

**BY COURIER**

16<sup>th</sup> May 2008

C.R. de Silva, P.C. Esqr.,  
Hon. Attorney General,  
Attorney General's Department,  
Hultsdorf Street,  
Colombo 12.

Dear Sir,

**Criminal Prosecution against Mr. K.N. Choksy P.C., M.P.  
& Mr. R. Paskaralingam & Others**

I am encouraged by the following statements attributed to you in the *Daily Mirror* yesterday i.e. 15.5.2008.

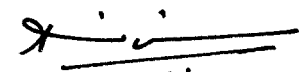
“The Attorney General said that it had been explicitly mentioned, that no transgression of the law to be tolerated and that all persons found to have violated the law would be dealt with and held accountable for their conduct”

“The Attorney General stressed that he himself had sanctioned the forwarding of indictments against several key persons in authority including ministers, members of parliament and several other senior officers of the government in respect of their participation in various criminal activities .....

I refer to my attached Letter of 18.4.2008 addressed to Mr. Sisira Mendis, DIG-CID, with copy, among others, to you.

In conformity with the foregoing stance taken by you, I trust that you would not make any exception to this long outstanding matter, warranting prosecution, as had been upheld by the Supreme Court *vide* the dicta thereof, and also by a Special Presidential Commission of Inquiry, which framed charges on grounds of fraud against the government, on the advice of the Solicitor General.

Yours truly,



Nihal Sri Ameresekere

cc: Mr. Sisira Mendis, DIG-CID  
Mr. Victor Perera, Inspector General of Police  
Mr. Gotabhaya Rajapakse, Secretary, Ministry of Defence

Mr. Neville Piyadigama, Chairman, Police Commission  
Ven. Elle Gunawansa, Member, Police Commission / Chairman, Committee to combat Fraud,  
Bribery & Corruption

Rtd. Supreme Court Judge Priyantha Perera Esqr, Chairman, Public Service Commission /  
former Chairman, Special Presidential Commission of Inquiry  
Mr. S.K.P. Bambarenda, Co-ordinating Secretary, to the Secretary, Ministry of Labour /  
former Secretary Special Presidential Commission of Inquiry

Mr. Lalith Weeratunga, Secretary to the President

H.E. the President

**BY COURIER**

18<sup>th</sup> April 2008

**IMPORTANT**

Mr. Sisira Mendis,  
Deputy Inspector General of Police  
Criminal Investigation Department  
4<sup>th</sup> Floor, New Secretariat Building  
Colombo 1.

Dear Mr. Mendis,

**Criminal Prosecution against Mr. K.N. Choksy P.C., M.P.  
& Mr. R. Paskaralingam & Others**

My congratulations on your appointment as DIG-CID, and my best wishes for the New Year !

I refer to Letter dated 4.4.2008 addressed to me, on behalf of Director, CID, by Chandra Nimal Wakishta, Senior Superintendent of Police, with copy to Hon. Attorney General, on the above-mentioned subject, which was personally delivered to me in my office, by Sub-Inspector Gunatilleke of the CID. *Copy of the said Letter is attached for your reference.*

I acknowledged the receipt of the said Letter, with following endorsement made thereon:

***"I do not agree with the above position. I shall reply as I may be advised on the matter" –  
"Please inform the Hon. Attorney General!"***

Accordingly, I refused to accept the several documents, including a photocopy of the Plan in issue, which had been furnished by me to the CID, upon they recording my statement of complaint on or about 12.3.2004, and followed-up, as requested, forwarding further documents with my Letter dated 15.3.2004. Hence, Sub-Inspector Gunatilleke took the said documents back to the CID.

On the very same day, I telephoned you and briefly informed you of the foregoing matter, and intimated that I would submit a reply after the New Year !

At the very outset, I reiterate that I cannot agree with the contents of the said Letter. In fact, I assisted the CID to trace the documents to the Department of National Archives, and caused the Secretary to the President, Mr. Lalith Weeratunga, to direct the Department of National Archives, to release the said documents in terms of the National Archives Law. I was made to understand that the Department of National Archives had agreed to do so, whereas on the contrary, then SSP-CID questionably endeavoured to make a futile attempt to photocopy the voluminous documents, as evidenced by his Letter dated 19.10.2006, *copy attached; thereby giving the lie to the stance, that documents are not available !*

In addition, I had pointed out that documents, which had been acceptable to and admitted in the Supreme Court are also with the Commercial High Court, having been transferred from the District Court. Furthermore, that copies of documents are also with the Attorney General's Department, they having appeared in my civil action, and also having assisted the Special Presidential Commission.

Secretary, Special Presidential Commission, Mr. S.K.P. Bambarenda, who on behalf of the then Secretary to the President, had transmitted the aforesaid documents to the Department of National Archives, was the person who confirmed to me that the aforesaid documents are at the Department of National Archives, when in the first instance they had questionably indicated to the CID, that they had no such documents, but later when confronted with Mr. Bambarenda's disclosure, reneged on their earlier position, as evidenced by the aforesaid Letter ! Mr. Bambarenda, who at present is the Co-ordinating Secretary to Mr. Mahinda Madihewa, Secretary, Ministry of Labour, confirmed to me that **an inventory of the aforesaid documents transmitted to the Department of National Archives had been made, and which too, would be available at the Department of National Archives !**

As requested in September 2007, I called over at the CID, and after discussions, I was requested to assist the CID to accompany the CID to trace the documents, particularly Sub-Inspector Gunatilleke, who I was informed was thereafter transferred outstation for a considerable period of time. Mr. Bambarenda being the State Official, who transmitted the said documents to the Department of National Archives, when phoned by me from the CID, consented to come and assist to trace them, if necessary. However, my cogent question to the then SSP-CID was, as to why a "B" Report could not be filed, as is the normal case, and an Order of Court obtained to retrieve the said documents. **I was informed that then Director-CID was reluctant to do so !**

