

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**
Course: **Centre State Relations and Local Self Government**
Semester-II (Batch: 2015-16)

LL.M. End Semester Examination: May-2016

Date: 13th May, 2016**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 M/s. Neer Pvt. Ltd, a company incorporated under the Indian Companies Act, works in the mining of the manganese in the State of Isthapur, a State of Union of India, under a lease granted by that State under the provision of the Mines & Minerals (Development & Regulation) Act, 1948 (Central Act) and the rules made there under. The State Legislature of Isthapur passed an Act called the Isthapur Mining Areas Development Fund Act 2015 (State Act), where under, certain areas were constituted as “mining areas” and under the powers conferred under that enactment the State Government was empowered to levy a fee on a percentage of the value of the mined ore, the collections being intended for the development of the “mining areas” in the State. The necessary steps for bringing these provisions into operation were taken by the State Government who thereafter made demands on Neer Pvt. Ltd. on 24th November, 2015 for the payment of the said fees. (12)
- The State Act had been enacted by virtue of the legislative power conferred by entry 23 of the State Legislative List reading “Regulation of mines and mineral development subject to the provisions of List I with reference to regulation and development under the control of the Union”. The legislative entry under which the Central Act was enacted was item 54 of the Union List “Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest”.
- The object of the State Act, as disclosed by its preamble, was “the constitution of mining areas” and the creation of “a Mining Area Development Fund” in the State. Section 3 empowers the State Government to constitute and alter the limits of these “mining areas”. The object of the constitution of these “mining areas” was inter alia the provision of amenities like communications, water-supply and electricity and the better development of areas wherein any mine was situated as well as to provide welfare of the residents or workers in any such area within which persons employed in a mine or group of mines reside or work. Section 4 is the provision empowering the State Government to levy a cess or a fee on all extracted minerals from any mines in “a mining area” with a limit, however, that the rate of such levy should not exceed 5 per cent of the value of the minerals. Section 5 makes provision for the constitution of the “Development Fund” into which the cesses raised under Section 4 and other moneys received in that behalf

might be paid and the section also specifies the purposes for which the fund may be utilised. Section provides for the benefit of labour and other persons residing or working in the mining areas (i) the improvement of public health and sanitation, the prevention of disease, and the provision and improvement of medical facilities; (ii) the provision and improvement of water-supplies and facilities for washing (iii) the provision and improvement of educational facilities; (iv) the improvement of standards of living including housing and nutrition, the amelioration of social conditions and the provision of recreational facilities and (v) the provision of roads, tramways and railways and such other communications

The Central Act specifies that the twin purposes of the Act are: (1) the Regulation of mines, and (2) the development of minerals, both under the control of the Union. Sections 4 to 10 provides for 'Undertaking Prospecting and Mining Operations' and relate to the rules and regulations under which prospecting licences and mining leases might be granted, the period for which they may be granted or renewed, the royalties and fees that would be payable on them etc. The procedure for obtaining prospecting licences or mining licences provided in Sections 10 to 12. Sections 13 to 17 are grouped under a caption which reads, "Rules for regulating the grant of Prospecting Licences and Mining Leases". Section 13 empowers the Central Government by notification, to make rules for regulating the grant of prospecting licences and mining leases in respect of minerals. Section 18 is the provision relating to the other object of the Act, "The Development of minerals". Section 18(1) provides "It shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and development of minerals in India, and for that purpose the Central Government may, by notification in the Official Gazette, make such rules as it thinks fit".

The imposition of fees and State Legislation has been challenged before the High Court and the petition is allowed based on Article 254(1). State challenged the decision before the Supreme Court. Decide the Case on merit.

