IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.M.MANOJ

TUESDAY, THE 27TH DAY OF JANUARY 2026 / 7TH MAGHA, 1947

WP(C) NO. 39539 OF 2024

PETITIONER:

E. SHANAVAS KHAN
AGED 76 YEARS
ADVOCATE S/O. EBRAHIM KUTTY, RESIDING AT VISHNUMADOM, THIRUMALA DEVASOM NAGAR-33, CUTCHERY WARD KOLLAM-, PIN - 691013

BY ADVS. SRI.S.SREEKUMAR (KOLLAM)
SRI.S.NAVAS
SHRI.K.VIJAYAN
SMT.NAMITHA RAJESH
SMT.NITHYA V.D.
SRI.S.SREEKUMAR (SR.)

RESPONDENTS:

1 **THE KOLLAM BAR ASSOCIATION**
REPRESENTED BY ITS SECRETARY, BAR ASSOCIATION HALL, COLLECTORATE, KOLLAM, PIN - 691013

2 **INTERNAL COMPLAINTS COMMITTEE CONSTITUTED UNDER ACT 14 OF 2013,**
REPRESENTED BY ITS CHAIRPERSON, C.VIJAYAKUMARI, ADVOCATE, KOLLAM, BAR ASSOCIATION, KOLLAM, PIN - 691013

3 **NEZLEE N**
AGED 24 YEARS
RESIDING AT AJ NIVAS, BHARATH NAGAR, KOLLAM, PIN - 691004

BY ADVS. SRI.K.SIJU
SMT.T.S.MAYA (THIYADIL)

SRI.C.M.MOHAMMED IQUABAL
SHRI.S.ABHILASH
SMT.ANJANA KANNATH
SMT. MARIYA JOSE
SHRI.ISTINAF ABDULLAH
SHRI.SHEHSAD A.S.
SRI.P.ABDUL NISHAD
SMT.DHILNA DILEEP
SMT.THASNEEM A.P.
SMT.K.A.SUNITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25.11.2025, THE COURT ON 27.01.2026 DELIVERED THE FOLLOWING:

C.R.

P.M. MANOJ, J

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WP(C) No. 39539 of 2024

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Dated this the 27th day of January, 2026

JUDGMENT

The primary issues to be considered in this Writ Petition are the legality of the constitution of the Internal Complaints Committee ('ICC' for short) under the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short, the POSH Act), the enquiry conducted by the said committee, and the challenge to the suspension order issued against the petitioner by the Kollam Bar Association.

2. The short facts of the case are as follows:

The petitioner and the 3rd respondent are members of the Kollam Bar Association, the 1st respondent, which is registered under Section 26 of the Travancore Companies Regulation 1 of 1092. The 3rd respondent preferred a complaint before the 1st respondent alleging misconduct on the part of the petitioner. The alleged incident occurred

on 14.06.2024 at the petitioner's residence, when the 3rd respondent visited the petitioner to discuss the notarisation of a document.

3. It is a matter of fact that the 3rd respondent had also preferred a complaint before the Police, based on which a First Information Report (FIR) was registered alleging offences under Sections 354, 354A(1)(i), 354(1)(ii), and 354(1)(iv) IPC. Subsequently, on the basis of the complaint preferred by the 3rd respondent on 15.06.2024, the President of the 1st respondent Bar Association constituted an ICC as provided under Section 4 of the POSH Act.

4. The ICC conducted an enquiry into the alleged misconduct that occurred on 14.06.2024 and submitted a report, marked as Ext.P8. The primary challenge in this petition is against the said report. The remaining reliefs sought are consequential to the report, including the challenge against the suspension of the petitioner from the 1st respondent Association.

5. For the purpose of examining the issues involved, it is necessary to consider Sections 2(a), 2(f), 2(g), 2(n) and 2(o) as well as Sections 3, 4 and 9 of the POSH Act.

For convenience, the above Sections are reproduced hereunder:

"2. Definitions.—In this Act, unless the context otherwise requires, —

(a) "aggrieved woman" means—

(i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;

xx xx xx

(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

xx xx xx

(v) any other unwelcome physical, verbal or non-verbal conduct of

sexual nature;

(o) "workplace" includes—

xx xx xx

(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainmental, industrial, health services or financial activities including production, supply, sale, distribution or service;

xx xx xx

(v) any place visited by the employee arising out of or during the course of employment, including transportation by the employer for undertaking such journey;"

6. The provisions mentioned above constitute the definition of sexual harassment under Section 3 of the Act, which focuses on prevention. Section 3 begins with an inclusive clause stating that no woman shall be subjected to sexual harassment at any workplace. Section 3 (2) enumerates the specific circumstances that constitute sexual harassment. Since the current discussion concerns the constitution of ICC rather than the final determination of the allegation of sexual harassment—which is a matter for a competent court of law—we will focus on the ICC. An FIR regarding this matter has already been registered by the Police.

