

## ● Illegal deals of a far graver nature Go after the bigger fish - Nihal Sri tells Bribery Commission

Judicial activist Nihal Sri Ameresekere in a petition filed at the Supreme Court on October 18, 2012 says the bribery commission should drop its double standards and go after the bigger fish and recommence investigations into more controversial deals involving larger sums of public monies.

In the petition filed in the Supreme Court he has pointed out that the Bribery Commission had apparently abandoned prior investigations commenced in 2008/2009 into illegal deals of a "far graver nature", involving very much larger amounts of public monies than The Finance Company Share purchase by National Savings Bank, which investigation had been given priority by the Bribery Commission.

"Losses caused to public property, including public funds, and/or aiding and abetting therewith should be prosecuted under the Offences Against Public Property Act No. 12 of 1982, which covers both public and private sector persons," Ameresekere said, pointing out that several investigations into illegal privatisations and oil hedging deals, which had been referred by Parliament and/or by the Supreme Court to the Bribery Commission have apparently not been investigated and prosecuted by the Bribery Commission, who had "questionably acted hastily in TFC/NSB Deal".

In his recent Petition filed in the Supreme Court Ameresekere states:

"...It was reported in the media that an investigation into the NSB/TFC Share deals had been commenced, as a priority, by the Commission to Investigate

Allegations of Bribery or Corruption (CIABOC), which comes under the purview of President Mahinda Rajapaksa. However the unjust profit enrichment attempted by the Directors of TFC, the Petitioner verily believes nominated by the Governor Central Bank of Sri Lanka, Ajith Nivard Cabraal, may not fall under the purview of the CIABOC."

"Prior to the aforesaid investigation by the CIABOC, investigations had commenced much earlier in 2009 into the privatisation of Lanka Marine Services Ltd., (LMSL) to John Keells Holdings Ltd., and Sri Lanka Insurance Corporation Ltd., to Distilleries Consortium, as had been reportedly referred to the CIABOC by the Parliament of Sri Lanka, consequent to a COPE Report, and also in the instance of LMSL, as directed in 2008 by the Supreme Court in SC (FR) No. 209/2007. The Petitioner's statements were recorded by the CIABOC in the said two investigations, both involving, among others, P.B. Jayasundera, Secretary, Ministry of Finance & Treasury. The outcome of the said investigations is to date unknown."

"In SC (FR) Nos. 535 & 536/2008 the Supreme Court in December 2008 directed the CIABOC to investigate the allegedly illegal Oil Hedging Deals perpetrated by the Ceylon Petroleum Corporation, which deals had been initiated by the Governor Central Bank of Sri Lanka, Ajith Nivard Cabraal, and endorsed by the Secretary, Ministry of Finance & Treasury, P.B. Jayasundera. The outcome of the said investigation too is to date unknown; whereas the aforesaid

investigation into the NSB / TFC transaction has been reported to being pursued, as a priority."

"The Petitioner was noticed by the Commission to Investigate Allegations of Bribery or Corruption, and the Petitioner's statements were recorded over a period of 8 days regarding the aforesaid annulled privatisation transaction of Lanka Marine Services Ltd., to John Keells Holdings Ltd., and another annulled privatisation transaction of Sri Lanka Insurance Corporation Ltd., to Distilleries Consortium referred to hereinbefore, both the said transactions having been handled by the said P.B. Jayasundera, as Chairman, Public Enterprise Reforms Commission at the relevant time."

"However, intriguingly nothing worthwhile from the foregoing investigations, which only wasted the valuable professional time of the Petitioner."

"CIABOC Chairman is a former Supreme Court Judge, D.J. De S. Balapatabendi, who was a Member of the 7 Judge Supreme Court Bench, presided by Chief Justice J.A.N. de Silva, which on a 6 to 1 majority Decision made on 27.9.2009, with Your Ladyship Chief Justice Shirani Bandaranayake and Justice D.J. De S. Balapatabendi also agreeing, who declared that President Mahinda Rajapaksa, also the Minister of Finance, was free to re-appoint P.B. Jayasundera to the post of Secretary, Ministry of Finance & Treasury, on an Application made by him in SC (FR) No. 209/2007, at the behest of President Mahinda Rajapaksa," Ameresekere states.

