

(2011) 09 CAL CK 0071

In the Calcutta High Court

Case No : Writ Petition No's. 20962 (W) of 2010 and 5362 (W) of 2011

Ashim Kumar Banerjee

APPELLANT

Vs

The State of West Bengal and Others
 Auto Emission
Testors Association and Others Vs Union of India (UOI) and
Others

RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 17, 17(1), 17(1), 20, 20
Central Motor Vehicles Rules, 1989 — Rule 115, 116, 116(3)
Constitution of India, 1950 — Article 14, 19(1), 21, 226, 227
Motor Vehicles Act, 1988 — Section 110, 110(1), 111, 190, 31A
West Bengal Motor Vehicles Rules, 1989 — Rule 115(2), 115(7), 258

Citation : (2012) 2 CHN 1

Hon'ble Judges : J.N. Patel, C.J.; Ashim Kumar Roy, J

Bench : Division Bench

Advocate : Ambar Majumdar, Kishore Dutta and Sumita Bhattacharya, for the Appellant; A.K. Banerjee, Biswajit De and Sakya Sen for the State, N.C. Bihani and Papiya Bhattacharya for the W.B.P.C.B., for the Respondent

Final Decision : Dismissed

Judgement

J.N. Patel, C.J.—These four petitions are filed primarily to question the authority, jurisdiction or expertise of the West Bengal Pollution Control Board to inspect the Auto Emission Testing Centres conducted by the Petitioners so as to monitor/control vehicular pollution and to challenge the impugned orders issued against the establishments of the Petitioners.

2. W.P. No. 5362 (W) of 2011 is filed by Sri Ashim Kumar Banerjee who carries on business as the proprietor of Asoke Automobiles at 1, Ultadanga Road, P.O. Shyambazar, P.S. Ultadanga, Kolkata-700 004 and has an AETC at his establishment by virtue of the licence granted on 2.5.2005 by the competent authority i.e. Public Vehicle Department. He has impugned the purported closure

order bearing No. 405/14K-2/2010 dated 10th March, 2011 issued by Respondent No. 8, the Chief Engineer, Operation & Execution Cell, West Bengal Pollution Control Board and has sought a declaration that the West Bengal Pollution Control Board does not have any jurisdiction in law to regulate and/or monitor vehicular pollution in the State of West Bengal and/or control and/or monitor the functioning of PUC centres and the Public Vehicle Department is the competent authority and for other ancillary reliefs.

3. W.P. No. 20962 (w) of 2010 is filed by the Petitioners i.e. Auto Emission Testors" Association and Ors. i.e. three members of the association who are having AETC in their respective establishments wherein the association has sought to challenge the orders passed by Assistant Director (Technical), Public Vehicle Department pursuant to the order dated 31st May, 2010 issued by the Respondent No. 9, officials of the West Bengal Pollution Control Board.

4. W.P. No. 11202 (W) of 2010 is filed by the Petitioners. Petitioner No. 1 is a partner of the partnership firm named and styled "Car Corner (Petrol Pump)" at whose establishment a surprise inspection was conducted by the officials of the West Bengal Pollution Control Board and has been issued with letters dated 1st/5th April, 2010 followed by order dated 13th May, 2010 passed by Respondent No. 9. Petitioner No. 2 is a partner of the partnership firm named and styled "Auto Emission Testing Centre" and Petitioner No. 3 is also a partner of the partnership firm named and styled "Anderson Auto Services". All the Petitioners are running their auto emission testing centres for petrol/diesel vehicles after obtaining licence issued by the office of the Director, Public Vehicles Department.

5. W.P. No. 10881 (W) of 2010 has been filed by the Petitioners. Petitioner No. 1 is a partner of the partnership firm styled "Lake Service Station". Petitioner No. 2 is a partner of the partnership firm styled "Bharat Motor Company". Petitioner No. 3 is a partner of the partnership firm styled "Barrackpore Auto Service". Petitioner No. 3 is a partner of the partnership firm styled "Paul Chowdhury Enterprise". Petitioner No. 5 is a partner of the partnership firm styled "Auto Emission Testing Centre". Petitioner No. 6 is a partner of the partnership firm styled "Auto Emission Testing Centre". Petitioner No. 7 is a partner of the partnership firm styled "Dwarka Service Station" and Petitioner No. 8 is a partner of the partnership firm styled "Salt Lake Auto Emission Centre". All the Petitioners are running auto emission testing centres for petrol/diesel vehicles after obtaining licence issued by the office of the Director, Public Vehicles Department and have impugned the order No. 4K-2/2010 dated 13th May, 2010 issued by the Chief Law Officer, West Bengal Pollution Control Board, Respondent No. 9 to show cause and offer their explanations for the mal-functioning of the PUC centres at their establishments and to pay pollution cost of Rs. 25,000/-.

