(2023) 05 GAU CK 0045

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 167 Of 2019

Pulen Dey And Anr. APPELLANT

Vs

State Of Assam And 7 Ors RESPONDENT

Date of Decision : 19-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Central Motor Vehicles Rules, 1989 — Rule 39, 40, 62, 62(1)(b), 63, 63(1), 63(2), 63(3), 63(3)(a), 63(4), 63(5), 73, 81
Assam Motor Vehicle Rules, 2003 — Section 2, 26, 26(i), 26(ii), 79, 87
Road Transport Corporations Act, 1950 — Section 2(b), 2(e), 3, 19, 19(i), 19(1)(b), 19(2), 19(2)(m), 19(3)(i)
Motor Vehicles Act, 1988 — Section 39, 56, 56(2), 56(4), 56(5), 59(1), 59(3), 60
Code of Civil Procedure, 1908 — Section 11

Citation : (2023) 05 GAU CK 0045

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : P K Goswami, Y. Doley

Final Decision : Partly Allowed

Judgement

1. The two petitioners have instituted the writ petition to invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India for assailment of a Notification bearing no. TMV.263/2015/84 dated 17.12.2018 issued by the Transport Department, Government of Assam under the hand of the Secretary to the Government of Assam, Transport Department.

2. In the Notification dated 17.12.2018, it is mentioned that a proposal had been submitted by the Assam State Transport Corporation [hereinafter referred to as 'the ASTC' or 'the respondent Corporation', at places, for easy reference] to grant approval to it under Section 19 of the Road Transport Corporations Act, 1950 to undertake the activity of operating Authorised Testing Stations in each of the districts of Assam with a copy of the Judgment and Order dated 27.09.2018 passed by this Court in the writ petition, W.P.[C] no. 1395/2018 [Nagaon Jila Bus

Paribahan Santha and two others vs. The State of Assam and another]. It further mentions that upon careful perusal and examination of the proposal submitted by the ASTC; the Judgment and Order dated 27.09.2018 [supra]; the relevant provisions of Section 19 of the Road Transport Corporations Act, 1950; Section 56 of the Motor Vehicles Act, 1988; and Rule 63 of the Central Motor Vehicles Rules, 1989, it has been found that the ASTC has possessed the required qualifications and is fit to comply with all the requirements, as prescribed under the relevant provisions of the Motor Vehicles Act, 1988 and Rule 63 of the Central Motor Vehicles Rules, 1989 for setting up Authorised Testing Stations. Observing so, the State Government in exercise of the powers conferred by Section 19 of the Road Transport Corporations Act, 1950 has accorded approval to the ASTC to operate Authorized Testing Stations in each of the districts of Assam with the further direction to the ASTC to follow the procedure prescribed under Rule 63 of the Central Motor Vehicles Rules, 1989 and Section 56 of the Motor Vehicles Act, 1998. By the Notification dated 17.12.2018, the ASTC has been permitted to realize service charge @ Rs. 300/- in respect of Light Motor Vehicles [LMV] and @ Rs. 500/- in respect of Medium and Heavy Motor Vehicles [MMVs & HMVs] apart from the statutory fees prescribed by the Transport Department, Government of Assam, which should be deposited to the State Exchequer.

3. Before going further, it may be stated that the Road Transport Corporations Act, 1950 [Act no. 64 of 1950] has been enacted by the Parliament to provide for incorporation and regulation of Road Transport Corporations. As per the definition provided by Section 2[b] thereof, 'Corporation' means a Road Transport Corporation established under Section 3 of the Act. Section 3 contained in 'Chapter II : Road Transport Corporation' of the Road Transport Corporations Act, 1950 has provided for establishment of Road Transport Corporations in the States. Sections 3 states that the State Government having regard to – [a] the advantages offered to the public, trade and industry by the development of road transport; [b] the desirability of co-ordinating any form of road transport with any other form of transport; [c] the desirability of extending and improving the facilities for road transport in any area and of providing an efficient and economical system of road transport service therein, may, by notification in the Official Gazette, establish a Road Transport Corporation for the whole or any part of the States under such name as may be specified in the notification. It is not in dispute that the respondent ASTC is a Road Transport Corporation, established under Section 3 r/w Section 2[b] of the Road Transport Corporations Act, 1950. ['the RTC Act, 1950', for short] on 31.03.1970.

4. The two petitioners have claimed that they are in the business of providing road transport services, having requisite permits from the concerned authorities. While the petitioner no. 1 has claimed to be a holder of a Public Carriage permit which is valid in routes all over Assam, the petitioner no. 2 has claimed to be a holder of a Contract Carriage permit in the route from Hojai to Howraghat sub-counter. As the petitioners' vehicles which ply under the aegis of the respondent

ASTC, also operate on the routes where the vehicles of the respondent ASTC also ply, the petitioners have contended that there is active business competition of the petitioners' vehicles with the vehicles of the respondent ASTC.

5. The case pleaded by the petitioners, in brief, is that a decision was taken in a meeting of the Transport Department, held on 13.02.2017, to allow the respondent Corporation to engage in the activity of operating Authorized Testing Stations under the Motor Vehicles Act, 1988. Pursuant to the said decision, the Secretary to the Government of Assam wrote to the Managing Director, ASTC on 20.11.2017 conveying the approval of the Government to the proposal for grant of a Letter of Authority to the respondent ASTC for a period of 5 [five] years under Rule 63 of the Central Motor Vehicle Rules, 1989 for operating Authorized Testing Stations for issuance of Certificates of Fitness to Transport Vehicles under Section 56 of the Motor Vehicles Act, 1988, subject to fulfillment of all the conditions prescribed therein. By the letter dated 20.11.2017, the Managing Director, ASTC was requested to submit a proposal on details of fees/charges, etc. item-wise for realization of the fees, etc. under the Central Motor Vehicle Rules, 1989 ['the CMV Rules, 1989', for short] or the Motor Vehicles Act, 1988 ['the MV Act, 1988', for short]. By a Notification bearing no. TMV.263/2015/59 dated 11.01.2018, the State Government in the Transport Department accorded approval to the respondent ASTC to operate Authorised Testing Stations of commercial vehicles/any other vehicles as specified under Section 56 of the MV Act, 1988 and Rule 63 of the CMV Rules, 1989, subject to fulfillment of all the conditions laid down therein. The Notification dated 11.01.2018 had further mentioned that the respondent ASTC could take service charge @ Rs. 300/- in respect of Light Motor Vehicles [LMVs] and @ Rs. 500/- in respect of Medium & Heavy Motor Vehicles [MMVs & HMVs], apart from the statutory fees prescribed by the Transport Department, Government of Assam, which should be deposited to the State Exchequer.

6. Aggrieved by the letter dated 20.11.2017 [supra] and the Notification dated 11.01.2018 [supra], three associations of bus operators viz. [i] Nagaon Jila Bus Paribahan Santha; [ii] Sunitpur Udalguri Darrang Nalbari & Kamrup District Bus Owners Association; & [iii] Sanmilita Bus Samannayarakhi Samity; had joined together to prefer a writ petition, W.P.[C] no. 1395/2018 before this Court to challenge those inter alia on the ground that those were issued in deviation of the prescribed procedure to be followed under Rule 63 of the CMV Rules, 1989 and also on the ground that the letter dated 20.11.2017 [supra] and the Notification dated 11.01.2018 [supra] were issued by an authority, who was not the prescribed authority under the CMV Rules, 1989.

7. After considering the provisions of Section 19 of the RTC Act, 1950; Section 56 of the MV Act, 1988; and Rule 63 of the CMV Rules, 1989, the letter dated 20.11.2017 [supra] and the Notification dated 11.01.2018 [supra] were set aside by a Judgment and Order dated 27.09.2018 rendered in the writ petition, W.P.[C] no. 1395/2018 [Nagaon Jila Bus Paribahan Santha and two others vs. The State

of Assam and another]. In the Judgment and Order, it had been concluded that there is an entitlement of the respondent ASTC to venture into any activity including the activity of operating an Authorized Service Station and there is statutory requirements under Section 19 of the RTC Act, 1950 to obtain approval for the same.

7.1. For ready reference, paragraph 11, paragraph 20 & paragraph 21 of the Judgment and Order dated 27.09.2018 are quoted hereinbelow :-

11. Section 19[i] of the Act of 1950 provides that the Transport Corporation shall have the power to do all such activities enumerated therein, whereas, Section 19[2] provides that the power conferred under sub-section [1] shall also include the power as described in sub-section [2]. Section 19[2][m] provides for the power to do all things to facilitate the proper carrying of the business of the Corporation with prior approval of the State Government. Accordingly, the activity of operating the authorized fitness center can be construed to be an activity undertaken by the ASTC for proper carrying out of its business.

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20. In view of the aforesaid conclusion, the communication dated 20.11.2017 and the notification dated 11.01.2018 are set aside. However, as a conclusion had already been arrived that there is an entitlement of the respondent ASTC to venture into any activity including the activity of operating an authorized testing station, although there is a statutory requirement under Section 19 of the Act of 1950 to obtain an approval for the same, setting aside of the aforesaid communication and the notification shall not be a bar on the part of the respondent ASTC to make an appropriate application under Section 19 of the Act of 1950.

