

THE GREAT STEEL CORP. RIPOFF

The Sunday Leader last week featured an analytical exposure of the privatisation transaction for the disposal of 90% of the shareholdings of Ceylon Steel Corporation Ltd., to Korea Heavy Industries & Construction Co. Ltd. (Hanjung). Such 90% shareholding had been sold disregarding the need for the government to have a continued interest in this base steel industry, upon which is directly depended, *the growth of the construction industry; a vital sector in the economy.*

Even the need to broadbase the shareholdings of Ceylon Steel Corporation Ltd., through a public share issue, thereby subjecting it to the desirable regulatory controls and framework, within which a listed public company is required to function, thus making it transparently accountable to the public, with market oriented comparative performance evaluation, has been questionably disregarded; *this is contradictory to the policy of developing a capital market.*

On the other hand, contrary to the declared and professed policies enunciated on transparency and public accountability, there is a very intriguing condition in the Share Sale and Purchase Agreement signed on 31st October 1996 by and between B.C. Perera, Secretary to the Treasury and Hanjung of Korea, binding the parties into strict confidentiality. Infact, Hanjung had been required to sign a confidentiality undertaking previously on 23rd July 1996, as a pre-condition for negotiations. *How come this shrouded secrecy contrary to declared policy?*

Would not the proper processes of privatisation demand thorough public dissemination, disclosure and transparency, with consequential public accountability thereby? After all, it is public property and means of provisioning of goods and services in the interest of the public, that is being transformed to the private sector.

The Sunday Leader received very encouraging responses and tributes from the public spirited readers last week on the analytical exposure of the privatisation of Ceylon Steel Corporation Ltd.

The Sunday Leader was commended on the analogy drawn, as to whether, Chairman, Public Enterprise Reform Commission [PERC], Dr. P.B. Jayasundera would sell his own house, if he had one, valued at Rs.18 Mn., only for Rs. 8 Mn., justifying such sale on the ludicrous argument, that the prospective buyer had agreed to modernise the house thereafter spending Rs.5 Mn. ?

One telephone caller referring to the cash balance of Rs.300 Mn. and steel stocks of Rs.504 Mn. held by the Company at the time of sale of 90% of its shareholdings to Hanjung, pointed out, that it was not merely a case of selling the house worth Rs.18 Mn. for Rs.8 Mn., but that Rs.8 Mn. of the value of Rs.18 Mn. was in the safe of the house - Rs.3 Mn. in cash and Rs.5 Mn. in jewellery, heirloom and family silver the ownership of which the buyer got on the payment of the full purchase consideration of Rs.8 Mn., whilst therefore he got the house like a dowry, absolutely free. - But ofcourse, like the bride, the buyer had to take over the maintenance of the employees. *But did this really happen?*

GOLDEN HANDSHAKE BY TREASURY

As regards the continuance of the employees, this is what Hanjung agreed to, as per the Share Sale and Purchase Agreement that had been entered into with B.C. Perera, Secretary to the Treasury on 31st October 1996. As per Part 4.3 (b) the purchaser, Hanjung, had covenanted and agreed as follows:

" Purchaser shall continue to employ all existing staff of the Company from the Closing Date on terms and conditions no less favourable than those enjoyed by each of the employees of the Company at the date hereof, including all welfare facilities currently being enjoyed such as the playground and housing facilities. This Clause shall not restrict the right of the Company to terminate the services of employees for cause nor prevent the Company accepting truly voluntary resignations and mutually agreed resignations."

The purchaser Hanjung had so covenanted and agreed in writing having taken cognisance of the representations that had been made by the Vendor, the Government of Sri Lanka, who had acted through the Secretary to the Treasury, B.C. Perera, whereby the Share Sale and Purchase Agreement had specifically represented at Part 4.1 (c) as follows:

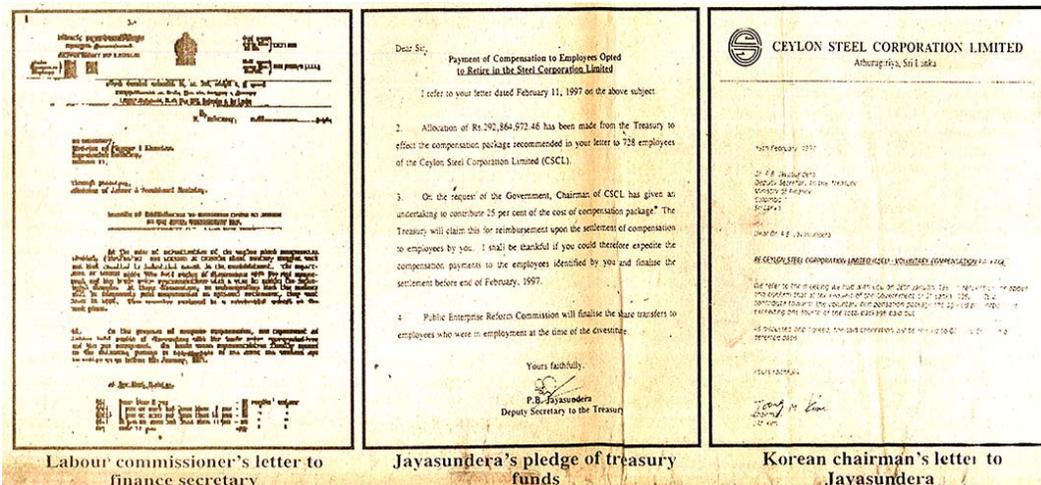
" Section 2 of the Company Profile dated September 1995, contains particulars of all the employees of the Company. Their wages, benefits including Provident Fund payments and payments to the Employees' Trust Fund and other entitlements as at the date of this Agreement, have been paid and settled in full by the Company, and that there are now no payments due and owing to the employees of the Company or others (such as dependents) entitled thereto."

Most startling revelations are to follow. On 11th February 1997, R.P. Wimalasena, Commissioner of Labour, wrote a letter addressed to the Secretary, Ministry of Finance & Planning, B.C. Perera, who had also entered into the Share Sale and Purchase Agreement with Hanjung, in his official capacity as the Secretary to the Treasury. The Commissioner of Labour, R.P. Wimalasena, had copied his letter to Dr. P.B. Jayasundera, Deputy Secretary to the Treasury, who is also the Chairman of PERC, specifically endorsing thereon to Dr. P.B. Jayasundera: *"This refers to my discussion with you on the above matter. For information and necessary action please."*

R.P. Wimalasena, Commissioner of Labour, in his said letter addressed to the Minister of Finance, endorsed to Dr. P.B. Jayasundera had inter-alia, stated;

"The option for retirement was opened till 6th January, 1997 and as for that date 727 has applied for compensation. One person who had opted to retire had died later and his name also included to the schedule. Another person who said to have committed suicide is also considered for compensation under the same package purely on humanitarian grounds. Hence, the total figure is 728 persons of whom 02 were dead. The total compensation amounts to Rs. 292,864,972.46."

"The Commissioner of Labour when discussing the matter of compensation with the Directors of Hunjung Company, they opted to pay not more than 20% of the compensation package at the beginning. However, later when the package was enhanced the Company held the position that they have agreed to pay 20% of the original package decided by you in terms of your letter PE1/000/6(iii) of 16/12/1996 but not of the enhanced package proposed subsequently. However, I earnestly requested them to contribute atleast 25% of the compensation package as it facilitates in settlement of the problems that would lead to many disputes even in the future. Infact the settlement brings relief to the Company as well as to the workers. Even in the event of retrenchment of excess labour as it happened in the Privatised Companies, the Company alone will have to pay large sums of money as compensation and this is being done automatically by way of optional retirement with enhanced compensation. Hence, it is justifiable for the Company to contribute atleast 25% of the quantum of full compensation to the Government. I believe you would pursue the Company for their contribution as the settlement of industrial dispute would certainly bring results both to the employees and employer as well with added advantage to the latter of reduction of Labour."



Dr. P.B. Jayasundera, as Deputy Secretary to the Treasury, who apparently had been handling this subject had promptly replied the Commissioner of Labour, R.P. Wimalasena's letter of 11th February 1997. In his letter to Commissioner of Labour R.P. Wimalasena, Dr. P.B. Jayasundera had stated as follows:

"I refer to your letter dated February 11, 1997 on the above subject."

"Allocation of Rs.292,864,972.46 has been made from the Treasury to effect the compensation package recommended in your letter to 728 employees of the Ceylon Steel Corporation Limited (CSCL)."

"On the request of the Government, Chairman of CSCL has given an undertaking to contribute 25 per cent of the cost of compensation package. The Treasury will claim this for reimbursement upon the settlement of compensation to employees by you."

"I shall be thankful if you could therefore expedite the compensation payments to the employees identified by you and finalise the settlement before end of February, 1997."

