

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

*In the matter on an Application under Articles 17
and 126 of the Constitution of the Democratic
Socialist Republic of Sri Lanka*

W.K.H. Wegapitiya
No. 195/30
Royal Court Koswattha Road
Rajagiriya.

PETITIONER

S.C. (FR) No. 535/2008

Vs

1. Hon. A.H.M. Fowzie
Minister of Petroleum & Petroleum
Resources Development
No. 80, Sir Ernst De Silva Mawatha
Colombo 7.
2. Ceylon Petroleum Corporation
109, Rotunda Tower
Galle Road
Colombo 3.
3. Asantha de Mel
Chairman
109, Rotunda Tower
Galle Road
Colombo 3.
4. Sumith Abeysinghe
Secretary to the Treasury
The Secretariat
Colombo 1
5. Hon. G.L. Peiris
Minister of Export Development and
International Trade
6th Floor, Rakshana Mandiraya
21, Vauxhall Street
Colombo 2.
6. Hon. Minister of Finance of Finance and
Planning
Ministry of Finance and Planning
The Secretariat
Colombo 1.

7. Monetary Board of Sri Lanka
No. 30, Janadhipathi Mawatha
Colombo 1.
8. Hon. Attorney General
Attorney General's Department
Colombo 12.

RESPONDENTS

AND NOW

***In the matter of an Application under and
in terms of Article 134(3) of the
Constitution of the Democratic Socialist
Republic of Sri Lanka***

Nihal Sri Ameresekere
No. 167/4, Vipulasena Mawatha
Colombo 10.

INTERVENIENT-PETITIONER

Vs.

W.K.H. Wegapitiya
No. 195/30
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PETITIONER-RESPONDENT

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RESPONDENTS-RESPONDENTS

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

WHEREAS I filed a Petition yesterday i.e. 10.12.2008 respectfully seeking the permission of Your Lordships' Court to intervene in this Action.

AND WHEREAS I refer to paragraph 9 (c) thereof re-produced below:

"9.(c) The 2nd Petitioner has not had adequate time to study and examine the above Instruments in depth as warranted, and has obtained an initial Schedule from a person knowledgeable in Banking, disclosing the financial implications of the foregoing, which reveals a potential loss to the CPC of approximately US \$ 623 million from 1.11.2008 based on the prices as at 8.12.2008.

*A True copy of the said Schedule is annexed marked **2P5**, pleaded as part and parcel hereof"*

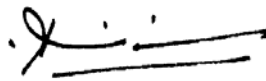
AND WHEREAS the person, who prepared the aforesaid Schedule **2P5**, has re-submitted the same excluding the 3rd Hedging Derivative Instrument dated 9.9.2008 of Standard Chartered Bank (*paragraph 9(a)(c) of the Petition*), in that, it has been an Instrument to protect against falling prices and appears to have got terminated. Accordingly, the revised Schedule **2P5**, marked as **2P5(a)** is respectfully tendered herewith to re-place the Schedule **2P5**, and the potential loss referred to in the aforesaid paragraph 9(c) should read US \$ 489 million, instead of US \$ 623 million. I regret the inconvenience caused to Your Lordships' Court.

AND WHEREAS in any case, the Hedging Derivative Instruments need examination by an expert, perhaps including a knowledgeable expert from overseas, and the respective Banks could speak to their respective Instruments.

AND WHEREAS I also respectfully draw the kind attention of Your Lordships' Court to paragraph 12(d) line 2 i.e. the words "is not too late in the day", which should correctly read as "is not **only** too late in the day". I respectfully attach a copy of the Central Bank Press Release dated 5.12.2008 referred to at paragraph 12(f), marked as **2P8**.

WHEREFORE I respectfully MOVE that Your Lordships' Court be pleased to permit the foregoing corrections.

