

POLICY SMILES ON THE BIG LEAGUE

Amongst other matters, the recently announced Cabinet Decision made, – on the basis of a Cabinet Memorandum dated June 10, '98 presented by President Chandrika Bandaranaike Kumaratunge, as the Minister of Finance & Planning on the subject of – "New procedures applicable to international companies bidding for large scale government tenders and BOO/BOT projects", – that such foreign investors or contractors should enter into a valid agency agreement with a local company, listed on the Colombo Stock Exchange, whose market capitalisation is not less than Rs. 500 million, to be applicable to all public sector projects and tenders in excess of a value of Rs. 250 million had been focused upon.

The rationale for such policy decision apparently had been, that it had been deemed that it is important that the local agents of such foreign investors or contractors bidding for such public sector projects and tenders do not unduly influence public officials or resort to corrupt practices in concluding deals, which at times are admittedly unfavourable to the Government i.e. the public. The justification for the stipulation that listed public companies should represent reputed international suppliers, contractors and investors apparently had been on the premise, that listed public companies are compelled to operate more transparently, than unlisted private or public companies and with a greater degree of accountability towards shareholders, and that furthermore, listed public companies are required to comply with the continuing listing requirements of the Securities & Exchange Commission [SEC].

CORPORATE LOBBY ?

On the other hand, would not such policy decision be based on the fallacy that foreign suppliers, contractors and investors, reputed or otherwise, do not unduly influence public officials or resort to corrupt practices ? Is this a truism ? Why is it that only the locals are deemed to be guilty and/or capable of unduly influencing public officials and resorting to corrupt practices ? Also what about the Sri Lankans resident abroad - do they not influence peddle and lobby ? – Surely, it cannot be for fun !

The validity ought be put in issue of such policy rationale, which also, no doubt, seriously stymies and stultifies the initiative, growth and development of new entrepreneurs, particularly from the younger generation – after all there are not very many listed public companies, whose market capitalisation is over Rs. 500 million, and who in addition would be interested and/or inclined and/or geared to act as agents on such multifaceted and/or complex public sector projects and tenders. Would not such policy decision doom the growth and development of the nascent and emerging cognisable private sector, operating as private companies, unlisted public companies and otherwise ? The stipulation of a market capitalisation of Rs. 500 million also excludes perhaps even a number of listed public companies !

If such policy decision is on the postulated premise, that listed public companies are compelled to operate more transparently with a greater degree of accountability, then why the stipulation of a market capitalisation of Rs. 500 million ? Is it that other listed public companies are deemed to operate with a lesser degree of transparency and accountability ? Untenable discrimination would it be not ?

The irony is that in these times of very steep price tumbles in the Colombo Stock Exchange, at what point of time in a public sector project or tender does one determine the market capitalisation of the local agent or does one get disqualified in the process, if one's market capitalisation falls through the roof ? Would not such policy very clearly give an obvious advantage to the big league of the corporate business world, whilst unfairly shutting out so many other players ? Would not such policy undoubtedly be contradictory to the concept of equality of opportunity on a level playing field, with free and fair competition open to all ? On the other hand, the compelling question that comes into focus is as to whether, such policy itself ironically has been as a result of lobby and influence peddling by a coterie of the big league of the corporate world pushing their own interests ?

Public interest activists and right thinking people have regularly espoused and steadfastly stood for, fighting corruption and corrupt practices in relation to public sector projects and tenders, no doubt, is a priority and an absolute necessity. Nevertheless, is the restriction of the promotion of such public sector projects and tenders to listed public companies with a market capitalisation of over Rs. 500 million the credible solution ? Several instances of corrupt and questionable practices by listed public companies, some of which have been international scandals have been exposed ! Would it not be grossly misplaced and unjust to presume, that the rest of the business sector, outside the big league of listed public companies with a market capitalisation of over Rs. 500 million, is prone to undue influence peddling and corrupt practices, whilst such big league of listed public companies are definitely not ?

FOREIGNERS IN FAVOUR ?

