

## THE BETRAYAL OF AIR LANKA

*The Sunday Leader* last week focussed upon the privatisation transaction of Air Lanka Ltd., carried out by the Public Enterprise Reform Commission [PERC]. This privatisation transaction, contrary to all enunciated policies of the People's Alliance Government, that professed to uphold absolute transparency in public transactions, publicly decrying the hatching of deals by those referred to as cronies, had, nevertheless, been carried out by the People's Alliance government without any consideration or regard, whatsoever, to such publicly avowed policies, and had been blatantly carried out by some handpicked persons. sans the practice of such much avowed transparency.



Kumaratunga — Lid on transparency

*"The government's approach to privatisation will be distinguished by full transparency and accountability, which have been notoriously absent in the past. There will be no crony privatisation"*

### WHY SUCH NON-DISCLOSURE ?

Let alone the issues of public disclosure, transparency and public accountability on such an important public transaction, the privatisation of Air Lanka Ltd., was a transaction of national economic proportions, concerning also sovereign rights of the country, ironically negotiated and finalised by a coterie of persons, keeping such negotiations in the shade as it were, away from the public glare and disclosure. Why? What is the experience and competence of those, who have apparently spearheaded and handled this Air Lanka privatisation transaction and are functioning, as spokesmen for the government? Could they explain to the public, as to why this privatisation transaction has been carried out in such questionable manner?

Let alone full public disclosure, warranted by the policies on transparency, that were heralded by none other than the People's Alliance government, with leadership given thereto by President Chandrika Bandaranaike Kumaratunge, herself, ironically, the very Board of Directors of Air Lanka Ltd., who ought to have been seriously concerned with all relevant matters and issues pertaining to privatisation of their own organisation, a public limited liability company, had quite apparently been kept in the dark. Why?

The Air Lanka Ltd., privatisation transaction did not concern the mere sale only of a 40 % shareholding of the government in Air Lanka Ltd. On the contrary, the privatisation transaction had included negotiations and decisions pertaining to the future management and strategic arrangements concerning all areas of business operations of Air Lanka Ltd., including a colossal capital commitment to acquire 5 new Airbus aircrafts on an exclusively negotiated basis. Ought not such matters have been of primary concern to the Board of Directors of Air Lanka Ltd.? If not, why not?

## **HOW DID PERC ACT ?**

*The Sunday Leader* last week dealt with the powers of PERC under the Public Enterprise Reform Commission Act No. 1 of 1996 [PERC Act No. 1 of 1996]. Clearly, Section 5(e) of PERC Act No. 1 of 1996 empowers PERC to make recommendations to the government on the sale of shares of companies registered under the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act No. 23 of 1987 [Conversion Act No.23 of 1987].

Air Lanka Ltd., is not a company registered under such Conversion Act No. 23 of 1987, but is a company incorporated in 1979, under the then Companies Ordinance, now replaced by the Companies Act No. 17 of 1982. In such circumstances, the question necessarily arises, as to whether in fact, PERC had had statutory right and power to have so acted and to have so dealt with, the sale of shareholdings of Air Lanka Ltd., which clearly does not come within the meaning of the provisions of Section 5(e) of the PERC Act No. 1 of 1996. If so, how was it handled by PERC?

Given the said legal provisions, the question arises as to whether, PERC had acted ultra vires the provisions of the PERC Act No. 1 of 1996 and accordingly, as to whether such Air Lanka privatisation transaction would be legally valid ? Given such scenario, would a future government be bound to honour such privatisation transaction, carried out in such questionable and secretive manner?

## **ROLE OF AIR LANKA BOARD?**

Had the Board of Directors of Air Lanka Ltd., considered and deliberated upon, the strategic decisions that have been made, pertaining to the management and future operations of all areas of business operations of Air Lanka Ltd., and the acquisition of 5 Airbus aircrafts, on an exclusive negotiated basis, entering into a colossal capital commitment thereby? If not, why not? Ought not such strategic decision making have been the exclusive prerogative of the Board of Directors of Air Lanka Ltd.? Had the officials of PERC, who handled the negotiations and finalisation of such decisions, usurped such statutory functions and right of the Board of Directors of Air Lanka Ltd.? How could this have been right and proper in the first instance?

The Parliamentary Committee on Public Enterprises (COPE) had summoned members of PERC for examination, on the premise that the members of PERC had not disclosed correctly to COPE, the facts pertaining to the Air Lanka privatisation deal at a meeting had before COPE just 24 hours prior to the signing and conclusion of the Air Lanka privatisation deal. COPE had been led to believe, that the negotiations pertaining to the Air Lanka privatisation deal was still pending at that time? How and why had it been so held out?

## **PERC & SEC**

For PERC to have made recommendations to the government, the members of PERC would have had to have had several meetings constituted as the Commission, to have considered and deliberated upon the said Air Lanka privatisation negotiations and to have had made the final recommendations to the government. When were such meetings of PERC held, to deliberate upon and decide to make the final recommendations to government? If such meetings of the Commission, as statutorily required, had not been held, why and who would be held accountable and responsible therefor?

