

18. As President of The Provincial, Legislative Council (1921-2)

Mr. Montagu, who as the Secretary of State for India, was taking a very keen interest in the working of the constitution associated with his name, sent out a despatch, dated 23rd December, 1920, regarding the status and functions of the first Presidents of the legislative Councils, and their relations with those bodies. I extract below a few sentences from it which will throw light on the incidents in my career as President I am now going to record. The Despatch laid down:-“The success of the reforms relationship to be established between the Legislative Council in each province, and the person first selected to hold the post of President. The first President of a council is not to be regarded as an official in the accepted use of the term. He will be an official of a kind hitherto unknown in the Indian hierarchy. I earnestly trust, therefore, that the Governments, the Presidents and the Councillors alike, will realise that from whatever walk of life the President may be chosen, from the moment that he assumes office he ceases to be an official of the Government. It will be the duty of the President so to conduct himself as to favour neither the Government, nor the opponent of the Government, to oppose the desire even of a majority when in his judgment that desire is in conflict with the interest of the Council, as a whole, and to do his best to secure fair treatment by the Council of minorities, or individuals, when they appear to him, to have reason and justice on their side. In short, I look to the time when the President will be regarded as a person to whom, in any case in which a personality of unquestioned impartiality is required for the settlement of any difficulty, all parties will naturally and without hesitation resort. It follows from this conception of the duties and prestige attaching to the office that I regard it as impossible to combine with it any direct employment under the Executive Government. Any attempt to utilise the services of the President, as a part time employee of the Government, will be incompatible with the proper discharge of his obligation to the Council.” These extracts indicate the Ideal which Mr. Montagu had set before himself for the holders of the office of the President of the Indian Legislatures, in general, and for those of the Provincial councils, in particular.

Lord Sinha, the then Governor of Bihar and Orissa, was very much exercised in connection with this matter. The province was, then as now, admittedly poor, and could not afford to pay for the services of an additional high officer. The Executive Council of the Governor at that time had as many as three members—two British Civilians and one Indian non-official—besides two Ministers. Lord Sinha was very unwilling, therefore, to appoint any one as President on a high salary; while, obviously it was not practicable to secure the services of any qualified person to work as an Honorary President. Although I had nothing to

do at the time with Lord Sinha's Government he nevertheless sent for me, and held a long consultation about this matter. I told him that I had made up my mind to move a resolution in the Assembly that the strength of the Bihar and Orissa Executive Council be reduced from three to two members, as was the case in all the other major provinces, except in the three presidencies of Bengal, Madras and Bombay. As he welcomed my proposal, I tabled a resolution on the subject which came up for discussion in the Assembly, in due course, and was carried by a large majority, in spite of the opposition offered to it by the then Home Member, Sir William Vincent. The Government announced later that they would accept the resolution, and recommend to the Secretary of State for the proposal being accepted, so that when the senior Civilian Member of the Executive Council would retire, the vacancy caused would not be filled, and the strength of the Council would thus automatically drop to two. This announcement gave great satisfaction to Lord Sinha, who rightly felt that the appointment of two civilians to the Executive Council of the province, when it was not so elsewhere was a slur upon him. Taking the view that he did, he naturally felt happy at the success of my resolution; but nevertheless he continued to be perturbed at the prospect of being called upon to appoint a high-salaried person as the President of the Bihar and Orissa Legislative Council. So he said to me one day, in course of conversation on the subject:-"Montagu is a theorist, and his ideals are very often remote from realities. Here I have got to administer this poor province with the land revenue absolutely inelastic, on account of the Permanent Settlement, and the revenue from excise undependable in view of the non-co-operation agitation, and yet Montagu insists that I should appoint someone as a President on a salary of not less than Rs. 3,000. He does not bother himself where the money is to come from, especially when he has saddled the administration with an Executive Council of three members, each drawing Rs. 5,000 a month. What advice would you give me in the circumstances?" "But it is open to you," I asked, "to go against the letter, or the spirit, of Mr. Montagu's despatch on the subject?" "Most certainly so", he said. "I shall write and explain the matter to Montagu, that, for special reasons, in my province, I cannot appoint a high-salaried President," "Well, in that case," I said, "I would suggest that you should utilise as the President the senior member of your Executive Council, though this would be going clearly against the principle laid down in Mr. Montagu's despatch." "That is by no means a bad idea", said Lord Sinha. "I shall consult," he continued, "Sir Walter Maude, and hope he will be agreeable to take up the work. True, he can work as much as only for a couple of months at the end of which he will be retiring; but that will take us on to the end of the cold weather session, and I shall await developments like Mr. Micawber, for something to turn up before the beginning of the next session in the autumn."