Interestingly, a multitude of locally registered liaison offices of foreign companies invariably regularly participate in the promotion of public sector projects and tenders. These companies have been registered as private companies. It is well known that Japanese companies operate a number of these liaison offices in this country, participating in the promotion of public sector projects and tenders. Ought not, the above policy decision that stipulates that in all instances in public sector projects and tenders over Rs. 250 million, there should be listed public companies with a market capitalisation of over Rs. 500 million acting as agents, fairly and squarely, have excluded and/or disqualified these liaison offices from functioning as agents in the promotion of public sector projects and tenders of a value of over Rs. 250 million ?

Ought this not have been more so, given the underlying rationale, that such policy decision had been taken to eliminate and/or minimise undue influence of public officials and corrupt practices in the promotion of public sector projects and tenders ? How could one espouse with any certainty, that these liaison offices are totally devoid of undue influence peddling of public officials and corrupt practices ? On the other hand, it is left to the intelligent public of this country to decide, as to whether, these liaison offices in fact have caused the advent of the culture of political influence peddling and corrupt practices in this country !

Ironically, in the very circumstances of influence peddling and lobbying, has the People's Alliance government back peddled on the above high profile policy stance, taken by collective Cabinet decision, to permit liaison offices, whether private companies or otherwise, to participate in the promotion of public sector projects and tenders of over Rs. 250 million, amending and/or varying the original Cabinet decision ? If this is so, ought not the People's Alliance government have made an official pronouncement, inasmuch as the prominent pronouncement that had been

made of the original Cabinet decision ? It is reliably understood from Finance Ministry sources that this is so. If it is so, would it be patently just and fair, only to permit foreign companies that operate liaison offices to participate in the promotion of public sector projects and tenders over Rs. 250 million, excluding scores of growing indigenous Sri Lankan entrepreneurs ? How could this be in consonance with the People's Alliance policy of a free and open market economy with a human face ?

TRANSPARENCY & ACCOUNTABILITY ?

On the contrary, to minimise corruption and corrupt practices, one would expect a greater degree of transparency and openness, with decision making tiered at several layers. Under the former United National Party government, in addition to the Cabinet and/or Ministry appointed Project/Tender Evaluation Committees, there was the Committee of Development Secretaries, that considered large Projects/Tenders. There was also the Economic Sub-committee of Cabinet, before whom any aggrieved party could be present and openly make representations and espouse grievances. None of such functional features of transparency and public accountability appear to be present ironically under a government, that came into power espousing the cause for even a greater degree of transparency and public accountability !

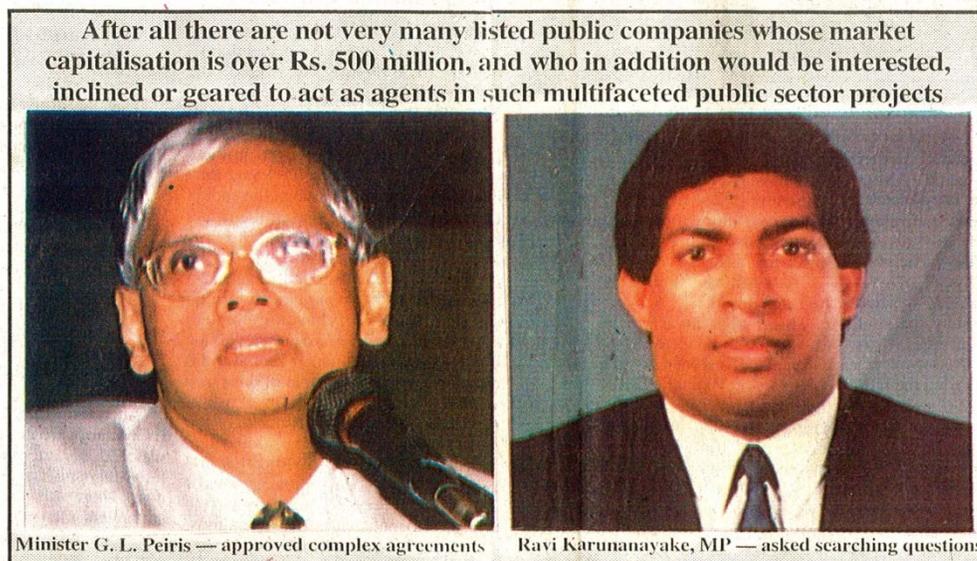
The general perception is that even agreements on major projects and privatisation transactions are rushed, devoid of desired level of transparency and public scrutiny, sans the different tiers and layers of decision making. On the other hand, even the participating parties have been required to be sworn to absolute confidentiality and secrecy by the Public Enterprise Reform Commission, ironically in respect of public transactions ! The media speculation is that nationally important agreements and/or Cabinet Memoranda are even not made available with adequate time for the Cabinet of Ministers to consider the ramifications of such complex projects and privatisation transactions. The Chairman of Airlanka Ltd., Harry Jayawardene has gone on record to be reported in the media, that he had been confronted with voluminous agreements devoid of adequate time to seriously consider the same, prior to placing his official signature thereon ! In an era of professed high profile transparency would not such phenomena be a complete contradiction thereof ?

