

MOST URGENT
PERSONAL ATTENTION

No. Per(Vig)F-(6)-1/98
Government of Himachal Pradesh.
Department of Home (Vigilance)

From

The Principal Secretary(Home/Vig) to the
Government of Himachal Pradesh.

To

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

Dated Shimla-2, 5-8-2011.

Subject:- Order on grant of Prosecution Sanction.

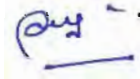
Sir,

I am directed to invite your kind attention to this department letter of even number, dated 26-5-2011 and to say that it has been observed by the Government that in various cases, (i) orders of prosecution sanction are being received in Home(Vigilance) Department and State Vigilance & Anti-Corruption Bureau(SV&ACB) in the shape of endorsement only or (ii) orders(in original) are being sent directly to the Home(Vigilance) Department with / without endorsement to the SV&ACB. It is not desirable and does not serve any purpose as only original order (signed by the competent authority), not endorsement, is required by the Bureau for filing the charge sheet in the court of law.

Due to above, efforts have to be made by the Bureau/ Home(Vigilance) Department to obtain the original order and to forward the same (in original) to the Bureau; therefore resources are wasted unnecessarily to procure the original order.

Therefore, you are, requested to kindly ensure that in future the original order(s) of prosecution sanction, signed by the competent authority, is

(are) sent to the SV&ACB with a copy to the Home (Vigilance) Department for information so that unnecessary delay in filing of challan in the court of law could be avoided.



Adl. Secretary-cum-Director(Vig.) to the
Government of Himachal Pradesh,
dated 2011.

Edst. No. Per(Vig)F-(6)-1/98,

Copy to the Inspector General, State Vigilance & Anti-Corruption Bureau, Himachal Pradesh, Shimla-2 w.r.t. his letter No. 15581, dated 23-7-2011 for information please.


Adl. Secretary-cum-Director (Vig.) to the
Government of Himachal Pradesh.

No. Per(Vig)F(6)-1/98
Government of Himachal Pradesh
Department of Home(Vigilance)

From

Chief Secretary to the
Government of Himachal Pradesh.

To

✓ All the Administrative Secretaries to the
Government of Himachal Pradesh.

Dated Shimla-2, 16 January, 2012.

Subject:-

Prosecution sanction under Prevention of Corruption
Act, 1988/report-in-writing under section 36 of
H.P. Prevention of Specific Corrupt Practices
Act, 1988.

Sir/Madam,

I am directed to refer this department letter of even number dated 26-5-2011 & 5-8-2011 (also available in the Vigilance link of Home Department on official website of Himachal Government on the web address: [http:// himachal.gov.in /home /Home /homeV.htm](http://himachal.gov.in/home/Home/homeV.htm)) on the subject cited above and to inform that despite repeated requests made by this department, the decisions on the prosecution sanctions/reports-in-writing are still not being taken by the concerned competent authorities within stipulated period of three months.

The said position has been viewed very seriously by the Hon'ble High Court, who, after considering the pendency of prosecution sanctions/reports-in-writing with the competent authorities, vide its order dated 14-12-2012 passed in COPC No. 575 of 2012 titled Virender Kumar Vs Smt. Bharti Sihag, Pr. Secretary(Forests) & other, has observed as under:-

"We would only like to caution the duty holders (concerned competent authorities) that in case they do not complete the process regarding request for sanction for prosecution within the three months period, they are liable also to

answer the charge of aiding the delay in the prosecution and in that event needless to say that the officer will be personally responsible for all the consequences, apart from contempt proceedings”


“We may hasten to add that three months time is an outer time given and it is not as if every case should take three months. If a case could take only three days, it should be done in three days and time up to three months is for cases where voluminous materials are to be seen and inter-departmental advice is also to be sought.”

You are, therefore, requested to kindly ensure that the above observations of the Hon'ble High Court are kept in mind, by the concerned competent authorities under your control, while deciding the prosecution sanctions/reports-in-writing as and when such requests are made by Vigilance Department/State Vigilance & Anti-Corruption Bureau in future.

Yours faithfully,

Spl.  Secretary (Vigilance) to the Government of Himachal Pradesh. 

Endst. No. Home(Vig)E(3)-15/2012, Dated January, 2012.
Copy to the Addl. Director General, State Vigilance & Anti-Corruption Bureau, H.P., Shimla-2 for information please.


Spl. Secretary (Vigilance) to the Government of Himachal Pradesh.

