

Chief Justice's questionable accounts, transactions

'ACT AGAINST BANK THAT DIDN'T REPORT'

CJ faced obstacles in discharging duties with husband assuming political appointment

CHAMINDA PERERA

The Central Bank should take action against the bank which failed to report questionable accounts

and transactions of Chief Justice Dr Shirani Bandaranayake, International Consortium of Government Financial Management member and former PERC chairman Nihal Sri Amarasekera said



yesterday. He said banks should report such accounts to the Central Bank's Financial Investigation Unit (FIU) under the Financial Transaction Reporting Act of 2006 and the Central Bank can take action against the bank's failure to report such transactions to the FIU.

Amarasekera said the Chief Justice faced obstacles in discharging her duties with her husband assuming political appointment.

He said the Chief Justice should ensure that the appearance of absolute

impartiality is maintained in all her duties.

"The Chief Justice's husband accepting political appointment, gives rise to a danger of bias in hearing of cases by her," Amarasekera said.

Referring to Chilean dictator Augusto Pinochet's extradition case before the UK's House of Lords, Amarasekera said the panel of Law Lords had to hear the case again as one Lord in the panel had a link with Amnesty International which had an interest in the case. To page 10

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Lord Hoffmann was barred from sitting in the panel, he said. Referring to the Alfred Dreyfus case, Amarasekera said that public outrage prevented the truth being divulged and Dreyfus was imposed lifetime imprisonment.

Amarasekera said the real traitor was found several years after the public outrage died down. Dreyfus was a French artillery officer of Jewish background whose trial and conviction in 1894 on charges of treason became one of the most tense political dramas

in modern French and European history. Known today as the Dreyfus Affair, the incident eventually ended with Dreyfus's complete exoneration. Amarasekera said the Chief Justice who assumed office after swearing that she will protect the country's constitution, cannot go against it when charges were leveled over her conduct under the same constitution.

"She cannot just walk out saying that the Parliamentary Select Committee (PSC) probing charges against her

is illegal. The PSC process is constitutional," he said. He said the PSC is not a tribunal where the accused and eye witnesses are cross examined by lawyers. Amarasekera said the PSC is an investigative body appointed by the Speaker.

He said President Mahinda Rajapaksa has no authority to appoint or remove the Chief Justice.

"The Constitutional Council has to approve the appointment of the Chief Justice. He or she can only be removed

by Parliament," Amarasekera said. He said certain parties question the legality of the independent panel of experts to be appointed by the President before a decision is taken in connection with the PSC report on the Chief Justice.

Amarasekera said the President decided to appoint this committee with a good intention.

He was of the view that the President can appoint a panel to advise him on any matter under the constitution.

Daily News

Sri Lanka's National Newspaper

Since 1918
Volume - 101 - No - 310
Registered as a Newspaper
in Sri Lanka
Rs. 30.00
www.dailynews.lk

Saturday December 29,
2012

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weds for
third time
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President calls on Mahanayake Theras

President Mahinda Rajapaksa visited the Sri Dalada Maligawa in Kandy on December 27 evening and paid homage to the Sacred Tooth Relic. The Most Ven Uduagama Sri Buddharakkhita Mahanayake Thera of the Asgiriya Chapter chanted *Seth Pirith* and invoked blessings on the President. Thereafter the President called on the Most Ven Tibbotuwawe Sri Sumangala Mahanayake Thera of the Malwatta Chapter at the Malwatta Viharaya and received his blessings. Central Province Chief Minister Tikiri Kobbekaduwa, Uva Chief Minister Shasheendra Rajapaksa, Deputy Minister Earl Gunasekara and Parliamentarian Dilum Amunugama were also present. *Pictures by Sudath Silva*

EX PERC HEAD AND CORRUPTION VIGILANTE —'PROUD SRI LANKA IMPEACHED CJ'

Cites UN corruption
convention

Rubbishes Jayaratne

Well known corruption buster and former Chairman of PERC (Public Enterprises Reform Commission), **Nihal Sri Amarasekera** said that as a member of a global anti-corruption organization, he would be proud to say to the world that Sri Lanka impeached her Chief Justice on integrity related issues.

He said so in a radio interview with SLBC last morning with the programme People's Power. Amarasekera said that there are serious integrity issues involving the CJ, and that she has not been able to acquit herself before a Parliamentary Select Committee (PSC) investigating them.

