



2025:CGHC:39556

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 1136 of 2025

Nutan Rajwade S/o Late Shri H.S. Rajwade Aged About 52 Years R/o Village - Kanki, Tahsil - Barpali, Distt - Korba Chhattisgarh Proprietor Maa Shitla Fuels, Village - Kanki, P.H.N. 03, Tahsil - Barpali, Distt - Korba Chhattisgarh

... Petitioner(s)

versus

1 - State Of Chhattisgarh Through Secretary, Department Of Food Civil Supplied And Consumer Protection, Mahanadi Bhawan, Mantralaya, Nava Raipur, Distt - Raipur Chhattisgarh

2 - Collector (Food) Korba, Distt - Korba Chhattisgarh

3 - Food Inspector Kartala, Distt - Korba Chhattisgarh

4 - Hindustan Petroleum Corporation Limited Through Crm, Retial, Bajpai Tower, Vyapar Vihar, Bilaspur, Distt - Bilaspur Chhattisgarh

5 - Ajit Vasant Collector, Korba, Distt - Korba Chhattisgarh.

--- Respondent(s)

For Petitioner	: Mr. Rajnish Singh Baghel, Advocate along with Ms. Chetna Sharma, Advocate
For Respondent-State	: Ms. Upasana Mehta, Dy. GA
For Respondent No.4	: Mr. Ali Asgar, Advocate

Hon'ble Shri Arvind Kumar Verma, Judge

Order on Board

07.08.2025

1. With the consent of learned counsel for the parties, the matter is heard finally.
2. By way of this petition, petitioner is seeking following relief(s) :-
 - “1. Hon'ble Court may be kind and gracious enough to call for the records of the case from the respondents.
 2. Hon'ble Court may kindly be pleased to quash/set aside the order dated 12.02.2025 bearing no. 274/Food RSL-RO/2025 by issuance appropriate writ/writs, order/orders, direction/directions.
 3. Any other relief/reliefs which Hon'ble court may deem fit in the facts and circumstances of the instant case.”
3. Learned counsel for the petitioner contended that after the notification dated 14.11.2024 the Respondent No.2 was not competent to exercise the powers of licensing authority as the Order of 1980 stands repealed without there being any substituting license and control order. After the repeal of Order of 1980 no substituting license and control order has been notified under the Essential Commodities Act, 1955 effect of which is that there is no legal framework for grant of license, to control the sale of petrol and diesel, to renew the existing licenses. So, the order dated 12.02.2025 i.e. Annexure P/1 is void ab initio and without jurisdiction. The grant of license and renewal of the license are the power exercised by the Respondent No.3 i.e. Food Officer. From the license issued to the petitioner it is very clear that it was issued and renewed by the

Respondent No.3 only. All the other licenses are renewed by Respondent No.3. Petitioner is filing and annexing renewal of license of one M/s Prakriti Fuels KSK to fortify his contention that it is Respondent No.3 which issues the license and renew it. The Respondent No.2 has passed an order in this case only and that proved his malafide. First thing which goes against the order of refusal to renew is that the whole proceedings were under clause 11 of the Order of 1980. Clause 11 deals with cancellation or suspension of License. It does not deal with renewal of License. Renewal of License is dealt under Clause 9 of the Order of 1980 which specifically mentioned that only after giving an opportunity to the dealer of stating his case renewal can be refused. In the instant case there is no notice under Clause 9 showing cause for refusal to renew the License. As such the order is bad in law and liable to be set aside as passed without following the process.

