

**(1985) 02 AHC CK 0038**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 32 of 1975

Kanchan Singh and Another

APPELLANT

Vs

State Transport Appellate  
Tribunal, Lucknow and Others

RESPONDENT

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**Date of Decision:** Feb. 4, 1985

**Acts Referred:**

- Motor Vehicles Act, 1939 - Section 57, 58(2)

**Citation:** AIR 1986 All 23

**Hon'ble Judges:** S.D. Agarwal, J

**Bench:** Single Bench

**Advocate:** A.D. Saunders and D.P. Singh, for the Appellant; Standing Counsel and B.D. Mandhyan, for the Respondent

**Final Decision:** Partly Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

S.D. Agarwal, J.

This is a petition under Art 226 of the Constitution of India arising out of proceedings under the Motor Vehicles Act, 1939, hereinafter referred to as the Act. The two petitioners who have filed the present petition are Kanchan Singh and Inder Pal Singh. Both the petitioners held a joint stage carriage permit No. 1331 on Khurja-Meerut route. This permit was valid till 18th August, 1973. On 12th April, 1973, the petitioners sent an application for renewal of the permit under certificate of posting to the Regional Transport Officer, Meerut in his capacity as the Secretary of the Regional Transport Authority. Meerut. This application was in fact, not received by the Regional Transport Officer, Meerut, who in fact is the Secretary of the Regional Transport Authority. Meerut. On October 22, 1973, the petitioners filed duplicate copies of the application dated 12th April, 1973 along with a certificate of posting dated 12th April, 1973 bearing the seal of the Post Office. This application

was thereafter published under the Act.

2. On 20th September, 1973 Gopi Singh, respondent No. 3 filed his objection against the renewal of the permit in favour of the petitioners. On the same day he also made an application for grant of a fresh permit in his favour in the vacancy which was to be caused by expiry of the permit in favour of the petitioners. Gopi Singh did not submit his application six weeks before the expiry of the permit. His application was not published in the U.P. Gazette and security money was not deposited.

3. The application for renewal of the permit made by the petitioner along with the objection filed by Gopi Singh came up for consideration in the meeting of the Regional Transport Authority, Meerut which was held on May, 15 and 16, 1974. The Regional Transport Authority, Meerut though held that the application for renewal dated 12th April, 1973 was not received by the Regional Transport Authority, however, in view of the circumstances of the case, treated the application for renewal made by the petitioners as having been filed within time. Since the delay in filing the application was condoned by the Regional Transport Authority, the Regional Transport Authority thereafter considered the renewal application and granted the renewal in favour of the petitioner. It was noted in the resolution of that day that the application of Gopi Singh was not submitted within six weeks from the date of expiry of the permit. It was not published in the U. P. Gazette and no security money was deposited.

4. Aggrieved by the decision of the Regional Transport Authority, Meerut, Gopi Singh filed an appeal u/s 64 of the Motor Vehicles Act before the State Transport Appellate Tribunal Lucknow. The Tribunal by an order dated 6-12-1984 allowed the appeal of Gopi Singh, set aside the resolution of the Regional Transport Authority, Meerut by which the renewal application of the petitioner was accepted and further granted a regular stage carriage permit on the route in question to Gopi Singh. The petitioners being aggrieved by the decision dated 6-12-1974 challenged the same by means of the present petition.

5. The petition was admitted by this Court on 1-1-1975 and an ad interim order was issued staying the operation of the order dated 6th December, 1974, This order was confirmed on 24th July, 1981. Since the grant of fresh stage carriage permit in favour of Gopi Singh had been stayed by this Court, the effect was that the petitioners continued to ply their vehicles on the route in question by virtue of the interim order passed by this Court It is stated that the petitioners are still plying their vehicles.

6. I have heard the learned counsel for the parties.

7. Sri D.P. Singh, learned counsel for the petitioners has contended that the State Transport Appellate Tribunal acted illegally and with material irregularity in the exercise of its jurisdiction in holding that since the renewal application was not made within time, it was not open to the Regional Transport Authority to accept the

said application. Learned counsel further contended that in any case, the fresh stage carriage permit could not have been granted in favour of Gopi Singh as his application for grant of a permit was not made within time, no security had been furnished and it had not been published in the U. P. Gazette as required by the Act

8. So far as the second question is concerned, the Regional Transport Authority has categorically held that the application made by Gopi Singh had not been submitted six weeks before the date of expiry of the permit. It has been further found that the security money had not been deposited and the application had not been published in the U. P. Gazette. The appellate Court did not consider these factors at all and after rejecting the renewal application granted the permit in favour of Gopi Singh without recording any reason as to why the application of Gopi Singh was treated as valid in the eye of law. Since the application of Gopi Singh was neither within time nor security had been furnished and neither it was published the application of Gopi Singh was wholly incompetent and as such the permit, if any, could not be granted to Gopi Singh. The second submission of the learned counsel for the petitioners consequently is well founded.

