

IN THE HIGH COURT OF DELHI AT NEW DELHI  
EXTRAORDINARY ORIGINAL CIVIL JURISDICTION

WP (C) NO. OF 2017

**IN THE MATTER OF:**

DELHI COMMERCIAL DRIVER UNION .....PETITIONER

VERSUS

UNION OF INDIA & OTHERS .....RESPONDENTS

**INDEX**

<b><u>SL.NO.</u></b>	<b><u>PARTICULARS</u></b>	<b><u>PAGE NO.</u></b>
1	Notice of Motion	
2	Court Fee	
3	Urgent Application	
4	Memo of Parties	
5	Proof of services	
6	Synopsis & List of Dates	
7	Writ Petition under Article 226 of the Constitution of India along with Affidavit	
8	<b><u>ANNEXURE P-1</u></b> True copy of the registration certificate of the Petitioner	
9	<b><u>ANNEXURE P-2</u></b> True copy of the Constitution of the Petitioner	
10	<b><u>ANNEXURE P-3</u></b> Images of cab run by the Respondent No. 6	
11	<b><u>ANNEXURE P-4</u></b> True copy of the order of Labour Commissioner, State of California dated 03.06.2015.	

12	<b><u>ANNEXURE P-5</u></b> True copy of the order of Employment Tribunal London dated 12.10.2016	
13	<b><u>ANNEXURE P-6</u></b> True copy of the newspaper articles covering the protests of the drivers against exploitation and unfair policies of Respondent No.5-6.	
14	<b><u>ANNEXURE P-7</u></b> True copy of the newspaper articles covering incident of suicide by a driver.	
15	<b><u>ANNEXURE P-8</u></b> Authorisation letter signed by the secretary of the Petitioner Union.	
16	Application on behalf of the petitioner/applicant under Section 151 of C.P.C. seeking exemption from filing certified/ typed copy of Dim Annexure, Handwritten, marked & with law margin with affidavit	
17	Vakalatnama	

PETITIONER

THROUGH

**AKASH VAJPAI & SHOUMENDU MUKHERJI**

ADVOCATES

E-126, GREATER KAILASH PART-II

NEW DELHI-110048

9711904919

NEW DELHI

DATED: \_\_\_\_\_, 2017

IN THE HIGH COURT OF DELHI AT NEW DELHI  
EXTRAORDINARY ORIGINAL CIVIL JURISDICTION

WP (C) NO. OF 2017

**IN THE MATTER OF:**

DELHI COMMERCIAL DRIVER UNION .....PETITIONER

VERSUS

UNION OF INDIA & OTHERS .....RESPONDENTS

**MEMO OF PARTIES**

**Delhi Commercial Driver Union**

Shop No. 1, L-Block, Kashmiri Market  
Lajpat Nagar – II  
New Delhi - 110024

.....PETITIONER

**Versus**

**Union of India**

Through Secretary,  
Ministry of Road Transport and Highways  
Transport Bhawan, 1, Sansad Marg  
New Delhi – 110001

.....RESPONDENT NO. 1

**Union of India**

Through Secretary,  
Ministry of Labour and Employment  
Shram Shakti Bhawan, Rafi Marg  
New Delhi – 110001

.....RESPONDENT NO. 2

**Labour Department**

Government of N.C.T. of Delhi  
Through Secretary  
5, Sham Nath Marg,  
Delhi – 110054

.....RESPONDENT NO. 3

**Transport Department**

Government of N.C.T. of Delhi  
Through Secretary  
5/9 under Hill Road  
Delhi – 110054

.....RESPONDENT NO. 4

**Uber India Systems Private Limited**

Through Director  
Level 13 Platinum Techno Park,  
Plot No.17/18, Sec-30A,  
Vashi Navi Mumbai Thane  
Maharashtra-- 400705

.....RESPONDENT NO. 5

**ANI Technologies Private Limited**

Through Director  
414, 3rd Floor, 4th Block, 17th Main,  
100 Feet Road Koramangala Bangalore  
Karnataka- 560034

.....RESPONDENT NO. 6

PETITIONER

THROUGH

**AKASH VAJPAI & SHOUMENDU MUKHERJI**

ADVOCATES

E-126, GREATER KAILASH PART-II

NEW DELHI-110048

9711904919

NEW DELHI

DATED: \_\_\_\_\_, 2017

IN THE HIGH COURT OF DELHI AT NEW DELHI  
EXTRAORDINARY ORIGINAL CIVIL JURISDICTION

WP (C) NO. OF 2017

**IN THE MATTER OF:**

DELHI COMMERCIAL DRIVER UNION .....PETITIONER

VERSUS

UNION OF INDIA & OTHERS .....RESPONDENTS

**Notice of Motion**

Sir,

The enclosed Writ Petition in the aforesaid matter is being filed on behalf of Delhi Commercial Driver Union and is likely to be listed \_\_\_\_/04 /2017. Please take notice accordingly.

