

**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:  
Muhammad Shafi Siddiqui  
& Jawad Akbar Sarwana JJ

**High Court Appeal No.145 of 2018**

**Cantonment Board Clifton**

**v.**

**Nadim Ahmed Ansari**

Appellant: Cantonment Board Clifton,  
through its duly authorized Officer  
Mr Muhammad Hayat, Deputy  
CEO, CBC through Mr Syed  
Zaeem Hyder, Advocate

Respondent: Nadeem Ahmed Ansari through  
LR's (i) Mrs. Simi Nadeem Ansari,  
(ii) Hassan Ahmed Ansari, (iii)  
Mrs. Hira Nadeem Ahmed Ansari,  
(iv) Ms. Nida Shah Zaib Siddiqui  
through Mr Shahenshah Hussain,  
Advocate

Date of hearing: 31.10.2023

Date of decision: 31.10.2023

Date of Judgment with reasoning: 06.12.2023

**J U D G M E N T**

**Jawad A. Sarwana, J.:** The Appellant/Defendant ("Cantonment Board Clifton" / "CBC") has challenged the Judgment and Decree dated 10.04.2018 of the High Court of Sindh at Karachi in Civil Suit No.263/2009 filed by Respondent/Plaintiff, Nadim Ahmed Ansari against CBC. All the communications exchanged by Nadim Ahmed Ansari with CBC were on the letterhead of "NAA Consulting Engineers" as he was doing business in the name of "NAA Consulting Engineers". Therefore, the Respondent/Plaintiff hereinafter is referred to as "NAA Consulting Engineers" and/or "NAA" interchangeably. The learned Single Judge passed a money decree

against CBC for compensation for services rendered by NAA to CBC in the sum of Rs.11,300,000 with interest at the rate of 10% p.a. from the date of filing of the suit till the date of recovery. During the pendency of the suit, Nadeem Ahmed Ansari passed away whereafter the suit continued against CBC through his legal heirs, (i) Mrs Simi Nadeem Ansari, (ii) Hassan Ahmed Ansari, (iii) Mrs Hira Nadeem Ahmed Ansari, (iv) Ms Nida Shah Zaib Siddiqui.

2. The brief facts of Suit No.263/2009, which the learned Single Judge has discussed in detail in the impugned Judgment, are that CBC requested NAA Consulting Engineers in writing to carry out certain financial and technical consultancy services involving surveying, planning, technical, designing, drawing and engineering estimates in relation to several development schemes within the jurisdiction of the CBC regarding:

- (a) stormwater drainage design (Ex.“5/2” and “5/5”);
- (b) sewerage upgradation (Ex.“5/2” and “5/5”);
- (c) revamping of urban infrastructure of Katchi Abadies (Ex.“5/3”);
- (d) design of internal roads in Clifton Block 6 (Ex.“5/8”);
- (e) planning, design and preparation of bill of quantities for improvement of CBC Fire Station at Submarine Chowrangji, Clifton, Karachi (Ex.“5/4”);
- (f) bill of quantities for (a), (b), and (d) above (Ex.“5/9”), etc.

3. Based on CBC’s above-referred work orders from (a) to (f), NAA Consulting Engineers commenced work on the matter. The work orders involved meetings with CBC from time to time, following up on

the matters post-meetings, and submitting revised, updated or fresh cost estimates, drawings, work, and reports, as the case may be (Ex.“5/6”, “5/7”, etc.).

4. After completing the assignment, NAA submitted four (4) invoices in relation to services rendered, totalling Rs.11,300,000 (Ex.“5/10”); however, CBC did not settle the invoices. NAA kept writing to them but without any positive results (Ex.“5/12” and (Ex.“5/13”). Consequently, NAA Consulting Engineers served on CBC a legal notice dated 17.01.2009 (produced as Ex. No.”5/11”). CBC did not reply to the said legal notice, and on 11.02.2009, NAA filed a civil suit for recovery against CBC. Service was effected on CBC on 25.03.2009 and held valid by the Additional Registrar (OS) on 28.04.2009. Thereafter, CBC’s lawyer filed his Vakalatnama on 14.09.2009, followed by CBC’s Written Statement on 26.10.2009.

5. The Court settled issues on 26.04.2010, whereafter the Commissioner for Recording Evidence commenced recording of evidence. The Commissioner returned the record of evidence to the Court on 03.09.2012, the learned Single Judge heard final arguments and passed the impugned Judgment and Decree. The learned Counsel for NAA has argued that the claim against CBC has been proved and that the Judgment and Decree passed in Suit No.263/2009 are proper and liable to be upheld. CBC's primary challenge to the impugned Judgment and decree is that the suit was filed contrary to Section 273 of the Cantonments Act, 1924, NAA did not render any service to CBC, is not entitled to the amount claimed along with markup, and the civil suit filed against CBC ought to have been dismissed by the learned Single Judge.

