, M. S. BUILDING, BENGALURU-560001.

2. 4 THE COMMISSIONER FOR TRANSPORT AND ROAD SAFETY, 1ST FLOOR, A BLOCK, TTMC BUILDING, SHANTINAGAR, BENGALURU-560027. ASSOCIATION OF RADIO TAXIS #261, GROUND FLOOR, OKHLA INDUSTRIAL ESTATE, PHASE-III, NEW DELHI-110020.

3.

4. BANGALORE TOURIST TAXI OWNERS ASSOCIATION (REGD.), #2 & 10, BDA SHOPPING COMPLEX, DOMALURU, BANGALORE-560071. ... RESPONDENTS (BY MR. A. S. PONNANNA, ADDL. ADVOCATE GENERAL & MR. D. ASHWATHAPPA, AGA FOR R-1 & R-2) MR. RAVI VERMA KUMAR, SENIOR ADV. FOR MR. VIJAY KUMAR DESAI, Ms. VEENA RAJES & MR. ZERIC DASTUR, ADVS., FOR J.

SAGAR ASSOCIATES, FOR R-3 MR. S. P. SHANKAR, SENIOR ADV. FOR MR. KUMAR M. N., ADV. FOR R-4) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE KARNATAKA ON-DEMAND TECHNOLOGY AGGREGATORS RULES, 2016, PRODUCED AS ANNEXURE-A. IN WRIT PETITION Nos. 31673-31674/2016 TRANSPORTATION BETWEEN:

1. UBER INDIA TECHNOLOGIES PRIVATE LIMITED HAVING ITS REGISTERED OFFICE AT: E-15, MAIN MARKET, HAUZ KHAS, NEW DELHI-110016, REPRESENTED BY ITS GENERAL MANAGER, MR. BHAVIK RATHOD. 5 ALSO AT: #1668/A, RJP TOWERS, 27TH MAIN, 2ND SECTOR, PARANGI PALYA, HSR LAYOUT, BENGALURU-560102.

2. UBER BV HAVING ITS REGISTERED OFFICE AT: VIJZELSTRAAT 68 1017 HL AMSTERDAM, THE NETHERLANDS, REPRESENTED BY ITS AUTHORISED SIGNATORY, MR. BHAVIK RATHOD. ... PETITIONERS (BY MR. SAJAN POOVAYYA, SENIOR ADV. FOR Ms. ANUPAMA G. HEBBAR, AND MR. ADITYA CHATTERJEE, ADVS., FOR KEYSTONE PARTNERS) AND:

1. STATE OF KARNATAKA THROUGH ITS PRINCIPAL SECRETARY, VIDHANA SOUDHA, BENGALURU-560001. COMMISSIONER FOR TRANSPORT 1ST FLOOR, TTMC BUILDING, K. H. ROAD, SHANTINAGAR, BENGALURU-560027.

2.

3. ASSOCIATION OF RADIO TAXIS REGISTERED OFFICE AT 261 GROUND FLOOR, OKHLA INDUSTRIAL ESTATE, PHASE III, NEW DELHI-110020, THROUGH ITS AUTHORISED REPRESENTATIVE MR. SIDDHARTHA PAHWA ... RESPONDENTS (BY MR. A. S. PONNANNA, ADDL. ADVOCATE GENERAL & MR. D. ASHWATHAPPA, AGA FOR R-1 & R-2) MR. S. S. NAGANAND, SENIOR ADV. FOR MR. VIJAY KUMAR DESAI, Ms. VEENA RAJES & MR. ZERIC DASTUR, ADVS., FOR J.

SAGAR ASSOCIATES, FOR R-3) 6 ON-DEMAND THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA

PRAYING TO STRIKE DOWN THE KARNATAKA TECHNOLOGY AGGREGATORS RULES, 2016, PASSED BY R-1, NOTIFIED DATED 24.2.2016 PRODUCED AT ANNEXURE-A AS BEING ULTRA VIRES OF THE MOTOR VEHICLES ACT, 1988 AND VIOLATIVE OF ARTICLES 14, 19(1)(G) AND 301 OF THE CONSTITUTION OF INDIA AND ETC. TRANSPORTATION THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR

ORDER

S, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Information Technology, and globalization have revolutionized our lives. The introduction of e-commerce, of e-governance, of e-banking, of telemarketing, have transformed our world. The taxi sector, in the urban transportation system, is a glaring example of the phenomenal changes brought by information technology and globalization. Gone are the days of endlessly waiting for a taxi to catch. At a click of a button, taxis can be called for anytime and anywhere. Through the use of downloaded software, a passenger can specify not only the kind of taxi he/she requires, but can also choose the kind of driver he/she prefers. The days of 'hail and ply taxis' are over; the days of radio taxis seem to be numbered. However, globalization has introduced cut throat competition, as multi-national companies are threatening the very existence of the indigenous companies. The rapid spread of information technology, the extensive reach of globalization are, thus, a boon and a bane for the people at large.

2. A few astray incidents in taxis, supplied by technological transport service provider, otherwise called "aggregator", in few parts of the country, and the threat posed by new players has alerted the government to a perceived danger: the emergence of "the aggregator". Such new breed of taxi providers need to be regulated as much as the brick and mortar taxis. An advisory issued by the Central Government, dated 08.10.2015, a direction issued by the Karnataka High Court in the case of B. G. Lingaraju @ B. G. Shivanna and Another v. Government of Karnataka and Others [(W.P.Nos.2178-2179/2015) decided on 20.01.2015].

convinced the State Government to go into the fast lane, and to frame the Karnataka On-demand Transportation Technology Aggregators Rules, 2016 ('the Aggregator Rules', for short).

3. However, the implementation of the Aggregator Rules has disturbed the lives of many: of the taxi drivers and the taxi permit holders whose taxis are being seized by the overzealous traffic police, the multi-national companies, like Uber, whose functioning is being questioned and controlled, and the start-ups whose entry into the lucrative business of taxi sector is being thwarted. Questioning the constitutional validity of the Aggregator Rules, these stakeholders have approached this court.

4. But the threat of growing influence of Uber Company, in the world of taxi transportation, has convinced its business rivals, like ANI Technologies Private Limited (the operator of OLA Cabs), and the Association of Radio Taxis, to implead themselves, as party- respondents, in the writ petitions filed by the Uber Company and others. The impleaded respondents have supported the State in defending the constitutionality of the Aggregator Rules.

5. A large number of writ petitions have been filed before this court. Since all these writ petitions revolve around the constitutional validity of the Aggregator Rules, and few other issues, they are being decided by this common order.

6. The facts are being taken from Uber India Technologies Pvt. Ltd., and Another v. State of Karnataka and Others, (Writ Petition Nos.31673-31674/2016).⁹ 7. According to the petitioners, petitioner No.1, Uber India Technologies Pvt. Ltd., is a registered company under the Companies Act, 1956; its registered office is in Delhi. Meanwhile, the Petitioner No.2, Uber B.V. is a company incorporated under the laws of Kingdom of Netherlands; its registered office is in Amsterdam, Netherlands.

8. In 2010, the Uber Technologies Inc, a USA based company, created a "Uber Platform", a mobile phone based technology that provides a software programme on smart phones which can be utilised by passengers seeking a taxi ride, and by taxi drivers seeking a passenger. This programme connects the passenger to the

driver in real time. Thus, through the Uber Platform a passenger can request a taxi to be provided with a driver, to be hired for point-to-point transport, for payment of a fare.

9. Since its inception in 2010, the Uber Company has spread its operation through forty countries, including India. In August, 2013, the petitioner No.2 launched the Uber Platform in India. Presently the Uber Platform is actively used in various Indian cities including Bengaluru. 10 10. In order to ensure compliance of law, to ensure greater integrity of the Transportation Technology Aggregator Platforms, to ensure operation of the said platforms, and to ensure the safety of the passengers, on 09.02.2016, the respondent No.1, the State of Karnataka, circulated a draft of the proposed Aggregator Rules to govern the functioning of the aggregators. The State sought the comments from different stakeholders with regard to the said Draft Rules. Since the petitioner No.1 was engaged in the business of providing such a transport technology platform, on 25.02.2016, it submitted its detailed objections. However, according to the petitioners, without considering and examining the objections raised by the petitioners and others, on 02.04.2016, the State notified the Aggregator Rules.

11. Since some of the provisions of the Aggregator Rules imposed onerous and vicarious liabilities on the petitioners, on 05.04.2016, the petitioner No.1 filed a representation before the Principal Secretary to the Government, Transport Department, seeking certain clarifications with respect to the Aggregator Rules. Thereafter, on 18.04.2016, the petitioner submitted its application for seeking a licence under the Aggregator Rules. However, instead 11 of giving a satisfactory response to the clarification sought by the petitioner No.1, on 23.04.2016, the petitioner was served with a notice from respondent No.2, the Commissioner for Transport, whereby the Commissioner directed the petitioner No.1 to comply with the Aggregator Rules, and directed them to obtain a licence, failing which penal action would be taken against the petitioner No.1 under Section 93 of the Motor Vehicles Act ("the Act" for short).

12. After the petitioner No.1 filed its application for seeking the licence, the respondent No.2 sought several documents from the petitioner No.1. By letter

dated 03.05.2016, the petitioner No.1 informed the respondent No.2 that they are in the process of collecting the documents. Eventually, on 18.05.2016, the petitioner submitted the required documents to the Regional Transport Authority.

13. Meanwhile, many taxi drivers, and taxi permit holders informed the petitioners that their taxis were being impounded for alleged violation of the Aggregator Rules. According to the petitioners, there were also media reports that the petitioners may be asked by the Government to close down their operations in the State. Therefore, the officers of petitioner No.1 met the officers of respondent No.2 and enquired about the status of their application for licence, and about the information they had received from the taxi drivers, taxi permit holders, and the media.

14. According to the petitioners, instead of giving any satisfactory clarification, the respondent No.2 continued to impound the taxis, and continued to inform the media that petitioner No.1 was not co-operating with the Regional Transport Authority. Since such adverse publicity affected both the goodwill and the operation of the petitioners' business, on 23.05.2016, the petitioner No.1 wrote to the respondent No.2, and to the Joint Commissioner for Transport requesting them to issue the licence under the Aggregator Rules as soon as possible.

15. Consequently, the officers of respondent No.2 visited the office of petitioner No.1, and demanded more documents from it dealing with the residency of the taxi drivers, and with their criminal record, if any, for the last seven years. Since these documents were difficult to procure for the petitioner No.1, as the 13 drivers are not its employees, on 26.05.2016, the petitioner No.1 sought further clarifications from the respondent No.2. However, according to the petitioners, so far, no clarification has been issued by respondent No.2.

16. To add insult to injury, on 29.05.2016, the respondent No.2 announced that the drivers who do not have a driving license issued by the State of Karnataka, they would not be permitted to drive their taxis. Although under the Act a driving licence issued is valid all over the country, but the officers of Respondent No.2 insisted that the licence has to be issued by the State of Karnataka. This extra requirement was imposed under the garb of the Aggregator Rules. Since many drivers did not

hold a driving licence from the Karnataka Government, their taxis were impounded by the officers of respondent No.2. Due to the action of respondent No.2, the taxi drivers went on strike and started picketing. This adversely affected the petitioners' business. Such a situation lead to a war of words between the respondent No.2, and the taxi drivers, the taxi permit holders, and the petitioners. Hence, these writ petitions before this court filed by the taxi drivers, the taxi permits holders, and the petitioner Company. 14 17. The petitioner Company has not only challenged the constitutional validity of the Aggregator Rules, but has also challenged the notice dated 23.04.2016. Likewise, the Taxi drivers and the permit holders have not only confined themselves to challenging the constitutional validity of the Aggregator Rules, but have also challenged the illegal seizure of their taxis by the officers of Respondent No.2.

18. But before recording the contentions raised by the parties, in order to better understand the controversy, it would be apposite to briefly describe and quote the relevant provisions of the Aggregator Rules which are under challenge before this court.

19. The preamble of the Aggregator Rules clearly reveals that in order to ensure the compliance of the law, and the safety of the passengers, in order to ensure greater integrity of process and operation of the On-demand Transportation Technology Aggregator Platforms, the Rules were promulgated by the Government for these purposes.

20. The preamble further claims that since Section 93 of the Act requires that, any person engaged in soliciting any customer is 15 required to obtain a licence from the appropriate authority, such licence shall be subject to such conditions as may be prescribed by the State Government. Therefore, while invoking its powers under Sections 93, 95 (1) and 96 (1) read with Section 212 of the Act, the Government has promulgated the Aggregator Rules.

21. The Rules shall apply to the aggregators operating in the State of Karnataka and shall come into force from the date of their publication in the Official Gazette i.e., from 02.04.2016. Rule 2 (2) of the Aggregator Rules defines the word "Aggregator" as under:- Aggregator means a person who is an aggregator or

operator or an intermediary/market place who canvasses or solicits or facilitates passengers for travel by a taxi and who connects the passenger/intending passenger to a driver of a taxi through phone calls, internet, web-based services or GPS/GPRS based services whether or not any fare, fee, commission, brokerage or other charges are collected for providing such services. Rule 2 (7) defines the word "Taxi" as being "a motor cab having a seating capacity not exceeding six passengers excluding the Driver with public service permit on contract."

16 Rule 2 (8) clearly lays down that words and expressions used in these Rules, and not defined herein shall have the same meaning assigned to them in the Act and the Karnataka Motor Vehicle Rules, 1989, (the KMV Rules for short). Rule 3 clearly states that "No person shall act or permit any other person to act as an aggregator unless he holds an effective licence issued to him under these Rules."

Rule 5 prescribes the profiles of the aggregator. According to Rule 5, the applicant may be an individual or a Company or a Partnership firm. Secondly, the applicant shall not only comply with the rules and regulations prescribed under the Act, but also comply with the Information Technology Act, 2000, including the intermediary guidelines. Rule 5

(3) is as under:- The applicant shall not own or lease any vehicle, employ any driver or represent himself as a taxi service provider, unless he holds the licence issued under these Rules. 17 Rule 6 prescribes the conditions for grant or renewal of a licence. It is as under:- The applicant for a licence shall satisfy that: (a) He has a fleet of minimum 100 taxies either owned or through an agreement with individual Taxi permit holders. (b) He has facilities for monitoring the movement of taxies with the help of GPS, GPRS, along with a control room facility. Rule 7 prescribes the vehicle profile and deals with the conditions which a vehicle should satisfy before it can be logged on to the Platform provided by the aggregator. Rule 7 is as under:- Vehicle Profile:- Every taxi, for the purpose of inclusion in a licence, shall,- (a) be covered with a contract carriage permit issued under section 74 or under sub-section

(8) of Section 88 of the Act. (b) Have a display board inside the Taxi containing vehicle permit and the drivers details such as photograph, name, Driving Licence and badge 18 particulars and ID card issued by police authorities. The display board shall be clearly visible to the passengers in the taxi. (c) Be capable of being tracked continuously with GPS/GPRS facility with a provision of a panic button for the use of the passengers, capable of alerting the control room of aggregator as well as local Police without any hindrance or interference by the driver. (d) Be fitted with single integrated GPS/GPRS capable vehicle tracking unit with Printer, display panel and digital fare meter, as per the specifications detailed in Appendix-II, capable of generating a printed receipt to be given to the passengers. (e) Be fitted with an yellow coloured display board with words Taxi visible both from the front and the rear. The board shall be capable of being illuminated during the night hours. Rule 8 lays down the qualifications of a driver. It is as under:- Drivers qualifications:-

(1) Driver of a Taxi shall have the following qualifications:- (a) He Shall be holder of a licence to driver light motor vehicles (transport) and the holder of a badge to drive motor cabs. 19 (b) He shall have a minimum driving experience of 2 years. (c) He shall be a resident of Karnataka for a minimum period of two years. (d) He shall have a working knowledge of Kannada and any one other language, preferably English. (e) He shall be of a good moral character without any criminal record. (f) He shall be a holder of KYC compliance bank account in accordance with the norms prescribed by Reserve Bank of India.

(2) The driver of a Taxi shall behave in a civil and orderly manner with the passengers or intending passengers and shall not give room for any complaints from them and shall not indulge in any touting activities or force or compel customers to use his services.

(3) The driver of a taxi shall not have been convicted within the past seven years, for the offence of driving under the influence of drugs or alcohol, or any cognizable offence under the Criminal Procedure Code, 1973, including fraud, sexual offences, use of a motor vehicle to commit a cognizable offence, a crime involving 20 property damage or theft, acts of violence, or acts of terror. Rule 9 fixes the rate

of hire and prescribes that "the fare including any of the charges, if any, shall not be higher than the fare fixed by the Government from time to time". It further lays down that "No passenger shall be charged for dead mileage and the fare shall be charged only from the point of Boarding to the point of Alighting". Rule 10, on the other hand, prescribe the general conditions to be observed by a Licensee i.e., the aggregator. The said rule is as under:-

10. General Conditions to be observed by a licensee:-

(1) The licensee shall (a) provide an address within the area of operation in the jurisdiction of the Licensing Authority along with details of the person-in-charge of the affairs. (b) neither shift his place of business, nor any of his branches as mentioned in the licence or open a new branch without a written permission from the licensing authority. 21 (c) maintain records, in digital form of all the taxis at his control, indicating on a day to day basis, the trips operated by each vehicle details of passengers who travelled in the vehicle origin and destination of the journey and the fare collected. The records so maintained shall be open for inspection by an officer nominated by the licensing authority at any time. (d) provide a list of drivers their Licence numbers, the vehicle registration numbers and the chassis and engine numbers and permit details of Taxis operated by him to the licensing Authority on a quarterly basis. (e) maintain the copies of following up-dated records relating to the drivers (after verification with the originals): i) ii) iii) iv) v) vi) a photograph of the driver; driving Licence; Present home address with proof of residential address; RBI compliance KYC bank account details; Self-attested copies of EPIC card and PAN card. Contact details and addresses of two family members. 22 (f) Maintain up-dated drivers vehicle the originals) following to the copies of the records relating the (after verification with i. Certificate of Registration; ii. Certificate of Fitness; iii. Permit of the vehicle; iv. Chassis and engine numbers and v. Commercial insurance policy covering for third party risks as prescribed in the Act. vi. Pollution under control certificate. (g) implement a zero tolerance policy on the use of drugs or alcohol applicable to any driver, provide notice of the zero tolerance policy on its website, as well as the procedure to report a complaint about a driver when a passenger reasonably suspects that the driver was under the influence of drugs or alcohol during the course of the ride.

The licensee shall immediately deactivate or suspend such drivers access to the platform upon receipt of a passengers complaint alleging violation of the zero tolerance policy. The suspension shall last or continue during the period of investigation by the licensee. (h) ensure that the antecedents of every driver of a Taxi is verified by the police authorities before the driver is allowed to use the licensees platform. 23 i) arrange at least once in a year structured Refresher training programme for the drivers not only for safe driving skills but also for gender sensitization and etiquette towards passengers etc. Conduct of all such training programmes shall be documented and preserved at least for one year. The driver shall not be allowed to work beyond the maximum number of hours as stipulated under Motor Transport Workers Act 1961. (Central Act No.27 of 1961) j) periodically check and maintain a register regarding the details of all the documents of all taxies at his command. k) ensure that all the taxies at his command maintain uninterrupted contact with the control room. The control room shall be in a position to monitor the movements of all the vehicles at his command. l) ensure adequate mechanism for receiving passengers feedback and grievances. This may be ensured through feedback register kept in the taxi, easily accessible to the passengers always and also by providing toll free phone numbers. m) ensure that the grievances or complaints of passengers or any other persons received by him shall be attended by the grievance officer appointed by him 24 and they must be made available to the inspecting authorities on demand. n) provide the taxies covered with a permit issued under section 74 or under sub-section

(8) of Section 88 of the Act as petitioner the requirement of the passengers. o) ensure that the vehicles entered in his licence do not operate independently or accept booking directly. p) give liberty to the permit holder who is in operation under his company to operate his vehicle simultaneously with any other aggregator as per his discretion. q) ensure that the taxi service is available all the time 24 X7 without any interruption. r) on termination or end of the agreement with permit holder, remove all the equipments or brand stickers and confiscate the identity card or authorization issued to the driver. s) maintain a web portal containing all details regarding the owners of the vehicles, services offered, fare structure, insurance liabilities, control room number, name and contact details of a

duly appointed grievance redressal officer. 25 t) send photo of the driver along with vehicle registration number and other details of the driver to the customers mobile before boarding. u) publish beforehand its policy on taxi fare, registration of taxis and drivers with its platform or app, sharing of fares with taxi owners and / or drivers, safety of passengers, grievance redressal mechanism for passengers etc. v) store datas of all passengers and drivers travelled in their vehicles up to one year and make them available to the inspecting authorities on demand.

2) If the licensee uses or causes or allows a Taxi to be used in any manner not authorized by the permit or provisions mentioned herein, the licensee and the driver shall be jointly and severally responsible for such defaults and for payment of penalty under the provisions of the Act and Rules.

3) If any untoward incident occurs during the course of a ride, the licensee shall inform the same to the licensing authority as well a to the jurisdictional police immediately.

4) The licensing authority may, after notice of not less than 30 days to the licensee, vary any conditions or may add fresh conditions. 26 Rule 11 grants power to the Licensing Authority to suspend or cancel the Licence. It is as follows :-

11. Power of the licensing authority to suspend or cancel the Licence:-

(1) The licensing authority may, after giving an opportunity of being heard to the licensee, suspend the licence for a period which shall not be less than 30 days and which shall not exceed 6 months at a time or may cancel the licence, if:- (a) the licensee fails to comply with any of the requirements or conditions of these rules, or (b) any Taxi operated by the licensee fails to comply with any of the requirements or conditions of these rules, or (c) any driver of a Taxi operated by him violates any requirements or conditions of these rules, or (d) a passengers complaint of misbehaviour or misdemeanour on the part of the driver or the licensee or any of his employees is found to be correct after enquiry or (e) a criminal complaint is filed against the licensee or his employee or the driver. 27

(2) Where a licence is suspended or cancelled, the licensee shall surrender the licence to the licensing authority within three days of receipt of order of suspension or cancellation and shall immediately stop all operations under the licence.

(3) Where the licence is liable to be suspended or cancelled and the licensing authority is of the opinion that it would be expedient to impose a fine on the licensee in lieu of suspending or cancelling the licence, the licensing authority may require the licensee to pay a fine which shall not be less than Rs.5,000 but not exceeding Rs.10,000.

(4) Without prejudice to an order of suspension or cancellation passed by the licensing authority, the security provided by way of bank guarantee may also be forfeited either in part or in full, depending upon the gravity of the violation.

(5) The licensee may, at any time, voluntarily surrender the licence for cancellation. On such surrender of the licence, the security by way of bank guarantee if any shall be returned to the licensee after the payment of outstanding dues if any. 28 Rule 12 grants the right to file an appeal. It is as under:-

12. Appeals:-

(1) The licensee aggrieved by any order passed by the licensing authority may, within 30 days of receipt of the order, appeal to the Karnataka State Transport Appellate Tribunal.

(2) An appeal shall be in the form of a memorandum in duplicate setting forth the grounds for the appeal and shall be accompanied by the requisite fee and the certified copy of the order passed by the licensing authority. Rule 14 prescribes the security deposit which needs to be submitted by the Licensee. It is as follows:-

14. Security Deposits:- Applicant for a licence under these Rules shall furnish refundable security by way of bank guarantee to the extent as indicated below from any nationalized bank situated within the jurisdiction of Bangalore City.
Purpose Sl. No.1. Up to 1000 Taxies Amount in Rupees 1,00,000

2. Up to 10000 Taxies 2,50,000

3. More than 10000 Taxies 5,00,000 29

22. During the course of the arguments, the Aggregator Rules were constantly compared with the City Taxi Service Scheme ('CTS Scheme', for short), promulgated by the Government, which is applicable to the taxis plying in Bengaluru. Therefore, in order to better understand the comparison, it is imperative to narrate the essential features of the CTS Scheme.

23. In order to augment transport service and to make it eco-friendly, in 1998, the Government introduced "The City Taxi Service Scheme". The Scheme is applicable to "all motor cabs to which contract carriage permits have been issued under Section 74 of the Act."

Condition No.2 (e) defines the word "Operator" as meaning "the owner of one or more motor cab either owned or leased over to him who is part of a wireless network registered under this scheme."

Condition No.3 prescribes the general conditions to be observed by the Operator. Condition No.3 (iii) of the CTS Scheme stipulates that the motor cab City Taxi Services shall be available throughout day and night (24 Hours). 30 Condition No.4 deals with registration. It lays down that the persons who are holders of permit granted by the Regional Transport Authority for running a City Taxi shall be eligible under the Scheme. Secondly, those permit holders who wish to be an operator under the Scheme shall intimate the Regional Transport Authority, who has issued his permit about the starting of his business under the Scheme. Condition No.6 (2) prescribes the qualification of a driver and is as under:

"(a) He shall have a driving licence and badge authorising him to drive Motor Cab (Taxi) (b) He must have minimum of two years experience in driving a light motor vehicle; (c) he must have the working knowledge of Kannada and preferably English. (d) He shall be fully conversant with the duties specified in Rule 13 and 16 of the KMV Rules, 1989 ; (e) He shall be a resident of Karnataka for a period of at least ten years. 31 (f) He shall possess minimum educational qualification of SSLC/10th standard.

24. Further, since the Aggregator Rules, as subordinate legislation, emanate from certain provisions of the Act, it is equally imperative to not only understand the architectural structure of the Act, but also to quote the relevant provisions of the Act.

25. The Act is a Code in itself which covers different facets of motor vehicles: from licensing of various kinds of motor vehicles to registration of motor vehicles, from control of transport vehicles to control of traffic, from motor vehicle accidents to liabilities for such accidents, from insurance of motor vehicles to the establishment of Claim Tribunals to prescribing offences, penalties and procedures. Thus, the Act is comprehensive in its nature and scope. Section 2 of the Act defines different terminologies which are used in the Act. While Section 2 (28) of the Act defines the words "motor vehicle" or "vehicle", Section 2 (7) of the Act defines the term "contract carriages". According to the definition, it means "a motor vehicle which carries a passenger or passengers for hire or reward 32 and is engaged under contract, whether expressive 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 agreed rate or sum on a time basis, whether or not with reference any route or distance or from one point to another."

"Contract Carriage" shall include a maxi cab or a motor cab. Section 2 (25) of the Act defines the word "motor cab" as meaning, "any motor vehicle constructed or adopted to carry not more than six passengers excluding the driver for hire or reward". Section 2 (35) of the Act further defines the term "Public Service Vehicle" as under:- 2. (35) public service vehicle means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxi cab, a motor cab, contract carriage, and stage carriage Moreover, Section 2 (43) of the Act defines the term "Tourist Vehicle" as under:- 33 2. (43) tourist vehicle means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf. Section 3 imposes a prohibition that no person shall drive a motor vehicle unless he holds an effective driving licence issued to him authorising him to drive the vehicle. Thus, Section 3 makes it absolutely imperative for a driver to have a driving licence.

