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far as parties who have died during the pendency of the appeal are concerned, the decree of the lower Court will stand confirmed except in cases where legal representatives have been duly brought on record.

G.R.

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## APPELLATE CIVIL.

*Before Mr. Justice Pandrang Row and Mr. Justice Abdur Rahman.*

1939, March 13.

THE MADURA MUNICIPALITY, THROUGH ITS COMMISSIONER (PLAINTIFF), APPELLANT,

*v.*

K. ALAGIRISAMI NAIDU (DEFENDANT), RESPONDENT.*

*Indian Contract Act (IX of 1872), ss. 65 and 70—Madras District Municipalities Act (V of 1920), ss. 68 (2) and 69 (2)—Contract with municipality entered into in contravention of sec. 68 (2)—Invalidity of—Person obtaining benefit under the contract—Liability to pay compensation under ss. 65 and 70 of the Indian Contract Act (IX of 1872)—Ratification of such contract by municipality—Unavailability of, under sec. 196 of the Indian Contract Act (IX of 1872)—Party receiving benefit incapable of returning same—Liability to pay compensation as a result of.*

A municipality sued to recover the balance of a certain amount of money due to it in respect of the right of taking rubbish, etc., within the municipality, basing its claim on a contract which was entered into by its chairman without conforming to the provisions of section 68 (2) of the Madras District Municipalities Act and also on an alleged ratification of the contract by the municipal council made more than a year after the entering into the said contract by the chairman

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* Appeal No. 312 of 1935.

and three months after the expiry of the period for which the bid was given by the defendant.

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*Held*: (i) Under section 69 (2) of the Madras District Municipalities Act the contract would not bind the municipal council since the contract was entered into in contravention of the provisions of section 68 (2) of the Act and there was no valid contract between the parties.

(ii) The ratification of the contract was not of any avail because (*a*) a contract forbidden by law cannot be ratified under section 196 of the Indian Contract Act, and (*b*) the option of ratification was not exercised within a reasonable time of the making of the contract.

(iii) Compensation could be recovered under section 65 of the Indian Contract Act which provides for the devolution of an obligation on a person who has received some advantage under an agreement which has been discovered to be void or unenforceable from the beginning, or under section 70 on the supposition that the contract did not exist in the eye of the law.

(iv) Inasmuch as the defendant was not in a position to restore the rubbish, etc., which he had taken from the municipal depots, he was liable to pay compensation.

Case-law discussed.

*Municipal Board, Lucknow* v. *S. C. Deb*(1) not followed.

APPEAL against the decree of the Court of the Subordinate Judge (Principal) of Madura dated 8th March 1935 and made in Original Suit No. 23 of 1932.

*M. Patanjali Sastri* for appellant.

*K. Rajah Ayyar* for respondent.

*Cur. adv. vult.*

ABDUR RAHMAN J.

The JUDGMENT of the Court was delivered by ABDUR RAHMAN J.—This appeal arises out of a suit instituted on behalf of the Madura Municipality for the recovery of a balance of Rs. 5,220–7–1 alleged to have been due from the defendant in respect of the rights of taking rubbish and night-soil for the years 1928–29 and 1929–30 and for interest calculated at

(1) (1932) I.L.R. 8 Luck. 1 (F.B.).

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twelve per cent per annum. It was asserted in the plaint that the defendant was the highest bidder in auctions held by the Sales Committee of the Madura municipality for both these years, the defendant's bid being Rs. 53,500 for the first year and Rs. 55,500 for the second one. The defendant had, it was admitted, paid the whole of the amount for the first year leaving a balance of Rs. 146–7–0 for interest and the greater portion of the amount due for the second year leaving a balance of Rs. 4,181–7–1 for principal and Rs. 892–9–0 for interest. So far as the first year was concerned, a decree for Rs. 146–7–0 was passed in favour of the municipality and no appeal has been filed by the defendant against that portion of the decree. As for the balance of Rs. 5,074–0–1 the trial Court held that there was no valid contract between the parties as the mandatory requirements of sections 68 and 69 of the District Municipalities Act were not complied with, but that the plaintiff would be entitled to recover the amount if it was found to be due on the principles underlying sections 65 and 70 of the Indian Contract Act. The trial Court was not however satisfied on the merits that the municipality had succeeded in establishing its claim. The suit was therefore dismissed in regard to the second year. The municipality has preferred this appeal in consequence.

