

SUPREME COURT OF INDIA
Advocate-on-Record Examination, June 2013

PAPER-I
PRACTICE AND PROCEDURE

Time: Three Hours

Total Marks: 100

Instructions

- 1. *All questions are compulsory*
- 2. *All questions carry equal marks of 20 each. Where a question is divided into sub-questions, the marks allotted to each sub-question are clearly indicated.*
- 3. *Clarity, brevity and legibility are expected, of course!*

- 1. Discuss the concept of a 'curative petition,' the situations in which you will advise a client to file such a petition and the procedural safeguards that you will observe if you were to file such a petition (20 marks)
- 2. a. Your client has challenged an assessment order passed under the Kerala Value Added Tax, under Article 226 of the Constitution without resorting to the alternative remedy of appeal, on the ground that a question of interpretation of the relevant section is involved. A Single Judge of Kerala High Court dismisses the writ petition and a Division Bench dismisses the writ appeal and you have advised filing of a SLP. Draft a proper prayer for interim relief in your SLP. (5 marks)
- b. The Division Bench of the Delhi High Court has struck down the provision of a Central Act as unconstitutional. The Central Government decides to file a SLP. Draft an appropriate prayer for interim relief. (5 marks)
- c. Your client has been convicted under Section 302 of the Indian Penal Code and sentenced to life imprisonment by the Sessions Judge, Madurai. First appeal to the Madras High Court (Madurai Bench) has been dismissed. Your client wants to file a SLP. Draft an appropriate prayer for bail. (5 marks)
- d. Draft a prayer for interim relief in an application for transfer under Article 139A of the Constitution (5 marks)

(Total 20 marks)

3. Write short notes on: (5 marks each)
- a. Senior Advocate
 - b. Advocate-on-Record
 - c. Section 406 of the Code of Criminal Procedure
 - d. Section 25 of the Code of Civil Procedure

(Total 20 marks)

4. Describe briefly each of the following writs: (4 marks each)
- a. Habeas Corpus
 - b. Mandamus
 - c. Prohibition
 - d. Quo Warranto
 - e. Certiorari

5. What do you understand by "moulding the relief" under Articles 136 and 142 of the Constitution? Illustrate your answer with a few cases (few means few, not many!). (20 marks)

Paper II - Drafting

SUPREME COURT OF INDIA

ADVOCATE-ON-RECORD EXAMINATION – JUNE 2013

Time: 3 Hours

Total Marks: 100

INSTRUCTIONS

1. Please attempt four questions.
2. All Questions carry equal marks
3. You may use assumed Names, Dates and other details within the framework of the questions.
4. Weightage will be given for conceptual clarity. Brevity as also reference to Case Laws.
5. Do not draft affidavits, certificates etc., and confine yourself to the core part of the drafts of petitions.

1. The Department of Overseas Communications service was originally part of the Ministry of Communication, Union of India. The Radio Telecommunication Corporation Ltd, a then existing Private Company along with its employees were taken over in the year 1974 by the Government of India and the employees were absorbed in the Department. Fresh recruitments also took place later. Number of employees were thus working in the department for almost 2 decades from the year 1974 onwards.

In the year 1991 the Department was converted into a public sector Corporation and named VSNL. Options were given to existing employees to be absorbed in the new corporation. After settlement of certain conditions of service including pension, VSNL en-masse absorbed the erstwhile employees of Overseas Communication Service.

Between the years 1995 – 2000 Government of India divested its shareholding in VSNL in favour of Banks and Financial Institutions. In the year 2002 VSNL divested 25% share in favour of a consortium of private companies. The due process of disinvestment policy was strictly followed. Currently the consortium holds more than 52% shares in VSNL. Certain agreements were entered into between VSNL and the consortium which inter alia provided against retrenchment for a period of one year from acquisition of shareholding and also against dismissal or termination except in accordance with the Regulations and Standing orders of the consortium. In the year 2005, services of certain number of managerial employees were terminated on payment of three months' salary in lieu of three months' notice. This was said to be in terms of the letter of appointment issued by VSNL at the time of absorption.

Writ petitions were filed before the High Court of Bombay challenging the order of termination. The Division Bench of the High Court dismissed the Writ petitions on the ground that the petition was not maintainable against VSNL after it transferred majority share holdings to the consortium.

Draft a special leave petition on behalf of the employees, raising issues involving Article 12 and elaborating how the new VSNL would be "other authority" within the meaning of Article 12 of the Constitution. Refer to relevant cases on the question of the nature of functions of VSNL namely its public function of dealing with overseas telecommunication services.

In *Sukhdev Singh vs. Bharat Ram* (1975) 1 SCC 421 Mathew J. in his concurring judgment has observed as under:

"I also wish to make it clear that I express no opinion on the question whether private corporations or other like organizations, though they exercise power over their employees which might violate their fundamental rights, would be 'State' within the meaning of Article 12."

