

(1898) 02 MAD CK 0012
In the Madras High Court

Health Inspector, Taluk Board

APPELLANT

Vs

Govinda Padayachi and Others

RESPONDENT

Date of Decision : 23-02-1898

Acts Referred:

Madras Local Boards Act, 1884 — Section 193, 221

Citation : 112 Ind. Cas. 591

Hon'ble Judges : Wallace, J

Bench : Single Bench

Judgement

Wallace, J.—This series of revision petitions is presented, on behalf of the Taluk Board, Kumbakonam, asking this Court to revise the order

of the Sub-Magistrate, Tiruvadamarudur, dismissing a series of complaints under b, 203, Criminal Procedure Code. The complaints were put in u/s

221 of the Madras Local Boards Act for the purpose of recovering license fees due to the Taluk Board, The fees were said to be due u/s 193 of

the Act. The accused were conducting trades which under that section required licenses. They failed to take out licenses and the Board did not

take steps in time to compel them to take out the licenses. Now, the Board maintains that even so the fees for these licenses are due to the Board

and seeks to recover them u/s 221. The lower Court has dismissed the complaints, holding that in the circumstances, the Taluk Board has no right

to the fees, and it is this order which is now under revision. It appears to me that the Magistrate was right. Fees for licenses are not due unless the

licenses had been granted. See Maridu Gopayya v. Emperor 110 Ind. Cas. 233 : AIR 1928 Mad. 682 : 10 A.I. Cr. R. 369. The grant of a license

is a quid pro quo for the case. The Board could no doubt have compelled the accused to take out licenses, but has not done so. Therefore, it is

now proposing to mulct the accused in fees for licenses which have not been given. It is argued that since the trades had been allowed to go on without licenses, it must be taken that they had the permission of the Board and, therefore, the fee is due for that permission. But that, in my opinion, is not the meaning of the Act. In the first place, it cannot be contended that a license has in effect been given when it would be still open to the Board within the statutory limitation period to prosecute for failure to take out a license. In the next place, the Act imposes the duty on the Board to insist on license before the trade is allowed to be exercised. The Board cannot neglect its duty and profit by that neglect. The fee is not a payment for the privilege of carrying on an offensive or dangerous trade; it is a fee to cover the cost of control by the authority which is bound under the law to exercise supervision over such a trade and it is not due unless such control is being exercised. Obviously the fee could not be levied if the license was refused, even though the trade continued to be carried on. The Board's argument indicates that its real object in these prosecutions is merely to get money and not to protect the public against offensive or dangerous trades.

2. The view expressed by the Bench in *Ramachandran Servai v. President, Union Board, Karikudi* 91 Ind. Cas. 529 : 22 L.W. 393: AIR 1925

Mad. 1015 is not at variance with this view. In that case the complaint was filed in order to recover a penalty levied for an encroachment, and we held that the accused could not plead that there was no encroachment and that, therefore, he was not liable. Here it is a question of the recovery of a fee which is only impossible for a license, and the license has admittedly not been given. That is, the complainant cannot come into Court at all unless he maintains that a license has been taken out, for which the fee has not been paid and here the complainant admits that a license has not been taken out. I am therefore, of opinion that the complaints were not maintainable as they stand and I, therefore, dismiss these revision cases.