CORRUPTION – HOW THE MIGHTY ARE FALLEN …. !

The People's Alliance government, no sooner it assumed office, hastily and pretentiously enacted legislation in October 1994, to define corruption, as an offence under such law, with consequences therefor. Loudly decrying corruption, was consequently, a major political cry of the People's Alliance, in the Presidential election that followed in November 1994. None other than, President Chandrika Bandaranaike Kumaratunga, herself, spearheaded such campaign, vociferously promising, to rid the country of such social menace of corruption and to take positive actions thereon.

Thus, not only did the People's Alliance espouse high profile policies ardently decrying corruption, but also enacted legislation to deal with such social menace of corruption. Therefore, the People's Alliance government was not only morally bound, but was legally committed and bounden in duty, to have carried out the governance of the country, in strict conformity with such legislation on corruption, that was enacted by the People's Alliance, itself, with the United National Party opposition, readily and willingly supporting.

WHY NO ACTION TO ENFORCE THE LAW

Under such legislation of October 1994, a public servant is deemed to be guilty of the offence of corruption, if such public servant, with intent and/or knowledge, caused a wrongful or unlawful loss to the government or conferred a wrongful or unlawful benefit, favour or advantage on himself, or on any other person, by;

(a) doing or not doing any act he is empowered to do as a public servant,
(b) inducing another public servant to perform or to refrain from performing any act, which such public servant is empowered to do,
(c) using information coming to his knowledge as a public servant,
(d) participating in the making of any decision as a public servant,
(e) inducing any other person, directly or indirectly, to perform or refrain from performing any act.

The above defines quite clearly and lucidly, the offence of corruption, as enunciated by the very law enacted by the People's Alliance government, itself. Such legislation also defined a public servant, amongst others, to include, Ministers, Deputy Ministers, Speaker, Deputy Speaker, Members of Parliament, Governors, Ministers, Provincial Councilors, public officials and directors and officers of incorporated companies, in which over 50% of the shares are held by the government but not the President of the country.

Therefore, in the context of such legislation, since October 1994, corruption was no more an ambiguous and loosely referred to social phenomenon, but a very much precisely and clearly defined offence, under and in terms of such law, which also stipulated, as to who, could be deemed to be guilty of corruption, as so defined.

After over three years of government, President Kumaratunga, who gave leadership to such high profile policies on corruption, vehemently and vociferously decrying corruption and enacted such legislation defining corruption, as an offence under the law, was recently widely reported in the media, to have strongly criticised and lambasted public servants, singled out for corruption, significantly excluding politicians and political appointees from outside the public service.

It is in such very context, that the most apt and pertinent question was posed, as to why the People's Alliance government had deliberately failed and neglected, to enforce the law under and in terms of such corruption legislation, against politicians and political appointees from outside the public service, who, prima-facie, have appeared to have transgressed such law on corruption enacted by the People's Alliance government, itself, as revealed by the scandalous exposures ?

LOSSES TO GOVERNMENT & BENEFITS TO OTHERS ?

Under and in terms of such specific definition of corruption in such law and the present controversy of alleged corruption by the public service, as the greatest challenge faced by the government, throw back on some of the scandalous exposures that spotlighted government transactions ─

1. In the Puttalam Cement/Thawakkal case, it was reported that it was Deputy Secretary to the Treasury, D.Y. Liyanage, *a public servant*, as a member of the Securities & Exchange Commission, on the advice of then Advisor, Ministry of Finance, Nihal Amerasekera, who had acted to stall such questionable transaction. Consequently, Thawakkal was required to pay Rs. 900 million to the government. The Ministry of Finance had prepared a draft Cabinet Memorandum on May 18, 1995 setting out action to be taken, including to re-open the privatisation and call for fresh bids, should Thawakkal refuse to so comply. In such circumstances, a meeting had been hastily held with Thawakkal, chaired by then Chairman, Public Enterprise Reform Commission [PERC] Rajan Asirwatham, on a public holiday, May 22, 1995, at his private Office at Ford, Rhodes, Thornton & Co., consequent to which, a fresh Cabinet Memorandum dated June 16, 1995, going back on the earlier position, had been submitted, under the office of the President of Sri Lanka, apparently unknown to the Ministry of Finance, recommending such questionable transaction, as reasonable, practicable and commercially accepted, whereas previously, Foreign Minister, Lakshman Kadirgamar had stated under his own hand, that this was a gross and calculated fraud on the government and the people of this country.