Can you make use of the following observations :

"Therefore, the ability conferred upon a person by the law to alter, by his own will directed to that end, the rights, duties, liabilities or other legal relations, either of himself or of other persons must be present *ab extra* to make a person an 'authority'. (*Som Prakash Rekhi v. Union of India* - 1981 (1) 447.)

Can you formulate any new principles for designating an entity as "other authority" in the context of globalization and privatisation.

Confine your answers to substantial questions of law and grounds.

2. Articles 21A & 45 of the Constitution read as follows:

Article - 21A - Right to education: The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

Article 45 - Provision for early childhood care and education to children below the age of six years. The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years.

Both Articles 21A and 45 use the word "provide". Being a provision in part IV of the Constitution viz Directive Principles, Article 45 uses the word, "endeavor"

In pursuance of Article 21-A, Parliament has enacted the Right of Children to Free and Compulsory Education Act, 2009. Section (n) of the Act defines School as under:

Section (n). "school" means any recognized school imparting elementary education and includes-

- (i) A school established, owned or controlled by the appropriate Government or a local authority;
- (ii) An aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;
- (iii) A school belonging to specified category; and
- (iv) An unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;

Sections 12(1), 35 (1) (2) of the Act read as follows:

12(1) For the purposes of this Act, a school-

- (a) specified in sub-clause (i) of Clause (n) of Section 2 shall provide free and compulsory elementary education to all children admitted therein;
- (b) specified in sub-clause (ii) of Clause (n) of Section shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent;
- (c) specified in sub-clauses (iii) and (iv) of Clause (n) of Section 2 shall admit in Class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion.

Provided further that where a school specified in Clause (n) of Section 2 imparts pre-school education, the provisions of Clauses (a) to (c) shall apply for admission to such pre-school education.

Section 35. Power to issue directions.- (1) The Central Government may issue such guidelines to the appropriate Government or, as the case may be, the local authority, as it deems fit for the purposes of implementation of the provisions of this Act.

(2) The appropriate Government may issue guidelines and give such directions, as it deems fit, to the local authority or the School Management Committee regarding implementation of the provisions of the this Act.

Several state Governments issued guidelines to the concerned authorities under Section 35 of the Act, to be followed in the making of admission to classes both below and above elementary education. These guidelines are to be abided by unaided Private Education Institutions also.

- (i) Draft a writ petition under Article 32 on behalf of - (i) unaided Minority Institutions and (ii) Unaided non-minority Institutions challenging the

constitutional validity of the Act and guidelines issued by the respective State Governments.

- (ii) **Alternatively draft only a common counter affidavit on behalf of Union of India and National Capital Territory of Delhi opposing the Writ petition.**

What meaning will you grant or assign to the words 'provide' occurring in Articles 21A & 45. How will you reconcile the fundamental right of Educational Institutions claimed under Article 19(1) (g) and recognized in TMA Pai Foundation vs. State of Karnataka - 2002 (8) SCC 481 and fundamental right to education guaranteed to children under Article 21 A. Explain why minority institutions be exempted from the operation of Article 21A.

Confine your draft petition to statement of issues and grounds only. What reliefs will you ask for in the petition.

3. In Sandur Magnes & Iron Ores Ltd. v. State of Karnataka 2010 (13) SCC 1 - The Supreme Court considered the question of the legality of certain decisions taken by the State Government regarding grant of Mining leases. One of the issues was as to whether the State Government could have granted mining leases entirely based on past commitments and consequently whether the State Governments have power to frame policy decisions dehors the Mines and Mineral (Development & Regulation) Act, 1957.

Reliance has been placed by the parties on a report of the committee to review the existing laws and procedures for regulation and development of Minerals. Union of India was a party to the litigation. However, the concerned department of Mines had not been properly arrayed as a party. Grievance arose that the Union of India did not get adequate opportunity of being heard. It is also found that certain portions of the expert committee report have been misquoted in the judgment. Union of India is of the view that the reasoning in the judgment and the conclusions reached on the application of the Section 11 of the Act are coloured by the wrong references to the Expert Committee Report.

Draft a review petition on behalf Union of India seeking review of the judgment and also seeking oral hearing of the application. Even though Rule 1 Order XL of Supreme Court Rules, 1966 refers to the grounds of review set out in order XLVII Rule 1 of the Code of Civil Procedure, state special grounds if any for review of the judgment of a Supreme Court having regard to the finality of its jurisdiction.

Your petition should be confined to the relevant statement of case law on the point and to the grounds of review.