7. Section 4 mandates that every employer shall constitute an ICC at the workplace, formalized by a written order. The structure and formation of the Committee are prescribed under Section 4(2). The proceedings under the PoSH Act are initiated under Section 9, which stipulates that any aggrieved woman may submit a written complaint of sexual harassment to the Internal Committee (if constituted) or to

the Local Committee (if the Internal Committee is not constituted). Such complaint must be made within a period of three months from the date of the incident, or, in the case of a series of incidents, within three months from the date of the last incident.

8. From the said provision, it is clear that a complaint under Section 9 can be initiated only by an 'aggrieved woman', as defined under Section 2(a). The complaint must relate to any of the circumstances provided under Section 2(n) and must have occurred at a 'workplace', as defined under Section 2(o)(ii) and (v), and be submitted to the Committee constituted under Section 4. Before considering these elements, it is appropriate to examine the arguments raised by the counsel for the petitioner and the respondents.

9. The counsel for the petitioner contended that the object of the Act is to protect women employees from sexual harassment at the workplace. However, the alleged incident occurred at the petitioner's private residence, which is not a workplace as defined under Section 2(o). Furthermore, neither the petitioner nor the respondent is an employee of the Kollam Bar Association, and therefore, no employer-

employee relationship exists. Since the Association functions more like a Club, it is argued that it is not an establishment covered by the Act. Therefore, the ICC could not assume jurisdiction under the provisions of the PoSH Act. Consequently, all proceedings initiated by the ICC are alleged to be without jurisdiction, violative of natural justice, *non est*, and void.

10. It is further contended that the Bar Association has no legal obligation to constitute an ICC since it employs only one woman employee. The petitioner points out that Section 6 of the PoSH Act provides for the constitution of a Local Committee (LC) for establishments that have not constituted an ICC and have fewer than ten employees. Given that the Association only has one woman member, the provisions for ICC are not intended for the said Bar Association. Hence, any action based on the constitution of such a Committee, including the submission of the Ext.P8 report, is argued to be void ab initio. Therefore, the creation of the Committee and the submission of a report by this *non est* body are argued to be amenable to writ jurisdiction.

11. In support of the contentions, the petitioners have brought to the attention of the Court the rulings in **Abdul Azeez v. Alappuzha Bar Association** [1993 KHC 375], **Jose Kuttiyani v. High Court Advocates Association** [2004 (1) KLT 35], and the Judgment dated 17.03.2020 in WP(C) No.89/2020. In all these cases, the Court has held that a writ petition is maintainable against a Bar Association.

12. It is further contended that the definition of workplace is not met in this case since the alleged incident occurred at the petitioner's residence. The office and the residence are distinct entities. According to the petitioner, the building certificates issued by Kollam Municipal Corporation (Exts.P13(a) to P13(d) and P14) and electricity bills (Exts.P15 & P16), it can be distinguished that office door nos. 44 to 48 and residence having door No.164 are at different premises. Ext.P1 FIS, Ext.P4 complaint and Ext.P11 Scene Mahazar all state that the alleged incident occurred in the dining hall of the petitioner's residence.

13. Based on this distinction (between an ICC and a Local Committee), it is further contended that the ICC constituted by the

Bar Association has no jurisdiction over the alleged incident that occurred in a private residence, which falls outside the scope of a "workplace" under the Act. Therefore, the Ext.P8 report has no relevance. It is additionally contended that the proper forum for recourse in this matter would be to approach the Bar Council of Kerala under Section 35 of the Advocates Act, 1961. In support of this argument, the counsel for the petitioner specifically points to the decision rendered by the Bombay High Court in **UNS Women Legal Association (Regd.) v. Bar Council of India and others** [2025 SCC OnLine Bom 2647] wherein even the Bar Council cannot constitute ICC with respect to the Advocates.

14. The learned counsel for the petitioner draw the attention of this Court to the decision of the Apex Court in **National Union of Commercial Employees v. MR Meher, Industrial Tribunal, Bombay [AIR 1962 SC 1080]**, wherein it was held that an Advocate's office is not an "industry" as defined under Section 2(j) of the Industrial Disputes Act, 1947.