Accordingly, Lord Sinha talked over matters with his senior Executive Councillor, Sir Walter Maude, whom he either found agreeable to take up the additional work of President, or in some way or other induced him to agree to it. His appointment was accordingly gazetted as the first President of the Bihar and Orissa Legislative Council. I had gone back to Delhi to attend the session of the Central Assembly, and I received there the following letter from Lord Sinha:-“I am glad to tell you that Sir Walter Maude has agreed to take up the work of the President of the Legislative Council. He was not quite agreeable to it, but I reasoned with him, and explained to him, my difficulties. Ultimately he promised to do his best. I fear Montagu will not like the arrangement I have made, in view of the strong opinion expressed by him in his despatch upon the subject. But I had no other alternative, and your suggestion seemed to me to be the best solution of the difficulty. I hope your resolution for reducing the strength of my Executive Council from three to two will be duly carried, and accepted by the Government of India and the Secretary of State”. After Sir Walter Maude’s retirement in April, 1921 the question for the appointment of his successor came up again before Lord Sinha, but it came up coupled with another important question. The non-official Indian member of the Executive Council at the time had been suffering from months past from tuberculosis of the lungs, and consequently he had not been able to do his work properly for some months. Lord Sinha was very much worried about it, but he was unwilling to force his colleague to go on leave, which he was unwilling to do. Meanwhile, I had made arrangements for going to Europe for about six months, with the primary object of qualifying myself to discharge more efficiently my duties as the Deputy President of the Assembly by watching parliamentary procedure as a daily visitor to the House of Commons. As Lord Sinha had left Patna for a month’s stay at Puri, before going to Ranchi, I wrote to him, telling him of my plans, and requested him to send me a letter of introduction to Mr. Montagu to help me in securing an introduction to the Speaker of the House of Commons. In acknowledging my letter he said that he would personally give me the letter of introduction at Puri, and wanted me to go there. I politely protested against his compelling me to go to Puri – a 36 hours’ journey from Patna, just to have a letter of introduction handed to me there, which he could easily send by post. But he was inexorable – either he would hand over the letter to me, or not give it to me at all! This seemed to me rather suspicious and it smacked of some mystery.

There being no alternative, however, I went to Puri and stayed right opposite the Government House, with the Indian Superintendent of Police, who happened to be an old friend of mine. On informing the Governor of my arrival, I was asked to lunch, after which he had a long talk with me on the subject. He said – “Now here is the letter of introduction to Montagu, but I do not think you will be able to use it. My Indian colleague, on the reserved side, is seriously

ill, and has been so for months. I have suggested to him to go on leave, but for some reason or other he is unwilling to do so. I feel, however, that it is not right that he should be allowed to continue in office as his work is heavily in arrears, and the administration of his departments is suffering seriously. I have, therefore, made up my mind to cut short my stay here, and go up to Ranchi tomorrow, and bring him round to go on four months' leave at once provided you will agree to enter into the Executive Council in his place and also as Sir Walter Maude's successor as the President of the Legislative Council." I thanked him, but said that I was very doubtful if the Indian Member would listen to his advice to go on leave since although he had been ailing for a long time, and had been advised by his doctors to take rest, he had refused to follow their advice. "What guarantee is there," I asked him, "that he would do so now; and surely, Sir, you do not expect me to cancel my passage and miss my boat next week on the off chance of succeeding your Indian Member of Government." He thought over the matter for a minute, and asked me to give him my address at Patna, Allahabad, and Bombay, the places where I expected to stay *en route* to Bombay. "If I wire to you from Ranchi to one of these places to come up at once to take charge as a Member of the Executive Council, I hope you will comply with my request." I said I would do my best to meet with his wishes, provided I got the information in time.