Section 9 deals with the grant and refusal of driving licence. Section 9 (4) imposes a pre-requisite condition upon drivers of a transport vehicle that he must possess such minimum educational qualification as may be prescribed by the Central Government and a Driving Certificate issued by the School or Establishment referred to in Section 12 of the Act. On the other hand, Section 9 (8) of the Act grants the power to the licensing authority to refuse to grant the licence if the licensing authority is satisfied that the applicant is a habitual criminal or a habitual drunkard; or is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act; or is a person ³⁴ whose licence to drive any motor vehicle has, at any time earlier, been revoked. Chapter V of the Act deals with Control of Transport Vehicles. Section 66 of the Act necessitates the taking of a Permit. The relevant portion of Section 66 is as under:- 66. Necessity for permits. - (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used : Section 74 deals with grant of contract carriage permit. Since this provision is essential for the decision of this case, it is quoted in extenso. It is as under:- 74. Grant of contract carriage permit:- (1) Subject to the provisions of sub- section (3), a regional transport authority may, on an application made to it under section 73, grant a contract carriage ³⁵ permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit: Provided that no such permit shall be granted in respect of any area not specified in the application. (2) The Regional Transport Authority, if it decides to grant a contract carriage permit, may, subject to any rules that may be made under this act, attach to the permit any one or more of the following conditions, namely:- i) that the vehicles shall be used only in a specified area or on a specified route or routes; ii) that except in accordance with specified conditions, no contract of hiring, other than an extension or modification of a subsisting contract, may be entered into outside the specified area; iii) the maximum number of passengers and the maximum weight of luggage that may be carried on the vehicle, either generally or on specified

occasions or at specified times and seasons; iv) the conditions subject to which goods may be carried in any contract carriage in addition to, or to the exclusion of, passengers; 36 v) that, in the case of motorcabs, specified fares or rates of fares shall be charged and a copy of the fare table shall be exhibited on the vehicle; vi) that, in the case of vehicles other than motor cabs, specified rates of hiring not exceeding specified maximum shall be charged; vii) that, in the case of motor cabs, a specified weight of passengers luggage shall be carried free of charge, and that the charge, if any, for any luggage in excess thereof shall be at a specified rate; viii) that, in the case of motor cabs, a taximeter shall be fitted and maintained in proper working order, if prescribed; ix) that the Regional Transport Authority may, after giving notice of not less than one month,- (a) vary the conditions of the permit (b) attach to the permit further conditions; x) that the conditions of permit shall not be departed from save with the approval of the Regional Transport Authority; xi) that specified standards of comfort and cleanliness shall be maintained in the vehicles; 37 xii) that, except in the circumstances of exceptional nature, the plying of the vehicle or carrying of the passengers shall not be refused; xiii) any other conditions which may be prescribed. (3) (a) The State Government shall, if so directed by the Central Government, having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of contract carriages generally or of any specified type as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs. (b) Where the number of contract carriages are fixed under clause (a), the Regional Transport Authority shall, in considering an application for the grant of permit in respect of any such contract carriage, have regard to the following matters, namely :- i) financial stability of the applicant ii) satisfactory performance as a contract carriage operator including payment of tax if the applicant is or has been an operator of contract carriages ; and 38 iii) such other matters as may be prescribed by the State Government: Provided that, other conditions being equal, preference shall be given to applications for permits from i) the India Tourism Development Corporation ; ii) State Tourism Development Corporation ; iii) State Tourism Departments ; iv) State Transport undertakings ; v) Co-operative societies

registered or deemed to have been registered under any enactment for the time being in force ; vi) Ex-servicemen. Section 75 of the Act deals with scheme for renting of motor cabs and is as under:- 75. Scheme for renting of motor cabs.-. (1) the central government may by notification in the official gazette, make a scheme for the purpose of regulating the business of renting of motor cabs or motor cycles to persons desiring to drive either by themselves or through drivers, motor cabs or motor cycles].for their own use and for matters connected therewith. (2) A scheme made under sub-section (1) may provide for all or any of the following matters, namely;- 39 (a) licensing of operators under the scheme including grant, renewal and revocation of such licences; (b) form of application and form of licences and the particulars to be contained therein; (c) fee to be paid with the application for such licences; (d) the authorities to which the application shall be made; (e) condition subject to which such licences may be granted, renewed or revoked; (f) appeals against orders of refusal to grant or renew such licences and appeals against orders revoking such licences; (g) conditions subject to which motor cabs may be rented; (h) maintenance of records and inspection of such records; (i) such other matters as may be necessary to carry out the purpose of this section, 40

Section 84 prescribes the general conditions attached to all the permits. It is as under:- 84. General conditions attaching to all permits.-. The following shall be conditions of every permit - (a) that the vehicle to which the permit relates carries valid certificate of fitness issued under section 56 and is at all times so maintained as to comply with the requirements of this Act and the rules made there under ; (b) that the vehicle to which the permit relates is not driven at a speed exceeding the speed permitted under this Act ; (c) that any prohibition or restriction imposed any fares or freight fixed by notification made under section 67 are observed in connection with the vehicle to which the permit relates ; (d) that the vehicle to which the permit relates is not driven in contravention of the provisions of section 5 or section 113 ; (e) that the provisions of this Act limiting the hours of work of drivers are observed in connection with any vehicle or vehicles to which the permit relates; 41 (f) that the provisions of Chapter X, XI and XII so far as they apply to the holder of the permit are observed ; and (g) that the name and address of the operator shall be painted or otherwise firmly affixed to every vehicle to which the permit relates on the exterior of the body of that vehicle on both sides thereof in a

colour or colours vividly contrasting to the colour of the vehicle centered as high as practicable below the window line in bold letters. Section 85 of the Act clearly stipulates that "every permit issued under this Act shall be complete in itself and shall contain all the necessary particulars of the permit and the condition attached thereto."

Section 88 is essential for the decision of this case. Section 88 of the Act deals with validation of permits for use outside region in which the permit is granted. The relevant extract is as under:- 88. Validation of permits for use outside region in which granted.-. (1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid 42 in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned: Provided that a goods carriage permit, granted by the Regional Transport Authority of any one region, for any area in any other region or regions within the same State, shall be valid in that area without the countersignature of the Regional Transport Authority of the other region or of each of the other regions concerned: Provided further that where both the starting point and the terminal point of a route are situate within the same State, but part of such route lies in any other State and the length of such part does not exceed sixteen kilometers, the permit shall be valid in the other State in respect of that part of the route which is in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State: Provided also that - xxxxxxxxx xxxxxxxxx xxxxxxxxx 43 (3) A Regional Transport Authority when countersigning the permit may attach to the permit any condition which it might have imposed if it had granted the permit and may likewise vary any condition attached to the permit by the authority by which the permit was granted. (8) Notwithstanding anything contained in sub- section (1), but subject to any rules that may be made under this Act by the Central Government, the Regional Transport Authority of any one region or, as the case may be, the State Transport Authority, may, for the convenience of the public, grant a special permit to any public service vehicle including any vehicle covered by a permit issued under section 72 (including a

reserve stage carriage) or under section 74 or under subsection (9) of this section for carrying a passenger or passengers for hire or reward under a contract, express or implied, for the use of the vehicle as a whole without stopping to pick up or set down along the line of route passengers not included in the contract, and in every case where such special permit is granted, the Regional Transport Authority shall assign to the vehicle, for display thereon, a special distinguishing mark in the form and manner specified by the Central Government and such special permit shall be valid in any other region or State without the countersignature 44 of the Regional Transport Authority of the other region or of the State Transport Authority of the other State, as the case may be. (9) Notwithstanding anything contained in sub- section (1) but subject to any rules that may be made by the Central Government under sub-section (14), any State Transport Authority may, for the purpose of promoting tourism, grant permits in respect of tourist vehicles valid for the whole of India, or in such contiguous States not being less than three in number including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application and the provisions of sections 73, 74, 80, 81, 82, 83, 84, 85, 86, [clause (d) of sub-section (1) of section 87 and section 89]. shall, as far as may be, apply in relation to such permits. (11) The following shall be conditions of every permit granted under subsection (9), namely :- i) every motor vehicle in respect of which such permit is granted shall conform to such description, requirement regarding the seating capacity, standards of comforts, amenities and other matters, as the Central Government may specify in this behalf; 45 ii) every such motor vehicle shall be driven by person having such qualifications and satisfying such conditions as may be specified by the Central Government ; and iii) such other conditions as may be prescribed by the Central Government. (14) (a) The Central Government may make rules for carrying out the provisions of this section. (b) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :- (i) the authorisation fee payable for the issue of a permit referred to in sub-section (9) and (12) ; (ii) the fixation of the laden weight of the motor vehicle ; (iii) the distinguishing particulars or marks to be carried or exhibited in or on the motor vehicle ; (iv) the colour or colours in which the motor vehicle is to be painted ; (v)

such other matters as the appropriate authority shall consider in granting a national permit. Explanation.-. In this section, - 46 (a) appropriate authority, in relation to a national permit, means the authority which is authorised under this Act to grant a goods carriage permit ; (b) authorisation fee means the annual fee, not exceeding one thousand rupees, which may be charged by the appropriate authority of a State of enable a motor vehicle, covered by the permit referred to in sub-section (9) and (12) to be used in other States subject to the payment of taxes or fees, if any, levied by the States concerned ; (c) national permit means a permit granted by the appropriate authority to goods carriages to operate throughout the territory of India or in such contiguous States not being less than four in number, including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application. Section 91 of the Act restricts the hours of working of drivers. It states that "hours of work of any person engaged for operating a transport vehicle shall be such as provided in the Motor Transport Workers Act."

Sub Section 4 further provides that "no person shall work or shall cause or allow any other person to work 47 outside the hours fixed or recorded for the work of such persons under Sub Section 3."

Section 93 of the Act which deals with grant of licence to an Agent or a Canvasser is crucial for adjudicating this case. It is as under:- 93. Agent or canvasser to obtain licence. (1) No person shall engage himself - (i) as an agent or a canvasser, in the sale of tickets for travel by public service vehicle or in otherwise soliciting customers for such vehicles, or (ii) as an agent in the business of collecting, forwarding or distributing goods carried by goods carriages, unless he has obtained a licence from such authority and subject to such conditions as may be prescribed by the State Government. (2) The conditions referred to in sub-section (1), may include all or any of the following matters, namely :- 48 (a) the period for which a licence may be granted or renewed ; (b) the fee payable for the issue or renewal of the licence ; (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 licence 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 licence that no agent or canvasser to whom the licence is granted shall advertise in any newspaper, book, list, classified 49 directory or other publication unless there is contained in such advertisement appearing in such newspaper, book, list, classified directory or other publication the licence number, the date of expiry of licence and the particulars of the authority which granted the licence. Section 95 of the Act bestows a power on the State Government to make Rules as to Stage Carriages and Contract Carriages. It is as under:-

95. Power of State Government to make rules as to stage carriages and contract carriages:-

(1) A State Government may make rules to regulate, in respect of stage carriages and contract carriages and the conduct of passengers in such vehicles.

(2) Without prejudice to the generality of the foregoing provision, such rules may -

(a) authorise the removal from such vehicle of any person contravening the rules by the driver or conductor of the vehicle, or, on the request of the driver or conductor, or any passenger, by any police officer;

(b) require a passenger who is reasonably suspected by the driver or conductor of contravening the rules to give his name and address to a police officer or to the driver or conductor on demand.

50 (c) Require a passenger to declare, if so demanded by the driver or conductor, the journey he intends to take or has taken in the vehicle and to pay the fare for the whole of such journey and to accept any ticket issued there for;

(d) Require, on demand being made for the purpose by the driver or conductor or other person authorised by the owners of the vehicle, production during the journey and surrender at the end of the journey by the holder thereof of any ticket issued to him ;

(e) Require a passenger, if so requested by the driver or conductor, to leave the vehicle on the completion of the journey the fare for which he has paid ;

(f) Require the surrender by the holder thereof on the expiry of the period for which it is issued of a ticket issued to him ;

(g) Require a passenger to abstain from doing anything which is likely to obstruct or interfere with the working of the vehicle or to cause damage to any part of the vehicle or its equipment or to cause injury or discomfort to any other passenger ;

(h) Require a passenger not to smoke in any vehicle on

which a notice prohibiting smoking is exhibited. 51 (i) Require the maintenance of complaint books in stage carriages and prescribe the conditions under which passengers can record any complaints in the same. On the other hand, Section 96 of the Act empowers the State to make Rules for the purpose of "this Chapter" i.e. Chapter V of the Act, which deals with "Control of Transport Vehicle". The relevant provisions of Section 96 are as under:- 96. Power of State Government to make rules for the purposes of this Chapter:- (1) A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter. 2 (xiv) the construction and fittings of, and the equipment to be carried by, stage and contract carriages, whether generally or in specified areas; 2 (xviii) regulating the painting or marking of transport vehicles and the display of advertising matter thereon, and in particular prohibiting the painting or marking of transport vehicles in such colour or manner as to induce any person to believe that the vehicle is used for the transport of mails; 52 2 (xx) the provision of taxi meters on motor cabs requiring approval or standard types of taxi meters to be used and examining testing and sealing taxi meters; 2 (xxv) authorizing specified persons to enter at all reasonable times and inspect all premises used by permit holders for the purposes of their business; 2 (xxviii) the licensing of and the regulation of the conduct of agents or canvassers who engage in the sale of tickets for travel by public service vehicles or otherwise solicit customers for such vehicles. 2 (xxxii) the records to be maintained and the returns to be furnished by the owners of transport vehicles.

26. The learned counsel for the parties have raised a plethora of issues, and have submitted myriad contentions. Therefore, this court proposes to record the contentions of the learned counsel for the parties under well defined topics, to deal with their rival contentions, and to give the reasoning with regard to each topic in separate segments of the order.

27. But before getting into the contention and counter- contentions, the first issue to be thrashed out is with regard to the 53 grounds for challenging the constitutional validity of subordinate legislation.

28. Mr. Sajan Poovayya, the learned Senior Counsel, for the petitioner-Company, pleads that the contours of the grounds for challenging the constitutionality of

subordinate legislation are well defined. In order to buttress this plea, the learned Senior Counsel has relied on the cases of *State of T. N. and Another v. P. Krishnamurthy and Others* [(2006) 4 SCC517].., and *Supreme Court Employees' Welfare Assn. v Union of India* [(1989) 4 SCC187]..

29. However, on the other hand, Mr. A. S. Ponnanna, the learned Additional Advocate General, and Mr. S.S. Naganand, the learned Senior Counsel for the Association of Radio Taxis, submit that the scope of judicial review of delegated legislation is extremely limited. Relying on the cases of *Directorate of Film Festivals and Others v. Gaurav Ashwin Jain and Others* [(2007) 4 SCC737, *Krishnan Kakkanth v. Government of Kerala and Others* [(1997) 9 SCC495, and *on Centre for Public Interest Litigation v. Union of India* [(2016) 6 SCC54408].., the learned counsel submit that subordinate legislation reflects a legislative policy. But the Courts cannot sit as an Appellate Authority to examine the correctness, suitability and appropriateness of a policy. The Courts cannot interfere with the policy either on the ground that it is erroneous, or on the ground that a better, fairer, wiser alternative is available. Therefore, this court should stay away from examining the constitutional validity of the Aggregator Rules.

30. The issue of power of judicial review of subordinate legislation need not detain us for too long. For, the said issue is no longer *res integra*. In the case of *P. Krishnamurthy and Others* (supra), the Apex Court has opined as under: There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds: a) Lack of legislative competence to make the subordinate legislation. 55 b) Violation of fundamental rights guaranteed under the Constitution. c) d) Violation of any provision of the Constitution. Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act. e) Repugnancy to the laws of the land, that is, any enactment. f) Manifest arbitrariness/unreasonableness (to the extent where the court might well say that the legislature never intended to give authority to make such rules).

31. In the case of Supreme Court Employees' Welfare Assn. (supra), the Hon'ble Supreme Court had delineated a few other grounds for challenging the subordinate legislation: being manifestly unjust, or oppressive, or outrageous, or directed to be unauthorised and/ or violative of the general principles of law of the land, or so vague that it cannot be predicted with certainty as to what it prohibited or so unreasonable that they cannot be attributed to the power delegated or otherwise disclosed bad faith. 56 32. In the case of P. Krishnamurthy (supra), the Hon'ble Supreme Court also opined that "the court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before deciding invalidity."

33. Of course, the learned counsel for the State, and Mr. S. S. Naganand, the learned Senior counsel, have argued that subordinate legislation being part of legislative policy cannot be examined by this court, as this court does not sit as an appellate court over the wisdom of the Executive. However, such a sweeping statement is untenable. For, when the constitutionality of a subordinate legislation is called into question, especially on the grounds mentioned above in the case of P. Krishnamurthy (supra), 57 this court is not sitting as an appellate court. This court, in fact, sits only as a constitutional court to examine the constitutionality of the subordinate legislation. While examining the subordinate legislation under the constitutional microscope, this court is not concerned with the soundness of the legislative policy. But the court is concerned only with the constitutional legality of the subordinate legislation, i.e. if the delegated legislation is well within the constitutional limits and within the parameter of the parental Act or not?. Therefore, this court cannot afford the luxury of closing its eyes to the constitutional challenges before it, on the spacious plea that it cannot sit as an appellate court over legislative policy.

34. Therefore, the Aggregator Rules would have to be examined on the touchstone of the tests laid down by the Hon'ble Supreme Court in the above mentioned cases. The Aggregator Rules versus the Act:

35. The first salvo of Mr. Sajan Poovayya, the learned Senior Counsel, is with regard to the Aggregator Rules being ultra vires the Act. Firstly, while trying to regulate and control an aggregator, 58 like the petitioner-Company, the State has misunderstood the character of the aggregator, and its relationship with the permit holder, the driver, and the passenger. According to the learned Senior Counsel, an aggregator merely creates a technology based platform i.e., it creates certain software program which can be downloaded by the passenger, and the driver of a taxi, on their respective mobile phones. The software permits the passenger to register himself/herself on to the Uber Platform. Similarly, the software also allows a permit holder, and a driver to register themselves on the platform. As and when a passenger requires a taxi service, he/she logs on to the platform, and reveals the place from where he/she needs to be picked up from. The platform, thereupon, searches for taxis available in the nearby vicinity; it informs the passengers about the availability of such taxis. The passenger is free to specify the category of taxi required by him, and to choose the taxi driver on the basis of his rating. Upon a choice made by the passenger, the particular taxi, whose details are sent to the passenger, including the name of the driver, the make of the taxi, its registration number, its colour reaches the pickup point. Upon completion of the trip, the passenger can pay 59 the fare either in cash, or by net banking to the driver. Thus, according to the learned Senior Counsel, an aggregator is merely a facilitator who connects the passenger to a taxi driver for a taxi ride, and nothing more. Secondly, according to the Aggregator Rules, they have been framed by the State under its powers bestowed by Sections 93, 95 (1) and 96 (1) of the Act. However, the Rules could not be framed under the said provisions of the Act. For, in order to bring an entity under the purview of Section 93 of the Act, two ingredients need to be satisfied: i) the entity has to be either an "agent", or a "canvasser"; ii) the entity has to be engaged either "in the sale of tickets for travel by public service vehicles", or "in soliciting customers for such vehicles". Thus, obviously, the said provision regulates the activities of only two classes of persons. Moreover, the activities of an agent, or a canvasser must fall within the purposes mentioned in the Section.

Thus, other activities of an agent, or a canvasser are not covered under the said provision. Section 93 of the Act does not bestow any power upon the State to make any Rules beyond the twin categories covered under 60 the said provision. But an aggregator is neither an agent, nor a canvasser. Relying upon numerous dictionaries and Law Lexicons, the learned Senior Counsel has emphasised that "to canvass" means "to go about a region or district to solicit votes, orders, subscriptions or the like". Moreover, the word "Canvasser" means "a travelling salesman who goes out on the road soliciting orders for his firm and taking with him samples of the goods or wares his house deals in."

Further, a distinction has to be made between the noun "canvasser" and the verb "to canvass". The verb "to canvass" applies to a person who solicits business on his own behalf, whereas the word "canvasser" is more commonly applied to a person canvassing on behalf of an employer, or a principal. In order to support this plea, the learned Senior Counsel has relied on the case of Verner Jeffers v. Pinto [140 LT360 1929, a decision of Court of Appeal of England].. Furthermore, Section 93 of the Act cannot be interpreted in a manner so as to include a principal, who canvasses for his own business, and a canvasser, who canvasses on behalf of an employer, or a principal. Such an interpretation of Section 93 would violate the architectural structure of the Act. For, Section 61 74 of the Act deals with granting of permit to the owner of the taxi vehicle. Thus, Section 74 covers the principal. Meanwhile, Section 93 specifically deals with "an agent" and "a canvasser". Since the principal is already covered under Section 74 of the Act, obviously, the word "canvasser" cannot mean a principal who is canvassing for his own business. Moreover, if the word canvasser used in Section 93 of the Act were to include the principal, it would make the issuance of permit under Section 74 of the Act redundant. It would also lead to an anomalous situation. For, the principal, i.e., the owner of the taxi, would be required to have a permit under Section 74 of the Act, and a licence under Section 93 of the Act. An interpretation which makes a provision redundant, or leads to an anomalous situation should not be accepted by this court. Moreover, a canvasser generally canvasses on behalf of a known entity, and in the capacity of an agent. However, an aggregator does not work for any known entity, since a large number of permit holders are registered on its platform. At any given moment of time, the passenger may take a taxi belonging to anyone

of the permit holders who are registered on the aggregator's 62 platform. Thus, the identity of the permit holder is unknown. Most importantly, the aggregator does not plead with the passenger that he/she must take a taxi belonging to a particular permit holder. Furthermore, the word "solicit" means "to entreat (a person) for or to do something; to importune."

But, an aggregator does not go through regions or districts soliciting votes, or orders, or subscriptions. Similarly, an aggregator does not entreat, or asks for, or seek a person for, or to do something. An aggregator merely provides a platform, and facilitates the availability of a taxi service to the passenger by connecting him/her to a taxi driver. Thus, at worst, an aggregator is a facilitator. But a facilitator cannot be covered under Section 93 of the Act. The Aggregator Rules cannot enlarge the categories contained in Section 93 of the Act from two to three classes. For a subordinate legislation cannot enlarge the scope of a provision of a parental Act. The subordinate legislation has to be within the confines of the parental Act. Since, an aggregator is not a canvasser, it does not fall within the ambit of Section 93 of the Act. Thus, the State could not have framed the Aggregator Rules under Section 93 of the Act. 63 Further, Section 93 (2) of the Act enumerates the conditions which may be imposed in the licence granted to an "agent" or a "canvasser". Section 93 (2) (f) of the Act uses the words "such other conditions as may be prescribed by the State Government". The words "such other conditions" obviously take their colour from the conditions enumerated in Section 92 (a-e) of the Act. Thus, even Section 93 (2) (f) of the Act bestows a limited power upon the State to add other conditions in the licence which have not been enumerated in Section 93 (2) (a-e) of the Act. Hence, Section 93 (2) of the Act does not bestow a power upon the State to frame any Rules with regard to agent or canvasser. Fourthly, Mr. Poovayya claims that only recently the Motor Vehicle (Amendment) Bill, 2016 has been introduced in the Parliament for introducing certain amendments in the Act. According to him, the Bill proposes to amend Section 93 of the Act by including a third category, namely "the Aggregator" in the said provision. Relying on the case of *Vodafone International Holdings BV v. Union of India and Another* [(2012) 6 SCC613 the learned Senior Counsel submits that since there is a proposed amendment for including "Aggregator" in Section 93 of 64 the Act, obviously the said category is not

included in the present Section 93 of the Act. Therefore, the State could not have exercised its power under Section 93 of the Act for framing the Aggregators Rules. Fifthly, although Section 95 of the Act empowers the State to frame Rules for Contract Carriages, but such Rules must relate to "the conduct of the passengers in such vehicles". This is amply clear from the fact that the provision uses the words "Contract Carriage and the conduct of passengers in such vehicles". Furthermore, Section 95 (2) of the Act clearly stipulates that such Rules may be made in relation to specified topics therein. Section 95 (2) (a-i) of the Act enumerate the topics. However, the Aggregator Rules do not relate to the conduct of the passengers in a taxi. Thus, the said Rules could not have been formulated under Section 95 of the Act. Furthermore, Section 95 of the Act covers a taxi, since a taxi is a contract carriage. It further covers the passengers. But an aggregator can neither be covered under "contract carriages", nor covered under the word "passengers". For, an aggregator neither owns, nor leases, nor provides a taxi service. Therefore, the power bestowed by Section 95 of the Act upon the State to frame rules, cannot be used by the State as a camouflage for framing rules for the aggregators. To permit the State to do so would tantamount to permitting the State to indulge in colourable exercise of power. Sixthly, although Section 96 of the Act does bestow power upon the State Government to make the Rules, but such Rules must be "for the purpose of this Chapter" meaning thereby only for the purpose of "control of transport vehicles". Therefore, in case the Rules travel beyond the purpose of controlling the transport vehicles, the State cannot claim that the Rules have been created by invoking its power under Section 96 (1) of the Act. Moreover, even if for the sake of an argument, it is conceded that the State could frame the Aggregator Rules under Section 96 (2) of the Act, but an aggregator does not fall within the scope of the word "agent" or "canvasser" used in Section 96 (2) (xxviii) of the Act. Thus, the State is unjustified in claiming that it has the power under Section 96 (2) (xxviii) of the Act to frame the Aggregator Rules. Therefore, the Aggregator Rules are clearly beyond the power of the State to frame the said Rules: the Aggregator Rules are ultra vires the Act.

36. The salvo fired by Mr. Poovayya has met with a barrage of submissions submitted by Mr. A.S.Ponnanna, the learned Additional Advocate General, Mr. D. Ashwathappa, Additional Government Advocate, Prof. Ravi Verma Kumar, Mr. S.

S. Naganand and Mr. S.P. Shankar, the learned Senior Counsel, and by Mr. Zeric Dastur and Mr. Faisal Sherwani, the learned counsel. Instead of individually dealing with the contentions raised by the learned counsel, in the interest of brevity, this court records their contentions collectively. Firstly, the learned counsel have argued in unison that the petitioner, the Uber Company, is not as innocent as it pretends. An aggregator does not merely provide a "technological platform" for the permit holders, the drivers and the passengers for registering themselves onto the platform. But it does much more than that. According the Memorandum of Association of the Uber India Technology Pvt. Ltd., it shall not only act as a "Taxi Aggregator", but shall also act as an "Agent", and/or any service provider in 67 connection with the foregoing. Thus, according to its Memorandum of Association, the Company shall act as an Agent. When an aggregator enters the taxi transportation service sector, it initially enters into an agreement with the permit holders. The aggregator and the permit holder enter into the agreement as independent contractors. The aggregator positions itself both as a "lead generator", and as being "a limited agent for the purpose of collecting the fare". But nonetheless, an aggregator holds out a promise to the permit holder that it will ensure an endless supply of passengers for the taxis owned by the permit holder. Since the permit holder is assured of passengers, since the permit holder reaps the benefit of such an association, the permit holder willingly enters into the agreement which stipulates certain conditions imposed by the aggregator. These conditions not only relate to the quality of the vehicle to be maintained by the permit holder, but also relate to the qualifications and character of the driver employed by the permit holder on his/her taxis. As a consideration for the service provided by the aggregator, the permit holder agrees to pay a consideration of 20% of the fares received by the driver from the passengers. Furthermore, according to the agreement, an 68 aggregator not only collects the fare for the trip, but also collects the booking fee and the service fee from the passengers. In order to buttress this plea, the learned counsel have emphasised the agreement entered between the Uber Company, the petitioner, and a permit holder. (The agreement shall be discussed in detail later in the judgment). Secondly, according to the learned counsel, an advertisement can also solicit orders from a prospective client/buyer/passenger. Thus, they have emphasised the advertisements issued

by Uber Company, and the e-mails sent by it to particular individuals. According to them, the Uber Company offers a bounty to the passengers for registering themselves on its platform. Further, the lucrative offers are also made to the passengers by the Uber Company not just for its own interest, but more so to ensure the endless supply of passengers for the benefit of permit holder (s). Since the Aggregator entices the passengers, convinces the passengers to use only those taxis which are registered on its platform, it solicits the passengers for the benefit of the permit holder (s). Moreover, since the aggregator does not own, or lease out any taxis, its advertisement for attracting the 69 passengers are on behalf of the permit holders. Therefore, the aggregator "canvasses" on behalf of the permit holder. Hence, the aggregator is "a canvasser" and is squarely covered by Section 93 of the Act. Thirdly, the learned Senior Counsel for petitioner company has misinterpreted Section 95 of the Act. For, Section 95 empowers the State Government to make Rules as to stage carriages and contract carriages. Since taxis fall within the category of contract carriages, the State has ample power for framing Rules for taxis as well under Section 95 of the Act. Hence, the State is justified in claiming that the Aggregator Rules are being framed under Section 95 of the Act. Fourthly, since the aggregator is a canvasser, since Section 96 (2) (xxviii) permit a State to frame Rules for agents and canvasser, the State is justified in invoking its power under Section 93 read with Section 96 of the Act for promulgating the Aggregator Rules. Moreover, Section 92 (xiv), (xviii), (xx), (xxv), (xxviii), (xxxii), (xxxiii) of the Act, duly empowers the State to frame Rules for different headings mentioned in the sub-sections aforementioned. 70 These different headings deal with different aspects of contract carriages including a taxi. Hence, the Rules are intra vires the Act. Fifthly, the learned counsel submit that while interpreting the scope and ambit of Section 93 of the Act, this court should apply the golden rule of interpretation, and should go by the plain and grammatical meaning of the words. If there is no ambiguity in Section 93 of the Act, the court need not go any further and need not consider external aids for interpreting the said provision. In order to support this plea, the learned counsel have relied upon *Nemai Chandrakumar & Ors. v Mani Square Ltd. & Ors.* [(2015) 14 SCC203, *Kalyan Roller Four Mills Pvt. Ltd. v Commissioner of Commercial Taxes Andhra Pradesh* [(2014) 16 SCC375, *Willow Wren Canal Carrying Co. Ltd. v British*

Transport Commission [(1956) 1 WLR213, British and Colonial Furniture Co. Ltd. v William McIlroy Ltd. [(1951) All ER404, and M/s Velji Lakhamshi and Co. v Benett Coleman and Co. [(1977) 3 SCC160. According the learned counsel, Section 93 of the Act does not suffer from any ambiguity. Hence, this court need not consider the proposed Amendment Bill of 2016 as an external aid for interpreting the said provision. 71 Sixthly, while Rule 113 of the KMV Rules already covers the licensing and regulation of conduct of agent, there were no corresponding rules which would cover the licensing and regulation of conduct of canvassers. Therefore, it was imperative to frame Rules which would regulate the action of the canvassers. Hence, the Aggregator Rules. Moreover, there were complaints from the public and other taxi service providers, such as the City Taxi Service, the Bangalore Tourist Taxi Owners Association, the Association of Radio Taxis, that the aggregators were charging more fares than fixed by the Government. Therefore, the aggregators were violating the law. Hence, the Government was convinced that the aggregator's conduct needs to be regulated. Further, there were also complaints that the aggregators were utilising All India Tourist Vehicle permits for fairing local commuters. Therefore, the aggregators were violating the purpose for which the permit was granted under Section 88 (9) of the Act. According to the learned counsel, permit issued under Section 88 (9) of the Act is granted to a person for plying "tourist vehicle" and 72 that, too, "for the purpose of promoting tourism". Therefore, such tourist vehicles are required, by Law to carry only tourists and not local commuters. However, the aggregators were violating the requirements of the law. Hence, the need for the Aggregator Rules. Furthermore, since certain untoward incidents had taken place in taxis provided by the aggregators, in different parts of the country, the issue about the safety of the passengers was of paramount concern. Therefore, in order to ensure that the aggregators comply with the law, that there is an integrity of their process and operation, and that there is a safety of the passengers, the Central Government issued an advisory to the State Government to frame the Aggregator Rules. Thus, the Aggregator Rules have been framed in public interest and for the public good. Hence, the Aggregator Rules are not only intra vires the Act, but are also in public interest. Thus, they are constitutionally valid. Seventhly, relying on the cases of Deepak Theatre, Dhuri v. State of Punjab [(1992) Supp (1) SCC684, Uttar

Pradesh Power Corporation Limited v. National Thermal Power Corporation Limited and Others [(2009) 6 SCC235 and on 73 State of U.P. and Another v. Maharaja Dharmander Prashad Singh and Others [(1999) 2 SCC505, the learned counsel have pleaded that the power to regulate implies the power to prescribe and enforce all such proper and reasonable Rules and Regulations as may be deemed necessary to conduct the business in a proper and orderly manner. Therefore, the State has the power to prescribe reasonable rules, regulations or conditions subject to which the business may be permitted or conducted. Therefore, the State has ample powers under Sections 93, 95 and 96 of the Act to promulgate the Aggregator Rules and to lay down the conditions under which an Aggregator can function and can carry out its business. Thus, the Aggregator Rules are intra vires the Act.

