

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

Case No. SC Application  
No. SC FR 209/2007

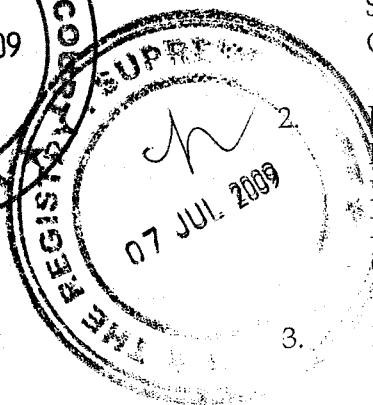
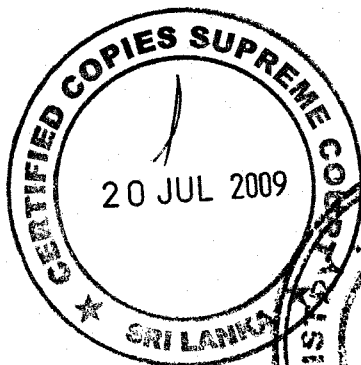
In the matter of an Application for Relief pertaining to the undertaking in the Affidavit filed by the 8<sup>th</sup> Respondent-Petitioner dated 16<sup>th</sup> October 2008 pertaining to holding public office

Vasudeva Nanayakkara  
Attorney-at-Law  
Advisor to HE The President  
Secretary, Democratic Left Front  
No. 49 1/1, Vinayalankara Mawatha  
Colombo 10

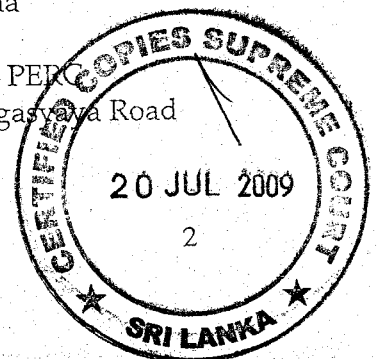
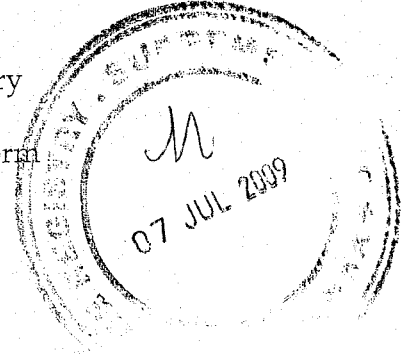
PETITIONER

VS

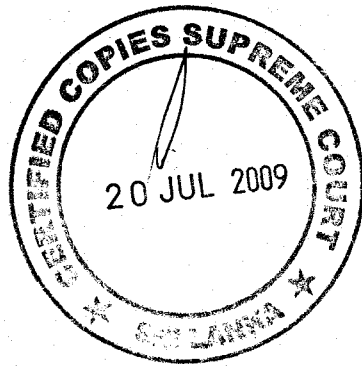
1. K. N. Choksy P. C., MP  
Former Minister of Finance  
No. 23/3,  
Sir Ernest de Silva Mawatha  
Colombo 07
2. Karu Jayasuriya MP  
Former Minister of Power and Energy  
No. 2, Amarasekera Mawatha  
Colombo 5
3. Ranil Wickremesinghe MP  
Former Prime Minister  
No. 115, 5<sup>th</sup> Lane  
Colombo 03
4. Chandrika Bandaranaike  
Kumaratunga  
Former President of Sri Lanka  
Horagolla Walawwa  
Horagolla
5. Milinda Moragoda MP  
Former Minister of Economic Reform  
No. 32, Allen Methiniyarama Road  
Colombo 05



