

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7430 OF 2026

MR. ANUP VIKAL

.....Petitioner

: Versus :

STATE OF MAHARASHTRA AND ORS.

....Respondents

**WITH
WRIT PETITION NO. 7434 OF 2026**

Ms. CHANDRANI SEN

.....Petitioner

: Versus :

STATE OF MAHARASHTRA AND ORS.

....Respondents

**WITH
WRIT PETITION NO. 8418 OF 2026**

MR. ROHIT ANAND

.....Petitioner

: Versus :

STATE OF MAHARASHTRA AND ORS.

....Respondents

Mr. Sharan Jagtiani, Senior Advocate with Ms. Shraddha Achliya, Mr. Ankoosh Mehta, Ms. Mansi Chheda & Ms. Arunima Phadke i/b Cyril Amarchand Mangaldas, for Petitioner in WP/7430/2026.

Mr. Ashish Kamat, Senior Advocate with Ms. Ankita Singhania i/b Cyril Amarchand Mangaldas, for Petitioner in WP/7434/2026.

Ms. Madhavi Nalluri i/b Cyril Amarchand Mangaldas, for Petitioner in WP/8418/2026.

Mr. Karl Tamboly with Ms. Vilasini Balasubramanian & Ms. Victoria Gonsalves i/b Jayakar & Partners, for Respondent No. 2 in WP/7430/2026.

Dr. Abhinav Chandrachud with Ms. Vilasini Balasubramanian & Ms. Victoria Gonsalves i/b Jayakar & Partners, for Respondent No. 2 in WP/7434/2026.

Mr. Aseem Naphade with Ms. Vilasini Balasubramanian & Ms. Victoria Gonsalves i/b Jayakar & Partners, for Respondent No. 2 in WP/8418/2026.

Ms. V.R. Raje, AGP for State, Respondent in WP/8418/2026 & WP/7430/2026.

Ms. A.A. Nadkarni, AGP for State, Respondent in WP/7434/2026.

CORAM : SANDEEP V. MARNE, J.

JUDGMENT RESD. ON : 04 August 2026.

JUDGMENT PRON. ON : 19 August 2026.

JUDGMENT :

1) Whether a remedy of appeal under Section 18 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is available to the aggrieved woman against a mere communication made by the Internal Complaints Committee that the complaint does not involve an element of sexual harassment is the issue which the Court is tasked upon to decide in the petitions.

THE CHALLENGE

2) These Petitions take exception to the Judgment and Order dated 4 May 2026 passed by the Learned Member, Industrial Court, Mumbai in Appeal (IESO) No. 3 of 2024, which was filed by Respondent No. 2 challenging the communication of Internal Complaints Committee (ICC) dated 30 October 2023. The Industrial Court has allowed the Appeal by rejecting Applications preferred by the Petitioners questioning maintainability of the Appeal, and has set aside ICC's communication dated 30 October 2023. The Industrial Court has remanded the proceedings to the ICC with directions to conduct the inquiry by following the procedure contemplated under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) and by affording due opportunity to all the parties.

FACTS

3) Maple Infra InvIT Investment Manager Private Limited (Maple Infra) is an infrastructure investment trust. Petitioners- Mr.

Anup Vikal and Ms. Chandrani Sen are employees of Maple Infra. Petitioner- Mr. Rohit Anand claims to be employed by CDPQ Asia Pacific Pte. Ltd. (**CDPQ**) a Singapore based entity which is a shareholder of Maple Infra. Respondent No.2 commenced her employment with Maple Infra from 1 August 2023 as General Counsel (Vice President-Legal). According to the Petitioners, Respondent No. 2 found it unbearable to continue employment on account of various factors, and she voluntarily tendered her resignation on 12 October 2023. Respondent No.2 was thus employed with Maple Infra for 73 days and it is claimed that she physically attended office only for 28 days. On 18 October 2023, Ms. Chandrani Sen shared draft of Mutual Settlement Agreement (**MSA**) with second Respondent outlining the terms of amicable exit from Maple Infra. However, the negotiations on settlement failed after exchange of drafts. On 19 October 2023, second Respondent filed a complaint before Ethics and Compliance Committee of CDPQ alleging wrongful termination, gender bias, discrimination and retaliation. By email dated 21 October 2023, she rejected the draft MSA terms. On 25 October 2023, Maple Infra accepted her resignation and agreed to pay her final dues. On 26 October 2023, Respondent No. 2 expressed unwillingness to exit, sought negotiations regarding the severance package, and inquired about resuming work. On 28 October 2023, Maple Infra informed Respondent No. 2 that 28 October 2023 would be treated as the last date of employment and that her final dues would be processed accordingly.

4) In the above background, on 28 October 2023 at 6.22 pm Respondent No. 2 sent an email to the ICC of Maple Infra branding the same as a complaint under the POSH Act. In her complaint, Respondent

No. 2 objected to Ms. Chandrani Sen being member of the ICC. Therefore, her complaint was forwarded to an external member of ICC and the same was intimated to her by email of 30 October 2023 at 9:16 pm. The external member of the ICC, Ms. Rewati Bhagwat, Director of Rewati Bhagwat Consultancy Services, addressed email at 9:39 pm on 30 October 2023, stating that upon deliberation between members of the ICC, it was determined that the nature of allegations did not have any sexual element and that the complaint would not be within the jurisdiction of ICC to undertake an inquiry. On 30 October 2023 at 10:19 pm, Maple Infra terminated the employment of second Respondent setting out final monetary payments.

5) On 3 November 2023, Respondent No 2 addressed an email to the ICC complaining about the rejection of her complaint in hurry without conducting any investigations and in violation of provisions of POSH Act. The Board of Maple Infra did not entertain the complaint of second Respondent and conveyed to her by email dated 8 November 2023 that her employment stood terminated on 26 October 2023. Respondent No. 2 addressed an email to Maple Infra on 14 November 2023 acknowledging receipt of full and final amount of Rs. 11,99,466 + Rs.90,739/- and also provided response to the Board's email dated 8 November 2023. On 16 November 2023, the external member of ICC replied to the second Respondent once again informing about the decision of not to entertain the complaint on account of the same not having any sexual element. On 3 December 2023, second Respondent sent email stating that statement of Mr. Anup Vikal about keeping Mr. Rohit Anand of CDPQ happy at all costs had sexual tone in it. The

external member of ICC replied on 8 December 2023, once again reiterating its decision and providing reasons for rejection of the complaint.

6) In the above background, Respondent No.2 filed Appeal (IESO) No. 3 of 2024 before the Industrial Court, Mumbai under Section 18(1) of the POSH Act challenging ICC's email dated 30 October 2023. Petitioners applied for the deletion from the Appeal and the applications were rejected by order dated 20 January 2025. Writ Petition Nos. 1730 of 2025, 1731 of 2025 and 1733 of 2025 were filed by the Petitioners challenging the order dated 20 January 2025. This Court disposed of the Petitions granting liberty to file applications questioning maintainability of the Appeal as well as for seeking its dismissal and requested the Industrial Court to defer recording of evidence till disposal of such applications. Respondent No.2 filed Application seeking recall of Order dated 5 February 2025 in which this Court had passed an order directing that the applications for maintainability and dismissal be decided without being influenced by observations made in the Order dated 5 February 2025. In February 2025, Petitioners filed separate Applications questioning maintainability as well as seeking dismissal of the Appeal. On 20 April 2026, Petitioners filed pursis for deciding maintainability application first. Respondent No.2 filed Writ Petition No. 5610 of 2026 in this Court for deciding the maintainability application and dismissal application together, which is pending.

7) The Industrial Court took up the maintainability application for decision. After hearing the parties, it has passed judgment and order dated 4 May 2026 holding the Appeal as maintainable and dismissing the

maintainability applications. The Tribunal has also proceeded to allow the Appeal itself by setting aside ICC's email dated 30 October 2023 and has remanded the matter to the ICC for fresh inquiry. Aggrieved by the Judgment and Order dated 4 May 2026 passed by the Industrial Court, Petitioners have filed the present Petitions.

SUBMISSIONS

8) Extensive submissions are canvassed in each of the Petitions by the learned counsel appearing for the rival parties, which are noted briefly.

SUBMISSIONS ON BEHALF OF PETITIONERS

9) Mr. Jagtiani the learning Senior Advocate appearing for the Petitioner, in Writ Petition No. 7430 of 2026 (Mr. Anup Vikal) submits that the Industrial Court has grossly erred in deciding the main Appeal itself while it was expected to pass order only on the maintainability applications. That only the maintainability applications were argued by the parties pursuant to the pursis filed by the Petitioners on 20 April 2026. That even in Writ Petition No. 5610 of 2026 filed by the second Respondent, it was admitted that only the maintainability applications were being heard. That even in para 21 of the impugned order the Tribunal itself has stated that it was proceeding to hear and decide the issue of maintainability on priority basis. That even a solitary issue was framed about the maintainability of the Appeal. However, while passing the impugned order, the Industrial Court has not only dismissed the maintainability application but has also dismissed the entire Appeal and

has remanded back the matter to ICC for conducting inquiry under the POSH Act. That while doing so, parties are not heard on merits.

10) Mr. Jagtiani further submits that though issue of maintainability was framed and taken up for decision, the Industrial Court has not really decided the same. That there are no reasons in the impugned order for holding that the Appeal is maintainable. That the impugned order, without deciding the issue of maintainability, goes beyond the issue of maintainability and decides merits of the Appeal without providing the parties an opportunity to address the Court on merits. Without prejudice to the contention that objection on maintainability has not been decided, Mr. Jagtiani submits that the Appeal filed by Respondent No.2 is not maintainable under Section 18 of the POSH Act. That an Appeal under Section 18 of the POSH Act can be filed by any person aggrieved by recommendations made under Section 13(2) or 13(3)(i) or (ii) or Section 14(1) or (2) or Section 17 or against non-implementation of a recommendation. That therefore only a recommendation made on conduct and completion of inquiry under Section 13(1) and (2) of the POSH Act is capable of being appealed under Section 18. That inquiry can be conducted under Section 11 only when a 'complaint' under Section 9 of the POSH Act is received by the ICC. That though the word 'complaint' is not defined under the POSH Act, considering the Preamble of the Act, the complaint necessarily must be a complaint of sexual harassment. That therefore in absence of a complaint of sexual harassment, which is a jurisdictional fact for ICC to conduct an inquiry, no inquiry can be conducted. In support of this contention, he relies on judgments of Kerala High Court in Hareesh

Versus. Kerala State Financial Enterprises Ltd. and Ors.¹ and Dr. Prasad Pannian Versus. Central University of Kerala and Ors.².

