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PART - V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the *Gujarat Government Gazette*. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT LOCAL AUTHORITIES LAWS (AMENDMENT) BILL, 2011.

GUJARAT BILL NO. 24 OF 2011.

A BILL

*further to amend the Bombay Provincial Municipal Corporations Act, 1949,
the Gujarat Municipalities Act, 1963 and
the Gujarat Panchayats Act, 1993.*

It is hereby enacted in the Sixty-second Year of the Republic of India as follows:-

1. This Act may be called the Gujarat Local Authorities Laws Short title.
(Amendment) Act, 2011.

Ex. V. 24-1

24-1

Amendment of
section 2 of Bom.
LIX of 1949.

2. In the Bombay Provincial Municipal Corporations Act, 1949 Bom. LIX of 1949, (hereinafter referred to as "the Municipal Corporations Act"), in section 2, after clause (34A), the following clause shall be inserted, namely :-

"(34AA) "mobile tower" means a temporary or permanent structure, equipment or instrument erected or installed on land or upon any part of the building or premises for providing telecommunication services;"

Insertion of
new section
108A in Bom.
LIX of 1949.

3. In the Municipal Corporations Act, in Chapter IX, after section 108, the following section shall be inserted, namely :-

Audit and
technical
guidance and
supervision
over audit.

"108A. (1) The accounts of the municipal corporation shall be audited under the provisions of the Gujarat Local Fund Audit Act, 1963.

Guj. XLIX
of 1963.

(2) Notwithstanding anything contained in this Act, the State Government shall entrust the Comptroller and Auditor General of India the technical guidance and supervision over the audit of the municipal corporation.

(3) The State Government shall cause the audit report under the Gujarat Local Fund Audit Act, 1963 along with the report of the Comptroller and Auditor General of India on technical guidance and supervision as referred to in sub-sections (1) and (2), to be laid before the State Legislature."

Guj. XLIX
of 1963.

Amendment of
section 127 of
Bom. LIX of
1949.

4. In the Municipal Corporations Act, in section 127, in sub-section (1), after clause (b), the following clause shall be inserted, namely :-

"(c) a tax on mobile towers;"

5. In the Municipal Corporations Act, after section 145, the following sub-heading and section shall be inserted, namely :-

Insertion of new section 145A in Bom. LIX of 1949.

"Tax on Mobile Towers"

Tax on mobile towers.

145A. (1) A tax at the rates not exceeding those prescribed by order in writing by the State Government in this behalf from time to time shall be levied on mobile towers from the person engaged in providing telecommunication services through such mobile towers.

- (2) The Corporation shall from year to year, in accordance with section 99, determine the rates at which the tax shall be levied."

Guj. 34 of 1964.

6. In the Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Municipalities Act"), in section 2, after clause (12A), the following clause shall be inserted, namely :-

Amendment of section 2 of Guj. 34 of 1964.

"(12B) "mobile tower" means a temporary or permanent structure, equipment or instrument erected or installed on land or upon any part of the building or premises for providing telecommunication services;"

7. In the Municipalities Act, in section 33, for sub-section (1), the following sub-section shall be substituted, namely:-

Amendment of section 33 of Guj. 34 of 1964.

- "(1) (a) The term of office of the President and Vice-President of a municipality shall be two and half years.
- (b) Subject to the other provisions of this section, the President or the Vice-President shall be eligible for re-election.
- (c) Subject to the other provisions of this section, the Vice-President of a municipality who has completed the term of two and half years on or before the commencement of the Gujarat Local Authorities Laws (Amendment) Act, 2011, shall continue to hold the office of the Vice-President till the expiry of the term of that municipality."

Guj. _____ of 2011.

Amendment of
section 77 of
Guj. 34 of 1964.

8. In the Municipalities Act, in section 77, after sub-section (3), the following sub-sections shall be inserted, namely:-

Guj. 34
of 1964.

“(4) Notwithstanding anything contained in the preceding sub-sections, the State Government shall entrust the Comptroller and Auditor General of India the technical guidance and supervision over the audit of the municipality.

