

Date- 20th January 2022

Shri Sushil Chandra

Chief Election Commissioner,

Election Commission of India (ECI)

Subject- Appeal for immediate and full implementation of the Standard Operating Procedure issued vide letter no. 76/instructions/EEPS/2015/Vol-II on seizure and release of cash/other items dated 29.05.2015 by the Election Commission of India.

Dear Shri Sushil Chandra,

Kindly refer to the Election Commission's guidelines/SOP issued vide Commission's letter no. 76/instructions/EEPS/2015/Vol-II dated 29-05-2015 (attached as Annexure 1) which states that the information pertaining to the search and seizure of cash, liquor, narcotic items, precious metals and all other kinds of prohibited items and freebies should be compiled and maintained by State CEOs/ECI. Further public should be made aware regarding use of money and muscle power during elections through print and electronic media. However, currently awareness regarding the use of money during elections is limited and cases of seizure are also not being maintained in a consolidated format by the ECI and the State CEOs.

- 1) *The guidelines laid down by the Commission and the SOP on search and seizure (attached as Annexure 1) clearly states that the information regarding cases of seizure should be recorded, compiled and maintained by State CEOs/ECI and awareness should be created among public regarding use of money/muscle power along with providing information like details and telephone number of committee overlooking cases of seizure. This will not only help in generating awareness among citizens against the rampant issue of bribery during pre and post elections periods by political parties and candidates but will also help in combating the widespread incidents of misuse of money, attempts to bribe electors and quid pro quo corruption.*
- 2) The Hon'ble Supreme Court of India had also taken note of the seriousness of the aforementioned issue in *State of Karnataka Vs. Parthik Parasmurthy, S.L.P (Cr) No. 003549 / 2016* where while examining the larger issue of *search and seizure of cash, liquor, narcotic substances and all other kinds of gifts and freebies during election period*, the Apex court had expanded the ambit of the case by raising some vital questions such as *status and outcome of each cases/prosecution/FIR registered in search and seizure, what happens to the money and other items seized etc. and whether criminal proceedings against persons accused of bribing voters are brought to their logical conclusion.*
- 3) *Bribery in elections is not just an attempt to manipulate the voters to influence their choice but it is also a serious offence that is damaging the very concept of 'free and fair elections' which is considered to be one of the basic structures of our Constitution. Section 123(1) of*

RP Act, 1957 and 171B/171E of IPC define bribery as a corrupt practice as well as an electoral offence. Any person, politician or political party who directly or indirectly interferes or attempts to interfere with the free exercise of any electoral right by promising cash in exchange of votes commits the offence of undue influence. Hence ECI must take serious note of such offences and initiate stringent action to deter such undesirable practices.

- 4) It is pertinent to note that the culprits who brazenly resort to all forms of corrupt practices and misuse of money power during elections are enjoying a free run *as all concerned agencies are yet to devise a mechanism for state-wise tracking of cases of search and seizures during elections*. Hence even if the cash and other prohibited items get caught, the candidate or the political party who sponsored it generally always escapes. The Supreme Court in the aforementioned petition had observed, *"That is why people who spend loads of money during elections are not worried as only the money is lost, which can be recovered after elections are won. It is sad that after 60-70 years after Independence, we are still trying to improve the system."*
- 5) *To apprise you of the ground situation, it is pointed out that the following bottlenecks were faced by ADR when it tried to access the claimed public information:*
 - A. ADR filed several RTI applications over the last one year, to access information on the status of cases of search and seizure during the Parliamentary elections 2019 and during all state assembly elections that were held thereafter. The RTI applications were filed with the Election Commission as well as the concerned state CEO offices. *Even after filing multiple RTIs applications, we were unable to access the information as the RTI applications were transferred from one office to the other. When we asked questions regarding the status of seizure cases, some responses provided information related to the amount or material seized. Further, the few replies that we have received clearly state that the sought information is not available with the office.* When we filed the RTI application with ECI (attached as Annexure 2), the response we received stated that the *'information sought is not available in a compiled format'*. Even though the SOP clearly states the reporting mechanism and how the ECI/ State CEO offices should receive compiled reports from districts and states, the complete unavailability of this vital information raises some pertinent questions regarding the reluctant attitude and lack of seriousness in the maintenance of data in the matter of search and seizure by the concerned authorities.
 - B. We reached out to the state CEO offices regarding cases of search and seizure and their understanding of the Standard Operating Procedure regarding the same. *While contacting the State CEO offices (Questionnaire attached as Annexure 3), most responded that the information cannot be shared by them until and unless there is an official letter from ECI directing them to do the same. Many in the state CEO offices are unwilling to speak regarding this and some are clueless about the SOP and directed us to look at the expenditure reports of the candidates, not aware that seizure of prohibited items and election expenditure are entirely different.* The passing of the buck by the authorities has made it difficult for us to access information and if this continues, citizens can never access this crucial information that is integral to free and fair elections!