6. As mentioned above, CBC has challenged in their appeal the maintainability of the suit filed by NAA against them arguing that the suit as filed was contrary to Section 273 of the Cantonments Act, 1924 (hereinafter referred to as “Section 273”). Section 273 of the Cantonments Act, 1924, reads as follows:

“Section 273. Notice to be given of suits. -(1) No suit shall be instituted against any [Board] or against any member of a Board, or against any officer or servant of a [Board], in respect of any act done, or purporting to have been done, **in pursuance of this Act** or of any rule or byelaw made thereunder, **until the expiration of two months after notice** in writing has been left at the office of the [Board], and, in the case of such member officer or servant, unless notice in writing has also been delivered to him or left at his office or place of abode, and unless such **notice states explicitly the cause of action, the nature of the relief sought, the amount of compensation claimed,** and the **name and place of abode of the intending plaintiff,** and unless the plaint contains a statement that such notice has been so delivered or left.

(2) If the [Board], member, officer or servant has, before the suit is instituted, tendered sufficient amends to the plaintiff, the plaintiff shall not recover any sum in excess of the amount so tendered, and shall also pay all costs incurred by the defendant after such tender.

(3) No suit, such as is described in sub-section (1), shall, unless it is an action for the recovery of immoveable property or for a declaration of title thereto, be instituted **after the expiry of six months from the date on which the cause of action arises.**

(4) **Nothing** in sub-section (1) shall be deemed to **apply to a suit** in which the only **relief claimed is an injunction** of which the object would be defeated by the giving of the notice or the postponement of the institution of the suit or proceeding.”

(bold highlight added for emphasis)

7. Before we turn to further discussion of Section 273, certain facts must be addressed first. These facts are important to keep in mind when considering CBC's plea that Section 273 mandatorily provides that a suit can only be filed after the expiry of the period of two months from the date of the notice and Civil Suit No.263/2009 filed earlier in time was barred under Section 273. First, as pointed out by the learned Single Judge, it is evident from the perusal of the Written Statement filed by CBC that the Board never raised the Section 273 plea in the Written Statement. There is no mention of

Section 273 at all in the written statement. CBC first raised the issue of Section 273 belatedly in their Affidavit in Evidence. Secondly, it is not CBC's case that NAA did not at all give notice to CBC before filing the civil suit against CBC. In fact, NAA followed up on its outstanding payment due from CBC by letters dated 23.07.2008, attaching the four invoices (produced as Ex. No. "5/10") and finally delivered a Legal Notice to CBC by letter dated 17.01.2009 (produced as Ex. No."5/11"). Without waiting for the expiry of two months from the date of the legal notice dated 17.01.2009, NAA filed his claim in the High Court after 25 days from the date of the notice, i.e. on 11.02.2009. As the learned Single Judge mentioned, CBC has not denied in their Written Statement and during evidence that CBC did not receive the Legal Notice. Two points emerge from this: (i) NAA had no knowledge of CBC's plea under Section 273 until after several years had passed from the date of filing of the suit, and (ii) the Plaintiff served the notice on CBC but did not wait for two months before filing the civil suit.

8. The learned Single Judge has observed that if CBC had raised the issue of Section 273 in their Written Statement or even challenged the maintainability of the civil suit by way of an interlocutory application or otherwise, then NAA could have remedied the situation, as it still had time to do so. The Superior Courts of Pakistan have held in several judgments that a Defendant's objections to a defective Plaint based on a procedural short-coming, if any, committed at the initial stage of a suit would not by itself defeat the suit when a subsequent authorization confirmation and post facto approval of acts done would make the institution of the suit valid and lawful. In cases with some technical defect, the Plaintiff may also remedy it on his own.<sup>1</sup> In the present case, as the learned Single Judge pointed out, the Legal Notice had been served on CBC, and CBC did not file its Written Statement until 26.10.2009. He observed that had CBC raised the objection in the Written Statement, NAA could have

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<sup>1</sup> Muhammad Yusuf v. Kharian Bibi, 1995 SCMR 784; and Faqir Muhammad v. Muhammad Bibi, 1991 PLD SC 590,

withdrawn the suit with permission of the Court and presented it again at a later date within time. The learned Single Judge appears to imply that this defect was curable subject to the timing of its identification.