On this 11th day of December 2008



Intervient-Petitioner

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and 126 of the Constitution of the Democratic
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PETITIONER

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RESPONDENTS-RESPONDENTS

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

On this 10th day of December 2008

The **Petition** of the **Intervient-Petitioner** above-named (hereinafter referred to as the “**2nd Petitioner**”), appearing in person, states as follows:

1. The 2nd Petitioner is a -
 - a) citizen of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as “**the country**”)
 - b) Member of the
 - Institute of Chartered Accountants, Sri Lanka,
 - Chartered Institute of Management Accountants, UK.
 - Institute of Certified Management Accountants, Australia
 - Association of Certified Fraud Examiners, USA
 - International Consortium on Governmental Financial Management
 - International Association of Anti-Corruption Authorities
 - c) Consultant exposed to both the private and public sectors
 - d) public interest activist, particularly, *vis-à-vis*, fraud, corruption and combating the pillage and plunder of the resources of the people of the country.

- e) **person who has been concerned about the foreign exchange position of the country, the leakages thereof, and the rising levels of foreign debts to be serviced.**

A true photostat copy of the National Identity Card of the Petitioner is annexed marked (“2P1”), pleaded as part and parcel hereof.

2. (a) The 2nd Petitioner is presenting this Petition for himself, on his own behalf, and for and on behalf of the people of the country, invoking the jurisdiction of Your Lordships’ Court in terms of the Article 126, read with Articles 3, 4 and 17 of the Constitution, to prevent grave and irreparable loss, damage and detriment being caused to the people of the country; whilst they are the real co-owners of the Consolidated Fund.
- (b) The transactions put in issue in this action have infringed and continues to infringe the fundamental right to equality before the law guaranteed by Articles 21(1) and 12(2) of the Constitution, and if not corrected, would render such constitutional guarantee of equality before the law nugatory.
- (c) In terms of Article 28 of the Constitution, 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, *inter-alia***, to uphold and defend the Constitution, further the national interest, and to preserve and protect public property, and to combat misuse and waste thereof.
- (d) Your Lordships’ Court in SC (FR) Application Nos. 10/07, 11/07, 12/07 and 13/07 *inter-alia* stated :
- “The limitation in Article 29 which states that the provisions of Chapter VI are not justiciable would not in my view be a bar against the use of these provisions to interpret other provisions of the Constitution. Article 27 of Chapter VI lays down that the ‘Directive Principles of the State Policy’ contained therein shall guide “Parliament, the President and the Cabinet of Ministries in the enactment of ‘laws and the governance of Sri Lanka for establishment of a just and free society.”
- (e) Those who hold elected and selected public office, having made oath or affirmation in terms of the Constitution, to enter upon such public office, are bounden to uphold and defend the Constitution, and duly perform the duties and obligations stipulated in Article 28 of the Constitution.
- (f) That public property is held in trust on behalf of the people, and that there could be no violation of the ‘Doctrine of Public Trust’ was upheld and exhaustively dealt with by Your Lordships’ Court in the recent Judgment in SC (FR) No. 352/2007.
- (g) The 2nd Petitioner intended to petition Your Lordships’ Court on this matter of ‘Hedging through Derivative Instruments’, but being involved in challenging the Appropriation Bill 2008, and with pressure of other work, delayed to do so, and is intervening in this Action, with the view to assisting Your Lordships’ Court in such matter of national and public importance.
3. (a) The 2nd Petitioner, in September 1990, instituted a derivative action in law, and Your Lordships’ Court in the Judgment in SC Appeal Nos. 33/92 & 34/92 - (1993) 1 SLR 22 / (1992) CLR Commercial 636, upheld the interim injunctions issued by the District Court, restraining two leading Japanese multinationals from obtaining monies in fraudulent circumstances, under Government Guarantees, even though it was stated that the said Government guaranteed had been discounted with the Exim Bank of Japan; observing that such interim injunctions had been issued to prevent the devious siphoning of a large scale of foreign exchange from the country.

