

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

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

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. 209/2007

VS

1. K.N. Choksy P.C., M.P.
Former Minister of Finance
23/3, Sir Ernst De Silva Mawatha
Colombo 7.
2. Karu Jayasuriya, M.P.
Former Minister of Power & Energy
2, Amarasekera Mawatha
Colombo 5.
3. Ranil Wickremesinghe M.P.
Former Prime Minister
115, 5th Lane
Colombo 3.
4. Chandrika Bandaranaike Kumaratunga
Former President of Sri Lanka
Horagolla Walawwa
Horagolla.
5. Milinda Moragoda M.P.
Former Minister of Economic Reform
3/2, Allen Methiniyarama Road
Colombo 5.
6. Sripathy Sooriyarachchi, AAL, M.P.
Former Minister, Public Enterprise Reforms
22, Niwasa Mawatha
Rilaulla
Kadana.
7. Charitha Ratwatte, Former Secretary to the Treasury
16, Jawatte Road
Colombo 5.

8. P.B. Jayasundera
Secretary to the Treasury / Former Chairman,
Public Enterprises Reform Commission (PERC)
Secretariat
Colombo 1.
9. P. Weerahandi, Former Secretary
Ministry of Power & Energy
410/7, Baudhaloka Mawatha
Colombo 7.
10. Daham Wimalasena, Former Chairman
Ceylon Petroleum Corporation
Member, Technical Evaluation Committee
22/11, Subadra Mawatha
Madiwela.
11. Upali Dahanayake, Former Director, Ministry of Finance
Member, Technical Evaluation Committee
32, Peiris Avenue, Idama
Moratuwa.
12. A.W.C. Perera, Former Addl. Secretary
Ministry of Economic Reforms
Member, Technical Evaluation Committee
57/2, Rajamaha Vihara Road
Pita Kotte.
13. Shamalee Gunawardene, Attorney-at-Law
Former Director Legal, PERC
500/111, Thimbrigasyaya Road
Colombo 5.
14. DFCC Bank
73/5, Galle Road
Colombo 3.
15. Commissioner of Lands
Land Commissioner's Department
7, Gregory's Avenue
Colombo 7.
16. Sri Lanka Ports Authority
19, Church Street
Colombo 1.
17. Ceylon Petroleum Corporation
109, Rotunda Tower
Galle Road
Colombo 3.
18. John Keells Holdings Ltd.
130, Glennie Street
Colombo 2.
19. Lanka Marine Services Ltd.
69, Walls Lane
Colombo 15.

20. Susantha Ratnayake, Chairman
John Keells Holdings Ltd.
130, Glennie Street
Colombo 2.
21. V. Lintotawela, Former Chairman
John Keells Holdings Ltd.
55, Abdul Caffoor Mawatha
Colombo 3.
22. Nihal Sri Ameresekere, Former Chairman, PERC
167/4, Vipulasena Mawatha
Colombo 10.
23. W.M. Bandusena, Former Chairman, PERC
XB 1/2/2, Edmonton Houses
Kirulapona
Colombo 5.
24. W.A.S. Perera, Chairman, PERC
West Tower, 11th Floor
World Trade Center
Colombo 11
25. Channa De Silva,
Director General
Securities & Exchange Commission of Sri Lanka (SEC),
Level 11-01, East Tower
World Trade Center
Echelon Square
Colombo 1.
26. Lalith Weeratunga
Secretary to His Excellency the President
Presidential Secretariat
Colombo 1.
27. Wijeyadasa Rajapakse P.C., M.P.
Chairman, Parliamentary Committee on Public Enterprises
(COPE)
17, Wijeba Mawatha
Off Nawala Road
Nugegoda.
28. Inspector General of Police
Police Headquarters
Colombo 1.
29. Deputy Inspector General of Police
Criminal Investigation Department
4th Floor, New Secretariat Building
Colombo 1.
30. Chairman
Commission to Investigate Allegations of Bribery or Corruption
36, Malalasekera Mawatha
Colombo 7.

31. Hon. Attorney General
Attorney General's Department
Colombo 12.

RESPONDENTS

32. **Sri Lanka Shipping Company Limited**
46/5, Nawam Mawatha
P.O. Box 1125
Robert Senanayake Building
Colombo 2.

33. **Lanka Maritime Services Limited**
3rd Floor, Robert Senanayake Building
46/5, Nawam Mawatha
Colombo 2.

34. **Lanka Services (Pvt) Ltd.**
1st Floor, Robert Senanayake Building
46/5, Nawam Mawatha
Colombo 2.

ADDED-RESPONDENTS

AND NOW BETWEEN

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

8TH RESPONDENT PETITIONER

VS

The Attorney General
Attorney General's Department
Colombo 12.

31ST RESPONDENT - RESPONDENT

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

On this 27th day of July 2009

The **Statement of Objections** of the 22nd Respondent above-named, appearing in person, to the Petition dated 7.7.2009 (hereinafter referred to as the "**Petition**") of the *former* 8th Respondent, (without prejudice thereto, sometimes referred as the "**8th Respondent**"), and his corresponding Affidavit also dated 7.7.2009, states as follows:

Preliminary Objections

1. By way of Preliminary Objections, the 22nd Respondent respectfully states that:

- a)
 - i) the *former 8th* Respondent's Application ought be rejected *in-limine*, in that, the said Application is misconceived in law, and devoid of any merit, and the jurisdiction of Your Lordships' Court could not be invoked in this manner; inasmuch as there is not even any reference in the Caption to the Constitutional or Statutory provisions under which the said Application has been made ;
 - ii) the *former 8th* Respondent has described himself in the said Application as '8th Respondent-Petitioner', and also without the *second* Caption containing the names of all the Respondents, including the Additional Respondents, and *substituting* the 8th Respondent, with the present holder of such office;
 - iii) *furthermore the former 8th Respondent's Affidavit in not in conformity with the law governing Affidavits.*
- b) There is no evidence, whatsoever, placed before Your Lordships' Court, that there is any question, whatsoever, of *general and public importance*, as stipulated in Article 132 of the Constitution, and nor has the *former 8th* Respondent sought such relief in a *purported* Application made in an Article 126 of the Constitution, which deals with *executive and administrative action*, and as such, the *former 8th* Respondent's Application *is not on a premise known to law.*
- c) Sri Lanka is a signatory and has ratified the United Nations Convention Against Corruption of December 2005, which encompasses the public service, as well as the private sector, obligating Sri Lanka, *inter-alia*, to conform to and comply with the dictates in the Articles thereof. Article 27(15) of the Constitution stipulates the Government's obligation to do so.
- d)
 - i) During the Hearing of this Case, the State Attorney having filed Proxy, the Deputy Solicitor General appeared for the *former 8th* Respondent.
 - ii) However, after delivery of Judgment on 21.7.2008, the State Attorney having revoked Proxy, the *former 8th* Respondent appeared by new Counsel.
 - iii) At that stage, *former 8th* Respondent did not state as follows, as he now seeks to state, **almost one year thereafter**, as cited at paragraph 8 hereinbelow:

"throughout my career in public service I (i.e. former 8th Respondent) had maintained the highest level of honesty and integrity and discharge duties with utmost commitment in good faith and in the best interests of the country, and never compromised under any circumstances the public interest"
 - iv) 22nd Respondent does not accept the foregoing, for reasons morefully set out hereinafter, more particularly at **paragraphs 14 (a) to 14 (o)** hereinbelow, and **rejects the same as totally incorrect and as furthest from the truth and reality.**

- v) In fact, the foregoing is an ‘*excerpt*’ from 8th Respondent’s Letter dated 25.7.2008 i.e. nearly one year ago, which had been knowingly and willfully suppressed at that time from Your Lordships’ Court, as morefully set out in paragraph 8 hereinbelow.
- vi) At the time Your Lordships’ Court held that the 8th Respondent’s actions to be wrongful, unlawful and illegal, and directed him to give-up public service, and he having given his resignation, His Excellency President had accepted same, without any demur, respecting the directions of Your Lordships’ Court.
- vii) Neither His Excellency the President, nor the Secretary to the President, 26th Respondent, had concurred at that time, with the foregoing statement of the 8th Respondent, made in his Letter dated 25.7.2008 marked (“A”) to his Petition, as evidenced by Letters dated 31.7.2008 and 17.9.2008 marked (“B”) and (“C”) to his Petition, which were replies to the said Letter dated 25.7.2008 (“A”) of the 8th Respondent.
- viii) Consequently, 8th Respondent expressed regret and tendered an unreserved apology to Your Lordships’ Court by tendering an Affidavit dated 16.10.2008 marked (“D”) to the Petition, for having held public office, after the grave and serious findings, and severe castigations made against him, by Your Lordships’ Court in Judgment dated 21.7.2008, which tantamounts to the acceptance of responsibility and admission of guilt on his part, and thus the 8th Respondent is *estopped* from pleading otherwise now.
- ix) In fact, the 8th Respondent, as borne out by the following sentence in paragraph 3 of his Letter dated 3.6.2009 marked (“F”) to his Petition, *has admitted that there had been adverse findings made by Your Lordships’ Court against him*.

“In this context, my lawyers had advised me prior to the delivery of the Judgment in the said case that if the Court were to take into account all the relevant material, there could be no adverse findings against me.”

However, at that time he did not point out that Your Lordships’ Court had not taken into account all the relevant material, and as to what those material were.

- x) At that time, the 8th Respondent did not plead the importance, he now pleads, of his service in the public sector, nor did he plead the manner in which he purports to have conducted himself in public service, which he now pleads, *nearly one year thereafter*; which is refuted by the contents of paragraphs hereinafter, more particularly by contents of paragraph 14 hereinbelow.
- e) i) In paragraph 2 (aa) of the main Petition in this Application, the Petitioner had pleaded as follows:

“31st Respondent is the Hon. Attorney General of Sri Lanka, who had already expressed opinion on the wrongful and unlawful monopoly granted to the Lanka Marine Services Ltd., (19th Respondent), and which monopoly has been subsequently impugned by the Court of Appeal.”