In the event, any such application is made, the State respondent authorities shall strictly follow the procedure required under Section 19 and arrive at its conclusion as to whether to grant or not grant such approval. Only upon such approval being granted under Section 19, the ASTC shall be eligible to make further application under Form 40 of the Rules 1989 for grant of Letter of Authority in Form 39, if they are otherwise, found fit but strictly by following the procedure under Rule 63 of the Rule of 1989.

21. This writ petition is allowed to the extent indicated above. It is provided that as to what fees are to be charged by the respondent ASTC, in the event, they are ultimately issued a Letter of Authority, the same also shall be determined strictly in terms of Rule 81 of the Rules of 1989, as amended.

7.2. In the afore-quoted paragraphs, it has been observed that setting aside of the letter dated 20.11.2017 [supra] and the Notification dated 11.01.2018 [supra] shall not be a bar on the part of the respondent ASTC to make an appropriate application under Section 19 of the RTC Act, 1950 seeking approval from the State Government to operate Authorized Testing Stations. In the event any such application is made, the State respondent authorities shall strictly follow the procedure required under Section 19 of the RTC Act, 1950 and arrive at its conclusion whether to grant or not to grant such approval. Only upon such approval being granted under Section 19, the respondent ASTC would be eligible to make further application in Form 40 of the CMV Rules, 1989 for grant of Letter of Authority in Form no. 39, if the respondent ASTC is otherwise, found fit but by strictly following the procedure under Rule 63 of the CMV Rules, 1989. It is also provided that as to what fees are to be charged by the respondent ASTC in the event it is ultimately issued a Letter of Authority, the same shall also be determined strictly in terms of Rule 81 of the CMV Rules, 1989, as amended.

8. In the backdrop of the Judgment and Order dated 27.09.2018 passed in the writ petition, W.P.[C] no. 1395/2018, the respondent ASTC submitted the proposal to the State Government in the Transport Department for grant of approval to it under Section 19 of the RTC Act, 1950 to undertake the activity of operating Authorized Testing Stations in each of the districts of Assam along with a copy of the Judgment and Order dated 27.09.2018. Upon receipt of the proposal, the impugned notification dated 17.12.2018 is stated to have been issued. As mentioned above, making an assailment on the afore-mentioned Notification dated 17.12.2018, the instant writ petition has been instituted.

9. I have heard Mr. Parthiv K. Goswami, learned senior counsel assisted by Mr. B.P. Borah, learned counsel for the petitioners; Mr. D. Saikia, learned Advocate General, Assam; & Mr. J. Roy, learned Standing Counsel, ASTC assisted by Ms. M.D. Bora, learned Standing Counsel, Transport Department; and Ms. P. Baruah, learned counsel for the respondents.

10. Before adverting to the submissions advanced by the learned counsel for the parties, it appears apposite to make references to some of the statutory provisions which are found to be of import and relevance for the lis. Section 59[1] of the MV Act, 1988 has empowered the Central Government to fix the age limit of motor vehicle. It has provided that the Central Government may, having regard to the public safety, convenience and objects of the MV Act, 1988 by notification in the Official Gazette, specify the life of a motor vehicle reckoned from the date of its manufacture, after expiry of which the motor vehicle shall not be deemed to comply with the requirements of the MV Act, 1988 and the Rules framed thereunder, provided that the Central Government may specify different ages for different classes or different types of motor vehicles. Section 59[3] has prescribed that notwithstanding anything contained in Section 56, no prescribed authority or Authorized Testing Station shall grant a Certificate of Fitness to a motor vehicle in contravention of the provisions of any notification issued under Section 59[1]. Section 60 has provided for registration of vehicles belonging to the Central Government.

10.1. As per Section 39 of the MV Act, 1988, a Certificate of Registration is mandatory for a motor vehicle. Couched in negative terms, it has inter alia stipulated that no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit a motor vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with the provisions of Chapter IV of the MV Act, 1988.

10.2. Section 56 has provided for Certificate of Fitness of Transport Vehicle, which means either a public service vehicle or a goods carriage or an educational institution bus or a private service vehicle. As per sub-section [1] thereof, subject to the provisions of Section 59 and Section 60, a Transport Vehicle shall not be deemed to be validly registered for the purposes of Section 39, unless it carries a Certificate of Fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an Authorized Testing Station mentioned in sub-section [2], to the effect that the vehicle complies for the time being with all the requirements of the MV Act, 1988 and the Rules made thereunder, provided that where the prescribed authority or the Authorized Testing Station refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons for such refusal.

10.3. Sub-section [2] of Section 56 has referred to the Authorised Testing Station. 'Authorized Testing Station' means a vehicle service station or public or private garage which the State Government, having regard to the experience, training and ability of the operator of such station or garage and the testing equipment and the testing personnel therein, may specify in accordance with the Rules made by the Central Government for regulation and control of such stations or garages. As the other sub-sections, that is, sub-section [3], sub-section [4] and sub-section [5] of Section 56 are not relevant for the purpose of the case in hand, they are not referred to herein for the sake of brevity.

10.4. Thus, from the afore-mentioned provisions of the MV Act, 1988, it is clear that a Transport Vehicle for the purpose of its valid registration, requires a Certificate of Fitness issued by the prescribed authority or an Authorized Testing Station.

11. Mr. Goswami, learned senior counsel appearing for the petitioners has submitted that the Court in its Judgment and Order dated 27.09.2018 rendered in the writ petition, W.P.[C] no. 1395/2018 had set aside the letter dated 20.11.2017 and the Notification dated 11.01.2018 on the ground that the authorities in the State Government who issued those, were not the Registering Authority as envisaged under Rule 63 of the CMV Rules, 1989. The Court had, however, observed that the activity of operating the Authorised Testing Station is a permissible activity under Section 19[2][m] of the RTC Act, 1950 for the respondent Corporation to undertake, subject to due approval of the State Government and upon due approval being granted by the State Government under Section 19 of the RTC Act, 1950, the respondent Corporation shall be eligible to make further application in Form 40 for grant of a Letter of Authority under Form 39 of the CMV Rules, 1989 which has to be considered strictly in terms of the procedure laid down in Rule 63 of the CMV Rules, 1989. Pursuant to

the Judgment and Order dated 27.09.2018, the respondent Corporation filed the application dated 02.11.2018 seeking approval of the State Government under Section 19 of the RTC Act, 1950 to undertake the activity of operating Authorized Testing Stations in each of the districts of Assam and it was pursuant thereto, the impugned Notification dated 07.12.2018 came to be issued by the State Government granting approval under Section 19 of the RTC Act, 1950 to the respondent Corporation to operate Authorised Testing Stations in each of the districts of Assam.

11.1. By referring to the Judgment dated 02.02.2021 rendered by a Division Bench on Reference in the instant writ petition pursuant to difference of opinion expressed by the learned Single Judge earlier in the Judgment and Order dated 15.11.2019 in the present writ petition about the correctness of the observations made and conclusions arrived at by the learned Single Judge in the Judgment and Order dated 27.09.2018 passed in the writ petition, W.P.[C] no. 1395/2018, about which reference would be made in the later part of this order, Mr. Goswami has submitted that the Division Bench in its Judgment on Reference has confined its discussion and findings around the issue as to whether the respondent Corporation would be legally entitled to carry on the activity of Authorized Testing Stations under the RTC Act, 1950, more particularly, Section 19 thereof. The Division Bench has held that Section 19[2][m] of the RTC Act, 1950 has empowered the respondent ASTC to venture or foray into the activity of operating an Authorised Testing Station for the purpose of Section 56 of the MV Act, 1988 subject, however, to prior approval of the State Government as well as subject to entitlement of Letter of Authority in terms of Rule 63 of the CMV Rules, 1989 and if any such approval is granted, the respondent Corporation as an applicant has to seek a Letter of Authority under Rule 63 of the CMV Rules, 1989. Such application would then, has to be considered by the concerned authority, that is, 'the Registering Authority' strictly in accordance with the procedure provided in Rule 63 of the CMV Rules, 1989.