He stated that he had submitted an

affidavit to the PSC with regard to some matters relating to her sitting on a Bench when her husband held public office, and would release the document to the media soon.

He also stated yesterday in this newspaper that the Banks that did not report the CJ's questionable transactions had to be taken to task by the

Central Bank for not disclosing the information.

Asked about the fact that a former head of Ceylon Chamber of Commerce Chandra Jayaratne had contended that the CJ's account information being released for the purposes of the impeachment motion was a violation of banking secrecy, To **page 08**



Nihal Sri alerts Speaker about perceived bias by CJ, other judges

■ Claims SC Judges N.G. Amaratunge and K. Sripavan stand disqualified from hearing petitions against impeachment because of reactions to a petition filed by Ameresekere seeking review of determination on Expropriation Bill

PUBLIC Interest Litigator Nihal Sri Ameresekere has maintained that the Supreme Court Justices Nimal Gamini Amaratunge and K. Sripavan stand disqualified from hearing the writ applications pertaining to the interpretation of Article 107 (3) of the Constitution with regard to the impeachment proceed-



Speaker Chamal Rajapaksa

ings against Chief Justice Shirani Bandaranayake.

Referring to an application filed by him in the Supreme Court, seeking a review of the Supreme Court's determination on the constitutionality of the Expropriation Bill on the basis that it is ultra vires the constitution and perceived bias and disqualification by the bench ruling on the bill, including the Chief Justice, Ameresekere has sent an affidavit to Speaker Chamal Rajapaksa recent-



Chief Justice Shirani Bandaranayake

ly. The affidavit which has been forwarded in the context of the impeachment motion against the Chief Justice, charges that Justices N.G. Amaratunge and K. Sripavan had already pre-judged, as frivolous, Ameresekere's averments on 'perceived judicial bias and disqualification' on the part of Chief Justice Shirani Bandaranayake, which is a premise for some of the Charges contained in the Resolution to impeach



Nihal Sri Ameresekere

Chief Justice Shirani Bandaranayake. "Hence do they not stand disqualified from hearing the aforesaid Applications?" Ameresekere asks.

Ameresekere's affidavit to Speaker of Parliament, Chamal Rajapaksa on 5 December highlights the perceived bias and disqualification by the Chief Justice and several other Justices of the Supreme Court with relation to the application filed by him in the Supreme Court.

THOUGHT for the day

I will not let anyone walk through my mind with their dirty feet - Mahatma Gandhi

Daily News

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ANCL

Tuesday, January 1 2013

CORRUPTION
WATCH?

Strange, that no journalistic organizations, or normally exuberant media watchers have nothing to say about the excellent journalistic efforts of the media community – sections of which – fearlessly put out the word on the malpractice and integrity issues relating to the Chief Justice of Sri Lanka, Shirani Bandaranayake. Today, it's settled that these are serious integrity problems, that struck at the core of the very legitimacy of judicial institutions.

Former head of the Public Enterprises Reform Commission (PERC), Nihal Sri Amarasekera, a corruption vigilante with a sterling and neu-

tral record of exposes of graft and corruption, said that he will be proud that Sri Lanka, as per UN conventions on corruption, impeached her Chief Justice.

Correct, the impeachment is not yet a *fait accompli*, but he is speaking about the fact that the Parliamentary Select Committee which investigated charges against the CJ, found her guilty on three charges. She stands to be impeached, as a result, though this is eventually upto the Legislature.

It is the media, a miniscule section of it, however, which relentlessly pursued the issue, and put the charges against the CJ and the background and the ramifications in the public spotlight. It is this reportage which coupled with the reportage of independent analyses of knowledgeable people such as Nihal Sri Amaraskera, which enabled the public to understand that there have been legitimate concerns about the integrity of the apex judicial officer of the country.

It was extremely important that the people be in the know, so to say. In the face of a grossly partisan politically motivated campaign to sweep the integrity issues concerning the CJ under the carpet, it was the newspapers, sections of them of course, that relentlessly pursued the issue on blinking accounts, the Golden Key transactions while on the Bench,

etc. etc., and fleshed out the details that constituted act of misbehaviour.

As Nihal Sri Amarasekera says, he will be proud to say at world anti-corruption forums that Sri Lanka impeached her Chief Justice. It is not easy to dislodge a person of the high stature of the Chief Justice of a country.

In simple terms, these are powerful people holding powerful office, and therefore, there was a need for relentless and fearless pursuit of the details of the charges.

