

## **SEEKING JUSTICE ON THE DEALS**

“SEEK ye first the kingdom of politics and all else shall be added unto to you.”

This is the inscription carved on the base of the statue of Dr. Nkrumah outside the law courts in Accra, Ghana. Would not such truism be apt in the context of a number of countries in the world to-day, whether it be South America, Africa or Asia? Leaves it to the public of this country to ponder upon, as to what extent such prophetic statement in truth and reality is applicable to the kingdom of politics in Sri Lanka and to those, who since the independence of this country have sought such kingdom of politics.

The IMF and World Bank meetings pertaining to Sri Lanka are presently on, with the Sri Lanka Aid Group Meeting scheduled for May 1998. Last year, World Bank President, James D. Wolfensohn addressing the spring meetings of the IMF and the World Bank had focussed upon corruption and transparency. The world Bank President had underscored the prestigious Harvard University research, that had revealed that corruption was a major issue causing concern to voters.

### **WORLD BANK & PA GOVERNMENT OF CORRUPTION & TRANSPARENCY**

The world Bank President had emphatically asserted clearly to governments, that if there is corruption, the World Bank would black ball any project, emphasizing, that eliminating corruption has to be started at the highest levels of authority, stating that it needs to be cured at the top or that it will not be cured at all. Transparency International in its introduction on corruption quotes Henry Ward Beecher, who had captured the human condition stating – “There is no man that lives that can’t be broken down, provided it is the right, - “I can resist anything except temptation”

In the World Bank Staff Working Paper No. 580, David Gould and Jose a. Amaro Reyes reported – “Corruption is pervasive in the countries of Asia, Africa and Latin America. The government monopoly of economic activities in developing countries, when combined with conditions of political ‘softness, ‘widespread poverty and socioeconomic inequalities, ambivalence towards the legitimacy of government and its organizations and systematic maladministration, provide fertile grounds for corruption, which.... has a deleterious, of ten devastating effect on administrative performance and economic and political development, for example corroding public confidence, perverting institutions’ processes and even goals, favouring the privileged and powerful few, and stimulating illegal capital export or use of non rational criteria in public decisions.”

President Chandrika Bandaranaike Kumaratunga, who gave leadership, to espouse the cause of fighting corruption and uphold the policy of high profile transparency in public transactions, in the very first address of the People’s Alliance government policy statement to Parliament, interalia, stated – “No where in the entire world would you come across such brazen pillage and plunder of a people’s wealth... They have only succeeded in enriching some powerful persons close to the leadership of the last regime... 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.”

Sri Lanka being a country dependent upon IMF and World Bank financial support, no doubt would be required and/or obligated to conform to the policies pronounced last year by the World Bank President, James D. Wolfensohn, emphasizing the need to eliminate corruption and that it has to be started at the highest levels of authority, stating that it needs to be cured at the top or that it may not be cured at all, and threatening that World Bank would black ball any project, if there is corruption. Accordingly, one would expect the local resident World Bank office, headed by World Bank Resident Representative, D. Roberto Bentjerodt, to act in conformity with such policy, so emphatically enunciated by the World Bank President. James D. Wolfensohn, himself.

### **HAS PERC CONFORMED TO REQUIRED POLICY ?**

The Public Enterprise Reform Commission [PERC] is a project funded by the world Bank and accordingly, one would expect the World Bank to ensure that such project is implemented strictly in conformity with such policies so enunciated by none other than the President of the World Bank, James D. Wolfensohn, himself. Furthermore, PERC being an agency of the government, particularly functioning under the direct preview and supervision of President Kumaratunge, also the Minister of Finance, would in addition, have been bounden in duty, to have functioned in strict conformity with People's Alliance Government's such policy laid before Parliament, by President Kumaratunge, herself, asserting that the People's Alliance government's approach to privatization will be distinguished by full transparency and accountability.

### **SCANDALOUS EXPOSURES UNREFUTED BY PERC**

The methods and manner in which PERC had carried out certain privatisation transactions and colossal losses caused to the government and the public by some of such privatisation transactions carried out by PERC had been dealt with and focused upon. Contrary to public accountability, the response from PERC thereto had been a deafening silence, clearly acknowledging thereby, that PERC is unable to account and explain.

The sale of the most profitable plantation companies to pre-selected parties, without any open competitive bidding, even to have given such parties, for whatever reason, the option of the first refusal, at the highest price for the 51% controlling interest established on such an open competitive bid. Whereas on the contrary, such 51% controlling interest was sold to such pre-selected parties, ludicrously on the basis of the lowest price received, obviously fixed at Rs. 10/- per share, on the fragmented sale of 20% shareholdings of such plantation companies, causing colossal losses to the government and the public thereby. No one has been held accountable and responsible therefore. Why?

In two of the said cases, one Kotagala, PERC sold 51% controlling interest of Kotagala for Rs. 102 million, whilst 4 months thereafter the said shareholdings had fetched r.s 280 million on a sale by private treaty; such sale by open competitive bid could very well have been much more, whilst it has been further revealed that Kotagala, itself, had had cash funds of Rs. 200 million to have made an investment in Lankem Plantation Holdings Ltd, In the other case of Kelani Valley, 71.2% ownership had been sold for an effective purchase price of Rs. 142.3 million, whilst in 2 years the share of profits earned by the purchaser of such 71.2% shareholdings in Kelani Valley had amounted to Rs. 212 million, and such pre-selected buyer continues to own 71.2%

shareholding having recovered nearly 15% of the cost of the investment, in addition to having earned Rs. 52.6 million as management agent's fees. Extensive exposures published during 1997 on such plantation privatisation fiasco, but there was nary a word from PERC or from the government. Who is accountable and responsible?