11.2. It is his submission that the impugned Notification dated 17.12.2018 is untenable in law on a number of grounds, firstly, it is evident from the contents of the impugned Notification dated 17.12.2018 that the said authority has dealt with and rendered findings on the issue of qualification and eligibility of the respondent Corporation to operate the activity of an Authorised Testing Station, which are issues within the exclusive domain of the Registering Authority viz. the District Transport Officer [DTOs] in terms of the Rule 63 of the CMV Rules, 1989 and it goes to show that the said authority has acted in excess of its jurisdiction; secondly, from the text and tenor of the Communication dated 28.12.2018 issued from the office of the Commissioner of Transport to all the District Transport Officers [DTOs] with copies to all the stakeholders, it is clearly demonstrable that the said authority has sought to present a picture of fait accompli to the Registering Authority, thereby, asking the Registering Authority, that is, the DTOs to grant a Letter of Authority straightway to the respondent Corporation under Rule 63 of the CMV Rules, 1989 leaving no amount of discretionary statutory power for the Registering Authority, that is, the DTOs to exercise with his independent judgment on the applications submitted by the respondent Corporation in Form 40 under Rule 63 of the CMV Rules, 1989. Projecting so, the learned counsel for the petitioners has contended that the same is totally contrary to the scheme contained in Rule 63 of the CMV Rules, 1989 as well as the settled position of law that an authority while exercising statutory power must exercise its independent judgment without being influenced by any authority. To buttress his such submissions, Mr. Goswami has relied on the decision of the Hon'ble Supreme Court of India in The Purtabpore Co. Ltd. vs. Cane Commissioner of Bihar and others, reported in 1996 [1] SCC 308.

11.3. It is his further contention that the Registering Authority is an independent authority while exercising its statutory power under Rule 63 of the CMV Rules, 1989. Thus, while considering an application seeking a Letter of Authority for operating the activity of an Authorized Testing Station, the Registering Authority is required in law to exercise its independent judgment on the issue of qualification and eligibility of an applicant without being influenced in any manner by any other authority including the State Government. It has been contended that the impugned Notification dated 17.12.2018 which has recorded findings on the qualification and eligibility of the respondent Corporation qua the requirements prescribed under Rule 63 of the CMV Rules, 1989 is wholly without authority of law and in excess of jurisdiction.

11.4. It has been further urged on behalf of the petitioners that the impugned Notification dated 17.12.2018 is also in violation of the Judgment and Order dated 27.09.2018 rendered in the writ petition, W.P.[C] no. 1395/2018 in so far as the matter of permission to the respondent ASTC to realize service charges @ Rs. 300/- in respect of Light Motor Vehicles [LMVs] and @ Rs. 500/- in respect of Medium and Heavy Motor Vehicles [MMVs & HMVs] are concerned, apart from statutory fees prescribed by the Transport Department, Government of Assam. When provision was made for similar service charges in the earlier impugned Notification dated 11.01.2018, since set aside, the Court in its Judgment and Order dated 27.09.2018 has clearly held that such prescription of fees would be a matter within the ambit of Rule 81 of the CMV Rules, 1989 and not a matter within the ambit of Section 19 of the RTC Act, 1950. As the Judgment and Order dated 27.09.2018 has since attained finality, the issue of service charge could not have been gone into again before a Letter of Authority is granted by the Registering Authority in accordance with law. The contention advanced on behalf of the respondent Corporation based of the proviso to Rule 81 of the CMV Rules, 1989 is misconceived. The reliance of the respondent Corporation on it which has inter alia provided that the State may also levy the additional amount to cover the cost of automation and technology utilized for conducting the testing or providing value added service is premature and unjustified in the facts and circumstances of the case in the absence of any tangible materials to show that the respondent Corporation has utilized or incurred any additional cost on automation and technology for conducting the testing or providing value added services.

11.5. Mr. Goswami has drawn attention to the aspect of conflict of interest by bringing reference to the entry at Serial no. 6 of Form 40. According him, the answer given thereto would be a relevant consideration to be gone into by the Registering Authority while dealing with an application seeking a Letter of Authority under Rule 63 of the CMV Rules, 1989 and the observations made by the Hon'ble Division Bench in the Judgment delivered on Reference.

11.6. With the above submissions, Mr. Goswami, learned senior counsel appearing for the petitioners has submitted that the impugned Notification dated 17.12.2018 is not sustainable in law and therefore, the same is required to be set aside and quashed.

12. In response, Mr. Saikia, learned Advocate General, Assam has raised a question about the locus standi of the two petitioners to challenge the Notification dated 17.12.2018 granting approval to the respondent ASTC by the State Government to set up Authorized Testing Stations. He has contended that the petitioners have failed to show any situation whereunder any of their legal rights has been violated. While the petitioner no. 1 has claimed to be a holder of a Public Carriage permit, the petitioner no. 2 has claimed that he has a Contract Carriage permit. On the other hand, the respondent Corporation is in the operation of State Carriages. In the event the respondent ASTC is allowed by the competent authority to operate Authorized Testing Stations to issue Certificates of Fitness to vehicles, then it would be an additional option for motor vehicle owners to get their vehicles tested and to obtain Certificate of Fitness, apart from the existing arrangement already available with the Registering Authority i.e. the Office of the District Transport Officer [DTO] in each district within the State of Assam. It is, thus, submitted that the interest of the petitioners is not going to be affected in any manner by the Notification dated 17.12.2018. The proceedings initiated by the petitioners is, thus, a proxy litigation. The petitioners do not fall in the bracket of an aggrieved person., he has contended.

12.1. He has submitted, by referring to the definition provided for 'Authorised Testing Stations' in sub-section [2] of Section 56 of the MV Act, 1988, that the State Government being satisfied with the experience and ability of the respondent Corporation and availability of qualified, trained and experienced personnel and engineers under its employment and disposal, accorded approval in exercise of the powers conferred under Section 19 of the RTC Act, 1950. On being granted such approval, the respondent Corporation in terms of Rule 63[2] of the CMV Rules, 1989, has made applications in Form 40 to the respective District Transport Officers [DTOs] for grant of a Letter of Authority each under sub-rule [1] of Rule 63 of the CMV Rules, 1989. As the District Transport Officer [DTO] for a particular district is the Registering Authority for the purpose of grant of such Letter of Authority, it is the Registering Authority i.e. the DTO in each district who under sub-rule [5] of Rule 63 of the CMV Rules, 1989 on receipt of such application under Rule 63[2], has to satisfy himself as to whether the applicant has complied with the requirements of Rule 63[3] and Rule 63[4] of the CMV Rules, 1989 to have the eligibility for grant of a Letter of Authority in Form 39 of the CMV Rules, 1989 or not. In the case in hand, the Registering Authority is yet to carry out such exercise. But the petitioners here have, in a hurry, instituted the writ proceedings at an anterior point of time. Contending so, the learned Advocate General has submitted that the writ petition is premature in nature and is liable to be dismissed on that ground itself.

12.2. Projecting the case of the State, learned Advocate General has submitted that the State Government has a mandate to provide road safety to all and to reduce road fatalities. To achieve such objectives, better and qualitative fitness test for vehicles is the first and foremost requirement. Emphasis has been made in the governing statutes for a Certificate of Fitness by a Transport Vehicle from time to time. The State registers 5.20 lakhs [approx.] nos. of vehicles every year out of which 9% [approx.], that is, 47,000 [approx.] vehicles are commercial vehicles. By referring to the statistics given in the counter affidavit, he has submitted that the total vehicles available and registered in the State of Assam till March, 2019 was 37.10 lakhs [approx.] and the total number of commercial vehicles were around 3,33,090 [approx.]. There are only 44 nos. of Motor Vehicle Inspectors [MVIs] in Assam to check fitness of these large nos. of commercial vehicles and the number of MVIs are, thus, grossly inadequate as these MVIs are also required to check the other vehicles, accident cases and other transport related departmental and administrative works connected to transport and field works. That apart, the District Transport Offices are having space constraints and most of these offices are operating from rented houses with more space constraints and as a result, the vehicles are normally inspected on the roadsides. Since a Certificate of Fitness of a Transport Vehicle is relatable to safety of public at large, the State Government had considered the matter of outsourcing about issuance of Certificate of Fitness. In view of the fact that the MV Act, 1988 has provisions for outsourcing such services and following a resolution taken in a meeting of Group of Ministers at all India level the State Government considered the matter of granting approval to the respondent ASTC, a statutory Road Transport Corporation under the RTC Act, 1950 under Section 19 thereof.

12.3. He has submitted that after considering all the aspects and taking into account the infrastructure and manpower including skilled mechanics and engineers available with the respondent ASTC, the State Government took the decision to allow it to set up Authorized Testing Stations to issue Certificate of Fitness, subject to compliance of all the statutory requirements. While arriving at the decision to grant or not to grant approval under Section 19 of the RTC Act, 1950, the State Government took into consideration the facts that the respondent Corporation has 49 nos. of qualified Automobile Engineers from the ranks of Assistant Engineer up to Chief Engineer; 36 nos. of Foreman; 420 nos. of Skilled Mechanics; and 21 nos. of Mechanic Helpers and has one Central Workshop; 4 nos. of Divisional Workshops and 14 nos. of Maintenance Centres. Having reached a satisfaction on that basis, the respondent Corporation has been allowed to foray into the activity of operating the Authorized Testing Stations after following due procedure and meeting the statutory norms. The State Government is of the view that with availability of more Authorized Testing Stations vis-à-vis inadequate strength of MVIs, would provide easy access and better facilities for quality fitness test for vehicles which would, in turn, improve the road safety scenario.

