

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 2374 of 2003**

1. Manohar Prasad Saha, S/o Late Shri D.R. Saha, aged about 48 years, R/o F-1/3, Irrigation Quarter, Nutan Colony, Sarkanda, District Bilaspur (CG).

---- Petitioner**Versus**

1. The Institution of Engineers (India), through its Secretary, 8 Gokheley Road, Kolkota, Kolkota, WB 700 020.
2. Union of India, through Secretary, Department of Human Resource Department of Higher Education, Shastri Bhawan, New Delhi – 110 001.
3. All India Council for Technical Education, through Director, All India Council for Technical Education, 7th Floor, Chander Lok Building, Connought Place, New Delhi – 110 001.
4. University Grants Commission, through Director, University Grants Commission, Bahadur Shah Jafar Marg, New Delhi – 110 002.
5. Distance Education Council, through Director, Distance Education Council, IGNOU, Campus, Maidan Garhi, New Delhi – 110 068.

---- Respondent

For Petitioner	Dr. N. K. Shukla, Senior Advocate with Ms. Vijay Laxmi Saraf, Advocate
For Respondent No.1	Shri Ashish Surana, Advocate
For Respondent-UOI	Shri N. K. Vyas, Asstt. Solicitor General

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order**

26/07/2016

1. The petitioner, working as Sub Engineer (Diploma Holder), in the Department of Water Resources, has preferred this writ petition seeking a direction to the respondent No.1 to the effect that the AMIE Course, which is governed by the old policy (including the petitioner), may be continued to be governed under the old policy till such students, who have acquired 'A' Section and appeared in 'B' Section, complete the Section 'B' Examination or in the alternative, the respondent No.1 be directed to extend the period of 2 years for a further period of 5 years to clear the remaining papers including the 3 papers of the petitioner.
2. Facts of the case, in brief, are that the petitioner obtained the Diploma in Civil Engineering from Polytechnic College, Raigarh in 1977 and was employed as Sub Engineer in the Water Resources Department in 1979. Degree of Civil Engineering or any equivalent degree being necessary for career growth, the petitioner applied before the respondent No.1 for registration as studentship, which was granted on 03.05.1979.
3. After being registered, the petitioner appeared in different summer and winter examinations from 1980 to 1982 and from 1982 to winter 1987 when he cleared 'A' section examination. Thereafter, the petitioner got himself registered with the Referee on 27.7.1988 as required under the bye-laws. Subsequently, the petitioner appeared in 'B' section examination from winter 1988 to

summer 1993, but could clear all the subjects. At this point of time, the bye-laws were amended and the time limit of 6 years was fixed to clear 'B' section examination. The amendment was made effective from 19.9.1993. Till winter 1999 examination, the petitioner could not clear all the papers

4. As requested by the petitioner on 23.08.1999, he was allowed extension of two years for passing the remaining papers. During this extended period, he could clear only two papers i.e. Design and Manufacturing and Structural Design and was unsuccessful in the remaining three papers. The petitioner, thereafter, applied for re-registration for Section 'B' examination for 6 years and continued to appear in summer and winter 2002 examination. Out of four papers, in which he appeared, he could pass only one paper i.e. Management of System.
5. It is argued by the learned counsel appearing for the petitioner that the change in policy restraining the time limit for passing the Section 'B' examination within 6 years, is arbitrary and illegal. He would submit that the students, who were enrolled contrary to the amendment made effective on 19.09.1993, will be governed by the old policy and the time limit for passing Section 'B' examination would not apply to the petitioner.
6. Per contra, learned counsel appearing for the respondent No.1 would argue that the said respondent not being creature of any statute nor being under the control of any State Government or

the Central Government, this petition is not maintainable to the writ jurisdiction of this Court, because it is not covered within the definition 'state' within the meaning of Article 12 of the Constitution of India.

7. On merits of the writ petition, it is argued that the amendment on 19.09.1993 is with an object of screening meritorious students, who would complete their AMIE Course within the stipulated time, therefore, if the petitioner could complete Section 'A' examination in 10 years and could not pass 10 subjects of Section 'B' examination in 12 years, he is blaming himself. The petitioner having failed to pass the examination in 22 years, he is not entitled for any further time. He would submit that the change in policy has reasonable nexus with the object sought to be achieved, therefore, it is neither arbitrary nor discriminatory. The policy is for screening meritorious students from amongst the candidates appearing in the examination.

