

Government of Jammu and Kashmir  
**Housing and Urban Development Department**  
Civil Secretariat, Jammu / Srinagar.

Subject: Accord of sanction for prosecution of in-service accused public servant namely Ghulam Rasool Dar (Enforcement Officer) Srinagar Municipal Corporation S/o Ghulam Mohammad Dar R/o Hari Watnoo, Tangmarg in case FIR No. 146/2014, P/S Safakadal.

Reference: O.M. No. GAD (Vig) 08-SP/2018 Dated: 04-09-2019 and O.M. No. GAD(Vig)08/-SP/2018 dated 18.11.2019 from General Administration Department.

**Government Order No. 25-JK(HUD) of 2020**  
**Dated: 16-01-2020**

Whereas, on 21.8.2014 one namely Nazir Ahmad Mir (Complainant) S/o Shri Ghulam Mohammad Mir R/o Chana Mohalla Safakadal lodged a written complaint alleging therein that he is constructing a hotel at Chana Mohalla, Chattabal, Srinagar and has got permission thereof from concerned Authority. It is further alleged that Ghulam Rasool Dar, Enforcement Officer of SMC, Srinagar called him off and on and asked for graft/bribe and on denial has warned that structure will be demolished and it is further alleged that the above said SMC official again called the complainant on phone and asked him for a bribe of ₹ 50,000/- more, otherwise the construction work of hotel will be stopped. Consequent to the complaint, the instant case bearing FIR No. 146/2014 u/s 5(2) of P.C. Act, Samvat, 2006, 161 RPC was registered at Police Station, Safakadal and investigation taken up; and

Whereas, during the course of investigation, the complainant had been provided an amount of ₹ 32,000/- and the said amount was duly marked/initialled by the Executive Magistrate, Srinagar and subsequently during the trap proceedings, the said amount of ₹ 32,000/- bearing the initials of the Executive Magistrate were recovered from the possession of accused Gh. Rasool Dar, Enforcement Officer in presence of material witnesses and the recovered amount was seized and statements of witnesses to that effect were also recorded under relevant sections of law. During Investigation, the accused person was arrested and subsequently released on bail in terms of the directions passed by the competent court of law on 25.12.2014. During the course of investigation, it has transpired that apart from the above said amount of ₹32,000/-, the accused has induced the complainant to pay/deliver huge amount to the tune of ₹ 5,10,000/- through the mode of different Cheques; and

Whereas, during further course of investigation, the J&K Bank Branches, Gole Market Karan Nagar Srinagar and Balgarden were approached and 8 No. of Cheques (04 from the Jammu and Kashmir Bank Golemarket, Karan Nagar, Srinagar and 04 Cheques from J&K Bank, Balgarden, Srinagar) were recovered and placed on record as piece of evidence though the mode of seizure memos; and

Whereas, investigation conducted revealed that the amount reflected in seized cheques has been written/reflected by the accused himself as stated by the complainant and confirmed by the handwriting expert. On the strength of facts and evidence discussed herein above, the investigation conducted has revealed that accused Shri Gh. Rasool Dar (Enforcement Officer) Srinagar Municipal Corporation in the capacity of a public servant has accepted and obtained for himself gratification for doing



an official act, as such was found to have committed offences punishable u/s 5(2), 4 (A) J&K P.C Act 2006 and investigation of the case closed as challan against him; and

Whereas, the Investigating Agency has prima-facie established case against accused in-service public servant namely; Ghulam Rasool Dar, the then Enforcement Officer, Srinagar Municipal Corporation (SMC) for commission of offences punishable under section 5(2), 4-A of the Prevention of Corruption Act, Samvat, 2006 in the above referred FIR; and

Whereas, General Administration Department intimated that the Hon'ble Apex Court in case titled Dr. Subramaniam Swamy V/S Dr. Manmohan Singh & others has passed the following orders.

*"Time limit of three (03) 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 Attorney General (AG) or any other law officer in the AG's Office."*

Whereas, General Administration Department accordingly vide O.M. No. GAD(Vig) 08-SP/2018 dated 04.09.2019 forwarded a copy of Final Investigation Report in case FIR No. 146/2017 P/S VOK Safakadal duly endorsed by the DGP, J&K, vide letter dated 21/02/2018 for accord of prosecution sanction against the above mentioned accused in-service employee of SMC, as required under Section 6 of the Jammu and Kashmir Prevention of Corruption Act, Samvat, 2006; and

Whereas, the case was referred to Law Department for seeking their opinion with regard to applicability of J&K Prevention and Corruption Act, 2006. The Secretary, Law Department vide U.O. dated 17.12.2019 opined as under:

*"The Jammu and Kashmir Reorganization Act, 2019 in terms of the Table 3 of the Fifth Schedule has repealed the prevention of Corruption Act, 2006 (State Act.) and applied Prevention of Corruption Act, 1987 (Central Act) to the Union territory of Jammu and Kashmir. On the date of the commission of offence, as also the date of commencement of investigation, the State Act was in force. Sanction for prosecution under Section 6(1) of the State Act is sine qua non for taking cognizance for the offences punishable under the provisions of the repealed State Act. Effect of repeal of an Act on the pending proceedings and investigations etc. is laid down in section 6 of the General Clauses Act. Besides Clause 13 of the Jammu and Kashmir Reorganization (Removal of Difficulties) Order, 2019 is also attracted in such circumstances which reads as under:-*

