

## **GOVERNMENT: GOLDEN SHAREHOLDER**

*The Sunday Leader* exposures on the plantation privatisations are continuing to attract wide public interest and are being subject to much public discourse, whilst those interested are speculating, as to how such shocking debacles ever occurred !! Nevertheless, the authorities concerned appear to be very significantly and questionably silent, on these unbelievable exposures of mishandling in the privatisation of the plantations, that very much concern the public, as one of the most valuable national assets.

The Director-General, Public Enterprises Reform Commission [PERC], Mano Tittawela, who had given an interview to the media last Sunday, chose curiously, not to deal with these shocking revelations on the plantation privatisations, that have been analytically exposed by *The Sunday Leader* in the public interest. Why?

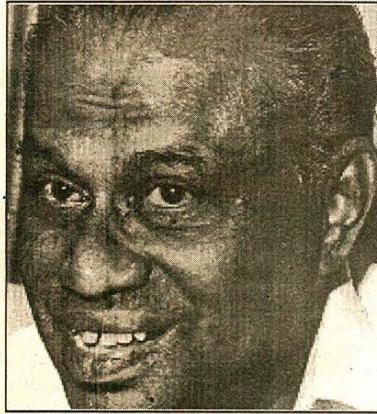
Public interest alone demands, that those who handled such privatisations be held responsible and accountable therefor — surely an explanation is owed to the public and the public are entitled to be kept informed, as to what action is to be taken, in such regard, by the government, that had taken very high profile ground, on the very subjects of privatisation, transparency and public accountability. Ought not the government act in conformity therewith? If not, why?

On one hand, ought not there be inquiries and investigations to ascertain, as to how such shocking debacles ever transpired, causing such colossal losses to the state, immensely and unjustly benefiting a questionably selected few; so that those responsible could be held accountable in conformity, with the government's own policies that have been so strenuously and loudly held out to the public, and specific laws that have been enacted by the government in that very behalf; justifiably criticizing transactions of the past, of far lesser gravity and consequential losses. If not, why?

On the other hand, the public ought to know, as to what corrective actions are to be taken by the government to recompense such social inequities that have resulted, causing colossal losses to the state and immense unjust enrichment to a questionably selected few. If not, why?

## **THE MANAGER & THE EMPLOYEE**

Though the Director-General, PERC, Mano Tittawela, had assured the public that 10% free shares in these privatized plantation companies would be given to the employees of the respective plantation companies, *The Sunday Leader* exposures blew this as a canard. In the plantation companies, Kelani Valley, Bogawantalawa and Kotagala the employees would have, if at all, only 5.88%, 5.97% and 6.25% shareholdings respectively. Could the Director-General, PERC, explain otherwise? Is this not a far cry from the 10% held out? Should uninitiated plantation employees, who have silently rendered yeoman service to this country be deceived and cheated in such puerile manner, that too by a government? How could Minister S. Thondaman, a responsible Cabinet Minister, ever acquiesce with such inequity?



▲ **Minister Thondaman—  
acquiescing with inequity?**

In contrast, to these plantation employees' deals, as exposed by *The Sunday Leader*, the Management Companies' deals should be compared to visualise such inequities of the unjust benefits obtained by the Management Companies, that were questionably given purchase options, to buy apparently 51% controlling interests in these very plantation companies, without any open competitive bidding, at a ridiculously absurd price of Rs. 10/- per share, with additional shares also obtainable at Rs. 10/- per share, by converting the debenture loans, that had been strategically arranged for.

These Management Companies could sell such additional shares above the controlling interest of 51%, and at present market prices could achieve an unbelievable position of continuing to have such 51% controlling interest fully recovering the cost of same and also have in addition, cash bonanzas of around Rs. 111 m., Rs 162 m. and Rs. 139 m., respectively in the cases of Kelani Valley, Bogawantalawa and Kotagala — that is, also taking into reckoning the questionable accruals of the 1995 balance profit shares, that rightfully belonged to the government; the Management Companies having already had their legitimate share of such 1995 profits for management and these Management Companies had acquired such controlling interests only towards the end of the year 1995. The Sunday Observer of June 15, 1997 reported that Kotagala debentures, that are convertible to shares at only Rs. 10/- each, are to be listed shortly for sale.

### **PERC ON WRONG COURSE?**

Ironically, the Special Presidential Commission, appointed by Her Excellency President Chandrika Bandaranaike Kumaratunga, was warranted to investigate and inquire into the very award of these management contracts to these very Management Companies. Item 04 in the Schedule to the Warrant issued by Her Excellency the President to the Special Presidential Commission of Inquiry 1995 reads; — "04. Sale of shares in companies in which the Government owned a majority of the shares, and contracts for the management of plantations."

PERC however blatantly acted in sheer disregard of such concerns, that had been addressed by the government in the background of questions, that had been raised by the public on the very process of transparency in the very award of such plantation management contracts, including questions on financial and technical capacities and capabilities of some of those selected.