Maintainability of writ petition :

8. The respondent No.1 has raised the objection regarding maintainability of the writ petition, therefore, this Court would first address on the issue. Respondent No.1 claims that it has neither been created by statute nor the functions and powers exercised by it are statutory in nature. Since it is not controlled either by the State Government or the Central Government, it is not a 'state' within the meaning of Article 12 of the Constitution of India.

9. To appreciate the submission, the origin of the respondent No.1 and its functions are to be understood. The respondent No.1, Institution of Engineers (India) created by a Royal Charter issued by Buckingham Palace on 13.08.1935 by the King's Most Excellent Majesty in Council. The Royal Charter was prepared with the advice of the Privy Council and was issued. It reads thus:-

THE INSTITUTION OF ENGINEERS (INDIA)
ROYAL CHARTER
AT THE COURT AT BUCKINGHAM PALACE,
The 13th day of August 1935
PRESENT
THE KING'S MOST EXCELLENT MAJESTY
IN COUNCIL

WHEREAS there was this day read at the Board a Report of a Committee of the Lords of His Majesty's Most Honourable Privy Council, dated the 1st day of August, 1935, in the words following, viz. :-

“YOUR MAJESTY having been pleased, by Your Order of the 21st day of February, 1935, to refer unto this Committee the humble Petition of Sir Thomas Guthrie Russell, President of the Institution of Engineers (India) and others praying for the grant of a Charter of Incorporation to the said Institution :

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that a Charter may be granted by Your Majesty in terms of the Draft hereunto annexed.”

HIS MAJESTY, having taken into consideration the said Report, and the Draft Charter accompanying it, was pleased, by and with the advice of His Privy Council, to approve thereof, and to order, as it is hereby ordered, that the Most Honourable the Marquess of Zetland, one of His Majesty's Principal Secretaries of State, do cause a Warrant to be prepared for His Majesty's Royal Signature, for passing under the Great Seal a Charter in conformity with the said Draft, which is hereunto annexed.

E.C.E. Leadbitter.

George the Fifth, by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To all to whom these Presents shall come, Greeting!

Whereas the Association or Institution incorporated under the Indian Companies Act, 1913, and known as the Institution of Engineers (India) hath petitioned Us for a Charter of Incorporation such as is in and by these Presents granted :

AND WHEREAS We are minded to comply with the prayer of such Petition :

NOW THEREFORE We by virtue of Our Royal Prerogative in that behalf, and of all other powers enabling Us so to do, of Our special grace certain knowledge and mere motion do hereby, for Us, Our Heirs and Successors, will, grant, direct, appoint and declare as follows :—

1. The Persons now Members of the said Association or Institution known as the Institution of Engineers (India) and all such persons as may hereafter become Members of the Body Corporate hereby constituted pursuant to or by virtue of the powers granted by these Presents, and their Successors, shall for ever hereafter (so long as they shall continue to be such Members) be by virtue of these Presents one Body Corporate and Politic by the name of “The Institution of Engineers (India)” and by the same name shall have perpetual succession and a Common Seal, with power to break, alter and make a new the said Seal from time to time at their will and pleasure, and by the same name shall and may sue and be sued in all Courts, and in all manner of actions and suits, and shall have power to do all other matters and things incidental or appertaining to a Body Corporate, including power to take an hold personal property and power to purchase, take on lease and hold lands, tenements or hereditaments or any interest in any lands, tenements or hereditaments whatsoever in Our Indian Empire for the purposes of the Institution and power to sell, let on lease, alienate, or otherwise dispose of the same or any part thereof.

2. The objects and purposes for which the Institution of Engineers (India) (hereinafter called “the Institution”) is hereby constituted are to promote the general advancement of engineering and engineering science and their application in India and to facilitate the exchange of information and ideas on those subjects amongst the Members of and persons attached to the Institution and otherwise, and for that purpose--

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xxx xxx xxx

4. The Institution shall not carry on any trade or business or engage in any transaction with a view to the pecuniary gain or profit of the Members thereof. No Member shall have any personal claim on any property of the Institution and no part of the income or property of the Institution shall be paid or transferred directly or indirectly by way of dividend or bonus or otherwise howsoever by way of profit to the Members of the Institution except in the case of and as a salaried officer of the Institution.