2. 90% shareholding of the Ceylon Steel Corporation Ltd. was sold to Korea Heavy Industries & Construction Co. Ltd. [Hanjung] in June 1996 for only Rs. 840 million, *[there had been a previous bid of Rs. 962.5 million in 1994 for only 55% shareholding]*, whilst the net current assets alone of the Ceylon Steel Corporation Ltd. stood at Rs. 844 million, of which Rs. 300 million was in cash deposits. Thereby, quite apparently, no consideration was received in respect of the fixed assets, i.e. land, buildings, plant & machinery, which had been valued by the Chief Government Valuer at Rs. 1053 million, as far back as December 1, 1993. Subsequently, P.B. Jayasundera, present Chairman, PERC having had discussions with J.M. Kim, Chairman, Hanjung, had confirmed in writing that Rs. 220 million would be paid by the government, as compensation to the employees of Ceylon Steel Corporation Ltd., thereby further reducing the net purchase consideration to Rs. 620 million.

3. Majority shareholdings in six plantation companies, Agalawatte, Horana, Kegalle, Kotagala, Bogawantalawa and Kelani Valley were sold for an absurdly ridiculous and highly questionable price of Rs. 10/- per share, through private treaty, without calling for open competitive bids, for a total effective consideration of Rs. 787.3 million only for all these companies, thereby causing a colossal wrongful loss to the government, reckoned in the region of Rs. 2500 million and conferring wrongful benefit, favour and advantage to other

persons. The government intervened, only to stop the sale of the balance plantation companies on such highly questionable and ridiculous basis, but took no action, whatsoever, on the transactions that had been so executed. In the controversial case of Kotagala, the Board of Investment [BOI] had approved foreign investment of US $ 6 million, with Thilan Wijesinghe, Chairman BOI, also an influential member of PERC.

4. In the privatisation of Orient Lanka Ltd., fresh bids were called for in November 1995, to be forwarded within 4 days, *[including a weekend]*, and the sale of 60% shareholding of Orient Lanka Ltd., was hastily concluded in January 1996 for Rs. 1000 million, handing over stocks and cash amounting to Rs. 285 million. This was discarding, a franchise proposal, that afforded the government, a 10-year, 20% of the turnover, with a down payment of Rs. 570 million, which would have resulted in a potential earning of over Rs. 4300 million at a turnover growth 10% p.a. and Rs. 7100 million at a turnover growth of 20% p.a., over the 10-years, with the ownership fully intact with the government, to be continuously franchised, with tremendously growing earning potentials. Disregarding the Evaluation Committee appointed by government, negotiations had been had by Advisor to PERC, part-time visiting consultant from London, Rajan Brito. The Share Sale & Purchase Agreement concluded in May 1996 shockingly revealed, that the actual buyer had not been the U.K. company that had bid, but another company, recently incorporated in the Netherlands, with a very small share capital and with no experience and track record, even to have made such offer and to have been pre-qualified, in violation of cardinal principles of tender procedure.

The above are only some of the main scandalous exposures amongst several others, which included the shocking Pacific Shore transaction of BOI, headed by Thilan Wijesinghe and the questionable sale of UDA shareholdings in the Nawaloka Specialist Centre Complex, under Chairmanship of Suren Wickremasinghe.

The above transactions prima-facie causing wrongful losses to the government and conferring wrongful benefit, favour and advantage to other persons, have been executed essentially by political appointees from outside the public service and have been approved by the Cabinet of Ministers, who are thus and thereby collectively responsible and accountable therefor. Citing President Kumaratunga's own words, at the Rupavahini Janamandali talk show, as reported in the media, would it not be quite apt to pose the question "Would not anyone with a brain size of two grains of gram, have realized that something very wrong had infact really happened in these transactions ?"

