



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 3285 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

Approved for Reporting	Yes	No
	Yes	


 Versus


Appearance:

IG JOSHI(8726) for the Petitioner(s) No. 1
 MR KEYUR GANDHI WITH MR NIRAV JOSHI WITH MR NISARG DESAI
 WITH MS PRAVALIKHA BATTHINI FOR GANDHI LAW
 ASSOCIATES(12275) for the Respondent(s) No. 1,2

**CORAM: HONOURABLE MR. JUSTICE HEMANT M.
 PRACHCHHAK**

Date : 16/04/2026

JUDGMENT

1. Rule returnable forthwith. Learned counsel Mr. Keyur Gandhi, appearing on behalf of Gandhi Law Associates, waives service of notice of Rule for and on behalf of the respondents.
2. With the consent of the learned counsel appearing for the respective parties, the petition has been taken up for final hearing today.
3. By way of present petition under Article 226 of the Constitution of India read with the provisions of Sexual Harassment of Women at



Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter be referred to as “the POSH Act”), petitioner has prayed for the following reliefs :

“A. This Hon’ble Court may be pleased to issue a writ of certiorari, order or direction in the nature of certiorari or any other writ, order or direction quashing and setting aside the Final Report dated 25.09.2025 (Annexure U) issued by Respondent No. 2 – Internal Complaints Committee; and

B. This Hon’ble Court may be pleased to issue a writ of mandamus, order or direction in the nature of mandamus or any other writ, order or direction directing Respondent No. 1 to comply with the order dated 19.01.2026 (Annexure V) passed by the State Human Rights Commission and constitute a fresh, neutral, and independent Internal Complaints Committee excluding members subordinate to Respondent No. 2, and direct a de novo inquiry into the Petitioner’s complaint under the supervision of a retired judicial officer or such independent authority as this Hon’ble Court deems fit;

BB. Pending hearing and disposal of the petition, this Hon’ble Court may be pleased to direct the Respondents to forward the Final Report dated 25.09.2025 to the Superintendent of Police, Anand for inquiring into the observations made at Para 22 of the Final Report by Respondent No. 2, vis-a-vis, forcefully taking the phone from Petitioner’s hand and further consider the case of the Petitioner for compensation as deemed appropriate by this Hon’ble Court;

C. For costs; and

D. Such other and further reliefs as may be considered fit and expedient in the facts of the present case be granted.”

4. Brief facts giving rise to the present petition are that, the petitioner completed her Bachelor of Commerce in the year 2016 and thereafter obtained a Master of Business Administration in Rural Management from the Institute of Rural Management, Anand in the year 2018. That, upon successfully clearing the recruitment process conducted through her college, the petitioner appeared for and cleared the interview process and was appointed as Senior Executive (Sales) on 18.04.2018 with respondent No. 1 and thereafter, upon successful completion of her probationary period with respondent



Society, her services were duly confirmed. That, in recognition of her performance and services, the petitioner was promoted to the post of Assistant Manager (Marketing) on 29.10.2021 and had been discharging her duties as an Assistant Manager with respondent No. 1 since then without any complaints from the management.

4.1 It is the case of the petitioner that, on 28.05.2025, the Petitioner was subjected to physical and verbal assault by one [REDACTED] and [REDACTED] at around 07:30 pm. That, both [REDACTED] and [REDACTED] forcibly snatched the petitioner's mobile phone from her hand and confiscated the same and therefore, the petitioner submitted a written complaint addressed to the Chairman, the Vice Chairman, the Chief General Manager and the Head of the Women Grievance Cell of respondent No. 1 on 29.05.2025 at 01:30 am. That, subsequent to filing of the aforesaid complaint, the petitioner's official email account and employee portal user ID were blocked, thereby disabling her access to the same. That, upon experiencing dizziness and an episode of vomiting arising out of the injuries sustained in the aforesaid incident, the petitioner contacted a friend who took her to the hospital for medical examination. That, upon examination, the attending doctor advised her to lodge a criminal complaint in view of the visible bruises on her arms, however, owing to apprehension of adverse consequences from the private respondents, the petitioner expressed her unwillingness to initiate criminal proceedings at that time. That, in absence of such willingness, the doctor declined to record the bruise marks in the medical certificate and consequently, no criminal complaint was lodged at the relevant time.

4.2 It is the case of the petitioner that, the petitioner received a



summons dated 29.05.2025 at about 1:45 p.m., calling upon her to remain present before the Local Crime Branch Police Station, Anand (hereinafter referred to as the "LCB"). That, upon perusal of the summons, the petitioner came to know that the same had been issued pursuant to a purported complaint lodged by [REDACTED] of which she had no prior knowledge. That parallelly, the petitioner reduced into writing her detailed account of the incident that occurred at the Head Office and forwarded the same to the Local Crime Branch, Anand, requesting registration of an FIR on 29.05.2025. That, on 31.05.2025, the petitioner was called to the LCB for the purpose of recording her statement in connection with her complaint, however, upon reaching the police station, she was informed that a complaint had been lodged against her by [REDACTED] and was directed to sign a pre-prepared confession statement allegedly admitting to the offence imputed to her. That, the petitioner refused to sign the said statement and requested a copy of the complaint, as she had no knowledge of the nature of the allegations made against her. Thereafter, the petitioner was made to remain seated at the police station for approximately 6 hours and was repeatedly threatened that she would not be permitted to leave unless she signed the purported confession statement. That, in view of the inaction on the part of the police authorities, she addressed a complaint dated 04.06.2025 to the Inspector General of Police, Ahmedabad Range, seeking registration of an FIR and initiation of a proper investigation into the incident dated 28.05.2025. That, the petitioner also submitted a complaint dated 04.06.2025 before the State Human Rights Commission, bringing to its notice the acts of harassment and misconduct allegedly committed by the officials of the LCB, Anand.

4.3 That, on 11.06.2025, the petitioner addressed a letter to the



Human Resource Department, with copies marked to the Head of the Internal Complaints Committee/POSH Committee (hereinafter referred to as the "ICC/POSH Committee"), Chief General Manager, the Chairman, the District Magistrate and the District Collector, requesting the constitution of a Committee under the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as the "POSH Act") to inquire into her complaint against [REDACTED] and [REDACTED]. That, simultaneously, Ms. [REDACTED] lodged a complaint dated 03.06.2025 (received on 09.06.2025) before the ICC against the Petitioner and certain unknown persons alleging that, on 27.05.2025 she came to know that certain letters / patrika were being circulated containing defamatory allegations along with her photographs, insinuating an illicit relationship between her and Mr. [REDACTED]. It was alleged that such circulation had outraged her modesty and caused serious harm to her reputation and she caught the petitioner red-handed taking her photographs on her mobile on 28.05.2025. That, the intimation regarding the filing of the aforesaid complaint was conveyed to the petitioner by the ICC vide email dated 16.07.2025.

4.4 That, on 19.06.2025, the petitioner received a letter from respondent No. 1 directing the petitioner to collect her mobile phone from the Administration Department, which had been allegedly handed over to the police officials on 28.05.2025 on the allegation that it was used as an instrument for spying. That, the said letter was slid under the door of the company quarters of the petitioner and, as she was not present at the quarters at the relevant time, she remained unaware of the communication. That, upon returning to the quarters and becoming aware of the same, the petitioner addressed a

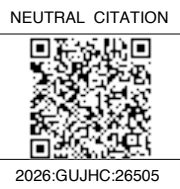


reply dated 26.06.2025 stating that the allegation that she had used her mobile phone for spying was false and that she would not collect or acknowledge receipt of the mobile phone unless the same was handed over to her without any such imputations. That, as the aforesaid reply was not accepted by the respondent Society, the petitioner addressed an email dated 27.06.2025 reiterating the contents of her earlier communication and requesting that her official email account and employee portal user ID be unblocked forthwith. That, on 19.07.2025, Mr. [REDACTED] and Ms. [REDACTED] submitted their respective replies before the ICC in response to the complaint filed by the petitioner. That, on 30.07.2025, the petitioner submitted her reply before the ICC in respect of the complaint filed by Ms. [REDACTED]. That, on 02.09.2025, a hearing was conducted by the ICC, wherein both the petitioner and Ms. [REDACTED] were specifically asked whether they were willing to explore conciliation in terms of Section 10 of the POSH Act; however, both parties declined the said option. During the proceedings, the petitioner was also shown CCTV footage of the original incident dated 28.05.2025 and was subjected to inappropriate and insinuating questions, thereby shifting blame upon her despite being the aggrieved party. That, the petitioner requested a copy of the said CCTV footage; however, the same was denied to her on the ground that furnishing such footage would be contrary to Section 16 of the POSH Act.

