

### **The system of seizure of vehicle during election**

- [1] In India, elections are held regularly whether it be of the Parliament or State Legislative Assembly or Municipality or Municipal Corporation and regarding each election the law has empowered the returning officer and election officer to attach / seize the private vehicles under the guise of required. Section 160, 166 of the Representation of People Act, 1951 provides for the powers to attach / seize the vehicles.
- [2] Similarly, in pursuance of the powers, under Article 243-d of the Constitution of India and under its residuary powers, the Election Commission, State of Gujarat issued a resolution dated 23.5.1995 that the Election Officer can acquire any vehicle with driver for the function of election regarding the election of village panchayat, taluka panchayat and district panchayat. As a formality, the notice under section 44 of the Panchayat Act is to be issued to the owner or occupier of the vehicle, such power can be exercised by the Collector or the Returning Officer and if any citizen objects, the proceedings can be initiated against him. Similar provisions are available under section 80 of the Bombay Provincial Municipal Act

and also under section 25, 26 of the Gujarat Municipal Act. The Gujarat State Election Commission, under the circular dated 7.1.2010 directed to obtain the insurance of the vehicles before using the same for election work. The Election Commission, New Delhi issued various direction on the subject matter vide communications dated 17.12.1987, 10.03.1998, 26.03.2004, 26.12.2008, 4.12.2012, 14.03.2014, 19.03.2014 including the directive that in case of acquisition of the vehicles belonging the Central Government by the State Government in the election no rent or compensation is required to be paid. If any accident is caused to the vehicle during the process of acquisition, there is no provision to pay the compensation. A very good provision is made that only those vehicles registered within that particular district can be acquired and not the vehicles registered outside the districts which are in transit, whether occupied or unoccupied. It is also provided that only that number of vehicles which are required, should be acquired and surplus vehicles should be released. A care should be taken that no inconvenience is caused to the owner. The amount of acquisition should be increased as per the price rise and vehicles should be returned immediately after the election is over. Vehicles belonging to WHO,

UNICEF, United Nations cannot be acquired. The vehicles belonging to BSNL, MTNL, UPSC, cannot be acquired. The vehicles transporting the students should not be acquired as far as possible.

- [3] Generally and in practice, the election officers stop the vehicles on road, serves the notice and order simultaneously and take the possession of the vehicle. Rule 98 of the Conduct of the Election Rules is also relevant. Additionally, the police and RTO have powers to stop and seize commercial vehicles. The election officer is also given the similar powers under Rule 67 of the Gujarat Village Panchayat Election Rules, 1994. Recently, Public Interest Litigation No.261/2012 and S.C.A. No.3864/2014 were heard and disposed of by the Gujarat High Court and the election officer tendered apology before the High Court regarding inconvenience caused to the general public in case of stopping on the road and immediate seizure of the vehicle. As per the circular dated 4.12.2012, issued by the Gujarat Election Commission, at the time of seizure of vehicle, the officer has to adopt humanitarian approach and to see that no inconvenience is caused. Advance planning is required regarding the requirement of the vehicles and private

vehicles can be acquired only if the government vehicles are not sufficient. The orders of acquisition required to be communicated to the vehicle owner in advance so that he can make alternative arrangements. The instructions are also issued not to cause inconvenience to the passengers of the vehicles on road. In the aforesaid judgments, there is a detailed information and discussion regarding the compensation regarding the seizure of vehicles. However, no instructions are issued till date that in each and every election, there must be advanced planning regarding the requirement of the vehicles, the tenders or rates should be called for from the persons doing travel business by giving public advertisement so as not to cause any inconvenience to the vehicle owners and also not to force any vehicle owner to part with the vehicle on the paltry amount of compensation. There is no clarification in the above circular as to how many days in advance the order of acquisition would be served to the owner. It is good that the instructions are issued not to exercise the powers of acquisition if the owner has only one vehicle and at the same time instructions are issued not to acquire luxurious car. It is provided that in case of written representations to the election officer explaining the inconvenience, the officer is required to initiate actions forthwith (this is on

paper only and election officer has no time to take any decision on the representation). On one hand the constitution has guaranteed the right to do the business freely and on the other hand the antic system of forceful acquisition is continued by the government, instead of amending the law. The aforesaid provisions are required to be declared unconstitutional in the present day situation.

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