PETITIONER

THROUGH

**AKASH VAJPAI & SHOUMENDU MUKHERJI**

ADVOCATES

E-126, GREATER KAILASH PART-II

NEW DELHI-110048

9711904919

NEW DELHI

DATED: \_\_\_\_\_, 2017

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY ORIGINAL CIVIL JURISDICTION

WP (C) NO. OF 2017

**IN THE MATTER OF:**

DELHI COMMERCIAL DRIVER UNION .....PETITIONER

VERSUS

UNION OF INDIA & OTHERS .....RESPONDENTS

**PROOF OF SERVICES**

IN THE HIGH COURT OF DELHI AT NEW DELHI  
EXTRAORDINARY ORIGINAL CIVIL JURISDICTION

WP (C) NO. OF 2017

**IN THE MATTER OF:**

DELHI COMMERCIAL DRIVER UNION .....PETITIONER

VERSUS

UNION OF INDIA & OTHERS .....RESPONDENTS

**URGENT APPLICATION**

To  
The Registrar  
High Court of Delhi  
New Delhi-110003

Sir,

Kindly treat the accompanying petition on an urgent basis as per the  
High Court Rules

PETITIONER

THROUGH

**AKASH VAJPAI & SHOUMENDU MUKHERJI**

ADVOCATES

E-126, GREATER KAILASH PART-II

NEW DELHI-110048

9711904919

NEW DELHI

DATED: \_\_\_\_\_, 2017

IN THE HIGH COURT OF DELHI AT NEW DELHI  
EXTRAORDINARY ORIGINAL CIVIL JURISDICTION

WP (C) NO. OF 2017

**IN THE MATTER OF:**

DELHI COMMERCIAL DRIVER UNION .....PETITIONER

VERSUS

UNION OF INDIA & OTHERS .....RESPONDENTS

**COURT FEE**

IN THE HIGH COURT OF DELHI AT NEW DELHI  
EXTRAORDINARY ORIGINAL CIVIL JURISDICTION

WP (C) NO. OF 2017

**IN THE MATTER OF:**

DELHI COMMERCIAL DRIVER UNION .....PETITIONER

VERSUS

UNION OF INDIA & OTHERS .....RESPONDENTS

**SYNOPSIS AND LIST OF DATES**

The present writ petition under Article 226 of the Constitution stems from the rising disillusionment and discontentment among the drivers, belonging to the Petitioner union, who are employed with Respondent No. 5 and 6. A large number of such drivers, almost over 1,50,000 in NCR are being subjected to exploitation every day with respect to their pay and service conditions and are being denied benefits of several labour laws as well as their fundamental rights under the Constitution by the Respondent No. 5-6. Respondent No. 5-6 instructs, manages and controls the drivers. Their supervision and control extend to all stages of operation from beginning to end. This Writ Petition *inter alia* demonstrates deplorable working and pay conditions of the drivers and thus prays for a committee to be set up which can look into their grievances and can give appropriate recommendations in order to improve their pay and working

conditions. The present writ petition also prays for a fixed amount to be given as compensation to the drivers who are victims of road accidents and to their next of kin in the family when his death occurs during the period of employment with Respondent Nos. 5 and 6.

To give a brief factual background, the Respondent No. 5 commenced its operations in India in August 2013 while Respondent No. 6 commenced its operation in 2010. The Respondent No. 5 and Respondent No. 6 accept bookings from the public through a mobile based application. Once the customer makes a booking, Respondent No. 5-6 by using their internal systems searches for registered drivers available around the customer's location. The Respondent No. 5-6 exercises their sole discretion in selecting a driver to service the ride. However, the element of freedom and independent decision-making on part of the driver is non-existent in the entire sequence of actions. The chargeable fare keeps varying on a daily basis on the whims of the Respondent No.5-6. No prior notice is given to the driver in this regard. Drivers' also have to suffer arbitrary deductions in their payments on vague and unsubstantiated grounds, without even giving them a chance to respond. The drivers are demanding a revision in the minimum fares and the bringing back of bonuses that were on offer in the initial days.

From time to time this Court and Hon'ble Supreme Court of India by interpreting various articles of Constitution have given an idea of the conditions under which

workman can be hired for work and also under which they can be compelled to work. The Hon'ble Supreme Court has held that the State is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly when he belongs to the weaker sections of the community, and unable to wage a legal battle against a strong and powerful opponent who is exploiting him. Therefore Respondent No. 1-4 must examine the fact that whether Respondent No. 5-6 are observing various social welfare and labour laws enacted for the benefit of the workmen. This Hon'ble Court must intervene under Article 226 of the Constitution as driver members of the Petitioner Union belong to the underprivileged segment of society and there is no system of redressal of their grievances vis-à-vis their working conditions.

It is respectfully prayed that for formation of a committee to look into their grievances will hopefully end the misery, suffering and helplessness of these victims of most inhuman exploitation. It will be possible to improve the life conditions of these drivers and ensure social justice to them. Hence, the present writ petition.

**LIST OF DATES**

<b>Date</b>	<b>Event</b>
2010	Respondent No. 6 commenced its operation in India
August 2013	Respondent Nos. 5 commenced its operations in India
3.6.2015	Labour Court of California in the case of <b>Barbara</b>

	<b>Ann Berwick V UBER Technologies Inc</b> held that drivers are employees of Uber
28.10.2016	Employment Tribunal of London in the case of <b>Mr. Y Aslam Vs. Uber B.V. &amp; Others</b> also held that drivers are employee of Uber.
October 2016	Respondent No.5-6 faced heavy backlash across the country from the drivers employed with them on account of drastic reduction in drivers' incomes and inhuman working conditions. This has resulted due to Respondent No.5-6's arbitrary and whimsical alteration in the payment terms and service conditions of their drivers on a daily basis without giving them any prior notice.
10.2.2017 to 24.2.2017	At least 5000 drivers of Respondent Nos. 5 and 6 protested in Delhi and went on indefinite strike against the suspension of incentives, low wages and deteriorating service conditions.
18.4.2017	Drivers of Respondent Nos. 5 and 6 went on strike demanding to restore their previous wage and service conditions when initially they had joined the Respondent No. 5-6.
___.4.2017	Hence present writ petition