Media, or sections of it, discharged this responsibility, amid warnings of being dragged to court, and amid continuing black-coat threats of being pilloried in court, for the 'wrongdoing' of acquainting the masses of the facts.

This should normally be award winning journalism, but what is curious is that watchdogs and journalism pundits have not made any observations about the pliant attitude of the majority of the local press, that said nothing about these charges.

Certainly, those who did put out the details of corruption and malpractice in the spotlight, need no special kudos. They do not need awards; they did what they did for the public good, so that matter can be laid to rest. But, what is curious is why the rest of the national media, which pays so much lip service to the notion of the watchdog function of exposing corruption, went numb and silent regarding

one of the cases of malpractice about which people desperately needed to be informed.

When the President met newspaper editors at a breakfast meeting, his ministers divulged the fact that the Chief Justice had been given a whopping discount for a house that she purchased from the Ceylinco group of companies, whose case she was hearing. The President said this too.

There was absolutely no problem reporting this fact, and if the media felt it necessary, the needed fact-checks should have been carried out. Besides, if the President said it, the President having legal immunity, the press was beholden to report this fact, because here was the Executive President of the country, making a responsible charge and the people needed to know.

But strangely again, the media kept a studied radio silence, NOT ONE WORD, except from this and a few other newspapers that can be counted on half the fingers of one hand. The pathetic silence of the media, no matter what their political policy and political affiliations, on one of the significant malpractice and corruption cases involving a top official of the country, will go down in history as a blackmark against a pliant gutless and indeed hypocritical media, alas, that pays lip service to corruption busting, but has no gumption to do what it takes when it comes to the crunch.

MS. KANAUL, PLEASE BE INFORMED

Nihal Sri Ameresekere in a letter dated December 20, 2012 to Special Rapporteur on the Independence of Judges and Lawyers Mrs. Gabriela Knaul states the Parliamentary Select Committee (PSC) is only an administrative process, enabling the President to remove a Chief Justice, if the Committee's Report makes an adverse finding and is passed after an address of Parliament. "A hue and cry has been raised on the matter of natural justice, but, on examination of the Parliamentary Select Committee report, it would be revealed that the facts are otherwise, and that the Chief Justice had been, in fact, afforded adequate time of one month, to respond to matters, which were within her own knowledge," Ameresekere further points out in his letter to Knaul.

Mrs. Gabriela Knaul
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Dear Mrs. Gabriela Knaul,

In the context of your previous above-mentioned 'News Release', I addressed to you my Letter dated 16th November 2012, attaching copies of the following:

1. My Petition dated 18th October, 2012 to the Supreme Court, whereby I put in issue the very grave and serious matter of 'perceived judicial bias and disqualification' on the part of the Chief Justice and two other Justices of the Supreme Court, who in my view had acted without jurisdiction and ultra-vires the Constitution. I cited the Judgment in Appeal in the House of Lords re - *Chet* vide paragraph 13 of my said Petition. I intimated that the response I received was even more appalling, but did not disclose the same in my said Letter.

Hence, I attach hereto my Affidavit dated 11th Decem-

ber, 2012 addressed to the Hon. Speaker of Parliament, *inter-alia*, setting out the aforesaid responses I received, which are lucidly self-explanatory. Attached to my Affidavit was my further written Submission, which I had tendered, as far back as 9th February 2012, to the Supreme Court on the same matter of 'perceived judicial bias and disqualification', on the part of Chief Justice, also setting out other pertinent facts, which however was not entertained, but returned to me by the Supreme Court. I urge you to cause a close examination and study of the facts contained in my said Affidavit of 11th December, 2012 and my further Written Submission of 9th February 2012, and reach your conclusions thereon,



Gabriela Knaul

"Sri Lanka: UN expert concerned about reprisals against judges urges reconsideration of Chief Justice's impeachment"

as to whether such conduct could in anywise be condoned and/or ignored?

2. My Letter dated 5th November 2012 to the Attorney General, with attachments thereto, which reveals the conduct on the part of the Supreme Court, *vis-a-vis*, illegal contracts pertaining to which, citing international authorities, I had sought *anti-suit injunctions*. As a consequence of such conduct, Sri Lanka faces Claims of around SL Rs. 40 billion (US \$ 315 million) - a cognizable sum of money.