This was indeed most baffling, because I have first hand experience of seeing "B" Reports filed by the CID, on the advice of the Hon. Attorney General and his Officials, comparatively on far more trivial matters, whereas this being a matter of national economic proportions and of far greater gravity, ought to be dealt with, with far greater zeal and commitment; however I am intrigued by the questionable and unenthusiastic indifference ! Law enforcement ought to have been with far more greater dedication and commitment, with the Supreme Court having upheld this to be a serious case of fraud on the Government, observing that the government could not be indifferent, **which necessarily includes the law enforcement authorities.**

In addition, a Special Presidential Commission of Inquiry, after investigations by the CID Officers on the advice of the Hon. Attorney General represented by the then Solicitor General, had issued Show Cause Notices on the aforementioned and other persons containing several charges on grounds of fraud committed against the Government, which were in fact prepared by the then Solicitor General. Hence this investigation before the CID for prosecution is not on a mere complaint by me, as a citizen, as in other cases. **Therefore, it is beyond comprehension, as to what is the apparent difficulty now ?**

Furthermore, I am indeed quite amused of the implication or connotation in the aforesaid Letter, that the original Plans are essential to launch a criminal prosecution ! I have to believe that this has been the advice proffered by the Officials of the Attorney General's Department ! I am advised that this is contrary to statutory provisions in the criminal law and applicable case law ! Ironically, I myself have witnessed, where in the absence of even a photocopy of the original document, and on the mere reference to such a document in an *ex parte* report, a prosecution has been zealously and successfully carried out by the Officials of the Attorney General's Department. **Hence, it begs the question, as to why such duplicity ?**

I am advised that more than adequate documents and corroborative circumstantial evidence are available for criminal prosecution, which, however, had not been adequately examined and addressed or the relevant facts clarified from me, who successfully carried out a civil prosecution and assisted the Special Presidential Commission to issue Charge Sheets on grounds of fraud committed against the Government i.e. the country.

This inquiry by the CID commenced with the Letter dated 23.12.2003, *copy attached*, by the then Hon. Attorney General, **who at a discussion having examined the facts and documents, conceded that there was irrefutable evidence of criminality.** Significantly, thereafter it was you, as then Director-CID, who wanted to have my statement recorded on or about 12.3.2004, stating that it was an urgent and important matter, **and quite rightfully so !** However, thereafter I have been intrigued, as to the unenthusiastic and uncommitted manner, in which this matter of national economic proportions and gravity has been handled, notwithstanding the foregoing, both by the Attorney General's Department and the CID, whereas I can cite cases of far less gravity and triviality handled zealously and committedly, which I have cited in some of my correspondence. The CID got activated again only after I made a complaint to the Police Commission and the Police Commission called for a Report from the IGP.

Being reasonably aware, as to how investigations and prosecutions are supervised and directed by the Hon. Attorney General and his Officials, I cannot fault the CID, since I verily believe, that the Hon. Attorney General and his Officials are questionably unenthusiastic *vis-à-vis* such fraud of national economic proportions and gravity, notwithstanding the Supreme Court having upheld a serious case of fraud, and a Special Presidential Commission, chaired by a Supreme Court Judge, with 2 Appeal Court Judges as Members, assisted by the **Solicitor General, having framed charges of fraud committed against the Government !**

I am not surprised at all, in that, excluding the Hon. Attorney General, Sunil de Silva P.C., who did not oppose my prosecution of the civil action in the interest of the country, the subsequent Hon. Attorney Generals and Officials, questionably '*kicking the rule of law*' opposed my civil prosecution, I verily believe, due to socio-political influences and pressures by parties impleaded, who in fact were castigated by the District Judge in his Order issuing the interim injunctions ! The only other Hon. Attorney General, who appreciated the facts of this case and its national importance and gravity, and acted accordingly, is the present Chief Justice His Lordship Sarath N. Silva P.C., at the time he was the Hon. Attorney General.

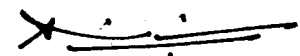
As intimated, I wish to call over for a proper and meaningful discussion on this grave and serious matter, in view of the volume of facts and gravity of this matter, which I cannot again repetitively include in this Letter. A perusal of the Files at the CID will disclose that I have made several written representations disclosing material facts to assist and urge the CID to enforce the 'rule of law', irrespective of the social standing and status of the personalities concerned ! If required, I can make photocopies of my said Letters and forward same to you !

I wish to however place on record, that I have made **two** complaints to the CID, **one** on the fraud perpetrated on the government and attempts to cover-up the same, *which ironically would include certain Officials of the Attorney General's Department, which therefore begs the question, as to whether the Hon. Attorney General and his Officials are eligible to advice on this matter*, and **two**, an attempt to make fraudulent payments, that too, in foreign exchange, in the region of US \$ 207 Mn., in 1995, *which today would amount to over Rs. 45,000 Mn.*, an offence under and in terms of Section 10 of the Offences Against Public Property Act No. 12 of 1982. **The said Letter dated 4.4.2008 under reference has no bearing, whatsoever, to my such second complaint !**

I attach for your kind information and necessary action, Letter dated 15.3.2007 addressed to the Hon. Attorney General by Mr. Lalith Weeratunga, Secretary to the President.

Attempting to perpetrate a fraud of this magnitude on the Government and the country, which was prevented by me, is a grave crime on the country and its people, whereas *on the contrary endeavouring to sweep such crime under the carpet, and shield the parties involved in such grave crime, is a far graver crime and a denial of equitable social justice !*

Yours truly,



Nihal Sri Amersekere

cc: Mr. Victor Perera, Inspector General of Police  
Mr. Gotabhaya Rajapakse, Secretary, Ministry of Defence

Mr. C.R. de Silva, Hon. Attorney General

Mr. S.K.P. Bambarenda, Co-ordinating Secretary, to the Secretary, Ministry of Labour

Mr. Neville Piyadigama, Chairman, Police Commission

Ven. Elle Gunawansa, Member, Police Commission / Chairman, Committee to combat Fraud, Bribery & Corruption

Mr. Lalith Weeratunga, Secretary to the President

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P.O. Box No. }

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CLASSIFICATION

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குற்றவியல் புலனாய்வுத் திணைக்களம்  
CRIMINAL INVESTIGATION DEPARTMENT

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4 ஆம் மாடி, புதிய செயலகக் கட்டிடம்  
4th Floor, New Secretariat Building  
කොළඹ 1, ශ්‍රී ලංකාව කොලොම්බු 1, இலங்கை Colombo 1, Sri Lanka

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උත්ත කරුණ සම්බන්ධයෙන් ඔබ විසින් 2004.03.12 වන දින මෙම දෙපාර්තමේන්තුවට කරන ලද පැමිණිල්ල සහ එවා ඇති ලිපි සම්බන්ධයෙනි.