- (b) The District Court Order, upheld by Your Lordships' Court, *inter-alia*, pointedly observed, that the Director-Defendants had intervened to obtain monies, without readily acting to conduct a correct examination, and having prevented such correct examination, exercising the influence gained in society, were attempting to effect payments, which would be an instance of acting in fraudulent collusion. Such reference, as per evidence adduced, was particularly to K.N. Choksy, PC, MP, who obstructed such correct examination and endeavoured to made the full payment to the Japanese Multinationals, which led to the action by the 2nd Petitioner.
 - (c) Then Hon. Attorney General, in concurrence with then Addl. Solicitor General, determined that even the Securities & Exchange Commission did not take action as warranted, renegeing on their statutory duties, responsibilities and obligations; this, among others, included the 5th Respondent Minister G.L. Peiris and Governor Central Bank Nivard Cabraal, as then President, Institute of Chartered Accountants.
 - (d) At the time the 2nd Petitioner instituted the aforesaid action, the foreign reserves of the country were very low, with an imminent threat of precipitation of an 'international cross-default' on the country's foreign borrowings, consequent to demands made by the Japanese multinationals under the Government Guarantees, which such situation was prevented by the action of the 2nd Petitioner.
 - (e) As a consequence of 2nd Petitioner's action, an equivalent of US \$ 207 million was written-off in June 1995 on the claims made in fraudulent circumstances on Government Guarantees, which said write-off at 6% p.a. interest would be equivalent today to US \$ 455 million, which is comparable to the potential claims in foreign exchange in the transactions put in issue in this Action.
 - (f) The 2nd Petitioner apprehends that in like manner as aforesaid influential and/or interested parties, would endeavour to cause payments under the transactions put in issue in this Action
4. (a) The 2nd Petitioner restricts himself to the issue of 'Hedging through Derivative Instruments' only, in the Petition of the Petitioner.
- (b) A search on the Internet would disclose large scale 'scams and frauds' associated with 'Hedging'.
- A true copy of a search on the Internet in relation to 'Hedging Frauds' is annexed marked **2P2(a)**, pleaded as part and parcel hereof.*
- (c) Also a search on the Internet would disclose large scale 'scams and frauds' associated with 'Derivative Instruments'.
- A true copy of a search on the Internet in relation to 'Derivative Instrument Frauds' is annexed marked **2P2(b)**, pleaded as part and parcel hereof.*
- (d) For example, the European Parmalat Bankruptcy was caused by 'Derivatives' of reputed U.S. Banks, namely, 'J.P. Morgan' Chase Bank, Bank of America, Citigroup.
- A true copy of a Repot from the Internet is annexed marked **2P2(c)**, pleaded as part and parcel hereof.*
- (e) **Hence, espousing in dabbling in 'Hedging through Derivative Instruments', ought to have been with the exercise of utmost caution and with requisite specialized expertise obtained through due process.**
5. (a) What had been espoused and carried out, though referred to as 'Petroleum Oil Hedging', in effect has been speculating and/or gambling and/or betting on the movement of Petroleum Oil Prices, on 'motional quantities' through a scheme of 'Hedging through Derivative Instruments'

