

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 58 of 2019

Date of Decision: 19.07.2019

Shri S. Osborne Kharjana & Ors. Vs. Union of India & Ors.

Coram:

Hon'ble Mr. Justice H. S.Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. P. Shome, Adv.

For the Respondent(s) : Mr. N. Mozika, Sr. Adv. with
Ms. S.A. Shallam, Adv.

i)	Whether approved for reporting in Law journals etc.	Yes/No
ii)	Whether approved for publication in press:	Yes/No

1) The petitioners being aggrieved by the impugned notification No. 13/2017 Central Excise (N.T) dated 09.06.2017 and impugned Circular No. C. No. II (39) 04/ET/CCO/SH/2019, dated 20.02.2019 issued by the Joint Commissioner, Office of the Chief Commissioner, Goods and Services Tax & Customs, Guwahati Zone, Shillong directing for the shifting of the Chief Commissioner's Office (CCO) from Shillong to Guwahati, have assailed the same by way of this instant writ petition. The pleaded case of the petitioners is that the notification and circular are in violation of the Central Excise Rules, 2002 and against the mandate prescribed therein, thus prejudicial to the petitioners, who are the employees of the said office, with many of whom are on the verge of superannuation.

2) Mr. P. Shome, learned counsel for the petitioners submits that the petitioners although presently posted in different departments of the Chief Commissioner's Office, are essentially the employees under the Chief Commissioner's Office, Shillong which is the parent body and cadre controlling authority and the posts held by the present petitioners are interchangeable from time to time. As such, the impugned decision of the respondents in shifting the Chief Commissioner Office from Shillong to Guwahati would adversely affect the petitioners and other employees' en-masse, besides amounting to changing the terms and conditions of appointment of the petitioners.

3) The learned counsel also submits that the impugned action of the respondents in taking a decision to shift the office of the Chief Commissioner, Central Excise and Service Tax from Shillong to Guwahati is not in accordance with the proposal approved by the competent authority and Finance Ministry. He further submits that in the absence of any proposal supporting the decision of the respondent, the respondents could not have issued the impugned Notification dated 09.06.2017 and the impugned Circular dated 20.02.2019, directing for shifting of the Chief Commissioner Office from Shillong to Guwahati.

4) He further submits that there is no order/decision by the respondent authority to close down the office of the Chief Commissioner Office, Shillong and neither is there any order of merger and as such in the absence of any such decision, the respondents could not have directed shifting of the Chief Commissioner Office from Shillong to Guwahati. Learned counsel contends that the Chief Commissioner's Office, Shillong was established vide an Administrative Order dated 24.01.2003 and the same was done pursuant to the Notification dated 20.12.2002. In this

connection, he contends, that the impugned Notification dated 09.06.2017 (Annexure-9 of the writ petition) even while superseding the earlier Notifications in this regard, had specifically protected the things done under the earlier Notifications and therefore unless the establishment/administrative order dated 24.01.2003 is specifically annulled or the Chief Commissioner Office, Shillong is closed down/merged by any other decision of the respondents, the same would continue to exist in law and as such the same cannot be shifted pursuant to the impugned Circular dated 20.02.2019 issued by the respondents.

5) The learned counsel contends that the impugned Notification dated 09.06.2017, essentially appoints/creates a fresh office of the Chief Commissioner while protecting the earlier action of establishing the office of the Chief Commissioner and as such, although the Chief Commissioner Office, Guwahati is created, the same does not tantamount to closure or merger of the Chief Commissioner Office, Shillong especially in the absence of any specific order/decision of closure or merger of the Chief Commissioner Office, Shillong by the respondent authority. Therefore, he submits, the action of the respondents in shifting the Chief Commissioner Office from Shillong to Guwahati is untenable in law and is liable to be interfered with by the Hon'ble Court.

6) The Learned Counsel further argues that the respondent No. 3, while issuing the impugned Circular dated 20.02.2019, has acted in excess of jurisdiction, inasmuch as, the respondent No. 3 has no authority to direct shifting of the Commissionerates under the Excise Rules, 2002 and the same being done in the absence of any order/notification from the Government, is arbitrary and illegal and is liable to be quashed and set aside.

