

# ALLAHABAD HIGH COURT

Municipal Board

Vs.

Bachchu

Second Appeal No. 286 of 1943

(Malik, C.J., Misra, Kidwai, Agarwala and V. Bhargava, JJ.)

12.05.1951

## JUDGMENT

### **Kidwai, J.**

1. The Municipal Board of Gonda owns some shops and a compound collectively designated the Sabzimandi in the City of Gonda. By resolution No. 7 (1) dated 1-8-1940, it agreed to grant under certain conditions a contract to Bachchu, alias Nabi Bux, for the realization of the Municipal dues leviable in this mandi from 1-8-1940 to 31-3-1942 in consideration of a payment of Rs. 1000 upto 31-3-1941, and another sum of Rs. 1000 for the ensuing year.

2. It is agreed that the contract was never reduced to writing nor was it signed as required by Section 97, Municipalities Act, but Bachchu was placed in possession of the Sabzimandi and began making his realizations. He also paid up the sum of Rs. 1000 for the period ending on 31-3-1941, but failed to pay the remaining Rs. 1000. Consequently, on 3-6-1942, the Municipal Board of Gonda instituted Suit No. 119 of 1942 in the Court of the Munsif, Gonda, for recovery of Rs. 1000.

3. The deft, raised a large number of pleas including a plea to the effect, that, as the contract could only be made through a written agreement and there was no such in existence, the suit based upon an agreement did not lie.

4. In its replication the Municipal Board repudiated the pleas raised in defense and relied upon the doctrine of part performance as entitling it to sue on the basis of the contract.

5. Issues were framed on the various points raised in defense and the learned Munsif upheld the plea that the contract, not having been executed in the manner required by Section 97, U. P. Municipalities Act, was void and could not form the basis of the suit. Although, therefore, he found the other pleas urged by the deft. against him he dismissed the suit.

6. The pltf. appealed and the appellate Court relying upon the Full Bench decision of the Chief Court of Avadh in *Municipal Board, Lucknow v. S. C. Deb*<sup>1</sup>, dismissed the appeal. The pltf. came up in second appeal and his appeal is numbered as Second civil Appeal

<sup>1</sup>9 O. W. N. 461

No. 286 of 1943, and because there were a number of decisions of other High Courts, including the Allahabad High Court, which conflicted with the decision in *Municipal Board, Lucknow v. S. C. Deb*<sup>2</sup>, the appeal was referred to a Full Bench of three Judges and later to the present Full Bench.

7. The Municipal Board of Gonda had also sanctioned by its resolution No. 218 of 28-3-1940, the grant to Bahraichi of a contract for the realization of Municipal dues payable in respect of the use by itinerant vendors of the footpath between the police office and the civil Courts at Gonda for three years in consideration of a payment of Rs. 175 annually. The contractor was placed in possession and he made various payments but a sum of Rs. 211 remained unpaid and Suit No. 96 of 1948 was filed in the Court of the Munaif, Gonda, on the Small Cause Court side for its recovery.

8. In respect of this agreement also, the provisions of Section 97, U. P. Municipalities Act, were not complied with and a plea of the invalidity of the contract on that ground having been taken by the deft. the learned Munsif upheld the plea and dismissed the suit. An application under Section 25, Small Cause Courts Act, was filed and is numbered 35 of 1943. In view of some conflict of decisions which has been referred to in respect of second Civil Appeal No. 256 of 1943, this application also has been placed before the Full Bench for disposal.

9. The Municipal Board of Gonda is also in charge of nazul lands within municipal limits and it sanctioned by resolution No. 528 of 4-2-1939, the grant of grazing rights in some of this land to Bahraichi for a period of five years in consideration of a payment of Rs. 58 annually. Only Rs. 48 were paid and on 22-1-1943, the Deputy Commissioner of Gonda, on behalf of the State Govt. instituted small cause court Suit. No. 45 of 1943 for the recovery of Rs. 161-12-0 principal and interest in respect of the grazing dues in the Court of the Munsif, Gonda, on the Small Cause Court side. In this case, it was pleaded that there was no contract at all : that in any case, the contract had not been reduced to writing as required by law : that the Small Cause Court had no jurisdiction : and that the suit was barred by time. Only the preliminary issues were framed in the suit and the learned Munsif held on the authority of *Municipal Board, Lucknow v. S. C. Deb*<sup>3</sup>, that, the lease not being in writing it was invalid and that in any case the requirements of Section 107, T. P. Act not having been complied with, the suit must be dismissed This decision has been challenged in Section 25 Application No. 42 of 1943, which has been referred to a Full Bench.

10. Two other appeals, Second civil Appeals Nos. 297 and 298 of 1944, in which the same question arose for decision, were also referred to a Full Bench but they were subsequently

dismissed for want of prosecution.

11. The principal questions which arise for determination are as to the effect of Section 97, U. P. Municipalities Act, and as to whether Section 65, Contract Act, has any application to the case of a contract which fails for non-compliance with the provisions of Section 97, Municipalities Act.

<sup>29</sup> O. W. N. 461

<sup>39</sup> O. W. N. 461

12. In *Municipal Board, Lucknow v. S. C. Deb*<sup>4</sup>, a Full Bench of three judges of the Chief Court of Avadh held that a contract which does not comply with the requirements of Sub-sections (1) and (2) of Section 7 is void and that in that event, neither party to the contract can get the benefit of Section 65, Contract Act. This decision is at variance with decisions of practically every other High Court in India and even with an earlier Division Bench decision of the Chief Court itself and we are called upon to re-examine the law laid down in it in view of this conflict.

13. Before considering the correctness of the Full Bench decision, it is necessary to point out that the present cases are not on all fours with that case. In the present case the suits were filed by the Municipal Board and the Deputy Commissioner of Gonda to enforce the contracts.

