

2022 LiveLaw (Ker) 128

IN THE HIGH COURT OF KERALA AT ERNAKULAM
S.MANIKUMAR (C.J.); SHAJI P.CHALY, J.
THURSDAY, THE 17TH DAY OF MARCH 2022

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 - The production unit of each film industry is an establishment employing Actor Artists and other workers and therefore, such production units have to maintain an Internal Complaints Committee, if they are engaging more than 10 workers, as is contemplated under the Act, 2013. (Para 67)

WP(C) NO. 33994 OF 2018

PETITIONERS:

1 Women in Cinema Collective (Reg No Ekm/tc/643/2017) Mamangam Arts Collective, Stadion 68, 3 Rd Floor, Behind Kaloor International Stadium, Palarivattom, Kochi-682025, Represented By Its Authorised Signatory J. Padmapriya.

2 Rima Kallingal Rajan, President, Women in Cinema Collective, 1111, 11th Floor, Purvankara Grandbay, Marine Drive, Ernakulam - 682018.

By Advs. Santhosh Mathew Sri. Arun Thomas Sri.vijay V. Paul Smt.karthika Maria Smt. Veena Raveendran Sri.anil Sebastian Pulickel

RESPONDENTS:

1 State of Kerala, Represented By Its Secretary, Cultural Affairs, Cultural Affairs Department, 1st Floor, South Block, Government Secretariat, Thiruvananthapuram-695001

2 The Special Secretary, Department of Women and Child Development, Government of Kerala, 1st Floor, South Block, Government Secretariat, Thiruvananthapuram-695001.

3 Association of Malayalam Movie Artistes (A.M.M.A), P.T.C. Road, Thycaud. P.O., Thiruvananthapuram - 695014, Represented By Its General Secretary.

4 Cine And T V Artists Association (CINTAA) 221, Kartik Complex, 2nd Floor, Opp.laxmi Industrial Estate, New Link Road, Andheri(w), Mumbai-400053 Represented By Mr. Amit Behl, 221, Kartik Complex, 2nd Floor, Opp.laxmi Industrial Estate, New Link Road, Andheri(w), Mumbai-400053

By Advs.smt.ammu Charles for R3 Mr.talish Ray For R4 Shri.n.manoj Kumar, State Attorney For R1 & R2

WP(C) NO. 34273 OF 2018

PETITIONER:

Women In Cinema Collective (Reg No. Ekm/TC/643/2017) Mamangalam Arts Collective, Stadion 68, 3rd Floor, Behind Kaloor International Stadium, Palarivattom, Kochi-682 025, Represented By Its Authorised Signatory, Ms. Remya Nambeesan @ Remya S. Unni.

By Advs. Santhosh Mathew Sri. Arun Thomas Sri. Vijay V. Paul Smt. Karthika Maria Smt. Veena Raveendran Sri.anil Sebastian Pulickel

RESPONDENTS:

1 State of Kerala Represented By The Secretary, Cultural Affairs, Cultural Affairs Department, 1st Floor, South Block, Government Secretariat, Thiruvananthapuram-695 001.

2 The Special Secretary Department of Women and Child Development, Government Of Kerala, 1st Floor, South Block, Government Secretariat, Thiruvananthapuram-695 001.

3 Kerala Film Chamber Of Commerce Registration No.40 Of 1956, Film Chamber Building, 2nd Floor, Mg Road, Kochi-682035, Represented By Its General Secretary.

4 Kerala Film Producers Association Registration No.er 508/89, Evershine Building, Pulleppady Junction, Pulleppady, Ernakulam-682 018.

5 Film Employees Federation of Kerala (FEFKA) Shop No.44/2608, Freedom Road, Kaloor, Ernakulam-682 017, Represented By Its General Secretary.

6 Malayalam Cinema Technicians Association (MACTA) Vattoly Estate, St. Vincent Road, Kacheripady, Ernakulam-682018, Represented By Its General Secretary.

7 Kerala Film Distributors Association Arangath Cross Road, Ernakulam North (Sopanam Square), Ernakulam-682018, Represented By Its General Secretary.

8 The Regional Officer Central Board of Film Certificate (CBFC), Chithranjali Studio Complex, Thiruvallam, Thiruvananthapuram-695027.

9 Kerala Women's Commission Represented By Director, Pattom Palace P.O., Thiruvananthapuram -695004

By Advs. Sri. Rony Jose For R5 Sri. Mohammed Ziyad For R4 & R6 Sri. R.Muralee Krishnan For R7 Sri. Jaishankar V. Nair, CGC, For R8 Smt. A. Parvathi Menon For R9 Sri. S. Sujin, Sri. N.N. Sugunapalan (Sr.) For R3 Mr. Talish Ray For R4 Shri. N. Manoj Kumar, State Attorney For R1 & R2

J U D G M E N T

SHAJI P.CHALY,J.

Captioned writ petitions are all Public Interest Litigations filed by various organisations seeking to constitute a grievance redressal mechanism against the sexual harassment as per the directions of the Hon'ble Supreme Court in **Vishakha v. State of Rajasthan** [(1997) 6 SCC 241] and in accordance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, hereinafter called, 'Act, 2013'.

2. Even though the reliefs sought for in the writ petitions are similar in nature against the various organisations having connections with film, Television and other allied activities, and against various political organisations, the issues are to be adjudicated, taking into account the provisions of the Act, 2013 since primarily it will have to be decided as to whether the provisions of the Act, 2013, applies to the organisations in question. Therefore, it is only appropriate that the reliefs sought for in the captioned writ petitions are extracted separately in order to have a proper understanding of the issues.

