

THE SCANDAL THAT IS KOTAGALA

The Sunday Leader this week, turns the spotlight to focus upon, the highly controversial transaction pertaining to the privatisation of Kotagala Plantations Ltd., that had been carried out by the Public Enterprise Reforms Commission [PERC]. Several expose's, as a consequence of investigative journalism, had been extensively published in the print media, subjecting this highly controversial privatisation transaction of the government, to much discussions and deliberations, at various forums and social circles in the city.

Though, very much had been so written and spoken about, *The Sunday Leader* is of the view, that a clear and comprehensive picture of this very controversial privatisation transaction carried out by PERC, had not, however surfaced transparently, to expose to the public, as to what actually had in fact transpired, except for the publication of certain aspects of the several controversial issues and veiled allegations, made by various parties, concerning certain other parties; ironically, all of whom had been the very actors in this national drama, that unfolded with public outcry.

EXCHANGE CONTROL ACTIONS ?

This highly controversial privatisation transaction of Kotagala Plantations Ltd., becomes quite topical today, given the current scenario, that President Chandrika Bandaranaike Kumaratunga, as the Minister of Finance, is at this very moment of time, considering the Appeals that have been made to her, as the Minister of Finance, under Section 52 (7) of the Exchange Control Act, by several parties to this highly controversial transaction, on whom the Controller of Exchange, M.R. Fernando, obviously acting in concurrence with the Governor of the Central Bank, A.S. Jayawardena, upon investigations carried out, had imposed severe penalties running into hundreds of millions of rupees. The Controller of Exchange of course, would have acted on the advice of the Attorney General and ought to have carried out comprehensive investigations accordingly.

At the time of this highly controversial privatisation transaction of Kotagala Plantations Ltd., in 1995, A.S. Jayawardena was then, the Secretary of the Ministry of Finance and as such, he was also then known to be a Member of PERC. Dr. P.B. Jayasundera, present Deputy Secretary Treasury and Chairman, PERC, was also known to have been a member of PERC at that time. Would not the Appeals made under the Exchange Control Act to the Minister of Finance, be a subject coming under the purview of the Deputy Secretary to the Treasury, Dr. P.B. Jayasundera, under whom the Economic Affairs division of the Ministry of Finance functions?

The Island of July 23, 1997 reported the imposition of such huge penalties by the Controller of Exchange on several parties under the caption "Principal parties fined in proportion to profits made - Merchant Bank rapped hardest in Kotagala deal". In addition to the Merchant Bank of Sri Lanka Ltd., as reported, the other parties fined by the Controller of Exchange, had been, George Steuarts & Co. Ltd. and certain other group companies and certain directors of George Steuarts & Co. Ltd., Rovenco Co. Ltd. of Thailand, two Malaysian nationals and Lankem Ceylon Ltd. It was further reported that the Controller of Exchange would be calling for explanations from the Bank of Ceylon, Julius and Creasy, Attorneys-at-law, and Secretaries & Registrars Ltd., an associate company of Ford, Rhodes, Thornton & Co., Chartered Accountants.

REFLECTING BACK !

Before proceeding any further, to recollect some of the controversies, that arose shortly after the privatisation transaction of Kotagala Plantations Ltd., it would be quite pertinent and relevant to throw back on some of the statements, that had been published in the print media, and had stood uncontradicted by the parties, who reportedly had made such statements to the media.

The Sunday Leader of December 24, 1995 reported thus - "Public Enterprise Reforms Commission [PERC] chief and Bank of Ceylon [BoC] Chairman Rajan Asirwathan, calling it "immoral", said that the Government could do nothing about it, as this was due to privatisation. Asked whether the state cannot take action against the company concerned, he replied that if action was to be taken, it would reflect very badly on our democracy".

The Sunday Leader of December 31, 1995 under the caption "Chandrika tells PERC to file action against George Steuart's" quoted the then Chairman PERC, Rajan Asirwatham to have stated - "I am frankly dismayed at what this company has done. They have let down the entire private sector by their actions". The company concerned referred to therein presumably being George Steuarts & Co. Ltd. It had also been confirmed by the then Chairman PERC, Rajan Asirwatham, that President Kumaratunga had directed PERC to consider immediate legal action against George Steuarts on allegations pertaining to the sale of Kotagala Plantations Ltd.