- 02. පැමිණිල්ලේ සඳහන් පරිදි මුල් පිඹුරුවලට පටහැනිව හෝටලේ ව්‍යාපෘතිය ඉදිකිරීම පිලිබඳව පරීක්ෂා කර ඇත. අපරාධ නඩුවකදී පැමිණිල්ල විසින් චෝදනා ඔප්පු කල යුතු හෙයින් එකී තත්වය තහවුරු කර ගැනීම සඳහා මුල් පිඹුරු සොයා ගැනීමට සිලප් උත්සාහ දරන ලදී. එසේම නීතිමය කරුණු සම්බන්ධයෙන් ගරු නීතිපතිගේ සහායද ලබාගෙන ඇත.
- 03. කොළඹ නගරසභාව එහි ගිණි නිවීමේ අංශය සහ නාගරික සංවර්ධන අධිකාරියෙන් පරීක්ෂා කර ඇතත්, මුල් පිඹුරු සොයා ගත නොහැකිවිය. ඔබ විසින් දුන් තොරතුරු අනුව ජාතික ලේඛනාරක්ෂක දෙපාර්තමේන්තුවෙන්, විශේෂ ජනාධිපති කොමිසමේ පරීක්ෂණ වලින් පසු මෙකී පිඹුරුපත් භාරදී ඇත්ද යන්න පරීක්ෂා කර ඇතත්, නිසි බලධාරියෙකුගෙන් මුල් පිඹුරුපත් ලබාගැනීමට නොහැකිවිය.
- 04. මේ සම්බන්ධයෙන් 2007.09.20 වන දින ඔබ මෙම කාර්යාලයේ පෙනී සිටියදී කරුණු පැහැදිලි කර දී ඇති බව විමර්ශන නිලධාරීන් වාර්තා කර ඇත.
- 05. තවදුරටත් මේ සම්බන්ධයෙන් ඉදිරි පරීක්ෂණ පැවැත්වීමට අවශ්‍යයක් නොමැති හෙයින්, අවසන් කරනු ලබන බව කාරුණිකව දන්වා සිටිමි.

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Received original  
delivered by SI *(Signature)*  
Year 2008/Reports/CCIU I  
I do not agree with the above position.  
I shall reply as I may be advised on  
the matter.

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திகதி }  
Date }

අපරාධ පරීක්ෂණ දෙපාර්තමේන්තුව  
குற்றவியல் புலனாய்வுத் திணைக்களம்  
CRIMINAL INVESTIGATION DEPARTMENT

සිවිල් මහල, නව මහ ලේකම් ගොඩනැගිල්ල  
4 ஆம் மாடி, புதிய செயலகக் கட்டிடம்  
4th Floor, New Secretariat Building

කොළඹ 1, ශ්‍රී ලංකාව කොලොම්බු 1, இலங்கை Colombo 1, Sri Lanka

අධ්‍යක්ෂ,  
ජාතික ලේඛනරක්ෂණ දෙපාර්තමේන්තුව,  
අංක 07,  
රීඩ් මාවත,  
කොළඹ 07.

සිලින් හේවිල් ව්‍යාපෘතිය පිළිබඳ 1995 විශේෂ ජනාධිපති  
නොවීමේ පිළිබඳ තරඟ ලද විමර්ශනයේ ලේඛන සම්බන්ධව.

උන්ම ලේඛන ලබා ගැනීම සඳහා ජාතික විමර්ශන කොළ සපයමින් ඔබ වෙත  
තරඟ ලද ලේඛන සම්බන්ධයෙනි.

02. එම ලේඛන ලබා ගැනීම ප්‍රමාද වී ඇති බැවින්, පරිපූරක කටයුතු සිදුකර  
අවසන් කිරීමට නොහැකි වී ඇත. මේ සම්බන්ධයෙන් මාගේ නියුධාරීන් අවධිවා කිපයකදී  
ඔබ හටු වී සාකච්ඡා කර ඇති බවට වාර්තා කර ඇති අතර, එහි ලේඛන සවිකරීම  
ලබාදෙන්නේ නම් ඉතා අහඹු නොවී සලකමි.

*(Handwritten signature)*  
අධ්‍යක්ෂ/අපරාධ පරීක්ෂක.

වි.ආර්. දෙවිදනාලකොර  
ජ්‍යෙෂ්ඨ පොලීසි නිලධාරී  
අපරාධ පරීක්ෂණ දෙපාර්තමේන්තුව,  
කොළඹ - 01

විමර්ශන:-

1. කීර්ති ශ්‍රී අමරසේකර, අංක 167/4, ශ්‍රී විප්‍රලයේන මාවත, කොළඹ 10.

24 DEC 2003

මගේ අංකය } AG55/2003  
எனது இல. }  
My No. }

මගේ ප. ආකර්ෂණ } 502  
அஞ்சல் பெட்டி }  
P. O. Box No. }

ඔබේ අංකය }  
உமது இல. }  
Your No. }

දුරකථන අංක } 433967  
தொலைபேசி இல. } 433769  
Telephone Nos. } 320800  
327919



කොළඹ 12.  
கொழும்பு 12.  
Colombo 12.

23<sup>rd</sup> December, 2003

**கிசිපகி දෙපාර්තමේන්තුව**  
**சட்ட மா அதிபதி திணைக்களம்**  
**ATTORNEY-GENERAL'S DEPARTMENT**

Mr. Nihal Sri Ameresekera,  
167/4, Vipulasena Mawatha,  
Colombo.

