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PART I—Orders and Notifications by the Governor of West Bengal, the High Court, Government Treasury, etc.

GOVERNMENT OF WEST BENGAL
Personnel & Administrative Reforms Department
Vigilance Cell

RESOLUTION

No. 1/ PAR (Vig)

Kolkata, the 10th January, 2012.

On careful consideration of the recommendations made by the 2nd Central Administrative Reforms Commission in the 4th report Ethics in Governance, the State Government has decided to strengthen the Vigilance and Anti-Corruption Machinery in the State by reconstituting the existing Vigilance Commission into a 3 member State Vigilance Commission to be headed by the State Vigilance Commissioner. The State Vigilance Commission would be responsible for implementation of Prevention of Corruption Act, 1988 along with other provisions of different acts/codes relating to Anti-Corruption measures.

Constitution of the Commission

2. (1) There shall be constituted a body known as State Vigilance Commission (Hereinafter referred to as Commission) to exercise the powers conferred upon, and to perform the functions assigned to it under this resolution. The Vigilance Commission constituted under the Government of West Bengal, Home Department (General Administration) Resolution No. 221-GAC dated 4th March 1965 shall be deemed to be constituted under this Resolution.
- (2) The State Vigilance Commission shall consist of —
 - a) a State Vigilance Commissioner — Chairperson
 - b) not more than two Vigilance Commissioners — Members
- (3) A person shall not be qualified for appointment:—
 - (a) as *State Vigilance Commissioner*, unless he has held for at least two years the post of Secretary to the Government of India or any other post under the Central or State Government and carrying the Scale of Pay which is not less than that of a Secretary to the Government of India for at least two years or held a

post of Additional Secretary to the Government of India for at least five years or any other post under the Central or State Government carrying the Scale of Pay which is not less than that of Additional Secretary to the Government of India at least for a period of five years;

Provided that the officers belonging to All India Services who were or are on Central Deputation to a lower post shall be deemed to have held the post of Secretary or Additional Secretary, as the case may be, from the date such officers were granted proforma promotion or actual promotion whichever is earlier to the level of Secretary or Additional Secretary, as the case may be, and the period spent on Central Deputation after such date shall count for qualifying service for the purposes of this clause.

- (b) as *Vigilance Commissioner*, unless he has held the post of Secretary to the Government of India or any other post under the Central or State Government and carrying the Scale of Pay which is not less than that of a Secretary to the Government of India or held a post of Additional Secretary to the Government of India for at least four years or any other post under the Central or State Government carrying the Scale of Pay which is not less than that of Additional Secretary to the Government of India at least for a period of four years;

Provided that the officers belonging to All India Services who were or are on Central Deputation to a lower post shall be deemed to have held the post of Secretary or Additional Secretary, as the case may be, from the date such officers were granted proforma promotion or actual promotion whichever is earlier to the level of Secretary or Additional Secretary, as the case may be, and the period spent on Central Deputation after such date shall count for qualifying service for the purposes of this clause.

- (4) The general superintendence, direction and management of the affairs of the State Vigilance Commission shall vest in the State Vigilance Commissioner who shall be assisted by the Vigilance Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Vigilance Commission autonomously without being subjected to directions by any other authority under this Resolution. The State Vigilance Commissioner will be responsible for the proper performance of the duties and responsibilities assigned to the Commission and for generally co-ordinating the work of and advising the departments/ undertakings in respect of all matters pertaining to maintenance of integrity in administration.
- (5) The State Government shall appoint a Secretary to the Commission on such terms and conditions as it deems fit to exercise such powers and discharge such duties as the Commission may specify in this behalf.
- (6) The headquarters of the Commission shall be at Kolkata.
- (7) The Vigilance Commissioner appointed under the Home Department (General Administration) Resolution no. 221-GAC dated 4th March, 1965 shall be deemed to have been appointed to be a Vigilance Commissioner within the meaning of Para 2(2)(b) of this resolution on the same terms and conditions subject to which he was so appointed vide the said resolution no. 221-GAC dated 4th March 1965.

Terms and Conditions of Service of State Vigilance Commissioner and Vigilance Commissioners

3. (1) The State Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the State Government.
- (2) The State Vigilance Commissioner and every other Vigilance Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he attains the age of sixty five years, whichever is earlier.
- (3) The State *Vigilance Commissioner* or a Vigilance Commissioner shall, before he enters upon his office, make and subscribe before the Governor, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Schedule to this resolution.
- (4) The State Vigilance Commissioner or a Vigilance Commissioner may by writing under his hand addressed to the Governor, resign his office.

- (5) On ceasing to hold office, the State Vigilance Commissioner and every other Vigilance Commissioner shall be ineligible for:—
- (a) any diplomatic assignment, appointment as administrator of a Union Territory and such other assignment or appointment which is required by law to be made by the President by warrant under his hand and seal.
 - (b) further employment to any office of profit under the Government of India or the Government of any State.
- (6) The salary and allowances payable to and other conditions of service of —
- a) The State Vigilance Commissioner shall be same as that of the Judge of the High Court;
 - b) The Vigilance Commissioner shall be same as that of the Chief Secretary to the State Government;

Provided that if the State Vigilance Commissioner or any Vigilance Commissioner is, at the time of his appointment, in receipt of a pension (other than a disability or would pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the State Vigilance Commissioner or any Vigilance Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted.