37. In order to answer the issue if the Aggregator Rules could be drafted under Sections 93, 95 (1) and 96 (1) of the Act or not, it is essential to analyze the definition of the word "Aggregator" as given in the Aggregator Rules.

38. At the cost of repetition, Rule 2 (2) of the Aggregator Rules defines the term "Aggregator" as under:

"Aggregator" means a person who is an aggregator or operator or an intermediary/ market place ⁷⁴ who canvasses or solicits or facilitates passengers for travel by a taxi and who connects the passenger/ intending passenger to a driver of a taxi through phone calls, internet, web-based services or GPS/GPRS based services whether or not any fare, fee, commission, brokerage or other charges are collected for providing such services. The said definition can be divided into three parts: firstly, it means an aggregator. But this part of the definition is purely tautological. For it merely says that a = a; secondly, it means an operator who connects the passenger/ intending passenger to a driver of a taxi through technological means, for a consideration or without a consideration; thirdly, it means a intermediary/ market place who canvasses or solicits or facilitates passengers for travel by a taxi and who connects passenger/ intending passenger to a driver of a taxi through a technological platform, for a consideration or without a consideration.

39. In the present case, this court is dealing with a petitioner-Company which is clearly neither "the owner" of the taxis, nor "a lessee" of the taxis. It merely claims to facilitate and to connect a passenger/ intending passenger to a driver of a taxi. The 75 other petitioners are either All India Permit Holder, or taxi drivers. The former are not so much disturbed by the framing of the Rules, as they are by omission of the class of All India Tourist Vehicle permit holder from the purview of the Aggregator Rules. The latter are aggrieved by the "illegal" seizure of their taxis by the police. Therefore, while dealing with the issue with regard to the Aggregator Rules being intra vires of the Act or not, the discussion is limited only to the position taken by the petitioner-Company. Thus, the discussion does not include "the operator" as contained in the definition of the aggregator mentioned and discussed above.

40. In order to fully understand the scope and ambit of Section 93 of the Act, it is essential to briefly refer to the architectural structure of the Act. Section 2 (7) of the Act defines the term "Contract Carriage". Contract Carriage includes motor cabs. Taxis are motor cabs. Section 74 of the Act grants permits to the owners of taxis. Thus, Section 74 of the Act deals with the principal. Section 74 (2) permits the licensing authority to impose certain conditions upon the permit holder. However, in order to control transport vehicles, 76 it was also essential for the Act to deal with two other classes of persons who are related to motor vehicles, but are not the principal, namely "the agent", and "the canvasser". Therefore, in order to bring these two classes of persons within the control of the law, Section 93 of the Act was enacted. Section 93 (1) of the Act makes it mandatory for an agent and a canvasser to have a license before he/she can hold himself/ herself as an agent or a canvasser. However, the section deals with only two activities performed by the each of the two classes: selling tickets for the public service vehicle by the agent, and with soliciting of customers by the canvasser for the public service vehicle. Hence, the section deals with only two categories of persons, and only when they perform the two specified functions. Hence, Section 93 (1) of the Act cannot travel beyond this limited scope. Section 93 (2) of the Act permits licensing authority to prescribe certain conditions named in the said sub-section. However, we need not concern ourselves with this sub-section as it is not germane to the controversy before this court. 77 41. The moot question before this court is whether an

aggregator is covered by the words "canvasser" or "solicitor" or not ?.

42. The word "canvasser" has not been defined in the Act. Therefore, we must turn to the Law Lexicon in order to know its meaning. P. Ramanatha Aiyar's Advanced Law Lexicon [2005 Edition]. defines a "canvasser" as a "travelling salesman who goes out on the road soliciting orders for his firm and taking with him samples of the goods or wares his house deals in."

It further defines the verb "to canvass" as "to go about a region or district, to solicit votes, orders, subscriptions, or the like."

(Emphasis added)

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43. Of course, Mr. Poovayya is justified in relying on the case of Verner Jeffers (supra) in order to distinguish between the noun "canvasser" and the verb "to canvass". Undoubtedly, the verb "to canvass" does apply to a person who solicits business on his own behalf. But the noun "canvasser" applies to a person who canvasses on behalf of another person.

44. The word "to solicit" also has not been defined in the Act. But according to P. Ramanatha Aiyar's Advanced Law Lexicon 78 [2005 Edition]., "to solicit" means "to entreat (a person) for or to do something; to importune", "to ask for or to seek".

45. Mr. Poovayya's argument that an aggregator neither canvasses, nor solicits customers is attractive at the first blush. His emphasis about the aggregator merely providing a technology "platform" is also beguiling at the first instance. But a closer scrutiny of the functioning of the aggregator, as revealed by the agreement entered between the aggregator and the permit holder, blows the cover off his arguments. Therefore, to fully understand the status of an aggregator it is imperative to refer to the terms and conditions of the Service Agreement" ('the agreement', for short) entered between the petitioner-Company and the permit holder.

46. The agreement has been drafted deftly. Hence it requires a close examination. The said agreement is between the transport service provider, called the "Customer", meaning thereby the permit holder, and the petitioner-Company, an aggregator. According to Condition No.13.1, "the relationship between the parties under this Agreement is solely that of independent contractors."

Moreover, the agreement is for "the mutual benefit of 79 both the parties."

Further, according to the preamble of the agreement, the petitioner-Company holds itself out to be a "lead generator". And according to condition No.13, dealing with the "Relationship of the Parties", the petitioner-Company admits that it acts "as the limited payment collection agent solely for the purpose of collecting payment from Users (passengers) on behalf of Customer."

(Later we shall discuss the term "lead generation", and its inter-relationship with advertising or advertisements). Further according to the agreement, Uber shall provide "Uber Service", which is defined in Condition No.1.17 as meaning "Uber's electronic service rendered via a digital technology platform, being on-demand intermediary and related services that enable transportation providers to seek, receive and fulfill on-demand requests for transportation services by users seeking transportation services" Thereby meaning that the aggregator shall provide a 'digital technology platform' to the permit holder, through which the permit holder would be able to 'seek, receive and fulfill', the 'on-demand request' from the passenger ('user') who is seeking a taxi ride ('transport service'). Hence, the aggregator is acting on behalf of the permit holder in such a way as to connect the permit holder to the passenger. Similarly, the words "Transportation Service" is defined in Condition No.1.14 as meaning "the provision of passenger transportation services to Users via the Uber Services in the Territory by Customer and its drivers using the Vehicles."

Therefore meaning that the passenger is being provided a taxi ride ('transportation services') by the permit holder ('Customer') and its drivers by the vehicles registered with the aggregator ('using the vehicles') through the Uber Services. Thus, the permit holder uses the aggregator as a medium for providing the taxis to the passenger. The vehicles, which are provided to the passenger, through the

aggregators, are the vehicles owned, and registered by the permit holder on to the aggregator's platform. Condition No.1.18 defines the term "User" as meaning "an end user authorized by Uber to use Uber's mobile application for the purpose of obtaining Transportation Services offered by Uber's transportation provider customers."

Thereby meaning that the word "User" means the passenger ('end user') who is authorized by the 81 aggregator to use the platform 'for the purpose of obtaining a taxi ('Transportation Service'), offered by the permit holder (elliptically described as "Uber's transportation provider customers"). Here again the aggregator is offering only those "public service vehicles" which are owned by the permit holder to the passenger. Thus, the aggregator is working as a medium on behalf of the permit holder. And the aggregator is concerned only with those taxis (public service vehicles) which are owned by the permit holder and are registered with the aggregator. Again the aggregator is working on behalf of the permit holder, and is related to the public service vehicles of the permit holder. Condition No.4 deals with the Financial Terms between the permit holder and the aggregator. According to Condition No.4.1 of the agreement, the "Customer: i) appoints Uber as Customer's limited payment collection agent solely for the purpose of accepting the fare, applicable Tolls and, depending on the region and/ or if requested by Customer, applicable taxes and fees from the User on behalf of the Customer via the payment processing functionality facilitated by the Uber Services; and ii) agrees that payment made by User to Uber shall be considered the same as payment made 82 directly by the User to Customer."

Further, "Uber agrees to remit to Customer on at least a weekly basis: (a) the Fare less the applicable Service Fee; (b) the Tolls; and (c) depending on the region, certain taxes and ancillary fees."

This Condition clearly spells out that the aggregator is working as a collection agent of the permit holder. The aggregator collects the fare on behalf of the permit holder, and remits the fare and other amount to the permit holder on a weekly basis. Moreover, the aggregator is permitted to deduct "the applicable Service Fee" from the fare amount to be remitted to the permit holder. According to

definition clause, Condition No.1.10, "Service Fees" has the meaning set forth in Section 4.

4. Condition No.4.4 defines the "Service Fee" as meaning "In consideration of Uber's provision of the Uber Services, Customer agrees to pay Uber a service fee on a per Transportation Services transaction basis calculated as a percentage of the fare" Further, "In addition, with respect to taxi Services in the applicable Territory, Customer agrees to pay Uber a booking fee in consideration of Uber's provision of the Driver App and the Uber Services."

Hence, according to this Condition, the aggregator is entitled to a percentage of the fare as 83 'Service fee', and to the 'booking fee'. This is the consideration paid to the aggregator for the service rendered by it to the permit holder. Condition No.13 reveals the "Relationship of the Parties."

According to Condition No.13.1, " Except as otherwise expressly provided herein with respect to Uber acting as the limited payment collection agent solely for the purpose of collecting payment from Users on behalf of Customer, the relationship between the parties under this Agreement is solely that of independent contractors."

Hence, the aggregator is acting as a "limited payment collection agent on behalf of the Customer (permit holder)". But both the parties are entering into the agreement as "independent contractors". Interestingly, under Condition No.4.7, "the Customer acknowledges and agrees that, for the mutual benefit of the parties, through advertising and marketing, Uber and its Affiliates may seek to attract new Users to Uber and to increase existing Users' use of Uber's mobile application."

Thus, Uber is allowed by the permit holder to "attract new Users (passengers)", through "advertising and marketing" for persuading the passengers to register on the 84 aggregator's platform for "the mutual benefit of the parties."

In fact, it is through advertising and marketing that the aggregator, Uber Company, shall fulfill its role as a 'lead generator' and as an endless provider of passengers for the benefit of the permit holder.

47. This takes us to the very concept of "lead generator". This is a term borrowed from marketing. Lead generation is the initiation of consumer interest, or inquiry into services or a business. The method of generating leads typically falls under the umbrella of advertising, but may also include other methods. Leads may come from various sources or activities, for example, digitally via the internet, or through advertisements. The purpose of lead generation is to tap potential customers for the benefit of either one's own business, or for the benefit of another's business. By tapping, by pursuing the potential customers, a list of potential customers is generated, who can be contacted for convincing them to either buy the product, or to take the service.

48. In marketing, "purchase funnel" or "purchasing funnel" is a consumer focused marketing model which illustrates the theoretical customer journey towards the purchase of a product or 85 service. In 1898, E. St. Elmo Lewis developed this model which mapped a theoretical customer's journey from the moment a brand or product attracted the attention of a customer to the point of action or purchase of the product or hiring of a service. According to this model, the impact of advertisements, as a tool of marketing, has five different facets: i) it creates an awareness in the mind of the potential customer about the existence of a product, or service; ii) it generates an opinion about the product, or service to be offered; iii) it leads to consideration of the product or service by the potential customer; iv) it creates in the customer's mind a preference for the product, or service offered; v) the customer purchases the product, or service. This process, of making the customer aware of the existence of the product, or service to his buying the product, or service, is called the "purchase funnel".

49. Thus, the function of the lead generator is to tap the potential clients/ customers for bringing them into a market place; the function of the advertisement is to create awareness, generate opinion, persuade the potential customer to consider the service, 86 to convince the customer to have a preference for the service, and to ensure that the customer takes the service. Thus, "lead generation", and advertising are inter-related. These two functions may be performed by a single entity, or by different entities.

50. A perusal of the terms and conditions of the agreement clearly reveal that the relationship between the two independent contractors is a symbiotic one, where one cannot exist without the other, and the relationship is mutually beneficial to both. The permit holder allows the aggregator to use advertising and marketing "to attract new Users (passengers)."

The aggregator attracts the passengers, through advertisement, to the vehicles (public service vehicles) owned and registered by the permit holder on the aggregator's platform. The aggregator collects the fare from the passenger on behalf of the permit holder. The aggregator remits the fare to the permit holder on a weekly basis. For the service of providing the passengers, and for collecting the fare, the permit holder, in turn, pays a 'Service Fee', and a 'booking fee', to the aggregator. Thus, simply put, the aggregator does work on behalf of the permit holder. This is one side of the coin. 87 51. But the next question is whether the aggregator 'solicits' customer for the permit holder or not?. The other side of the coin is for the aggregator to arouse the interest of the potential customer/ passengers to the extent that the customer/ passenger would agree to take the vehicles registered on its platform. For this purpose, we may examine to the advertisements issued by the aggregator. The petitioner Company has issued a large number of advertisements for "Book an Uber Ride at Rs. 7/Km", for getting "Around Like a Movie Star!" with "Rs. 300 off Your First Uber Ride", for "Treating Yourself: Step it Up When Step Out for a Big Night."

There are ads informing the potential customer/ passenger that

"25. Off All Uber RidesWe just dropped our fares by 25% for a limited duration,,, making Uber almost as cheap as auto-rickshaw fares. In fact, if you use the fare-split feature with friend or colleague, it is cheaper than auto-rickshaw!" It offers "ride free for one weekshare your invite code with 4 friends and family."

There is also a comparative advertising done by the petitioner-Company whereby Uber compares its fares with an auto-rickshaw, and other Operators/ Taxis. It even offers Flight Tickets to Kolkatta. If the petitioner Company finds that a particular passenger has not 88 taken a ride for quite some time, it sends a personal e-mail and tries to convince him/ her to "take a ride with Uber".

52. Hence, by making alluring offers, the petitioner- Company is entreating the passenger to register with its platform, for the purpose of taking taxis (public service vehicle), owned by the permit holder. Therefore, the petitioner-Company, as an aggregator, is certainly soliciting the customer/ passenger strictly for the purpose of taking only those vehicles which are registered on its platform, and which belong to the permit holder. Thus, the aggregator does "canvass" for the permit holder by soliciting the customer for taking the public service vehicles owned by the permit holder. Hence, undoubtedly, an aggregator does fall within the words of Section 93 of the Act, namely "a canvassersolicits the customer for such vehicle (public service vehicle) . Therefore, an aggregator is covered under Section 93 of the Act.

53. Of course, Mr. Sajan Poovayya, the learned Senior counsel, has argued that an aggregator does not go on to the road to solicit customers. But in the Digital Age, the internet itself has created "roads" for the people to travel and solicit customers. The 89 days of travelling salesmen belong to the bygone age. In the post- modern world, in the age of virtual reality, internet is the longest and safest "highway" which connects people across continents. Internet has not only created highways for people to travel on, but has also created market places for people to sell their products, services, and ideas. It has reduced the planet into a global village. Therefore, Mr. Poovayya's argument that the petitioner Company merely offers a technology platform, and merely "facilitates and connects the passenger and the taxi driver" is a hypnotic illusion which cannot be accepted. In the face of the evidence, it is both untenable and unacceptable.

54. Mr. Sajan Poovayya is equally unjustified in claiming that a canvasser has to work for a known entity. A bare perusal of Section 93 of the Act would belie this plea. For, the said section does not lay down that a canvasser has to work for a known principal. The section confines itself to the function being performed by the canvasser, that he/ it should solicit customer for the public service vehicle. Thus, it is not necessary for the purpose of Section 93 of the Act for a canvasser to work for a known permit holder or entity. What is essential for Section 93 of the Act is that 90 the canvasser should solicit customers for the public service vehicle owned by the permit holder. As discussed above, the aggregator does solicit customer for

taking the taxis owned by the permit holder. Hence, an aggregator is covered by Section 93 of the Act.

55. Mr. Sajan Poovayya is certainly justified in claiming that Section 93 of the Act covers only the canvasser and not the principal. As distinguished in the case of Verner Jeffers (supra), "canvasser" is a person who canvasses on behalf of another person or entity. Thus, while the principal or a permit holder may canvass on his own behalf, he/ she does not become a "canvasser". Moreover, if Section 93 of the Act were interpreted to mean as including the principal or the permit holder, then such an interpretation would make the grant of permit under Section 74 of the Act as redundant. Further, the Act could not have envisaged that a permit holder is first required to take a permit under Section 74 of the Act, and then to seek a license under Section 93 of the Act. Since such an interpretation would lead to an anomalous situation, such an interpretation cannot be accepted. Thus, Section 93 of the Act does not include a principal even if the principal were canvassing for himself/ herself/ itself. Section 93 of the Act is, in fact, confined only to an agent and a canvasser.

56. Mr. Sajan Poovayya has also emphasised on the proposed Amendment Bill, 2016 and relied upon the case of Vodafone International Holdings BV (supra) to argue that the proposed Bill clearly proves that the category of aggregator is not covered by the present Section 93 of the Act. Such an argument raises an interesting legal issue: whether a court should take recourse to an external aid, like a Proposed Bill for Amendment, while interpreting the law that exists presently or not?.

57. In catena of cases, the Hon'ble Supreme Court has opined that the starting point for an interpretation of a Statute is the plain and grammatical meaning of the provision itself. If the language of the provision is clear and unambiguous, the court need not look outside the statute. The interpretation on the basis of plain and grammatical meaning, or the Rule of Literal Interpretation has also been called the "Golden Rule of Interpretation". In the case of Kalyan Roller Flower Mills Pvt. Ltd. v. Commissioner of Commercial Taxes, Andhra Pradesh [92 (2014) 16 SCC375, the Apex Court has opined that the object and purpose of the statutory provision

has to be gathered from the words themselves. The safer and more correct course to deal with a question of construction of a statute is to take the words themselves and arrive at, if possible, at their meaning, without, in the first place, reference to cases or theories of construction.

58. Although the word canvasser may not be defined in the Act, but considering the definition of the word canvasser given in the Law Lexicon, Section 93 of the Act does not suffer from any ambiguity. Therefore, there is no reason for this court to consider external aids for interpreting the said provision.

59. Mr. Sajan Poovayya, the learned Senior Counsel has relied on the case of Vodafone International Holdings BV (supra) in order to argue that the proposed Amendment Bill should be considered while interpreting Section 93 of the Act. However, such a plea is fraught with danger. For, a proposed Bill has to undergo the scrutiny of both the Houses of the Parliament while the Bill is under debate; the proposed amendments may be modified, altered, accepted, or rejected by the House of the Parliament. Thus, till the 93 Bill is passed as an Act of the Parliament, it does not reflect either the will of the people, or the intention of the Parliament. For what is in the realm of possibility cannot be said to be concretized. It is only after a proposed Bill has received the assent of the President, and the amendments are brought into force through an Amendment Act, can it be said that the intention of the Parliament is clear. Till the intention of the Parliament is abundantly clear, it would be too early to accept the proposed Amendment Bill as the intention of the Parliament.

60. In the case of Willow Wren Canal Carrying Co. Ltd., (supra) UpJohn. J opined as under: But it is plain that it is not right for this court either now or at the hearing to take into account the possible effect of some bill at present before Parliament, which, so far as this court is concerned may never be passed into law at all, or, if passed into law, may ultimately contain provisions which do not affect the rights of the parties before the Court at all. In other words, it is a matter of speculation on which this court will not embark as to whether a Bill at present before Parliament will be passed into law in its present form. 94 61. Similarly in the case of British and Colonial Furniture Co. Ltd., (supra) Jenkis L.J.

opined that "it is contrary to all principles that we should decide these two cases not simply on matters relevant to the Landlord and Tenant legislation as it stands, but by reference to possible alterations in the law which may be made under legislation yet to be passed".

62. The observations made in the case of Willow Wren Canal Carrying Co. Ltd. (supra) have been accepted by the Hon'ble Supreme Court in the case of M/s. Velji Lakhamshi and Co. and Others (supra).

63. Even in the case of Vodafone International Holdings BV (supra) the Apex Court has not laid a new rule for interpreting a provision of law. The Hon'ble Supreme Court has merely used the proposed Bill as a minor premise in order to support its major premise for reaching the conclusion that Section 9 (1) (i) of the Income Tax Act, 1961, cannot be extended to cover indirect transfers of capital assets/property situated in India. Therefore, the said case does not lay down a new principle for interpreting a provision of law. Hence, the contention raised by the learned 95 counsel for petitioner-Company that the proposed Amendment Bill should be considered and should be taken to reveal the fact that the category of Aggregator is not included within the category of Canvasser is unacceptable.

64. Moreover, as discussed above, the meaning of the word canvasser is clear both from the case of Verner Jeffers (supra), and from the definitions given in the Law Lexicon. Thus, there is no ambiguity about Section 93 of the Act. Since there is no ambiguity in the language of Section 93 of the Act, there is no justifiable reason for consulting external aids for understanding the scope of the said provision.

65. As far as Mr. Sajan Poovayya's contention with regard to Section 93 (2) of the Act is concerned, it is not germane to the present controversy. For, once this court has concluded that an aggregator falls within the category of canvasser, under Section 96 (2) (xxviii), the State does have ample power to make Rules for the aggregator.

66. As far as Mr. Sajan Poovayya's contention with regard to Section 95 of the Act is concerned, suffice it to say that Section 95 96 of the Act deals with Contract

Carriages. Since a Taxi is a motor cab, therefore, it does come under the definition of the word Contract Carriage as defined in Section 2 (7) of the Act. Thus, the State is empowered to frame the Aggregator Rules under Section 95 of the Act.

67. Section 96 (1) of the Act empowers the State to frame rules "for the purpose of carrying into effect the provisions of this Chapter."

Since Chapter V includes Section 74 of the Act, therefore, the State can also make rules with regard to the owner of the taxi cabs, or the "operator" as included in the definition of the word "Aggregator" given in Rule 2 (2) of the Aggregator Rules.

68. Moreover, Section 96 (2) (xxviii) of the Act empowers the State to make rules with regard to an agent and a canvasser. Since an aggregator comes within the definition of the word canvasser contained in Section 93 of the Act, since Section 95 of the Act covers contract carriages, therefore, Section 93 read with 95 read with Section 96 (1) and 96 (2) (xxviii) of the Act do bestow ample power upon the State to promulgate the Aggregator Rules, 2016. Hence, the Aggregator Rules are within the competency of the 97 State. Therefore, the first contention raised by the learned Senior counsel for petitioner-Company is clearly unacceptable. The Aggregator Rules and the Constitution of India:

69. Extensive arguments have been raised with regard to the Aggregator Rules violating Articles 14, 19 and 21 of the Constitution of India. In order to have a comprehensive understanding of the submissions, vis-a-vis a particular article of the Constitution, this court proposes to deal with the arguments under sub-headings referring to the particular Article of the Constitution of India. The Aggregator Rules vis-a-vis Article 14 of the Constitution of India:

70. Mr. Sajan Poovayya's second challenge to the Aggregator Rules is on the ground that the provisions of the Rules violate Arts. 14, 19 and 21 of the Constitution of India. This court shall deal with each Article separately. In this challenge on the basis of Article 14 of the Constitution of India, the learned Senior counsel is joined by Mr. Udaya Holla, the learned Senior Counsel in 98 W.P.No.30917/2016, and by Mr. Anish Munu, the learned counsel in W.P.No.30191/2016.

71. Relying on the case of *Om Kumar v Union of India* [(2001) 2 SCC386, Mr. Poovayya, the learned Senior Counsel submits that while regulating exercise of fundamental rights, the appropriate or least-restrictive choice of measure should be adopted by the legislature. Therefore, the courts are asked to examine if the legislature has maintained a proper balance between the adverse effects which the legislation may have on the rights, liberties or interests of persons, while keeping in mind the purpose which the legislation intends to serve. Secondly, an aggregator and an Operator under the CTS Scheme are similarly placed. For, both are involved with the taxi sector in urban transportation, and both provide taxis to the passengers. However, a comparison between the CTS Scheme and the Aggregator Rules would reveal that the Aggregator Rules have inflicted more onerous liabilities/ responsibilities on the aggregator than has been placed on the Operator under the CTS Scheme. Thus, a homogenous category of taxi service providers is being artificially bifurcated by the Aggregator Rules. But such a bifurcation is without any intelligent differentia, and without any nexus to the object of the Aggregator Rules. Thus, these provisions violate Article 14 of the Constitution of India. To begin with, Rule 5 (3) of the Aggregator Rules prevents an aggregator from owning or leasing a taxi unless it has a licence under the Aggregator Rules. However, no such pre-requisite has been prescribed for an Operator under the CTS Scheme. Thus, a prohibition has been imposed on the aggregator, which does not exist vis-a-vis the Operator under the CTS Scheme. Clearly, Article 14 of the Constitution of India is being violated. Likewise, Rule 6 of the Aggregator Rules deals with grant or renewal of a licence. Rule 6(a) of the Aggregator Rules requires that an aggregator should have "a fleet of minimum of 100 taxies either owned or through an agreement with individual Taxi permit holders."

However, no such requirement of having a minimum number of taxis has been imposed upon an Operator under the CTS Scheme. Thus, again a higher threshold is being inflicted upon the aggregator than on an Operator. Further, this 100 requirement of having a minimum of 100 taxies has no logical basis. Furthermore, such a requirement has no nexus with the avowed object of the Rules, which is to ensure the safety of the passenger and to ensure greater integrity of process and operation of the Aggregator. Hence, Rule 6(a) of the

Aggregator Rules is obviously violative of Article 14 of the Constitution of India. Similarly, Rule 7 of the Aggregator Rules prescribes the vehicle profile of the vehicles to be maintained by the aggregator. Rule 7 (c) of the Aggregator Rules makes it mandatory that each taxi should have a "panic button" which should be connected both with the control room of the aggregator, and with the police station. However, no such condition is imposed upon the Operators under the CTS Scheme. If the safety of the passenger is paramount, then all the taxis should be required to have a panic button, regardless of the fact whether they are covered by the CTS Scheme, or by the Aggregator Rules. However, the Aggregator Rules treat the Operators as more equal than the aggregators. Thus, Rule 7 (c) of the Aggregator Rules is violative of Article 14 of the Constitution of India. 101 While the CTS Scheme does not require a permit holder to check the criminal antecedents of the driver before employing him, Rule 10 (h) of the Aggregator Rules makes it a mandatory condition that "the antecedents of every driver of a Taxi is verified by the police authorities before the driver is allowed to use the licensee's platform."

If such a requirement is imposed ostensibly on the ground that the safety of the passenger is important, then the said requirement should equally be imposed on the Operator under the CTS Scheme. However, no such requirement exists in the CTS Scheme. Thus, again Article 14 of the Constitution is violated. Most importantly, Rule 11 of the Aggregator Rules deals with power of the licensing authority to suspend or cancel the licence. According to Rule 11(c) of the Aggregator Rules, the licensing authority may cancel the license if "any driver of a Taxi operated by him violates any requirement or conditions of these rules", or "a passenger's complaint of misbehaviour or misdemeanour on the part of the driver or the licensee or any of his employees is found to be correct after enquiry" or "a criminal complaint is filed against the licensee or his employee or the driver."

According to the learned Senior Counsel no such liability is imposed upon the permit 102 holders under the CTS Scheme. While a vicarious liability is imposed upon the aggregator, under Rule 11 (c), (d), and (e) of the Aggregator Rules, no such vicarious liability exists qua the permit holder covered by the CTS Scheme. Thus, Article 14 of the Constitution of India is violated.

72. Mr. Udaya Holla, the learned Senior Counsel in Writ Petition No.W.P.No.30917/2016, has argued on behalf of All India Tourist Vehicle permit holders and on behalf of the taxi drivers. While comparing the Aggregator Rules vis--vis the CTS Scheme, the learned Senior Counsel has basically echoed the arguments of Mr. Poovayya as far as the contentions with regard to Article 14 of the Constitution of India are concerned. Hence, his submissions are not being narrated here.

73. However, Mr. Udaya Holla, the learned Senior counsel, has challenged the constitutionality of Rule 8 (c) and (d) of the Aggregator Rules, on the ground that they violate Article 14 of the Constitution of India. Rule 8 (c) of the Aggregator Rules insists that the driver should have stayed in Karnataka for at least two years. Thus, the Rule imposes a pre-requisite period of residency. 103 Further, Rule 8 (d) of the Aggregator Rules requires that the driver should have "a working knowledge of Kannada". According to the learned Senior counsel such requirements have no nexus with the object of the Aggregator Rules. Hence, they are highly arbitrary, unreasonable and unfair requirements prescribed by the Aggregator Rules; thus, violative of Article 14 of the Constitution of India.