14. Even if the contracts have not been executed in the manner required by the provisions of Section 97, sub-Sections (1) and (2) it is by no means clear that they are void. Sub section (3) of Section 97 thus states the consequence of a non-compliance with the requirements of the first two sub-clauses :

"If a contract to which the foregoing provisions of this section apply is executed otherwise than in conformity therewith it shall not be binding on the Board."

15. This sub-section does not declare the contract altogether void. It only declares that the Municipal Board shall not be bound.

16. In view, however, of a decision of the Madras High Court in *Mohamed Rowther v. Tinnevelly Municipal Council*<sup>5</sup>, in interpreting a similar provision of the Madras District Municipalities Act, in which it was held that a contract which did not bind one party to it did not bind the other either. Mr. Ram Bharossey Lal preferred to argue the matter on the assumption that a contract which failed to comply with the provisions of Section 97, U. P. Municipalities Act, was void and not binding on either party. It is, therefore, not necessary to give decision on the interpretation of Section 97, Municipalities Act. It is agreed between the parties to the appeal that the contracts in S. C. A. No. 386 of 1943 and Section 25 application No. 35 of 1943 do not comply with the requirements of Section 97, U. P. Municipalities Act, and are void and the contract in Application

No. 43 is not in accordance with Nazul rules and is void.

17. In *Municipal Board, Lucknow v. S. C. Deb*<sup>6</sup>, the pltf. agreed to sell to the Municipal Board of Lucknow a certain amount of coal. The contract was in writing but was not signed by any of the persons specified in clauses (a) and (b) of Subs. (2) of Section 27. The pltf. gave the required security and delivered most of the coal which he had undertaken to sell. He was paid a major portion of the price but Rs. 7,066-10-4 remained to be paid. He accordingly sued for recovery of this sum and of a sum of Rs. 3,742-9-4 out of the security deposit. The Court of first instance decreed the suit. The Board appealed and one of the questions referred to the Full Bench for decision was :

<sup>49</sup> O. W. N 461

<sup>69</sup> O. W. N. 461

<sup>5</sup> AIR 1938 Mad 746

"Is the contract pleaded in paragraph 2 of the plaint (Ex. 11) void by reason of the provisions of Sections 96 and 97, u. P. Municipalities Act, 1916. If the answer is the affirmative, can any relief be given to the pltf. under the provisions of Sections 65, 70 and 72, Contract Act?"

18. It is not necessary for us to enter into the question of the validity of the contracts in these cases, because, as I have already stated, these cases have been argued on the assumption that the contracts are void for non-compliance with the requirements of Sub-sections (2) and (3) of Section 97, U. P. Municipalities Act and the Nazul Rules.

19. With regard to the second part of the question, before the Full Bench reliance was placed by the pltf.'s learned Advocate only upon Section 65, Contract Act. In dealing with that section the learned Chief Judge held that, although the contract was void from its inception and must be held to have been discovered to be so from the date it was entered into, yet, in accordance with the decisions of their Lordships of the Privy Council in *Annada Mohan v. Gour Mohan*<sup>7</sup>, and in *Satgur Prasad v. Har Narain Das*<sup>8</sup>, it fell within the purview of Section 65. He, however, proceeded to consider the U. P. Municipalities Act, and said :

"The Municipal Board of Lucknow and other similar boards within the provinces are clearly creatures of statute, that is U. P Municipalities Act (II [2] of 1916): vide, the definition of Board in Section 2 of the Act. By Section 6 of the same Act it is a body corporate and by the same section it is vested with the capacity of suing and being sued in its corporate name, of acquiring, holding, and transferring property moveable and immoveable, and of entering into contracts.'

It follows that the liability of the Municipal Board of Lucknow as a corporate body to make compensation to the pltf in the present case must arise out of the provisions of u. P. Municipalize Act, 1916 and not otherwise in matters arising out of a contract which has become void According to express terms of Section 97, U. P. Municipalities Act, 1916, the contract on which



therefore, not a case of a corporation being bound only by a document under seal, as the language used by the learned Chief Judge seems to imply.

25. In the cases under consideration the contracts had received the sanction of the Board as required by Section 96, U. P. Municipalities Act. The contracts were thus ones which the Board was not only authorized to enter into but which it had actually sanctioned. Further the property to which the contracts related had been delivered to the contractor. All that remained to be done was to carry out the legal procedure for the completion of the contracts, namely, the execution of written deeds signed by one of the officers mentioned in Section 97, U. P. Municipalities Act. The provision is analogous to the provisions of, for instance, the Indian Registration Act or the Transfer of Property Act, which require certain transfers or other dispositions of property to be in writing. Further there are other enactments, like Sch. II, Civil Procedure Code, and some of the Debt Acts, which only validate transfers in respect of which the permission of certain authorities has been obtained. The Contract Act itself enacts that certain contracts are void: see Sections 24 to 30.

<sup>119</sup> O.w.n. 638

<sup>13</sup> Deb 9 o.w.n. 461

<sup>12</sup>(1891) 2 Q. B. 509

26. It cannot possibly be argued that all contracts which are void by reason of any of the provisions of these statutes are excluded from the operation of Section 65, Contract Act. That would very greatly limit the scope of that section and the cases of *Nisar Ahmad Khan v. Mohan Manucha, Raja*<sup>14</sup>, and *Raja Mohan Manucha v. Manzoor Ahmad Khan*<sup>15</sup>, are direct authorities of the Judicial Committee for the proposition that Section 65, Contract Act, applies to those cases also in which a contract is found to be void by reason of a statutory provision. There is no reason why the same principle should not apply to a contract which is void for non-compliance with the provisions of Section 97, U. P. Municipalities Act.

27. Section 63 embodies an equitable principle. That principle is that if a contract between two parties is found to be void, that is to say nonexistent in law, both parties to it should be restored as nearly as possible to the position which they would have occupied if the contract had in fact, as in law, not come into being. There is no reason why corporations or juristic persons should be placed on a different footing in this respect from real persons.