6. In view of the fact that in all these petitions jurisdiction and authority of the West Bengal Pollution Control Board to conduct inspection of the auto emission testing centres for issuing PUC certificate in the establishments of the Petitioners

is under challenge, we propose to dispose of all these petitions by a common judgment and order.

7. It is the contention of the Petitioners that they have established the Auto Emission Testing Centre (for short AETC) and have been granted licence to run the same by the Public Vehicle Department in the year 1987 in exercise of power conferred under Rule 116 of the Central Motor Vehicles Rules, 1989. According to the Petitioner any pollution and/or emission caused by any vehicular operation within the territory of India is governed and regulated under the Central Motor Vehicles Rules, 1989 (for short said CMV Rules) read with Motor Vehicles Act, 1988 to control the emission of the gasses of the vehicles as has been determined under the said rules and in the event any vehicle emit gasses beyond the standard norms as has been enumerated under the said rules under 115 the said vehicle may not be granted the certificate for plying within the territory of India by the concerned Public Vehicle Department.

8. Under Rule 116 a Police Officer, not below the rank of a Sub-Inspector or the Inspector of Motor Vehicles have the power and/or the authority to check the standard of emission of a vehicle or the Public Vehicles Department may authorize testing agencies to do the same and issue certificate in respect of such checking in respect of any vehicle as pollution under control.

9. It is the case of the Petitioners that the Respondents have carried out inspection of their establishment and have ordered closure of the Auto Emission Centre and imposed a fine of Rs. 25,000/- pursuant to a decision of this Court in W.P. No. 6367 (W) of 2007 dated 18th July, 2008 wherein this Court while dealing with the problems of emission from motor vehicles and considering the tremendous environmental hazards particularly from three wheelers and taking note of the fact that auto rickshaws whose engines have been found unsuitable for conversion and having an age of over 15 years have been banned in metro cities. In M.C. Mehta's case the Supreme Court in such circumstances had recommended the use of CNG and government has also been directed by Supreme Court as well as by other High Courts to constitute Monitoring Committees consisting of different segments of the Government as well as the society to ensure that remedial measures are taken by the Government are made effective and taking into consideration the notification dated 4th March, 2008 wherein directions had been issued with regard to control of pollution and the said notification has been kept in abeyance by another notification dated 29th May, 2008 and as there was dire need of taking active steps to somehow reduce the pollution in Kolkata city, if not bring it under total control. To this effect the State Government in consultation with the West Bengal Pollution Control Board and in terms of Air (Prevention & Control of Pollution)Act, 1981 and the Environment (Protection) Act, 1986 has issued another Notification dated 17th July, 2008. The said petition was disposed of with an observation:

We are of the considered opinion that the aforesaid Notification, if faithfully implemented, would certainly have a favourable impact on the effort of the State-

authorities to reduce/control the auto pollution within the Kolkata Municipal Area. In order to be implemented, we direct that the directions issued in the Notification shall also be read as orders of this Court.

10. It is contended that the notification dated 17th July, 2008 was issued in exercise of powers u/s 20 Air (Prevention & Control of Pollution)Act, 1981 which does not enable the State to issue any notification authorizing the West Bengal Pollution Control Board (for short WBPCB) and Motor Vehicles Department to check the pollution under control certificate issuance centres and, therefore, the mere fact that the same has been directed by this Court to be read as order will not authorize West Bengal Pollution Control Board (for short WBPCB) to carry out inspection of the AETC.