Similarly, in **Sasidharan v. Peter and Karunakaran and Others [AIR 1984 SC 1700]**, the Apex Court ruled that a lawyer's office or

firm is not a "commercial establishment" coming within the definition of Section 2(4) of the Shops and Establishments Act, 1960. In **T.P. Daver v. Lodge Victoria No. 363, SC Belgaum and Others [AIR 1963 SC 1144]**, the Apex Court held that the members of a club are bound by its bylaws upon joining, and any breach entails civil consequences. Crucially, the Court established that a club is not an employer of its members. This same situation is applicable to Bar Associations. Only the members who join the Association, after accepting its bylaws, come under their purview. Therefore, a Bar Association cannot be treated as an "employer." To treat it as an employer and an advocate as its employee would require the application of various labour laws (e.g., Insurance Act, Provident Fund Act), potentially requiring a threshold of 20 advocates. In the case at hand, no such situation is contemplated.

15. The contentions regarding the factual aspects of the incident and the suspension of the petitioner are not intended to be considered in this writ petition. However, the contention concerning violation of the principles of natural justice is an issue that squarely relates to the validity of the Constitution of the Committee. Despite this close

relationship, the Court will also not consider the factual aspect of the alleged issue at this stage. The determination of the principles of natural justice will be left open, dependent on the final outcome of the writ petition.

16. The 1st respondent, on the other hand, contended that the Kollam Bar Association is a Company incorporated in the year 1937 under the Travancore Companies Regulation 1 of 1092. It is also admitted by the petitioner and the 3rd respondent that they are members of this Company.

17. The Association received a complaint via email on 15.06.2024, regarding sexual harassment of the third respondent by the petitioner, allegedly occurring on 14.06.2024. Upon receipt of the complaint, the Association issued a notice to the petitioner on 18.06.2024, requesting his remarks within seven days. Thereafter, at its Director Board Meeting held on 21.06.2024, the Association resolved to forward the complaint to the existing ICC constituted under Section 4 of the PoSH Act. This decision was intimated to both sides. Since the petitioner did not respond, the Board, reconvening on 21.06.2024, reconsidered the issue and decided to suspend the

petitioner from his membership until a further decision was made on the ICC's report. This suspension was intimated to the petitioner on 26.06.2024. In the meantime, the issue gained media attention, with reports published in several newspapers and news channels, including the dissemination of audio clips and interviews. A separate criminal case was also registered against the petitioner on June 22, 2024, alleging offences under Sections 354, 354A, 354A(1)(i), 354A(1)(ii), and 354A(1)(iv) of IPC.

18. It is further contended that several Bar Associations within the State have constituted ICCs due to similar allegations and incidents. The ICC of the respondent Association was constituted three years ago and has been operational since then. Considering the gravity of the alleged incident, that a junior member was harassed by a senior male member, the matter was referred to the ICC with bona fide intention, aimed at avoiding controversy in the public sphere. It is also contended that the petitioner never challenged the Committee's referral and, in fact, cooperated with the Committee, and even cross-examined the complainant. The petitioner submitted a belated explanation on 18.07.2024, after his suspension, claiming the

action was issued maliciously, as evidenced by Ext.P6. Even in this explanation, the petitioner did not raise any objection regarding the applicability of the PoSH Act. Similarly, the respondent contends that the petitioner filed this writ petition only after the submission of the Ext.P8 report and after being asked for his remarks, having fully participated in the proceedings. Hence, the petitioner lacks *bona fides* in challenging Ext.P8. Thereafter, the petitioner submitted a letter seeking time to offer his remarks, claiming he was indisposed until November 2, 2024. Subsequently, upon realizing that the Committee's report was unfavourable, he preferred this writ petition.

19. The Association took disciplinary action against the petitioner under Article 12 of the Articles of Association. Article 12A(j) provides that dishonourable and unprofessional conduct of members can be treated as misconduct. Similarly, Article 12A(e) deals with abusing a member or members in filthy language, which also constitutes misconduct. In the case at hand, the misconduct of the petitioner has been prima facie established. Hence, the Director Board decided on 26.06.2024, to place the petitioner under suspension pending enquiry, as permitted by Article 12D of the Articles of

Association. Consequently, there is no illegality in the decision to suspend the petitioner, and there was no *mala fide* intention on the part of the Association when taking action. It is also pleaded that, irrespective of the findings on the sustainability of the ICC, the Association should be permitted to proceed further with the disciplinary action initiated against the petitioner.