10. There is, thus, no controversy that the Institution of Engineers (India) has been established and constituted by a Royal Charter as a body corporate having perpetual succession and a Common Seal.
11. 'Royal Charter' means 'a charter proceeding from a sovereign', as mentioned in the Oxford English Dictionary. 'Charter' in the same dictionary has been given the meaning "A written document delivered by the sovereign or Legislature granting privileges to or recognising rights of the people or of certain classes or individuals.' In Webster's Dictionary 'Charter' has been given the meaning. "An instrument in writing, from the sovereign power of a state or country, executed in due form, granting or guaranteeing rights, franchises or privileges.'
12. While dealing with applicability of the provisions contained in Article 183 of the Limitation Act, 1908, the issue came up for consideration before the Full Bench of the Rajasthan High Court

in **Government of Rajasthan and another v. Sangram Singh and others**¹. The Full Bench held that the erstwhile Bikaner High Court was established by a letters patent, which falls within the meaning of Royal Charter, therefore, the erstwhile Bikaner High Court may be treated as a High Court established by a Royal Charter. The Full Bench observed that Article 183 of the Limitation Act had been enacted to apply to the judgment, decree or order of any court established by letters patent. In the year 1861 the Indian High Courts Act was passed by the Parliament of England empowering the Crown to establish by letters patent High Courts at Calcutta, Madras, Bombay. Thereafter, by appropriate Charters High Courts at Allahabad, Lahore, Patna and Nagpur were established.

13. Relying upon the law laid down by the Supreme Court in **Ameer-un-Nissa Begum and Others v. Mahboob Begum and Others** wherein the Supreme Court observed that it cannot be disputed that prior to the integration of Hyderabad State with the Indian Union and the coming into force of the Indian Constitution, the Nizam of Hyderabad enjoyed uncontrolled sovereign powers. He was the supreme legislature, the supreme judiciary and the supreme head of the executive, and there were no constitutional limitations upon his authority to act in any of these capacities. The 'Firmans' were expressions of the sovereign Will of the Nizam and they were binding in the same way as any other

¹ AIR 1962 Rajasthan 43

law;--nay, they would override all other laws which were in conflict with them.

14. Comparing the language of proclamation issued by the Maharaja of Bikaner with the Royal Charter or the letters patent by which various High Court were established, the Full Bench concluded that the language of the proclamation being similar to the Royal Charter or letters patent, the High Court of Bikaner may fall within the meaning of Royal Charter and the High Court established by them may be treated as a High Court to which Article 183 of the Limitation Act would apply. It is, thus, crystal clear that the Royal Charter is an instrument having force of law by which even the High Court can be created, therefore, applying the same principle, the respondent No.1 having been constituted and established by Royal Charter and having conferred status of a body corporate having a perpetual succession and a Common Seal would be a statutory body and would, thus, be covered within the meaning of 'state' for the purpose of Article 12 of the Constitution of India.
15. While taking view, this Court would profitably refer to the Division Bench Judgment of the High Court of Punjab and Haryana at Chandigarh in **Kartar Singh v. Union of India & Others**², wherein the Institution of Engineers has been held to be a statutory body.

² CWP No.1640 of 2008 (O&M) (decided on 6-11-2012)

16. The matter also needs consideration with reference to constitutional angle to examine as to whether the respondent No.1 would fall within the term of 'state' under Article 12 and would be amenable to the writ jurisdiction. Indisputably, the certificate of AMIE course issued by the respondent No.1 is recognized as equivalent to the degrees granted by the Universities, therefore, while discharging the function to conduct examination to issue certificate of having successfully completed the AMIE course, the respondent No.1 imparts education and does public duty.
17. In **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others v. V.R. Rudani and Others**³ the Supreme Court has held that the unaided educational institution performing public duty of imparting education would be amenable to the writ jurisdiction of the High Court.
18. The Supreme Court in **K. Krishnamacharyulu and Others v. Sri Venkateswara Hindu College of Engineering and Another**⁴, has held that a writ petition is maintainable against a non-aided private educational institution when public law element is involved and the claim is based on the Government instructions.
19. Referring to the decisions rendered by the Supreme Court in **K. Krishnamacharyulu** (supra), **Sushmita Basu and Others v.**

³ (1989) 2 SCC 691

⁴ (1997) 3 SCC 571

Ballygunge Siksha Samity and Others⁵ and **Mrs. Satimbla Sharma & Ors. v. St. Paul's Senior Secondary School & Ors.⁶**, this Court in **Mukul Ranjan Ganguly v. Board of Secondary Education and Teachers Training & Others⁷** and other connected matter, has held that a writ petition against a private educational institution would be maintainable if a public law element is involved, however, if it is only a private law no writ petition would lie.

