

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Constitutional Law-III  
(Centre State Relations, Emergency and Amendments)  
Semester-V (Batch: 2013-18)

End Semester Examination: Oct-Nov. 2015

Date: 28<sup>th</sup> October, 2015

Duration: 3 hours

Max. Marks: 50

**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.

Answer any five of the following questions:

Marks

- Q.1 The State Legislature of Gujarat has enacted the Gujarat Luxury-cum-Entertainment and Amusement Tax on Holders of Smartphone Act, (Act), which came into force on 1st July 2014. Section 2(a) 'tax' has been defined to mean "the luxury-cum-entertainment and amusement tax levied and collected under this Act." As section 3 provides, tax is to be levied on every holder of a smartphone and is to be collected from the said holder. Section 2(c) defines 'holder of a smartphone' as follows: 'holder of a smartphone' means a person in whose name a licence is issued in respect of any smartphone under the Wireless Telegraphy Act, 1933, and includes a person, who is for the time being found in possession, irrespective of the fact whether the person holds such licence or not. Under Section 4 every holder of a smartphone is liable to pay the amount of tax of Rs.1200 on or before January, 31 of that year and if any holder fails to pay tax he becomes liable to pay a penalty at the rate of Rs. 60 per month. Under section 5(1) tax is not leviable in respect of smartphone owned and used by or on behalf of the Government or Governmental agencies. Section 6 provides that every smartphone holder must register before the authority constituted under the Act. Section 8 which provides for an appeal against the amount of tax and penalty and Section 10 provides for the rule-making power of the State Government and Section 11 provides for the power to the State Government to do anything which appears to it to be necessary or expedient for the purpose of removing any difficulty which arises in giving effect to any of the provisions of the Act. The Act is thus a very short measure having 11 sections. Mobile Phone Users Association challenged the legislation before the Court.

(10)

Decide the validity of the State Law.

Relevant Entries: Entry 62 of List II of the Seventh Schedule to the Constitution of India which reads as follows: Taxes on luxuries, including taxes on entertainment, amusements, betting and gambling.

Entry 31 of List I of the Seventh Schedule which reads: Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.

- Q.2 The plight of residents of Delhi in not getting sufficient water even for drinking led, Mr. Atul Sakshi to approach Supreme Court under Article 32 of the Constitution by filing a public interest petition, seeking a direction to the concerned Governments to maintain regular flow of water, in Jamuna river so that the residents of Delhi do not face problem of drinking water, which, however, was being so faced because of non-release of sufficient quantity of water from Tajewala Head. A Memorandum of Understanding (MOU) between U.P, Haryana, Rajasthan, Himachal Pradesh and National Capital Territory of Delhi, regarding allocation of surface flow of Jamuna, had come to be signed on September 12, 1994. But, as to act according to the MOU required deliberation by Upper Jamuna River Board; and as there was some difficulty in doing so because its membership could not be finalized. This led Supreme Court to pass order dated March 3, 1995, directing all the parties to MOU to assure that sufficient water is released from Tajewala Head to Delhi. A special direction was also issued to the States of Haryana and Uttar Pradesh through their Chief Secretaries to release water with effect from April 6, 1995. Court made it clear that this order is an interim measure till the time the members of the Board is appointed. As soon as the Board becomes functional, it will be at liberty to pass any direction in the light of this order as they deem fit and in accordance with the MOU in the interest of all the States which are signatories. Even after this no water at all was released pursuant to the above order. This led the present petition being filed. Haryana took the stand that under the MOU, Delhi was not entitled to get any extra water beyond what it was getting before March 31, 1995, this view was also taken by Union of India but finally took the stand that Haryana may not be correct. After hearing the parties, Supreme Court ordered that Delhi shall continue to get as much water for domestic use from Haryana through river Jamuna which can be consumed and filled in the two water reservoirs and treatment plants at Wazirabad and Hyderabad. Both the Wazirabad and Hyderabad reservoirs shall remain full to their capacity from the water supplied by Haryana through river Jamuna. Court also directed that the State of Haryana should not obstruct the supply of water to Delhi. This order according to the Court is not dependent on the MOU mentioned above or any other proceedings which may be initiated under any other law between the parties. Court made it clear that any violation of this direction would be viewed seriously and the guilty persons would be dealt with appropriately. Supreme Court made their order binding not only the parties to this proceeding, but also the Upper Jamuna River Board.

Analyse this decision based on case laws.