11. It is submitted that Their Lordships while recording their considered opinion in the said order dated 18th July, 2008 did not consider whether at all the State authorities are empowered to take any measures to reduce/control auto pollution within the Kolkata Municipal Corporation or in any part within the State as there is no statutory provision under Motor Vehicles Act or Rules empowering the State of West Bengal as well as PCB to take any measures to reduce and/or control auto pollution within the State as Rule 258 of WBMVR has been repealed w.e.f. 16th December, 2003 in view of the notification issued on 12th December, 2003 was held to be invalid, vide judgment and order dated 8th May, 2002 passed by this Court in W.P. No. 5014 (W) of 2000 (State v. Urmi Ghoshal), W.P. No. 2249 (W) of 2001 (Snehasis Bhowmick v. State), W.P. No. 3168 (W) of 2000 (Dilip Kumar Sil v. State) and W.P. No. 1797 (W) of 2000 (Deputy Commissioner of Police v. Md. Noor Alam).

12. It is submitted that the licence to a PUC centre has been granted by the Public Vehicles Department. Therefore, without taking permission from competent authority and/or from the Central Government the WBPCB cannot inspect the PUC centres established under Rule 116 of the Motor Vehicles Rules, 1989 and interfere with the licence issued under the said Rule of 1989. It is submitted that as the licences issued by the Public Vehicles Department for AETC under the provision of Rule 116 of the Central Motor Vehicles Rules, 1989 cannot be a subject matter of checking by any of the State authorities, unless and until the said State authority is duly empowered by the Central authority to check the functioning of the said centres created by the Central authority. Therefore, the WBPCB has no jurisdiction and/or expertise to monitor the functioning of the PUC Centre.

13. It is the case of the Petitioners that the vehicular pollution is controlled and/or regulated under the Motor Vehicles Act, 1988 (for short MV Act) and the Central Motor Vehicles Act, 1989 (for short CMV Act) rather do not confer any jurisdiction over WBPCB to control and/or monitor and/or functioning of the PUC centres and that there is no provision under the West Bengal Motor Vehicles Rules, 1989 for regulating and controlling of the vehicular pollution. Therefore, the impugned action on the part of the Respondent pollution control board is

illegal and bad in law.

14. According to the Petitioners, Section 110(1)(g) of the MV Act, 1988 confers power on the Central Government to frame rules regulating emission of smoke, visible vapour, sparks, ashes, grit or oil. Section 111 of the MV Act, 1988 further provides that State Government may make rules with respect to all matters other than those specified in Section 110 of the MV Act, 1988 and, therefore, Rule 258 of the WBMV Rules, 1989 which was framed by the State Legislature providing (a) emission standard for motor vehicles; (b) test for smoke emission level and other pollution level for motor vehicles; (c) pollution under control certificate; and (d) regulating horns in motor vehicles was not within its competence.

15. The validity of Rule 258 of the WBMV Rules, 1989 fell for consideration before the Hon''ble Division Bench of this Hon''ble Court in F.M.A. No2607 of 2002 (Dilip Kumar Sil v. State of West Bengal and Ors.) and was declared to be invalid. Therefore, by notification bearing No. 5305-WT dated 12th December, 2003 Rule 258 is omitted from the West Bengal Motor Vehicles Rules, 1989. Since then there are no provisions under the Rule, 1989 relating to control and monitoring of vehicular pollution.

16. It is, therefore, contended that it is well-settled principles of law that the authority, which issues the licence itself would renew, extend, cancel or revoke the licence. No other authority except the licence granting authority can exercise such power to extend, renew, cancel or revoke the licence unless otherwise conferred by law.

17. It is, therefore, contended that the purported inspection carried out by the Respondent officials of Pollution Control Board is without jurisdiction and non-est in the eye of law and no further proceedings can be initiated on the basis of such inspection as the impugned action and order are illegal, arbitrary, improper, unjust and unfair and violative of Article 14, Article 19(1)(g) and Article 21 of the Constitution of India and deserves to be quashed and set aside.