Provided also that the salary, allowances and pension payable to, and the other conditions of service of, the State Vigilance Commissioner or any Vigilance Commissioner shall not be varied to his disadvantage after his appointment.

Removal of State Vigilance Commissioner and Vigilance Commissioner

4. The State Vigilance Commissioner and Vigilance Commissioners will not be removed or suspended from office except in the manner provided for the removal or suspension of the Chairman or a Member of State Public Service Commission.

Functions and Powers of the State Vigilance Commission

5. (1) the functions and powers of the Commission shall be to —
- (a) The State Vigilance Commission through its Anti-Corruption Wing would be responsible for investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 or an offence with which a public servant specified in sub-section (2) of the Prevention of Corruption Act, 1988 may, under the Code of Criminal Procedure, 1973, be charged at the same trial;
 - (b) exercise superintendence and control over the functioning of the Anti Corruption Wing in relation to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 or an offence with which a public servant specified in sub-section (2) of the Prevention of Corruption Act, 1988 may, under the Code of Criminal Procedure, 1973, be charged at the same trial;
 - (c) inquire or cause as inquiry or investigation to be made on a reference made by the State Government wherein it is alleged that a public servant being an employee of the State Government or a corporation established by or under any State Act, Government company, society and any local authority owned or controlled by that Government, has committed an offence under the prevention of Corruption Act, 1988 or an offence with which a public servant may, under the Code of Criminal Procedure, 1973, be charged at the same trial;
 - (d) inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in clause 5 (2) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988 and an offence with which a public servant specified in Clause 5 (2) may, under the Code of Criminal Procedure, 1973, be charged at the same trial;

Provided further that no such inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 shall be conducted except with the previous approval of the State Government where such allegation relates to—

- (i) the employees of the State Government of the level of Special Secretary and above; and
 - (ii) such officers as are appointed by the State Government in corporations established by or under any state act, Government Companies, societies and local authorities owned or controlled by that Government.
- (e) review the progress of investigations conducted by the Anti Corruption Wing into offences alleged to have been committed under the Prevention of Corruption Act, 1988 or the public servant may, under the Code of Criminal Procedure 1973, be charged at the same trial;
 - (f) Review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988;
 - (g) tender advice to the State Government, corporations established by or under any State Act, Government companies, societies and local authorities owned or controlled by the State Government on such matters as may be referred to it by that Government, said Government companies, societies and local authorities owned or controlled by the State Government or otherwise;
 - (h) exercise superintendence over the vigilance administration of the various Departments of the State Government or corporations established by or under any State Act, Government companies, societies and local authorities owned or controlled by that Government;

Provided that nothing contained in this clause shall be deemed to authorise the Commission to exercise superintendence over the Vigilance administration in a manner not consistent with the directions relating to vigilance matters issued by the government and to confer power upon the Commission to issue directions relating to any policy matters;

5(2) The persons referred to in clause 5 (1) (d) are as follows:—

- (a) All employees of the State Government and Members of All-India Services serving in connection with the affairs of the State;
- (b) Such level of officers of the corporations established by or under any State Act, Government companies, societies and other local authorities, owned or controlled by the State Government, as that Government may, by notification in the Official Gazette, specify in this behalf;

Provided that till such time a notification is issued under this clause, all officers of the said corporation, companies, societies and local authorities shall be deemed to be persons referred to in clause 5 (1) (d).

Proceedings of the Commission

- 6. (1) The proceedings of the Commission shall be conducted at its headquarters.
- (2) The State Vigilance Commissioner, or, if, for any reason he is unable to attend any meeting of the commission, the senior most Vigilance Commissioner present at the meeting, shall preside at the meeting.
- (3) No act or proceeding of the Commission shall be invalid merely by reason of —
 - (a) any vacancy in, or any defect in the constitution of, the Commission; or
 - (b) any defect in the appointment of a person acting as the State Vigilance Commissioner or as a Vigilance Commissioner; or
 - (c) any irregularity in the procedure of the Commission not affecting the merits of the case.
- 7. (1) In the event of the occurrence of any vacancy in the office of the State Vigilance Commissioner by reason of his death, resignation or otherwise, the State Government may, by notification, authorise one of the Vigilance Commissioners to act as the State Vigilance Commissioner until the appointment of a new State Vigilance Commissioner to fill such vacancy.

- (2) When the State Vigilance Commissioner is unable to discharge his functions owing to absence on leave or otherwise, such one of the Vigilance Commissioners as the State Government may, by notification, authorise in this behalf, shall discharge the functions of the State Vigilance Commissioner until the date on which the State Vigilance Commissioner resumes his duties.