28. If the reasoning adopted by the learned Chief Judge were accepted, it would mean that Section 65, Contract Act, would not give relief in the case of any void contract entered into with any corporation. This would very greatly limit the scope of Section 65. Corporations as such are in no better-and no worse-position than other persons and if an individual can be made to restore the benefit which he has derived from a contract which is void for a legal defect, there is no reason why a corporation should not be compelled to do so.

29. According to the General Clauses Act a "person" shall include any company or association or body of individuals, whether incorporated or not. Thus when the word "person" is used in Section 65 Contract Act, it includes such corporations as a Municipal Board.

30. As to the argument that the liability of the Municipal Board must arise out of the U. P. Municipalities Act, it means when examined, that a Municipal Board is not subject to the general law. There is no justification for such a conclusion. Municipal Boards, no less than individuals, are governed by such general laws as the Indian Contract Act or the Transfer of Property Act or the Indian Registration Act. It is not necessary to incorporate all the terms of the general law into the special enactment creating a body corporate in order to make that general law applicable to that body corporate : if there is no exclusion of the general law, or any part of it, from operating in respect of a particular statutory body, it will apply to it with full force. I have quoted above the entire reasoning of the learned Chief Judge in *Municipal Board, Lucknow v. S. C. Deb*<sup>16</sup>, and it will be seen that he arrived at his conclusion not upon any provision excluding the operation of Section 65, Contract Act, but because there is no provision making Section 65 applicable. The general law does not require to be applied by each special law : it is applicable by its own force and it is not necessary to establish its application. It is for the person who seeks to exclude its operation to show that it is incompatible with the special law and unless this is clearly established the general law will apply.

<sup>14</sup>1941 o.w.n. 513

<sup>169</sup>O. W. n. 461

<sup>15</sup>1943 O. w. n. 214

31. For the reasons given above, I am unable to accept the reasoning of the learned Chief Judge in *Municipal Board, Lucknow v. S. C. Deb*<sup>17</sup>, in so far as he held that the operation of Section 65, Contract Act, within the scope of which even according to him, cases such as these fail, is excluded by the force and context of the U. P. Municipalities Act.

32. In *Arunachala Nadar v. Srivilliputtur Municipal Council*<sup>18</sup>, a Division Bench of the Madras High Court discussed the matter at length and said :

"Now if a Municipality make an agreement which is discovered to be void because it is not under the signature of two councilors as provided by Section 45, Madras Act. 4 of 1884, can it be said to go behind the statute or to render its provisions nugatory, if such an agreement is brought within the ambit of Section 65, Contract Act? The short answer to this question would seem to be that the Municipalities Act is silent about and, therefore, not concerned with such an agreement. The distinction between agreements and contracts is well known and it would have been quite easy to provide that every agreement made on behalf of a Municipal Council shall be immune from the provision of Section 65, Contract Act, but there is nothing of the kind in the Act. The Act only states that in certain circumstances contracts shall be not binding on the council. Sections 45 and 46 are only concerned with contracts. If a council makes a promise it is an agreement; if that agreement is not enforceable by law it is said to be void; and when an agreement is discovered to be void any person who has received any advantage under such agreement is bound to restore it. If it is held that a Municipality is a person who can make agreements, then, if such person is treated under the general law, can it be said that a salutary provision has been defeated?"

There is nothing salutary in allowing rate-payers to escape their statutory obligation more easily than other persons. The legislature is considering the welfare of the community as a whole, and there is no cause for surprise that while making special provision in terms as regards contracts, it left agreements to be governed by the general law. Mr. Srinivasa Ayyangar argues that the special overrides the general; a maxim of universal acceptance, but before its application one must first find that there is a special law. If agreements are not specially mentioned they are under the general law. Probably the idea that to apply Section 65 would go behind the statute is derived from the English leading case in this matter: *Young and Co. v. Mayor, Corporation of Royal Leamington Spa*<sup>19</sup>. In that case an engineering firm had spent between "6,000 and "7,000 upon improvements in Leamington, and the Court held that inasmuch as the contract was not sealed as required by the Statute the suit did not lie. On the facts of this particular case Lindley L. J., finds that to allow the claim would in effect be repealing the Act of Parliament and depriving the rate-payers of that protection which Parliament intended to secure for them. But this language need not necessarily be imported to India. We can hardly say that if this claim is allowed we shall in effect be repealing the Municipalities Act or depriving the rate-payers of that protection which the legislature intended to secure for them. Because obviously by its language which is the best guide to a legislature's intentions it has not made this provision in regard to agreements, and on general principles it is hard to see why it should make such a provision. In the same English case *Young and Co. v. Mayor, Corporation of*

<sup>179</sup> O. W. n. 461

<sup>19</sup>(1883) 8 A. C. 517

<sup>18</sup> AIR 1934 Mad 480

*Royal Leamington Spa*<sup>20</sup>, at

p. 586 of 8 Q. B. Brett L. J., evidently considers that the decision to which he is constrained to come, causes injustice, and Lindley, L. J., describes it as 'hard and narrow.' On appeal Lord Blackburn (*Young and Co v. Mayor, Corporation of Royal Leamington Spa* at p. 527) observed: 'It is true this works great hardship.'

33. This decision was followed in *Madura Municipality v. Raman Servai*<sup>21</sup>, and the same law was laid down in *Mohamed Rowther v. Tinnevelly Municipal Council*<sup>22</sup>, which was also a suit by a Municipal Council in similar circumstances.

34-35. In *Municipal Board, Agra v. Babu Ram Lal*<sup>23</sup>, it was held that if a contract was void for non-compliance with the provisions of Section 96, U. P. Municipalities Act, the principle of quantum meruit applied and relief could be granted directing the restoration of the benefit derived by one of the parties.