(5) The State Government shall cause the audit report under the Gujarat Local Fund Audit Act, 1963 referred to in sub-section (1) alongwith the report of the Comptroller and Auditor General of India on technical guidance and supervision as referred to in sub-section (4), to be laid before the State Legislature.”.

Guj. XLIX
of 1963.

Amendment of
section 99 of Guj.
34 of 1964.

9. In the Municipalities Act, in section 99, in sub-section (1), after clause (xiv), the following clause shall be inserted, namely:-

“(xiv-a) a tax on mobile towers to be levied from the person engaged in providing telecommunication services through such mobile towers;”.

Amendment of
section 2 of Guj.
18 of 1993.

10. In the Gujarat Panchayats Act, 1993 (hereinafter referred to as “the Panchayats Act”), in section 2, after clause (12), the following clause shall be inserted, namely:-

Guj. 18 of 1993.

“(12A) “mobile tower” means a temporary or permanent structure, equipment or instrument erected or installed on land or upon any part of the building or premises for providing telecommunication services;”.

Amendment
of section 121
of Guj. 18 of
1993.

11. In the Panchayats Act, in section 121, after sub-section (1), the following sub-sections shall be inserted, namely :-

“(1A) Notwithstanding anything contained in sub-section (1), the State Government shall entrust the Comptroller and Auditor General of India the technical guidance and supervision over the audit of the village panchayat.

Guj. XLIX
of 1963.

(1B) The State Government shall cause the audit report under the Gujarat Local Fund Audit Act, 1963 referred to in sub-section (1) alongwith the report of the Comptroller and Auditor General of India on technical guidance and supervision as referred to in sub-section (1A), to be laid before the State Legislature.”.

12. In the Panchayats Act, section 143 shall be numbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:-

Amendment
of section 143
of Guj. 18 of
1993.

“(2) Notwithstanding anything contained in sub-section (1), the State Government shall entrust the Comptroller and Auditor General of India the technical guidance and supervision over the audit of the taluka panchayat.

Guj. XLIX
of 1963.

(3) The State Government shall cause the audit report under the Gujarat Local Fund Audit Act, 1963 referred to in sub-section (1) alongwith the report of the Comptroller and Auditor General of India on technical guidance and supervision as referred to in sub-section (2), to be laid before the State Legislature.”.

13. In the Panchayats Act, in section 166, after sub-section (2), the following sub-sections shall be inserted, namely:-

Amendment
of section 166
of Guj. 18 of
1993.

“(3) Notwithstanding anything contained in sub-section (2), the State Government shall entrust the Comptroller and Auditor General of India the technical guidance and supervision over the audit of the district panchayat.

Guj. XLIX
of 1963.

(4) The State Government shall cause the audit report under the Gujarat Local Fund Audit Act, 1963 referred to in sub-section (2) alongwith the

report of the Comptroller and Auditor General of India on technical guidance and supervision as referred to in sub-section (3), to be laid before the State Legislature.”.

Amendment of
section 200 of
Guj. 18 of 1993.

14. In the Panchayats Act, in section 200,-

(1) in sub-section (1), after clause (i), the following clause shall be inserted, namely:-

“(i-a) a tax on mobile towers;”;

(2) after sub-section (4), and the proviso thereunder, the following sub-section shall be inserted, namely:-

“(4A) a tax on mobile towers referred to in clause (i-a) of sub-section (1) shall be levied from the person engaged in providing telecommunication services through such mobile towers.”.

STATEMENT OF OBJECTS AND REASONS

The present Bill contemplates to amend the Bombay Provincial Municipal Corporations Act, 1949, the Gujarat Municipalities Act, 1963 and the Gujarat Panchayats Act, 1993 in connection with the matters as stated herein below :

Sections 105 to 107 of the Bombay Provincial Municipal Corporations Act, 1949 provide for the audit of accounts of the municipal corporations by the Chief Auditor of Municipal Corporation concerned. Section 108 the said Act also provides for the special audit by the State Government. There is no provision in the said Act for laying the audit report before the State Legislature and to provide for the technical guidance and supervision over the audit of the municipal corporation by the Comptroller and Auditor General of India.

