

(1935) 11 PAT CK 0017
In the Patna High Court

Seth Ghadsiram

APPELLANT

Vs

Vice-Chairman, Sambalpur Municipality

RESPONDENT

Date of Decision : 20-11-1935

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 180(1), 180(5)

Citation : AIR 1936 Patna 101

Hon'ble Judges : Rowland, J

Bench : Division Bench

Judgement

Rowland, J.—The petitioner has been convicted u/s 180, Clause (5), Bihar and Orissa Municipal Act, and sentenced to pay a fine of Rs. 30 and costs Rs. 3-12 for keeping a platform extending over the Municipal drain in front of his house in Sambalpur Municipality without taking out a license for keeping the platform. It is not disputed that the petitioner has kept this platform and that he has not taken out a license. His substantial defence in the Courts below was that the platform had been in existence since 70 years ago, long before the Municipal Act came into force in Sambalpur, and therefore he should not be prosecuted. This contention would have been available to the petitioner and might have been good defence had he been prosecuted for an alleged contravention of Section 180, Sub-section (1), Municipal Act. That sub-section forbids to erect, re-erect or extend a platform, but the offence alleged against the accused is contravention of Sub-section (2), Section 180 which requires the owners of every platform (except a platform used for giving such access to the house as the Commissioners may consider necessary) to take out a license for keeping the platform if the Commissioners at a meeting so direct. This sub-section contains nothing to distinguish between the cases of new platforms and old platforms and the intention appears to be that while old platforms will be allowed to be retained their owners must take out licenses. The second defence taken was that the proceedings were bad for want of sanction by the Chairman of the Municipality. This contention was negated by the Courts below on the facts, it being held that the complaint had been made with the consent and approval of the

Chairman.

2. It was further contended (and this is the point which has been pressed in this Court that the Commissioners had no power to levy a fee without the sanction of the Local Government. It is conceded that no orders of the Local Government have been obtained sanctioning or approving the scale fixed by the Municipal Commissioners at a meeting dated 7th July 1934, and it is said in reply that no approval of the Local Government was necessary for fixing license fees u/s 180. The argument for the petitioner is based on Section 82 of the Act. Sub-section (1) of this section empowers the Commissioners at a meeting after notice and with the sanction of the Local Government to impose certain taxes and fees. Sub-section (2) empowers the Commissioners at a meeting to charge a fee in respect of licenses not provided for by Sub-section (1) "in accordance with a scale of fees to be approved by the Local Government." The argument is that this section controls the provisions of Section 180 that the provisions of Section 82 which is the opening section of Ch. 4, the chapter dealing generally with Municipal taxation, are intended to be of general application and that they regulate the procedure to be followed by the Commissioners both in imposing taxes, and in fixing a scale of fees for licenses. If so, a resolution of the Commissioners, under Sub-section (4) fixing the scale of fees for licenses to keep a platform extending over a public road or drain would not become effective until the approval of the Local Government has been obtained in pursuance of Section 82, Clause (2), and without such approval there would be no obligation u/s 180, Clause (4) to pay the fee; and non-payment of the license fee would be no offence by reason of contravention of Section 180, Sub- Section (4). But the petitioner has been convicted of contravening Sub Section (2) and not Sub-section (4) of Section 180, and I can find nothing in the Act requiring any other authority than a resolution of the Commissioners at a meeting to impose the obligation on the owners of platforms to take out a license.

3. I have no doubt that the Commissioners had power by their own resolution to make it obligatory on the owner of a platform to take out a license, and that by keeping a platform without a license there was a contravention of Sub Section (2) of Section 180. It may be that the resolution charging fees for such licenses could not be effective until it had been approved by the Local Government; and if the owner of a platform were to apply for a license and claim to have it issued, to him free of any fees until the scale had been approved by the Local Government, and so brought into force in the manner provided for by Section 82 of the Act the question might arise whether the Commissioners could lawfully refuse it. But the petitioner made no such application and so it is not necessary to determine whether he had the right to have a license issued to him without paying the fee. It is enough to say that he was not entitled to keep a platform without making an application for a license in that behalf. That being so the conviction of the petitioner is correct because he has contravened Sub-section (2) of Section 180.

4. The rule is discharged.