20. The second respondent, ICC, represented by its Chairperson, also appeared through counsel. The primary contention raised by the counsel for the second respondent is with respect to the maintainability of the writ petition on the grounds of non-joinder of necessary parties. This is because Rule 7 of the PoSH Rules prescribes a minimum of three members, including the Presiding Officer or Chairperson, for conducting the inquiry. The Rules do not provide representative capacity to the Chairperson in legal proceedings. Furthermore, Ext. P8 report, which is being challenged in the writ petition, reveals that the entire proceedings were conducted collectively by the Chairperson and the members, none of whom have been impleaded in the party array, rendering the writ petition defective.

21. Counsel for the 2nd respondent further contended that the existence of an employer-employee relationship between the petitioner and the 3rd respondent is not a prerequisite for the applicability of the PoSH Act. It is argued that based on the definition of 'aggrieved woman' and the objective of the PoSH Act, the legislation is intended to protect all women in the country, extending beyond a strict employer-employee relationship. Therefore, it is not necessary that the aggrieved person- the 3rd respondent-should be an employee of either the petitioner or the first respondent Bar Association. The Act also covers women who approach a workplace for employment purposes. Hence, the 3rd respondent has every right to approach the ICC under the PoSH Act.

22. The next contention is with respect to the constitution of ICC by the Bar Association. On the strength of **Aureliano Fernades v. State of Goa** [2023 KHC 6567], the counsel submitted that the Hon'ble Apex Court gave some directions regarding the constitution of ICC, wherein it was held: "77. DIRECTIONS

To fulfil the promise that the PoSH Act holds out to working women all over the country, it is deemed appropriate to issue the following directions:

xx xx xx

iii. A similar exercise shall be undertaken by all the Statutory bodies of professional at the Apex level and the State level (including those regulating doctors, lawyers, architects, chartered accountants, cost accountants, engineers, bankers and other professionals), by Universities, colleges, Training Centres and educational institutions and by government and private hospitals/nursing homes."

Thereby, it is contended that Kerala Bar Council is a state-level body of Advocates and as per Rule 2 of the Bar Council of Keala Rules, Bar Association means a Bar Association or association of Advocates recognised by the Bar Council of Kerala for the purpose of the Rules. Thereby, the 1st respondent is a statutory body of advocates registered under the Bar Council of Kerala and constituted for the welfare of its members. In the case of **Aureliano Fernandes** supra the Apex Court directed the constitution of ICC in all statutory bodies of professionals, including lawyers.

23. It is further contended that in the **Initiatives for inclusion of Foundation v. Union of India** [2023 KHC 6935], in the light of the directions passed in **Aureliano Fernadez** the Apex Court directed to constitute ICC in public establishments which directly fall within the ambit of Section 2(o)(i) of POSH Act and also directed to constitute ICCs in private establishment such as bodies governing Professional

Associations. The 1st respondent is such an Association, and therefore, the meaning of the word Association, an act of connecting for linking ideas, and the state of being connected, is applicable in this case. Also, it can be made widely applicable to a formal organisation, a mental connection or relationship between things. As far as an Association is concerned, the relationship between its members is only for the common interest, and there is no need to have a strict employer-employee relationship. In such premises and on the directions of the Supreme Court in **Aurlieano** and **Initiative for inclusion of foundations** supra the Advocates Association has the power to constitute ICC for the protection of its lady members who come under the definition of working women and aggrieved persons under the POSH Act.

24. Further argument placed by the counsel for the 2nd respondent is with respect to the power of the Bar Association to initiate any penal action against the accused person on the basis of ICC report. In **Women in Cinema Collective and others v. State of Kerala and Others** [2022 (2) KHC 565] the Division Bench of this Court held:

> "Therefore, it cannot be said that even if the respondent Organisations have no direct employer-employee relationship with the Actor Artists and consequent to which no Internal Committee is constituted to redress their grievance against the sexual harassment, can be raised against the person or the management, who maintain a work place.
>
> xx xx xx
>
> "To put it short, so far as the film industry is concerned, the production unit is a workplace of an individual firm and therefore, each production unit would have to constitute an Internal Complaints Committee, which alone can deal with the harassment against the women in contemplation of the provisions of Act, 2013".

