

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Centre State Relations and Local Self Government
Semester-II (Batch: 2016-17)

LL.M. End Semester Examination: May-2017

Date: 5th May, 2017

Duration: 3 hours

Max. Marks: 70

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.

Part-A

Marks

Answer **any four** of the following:

- Q.1 ABC Co. is a Public Limited Company incorporated under the Companies Act, 1956 (10)
having its registered office at C-35, Sector-12, Gandhinagar, Gujarat. The company has challenged the Constitutional validity of Section 66A of Finance Act, 1994. ABC Co. has also prayed that the petitioner is not liable to pay Service Tax on the commission/fee paid to the company located in USA, for promoting and marketing its services in USA. ABC Co. is a 100% export oriented unit for manufacture of software. It is engaged in the e-publishing services, such as data capturing, data conversion, typesetting, formatting, paging, indexing etc. and exports the same to its customers in USA. In other words, the petitioner is editing and setting the contents of the books, which are received from USA. ABC Co. entered into an agreement dated 29.9.2016 with M/s Software Services LC (SSLC), a company incorporated in USA for promoting and marketing of its business activities in USA.
- The Service Tax was introduced in India in the year 1994 - Finance Act, 1994. The Service Tax Rules, 1994 were further amended in 2006. Section 66A was inserted, which reads as follows:
- 66A. Charge of service tax on services received from outside India:
- (1) Where any service (a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and
- (b) received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India, such service shall, for the purposes of this section, be taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply:
- Provided that where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce, the provisions of this sub-section shall not apply:
- Provided further that where the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as

the country from which the service is provided or to be provided.

(2) Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

Explanation 1.- A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.

Explanation 2. Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted.

The service tax of Rs. 74,821/-with interest of Rs. 25,128/ was demanded on the ABC Co. as charges paid to foreign company for upgrading software and also online support services. Besides the tax service charge of Rs. 31,147/- with interest of Rs. 6,074/-was demanded alleging professional fee paid to the foreign company.

ABC Co. challenged the taxation before High Court of Gujarat and but the court rejected the petition against the order. An appeal has been filed before Supreme Court of India. Decide the appeal.

- Q.2 Parliament in 1987 passed an Act for the regulation and conduct of technical and higher education in the field of engineering and technology, which is known as All India Council for Technical Education Act, 1987. The Act which regulates the technical education provides for the recognition and de-recognition of technical institution throughout the Country. State of Punjab established Bhagat Singh University of Technology at Amritsar based on Bhagat Singh University of Technology Act, 2014. 26 Colleges were affiliated to this University during 2015-2016. The Punjab Private Colleges (Regulation and Control) Act, 2015, passed by the Legislature of Punjab provides for the power of the Government of Punjab to grant permission and withdraw permission of Colleges. The Act also provides for the power of Government to fix fees of various courses and allotment of number of seats in various courses. The State Government issued a Notification under the Punjab Private Colleges (Regulation and Control) Act, 2015, and permitted private managements to start new Engineering Colleges under the self-financing scheme. Punjab Educational Trust, a private management, applied to the Government of Punjab for permission to start a new Engineering College based on the Government Notification. The Government granted permission to the trust to start a private Engineering College, College of Engineering and Information Technology, Amritsar, from Academic year 2015-2016. Permission has been given to admit 90 students in two batches of Mechanical Engineering. One of the conditions imposed by Government was that the management could admit candidates of its choice up to 50 percent of the approved seats and the remaining 50 percent of the seats shall be filled by the Government from the list prepared by the University based on the Common Entrance Test. It was also stipulated that if any conditions imposed by Government was not fulfilled, the permission granted would be withdrawn and Government will have the right to take over the College with all its movable and immovable property. Pursuant to this permission by Government, the College got the affiliation of Bhagat Singh University. On 17 11 2016, the State Government appointed a Committee to enquire about the conduct of the Self Financing Colleges in the State. The Committee reported that College of Engineering and Information Technology, Amritsar and other 8 Colleges affiliated to the Bhagat Singh University of Technology not fulfilled the condition imposed by Government. Higher Education Secretary, Government of Punjab, issued a notice to the Colleges for the non-compliance of the Governmental directions. University, by exercising its power under the Bhagat Singh University of Technology, 2014, also constituted a Committee to enquire into the conduct of the Colleges. The affiliation and permission were withdrawn by the University and the Government

through its orders. Punjab Educational Trust challenged the provisions of the State Acts and orders before the High Court; the court upheld the Act and decision of the University and Government. Against this decision, Punjab Educational Trust approached Supreme Court. Decide the appeal.

Relevant Entries under 7th Schedule:

Entry 66 of List I: Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

Entry 25 of List III: Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.