12.4. As regards the letter dated 28.12.2018 of the Commissioner of Transport, Assam is concerned, it is submitted that by the said letter, the respective Registering Authority, that is, the DTO has only been informed to the effect that the respondent ASTC is going to set up Authorized Testing Stations in each of the districts of Assam pursuant to the Notification dated 17.12.2018. The DTOs have been requested to take necessary steps for early implementation of the project in consultation with the District Information Officer, National Informatics Centre [NIC] with the further request to furnish the Head of Account. From the contents of the letter dated 28.12.2018, it cannot be perceived that it contains a dictate for the respective Registering Authority to grant a Letter of Authority in Form 39 invariably without exercise of the independent statutory power by the Registering Authority conferred on it.

12.5. On the events subsequent to the Notification dated 17.12.2018, it is submitted by Mr. Roy, learned Standing Counsel, ASTC that pursuant to the approval granted by the Transport Department to foray into the activity of operating Authorized Testing Stations, the respondent ASTC took steps for setting up Authorized Testing Stations by filing applications in Form 40 of the CMV Rules, 1989 with the respective Registering Authority in 6 [six] of the districts of Assam. The Registering Authorities of the respective district have been requested to issue username and password for log in to 'Vahan' in favour of the designated officials of the ASTC so that the Authorized Testing Stations can be operated.

12.6. While contending that the issue of conflict of interest is not required to be gone into at the present proceedings in view of the observations already made by the Division Bench on Reference, the learned Advocate General has fairly admitted that provision permitting the ASTC in previous Notification dated 11.01.2018 and the subsequent Notification dated 17.12.2018 to realize service charges are similarly worded and that part of the Notification dated 11.01.2018 is also set aside by the Judgment and order dated 27.09.2018 delivered in the writ petition, W.P.[C] no. 1395/2018.

13. I have duly considered the submissions made by the learned counsel for the parties and have also perused the materials brought on record by the parties through their respective pleadings. I have also gone through the decisions cited at the Bar.

14. It appears appropriate, at this stage, to mention that the present writ petition was earlier heard and disposed of by a Judgment and Order dated

15.11.2019 rendered by a coordinate bench. In the Judgment and Order dated 15.11.2019, the coordinate bench did not agree with the conclusions arrived at by the learned single judge in the Judgment and Order dated 27.09.2018 rendered in the writ petition, W.P.[C] no. 1395/2018. In view of such differences in opinion, the coordinate bench by its Judgment and Order dated 15.11.2019 gave an opinion that the issue should be placed before the Hon'ble Chief Justice to refer it to a larger bench for a conclusive decision on the issue. As a result, the writ petition came to be placed before a Division Bench by way of Reference.

15. The coordinate bench in its Judgment and Order dated 15.11.2019 had, inter alia, observed as under :-

8. The aforesaid decision contained in the letter dated 20.11.2017 and 11.01.2018 was the subject matter of challenge in a writ petition, being WP(C) 1395/2018, instituted by certain other petitioners being Association of different bus owners. This Court vide judgment and order date 27.09.2018, had set aside the impugned communications. However, the Court had come to a finding that the ASTC was entitled to venture into any activity including the activity of undertaking an Authorized Testing Station and accordingly observed that there shall not be a bar on the part of the ASTC to make an appropriate application under Section 19 of the Act of 1950 and in such event, the State Government was directed to follow the procedure laid down in Section 19 and come to a findingas to whether to grant or not to grant such approval. The observations and considerations made in the aforesaid judgment would be taken up for discussion at a later stage.

15.1. After referring and considering the provisions contained in Section 2 and Section 19 of the RTC Act, 1950; Section 56 of the MV Act, 1988; Rule 62 and Rule 63 of the CMV Rules, 1989; and Rule 2, Rule 26, Rule 79 and Rule 87 of the Assam Motor Vehicle Rules, 2003 [hereinafter referred to as 'the Assam MV Rules, 2003', for short]; along with the observations made by the other coordinate bench in the Judgment and Order dated 27.09.2018 passed in the writ petition, W.P.[C] no. 1395/2018, the second coordinate bench had gone on to observe in the Judgment and Order dated 15.11.2019 in the following manner :-

22. The aforesaid observation of the learned Single Judge is required to be examined from the point of view of the statute holding the field. The statements of objects and reasons of the Road Transport Corporation Act of 1950 are to provide efficient, adequate, economical and properly coordinated system of road transport service. Road transport service itself has been defined in Section 2 [e] of the said Act to mean a service carrying passengers or goods or both by road in vehicles for hire or reward. 'Ancillary Service' as defined in Section 2 [a] is to mean subsidiary service which provides amenities or facilities to persons making use of any road transport service of a Corporation. Though various powers have been vested with the Corporation by Section 19 including to provide for Ancillary Service under Section 19 [1] [b] or even other things to facilitate the proper

carrying on of the business of the Corporation under Section 19 [2][m], this Court is unable to agree with the conclusion that the activity of running an Authorized Testing Station would either be an Ancillary Service or a thing to facilitate the proper carrying on of the business of the Corporation. If a conclusion is arrived that there is no such power on the part of the Road Transport Corporations [ASTC herein], the requirements of further adjudication will not arise. It may be mentioned on the basis of the observation made by the learned Single Judge in the earlier judgment that ASTC was entitled to venture into the activity of operating an Authorized Testing Station.

23. In view of the aforesaid discussion and the fact that the finding of the learned Single Judge in the judgment and order dated 27.09.2018 is unable to be agreed upon by this Court with regard to the observation that ASTC is entitled to carry on the business of running an Authorized Testing Station, this Court is of the opinion that the issue may be placed before the Hon'ble Chief Justice to refer it to a larger Bench for a conclusive decision on the issue.

16. The Division Bench when the matter reached before it by way of Reference, had found the salient point for determination to be as to whether under the scheme of the RTC Act, 1950; the MV Act, 1988; the CMV Rules, 1989; and the Assam MV Rules, 2003; the ASTC can venture into the activity of operating an 'Authorised Testing Station' and/or whether there was any legal embargo for the ASTC to foray into the said activity for the purpose of issuance or renewal of a Certificate of Fitness to a Transport Vehicle. The Division Bench confined itself on the issue as to whether it was legally permissible for an entity like the ASTC to do activity as an operator of an Authorised Testing Station and whether there was legal embargo forbidding the ASTC to venture into the said activity. To answer the Reference, the Division Bench inter alia considered the provisions of [a] Section 18 and Section 19 of the RTC Act, 1950, more particularly, Section 19[2][m] and Section 19[3][i] thereof; [b] Section 56 of the MV Act, 1988; [c] Rule 63 and Form 39/40 of the CMV Rules, 1989; and [d] Rule 26 of the Assam MV Rules, 2003; along with others.

16.1. After an elaborate discussion and recording its reasons, the Division Bench had answered the Reference by its Judgment dated 02.02.2021 in the following terms :-

24. For the foregoing reasons, we have no hesitation to hold that clause (m) of sub-section [2] of section 19, not clause [i] of sub-section [3] of Section 19, of the Transport Corporations Act, empowers ASTC, being a Corporation established under Section 3 of the said Act, to venture or foray into the activity of operating an authorised testing station for the purposes of Section 56 of the 1988 Act subject, however, to prior approval of the State Government as well as subject to entitlement to letter of authority in terms of Rule 63 of the Central Rules. The words 'to do all other things' in clause [m] of sub-section [2] of section 19 of the Transport Corporations Act would take within its fold the activity of ASTC to operate 'Authorised Testing Station' and the word 'business' therein cannot be

given a meaning by restricting it to business relatable to 'road transport services' and 'ancillary service', so defined in the said Act. No legal embargo is discerned or perceived prohibiting ASTC from operating Authorised Testing Station, after the grant of Letter of Authority in accordance with law.

25. The reference stands accordingly answered. Registry is directed to place the matter before the appropriate Bench for consideration of the writ petition on its factual matrix.

17. The Judgment dated 02.02.2021 rendered by the Division Bench on Reference in the present writ petition, that is, W.P.[C] no. 167/2019 had been assailed before the Hon'ble Supreme Court of India by the petitioner no. 2 herein in a special leave to appeal being SLP [C] no. 2820/2021. When the SLP [C] no. 2820/2021 was listed for hearing on 25.02.2021, the Hon'ble Supreme Court of India recorded its disinclination to interfere with the Judgment dated 02.02.2021 made by the Division Bench on Reference and dismissed the special leave petition accordingly. As a result of such dismissal, the decision rendered by the Division Bench on Reference is to be held to have attained finality and is binding.

