CIVIL MISCELLANEOUS

Before R. S. Narula, J.

GANGA JIWAN AND OTHERS,—*Petitioners*

versus

DEPUTY COMMISSIONER, GURGAON,

AND ANOTHER,—*Respondents*

Civil Writ No. 505 of 1965

1965

September 30th

Punjab Gram Panchayat Act, 1952 (*IV of 1953*)—*S.* 81(1)(c)—*Amount collected by managers of a fair in consideration of amenities etc. to be provided by them at the fair—Whether can be ordered by the Collector to be credited to the Gram Panchayat Fund—Dispute as to the amount collected—Authority to decide—Whether the Collector or the Civil Court—Collection of the amount by the managers of the fair—Whether prevents the panchayat from levying and collecting* tehbazari.

Held,—

(1) that the amount collected by the managers of a fair from a contractor in whose favour they have sold certain rights in connection with the fair does not fall within clause (c) of sub-section (1) of section 81 of the Punjab Gram Panchayat Act, 1952, and the Collector cannot order the contractor to deposit it in the Gram Panchayat Fund;

(2) that the Collector has no jurisdiction to decide whether the amount in question falls within clause (c) of sub-section (1) of section 81 of the said Act as no provision in the Act authorises him to do so. If the Gram Panchayat lays claim to the amount it should have the matter decided by the civil court; and

(3) that the Gram Panchayat is competent under section 82(2)(i) of the Act to levy and recover *tehbazari* and the managers of the fair have no right to levy any fee or tax. The levy of the amount by the managers of the fair directly or indirectly from the intending shopkeepers or stall-holders at the fair does not in any way derogate from the authority of the Panchayat under section 82(2)(i) of the Act to levy *tehbazari* for using any lands vested in the Panchayat. But the Gram Panchayat cannot levy any *tehbazari* in respect of the property belonging exclusively to the petitioners or their *mandir*.

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued quashing the notice, dated 15th July, 1964.

H. L. SARIN AND MISS ASHA KOHLI, ADVOCATES, for the Petitioners.

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL, WITH M. M. SINGH AND D. N. AGGARWAL, ADVOCATES, for the Respondents.

ORDER

Narula, J.

NARULA, J.—The main question of law which arises in this case is whether any amount collected by the managers of a *mela* (fair) in consideration of the amenities, etc., to be provided by them can be declared by the Collector of a district as an amount liable to be credited to the Gram Panchayat fund under section 81(1)(c) of the Punjab Gram Panchayat Act, 4 of 1953, hereinafter referred to as the Act. I may first set out the relevant facts leading to the filing of this writ petition. Admittedly there is a religious temple in village Gurgaon, known as Sitla Mata Masani Temple. For the sake of convenience I will hereinafter refer to the same as the temple. The case of the petitioners is that this temple is being worshipped only by the Hindus and by members of no other community. On behalf of the respondents it has not been admitted that the temple is used exclusively by the worshippers of the Hindu community. The temple exists on Khasra No. 2297, khewat No. 437, (described in the writ petition as 427, but described in the Collector's written statement as 437) according to the revenue records of 1959-60 while a Dharamsala, which is a religious institution of the Hindus, exists on Khasra No. 2299 and a pond on Khasra No. 2741. The area covered by the said three Khasra Nos. measures 8 Bighas 19 Biswas. Adjacent to these three properties there is land comprised in Khasra No. 2295 and 2302, Khewat No. 443 according to the revenue records of 1959-60, on which there exists a Dharamsala and Khasra No. 2300, where there exists a pacca well for drinking water. It has not been disputed in the affidavit filed on behalf of the Deputy Commissioner that the entire land of the said three Khasra Nos. belongs to Mandir Thakardwara, Gurgaon, and that the entire area of the said five Khasra Nos. measures 12 Bighas 12 Biswas

It is also admitted by the Collector that no portion of the above-said land vests in the Gram Panchayat, Gurgaon.