The first point which arises for determination relates to the validity of the agreement executed by the defendant and signed by the chairman of the municipality and some of its members on 8th April 1929 (Exhibit B) after the second auction had been held. It may not be very material in this case but it is rather interesting to find that most of the terms of the printed agreement which the defendant

was asked to sign and signed had nothing to do with the sale of rubbish and night-soil. The municipal clerk who was entrusted with the duty of having the agreement prepared appears to have selected a wrong printed form for the purpose and got it executed by the defendant. The mistake does not seem to have been detected even when the chairman or the other members were signing. The document thus has led to some confusion but in view of the conclusions at which we have arrived, this mistake has not proved to be material.

The agreement on which reliance was primarily placed in the plaint was not sanctioned by the municipality until a few months after the expiry of the period for which the second auction was held. It has not been denied, and indeed it cannot be disputed, that the value or amount of the contract (Exhibit B) exceeds Rs. 1,000. The question then is whether the chairman or any other person could enter into this contract without the previous sanction of the municipality. An examination of the provisions contained in section 68 of the Madras District Municipalities Act would show that the municipality is authorised to delegate to the chairman or committee consisting of two or more members the power of making on its behalf any contract whereof the value or amount does not exceed Rs. 1,000, but that when the value or amount of the contract exceeds Rs. 1,000 the sanction of the municipality has to be taken for the making of the contract before the same is made. This means that no contract of the value or amount exceeding Rs. 1,000 can be entered into or made by any person before the sanction of the municipality has been obtained. It was contended by Mr. Patanjali Sastri

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on behalf of the municipality that it would be unnecessary for the municipal council to sanction every individual transaction before it is made and that it would be enough if, instead of delegating an authority generally to either the chairman or to a committee consisting of two or more members of the municipal council as permitted by section 68, sub-clause (1), it confers the power of entering into or making a contract in regard to a particular transaction. In other words, the point of distinction according to him between sub-clause 1 and sub-clause 2 of the section is that while delegation of the power under sub-clause 1 might be general in regard to contracts of less than Rs. 1,000, the power of making contracts in regard to transactions exceeding that figure must be specific, although he contends that in neither case would it be necessary for the municipal council to know the exact terms on which the contract was to be entered into. We cannot accept this contention and are of opinion that section 68 (2) could not be construed in that manner. The omission of any reference in that sub-section to the persons on whom this power could be conferred, if it could be conferred at all, is significant. Moreover the necessity to obtain the sanction of the council for the making of a contract before the same is made implies that the council must be made aware not only of the matter in regard to which the contract would be entered into but also of the terms and conditions of the contract. The sanction has to precede and not follow the making of every contract which exceeds Rs. 1,000. This could only be possible if the whole of the proceedings, which culminated in the highest bids made by the defendant, are, before the necessary sanction is obtained, considered to be in the nature of an offer which has to be placed

before the municipality and which could mature into a contract after that has been accorded. Once the proposal is sanctioned by the municipality all that would remain to make the contract enforceable would be to express it in a manner recognised by law. The penalty for entering into a contract which contravenes the provisions of section 68 is contained in sub-clause 2 of section 69 and the result is that any contract entered into in contravention of the provisions of section 68 (2) would not bind the municipal council. It must therefore follow that this contract could not be deemed to have come into existence after the auction was finished ; and the final bid given by the defendant must in the circumstances be regarded as a mere offer. This had to be accepted within a reasonable time and could not be held to have remained open even after the period for which it was made. The acceptance of the offer by the municipal council in July 1930 was in our opinion misconceived. It was argued by the learned Counsel for the appellant that the resolution passed by the municipality in July 1930 must at all events be taken to have ratified the auction held in April 1929 and must be taken to relate back to the date on which the agreement was signed by the chairman and other municipal councillors. It is hardly necessary to consider the correctness of the argument in regard to the doctrine of relation back as applied to contracts entered into by certain persons on behalf of others without their knowledge or authority, particularly when the decision in *Bolton Partners* v. *Lambert*(1), on which reliance was placed by Mr. Patanjali Sastri in this connection, although not disapproved by their

(1) (1889) 41 Ch. D. 295.

