

**IN THE SUPREME COURT OF THE  
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an Application under Article 126,  
read with Articles 17, 3, 4, Chapters III and VI of  
the Constitution of the Democratic Socialist  
Republic of Sri Lanka

Nihal Sri Ameresekere  
167/4, Vipulasena Mawatha  
Colombo 10.

**PETITIONER**

Vs

S.C. (FR) No. 481 / 2009

1. Ceylon Petroleum Corporation  
109, Rotunda Tower  
Galle Road,  
Colombo 3.

2. Sumith Abeysinghe  
Secretary to the Treasury  
The Secretariat  
Colombo 1.

3. Standard Chartered Bank  
Sri Lanka Branch  
37 York Street,  
Colombo 1.

Head Office at 1 Basinghall Avenue  
London EC2V 5DD, U.K.

4. Citibank  
Sri Lanka Branch  
65C, Dharmapala Mawatha  
Colombo 7.

Head Office at Citigroup Center  
153, East 53<sup>rd</sup> Street, 16/F, Zone 19  
New York, NY 10022, U.S.A.

5. Deutsche Bank AG  
Sri Lanka Branch  
86 Galle Road,  
Colombo 3

UK Branch at 1 Great Winchester Street  
EC2N 2DB London, U.K.

Head Office at Theodor-Heuss-Allee 70  
60486, Frankfurt, Germany.

6. Commercial Bank of Ceylon PLC  
Commercial House  
21, Bristol Street  
Colombo 1.
7. People's Bank  
75, Sir Chittampalam  
A. Gardiner Mawatha,  
Colombo 2.
8. B.D.W.A. Silva  
Director, Bank Supervision  
Central Bank of Sri Lanka  
Towers 1 & 2, Level 6  
30 Janadhipathi Mawatha  
Colombo 1.
9. Hon. Attorney General  
Attorney General's Department  
Colombo 12.

#### RESPONDENTS

**TO: HIS LORDSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS & LADYSHIPS THE OTHER HONOURABLE JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

On this 25<sup>th</sup> day of June 2009

The **Petition** of the **Petitioner** above-named, appearing in person, states as follows:

1. The Petitioner is a -
  - a) citizen of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as the "country")
  - b) Member of the
    - Institute of Chartered Accountants, Sri Lanka,
    - Chartered Institute of Management Accountants, UK.
    - Institute of Certified Management Accountants, Australia
    - Association of Certified Fraud Examiners, USA
    - International Consortium on Governmental Financial Management
    - International Association of Anti-Corruption Authorities
  - c) Consultant exposed to both the private and public sectors, and as a **Member of the aforesaid latter three Associations has been exposed to international practices, and instances of fraud and corruption, and is regularly updated with News Letters, *inter-alia*, relating thereto.**
  - d) public interest activist, particularly, *vis-à-vis*, fraud, corruption and combating the pillage and plunder of the resources of the people of the country.
  - e) person who has been concerned about the foreign exchange reserves of the country, the leakages thereof, and the rising levels of foreign debts to be serviced.

*A true photostat copy of the National Identity Card of the Petitioner is annexed marked "P1", pleaded as part and parcel hereof.*

2. (a) 1st Respondent (CPC) is a statutory Corporation established by Parliament by the enactment of Act No. 28 of 1961, as amended, (hereinafter referred to as the "**Ceylon Petroleum Corporation Act**"), *inter-alia*, defining its objects, rights, functions and operations.
  - (b) 2<sup>nd</sup> Respondent is the Secretary to the Treasury responsible *inter-alia*, for making payments of the Government of the Republic of Sri Lanka.
  - (c) 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents are licensed by the Central Bank of Sri Lanka, to operate as Commercial Banks, as Branches in Sri Lanka, of Foreign Banks, with Head Offices, respectively in UK, US and Germany. **The 5<sup>th</sup> Respondent's UK Branch has executed one of the transactions put in issue, with the 1st Respondent (CPC), the Petitioner verily believes handled by the Sri Lanka Branch of the 5<sup>th</sup> Respondent.**
  - (d) 6<sup>th</sup> Respondent is a listed public company, coming within the purview of the Companies Act No. 7 of 2007, and licensed by the Central Bank of Sri Lanka to operate as a Commercial Bank.
  - (e) 7<sup>th</sup> Respondent is a Bank established by Parliament by the enactment of Act No. 29 of 1961, as amended, and licensed by the Central Bank of Sri Lanka to operate as a Commercial Bank.
  - (f) 8<sup>th</sup> Respondent is the Director, Bank Supervision, Central Bank of Sri Lanka, under whose direction and supervision, licensed commercial Banks, including the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondent Banks operate.
  - (g) 9<sup>th</sup> Respondent is the Hon. Attorney General and is made a party in terms of Article 134 of the Constitution.
3. (a) The Petitioner, acting in the national and public interest, is presenting this Petition for himself, on his own behalf, and for and on behalf of the People of the country, invoking the jurisdiction of Your Lordships' Court in terms of the Article 126, read with Articles 17, 3, 4, Chapters III and VI of the Constitution, to prevent grave and irreparable loss, damage and detriment being caused to the People of the country; **the People being the co-owners of the Consolidated Fund, including the official foreign exchange reserves.**
  - (b) In like manner in the given circumstances of **wagering**, the Petitioner on 25.5.2009 filed SC (FR) Application No. 404/2009 putting in issue transactions, described as '**Petroleum Oil Hedging Agreements**', which said Application came-up before Your Lordships' Court on 1.6.2009 and 2.6.2009, and the Respondents seeking time to file documents, together with limited objections relevant to the interim relief that had been sought, the said Application has been fixed for Support on 14.7.2009.