4.5 That, on 06.09.2025, the petitioner received a letter from respondent No. 1, thereby providing details of the members of the ICC, which was sent pursuant to the direction of the Human Rights Commission and upon perusal of the same, it is evident that majority members of the ICC were direct subordinates of respondent No. 2,



who is the Managing Director. That, on 09.09.2025, the petitioner submitted her written submissions in respect of the CCTV footage shown to her during the hearing dated 02.09.2025, placing on record material facts and clarifications which, were not duly considered. That, in the said communication, the petitioner raised a categorical objection regarding the constitution and functioning of the ICC, on the ground that its members were direct subordinates of the Managing Director, against whom her complaint had been made, thereby vitiating the proceedings and offending the principles of natural justice and a fair hearing. Furthermore, the petitioner had vide email dated 26.09.2025 again raised the aforesaid objection with regard to the members of the ICC, but to no avail. That, on 29.09.2025, the petitioner was provided with a copy of the impugned Final Report of the ICC dated 25.09.2025 concluding that, the complaint of the petitioner is false and baseless and disciplinary action must be taken against the petitioner, however, the Final Report in respect of the complaint filed by Ms. [REDACTED] concluded that the allegations made therein require some consideration and the said complaint was forwarded to the police authorities for initiating appropriate action. That, the impugned Final Report proceeds largely on the basis of its own interpretation of the CCTV footage and arrives at a conclusion regarding the absence of any "sexual undertone", while failing to apply the statutory test of "unwelcome physical contact" as contemplated under the Act. Moreover, the findings recorded therein as to whether the allegations made in the respective complaints of the petitioner and Ms. [REDACTED] fall within the ambit of "sexual harassment" as defined under Section 2(n) of the POSH Act, 2013, are inconsistent and mutually contradictory. That, the State Human Rights Commission, by order dated 19.01.2026, directed the Chairman of respondent No. 1 to constitute a neutral



Committee to inquire into the complaint of the petitioner. That, the petitioner was served with a termination letter dated 11.02.2026, whereby her services were terminated with immediate effect.

5. Being aggrieved and dissatisfied with the impugned Final Report dated 25.09.2025, the petitioner has preferred this petition.

6. Heard Mr. I.G. Joshi, learned counsel appearing for the petitioner and learned counsel Mr. Keyur Gandhi, assisted by Mr. Nirav Joshi, Mr. Nisarg Desai and Ms. Pravalikha Batthini, learned counsels appearing on behalf of Gandhi Law Associates, for the respondents.

SUBMISSIONS OF THE PETITIONER

7. Learned counsel Mr. Joshi for the petitioner has submitted that the ICC proceedings were vitiated by a real and reasonable apprehension of bias as all of the ICC members, except one, were direct subordinates of the Managing Director, against whom the complaint was filed and the composition of such a committee creates an institutional conflict of interest and violates the principle of *nemo judex in causa sua*. He has submitted that despite specific objections raised by the petitioner and the State Human Rights Commission's order dated 19.01.2026 directing constitution of a neutral committee, respondent No. 1 proceeded with the same ICC and acted upon its report evidencing institutional bias and therefore, failure to reconstitute a neutral committee renders the proceedings non-est in law and without jurisdiction. He has submitted that the ICC has committed an error in holding that absence of "sexual undertones" negates sexual harassment as contemplated under Section 2(n) of the POSH Act, which includes physical contact and advances and other

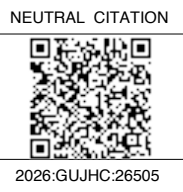


unwelcome conduct of sexual nature. He has submitted that the impugned Final Report itself records that [REDACTED] held the petitioner's wrist and that a physical scuffle ensued for the purpose of snatching her personal mobile phone and therefore, the ICC's reasoning that such conduct is legally permissible if not accompanied by "sexual intent" is contrary to the plain language of the statute. He has submitted that the ICC has selectively relied upon CCTV footage and absence of corroborative witness testimony to label the petitioner's complaint as "false and baseless," while simultaneously accepting and acting upon collateral, anonymous and untested material (the patrikas/letters) and the counter-complaint of Ms. [REDACTED]. He has submitted that the Final Report admits that physical contact occurred but proceeds to dilute its seriousness by speculating that [REDACTED] acted on instinct or suspicion and the ICC has effectively justified the use of force by a superior officer on the basis of unverified suspicion, which is perverse and contrary to settled principles governing appreciation of evidence. He has further submitted that the ICC has failed to adequately consider that the witnesses examined were employees subordinate to [REDACTED] thereby compromising the independence of their testimony.

7.1 Learned counsel Mr. Joshi has submitted that the ICC has relied upon anonymous patrikas, police communications and third-party material to discredit the petitioner without testing their authenticity, authorship, or chain of custody and such material, if relied upon, ought to have been subjected to proper evidentiary scrutiny and thus, the use of unverified defamatory material to undermine the credibility of the complainant violates the principles of fairness and reasonableness under Article 14 of the Constitution of India. He has submitted that the impugned Final Report applies a restrictive and



hyper-technical interpretation of Section 2(n) to the petitioner's complaint while simultaneously treating the complaint of Ms. [REDACTED] as falling within the ambit of the POSH Act. He has submitted that while dismissing the petitioner's complaint on the ground that there was no "sexual intent", the ICC admitted and acted upon Ms. [REDACTED]'s complaint which alleged that defamatory letters and photographs "outraged modesty" and thus, the ICC's approach is inconsistent and mutually contradictory and the Final Report thus, discriminates between two complaints arising from the same factual matrix and applies different legal standards, thereby violating Article 14 of the Constitution of India. He has submitted that even assuming that the ICC has not find overt sexual intent, but it has still failed to consider that the conduct of [REDACTED] falls squarely within Section 3(2) of the POSH Act and thus, the physical force used by a high-ranking Managing Director against a junior female employee, resulting in medical distress and intimidation, created an "intimidating, hostile or offensive work environment" and interfered with her work and employment security, however, the ICC has failed to examine whether the conduct amounted to implicit threat, humiliation, or interference with employment status, all of which are statutorily recognized consequences under Section 3(2) of the POSH Act. He has submitted that the ICC has failed to consider the medical report of the petitioner following the incident, which recorded symptoms of physical distress and visible bruising and therefore, the absence of visible injury on CCTV footage does not negate the occurrence of unwelcome physical force, however, the ICC has neither reconciled the medical report with its findings nor provided reasons for discounting such contemporaneous evidence and thus, the findings recorded by the ICC are perverse and based on incomplete evaluation of material evidence.



7.2 Learned counsel Mr. Joshi has submitted that subsequent to the incident and filing of the complaint, the petitioner's official email and access credentials were blocked, she was subjected to police pressure, and ultimately her services were terminated, *inter alia*, based upon the impugned Final Report and therefore, such acts constitute victimization and punitive retaliation for invoking the POSH mechanism and are contrary to the statutory duty of the employer under Section 19 of the POSH Act. He has submitted that the respondent No. 1 deliberately failed to implement the order dated 19.01.2026 passed by the State Human Rights Commission directing constitution of a neutral committee and instead of that, they had proceeded to act upon the impugned Final Report and terminated the services of the petitioner and thus, the refusal to comply with a direction aimed at ensuring fairness demonstrates *mala fide* intent to shield a high-ranking official and to penalize the complainant.