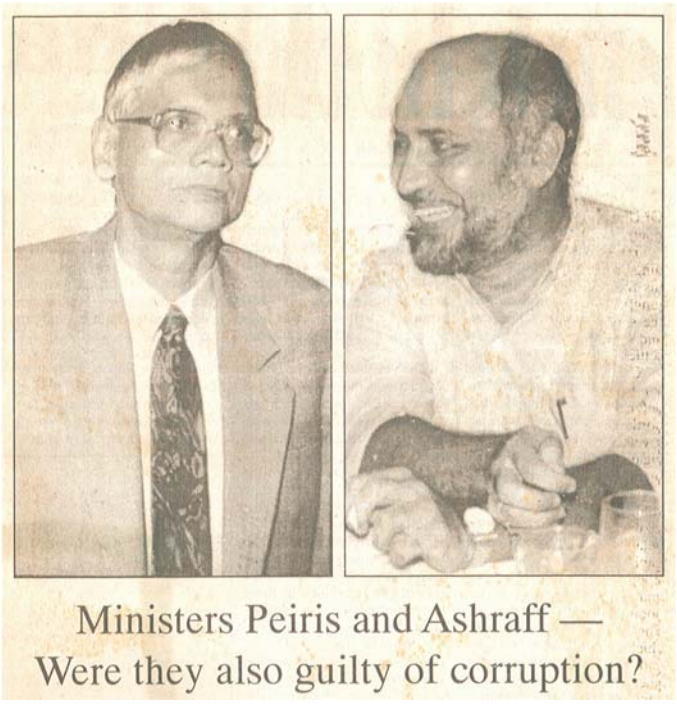
GOVERNMENT'S CREDIBILITY ON CORRUPTION IN QUESTION ?

Though it has been repeatedly pointed out, that the government ought to take action in the face of scandalous exposures, in the context of the very provisions of the special legislation on corruption, that had been enacted by the government, itself. Nothing happened, nary a word on such transactions, by those, who pretentiously professed high profile policies on corruption, whilst pontificatingly accusing others of corruption.

Let alone referring such questionable transactions, which prima-facie fall within the meaning of the terms stipulated in such legislation on corruption enacted by the People's Alliance government, itself, the government deliberately failed and neglected to take any action, whatsoever, thereon and appeared to be indifferent thereto, thereby throwing into grave doubt, the credibility of the government's commitment to deal with corruption, as so defined under the law by the government, itself ?

Ironically and poignantly, a dramatic issue has now loomed into focus, as to whether, the very architect, Justice Minister, G.L. Peiris, who, basking in glory, pompously spun the legal cobweb to catch others for corruption, has, himself, got entangled and enmeshed in such very legal cobweb, that he gleefully spun, to catch others for corruption ?

LOSS TO GOVERNMENT & FAVOUR FOR MINISTER PEIRIS ?



Ministers Peiris and Ashraff —
Were they also guilty of corruption?

It is reliably understood from Finance Ministry sources, that a major crisis is now simmering to blow up in the Ministry, causing much concern and consternation to the top three at the Ministry, Secretary B.C. Perera, Deputy Secretaries D.Y. Liyanage and P.B. Jayasundera, regarding losses caused to the government, as a result of the conduct and actions of their superior, the Deputy Minister of Finance, G.L. Peiris.

Creating much controversy, Minister G.L. Peiris admittedly intervened, to have the Hilton Settlement questionably suspended in 1995, for alleged conditions, *not acceptable to the government,* further collaborated upon by his colleague, Foreign Minister, Lakshman Kadirgamar, as *unsatisfactory conditions*. Nevertheless, as exclusively reported in the media, the suspended Hilton Settlement came to be given effect to in October 1996, with nary a word from Ministers G.L. Peiris, or Lakshman Kadirgamar, or the government, on the rescinding of such suspension ?

