

FREE SHARES: MISLEADING OFFER

The Sunday Leader analytical exposure on the privatisation of the first six plantation companies have caused shock waves of incredulous disbelief in respected business circles, that staunchly believe in concepts of free and fair open competition on a level playing field, justice and fair play. A business deal ought to be a fair and equitable to all those concerned; even more so in this instance, since the plantations were a valuable national asset, that belonged to the people of this country.

As to how such highly questionable inequitable deals, with such unjust blatant enrichment to certain pre-selected parties, without any open competitive bidding on a level playing field, at colossal losses to the government i.e. the public, ever came to be flagrantly perpetrated, ironically under the very stewardship of a government, that vociferously, but correctly, criticised some of the privatisation of the past, even enacting special legislation in such regard, goes beyond all fertile imagination and comprehension.

These were some of the very first privatisations under this government, that had committed itself to very high profile policies on transparency, public accountability and the elimination of corruption, which were some of the core public issues on the election platform, that brought this government into power and threw out the former government.

The government's such policies were made loud and clear to all those concerned right from the very outset. Most of all, the members of the Public Enterprise Reform Commission [PERC], ought to have strictly acted in adherence to such well enunciated policies of the government and in compliance therewith; moreso particularly, the PERC having function directly under her President, Chandrika Bandaranaike Kumaratunge, who staunchly spearheaded and championed the cause of such noble objectives of transparency, public accountability and the elimination of corruption.

The Government at the very outset openly exhorted public officers, which obviously, also included the members of PERC, to act independently and fearlessly in strict conformity with such government policies emphatically enunciated, without at any time being subservient and lackeys to any socio-political interference or influence from, whatsoever quarter.

In fact, to ensure compliance with such well enunciated government policies and as a deterrent to prevent the transgression of such very policies, no sooner the government assumed office, without wasting much time as early as October 1994, the government enacted new legislation to deal with corruption by any public officer, which also included any Minister or Deputy Minister. The opposition readily and willingly unanimously supported the adoption of such legislation. Without any doubt, it was the force of strong public opinion that was then prevalent, that resulted in such legislation.

GOVERNMENT POLICIES VIOLATED

Responding and reacting to such public opinion that was then prevalent, the government was justifiably critical of some of the past privatisations. Her Excellency the President, who gave the leadership in furtherance of such noble objectives and policies, in the government's very first policy statement to parliament on January 6th, 1995, inter-alia, stated:

"In the name of privatisation, the past regime had engaged in virtual daylight robbery of valuable national assets ... Many of these ventures were grossly undervalued by reducing their sale price by as much as 2/3rd or 3/4th of the actual value ... Nowhere in the entire world would you come across such brazen pillage and plunder of a people's wealth ... 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 in the future ... We have also to ensure that the process of government is transparent and free of corruption, and that everyone in public life is accountable for their actions."

In moving the vesting orders in respect of six of the previous privatisations under the special legislation enacted, Minister G.L. Peiris was quite emphatic in upholding such committed policies of government, when he asserted that, the government would invoke both civil and criminal legislation, against those, who caused such loss to the state. In such context, how would the colossal losses caused to the state on the first six plantation privatisations, compare with the losses to the state on these previous privatisations, in respect of which vesting orders were moved by Minister G.L. Peiris, being quite critical thereof? Accordingly, should not Minister G.L. Peiris take prompt and immediate effective action, as so held out, on these plantation privatisations? If not, why?

Have not these plantation privatisations, not only been the mere giving away of family silver, but in the case of some, the giving away of family silver with a pot of gold? As to how such privatisations were brazenly and fearlessly perpetrated, by those who were entrusted to do so, under the very tenure of this government, that had emphatically enunciated such policies, as aforesaid, and had been so very critical of crony capitalism, is shockingly unbelievable; this only stands to the credit of the ingenuity of those involved. Why was there no concern or any regard, whatsoever, to the government's avowed policies that were so emphatically deliberately spelt out on this very matter of privatisation? In such circumstances, how could any responsible government be indifferent without taking appropriate actions in such regard, in conformity with the government's own policies that had been so vigorously held out?