Accordingly, PERC had retained the law firm, Julius & Creasy in such regard. *The Sunday Leader* of January 7, 1996 reported that Julius & Creasy, Attorneys-at-law acting on behalf of PERC had written to George Steuarts & Co. Ltd., querying the basis, on which they had sold Kotagala Plantations Ltd., and that PERC had had legal consultations with Romesh de Silva P.C. with regard to George Steuarts sale of Kotagala Plantations Ltd., to foreign investors. It was further reported that - "The BOI Chairman Thilan Wijesinghe said that BOI has given the approval only for the sale of 40 percent of the shares"

The Sunday Leader of January 7, 1996 in addition reported, that the Ceylon Chamber of Commerce Chairman and Lankem Ceylon Ltd., Managing Director, A.C. Gunesinghe had addressed a strongly worded letter to the Plantations Minister, Ratnasiri Wickramanayake, censuring, amongst other, the Kotagala privatisation transaction, inter-alia, stating - " The undue haste with which the BOI approval is said to have been given to this company to acquire the holdings in Kotagala Plantations Ltd., through the medium of George Steuarts Management Services (Pvt) Ltd., is also a cause for grave concern ... In this instance too, in order to ensure absolute transparency, the local partners should be called upon to disclose their identity and their sources of funding"

SCANDALOUS EXPOSURE?

The Ravaya of January 28, 1996 had its lead story captioned - "Rajan Asirwatham's Privatisation is also a scandal [*magadiya*]" in reporting, amongst other, the privatisation transaction of Kotagala Plantations Ltd., carried out by PERC. The *Ravaya* report, inter-alia, stated - "There is grave suspicion amongst business circles on the activities of PERC of which Rajan Asirwatham is the Chairman ... Whilst the Merchant Bank of Sri Lanka Ltd. of which Rajan Asirwatham is the Chairman had been the pivotal party to this [Kotagala] transaction, prior to the sale of shares to the Thai company, action to obtain BOI approval had been taken by Secretaries & Registrars Ltd., of which Rajan Asirwatham is a Director ... If the state

controlled plantations had been sold at such a low price of Rs. 10/- per share, without any competition, to enable the parties to resell the same, and reap huge profits, then the question arises, as to why these plantations had not been sold on a competitive basis for the government to have received a much greater revenue ?" [Translation]

The then Chairman, Colombo Stock Exchange, Ajit Jayaratne was reported in *The Sunday Leader* of January 28, 1996 to have pointedly stated — "Privatisation is not coming into the trading market as it should. We will be making immediate representations of all facts to the government".

CHALLENGE & CALL FOR COMMISSION !

The *Ravaya* of January 28, 1996 reaching the news stands on Friday, January 26, 1996, *The Sunday Leader* of January 28, 1996 reported a statement promptly made by the then Chairman, PERC thus - " Asirwatham said he will request the President to appoint a Commission with the Editor of *Ravaya*, Victor Ivan as Chairman and former Finance Ministry Advisor, Nihal Amarasekera as a Member. I want to clear my name as well as the handling of the government's privatisation programme. If the Commission finds me guilty of any wrong-doing I will resign immediately".

In addition, the then Chairman, PERC, Rajan Asirwatham also threw out a challenge to the *Ravaya* Editor, Victor Ivan, that if he, Victor Ivan could establish wrong-doing as published, then that he would resign from all positions held, and if Victor Ivan becomes the wrong-doer, that then he should donate rupees one million to a kidney fund established for the needy - vide *Divaina*, January 30, 1996.

Nevertheless, immediately thereupon, apparently after consultation with President Kumaratunga, Chairman, PERC, Rajan Asirwatham had made a complaint to the Criminal Investigation Department against the *Ravaya* Editor, Victor Ivan, for such publication - It was then speculated that DIG, CID, Sumanasekera, himself, had gone to Mr. Rajan Asirwatham's Ford, Rhodes, Thornton & Co., Chartered Accountants' office, to have recorded such complaint. Consequently, CID officers had recorded the statement of *Ravaya* Editor, Victor Ivan, who had firmly stood by his publication made in the public interest.