18. The preliminary objection from the respondents' sides is with regard to the maintainability of the writ petition including locus standi of the petitioners. The objection on locus was also raised from the respondents' sides earlier. The co-ordinate Bench in the Judgment and Order dated 15.11.2019, rendered earlier, negated the said objection regarding locus of the petitioners on the premise that the present litigation was a continuation of the earlier writ petition, W.P.[C] no. 1395/2018, such objection could not be sustained and be a hurdle in determination of the lis. The principles of res judicata is engrafted in Section 11 of the Code of Civil Procedure, 1908 and it bars the court from deciding issues which have been directly or indirectly in issue in an earlier proceeding between the same parties or parties claiming under the same title and have been finally decided. It is well established that the principles of res judicata, which Section 11 of the Code of Civil Procedure, 1908 embodies, are also applicable to writ petitions under Article 226 of the Constitution of India. It is held in Satyadhyan Ghosal and others vs. Deorjin Debi [Smt] and another, reported in AIR 1960 SC 941, that the principle of res judicata applies also as between two stages in the same litigation to the extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. Reiterating the said principle, it is held in U.P. State Road Transport Corporation vs. State of U.P. and another, reported in [2005] 1 SCC 444, that the principle of res judicata is based on the need of giving a finality to judicial decisions. The principle which prevents the same case being twice litigated is of general application and is not limited by the specific words of Section 11 of the Code of Civil Procedure in this respect. For the above reasons, the objection of maintainability of the writ petition including lack of locus of the petitioners is not accepted.

19. For the purpose of further deliberation and also in order to appreciate the rival submissions of the parties, it appears necessary to quote the provisions contained in Section 56 of the MV Act, 1988 and Rule 63 of the CMV Rules, 1989 herein below.

19.1. As mentioned hereinabove, Section 56 of the MV Act, 1988 has provided for Certificate of Fitness of Transport Vehicles and it reads as under :-

Section 56 - Certificate of Fitness of Transport Vehicles -

[1] Subject to the provisions of Sections 59 and 60, a Transport Vehicle shall not be deemed to be validly registered for the purposes of Section 39, unless it carries a Certificate of Fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an Authorised Testing Station mentioned in sub-section [2], to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder:

Provided that where the prescribed authority or The Authorised Testing Station refuses is issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.

[2] The "Authorised Testing Station" referred to in sub-section [1] means a vehicle service station or public or private garage which the State Government, having regard to the experience, training and ability of the operator of such station or garage and the testing equipment and the testing personnel therein, may specify in accordance with the rules made by the Central Government for regulation and control of such stations or garages.

[3] Subject to the provisions of sub-section [4], a Certificate of Fitness shall remain effective for such period as may be prescribed by the Central Government having regard to the objects of this Act.

[4] The prescribed authority may for reasons to be recorded in writing cancel a Certificate of Fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the Certificate of Registration of the vehicle and any permit granted in respect of the vehicle under Chapter V shall be deemed to be suspended until a new Certificate of Fitness has been obtained:

Provided that no such cancellation shall be made by the prescribed authority unless such prescribed authority holds such technical qualification as may be prescribed or where the prescribed authority does not hold such technical qualification on the basis of the report of an officer having such qualifications.

[5] A Certificate of Fitness issued under this Act shall, while it remains effective, be valid throughout India.

19.2. Chapter III of the CMV Rules, 1989 pertains to Registration of Motor Vehicles. Rule 62 to Rule 73 containing in Chapter III are relatable to Certificate of Fitness. Rule 62 is with regard to validity of a Certificate of Fitness providing inter alia that a Certificate of Fitness in respect of a Transport Vehicle granted under Section 56 of the MV Act, 1988 has to be in Form 38 and such Certificate of Fitness when granted or renewed shall be valid for a period [a] two years in respect of a new Transport Vehicle; [b] two years for vehicles upto eight years old and one year for vehicles older than eight years in case of renewal of a Certificate of Fitness in respect of Transport Vehicles. Rule 63 is with regard to regulation and control of Authorised Testing Stations and it reads, as it existed prior to the Central Motor Vehicles [Twenty First Amendment] Rules, 2021, as under :-

Rule 63 - Regulation and Control of Authorised Testing Stations -

[1] No operator of an Authorised Testing Station shall issue or renew a Certificate of Fitness to a Transport Vehicle under Section 56 without a Letter of Authority in Form 39 granted by the Registering Authority.

[2] An application for grant or renewal of a Letter of Authority under sub-rule [1] shall be made in Form 40 to the Registering Authority having jurisdiction in the area in which the service station or garage is situated and shall be accompanied by :-

[a] the appropriate fee as specified in Rule 81;

[b] a security deposit of 1 [Rupees one lakh] in such manner as may be specified by the State Government.

Explanation.— For the purpose of this rule and Rules 64 to 72, the Registering Authority means an officer not below the rank of the Regional Transport Officer of the Motor Vehicles Department established under Section 213.

[3] A Registering Authority shall, when considering an application for the grant or renewal of a Letter of Authority, have regard to the following matters, namely :—

[a] the applicant or at least one of the members of the staff employed by him for the inspection of transport vehicles for the purpose of issue or renewal of Certificate of Fitness possesses the following minimum qualifications :—

[i] a three years diploma in automobile engineering or mechanical engineering or an equivalent qualification;

[ii] experience of minimum service of five years in an automobile workshop undertaking repairs of heavy goods vehicles, heavy passenger motor vehicles, medium motor vehicles and light motor vehicles;

[iii] a driving licence to drive motor cycle, heavy passenger motor vehicle and heavy goods vehicle with a minimum driving experience of not less than five years;

[iv] thorough knowledge of the Act and the rules made thereunder, especially the Chapters relating to registration of motor vehicles and construction, equipment

and maintenance of motor vehicles;

[b] the premises where the Authorised Testing Station is to be housed is either owned by the applicant or is taken on lease by him or is hired in his name and it has 2 [minimum of one acre of land] for administrative section, reception room and sanitary block and space for erection of testing equipments and other apparatus;

[c] inspection lanes are provided adjacent to the building in the same compound or at other places approved by the Registering Authority;

[d] testing equipments and apparatus are installed in such manner that vehicles may pass through with ease and speed;

[e] the applicant maintains in good condition, the equipment and apparatus for undertaking test pertaining to exhaust gas, engine tuning, engine analysis, smoke emission, brake system, head-lights, wheel alignments, compressors, speedometers and other like components;

[f] the financial resources of the applicant are sufficient to provide for its continued maintenance;

[g] the applicant maintains an up-to-date copy of the Act, these Rules and the concerned State Motor Vehicles Rules.

[4] The Registering Authority shall also, when considering an application under this rule, take into consideration the fact that the setting up of the Authorised Testing Station will improve the availability of testing facilities in the area both in relation to the number of vehicles and proximity to such facilities.

[5] The Registering Authority may, on receipt of an application under sub-rule [2] and after satisfying himself that the applicant has complied with the requirements of sub-rules [3] and [4], grant or renew the Letter of Authority in Form 39 :

Provided that no application for a Letter of Authority shall be refused by the Registering Authority unless the applicant is given an opportunity of being heard and reasons for such refusal are given in writing by the Registering Authority.

20. The matter of issuance of Certificate of Fitness is provided in Rule 26 of the Assam MV Rules, 2003. As per Rule 26[i], a Certificate of Fitness is to be issued or renewed on receipt of an application to the Motor Vehicle Inspector through the Registering Authority at least 30 days ahead of the expiry of the Certificate of Fitness in Form no. 21 and Form no. 21[A], as the case may be, by the officer of the Transport [Motor Vehicle] Department not below the Rank of the Motor Vehicle Inspector or an Authorised Testing Station, having a Letter of Authority issued under sub-section [2] of Section 56 of the MV Act, 1988 read with Rule 63 of the CMV Rules, 1989 in Form 39 as prescribed in the CMV Rules to the effect the vehicle complies with all the requirements of the MV Act, 1988 and the rules made thereunder together with the type of vehicle inspected. The Certificate of

Fitness issued by the Motor Vehicle Inspector is to be countersigned by the DTO and the DTO has to keep a record of each Certificate of Fitness issued. It further provides that where the authority prescribed for issuance or renewal of the Certificate of Fitness refuses to issue such Certificate of Fitness, then such authority has to furnish the owner of the vehicle with his reasons in writing for such refusal in Form no. 21[C]. Rule 26[ii] has inter alia prescribed that a Certificate of Fitness can be issued to a vehicle only at the office of the DTO where the vehicle is either registered or recorded.

21. It is also necessary to have a look at the format provided in Form 40, appended in the CMV Rules, 1989, by which an applicant has to apply for grant or renewal of Letter of Authority in terms of Rule 63[2] of the CMV Rules, 1989. The prescribed format provided in Form 40 is as under :-

FORM 40

[See rule 63 (2)]

APPLICATION FORM FOR GRANT OR RENEWAL

OF LETTER OF AUTHORITY

To

The Registering Authority,

....

....