7) The learned counsel further submits that the impugned notification dated 09.06.2017 issued by the respondent does not anywhere create/specify any Commissionerate at Guwahati in exercise of the power under Rule 3(1) of the Excise Rules, 2002 and corresponding exercise powers under Rule 3(2) of the said Rules without exercising the power under Rule 3(1) would render any such exercise and decision thereto as void and illegal and as such the impugned notification dated 09.06.2017, as well as the Circular dated 20.02.2019 being in violation of Rules and the mandate provided therein, is therefore liable to be quashed and set aside.

8) He also further submits that proposal (Annexures-5, 6 & 7 of the writ petition) are not merely an internal communication and instead are the final proposal/policy decision approved by the Finance Department and the competent authority and as such the impugned notification dated 09.06.2017, being not in accordance with the same is liable to be interfered with by this Hon'ble Court. Further, to the contention of the respondents that the Audit Office, Shillong had already been shifted to Guwahati, he submits that there exists no proposal/circular to this effect and nor there is any document on record to substantiate the same, as such the contention of the respondents are without any substance and devoid of merit. Besides, learned counsel submits, at no point of time any option was accorded to the employees/petitioners vis-a-vis the shifting of the office from Shillong to Guwahati as alleged by the respondents and there is nothing on record to substantiate the same.

9) He concludes by submitting that the impugned notification dated 09.06.2017 as well as the impugned Circular dated 20.02.2019 being capricious, untenable and arbitrary, cannot be sustained in law and as such is liable to be quashed and set aside.

10) Dr. N. Mozika, learned senior counsel assisted by Ms. S.A. Shallam, for the respondents in reply, submits that the decision to shift the office of the Chief Commissioner from Shillong to Guwahati is a policy decision of the Central Government and is not subject to judicial review. He also submits that the Central Excise and Service Tax formations in CBEC were re-organized to take up the work of the new tax regime i.e. GST from 01.07.2017, and the Central Board of Excise and Customs was completely re-organized to efficiently and effectively support the Government of India in the rolling out of the Goods and Service Tax and that after obtaining the Hon'ble Finance Minister's approval on the overall scheme of the re-organization, the Government of India proceeded to finalize and fine tune the formations, their jurisdiction and locations. He submits that one such administrative decision was the shifting of the Chief Commissioner Office from Shillong to Guwahati and that this was done to strengthen the organizational structure, to be able to cater to the new tax regime in a more efficient and effective manner in the North Eastern States, keeping in view the connectivity of other States with Guwahati, as State congruity is one of the main factors in GST. He submits that the decision was also based on volume of revenue generation wherein Assam has the maximum number of GST assesseees (78% of total revenue in NE) of all the seven North Eastern States and that Assam also houses two commissionerates viz. Guwahati and Dibrugarh.

11) Learned senior counsel submits that it was in this changed scenario that the Chief Commissioner's Office was proposed to be shifted from Shillong to Guwahati in order to provide better taxpayer accessibility and taxpayer services, which in turn would facilitate the objective of doing business with ease. He submits the re-organization has also resulted in the increase in the number of Commissionerates from 3 to 8, and in order to ensure better reach of the Department, new Commissionerates have been opened in Itanagar,

Dimapur, Agartala, Aizawl and Imphal in addition to the existing Commissionerates of Guwahati, Dibrugarh and Shillong. (Annexure-1 Page-13 of the affidavit-in-opposition). As such, he submits the decision for shifting of the Chief Commissioner's Office from Shillong to Guwahati has been taken after detailed discussions keeping in view the aforesaid reasons as stated above. Learned senior counsel reiterates the submission that the same being a policy decision of the Government of India it cannot be subjected to judicial review.

