

## **Prosecuting corrupt officials: Apex court sets norms for sanctioning authority**

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In a big boost to the anti-graft movement, the Supreme Court on Tuesday framed guidelines to ensure that the Government disposes of in a time-bound manner all applications seeking grant of sanction to prosecute 'corrupt' public servants.

The apex court said the sanctioning authority (in the Government) has to arrive at a decision (in favour or against) within three months on every application before it seeking such a sanction.

The court said the sanctioning authority can take a maximum of one more month for its decision, and that too only to consult the Attorney-General. The order was pronounced by a Bench comprising Mr Justice A.K. Ganguly and Mr Justice G.S. Singhvi.

The apex court observed that it is a Constitutional right of a citizen to file a complaint under the Prevention of Corruption Act against a public servant.

### **'DEEMED SANCTION'**

Mr Justice Ganguly said Parliament should amend the relevant provision - Section 19 of the Prevention of Corruption Act - so that if the sanctioning authority fails to take any decision within four months after receiving such an application, it will be considered a 'deemed' sanction to prosecute the 'corrupt' public servant. Though Mr Justice Ganguly agreed with Mr Justice Singhvi on the broad guidelines, he wrote a separate judgment.

The matter pertains to a petition filed by the Janata Party President, Dr Subramanian Swamy, asking the apex court to direct the Prime Minister, Dr Manmohan Singh, to take a decision on his petition seeking sanction to prosecute former Telecom Minister, Mr A. Raja, in the 2G spectrum case under the Prevention of Corruption Act.

With its order, the apex court in effect set aside an earlier Delhi High Court ruling and allowed Dr Swamy's plea and said he had the right and locus standi to seek sanction from the Prime Minister for prosecuting Mr Raja.

Dr Swamy had alleged that there was a delay on the part of the Prime Minister on deciding on his plea for sanction to prosecute Mr Raja, who was then a Minister in Dr Singh's Cabinet.

Following the resignation of Mr Raja on November 14, 2010, Dr Swamy's plea had become infructuous. Dr Swamy then wanted the apex court to frame guidelines on the matter in the interest of speedy justice in similar cases in the future.

### **PM's 'SILENCE'**

During the hearing, the apex court had questioned the Prime Minister's "inaction and silence" in the matter for 16 months after having received Dr Swamy's plea.

The Prime Minister's Office then denied all the allegations and referred to the Law Ministry's advice to the PM that, "The decision to accord sanction of prosecution may be determined only after perusal of the evidence (oral and documentary) collected by the CBI and other materials to be provided by the competent authority."

The apex court had reserved its judgment in the matter on November 24, 2010.

## **SWAMY'S REACTION**

Terming the order as a "victory for those engaged in the war against corruption", Dr Swamy said now any Indian citizen is empowered to straight away approach a criminal court seeking an order for initiating an inquiry against a 'corrupt' public servant.

According to the present norms, the complainant has to first obtain a sanction from the sanctioning authority and then go to the criminal court for an order to initiate such an inquiry. But now with the Supreme Court order, the sanction can be obtained even after the criminal court order for initiating an inquiry and the start of the trial, he said.

"The Government cannot anymore block a common man who is fighting corruption by not giving sanction. Also, if a citizen moves the court today seeking initiation of probe, he is asked where is the sanction, and such a situation and delays will not happen in the future," Dr Swamy said.

Also, the sanctioning authority can consult only the Attorney General – and not any other body including the CBI – for getting an opinion regarding whether to grant the sanction, he added.

Dr Swamy said the apex court has ensured that its earlier judgment in the 'Vineet Narain case' is still binding on the Government regarding grant of such sanctions.

He described the order as a setback for all sanctioning authorities, including the Prime Minister, who vacillates on taking a decision regarding grant of sanction.

"I am pleased that democracy is working in India. The Supreme Court has given a great deal of encouragement to those who are fighting against corruption and has simplified the norms on grant of sanction," he said.

He urged the Prime Minister to "atone for his past delays" (in grant of sanction) by issuing an ordinance on amending Section 19 of the Prevention of Corruption Act to avoid delays in grant of sanction.

Dr Swamy said when he sent his plea to the Prime Minister for obtaining sanction to prosecute Mr Raja, the Telecom Minister, Mr Kapil Sibal, and the Law Minister, Mr Salman Khurshid, had questioned how he could approach the Prime Minister.

"Now the apex court has said any Indian citizen can approach the PM. I think Khurshid and the 'zero loss' Sibal should go back to law college and study law all over again," Dr Swamy quipped.

Also, the Government cannot "fool people anymore" on corruption cases by "delaying sanction", he said, adding that "Raja-type situations will not happen in the future."