11) That every complaint cannot lead to inquiry under Section 11 as wrongly held by the Industrial Court. That in the present case, the ICC found that the complaint filed by the Second Respondent did not contain allegation of any sexual harassment and that email of ICC dated 30 October 2023 cannot be called as 'recommendation' under Section 13 of the POSH Act since there has been no inquiry under Section 11. That therefore email dated 30 October 2023 could not have been challenged by filing an Appeal under Section 18, since the same is not a 'recommendation'. Mr. Jagtiani further submits that the Industrial Court is a Court of limited jurisdiction, empowered to entertain an appeal under Section 18 of the POSH Act against a 'recommendation' by ICC. That its powers are limited and circumscribed by the statute.

12) Mr. Jagtiani further submits that Respondent No.2 is not remediless and can file Writ Petition under Article 226 of Constitution of India challenging the email of ICC not entertaining her complaint. Mr. Jagtiani relies on judgment of this Court in **ABC Versus. Internal Complaints Committee and Ors.**³ in support of his contention that only cases involving non-conduct of inquiry in conformity with the provisions of the POSH Act can be raised before the Appellate Authority and not where ICC refuses to discharge statutory duty to inquire into the complaint of sexual harassment. Mr. Jagtiani would accordingly pray for setting aside the impugned judgment and order of the Industrial Court.

1 2025 SCC Online Ker 963.

2 2020 SCC Online Kerala 6550

3 WP(ST) No. 15574 of 2025 decide on 4 November 2025

13) Mr. Kamat, the learned Senior Advocate appearing for the Petitioner in Writ Petition (L) No. 15880 of 2026 (Ms. Chandrani Sen) adopts the submissions of Mr. Jagtiani. Additionally, he submits that email dated 30 October 2023 cannot be treated as a 'recommendation' under Section 13 of the POSH Act. That under the POSH Act 'recommendation' can be made by ICC only upon completion of inquiry and when the ICC arrives at the conclusion that the allegation has been proved. That both the requirements are absent in the present case. That the ICC at the threshold has refused to entertain the complaint as the same does not contain allegation having sexual harassment element as provided under Section 2(n) and (3) of POSH Act. That the second Respondent is not remediless and can always file Writ Petition under Article 226 of Constitution of India as held by the Karnataka High Court in *X Versus. Internal Committee Ani, Technologies Pvt. Ltd. And Ors.*⁴. He accordingly prays for setting aside the impugned judgment and order of the Industrial Court.

14) Ms. Nalluri, the learned counsel appearing for the Petitioner in Writ Petition No. 8418 of 2026 (Mr. Rohit Anand) adopts the submissions of Mr. Jagtiani and Mr. Kamat. Additionally, she submits that Petitioner is situated outside the territorial ambit of the POSH Act. That he is a resident of Singapore and has always resided and worked exclusively at Singapore throughout the employment of Respondent No.2. That Petitioner met Respondent No.2 only on one occasion during subsistence of her employment. That Petitioner was never an employee of Maple Infra and has been employed by CDPQ, a Singapore based

4 2024 SCC Online Kar 102.

entity which is a mere shareholder of Maple Infra. That CDPQ and Maple Infra are separate and independent corporate entities with distinct management, operational structures and employment frameworks. That POSH Act is confined to the workplaces situated within the territory of India. That the jurisdiction of ICC is therefore necessarily predicated upon existence of a statutorily recognized 'workplace' as defined under Section 2(o) of the POSH Act. That since Section 1(2) of POSH Act makes the Act applicable to the whole of India, the statutory concept of workplace under Section 2(o) is confined only to workplaces and employment relationships falling within the territorial operation of the Act viz. within India. That these objections raised by the Petitioner-Rohit Anand have remained undecided by the Industrial Court. She accordingly prays for setting aside of the impugned judgment and order of the Industrial Court.

SUBMISSIONS ON BEHALF OF RESPONDENT No. 2

15) Mr. Tamboly, the learned counsel appearing for Respondent No.2 submits that the Industrial Court has decided the question of maintainability of the Appeal and has expressly rejected the maintainability applications. That Petitioners' entire case was premised on factual assertion that the Complaint does not have any sexual element/make out a case under Section 2(n) of the POSH Act. That specific dismissal applications are filed raising grounds of absence of sexual element in the Complaint. Therefore, the Industrial Court was justified in examining the complaint to ascertain whether the seminal jurisdictional fact of a sexual element in the complaint in fact existed.

That having driven the Industrial Court into the direction of existence of sexual element in the allegations, Petitioners are now estopped from questioning the wisdom of the Industrial Court in going into the merits of the case. That Section 2(n) of the POSH Act defines the term 'sexual harassment' expansively and that the definition must be interpreted broadly and purposively from the perspective of the aggrieved woman, focusing on the safety and dignity rather than being defeated by harasser's semantic circumlocutions or narrow technicalities. He relies on the judgment of Madras High Court in *HCL Technologies Limited Rep. By Mr. Nerwin Dhanraj Versus. N. Parsarathy*⁵. In support of his contention that POSH Act is a welfare legislation, which must be liberally construed in favour of the aggrieved woman, he relies on judgment of Madhya Pradesh High Court in *Global Health Pvt. Ltd. Versus. Local Complaint Committee District Indore and Ors.*⁶

16) Mr. Tamboly further submits that the communication dated 30 October 2023 of ICC amounts to a complete and final rejection of complaint of Respondent No.2 and the same operates as a decision under Section 13(2) of the POSH Act. It is not a mere pre-enquiry communication or a threshold jurisdiction order as sought to be suggested by the Petitioners. That POSH Act does not contemplate any distinction between post inquiry dismissal and summary pre-enquiry dismissal by the ICC. That if interpretation put forth by Petitioners is validated, every delinquent organization would simply resort to a tactic for evading statutory compliance by shutting down complaints at the threshold to shield themselves from proper inquiry and appellate

5 2025 SCC Online Mad 579

6 I.L.R. (2019) M.P. 2482.

scrutiny. That it is a foundation rule of administrative and statutory governance that the true characters of an order is determined by its pith, substance and operationality and not by the label or nomenclature given to it by the authority. That the Industrial Court has rightly pierced the procedural evasion by holding the Appeal as maintainable. He relies on judgment of this Court in **Poonam Vijay Thakkar Versus. Aditya Birla Capital Shared Services Limited and Ors.**⁷ in support of his contention that statutory remedy of Appeal under Section 18 of POSH Act is upheld by the Division Bench rather than permitting invocation of writ jurisdiction when complaint of sexual harassment was rejected at the threshold. He relies on judgment of Delhi High Court in **Sharanjeet Kaur Versus. IDBI Bank Ltd.**⁸ which also upholds the appellate remedy under Section 18 of the POSH Act where complaint of sexual harassment is rejected without inquiry. On above broad grounds Mr. Tamboly prays for dismissal of the Petition.

17) Dr. Chandrachud would submit that when the ICC dismisses a complaint for want of jurisdiction, its decision is an appealable 'recommendation' under Section 18 of the POSH Act. That when ICC decides that the complaint does not contain allegations which are sexual in nature, its decision constitutes a 'recommendation' within the meaning of Section 13(2) of the POSH Act. That email dated 30 October 2023 of ICC was sent within 23 minutes of receiving the complaint. That deliberations were made in respect of the allegations contained in the complaint for concluding that the complaint does not have sexual element. That what is made by the ICC on 30 October 2023 is a

7 WP. (L) NO. 3972 of 2020 decided on 8 July 2021

8 2024 SCC Online Del 3918

‘recommendation’ within the meaning of Section 13(2) of the POSH Act. He relies on judgment of the Delhi High Court in ***Sharanjeet Kaur*** (supra) in support of his contention that when a complaint is closed by ICC without holding an inquiry, the same constitutes an appealable order under Section 18 of the POSH Act.

18) Dr. Chandrachud further submits that POSH Act is a social welfare legislation and that therefore the same must be construed liberally and relies on judgments of the Apex Court in **Dr. Sohail Malik Versus. Union Of India and Another.**⁹ and **Regional Provident Fund Commissioner Versus. Hooghly Mills Company Limited and Ors.**¹⁰. That if ICC’s decision of allegations not constituting sexual element is not treated as an ‘appealable recommendation’, then the broad social welfare purpose of the legislation will be destroyed. That complainant in such cases cannot be relegated to a writ remedy considering the narrow scope of interference in writ proceedings as compared to broad statutory remedy of appeal. That judgments of Kerala High Court relied upon by the Petitioners do not decide any of the propositions under Section 18 of the POSH Act and in none of the cases, the Kerala High Court was concerned with the issue of ICC’s decision to close a complaint for lack of jurisdiction constituting an appealable recommendation.

19) Dr. Chandrachud further submits that even when a Civil Court dismisses a suit for lack of jurisdiction, the decision constitutes a decree, that is appealable. In support, he relies on judgment of the Apex

9 2025 SCC Online SC 2751

10 2012 (2) SCC 489

Court in Sayyed Ayaz Ali Versus. Prakash G. Goyal and Ors.¹¹ That applying the same analogy, when ICC dismisses a complaint for lack of jurisdiction or for complaint not containing allegations of sexual nature, such decision constitutes a recommendation capable of being appealed under Section 18 of the POSH Act.

20) Dr. Chandrachud further submits that even if it is assumed arguendo that the impugned judgment and order of the Industrial Court does not contain the requisite or elaborate reasons, a Writ Court may not interfere with such order when conclusions in the order are supported by reasons discernible from records. That the impugned order contains succinct reasons which could have been more elaborative and that the Industrial Court could have recorded a finding that the ICC's decision as to lack of jurisdiction constitutes an appealable recommendation. However, insufficient reasons or even complete absence of reasons is no ground for writ Court to interfere if no injustice is done in the case or if reasons are apparent from the record. In support, he relies on judgments of the Apex Court in M/s. Woolcombers of India Ltd. Versus. Woolcombers Workers Union and another.¹², Garment Craft Versus. Prakash Chand Goel¹³, K.L. Tripathi Versus. State Bank of India and Ors.¹⁴. That every error of the lower Court need not be corrected in writ proceedings and no case for interference is made out where no prejudice is caused to a party.

11 2021 (7) SCC 456

12 1974 (3) SCC 318

13 2022 (4) SCC 181

14 1984 (1) SCC 43

21) Dr. Chandrachud further submits that Petitioners themselves expanded the scope of their maintainability application before the Industrial Court by arguing merits of the Appeal. That in the written submissions filed by the Petitioners, submissions were canvassed beyond maintainability touching merits of the Appeal making Industrial Court believe that merits of the Appeal were also required to be considered. Petitioners are now estopped from contending that it was not open for the Industrial Court to decide merits of the Appeal.

