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In the Court of State Commissioner for Persons with Disabilities
National Capital Territory of Delhi
25- D, Mata Sundari Road, Near Guru Nanak Eye Centre, New Delhi
Phone-011-23216002-04, Telefax: 011-23216005,
Email: comdis.delhi@nic.in

[Vested with powers of Civil Court under the
Rights of Persons with Disabilities Act, 2016]

Case No. 996/1108/2019/06/7624-7634 Dated: 05/11/2019

In the matter of:

SUO-MOTU

Versus

Regional Operations Manager, Gurgaon,
The Uber India,
One Horizon Centre, 23rd Floor,
Golf Course Road, Sector-43,
Gurugram-122002.
Haryana.

.....Respondent No.1

Sh. Pradeep Parmeshwaran,
CEO, India and South Asia,
The Uber India,
One Horizon Centre, 23rd Floor,
Golf Course Road, Sector-43,
Gurugram-122002.
Haryana.

.....Respondent No. 2

Ms. Vishpala Reddy,
Sr. Vice President / Regional HR Director & Head- Asia Pacific
The Uber India,
One Horizon Centre, 23rd Floor,
Golf Course Road, Sector-43,
Gurugram-122002.
Haryana.
Email: vishpala@uber.com

.....Respondent No.3

Last date of Hearing: 30.10.2019

Present: Pradyumn Sharma, counsel alongwith Sh. Aditya Dayal for
respondents.

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ORDER

Sh. Venkatesh of Ummeed, Ray of Hope had forwarded a link for the video clip of the incident that happened with Sh. Arman Ali, Executive Director, National Centre for Promotion of Employment for Disabled People (NCPEDP), E-150, Ground Floor, East of Kailash, New Delhi vide his email dated 24.06.2019. Sh. Arman Ali is a person with 80% locomotor disability and a wheel chair user. It was alleged in the video clip from Mirror Now that the drivers of Uber India refused to load the wheelchair of Sh. Arman Ali in their cars and cancelled the trips and thus he was discriminated against on the ground of disability. Consequently, Sh. Arman Ali missed his flight and had to spend Rs. 14,000/- for a fresh air ticket. Uber India offered to refund only the cancellation charges of Rs. 45/-.

2. The Rights of Persons with Disabilities Act, 2016 hereinafter referred to as 'Act', has been enacted to implement the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and for the matters connected therewith or incidental thereto. The following are, amongst the core principles laid down in the Convention:

- (a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;

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3. As per Section 2 (h) of the Act "**discrimination**" in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation. Section 3 of the Act mandates to ensure that the persons with disabilities enjoy the right to equality and they are **not discriminated** against.

4. Section 46 of the Act mandates that "the service providers whether govt. or private, shall provide **services** in accordance with the rules on accessibility formulated by the Central Govt. under Section 40 within a period of 2 years from the date of notification of such rules".

5. As per Section 2 (x) "**public facilities and services**" include all forms of delivery of **services** to the public at large, including housing, educational and vocational trainings, employment and career advancement, shopping or marketing, religious, cultural, leisure or recreational, medical, health and rehabilitation, banking, finance and insurance, communication, postal and information, access to justice, public utilities, **transportation**;

6. Section 89 of the Act provides, "any person who contravenes any of the provisions of this Act, or of any rule made thereunder shall for first contravention be punishable with fine which may extend to Rs. 10,000/- and for any subsequent contravention with fine which shall not be less than Rs. 50,000/- but which may extend to Rs.5,00,000/-.

7. Section 80 (b) of the Act provides that State Commissioner shall "inquire, suo motu or otherwise deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for


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which the State Government is the appropriate Government and take up the matter with appropriate authorities for corrective action".

8. A suo-motu cognizance of the incident was taken under Section 80 of the Act and the respondent was directed to show cause why Sh. Arman Ali was discriminated against and to submit his/her version of the case by 10.07.2019 and a hearing was also scheduled on 04.07.2019 vide show cause-cum-hearing notice dated 24.06.2019. The said notice was sent to the address of the Regional Operations Manager, Gurgaon, Uber India, DLF Phase 5, Sector 43, Gurgaon-122002, Haryana as was available in the internet. It was also emailed at various addresses such as grievanceoffice_india@uber.com and also at supportdelhi@uber.com. However, neither any response was received from Uber India nor anyone appeared on its behalf on 24.07.2019.

9. A copy of the notice was also forwarded to Sh. Arman Ali who appeared on 24.07.2019.

10. As the emails did not get bounced, it was presumed that someone must have received them in Uber India. The concern of this Court was therefore conveyed to Uber India which is a private establishment as defined in Section 2 (v) of the Act, which reads as,

"private establishment" means a company, firm, cooperative or other society, associations, trust, agency, institution, organisation, union, factory or such other establishment as the appropriate Government may, by notification, specify.