How could any right thinking person dismiss such shocking and devastating public issues, as mere mistakes? Why should the public be called upon to bear the burden of such costly price? Surely, should not those, who were responsible, be held accountable? Were these mere mistakes or skillfully intentionally designed and ingeniously executed deals, that benefited some very handsomely, at the cost of colossal loss to the state? If so, by whom? Were there any conflicting interests and other mitigating circumstances and relationships between those who handled such privatisations and those who so benefited?

10 % EMPLOYEE SHARES?

In contrast to its spotlighted reporting on losses caused to the state on previous privatisations, The Sunday Observer, whilst maintaining a deafening silence on this fiasco on the privatisation of the plantations and the consequent colossal losses caused to the state, in its issue on June 8th, 1997, reported that the new Director General, PERC, Mano Tittawella had stated - "The privatisation of the plantations is done not with sole aim of making money, but to manage an important sector of the economy by the private sector in a sustainable manner. The other factor was to develop the capital market in Sri Lanka."

Whether such privatisations were carried out for sustainable development of the public of this country or for the sustainable development for a few people only, is what the new Director General, PERC, Mano Tittawella ought to focus on. Would it not be Tittawella's bounden duty, to be concerned with what has transpired or is it that he opts to have blinkers on, unlike the former Director-General, SEC, Aritta Wikremanayake, who was man enough to stand up to question even the conduct and actions of the Chairman, SEC, C.P. de Silva - resulting in the matter precipitating before a Select Committee of Parliament? How does the Director-General, PERC Mano Tittawalle ever reconcile, all that has transpired on these privatisations of the plantations, with the publicly pronounced policies of the government ? How was the capital market ever to develop, when such 51% controlling interest in such a vital and nationally important sector of the economy was not even put up for competitive bidding on the Colombo Stock Exchange?



**M.P. Mahinda
Samarasinghe — raised
the question in parliament**

Just a case in point to ponder for Director-General, PERC, Mano Tittawella. The Island of the May 21st, 1997, carried the front page headline, that the Director-General, PERC, Mano Tittawella had assured [obviously to the public of this country] that 10% free shares of these plantation companies would be distributed to the estate workers. Mahinda Samarasinghe M.P. had previously raised questions on this very issue of the 10 % free shares, that were to be distributed to the employees in these plantation companies.

The Director-General, PERC, Mano Tittawella would no doubt have to look into the simple arithmetic, as to how the estate workers of these six plantation companies are to be given 10 % free shareholdings in these six privatised plantation companies, namely, Agalawatte, Horana, Kegalle, Kotagala, Bogawantalawa and Kelani Valley, all of which initially have a Rs 200 m share capital, comprising of 20 m shares of Rs 10/- each, and one golden share of Rs 10/- to be held by the government.

10.2m shares, i.e. 51 % initially, in each of these six plantation companies have been transferred to the respective management companies at Rs 10/- each. 4 m shares in each of these six plantation companies have been disposed of on the offer sale documents issued through the Colombo Stock Exchange. A further 3.8 m shares in each of these six plantation companies have been subsequently disposed of through the Colombo Stock Exchange, as one parcel in each case, except in the case of Kelani Valley, which appears to have been disposed of in two parcels - why?

This leaves just the balance 2 m shares in each of these six plantation companies in the hands of the Treasury Secretary, which 2 m shares are to be distributed free to the respective plantation company employees. This 2 m shares on the initial share capitals of the 20 m shares, in each of these six plantation companies no doubt at first glance would appear to be 10 %, but this is so, only superficially and misleadingly. What is the truth and real position?

