

(2011) 05 CAL CK 0123

In the Calcutta High Court

Case No : M.A.T. No. 1271 of 2009 with C.A.N. No. 10527 of 2009

Ramesh Kejriwal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 100
Essential Commodities Act, 1955 — Section 3

Citation : (2012) 3 CHN 37

Hon'ble Judges : Pinaki Chandra Ghose, J;Asim Kumar Ray, J

Bench : Division Bench

Advocate : L.K. Gupta and Samim UL Bari, for the Appellant;S.K. Mal and Bimalendu Das, for the Respondent

Final Decision : Dismissed

Judgement

Pinaki Chandra Ghose, J.—Instead of taking up the stay petition by consent of the parties, we take up the appeal. This appeal is directed against an order and/or judgment dated 26th August 2009 whereby the Hon"ble Single Judge considered the issue with regard to the authority of the respondent No. 7, as an agent of the respondent corporation, to collect samples of motor spirit and high speed diesel from the retail outlet of the petitioners for marker test. Relying on a decision of Tarun Kr. Halder and Ors. vs. State of West Bengal reported in 2009 (2) CHN page 689 His Lordship held that the point of law involved in the writ Petition being W.P. No. 1606 (W) of 2008 has already been decided in favour of the respondent corporation in the said decision and His Lordship was pleased to dismiss the writ Petition.

2. Being aggrieved this appeal has been preferred by the writ petitioner.

3. The facts of the case briefly are as follows:-

On 4th March, 1999, the writ petitioners entered into an agreement with the Bharat Petroleum Corporation Limited (hereinafter referred to as "BPCL") for the

purpose of running a retail outlet (commonly known as Petrol Pump). The writ petitioners obtained a licence under West Bengal Motor Spirit and High Speed Diesel (Licensing and Regulation of Supply) Order, 2000 for the said business. The writ petitioners as "dealer" are governed by the provisions of the Essential Commodities Act, 1955 and the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005.

4. On 20th December, 2007 one Sri Prosenjit Dutta, representative of SGS (India) Private Limited being the respondent No. 7 herein, came to the said retail outlet of the petitioners and describing himself as a representative of said respondent No. 7 as an authorized person of SGS (India) Private Limited claimed that he has right to draw sample under the law. It is also represented that he would draw sample from the nozzle attached to the machine of the said same petrol pump. Thereafter, he drew three samples from the Pump Nozzle out of which first one was of Petrol and second and third was of Diesel and thereafter he handed over a copy of its analytical report of the said samples to the representatives of the petitioners. The said sample test is commonly known as TT Sample.

5. It is the case of the writ petitioners that the samples were drawn and without handing over one sample to the petitioners, the said agency prepared the report and left the said retail outlet of the petitioners. Thereafter on 20th December, 2007 an order was issued on behalf of the BPCL and the petitioners was informed that the said agency has carried out marker test at the said retail outlet of the petitioner. It was further informed on behalf of the BPCL that as per the marker test at the said retail outlet of the petitioner the alleged result was positive and, further the sales and supplies of all products of the BPCL from the said retail outlet of the petitioner was suspended.

6. On 20th December, 2007 the officers of the BPCL also sealed the tanks and nozzles of the petitioner's said retail outlet. On 27th December 2007 the petitioners further received an order whereby writ petitioners was informed that the BPCL has scheduled for a further test of retail outlet/tank lorry sample at Budge Budge Laboratory on 28th December 2007 and the petitioners has been advised to remain present there at the time of testing of samples collected from his said retail outlet.

7. The petitioners has made a representation before the respondents concerned and prayed for withdrawal of the order of suspension of sales and supply of the product of the BPCL on the ground that SGS had no jurisdiction to do such marker test and the has been done in contravention of the guide line of the BPCL in cases of carrying out tests in the dealers outlet.

8. It is contended that the Central Government amended the Marketing Discipline Guidelines, 2005 (hereinafter referred to as the said guideline) and introduced Chapter 12 therein, which inter alia, provides for blending of marker and testing for markers at retail outlets. The Clause 4 of Chapter 12 of the said Marketing

Discipline Guidelines provides as follows:-

The Officials/Mobile labs of the Oil Companies and other agencies authorized/empowered to draw samples/inspect the retail outlets will have the power to carry out the Marker test at retail outlets. The Marker test can be carried out at any point of time and need not be only at the time of inspection.

9. The petitioner further states that Clause 4 of Chapter 12 of the said guidelines contravenes the Clause 7 of the Control Order, 2005.