- (b) The above had nothing, whatsoever, to do with the actual purchasing of Petroleum Oil by the 2nd Respondent (CPC).
 - (c) 'Hedging through Derivative Instruments' is a separate speculative gamble, distinctly different from the purchasing of Petroleum Oil in a volatile market or otherwise, and is completely unrelated and alien to the actual purchasing of Petroleum Oil.
 - (d) Hence, 'linking' the two in the given facts and circumstances was a misleading deception, resulting in the given catastrophic situation.
6. (a) The 2nd Respondent (CPC) was only authorized and empowered to carry out the activities referred to in the Ceylon Petroleum Corporation Act, more particularly Section 5B thereof, which was essentially and solely to deal with petroleum products.
- (b) Hence, 'Hedging through Derivative Instruments' was not a business activity that the 2nd Respondent (CPC) was authorized and empowered to engage and/or dabble in, in terms of the Ceylon Petroleum Corporation Act.
 - (c) **Hence, in the absence of such statutory power and authority, it could not have been suggested, that the 2nd Respondent (CPC) embarks upon and/or engages in such separate speculative business activity.**
7. (a) On the other hand, commercial Banks operate under a License granted by the Central Bank of Sri Lanka.
- (b) Accordingly, commercial Banks are subject to the regulatory directives of and the supervision by the Central Bank of Sri Lanka.
 - (c) A Bank is required to have ascertained, as to whether the 2nd Respondent (CPC) was authorized and empowered to have dabbled in speculative business of 'Hedging through Derivative Instruments'.
 - (d) The relationship between a Bank and its customer is of a highly fiduciary nature, where a customer would act with utmost trust and good faith in a Bank.
 - (e) Therefore, one does not expect a Bank to mislead and/or compromise and/or cheat and/or take undue advantage of and/or defraud a customer, whereas a Bank is expected to act to protect and safeguard the very interest of a customer, as a consequence of the fiduciary professional relationship.
8. Chronology of events :
- (a) 6.9.2006 – Governor, Central Bank of Sri Lanka Nivard Cabraal makes a power-point presentation to the Members of Cabinet on – "Maintaining Stability in a Volatile Global Oil Market", with a hand-out circulated.
 - (b) 6.9.2006 – Cabinet had decided that the subject to be further studied by a group of officials from the Central Bank, Ministry of Finance and Planning, Ministry of Petroleum and Petroleum Resources Development and any other Agencies concerned, and present a report to the Cabinet so that decision can be taken on the alternatives suggested in the Governor's presentation. **Action was to be taken by the Ministry of Finance and Planning.**

*A true copy of the said Power-point presentation is annexed marked **2P3(a)**, pleaded as part and parcel hereof*

(c) 16.11.2006 - by Letter addressed to P.B. Jayasundera, then Secretary Ministry of Finance and Planning, the Members appointed by him to the aforesaid Committee on 19.10.2006, had forwarded to him a report titled "Oil Hedging Report of the Study Group"

(i) The aforesaid Committee had comprised of the following persons:

1. Y.M.W.B. Weerasekara, Assistant Governor, **Central Bank of Sri Lanka**
2. H.M. Thenuwara, Assistant Governor, **Central Bank of Sri Lanka**
3. Saliya Rajakaruna, Chief Financial Officer, Bank of Ceylon
4. Kapila Ariyaratne, Head of Corporate and Institutional Banking, People's Bank
5. Kanthi Wijethunga, Addl. Secretary, Ministry of Petroleum and Petroleum Resources Development
6. Lalith Karunarathna, Deputy General Manager (Finance), Ceylon Hotels Corporation
7. V. Kanagasabapathy, Financial Management Advisor, Ministry of Finance and Planning

(ii) The specialized expertise and/or competence and/or exposure of the above persons to 'Hedging through Derivative Instruments' is not known.

(iii) **It would be noted that the Committee had been appointed 19.10.2006 and the report submitted within one month on 16.11.2006.**

*True copies of the said Letter addressed to Dr. P.B. Jayasundera and the aforesaid Report are annexed respectively marked **2P3(b)** and **2P3(c)** pleaded as part and parcel hereof*

(iv) **Accordingly, it is respectfully submitted that P.B. Jayasundera, former Secretary, Ministry of Finance, is a necessary Party for the due and proper adjudication of this matter by Your Lordships' Court.**

(d) 13.1.2007 - Cabinet Memorandum of 13.1.2007 No. 04/2007 had been submitted by the 1st Respondent, Minister of Petroleum and Petroleum Resources Development, seeking approval of Cabinet for the recommendations made by the Committee in its aforesaid Report.

*True copy of the said Cabinet Memorandum of 13.1.2007 is annexed marked **2P3(d)** pleaded as part and parcel hereof*

(e) 24.1.2007 - The Cabinet of Ministers had considered the above Cabinet Memorandum, **along with observations of the Ministry of Finance and Planning**, and approval had been granted to the proposals in the Cabinet Memorandum to be implemented without delay, **as suggested by the Central Bank of Sri Lanka.**

*True copy of the said Cabinet Decision of 24.1.2007 is annexed marked **2P3(e)** pleaded as part and parcel hereof*

(f) 30.3.2007 - The Central Bank Annual Report 2006 dated 30.3.2007 under the hand of Governor, Nivard Cabraal, at page 46 had reported thus:

