

**Opinion of
Mr M C Setalvad
in respect of Royal Charter
as Granted to IEI in the year 1935**

Summary of the Opinion

A reference was made in 1958 to Mr M C Setalvad, the then Attorney General of India, requesting for his opinion in respect of the following:

- A. If the Royal Charter as granted to IEI on 9th September 1935, was valid and whether IEI continues to be in the eye of law a valid body corporate and politic in view of constitutional changes in India on and after 15th August 1947.
- B. Whether it is necessary for the IEI to request the Indian Parliament to enact a special statute granting to the IEI the status of body corporate.
- C. Whether any amendments of the Bye-laws of the IEI are to be ratified by the Privy Council or any other authorities in terms of provision of Clause 18 of the said Charter before implementation.

In his opinion dated 25.7.1958, Mr Setalvad relied upon the provisions of Government of India Act 1935, Indian Independence Act 1947, Abolition of Privy Council Jurisdiction Act 1949. His opinion, in short, were as follows :-

1. The Royal Charter granted in the year 1935 was a valid written instrument containing a grant by the Crown, made in the form of Letters Patent with the Great Seal having the effect and authority of an Act of Parliament and repeal of such a Charter is

only possible by another Act of Parliament. This Act of granting of Royal Charter had not been repealed by any other Act by the Indian Parliament.

2. IEI continuous to be in the eyes of law a valid body corporate and politic notwithstanding the Constitutional changes in India on or after 1947.
3. The Charter granted to IEI remains in full force after August 15, 1947, and it is also not necessary for IEI to request the Indian Parliament to enact a special statute granting to it the status of a Body Corporate

and further that

4. Since after the introduction of the Constitution of India, the Privy Council does not have the authority in terms of Clause 18 of the Charter to allow or disallow any revision of the Bye-laws and also for the reason of Indian Parliament not enacting any law to recognise the Charter in any other form, reference to the Privy Council or any authority in India in respect of revision of Bye-laws is not necessary.

Text of the Opinion

ex parte: The Institution of Engineers (India)
 having its Office at
 8 Gokhale Road, Calcutta – 20 QUERIST

1. The main question for consideration is whether the Querist which was constituted a body corporate by a Royal Charter and the Letters Patent issued under the King's Sign Manual on the 9th of September, 1935 under an Order in Council of His Majesty dated the 13th of August 1935 continues to be in the eyes of the law a body corporate notwithstanding the changes in the Indian constitutional structure since 1935.

2. Section 2(1) of the Government of India Act of 1935 *inter alia* provided that "All rights, authority and jurisdiction heretofore belonging to His Majesty the King-Emperor of India, which appertain or are incidental to the Government of the territories in India for the time being vested in him are exercisable by His Majesty, except in so far as may be otherwise provided by or under this Act." Thus notwithstanding the enactment of the Act the powers of the King under his prerogative remained unaffected except as otherwise provided by the Act.

3. One of the prerogatives of the Crown is to issue orders in Council and Letters Patent conferring rights and privileges, Such prerogative is not confined to the British Islands, but extends to all parts of the Commonwealth, as fully in all respects as to England, unless otherwise prescribed by United Kingdom or local enactment (Halsbury's Laws of England, 3rd Edition, Vol. VII, paragraph 466). The principal document by means of which the Crown carries into effect or makes known its intentions are *inter cilia* among others Letters Patent under the Great Seal and Charters (Halsbury's Laws of England, 3rd Edition, Vol. VII, paragraphs 508 and 713). Thus the Crown could after the passing of the Government of India Act validly constitute by Letters Patent and a Charter a body corporate in India.

4. The Royal Prerogative to promulgate Orders in Council has been regarded "as what is left of the original sovereign power of the Crown to legislate without the authority of the Houses of Parliament the essence of this kind on legislation by the King in Council without the intervention of Parliament is that it is original and in no sense delegated" (Report of Committee on Ministers' Powers, 1932, pages 24-25, para 5). "The prerogative of the Crown is defined by A V Dicey in his 'Law of the Constitution' as 'the residue of discretionary or arbitrary authority which at any given time is legally left in the hands of the Crown'. In other words the Royal Prerogative is what is left of the original sovereign power of the Crown to legislate without the authority of the Houses of Parliament" (The New Constitution of India, 2nd Edition, 1941, G N Joshi, pp. 101 and 102).