It was exclusively reported, that the *only condition*, that had been excluded from such Settlement, through an Addendum in October 1996 was the condition, that obligated the government to take action, amongst others, against the former members of the Securities & Exchange Commission, which included Minister G.L. Peiris, for gross and deliberate neglect of their statutory duties. None of the parties to the Settlement, nor the Attorney General have to date denied such exclusive expose.

The Hotel Developers' Accounts circulated by Attorney-at-law, U.L. Kadurugamuwa, Director, Corporate Services Ltd., an associate of the reputed law firm, F.J. & G. De Saram, on November 7, 1997, and signed by the Hotel Developers' Chairman, D.Y. Liyanage, and its Director, P.B. Jayasundera, both Deputy Secretaries to the Treasury, have disclosed, that Hotel Developers has paid an additional sum of Rs. 79,629,171/- to the Japanese, as and by way of interest, as a result of the delay, caused by such questionable suspension. These Accounts have further revealed, that the government has had to pay a staggering sum of Rs. 288,567,634/-, under and in terms of the state guarantees to the Japanese, to meet the loan instalment that fell due on July 1, 1997.

A condition in the Settlement, that was exclusively published by the media in 1995 provided that - "Hotel Developers shall and will explore the feasibility of building the 3rd Tower of Hotel Rooms at the Hotel and consider financing the cost of same, through a Rights and/or a new Issue of its Shares or otherwise, as considered feasible, to enhance Hotel Developer's profitability and debt service ability, to enable the repayment of the said Loans to Mitsui and Taisei ..."

It is reliably understood that the former Finance Ministry Advisor, Nihal Amaresekera written to Secretary, B.C. Perera and Deputy Secretaries D.Y. Liyanage and P.B. Jayasundera, stating that the aforesaid condition in the Settlement could not be pursued with, during the loan grace period provided for such very purpose, because of the suspension, and as a result, that such loss and set back to Hotel Developers *[more than 50% owned by the government],* had been caused by Deputy Minister of Finance, G.L. Peiris, who had intervened to cause such suspension, notwithstanding having been an affected party. Would this not tantamount to the wrongfully conferring of a benefit, favour and advantage on himself, and causing a considerable wrongful loss to the government ── as per the very dicta of such corruption legislation mooted by Minister G.L. Peiris, himself ?

It was reported in the media that Lawyers had notified Minister G.L. Peiris of such apparent transgression of such corruption law and whether it was not right and proper, that Minister Peiris relinquishes forthwith, the public offices held ? Ironically, it is Minister Peiris, himself, who pretentiously with great enthusiasm and zeal introduced the very legislation on corruption. Having mooted such very legislation on corruption, himself, ought not Minister Peiris, strictly submit thereto and be held accountable thereunder, resigning from public office in the first instance, to enable proper inquiry, as demanded in a civilised democracy ?

LOSS TO GOVT. & BENEFIT FOR MINISTER ASHRAFF ?

It has been recently exposed that considerable sums of monies had been paid by the Sri Lanka Ports Authority, for and on behalf of the Sri Lanka Muslim Congress, on the instructions given by the Ports & Shipping Minister, Ashraff, as stated by Ports Authority Director Administration, M.H.V. Gunawardena. Would this also not tantamount to wrongful loss caused to the government by Minister Ashraff, and the wrongful conferring of benefit, favour and advantage on himself, as the leader of the Sri Lanka Muslim Congress, and the Muslim Congress, itself, deemed as

corruption under and in terms of the legislation on corruption, enacted by the People's Alliance government, itself, with the committed affirmative support of Minister Ashraff, himself, as a member of the very Cabinet ?

CONCLUSION

Under and in terms of such legislation on corruption, enacted by the People's Alliance government, itself, it is left to the intelligence of the public of this country to consider, whether or not the abovementioned transactions have caused wrongful losses to the government and/or have conferred wrongful benefit, favour or advantage to other persons, which under such very law that had been enacted previously in October 1994,prima-facie tantamount to the offence of corruption; and, to also consider, as to who should be prima-facie charged for such offences of corruption - whether public servants or People's Alliance politicians and political appointees ?

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