I/We.................... address .... hereby submit the following information, namely: -

1. Name of the applicant

2. Son/wife/daughter of

3. Address (proof to be enclosed)

4. Qualification of the applicant

5. Experience in automobile workshop

6. Whether involved/connected directly or indirectly in transport business

7. Machinery and equipment

8. Staff engaged in different cadres: -

[i] Manager

[ii] Foreman

[iii] Mechanic

[iv] Helpers

[v] Other administrative staff

9. Particulars of a person as required under clause [a] of sub-rule [3] of Rule 63 of the Central Motor Vehicles Rules

[a] Name

[b] Age

[c] Qualification in automobile engineering [d] Actual experience in automobile workshop [e] Name of firm with full address

[f] Driving experience of various types of transport - [i] Driving licence number

[ii] Issued by [iii] Date of issue [iv] Type of vehicle

[v] Period of validity of driving licence [vi] Endorsement on driving licence, if any

10. Proof of land owned by or hired by the applicant

11. Whether garage is equipped with following facilities: -

[i] Water supply

[ii] Electricity

[iii] Toilet

[iv] Rest room

12. Sources of finance

13. If application is for the renewal of letter of authority, furnish following particulars, namely: --

[i] Number of existing letter of authority

[ii] Date of issue

[iii] Period of validity

[iv] If application is not submitted within time, state the reasons

[v] Whether letter of authority suspended/ cancelled/ surrendered earlier. Further details

14. I hereby solemnly declare that the information given above is true and correct. Further, I hereby declare that I shall abide by the rules, regulations and conditions attached to the letter of authority and as prescribed in the Motor Vehicles Act, 1988, and the Central Motor Vehicles Rules, 1989.

Dated

Signature of the Applicant

22. Subsequent to the judgment and order dated 27.09.2018 rendered in the writ petition, W.P.[C] no. 1395/2018, the respondent Corporation through its Managing Director submitted a proposal before the State Government in the Transport Department on 02.11.2018 vide Ref no. ASTC/HO/FC/1582/17/0683 dated 02.11.2018 to accord approval to it under the provision of Section 19 of the RTC Act, 1950 to undertake the activity of operating Authorised Testing Stations in each of the districts of Assam. By referring to the statutory requirement envisaged under Section 19 of the RTC Act, 1950 to obtain approval and the observations made in the Judgment and Order dated 27.09.2018 [supra], the respondent Corporation apprised the State Government that in the Judgment and Order dated 27.09.2018 [supra], it was observed there is an entitlement of the respondent Corporation to venture into the activity of operating an Authorised Testing Station, subject to an approval for the same by the State Government which is a statutory requirement under Section 19 of the RTC Act, 1950. The proposal had also made mention of the observations made in the Judgment and Order dated 27.09.2018 [supra] to the effect that in the event the respondent Corporation would submit such a proposal/application, the authorities in the State Government shall strictly follow the procedure required under Section 19 of the RTC Act, 1950 and shall arrive at its conclusion as to whether to grant or not to grant such approval.

22.1. In the proposal so submitted on 02.11.2018, the respondent Corporation highlighted the fact of its establishment as a Road Transport Corporation under Section 3 of the RTC Act, 1950 as a State Government Undertaking and a Public Utility Service. The respondent Corporation had apprised about the decision taken by the Management of the respondent Corporation implementing various activities to uplift its financial position. It was mentioned that the ASTC was desirous to undertake the activity of operating Authorised Testing Stations and for that purpose, decision was taken by the Management to open/establish Authorised Testing Stations in all districts of Assam under the provisions of the MV Act, 1988 and the CMV Rules, 1989 for running the business of issuance of Certificate of Fitness to commercial Transport Vehicles / any other vehicles including the ASTC vehicles and the vehicles operating under the banner of ASTC.

22.2. In the proposal so submitted, the details of the infrastructure possessed by the ASTC were mentioned. It was mentioned that the ASTC owned/possessed land and building with stations, workshops and maintenance centres in all districts throughout the State of Assam. It was stated that the Corporation had sufficient experienced manpower, staff, qualified technical officers, artisans including automobile engineers, etc. to be engaged in different cadres such as Manager, Foreman, Mechanic, Helper and other administrative staff, etc. as would be required for operation of such Authorised Testing Stations under the relevant Acts and the Rules. The State Government was apprised that the Corporation had sufficient space and infrastructure, machinery and equipment available at its workshops/stations and maintenance centres to carry out the business of Authorised Testing Stations in each district of Assam. In support of its claim regarding availability of personnel to operate Authorised Testing Stations, a list of ASTC Engineers and other staff at different locations was attached as Enclosure–A with the proposal. It was apprised that after receipt of approval from the State Government under Section 19 of the RTC Act, 1950, the Corporation would carry out all the formal steps and works strictly as required to be done before the concerned competent authorities as per the provisions of the MV Act, 1988 and the CMV Rules, 1989 for the purpose of obtaining the Letter of Authority for establishment of the Authorised Testing Stations in all districts of Assam.

23. It was after receipt of the above proposal from the respondent Corporation on 02.11.2018, the State Government in the Transport Department in exercise of the powers conferred on it by Section 19 of the RTC Act, 1950 accorded approval to the respondent ASTC vide the impugned notification dated 17.12.2018 to operate Authorised Testing Stations in each district of Assam. The contents of the impugned notification dated 17.12.2018 have already been mentioned in paragraph 2 hereinabove.

24. It can be easily seen from the format provided in Form 40 that to operate an Authorised Testing Station, the applicant has to provide information required by different clauses therein. Apart from the general details, information is to be provided in respect of [a] machinery and equipment [under Clause 7]; [b] staff engaged in different cadres : [i] Manager, [ii] Foreman, [iii] Mechanic, [iv] Helpers, and [v] other administrative staff [under Clause 8]; [c] Proof of land, owned or hired [under Clause 10]; [d] whether the garage is equipped with facilities of : [i] water supply, [ii] electricity, [iii] toilet, and [iv] restroom [under Clause 11]; [e] sources of finance [under Clause 12], etc. It is also the statutory requirement, as per Form 40, to provide particulars of a person under Clause [a] of sub-rule [3] of Rule 63 of the CMV Rules, 1989. The Division Bench in its judgment dated 02.02.2021 has already held that Clause [m] of sub-section [2] of Section 19 of the RTC Act, 1950 has empowered the ASTC, being a Corporation established under Section 3 of the said Act, to venture or foray into the activity of operating an Authorised Testing Station for the purposes of Section 56 of the MV Act, 1988, subject to prior approval of the State Government as well as subject to entitlement to a Letter of Authority in terms of Rule 63 of the CMV Rules, 1989.

25. When a proposal is received from an applicant like the respondent ASTC under Section 19 of the RTC Act, 1950, the State Government is obligated to look into the proposal carefully and to consider the same by taking into account the statutory framework within which a Road Transport Corporation like the respondent ASTC can be permitted and under which an Authorised Testing Station so contemplated, is required to operate. It is also incumbent on the part of the State Government to examine and to arrive at a prima facie satisfaction as to whether the applicant [for example, the ASTC in the case in hand] can be permitted under the RTC Act, 1950 to venture or foray in the activity of operating

an Authorised Testing Station and also to a certain extent that if permitted, whether it has the wherewithal of meeting the requirements of being granted a Letter of Authority by the competent authority to operate an Authorised Testing Station. For the said purpose, there is also requirement to look into the provisions of Section 19 of the RTC Act, 1950; Rule 63 of the CMV Rules, 1989; and Section 56 of the MV Act, 1988. In the backdrop of the previous litigation, there was necessity to look into the Judgment and Order dated 27.09.2018 rendered in the writ petition, W.P.[C] no. 1395/2018 as well the other preceding events. The Notification dated 17.12.2018 has recorded that it was after careful perusal and examination of the above vis-à-vis the proposal, the Governor of Assam in exercise of the power conferred under Section 19 of the RTC Act, 1950 is pleased to accord approval to the respondent ASTC to operate Authorised Testing Stations in each district of Assam with the further condition that the respondent ASTC would follow the procedure as prescribed under Rule 63 of the CMV Rules, 1989 and Section 56 of the MV Act, 1988. It may be mentioned that prior to accord of such approval by the Notification dated 17.12.2018, the issue whether the respondent ASTC can venture or foray into the activity of operating an Authorized Testing Station under Section 19[2][m] of the RTC Act, 1950 had received judicial imprimatur. It is in such background, the assailment made by the petitioners herein to the Notification dated 17.12.2018 to the effect that the State Government while granting the approval vide the Notification dated 17.12.2018, has dealt with and rendered findings on the issue of qualification and eligibility of the respondent Corporation to operate the activity of an Authorised Testing Station, which has the effect of influencing the independent decision-making power vested in the Registering Authority under Rule 63 of the CMV Rules, 1989 to issue a Letter of Authority for operating the activity of an Authorised Testing Station is to be examined.

