

IN THE SUPREME COURT OF INDIA
Advocate-on-Record Examination June-2014

Paper-I

PRACTICE AND PROCEDURE

Time: Three Hours

Total Marks: 100

INSTRUCTIONS

(I) Answer any five questions

(II) All questions carry equal marks

1. What is the source of authority of the Supreme Court to make the Rules for regulating practice and procedure of the Court? When were they made first? What are the last major changes brought about in them?
2. As a general rule appeals or matters are heard by a Bench of two Judges? Enumerate the categories of matters which can be disposed of by a Single Judge?
3. What are the basic differences between the powers of High Courts exercisable under Section 100 (Second Appeal) and Section 115 (Revision) of the Code of Civil Procedure?
4. What are the rules of the Supreme Court relating to costs? Is intervener entitled to costs? Can Advocate-on-Record be personally saddled with costs and, if yes, under what circumstances?

5. Write a brief note on the power of the President of India to consult Supreme Court under Article 143 of the Constitution and the procedure prescribed by the Supreme Court Rules for such reference.
6. What is the period of limitation for filing criminal appeal? When does the period commence? What are the essential requirements in a memo of appeal, when the appellant is sentenced to term of imprisonment?
7. Explain the procedure for making an application for review in (i) civil and (ii) criminal proceedings. Is further application for review of an order in the same matter maintainable?
8. What are the Supreme Court's power of transfer of proceedings from one Court to the other under (i) the Constitution of India (b) the Code of Civil Procedure and (iii) the Criminal Procedure Code?

SUPREME COURT OF INDIA
ADVOCATES ON RECORD EXAMINATION JUNE 2014
PAPER II DRAFTING

Time 3 hours

Total Marks 100

INSTRUCTIONS

1. Please attempt all the questions
2. All questions carry equal marks
3. You may assume Names, Dates and other details within the framework of the questions
4. Weightage will be given for Clarity and Brevity as also References to Case Laws.

Q No. 1

One AB having served a Municipal Council as an Accountant for five years, resigned and contested elections to the State Assembly. He was elected and taken in the Cabinet as a Minister. Since then he continuously held the office as Minister for few years whereafter he assumed the position as Chief Minister of the State.

Though AB came from modest background, presently the elder son of AB, heads a business empire worth hundreds of crores showing phenomenal rise in fortunes. The other son, a practicing doctor, has extensive properties in his name including agricultural lands apparently yielding great deal of income. The spouses of AB and his sons, though housewives, also have extensive properties in their names.

Questions were raised in the Assembly about the extent of properties of AB and family members and source of acquisition but the party headed by AB was successful in thwarting attempts to inquire into such aspects.

A public spirited individual with impeccable profile approaches you to draft an appropriate petition in the Hon'ble

Supreme Court . He is of the view that the source of acquisition of wealth in the names of the members of family of AB is nothing but abuse or misuse of power by him. Given the position and authority of AB, your client was apprehensive that no effective investigation would materialize at the hands of the State functionaries. Even then he did approach the State police with written complaint giving certain particulars. However the State police did nothing in the matter.

Draft an appropriate petition seeking, inter alia, independent investigation into the matter including probe into issues regarding acquisition of wealth and properties and the fact that such wealth is being projected as having been lawfully acquired.

Draft the petition including Cause title, brief facts, grounds and prayers (without any applications and list of dates)

Q No. 2

Article 282 of the Constitution of India reads as under:-

“282. Expenditure defrayable by the Union or a State out of its revenues--- The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.”

ABC a political party, while releasing its election manifesto for the State Assembly elections of 2006, announced a scheme for free distribution of colour television sets (CTVs) to each and every household which did not possess the same, if the said party were elected to power. This scheme was challenged by your client by filing a writ petition before the High Court on the ground that the expenditure to be incurred by the State Government for its implementation out of the State exchequer was unauthorized, impermissible and ultra vires the constitutional mandates. ABC having emerged victorious in the elections, the then State Government decided to implement the scheme in a phased manner. A committee was constituted headed by the then Chief Minister in order to ensure transparency in the implementation of the scheme. Your client filed second writ petition alleging that the scheme was a corrupt practice to woo the gullible electorates with an eye on the vote bank. Reliance was placed on Section 123 of the Representation of the People Act 1951 which, inter alia reads as under:

“123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:-

- (1) "Bribery", that is to say,--
- (2) Any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the objects, directly or indirectly, of inducing—
 - (a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election; or
 - (b) an elector to vote or refrain from voting at an election, or as a reward to—
 - (i) a person for having so stood or not stood or for having withdrawn or not having withdrawn his candidature; or
 - (ii) an elector for having voted or refrained from voting
-----"

The High Court dismissed both the writ petitions holding that the action of the Government in distributing the CTVs cannot be branded as a waste of exchequer and that Section 123 of the Representation of the People act would not apply to the cases in question.

Draft an appropriate petition for special leave to appeal against the decision of the High Court dismissing both the writ petitions.(without any applications and list of dates)

Q No. 3

Extending the facts stated in Q.No.2 further, during the pendency of the Appeals after grant of Special Leave by the Hon'ble Supreme Court, pursuant to fresh elections to the State Assembly being announced in 2011, the ruling party ABC announced its election manifesto with a volley of free gifts. In the same manner the rival party XYZ also announced its election manifesto with free gifts to match and outdo the gifts offered by ABC and promised to distribute free of cost the following items viz. grinders, mixies, electric fans, laptop computers, 4 grams of gold, Rs. 50000 cash for women's marriage etc. if said party XYZ were elected to power. XYZ was elected to power and a policy decision was taken by the State Government to distribute the abovesaid freebies, in order to fulfill the promise made in the election manifesto. A writ petition was filed in the High Court challenging the schemes of both the parties. It was submitted inter alia that the practice of political parties offering freebies to the electorates was not conducive to free and fair elections and the matter therefore called for issuance of appropriate guidelines.

