Supreme Court of India Harbanslal Sahnia And Anr. vs Indian Oil Corpn. Ltd. And Ors. on 20 December, 2002 Equivalent citations: AIR 2003 SC 2120, JT 2002 (10) SC 561, 2004 I OLR 81, (2003) 2 SCC 107 Author: R Lahoti Bench: R Lahoti, B Kumar JUDGMENT R.C. Lahoti, J. 1. Leave granted. 2. By an agreement dated 31st day of March, 1994 entered into between the Indian Oil Corporation Limited and the appellants, the appellants were appointed dealer in petroleum products. It appears that on 15.12.1999. officers of the respondent-Corporation visited the retail outlet of the appellants. An inspection was carried out. On 24.1.2000, the Corporation served a show cause notice on the appellants requiring them to explain why density record was not maintained on day-to-day basis as, on 15.12.1999, density upto 9.12.1999 was only recorded in the density register and, secondly, why the appellants did not cooperate with the officers who had come to inspect the retail outlet and rather used un-parliamentary language and displayed discourteous behavior. On 2.2.2000, the appellant sent a reply. The matter rested at that. 3. On 11.2.2000, sample of SKO was taken jointly by the Sub-Divisional Magistrate and officials of the respondent Corporation and sent to Kanpur laboratory of the respondent whereat the sample was received on 13.3.2000 and subjected to lab test on 18.3.2000. The only infirmity found in the sample was that automatic viscosity at 40 (SIC) should have been within the range of 1.8 to 5.0 but was found to be 1.758. On 22.3.2000, the appellants were served with a show cause notice requiring them to explain why the sample drawn from their outlet did not satisfy and match with the standard specifications. The appellants sent a reply raising a few objections. The correctness of the test report was disputed. The appellants were served with a termination order dated 6.9.2000 whereby the appellants dealership has been terminated forthwith. In the earlier part of the notice there is a casual reference that the monthly sales during the last year were not satisfactory that there were malpractices at the appellants' outlet that the density register was not found to be properly filled during the inspection held on 15.12.1999 and on that day the appellants misbehaved with the officers of the respondent. However, these are not relied on as the ground for cancellation of the develop. What has been relied on is the failure of the sample taken from the appellants outlet consequent whereupon supply to the appellants outlet was suspended. The State Government acting through the Collector of the District suspended the appellants' licence which authorized them to deal in petroleum products and also imposed a fine on them. 4. The appellants filed a writ petition laying challenge to the order of termination. The petition has been dismissed by the High Court on the ground that the relationship between the parties is contractual and the dealership agreement contains an arbitration clause and therefore the appropriate remedy available to the appellants was to have recourse to arbitration rather invoking the writ jurisdiction of the High Court. The appellants sought for a review of the order of the High Court which prayer has been refused. The appellants have filed these appeals by special leave. 5. It is submitted by Shri. P. Malhotra, the learned senior counsel for the appellants that the dealership has been terminated on irrelevant and non-existent grounds and, therefore, the order of termination is liable to be set aside. The Government of Uttar Pradesh

have issued directions to all the District Magistrates of the State in the matter of taking of samples and carrying out tests. There are two Government Orders issued namely No. 1459/29-7-97-731-PP dated 25.4.1997 and No. 2722/29-7-2000-PP/2000. The orders state inter alia that the strength frictions of petrol and diesel change after ten days and therefore time limit of ten days is fixed for testing of such products. It is also emphasized that in the interest of natural justice, the inspecting officials should test the sample for quality and density at the retail outlet itself in the presence of the dealer with necessary equipments such as filter paper, hydrometer, thermometer, jar and the conversion table which are available at the retail outlets and recorded density thereat only in the presence of the dealer. These government orders were violated in respect of the sample taken on 11.2.2000. Firstly, the test was not carried out at the retail outlet itself and, secondly, the time gap between the sample taken and lab test carried out is of about a month which is capable of causing marginal variation as detected. The learned senior counsel for the appellants invited attention the Court to an order dated 24.10.2002 passed by the Commissioner, Nanital in an appeal preferred against the suspension of petitioners licence which too was founded on the test report of the sample taken on 11.2.2000. Impressed by non-compliance with the instructions contained in the government orders and the delay in carrying out the lab tests, also keeping in view the previous performance of the petitioners, the learned Commissioner has allowed the appeal and set aside the suspension as also the fine imposed on the petitioners. The learned counsel is right in submitting that in view of the abovesaid facts, the failure of the sample taken from the appellants outlet on 11.2.2000 becomes an irrelevant and non- existent fact which could not have been relied on by the respondent- Corporation for cancelling the appellants licence. 6. As already stated, the cancellation is founded solely on the failure of the appellants' sample. Non-cooperation and discourteous behavior of the appellants has been alleged in a very general way without specifying what was non-cooperation and what was the discourtesy shown to the officers of the respondent-Corporation. The deficiency in sales is also generally stated without particularising he same. So is the case with deficiency in maintaining the records. Be that as it may, these are the grounds which formed the subject matter of the earlier show cause notice which was not persuaded. In all probability, the respondent-Corporation felt satisfied with the explanation furnished by the appellants. The order of termination is certainly not founded on these grounds and, therefore, this aspect need not be pursued further. It may be stated that the appellants have volunteered to file a statement made on affidavit during the course of hearing before this Court, expressing regrets for any incident of departure from normal behavior and courtesy expected of the appellants towards the officials of the respondent-Corporation and submitting that it might have happened inadvertently but in future the appellants would be more careful and shall show full regard to the visiting officials of the respondent-Corporation and extend their full cooperation in their dealings with the respondent. 7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable

to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged [See Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors., (1998) 8 SCC 11. The present case attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings. 8. The appeals are allowed. The impugned judgment of the High Court is set aside. The Corporation's order dated 6.9.2000, terminating dealership of the appellants, is hereby quashed and set aside. No order as to the costs.