74. On the other hand, both Mr. A. S. Poonana, the learned Additional Advocate General, and Mr. S. S. Naganand, the learned Senior Counsel, for respondent No.5 in W.P.No.30917/2016, and Prof. Ravi Verma Kumar, the learned Senior Counsel for respondent No.3 in W.P.No.30191/2016 have pleaded that the Aggregator Rules deal with a single category, namely the aggregators. The object of the Aggregator Rules is to regulate the aggregator, and not the permit holder or the driver. Thus, the aggregator and the Operator under the CTS Scheme do not form a homogenous category. Further, even the permit holders associated with the aggregator, and the permit holders under the CTS Scheme form two distinct classes. For the former permit holders use a technology platform in order to access the passenger, they reap the 104 benefits of their association with an aggregator, whereas the latter permit holders neither use such a technology, nor reap such benefits. Therefore, the permit holders under the Aggregator Rules, and under the CTS Scheme form two unequal classes. Hence, the question of violation of Article 14 of the Constitution of India would not even arise. Secondly, the permit

holders under the CTS Scheme are permit holders under Section 74 of the Act. Thus, they are amenable to the requirements prescribed by the Act and the Rules made there-under. Thus, for the sake of argument, even if the permit holders under the CTS Scheme and the ones under the Aggregator Rules were held to be a homogenous category, even then there is hardly any difference between the requirements under the Aggregator Rules and those under the CTS Scheme read with the requirements of the MV Act and the KMV Rules. In fact, the permit holders under the CTS Scheme operate, more or less, under the same conditions as are prescribed under the Aggregator Rules for the permit holders under the said Rules. Thus, again the question of violation of Article 14 of the Constitution of India would not arise. 105 Thirdly, according to the learned counsel, the minimum requirement of 100 taxis cannot be faulted. For, the same is a policy decision of the State Government. The State has to fix a cut off number for the aggregator. Since it is a legislative policy decided by the State, therefore, the same cannot be interfered with by this court under its writ jurisdiction. In order to support this plea, the learned counsel have relied upon the case of *D. S. Nakara v Union of India* [(1983) 1 SCC305]. Fourthly, as far as the requirement of panic button is concerned, Mr. A. S. Poonanna, the learned Additional Advocate General, submits that the aggregators control about 85% of the taxi sector. Therefore, initially the requirement has been imposed upon them as they control the lion's share of the market. But soon, the government would make it a pre-condition for all the taxis in the State. Hence, eventually there will not be any discrimination between the taxis under the Aggregator Rules, and the ones under the CTS Scheme. Supporting the stand of the State, Mr. S. S. Naganand, the learned Senior Counsel, submits that merely because a miniscule 106 minority of taxis, which exist under the CTS Scheme, are not required to install a panic button, even this does not imply that the aggregators are being discriminated against. Relying on the case of *State of Madhya Pradesh v Narmada Bachao Andolan & ANo.* [(2011) 7 SCC639], the learned Senior counsel has argued that a conduct is said to be discriminatory if it is unjust, unfair action in favour of one against another or involves an element of intentional and purposeful differentiation and further involves an element of unfavourable bias, and unfair classification. However, in the present case there is neither an element of unfavourable bias, nor unfair classification, nor an element

of unjustness and unfairness. The need for a panic button is for the safety of the passenger. Thus, it is in public interest. Hence, this requirement is not violative of Article 14 of the Constitution of India. Fifthly, as far as getting the antecedents of the driver is concerned, according to the learned counsel before granting a driver licence and the badge, the criminal record of the driver is examined by the licensing authority. Moreover, under Section 9 (8) of the Act a driver's licence may be refused if the licensing authority is satisfied that the applicant for the licence is a habitual 107 criminal, or a habitual drunkard, or is a habitual addict to any narcotic drugs etc. Similarly, under Section 19(1) of the Act a licensing authority may disqualify a person from having a driver's licence in case his antecedents are found wanting. Likewise, under Rule 10 of the KMV Rules, if an application for renewal of driving licence is made to the licensing authority, he is required to check if the applicant has any antecedents of a bad record of driving. Thus, the need to have the driver's antecedents checked is a requirement under the Aggregator Rules, the CTS Scheme, the Act and the KMV Rules. Thus, no onerous responsibility is being forced upon an aggregator under the Aggregator Rules. Sixthly, the CTS Scheme covers permit holders who have been granted the permit under Section 74 of the Act. According to Sections 86 and 192-A of the Act, if the conditions of the permit are violated, the permit shall be cancelled by the licensing authority. Thus, the consequence of violation of a condition is the same under the CTS Scheme and the Aggregator Rules. Hence, there is no violation of Article 14 of the Constitution as pleaded by the learned Senior Counsel for the petitioner company. 108 75. As far as Mr. Udaya Holla's contentions with regard to the language and residency requirements are concerned, the learned counsel for the State has contended that such a requirement is equally placed on the drivers covered by the CTS Scheme. Considering the fact that the taxis are being used in Karnataka, considering the fact that most of the passengers may be local residents of Karnataka, considering the fact most of the traffic signals and signs are in Kannada language, it is imperative for the driver to have a working knowledge of the state language. Moreover, while the Aggregator Rules require the driver to have a residency of two years, the CTS Scheme requires a driver to have a residency of ten years. Hence. the requirement under the Aggregator Rules is a reasonable one.

76. In rejoinder, Mr. Sajan Poovayya submits that the requirement of checking the antecedents is not upon the permit holder under the Act, or under the KMV Rules, or under the CTS Scheme. However, the Aggregator Rules require the aggregator to check the antecedents of a driver up to seven years before registering him/her on the platform. Moreover, the Act and the KMV Rules merely prescribe that the antecedents of the driver 109 should be checked prior to grant of driver licence or prior to the renewal of the driver licence. But, the Aggregator Rules force the aggregator to examine the driver's antecedents up to seven years prior to his registration on the aggregator's platform. Hence, a higher threshold is forced on the aggregator.

77. The moot question before this court is, therefore, whether the aggregator under the Aggregator Rules, and the Operator under the CTS Scheme form a homogenous class or not?.

78. A bare perusal of the CTS Scheme and the Aggregator Rules clearly reveals that the Operator under the former, and the aggregator under the latter exist on two different planes. Firstly, the CTS Scheme deals with the owners of taxis who have been granted permits under Section 74 of the Act; the Aggregator Rules do not deal with the owners of the taxis. It deals with the aggregators, who are merely canvassers for the permit holder. Thus, while the CTS Scheme deals with the principal, the Aggregator Rules deal with the canvasser. Hence, their status emanates from two different provisions of the Act. 110 Secondly, the permit holders under Section 74 of the Act are controlled by the provisions of the Act and by the KMV Rules; the aggregators, by the Aggregator Rules and by few of the provisions of the Act. Thus, the Operators are covered by different set of laws, than the aggregators. Thirdly, the CTS Scheme is applicable only to the taxis being plied in Bengaluru; the Aggregator Rules are applicable throughout the State. Thus, the applicability of the Aggregator Rules is in a wider area than the Scheme. Fourthly, merely because the Operator and the aggregators are engaged in providing taxi service to the passenger, this by itself would not place both of them on identical footing. Their function may be similar, but their status and the provision under which they are covered are different. Hence, they form two separate and distinct classes. Therefore, they can be subjected to two different

sets of conditions, rules and regulations.

79. As far as Mr. Udaya Holla's submission is concerned, even that is difficult to accept. Undoubtedly, the permit holder under the Scheme, and under the Aggregator Rules are both 111 permit holder under Section 74 of the Act. But this by itself would not place them on the same plane. The permit holder under the Aggregator Rules not only uses a technology platform, but also has a canvasser, who has assured him/ her of an endless supply of passengers; whereas, the Operator under the CTS Scheme has neither the benefit of a technology platform, nor the benefit of a canvasser, nor the benefit of a assured supply of passenger. The Operator continues to be brick and mortar 'Taxiwala', although covered under a Scheme floated by the Government. Thus, the Operator stands on a different footing altogether.

80. Since both the classes are unequal, therefore, the argument of Mr. Sajan Poovayya and Mr. Udaya Holla that the two classes should be subject to same set of liabilities is unacceptable. After all, unequals cannot be treated as equals.

81. In the case of State of A. P. v Nallamilli Rami Reddy [(2001) 7 SCC708, the Hon'ble Supreme Court has opined that "If the legislature reasonably classifies persons for legislative purposes so as to bring them under a well-defined class, it is not open to challenge on the ground of denial of equal treatment that the 112 law does not apply to other person."

Therefore, as the State has classified the aggregator and the Operator as two distinct and separate classes, the former cannot complain that the similar set of liabilities and responsibilities should be inflicted on the latter as well.

82. Mr. Sajan Poovayya and Mr. Udaya Holla, the learned Senior counsel, have pointed out many differences between the responsibilities and duties forced upon the aggregator which have not been pressed upon the Operator in order to argue that there is an artificial bifurcation of the homogenous class. Moreover, the differentiation has no nexus with the object of the Aggregator Rules. Thus, it is a case of hostile discrimination against the aggregator.

83. But such a contention would be valid if and only if the two categories form a homogenous class. Since they do not, the contentions with regard to imposition of more onerous liability being inflicted on the aggregator cannot be accepted.

84. But even if, for the sake of argument, the above noted contention were accepted, even then there is "logic in the madness"

11. of the State, to quote William Shakespeare. For, Rule 5 (3) of the Aggregator Rules prohibits the aggregator from owning or leasing a vehicle unless it has a license under the Aggregator Rules. However, no such bar has been imposed upon the Operator. In fact, no such bar could be placed on the Operators as under Section 74 of the Act only an owner of a vehicle can apply for a permit to be issued to him/her. Thus, Section 74 of the Act mandates that the applicant for the permit should be the owner of the vehicle. Moreover, according to the CTS Scheme it covers only the permit holders under Section 74 of the Act. Once a person becomes a permit holder under Section 74 of the Act, and plies the taxi in the Bengaluru area, he is covered by the CTS Scheme. Therefore, if a bar were placed on the permit holder not to own or lease out a taxi without a license under the CTS Scheme, it would make the Scheme unworkable. For the Scheme comes into play only when a person owns a vehicle and has a license under Section 74 of the Act. Thus, the State is logically and legally justified in not placing such a prohibition on the Operators under the CTS Scheme. 114 85. A few arguments were raised by the learned Senior Counsel and other counsel for the petitioners that the CTS Scheme does not mandatorily cover all the permit holders under Section 74 of the Act. For, Condition No.4 (2) clearly stipulates that every person who is a permit holder and wishes to be an Operator". However, the petitioners have not brought any evidence to show that there are permit holders under Section 74 of the Act who are plying their taxis in Bengaluru, but are not covered by the CTS Scheme. On the other hand, both the State and the interveners have categorically stated that all permit holders under Section 74 of the Act are covered under the CTS Scheme. Be that as it may, this court is not concerned with the extent of the CTS Scheme except for the limited purpose of examining if the concept of equality as contained in Article 14 of the Constitution is violated or not.

86. Rule 6 (a) of the Aggregator Rules prevents an aggregator from having a license under the said Rules, unless it owns or leases out, through an agreement, a minimum of 100 taxis. However, the CTS Scheme does not prescribe any minimum limit of having a taxi by the permit holder before the permit holder is 115 brought under the Scheme. Again there is logic in this distinction: since the Scheme applies to all the permit holder under Section 74 of the Act, the moment a person owns and operates his/ her taxi, the permit holder, according to the State, automatically comes within the CTS Scheme. Hence, the said prohibition could not be placed on the Operators. If such a bar were placed on an Operator, it would again make the CTS Scheme unworkable. For, an Operator would not be covered by the Scheme until and unless he/ she owns a minimum number of vehicles. Till then, he/ she would not be covered by the CTS Scheme. Since the object of the Scheme is to regulate the Operators and their taxis, by placing such a ban, the ban would defeat the object of the CTS Scheme itself. Hence, the State is justified in not imposing such a prohibition on the Operators under the CTS Scheme. Secondly, in the case of *CSIR v. Ramesh Chandra Agarwal* [(2009) 3 SCC35, although the Hon'ble Supreme Court has confirmed the power of the court to examine a cut-off date or a point, but has held that the "power of judicial review is limited in the sense that the impugned action can be struck down only when it is found to be arbitrary."

Considering the fact that different 116 yardsticks have been applied upon the aggregator, and the Operator under the CTS Scheme, considering the fact that there is reasonable grounds for applying the different yardsticks, Rule 6 (a) of the Aggregator Rules is not arbitrary. Hence, it is not violative of Article 14 of the Constitution of India. Rule 7 (c) of the Aggregator Rules prescribes that the taxis under the aggregator should have "a panic button" which should be attached to the aggregator's control room and to the police control room. However, according to the learned counsel for the petitioners, no such requirement has been placed over the Operators under the CTS Scheme. Thus, although the aggregator and the Operator are equals, a liability has been placed over the aggregator, but the same has not been imposed on the Operator. The learned counsel have further argued that if the object of the State is to ensure the safety of the passenger, then the State should have insisted upon the panic button in all the taxis.

87. Undoubtedly, the safety of the passengers is of paramount concern. However, merely because the requirement of the panic button is being introduced in a phased manner, firstly 117 through the aggregators, and as claimed by Mr. A. S. Ponnanna, secondly, through the permit holders under the CTS Scheme, the requirement cannot be said to be discriminatory in nature. The journey of such a requirement has to begin with the first step. Considering the fact that certain untoward incidents in the taxis run by the aggregators had highlighted the issue with regard to the passenger safety, considering the fact that the aggregators allegedly are beginning to have a lion's share of the taxi sector under their belt, the requirement of their taxi's having a panic button is neither unreasonable, nor arbitrary. For a thousand mile journey begins with the first step. (Of course, later in the judgment we will revisit this topic of "panic button", but in different context). But as far as Article 14 of the Constitution of India is concerned, Rule 7 (c) of the Aggregator Rules does not violate the said Article.

88. As far as the requirement laid down by Rule 10 (h) of the Aggregator Rules is concerned, the learned Senior Counsel has challenged the same ostensibly on the ground that the CTS Scheme does not require an Operator to get the antecedents of the driver verified prior to hiring the driver, while the said Rule places the burden upon an Aggregator to verify the taxi drivers 118 antecedents by the police even before the driver is allowed to use the platform.

89. A bare perusal of condition No.6 (2) of the CTS Scheme clearly reveals that a driver is required to have a driving license and a badge authorising him to drive a motor cab. According to Section 9 (8) of the Act, a Licensing Authority may refuse to issue a driving license to a person if it is satisfied that the person is a habitual criminal, or a habitual drunkard, or is a habitual addict to any drug of psychotropic substance, or is a person whose license to drive any motor vehicle has at any time earlier been revoked. Moreover, according to Section 19 of the Act, even after a driving license has been granted by the licensing authority, even then the driving license can be revoked if the licensing authority is satisfied that the person has used, or is using a motor vehicle in the commission of a cognizable offence, or by his previous conduct as a driver of motor vehicle shown that is driving likely to be attended with danger to the public, the licensing authority may either disqualify the

person for a specified period for holding or obtaining any driving license or revoking such license. Thus, the grant and the refusal to grant, and the revocation of a license are 119 dependent upon the antecedents of the driver. Hence, before a license is granted to a driver and even thereafter, a police verification is carried out.

90. Even the provisions regarding grant of a badge under the KMV Rules require that criminal antecedents of a driver is to be verified before granting the badge. Thus, a driver employed by an operator is also put through a screening process to ensure that his antecedents are bonafide. Although Rule 10 (h) of the Rules require the aggregator to get the antecedents of the driver verified, but even the said verification has to be done through the police. Therefore, an unreasonable condition is not been placed upon the aggregator as claimed by the petitioner-Company. Moreover, according to the petitioner-Company itself, it has clearly held out to the public that before it registers a driver on its platform, it does get the drivers antecedents examined and verified. Hence, the contention raised by the learned Senior Counsel for the petitioner- Company is more academic than legal.

91. Mr. Sajan Poovayya, the learned Senior Counsel for the petitioner-Company, has further pleaded that under Rule 11 of the 120 Aggregator Rules, the sword of Damocles has been placed on the aggregator's head that its license may be suspended or cancelled if any of the conditions of the Aggregator Rules is not satisfied. However, no such liability is imposed upon the permit holder under the CTS Scheme.

92. A bare perusal of Section 66 of the Act clearly reveals that Section 66 of the Act makes it mandatory for an owner of a motor vehicle to have a permit before using the vehicle as a transport vehicle in any public place.

93. Section 74 of the Act deals with grant of a contract carriage permit. Section 74 (2) of the Act empowers the Regional Transport Authority to attach anyone or more of the conditions in Section 74 (2) to the permit to be granted under the Section 74 of the Act.

94. Section 84 of the Act deals with general conditions attached to all the permits. Most importantly, Section 86 of the Act empowers the transport authority to suspend or to cancel a permit on the breach of any conditions specified in Section 84 of the Act, or of any condition contained in the permit. Therefore, if the 121 permit holder or the driver violates any of the conditions of the permit, under Section 86 of the Act, the permit can be suspended, or cancelled by the transport authority. Thus an operator under the CTS Scheme is equally liable to ensure that his/her driver does not violate the permit conditions. Moreover, in case, the driver does violate a permit condition, the operator faces the same liability of having his/her permit cancelled or suspended, as does an aggregator under Rule 11 of the Aggregator Rules. Although there may be minor differences in the grounds for suspending, or canceling a license under the Aggregator Rules, or a Permit under the CTS Scheme, but such minor differences cannot be said to violate Article 14 of the Constitution of India. For, Article 14 does not enjoin that there should be mathematical accuracy in maintaining equality. A deviation, here and there, is permissible, provided the deviation is neither unreasonable, nor arbitrary.

95. Thus, as far as arguments raised by Mr. Sajan Poovayya, the learned Senior Counsel, is concerned suffice it to say that an Aggregator under the Aggregator Rules, and an Operator under the CTS Scheme are two distinct and separate classes. They do not form a homogenous category. Therefore, both the classes can be 122 subjected to different controls and regulations. Moreover, even if theoretically they are accepted to be a single class, even then, both the Aggregator and the Operator are subjected to similar controls and regulations. Hence, the liabilities imposed by the Aggregator Rules do not violate Article 14 of the Constitution of India. Exclusion of All India Permit Holders from the Aggregator Rules and Article 14 of the Constitution of India:

96. Mr. Udaya Holla, the learned Senior counsel, has further challenged the Aggregator Rules as violative of Article 14 of the Constitution of India, but on a totally different premise. The learned Senior counsel submits that although prima-facie the Aggregator Rules may appear to deal with the aggregators as a class, but the effect of the Rules falls upon the permit holders and the drivers. Therefore, while examining the constitutional validity of the Aggregator Rules, the said Rules

would also have to be interpreted from the point of view of these two categories, namely the permit holder and the drivers. In order to buttress this plea that the effect of the Rule will also have to be considered, the learned Senior Counsel has relied upon the case of *State of Kerala & Ors. v Unni & ANo.* [(2007) 2 SCC365. 123 97. Further, according to the Senior counsel, the Act deals with three different types of permits for Contract Carriages: firstly, the permit granted to a taxi owner under Section 74 of the Act; Secondly, "the special permits" granted under Section 88 (8) of the Act to a taxi holder who wants to ply the taxi beyond the region for which his permit has been granted under Section 74 of the Act. Thirdly, the permit granted to the All India Tourist vehicle, granted under Section 88 (9) of the Act. Although these permits may be different, but they all relate to the Contract Carriage. Hence, they form a homogeneous class.

98. Relying on the case of *S. Kannan v. Karnataka State Road Transport Authority* [(1984) 1 SCC375 the learned Senior Counsel has pleaded that regular taxis and the All India Tourist vehicles are included in the category of Contract Carriages. The only difference between a regular taxi (whose permit is granted under Section 74 of the Act), and the All India Tourist vehicles (whose permit is granted under Section 88 (9) of the Act), is the territorial extent to which the taxi can be plied. While the former can be plied in a limited region, the latter can be plied on a all India basis. But nonetheless, both the categories of taxis fall within a homogenous class of being a Contract Carriage. Rule 10 (n) of the Aggregator Rules clearly stipulates that a licence issued to an aggregator shall cover taxis with a permit granted under Section 74, or under Section 88 (8) of the Act. However, the Aggregator Rules do not cover the permit holders under Section 88 (9) of the Act. Hence, the permit holders under Section 88 (9) of the Act cannot register themselves with an aggregator under the Aggregator Rules. Therefore, the distinction being made between a regular taxi and an All India Tourist vehicle by the Aggregator Rules leads to an artificial bifurcation of a homogenous class. Therefore, such a classification violates Article 14 of the Constitution of India. Such an artificial classification does not bear any nexus with the object of the Aggregator Rules, for the safety of the passengers is as essential in an All India Tourist vehicle as it is in a regular taxi provided by an Aggregator. Such exclusion is further aggravated by the fact that in the Advisory issued by the Central

Government, on 08.10.2015, to the 125 State Government, permit holders under Section 88 (9) of the Act were required to be included in the Aggregator Rules. In fact, in the draft of the Aggregator Rules, such permit holders were included in the Aggregator Rules. However, when the Aggregator Rules were published finally, the permit holders under Section 88 (9) of the Act were excluded from the purview of the Aggregator Rules. But, despite the recommendation made by the Central Government the State Government has ignored the same. The total exclusion of permit holders under Section 88 (9) of the Act, from the Aggregator Rules, moreover, leads to a very curious position. For, Section 88 (8) of the Act also includes permit holders under Section 88 (9) who have sought "a special permit for plying to a taxi beyond the minimum of three States as required under Section 88 (9) of the Act. Thus, this particular category of All India Tourist vehicle permit holders would be entitled to register themselves with an aggregator. But, meanwhile other All India Tourist vehicle permit holders, who are not included within Section 88 (8) of the Act, they would not be permitted to register with an aggregator under the Aggregator Rules. Such an anomalous situation could not have been intended by the 126 Government. Thus, the exclusion of permit holders under Section 88 (9) of the Act is clearly unreasonable and arbitrary. It is in violation of Article 14 of the Constitution of India.

99. On the other hand, Mr. A. S. Ponnanna, the learned Additional Advocate General for the State, and Prof. Ravi Verma Kumar, the learned Senior Counsel representing the Association of Radio Taxis in W.P.No.30191/2016, have countered the stand taken by Mr. Udaya Holla, the learned Senior Counsel.

100. Prof. Ravi Verma Kumar has drawn the attention of this court to the Statement of Objects and Reasons to Bill No.XIX of 1965, which sought to amend the Motor Vehicle Act, 1939 (the Act of 1939, for short), and to incorporate Section 63 (7) into the said Act. Since the original Act of 1939 did not deal with grant of All India Tourist Vehicle Tourist Vehicle Permit, since the tourists faced the problem of not being able to hire taxis on a all India basis, the Parliament amended and incorporated Section 63 (7) into the Act of 1939. Section 63 (7) of the Act of 1939 is similar to Section 88 (9) of the Act of 1988. Since both the provisions are mutatis mutandis, the Statement of Object and Reasons for 127 incorporation of Section

67 (3) can be considered while interpreting Section 88 (9) of the Act.

101. Moreover, the Hon'ble Supreme Court in the case of Ashutosh Swain & Ors. v State Transport Authority & Ors. [(1985) 2 SCC636, and a learned Division Bench of this court in the case of State of Karnataka v. Mohammed Illyas [ILR 1993 KAR2812 have held that tourist vehicles can carry only tourists, and not local commuters. In fact, in the latter case, this court has differentiated between a commuter and a tourist. Secondly, the Central Motor Vehicles Rules, 1989 (in short "the CMV Rules"), contain provisions with regard to grant of "tourist permits", "additional conditions of tourist permits" and "additional conditions of every tourist permit in respect of motor cabs". Rule 82 of the CMV Rules requires that the owner of a tourist vehicle should submit an application for a permit to the State Transport Authority in Form No.45 attached to the CMV Rules. Rule 85 of the CMV Rules prescribes additional conditions which shall be attached with a tourist permit. 128 Rule 85 (1) of the CMV Rules requires a permit holder to prepare, in respect of each trip, a list of "tourist passengers". Thus, according to the learned Senior Counsel, Prof. Ravi Verma Kumar, the tourist vehicle is meant only for "tourists" and not for commuters. In order to strengthen the above plea, the learned Counsel have also relied upon the Motor Vehicles (All India Permit for Tourists Transport Operators) Rule, 1993 ("the Tourist Transport Operators Rules" for short). The said Rules have been formulated under Section 88 (9) read with Section 88 (14) of the Act. These Rules clearly emphasise that "a tourist transport operator" is an individual or a company "engaged in the business of promotion of tourism by providing tourist transport vehicles on tourist circuits". The word "tourist circuit" is defined by Rule 2 (h) of the Tourist Transport Operators Rules as meaning "all places of tourist interest situated in a State for which package tours are prepared and sold by the recognised tourist transport operator". Under these Rules, a tourist transport operator is required to obtain an authorisation certificate from the State Transport Authority under Rule 4 of the Tourist Transport Operators Rules. According to the learned 129 Senior Counsel these Rules clearly reveal that" tourist vehicles" "shall carry only tourists" that, too, within the "tourist circuits" within a given State. Hence, All India Tourist vehicle permit holders, the permits holders under Section 88 (9) of the Act, cannot carry a local commuter/ passenger. In order to buttress this plea, the learned Senior

Counsel has relied upon the case of Mohammed Illyas (supra). Therefore, the State is justified in excluding such permit holders from the purview of the Aggregator Rules. Both the learned Counsel have also emphasised that All India Tourist Vehicle Permit is granted under Section 88 (9) of the Act, only to "Tourist Vehicles" and that, too, "for the purpose of promoting tourism". Further, All India Tourist Permit Holder are required to carry only tourists in their motor vehicles, both by law and according to case law. Such permit holders can neither ply their taxis intra-city, nor carry a local commuter in the said taxi. However, many All India Tourist vehicle permit holders, in collusion with the Aggregators, were misusing the All India Tourist vehicle permit by carrying local commuters within the city of Bengaluru. Therefore, in order to get rid of this mischief, All India 130 Tourist vehicle permit holders are not included under Rule 10 (n) of the Aggregator Rules. Thirdly, Section 88 (9) of the Act begins with a non-obstante clause, and subjects the permit issued under sub-section 9 to "any rules that may be made by the Central Government under sub- section 14" of Section 88 of the Act. Section 88 (14) (a) of the Act empowers the Central Government to make rules for carrying out the provision "of this Section". Section 88 (14) (b) of the Act prescribes the specific topics for which the Central Government may provide the Rules. According to both the learned counsel, the Central Government has promulgated the Motor Vehicles (All India Permit Tourist Transport Operators) Rules, 1993. Since the Central Government has already formulated the Rules governing the All India Tourist Vehicle Permit, therefore, the State is precluded from framing any Rules which would cover All India Tourist Vehicle Permits. In order to buttress this plea, the learned Counsel have relied upon *State of Andhra Pradesh v. B. Noorulla Khan and Another* [(2004) 6 SCC194. Hence according to them the State Government could not have included 131 the permit holders under Section 88 (9) of the Act within the Aggregator Rules.