36. There are numerous other decisions of various High Courts but it is not necessary to refer them. They have all been discussed in the judgment in *Ram Nagina Singh v. Governor General*

*in a Councila*<sup>24</sup>. Sinha J. exercising the original jurisdiction of the Calcutta High Court considered the question whether the principle of restitution embodied in Section 65, Contract Act, is applicable to a case where an agreement entered into between the parties is void by reason of non-compliance with an express statutory provision at great length. At p. 304 of the report he stated his conclusions thus :

"It will be seen that Judicial opinion in India has not been uniform on the question whether Section 65 should be applied where an agreement is entered into by the parties which is discovered to be void by reason of failure to comply with statutory requirements. As Sir Lawrence Jenkins pointed out in *Harnath Kuar v. Indar Bahadur Singh*<sup>25</sup>, the question has to be determined on the terms of the section itself and not by reference to English decisions. If the facts of the case can be brought within the scope of Section 65 it should be held to apply. The section enunciates the principle of restitution and should be liberally construed in order to do equity and justice between the parties. The intention of the section is to prevent a party to avoid agreement to retain benefits received under it. The agreement may be void on grounds of fact or on grounds of law. There is nothing in the section to restrict it to agreements which are void on grounds of fact. The only requirement is that the benefit must have been received under an agreement before discovery that it was void."

37. I entirely agree with the view expressed in the above words. The result is that I would hold that Section 65, Contract Act, is applicable to all the above cases.

38. In Second Appeal No. 886 of 1943, all the points raised were decided by the trial

<sup>20</sup>(1883) 8 a. C. 517

<sup>22</sup> AIR 1938 Mad 746

<sup>24</sup>84 C. L. J. 275

<sup>21</sup> AIR 1986 Mal. 98

<sup>23</sup> AIR 1936 All 723

<sup>25</sup>50 i. a. 69

Court, but not by the lower appellate Court, which dismissed the suit on the basis of the decision in *Municipal Board, Lucknow v. S. C. Deb*<sup>26</sup>, and did not consider the other pleas raised by the deft. The case will, therefore, go back to the lower appellate Court for a consideration of the other points raised by the deft, and for disposal de novo in the light of this decision holding that Section 65, Contract Act, applies and warrants the grant of relief to the Plaintiff The appellant will get his costs of this Court, but costs of the trial Court will abide the result.

39. In Section 25 Application No. 35 of 1943 the sole point raised by the deft, was that the contract was void and could not form the basis of the suit. In the view which I have taken of the effect of Section 65, Contract Act, the applicant will be entitled to get a decree for the sum claimed by him on the basis of the principle of quantum meruit as embodied in Section 65. The application is, therefore, allowed and a decree for Rs. 211/4/0 is passed in favour of the Plaintiff who is also allowed costs of both the Courts.

40. Section 25 Application No. 42 of 1943 was also decided on a preliminary point as to the non-applicability of Section 65. Contract Act, and other pleas remain to be decided. This case must

go back to the trial Court for decision of the remaining points in the light of what has been said above as to the applicability of Section 65. The applicant will get his costs of this application from the opposite party but costs of the trial Court will abide the result.

**Misra, J**

41. I agree and have nothing to add.

**Agarwala, J**

42. The facts of the different connected cases have all been mentioned by my brother Kidwai. It is unnecessary to repeat them.

43. It is conceded that Section 96, Municipalities Act, was complied with in all these cases but that the form of execution of contracts prescribed in Section 97 was not followed. It was not disputed by the learned counsel for the Municipal Board that the agreement not having been executed as required by Section 97, was void. The main point that was argued before us was whether the Municipal Board is entitled to claim the benefit of Section 65, Contract Act. No other section of the Contract Act was relied upon.

44. Section 65 applies when : (a) an agreement is discovered to be void and (b) when a contract becomes void. The Indian Contract Act makes a distinction between an agreement and a contract. An agreement not enforceable by law is said to be void (Section 2 (g)). A contract is an agreement enforceable by law- Section 2 (h). An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others is a voidable contract - Section 2 (i). A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable Section 2 (j). Therefore Section 65 applies to agreements which are ab initio void as also to voidable contracts which subsequently become void, (see *Harnath Kuar v. Inder*

<sup>269</sup> O. W. N 461

*Bahadur*<sup>27</sup>, and *Anand Mohan v. Gour Mohan*<sup>28</sup>,

45. A void agreement being an agreement not enforceable by law, it follows that an agreement by a person who is incapable of giving his consent, e. g., a minor, it not an agreement at all and the term 'void agreement' is not applicable to an agreement by a person who is incapable of giving his consent. Section 65, therefore, does not apply to a case in which there is no agreement at all: in other words, where the so-called agreement is between persons one of whom is incompetent to give his consent or enter into an agreement at all. This was laid down by the Privy Council in *Mohri Bibi v. Dharmodas Ghose*<sup>29</sup>, which was a case of an agreement by a minor.

46. A corporation is a juristic person and there is no reason to exclude it from the operation of Section 65 provided it has the capacity of entering into an agreement and has actually entered into it. Where a statute creates a corporation and lays down that a corporation has not got the capacity to enter into an agreement, unless it complies with a certain form or makes its will known in a particular manner, it is obvious that Section 65 will have no application even though the corporation might have received an advantage under an assumed agreement. In this respect, the principle applicable to natural persons must also clearly apply to a juristic person like a statutory corporation. But where the form prescribed by the statute does refer to the capacity of the corporation to enter into a contract and merely makes the agreement unenforceable by law against it, the statutory provision will not debar the applicability of Section 65 because that section applies even though an agreement is void ab initio. Therefore, in all cases of statutory corporations required by the statute to act in a particular manner, what one has to see is whether the requirement of law contravened refer to the capacity of the corporation to enter into a contract, or whether they refer to the enforceability of the agreement by law.

47. We have, therefore, to determine whether the formalities prescribed by Section 97, Municipalities Act, refer to the capacity of a Municipal Board to enter into a contract or are merely forms which the law prescribes in order that an agreement may be binding.