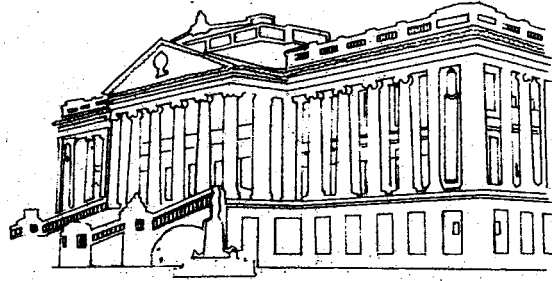
**CRIMINAL PROSECUTION AGAINST K.N.CHOKSY P.C., M.P.**  
**AND R.PASKARALINGAM**

I refer to your letter of 18<sup>th</sup> December, 2003.

This is to inform you that I have called for the relevant particulars from the Inspector General of Police.

for Attorney-General

19 MAR 2007



මගේ අංකය  
எனது இல.  
My No.

SP/4/12

ඔබේ අංකය  
உமது இல.  
Your No.

කොළඹ 1.  
கொழும்பு 1.  
Colombo 1.

ජනාධිපති කාර්යාලය  
சனாதிபதி அலுவலகம்  
PRESIDENTIAL SECRETARIAT

March 15, 2007

Hon. Attorney General  
Attorney General's Department

Mr. Nihal Sri Ameresekere has been repeatedly writing to me in regard to what he considers to be a major fraud in the construction of the Colombo Hilton. He also contends that the Supreme Court upheld that there was a major fraud in the construction and had further made an observation that the government should not be indifferent.

Mr. Ameresekere further laments that his numerous complaints to the CID has gone unheeded. I wish to seek your advice as to what action the government of Sri Lanka should take on this matter, as Mr. Ameresekere emphasizes that a major fraud has been perpetrated on the government of Sri Lanka.

Lalith Weeratunga  
Secretary to the President

Copy: Mr. Nihal Sri Ameresekere  
Business & Management Consultant  
167/4, Sri Vipulasena Mawatha,  
Colombo.

# ABDEEN ASSOCIATES

(Attorneys At Law & Notaries Public)

Razmara Abdeen  
Miss. Bushra M. Hashim  
Mrs. Manjula Pasqual  
Miss. Chamari T. Athukorala  
Miss. H. G. Nadeeja Pragathi  
ATTORNEYS-AT-LAW & NOTARIES PUBLIC

218, Hulftsdorp Street,  
Colombo - 12, Sri Lanka.  
Phone : 2334677, 2424799, 2459954  
Fax : 2321212  
email : abdeen@sltnet.lk

Your Ref:

Our Ref:

**BY COURIER**

2<sup>nd</sup> April 2008

Hon. C.R. de Silva, P.C.  
Attorney General  
Attorney General's Department  
Colombo 12.

Attn: Mr. Arjuna Obeyesekere  
Senior State Counsel

Dear Sir,

## **CA Writ Application No. 1661/2003**

We act on behalf of our Client, Mr. Nihal Sri Ameresekere, F.C.A., F.C.M.A., the Petitioner in the above Application.

We write with reference to our Letter dated 11.9.2007, subsequent discussions had, our Motion dated 15.11.2007, and our Letter dated 30.1.2008 on the above-mentioned Application.

We enclose a copy of the finalized Consent Motion, including references to the mandatory provisions of the Inland Revenue Act, for the due performance thereof by the Commissioner General of Inland Revenue.

As per our said Letter dated 11.9.2007, we pointed out that the former Late Hon. Attorney General, having agreed in principle to the terms of settlement at that time, the settlement of this matter, from as far back as 10.10.2005, has been mentioned in Court on 21 days, *as per schedule attached*, now for nearly 2 ½ years, and still stands pending, since we understand that the written confirmation of consent is still awaited from the Commissioner General of Inland Revenue / his Officials for the due performance of the matters set out in the Consent Motion.

Our Client's action in the public interest, resulted in the repeal of the 'infamous' purported Tax Amnesty of 2003, by Act No. 10 of 2004, upon pronouncements by the Supreme Court, that the said Amnesty had defrauded public revenue, causing extensive loss to the State, and was inimical to the rule of law, and violative of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights. Supreme Court Pronouncement and Determination are to be attached to the Motion

We appeal to you, in the national and public interest to conclude this matter, without any further delay.

Thanking you  
Yours faithfully,

R. Andrews

Attorneys-at-Law

- cc: Commissioner General of Inland Revenue  
Director General of Customs  
Director General of Excise  
Controller of Imports & Exports  
Controller of Exchange,  
Chairman, Commission to Investigate Allegations  
of Bribery or Corruption
- Secretary to H.E. the President
- Auditor General