Power relating to inquiries

8. The Commission shall, while conducting any inquiry shall have the powers in respect of the following matters, namely:—

- (a) to call for reports, returns and statements from all departments corporate undertakings under the control of the State Government so as to enable it to exercise general check and supervision over the vigilance and anti-corruption work in the departments undertakings;
- (b) the Commission will have the power to require that the oral enquiry in any departmental proceedings except in petty cases should be entrusted to one of the Commissioner for departmental enquiries;
- (c) the Commission will examine the report of the Commissioner for departmental enquiries, which will in all cases be submitted by the Commissioner for departmental enquiries to the Vigilance Commission, and the Commission will forward the record of the case to the appropriate disciplinary authority with its advice as to further action;
- (d) requiring the discovery and production of any document, public record or copy thereof from all departments corporate undertakings under the control of the State Government so as to enable it to exercise general check and supervision over the vigilance and anti-corruption work in the departments undertakings;
- (e) the Commission may obtain information about action taken on its recommendation.

Annual Report

9. (1) It shall be the duty of the Commission to present annually to the State Government a report as to the work done by the Commission within six months of the close of the year under report.
- (2) The annual report shall draw particular attention to any recommendation made by it, which had not been accepted or acted upon; and a copy of the report together with a memorandum explaining the reasons for non-acceptance of any recommendations of the Commission will be laid by the State Government before the State legislature.

Miscellaneous

10. The State Vigilance Commissioner, every Vigilance Commissioner, the Secretary and every staff of the Commission shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

11. (1) The report of the inquiry undertaken by any agency on a reference made by the Commission shall be forwarded to the Commission.
- (2) The Commission shall, on receipt of such report and after taking into consideration any other factors relevant thereto, advise the State Government and corporations established by or under any State Act, Government companies, societies and local authorities owned or controlled by that Government, as the case may be, as to the further course of action.
- (3) The State Government and the corporations established by or under any State Act, Government companies, societies and other local authorities owned or controlled by that Government, as the case may be, shall consider the advice of the Commission and take appropriate action;

Provided that where the State Government, any corporation established by or under any State Act, Government company, society or local authorities owned or controlled by the State Government, as the case may be, does not agree with the advice of the Commission, it shall, for reasons to be recorded in writing, communicate the same to the Commission.

12. The Commission may call for reports, returns and statements from the State Government or corporations established by or under any State Act, Government companies, societies and other local authorities owned or controlled by that Government so as to enable it to exercise general supervision over the vigilance and anti-corruption work in that Government and in the said corporations, Government companies, societies and local authorities.
13. The Vigilance Officers in departments will be appointed in consultation with the Commission and no person whose appointment as the Vigilance Officer is objected to by the Commission will be so appointed.
14. The State Government shall, in making any rules or regulations governing the vigilance or disciplinary matters relating to persons appointed to public services and posts in connection with the affairs of the State, consult the Commission.
15. The Commission will take the initiative in prosecuting persons, who are found to have made false complaints or lack of integrity against public servants.
16. The Commission will be attached to the Personnel & Administrative Reforms Department, but in the exercise of its powers and functions it will not be subordinate to any department and will have the same measure of independence and autonomy as the Public Service Commission.

Provisions relating to Existing Vigilance Commission

17. With effect from the constitution of the State Vigilance Commission under this resolution, the existing Vigilance Commission set up by the Resolution No. 221-GAC of the Government of West Bengal, Home Department (General Administration) dated 4th March 1965 shall, in so far as its functions are not inconsistent with the provisions of this Resolution, continue to discharge the said functions and —

- (a) all actions and decisions taken by the Vigilance Commission insofar as such actions and decisions are relatable to the functions of the Commission constituted under this Resolution shall be deemed to have been taken by the Commission;
- (b) all proceedings pending before the Vigilance Commission, insofar as such proceedings relate to the functions of the Commission, shall be deemed to be transferred to the Commission and shall be dealt with in accordance with the provisions of this Resolution;
- (c) the employees of the Vigilance Commission shall be deemed to have become the employees of the Commission on the same terms and conditions;
- (d) all the assets and liabilities of the Vigilance Commission shall be transferred to the Commission.

Repeal and Savings

18. (1) The Government of West Bengal, Home Department (General Administration) Resolution No. 221-GAC dated 4th March, 1965 is hereby repealed.
- (2) Notwithstanding such repeal anything done or any action taken under the said Resolution including the appointments made and other actions taken or anything done or any action taken shall be deemed to have been made or done or taken under this resolution.

ORDER

Ordered that a copy of this Resolution be communicated to all departments of the State Government and also that the Resolution be published in the "Kolkata Gazette".

By order of the Governor,

SAMAR GHOSH
Chief Secretary to the Government of West Bengal

SCHEDULE

[See paragraph 3(3)]

Form of oath or affirmation to be made by the State Vigilance Commissioner or Vigilance Commissioner:—

“I, A.B., having been appointed State Vigilance Commissioner (or Vigilance Commissioner) of the State Vigilance Commission do swear in the name of God/Solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgement perform the duties of my office without fear or favour, affection or ill-will and that I will uphold Constitution and the laws.”

By order of the Governor,

SAMAR GHOSH

Chief Secretary to the Government of West Bengal