

APPELLATE CRIMINAL.

Before Mr. Justice Waller and Mr. Justice
Krishnan Pandarai.

A. RAHEEM SAHIB PETITIONER (ACCUSED).*

1929,
February 25.

Madras Local Boards Act (XIV of 1920), sec. 221—Proceeding under—If party entitled to prove fee not due—Sec. 184—If includes omnibus stand—Union Board—If can levy fee on such stand.

A party appearing before a Magistrate under section 221 of the Local Boards Act (Madras) is entitled to allege and prove that the fee claimed is not due from him or under or by virtue of the Act.

Ramachandran Servai v. President, Union Board, Karaikudi, (1925) I.L.R., 49 Mad., 888, dissented from.

Section 184 of the Act does not include a stand for omnibuses, and a Union Board cannot levy a fee in respect of such a stand.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of the Stationary Second-class Magistrate of Tindivanam in C.C. No. 662 of 1928.

S. Panchapagesa Sastri for petitioner.

K. N. Ganpati for Public Prosecutor for the Crown.

JUDGMENT.

This petition has been referred to a Bench owing to the doubt as to the correctness of the decision in *Ramachandran Servai v. President, Union Board, Karaikudi*(1), expressed in two other cases from this Court, *In re Gopayya*(2), and *Union Board, Paramakudi v. Jhellaswami*

* Criminal Revision Case No. 914 of 1928.

(1) (1925) I.L.R., 49 Mad., 888.

(2) (1927) I.L.R., 51 Mad., 836.

Thevar(1). The facts are these. The petitioner owns two motor omnibuses. The Union Board of Tindivanam have provided a stand for buses and have prescribed fees for the use thereof. The fees leviable from the petitioner amount to Rs. 10 for each of his buses. He refused to pay, whereupon the Board took action against him under section 221 of the Local Boards Act. Before the Magistrate the petitioner contended that the fee was not legally leviable. To that the Board replied that such a contention was not open to him. The Magistrate following *Ramachandran Servai v. President, Union Board, Karaikudi*(2), held that he had no jurisdiction to consider the legality of the fee. On the merits, he was of opinion that the fee was legally leviable.

With great respect, we think that *Ramachandran Servai v. President, Union Board, Karaikudi*(2), was wrongly decided. The fee to be paid under section 221 of the Act must be due to a Local Board "under or by virtue of the Act" and it cannot be that the party called upon by the Magistrate to pay it is disentitled from pleading that it is not due under or by virtue of the Act. Take a case under section 106. The provisions of sub-section (2) are clear. No toll can be charged unless a table of tolls is put up at the toll-gate. If action is taken against a party under section 221 to recover tolls, can he not allege and prove that section 106 (2) was not complied with or must he pay and file a civil suit to recover the tolls illegally levied from him? The learned Judges thought it a startling proposition that a Magistrate should be constituted a sort of appellate authority over a Local Board, but the section gives him jurisdiction to decide that the amount charged by the Board is incorrect and there seems no reason, as

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(1) (1926) M.W.N., 676.

(2) (1925) I.L.B., 49 Mad., 838.

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PHILLIPS, J., pointed out in the 51 Madras case, why he should not have jurisdiction also to decide that the Board is not entitled to charge anything at all. We are of opinion that it is open to a party appearing before a Magistrate under section 221 of the Act to allege and prove that the fee claimed is not due from him under or by virtue of the Act.

On the merits, we cannot uphold the view taken by the Magistrate. A motor omnibus is a carriage and not a cart within the meaning of the Act. Section 184 allows a Board to construct or provide public landing places, halting places and cart-stands. A stand for omnibuses is neither the first nor the third; nor in our opinion, is it the second. Halting place is, no doubt, a very general term, which is nowhere defined in the Act, but it appears to us to be meant to cover places like choultries and rest-houses. Assuming that it could include stands for omnibuses, it is by no means clear that the intention of the Act was that Union Boards should, under section 188, exercise powers over anything but cart-stands strictly so called. Section 164 is also relied on, but that section specifically excludes public roads and we are here concerned with a public road. Apart from that, the standing of an omnibus for a few minutes periodically on the land is not the sort of occupation contemplated by the section.

The order of the Magistrate is set aside. The amount, if levied, will be refunded.

B.C.S.