12) With regard to the contention of the petitioners that the shifting was sought to be done in the absence of any order/notification from the Government, the learned senior counsel submits that the Notification No. 14/2002-CE (N.T) dated 08.03.2002 specified the jurisdiction of the Chief Commissioners and Commissioners and in the said Notification, Guwahati was specified as the Chief Commissioner which had jurisdiction over Guwahati and Shillong. The aforesaid Notification was thereafter amended vide Notification No. 41/2002-Central Excise (N.T) dated 20.12.2002 wherein Guwahati was substituted by Shillong having jurisdiction over Dibrugarh and Shillong. The Notification No. 14/2002-CE (N.T) dated 08.03.2002 was then superseded by the Notification No. 27/2014-Central Excise (N.T) dated 16.09.2014 wherein the Chief Commissioner's Office, Shillong has been vested jurisdiction over Shillong, Dibrugarh and Guwahati (Annexure-2 of the writ petition). The said Notification No. 27/2014-Central Excise (N.T) dated 16.09.2014 has now been superseded by the Notification No. 12/2017-Central Excise (N.T) dated 09.06.2017 (Annexure-9 of the writ petition) whereby the Chief Commissioner's Office, Shillong has been proposed to be shifted to Guwahati. As such, he submits that the contention of the petitioners that the decision of the respondents to shift the office of the Chief Commissioner's Office

from Shillong to Guwahati is in the absence of any Notification of the Commissionerate is incorrect.

13. He also submits that the Circular No. C. No. II (39)04/ET/CCO/SH/2019 dated 20.02.2019 issued by the Joint Commissioner (Annexure-16 of the writ petition) as referred to by the petitioners is only an instruction issued by the Joint Commissioner for implementation of the policy decision of the Government of India. In the letter it is mentioned that *“In terms of the Notification No. 13/2007-(Central Excise-NT), the Headquarter of Guwahati Zone is at Guwahati. Further, DGHRD vide letter No. F. No. 8/B/HRD(HRM)/2015-Pt-I/652 dated 21.05.2018 instructed for shifting of the same to Guwahati long back. It has therefore been decided to shift the Chief Commissioner’s Office (CCO) from Shillong to Guwahati in the building ‘GST BHAWAN’, Kedar Road, Guwahati on 01.03.2019”*. As such, the decision to shift the Chief Commissioner’s Office from Shillong to Guwahati flows from the Notification No. 13/2007-(Central Excise-NT) and not from the Circular No. C. No. II (39)04/ET/CCO/SH/2019 dated 20.02.2019 issued by the Joint Commissioner.

14. He further submits that with the implementation of the GST, separate Notifications were issued under the Central Goods and Service Tax Act, 2017, the Integrated Goods and Service Tax Act, 2017 and the Central Excise Act, 1944 and the Customs Act, 1962 providing for Chief Commissioner of Central Excise and Customs at Guwahati but the petitioners have challenged only the notifications under the Central Excise Act, 1944.

Learned senior counsel submits that with the implementation of the GST separate Notifications were issued providing for Chief Commissioner of Central Excise and Customs at Guwahati as follows:

- a) Notification No. 2/2017 (CE) dated 19.06.2017 issued under Section 3 read with Section 5 of the Central Goods and Service Tax Act, 2017 and Section 3 of the Integrated Goods and Service Tax Act, 2017.
- b) Notification No. 82/2017-Cus (N.T) dated 24.08.2017 issued under Section 4 of the Customs Act, 1962.
- c) Notification No. 12/2017-CE (N.T) dated 09.06.2017 and No. 13/2017-CE (N.T) dated 09.06.2017 issued under Section 2 of the Central Excise act, 1944.

Learned senior counsel submits that these separate Notifications, were issued under the Central Goods and Service Tax Act, 2017, Integrated Goods and Service Tax Act, 2017, the Central Excise Act, 1944 and the Customs Act, 1962, providing for Chief Commissioner at Guwahati who is the Chief Commissioner under the CGST Act, IGST Act, Central Excise Act and Customs Act. The petitioners have challenged only the Notification No. 13/2017-CE (N.T) dated 09.06.2017 issued under Central Excise Act. The petitioners have not challenged the Notifications issued under the Customs Act, CGST Act and IGST Act.