The Director General of the Securities & Exchange Commission [SEC] is also statutorily a member of PERC. The SEC is the regularity authority mandated with power to ensure the proper functioning of listed public companies. Given such scenario, how could the Director General, SEC, allow and/or permit himself to be compromised and to be a party to the carrying out of a public transaction in such questionable manner? How could he, in such circumstances, enforce the duties, responsibilities and obligations of Directors of listed public companies and public disclosure to the investing public?

## **TENDER PROCEDURES SHUNNED?**

Air Lanka Ltd., upto the point of privatisation, was a government owned company and accordingly, the procurement and tender procedures applicable to governmental institutions, including public corporations and government owned companies, would have applied to Air Lanka Ltd. Had those, who had exclusively negotiated to procure 5 Airbus aircrafts for Air Lanka Ltd., at a colossal cost, adhered to such procurement and tender procedures that have been clearly laid down? On the contrary, have such procurement and tender procedures been blatantly and grossly violated? If so, who would be held accountable and responsible therefor? Would not the adherence and conformity to laid down policies and procedures applicable to procurement in the public sector and public accountability, be of even greater significance and importance, than the policies on public transparency?

In the foregoing scenario, could one truly assert, that the Air Lanka Ltd., privatisation transaction had been transparently carried out, in conformity with the policies on transparency, that had been held out to the public of this country by the People's Alliance Government in coming into power? Is transparency of inimical and nuisance value and obstructive to the hatching of a privatisation transaction by a closeted few? Are these not public transactions demanding public scrutiny in a transparent manner and demanding public accountability, from those who have so acted?

## **UNP & AIRBUS**

Ironically, the People's Alliance in coming into power, had made the procurement of Airbus aircraft by the former UNP Government a major public issue on its political platform, even threatening to cancel the deal. However, let alone cancelling the deal entered into by the former UNP government for the procurement of Airbus aircraft, the People's Alliance, upon assuming the mantle of power and office of government, quite unconcerned of commitments made in its election campaign in coming into power, in fact, acquiescing and/or concurring with such order placed by the former UNP government to procure Airbus aircraft, took delivery of 3 balance Airbus aircraft, against such very order. Has this not thereby made a mockery of political accountability and responsibility?

The procurement of Airbus aircrafts by the former UNP government had been after having called for open competitive offers and a Technical Evaluation Committee/Tender Board having examined and evaluated the offers. Even the financial proposals for such procurement of the Airbus aircrafts had been decided upon after having received competitive proposals and an Evaluation Committee having evaluated such proposals. Nevertheless, for good reason, bad reason or no reason, such Airbus aircraft procurement transaction of the former UNP government had been publicly decried and castigated by the People's Alliance, whilst in the opposition.

## **PA & AIRBUS**

In contrast to the above, the procurement of Airbus aircrafts by the People's Alliance government, itself, has been sans such open competitive offers and evaluation processes, and had been packaged into a privatisation transaction of Air Lanka Ltd. Had even the Cabinet of Ministers had an opportunity to have examined, deliberated upon and gone into such an important and complex privatisation transaction of Air Lanka Ltd. touching upon even the sovereign rights of the country ?

Ought it not have been moreso the responsibility of the Cabinet of Ministers, given the public hue and cry that had been created by the very People's Alliance political leaders, who ironically as members of the People's Alliance Cabinet of Ministers, sanctioned such privatisation transaction of Air Lanka Ltd., with a packaged procurement of Airbus aircrafts on an exclusive negotiated basis ironically having publicly decried and castigated the very Airbus aircraft procurement by the former UNP government.

Not only, did the People's Alliance publicly criticise and castigate the Airbus aircraft procurement transaction of the former UNP government, but also in fact, President Kumaratunge appointed a Special Presidential Commission of Inquiry of 1995, to, inter-alia, specifically inquire into the purchase of Airbus aircraft by Air Lanka Ltd. The Schedule to the Warrant that gazetted the appointment of the Special Presidential Commission of Inquiry of 1995 in Gazette Extraordinary No. 858/4 of February 14, 1995 itemised the purchase of Airbus aircraft by Air Lanka Ltd. as the very first item on the said Warrant. Would not the public of this country in the public interest be entitled to know, as to what became of such inquiry or whether such inquiry was not had, and if so, why?

### **WORLD BANK & AIRBUS**

It had been reported that the World Bank had commented adversely on the procurement of Airbus aircrafts by the former UNP government in a World Bank country review report on Sri Lanka, pointing out the considerable impact on the country's balance of payments, specifically arising from the procurement of Airbus aircrafts. In such context, one wonders what the World Bank would have to say now, on the recent privatisation transaction of Air Lanka Ltd., which has packaged the procurement of Airbus aircraft on an exclusive negotiated basis? President Kumaratunge in her Policy Statement to Parliament on January 6, 1995 asserted - *"The Airbus deal and the ground bus deal had particularly offended the international financial institutions."*

Would not the public of this country, whose living conditions are invariably determined, as a consequence of World Bank dictates, have a right to be entitled to know, as to whether the World Bank approves the method and manner in which the privatisation transaction of Air Lanka Ltd., had been carried out, including packaging the procurement of Airbus aircrafts on an exclusive negotiated basis, particularly given the policy on transparency and public accountability pronounced by the World Bank President James D. Wolfensohn publicly, threatening even to black ball projects lacking in transparency.

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