

# The Indian Law Reports

CIVIL MISCELLANEOUS

Before H. R. Khanna, J.

MESSRS DELHI TOURIST TRAVEL SERVICES CO-OPERATIVE  
TRANSPORT SOCIETY LTD.—*Petitioner*

*versus*

DELHI STATE TRANSPORT AUTHORITY, DELHI,—*Respondent*.

Civil Writ No. 47-D of 1965.

*Motor Vehicles Act (IV of 1939)—Ss. 57 and 58—Application for renewal of permit made—Another party making application for grant of permit—Both applications—Whether to be heard together.*

*Held*, that a new application for permit for stage carriage and an application for renewal should no doubt be normally heard together, because the acceptance of one application automatically results in the rejection of the other, but it is essential that both the applications are filed within time and are otherwise in accordance with law. A new application for permit, which is not filed within the prescribed time, cannot be treated as one in accordance with law and as such a person filing it not within the prescribed time cannot insist that it should also be heard along with an application for renewal which is filed within the prescribed time. The two applications can only be heard together if they are filed within the prescribed time and it was with that object that the legislature prescribed the time before which such applications should be filed. Another reason for prescribing the time seems to have been to ensure that the applications are decided well before the date from which the permit is to operate so that there may be a continuity and no break in a public utility service like bus transport on a route. The petitioner-Society having not filed the application before the prescribed period can have no legitimate grievance on the score that its application for permit is not being set down for hearing along with the application for renewal filed by the Delhi Bus Service.

*Petition under Article 226 of the Constitution of India praying that this Hon'ble Court may be pleased to direct the respondent, by issuing an appropriate writ, to follow the procedure laid down*

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*by the Motor Vehicle Act, 1939, in resolution to the petitioner's application for the grant of stage carriage permission on Delhi Karala route and to consider and dispose of the same along with the renewal application to Delhi Bus Service in accordance with law. Any other and further order and/or direction which this Hon'ble Court may deem fit in the circumstances of the case may also be issued and the petitioner may also be awarded the costs of the petition.*

S. N. CHOPRA, ADVOCATE, for the Petitioner.

PRAKASH NARAIN AND S. S. DALAL, ADVOCATES, for the Respondents.

#### ORDER

**Khanna, J.**

**KHANNA, J.**—Delhi Tourist Travel Services Co-operative Transport Society Limited petitioner has, by means of this petition under Article 226 of the Constitution of India, prayed for the issuance of an appropriate writ to Delhi State Transport Authority (hereinafter referred to as the Authority) to consider the petitioner's application for grant of stage carriage permit on Delhi-Karala route along with the renewal application of Delhi Bus Service, which firm has also been impleaded as a respondent on its application.

The brief facts of the case are that Delhi Bus Service respondent was granted a permit to run a stage carriage service on Delhi-Karala route about 13 years ago and it was then resolved by the Authority that only one permit was to be issued on that route. The permit was renewed from time to time and the last permit was to expire on 2nd January, 1965. According to the proviso to sub-section (2) of section 58 of the Motor Vehicles Act, 1939 (IV of 1939), hereinafter referred to as the Act, an application for the renewal of a stage carriage permit should be made not less than sixty days before the date of its expiry. Accordingly, Delhi Bus Service applied for renewal of the permit to the Authority on 20th October, 1964. The application for renewal of the permit was published on 12th November, 1964, and, according to the affidavits filed on behalf of the respondents, objections against the renewal application were invited to be filed not later than 2nd December, 1964. The petitioner-Society filed objections to the renewal of the permit of Delhi Bus Service on 8th or 9th December, 1964, and at the same time filed an application that the permit for stage carriage on that route should

be granted to the petitioner. The application of the petitioner for grant of permit was not published and the petitioner came to know that the Authority would be disposing of the renewal application of Delhi Bus Service after hearing the petitioner's objections and would not along with that be hearing the application of the petitioner for grant of permit. The petitioner claims that the Authority was not entitled to give preference to the renewal application of Delhi Bus Service to the application of the petitioner, and that it is essential that the two applications should be decided together. The present petition has consequently been filed to compel the Authority to decide the petitioner's application for fresh permit along with the application for renewal of Delhi Bus Service.

The petition has been resisted by the Authority as well as by Delhi Bus Service, and after hearing Mr. Chopra, on behalf of the petitioner, and Mr. Parkash Narain and Mr. Dalal, on behalf of the respondents, I am of the view that there is no merit in the petition. According to sub-section (2) of section 57 of the Act an application for a stage carriage permit should be made not less than six weeks before the date on which it is desired that the permit shall take effect, or, if the Regional Transport Authority appoints dates for the receipt of such applications, on such dates. It is not disputed that no date was fixed by the Regional Transport Authority, and it would, therefore, follow that the application for stage carriage permit was to be filed by the petitioner not less than six weeks before the date on which it was desired that the permit should take effect. The previous permit of Delhi Bus Service expired on 2nd January, 1965 and the permit for which the petitioner applied was to take effect from 3rd January, 1965. As such the application for stage carriage permit on the route in question having not been filed by the petitioner at least six weeks before the date on which it was desired that the permit should take effect was clearly belated and not within the prescribed time. The petitioner, in the circumstances, in my opinion, could not claim that his application, which was not filed within the prescribed time, should be set down for hearing along with the renewal application of Delhi Bus Service. According to sub-section (3) of section 57 of the Act, on receipt of an application for a stage carriage permit, the Regional Transport Authority has to publish the application or the substance thereof together with a notice of the

