

Kerala High Court has reinforced that the jurisdiction of Internal Committee is limited to complaints constituting 'sexual harassment' only

In the recent case of *Hareesh M.S. vs. The Kerala State Financial Enterprises Ltd. and Ors.*¹, a single judge bench of the Kerala High Court (“**Kerala HC**”) reinforced the jurisdictional limits of the Internal Committee (“**IC**”) under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**POSH Act**”), and held that the IC cannot proceed with a complaint or issue notice to a respondent where allegations do not disclose any conduct that falls within the definition of ‘sexual harassment’ under Section 2(n) of the POSH Act.

Brief facts

The petitioner, Hareesh M.S. (“**Respondent**”), was working as a manager of Kerala State Financial Enterprises Limited (“**KSFE**”). On May 31, 2024, the Respondent issued a memo to 8 (eight) junior female employees of his branch citing failure to meet their chitty canvassing targets and requested them to provide written explanations within 7 (seven) days.

Having received no response from these employees, the Respondent reported the matter to his higher authorities on June 19, 2024. On the following day, a political union office bearer (“**Complainant**”) who was not posted at the Respondent’s branch visited the branch premises along with several union members. The group reportedly entered the Respondent’s cabin without prior appointment or approval and allegedly created a hostile environment. The Respondent alleged that the Complainant and others misbehaved with him, attempted to snatch his mobile phone, and verbally threatened him. The Respondent also filed a police complaint regarding this incident.

Subsequently, the Complainant filed a complaint before KSFE’s IC, citing that she had visited the Respondent’s branch in her capacity as an office bearer to discuss the issuance of the memo to the junior staff. She alleged that upon entering the Respondent’s cabin, he attempted to record her on his mobile phone without her consent and shouted at her to leave the cabin, using language that she described as obscene and disrespectful (however, the complaint did not specify the exact words or phrases allegedly used by the Respondent). She further stated that his behaviour was insulting and humiliating, particularly in the presence of other staff members. On the basis of this complaint, the IC issued a notice dated July 8, 2024, to the Respondent.

¹ W.P. (C) 24867/2024 (Decided on February 10, 2025)

Aggrieved by this, the Respondent filed a writ petition before the Kerala HC, contending that the complaint lacked any allegation amounting to 'sexual harassment' under Section 2(n) of the POSH Act, and thus, the IC cannot take cognisance of the same.

Issue

The Kerala HC was presented with the issue as to whether the complaint filed by the Complainant disclosed allegations of 'sexual harassment' within the meaning of Section 2(n) of the POSH Act, and consequently, whether the IC had the jurisdiction to take cognisance of and proceed with the complaint.

Observations and analysis

The Kerala HC while examining the complaint and deciding upon the matter laid down the following observations:

1. Even if the complaint is taken at face value, the allegations therein including the use of abusive language, an attempt to record a video, and alleged public insult did not fall within any of the categories set out under Section 2(n) of the POSH Act. These allegations did not involve sexually coloured remarks or any conduct of a sexual nature and therefore does not meet the definitional threshold of 'sexual harassment' under the POSH Act.
2. Where the complaint does not *prima facie* disclose allegations of 'sexual harassment' as defined under the POSH Act, the IC does not have the jurisdiction to proceed. In the absence of such a jurisdictional fact, any cognisance and even issuance of notice to the accused by the IC would be without authority.

In light of the above, the Kerala HC allowed the writ petition and set aside the notice issued by the IC, holding that the IC cannot proceed with the complaint.

Conclusion

The Kerala HC's ruling in the judgment reaffirms that the jurisdiction of an IC under the POSH Act is strictly limited to complaints that disclose allegations of 'sexual harassment' as defined under Section 2(n) of the POSH Act.

Interestingly, in this case, the Kerala HC went a step further to emphasise that even the issuance of a notice to the respondent typically treated as a procedural first step cannot be undertaken in the absence of a preliminary assessment by the IC. The Kerala HC clarified that the IC must, at the outset, assess whether the allegations in a complaint, on a *prima facie* basis, fall within the scope of 'sexual harassment'. If they do not, the IC lacks jurisdiction to proceed under the POSH framework, and issuance of a notice itself would be without authority. This interpretation gains significance since in practice, ICs typically tend to issue notices to respondents on the basis of written complaints from complainants as a matter of course without first assessing whether any of the allegations meet the statutory thresholds. The Kerala HC's ruling establishes that such an approach may be procedurally flawed and legally untenable.

This decision reinforces procedural fairness and highlights the importance of a structured, legally compliant inquiry process. It further reinforces that while the POSH Act is designed to provide an accessible and sensitive mechanism for addressing genuine complaints of sexual harassment, it must also be applied carefully ensuring that individuals are not subjected to the rigours of inquiry in cases where applicability of the POSH Act is limited or absent.

Illustrative Threshold for Sexual Harassment

While in the present case, the complaint only vaguely referred to the use of 'obscene' language without specifying the actual words used or indicating any sexual undertone there have been instances where courts have analysed specific language used by the respondent to assess whether it meets the threshold of 'sexual harassment' under Section 2(n) of the POSH Act. For instance:

3. In *Vinod Narayan Kachave vs. The Presiding Officer (ICC) and Anr.*², the Bombay High Court held that a comment about the complainant's hair—such as 'you must be using a JCB to manage your hair' even if unwelcome, did not meet the statutory definition of sexual harassment, as it lacked any sexual connotation.
4. In *[Redacted Name] vs. Gender Sensitization and Internal Complaint Committee and Ors.*³, the Calcutta High Court (Appellate Side) ("**Calcutta HC**") considered whether the use of expressions like 'baby' and 'sweety' constituted sexual harassment. While the Calcutta HC agreed that such terms are inappropriate, it observed that these expressions are not *per se* inherently sexually coloured and may be prevalent in certain social contexts.

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JSA also has significant experience in assisting employers to ensure that they provide focused and proactive counselling to comply with the obligations placed on employees under the prevention of sexual harassment regime in India. We advise and assist clients in cases involving sexual harassment at the workplace, intra-office consensual relationships, including drafting of prevention of sexual harassment (POSH) policies, participating in POSH proceedings, conducting training for employees as well as Internal Complaints Committee members, and acting as external members of POSH Committees.

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² W.P. No. 17230/2024 (Decided on March 18, 2025)

³ W.P.A No. 26677/2023 (Decided on April 24, 2024)



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