9. In Haji Abdul Aziz v. Karachi Port Trust and Another, 2010 MLD 1916, the learned Single Judge, Mr. Justice Hani Muslim, who was subsequently elevated to the Supreme Court of Pakistan,<sup>2</sup> dealing with Section 87 of the KPT Act, 1886<sup>3</sup>, which provision is similar to Section 273 of the Cantonments Act, 1924, held that a defect such as not giving notice (under Section 87 of KPT Act) was otherwise curable and the Court below should have granted time to the applicant to cure such defect instead of rejecting the Plaint. Although perhaps not articulated expressly, the learned Single Judge appears to suggest a constructive waiver on the part of KPT. When CBC did not raise the plea of Section 273 of want of notice in its Written Statement, it may be said that CBC waived the requirement. The learned Single Judge's view carries weight, and the view that the provisions of Section 273 and waiver can stand together is well-established by the Privy Council in the case of Vallayan Chettiar v. Government of the Province of Madras, AIR 1947 PC 197, in the following terms:

“There is no inconsistency between the propositions that the provisions of the section are mandatory and must be enforced by the Court and that they may be waived by the Authority for whose benefit they are provided,”

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<sup>2</sup> Weightage of Judgments by a Single Bench of the High Courts (also see footnotes, (2), (8) and (10) herein. Cases decided by High Court Judges who were subsequently elevated to the Supreme Court, which was neither approved nor disapproved by the Supreme Court, were entitled to the highest consideration and respect as and when such cases come up for consideration before the Supreme Court. Agricultural Workers Union v. The Registrar of Trade Unions, 1997 SCMR 66, 81 (para 18).

<sup>3</sup> KPT Act, 1886. “Section 87. Limitation of suits, etc. – No suit shall be commenced against any person for anything done or purporting to have been done; in pursuance of this Act, without giving to such person one month's previous notice in writing of the intended suit and of the cause thereof, nor after six months from the accrual of the cause of such suit. And, in the case of a suit for damages if tender of sufficient amends shall have been made before the suit was brought, the plaintiff shall not recover more than the amount so tendered and shall pay all costs incurred by the defendant after such tender.”

Therefore, when CBC remained silent in its Written Statement about Section 273, CBC implicitly waived the protection under Section 273. It was estopped from raising the plea subsequently which as discussed earlier, was a curable defect.

10. The learned Single Judge also examined Section 273 from the angle of contract (Page 5 of the impugned Judgment). NAA had rendered services to CBC, and CBC had benefitted from the same. NAA was claiming a contractual right for compensation, and that right could not be rejected based on the facts at hand, particularly when NAA had served the statutory notice to CBC, except that he did not wait out the 2-month period before filing the suit. This situation differed entirely from total non-compliance of Section 273(1), and CBC's plea would sidestep substantial justice between parties as a matter of contract.<sup>4</sup> In support of his reasoning, the learned Single Judge relied on paragraph 12 of B. Ram Chander Sahai v. Cantonment Board of Meerut, AIR (34) 1947 42, which is reproduced in the impugned Judgment.

11. Notwithstanding the above reasons cited by the learned Single Judge on why CBC could not raise the plea of Section 273, we would now like to turn to the issue of the types of suits to which Section 273 is applicable and whether Section 273 applies to NAA's suit for compensation for services rendered to CBC. In this context, it is necessary to see the scope, spirit and purpose of Section 273, under which the provision for prior notice has been mandated. To this end, we propose to focus on the interpretation of Sections 273(1) and 273(4), including the use of the phrases: "relief claimed in an injunction", "in pursuance of the Act", and "the amount of compensation claimed."

12. Pakistan Courts have held that notice to the Board and compliance with Section 273(1) is mandatory for a suit for

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<sup>4</sup> Ismail v. Razia Begum, 1981 SCMR 687

declaration.<sup>5</sup> NAA's suit is one for compensation for services rendered and not for declaration. We also have sight of several Judgments of the Supreme Court of Pakistan wherein the apex Court has consistently held that no prior notice will be necessary in the case of a suit against the Board in which the only relief claimed is an injunction of which the object would be defeated by giving of a notice or the postponement of the institution of the suit or proceedings. This is also consistent with the wording of Section 273(4), which provides that Section 273 shall not apply to a suit in which the only relief claimed is an injunction.<sup>6</sup> In the case at hand, NAA filed a suit for compensation for services rendered to CBC. NAA did not seek any relief of injunction; hence, it cannot take the plea of 273(4). Therefore, it still remains to be considered if Section 273(1) applies to NAA's claim. In Lahore Cantonment Cooperative Housing Society v. Messrs. Builders and Developers (Pvt.) Ltd., PLD 1999 Lahore 305, the Plaintiff-Developer had filed a suit against the Lahore Cantonment Housing Society as the latter had built a wall blocking the Plaintiff Developer's access to pass. As the Plaint concerned the relief of injunction, the Division Bench of the Lahore High Court held that such Section 273 could not be applicable. However, the Division Bench also examined Section 70 of the Cooperative Societies Act of 1925,<sup>7</sup> which also contains a provision similar to Section 273. The Division Bench observed that Section 70 of the Cooperative Societies Act, 1925, specifically mentioned that one of the conditions of applicability of Section 70 is that the dispute must relate to the business of the society. Thus, for notice to be served, the dispute must be relatable to the business of the society. Once again, the wording of Section 273 is different from Section 70 of the Cooperative Societies Act,

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<sup>5</sup> Riffat Masood v. Cantonment Board of Sialkot, 2004 SCMR 113.