7.3 In support of his submissions, learned counsel Mr. Joshi has referred and relied upon the following decisions of the Hon'ble Apex Court as well as this Court :

- [I] Shridhar C. Shetty (Deceased) Through Legal Representatives vs. Additional collector and Competent Authority and Others, [2020] 9 SCC 537;**
- [II] Medha Kotwal Lele and Others vs. Union of India and Others, [2013] 1 SCC 297;**
- [III] Anand Khakhar & Ors. vs. Khushbu Pathan & Anr., SCA/15519/2024;**
- [IV] Modex Trading Private Limited vs. Ashish Ashokkumar Goswami & Ors., LPA/579/2025;**
- [V] S. Ravi Selvan vs. Central Board of Indirect Taxes &**

**Customs, [2022] SCC OnLine Mad 9913.**

8. Per contra, learned counsel Mr. Keyur Gandhi, appearing on behalf of the respondents, has vehemently objected the present petition and submitted that the present petition filed by the petitioner challenging the Final Report dated 25.09.2025 issued by the Internal Complaints Committee ["ICC"] under the POSH Act is not maintainable and deserves to be dismissed in limine only on this ground. He has submitted that the petitioner had filed a Complaint vide e-mail dated 29.05.2025 to the Chairman, [REDACTED] [REDACTED] ["REDACTED"] complaining about sexual harassment by [REDACTED] - Managing Director of the respondent No. 1 and Ms. [REDACTED] - Deputy Manager, Marketing Department of the respondent No. 1, which came to be numbered as Case No. 1 of 2025 - Complaint of Ms. [REDACTED] and subsequently, on 03.06.2025, the respondent No. 2- ICC received a separate complaint from [REDACTED] [REDACTED], in which she complained against the petitioner and other unknown people who have outraged her modesty and defamed her by circulating anonymous letters containing false narratives, which was registered as Case No. 2 of 2025. He has submitted that the respondent No. 2 - ICC, after considering both the complaints, has issued the Impugned Report. He has submitted that the respondent No. 2 - ICC, in Case No. 1 of 2025 of the petitioner has concluded that the petitioner has made an allegation of sexual harassment against Mr. [REDACTED] - Managing Director of the respondent No. 1 and Ms. [REDACTED] Deputy Manager, Marketing Department, knowing the same to be false and incorrect. He has submitted that the Committee has also observed that the petitioner consciously concealed material facts from the Committee and did not give true narration of the entire episode that unfolded on



the 28.05.2025. He has submitted that the ICC has also observed that the statements made by the petitioner are false and misleading in nature and therefore, as per Section 14 of the POSH Act, the ICC members unanimously rejected petitioner's complaint and advised the Administration Department of the respondent No. 1 to take suitable disciplinary action against the petitioner in accordance with the provisions of the service rules applicable. He has submitted that in Case No. 2 of 2025 - Complaint of Ms. [REDACTED], the respondent No. 2 - ICC has concluded that the circulation of anonymous letters/patrikas are serious and cognizable offence and Ms. [REDACTED] was subjected to character assault through the defamatory letters/patrikas circulated with her photographs. He has submitted that it was also observed that the interim police investigation report suggests involvement of the petitioner as the photos of Ms. [REDACTED] circulated in the letters/patrikas were found in her mobile device. He has submitted that the respondent No. 2 - ICC, relying on Section 11 (1) of the POSH Act, decided to admit the complaint made by Ms. [REDACTED] dated 03.06.2025 and directed the Complaint to be forwarded to the police for detailed investigation and take appropriate action as per the law against all involved. He has submitted that the respondent No. 2 - ICC also recommended the Administration department of GCMMF to take appropriate disciplinary action as per the rules.

8.1 Learned counsel Mr. Gandhi has submitted that the petition will not be maintainable on two counts viz., (1) respondent No. 1 is not a 'State' under Article 12 of the Constitution of India in accordance with settled legal position as derived from various settled case-laws on the issue; and (2) In any event, the petitioner has an alternative remedy to file an Appeal before the appellate forum available under the



provisions of POSH Act and Rules, and further, (3) Without prejudice to the above contentions, the alleged act does not fall within the definition of 'sexual harassment' as defined under Section 2(n) of the POSH Act. He has submitted that the petitioner has an alternative remedy to file an Appeal under the POSH Act and Rules and therefore, an Appeal is required to be filed under Section 18 of the POSH Act within 90 days of the Committee Recommendations i.e., Report before the Appellate Authority notified under Section 2(a) of the Industrial Employment (Standing Orders) Act, 1946. He has submitted that in the facts of the present case, the ICC report is dated 25.09.2025 and hence, the prescribed period of limitation to file an Appeal before the Appellate Authority is also over. He has submitted that instead of filing an Appeal, the petitioner has filed the captioned petition which is not maintainable in view of availability of the aforesaid alternative remedy. He has submitted that as per the settled legal position, writ jurisdiction can be exercised in case of alternative remedies only in three contingencies i.e. (1) Enforcement of Fundamental Rights, (2) When there is failure of natural justice; and (3) Orders or proceedings are wholly without jurisdiction or varies of the fact is challenged, however, in the present case, no any fundamental rights of the present petitioner has been violated by the respondents and the petitioner has been provided that sufficient opportunity of hearing and hence, there is no violation of principles of natural justice. He has further submitted that the petitioner has not pleaded any of the above contingencies in the petition for this Court to exercise Writ Jurisdiction and therefore, no contingencies exit for exercising Writ Jurisdiction by this Court to interfere with the Report dated 25.09.2025, hence, the captioned petition filed by the petitioner is not maintainable and the petitioner may be directed to avail appropriate remedy of appeal under the POSH Act and Rules. He has submitted that it is a settled



legal position that Appeal under Section 18 of the POSH Act is an efficacious alternative remedy to challenge recommendations / report of the ICC and therefore, no writ petition can lie against the recommendations / report of the ICC and it has also been held by Courts that the Court should refrain from exercising writ jurisdiction in view of availability of alternative remedy of Appeal under POSH Act. He has further submitted that from bare perusal of Section 18, it is amply clear that where the service rules applicable to the person concerned do not provide a forum for preferring an Appeal in respect of matters mentioned therein, the Appeal has to be preferred in the manner prescribed under the POSH Act and hence, the present petition deserves to be dismissed on this ground.

8.2 Learned counsel Mr. Gandhi has submitted that the respondent No. 1 is registered on 09.07.1973 by the Joint Registrar of Co-operative Societies (Sugar) Gujarat and therefore, the present petition is not maintainable as the respondent No. 1 - [REDACTED] does not fall within the ambit of 'State' or the 'Other Authorities' as defined under Article 12 of the Constitution of India, as the respondent No. 1 is a co-operative society registered under Section 10 of the provisions of the Gujarat Co-operative Societies Act, 1961 and as per the settled legal position, a co-operative society is not *ipso facto* 'State' under Article 12 of the Constitution of India. He has submitted that the as per Article 12 of the Constitution the 'State' includes 'all local and other authorities within the territory of India or under the control of the Government of India'. He has further submitted that it is also a settled legal position that an entity to be an 'Authority' under Article 12, it must be financially, functionally and administratively dominated by or under the control of the State and it has been consistently held that an

entity will not be a 'State', if there is no financial dependence on State, absence of administrative domination and the functions are not essential governmental functions. He has submitted that it has been further held by the Courts that a writ petition under Article 226 of the Constitution would be maintainable against (i) the Government; (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of state; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or body under liability to discharge any function under any statute, to compel it to perform such a statutory function and the Courts have further laid down twin tests for maintainability of the writ viz., (1) the person or authority is discharging public duty / public functions; (2) Their action under challenge falls in domain of public law and not under common law, and merely because a writ petition can be maintained against the private individual / establishment discharging the public duties and/or public function, the same should not be entertained if the enforcement is sought to be secured under the realm of a private law and thus, the right which purely originates from a private law cannot be enforced taking aid of the writ jurisdiction irrespective of the fact that such institution is discharging the public duties and/or public functions.