Your aforesaid repeated concerns have been on the Resolution in terms of Article 107 of the Constitution, which reigns supreme, and the Standing Orders made thereunder for the process to impeach the Chief Justice, by 117

law makers of a total of 225, consequent to which, the Hon. Speaker had no option, other than to appoint a Parliamentary Select Committee to investigate into Charges contained in such Resolution. To allay the controversy caused, as in the famous instance in France of *Alfred Dreyfus* affair, I attach a Chart depicting the administrative procedure for disciplinary action against judicial and public officers, together with an Article I had caused to be published, and the relevant Articles of the Constitution. I have observed as reported in the media, that Article 14 of the International Covenant on Civil and Political Rights was to be extended. Nevertheless, Judges are accountable to the prevalent Constitution under which they entered upon Office, and must not usurp



Parliament's Legislative function *vide* - Latimer House Principles; whereas as revealed in my Petition dated 18th October, 2012 forwarded previously the Chief Justice has violated the UN Universal Declaration of Human Right; and had overwritten Article 157 of the Constitution, which she could not!

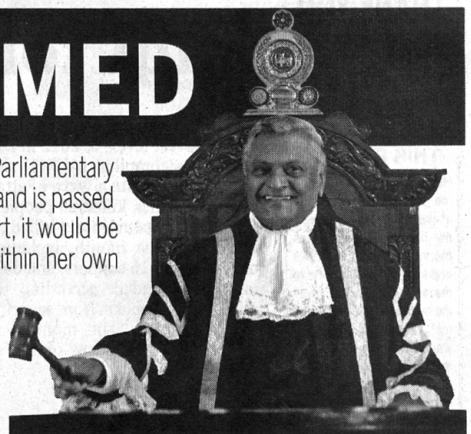
I attach a scanned copy of the Report of the Parliamentary Select Committee, without the recorded proceedings of, the list of documents examined by and the oral submissions made before, the said Committee, the contents of which are self-explanatory. The Parliamentary Select Committee is only an administrative process, enabling the President of the Republic to remove a Chief Justice, if the Committee's Report makes an adverse finding and is passed after an Address of Parliament. I myself have appeared

before Parliamentary Standing Committees, which are fact finding Committees, not exercising any judicial power, which I believe is as the same as in the House of Commons and Lords in the UK. The fact disclosed, that the Opposition Members of the Parliamentary Select Committee, after having seen the evidence, had 'walked out', without participating and writing a dissenting Report, with justifiable reasoning only reinforces the findings.

A hue and cry has been raised on the matter of natural justice, which perhaps triggered your concerns. On an examination of the attached Report of the Parliamentary Select Committee, it would be revealed that the facts are otherwise, and that the Chief Justice had been, in fact, afforded adequate time of one month, to respond to matters, which were within her own knowl-



Nihal Sri Ameresekere



Speaker Chamal Rajapaksa

edge. Please do compare this with the contents of my aforesaid Affidavit, where the people and I, particularly parties affected, had been knowingly denied natural justice of even having been heard, whilst she and the other Members of the Bench had acted in my view, *without jurisdiction, ultra-vires the Constitution, rendering nugatory the tenet that all are equal before the law.*

Given below are two strips of scanned newspaper photographs of scenes, (not reproduced in this newspaper due to reasons of space) within the precincts of the Supreme Court, portraying organized protests, including rituals performed, uproars created and the demeanor of the Chief Justice, whilst leaving to attend the Parliamentary Select Committee proceedings, which alone speaks volumes, and brings into issue, as to whether such hullabaloo is

acceptable under the Commonwealth Latimer House Principles and the Bangalore Principles of Judicial Conduct adopted by the UN. Would any ordinary litigant have been permitted to so conduct demonstrations in the Supreme Court precincts, to bring about undue pressure to endeavour to stymie and stultify an inquiry?

As disclosed in my previous Letter, my interest is as an Individual Member of the International Association of Anti-Corruption Authorities, committed to promoting and facilitating the implementation of the UN Convention Against Corruption (UNCAC),

which Sri Lanka ratified on 31st March 2004, whilst India ratified same only on 9th May, 2011. I am confident that you would support the same. In the circumstances revealed in my aforesaid Affidavit dated 11th December, 2012 and further written Submission dated 9th February 2012 attached thereto, the Chief Justice comes within the ambit of Article 52 of the UNCAC, pertaining to category of 'politically exposed persons' (PEPs), warranting enhanced scrutiny of their affairs in terms of the UNCAC.

Yours truly,
NIHAL SRI AMERSEKERE,
F.C.A., F.C.M.A., C.M.A., C.G.M.A., C.F.E.

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