48. In this connection Sections 96 and 97, Municipalities Act, have to be considered. These sections are as follows:

S.96. - "Sanctioning of contracts.- (1) The sanction of the board by resolution is required in the case of every contract (a) for which budget provision does not exist, or (b) involving a value or amount exceeding one thousand rupees in the case of a contract By the board of a city and two hundred and fifty rupees in any other case.

(2) Any contract other than a contract of either description specified in sub section (1), may be sanctioned by resolution of the board, or by a committee of the board (not being an advisory committee) empowered in this behalf by Regulation, or by any one or more than one officer or servant of the board so empowered .....

Section 97. - "Execution of contracts. - (1) Every contract made by or on behalf of a

<sup>27</sup>50 I. A. 69

<sup>29</sup>30 I. A. 114 : 30 Cal. 539

<sup>28</sup>50 I. A. 239

board whereof the value of the amount exceeds Rs. 250 shall be in writing. ....

(2) Every such contract shall be signed (a) by the president or a vice-president and by the executive officer or a secretary, or (b) by any person or persons empowered under sub-section (2) or (3) of the previous section to sanction the contract if further and in like

manner empowered in this behalf by the board.

(3) If a contract to which the foregoing provisions of this section apply is executed otherwise than in conformity therewith it shall not be binding on the board."

It will be observed that Section 96 refers to the sanctioning of contracts or, in other words, to the expression of the board's will with regard to certain proposals, or the making of agreements, while Section 97 refers to the form in which agreements shall be executed. The difference in the effect of the two sections may be illustrated by an example. Let us assume that there is a proposal for an agreement before the board of a city of a value or amount exceeding Rs. 1000. Under Section 96, in order that there may be an agreement, all that is required is that there may be a resolution of the board. The proposal by a third person coupled with the resolution of the board, duly communicated to that third person, amounts to an agreement between the board and third person. The agreement, however, will not be enforceable by law unless the formalities prescribed under Section 97 are complied with.

49. In the present case it is conceded that the provisions of Section 96 were complied with. The board, therefore, had the capacity to enter into the agreement and did enter into it. But the agreement could not be enforced in law because the form prescribed in Section 97 was not gone through (assuming that Section 97 makes such contracts void altogether even against parties other than the board). If there had been a contravention of the provisions of Section 96, the board had not the capacity to enter into the agreement at all and the benefit of Section 65 could not have been claimed. As, however, the provisions of Section 96 were complied with, there is nothing to prevent the board from claiming the benefits of Section 65, Contract Act. It is clear that in so holding there is no contravention of Section 97 at all because that section refers to the enforceability of such agreements while Section 65, Contract Act, on the other hand, does not deal with the enforcement of an agreement; it assumes that the agreement is void and then grants a relief on equitable considerations.

50. Under the Common Law of England, a corporation may make a contract provided it is evidenced by the corporate seal. Subject to certain exceptions, an unsealed contract is enforceable neither by nor against a corporation. These exceptions are first the use of seal may be dispensed with by the constitution of the corporation; secondly, routine contracts of frequent occurrence may be entered into without using the seal, and thirdly, a trading corporation may enter into a contract without a seal provided that it relates to the subjects and purposes for which the trading corporation was incorporated. *South of Ireland Colliery Co. v. Maddle*<sup>30</sup>, The fourth exception relates to non-trading corporations, such as urban and rural district councils, and is to this effect :

<sup>30</sup>(1868) L. R. 3 C. P. 463

'Whether such a corporation makes a simple contract in order to fulfil the purposes for which it was created, and the contract is performed by one of the parties, then an action

lies against the party who has had the benefit of the performances." *Clarke v. Cuckfield Union* <sup>31</sup>*Lawford v. Villericay Rural District Council*<sup>32</sup>, See the Law of Contracts by Chesire and Fifoot, pages 270-271.

51. Wherefore, however, the statute expressly provides that a contract of certain value must be entered into under the seal of the corporation, and the provisions are mandatory, it has been held that the exceptions do not apply because the corporation has no capacity to enter into a contract of that value except under seal. In *Church v. Imperial Gas Co*<sup>33</sup>, Lord Denman said that it was only in that way (i. e., by the use of the seal) that a corporation could express its will or do any act. And Rolfe B. in delivering the judgment of the Court of Exchequer in *Mayor of Ludlow v. Chareton*<sup>34</sup>, said:

"It is quite clear that there was nothing to enable the corporation of Ludlow to contract with the deft. otherwise than in the ordinary mode under the corporation seal."

These cases were referred to with approval in *Young and Co. v. Corporation of Royal Leamington Spa*<sup>35</sup>, In that case Section 174, Public Health Act of 1875 had to be considered. That section provided:

"With respect to contracts made by an urban authority under this Act, the following regulations shall be observed; (namely)

(1) Every contract made by an urban authority whereof the value or amount exceeds fifty pounds shall be in writing and sealed with the common seal of such authority,

In the Public Health Act of 1875 there was no provision corresponding to Section 96, U. P. Municipalities Act. The provisions of Section 174 were construed as referring to the capacity of a corporation to enter into a contract of value exceeding fifty pounds and it was, therefore, held that even though the urban local board governed by the Act had received the benefit of an agreement which was entered into without the seal of the board, it could not be sued for the amount under doctrine of quantum meriut because the mandatory provisions of the statute must prevail. This case has to be read in the light of the common law rule and the previous authorities. Read in that light, it is obvious that the case proceeded on the assumption that the local board had not the capacity to enter into a contract of value exceeding fifty pounds unless the contract was evidenced by writing and the seal.

