

(1893) 11 MAD CK 0002
In the Madras High Court

Queen-Empress

APPELLANT

Vs

Marian Chetti and Another

RESPONDENT

Date of Decision : 01-11-1893

Acts Referred:

Ports Act, 1875 — Section 6, 8

Citation : (1894) ILR (Mad) 118

Hon'ble Judges : Arthur J.H. Collins, C.J;Shephard, J

Bench : Division Bench

Judgement

1. The act charged as an offence is the bringing a boat into the Negapatam river in disregard of a general order passed by the Port Conservator to

the effect that boats should not be brought in while the flag W is flying. This act is said to be punishable u/s 8 of the Ports Act, That section

authorizes the Conservator to give directions for carrying into effect any rule passed u/s 6 of the same Act, and goes on to make it penal to disobey

any such lawful direction. It has therefore to be seen whether the Conservator was carrying into effect any valid rule passed under the Act. The

rules to which we have been referred are those numbered V and VIII, being rules passed with reference to Clauses (f) and (k) of Section 6

respectively. In our opinion there is clearly no connection between the former of these rules and the direction which in this case has been

disobeyed.

2. Rule VIII is a rule of wider scope, for it requires boat owners to ""carry out at all times all orders issued by the Conservator in connection with

the plying of their boats and which are not inconsistent with the regulations issued by Government.

3. In order to put an interpretation on the rule VIII, and to see whether it covers the present case, we think that the rule must be read with the clause of the Act under which it is framed and the other clauses specifying the matter in respect of which rules may be made by the Government. It must be presumed that the Government intended to pass a rule which they were authorized to pass by the terms of Clause (k) of the section, and a construction which has the effect of extending the operation of the rule to matters not covered by Clause (k) ought, we think, if possible to be avoided. Now when it is seen that by Clause (a) of the section the Government is empowered to make rules for regulating the time at which vessels are to enter or leave any port, it seems tolerably clear that the rules to be framed under Clause (k) were not intended to regulate the entry or exit of vessels in the matter of time. This being so, we do not think that the rule VIII passed with reference to the latter clause can be taken to refer to such matters. Accordingly the direction of the Conservator not to bring boats into the river when a certain flag is flying cannot be a direction for carrying into effect the rule in question, and therefore no lawful direction was disobeyed. In referring to Clause (a), we do not overlook the fact that boats may go out of the river without leaving the port. That may be so. We should still be disposed to think that the regulation intended by Clause (k) was a regulation different in kind from that intended by Clause {a}.

4. There is however another reason why the conviction cannot be supported. The charge is not based immediately on an alleged breach of rule VIII; indeed no rule at all is mentioned in the charge. The conviction can only be supported on the ground that the direction of the Conservator which was disobeyed was a direction lawfully given in pursuance of an authority lawfully conferred on him by rule VIII or some other rule. To support the conviction it has to be shown that the Government is by Section 6 of the Act authorized to empower other persons to make rules such as the one which has been disobeyed in the present case. In our opinion, the contention cannot rightly be maintained, and if Rule VIII or any other rule purports to give the Conservator authority to make such rules, that rule is to that extent, ultra vires and therefore void. In the case of power being by statute given to the Government or other public body to make rules having the force of law, the maxim delegates non potest delegare

must, we think, be applied. When the Legislature entrusts to some public body, it may be the Executive Government or a Corporation, the duty of

making rules, such public body cannot, in our judgment, relieve itself of the responsibility and depute other agencies to discharge the duty. The

authority to make rules must remain in the hands to which it was entrusted. It is absurd to suppose that the Legislature intended this important

authority to be exercised by any person whom the Government might choose to select. The rule laid down by the Conservator may be a perfectly

reasonable one, and it may be one which the Local Government may make u/s 6. On this we offer no opinion. At present it is enough to say there

is no such rule having the force of law, and therefore the conviction as for breach of it must fall to the ground.

5. For these reasons we think the conviction should be set aside and the fine, if paid, refunded. We would add that in these cases where the charge

in effect relates to an alleged breach of a rule passed under an Act, care ought to be taken to specify the particular rule said to have been infringed.