4. Certain extent of lands within the jurisdiction of the Mumbai Municipal Corporation were leased out to party "A" in the year 1962. In terms of the development plan the lease was for general industrial purposes. For about 25 years, the lessee used the leased land for the said purposes. Thereafter application was made to the corporation for change of land use for general industrial to residential. In exercise of the authority available under Section 37(2) of the Mumbai Municipal Corporation Act, the State Government issued permission in respect of major portion of the leased land, enabling conversion.

The planning authority initially granted approval of building plans for constitution of only X number of buildings. However revised building plans were submitted few years later seeking approval for larger number of buildings. There were some disputes regarding the legality of the revised building plans. The corporation issued a stop work notice under the Act.

During the pendency of these proceedings, groups of developers acting on behalf of the lessee under a contract executed agreements with prospective buyers. There is some dispute as to whether the buyers of these flats were aware of non-approval of the revised building plans. Regardless of the building plans controversy, large number of buildings were completed and also occupied by members of the Housing Societies who were the prospective buyers.

The societies filed applications before State Government for regularization of the buildings. In the meanwhile the Corporation issued notices for demolition of all structures which were not in conformity with the approved plans.

Suits were filed by the Housing Societies seeking mandatory injunction against the notice issued by the Corporation. The Trial Court dismissed the applications for temporary injunction. Appeals were filed in the High Court against the said rejection. Writ Petitions seeking a writ of mandamus for regularisation of all buildings and the appeals were heard together, by a common judgment. The High Court dismissed both the Writ Petitions and the Appeals. Individual Members, as well as Housing societies have approached you.

Draft a Special Leave Petition with grounds in support of the prayer for a writ of mandamus for regularisation of the alleged illegal constructions. How would you establish that the constructions are not hit by the law? Explain how a writ of mandamus will lie. Can you plead that the lack of knowledge regarding the non-approval of building plans could be a ground in relaxation of the strict requirements of law stated in *Royal Paradise Hotel vs. State of Haryana*, 2006 (7) SCC 597 namely that construction made in the teeth of notices for stopping unauthorized construction do not deserve regularization? The Supreme Court in several recent judgments has expressed its reservation against prayer for regularisation of unauthorized constructions. Your special leave petition, should deal with these

points of view and set out grounds, stating non-applicability if any of the views expressed in the following cases:

- i) Friends Colony Development Committee vs. State of Orissa – 2004 (8) SCC 733
- ii) Shanti Sports Club v. Union of India – 2009 (15) SCC 705.

Your petition should be confined to only questions of law and grounds.

5. In *Sucha Singh v. State of Punjab*, (2003) 7 SCC 643, the Supreme Court has observed as under :-

"..... The prosecution is not required to meet any and every hypothesis put forward by the accused. ... A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some inevitable flaws because human beings are prone to err, it is argued that it is too imperfect."

The object of diligent and sensitive compliance with Section 313 Cr. P.C., thus assumes significance. In the context of incriminating evidence, regardless of its nature or reliability, the incriminating circumstances must be clearly and specifically brought to the attention of the accused. It is not merely a ritual of drawing attention to all evidence led by the prosecution. If there is a failure to closely articulate the incriminating circumstances, or if the prosecution has withheld information or materials from being part of the evidence, even though seized or collected, the accused may have reason to complain regarding violation of Section 313 Cr.P.C., in the sense that by such materials being with held, the accused is disabled to explain the incriminating circumstances.

Is there a right to fair trial dimension in Section 313 of Cr.P.C.?

In *V.K. Sasikala v. State*, (2012) 9 SCC 771 has observed as under :-

".... the examination of an accused under Section 313 Cr.P.C. does have a fair nexus with the defence that he may choose to bring, if the need arises. Any failure on the part of the accused to put forward his version of the case in his examination under Section 313 Cr.P.C. may have the effect of curtailing his rights in the event the accused chooses to take up a specific defence and examine the defence witnesses. Besides the answers given by the accused in his examination, if incorrect or incomplete, may also jeopardise him as such incorrect or incomplete answers may have the effect of strengthening the prosecution case against the accused."

Certain criminal proceedings against the former Chief Minister of Tamil Nadu and another person, pending in the Special Court in Chennai stood transferred to a Special Court in Karnataka, in year 2003. The criminal cases pertained to the year 1997 and have been pending since then. Directions were given while transferring these proceedings for expeditious disposal. Certain interim proceedings of the trial court were challenged and brought up to the Supreme Court. The trial got halted at several stages. The accused were said to be responsible for the delay.

On completion of the trial, the matter was posted for examination of the accused under Section 313 of Cr.P.C. This commenced in the year 2012. One of the accused after having answered large number of questions moved an application seeking certified copies of certain non-exhibited documents which were in the custody of the prosecution. Both the trial court and High court on appeal rejected the application. Yet another application for inspection of some set of documents also came to be rejected.

The accused has approached you for the filing of a Special Leave Petition. Are there any substantial question of law which can be raised on behalf of the accused? How would you link the scheme of Section 313 Cr.P.C. to Article 21 of the Constitution.