"CPC initiated Hedging of Oil purchases against adverse price movements. Hedging of Oil purchases is vital to ensure stability in prices and other economic variables. CPC entered into two hedging arrangements for the first time in February 2007 to purchase 900,000 barrels of Auto-Diesel during March/May 2007, under the Zero - cost Collar mechanism". (Emphasis added)

True copy of Page 46 of the Central Bank Annual Report 2006 dated 30.3.2007 is annexed marked 2P3(f) pleaded as part and parcel hereof

- (g) 31.3.2008 - The Central Bank Annual Report 2007 dated 31.3.2008 under the hand of Governor, Nivard Cabraal, at page 58 had reported thus:

“The CPC has implemented several measures to reduce a cost of its oil purchases. The hedging of oil purchases against price volatility was continued in 2007. CPC entered into 6 hedging agreements during the year and has gained Rs. 209 million as risk mitigating income during the year”.

True copy of Page 58 of the Central Bank Annual Report 2007 is annexed marked 2P3(g) pleaded as part and parcel hereof

- **Accordingly, it is respectfully submitted that Nivard Cabraal, Governor Central Bank of Sri Lanka is a necessary Party for the due and proper adjudication of this matter by Your Lordships’ Court.**

- (h) 17.11.2008 - Cabinet Memorandum No. 12/55/2008 titled “Hedging Risk Mismanagement Committee” by the 1st Respondent, Minister of Petroleum and Petroleum Resources Development, suggesting the following persons be appointed with immediate effect, as a ‘Hedging Risk Mismanagement Committee’, if the 2nd Respondent (CPC) is to continue with the management of oil hedging in the future.

1. W.B. Ganegala, Secretary, Ministry of Petroleum and Petroleum Resources Development
2. R.H.S. Samaratinga, Deputy Secretary to Treasury
3. D. Widanagamachchi, Director State Accounts Department, Treasury
4. Ashantha de Mel, 3rd Respondent, Former Chairman CPC
5. P.N. Weerasinghe, Chief Economist, **Central Bank of Sri Lanka**
6. R.A.A. Jayalath, Addl. Director International Operations, **Central Bank of Sri Lanka**
7. Lalith Karunaratne, Deputy General Manager (Finance), CPC

True copy of the said Cabinet Memorandum of 17.11.2008 is annexed marked 2P3(h) pleaded as part and parcel hereof

- (i) 19.11.2008 - Cabinet Approval granted for the appointment of the above Committee with immediate effect for the **management of oil hedging risk in the interest of the country.**

True copy of the said Cabinet Decision of 19.11.2008 is annexed marked 2P3(i) pleaded as part and parcel hereof

- ‘Terms of Reference’ of the ‘Heading Risk Management Committee’ had been set out.

True copy of the said ‘Terms of Reference’ is annexed marked 2P3(j) pleaded as part and parcel hereof

9. (a) The following 'Hedging Derivative Instruments' had been entered into by the 2nd Respondent (CPC) with the under mentioned Banks in 2008 and **are pending**

- (a) Standard Chartered Bank on 9.4.2008
- (b) Standard Chartered Bank on 9.7.2008
- (c) Standard Chartered Bank on 9.9.2008 / Letter dated 26.9.2008
- (d) Citibank on 20.6.2008
- (e) Citibank on 22.7.2008
- (f) Deutsche Bank on 10.7.2008
- (g) Commercial Bank on 10.7.2008
- (h) People's Bank on 18.8.2008
- (i) People's Bank on 9.10.2008

*True copies of the above' Derivative Instruments' are annexed compendiously marked **2P4**, pleaded as part and parcel hereof*

- (b) The 2nd Petitioner is unaware, as to whether the above are all the 'Derivative instruments' executed by the 2nd Respondent (CPC) during the Year 2008, nor is the 2nd Petitioner aware of those executed in 2007.
- (c) The 2nd Petitioner has not had adequate time to study and examine the above Instruments in depth as warranted, and has obtained an initial Schedule from a person knowledgeable in Banking, disclosing the financial implications of the foregoing, which reveals a potential loss to the CPC of approximately US \$ 623 million from 1.11.2008 based on the prices as at 8.12.2008.

