

WWW.LIVELAW.IN

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 05TH DAY OF APRIL, 2021

PRESENT

THE HON'BLE MRS. JUSTICE B.V.NAGARATHNA

AND

THE HON'BLE MS. JUSTICE J.M.KHAZI

WRIT APPEAL No.4010/2019 (MV)

BETWEEN:

ANI TECHNOLOGIES PVT. LTD.,
REGENT INSIGNIA, #414,
3RD FLOOR, 4TH BLOCK,
17TH MAIN 100 FEET ROAD,
KORAMANGALA,
BANGALORE - 560 034.
THROUGH ITS AUTHORIZED
REPRESENTATIVE.

... APPELLANT

(BY SRI ARUN KUMAR K., SENIOR ADVOCATE FOR
SRI CHETHANA K.N., ADVOCATE)

AND:

1. STATE OF KARNATAKA
THROUGH ITS SECRETARY,
VIDHANA SOUDHA,
BENGALURU - 560 001.
2. ADDITIONAL TRANSPORT COMMISSIONER AND
SECRETARY STATE TRANSPORT AUTHORITY
BANGALORE, 1ST FLOOR,
TTMC BUILDING, A-BLOCK,
SHANTHINAGAR,
BANGALORE - 560 027.
3. THE COMMISSIONER,
ROAD TRANSPORT DEPARTMENT
AND STATE TRANSPORT AUTHORITY,
1ST FLOOR, TTMC BUILDING,
A-BLOCK, SHANTHINAGAR,
BANGALORE - 560 027.

4. KARNATAKA STATE TRANSPORT AUTHORITY,
THROUGH ITS SECRETARY,
1ST FLOOR, TTMC BUILDING,
A-BLOCK, SHANTINAGAR,
BANGALORE - 560 027.
5. UNION OF INDIA
THROUGH PRINCIPAL SECRETARY,
THE MINISTRY OF ROAD TRANSPORT AND HIGHWAYS,
TRANSPORT BHAWAN,
I PARLIAMENT STREET,
NEW DELHI - 110 001.
6. ROPPEN TRANSPORTATION SERVICES PVT. LTD.,
REG. OFFICE AT: 3RD FLOOR,
SAI PRITHVI ARCADE,
MEGHA HILLS, SRI RAMA COLONY
MADHAPUR, HYDERABAD,
TELAGANA - 500 081.
ALSO AT: 148, 5TH MAIN ROAD,
RAJIV GANDHI NAGAR,
SECTOR 7, HSR LAYOUT, BENGALURU,
KARNATAKA - 560 102.
THROUGH ITS DIRECTOR
MR. PAVAN KUMAR GUNTUPALLI. ... RESPONDENTS

(BY SMT. SHWETHA KRISHNAPPA, AGA FOR R-1 TO R-4;
SRI. MADANAN PILLAI, R. CGC FOR R-5;
SAHANA DEVANATHAN, ADVOCATE FOR
SRI LOMESH NIDUMURI, ADVOCATE FOR R-6)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO a) PASS AN ORDER SETTING ASIDE THE FINAL ORDER DATED 12/09/2019 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT IN WPIT PETITION NO.14485/2019, INSOFAR AS IT ERRONEOUSLY RECORDS THAT ALL THE GRIEVANCES OF THE APPELLANT WERE REDRESSED AND ETC.,

THIS APPEAL COMING ON FOR PRELIMINARY HEARING THIS DAY, **NAGARATHNA J.**, DELIVERED THE FOLLOWING:-

JUDGMENT

Being aggrieved by the order of the learned single Judge dated 12/09/2019, passed in W.P.No.14485/2019

and order dated 14/11/2019, passed in R.P.No.516/2019, the petitioner has filed this appeal.

2. We have heard learned senior counsel for the writ petitioner/appellant, learned Additional Government Advocate for respondent Nos.1 to 4, learned Central Government Counsel for respondent No.5 and learned counsel for respondent No.6.

3. Learned senior counsel appearing for the petitioner/appellant herein drew our attention to the prayers sought in the writ petition. They read as under:

"Wherefore, it is respectfully prayed that this Hon'ble Court may graciously be pleased to:

(a) To issue a writ in the nature of mandamus or any other appropriate writ, order or direction to the Respondent Nos.1 to 4 to take all action necessary to permit registration of bike taxies as transport vehicles and grant of appropriate Contract Carriage permits in terms of the Motor Vehicles Act, 1988, Central Motor Vehicles Rules, 1989 and Karnataka Motor Vehicles Rules, 1989;

Or in the Alternative:

(b) To issue a writ in the nature of *mandamus* or any other appropriate writ, order or direction to the Respondent Nos.1 to 4 to sanction and implement a framework for bike taxis in view of S.O. 1248(E) dated 05.11.2004 annexed as **ANNEXURE-A** issued by the Central Government, whereby 'Motor cycle used for hire to carry one passenger on pillion...' has been added as a category of '**Transport vehicle**'.