18. On behalf of the State it is submitted that the jurisdiction of WBPCB in the matter of air pollution is governed by the provision of the Air (Prevention and Control of Pollution) Act, 1981. Vehicular emission and vehicular pollution contributes to pollution of the air and for Regulation thereof the powers and functions conferred upon the State Boards by Section 17 of the said Act may be exercised by the State Boards. In this connection the powers conferred by Section 17(1)(e), (g), (j) authorizes the WBPCB to issue orders for regulating air pollution resulting from vehicular emission and vehicular pollution. In exercise of such powers under the aforesaid provisions, in order to control and regulate air pollution caused from vehicular pollution, WBPCB is empowered to examine the AETC and/or whether such testing centre conform to the existing PUC norms and the code of practice for PUC equipment manufacturer/supplier and PUC Centres.

19. It is submitted that Section 31A of the Act also authorizes the Board to issue

directions which includes amongst others the power to direct closure.

20. It is submitted that reliance has also been placed by the Petitioner with regard to the definition of air pollutant, automobiles, control equipment, emission and industrial plant as defined in various provisions of the said Act and contended that AETC does not come within the purview of the Act. It is to be understood that AETC has been set up for the purpose of control of air pollution caused by vehicular emission and therefore the testing centres are obviously controlled and regulated by the powers to be exercised by the State Boards within the scope of Section 17 of the said Act. AETC cannot be excluded from the purview of the Act only on the mere ground that it is not an industrial plant and/or that no manufacturing activities are being carried on.

21. On behalf of the WBPCB it is submitted that Rule 258 of the West Bengal Motor Vehicle Rules and Rule 115(7) of the Central Motor Vehicles Rules operate in different fields and, as such, setting aside of Rule 258 does not debar the State of its powers.

22. It is submitted that Rule 126 has no manner of application in cases of testing equipments used by the AETCs.

23. A notification has been issued by the Government of India, Ministry of Road Transport & Highways vide No. RT-11028/11/2002-MVL dated September 09, 2004, inter alia, for up-gradation of PUC NorMs. The said Notification, which also contains the Code of Practice for PUC equipment manufacturer/supplier conclusively clinches the issue.

24. A notification has been issued by the Department of Environment, Government of West Bengal vide No. S/EN/1517/611/08 dated July 17, 2008, inter alia, issuing directions for compliance by the respective Departments. An order was passed by the Hon'ble High Court, Calcutta in W.P. No. 6377(W) of 2007 dated July 18, 2008 wherein the High Court was pleased to hold that the said Notification, if faithfully implemented, would certainly have a favourable impact on the effort of the State authorities to reduce/control the auto pollution. The High Court further directed that the direction issued on the Notification shall also be read as orders of the Court.

25. The only issue which arises for determination in these petitions is whether the Respondent WBPCB has power to inspect establishment of the Petitioners and proceed against establishments which are found to have violated the requirements of the licence issued for running AETC. It is the contention of the Petitioners that once the Petitioner has been given a licence by the Motor Vehicles Department on being satisfied that they have the required equipment and machinery for establishing the AETC as per Rule 116(3) of the CMV Rules, 1989, the State Government as well as WBPCB do not have any authority to interfere with the operation and functioning of such emission checking equipment for PUC testing. According to the Petitioners, it is the only the Automotive Research Association of India which is authorized to approve equipment for PUC

checking as per Rule 116(3) of CMV Rules, 1989 and the approved equipment which are required to be installed and supplied are notified as regards its model number, manufacturer and the agency which conducts its test having type approval and latest COP certificate and the Petitioners having purchased and installed the approved equipment in accordance with the Rules from the manufacturer. The test of such equipment can only be carried out by the approved agency and no other person or authority, and in absence of the approved authority no other agency can conduct such inspection or tests.

26. It is submitted that the Petitioners have all the required certificates relating to calibration of gas analyzers and so on. Therefore, the action on the part of the Respondents was uncalled for.

27. Licence to apply for AETC is required to be obtained by making an application to the transport department of the Government of West Bengal which is to be addressed to the Director, PVD for Kolkata and Public Vehicles Department/ Regional Transport Officer of the concerned District where the AETC is required to be established.

28. In addition to the various information which is required to be furnished in the nature of general information, technical information relating to emission of testing hazards, emission levels, smoke vapour, infrastructure facilities and other information. Relevant terms and conditions for the purpose of taking decision of this petition regarding provision of control and supervision of the Transport authorities/WBPCB are:

The occupier/owner will be required to work under direct control and supervision of the Transport Department of West Bengal through Director, PVD for Kolkata in case of District-the concerned District Magistrate through their Regional Transport Officer's of the concerned Districts, as the case may be. The occupier will be required to implement all directions issued and condition prescribed to from time to time for effective implementation of the pollution control measures in the State and shall carry out or implement such other terms and condition as may be imposed from time to time.