10. It is further stated that in exercise of power conferred section 3 of the Essential Commodities Act, 1955, the Central Government promulgated the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005 (hereinafter to be referred as "the Control Order, 2005") vide Notification No. G.S.R. 729(E) dated 19th December 2005.

Clause 7(1) of the said Control Order, 2005 provides as follows:-

Any Gazetted Officer of the Central Government or a State Government or any police officer not below the rank of Deputy Superintendent of Police duly authorized, by general or special order or the Central Government or a State Government, as the case may be, or any officer of the oil company, nor below the rank of sales officer, may with a view to securing compliance with the provisions of this order, or for the purpose of satisfying himself that this order or any order made thereunder has been complied with or there is reason to believe that all or any of the provisions of this order have been and are being or are about to be contravened-

(a) enter and search any place or premises of a dealer, transporter, consumer or any other person who is an employee or agent of such dealer or transporter or consumer,

(b) stop and search any person or vehicle or receptacle used or intended to be used for movement of the product;

(c) take samples of the product and seize any of the stocks of the product and the vehicle or receptacle or any other conveyance used or suspected to be used for carrying such stocks and thereafter take or authorize the taking of all measures necessary for securing the production of stocks or items to seized before the Collector or District Magistrate having jurisdiction under the provisions of the Essential Commodities Act, 1955 and for their safe custody pending such production;

(d) inspect, seize and remove with, such aid or assistance as may be necessary, books, registers, any other records or document or the dealer, transporter, consumer or any other person suspected to be an employee or agent of the dealer, transporter or consumer;

11. It is further stated that SGS failed to comply with the mandatory provisions

of paragraph 8 of the Control Order, 2005 in the following manner:-

a) No authorized officer of respondent No. 2 was present at the time of purported inspection/drawl of sample or marker test by the representative of respondent No. 7 nor any report was made recording the events by the authorized officer of respondent No. 2.

b) Only one sample was drawn by respondent No. 7 whereas paragraph 8 (2) of the Control Order, 2005 mandates that six samples of motor spirit of one liter each should be drawn and two scaled samples must be left with the dealer with instructions to preserve the same in his safe custody till the testing or investigation of completed.

c) Under paragraph 8(3) of the Control Order, 2005, the sample label is required to be jointly signed by the authorized officer and the dealer or his representative and such label is required to contain the name of product, name of retail outlet, name of the authorized officer, name of the dealer or his representative, date of sampling and quantity of sample but in the instant case, no label was prepared and mandatory requirements were not complied with.

Clause 2(f1) of the Control Order, 2005 defines marker as a chemical substance approved by the Central Government from time to time for blending in Kerosene and other petroleum product with the objective of preventing their diversion or adulteration of Motor Spirit or High Speed Diesel.

The marker test, being a visual test, cannot be conclusive and for that reason, the Control Order, 2005 and the Marketing Disciplinary Guidelines, 2005, as amended, provide for laboratory test of the samples as per BIS specification even when the report of the sample is found to be negative.

12. It is stated that the impugned actions on behalf of the SGS as well as the suspension of the retail outlet of the writ petitioner having been done without jurisdiction and the same acts on the part of the respondent authorities are arbitrary and unreasonable and based on irrelevant and extraneous consideration.

13. It is further stated that the impugned order of suspension has grave civil consequences inasmuch as it deprives the petitioner of his means of livelihood and the same, as also being punitive in nature, could not have been passed without complying with the principles of natural justice and impugned order of suspension being issued without prior notice and/or opportunity of hearing and is violative of Principles of Natural Justice.

14. Mr. L.K. Gupta, learned Senior Advocate, appearing on behalf of the writ petitioner/appellant herein contended that Clause 2(6) defines the expression "authorized officer" to mean an officer authorized under the provisions of Clause 7 thereof. Clause 7 contains provision for search and seizure. According to Clause 7(1) the persons who may carry out the functions stated in Sub-clauses (a) to (d), which does not include an agent like SGS. He also drew our attention to "Marketing Discipline Guidelines, 2005" and submitted that Para 2.2.3 mentions

the persons/agencies who are authorized to draw samples, which includes "agencies authorized by oil companies". The same provision is continue in the 2007 amendment to the said Guidelines (para 4). The guidelines at Para 2.4.2 requires 3 samples to be collected, one to be kept with the dealer, one to be taken to Division/Territory/Regional Office of the Oil Company and the other to be sent to the Laboratory for testing.

