Government of Odisha
General Administration Department
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No. 12050 / Gen., Dt.15.05.2015
GAD-SC-VIG-0030-2015

From

G.V.V. Sarma, IAS
Principal Secretary to Government

To

All Secretaries of the Departments of Government/
All Heads of Departments/
All Collectors

Sub: Guidelines to be followed while considering grant of sanction of prosecution.

Sir,

I am directed to enclose herewith a copy of Government of India, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions Letter No.142/15/2015-AVD.I, Dt.27.03.2015 regarding the guidelines laid by the Hon'ble Supreme Court in their judgment in Criminal Appeal No.1838 of 2013 in the matter of Central Bureau of Investigation Vrs. Ashok Kumar Aggarwal. The Hon'ble Supreme Court in Para-7 of the judgment has observed that there is an obligation on the sanctioning 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 the 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. In para-8 of the judgment, the

complete strictness by the competent authorities while considering grant of sanction. Extracts from para 7 and 8 of the judgment of the Hon'ble Apex Court are enclosed.

2. Sanction is a condition precedent to the institution of the prosecution of a public servant. As per provisions of Section-19 of the PC Act, 1988, no court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of the competent authority. Similar provisions appear u/s 197 of the Criminal Procedure Code involving IPC offences. No court shall take cognizance of such offence except with the previous sanction of the competent authority against the public servant accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. Authority competent to remove the public servant from office is the authority competent to accord sanction for prosecution.

3. It has been made clear in the judgment of the Hon'ble Apex Court discussed under para-1 above that the object of sanction is to ensure discouragement of fraudulent, doubtful, frivolous and impolitic prosecutions against public servants and to protect them from unnecessary and uncalled for harassment involved in a prosecution. It is a safeguard for the innocent public servant though not a shield for the corrupt. Hence, while considering proposals received from the Vigilance, CBI and the Crime Branch seeking sanction for prosecution of public servants for offences committed by them at a time when they were engaged in their official duty, the concerned sanctioning authority shall have to carefully peruse the entire relevant record and has to do complete and conscious scrutiny of the whole records so produced by the investigating authority and independently applying its mind satisfy himself as to if facts and circumstances of the case and material

evidences on record justify existence of a prima-facie case against the accused. For correct appreciation of the case, the sanctioning authority may follow the following procedure:

a) On receipt of the proposal of the investigating authority, each case shall be separately processed in a file. Pre-sanction discussion may be held with the investigating officer of the case.

b) The sanctioning authority shall peruse relevant materials which may include the FIR, detailed report of investigation of the SP, disclosure statements, statements of witnesses, statement of the accused, recovery memos, seizure lists, draft charge sheet and all other relevant materials/ documents if any, make complete and conscious scrutiny of the whole records produced by the IO, apply its independent mind and satisfy himself as to if there is a prima-facie case against the accused or not and accordingly decide to give or to decline sanction sought for against the public servant. Copy of the relevant materials perused by the sanctioning authority may be retained in the file for future reference or production before the Court in case of necessity.

c) The sanction order should reveal that the sanctioning authority had been aware of the facts and circumstances of the case, perused and scrutinised relevant materials and applied its independent mind in arriving at a conclusion that there is a prima-facie case against the accused and that the public servant may be prosecuted for the offences committed by him and any other offences punishable under the provisions of law.

4. The time limit prescribed by the Hon'ble Supreme Court for consideration of the proposal of the investigating authority is 3 months generally speaking. However, in cases involving substantial question of law, the sanctioning authority may take another month if it considers expedient and necessary to consult the Law Department or the Advocate General

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seeking their views in the matter. The whole exercise must be completed within the time limit prescribed.

5. The above guidelines may be meticulously followed and sub-ordinate offices appraised of the same.

Yours faithfully

14/5/15

Principal Secretary

Memo No. 12051 /Gen, Dt. 15.05.2015

Copy to the Director-cum-Addl. DG of Police, Vigilance, Odisha, Cuttack/Addl. DG & IG of Police, Crime, Odisha, Cuttack/ SP, CBI, Bhubaneswar for information and necessary action.