The reliefs sought for in W.P.(C) No.33994 of 2018 are as follows:

1) Issue a writ of mandamus or any other writ order or direction declaring that the 3rd Respondent Association is legally obliged to constitute a complaints committee against sexual harassment for its members in accordance with the guidelines laid down by the Honourable Supreme Court in **Vishaka v. State of Rajasthan** reported in (1997) 6 SCC 241 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013;

2) Issue a writ of mandamus or any other appropriate writ order or direction compelling the Respondents to appoint a complaints committee against sexual harassment, comprising of suitable and independent members, for the 3rd Respondent Association in accordance with the guidelines laid down by the Honourable Supreme Court in **Vishaka v. State of Rajasthan** reported in (1997) 6 SCC 241 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 within a time limit prescribed by this Hon'ble Court;

3) Issue such other appropriate writ, order or direction which this Hon'ble Court may deem fit and just in the circumstances of the case.

The reliefs sought for in W.P.(C) No.34273 of 2018 are as follows:

1) Issue a writ of mandamus or any other writ, order or direction declaring that the Respondent Associations are legally obliged to constitute a complaints committee against

sexual harassment for its members in accordance with the guidelines laid down by the Honourable Supreme Court in **Vishaka v. State of Rajasthan** reported in (1997) 6 SCC 241 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and comply with the various guidelines and the provisions of Act 14 of 2013 for prevention of sexual harassment at work places in letter and spirit;

2) Issue a writ of mandamus or any other appropriate writ, order or direction compelling the third Respondent and its members to ensure that a complaints committee against sexual harassment, comprising of suitable and independent members, in accordance with the guidelines laid down by the Honourable Supreme Court in **Vishaka v. State of Rajasthan** reported in (1997) 6 SCC 241 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and comply with the various guidelines and the provisions of Act 14 of 2013 for prevention of sexual harassment at work places in letter and spirit;

3) Issue a writ of mandamus or any other appropriate writ, order or direction compelling the Fourth Respondent and its members to ensure that a complaints committee, comprising of suitable and independent members, in accordance with the guidelines laid down by the Honourable Supreme Court in **Vishaka v. State of Rajasthan** reported in (1997) 6 SCC241 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is constituted to enquire into complaints which arise during the shooting and pre and post production work of a Cinematograph and also for its regular employees and comply with the various guidelines and the provisions of Act 14 of 2013 for prevention of sexual harassment at work places in letter and spirit;

4) Issue a writ of mandamus or any other appropriate writ, order or direction compelling the Fifth Respondent and the member Unions affiliated to to ensure that a complaints committee comprising of suitable and independent members, in accordance with the guidelines laid down by the Honourable Supreme Court in **Vishaka v. State of Rajasthan** reported in (1997) 6 SCC 241 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is constituted to enquire into complaints which arise during the shooting and pre and post production work of a Cinematograph and comply with the various guidelines and the provisions of Act 14 of 2013 for prevention of sexual harassment at work places in letter and spirit;

5) Issue a writ of mandamus or any other appropriate writ, order or direction compelling the Sixth Respondent to ensure that a complaints committee comprising of suitable and independent members, in accordance with the guidelines laid down by the Honourable Supreme Court in **Vishaka v. State of Rajasthan** reported in [(1997) 6 SCC 241] and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is constituted to enquire into complaints which arise during the shooting and pre and post production work of a Cinematograph and also for its regular employees and comply with the various guidelines and the provisions of Act 14 of 2013 for prevention of sexual harassment at work places in letter and spirit;

6) Issue a writ of mandamus or any other appropriate writ, order or direction compelling the Seventh Respondent and its members to ensure that a complaints committee comprising of

suitable and independent members, in accordance with the guidelines laid down by the Honourable Supreme Court in **Vishaka v. State of Rajasthan** reported in [(1997) 6 SCC 241] and the Sexual Harassment Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is constituted to enquire into complaints relating to its employees and comply with the various guidelines and the provisions of Act 14 of 2013 for prevention of sexual harassment at work places in letter and spirit; of

7) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the Eighth Respondent to ensure that Cinematographs produced by Producers who have constituted a complaints committee comprising of suitable and independent members, in accordance with the guidelines laid down by the Honourable Supreme Court in **Vishaka v. State of Rajasthan** ported in [(1997) 6 SCC 241] and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 to enquire into complaints which arise during the shooting and pre and post production work of a Cinematograph, which is duly certified by the 3rd Respondent, alone are granted Certificates of Registration;

8) Issue such other appropriate writ, order or direction which this Hon'ble Court may deem fit and just in the circumstances of the case The reliefs sought for in W.P.(C) No.36059 of 2018 are as follows:

a) To Issue a Writ of mandamus, order or direction, directing the 1st Respondent to conduct an Enquiry into the compliance of the Sexual harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in the Respondent 3 to 9 registered in the state;

b) To issue a writ of mandamus , order or direction directing the Respondents to set up a body for the conduct of a social audit into the establishment and effective functioning of the Internal committee under the Sexual Harassment at workplace within Respondents 3 to 9;

c) To issue a writ of mandamus, order or direction, directing the 1st Respondent to issue necessary guidelines for the monitoring and implementation of the Sexual Harassment At Workplace (Prevention, Prohibition And Redressal) Act in State of Kerala.

d) Any other relief as this court may think fit.