15. According to Mr. Gupta, learned Senior Advocate, the Control Order is a statutory one which does not authorize an agent of an oil company to collect samples. The collection of sample and action based thereon being a serious matter which may lead to termination of dealership; the control order has consciously conferred the power upon specification persons or authorities so that a dealer may not be exposed to the whims of outside agencies.

16. It is further stated that the requirement of para 2.4.2 of the Guidelines for handing over to the dealer one of the 3 samples collected has the object of providing checks and balances. Such provision is aimed at providing a meaningful opportunity to the dealer to participate at the laboratory test when he can demand that the sample kept with him be also tested. The violation of such an important provision has rendered the provision for laboratory test meaningless, or at any rate, the petitioners have been deprived of the right of raising any effective objection thereto. The fact that the sample sent for laboratory test is sealed is not a full proof guarantee and that is the reason why in the Guidelines provision have been made for keeping one sample with the dealer too. Laboratory test has been held to be a very serious matter in which the right of the dealer has to be fully protected.

17. He relies upon a decision in the case of Hindustan Petroleum Corporation Limited vs. Super Highway Services & Anr. reported in 2010(3) SCC 321 and submitted that in the said decision the Supreme Court was dealing with a situation in which the notice fixing the date of the test was found as not having been served upon the dealer. The Court was pleased to set aside the order of termination of dealership on that ground. In the instant case before this Hon'ble Court though the notice for the test was served, the dealer was deprived of a proper opportunity in the absence of a sample being kept with them. The dealer could only be a spectator to such a laboratory test being carried out.

18. He drew our attention to para 10(o) of the agreement whereby he submitted that the agreement does not authorize collection of samples by an agent of the oil company for the purpose of testing or marker test.

19. According to him the inspection referred to in the said Para 10(o) is altogether for different purposes. The respondents cannot take resort to the said provision to justify the drawing of sample by SGS and subsequent action based thereon.

20. He submitted that the decision of the learned Single Judge in the case of Tarun Kumar Halder vs. State of West Bengal reported in 2009(2) CHN 689 the

Court considered para 10(o) of the agreement in its proper perspective. The Division Bench of the Madras High Court in the case of Chief Regional Manager, HPCL vs. M/s D. Nagarajan & Co. (unreported decision) relied on by the respondents is distinguishable as in that case the points were different. The challenge there was that the show cause notices disclosed pre-determined mind. This was negated in Para 12 of the judgment. Moreover, in that case the samples were collected not only by SGS but also an oil company representative as appears from Para 16 of the said judgment. He further contended that the said judgment did not lay down any legal principle and as will appear from Para 18 of the said judgment. The facts of the case were different that of the instant case.

21. The SLP being Writ Appeal No. 391 of 2008 and Writ petition (MD) No. 6167 of 2008 and W.P. No. 1 of 2008 in W.A. No. 391 of 2008, M.P. (MD) Nos. 2 and 3 of 2008 in W.P. (MD) No. 6167 of 2008 filed from the said decision of the Madras High Court was rejected.

22. Mr. Gupta further pointed out that the matter could not be argued before His Lordship since none was present at the time of taking up the matter in question. Hence, he submitted that the writ Petition also can be disposed of along with this appeal,

23. On the contrary, the BPCL filed their affidavit before the learned Trial Court a copy whereof was also placed before us. It is submitted on behalf of the BPCL that as per direction of the Ministry of Petroleum and Natural Gas (hereinafter referred to as "MOP & NG") the contract was awarded to one M/s SGS India Private Limited and they were required to carry out the audits at the terminals and retail outlets including testing. Accordingly all the dealers of all the Public Sector Oil Marketing Companies were intimated about the SGS who will be carrying out the test at the retail outlets.

24. It is further stated that "Marker" means a chemical substance approved by the Central Government from time to time for blending in kerosene and other petroleum products with the objective of preventing their diversion or adulteration of motor spirit or high speed Diesel as per section 2(f1) of the Motor spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005.

25. It is further stated that Authentix's technology was introduced for the purpose of marker test. Marker is a chemical substance which is a recognized molecule and used in the test kit into the sample product of petrol or diesel (taken at the retail outlet) and the said molecule reorganization of a chemical marker on finding the chemical marker will make the column "pink" (Pink Band) i.e. the sample product is positive for marker. It is stated that before issuance of marker to prevent diversion or adulteration of Kerosene, malpractices carried out by few of the errant dealers. "The Motor Spirit and High Speed Diesel (Regulation of Supply Distribution and Prevention of Malpractices) Order, 2005" was

amended by an order dated 12th January 2007 and it was known as The Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2007". After such amendment dated 15th June 2007 Marketing Discipline Guidelines (hereinafter referred to as "MDG"), 2005 introduced marker.