14.5.2015

Officer on Special Duty

Extracts from the judgment of the Hon'ble Apex Court in Criminal Appeal No.1838 of 2013

7. The prosecution has to satisfy the court that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such grant was made available to the said authority. This may also be evident from the sanction order, in case it is extremely comprehensive, as all the facts and circumstances of the case may be spelt out in the sanction order. However, in every individual case, the court has to find out whether there has been an application of mind on the part of the sanctioning authority concerned on the material placed before it. It is so necessary for the reason that there is an obligation on the sanctioning 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 the protection available to the accused against whom the sanction is sought.

It is to be kept in mind that 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.

Consideration of the material implies application of mind. Therefore, the order of the sanction must *ex facie* disclose that the sanctioning authority had considered the evidence and other material placed before it. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that those facts were placed before the sanctioning authority and the authority had applied its mined on the same. If the sanction order on its face indicates that all relevant material i.e. FIR, disclosure statements, recovery memos, draft charge sheet and other materials on record were placed before the sanctioning authority and if it is further discernible from the recital of the sanction order that the sanctioning authority perused all the material, an inference may be drawn that the sanction had been granted in accordance with law. This becomes necessary in

case the court is to examine the validity of the order of sanction *inter-alia* on the ground that the order suffers from the vice of total non- application of mind.

(Vide: **Gokulchand Dwarkadas Morarka** v. **King**, AIR 1949 PC 82; **Jaswant Singh** v. **State of Panjab**, AIR 1958 SC 124: **Mahd Iqbal Ahmed** v. **State of A.P.**, AIR .1979 SC 677: **State through Anti Corruption Bureau, Govt. of Maharastra** v. **Krishanchand Khushalchand Jagatiani**, Air 1996 SC 1910: **State of Punjab** v. **Mohd. Iqbal Bhatti**, (2009) 17 SCC 92; **Satyavir Singh Rathi, ACP** v. **State**, AIR 2011 SC 1748; and **State of Maharastra** v. **Mahesh G.Jain** ,(2013) 8 SCC 119).

8. In view of the above, the legal propositions can be summarised as under:

(a) The prosecution must send the **entire** relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

(b) The authority **itself** has to do complete and conscious scrutiny of the hole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

(c) The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

(d) The order of sanction **should make it evident** that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

(e) In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

IMMEDIATE DY.NO. 8130/CSO/2015
7.4.15

Jishnu Barua, IAS
Joint Secretary (S&Vig.-II)
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07 APR 2015

भारत सरकार
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GOVERNMENT OF INDIA
DEPARTMENT OF PERSONNEL & TRAINING
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
NORTH BLOCK, NEW DELHI - 110001

OFFICE OF THE CHIEF SECRETARY * ODISHA *
06 APR 2015

No.142/15/2015-AVD.I

Pr. seen, GA

Dear Sir,

Kindly refer to Hon'ble Supreme Court Judgement regarding Criminal Appeal no.1838 of 2013 in the matter of Central Bureau of Investigation Vs. Ashok Kumar Aggarwal. Hon'ble Supreme Court has observed that there is an obligation on the sanctioning 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. Hon'ble Supreme Court vide said order has explicitly laid down guidelines for grant of sanction for prosecution which need to be complied upon. Your particular attention is drawn to para 8 of the Hon'ble Supreme Court aforesaid judgement. (Copy enclosed)

2. In this regard attention is also invited to the guidelines issued by this Deptt vide letter No.142/4/2012 dated 28th July,2014 wherein it has been conveyed that complete proposals as per the checklist would only be accepted for further detailed scrutiny and examination to consider sanction for prosecution under the Prevention of Corruption Act,1988. All administrative authorities are requested to adhere to the aforesaid guidelines while deciding grant of sanction for prosecution.

SC.
OSD(Vig)
S-I & II
Pl. ensure compliance of all concerned.
7/4/15

with regards

Yours sincerely

(Jishnu Barua) 7/4/2015

Shri Gokul Chandra Pati
Chief Secretary, Govt.of Orissa
Bhubaneswar 751001

8/4/2015