IN THE HIGH COURT OF DELHI AT NEW DELHI  
EXTRAORDINARY ORIGINAL CIVIL JURISDICTION

WP (C) NO. OF 2017

**IN THE MATTER OF:**

DELHI COMMERCIAL DRIVER UNION .....PETITIONER

VERSUS

UNION OF INDIA & OTHERS .....RESPONDENTS

**WRIT PETITION UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA SEEKING FROM THIS HON'BLE  
COURT WRIT OF MANDAMUS OR ANY OTHER  
APPROPRIATE WRIT, ORDER OR DIRECTION DIRECTING  
RESPONDENTS NO. 1-4 TO APPOINT AND CONSTITUTE A  
COMMITTEE TO LOOK INTO THE COMPLAINTS VIS-À-  
VIS WORK AND PAY CONDITIONS OF DRIVERS  
WORKING WITH RESPONDENT NO. 5-6 AND TO GIVE  
SOME RECOMMENDATIONS IN ORDER TO IMPROVE  
THEIR WORK AND PAY CONDITIONS**

**WRIT PETITION UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA SEEKING FROM THIS HON'BLE  
COURT WRIT OF MANDAMUS OR ANY OTHER  
APPROPRIATE WRIT, ORDER OR DIRECTION DIRECTING  
RESPONDENTS NO 1-4 TO APPOINT AND CONSTITUTE A  
COMMITTEE FOR THE MONITORING OF THE  
IMPLEMENTATION OF DIFFERENT LABOUR LAWS VIS-À-  
VIS DRIVERS WORKING WITH RESPONDENT NO. 5-6**

**WRIT PETITION UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA SEEKING FROM THIS HON'BLE  
COURT A WRIT OF MANDAMUS OR ANY OTHER  
APPROPRIATE WRIT, ORDER OR DIRECTION DIRECTING  
THE RESPONDENTS NO. 5-6 TO PAY COMPENSATION TO  
THE DRIVERS WHO ARE VICTIMS OF ROAD ACCIDENTS  
OR TO THEIR FAMILY IN CASE OF THEIR DEATH  
DURING THE COURSE OF EMPLOYMENT AND TO FRAME  
A SCHEME OF COMPENSATION FOR DRIVERS IN THIS  
REGARD;**

**WRIT PETITION UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA SEEKING FROM THIS HON'BLE  
COURT A WRIT OF MANDAMUS OR ANY OTHER  
APPROPRIATE WRIT, ORDER OR DIRECTION DIRECTING  
THE RESPONDENTS TO NOTIFY THE  
RECOMMENDATIONS OF THE COMMITTEE AS  
GUIDELINES TO BE FOLLOWED BY RESPONDENT NO. 5-6.**

**TO  
THE HON'BLE CHIEF JUSTICE  
AND HER COMPANION JUSTICES OF THE  
HON'BLE DELHI HIGH COURT, NEW DELHI**

**MOST RESPECTFULLY SHEWETH:**

1. That Petitioner is a registered Trade Union of drivers working with Respondent No. 5-6. Currently Petitioner has 300 members who are employed by the Respondent No. 5-6. Through this Writ Petition Petitioner likes to draw court's

attention towards a situation where large number of drivers are being subjected to exploitation by Respondent No. 5-6 and also are being denied the benefits of social welfare labour laws. This Writ Petition demonstrate deplorable working and pay conditions of 1, 50, 000 drivers working with Respondent No. 5-6 in NCR and therefore demands a committee to be set up which can look into their grievances and can give appropriate recommendations in order to improve their miserable pay and working conditions. True copy of the registration certificate of the Petitioner and True copy of the Constitution of the Petitioner are enclosed here as **ANNEXURE P-1 & ANNEXURE P-2.**

2. Outcome of this case may have major ramification not only in India but around the world as Writ Petition pertains to a new and important issue for the court whether this Hon'ble Court should intervene to alleviate the fears and concerns of nearly 1.5 lakh drivers working for Respondent No. 5-6 in an unique set up i.e. a so called "gig economy" and whether is it necessary that a socio-legal investigation should be carried out for the purpose of determining what are the conditions of the drivers employed with app based taxi services specifically Respondent No. 5-6.
3. Respondent No.5 and Respondent No.6 are companies

incorporated under the Companies Act, 1956. Respondent No.5 and Respondent No.6 provide transportation services to the public. Any person willing to avail their services must download their mobile applications, created and owned by the Respondent No.5 and Respondent No.6. Approximately, 10 million bookings are made on their mobile app in a week; and almost 5 lacs drivers are employed with Respondent No.5 and Respondent No.6.

4. The Respondent No. 5 commenced its operations in India in August 2013 while Respondent No. 6 commenced its operation in 2010. Presently Respondent No.5 and Respondent No.6 are providing their services in 29 cities of India. The services provided by Respondent No.5 and Respondent No.6 are as follows:

<b>Respondent No. 6</b>	<b>Respondent No. 5</b>
<b>OLA Share:</b> Service offering customers to share their ride with other customers headed in the same direction and split the fare proportionately. This works out to be the cheapest offering.	<b>Uber Pool:</b> Service offering customers to share their ride with other customers headed in the same direction and split the fare proportionately. This works out to be the cheapest offering.
<b>OLA Micro and Mini:</b> Service	<b>Uber Go:</b> Service offering a

<p>offering a cheap mode of travel to customers using low end cars, usually hatchbacks. This is usually preferred for single person travel.</p>	<p>cheap mode of travel to customers using low end cars, usually hatchbacks. This is usually preferred for single person travel.</p>
<p><b>OLA Prime:</b> Service offering customers a slightly more expensive travel option with premium high end cars, usually sedans. This is usually preferred for group / family travel.</p>	<p><b>Uber X:</b> Service offering customers a slightly more expensive travel option with premium high end cars, usually sedans. This is usually preferred for group / family travel. Minimum fare is fixed at Rs 69/- (Rupees Sixty Nine only) and maximum capacity is 4 persons.</p>
<p><b>OLA Lux and OLA Shuttle:</b> Service offering customers SUVs and large sized vehicles like Tempo Traveller.</p>	<p><b>Uber XL:</b> Service offering customers SUVs and large sized vehicles. Minimum fare for this option is Rs. 150/- (Rupees One Hundred and Fifty only) and maximum capacity is 9 persons.</p>

5. The Respondent No. 5 and Respondent No. 6 accept bookings from the public through a mobile based application. A customer has to first download their mobile

application on his Smartphone, thereafter register his mobile number, and feed in the pick-up and destination points to confirm a booking. Customer can pay through cash/credit card/debit card/ e-wallet.