*A true copy of the Petition in the said SC (FR) Application No. 404/2009 is annexed marked "P2", pleaded as part and parcel hereof, without the documents annexed thereto; and should Your Lordships' Court so direct, copies of the said documents shall be tendered.*
  - (c) The transactions put in issue have infringed and continues to infringe the fundamental right to equality before the law guaranteed by Articles 12(1) and 12(2) of the Constitution, and violate the other dictates of the Constitution referred to hereinabove, and if not restrained and nullified, would render such constitutional dictates nugatory.

4. The Petitioner very respectfully states that;

(a) It has been upheld and exhaustively dealt with in several Judgments of Your Lordships' Court that public property is held in trust on behalf of the People, and that there could be no violation of the 'Doctrine of Public Trust'.

(b) Your Lordships' Court in SC (FR) Application Nos. 10/07, 11/07, 12/07 and 13/07 *inter-alia* stated :

"The limitation in Article 29 which states that the provisions of Chapter VI are not justiciable would not in my view be a bar against the use of these provisions to interpret other provisions of the Constitution. *Article 27 of Chapter VI lays down that the 'Directive Principles of the State Policy' contained therein shall guide "Parliament, the President and the Cabinet of Ministries in the enactment of 'laws and the governance of Sri Lanka for establishment of a just and free society". Hence the restriction added at the end in Article 29 should not detract from the noble aspirations and objectives contained in the Directive Principles of State Policy, lest they become as illusive as a mirage in the desert."*

(c) Your Lordships' Court in the recent Judgment delivered on 4.6.2009 in SC (FR) Application No. 158/2007, *inter-alia*, stated as follows:

"In this case the petitioner in SCFR 158/2007 who has locus standi as a matter of right, to come before this Court for the alleged violation of his and the citizens' right to equality before the law, has emphatically asserted that he invoked the jurisdiction of this Court also in pursuance of a duty cast on every citizen of Sri Lanka. He has relied on Article 28(d) of the Constitution which appears in Chapter VI which set out Derivative Principles of State Policy and Fundamental Duties. According to Article 28(d) relied on by the petitioner, it is the duty of every citizen in Sri Lanka "to preserve and protect public property and to combat misuse and waste of public property." The petitioner's position is that he came before Court in obedience to a constitutional duty to protect public property - that is the SLIC, [which ultimately belongs to the people who possess the powers of the Government (Article 3 of the Constitution)] sold in contravention of the law.

Article 29 of the Constitution which appears in the same Chapter referred to above provides that :

"The provisions of this Chapter do not confer or impose legal rights or obligations and are not enforceable in any court or tribunal. No question of inconsistency with such provisions shall be raised in any court or tribunal."

The above provision shows that the duty set out in Article 28(d) is not enforceable against the petitioner in any court or tribunal. But if a person, on his own volition, decides to invoke the jurisdiction of this Court in terms of Articles 12(1), 17, 126(1) and 28(d) can this Court prevent that ? My considered answer is in the negative. On the other hand, when the Court has to deal with any objection to such application the Court has consider Articles 12(1), 17, 126 and 28(d) in combination. These articles do not merely confer power on this Court to issue directions or orders for enforcement of fundamental rights but lays down a constitutional duty to protect the fundamental rights of the people and for that purpose confer on this Court all incidental and ancillary powers necessary to progressively move forward to fashion and adopt, within the framework of the law, new strategies for the purpose of securing the enforcement of peoples fundamental rights. It must be remembered that these two applications have been filed in the public interest to make the fundamental right enshrined in article meaningful - that is to make it "tangible" and "palpable", and also to ensure that all officers of the State and its agencies entrusted with the duty to discharge their functions and obligations, do so in accordance with the law, bearing in mind the concept of equality enshrined in the Constitution and the basic tenet of the Rule of Law."