26. It is stated that when the representative of SGS India Private Limited carries out the test at the retail outlet and if the product fails a fresh product sample is taken from the nozzle of the Dispensing Unit which is sealed in the presence of the Dealer or its representative. The said sealed sample product along with sealed tank lorry retention sample of the last load of that product available at the retail outlet were collected and handed over to the officer of the concerned Oil Marketing Company. The whole exercise of collecting the sample, checking the same, sealing etc. is done in the presence of the Dealer and/or its representative.

27. Thereafter the sample collected of the product by the said SGS India Private Limited and Tank Lorry Retail Outlet retention sample are again checked by concerned oil marketing company's officials in the presence of the Dealer or its representative and also in presence of the transporter or its representative. If the product fails then only oil marketing company takes action against the dealer or the transporter as per the agreements executed between them. The whole purpose is to prevent any malpractice. The oil marketing company and the dealer are having a contractual agreement and both are bound by the terms and conditions of this agreement. The drawing of samples by agents authorized to do so by the oil companies is as per the terms of the said provisions.

28. The oil marketing companies take measures under the contractual obligations and all the actions are taken to ensure quality and quantity of the petroleum product in the public interest.

29. It is stated that under the statutory provisions of Essential Commodities Act and MS-HSD Control Order, there is no provision to terminate a dealership agreement. Such right has been exercised by the oil marketing companies as per the terms and conditions of the agreement.

30. It is stated that the dealer is not penalized consequent to failure of Marker Test carried out by authorized agent of SGS at the retail outlet. The action on the dealer is initiated after formal test has been carried out subsequently with the same sealed sample collected from the retail outlet at the oil company premises in the presence of dealer or his representative, transporter or his representative, SGS officials and oil marketing officials. After such test the report is accepted as final and conclusive for initiating action against the errant dealer.

31. The Ministry of Petroleum and Natural Gas has been taking various steps to curb adulteration from time to time. It is stated that all steps were taken by the SGS when visited the retail outlet on 19th December, 2007 and upon spot test have carried out and it is found out that the sample taken from the dispensing unit connected to diesel tank No. 2 showed pink thereby indicating presence of

adulterated product in the said tank. Further the available Tank Truck retail outlet retention sample was found with improper label and without the signature of the driver. The steps were taken by BPCL on 20th December, 2007 by suspending the sales and supplies at the said retail outlet and on 27th December, 2007 BPCL intimated the writ petitioners that the testing will take place on 28th December, 2007 instead of 26th December, 2007 as the petitioners showed their inability to be present during testing on 26th December 2007.

32. The writ petitioners along with the representative came to Budge Budge installation, a prohibited area under falls personification to witness the marker test at QC Laboratory Budge Budge installation. It is stated that the petitioner along with the representative left the QC Laboratory Budge Budge without signing the test report. The retail outlet sample test at the QC Laboratory, the supply location retention sample, the retail outlet sample of HSD failed with regard to marker test. All these facts were communicated to the writ petitioner.

33. After such test the show cause notice was issued but no reply was received from the writ Petitioner. Again the writ petitioner was directed to make payment of Rs. 4,65,596/- towards last load lifted on 18th February, 2008 which remained unpaid. It is contended that all steps were taken by the authorities in accordance with the provisions of law and in terms of the agreement.

34. The learned Advocate appearing on behalf of the BPCL submitted that the harmonies construction of all the documents will go that the steps have been taken by the respondents in accordance with the provisions of law and there is no arbitrariness or illegalities caused by the action taken on behalf of the BPCL. To prevent adulteration of petroleum products with highly subsidized kerosene oil which is earmarked for the country-men who live below the poverty line and thereby causing immense hardship to the citizen of this country and to prevent pollution by using such adulterated petroleum products the Ministry has taken steps to prevent and formulate a policy therefore.

35. It is further submitted that the said marker test has been conducted in accordance with law and following all the accepted norms. The said test is presently accepted throughout the world and as such is conclusive in nature though BPCL conducts a further laboratory test before arriving at a final decision. It is further stated that the test conducted by the SGS cannot be stated to be illegal or arbitrary and without jurisdiction.

