

**IN THE SUPREME COURT OF THE  
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

*In the matter of an Application under Article 126 of  
the Constitution of the Democratic Socialist Republic  
of Sri Lanka*

Vasudeva Nanayakkara  
Attorney-at-Law  
Advisor to His Excellency the President  
Secretary, The Democratic Left Front  
49 1/1, Vinayalankara Mawatha  
Colombo 10.

**Petitioner**

**SC FR Application No. 158/2007**

**Vs**

1. K.N. Choksy M.P.  
President's Counsel  
Former Minister of Finance  
23/3, Sir Ernst De Silva Mawatha  
Colombo 7.
2. Milinda Moragoda M.P.  
Former Minister of Economic Reform  
3/2, Allen Methiniyarama Road  
Colombo 5.
3. Sripathy Sooriyarachchi M.P.  
Attorney-at-Law  
Former Minister, Public Enterprise Reforms  
22, Niwasa Mawatha  
Rilaulla  
Kadana.
4. Charitha Ratwatte  
Former Secretary to the Treasury  
16, Jawatte Road  
Colombo 5.
5. Faiz Mohideen  
Former Deputy Secretary to the Treasury  
5/2, Liberty Plaza Flats  
250, R.A. De Mel Mawatha  
Colombo 3.
6. N. Pathmanathan  
Former Deputy Secretary to the Treasury  
16, Gregory's Place  
Dehiwela.

7. P.B. Jayasundera  
Secretary to the Treasury / Former Chairman,  
Public Enterprises Reform Commission (PERC)  
The Secretariat  
Colombo 1.
8. Chrisantha Perera  
Former Chairman, PERC / Sri Lanka Insurance  
Corporation Ltd. (SLIC)  
40/10, Lake Garden, Off Lake Drive  
Rajagiriya.
9. M. Kandasamy  
Member of the Steering Committee / General  
Manager SLIC  
“Rakshana Mandiraya”  
21, Vauxhall Street  
Colombo 2.
10. V. Kanagasabapathy  
Chartered Accountant  
Member of the Steering Committee /  
Former Member of PERC  
79/3, W.A Silva Mawatha  
Colombo 6.
11. Dayanath Jayasuriya  
Member Steering Committee /  
Former Director General SEC / Member PERC  
Apt. 3/1, Seagull Appartments  
12, Melbourne Avenue  
Colombo 4.
12. Rani Jayamaha  
Member Steering Committee / Deputy Governor  
Central Bank  
30, Janadhipathi Mawatha  
Colombo 1.
13. Nihal Sri Ameresekere  
Chartered Accountant  
Former Chairman, PERC  
167/4, Vipulasena Mawatha  
Colombo 10.
14. M.D. Bandusena  
Chairman, PERC  
11-01, West Tower, World Trade Center  
Colombo 1.

15. Shamalee Gunawardene  
Attorney-at-Law  
Former Director Legal, PERC  
500/111, Thimbirigasyaya Road  
Colombo 5.
16. Aneela De Soysa  
Chartered Accountant  
Former Director PERC / Later Partner  
PricewaterhouseCoopers, Sri Lanka  
207/22, Dharmapala Mawatha  
Colombo 7.
17. PT PricewaterhouseCoopers FAS  
Gedung PricewaterhouseCoopers  
J1 H.R., Rasuna Said, Kav C - 3  
Jakarta 12920  
Indonesia.
18. Roger De Montfort  
Chartered Accountant  
Former Attorney – In Fact  
PT PricewaterhouseCoopers FAS  
Gedung PricewaterhouseCoopers  
J1 H.R., Rasunasaid, Kav C - 3  
Jakarta 12920  
Indonesia.
19. Devasiri Rodrigo  
Chartered Accountant  
Former Senior Partner  
PricewaterhouseCoopers  
42/8, Rosmead Place  
Colombo 7.
20. Y. Kanagasabai  
Chartered Accountant  
Senior Partner  
PricewaterhouseCoopers  
100, Braybrooke Place  
Colombo 2.
21. S. Manoharan  
Chartered Accountant  
Partner  
PricewaterhouseCoopers  
100, Braybrooke Place  
Colombo 2.