4. It is very clear from the reply submitted by the petitioner against the Show Cause Notice of suspension/cancellation of License that there was no order prohibiting the petitioner from using dispensing unit-2 (4 nozzles) for sale of Petrol and Diesel and from 04.11.2024 onwards the sale was from 4 nozzles of dispensing unit-2 only and the dispensing unit-1 (2 nozzles) were never used and seal was never tempered with hence the ground that the petitioner has made sale from unverified dispensing unit is totally baseless and against facts. It is established fact that dispensing unit-2 (4 nozzles) was verified and valid upto

02.05.2025. He further contended that explosive license has been renewed by order dated 31.12.2024. Had there been any irregularity by petitioner the same could not have been renewed as the Respondent No.2 itself is the authority which verifies and forwards the documents for renewal of Explosive License. The order does not explain the discrepancies in the stock and sale register. When inspection was made the petitioner who is proprietor of dealership was not present and the inspecting authorities willfully on their own mentioned that the stock and sale register were not produced. The petitioner in his reply has categorically stated the the registers are properly maintained and ready to produce them but no chance was given to produce them. In the reply to the show cause notices the petitioner has also mentioned that purchase, stock and sale can be verified from the monthly sale details properly submitted by the petitioner but no such verification was made. As such order is bad on this ground also. There is no detail of what wrong information petitioner has submitted in monthly report. Totally on a blunt finding without any supportive detail it has been declared that petitioner does not submitted proper information. As such the order is bad in on that ground also.

5. Due to the previous litigation between petitioner and the Respondent No.5 the order of refusing the renewal has been passed which is due to malafide which is evident from the fact mentioned in the preceding paragraphs. The Oil Company which is the main Licensee has not been

consulted or noticed before refusal of renewal. By refusing to renew by employing wrong procedures with malafide intention the fundamental right of the petitioner to conduct business as per law and earn livelihood has been violated. Hence the order is bad in law. The impugned order is arbitrary, passed in colourable exercise of power, is without jurisdiction, is discriminative hence is liable to be set aside.

6. Learned State counsel opposes the submission made by learned counsel for the petitioner.
7. Learned counsel for respondent No.4 contended that on 13/11/2024, Collector, Korba issued a notice to the answering respondent for the first time and sort explanation with regard to the violations of the conditions as enumerated in NOC dated 06/06/2020. In response to the said letter, answering respondent issued a reply on 23/11/2024 to the Collector, Korba seeking the copies of proceedings for further action. Till date no response from the State Authorities has been received by the answering respondent. He further contended that the answering respondent being a government entity strictly adheres to the rules and regulations and would proceed as per brochure guidelines as and when required. In the meantime the application for renewal of RSL has been rejected by the authorities by way of impugned order. As reflected by the repeal order dated 14-11-24, no further requirement of RSL exist. In the given facts and circumstances of case, this Court may pass appropriate orders as the RO is closed since long and answering respondent is also suffering loss.

8. I have heard learned counsel for the parties and perused the record with utmost circumspection.
9. Considering the facts and circumstances of the case and submission made by learned counsel for the respective parties. The impugned order dated **12.02.2025** (Annexure P-1) passed by the Respondent No.2 – Collector (Food), Korba, District Korba (C.G.), in the said order, relevant part as under :

"उपरोक्त विषयांतर्गत आपके द्वारा संचालित रिटेल आउट लेट पंप शीतला फयुल्स ग्राम कनकी विकास खंड करतला जिला कोरबा के नाम से पूर्व में जारी रिटेल आउट लेट अनुज्ञप्ति क्रमांक 15/MS- HSD/HPCL/KRB/2020 की वैधता तिथि 31.12.2024 तक निर्धारित थी, जिसको नवीनीकरण हेतु आपके द्वारा आवेदन दिनांक 6.11.2024 प्रस्तुत किया गया है।

अनुज्ञप्ति नवीनीकरण हेतु आवेदन के प्रस्तुतीकरण के पूर्व रिटेल आउट लेट पंप की जांच दिनांक 4.11.2024 में पम्प संचालन कार्य में छ०ग० मोटर स्पिरिट तथा हाई स्पीड डीजल ऑयल (अनुज्ञापन तथा नियंत्रण) आदेश 1980 के खंड 3 (4) 3(5),4(1), 10 एवं अनुज्ञापन की निष्पादित शर्तों क्रमांक 3 (एक),4,5,9 एवं 10 के प्रावधानों का स्पष्ट उल्लंघन पाया जाकर अनुज्ञापन प्राधिकारी द्वारा नवीनीकरण से इंकार किया गया है। तत्संबंधी आदेश क्रमांक 274/ खाद्य/RSL-RO/2025 कोरबा दिनांक **12.02.2025** की प्रति सूचनार्थ प्रेषित ।"