8.3 So far as the submissions with regard to the fact that the respondent No.1 is not a 'State' under Article 12 of the Constitution of India is concerned, learned counsel Mr. Gandhi has referred and relied upon the following decisions of the Hon'ble Apex Court as well as this Court :

[I] Managing Director, Kaira Co-operative Milk Producers vs. Union Limited, Letters Patent Appeal No. 59 of 1984 in Special



Civil Application No. 855 of 1983 (para-2);

[II] Bipinchandra Jugaldas Soni, Madhusudan Manikant Vedant vs. Gujarat State Co-operative Cotton Federation, [1984] Law Suit (Guj) 209 (para-4);

[III] Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology and Others, [2002] 5 SCC 11 (Para-40);

[IV] Thalappalam Service Co-op. Bank Limited vs. State of Kerala and Others, [2013] 6 SCC 82 (Paras-17, 18, 20, 32, 38, 46);

[V] K.K. Saksena vs. International Commission on Irrigation and Drainage and Others, [2015] 4 SCC 670 (Paras-46 to 49);

[VI] Hema Ritesh Thakker and Others vs. State of Gujarat and Others, [2016] LawSuit (Guj) 1306 (Paras-31, 38, 39, 44);

[VII] St. Mary's Education Society vs. Rajendra Prasad Bhargav, [2022] 4 SCT 94 (Para-68);

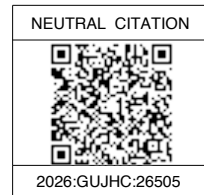
[VIII] Jignesh Sureshbhai Shah vs. State of Gujarat and Others, [2024] LawSuit (Guj) 1490 (Paras-6 to 8);

[IX] Army Welfare Education Society, New Delhi vs. Sunil Kumar Sharma and Others, [2024] SCC OnLine 1683 (Paras-41, 42);

[X] Vaneeta Patnaik vs. Nirmal Kanti Chakrabati and Others, [2025] LawSuit (SC) 1248 (Paras-14, 24 to 27, 31, 32);

8.4 So far as the statutory alternative remedy available to the petitioner to file an Appeal under the POSH Act read with Rules is concerned, learned counsel Mr. Gandhi has referred and relied upon the following decisions of the Hon'ble Apex Court as well as different Courts of India :

[XI] Suresh Babu vs. Regional Joint Labour Commissioner, Ernakulam and Others, [2017] LawSuit (Ker) 2230 (Para-2);



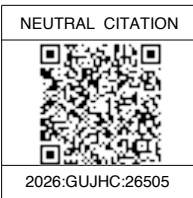
[XII] ABC vs. Internal complaints Committee and Others, [2025] SCC OnLine Bom 4192 (Paras-25 to 29, 33, 34, 39, 43 to 46);

[XIII] Radha Krishnan Industries vs. Himachal Pradesh and Others, [2021] 6 SCC 771 (Paras-24 to 27); and

8.5 So far as the contention with regard to the fact that the alleged act does not fall under the definition of 'Sexual Harassment' under Section 2(n) of the POSH Act is concerned, learned counsel Mr. Gandhi has referred and relied upon the decision of the Madras High Court rendered in case of **D.S. Radhika vs. Secretary to Government, Health, Medical and Family Welfare Department, [2023] LawSuit (Mad) 674 (Para-5).**

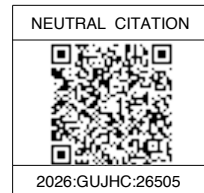
8.6 Thus, considering the principles laid down by the Hon'ble Supreme Court as well as different Courts and in view of the submissions advanced hereinabove and particularly in view of the present preliminary objections regarding the maintainability of the petition, learned counsel Mr. Gandhi has urged that the petitioner is not entitled to any of the reliefs sought for in the captioned petition and therefore, the present petition be dismissed and no interference is required to be called for in the impugned Final Report of the ICC.

9. Referring to the affidavit-in-rejoinder filed on behalf of the petitioner, learned counsel Mr. I.G. Joshi has submitted that no alternative, much less efficacious remedy is available to the petitioner under the POSH Act, as Section 18 of the POSH Act provides for an appeal against the recommendations / report of the ICC before a "Court" or "Tribunal" in accordance with the applicable service rules and in absence of such service rules, the appeal is to be preferred "in



such manner as may be prescribed", i.e., under Rule 11 of the POSH Rules. He has submitted that Rule 11 contemplates an appeal before an appellate authority notified under Section 2(a) of the Industrial Employment (Standing Orders) Act, 1946 and in the State of Gujarat, such appellate authority is stated to be the Industrial Court, Ahmedabad, however, the Industrial Court derives its jurisdiction from the Gujarat Industrial Relations Act, 1946 and is confined strictly to powers conferred under the said statute, more particularly under Section 87(x) of the said Act and there is no notification or statutory conferment empowering the Industrial Court to adjudicate appeals under Section 18 of the POSH Act and in absence of such conferment, the Industrial Court cannot assume jurisdiction beyond its statutory mandate. In support of his submissions, he has referred and relied upon the decision of the Hon'ble Supreme Court rendered in case of **Shridhar C. Shetty (Supra)**.

9.1 Learned counsel Mr. Joshi has submitted that appeals purportedly filed under the POSH Act before the learned Industrial Court are not traceable to any provision under the POSH Act itself, but are instead based on a notification dated 31.12.1979, under which employer institutions and/or complainants have approached the learned Industrial Court by invoking the framework of the Industrial Employment (Standing Orders) Act, 1946, however, in absence of any subsequent notification issued by the State Government, and in the absence of any Appellate Authority constituted under the POSH Act by respondent No. 1, no statutory forum is in fact available to the petitioner. He has submitted that the Industrial Court, being a statutory authority constituted under the Gujarat Industrial Relations Act, 1946 cannot exercise jurisdiction beyond what is expressly conferred upon it under the said State legislation, nor can it



adjudicate disputes arising under a Central legislation of nationwide applicability, in the absence of a specific conferment of jurisdiction. He has submitted that even assuming that the learned Industrial Court could entertain an appeal under the POSH Act, it would, in the absence of a specific Government notification or express conferment of jurisdiction, be unable to adjudicate such proceedings. He has submitted that the jurisdiction of the Industrial Court is confined to matters arising out of the interpretation and application of standing orders under the Industrial Employment (Standing Orders) Act, 1946, and in the absence of certified standing orders applicable to the present case, it would lack the jurisdiction to entertain such an appeal. He has submitted that the aforesaid position is further reinforced by Section 18 of the POSH Act itself, which provides that an appeal shall lie before a court or tribunal in accordance with the service rules applicable to the aggrieved person, however, in the present case, no such forum is available under the applicable service framework. He has submitted that even if this Court does not accept the aforesaid submissions, the petitioner would still be left with no efficacious remedy except to invoke the jurisdiction of this Court for enforcement of fundamental rights. He has submitted that upon the implementation of the Industrial Relations Code, 2020, the Industrial Employment (Standing Orders) Act, 1946 stands repealed with effect from 21.11.2025 and consequently, any notification issued under the repealed enactment would also cease to have effect, thereby extinguishing even the purported appellate forum relied upon by respondent No. 1, and under such circumstances, the petitioner has no alternative but to approach this Court.

9.2 Learned counsel Mr. Joshi has submitted that while the exceptions carved out by the Hon'ble Supreme Court and this Court

regarding maintainability of writ petitions despite availability of an alternative remedy are well settled, the present case is not one of bypassing a statutory remedy and on the contrary, it is a case where no efficacious statutory remedy exists. He has submitted that the issues involved pertain to the protection of dignity and rights of a female employee, which are rooted in constitutional guarantees and are recognized under the POSH Act and in such circumstances, the exercise of jurisdiction under Article 226 of the Constitution of India is not only justified but necessary, as it constitutes the only effective remedy available to the petitioner. He has submitted that the Hon'ble Supreme Court in case of **Medha Kotwal Lele (Supra)** has noted the absence of a clear appellate mechanism under the POSH framework and even this Court, in pending proceedings, has stayed similar proceedings before Labour / Industrial Courts and called upon the State to clarify the issue of jurisdiction (SCA No. 15519 of 2024 Orders dated 25.11.2024 and 25.11.2025, LPA Nos. 579-580 of 2025-Order dated 01.05.2025). He has submitted that the reliance on the Industrial Employment (Standing Orders) Act, 1946 is rendered further untenable in view of its repeal upon enforcement of the Industrial Relations Code, 2020, thereby extinguishing even the purported appellate framework and in these circumstances, the petitioner is left remediless under the statutory scheme, thereby necessitating invocation of the writ jurisdiction of this Court.