In light of the aforementioned decision, it is contended that the employer-employee relationship is not strictly necessary for the applicability of the PoSH Act, as clarified by the Division Bench. For example, if an actor or artist commits sexual harassment against another lady artist at the workplace of any film production unit (outdoor or indoor), the ICC can conduct enquiry and file report. It is true that the production unit cannot take any penal action against the actor/artist, such as restraining them from performing their duties, based solely on the ICC report. The only course of action is to forward the ICC report to their Organization (like AMMA, etc.), which

can then suspend or dismiss their membership and recommend further penal action. Similarly, the Bar Association can also take disciplinary action against the accused person, such as suspending or dismissing his membership, based on the ICC report. The Association can then forward the report to the Kerala Bar Council for further action, even though the Association cannot restrain the petitioner from practising his profession.

25. The next contention concerns the definition of "workplace" under the Act. The alleged incident occurred at the petitioner's office, where the 3rd respondent visited for notarisation of documents. The petitioner cooperated with the 2nd respondent's enquiry by filing an objection and cross-examining the third respondent. It is also admitted by the petitioner in this writ petition that the 3rd respondent came to his office, which is within his house premises and includes a library. Therefore, the residential house where the alleged incident took place cannot be considered as a purely private place or a residential dwelling for the purposes of this Act.

26. Similarly, the 3rd respondent has appeared through her counsel. Most of her arguments align with the contentions raised by

the 2nd respondent. The primary contention is with respect to the maintainability of the writ petition. In this regard, it is argued that the Kollam Bar Association is not a "State" within the purview of Article 12 of the Constitution of India. Therefore, a writ petition under Article 226 of the Constitution is not maintainable against the Bar Association. Going by Article 226, it is clear that writs can only be issued against the State, as defined under Part III, Article 12 of the Constitution. The Kollam Bar Association will not come under the purview of Article 12. While it is contended that the Bar Association is not a statutory body—though it is a registered company limited by guarantee, incorporated in 1983 under Section 26 of the Travancore Company Regulation, and is an existing company within the meaning of the Companies Act, 1956 and 1983—it is ultimately argued that it is not a "State." Therefore, the writ petition is not maintainable.

27. It is also contended by the counsel for the third respondent that, in **Abhijeet Appasaheb Bacche-Patil v. The Bar Council of Maharashtra and Goa** [(2025) SCC OnLine Bom 1514], it was held that a writ petition against the Bar Association is not maintainable on various grounds. Furthermore, reliance is placed on the Supreme

Court's decision in **Secretary Alipur Bar Association v. Subir Sengupta and Others** [(2024) SCC OnLine Cal 3597], which reiterated this stand by holding that a Bar Association is not amenable to writ jurisdiction. This position is also supported by the principles laid down in **Pradeep Kumar Biswas and Others v. Indian Institute of Chemical Biology and Others** [(2002) 5 SCC 111].

28. The further contention by the counsel for the 3rd respondent was with respect to the maintainability of the proceedings under the PoSH Act. Primarily, the 3rd respondent is defined as an "aggrieved person" under Section 2(a)(i) of the Act. It is contended that the 3rd respondent was subjected to sexual harassment at the office of the petitioner, an advocate who operates his office from his residence. When the 3rd respondent approached the petitioner, in his capacity as an advocate, for Notary attestation at his office, she was allegedly taken *inside* the house and subjected to sexual harassment. Since her visit was not for any personal purposes, the incident can be treated as sexual harassment occurred during an official visit to the petitioner's office. Thereby, she qualifies as an "aggrieved woman,"

and the petitioner's office constitutes a "workplace." For the purposes of the Act, an employer-employee relationship is not necessary as per Section 2(a)(i) and Section 2(g) of the Act, which defines "employer." Stressing Section 2(g)(ii), the counsel for the 3rd respondent contends that any person responsible for the management or supervision of the workplace is the employer. The petitioner, being in control of the workplace where the incident took place, falls under this definition.

29. Similarly, on the basis of Section 2(o), the counsel for the 3rd respondent contends that the petitioner's office is an "organisation" coming under the purview of Section 2(o)(ii). Therefore, the overt act committed by the petitioner, irrespective of the contention that the location was his residence, is not a valid ground to allow the writ petition. This is because the advocate's residence, when used for professional work, is also considered a workplace as per the notional extension principle. The victim was taken from the advocate's office, functioning in his residence, to the inside of the residence (the dining hall). It is contended that since the location is not a purely private area, the ICC is competent to entertain the complaint as a workplace matter.