- ii) Hon. Attorney General gave Opinion dated 3.3.2004 marked (“P21”) to the main Petition in the main Application, *inter-alia*, stating that ‘any refusal to permit other barge owners to transport bunker fuel by barge, would be a violation of Article 12(1) and 14(1) of the Constitution’, as pleaded in paragraph 20(c) of the main Petition.
- iii) The foregoing was specifically in relation to the ‘monopoly’ Clause *surreptitiously* included in Agreement (“P19(a)”) by the 8th Respondent, as pleaded in paragraph 16 of the main Petition.
- iv) As pleaded in paragraph 20(e) of the main Petition, the Court of Appeal refused to issue Notice by its Judgment in CA (Writ) Application No. 829/2005 marked (“P22”) to the main Petition, *inter-alia*, holding that the said Clause in the Agreement (“P19(a)”) was illegal and *ultra-vires* the law enacted by Parliament.
- v) Your Lordships’ Court in its Judgment delivered on 21.7.2008 at page 61 at end of paragraph 15, held as follows:

“The Clause agreed to by Jayasundera (i.e. 8th Respondent) was struck down by the Court of Appeal as being illegal.”

- vi) In the foregoing circumstances, 22nd Respondent respectfully states that the Hon. Attorney General stands estopped from appearing in support of the Application made by the 8th Respondent, in that, the Hon. Attorney General had opined that the impugned Clause introduced by the 8th Respondent violates Articles 12 (1) and 14(1) of the Constitution, and the said Clause had been struck down by the Court of Appeal and Your Lordships’ Court, *as being illegal*.
- f) The 22nd Respondent reiterates the following paragraph 14. o) viii. hereinbelow:

“In contrast, the 8th Respondent, as Secretary to the Treasury, *prevented* E. Arumugam, who had a Masters Degree from Harvard University in Public Administration and was a Fellow Member of Management Accountants, UK, from ‘re-joining’ the Public Enterprise Department, from which he, as a Director, had resigned to join PERC. *which the 8th Respondent in the face of disclosures in this Action and the SLIC Action SC (FR) No. 158/2007 questionably caused to be closed, from re-joining the Department of Public Administration, as the Addl. Director General, notwithstanding the recommendation of the Director General, Public Enterprise Department. The same principle ought to apply to the 8th Respondent, without exception.”*

Likewise, the 8th Respondent stands estopped from making his instant Application

- g) i) 22nd Respondent verily believes that the 8th Respondent now, *nearly one year later*, has prevailed upon and persuaded His Excellency the President, *who had not been fully apprised of the grave and serious findings and severe castigations made against the 8th Respondent in the Judgment of Your Lordships’ Court dated 21.7.2008 (22RX1)*, to direct the Secretary to His Excellency President to write Letter dated 25.5.2009 to the 8th Respondent marked (“E”) to the Petition, which the 8th Respondent had replied by his Letter dated 3.6.2009 marked (“F”) to the Petition, *laying the foundation as it were*, to make this Application to Your Lordships’ Court.

- ii) 22nd Respondent very respectfully states that the Hon. Attorney General ought to have apprised His Excellency the President of the foregoing, inasmuch the Deputy Solicitor General informed Your Lordships' Court of having revoked the Proxy of the 8th Respondent.
- iii) 22nd Respondent relies on the *dicta* in the Determination made by a 7 Member Bench of Your Lordships' Court on the aborted 19th Amendment to the Constitution, which, *inter-alia*, included the following:

"If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the Rule of Law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the Rule of Law meaningful and effective" _ (Cited from Indian Judgment) (Emphasis added)

- h) *Without prejudice to the foregoing*, the 22nd Respondent, **who actively supported the Petitioner in this Application, making extensive Oral and Written Submissions, as borne out in the Judgment ("22RX1")**
 - i) denies all and singular the several averments contained in the Petition and the corresponding paragraphs of Affidavit of the 8th Respondent, save and except those that are hereinafter specifically admitted, and
 - ii) responds to the averments contained in the Petition and the corresponding paragraphs of the Affidavit of the 8th Respondent, *to demonstrate that the 8th Respondent had knowingly and willfully suppressed material facts and made false statements*, with the deliberate intent of misleading Your Lordships' Court.

Responses

- 2. The 22nd Respondent admits the averments contained in paragraph 1 of the Petition.
- 3. In response to the averments in paragraphs 2, 3, 4 and 6 of the Petition, the 22nd Respondent respectfully states that;
 - a) the statements therein are **incorrect** and **incomplete**; and therefore *are false*, and had been knowingly and willfully made with the deliberate intent to mislead Your Lordships' Court.
 - b) the statement in paragraph 2 of the Petition, that reliefs in prayers (g), (h) and (i) had been granted, and the statement in paragraph 3 of the Petition, that reliefs in prayers (o), (q) and (r) had not been granted, have been knowingly and willfully camouflagly made, *with deliberate intent to mislead Your Lordships' Court*.
 - c) the 22nd Respondent respectfully states that a complete reading of the comprehensive Judgment dated 21.7.2008, and the specific findings therein, would give the lie to the aforesaid statements *of which judicial notice ought be taken*.

*A true copy of the Judgment delivered on 21.7.2008, with the **relevant paragraphs highlighted**, for the convenience of Your Lordships' Court, is annexed marked "22RX1", pleaded as part and parcel hereof*

4. Further responding to paragraphs 2, 3, 4 and 6 of the Petition, the 22nd Respondent respectfully states that the 8th Respondent has **knowingly and willfully suppressed** the following material facts from Your Lordships' Court, with deliberate intent to mislead Your Lordships' Court.

a) in the final paragraph of the Judgment delivered on 21.7.2008 ("22RX1") at page 69, Your Lordships' Court had stated thus:

"All parties to the proceedings will take necessary action on the basis of the findings stated above"

b) the instant Case after delivery of Judgment on 21.7.2008, had come-up on several dates i.e. on 8.9.2008, 29.9.2008, 8.10.2008, 20.10.2008 and 15.12.2008, on which date the Proceedings had been **terminated**.

c) several just and equitable reliefs had been granted and directions made by Your Lordships' Court on the aforesaid dates.

d) on 8.9.2008, the Counsel for the Petitioner having, *inter-alia*, brought to the notice of Your Lordships' Court, that notwithstanding the foregoing and the notification thereof to the 28th, 29th, 30th, 25th and 31st Respondents, no action had been taken, *Your Lordships' Court directed Notices to be issued on the said Respondents for 29.9.2008*.

e) also on the said 8.9.2008, Counsel for the Petitioner had further pointed out that;

'8th Respondent in respect of whose conduct adverse findings had been made by Your Lordship's Court is continuing to hold public office notwithstanding the fact that findings of Your Lordships' Court is that the 8th Respondent has violated the provisions of the Constitution and thereby breached the oath taken in terms of Article 53 of the Constitution and thus he is disqualified from holding public office'.

f) on 29.9.2008, Your Lordships' Court had made several Orders, *inter-alia*, directing;

- Inspector General of Police – 28th Respondent
- DIG, Criminal Investigation Department – 29th Respondent
- Chairman, Bribery Commission – 30th Respondent
- Hon. Attorney General – 31st Respondent

to take steps on the basis of the Judgment, *to enforce the rule of law and the equal protection of the law guaranteed under the Constitution*, and **the 22nd Respondent's written representations in this regard dated 29.9.2008 were directed to be furnished to the Addl. Solicitor General** (a copy of which was handed over), and the *Respondents were directed to take steps in terms of the laws that are applicable on the basis of the findings made by Your Lordships' Court and ascertain whether any offences have been committed*; and **the Addl. Solicitor General directed to notify Your Lordships' Court of the steps that were being taken by the Respondents.**

g) also on 29.9.2008, Your Lordships' Court had noted that –

'the Court had come to firm findings that the 8th Respondent had acted contrary to law against the public interest in the conferment of benefits to a private party and that there is firm finding that he had infringed the fundamental rights guaranteed by Article 12(1) of the Constitution and that notwithstanding these findings which clearly show that he has acted in flagrant violation of the Constitution the 8th Respondent is yet continuing to hold public office'.

h) also on 29.9.2008, the **Addl. Solicitor General, who appeared for the 8th Respondent submitted that the Attorney General had revoked the proxy of the 8th Respondent,** and thus Your Lordships' Court directed to issue Notice directly on the 8th Respondent to be present in Court on the next date to reveal the facts stated in paragraph 9 of the Petition of the 8th Respondent; **and that the Attorney General to assist Court on this matter since he is not appearing for any particular party now.**

True copies of the Proceedings of 8.9.2008, 29.9.2008, the 22nd Respondent's written representations dated 29.9.2008, Proceedings of 8.10.2008, 20.10.2008, and 15.12.2008 are annexed compendiously marked "22RX2", pleaded as part and parcel hereof

i) on 8.10.2008, the new Counsel for the 8th Respondent had, *inter-alia*, made submissions. A relevant section of the Proceedings is cited below:

'He further submits that the 8th Respondent tenders an unreserved apology to Court for having continued functioning after the Judgment of this Court. Hence the 8th 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 governmental institution either directly or indirectly or purport to exercise in any manner executive or administrative functions'.

j) on 15.12.2008 **vide Proceedings, the Addl. Solicitor General *inter-alia* tendered:**

- Letter dated 5.12.2008 of the Chairman of the Commission to Investigate Allegations of Bribery or Corruption, *inter-alia*, indicating that substantial progress has been made on investigations that are being carried out
- Letter dated 15.12.2008 sent by the Criminal Investigation Department to the Attorney General seeking advice.