102. In rejoinder, Mr. Udaya Holla, the learned Senior Counsel, has pleaded that neither the definition of "tourist vehicle" given in Section 2 (43) of the Act, nor Section 88 (11) of the Act, which prescribes the conditions attached to a permit granted under Section 88 (9) of the Act, deals with the status of the passenger carried in a tourist vehicle. Neither of these provisions prescribe that only "a tourist" should be carried in a tourist vehicle. Secondly, the words "promotion of

tourism" contained in Section 88 (9) of the Act have to be interpreted liberally. For, in today's day and age, various methods can be employed for "the purpose of promoting tourism". One of the best means of promoting tourism is to ensure an easy availability of comfortable taxis. According to the learned Senior counsel, certain aggregators, like the Uber Company, have also started dealing with international tourists. Since the Uber Platform is interoperable between different countries, a foreign tourist can just switch on the 132 Uber application/Platform in India and order a taxi. Moreover, such passengers can log into the Uber platform in their own country, and book taxis for travelling in India. According to the learned Senior Counsel, since 2013, tourists from over seventy-two countries have used the Uber Platform in India. Thus, a robust taxi infrastructure which provides the tourists with a reliable and effective transportation system, as provided by the All India Tourist Vehicle permit holders, would certainly "promote tourism". Thus, the aggregator plays a substantial role in promoting tourism in the country. But by excluding the All India Permit tourist vehicles from the ambit of the Aggregator Rules, the State would be neglecting tourism, although tourism is essential for the growth of National and State economy. Hence, to exclude permit holders under Section 88 (9) of the Act is to violate the mandate of Article 14 of the Constitution of India. Thirdly, Rule 82 of the CMV Rules merely deals with grant of permit in respect of a tourist vehicle. Even this Rule does not prescribe that a tourist vehicle should be used only for "tourists". 133 Fourthly, Rule 85 of the CMV Rules clearly state that the additional conditions to a tourist permit for a tourist vehicle, mentioned in the Rules, shall not apply to a motor cab under Section 88 (9) of the Act. The taxis owned by the permit holder under Section 88 (9) of the Act fall in the category of motor cabs. Hence, the additional conditions imposed by Rule 85 of the CMV Rules, namely that the permit holder shall prepare "a list of tourist passengers" is inapplicable to the All India Tourist Taxis permit holders under Section 88 (9) of the Act. Fifthly, Rule 85-A of the CMV Rules prescribes an additional condition for "tourist permit in respect of motor cabs". Even this particular Rule does not limit the status of the passengers carried in a tourist vehicle only to "a tourist". Sixthly, the respondents have erred in relying upon the Tourist Transport Operators Rules. For, the said Rules are applicable to only those tourist transport operators who wish to ply their tourist vehicles within the tourist

circuits. It is a scheme floated by the Central Government for a specific purpose of promoting tourism, within the tourist circuits, situated in a State. 134 Thus, the Tourist Transport Operators Rules are inapplicable to All India Tourist vehicle permit holders under Section 88 (9) of the Act. Therefore, the requirement of Tourist Transport Operators Rules cannot be read against the permit holders under Section 88 (9) of the Act. Hence, the learned counsel for respondents are unjustified in relying upon the Tourist Transport Operators Rules. Seventhly, it is a settled principle of law that a bar has to be expressly placed by law; it cannot be read by a court into a provision of law. According to the learned Senior Counsel, in the case of Mohammed Illyas (supra), the learned Division Bench of this court has read a bar, although such a prohibition does not exist in the law. Since the *casus omissus* could not have been supplied, the learned Division Bench has erred in reading the bar. Moreover, the learned Division Bench has ignored the fact that Rule 85 of the CMV Rules does not apply to a motor cab i.e., to a taxi. Hence, the said judgment, according to the learned Senior Counsel, is *per incuriam*. Thus, not binding on this court. Eighthly, the learned counsel for respondents are unjustified in relying upon the case of Noorulla Khan (supra). For, the said 135 case is distinguishable on the factual matrix. In the said case, the Hon'ble Supreme Court dealt with a State Rule which was repugnant to the Central Rules formulated under Sections 88(9) and 88 (14) of the Act. Therefore, the Apex Court opined that where the Central Government has framed the Rules under 88 (9) read with 88 (14) of the Act, the State cannot frame any Rule. However, the Apex Court has not laid down a universal principle of law. Therefore, the State is not justified in taking the stand that it cannot frame any Rules for All India Tourist vehicle permit holders, since the Central Government has framed the necessary Rules. For, the advisory issued by the Central Government did not prohibit the State Government from including the permit holders under Section 88 (9) of the Act within the Aggregator Rules. In fact, the Central Government advised the State Government to include such All India Tourist vehicle permit holders within the Aggregator Rules. The States of Maharashtra and West Bengal, the Union Territory of Chandigarh have included the All India permit holders of Section 88 (9) of the Act within their respective Aggregator Rules. Hence, the State can frame Rules even if the Central Rules occupy 136 the same field, provided the State Rules are not repugnant to

the Central Rules. Furthermore, the pith and substance of the Aggregator Rules is to control the aggregators. Even if some provisions of the Aggregator Rules may incidentally trespass into the Rules made by the Central Government for the All India Permit Holders, even then the question of repugnancy would not arise. For, the Aggregator Rules vis-a-vis the All India Tourist vehicle permit holders would be protected by the doctrine of Pith and Substance. Moreover, as of today, the Central Government has not framed any rules for the aggregators. Therefore, the question of the State Aggregator Rules being repugnant to the Central Aggregator Rules would not even arise. Further, Sections 93, 95 and 96 (2) of the Act, empower the State Government to make Rules. Thus, under these provisions, the State would be justified in making the Rules for the All India Permit Holder, and to include them within the folds of the Aggregator Rules, provided the State Rules are not repugnant to 137 the Central Rules dealing with the All India Tourist Vehicle Permits. Lastly, the provisions of the Karnataka Motor Vehicle Rules ("KMV Rules" for short) itself contain ample provisions whereby the State Government is regulating the All India Tourist vehicle permit holders who fall under Section 88 (9) of the Act. Thus, the stand taken by the State, that it cannot frame any rules qua the All India Tourist vehicle permit, is belied by the KMV Rules. Hence, the State should have included the All India Tourist vehicle permit holders under Section 88(9) of the Act within the Aggregator Rules. Their exclusion is violative of Article 14 of the Constitution of India.

103. Yarns of different arguments have been woven about the exclusion of All India Tourist vehicle permit holders under Section 88 (9) of the Act from the purview of the Aggregator Rules. Mr. Udaya Holla, the learned Senior Counsel, has textured his arguments with dexterity and lucidity to argue that such an exclusion of permit holder is violative of Article 14 of the Constitution. On the other hand, Mr. A. S. Ponnanna, the learned Additional Advocate General, and Prof. Ravi Verma Kumar, the 138 learned Senior Counsel for Association of Radio Taxis, respondent No.3 in W.P.No.30191/2016, have torn into Mr. Udaya Holla's arguments in order to take up a contrary position.

104. Before entering into the core issue whether such exclusion violates Article 14 of the Constitution of India or not, it is essential to consider the genesis of Section

88 (9) of the Act. For the genesis of the provision would reveal its niche in the architectural setting of the Act; it would also throw light on the constitutional issue about the violation of Article 14 of the Constitution of India.

105. Section 88 (9) of the Act, which deals with grant of permit for the All India Tourist vehicles, is in pari materia with Section 63 (7) of the Act of 1939. Sub-section (7) of Section 63 of the Act of 1939 was introduced by way of an amendment in order to fill in a gap which existed in the Act of 1939.

106. Initially the Act of 1939 did not contain any provision for grant of permit on an inter-regional or inter-State basis. Therefore, the tourists coming to India faced great hardship in hiring taxis for their travels within limited parts of the country, or 139 on an All India basis. The lack of such taxis adversely affected the tourism industry in the country. Considering the tourism potential of the country, well aware of the challenges faced by the tourist, in 1965, the Parliament decided to introduce certain amendments in the Act of 1939.

107. According to the Statement of Objects and Reasons of the said Amendment Bill, "The main purpose of the Bill is to provide for .liberalisation of restrictions on inter-State movement of motor vehicles including tourist vehicles; provision of better facilities and amenities in tourist vehicles" Clause 2, sub-clause (e) dealing with tourist taxis is as under: Sub-clause (e)--Tourist coaches and tourist taxis are not defined in the Act at present. This sub-clause seeks to include them in the category of contract carriages so as to enable State Governments to ensure that vehicles used solely for tourist conform to much better standards of comfort as the State Government may specify in this behalf.

(Emphasis added)

. 140 Moreover, while dealing with the specific amendment to be made in the then existing Section 63 of the Act of 1939, the Bill contained another sub-clause (e) which reads as under: Sub-clause (e)-- The existing procedure for the grant of special permits under sub-section (6) of section 63 involves delays which adversely affect tourist traffic. It has been considered that the interests of tourist traffic require the grant of regular inter-regional and inter-State permits for vehicles exclusively for tourists. Operation of these tourist vehicles will be subject to certain

special conditions in the interest of the passengers.

(Emphasis added)

. Thus, Sub-section 7 was introduced into Section 63 of the Act of 1939 with the particular purpose mentioned in the Statement of Object and Reasons, namely the introduction of a new class of permits for a new category of Contract Carriage:

"vehicles used solely for the tourist". Thus, "the inter-regional and inter-State permits" were being granted "for vehicles used exclusively for tourists". 141 108. In the case of Ashutosh Swain and Others (supra) the Hon'ble Supreme Court was concerned with the scope and ambit of the All India Tourist Permit issued under Section 63 (7) of the Act of 1939. The Apex Court had noticed the object and statements mentioned above for introducing the amendments in Section 63 of the Act of 1939.

109. Since Section 88 (9) of the Act is pari materia to Section 63 (7) of the Act of 1939; the Statement of Object and Reasons makes it abundantly clear that the All India Tourist Vehicle Permits issued under Section 88 (9) of the Act are meant for those vehicles which are used only "for vehicles used exclusively for tourists".

110. Notwithstanding the above mentioned Reasons and Object of Section 63 (7) of the Act of Act of 1939, and its inter- relationship Section 88 (9) of the Act, Mr. Udaya Holla, the learned Senior Counsel, has argued that the definition of "tourist vehicle" contained in Section 2 (43) of the Act merely describes a "tourist vehicle as a contract carriage constructed or adopted and equipped and maintained in accordance with such specifications as may be 142 prescribed."

Therefore, the said definition does not specify the "purpose" for which the vehicle should be used. Similarly, Rule 82 of the CMV Rules, dealing with application for the grant of "Tourist Permit" does not mention the purpose for the grant of the said permit. Thus, the purpose mentioned in the Statement of Object and Reasons is not reflected in the particular provisions of the law.

111. However, the said argument is clearly untenable. For the very use of the word "tourist" with the word "vehicle clearly indicates the purpose for which the vehicle

should be used. Therefore, the purpose for which the vehicle has to be used is inherently built into the very words "tourist vehicle". Thus, for the Parliament to say that a tourist vehicle "should be used only for tourists" would tantamount to indulging in tautology. Hence, it is not surprising that the Parliament, in its wisdom, has not explicitly said what is implicitly contained in the words "tourist vehicle", and "tourist permit" used both in Section 88 (9) of the Act and in Rule 82 of the CMV Rules.

112. Moreover, one cannot ignore the fact that according to Section 88 (9) of the Act, the permit is granted "for the purpose of 143 promoting tourism". Of course, Mr. Udaya Holla, the learned Senior Counsel, has vehemently argued that in today's day and age, there are several means and methods for promoting tourism. One of the best ways is to provide comfortable taxis for long distance travels to the tourists. One cannot disagree with the position taken by the learned Senior Counsel. But, even then, such permits would be limited only for those vehicles which ply "tourists".

113. To rein in the vast interpretation given by Mr. Udaya Holla to Section 88 (9) of the Act, Mr. A. S. Poonanna and Prof. Ravi Verma Kumar have relied upon Rules 82, 85 and 85 A of the CMV Rules in order to buttress their plea that a tourist vehicle is permitted to carry only tourists. But according to Mr. Holla even these provisions do not explicitly restrict the use of the All India Tourist Taxis only to the use of "tourists". Mr. Udaya Holla's argument is valid for Rule 85 of the CMV Rules. But his plea is invalid with regard to Rule 82 and 85 A of the CMV Rules.

114. Mr. Udaya Holla is certainly justified in claiming that Rule 85 of the CMV Rules is inapplicable to the All India Tourist Permit issued under Section 88 (9) of the Act. The rule itself states 144 that "these conditions shall not apply to a motor cab under sub- section 9 of Section 88 of the Act". Thus, the conditions mentioned in Rule 85 of the CMV Rules are inapplicable to the All India Tourist Vehicle Permit issued under Section 88 (9) of the Act. To this limited extent his plea is legally valid. However, Rule 82 of the CMV Rules deals with submission of an application for grant of permit in respect of a "tourist vehicle" (referred to in the Rules as "tourist permit"). The Rule requires that the application should be in Form No.45,

and should be submitted to the State Transport Authority. Moreover, Rule 85A of the CMV Rules deals with "an additional condition to be attached to every tourist permit in respect of motor cabs". According to Rule 85A of the CMV Rules, it is obligatory to paint on both the sides of the vehicle within a circle of twenty-five centimeters diameter the words "Tourist vehicle". Moreover, it is imperative to clearly indicate above the registration number plates an inscription stating "Tourist Permit valid in the State(s) of . "

14. Thus, while Rule 82 of the CMV Rules deals with grant of "tourist" permit, Rule 85 A of the CMA Rules requires the word "tourist" to be boldly painted on the All India Tourist vehicles. Keeping in mind the scope of these two Rules in mind, as stated earlier, it would be height of redundancy to say that only "tourists" can be carried in a "tourist" vehicle having a "tourist" permit. For, what is obvious need not be stated. Hence, Mr. Udaya Holla is unjustified in claiming that Rules 82 and 85 A of the Rules does not limit the All India Tourist Permit to those vehicles which are to be used only for "tourists". In fact, implicitly these provisions limit the use of the vehicles solely for the tourists.

115. Prof. Ravi Verma Kumar has tried to take advantage of the Tourist Transport Operators Rules in order to buttress his plea that "tourist vehicles" are meant only for the "tourists". However, his reliance on the said Rules is highly misplaced. For, Rule 1 (4) of the said Rules clearly stipulates that "Rule 82 to 85A of the CMV Rules shall not apply to the permits granted under this scheme". This clearly indicates that the said Rules apply to a smaller category of permit holders, namely to the Tourist Transport Operators. The Rules require a Tourist Transport Operator to have 146 an Authorisation Certificate issued by the State Transport Authority for plying the vehicles owned by the operator on "Tourist Circuit". The words "Tourist Circuit" has been defined by Rule 2 (h) of the Rules as meaning, "all places of tourist interest situated in a State for which package tours are prepared and sold by the recognized Tourist Transport Operator."

Thus, the said Rules do not apply to all the All India Tourist vehicle permit holders. Therefore, Prof. Verma's reliance on the said Rules is unjustified.

116. However, in the cacophony of arguments one melody does survive: a permit issued under Section 88 (9) of the Act is only for those vehicles which shall be used "solely or exclusively for transporting tourists". Hence, called "tourist vehicles". Therefore, the tourist vehicles cannot carry commuters.

117. However, the moot questions before this court are whether the exclusion of All India Tourist Permit, granted under Section 88 (9) of the Act, from the purview of the Aggregator Rules would be violative of Article 14 of the Constitution of India or not?. And whether the State is justified in excluding the All India Tourist 147 Vehicle permit holders from the purview of the Aggregator Rules or not ?.

118. Mr. Udaya Holla, the learned Senior Counsel, has pleaded that since all the permits issued under Sections 74, 88 (8) and 88 (9) of the Act relate to Contract Carriages, therefore, all the permit holders form a homogenous class. Therefore, the All India permit holders could not be excluded from the ambit of the Aggregator Rules. For such an exclusion would artificially bifurcate an homogenous category of permit holders and would treat equals as unequals. Moreover, the bifurcation has no nexus to the object of the Aggregator Rules. Hence, Article 14 of the Constitution of India is violated. However, his position is legally untenable.

119. "Contract Carriage" is defined under Section 2 (7) of the Act. The definition is a vast one. It includes both maxi cab as defined under Section 2 (22) of the Act, and a motor cab as defined under Section 2 (25) of the Act. Thus, the said definition merely defines a genus. However, Sections 74, 88 (8) and 88 (9) of the Act, trifurcate the genus of Contract Carriage into three different species. While 148 Section 74 of the Act deals with grant of permits to vehicles which are plied in a limited region mentioned in the permit, Section 88 (8) of the Act deals with a 'special permit' granted to a vehicle which needs to go beyond the limited territory mentioned in the permit issued under Section 74 of the Act. Moreover, Section 88 (9) of the Act deals with grant of permit to motor vehicles which are to be used as Taxis on inter-regional or all India basis. Therefore, merely because the three species of permit holders relate to the genus of Contract Carriages, the three species cannot be said to belong to a single homogenous class. Biologically speaking, each species is in a separate category by itself. The species cannot and

do not breed amongst each other. Thus, the three different permits granted under Sections 74, 88 (8) and 88 (9) of the Act form separate and distinct classes by themselves.

120. The distinction between the three permits is also obvious from the fact that a permit under Section 74 of the Act is limited to a specified geographical region in which contract carriage vehicle is permitted to ply. A Special Permit under Section 88 (8) of the Act, allows the contract carriage to travel a bit beyond the limited region for which it was granted a permit under Section 149 74 of the Act. Therefore, Section 88 (8) of the Act allows the vehicle a slightly wider area to cover. However, under Section 88 (9) of the Act, the minimum area to be covered is three States, and the maximum area is the entire country. Therefore, a permit issued under Section 74 of the Act is at a micro level, whereas the permit issued under Section 88 (9) of the Act is at a macro level.

121. A distinction also has been maintained between Section 74 and Section 88 (9) of the Act. While a permit under Section 74 relates to carrying of commuters, a permit under Section 88 (9) of the Act is called a "Tourist" Permit. The use of the word "Tourist" which precedes the word Permit cannot be ignored. The use of the said word harks back to the Statement of Objects and Reasons for amending Section 63 of the Act of 1939: the vehicle must be "used solely or exclusively for tourists". Thus, the permit under Section 88 (9) of the Act is meant for those vehicles which are used "only for the tourists". Hence, the permit under Section 74 and under Section 88 (9) of the Act also differ with regard to the status of the passenger. 150 122. In the case of Mohammad Illiyas (supra) this court has elaborately discussed the distinction between "the commuters", and "the tourists."

According to the learned Division Bench, a tourist is a person who undertakes a journey through a country, from place to place, for the purpose of excursion. The purpose of travelling is sightseeing i.e., to enjoy historical monuments, or natural places. The purpose of traveling is not to fulfill a personal requirements like meeting friends or relatives or for discharging any social or service obligations at the place of destination. On the other hand, a commuter reaches his destination for a specific private purpose and not for enjoying the sightseeing. Hence, Mr.

Udaya Holla is unjustified in claiming that the permit holders under Sections 74, 88 (8), and 88 (9) of the Act form a homogenous category. In fact, the Act treats the All India Tourist Vehicle permit holders as distinct and separate classes. Since the permit holders under Section 88 (9) of the Act are a distinct class by themselves, their exclusion from the Aggregator Rules does not violate Article 14 of the Constitution of India. Once this court has held so, then this court need not enter the issue whether such an exclusion is justified or not. 151 123. However, one more issue still remains to be resolved, namely whether the State is justified in its stand that it could not make any rule qua the permit holders under Section 88 (9) of the Act or not ?.

124. Mr. A. S. Ponnanna, the learned Additional Advocate General has taken refuge under Section 88 (9) read with Section 88 (14) of the Act to argue that the permit given under Section 88 (9) is subject to the Rules made by the Central Government under sub-section 14 of Section 88 of the Act. Since the Central Government has made the Rules with regard to the All India Permit, therefore, the State is precluded from making any Rule dealing with All India Permits. In order to buttress this plea, the learned Counsel has relied on the case of B. Noorulla Khan and Another (supra).

125. However, the position taken by Mr. A. S. Ponnanna is clearly unacceptable. For, the phraseology used in Section 88 (8) and in Section 88 (9) of the Act is similar in its content. Both the sub-sections begin with non-obstante clause clearly stating, "notwithstanding anything contained in sub-section (1)". 152 While Section 88 (8) uses the words "but subject to any Rules that may be made under this Act by the Central Government". Section 88 (9) uses the words "but subject to any Rules that may be made by the Central Government under sub-section (14)". Sub-section 14, on the other hand, empowers the Central Government to make Rules for carrying out "the provisions of this Section". Since the phraseology of Section 88 (8) and Section 88 (9) is similar, it cannot be argued by the State that it cannot make any Rules with regard to vehicles covered by Section 88 (9) of the Act.

126. Moreover, it cannot be forgotten that the Central Government in its Advisory dated 08.10.2015 did not prevent the State from including a permit holder under

Section 88 (9) of the Act within the Aggregator Rules. In fact, Condition No.3 deals with the vehicle profile. Condition 3.1 states that "every vehicle that is operated for a journey booked via an aggregator platform should hold relevant permit to ply in the given area of operation."

While using the words "relevant permit", the words are not qualified by making a reference to Sections 74, 88 (8) or 88 (9) of the Act. Thus, the permit could be issued under any of these Sections. Hence, the Central Government did not preclude the State Government from including a permit holder under Section 88 (9) of the Act, within the folds of the Aggregator Rules. Interestingly, based on the same Advisory issued by the Central Government to the other States, the State of Maharashtra and West Bengal and the Union Territory of Chandigarh have included the permit holders under Section 88 (9) of the Act within their respective Aggregator Rules.

127. Hence, the learned Additional Advocate General is unjustified in claiming that the State cannot make any Rules for vehicles covered under Section 88 (9) of the Act.

128. But the Advisory issued by the Central Government merely enables the State Government to include the All India permit holder under Section 88 (9) of the Act within its Aggregator Rules. Such an Advisory is not binding upon the State Government, as it is merely a recommendation made by the Central Government to the State Government. Moreover, just because a few States and a Union Territory have included the All India permit holders under Section 88 (9) of the Act, within its Aggregator Rules, would not impose a legal duty upon the Government of Karnataka to do the same. However, as the permit holders under Section 88 (9) of the Act form a class in themselves, it is the discretion of the State to include them within the Aggregator Rules or not. Merely because they have been excluded from the Aggregator Rules, would not make the Rule 10 (n) as violative of Article 14 of the Constitution of India.

129. The case of B. Noorulla Khan and Another (supra) is distinguishable on its factual matrix. Thus, it does not come to the rescue of the respondent State. In fact, the State Government is competent to frame the rules, provided that the State

rules are not contrary to the rules promulgated by the Central government. Hence, the State is unjustified in claiming that since the Central Government has framed the rules under the CMV Rules, the State cannot formulate its rules. The Aggregator Rules and Article 19 of the Constitution of India:

130. Mr. Udaya Holla, the learned Senior Counsel, has also led the charge in claiming that the Aggregator Rules violate Article 19 (1) (g) of the Constitution of India. 155 Mr. Udaya Holla submits that the All India Tourist Vehicle permit holders, covered by Section 88 (9) of the Act, were included in the draft of the Aggregator Rules published by the State Government. But in the Aggregator Rules finally promulgated by the State, the said category is excluded. For, Rules 7 (a) and 10 (n) recognise only two classes of transport vehicles which are permitted to register with the Aggregators, namely those permit holders who have been granted the permit under Section 74 of the Act, and those who have been granted the permit under Section 88 (8) of the Act. Therefore, the category of All India Tourist Vehicle permit holders is excluded from the purview of the Rules. Consequently, such permit holders are prevented from registering with an Aggregator. Therefore, they are denied the benefits which would arise from registering with the Aggregator. Hence, the permit holder's fundamental rights under Article 19 (1) (g) of the Constitution of India is being violated by the State. The learned Senior counsel has also challenged the constitutionality of Rule 10 (o) of the Aggregator Rules. The said provision imposes a duty upon the aggregator to ensure that "vehicles entered in his licence do not operate independently or 156 accept booking directly". According to the learned Senior Counsel, the permit holders and the taxi drivers are prohibited from operating independently, and from accepting booking independently, if they are registered with an aggregator. This clearly violates their fundamental right to carry on a business. Moreover, such a restriction is not in public interest. For, an idle taxi cannot be used by the general public if it is registered with an aggregator. Hence, Rule 10 (o) of the Aggregator Rules is an unreasonable restriction on the fundamental rights of the permit holders and the taxi drivers.

131. Similarly, Mr. Anish Munu, the learned counsel for petitioner in W.P.No.30191/2016, has pleaded the cause of start ups. According to the learned

counsel, Rule 6 (a) of the Aggregator Rules prescribes a minimum number of 100 taxis which should be either owned, or leased by an aggregator, before the aggregator can seek a licence under the Aggregator Rules. However, a start up would find it extremely difficult to meet the minimum limit of 100 taxis. Moreover, as a start up is not a permit holder under Section 74 of the Act, he/she is not covered by the CTS Scheme. Thus, a start up is caught in a limbo, for he/she is covered neither by the 157 CTS Scheme, nor under the Aggregator Rules. Hence, the start ups cannot enter the taxi sector. Therefore, the higher threshold of having a minimum number of 100 taxis violates the fundamental right of a start up under Article 19 (1) (g) of the Constitution of India.

132. Per contra, Mr. A. S. Ponnanna, the learned Additional Advocate General, submits that the fundamental right to carry on a trade or business is not an absolute right. The said right can be restricted in the interest of the general public. Since the Aggregator Rules have been made in the interest of the general public, they cannot be said to violate Article 19 (1) (g) of the Constitution of India. However, Mr. A. S. Ponnanna has frankly conceded that the restriction placed on the permit holder and the drivers "not to operate independently or to book directly" is an unreasonable restriction and is violative of Article 19 (1) (g) of the Constitution of India.

133. As far as the arguments of Mr. Anish Munu are concerned, Mr. S. S. Naganand, the learned Senior Counsel, contended that the writ petition filed on behalf the Start ups is 158 bereft of any details. The petitioner has not given any details about their technological platform. They merely claim that they are eager to start a taxi business using the technological platform. Moreover, the petition seem to have been filed on the behalf of unknown individuals as the petitioner has raised arguments on behalf of the aggregators although the petitioner is not an aggregator. The learned Senior counsel has further reiterated his earlier argument that the minimum requirement of hundred taxis is a legislative policy, which cannot be interfered by this court.

134. On the other hand, Prof Verma Kumar, the learned Senior Counsel has pleaded that in the case of B. A. Jayaram and Ors v. Union of India and Ors.

[(1984) 1 SCC168 the Hon'ble Supreme Court had noticed that how the grant of All India Tourist Vehicle Permits were abused in Karnataka by plying the contract carriages as stage carriages. Similarly, even today, the All India Tourist Vehicle permit holders are abusing the permit and are plying commuters intra-city whereas they are supposed to carry only tourists. Since the All India Tourist Vehicle permit holders are violating the law, the State Government is justified in excluding the said category from the purview of the Aggregator Rules. Since the 159 exclusion is in the interest of the public, the same is protected by Article 19 (6) of the Constitution of India.

135. Mr. Udaya Holla's argument that exclusion of permit holders under Section 88 (9) of the Act from the Aggregator Rules violates their fundamental right under Article 19 (1) (g) of the Constitution of India is unacceptable. For, the fundamental right to carry on any trade, profession or business is not an absolute right. It can be restricted under Article 19 (6) of the Constitution of India on the ground of "interest of the general public". Secondly, even in the case of B. A. Jayaram and Others (supra) the Apex Court had noticed the fact that the All India Tourist Vehicle permit holders were engaging in violating the conditions and purpose of the permit. According to the Apex Court it was a prevalent problem in Karnataka. This allegation has also been leveled against the All India permit holders before this court. Thus, the permit holders were/ are violating the very purpose for which the permit is granted. In order to get rid of this mischief, the State was justified, in the interest of the general public, in excluding the category of All India Permit Holders from the ambit of 160 the Aggregator Rules. Since the exclusion is in the interest of general public, it is saved by Article 19 (6) of the Constitution of India.

136. As far as the challenge to Rule 10 (o) of the Aggregator Rules is concerned, Mr. A. S. Ponnanna, the learned Additional Advocate General, has already conceded that the said Rule is in violation of Article 19 (1) (g) of the Constitution of India. Therefore, the same need not detain us. Thus, the State is not justified in preventing the permit holders from operating independently or from accepting booking directly from the passengers/ users of the taxi. Rule 10 (o) of the Aggregator Rules is, thus, unconstitutional.

137. The writ petition filed by Mr. Munu is of doubtful origin. For the writ petition is devoid of any details about the alleged activities of the petitioner. Although the petitioner claims that they would like to start a business as an aggregator, but the petitioner has not submitted any details about their technological platform. Moreover, a bare perusal of the writ petition reveals that the petitioner has raised many arguments which have been raised by the petitioner-Company. Therefore, the said writ petition seems 161 to be at the behest of someone who has not come to this court with clean hands. Thus, the writ petition deserves to be dismissed on this ground alone.

138. Even otherwise, Mr. S. S. Naganand, the learned Senior Counsel, is justified in claiming that the minimum requirement of 100 Taxis is a legislative policy decision taken by the Government. Hence, the same cannot be set aside by this court. Generally, a Court does not, and should not, interfere with the laying down of a cut off number. For, to enter into the question of cut off numbers is to step on to a slippery slope. An 'X' number set up by the State can always be questioned by a litigant. But the Court is concerned not with the 'soundness' of the policy, but only with its 'legality'. Since the State does have the power to formulate the Aggregator Rules, as opined above, the State is free to decide the number of taxis an aggregator should have before he is required to take a license under the Aggregator Rules.

139. Moreover, even if the argument that the State should encourage the start-ups to enter the taxi sector were to be accepted, even then, it is for the State to decide the ways and 162 means to encourage the Start-ups in this sector. Therefore, this court refrains itself from declaring the minimum requirement of 100 Taxis as being in violation of Article 19 (1) (g) of the Constitution of India. Hence, Rule 6 (a) of the Aggregator Rules does not violate Article 19 (1) (g) of the Constitution of India. The Aggregator Rules and Article 21 of the Constitution of India :

140. Mr. Sajan Poovayya, the learned Senior Counsel, has raised a very interesting constitutional issue by pleading that the Aggregator Rules force an aggregator to violate the right of privacy of a citizen. Moreover, by forcing the aggregator to violate a fundamental right, such a violation would discourage the

passenger from registering onto the Aggregator's platform. Therefore, an aggregator would lose its business, thereby adversely affecting its right to carry on a business under Article 19 (1) (g) of the Constitution of India. Since the Aggregator Rules violate the right of privacy of a citizen under Article 21 of the Constitution, and violate the right of the petitioner under Article 19 (1) (g) of the Constitution of India, hence, the petitioner has a right to raise the issue of violation of right of privacy before this court. In order to support this plea, the learned Senior Counsel has relied on the case of District Registrar and Collector, Hyderabad and Another v. Canara Bank and Others [(2005) 1 SCC496.

141. Elaborating on this plea, the learned Senior Counsel has pleaded that Rule 10 (c) of the Aggregator Rules requires an Aggregator "to maintain a record in digital form of the details of the passengers who travelled in the vehicle, origin and destination of the journey and the fare collected". Moreover, "the record shall be kept open for inspection by an officer nominated by the Licensing Authority at any time". Further, Rule 10 (v) of the Aggregator Rules stipulates that "the data of all passengers and drivers shall be stored up to one year and shall be made available to the inspecting authorities on demand."

Secondly, Rule 5 (2) of the Aggregator Rules makes it mandatory that an Aggregator "shall comply with the Information Technology Act, 2000, including the intermediary guidelines."

Thirdly, the virtual world of Information Technology gives the aggregator access to not only the personal data, but also to the sensitive personal data of a person. The personal information may directly or indirectly, or in combination with other information reveal the identity of a person, may reveal his physical, physiological and mental health condition, and may reveal his or her sexual orientation etc. Therefore, the data available with the Aggregator may expose the privacy of a person to a third party including the State.

