

GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR
 Course: Constitutional Law-III
 (Centre State Relations, Emergency & Amendments)
 Semester-V (Batch: 2012-17)



End Term Examination: Oct-Nov. 2014

Date: 29th October, 2014

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 anything 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 a. Ware Housing Corporation is Corporation established under the Ware Housing Corporations Act, 2001 by the Parliament. The Act empowers Ware Housing Corporation to establish State Ware Housing Corporations. These Corporations were envisaged to ensure the collection of all essential commodities. The Act empowers the Corporation to do business out of the collection made by them. Ware Housing Corporation Gujarat collected huge quantity of rice and wheat and carried out the sale of it throughout India. The Commissioner, Land and Buildings, State of Gujarat exercising his power under the Gujarat Land and Building Tax Act imposed tax and the Municipality imposed property tax under the Municipality Act for the financial year of 2013-2014 on the Ware Housing Corporation. The tax has been challenged before the High Court. (05)
- Decide the validity of taxation.
- b. Explain the financial relations between Union and States under the Indian Constitution. (05)
- Q.2 State of Ramarajya, a State in the Union of India, by exercising its legislative power under Entry 56 of List II, Legislature of Ramarajya passed Ramarajya Roads and High Ways (Regulation and Taxation Act), 2014. The Act in Section 17 provides for tax on vehicles when they are using state express highways mentioned in the Schedule of the Act. The rate of tax on the vehicles is determined based on the kilometres used by the vehicle in state express highways. The Act provides different rate of tax according to the kilometres. The rate of tax as per this section provides that those vehicles of commercial class need to pay Rs. 50 for use upto 100 kilometres Rs. 100 for use upto 200 kilometres, whereas Rs. 150 has been fixed for the use upto 400 kilometres and Rs. 200 for the use more than 400 kilometres. The Act provides for a different structure and rate of tax on non commercial vehicle. Non commercial vehicles using the state express highways need to pay Rs. 20 for 100 kilometres, whereas Rs. 40 has been fixed for the use upto 300 kilometres and Rs. 60 for more than 300 kilometres. (10)

This State tax has been challenged by the Motor Vehicle Federation and Motor Vehicle

User's Association before the High Court, decide the Petition.

Relevant Entries:

Entry 56 of List II: "Taxes on goods and passengers carried by roads or on inland waterways".

Entry 23 of List I: "Highways declared by or under law made by parliament to be national highways".

- Q.3 State of Navarashtra is a state of Union of India situated in the central part of India. Elections to the 225 member Legislative Assembly took place on 19th January, 2014. Election Commission notified the elected members of the Legislative Assembly and as per the notification Liberal Socialist Party (LSP) won 84 seats, Republican Party of India (RPI) won 75 seats, Democratic Communist Party (DCP) won 31 seats, Socialist Congress Party (SCP) won 27 seats, and Independent candidates won 8 seats. After elections results, a new alliance as Socialist Democratic Forum (SDF) has been formed in the State of Navarashtra which consists of RPI, DCP and Independent candidates. SDF elected RPI Leader Mr. Navakishore Singh as their leader and informed the Governor about their claim to form new Government in the State. Governor of the State invited LSP leader Ms. Mithila Kurmari to form the Government based on their claim of majority. The Government was formed by Ms. Mithila kumari and 24 MLAs were sworn in as Ministers on 28th January 2014. As per Governor's instruction the new Government proved its majority in the Legislative Assembly on 7th February 2014 with the support of SCP and all Independent MLAs. On August 10th 2014, 7 Independent MLAs informed to the Governor that they are withdrawing support to Ms. Mithila Kurmari Government. Mr. Navkishore Singh Leader of SDF informed to the Governor that he is having the support of 114 MLAs and should be allowed to form the new Government and informed that he can prove the majority before the Legislative Assembly on the same day of formation of Government. Governor in his report to the President of India informed that ruling Government lost majority in the house, accordingly President dismissed Ms. Mithila Kurmari Government and imposed Presidential Rule. On 24th August, 2014, Ms. Mithila Kurmari approached the High Court and filed petition for an order directing President of India to revoke President's Rule. The High Court dismissed the petition against this decision. Appeal has been filed before the Supreme Court by Ms. Mithila Kurmari. On 16th September, 2014 the President revoked the presidential rule and Mr. Navkishore Singh, Leader of SDF formed the Government. Mr. Navkishore Singh has been given one month time by Governor to prove majority. On 3rd of October a group of people attacked DCP leader and killed him. This resulted in continuous violence across the State resulting DCP withdrawing support to Government and SCP declaring support to Government. President of India dismissed the State Government and dissolved the Legislative Assembly. Mr. Navkishore singh challenged the same before the Supreme Court and the court considered this petition along with the appeal filed by Ms. Mithila Kurmari and posted for final hearing.
Decide the Appeal and Petitions. (10)
- Q.4 Indian 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 Uttarakhand established University of Himalaya based on the University of Himalaya Act, 2012. 31 Colleges were affiliated to this University during 2012-13. The Uttarakhand Private Colleges (Regulation and Control) Act, 2013, (10)