3. For the disposal of the writ petitions, we are relying upon the pleadings put forth by the petitioners in W.P.(C) No.33994/2018.

4. The State Government has filed a counter affidavit in the said writ petition and has filed adoption memos in the other two writ petitions. Whenever the pleadings of the other writ petitions are to be relied upon, reference will be made separately.

5. In W.P.(C) No.33994/2018, first petitioner is an organisation called 'Women in Cinema Collective', which is a society registered under section 12 of the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, apparently constituted for the welfare of women in Indian Cinema with the objectives of ensuring equal space and equal opportunities for all women working in Cinema with respect to all creative and other processes and activities concerning the making of cinema and all related events; and also for ensuring the dignity of women working in cinema in their workspaces by promoting

awareness and preserving the rights of women as guaranteed under the Constitution of India.

6. Second petitioner is the President of the 1st petitioner society. Petitioner in W.P.(C) No.34273/2018 is also 'Women in Cinema Collective'; petitioner in W.P.(C) No.36059/2018 is claiming to be a registered organisation working on the issues relating to women and children viz., Centre for Constitutional Rights Research & Advocacy (CCRA).

7. The paramount contention advanced is that the 3rd respondent Association viz., Association of Malayalam Movie Artists (AMMA), which is having registered office at Thiruvananthapuram, is an Association registered under the provisions of the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 and its membership is restricted to Actor Artists in feature films. According to the petitioners, as per the bye-laws of the said society, some of the objectives are to protect the rights of the its members, to insist, maintain and develop self-discipline and professional & social ethics among members; to find out the issues concerning the artists; to analyse them and to find out possible remedies; and to act as arbitrators in all disputes that may be submitted to them for arbitration by the members and others in film industry.

8. According to the petitioners, 3rd respondent association, in spite of being the dominant professional Association for Actor artists in the Malayalam film industry, it has failed to implement a grievance redressal mechanism for its members against the sexual harassment at the workplace. It is also the case of the petitioners that the omission of the 3rd respondent Association is striking at a time when revelations or widespread sexual assault and harassment of women in film industries across the country have come out.

9. Therefore, the sum and substance of the contention advanced is that the members of the 3rd respondent Association are helpless and without any adequate remedy against the sexual harassment, directed against them in the professional context. Accordingly, it is submitted that the inaction of the 3rd respondent association in setting out a grievance redressal mechanism against the sexual harassment is also a breach of the **Vishakha** guidelines laid down by the Hon'ble Supreme Court and also the violation of the provisions of the Act, 2013. These are the basic background facts projected by the writ petitioners, in order to secure the reliefs sought for in the writ petition.

10. In W.P.(C) No.36059/2018, apart from the film industry, allegations of sexual harassment are raised on members of a political party; and so also there are allegations of sexual harassment against women, who are members of Kerala Working Women Journalists and certain paper reports are also referred to.

11. Therefore, the sum and substance of the contention advanced therein is that the aforesaid respondent organisations would also come under the provisions of the Act, 2013. However, basically the relief sought for in the writ petition would show that directions are sought to be issued to the State Government to conduct an enquiry into the compliance of the provisions of the Act, 2013 in the respondents 3 to 9 organisations viz., Kerala Television Federation, Thiruvananthapuram, Indian Newspaper Society, Kozhikode, Kerala Union of Working Journalists, Thiruvananthapuram, Film Employees Federation of Kerala (FEFKA), Ernakulam, Indian National Congress Party, Kerala Chapter, Thiruvananthapuram,

Bharatiya Janata Party, Thiruvananthapuram and Communist Party of India (Marxist), Kerala Chapter, Thiruvananthapuram, and for a further direction to the respondents to set up a body for the conduct of a social auditing in the establishment and effective functioning of the internal committee under the Act, 2013.

12. The 3rd respondent in W.P.(C) No.33994/2018 has filed a counter affidavit basically contending as follows;

13. It is submitted by the 3rd respondent that in the case of a film production, the workplace varies from different stages of pre-production, postproduction etc., and predominantly the workplace of film production will be the shoot location; in a film shoot location, other than the members of the 3rd respondent, the major participants will be technicians, junior artists, production team etc., in other words, in shoot location, numbers of technicians, junior artists, production team etc. will outweigh the number of members of the 3rd respondent; the FEFKA is a trade union of all technicians in film industry, which consists of 19 sub-unions, and each sub-union represents different sectors of technicians in film industry such as make-up artists, junior artists, cameraman, editors, directors etc.; other than FEFKA, Kerala Film Chamber of Commerce and Kerala Film Producers Association, are the other predominant associations in the film industry.

14. It is further submitted that in the case of a film production, 3rd respondent is not an 'employer' and it is only an association of Actor Artistes in Malayalam feature films; there is no employer-employee relationship between AMMA and its members; 3rd respondent also does not have any control over any film production since the artists are individually booked directly by the film producers/film production house and all remunerations are paid by the said film producers/film production house directly to each artists and other technicians and as such, employer of a film production is the film producer/film production house of that particular film production; if any sexual harassment in workplace occurs, in order to have an effective grievance mechanism, a committee constituted by the employer will be a suitable body; the Act also validates a grievance mechanism constituted by the employer; the number of members of the 3rd respondent in a shoot location will only be nominal when compared to the presence of members of other associations and the grievance mechanism, if any, created by the 3rd respondent will not be effective, it is because of the fact that 3rd respondent has no control over other members of technician and producers association.