5. The suppression of the foregoing material facts referred to in paragraph 4 hereinabove, and making of the foregoing misleading representations referred to in paragraph 3 hereinabove, well and truly demonstrate and speaks volumes, that the statement made by the 8th Respondent in paragraph 5 of his Petition, more particularly at corresponding paragraph 6 of his Affidavit, cited at paragraph 8 hereinbelow, is *palpably false viz:*

"throughout my career in public service I (*i.e. 8th Respondent*) had maintained the highest level of honesty and integrity and discharge duties with utmost commitment in good faith and in the best interests of the country, and never compromised under any circumstances the public interest"

6. Further responding to the averments in paragraph 4 of the Petition, the 22nd Respondent states that:
- a) Your Lordships' Court had made several grave and serious adverse findings against the 8th Respondent, severely castigating his conduct and actions, as extensively borne out in the aforesaid Judgment dated 21.7.2008 ("**22RXI**"), and the 8th Respondent as directed by Your Lordship's Court, paid a sum of Rs. 500,000/- as compensation to the State.
 - b) The expression of regret and tendering of an unreserved apology to Your Lordships' Court by the 8th Respondent by way of Affidavit dated 16.10.2008 marked "D" to his Petition, and the tendering of such Affidavit to Your Lordships' Court **is a clear demonstration of admission by the 8th Respondent of responsibility and guilt on his part** on the said several grave and serious adverse findings and severe castigations in the Judgment of Your Lordships' Court dated 21.7.2008 ("**22RXI**")
 - c) 22nd Respondent's statement was recorded for over 2 days in February 2009 by the Commission to Investigate Allegations of Bribery or Corruption, and he verily believes that the investigations have now been completed, and action is to be instituted shortly against certain persons, which could be made known to Your Lordships' Court by the 30th Respondent, the Chairman of the said Commission and the 31st Respondent, Hon. Attorney General.
 - d) Inasmuch as his statement was recorded, the 22nd Respondent verily believes that the statement of the 8th Respondent, and those others involved would also have been recorded as aforesaid. **Significantly, 8th Respondent has suppressed such relevant and material fact from Your Lordships' Court.**
 - e) 22nd Respondent is unaware of the progress of the investigations by the Criminal Investigation Department, which could be made known by the 28th Respondent, IGP and 29th Respondent, DIG-CID and 31st Respondent, Hon. Attorney General.
7. a) i) Ordinarily, a public servant is suspended and/or interdicted, *even whilst disciplinary inquiries are being conducted into alleged minor offences*, to keep such public servant away from the place of work, to ensure the protection of records / evidence, and proper unimpeded investigations to be carried out.
- ii) **There can be no exception to such practice, moreso particularly given the grave and serious findings and severe castigations made by Your Lordships' Court, the highest Court of the country.**
- b) 22nd Respondent, in the national and public interest, has filed SC (FR) Applications Nos. 404 & 481/2009, seeking to impugn transactions *camouflagely* referred to as 'Oil Hedging Agreements', and which Applications are pending before Your Lordships' Court.

- c) 8th Respondent, as then Secretary Ministry of Finance & Secretary to the Treasury, had appointed a Committee to study 'Oil Hedging', and thereafter based on the Report in November 2006 of the Committee, had caused the making of recommendation to the Cabinet of Ministers in January 2007, resulting in the Ceylon Petroleum Corporation (CPC) entering into these *dubious deals*, entailing colossal Claims in foreign exchange against CPC and the Government.
- d) It has been disclosed to Your Lordships' Court, that the 3 Foreign Banks involved have already instituted Arbitrations / Litigations against the CPC, and one against the Government, represented by the Secretary to the Treasury, in foreign jurisdictions.
- e) It is public knowledge, that the 22nd Respondent has been / is engaged in public interest activity and/or litigating in the public interest, and in which circumstances, the 22nd Respondent receives by post and otherwise, from disclosed and undisclosed persons, various informations and documents pertaining to fraud, corruption and other misdemeanors.
- f) Recently, the 22nd Respondent received by post, what was intimated by a telephone call, to be details of Telephone Bill *extracts* of Telephone No. 0773-660660 said to be the Telephone No. of the CEO, Standard Chartered Bank, one of the Banks primarily involved in the '*so-called*' 'Oil Hedging Deals'.
- g) The Telephone Bill *extracts* reveal that on several dates in March, April and May 2009, the Telephone No. 0777-576070 had been telephoned from the above Telephone No., significantly at times just before lunch or in the evening. The 22nd Respondent is aware that this Telephone No. is that of the 8th Respondent.
- h) 22nd Respondent was also intimated by the telephone caller, that the Telephone No. 0773-647353 is that of CEO, Citibank, another Foreign Bank involved in the '*so-called*' 'Oil Hedging Deals'. The Telephone Bill *extracts* disclose that after telephone calls to the above No. 0777-576070 (8th Respondent), telephone calls have been made from the aforesaid said Telephone No. 0773-660660, to the said Telephone No. 0773-647353 i.e. CEO, Citibank.
- i) Though the aforesaid Telephone Bill *extracts* appear *prima-facie* unsuspecting, nevertheless, the 22nd Respondent very respectfully appeals to Your Lordships' Court to have the authenticity thereof verified, through relevant law enforcement authorities.
- j) If the said Telephone Bill *extracts* are proven to be authentic, then this would disclose, that there is a '*nexus*' / '*collusion*' between the 8th Respondent, Standard Chartered Bank and Citibank, which would be adversely material to the 22nd Respondent's aforesaid SC (FR) Applications Nos. 404 & 481/2009, which are pending and which have sought to impugn the '*so-called*' 'Oil Hedging Deals'.
- k) In the face of the grave and serious findings and severe castigations made against the 8th Respondent in Your Lordships' Court in Judgment ("**22RX1**"), Your Lordships' Court held that the 8th Respondent is not a fit and proper person to hold public office.

- l) If the aforesaid Telephone Bill *extracts* be found to be authentic, then it would further establish that the 8th Respondent is not a fit and proper person to hold public office, most of all, as the Secretary to the Treasury.
- m) In the light of the 22nd Respondent's SC (FR) Applications Nos. 404 & 481/2009; and shortly after which said first Application the 22nd Respondent reliably understood that the Criminal Investigation Department had commenced investigations into this 'so-called' 'Oil Hedging Deals', *the 8th Respondent would be disqualified from holding such public office.*

True copies of the said Telephone Bill 'extracts', the Study Group Report forwarded to the 8th Respondent by Letter dated 16.11.2006, the Cabinet Paper and Cabinet Decision of January 2007 are annexed compendiously marked "22RX3" pleaded as part and parcel hereof

8. Responding to paragraph 5 of the Petition of the 8th Respondent, and more particularly the corresponding paragraph 6 of his Affidavit, the 22nd Respondent states that:

- a) the 22nd Respondent categorically denies that the 8th Respondent had acted in the manner, he had purported to have acted in, as stated in the paragraph cited below, which is a *excerpt* from his Letter dated 25.7.2008 to His Excellency the President, with copy to the Secretary to the President, marked ("A") to his Petition:

"throughout my career in public service I (i.e. 8th Respondent) had maintained the highest level of honesty and integrity and discharge duties with utmost commitment in good faith and in the best interests of the country, and never compromised under any circumstances the public interest"

- b) *curiously*, the aforesaid Letter dated 25.7.2008 of the 8th Respondent, had not been attached to the 8th Respondent's Affidavit dated 16.10.2008 ("D"), which had been tendered to Your Lordships' Court in October 2008, thereby having knowingly and willfully suppressed the said Letter at that time from Your Lordships' Court.
- c) in the final paragraph of the said Letter dated 25.7.2008 ("A") sent by the 8th Respondent i.e. 4 days after the Judgment of Your Lordships' Court on 21.7.2008, the 8th Respondent had stated thus:

"Considering the 'various views expressed to the media' on the LMSL transaction, I enclose some clarifications on my involvement in this transaction as the Chairman PERC." (Emphasis added)

- d) it is disclosed that the 8th Respondent in Letter dated 25.7.2008 ("A") had dealt with the 'views expressed in the media', and **not the several grave and serious adverse findings and severe castigations made against him by Your Lordships' Court in the Judgment ("22RX1")**, which had been delivered previously on 21.7.2008.
- e) **very significantly**, the aforesaid '**clarifications**' enclosed to the aforesaid Letter had not been even attached to Document marked ("A") to the Petition of the 8th Respondent, thereby rendering the said Document to be '**an incomplete document**'.

- f) **even now the 8th Respondent has knowingly and deliberately suppressed the said ‘so-called’ clarifications from Your Lordships’ Court.**
- g) *also very significantly*, as disclosed by Letters dated 31.7.2008 (“B”) and 17.9.2008 (“C”) of the Secretary to the President, *neither* has the Secretary to the President, *nor* His Excellency the President admitted the correctness of the statement made by the 8th Respondent at paragraph 3 of his Letter dated 25.7.2008 (“A”), cited at paragraph 7. (a) hereinabove
9. The 22nd Respondent sets out at paragraph 14 hereinbelow several instances of conduct and actions of the 8th Respondent, **which give the lie to the foregoing statement made under Oath by the 8th Respondent to Your Lordships’ Court referred to at paragraph 8(a) hereinabove**, and respectfully states that *judicial notice ought be taken thereof*.
10. Responding to paragraphs 7, 8, 9, 10, 11, 12, 13 and 14 of the Petition, the 22nd Respondent states that:
- a) the 8th Respondent with intent to mislead Your Lordships' Court, has knowingly failed to make a full and complete disclosure, thereby rendering statements in the aforesaid paragraphs to be false.
- b) 22nd Respondent admits only the record of the Proceedings of Your Lordships’ Court marked “22RX2”.
11. Responding to paragraphs 15, 16 and 17 of the Petition, the 22nd Respondent states that:
- a) he verily believes that the Secretary to His Excellency the President and His Excellency the President have not been correctly and fully apprised of the several grave and serious adverse findings and the severe castigations made by Your Lordships’ Court against the 8th Respondent and/or that the 8th Respondent has misrepresented to and/or misled the said persons.
- b) the foregoing is amply borne out by the facts set out in paragraph 9. hereinabove.
- c) such aforesaid misrepresentation to and/or misleading of the aforesaid persons, by the 8th Respondent, is further clearly borne out by the following sentence in paragraph 3 of his Letter dated **3.6.2009** marked (“F”) to his Petition – *viz*:
- “In this context, my lawyers had advised me prior to the delivery of the Judgment in the said case that if the Court were to take into account all the relevant material, there could be no adverse findings against me.”
- d) the foregoing statement is an affront to Your Lordships’ Court, inasmuch as the 8th Respondent represented by the Deputy Solicitor General had been given an opportunity to place all facts before Your Lordships’ Court, and all of which facts had been examined by Your Lordships’ Court, **including the Affidavit of the 8th Respondent**, prior to delivery of the aforesaid Judgment dated 21.7.2008 (“22RX1”).