It is also not disputed that a fair known as Sitla Mata Masani Fair is periodically held in the premises. This fair is organised by the Hindu Jats of the village and more particularly by the Managing Committee of the Sitla Mata Masani Fair. It cannot be disputed that some kind of arrangements have to be made for the holding of the fair. The case of the petitioners is that in consideration of providing various amenities to the pilgrims, for example, water-supply, sanitation, first-aid, electric supply, etc., and also for meeting the expenses of the observance of various religious ceremonies in the temple contributions (loosely called Tehbazari) are received by the petitioners by annual auction from the shopkeepers and others setting up their stalls, etc., on the land attached to the temple and the Dharamsala referred to above. According to the petitioners the fair is held on that land. In reply to this allegation it has been stated in the written statement of the Collector as follows:—

> "There is no dispute regarding the celebration of Sitla Mata Masani Fair. The present dispute is to levy *tehbazari* tax for the use of roads and lands of the village and not only on these Khasra Nos. mentioned in the petition. *Tehbazari* Tax can be levied only by the Panchayat under section 82(2)(i) of the Gram Panchayat Act, 1952. The dispute is regarding the use of roads and lands of the village. In the Revenue Record in the Fard Jamabandi, it is mentioned in its column 5, that it is used for *Rifa-i-am* (public). It is, therefore, a public fair."

On July 15, 1964, the Deputy Commissioner, Gurgaon, sent a notice to Shri Onkar Singh, petitioner No. 4, describing him as Amanatdar, Mela Masani, Gurgaon, of which notice, a copy is annexure 'A' to the writ petition. It is stated in that notice that the Gram Panchayat, Gurgaon, had applied to the Deputy Commissioner to declare the sum of Rs. 20,000 which had been levied by the management of Mela Masani as Tehbazari, as Panchayat fund under section 81(c) of the Act. Onkar Singh was called upon by that notice to attend the office of the

Ganga Jiwan and others
v.
Deputy Commissioner, Gurgaon and another

Narula, J.

Deputy Commissioner on August 3, 1964, to show cause why the sum of Rs. 20,000 in question should not be recovered from him as it was Panchayat fund and as the village Panchayat alone could levy Tehbazari under section 82(2)(i) of the Act.

The six petitioners, who claim to be members of the Managing Committee of Sitla Mata Masani Fair, Gurgaon, sent a written reply dated August 3, 1964, to the above-said notice. A copy of the reply has been filed by the petitioners as annexure 'B' to the writ petition. Several points were sought to be made out in the said reply. The main contentions of the petitioners were that the Panchayat could be concerned under section 19(1) of the Act only with non-religious fairs and inasmuch as the fair in question was a purely religious one, the Panchayat was not concerned with it. It is further averred in the said reply that though the contribution in question is customarily but erroneously called *Tehbazari,* in fact it is in the nature of a contribution realised by the management of the fair in lieu of amenities provided by them to the pilgrims. Reliance in the reply was placed in this connection on the judgment of the District Judge, Gurgaon, dated 2nd November, 1929 in Civil Appeal No. 187 of 1928-*Kurya and others* v. *Ram Nath and others* and on the judgment of Shri Dev Raj Khanna, Sub-Judge 1st Class, Gurgaon, dated 16th December, 1961, in Civil suit No. 160 of 1961—*Pandit Panna Lal and others* v. *Onkar Singh and others.*

In the judgment of the District Judge, Gurgaon, referred to above it had been held in a dispute between the various land-holders of the village as follows:—

> "In view of the fact that the pilgrims are not using only field No. 2875, but the District Board Road and a field belonging to Bhats (who are not the plaintiffs) and that even that income is all put in one place shows that the Tehbazari of the Chaukidars were not any tax levied on account of the use of the land, but for the successful management of the fair itself,....."

In a similar dispute raised in the suit of 1961 Shri Dev Raj Khanna, Sub-Judge 1st Class, Gurgaon, held on issues Nos. 1 and 2, which are also quoted below, as follows:—

> *Issue No.* 1.—How is the income of the Tehbazari of Mela Masani to be utilised ?

Issue No. 2.—Have the biswedars of Gurgaon village right to share that income wholly or partly ?

"After therefore giving my careful and prolonged consideration to the evidence on the record and the circumstances of the case, I am of the view that the income of the tehbazari realised at the Mela Masani is meant to be utilised for the management of the mela and providing amenities and comforts to the pilgrims visiting the same, and for no other purpose. In fact there can be no limit to amount spent in that direction as lakhs of pilgrims visit that fair annually, and according to D.W. 1 Sh. Chander Bhan, even Rs. 25,000 can be spent on the said management. I, therefore, decide issue No. 1 accordingly, and issue No. 2 in the negative."