Draft a Special Leave Petition under Article 136 raising relevant grounds and confine your petition to questions of law and grounds.

- 6. The Uttar Pradesh Industrial Area Development Act, 1976 provides for preparations of plans for the Development of Industrial Areas and to lands in the Industrial Development Area. Section 7 of the Act enables the Industrial Development Authority under the Act to transfer by auction, allotment or otherwise any land or building to it.

Certain villages were notified in the year 1994 as part of the Greater NOIDA Industrial Development Area. In the year 2000 the authority prepared a Development Plan for Greater NOIDA 2021. Respective land users were specified in the Development Plan Villages X & Y were shown in the plan as industrial.

Large extent of land in the said villages were acquired for planned Industrial Development Notifications under Section 4 of Land Acquisition Act was issued on 05.05.2009. Section 5A of the Land Acquisition Act was dispensed with, and notifications under Section 17(1) (4) of the Act came to be issued invoking grounds of urgency as the process of hearing objections would entail undue delay and thus adversely affect planned industrial development. This was followed by a notification under Section 6(1). A further notification was issued changing the land use of acquired land from industrial to housing and objections were invited.

Following the conversion of land use plan and the Section 6 declaration the affected land owners filed writ petitions in the High Court, placing reliance upon the judgment of the Supreme Court in Anand Singh v. State of Uttar Pradesh 2010 (11) SCC 242 and Radhe Sham v. State of Uttar Pradesh 2011 (5) SCC 553, the High Court was pleased to declare the entire acquisition process particularly the application of Section 17, is illegal and colourable exercise of power. The High Court also found the conversion of land user was not in terms of the 1976 Act.

It is a matter of fact that number of real estate establishment and builders in whose favour the acquired lands were transferred, were not heard by the High Court.

Draft a special leave petition on behalf of State of Uttar Pradesh, raising substantial questions of law involving the 1976 Act and the Land Acquisition Act, 1984. Question the wisdom of the High Court quashing the entire acquisition and also that the those land owners who have accepted compensation are disentitled to seek any relief.

Write brief synopsis and draft appropriate questions of law and relevant grounds.

7. The juvenile Justice Act, 1986 was replaced by Juvenile Justice (Care and Protection of Children) Act, 2000. The Act came to be enacted to give effect to and towards realization of objectives contained in the Articles 39(2) (f), 45 and 47 of the Constitution. Article 15(3) enables special provisions to be made in favour of Children. The Act also sought to incorporate - *the standards prescribed in the Convention on the Rights of the Child, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) and all other relevant international instruments.*

By Act 33 of 2006 , Section 7A came to be inserted. The said provision reads as follows:

7-A. Procedure to be followed when claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the Court shall make an enquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be.:

Provided that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the Rules made

thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under Sub-Section (1), it shall forward the juvenile to the Board for passing appropriate orders, and the sentence if any, passed by a court shall be deemed to have no effect."

Certain rules have been framed in the year 2007 and Rule 12 thereof inter alia provides as follows:

12(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof,

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat.

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

One Abuzar Hossain was convicted for an offence under Section 302 read with Section 34 Indian Penal Code alongwith several others. In the Section 313 Cr.P.C. statement, it was claimed on his behalf that he was juvenile on the date of the incident and as such could not have been tried with the normal criminal Court. It emerged from the judgments of the trial court and the High Court that the issue of juvenility was not clearly pressed at any stage and except the Section 313 Cr.P.C. statement no evidence was led.

The Supreme Court occasion to consider the question of stage of determination of the age of the accused, even before the insertion of Section 7A of the Act in the following cases-

1. *Gopinath Ghosh v. State of West Bengal* – 1984 Supp. SCC 228 –
2. *Bhoop Ram v. State of U.P.* – 1989 (3) SCC 1
3. *Pradeep Kumar vs. State of U.P.* 1995 Suppt. 4 SCC 419

You are instructed to draft a Special leave petition on behalf of Hossain claiming the benefit of Section 7A of the Act and to argue that the issue of juvenility can be raised at any stage even before the Supreme Court, regardless of the failure to raise the same earlier. How would you raise issues involving Article 21 of the constitution?

Assuming that such a ground was not taken in the special leave petition can such a plea be raised in any other proceedings?

Examine the High Constitutional objective behind Section 7A and frame substantial questions of law and raise grounds to show that having regard to the following observations of the Court, the obligation to determine the age cannot be subjected to any technicalities.

"Can the advantage of a beneficial legislation be denied to such unfortunate and wayward delinquents? Can the misfortune of the accused never going to a school be followed or compounded by denial of the benefit that the legislation provides in such empathic terms, as to permit an enquiry even after the last Court has disposed of the appeal and upheld his conviction? The answer has to be in the negative."