15. It is also pointed out that the 3rd respondent, complying with the spirit of the **Vishakha** Guidelines issued by the Hon'ble Supreme Court, has already formed a Women Cell Grievance Forum consisting of three senior lady artists in Malayalam film industry; even though Women Cell Grievance Forum within the 3rd respondent Association is already in existence and is fully functional, the object of the Act will not be fulfilled as the above Women Cell Grievance Forum has no control over the members of Technician Association and Producers Association; so also, the grievance as pointed out by the petitioners cannot be effectively redressed unless and until a proper & effective Grievance Forum is constituted in respect of workplace in film industry; Chapter IV of the Act, 2013 deals with various procedures to deal with the complaint and Chapter V of the Act, 2013 speaks about the procedures to be followed in an inquiry into the complaint.

16. Therefore, according to the 3rd respondent Association, in order to discharge the functions as contained in Chapter IV and V of the Act, 2013, an effective Grievance Forum is to be constituted by the employer. Otherwise, the whole procedure will become a mockery and the objectives of the Act, 2013 cannot be fulfilled.

17. According to the 3rd respondent, they always encourage a proper and effective Women Cell Grievance mechanism so as to provide protection against sexual harassment at work place; however, in the case of film production, since the workplace mainly consists of members from other associations also, a Women Cell Grievance mechanism constituted by respondent association will not serve the purpose intended by the Act, 2013; moreover, the Act, 2013 provides that the employer is the responsible person to constitute a proper Women Cell Grievance mechanism in the workplace and Chapter VI of the Act deals with duties of the employer.

18. It is further submitted that production of a feature film in Malayalam film industry commences when the producer and director registers the film script with the Kerala Film Chamber of Commerce; any project without such registration with Kerala Film Chamber of Commerce will not be qualified for final censorship certification; for proper implementation of the provisions of the Act, 2013 in each workplace in the film industry, the producers/production house can give a panel of committee selected within employees of that particular film production in accordance with the provisions of the Act at the time of registration with Kerala Film Chamber of Commerce so that the said Committee can function within the workplace of such film, AMMA is not against the constitution of an internal complaints committee under the Act, however, as the same would not be an effective remedy, a possible remedy is to constitute a committee consisting of representatives of all Associations in the film industry so that the said committee can effectively discharge the duties as contemplated under the Act, 2013.

19. Petitioners have filed a reply affidavit to the said counter affidavit basically reiterating the stand adopted in the writ petition and pointing out certain individual aspects that have taken place at various places, which according to the petitioners, are workplaces in contemplation of section 2(o) of Act, 2013.

20. The State Government has also filed a detailed counter affidavit basically submitting that in the said writ petition, no reliefs are sought against the State Government. That apart it is specifically stated that in contemplation of section 5 of Act, 2013, the State Government has notified the District Collectors of all Districts as the District Officers to exercise the powers to discharge the functions under the Act, 2013. It is also submitted that the District Officers have constituted a Local Complaints Committee in contemplation of section 6 of Act, 2013 and designated 258 Child Development Project Officers of the Women & Child Development as Nodal Officers as per section 6(2) of Act, 2013.

21. These aspects are evident from Exhibit R2(b) and R2(d), produced along with the counter affidavit. It is further pointed out that in order to have implementation of the provisions of the Act, 2013, administrative sanction was accorded for the advertisement through newspapers as per Exhibit R2(d) Government Order dated 21.6.2017. However, it is submitted that it is the duty of the employer to constitute the Internal Complaints

Committee in contemplation of section 4 of Act, 2013. It is also the submission of the State Government that the Local Complaints Committee have been constituted in all the 14 Districts and Government have issued orders for re-designating the Directorate of Women & Child Development Department as the nodal agency for implementing the Act, 2013, evident from Exhibit R2(c) Government Order dated 13.8.2018.

22. Whatever that be, the Government have raised a contention that the definition of 'employers' in section 2(g) of the Act, 2013 does not cover a voluntary organisation like Association of Malayalam Movie Artistes and there is no employer-employee relationship between this Association and Artists in Malayalam Industry, and therefore, the employer-employee relationship does not exist and the Government is constrained to legally compel the Association of Malayalam Movie Artists to form an Internal Complaints Committee as per the statute. But it is also stated that the Government feels that since a large number of women are working in the Malayalam film industry and sometimes some of them have to work at odd places at odd hours, the Association shall voluntarily form guidelines to ensure the safety and security as well as uphold the dignity of all women working in Malayalam film industry. It is also submitted that such guidelines should compel the Producers/Directors or Production Controller/Site-in- Charge, to provide the requisite safety measures on film locations, when women are working in a room or a remote place or at odd hours of night.

23. Therefore, basically the State Government states that nothing prohibits the Association of Malayalam Movie Artists from forming an Internal Complaints Committee to prescribe and modify the guidelines as well as to inquire into the complaints, if any, raised by any woman member of the Association. Other aspects are also put forth to the effect that the Airline industry has formed committees in order to deal with the harassment against women. It is also submitted that several Medical Associations prescribed guidelines as code of conduct or code of ethics to Doctors to uphold modesty of women during physical examination or surgery.

24. Petitioners have filed a reply affidavit to the counter affidavit filed by the State Government also and submit that the contention advanced by the State Government that the Act, 2013 may not apply to the Association of Malayalam Movie Artists, is not correct since the said contention is against the scope and purpose of the Act, 2013. Petitioners have produced along with the said reply affidavit, Exhibit P5 Extraordinary General meeting of Producers Guild of India, wherein a policy is adopted by the said organisation in order to tackle the complaints, malicious complaints etc., apparently to take action in accordance with the provisions of the Act, 2013.