<sup>6</sup> Defence Housing Authority, Lahore v. Builders and Developers (Pvt.) Ltd., 2015 SCMR 1799; Muhammad Ilyas Hussain v. Cantonment Board Rawalpindi, PLD 1976 SC 785

<sup>7</sup> Cooperative Societies Act, 1925. "Section 70. Notice necessary in suits.– No suit shall be instituted against a society or any of its officers in respect of any Act touching the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left."

1925. Unlike Section 70 of the Cooperative Societies Act of 1925, which contains an express reference to “business of the society,” the Cantonments Act, 1924, contains no such reference. Therefore, it cannot be said that the subject matter of NAA’s suit - a commercial transaction between NAA and CBC - is a part of the business of CBC, and a notice under Section 273 was necessary.

13. In the instant case, the dispute between the parties concerned neither declaration nor injunction. The subject matter of the civil suit filed by NAA against CBC was purely compensation for services rendered. One of the defences taken by CBC was that the Board of CBC did not sanction the work orders. The learned Single Judge did not take up this point in the impugned Judgment. There is a line of judicial precedents that a bar of Section 273 may not be sustained (to be read as “does not apply”) when it could be shown that the impugned order passed was either malafide or the act (actions/inactions) was done wrongfully under the Act. In all such cases, the bar of Section 273 would not apply.<sup>8</sup> In the case at hand, CBC raised the plea in their Written Statement and Affidavit in Evidence that “the record shows that there is no sanction of the Board for hiring services of the Plaintiff as mentioned in the Plaint (Paragraph 3 of CBC’s Written Statement as well as the Affidavit in Evidence).” If this is CBC’s defence, then as the language of Section 273(1) suggests, the action was not done under the Cantonments Act of 1924. In other words, it was bereft of statutory sanction and, therefore, beyond the Cantonments Act of 1924. For this reason, CBC's actions were not in pursuance of the Act. Thus, NAA’s suit for compensation for services rendered was/is not hit by Section 273, and consequently, Civil Suit No.263/2009 was filed validly against CBC.

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<sup>8</sup> Sabir Hussain v. Board of Trustees of the Port of Karachi and Five Others, 2010 YLR 3313, per Mohammad Ali Mazhar, J., and United Marine Agencies (Pvt.) Ltd. v. Trustees of the Port of Karachi and Others, 2007 CLD 1092, per Mushir Alam J.

14. Be that as it may, alternatively, there is another argument. Those civil actions which are beyond the parameters of the Act could not be eclipsed by the bar on suits under Section 273. It may be noted that the language of Section 273(1) suggests that notice is required to be given in a suit against CBC, in respect of any act done, or purporting to have been done, in pursuance of the Cantonments Act, 1924 or of any rule or bye-law made thereunder. This means that the bar of Section 273(1) would be attracted where the impugned action was done or purported to have been done in pursuance of the Act or any rule or bye-law. The only authority which we have found (and also relied upon by the Plaintiff and acknowledged by CBC in paragraph (f) in the Grounds of the Appeal) wherein a Court of the Indian Subcontinent had to interpret Section 273 in a suit for compensation is the Division Bench Judgment of the Allahabad High Court reported as B. Ram Chander Sahai v. Cantonment Board of Meerut, AIR (34) 1947 Allahabad 42 / MANU/UP/0403/1945. In this case, B. Ram Chander Sahai instituted a suit for recovery of Rs.2,500 against the Cantonment Board of Meerut. B. Ram Chander Sahai had given notice to the Board on 22.12.1938, whereas the suit was not filed until 19.09.1939, more than eight months after the cause of action had accrued. He claimed entitlement to the salary amount that the Board had allegedly withheld. One of the defences the Board took was that the suit was barred by limitation under the provisions of Section 273(3). The Division Bench had to consider whether a breach of contract or implied contract does or does not come within the protection of Section 273. In paragraph 16 of the B. Ram Chandar Sahai case (ibid.), the Division Bench observed as follows:

“16. To apply the principle of this decision to the Cantonments Act we note that the Act requires that a Board should have an Executive Officer. It follows that the Board must appoint an Executive Officer and if in regard to the contract between such an Executive Officer and the Board there should arise a dispute, the Board will be entitled to the benefit of S. 273 of the Act. On the other hand, although S. 280, Cantonments Act provides for the making by the Central Government of rules relating to the appointment, control, supervision, suspension, removal, dismissal and

punishment of servants of Boards, and although obviously the appointment of servants is necessary to enable the Board to perform its duties, there is nothing in the Act which enjoins upon the Board, that is, which makes it the duty of the Board to appoint a servant. It has the authority or power to make such appointment but it has not a corresponding duty.”