22) Dr. Chandrachud further submits that even when an issue is not framed by a Court/Tribunal, no prejudice is caused to a party, who knows, despite the said omission, what arguments are to be canvassed before the Court/Tribunal. In support, he relies on judgment of the Apex Court in Sayed Akhtar Versus. Abdul Ahad¹⁵. That therefore mere non-framing of issues relating to merits of the Appeal does not render the order of the Industrial Court erroneous when Petitioners were fully aware of the position that the merits of the Appeal were also argued before the Industrial Court.

23) Lastly, Dr. Chandrachud submits that when a lower court/forum disposes off cases on preliminary point and the appellate court reverses the said finding, it is open for the appellate court to remand the matter back to the lower court/forum for a fuller reconsideration. He relies on provisions of Order 41 Rule 23 of Code of Civil Procedure, 1908 **(the Code)** and relies on judgment of the Apex Court in J. Balaji Singh Versus. Diwakar Cole and Ors.¹⁶. He submits

15 2003 (7) SCC 52

16 2017 (14) SCC 207.

that whether the act of the Petitioners is sexual in nature or not is a matter of perception which requires evidence and in support he relies on judgments in *Additional District and Session Judge 'X' Versus. Registrar General, High Court of Madhya Pradesh and Ors.*¹⁷ and *Apparel Export Promotion Council Versus. A.K. Chopra*¹⁸. That ICC had clearly erred in failing to conduct an inquiry and Industrial Court has rightly remanded the matter back to the ICC for reconsideration. That no prejudice is caused to the Petitioners by mere order of remand. Dr. Chandrachud accordingly prays for dismissal of the Petition.

24) Mr. Naphade the learned counsel adopts the submissions of Dr. Chandrachud and Mr. Tamboly. Additionally, he submits that under the scheme of POSH Act, the ICC is a fact finding body on whose factual findings, the employer is supposed to take action. That therefore when ICC comes to a conclusion, even without conducting an inquiry, that allegation of sexual harassment is not made out on reading of a complaint, such decision would also amount to a recommendation. That the word 'recommend' used in Section 13 has not been defined under the POSH Act. That it is well settled law that where a statute deploys a word which is not defined, the word bears its ordinary meaning. He relies on judgment of the Delhi High Court in *Union of India Versus. Telecom Regulatory Authority Of India*¹⁹ in support of his contention that the word 'recommend' has to be seen in the context in which it is used and the same means 'to advise' or 'to counsel' a course of action. That therefore the decision of the ICC would clearly fit into the ambit of the

17 2015 (4) SCC 91

18 1999 (1) SCC 759

19 1998 3 Comp LJ 400 (Del)

term 'recommendation'. Mr. Naphade relies on judgment of this Court in **Poonam Vijay Thakkar** (supra) in support of his contention that similar decision taken by ICC not to entertain the complaint of sexual harassment was held to be appealable under Section 18 of the POSH Act. Mr. Naphade also prays for dismissal of the Petition.

CONSIDERATION OF SUBMISSIONS, REASONS AND ANALYSIS:

25) The issue involved in the Petitions is whether a communication made by the ICC that the complaint does not involve sexual element for conduct of inquiry under the POSH Act, can be treated as a 'recommendation' within the meaning of Section 13(2) of the POSH Act, which is capable of being appealed under Section 18.

26) In the present case, Respondent No.2 filed a complaint vide email dated 28 October 2023 before the ICC formulated by Maple Infra. At that time, The ICC was presided over by Ms. Chandrani Sen and therefore Respondent No.2 requested for replacement of Ms. Sen from the ICC by raising the issue of conflict. Respondent No.2. contended that Ms. Chandrani Sen had conflicted herself on account of her presence at the time of making the complaint against Mr. Rohit Anand, as well as on account of she suggesting to Respondent No.2 to go ahead accepting the unreasonable demands of Mr. Rohit Anand. The request of Respondent No.2 for recusal by Ms. Chandrani Sen was accepted and the complaint was accordingly forwarded to an external member of the Company's ICC and a communication to that effect was sent to Respondent No.2 by email dated 30 October 2023 sent at 9.16 pm. The email stated that

external member of ICC would take up the matter with the ICC (*excluding Ms. Chandrani Sen*). Within 23 minutes thereafter, Respondent No.2 received email at 9.39 p.m. on 30 October 2023 from Smt. Rewati Bhagwat, Director of Rewati Bhagwat Consultancy Services, stating as under:

On Mon, Oct 30, 2023 at 9:39 PM rewati bhagwat <rewatibhagwat@gmail.com> wrote:

Dear Sumeeta,

The ICC is in receipt of your complaint dated October 28, 2023, raising certain allegations against Mr. Anup Vikal. **We have reviewed the allegations and after thorough deliberations between the members of the ICC it has been determined that the nature of your allegations do not have a sexual element and it would therefore not be within the jurisdiction of the ICC to undertake an inquiry into the contents of your complaint.**

The POSH act defines sexual harassment as follows:

- a) Physical contact and advances
- b) A demand or request sexual favors
- c) Sexually coloured remarks
- d) Showing pornography
- e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature

You will appreciate that the nature of allegations does not satisfy the above.

(emphasis added)

27) Thus, the email dated 30 October 2023 stated that the ICC had reviewed the allegations and after thorough deliberations between the members of the ICC, it was determined that the nature of allegations

did not have a sexual element and that it would not be in the purview of the ICC to undertake an inquiry into the contents of the complaint. Since this Court is not going into the merits of the Appeal, it is not necessary to go into the aspect of time gap between sending of intimation to Respondent No.2 about forwarding of complaint to ICC and ICC's email refusing to take cognizance of the complaint. As of now, it is unknown as to when exactly the complaint was forwarded by the employer to the ICC and how the members of ICC deliberated the allegations. It is a matter of evidence, and this Court refrains itself from making any comments on the issue of time gap.

28) Thus, by email dated 30 October 2023, the ICC refused to hold any inquiry into the complaint ruling that the same did not involve any sexual element. The issue for consideration is whether the decision of the ICC conveyed vide email dated 30 October 2023 can be challenged in an appeal filed under Section 18 of the POSH Act.

STATUTORY FRAMEWORK OF POSH ACT

29) To decide the issue as to whether the communication dated 30 October 2023 is a 'recommendation' which is capable of being challenged in an Appeal under Section 18, it would be necessary to take a quick stock of the statutory scheme of the POSH Act. The expression 'sexual harassment' is defined under Section 2(n) of the POSH Act as under:

(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;

30) Section 3 of the POSH Act prohibits sexual harassment to a woman at workplace and enumerates the circumstances which may amount to sexual harassment and provides thus:

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 behavior 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.

31) Under Section 9 of the POSH Act, an aggrieved woman can make a complaint of sexual harassment. Section 9 of the Act provides thus:

9. Complaint of sexual harassment.—

- (1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of

three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident.

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing.

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

32) After complaint of sexual harassment is received by the internal committee or by the local committee, an attempt for settlement of the matter can be made through conciliation under Section 10 only on request made by the aggrieved woman. Section 11 of the POSH Act provides for conduct of inquiry into the complaint of sexual harassment and provides thus:

11. Inquiry into complaint.—

(1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal

Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police.

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee. (2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents; and
- (c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days.

33) Section 13 of the POSH Act deals with the inquiry report to be prepared on completion of the inquiry and provides thus:

13. Inquiry report.—

(1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the

respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

- (i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;
- (ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15.

Provide that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman.

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or as, the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

34) Section 14 of the POSH Act deals with punishment for false and malicious complaints and false evidence and Section 17 deals with penalty for publication or making known contents of complaint and inquiry proceedings. Section 18 provides for a remedy of Appeal in respect of the recommendations made under Section 13(2) or 13(3)(i) or (ii) or under Section 14 (1) or (2) or under Section 17 or against non-implementation of such recommendations. Section 18 of the POSH Act provides thus:

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 subsection (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.

35) Thus, an Appeal under Section 18 of the POSH Act lies only against the recommendations made under Section 13(2) or Section 13 (3) (i) or (ii) or Section 14 (1) or (2) or Section 17 or against non-implementation of such recommendation. Since POSH Act creates a statutory right of appeal, the remedy of appeal must be exercised strictly in accordance with the provisions of the POSH Act and appeal would lie only against the enumerated recommendations or against non-implementation of such recommendations. The Appeal under Section 18 of the POSH Act thus, does not lie against every action or decision unless such action or decision is one of the enumerated recommendations.

36) The word 'recommendation' has not been defined under the POSH Act. However, various provisions of the POSH Act use the word 'recommendation'. Section 13 of the POSH Act deals with inquiry report and sub-section (2) thereof provides that when the ICC arrives at a conclusion that the allegations against the Respondent are not proved, it can recommend to the employer that no action is required to be taken in the matter. Thus one of the enumerated recommendations within the meaning of Section 18 is recommendation *qua* not taking any action in the matter under Section 13(2) of the POSH Act.

37) Under Section 13(3) of the POSH Act, when the ICC arises at a conclusion that allegation against the Respondent has been proved, it

can make a recommendation to the employer to take an action for sexual harassment against the Respondent in accordance with the provisions of Service Rules or in the prescribed manner as well as for deduction from salary/wages of the Respondent, such sum as considered appropriate. The recommendations so made under clauses (i) or (ii) of sub-section (3) of Section 13 are appealable under Section 18 of the POSH Act.

38) Under Section 14 of the POSH Act, a provision is made for punishment against false or malicious complaint and for giving false recommendation and under sub-section (2), the ICC, if it arrives at the conclusion that during the inquiry any witness has given false evidence or produced any forged, misleading document, it can recommend to the employer of the witness for taking action in accordance with provisions of Service Rules. Even the recommendation made by the ICC under sub-section (2) of Section 14 is appealable under Section 18 of the POSH Act.

39) Appeal under Section 18 also lies against imposition of penalty under Section 17 of the POSH Act for publication or making known the contents of the complaint and inquiry proceedings.

40) Having considered the broad statutory scheme of remedy of appeal under the POSH Act, I proceed to examine the manner in which the inquiry is conducted by the Industrial Court while deciding the issue of availability of the remedy of appeal to Respondent No.2 in respect of communication dated 30 October 2023 by the ICC.