" ..... The ruler's trusteeship of the resources of the State which belong to the people is a part of the legal heritage of Sri Lanka dating back at least to the third century BC as pointed out by Justice Weeramantry in his separate opinion in the International Court of Justice in the Danube Case, by quoting the sermon of Arahath Mahinda to King Devanampiya Tissa as recorded in the Great Chronicle - Mahawansa. (See Bulankulama case - 2000 (3) SLR 243 at 254-255.)

This concept of the public trust which curtailed the absolute power of the monarch is in perfect harmony with the doctrine of public trust developed by the Supreme Court on the basis of the sovereignty of the people set out in Articles 3 and 4 of the Constitution, Article 12(1) and the principle of the Rule of Law, which is the basis of our Constitution. The Rule of Law is the principle which keeps all organs of the State within the limits of the law and the public trust doctrine operates as a check to ensure that the powers delegated to the organs of the government are held in trust and properly exercised to the benefit of the people and not to their detriment. When the Executive which is the custodian of the People's Executive Power "act *ultra vires* and in derogation of the law and procedures that are intended to safeguard the resources of the State, it is in the public interest to implead such action before Court." Per S.N. Silva CJ, in Vasudeva Nanayakkara vs. Choksy, SCFR 209/2007 SCM 21.7.2008. As pointed out by the Chief Justice (in Senarath vs. Kumaratunga SCFR 503/2005 SC Minutes of 3.5.2007 - 2007 BLR 23 at 30), the public interest to keep the executive within the power given to it by law is the "positive component" in the right to equality."

5. The Petitioner very respectfully states that

- (a) As per Article 28 of the Constitution, ***the exercise and enjoyment of rights and freedoms is inseparable*** from the performance of **fundamental duties** and obligations, and accordingly, it is the duty of every person in Sri Lanka, *inter-alia*, to:
- “(a) to uphold and defend the Constitution and the law;
  - (d) to preserve and protect public property, and to combat misuse and waste of public property**
  - (e) to respect the rights and freedoms of others”
- (b) Those who hold elected and selected public office, having made oath or affirmation in terms of the Constitution, to enter upon such public office, are bounden to uphold and defend the Constitution, and thereby duly perform the duties and obligations stipulated in Article 28 of the Constitution.
- (c) The ***exercise and enjoyment of rights and freedoms*** referred to in Article 28 of the Constitution, would *inter-alia* include the **‘right and freedom’ to engage in any lawful occupation, profession, trade, business or enterprise**, enshrined in Article 14(g) of the Constitution.
- (d) Hence, question arises, as to whether the aforesaid rights and freedoms enshrined the Constitution could be exercised by any person, who has not performed the fundamental duties, more particularly in this instance - **‘to preserve and protect public property, and to combat misuse and waste of public property’**; *more so, once such defraud of public revenue having been notified of.*

6. The Petitioner very respectfully states that;

(a) (i) In fact, to enforce the public duty, **to preserve and protect public property, and to combat misuse and waste of public property** enshrined in Article 28 of the Constitution *enacted in 1978*, Parliament shortly thereafter in 1982 enacted the **Offences Against Public Property Act No. 12 of 1982**, (amended by Act No. 28 of 1999), which stipulates that any person, whether public Officer or otherwise, is liable for the following Offences:

1. Mischief to public property.
2. Theft of public property
3. Robbery of public property
4. Misappropriation or criminal breach of trust of public property
5. Cheating, forgery or falsification in relation to public property
6. Attempting to commit any one of the above offences

(ii) Punishment for any one of the above Offences as stipulated in the aforesaid Act No. 12 of 1982 is a **fine up to 3 times (i.e. 300%) the value of the public property in respect of which such offence was committed and imprisonment not exceeding 20 years.**

(b) (i) **"Public property"** is defined in the said Act No. 12 of 1982 thus – *" 'Public property' means the property of the Government, any department, statutory board, public corporation, bank, co-operative society or co-operate union."*

(ii) The provisions of the said Act No. 12 of 1982 *being applicable to public corporations, would therefore be applicable to the 1st Respondent (CPC)*, its Officers and all those who deal with the 1<sup>st</sup> Respondent (CPC).