- e) the 8th Respondent had made the aforesaid blatant and misleading statement **without setting out, as to what were the relevant material facts, which had not been taken into account** by Your Lordships' Court in delivering the Judgment on 21.7.2008.
- f) shockingly, **now on 3.6.2009, after almost one year** of the said Judgment delivered on 21.7.2008, the 8th Respondent blithely states as above, *without any substance*, to have misrepresented to and/or misled His Excellency the President and the Secretary to His Excellency the President.
- g) in fact, even after nearly one year the 8th Respondent by the aforesaid statement admits that *there had been adverse findings made against him by Your Lordships' Court* in the Judgment dated 21.7.2008 (“**22RX1**”).
- h) the conduct of the 8th Respondent as set out hereinabove renders the following statement made by him at paragraph 5 of his Petition and more particularly at the corresponding paragraph 6 of his Affidavit, cited at paragraph 8. hereinabove, to be a fiction *viz*:

“throughout my career in public service I (*i.e. 8th Respondent*) had maintained the highest level of honesty and integrity and discharge duties with utmost commitment in good faith and in the best interests of the country, and never compromised under any circumstances the public interest

12. Responding to paragraph 18 of the Petition, the 22nd Respondent states that:

- a) the 8th Respondent's Application is misconceived in law and without jurisdiction.
- b) **national and public interest demands that the 8th Respondent, who held high public office in charge of the finances of the country, be severely dealt with in terms of the law, without exception, in that, Your Lordships' Court had consistently upheld, that no one is above the 'rule of law'.**
- c) even a former President's term of Office was terminated by Your Lordships' Court on an '**Oath**' administered, *without taking into reckoning a subsequent 'Oath'*, whilst in this instance, the facts are of a far more grave and serious nature, with grave and serious findings and severe castigations made by Your Lordships' Court against the 8th Respondent, a senior public servant, and also concerning the expression *of regret and apology and an undertaking given* by way of an '**Affidavit**' tendered to Your Lordships' Court.

13. Responding to paragraph 19 of the Petition, the 22nd Respondent states that;

- a) the 8th Respondent has willfully evaded giving notice to the Petitioner and to all the Respondents, *as he ought to have*.
- b) upon the 22nd Respondent pointing out such lapse, Your Lordships' Court directed that *all the Respondents be given notice by the 8th Respondent*.

14. a) Further responding to paragraph 5 of the Petition of the 8th Respondent, and more particularly the corresponding paragraph 6 of his Affidavit, which contain the following *excerpt* from his Letter dated 25.7.2008 to His Excellency the President, with copy to the Secretary to the President, marked (“A”) to his Petition:

“throughout my career in public service I (*i.e.* 8th Respondent) had maintained the highest level of honesty and integrity and discharge duties with utmost commitment in good faith and in the best interests of the country, and never compromised under any circumstances the public interest”

the 22nd Respondent is compelled, *in the national and public interest*, to adduce the following facts within his knowledge, pertaining to several instances, **which give the lie** to the foregoing statement boldly and blatantly made, *with scant respect to Your Lordships’ Court*.

- b) 22nd Respondent, whilst he was an Advisor, Ministry of Finance in 1994 / 1995, came to know the 8th Respondent, when he was seconded by the Central Bank to the Ministry of Finance, as the Deputy Director Economic Affairs.
- c) 22nd Respondent has dealt with the 8th Respondent, both whilst holding above office, as well as Chairman, Public Enterprise Reform Commission in 2004 / 2005, of which the 8th Respondent was a Member, as Secretary to the Treasury, and also whilst not holding public office, on matters involving the Ministry of Finance / Treasury.
- d) 8th Respondent was a Member, as Alternate Member to the then Secretary to the Treasury of the Public Enterprise Reform Commission (PERC) constituted by the President in 1995, and thereafter was a Member of the said Commission established by Act No. 1 of 1996. 8th Respondent functioned as the Chairman of the said Commission from January 1997 to December 2002 and continued as Senior Advisor to the Commission upto February 2004, when he resigned.
- e) i) The privatisation of Sri Lanka Insurance Corporation Ltd., (SLIC) too had been handled by the 8th Respondent, as then Chairman PERC, and which Your Lordships’ Court annulled as wrongful, unlawful and illegal by Judgment delivered on 4.6.2009, in SC (FR) No. 158/2007, in which the 22nd Respondent was the 13th Respondent.

A true copy of the Judgment delivered on 4.6.2009, in SC (FR) No. 158/2007 is annexed marked “22RX4”, pleaded as part and parcel hereof

- ii) 8th Respondent was the 7th Respondent in the said SC (FR) No. 158/2007 and the Judgment therein bears out the conduct and actions of the 8th Respondent carried out without lawful authority, and the wrongful, unlawful and illegal acts committed by the 8th Respondent, as the 7th Respondent therein, in handling the said privatization of SLIC.
- iii) Conduct and actions of the 22nd Respondent, as Chairman, PERC in 2004/05, and who was the 13th Respondent in the aforesaid Action, prevented a major fraud being perpetrated on the State and the People as borne out by the said Judgment.

- iv) Whilst the 22nd Respondent was Chairman PERC in 2004 / 2005, on the advice of the then Hon. Attorney General late K.C. Kamalabayson P.C., concerned parties were put on Notice in 2005 by the State Attorney for the institution of legal proceedings. Draft Plaints were finalised by PERC and forwarded, for actions to be instituted by the 8th Respondent representing the Government, as the Secretary to the Treasury. For reasons best known to the 8th Respondent he did not pursue action, and 22nd Respondent resigned as Chairman PERC in November 2005.
- v) Subsequently, 22nd Respondent came to know that the 8th Respondent had functioned, as a Policy Advisor to Ernst & Young (which the 8th Respondent has admitted in his Affidavit filed in SC (FR) 158/2007), who was one of the parties, who had been so Noticed for action to be taken against them, whilst by the aforesaid Judgment, Your Lordships' Court terminated Ernst & Young from continuing to function, as Auditors of SLIC, and subsequently directed that the Accounts of the SLIC be audited by the Auditor General from the date of privatisation in April 2003 upto date of takeover by the Government in June 2009.
- vi) The foregoing conduct and actions of the 8th Respondent, as Chairman PERC / Secretary to the Treasury ***give the lie*** to what he had stated under Oath to Your Lordships' Court at paragraph 6 of his Affidavit.

True Copies of the aforesaid Letters and evidence of the 8th Respondent having been Policy Advisor to Ernst & Young are annexed compendiously marked as "22RX5", pleaded as part and parcel hereof.

- f) i) Parliamentary Committee on Public Enterprises (COPE) Report submitted to Parliament in January 2007, after investigations, examining the relevant documents and persons concerned, including the 8th Respondent and the 22nd Respondent, castigated the privatisation of Lanka Marine Services Ltd., (LMSL) and Sri Lanka Insurance Corporation Ltd., (SLIC), *inter-alia*, specifically castigating the conduct and actions of the 8th Respondent, stating thus:

ii) COPE Report to Parliament re - LMSL

- Before confirmation and notification of Cabinet Approval on 21.8.2002, PERC Chairman, P.B. Jayasundera:
 - on 12.7.2002 on exchange of Letters with John Keells Holdings Ltd., had made the 'award' for the Sale of 90% Shares of LMSL to John Keells Holdings Ltd.
 - The 'award' to John Keells Holdings Ltd., had been made on the basis that John Keells Holdings Ltd., had been the only party, who had submitted a 10% Bid Bond on the 'floor price' of Rs. 1,200,000,000/-, as required by letter dated 25.6.2002 to be submitted by 10.7.2002. This has been alleged by the other Bidders as 'foul play'.
 - On 2.8.2002 on exchange of Letters with John Keells Holdings, PERC Chairman, P.B. Jayasundera has agreed to grant a 'monopoly' to LMSL after John Keells Holdings purchases 90% Shares of LMSL. Previously the TEC had rejected the Bid of Sri Lanka Shipping Co. Ltd., for requesting a monopoly for 8 years for LMSL.

- On 20.8.2002 PERC Chairman, P.B. Jayasundera, Secretary to the Treasury Charitha Ratwatte and Director Legal PERC, Shamalee Gunawardene, acting in concert had signed the Share Sale & Purchase Agreement and CUF Agreement with John Keells Holdings Ltd. CUF Agreement included the following new Clause 8.2, which was not there previously:

'8.2 GOSL / SLPA / CPC shall ensure that all bunkers / marine fuels handled and transported within the Port of Colombo would be handled and transported using the CUF'

- The above acts have been prior to confirmation and notification of Cabinet Decision on 21.8.2002 and are therefore bad in law and invalid, null and void.
- The Court of Appeal has held that the inclusion of the above 'monopoly' clause has been ultra-vires Petroleum Products (Special Provisions) Act No. 33 of 2002.
- Though the Instrument of Grant dated 19.1.2005 has stated that the Government has received Rs. 1,199,362,500/- from LMSL, Director General, Department of Treasury Operations, by Letter dated 18.8.2006 has confirmed that the Government has not received any money for the transfer of this Land, in response to Letter dated 21.3.2006 addressed to the Secretary Treasury, P.B. Jayasundera by Chairman, PERC, W.M. Bandusena, seeking confirmation as to whether the Government has received the purchase consideration as stated in the Instrument of Grant.
- Hence, the Instrument of Grant is a 'fraudulent document' and a 'fiction', in that, no payment had been made by LMSL and has been received by the Government, as acknowledged in the Instrument of Grant for the transfer of the Government Land at Bloemendal in extent 8A 2R 21.44P to LMSL . Therefore, there could not be a legal transfer of this Land, inasmuch as this Instrument of Grant is *ex-facie* fraudulent and a 'fiction'.
- This transaction had been executed blatantly without Cabinet Approval, with several flaws causing loss and detriment to the Government, and demonstrating it to be a questionable 'fix', and is therefore *ab-initio* bad in law, null and void."

iii) COPE Report to Parliament re - SLIC

- The Cabinet has approved the appointment of a TEC by the Secretary to the Treasury, but had rejected the request of the Secretary to the Treasury to appoint a Tender Board by himself and decided that the Tender Board shall be appointed by the Cabinet.
- After the evaluation of Bids, the TEC has recommended the Sale of 90% Shares to the Consortium comprising of Distilleries Company Ltd., Aitken Spence Co. Ltd., Aitken Spence Insurance (Pvt) Ltd., together with Technical Parties, ING Institutional & Government Advisory Services BV (Holland) on 25.3.2003.
- On 11.4.2003 Share Sale & Purchase Agreement has been signed with Milford Holdings (Pvt) Ltd., and offshore company, Greenfield Pacific EM Holdings Ltd., incorporated in Gibraltar on 28.3.2003. It was not in existence when the Cabinet approved it on 27.3.2003.
- These two companies were not bidders and they were strangers.
- The said sale has taken place on unaudited accounts and thereby it was not possible to enter into any kind of Share transaction. It also appeared the accounts have been surreptitiously and intentionally adjusted.
- Ernst & Young auditors and PWC consultants were directly involved in the said fraudulent conduct.
- Ernst & Young, who had been auditors of SLIC, whilst the Government was 100% share holder, continued as SLIC auditors after the sale to the illegal buyers and had been compromised by them not to discharge their responsibilities to the Government.