26. In The Purtabpure Co. Ltd. [supra], the Cane Commissioner, Bihar made an order reserving certain villages in favour of the appellant under Clause 6[1][a] of the Sugar Cane [Control] Order, 1966. For two seasons : 1964-1965 and 1965-1966, the fifth respondent challenged the validity of the order of the Cane Commissioner in the High Court, but the case was adjourned. Later, both parties made representations to the Chief Minister and the Cane Commissioner, who recommended to the Chief Minister against interfering with the reservation already made. The Chief Minister directed the Cane Commissioner to divide the area into two portions and allot one portion to the fifth respondent. On the basis of that direction, the Cane Commissioner made the orders. The Hon'ble Supreme Court has noted that the Cane Commissioner was of a definite view earlier that the reservation made in favour of the appellant should not be disturbed with. But, the Chief Minister did not agree with that view. The Hon'ble Supreme Court has observed that it was clear from the documents before it that the Chief Minister directed the Cane Commissioner to divide the reserved area into two portions and allot one portion to the fifth respondent. Pursuant to such direction, the Cane Commissioner merely carried out the orders of the Chief Minister

though the orders were issued in the name of the Cane Commissioner. The Hon'ble Supreme Court of India has held that the impugned orders though purported to have been made by the Cane Commissioner were, in fact, made by the Chief Minister and they were invalid. It has been held that the power exercisable by the Cane Commissioner under Clause 6[1] is a statutory power and he alone could have exercised that power. While exercising that power, the Cane Commissioner could not have abdicated his responsibility in favour of anyone - not even in favour of the State Government or the Chief Minister. The interference of the Chief Minister with the functions of the Cane Commissioner had been held to be improper.

27. The principles deducible from the decision in The Purtabpure Co. Ltd. [supra] is that the authority which has been conferred with the specific power by a governing statute to pass a particular order, can alone pass such an order and no other person, even a superior authority, can interfere with the functioning of such a statutory authority. If any decision is taken by a statutory authority at the behest of a person who has no statutory role to play, the same would be illegal. It is also to be borne in mind that a decision is an authority for what it decides and not what can be logically deduced therefrom and even a slight distinction in fact or an additional or different fact may make a lot of difference in the decision-making process. The Constitution of India envisages a rule of law and all the constitutional and statutory functionaries are required to function and discharge within the constitutional limits. The RTC Act, 1950; the MV Act, 1988; the CMV Rules, 1989; and the Assam MV Rules, 2003 are laws made in relation to motor vehicles and matters relatable and ancillary to them. If any of the said statutes mentions an authority who would exercise a certain power, then such authority being a statutory authority, is bound to act strictly in terms of the provisions of the statute and it cannot act in derogation of the powers so conferred or cannot bypass or ignore the procedure laid down for exercise of such power. Thus, the legal proposition is that the authority which has been conferred with the competence under the statute alone can pass the order. In view of the democratic set up envisaged by the Constitution, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be termed as illegal. As a corollary, it can be said that an authority vested with the power to act under the statute alone should exercise its independent judgment following the procedure prescribed therein and any interference on the part of an authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law as it violates the constitutional scheme.

28. In the case in hand, the legal position which has attained finality is that as per clause [m] of sub-section [2] of Section 19 of the RTC Act, 1950, the respondent ASTC can venture or foray into the activity of operating an Authorised Testing Station for the purposes of Section 56 of the MV Act, 1988, only with the prior approval of the State Government. Thus, prior approval of the State Government is a condition precedent for the respondent ASTC to venture

or foray into the activity of operating an Authorised Testing Station. The approval accorded by the State Government vide the Notification dated 17.12.2018 is to a decision of the respondent ASTC contained in the proposal submitted on 02.11.2018 to venture or foray into the activity of operating an Authorised Testing Station. In Black's Law Dictionary, 5th Edition, the word, 'approval' has been explained as : Approval – the act of confirming, ratifying, assenting, sanctioning, or consenting to some act or thing done by another. A statutory act of acceptance of approval under Section 19[2][m] of the RTC Act, 1950 requires consideration of such a proposal with due application of mind on the part of the authority to arrive at a conscious decision on the issue whether to grant approval or not to grant approval on the basis of the materials presented before it and by taking into account the extant provisions of law. When it involves a decision to grant or not to grant prior approval to the ASTC to venture or foray into the activity of operating Authorised Testing Stations for issuing Certificate of Fitness to Transport Vehicles, the empowered authority definitely has to take into consideration all the relevant statutory provisions regulating such activity vis-à-vis the credentials of the ASTC to fulfill the relevant criteria and to comply the statutory prescription or else, the exercise might result in an exercise in futility. The impugned notification dated 17.12.2018, in the considered view of the Court, has reflected consideration of the proposal qua the extant provisions of law relating to an Authorised Testing Station on the part of the authority for reaching a prima facie satisfaction that the respondent ASTC has the necessary ability and wherewithal to venture or foray into the activity of operating an Authorised Testing Station. Such reflection of prima facie satisfaction by the State Government about the ability of the respondent ASTC as an applicant, who is likely to venture or foray into the activity of operating an Authorised Testing Station is at the stage of exercise of statutory power vested in it under Section 19[2][m] of the RTC Act, 1950 and within the zone given to it by the statute. Thus, the observations made therein which are inevitable, cannot, by any stretch, be held to be a direction to the Registering Authority, that is, the District Transport Officer [DTO], who is statutorily empowered under Rule 63 of the CMV Rules, 1989 to issue or not to issue a Letter of Authority on an application to be submitted by the respondent ASTC in Form 40 at a future date for operating an Authorised Testing Station with the exercise of his independent judgment by taking into consideration the matters germane for it. It is demonstrable from the Notification dated 17.12.2018 itself that the prior approval has been accorded, subject to the clear condition that the respondent ASTC has to proceed further by following the procedure prescribed under Section 56 of the MV Act, 1988 and Rule 63 of the CMV Rules, 1989, thus, leaving no semblance of doubt for the Registering Authority to exercise its own independent judgment at the time of consideration of the application to be submitted by the respondent ASTC, at a future date as per the prescribed procedure for grant or refusal of a Letter of Authority.

29. The contention of the petitioners does not deserve acceptance also for the

reason that the Registering Authority under Rule 63 of the CMV Rules, 1989 is yet to consider the applications submitted by the respondent ASTC in Form 40 on 27.12.2018 for grant of Letter of Authority for operating Authorised Testing Stations at 6 [six] locations viz. Cachar, Kamrup [Metro], Darrang, Kamrup [Rural], Nagaon and Jorhat districts [vide Annexure-2, Annexure-3, Annexure-4, Annexure-5, Annexure-6, Annexure-7 & Annexure- 8 to the affidavit-in-opposition filed by the respondent nos. 3 & 4] and to pass final orders on such applications granting either the Letter of Authority in Form 39 or refusing it. Thus, the legal proposition observed in The Purtabpure Co. Ltd. [supra] is found not applicable to the case in hand as it is not possible to conclude that the Registering Authority has acted in a particular manner at the behest of the State Government. A look at sub-rule [3] of Rule 63 of the CMV Rules, 1989 goes to show that it has enumerated the criteria which the Registering Authority has to take into account while considering an application for grant of a Letter of Authority and to a large extent, those criteria are objective in nature in respect of which the Registering Authority has to form its independent opinion as to whether the applicant fulfills the above objective criteria. Sub-rule [4] of Rule 63 would require the Registering Authority to take into consideration while considering an application for grant of a Letter of Authority, the aspect as to whether the setting up of the Authorised Testing Station would improve the availability of testing facilities in the area both in relation to the number of vehicles and proximity to such facilities. Thus, the Registering Authority as the statutory authority who is vested with the power to grant or to refuse a Letter of Authority, has to act strictly within the four corners in terms of the procedure so prescribed, in an independent manner. As the fact situation obtaining in the case has not reached to the position of grant or refusal of a Letter of Authority by the Registering Authority under Rule 63[5] of the CMV Rules, 1989, this Court is of the clear view that the petitioners have jumped the gun here by instituting the instant writ petition before the proper time, that is, prior to the exercise of the statutory power by the Registering Authority under Rule 63 of the CMV Rules, 1989.

30. In the applications dated 27.12.2018 submitted in Form 40 by the respondent ASTC to the respective DTOs as the Registering Authority, it is noticed that a request has been made to the said authority to issue an user name and a password to log-in to Vahan to enable it to operate the Authorised Testing Station. It is averred by the respondent ASTC that the data collected during the fitness test by the ASTC would be transmitted to the DTOs through the software, Vahan as the Certificate of Fitness which would be issued by an Authorised Testing Station, would require counter signature by the Registering Authority through the software, Vahan. It is only after counter signature of the Certificate of Fitness by the Registering Authority, the same can be downloaded and handed over to the vehicle owner in compliance of Rule 26 of the Assam MV Rules, 2003. It is averred that the software also has on-line system to intimate every step progress intimation to the vehicle owners till handing over of the

Certificate of Fitness. The matter of submission of the applications in Form 40 on 27.12.2018 was also intimated to the Commissioner of Transport, Assam on the same date and the Communication dated 28.12.2018 sent by the Commissioner of Transport, Assam was clearly a consequential process of such intimation. By the Communication dated 28.12.2018, the DTOs were informed that pursuant to the Notification dated 17.12.2018, the respondent ASTC was going to set up Authorised Testing Stations and necessary steps were asked to be taken in consultation with the District Information Officer, NIC for early implementation of the project by furnishing the Head of Account for deposit of fees, fines, etc. The action sought from the DTOs by the Communication dated 28.12.2018 is not an action which is a part of the decision-making process for grant or refusal of a Letter of Authority under Rule 63 of the CMV Rules, 1989 for the DTO as a Registering Authority. Thus, the contention of the petitioner to the effect that the text and tenor of the Communication dated 28.12.2018 had projected a picture of fait acompli cannot be countenanced and the same is rejected.

