

MONEY LAUNDERING ON STOCK EXCHANGE?

The Sunday Leader analytical exposures on the privatisations of the plantations, a most valuable national asset and a vital sector of the economy, are being greatly appreciated, by those right thinking public of this country, whilst those affected, interested and who have benefited are damning *The Sunday Leader* for such discomfoting critical exposures causing embarrassment, forgetting of course, that the government of the day has placed on very high profile ground, the concepts of transparency and public accountability in the conduct of public affairs.

Those of the public, appreciating the genuine efforts of investigative journalism that is being pursued out by *The Sunday Leader* in the public interest, are sending in very shocking and valuable vital documentations and informations pertaining to some of the plantation privatisations and other privatisations as well, such as Colombo Gas and Orient Lanka, to be analytically dealt with and exposed in the public interest. *The Sunday Leader* shall most certainly do so in the public interest.

Those, who involve themselves in the conduct of public affairs, should not aspire to hold public office, purely as social embellishments and for personal kudos, but should bear with great humility, the grave responsibilities of public accountability, in the conduct of such public affairs, which by no means are their private affairs, that could be kept away from public focus and scrutiny.

On the other hand, those of the private sector, who deal with the public sector, ought to also focus on the social responsibilities and public accountability and the underlying need for equitable transactions on a level playing field, if such private sector is genuinely and seriously interested and committed towards strengthening and developing, a sustainable free and open market economy in this country, mobilising and harnessing the highest degree of public support for and confidence in such a free and open economic system.

Irresponsible conduct and inequitable transactions, devoid of fair and open market competition on a level playing field, would only erode public confidence, with outrageous cries of crony capitalism, particularly during these nascent years of growth towards a system of free and open economy, ultimately resulting in social reactions and upheavals, causing set-backs to such very free and open economic system, that is being espoused, as has been aptly experienced in this country and also witnessed elsewhere in the contemporary world.

How a free and open economy vibrantly flourishes in the developed world, with uninhibited public outcries against social exploitations and inequitable deals, with the effective functioning of institutional/regulatory safeguards/frameworks to curb and deal with questionable deals and transgressions, regardless of the socio political considerations concerning the persons concerned, is visibly transparent in the contemporary world, vis-a-vis the recent scandals in the US, Japan, South Korea and even neighbouring India.

EXPOSURE OF MYTHS

The Sunday Leader last week exposed the myth of the 10% free shareholdings to the plantation workers. Why mislead such poor plantation workers, who have rendered yeoman service over several decades to the plantations sector in this country, in contrast to the Management Companies, who presumably claimed and were readily afforded questionable beneficial

options, for having managed the plantations only since 1992, that too on attractive profit sharing basis? Rationally, how could there have been, any further obligation on the part of the government? Would any of these Management Companies ever have acted in such beneficial manner in dealing with other private sector companies, in the course of their business dealings? If not, would it have been fair and equitable to have caused the government to have so acted in the disposal of such very valuable public assets of national economic significance?

The Sunday Leader last week also exposed the myth of the golden shareholding held by the government, ironically meant to safeguard and protect the national interest and the interest of the government, as has been held out by Minister G.L. Peiris.

Essentially, the government could only discuss once in three months and receive informations once in three months, and inspect books of accounts, whenever. But, pertinently, having so discussed, having been so informed and having so inspected, what can the government in legitimate, concrete and practical terms, really and tangibly do thereafter, with the use of such golden shareholding of one share?

Was this another blunder, by those who structured and strategised the plantation privatisations, or was it a red-herring drawn to, mislead the government and the public into a sense of complacency, to believe that there was in fact a golden protection to safeguard national interests and the interest of the government?