11. It was also brought to the notice of Uber India that besides the penal provisions for contravention of the Act, Section 93 also provides for punishment for failure to furnish information which may extend to fine of Rs. 25,000/- in respect of each offence and in case of continued

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failure or refusal, with further fine which may extend to Rs.1,000/- for each day of continued failure or refusal.

12. Sh. Arman Ali suggested that a copy of the notice and RoP should be sent to Sh. Pradeep Parmeshwaran, CEO, India and South Asia, Uber India at Gurgaon office and Ms. Vishpala Reddy, Sr. Vice President/Regional HR Director & Head-Asia Pacific of the company at vishpala@uber.com. They were also impleaded as respondent no. 2 & 3 respectively. Besides emailing them, the RoP and copy of Show Cause-cum-hearing notice were also sent at their given addresses and the matter was fixed for hearing on 22.08.2019. The communication sent to Ms. Vishpala Reddy by Speed Post was received back.

13. On the next date of hearing on 22.08.2019 also none appeared. On further search, the address at One Horizon Centre, 23rd Floor, Golf Course Road, Sector-43, Gurugram was found in the internet and the copy of RoP dated 02.09.2019 was sent at that address. Sh. Aditya Dayal, Associate Counsel, India South Asia on behalf of Uber India Pvt. Ltd (Uber India) responded vide email dated 01.10.2019 and sought extension till 15.10.2019 to file the response as they did not receive the notice and the RoP earlier.

14. Another hearing was scheduled on 30.10.2019. During the hearing, Sh. Pradyumn Sharma, Counsel alongwith Sh. Aditya Dayal appeared on behalf of Uber India System Private Limited and filed written reply dated 30.10.2019 which is reproduced below:

*"This is with reference to the above referred show cause notice dated June 24, 2019 ("**Notice**") issued by your good office to Uber India Systems Private Limited ("**Uber**", "**we**" and "**our**"). In response to the said Notice, Uber now submits this present reply.*


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We have noted the contents of the Notice as it refers to a video clip of Mirror Now wherein it has been alleged that drivers of Uber refused to load wheel chair of Mr. Arman Ali in the cars and cancelled the trips and thus was discriminated against.

At the outset, and without prejudice to the contents of the present reply, Uber would like to express its sincerest regrets for the inconvenience experienced by Mr. Arman Ali during his interactions with driver partners registered on the Ether technology platform ("**Uber App**"). As part of our policy, we had reached out to Mr. Arman Ali as soon as this incident was brought to our attention and assured him that any kind of alleged incidents of discrimination, once reported, are thoroughly investigated by our team. These investigations are followed by corrective actions as per our policies and guidelines (available at: <https://www.uber.com/legal/community-guidelines/ind-en/>) and annexed with this response as Annexure A. It worthy to mention that the same process has been followed by Uber in relation to this unfortunate incident as well, and we have communicated the gravity of the incident to the Driver Partner involved, and reiterated our non-discrimination policy to them along with a warning to refrain from any such discriminatory conduct in the future.

Our non-discrimination policy is apprised to every driver partner utilizing the Uber App at the time of on-boarding such driver partners. Uber insists that such driver partners comply with the community guidelines (available at <https://www.uber.com/legal/community-guidelines/ind-en/>) while using the Uber App. As a global organization, and keeping in mind the mandate of the United Nations Convention on the Rights of Persons with Disabilities, we at Uber believe that everyone should feel supported and welcomed when they use the Uber App. Accordingly, Uber already conducts disability sensitization programs for its driver partners which are aimed at increasing awareness and education about the problems faced by differently-abled persons. Uber also has in place an accessibility policy (available at <https://accessibility.uber.com/>) that is annexed with this response as Annexure B.

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Having said that, we would like to specifically highlight that Uber is a technology company or aggregator that seeks to connect the riders with independent third party transport service providers (i.e., the Driver-Partners); based on the requirements specified by the riders of the Uber App. The operation of Uber only involves providing riders a technology platform for connecting them with independent third party contractors; wherein, such independent third party contractors are not employees of Uber, such contractors are not plying vehicles owned by Uber, and Uber does not control the conduct of such contractors.

In this regard, while the incident involving Mr. Arman Ali was truly regretful, we would like to state that Uber does not have any actual-on-ground control of the Driver Partners, and the decision to accept and fulfil the travel-booking on the Uber App rests solely with the Driver Partners. Based on our internal investigation, we understand that the second Driver Partner was unable to carry Mr. Arman Ali's wheelchair on the front and rear seats of the car since the wheelchair was not fitting into the trunk of the car, and accordingly, the Driver Partner was unable to fulfil the travel-booking by Mr. Arman Ali. As stated above, we have warned the concerned driver partners to refrain from acting in such a manner in future instances; however, please do note that owing to the nature of business of Uber, Uber cannot actively control the conduct of driver partners, which is solely the domain of the independent driver partners.