25. The 4th respondent in W.P.(C) No.33994/2018 has got itself impleaded, which is a Cine & T.V.Artists Association (CINTAA) apparently registered at Mumbai. Contentions are advanced by the said organisation also in support of the contentions raised by the writ petitioners, basically relying upon the submissions made in the affidavit filed along with the impleading petition. The submissions contained in the affidavit are basically relying upon the provisions of the Act, 2013 and we propose to consider those aspects together.

26. In W.P.(C) No.34273/2018, the 5th respondent therein i.e., the Film Employees Federation of Kerala (FEFKA), Ernakulam has filed a detailed counter affidavit basically

refuting the allegations and submitted that it is a federation comprising of 18 registered trade unions as its members and associated with the Malayalam Film Industry, which includes the Directors Union, Production Executive Union etc. That apart, it is stated that the prime objective of FEFKA is to act as a representative body for the purpose of protecting the rights and welfare of its members and as a federation of several registered trade unions. Its primary duty is to function as a representative body and use the power of collective bargaining for acting on behalf of its members and for protecting the rights of its members. Further it is submitted that to function in the Malayalam Film Industry, it is not necessary to be a member of FEFKA. But once a person becomes a member of FEFKA, it can represent the member and use its power of collective bargaining to help and protect the rights of its members, with regard to any employment issues. However, it is pointed out therein that a registered trade union will not come within the ambit of a workplace as defined under section 2(o) of the Act, 2013 vis-a-vis its members and further, there is no employer-employee relationship between the 5th respondent and its members.

27. Therefore, the sum and substance of the contention is that it is not mandatory on the part of the FEFKA to set up an Internal Complaints Committee as contemplated under section 4 of the Act, 2013. But the 5th respondent in its meeting held on 3/2/2018 has set up a committee of 9 members, all of them are women, for addressing any issue relating to sexual harassment or any other allied issues pertaining to the members under the 5th respondent. Therefore, it is submitted that the contentions raised by the petitioners against the 5th respondent that it has not constituted an Internal Complaints Committee in terms of Act, 2013, cannot be sustained under law.

28. The third respondent in the said writ petition viz., Kerala Film Chamber of Commerce, has also filed a counter affidavit basically contending that so far as the said respondent is concerned, its workplace is only an office in Ernakulam city with a few staff and all of them are male members. That apart it is stated that the constitution and object of the Kerala Film Chamber of Commerce are to promote, aid, encourage and develop the production, distribution, exhibition of all other branches of the Indian film or motion picture industry in all possible ways in India and to provide the library for members and a place of meeting and discussion of the commonplace of meeting and discussion of common problems and generally for the diffusion of useful knowledge regarding the subject matter of film and film industry. Therefore, it is submitted that there is no lady staff in the workplace of Film Chamber of Commerce and there is no requirement for the constitution of an Internal Committee to redress any grievances in contemplation of the provisions of Act, 2013. That apart it is stated that 3rd respondent settles disputes & grievances in the film industry whatever complaints preferred before it connected with the film trade, particularly, keeping in mind the gender equality. That apart it is stated that the association has no workplace and therefore, it cannot be compelled to constitute an Internal Committee .

29. A reply affidavit is filed by the petitioners therein also to the counter affidavit filed by respondents 3 & 5, reiterating the stand adopted in the writ petition. The Kerala State Women Commission, the additional 9th respondent in W.P.(C) No.34273/2018 has got themselves impleaded and the learned counsel for the said organisation has advanced arguments supporting the contentions put forth by the petitioners and also pointing out certain gruesome

harassment faced by the women and along with the same, a representation submitted by the Commission before the Secretary, Department of Cultural Affairs, Thiruvananthapuram is also produced, for the formation of Internal Committee constituted by a Production Unit viz., Kabini Films with two women members and two male members, in order to redress any complaint made by women in the production unit.

30. In W.P.(C) No.36059/2018, 3rd and 4th respondent viz., Kerala Television Federation, Thiruvananthapuram and Indian Newspaper Society, Kozhikode have filed a joint counter affidavit stating that 3rd respondent is registered as a non-profit company under section 8 of the Companies Act, 1956 for the purpose of coordinating the activities of other member organisations and the total number of members of the 3rd respondent is 16 in number and there are 7 Directors also. It is also submitted that the 4th respondent society is registered as a non-profit company under the provisions of section 25 of the Companies Act, 1956 and the Kerala Regional Committee of the 4th respondent has 14 members. It is also stated that the 4th respondent is set up with the objective of inter alia acting as a Central Organisation for the Indian Press to promote and safeguard the business interest of its members, to promote cooperation in matters of common interest of its members, to collect information of topics of practical interest to hold periodical conferences etc.

31. Therefore, it is submitted that 3rd and 4th respondents are functioning with the aim of addressing the common interest of its respective members and to enable their unified/collective representation. However, the 3rd and 4th respondents do not employ any person for the purpose of its activities.

32. General contentions are also advanced in respect of the applicability of the provisions of the Act, 2013. Therefore, the prime contention is that the applicability of section 4 of Act, 2013 mandating 'employer' of the workplace to set up an Internal Complaints Committee comes into play only when the 'employees' as defined under the Act, 2013 are employed at such a workplace and therefore, respondents 3 & 4 have not taken into employment any persons nor do the said respondent maintain any workplace for their functioning, the mandate of section 4 of the Act is not applicable.