52. With regard to the necessity of strictly complying with the statutory provisions relating to the incapacity of corporations to enter into contracts of certain value except under seal, Lord Barnwell in the above case ((1883) 8 a. C. 517), stated:

"The Legislature has made provisions for the protection of rate-payers, share-holders and others who must act through the agency of a representative body by

<sup>31</sup>(1852) 21 L. J. Q. B. 349

<sup>33</sup>(1838) 6 Ad. and e. 846 at p. 861

<sup>35</sup>(1883) 8 A. C. 517 at p. 525

<sup>32</sup>(1903) 1 K. B. 772

<sup>34</sup>(1840) 6 m. and W. 815 at p. 822

requiring the observance of certain solemnities and formalities which involve deliberation and reflection. That is the importance of the seal It is idle to say there is no magic in a wafer .... The decision may be hard in this case on the plffs., who may not have known the law. They and others must be taught it, which can only be done by its enforcement."

The Privy Council decision in Mohori Bibi's case, 30 I. a. 114: 30 Cal. 539, concerned a case of contract by a minor and it was held that benefit under Section 65 could not be claimed by the promisee as against the minor. The principle in both cases, that of a contract by a minor and that by a corporation which is incapable of contracting except under seal in matters of contract of certain value is the same. But the real question to be determined in all such cases is whether the form prescribed by law refers to the capacity of the corporation to contract or it does not.

53. The matter has been considered in several cases in India, but the views expressed are not uniform.

54. In *Abaji Sitaram v. Trimbak Municipality*<sup>36</sup>, the Municipality of Trimbak granted to the deft. the right of collecting certain tolls and taxes for a period of 14 months on a consideration of payment by the deft of a sum of Re. 15001. The Bombay District Municipal Act, ii of 1884, by Section 30, required such a contract to be sealed with the seal of the Municipality. The contract was not so sealed. The deft. objected and failed to pay the balance. The Municipality brought a suit for recovery of the balance. The Court held that though the contract was not under seal, still as there was an executed consideration, the suit was maintainable. The Court referred to Section 23, Contract Act. and held that that section did not apply. Though the reference to Section 23 was hardly relevant, the decision can be justified under Section 70, Contract Act. It could not, however, be justified under the provisions of Section 65, Contract Act, because the provisions of Section 30, Bombay Municipal Act, ii [2] of 1884, incapacitated the board to enter into a contract of the value exceeding Rs. 500 otherwise than by a writing signed by the President and by the two Commissioners of the Municipality with the common seal. But the decision may possibly be justified under Section 70, Contract Act.

55. In *Radha Krishna Das v. Municipal Board of Banaras*<sup>37</sup>, decided before the decision of the Privy Council in Har Nath Kuar's case, 50 i. a. 69, Section 65 was not applied because it was thought that the section had no application to a case in which a contract was void ab initio. This view is no longer tenable.

56. In *Raman Chetti v. Municipal Council of Kumbakonam*<sup>39</sup>, the suit was by the Municipal Council of Kumbakonam to recover damages and arrears from the deft., a toll contractor, who had purchased at public auction the right of collecting tolls for three years. The deft. collected tolls but there was no written agreement which was required by the provisions of Section 45, Municipalities Act. The suit was dismissed upon the ground that the contract was void. It was

observed:

"The suit is based upon the agreement, and upon the agreement alone, and cannot

<sup>36</sup>28 Bom. 66

<sup>38</sup>30 Mad. 290

<sup>37</sup>27 ALL. 592

be, to any extent, treated as a suit for money had and received. On the ground that the contract is invalid, the decree of the lower Court must be set aside and the suit dismissed."

Neither Section 65 nor Section 70, Contract Act were considered.

57. In *Mathura Mohan v. Ram Kumar*<sup>39</sup>, a certain piece of land which had been acquired by the District Board was agreed to be re-transferred to the original owner on payment of a certain sum. The owner deposited the amount with the District Board. The agreement, however, was not in writing and signed by the Chairman and two other members of the Board with the common seal as required by rules in a case involving a value of above Rs. 500. The District Board thereafter did not sell to the original owner but sold it to a third party. The original owner sued the purchaser and the District Board for the recovery of the amount deposited by him and in the alternative for specific performance of the contract and also for recovery of damages. The contention of the purchaser was that the agreement with the owner not being executed as required by the rules was void and no relief could be granted to the owner. It was held that though the agreement was void, the Board was bound to refund the amount it had accepted. It was observed:

"It cannot be disputed that where a corporation receives money or property under an agreement, which turns out to be ultra vires or illegal, it is not entitled to retain the money. The obligation to do justice rests upon all persons, natural and artificial; if one obtains the money or property of others without authority, the law, independently of express contract, will compel restitution or compensation." *Wenkin v Emigh*<sup>40</sup>,

58. In *Mohammad Ebrahim v. Commissioner for the Port of Chittagong*<sup>41</sup>, an agreement the value of which exceeded Rs. 2500 was executed by the Port Officer of Chittagong, by his proxy, the Port Officer of Moulmein, on behalf of the Commissioners for the Port of Chittagong by which a towing vessel was let out by the Port Commissioners for operations outside the Chittagong Port. The agreement was in contravention of Section 29 of Chittagong Act, 1914. Section 28 lays down:

"(1) The Commissioner may enter into contracts authorized by this Act which any person for the execution or supply of any works, labour, materials, machinery, stores, or (or other matters necessary for carrying into effect the trusts and purposes of this Act.

(2) Any such contract, the value of amount of which does not exceed Rs. 2500, may be made by the Chairman in the case of any work or matter which he is authorized to carry out by this Act or the rules or by laws there under or which has been sanctioned by the

Commissioners, but other contracts shall not be entered into except in accordance with a resolution passed by the Commissioners in meeting."

<sup>39</sup>43 Cal. 790,  
<sup>40</sup>(1916) 218 u. S. 27

<sup>41</sup>54 Cal 189

Section 29 which lays down the mode of executing contracts and agreements is as follows:

"(1) Any contract, the value or amount of which does not exceed Rs. 2500, made by the Chairman for and on behalf of the Commissioners may be made in such manner and form as, according to the law for the time being administered in Chittagong, would bind him if such contract were on his own behalf.