With this understanding I returned to Patna, from where I left for Bombay, a couple of days later. I halted at Allahabad to meet my many friends there at a farewell dinner which Sir Tej Bahadur Sapru had very kindly arranged at his house. But before the dinner came on, I received a telegram from Lord Sinha, asking me to meet him at Ranchi the next day, without fail. I wired accordingly to Bombay to cancel my passage, and went back Ranchi. On my meeting him, he told me that in accordance with his promise to me, he had left Puri the same day on which I saw him there, and had managed to induce his colleague to go on four months leave which he had done, that he had taken charge from him of the departments under his control, and so he would make over charge to me immediately, which formality he went through then and there, by handing over to me the key of an empty despatch box! "But this is not all" he said, "for, please remember, you have got to work, in addition to your duties as an Executive Councillor, as the President of the Legislative Council, and you may rest assured that as long as I am the Governor you will be the President, for I am satisfied that I cannot get a better man in the Province to do this work." The next issue of the *Gazette* announced my appointment not only as a temporary member of the Governor's Executive Council, but also as the President of the Bihar and Orissa legislative Council. And so I found myself hoist with my own petard! When I suggested to Lord Sinha that one of his Executive Councillors should be the President, it never occurred to me that I myself would be in for it before a few months were over. I remember telling Lord Sinha, however, when

he pressed this matter at Ranchi, that according to the precedent created by him the appointment of Sir Walter Maude, the presidentship should go to the then senior member of the Executive Council Mr. (afterwards Sir) Havilland Lemesurier. But Lord Sinha was equal to the occasion, and told me that when consulting his two civilian colleagues (Messrs. LeMesurier and McPherson)-the latter having succeeded Sir Walter Maude-about my appointment as a temporary member of the Executive Council, he had also discussed with them the question of my appointment as the President, and that they both had agreed that, as the Deputy president of the Assembly, I was the most qualified person to do that work! So it was all fixed up, and in the July session of the Legislative Council, held at Patna, I took my seat not on the Government benches as an Executive Councillor, but in the presidential chair, which I continued to occupy till November, 1922, that is, till after the retirement from service of Sir Havilland LeMesurier, when the strength of the Executive Council was reduced to two only, as recommended in my own resolution on the subject.

It fell to my lot as the President to give the first important ruling on a question of procedure in the Indian legislatures. It is an interesting episode, which I recall in view of the fact that the non-official member, concerned in the matter, was himself duly elected, some years later as the President of the Provincial Legislative Council. The relevant facts will appear from my statement in the Legislative Council made on 10th March, 1922, which I transcribe from the authorised report of the proceedings:-“The President: Before we proceed with the work of the day I desire to make a few observations on an incident, to my mind a very unfortunate incident, which occurred in this Council yesterday. I shall read out the shorthand-writer’s transcript of what transpired in this house yesterday, to enable Hon’ble Members to refresh their memory. I may add that in the transcript supplied by the official reporter no changes of any kind whatsoever have been made by me”. The facts are thus stated in it: “The Hon’ble the Minister, at the close of the debate on the salary of a physical trainer, made the observation, which is very frequently done by the members of Government, that he would leave the matter in the hands of the Council; on which the Hon’ble Member for Saran said:-“Did I understand that the Hon’ble Minister leaves the matter in the hands of the non official members?” The Hon’ble the Minister replied:-“What I said is that I leave it to the Council.” I then said:-“We are dealing now with the budget of a transferred department, which is entirely in the hands of the Council. But when the Hon’ble the Minister leaves it in the hands of the Council, he cannot mean that he can deprive the official members of their indefeasible right to take part in the voting.” The Hon’ble Member for Saran said:-“Sometimes the official members vote against their conscience, if they are forced to do so.” An official member immediately got up and said:-“I take exception to such a remark.” I then said:-“That remark was unwarranted and uncalled for, and should not have been made. Besides, it was absolutely

unparliamentary, and should be with-drawn.” I may add that I also read out immediately an authority on unparliamentary expressions, in support of my view. The Hon’ble non-official Member said – “I am not going to withdraw it. That was a remark and not a speech. On which I said:-“This distinction is immaterial. Whether a Member makes an unparliamentary remark in regard to other members in a speech, or interjects it as a casual observation, it is equally unparliamentary. I hope the Hon’ble Member, for the sake of the dignity of the House, will, therefore, withdraw it”. To which he replied:-“I would rather withdraw from the Council than withdraw the remark.” On which I said:-“The choice is his, and he takes the responsibility for his action.” The Hon’ble Member then withdraw from the Council Chamber.