DOUBLE STANDARDS ?

A public controversy had been precipitated by Ministers G.L. Peiris and Lakshman Kadirgamar on the Hilton Settlement agreements in August 1995 with pronouncements of – "obligations of an unacceptable nature" and "unsatisfactory features", respectively, to questions posed in Parliament on the very preceding day by United National Party M.P. Mahinda Samarasinghe, – subsequently even leading to the forced resignation of A.S. Jayawardene, from the office of the Secretary, Ministry of Finance at the behest of Minister G.L. Peiris.

The Hilton Settlement agreements published in full in the media. Whereas on the contrary, very much more complex and voluminous agreements pertaining to projects and privatisation transactions, without any public disclosure thereof, have been approved without any murmur, whatsoever, from Ministers G.L. Peiris and Lakshman Kadirgamar. Exposures have revealed and highlighted a number of questionable issues pertaining to such agreements, such as Airlanka, Orient Lanka, Colombo Gas, Thawakkal, Steel Corporation, Telecom and the Plantation Companies, etc. Would not such issues even go beyond the descriptions – "obligations of an

unacceptable nature" and "unsatisfactory features" ? Even in the face of such public interest media exposures on the above agreements Ministers G.L. Peiris and Lakshman Kadirgamar have maintained a stoic silent, thereby undisputedly taking full responsibility therefor !



Contrary to the public pronouncement made by Minister G.L. Peiris in July 1995 that no implementation would be given effect to until the conclusion of the inquiry by the Special Presidential Commission, nevertheless upon giving effect to the Hilton Settlement agreements in October 1996, to questions raised on November 18, 1996 in Parliament by DUNLF M.P. Ravi Karunanayake, Minister G.L. Peiris, nearly one month thereafter on December 13, 1996 had replied as follows; –

"It is rather a long answer. I would like to table it, if that is acceptable." – Answer tabled: –" 1. No." – " 2. Show Cause Notices, setting out acts of commission and/or omission that were fraudulent and detrimental to the interests of Hotel Developers (Lanka) Ltd. and/or the Government have been served on several persons. The inquiry is proceeding. –" 3. The total claim as at 30.6.'95 was as follows: japanese yen. million capital 13,700, accrued interest 14,006, insurance premium 87, - total 27,793. – Payments were stopped due to the derivative action filed by Mr. Nihal Sri Ameresekere against Hotel Developers (Lanka) Ltd." –" 4. It is correct that an agreement has been entered into by the Government to settle the outstanding payments to the contractors. The agreement provides for the write-off of japanese yen. 13,450 million on account of interest and 30% of the capital. A total of Japanese yen. 17,586 million is therefore written off. – The Agreement provides for the settlement of the outstanding payment by an initial lump sum payment and fifteen annual Instalments. The Lump Sum payments of japanese yen. 2,138 million was made on 29.10.'96 and the first annual payment of Japanese Yen. 972 million on 15.11.'96." –" 5. The Board of Hotel Developers (Lanka) Ltd. at its meeting held on 28.6.'95 unanimously approved the settlement agreements." –" 6. Mr. Nihal Sri Ameresekere is a shareholder and a Director of Hotel Developers (Lanka) Ltd. - Action against Mr. Ameresekere by government in respect of matters related to his involvement as a director of Cornel Co.Ltd. were settled." –" 7. Yes. The loan obtained for the construction of the Colombo Hilton Hotel is on a government guarantee. The long delay in the service of this loan has resulted in a contingent liability on government. The government re-scheduled this loan with favorable terms for the