NON-DECISION OF ISSUE OF MAINTAINABILITY BY THE INDUSTRIAL COURT

41) In the present case, the Industrial Court had taken up only the application questioning maintainability of the Appeal for decision. By order dated 12 February 2025 passed in Writ Petition No.1730 of 2025, this Court had granted liberty to the Petitioners to file applications questioning maintainability of the Appeal as well as for seeking its dismissal with further direction to the Industrial Court to defer recording of evidence till decision of such applications. In terms of the liberty granted by this Court, Petitioners filed application questioning maintainability of the Appeal on account of absence of recommendation under Section 13(2) read with Section 18 of the POSH Act. It appears that separate applications were filed seeking dismissal of the Appeal on the ground of the Appeal not exhibiting a cause relating to sexual harassment. By pursis filed on 20 April 2026, Petitioners requested the Industrial Court to take up only maintainability application before hearing the dismissal application. Accordingly, the Industrial Court began hearing maintainability application. As the hearing on maintainability application commenced, Respondent No.2 got aggrieved by such course of action adopted by the Industrial Court and filed Writ Petition No.5610 of 2026 on 22 April 2026 pleading a grievance that *‘despite the absence of such an order the learned Industrial Court proceeded to hear only the application challenging maintainability’*. Thus, Respondent No.2 was also fully aware that what was taken up for hearing by the Industrial Court was only the maintainability application. If any doubt remained, the same has been clarified by the Industrial Court in

paragraph 21 of the impugned judgment, in which it has observed as under:

The respondents filed pursis before this court with prayer to hear and decide these two applications of maintainability and its dismissal distinctly and the ratio of maintainability be decided as a preliminary issue. The appellant has not raised any objection for that. Accordingly, this court comes to the conclusion to hear and decide the issue of maintainability on priority basis.

42) As only maintainability application was taken up for hearing and was heard, the Industrial Court has rightly framed issue relating to maintainability as under:

Whether the Respondents succeed to show that the present Appeal is not maintainable under the provisions of POSH Act?

43) However, the findings recorded in the impugned judgment and order by the Industrial Court would indicate that after framing the issue of maintainability of Appeal, the Tribunal forgot the remit of inquiry before it and proceeded to enter into merits of the Appeal. In paragraph 28 of the judgment it has taken note of point No.1 about maintainability of Appeal in the eyes of law. However, after going through the communication dated 30 October 2023 of the ICC as well as into the complaint made by Respondent No.2, the learned Member misdirected herself in concluding that Respondent No.2 was working in a very unhealthy, stressful and uncomfortable environment. The findings in paragraph 32 of the order read thus:

32) Here, on going through the wordings of the complaint, it is very much clear that the complainant was working in a very unhealthy, stressful and uncomfortable environment. The expressions used in instance 5 by respondent no. 3 to appellant about respondent no. 4 are offensive and unwelcome in nature.

44) The Industrial Court thereafter went into the ambit of the term 'sexual harassment' under POSH Act and after analyzing provisions of Section 11(1) of the POSH Act and Rule 7 of POSH Rules, it has concluded that there ought to have been a full-fledged inquiry by the ICC. It has held that summary dismissal of the complaint on the ground of absence of element of sexual harassment without giving single opportunity to Respondent No.2 was improper. It therefore held that the communication of ICC dated 30 October 2023 is required to be set aside. Thus after embarking upon the journey to decide the maintainability application, the Industrial Court lost the track and went on to decide the merits of the Appeal. Findings recorded in paragraph 45 of the impugned order of the Industrial Court read thus:

45. In the premises of aforesaid discussion and going through the ratio of cited authorities, this court prominently observed that on receiving the complaint of appellant about sexual harassment against respondents no. 3 and 4, ICC (respondent no.2) without being given a single opportunity of hearing to applicant, directly dismissed her complaint on the ground that it does not have an element of sexual harassment.' Without considering the allegations narrated into the complaint and without following due process of law for conducting enquiry as contemplated under the Act, the concerned ICC has taken its own decision of dismissal of complaint. Said act is in the utter disregard of the principles of natural justice and not acceptable under law. Considering this factual position, the email report of ICC dated 30.10.2023 is required to set aside. The matter is remanded to ICC with specific direction to conduct the enquiry by following due procedure contemplated under Act and by affording due opportunity to all parties to put their case and complete the proceedings as expeditious as possible within a period of three months from the receipt of this order. Both the parties are directed to co-operate for early disposal of the enquiry proceedings. **In view of this observations, the applications filed by the respondents raising the Issue of maintainability of present Appeal is hereby dismissed** Hence, I answer point no. 1 in the 'Negative. Accordingly, the present appeal is allowed. With this, I proceed to pass the following order.

(emphasis supplied)

45) The Industrial Court thereafter proceeded to adjudicate the Appeal on its merits, overlooking the fact that it had embarked upon an inquiry into the maintainability of the Appeal. The operative order passed by the Industrial Court reads thus:

ORDER

The present Appeal is hereby allowed.

2) The applications of respondents filed below Exh. C-7, CA-2, CB-7, CC-6 & CD-6 about the maintainability of present Appeal are hereby dismissed.

3) The email report dated 30.10.2023 of the ICC stands quashed and set aside'

4) The matter is remanded to ICC with specific direction to conduct the enquiry by following the procedure contemplated under Act and by affording due opportunity to all parties to put their case and complete the proceedings as expeditious as possible within a period of three months from the receipt of this order.

5) Both the parties are directed to co-operate for early disposal of the enquiry proceedings

46) Thus, the learned Member of the Industrial Court has committed an egregious error of deciding the Appeal on merits while taking up for decision the application as to maintainability of Appeal. More shockingly the Court has not decided the objection as to maintainability. Thus the error committed in not deciding the objection of maintainability is further aggravated by deciding the Appeal itself on merits. Beyond holding that "*in view of this observations, the applications filed by the Respondents raising the issue of maintainability of the present appeal is hereby dismissed*" the learned Member of the Industrial Court has actually not decided the objection of maintainability. There is no finding in the entire judgment that communication of the ICC dated 30 October 2023 is a recommendation within the meaning of Section 13(2)

or that an Appeal against such recommendation is maintainable under Section 18 of the POSH Act.

47) It is the case of the Petitioners that parties argued only the issue of maintainability before the Industrial Court. This is sought to be contested by Dr. Chandrachud by inviting attention of this Court to written submissions filed by the Petitioners by contending that they have canvassed submissions on merits of the appeal. I have gone through the written submissions and it is difficult to hold that Petitioners argued merits of the Appeal before the Industrial Court. In their written submissions, they only gave brief background of the nature of complaint made by Respondent No.2, which does not mean that merits of the Appeal were argued in any manner before the Industrial Court. The contention now raised by Respondent No.2 is contrary to the one raised by her in Writ Petition No.5610 of 2026. It is also contrary to the observations made by the Industrial Court in paragraph 21 of the impugned judgment. It has to be therefore held that the Industrial Court heard the arguments only on the issue of maintainability.

48) The judgment of the Apex Court in *Sayed Akhtar* (supra), relied upon by Dr. Chandrachud in support of his contention that absence of prejudice on account of canvassing submissions on merits is inapposite in the present case. It cannot be said, by any stretch of imagination, that Petitioners were aware of the fact that the Industrial Court was going to decide the merits of the Appeal. In any case, the judgment in *Sayed Akhtar* (supra) is an authority on the proposition that mere failure of the Court/Tribunal to frame an issue is not fatal

when parties know the issue on which they have to address the Court. The said proposition has no application in the facts of the present case.

49) The Industrial Court has thus completely misdirected itself in going into merits of the Appeal when it was expected to decide only the issue of maintainability of the Appeal. The inquiry conducted by the learned Member of the Industrial Court is perfunctory. The manner in which the Industrial Court has proceeded to decide the proceedings is disquieting. This Court expresses its disapproval.

TO REMAND OR TO DECIDE THE OBJECTION OF MAINTAINABILITY?

50) Ordinarily, this Court would have remanded the proceedings to the Industrial Court for re-adjudication of the issue of maintainability of the Appeal after noticing that the Tribunal has skirted the said issue. However, both the sides have canvassed elaborate submissions on the issues as to whether the impugned communication is a 'recommendation' and whether the Appeal is maintainable. Therefore, this Court put a query to the learned counsel appearing for the Petitioners as to whether this Court can decide the issue of maintainability of the Appeal in view of detailed submissions being heard on the issue. In their usual fairness, Mr. Jagtiani and Mr. Kamat, after taking instructions, have agreed that this Court can directly decide the issue of maintainability of the Appeal rather than making an order of remand on that aspect. Ms. Nalluri has not opposed the suggestion. It is only on account of the concession made on behalf of the Petitioners that this Court is not making an order of remand to the Industrial Court for re-adjudication of issue of maintainability.

51) To decide the issue of maintainability of the Appeal, it is first necessary to decide the issue as to whether the communication dated 30 October 2023 made by the ICC is a 'recommendation' within the meaning of Section 13(2) of the POSH Act.

WHETHER COMMUNICATION OF 30 OCTOBER 2023 IS A 'RECOMMENDATION' WITHIN THE MEANING OF SECTION 13(2) OF THE POSH ACT

52) There is a serious dispute between the parties as to whether the communication dated 30 October 2023 can be treated as a 'recommendation'. According to the Petitioner, it is mere threshold rejection of complaint. It is the case of the Petitioners that the recommendation under Section 13(2) for not taking any action in the matter can be made by the Internal Committee only after completion of inquiry under the POSH Act. It is contended by them that since the inquiry itself is not conducted by the ICC in the present case, communication dated 30 October 2023 cannot be treated as a 'recommendation' capable of being subjected to the remedy of appeal under Section 18 of the POSH Act. On a standalone reading of provisions of Section 13(1) and (2) of the POSH Act, what is sought to be suggested on behalf of the Petitioners, may appear to be correct. A recommendation under Section 13(2) can be made only after conduct and completion of inquiry under the POSH Act. This is because after completion of the inquiry, the ICC needs to provide a report of findings to the employer within a period of 10 days from the date of completion of report and such report also needs to be made available to the concerned parties. The recommendations envisaged in sub-section (2) and (3) have to be necessarily made in the report so prepared and

submitted under Section 13(1) of the POSH Act. Therefore, one may contend that unless inquiry under the POSH Act is conducted and concluded by the ICC, it is neither possible to make a report within the meaning of Section 13(1) nor such report can contain any recommendation as envisaged under sub-sections (2) or (3) of Section 13.

53) However, in my view, isolated reading of provisions of Section 13 of the POSH Act causes violence to the legislative object behind enacting the statute. Provisions of Section 13 must necessarily be read with provisions of Section 11 of the POSH Act. Under Section 11 of the POSH Act, there is a mandate to the ICC to conduct the inquiry. It is not an option left to the ICC to not conduct an inquiry under Section 11(1) of the POSH Act. The word used under Section 11 (1) is 'shall'. Section 11(1) of the POSH Act provides that "*the Internal Committee or the Local Committee, as the case may be, **shall**, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent*". Thus, holding of inquiry under Section 11(1) is mandatory and not optional for the internal committee. Considering the legislative object of POSH Act, it is not possible to read the word 'shall' as 'may' as the Legislature has not intended to leave conduct of inquiry at the discretion of the ICC.