PERC'S RESPONSIBILITIES

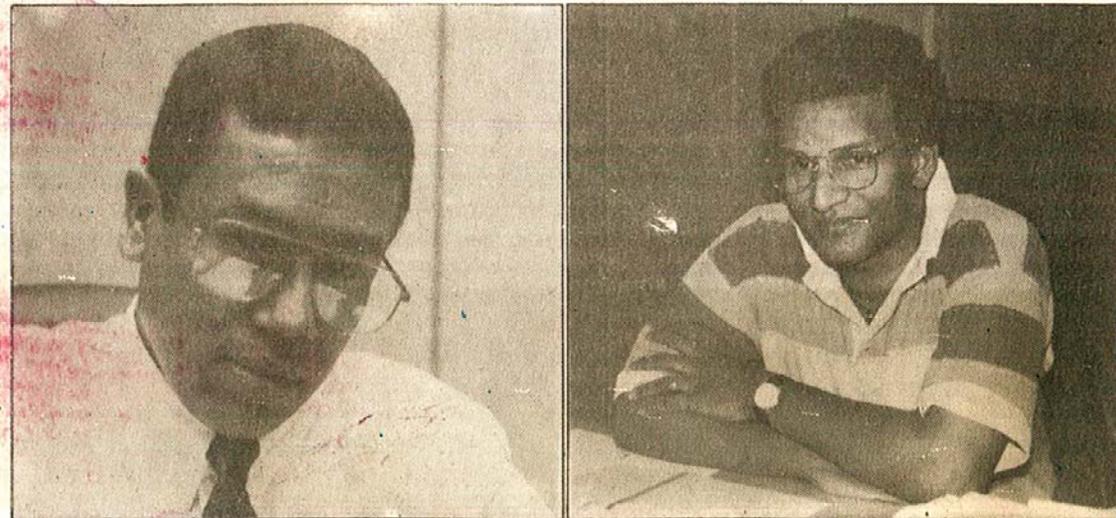
Are these not some of the real issues, that members of PERC, if they have any sense of public responsibility, ought to address and focus upon and be accountable for, and demonstrate how such public concerns, affecting such a vital sector of the national economy, could be allayed. If it is the goodwill and the good sense of the private sector, that is intended to be depended upon, then why not effect the requisite corrections now, demonstrating in practice the operation of such goodwill and good sense? Nevertheless, as evidenced by the media exposures on Kotagala, the Exchange Controller, however, does not appear to be a beneficiary of such goodwill and good sense from the private sector! In the absence of any legally enforceable protections and safeguards, such golden shareholding is as good as any lame duck!!

The other issue touched upon in *The Sunday Leader* last week was the strange and curious method adopted recently for the sale of the 51 % controlling interest of majority shareholdings in the plantation companies, Maturata and Namunukula. Such Shareholdings, though pro-forma put up for sale on the Colombo Stock Exchange, were available for bid only to pre-selected/pre-qualified parties by PERC. The bungling and the blundering by PERC, as exposed by *The Sunday Leader* on the past plantation privatisations, no doubt causes concern on the reliability, credibility and acceptability of such very pre-selection/pre-qualification process carried out by PERC, as far as the public are concerned. Were any Offer Sale Documents published?

One of the main criteria for such pre-selection/pre-qualification has been reported to be the commitment to an investment/development plan and programme by the bidder seeking pre-selection/pre-qualification. Is this mere statement of intention or underwritten enforceable commitment? If there is no compliance thereafter, what action could and would PERC take? What could then the golden shareholding effectively do in real and tangible practical terms ? Would there be any penalisation for default of such solely important pre-selection/pre-

qualification criteria or would such miscreant party be thrown out and the sale of such majority shareholdings reversed? If so, how? Otherwise, why have such pre-selection/pre-qualification criteria at all, that is not really enforceable?

SEC / CSE APPROVAL?



Director General, SEC/PERC member,
Kumar Paul — Does the SEC approve of
bids restricted to selected parties?

Chairman, BOI and PERC member,
Thilan Wijesinghe — Does BOI concur
with PERC's agenda?