- Chairman PERC, who handled this SLIC transaction and later Secretary to the Treasury Dr. P.B. Jayasundera has been a Senior Policy Advisor to Ernst & Young, and had failed and neglected to act in the interest of the Government in this matter.
- In the facts and circumstances of the said transaction is null and void *ab-initio* and frustrated. Prima facie the conduct of the responsible Officers is in violation of the provisions of Public Property Act and the Bribery and Corruption Laws."

iv) The conduct and actions of the 8th Respondent, as Chairman PERC / Secretary to the Treasury disclosed in the above COPE Reports ***give the lie*** to what he had stated under Oath to Your Lordships' Court at paragraph 6 of his Affidavit.

True copies of the Hansard Columns Nos. 358 to 364 of 12.1.2007 and the 22nd Respondent's Letter dated 20.2.2007, inter-alia, in this connection addressed to the 8th Respondent which had not been responded to are compendiously marked "22RX6", pleaded as part and parcel hereof.

g) The 8th Respondent, as then Chairman PERC had been a principal party involved in carrying out the privatisation of 1 / 3rd of the network (100 Petrol Stations) of Petroleum Retail Outlets of the Ceylon Petroleum Corporation (CPC) to Indian Oil Company (IOC) which formed Lanka IOC for such purpose. Salient facts pertaining to this *dubious privatization* are briefly set out hereinbelow:

- i) By Cabinet Memorandum of 13.11.2002 the then Minister of Power & Energy initiated the liberalization of the petroleum sector.
- ii) Indian Oil Company (IOC) had been questionably exclusively selected, without any competitive offers transparently being called for.
- iii) By Cabinet Memorandum of 7.10.2003 and Note to Cabinet of the same date, the then Minister of Economic Reform, had set out the transaction with IOC, *vis-a-vis* the privatization of LIOC.
- iv) LIOC was to pay US \$ 75 million for 100 Petrol Stations of the CPC, and for 1 / 3rd Share of the Common User Facility.
- v) The 100 Petrol Stations are said to have been the most lucrative ones, which CPC had, and which the LIOC had been given the option to select.
- vi) LIOC had also committed an investment of around Rs. 2 to 3 billion to upgrade the Petrol Stations.
- vii) On a further Cabinet Memorandum of 8.10.2003 by then Minister of Economic Reform, as per observations made thereon by the then Minister of Power & Energy on 10.10.2003, it had stipulated that the above purchase consideration should be paid in foreign currency and should not be raised through local Banks.

- viii) However, in violation thereof, IOC had invested only US \$ 40 million in foreign currency, and had raised the balance of US \$ 35 million through local Banks.
- ix) Ernst & Young had done a Valuation of US \$ 71 million, comprising of US \$ 40 million as 1 / 3rd Share of the Common User Facility and US \$ 31 million as the Valuation for the 100 Petrol Stations, without any valuation from the Chief Valuer.
- x) It is based on such valuation of Ernst & Young that IOC had been permitted to pay US \$ 75 million, without any competitive bids being called for, to establish the proper market value, on a transparent competitive bidding process.
- xi) In addition, Ernst & Young had valued as an added 'premium' upto a maximum of US \$ 30 million, for LIOC to be given the right to acquire Dealer-Owned and Dealer-Operated Petrol Stations, which were outside those operated by CPC.
- xii) However, in the Share Sale & Purchase Agreement dated 30.12.2003, LIOC had been questionably given such right, without the Government having received any consideration therefor.
- xiii) On the basis that an investment of US \$ 75 million was coming into the country in foreign currency, the Sale & Purchase Agreement had provided for a Subsidy to be paid by the Government to LIOC, based upon a dubious 'pricing formula', which had been formulated by the then Chairman PERC, the 8th Respondent.
- xiv) Upon the 8th Respondent claiming that it had been Ernst & Young, who had formulated the 'pricing formula', upon clarification from Ernst & Young, they had intimated that they were not involved in the 'pricing formula', as it had been already in place, when they got involved, which fact was confirmed by the then Director General, PERC by Letter dated 24.8.2005 to Ernst & Young.
- xv) Consequently, the Claims for subsidies from the Government made by LIOC had accumulated upto Rs. 9620 million as at April 2006, which afforded LIOC unjustifiable enrichment; including covering approximately 70 Dealer-Owned and Dealer-Operated Petrol Stations, which had been acquired by LIOC, in addition to the 100 Petrol Stations acquired from CPC.
- xvi) The said Claims for Subsidies had been disputed by the Petitioner on the basis of Opinions obtained from the Hon. Attorney General, and private Counsel on a *pro-deo* basis, and on the basis that the actual costs incurred were less than the components therefor provided in the 'pricing formula'.
- xvii) Thereafter, agreement had been reached with LIOC by the former Secretary to the Treasury, without any transparency, reducing part of the subsidy, and affording LIOC, the Petitioner verily believes, Government Bonds for the balance payment agreed to be paid; the terms of which are not known.

- xviii) In addition, in December 2002 LIOC had received BOI Approval, in addition to the core business, for other businesses, such as automatic car wash, car service, departmental stores, internet cafes, ATMs, food courts, etc., which would be a violation of the fundamental rights of those others engaged in such businesses.
- xix) Whilst PERC was in the process of communication with the Chinese Company SINOPEC for the privatisation of the balance 1 / 3rd Petroleum Distribution Retail Network of CPC (over 100 Petrol Sheds), the 8th Respondent, as Secretary to the Treasury, without the knowledge of PERC, invited Bharat Petroleum, also another Indian Government Company (*i.e. thereby IOC and Bharat, both owned by the Indian Government would have created a monopoly*), to hand over this 2nd 1 / 3rd Share also to an Indian Company, whilst a Chinese Company would have ushered in competition, and also another source i.e. China, for Petroleum Products to the country. Upon the 22nd Respondent raising the issue of the *dubious price subsidy formula* referred to above Bharat Petroleum backed out.
- xx) The foregoing conduct and actions of the 8th Respondent, as Chairman PERC / Secretary to the Treasury *give the lie* to what he had stated under Oath to Your Lordships' Court at paragraph 6 of his Affidavit.

True copies of the relevant documents referred to above are annexed compendiously marked "22RX7", pleaded as part and parcel hereof

- i) i) The reckless and dubious manner in which privatisations had been carried out in this country had resulted in complete erosion of public confidence in the process of privatisation resulting in public sector employees even resisting justifiable reforms and restructuring in the public sector.
- ii) 8th Respondent had been actively involved and a principal party in privatisations carried out after 1995 as referred to at paragraph 14 (d) hereinabove.
- iii) The privatisations carried out has resulted in a whole host of post privatisation issues and post privatisation litigations. As Chairman PERC, in 2004 /05 the 22nd Respondent caused these issues and litigations to be identified to be centrally progressively dealt with by a separate Monitoring and Evaluation Unit of PERC.

True copies of pages 5, 6 and 7 of the PERC Annual Report 2004 setting out details of these post privatisation issues and post privatisation litigations are annexed compendiously marked "22RX8", pleaded as part and parcel hereof

- iv) The aforesaid pages identifying a multitude of post privatisation issues and litigations speaks volumes of the reckless and dubious privatisation processes, which had been carried out by the 8th Respondent among others.

- v) The Losses to the State had been cognisable in the privatisation of 20 Plantation Companies of which, the first 6 most profitable Plantations Companies had been questionably sold to the private sector Plantation Management Companies by private treaty in 1995, on a dubious formula merely for a total sum of only Rs. 612 million (Rs. 102 million each), whereas transparent open competitive bidding would have resulted in a total consideration of around Rs. 4000 to 6000 million For such purchase consideration of Rs. 612 million the Plantation Management Companies had earned by December 2003 / March 2004, Management Agent Fees of Rs. 1865 million and in addition Dividends of Rs. 460 million with other hidden benefits of commissions, etc.

True copies of the 22nd Respondent Memos dated 6.6.2005 and 13.6.2005 to the President, without the attachments thereto are annexed compendiously marked “22RX9”, pleaded as part and parcel hereof

- vi) Present conditions of the Plantation Companies had caused the President to the constitute Committees to examine the resultant crisis in this sector.
- vii) (i) As a further example of the questionable and dubious manner in which the 8th Respondent acted, as a Senior Public Servant, as the Chief Financial Officer of the State i.e. Secretary to the Treasury, is borne out by the manner in which he insistently intervened to prevent PERC from carrying out a transparent competitive process for the re-establishment of Thulhiriya and Mattegama Textile Mills.
- (ii) 8th Respondent, as Secretary to the Treasury, intervened with the President to have the rehabilitation of these 2 Textile Mills to be handled by the Ministry of Finance under his purview, through a surreptitious process of private treaty, questionably with 2 private companies, without any credentials, whatsoever, having a Share Capital of only Rs. 20/- and Rs. 300/- respectively.

*True copies of the 22nd Respondent’s Note dated 13.3.2005 and Memo dated 28.3.2005, together with the attachments **disclosing the despicable nature of what transpired** and draft of Note to Cabinet dated 6.1.2005 are annexed compendiously marked “22RX10”, pleaded as part and parcel hereof*

- viii) Subsequently, the 22nd Respondent believes the valuable Thulhiriya Textile Mills Complex was handed over to MAS Holdings, and Mattegama Textiles Mills was auctioned by way of assets sale by the People’s Bank, with undisclosed losses. Questionably, the Personal Secretary of the 8th Respondent the 22nd Respondent is made to understand is working with MAS Holdings, immediately after the 8th Respondent had to vacate public office consequent to the direction of Your Lordships’ Court.

- ix) The foregoing conduct and actions of the 8th Respondent, as Chairman PERC / Secretary to the Treasury ***give the lie*** to what he had stated under Oath to Your Lordships' Court at paragraph 6 of his Affidavit.
- i) i) The Auditor General in or about July 2006 submitted a Special Report to Parliament, titled "Special Project Audit on the Management of Government Tax Revenue" in terms of Article 154 (6) of the Constitution.
- ii) The Auditor General in the said Report in the Executive Summary, *inter-alia*, stated as follows in relation to the 8th Respondent, who was at the relevant time Secretary, Ministry of Finance / Secretary to the Treasury.

"The responsibilities devolving on the Secretary to the relevant Ministry in terms of the provisions in the Constitution, and on the Secretary to the Treasury and the respective Heads of Departments as the Accounting Officers through the Financial Regulations had not been discharged properly.

Questionable responses made instead of taking the immediate steps necessary to be taken even after serious lapses are brought to the notice of the institutions concerned by audit, pose problems.