As had been intentionally structured into these privatisation deals, with the conversion of the debenture loans into additional shares, that too at Rs 10/- each only, after two years from the end of the year 1995 i.e in 1997, the correct total share capitals of these six plantation companies after such conversions would be, - Agalwatte 25 m shares, Horana 25 m shares, Kegalle 25 m shares, Kotagala 32m shares, Bogawantalawa 33.5 m shares and Kelani Valley 34 m shares. Therefore, the 2 m shares to be distributed free to the employees in these six plantation companies would amount only to - Agalawatte 8 %, Horana 8 %, Kegalle 8 %, Kotagala 6.25 %, Bogawantalawa 5.97 % and Kelani Valley 5.88 %.

The Sunday Leader holds the Director-General, PERC, Mano Tittawella to stand by his such public assurance, that 10 % free shares would be given to the employees of these six plantations companies, particularly in background of the query raised by Mahinda Samarasinghe M.P. in this very regard. Should the privatisation of such nationally important sector, be dealt with in such superficial manner, or the public so blatantly misled?

NOT A MISTAKE

The 4 m shares, in each of these six plantation companies, that were placed on offer to the public had been divided into 2 separate portions i.e. 1.6 m shares were made available at Rs 10/- each, with maximum allotment of 1000 shares to a person and the balance 2.4 m shares were made available at prices to be tendered, with a maximum allotment of 800,000 shares to a person. Questionably, there was no conventional fanfare or professional promotional campaign to really promote the sale of these plantation company shares to the public. After all, it had been disclosed, by one who had been in the inner-most circles handling these plantation privatisations, that it was not in the interest of the Management Companies and the underwriters, to have promoted such sales of these plantation companies, whilst PERC however, ironically, was statutorily bounded in duty to have acted in the interest of the government and these plantation companies, which were owned by the government.

Such questionable objective of acting in the interest of the Management Companies and the underwriters, of course was achieved, in that, the lowest price registered through the ludicrously absurd price fixing formula, in respect of all these six plantation companies was incredibly Rs 10/- per share. Let alone the portions of 2.4 m shares on offer on prices to be tendered, even the portions of 1.6 m shares that were made available at only Rs 10/- per share, were hardly subscribed for in the case of all these six plantation companies. *The Sunday Leader* reliably learns that the number of shares subscribed out of the total 1.6 m shares offered in respect of these six plantation companies, were - Agalawatte 15,300 shares i.e. 0.95 %, Horana 17,400 shares i.e. 1.08 %, Kegalle 36,100 shares i.e. 2.25 %, Kotagala 117,900 i.e. 7.36%, Bogowantalawa 98,400 shares i.e. 6.15% and Kelani Valley 69,200 shares i.e. 4.32%. This is how successfully how such plantation company shares were marketed to the public by those, who handled the privatisation of these six plantation companies.

Such ridiculously low subscriptions achieved by not professionally promoting in the conventional manner, the sales of these six plantation shares - [handicapped by the ludicrously absurd price formula to register the lowest price to sell the 51% controlling interests, which was already committed to the Management Companies], - had been registered in respect of these six plantation companies -on the following dates, - Kotagala on October 24th, 1995, Bogawantalawa on October 24th, 1995, Kegalle on November 22nd, 1995, Agalawatte on November 22nd, 1995, Horana on December 19th, 1995 and Kelani Valley on December 19th, 1995. Even though such total failure was patently known from the very first issue, knowingly the members of the PERC had persistently pursued regardlessly. Why? Therefore, would it not be quite clear, that this was no mere mistake?

The Government abandoned the privatisation of the plantation companies in such questionable manner in December 1995 and thereafter, the 51% shareholding of the plantation companies were placed on the Colombo Stock Exchange for bidding, that too without the conventional fanfare and professional promotional campaigns. Why ? The controlling interest of 51% shareholdings in the following plantation companies, namely, Watawala, Maskeliya, Madulsima, Hapugastenne, Balangoda, Agarapatana and Udapussellawa, were sold in such a manner in the Colombo Stock Exchange as set out in the given Chart. Two more companies namely Maturata and Namunukula were subsequently sold to pre-selected bidders through the Colombo Stock Exchange, with minimum floor prices stipulated, however giving rise to several questions spotlighted in the media.