Since the earlier view taken by the High Court is pending consideration by the Hon'ble Supreme Court the State is desirous of filing a petition for transfer of this writ petition to the Hon'ble Supreme Court.

1. Draft an appropriate Transfer Petition on behalf of the State Government (with application for interim relief but without list of dates)
2. Draft a common counter affidavit on behalf of the State Government justifying its actions and for dismissal of all the petitions

Q No. 4

(A) Under Order XXXIX of the Supreme Court Rules, who are competent to file a petition calling in question the election of the President or the Vice President of India? Every such petition must bear a certificate under the Rules. What kind of certificate is contemplated? What relief can be claimed in such petition and who must be impleaded in the petition ?

- (3)
 1. Once the pleadings in a writ petition under Article 32 of the Constitution to the Hon'ble Supreme Court of India are complete, the Rules require a "written brief" to be filed . Indicate what the "written brief" is to contain.
 2. In a petition for special leave to appeal in civil cases your client wishes to produce documents which were not part of the Court below. Indicate the procedure and the nature of the explanations required to be given in order to do so.

SUPREME COURT OF INDIA

Advocates – on – Record Examination

June 2014

Question Paper III

Advocacy and professional Ethics

1. Paper III of the Regulation Regarding Advocates-on-Record Examinations used to read "(III) Elementary Knowledge of Book Keeping & Accounts and Professional Ethics". Paper III now reads "Advocacy and Professional Ethics". Please state when the description of Paper III was changed & the reasons for the change.
2. Does an Advocate have a lien for his fees on the litigation papers entrusted to him by the client? Discuss.
- 3(a). If any Advocate is guilty of professional or other misconduct, to whom is a complaint in that regard to be made?
- (b) Describe the procedure which that authority is required to follow in order to dispose of the complaint.
- (c) What are the orders which that authority may make while disposing of the complaint?
3. Is an Advocate entitled to maintain a website giving information about himself? What are the informations which such website may contain?
4. The Bar Council of India Rules provide that an Advocate shall not appear in or before any Court or Tribunal or any other authority for or against an organization or an institution, society or corporation if he is a member of the Executive Committee of such organization or institution or society or corporation. Discuss the reasons for such a rule.
5. A lawyer is an officer of the Court and his primary duty is to the Court. However at all times he should act at the best interest of his client. How can these duties be reconciled? Discuss.
6. A lawyer should defend a person accused of a crime regardless of his personal opinion as to his guilt. Discuss the logic behind this Rule.

Questions for AOR Examination June 2014

P-IV (Leading Cases)

- (1) What was the challenge to the constitutional validity of the Administrative Tribunals Act 1985 in L Chandra Kumar? Do tribunals constituted under Article 323 A and 323 B have the power to strike down a rule of regulation on the ground that it violates the provisions of the Constitution of India? On what basis did the Supreme Court hold that a writ petition would lie against a decision of the Tribunal under Article 226 of the Constitution of India? Did the court differ from its own earlier ruling in Samapath Kumar 1987(1) SCC 124, how and why? Would the outcome of the decision have been the same, if the Administrative Tribunals Act had provided a direct appeal to the Supreme Court?
- (2) What is the concept of a Curative petition? Under what circumstance would you issue a certificate that a case was fit for filing a Curative petition? Can you give an illustration of a case, which you would certify as fit for filing a curative petition, or in the alternative, mention any case in which the Supreme Court has issued notice on a Curative Petition and has heard it?
- (3) What was the challenge to the maintainability of the Reference in In re Special Reference 1 of 2012, 2012 (10) SCC 1? Why was the reference entertained despite the fact that the review petition against the judgment in Center for Public Interest Litigation versus UOI 2012(2) SCALE 180 was withdrawn? Briefly outline the separate opinion of Justice J.S. Kehar? To what extent can the courts undertake judicial review of policy decisions of an economic nature?
- (4) Why did the Supreme Court order a retrial of the case in Zahira Habibulla Sheikh 2004(4) SCC 158? What is the concept of fair trial as articulated by the court in this case ?
- (5) Why did the Supreme Court in Selvi versus State of Karnataka 2010(7) SCC113 hold that the involuntary administration of the narco and similar scientific tests unconstitutional ? Explain the concept of "substantive due process" in relation to Article 21 of the Constitution of India.

- (6) Explain the ruling of the Court in Danial Latifi versus Union of India 2001(1)SCC 305? Was the Muslim Women's Protection of Rights on Divorce Act 1986 struck down, if not why not? How did the court interpret the expression : "reasonable and fair provision to be made and paid within the iddat period" ? Would you have struck down the Act, and if so why?
- (7) Explain the concept of equality in Article 14 of the Constitution of India. How was it applied in D S Nakara versus Union of India 1983(1)SCC ?
- (8) Explain the distinction between a 'judicial function' and an 'administrative function' as dealt with in SBP and Co versus Patil Engineering ltd 2005(5) SCC618. While appointing an Arbitrator under Section 11(6) of the Arbitration and Conciliation Act of 1996, is the court performing a judicial or an administrative function?
- (9) What was the ratio of the case in Vodafone International Holdings B.V. vs. Union of India, 2012 (6) SCC 613? Do you think the court is justified in declining to "look through" while interpreting tax legislation?