In pursuance of provisions in Article 52(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka the overall responsibility in this area is devolved on the Secretary to the Ministry of Finance.

The Constitutional provision that "The Secretary to the Ministry shall, subject to the direction and control by his Minister, exercise supervision over the departments of Government or other institutions in the charge of his Minister" surpasses all other provisions.

Apart from that, a huge responsibility and a duty are devolved on him in terms of Financial Regulations as the Secretary to the relevant Ministry who is the Chief Accounting Officer and as the Secretary to the Treasury whose foremost responsibility is the maintenance of the financial control and administration of the Government."

- iii) The Report in 2005 submitted to Parliament by the Parliamentary Committee on Public Enterprises (COPE), in dealing with the Central Bank of Sri Lanka, had *inter-alia*, reported thus:

"The Auditor General and the Department of Public Enterprises have highlighted the following in their reports"

- *"Decline in the remittances of export earnings to the country as the Bank did not monitor the remittances of such export proceeds to the country and the foreign exchange loss to the country."*

"Your Committee in conclusion recommends the following:"

- *"Carry out investigations on the nonrepatriation of export proceeds to Sri Lanka and take corrective action appropriately to avoid drain of foreign resources."*

- iv) The foregoing conduct and actions of the 8th Respondent, as Secretary to the Treasury ***give the lie*** to what he had stated under Oath to Your Lordships' Court at paragraph 6 of his Affidavit.

True copies of the Executive Summary of the said Report of the Auditor General submitted to Parliament in July 2006 and the 22nd Respondent's Letter dated 24.8.2006 to the 8th Respondent in connection with the foregoing matters, which has not been responded to date, are annexed compendiously marked "22RX11", pleaded as parcel hereof.

- j) i) 22nd Respondent having litigated on the *perverse* Tax Amnesty of 2003, which was pronounced in SC Reference No. 1/2004, and determined in SC (SD) No. 26/2004 by Your Lordships' Court to be inimical to the rule of law, and had ***defrauded public revenue causing extensive loss to the State***, subsequently with the change of Government, caused the repeal of the said perverse Act, by Act No. 10 of 2004.
- ii) **Thus, the 22nd Respondent's actions prevented the write-off of revenue due to the State, reckoned to have been around Rs. 200,000 million, and prevented 'amnesties' antithetic to the rule of law.**
- iii) Having discovered in June 2005, that the said Act No. 10 of 2004 had not been given effect to by the then Commissioner General of Inland Revenue, 22nd Respondent, as Chairman PERC, addressed Letter dated 10.6.2005 to the said Commissioner General, and also suggested as cited below, that the matter of the VAT Fraud be referred to the Presidential Investigation Unit (PIU), which the 22nd Respondent was assisting, for investigation and warranted action under the law, and forwarded the same, with a Note dated 10.6.2005 to the President, under whose purview PERC functioned at that time.

"VAT & GST Fraudulent Refunds

As regards, the fraud perpetrated *vis-à-vis* refunds of VAT and GST reported upon by the Auditor General, it was suggested that this matter be referred to the Presidential Investigation Unit for investigations and warranted action under the law."

- iii) The aforesaid Letters were forwarded to the 8th Respondent, as a Member of PERC and he by Letter dated 1.7.2005 called for the explanation of the said Commissioner General of Inland Revenue, and thereafter on his retirement on 9.7.2005, having failed to get extension for the Commissioner General, *questionably appointed him Consultant to the Ministry of Finance, notwithstanding the said Letter dated 1.7.2005.*

- iv) **Disregarding the 22nd Respondent's aforesaid suggestion on 10.6.2005 to refer the VAT Fraud to the PIU, who would have, after investigations, referred the matter to the CID, the said Commissioner General of Inland Revenue, with the concurrence / collusion of the 8th Respondent, had merely appointed an 'Internal Committee' of the Inland Revenue Department, itself, to investigate into this matter, as borne out by the said Commissioner General's Letter dated 23.6.2005 to the 8th Respondent, as Secretary to the Treasury. In this regard, having given evidence, the 22nd Respondent addressed Letter dated 4.6.2008 to the Presidential VAT Commission.**
- v) The Parliamentary Committee on Public Accounts (PAC) in its Interim Report presented to Parliament in November 2007 had highlighted the VAT Fraud during the Years 2002 to 2004, demonstrating the steep increase in VAT refunds in 2002/03 and 2003/04; in respect of which questionably the 8th Respondent did not take or cause to be taken timely warranted criminal action, as had been suggested by the 22nd Respondent as referred to above. The question arises as to whether such questionable act afforded opportunity and time for destruction of documents and records pertaining to the VAT Fraud, *now reported missing*.
- vi) The foregoing conduct and actions of the 8th Respondent, as Secretary to the Treasury ***give the lie*** to what he had stated under Oath to Your Lordships' Court at paragraph 6 of his Affidavit

True Copies of aforesaid Note dated 10.6.2005 and Letters dated 10.6.2005, 1.7.2005, 4.6.2008 and Hansard Columns 2861 and 2862 dated 18.3.2008 and the Executive Summary of the PAC Report to Parliament of November 2007 are annexed compendiously marked "22RX12", pleaded as part and parcel hereof

- k) i) The following 'extracts' are cited from the draft Report titled – "Proposals for Strengthening of Parliamentary Control over Public Finance", forwarded in or about August 2007 by the former Auditor General, as Project Director of PAC & COPE:

"The revision of the budget by Rs.220.2 Billion at the discretion of the officers in terms of provisions in Section 5 of the Appropriation Act, No. 39 of 2005 including Rs.166 Billion in terms of authority granted under Section 6 of the said Act raises the question whether it tantamount to a partial abdication of the powers of full control over the Public Finance vested in the Parliament by Article 148.

As compared with Rs.609 Billion originally approved for expenditure for the year 2006 and Rs.1,072.8 Billion stated as the actual expenditure, that sum of Rs.220.2 Billion represents a very high percentage.

This becomes more serious as this form of version left to the discretion of the Officers has been arranged in such manner, it does not need the approval or sanction of the Parliament as well as that of the Cabinet of Ministries or even the Minister.

Even though provision has been made in Sections 13, 14 and 15 of the Fiscal Management (Responsibility) Act, No. 3 of 2003 for carrying out a statements of the approved Budget and the actual Budget and report thereon to Parliament, the Annual Report for the year 2006 presented by the Ministry of Finance and Planning does not clearly and adequately facilitate a comparison. Therefore the opportunity afforded to report the actual position to the Parliament had been abandoned."

According to that Appropriation Act, out of the total expenditure of Rs.609 Billion approved for the year 2006 provision amounting to Rs.62.2 Billion which exceeds 10 percent of the total approved expenditure has been made available to Head 801. Parliament has approved the increase of the provision under Head 801 for the year 2006 by Rs.109 Billion to Rs.171.2 billion.

The bureaucrats have spent Rs.220.2 Billion of Public Funds in the year 2006 through the opportunity granted in terms of Section 5(1) and 6 of the said Act at their discretion against the approved budget without any knowledge or approval of the Parliament."

True copies of the pages containing the Introduction in the aforesaid Report to PAC & COPE are annexed marked "22RX13, pleaded as part and parcel hereof

- ii) During the period referred to in the aforesaid Report to PAC and COPE, the 8th Respondent was the Secretary to the Treasury, who was responsible for such discretionary payments, details of which are unknown to Parliament and the People, who have a statutory right to know, *as had been upheld by Your Lordships' Court in the Determination in SC (SD) No. 7 of 2007 on the Appropriation Bill 2007 communicated to Parliament.*
- iii) Such unchecked discretionary power to disburse public funds, without due and proper disclosure, gave the 8th Respondent undue power, for even politicians to be subservient and/or under obligation to him. Such practice was in violation of Article 151 of the Constitution.
- iv) Upon the challenge by the 22nd Respondent of the Appropriation Bill 2008, Your Lordships' Court, *inter-alia*, stated as follows in the Determination in SC (SD) No. 3 of 2008 communicated to Parliament:

"Addl. Solicitor General submitted that the Fiscal Management Report 2009 would be presented to Parliament on 6th November 2008 (Budget day). An initial copy of which was tendered to Court. This copy reveals that during the period 1st January to 30th September 2008, Treasury officials have made 108 transfers in terms of clause 6(1) of the 2007 Appropriation Act. A sum of Rs. 7,558,078,445/- has been transferred from the Recurrent Account and a sum of Rs. 13,442,507,041/- has been transferred from the Capital Account under the Head "Department of National Budget". That is nearly Rs. 21 Billion have been transferred by Treasury officials during the period from the "Development Activities Program" to other activities under a large number of Heads. The transfers reveal that many of them have been for foreign travel, purchase of vehicles and for other miscellaneous items of expenditure far removed from "Development Activities". Furthermore this report does not specify any reason which required the particular deviations to be made. Hence there has been no compliance of the determination made by this Court. (Emphasis added)

Addl. Solicitor General conceded that although Program is titled "Development Activities", in fact it is utilized for miscellaneous expenditure. In the present Bill under Head 240 titled "Department of National Budget" following amounts are allocated under the Development Activities Program, where Rs. 4,980,000,000/- as Recurrent Expenditure and Rs. 27,647,500,000/- as Capital expenditure. Accordingly a sum of approximately 32 Billion is thus set apart to be transferred at the discretion of Treasury officials to any other Head. As noted above for 9 months in the current year 108 such transfers have been made amounting to Rs. 21 Billion.

According to the same Report titled "Fiscal Management Report 2009" which as stated above will be tabled in Parliament only on 06.11.2008, during the period 16.10.2007 to 31.12.2007, 127 such transfers have been made totalling a Recurrent expenditure of Rs. 34,422,384,169/- and a capital expenditure of Rs. 33,262,585,762/-. Thus during the period of 2 1/2 months transfers have been made approximately Rs. 69 Billion. An examination of the subjects in respect of which and the amounts of such transfers reveal that the then Secretary to the Treasury has been operating a "Budget" of his own. (Emphasis added)

For the reasons stated above we are of the opinion that clause 6(1) of the Bill is in derogation of the control of public finance that should be exercised by Parliament and is accordingly inconsistent with Articles 148 and 150 of the Constitution.

Accordingly, we are of the opinion that the inconsistency with Articles 148 and 150 would cease if clause 6(1) is amended by the inclusion of a specific provision that the money so transferred shall be deemed to be a supplementary allocation made to the particular Ministry and the transfer including the reasons therefor are reported to Parliament within a period of two months from the date such transfer is effected".

