

## **PIOUS RHETORIC ON POLL VIOLENCE**

The entire cabinet of ministers of the People's Alliance government, without any exception, would stand collectively fully responsible and accountable for the fiasco at the Wayamba provincial council elections, whereat the democratic rights of the people have been devastated and the franchise of the people plundered, as unreservedly endorsed by a wide spectrum of respected members of society, including religious leaders.

If any cabinet minister had wished to have himself disassociated from such collective responsibility, then, there was no compromise available, but to have resigned according to one's conscience and principles valued. Mere pronouncements of rhetoric statements would be of no avail to evade responsibility.

It is the government of the day that is entrusted with the sole responsibility of ensuring the good governance of the country, for which the entire cabinet is collectively responsible. The conduct of free and fair elections is an integral part of good governance and is the onus and responsibility of the incumbent government.

In a civilised democracy failure to discharge such duties and responsibilities would only demand the honourable resignation of a government. A government ought not to proffer any excuses for its inability to have effectively governed. In the least, to establish the bona-fides of its credibility, the People's Alliance government ought to have taken action under the law to have apprehended the miscreants, whomsoever, they may have been.

### **ELECTION COMMISSIONER'S STAND ?**

The criticisms and condemnation of widespread violence and malpractices at the Wayamba provincial council elections have been unprecedented, with the Commissioner of Elections, Dayananda Dissanayake, himself, leading the way, remorsefully acknowledging that this was the worst elections in his entire experience and that he was not satisfied with the elections. That was his unqualified certification on the concluded Wayamba provincial council elections.

Such unreserved indictment by the very officer of the government constitutionally vested with the onus and responsibility of conducting free and fair elections, most certainly puts in issue the very legitimacy and validity of such elections. The Commissioner of Elections having publicly so declared, would he now not be estopped from pleading otherwise before the Supreme Court, where the legitimacy and the validity of the Wayamba provincial council elections are being challenged ?

In the light of the grave strictures made by the Supreme Court on his conduct and actions in the postponement of the other elections in the Western, Central, North Central, Uva and Sabaragamuwa provincial councils, would not the Commissioner of Elections have no alternative, but to submit to Supreme Court, the very same public pronouncements he had made on the Wayamba provincial council elections, admitting that he was not satisfied with the said elections and that it was the worst elections in his entire experience ?

Should the charge, that the Wayamba provincial council elections are not legitimate and not valid stand unchallenged by the Commissioner of Elections in the Supreme Court, then would it not stand to logical reason, that it is common ground that the elections are not legitimate and therefore not valid, without any contest thereon ? The Attorney General, Sarath Silva P.C., would, no doubt, be representing the Commissioner of Elections in the Supreme Court.

In the given scenario, it would be most apt and appropriate to cite the following extracts from the Key-note Address made by Attorney General, Sarath Silva P.C., to the National Law Conference of the Bar

Association of Sri Lanka held on March 1, 1997. On the role of the Attorney General on constitutional and public matters, Attorney General, Sarath Silva P.C., then propounded thus:

"In advising the government, he has to form his opinion after considering the legal principles as well as the practical effect of his advice. This does not mean that his advice should besides being correct be somehow favourable to the government. Thus where any question in respect of which his advice is sought has arisen out of political controversy or has political overtones, his opinion should be objective and fair to the parties affected. No doubt he must have due regard to the desire of any government to realise its legitimate aspirations and the political problems ministers have to contend with. However, it is his duty to advise the government to act within the law in implementing its policies."

The Attorney General, Sarath Silva P.C., on that occasion further opined that – "By convention, any citizen is free to complain to the Attorney General of injustices by administrative officials or neglect of public duties. The Attorney General is competent to call for reports in such cases and to arrange for redress administratively in appropriate cases so that aggrieved persons will be saved the trouble of litigation which can be both expensive and protracted".