“I now find”, I continued, “that the Hon’ble Member who did not withdraw the remark which I, as the President, ruled as unparliamentary, has taken his seat in this House today, without having expressed his regret for his conduct yesterday in defying the authority of the Chair, and without withdrawing the unparliamentary expression to which I, as President objected. That being so, the question now arises, what right is vested in me, as President of this Council, to enforce such discipline as may be necessary for the maintenance of order in this House. The power vested in the President is set forth in rule 17. I shall invite the attention of Hon’ble Members to this rule, which I propose to enforce in this particular case. The rule lays down that:-

- (1) The President shall preserve order and have all powers necessary for the purpose of enforcing his decisions on all points of order.
- (2) He may direct any member whose conduct is in his opinion grossly disorderly to withdraw immediately from the Council, and any member so ordered to withdraw shall do so forthwith, and shall absent himself during the remainder of the days’ meeting. If any member is ordered to withdraw a second time in the same sessions, the President may direct the member to absent himself from the meeting the council for any period not longer than the remainder of the sessions, and the member so directed shall absent himself accordingly.
- (3) The President may in the case of grave disorder arising in the Council suspend any sitting for a time to be named by him.”

“My construction of the rule”, I proceeded to say:-“Is that if any member’s conduct in the President’s opinion, is grossly disorderly, the President can enforce on that erring member a penalty by asking him to withdraw from the deliberations of the House for the day. The Hon’ble Member yesterday evidently thought that by withdrawing from the Council Chamber himself, he would be imposing upon himself some kind of penalty, or perhaps the penalty which this section contemplates. My ruling is that in that view of the matter he was mistaken, and that the provisions of section 32 have not been so far duly

complied with. As he himself withdrew from the Council Chamber yesterday, he gave no opportunity to me to enforce this particular provision which is, in my opinion, absolutely necessary for the maintenance of discipline in the House. This being the first opportunity on which I can enforce the rule, I now, acting under the powers vested in me under this section, call upon the Hon'ble Member for the sake of the dignity of the House, to either withdraw the remarks he made and to express his regret for having disobeyed the ruling of the chair, or, if he does not wish to do that-and he is quite at liberty to take his own course in this particular matter-to be deprived of his rights for the day. I have no alternative, in the latter case, but to ask him to withdraw from the deliberation of the House for today. This is my ruling and it is not open to discussion. ”

The Hon'ble Member-“Then I may take it that I am not even entitled to state the facts upon which this ruling is based, or upon the expression which the Hon'ble President has used, that as I had the choice in the matter I could withdraw. And if that is not so, then may I ask if I am entitled to say anything in my defence?”

The President-“The Hon'ble Member is not entitled, on a point of order, to make a speech, but as he has raised the point again, I shall once more state to the House, which I have done already, that the view taken by the Hon'ble Member for Saran is not correct, because he said:-“I would rather withdraw from the Council than withdraw the remark, “My reply to which was that the choice was his, and he would assume responsibility for his action. Thus it is clear that there was nothing said at the time about any penalty such as the section under consideration contemplates. I now once again give the Hon'ble Member the opportunity today that (if he cares to accept my ruling that he has offended against the dignity of the House) he will, as befitting a gentleman of education and culture, and a member of this legislature, withdraw the unparliamentary remark and express his regret for the defiance of the authority of the Chair or (if he shall not do so) withdraw from the House for the rest of the day. I regret that in case of his refusal to comply with the ruling I have given, I have no other alternative left but to ask the Hon'ble Member to withdraw for the day.”

The Hon'ble Member-“I shall withdraw from the House.” Personal thanks for the valuable services you rendered as President, and my cordial appreciation of the able manner in which you have filled the office.”

On the last date that I took my seat as the President at the session of the Legislative Council, at Ranchi, I was the recipient of highly appreciative remarks, alike from the official and the non-official members of the Council. But I may quote here the observations of Mr. (afterwards Sir) Frederick Whyte the first President of the Indian Legislative Assembly, under whom it had been my privilege to have worked as the first elected Deputy President. In opening the session of the Assembly at Simla, on the 1st September, 1921, he addressed the Central Legislature a follows:-

“Since the Assembly last met one of our colleagues, Mr. Sachchidananda Sinha, has resigned his seat on his appointment to a high office elsewhere. Mr. Sinha is now a Member of the Executive Council of His Excellency the Governor of Bihar and Orissa, and has also been appointed to the position of the President to the Legislative Council of that province. What this Assembly loses Mr. Sinha’s native province gains. Few figures in contemporary constitutional and political movements in India are better known than that of Mr. Sachchidananda Sinha. This Assembly has already signified its appreciation of his eminent qualities by electing him, in Delhi, to the post of Deputy President. It would be superfluous on my part to add anything to that signal mark of appreciation of his fellow countrymen, but I think I may now convey to him the congratulations and good wishes of those who were his colleagues in the public work of India in this Chamber.” Thus ended my career as the President of the Bihar and Orissa Legislative Council, and an important episode in my public activities.