15. The Division Bench of the Allahabad High Court also discussed another aspect of the matter in the *B. Ram Chander Sahai* case (ibid.). In paragraphs 31 and 32, the Division Bench observed as follows:

31. For the reasons we have given earlier, . . . [a] case of more directly applicable is [Cantonment Board Allahabad v. Hazari Lal Ganga Pd.] (34) 21 MANU/UP/0101/1934 : A.I.R. 1934 All. 436 (437): 56 All. 885 : 149 I.C. 49 : 1934 A.L.J. 805, in which it was held that a suit for recovery of the value of goods supplied to a Cantonment Board does not fall within the description of suits mentioned under S. 273 (1), Cantonments Act, and Art. 52, Limitation Act applies to such a suit. At page 807, Sulaiman J. remarked:

“No doubt under S. 12, Cantonments Act a Cantonment Board is empowered to acquire and hold property both moveable and immovable and to contract. It is also clear that the purchase made by the Board was by virtue of the power vested in it under the Cantonments Act. But I am unable to regard the suit of the plaintiff against the Board as a suit in respect of an act done by the Board in pursuance of the Act itself as distinct from an act done in the exercise of the power granted to the Board under the Act.”

32. We inter[pret] that Sulaiman, C.J. interpreted "act done by the Board in pursuance of the Act" as meaning an act enjoined upon the Board by the Act. The Full Bench case in [District Board, Allahabad v. Behari Lal] (36) 23 MANU/UP/0147/1935 : A.I.R. 1936 All. 18 (21) : 58 All. 569 : 160 I.C. 226 : 1935 A.L.J. 1214 (F.B.) was a case under S. 182 (1), District Boards Act. In the last paragraph of the leading judgment in this case, Sulaiman C.J. remarked:

“I do not consider it necessary to refer to the English cases under the Public Authorities Protection Act, 1893 though it may be observed that it appears to have been generally held in

England that private contracts entered into by public authorities would not be 'acts done in pursuance or execution of any Act of Parliament or of any public duty or authority, etc.'

16. Thus, after discussing several reported judgments, the Division Bench of the Allahabad High Court came to the conclusion that the provisions of Section 273(1) did not apply to the case of Ram Chander Sahai, who claimed his salary from the Cantonment Board.

17. Applying the observations of the High Court of Allahabad (paragraphs 14 to 16 above), we do not find that the relationship between CBC and NAA, based on a contract between the parties, arising from the exchange of communications, concerns an act done in pursuance of the Cantonments Act, 1924. The duties, powers and functions of the Cantonment Board are provided under Chapter Nos.IV, VIII to XIII of Cantonments Act, 1924. None of these chapters specifies a duty upon CBC to obtain, through third-party vendors, such as NAA, etc., survey, planning, technical, designing, drawing and engineering estimates concerning various development schemes within the jurisdiction of CBC. Further, Sections 116 and 117 specifically enumerate the duties and discretionary functions of the Board, respectively. None of these services under the several work orders issued by CBC to NAA from time to time (as described above in paragraphs 2, 3 and 4) are enumerated as either duties or discretionary functions of the Board in the Act. Section 112 of the Cantonments Act, 1924, provides the competence for entering into a contract.<sup>9</sup> A learned Single Judge of the Lahore High Court, Mr Justice Ijaz Ahmed Chaudhry, later elevated to the Supreme Court of Pakistan, observed that the contracts permissible under Section 112 are contracts done in pursuance of the Act. As such "purpose of the Act" includes the duties and discretionary functions of the Board,

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<sup>9</sup> Chapter VII, Cantonments Act, 1924. **Contracts.** "Section 112. **Contracts by whom to be executed.** Subject to the provisions of this Chapter, every 1 [Board] shall be competent to enter into and perform any contract necessary for the purposes of this Act."

which are laid down under Sections 116 and 117 of the Act.<sup>10</sup> As already discussed, reading the provisions of the Cantonments Act of 1924 leads us to only one conclusion: that the services described in the work orders were, at best, matters arising out of contract and not statutory obligations under Sections 116 and 117 of the Act. The work orders fall outside the statute's scope.