22. Asite Talwatte  
Chartered Accountant  
Senior Partner, Ernst & Young  
201, De Saram Place  
Colombo 10.
23. Ruwan Fernando  
Chartered Accountant  
Partner, Ernst & Young  
201, De Saram Place  
Colombo 10.
24. Distilleries Company of Sri Lanka Ltd.  
110, Norris Canal Road  
Colombo 10.
25. Aitken Spence & Company Ltd.  
305, Vauxhall Towers  
Vauxhall Street  
Colombo 2.
26. Aitken Spence Insurance (Pvt) Ltd.  
305, Vauxhall Towers  
Vauxhall Street  
Colombo 2.
27. Sri Lanka Insurance Corporation Ltd.  
“Rakshana Mandiraya”  
21, Vauxhall Street  
Colombo 2.
28. Milford Holdings (Pvt) Ltd.  
110, Norris Canal Road  
Colombo 10.
29. Greenfield Pacific EM Holdings Ltd.  
C/o Asia Box Consultancy Services (Pte) Ltd.,  
61, Club Street  
Singapore 069436.

Also at

C/o D.H.S. Jayawardhene  
C/o Milford Holdings (Pvt) Ltd.  
110, Norris Canal Road  
Colombo 10.

30. Channa De Silva  
Director General  
Securities & Exchange Commission of Sri Lanka  
(SEC)  
Level 11-01, East Tower, World Trade Center  
Echelon Square  
Colombo 1.

31. President  
Institute of Chartered Accountants of Sri Lanka  
30 A, Malalasekera Mawatha  
Colombo 7.
32. F.H. Puvimanasinghe  
Chartered Accountant  
Senior Partner, F.H. Puvimanasinghe & Co.  
126-2/1, 2<sup>nd</sup> Floor, YM.B.A. Building  
Sir Baron Jayatilleke Mawatha  
Colombo 1.
33. Wijeyadasa Rajapakshe M.P. President's Counsel  
Chairman, Parliamentary Committee on Public  
Enterprises (COPE)  
17, Wijeba Mawatha, Off Nawala Road  
Nugegoda.
34. Inspector General of Police  
Police Headquarters  
Colombo 1.
35. Deputy Inspector General of Police  
Criminal Investigation Department  
4<sup>th</sup> Floor, New Secretariat Building  
Colombo 1.
36. Chairman  
Commission to Investigate Allegations of Bribery  
or Corruption  
36, Malalasekera Mawatha  
Colombo 7.
37. Hon. Attorney General  
Attorney General's Department  
Colombo 12.
38. D.H.S. Jayawardhene  
C/o Milford Holdings (Pvt) Ltd.  
110, Norris Canal Road  
Colombo 10.

**Respondents**

**TO: HIS LORDSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS AND LADYSHIPS  
THE OTHER HONOURABLE JUSTICES OF THE SUPREME COURT OF THE  
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

I, NIHAL SRI AMERESEKERE of 167/4, Vipulasena Mawatha, Colombo 10 in the Democratic Socialist Republic of Sri Lanka, being a Buddhist, do hereby solemnly, sincerely and truly affirm and declare as follows:

1. a) I am the Affirmant and the 13<sup>th</sup> Respondent abovenamed and affirm to the facts herein contained of my own personal knowledge and belief and from the documents herein referred to and as advised.

- b) I received on 23.6.2007 by Registered Post from the Registry of Your Lordships' Court, Notice issued on me, together with copies of the Petition dated 28.5.2007 of the Petitioner, and his supporting Affidavit and the Documents marked therewith.
  - c) I have been the Chairman, Public Enterprise Reforms Commission (PERC) from 24.5.2004 to 10.11.2005.
  - d) I respectfully state that, I concur and agree with the contentions of the Petitioner, and to the grant by Your Lordships' Court of the reliefs prayed for by the Petitioner in his Petition.
  - e) In response to the Petition of the Petitioner, I state as follows :
2. a) I admit averments in paragraphs 2(j), 18, 21(c), 22 and 23 of the Petition and the corresponding averments in the Affidavit and admit Documents **P21(a)**, **P21(b)**, **P22(a)**, **P22(b)** and **P23** referred to in paragraph 19(a).
  - b) I am aware of the averments in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 19, 20, 21, 24 of the Petition and the corresponding averments in the Affidavit, and admit the same.
  - c) I verily believe the averments in paragraph 12.
  - d) Further answering paragraph 18, I admit that, as had been required, I gave evidence and made written representations before the Investigation Panel of the Ethics Committee of the Institute of Chartered Accountants of Sri Lanka (ICASL).
  - e) Further answering paragraph 21, I admit that, as had been required, I gave evidence and tendered written representations before the Parliamentary Committee on Public Enterprises (COPE).
3. I respectfully adduce before Your Lordships' Court, the following further facts, which would be material to be taken cognisance of in the adjudication of the matters in this Application before Your Lordships' Court.
  4. a) I verily believe that the transaction put in issue by the Petitioner would have been dealt with by the Economic Sub-Committee of the Cabinet.
  - b) The Minutes of the Economic Sub-Committee of the Cabinet during the relevant period, would reveal the decisions taken thereat and the persons, who had taken such decisions
  - c) Mr. R. Paskaralingam, Senior Advisor to the then Prime Minister, had participated at the Meeting of the Steering Committee held on 11.4.2002 and had participated in the making of the decision on the percentage of the Shares of SLIC to be sold, as borne out by item 12 of the Minutes of the said Meeting. – *quote*