- Q.3 (a) Mr. Ram Prakash and Mr. Vijay Raj (Petitioners) are the owners of agricultural lands in the State of Rajasthan. They also hold agricultural land in Rajkot of State of Gujarat. State Legislature of Rajasthan passed the Rajasthan Agricultural Lands Ceiling (Amendment) Act, 2016 and inserted Section 6(3A) to the Rajasthan Agricultural Lands Ceiling Act, 2010. It lays down that for computing the ceiling area of a person in the State of Rajasthan, his holding in another part of India has also to be taken into account. In respect of said provision notices were issued by the State of Rajasthan for reopening the ceiling cases. Section 6(3A) of the Act is reproduced hereunder: (5+5=10)
- Section 6(3A):- Where any person holds any land in any other part of the India, outside the State, then of the area of land so held by him in such other part, not exceeding the maximum area of land which such person is entitled to hold in such other part of India under any law, if any, relating to ceiling on land, used or capable of being used for agricultural purposes, shall be excluded from the ceiling area in excess of which a person is not entitled to hold land under this Section and the extent of land determined after so excluding such area shall in relation to such person, be deemed to be the ceiling area, to be held by him in this State.
- Provided that where any such person disposes of, at any time before the determination of ceiling area under this Act, any land or part thereof so held by him any other part of India outside the State in accordance with the provisions of law in force in such part, the area equal to the land or part thereof so disposed of shall not be excluded while determining the ceiling area, to be held by him in this State.
- Petitioners have Challenged the Amendment Act provisions. Decide the Constitutionality of the said provisions.
- (b) Federation of Hotels & Restaurants Association, who are engaged in, or associated, with the Hotel Industry in India challenged the Constitutional validity of the Expenditure-Tax Act. The Act envisages a tax at 10 per cent on 'chargeable expenditure' incurred in the class of Hotels wherein "room-charges" for any unit of residential accommodation are Rupees Five Hundred per day per individual. The 'Chargeable-expenditure' as defined in Section 5 of the Act include expenditure incurred in or payments made in such class of hotels in connection with the provision of any accommodation, residential or otherwise, food or drink whether at or outside the hotel; or for any accommodation in such hotel on hire or lease; or any other services envisaged in that Section. However, any expenditure incurred in or paid for in "foreign exchange" or by persons who enjoy certain diplomatic privileges and immunities are exempt. The challenge to the vires of the 'Act' is on grounds of lack of legislative-competence under Entry 62 of List II (Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.) and of violation of the rights under Article 14 and 19(1) (g). Union of India seeks to sustain the legislative competence on the ground of 7th Schedule. Decide the Petition.

- Q.4 State of Vidharbha, a State in the Union of India, by exercising its legislative competence under Entry 18 of the State List (Land, Land Tenures) passed Vidharbha Land Reforms Act. The Act has been challenged before the court on the contention that it is repugnant to the Hindu Adoptions and Maintenance Act, 1956 passed by the Union under Entry 5 of List III (Adoption, Succession, Joint Family and Partition). Whether State Legislation can be challenged on the basis of this contention? Which are the doctrines that can be argued? Which doctrine will prevail in the present case? Decide. (10)
- Q.5 "It is settled law that the heads of legislation given in the list should not be constructed in a narrow or pedantic way. If any legislature makes any ancillary or subsidiary provision which incidentally transgresses over its jurisdiction for achieving the object of such legislation, it would be a valid piece of legislation. The entries in a legislative list should be given their fullest meaning and the widest amplitude and be held to extend to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in them. It is only when a legislature which has no power to legislate, or the legislation is camouflaged in such a way as to appear to be within its competence when it knows it is not, then alone it can be said that the legislation so enacted is a colourable legislation and that there is no legislative competence". Explain this statement with case laws. (10)

Part-B

Answer all the questions

(3x10
=30)

- Q.6 The Gujarat Legislature, with a view to strengthen the Local Self-governments, proposed Amendments to the Gujarat Panchayats Act, 1993, which incorporates the minimum eligibility criteria for contesting local body elections and additional grounds for disqualification of members. The relevant provisions are as follows:
Disqualification
(1) No person shall be a Sarpanch or a Panch of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such member if he/she has more than two living children.
Provided that a person having more than two children on or upto the expiry of one year of the commencement of this Act, shall not be deemed to be disqualified;
(2) Persons not having a functional toilet at their place of residence.
Minimum Educational Qualification
(1) Minimum education qualification for the contesting elections-General candidates must have passed Class X examination. Dalit male candidates need to have cleared Class VIII. Dalit women candidates must have cleared Class V.
Examine the Constitutionality of the above mentioned provisions in the light of relevant provisions of the Constitution of India with leading cases.
- Q.7 What is the permissible quantum of reservations in panchayat elections in favour of SC/ST and OBC? Explain with the help of an example, how to allocate the seats for SC/ST for wards/panchayats in local body elections? Examine the disputes arising out of reservation of seats in wards/panchayats in favour of chairperson with the help of decided cases.
- Q.8 Write short notes on any two of the following:
(a) Draft Model Panchayat and Gram Swaraj Act
(b) E Panchayat
(c) The Grama Nyayalayas Act, 2008