9.3 Learned counsel Mr. Joshi has submitted that the objection raised by the respondent No. 1 regarding maintainability on the ground that it is not "State" under Article 12 is misconceived and irrelevant in the facts of the present case as the present petition primarily seeks enforcement of fundamental rights under Articles 14, 15 and 21 of the Constitution of India, particularly the right to dignity

and a safe working environment, which are also embedded in the object of the POSH Act and therefore, the said contention deserves to be deprecated, as it is wholly extraneous to the controversy at hand and does not materially affect the issue in question. He has submitted that irrespective of whether an Internal Complaints Committee (ICC) constituted under the POSH Act in the State of Gujarat falls within the aforesaid definition, any challenge to the decision of such Committee would lie only before this Court, being a Constitutional Court, in view of the absence of any "Court" or "Tribunal" vested with the appellate powers contemplated under Section 18 of the POSH Act read with Rule 11 of the Rules framed thereunder. He has submitted that it is well settled that writ jurisdiction can be invoked against private bodies where: (i) public duties are discharged; (ii) statutory functions are performed; or (iii) fundamental rights are violated and the ICC, being a statutory / quasi-judicial body under the POSH Act, is amenable to writ jurisdiction and the employer itself operates within a regulatory framework and exercises significant public functions. In support of his submissions he has referred and relied upon the decision of the Hon'ble Supreme Court rendered in case of **Kaushal Kishor vs. State of Uttar Pradesh**, reported in **[2023] 4 SCC 1**, wherein, the Hon'ble Supreme Court has clarified that enforcement of fundamental rights can, in appropriate cases, extend even against private employers.

9.4 Learned counsel Mr. Joshi has submitted that in view of the aforesaid and in the absence of any applicable service rules governing the petitioner, the petitioner is constrained to invoke the writ jurisdiction of this Court for enforcement of her fundamental rights, which are not only constitutionally guaranteed but are also reinforced by the statement of objects and reasons of the POSH Act, which may

kindly be taken into consideration by this Court while adjudicating the present petition. He has further submitted that the recommendations of the ICC did not form the basis for the termination of the petitioner, and no material to the contrary has been placed on record by the respondents before this Court. He has submitted that the provisions of the POSH Act, being a piece of social welfare legislation, cannot be construed in a narrow or restrictive manner, but must be interpreted in the context of the "discomfort", whether mental or physical, caused to the aggrieved woman and in the present case, the record (at Pages 81 and 82 of the petition) clearly evidences physical discomfort and accordingly, the definition of "sexual harassment" under Sections 2(n) and 3 of the POSH Act must be given a purposive and contextual interpretation, and the conduct in question squarely falls within the ambit of the said provisions. He has submitted that the definition of sexual harassment under the POSH Act is wide enough to encompass both direct and implied forms of unwelcome conduct and herein the present case, the undisputed use of force upon the petitioner, specifically, holding her wrist and forcibly snatching her mobile phone, as recorded in the impugned Final Report, clearly constitutes unwelcome physical conduct. He has submitted that the impugned report proceeds on an erroneous premise that the absence of "sexual intent" or "sexual undertones" negates the existence of sexual harassment, which is contrary to the statutory scheme of Sections 2(n) and 3 of the POSH Act, which emphasize the nature and impact of the conduct, including unwelcome physical contact, affront to dignity, and the creation of a hostile or intimidating work environment, rather than the subjective intent of the perpetrator and significantly, the ICC itself has recorded that a superior officer held the petitioner's wrist and forcibly snatched her phone, which conduct is inherently unwelcome and violative of dignity, irrespective of the

alleged motive. He has submitted that the statutory test under the POSH Act is thus one of the nature and effect of the conduct, and not the intent behind it and therefore, the reasoning adopted by the ICC is contrary to the scheme of the Act. Moreover, the ICC has applied inconsistent and arbitrary standards by rejecting the petitioner's complaint on the ground of absence of "sexual intent", while simultaneously entertaining a counter-complaint alleging "outraging modesty" on tenuous material, and such contradictory reasoning is manifestly arbitrary and violative of Article 14 of the Constitution. He has submitted that even assuming *arguendo* that explicit sexual intent is absent, the conduct in question squarely falls within the ambit of Section 3(2) of the POSH Act, inasmuch as it resulted in the creation of an intimidating and hostile work environment for the petitioner and therefore, learned counsel Mr. Joshi has urged that the present petition be allowed and the impugned Final Report dated 25.09.2025 be quashed and set aside.

ANALYSIS

10. I have heard the learned counsel appearing for the respective parties and perused the material placed on record. For the foregoing facts mentioned hereinabove, the issue posted before me for the purpose of determining is that, whether the Final Report passed by the respondent authority is required to be interfered with by this Court by exercising jurisdiction under Article 226 / 227 of the Constitution of India or not, whether there is any illegality / perpetual illegality committed by the respondent authority while issuing the Final Report, and without joining the concerned person who is going to be directly effected by the order passed by this Court whether this Court can interfere with the Final Report passed by the respondent



authority and lastly, whether the present petition is maintainable against the respondent No.1 - [REDACTED] as a writ maintainable against a private society without availing statutory alternative remedy available to the petitioner.

11. After going through the facts of the present case and on perusal of the impugned Final Report dated 25.09.2025 issued by the respondent No.2 - ICC which is the subject matter in the present petition, it emerges that the petitioner had raised a complaint under the provisions of the POSH Act complaining about sexual harassment against one Mr. [REDACTED] the Managing Director of the respondent No.1 and Ms. [REDACTED]. It appears from the record that the petitioner was appointed as a Senior Executive (Sales) by the respondent No.1 Co-operative Society on 18.04.2021 and she was to report at Ludhiana Branch Office. Thereafter, the petitioner was transferred from Ludhiana Branch to Head Office, Anand vide transfer order dated 04.08.2018 and therefore, she reported at the Anand Office and in the year 2021, she was promoted to the post of Assistant Manager (Marketing). Then on 28.05.2025, the petitioner raised a complaint before the respondent No.1 against the Managing Director - Mr. [REDACTED] alleging that Mr. [REDACTED] misbehaved with her and assaulted her and also improperly touched and twisted her hand. The petitioner had also raised the said complaint before the Inspector General of Police, Ahmedabad Range on 04.06.2025 and also forwarded the same to the Chair Person of the Gujarat State Human Rights Commission. Ms. [REDACTED] against whom allegations were made, had also filed complaint against the present petitioner before the respondent No.2 - ICC on 03.06.2025 alleging that the petitioner and other unknown people had outraged her



modesty and defamed her by circulating anonymous letters containing false narratives. Thereafter, the said Mr. [REDACTED] and Ms. [REDACTED] filed their respective replies through email on 18.07.2025 before the respondent No.1 - ICC. The petitioner had also given her complaint to the members of the respondent No.2 Committee. In response thereto, the Internal Complaints Committee as constituted under the Act had initiated inquiry and prepared a detailed report on 25.09.2025 and also made recommendations to the respondent No.1 - Co-operative Society in para-51, which is reproduced hereunder :

RECOMMENDATIONS

"51. Case No. 1 of 2025 : Complaint of Ms. [REDACTED] : ICC has concluded that Ms. [REDACTED] has made the allegation of sexual harassment, knowing the same to be false and incorrect. The committee members also observed that Ms. [REDACTED] consciously concealed material facts from this committee and did not give true narration of the entire episode that unfolded on the evening of 28.05.2025. Ms. [REDACTED]'s statements to the committee, both in her interview and the written complaint submitted, detailed the allegations of sexual harassment and molestations by [REDACTED] and Ms. [REDACTED]. Based on the available evidence, ICC is of the opinion that the statements are false and misleading in nature.

Thus, according to Section 14 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, the ICC members unanimously reject her complaint and advise the Administration Department of GCMF Ltd., to take suitable disciplinary action against Ms. [REDACTED] in accordance with the provisions of the service rules applicable.

Case No. 2 of 2025 : Complaint of Ms. [REDACTED] : ICC has concluded that the circulation of the above-mentioned anonymous letters/patrika are serious and cognizable offence and the complainant, Ms. [REDACTED] was subjected to character assault through the defamatory letters/patrika circulated with her photographs. The interim police investigation report suggests involvement of Ms. [REDACTED] as the photos of Ms. [REDACTED] circulated in the letters/patrika, were found on her mobile. Therefore, as per Section 11(1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, ICC decides to admit the Complaint made by Ms. [REDACTED] dated 03.06.2015 (received on 09.06.2025) and forward it to



police for detail investigation and take appropriate action as per law against all involved. ICC also recommends the Administration department of GCMMF to take appropriate disciplinary action as per rules against whoever found involved."

