

No. Home (Vig.)-B(15)-8/2018-Misc-RD&PR  
Government of Himachal Pradesh  
Department of Home (Vigilance)

From:

The Principal Secretary (Vig.) to the  
Government of Himachal Pradesh,  
Shimla-2.

To

1. All the Administrative Secretaries to the  
Government of Himachal Pradesh, Shimla-2.
2. All the Heads of Departments,  
in Himachal Pradesh.
3. All the Managing Directors,  
PSUs/Boards/Corporation ,  
in Himachal Pradesh
4. All Divisional Commissioners/ Dy. Commissioners  
Government of Himachal Pradesh

Dated: Shimla-2, the 26.11.2019

Subject:- Prosecution Sanction against Public Servants u/s 197 of Cr.  
P.C. and u/s 19 of the P.C. Act.

Sir,

I am directed to refer to the subject cited above and to say that this department has already issued instructions from time to time regarding orders of prosecution sanction, sanctioning authorities for granting prosecution sanction, stipulated timelines to be followed while granting prosecution sanction and the format of sanction order. The last such instruction was circulated vide letter No.(Vig)F-(6)/1/98 dated 16.01.2013(this letter alongwith earlier references is available on the Vigilance link of Home Department in the official website of the State Government).

2. The Department has been emphasizing the need for quick and expeditious decision on requests of sanction for prosecution received from the State Vigilance and Anti-Corruption Bureau(SV&ACB), Himachal Pradesh

under section 19 of the Prevention of Corruption Act and section 197 of the Code of Criminal Procedure as per procedure laid down in the HP Vigilance Manual and guidelines circulated in this regard by the State Government from time to time. It has been observed that despite of repeated requests made by this Department and the SV&ACB, the guidelines/ instructions are still not being followed strictly by the concerned sanctioning authorities.

3. Various judgments of the Supreme Court have emphasized that the order of sanction should be in the form of speaking order disclosing application of mind of the authority on the material placed before it. The Hon'ble Supreme Court in case (AIR 1997 SC 3400) has clearly held that *since the validity of sanction depends on the applicability of mind of the Sanctioning Authority to the facts of the case as also the material and evidence collected during the investigation, it necessarily follows that the Sanctioning Authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the Sanctioning Authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or other.*

*Since, the discretion to grant or not to grant sanction vests absolutely in Sanctioning Authority, its discretion should not be shown to have been affected by any external consideration.*

4. The Hon'ble Supreme Court in Criminal Appeal No. 1838 of 2013 in the matter of CBI V/s Ashok Kumar Aggarwal, in para 7 of the judgment observed that *"there is an obligation on the sanction authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and protection available to the accused against whom the sanction is sought. Sanction lifts the bar for prosecution. Therefore, it is not an acrimonious exercise*



*but a solemn and sacrosanct act which affords protection to the Government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty".*

5. Accordingly the instructions issued earlier are reiterated and it is requested to kindly ensure that:-

- a) The original order(s) of prosecution sanction/denial, signed by the competent authority is(are) sent to the SV&ACB directly in the manner as specified in the HP Vigilance Manual on prescribed format, with a copy to the Home(Vigilance) Department for information.
- b) The order of sanction should make it evident that the authority had been aware of the relevant facts/ material supplied to him/her and had applied its mind to all the relevant material so supplied to him/her by the investigating agency.
- c) The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the officer(s)/officials(s) against whom the sanction is sought.
- d) The sanction of prosecution must be conveyed by the competent authority to the investigating agency most preferably within a period of three months as per the order passed by the Hon'ble High Court in COPC No. 575 of 2012 titled as Virender Kumar V/s Smt. Bharti Sihag, Principal Secretary (Forests) & others in its order dated 14.12.2012 and provision of para 11 of Chapter VI of HP Vigilance Manual as well.

- e) The competent authority cannot change its opinion subsequently once the prosecution sanction has been accorded earlier after due application of mind on the basis of same facts and circumstances. The competent authority should take care that prosecution sanction should not be denied on account of irrelevant facts.
- f) The sanctioning authority while taking decision on the question of sanction is not required to meticulously appreciate the evidence because the question of inadequacy or inconsistency in the evidence has to be considered by the Trial Court and the sanctioning authority has to confine only to the allegations against the concerned officer/ official.

6. You are, therefore, requested to act accordingly and obtain approval of Competent Authority as per scheme of the Rule of Business of the State Government and ensure strict compliance of these guidelines by the Department(s) and other organization(s) under your administrative control. Since non-compliance of above guidelines vitiates the sanction for prosecution, therefore, sanctioning authorities should discharge their obligation with complete due diligence and would be held responsible for any deviation or non-adherence in the matter of prosecution sanction if the validity of sanction were to be questioned at a later stage.

The receipt of this letter may be acknowledged.

Yours faithfully,



(Rakesh Sharma)  
Special Secretary (Vigilance) to the  
Government of Himachal Pradesh  
(Phone No. 2621110)