**C.A. WRIT APPLICATION NO. 1661/2003**

|            |                                                                                                                                                                                                                   |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10.10.2005 | Respondents' Counsel moving for further time to file Terms of settlement, fixed to be mentioned on 26.10.2005.                                                                                                    |
| 26.10.2005 | Mentioned for Settlement<br>Respondents' wanting more time to file Terms of Settlement, fixed to be mentioned on 23.11.2005                                                                                       |
| 23.11.2005 | Re-fixed to be mentioned on 6.2.2006 to finalise settlement.                                                                                                                                                      |
| 6.2.2006   | Upon both Counsel informing Court that there is a possibility of a settlement, matter fixed to be mentioned on 24.4.2006.                                                                                         |
| 24.4.2006  | State Counsel appearing for the Respondents informing Court that there is possibility of a settlement, re-fixed to be mentioned on 12.6.2006.                                                                     |
| 12.6.2006  | Upon Counsel for the Petitioner & the Respondents informing Court that there is a possibility of a settlement and moving that the application be mentioned in a month's time, order made to mention on 12.7.2006. |
| 12.7.2006  | Re-fixed to be mentioned (to finalise terms of Settlement) 2.8.2006.                                                                                                                                              |
| 2.8.2006   | Re-fixed to be mentioned (Settlement) 23.8.2006.                                                                                                                                                                  |
| 23.8.2006  | Re-fixed to be mentioned (Settlement) 27.9.2006.                                                                                                                                                                  |
| 27.9.2006  | Re-fixed to be mentioned 1.11.2006                                                                                                                                                                                |
| 1.11.2006  | Re-fixed to be mentioned 20.11.2006                                                                                                                                                                               |
| 20.11.2006 | Re-fixed to be mentioned 22.1.2006                                                                                                                                                                                |
| 22.1.2007  | Re-fixed to be mentioned to finalise terms of settlement on 9.3.2007                                                                                                                                              |
| 9.3.2007   | Re-fixed to be mentioned 15.5.2007                                                                                                                                                                                |
| 15.5.2007  | Counsel for the Respondents informing that Attorney General is considering the terms of Settlement, re-fixed to be mentioned 18.7.2007.                                                                           |
| 18.7.2007  | Counsel for the Respondents informing that Attorney General is considering the terms of Settlement. Re-fixed to be mentioned 20.9.2007.                                                                           |
| 20.9.2007  | Terms of Settlement finally on 6.11.2007                                                                                                                                                                          |
| 6.11.2007  | Mention Terms of Settlement finally on 3.12.2007.                                                                                                                                                                 |
| 3.12.2007  | Mention for Settlement 7.1.2008.                                                                                                                                                                                  |
| 7.1.2008   | Mention 18.2.2008.                                                                                                                                                                                                |
| 18.2.2008  | Mention 28.3.2008.                                                                                                                                                                                                |
| 28.3.2008  | Mention 22.6.2008.                                                                                                                                                                                                |

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

*In the matter of an Application for Writs in the nature of  
Certiorari, Prohibition and Mandamus in terms of Article  
140 of the Constitution of the Democratic Socialist  
Republic of Sri Lanka*

Nihal Sri Ameresekere  
167/4, Sri Vipulasena Mawatha  
Colombo 10.

**PETITIONER**

**Case No. 1661/2003**

**Vs.**

1. Commissioner General of Inland Revenue  
Sir Chittampalam A Gardiner Mawatha,  
Colombo 2.
2. Director General of Customs  
Customs House, Bristol Street,  
Colombo 1.
3. Director General of Excise  
28, Staples Street,  
Colombo 2.
4. Controller of Imports & Exports  
75 1/3, 1<sup>st</sup> Floor, Hemas Building  
York Street,  
Colombo 1.
5. Controller of Exchange,  
Central Bank of Sri Lanka  
5<sup>th</sup> Tower, Level 7, Janadhipathi Mawatha,  
Colombo 1.
6. Governor, Central Bank of Sri Lanka  
Chairman, Monetary Board of Sri Lanka  
1<sup>st</sup> Tower, Level 15,  
30, Janadhipathi Mawatha,  
Colombo 1.
7. Chairman, Commission to Investigate Allegations  
of Bribery or Corruption  
36, Malalasekera Mawatha,  
Colombo 7.
8. Secretary, Ministry of Finance  
& Secretary to the Treasury  
Secretariat,  
Colombo 1.

9. Minister of Finance  
Secretariat,  
Colombo 1.
10. Hon. Speaker of Parliament of Sri Lanka  
Parliament of Sri Lanka  
Sri Jayawardenepura  
Kotte.
11. Secretary to His Excellency the President  
Presidential Secretariat  
Colombo 1.
12. Hon. Attorney General  
Attorneys General's Department,  
Colombo 12.

## **RESPONDENTS**

**TO: HIS LORDSHIP THE HONOURABLE PRESIDENT AND THEIR LORDSHIPS THE OTHER HONOURABLE JUDGES OF THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

**WHEREAS** the Petitioner abovenamed filed this Application on 29<sup>th</sup> September 2003 and Your Lordships' Court made Order on 27<sup>th</sup> October 2003 to issue Notice on the 12<sup>th</sup> Respondent, and further made Order on 12<sup>th</sup> January 2004 to issue Notice on the 1<sup>st</sup> Respondent, refusing Notices to be issued on the 2<sup>nd</sup> to 11<sup>th</sup> Respondents

**AND WHEREAS** the 11<sup>th</sup> Respondent abovenamed, Secretary to His Excellency the President, acting in terms of Rule (7) of the Court of Appeal [Appellate Procedure] Rules 1990, had, however, previously on 15<sup>th</sup> December 2003 already filed a Statement of Objections, concurring with the Petitioner and agreeing to the grant of the reliefs sought for by the Petitioner

**AND WHEREAS** the Supreme Court subsequently by its Order dated 15<sup>th</sup> June 2004 in SC Appeal No. 47/2004 having directed that Notices be issued on the 2<sup>nd</sup> to 11<sup>th</sup> Respondents as well, Your Lordships' Court on 24<sup>th</sup> June 2004 made Order to issue Notices on the said Respondents for 26<sup>th</sup> July 2004, whereby all Respondents stood and stand noticed by Your Lordships' Court

**AND WHEREAS** during the pendency of this Application, Her Excellency the President made Reference No. 1/2004 invoking the consultative jurisdiction of the Supreme Court, under and in terms of Article 129 (1) of the Constitution, *vis-à-vis*, the impugned Inland Revenue (Special Provisions) Act No. 10 of 2003 and the Inland Revenue (Special Provisions) (Amendment) Act No. 31 of 2003, in respect of which a public hearing was held on 17<sup>th</sup> March 2004 by a 5-Member Bench of the Supreme Court, and the Petitioner too intervened and made submissions at the said hearing

*A true copy of the Opinion pronounced by Their Lordships of the Supreme Court is annexed hereto marked "XI"*

**AND WHEREAS** said Opinion pronounced by the Supreme Court, *inter-alia*, held thus:

“It is to be borne in mind that public revenue is held in trust for the People of Sri Lanka who cannot be denied its benefit. Any exemption that is granted should be strictly in compliance with Article 12 (1) of the Constitution”

