



*Kajol Pokkebhriyal*  
*Associate*

## CALCUTTA HC ON IC'S JURISDICTION ON COMPLAINTS AGAINST EMPLOYER

### A. Introduction

In the *Banani Chattopadhyay* case,<sup>1</sup> the Calcutta High Court (HC) held that when the complaint is against an employee and not the employer itself, a duly constituted Internal Committee (IC) is the competent authority and the complaint does not fall under the jurisdiction of the Local Committee (LC).<sup>2</sup>

### B. Brief Facts

1. The petitioner, Banani Chattopadhyay (**Chattopadhyay**), was employed at Hindustan Cables Limited (**HCL**) and voluntarily retired on January 31, 2017, following a decision by HCL to wind-up.
2. Subsequently, she was onboarded by HCL on a temporary basis, which was terminated by HCL on April 30, 2018.
3. Chattopadhyay filed a sexual harassment complaint against the Chairman-cum-Managing Director (**CMD**), on May 9, 2018, alleging harassment dating back to the last quarter of 2016.
4. In the absence of an IC, she requested that an impartial committee investigate her allegations.
5. HCL convened an IC and instructed Chattopadhyay to participate in the proceedings.
6. The IC, by its report of June 19, 2018, concluded that the allegations against the CMD were unproven and recommended that no action be taken against him.
7. Aggrieved, Chattopadhyay filed a writ of mandamus before the HC to command HCL to hear her complaint afresh and reinstate her to the post of advisory assignment.
8. The question before the HC was whether the CMD, being a very senior employee, is an “employer” under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (the “Act”).<sup>3</sup> Therefore, will the LC, and not the IC have jurisdiction to

<sup>1</sup>*Banani Chattopadhyay vs. Union of India and Others* (11.11.2022 – Calcutta HC): 2022 SCC OnLine Cal 3592.

<sup>2</sup> Referred as “Internal Complaints Committee” (**ICC**) and “Local Complaints Committee” (**LCC**) in the Judgment, as was initially defined under the Act.

<sup>3</sup> (g) “employer” 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.

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enquire the complaint.

### C. Parties' Contentions

1. Chattopadhyay's contention was that only LC has jurisdiction since:
  - a. the CMD was the 'employer' under the Act, and
  - b. IC was biased as the IC members were reporting to the CMD.
2. HCL contended that:
  - a. HCL being a public sector enterprise, is managed by the board of directors ("Board"). Thus, the CMD does not fall under the definition of 'employer' under the Act.
  - b. IC was impartial as the CMD did not partake in its constitution.
  - c. the CMD having since retired, the petition has become infructuous.

### D. HC's Judgment & Reasoning

The HC:

1. Held that since the Board is responsible for formulation and administration of policies of HCL, the CMD is answerable to the Board. Thus, "*the Board of Directors, being the ultimate authority, is the employer as defined under section 2(g) of the 2013 Act. [The CMD] cannot be said to be employer for the purpose of this Act.*"
2. Rejected HCL's contention that since the CMD had retired, the petition was not maintainable. It opined that proviso to section 13(3) of the Act,<sup>4</sup> states that in case of cessation of employment, the respondent may be directed to pay the compensation. Thus, continuation in service cannot be a condition precedent for making a recommendation under section 13(3) of the Act.
3. Noted that since the IC was duly constituted and the complaint is against an employee, and not the employer, only the IC (and not the LC) has jurisdiction to enquire into the complaint.
4. Held that writ of mandamus cannot be issued under such circumstances directing HCL to reinstate Chattopadhyay to the post of advisory assignment, which was purely on temporary basis.

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<sup>4</sup> Section 13(3) of the Act empowers the IC or LC to direct payment of monetary compensation in addition to other reliefs as provided therein where the allegation against the respondent has been proved.