30. It is further contended that the Bar Association is empowered to conduct an enquiry into the overt act because it is the body responsible for the welfare of the advocates. Article 12A of the Articles of Association empowers the Bar Association to act against the misconduct of its members, specifically describing "misconduct" as dishonourable or unprofessional conduct. The counsel for the 3rd respondent is trying to establish that the alleged overt act committed by the petitioner in his office against another member of the Association would amount to dishonourable or unprofessional conduct. Therefore, the Bar Association is bound to act upon Ext. P4 complaint.

31. The counsel for the 3rd respondent is also trying to justify Ext. P5, the order of suspension, by stating that the petitioner failed to comply with the Bar Association's direction to offer an explanation to the report submitted by the ICC within the stipulated time. Consequently, the Director Board made a decision to suspend his membership in the Bar Association. Furthermore, the petitioner did not raise any complaint against the Bar Association proceedings; instead, he requested that the enquiry be postponed until the finality

of the criminal proceedings. However, the ICC proceeded and submitted a report, as evidenced by Ext. P8.

32. Going by Ext. P8, it is discernible that the petitioner participated in the enquiry initially, but once the findings turned against him, he chose to challenge the constitution of the Committee and its report. On the strength of **Women in Cinema Collective** (cited *supra*), the counsel contends that the Association has ample power to proceed under the provisions of the PoSH Act. It is further contended that the said Act is a direct result of the decision rendered by the Apex Court in the **Vishaka v. State of Rajasthan [1997 KHC 564]**.

33. The Act intends to protect women in the workplace and also to provide adequate protection to their dignity. In the case at hand, it is alleged and undisputed that the 3rd respondent was harassed, regardless of the absence of an employer-employee relationship between the parties. Given the definitions under Section 2(a)(i) (aggrieved woman) and Section 2(g)(i) and (ii) (employer), the harassment sustained by an advocate at the office premises is also considered harassment under the provisions of the PoSH Act. This is

especially true since the 3rd respondent, being a lawyer, is also entitled to the protection envisaged under the Act. Ext.P1, the FIR, will not be an impediment to the ICC conducting an enquiry under the PoSH Act. The FIR pertains to the criminal act conducted by the petitioner, not the misconduct contemplated under Section 2(a)(i) of the PoSH Act. It is also contended that the language used against the 3rd respondent, the victim in the writ petition, by a senior and renowned lawyer, demonstrates a naked disregard for the victim's reputation and constitutes an insult to a person who is also a practising lawyer.

34. On the basis of the aforementioned contentions, it is necessary to decide the legality of the ICC constituted by the 1st respondent. This is contested by the 3rd respondent, who has raised a preliminary objection with respect to the maintainability of the writ petition, arguing that the Bar Association does not fall within the purview of Article 12 of the Constitution.

35. I have heard Sri.S.Sreekumar learned Senior Counsel instructed by Adv. S.Sreekumar (Kollam), Sri. Siju Kamalasanan for

the 1st respondent, Smt.T.S. Maya (Thiyyadiyil) and Sri.C.M. Muhammad Iqbal for the 3rd respondent.

36. The preliminary issue is with respect to the maintainability of the writ petition. This is because the relief sought in the petition challenges the report submitted by the second respondent, as well as the action taken by the first respondent based on that report. Furthermore, the petitioner also seeks relief against the first respondent Association regarding the order of suspension.

37. According to the 3rd respondent, the writ petition under Article 226 is maintainable against the State or its instrumentality, which is defined under Article 12. Article 226 of the Constitution of India reads as follows :

> **"226. Power of High Courts to issue certain writs**
>
> (1)Notwithstanding anything in article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrantor and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(2)The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the scat of such Government or authority or the residence of such person is not within those territories.

(3)Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without--(a)furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and(b)giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4)The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32."

Going by the recitals in Article 226(2), it can be seen that the power conferred by Clause (1)—to issue directions, orders, or writs to any government, authority, or person—may also be exercised by any High Court exercising jurisdiction in relation to the territories within

which the cause of action wholly or in part arises for the exercise of such power. This is applicable notwithstanding that the seat of such government or authority or the residence of such person is not within those territories. Here, in the case at hand, the challenge is raised primarily against a report preferred by a Committee, which is stated to be constituted under the provisions of the PoSH Act, 2013. The legality of the constitution of such a Committee itself is under challenge.