18. To illustrate the point, reference is made to CBC's work order for improving the fire station at the Subway Chawrangi, Karachi. We accept and have no doubt that the provision of fire-station services by CBC was an act in pursuance of the Cantonments Act, 1924, in this case, as part of the duties of the Board under Section 116(o).<sup>11</sup> Yet CBC seeking help and assistance from NAA to determine the engineering and financial cost to improve its fire station was neither a corresponding duty nor discretionary function nor an act done or purporting to have been done in pursuance of the Act. NAA was not contracted (sought out) by CBC to provide services in pursuance of Section 116(o) or any compulsory discretionary functions of the Board under Section 117. Further, CBC was also not outsourcing its statutory obligations to NAA as under Section 112 of the Act. In the above illustration, concerning the improvement of the fire station, CBC engaged NAA to find out how much money it would cost CBC to improve its fire station at Submarine Chawrangi (planning, design and

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<sup>10</sup> Messrs. Coca-Cola Beverages v. Cantonment Board Chaklala, Rawalpindi and Others, 2011 MLD 1987

<sup>11</sup> Chapter VIII, Cantonments Act, 1924. Duties and Discretionary Functions of the Boards. "**Section 116. Duties of the Board.** It shall be the duty of every 1 [Board], so far as the funds at its disposal permit, to make reasonable provision within the cantonment for:

- (a) lighting streets and other public places
- (b) . . .
- (o) rendering assistance in extinguishing fires, and protecting life and property when fires occur. . . ."

**Section 117. Discretionary function of the Board.—** A Board may, within the cantonment, make provision for .----

- (a) . . .

. . .

- (k) adopting any measure, other than a measure specified in section 116 or in the foregoing provisions of this section, likely to promote the safety, health or convenience of the inhabitants of the cantonment. . . ."

preparation of bill of quantities)(Ex.“5/4”). As a third-party contractor, NAA generated cost estimates for CBC perhaps to get an idea of the costs involved for improving the fire station before CBC invited tenders for the said project work from builders, contractors, etc. The engineering and financial cost estimation would have helped CBC determine a minimum price for carrying out the works and provided a context to decide the bids received for carrying out the improvement. By the time NAA issued legal notice to CBC, the work for which NAA designs were submitted, had already been executed and the contractors who executed these works had been paid by CBC. This is based on the evidence available on record, Ex. Nos.“5/12” and “5/13” produced by NAA in support of this contention and unrebutted by CBC. Nothing in the Cantonments Act, 1924, mandates that CBC conduct such due diligence before upgrading a fire station. The due diligence activity is enumerated neither as duties under Section 116 nor as discretionary functions under Section 117 of the Act. Such services by NAA could not by any stretch of the imagination be deemed to be in “pursuance of the Act”. Thus, on this score, CBC’s request to NAA to provide technical assistance and consultancy work was in itself distinct from the exercise of the power granted to CBC under the Act, and consequently, Section 273 was not applicable.

19. In view of the above discussion, including the reasons given by the learned Single Judge in the impugned Judgment, which we have summarised in this appeal and additional grounds discussed above, we find that Section 273(1) does not apply to the instant case.

20. The other grounds CBC took in this appeal were on the merits of NAA’s suit. CBC contended that the learned Single Judge failed to mention any specific document that justified the amount claimed by NAA or CBC’s acceptance of the amount (paragraphs (b), (c), (i) and (k) of the Grounds). CBC further submitted that NAA was invited thrice for meetings on 12.02.2007, 29.05.2007 and 06.03.2007, “wherein the consultancy service can be approved and a fee can be

decided”, however, NAA failed to appear before CBC (Paragraph (g) of the Grounds). CBC additionally argued that even though in its cross-examination, CBC clearly mentioned its “lack of awareness of any drawings, maps, plans submitted” by NAA, yet the learned Single Judge, “has perceived the unawareness of. . .[CBC] as acceptance” (Paragraphs (h) and (j) of the Grounds). Finally, CBC claimed that there is not even “any iota of evidence so as to prove” NAA’s claim (Paragraphs (h), (i) and (l) of the Grounds).

21. We have perused the evidence, re-read the impugned Judgment and find that the learned Single Judge has thoroughly examined the evidence on record. It is not understood how CBC can claim that the decretal amount is not based on any document produced by NAA when NAA submitted its invoices to CBC along with a cover letter dated 23.07.2008 (Ex.“5/10”). The cover note clearly mentioned NAA’s claim of Rs.11,300,000 based on four (4) invoices attached thereto, precisely the principal amount decreed against CBC. CBC’s witness did not deny Ex.“5/10”. Instead, he stated that: “I was unaware of it”. We will discuss this aspect of CBC’s reply later, except suffice it to say that the learned Single Judge arrived at the decretal amount awarded based upon the definite figure stated in an exhibited document, which CBC did not rebut. Further, the learned Single Judge did not award the decretal amount over and above the invoiced amount submitted by NAA to CBC for services rendered, except that he awarded compensation for delayed payment at 10% p.a. from the date of filing of the suit till the date of realisation of the decretal amount.