Sometime thereafter, *The Sunday Times* of June 2, 1996 quoted Chandra Jayaratne, a then Member of PERC and Director of Lankem Ceylon Ltd., to have stated - "I have not participated in any transaction related to Kotagala or anything related to PERC ... I have made a declaration of interest to PERC and I have made a declaration of my interest to Lankem." Few days thereafter, it was reported that Chandra Jayaratne had resigned as a member of PERC.

CONTROVERSIAL PRONOUNCEMENTS?

The Island of June 6, 1996, inter-alia, reported thus - "President Chandrika Bandaranaike Kumaratunga at a special press conference last Friday said that no shares of Kotagala Plantations would be transferred and that legal action was being taken. 'No room will be left for this kind of dishonest and fraudulent actions' she said". It was further reported therein - "PERC duly initiated an inquiry into the transaction and appointed the law firm Julius and Creasy to probe the deal. Early last month Mr. R. Senathiraja a Partner of the law firm in an interview with '*The Island*' at first said that there was no investigation, but later admitted that there was indeed an investigation into the transaction".

At that same time, *The Sunday Times* of June 16, 1996 reported Chairman PERC, Rajan Asirwatham to have stated at an interview given by him - "I agree that this whole matter has been most disagreeable"

Under the caption "Kotagala deal legal action to be taken against wrongdoers", *The Island* of August 3, 1996, reported - "The Attorney General said on Thursday that the controversial Kotagala deal would not be rescinded in toto, but that action would be taken in respect of violations of any existing law ... when asked whether fraud had been committed in respect of the deal, he replied that fraud had not been committed in that sense and that the relevant parties had made use of the low prices. He however conceded that the regulations as regards the control of exchange had been violated."

Under the caption "Exchange fraud alleged in Kotagala Plantations sale" - *The Island* of June 13, 1997, inter-alia, reported - "There is evidence of a massive scale foreign exchange fraud in the privatisation of Kotagala Plantations Ltd., Minister of Justice and Constitutional Affairs and Deputy Finance Minister Prof. G.L. Peiris said yesterday. The Exchange Control Department and the Attorney General's Department will determine the credibility of the explanations of the persons, who are alleged in this fraud. Prof. Peiris told a group of Parliamentarians during a discussion on the subject of Finance." PERC coming within the ambit of the Ministry of Finance, would be functioning under the purview of the Deputy Minister of Finance and the Minister of Finance.

SUNDAY LEADER TO PROBE !

President Kumaratunga having appointed several Commissions to probe various allegations and issues pertaining to the period under the previous regime did not, however, appoint a Commission to probe the privatisation of Kotagala Plantations Ltd., even though the Chairman PERC, Rajan Asirwatham, himself, had specifically exhorted, that such a Commission be appointed by the President. Rajan Asirwatham, partner of Ford, Rhodes, Thornton & Co., Chartered Accountants, was known to have been a close political confidante of President Kumaratunga, and also to have had a professional relationship.

Since President Kumaratunga did not favourably respond to the request of Rajan Asirwatham and appoint a Commission, as had been requested by then Chairman, PERC, Rajan Asirwatham, to comprise of Editor *Ravaya*, Victor Ivan, who had published several exposures on corruption in actively supporting the People's Alliance election campaign of President Kumaratunga and also comprising of former Advisor Ministry of Finance, Nihal Amarasakera, who had been enlisted by President Kumaratunga to the Ministry of Finance for his reputation and prowess in privatisation and commercial investigation, *The Sunday Leader* in the public interest deemed it apt and fitting to carry out such probe, to place the correct facts before the public, as had been enacted by all parties to this national drama that created quite a controversy.

The Sunday Leader would endeavour through the process of investigative journalism, to place before the public of this country, the relevant and pertinent material facts pertaining to this highly controversial transaction, in the true spirit and practice of transparency, as opposed to what is witnessed today, as mere loud lipped service, fashionably paid to the concept of transparency, for mere political expediency and accordingly invite, any interested persons of the public to forward relevant documentations and informations in this regard.

- Published in *The Sunday Leader* on 15.2.1998 by Nihal Sri Ameresekere under the pseudonym 'Bismark'