38. The Advocates Act, 1961, establishes a comprehensive legal framework for the legal profession in India, centralizing the regulatory and representative role on two main statutory bodies, collectively referred to as "Bar Councils": the Bar Council of India and the State Bar Councils. As per Section 3 of the Advocates Act, 1961, there shall be a Bar Council for each State. Specifically, under Section 3(1)(c), the Bar Council of Kerala is recognized for the State of Kerala and the Union Territory of Lakshadweep.

The Bar Council of Kerala is the primary body empowered to:

- Admit a person as an Advocate on its roll under Section 6(1)(a) of the Act.

- Entertain and determine cases of misconduct against an Advocate on its roll, as per Section 6(1)(c).
- Safeguard the rights, privileges, and interests of advocates on its roll, as per Section 6(1)(d).

Therefore, it can be seen that the Bar Council of Kerala is the responsible body for the Advocates within the territory of the State to enrol a person, maintain that person in the rolls, take disciplinary action against them, and is also responsible for their welfare.

39. Although the Advocates Act, 1961, does not specifically mention anything about Bar Associations, the Kerala Advocates Welfare Fund Act, 1980, provides for their registration and recognition under Section 13. Furthermore, Section 14 prescribes the duties of Bar Associations, which include maintaining a register of Advocates and intimating the Bar Council of any professional fraud. Thereby, it can be seen that Bar Associations are officially recognized only for the purpose of the Advocates' Welfare Fund. Since the welfare of advocates is one of the primary duties of the Bar Council, it can be argued that the Bar Association also attains the legal status of a statutory body with respect to the Welfare Fund. Moreover, the first respondent Association is registered as a company limited by

guarantee, incorporated in 1983 under Section 26 of the Travancore Companies Regulation, and is an existing company within the meaning of the Companies Act, 1956 and 1983. This court has previously interfered in matters concerning Bar Associations, as seen in **Abdul Azeez** supra and in **Jose Kuttiyani** supra. Following these decisions, this Court also interfered in a matter preferred by certain members, including the petitioner herein, against the first respondent in WP(C) No. 89/2020 (vide judgment dated March 17, 2020). In such circumstances, the contention by the 3rd respondent, relying on the decisions in ***Abhijeet Appasaheb Bacche-Patil*** (*supra*) and ***Secretary Alipoor Bar Association*** (*supra*), that the Bar Association is not amenable to writ jurisdiction, cannot be accepted. Moreover, the core question in this case is the alleged illegal formation of the ICC, which submitted the report Ext. P8 under the PoSH Act. Hence, this Court has every jurisdiction to entertain the writ petition.

40. The central issue now pertains to the capability and legality of the first respondent to form the ICC under the provisions of the PoSH Act, and the subsequent validity of proceeding against the petitioner based on the report submitted by that Committee.

41. As stated earlier, the object of the Act is to provide protection against sexual harassment of women at the workplace and to ensure the prevention and redressal of complaints of sexual harassment, along with matters connected therewith or incidental thereto. For that purpose, Section 4 of the Act contemplates the constitution of an ICC. Under Section 4, it is stipulated that every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the Internal Complaints Committee. Section 4 also details the structure and composition of the said Committee. The remaining provisions under Section 4 cover the tenure of the Committee, the fees to be paid, and the qualifications required for the Presiding Officer and the members.

42. The next question to be decided, therefore, is whether the Advocates Association has the power to constitute such a Committee (ICC). This hinges on the explicit wording of Section 4, which states that "**every employer of a workplace**" is the person qualified to constitute an ICC. As per the provisions of the Advocates Act, it can be seen that the Bar Association is not mentioned anywhere. The only mention with respect to the Bar Association is found under the Kerala

Advocates Welfare Fund Act, 1980, and that is solely for the purpose of maintaining a roll of persons who are also on the rolls of the Bar Council of Kerala.

43. As per Section 2(g) of the PoSH Act, an "employer" means the head of a department of an organization, undertaking, establishment, enterprise, institution, office, branch or unit, or such other officer as the appropriate government or the local authority, as the case may be, may, by an order, specify in this behalf. In cases where a workplace is not covered under the above definition, an "employer" is defined further under Sub-section (ii) of Section 2(g) as any person responsible for the management, supervision, and control of the workplace. The authority constituting the employer is essentially the person discharging the contractual obligation with respect to his or her employees. As far as an advocate is concerned, the petitioner's role does not qualify under any of the authorities mentioned in the said provisions.