6. Sripathy Sooriarachchi AAL, MP  
Former Minister,  
Public Enterprise Reforms  
No. 22, Nivasa Mawatha  
Rilaula, Kandana  
(Now Deceased)
7. Charitha Ratwatte  
Former Secretary to the Treasury  
No. 16, Jawatte Road  
Colombo 5
8. P. B. Jayasundara  
Secretary to the Treasury  
Former Chairman  
Public Enterprises Reform  
Commission  
Secretariat  
Colombo 1
9. P. Weerahendi  
Former Secretary  
Ministry of Power and Energy  
No. 410/7 Baudhaloka Mawatha  
Colombo 7
10. DahamWimalasena  
Former Chairman  
Ceylon Petroleum Corporation  
Member, Technical Evaluation  
Committee  
No. 22/11, Subhadre Mawatha  
Madiwela
11. Upali Dahanayake  
Former Director, Ministry of Finance  
Member, Technical Evaluation  
Committee  
No. 32, Peiris Avenue, Idama  
Moratuwa
12. A. W. C. Perera  
Former Addl. Secretary  
Ministry of Economic Reforms  
Member,  
Technical Evaluation Committee  
No. 57/2, Rajamaha Vihara Road  
Pita Kotte
13. Shamalee Gunewardena  
Attorney-at-Law  
Former Director Legal, PERC  
No. 500/111, Thimbirigaswaya Road  
Colombo 05



14. DFCC Bank  
No. 73/5, Galle Road  
Colombo 3
15. Commissioner of Lands  
Land Commissioner's Department  
No. 7, Gregory's Avenue  
Colombo 7
16. Sri Lanka Ports Authority  
No. 19, Church Street  
Colombo 01
17. Ceylon Petroleum Corporation  
No. 109, Rotunda Tower  
Galle Road  
Colombo 3
18. John Keells Holdings  
No. 130, Glennie Street  
Colombo 02
19. Lanka Marine Services Ltd.  
No. 6, Walls Lane  
Colombo 15
20. Susantha Ratnayake  
Chairman  
John Keells Holdings Ltd.  
No. 130, Glennie Street  
Colombo 02
21. V. Lintotawela  
Former Chairman  
John Keells Holdings Ltd  
No. 55, A, Abdul Caffoor Mawatha  
Colombo 05
22. Nihal Sri Amarasekera  
Former Chairman, PERC  
No. 167/4, Vipulasena Mawaha  
Colombo 10
23. W. M. Bandusena  
Former Chairman, PERC  
No. XB 1/2/2, Edmonton Houses  
Kirulapona  
Colombo 05
24. W. A. S Perera  
Chairman, PERC  
West Tower, 11<sup>th</sup> Floor  
World Trade Center  
Colombo 01



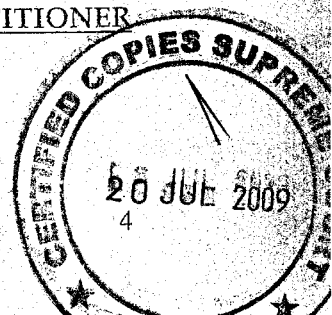
25. Channa de Silva  
Director General  
Securities & Exchange Commission  
of Sri Lanka (SEC) level 11-01, East  
Tower  
World Trade Center  
Echelon Square, Colombo 01
26. Lalith Weeratunga  
Secretary to His Excellency the President  
Presidential Secretariat  
Colombo 01
27. Wijeyadasa Rajapaksha P.C. M.P.  
Chairman  
Parliamentary Committee on Public  
Enterprises  
(COPE)  
No. 17, Wijayaba Mawatha  
Off Nawala Road  
Nugegoda
28. Inspector General of Police  
Police Headquarters  
Colombo 01
29. Deputy Inspector General of Police  
Criminal Investigation Department  
4th Floor, New Secretariat Building  
Colombo 01
30. Chairman  
Commission to Investigate Allegations of  
Bribery and Corruption  
No. 36, Malalasekera Mawatha  
Colombo 07
31. Hon. Attorney General  
Attorney General's Department  
Colombo 12