“The right to equality is statutorily enshrined in terms of Article 12 of our Constitution and is a component of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights (Article 2). It provides for all persons to be equal before the law and to be entitled to equal protection of the law. This guarantee of equal protection of the law is an injunction issued by the Constitution to the Legislature against enacting discriminatory laws”

“It is our opinion, based upon the preceding analysis that, the provisions contained in the Inland Revenue (Special Provisions) Act, No. 10 of 2003, as amended, are inconsistent with Article 12(1) of the Constitution which guarantees to every person equal protection of the law; in that it grants; immunities and indemnities to persons who have contravened the laws that have been referred to and thereby defrauded public revenue causing extensive loss to the State”

“The schedule to Act No. 10 of 2003, lists different statutes as referred to earlier, such as Turnover Tax, Goods and Services Tax, National Security Levy Tax and the like. Revenue has been collected from the general public by various companies and persons under these statutes as agents of the State; hence kept in trust for the benefit of the People. The revenue thus collected should be remitted to the State. However, Act No. 10 of 2003 has permitted those companies and persons to retain money collected from the public on behalf of the State and thereby condoned misappropriation of public funds”

**AND WHEREAS** subsequently Their Lordships of the Supreme Court made a Determination SC (SD) No. 26/2004 upon hearing on 23<sup>rd</sup> August 2004, on the reference made by the Cabinet of Ministers in terms of Article 122 (1) of the Constitution, of a Bill titled ‘Inland Revenue (Regulation of Amnesty)’, to repeal the Inland Revenue (Special Provisions) Act No. 10 of 2003, as amended by Act No. 31 of 2003

**AND WHEREAS** in the said Determination, Their Lordships of the Supreme Court reiterated excerpts from the aforesaid Opinion of the Supreme Court, specifically reiterating the last paragraph quoted above

*A true copy of the said Determination of the Supreme Court is annexed hereto marked “X2”*

**AND WHEREAS** consequently the Parliament of Sri Lanka enacted Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, which was certified into law by the Hon. Speaker on 20<sup>th</sup> October 2004, to repeal the Inland Revenue (Special Provisions) Act No. 10 of 2003 and Inland Revenue (Amendment) Act No. 31 of 2003, and to afford only an Income Tax Amnesty upto 31<sup>st</sup> March 2002 under the Inland Revenue Act No. 38 of 2000, in respect of the persons who had made Declarations under the said repealed laws, and further empowering the respective State Authorities to enforce the relevant laws to assess and collect all revenues legitimately due to the State, which had been defrauded to the State by the aforesaid repealed laws

**AND WHEREAS** the Petitioner instituted several actions in the national and public interest agitating against the aforesaid Inland Revenue (Special Provisions) Act No. 10 of 2003 and Inland Revenue (Amendment) Act No. 31 of 2003, which led to the final repeal of the said statutes and the enactment of Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, which was certified in law on 20<sup>th</sup> October 2004

**AND WHEREAS** the Petitioner's such stance having been fully vindicated by the foregoing, and most of the reliefs sought for by the Petitioner having already been satisfied and fulfilled, but however, upon the Petitioner in June 2005 discovering to his surprise that the 1<sup>st</sup> Respondent (*the former incumbent in office*) had failed and neglected to take any action, whatsoever, as required of him to duly give effect to Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, and the 1<sup>st</sup> Respondent (*the former incumbent in office*) had failed and neglected to afford informations lawfully called for in terms of Exchange Control Act by the 5<sup>th</sup> Respondent, the Petitioner by Motion dated 20<sup>th</sup> July 2005, with notice to the State Attorney, who is the Registered Attorney for the 1<sup>st</sup> to 10<sup>th</sup> and the 12<sup>th</sup> Respondents and the Registered Attorney for the 11<sup>th</sup> Respondent sought the permission of Your Lordships' Court to suitably amend the prayers, taking cognizance of the foregoing dicta pronounced by Their Lordships of the Supreme Court and the provisions of the Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004

**AND WHEREAS** upon Their Lordships of the Supreme Court opining and determining as aforesaid that the said repeal Acts, namely Inland Revenue (Special Provisions) Act No. 10 of 2003, as amended by Act No. 31 of 2003 had been a fraud perpetrated on the State, defrauding public revenue, no legitimacy or legitimate entitlement, right or expectation or any legal protection, whatsoever, would flow to anyone, whomsoever, who had partaken in such fraud defrauding the State

**AND WHEREAS** Section 178 (4) (b) of Inland Revenue Act No. 38 of 2000 and Section 209 (iv) (b) of Inland Revenue Act No. 10 of 2006 mandated the Commissioner General of Inland Revenue to communicate to the Commissioner of Revenue of any Provincial Council, matters relating to turnover of any wholesale or retail trade or business, carried on by any person or partnership coming under the purview of such Provincial Council, to enable such Commissioner of Revenue to ascertain such turnover.

**AND WHEREAS** furthermore the Inland Revenue Act No. 28 of 1979 at Section 158 (10), Inland Revenue Act No. 38 of 2008 at Section 178 (10) and Inland Revenue Act No. 10 of 2006 at Section 209 (10) **consistently mandated the Commissioner General of Inland Revenue, where it appears that any person has committed an offence under the Exchange Control Act or the Customs Ordinance, to communicate or deliver to the Controller of Exchange or Director General of Customs, any information relating to the commission of the offence or any articles, books of accounts or other documents necessary or useful for the purpose of proving the commission of such offence**

**AND WHEREAS** furthermore Section 158 (5) (iv) of the Inland Revenue Act No. 28 of 1979, Section 178 (5) (d) of the Inland Revenue Act No. 38 of 2000 and Section 209 (5) (d) of the Inland Revenue Act No. 10 of 2006, **consistently mandated the Commission General of Inland Revenue to report to the Attorney General for investigation any case where he suspects from information available, that any person is guilty of bribery**, whilst by Act No. 19 of 1994 the then Bribery Department, was converted into the Commission to Investigate Allegations of Bribery or Corruption