33. We have heard learned counsel for the petitioners Sri.Santhosh Mathew & Smt.Sandhya Raju, learned State Attorney Sri.N.Manoj Kumar and learned Special Government Pleader Smt.S.Ambikadavi, learned counsel Sri.Rony Jose for FEFKA, learned counsel Sri.S.Sujin for the Kerala Film Chamber of Commerce, learned counsel Smt.Ammu Charles for AMMA, learned counsel Smt.Parvathy Menon for the Kerala Womens' Commission, learned counsel Sri.Talish Ray for the CINTAA, learned counsel Smt.Anagha Lakshmy Raman for the Kerala Television Federation and Indian Newspaper Society and perused the pleadings and materials on record.

34. According to the petitioners, failure on the part of the respondent organisations to constitute a grievance redressal mechanism for its members in the form of an Internal Complaints Committee against the sexual harassment is arbitrary, illegal and violative of the fundamental rights of its members. It is also submitted that the failure on the part of the organisations to constitute a committees against the sexual harassment, is in breach of its

obligations as per the directions of the Honourable Supreme Court in **Vishaka** (supra) and under the Act, 2013.

35. That apart, it is pointed out that even though the organisations are not state under Article 12 of the Constitution of India, it would not bar the petitioners from securing relief under Article 226 of the Constitution of India as the absence of a grievance redressal mechanism by the respondent organisations is violative of the fundamental rights of its members. That apart, it is submitted that there is a pressing need for a grievance redressal mechanism against the sexual harassment to be instituted by the organisations in the light of the recent abusive practices and the sexual harassment faced by the women in the film industry and particularly so, since the nature of the work undertaken by Actor Artists is such that, once the production of a film is over, there is no longer a workplace for that film where such grievance can be pursued.

36. In one of the writ petitions, wherein the political parties are made respondents, it is submitted that all institutions having more than 10 employees should have an Internal Complaints Committee but unfortunately despite the legislation coming into force, the implementation has not happened either in letter or spirit in the organisations. According to the petitioners therein, it amounts to grave illegality as per the provisions of the Act, 2013 and the State Government is bound to take action in accordance with the provisions of the Act, 2013. Therefore, it is the case of the petitioners that the absence of a grievance redressal mechanism against the sexual harassment, for members of the respondent associations, is violative of Article 14, 15, 19 & 21 of the Constitution of India.

37. On the other hand, the State Government as well as the organisations advanced arguments in accordance with the submissions deliberated above, and basically contended that since there is no employer-employee relationship in any of the organisations in the instant writ petitions, there is no requirement for constituting an Internal Complaints Committee in accordance with the provisions of the Act, 2013. That apart it is pointed out that none of the respondent organisations are employing the Actor Artists and they are actually employed by the producers and therefore, the Act, 2003 does not envisage constitution of an Internal Complaints Committee in the scheme of Act, 2013.

38. Whatever that be, the learned counsel appearing for the Association of Malayalam Movie Actors, which is the 3rd respondent in W.P.(C) No.33994/2018, has submitted through its counsel Smt.Ammu Charles that it has already identified four persons to be appointed as Internal Committee so as to deal with the sexual harassment in workplaces and the names of the committee members would be notified in accordance with law in due course.

39. The discussion of facts made above would also make it clear that the FEFKA has constituted a committee of 9 women members even though they have contended that there is no employer-employee relationship by and between the Members of FEFKA & FEFKA. Needless to say, the FEFKA is an organisation, wherein nearly 18 trade unions engaged in activities in the film industry, are members. However, there is no employer-employee relationship between the FEFKA and the trade union. Therefore, according to the FEFKA, FEFKA is not bound to constitute a committee as per the provisions of the Act, 2013. The Film Chamber of Commerce, which is also one of the respondents, has contended that they

are not having any women employees in their workplace and three male workers are employed by them to manage the office and it is an organisation, in which various organisations related to film industry are members.

40. Having considered the rival submissions made across the Bar, we are of the view that in order to sort out the issue, a reference to the relevant provisions of Act, 2013 is required. The Act, 2013 is an act basically introduced in line with Article 11 of the convention on elimination of all forms of discrimination, to which India is a party, which requires State parties to take appropriate measures to eliminate discrimination against women in the field of employment. It is also evident that the Act has its genesis in Article 21 of the Constitution of India, which relates to the right to life and personal liberty, and includes the right to life with dignity and in the case of women, it means that they must be treated with due respect, decency and dignity at workplaces.

41. It is also clear that the introduction of the Act, 2013 was also due to the reason that more and more women started joining the workforce, both in organised and unorganised sectors, and for ensuring an enabling working environment for women. The Act is also the outcome of the fact that the sexual harassment at a workplace is considered violation of women's right to equality, life and liberty, which creates an unsecured and hostile work environment, which discourages women participation in work thereby, adversely affecting their social and economic empowerment and the goal of inclusive growth.

42. While introducing the Act, the Union Government has also considered the concept of equality provided under Articles 14 & 15 of the Constitution of India, which prescribes discrimination on the grounds of religion, race, caste, sex or place of birth or any of them. That apart Article 19(1)(g) has weighed with the Parliament, which gives the fundamental right to all citizens to practice any profession, or to carry on any occupation, trade or business, and which presupposes the availability of an enabling environment for women, which is equitable, safe and secure in every aspect.