"Mr. Paskaralingam was of the view that this decision need not be made immediately. It was decided that the Financial Advisor should be consulted on the structuring of the transaction. A decision will have to be made by early July 2002 before the Information Memorandum is sent out."

*A true copy of the Minutes of the Steering Committee held on 11.4.2002 is annexed marked "13R1" to my Statement of Objections, pleaded as part and parcel thereof.*

5. I tender true copies of the following Letters, which had been exchanged by and between PERC and Pricewaterhousecoopers (PWC).
- ii) *PERC's Letters to PWC dated 30.5.2003, 12.6.2003, 11.2.2004, 30.3.2004, 17.6.2004, 20.9.2004, 29.9.2004, 6.10.2004, 15.10.2004, 17.11.2004, 9.12.2004 and 13.1.2005– respectively annexed marked “13R2(a)”, “13R2(b)”, “13R2(c)”, “13R2(d)”, “13R2(e)”, “13R2(f)”, “13R2(g)”, “13R2(h)”, “13R2(i)”, “13R2(j)”, “13R2(k)”, 13R2(l)” to my Statement of Objections, pleaded as part and parcel thereof.*
  - iii) *PWC's Letters to PERC dated 5.6.2003, 6.11.2003, 29.4.2004, 24.9.2004, 1.10.2004, 14.10.2004, 28.10.2004 and 7.2.2005 respectively annexed marked “13R3(a)”, “13R3(b)”, “13R3(c)”, “13R3(d)”, “13R3(e)”, “13R3(f)”, “13R3(g)”, “13R3(h)” to my Statement of Objections, pleaded as part and parcel thereof.*
6. a) I tender true copies of the following Letters, which had been exchanged by and between PERC and Ernst & Young (“E&Y”).
- i) *PERC's Letters to E & Y dated 17.11.2004, 25.11.2004, 9.12.2004, 13.1.2005, are annexed respectively marked “13R4(a)”, “13R4(b)”, “13R4(c)”, “13R4(d)” to my Statement of Objections, pleaded as part and parcel thereof.*
  - ii) *E & Y's Letter to PERC dated 18.1.2005 annexed marked “13R5” to my Statement of Objections, pleaded as part and parcel thereof.*
- b) Queries and clarifications sought in Letter dated 17.11.2004 (**13R4(a)**) were not responded to by E&Y upto the time I relinquished, Office as Chairman, PERC, on 10.11.2005.
7. a) The ICASL by Letter dated 10.4.2006 invited me for an interview with the Investigation Panel of the Ethics Committee regarding a Complaint, which had been made.
- b) I was authorised by the Hon. Minister of Skills Development & Public Enterprise Reforms to extend the fullest co-operation and assistance in the said investigation, as per Letter dated 25.4.2006.
- c) I met the Investigation Panel of the Ethics Committee on 25.4.2006, and on a another date thereafter, together with Mr. E. Arumugam, Director (Monitoring & Evaluation), PERC, as authorised as aforesaid.
- d) By Letters dated 5.5.2006 and 8.8.2006, PERC forwarded copies of documents requested by the Investigation Panel of the Ethics Committee.
- e) Subsequently, since the aforesaid documents had been tampered with, I forwarded further copies, as requested, submitting my Letters dated 17.8.2006 and 22.8.2006 to the 32<sup>nd</sup> Respondent, the Chairman, Investigation Panel of the Ethics Committee.
- f) The Complainant, Mr. Amrit Muttukumar, a public interest activist, has repeatedly complained to the ICASL about the questionable and lethargic progress of the investigations into his Complaint, finally by his E-mails dated 24.7.2007 and 9.7.2007 addressed to the 31<sup>st</sup> Respondent, President of the ICASL, which apparently stand not responded to.