15. The learned counsel also submits that staff working in the Chief Commissioner's Office were given the option to opt for Guwahati or to be accommodated in other GST and Customs Offices in Shillong, as such there is no threat of forced dislocation of the staff from Shillong, as projected by the petitioners. Learned counsel further submits that the Central Board of Excise and Customs took into consideration all the staff concerned, so as to have minimal dislocation of the staff including that of Shillong, consequent upon shifting of the Chief Commissioner's Office from Shillong to Guwahati, and it was with this rationale that Audit Commissionerate was shifted from Guwahati to Shillong. Further, no employee of the Chief Commissioner's Office, Shillong has been relocated to

Guwahati without their consent and the employees have been given the option to stay in Shillong or to be relocated to Guwahati. He submits, out of the sanctioned strength of 1938 officers in Group B and Group C grades of officers in Shillong Zone, 60 is the sanctioned strength of the Chief Commissioner's Office which is 3% of the total sanctioned strength of the Zone and even this number of employees were not affected because no one is shifted to Guwahati without their consent.

16. Lastly, the learned counsel for the respondents submits that the petitioners have no locus standi to challenge shifting of Chief Commissioner's Office from Shillong to Guwahati on the ground that the petitioners have falsely claimed that they are working in the Office of the Chief Commissioner Customs, Central Excise, Shillong and are attempting to mislead this Hon'ble Court by claiming to be the employees of the Officer of the Chief Commissioner. He submits, the petitioners are in fact posted in different Offices of the Commissionerate of Customs (Preventive) across the Zone in the State of Meghalaya and none of the petitioners are transferred/shifted to Guwahati. As such, he submits, the petitioners have no locus standi to file the instant writ petition. Learned counsel then concludes by submitting that the contentions of the petitioners that the action of the respondents is essentially affecting several employees, including ladies having families who are dependent on them, and such employees are facing undue hardships, many of whom are the verge of retirement are absolutely baseless and incorrect.

17. In support of his submissions the learned senior counsel has placed reliance in the case of **J.R. Raghupathy & Ors. vs. State of A.P & Ors.** reported in (1998) 4 SCC 364 (Para 9 & 31) wherein the Hon'ble Apex Court has declined to interfere with the decision of the State Government to locate the Mandal Headquarter at a particular

place. The learned counsel has also placed reliance in the case of ***Union of India vs. Kannadapara Sanghatanegala Okkuta & Kannadadigara & Ors.*** reported in (2002) 10 SCC. (at Para 5), and in the case of ***Kailash Meghwal & Ors. vs. State of Rajasthan & Ors.*** reported in (1982) SCC Online Raj 57,(at para 14).

18. I have heard learned counsels for the parties and given my thoughtful consideration to the submissions and also have examined the materials on record.

19. The main contentions of the writ petitioners as can be seen from the pleadings and submissions is that the order of shifting of the Chief Commissioner's Office from Shillong to Guwahati is arbitrary, irrational and devoid of any reasonable justification and the decision arrived at by the respondents is in violation of the Excise Rules. The respondents per contra, however have first questioned as to whether the decision to shift the Office being a policy decision in public interest, would warrant interference of this Court in exercise of powers under Article 226 of the Constitution of India. To the contention of the petitioners that the decision was arrived at irrationally and in violation of the rules, the same has also been refuted by the respondents, who have illustrated the sequence leading to the impugned circular dated 20.02.2019 (Annexure-16) as well as Notification No. 13/2017 Central Excise (N.T.) and letter dated 21.05.2018, wherein instructions have been issued for shifting the Office to Guwahati. Apart from the aforementioned main points, the other points for consideration is whether the petitioners have any locus standi, to challenge the shifting of the Chief Commissioner's Office from Shillong to Guwahati and whether there will be any forced dislocation of staff in the exercise thereof.