In the background of *The Sunday Leader's* startling and shocking exposures on the plantation privatisations, in the interview given to the media last Sunday, the Director-General, PERC, Mano Tittawala, however, did not face up to the real issues of such exposures and did not bite the bullet, as it were, but amusingly held out, that PERC has redefined its objectives, obviously conceding thereby, that PERC had not been on proper course previously.

### PERC'S FUNCTIONS & OBJECTIVES

To the knowledgeable public, however, PERC was already committed with the objectives that have been set out in the Act of Parliament, that established PERC. Accordingly, would not members of PERC be held responsible and accountable thereunder? Section 4 of the Public Enterprises Reform Commission of Sri Lanka Act No. 1 of 1996 [PERC Act] defines clearly the functions and powers of PERC as follows:

- "4. The functions of the Commission shall be to advise and assist the Government on the reform of public enterprises with the following view:- (a). fostering and accelerating the economic development of the country;- (b). improving the efficiency and competitiveness of the economy; - (c). upgrading production and services with access to international markets on a competitive basis, by the acquisition of new technology and expertise; - (d). developing and broad-basing the capital market and mobilizing long term private savings; - (e). motivating the private sector;- (f). augmenting the revenues of the Government, so as to enable it to better address the social agenda."

Section 5 of PERC Act defines comprehensively the powers and duties of PERC, as set out in the given Chart.

PERC's powers and duties
5. For the purpose of discharging its functions the commission may exercise and perform the following powers and duties:
a. to carry out surveys and studies to ascertain and determine the public enterprises which require to be reformed;
b. to formulate a framework for a sustainable and stable public enterprise reform strategy;
c. to make recommendations to the government on the continuation, and efficiency, of public enterprises which are profit making and are of national importance;
d. to make recommendations to the government, on the selection of public enterprises for conversion into public companies under the conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act No. 23 of 1987;
e. to make recommendations to the government on the sale or disposal to the public, of shares in, or assets of, companies registered under the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act No. 23 of 1987;
f. to manage, on behalf of the government, companies registered under the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act No. 23 of 1987, in which entirety of the shares are owned by the secretary to the treasury;
g. to monitor the performance of companies registered under the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act No. 23 of 1987, and majority of the shares in which are owned by persons other than government, to identify weaknesses in their performance and to make recommendations to the government, for the correction of these weaknesses;
h. to advise and assist the government in regulating companies registered under the Conversion of Public Corporation or Government Owned Business Undertakings into Public Companies Act No. 23 of 1987;
i. to assist the government to create public awareness of government policies and programmes on the reform of public enterprises with a view to developing a commitment by the public, to such policies and programmes;
j. to promote workers' participation in the implementation of such policies and programmes and to ensure worker participation in the equity of the companies referred to in paragraph (e);
k.-u. define the administrative powers and duties;

Has PERC discharged its functions, duties, obligations and responsibilities in conformity with such statutory stipulations? If not, why? Would not the members of PERC be responsible and accountable therefor? *The Sunday Leader* leaves it to the intelligent public to judge PERC's performance of its functions and duties and the discharge of its obligations and responsibilities, and as to whether, the given statutory stipulations in the PERC Act have been adhered to and conformed with? Would not PERC owe an explanation to the public on these very issues, prior to redefining any objectives?

Section 19 of the PERC Act mandates PERC to report to Parliament on each and every privatisation transaction, viz:- "19. The Commission shall at the end of each sale or disposal by lease or otherwise as the case may be, made in pursuance of a recommendation made under paragraph (e) of section 5, submit to Parliament through the Minister a report in respect of all matters pertaining to such sale or disposal."

### POWERLESS GOLDEN SHARE ?

Minister Karunatilaka — golden shares to protect national interest



Those who structured and handled the privatisation of the plantation companies, recognised, however, the desirability for the government to have some control and say over the plantation companies, after they were privatised, presumably in the national interest in this vital sector of the economy. For this purpose, they had structured one share of the entire share capital - ranging from 25 to 34 million shares to be a Golden Share to be owned by the government. What is in issue, is as to what protection and control this Golden Share really affords the government? What can the Golden Shareholder, that is the government, really do ?

The powers and rights of the Golden Shareholder, that is the government, are defined in the Articles of Association of the respective plantation companies at Articles 2A, 2B, 3C, 3C(i), 3C(ii), 25A, 127A, 127B 127C and 128.

In essence, as per these Articles, the powers and rights conferred upon or attached to the golden shareholder, that is the government, are merely only the following:

1. Written consent of the golden shareholder is necessary to sub-lease or assign any part of the land.

2. The golden shareholder shall be entitled to call the Board of Directors of the respective plantation Companies every three months [but only] to discuss matters of the respective plantation companies of interest to the government.
3. The golden shareholder is entitled to inspect the books of accounts of the respective plantation companies.
4. The respective plantation companies are to submit quarterly reports to the golden shareholder, and annual informations relating to the respective plantation Companies, on agreed formats.
5. The golden share shall be held by the Secretary to the Treasury, on behalf of the government, and any amendments to these Articles pertaining to the golden share are to be only with the concurrence of the golden shareholder.