31. A submission is also advanced from the end of the petitioners that during the pendency of the writ petition, the Central Government in exercise of the powers conferred by Section 56 of the MV Act, 1988, have amended the CMV Rules, 1989 by the Central Motor Vehicles [Twenty First Amendment] Rules, 2021 [hereinafter referred to as ‘the CMV [Amendment] Rules, 2021’, for short]. With the publication of the CMV [Amendment] Rules, 2021 in the Gazette of India vide a Notification no. G.S.R. 652[E] dated 23.09.2021, they have come into force w.e.f. 25.09.2021. By Rule 2 thereof, a new sub-rule [6] has been inserted after sub-rule [5] of Rule 63 in the CMV Rules, 1989. As per the newly inserted sub-rule [6] of Rule 63, notwithstanding anything contained in Rule 63, the recognition, regulation and control of Automated Testing Station, for the purpose of Section 56 of the MV Act, 1988, shall be as per Chapter XI of the CMV Rules, 1989, as amended. The definition of ‘Automated Testing Station’ is provided in Section 174[1][ii] of Chapter XI of the MV Act, 1988, as amended, and Section 175 contained in new Chapter XI has provided for registration procedure for Automated Testing Station. It is also submitted that clause [b] of sub-rule [1] of Rule 62 has come to be substituted by the Central Motor Vehicles [Eighth Amendment] Rules, 2022 [hereinafter referred to as ‘the CMV [Amendment] Rules, 2022’, for short], notified by a Notification no. G.S.R. 272[E] dated 05.04.2022. It is further submitted that with the coming into force of the CMV [Amendment] Rules, 2022 on and from 05.04.2022, that is, on and from the date of its publication in the Gazette of India, it has become mandatory to get a Certificate of Fitness in respect of Transport Vehicles only through a registered Automated Testing Station. By reference to different provisions contained in the CMV [Amendment] Rules, 2021 and the CMV [Amendment] Rules, 2022, it is, thus, submitted on behalf of the petitioners that with the coming into effect of these amended Rules, a wholly new regime for issuance of Certificate of Fitness as well as a Letter of Authority has been put in place and the applications submitted by the respondent ASTC on 27.12.2018 are to be considered in the

light of the CMV [Amendment] Rules, 2021 and the CMV [Amendment] Rules, 2022. It is urged that with the change the statutory provisions, the pending applications of the respondent ASTC for grant of a Letter of Authority cannot be considered as per the previous statutory provisions.

31.1. The above change in policy has taken place and the amendments in the statutory provisions, mentioned above, have been made during the pendency of the writ petition. Adjudication on the said aspects is found not necessary in the instant proceedings primarily for the reason that the challenge made in the instant writ petition is only limited to the Notification dated 17.12.2018. It is, therefore, not necessary to broaden the scope of the present lis by any adjudication on the applications dated 27.12.2018 submitted by the respondent ASTC qua the CMV [Amendment] Rules, 2021 and the CMV [Amendment] Rules, 2022 as these are events which would take place subsequent to the decision on the sustainability or otherwise of the Notification dated 17.12.2018.

32. At the cost of repetition, it is to be mentioned that the second ground of challenge of the petitioners is to that part to the Notification dated 17.12.2018 whereby it is specified that the respondent ASTC may realize service charge @ Rs. 300/- in respect of Light Motor Vehicles [LMVs] and @ Rs. 500/- in respect of Medium & Heavy Motor Vehicles [MMVs & HMVs], apart from the statutory fees prescribed by the Transport Department, Government of Assam, which should be deposited to the Government Exchequer. It is also pertinent to mention that in the earlier Notification dated 11.01.2018 also, which was the subject-matter of challenge in the writ petition, W.P.[C] no. 1395/2018, it was mentioned, in the similar manner, that the respondent ASTC could realize service charge @ Rs. 300/- in respect of Light Motor Vehicles [LMVs] and @ Rs. 500/- in respect of Medium & Heavy Motor Vehicles [MMVs & HMVs], apart from the statutory fees prescribed by the Transport Department, Government of Assam, which should be deposited to the Government Exchequer. As regards that part of the Notification dated 11.01.2018, the Court in the Judgment and Order dated 27.09.2018 had categorically observed while setting aside the Notification dated 11.01.2018 in its entirety, that prescription of fees would be a matter within the purview of Rule 63 of the CMV Rules, 1989 and it could not be a matter within the purview of Section 19 of the RTC Act, 1950. It was further observed that as to what fees were to be charged by the respondent ASTC in the event the respondent ASTC would ultimately be issued a Letter of Authority, had to be determined strictly in terms of Rule 81 of the CMV Rules, 1989.

32.1. The proviso to Rule 81 of the CMV Rules, 1989 has allowed the options to the State to levy fee lower than the amount specified in the Table and also levy additional amounts to cover the cost of automation and technology utilised for conducting the testing or providing value added services. The meaning of word in a statutory provision depends its text and context and also upon the object it seeks to achieve. Utilise is to make practical and effective use of something. The past tense and past participle of utilise is 'utilised'. The proposal submitted by the respondent ASTC before the State Government on 02.11.2018 did not contain anything which would indicate towards incurring of any cost towards automation and technology by the ASTC at that time or the ASTC contemplating to provide any value added services at the time of issue of Certificate of Fitness. In the absence of existence of circumstances, the act of the State Government permitting to realise service charges apart from the statutory fees is an act of putting the horse before the cart.

32.2. It is found that the above findings returned in respect of the realization of service charges by the respondent ASTC by the Judgment and Order dated 11.01.2018 had attained finality with no appeal being preferred by anyone including the State respondents assailing the same. Permitting realization of service charges by the respondent ASTC at the same rates in the similar manner by the subsequent Notification dated 17.12.2018 is clearly unsustainable in law.

32.3. It is also noticed that Rule 81 is part of Chapter III of the CMV Rules, 1989 and it has prescribed for fees to be charged for various matters including grant or renewal of Certificate of Fitness for motor vehicles, covered under the provisions of Chapter III. A Table has provided therein specifying the fees which shall be charged under the provisions of Chapter III. The proviso to Rule 81 has mentioned that the States may levy fee lower than the amount specified in the Table and may also levy additional amounts to cover the cost of automation and technology utilized for conducting the testing or for providing any value added service.

34. On the aspect of conflict of interest raised on behalf of the petitioners, by bringing reference to the entry at Serial no. 6 of Form 40, it is to be noted that the Division Bench in its Judgment dated 02.02.2021 rendered on Reference, has already expressed the view that considering the substantive provisions of Rule 63 of the CMV Rules, 1989, the same does not operate to restrain the ASTC to make application and to be entitled to for grant or renewal of a Letter of Authority. It has been further observed that like all other queries in Form 40 for the applicant to answer, the query at Serial no. 6 is likewise a relevant consideration to be gone into and the same cannot be read as imposing restrictions. As the issue has been deliberated in detail by the Division Bench on Reference in Paragraph 23 of the Judgment dated 02.02.2021 by holding that the respondent Corporation can be the owner and certifier at the same time and the same is a matter to be considered by the Registering Authority empowered under Rule 63 of the CMV Rules, 1989 at the time of consideration of the application of the respondent Corporation submitted in Form 40, there is no necessity for this Court to dilate on the same at an anterior point of time.

35. Summing up, the ground of challenge of the petitioners herein to first part of the Notification dated 17.12.2018 to the effect that the State Government empowered under Section 19[2][m] of the RTC Act, 1950 to accord prior approval to the ASTC permitting it to venture or foray into the activity of operating an Authorised Testing Station, has dealt with and rendered definitive

findings on the credentials of the ASTC to operate the activity of an Authorised Testing Station while granting such prior approval is found not sustainable for the reasons stated hereinabove and as such, the said challenge is answered in the negative against the petitioners, meaning thereby, there is no interference with the prior approval granted by the State Government vide Notification dated 17.12.2018 under Section 19[2][m] of the RTC Act, 1950. In so far as the ground of challenge to the second part of the Notification dated 17.12.2018 pertaining to permitting the ASTC to realize service charges at the rates mentioned therein apart from the statutory fees prescribed by the Transport Department, Government of Assam is concerned, the same is answered in the affirmative for the petitioners for the reasons assigned hereinabove. Consequently, that part of the Notification dated 17.12.2018 whereby the ASTC has been permitted to realize service charges @ Rs. 300/- in respect of Light Motor Vehicles [LMVs] and @ Rs. 500/- in respect of Medium & Heavy Motor Vehicles [MMVs & HMVs], apart from the statutory fees prescribed by the Transport Department, Government of Assam, is set aside and quashed.

36. With the findings arrived at and the interference made as above, the writ petition is partly allowed to the extent indicated. There shall, however, be no order as to cost.