C. While contacting around 14 state CEOs, three mentioned that all the information we require related to the status of cases is available on the state CEO website as well as the website of the Election Commission and that they cannot help us any further. ADR checked the state CEO websites but the requested information is not available. Even the website of the Election Commission provides access to seizure reports which doesn't provide requisite information related to status of the cases.

6) **Information sought by ADR from ECI**

The information pertaining to search and seizures in the 2019 General elections and all State assembly elections held thereafter required from the ECI is outlined at Annexure 4. It is requested that the concerned office may be directed to provide the same in the larger public interest.

7) **Recommendations of ADR**

ADR would also like to take this opportunity to appeal to the Commission to consider taking following steps in view of the powers conferred upon the Commission under Article 324 of the Indian Constitution and in order to make a robust tracking system, transparent database of each and every information related to search and seizure.

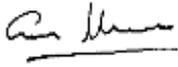
- A. The Commission should maintain an offline and online database of cases relating to search and seizure containing the *specific offence of seizures, status/ outcome and follow-up of FIRS, cases and the complaints lodged on real time basis, list carrying names of specific political parties and candidates involved etc. This compiled and consolidated information should be made available in the public domain by the ECI.*
- B. All States and Union Territories should file a '**Status Report**' before the Election Commission of India regarding handling cases of illegal seizures lodged by the Election Commission during each election.
- C. The Election Commission of India should be intimated by the CBDT and Income Tax Department pursuant to the conduct of each raid relating to the cases of search and seizure.
- D. The Election Commission of India, the Central Board of Direct Taxes (CBDT), Central Board of Indirect Taxes and Customs (CBIC), the Income Tax Department, the Ministry of Finance and the Law enforcement agency i.e. Police should jointly devise a mechanism to deal with seizure of cash and other prohibited items, tracking the source of the illicit cash and other seizures, collating comprehensive data on raids conducted, prosecution of culprits during each election, status of each FIR/complaint lodges/ cases filed, tracking system etc.
- E. Cash seized during elections should be classified as '**election and non-election-related**' and hence an account of it should be separately maintained by the concerned department.
- F. The DEOs and State CEOs should also submit a '**Status Report**' to the Commission regarding search and seizure matters in their respective states/constituencies. Such information should also be available on the State CEOs website.
- G. The commission should work towards creating '**Voter Awareness**' regarding the use of money or muscle power along with candidates/political parties that have cases of search and seizure registered/pending against them so that there can be a reduction in the criminality of politics of our country.
- H. Training should be provided to State CEO offices/DEO offices regarding the implementation of the SOP regarding search and seizure. This will enable the functionaries of the commission to follow the guidelines laid down in the SOP more efficiently.

Conclusion

In view of the current predicament in law, like non-binding nature of Model Code of Conduct issued by the Election Commission of India, bribery is still not a cognizable offence or a ground for immediate disqualification. This vagueness in provisions relating to freebies and search and seizure during elections leads to a situation where candidates, political parties and their office bearers are hardly ever held accountable. *Hence it becomes the need of the hour that Election Commission of India takes cognizance of this serious matter by devising a mechanism to report and deal with cases of seizure, availability of status of all the cases related to search and seizure, state-wise tracking of illegal cash and other prohibited items seized during the elections and take stringent action against such malpractices in the upcoming elections.*

We hope the commission will take due cognizance of our recommendations and initiate necessary actions so the State CEOs agree to cooperate with us regarding the interviews and provide information which should be available in the public domain. We look forward to your continuous support towards improving governance and strengthening democracy in our country, an important ingredient of which is provision of information in the public domain.

Warm Regards and best wishes,



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Election Commissioner
Election Commission on India (ECI)

2. Mr. Anup Chandra Pandey
Election Commissioner
Election Commission on India (ECI)

3. All State Chief Electoral Officers (State CEO)

Annexure - 1

Important extracts of the Standard Operating Procedure on search and seizure from ECI letter no 76/Instructions/EEPS/2015/Vol-II dated 29 May 2015.

