

**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
Rilaula
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

WHEREAS having filed an extensive Statement of Objections to the instant Application of the *former* 8th Respondent and similarly Written Submissions, due to the non-availability of time, the 22nd Respondent was afforded only a very limited time yesterday to make Oral Submissions

AND WHEREAS in deference to the request made by Your Lordships' Court, the 22nd Respondent made very limited Oral Submissions, that too, very briefly, and was thus not able to make all the submissions, which had been intended to be made

AND WHEREAS in such circumstances, the following material submissions in brief are set out very respectfully Moving that Your Lordships' Court be pleased to accept the same:

1. Adverting to the 22nd Respondent's Statement of Objections dated 27.7.2009, supported by an Affidavit of same date, it was pointed out that upto date, the adverse findings against and/or the unbecoming conduct of the former 8th Respondent set out therein, *inter-alia*, as per the Reports by the Auditor General, COPE, PAC and Judgments of Your Lordships' Court, had not been controverted and/or refuted and/or denied by the former 8th Respondent, whereby they stood and stand admitted.

Among such vitally and materially important adverse findings made against the former 8th Respondent were;

- a) by the Auditor General in a Special Audit Report on the Management of Government Revenue, submitted to Parliament in July 2006 under Article 154(6) of the Constitution - *vide page 23 of the 22nd Respondent's Statement of Objections dated 27.7.2009*:

"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." (*Emphasis added*)

- b) in SC (SD) No. 3 of 2008 Your Lordships' Court, *inter-alia*, held as follows - *vide pages 26 / 27 of 22nd Respondent's Statement of Objections dated 27.7.2009*:

"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.

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*)

- c) in a Report of the PAC & COPE in August 2007 it had been stated as follows – *vide pages 25 / 26 of 22nd Respondent's Statement of Objections dated 27.7.2009*

"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.

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."

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." (Emphasis added)

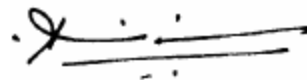
2. The Constitutional Council not functioning at present, and consequently the Public Service Commission having become defunct, the duties, functions and responsibilities of the Public Service Commission, to maintain discipline in the public service, had been reported to have been vested by Cabinet Decision, in the Secretaries of the respective Ministries. Hence -
 - a) in the face of the several grave and serious adverse findings by Your Lordships' Court in this Case, and as disclosed above, the question arises, as to whether the *former* 8th Respondent stands qualified and/or competent to discharge the functions to maintain discipline in the public service, as the Secretary, Ministry of Finance / Treasury
 - b) until the conclusion of investigations being carried out, as per the directions given by Your Lordships' Court by the IGP / CID and the Bribery Commission, the *former* 8th Respondent stands disqualified from being appointed to the Office of Secretary, Ministry of Finance / Treasury
3. Article 28 of the Constitution setting out the **Fundamental Duties** stipulates, that the exercise and enjoyment of rights and freedoms is **inseparable** from the performance of duties and obligations, and accordingly it is the duty of every person in Sri Lanka - '(d) to preserve and protect public property, and to combat misuse and waste of public property'. Hence it is respectfully submitted, that if a person does not perform his fundamental duties and obligations, *conversely* such person is **debarred** from the exercise and enjoyment of rights and freedoms, inasmuch as they are **inseparable** - *vide Note "A" to the 22nd Respondent's Written Submissions dated 9.9.2009*

AND WHEREAS according to the 22nd Respondent's understanding of the proceedings in Your Lordships' Court yesterday 24.9.2009, the Counsel for the Petitioner in response to observations made by Your Lordships' Court, conceded that the Judgment dated 21.7.2008 and the incidental / consequential Orders made thereafter upto termination on 15.12.2008, were not being impeached and/or sought to be reviewed, and in such circumstances, the main prayers (a) and (b) to the *former* 8th Respondent's amended Petition dated 31.7.2009 were being abandoned by him, thereby only standing on prayer - '(c) grant such other and further relief as to Your Lordships' Court shall seem fit and meet'

WHEREFORE in the given circumstances, the foregoing brief submission is being respectfully placed before Your Lordships' Court for due consideration thereof, and the 22nd Respondent most respectfully reiterates the following '*dicta*' of the Determination of the 7-Member Bench of Your Lordships' Court on the aborted 19th Amendment to the Constitution

"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)

Colombo, on this 25th day of September 2009



22nd Respondent