20. In the case at hand, this Court has already found that the respondent No.1 being established by Royal Charter which has the force of law, it is a statutory body as held by the High Court of Punjab and Haryana at Chandigarh in **Kartar Singh** (supra). Thus, the writ petition against the respondent No.1 is maintainable under Article 226 of the Constitution of India.
21. The Division Bench of the Allahabad High Court in **Ashwani Kumar Srivastava v. Institution of Engineers (India), Calcutta and Another⁸**, while agreeing with the decision of the Calcutta High Court in **Radha Kanta Samanta v. Secy., Ministry of Education⁹**, held that Institution of Engineers incorporated under the Royal Charter is not a statutory body, therefore, writ petition against it is not maintainable. It is held therein that while issuing

5 (2006) 7 SCC 680

6 AIR 2011 SC 2926 : (2011) 13 SCC 760

7 WP No.523 of 1999 (decided on 28-9-2015)

8 AIR 1986 Allahabad 251

9 (1977) Matter No.803 of 1976 (decided on 7-3-1977) (Cal.)

the Royal Charter the Crown was exercising executive power and not the legislative power, therefore, the Royal Charter was not a statute and would not fall within the purview of existing law under Section 372 of the Constitution of India.

22. Article 372 of the Constitution of India is quoted below for ready reference :

372. Continuance in force of existing laws and their adaptation.--

(1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the laws 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.

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(3) Nothing in clause (2) shall be deemed--

(a) to empower the President to make any adaptation or modification of any law after the expiration of three years from the commencement of this Constitution; or

(b) to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause

Explanation I--- The expression law in force in this article shall include a law passed or made by a legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas

Explanation II--- Any law passed or made by a legislature or other competent authority in the territory of India which immediately before the commencement of

this Constitution had extra territorial effect as well as effect in the territory of India shall, subject to any such adaptations and modifications as aforesaid, continue to have such extra territorial effect

Explanation III--- Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this Constitution had not come into force

Explanation IV--- An Ordinance promulgated by the Governor of a Province under Section 88 of the Government of India Act, 1935, and in force immediately before the commencement of this Constitution shall, unless withdrawn by the Governor of the corresponding State earlier, cease to operate at the expiration of six weeks from the first meeting after such commencement of the Legislative Assembly of that State functioning under clause (1) of Article 382, and nothing in this article shall be construed as continuing any such Ordinance in force beyond the said period.

23. What is provided under Article 372 is that all the laws in force in the territory of India immediately before the commencement of the Constitution continued to be in force therein until altered or repealed by a competent legislature or other competent authority.
24. In **Edward Mills Co. Ltd., Beawar and others v. State of Ajmer and another**¹⁰ the Supreme Court held that the words 'law in force' as used in Article 372 are wide enough to include not merely a legislative enactment but also any regulation or order which has the force of law, but it must be a legislative and not an executive order.
25. In **Raj Kumar Narsing Pratap Singh Deo v. The State of Orissa and another**¹¹, the Supreme Court has laid down the

¹⁰ AIR 1955 SC 25

¹¹ AIR 1964 SC 1793

distinction between legislative and executive acts in regard to the order issued by absolute monarchs. Elucidating the legal position whenever a dispute arose as to whether an order passed by an absolute monarch represented a legislative act it is held that all relevant facts must be considered before the question is answered and the relevant factors are (i) the nature of the order, (ii) the scope and effect of its provisions, (iii) its general setting and context, and (iv) the method adopted by the Ruler in promulgating legislative as distinguished from executive orders. Thus, allied matters would have to be examined before the character of the order is judicially determined.