(c) To issue in the nature of *mandamus* or any other appropriate writ, order or direction directing the Respondent Nos.1 to 4 to ensure that no motorcycles which are registered for personal use and not for use as transport vehicles are allowed to be operated as taxies in any form or manner;

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

4. Appellant's counsel contended that the appellant had filed the writ petition seeking a direction to respondent Nos.1 to 4 to take steps to issue necessary permits for running the business of bike taxis as transport vehicles and to grant appropriate permits in respect of contract carriage permits in respect of contract carriage

permits as per the provisions of the Motor Vehicles Act, 1988, Central Motor Vehicles Rules, 1989 and Karnataka Motor Vehicles Rules, 1989 (hereinafter referred to as "the MV Act, 1988", "Central Rules, 1989" and State Rules, 1989" respectively for the sake of brevity). The grievance of the appellant is that respondent Nos.1 to 4 are not accepting the application sought to be filed by the appellant so as to seek permit under the provisions of Chapter VI of the MV Act, 1988 which deals with Special Provisions Relating to State Transport Undertakings and Chapter V deals with Control of Transport Vehicles including the issuance of permits for contract carriage vehicles.

5. Learned counsel for the appellant further drew our attention to Section 2(7) of the MV Act, 1988 which defines contract carriage, which is an inclusive definition and the power of the Central and State Government to control transport vehicles which also includes a contract carriage and the provisions dealing with application for contract carriage permit namely, Section 73 of the MV Act, 1988, the grant of contract carriage permit as per Section

74, the conditions under which they may be granted as well as the waiver of conditions.

6. That in the instant case, permission is being sought for running a motorcycle taxi being a transport vehicle as per Annexure - A/Notification dated 05/11/2004 as the appellant is seeking permission to run a motorcycle contract carriage permit. In this context, learned senior counsel drew our attention to Annexure - G, which is a letter dated 02/03/2019 addressed to the Transport Minister, State of Karnataka with a copy to the Transport Commissioner and Chairman, State Transport Authority, Bengaluru. He submitted that there has been no response to the said request made by the appellant.

7. Learned senior counsel submitted that the appellant would make one more application in accordance with the provisions of the MV Act, 1988 and the applicable Rules for seeking a contract carriage permit in respect of motorcycle used for hire to carry one passenger on pillion on hire as per Entry (iii) under the column Transport Vehicles vide Notification dated 05/11/2004 (Annexure - A).

8. In that regard, learned senior counsel also drew our attention to the report of the Committee constituted to Propose Taxi Policy Guideline to Promote Urban Mobility, submitted on 15/12/2016 by the Ministry of Road Transport and Highways, wherein there is a specific reference to encourage and permit new forms of urban mobility like bike sharing and e-rickshaws and to reduce delays and to embrace digital technology online grant of the permits is recommended for such transport vehicles engaged in bike sharing and e-rickshaws for last mile connectivity or even otherwise.

9. Learned senior counsel submitted that all that the appellant had sought in the writ petition was a writ of mandamus to respondent Nos.1 to 4 to consider the application of the appellant for issuance of such a permit under the provisions of the MV Act, 1988 and the applicable Rules. This was because, the respondent/State had not responded in a positive manner despite the issuance of Notification dated 05/11/2004 and the Central Government taxi policy guidelines to promote urban mobility. Therefore, direction may be issued to respondent

Nos.1 to 4 to consider the application for grant of contract carriage permits to run bike taxi to the appellant herein.

10. Learned Additional Government appearing for respondent Nos.1 to 4 submitted that as of now, there are no rules which have been framed for the issuance of permits to motorcycle taxis as such and the Department would have to examine whether under the extant provisions of the MV Act, 1988 and the Rules made thereunder by the State and Central Government, the request for permit sought for by the appellant could be considered. She submitted that if this Court is to issue a direction to consider the case of the appellant herein for the grant of permits for running a motorcycle taxi service, the same would be considered in accordance with law. Further, at this stage, no observations may be made with regard to the issuance of the permit as such as the concept of issuance of transport permits to motorcycle taxis is an emerging issue and hence, the State would have to apply its mind on all aspects of matter.

11. Learned counsel for respondent No.6 submitted that if this Court is to issue a direction to respondent Nos.1

to 4 to consider the request/application to be made, then all such applications or requests to be made by all the interested parties may be considered within a time frame to be fixed by this Court.