11.1 While recording the reasons in detail, the authority has examined all the relevant aspects including CCTV Footage with regard to the alleged incident as asserted by the petitioner against M [REDACTED] [REDACTED], however, without joining Mr. [REDACTED] the petitioner has preferred this petition and the contention raised by the learned counsel Mr. Joshi for the petitioner and in light of the reasons stated by the respondent No.2 - ICC, it appears that there is no illegality / perpetual illegality committed by the ICC while recording the reasons and recording the recommendations, however, the contention raised by the learned counsel Mr. Gandhi for the respondents with regard to the maintainability of the present petition is concerned, the respondent No.1 is a Milk Marketing Federation registered under the Gujarat Co-operative Societies Act, 1961 and whether the said Federation is amenable under Article 12 of the Constitution of India or not, is required to be looked into first. On perusal of the affidavit-in-reply filed by the respondent No.1 and while examining the averments made by the respondent No.1 in para-6 with regard to the fact that whether writ can be issued against the respondent No.1 as it is amenable under the writ jurisdiction as defined under Article 12 of the Constitution because, the said Society is registered under the Gujarat Co-operative Societies Act, 1961 on 09.07.1973 and though it is a Multi State Co-operative Society and having monopoly in the field, it does not fall under the ambit of Article 12.

11.2 At this juncture, it would be appropriate to refer to the recent decision of the Hon'ble Apex Court rendered in case of

Gajanan M. Naik vs. Goa State Co-Op. Milk Producers' Union Ltd. and Another, reported in **[2024] SCC OnLine Bom 1269**, wherein, it has been observed and held by the Division Bench of the Bombay High Court as under :

"C. WHETHER THE UNION ENJOYS A MONOPOLY/APEX STATUS CONFERRED BY THE STATE OR IS STATE PROTECTED OR WHETHER IT DISCHARGES PUBLIC FUNCTIONS AS PERFORMED BY A STATE :

I. It was submitted that the Union enjoys a total monopoly in the area of producing/processing and distribution of milk in the State of Goa, and being the only player in the market, the State has raised the Union to the status of an Apex Milk Producer/Distributor. This pleading has been specifically denied by the Respondent Union stating in its written that there is no monopoly enjoyed by the Respondent in the market as there are atleast two other milk producers and distributors named Amul and Govan who process and market milk and milk products in the State of Goa. The reply also states that similar business is also carried out by M/s Igloo Cold Storage and Samarth Dairy, both of which have their units at IDC-Kundaim, at Goa. The reply further states that there are other entities within the State of Goa who receive and sell milk and milk products from neighbouring States under the brand names Nandini, Warna, Gokul, Govind, Shree Krishna, Mahanand, Arogya and Aditya. In the affidavit-in-rejoinder, apart from a bald denial, there does not appear to be positive traverse or assertion to these specific facts pleaded by the Respondent. There is no reason to disbelieve the statements made in the affidavit of the Respondent on this count and in any event these would be highly disputed questions of fact on which we would place no reliance. We therefore hold that the Petitioner, apart from the statement made in the Petition, which is denied has not placed uncontroverted material before us to demonstrate that the Respondent Union has complete monopoly at the behest of the State, in the area of production and distribution of milk and milk products within the State of Goa.

II. It was further contended that the Respondent Union has the status of an Apex Milk Distribution Society having complete monopoly in the area of supply/distribution of milk within the State of Goa. Under sub- section (3) of Section of the Goa Co-operative Societies Act, and "Apex Society" means a society, the area of operation of which extends to the whole of the State of Goa, and the main objects of which is to promote the principal object of the societies affiliated to it as members and to provide for the facilities and services to them and which has been classified as an Apex Society by the Registrar. Thus, by a definition, an Apex Society operates for implementing objects of its constitutional society members and provides facilities and services to its members; such a society is required to be declared as an Apex Society by the Registrar. No such a declaration has been produced by the Petitioner before us to claim that Respondent No.1 is an "Apex Society" under the Act.



The classification and sub-classification of societies under the Act is done under Rule 8 of the Goa Co-operative Societies Rules, 2003, under which Apex Societies are one such classification, besides other classifications such as co- operative farming societies, of which Dairy Societies are a sub-classification. On going through the scheme of the Co-operative Societies Act, we do not find any special status conferred upon an Apex Society, even if the Respondents were to have been declared as one, to confer upon it a monopoly status, as contended.

III. *A similar argument was raised before the Full Bench of this Court in Vassudev Madkaikar (supra) which is dealt with in paras 25 and 26 of the judgment. Therein it is held that merely because a particular co-operative society has been declared as an Apex Society or, as in that case a "State Co-operative Bank" and has received such recognition under the Act, it cannot be said that it enjoys a complete monopoly in the field. This Court has further noted that being declared an Apex Body, may confer certain benefits on it, but by merely projecting it on a higher pedestal that other societies registered under the Co-operative Societies Act, does not lead to the conclusion that it satisfies the test of it being a functionality of the State, attracting the expressing "Other Authorities", within the meaning of Article 12. On the same reasoning, this Court has held that such a society, which enjoys apex status, does not confer upon it the character of being an instrumentality or agency of the State Government. For reasons stated above, we reject this contention.*

IV. *It was further argued that since the main object of the Respondent No.1-Union is to distribute milk to consumers within the State of Goa, milk being a product which is a necessity for human population and for their sustenance such a function partakes of a public function which would be performed by the State; that since such a public function is being performed by the Union on behalf of the Government of Goa, it is acting as an instrumentality of the State and is, therefore, amenable to the writ jurisdiction of this Court. The Petitioners rely upon a Judgment of this Court in Dr. Ajit T. Kossambe (supra) to buttress this contention.*

At the outset, we note that the Court, whilst passing its order in that case, was only dealing with such a contention raised at the interim stage and for the purpose of grant of an interim relief to the Petitioner and has not finally decided this issue. In fact, at para 18 of its order the question of whether a writ would lie against the Respondent-Union was specifically kept open to be decided at the stage of final hearing and the order specifically notes that the view taken was only a prima facie view. In that view of the matter, the question not having been finally decided, the judgment in Dr. Ajit Kossambe (supra) cannot be relied upon by the Petitioner to decide the maintainability of this Petition.

V. *In dealing with the above submission, after having applied various tests as laid down in the judgments cited by us to the facts of the present case, we are quite clear that the Respondent-Union is a society, like any other, registered under the Societies Registration Act, but is not a statutory body;*



the Society is purely of a private one, managed by its members through its Board of Directors. The Petitioner is not claiming enforcement of any function or duty by the Union which it might have to perform under the statute governing its functioning. Keeping these facts in mind, we would have to examine whether the society performs any functions which are of public character.

In Shree Anandi Mukta (supra), the Supreme Court is has decreed that if the rights claimed by a petitioner are purely of private character no mandamus can issue; as in that case, if the management of the college was purely a private body with no public duty, mandamus will not lie. It further held that the words “any person or Authority” used in Article 226 are not to be confined only to statutory authority and instrumentalities of State and they may cover any other person or body performing public duty. What is relevant is not the form of the body but the nature of the duty imposed on the body, which must be judged in the light of positive obligation owed by the person or authority, to the affected person.

VI. *Andi Mukta Sadguru (supra) was further clarified in K.K. Saksena vs International Commission on Irrigation and Drainage and ors., reported in (2015) 4 SCC 670, holding that even when a body is performing public duty, all its decisions are not subject to judicial review and it is only those decisions which have a public element that can be reviewed in exercise of writ jurisdiction. We quote from K.K. Saksena (supra) as under :*

“49. There is yet another very significant aspect which needs to be highlighted at this juncture. Even if a body performing public duty is amenable to writ jurisdiction, all its decisions are not subject to judicial review, as already pointed out above. Only those decisions which have public element therein can be judicially reviewed under writ jurisdiction. In The Praga Tools Corporation v. Shri C.A. Imanuel & Ors.11, as 11 (1969) 1 SCC 585 Page 3536 already discussed above, this Court held that the action challenged did not have public element and writ of mandamus could not be issued as the action was essentially of a private character. That was a case where the concerned employee was seeking reinstatement to an office.