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MOST URGENT
PERSONAL ATTENTION

No. Per(Vig)F(6)-1/98
Government of Himachal Pradesh.
Department of Home(Vigilance)

From

Chief Secretary to the
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the Government of Himachal Pradesh.
2. All the Heads of Departments , In Himachal Pradesh.
3. All the Managing Directors, PSUs/ Boards/Corporations In Himachal Pradesh.
4. All Divisional Commissioners/ Deputy Commissioners In Himachal Pradesh.

Dated Shimla-2, 26-5-2011.

Subject:- Prosecution sanction under Prevention of Corruption Act, 1988.(Directions of Hon'ble High Court in CWP NO. 4916/2010, dated 11-5-2011)

Sir/Madam.

I am directed to refer to this department letters of even number, dated 13-11-1998, 28-11-2000, 14-6-2004 & 20-3-2006 on the subject cited above, vide which instructions were issued for accordance of proper prosecution sanctions order within a stipulated period of three months(copy of one of these letters, dated 14-6-2004 is enclosed for ready reference). I am directed to inform you that while considering the affidavit filed by the Chief Secretary, H.P., in case CWP No. 4916/2010, titled Sher Singh Vs State of H.P. and others, the Hon'ble High Court of H.P. vide its order dated 11-5-2011, has taken a serious view on the prosecution sanctions pending with various departments for more than three months. The relevant part of the Hon'ble High Court order is reproduced below:-

“There will also be a direction to the Chief Secretary to take final decision in all the cases of request for sanction of prosecution within three months of the request for

sanction from the Vigilance Bureau/Prosecution Agency. In order to avoid any ambiguity in this regard, it is made clear that in all the cases of request for prosecution sanction, the Government shall take decision within three months of the request from the quarter concerned for sanction whether of gazetted or non-gazetted officer. In case, any instruction is to be issued in this regard, the Chief Secretary shall issue the same directing all competent authorities to take action, as above."

In this regard, it has been noticed that in some departments the prosecution sanction cases are still not being dealt with on priority basis resulting in undue delay in filing the challans in the competent courts.

The Hon'ble Supreme Court of India in case of Vineet Narain Vs Union of India, reported in Criminal Law Journal, 1998, has directed that the "time limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General(AG) or any other Law Officer in the AG's office."

The action taken by the department/ PSUs/ other authorities in compliance with these directions with regard to disposal of pending prosecution sanction may be conveyed to the Home Department and to the Vigilance Bureau, within 10 days.

It is, therefore, again requested that while according prosecution sanction, it may please be ensured in future that the same is conveyed to the Addl. Director General, State Vigilance Bureau within a period of three months under intimation to this department.


Yours faithfully,

Principal Secretary(Home/Vigilance) to the
Government of Himachal Pradesh, 8

Endst. No. Per(Vig)F(6)-1/98,

Dated: Shimla-2, 26-5-2011.

The Addl. Director General, State Vigilance & Anti-Corruption Bureau, Himachal Pradesh, Shimla-2 for information please.



Principal Secretary(Home/Vigilance) to the
Government of Himachal Pradesh.

No.Per(Vig.)F(6)-1/98
Government of Himachal Pradesh
Department of Home-Vigilance

From

The Pr. Secretary(Vigilance)to the
Government of Himachal Pradesh.

To

The All Administrative Secretaries to the
Government of Himachal Pradesh.

Dated, Shimla-2, the 14-6-2004

Subject:- Prosecution sanction under Prevention of
Corruption Act, 1988.

Sir,

Under section 19 of Prevention of Corruption Act, 1988, no court can take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 of this Act, alleged to have been committed by a public servant except with the previous sanction of the competent authority. As such on completion of investigation of a vigilance case under P.C. Act, 1988 by the police, before the challan is to be put in the court, a reference is invariably made to the Administrative Department/Competent Authorities for obtaining and conveying prosecution sanction under section 19 of the said Act. In case the accused is a gazetted officer, the competent authority for according prosecution sanction is the Government. In case of others, the appointing authority is the competent authority.

2. In the Prevention of Corruption Act, 1988 no particular form or set of words has been prescribed in which the sanction is to be accorded. The courts expect that as a general rule, a sanction for which no particular form has been prescribed by law, should ex-facie indicate that the sanctioning authority had before it all relevant facts on the basis of which prosecution was proposed to be launched and has applied its mind to all the facts and circumstances of the case before according its sanction or refusing it. In order to avoid delays and expense and for the

sake of convenience and uniformity of practice two standard forms have been given in the H.P. Vigilance Manual which are enclosed herewith as Appendix-A and Appendix-B.

