

Santosh

***IN THE HIGH COURT OF BOMBAY AT GOA***

***LD-VC-CW – 216 OF 2020***

Harish Baheti. .... Petitioner.

Versus

Shital Babi Pal and others. .... Respondents.

Mr. Shivan Desai with Mr. Ameya Salatry, Advocates for the  
Petitioner.

Mr. D.J. Pangam, Advocate General with Mr. P. Arolkar, Additional  
Government Advocate for Respondent No.3.

***Coram : M.S. Sonak &  
Smt. M.S. Jawalkar, JJ.***

***Date : 5<sup>th</sup> October, 2020.***

**P.C. :-**

Heard Mr. Shivan Desai, the learned Counsel for the  
Petitioner. Mr. D. Pangam, the learned Advocate General appears  
along with Mr. P. Arolkar, Additional Government Advocate for  
Respondent No.3.

2. The Petitioner, in this case, is aggrieved by the notice dated  
02/09/2020 issued by the Local Complaints Committee (LCC)-  
Respondent No.2 under the provisions of the Sexual Harassment of  
Women at Workplace (Prevention, Prohibition and Redressal) Act,  
2013 (said Act), requiring the Petitioner to appear before itself in

relation to a complaint made by Respondent No.1 herein (Complainant).

3. Mr. Desai contends that the impugned notice dated 02/09/2020 is *ex facie* without jurisdiction and ultra vires the provisions of the said Act and, therefore, this is a fit case for grant of a writ of prohibition restraining Respondent No.2 from proceeding any further in this matter. Mr. Desai points out that in this case, the complaint of the Complainant has already been investigated by Internal Complaints Committee (ICC) constituted under Section 4 of the said Act. In case the Complainant was dissatisfied with the outcome, there is an appeal provided under Section 18 of the said Act, to the Tribunal. He points out that instead, the Complainant has chosen to file an identical complaint before the LCC, and the LCC, despite having no jurisdiction in the matter, has issued the impugned notice dated 02/09/2020, requiring the Petitioner to appear before it and, possibly once again to submit to the inquiry/investigation/adjudication. Mr. Desai points out that this is clearly impermissible and, in fact, amounts to harassment to the Petitioner by the Complainant. Mr. Desai contends that the Branch Manager of a private insurance company cannot be regarded as an employer for the purposes of Section 2(g) of the said Act.

4. Mr. Pangam, the learned Advocate General points out that in this case, the Petitioner is the Branch Manager of Max Life

Insurance Co. Ltd. and, therefore, is an '*employer*' within the meaning assigned to this term under Section 2(g) of the said Act. He submits that where a complaint is made against the employer himself, it is the LCC, which, in terms of Section 6 of the said Act, is empowered to adjudicate in the matter. He submits that the ICC, in the present case, may not have had jurisdiction to look into the complaint, since, the complaint was against the employer himself. He submits that the LCC has quite correctly assumed the jurisdiction in the matter and, therefore, there is no case made out for grant of any relief in this Petition. He relies on the decision dated 24/8/2020 in LD-VC-CW-137-2020 and points out that a similar view was taken in this case, which involved the Principal of the Government Polytechnic, Panaji.

5. We have considered the rival contentions, as also the material placed on record.

6. In order to seek a writ of prohibition, the burden is upon the Petitioner to make out a case that the jurisdiction which is assumed by the authority, is *ex facie*, lacking in such authority. It is only when the clear case of lack of jurisdiction is made out, that the writ in the nature of prohibition can be issued. Therefore, even if arguable case exists, the Petitioner has to satisfy the authority, that in the facts and circumstances of the case, jurisdiction is indeed not vested in such authority.

7. In the present case, there is no dispute that the Petitioner is the Branch Manager of Max Life Insurance Co. Ltd. in which the Complainant was posted. The definition of the expression '*employer*', appearing in Section 2(g) of the said Act is, at least *prima facie* quite wide enough to include the Branch Manager.

8. Besides, Section 6 of the said Act is also quite clear, in that, it provides that if the complaint is against the employer himself, then, it is the Local Committee which will have jurisdiction to receive and dispose of such complaints.

9. Therefore, at least, *prima facie*, it cannot be said that the assumption of jurisdiction by the LCC or the issuance of notice dated 02/09/2020 by such LCC is *ex facie* without jurisdiction.

10. In the aforesaid circumstances, there is no case made out for a writ of prohibition, as claimed by the Petitioner in this Petition.

11. However, it is necessary to clarify that our observation is only *prima facie* and, therefore, it will be open to the Petitioner to raise the issue before the LCC and, if such issue is indeed raised, we are sure that the LCC, along with all other issues which arise in the matter, will take into consideration this issue as well.

12. At this stage, Mr. Desai states that the LCC may be directed

to decide the issue of jurisdiction first. According to us, the complaint made under the said Act is required to be expeditiously disposed of. It is possible that the LCC assumes jurisdiction, but dismisses the complaint on merits. In such a case, possibly, the Petitioner's grievance may not survive. If, however, the LCC decides against the Petitioner on issue of jurisdiction and merits, then, the Petitioner has right of appeal, as provided under Section 18 of the said Act.

13. Therefore, it will be appropriate if all issues are decided together by the LCC, instead of deciding issues in piecemeal.

14. With the aforesaid clarifications, we dismiss this Petition.

15. There shall be no order as to costs.

***Smt. M.S. Jawalkar, J.***

***M.S. Sonak, J.***