142. But, under the provisions of the Constitution of India and under constitutionalism, a State cannot be given an absolute power to violate the privacy of a person. Under Article 21 of the Constitution of India the word "life" and the words "personal liberty" embody the right of privacy of a person. Such a right of

privacy can only be invaded by the State through a procedure established by law. Of course, under the doctrine of due process of law, the procedure established by law has to be fair, just and reasonable. Hence, the power given by the law can neither be unbridled, nor uncontrolled. The power has to be exercised within well defined limits--the limits prescribed by the law. By no stretch of imagination can the State be permitted to vandalise the right to privacy, and desecrate the alter of Article 21 of the Constitution of India. In order to buttress this plea, the learned Senior Counsel 165 has relied upon the cases of R. Rajagopal alias R.R.Gopal and ANo.v. State of T.N. and Ors. [(1994) 6 SCC632]. and Thalappalam Service Co-operative Bank Ltd. & Others v. State of Kerala & Others [(2013) 16 SCC82.

143. Moreover, keeping in mind the sanctity of the right of privacy, keeping in mind the vast data stored by Intermediaries, keeping in mind the great danger posed by unauthorised usage of such data, the Information Technology Act and the Rules, made there under, prescribe not only procedure for sharing of such data, lay down the circumstances under which information can be given to the State authorities, but also impose the penalty of having to pay compensation upon the intermediary in case the data is negligently leaked.

144. Section 2 (w) of the I.T. Act, defines the word "intermediary" with respect to any particular electronic records as meaning "any person who on behalf of another person receives or transmits that record or provides any service with respect to that record and includes telecom service provides, network service providers, internet service providers, webhosting service providers, 166 search engines, online payment sites, online-auction sites, online market places and Cyber Cafes". According to the learned Senior Counsel, an aggregator under the Aggregator Rules stores, collects records, and is an online market place as it provides access to the passengers to the taxis, and has online payment sites through which fares are paid by the passengers to the taxi drivers. Thus, an aggregator is an "intermediary" under the I.T. Act.

145. Furthermore, Section 43-A of the I. T. Act imposes a duty upon a body corporate to protect the electronic datas collected by it. In case of any leakage of any information so collected, it would expose the body corporate to pay damages

to the person affected by such leakage. Hence, under the said provision, the aggregator is duty bound to ensure that the electronic records kept by it are duly protected.

146. In order to further protect the privacy of citizens, the Government has promulgated both the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 ("the SPDI Rules", for short), and the Information Technology (Intermediary Guidelines) 167 Rules, 2011 ("the Intermediary Guidelines Rules", for short). Both these Rules contain an elaborate procedure, and prescribe the particular circumstances under which the data can be shared with a competent authority of the State. Both these Rules require that the safeguards prescribed by these Rules must be followed, both in letter and spirit, before the State can claim its power to have access to the data. Thus, these Rules clearly prevent the State from having absolute and free access to personal and sensitive personal information of a citizen. However, neither Rule 10 (c), nor Rule 10 (v) of the Aggregator Rules contains any safeguards which would protect a person from the snooping eyes of the State. Therefore, Rule 10 (c) and 10 (v) bestow an uncontrolled and unbridled power on the State, and that, too, to a licensing authority and that, too, upon demand. Such a vast power is clearly violative of Article 21 of the Constitution of India. In order to buttress these pleas, the learned Senior Counsel has relied on the case of *United States v Jones* [565 U. S., 3-6 (2012)].

147. Per contra, Mr. A. S. Ponnanna, the learned Additional Advocate General and Mr. S. S. Naganand, the learned Senior Counsel, have pleaded that the petitioner, the Uber Company, 168 cannot possibly raise the issue with regard to the violation of right to privacy. For, a company cannot claim that it has any right to privacy. Moreover, no citizen has come before this court and pleaded that his right of privacy has been violated by the Aggregator Rules. Therefore, the issue raised by the petitioner- Company is merely academic; academic questions need not be gone into by this court. Thus, they have requested that this court should put blinders on its judicial vision, and ignore the entire issue.

148. The learned counsel have also pleaded that the right of privacy is not an absolute right. Therefore, for certain specified purposes, the State can pierce the veil of privacy without violating Article 21 of the Constitution of India. In order to buttress this plea, the learned counsels have relied on the cases of *Govind v. State of M.P.* and *ANo.* [(1975) 2 SCC148, *Mr. X v. Hospital Z* [(1998) 8 SCC296, *Sharada v. Dharampal* [(2003) 4 SCC493, *K.J.*

Doraiswamy v. Assistant General Manager, SBI [(2006) 5 CTC829, and *United States v. Leroy Carlton Knotts* [460 U.S. 276].. 169 149. The learned counsel have also submitted that there is nothing unusual about the Aggregator Rules requiring that data be collected with regard to identify, the point of origin and the point of destination, and the fare charged from a passenger. The said data is required to ensure that the passengers are not over charged by the aggregators. In fact, Rule 106 of the KMV Rules requires that the data with regard to each trip should be maintained by the owner of the transport vehicles. Furthermore, Rule 106 (4) of the KMV Rules clearly state that such a record shall be produced on demand by any Police Officer, not below the rank of the Sub-inspector, or an officer of the Motor Vehicles Department. Since the permit holders under Section 74 of the Act are required to comply with Rule 106 of the KMV Rules, since such permit holders are covered by the CTS Scheme, therefore, the permit holders under the CTS Scheme are equally required to maintain the said data. Thus, even they are required to produce the data before an officer of Motor Vehicles Department on demand. Therefore, the question of violation of right of privacy cannot be pleaded. 170 150. The issue before the court is about what is the scope of judicial review while dealing with the constitutionality of a subordinate legislation?. Whether the court should close its eyes and subject the people to suffer the slings and arrows of an illegal law?. Or it should apply its holistic judicial vision to the constitutional challenges to a subordinate legislation and protect the rights of the people at large?.

151. The power of judicial review, a basic structure of the Constitution of India, is sacrosanct. It is one of the best means for exercising checks and balance on the other two branches of the State. Since the Judiciary has been assigned the role of keeping the other two branches of the State within the confines of the Constitution

of India, the court cannot turn a Nelson's eyes to the constitutional issues raised before it. Merely because a variety of legal issues confront the court, the court cannot bury its head, like the proverbial ostrich, and claim to see and hear nothing. While tackling constitutional issues, the judicial vision has to be broad and judicial conduct courageous. To shy away from cutting the constitutional Gordian knot is to abdicate the judicial duty. Neither the Judge, nor the judiciary, neither the people, nor the 171 nation can afford to be coward while confronting constitutional enigma. While traveling through the labyrinth of law and case law, through contentions and counter-contentions, a judge has to be ready, like Theseus, to strike down the Minotaur, if the impugned Rules are uncontrolled and unbridled. Moreover, technicalities of law cannot be permitted to become obstacles in the road to justice. If the impugned Aggregator Rules do violate the peoples' right to privacy, then mere technicality cannot be permitted to shield such a law from the power of judicial review.

152. Constitutional history and Constitutionalism reveal many facets of constitutional interpretation. Entrenched in the Age of Enlightenment, embedded in the political theory of Social Contract, "We the People" gave to ourselves the Constitution of India. Since the people have given the Constitution to themselves, they have defined and limited the powers of the three organs of the State, namely the Executive, the Legislature, and the Judiciary. The people have clearly demarcated the areas in which the government cannot interfere. Although our political vision continues to be blurred by our feudal past, but both the Constitution of India, and Constitutionalism teach us that we have 172 given a limited government to ourselves. Constitutionalism is "a complex of ideas, attitudes, and patterns of behavior elaborating the principle that the authority of government derives from and is limited by a body of fundamental law". Constitutionalism proclaims the desirability of the rule of law as opposed to rule by the arbitrary judgment or mere fiat of public officials. Throughout the literature dealing with modern public law, and the foundations of statecraft the central element of the concept of constitutionalism is that in political society, the government officials are not free to do anything they please in any manner they choose; they are bound to observe both the limitations on power and the procedures which are set out in the supreme, Constitutional law of the community. It may therefore be said that the

touchstone of constitutionalism is the concept of limited government under a higher law. Hence, the sovereignty of the nation does not lie with the government in power, but with the people of the country. Thus, the government is legally required to function within the confines of the Constitution of India, and within the limits established by the law. Even if the intention of the government were laudable, even then it cannot transgress the limits of the law. 173 153. Presently, the scope and ambit of right of privacy is sub-judice before the Hon'ble Supreme Court. For, the issue has been referred to a Larger Bench in the case of K. S. Puttaswamy (Retired) and Another v. Union of India and Others [(2015) 8 SCC735 Whether the said right is a fundamental right, or a Constitutional one is yet to be decided by the Apex Court. But nonetheless, it is a human right. The said right has been recognized by the Constitutions of other democratic countries, especially of U. S. A, by the courts of other democratic countries, especially of England and United States, and by International Declarations and Covenants.

154. As far back as 1603, in Semayne's case [(1603) 5 Coke's Rep 91a]., it was laid down that "Every man's house is his castle."

In 1763, while debating in the English Parliament, William Pitt had given a forceful expression to the above maxim when he said, "The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail--its roof may shake-- the wind may blow through it---the storm may enter, the rain may enter-- but the King of England cannot enter--all his force dare not cross the threshold of the ruined tenement."

174 155. The Fourth Amendment of the American Constitution clearly states that "The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Thus, before a place or person can be searched or seized, there has to be a probable cause, and the particular place or person has to be described in the search warrant.

156. Even international conventions, to which India is a signatory, recognize the right to privacy. Article 12 of the Universal Declaration of Human Rights (1948) states: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks. Similarly, Article 17 of the International Covenant of Civil and Political Rights proclaims as under: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and 175 correspondence, nor to unlawful attacks on his honour and reputation.

157. Since India is a signatory to these International Covenants, we are legally bound to implement them. Thus, the right of privacy has to be protected and promoted both by Law and by the courts.

158. In the case of *Kharak Singh v State of U. P.* [(1964) 1 SCR332 the Hon'ble Supreme Court opined that although the Constitution of India does not explicitly mention the right of privacy, but the same can be traced from the right to "life" in Article 21 of the Constitution of India. Subba Rao, J.

while concurring that the fundamental right to privacy was part of the right to liberty in Article 21, part of the right to freedom of speech and expression in Article 19 (10 (a), and also of the right to movement in Article 19 (1) (d), held that the Regulations permitting surveillance violated the fundamental right of privacy.

159. Similarly, in the case of *Govind v. State of M. P.* [(1975) 2 SCC148 Hon'ble Mathew J.

developed the law as to privacy where it was left off in *Kharak Singh's* case. Borrowing the 176 doctrine of penumbras and peripheral rights, the Apex Court discovered the right of privacy emanating from Articles 19 and 21 of the Constitution of India. According to the learned Judge, any right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child-bearing. However, the list is not exhaustive.

160. However, Mathew J.

did state that such a right is not an absolute one. The privacy right can be denied only when an "important countervailing interest is shown to be superior", or where a compelling State interest was shown. According to the learned Judge, if there was State intrusion there must be "a reasonable basis for intrusion."

The right to privacy, in any event, would necessarily have to go through a process of case-by-case development.

161. The issue about the right of privacy has become a crucial issue in the Digital Age. For, the data stored in computers consists of both personal and sensitive information. In *United States v Jones* [565 U. S., 3-6 (2012)]. the Hon'ble Supreme Court of United States dealt with a case where Mr. Jones was suspected 177 of drug trafficking. The police investigators asked for and received a warrant to attach a Global Positioning System (GPS) tracking device to the underside of the defendant's car; but then, exceeded the warrant's scope in both geography and length of time. Two issues were raised before the Hon'ble Supreme Court: Whether such a tracking amounted to "search" as envisaged under the Fourth Amendment or not?. (The Fourth Amendment quoted above). And whether such search violated a person's "expectation of privacy" or not?. Justice Sotomayor delivered a concurring judgment. The learned Judge agreed with the majority opinion that such a search fell within the scope of the Fourth Amendment. With regard to the second issue the learned Judge opined as under: GPS monitoring generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious and sexual associations. (Disclosed in [GPS]. data will be trips the indisputable private nature of which takes little imagination to conjure: trips to the psychiatrist, the plastic surgeon, the abortion clinic, the AIDS treatment center, the strip club, the criminal defense attorney, the by-the-hour motel, the union meeting, the mosque, synagogue or church, the 178 gay bar and on and on"). The Government can store such records and efficiently mine them for information years into the future. And because GPS monitoring is cheap in comparison to conventional surveillance techniques and by design, proceeds surreptitiously, it evades the ordinary checks that constrain abusive law enforcement practices:

"limited police resources and community hostility."

Awareness that the Government may be watching chills associational and expressive freedoms. And the Government's unrestrained power to assemble data that reveal private aspects of identity is susceptible to abuse. The net result is that GPS monitoring--by making available at a relatively low cost such a substantial quantum of intimate information about any person whom the Government, in its unfettered discretion, chooses to track--may "alter the relationship between citizen and government in a way that is inimical to democratic society."

United States v Cuevas-Perez, 640 F. 3d 272, 285 (CA7 2011) (Flaum, J., concurring). I would take these attributes of GPS monitoring into account when considering the existence of a reasonable societal expectation of privacy in the sum of one's public movements. I would ask whether people reasonably expect that their movements will be recorded and aggregated in a manner that enables the Government to ascertain, more or less at will, their political and religious beliefs, sexual habits and so on I would also consider the appropriateness of entrusting to the Executive, in the absence of any oversight from a coordinate branch, a tool so amenable to misuse, especially in the light of the Fourth Amendment's goal to curb arbitrary exercise of police power to and prevent "a too permeating police surveillance," United States v Di Re 332 U. S. 581, 595 (1948). More fundamentally, it may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties This approach is ill suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks. People disclose the phone number that they dial or text to their cellular providers; the URLs that they visit and the e-mail addresses with which they correspond to their Internet service providers; and the books, groceries, and medications they purchase to online retailers. Perhaps as JUSTICE ALITO notes, some people may find the "tradeoff" of privacy for convenience "worthwhile," or "inevitable," and perhaps not. I for one doubt that people would accept without complaint the warrant less disclosure to the Government of a list of every Web site they had visited in the last week, or month, or year. But whatever the societal expectations, they can attain constitutionally

protected status only if our Fourth Amendment jurisprudence ceases to treat secrecy as a prerequisite for privacy. I would not assume that all information voluntarily disclosed to some member of the public for a limited purpose is, for that reason alone, disentitled to Fourth Amendment protection. See *Smith*, 442 U. S., at 749 (Marshall, J., dissenting) ("Privacy is not a discrete commodity, possessed absolutely or not at all. Those who disclose certain facts to a bank or phone company for a limited business purpose need not assume that this information will be released to other persons for other purposes") ; see also *Katz*, 389 U. S., at 351-352 ("What [a person]. seeks to preserve as private even in an area accessible to the public, may be constitutionally protected"). Thus, the following principles emerge from the above law and case law:

1. At best, the right to privacy is imbibed in Arts. 19 and 21 of the Constitution of India. At worst, it is a human right protected by International Covenants to which India is a signatory. Thus, right to privacy has to be protected and promoted by the Judiciary. 181
2. The right includes the right to be left alone.
3. The said right is not an absolute one. But before the right can be invaded by the State there should be important countervailing interest which is shown to be superior to the right of privacy. Thus, there should be a reasonable basis for such intrusion.
4. The people have expectation of privacy. Merely because they may have shared some personal information for a limited purpose, this does not mean that the said information can be made available to others, or to the State without any compelling reasons.
5. Under Constitutionalism, the State has a very limited power to invade the right of privacy. The said power has to be well defined by the law. An unbridled power cannot be given to the State, for such extensive power is likely to be abused by the State. Hence, the law should define the circumstances under which the State would be justified in intruding into the right of privacy. A law which gives the State an absolute power to invade the right of privacy, such a law would be violative of Arts. 19 and 21 of the Constitution of India. For, the law must pass the test of due process of law. Rule 10 (c) of the Aggregator Rules makes it mandatory for the

aggregator to "maintain records, in 182 digital form of all the taxies at his control, indicating on a day to day basis, the trips operated by each vehicle details of passengers who travelled in the vehicle origin and destination of the journey and the fare collected. The records so maintained shall be open for inspection by an officer nominated by the licensing authority at any time."

(Emphasis added)

. Rule 10 (v) of the Aggregator Rules further requires an aggregator to "store data of all passengers and drivers travelled in their vehicles up to one year and make them available to the inspecting authorities on demand."

(Emphasis added)

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162. A bare perusal of these two provisions clearly reveal that the Aggregator Rules do not prescribe the circumstances under which the licensing authority or a person nominated by the licensing authority could have access to the information stored by the aggregator. Such an unfettered, uncontrolled power granted to the licensing authority would permit the authority to invade the right of privacy of a passenger. For Rule 10 (c) of the Aggregator Rules requires that "the place of origin and place of destination of a passenger" has to be recorded and preserved for the perusal of the 183 licensing authority. However, such information may reveal the social, or political relationship, and sexual orientation of a passenger. It may also reveal the medical concerns of an individual, such as visit to AIDS treatment centre or to an abortion clinic. Such data has to be handed over to the licensing authority "on demand". Interestingly, these two provisions neither provide any safeguard to the passenger against such intrusion of his right of privacy, nor prescribe the circumstances under which the licensing authority can demand the stored electronic information. Hence, these provisions leave the doors wide open for abuse of the said power by the State.

163. Of course, Mr. A. S. Ponnanna and Mr. S. S. Naganand have argued that provisions similar to the Rules 10 (c) and 10 (v) of the Aggregator Rules also exist

under Rule 106 of the KMV Rules. The said Rule makes it imperative for an owner of a transport vehicle to maintain record with regard to each trip, and to submit the said record for inspection to an officer of the Motor Vehicles Department. Thus, if Rule 106 of the KMV Rules does not violate the right of privacy, then Rules 10 (c) and 10 (v) of the Aggregator Rules, too, do not violate the said right. 184 164. However, the said argument is highly misplaced. Firstly, although Rule 106 of the KMV Rules does deal with transport vehicles, but Rule 106 (1) (a) (vi) of the KMV Rules speaks of "the place of origin and destination of the goods vehicles."

Thus, in respect of maintaining the record about the place of origin and destination" is not about motor cabs, but about the goods vehicles. Secondly, even if Rule 106 of the KMV Rules is applicable to the motor cabs, even then it would not affect the constitutional validity of Rules 10 (c) and 10 (v) of the Aggregator Rules. For, merely because the constitutional validity to Rule 106 of the KMV Rules has not been challenged, it would not make Rules 10 (c) and 10 (v) of the Aggregator Rules constitutionally valid. After all, each provision of law would have to be tested on the touchstone of the constitutional provisions and philosophy on its own. Hence, the said contention is untenable. Furthermore, the learned counsel have submitted that the information with regard to the distance between the place of origin and place of destination is required by the licensing authority in order to ensure that the aggregator is not over-charging the passenger. However, such a plea is not borne out by Rules 10 (c) 185 and 10 (v) of the Aggregator Rules. For, neither of the provisions restrict the accessibility to the information stored by the aggregator for the singular purpose of finding out if the passenger is being overcharged or not. Hence, the said submission is unacceptable.

165. On the other hand, the IT Act, which deals with storing of electronic information and its dissemination, provides certain safeguards for such sharing of information with third party including the State. Section 2 (w) of the IT Act defines the term "intermediary" as "any person who on behalf of another person receives, stores, or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online- auction sites, online-market place and cyber cafes."

166. Section 43A of the IT Act imposes a liability upon an intermediary to pay compensation in case the intermediary is negligent in implementing and maintaining reasonable security practices and procedure and thereby causes wrongful loss or wrongful gain to any person. 186 167. Rule 6 of the Rules of 2011 deals specifically with disclosure of electronic information and is as under:

6. Disclosure of information.- (1) Disclosure of sensitive personal data or information by body corporate to any third party shall require prior permission from the provider of such information, who has provided such information under lawful contract or otherwise, unless such disclosure has been agreed to in the contract between the body corporate and provider of information, or where the disclosure is necessary for compliance of a legal obligation: Provided that the information shall be shared, without obtaining prior consent from provider of information, with Government agencies mandated under the law to obtain information including sensitive personal data or information for the purpose of verification of identity, or for prevention, detection, investigation including cyber incidents, prosecution, and punishment of offences. The Government agency shall send a request in writing to the body corporate possessing the sensitive personal data or information stating clearly the purpose of seeking such information. The Government agency shall also state that the information so 187 obtained shall not be published or shared with any other person. (2) Notwithstanding anything contain in sub- rule (1), any sensitive personal data or Information shall be disclosed to any third party by an order under the law for the time being in force. (3) The body corporate or any person on its behalf shall not publish the sensitive personal data or information. (4) The third party receiving the sensitive personal data or information from body corporate or any person on its behalf under sub-rule (1) shall not disclose it further.

168. A bare perusal of the said provision clearly reveals that before a data can be disclosed it "requires prior permission from the provider of such information."

However, such a prior permission is not required if "the Government agencies mandated under the law [is]. to obtain informationfor the purpose of verification of identity, or for prevention, detection, investigation including cyber incidents,

prosecution, and punishment of offences."

Moreover, the provision 188 provides that the "Government agency shall send a request in writing stating clearly the purpose of seeking such information."

Thus, the provision not only protects the interest of the individual whose information is being sought by the government, but it also prescribes the specific purposes for which the information can be sought by the government, and the procedure for seeking the information from an intermediary. Thus, the power of the State is cribbed, cabined and confined by Rule 6 of the Rules of 2011.

169. However, Rules 10 (c) and 10 (v) of the Aggregator Rules bestow an unfettered, unbridled, uncontrolled power upon the government to seek the electronic information, that too, on demand. Such Rules are likely to be abused by the government. Hence, such Rules are clearly violative of right of privacy, as discussed by Justice Sotomayor in her judgment in the Jones' case. Hence, the Rules 10 (c) and 10 (v) of the Aggregator Rules are violative of both Arts. 19 and 21 of the Constitution of India, and are contrary to the commitment of India to the Universal Declaration of Human Rights (1948) and to the International Covenant of Civil and Political Rights. Therefore, Rules 10 (c) and 10 (v) of the Aggregator Rules are unconstitutional. 189 The Aggregator Rules and others provisions of the Act 170. Mr. Sajan Poovayya, the learned Senior Counsel, has further challenged the constitutional validity of the Aggregator Rules on the ground that some of the provisions of the Rules violate some of the provisions of the Act. Thus, the subordinate legislation violates the parental Act. Hence, the Aggregator Rules are unconstitutional.

171. Both according to him and according to Mr. Udaya Holla, the learned Senior Counsel, Section 74 (2) of the Act provides a discretionary power to the Regional Transport Authority to add certain conditions while granting the permit to an applicant for a contract carriage. Section 74 (2) (ix) of the Act further prescribes the procedure before the Regional Transport Authority can either vary the conditions, or attach further conditions to a permit already granted to a permit holder. According to the procedure, the Transport Authority is required to give a notice of not less than one month to the permit holder, before the Regional

Transport Authority can vary or attach further conditions to the permit. 190 172. However, according to the learned counsel, the Aggregator Rules makes the conditions mentioned under the said Rules as being automatically attached to the permits already granted to the permit holders. In fact, the officers of respondent No.2 have seized taxis, supplied by the Uber Company, ostensibly on the ground that the Uber Company does not have a licence under the Aggregator Rules, or on the ground that the drivers are violating conditions of the permit granted to them. But the conditions contained in the Aggregator Rules are yet to be attached to the permit granted under Section 74 of the Act. Moreover, they can be attached only after the procedure under Section 74 (2) (ix) of the Act is followed.

173. Rule 8 (c) requires a driver to be a resident of Karnataka for a minimum period of two years, and Rule 8 (d) requires him to have working knowledge of Kannada. However, neither Section 9 of the Act, dealing with grant of driving licence, nor Section 74 of the Act, dealing with the grant of permit to a permit holder, impose such conditions of residency, or knowledge of a particular language. Therefore, the subordinate legislation has 191 imposed conditions not warranted by the Parental Act. Hence, the Aggregator Rules travel beyond the Act.

174. The aggregator is not an employer of the drivers as an aggregator is neither a permit holder, nor the owner of the taxis. Thus, the aggregator has no control over either the behaviour or the conduct of the driver. Yet, Rule 10 (2) of the Aggregator Rules imposes a vicarious liability upon the aggregator by holding him jointly and severally responsible for any default committed by a permit holder, or by a taxi driver and requires the aggregator to pay penalty under the Act and the Rules.

175. Similarly, Rule 11 of the Aggregator Rules empowers the licensing authority to suspend or cancel the aggregator's licence if any driver of a taxi operated by it violates any requirements or conditions of the Aggregator Rules, or a passenger complains of misbehaviour or misdemeanour on the part of the driver is found to be correct after enquiry, or a criminal complaint is filed against the driver.

176. Therefore, both these Rules impose a penal liability on the aggregator for the acts done either by the permit holder, who 192 happens to be the Principal, or by his driver. However vicarious liability cannot be imposed upon a person who has

no relationship with the misconduct, or with the offence committed by a delinquent, or an offender respectively.

177. Section 93 (2) of the Act prescribes the conditions which may be attached with a licence issued to a canvasser. According to the said provision, a canvasser may be asked to deposit a security of a sum not exceeding Rs.5,000/- in case the canvasser does not deal with goods carriages. However, Rule 14 of the Aggregator Rules prescribes that an Aggregator who has up to One thousand taxis is required to pay a security deposit of Rupees One Lakh. Thus, Rule 14 of the Aggregator Rules is obviously contradictory to Section 93 (2) of the Act. Since there is a contradiction between the said Rules and the Parental Act, Rule 14 of the Aggregator Rules should be declared as unconstitutional.

178. Mr. A. S. Ponnanna, the learned Additional Advocate General, and Mr. S. S. Naganand, the learned Senior Counsel, on the other hand, submit that not every single condition can be mentioned in the permit. Moreover, if the contention of the learned 193 counsel for petitioner-Company were to be accepted, that the procedure under Section 74 (2) (ix) of the Act has to be followed for varying or attaching further conditions, with the change of any Rules or Regulations, thousands of permits would have to be recalled by the Regional Transport Authority. Thus, the procedure prescribed by Section 74 (2) (ix) of the Act is merely discretionary, and is not mandatory in nature. Further, only those taxis have been seized which were being plied as All India Tourist Vehicle, but were carrying local commuters. Since the permit holders and the drivers were violating the purpose behind the All India Tourist Vehicle Permit, the officers of the respondent No.2 were justified in seizing the taxis. The requirement of residency of at least two years, and the need to have a working knowledge of Kannada is to ensure the safety of the passenger. For, the language barrier between the driver and the passenger needs to be minimised. Therefore, both the requirements are in public interest. The requirements which are in public interest cannot be held to be unconstitutional. 194 Furthermore, according to the learned counsel, a bare perusal of the agreement entered between the Uber Company and the permit holder would clearly reveal that the petitioner company has an extensive control over both the permit holder, and the driver. In fact, repeatedly, the petitioner

company has informed the public, through its ads, that the drivers would be courteous, peace loving and law abiding. It also has a mechanism for dealing with any complaint filed by the passengers with regard to any misbehaviour committed by the drivers. Therefore, the petitioner company is not justified in claiming that it has no control either over the permit holder, or over the driver. Hence, it can be held vicariously liable for the acts of either of these two. The State is merely asking the aggregator to give a security deposit of Rupees One Lakh. Considering the fact that the petitioner-Company is a Multi-National Company, with deep pockets, it cannot claim that it is being over charged under Rule 14 of the Aggregator Rules. Hence, the said provision is in consonance with the Act. 195 179. Mr. Sajan Poovayya, the learned Senior Counsel, is justified in pleading that the conditions imposed by the Aggregator Rules cannot be read automatically in the permit issued by the Regional Transport Authority under Section 74 of the Act. For, Section 74 (2) (ix) of the Act, clearly prescribes a procedure for alteration of the conditions of the permit. Since a procedure has been prescribed by the Act, the same has to be followed by the Regional Transport Authority. It is, indeed, trite to state that if a power is given to do something in a particular manner, it must be done in that manner or not at all [Ref. to Central Coal Fields Ltd., and Another v. SLL-SML (Joint Venture Consortium) and Others (2016) 8 SCC622]. Therefore, before the conditions of the Aggregator Rules can be read as part of the permit issued under Section 74 of the Act, the procedure established by Section 74 (2) (ix) of the Act has to be followed.

180. However, merely because the Regional Transport Authority is treating the conditions of the Aggregator Rules as having been automatically incorporated in the Permit under Section 74 of the Act, such a misinterpretation cannot adversely affect the legality of the conditions imposed by the Aggregator 196 Rules. For, a misinterpretation of law, or its wrongful implementation would not adversely affect the legality of the provision. Therefore, the learned Senior Counsel is unjustified in pleading that conditions imposed under the Aggregator Rules violate Section 74 of the Act.

181. It is true that the Act does not prescribe the requirement of residency of the driver, or the requirement of the knowledge of the local language by the driver. But

Rules 8 (c) and 8 (d) of the Aggregator Rules impose these twin requirements respectively. But the moot question is whether by prescribing these twin requirements, the Aggregator Rules violate any provision of the Act?. Or travel beyond the scope of the Act?. One of the purposes of the Act is to ensure the smooth functioning of the motor cabs. Safety of the passenger is crucial for the Act as well as for the Aggregator Rules. Since most of the roads signage, including the names of the roads, the names of the cities and the villages, even on the National Highway, happen to be in the local language, it is imperative that the taxi drivers should have proficiency in the local language. Moreover, for the convenience and safety of the passenger it is essential that there should be as little of language barrier between the driver and the passenger as possible. For, the lack of communication between the passenger and the driver may cause inconvenience to the passenger, and may also jeopardize the safety of the passenger. The residency requirement has to be seen in the light of proficiency in the local language. For, the knowledge of a local language improves with the residency in the local area. Since both these requirements are in consonance with one of the purposes of the Act, and are in public interest, they cannot be faulted.