54) Thus, when a complaint of sexual harassment is received, the internal committee is bound by provisions of Section 11 to conduct the inquiry. Section 11(1) of the POSH Act provides that the inquiry into a complaint of sexual harassment can be made '*in accordance with the*

provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed’. However this requirement of manner of conduct of inquiry does not control the mandate for the ICC to conduct the inquiry. Therefore, for deciding whether ICC's decision is a ‘recommendation’ or not, a reverse engineering method cannot be adopted by finding out (i) whether service rules or the prescribed manner is followed (ii) and therefore whether there is an inquiry under Section 11(1) or not. Even if the service rules or the manner prescribed is not followed for giving response on the complaint, the response will still have to be treated as a ‘recommendation’ for the limited purpose of making available the remedy of appeal to the aggrieved woman. Therefore, it is not necessary to delve deeper into the manner in which the ICC has conducted the inquiry in the facts of the present case, at this juncture. That issue may be relevant for determining the merits of the Appeal.

55) On combined reading of Sections 11 and 13 of the POSH Act, every decision taken by the Internal Committee on a complaint of sexual harassment would form a ‘recommendation’ within the meaning of Section 13(2) or 13(3). If the Internal Committee does not conduct inquiry in the manner prescribed under Section 11, the same may vitiate its decision/recommendation. However, mere non-conduct of inquiry in respect of complaint of sexual harassment by the Internal Committee would not save its decision from the ambit of the expression ‘recommendation’ under Section 13 of the POSH Act. Even if Internal Committee does not conduct an inquiry but still makes a decision on a complaint of sexual harassment, such decision would be a

‘recommendation’ within the meaning of Section 13(2) or (3) of the POSH Act. To illustrate, upon receipt of a complaint of sexual harassment, the ICC writes to the employer to terminate the services of the Respondent-employee without holding inquiry, such course of action of the committee would assume characteristic of a ‘recommendation’ and the mere vice of non-holding of inquiry would not save such action from the ambit of the expression ‘recommendation’ used under Section 13(3) of the POSH Act. On the same analogy, if the Internal Committee, upon receipt of complaint of sexual harassment, rules that the complaint does not constitute sexual harassment of the complainant, such ruling by the Internal Committee would also assume characteristic of a recommendation made under Section 13(2) of the POSH Act. This is because the employer acts on such decision of the Internal Committee and does not take any further action in the manner as per Section 13(2) of the POSH Act. Therefore, a ruling by the Internal Committee that the complaint does not constitute sexual harassment, which is arrived at without holding any inquiry, would still be a ‘recommendation’ within the meaning of Section 13(2) of the POSH Act.

56) The word ‘recommend’ needs to be construed in the context of provisions of the POSH Act. Therefore it is not necessary to consider the ratio of judgment of Delhi High Court in ***Union of India Versus. Telecom Regulatory Authority Of India*** (supra) relied upon by Mr. Naphade which deals with the meaning of the expression “recommend” in the context of provisions of Telecom Regulatory Authorities Act, 1997. The judgment is rendered by the Delhi High Court in the context of a recommendation made by TRAI for revocation of license and the issue

before the Court was whether such recommendation is mandatory or advisory. Here the issue is entirely different viz. whether the ICC has made a recommendation or not.

57) One can also construe and interpret provisions of Sections 11, 13 and 18 of the POSH Act in the context of availability of remedy to the aggrieved person. In the illustration discussed above, if the Internal Committee writes to the employer for termination of services of Respondent-employee upon mere receipt of complaint of sexual harassment, without holding any inquiry, if such writing by the ICC is not construed as a recommendation under Section 13(3), the delinquent employee would be without a remedy in respect of such decision of the ICC. On the other hand if a 'recommendation' is made after conducting inquiry, the delinquent employee has the remedy of filing appeal under Section 18 of the POSH Act. If what is sought to be canvassed by Petitioners is accepted, in such a scenario, the ICC violating provisions of Section 11(1) and making direct communication to the employer for taking of adverse action, would save itself from judicial scrutiny, on account of non-availability of remedy as compared to the ICC following mandate of Section 11 (1) and making a recommendation after holding of a proper inquiry. The legislative object is not to reward the Internal Committee which violates mandate of Section 11(1) for making its decision challenge free. Thus, when the Internal Committee violates mandate of Section 11(1) and makes a decision without holding inquiry, which may result in adverse action against the Respondent-employee, some remedy has to be provided to the affected employee by treating

such decision of the Internal Committee as a recommendation within Section 13(3) of the POSH Act.

58) On a similar analogy when the Internal Committee violates the mandate under Section 11 of the POSH Act by not conducting inquiry into the complaint of sexual harassment and rules that the complaint does not have any sexual element, the ruling to that effect made by the ICC without holding inquiry will have to be necessarily treated as a 'recommendation' under Section 13(2) with a view to provide a remedy to the Complainant under Section 18 of the POSH Act. Otherwise, appellate scrutiny of ICC's decision can be easily avoided by rejecting every complaint at the threshold.

POSH ACT: WELFARE LEGISLATION

59) The legislative object underlying the enactment of the POSH Act must be borne in mind. As rightly contended by Dr. Chandrachud, the POSH Act is a piece of social welfare legislation. The POSH Act is enacted by the Legislature recognizing the legislative void, which was highlighted by the Apex Court in its seminal judgment in **Vishakha and Ors. vs. State of Rajasthan and Ors.**²⁰. The intent of the Act is to uphold women's right to equality under Articles 14 and 15 and a right to a dignified life under Article 21 of the Constitution of India. The Act imposes a legal duty on employers to prohibit and prevent sexual harassment of women by ensuring that women at every workplace have open and effective access to a mechanism for the redressal of complaints of sexual harassment. The Act is aimed at bringing about safety and

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accountability in the workplace. Since POSH Act is a social welfare legislation, it must be interpreted accordingly. It would be apt to take into consideration the Preamble of the Act:

An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

60) In ***Dr. Sohail Malik*** (supra) the Apex Court has ruled against narrow interpretation of provisions of the POSH Act by holding the same as a social welfare legislation and has held in paragraph 54 of the judgment as under:

54. Keeping in mind the object behind the enactment of the POSH Act, if the aggrieved woman had to approach the ICC constituted at the workplace of the 'Respondent' for every third-party incident, it would fall short of the aforesaid object. The ICC at the workplace of the 'Respondent' would be tasked with inquiring into an incident that may or may not have occurred on their employer's premises or in relation to their employer's work environment. A narrow interpretation of provisions of the POSH Act, in order to hold that only the ICC of the workplace of the 'Respondent' has jurisdiction to inquire into complaints against him, irrespective of where the workplace of the aggrieved woman is or where the alleged act of sexual harassment took place, would undermine the POSH Act's remedial social welfare intent since it would create significant practical hurdles for the aggrieved woman.

61) It is a settled canon of statutory interpretation that a remedial statute must receive a liberal construction, as opposed to a penal statute, which calls for strict construction. In cases of remedial statutes or social welfare legislation, if there is any doubt, the same must be resolved in favour of the class of persons for whose benefit the statute is enacted. It would be apposite to make a reference to the judgment of the Apex Court in ***Regional Provident Fund Commissioner Versus.***

Hooghly Mills Company Limited (supra) in which it is held in paragraphs 24, 25 and 26 as under:

24. If we look at the modern legislative trend we will discern that there is a large volume of legislation enacted with the purpose of introducing social reform by improving the conditions of certain class of persons who might not have been fairly treated in the past. These statutes are normally called remedial statutes or social welfare legislation, whereas penal statutes are sometime enacted providing for penalties for disobedience of laws making those who disobey, liable to imprisonment, fine, forfeiture or other penalty.

25. The normal canon of interpretation is that a remedial statute receives liberal construction whereas a penal statute calls for strict construction. In the cases of remedial statutes, if there is any doubt, the same is resolved in favour of the class of persons for whose benefit the statute is enacted, but in cases of penal statutes if there is any doubt the same is normally resolved in favour of the alleged offender.

26. It is no doubt true that the said Act effectuates the economic message of the Constitution as articulated in the directive principles of State policy. Under the directive principles the State has the obligation for securing just and humane conditions of work which includes a living wage and decent standard of life. The said Act obviously seeks to promote those goals. Therefore, the interpretation of the said Act must not only be liberal but it must be informed by the values of the directive principles. Therefore, an awareness of the social perspective of the Act must guide the interpretative process of the legislative device.

62) In my view therefore, provisions of POSH Act must not only be interpreted liberally but in the event of any difficulty, the same must be interpreted in favour of class of persons for whose benefit the statute is enacted. Therefore, a plain and strict interpretation of Sections 13 and 18 of the POSH Act would result in a situation where an aggrieved woman is rendered remediless against a decision of the ICC, essentially on account of ICC's failure to conduct an inquiry. In such circumstances, the Courts ought to adopt a liberal interpretation of the provisions of the POSH Act so as to give the character of a 'recommendation' to a decision

of the ICC holding that the complaint does not disclose any sexual element.

MAINTAINABILITY OF APPEAL

63) I have already held that the communication of ICC dated 30 October 2023 that the complaint does not have sexual element tantamounts to a ‘recommendation’ within the meaning of Section 13(2). I have not accepted the interpretation placed on provisions of Sections 11, 13 and 18 of POSH Act by Mr. Jagtiani and Mr. Kamat while holding that the impugned communication is a ‘recommendation’.

64) Once the communication of ICC dated 30 October 2023 is held to be a ‘recommendation’ within the meaning of Section 13(2) of the POSH Act, the remedy of filing appeal against the same is available to Respondent No. 2 under Section 18 of the POSH Act. In that sense, the objection as to maintainability of appeal becomes unfounded.

65) Before concluding the issue of maintainability of Appeal, it would be necessary to deal with some of the points raised by Mr. Jagtiani. He has contended that the word “complaint” appearing in Section 11 of the POSH Act must necessarily be a complaint of sexual harassment. I agree with the contention. Any complaint not involving an allegation of sexual harassment cannot be inquired by the ICC. Existence of complaint of sexual harassment is a jurisdictional fact for exercise of jurisdiction by the ICC. His reliance on judgments of Kerala High Court in *Hareesh M.S.* and *Dr. Prasad Pannian* in this regard is apposite. Only a complaint of ‘sexual harassment’ can be entertained by the ICC for the purpose of

initiating an inquiry. What is sought to be illustrated by Mr. Jagtiani is a case where the employer does not refer the case to the ICC on the ground that the same does not involve an element of sexual harassment. To illustrate, a woman employee is not granted promotion or is punished for commission of misconduct and files a complaint and there is no allegation of sexual harassment, the same need not even be referred to the ICC. However, the issue as to whether complaint involves element of sexual harassment or not can be considered and decided by the Court while deciding the Appeal under Section 18 of the POSH Act. The Court can decide whether the Complaint makes out a case of sexual harassment and if it reaches the conclusion that it does not, it can dismiss the Appeal by upholding the decision of the ICC. In every case, where the ICC rejects the complaint without holding an inquiry, it is not necessary that the Court must mechanically make an order of remand to the ICC for conduct of inquiry. It is only when the Court arrives at a conclusion that the complaint contains an element of sexual harassment and if after reaching that conclusion the Court finds that the ICC has not conducted any inquiry, it can direct conduct of inquiry by the ICC.