(2) Every contract or agreement by or on behalf of the Commissioners which shall exceed the sum of Rs. 2500 shall be in writing and signed by the Chairman or vice Chairman and by two other Commissioners, and shall be sealed with the common seal of the Commissioners."

It was held that the agreement was void as it contravened Section 29, but that the pltfs. were entitled to recover quantum meruit for the services rendered by them to the Defendant. It may be observed that the provisions of Sections 28 and 29, Chittagong Act, are similar to the provisions of Sections 96 and 97, U. P. Municipalities Act. Section 28 enabled the Commissioners to enter into an agreement. The agreement was entered into but the agreement was not enforceable at law because the form under which the agreement was required to be executed was not followed.

59. In *Municipal Board, Lucknow v. Debi Das*<sup>42</sup>, it was held that, whether the contract was void under Section 96 or under Section 97, U. P. Municipalities Act, Section 65, Contract Act, afforded relief to the pltf. The attention of the Court was not drawn to Mohori Bibi's case. The decision was right (speaking with respect) so far as the effect of Section 97 is concerned, but I am unable to follow it so far as the effect of Section 96 is concerned.

60. In *Municipal Board, Lucknow v. S. C. Deb*<sup>43</sup>, there was an agreement by the Municipal Board of Lucknow to purchase a certain quantity of coal from the pltf. The pltf. deposited a cash security of Rs. 5000 for the due performance of his part of the contract and supplied a part of the quantity of coal agreed upon. The Municipal Board paid a part of the price. The pltf. sued to recover the balance of the price to the extent of Rs. 7066-10-4 and also the sum of Rs. 3742-9-4 on account of security deposit. The defense inter and was that the agreement was not binding on the board by reason of Sections 96 and 97, U. P. Municipalities Act, not having been complied with. The Subordinate Judge of Lucknow gave a decree to the pltf. The Municipal Board appealed to the Chief Court. A Division Bench before which the appeal came up for hearing referred two questions to a Full Bench for opinion, the first of which was:

"Is the contract pleaded in para 2 of the plaint (Ex. 11) void by reason of the provisions of Sections 96 and 97, u. p. Municipalities Act, 1916. If the answer is the affirmative, can any relief be given to the pltf. under the provisions of Sections 65, 70 and 72, Contract Act?" At the time of hearing, reliance was placed upon Section 65, Contract Act, alone and not upon Sections 70 and 72. It was conceded

<sup>421</sup> Luck. 444

<sup>439</sup> o. w. n. 461

before the Full Bench that Section 96 had not been contravened but that the form prescribed by Section 97 had not been complied with. The learned Chief Judge after holding that the contract was void by reason of Section 97 held that the benefit of Section 65 could not be given to the pltf. The learned Chief Judge observed that although the contract fell within the purview of Section 65, Contract Act the provisions of Section 97, Municipalities Act, excluded the application of that section on the principle *generalalia specialibus non derogant*. In support of his view the learned Chief Judge relied upon the decision of the House of Lords in the case of *Young and Co. v. Mayor and Corporation of Royal Leamington Spa*<sup>44</sup>, and also upon *Douglas v. Rhyl Urban District Council*<sup>45</sup>, With all respect I may state that the learned Chief Judge failed to observe, first, that while Section 174, Public Health Act, referred to the capacity of an urban local authority, to enter into a contract of the value exceeding 50 pounds, Section 97, U. P. Municipalities Act, when read along with Section 96 of that Act, did not have that effect and secondly, the principle *generalalia specialibus non derogant* had no application to the case. The principle applies only when the provisions of a special and particular statute are in conflict and inconsistent with the provisions of a general statute. The provisions of the Municipalities Act which may be taken to be a special statute referred only to the execution of a contract and rendered the contract void if it was not executed in that form. Section 65, Contract Act, however, assumes that the contract is void and then lays down the rule that in such a case the party receiving a benefit must make compensation for the same to the other party The two provisions are, therefore, not in conflict with each other and the special law cannot be said to override the general law.

61. In *Srivilliputtur Municipal Council v. Arunachala Nadar*<sup>46</sup>, Walsh J. held that where the contract was void under Sections 44 and 45, Madras District Municipalities Act, no relief could be given under Section 65, Contract Act. It is not clear from the report whether the provisions contravened referred to the capacity of the Municipality or whether they referred to the form in which an agreement which could be entered into by the Municipality had to be executed.

62. In *Ram Chand Lotia and Sons v. Municipal Committee, Lahore*<sup>47</sup>, a Bench of the Lahore High Court held that even though the contract was void by reason of Section 47, Punjab Municipal Act, 3 of 1911, the Plaintiff was entitled to the return of the goods supplied by him

under Section 70 of the Contract Act.

63. In *Madura Municipality v. K. Alagirisami Naidu*<sup>48</sup>, it was held that even though a contract was void under Section 68, Madras District Municipalities Act, benefit received must be restituted under Section 65, Contract Act. The Full Bench decision of the Oudh Chief Court already referred to (9 O. W. N. 461) was referred to and dissented from.

64. In *Dhanna Munda v. Mt. Kosila Banian*<sup>49</sup>, Contract Act, was not given to the Plaintiff on the ground that the validity of the

<sup>44</sup>(1883) 8 A. C. 517

<sup>46</sup> AIR 1933 Mad 332

<sup>48</sup> AIR 1939 Mad 957

<sup>45</sup>(1913) 2 Ch. 407

<sup>47</sup> AIR 1933 Lah 14

<sup>49</sup> AIR 1941 Pat 510, benefit of Section 65

contract must be presumed to have been known to the parties at the time of entering into it.

65. In *Akshoy Kumar Banerji v. T. Municipal Commissioners of Tollygunge Municipality*<sup>50</sup>, although the agreement between the Municipal Board and a private individual was found to be void by reason of its not complying with the provisions of Section 103 (3), Bengal Municipal Act, the Plaintiff was held entitled to the benefit of Section 65, Contract Act.