The Auto Emission Testing Center may be inspected occasionally by the M.V.I. (Tech) Inspector of the motor vehicles and or Officers of the West Bengal Pollution Control Board and the occupier will be required to produce all registers, papers, etc. on demand and allow examination of the activities of the staff and officials as well as the efficiency of the equipment.

The occupier/owner will not be entitled to refuse to test any vehicle reported/ brought to you 30 minutes before the closing of the time schedule subject to the limitation prescribed in Clause 11 above. The occupier/owner will maintain a register of testing having columns as per proforma below:

Registration Number of the Vehicle, Class of Vehicle, Date and Time Reported, Tested by, Testing Report, Certificate Number issued, Fees realized and Other

Particulars if any.

The occupier/owner will maintain a monthly statement book.

Suspension or Cancellation of License.

24. The license may be suspended and/or terminated or cancelled or revoked at any time. If the authority finds the testing centres and equipments installed therein not working as per the terms and conditions mentioned above or the occupier is found to have adopted any unfair means in issuing of PUC or running the centre in a manner which creates congestion of roads thereby causing hindrance to pedestrian and vehicles movement or on account of default or contravention of any of the terms of the license.

25. In case of suspension or termination, revocation or cancellation of the license, the occupier/owner will not be entitled to claim any compensation from the Government of West Bengal for such revocation or termination, suspension or cancellation. Before such action is taken the occupier will be given an opportunity of being heard.

26. If the occupier/owner is aggrieved by any such order issued by the RTO and/or Director, PVD, the occupier/owner may prefer an appeal to the Secretary, Transport Department, Government of West Bengal and the decision of the Secretary, Transport Department, Government Bengal will be final and binding upon the occupier/owner.

27. After installing the testing equipment and appointing testing personnel within a period of 30 days hereof you shall intimate the authority concerned who shall then cause an enquiry and after being satisfied shall issue license for a period of one renewable in terms of Clause 15 above. The license shall be displayed at a conspicuous place of the Centre.

28. The license shall be subject to all the terms and conditions contained herein and shall be governed by the relevant provisions of the respective enactment in this regard and the rules of orders or guidelines that may be framed or issued from time to time by the appropriate authority.

29. Complaint Book to be maintained by the occupier/owner of the auto emission testing center and to be made available to the Motor Vehicle Inspectors

29. Suspension and/or cancellation of license has been specifically provided in the terms and condition Nos. 24 to 29 as mentioned above and, therefore, the authorities who are competent to suspend and/or terminate and/or cancel and/or revoke the licence if the authority finds the testing centres and equipments installed therein not working as per the terms and conditions mentioned above or the occupier is found to have adopted any unfair means in issuing of PUC or running the centre in a manner which creates congestion of roads thereby causing hindrance to pedestrian and vehicles movement or on account of default or contravention of any of the terms of the license and that before such action is

taken the occupier is entitled to be given an opportunity of being heard and if the occupier/owner is aggrieved by any such order issued by the RTO and/or Director, PVD, the occupier/owner may prefer an appeal to the Secretary, Transport Department, Government of West Bengal and the decision of the Secretary, Transport Department, Government Bengal will be final and binding upon the occupier/owner.

30. The State of West Bengal has authorized the PCB to inspect such establishments in order to satisfy that the testing centres and the equipments installed therein are functioning as per the requirements. The State has also appointed WBPCB by notification dated 28th July, 2004 that the AETC of the State shall be technically examined and cleared by WBPCB before grant or renewal of licence by the PVD.

31. Officers of the WBPCB are also nominated and authorized to undertake inspection of AETC with such assistance as considers it necessary and, therefore, it is implicit that WBPCB is vested with the authority and empowered by the State Government to technically examine and clear AETC in the State of West Bengal.