182. Further, the learned Senior Counsel is also unjustified in claiming that the aggregator cannot be imposed with a vicarious liability under Rule 10 (2) of the Aggregator Rules. For, a bare perusal of the agreement entered between the petitioner-Company and the permit holder, discussed above, clearly reveals that the petitioner-Company has a pervading control over the functioning of both the permit holder and the driver. Once the petitioner- Company supervises the actions and omissions of the permit holder and the driver, then it is unjustified in claiming that it cannot be held vicariously liable for the act of either the permit holder, or the driver. Therefore, the said contention is clearly unacceptable.

183. Admittedly, under Section 93 (2) of the Act, a canvasser is required to deposit a security of a sum not exceeding Rupees Five thousand in case the canvasser does not deal with goods carriage. Undoubtedly, Rule 14 of the Aggregator Rules requires an aggregator to pay Rupees One Lakh up to One thousand Taxis. Since an aggregator is a canvasser, as discussed above, Rule 14 of the Aggregator Rules cannot prescribe a different rate of security deposit in the case of the

aggregator. Of course, Mr. A. S. Ponnanna, the learned Additional Advocate General, has tried to justify Rule 14 of the Aggregator Rules ostensibly on the ground that the aggregator, like the petitioner-Company, has "deep pockets". Thus, the Government is justified in prescribing a higher security deposit by the aggregator. However, such a plea is unacceptable. For, once Section 93 (2) of the Act has prescribed the security deposit for all the canvassers, since the aggregators also belong to the same category, therefore a different security deposit cannot be laid down by the Aggregator Rules. To do so, 199 would clearly violate Article 14 of the Constitution of India. Hence, Rule 14 of the Aggregator Rules is unconstitutional. Aggregator Rules suffer from self-contradiction, unreasonableness, and vagueness:

184. Mr. Sajan Poovayya, the learned Senior Counsel, has further pleaded that the Aggregator Rules suffer from self-contradictions, unreasonableness, and vagueness. Relying on the cases of P. Krishnamurthy (supra) and Supreme Court Employees' Welfare Assn. (supra), the learned Senior Counsel has submitted that some of the provisions of the Aggregator Rules which suffer from such viruses deserve to be declared as unconstitutional.

185. According to the learned Senior counsel, there is an inbuilt self-contradiction between Rule 5 (3) of the Aggregator Rules, which requires that an applicant shall not own or lease any vehicle unless he holds a licence under these Rules, and Rule 6 (a) of the Aggregator Rules, which prescribes that unless an Aggregator has a fleet of minimum hundred taxis either owned, or through an agreement with individual taxi permit holders, it 200 cannot apply for a licence under the Aggregator Rules. Thus, on the one hand, an aggregator is prevented from owning any vehicle or leasing out a vehicle unless it has a license under the Aggregator Rules. Yet, on the other hand, unless the aggregator owns or has access, through an agreement, to a minimum of hundred taxis, the aggregator cannot apply for a licence. Thus, according to the learned Senior Counsel, the aggregator is caught in a catch-22 situation. Secondly, on the one hand, Rule 7 (c) of the Aggregator Rules, dealing with the vehicle profile, requires that each vehicle should be fitted with a panic button, and the panic button should be capable of alerting the control room of the aggregator as well as the local police station. Yet on the other hand,

Rule 10 (p) of the Aggregator Rules allows a permit holder to operate his vehicle simultaneously with two or more aggregators. Therefore, if a taxi were simultaneously registered with two or more aggregators, the taxi would be required, under Rule 7 (c) of the Aggregator Rules, to have different panic buttons, where each panic button is connected to the control room of each aggregator. According to the learned Senior Counsel, such a requirement would defeat the very object of 201 the Aggregator Rules, namely the safety of the passengers. For, in a panic stricken situation the passenger may not even know which panic button to press in order to alert the control room of the particular aggregator from whom the passenger has hired the taxi. Therefore, Rule 7 (c) and Rule 10 (p) not only contradict each other, but also create a self-defeating mechanism. Instead of strengthening the passenger's safety, these two provisions jeopardise the safety of the passenger. Thus, this clearly proves the unreasonableness and the arbitrariness of the provisions. Thirdly, Rule 7 (e) of the Aggregator Rules requires that each taxi be fitted with a yellow colour display board with the words "Taxi" visible both from the front, and the back. And the board shall be capable of being illuminated during the night hours. The learned Senior Counsel submits that this Rule amounts to redundancy. For, when a passenger requests for the service of a taxi, through a platform, he/she is already informed about the taxis registration number, the driver's name, and about the color of the taxi, and the time it will take for the taxi to reach the place where the passenger is waiting. Thus, the passenger can easily identify the taxi without the need for a display board. Therefore, 202 there is no need for a vehicle to have a display board proclaiming itself to be a "Taxi". Since the requirement is redundant and oppressive, it is unjust and unreasonable. Hence, it is illegal and unconstitutional.

186. Rule 8 (d) of the Aggregator Rules requires a driver to have working knowledge of Kannada. However, the words "working knowledge" is nowhere defined. Therefore, the term "working knowledge" is highly vague in its scope.

187. Rule 10 (g) of the Aggregator Rules requires the aggregator to investigate a passenger's complaint alleging violation of the zero tolerance policy, and to suspend the driver's access to the platform during the period of investigation. According to the learned Senior Counsel, investigation of a complaint can be done

by the Police or by a competent authority created by the State. But, an aggregator does not have the power to investigate a complaint. Therefore, again an onerous responsibility has been hoisted upon the aggregator---a responsibility it may not be able to fulfil substantially. Hence, Rule 10 (g) of the Aggregator Rules is highly oppressive and unreasonable. 203 188. Rule 10 (i) of the Aggregator Rules further imposes the condition that the aggregator shall not allow the taxi driver to work beyond the maximum number of hours as is stipulated under Motor Transport Workers Act, 1961. However, an aggregator is not an employer under Section 2 (e) of the Motor Transport Workers Act, 1961. Moreover, since a taxi may be registered with two or more aggregators, the taxi driver would be free to switch on and off from a platform belonging to one particular aggregator to another. Once the taxi driver switches off from the platform of the petitioner-Company, the petitioner-Company has no way of ensuring that the concerned taxi driver does not work beyond the stipulated period of eight hours. Therefore, again a condition is being inflicted upon an aggregator, which is impossible to perform. Hence, Rule 10 (i) is unreasonable and arbitrary in its scope.

189. Rule 10 (o) of the Aggregator Rules prescribe that the aggregator shall ensure that the vehicles registered with it do not operate independently or except booking directly. Since a taxi driver can log off from the platform of an aggregator, it is highly unclear as to how an aggregator can stop a taxi driver from either operating independently, or from accepting bookings directly. 204 Thus, again a condition is being imposed upon an aggregator, which is impossible to fulfil. Hence, the condition is not only an unreasonable one, but is also an oppressive one.

190. Rule 10 (q) of the Aggregator Rules lays down that the aggregator shall ensure that the taxi service is available all the time, 24 x 7, without any interruption. However, due to political agitations, due to numerous "bandhs", due to natural calamity, it may not be possible to provide taxi service throughout the year. Again this is a condition which an aggregator may not be able to fulfil. Thus, another unreasonable condition is being imposed upon the aggregator.

191. A combined reading of Rules 8 (3), 10 (h) and 11 (1) (a) of the Aggregator Rules clearly reveal that the said provisions are unreasonable and unjust. Rule 8 (3) of the Aggregator Rules requires that a taxi driver shall not have any conviction within the past seven years of the date of his registration with the aggregator. Furthermore, Rule 10 (h) of the Aggregator Rules, requires the aggregator to ensure that the antecedents of a taxi driver is verified by the police authorities before the driver is allowed to use the 205 Aggregator's platform. Moreover, under Rule 11 (a) of the Aggregator Rules, if the aggregator fails to comply with any of the requirements of the Aggregator Rules, the aggregator is likely to have its license suspended up to six months, or to even have its licence cancelled by the licensing authority. According to the learned Senior Counsel the condition of verifying the criminal antecedents of a driver, for a period of seven years, that too prior to registering a driver is an impossible task to be performed by an aggregator. For, due to migration of people within the country, due to people from outside Karnataka coming into Bengaluru to eke out a living, many drivers have come from far flung areas of the country. Since there is no central data maintained by the Central Government with regard to all the offenders, or convicts throughout the country, it is almost impossible for an aggregator to verify a driver's antecedents of past seven years. Such verification may require verification from some unknown region of the country. Most importantly, since under Rule 11 of the Aggregator Rules the aggregator may lose its licence, in case Rule 10 (h) is not complied with, and the driver's seven years antecedents are not verified, Rule 11 of the Aggregator Rules grants an unfettered power to the 206 licensing authority. Hence, Rule 11 of the Aggregator Rules is highly unreasonable and arbitrary.

192. Further, Rule 11 (1) (b) and (c) of the Aggregator Rules makes the aggregator vicariously liable for the acts of the permit holder or of the driver, respectively. Since neither the permit holder, nor the driver is under the aggregator's control, the said provision is unreasonable in creating a vicarious liability against the aggregator. Hence, it deserves to be declared as illegal.

193. Moreover, Rule 11 (1) (e) of the Aggregator Rules is absolutely vague. For the said Rule prescribes that if a criminal complaint is filed against the driver, then the aggregator is likely to lose his license or to have his license suspended.

However, the said Rule does not specify the nature of the criminal complaint. Whether the complaint is for cognizable or non-cognizable offences?. Whether the complaint is related to or unrelated to the working of the driver as a driver, or can it relate to any of his other illegal acts or omissions?. Hence, Rule 11 (1) (e) of the Aggregator Rules suffers from vagueness. Hence, it is illegal. 207 194. Mr. A. S. Ponnanna, the learned Additional Advocate General, submits that the learned Senior Counsel for the petition- Company is misreading Rules 5(3) and 6(a) of the Aggregator Rules. A co-joint reading of these two Rules make it abundantly clear that before an aggregator can apply for a licence under the Aggregator Rules, he should have a fleet of 100 taxis. Once the aggregator has the minimum number of taxis, it can represent itself as a taxi service provider. Thus, these two Rules do not suffer from any self-contradiction as claimed by the learned Senior Counsel. Secondly, it is not necessary for a taxi to have multiple panic buttons, as a single panic button would be able to connect to the control room of aggregator with whom the taxi is currently logged in. Hence, even if a taxi is registered with two or more aggregator, it needs a single panic button.

195. Since this court is concerned with the safety of the passenger, this court asked the learned Additional Advocate General if a single panic button would be able to connect to various aggregators one at a time?. The learned Additional Advocate 208 emphatically stated that present technology would permit multiple access through a single panic button. In order to verify the veracity of this statement, the court asked the learned Additional Advocate General to demonstrate the working of the panic button, and to show its efficacy by calling a taxi which is registered with two or more aggregators in Bengaluru. Subsequently, on 01.09.2016, this court had the benefit of seeing a live demonstration of a panic button in a taxi. (We shall deal with this aspect later in the judgment).

196. The learned Additional Advocate General further submitted that since the requirement of yellow display board on each taxi is applicable to all the taxis under the CTS Scheme, there is no good reason for exempting the taxis registered with an aggregator from such a requirement. Moreover, although the particular passenger who has ordered for the taxi may be able to identify the taxi, but the public at large also needs to be informed that the motor cab is a taxi. Hence, the

requirement of displaying the word "Taxi" is in public interest. Thus, Rule 7 (e) of the Aggregator Rules is not redundant. 209 197. Under Rule 8 (d) of the Aggregator Rules, "working knowledge" would imply sufficient knowledge of the language so as to be able to read the road signs, and to be able to communicate with the local residents. Hence, the words "working knowledge" do not suffer from vagueness.

198. Moreover, Rule 10 (h) of the Aggregator Rules merely requires the aggregator to have the antecedents of a driver, for the previous seven years, verified from the police. Thus, the aggregator is not expected to itself carry out the said verification. Further, the fact that the driver has a valid driving licence itself is a proof that his antecedents are good. Thus, Rule 10 (h) of the Aggregator Rules does not impose an impossible condition which cannot be performed by the aggregator. In fact, the Rule is a reasonable one as the passenger cannot be exposed to drivers with dubious antecedents.

199. The learned Additional Advocate General claims that although Rule 10 (g) of the Aggregator Rules use the words "to investigate", but the aggregator is merely required to inquire into the passenger's complaint, and if the complaint is found to be true, 210 then to de-register the concerned driver from its platform. Since the safety of the passenger is paramount, therefore Rule 10 (g) of the Aggregator Rule is a reasonable one.

200. As far as Rule 10(i) of the Aggregator Rules is concerned, Mr. A. S. Ponnanna, submits that since a driver is in a position to switch off from the aggregator's platform, therefore the Rule merely means that an aggregator should not permit a driver to work more than eight hours on its platform.

201. Further, Rule 10 (q) of the Aggregator Rules does not impose a condition that the taxi service should be provided by the aggregator day and night. It merely means that the aggregator's platform should be available to the passengers and drivers even if there are rallies and bandhs. According to Mr. A.S. Ponnanna the Aggregator Rules have been framed while keeping the interest of the public in mind. Hence, they are neither vague, nor unreasonableness, neither oppressive, nor arbitrary; they are constitutionally valid.

202. Further, Rule 11 (1) (e) of the Aggregator Rules would have to be read in consonance with Rule 8 (3) of the Aggregator 211 Rules. Rule 8 (3) of the Aggregator Rules requires that the driver should not have been convicted, within the past seven years, for the offence of driving under the influence of drugs or alcohol, or any cognizable offence under the Criminal Procedure Code, including fraud, sexual offences, use of motor vehicle to commit a cognizable offence, a crime involving property damage or theft, acts of violence or acts of terror. Thus, the criminal complaint mentioned in Rule 11 (1) (e) of the Aggregator Rules would be limited to this extent only. Furthermore, once an opportunity of hearing is provided under Rule 11 (1) of the Aggregator Rules, the said Rule provides sufficient safeguards for protecting the interest of the aggregator before the aggregator's license is suspended or cancelled. Hence, Rule 11 (1) (e) of the Aggregator Rules does not suffer from vagueness.

203. There is force in Mr. Sajan Poovayya's argument that there is inherent self-contradiction between Rule 5(

3) and Rule 6 (a) of the Aggregator Rules. For, while Rule 6 (a) of the Aggregator Rules requires an applicant to have a fleet of at least 100 taxis which are either owned or leased through an agreement, Rule 5 (3) of the Aggregator Rules prohibits the aggregator from owning or 212 leasing any vehicle unless the aggregator has a license under the Aggregator Rules. Thus, a license cannot be had unless the aggregator owns or leases a minimum of 100 taxis, yet prior to having a license, the aggregator cannot own or lease out any vehicle. This is a classic catch-22 situation. Because the two provisions contradict each other, the aggregator is caught in a cleft not knowing what is expected of him/ her. Thus, Rule 5 (3) read with Rule 6 (a) of the Aggregator Rules suffer from the virus of vagueness. The provisions also suffer from being arbitrary and unreasonable. For, the two provisions cannot co-exist. Thus, Rules 5 (3) and 6 (a) are legally unsustainable. They are unconstitutional.

204. Much has been argued about the unreasonableness about installing of a panic button in the taxis operated by an aggregator. Admittedly, Rule 7 (c) of the Aggregator Rules requires each taxi to be fitted with a panic button; Rule 10 (p) of

the Aggregator Rules, on the other hand, allows the permit holder and the driver to register himself with more than one aggregator. Thus, the issue is whether a taxi registered with two or more aggregator would be required to have just one panic button, or different panic buttons belonging to the each aggregator, or not?. 213 205. Of course, Mr. A. S. Ponnanna has argued that the present state of technology would permit a single panic button to operate for different aggregators simultaneously. However, as this court was unconvinced by this argument, the court asked for a practical demonstration. Consequently, on 01.09.2016, a taxi was brought to the court campus and tested.

206. During the demonstration, the court was informed that so far there is not a single taxi, in Bengaluru, which is registered with more than one aggregator. But still wanting to see the practical feasibility of the working of the panic button, this court appointed Mr. Jobin Jolly, an Internee with the court, as a Court Commissioner, to go to the control room of ANI Technologies Pvt. Ltd. (respondent No.4 in W.P. No.30917/2016), the Company which operates the OLA Cabs, and to see as how the panic button was connected to the control room?. He was further directed to see as to what steps were taken by the Company when an alarm is sounded by the use of the panic button?.

207. At the time of the practical demonstration, on 01.09.2016, this court asked Mr. Raghav Rohila, Senior Manager 214 at ANI Technologies Pvt. Ltd., respondent No.4, if it is possible for a single panic button to work simultaneously for different aggregators or not?. Mr. Raghav Rohila informed this court that presently technology does not exist which would permit a single panic button to send an alarm to the control rooms of different aggregators. Thus, it is essential that a taxi be equipped with different panic buttons, belonging to different aggregators for the panic button system to be efficient.

208. This court also asked Mr. Raghav Rohila if the panic buttons used in the cabs belonging to respondent No.4 were also connected to the police station as required by the Aggregator Rules?. This court was informed that the Police has asked the aggregator not to connect the panic buttons to the police station. For, the passenger tends to be curious, and out of curiosity, he/ she tends to press the

panic button, although there is no emergent situation. Thus, the police is unnecessarily flooded with false alarms. Hence, presently, the panic buttons are not connected to the police stations. 215 209. Mr. Jobin Jolly, the Court Commissioner, informed this court, through his affidavit, that at the control room, the "Security Response Team" consists of thirty-three members. The team is headed by a team leader, Mr. Aurobindo. The team works 24 x 7, in shifts. According to the team leader, whenever a panic button is pushed, the signal directly comes to the team on the big screen in the control room, and on the other systems in the room. Moreover, the team also receives an email. Immediately, they try to telephonically contact the passenger. If the passenger cannot be contacted, they telephonically contact the concerned driver of the taxi.

210. However, according to Mr. Jobin Jolly, the Court Commissioner, the system is highly defective. For, when the panic button was pushed at the High Court, "there was no significant signal or alert on the big screen in the control room."

"There is no significant device that alerts the office about any misconduct done by the driver."

"The said office gets an email alert, when the panic button is pushed but only after they refresh their system."

According to Mr. Jolly, random check of panic button messages from June 2016 showed that "even when both driver as well as the customer 216 couldn't response to the calls made to them, at the time of that emergency, still there was no further action taken upon the panic alerts. No information was forwarded to the concerned Police Station."

In fact, the team leader informed Mr. Jolly that if neither the driver, nor the customer responds to the call made from the control room, the Company merely informs its legal counsel along with the message received by the Company. After this, the Company considers the matter as closed. According to the team leader out of 65,000 taxis operating in Bengaluru, only 153 are equipped with panic button facility.

211. According to Mr. Sajan Poovayya, the learned Senior Counsel, such a system of multiple panic buttons would be self-defeating. For, a passenger in panic situation may be unable to know and understand as to which panic button is to be pushed in order to inform the aggregator through whom the passenger had booked the taxi. According to him, considering the performance of the control room of ANI Technologies Pvt. Ltd., respondent No.4 (the operators of OLA Cabs), considering the non-connectivity between the panic button and the police station, the requirement of having a panic button in the taxi, under Rule 7 (c) of the 217 Aggregator Rules is merely cosmetic. Furthermore, a co-joint reading of Rules 7 (c) and 10 (p) of the Aggregator Rules makes the panic button system self-defeating. Hence, the requirement is impractical and unreasonable.

212. But merely because the implementation of these two provisions may lead to some practical and technical difficulties, would not make Rules 7 (c) and 10 (p) of the Aggregator Rules per se unreasonable. Since the safety of the passenger is a paramount concern, the requirement prescribed by Rule 7 (c) of the Aggregator Rules is a reasonable one. Moreover, the said requirement cannot be said to be unjust, oppressive, outrageous, vague or arbitrary. The provision is a reasonable one, although few technical wrinkles may need to be ironed out. In fact, this court has narrated the technical difficulties, hereinabove, in order to highlight the difficulties which need to be addressed to by the Government. Hence, Rules 7 (c) and Rules 10 (p) of the Aggregator do not suffer from unconstitutionality.

213. Rule 7 (e) of the Aggregator Rules have been challenged on the ground that the requirement of painting the word "Taxi" in 218 yellow color on the taxi is a redundant condition. However, even if the passenger is well aware of the cab being the taxi he/she has called for, the fact that the motor vehicle is a taxi may be unknown to the public. The said requirement is by way of abundant caution to let the public at large know that the motor vehicle is a "Taxi". An information being made available to the public, for the public good, cannot be held to be unreasonable, arbitrary, or oppressive. Hence, Rule 7 (e) of the Aggregator Rules does not suffer from being oppressive, outrageous, or being unjust and unreasonable. Thus, Rule 7 (e) of the Aggregator Rules is constitutionally valid.

214. Mr. Sajan Poovayya's contentions with regard to Rules 8 (3), 10, 11 (a) (h) of the Aggregator Rules are also untenable. For, the burden to verify the seven years of criminal antecedents of the driver is not just on the shoulders of the aggregator. Rule 10 (h) of the Aggregator Rules does not require the aggregator to personally verify the criminal antecedents. The aggregator is required to have the antecedents verified through the police. Even if there is no central data available with regard to the criminal records of the people, but the police station of the relevant place would have the necessary record available with it. Thus, Rule 10 (h) of the 219 Aggregator Rules does not place an oppressive burden on the aggregator. Hence, it is legally valid.

215. Rule 11 (1) (a) of the Aggregator Rules is not as unfettered as Mr. Sajan Poovayya has claimed. The learned counsel for the respondents are justified in claiming that sufficient safeguards have been built into the Aggregator Rules in order to control the power to cancel or to suspend an aggregator's license. Firstly, Rule 11 (1) of the Aggregator Rules itself imposes a duty on the licensing authority to give an opportunity of hearing to the aggregator before suspending or canceling the license. Secondly, the said provision prescribes the period for which the license can be suspended, namely "not less than thirty days and not exceeding six months."

Hence, the period is a limited one. Thirdly, Rule 11 (3) of the Aggregator Rules bestows a discretionary power upon the licensing authority to impose a fine in lieu of suspending or canceling the license. Fourthly, Rule 12 of the Aggregator Rules provides for the remedy of appeal to the Karnataka State Transport Appellate Tribunal. Hence, an appellate authority has been empowered to adjudge the legal validity of any order passed by the licensing authority under the Aggregator Rules. Therefore, the power of the licensing authority under Rule 11 (1) is not an unbridled or arbitrary power. It is a well defined power under the Aggregator Rules. Thus, Rule 11 (1) (a) of the Aggregator Rules is legally valid.

216. Although Mr. Poovayya has claimed that the word "working knowledge of Kannada" is a vague term, but the said argument is unacceptable. Though the words "working knowledge" may not be defined in the Aggregator Rules, but the

term in common parlance means sufficient knowledge of the language so as to carry out the function assigned to a person. Thus, a driver should be able to read, write and understand the language sufficiently so as to function as an efficient driver. Hence, Rule 8 (d) of the Aggregator Rules does not suffer from vagueness as claimed by the learned Senior counsel.

217. Rule 10 (g) of the Aggregator Rules has been challenged on the ground that the aggregator does not have the power to "investigate" a passenger's complaint. "Investigation" can be done only by the police or an investigating agency. But the word "investigation" can be read down as "holding an inquiry". An inquiry can certainly be conducted by an aggregator. Hence, Rule 221 10 (g) of the Aggregator Rules does not impose a liability upon the aggregator which the aggregator cannot carry out. Hence, Rule 10(g) of the Aggregator Rules is legally valid.

218. Even Rule 10 (i) of the Aggregator Rules has been challenged on the ground that it would be near impossible for the aggregator to ensure that the driver does not work overtime. However, considering the control the aggregator has over both the permit holder and the driver, it is not difficult for the aggregator to ensure that the driver is asked to work only for eight hours as permitted by the law. Moreover, in case the driver or the permit holder were registered with more than one aggregator, then the said Rule has to be interpreted practically, namely the aggregator is required to ensure that the driver does not work more than eight hours for it. A too impractical interpretation of the Rule may make the Rule unworkable. Thus interpreting the said Rule, the said Rule is neither unreasonable, nor arbitrary. Rule 10 (i) of the Aggregator Rules is constitutionally valid.

219. Similarly, Rule 10 (q) of the Aggregator Rules has to be read practically. When the said rule requires the aggregator to 222 ensure that the taxi service is available 24 x 7, it does not mean that taxis must ply despite the political and social 'bandh' (total shut down) our cities are subjected to. Naturally, it means that the taxi service should be available for the benefit of the public during the normal times. Hence, Rule 10 (q) of the Aggregator Rules does not impose an oppressive

condition upon the aggregator. It is legally valid.

220. As far as Rule 11 (1) (e) of the Aggregator Rules is concerned, the said Rule does appear to be vague. For it merely states that if a criminal complaint is filed against the licensee, or his employee, or the driver, then the licensee is likely to either have the license suspended or cancelled. The said provision does not demarcate the nature of the crime. Hence, a criminal complaint with regard to any crime, i.e. cognizable or non-cognizable, bailable or non-bailable, may lead to the license being suspended or cancelled. Mr. A. S. Ponanna is unjustified in claiming that Rule 11 (1) (e) of the Aggregator Rules should be read in light of Rule 8 (3) of the Aggregator Rules mentioned above. For, the former Rule does not refer to the latter Rule in its language. Hence, the said interpretation offered by Mr. A. S. Ponnanna is unacceptable. 223 221. Moreover, even if such an interpretation is offered by the learned Additional Advocate General, such an interpretation may not be adhered to by the licensing authority or its officials. In the case of *Shreya Singhal v. Union of India* [(2015) 5 SCC1 the Hon'ble Supreme Court has clearly opined that a limited interpretation of a vast and undefined term by the Government cannot be accepted by the court. Since Rule 11 (1) (e) of the Aggregator Rules suffers from vagueness, it is unconstitutional. The Aggregator Rules and other Laws:

222. Mr. Sajan Poovayya's last plank of attack is that the provisions of the Aggregator Rules violate the provisions of other laws for the time being in force, especially of the I. T. Act and of the Rules made there under, namely the Traffic Data Rules, the SPDI Rules and the Intermediary Guidelines.

223. According to the learned Senior counsel, Rule 5 (2) of the Aggregator Rules makes it mandatory for an aggregator to comply with the I. T. Act and the Intermediary Guidelines. As mentioned above, an aggregator falls within the definition of an 224 "intermediary" as contained in Section 2 (w) of the I. T. Act. Further, as mentioned above, under Section 43-A of the said Act, the aggregator is not only legally bound to protect the data, but is also bound to prevent unauthorised access to the said data. In case, the aggregator is negligent, then it is liable to pay compensation to the injured party.

224. Moreover, Section 81 of the I. T. Act makes the said Act override "anything inconsistent therewith contained in any other law for the time being in force."

Thus, if there is inconsistency between the Aggregator Rules and the I. T. Act, the latter would have an overriding effect over the former.

225. Not only the I. T. Act, but also Rule 6 of the Traffic Data Rules, make the intermediary responsible for the actions of its employees in case they were to breach the secrecy or the confidentiality of any information stored by the intermediary.

226. Rule 2 (i) of the SPDI Rules defines the word "Personal information" as meaning "any information that relates to a natural person, which, either directly or indirectly, in combination with other information available or likely to be available with a body corporate, 225 is capable of identifying such person."

Rule 3 of the SPDI Rules further defines the meaning of the words "Sensitive personal data or information."

Rule 4 of the SPDI Rules make it mandatory for the body corporate to provide a policy for privacy and disclosure of information. Under the said Rule, the body corporate is required not only to declare its privacy policy on its website, but is also required to enter into a lawful contract with the person providing the personal information. Rule 5 of the SPDI Rules further make it essential for the body corporate to obtain consent in writing through e-mail from the provider of the sensitive personal data or information regarding purpose of usage before collecting such information. Further, Rule 6 of SPDI Rules states that "disclosure of sensitive personal data or information by body corporate to any third party shall require prior permission from the provider of such information, who has provided such information under lawful contract or otherwise, unless such disclosure has been agreed to in the contract between the body corporate and provider of information, or where the disclosure is necessary for compliance of a legal obligation."

The proviso thereto lays down an elaborate procedure 226 for even the government agency to have access to the information from the body corporate. Moreover, the proviso clearly stipulates that the information shall be shared with a Government agency only for certain purposes, such as for the purpose of verification of identity, or for prevention, detection, investigation, prosecution, and punishment of offences. Similarly, Rule 3 of the Intermediary Guidelines cast a duty on an intermediary to exercise due diligence in following the dos and don'ts mentioned in Rule 3 (2) of the Intermediary Rules. Rule 3 (7) does cast a duty on the intermediary to provide information to Government Agencies who are lawfully authorised for investigative, protective, cyber security activity. The information should be provided for definite purposes mentioned in the said sub-section, and that, too, only after following certain procedure.

227. Thus, all these Rules, mentioned above, cast a duty on the intermediary to protect the information it has in its storage, and to share the same with a government agency only in certain circumstances and for a particular purpose. The information shall 227 be shared only after the procedure prescribed by the Rules has been followed by the Government Agency.