66) Therefore, in the context of issue of maintainability of Appeal, the issue as to whether the complaint makes out a case of sexual harassment or not takes a backseat and becomes irrelevant. Once a complaint is made alleging sexual harassment and the same is forwarded by the employer to the ICC and the ICC, upon deliberation amongst members, rules that the complaint does not involve an element of sexual harassment, the aggrieved woman must have some remedy against such

decision of the ICC. The statute has provided the remedy of appeal under Section 18 of the POSH Act.

67) Also, the present case does not involve eventuality of the employer refusing to take cognizance of the complaint at all. The employer has taken cognizance of the complaint and the same has been forwarded to the ICC. The reference was in fact made by the employer to an external ICC member since there was a conflict involved *qua* one of the members of ICC. Accordingly, the ICC headed by an external member, took cognizance of the complaint and has rendered its decision on the same. Its conclusion is a recommendation as held above and the same would accordingly be appealable. In the Appeal, the Industrial Court would decide whether the ICC is right in concluding that the complaint does not involve an element of sexual harassment.

68) It is therefore held that Appeal under Section 18 of POSH Act is maintainable against the communication dated 30 October 2023 of the ICC.

WHETHER AVAILABILITY OF WRIT REMEDY CAN BE A REASON FOR DENYING APPELLATE REMEDY?

69) Mr. Jagtiani and Mr. Kamat have strenuously contended that the theory of absence of remedy does not get attracted in the present case, since the aggrieved complainant can always have recourse to writ jurisdiction of High Court in the event of ICC not taking cognizance of the complaint. Reliance is placed on judgment of Karnataka High Court in *X Versus. Internal Committee Anil Technologies Pvt. Ltd.* (supra). In

case before the Single Judge of Karnataka High Court, Petitioner therein was a victim of sexual harassment at the hands of a driver of a OLA Taxi. She was aggrieved by the inaction on the part of ICC of OLA in not considering her request to inquire in the Complaint against the driver on the purport of it lacking jurisdiction to inquire into the complaint as the driver was not an employee of OLA. She invoked jurisdiction of the High Court under Article 226 of Constitution of India. The Karnataka High Court invoked the doctrine of public duty and by relying on judgment of the Apex Court in **St. Mary's Education Society Versus. Rajendra Prasad Bhargava**²¹ held that Writ Petition against a private entity is maintainable if it is shown that it owes a duty and obligation to public involving public law elements. The Karnataka High Court held in paragraphs 25 and 27 of the judgment as under:

25. Though it is vehemently urged on behalf of Petitioner that since the OLA is into the business of providing transport service of such a huge magnitude across the country it partakes the character of it discharging a public function, which is denied with equal vehemence by the learned counsel for the ICC and OLA, this court is of the considered view that, in the light of statutory obligations cast on OLA of constituting the Internal Complaint Committee for enquiring into the complaints of sexual harassment and taking further actions under the provisions of the PoSH Act, 2013 referred to hereinabove as well the obligations imposed under Rules 2016 which is undoubtedly a duty and obligation which it owe towards the public at large, ICC and OLA cannot be heard to say that they are not discharging any 'public duty' involving 'public law element' making them amenable to Article 226 of the Constitution of India. It is now well settled that sexual harassment constitutes violation of various fundamental rights of women guaranteed under Articles 14, 15, 19(1)(g) and 21 of the Constitution of India which may be enforced against private persons with corresponding duty imposed by a statute.

27. For the above reasons and for the purpose and to the extent mentioned above this Court is of considered view that the writ petition under Article 226 is maintainable. Point No. 1 is answered accordingly.

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However, in *X Versus. Internal Committee Anil Technologies Pvt. Ltd.*, there was a difficulty in identifying the employer who could be mandated to conduct the inquiry of sexual harassment. Therefore, the observations by the Karnataka High Court about maintainability of a writ petition under Article 226 of the Constitution are made in that context. The case did not involve challenge to the ruling by the ICC that the complaint did not involve element of sexual harassment. Therefore it is difficult to accept the proposition that in every case, a woman aggrieved by the decision of ICC of a private employer must approach the High Court by filing a writ petition.

70) In a given case, the High Court may entertain a Writ Petition filed under Article 226 of Constitution of India by an aggrieved complainant where the employer or ICC does not take cognizance of complaint of sexual harassment, by extending its long arms by invoking the concept of involvement of public duty. The issue in the present case however is not about availability of writ remedy to the aggrieved woman. The issue is whether the remedy of appeal under Section 18 of POSH Act is available or not. Therefore, a mere possibility of High Court entertaining a writ petition against rejection of complaint by the ICC at the threshold, cannot be a factor relevant for deciding whether the remedy of Appeal under Section 18 of POSH Act is available or not. To paraphrase, the issue of availability of remedy of appeal under Section 18 of POSH Act cannot be determined based on whether a High Court would entertain challenge to the decision of ICC or not. A High Court, in its plenary writ jurisdiction, may entertain a direct challenge to ICC's decision by ignoring the aspect of availability of alternate remedy of

appeal in a given case. That does not mean that the factor of entertainability of writ petition by the High Court would be relevant for deciding the issue of availability of remedy of appeal under Section 18 of POSH Act.

71) Also, the remedy of appeal is a much broader remedy created under the statute as compared to a writ remedy under Article 226 of Constitution of India, which is discretionary. More importantly, the present case does not involve refusal to take cognizance of the complaint; rather, it concerns a specific determination by the ICC that the complaint does not involve any sexual element. The communication by ICC on 30 October 2023 has already been reproduced above. The same shows deliberations made by the members of the ICC on the complaint submitted by Respondent No.2. The communication itself states that the conclusion reached by the ICC that '*the nature of your allegations do not have a sexual element*' is arrived at after thorough deliberations between the members of the ICC. The communication itself uses the word '*it has been determined that*'. Thus, what is communicated to Respondent No.2 on 30 October 2023 is a 'decision of the ICC' that the complaint does not have a sexual element.

72) Ordinarily, the decision of complaint not containing sexual element needs to be arrived at after holding an inquiry under Section 11 of the POSH Act. However, in the present case such decision is rendered by the ICC without holding any inquiry. As observed above, the folly committed by ICC does not enure to the benefit of Respondents in the complaint so as to deny the remedy of appeal to the Complainant. The decision in the present case communicated vide email dated 30 October

2023, is a recommendation within the meaning of Section 13(2) of the POSH Act. In such a situation it would not be appropriate to deny the remedy of appeal on a specious plea that Respondent No.2 could have tried her luck in approaching the High Court under Article 226 of the Constitution of India.

JUDGMENTS CITED BY PARTIES

73) The judgments of Kerala High Court relied upon by Mr. Jagtiani in *Hareesh M.S.* and *Dr. Prasad Pannian* are not authorities on the principle that a remedy of appeal is not available when ICC decides to hold that the complaint does not have a sexual element in it. In *Hareesh M.S.* the Petitioner therein had challenged the proceedings initiated by the ICC by petitioning the Kerala High Court. After going through the complaint, the learned Single Judge of the Kerala High Court held in paragraphs 8, 12 and 14 of the judgment as under:

8. ICC is only empowered to recommend if it finds the behaviour of the employee amounts to sexual harassment at workplace under the provisions of Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 [hereinafter referred to as POSH Act, 2013]. The ICC does not have the power to impose any punishment. If the ICC finds that the complaint has no substance, it cannot impose punishment for a false complaint. However, the power to decide whether an allegation of sexual harassment is made or not is solely the domain of the ICC, and this court may not interfere with the proceedings of the ICC at this stage.

12. The complaint that has been re-produced above does not have an allegation of 'physical contact and advances, a demand or request of sexual favour or making sexually coloured remarks or showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature'. Even if the complaint is believed to be correct, the only allegation is that the petitioner tried to record the conversation and he hurled abuses on the 3rd respondent and other employees who were present there at the cabin of the petitioner. The

complaint is about the language used by the petitioner and the alleged insult caused to the 3rd respondent.

14. When the complaint/allegation does not constitute "sexual harassment" as defined under Section 2(n) of the POSH Act, 2013, the jurisdictional fact for taking cognizance on such a complaint and issuing notice to the petitioner is missing. Therefore, this complaint cannot be proceeded with under the provisions of the POSH Act, 2013.

74) It must be observed that the judgment of the Kerala High Court in *Hareesh M.S.* does not contain elaborate discussion of provisions of Sections 11 and 13 of the POSH Act. Even before ICC could have conducted an inquiry into the complaint, the High Court went into the contents therein and ruled that the complaint/allegation did not constitute sexual harassment as defined under Section 2(n) of the POSH Act. The judgment rendered in the peculiar facts of that case cannot be cited in support of an abstract proposition when ICC rules that there is no sexual element in the complaint, the complainant would not have the remedy of appeal under Section 18 of the POSH Act.

75) Mr. Jagtiani has relied on judgment of Division Bench of Kerala High Court in *Dr. Prasad Pannian* (supra) in which the Division Bench has answered a reference after noticing the conflict in the two Single Judge Bench judgments. The conflict was noticed in judgment of the Single Judge in *Anil Rajgopal Versus. State of Kerala*²², in which it was held that every act should be connected with and must have relation to the act of behavioral sexual harassment. On the other hand, in the case in which reference was made, another learned Single Judge did not agree with the proposition in *Anil Rajgopal* (supra), held that the acts of behavior enumerated under Section 2(n) of POSH Act are not exhaustive

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and that therefore even acts outside Section 2(n) can be brought within the purview of the POSH Act. The Division Bench upheld the view in **Anil Rajgopal** and held that the complaint must be a complaint of sexual harassment at the workplace. Therefore, beyond the proposition that only a complaint of sexual harassment can be entertained by ICC, the judgment of Division Bench of Kerala High Court in **Dr. Prasad Pannian** is not of much relevance to the issue involved in the present case.