*A True copy of the said Schedule is annexed marked **2P5**, pleaded as part and parcel hereof*

- (f) It would be noted that individual sheets of these instruments have not been initialed in most cases, except the last page thereof having been signed by the 3rd Respondent, former Chairman, CPC and Lalith Karunaratne, Deputy General Manager (Finance), CPC.
- (g) It would appear that the aforesaid Instruments do not bear the 'Official Seal' of the 2nd Respondent (CPC), as duly authorized to be placed thereon and signed by the aforesaid two persons.
- (h) It is not known, as to whether the aforesaid signatures being placed by the aforesaid persons on behalf of the 2nd Respondent (CPC), are in conformity with the respective 'mandates', which would have been given and/or ought to have been given by the 2nd Respondent (CPC) to the respective Banks, and **ought to have been obtained by the respective Banks.**
- (i) It would be noted that Kapila Ariyaratne, Head of Corporate and Institutional Banking, **People's Bank** had been a Member of the 'Oil Hedging Report Study Group' referred to at paragraph 8(c) hereinabove, whilst **People's Bank** too had entered into 'Hedging Derivative Instrument', with 2nd Respondent (CPC)
- (j) **In the foregoing circumstances, it is respectfully submitted that the above mentioned Banks are necessary Parties for the due and proper adjudication of this matter by Your Lordships' Court i.e.**

- (i) **Standard Chartered Bank**
- (ii) **Citibank**
- (iii) **Deutsche Bank**
- (iv) **Commercial Bank**
- (v) **People's Bank**

10. (a) The foregoing 'Hedging Through Derivative Instruments' involving high levels of public funds, ought to have been negotiated and entered into, only with strict adherence to the Public Finance Circulars and Guidelines, involving the appointment of Cabinet Appointed Negotiating Committees and Technical Evaluation Committees, with specific approvals of the Cabinet in the context of the monetary value of Instruments entered into.
- (b) In any case, the foregoing speculative business activity of 'Hedging Through Derivative Instruments' could not have been undertaken by the 2nd Respondent (CPC), and if at all, ought to have been undertaken by a specialized financial agency, with the input of specialist expertise and experience with due process.
- (c) Furthermore, the foregoing 'Hedging Through Derivative Instruments' ought to have received individual approvals from the Controller of Exchange under and in terms of the Exchange Control Act.
11. On a mere perusal of the above Instruments
 - (a) it appears that these 'Derivative Instruments' specify a 'notional quantity of oil' and 'oil price ranges', upon which speculative deals of a 'gaming' / 'gambling' nature have been executed.
 - (b) it appears that there is a 'cap' above the price at the upper-end of the range, referred to as the 'upper collar', where the Bank is obliged to pay 2nd Respondent (CPC) above the 'upper collar', and thus the Bank would pay only such capped/restricted amount .
 - (c) on the other hand, there is no 'cap' below the price at the bottom-end of the range, referred to as the 'lower collar' whereby 2nd Respondent's (CPC) payment to the Bank is not reciprocally capped/restricted.
 - (d) in addition, where the price level hits the upper 'cap', cumulatively reaching a specified amount, then the Bank's contractual obligation terminates, thereby the Bank's risk is quantified/defined in times of rising prices.
 - (e) whereas, on the other hand, where the price level goes below the lower end of the range, then there is no such reciprocal termination, but the contractual obligation on the part of the 2nd Respondent (CPC) to pay the Bank on notional quantities continues till the end of the tenure of the Instrument.
 - (f) in fact, shockingly such obligation on the part of the 2nd Respondent (CPC) to pay the Bank is in respect of 'double the quantity' in some of the foregoing instances (i.e. 7 out of the 9 in the Schedule to "2P5"), whereas when price reaches the upper cap, the Bank's obligation is only to pay in relation to half such quantity !
 - (d) the foregoing itself discloses such Instruments to be unfair, inequitable, one sided and unjust, thereby rendering them to be *ab-initio* null and void.
12. (a) Clearly the foregoing Instruments are mere speculative and/or gambling and/or betting 'deals' and are completely unrelated to the actual purchasing of Petroleum Oil by the 2nd Respondent (CPC).
- (b) Given the prevalent 'scams and frauds' in this sector, no caution appears to have been exercised in advocating and pursuing such reckless course of speculation/gambling/betting/'hedging'.
- (c) Even if one were to consider such advent into unknown virgin territory, then international expertise and advice from experienced specialized knowledgeable authorities ought to have been obtained after due process.
- (d) To state that the Central Bank directions on financial products had not been adhered to after such damage of national economic proportions had been done, is not too late in the day, but indeed puerile.