What do such rights and powers conferred upon or attached to such one golden share really mean? In essence, - the government can discuss, that too once in three months only; - the government can inspect the books of accounts;- the government can receive quarterly and annual informations;- But what can the government really do ? What legal provision is there for the government to legitimately act? If so, where and how Could PERC explain?

By inspecting books of accounts, is the government to duplicate the role of the statutory auditor? For what purpose to be achieved?- By receiving informations, what actions can the government take thereon, holding only one share? - By only discussing once in three months, without any power to enforce any decisions, what control would the government really have ? If so, how ? In pragmatic terms, would it not have been far better, for the government, at least to have had a right, to carry out physical inspections, including on a surprise basis, of the plantations and to carry out agro-economic reviews, rather than look at books of accounts and informations on formats, in secluded air-conditioned environments in Colombo?

Legitimately even the protections and safeguards afforded under the Companies Act No. 17 of 1982, specifically under Sections 210 to 219 thereof, would not be available to the government. What meaningless strategy is this? Who takes the responsibility for such mediocracy? Would it be that the government has been taken for a glorious ride?

### **G.L. HOLDS OUT OTHERWISE**

However, in reply to query raised by former Plantations Minister, Rupa Karunatilaka, government spokesman, Minister G.L. Peiris, has been reported to have stated, that the national interests and the interest of the government will be protected by means of the golden shareholding of the government in these plantation companies. Having so held out, could Minister G.L. Peiris please explain to the public, in simple pragmatic terms, as to what such national interests and the interest of the government are and how such objectives are to be achieved, with such golden shareholding? If so, what action has the government taken on Kotagala with the use of such golden shareholding? If not, why?

Surely, would it not have been a properly designed regulatory framework, to safeguard and address national issues, in this vital sector of the economy and to harness its desired development and growth, that would have been required? Paddy lands are debarred from conversion- jak trees are debarred from being felled - natural reserves and environment safeguards are protected - not by such ludicrous golden shares, but by proper regulatory framework!

## MID-COURSE CORRECTIONS

In the absence of a properly conceived and developed strategy for the privatisation of the plantations, such a nationally important sector of the economy, PERC has made several mid-course corrections, in the course of the very implementation of the privatisation of the plantations by trial and error, as it were! PERC, however, comprised of and has been assisted by economists, accountants and lawyers!!

The ludicrously absurd price formula to determine the lowest price to dispose of the 51% controlling interest of majority shareholdings, without any open competitive bidding at the Colombo Stock Exchange, was dispensed with, after registering colossal losses to the state.

Thereafter, 51% controlling interest of majority shareholdings was put up for open competitive bidding at the Colombo Stock Exchange, but that too was without reserved floor prices based on professional valuations, where some sales prices in the absence of professional promotional campaigns were questionably low - Madulsima sold at only Rs. 10/- per share. Why?

Thereafter, PERC introduced the elementary concept of reserved floor prices, but 51% controlling interest of majority shareholdings were available for bid, only to those parties pre-qualified by PERC, raising the question as to how the Securities & Exchange Commission ever approved such a scheme? Can any member of the public dispose of shares in such manner? If so, how? If not, why?

PERC thereafter, has caused further amendments to be effected to the Articles of Associations of the balance plantation companies, to restrict the re-sale of the 51% shareholdings in these balance plantation companies, that too, for a period of 5 years, as per the Memorandum dated 23<sup>rd</sup> May 1997 of the Plantation Management Monitoring Division, issued by Company Secretary, Christine S Kanaganayaga Singam, in respect of the plantation companies, Kahawatte, Malwatte Valley, Talawakelle, Maturata, Elpitiya, Pussellawa, Namunukula, Chilaw, Kurunegala and Elkaduwa -

- " 25. Notwithstanding the authority contained in the above paragraph, the Purchaser of 51% of the issued share capital from the Secretary to the Treasury shall not transfer any portion of their shareholding in the Company without the express written consent of the Golden Shareholder for a continuous period of five years from the date of such transfer and such consent may not be unreasonably withheld.
110. Provided that in the event the Company decides to enter into an agreement with any party to manage the whole or part of the Company on its behalf. Such Management Agreement (whether verbal written or implied) shall be entered into only after having obtained the prior written concurrence of the Golden Shareholder, the requirement for said concurrence being limited to a continuous period of five years from the date of transfer of 51% of the issued share capital of the Company by the Secretary to the Treasury to any party.
131. Notwithstanding the authority contained in the above two paragraphs, on transfer of 51% of the issued share capital of the Company by the Secretary to the Treasury to any party, the Company shall not for a continuous period of five years from the date of such transfer capitalize any amount standing to the credit

of any reserve or profit and loss account of the Company nor shall it revalue its assets and create a revaluation reserve without the express written consent of the Golden Shareholder. However, such consent may not be unreasonably withheld."

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