6. Once the customer makes a booking, Respondent No. 5-6 by using their internal systems searches for registered drivers available around the customer's location. The Respondent No. 5-6 exercises their sole discretion in selecting a driver to service the ride.

7. The driver must also register with the Respondent No. 5-6 on a separate mobile application created for him in order to be eligible to receive customer bookings. However, the element of freedom and independent decision-making on part of the driver is non-existent in the entire sequence of actions. Once a booking is accepted by the driver on the mobile application, the driver contacts the customer over phone. At this stage, the driver cannot enquire about the destination from the customer as this is considered a breach of the Respondent No. 5-6's service policy. The driver does not enjoy the freedom to decline the booking after getting to know the destination. The driver has no option but to accept a "lead" without even knowing the destination. Moreover, the ride service is to be fulfilled via pre-determined route on

a pre- determined fare as fixed by the Respondent No.5-6. The driver has no say in either the routes to take or fare to be charged. If a driver decides to choose an alternative route, it entails adverse consequences from the Respondent No.5-6. The fare is non-negotiable between the driver and customer. At the end of a trip, the fare is calculated by Respondent No.5-6's servers based on the GPS data from the driver's Smartphone. The calculation takes account of time spent and distance covered. The driver has no freedom to charge a higher fee as is prescribed by the app. A driver must make a minimum of one trip in 30 days or as prescribed by the Respondent No. 5-6.

8. Not every driver can avail the services of Respondent No.5-6. There is an extensive verification process that they have to go through and pass. As part of the verification process, the drivers' personal information is shared with Respondent No.5-6, which includes bank account details, place of residence, family members, driving license, PAN Card No., vehicle registration no., vehicle insurance certificate, secondary and higher secondary education board mark sheet and certificate. The drivers have to be personally present throughout the verification process.
9. A condition precedent for drivers is that the vehicle in use

cannot be more than 10 years old. The colour of the vehicle should be white. True images of the cab run by Respondent No. 6 is enclosed here as **ANNEXURE P-3**.

10.The payments that are made by customers through credit / debit cards or internet banking are received by the Respondent No.5-6 directly, and the drivers' share is remitted to them on a weekly basis based on the number of trips completed minus a 25% service fee. It is not that the driver can keep everything that he earns with himself.

11.On certain occasions some trips are obtained by fraud by some person having stolen the identity of the actual passenger. When the fraud actually comes to light, the actual passenger has to be compensated for whatever has been deducted from the credit / debit card / cash paid. There is no indemnity scheme for the driver to compensate for his loss of income.

12.If a driver declines three trip requests in succession, he is forcibly logged off the mobile application. After every trip, the customer rates the driver on a scale of 0 to 5. If a driver's ratings fall below 4.5, he is suspended from service and his registration is deactivated. In such an event occurring, all data from the driver's mobile application about previous

trips is erased, without any back-ups.

13. A driver cannot share his Driver ID with a fellow driver as his right to the use of the App is not transferable; he is also not allowed to carry a co-driver with him during the ride; not allowed to have a substitute driver if he is unwell or unable to carry out duty himself; not allowed to exchange numbers with the passenger after the trip has ended for future references since it is considered as “solicitation”.

14. There is constant monitoring of the drivers by Respondent No. 5-6 in order to check quality standards, to the extent that the drivers are even told the manner and way in which to engage with their passengers so that passengers carry with them happy memories and experiences of their rides with Respondent No. 5-6. That is a clear business strategy to ensure customer satisfaction and build goodwill in the industry through the drivers.

15. That Respondent No. 5-6 state that they are merely “technology platform” or “electronic platform” to facilitate aggregation of Vehicles and does not in any manner provide transportation services while in reality drivers of Respondent No. 5-6 only implement instructions of Respondent No. 5-6 and have very limited say over how they work. Respondents

No. 5-6 are involved in every aspect of operation and therefore their claim that they are not employer is not correct in true sense. Drivers working with Respondent No. 5-6 are not independent contractors but in fact employees of the Respondent No. 5-6 as different Courts have held abroad. True copy of the order of Labour commissioner, California and True copy of the order of the Employment Tribunal, London are enclosed here as **ANNEXURE P-4** & **ANNEXURE P-5**. Some of the observations have been reproduced here for the sake of ready reference:

A. In the case of **Barbara Ann Berwick V UBER Technologies Inc.** Labour Court of California, while declaring complainant as employee of Uber has made the following remarks:

*Defendants hold themselves out as nothing more than a neutral technological platform, simply to enable drivers and passengers to transact the business of transportation. The reality; however is that Defendants are involved in every aspect of the operation. Defendants vet prospective drivers, who must provide to Defendants their personal banking and residence information, as well as their Social Security Number. Drivers cannot use Defendants' application unless they pass Defendants' background and DMV checks.*

*Defendants control the tools the drivers use, for example, drivers must register their cars with Defendants, and none of their cars can be more than ten years old...Defendants monitor the Transportation Drivers' approval ratings and terminate their access to the application if the rating falls below a specific level (4.6 stars)*