32. Vehicle emission standards in our country are laid down and known as Bharat Stage emission standards which are emissions standards instituted by the Government of the Republic of India (Bharat) that regulate the output of air pollutants (such as nitrogen oxides (NOx), carbon monoxide (CO), hydrocarbons (High Court), particulate matter (PM), soot, and, where applicable, sulfur oxides (SOx) by internal combustion engine powered equipment, including motor vehicles, or other air polluting facilities or equipment. In many cases they are similar to European emission standards. Emission of smoke, vapour etc. from motor vehicles is governed by the M.V. Act and the Central Motor Vehicles Rules, 1988 and more particularly Rules 115 and 116 of the Central Motor Vehicles Rules, 1989.

33. Rule 115 provides for emission standards of every motor vehicle operating of the petrol, CNG, LPG driven vehicles and also for diesel vehicles. Sub-rule (7) of Rule 115 was added by a notification No. GSR 338E dated March 26, 1993 which provides:

(7) After the expiry of a period of one year from the date on which the motor vehicle was first registered, every such vehicle shall carry a valid "Pollution under control" certificate issued by an agency authorized for this purpose by the State Government. The validity of the certificate shall be for six months and the certificate shall always be carried in the vehicle and produced on demand by the officers referred to in Sub-rule (1) of Rule 116."

Rule 116 provides as under:

"116. Test for smoke emission level and Carbon Monoxide level for vehicles.

(1) Notwithstanding anything contained in Sub-rule (7) of Rule 115 any officer

not below the rank of Sub-Inspector of Police or the inspector of Motor Vehicles who has reason to believe that a motor vehicle is not complying with the provisions of Sub-rule (2) or Sub-rule (7) of Rule 115, may in writing direct the driver or any person incharge of the vehicle to submit the vehicle for conducting the test to measure the standards of emission in any one of the authorized testing stations, and produce the certificate to any authority at the address mentioned in the written direction within 7 days from the date of conducting the check.

(2) The driver or any person in-charge of the vehicle shall upon such direction by the officer referred to in Sub-rule (1) submit the vehicle for testing for compliance of the provisions of [sub-rule (2) and Sub-rule (7) of Rule 115] at any authorized testing stations.

(3) The measurement for compliance of the provisions of [sub-rule (2) and Sub-rule (7) of Rule 115] shall be done with a meter of the type approved by any agency referred to in Rule 126 of the principal rules or by the National Environmental Engineering Research Institute, Nagpur-440001:

(4) If the result of the tests indicate that the motor vehicle complies with the provisions of Sub-rule (2) and Sub-rule (7) of Rule 115, the driver or any person incharge of the vehicle shall produce the certificate to the authority specified in Sub-rule (1) within the stipulated time-limit.

(5) If the test results indicate that the motor vehicle does not comply with the provisions of the [sub-rule (7) of Rule 115], the driver or any person incharge of the vehicle shall rectify the defects so as to comply with the provisions of the [sub-rule (2) and Sub-rule (7) of Rule 115] within a period of seven days and submit the vehicle to any authorized testing station for re-check and produce the certificate so obtained from the authorized testing station to the authority referred to in Sub-rule (1).

(6) If the certificate referred to in Sub-rule (1) is not produced within the stipulated period of seven days or if the vehicle fails to comply with the provisions of [sub-rule (2) and Sub-rule (7) of Rule 115] within a period of seven days, the owner of the vehicle shall be liable for the penalty prescribed under Sub-section (2) of Section 190 of the Act.

(7) If the driver or any person in charge of the vehicle referred to in sub-rule

(1) does not produce the said certificate within the said period of seven days, such vehicle shall be deemed to have contravened the provisions of the Sub-rule (2) of Rule 115 and the checking officer shall report the matter to the registering authority.

(8) The registering authority shall on receipt of the report referred to in Sub-rule (7), for reasons to be recorded in writing, suspend the certificate of registration of the vehicle until such time the certificate is produced before the registering authority to the effect that the vehicle complies with the provisions of [sub-rule

(2) and Sub-rule (7) of the Rule 115].

(9) On such suspension of the certificate of registration of the vehicle, any permit granted in respect of the vehicle under Chapter v. or under Chapter VI of the Motor Vehicles Act 1988 (59 of 1988) shall be deemed to have been suspended until a fresh "Pollution under control" certificate is obtained.