66. The last case to be cited in this connection is a recent decision of Sinha, J. in *Ram Nagina Singh v. Governor General in Council*<sup>51</sup>, In that case the Plaintiff delivered certain bricks to the Chief Engineering, Eastern Command. The suit was for recovery of the price of the bricks supplied and alternatively for compensation under Sections 65 and 70 of the Contract Act. One of the defenses raised was that the contract was void because it was not entered into in the manner prescribed by Section 175, Govt. of India Act. It was held that Section 175, Govt. of India Act, being mandatory, noncompliance with its provisions rendered the contract void, but that relief under Section 65, could be granted. It was further held that Section 70, Contract Act, might also be invoked by the Plaintiff inasmuch as goods delivered under the agreement, which did not satisfy the statutory requirements, did not make the delivery unlawful and that the provisions of Section 70 were applicable to statutory persons where a statutory body had entered into a contract which was invalid by reason of non-compliance with statutory requirements. The learned Judge noted the fact that Section 65, Contract Act, could not apply to a case in which there could not be an agreement at all because the person sought to be bound under the agreement was incapable of entering into it, as was held by the Privy Council in Mohiri Bibi's case, 30 i. a. 114: 30 Cal. 539. But he observed that the principle of the ruling of the Privy Council did not apply to the case of corporations which were not absolutely debarred from making contracts but were debarred from entering into contracts of a particular nature or of a particular value. With all respect, I am unable to agree with this distinction so far as Section 65, Contract Act, is concerned. If a corporation had not the capacity to enter into a particular agreement under which benefit has been received by one party, it could not be said that there was an agreement at all; and if there was no agreement, the case falls within the principle laid down by the Privy Council in Mohiri Bibi's case and Section 65 cannot be applied. The fact that though the corporation concerned had not the capacity to enter into a particular contract, it could enter

into some other contract is wholly immaterial, in my judgment, in considering the applicability of Section 65 of the Act. The Plaintiff's claim in that case, however, might possibly be upheld under Section 70, Contract Act.

67. Upon a consideration of the whole matter, I am of opinion that Section 65, Contract Act, applies to a case in which an agreement entered into by a statutory body is invalid by reason of non-observance of statutory provisions with regard to the execution of contracts, but does not apply when those provisions refer to the capacity or the statutory body to enter into an agreement.

68. I am further of opinion that Section 97, U. P. Municipalities Act, does not refer to the

<sup>50</sup>46 C. W. N. 393

<sup>51</sup>84 C. L. J. 275

capacity of a Municipal corporation to enter into an agreement and as such, non-compliance with its provisions does not render Section 65 inapplicable. I agree in the order proposed by my learned brother.

**Bhargaya, J.**

69. I agree with my brother Agarwala J.

**Malik, C.J.**

70. After the elaborate judgments of my brothers Kidwai and Agarwala, it is no longer necessary for me to discuss the decisions of the various High Courts that were cited at the Bar. I would, however, like to set out briefly my reasons for my decision.

71. Section 65, Contract Act, provides that when an agreement is discovered to be void, or when a contract become void, the benefit received under that agreement or contract has to be restored or compensation has to be paid. Under Section 2, sub-section (c) every promise and every set of promises forming the consideration for each other is an agreement. Promise is defined in sub-section (b) of Section 2, as acceptance of a proposal. When an agreement is enforceable by law, it is a contract. Sub section (g) of Section 2 says that an agreement not enforceable by law is void. Section 65 will, therefore, only apply to a case where there is an agreement which is discovered to be void or the agreement has matured into a contract which becomes void. If there is no proposal or that the proposal has not been accepted so as to become a promise, there can be no agreement and if there is no agreement in fact, Section 65 will not apply. Section 65 will only apply where there is an agreement in fact but that agreement is not enforceable later.

72. The case before us has been argued on the basis that there was an agreement but that agreement was not enforceable by law. To such a case Section 66, Contract Act, will clearly apply.

73. If there is, however, in fact no agreement at all-void or otherwise-then there can be no question of the applicability of Section 65 though Section 70, Contract Act, might help the party which has done anything or delivered anything not intending to do so gratuitously when the person for whom the thing has been done or to whom the thing has been delivered has enjoyed the benefit thereof. It is not necessary for me to go into this question as the point does not directly arise in this case.

74. When the law provides that a statutory body can enter into a contract in a particular manner the question, as has been pointed out by my brother Agarwala, is whether the provision merely makes the agreement not enforceable at law or it goes further and it has to be said that there was in fact no agreement at all. The question has to be decided on the facts and circumstances of each case and on the law relating to such a public body. Such provisions are usually made for the protection of the members of those public bodies who are not to be saddled with responsibility unless they have been bound in the manner provided; in other words the statutory provisions cannot be nullified and liability imposed indirectly in contravention of the terms of the statute. On the other hand, there is no reason why a public body should be allowed to behave dishonestly and retain the benefit without compensating for an act not intended to be done gratuitously.

75. We are in this case concerned with the relevant provisions of the Indian Contract Act and Section 97, Municipalities Act. Section 97, Municipalities Act, merely makes the agreement unenforceable and to my mind, therefore, Section 65, Contract Act, clearly applies.

76. I concur in the order proposed.

77. By the Court. - Second Civil Appeal No. 286 of 1943 is remanded to the lower appellate Court for a consideration of the other points raised by the deft. and for disposal according to law. The appellant will get his costs of this Court, but costs of the lower Courts will abide the result.

76. Section 25 Application No. 35 of 1943 is allowed, the decree of the lower appellate Court is set aside and the pltf.'s suit is decreed for Rs. 211-4-0 with costs in both the Courts.

79. Section 25 Application No. 42 of 1943 is allowed and the case is remanded to the trial Court for decision of the remaining points in the light of what has been said above as to the applicability of Section 65 Contract Act. The applicant will get his costs of this application but the costs of the trial Court will abide the result.

Order accordingly.