Section 77 of the Gujarat Municipalities Act, 1963 provides for the audit of accounts of the municipalities by the Local Fund Examiner under section 3 of the Gujarat Local Fund Audit Act, 1963. The audit reports are sent to the Director of Municipalities and concerned Collector. The Comptroller and Auditor General has been entrusted control and supervision over the proper maintenance of accounts and the audit of Municipalities of the State under the Government Resolution, Finance Department dated the 6th May, 2005. However, there is no provision in the Gujarat Municipalities Act, 1963 for laying the audit report before the State Legislature.

The provisions of sections 121, 143 and 166 of the Gujarat Panchayats Act, 1993 provide for audit of accounts of the Village, Taluka and District Panchayats by the Local Fund Examiner under section 3 of the Gujarat Local Fund Audit Act, 1963. The audit report is sent to the concerned Panchayat and a copy of which is sent to the concerned authorities as per the provisions of the Panchayats Act. The audit reports of Taluka and District Panchayats are laid before the State Legislature as per the Government Resolution, Panchayats, Rural Development and Rural Housing Department dated the 15th March, 1965. On the basis of the

Eleventh Finance Commission's recommendation, the Comptroller and Auditor General has been entrusted with the responsibilities of exercising control and supervision over the proper maintenance of accounts and the audit of all the tiers/ levels of Panchayats and Urban Local Bodies of the State under the Government Resolution, Finance Department dated the 6th May, 2005. However, there is no provision in the Panchayats Act, for laying the audit report before the State Legislature.

The 13th Finance Commission in its report has recommended to make statutory provisions in the respective Acts, i.e. (i) to entrust the task of Technical Guidance and Supervision (TG&S) to the Comptroller and Auditor General over the maintenance of accounts and their audit for all the tiers/levels of Panchayats and Urban Local Bodies, and (ii) by laying before the State Legislature, the annual technical inspection report of the Comptroller and Auditor General of India of all the tiers/levels of Panchayats and Urban Local Bodies in the State alongwith the audit reports of all the tiers/levels of Panchayats / Urban Local Bodies in the State carried out under the Gujarat Local Fund Audit Act, 1963.

It is, therefore, considered necessary to make necessary provisions in the respective Acts providing for technical guidance and supervision over the proper maintenance of accounts and their audit of the local authorities by the Comptroller and Auditor General of India and also laying before the State Legislature, the annual technical inspection report of the Comptroller and Auditor General of India alongwith the audit report of the Examiner of the Gujarat Local Fund. *Clauses 3, 8, 11, 12 and 13* provide for the same.

The Hon'ble High Court of Gujarat in Special Civil Application No.1898/2009 and others has, wherein the Resolution dated 11-12-2008 issued by the Government of Gujarat in the matter of determining annual fees etc. within the limits of Municipal Corporations/Municipalities and demand notices issued pursuant thereto providing for levy and recovery of annual permission fees and installation charges on mobile communication towers were under challenge, held that it was not permissible for the authorities to levy and collect taxes or fees in respect of mobile towers in absence of any provision to that effect in the statutes.

It is, therefore, considered necessary to make necessary provisions in the respective Acts providing for levy and collection of taxes or fees in respect of such mobile telecommunication towers by the respective local authorities. *Clauses* 2, 4, 5, 6, 9, 10 and 14 provide for the same.

Section 33 of the Gujarat Municipalities Act, 1963 provides for the term of offices of the President and Vice-President which is two and a half years in case of President, whereas the term of the Vice-President is co-extensive with the term of the Municipality. In order to bring the term of the office of the Vice-President at par with that of the office of the President, it is considered necessary to amend the provision of section 33 of the said Act. The provision is also made in respect of the existing Vice-Presidents who have completed the term of two and a half years on or before the commencement of this amending Act, so as to allow them to complete their term which is co-extensive with the term of the Municipality. *Clause 7* provides for the same.

This Bill seeks to amend the said three Acts to achieve the aforesaid objects.

Gandhinagar,
Dated the 17th March, 2011.

NITIN PATEL.

By order and in the name of the Governor of Gujarat,

Gandhinagar
Dated the 18th March, 2011.

C. J. GOTHI,
Secretary to the Government of Gujarat,
Legislative and Parliamentary Affairs Department.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.