9. In regard to the first submission made by the learned counsel, it is necessary to quote the relevant provisions of the Act. Sub-clause (2) to Section 58 reads as under :  
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"58. Duration and renewal of permits.

(1).....

(2) A permit may be renewed on an application made and disposed of as if it were an application for a permit:

Provided that the application for the renewal of a permit shall be made,--

(a) in the case of a stage carriage permit or a public carrier's permit, not less than (one hundred and twenty days) before the date of its expiry; and

(b) in any other case, not less than sixty days before the date of its expiry."

10. The above Section lays down that the application for renewal has to be disposed of as if it were an application for a permit

11. The proviso to Sub-section (2) of Section 58 clearly provides that the application for renewal of a permit has to be made not less than 120 days before the date of its expiry.

12. The question which requires interpretation is as to what meaning has to be given to the expression "made" used in the proviso. Shri B.D. Mandhyan, learned counsel for the respondent has urged that the word "made" here means "filed". The mere sending of application by post or by any other mode cannot fulfill the requirement of the proviso. The application for renewal has to be filed before the

authority concerned not less than 120 days before the date of its expiry.

13. In Black's Law Dictionary, the word "made" has been defined as "filed". No other definition has been placed before me.

14. On a reading of the provisions of the Limitation Act also it does appear that the word "made" should be given the meaning "filed".

15. Section 3 of the Limitation Act, 1963 provides that an application made after the prescribed period has to be dismissed as barred by time. Here also in this Section the word "made" has been used. It implies that the application has to be made before the authority concerned within the prescribed period. If an application has to be made before the authority concerned, it has to be filed before the said authority. Therefore, it is reasonable to interpret the word "made" as meaning "filed". Similarly, Section 4 of the Limitation Act provides as follows: --

"4. Where the prescribed period for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the Court reopens."

16. Here also the Parliament has used the expression "made" for filing of an application. The making of an application is similar to the words "filing of an application". Similar is the position in regard to Section 5 of the Limitation Act.

17. In my opinion, consequently, the arguments of Shri B.D. Mandhyan is correct that the word "made" has to be given an interpretation to mean as "filed".

18. There is one more reason why in my opinion the word "made" should be read as "filed" as under the Scheme of the Act after an application for renewal is made u/s 58, it has to be disposed of as if it were an application for the grant of a permit under the Act. The procedure for the grant of a permit has been laid down in detail u/s 57 of the Act. There are many steps required before the actual consideration of the application for renewal, namely, the application has to be published in the Gazette, the objections are invited. It is open to persons to object to the renewal of the permit and thereafter the application for renewal is considered, all these procedures take time and it is for this reason that the Parliament provided that the application for renewal should be made at least 120 days before the expiry of the permit. If any other interpretation is given to the word "made" used in Section 58(2), the result may be that it will not be possible for the authority concerned to comply with the provisions of Section 57 of the Act.

19. I am consequently clearly of the opinion that the word "made" should be given the meaning as "filed".

20. "Filing" does not contemplate personal presentation. The applicant can use any mode he likes but the application should be received by the authority concerned within the time prescribed by law.

21. So far as the facts of the present case are concerned, it is not disputed that the application for renewal was posted on 12th April, 1973 but this application was not received by the Regional Transport Authority, Meerut at all. For the first time the application for renewal was moved before the authority on 22-10-1973. This application was made more than two months after the actual expiry of the period on 18th August, 1973. Since the application for renewal was made on 22-10-1973 much after the expiry of the period of permit, clearly the proviso of Section 58(2) was contravened as no application for renewal had been made by the petitioners 120 days before the expiry of the period. In the circumstances it cannot be said that the Tribunal acted illegally or with material irregularity in the exercise of his jurisdiction in treating the application for renewal as wholly incompetent.

22. In view of the above, I hold that the application for renewal of the permit made by the petitioners was rightly rejected by the Tribunal. I further hold that fresh permit could not have been granted in favour of Gopi Singh. The result now is that there would be a vacancy caused by expiry of the permit in favour of the petitioners.

23. In the result, I allow the petition in part, modify the order of the Tribunal dated 6-12-1974 and quash the operative portion of the order by virtue of which a regular stage carriage permit was granted to Gopi Singh on Khurja-Meerut route. Since the vacancy has been caused in respect of this route, the authorities shall take steps for granting a fresh regular stage carriage permit in respect of this route after following the procedure prescribed under the Act. Since the petitioners have been running their stage carriage on this route for a very long time and also by virtue of the stay order passed by this Court, I think in the interest of justice to permit the petitioners to ply the vehicle on this route in order that the public may not be inconvenienced till the matter relating to the grant of a regular stage carriage permit in respect of the route in question is ultimately decided by the authorities concerned. The vacancy caused by the expiry of the permit in favour of the petitioners shall be filled in very expeditiously. The parties are directed to bear their own costs.