- (e) The citations of the Central Bank Annual Reports of 2006 and 2007 clearly disclose that the Central Bank had been well and truly aware of the transactions being executed, Central Bank Officers having also been Members of the Committees referred to hereinabove.
 - (f) For the Central Bank to have issued a 'Press Release' on 5.12.2008, whilst this matter was pending before Your Lordships' Court was improper, if not contemptuous. If at all, Central Bank ought to have sought the permission of Your Lordships' Court to have intervened to adduce facts and make submissions before Your Lordships' Court.
13. (a) It appears that the Banks had induced the 2nd Respondent (CPC) and 3rd Respondent, former Chairman, CPC and those others involved, into unsuspectingly buying dubious deals, which conduct is unbecoming and unworthy of Banks.
- (b) It would appear that Standard Chartered Bank has either been the lead Bank or initiator in mooted and securing these dubious deals.

A true copy of a Newspaper Report captioned – ‘SCB seals deal on first ever oil hedging option’- Lanka hedges oil at \$ 72 from March for 150,000 barrels’ is annexed marked 2P6, pleaded as part and parcel hereof

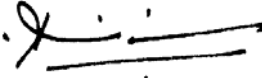
- (c) A Bank carries a fiduciary responsibility not to cheat and/or dupe and/or to get the better of a customer, but on other hand to advise a customer to protect the very interest of the customer.
 - (d) A Banker is a professional in whom reliance is totally placed by a customer, and no professional ought to take undue advantage of such trust reposed in a professional.
 - (f) On the other hand, it appears that Standard Chartered Bank has unprofessionally induced, enticed and compromised public officials to sell dubious deals.
- True copies of Invoices dated 13.2.2008, 24.9.2008(2) and 29.9.2008(2) of Hemas Travel (Pvt) Ltd. charged to Standard Chartered Bank in respect of air travel of public Officers concerned are annexed compendiously marked 2P7, pleaded as part and parcel hereof*
14. (a) It is respectfully submitted that the foregoing clearly and amply discloses that a well schemingly conceived an intentional fraud had been perpetrated on the 2nd Respondent (CPC) a statutory corporation owned by the Government.
- (b) Hence the foregoing is a fraud schemingly and intentionally perpetrated on the Government.
- (c) Thus and thereby, the foregoing attracts the provisions of the Penal Code, more particularly Chapters X and XI thereof and the provisions of the Offences Against Public Property Act No. 12 of 1982.
- (d) In addition, the foregoing conduct of the Banks ought be reckoned in the context of the provisions of the Banking Act, Regulations made thereunder, the Exchange Control Act and the Central Bank's Mandatory Code of Corporate Governance for Banks.
15. (a) The 2nd Petitioner respectfully state the fundamental right of equality before law guaranteed under Articles 12(1) and 12(2) have being infringed, and continuing to be infringed, causing irreparable loss and damage and irremediable mischief to the 2nd Petitioner and the public of the country; whereby a cause of actions arises to invoke the Jurisdiction of Your Lordships' for the exercise of the judicial power of the people and for remedial action to be taken to protect national and public interest.

