

1939

Present : Hearne J.

DANAPALA v. WEERAWARDENE.

737—M. C. Colombo, 65,330.

Omnibus—Remaining in omnibus parked in public stand—Regulation under Motor Car Ordinance not ultra vires—Power of Court to question validity of regulation—Ordinance No. 20 of 1927, s. 53, reg. 8.

Where a person was charged with having remained in an omnibus while it was parked in a public stand in breach of regulation 8, framed under section 53 of the Motor Car Ordinance, No. 20 of 1927, which was as follows : "Regulations may be made, at the request of the licensing authority concerned, prohibiting, restricting, or regulating the parking of motor cars in an urban area",—

Held, that the regulation was not *ultra vires*.

Held, further, that the validity of the regulation cannot be questioned in a Court of law.

Seyappa Chetty v. Municipal Council, Kandy (1913, 17 N. L. R. 195) and *Perera v. Fernando* (17 N. L. R. 494) followed.

A PPEAL from a conviction by the Municipal Magistrate of Colombo.

A. P. de Zoysa, for accused, appellant.

E. H. T. Gunasekara, C.C., for complainant, respondent.

Cur. adv. vult.

February 7, 1939. HEARNE J.—

The accused was charged before the Municipal Court of Colombo with having remained in omnibus No. X 4194 at the Fifth Cross street omnibus stand and in breach of regulation 8 of the regulations, framed under section 53 of Ordinance No. 20 of 1927, and was convicted of an offence punishable under section 84 of the said Ordinance. The regulations have been duly published.

Regulation 8 reads: "No person shall remain or be allowed to remain in any part of a public stand, or in any omnibus or motor car while it is parked in a public stand unless he is—

- (a) the driver, conductor, or owner of an omnibus or motor cab parked at that stand, or
- (b) a person engaged in repairing any damage to any such omnibus or motor cab, or
- (c) a *bona fide* passenger travelling or intending to travel by any such omnibus or motor cab."

The relevant portion of section 53 of Ordinance No. 20 of 1927 is as follows:—

"Regulations may be made, at the request of the licensing authority concerned, prohibiting, restricting or regulating the parking of motor cars in an urban area."

The accused did not come within the excepted categories mentioned in regulation 8 but it is claimed on his behalf that the regulation is *ultra vires* section 53 of the Ordinance and is unreasonable. It is stated that he is an Inspector employed by the Company which owns bus No. X 4194 and, so far as he is concerned, the regulation is oppressive.

On the latter question I am unable to express an opinion as the accused did not choose to give evidence. I do not know the precise nature of his duties and on appeal it could not be stated either that he could only perform his duties on the bus when parked in a public stand or even that it was the most convenient place for him to perform his duties.

Apart from this I am of the opinion that the regulation is not *ultra vires*. As section 53 enables a regulation to be made in order to restrict the parking of vehicles in an urban area, it may impose conditions subject to which parking in a public stand is permissible, and having regard to the object of the regulation which is, as I understand, to curb the activities of touts, it is not unreasonable to exclude from a public stand or a bus therein all persons other than the owners of buses, passengers and those who have legitimate duties in connection with the running of buses.

I may add although it is unnecessary to decide the question that I take the view that the validity of the regulation cannot be questioned in a Court of law. It is presumed that the provisions of section 87 of the principal

Ordinance as amended by section 30 of Ordinance No. 22 of 1929 have been complied with : this being the case the regulations in question must be deemed to have the direct sanction of the Legislature and to be of "full force and effect" in law. (*Institute of Patents Agents v. Lockwood*; *Seyappa Chetty v. Municipal Council, Kandy*; and *Perera v. Fernando*.)

The appeal is dismissed.

Appeal dismissed.