RESPONDENTS

AND NOW BETWEEN

P. B. Jayasundera  
No. 761/C, Pannipitiya Road  
Pelawatte  
Battaramulla

8<sup>TH</sup> RESPONDENT PETITIONER



VS

The Attorney-General  
Attorney-General's Department  
Colombo 12

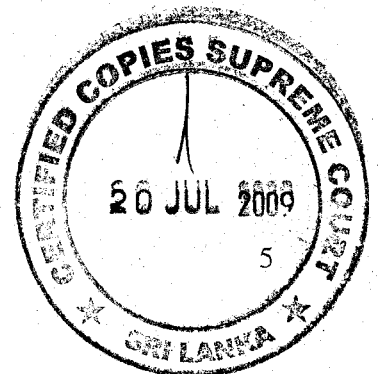
31<sup>ST</sup> RESPONDENT - RESPONDENT

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

On this 7<sup>th</sup> day of July 2009

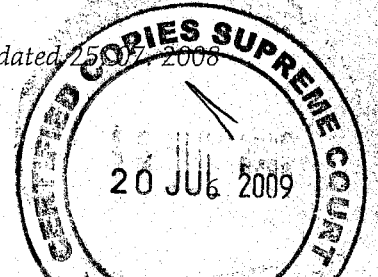
The Petition of the 8<sup>th</sup> Respondent-Petitioner abovenamed (hereinafter referred to as "the present Petitioner") appearing by his Attorneys-at-Law Mahinda Haradasa, Sittampalam Kumaranathan, Nimal Weeraratne, Hareed Mohamed Zafrullah, Kumutharanjani Nandakumar, Rajaratnam Selvaskandan, Ravidranath Perera, Yasmin Haradasa, Sita Vinothini Amarasekara practicing in Partnership under the name and style and firm **VARNERS** with their Assistants Surani Wickramaratna, Geethangani Jayasundara, Nilanthi Perera, Lankika Dayaratne, Rosheni Wickremaratne, Radeeka Tissera, Shamini Halpe, Mihirini Perera, Lanka Bandara, Lakshika Ketawalage, Nadhra Zanoon, Pubudu de Silva, Lakdini Perera Herath, Anushka Samarasinghe, Anuruddha Wijayarathne and Manahari Wickrama states as follows:

1. The present Petitioner abovenamed was appointed in April 2004, as Secretary, Ministry of Finance and Planning/Secretary to the Treasury by His Excellency the President in terms of Article 51(2) of the Constitution. His Excellency the President being also the Minister of Finance and Planning, the present Petitioner whilst functioning in the said post was subject to the direction and control of His Excellency the President. At the time material to the above Application, the present Petitioner held the said post of Secretary, Ministry of Finance and Planning/Secretary to the Treasury and was cited as the 8<sup>th</sup> Respondent in SC FR Application No. 209/2007.



2. His Lordship the Chief Justice the Honourable Sarath N. Silva, and Their Lordships Justice R A N G Amaratunga and Justice D J de S Balapatabendi delivered judgment in the said Application on 21<sup>st</sup> July 2008 granting specifically "the relief prayed for in paragraphs (g), (h) and (i) of the prayer to the Petition" in the said Application, which are in the following terms:
- (i) Make Order declaring that the execution of the instrument of grant (P30) purporting to transfer the Bloemendhal land A8-R2-P21.44 to Lanka Marine Services Limited (19<sup>th</sup> Respondent) had been carried out in a wrongful, unlawful and fraudulent manner;
  - (ii) Make Order declaring that the execution of the instrument of grant (P30) purporting to transfer the Bloemendhal land A8-R2-P21.44 to Lanka Marine Services Limited (19<sup>th</sup> Respondent) is fraudulent and *ab initio* invalid, null and void and of no force or avail in law;
  - (iii) Make Order canceling, annulling and making void the instrument of grant (P30) purporting to transfer the Bloemendhal land A8-R2-P21.44 to Lanka Marine Services Limited (19<sup>th</sup> Respondent).
3. Their Lordships directed the present Petitioner to pay a sum of Rs.500,000/= as compensation to State on the basis that his conduct was arbitrary, *ultra vires*, biased and collusive. However, their Lordships did not grant specific relief as prayed for in paragraphs (o), (q) and (r) against the present Petitioner.
4. The present Petitioner respectfully states that he is not guilty of any misconduct and for that reason will take appropriate legal action to move Your Lordships' Court to establish the same.
5. The present Petitioner by letter dated 25<sup>th</sup> July 2008 addressed to His Excellency the President stated that he would be paying the said sum of Rs.500,000/= as directed by Your Lordships' Court and noted that throughout his career in public service he had "maintained the highest level of honesty and integrity and ..... discharged ..... duties with utmost commitment in good faith and in the best interests of the country, and never compromised under any circumstances the public interest...". By the said letter, the present Petitioner requested His Excellency the President to relieve him of the responsibilities as Secretary, Ministry of Finance and Planning/Secretary to the Treasury at the earliest convenience.