The economics of the 90% sale of Steel Corporation, for a purchase consideration of US \$ 15 million i.e. Rs. 840 million, whereas the net current assets of the Steel Corporation had stood at Rs. 844 million, including stocks of Rs. 504 million and bank deposits of Rs. 300 million, creditors having been only Rs. 39 million, thereby there being no payment, whatsoever, towards fixed assets of land, buildings, plant & machinery. Subsequently, the government had also agreed to pay 75% compensation to employees amounting to Rs. 220 million, thereby reducing the purchase consideration from Rs. 840 million to a mere Rs. 620 million. Who is accountable and responsible ? The questionable procedures followed in the sale of 60% shareholdings of Orient Lanka Ltd., for Rs. 1,000 million, with debtors and cash amounting to Rs. 285 million, with a further option to purchase 37% shareholding after 2 years. This sale had been hastily concluded in the face of a franchise proposal by the 3<sup>rd</sup> largest Duty Free operator in the world, having offered to pay 20% of the turnover annually as royalty to the government, expressing willingness to further negotiate thereon upto 25% – this had been also with a down payment of US \$ 10.4 million i.e. Rs. 570 million. At a 10% p.a. turnover increase, the franchise earnings to the government at 20% royalty on sales had been reckoned to be in the region of Rs. 5,000 million over 10-years, which gives a net present value today of over Rs. 3,000 million and the government would have continued to own such right to re-franchise time and again in the future. All PERC Members had been put on notice prior to the conclusion of the transaction. Nevertheless, it had been concluded regardless. Who is accountable and responsible?

Leaving aside the economics, the said Orient Lanka sale to a Company in the UK, who had preciously pre-qualified, had been sold, after having called for fresh offers in the Newspapers giving only 4 days notice, including a week-end. But in actual fact, the beneficial ownership had been sold to another company registered in the Netherlands jus 2 years previously, with a share capital under Rs. 6 million, without having any international Duty free operation experience and also in violation of normal tender procedure, where such substitution is strictly prohibited. The majority shareholdings of the said Netherlands Company, owning 60% of Orient Lanka Ltd., with the option to purchase a further 37%, could be easily sold, thereby in effect reselling such ownership of Orient Lanka Ltd., just as in the case of Kotagala Plantations Ltd. Who is accountable and responsible? The Kotagala resale had been publicly decried by President Kumaratunge, herself.

## **PUBLIC INTEREST LITGATION & PUBLIC ACCOUNTABILITY**



Rajan Brito — Public accountability and responsibility ?

Given such scenario, the method and manner in which the Air Lanka privatisation transaction had been carried out by PERC, no doubt, leaves much to be desired with Chairman Air Lanka, Harry Jayawardena, himself, not expressing positive endorsement. The public are legitimately entitled to be concerned, given the above track record of PERC, illustrated by some of the PERC transactions only.

The Air Lanka privatisation and the Sri Lanka Telecom privatisation to greater public scrutiny. The public are legitimately entitled to know. Why should they not be, moreso particularly in an era of high profile much professed transparency. Minister G.L. Peiris having publicly pronounced that the government's commitment to transparency is unequivocal, has been questionably silent on several government's commitment to transparency is unequivocal, has been questionably silent on several government's transactions in blatant transgression of such professed unequivocal commitment to transparency. Is it clearly not a case of double standards?

In the absence of plausible and rational explanations and answers to some of the transactions exposed would not the public of this country be entitled to seek legal redress to protect public interest, through public interest litigations, that have been upheld in several developed countries under such similar circumstances, even in neighbouring India?

Reliably understands, that several public spirited persons are in earnest discussions today in highly reputed and respected legal chambers, considering the prospects of exercising the right to institute public interest litigations in this country, concerning some of these scandalous transactions, that have caused colossal losses to the state and the public, each and every citizen of the country having an interest in the Consolidated Fund of the country, being thereby an affected person, by the loss caused to the Consolidated Fund, and accordingly entitled to a right, to institute such litigation to protect the interest of the public and the country.

The judiciary in this country, known for its fearless independence, would no doubt be guided by the contemporary judgments given in public interest litigations in other countries. The opinion in legal circles today is that in all probability, the judiciary would entertain public interest litigations instituted in good cause. Sanctimonious cover and refuge, often resorted to, under the dictum-“The approval of the Attorney General has been obtained” could very well be subjected to the test and determination by the judiciary. The Constitution provides even for Bills drawn by the Legal Draftsman and approved by the Attorney General, presented to Parliament, to be reviewed and determined upon by the judiciary, on a petition filed by any citizen.

The Ministry of Finance & Planning had retained the professional services of a Chartered Accountant, J.M.S. Brito, LL.B, F.C.A., M.Sc., resident in the UK., as a visiting Consultant, who presumably has been advising and assisting PERC, in its privatisation transactions. Would not the public of this country have been legitimately entitled to expect, that such professional services, presumably with proven experience and expertise in the field of privatisation, would in fact have protected the public interest and prevented such colossal losses, that have been caused to the state, by some of the privatisation transactions carried out by PERC, stand unrefuted ? Would not a professional carry the responsibility of social and public accountability, in the discharge of expertised services, as expected by the public ?

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