20. The petitioners had contended that the Chief Commissioner's Office was established in Shillong vide order dated

24.01.2003, and that the same was done pursuant to the Notification dated 20.12.2002. However, on examination of the records, it is seen that even on 08.03.2002, Notification No. 14/2002-CE (N.T) had specified the location of the Chief Commissioners at Guwahati with jurisdiction over Guwahati and Shillong. The aforesaid Notification was thereafter amended vide Notification No. 41/2002-Central Excise (N.T) dated 20.12.2002 wherein Guwahati was substituted by Shillong having jurisdiction over Dibrugarh and Shillong. The said Notification No. 14/2002-CE (N.T) dated 08.03.2002 was superseded vide Notification No. 27/2014-Central Excise (N.T) dated 16.09.2014 wherein the Chief Commissioner's Office, Shillong was vested with jurisdiction over Shillong, Dibrugarh and Guwahati. However, this Notification also was superseded by the Notification No. 12/2017-Central Excise (N.T) dated 09.06.2017 (Annexure 9), whereby the Chief Commissioner's Office, Shillong has been proposed to be shifted to Guwahati and culminated in the impugned Notification No. 13/2017 dated 09.06.2017 (Annexure 10). The change of events portrays that the proposed shifting is not in the absence of notifications indicating and notifying the shifting of merger of the Commissionerate. Another aspect that deserves attention of the Court, is that with the implementation of the GST, separate Notifications were issued under the Central Goods and Service Tax Act, 2017, the Integrated Goods and Service Tax Act, 2017, the Central Excise Act, 1944 and the Customs Act, 1962 providing for the Office of the Chief Commissioner of Central Excise and Customs to be integrated in Guwahati. It is to be noted also that the petitioners have not challenged the other Notifications, but have only challenged the Notifications issued under the Central Excise Act, 1944. The other separate Notifications providing for Chief Commissioner of Central Excise and Customs are quoted herein below:

- a) Notification No. 2/2017 (CE) dated 19.06.2017 issued under Section 3 read with Section 5 of the Central Goods

and Service Tax Act, 2017 and Section 3 of the Integrated Goods and Service Tax Act, 2017.

- b) Notification No. 82/2017-Cus (N.T) dated 24.08.2017 issued under Section 4 of the Customs Act, 1962.
- c) Notification No. 12/2017-CE (N.T) dated 09.06.2017 and No. 13/2017-CE (N.T) dated 09.06.2017 issued under Section 2 of the Central Excise act, 1944.

21. From the discussions above, it can also be discerned that the decision to shift the Chief Commissioner's Office from Shillong to Guwahati flows from the Notification No. 13/2007-(Central Excise-NT) and not from the Circular No. C. No. II (39)04/ET/CCO/SH/2019 dated 20.02.2019 issued by the Joint Commissioner.

22. Another aspect which cannot be disregarded is the submissions of the respondents is that, with the Central Excise and Service Tax formations in CBEC being re-organised in view of the new tax regime, i.e. GST, there was a necessity for complete reorganization to efficiently and effectively implement the new tax regime in the North Eastern States, keeping in view the connectivity of other States and that Assam had the maximum number of GST assesses (78%) as well as highest revenue (84%) of the total of the North Eastern States. The convenience to public by providing taxpayer accessibility and taxpayer services, which would ease the transaction of business cannot also be disregarded.

23. The points as discussed above reflects that the decision making process in arriving at the decision to shift the Chief Commissioner's Office from Shillong to Guwahati does not suffer from arbitrariness, nor can the same be said to have been done irrationally or unreasonably. The duty of the Courts in exercise of powers of judicial review over administrative action is to determine whether the action and to see that the same is not illegal, irrational or

vitiated by procedural impropriety and that administrative action must be seen to have been done fairly, impartially and reasonably.

24. In the instant case, the impugned action of the respondents cannot be said to meet any of the conditions, which would warrant interference by this Court and the decision making process cannot be faulted with. The stated position also being that the same being a policy decision, it is a settled law that a policy decision will not be interfered in a routine manner unless the policy is contrary to the provisions of statutory rules or in violation of provisions of the Constitution. Unless the same is established, the said policy decision must be left to the Government to decide as to which policy should be adopted. The scope of judicial interference is extremely limited in matters of policy decision or exercise of jurisdiction by the Government, so long as the infringement of fundamental rights is not apparent, and the Court will not substitute its own judgment in accessing the propriety of the decision of the Government if a second view is possible.