After sending the reply to the show-cause notice (annexure 'B') the petitioners filed this writ petition on or about 22nd February, 1965. They got it adjourned from the Motion Bench on February 25, 1965. Without calling the petitioners to support the allegations made by them in their written reply and without endeavouring to hold any inquiry in the presence of the petitioners on the disputed questions of fact, which arose on the basis of their said reply, the Collector gave his *ex-parte* decision in the matter on February 28, 1965, of which order a copy has been filed in this Court subsequently and marked annexure 'C'. This order, which is now impugned, is in the following terms:—

"In exercise of the powers conferred upon me under section 81(1)(c) of the Punjab Gram Panchayat Act, 1952, I, Nar Narain Singh, Collector, District Gurgaon, hereby order that Rs. 20,000 (Twenty thousand) Tehbazari amount collected by the Contractor for levy of Tehbazari on shopkeepers and vehicles, etc., for the use of roads and lands, etc., for 1964-65 should be credited to the fund of Gram Panchayat, Gurgaon, as it is a fund collected for the common secular purposes of the village Gurgaon."

When the above-said order was passed on 28th February, 1965, the petitioners were compelled to apply

Ganga Jiwan and others
v.
Deputy Commissioner, Gurgaon and another

Narula, J.

for an amendment of their writ petition. This they did by C.M. 759 of 1965, dated 6th March, 1965. The amended writ petition was admitted on 8th March, 1965, by the Motion Bench (Dulat and Grover, JJ.). At the time of admitting the amended petition the Motion Bench also passed an order for stay of recovery of the sum of Rs. 20,000 in dispute. In the writ petition the petitioners had impleaded only the Deputy Commissioner, Gurgaon, as the solitary respondent. On an application of the Gram Panchayat of village Gurgaon, (C.M. No. 2427 of 1965) under Order 1, rule 10 of the Code of Civil Procedure the Gram Panchayat was added as a second respondent in the case. The Collector has filed a detailed written statement, dated nil which is supported by an affidavit dated 15th April, 1965. In the said written statement it has been averred that the Panchayat is the only body competent to levy any tax or fee under the law and that the petitioners have no right to make such arrangements for the fair. Section 19(1)(i) of the Act has been invoked to justify the plea that it is the Panchayat alone which can arrange for the fair in question and can levy *Tehbazari* tax under section 82(2)(i) of the Act. According to the Collector the fair in question is a "public mela" and is not a religious festival. Distinction is also sought to be drawn between the offerings received at the temple which are stated to amount to about Rs. 1,25,000 per year on the one hand and the so-called *Tehbazari* on the other.

The Gram Panchayat, the added respondent, has filed a separate written statement, dated 13th September, 1965. The Panchayat has gone to the length of denying that Dharamsala is a religious institution and even the situation of temple, etc. It is further stated that it is true that the lands in question are the property of the Thakardwara, but it is claimed that these Khasra Nos. have vested in the Panchayat as they are not subservient to the Thakardwara. The petitioners, who hold the Sitla Mata Masani fair, have been styled as a self-constituted so-called Managing Committee of a few persons, who reap the largest advantage. It has further been deposed in the written statement that *Tehbazari* is charged by the petitioners not only from the people, who set up their stalls on the land attached to the temple or the Dharamsala, but from all the people who set up their shops on either side of the road

itself. The Panchayat states that the collections in question are for a common secular purpose and it is the Collector alone who has to decide the nature of the collections and it is the Collector's opinion which is decisive in the matter.

"Tax" is defined in section 3(p) of the Act as including any cess, duty, fee, rate, toll or other impost leviable under this Act. Section 19(1)(i) of the Act reads as follows:—

> "19(1) Subject to such rules as may be prescribed, it shall be the duty of the Gram Panchayat within the limits of the funds at its disposal, to make arrangements for carrying out the requirements of the Sabha area in respect of the following matters including all subsidiary works and buildings connected therewith:—
>
> (a) to (h) ————————
>
> (i) the organisation and celebrations of public festivals, other than religious festivals;
>
> (j) to (zz) ————————".