- Q.3 Elections for the 120 seats of Legislative Assembly of State of Purvanchal a State in Union of India were held in August, 24, 2014. After the elections, Purvanchal Congress Party (PCP) won 52 seats and National Democratic Congress (NDC) won 50 seats, Rashtriya Jana Morcha (RJM) won 7 Seats, Kissan Socialist Party (KSP) won 6 Seats and independents won 5 seats. PCP leader Mr. Dhanaranjan Singh made a claim before Governor to form the Government with 63 MLAs support in the banner of coalition Purvanchal Rashtriya Forum (PRF) consists of PCP, KSP and independents. Governor did not allow this claim because PRF was not in existence at the time of election also they failed to provide necessary documents to prove their claim. Since no party was in position to form the Government, Governor of Purvanchal sent a report to the President and Presidential Rule was imposed in Purvanchal. Mr. Dhanaranjan Singh filed a writ petition before the High Court and Court stayed dissolution of Legislative Assembly. And in a final order, the High Court held that the Presidential Rule invoked in Purvanchal was unconstitutional. This order has been challenged by the Union of India before the Supreme Court on the ground of lack of jurisdiction with High Court. While

the Appeal is pending before Supreme Court, on December 10, 2014, the President revoked presidential Rule and Governor invited Mr. Indrajith Gupte, leader of NDC who claimed majority of MLAs in the banner of Purvanchal United Front (PUF), which consists of NDC, RJM and Independents, and Government was formed on 17<sup>th</sup> December, 2014. Parliament passed an amendment to Article 356 and added a provision barring the power of judicial review of High Court on proclamation under this Article. Mr. Dhanarajan Singh challenged the Governor's decision, formation of Government and amendment before the Supreme Court. Appeal filed by the Union Government was also considered by the Supreme Court along with the said case.

Decide the dispute.

- Q.4 State of Vijaya Nagar is a State of India situated in the central part of India. In exercise of its legislative power under List II, State Legislature passed an Act, Vijaya Nagar Urban Development Act, 2015 (Act). Object of the Act is to regulate the building construction in the municipal areas of Vijaya Nagar. The said Act provides for the power under which the Commissioner of Roads and Building Department is empowered to take actions to prevent illegal constructions. Section 38 of the Act empowers the Commissioner to demolish illegal constructions and encroachments in urban areas by giving 7 days notice. The Act provides for the establishment of Ombudsman for grievances redressal. The provisions of the Act were challenged before the High court by Vijaya Nagar City Developers Association (VCDA) and the Act was struck down by the High Court on the ground that the provisions of the legislation are arbitrary and against the freedom of trade and commerce. Appeal has been preferred by the Government. While the appeal is pending the said Act was included in the Ninth Schedule through Constitutional Amendment. Commissioner commenced proceedings under the Act and issued notice to 248 traders to vacate the illegal constructions and to demolish them. VCDA approached the Supreme Court and challenged the Constitutional Amendment. (10)

Decide the Petition.

- Q.5 State of Madhya Pradesh, under the MP Education Act, 2011, constituted an Institutional Pension Fund (IPF) for teachers in non-pensionable service. Under Section 3 the proportion of contribution to be paid by the teachers was specified, while under Section 4, contribution by the government and by the management of the school to IPF was also specified. In 2013, MP Teacher's Employment Conditions Act was passed. The preamble of the Act states that it is an Act to make provision for regulating payment of salaries to teachers and other employees of non- government educational institutions receiving grants from Government. Under Section 5 of the said Act of 2013 an institutional fund was constituted for payment of salary to the teachers, contribution to any IPF, was now required to be deposited in the institutional fund. The Act of 2013 did not prescribe any scheme for provident fund as such. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952, Central Act was not applied to educational institutions of MP. In 2014, the Central Act which came into effect on its publication in the Gazette of India dated 6th of March, 2014, in exercise of powers conferred by Section 1(3) (b) of the Employees' Provident Fund and Miscellaneous Provisions Act, the Central Government specified certain classes of establishments in which 20 or more persons were employed, as covered by the said Central Act. The establishments so covered includes any College whether or not affiliated with the University, as also any school whether or not recognised or aided by the Central or the State Government. It also covered any other institution in which the activity of imparting knowledge or training was carried on. State decided that, the Central Act is not applicable to the aided (10)

schools of the State of Madhya Pradesh. Against this decision School Teachers Association of MP to the approached Supreme Court.

Decide the dispute.

Relevant Entries of Seventh Schedule: List III- Concurrent List: Entry 24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

List II- State List: Entry 41. State public services; State Public Service Commission.

Entry 42. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.

- Q.6 Federation of Hotel & Restaurant Association, who are engaged in, or associated, with, the Hotel Industry in India challenged the constitutional validity of the Expenditure-Tax Act, an Act passed by the parliament before Supreme Court. The Act envisages 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 is exempted from taxation. The challenge to the vires of the 'Act' is on grounds of lack of legislative competence. (10)

Relevant Entry of 7<sup>th</sup> Schedule: Entry 62 of List II: - Taxes on luxuries, including taxes on entertainment, amusements, betting and gambling.

Union of India seeks to sustain the legislative competence on the ground of 7<sup>th</sup> Schedule and constitutional provisions.

Decide the Petition.

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