12. We have referred to the relevant provisions under the MV Act, 1988 which have a bearing on the issuance of transport permits to contract carriages. We have also referred to Annexure - A, which is a Notification issued on 05/11/2004, by the Central Government/respondent No.5/Union of India, categorizing transport vehicles and non-transport vehicles under the category of Transport Vehicles, column No.(iii), which reads as under:

"NOTIFICATIONS UNDER THE MOTOR VEHICLES ACT

(Issued by the Central Government)

Under Section 41(4)

Specification of Types of Motor Vehicles

S.O.1248(E),dated 5-11-2004. – In exercise of the powers conferred by sub-section (4) of section 41 of the Motor Vehicles Act, 1988 (59 of 1988) and in supersession of the notification of the Government of India in the erstwhile Ministry of Surface Transport No.S.O. 451(E), dated the 19th June, 1992, the Central Government hereby specifies the types of motor vehicles as mentioned in column 1 and 2 of the Table below for the purposes of said sub-section (4); -

Transport Vehicles	Non-Transport Vehicles
(1)	(2)
(i)Motor cycle with side car for carrying goods.	(i)Motor cycle with or without side car for personal use.
(ii)Motor cycle with trailer to carry goods	(ii)Mopeds and motorized cycle (Engine capacity exceeding 25cc).
(iii)Motor cycle used for hire to carry one passenger on pillion and motorized cycle-rickshaw for goods or passengers on hire.	(iii)Invalid carriage.
(iv)Luxury cabs.	(iv)Three-wheeled vehicles for personal use.
(v) Three wheeled vehicles for transport of passenger/goods.	(v)Motor car.
(vi)Goods carrier trucks or tankers or mail carriers (N1-N3 category).	(vi)Fork lift.
(vii)Power tillers and Tractors using public roads.	(vii)Vehicles or trailers fitted with equipment's like rig, generator, and compressor.
(viii)Mobile clinic or X-ray van or Library vans	(viii)Crane mounted vehicles.
(ix)Mobile workshops.	(ix)Agricultural Tractors and power Tillers.
(x)Mobile canteens.	(x)Private service vehicle, registered in the name of an individual and if declared to be used by him solely for personal.
(xi)Private Service Vehicle.	(xi)Camper van or trailer for private use.
(xii)Public service Vehicle such as maxi cab, motor cab, stage carriage and contract carriages including tourist vehicles.	(xii)Tow trucks, Breakdown Van and Recovery Vehicles.
(xiii)Educational Institution buses.	(xiii)Tower Wagons and tree trimming vehicles owned by Central, State

	and local authorities.
(xiv)Ambulances.	(xiv)Construction Equipment vehicles as defined in rule 2(ca)
(xv)Animal ambulances.	
(xvi)Camper vans or trailers.	
(xvii)Cash vans.	
(xviii)Fire tenders, snorked ladders, auxiliary trailers and fire fighting vehicles.	
(xix)Articulated vehicles.	
(xx)Hearses.	
(xxi)Omnibuses.	
(xxii)Quadricycle	

13. Therefore, a motorcycle could be used for hire to carry one passenger as a pillion. Even as per the Central Government Notification such a motorcycle used for hire would, *prima facie*, come within the definition of contract carriage as defined under sub-section (7) of Section 2 of the MV Act, 1988, wherein a "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether express 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 authorized by him in this behalf on a fixed or an agreed rate or sum. The definition of contract carriage is an

inclusive definition, which includes a maxi-cab and a motor-cab notwithstanding that separate fares are charged for its passengers. The definition of contract carriage, is an inclusive definition and not an exhaustive one, which would include even a motorcycle taxi which is to be used for hire or reward on which a passenger could be carried on pillion as it is categorized as a transport vehicle by issuance of notification by the Central Government under the provisions of the MV Act, 1988. In this regard, reference could also be made to sub-section (28) of Section 2 of the Act which defines a 'motor vehicle' or 'vehicle' which means mechanically propelled vehicle adapted for use upon roads which includes a Chassis and sub-section (27) of Section 2 which defines a 'motorcycle' which means a two-wheeled motor vehicle, inclusive of any detachable side-car having an extra wheel, attached to the motor vehicle.

14. Insofar as contract carriages are concerned, as per Chapter V of the MV Act, 1988, necessity for permits is envisaged and Sections 73 and 74 deal with the application for contract carriage permit and the grant of contract carriage permit subject to certain terms and conditions

stipulated therein. In fact, there is also a scheme for renting motor-cabs, which is envisaged under Section 75 of the Act.

15. In the instant case, the permit sought is with regard to renting of motor cabs or motorcycles/taxi service for hire or reward and therefore, we find that the applications to be made by the appellant or any other entity similarly situated for seeking such a permission ought to be considered by respondent Nos.1 to 4 having regard to the aforesaid provisions as well as in accordance with law.

16. At this stage, learned senior counsel for the appellant submits that the appellant would make an application within a period of two weeks from today. If such an application is made, respondent Nos.1 to 4 shall consider the same in accordance with law within a period of two months from today.

17. In the result, the appeal is **disposed of** by modifying the order dated 12/09/2019, passed in the writ petition (W.P.No.14485/2019) as well as the order dated

14/11/2019, passed in the review petition
(R.P.No.516/2019).

Parties to bear their respective costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

*S**