50) We have also pointed out above that in Sata Venkata Subba Rao (supra) this Court had observed that administrative law in India has been shaped on the lines of English law. There are catena of judgments in English courts taking same view, namely, contractual and commercial obligations are enforceable only by ordinary action and not by judicial review. In Queen (on the application of Hopley) v . Liverpool Health Authority & Ors. (unreported) (30 July 2002), Justice Pithford helpfully set out three things that had to be identified when considering whether a public body with statutory powers was exercising a public function amenable to judicial review or a private function. They are: (i) whether the defendant was a public body exercising statutory powers; (ii) whether the function being performed in the exercise of those powers was a public or a private one; and (iii) whether the defendant was performing a public

duty owed to the claimant in the particular circumstances under consideration.

51) Even in Anadi Mukta Sadguru (supra), which took a revolutionary turn and departure from the earlier views, this Court held that 'any other authority' mentioned in Article 226 is not confined to statutory authorities or instrumentalities of the State defined under Article 12 of the Constitution, it also emphasized that if the rights are purely of a private character, no mandamus could issue.

52) It is trite that contract of personal service cannot be enforced. There are three exceptions to this rule, namely: (i) when the employee is a public servant working under the Union of India or State; (ii) when such an employee is employed by an authority/ body which is a State within the meaning of Article 12 of the Constitution of India; and (ii) when such an employee is 'workmen' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking the machinery under the said Act. In the first two cases, the employment ceases to have private law character and 'status' to such an employment is attached. In the third category of cases, it is the Industrial Disputes Act which confers jurisdiction on the labour court/industrial tribunal to grant reinstatement in case termination is found to be illegal.

53) In the present case, though we have held that ICID is not discharging any public duty, even otherwise, it is clear that the impugned action does not involve public law element and no 'public law rights' have accrued in favour of the appellant which are infringed. The service conditions of the appellant are not governed in the same manner as was the position in Anadi Mukta Sadguru (supra)". (emphasis supplied)

VII. *Merely claiming that supply and distribution of milk to the public within the State of Goa partakes of a public function or duty, the Petitioner cannot claim that the Union is a "State" for the purpose of Article 12. Distribution of milk per se is not a public function, more so in the light of the fact that the pleadings of the Respondents, which are otherwise not seriously controverted that there is no monopoly in this activity with the Union and there are multiple players in the market to compete. Applying the principles enunciated by the Supreme Court in K.K. Saksena (supra) to the facts of the present case, even if the Respondent-Society were discharging the duties of a public nature, a service dispute such as the one raised in the present Petition claiming a higher age of superannuation, does not permit the Petitioner to take recourse to filing a petition seeking to invoke Article 226 of the Constitution of India to address it.*

VIII. *Vasudev Madkaikar (supra), referring to the aforementioned line of judgments, has adopted a similar line of reasoning, which we believe is binding on us. It holds :*

"40. ... Another important aspect which has to be borne in mind is



that a writ can be issued for the discharge of only that public function if at all a body performs a public function and not any other function performed by it in the course of its business. Even if a body is performing public duty and amenable to writ jurisdiction, as a necessary sequel, all its decisions are not subject to judicial review but only those decisions which have public element therein can be judicially reviewed in exercise of writ jurisdiction. A fine line needs to be drawn between the contract of service by bearing its connection to the nature of contract and a contract of personnel service cannot be enforced with the exception when the employee is a public servant working under the Union of India or State, or an employee who is employed by any authority which is recognised as 'State' within the meaning of Article 12 and when such an employee fall within the ambit of "workman" within the meaning of Section 2(s) of the Industrial Dispute Act, 1947. There cannot be any dispute that writ is maintainable under Article 226 of Constitution of India even against a private management for enforcing the 'public duty' cast upon them, but it cannot be said that the same is available also for enforcing the terms and conditions of service in every situation. With the said observations, the Accountant who had knocked the doors of the Court who was aggrieved by issuance of a chargesheet by the Socio-Economic Unique Foundation, a private Society without any government control, and which was held to be not answering the description of a State, an agency or instrumentality of State or that of any other authority, it was held that though acting as a accredited agent to the Government it discharges duties of public nature, mere service dispute in terms of non-statutory service rules does not permit the petitioner to take recourse to Article 226 of the Constitution of India...."

In the light of these observations, we are clearly of the opinion that the Respondent-Society does not discharge or perform any public function.

21. *In the light of what is held above, we conclude that the Respondent No.1, Goa State Co-operative Milk Producers' Union is not a "State" or an instrumentality of the State nor can it be considered "any other Authority" for the purpose of Article 12 of the Constitution of India and is, thus, not amenable to writ jurisdiction of this Court under Article 226 of the Constitution of India to seek the reliefs sought by the Petitioner in this Petition. The Petition is dismissed as not maintainable. No costs."*

11.3 Yet in another recent decision of the Bombay High Court rendered in case of **ABC vs. Internal Complaints Committee and Others**, reported in **[2025] SCC OnLine Bom 4192**, the Bombay High Court has discussed in detail with regard to the maintainability of the writ petition against the private entities as well as in the face of



alternate remedy, and observed and held as under :

"Maintainability of the writ petition against the private entities:

25. Undoubtedly, the language of Article 226 is of wide import. If the words, "to any person or authority" are literally construed, then writ can be issued even against private persons. Likewise, if the term, "for any other purposes" is interpreted literally, the writ court would be within its right in issuing a writ for any purpose whosoever, even for resolving the private disputes. However, these expressions have not been construed in such literal fashion. By a catena of decisions, it is firmly crystallized that a writ will lie against the State or the instrumentality of the State, and a private entity only when such private entity performs a public function or discharges a public duty involving a public law element.

Maintainability of the petition in the face of alternate remedy:

34. This leads me to the principal ground of challenge to the impugned order on the count of failure to adhere to the principles of natural justice. Under the scheme of POSH Act, the recommendation made by the ICC is subject to an appeal under Section 18 of the said Act before the Appellate Authority constituted thereunder. Existence of an alternate remedy, it is well settled, is a self-imposed restraint on the exercise of the writ jurisdiction. It is a well settled position in law that, despite, the availability of an alternate remedy, the writ Court is not denuded of the power of judicial review and may exercise the plenary writ jurisdiction. The situations in which a writ court may exercise the jurisdiction, notwithstanding the availability of an alternate remedy are also settled by a series of judgments. In the case of *Ghanashyam Mishra and Sons (supra)*, on which reliance was placed by Ms. Singhania, the Supreme Court after referring to the previous pronouncements, including the decision of the Supreme Court in the case of *Whirlpool Corporation vs. Registrar of Trade Marks 10*, enunciated that it has been consistently held that the alternate remedy would not operate as a bar in at least three contingencies:

"(1) where the writ petition has been filed for the enforcement of any of the Fundamental Rights;

(2) where there has been a violation of the principle of natural justice; and

(3) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

49. Hence, the following order:

(i) The petition stands dismissed.

(ii) In the event the petitioner files an appeal under Section 18 of the POSH Act, within a period of four weeks from today, the time spent by the



petitioner in prosecuting this petition may be accounted for, if the question of limitation arises.

(iii) By way of abundant caution, it is clarified that the aforesaid consideration is confined to determine the tenability of the petition and this Court may not be understood to have expressed any opinion of the merits of the matter and, in the event, an appeal is preferred, all contentions of all the parties would be open for consideration by the Appellate Authority, and the Appellate Authority shall decide the appeal on its own merits and in accordance with law, without being influenced by any of the observations made hereinabove."

11.4 In case of **S.S. Rana vs. Registrar, Co-operative Societies and Anr.**, reported in **[2006] 11 SCC 634**, the Hon'ble Apex Court has observed and held as under :

"11. The respondent No.1-Society does not answer any of the aforementioned tests. In the case of a non-statutory society, the control thereover would mean that the same satisfies the tests laid down by this Court in Ajay Hasia vs. Khalid Mujib Sehravardi [(1981) 1 SCC 722]. [See Zoroastrian Coop. Housing Society Ltd. vs. District Registrar, Coop. Societies (Urban) & Ors. reported in 2005 (5) SCC.