passed by the Legislature of Uttarakhand provides for the power of the Government of Uttarakhand 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 Uttarakhand Private Colleges (Regulation and Control) Act, 2013 and permitted the private managements to start new Engineering Colleges under the self-financing scheme. Dehradun Educational Trust, a private management, applied to the Government of Uttarakhand for permission to start a new Engineering College and Government granted permission to the trust to start a private engineering college namely Indian College of Technology (ICT), Dehradun, from academic year 2012-13. Permission has been given to admit 90 students in two batches of mechanical engineering. One of the conditions imposed by the 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 the 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. ICT also got the affiliation from the University of Himalaya. On 17-04-2014, the state Government appointed a committee to enquire about the conduct of the self financing colleges in the State. The Committee reported that ICT has not fulfilled the conditions imposed by the Government. Higher Education Secretary, Government of Uttarakhand, issued a notice to ICT for the non-compliance of the Governmental directions. University by exercising its power under the Act also constituted a committee to enquire into the conduct of the College. The affiliation and permission were withdrawn by the University and the Government through its orders. Orders were challenged before the High Court; the court upheld the Act and decision of the University and Government, Dehradun Educational Trust had appealed to the Supreme Court against this decision. 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.5 “Parliament may by law provide for the adjudication of any dispute or compliant with respect to use, distribution or control of the waters of, or in, any inter-State or river valley”. (10)
Parliament is empowered by the Constitution to exclude, by law, the jurisdiction of Supreme Court or any other Court. This Constitutional scheme in which Supreme Court intervened and played key role in the adjudication of water dispute. Explain the role played by the Supreme Court.
- Q.6 Ms. Geetanjali had obtained a loan of Rs. 10,00,000/- from the Koba Co-operative Bank, Gandhinagar. In every instance there was a default in the repayment of the instalments or the loan amount and consequently violation of the terms of the loan agreement. The lending Co-operative Bank had initiated proceedings for recovery of dues under the provisions of the Gujarat Co-operative Societies Act, an Act Passed by Legislature of Gujarat. Award was passed against Ms. Geetanjali under Section 61 and order was issued under section 71 of the Act. Award and order dated 14-6-2014 issued by the Registrar of the Co-operative Societies, an officer on special duty, ordering (10)



recovery of Rs. 29 Lacs towards the debt due to the Bank. A Petition was filed by Ms. Geetanjali before the High Court challenging the jurisdiction of the authorities under the Gujarat Co-operative Societies Act to adjudicate upon the claims of the Co-operative Bank. The challenge is that the claims of the co-operative bank for recovery of the debts due to them could be adjudicated exclusively by the Tribunal constituted under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, an Act passed by the Parliament.

Petitioner contends that respondent-bank is a "Co-operative Bank:" and "Banking Company" within the meaning of Section 5(c) of the Banking Regulation Act 1949. Section 5(c) defines "banking company" as any company which transacts the business of banking in India and Section 5(b) defines "banking" as "the accepting for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawals by cheque, draft, order or otherwise." They contend that as the debts due to the respondent Cooperative Bank are more than Rs. 10 Lacs it is the Tribunal constituted under the 1993 Act that has exclusive jurisdiction.

On behalf of the State Government and the respondent Co-operative bank it is asserted that the provisions of the 1993 Act have no application and the Tribunal constituted under 1993 Act have no jurisdiction, power or authority to entertain and decide applications from co-operative banks for recovery of debts due to them and therefore the various claim proceedings pending, awards passed or execution proceedings initiated under the provisions of the Gujarat Co-operative Societies Act are competent, valid and operative.

The Gujarat Co-operative Societies Act is relating to Co-operative Societies in the State of Gujarat. The provisions of the Act are relating to registration of societies and matters connected and incidental thereto membership of the society, composition of managing committees of the societies, the rights and liabilities of the members and matters relating to management of societies including the powers and functions of the managing committee, respectively, the rights and privileges, properties and funds and substantive and procedural provisions relating to audit, inquiry, inspection and surcharge in relation to a society; provisions regarding settlement of disputes and section 61 confers arbitral power for recovery of dues of a Cooperative Society; provisions relating to winding-up and cancellation of registration of a society, to appeal, revision and review and offences and penalties, respectively provisions relating to execution of decisions and decrees and to the power of the Registrar to recover amounts and other provisions for recovery includes provisions relating to the financing banks and primary agricultural societies and matters connected therewith and incidental thereto

Relevant Entries of 7th Schedule:

Union List Entry: 43: Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.

Union List Entry: 45: Banking

State List Entry: 32. Incorporation, regulation and winding up of corporation, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

Decide the Constitutionality of the State Act and the proceedings initiated there under.

- Q.7 State of Nayasthan, a State in Union of India. Geographically, it is a state having more forest land. State Legislature Passed Legislation on April, 10, 2014 named as "The Protection and Preservation of Economic Rights of People of Schedule Tribes (ST) Act, 2014". The Act in its Object and reasons provides that it is a legislation to protect the rights of people of ST and to ensure that this section of society is being benefited by (10)

their land. The Schedule of the Act provides for various categories of people and they have been classified as ST for the purpose of this Legislation. Section 16 of the Act prohibits the transfer of title on land by a person of these categories to a person other than Schedule Tribe, if the land proposed to be transferred is a land which a person of these communities got through inheritance, where as there is no prohibition on the transfer of land which has been purchased by a person of these category. Section 16 of the Act provides that any transfer in contravention of the prohibition will make the transfer void. The Act in its Section 17 also provides for a fine of Rs. 2 Lacs on any such purchase by any person, which is being prohibited under Section 16. High Court struck down the Act as arbitrary. State Legislature subsequently amended this Act and added certain sections numbered 23 to 27. Under these provisions it provides for establishment of Tribunal and also provides that contravention of section 16 or disputes can be addressed to the Tribunal and Tribunal's decision will be final. Section 26 bars the Jurisdiction of any Court on the decisions taken under the provisions of the Act. The amended Act has been submitted before the Parliament and the State's request to amend the 9th Schedule and to include the legislation in the 9th schedule got the approval of parliament. Parliament by Constitutional Amendment included "The Protection and Preservation of Economic Rights of People of Schedule Tribes (ST) Act, 2014" into the 9th schedule. The Act and amendment were challenged before the Supreme Court. Decide the Petition.