*While Defendants permit their drivers to hire people, no one other than the Defendants' approved and registered drivers are allowed to use Defendants' intellectual property. Drivers do not pay Defendants to use intellectual property.*

*The passengers pay Defendants a set price for the trip, and Defendants, in turn, pay their drivers a non-negotiable service fee. If a passenger cancels a trip request after the driver has accepted it, and the driver has appeared at the pickup location, the driver is not guaranteed a cancellation fee. Defendants alone have the discretion to negotiate this fee with the passenger. Defendants discourage drivers from accepting tips because it would be counterproductive to Defendants' advertising and marketing strategy.*

*Plaintiff's car and her labour were her only assets. Plaintiff's work did not entail any "managerial skills" that could affect profit and loss. Aside from her car, Plaintiff had no investment in the business. Defendants provided the I phone application, which was essential to the work. But for Defendants' intellectual property, Plaintiff would not have been able to perform the work.*

In light of the above, Plaintiff was the Defendants' employee.

**B. In the matter of Mr. Y Aslam Vs. Uber B.V. & Others**

Employment Tribunal of London ,while declaring drivers as employee of the Uber has made following observations about the legal status of drivers working with Uber cab:

- i) *As soon as the app is switched on, and when the driver is within the territory authorised to do work and is willing to accept the leads on the app, he should be classified as a “worker” (Para 86)*
- ii) *The cab aggregated companies have gone on remarkable lengths to compel agreement with its description of itself and with its analysis of legal relationships between the company, drivers and passengers. However, any organisation running an enterprise at the heart of which is the function of carrying people in motor cars from where they are to where they want to be; requiring drivers and passengers to agree as a matter of contract that it does not provide transportation services, and resorting in documentation to fictions, twisted language, and even brand new terminology merits a degree of scepticism (Para 87).*
- iii) *It is unreal to deny that the Uber is in business as a supplier of transportation services. The products being marketed by Uber are a variety of driving services. An individual driver does not market such a product range. The marketing self evidently is not done for the benefit*

*for any individual driver. Equally self evidently, it is done to promote Uber's name and "sell" its transportation services (Para 89).*

- iv) *In recent proceedings under the title of Douglas O' Connor v Uber Technologies Inc. the North California District Court resoundingly rejected the company's assertion that it was a technology company and not in the business of providing transportation services. The judgment included "Uber does not simply sell software; it sells rides. Uber is no more of a "technology company" than Yellow Cab is a "technology company". We respectfully agree. (Para 89)*
- v) *It seems to us that the Respondents' general case and the written terms on which they rely do not correspond with the practical reality. The notion that Uber in London is a mosaic of 30, 000 small businesses linked by a common "platform" is to our minds faintly ridiculous. In each case, the "business consists" of a man with a car seeking to make a living by driving it. Ms. Bertham spoke of Uber assisting the drivers to "grow" their businesses, but no driver is in a position to do anything of the kind, unless growing his business simply means spending more hours at the wheel. Nor can Uber's function sensibly be characterised as supplying drivers with "leads". That suggests that the driver is put into contact with a possible passenger with whom he has the opportunity to negotiate and strike a bargain. But drivers do not and cannot negotiate with passengers (except to agree to a reduction of the fare set by Uber). They are offered and accept trips strictly on Uber's terms. (Para 90)*
- vi) *The logic of Uber's case becomes all the more difficult as*

*it is developed. Uber's case is that the driver enters into a binding agreement with a person whose identity he does not know (and will never know) and who does not know and will never know his identity, to undertake a journey to a destination not told to him until the journey begins, by a route prescribed by a stranger to the contract from which he is not to depart for a fee which (a) is set by the stranger, and (b) is not known by the passenger (who is only told the total to be paid), (c) is calculated by the stranger (as a percentage of the total sum) and (d) is paid to the stranger. Not surprisingly, it was not suggested that in practice drivers and passengers agree terms. The logic extends further. For instance, it is necessarily part of Uber's case (as constructed by their lawyers) that where, through fraud or for any other reason a fare is not paid, it has no obligation to indemnify the driver for the resulting loss. Accordingly, in so far as its policy is to bear the loss and protect the driver it must be free to reverse the policy and if it does so, drivers will be left without remedy. That would be manifestly unconscionable but also, we think, incompatible with the standard perceptions of drivers and Uber decision-makers as to Uber's legal responsibilities. For all of these reasons, we are satisfied that the supposed drivers / passengers contract is pure fiction which bears no relation to the real dealings and relationships between the parties. (Para 91)*

vii) *Uber runs a transportation business. The drivers provide the skilled labour through which the organisation delivers its services and earns its profits. We base our assessment on the facts and analysis on the following considerations: the fact that the Uber interviews and*

*recruits drivers; the fact that Uber controls the key information (in particular the passenger's surname, contact details and intended destination) and excludes the driver from it; the fact that Uber requires drivers to accept trips and / or to not to cancel trips, and enforces the requirement by logging off drivers who breach those requirements; the fact that Uber sets the default route and the driver departs from it at his own peril; that fact that Uber fixes the fare and the driver cannot agree to a higher sum with the passenger (the supposed freedom to agree to a lower fare is obviously nugatory); the fact that Uber imposes numerous conditions on drivers (such as the limited choice of acceptable vehicles), instructs drivers as to how to do their work, and, in numerous ways, controls them in the performance of their duties; the fact that Uber subjects drivers through the ratings system to what amounts to a performance management / disciplinary procedure; the fact that Uber determines issues about rebates, sometimes without even involving the driver whose remuneration is liable to be affected; the fact that Uber handles complaints by passengers, including complaints against drivers; the fact that Uber reserves the power to amend the drivers' terms unilaterally (Para 92)*

viii) *For the reasons already stated, we are clear that they provide their work "for" Uber. We are equally clear that they do so pursuant to a contractual relationship. If, as we have found, there is no contract with the passenger, the finding of a contractual link with Uber is inevitable.... We are entire satisfied that the drivers are recruited and retained by Uber to enable it to operate its transportation business. And if there is a contract with*