However, we would also like to reiterate that Uber is committed to fostering a non-discriminatory environment towards all persons. In this regard, we would like to bring your attention to certain initiatives undertaken by Uber for the furtherance of the principles of non-discriminatory treatment towards differently-abled persons – i.e. Uber ASSIST and Uber ACCESS. We have partnered with MPHASIS, a pioneer in supporting accessibility of persons with disability (through its corporate social responsibility and diversity initiatives) to increase the mobility, efficiency, and freedom of customers/ users of the Uber App. Uber ACCESS and Uber ASSIST connect customers who are differently abled, older adults or other persons who may feel more comfortable with an extra hand when getting from place to place, with driver

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partners who provide door to door service. Uber ACCESS and Uber ASSIST are presently being tested as pilot projects in Bengaluru; and the driver partners associated with the programs are the top-most rated driver partners, and they have received comprehensive in-person training from the Diversity and Equal Opportunity Centre (DEOC) to sensitize them in dealing with differently abled customers and in order to enable them to assist customers. These programs also have a dedicated fleet of vehicles that can accommodate most foldable wheelchairs. Brief details of the Uber ACCESS and Uber ASSIST programs are available at — <https://www.uber.com/en-IN/blog/bangalore/faqs-uberassist-uberaccess/>; https://www.uber.com/enIN/blog/bangalore/making_blr_accessible/; and https://www.uber.com/en-IN/blog/bangalore/uberaccess_blr/ and also annexed with this response as Annexure C.

Uber plans to launch the Uber ACCESS and Uber ASSIST programs pan-India over time, and is already actively working towards achieving ease of accessibility for differently-abled persons to be able to avail the services offered through the Uber App.

Uber would be delighted to partner with and assist the Ministry of Social Justice and Empowerment, and your good offices, across India, to drive the sensitization of individuals towards disabilities and the needs of differently-abled persons, and Uber is willing to develop and provide services to further empower persons with disabilities.

We hope the above clarifies the matter and will satisfy your query. Assuring you of our best cooperation and looking forward to your sustained support.

Thanking you,

Yours sincerely,
For Uber India Systems Private Limited

Joyjyoti Misra
Authorized Representative"

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15. Sh. Pradyumn Sharma specifically drew the attention to annexure B and C to bring home the point that Uber had started the pilot project **Uber Assist & Uber Access** in November, 2017 itself and there is a specific question in the FAQs which reads, "will my driver be able to fold up my wheelchair?" and the answer is "yes. Driver-partners will have an understanding of how to fold your wheelchair, but please feel free to provide specific instructions along the way."

16. It is observed that Uber Community Guidelines under the heading 'Why riders can lose access to Uber' and 'why drivers can lose access to Uber', there are guidelines on 'discrimination'.

17. Guidelines for the riders read as under:

*"Uber has a zero tolerance policy towards discrimination of any kind. This means you will lose access to your account if you are found to have discriminated against drivers or other riders based on their race, caste, religion, national origin, **disability**, sexual orientation, sex, marital status, gender identity, age or any other characteristic protected under applicable law."*

18. The guidelines for drivers with respect to disability under 'discrimination' is as under:

"We have a zero tolerance policy towards discrimination of any kind at Uber."

*What leads to you losing access to your account? It is unacceptable to refuse to provide services based on where someone is going, or characteristics like a person's race, caste, religion, national origin, **disability**, sexual orientation, sex, marital status, gender identity, age or any other characteristic protected*

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under relevant central, state or local law. Actions like these will result in permanent deactivation of your account."

19. It is also observed that under the Uber Access and Uber Assist initiated in November, 2017, '*driver-partners that are trained in care giving and the vehicles can accommodate most foldable wheelchairs*'.

20. Annexure B to the reply is about Accessibility at Uber which provides information specifically for use of riders with various disabilities such as those who are blind or low vision, deaf and hard of hearing, those with mobility disabilities, assistance needs and the drivers with disabilities who are deaf and hard of hearing and driver partners who have mobility disabilities.

21. It is also observed that while the guidelines and the policy of Uber India are fairly disabled friendly and I appreciate the same, the policy does not provide for any compensation to the customers/riders with disabilities in such situations. The key is the implementation of the policies and monitoring. Awareness about the key provisions on 'non-discrimination' and 'accessibility' for persons with disabilities in the Act as well as the policy of Uber itself and appropriate training are integral part of the implementation process.

22. As regards the contention of the Uber India that it is only the aggregator and hence Uber does not control the conduct of the third party transport service providers, cannot be a ground for abdication of its responsibility to ensure compliance of the relevant laws and its own policy and providing for compensation for the loss caused due to the negligence or poor quality of service on the part of those who are mandated to follow the guidelines and the **service providers**.