36. The learned Advocate appearing on behalf of the BPCL drew our attention to all the reports and the documents in support of his contention and further drew our attention to the Clauses of the agreement dated 4th March, 1999. Hence, it is submitted on behalf of the respondent authorities that this writ Petition should be dismissed. He further relying upon the decision in the case of Tarun Kr. Halder (Supra) and submitted that the facts of this case comes within the four corner of the said decision.

37. He further drew our attention in the case of Madras High Court and

submitted that the Court did not have the occasion to consider the terms of the agreement between the parties and hence the said decision has no application in the facts and circumstances of this case.

38. After considering the facts stated before us the issue which falls for determination in this appeal is whether BPCL is justified in taking action by suspending the supplies of all its products to the petitioner on the basis of inspection of retail outlet held by SGS and collection and testing of sample by SGS. Before we decide such question it would be our endeavour to examine the terms of the agreement.

39. It appears that the said dealership agreement inter alia contains the following clauses 10,13(a) & 18, which are relevant for the purpose of deciding the issue:

Clause 10: The Licensees hereby covenant and agreed with the Company as follows:-

(b) To promote the sales of the Company's products to the satisfaction of the Company and achieve sales target as may be set by the Company from time to time.

(g) Not to adulterate the Petroleum Products supplied by the Company and at all times to take all reasonable precautions to ensure that the. Motor Spirit or H.S.D. is kept free from water, dirt and other impurities and served from the pumps in such condition.

(j) Not to do or permit to be done any act or thing which may endanger the grant or continuance of the Government Licence under the authority of which Motor Spirit or H.S.D. may be stored in the Outfit, or sold there from.

(k) To abide by the Petroleum Act. 1934 and the Rules framed there under for the time being in force as also any other laws, rules or regulations either of the Government or of any local body as may be in force.

(o) At all times and from time to time during the currency of this Licence to give adequate facilities to the Company, its officers, agents and servants to inspect and test the accuracy and general working of the pumps and other equipment upon the said premises and to investigate the conduct and movement by the Licensees of the said cities and afford to the company its officers, agents and servants all proper and necessary assistance and facilities for conducting such inspection and investigation and for maintenance of the buildings and equipment.

Clause 13 (a)

(vii) If the Licensees shall be guilty of a breach of any of the covenants and stipulations on their part contained in this agreement;

(vii) If the Licensees shall commit or suffer to be committed any act which in the opinion of the Marketing Manager of the Company for the time being in Bombay

or any other person nominated for this purpose by the Company is prejudicial to the interest or good name of the Company or its products. The decision of such Officer or person shall be final and binding on the Licensees.

Clause 18

The Licensees hereby expressly agree and declare that nothing herein contained shall be construed to create any right other than the revocable permission granted by the Company in favour of the Licensees in respect of the licensed premises/facilities strictly in accordance with the terms hereof. In particular nothing herein contained shall be construed to create any tenancy or other right of occupation whatsoever in favour of the Licensees.

40. It appears to us that the inspection of the aforesaid premises had been made in terms of the dealership agreement. Admittedly, on 19th December, 2007 surprise marker test was carried out by SGS who is an authorized representative of BPCL and the sample was drawn from the dispensing unit nozzle connected to the underground tank No. 2 and the test report at the said retail outlet was positive for marker (pink). The said report was signed on 19th December, 2007 by the representative of the said dealer/writ petitioner and one Sri Prosesnjit Dutta on behalf of the SGS. In the said report it was clearly mentioned that the "retail outlet tank lorry retention sample (tank lorry No. WB 37A 8221) found with improper level (signature of TT driver is not present on tag label) and for that reason they could not collect the TT sample."

41. It is a fact that the sample which was sealed by SGS was signed by the representative of the said dealer and the representative of SGS jointly in the presence of one of the partner. Due to the product failure with regard to the marker test this company, BPCL on 20th December, 2007 addressed to the said service station and informed about the suspension of supplies and sales to and from the said retail outlet of the writ petitioner and all the tanks and dispensing units were sealed temporarily to prevent the products being sold in the open market until the final test is carried out at QC laboratory. The said letter was received and acknowledged on the same date.

42. It appears from the facts and from the materials which recorded that one R. Kejriwal along with his representative went to Budge Budge on 28th December 2007 at 13:15 hrs for witnessing the Marker Test but refused to sign on the observation sheet and also refused to witness the test and left the QC laboratory, Budge Budge at about 14:00 hrs. The entry of R. Agarwal at the said Budge Budge laboratory also recorded in the visitor gate pass as R. Agarwal. In these circumstances, the show cause notice was issued and steps were taken by the authority.