3. It has been brought to the notice of this Department by the Director General of Police, Vigilance, H.P. that in quite a few cases the prosecution sanctions were found defective and have had to be returned to the concerned Administrative Departments/Competent Authorities for rectification. This causes avoidable delay in presenting the challans in the courts. The common defects noticed in the prosecution sanctions are given below :-

- (a) The prosecution sanction order sometimes do not bear the signature of the competent authority and only copies are sent as endorsement signed by some other authority;
- (b) In a few cases, appropriate section i.e. sec.19(1)(b) or sec.19(1)(c) is not mentioned. It is clarified that sec.19(1)(b) is applicable in case of gazetted officers, whereas sec.19(1)(c) is applicable in case of others;
- (c) The brief facts of the cases including names of the accused, dates of occurrence of offence as mentioned in the challands are, sometime, not mentioned;
- (d) In a few cases, for example, those involving bribery or disproportionate assets, the amount involved is either not mentioned or wrongly mentioned.

4. It has further been noticed that generally the prosecution sanction cases are not dealt with on priority/^{basis} In most of the cases there is undue delay. The Hon'ble Supreme Court of India in the case of Vineet Narain Vs Union of India, reported in Criminal Law Journal, 1998, has directed that the time limit of 3 months for grant of sanction for prosecution must be strictly adhered to except that additional time of one month may be allowed where consultation is required with the Attorney General or any Law Officer in the AG's office.

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It is, therefore, requested that while according prosecution sanctions by the Administrative Departments/Competent Authorities it may please be ensured that these are in order and conveyed to the Vigilance Department within a period of 3 months.

Yours faithfully,

by
Spl. Secy.-cum-Director(Vigilance) to the
Government of Himachal Pradesh.

Endst.No. :- As above.

Dated, Shimla-2, the 14-6-2004.

Copy forwarded for information and necessary action to :-

1. The all Heads of Departments in Himachal Pradesh.
2. The all Deputy Commissioners in Himachal Pradesh.

by
Spl. Secy.-cum-Director(Vigilance) to the
Government of Himachal Pradesh.

Mishra

GUIDELINES FOR ADMN. DEPTT. TO ACCORD PROSECUTION SANCTION

- The competent authority may refuse sanction for prosecution if the offence alleged has no material to support or it is frivolous or intended to harass the lowest officer.
- He cannot refuse to grant sanction if the material collected has made out the commission of offence alleged against the public servant.
- The authority competent to remove the public servant would be in a better position than the prosecuting agency to assess the material collected in a dispassionate and reasonable manner and determine whether sanction for prosecution of a public servant deserves to be granted or not.

K Veeraswami Vs Union of
India, AIR. 1991(3) S.C. 694.

- Section 9- Discretion to prosecute or not to prosecute a public servant taken away from prosecuting agency and conferred on sanctioning authority-sanctioning authority has to apply its mind to material on record and form its own opinion- But if material makes out the offence, authority is bound to accord the sanction (1991)-3 SCC 655.
- "It seems that to protect an official of the Board, a parallel investigation was initiated at the instance of respondent No. 3 and after considering those papers, respondent No. 3, competent authority/Director Personnel declined to accord sanction for prosecuting Sunder Lal. It is nothing but a colourable exercise of power and is liable to be struck down. The competent authority cannot carve out a defence for such an accused and refuse to accord sanction on the ground. In the impugned order Annexure- R-7 no opinion is expressed with regard to the papers submitted by respondent No. 2, which is indicative of the total non application of mind to the relevant facts" (1996 Cr. L.J. 2962)
- "Once the sanction is duly accorded by the competent authority under section 19, neither the Vigilance Commissioner nor for that purpose any other department of the State Government any right. power whatsoever to direct the sanctioning authority either to reconsider or withdraw or in any other way ultimately directing it to withdraw the prosecution from the court" (1997 Cr. L.J. 2896).
- "It appears that for whatever reasons the concerned officer who has misconducted himself in defying the statutory provisions by withdrawing cases in clear violation of the PC Act deserves to be unquestionably prosecuted and also departmentally proceeded with. This is

clearly an offence under Section 186 of the Indian Penal Code which pertains to obstructing public servant in discharge of functions". (1997 Cr. Law Journal 2896)