22. We have considered CBC’s plea that NAA rendered no services at all to CBC and frankly find it difficult to believe. The learned Single Judge has discussed in detail in the impugned Judgment the several evidences brought on record and CBC’s response to the same. These support NAA’s claim against CBC. No document was brought on record by CBC, which denied the rendition of services by NAA. The learned Judge has reproduced several excerpts from the

evidence of witnesses in the impugned Judgment. The record of evidence does not inspire confidence in CBC's position that NAA carried out no (zero) services as per the work orders issued by CBC to NAA from time to time. A tabular summary of the evidence of NAA is given herein below.

S. No.	Work Orders	Ex. Nos.	Meetings	Follow-up letters	CBC evidence on letters beginning with
(a)	Stormwater drainage design	<b>30.09.06</b> <b>"5/2"</b> <b>(admitted)</b>	<b>09.02.07</b> <b>Ex."5/7"</b> <b>(admitted)</b>	12.02.07 Ex."5/5"  22.03.07 Ex."5/9"  17.09.07 Ex."5/6"  16.02.08 Ex."5/12"	"I cannot say..."  "I am not aware of it..."  "I cannot say anything..." + "I am not aware..."  "I am not aware of it..."
(b)	sewerage upgradation	<b>30.09.06</b> <b>"5/2"</b> <b>(admitted)</b>	<b>09.02.07</b> <b>Ex."5/7"</b> <b>(admitted)</b>	12.02.07 Ex."5/5"  22.03.07 Ex."5/9"  17.09.07 Ex."5/6"  16.02.08 Ex."5/12"	"I cannot say anything..."  "I am not aware of it..."  "I cannot say anything..." + "I am not aware..."  "I am not aware of it..."
(c)	revamping of urban infrastructure of Katchi Abadies	<b>17.02.07</b> <b>"5/3"</b> <b>(admitted)</b>	-	26.07.07 Ex."5/13"  16.02.08 Ex."5/12"	"I am not aware of it..."  "I am not aware of it..."
(d)	design of internal roads in Clifton Block 6	"5/8"	-	17.03.07 Ex. "5/8"  22.03.07 Ex "5/9"  26.07.07 Ex."5/13"  17.09.07 Ex."5/6"  16.02.08 Ex."5/12"	"I cannot say..."  "I am not aware of it..."  "I am not aware of it..."  "I cannot say anything..."  "I am not aware of it..."
(e)	Improvement of CBC Fire Station at Submarine Chowrangi, Clifton, KHI	<b>"5/4"</b> <b>(admitted)</b>	-	26.07.06 Ex."5/13"  16.02.08 Ex."5/12"	"I am not aware of it..."  "I am not aware of it..."

(f)	Bill of Quantities	"5/9"	-	22.03.07	"I am not aware of it..."
(g)	INVOICES	"5/10"	-	23.07.08	"I am not aware of it..."

23. The above tabular exposition of the evidence is compelling. CBC's witness admitted that the Board issued work orders to NAA from time to time. He did not deny the Minutes of the Meeting discussing the work orders. It is odd that, on the one hand, CBC claims that NAA did not render any services to them, and on the other hand, **CBC invited NAA thrice "for a meeting wherein the consultancy service can be approved and a fee can be decided"** (paragraph (g) of the Grounds of Appeal). CBC's position in the appeal begs the question on what basis the Board denied the services rendered when it invited NAA to meet with them for approval of the consultancy service and decide his professional fee and expenses. If CBC is to be believed that NAA did not render any services to CBC then there was no need for CBC to call him for a meeting as per Ground (g) of the Appeal. CBC cannot blow hot and cold. In fact, during the cross-examination of CBC's witness with regard to the said three CBC invites for meeting dated 02.02.2007 (Ex."D/3"), 06.03.2007 (Ex."D/4") and 29.05.2007 (Ex."D/4") which CBC sent to NAA, CBC's witness claimed complete lack of knowledge of the said letters. It is not understood when CBC had produced Ex. Nos."D/3, "D/4" and "D/5" (all three CBC notices printed on the letterhead of CBC) why did CBC's witness plead "lack of awareness" of his own evidence. He stated under oath that:

*"I am not aware whether Plaintiff [NAA] had appeared before Committee as per letter dated 02.02.2007 Ex.D/3, letter dated 06.03.2007 Ex.D/4, letter dated 29.05.2007 Ex.D/5."*

*"I do not know whether Defendants [CBC] wrote any letter to Plaintiff that since he did not appeared before the Committee of Defendants, his drawing and proposals does not considered."*

*“I am not aware whether Ex. D/3, D/4 & D/5 were received by [NAA] the Plaintiff or not.”*

The above answers reflect the total ignorance of the witness about his own evidence and CBC’s defence, and does not lend support to CBC’s contention that NAA did not attend the meetings of 02.02.2007, 06.03.2007 and 29.05.2007.