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date before which representations in connection therewith may be submitted and also fix a date, not being less than thirty days from such publication, on which the application and any representation received would be considered. If the Authority was to decide that the application for renewal filed by the Delhi Bus Service and the petitioner's application for grant of permit should be decided simultaneously, the effect of that would be to unduly delay the decision of the renewal application because of the necessity of the publication of the petitioner's application and the fixing of a date, not being less than thirty days after such publication, when the petitioner's application and objections thereto would be considered. The result would have been that the renewal application of the Delhi Bus Service would come up for decision and consideration long after 2nd January, 1965, when the stage carriage permit on the route in question expired. Delhi Bus Service would thus be made to suffer for no fault of that firm and a premium would be put on the default of the petitioner in not filing within time the application for permit. The petitioner-Society, in my view, cannot be allowed to take advantage of its own default and the delay with which it filed the application for permit. It would, therefore, follow that as the petitioner-Society did not file the application within the prescribed time, it cannot compel the Authority to decide its application for permit simultaneously with the application for renewal filed by the Delhi Bus Service.

Mr. Chopra has referred to the second proviso to subsection (2) of section 58 of the Act, according to which other conditions being equal an application for renewal shall be given preference over new applications for permits. It is contended that this proviso contemplates that new applications for permits and applications for renewals should be decided simultaneously. Reference has also been made to *Ram Gopal v. Anant Prasad and another* (1), wherein, while dealing with a right of appeal under section 64 of the Act, the following observations of Madras High Court in *S. Gopala Reddi v. Regional Transport Authority, North Arcot, and others* (2), were approved :—

“The appeal was, in our opinion, perfectly competent as an appeal against the order of the

(1) A.I.R. 1959 S.C. 851.

(2) A.I.R. 1955 Mad. 386.

Regional Transport Authority, refusing to grant a permit. The fact that such an appeal involved an attack on the order granting a renewal of a permit to the 4th respondent would not prevent the appeal being what it was, viz., an appeal against a refusal to grant a permit to the appellant. The Central Road Traffic Board erred in presuming that it was not open to them in the appeal to consider the merits of the order granting renewal of the 4th respondent's permit. Indeed, the first question which had to be determined in the appeal filed by the appellant would be the propriety of the action of the Regional Transport Authority in granting renewal to the 4th respondent. The filing of the appeal by the appellant set at large the order of the Regional Transport Authority granting the renewal."

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There can be hardly any dispute so far as the dictum laid down above is concerned, but the petitioner, in my opinion, can derive no benefit from it. A new application for permit for stage carriage and an application for renewal should no doubt be normally heard together, because the acceptance of one application automatically results in the rejection of the other, but it is essential that both the applications are filed within time and are otherwise in accordance with law. A new application for permit, which is not filed within the prescribed time, cannot be treated as one in accordance with law and as such a person filing it not within the prescribed time cannot insist that it should also be heard along with an application for renewal which is filed within the prescribed time. The two applications can only be heard together if they are filed within the prescribed time and it was with that object that the legislature prescribed the time before which such applications should be filed. Another reason for prescribing the time seems to have been to ensure that the applications are decided well before the date from which the permit is to operate so that there may be a continuity and no break in a public utility service like bus transport on a route. The petitioner-Society having not filed the application before the prescribed period can have no legitimate grievance on the scope that its application for

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permit is not being set down for hearing along with the application for renewal filed by the Delhi Bus Service.

The petition, consequently, fails and is dismissed, but, in the circumstances of the case, I make no order as to costs.

B.R.T.

APPELLATE CIVIL

Before S. K. Kapur, J.

KUNDAN LAL AND ANOTHER,—Appellants

versus

HANUMAN CHAMBER OF COMMERCE LIMITED,—Respondent.

F.A.O. No. 23-D of 1957

1965  
August, 19th.

*Companies Act (I of 1956)—Ss. 560(5) and 647—Winding up order against a company dissolved under S. 247 of the Companies Act (VII of 1913)—Whether can be passed without first getting the order of dissolution set aside—Petition for winding up dismissed before Companies Act (I of 1956) came into force—Appeal filed—Proviso to S. 560(5)—Whether can be applied in appeal.*

*Held*, that in view of proviso (b) to sub-section (5) of section 560 of the Companies Act, 1956, a winding up order can be passed against a company without first getting the dissolution order set aside. The appeal is a continuation of the original proceedings and the change of law effected during the pendency of the appeal can be taken into consideration by the appellate Court while hearing and deciding the appeal. Section 647 of the Companies Act, 1956, is applicable only in a case where the winding up order or the resolution for voluntary winding up had been passed before the commencement of the Act and this section creates no bar to a winding up order being passed in appeal in view of proviso (b) to sub-section (5) of section 560.

*First Appeal (under Section 202 of the Indian Companies Act 1913) from the order of Shri S. B. Kapoor, I.C.S., District Judge, Delhi, dated the 23rd February, 1956, dismissing the petition and leaving the parties to bear their own costs.*

H. R. SAWHNEY AND Y. K. SABHARWAL, ADVOCATES, for the Appellant.

B. C. MISRA, ADVOCATE, for the Respondent.