34. Therefore, plain reading of Rules 115 and 116 makes it clear that it govern the subject of regulating emissions standards and Sub-rule (7) of Rule 115 provides for authorized testing station to carry out re-checking of motor vehicles for smoke emission level and carbon monoxide level of vehicles and certified that a motor vehicle confirms to the norms prescribed by the law for emission level, and such an agency has to be authorized for this purpose by the State Government. The State Government has authorized Public Vehicle Department/ Regional Transport Authority for grant/renewal of licence and West Bengal Pollution Control Board for technical examination and clearance of the Auto Emission Testing Centres (AETC) vide notification No. 3357-WT/3M-7/20032004 dated 28th July, 2004..

35. Therefore, persons who want to start an establishment of AETC are required to make an application for letter of offer so as to obtain licence for operation of a new centre for AETC and licence for renewal of an operation of an existing AETC to the Department of Transport, Government of West Bengal (a statutory authority created under the Motor Vehicles Act) and West Bengal Pollution Control Board [a statutory authority constituted under the Air (Prevention & Control of Pollution)Act, 1981 (for short Air Act)]. The licence to operate a new centre or for renewal of licence for AETC to be issued by the Department of Transport, Government of West Bengal.

36. On inspection by the officials i.e. Motor Vehicles Inspector (Technical Inspector) of the Motor Vehicles Department and officials of the PCB the said licence may be suspended and/or terminated or cancelled or revoked at any time, if the authority finds the testing centres and equipments installed therein not working as per the terms and conditions on which licence has been granted or the occupier is found to have adopted any unfair means in issuing of PUC or running the centre in a manner which creates congestion of roads thereby causing hindrance to pedestrian and vehicles movement or on account of default or contravention of any of the terms of the license.

37. The Air Act provides for prevention, control and abatement of air pollution and for the said purpose it provides for constitution of Central Pollution Control Board (Section 3) as well as State Pollution Control Board (Section 4) and the WBPCB is the statutory authority being a board constituted under the said Act.

38. Section 17 of the Air Act, 1981 provides for the functions of the State Board and the State Board has been entrusted with the job of looking after the problems of air pollution and to take steps for its prevention and control. u/s 17(1)(g) of the Act it is required to lay down in consultation with the Central

Board and having regard to the standards for the quality of air laid down by the Central Board, standard for emission of air pollutants into the atmosphere from industrial plants and automobile or for the discharge of any air pollutant into the atmosphere from any other source not being a ship or an aircraft.

39. Similarly, Clause (j) authorizes the State Board to do such other thing and to perform such other acts as it may think necessary for the proper discharge of its function and generally for the purpose of carrying into effect the purposes of this Act. Therefore, its statutory function of the Board to see that standards for emission of air pollutants into the atmosphere from automobile are regulated and for that purpose a notification had been issued by the Department of Environment, Government of West Bengal vide No. S/EN/1517/611/08 dated July 17, 2008 in exercise of the power u/s 20 of the Air Act, 1981 and direction 6 in the said notification requires that Pollution under Control certificate (PUC centres) should be checked by the statutory authorities i.e. WBPCB and MV Department, at a regular basis and if it is found that the PUC centres are issuing fake certificates or without complying with the statutory norms as prescribed by the WBPCB and MV Department, in such case, licence of the PUC centre should be withdrawn immediately and such licences need to be suspended at least for two years with imposition of pollution cost not less than Rs. 25,000/- (Rupees twenty five thousand) only.

40. This notification came up for consideration by this Court while it was dealing with the issue of fishing out of vehicles and conversion of three wheelers to eco-modes of using LPG and CNG fuel pursuant to the various orders and directions issued by the Supreme Court of India in M.C. Mehta Vs. Union of India and Others, from time to time and this Court in order to ensure that the aforesaid notification is duly implemented, approved that the directions issued in the notification shall also be read as orders of this Court and we find that there is no legal impediment in doing so, and the Court can issue such directions for effective and meaningful implementation of statutory provisions to facilitate the authority, in this case the State Pollution Control Board in the exercise of its powers and performance of its functions under the Air Act, 1981 which was with the sole object of effective implementation of the said notification.