"Public Enterprise Reform Commission will finalise the share transfers to employees who were in employment at the time of the divestiture."

At the very same time, J.M. Kim, the Hanjung, Chairman of Ceylon Steel Corporation Ltd., has had discussions with Dr. P.B. Jayasundera, the Deputy Secretary to the Treasury on 28th January 1997. This the Ceylon Steel Corporation Ltd., Chairman, J.M. Kim had confirmed by his letter dated 19th February 1997 addressed to Dr. P.B. Jayasundera, Deputy Secretary to the Treasury, stating as follows:

"We refer to the meeting we had with you on 28th January 1997 in respect of the above and confirm that at the request of the government of Sri Lanka (GOSL), CSCL will contribute towards the voluntary compensation package the agreed proportion not exceeding one fourth of the total package paid out."

"As discussed and agreed, the said proportion will be re-paid to GOSL by CSCL, on a deferred basis."

WHAT A DEAL!!!

Would not the above payment of compensation to employees of Ceylon Steel Corporation Ltd., by the government after the sale of 90% of its shareholdings amount to a violation of the above referred to conditions in the Share Sale and Purchase agreement, particularly in the context of the purchase consideration of US \$ 15 Mn., which amounted to SL Rs. 840 Mn. ? Since 75% of such compensation of Rs. 292.8 Mn., amounting to Rs.220 Mn. is to be borne by the government, then the actual net purchase consideration for this 90% of the shareholdings would amount to only Rs.620 Mn., that too in the light of Rs. 844 Mn. worth of net current assets, *i.e. cash and steel stocks handed over to Hanjung.*

In contrast in 1994, just 55% of the shareholdings of Ceylon Steel Corporation Ltd., was to have been sold to a Japanese Consortium led by DFCC, for a consideration as much as Rs. 962.5 Mn., at a time the net current assets were even lesser by Rs. 351 Mn. Was such offer not accepted and fresh bids called for again by PERC, with a view to obtaining a much higher price, comparatively more than Rs.1600-Rs.1700 Mn. for 90% shareholdings? If not, why?

CONFIDENTIALITY

Why was such significant and material matter of the government paying compensation to 728 employees, suppressed by Dr.P.B. Jayasundera at the Press Conference at the Presidential Secretariat, when called upon to answer by Her Excellency President, to a question posed by the Free Media Movement Convenor, Waruna Karunatileke? Would not such material and significant change, subsequently privately negotiated, that too under confidentiality commitments, be unfair by the other prospective bidders, since such material conditionality was not disclosed or known to other bidders at the time of bidding?

Even to reimburse the Treasury the 25% of such compensation to employees, amounting to only Rs. 73 Mn., from Ceylon Steel Corporation Ltd., the Chairman J.M. Kim had agreed to do so only on a deferred basis, on terms unknown, whereas, the Ceylon Steel Corporation Ltd., had Bank Deposits amounting to 300 Mn. and Hanjung had agreed to deposit US \$ 10 Mn. SL Rs.560 Mn. to an escrow account to be spent for further development of the steel mill. *Should one merely say "yes" to every suggestion made by a foreigner, without the strength and ability to negotiate?*

Has such considerable financial allocation made by the Treasury been approved by a Supplementary Vote in Parliament, as required by the Financial Regulations ? If not, why?

Would the Treasury have been so readily and speedily accommodating pressing financial needs, of even much lesser value, urged by Ministers of government for much needed development projects and programmes under their Ministries, for the benefit of the public and some for the upliftment of the poor?

COLLECTIVE RESPONSIBILITY

Could Dr. P.B. Jayasundera have acted unilaterally and independently? Would not the entirety of PERC be responsible for the manner in which this privatisation transaction of Ceylon Steel Corporation Ltd., had been carried out and decisions made? Had such important matters been deliberated and decided upon by the members of PERC at a meeting? If so, on what dates were such deliberations and decisions made? Would not each and every member of PERC be accountable and responsible therefor? If not, should they not resign or disassociate themselves from such transaction, if they do not wish to be held accountable and responsible therefor? Section 9 (2) of the Public Enterprises Reform Commission of Sri Lanka Act No.1 of 1996 has envisaged decision making by the Commission by the process of members of the Commission voting.