Section 80 of the Act provides for there being instituted a Sabha Fund for each Panchayat for its being utilised for carrying out the duties and obligations imposed on the Panchayat or any Committee thereof by the Act or by any other enactment or for such other purposes of the Panchayat as the State Government may prescribe. Section 81 of the Act reads as follows:—

> "81 (1) The following moneys shall be credited to the Gram Fund—
>
> (a) all grants from Government or other Local authorities.
>
> (b) the balance (if any) standing at the credit of the Panchayat at the commencement of this Act;

Ganga Jiwan
v.
Deputy
Commissioner,
Gurgaon
and another

Narula, J.

(c) the balances and proceeds of all funds which, in the opinion of the Collector, were or are being collected for common secular purposes of the village or villages comprised in the Sabha area;

(d) all donations:

(e) all taxes, duties, cesses and fees imposed and realised under this Act;

(f) the sale proceeds of all dust, dirt, dung or refuge collected by the servants of the Panchayats and dead bodies of animals not claimed by any person in accordance with any custom or usage and trees and other produce of the land vested in the Sabha;

(g) income derived from the village fisheries which are under the management of Panchayats;

(h) income derived from common lands vested in the Panchayat under any law for the time being in force.

(2) The government shall every year assign to every Panchayat a portion of the land revenue not being less than ten per centum of the total annual land revenue realised within the limits of the Sabha area which shall be credited to the Gram Fund."

Section 82(2)(i) of the Act provides that subject to rules made under the Act or under any order made by the Government in this behalf a Gram Panchayat may levy various kinds of fees including "*teh-bazari* from the shopkeepers in fairs other than cattle fairs."

Section 85 of the Act enjoins on the Collector a duty to recover any sums due under the Act (other than sums due under a decree passed by the Panchayat in exercise of its civil jurisdiction or as fines imposed in the exercise of its criminal jurisdiction) as if such sums were arrears of land revenue.

Ganga Jiwan
v.
Deputy Commissioner, Gurgaon and another

Narula, J.

Shri Harbans Lal Sarin, the learned senior counsel appearing for the petitioners, has urged three main points before me in support of the writ petition. It is firstly contended by him that even if it may be assumed that the petitioners had recovered certain amount from a third person which they were not entitled to recover and which it was the exclusive right of the Gram Panchayat to obtain from that person, Section 81(1)(c) of the Act does not authorise the Collector to adjudicate upon the matter in favour of the Panchayat or otherwise. This, he urges, would be the function of a competent Civil Court of original jurisdiction. His argument is that in clause (c) of sub-section (1) of section 81 of the Act after the words "are being collected" and before the words "for common secular purposes of the village" we must read the words "by the Gram Panchayat". Mr. Sarin suggests that these words are implied in clause (c) inasmuch as the words "given or made to the Gram Panchayat" have to be impliedly added to the words "all donations" in clause (d) of sub-section (1) of section 81 and in the same manner as the words "to the Gram Panchayat" must be read after clause (a) of sub-section (1) relating to "all grants from Government or other Local authorities." The contention is that the pivot around which all these clauses have to rotate is the Gram Panchayat. There appears to be great force in this contention of Mr. Sarin. It would be meaningless to suggest that "all donations" within the Sabha area have to be credited to the Gram Fund under clause (d) of sub-section (1) of section 81 of the Act. It would be equally ridiculous to argue that "all grants from the Government or other Local authorities" to whomsoever made have to be credited to the Gram Fund. I think, it would be equally illogical to suggest that the balances and proceeds of all funds which are collected for common secular purposes of the village by any person whatsoever can be brought within the scope of clause (c) of sub-section (1) of section 81.

The next question that arises is about the authority empowered by law to decide a dispute as to whether a certain amount collected by a third person from an outside body within the village is for the common secular purposes of the village or not and falls under clause (c) quoted above or not and whether it is liable to be credited to the Gram Fund or not. The authority and jurisdiction of the

Ganga Jiwan
v.
Deputy
Commissioner,
Gurgaon
and another

Narula, J.

Collector under the Act is circumscribed by the provisions of the Act itself. The learned counsel for the respondents stated that it is under section 81(1)(c) of the Act alone that the Collector has the power to determine the above-said question and it is only after such determination that the amount becomes payable to the Panchayat under the Act and, therefore, becomes recoverable as arrears of land revenue under section 85 thereof. There is no doubt that if any amount other than that excepted from the operation of section 85 of the Act becomes due to the Panchayat under the Act, it is recoverable by the Collector under section 85 as arrears of land revenue. But I do not think, the Collector is authorised to decide whether an amount of the type involved in the instant case is due to the Panchayat under the Act or not. As at present advised on the material that is before me, I am also of the tentative opinion that the amount in question does not fall within section 81(1)(c) of the Act. The principal reason for so holding is that the amount has not been collected either by the Panchayat or by anyone on its behalf or as its agent.

It has been argued by Shri Kaushal, the learned Deputy Advocate-General appearing for the Collector, on the basis of certain resolutions of the Gram Sabha to which reference is being made herein below, that the amount has in fact been recovered for and on behalf of the Panchayat by the petitioners and this, therefore, amounts to recovery by the Panchayat and on that account falls within clause (c) of sub-section (1) of section 81 of the Act. A list of those resolutions may be given below:—

(1) Resolution No. 2, dated 27th March, 1964,
(2) Resolution No. 1, dated 4th May, 1964.
(3) Resolution No. 4, dated 6th December, 1964.
(4) Resolution No. 1, dated 4th March, 1965. (after the filing of the writ petition).
(5) Resolution No. 1, dated 5th March, 1965:
(6) Resolution No. 3, dated 13th March, 1965.

By the resolution of March 27, 1964, it was resolved that a sum of Rs. 20,000 had been recovered on account of the contract of *Tehbazari* of which amount the owner should be the Panchayat so that the amount could be put to the right use and its account could be audited. It was

further resolved that it was not the right of any one person to utilise that amount and that, therefore, the amount should be brought into the Panchayat Fund. By that resolution the Collector was requested to give a direction to have this sum of Rs. 20,000 deposited in the Panchayat Fund and the Collector was also asked to pass an order for the amount of such a contract being made payable to the Panchayat in future.

The above-said resolution makes it clear that the contract of Rs. 20,000 had not been given by the Panchayat nor had any agent of the Panchayat recovered the amount and that what was sought to be ordered by the Collector was that irrespective of the will of the persons, who had paid or recovered the amount, it should be got deposited in the Panchayat fund.

By resolution, dated 4th May, 1964, it was resolved that the sum of Rs. 20,000 which had been paid by Ishar Singh Jat, who had obtained the contract, was lying in trust with Shri Onkar Singh, (petitioner No. 4) and that under section 81(1)(c) of the Act, this amount was liable to be deposited in the Panchayat fund. Reference in that resolution was also made to the judgment of the Court of Shri Dev Raj Khanna, Sub Judge 1st Class, Gurgaon, dated 16th December, 1961, quoted above. If by reference to that judgment it was sought to be made out that any one person of the village was not entitled to receive the amount in question, it could be justified. But if by that reference it is sought to be made out that the Panchayat had any right to the amount in question or any part thereof, the reference is wholly misleading and entirely misconceived.

By resolution, dated 6th December, 1964, the Panchayat resolved to ask the Collector to direct that the amount of the contract for 1965-66, which was likely to be auctioned soon, should be got paid to the Panchayat. Resolution, dated 4th March, 1965, provided for certain arrangements being made in connection with the approaching fair. By resolution, dated 5th March, 1965, it was resolved that the sum of Rs. 20,000, which had been recovered, should be got accounted for from Shri Onkar Singh and his original receipts and acquittances, etc., should be obtained from him.

Ganga Jiwan
v.
Deputy Commissioner, Gurgaon and another

Narula, J.

Resolution, dated 13th March, 1965, does not at all appear to be relevant for the disposal of the dispute before me. It relates to a unanimous decision of the Panchayat to the effect that the sum of Rs. 22,500, which had been paid on 12th March, 1965, by Shri Mohinder Singh, on account of the bid money for the contract for the next year, should be got deposited in the Panchayat Fund.

None of the resolutions produced by the Panchayat before me and referred to above seem to justify the inference that the sum of Rs. 20,000 in question had been collected by the Panchayat either directly or indirectly.

Reference was then made by the learned counsel for the respondents to clause (e) of sub-section (1) of section 81 and it was suggested that *Tehbazari* being a fee leviable under the Act, it formed part of the Gram Panchayat Fund. Clause (e), however, refers to such taxes; etc. as are "imposed" and "realised" under the Act. It cannot be successfully argued for a moment that the sum of Rs. 20,000 in question was realised under the Act. In fact it would be fallacious to say that the amount in question was even an imposition under the Act.

It has also been argued by Mr. Sarin, that the fair in question is a religious one and not a secular one. In the first instance this is a question of fact which I am not called upon to decide in the writ jurisdiction of this Court. Moreover I think that it does not make the slightest difference whether the fair in question is religious or secular as none of the respondents is eagar to control the holding of the fair. They are really concerned with the recovery of the amount called *Tehbazari* from the petitioners.

No exception can be taken to the argument of the learned counsel for the respondents that it is open to the Gram Panchayat to levy any *Tehbazari* on the shop-keepers for the fair in question, which is admittedly not a cattle fair. But the petitioners were not prohibiting the Gram Panchayat from doing so. The only question is whether the sum of Rs. 20,000 in dispute has been imposed and recovered as *"Tehbazari"* under section

82(2)(i) of the Act. This is certainly not so. This provision of law does not, therefore, help the respondents to defeat this writ petition.

On a careful consideration of the contentions raised by the learned counsel for the parties before me I hold:—

(i) that the sum of Rs. 20,000 in question recovered by the petitioners from a contractor in whose favour they have sold certain rights in connection with the fair in question does not fall within clause (c) of sub-section (1) of section 81 of the Act;

(ii) that irrespective of my decision on the above-said point the Collector has no jurisdiction to decide whether the amount in question falls within that clause or not as no provision in the Act authorises him to do so;

(iii) that the fair in question being secular or religious does not make any difference to the question of levy of *Tehbazari;*

(iv) that the Gram Panchayat is competent under section 82(2)(i) of the Act to levy and recover *Tehbazari* and obviously the petitioners are not entitled to levy any fee or tax;

(v) that the term *"Tehbazari"* has been loosely used by the petitioners for the amount of the consideration of the contract which they have been giving and which they have given for making certain arrangements in connection with the fair in question;

(vi) that the levy of the said amount by the petitioners directly or indirectly from the intending shop-keepers or stall-holders at the fair does not in any way derogate from the authority of the Panchayat under section 82(2)(i) of the Act to levy a *Tehbazari* for using any lands vested in the Panchayat;

Ganga Jiwan
v.
Deputy Commissioner, Gurgaon and another

Narula, J.

(vii) that the Gram Panchayat cannot levy any *Tehbazari* in respect of the property belonging exclusively to the petitioners or their *Mandir;*

(viii) that if the Gram Panchayat is advised that the amount in question has been recovered by the petitioners on the basis of some kind of a quasi-contract purporting to be on behalf of the Panchayat or that the petitioners have recovered something which is the exclusive right of the Gram Panchayat to obtain, they can approach a Civil Court to decide the matter and cannot ask the Collector to decide that issue.

As a result of my above findings I hold that the notice 'A' issued by the Collector and the orders 'C' issued by him are both wholly without jurisdiction and void and ineffective.

I, therefore, allow this writ petition, set aside and quash the notice, dated 15th July, 1964 (annexure 'A' to the writ petition) and the order, dated 28th February, 1965, (annexure 'C' to the writ petition). The petitioners would be entitled to get their costs from respondent No. 1 in his official capacity. Respondent No. 2 will bear its own costs.

B.R.T.

CIVIL MISCELLANEOUS.

Before Inder Dev Dua and Prem Chand Pandit, JJ.

AJIT SINGH,—*Petitioner.*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 663 of 1965.

1965

October, 5th.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Ss. 14(2) and 24—Consolidation scheme prepared by an officer on whom requisite authority is conferred later on retrospectively—Whether liable to be quashed—The Constitution (Seventeenth Amendment) Act (1964)—Proviso added to Article 31-A.—Effect of—Whether retrospective—Rights under the scheme of consolidation—When become vested rights—Assignment of land for common purposes—Whether acquisition—Constitution of India (1950)—Article 226—Petition under—Whether must be dismissed on grounds of delay—Petition alleging infringement of fundamental rights—Whether cannot be