10. Gazette Notification dated 14.11.2024 issued by the respondent No.1 as under :

NOTIFICATION

“No. F 4-5/2021/29-2-In exercise of the powers conferred by Section 3 read with Section 5 of the Essential Commodities Act 1955 (No. 10 of 1955) and SON 681(E) issued by the Ministry of Industry and Civil Supplies (Department of Civil Supplies and Co-operation) of the Government of India, the State Government hereby, makes the following Order, namely:-

ORDER

1. **Short title, extent and commencement.**-(1) This Order may be called the Chhattisgarh Motor Spirit and High Speed Diesel Oil (License and Control) Repeal Order, 2014.
 (2) It extends in the whole State of Chhattisgarh.
 (3) It shall come in to force from the date of its publication in the Official Gazette.
2. Repeal and saving- Chhattisgarh Motor Spirit and High Speed Diesel Oil (License and Control) Order, 1980 is hereby repealed:

Provided that, the pending registered cases, prior to the publication of this Notification before the competent authority/courts, for the violations of the provisions of the Chhattisgarh Motor Spirit and High Speed Diesel Oil (License and Control) Order, 1980 and subsequent proceedings therein shall have no effect of this Order.”

11. This Court has passed the order on 18.07.2025 by which learned State counsel was directed to file additional reply on the point that prior to the date of 14.01.2024, i.e., the date of notification the case was registered against the petitioner or not along with all the relevant documents.
12. In compliance of the aforesaid order, the learned State counsel filed the additional reply vide Annexure R-1 dated **28.01.2025** in which relevant part as under :

"कलेक्टर महोदय एवं अनुज्ञापन अधिकारी के समक्ष श्री नूतन राजवाड़े प्रो. में. शीतला फयूल्स को दिनांक 08.11.2024 को जारी एस.सी.ऐन. के सम्बन्ध में जवाब दिनांक 12.11.2024 को प्रस्तुत किया गया। कलेक्टर महोदय के द्वारा जवाब समाधान कारक ना पाते हुये उपरोक्त फर्म का अनुज्ञप्ति नवीनीकरण अस्वीकार हेतु आदेशित किया गया है।"
13. On perusal of the aforesaid additional reply along with the document purportedly pertaining to the rejection/denial of the renewal of license.

Bare perusal of the document shows that it is a concocted document. The 'Nasti Kramank 15/2020/2024' is hand written whereas the tip is typed. The document further says that the reply of show cause notice dated 08.11.2024 was received on 12.11.2024. Reply not found satisfactory hence the renewal is rejected/denied. Further, it appears that the impugned order was already passed on **28.01.2025** which in turn shows that the biased and predetermined of the Collector that conclusion was drawn regarding renewal and to substantiate the order later on the impugned order was passed. From perusal of the note-sheet dated 28.01.2025, it further shows that it is trying to show that the case of registered against the petitioner before issuance of notification.

14. Considering the judgment passed by the Hon'ble Supreme Court in the case of **Keshavan Madhava Menon Vs. State of Bombay**. Para 10, 11, 12 & 13 of the said judgment are as under :

"10. One of the points discussed elaborately by the learned counsel appearing for the parties in the course of their arguments was as to what was the effect upon pending proceedings when an Act was repealed or when a temporary Act expired. In Craies on Statute Law, the effect of the expiry of a temporary Act is stated to be as follows :-

"As a general rule, and unless it contains some special provision to the contrary, after a temporary Act has expired no proceedings can be taken upon it, and it ceases to have any further effect. Therefore, offences committed against temporary Acts must be prosecuted and punished before the Act expires, and as soon as the Act expires any proceedings which are being taken against a person will ipso facto terminate." (4th Ed., pp. 347-348).