*True copies of Letters dated 10.4.2006, 25.4.2006, 5.5.2006, 8.8.2006, 17.8.2006, 22.8.2006 and E-mails dated 24.7.2007 and 9.7.2007 are annexed respectively marked "13R6(a)", "13R6(b)", "13R6(c)", "13R6(d)", "13R6(e)", "13R6(f)", "13R6(g)" and "13R6(h)" to my Statement of Objections, pleaded as part and parcel thereof.*

8. At paragraph 18 of the Petition my Letter dated 5.10.2006 (**P20(b)**) is without the attachment thereto of the Case Law, in support of the 'dicta' of Judgments referred to in the Section 'Conclusion' given on page 8 of my said Letter.

*A true copy of the Case Law attached to my said Letter dated of 5.10.2006 is annexed marked "13R7" to my Statement of Objections, pleaded as part and parcel thereof.*

9. a) The SLIC Balance Sheets as at 31.3.2002 (**P15**) (not-audited) and 11.4.2003 (**13R8**) (not-audited), which had been specially prepared for the transaction put in issue by the Petitioner, had been held out by E&Y and PWC, to have been in accordance with the International Accounting Standards.

*A true copy of the SLIC Accounts as at 11.4.2003 forwarded by E&Y referred to at paragraph 17(b) of the Petition is annexed marked "13R8" to my Statement of Objections, pleaded as part and parcel thereof.*

- b) Members of the Steering Committee had accepted the position that the aforesaid SLIC Accounts, more particularly the SLIC Balance Sheets, had been prepared to be in accordance with the International Accounting Standards.
- c) I accessed the website of the International Accounting Standards Board to verify the correctness of such position, which was a material factor in the transaction put in issue by the Petitioner.
- d) The International Accounting Standards Board by E-mail dated 20.11.2006 confirmed that International Accounting Standard 1 (IAS 1) applied to insurance companies.
- e) IAS 1 specifies the minimum line item disclosures on the face of, or in the notes to, the Balance Sheet, ..... 'Current' and 'non-current' assets, and 'current' and 'non-current' liabilities are presented as separate classifications on the face of the Balance Sheet.
- f) The SLIC Balance Sheets as at 31.3.2002 (**P15**) and 11.4.2003 (**13R8**), (both not-audited) *contrary to what had been held out*, had not been presented in accordance with the aforesaid International Accounting Standards, disclosing separately 'current assets' and 'non-current assets' and 'current liabilities' and 'non-current liabilities', leading to one of the problems confronted by the Government.
- g) Whereas, such Accounting Standard had been adhered to in the SLIC audited Balance Sheets as at 31.12.2001 (**P14**) and 31.12.2002 (**P17**), disclosing separately 'current assets' and 'non-current assets' and 'current liabilities' and 'non-current liabilities', raising the question, *as to why such policy had been consciously changed*.

- h) In any case, the ‘price adjustment formula’, as per Clause 4 of the Agreement dated 11.4.2003 (P13), structured by PWC and known to E&Y, requires such classification to be disclosed in the Balance Sheets as at 31.3.2002 and 11.4.2003 (both not-audited) to compute the ‘net working capital’ increase, which is the increase in ‘current assets’ less ‘current liabilities’, as defined in P13 between 31.3.2002 and 11.4.2003; and which said Accounts should also be audited.

*True copies of International Accounting Standard 1 and E-mail dated 20.11.2006 are annexed respectively marked “13R9(a)” and “13R9(b)” to my Statement of Objections, pleaded as part and parcel thereof.*

10. a) I was examined by COPE on the transaction put in issue by the Petitioner, which *prima-facie* has several instances of ‘conflicts of interest’.
- b) Whilst I was being examined by COPE, Suhadha Gamalath, Member, PERC and Secretary, Ministry of Justice, made a clear presentation, citing authorities, on the definition of ‘conflicts of interest’, which would be available with the 33<sup>rd</sup> Respondent, Chairman COPE.
11. In the foregoing premises, I reiterate that I concur and agree with the contentions of the Petitioner and pray that Your Lordships’ Court be pleased to grant the reliefs prayed for in his Petition.

The foregoing Affidavit having been read over and explained by me to the affirmant thereof and he having admitted to have understood the contents thereof affirmed to and signed at Colombo on this 2<sup>nd</sup> day of August 2007



BEFORE ME

*[Signature]*  
JUSTICE OF THE PEACE

S. NAVARATNE  
Justice of the Peace  
No. 25/10, Wipulasena Mawatha,  
Colombo - 10.

2007/8/02

TRUE COPY

*[Signature]*

Attorneys-at-Law for the

~~Plaintiffs~~ ~~Defendants~~ ~~Appellants~~  
13th ~~Petitioners~~ ~~Respondents~~