

appointment could be questioned before the Judge only with reference to sections 55 and 56 of the Act. It could certainly not be questioned in a proceeding of this kind. The Act, no doubt, provides that the President shall be elected from among the members of the Board, but that provision does not give the judge jurisdiction on an election petition to consider whether the members have or have not been properly appointed. He cannot disqualify them save on grounds that are not applicable here. The result, in the present instance, was the petitioner remained an appointed member of the Board, although the Judge had set aside his election as President on the ground that he had not been properly appointed a member. On the last point I agree that the petitioner was properly appointed and concur in the order allowing the petition and as to costs.

PARTHA-
SABADHI
NAIDU
v.
KOTESWARA
RAO.
—
WALLER, J.

N.R.

APPELLATE CRIMINAL.

Before Mr. Justice Krishnan and Mr. Justice Odgers.

1923,
September
19.

PUNYA SYAMALO (DEFENDANT IN MISCELLANEOUS
CASE NO. 44 OF 1922 ON THE FILE OF THE TOWN
SUB-MAGISTRATE OF BERTHAMPUR).*

Local Boards Act (Madras Act XIV of 1920)—Money due under a contract of lease of tolls—Sec. 221 of the Act, if recoverable under.

The amount due under a contract of lease of the tolls due to a Local Board is not "any fee, toll, costs, compensation, damages, penalties, charges, expenses or other sums due to a Local Board" within the meaning of section 221 of the Madras Local Boards Act (Madras Act XIV of 1920) and is not recoverable under the warrant of a Magistrate.

The words "other sums" in the section should be read *ejusdem generis* with what precedes them.

* Criminal Revision Case No. 222 of 1923.

PUNYA
SYAMALO,
In re.

CASE referred for the orders of the High Court, under section 438, Code of Criminal Procedure, by H. D. C. REILLY, Sessions Judge of Ganjām at Berhampur, in his letter Dis. No. 883, dated 15th March 1923.

The facts are given in the following Order of Reference by the Sessions Judge:—

The President of the Ganjām District Board leased to the petitioner the right to collect tolls at a certain toll-gate during the financial year 1921-22, on the petitioner agreeing to pay Rs. 4,450 in certain instalments. Petitioner being in arrears with his payments, an official of the District Board applied to the Town Sub-Magistrate of Berhampur to recover Rs. 1,112-8-0 with interest from the petitioner under section 221 of the Madras Local Boards Act, 1920. The Magistrate found that Rs. 612 was due from the petitioner and, purporting to proceed under section 221 of the Act, ordered the petitioner to pay that amount to the District Board with interest at 8 per cent, the rate of interest provided in the contract being 12 per cent. Petitioner prays that the case may be reported to the High Court for revision.

Petitioner's main contention is that the case is not covered by section 221 of the Act and that the Magistrate acted without jurisdiction. In that, I think, he is correct. Section 221 of the Act provides that "in default of payment of any fee, toll, costs, compensation, damages, penalties, charges, expenses or other sums due to a Local Board under, or by virtue of this Act, the same may be recovered under the warrant of the Magistrate." These words do not appear to include a sum due to a Local Board under a contract. The respondent's vakil does not contend that the section would apply to the recovery of rent due from a tenant on land leased to him by a local board, or of money due to a local board under a contract unconnected with the collection of any tax or toll levied by the board. But he contends that, because the District Board is empowered under section 75 of the Act to levy tolls, and under section 106 to lease out the right to collect them, any sum which a toll-contractor or lessee agrees to pay to the board for that right, is a sum due to the board "under or by virtue of the Act" within

the meaning of section 221. That contention appears to me unsound. The fees, tolls, costs, etc., mentioned in section 221 are all amounts which the member of the public concerned is bound to pay under orders made by virtue of the Act irrespective of his own wishes or consent. A sum due to the board from a party to a contract with it is not *ejusdem generis* with such fees, tolls, costs, etc., and cannot by any proper interpretation be brought within the words "other sums" in that section. Moreover, an amount due to the board under a contract cannot be said to be due to it under, or by virtue of the Act merely because the contract relates to the collection from the public of sums which, under the Act, the board can require the public to pay, or the contract is one into which the Act permits the board to enter. But for his contract the board would have no claim on the petitioner for the amount in question, and it is not by virtue of the Act but by virtue of his contract that he is liable for it. In my opinion section 221 of the Act does not apply to the case and the Magistrate's order is illegal.

In his explanation the Magistrate suggests that in making his order he was not acting as a Criminal Court, from which it would follow that I have no power to examine his proceedings under section 435, Code of Criminal Procedure, or to report the case to the High Court for revision under section 438, Code of Criminal Procedure. But in view of the decision of the High Court in Criminal Revision Case No. 427 of 1922, the respondent's vakil does not press that point. The case will be reported to the High Court for revision.

V. L. Ethiraj for the Public Prosecutor on behalf of the Crown.

The Court made the following

ORDER.

We think the reasons stated in the Order of the learned Sessions Judge are correct and we accept the same. The amount due under a contract of lease though of the toll cannot be treated as falling within the words of section 221 of the Local Boards Act. The words "other sums" in the section should be read *ejusdem*

PUNYA
STAMALO,
In re.

generis with what precedes them. Then again the sum in question here, is not payable "under or by virtue of this Act," but is payable under the contract between the parties. Section 106 has no bearing on this question; it merely authorizes the leasing out of the tolls but does not make the money payable under the contract of lease, money payable under the Act.

We, therefore, set aside the order of the Town Sub-Magistrate of Berhampur in M.C. No. 44 of 1922 as made without jurisdiction.

D.A.R.

APPELLATE CRIMINAL.

Before Mr. Justice Odgers and Mr. Justice Wallace.

NATARAJA PILLAI, PETITIONER,

v.

RANGASWAMY PILLAI AND THREE OTHERS, RESPONDENTS.*

Criminal Procedure Code (Act V of 1898), sec. 195—Nature of application to High Court—Not an appeal—Effect of amendment of the section—Application to set aside order revoking sanction—Not maintainable.

No right of appeal is provided for under section 195 of the Criminal Procedure Code (Act V of 1898), and an application to set aside an order revoking sanction does not lie after the amendment of the section by Act XVIII of 1923 as the amendment affects procedure and, as such, has retrospective effect.

Bapu v. Bapu, (1916) 1.L.R., 39 Mad., 750 (F.B.) and *Muthuswami Mudali v. Veeni Chetti*, (1907) 1.L.R., 30 Mad., 382 (F.B.), referred to and explained.

PETITION praying the High Court to set aside the order, dated 24th April 1923, of S. N. V. RAJACHARI, Additional District Magistrate, Tanjore, in Criminal Miscellaneous Petition No. 17 of 1923, revoking the sanction accorded for the prosecution of the respondents

* Criminal Miscellaneous Petition No. 374 of 1923.