26. In **Union of India etc. v. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd., Birlanagar, Gwalior and another**¹², the following has been held by the Supreme Court :

17.....We cannot impute to the Constitution-makers an intention to continue each and every order of an absolute Ruler as a law whatsoever be its nature. When Article 372 of the Constitution speaks of continuance of laws in 1950 the jurisprudential distinction between legislative, judicial and executive acts must have been present in the mind of the Constitution-makers and that distinction must always be kept in mind by courts in deciding whether a particular order of an absolute Ruler is law for the purpose of its continuance under Article 372. It may be that the order might not be liable to challenge by any one in the State, while the Ruler was there and in that sense the word of a Ruler might be law in his State. But when we are considering whether a particular order of a Ruler continues under Article 372 as law we cannot forget the jurisprudential distinction between legislative, judicial and executive acts and only those orders of the Ruler which are jurisprudentially legislative acts will continue as laws under Article 372 of the Constitution. Therefore

12 AIR 1964 SC 1903

simply because the order dated January 18, 1947 was passed by an absolute Ruler it does not necessarily follow that it is law for the purpose of Article 372 and we have to see after looking into all the various considerations referred to above whether the order can be jurisprudentially said to be a law in order that it may continue as law under Article 372 of the Constitution.

(Emphasis added)

27. In **Ameer-un-Nissa Begum** (supra), the Supreme Court was considering the validity of *Firman* issued by the Nizam of Hyderabad on 19th February, 1939 by which a special Commission had been constituted to investigate and submit a report to him in the case of succession to a deceased Nawab which was transferred to the commission from the file of Darul Quaza Court. Dealing with the question as to whether the *Firman* in question was passed by the Nizam in exercise of his legislative power or judicial power it was held that the '*Firmans*' were expressions of the sovereign Will of the Nizam and they were binding in the same way as any other law;--nay, they would override all other laws which were in conflict with them.
28. Similar view has been expressed by the Supreme Court in **Director of Endowments, Government of Hyderabad and Others v. Akram Ali**¹³, **State of Rajasthan and Others v. Sajjanlal Panjawat and Others**¹⁴, **Madhaorao Phalke v. State of Madhya Bharat (Now Madhya Pradesh) and Another**¹⁵, **Promod Chandra Deb v. The State of Orissa and Another**¹⁶,

13 AIR 1956 SC 60

14 AIR 1975 SC 706

15 AIR 1961 SC 298

16 AIR 1962 SC 1288

Tilkayat Shri Govindlalji Maharaj etc. v. State of Rajasthan and Others¹⁷ and **Pt. Jayvant Rao and Others v. Pt. Chandrakant Rao and Others¹⁸**.

29. In **Maharaja Shree Umaid Mills Ltd. v. Union of India and others¹⁹** the Supreme Court held that there is no general proposition that in the case of an absolute monarch, no distinction could be made between his legislative and his executive act. In the said case, the Supreme Court eventually held that the agreement in question was only a contract which was an executive act and not a law within the meaning of Article 372.
30. In **Bengal Nagpur Cotton Mills Ltd. v. Board of Revenue, M.P. and Others²⁰**, the Supreme Court held that it is not every indication of the Will of the Ruler however expressed which amounts to law. An indication of the Will meant to bind as a rule of conduct and enacted with some formality either traditional or specially devised for the occasion results in a law, but not an agreement to which there are two parties, one of which is the Ruler.
31. I shall now effort to appreciate and understand the true nature of the subject Royal Charter to find out whether it is an executive act or it is a legislative act. Merely because it is referred as grant

17 AIR 1963 SC 1638

18 AIR 1971 SC 910

19 AIR 1963 SC 953

20 AIR 1964 SC 888

or letters patent is not conclusive to hold that it is an executive act of the Crown, therefore, the contents of the Royal Charter have to be referred, before taking a view in the matter. The opening part of the Royal Charter issued at the Court at Buckingham Palace on the 13th day of August 1935 speaks that by Your Majesty's order dated 21st day of February, 1935 a committee was constituted and referred the petition preferred by Sir Thomas Guthrie Russell, President of the Institution Engineers (India) and others praying for the grant of a Charter of Incorporation to the said Institution. The Committee, thereafter, submitted a favourable report for grant of Charter and, thereafter, a warrant was directed to be prepared by His Majesty's Royal Signature, for issuance of the Charter. Having established an association of Institution known as Institution of Engineers (India) by the said Charter, it was declared to be a Body Corporate and Politic having perpetual succession and a Common Seal having further powers to sue and be sued in all Courts, and in all manner of actions and suits, and shall have power to do all other matters and things incidental or appertaining to a Body Corporate.