The Public Enterprise Reform Commission (PERC) consists of 2 ex-officio Members stipulated by statute, namely the Secretary, Ministry of Finance, B.C. Perera, and the Director General SEC, Kumar Paul, and 3 other Members appointed by the Minister of Finance, namely, Deputy Secretary to the Treasury, present Chairman, Dr. P.B. Jayasundera, Director General, BOI, Thilan Wijesinghe, Advisor, Ministry of Finance & Planning, Dayani de Silva. At the relevant time, Rajan Asirwatham, Partner, Ford, Rhodes, Thornton & Co., was the Chairman of PERC, and Arittha Wikramanayake, then Director General, SEC was a member of PERC.

PERC'S FUNCTIONS

It is very relevant and pertinent to note the functions and powers of PERC as stipulated in Section 4 of the PERC Act No: 1 of 1996:

" The functions of the Commission shall be to advise and assist the Government on the reform of public enterprises with the following objects in view:

- (a) fostering and accelerating the economic development of the country;

- (b) improving the efficiency and competitiveness of the economy;
- (c) upgrading production and services with access to international markets on a competitive basis, by the acquisition of new technology and expertise;
- (d) developing and broadbasing the capital market and mobilizing long term private savings;
- (e) motivating the private sector;
- (f) augmenting the revenues of the Government, so as to enable it to better address the social agenda."

How much and to what extent such noble objectives statutorily stipulated had been focused upon by the members of PERC in carrying out the privatisation of Ceylon Steel Corporation Ltd. is an important issue that would have to be addressed by each and every member of PERC and answered in public interest. *The statute after all has been enacted by Parliament by the representatives of the people.*

PERC'S POWERS & DUTIES

Furthermore, Section 5 of the PERC Act No.1 of 1996 has, inter-alia, conferred the following powers and duties to be exercised by PERC for the purpose of discharging its statutorily mandated functions;

- " (c) to make recommendations to the Government on the continuation, and efficiency, of public enterprises which are profit making and are of national importance;
- (e) to make recommendation to the Government on the sale or disposal to the public, of shares in, or assets of, companies registered under the Conversion of Public Corporations and Government Owned Business Undertakings into Public Companies Act, No. 23 of 1997, in which the entirety of the shares are owned by the Secretary to the Treasury;
- (i) to assist the Government to create public awareness of Government policies and programmes on the reform of public enterprises with a view to developing a commitment by the public, to such policies and programmes;
- (j) to promote worker participation in the implementation of such policies and programmes and to ensure worker participation in the equity of the companies referred to in paragraph (c);"

It stands to reason that members of PERC ought to act and could only act in conformity with the functions, powers and duties conferred upon them by the Act of Parliament that statutorily had established PERC. Otherwise what was the purpose of ever having enacted such Act presented to Parliament by none other than learned Prof. G.L. Peiris, Deputy Minister of Finance & Planning also the Minister of Justice?

Incidentally, Prof. G.L. Peiris, could the sale of 90% of the Shareholdings of Ceylon Steel Corporation Ltd. to Hanjung, a Korean Company, be interpreted, as a sale or disposal to the public, within the meaning of Section 5 (e) of the statute? If so, how?

Prof. G.L. Peiris having performed as the leader of the government delegations to IMF, World Bank, ADB, Aid Group Meetings, etc., committing the country on its privatisation programmes, and being the Deputy Minister of Finance, who fathered the PERC Act, cannot now shirk responsibility and distance himself from these dubious transactions - after all, invariably it is he, who stands in ceremony, as chief spokesman receiving the Kudos and bouquets and recently returned from an overseas roadshow to borrow US \$ 50 Mn.

President Chandrika Bandaranaike Kumaratunga spearheads the privatisation programme with a team of handpicked officials, including a visiting consultant from London, Rajan Britto, a Chartered Accountant.



Who is responsible for this ripoff of a valuable public asset? Should not the finance minister take full responsibility?
And more importantly is this deal not crying out for a presidential commission of inquiry?

Left: Dr. P. B. Jayasundera

Right: President Kumaratunga



ACCOUNTABLE TO PARLIAMENT

Irrespective of questionable confidentiality commitments, PERC is ultimately accountable and answerable to Parliament and thereby to the people of this country for each and every sale or disposal, as stipulated under Section 19 of the PERC Act No.1 of 1996 which reads as follows:

" The Commission shall at the end of each sale or disposal by lease or otherwise as the case may be, made in pursuance of a recommendation made under paragraph (e) of Section 5, submit to Parliament through the Minister a report in respect of all matters pertaining to such sale or disposal."