1. The magistrate of the Flying squad shall send a Daily Activity report in respect of items of seizure of bribe or cash to the D.E.O, with a copy to R.O, S.P and the expenditure observers. The S.P shall send daily activity reports to the Nodal Officer of Police headquarters, who shall compile all such reports from the district and **send a consolidated report on the next day to the Commission with a copy to the CEO of the state.**
2. The entire proceeding will be video recorded. The incharge officer of FS shall also file complaints/F.I.R immediately against (a) the persons, receiving and giving bribes. (b) any other person from whom contraband items are seized. (c) any other antisocial element. The copy of the complaint/FIR shall be displayed on the notice board of the R.O for public information and be sent to the DEO, General observer, Expenditure Observer and Police Observer.
3. The checking by the State Surveillance team shall be done in the presence of an Executive magistrate and shall be videographed. No such checking shall take place without the presence of an Executive Magistrate. The video/CCTV record with an identification mark of date, place and team number shall be deposited with the R.O, on the next day who shall preserve the same for verification by the commission at a later point of time. It may also be widely advertised by the DEO that any member of the public can obtain a copy of the videos/CCTV record by depositing Rs. 300.
4. The procedure of appeal against seizure should be mentioned in the seizure document and it should also be informed to such persons at the time of seizure of cash. The functioning of this committee should be given wide publicity, including telephone no. of the convener of the committee.
5. Each FS shall announce through a public address system, fitted on the vehicle, regarding section 171 B and 171 C of the Indian Penal Code and further about the toll free number of the district complaint monitoring cell.
6. The DEO shall publish information pamphlets and distribute through the flying squad in prominent places. Press releases should also be issued by the DEO on the election expenditure monitoring measures.
7. After the announcement of elections, DEO shall make an appeal regarding the monitoring mechanism which is being put in place during election process in print and electronic media for the benefit of general public

Annexure-2

ADR RTI application dt 14 Oct 2021 to Election Commission of India

Letter No. ADR04/RTI/updated ECI-Search and Seizure/01

Date: 14-10-2021

To

Shri Avinash Kumar
CPIO & Under Secretary
Election Commission of India
Nirvachan Sadan, Ashoka Road,
New Delhi – 110001

Sub: Application for information under Section 6(1) of the Right to Information Act, 2005 on the status of every case of seizure and release of cash and other items during Lok Sabha elections, 2019.

Dear Sir,

As per the Election Commission of India's letter No. 76/Instructions/EEPS/2015/Vol-II dated 29 May 2015, to the Chief Electoral Officers of all States and UTs, ECI has issued a Standard Operating Procedure (SOP) for Flying Squads (FS), constituted for keeping vigil over excessive campaign expenses, distribution of items of bribe in cash or in kind, movement of illegal arms, ammunition, liquor, or antisocial elements etc. in the constituency during elections process.

As per the Standard Operating Procedure, the Magistrate of FS shall send a Daily Activity Report in respect of items of seizure of bribe or cash to the D.E.O. in a prescribed format with a copy to R.O., S.P. and the Expenditure Observers. The S.P. shall send Daily Activity Report to Nodal Officer of Police Headquarter, who shall compile all such reports from the district and send a consolidated report in the same prescribed format on the next day by fax/e-mail to the Election Commission of India with a copy to the CEO of the state.

Additionally, the Magistrate of Static Surveillance Team (SST) shall send Daily Activity Report to the D.E.O. with copy to R.O., S.P. and Expenditure Observer, General Observer, and Police Observer in a prescribed format. The S.P. shall send the daily activity update to Nodal Officer of Police Headquarter, who shall compile all such reports from the district and send a consolidated report in the same prescribed format on the next day by fax/e-mail to the Election Commission of India with a copy to the CEO of state.

The SOP further mentions formation of a Committee of three officers of the district that shall suo-motu examine each case of seizure made by the Police or SST or FS. The Committee shall look into all cases and take decision on seizure. All the information pertaining to release of cash shall be maintained by the Nodal Officer expenditure monitoring in a register, serially date-wise with the details regarding amount of cash seized and date of release to the person(s) concerned. Here, the SOP also mentions that the EEMS software for Daily Activity Report, available in the Commission's website maybe used for sending report to the Commission.

Kindly provide the following information:

1. The total seizure reported by the ECI at the end of elections was a monstrous Rs 3475.76 crore.
Please provide information on the State and UT-wise total number of cases of seizure of cash, liquor, drugs/narcotics, precious metals, others etc. across India during the Lok Sabha elections 2019 between March 26 to May 24, 2019.
2. How many of these cases of seizure have been disposed off by the concerned authorities? Kindly provide complete details of such cases.
3. How many cases of seizure are still pending with the committee(s) formed comprising of three officers of the district(s) of all concerned states to handle these cases? Is there a deadline by when all such cases have to be disposed off and action has to be taken against the defaulting persons/parties?
4. In how many of these cases across concerned States and UTs in India, an FIR/complaint was filed against the seizure of prohibited items? Kindly provide complete details of such cases along with the FIR/complaint/case no. and name of the parties and courts.
5. In how many of these cases across concerned States and UTs in India, no FIR/complaint was filed against the seizure of prohibited items?
6. In how many cases the seizure was not linked with any candidate or political party or any election campaign etc.? Have the seized items (cash, liquor, precious metals, others etc.) been released to the concerned persons in all such cases?
7. What action was taken against cases across concerned states in India where seizure was found linked with a candidate/political party/election campaign? Please provide information on the status of action taken against all such cases along with the names of candidates and political parties that were found guilty?
8. How much money was seized where there was enough evidence to prove that the cash was meant for election purposes?
9. Please provide complete details of amount of other seized items (cash, liquor, precious metals, others etc.) where there was enough evidence to prove that such seized items were meant for election purposes?
10. As of today, how much cash that was found seized for election purposes is deposited in the district and state treasuries across India?

Annexure -3

ADR Questionnaire regarding Search and Seizure sent to State CEOs

Background-Following is the copy of the questionnaire that we used to interact with the State CEO/ concerned authorities. All the questions only require a yes or no response and are regarding the information that should already be available as it is supposed to be public information.

1. Does the CEO office maintain/record information on the number of cases of seizure that have been disposed off or are still pending with the committee(s) made as per the Standard Operating Procedure issued vide Election Commission of India letter no. 76/instructions/EEPS/2015/Vol-II on seizure and release of cash/other items dated 29.05.2015?
2. Is the CEO office aware of any limitation period specified for the disposal of seizure cases?
3. Does the CEO office have any information on the cases where the FIR/Complaint is not registered in the territory of India, against the seizure or where the seizure was not linked with any candidate or political party or any election campaign etc.? Have the seized items (cash, liquor, drugs/narcotics, precious metals, others etc.) been released to the concerned persons in such cases?
4. In all cases across concerned districts in India where seizure was found linked with a candidate/political party/election campaign, what action was taken? Does the CEO office track or maintain any information on the status of action taken in all such cases along with the names of candidates and political parties that were found guilty?
5. What is the limitation period for registration/lodging of a FIR/ complaint to filing of cases in the court of law for cases of seizure?
6. Are the Central Board of Direct Taxes, the Income Tax Department and the Central Board of Indirect Taxes and Customs informed in cases of seizures? Do they share details of such proceedings or final outcome of such cases with the ECI? Is this information available in the public domain?
7. As per the Standard Operating Procedure (SOP) on search and seizure, the functioning of the committee should be given wide publicity, including telephone no. of the convener of the committee. Are the ECI or the State CEO office providing the said information online along with details regarding the seizure cases?
8. Does the DEO/CEO/Commission receive the Daily Activity reports from the FS/concerned authorities and is that information available publicly through public address system?
9. Is the information regarding the seizure committee, ongoing seizure cases along with process of case reporting available on the State CEO/Commission websites?
10. What action has been taken by the Election Commission of India/state CEO against political parties, candidates and voters found guilty of taking bribery/distribution of cash for vote? What have been the observations of the observers in this regard and whether the observers' reports on the distribution of money during polls are made available to the public?
11. Political Parties found guilty of promising or distributing cash in exchange for votes constitutes a serious breach. Whether the Election Commission of India/State CEO have information available regarding the candidates and the political parties these seizures are associated with? Has the ECI/state CEO considered invoking its powers under Paragraph 16A of the Election Symbols (Reservation and Allotment) Order, 1968 read with Article 324 of the Constitution and suspend or withdraw recognition of such a political party?

Annexure-4

Information sought by ADR from ECI

- A. Complete details of cases where FIR/complaint was filed. Cases where no FIR/complaint was filed and the reason for the same.
- B. Steps taken by the Election Commission of India as well as the State CEOs to ensure the availability of information on search and seizure with the citizens including concrete steps taken so that such information is readily available for the citizens to inspect without getting caught in the bureaucratic red tape and multiple follow ups with no returns.
- C. Any stringent action taken by ECI against the use of muscle or money power during elections.
- D. Role played by ECI in the maintenance and disposal of cases relating to search and seizure.
- E. Steps taken by ECI to enhance awareness among the state CEOs as well as other concerned authorities regarding the SOP devised by the Commission on search and seizure.
- F. In this backdrop it is requested that the Election Commission should grant permission to the following State/UT CEOs to speak with us and provide the required information:
 - Uttar Pradesh
 - Madhya Pradesh
 - Puducherry
 - Tamil Nadu
 - Kerala
 - Uttarakhand
 - Punjab
 - Bihar
 - Jharkhand
 - Odisha
 - Maharashtra
 - Assam
 - Gujarat
 - West Bengal