- (b) The 2nd Petitioner respectfully states that he has not invoked the jurisdiction of Your Lordships' Court previously on this matter.
16. The 2nd Petitioner respectfully seeks the permission of your Lordships' Court to intervene in this action, without seeking Your Lordships' Court to file a separate action.
17. (a) The 2nd Petitioner has received the documents annexed to the Petition and verily believes them to be true and has no reason to suspect the genuineness thereof, and relies on the Hon. Attorney General to verify the genuineness thereof.
- (b) The 2nd Petitioner respectfully reserves the right to adduce, with the permission of Your Lordships' Court, further documents and facts pertaining to this matter of national and public importance, should the necessity arise.
- (c) The 2nd Petitioner apprehends that the relevant documents and records, electronic and otherwise, relevant to these 'Hedging Derivative Instrument' deals could get destroyed and/or lost at the various locations, including at the aforementioned Banks, and therefore the 2nd Petitioner respectfully submits that they ought be taken into safe custody for due and proper investigations to be carried out thereinto.
18. The Affidavit of the 2nd Petitioner is annexed in support of the averments herein

WHEREFORE the Intervening-Petitioner respectfully prays that Your Lordships' Court pleased to :

- (a) make Order permitting the Intervening-Petitioner to intervene in this Application, adding him as the 2nd Petitioner.
- (b) make Order to issue Notices of this intervention Application on the Respondents
- (c) make Order declaring that the following are necessary parties for the due and proper adjudication of this matter by Your Lordships' Court, and accordingly make Order adding them respectively as the 9th, 10th, 11th, 12th, 13th, 14th and 15th Respondents in this Application
- (i) Nivard Cabraal, Governor Central Bank of Sri Lanka
 - (ii) P.B. Jayasundera, former Secretary Ministry of Finance & Secretary to the Treasury
 - (iii) Standard Chartered Bank
 - (iv) Citibank
 - (v) Deutsche Bank
 - (vi) Commercial Bank
 - (vii) People's Bank
- (d) make Order declaring that the fundamental rights guaranteed under Article 12(a) and 12(2) of the Constitution of the 2nd Petitioner and the People of Sri Lanka have been infringed
- (e) make Order declaring that the 'Hedging Derivative Instruments' had been entered into by the 2nd Respondent (CPC), wrongfully, unlawfully and fraudulently, without due and proper process
- (f) make Order declaring that the 'Hedging Derivative Instruments' entered into by the 2nd Respondent (CPC), are *ultra-vires* the Ceylon Petroleum Corporation Act,
- (g) make Order that Hedging Derivative Instruments entered into by the 2nd Respondent (CPC) are *ab-intio* null and void and of no force or avail in law.

- (h) make Order canceling, annulling and making void the Hedging Derivative Instruments entered into by the 2nd Respondent (CPC).
- (i) make Order declaring that the conduct and actions of anyone or more of the Respondents and/or their Officers have caused loss and damage to the 2nd Respondent (CPC), and thereby to the Government and the People of Sri Lanka, conferring unjust and unlawful benefit to one or more of the Respondents and/or their Officers.
- (j) make Interim Order directing the 7th Respondent, Monetary Board of Sri Lanka to cause the Controller of Exchange, or in the alternative, make Interim Order directing the Controller of Exchange to investigate all the Hedging Derivative Instruments entered into by 2nd Respondent (CPC) and to submit a Report to Your Lordships' Court, and to take warranted action against those persons concerned in terms of the Exchange Control Act.
- (k) make an Interim Order directing the Hon. Attorney General to cause the Director General, Criminal Investigation Department to take into safe custody and possession all and whatsoever records and documents, electronic and otherwise, pertaining to all the Hedging Derivative Instruments entered into by the 2nd Respondent (CPC), and in respect of all matters relevant and incidental thereto, from the respective Banks, permitting the Banks to keep copies thereof for their purposes.
- (l) make Interim Order directing the Hon. Attorney General to cause the Director General, Criminal Investigation Department to carry out full and proper investigations into all aspects pertaining to the 2nd Respondent (CPC) entering into the aforesaid Hedging Derivative Instruments, and to cause warranted action to be taken in terms of the applicable law against those persons concerned, on the findings of such investigations.
- (m) grant costs, and
- (n) grant such other and further relief as to Your Lordships' Court shall seem meet


Intervenant-Petitioner