23. I would also like to take this opportunity to record my observation and the concern of persons with disabilities that the passenger car

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manufacturers in India neither have a universal design policy nor is there any mandate for them to manufacture a certain percentage of disabled friendly cars out of the total number of the vehicles produced so that all or enough number of taxis meet the requirement of persons with disabilities. A person with disability can also purchase a car of his/her choice and use it on equal basis with others. I would like to reiterate my recommendation, which I had made in one of the Society of Indian Automobile Manufacturer's (SIAM) General Body Meeting many years ago that they should take the initiative to produce disabled friendly vehicles in India. Ministry of Heavy Industries and Ministry of Road Transport and Highways should also consider forming a policy on this.

24. In light of the above discussion, the following recommendations are made:

- i) The respondent company should introduce training module for its employees as well as the driver-partners on key provisions of the Act and its own policy in respect of riders with disabilities.
- ii) The agreement between the respondent company and the driver-partners should provide for penalties in case of discrimination or non-compliance with the provisions of the Act and its policy as a deterrent.
- iii) The respondent company should provide for compensating the riders with disabilities for any loss caused due to the negligence or poor quality of service by the respondent company or its driver partners to riders with disabilities.
- iv) The respondent company should compensate Sh. Arman Ali for the loss he incurred on buying the fresh air ticket and the stress he had to undergo on account of refusal to take

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him to the airport to set an example and as a deterrent for all concerned including driver partners.

- v) Ministry of Heavy Industries and Ministry of Road Transport and Highways should take the initiative to frame a policy for manufacturing disabled friendly cars and vehicles in consultation with Society of Indian Automobile Manufacturers or other organizations keeping in view the needs of persons with disabilities. The Policy should mandate that the car/vehicle manufacturers should either follow a universal design of the car/vehicle usable by 'ALL' or alternatively, they should be mandated to produce a certain number of disabled friendly cars/vehicles or make them available 'on demand'.

25. Due to unavailability of the name, designation, address and other contact details of the concerned functionaries of the company at an appropriate and prominent location in the website/internet, a lot of time and effort was lost to reach the concerned persons and it caused inordinate delay in passing this order. Hence, Ministry of Corporate Affairs should mandate all companies operating in India to ensure easy access to information and contact details.

26. This Court and the complainant be informed of the action taken on the above recommendations within three months from the date of receipt of this order as required under Section 81 of the Act which is reproduced below:

"Whenever the State Commissioner makes a recommendation to an authority in pursuance of clause (b) of section 80, that authority shall take necessary action on it, and inform the State Commissioner of the action taken within three months from the date of receipt of the recommendation:

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Provided that where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the State Commissioner for Persons with Disabilities within the period of three months, and shall also inform the aggrieved person."

27. The complaint is disposed off.

28. Given under my hand and the seal of the Court this 5th day of November, 2019



T.D. Dhariyal
(T.D. Dhariyal) 5/11/19

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Copy to:

1. Secretary, Ministry of Heavy Industries, Govt. of India, Udyog Bhawan, New Delhi - 110011. Email : shioff@nic.in
For action on para 23 and recommendation no. (v)
2. Secretary, Road Transport and Highway, Govt. of India, Transport Bhawan, Sansad Marg, New Delhi - 110001. Email : secy-road@nic.in
3. Secretary, Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment, 5th Floor, Pt. Deendayal Antyodaya Bhawan, CGO Complex, Lodhi Road New Delhi - 110003. Email: secretaryda-msje@nic.in
For information and necessary action as deemed fit w.r.t. the last but one para of the reply of Uber at page 8 of this order.
4. Secretary, Ministry of Corporate Affairs, A-wing, Shastri Bhawan, Rajendra Prasad Road, New Delhi, 110001 Email: secy.mca@nic.in
5. Pr. Secretary cum-Commissioner, Transport Department, Govt. of NCT of Delhi, 5/9 Under Hill Road, Delhi-110054. Email: commtpt@nic.in
For necessary action on para 25

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6. Mr. Rajan Wadhera, President, Society of Indian Automobile Manufacturers (SIAM), Core 4-B, 5th Floor, India Habitat Centre, Lodhi Road, New Delhi - 110003. Email : siam@siam.in

For action on para 23 and recommendation no. (v)

7. Sh. Arman Ali, Executive Director, National Centre for Promotion of Employment for Disabled People (NCPEDP), E - 150, Ground Floor East of Kailash, New Delhi - 110065. Email: secretariat@ncpedp.org / secretariat.ncpedp@gmail.com

For information

8. Sh. Venkatesh of Ummeed. Email: venkatesh.kz@gmail.com


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