5. What is the effect of a Royal Charter containing a grant by the Crown made in the form of Letters Patent with the Great Seal? "A Royal Charter is a written instrument, containing a grant by the Crown made in the form of Letters Patent with the Great SealAn instrument of grant ... has the effect and authority of an Act of Parliament and such a Charter can only be repealed by another Act of Parliament. It is at the pleasure of the Crown to grant or withhold a charter of incorporation; but when once granted and accepted, the Charter is irrevocable, except with the full, and perhaps the unanimous concurrence of the grantees or their successors; for the Crown cannot, by its prerogative, destroy or dissolve a corporation." (Grant's Law of Corporation, 1850, pp. 9 and 10).

6. The result then of the exercise of the Royal Prerogative granting the Charter to the Querist on the 9th of September 1935 was that the Querist was created a Corporation sole by the exercise by the King of his Prerogative power of legislation which had the effect and authority of an Act of Parliament. The Charter created in exercise of this Prerogative legislative power by the King had effect in British India as if it were a statute passed by Parliament.

7. The Indian Independence Act provided *inter alia* by subsection (3) of section 18 that "Save as otherwise expressly provided in this Act, the law of British India and of the several parts thereof existing immediately before the appointed day shall, so far as applicable and with the necessary adaptations, continue as the law of each of the new Dominions". The Charter was as already pointed out "the law of British India" before the 15th of August 1947. It continued to be such law notwithstanding the passing of the Indian Independence Act by reason of sub-section (3) of section 18. The Indian Legislature constituted by sections 6 and 8 of the Independence Act undoubtedly had the power to legislate so as to affect the law of British India even though it may have been made by an Act of Parliament. However, the Indian Legislature did not exercise such power in regard to the Charter of the Querist. The Charter therefore remained in full force and operation after the 15th of August, 1947.

8. Article 372 of the Constitution of India provided *inter alia* that "subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority." The Charter was at the date of the commencement of the Constitution a law in force in the territory of India. It therefore continued in force after the enactment of the Constitution and is still a valid and binding law not having been repealed by a competent Legislature or competent authority.

9. The Querist therefore continues notwithstanding the constitutional changes in India to be in the eyes of the law a valid body corporate and politic.

10. Questions have been raised whether the Querist needs any fresh recognition of its status from the Government of India or whether it is necessary for the Querist to request the Indian Parliament to enact a special statute granting to the Querist the status of body corporate. In view of what has been stated in the preceding paragraphs the courses suggested are unnecessary.

11. A question has been raised in regard to the construction of the clauses 2(a) and (b) of the Charter. In my view those clauses are wide enough to cover engineering in all its branches including civil, mechanical, electrical, tele-communication, chemical and aeronautical engineering.

12. A difficulty has arisen in regard to clause 18 of the Charter which provides for the making and the revocation, alteration or amendment of the Bye-laws of the Querist. The clause provides that "no such Bye-law, revocation, alteration or amendment shall take effect until the same has been allowed by the Lords of Our Privy Council of which allowance a Certificate under the hand of the Clerk of Our Privy Council shall be conclusive evidence." It appears that the Querist was in 1950 desirous of revising its then existing Bye-laws and it approached the Government of India for the purpose. It appears

to have been suggested to the Querist that it should approach His Majesty's Privy Council for the proposed revision in terms of clause 18 of the Charter. Thereupon the Querist approached the Privy Council and towards the end of the year 1951 the Privy Council permitted the revision proposed by the Querist. The revised Bye-laws were thereupon adopted from the 1st March 1952.

13. It appears to me that the procedure followed in regard to the revision of the Bye-laws was incorrect. Notwithstanding the provisions of clause 18 of the Charter, the Privy Council would not have, I think, authority after the introduction of the Constitution to allow any revision of the Bye-laws. The authority which the Privy Council had under that clause was possessed by it as a body subordinate to the Crown who could exercise the Royal Prerogative in British India. The authority of the Crown having ceased the Privy Council could not function under that clause of the Charter.

14. I have dealt with the important questions raised in the instructions. I think it unnecessary to answer the questions seriatim.

Sd/-
M C Setalvad
25-7-1958