

**(1934) 02 MAD CK 0012**  
**In the Madras High Court**

K.C.A. Arunachala Nadar and Others

APPELLANT

Vs

Srivilliputtur Municipal Council

RESPONDENT

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**Date of Decision :** 20-02-1934

**Acts Referred:**

Contract Act, 1872 — Section 65

**Citation :** AIR 1934 Mad 480 : (1935) ILR (Mad) 65 : (1934) 40 LW 18

**Hon'ble Judges :** Jackson, J

**Bench :** Division Bench

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**Judgement**

Jackson, J.—The plaintiffs are wholesale rice merchants of Sattur, who agreed during the period of scarcity after the war of 1914-1918 to

supply rice bags to Srivilliputtur Municipality, which a committee duly appointed by the Municipality was to retail to private persons. After a

consignment of bags had been made in February 1920, the price fell and the Municipality disposed of them at a loss and refused to pay the

plaintiffs more than what it got by the sale. The plaintiffs claim Rs. 3,000 as the value of the bags as upon the date of delivery. The District Munsif

and the Subordinate Judge decreed the suit except for a reduction made on account of gunny bags. This Court dismissed the suit on second

appeal. Hence this Letters Patent appeal.

2. The plaintiffs cannot sue upon contract because they have no written contract signed by two councillors as provided by Section 45 of the then

Act, Act 4 of 1884. They claim however u/s 65, Contract Act, that the agreement having been discovered to be unenforceable in law on this

account they are still entitled to compensation in proportion to the advantage received by the Municipality. This claim was originally met by citing

Radhakrishna Das v. Municipal Board of Benares (1905) 27 All. 592 which has been followed in Ramaswami Chetty v. Municipal Council

Tanjore (1906) 29 Mad. 360 and evidently influenced Walsh, J., in our present case. It was held in Allahabad that Section 65 cannot apply to a

contract void ab initio and it was also suggested hypothetically that if a Court were to hold otherwise it would render nugatory the salutary

provision of the Municipalities Act which provides that a contract executed otherwise than in conformity with it shall not be binding on the Board.

In Gulabchand v. Fulbai (1909) 33 Bom. 411 it was suggested that the scope of Section 65 may be extended to contract void abinitio, and now in

the light of Harnath Kumar v. Indar Singh AIR 1922 P.C. 403 that suggestion must be accepted as correct.

3. Now if a Municipality make an agreement which is discovered to be void because it is not under the signature of two councillors 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?

4. 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 & Co. v. Mayor, Corporation of Royal Leamington Spa* (1883) 8 A.C. 517 arising out of 8 Q.B. 579. In that case an engineering firm

had spent between ₹½ 6,000 and ₹½ 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 & Co. v. Mayor, Corporation of Royal Leamington Spa* (1883) 8 A.C. 517 arising out of

8 Q.B. 579 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 & Co. v. Mayor Corporation of Royal Leamington Spa* (1883) 8 A.C.

517 arising out of 8 Q.B. 579 at p. 527 observed : "It is true this works great hardship.

5. On the other hand the law in its present state in this Presidency works no hardship. If under an agreement such as that entered into by Young

& Co. with Leamington or that between these plaintiffs and Srivilliputtur advantage has accrued to the Municipality, the Municipality makes good

that amount to its promisees. If the agreement however does not resound to the advantage of the Municipality it is in no way bound, and the

interests of the rate payers are fully secured.

6. This argument has proceeded on the assumption that a Municipality is a person who can make agreements. The Act itself seems to assume as much, for even u/s 45 a contract below Rs. 100 is left to its unhampered direction. The Act does not specially empower Municipalities to make agreements, and then prescribed the form for agreements involving more than Rs. 100. It assumes the power and only prescribes a form for the larger amount. We see no force therefore in Mr. Srinivasa Ayyangar's suggestion that Municipality is more like a lunatic or a minor than a juristic person. Nor can it be said that in undertaking this business of distributing rice the Municipality acted ultravires. The safety, health, comfort and convenience of the people were all furthered by this arrangement at the end of the war, of. Section 113(v) Act 4 of 1884. In *Mohamed Ebrahim Molla Vs. Commissioners for the Port of Chittagong*, it is held that the contract is void, but Mr. Mitter argued that even so Section 65, Contract Act, would apply, p. 194 of 54 Cal., and the Court did not see why plaintiff's should not recover quantum meruit, p. 217 of 54 Cal. This case is followed by *Walsh, J., sitting with Kumaraswami Sastri, J., in Municipal Council Tiruvarur v. Kannuswami AIR 1930 Mad. 600*. In that case the parties "'agreed"' to a decree on a quantum meruit basis, presumably because they did not think it worth disputing. Sir Frederick Pollock has questioned the wisdom of counsel's conceding the point in *Mohamed Ebrahim Molla Vs. Commissioners for the Port of Chittagong*, . of his commentary on the Contract Act but he only follows the English decisions. It would be dangerous to ignore the plain, statutory provision of Section 65 and argue as though the matters were entirely dependent upon English rules of Equity as laid down in the English cases.

7. On this general proposition the learned judgment of our late Chief Justice in *Municipal Council, Dindigul v. Bombay Co. Ltd. AIR 1929 Mad. 409* repays perusal. It has been found that the quantum of the claim is just and we restore the decree of the Subordinate Judge with costs throughout to the appellants.