The present Petitioner annexes hereto a true copy of the said letter dated 25<sup>th</sup> July 2008 marked "A".



6. The present Petitioner paid the said sum of Rs.500,000/= as compensation to the State on 28. 07. 2008.
7. In response to his said letter marked "A", by letter dated 31<sup>st</sup> July 2008, the Secretary to the President informed the present Petitioner that the President appreciated his concerns but required him to continue to serve until a suitable replacement was found.

*The present Petitioner annexes hereto a true copy of the said letter dated 31. 07. 2008 marked "B".*

8. On 17<sup>th</sup> September 2008, the Secretary to the President informed the present Petitioner that as requested by his letter of 25<sup>th</sup> July 2008, he had been relieved from the post of Secretary, Ministry of Finance and Planning/Secretary to the Treasury with effect from 17<sup>th</sup> September 2008.

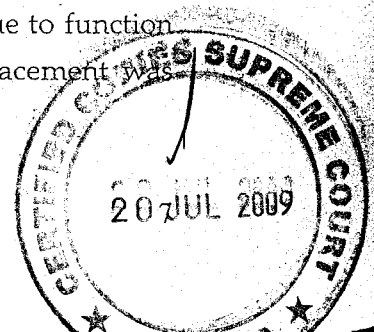
*The present Petitioner annexes hereto a true copy of the said letter dated 17. 09. 2008 marked "C".*

9. The present Petitioner received a notice dated 3<sup>rd</sup> October 2008 from Your Lordships' Court requiring him to appear before Your Lordships' Court on 8<sup>th</sup> October 2008 and reveal to Court whether the present Petitioner was continuing to:

- (i) hold office under the Republic and if so, the nature of such office and the place at which he is functioning;
- (ii) whether he is holding office in any establishment in which the Government of Sri Lanka has any interest, purporting to represent the interest of the Government of Sri Lanka and if so the nature of such office.

10. On 8<sup>th</sup> October 2008, the present Petitioner appeared before Your Lordships' Court represented by Counsel.

11. The present Petitioner states that Counsel appearing on his behalf submitted that within 04 days of the Judgment, the present Petitioner had submitted his resignation from the post of Secretary, Ministry of Finance and Planning/Secretary to the Treasury, but was required to continue to function in that post and discharge official duties until a suitable replacement was found.



12. Counsel further submitted that the present Petitioner had already resigned as Chairman Sri Lankan Airlines and did not hold office in any Government establishment or in any establishment that the Government had any interest and apologized for having held office which Counsel submitted was pursuant to His Excellency the President requiring him to continue to serve as aforesaid. Your Lordships' Court made Order in the following terms:

"8<sup>th</sup> Respondent is given time to file appropriate Affidavit in which he may consider including the said expression of regret and a firm statement that he would not hold any office in any Government institution either directly or indirectly or purport to exercise in any manner executive or administrative functions."

Your Lordships' Court also directed that the case be mentioned on 20<sup>th</sup> October 2008 for a final order.

13. Pursuant to the said Order, the present Petitioner tendered an Affidavit dated 16<sup>th</sup> October 2008, in which he stated, *inter alia*, as follows:

"I state that I do not hold office under the Republic or in any establishment in which the Government of Sri Lanka has an interest, purporting to represent the Government of Sri Lanka and I will not hold office in any Government institution either directly or indirectly or purport to exercise in any manner executive or administrative function."

*A true copy of the said Affidavit and the annexures thereto are annexed hereto compendiously marked "D".*

14. On 20<sup>th</sup> October 2008 when the case was mentioned before Your Lordships' Court, Counsel representing the present Petitioner submitted that the requisite affidavit had been filed and Your Lordships' Court made order that the case be mentioned on 15<sup>th</sup> December 2008, on which date the proceedings were terminated.

