

Role of the Chief Vigilance Commissioner in the matter of according sanction for prosecution under the Prevention of Corruption Act, 1988.

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विभाग संख्या 5.7.4 निव/प्र.क/20057/Karmik/Ka-3/97  
दिनांक 16-4-02

GOVERNMENT OF RAJASTHAN  
Department of Personnel (A-3)

Dated: April 06, 2002

- All Principal Secretaries / Secretaries to Government
- All Heads of Departments (including District Collectors)
- All Special Secretaries / Deputy Secretaries to Govt.

C I R C U L A R

**SUBJECT:** Role of the Chief Vigilance Commissioner in the matter of according sanction for prosecution under the Prevention of Corruption Act, 1988.

With reference to the above-mentioned subject your attention is invited to this Department's Circular of even No. dated May 30, 2001, whereby it had been directed in that if the competent authority is of the opinion that sanction for prosecution should not be accorded in any particular case he would forward the matter to the concerned Administrative Department. If the concerned Administrative Department is also of the opinion that sanction for prosecution should not be accorded, the matter would be forwarded to the Chief Vigilance Commissioner whose decision would be final and binding on the competent authority. The matter has been reconsidered and the State Government has now decided as follows :-

1. If the competent authority, after examining all the relevant evidence, is prima facie of the view that sanction for prosecution should not be accorded, he shall make a reference to the concerned Administrative Department. He shall not record a final decision on the file before referring the matter to the concerned Administrative

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Department; he will only mention that he is tentatively of the view that the case is not one where sanction for prosecution should be granted.

2. The Secretary of the concerned Administrative Department will examine all the evidence available on the record and also discuss the case with the concerned competent authority. If the Secretary of the concerned Administrative Department is then of the view that there is adequate evidence available on the record to form an opinion that a prima facie case is made out against the concerned government servant, the case will be referred back to the concerned competent authority for re-examination of the matter and taking a decision accordingly. The specific evidence or the material facts which need to be taken into consideration by the competent authority will be specified by the Secretary of the concerned Administrative Department.
3. If, however, the Secretary of the concerned Administrative Department agrees with the views of the competent authority that sanction for prosecution should not be accorded in any particular case, the matter shall be referred to the Minister of the concerned Department through the Chief Vigilance Commissioner. The Chief Vigilance Commissioner shall forward the case to the Minister of the concerned Administrative Department along with his advice/opinion. The role of the Chief Vigilance Commissioner will be purely advisory; the final decision whether or not to grant sanction for prosecution shall be taken only by the competent authority i.e. the authority which is empowered to remove the government servant from service.
4. If the Chief Vigilance Commissioner is of the opinion that sanction for prosecution should be accorded in any particular case and the competent authority finely agrees with his views, the competent authorities shall issue the sanction for prosecution under his signatures. However, it may be ensured that no reference is made to

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the opinion of the Chief Vigilance Commissioner or the Administrative Department while granting sanction for prosecution. If any reference is made to the opinion / advice of the Chief Vigilance Commissioner or the Administrative Department, the courts are likely to take a view that the sanction for prosecution is not a valid one as it has been issued under the directions of the Chief Vigilance Commissioner / Administrative Department and not on the subjective satisfaction of the competent authority.

Clarification has been sought by some Departments as to whether the authority next higher to the competent authority can grant the sanction for prosecution in a case where the concerned competent authority is of the view that the case is not fit for granting sanction for prosecution. In this connection it is hereby clarified that under the Prevention of Corruption Act, 1988 the power for according sanction for prosecution vests in the authority which is empowered to remove the government servant from service and should be exercised only by such authority. It would not be proper for the next higher authority to issue the sanction for prosecution where the competent authority is of the view that it is not a case where sanction for prosecution should be accorded.

  
(Ashok Sampatram)

Secretary to Government

Copy for information and necessary action to the following:

1. Private Secretary to the Chief Secretary
2. Additional Chief Secretary Home Department & Chief Vigilance Commissioner
3. Director General of Police, Anti Corruption Bureau, Rajasthan Jaipur
4. Secretary (I) to the Chief Minister / Secretary (II) to Chief Minister
5. Guard File

  
Secretary to Government