- **Para 11 of Chapter VI of Vigilance Manual.**

Superintendent of Police Anti Corruption Unit will forward the final report of investigation to the Vigilance Department. While forwarding the report of the investigation, the Superintendent of Police Anti Corruption Unit will also forward to the Vigilance Department such original documents as can be sent after retaining copies if necessary. In respect of the documents which the ACU will not like to part with, attested copies or gist of their contents may be sent instead. The Vigilance Department will then examine the investigation report of ACU and will forward its advise alongwith the investigation report to the competent authority. In case the competent authority differs with the advice tendered by the Vigilance Department then it should refer the case back to the Vigilance Department for consideration. In case authority competent to grant prosecution sanction wants to see the original documents, the ACU may be requested to make them available for inspection. If there are any documents which are not capable of being copied or even a gist of which cannot be prepared the administrative authority may inspect such documents by arrangements with the ACU. Then the competent authority should pass a formal orders granting prosecution sanction and communicate it to Superintendent of Police (ACU) under intimation to the Vigilance Department.

- As per Vineet Narain's case, the Apex Court has given three months time limit for grant of sanction of prosecution. However, additional time of one month may be allowed where consultation is required with the Attorney General or any other Law Officers in the AG's office.
- We are governed by "Rule of Law" i.e. what ever is required to be done, that can be done in the manner and way prescribed under the law and under only and only by the particular authority so entrusted with that particularly duty. No person or authority however high he may be, has any discretion or privilege to impose himself and carry out its wishes or orders unless it is backed by the statute.

Appendix- "A"

GOVERNMENT OF HIMACHAL PRADESH

Office of

ORDER

Dated, Shimla the.....2000.

Whereas it is alleged that Shri.....(here enter the name of the offender), while functioning as.....(here enter the post held by the offender at the time of the offence), on or about (here enter the date of offence) day of.....2000.

.....
.....
..... section/sections.

And whereas the said acts constitute an offence/offences punishable under section/sections.....of the Indian Penal Code, 1860 (Act 45 of 1860)/ section/sections..... of the Prevention of Corruption Act, 1988 (Act 49 of 1988);

And whereas State Government, after fully and carefully examining the material before it in regard to the said allegations and the circumstances of the case, considers that the said Shri.....(here enter the name of the offender) should be prosecuted in a court of law for the said offence/offences;

Now, therefore, the State Government does hereby accord sanction under section 197 of the Code of Criminal Procedure, 1898 (Act V of 1898)** and/or section 19 (i) (b) of the Prevention of Corruption Act, 1988, for the prosecution of the said Shri.....(here enter the name of the offender) for the said offence/offences and any other offences punishable under other provisions of law in respect of the acts aforesaid and for the taking of cognizance of the said offence by a court of competent jurisdiction.

By order and in the name of the Governor.

.....
Name and designation of the competent Authority.

(To be signed by an officer authorised under Article 166 of the Constitution to authenticate orders on behalf of the Governor.)

*Description of the acts constituting offences and also the place commission of the offence.

*Strike out whichever is not applicable.

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Appendix-"B"

GOVERNMENT OF HIMACHAL PRADESH

Office of.....

ORDER

Dated, the.....

Whereas it is alleged that Shri.....(here enter the name of the offender), while functioning as (here enter the post held by the offender at the time of the offence) on or about.....(here enter the date of offence) day of.....2000.

*.....
.....

And whereas the said acts constitute an offence/offences punishable under section/sections.....of the Indian Penal Code, 1860 (Act 45 of 1860)/ section/sections.....of the Prevention of Corruption Act, 1988 (Act 49 of 1988);

And whereas, I, (here enter the name and designation of the sanctioning authority), being the authority competent to remove the said Shri.....(here enter the name of the offender) from office, after fully and carefully examining the material before me in regard to the said allegations and the circumstances of the case, consider that the said Shri.....(here enter the name of the offender) should be prosecuted in a court of law for the said offence/offences.

Now, therefore, I do hereby accord sanction under section 19 (i) (c) of the Prevention of Corruption Act, 1988 for the prosecution of the said Shri.....(here enter the name of the offender) for the said offence/offences and any other offences punishable under other provisions of law in respect of the acts aforesaid and for the taking of cognizance of the said offences by a court of competent jurisdiction.

Signature and designation of the authority
competent to remove the offender.

.....
*Description of the acts constituting offences and also the place of commission of the offence.