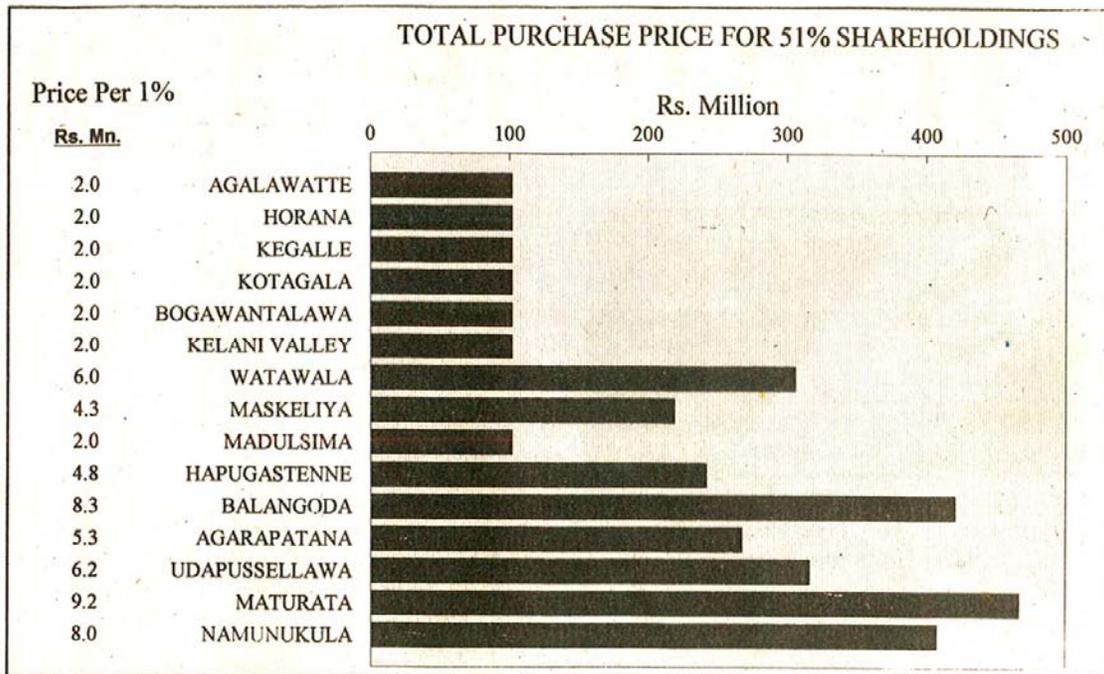
The other pertinent and interesting question, is as to how the Securities & Exchange Commission [SEC] and the Colombo Stock Exchange [CSE] ever approved such bid being restricted only to such pre-selected/pre-qualified parties? Would the SEC and the CSE similarly permit other listed public companies, to also dispose of their shareholdings in the Colombo Stock Exchange, only to pre-selected/pre-qualified parties? If not, why? As *The Sunday Leader* has on previous occasions questioned, has the Director General, SEC, Kumar Paul, being an ex-officio Member of PERC, resulted in any such favourable/preferential compromise?

In the case of Namunukula, since there was only one such pre-selected/pre-qualified party to bid, was not such pro-forma bid put through the Colombo Stock Exchange, a mere mockery and a farce undervaluing the whole process and the fixing of a deal, contrary to the concepts of open competitive bidding in a fair market place, that presumably are the goals and objects of both the SEC and the CSE? Should not the government uphold the rules and norms in the first instance, if the public are to be required to conform and adhere to such rules and norms?

MONEY LAUNDERING

Director General, PERC, Mano Tittawella, in his inter-view to *The Sunday Times* of June 15th, 1997, had, inter-alia, stated why such development plans had been called for such pre-selection/pre-qualification; quote - " One was to see that people had adequate funds, before they bid. Two, we were concerned where the funds came from. It is no secret that funds flow into developing countries from dubious sources. To cite an example we may find that Nazi holocaust funds were coming from Swiss Banks, then we will have problems"

It is no doubt very laudable for PERC to have been concerned with the serious issue of money laundering, but it was no doubt pertinently more important for PERC to have ensured in the first instance, the basic conformity with and adherence to PERC's own functions, duties and responsibilities, stipulated by the very Act of Parliament that established PERC, and complied with the very basic fundamentals of privatisations that have been well established in the contemporary world. Director General, PERC, Mano Tittawella has also admitted in the same interview, that;- "We learn as we go along."- At what tremendous cost, set-back and loss to the state and the public, is such learning process!!



The given Chart reflective of such learning process, sets out clearly the comparative purchase prices realised on the sale of the 51% controlling interests of the majority shareholdings of the plantation companies hitherto privatised, giving also the comparative price realised per 1% shareholding. It would be noted that certain plantation companies have sold for, as much as 4 to 4.6 times the price, at which profitable plantation companies had been preferentially given to the respective Management Companies.

Money laundering is a separate vast issue, that the country is committed to legislatively and institutionally deal with in conformity with international agreements that the country has been a signatory to. *The Sunday Leader* is aware that draft legislation in this connection is already in the making. Those, who are knowledgeable about money laundering would well be aware, that stock markets and investment funds have been identified to be breeding grounds and an integral part of the international money laundering processes and networks, and not Swiss Banks alone.