### **MERE WORDS – NO DEEDS ?**

Notwithstanding the unprecedented public outrage, so far no one has been held responsible and accountable under the law, for openly perpetrating such violence and malpractices in the very presence of the law enforcement authorities. The advocacy to appoint committees to inquire is patently to avoid the issue. Surely, the law enforcement authorities ought to have by now taken warranted action to apprehend those, who had been responsible for such violence and malpractices in blatant violation of the law ? Ought not several of such persons have been apprehended and brought before courts of law ? Would not the inability to have done so, only speak volumes of the government's competence and/or commitment to enforce the rule of law ?

In this given scenario, it is both sad and amusing to see the minister of justice, G.L. Peiris, meekly advocating the pursuance of changes to the electoral process, ignoring the burning issues at hand of blatant violence and malpractices openly perpetrated in breach of the law, destroying democracy. Is it akin to the case of Nero's fiddling, whilst Rome was burning ? Constitutional and/or statutory provisions, however idealistic, would be futile, if a government enthroned in office to rule, fails to uphold and enforce the rule of law. In such regard would not minister G.L. Peiris admit that the People's Alliance government, of which he is the minister of justice, has miserably failed ?

Foreign minister, Lakshman Kadirgamar P.C., who decried the aberrations to democracy by the former United National Party regime, once exhorted his cabinet colleagues to strictly uphold the rule of law without any compromise, with his famous words in writing – "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". Having so propounded profoundly he has very patently not taken any action, whatsoever, when the basic tenets of honest government have been blatantly violated by the government of which he is a responsible minister !

President Chandrika Bandaranaike Kumaratunga, herself, had been reported to have acknowledged the widespread violence and malpractices at the Wayamba provincial council elections, in that, *The Sunday Times* of February 7, 1999 reported that she had indignantly reprimanded the cabinet of ministers thus – "It was a shameless exercise. My name has been tarnished. I am being blamed for all that the others have done by stuffing the ballot boxes. I am taking a decision to dissolve the provincial councils. Some people advise me to dissolve the provincial councils, whilst some others tell me to remove ministers who are found to have indulged in poll malpractices. Yet some others wanted me to go to London. I am fed up with this situation".

The aforesaid news report has not been controverted, nor has President Kumaratunga taken any one of the reported contemplated actions, – i.e. to dissolve the provincial council, – or to remove the ministers, who are found to have indulged in poll malpractices, – or to decamp to London.

### **ENFORCEMENT OF THE LAW**

President Kumaratunga, as the Minister of Defence is primarily responsible for ensuring the maintenance of law and order in this country and causing deterrent action to be taken in terms of the law, by the law enforcement authorities of the government, when the law of the land has been breached. To discharge such responsibility, she has the Deputy Minister of Defence, Anuruddha Ratwatte, the Secretary Ministry of Defence, Chandrananda de Silva (a former Commissioner of Elections, himself) and the Inspector General of Police, Lucky Kodituwakku – all functioning under her direction and control. As the President, she is also the Commander-in-Chief of the Armed Forces.

Contrary to the aforesaid tell-tale pronouncements reported to have been made by President Kumaratunga, curiously why has no deterrent action, warranted under the law, been reported to have been taken to apprehend the miscreants responsible for such shameless violence and malpractices and to bring to book such culprits before courts of law ? Surely, ought not the President, as the Minister of Defence, have given leadership and requisite directions for the law enforcement authorities to have taken warranted action to uphold the rule of law irrespective of the persons concerned, free of any fear or favour ? Why has no legitimate action been taken ?

Interestingly, the business leaders, who came forward to usher in a bi-partisan political approach towards the resolution of national issues have issued a circular dated February 16, 1999, inter-alia, stating:- " You would have also seen the full page advertisements which the Committee placed in several newspapers prior to the Wayamba provincial council elections and the quarter page advertisements after the elections. These advertisements were placed with the intention of creating an environment that is conducive to bi-partisan approach to national issues. Despite the drawbacks, the Committee is determined to proceed undaunted in achieving its goals".