- v) The foregoing conduct and actions of the 8th Respondent, as Secretary to the Treasury *give the lie* to what he had stated under Oath to Your Lordships' Court at paragraph 6 of his Affidavit.
- l) i) 22nd Respondent filed CA (Writ) Application No. 1661/2003 in relation to the perverse '*all encompassing amnesty*', in the guise of a Tax Amnesty, by Act No. 10 of 2003.
- ii) Your Lordships' Court in SC Reference 1/2004 and SC (SD) 26/2004 pronounced and determined, *inter-alia*, that the said Act No. 10 of 2003 was '*inimical to the rule of law*' and '*had defrauded public revenue causing extensive loss to the State*'.
- iii) Consequently, Act No. 10 of 2004 was enacted by Parliament into law in October 2004, in effect repealing Act No. 10 of 2003, except preserving an Income Tax Amnesty.
- iv) Thereupon, the then Hon. Attorney General, K.C. Kamalabayson P.C., agreed to enter settlement in the said CA (Writ) Application No. 1661/2003, to ensure the enforcement of the applicable laws, and the matter was fixed for settlement *as far back as October 2005*; with the Hon. Attorney General moving to file Terms of Settlement in Court.

- v) 22nd Respondent on 18.4.2008 having met and forwarded the draft Terms of Settlement to the 8th Respondent, who was a Respondent, *as the Secretary to the Treasury*, in the said Writ Application, directed the Advisor to the Ministry of Finance on Income Tax, former Commissioner General of Inland Revenue, R.P.L. Weerasinghe to immediately finalise the same with the Hon. Attorney General.
- vi) Thereafter, the 22nd Respondent forwarded Note dated 19.4.2006 to the Secretary to His Excellency the President, since he too was a Respondent in the said Writ Application in the Court of Appeal, intimating of the said proposed settlement.
- vii) Nevertheless, this matter which concerns the due and proper enforcement of the provisions of the Inland Revenue & other Statutes, and the due and proper administration of collection of State revenues, is still pending settlement in the Court of Appeal.
- viii) The foregoing is notwithstanding the firm assurance given by the 8th Respondent to the 22nd Respondent, as far back as April 2006, thereby *demonstrating sheer indifference and tardiness on the part of the 8th Respondent*, then Secretary to the Treasury *vis-à-vis* such a matter of general and public importance, particularly concerning the administration of collection State revenues and the enforcement of the relevant Statutes.
- ix) Following-up on several correspondence on this matter, the 22nd Respondent's Attorneys-at-Law forwarded Letter dated 19.3.2009 to the present Hon. Attorney General, with a view to having this matter of national and public interest and of importance, to be promptly concluded, *to ensure the due and proper administration of collection of State revenues, and that the applicable Inland Revenue & other Statutes are duly complied with and enforced*.
- x) The foregoing conduct and actions of the 8th Respondent, as Secretary to the Treasury give the lie to what he had stated under Oath to Your Lordships' Court at paragraph 6 of his Affidavit.

True copies of Note dated 19.4.2006 and Letter dated 19.3.2009, together with the attachments thereto, are annexed compendiously marked "22RX14", pleaded as part and parcel hereof.

- m) i) At the Meeting of the Board of Directors of Hotel Developers (Lanka) Ltd., (HDL), held on 31.3.2005, 22nd Respondent, as its then Chairman, *nominated by the Government*, informed the Directors that in view of the bankrupt position of HDL, unless a financial re-structuring was effected immediately, *HDL would have no option, but to be wound-up*.
- ii) Endeavours made by Your Lordships' Court in SC Appeal No. 99/99 *to bring about such re-structuring*, noting that the Hotel is built on a Land in extent of about 7 acres, being property of the Government of Sri Lanka, situated in the heart of the Fort, being of highest commercial value, however, failed in July 2006.

- iii) Consequently, 22nd Respondent on 17.9.2006, instituted D.C. Colombo Case No. 217/CO, *to wind-up HDL*, on just and equitable grounds, in the context of its hopelessly bankrupt position, as morefully set out in the Petition.
- iv) The 22nd Respondent acted in conformity with the Government's Proposals forwarded to the Hon. Attorney General by the Ministry of Finance & Planning by Letter dated 14.7.2005, *which was known to the 8th Respondent*.
- v) Nevertheless, 8th Respondent, *without obtaining leave of Court*, 'questionably' purported to intervene in the 22nd Respondent's said Winding-up Application, *to oppose the winding-up of HDL*.
- vi) Whereas, upon justifiable, and *now statutorily* mandated winding-up of HDL, the Hotel would become a 100% owned property of the Government, in the context of the Land already being owned by the Government, and HDL's large defaulted debts to the Government being well in excess of the values of the Hotel Buildings, *etc.*
- vii) HDL Share Capital is only Rs. 452.2 million, *with Rs. 250.9 million standing as not paid for*, and with accumulated losses reckoned now to be in the region of over Rs. 9000 million, which accumulated losses as at 30.6.2005, stood at Rs. 6351 million, whereby the accumulated losses had *completely eroded HDL's Share Capital*.
- viii) As at December 2008, the defaulted debts by HDL to the Government has been confirmed by the Ministry of Finance to be Rs. 8718 million, and today it would be over Rs. 9000 million, whilst as at 30.6.2005, such defaulted debts of HDL to the Government stood at Rs. 4940 million i.e an increase of Rs. 3778 million.
- ix) On the initiative of the 22nd Respondent, and upon the advice of the Hon. Attorney General, Land in extent over 7 acres, on which the Hotel stands *had vested in the State in July 1999*, after which no payments, whatsoever, have been made by HDL to the Government, for the use of such valuable State Land in the heart of the Colombo City, *tantamounting to the misuse of public property*.
- x) In the meanwhile, the new Companies Act No. 7 of 2007, which came into operation on 3.5.2007, *statutorily mandated* that HDL given the circumstances it is in *warranted to be wound-up*.
- xi) Sections 219 and 220 of the Companies Act No. 7 of 2007 are cited below, for easy reference of Your Lordships' Court;

"219. (1) A director of a company who believes that the company is unable to pay its debts as they fall due, shall forthwith call a meeting of the board to consider whether the board should apply to court for the winding up of the company and the appointment of a liquidator or an administrator or carry on further the business of the company.

- (2) Where a director referred to in subsection (1) fails to comply with the requirement of that subsection and at the time of that failure the company was unable to pay its debts as they fell due, and the company is subsequently placed in liquidation, the court may on the application of the liquidator or of a creditor of the company, make and order that the director shall be liable for the whole or any part of any loss suffered by creditors of the company as a result of the company continuing to carry on its business.
- (3) If—
- (a) at a meeting called under subsection (1) the board does not resolve to apply to court for the winding up of the company and for the appointment of a liquidator or an administrator;
 - (b) at the time of that meeting there were no reasonable grounds for believing that the company was able to pay its debts as they fell due; and
 - (c) the company is subsequently placed in liquidation, the court may, on the application of the liquidator or of a creditor of the company, make an order that the directors, other than those directors who attended the meeting and voted in favour of applying to court for the winding up of the company and for the appointment of the liquidator or an administrator, shall be liable for the whole or any part of any loss suffered by creditor of the company as a result of the company continuing to carry on its business.

- "220. (1) If at any time it appears to a director of a company that the net assets of the company are less than half of its stated capital, the board shall within twenty working days of that fact becoming known to the director, call an extraordinary general meeting of shareholders of the company for the purposes of this section, to be held not later than forty working days from that date of calling of such meeting.
- (2) The notice calling a meeting under this section shall be accompanied by a report prepared by the board, which advises shareholders of—
- (a) the nature and extent of the losses incurred by the company;
 - (b) the cause or causes of the losses incurred by the company;
 - (c) the steps, if any, which are being taken by the board to prevent further such losses or to recoup the losses incurred.
- (3) The business of a meeting called under this section shall be to discuss the report prepared by the directors and the financial position of the company. The chairperson of the meeting shall ensure that shareholders have a reasonable opportunity to ask questions in relation to and to discuss and comment on the report and the management of the company generally.
- (4) Where the board of a company fails to comply with subsection (1), every director who knowingly and willfully authorises or permits the failure or permits the failure to continue, shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees."

xii) Having been put on notice, thereafter not to wind-up HDL, *violating the foregoing Sections of the Statute* makes the Directors personally liable for HDL's Defaulted Debts, in terms of the aforesaid provisions of the Companies Act No. 7 of 2007.

xiii) Directors of HDL, in respect of certain provisions of the Companies Act No. 7 of 2007, include the 8th Respondent, *as then Secretary to the Treasury*, within the meaning of the 'definition' of Directors given in Section 529 of the Companies Act No. 7 of 2007 – viz:

"Director" includes -

- a) a person occupying the position of director of the company, by whatever name called;
- b) for the purposes of sections 187, 188, 189, 190, 197, 374 and 377 -
 - (i) a person in accordance with whose directions or instructions a person referred to in paragraph (a) may be required or is accustomed to act;
 - (ii) a person in accordance with whose directions or instructions the board of the company may be required or is accustomed to act; and
 - (iii) a person who exercises or who is entitled to exercise or who controls or who is entitled to control the exercise of powers which, apart from the articles of the company, would be required to be exercised by the board; and
- c) for the purposes of sections 187 to 195 (both inclusive), 197, 374 and 377, a person to whom a power or duty of the board has been directly delegated by the board with that person's consent or acquiescence, or who exercises the power or duty with the consent or acquiescence of the board.

The provisions of paragraphs (b) and (c) shall not apply to a person to the extent that the person acts only in a professional capacity."

- xiv) The mandated '**Duties of Directors**' are statutorily stipulated in Sections 187 to 190 of the Companies Act No. 7 of 2007, *which could not be transgressed*.
- xv) HDL being a Government majority owned and controlled Company, *cannot blatantly and patently, violate the Statute*, whereas on the contrary, such a Company ought to strictly conform to the Statute, *without any exception, whatsoever*.
- xvi) As a consequence of the 22nd Respondent's actions, the Japanese Consortium in June 1995 wrote-off Jap. Yen 17,586 Mn. (*then equivalent to US \$ 207 Mn. and SL Rs. 10,200 Mn.*) on their Claims against the Government on Government Guarantees, which had been given on behalf of HDL, and re-scheduled the balance to be paid over a period of 15-Years upto the Year 2010 (*originally fully payable by 1999*), at a reduced rate of interest of 5.25% p.a. (*originally 6 % p.a.*)
- xvii) 22nd Respondent having acted to protect national and public interest, the conduct and actions of the 8th Respondent, as Secretary to the Treasury in regard to the foregoing *give the lie to what he had stated under Oath to Your Lordships' Court at paragraph 6 of his Affidavit; and furthermore violates the fundamental right of other Hoteliers to equality, guaranteed under the Constitution*.