Is the SEC and the CSE going to scrutinise every bidder in the Colombo Stock Exchange to ascertain the source of funds, if not, why only in the case of the plantation companies? Is this not patently discriminatory? Director General, SEC, Kumar Paul, being an ex-officio member of PERC, would not the SEC also be responsible for and compromised in such discriminatory and partisan action?

How could PERC have ever dealt with such complex issues of money laundering, by merely soliciting and perusing development plans? Should not PERC have been more focussed on PERC's primary issues at hand, of carrying out proper privatisations, transparently on a level playing field, with equality of opportunities, leading towards the growth of a stable, free and open economy, devoid of crony capitalism, thereby upholding government's avowed policies on transparency and public accountability?

RELEVANCE OF BERNARD SOYA REPORT

In the context of the analytical exposures hitherto carried by *The Sunday Leader* on the privatisations of the plantations, it would be very interesting, relevant and pertinent to quote some very brief extracts from the 640 page Report of the Commission of Inquiry on Agency Houses and Brokering Firms issued in December, 1974, chaired by Minister Bernard Soya, then M.P., who also then acted, as the Minister of Finance on several occasions and was a very knowledgeable and respected Chairman of the Public Accounts Committee of Parliament.

On Company Accounts and disclosure of information, the Committee had this to say at page 156 of the said Report; - " It needs to be said that by and large, company accounts today appear to be designed more to conceal rather than to reveal the truth. It is pointed out elsewhere in the Report, that a complex of companies operating together in the Agency business, can show accounts that seem to conceal the realities of the operations of the complex. What is considered to be the enlightened (and inevitable) trend in regard to company accounts is to give the shareholders and the public the fullest information. In operation, due regard is paid to the fact that to divulge certain kinds of information could harm an organisation engaged in competitive activity. The provisions of the Companies' Ordinance in regard to these matters are seriously in need of amendment to bring them in line with today's requirements. One aspect of the necessary changes is in regard to the disclosure of information. The other is the drawing up and presentation of accounts in a manner that would make them an efficient instrument of management."

On Auditors and audits of Company Accounts the Committee has been quite critical in passing cogent strictures in its Report at pages 156 and 334, stating; - " Mitigating against the independence of auditors is their dependence upon the fees paid by those whose accounts are audited. Apart from this aspect of the matter, the Auditor's Report, which is intended to enlighten the shareholders in regard to the affairs of the Company, hardly ever provides the criticism that the shareholders need to protect their own interest and to participate in management in a meaningful way." ..." Your commission in the course of its inquiries noted that partners of the leading audit firms also hold positions of directors in plantation companies as well as in financial and investment companies. It is true that partners of these firms do not hold any directorial and management positions in the companies that they audit. But in view of the fact that there exist material financial and management relationships amongst plantation companies, the investment companies and agency houses, the practice of auditors holding directorial position in these companies could serve to impugn their independence in carrying out the audit of their firms. This problem falls within the area of the professional conduct of auditors."

On improprieties and illegalities in the plantation sector, this is what the Committee had stated at page 521 of the said Report; - " It is not proposed to list here the various misdemeanours of Agency Houses, that have been referred to in the preceding chapters. Reference has been made to misdemeanours, sins of commission and omission and improprieties. These have arisen in

relation to exchange control, the use of corporate funds, inter-corporate relations and investments, taxation, labour relations and the care of the agricultural asset."

The respected and distinguished Members of the Committee, that produced such Report, after exhaustive inquiries and investigations and having received evidence from several persons from the plantation sector, were Bernard Soysa, M.P., Chairman, Dr.(Mrs.) Kumari Jayawardena, Dr. Buddhadasa Hewavitharana, P.M.W. Wijayasuriya (former Auditor General), Nagaratnam Nagenthiran, Dr. S.T.G. Fernando and Kenneth Shinya. Dr.(Mrs.) Kumari Jayawardena, *The Sunday Leader* believes is the wife of Dr. Lal Jayawardena, Economic Advisor to Her Excellency the President.

As to whether, those who structured and strategised the privatisations of the plantations, ever dwelled into the findings in this Bernard Soysa Report on the Plantations, carried out at the time of the nationalisation of the plantations, containing also very valuable data and informations, is no doubt, a very relevant and pertinent question to be posed? Are not such strictures made in such report quite relevant and pertinent even today? *The Sunday Leader* analysis yet to come will reveal!!

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