

(1893) 11 MAD CK 0007
In the Madras High Court

Queen-Empress

APPELLANT

Vs

Thommayya Chetti

RESPONDENT

Date of Decision : 01-11-1893

Acts Referred:

Ports Act, 1875 — Section 6

Citation : (1894) ILR (Mad) 397

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

Bench : Division Bench

Judgement

Arhtur J.H. Collins, C.J.—The accused were convicted for refusing to take out their licensed boats to certain steamers when called on by

the Port Officer to do so. The Acting Sessions Judge, who refers this case, admits that the accused were rightly convicted under certain boat rules

made by the Local Government under the powers given by Section 6 of Act X of 1889, but suggests that those rules are ultra vires. Clause (k) is

the clause in the Act under which the Local Government acted, and boat Rules 20 to 23 are the rules under which the convictions took place. It is

contended on the part of the accused that at the time the Port Officer issued his orders they were not plying, and that therefore the order of the

Port Officer was not a lawful one. I do not think that there is any power in the Local Government to make rules compelling owners! of licensed

boats to"" ply their boats at all times, and if they have a discretion to ply or not, the Port Officer's orders to ply are not lawful orders. These boat

Rules 20 to 23 appear to be ultra vires, and the convictions must be set aside and the fines, if paid, refunded. In summary trial No. 4 of 1893 if the

boat was unseaworthy as it is stated, I agree with the Acting Sessions Judge that the complaint was vexatious and frivolous and ought not to have

been made.

Shephard, J.

2. I am of the same opinion. I think that the Rules 1 and 23, so far as they purport to make it obligatory on boat owners to ply for hire, are ultra vires, and therefore void and of no effect. It is only with regard to boats plying for hire that Section 6 of the Act gives the Government authority to make rules.