11. This statement of law by Craies was referred to with approval and adopted by the Federal Court in *J.K. Gas Plant Manufacturing Co., (Rampur) Ltd., and Others v. King Emperor*. (1) As to the effect of the repeal of an Act, the following passage from Craies book seems to sum up the legal position as it obtained in England before the enactment of the Interpretation Act of 1889 :-

"When an Act of Parliament is repealed," said Lord Tenterden in *Surtees v. Ellison*(2) "it must be [1947] F.C.R. 141 at 166. (2) [1829] 9 B & C. 752.

considered (except as to transactions past and closed) as if it had never existed. That is the general rule." Tindal C.J. states the exception more widely. He says (in *Kay v. Goodwin*)(1): „ The effect of repealing a statute is to obliterate it as completely from the records of the Parliament as if it had never been passed;and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law." (P. 350).

12. Again, Crawford in his book on "Statutory Construction" dealing with the general effect of the repeal of an Act states the law in America to be as follows:--- "A repeal will generally, therefore, divest all inchoate rights which have arisen under the repealed statute, and destroy all accrued causes of action based thereon. As a result, such a repeal, without a saving clause, will destroy any proceedings whether not yet begun, or whether pending at the time of the enactment of the repealing Act, and not already prosecuted to a final judgment so as to create a vested right." (Pp. 599-600).

13. In a footnote relating to the cases which the learned author cites in support of the above proposition, he adds:--

"See *Cleveland, etc., R. Co. v. Mumford* (Ind.)(2) where the repeal of a statute during the trial prevented a judgment from being rendered. Similarly, there can be no legal conviction for an offence, unless the act be contrary to law at the time it is committed; nor can there be a judgment, unless the law is in force at the time of the indictment and judgment. If the law ceases to operate, by its own limitation or by a repeal, at any time before judgment, no judgment can be given. Hence, it is usual in every repealing law to make it operate prospectively only, and to insert a saving clause, preventing the retroactive operation of the repeal and continuing the repealed law in force as to all pending prosecutions, and often as to all violations of the existing law already committed."

15. Further, considering the order passed by the Hon'ble Supreme Court in the case of **Rayala Corporation (P) Ltd. & Ors. Vs. The Director of Enforcement, New Delhi**. Para 12 & 13 of the said order are as under :

“12. There remains for consideration the question whether proceedings could be validly continued on the complaint in respect of the charge under R. 132A(4) of the D.I.Rs. against the two accused. The two relevant clauses of Rule 132A are as follows:

"132A. (2) No person other than an authorised dealer shall buy or otherwise acquire or borrow from, or sell or otherwise transfer or lend to, or exchange with, any person not being an authorised dealer, 'any foreign exchange.

* * * * *

(4) If any person contravenes any of the provisions this rule, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both; and any court trying such

contravention may direct that the foreign exchange in respect of which the court is satisfied that this rule has been contravened, shall be forfeited to the Central Government."

The charge in the complaint against the two accused was that they had acquired foreign exchange to the extent of Sw. Krs. 88,913.09 in violation of the prohibition contained in R. 132A(2) during the period when this Rule was in force, so that they became liable to punishment under R.132A(4). Rule 132-A as a whole ceased to be in existence as a result of the notification issued by the Ministry of Home Affairs on 30th March, 1955, by which the Defence of India (Amendment) Rules, 1965 were promulgated. Clause 2 of these Amendment Rules reads as under :--

"In the Defence of India Rules, 1962, rule 132A (relating to prohibition of dealings in foreign exchange) shall be omitted except as respects things done or omitted to be done under that rule."