*Uber, it is self-evidently not a contract under which Uber is a client or customer of a business carried on by the driver. (Para 93).*

- ix) Drivers do not market themselves to the world in general, rather they are recruited by Uber to work as integral components of its organisation (Para 94).*
- x) Many Uber drivers (a substantial proportion of whom, we understand, do not speak English as their first language) will not be reading and interpreting dense legal documents couched in impenetrable prose. This is we think an excellent illustration of the phenomenon of which Elias J warned in the Kalwak case of armies of lawyers contriving documents of their clients' interests which simply misrepresent the true rights and obligations on both sides. (Para 96)*
- xi) Uber London Ltd., the UK Company that is the employer. Despite protestations to the contrary in the Partner Terms and New Terms, it is self evidently exists to run, and does run, a PHV operation in London. It is the point of contact between Uber and the drivers. It recruits, instructs, controls, disciplines and where it sees fit, dismisses drivers. It determines disputes affecting their interests (Para 98)*

**C. Brazil Court Judgment:** A Brazilian judge in Minas Gerais state ruled that a driver using the Uber ride-hailing app is an employee of the San Francisco-based company and is entitled to workers' benefits, adding to the global debate over labour rights for drivers on the platform. Court ordered

Uber to pay one driver around 30,000 reais (\$10,000) in compensation for overtime, night shifts, holidays and expenses such as gasoline, water and candy for passengers and also 50,000 reais in "moral damages" related to attacks from taxi drivers upset with Uber's competitive pricing model.

**PLIGHT OF THE DRIVERS:**

16.The chargeable fare keeps varying on a daily basis on the whims of the Respondent No.5-6. No prior notice is given to the driver in this regard. Drivers' also have to suffer arbitrary deductions in their payments on vague and unsubstantiated grounds, without even giving them a chance to respond. Upon being enquired, Respondent No.5-6 standard response is that such deductions were made based on customer complaints. The driver is not even given an opportunity to respond to these accusations. Refunds are handed to the customer without referring the incident to the driver, for hearing his version. When a customer cancels a trip after the driver has reached the pick-up point, a cancellation fee of Rs. 80/- (Please verify) is levied on the customer. Since such a cancellation is also considered a fare, Respondent No.5-6 charges its commission thereby deducting a part of the driver's income. Fearing a back clash

and discontinuance from the rolls, the drivers often do not raise any objections to such arbitrary practices of the Respondent No.5-6, as it is a matter of their bread and butter, their families' future. The power to dismiss drivers thus remains with the employer i.e. Respondent No. 5-6.

17.In October 2016, Respondent No.5-6 faced heavy backlash from the Petitioner and similarly placed unions on account of drastic reduction in drivers' incomes. This has resulted due to Respondent No.5-6's arbitrary and whimsical alteration in the payment terms of their drivers on a daily basis without giving them any prior notice. Such a practice is violative of the provisions of Section 9A of the Industrial Disputes Act, 1947 under which an employer must give a workman prior notice of 21 days before effecting any change in the service conditions. True copy of the newspaper articles covering the protests of the drivers against exploitation and unfair policies of Respondent No.5-6 are published in different newspapers are annexed hereto and marked as **ANNEXURE P-6**.

18.The drivers are demanding a revision in the minimum fares and the bringing back of bonuses that were on offer in the initial days. Drivers also want Respondent No. 5 and 6 to reduce the commission rate which is now 25% and initially

which was 5%.

19. The drivers are further burdened by a lack of a grievance redressal mechanism of the Respondent No.5-6 under section 9C of the Industrial Disputes Act, 1947.

20. From time to time this Court and Hon'ble Supreme Court of India by interpreting various articles of Constitution and labour laws have given an idea of the conditions under which workman can be hired for work and also under which they can be compelled to work and also of the responsibility of the Government, both Central and State, towards the workmen to secure for them social order and living wages, keeping with the economic and political conditions of the country and dignity of the nation.

21. Like there is no provision for compensation in case of death of driver or in case he gets injury while working with Respondent No. 5-6. There are numerous incidents where driver died on road while working for Respondent No. 5-6 but his family did not get any compensation whatsoever from Government or Respondent No. 5-6. The drivers are not provided with any medical care, what to speak of compensating the poor driver for injury or for death.

22.It is the fundamental right of every one in this country, assured under the interpretation given to Article 21 by this Court in **Francis Coralie Mullin v. Administrator, Union Territory of Delhi [1981CriLJ306]** case, to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least.

In the case of **Bandhua Mukti Morcha v. Union of India [1984] 2SCR67** wherein Bhagwati, J. (as His Lordship then was) referring to **Francis Coralie Mullin v. Administrator, Union Territory of Delhi [1981CriLJ306]** stated;

*It is the fundamental right of every one in this country, assured under the interpretation given to Article 21 by this Court in Francis Mullin's case, to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government-has the right*

*to take any action which will deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of State Policy contained in Clauses (e) and (f) of Article 39, Article 41 and 42 are not enforceable in a court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity but where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21, more so in the context of Article 256 which provides that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State.*

**23.In Asiad Construction Worker (1982) IILLJ454SC**

Hon'ble Supreme Court has held that the State is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly when he belongs to the weaker sections of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. The Central Government is therefore bound to ensure observance of various social welfare and labour laws enacted by Parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the Directive Principles of State Policy.