"The cost incurred in whatever that has been done to date is approximately Rs. 3 million and we anticipate that further substantial sums of money will have to be expended in what may well be a long and arduous task ahead. The entities involved in this initiative are not in a position to fund such a large scale exercise. We are certain that you will appreciate that the initiative taken by the business community is indeed a very laudable one and that the economic development of our nation will, among other factors, depend on the success of its endeavours. We therefore write to appeal to you to make generous contributions to the fund that has been set up to support this initiative."

"We shall be grateful if you could forward your contribution, drawn in favour of, and to:- The National Committee for Peace and Economic Development, C/o Deshamanya Lalith Kotelawala, The Ceylinco Group of Companies, 55, R.A de Mel Mawatha, Colombo 4."

Though the business leaders claim, that the strategy of placing advertisements in the media was with the intention of creating an environment, that is conducive to a bi-partisan approach, such strategy of the business leaders, however, had hopelessly misfired making it a futile exercise. Other than mere make belief, what real impact did such advertisements have and what were the tangible results ?

On the contrary, ought not the business leaders, committed to peace and economic development, moot that the law enforcement authorities uphold and enforce the rule of law, irrespective of the persons concerned, without any fear or favour. Surely, upholding and enforcing the rule of law is vitally the pre-requisite to ensure peace and economic development of the country, as amply evidenced in Singapore demonstrated by Prime Minister Lee Kuan Yu. Should not this be the crucial urgings that ought to be

made by the business leaders to President Kumaratunga and her government ? Are the business leaders unable to do so ? If so, why ?

### TO SHUN CRIMINALITY & CORRUPTION



Lalith Kotelawala



Ken Balendran

Have any of the business leaders have had any dealings with the highest levels of government, seeking favours and concessions in the promotion of their private business interests, including the settlement of any pending litigations involving government agencies ? If so, ought not the same be transparently disclosed in furtherance of the very public and national interests that are being publicly focused upon and upheld ? In such circumstances, could one act independently and fearlessly, which is the crying need of the hour in this country to safeguard democracy ?

On the other hand, could the business leaders pronounce in categorical terms, that they and/or their members had not generously doled out any political donations for financing the conduct of the election campaigns, which regrettably turned out to be replete with violence and malpractices, now condemned all round by those right thinking members of civil society ? In funding election activities, would not the hands of the business community also be tainted, with indirect responsibility for such shameless violence and malpractices, that only destroy peace and frustrate economic development ?

Significantly, in the foregoing context, the following extracts from the declaration recently made in Kathmandu by the Election Commissioners of South Asia, i.e. India, Nepal, Pakistan and Sri Lanka, would be pointedly very pertinent – "Express the urgent need to check effectively the growing influence of money and muscle power in manipulating electoral process and affirm that such unscrupulous practices should be prevented: – appeal to political parties to field competent, upright and honest candidates totally discouraging aspirants with criminal record and corrupt record, in the larger interest of democracy; and – .... express the unanimous opinion that reform in the functioning of the political parties, including reform aimed at ensuring their financial transparency, would greatly promote Elections Commission's endeavours to ensure free and fair elections."

Ought not the business leaders, if staunchly and seriously committed to peace and economic development, seriously move to ensure the achievement of and adherence to these cardinal principles propounded in the declaration made as recently as February 14, 1999 by the Commissioners of Elections of South Asia for the wellbeing of civilised democracy ?

To start with, would and could the business leaders resolve to distance themselves from and shun politicians and political aspirants with criminal record and/or corrupt record, as the Commissioners of Elections have pleaded for, in the interest of preserving democratic and civilised society ? Why would the business leaders be unable to do so ?

*- Published in The Sunday Leader on 21.2.1999 by Nihal Sri Ameresekere under the pseudonym 'Bismark'*