The argument of Mr. Sen was that, even if there was a contravention of R. 132A(2) by the accused when that Rule was in force, the act of contravention cannot be held to be a "thing done or omitted to be done under that rule," so that, after that rule has been omitted, no prosecution in respect of that contravention can be instituted. He conceded the possibility that, if a prosecution had already been started while R. 132A was in force, that prosecution might have been competently continued. Once the Rule was omitted altogether, no new proceeding by way of prosecution could be initiated even though it might be in respect of an offence committed earlier during the period that the rule was in force. We are inclined to agree with the submission of Mr. Sen that the language contained in cl. 2 of the Defence of India (Amendment) Rules, 1965 can only afford protection to action already taken while the rule was in force, but cannot justify initiation of a new proceeding which will not be a thing done or omitted to be done under the rule but a new act of initiating a proceeding after the rule had ceased to exist. On this interpretation, the complaint made for the offence under R. 132A(4) of the D.I. Rs., after 1st April, 1965 when the rule was omitted, has to be held invalid.

13. This view of ours is in line with the general principle enunciated by this Court in the case of *S. Krishnan and Others Vs. The State of Madras (1)*, relating to temporary enactments, in the following words :--

"The general rule in regard to a temporary statute is that, in the absence of special provision to the contrary, proceedings which are being taken against a person under it will ipso facto terminate as soon as the statute expires."

Mention may also be made to a decision of a learned single Judge of the Allahabad High Court in *Seth Jugmendar Das and Others Vs. State*

(2), where a similar view was taken when considering the effect of the repeal of the Defence of India Act, 1939, and the (1) [1951] S.C.R. 621. (2) A.I.R. 1951 All. 703.

Ordinance No. XII of 1946 which had amended Section 1(4) of that Act.

16. After the repeal of Order of 1980, no substituting license and control order has been notified under the Essential Commodities Act, 1955 effect of which is that there is no legal framework for grant of license, to control the sale of petrol and diesel, to renew the existing licenses. The grant of license and renewal of the license are the power exercised by the Respondent No.3 i.e. Food Officer. From the license issued to the petitioner it is very clear that it was issued and renewed by the Respondent No.3 only. All the other licenses are renewed by Respondent No.3. Petitioner is filing and annexing renewal of license of one M/s Prakriti Fuels KSK to fortify his contention that it is Respondent No.3 which issues the license and renew it. First thing which goes against the order of refusal to renew is that the whole proceedings were under clause 11 of the Order of 1980. Clause 11 deals with cancellation or suspension of License. It does not deal with renewal of License. Renewal of License is dealt under Clause 9 of the Order of 1980 which specifically mentioned that only after giving an opportunity to the dealer of stating his case renewal can be refused. In the instant case there is no notice under Clause 9 showing cause for refusal to renew the License which is bad in law. So, the order dated 12.02.2025, i.e., Annexure P/1 is void ab initio and without jurisdiction.

17. On perusal of the note-sheet dated 28.01.2025, it reveals that the order was already passed with respect to the rejection of the application for renewal of license of the petitioner's petrol pump which was never disclosed to the petitioner. The order was already passed, but was prepared on **12.02.2025** (Annexure P-1) which in turn shows that the biased and predetermined of the Collector that without application of mind conclusion was drawn regarding renewal and to substantiate the order later on the impugned order was passed. From perusal of the note-sheet dated **28.01.2025**, it further shows that it is trying to show that the case of registered against the petitioner before issuance of notification and the Annexure P-1 was not passed on 12.02.2025 and it crystal clear that the case has not been registered against the petitioner before issuance of notification dated 14.11.2024 and as per the notification, Chhattisgarh Motor Spirit and High Speed Diesel Oil (License and Control) Order, 1980 has already been repealed.

18. In view of the aforesaid discussion, the impugned order dated **12.02.2025** (Annexure P-1) passed by respondent No.2 – Collector (Food), Korba, District Korba (C.G.) is hereby quashed.

19. Consequently, the instant petition is allowed.

Sd/-
(Arvind Kumar Verma)
JUDGE