- Q.2 State of Uttar Bharat is a State of the Union of India, election to the 160 seats of the State Legislative Assembly took place on 24th February, 2015. On 28th February, 2015 Election Commission notified the list of elected members. The party position as per this notification provide that Socialistic Communist Forum (SCF) won 77 seats, Communist Marxist Party (CMP) won 17 seats, Lokshakthi Congress (LC) won 62 seats, Democratic Janatha Party (DJP) won 4 seats. After election under the leader ship of Mr. Mahadev Kumar, leader of SCF, a new front has formed in Uttar Bharat known as Uttar Bharat Front (UBF). UBF was consisting of SCF and CMP. Mr. Mahadev Kumar was elected as the leader of UBF and he formed the new Government in March 2015. The ministers were elected from the parties, 20 from SCF and 5 from CMP. In October, 2015 DJP declared their support to the ruling Government and joined with UBF. Two MLAs of DJP were made as ministers, this provoked CMP and they demanded three more minister posts and the same was turned down by SCF. In December, 2015 CMP the decided to quit the UBF and withdrawn the support of the Government and the same was informed to the Governor. During January, 2016, two MLAs of DJP informed the Speaker that they formed a new party named as Uttar Bharat Janatha Party (UBJP) and continued to support the Government. On 2nd April 2016 UBJP withdrew the support to the Government. A new forum known as Congress Democratic Forum (CDF) was announced by the parties consisting of LC, CMP and UBJP and elected Mrs. Harshini Singh as the leader of the forum and approached the Governor and claimed to form the new Government. Governor instructed Mr. Mahadev Kumar to prove majority within one week. Speaker disqualified the UBJP MLAs under Anti-Defection Law. On 13th April 2016 Mahadev Kumar lost majority as the confidence motion failed before the

Legislative Assembly. Fourteen MLAs of SCF voted against the confidence motion. On 14th April 2016, the Governor had sent a report to the President. In that report, he informed the president that Government lost majority in the house and recommended for Presidential Rule, on the same day State Government was dismissed and Legislative Assembly was suspended. Mrs. Harshini Singh filed a Writ Petition before the High Court and the Court dismissed the Petition and held that Presidential Proclamation is correct. The decision was challenged before Supreme Court and appeal was filed on 7th May, 2016. On 10th May, 2016 the Parliament approved the proclamation and the Governor dissolved the Legislative Assembly on 11th May, 2016. Dissolution of Legislative Assembly has been challenged before the Supreme Court by MLAs and the Supreme Court clubbed the appeal and the petition. Decide the Cases.

Q.3 The River Jaladhara originates in the North East of Vananadhi District of Neerrashtra, a State of Union of India, and continues its journey for 198 kilometres before entering the Bay of Bengal. Out of the said 198 kilometer, a length of 144 kilometres lies in the State of Neerrashtra, 16 kilometres forms the border between the State of Neerrashtra and SuryaPradesh, a State of Union of India, and the remaining 38 kilometers lies within the State of Surya Pradesh. The said river and the valley is fed by the South-West monsoon beginning in the middle of June and ending in the month of October each year and is followed by the retreating monsoon and North-East monsoon till the end of January. According to the State of Neerrashtra, about 80% of the total volume of water comes from the catchment area lying in their State. While the farmers in Surya Pradesh utilize 16 TMC of water from the river, the inhabitants of Neerrashtra utilize 124 TMC for drinking purposes and water tanks etc. in the up-stream and downstream of Vananadhi. During the period from 1990-94, the State of Surya Pradesh proposed the construction of Naveen Canal and Niyal Canal across the Jaladhara river. An Agreement was signed between the Chief Engineers of Neerrashtra and the Surya Pradesh. Surya Pradesh completed the construction of Naveen Canal in the year 2004. Thereafter, it also started constructing Niyal Canal. Several meetings were held between the officials, including the Chief Ministers of the two States, and Agreements were signed pertaining to allocation of water of the Naveen Canal. Based on the sensitivity study, State of Neerrashtra raised the contention of revision of the height and length of the walls of Canals, and took a position that the design of which will need to be agreed by the Neerrashtra Government. At this stage, while considering the technical design of the Niyal Canal, the Government of Surya Pradesh announced a new project by the investment of Rs.1050 crores and announced that the waters of the Jaladhara river would be diverted at Vananadhi to a 34 kilometers long flood flow canal and be stored in the Nilamandalam reservoir to irrigate 1.07 lakh acres of land by utilizing 19 TMC of water. It was apprehended by the State of Neerrashtra that the said proposed project would deprive the villagers of Neerrashtra lying on the opposite bank in the downstream from even dry-weather flow and there was also a possibility of shifting of the river course itself. Government of Neerrashtra, rejected the new project. State of Surya Pradesh continued with its construction work on the flood flow canal by continuing with land acquisition and other preliminary works. State of Neerrashtra approached the Supreme Court; they also approached the Union of India in 2006. However, no action was taken by the Government of India with regard to the request made by the Government. Decide the case. (12)