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Lordships of the Privy Council in *Fleming* v. *Bank of New Zealand*(1), was yet not approved of by them and when we find that section 68 of the District Municipalities Act imposes a disability and thus forbids any person other than the municipality from entering into or sanctioning a contract which exceeds Rs. 1,000 in value. Section 196 of the Indian Contract Act refers to contracts which have been entered into by some persons on behalf of others without their knowledge or authority but not to contracts which have been expressly forbidden either by those persons who are alleged to have ratified them later or by law. Moreover an option of ratification could be held to be capable of being exercised within a reasonable time of the act purported to be ratified as held in *Phillips* v. *Homfray Fothergill* v. *Phillips*(2) and *Dibbins* v. *Dibbins*(3) and not after the expiry of the period for which the option was open or, as in this case, three months after the expiry of the period for which the bid was given by the defendant. It is true that a distinction has been made at times between "executed" and "executory" contracts (*see* Leake on Contracts, 5th Edition, pages 415–416); but section 68 of the Madras District Municipalities Act which we have now been called upon to construe draws no such distinction and the word "contracts" used in that section must be held to cover both "executed" and "executory" contracts. We would therefore hold that there was no valid contract between the parties and the view taken by the lower Court on this point is correct.

This is however not enough to dispose of the case. The defendant had admittedly taken the rubbish

(1) [1900] A.C. 577, 587. (2) (1871) 6 Ch. App. 770.
(3) [1896] 2 Ch. 348.

and night-soil from the municipal depots for the whole year and has already paid, as stated above, a large portion of the amount he had agreed to pay. Should the municipality be held disentitled then to recover the balance or any other sum which may be found to be due either on the basis of *quantum valebat* or on the principle embodied in section 70 of the Indian Contract Act on the ground that the contract has been found to be unenforceable ? There was a divergence of opinion on this point so far as this Court is concerned and some of the cases had gone to the length of deciding that when an agreement was found to be unenforceable for want of fulfilment of a statutory requirement, the whole suit should be dismissed ; see *Raman Chetti* v. *The Municipal Council of Kumbakonam*(1) and *Ramaswamy Chetty* v. *The Municipal Council, Tanjore*(2). But a more equitable view has been taken in later cases ; see *Palaniswami Goundar* v. *English and Scottish Co-operative Wholesale Societies, Ltd.*(3), *Arunachala Nadar* v. *Srivilliputtur Municipal Council*(4) and *Madura Municipality* v. *Raman Servai*(5). The language of section 65 of the Indian Contract Act has been held by their Lordships of the Privy Council in *Harnath Kunwar* v. *Indar Bahadur Singh*(6) to include agreements which are destitute of legal effect from their inception and it would therefore cover a case like the present where the agreement in pursuance of which the defendant took delivery of the rubbish and night-soil has been discovered to be of no legal effect from the beginning. There are certain cases which appear to hold that section 65 would have no application

(1) (1907) I.L.R. 30 Mad. 290.
(2) (1906) I.L.R. 29 Mad. 360.
(3) A.I.R. 1933 Mad. 145.
(4) (1934) I.L.R. 58 Mad. 65.
(5) (1935) 43 L.W. 39.
(6) (1922) I.L.R. 45 All. 179 (P.C.).

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where the void character of the agreement was known to the party; see *Ledu Coachman* v. *Hiralal Bose*(1) and *Nathu Khan* v. *Sewak Koeri*(2). But these cases were decided on the principle that the contracts being either immoral or opposed to public policy were inherently illegal and the parties being in *pari delicto* the Courts could not render any assistance in enforcing them. The same cannot be said however of cases where agreements are held to be merely unenforceable on account of a failure to comply with certain forms or for want of giving expression to them in the manner prescribed by law. The reason for this difference is obvious. It is impossible for a Court to give effect to or recognise an illegal transaction either by enforcing it or by ordering restitution to a party after it has been wholly or partially carried out. But when an agreement is discovered to be unenforceable and not illegal and when a party has not been guilty of any conduct which would disentitle him to come to Court, there appears to be no reason why the principle underlying section 65 should not be given effect to. It is hardly necessary to refer to English cases in this connection. Apparently the language employed in section 65 is much wider than that employed in the Act of Parliament which came up for construction before LINDLEY L.J. in *Young & Co.* v. *Mayor, &c., of Royal Leamington Spa*(3), and since the statutory law of India is different from that which prevailed in England, the English decisions could not be of much value in interpreting the Indian Statute. While examining sections 65 and 70 of the Indian Contract Act a number of Indian decisions came to our notice and since most of them