country. The write-off of interest and capital amounting to Japanese yen. 17,586 million i.e. SL Rs. 10,624 million as at 28.6.'95, and re-scheduling of the balance over a further period of 15-years going upto 2010, is of benefit to the country."

The questions asked from Minister G.L. Peiris by M.P. Ravi Karunanayake had been – " 1. Has the Special Presidential Commission completed its investigation on Hotel Developers (Lanka) Ltd. (Hilton Hotel) ?" – " 2. If so what is the outcome ? If not of what stage is it ?" – " 3. What is the balance amount payable to the Contractors ? Was the payment stopped for any reason ? What was that reason ?" – "4. Is it correct that there has been agreement to pay this money now ? If so when and how much ?" – " 5. Were all the Directors in agreement ? If not who dissented ?" – " 6. Who is Mr. Nihal Ameresekere in this Hotel Developers (Lanka) Ltd., case ? Does he get any benefits or any cases withdrawn ?" – "7. Is this to the benefit of the Sri Lankan government. If so, how ?"

WORDS & DEEDS ?

In contrast to the above answers occupying less than one column of the Hansard being tabled by Minister G.L. Peiris stating that "it is rather a long answer", in August 1995 in a very prompt reply to Mahinda Samarasinghe M.P., Minister G.L. Peiris gave an oral answer occupying over 3 columns of the Hansard, stating – "Mr. Deputy Speaker, in the light of the importance of this matter, I ask for your indulgence to answer this question in some detail". What Minister G.L. Peiris did not disclose in December 1996 is that the Settlement agreements had been given effect to excluding only one solitary condition that had personally affected Minister G.L. Peiris, as a former Member of the SEC.

On that occasion in August 1995 Minister G.L. Peiris stated to Parliament - "The People's Alliance promised to uncover the facts behind this episode during the election campaign and in keeping with its pledge, set up a Special Presidential Commission of Inquiry to inquire into the circumstances behind the transaction. It must be reiterated that this Commission will continue with its inquiries into this matter and that the government will take all necessary action to ensure that the wrongdoers are dealt with under the laws of this country." – "However, it must be reiterated that there was no intention or understanding whatsoever at any stage, to either slow down or shelve the work of the Special Presidential Commission inquiring into the circumstances relating to the alleged fraud and misdeeds behind the Hilton project and that it remained the intention of the government, that if any wrongdoing is discovered or found by the Commission, such activity will be dealt with severely under the laws of this country."

F.J. & G. De Saram, lawyers of Hotel Developers (Lanka) Ltd., have stated to Court, that the Hilton Settlement agreements and all documents pertaining thereto had been placed before the Special Presidential Commission, prior to the said agreements being signed in June 1995 and that the Commission had no objection thereto; thereby by implication drawing a distinction with the other agreements executed by the government, without such transparent public disclosure. Mrs. Lakshman Kadirgamar is also a partner of the law firm F.J. & G. De Saram, whose partner U.L. Kadurugamuwa on the Thawakkal transaction had alerted the Minister Lakshman Kadirgamar, who on that occasion penned the famous words –" I repeat that I am deeply troubled. Those of us who wish to see that at least the basic tenets of honest Government are observed by our Government cannot rest content until this matter is fully investigated".