24. Therefore Respondent No. 1-4 should examine the fact that whether Respondent No. 5-6 are observing various social welfare and labour laws such as Employee Compensation Act enacted for the benefit of the workmen. This is a constitutional obligation which can be enforced against the Central Government and the State Governments by a writ petition under Article 226 of the Constitution.

25. Poor and the disadvantaged cannot possibly produce relevant material before the court in support of their case and equally where an action is brought on their behalf by a Trade Union pro bono, it would be almost impossible for it to gather the relevant material and place it before the court.

26. Members of Petitioner Trade Union do not have many documents as they were never provided to them by the Respondent No. 5-6. Therefore praying this Hon'ble Court to intervene under Article 226 of the Constitution because members of the Petitioner Union belong to the underprivileged segment of society.

27. It is for this reason that Petitioner is praying to this Hon'ble Court to pass any writ, order or direction directing Respondent No. 1-4 to appoint and constitute a Committee for the purpose of gathering facts and data with regard to

complaints of breach of fundamental right made on behalf of the drivers who are weaker sections of the society. The Report of the committee and data collected would furnish prima facie evidence of the status of the drivers and if drivers are found employees of the Respondent No. 5-6, there are numerous social welfare benefits for which they will be entitled. Like benefits under Workman's Compensation Act 1923, The Payment of Wages Act 1936, The Employees' State Insurance Act 1948, The Employees' Provident Funds and Misc. Provisions Act, 1952 etc. Similarly if drivers are found employees of the Respondent No. 5-6, committee can recommend Central Government and State Governments to take necessary steps for the purpose of ensuring that minimum wages are paid to the drivers employed with Respondent No. 5-6.

**28.** That Hon'ble Supreme Court in the case of **Consumer Education & Research Centre and others v. Union of India and others (1995) 3 SCC 42**, has held that the right to health and medical care to protect one's health and vigour, while in service or post-retirement, is a fundamental right of a worker under Article 21 read with Articles 39(e), 41, 43, 48-A and all related Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person.

29. Formation of committee to look into their grievances will hopefully end the misery, suffering and helplessness of these victims of most inhuman exploitation. It will be possible to improve the life conditions of these drivers and ensure social justice to them so that they may be able to breathe the fresh air of social and economic freedom. True copy of the Authorisation letter of Petitioner Union in favour of Mr. Raju Yadav is enclosed here as **ANNEXURE P-8**.

### **GROUND**

- (i) Because in a host of different ways, Respondent No.5-6 instructs, manages and controls the drivers and their supervision and control extend to all stages of operation from beginning to end.
- (ii) Because the drivers fall under the definition of “workman” under Section 2(s) of the Industrial Disputes Act, 1947. A relationship of employer and employee exists between Respondent No.5-6 and drivers associated with the

Petitioner.

- (iii) Because the Respondent No.5-6 who are the employers, under Section 9A of the Industrial Disputes Act, 1947, before effecting any change in the conditions of service applicable to its workmen i.e. drivers, must give a notice in the prescribed form, and no such change can be effected before twenty one days have elapsed from the date of the notice.
- (iv) Because Respondent No.5-6 have been constantly changing service conditions relating to wages, hours of work, withdrawal of concession and privilege, introduction of new rules of discipline and alteration of existing rules without giving any statutory notice and without adhering to the twenty one days' mandatory time period as prescribed under Section 9A of the Industrial Disputes Act, 1947.
- (v) Because Respondents No. 5-6 are involved in every aspect of operation and therefore their claim that they are not employer is not correct in true sense.
- (vi) Because if drivers are found to be employee of the Respondent No. 5-6, Central Government and the State

Government will should take steps to ensure that proper and adequate medical treatment is provided by the Respondent No. 5-6 to drivers employed by them in case of any injury and also provide compensation to his family member if he dies during the course of employment.

(vii) Because drivers belong to one of the most vulnerable segments of unorganized labour in India and are characterized by the inherent risk to life and limb; their nature of work mark with uncertain work hours, lack of basic amenities and inadequacy of welfare facilities.

(viii) Because in the case of **Trained Nurses Association of India V Union of India & Ors.** [ 527/2011] Hon'ble Supreme Court seeing the plight of nurses working in private hospital has directed Union of India to look into their grievances and form a committee in this regard. Court directed:

*4. We expect that the Central government will look into the grievances ventilated in this petition, by forming a Committee within four months from today. We are sure that after examining the factual situation, if the Committee is of the view that the grievances ventilated in the petition are correct, the Committee will make its recommendations, so as to do the needful for improvement of working conditions and pay of the nurses working in private hospitals and nursing homes within six months from its constitution, which can*

*ultimately be given a form of legislation by the Respondent-States or by the Central Government itself.*

*5. We are sure that the recommendations of the Committee shall be duly considered by the Central Government and it shall do the needful.*

- (ix) Because Respondent No. 1-4 and this Hon'ble Court has to intervene and redress the grievances of drivers before this protest of drivers turn violent.
- (x) Because earning of the drivers employed with Respondent No. 5-6 have gone down drastically and drivers don't have much options as they have taken huge loan to buy cars and it's getting difficult for them to pay even EMI.
- (xi) Because there are some incidents where drivers unable to pay their debts have committed suicide which setting and a wrong precedent among the drivers and court intervention is necessary. True copy of the news paper report covering suicide of driver because his inability to pay debt is enclosed here as **ANNEXURE P-7**.

(xii) Because giving unfair and undignified wage is violation of human dignity and giving high wage initially in order to capture market share and then subsequently reduced it so that a person cannot even pay his debts is violation of principles enshrined in Articles 39, 42 and 43 of our Constitution.

30. That Petitioner has no alternate or other efficacious remedy under any other law except approaching this Hon'ble Court under Article 226 of the Constitution of India.

31. That Petitioner has not filed any such case seeking same relief either before this Court or any other court of India including Hon'ble Supreme Court.