15. The present Petitioner received a letter dated 25<sup>th</sup> May 2009 from the Secretary to the President directing the present Petitioner to resume duties as Secretary, Ministry of Finance and Planning and Secretary to the Treasury. In the said letter the Secretary to the President stated, *inter alia* -:



- (i) that with the successful liberation of the North and East the country needs to embark on a massive development programme and that the country is confronted with several challenges that required to be managed to restore the desired socio economic progress, the impact of the global economy that is confronted with a financial crisis being one such major challenge;
- (ii) that several major infrastructure development activities are in the final stage of implementation and many others are to be launched for which domestic and external funding and other resources need to be mobilized;
- (iii) that the implementation of post-war development programmes in the North and East also demand experienced and committed public officers.

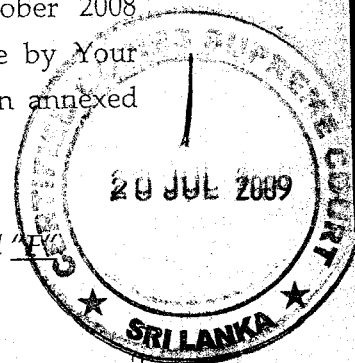
In the said letter the Secretary to the President stated further as follows:

*"As we know, His Excellency the President accepted your resignation from the post of Secretary, Ministry of Finance and Planning and other positions in the Government reluctantly, in view of your insistence. Considering the vast knowledge and experience you command while acknowledging your honesty and integrity, His Excellency the President is of the view that it is a waste that your services are not available to the Government, particularly in the present context. In this background, His Excellency the President has instructed me to inform you to resume duties as Secretary, Ministry of Finance and Planning and assist the Government in its endeavours."*

*A true copy of the said letter dated 25. 05. 2009 is annexed hereto marked "E".*

16. Responding to the said letter, the present Petitioner by his letter dated 3<sup>rd</sup> June 2009 re-iterated that he had always conducted himself with utmost propriety and that he is not guilty of any wrongdoing. In the said letter, the present Petitioner also expressed his gratitude to His Excellency the President for the confidence placed in him and stated that he was unable to make a commitment in response to His Excellency's direction to resume office in view of the undertaking contained in the Affidavit dated 16<sup>th</sup> October 2008 tendered by the present Petitioner pursuant to the Order made by Your Lordships' Court. (A true copy of which said Affidavit has been annexed hereto marked "D").

*A true copy of the said letter dated 3<sup>rd</sup> June 2009 is annexed hereto marked "E".*



17. Thereafter the present Petitioner was summoned by His Excellency the President and His Excellency impressed upon him that his services as the Secretary, Ministry of Finance and Planning/Secretary to the Treasury were urgently required in the national interest. The present Petitioner submits that His Excellency the President is vested with the power under Article 52(1) of the Constitution to appoint a Secretary to each Ministry. A Secretary holds office under Article 52(3) of the Constitution, until the dissolution of the Cabinet of Ministers or upon a determination by the President which results in the relevant Ministry ceasing to exist.
18. In the circumstances, the present Petitioner makes this Application to Your Lordships' Court for relief as hereinafter prayed for, in order to enable the present Petitioner to comply with the direction of His Excellency the President that the present Petitioner's services are required in the national interest.
19. The present Petitioner has given notice of this Application to the Attorney General and proof of same is annexed to the accompanying motion.
20. The present Petitioner has not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.

WHEREFORE the 8<sup>th</sup> Respondent-Petitioner prays that Your Lordships' Court be pleased -

- (a) to make order relieving the present Petitioner of the undertaking contained in paragraph 13 of the said Affidavit dated 16<sup>th</sup> October 2008 tendered by the present Petitioner pursuant to the Order of Your Lordships' Court and produced marked "D" to this Application;
- (b) to grant such other and further relief as to Your Lordships' Court shall seem fit and meet.

*Varney*

ATTORNEYS-AT-LAW FOR THE 8<sup>TH</sup>  
RESPONDENT-PETITIONER

