



*Somanna Kalappa*  
*Principal Associate*

## **DRIVERS ARE EMPLOYEES OF RIDE-HAILING COMPANIES FOR POSH ACT**

The Karnataka High Court (**HC**), in *X's case*,<sup>1</sup> *inter alia* held that there exists an “*employee*” and “*employee*” relationship between ANI Technologies Private Limited (**Ola**) and the driver, thus casting a statutory obligation on the Internal Committee (**IC**) constituted by Ola under The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (**POSH Act**) to inquire into the complaint received from a user of Ola taxi hailing platform who was a victim of sexual harassment by an Ola taxi driver.

### **Brief Facts**

X, a woman (**X**) booked a taxi through the Ola mobile application.

During her commute, the driver allegedly committed various sexually explicit acts.

X *inter alia* called upon Ola to proceed against the driver under the POSH Act (**Complaint**).

The IC rejected the Complaint of X on the grounds that the drivers were not “*employees*” but “*independent contractors*” and hence, had no jurisdiction.

X approached the HC invoking its writ jurisdiction *inter alia* seeking various reliefs against various parties including Ola and its IC (“**WP**”) including a direction to the IC to enquire into her Complaint.

### **X's Contentions**

The WP is maintainable against Ola, a private entity since it provides transportation services to the public, an essential service pursuant to a statutory licence<sup>2</sup> and therefore performs a public function.

Ola drivers are employees of Ola within the meaning of the POSH Act<sup>3</sup> and therefore, the IC was required to receive the Complaint.

The IC is an independent and statutory body and is mandated to enquire into the Complaint in accordance with the principles of natural justice.

### **IC's Contentions**

The driver against whom the Complaint was filed by X was neither an “*employee*” nor a “*contractor*” of Ola and was an imposter who unauthorisedly was driving the cab. Therefore, the IC could not proceed to issue any direction or inquire under the POSH Act against such person.

---

<sup>1</sup> *X v. Internal Complaints Committee, Ani Technologies Private Limited and Others*, 2024 SCC OnLine Kar 102.

<sup>2</sup> See Rule 4 of the Karnataka On- demand Transportation Technology Aggregators Rules, 2016.

<sup>3</sup> See Section 2(f) of the POSH Act.

X may seek appropriate remedies by setting the criminal justice system into motion.

The contract between the driver and Ola clearly defines the relationship as a principal-to-principal.

### **OLA's Contentions**

The WP is not maintainable since Ola is a private commercial entity and does not perform a public function or discharge a public duty.

The drivers are not 'employees' of Ola since there are no implied or express terms of employment between them and OLA and the drivers.

Scheme of the POSH Act does not envisage conducting an enquiry or acting against an individual who is not associated with the employer in any manner whatsoever.

Ola is merely an 'intermediary'<sup>4</sup> within the meaning of the Information Technology Act, 2000 ('IT Act').

Ola has integrated various safeguards to ensure passenger safety.

### **HC's Judgement and Reasoning**

The HC held that the WP is maintainable against Ola since it is settled law that sexual harassment constitutes violation of various fundamental rights of women and in such cases a writ remedy is maintainable against private persons too.

Ola is not merely an 'intermediary', since it is involved in all aspects of the business of transportation.

- The HC held "[i]t is clear that the definition of term 'employee' provided under section 2(f) of PoSH Act, 2013 embraces all possible connection which employer would have with the employee. In the instant case the components of the definition 'employee' which is encapsulated hereinabove leaves no doubt that the driver-subscriber is rendering his services directly in connection with the commercial activity of OLA for which it is established. In that view of the matter and more particularly for purposes advancement of the intent and object of the PoSH Act, 2013 it is necessary and compelling that the meaning of the term 'employee' be extended to cover the persons like driver-subscriber."

IC was *inter alia* directed to enquire into the Complaint of X.

Ola and IC was ordered to pay a compensation of Rs. 5,00,000 to X and a sum of Rs. 50,000 towards litigation expenses.

The WP was partly allowed barring the prayer seeking directions to the Ministry of Women and Child Development, Union of India to ensure Ola and its IC comply with POSH Act.

\*\*\*\*

This *Counselence Connect* contains information in a nutshell on a recent change in law.

This is not legal advice and must not be treated so. For any clarifications, please contact us at: [info@counselence.com](mailto:info@counselence.com). Past issues of *Counselence Connect* are available at the 'Newsletters' page of our website ([www.counselence.com](http://www.counselence.com)).

---

<sup>4</sup> See Section 2(w) of the IT Act.