**AND WHEREAS** furthermore the Government had subsequently enacted the Convention on the Suppression of Terrorist Financing Act No. 25 of 2005, Prevention of Money Laundering Act No. 5 of 2006 and Financial Transaction Reporting Act No. 6 of 2006

**AND WHEREFORE** in such circumstances, to ensure the due, perfect and effectual implementation of the provisions Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, a settlement has now been reached as set out hereinbelow by and between the Petitioner and the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents, who are statutorily bound to give effect to the provisions of the said Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004

**AND NOW THEREFORE** in the foregoing circumstances, the Petitioner and the Respondents have of consent agreed to the termination of these proceedings upon the grant and issue by Your Lordships' Court of the following:

- a) a Writ of Mandamus compelling and directing the 1<sup>st</sup> Respondent to deal with the Declarations (approximately 51,805 Declarations), which had been made under the Inland Revenue (Special Provisions) Act No. 10 of 2003 and Inland Revenue (Special Provisions) (Amendment) Act No. 31 of 2003, and now deemed to be Declarations made under and in terms of the Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, and accordingly
  - i) to open new Income Tax Files in respect of approximately 13,482 Declarents, who have submitted Declarations, without having Income Tax Files, and to grant the said Declarents Income Tax Amnesty, after verification of the correctness of the Declarations, in terms of the law up to 31<sup>st</sup> March 2002, and to thereafter enforce the correct assessment and collection of Income Taxes for the subsequent Years of Assessment commencing from the Year of Assessment 2002/03 under and in terms of the Inland Revenue Act No. 38 of 2000, as amended,
  - ii) to grant an Income Tax Amnesty in terms of the law up to 31<sup>st</sup> March 2002 to approximately 38,303 Declarents, who already had Income Tax Files, after verification of the correctness of the Declarations, and to thereafter enforce the correct assessment and collection of Income Taxes for the subsequent Years of Assessment commencing from the Year of Assessment 2002/03, under and in terms of the Inland Revenue Act No. 38 of 2000, as amended,
  - iii) to enforce and/or cause the enforcement of the collection all other indirect taxes, such as GST, VAT and Turnover Tax, in respect of all the aforesaid Declarents as may be applicable under the respective laws, and where necessary causing action to be taken under and in terms of the Offences Against Public Property Act No. 12 of 1982, as amended, inasmuch as the Supreme Court had pronounced that such revenue had been collected on behalf of the State from the general public by companies and persons under the said Statutes and thus tantamount to the misappropriation of public funds,
  - iv) the 1<sup>st</sup> Respondent and his agents and/or assigns to communicate, in terms of Inland Revenue Act No. 38 of 2000 Section 178 (4) (b) / Inland Revenue Act No. 10 of 2006 Section 209 (4) (b) to the Commissioners of Revenue of the respective Provincial Councils of matters which relate to turnover of any wholesale or retail trade or business carried on by any person or partnership within such respective Provincial Councils to enable such Commissioners of the respective Provincial Councils to ascertain such turnovers for purpose of collecting the correct turnover tax,
  - v) the 1<sup>st</sup> Respondent to confirm to Court by 30<sup>th</sup> June 2008, that actions to be taken on his part in terms of i), ii), iii) and iv) above have been duly and fully performed.
- b) a Writ of Mandamus compelling and directing
  - i) the 1<sup>st</sup> Respondent and his agents and/or assigns to communicate, in terms of Inland Revenue Act No. 28 of 1979 Section 158 (10) / Inland Revenue Act No. 38 of 2000 Section 178 (10) / Inland Revenue Act No. 10 of 2006 Section 209 (10), to the 5<sup>th</sup> Respondent, as had been already called for by the 5<sup>th</sup> Respondent, Declarations which contain disclosure of foreign income and/or foreign borrowings and/or foreign debts and/or foreign assets, to be investigated and dealt with by the 5<sup>th</sup> Respondent in terms of respective laws administered and enforced by him,

- ii) the 1<sup>st</sup> Respondent and his agents and/or assigns to communicate, in terms of Inland Revenue Act No. 28 of 1979 Section 158 (10) / Inland Revenue Act No. 38 of 2000 Section 178 (10) / Inland Revenue Act No. 10 of 2006 Section 209 (10) to the 2<sup>nd</sup> Respondent, where it appears that any person has committed offence under the Customs Ordinance,
  - iii) the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents, as have been authorized and empowered by the provisions of Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, to enforce the respective laws administered and enforced by them against any one or more of the Declarants, who had made Declarations under the Inland Revenue (Special Provisions) Act No. 10 of 2003 and Inland Revenue (Special Provisions) (Amendment) Act No. 31 of 2003, and now deemed to be Declarations made under and in terms of the Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004,
  - iv) the 1<sup>st</sup> Respondent to confirm to Court by 30<sup>th</sup> June 2008, that actions to be taken on his part in terms of i) and ii) above have been duly and fully performed
  - v) 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents to confirm to Court by 30<sup>th</sup> June 2008 that actions to be respectively taken on their part in terms of iii) above have been duly and fully performed.
- c) a Writ of Mandamus compelling and directing
- i) the 1<sup>st</sup> Respondent and his agents and/or assigns, in terms of Inland Revenue Act No. 28 of 1979 Section 158 (5) (iv) / Inland Revenue Act No. 38 of 2000 Section 178 (5) (d) / Inland Revenue Act No. 10 of 2006 Section 209 (5) (d) to report to the Attorney General to be forwarded to the 7<sup>th</sup> Respondent for investigation, any case where the 1<sup>st</sup> Respondent and/or his agents and/or assigns suspect/s from information available to him and/or them, that any person is guilty of bribery, as per the Declarations made to the 1<sup>st</sup> Respondent under Inland Revenue (Special Provisions) Act No. 10 of 2003 and Inland Revenue (Special Provisions) (Amendment) Act No. 31 of 2003, and now deemed to be Declarations made under and in terms of the Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004 or otherwise
    - x) by public servants, who have held such office within the last 10-years prior to the date of coming into effect of Inland Revenue (Special Provisions) Act No. 10 of 2003, coming under the purview of the Bribery Act, amended by Act No. 20 of 1994, and
    - y) by persons who have held such office within the last 10-years prior to the date of coming into effect of Inland Revenue (Special Provisions) Act No. 10 of 2003 coming under the purview of the Declaration of Assets and Liabilities Law No. 1 of 1975, amended by Act No. 74 of 1988