24. Further, earlier NAA during his cross-examination had denied the suggestion that *“you were asked vide letters...dated 12.02.2007 and 06.03.2007 to appear before Committee to justify but you failed to appear, therefore, the matter was closed.”* The burden of proof was on CBC to dislodge NAA’s evidence but they did not do so. Thus, CBC’s entire contention that NAA rendered no services to CBC and that they had called him for meetings with CBC but he did not turn up is reduced to a cipher. In the circumstances, we find that the evidence corroborates NAA’s claim and the learned Single Judge rightly concluded that NAA had rendered consultancy services to CBC.

25. We would now address CBC’s witness response pleading “lack of awareness.” In the grounds of appeal, CBC has pleaded that the learned Single Judge wrongly assumed that this lack of knowledge meant acceptance. As visually captured in the tabular analysis of the evidence mentioned above, CBC’s witness consistently pleaded “I cannot say...”, “I cannot say anything...”, and “I am not aware of...” to the majority of documents of NAA addressed to CBC confronted to him in the cross-examination by NAA’s Counsel. Additionally, CBC’s witness also claimed a lack of awareness of CBC’s own documents produced by him (Ex. Nos. “D/3”, “D/4,” and “D/5”). The learned Single Judge commented upon the witness’ response that *“there is a difference between unaware and denied when the witness was not aware of the facts of the case then why the defendant had sent him in the witness box. It means all the consultancy work done by the plaintiff has been fully utilized by the defendant.”* CBC’s witness, Muhammad Iqbal, was O.S. Legal when

he gave evidence for and on behalf of CBC. He could have affirmed or denied when confronted with the chain of documents evidencing the contract, including services rendered, meetings, follow-ups with CBC, submission of invoices, etc. But he did not. He chose the path less travelled. If, in his cross-examination, a witness states, "I cannot say", "I cannot say anything", and "I am not aware of it", it means that the witness is avoiding telling the truth. Or that he is not sure about his assertions. In either case, he is not a reliable witness. After NAA produced the bundle of letters concerning services rendered by NAA and subjected himself to cross-examination, the documents stood proven. The burden of proof of the documents shifted from NAA to CBC. CBC could have controverted the documents through their witness by denying them and stating the true and correct position. When CBC's witness did not deny the documents in his evidence and instead deposed a lack of knowledge about them, including his own documents, he appeared to the learned Single Judge to be avoiding to tell the truth. His evidence did not inspire confidence in the learned Single Judge. While we share the views expressed by the learned Single Judge, on our part, we opine that CBC's witness, Mohammad Iqbal, also needs appreciation. He commendably, under oath, stepped into the witness box and spoke the truth, the whole truth and nothing but the truth. He knew nothing and plainly said so. In the circumstances, he accepted NAA's claim against CBC.

26. Finally, CBC's Counsel has argued that the Board neither sanctioned nor approved the work orders. Hence, NAA should not have commenced work before such sanction and approval of CBC. NAA carried out such work at his risk and as such CBC was not responsible for the same. As discussed, the evidence on record confirms that NAA had rendered consultancy services to CBC. Further, CBC did not rebut NAA's witness testimony that CBC had carried out and completed several projects arising out of CBC's work orders to NAA (Ex. "5/12 and "5/13"). In view of the foregoing, even if the consultancy services rendered were neither approved nor

sanctioned, CBC still enjoyed the benefits of services rendered by NAA. Under section 70 of the Contract Act, where a person lawfully does anything for another person or delivers anything to him not intending to do so gratuitously, and the other enjoys the benefit, he is bound to compensate for the thing so done or delivered. The section provides three requirements: (i) the party claiming compensation must do something for another or deliver something to the party from whom he is claiming compensation, (ii) the claimant must not intend to do the act or deliver the goods gratuitously, (iii) the party from whom he is claiming must enjoy the benefit of the act or goods. In the present case, NAA satisfied all three ingredients of Section 70. Therefore, even if there was neither any contract nor contractual term fixing the compensation for the services rendered, NAA was still entitled to compensation “quantum meruit” from CBC. Hence, CBC’s submission, as stated herein, fails on this score, too.

27. No other legal grounds have been urged to set aside the impugned Judgment and Decree. The learned Single Judge has not fallen into any error while passing the impugned Judgment and Decree, which requires interference.

28. In view of the above, we hold that the impugned Judgment and Decree has been passed on proper appreciation of facts and law. It is well-reasoned and does not suffer from any illegality that calls for interference. Accordingly, this Appeal is dismissed along with all listed applications and the impugned Judgment and Decree is hereby confirmed.

29. The parties are left to bear their own costs.

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