

**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, Thimbirigasyaya 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 29th day of July 2009

The limited **Statement of Objections** of the 22nd Respondent above-named, appearing in person, to the '**Amended Petition**' dated 21.7.2009 (hereinafter referred to as the "**Amended Petition**") of the *former* 8th Respondent, (without prejudice thereto, sometimes referred as the "**8th Respondent**"), and his corresponding *purported* '**Amended Affidavit**' also dated 21.7.2009, respectfully states that:

PREAMBLE

1. The 22nd Respondent having come to know from the *media* that the *former* 8th Respondent had made some Application in this SC (FR) Application No. 209/2007, the 22nd Respondent was present in Your Lordships' Court, when this matter came-up on 14.7.2009.
2. On the said date,
 - a) the Counsel for the Petitioner, informed Your Lordships' Court that no papers had been served on his Client, and that he had obtained a certified copy of the same from the Registry of Your Lordships' Court on the previous day.
 - b) the 22nd Respondent also informed Your Lordships' Court that Notice of the *former* 8th Respondent's Application has not been received by the 22nd Respondent,

Thereupon, Your Lordships' Court directed that Notices be given of the said Application of the *former* 8th Respondent to all the Respondents.

3. Accordingly, Counsel for the *former* 8th Respondent undertook to give Notices to all the Respondents, except the 31st Respondent, Hon. Attorney General, who had been given Notice.
4. The Notice undertaken to be so given by the Counsel for the *former* 8th Respondent, having not been received by the 22nd Respondent, *in view of the necessity to file Objections in time*, the 22nd Respondent on 20.7.2009 obtained a certified copy of the *former* 8th Respondent's Application dated 7.7.2009 from the Registry of Your Lordships' Court.
5. Consequently, the 22nd Respondent tendered on 27.7.2009 his Statement of Objections to the abovementioned Petition dated 7.7.2009 of the *former* 8th Respondent, together with an Affidavit and Documents forwarding copies thereof to the Petitioner and the other Respondents, as morefully set out in the 22nd Respondent's Motion of 27.7.2009.
6. This Statement of Objections and corresponding Affidavit be read and considered, together with the 22nd Respondent's aforesaid Statement of Objections and the corresponding Affidavit, both dated 27.7.2009.
7. After having tendered to Your Lordships' Court the aforesaid Statement of Objections on 27.7.2009, the 22nd Respondent received by Registered Post a set of papers from the *former* 8th Respondent.
8. Initially, the 22nd Respondent believed that this was the Notice of the *former* 8th Respondent's aforesaid Application dated 7.7.2009, a copy of which the 22nd Respondent had obtained as aforesaid from the Registry of Your Lordships' Court on 20.7.2009.
9. However, on an examination of the aforesaid papers subsequently received, the 22nd Respondent observed that this was a '**New Application**' dated 21.7.2009, with Captions headed as '**Amended Petition**' and '**Amended Affidavit**', together with several Documents, including the copy of the aforesaid Application dated 7.7.2009 attached thereto.

PRELIMINARILY OBJECTIONS TO THE FORMER 8TH RESPONDENT'S 'AMENDED PETITION' AND PURPORTED 'AMENDED AFFIDAVIT' DATED 21.7.2009

10. The Order made by Your Lordships' Court on 14.7.2009 was to issue Notice of the Application dated 7.7.2009 of the *former* 8th Respondent.
11. Such Order dated 14.7.2009 could not in any manner have covered the '**New Application**' made by way of an '**Amended Petition**' and subsequently tendered on 21.7.2009 to Your Lordships' Court.
12. The said '**Amended Petition**' and *purported* '**Amended Affidavit**' was received, with a Notice from the Registry of Your Lordships' Court, *inter-alia*, stating;

'.... the application filed by the 8th Respondent Petitioner abovenamed (Copies of the Original Petition and Affidavit and the **Amended Petition**, **Affidavit** and **Annexure** thereto are enclosed herewith.....'
(*emphasis added*)
13. Nevertheless, there was no Motion by the *former* 8th Respondent included with the said New Application explaining / indicating,
 - a) as to how and why the '**Amended Petition**' and *purported* '**Amended Affidavit**' and Annexures were necessary;
 - b) as to whether Leave of Your Lordships' Court had been obtained for the foregoing.
 - c) as to how the '**New Application**' made on 21.7.2009 by way of an '**Amended Petition**' has been included with the Notice, whereas the Notice which was Ordered by Your Lordships' Court on 14.7.2009 to be given was of the *former* 8th Respondent Original Application made on 7.7.2009
14. It appears that an '**Amended Petition**' and *purported* '**Amended Affidavit**', both dated 21.7.2009 have been included under the cover of the Order to issue Notice made by Your Lordships' Court on 14.7.2009.
15. The '**Amended Petition**' including additional / modified averments, as well as an '**Additional Prayer**', is not in conformity with the imperative provisions of the Statute and Case Law applicable to the amendment of pleadings in a Petition, and **hence ought be rejected in-limine.**
16. **The '**Amended Petition**' in effect has converted a purported action of one character into an action of another and inconsistent character.**
17. The *purported* '**Amended Affidavit**' is also consequently so impugned, and in any case it is also not in conformity with the law governing Affidavits, and **hence which also ought be rejected in-limine.**
18. The foregoing warrants the rejection by Your Lordships' Court of the '**Amended Application**' subsequently made by the *former* 8th Respondent on 21.7.2009.

LIMITED RESPONSES

19. Without prejudice to the foregoing, the 22nd Respondent denies all and singular the several averments contained in the said '**Amended Petition**' and the corresponding *purported* '**Amended Affidavit**' save and except those
- a) averments which are not inconsistent with the averments in the Statement of Objections and the corresponding Affidavit, both dated 27.7.2009 of the 22nd Respondent, and
 - b) which have been specifically admitted in the 22nd Respondent's aforesaid Statement of Objections dated 27.7.2009, to the averments in the respective paragraphs of Petition dated 7.7.2009 of the *former* 8th Respondent, which are identically repeated in the *former* 8th Respondent's '**Amended Petition**', and the corresponding *purported* '**Amended Affidavit**' both dated 21.7.2009.
20. However, the 22nd Respondent respectfully reserves the right to file, *should the need arise*, an **additional** Statement of Objections and Affidavit to the **additional** and/or **modified** averments in the '**Amended Petition**' dated 21.7.2009 of the *former* 8th Respondent and his *purported* '**Amended Affidavit**' also of the same date.
21. In addition, the 22nd Respondent reiterates the averments in the Preliminary Objections in the 22nd Respondent's Statement of Objections dated 27.7.2009 and the corresponding Affidavit of the same date.
22. 22nd Respondent also reiterates the following paragraph 1 (g) (iii) of this Statement of Objections dated 27.7.2009

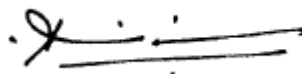
"22nd Respondent relies on the *dicta* in the Determination made by a 7 Member Bench of Your Lordships' Court on the aborted 19th Amendment to the Constitution, which, *inter-alia*, included the following:

"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)"

23. 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 '**Amended Petition**' and *purported* '**Amended Affidavit**', both dated 21.7.2009, of the *former* 8th Respondent
- b) grant costs, and
- c) such other and further relief as to Your Lordships' Court shall seem meet



22nd Respondent