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#### Go after...

In a related issue, Ameresekere also highlighted the following in relation to loss, damage and detriment caused by Minister of External Affairs, G.L. Peiris, who also should be held so accountable and responsible and dealt with in terms of law:

"Mitsui & Co. Ltd., and Taisei Corporation were compelled to write-off in June 1995 Jap Yen. 17,586 Mn., then equivalent to US \$ 207 Mn., i.e. then SL Rs. 10,200 Mn., on their purported Claims on the Government Guarantees, which had been issued to them, and to re-schedule the balance agreed debt over a further period of 15 years (originally fully payable by 1999), with a one year grace period, at a reduced rate of interest of 5.25% p.a., (originally 6% p.a.)."

"The Settlement Agreements executed, as had been finalized by the Hon. Attorney General, and approved by the Cabinet of Ministers, were subsequently wrongfully and unlawfully, capriciously suspended by then Minister of Justice, G.L. Peiris to save his skin, he, having been a party personally adversely affected by a Condition in the said Settlement Agreements, thereby causing grave and irreparable loss and damage to HDL and the Government, resulting in the Petitioner having to incur time, efforts and costs in defending the interests of HDL and the Government in several vexatious litigations."

"Consequently, Mitsui & Co. Ltd., and Taisei Corporation, having exerted pressures through the Japanese Government on the Government of Sri Lanka and in the face of the difficulties confronted by the Government in attending the Sri Lanka Aid Group Meeting in November 1996, the Petitioner was persuaded, among others, by P.B. Jayasundera, then Deputy Secretary Treasury, to give effect to the said Settlement Agreements, without the prior fulfillment of the 'Conditions Precedent', on the express solemn promise and undertaking, that said 'Conditions Precedent', shall and will be honoured and fulfilled as 'Conditions Subsequent'."

"Accordingly, an Addendum prepared by the Hon. Attorney General to the said Settlement Agreements, excluding the aforesaid Condition, which adversely affected the Minister of Justice, G.L. Peiris was signed by the Government, with the Petitioner, Mitsui & Co. Ltd., and Taisei Corporation in September / October 1996. The Petitioner on the basis of the said Settlement Agreements and the said Addendum, relying on the foregoing solemn promise and undertakings, withdrew his legal action on 23.10.1996 and the other connected legal action."

"This facilitated Mitsui & Co. Ltd., and Taisei Corporation to obtain from the funds accumulated in HDL, as a consequence of the interim injunctions, which had been obtained by the Petitioner in October 1996 a lump-sum

payment of Jap. Yen. 2,138,082,192, and in November 1996 the first Installment of Jap. Yen 971,969,460 i.e. a total of Jap. Yen 3,110,051,652, then US \$ 27.5 Mn., and the balance 14 instalments over the years 1997 to 2010. P.B. Jayasundera, Deputy Secretary Treasury, among others, consequently attended the said Sri Lanka Aid-Group Meeting in November 1996."

"Had the Petitioner not agreed to the aforesaid urgings and pleadings by the Government, then HDL with accumulated funds in October 1996 of over US \$ 27.5 Mn., would have been in a totally different profitability and liquidity position today. Thus the Government stood and stands responsible and accountable for whatever financial plight HDL was plunged into as a consequence."

"For such predicament of loss, damage and detriment caused to HDL and the Government, then Justice Minister, G.L. Peiris, now Minister of External Affairs, ought take the absolute blame and be solely held accountable and responsible."

"In the foregoing circumstances, the Petitioner has filed two legal actions, D.C. Colombo Cases Nos. 19849/MR and 21819/MR, which are pending before the Supreme Court on the issues of then Justice Minister, G.L. Peiris being unwilling and evading to answer Interrogatories and give discovery of documents," Ameresekere states.