32. The objects and purposes for which the Institution of Engineers (India) is constituted was to promote the general advancement of engineering and engineering science and their application in India and to facilitate the exchange of information and ideas on those subjects amongst the Members of and persons attached to

the Institution and otherwise, and for the purpose delineated in clauses (a) to (k) of para 2 of the Royal Charter.

33. Clause 2 (f) of the Royal Charter is most pertinent and needs reference in the context of the present writ petition. It reads thus :

(f) To encourage, regulate and elevate the technical and general knowledge of persons engaged in or about to engage in Engineering or in any employment manual or otherwise in connection therewith and with a view thereto to provide for the holding of classes and to test by examination or otherwise the competence of such persons and to institute and establish professorships, studentships, scholarships, rewards and other benefactions and to grant certificates of competency whether under any Act of the Government of India or Local Governments regulating the conduct and qualifications of Engineers or otherwise howsoever.

34. The Institution shall not carry on any trade or business or engage in any transaction with a view to the pecuniary gain or profit of the Members thereof. No Member shall have any personal claim on any property of the Institution.
35. Clause 15 of the Royal Charter provided thus :

15. A Member of the Institution shall be entitled to the exclusive use after his name of the abbreviated designation "M.I.E.(Ind.)"; an Associate Member of the abbreviated designation "A.M.I.E. (Ind.)"; a Companion of the abbreviated designation "Comp.I.E. (Ind.)"; an Honorary Life Member of the abbreviated designation "Hon. Life M.I.E. (Ind.)"; and an Honorary Member of the abbreviated designation "Hon. M.I.E. (Ind.)".

36. The nature of grant is, thus, to promote the general advancement of engineering and engineering science and their application in India with specific power for holding of classes and to test by

examination or otherwise the competence of such persons and to institute and establish professorships, studentships, scholarships, rewards and other benefactions and to grant certificates of competency whether under any Act of the Government of India or Local Governments regulating the conduct and qualifications of Engineers or otherwise howsoever.

37. Since the Royal Charter specifically prohibited for carrying on any trade or business or engage in any transaction with a view to the pecuniary gain or profit, the warrant/grant and the consequent Charter was only with a view to do public duty like an educational institution or University having powers to grant degree or certificate having equivalence of qualification of Engineers as recognized by the Government of India or local Governments. **Therefore, the Royal Charter constituting Institution of Engineers (India) was legislative in character and not an executive function** giving away some property or entering into contract giving some benefit to recipient.

38. I am in respectful disagreement with the law laid down by the Allahabad High Court in **Ashwani Kumar Srivastava** (supra), which held that the Royal Charter was executive function and not a legislative function.

On merits :

39. In so far as the relief for continuing the old policy in respect of the petitioner to allow him to appear in 'B' section examination for a further period of five years is concerned, it is to be seen that the petitioner was registered as studentship in May, 1979, but could not clear both the sections till 1993 i.e. for 14 years when the subject amendment in the bye-laws was incorporated giving 6 years time to the students to complete the studentship. The petitioner, thereafter, continued to appear in the summer or winter examination for a further period of 6 years and as a matter of fact he was allowed to appear in 'B' section examination till 2006, however, he could not complete the 'B' section examination, therefore, it is not a case where the respondents have acted in an arbitrary and unreasonable manner. Moreover, the validity of the bye-laws have not been challenged in specific terms. Had the respondent No.1 was arbitrary in dealing with the petitioner he would not have been allowed to appear in further examination even after expiry of six years period. It is also to be seen that in his application for examination re-registration for 'B' section examination (Annexure – P/35) the petitioner had submitted undertaking that exemption in subject (s) secured during the stipulated period as well as in extended period in 'B' section examination shall be forfeited once his application for examination for re-registration is accepted by the Institution and he shall not claim in future to carry forward such exemptions. Thus, while accepting the re-registration for appearing in Winter

2001 examination the petitioner has forfeited his claim to secure any future exemptions and, thus, he has no right to claim any fresh attempt for clearing 'B' section examination of the AMIE course.

40. For the foregoing, while holding that the Royal Charter creating the Institution of Engineers (India) is a legislative act having force of law under Article 372 of the Constitution of India and the Institution of Engineers (India) is a statutory body, therefore, the writ petition under Article 226 of the Constitution of India is maintainable, the writ petition is dismissed on merits.

41. There shall be no order as to costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri