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manner of doubt that the interests of justice required a remand. The Appellate Tribunal did not exceed the authority conferred upon it by law by declining to interfere with the order of the Assistant Commissioner. Indeed, the order passed by the Tribunal was the only order which could be passed in the circumstances of the case.

For these reasons I entertain no doubt in my mind that on the facts and in the circumstances of this case the order of the Tribunal maintaining that passed by the Assistant Commissioner was not erroneous in point of law. The question which has been referred to us by the Tribunal must, in the circumstances, be answered in the negative. Let an appropriate answer be returned. The Department will be entitled to costs of this case.

Chopra, J.

Chopra, J.—I agree.

CIVIL MISCELLANEOUS.

Before Bhandari, C. J., and Chopra, J.

MESSRS. SIKRI BROTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Application No. 332 of 1955.

1957

Jan., 30th

Constitution of India, Articles 19(5) and 226—Mandamus —Person asking for a writ of mandamus must come with clean hands—Laches—Delay in filing a petition under Article 226 must be explained in the petition—Delay—Reasonable excuse—Time spent in pursuing a legal remedy, whether reasonable excuse—Time spent in pursuing a mercy petition, whether can be excused—Right to carry on business—Whether subject to reasonable restrictions.

Held, as follows:—

(1) A writ of mandamus is controlled by equitable principles and can be issued only to a person who comes

into Court with clean hands and who is not guilty of fraud or bad faith in respect of the matters in controversy between the parties.

(2) A petition under Article 226 must be brought without unreasonable delay, for it is subject to the equitable doctrine of laches. A Court exercising its equitable jurisdiction is extremely reluctant to examine the grievances of a person who has not shown reasonable diligence in the assertion of his claim or who has slept upon his rights for an unreasonable period of time or who has no excuse for his laches in asserting the said rights. It is of the utmost importance, therefore, that a person who seeks the intervention of this Court under Article 226 of the Constitution should give a satisfactory explanation of his failure to assert his claim at an earlier date. The excuse for his procrastination should find a place in the petition submitted by him and the facts relied upon by him should be set out clearly in the body of the petition.

(3) The only delay which the Court is prepared to excuse in presenting a petition is the delay which is occasioned by the petitioners pursuing a legal remedy. Once the final decision of Government is given a representation is merely an appeal for mercy and indulgence. It is not pursuing a remedy given by the law. Delay cannot be condoned on the ground only that the petitioner did not wish to annoy Government, or that he failed to assert his claim because of prudential reasons, lack of funds or of ill-health.

(4) A person has no fundamental right to carry on his business without let or hinderance. His right to carry on business is subject to such reasonable restrictions as the Legislature may think fit to impose under the provisions of clause (5) of Article 19 of the Constitution.

Petition under Article 226 of the Constitution of India praying that appropriate writs, directions or orders be issued for treating the cancellation of the petitioner's licence under the East Punjab Control of Bricks Supplies Order, 1949, as wholly void and ineffective and for preventing the respondents from continuing to enforce the cancellation order; and further praying that the respondents be directed to take necessary steps with regard to the renewal of the licence of the petitioner for the year 1955-56 to enable the petitioner to carry on the trade and business of manufacturing and selling bricks.

A. N. GROVER and K. L. JAGGA, for Petitioners.

BHAGIRATH DASS, for Respondents.

JUDGMENT

Bhandari, C. J. BHANDARI, C.J.—This petition under Article 226 raises the question whether the East Punjab Control of Bricks Supplies Order, 1949, is consistent with the provisions of the Constitution.

The petitioners in this case are a firm of coal merchants having their head office at Ferozepore. In the year 1950 they were granted a licence for the manufacture and sale of bricks under the provisions of the East Punjab Control of Bricks Supplies Order, 1949, and this licence was renewed year after year, the last licence being valid up to the 31st March, 1954. The petitioners obtained large quantities of coal under a permit for the purpose of firing their brick-kiln but they did not use the coal for the purpose for which it was intended and passed it on to certain other persons. The State Government caused enquiries to be made into the matter and finding the allegations against the petitioners to be true declined to order the renewal of their licence. The petitioners are dissatisfied with the order of the State Government and have challenged the validity of the Order of 1949. It is not necessary however to go into this question as I am of the opinion that the petition can be disposed of on other grounds.

The first point for decision in the present case is whether the petitioners have come to this Court with clean hands. It is common ground that in the year 1950-51 they were allotted 14 wagons of coal all of which were passed on to other firms. In the year 1951-52 they obtained permits for 17 wagons of coal but were unable to pass their quota on to other persons as no consignments of coal arrived in Ferozepore owing to the shortage of transport. In the year 1952-53 the petitioners received

9 wagons of coal, four of which were transferred to others, four given on loan and one not accounted for. Thus out of a total number of 23 wagons of coal received as many as 18 were transferred to other firms, four were given by them on loan and one was completely unaccounted for. The petitioners admit that they did not fire their kiln in Ferozepore after July, 1950, but they attribute their failure to do so to a number of circumstances, among others being (1) that they had already a large number of bricks in stock with them; (2) that in view of the serious tension between India and Pakistan over the Kashmir issue there was scarcely any building activity; (3) that it was difficult to persuade the labour to work at their kiln which is at a distance of one-and-a-half miles from the border; and (4) that Government had auctioned a number of old bricks which had become available by the destruction of houses due to floods and consequently that there was no demand for purchase of bricks in Ferozepore. The State Government controverted these allegations by stating that there was sufficient demand for supply of bricks and that other kiln licensees were manufacturing bricks during the relevant period. Even if the allegations made by the petitioners were accepted at their face value and even if it were assumed that it was difficult or impossible for them to manufacture bricks, it seems to me that there was no justification whatever for the petitioners placing indents for supplies of coal during the relevant period. It is contended on behalf of the State, and in my opinion with a certain amount of justification, that the petitioners who were coal merchants by profession were anxious to obtain wagons of coal not with the object of firing their kiln but with the object of selling coal in the black-market or at any rate with the object of making profits over the sales. A writ of mandamus is controlled by equitable principles and can be issued only to

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a person who comes into Court with clean hands and who is not guilty of fraud or bad faith in respect of the matters in controversy between the parties. I am satisfied that the petitioners in the present case obtained their licence not with the object of firing their kiln but with the object of obtaining supplies of slack coal for the purposes of their business as coal merchants.

There is another reason also for rejecting this petition. A petition under Article 226 must be brought without unreasonable delay, for it is subject to the equitable doctrine of laches. "A Court of equity" said Lord Camden "has always refused its aid to stale demands where the party slept upon his rights, and acquiesced for a great length of time. * * * * Laches and neglect are always discountenanced; and therefore, from the beginning of this jurisdiction, there was always a limitation to suits in this Court." A Court exercising its equitable jurisdiction is extremely reluctant to examine the grievances of a person who has not shown reasonable diligence in the assertion of his claim or who has slept upon his rights for an unreasonable period of time or who has no excuse for his laches in asserting the said rights. It is of the utmost importance, therefore, that a person who seeks the intervention of this Court under Article 226 of the Constitution should give a satisfactory explanation of his failure to assert his claim at an earlier date. The excuse for his procrastination should find a place in the petition submitted by him and the facts relied upon by him should be set out clearly in the body of the petition. He should state, for example, that he was not aware of his rights ; he should set out the circumstances which prevented him from acquiring knowledge at an earlier date and he should aver that he acquired knowledge of the facts on which he alleges in the petition after the expiry of

a long period. If the petition is silent in this respect, the Court will be entitled to presume that the petitioner had knowledge of the facts giving rise to the petition and that there was no obstacle to the presentation of the petition after the cause of action had arisen.

Now what are the causes which have prevented the petitioners from asserting their claim at an earlier date ? None have been set out in the body of the petition. As long ago as July or August, 1953, Government received a complaint that the petitioners were not utilising the coal wagons received by them for firing their own kiln and were passing on their supplies of coal to others. The Fuel Inspector started an official enquiry into this matter and found the allegations to be true. On the 11th July, 1954, the Assistant Food Controller informed the petitioners that Government had decided to discontinue their licence for the manufacture of bricks. The petitioners were fully aware that their licence was about to be cancelled and they accordingly submitted a representation to the Secretary to Government protesting against the action that was proposed to be taken in regard to them. The Director of Food and Civil Supplies informed them on the 10th September, 1954, that Government had reconsidered the position and had come to the conclusion that there was no justification for altering the decision already made. The petitioners now endeavoured to bring political pressure to bear upon Government and sent a written representation to the Chief Minister through a powerful member of the Legislative Assembly. This representation elicited a reply on the 5th April, 1955, that the petitioners had already been given a chance to explain their position, that action had been taken against them on their own admission that the brick-kiln was not

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worked from 1950 onwards, that there was an overall shortage of slack coal in the State, that Government had been endeavouring to eliminate all kiln owners who had not been manufacturing bricks themselves and had been passing on their quotas to other kiln owners and consequently that the action taken against the petitioners was fully in accord with the policy of Government.

The petitioners do not appear to have been satisfied with this reply, for in March, 1955, they submitted a formal application for the renewal of their licence. They did not receive a reply either granting or refusing their application and on the 12th September, 1955, they presented the present petition under Article 226 of the Constitution.

Two submissions have been placed before us by the learned counsel for the petitioners. It is contended in the first place that the delay in presenting the petition is not unreasonable, and secondly that as the injury caused by the deprivation of a fundamental right is a continuing wrong, no delay can be said to have been occasioned in the present case.

The first contention must, in my opinion, be summarily rejected. The petitioners were informed on the 14th July, 1954, that Government had decided to discontinue their licence; they were informed on the 10th September, 1954, that Government saw no reason to reconsider this decision; they were informed on the 5th April, 1955, that the Chief Minister saw no reason to interfere with the orders already passed. They could have been in no manner of doubt that their application for the grant or renewal of a licence for the year 1955-56 had been refused and yet knowing all this they waited till the 14th September, 1955, for presenting a petition to this Court. This delay requires explanation but is inexplicable and remains

wholly unexplained. The petitioners do not state that Government ever recognised their right to receive the licence or had promised to satisfy their claim or that the delay must be attributed to the conduct of Government. They state merely that they did not wish to present an application under Article 226 until they had explored all possible avenues for securing a redress of their grievances and that in any case they did not wish to alienate the sympathy of Government by asking for the issue of a writ. The only delay which the Court is prepared to excuse in presenting a petition is the delay which is occasioned by the petitioners pursuing a legal remedy for, as pointed out in *Gandhinagar Motor Transport Society* v. *State of Bombay* (1), once the final decision of Government is given a representation is merely an appeal for mercy and indulgence. It is not pursuing a remedy given by the law. Nor is there any substance in the contention that delay should be condoned in the present case as the petitioners did not wish to annoy Government. An excuse that a person failed to assert his claim because of prudential reasons or because of lack of funds or because of ill-health cannot, in my opinion, merit serious consideration. Having regard to all the circumstances of the case it seems to me that the delay which has been occasioned in presenting this petition cannot be justified or condoned.

Our attention has been invited to certain authorities which appear to propound the proposition that any injury caused by the deprivation of a fundamental right is a continuing wrong and that an application for the redress of this wrong can be presented at any time. These authorities cannot, in my opinion, regulate the decision of this case, for a person has no fundamental right to

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carry on his business without let or hindrance. His right to carry on business is subject to such reasonable restrictions as the Legislature may think fit to impose under the provisions of clause (5) of Article 19 of the Constitution.

For these reasons I am of the opinion that the petition must be dismissed but without costs. I would order accordingly.

Chopra, J.

CHOPRA J.—I agree,

APPELLATE CIVIL

Before Bishan Narain and Chopra, JJ.

SURJAN SINGH,—*Appellant*

versus

THE EAST PUNJAB GOVERNMENT,—*Respondent.*

Regular First Appeal No. 17 of 1949.

1957

Jan., 31st

Defence of India Act (XXXV of 1939) and Rules made thereunder—Whether temporary enactments—Effect of—Temporary Acts—Rights created by—Whether lapse with their expiry—Defence of India Act (XXXV of 1939)—Section 19 and Defence of India Rules—Rule 75A—Land acquired under—Right to receive compensation in respect thereof—Nature of—Whether such right fell with the expiry of the Act—Award made and appeals filed while Act in force—Whether can be heard after the expiry of the Act—Right of appeal—Nature and extent of—Defence of India Act (XXXV of 1939)—Section 19—Defence of India Rules—Rule 75—Whether inconsistent with Land Acquisition Act (I of 1894)—Expiry of Defence of India Act—Whether revives and makes Land Acquisition Act applicable—Appeals, whether can be heard under Land Acquisition Act—Interpretation of Statutes—Temporary Act making an earlier permanent Act ineffective during the time of its operation—Expiry of, whether revives the permanent Act—General Clauses Act (X of 1897)—Section 7—Whether applicable to temporary Acts—Banjar Jadid, Banjar Qadim *and* Ghair Mumkin—*Meaning of.*