*The Acts repealed in the manner provided in TABLE 2 of the Fifth Schedule, shall not affect:-*

- (a) the previous operation of any law so repealed or anything duly done or suffered there under;*
- (b) any right, privilege, obligation or liability incurred under any law so repealed; or*
- (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or*
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege obligation, liability, penalty, forfeiture or punishment as aforesaid,*

*and any such investigation, legal proceeding or remedy in respect of any such right, privilege obligation, liability, penalty, forfeiture or punishment may be imposed as if the Act had not been passed.*



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The Apex Court in the matter of Nar Bahadur Bhandari etc. V. State of Sikkim and others has, which dealing with the issue of repeal of old Prevention of Corruption Act, 1947 held :

*“That does not mean that any offence which was committed under the Act of 1947 would cease to be triable after the repeal of the said Act. Normally Section 6 of the General Clauses Act would come into play and enable the continuation of the proceedings including investigation as if the repealing Act had not been passed. As per the provisions of Section 6 of the General Clauses Act the position will be as if the Act of 1947 continues to be in force for the purpose of trying the offence within the meaning of the said Act. Section 6 of the General Clauses Act, however, makes it clear that the said position will not obtain if a different intention appears in the repealing Act.”*


As far as issue of granting sanction under the relevant Act is concerned, the Hon'ble High Court of Chattisgarh in case State of Madhya Pradesh (Now Chhattisgarh) versus Ishwar Aadhar Yadav 2010 4 Crime (HC) 700 (which was based on similar circumstances), has held as under:-

*“Order of discharge on ground that sanctioning authority accorded sanction under the Act, 1947 on 5.2.1991 and it was invalid sanction when Act of 1998 had come in force-offence had been committed on 10.7.1987-Sanctioning authority was competent to accord sanction relating to offence found committed under old Act in accordance with provisions of old Act-Impugned order of discharge was illegal liable to be set-aside.*

*In the light of legal proposition ad in terms of Section 30(2) of the Act, 1998, sanctioning authority was competent to accord sanction relating to the offence punishable under the old Act in accordance with the provisions of old Act. While according sanction, the sanctioning authority has not committed any illegality, while discharging the respondent from the aforesaid charges, the Special Judge has not considered the provisions of Section 30(2) of the Act, 1988 and thereby committed illegality in discharging the respondent. The order impugned is not sustainable under the law and is liable to be set-aside.”*

The similar position of law has been laid down by Hon'ble Supreme Court in “Central Bureau of investigation vs Subodh Kumar Dutta and another”. In view of the afore-stated legal position it can be well said that since offence was committed when the State Act of 2006 was in force and investigation too has commenced on the basis of commission of offences under the State Act, it would be only permissible to accord sanction in term of section 6 of the State Act for omission of offences under the State Act keeping in view the effect and legal consequences of the repeal of the State Act as of the Jammu and Kashmir Reorganization (Removal of Difficulties) Order, 2019”; and

Whereas, no such prosecution can be launched against an in-service public servant without prior sanction from the competent authority as envisaged under Section 6 of Jammu and Kashmir Prevention of Corruption Act, Samvat, 2006.





Now, therefore, in terms of Section 6 of Jammu and Kashmir Prevention of Corruption Act, Samvat, 2006, sanction is hereby accorded to the prosecution of in-service accused public servant namely Shri Ghulam Rasool Dar (Enforcement Officer) Srinagar Municipal Corporation S/o Ghulam Mohammad Dar R/o Hari Watnoo, Tangmarg for commission of offences punishable u/s 5(2), 4(A) of said Act in case FIR No. 146/2014 P/S Safakadal.

By order of the Government of Jammu and Kashmir.

Sd/-

**(Dheeraj Gupta) IAS**

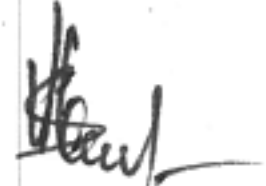
Principal Secretary to the Government  
Housing & Urban Development Department

Dated: 16-01-2020

No: HUD/SMC/76/2019-Home

Copy to the:

1. Principal Secretary to Government, Home Department.
2. Principal Secretary to Lieutenant Governor.
3. Secretary to Government, General Administration Department. *The U.O. file bearing No. Home/Pros/13/2018 alongwith CD file consisting 260 page (in original) is returned herewith.*
4. Director, Anti Corruption Bureau, J&K, Jammu.
5. Commissioner, Srinagar Municipal Corporation, Srinagar.
6. Private Secretary to the Chief Secretary.
7. Private Secretary to Principal Secretary to the Government, Housing & Urban Development Department.
8. Concerned Officer.
9. Government Order file (w.2.s.c).
10. Stock file.

  
**(Syed Nazir Ahmad)**

Under Secretary to the Government  
Housing & Urban Development Department