44. As stated earlier, the Bar Association cannot be treated as an "employer" under the aforementioned terms. Hence, the formation of the ICC does not qualify under the mandate of Section 4 of the

PoSH Act. Therefore, the constitution of the ICC by the first respondent is itself against the objective and specific requirements of Section 4 of the PoSH Act. Consequently, the report submitted by the ICC (Ext. P8) has no legal basis to stand upon. Accordingly, Ext. P8 should be set aside.

45. In the light of the above findings, I do not find it necessary to address the remaining contentions raised by the respective counsel on both sides. The rest of the contentions concerning the facts and merits of the alleged incident are left open.

This Writ Petition is disposed of accordingly.

Sd/-

P.M.MANOJ
JUDGE

ttb

APPENDIX OF WP(C) NO. 39539 OF 2024

PETITIONER'S EXHIBITS :

Exhibit P1	**THE TRUE COPY OF THE FIR IN CRIME NO. 664/2024 OF KOLLAM WEST POLICE**
Exhibit P2	**THE TRUE COPY OF THE ORDER IN CRL.MC NO. 1264/2024 OF THE SESSIONS COURT, KOLLAM DATED 02-07-2024**
Exhibit P3	**THE TRUE COPY OF THE JUDGEMENT DATED 12.08.2024 IN WP(C) NO. 22856 OF 2024 OF THIS HON'BLE COURT**
Exhibit P4	**TRUE COPY OF THE COMPLAINT DATED 15-06-2024 SUBMITTED BY 3RD RESPONDENT BEFORE 1ST RESPONDENT**
Exhibit P5	**A TRUE COPY OF THE SUSPENSION ORDER DATED 26-06-2024 ISSUED BY THE 1ST RESPONDENT**
Exhibit P6	**THE TRUE COPY OF THE OBJECTION SUBMITTED ON 18.07.2024 BY THE PETITIONER BEFORE THE 1ST RESPONDENT**
Exhibit P7	**TRUE COPY OF THE PRELIMINARY OBJECTION DATED 20-07-2024 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT**
Exhibit P8	**THE TRUE COPY OF THE REPORT OF THE 2ND RESPONDENT, INTERNAL COMPLAINTS COMMITTEE DATED 20.09.2024**
Exhibit P9	**THE TRUE COPY OF THE NOTICE DATED 24.10.2024 ISSUED BY THE 1ST RESPONDENT ON 25.10.2024**
Exhibit P10	**THE TRUE COPY OF THE LETTER DATED 02.11.2024 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT**
Exhibit P11	**THE TRUE COPY OF THE SCENE MAHAZAR IN CRIME NO. 664/2024 OF KOLLAM WEST POLICE STATION**
Exhibit P12	**MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION OF THE KOLLAM BAR ASSOCIATION**
Exhibit-P13	**The true copy of the Building Certificate issued from the Kollam Municipal Corporation with regard to the petitioner's office for Door No. 44 dated 30.11.2024**
Exhibit-P19	**The true copy of the relevant extracts of the Final Report in Crime Number 664/2024 dated 24.10.2024**
Exhibit-P20	**The true copy of the relevant extracts in Final Report in Crime No.671/2024 of Kollam West Police Station dated 11.10.2024**

Exhibit-P13(a)	**The Building Certificate issued from the Kollam Municipal Corporation with regard to the petitioner's office for Door No. 45, dated 30.11.2024**
Exhibit-13(b)	**The Building Certificate issued from the Kollam Municipal Corporation with regard to the petitioner's office for Door No. 46, dated 30.11.2024**
Exhibit-P13(c)	**The Building Certificate issued from the Kollam Municipal Corporation with regard to the petitioner's office for Door No. 47, dated 30.11.2024**
Exhibit-P13(d)	**The Building Certificate issued from the Kollam Municipal Corporation with regard to the petitioner's office for Door No. 48 dated 30.11.2024**
Exhibit-P14	**The Building Certificate issued from the Kollam Municipal Corporation with regard to the petitioner's residence for Door No. 164, dated 30.11.2024**
Exhibit-P15	**The Electricity Bill issued to the Advocate Office of the petitioner dated 09.12.2024**
Exhibit-P16	**The Electricity Bill issued to the Residence of the petitioner dated 18.02.2025**
Exhibit-P17	**The true copy of the Seizure Mahazar in Crime No.664/2024, dated 28.06.2024**
Exhibit P18	**The true copy of the Mobile Provider's Call Record dated 11.08.2024**
Exhibit P19	**The true copy of the relevant extracts of the Final Report in Crime Number 664/2024 dated 24.10.2024.**