25. The Hon'ble Supreme Court in the case of ***Union of India vs. Kannadapara Sanghatanegala Okkuta & Kannadadigara & Ors: (2002) 10 SCC 226*** at Para 5 is quoted herein below: -

“5. We do not find any basis for the High Court coming to the conclusion that the decision of the Union Cabinet was vitiated on account of legal mala fides. Merely because an administrative decision has been taken to locate the headquarters at Bangalore, which decision is subsequently altered by the same authority, namely, the Union Cabinet, cannot lead one to the conclusion that there has been legal mala fides. Why the headquarters should be at Hubli and not at Bangalore, is not for the court to decide. There are various factors which have to be taken into consideration when a decision like this has to be arrived at. Assuming that the decision so taken is a political one, it cannot possibly give rise to a challenge on the ground of legal mala fides. A political decision, if taken by a competent authority in

accordance with law, cannot per se be regarded as mala fide. In any case, there is nothing on the record to show that the present decision was motivated by political consideration. The observation of the High Court that there has been a change in the decision because there was a change of the Governments and a different political party had come into power, is not supported by any basis. That the court will not interfere in questions of policy decision is clearly brought out by the following passage from a decision of this Court in *Delhi Science Forum v. Union of India* (1996)2 SCC 405”.

26. In the case of ***Kailash Meghwal &Ors. vs. State of Rajasthan &Ors: AIR 1983 Raj 182***, at Para 14, the Hon’ble High Court of Rajasthan has held that “the establishment of circle office of PHED or its shifting from one district to another is neither a matter of prima facie judicial, nor legislature domain and none is concerned in such matters because it is neither legislative nor judicial. As executive or administrative decision simpliciter cannot be put to judicial review”.

27. In the case of ***J.R. Raghupathy & Ors. v. State of A.P. & Ors: (1988) 4 SCC 364*** at Para 9 & 31, the Hon’ble Supreme Court has held that:

“9. It will serve no useful purpose to delineate the facts in all the cases which follow more or less on the same lines. We are of the opinion that the High Court had no jurisdiction to sit in appeal over the decision of the State Government to locate the Mandal Headquarters at a particular place. The decision to locate such Headquarters at a particular village is dependent upon various factors. The High Court obviously could not evaluate for itself the comparative merits of a particular place as against the other for location of the Mandal Headquarters. In some of the cases the High Court declined to interfere saying that the Government was the best judge of the situation in the matter of location of Mandal Headquarters. However, in a few cases the High Court while quashing the impugned notifications for location of Mandal Headquarters issued under sub-s. (5) of s. 3 of the Act on the ground that there was a breach of

the guidelines, directed the Government to reconsider the question after hearing the parties”.

“31. We find it rather difficult to sustain the judgment of the High Court in some of the cases where it has interfered with the location of Mandal Headquarters and quashed the impugned notifications on the ground that the Government acted in breach of the guidelines in that one place or the other was more centrally located or that location at the other place would promote general public convenience, or that the headquarters should be fixed at a particular place with a view to develop the area surrounded by it. The location of headquarters by the Government by the issue of the final notification under sub-s. (5) of s. 3 of the Act was on a consideration by the Cabinet Sub-Committee of the proposals submitted by the Collectors concerned and the objections and suggestions received from the local authorities like the gram panchayats and the general public. Even assuming that the Government while accepting the recommendations of the Cabinet Sub Committee directed that the Mandal Headquarters should be at place 'X' rather than place 'Y' as recommended by the Collector concerned in a particular case, the High Court would not have issued a writ in the nature of mandamus to enforce the guidelines which were nothing more than administrative instructions not having any statutory force, which did not give rise to any legal right in favour of the writ petitioners”.



28. With regard to the locus standi of the petitioners to challenge the shifting of the Chief Commissioner's Office from Shillong to Guwahati, this aspect need not be considered in view of the discussions made herein above on other issues. However, with regard to dislocation of the petitioners and other staff working in the Chief Commissioner's Office, on the basis of the submissions advanced by the respondents, it is directed that an option shall be given to the concerned staff to opt for Guwahati, or to be accommodated in other Central Excise and Customs Office in Shillong, to avoid any forced dislocation.

29. For the foregoing reasons discussed above and the facts and circumstances of the case, there being no illegality or arbitrariness in the action of the respondents and the decisions arrived at being in pursuant to policy and in public interest, the writ petition being devoid of merit and is accordingly dismissed.

30. However looking into the facts and circumstances of the case there will be no order as to costs.

JUDGE

Meghalaya
19.07.2019
"V. Lyndem PS"