(1) (1915) I.L.R. 43 Cal. 115. (2) (1911) 15 C.W.N. 408.
(3) (1883) 8 App. Cas. 517.

have taken the view which we ourselves take of these sections it would be supererogatory to do anything more than cite them; see *Municipal Committee, Gujranwala* v. *Fazal Din*(1), *Municipal Committee, Lahore* v. *Miran Bakhsh*(2), *Zulaing* v. *Yamethin District Council*(3), *Mohamed Ebrahim Molla* v. *Commissioners for the Port of Chittagong*(4) and *Pallonjee Eduljee* v. *The Lonavla City Municipality*(5). However a Full Bench case of the Lucknow Chief Court, *Municipal Board, Lucknow* v. *S. C. Deb*(6), takes a different view. Having given our careful attention to the matter and with deference to the learned Chief Judge who delivered the leading judgment in that case we have not been impressed by the reasons underlying that decision. If the English cases on which reliance was placed are not taken into account, as they cannot be for the reason which has been mentioned above, the decision if analysed will be found to have been arrived at mainly on two grounds; (i) that in the event of a divergence between a special law and the general law of the country the former has to be preferred, and (ii) that a man cannot be allowed to do by indirect means what he is forbidden by law to do directly. The propositions advanced by the learned Chief Judge may be sound but did they have any application to the facts of that case? Is the special law in any way different from what has been described to be the general law of the country? According to the learned Chief Judge there is a conflict between the general law of the country as laid down in section 65 of the Indian Contract Act and the so-called special law in section 97

(1) (1929) I.L.R. 11 Lah. 121.
(2) (1932) I.L.R. 13 Lah. 561.
(3) (1932) I.L.R. 10 Ran. 522.
(4) (1926) I.L.R. 54 Cal. 189.
(5) I.L.R. [1937] Bom. 782.
(6) (1932) I.L.R. 8 Luck. 1 (F.B.).

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of the United Provinces District Municipalities Act. We do not agree with this statement. The special law in the United Provinces District Municipalities Act is almost the same except in regard to certain minor details as contained in sections 68 and 69 of the Madras District Municipalities Act (IV of 1884) and defines how certain contracts between the municipalities and private individuals have to be made or expressed in order to be binding. Section 65 of the Contract Act on the other hand only provides for the devolution of an obligation on a person who has received some advantage under an *agreement* which has been discovered to be void or unenforceable from the very beginning. The sections of the two Acts were framed by the Legislatures with entirely different objects and one cannot be said to be in conflict with the other. Section 65 of the Indian Contract Act was meant to cover those agreements as well which are discovered to be void from their inception while sections 96 and 97 of the United Provinces District Municipalities Act or sections 68 and 69 of the Madras District Municipalities Act (IV of 1884) apply to contracts only. The distinction between an agreement and a contract must not be lost sight of. It would thus appear that the provisions of section 65 of the Indian Contract Act were only intended to come into play when an agreement was discovered to be unenforceable at law according to the rules laid down in sections 96 and 97 of the United Provinces District Municipalities Act or sections 68 and 69 of the Madras District Municipalities Act. The result is that instead of there being any conflict between the special and general laws we find that the general law would permit a party to get relief when on account of a special law the agreement

cannot be considered to be enforceable or, in other words, characterised, as a contract.