76) Mr. Jagtiani has also relied on judgment of this Court in **ABC Versus. Internal Complaints Committee, Akasa Air** (supra) in which a Single Judge of this Court has held in paragraph 33 of the judgment as under:

33. In my considered view, a distinction would be required to be drawn in cases where the ICC refuses to discharge statutory duty to inquire into the complaint of sexual harassment in accordance with the provisions of the POSH Act and Rules therein and thereby fails to discharge its duty and obligation to the public at large created by a statutory regime, and the cases where the ICC allegedly conducts the inquiry not in conformity with the provisions of the Act and the rules and the principles of natural justice. In the later case, the infraction of the procedure or the transgression of the jurisdiction, or for that matter, the perversity in the findings, would be the matters which can be legitimately raised before the Appellate Authority. The legality, propriety and correctness of the findings recorded by ICC would be examined by the Appellate Authority. An incorrect finding or defect in procedure would not necessarily amount to failure to discharge a public duty. At best, that would be an error within the jurisdiction. Thus, I am not inclined to accede to the submissions on behalf of the petitioner that, in the facts of the case, the writ petition under Article 226 of the Constitution of India would be maintainable against respondent No. 1 as it was discharging a public duty.

77) This Court has thus distinguished between cases where ICC refuses to discharge statutory duty to inquire into the complaint of

sexual harassment and the cases where ICC conducts inquiry not in conformity with provisions of the POSH Act. This Court held that, in the latter case, an infraction of procedure, a transgression of jurisdiction, or even perversity in the findings would be matters that could legitimately be raised before the Appellate Authority. This finding is read by Mr. Jagtiani to mean as if in the former cases the remedy of appeal is not available. However, the judgment does not specifically state so. In fact the present case would also fall in the latter category as it is the complaint of Respondent No.2 that the decision is rendered by ICC in violation of principles of natural justice. Therefore, reliance by Petitioners on judgment of this Court in ***ABC Versus. Internal Complaints Committee, Akasa Air*** (supra) is inapposite.

78) While the judgments relied upon by the Petitioners do not decide the issue of availability of remedy of appeal under Section 18 of the POSH Act, there are few decisions which do tend to suggest that the remedy of appeal can be exercised when the employer rules that there is no element of sexual harassment in the complaint.

79) Mr. Naphade has relied on order of Division Bench of this Court in ***Poonam Vijay Thakkar***. In case before the Division Bench of this Court in ***Poonam Vijay Thakkar*** (supra) a communication was addressed by the employer that no action was required to be taken on the complaint of sexual harassment, which communication was subject matter of challenge in a writ petition filed by the complainant. Maintainability of Writ Petition was questioned by employer by referring to the provisions of Section 18 of the POSH Act. The case thus involved a converse situation where a directly filed Writ Petition under Article 226

of the Constitution of India was opposed by the employer contending that there is statutory remedy of appeal under Section 18 of the POSH Act. Though the order does not contain elaborate discussion of statutory scheme of POSH Act, this Court has upheld the remedy of appeal under Section 18 of the POSH Act even against order refusing to take cognizance of complaint of sexual harassment. This Court has held in paragraphs 2, 3, 7.1 and 11 of the order as under:

2. This petition has been filed under Article 226 of the Constitution of India assailing the legality and validity of the communication dated 17th March, 2020, whereby the petitioner was informed by respondent No. 1 that no action was required to be taken on her complaint alleging sexual harassment upon her by respondent No.2 and thereby dismissing her complaint of sexual harassment by respondent No.2 under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (briefly "the Act" hereinafter).

3. We find from the order dated 11th March, 2021 that learned counsel for respondent Nos. 1, 3 and 5 had raised objection as to maintainability of the writ petition and in this connection has filed a short affidavit. Learned AGP on the other hand had pointed out that there is provision for appeal under section 18 of the Act.

7.1 From the above, we find that 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 preferred an appeal to such Court or Tribunal and in such manner as may be prescribed. As per sub-section (2), such appeal is required to be preferred within a period of 90 days of the recommendations.

11. That being the position, we are of the view that petitioner may avail her remedy in terms of section 18 of the Act read with rule 11 of the Rules by filing appeal before the Industrial Court at Mumbai. It would be open to the petitioner to seek condonation of delay in filing the appeal in which event the appellate authority, may consider the period spent in pursuing the writ petition before this Court as well as the condition prevailing in the State on account of COVID-19 pandemic.

80) In ***Sharanjeet Kaur*** Division Bench of Delhi High Court has dealt with a case where Single Judge had dismissed Writ Petition filed by

the Complainant challenging closure of her complaint on account of availability of alternate remedy of filing Appeal under Section 18 of POSH Act. The Complainant contended that no fact finding inquiry had taken place into her complaint and that therefore remedy of appeal was not available to her. The Division Bench however rejected the contention and held in paragraph 6 of the judgment as under:

6. After hearing the appellant, this Court is of the view that the appellant's submission that without any inquiry, an appeal cannot lie is misplaced as the recommendations made by ICC under Section 13(2) of the POSH Act in the present case is appealable to the Court or Tribunal in accordance with Section 18 of the POSH Act. Further, it is apparent from the order dated 16th March, 2020 that an inquiry was conducted by the ICC into the appellant's complaint and the complaint was not simply closed but disposed of by the ICC as closed.

81) Thus in *Sharanjeet Kaur* (supra) Division Bench of Delhi High Court has held that where complaint of sexual harassment is dismissed without conducting fact finding inquiry, remedy of filing Appeal under Section 18 of POSH Act would still be available.

82) Thus there is no direct judgment to support the case of the Petitioners that the remedy of appeal under Section 18 of POSH cannot be exercised against decision of the ICC holding that the complaint does not involve an element of sexual harassment. On the other hand, there are couple of judgments which do support the conclusion drawn by me that the remedy of appeal under Section 18 of POSH Act would be available to the aggrieved woman when the ICC makes a decision that the complaint does not involve an element of sexual harassment. Also this Court has made independent interpretation of provisions of POSH Act for arriving at a conclusion that the remedy of Appeal is available.

83) The conspectus of above discussion is that Respondent No.2 has the remedy of filing Appeal under Section 18 of the POSH Act against the impugned communication of ICC vide email dated 30 October 2023. The Appeal preferred by Respondent No.2 is thus perfectly maintainable and all applications filed by Petitioner questioning maintainability of the Appeal deserve to be dismissed.

CORRECTNESS OF ORDER ALLOWING THE APPEAL AND REMANDING THE PROCEEDINGS TO ICC

84) Even though this Court has held that the Appeal preferred by Respondent No.2 is maintainable under Section 18 of POSH Act, the course of action adopted by the Industrial Court in deciding merits of the Appeal is clearly erroneous. As observed above, parties did not argue merits of the Appeal and had confined their arguments only on the issue of maintainability thereof. The Industrial Court itself had taken only the issue of maintainability of Appeal for consideration, heard the parties on the issue of maintainability, but misdirected itself in going into merits of the Appeal. To this extent, the impugned judgment and order of the Industrial Court deserves interference. It is elementary that when an application as to maintainability of proceedings is taken up for decision, Courts or Tribunals cannot go into the merits of the proceedings especially without putting parties to notice that merits would also be decided. It is like the Court, while deciding the application for rejection of Suit under Order 7 Rule 11 of the Code, allows the Suit on merits.

85) Perusal of the order of the Industrial Court would indicate that it has not recorded a positive finding that the complaint involves an element of sexual harassment. Mere finding that the expressions used are offensive and unwelcome in nature is not sufficient. It is thus noted that the Industrial Court has mechanically directed remand of proceedings of the ICC. There is no determination by the Industrial Court as to whether the complaint can be treated as the one involving sexual harassment or not. Ofcourse a detailed fact finding inquiry is not expected at this stage. But as observed above, complaint of sexual harassment constitutes jurisdictional fact for conduct of inquiry by the ICC. It is only after the Industrial Court arrives at a conclusion that upon plain reading of the complaint that the same involves an element of sexual harassment that a detailed fact finding inquiry can be directed to be conducted by the ICC. Petitioner must be granted an opportunity to argue before the Industrial Court that the complaint does not involve any element of sexual harassment. The finding that the expressions used are offensive and unwelcome in nature is without affording an opportunity to the Petitioner. Petitioner did not know that the Industrial Court was to go into the merits of the Complaint. They need to be granted an opportunity to prove that the allegations in the complaint do not involve sexual harassment of Respondent No.2. For that purpose, the Appeal deserves to be remanded to the Industrial Court.

86) I am also not impressed by submission of Dr. Chandrachud that when the Trial Court dismisses the Suit on a preliminary point and if Appellate Court reverses the findings of Trial Court on that point, it is open to the Appellate Court to remand the matter back to the Trial Court

by having recourse to provisions of Order 41 Rule 23 of the Code. The submission of Dr. Chandrachud is premised on the footing that the ICC had rejected the complaint on preliminary point and that therefore while reversing the decision of ICC on preliminary point, it was open for the Industrial Court to remand the proceedings to ICC for decision of other issues. Provisions of Order 41 Rule 23 of the Code provides thus:

23. Remand of case by Appellate Court.

Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

87) However in the present case, provisions of Order 41 Rule 23 of the Code are wholly inapplicable. In the context of the Code, the present Petitions are like second appeals over the decision of the appellate court in which the decision of reversal of finding of lower court on preliminary issue is challenged. This Court is not satisfied by the decision making process of the Industrial Court and the proceedings are being remanded to the Industrial Court for fresh decision of the Appeal. Therefore, reliance by Dr. Chandrachud on provisions of Order 41 Rule 23 of the Code as well as judgment of the Apex Court in *J. Balaji Singh* (supra) is inapposite.

88) As of now this Court is only remanding the proceedings to the Industrial Court for re-adjudication of the Appeal. This Court is not

deciding the merits of decision of the ICC. Therefore, it is not necessary to go into the contention raised by Respondent No. 2 that the element of sexuality in the complaint is a matter of perception. Therefore, it is unnecessary at this stage to consider the ratio of judgments in *Additional District and Session Judge 'X'* and *Apparel Export Promotion Council*. I am also not going into the issue of expansive definition of the term 'sexual harassment' in support of contention of Respondent No. 2 that the allegations in the Complaint constitute sexual harassment. Therefore, it is also not necessary to consider the judgment of the Madras High Court in *Hcl Technologies Limited Rep. By Mr. Nerwin Dhanraj Versus. N. Parsarathy*. All these contentions can be decided by the Industrial Court.