43. Now, coming to section 2(a) defining 'aggrieved woman' to mean,

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

(ii) in relation to dwelling place or house, a woman of any age who is employed in such a dwelling place or house.

44. The “appropriate Government” is defined to mean,—

(i) in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly—

(A) by the Central Government or the Union territory administration, the Central Government;

(B) by the State Government, the State Government; and

(ii) in relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government.

45. The “employee” is defined under section 2(f) to mean, a person employed at a workplace for any work on regular, temporary, adhoc or daily wage basis, either directly or through an

agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name.

46. The “employer” is defined under section 2(g) means,

(i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf.

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

Explanation. —For the purposes of this sub-clause “management” includes the person or board or committee responsible for formulation and administration of policies for such organisation;

(iii) in relation to the workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees.

(iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of a domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker.

47. The “workplace” is defined under section 2(o), which includes—

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society.

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

(iii) hospitals or nursing homes;

(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto.

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

(vi) a dwelling place or a house;

48. The “unorganised sector” is defined under section 2(p) in relation to a workplace means, an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

49. On an analysis of the definition given to 'employee', it is clear that the employee is a person employed at a workplace whether on regular, temporary, ad hoc or daily wage basis, either directly or through an agent including a contractor with or without the knowledge of the principal employer whether for remuneration or not, or working on a voluntary basis or

otherwise, whether the terms of employment are express or implied and it includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name.

50. Therefore, it is clear that the basic requirement to become an employee one should be employed at a workplace. This would be more clear, if we analyse the definition of employer contained under section 2(g)(ii). Section 2(g)(i) in fact deals with the department, organisation, undertaking, establishment etc. of the appropriate Government or a local authority, head of that department, an organisation etc. So that clause 2(g) (i) would not come into play so far as the contentions advanced in the writ petitions are concerned against the respondents in the writ petition because there is no case for the petitioners that any of the organisations and the political parties would come under the term “appropriate Government” or “local body” so as to persuade such organisations to constitute an Internal Complaints Committee.

51. However, the thrust of the argument advanced by the learned counsel for petitioners and the supporting respondents is that all these organisations would come under section 2(g)(ii) of Act, 2013, which deals with any workplace not covered under sub-clause (i) and any person responsible for the management, supervision and control of the workplace.

52. It is true, an explanation thereto makes it clear that for the purpose of the sub-clause “management” includes the person or board or committee responsible for formulation and administration of policies for such organisation. Therefore, according to the respondents, none of them would come under the definition of section 2(g)(ii) because none of the respondent organisations have any workplace to cater to the needs of the Actor Artists of the film industry.

53. According to the respondent organisations they have no control over the producers or the film units and they are basically undertaking the resolution of disputes in regard to the commercial issues that crop up during the film shooting and other activities. That apart it is pointed out that they are employing only a very meagre workforce in order to manage the office and many of the respondents have contended that they have no women employees/workers in their office.

54. The “workplace” defined under section 2(o)(ii) deals with any private sector organisation or private venture undertaking, enterprises, institutions, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution, or service.

55. Relying upon the said provision, learned counsel for petitioners submitted that all the organisations included in the writ petitions relating to the film industry, are discharging functions in contemplation of section 2(o)(ii) of Act, 2013 and therefore, they are bound to constitute an Internal Complaints Committee. No doubt section 3(1) of Act, 2013 makes it clear that no women shall be subjected to sexual harassment at any workplace.

56. The question to be decided is whether any of the respondent organisations are creating a workplace or creating an employer-employee relationship in order to attract the provisions of Act, 2013 and thereby bound to constitute an Internal Complaints Committee ? On an

analysis of the above said provisions, we are of the clear opinion that the organisations associated with the film industries, who are made respondents in the writ petitions, are not employers of the Actor Artists in the film industry. However, these organisations have their own structure, in which employees are there and therefore, if there are any women employees employed by such organisations, they are duty bound to constitute an Internal Complaints Committee, if the employees are exceeding 10 in number in contemplation of section 4 r/w. Section 6 of the Act, 2013.

57. Section 4 of the Act, 2013 deals with constitution of Internal Complaints Committee, which specifies that every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the “Internal Complaints Committee”: It also makes it clear that there should be an employer-employee relationship and there should be a workplace managing the employer to constitute an Internal Complaints Committee.

58. However, the proviso makes it clear that if the employer has different office or administrative units of the workplace located at different places or divisional or sub-divisional level, an Internal Complaints Committee shall be constituted at all administrative units or offices.

59. Section 4(2) deals with the manner in which the Internal Committee is to be constituted. No doubt, once it is found that there is employer-employee relationship in contemplation of the provisions of the Act, whether engaged for wages or otherwise, necessarily such organisation would have to constitute an Internal Complaints Committee.

60. Whatever that be, section 5 of Act, 2013 deals with the constitution of Local Complaints Committee and it specifies that the appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under the Act. Section 6 deals with Constitution and jurisdiction of Local Committee and sub-section (1) stipulates that every District Officer shall constitute in the district concerned, a committee to be known as the “Local Committee” to receive complaints of sexual harassment from establishments where the Internal Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself. Other stipulations are contained under section 6 with respect to the designation of Nodal Officer etc.