**PRAYER**

In view of the above circumstances, it is most respectfully prayed before this Hon'ble Court to:

- (i) To issue a writ of mandamus or any other appropriate writ, order or direction directing respondents No. 1-4 to appoint and constitute a Committee to look into the complains vis-à-vis work and pay conditions of drivers working with respondent no. 5-6 and suggest some recommendations in order to improve their work and pay conditions ;
- (ii) To issue a writ of mandamus or any other appropriate writ, order or direction directing respondents No 1-4 to appoint and constitute a Committee for the monitoring of the implementation of different labour laws vis-à-vis drivers working with respondent no. 5-6
- (iii) To issue a writ of mandamus or any other appropriate writ, order or direction directing the Respondents No. 5-6 to pay compensation to the drivers who are victims of road accidents or to their family in case of their death during the course of employment and to frame a scheme of compensation for drivers in this regard;
- (iv) To issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to notify the recommendations of the committee as guidelines to be followed by Respondent No. 5-6.

- (v) Direct all the Respondent No. 5-6 to adhere to the guidelines/rules framed by the aforesaid committee till necessary legislation is made by the Parliament/State Legislative Assemblies;
- (vi) Pass such other order/orders as the court may deem fit and proper in the facts and circumstances of the case.

PETITIONER

THROUGH

**AKASH VAJPAI & SHOUMENDU MUKHERJI**

ADVOCATES

E-126, GREATER KAILASH PART-II

NEW DELHI-110048

9711904919

NEW DELHI

DATED: \_\_\_\_\_, 2017

IN THE HIGH COURT OF DELHI AT NEW DELHI  
EXTRAORDINARY ORIGINAL CIVIL JURISDICTION

WP (C) NO. OF 2017

**IN THE MATTER OF:**

DELHI COMMERCIAL DRIVER UNION .....PETITIONER

VERSUS

UNION OF INDIA & OTHERS .....RESPONDENTS

**AFFIDAVIT**

I, \_\_\_\_\_ S/o Shri \_\_\_\_\_,  
aged about \_\_\_\_\_ Years, R/o \_\_\_\_\_

Do hereby solemnly affirms and declares as under:

1. That I am the Petitioner herein in the abovementioned Writ Petition and competent to swear by way of the present affidavit.
2. That I have read and understood the contents mentioned in the Writ Petition and that content mentioned therein is true and correct to the best of my knowledge and belief based on the records available.

DEPONENT

**VERIFICATION**

Verified at New Delhi on this \_\_\_\_\_  
that the contents of the above affidavit are true and correct to the best of my knowledge and belief, that no part of it is false and noting material has been concealed therefrom.

DEPONENT

IN THE HIGH COURT OF DELHI AT NEW DELHI  
EXTRAORDINARY ORIGINAL CIVIL JURISDICTION

I.A. \_\_\_\_\_/2017

IN

WP (C) NO. \_\_\_\_\_ OF 2017

**IN THE MATTER OF:**

DELHI COMMERCIAL DRIVER UNION .....PETITIONER

VERSUS

UNION OF INDIA & OTHERS .....RESPONDENTS

APPLICATION UNDER SECTION 151 OF THE CODE OF CIVIL  
PROCEDURE, 1908 ON BEHALF OF THE PETITIONER FOR  
EXEMPTION FROM FILING THE TRUE TYPED COPY OF  
DIM/PROPER MARGIN/UNDERLINE/SINGLE LINE SPACING  
OF THE ANNEXURES

**MOST RESPECTFULLY SHOWETH:**

1. That the Petitioner has preferred the accompanying Writ Petition and the contents whereof are not being repeated herein for the sake of brevity and may be read as part and parcel of the present application.
2. That this Hon'ble Court may kindly exempt the Petitioner from filing the true typed copy of dim/proper margin/underline/single line spacing of the annexure.
3. That the Petitioner undertakes to file the fair typed of

dim/underline etc. of documents, if so directed by this Hon'ble Court.

4. That the present application is filed bonafide and in the interest of justice.

PRAYER

It is, therefore most respectfully prayed that in view of the facts and circumstances of the case and in the interest of justice, this Hon'ble Court may be pleased to exempt the Petitioner from filing the true typed copy of dim/proper margin/underline/single line spacing of the annexures.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY

PETITIONER

THROUGH

**AKASH VAJPAI & SHOUMENDU MUKHERJI**  
ADVOCATES  
E-126, GREATER KAILASH PART-II  
NEW DELHI-110048  
9711904919

NEW DELHI  
DATED: \_\_\_\_\_, 2017

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY ORIGINAL CIVIL JURISDICTION

I.A. \_\_\_\_\_/2017

IN

WP (C) NO. \_\_\_\_\_ OF 2017

**IN THE MATTER OF:**

DELHI COMMERCIAL DRIVER UNION .....PETITIONER

VERSUS

UNION OF INDIA & OTHERS .....RESPONDENTS

**AFFIDAVIT**

I, \_\_\_\_\_ S/o Shri \_\_\_\_\_, and  
age \_\_\_\_\_ Years, R/o \_\_\_\_\_  
\_\_\_\_\_ Do hereby  
solemnly affirm and declare as under:

1. That I am the Petitioner herein in the abovementioned Writ Petition and competent to swear by way of the present affidavit.
3. That I have read and understood the contents mentioned in the present application and that content mentioned therein are true and correct to the best of my knowledge and belief based on the records available.

DEPONENT

**VERIFICATION**

Verified at New Delhi on this \_\_\_\_\_  
that the contents of the above affidavit are true and correct to  
the best of my knowledge and belief, that no part of it is false  
and noting material has been concealed therefrom.

DEPONENT