So far as the second ground for the decision is concerned, the underlying assumption appears to be that a party in asking for restoration or compensation under section 65, Indian Contract Act, on account of the agreement having been denied the status of a contract, is none the less enforcing the same. This is not correct. In a suit on the basis of a contract a party is trying to enforce its terms while in a suit under section 65 a party merely asks for restoration or compensation as the agreement has not matured into a contract and he wants to be placed in the position in which he would have been if no agreement had been entered into. Moreover a perusal of these sections in the District Municipalities Act would show that the municipalities or their officers and members were not forbidden to enter into contracts. What they appear to lay down is that if a certain contract is entered into either by a person not mentioned in these sections or without the formalities regarded by them to be indispensable it would not be binding on the board or the municipality. First of all the rule only safeguards the interests of the municipalities and does not specifically lay down that the contracts would not be enforceable at their instance. But even if the doctrine of mutuality is held to be applicable the only inference would be that the contracts could not be enforced by either party. It cannot be legitimately contended that in asking for a relief under section 65 of the Indian Contract Act they are doing indirectly the same thing that was forbidden by the Municipalities Act. It would be extremely inequitable to find that, when a contract has not been entered into by authorized persons or is found to be unenforceable for want

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of certain formalities, the advantage gained by a party should not, when it was not intended to be gratuitous, be restored or compensated. The Courts in India are and have been administering both law and equity and there is no reason why this equitable relief, which since the passing of the Judicature Act is grantable even by the Courts in England, should not be grantable here. The relief which a person asks for under section 65, Indian Contract Act, has not been forbidden by any law and it cannot be legitimately argued that in trying to secure such a relief he is attempting to do indirectly what he had been forbidden by law to do directly. By asking for an equitable relief he cannot be said to have got round the law. Indeed he ought to be taken to have admitted that the law does not permit such agreements to be enforced and it is only then that he asks the Court to exercise its equitable jurisdiction in restoring the parties to the position in which they were before these infructuous agreements came into existence. By holding section 65, Indian Contract Act, to be applicable, we will be giving effect to both the letter and the spirit of the law.

The same conclusion would be arrived at if we hold that the contract did not exist in the eye of the law. In the absence of such a contract, section 70, Indian Contract Act, could well be applied. It cannot be said that there was anything unlawful in permitting the defendant to remove the rubbish or night-soil. The permission was not intended to be given gratuitously and the benefit was on the defendant's own showing enjoyed by him.

We must therefore hold that as the defendant is unable to restore the rubbish and the night-soil which he had taken from the municipal depots, he must

make compensation for it to the plaintiff municipality.

The next point for determination is the amount of compensation to which the plaintiff is entitled under sections 65 and 70 of the Indian Contract Act. The defendant had agreed to purchase the rubbish and night-soil for the year 1928–29 for a sum of Rs. 53,500. He offered to purchase the same for the year 1929–30 for a sum of Rs. 55,500. The increase in the offer was not apparently due to any increase in the market rates but in all probability to the fact that the municipality had invited tenders for the removal of rubbish and night-soil by motor lorries instead of by municipal carts. See Exhibits J and J-1. A remark in Exhibit Q that the depot for collections would be removed to the new site near Mathikattinam tank, Vandiyur limits, leads us to think that this was also one of the factors which had induced the defendant to make a higher bid in the auction. The contract for the removal of rubbish and night-soil by motor lorries was given after a few months and the depots were not shifted to the new site during the whole of the period in which he removed them. If the defendant had not been induced by these facts it is improbable that he would have exceeded the bid which he had given in the previous year. On account of the delay on the part of the municipality in carrying out these changes we are inclined to hold that the proper measure of compensation would be the amount which the defendant had agreed to pay for the previous year, particularly when the defendant has admitted in his statement as a witness that the prices of the rubbish and night-soil had not fallen during the year 1929–30. The defendant has not produced all the accounts which were in his possession and in the absence of the original chits

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in which the accounts were kept we are not prepared to believe that the accounts produced by him relate to all the supplies which were made to him from various depots. We must therefore hold that he was liable to pay Rs. 53,500 as compensation to the municipality. Having paid Rs. 51,318-8-11 he is liable to pay the balance Rs. 2,181-7-1. In the absence of any contract there is no liability to pay any interest and the same cannot be decreed. We would therefore pass a decree for Rs. 2,181-7-1 in favour of the municipality. As the parties have partly succeeded and partly failed the proper order in the circumstances appears to be that they should bear their own costs both here and in the Court below.

[The rest of the judgment is omitted as not necessary for this report.]

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