61. But fact remains, it also deals with the complaints with regard to the establishments wherein the workers are less than ten or if the complaint is against the employer himself. The phraseology “employee” under section 6 is also very significant because it also visualises an establishment making the employer liable to constitute an Internal Complaints Committee. Section 9 deals with complaint of sexual harassment. Sub-section (1) thereto specifies that 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.

62. From there, it can be gathered that even if the respondent organisations are not duty bound to constitute an Internal Complaints Committee, a complaint will lie to the Local Committee constituted under section 6 because the second limb of section 9 makes it clear

that where there is no internal committee constituted, the complaint can be preferred to the local committee. Therefore, it cannot be said that even if the respondent organisations have no direct employer relationship with the Actor Artists and consequent to which no Internal Committee is constituted to redress their grievance against the sexual harassment, can be raised against the person or the management, who maintain a workplace.

63. To put it short, so far as the film industry is concerned, the production unit is the workplace of an individual film and therefore, each production unit would have to constitute an Internal Complaints Committee, which alone can deal with the harassment against the women in contemplation of the provisions of Act, 2013.

64. As we have pointed out, if the respondent organisations are maintaining a workforce to maintain such establishments and engaged in the activities in contemplation of the workplace defined under section 2(o)(ii), then individually such organisations are bound to maintain an Internal Complaints Committee. These are the basic features that we come across so far as the Act, 2013 is concerned so as to arrive at certain definite conclusions.

65. We also make it clear that any organisations, establishments, private institutions are employing workers whether for wages or not in contemplation of the provisions of the Act, 2013 coming under the definition of employer, employee and workplace, they are duty bound to constitute an Internal Complaints Committee.

66. Even though learned counsel for petitioners have made submissions relying upon the judgment in **Vishaka** (supra) and the judgment in **Medha Kotwal Lele and others v. Union of India and others** [(2013) 1 SCC 297] of the Apex Court, we find that the directions contained therein are directed to continue till such time a legislative enactment on the subject is in place. Therefore, consequent to the introduction of the Act, 2013, all the organisations and institutions are guided by the provisions of the Act, 2013 and all such institutions, establishments, organisations will have to adhere to the provisions of Act, 2013.

67. In the light of the discussions made above, we are of the considered opinion that;

(1) The production unit of each film industry is an establishment employing Actor Artists and other workers and therefore, such production units have to maintain an Internal Complaints Committee, if they are engaging more than 10 workers, as is contemplated under the Act, 2013.

(2) If any of the respondent organisations, apart from the political parties, made as respondents in W.P.(C) No.36059/2018, are duty bound to maintain Internal Complaints Committee, if they are engaging 10 workers or more for managing the office establishments and wherein women workers are employed for wages or not.

(3) If women workers are employed by any of the respondent organisations related to the film industry in which less than 10 workers are employed, then they are entitled to make suitable complaints to the Local Complaints Committee in accordance with the provisions contained under section 6 read with Section 9 of Act, 2013.

(4) Since the Association of Malayalam Movie Actors – the 3rd respondent in W.P.(C) No.33994/2018 has volunteered to appoint a committee to deal with any sexual harassment

at its workplace, we record the same and accordingly to take action to notify the members of the Internal Complaints Committee, in accordance with law.

(5). From the discussions made above, we find that the political parties, which are not having any employer-employee relationship with its members and which are not carrying on with any private venture, undertaking, enterprises, institution, establishment etc. in contemplation of a 'workplace' as defined under section 2(o)(ii) of Act, 2013, are not liable to make any Internal Complaints Committee.

(6) In all other cases, a woman employee subjected to sexual harassment is entitled as of right to file any complaint of sexual harassment before the Local Committee in contemplation of the provisions of the act, and under section 9 r/w. Section 6 of Act, 2013.

68. Even though, we have clearly expressed our views with respect to the extent of obligations of the organisations coming under the provisions of Act, 2013 to form Internal Committees, we convey our desire that the organisations associated with the film industry viz., Association of Malayalam Movie Actors (AMMA), FEFKA, Kerala Film Chamber of Commerce, Kerala Film Producers Association, take steps to constitute a joint committee, by including the members of organisations registered with them in tune with the provisions of Act, 2013 to deal with sexual harassment of women, which would definitely render sufficient confidence to women Actor Artists and other employees & other workers employed by the production unit ; which would in turn protect the dignity, and make the right to life and personal liberty of the women in the film industry more meaningful and fruitful.

69. Even though learned counsel for petitioners Sri.Santhosh Mathew has invited our attention to the order of the National Company Law Appellate Tribunal, New Delhi in Competition Appeal (AT) No.5 of 2017 in regard to an issue arose under the Competition Act, 2002 by and between the Association of Malayalam Movie Artists, FEFKA Production Executive Union, FEFKA Directors Union, Film Employees Federation of Kerala and has rendered its finding that all these organisations are intertwined, the subject matter of consideration therein, was in respect of the provisions of the Competition Act, 2002, which findings cannot be brought into the instant case to sort out the issues raised in the writ petitions on account of the Act 2013.

70. The deliberations made above also would make it clear that the State Government has notified District Collectors of 14 districts in the State of Kerala and all Heads of the Departments, to constitute Internal Complaints Committee in all the Government, Quasi Government and private institutions, and designated 258 Child Development Project Officers of the the Women & Child Development as Nodal Officers as per section 6(2) of Act, 2013. It is also clear from Exhibit R2(c) Government Order that administrative sanction is accorded for the advertisement of the provisions of the Act 2013 through newspapers.

The writ petitions are, therefore, disposed of with the above said observations and directions.