43. Therefore, after scrutinizing these facts as placed before us we have noticed that under the agreement itself the said authority has a right to surprise visit/inspection through their representatives which would be evident from the said agreement.

44. We have also noticed that to stop adulteration of motor spirit and diesel by errant dealers marker test system has been introduced by the authorities to check adulteration. The BPCL, being one of the several Government oil companies, is duty bound to ensure supply of unadulterated quality motor spirit and diesel to its consumers. To discharge this duties it has appointed the respondent No. 4 as its agent to conduct surprise inspection at its retail outlets. In terms of clause 10 (g), the petitioners as dealers are under an obligation not to adulterate the petroleum product supplied by BPCL and in terms of clause 10(o) thereof, they have unconditionally agreed to allow inspection of the retail outlet by the officers, agents and servants of BPCL to test the accuracy and general workings of the pump and other equipments at the said premises.

45. The 1934 Act and the 2005 Order, which has been issued by the Central Government in exercise of powers conferred by section 3 of the Essential Commodities Act, 1955 and in suppression of Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices), Order, 1998. The order was issued by the authority known as the Motor Spirit and High Speed Diesel Order, 2005 and whereby the definition of authorized officer has been specifically mentioned in 2(b) which is set out hereunder:-

(b) "authorized officer" means an officer authorized under the provisions of Clause 7.

46. The power of search and seizure has specifically granted under Clause 7 of the said order which is set out hereunder:-

7. Power of search and seizure--(1) "Any Gazetted Officer of the Central Government or a State Government or any police officer not below the rank of Deputy Superintendent of Police duly authorized, by general or special order or the Central Government or a State Government, as the case may be, or any officer of the oil company, nor below the rank of sales officer, may with a view to securing compliance with the provisions of this order," or for the purpose of satisfying himself that this order or any order made thereunder has been complied with or there is reason to believe that all or any of the provisions of this order have been and are being or are about to be contravened-

(a) enter and search any place or premises of a dealer, transporter, consumer or any other person who is an employee or agent of such dealer or transporter or consumer,

(b) stop and search any person or vehicle or receptacle used or intended to be used for movement of the product;

(c) take samples of the product and seize any of the stocks of the product and the vehicle or receptacle or any other conveyance used or suspected to be used for carrying such stocks and thereafter take or authorize the taking of all measures necessary for securing the production of stocks or items to seized before the Collector or District Magistrate having jurisdiction under the provisions

of the Essential Commodities Act, 1955 and for their safe custody pending such production;

(d) inspect, seize and remove with, such aid or assistance as may be necessary, books, registers, any other records or document or the dealer, transporter, consumer or any other person suspected to be an employee or agent of the dealer, transporter or consumer;

2. While exercising the power of seizure provided under sub-clause (c) and (d) above, the authorized officer shall record in writing the reasons for doing so and a copy of such recording shall be provided to the dealer, transporter, consumer or any other concerned person, as the case may be.

3. The provisions of section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall, as far as may be, apply to searchers and seizure under this order.

47. Therefore, we find that the BPCL has acted in accordance with the provisions of the statute and we hold that the SGS Private Limited is an authorized agent of BPCL and they have under the terms of contract.

48. We further noticed that the proceedings initiated in terms of an agreement between the oil company and the dealer are meant not really to punish the guilty committed by the said dealer but to keep the administrative machinery alive by getting rid of bad elements. Interfering with proceedings initiated under a contract between the oil company and its dealer for taking action against an errant dealer would only result in serving the interest of the dishonest dealer. In the instant case, the finding of BPCL has to be accepted in the interest of administration and good governance. In our considered opinion the judgment cited by Mr. Gupta in the facts and circumstances of this case cannot be a help to the writ petitioner.

49. Accordingly, we hold that the steps taken by the BPCL appointing such agency to collect sample cannot be said to be illegal or arbitrary. We also hold that the exercise of contractual power for initiating action on the part of the BPCL cannot be said to be illegal or mala fide or in violation of law.

50. Hence we hold that the appellant's appeal is without merit and we do not find any reason to interfere with the order passed by the Hon''ble Single Judge. Accordingly, we affirm the order of the Hon''ble Single Judge.

51. For the reasons stated hereinabove this appeal stands dismissed.

52. Since the appeal is dismissed, the connected application for stay (being CA.N. No. 10527 of 2009) has become infructuous and the same is dismissed accordingly. Xerox certified copy of this order, if applied for, be supplied to the parties on usual undertakings.