inasmuch as the aforesaid persons and/or their said Declarations had been specifically denied any immunity, whatsoever, under the Inland Revenue (Special Provisions) Act No. 10 of 2003, as amended by Inland Revenue (Special Provisions) Act No. 31 of 2003, and no legitimacy or legitimate entitlement, right or expectation or legal protection, whatsoever, could flow from a fraud, and in this instance, the perpetration of a fraud on the State defrauding public revenue as had been held by the Supreme Court.
  - ii) the 1<sup>st</sup> Respondent to confirm to Court by 30<sup>th</sup> June 2008, that action to be taken on his part in terms of i) above has been duly and fully performed.

- iii) the 7<sup>th</sup> Respondent to take warranted action, in terms of the provision of the Bribery Act, amended by Act No. 20 of 1994, and the Declaration of Assets & Liabilities Law No. 1 of 1975, amended by Act No. 74 of 1988, in respect of persons pertaining to whom informations have been forwarded in compliance with (c) (i) above

On this    day of April 2008

Attorneys-at-Law  
for the Petitioner

State Attorney for  
1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> Respondents

Fax: 2381171

Hon. Attorney General,

Re – telephone call had, as requested, I am faxing this Note.

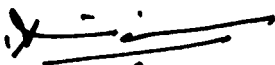
**Re – PRIMA**

1. Around 1994 / 1995, as then Advisor, Ministry of Finance, I, together with then Deputy Secretary to the Treasury, Mr. K. Shanmugalingam, as requested by then Secretary to the Treasury, Mr. A.S. Jayawardena, investigated into the Prima Agreements and the dealings had with the Government.
2. I recollect there had been an original Agreement in or around 1978 / 1979, and thereafter another Agreement had been signed by then Secretary to the President further extending the 'BOT period' on the premise of an additional investment on a Jetty.
3. The Prima Mill had been developed on the basis of a 'BOT' i.e. 'Build, Operate and Transfer', free to the Government, after a given number of years, during which period, the investor is expected to recover the investment in full at a pre-negotiated 'rate of return' on such investment.
4. As per the Agreement, the wheat Grain was imported by the Government and made available to Prima for Milling of the Flour.
5. 'Prima's 'earnings' or 'payment/consideration' for Milling was the 'transfer' of the ownership of the Bran, which is very valuable, to Prima, whilst the Flour had to be given to the Government, who had imported and provided the wheat Grain for Milling.
6. The Agreement had stipulated a Flour Milling extraction of, I recollect 71% or 74%. This is to have ensured that the Flour Mill will use proper technology and process, to ensure a 'minimum extraction of Flour'.
7. In examining the production data of the Prima Mill and the financial accounts / data since its inception, I recollect for about 14 years, the extraction of Flour had been well over 71% / 74%. I recollect sometimes, as high as 89% !
8. The quantity of Flour extracted over the 71% / 74% had been wrongfully 'sold' by the Prima Mill to the Food Commissioner and to biscuit manufacturers, Maliban and Williams, earning annually a 'large extent of additional revenue', which they had been not entitled to.
9. The stance I took, with the concurrence of Mr. K. Shanmugalingam, was that all Flour extracted belonged to the Government, inasmuch as the wheat Grain had been imported by the Government, and therefore the ownership of and title to the Flour remained with the Government, since the Agreement provided that the Prima Mill will be entitled to only the Bran, as the 'charge / consideration' for the Milling of Flour.

10. The viability of this 'BOT Project' would have been worked out on the 'earnings' from the sale of Bran to recover the investment and to determine the 'BOT Period'.
11. According to my recollection, the late Mr. K. C. Kamalasabayson P.C., I believe at that time a Deputy Solicitor General, was consulted, and he concurred with the position that the title to the Flour never passed to Prima, but remained with the Government.
12. Hence, all Flour in excess of the 71% / 74% could not have been 'lawfully' sold back to the Government, ironically recovering monies therefor from the Government and/or sold to private parties recovering monies therefor. Local Officers of Prima, with whom we examined the data during the investigation, became aware of the stance we took.
13. Consequently, the Prima Mill Chairman, I recollect Mr. Primus, was written to by the then Secretary to the Treasury and required to call over for a Meeting. Prima Chairman and/or Officials refused to come for such a Meeting, but sent their foreign Lawyers instead. When they were confronted with the above issue, they could not afford any proper answer !
14. The above I believe tantamounted to the misappropriation of public property, cheating and knowingly defrauding the Government.
15. In 1995, after a very short stint as Advisor, Ministry of Finance, I resigned from such position. Therefore, I am unaware, as to what happened thereafter.
16. I confirmed the above facts this morning with Mr. K. Shanmugalingam on the telephone. Though he is not in the best of health, he recollected the above, and intimated that the relevant Finance Ministry File should be in the Office of the Secretary to the Treasury or in the Department of Public Enterprises. It could even be in the Department of Fiscal Policy.
17. Even for the present issue intimated of 'Subsidy Claims', the 'actual extraction level' of Flour would be relevant, taken together with the value of the Bran sold, in determining any 'subsidy', which should be only to reimburse any loss and afford an agreed level of reasonable profits, particularly on an essential consumer sensitive item, such as Bread. (I took a similar stance, as then Chairman PERC, supported by the former Hon. Attorney General late Mr. K.C. Kamalasabayson P.C., in stopping the subsidy payments claimed by LIOC, which resulted in a very cognisable write-off of their 'alleged claims').

I shall be pleased to afford you and/or your Officials any further clarifications or explanations on this matter of national and public importance.

Kind regards,



Nihal Sri Ameresekere

6.2.2008