228. But contrary to the I. T. Act and to these Rules, Rule 10 (c) of the Aggregator Rules demands that the aggregator shall keep the information collected by it "open for inspection by an officer nominated by the licensing authority at any time."

And Rule 10 (v) of the Aggregator Rules further lays down that the information shall be preserved for a period of one year and shall be made available to the inspecting authority on demand. These two Rules of the Aggregator Rules are, thus, obviously contrary to the duties and role assigned to an intermediary under the I. T. Act and the Rules made there under, as mentioned above. Thus, the Aggregator Rules violate the provisions of other laws in force. Hence, the Aggregator Rules are unconstitutional.

229. On the other hand, Mr. A. S. Ponnanna, the learned Additional Advocate General, and Mr. S. S. Naganand, the learned Senior counsel, have raised the following contentions: firstly, the Aggregator Rules are framed for the purpose of controlling of transport vehicles. Therefore, these Rules do not encroach upon 228

the provisions of the I. T. Act. If there is an incidental encroachment, even then the Aggregator Rules are protected by the doctrine of pith and substance. Hence, the Aggregator Rules are not inconsistent either with the I. T. Act or with the Rules made there under. Secondly, the learned Senior counsel for the petitioner-Company is unjustified in relying on Section 43-A of the I. T. Act. For the said section deals with negligence in implementing and maintaining reasonable security practices and procedures. However, if the information is required to be shared with a government agency, the information is neither being shared negligently, nor there is negligence in implementing the security practices and procedure. Therefore, the anxiety of the petitioner- Company that it may be held liable to pay any compensation under Section 43-A of the I. T. Act is highly misplaced. Thirdly, an aggregator does not deal with "sensitive personal data or information" of the passenger as defined by Rule 3 of the SPDI Rules. Therefore, Rule 6 of the SPDI Rules is inapplicable to the aggregator. 229 Fourthly, both the SPDI Rules and the Intermediary Guidelines provide easy access to the Government Agencies to the information kept by the intermediary. Hence, there is no conflict between Rules 10 (c) and 10 (v) of the Aggregator Rules, and the provisions of the SPDI Rules and the Intermediary Guidelines, mentioned above.

230. Prior to the Digital Age, a person's personal information was known within a limited circle; in the Digital Age the personal information is available to unlimited people, institutions, and the government. Personal information is co-related to right of privacy, as discussed above. The law also recognizes the importance of safeguarding the personal information of a person. The I. T. Act in general, and some of the Rules made there under, as mentioned above, in particular, try to protect the access to personal information by a third party or even by the government.

231. The learned counsel for the respondents are unjustified in claiming that since the Aggregator Rules are primarily concerned with controlling of transport vehicles, therefore, this court need not go into the question of violation of the I. T. Act and 230 the Rules made there under by the Aggregator Rules. Such a stand is clearly untenable. For, once the constitutionality of a provision is challenged on the ground that it violates other laws in force for the time being, the said contention

cannot be brushed under the carpet. The said plea would have to be adjudicated upon by this court.

232. Even the argument based on the doctrine of pith and substance does not hold water. For, Rule 5 (2) of the Aggregator Rules imposes a duty on the aggregator to comply with the I. T. Act, in general, and with the Intermediary Guidelines, in particular. Once this legal duty has been cast upon the aggregator, naturally the aggregator has a right to know as to what is expected of it. Since certainty of law is an essential part of Rule of Law, the aggregator would like to know whether he is required to follow the requirements of the Aggregator Rules, or the mandate of the I. T. Act and the Rules made there under. Moreover, Section 81 of the I. T. Act categorically makes the said Act override "anything inconsistent therewith contained in any other law for the time being in force."

Hence, in case of inconsistency between the requirements of the Aggregator Rules and of the I. T. Act, or of the Rules made 231 there under, the Aggregator Rules would have to give way to the latter set of laws. Thus, this court cannot dismiss Mr. Poovayya's arguments lightly, especially when he has raised a weighty issue. This court is bound to answer the issue raised by the learned Senior Counsel.

233. Undoubtedly, an aggregator is both an online-market place for providing taxi services, and gives an online payment site. Thus, an aggregator is an "intermediary" as defined under Section 2 (w) of the I. T. Act. Once the aggregator is an intermediary, it falls under the purview of the I. T. Act and the Rules made there under mentioned hereinabove.

234. At the cost of repetition, Section 2 (i) of the SPDI Rules defines the term "personal information" as meaning "any information that relates to a natural person, which, either directly or indirectly, in combination with other information available or likely to be available with a body corporate, is capable of identifying such person."

232 235. Rule 3 of the SPDI Rules further defines "Sensitive personal data or information" as under:

3. Sensitive personal data or information Sensitive personal data or information of a person means such personal information which consists of information relating to;- (i) (ii) (iii) (iv) password; financial information such as Bank account or credit card or debit card or other payment instrument details; physical, physiological and mental health condition; sexual orientation; (v) medical records and history; (vi) Biometric information; (vii) any detail relating to the above clauses as provided to body corporate for providing service; and (viii) any of the information received under above clauses by body corporate processing, stored or processed under lawful contract or otherwise: for Provided that, any information that is freely available or accessible in public domain or 233 furnished under the Right to Information Act, 2005 or any other law for the time being in force shall not be regarded as sensitive personal data or information for the purposes of these rules. Again at the cost of repetition, Rule 6 of the SPDI Rules deals with "Disclosure of Information". It is as under:

6. Disclosure of information.- (1) Disclosure of sensitive personal data or information by body corporate to any third party shall require prior permission from the provider of such information, who has provided such information under lawful contract or otherwise, unless such disclosure has been agreed to in the contract between the body corporate and provider of information, or where the disclosure is necessary for compliance of a legal obligation: Provided that the information shall be shared, without obtaining prior consent from provider of information, with Government agencies mandated under the law to obtain information including sensitive personal data or information for the purpose of verification of identity, or for prevention, detection, investigation including cyber incidents, prosecution, and 234 punishment of offences. The Government agency shall send a request in writing to the body corporate possessing the sensitive personal data or information stating clearly the purpose of seeking such information. The Government agency shall also state that the information so obtained shall not be published or shared with any other person. (2) Notwithstanding anything contain in sub- rule (1), any sensitive personal data or Information shall be disclosed to any third party by an order under the law for the time being in force. (3) The body corporate or any person on its behalf shall not publish the sensitive personal data or information. (4) The third party receiving the sensitive personal data or information from body

corporate or any person on its behalf under sub-rule (1) shall not disclose it further.

236. Meanwhile, Rule 3 of the Intermediary Rules deals with "Due diligence to be observed by intermediary". Rule 3 (6) of the Intermediary Rules clearly imposes a legal duty upon the 235 intermediary "to strictly follow the provisions of the Act or any other laws for the time being in force."

Thus, the intermediary is also required to adhere to Rule 6 of the SPDI Rules. Furthermore, Rule 7 of the Intermediary Rules itself deals with sharing of information by the intermediary with the government. It is as follows: (7) When required by lawful order, the intermediary shall provide information or any such assistance to Government Agencies who are lawfully authorised for investigative, protective, cyber security activity. The information or any such assistance shall be provided for the purpose of verification of identity, or for prevention, detection, investigation, prosecution, cyber security incidents and punishment of offences under any law for the time being in force, on a request in writing stating clearly the purpose of seeking such information or any such assistance.

237. On the other hand, as mentioned above, Rules 10 (c) and 10 (v) of the Aggregator Rules require that the aggregator should give access to the licensing authority or to a person 236 nominated by the licensing authority at any time and on demand. Clearly, Rules 10 (c) and 10 (v) of the Aggregator Rules are contrary to the procedure and rights prescribed by Rule 6 of the SPDI Rules, and to Rule 3 (7) of the Intermediaries Guidelines. For, while the former Rules gives access to the licensing authority "at any time" and "on demand", the latter Rules bestow certain rights on the person providing the information, prescribe the circumstances under which the information can be accessed by the government, and also prescribe the procedure to be followed by the government before it can access the information which is with the intermediary. Since Rules 10 (c) and 10 (v) of the Aggregator Rules are clearly contrary to the mandatory provisions of Rule 6 of the SPDI Rules, and to Rule 3 (7) of the Intermediary Guidelines, since Rule 5 (2) of the Aggregator Rules makes it mandatory for the aggregator to follow the Intermediary Guidelines, Rules 10 (c) and 10 (v) are unsustainable; the said

provisions are unconstitutional.

238. Of course, the learned counsels for the respondent are justified in claiming that if the aggregator were to give access to the government at its asking, the aggregator cannot be said to be negligent in parting with the said information. Hence, the 237 aggregator cannot be held liable under Section 43-A of the I. T. Act. Therefore, the argument raised by Mr. Poovayya with regard to Section 43-A of the I. T. Act is unacceptable.

239. But the moot question is under what circumstances is the aggregator required to share the information with the government?.

240. Under Rules 10 (c) and 10 (v) of the Aggregator Rules, the aggregator is required to give access to the information at any time and on demand; under the Rule 6 of the SPDI Rules the intermediary is required to give access to the information only after seeking consent of the concerned party, or if the government were to seek the information within the well defined circumstances, then without the consent of the concerned party. But even then, the government is required to follow certain procedure prescribed by the said Rules. Rule 3 (7) of the Intermediary Rules is on similar line as Rule 6 of the SPDI Rules. Therefore, the learned counsel for the respondent are not unjustified in claiming that since the SPDI Rules and the Intermediary Rules provide easy access of the government to the information, there is no conflict between these 238 two Rules and the Aggregator Rules. As mentioned above, Rules 10 (c) and Rule 10 (v) of the Aggregator are inconsistent with the requirements of Rule 3 (7) of the Intermediary Rules and with Rule 6 of the SPDI Rules. Hence, Rules 10 (c) and 10 (v) of the Aggregator Rules are unconstitutional. Doctrine of Severability 241. A critical analysis of the Aggregator Rules has lead this court to declare few provisions of the Aggregator Rules as unconstitutional. However, merely because few provisions have been declared as unconstitutional, would it also affect the constitutional validity of the entire Aggregator Rules or not ?. This is one of the last issues to be tackled by this court.

242. In the case of R.M.D. Chamarbaugwalla and Another (supra), the Hon'ble Supreme Court has dealt with the doctrine of severability and summarized the

construction laid down by the American Courts where the question of severability has been the subject of regular consideration. The summary is as under:- 22 (1) In determining whether the valid parts of a statute are separable from the invalid parts thereof, it is the intention of the legislature that is 239 the determining factor. The test to be applied is whether the legislature would have enacted the valid part if it had known that the rest of the statute was invalid. Vide Corpus Juris Secundum, Vol. 82, p. 156; Sutherland on Statutory Construction, Vol. 2, pp. 176-177.

2. If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, then the invalidity of a portion must result in the invalidity of the Act in its entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid, what remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become unenforceable. Vide Cooley's Constitutional Limitations, Vol. at pp. 360-361; Crawford on Statutory Construction, pp. 217-218.

3. Even when the provisions which are valid are distinct and separate from those which are invalid, if they all form part of a single scheme which is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole. Vide Crawford on Statutory Construction, pp. 218-219. 240 4. Likewise, when the valid and invalid parts of a statute are independent and do not form part of a scheme but what is left after omitting the invalid portion is so thin and truncated as to be in substance different from what it was when it emerged out of the legislature, then also it will be rejected in its entirety.

5. The separability of the valid and invalid provisions of a statute does not depend on whether the law is enacted in the same section or different sections; (Vide Cooley's Constitutional Limitations, Vol. 1, pp. 361-362); it is not the form, but the substance of the matter that is material, and that has to be ascertained on an examination of the Act as a whole and of the setting of the relevant provisions therein.

6. If after the invalid portion is expunged from the statute what remains cannot be enforced without making alterations and modifications therein, then the whole of it

must be struck down as void, as otherwise it will amount to judicial legislation. Vide Sutherland on Statutory Construction, Vol. 2, p.

194.

7. In determining the legislative intent on the question of separability, it will be legitimate to take 241 into account the history of the legislation, its object, the title and the preamble to it. Vide. Sutherland on Statutory Construction, Vol. 2, pp. 177-178. 243. Thus, in case those parts which have been held to be constitutional, can be separated from the invalid parts, and if the remaining valid part could have been framed by the State Government, knowing full well that some parts are invalid, in that case, the valid parts can be separated and can continue to exist. It is only if the valid and invalid parts are so extrinsically mixed up that they cannot be separated that the invalidity of a portion must result in the invalidity of the entire statute. Therefore, the question is, whether the Aggregator Rules can exist de hors the provisions declared unconstitutional by this court or not ?.

244. A bare perusal of the provisions which have been held to be unconstitutional would clearly reveal that the remaining part of the Aggregator Rules does not rest so heavily upon these provisions that in case Aggregator Rules are separated from these provisions, the Aggregator Rules would collapse by itself. The invalid provisions are merely like partition walls which do not 242 support the super structure of the Aggregator Rules. Therefore, the Aggregator Rules continue to validly exist even if the valid parts of the Aggregator Rules are separated from the invalid portions. Therefore, applying the doctrine of severability, this court need not declare the entire Aggregator Rules as unconstitutional. Therefore, the contention raised by Mr. Sajan Poovayya, the learned Senior Counsel, that the invalidity of certain provisions would endanger the very existence of the Aggregator Rules is clearly unacceptable. A Few More Issues:

245. Before we draw the curtain on this order, there are still few issues which need to be resolved: firstly, whether the State Government has the power to prescribe the fare to be charged by the aggregator or not?. Secondly, whether the petitioner-Company can be forced to adhere to the fare limits prescribed by the State or not?. Thirdly, whether the notice dated 23-4-2016 issued by the Transport

Commissioner to the petitioner-Company is legally valid or not?. Fourthly, whether the police, or the officers of the respondent No.2 are justified in seizing the taxis under Section 207 of the Act or not?. 243 246. A concerted effort was made by the Prof. Ravi Verma Kumar, Mr. S. S. Naganand, and Mr. S. P. Shankar, the learned Senior Counsel, to ensure that the petitioner-Company is not permitted to charge more fare than prescribed by the Government. However, Mr. Sajan Poovayya, the learned Senior counsel, has thwarted their efforts by firstly conceding that under the Act, the State does have the power to prescribe the limits of fare to be charged by the taxi permit holder and the aggregator. Secondly, the learned Senior counsel has given an undertaking before this court that the petitioner-Company shall not charge more than the maximum fare prescribed by the Government. Mr. Sajan Poovayya's only concern is that the Government should permit the petitioner-Company to charge the maximum fare during the peak hours when the demand for the taxis is at the highest point. To this concern, Mr. A. S. Ponnanna, the learned Additional Advocate General, has conceded that the Government would not have any objection if the petitioner-Company were to charge the maximum fare amount from the passenger as prescribed by the Government. However, the Government is only concerned that the petitioner- Company, and the other aggregator, should not charge fares higher 244 than the maximum fares prescribed by the Government. With the undertaking given by Mr. Sajan Poovayya, and the concession made by Mr. A. S. Ponnanna, the first two issues need not be decided by this court.

247. Mr. Sajan Poovaya, the learned Senior Counsel, has challenged the impugned notice, mentioned above, inter alia on the ground that since the Aggregator Rules are ultra vires the Act, since the said Rules are unconstitutional, therefore the Transport Commissioner is not justified in issuing the said notice. The learned Senior Counsel has further contented that since the application filed by the petitioner-Company is still pending with the Regional Transport Authority, it is for the respondent to expedite the same and to grant the license. The Regional Transport Authority cannot be permitted to sit over the application and to simultaneously adversely affect the operations of the petitioner- Company in running its business.

248. On the other hand, Mr. A.S. Poonnanna, the learned Additional Advocate General, has defended the said notice on the ground that the notice has been issued under the provisions of a 245 validly promulgated Aggregator Rules and under Section 93 of the Act.

249. Since this court has already held that the Aggregator Rules are constitutional, the impugned notice cannot be faulted. However, as the petitioner-Company has filed its application for seeking the license under the Aggregator Rules, the same should be expedited within a reasonable time. For, while an aggregator is legally bound to apply for a license under the Aggregator Rules, a corresponding duty is also cast upon the Regional Transport Authority to expeditiously deal with the application, provided the aggregator fulfills the requirements of the Aggregator Rules.

250. As far as the seizure of the taxi is concerned, a distinction has to be maintained between "breach of a condition of permit", and violation of "the purpose" for which the permit is granted. In the case of *State of Maharashtra and Ors. v Nanded-Prabhani Z. L. B. M. V. Operator Sangh* [(2000) 2 SCC69], the Apex Court dealt with breach of a condition of the permit. For, the Apex Court clearly observed that " The present case is only concerned with the question of contravention of the condition of 246 permit."

In the said case, the condition with regard to number of passengers which could be legally carried in the vehicle was violated. It is in this circumstance that the Apex Court opined that breach of a condition of permit would not allow the licensing authority to seize the vehicle under Section 207 of the Act. However, the Hon'ble Supreme Court also observed that "the purpose would only refer to a contingency when a vehicle having a permit of a stage carriage is used as a contract carriage or vice versa or where a vehicle having a permit for stage carriage or contract carriage is used as a good vehicle and vice versa."

251. Thus, a distinction has to be made between a violation of "a condition" and the violation of the "purpose" for which the permit has been given to the permit holder. The extracted portion, mentioned above, clearly indicates that if "the purpose" for which the permit is given is violated, then the power of seizure under

Section 207 of the Act can be exercised legitimately. In fact, Section 207 of the Act is categorical when it empowers the police or any person authorised in this behalf by the State Government to seize and detain any vehicle if "the purpose for which the vehicle may be used" is violated. Thus, if the All India Tourist Vehicle plies 247 commuters instead of tourists, the permit holder violates the purpose for which the permit was granted under Section 88 (9) of the Act. Therefore, the permit holder is violating the very basis of the law. Hence, the police, or any person authorised by the State Government is legally justified in seizing and detaining the All India Tourist Vehicle for such violation. Its action cannot be faulted. Therefore, the contention raised by Mr. Udaya Holla, the learned Senior counsel, that the power under Section 207 of the Act cannot be exercised as the All India Tourist Vehicle permit holders are merely violating a "condition" of the permit is unacceptable. The Summary of the Order:

252. This Order is, indeed, a long one where many issues have been raised, debated, discussed, and decided by this court. Therefore, it is imperative that a summary of the conclusions drawn by this court, on different issues, be provided. The summary is as under:- 1. An Aggregator is a canvasser. Therefore, the aggregator falls within the scope of Section 93 of the Act. Hence, the 2. 248 Aggregator Rules are legally framed under Section 93 of the Motor Vehicles Act, 1988. Since the definition of an "Aggregator", given in the Aggregator Rules, also includes an Operator, and the Aggregator Rules also deal with a contract carriage, therefore, the Aggregator Rules are legally framed under Section 95 of the Act.

3. Section 96 (1) and Section 96 (2) of the Act, bestow ample power upon the State for framing Rules dealing with the provisions of Chapter V of the Act. Therefore, the Aggregator Rules are legally framed under Section 96 (1) of the Act. Hence, the State Government is well within its competence to frame the Aggregator Rules under Sections 93, 95 and 96 (1) of the Act. The Aggregator Rules are, thus, intra-vires the Act.

4. The aggregator under the Aggregator Rules, and the Operator under the City Taxi Scheme form two distinct and separate classes. Therefore, they need not be subjected to the same 249 control, or to the same set of liabilities. Since they are

unequals, they cannot be treated equally.

5. Rule 6 (a) of the Aggregator Rules, which requires that an aggregator should have a fleet of minimum of hundred taxis, either owned or through an agreement, is not violative of Article 14 of the Constitution of India.

6. Similarly, Rule 7 (c) of the Aggregator Rules, which requires that the taxis registered with an aggregator should have a panic button, is not violative of Article 14 of the Constitution of India. Likewise, Rule 10 (h) of the Aggregator Rules, which requires the aggregator to verify the antecedents of the drivers, for the last seven years, through the police, before registering the driver on its platform, is not violative of Article 14 of the Constitution of India. Moreover, the requirement is neither oppressive, nor unreasonable. Hence, Rule 10 (h) of the Aggregator Rules is constitutionally valid. 7.

8. 250 Rule 11 (1) (a), (b), and (c) of the Aggregator Rules, which bestows a power on the licensing authority to suspend or to cancel the aggregator's license under the circumstances mentioned therein, is also not violative of Article 14 of the Constitution of India. Furthermore, Rule 11 (1) of the Aggregator Rules does not grant an unbridled, uncontrolled power to the licensing authority to suspend or cancel the aggregator's license. Since the said power is circumscribed by sufficient safeguards provided under Rules 11 (3) and 12 of the Aggregator Rules, Rule 11 (1) of the Aggregator Rules is constitutionally valid.

9. Rule 10 (n) of the Aggregator Rules, which excludes the All India Tourist Vehicle Permit Holder from the purview of the Aggregator Rules, is also not violative of Article 14 of the Constitution of India.

10. All India Tourist Vehicle Permit Holders under Section 88 (9) of the Act form a separate class from the permit holders under Sections 74 and 88 (8) of the Act.

251 11. The All India Tourist Vehicles can carry only tourists and cannot ply commuters.

12. The State does have the power to make Rules for the All India Tourist Vehicle Permit Holders, provided the said Rules are not inconsistent with any Rule made

by the Central Government for the All India Tourist Vehicles. But merely because the State is competent to make such a Rule for the All India Tourist Vehicle, the exclusion of the said category from the purview of the Aggregator Rules does not violate Article 14 of the Constitution of India.

13. The exclusion of All India Tourist Vehicle Permit Holder from the Aggregator Rules also does not violate Article 19 (1) (g) of the Constitution of India.

14. Rule 6 (a) of the Aggregator Rules which prescribes the minimum requirement of having hundred taxis for an aggregator is a legislative policy decision of the State Government. Therefore, this court refrains from declaring the requirement as being violative of Article 19 (1) (g) of the Constitution of India qua the Start Ups. It is for the State Government to decide the ways and means to encourage and promote the interest of the Start Ups in the Taxi Sector.

15. Rule 10 (o) of the Aggregator Rules, which prohibits the permit holder and the driver, who are registered with an aggregator, from independent operation, or from accepting booking directly, does violate the fundamental rights of the permit holders and the drivers under Article 19 (1) (g) of the Constitution of India. Since the restriction is not in the interest of the public, Rule 10 (o) of the Aggregator Rules is not protected by Article 19 (6) of the Constitution of India. Thus, Rule 10 (o) of the Aggregator Rules is unconstitutional.

16. Rule 10 (c) and Rule 10 (v) of the Aggregator Rules bestow an unbridled, uncontrolled power upon the State to have access to the personal information about the passenger. Such unfettered power is likely to be abused by the State. Thus, Rule 10 (c) and Rule 10 (v) of the Aggregator Rules violate the right of privacy. The right of privacy is not only a human right, but is also a fundamental right under Arts. 19 and 21 of the Constitution of India. Moreover, India being a signatory to International Conventions, which guarantee the right of privacy to the people, the Indian Judiciary is legally bound to protect and promote the right of privacy. Since Rules 10 (c) and 10 (v) of the Aggregator Rules violate the right of privacy, they are unconstitutional. Furthermore, the said provisions are contrary to other laws of the land, namely Rule 6 of the SDPI Rules and Rule 3 (7) of the Intermediary Rules. Hence, Rule 10 (c) and Rule 10 (v) of the Aggregator Rules

are also unconstitutional on this account.

17. Before the conditions to the Aggregator Rules can be read into a permit issued under Section 74 of the Act, the Regional Transport Authority is legally bound to follow the procedure prescribed by Section 74 (2) (ix) of the Act. Hence, the conditions imposed by the Aggregator Rules cannot be read as automatically attached to the permit issued under Section 74 of the Act.

18. Rule 8 (c) of the Aggregator Rules, which requires that a driver should be a resident of Karnataka for a period of two years, and Rule 8 (d) of the Aggregator Rules, which requires 254 that the driver should have a working knowledge of Kannada language, both these provisions are constitutionally valid. For, these provisions are within the object and purpose of the Act, which is to ensure the smooth functioning of the contract carriage, and to ensure the safety and comfort of the passenger.

19. Rule 14 of the Aggregator Rules, which requires an aggregator to make a security deposit of Rupees One Lakh for up to one thousand taxis, is contradictory to Section 93 (2) of the Act. Hence, Rule 14 of the Aggregator Rules is unconstitutional.

20. Rule 5 (3) of the Aggregator Rules, which prohibits the aggregator from owning or leasing any vehicle unless it has a license under the Aggregator Rules, and Rule 6 (a) of the Aggregator Rules, which requires that the aggregator should have a fleet of hundred taxis, either owned or through an agreement, before it can apply for a license under the Aggregator Rules, both these provisions are self-contradictory. They cannot co-exist simultaneously. Thus, these provisions are unreasonable and 255 arbitrary. Hence, Rule 5 (3) and Rule 6 (a) of the Aggregator Rules are unconstitutional.

21. Merely because there are technical difficulties in implementation of, and in the efficient functioning of the panic button, the requirement of panic button, prescribed by Rule 7 (c) of the Aggregator Rules, would not make the said provision an unreasonable or arbitrary one. Thus, Rule 7 (c) of the Aggregator Rules is constitutionally valid.

22. Rule 7 (e) of the Aggregator Rules, requiring that the taxis registered with an aggregator should display a board with the word "Taxi" written on it, and which should be illuminated during the night, is in public interest. Thus, Rule 7 (e) of the Aggregator Rules is constitutionally valid.

23. Rule 10 (g) of the Aggregator Rules which imposes the duty on the aggregator to investigate a passenger's complaint alleging violation of zero tolerance policy can be read down as the responsibility "to inquire" into the said complaint. Thus, Rule 10 (g) of the Aggregator Rules is constitutionally valid. 256 24. Similarly, Rule 10 (i) of the Aggregator Rules, which requires the aggregator to ensure that a driver does not work more than the maximum number of hours prescribed by the Motor Transport Workers Act, 1961, is constitutionally valid. For, the aggregator has sufficient control over the working of the driver, and the functioning of the permit holder through the agreement entered between the aggregator and the permit holder. Thus, Rule 10 (i) of the Aggregator Rules is constitutionally valid.

25. Rule 10 (q) of the Aggregator Rules requiring that the taxi service has to be available all the time, has to be interpreted practically. Thus, it does not require that the taxi service should be made available even during abnormal or disastrous situations. It merely means that the technological platform should be available to the passenger during the normal conditions. Hence, Rule 10 (q) of the Aggregator Rules does not impose an oppressive condition upon the aggregator. It is constitutionally valid. 257 26. Rule 11 (1) (e) of the Aggregator Rules, which permits the licensing authority to suspend or cancel the aggregator's license if "any criminal complaint is filed against the driver, or the aggregator, or its employee", suffers from vagueness. Thus, the said provision is unconstitutional.

27. The petitioner-Company has conceded that the State Government has the power, under the Act, to prescribe the limits of the fares to be charged by the permit holder. Since the petitioner-Company has given an undertaking before this court that it will not charge more fare from the passenger than the maximum fare laid down by the State Government, this court hopes the petitioner-Company will abide by its undertaking.

28. The impugned notice dated 23-4-2016 is legally valid as the said notice has merely directed the petitioner-Company to take a license under the Aggregator Rules. Since the Aggregator Rules are constitutionally valid, the notice dated 23-4-2016 cannot be faulted.

29. 258 In case the All India Tourist Vehicle is found to be carrying commuters and not tourists, then such a vehicle is liable to be detained and seized under Section 207 of the Act. For, while carrying commuters the All India Tourist Vehicles is violating the "purpose" for which the permit was issued under Section 88 (9) of the Act.

30. This court has declared some of the provisions of the Aggregator Rules as being unconstitutional. However, as the remaining valid parts of the Aggregator Rules can be severed from the invalid parts of the Aggregator Rules, applying the doctrine of severability, the Aggregator Rules, de hors the invalid parts, are constitutionally valid.

31. Since this court has declared the Aggregator Rules to be constitutionally valid, while striking down some of its provisions as unconstitutional, the immediate implementation of the Aggregator Rules may create some difficulties for the petitioner-Company and for other aggregators. Therefore, the respondents are directed to give the petitioner-Company, and other aggregators, a reasonable 259 time of one month to comply with the requirements of the Aggregator Rules. During this period, the respondents are directed not to take any coercive steps against the petitioner- Company and against the other aggregators.

32. Moreover, since the petitioner-Company has already applied for the license under the Aggregator Rules, in case the petitioner-Company fulfills the requirements of the Aggregator Rules, the respondents are directed to issue the license as expeditiously as possible and certainly within a period of one month from the date the requirements are fulfilled by the petitioner-Company.

33. Since this order may also cause some inconvenience to the All India Tourist Vehicle permit holders, the respondents are directed to give wide publicity to the fact that the said permit holders shall be required to carry only tourists in their

vehicle(s). Any violation of the purpose of the permit will entail seizure and detention of the said vehicle. The wide publicity shall be carried out for a period of one month. Only thereafter, would the respondents be justified in invoking 260 their power under Section 207 of the Act. Although this court does not mean to curtail the power under Section 207 of the Act, but its immediate implementation, in the garb of following the present order, may lead to inconvenience both to the All India Tourist Vehicle permit holder, and to the public at large. Hence, the present direction by this court.

34. For the reasons stated above, I pass the following:

ORDER

W.P.Nos.31673-31674/2016 filed by M/s. Uber India Technologies Private Limited, and W.P.No.30917/2016 filed by Mr. Sathish and Others are partly allowed. W.P.No.30191/2016 filed by M/s. Helion Technologies Pvt. Ltd., is dismissed. No order as to cost. Np/- Sd/- JUDGE

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