Q.4 Explain the Case Law in GVK Industries. Ltd. and Anr. v. The Income Tax Officer and Anr (2011)4 SCC 36. Analyse the impact of this decision in subsequent judicial decisions. (12)

Q.5 (a) Constitutional validity of the U.P. Transport Service Development Act was questioned by Mr. Deepchand because the Act authorised the State Government to (4+4+4=12)

make scheme for nationalisation of Motor Transport in the State. The Act was passed by the State because the Motor vehicles Act, which is a Union Law, did not contain any provision for the nationalisation of Motor Transport Services. Later Parliament amended the Motor Vehicles Act and incorporated provision for nationalisation. Mr. Deepchand challenged the State Law in this context of having Union Law in the same field. Decide the validity of the State Act.

Relevant Entry of 7th Schedule: Entry 35 of the Concurrent List: Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.

- (b) Elucidate the Supreme Court decision in special reference Case 1 of 2001, 2004 (4) SCC 489
- (c) Parliament by exercising its legislative competence passed the Expenditure tax Act. The Act has been challenged by a leading business firm of Mumbai. Its contention before the Court was that the expenditure tax imposed on them by the Expenditure Tax officer is unconstitutional because of Entry 62 in List II, which reads "Taxes on luxuries including taxes on entertainments, amusements, betting and gambling". Decide the dispute.

Part-B

- Q.6 The Karnataka Panchayat Raj Act, 1993 introduced three tier panchayat raj system in the State i.e., Grama Panchayat, Taluk Panchayat and Zilla Panchayat. The Ministry of Rural Development and Panchayat has recently accepted the expert committee's recommendation to bring proposed amendments to the Panchayat Raj Act, 1993 to introduce revised eligibility criteria for contesting elections and also disqualification of members of the above offices on certain additional grounds. The experts committee proposes to bring an amendments to the Act, particularly to the provisions pertaining to the qualifications and disqualification for the above offices. The proposed amendments recommends to introduce qualification of 7th class, 10th class and 12th class pass to contest for the elections for Grama panchayat, Taluk Panchayat and Zilla Panchayat under Sections 11, 127 and 166 simultaneously. The proposed amendments also recommends to introduce new disqualification clauses under sections 12, 128 and 167 for Grama Panchayat, Taluk Panchayat and Zilla Panchayat, which disqualifies the members of the above offices, neither eligible to contest the election to any one of the offices under the Act nor can they continue in office if they incur any one of the disqualifications, after having been elected. The grounds proposed by the committee for disqualification are (i) persons against whom charges are framed in criminal cases for offences punishable with imprisonment for not less than ten years, (ii) persons who fail to pay arrears, if any, owed by them to either a Primary Agricultural Cooperative Society or District Central Cooperative Bank or District Primary Agricultural Rural Development Bank, (iii) persons who have arrears of electricity bills, (iv) persons who do not possess the specified educational qualification and lastly (v) persons not having a functional toilet at their place of residence. Discuss whether above proposed amendments to the Karnataka Panchayat Raj Act, 1993 is sustainable in the light of the provisions of the Constitution and decided case laws. What is your opinion on the same? (10)

- Q.7 Write short notes on **any two** of the following: (2x6=12)
- (a) Reservation in Panchayat Raj Institutions
- (b) Grama Nyayalaya
- (c) e-panchayat