BALANCE PLANTATION COMPANIES PRIVATISED				
NAME	51% CONTROLLING INTEREST NO OF SHARES Mn.	PRICE PER SHARE Rs.	TOTAL PURCHASE CONSIDERATION Rs.Mn	SOLD IN
WATAWALA	10.2	30/-	306.0	DEC '95
MASKELIYA	10.2	21/5	219.3	JAN '96
MADULSIMA	10.2	10/-	102.0	JAN '96
HAPUGASTENNE	10.2	23/75	242.3	AUG '96
BALANGODA	10.2	41/25	420.8	SEP '96
AGARAPATANA	7.599	35/25	267.9	SEP '96
UDAPUSSELLAWA	4.845	65/25	316.1	OCT '96
MATURATA	10.2	45/75	466.7	MAY '97
NAMUNUKULA	10.2	40/-	408.0	JUN '97

GOLDEN SHARE

Former Minister of Plantations, Rupa Karunatilaka in May 1997, inter-alia, raised the question, as to how many of the privatised plantation companies, if any, have no government directors on their Board of Directors? Minister G.L. Peiris has been reported to have replied, that 9 such plantation companies operate without government nominated directors, but that the national interest and the interest of the government will be protected by the means of the Golden shareholding of the government. The government has one Golden share in each of the privatised plantation companies. The offer sale documents give the relevant clauses in the Articles of Association of these plantation companies, pertaining to the government's Golden share and its rights, as follows:

"2.23 The Golden share originally issued to the Secretary to the Treasury will subsequently be transferred by him to a company owned by the Government set up expressly for the purpose of holding the Golden Share of the Company and similar Golden Share of the other Regional Plantation Companies. The Board of Directors of this company will act under the direction of the Ministry in charge of plantations.

2.24 The rights of the Golden Share are as follows:

- The concurrence of the Golden Share holder will be required for the Company to sub-lease any of the estate lands leased/to be leased to the Company by the Janatha Estate Development Board/Sri Lanka State Plantations Corporation.[Note: The Ministry in charge of plantations has, as a matter of policy, already decided that requests by the Company for approval for sub-leasing to companies and projects approved by the Board of Investment and/or the Cabinet will be granted automatically.
- The concurrence of the Golden Share holder will be required to amend any clause in the Articles of Association of the Company which grant specific rights to the Golden Share holder.
- The Golden Share holder, or his nominee, will have the right to examine the books and accounts of the Company at any time with two weeks written notice.
- The Company will be required to submit a detailed quarterly report to the Golden share holder in a specific format within 60 days of the end of each quarter. Additional information relating to the Company in a specified format must be submitted to the Golden Share holder within 90 days of the end of each fiscal year.
- The Golden Share holders can require the Board of Directors of the Company to meet with him/his nominee, once every quarter to discuss issues related to the Company's operation of interest to the Government.
- The Golden Share must be owned either directly by the Government or by a 100% Government owned public company."

As to how the national interest and the interest of the government could be protected, as Minister G.L. Peiris has asserted, with the specific limited powers as above, would be very much in question even to a person, not so knowledgeable in the law. Even with the government's 100 % shareholding held prior to privatisation, the analytical exposures in *The Sunday Leader* clearly reveals how well, the national interest and the interest of the government have been protected, in these plantation privatisations that had been carried out and the consequent colossal losses caused to the government, that is the public. Surely, would it not have been very elementary, for the government to have held at least a 5% a shareholding, golden or otherwise, to have had the legitimate rights and protections afforded under the provisions of the Companies Act No. 17 of 1972, more specifically, the rights and protections afforded under Section 210 to 219 therein ?

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