13. The decision of the Seven Judge Bench of this Court in Pradeep Kumar Biswas (supra), whereupon strong reliance has been placed, has no application in the instant case. In that case, the Bench was deciding a question as to whether in view of the subsequent decisions of this Court, the law was correctly laid down in Sabajit Tewary vs. Union of India & Ors. [(1975) 1 SCC 485], and it not whether the same deserved to be overruled. The majority opined that the Council of Scientific and Industrial Research (CSIR) was a 'State' within the meaning of Article 12 of the Constitution of India. This Court noticed the history of the formation thereof, its objects and functions, its management and control as also the extent of financial aid received by it. Apart from the said fact it was noticed by reason of an appropriate notification issued by the Central Government that CSIR was amenable to the jurisdiction of the Central Administrative Tribunal in terms of Section 14(2) of the Administrative Tribunals Act, 1985. It was on the aforementioned premises this Court opined that Sabhajit Tewary (supra) did not lay down the correct law. This Court reiterated the following six tests laid down in Ajay Hasia vs. Khalid Mujib Sehravardi [(1981) 1 SCC 722]:

"(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some

indication of the corporation being impregnated with Governmental character.

(3) It may also be relevant factor #..whether the corporation enjoys monopoly status which is State conferred or State protected.

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government."

This Court further held:

"This picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

(Emphasis supplied)

11.5 So far as the statutory alternative remedy available under Section 18 of the POSH Act read with Rule 11 of the POSH Rules is concerned, I am not impressed with the submissions made by the learned counsel Mr. Joshi for the petitioner and thereby canvassing that writ can be issued against the respondent No.1, which is wholly without merits and thus, the said contention is rejected. Moreover, considering the decisions of the Hon'ble Apex Court as discussed hereinabove, when there is a statutory alternative efficacious remedy is available to the petitioner, the Court cannot issue any writ, more

particularly when the Final Report prepared by the respondent No.2 – ICC is legal and valid and there is no any illegality committed by the ICC while inquiring into the complaints in detail and I do not find any infirmity in the impugned Final Report prepared by the ICC. Section 18 of the POSH Act read with Rule 11 of the POSH Rules, are reproduced hereunder :

"Section 18- Appeal.-

(1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

(2) the appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.

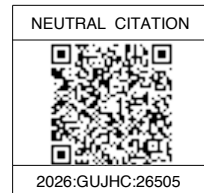
Rule 11 of the POSH Rules, 2013 provides for an Appeal as under :

"11. Appeal.- Subject to the provisions of Section 18, any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clauses (i) or (ii) of sub-section (3) of section 13 or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the appellate authority notified under clause (a) of section 2 of Industrial Employment (Standing Orders) Act, 1946 (20 of 1946)."

11.6 While examining the issue involved in the present petition as narrated by the petitioner, even the provisions of Section 2(n) of the POSH Act are required to be looked into, which are reproduced hereunder :

"Section 2(n) "sexual harassment" includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:—

(i) physical contact and advances; or



- (ii) a demand or request for sexual favours; or*
- (iii) making sexually coloured remarks; or*
- (iv) showing pornography; or*
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;”*

11.7 It would also be appropriate to refer to the provisions of Section 3 of the POSH Act, which are reproduced hereunder :

“Section 3 : Prevention of sexual harassment.—

- (1) No woman shall be subjected to sexual harassment at any workplace.*
- (2) The following circumstances, among other circumstances, if it occurs, or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:—*
 - (i) implied or explicit promise of preferential treatment in her employment; or*
 - (ii) implied or explicit threat of detrimental treatment in her employment; or*
 - (iii) implied or explicit threat about her present or future employment status; or*
 - (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or*
 - (v) humiliating treatment likely to affect her health or safety.”*

11.8 Section 4 of the POSH Act provides for constitution of Internal Complaints Committee, which is reproduced hereunder :

“Section 4 : Constitution of Internal Complaints Committee.

- (1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the “Internal Complaints Committee”:*

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(2) The Internal Committees shall consist of the following members to be nominated by the employer, namely:—

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section(1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee,—

(a) contravenes the provisions of section 16; or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest,

such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy

shall be filled by fresh nomination in accordance with the provisions of this section."

11.9 Even the definition of Sexual Harassment under the Act is wide enough to cover both direct or implied sexual conduct which may involve physical, verbal or non-verbal conduct. The key distinguishing feature is that the conduct is warranted and unwelcomed by the recipient. The definition also includes reference to create an offensive or intimidating or hostile work environment. Herein the present case, whether the allegations made by the petitioner fall under Section 2(n) of the POSH Act read with Section 3 or not. While examining the said fact, the respondent No.2 - ICC has recorded in detail after examining relevant evidence including CCTV footage and they have also referred the investigation carried out by the police and thus, while carried out inquiry, the respondent No.2 - ICC has completely followed the framework as provided under Section 11 of the POSH Act. The Inquiry Committee has submitted its report strictly in compliance with the provisions of Section 11 of the POSH Act. However, it is to be noted herein that Section 14 of the POSH Act provides for protection to the concerned person against whom the allegations are made by the complainant with regard to the offence of sexual harassment. Section 14 makes it clear that in case that the complaint lodged by the complainant is found to be false or malicious and the complaint has been made knowing it to be false, the recommendations made by the respondent No.2 - ICC are in consonance with the settled legal principles enunciated under the Act. Section 14 of the POSH Act reads as under :

"Section 14 : Punishment for false or malicious complaint and false evidence.--

(1) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is



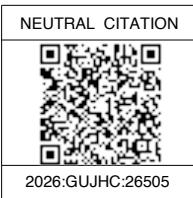
malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed."

11.10 The respondent No.2 - ICC has found that no sufficient material exists as alleged by the petitioner and therefore, after dealing with all these contentions raised by the petitioner before the respondent No.2 - ICC, the Final Report has been prepared by the ICC in detail. There is another underlying context in the present matter. In allegations of sexual harassment, which are sensitive by their very nature, one has to be careful that a reverse bias does not operate against the involved male accused, since the statute itself provides sufficient protection, a double layer of protection, if extended by adjudicating forums to the complainant, might be counterproductive, since excessive abuse of the provisions of the statute will create more glass ceilings than they remove, creating fetters in the employment of genuinely competent and hard-working employee. On perusal of the above discussed facts and circumstances, the writ courts, in judicial

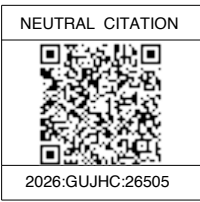


review, have to be careful so as not to substitute their own opinions for those of the adjudicating authorities unless there is any patent unreasonableness, arbitrariness, *mala fides*, perversity and/or illegality evident on the face of the record. I do not find any bias operating in the mind of the ICC or reflected in the impugned decision. Rather, the ICC complied with all principles of natural justice by giving adequate opportunity of hearing and carefully assessing the entire body of evidence before dismissing the complaint of the petitioner. Thus, the principles of natural justice were adhered to and there was no flaw whatsoever in the decision-making process adopted. Hence, there is no scope of interference whatsoever with the impugned decision of the ICC. I am in complete agreement with the Final Report prepared by the respondent No.2 – ICC and I do not find any merits in the present petition. Even on the ground of alternative efficacious remedy available to the petitioner also, I am in complete agreement with the preliminary objections raised by the respondents.

12. Accordingly, the present writ petition is hereby dismissed. Rule is discharged. There shall be no order as to costs.

12.1 It is, however, made clear that this Court has not entered into the merits of the impending criminal trial, if at all, initiated against the concerned person against whom allegations of sexual assault have been made by the petitioner. Even without joining such person as a party to the proceedings, the petitioner has directly prayed for relief before this Court, which is also to be noted herein.

12.2 It is observed that liberty is reserved in favour of the petitioner to take recourse of remedy of appeal before the Appellate Authority. It is also to be mentioned that if the petitioner prefers an



appeal, the same shall be decided in accordance with law, after affording ample opportunity of hearing to all the concerned parties, without being influenced by this Order.

(HEMANT M. PRACHCHHAK,J)

Dolly