True copies of the Winding-up Petition dated 17.11.2006, Government Proposals forwarded by the Ministry of Finance & Planning to the Hon. Attorney General by Letter dated 14.7.2005, Proceedings in Supreme Court in July 2006, and HDL's Defaulted Debts to the Government as at 31.12.2008 as confirmed by the Ministry of Finance, are annexed compendiously marked "22RX15", pleaded as part and parcel hereof.

Your Lordships' Court, if deemed necessary, may call for the Record of the Case in 217/CO from the District Court of Colombo to be apprised of the totality of the facts of this matter which is still pending

- n) i) Among the privatizations carried out by the 8th Respondent, one was of Sevenagala Sugar Industries Ltd., *to a questionably selected party* at a price and process, *which also had been in question.*
- ii) The said privatization had resulted in several post privatization issues - in relation to employees shares, land lease issues and compensation claims by casual labour.
- iii) After the privatization in or about October 2004, Sevenagala Sugar Industries Ltd., had made representations on a shipment of sugar by one Kala Traders (Pvt) Ltd., suggesting ICUMSA levels for white sugar and brown sugar.
- iv) 8th Respondent, as Secretary to the Treasury by a Letter dated 4.10.2004 addressed to the Director General, Customs had intimated that it had been brought to his notice that there is no clear definition in respect of white sugar.
- v) Significantly, by Letter also dated 4.10.2004, the 8th Respondent had intimated the decision of the Cabinet, imposing duties on white sugar of an ICUMSA level, *significantly on the identical lines of the representations made by Sevenagala Sugar Industries Ltd.*
- vi) Questionably, the aforesaid 2nd Letter dated 4.10.2004 bears evidence of having been faxed on 23.11.2004 to the Director General, Customs, whilst the previous Letter had been faxed on 4.10.2004.
- vii) Also questionably, there is no reference in one Letter of 4.10.2004 to the other Letter of the same date 4.10.2004.
- viii) The foregoing had resulted in the consignment of sugar of Kala Traders (Pvt) Ltd., being seized by the Customs, and precipitating a Customs Inquiry, with the subsequent *abduction* of the Managing Director of Kala Traders (Pvt) Ltd., *who is reported missing.*
- ix) Previously, Your Lordships' Court in SC Spl. LA No. 138/2005 admonishing the Customs Officers, directed that the consignment of sugar be released to Kala Traders (Pvt) Ltd., with the sale proceeds being deposited, until the conclusion of the Customs Inquiry.

- x) The Statutory Authority for defining specifications of white sugar and brown sugar is the Sri Lanka Standards Institution, which has an established procedure for defining such specifications and certainly not the 8th Respondent, *who could not have usurped such statutory authority.*
- xi) Even in this LMSL Case, the 8th Respondent as Secretary to the Treasury, *intervened* with the 22nd Respondent, as Chairman, PERC, to have the Bloemendhal Land and Tank Farm of 8A 2R 21.44P *urgently transferred*, without any examination, which the 22nd Respondent *resisted*, as borne out by 22nd Respondent's Letter dated 1.12.2006 to COPE.
- xii) The foregoing conduct and actions of the 8th Respondent, as Chairman PERC / Secretary to the Treasury *give the lie* to what he had stated under Oath to Your Lordships' Court at paragraph 6 of his Affidavit

True copies of Page 5 of PERC Annual Report 2004, Sevenagala Sugar Industries Ltd.'s Letter dated 6.10.2004 , 8th Respondent's 2 Letters dated 4.10.2004, Sri Lanka Standards Institution Specifications for white and brown sugar and 22nd Respondent's Letter dated 1.12.2006 are annexed compendiously marked "22RX16", pleaded as part and parcel hereof.

- o) i) Then Director Legal PERC had been advised in January 2004 by the then Secretary to the Treasury to revert back to the substantive post at the Central Bank of Sri Lanka.
- ii) After the change of Government in April 2004, a Fundamental Rights Application was filed by the said Director Legal PERC.
- iii) Consequently, the said Director Legal PERC had claimed compensation of Rs. 750,000/- from PERC, payment of which Claim the Hon. Attorney General by Letter dated 1.11.2004 opined would have to be on a rational basis, *also intimating that payment of such computation does not arise.*
- iv) Whilst the 22nd Respondent was Chairman PERC in 2004/05, the 8th Respondent, as Secretary to the Treasury, being a Member of PERC being *critical* of the Hon. Attorney General *insisted* upon the said Claim being paid by PERC, *without any question, whatsoever.*
- v) 22nd Respondent and PERC resisted making of such Claim, notwithstanding the *hostility and arrogance* displayed by the 8th Respondent, *insisting* on such payment being made at a PERC Meeting.
- vi) Your Lordships' Court did not grant the relief for payment of such compensation Claim, and the said Fundamental Rights Application concluded in July 2005.

- vii) 22nd Respondent, as Chairman PERC, addressed confidential Memo dated 24.3.2005 to the then H.E. the President, under whose purview PERC then functioned, setting out the relevant facts and *pointing out that the attitude and demeanor of the 8th Respondent inhibits other Commission Members, who are public servants* from freely expressing their views, *inter-alia*, stating thus-

"Immediately thereupon, on Monday 22.11.2004, the Secretary to the Treasury telephoned me and spoke in a very hostile and arrogant manner, casting aspersions on the Hon. Attorney General and the Members of the Commission, alleging that the above draft Settlement Motion forwarded was not in conformity with the Commission decision."

"In view of the Office he holds, as the Secretary to the Treasury, his attitude and demeanour inhibits other Commission Members, who are public servants, from freely expressing their views."

- viii) **In contrast**, the 8th Respondent, as Secretary to the Treasury, *prevented* E. Arumugam, who had a Masters Degree from Harvard University in Public Administration and was a Fellow Member of Management Accountants, UK, from 're-joining' the Public Enterprise Department, from which he, as a Director, had resigned to join PERC. *which the 8th Respondent in the face of disclosures in this Action and the SLIC Action SC (FR) No. 158/2007 questionably caused to be closed, from re-joining the Department of Public Administration, as the Addl. Director General, notwithstanding the recommendation of the Director General, Public Enterprise Department. **The same principle ought to apply to the 8th Respondent, without exception.***

The 22nd Respondent believes that this was because, E. Arumugam assisted the 22nd Respondent, to 'discover' in 2005, that the SLIC Accounts had been surreptitiously *retrospectively* adjusted by the Distilleries Consortium and Ernst & Young by Rs. 3000 million, resulting in a Claim of Rs. 2059 million by the Distilleries Consortium from the Government, which the 22nd Respondent and the Hon. Attorney General, *resisted*.

- ix) It is now disclosed before Your Lordships' Court in SC (FR) Applications Nos. 158/2007 & 209/2007, that the said Director Legal PERC had been instrumental and responsible for the surreptitious execution of Agreements in respect of LMSL and SLIC privatisations, which said Agreements have been annulled by Your Lordships' Court, as wrongful, unlawful and illegal.
- x) The foregoing conduct and actions of the 8th Respondent, as Secretary to the Treasury **give the lie** to what he had stated under Oath to Your Lordships' Court at paragraph 6 of his Affidavit.

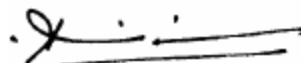
True copies of Letters dated 8.1.2004 and 1.11.2004 and 22nd Respondent's Memo dated 24.3.2005 are annexed compendiously marked "22RX17", pleaded as part and parcel hereof.

15. In the context of the foregoing, the 22nd Respondent very respectfully states that;
- a) *in the national and public interest*, that ***no one being above the ‘rule of law’***, Your Lordships’ Court be pleased to take *judicial notice* of the foregoing facts, **which give the lie** to the contents of paragraph 5 of the Petition of the 8th Respondent, and more particularly the corresponding paragraph 6 of his Affidavit, which contains the following *excerpt* from his Letter dated 25.7.2008 to His Excellency the President, with copy to the Secretary to the President, marked (“A”) to his Petition, boldly and blatantly made, *with scant respect to Your Lordships’ Court*:

“throughout my career in public service I (*i.e. 8th Respondent*) had maintained the highest level of honesty and integrity and discharge duties with utmost commitment in good faith and in the best interests of the country, and never compromised under any circumstances the public interest”
 - b) The 8th Respondent had in many instances, as disclosed above, acted in a manner unbecoming and unworthy of a public servant, most of all, as Secretary to the Treasury, the Chief Accounting Officer of the State, and in some instances acting in violation of the Constitutional mandates.
 - c) The 8th Respondent has made this Application suppressing material facts, with misrepresentations, and false statements, to mislead Your Lordships’ Court.
16. 22nd Respondent very respectfully states, that the foregoing conduct and actions of the 8th Respondent and the facts and circumstances set out hereinabove, constitute good, valid and more than sufficient reasons to:
- a) *disqualify* the 8th Respondent from seeking the relief, he has now endeavoured to seek from Your Lordships’ Court,
 - b) *warrant* Your Lordships’ Court to be pleased to refuse relieving the 8th Respondent from the undertaking contained in his Affidavit dated 16.10.2008 tendered to Your Lordships’ Court, pursuant to Order made by Your Lordships’ Court,
 - c) *warrant* Your Lordships’ Court to be pleased to direct the law enforcement authorities to take action on the relevant matters hereinbefore referred to, in the context of Your Lordships’ Court having directed such authorities to take action consequent to the delivery of Judgment on 21.7.2008 in this Action, and Deputy Solicitor General having confirmed to Your Lordships’ Court, that actions were being pursued by the relevant law enforcement authorities.
17. a) In view of the documents being voluminousness, in certain instances only relevant Sections of Reports and some documents have been marked, without the attachments thereto.
- b) Should Your Lordships’ Court so direct, the 22nd Respondent undertakes to tender copies of the said Reports and the attachments, where relevant.
18. Affidavit of the 22nd Respondent in support of the foregoing averments is attached hereto.

WHEREFORE the 22nd Respondent respectfully prays that Your Lordships' Court be pleased to:

- a) reject and/or dismiss the Application of the 8th Respondent
- b) grant costs, and
- c) such other and further relief as to Your Lordships' Court shall seem meet



22nd Respondent