PLEA FOR SUSTAINING THE ORDER OF REMAND OF INQUIRY TO ICC

89) Faced with the twin errors in the Order of the Industrial Court where the order does not record a single reason for rejecting maintainability application and where the Court has proceeded to decide the Appeal itself while taking up maintainability application for decision, it is urged on behalf of Respondent No. 2 that the impugned Order passed by the Industrial Court actually serves the ends of justice and that therefore the same need not be disturbed. It is submitted that all that is envisaged in the Order is that there would be proper inquiry by the ICC after affording due opportunity to both the sides. It is therefore urged that the Order may not be disturbed even if this Court arrives at a conclusion that the maintainability applications are not properly decided

or that the Tribunal has erred in deciding the merits of the Appeal while taking up the maintainability issue.

90) The plea here is twofold. Firstly, the Order is sought to be saved from the vice of failing to record reasons for reaching the conclusion for rejecting the maintainability objection. Secondly, the Order is sought to be saved from the vice of going directly into the issue of merits of the Appeal by contending that the Order ultimately is just and merely ensures proper inquiry into the allegations. It is contended that if this Court upholds the maintainability of the Appeal, the Order of the Industrial Court ought not to be disturbed as it merely warrants remand of the proceedings before the ICC for conduct of proper inquiry.

91) The situation is accordingly sought to be salvaged by Dr. Chandrachud by relying on judgment of the Apex Court in ***Woolcombers of India Ltd.*** (supra) by contending that insufficiency of reasons or even complete absence of reasons is no ground for a writ Court to interfere in the impugned order if no injustice is done in the case or if the reasons are apparent from the record. The Apex Court has held in paragraph 9 of the judgment as under:

9. According to Shri Sanghi, this passage clearly indicates that the Tribunal has fixed the bare minimum wage. We have already pointed out that the referring order of the West Bengal Government did not ask the Tribunal to fix the bare minimum wage. It is also necessary to point out at this stage that apart from the aforesaid passage in the award there is no reference at any other place therein that the bare minimum wage was being granted to the workmen. The financial capacity of an employer does not enter into the scale in the fixation of the bare minimum wage. But in fixing the basic wages the Tribunal has admittedly considered the financial capacity of the Woolcombers. It would suggest that the Tribunal has really fixed the basic fair wage. So when the Tribunal says in the aforesaid passage that the basic wages

fixed by it "cannot be in any way fair wage" it does not really mean to say that it was fixing the bare minimum wage. It seems to us that the Tribunal really wanted to emphasise the fact that having regard to the financial capacity of the Woolcombers it was not awarding more than the floor level of the fair wage to the workmen. **So we do not agree with Shri Sanghi that the Tribunal has fixed the bare minimum wage. Now, the absence of reasons in support of the conclusions is indeed a serious flaw in the award. However, the award cannot be set aside simply on that score, if there is evidence on the record in support of the Tribunal's conclusion.** Accordingly we have gone through the entire evidence on record.

(emphasis supplied)

92) In *K.L. Tripathi* (supra) the Apex Court has held where the reasons are not expressly spelt out but the same are implicit from fair reading of the impugned order and where the ultimate conclusion is found to be reasonable, the conclusion did not warrant interference. The Apex Court held in paragraph 43 of the judgment thus:

43. It may be mentioned that the facts in that case were different. **In the instant case though reasons have not been expressly stated, these reasons were implicit namely, the nature of the charges, the explanation offered and the reply of the appellant to the show cause notice.** These appear from a fair reading of the order impugned in this case. It, further, appears that there was consideration * of those facts and the decision was arrived at after consideration of those reasons. It is manifest, therefore, that absence of any denial by the appellant, indeed admissions of the factual basis and nature of the explanation offered by the appellant were considered by the authority to merit the imposition of the penalty of dismissal. **Such a conclusion could not, in the facts and circumstances of the case, be considered to be unreasonable or one which no reasonable man could make.**

(emphasis supplied)

93) In *Garment Craft* (supra) the Apex Court has held that every error of lower Court need not be corrected in writ proceedings and interference need not be made where final conclusion is acceptable. The Apex Court held in paragraphs 15,16 and 17 of the judgment as under:

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court Under Article 227 of the Constitution of India. **The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported.** The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal.¹ The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power Under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

16. Explaining the scope of jurisdiction Under Article 227, this Court in *Estralla Rubber v. Dass Estate (P) Ltd.* MANU/SC/0558/2001 : (2001) 8 SCC 97 has observed:

6. The scope and ambit of exercise of power and jurisdiction by a High Court Under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this Article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. **The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals.** Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to. *(emphasis supplied)*

94) In *M.S. Sanjay* (supra), the Apex Court has held that interference by a writ Court for mere infraction of statutory provisions or norms where such infraction has not resulted in injustice, is not a matter of course. The Apex Court has held in paragraphs 9 and 10 of the judgment as under:

9. It is well settled that interference by the Writ Court for mere infraction of any statutory provision or norms, if such infraction has not resulted in injustice is not a matter of course.

10. It has been rightly observed that legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal Court of Appeal, which it is not. **It is a settled principle of law that the remedy Under Article 226 of the Constitution of India is discretionary in nature and in a given case, even if some action or order challenged in the petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties.**

(emphasis supplied)

95) So far as the issue of failure to record reasons for rejecting the maintainability objection is concerned, the situation is already salvaged on account of Petitioners agreeing for deciding the maintainability issue by this Court and an order of remand on that count is already obviated. So far as the second plea for retention of the Order of the Industrial Court after rejecting the maintainability objection by this Court is concerned, I am not able to accept the same. The Industrial Court has grossly erred in deciding the merits of the Appeal without putting Petitioners to the notice that it would also decide merits of the

Appeal while deciding the maintainability applications. The Industrial Court has also not inquired whether the complaint contains any allegation involving sexual harassment or not. So this illegality committed by the Tribunal cannot be ignored. Also this Court is not satisfied with the ultimate conclusion recorded by the Industrial Court. The inquiry conducted for reaching the finding for remand of proceedings to the ICC is perfunctory. The conclusion is recorded without hearing the parties and without recording a satisfaction that the complaint involves an element of sexual harassment. Even the Respondent No. 2 was not heard on merits of the Appeal. Therefore the second illegality in the order cannot be ignored even while exercising the extraordinary jurisdiction by this Court.

96) I am also not impressed by the submissions made by Mr. Tamboly, Dr. Chandrachud and Mr. Naphade that no prejudice is caused to the Petitioners by mere order of remand by the Industrial Court. The folly committed by the Industrial Court results in a situation where there is a finding on merit that Respondent No.2 was working in unhealthy, stressful and uncomfortable environment and that expressions used by the Petitioners are offensive and unwelcome in nature. The Industrial Court has clearly ventured into the merits of the decision made by the ICC without even granting an opportunity of hearing to the parties on merits. Cause of prejudice to the Petitioners is thus writ large.

ISSUE OF TERRITORIAL JURISDICTION RAISED IN WP 8418 OF 2026

97) It is contended by the Petitioner in Writ Petition No.8418 of 2026 (Mr. Rohit Anand) that the Industrial Court does not have

jurisdiction to decide the Appeal qua him since he is not employed by the same employer (Maple Infra) and that he is an employee of an independent employer (CDPQ). It is also contended that the Petitioner is located outside India and is working with the CDPQ at Singapore. It is however an admitted position that CDPQ is a shareholder of Maple Infra. In my view, in the light of allegations against the Petitioner in the complaint, whether the Petitioner-Mr. Rohit Anand can be roped in the Appeal or not is a disputed issue, which has no connection with the issue of maintainability of appeal under Section 18 of the POSH Act. Therefore, the issues relating to applicability of POSH Act to Mr. Rohit Anand and identity of his exact employer need to be kept open to be decided along with the Complaint. All contentions of parties on these issues are specifically kept open.

PENDING APPLICATIONS SEEKING DISMISSAL OF APPEAL

98) It appears that Petitioner had filed two sets of applications before the Industrial Courts viz. questioning maintainability and seeking dismissal of the Appeal raising the ground of absence of sexual element in the Complaint. In my view, the latter objection touches upon merits of the Appeal and cannot be decided in a piecemeal manner. Therefore, the objection that the complaint does not make out any element of sexual harassment can be decided while finally deciding the Appeal. Such course of action would obviate another round of litigation between the parties over interlocutory orders. So far parties have approached this Court thrice over the interlocutory decisions. It is therefore necessary that all issues are decided by the Industrial Court together.

99) The limited remit of inquiry before the Industrial Court is whether the ICC is justified in ruling that the complaint of Respondent No. 2 does not contain an element of sexual harassment. The Industrial Court is not going to inquire whether the Respondent No. 2 is sexually harassed or not. If it finds that the complaint has an element of sexual harassment, it would direct conduct of inquiry by the ICC. If on the other hand, it arrives at a conclusion that the complaint actually does not involve an element of sexual harassment, it would proceed to dismiss the Appeal. Therefore piecemeal determination of Applications filed by the Petitioners seeking dismissal of the Appeal is not warranted. Decision of those Applications would actually determine the final outcome of the Appeal itself. Therefore it is better that all the issues are heard and decided together by the Industrial Court.

CONCLUSIONS

100) Conspectus of the above discussion is that though the Order of the Industrial Court does not contain any real 'decision' on the issue of maintainability of the Appeal and though this Court is dissatisfied with the Order on that count, the Court has itself gone into the issue of maintainability of the Appeal on account of willingness expressed by the Petitioners. The issue of maintainability of the Appeal is decided against the Petitioners and it is held that the communication of the ICC dated 30 October 2023 is a 'recommendation' within the meaning of Section 13(2) of the POSH Act and therefore the Appeal filed under Section 18 of the Act against that recommendation is maintainable. Accordingly, curtains are drawn on that issue. However, the approach of the Industrial Court in

going into merits of the Appeal has not found favour with this Court and on that count, the Order of the Industrial Court allowing the Appeal and setting aside communication of ICC dated 30 October 2023 as well as remanding the proceedings to ICC deserves to be set aside.

ORDER

101) Accordingly, I proceed to pass the following order:

- i) It is held that Appeal (IESO) No. 03 of 2024 filed by Respondent No. 2 is maintainable and accordingly the Applications as to maintainability of Appeal filed by the Petitioners are dismissed.
- ii) Judgment and order dated 4 May 2026 passed by the learned Member, Industrial Court, Mumbai, in Appeal (IESO) No.03 of 2024 is set aside in part.
- iii) Appeal (IESO) No.03 of 2024 is remanded on the file of the Industrial Court for being decided afresh on its own merits.
- iv) All contentions of parties on merits of the Appeal are kept open. The Industrial Court is requested to decide the remanded Appeal as expeditiously as possible preferably within a period of 4 months.

102) With the above directions, Writ Petitions are **partly allowed and disposed of**. There shall be no order as to costs.

NEETA
SHAILESH
SAWANT

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Date: 2026.08.19
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[SANDEEP V. MARNE, J.]