41. We find that the Respondent Board conducted the technical inspection of the establishments of all these Petitioners to find out that they were operating their AETCs in accordance with the rules and Regulations and the machines, apparatus, device or equipments which are installed in their establishment are as per specification and are functional for which they were empowered vide notification dated 17th July, 2008 issued by the Transport Department to the Government of West Bengal to do so after giving due notice of inspection to the Petitioner. The Respondents i.e. officials of PCB having found irregularities in the equipments installed in the Petitioners establishment for the purpose of testing motor vehicles for issuing PUC certificates and issued notice to the Petitioners for their appearance before the Board so as to give them opportunity to explain the

deficiencies as revealed from the inspection report at the AETC owned by the Petitioners and on conclusion of the hearing issued the impugned closure orders thereby directing the Petitioners not to operate their centres and to submit a pollution cost of Rs. 25,000/- within 15 days by depositing the same with the Respondents. The closure order further made a request to the Motor Vehicles Department (PVD, Kolkata) to cancel the licence of the Petitioner immediately.

42. We find that the Respondent West Bengal Pollution Control Board is authorized u/s 31A of the Motor Vehicles Act to give such directions in the exercise of its powers and performance of its functions under the said Act and having found that the equipments installed at the AETC of the Petitioner were not in conformity with the prescribed standards and having noted the deficiency, for which no reasonable explanation was offered by the Petitioners, issued directions for its closure and that the Petitioner could have preferred appeal before the appellate authority u/s 31 of the Air Act if they were aggrieved by the impugned order.

43. The Petitioners have chosen to approach this Court by invoking its jurisdiction under Articles 226 and 227 of the Constitution of India on the premise that they have no jurisdiction in the matter appears to be unfounded.

44. We find that the Petitioners are bound by the terms and conditions on which they obtained licence from the PVD to own and run an AETC in order to issue "Pollution Under Control" (PUC) certificate and they are under an obligation to maintain machineries, apparatus and equipments got installed at their establishments from the approved dealer and also get it tested by the approved agency as notified under the Central Motor Vehicles Rules. The Petitioners establishments are subject to inspection of their respective auto emission testing centres occasionally by the Motor Vehicle Inspector (Technical) and/or officers of the WBPCB who are expected to conduct surprise checks to see that the AETC is functioning as per the required standard and their machineries and equipments are in order. If no such inspection is carried by the authorities under the MV Act as well as Air Act, 1981 it will be impossible for the authorities to provide or keep in check emission by motor vehicles as Sub-rule (7) of Rule 115 specifically provide that every motor vehicle should carry out a valid PUC certificate issued by an agency authorized for this purpose by the State Government and if such agency indulged into mal-practice of any nature it may defeat the very object and purpose of regulating emission standards of motor vehicles which are expected to conform to the norms prescribed by the law for emission level. These two authorities viz. the PVD as well as WBPCB have a complimentary role to play while regulating emission levels. However, it is true that the licensing authority is the PVD of the State Government but nothing prevents the officials of the WBPCB who are notified to carry out surprise inspection at the establishment of persons who are granted licence to operate AETC and it is well within their power to issue orders for closure of operation of the AETC, if it is found that the equipment is not as per specification and/or is not performing its function as required due to

which motor vehicles cannot be certified as maintaining statutory emission levels and, therefore, they have every right to issue an order of closure after following due procedure which is the first step required to be taken to keep in check all AETCs before their licences issued by the PVD is suspended or finally cancelled. The Air Act, 1981 provides for remedy against such action and it will be always open to the Petitioners to challenge the action on the part of the WBPCB by preferring an appeal as already observed.

45. We may further reiterate the powers conferred on the WBPCB and PVD for withdrawing the licence for defaulting PUC centre and the need to suspend at least for two years with imposition of pollution cost not less than Rs. 25,000/- in terms of the notification dated 17th July, 2008 issued by the Department of Environment, Government of West Bengal is in consonance with law and it is expected to have a deterrent effect so that the law relating to effective implementation of the pollution control measures in the State meets the object and purpose of keeping the pollution under control. Therefore, we find that the Petitioners have failed to make out any case to grant the relief sought for in these petitions and all these petitions stand dismissed with no order as to costs.