7. (a) The Petitioner states that, as per Economic Indicators published by the Central Bank of Sri Lanka, the Gross Official Reserves of the Government of Sri Lanka as at end March 2009 stood at US \$ 1272.1 Mn. A scanned 'extract' from the data published by the Central Bank of Sri Lanka in the 'Daily News' of 22.6.2009 is given below:

**DN** page **X** MONDAY, JUNE 22, 2009

**ECONOMIC INDICATORS**  
19 - 06 - 2009

<b>EXTERNAL FINANCE</b>				
		2009(a) End Mar.	2008(a) End Dec.	% Change
External Assets				
Total Reserves (b)(c)	US\$ Mn	2,721.4	2,991.5	-9.0
	Rs Mn	343,323.8	338,455.2	-7.4
Gross Official Reserves (b)(c)	US\$ Mn	1,272.1	1,753.4	-27.4
	Rs Mn	146,479.0	198,360.7	-26.2
		2009	2008	%
		Jan-Mar	Jan-Mar	Change
Private Remittances Inflows	US\$ Mn	773.6	787.0	-1.7
	Rs Mn	88,163.0	84,968.1	3.8
Outflows	US\$ Mn	92.5	79.2	16.9
	Rs Mn	10,546.7	8,345.2	23.4
Net	US\$ Mn	681.1	707.8	-3.8
	Rs Mn	77,633.3	76,426.9	1.6

(a) Provisional  
(b) Excluding ACU receipts  
(c) By end March 2009, the total level of foreign reserves were sufficient to finance 2.5 months of imports and the gross official reserves were sufficient to finance 1.2 months of imports.

- (b) At the time the Petitioner filed SC (FR) Application No. 404/2009, the Petitioner was made to understand that the purported Claims by the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents from the 1<sup>st</sup> Respondent (CPC) i.e. a Government Corporation and/or the 2<sup>nd</sup> Respondent, the Government of Sri Lanka, was in the range of US \$ 600 Mn. to 800 Mn., including applicable Interests claimed.
- (c) The Petitioner is now led to believe that the said purported Claims, **including applicable Interest**, as referred to at paragraph 9(h) at pages 17 and 18 of the ISDA Master Agreement (**P4(a)/(b)**) would even be over US \$ 800 Mn., with some of the Agreements described as **‘Petroleum Oil Hedging Agreements’**, going upto July 2009, August 2009 and October 2009.
- (d) **The correct amounts of the purported Claims could only be furnished to Your Lordships’ Court by the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents.**
- (e) It is shockingly revealed, that the said purported Claims by the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents from the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondents are alarmingly high compared with the aforesaid gross Official Foreign Exchange Reserves of the Government of Sri Lanka, as disclosed at 7(a) above.

8. The Petitioner respectfully states that;

- (a) Agreements camouflagedly described as “Petroleum Oil Hedging Agreements” referred to at paragraph 8 of the Petition in SC (FR) Application No. 404/2009, marked as (**P2**) at paragraph 3(b) hereinabove had been entered into by the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondent Banks with the 1<sup>st</sup> Respondent (CPC) , compromising and/or inducing the Public Officers of the 1<sup>st</sup> Respondent (CPC).
- (b) What had been carried out by the said transactions put in issue, though *camouflagedly* held out as **‘Petroleum Oil Hedging’**, in effect has been **‘deals’** in the nature of **‘speculating’** and/or **‘gambling’** and/or **‘betting’** and/or **‘wagering’** on the movement of Petroleum Oil Prices, on ‘notional quantities’, through a devious scheme of **‘Hedging through Derivative Instruments’**, entered into by and between the 3<sup>rd</sup> and/or 4<sup>th</sup> and/or 5<sup>th</sup> and/or 6<sup>th</sup> and/or 7<sup>th</sup> Respondents, with the 1<sup>st</sup> Respondent (CPC).

*True copies of the Price Movement Graphs / Data downloaded from the Internet in respect of Singapore Gas Oil, Dubai Crude Oil and Nymex WTI Crude Oil, are annexed respectively marked “P3(a)”, “P3(b)” and “P3(c)”, pleaded as part and parcel hereof*

- (c) Such **‘deals’** in the nature of **‘speculating’** and/or **‘gambling’** and/or **‘betting’** and/or **‘wagering’** is an unlawful and illegal activity in this country, and internationally, **and cannot be enforced in law.**
- (d) The Petitioner verily believes that the said transactions have been carried out purportedly under the Master Agreement, referred to as the ISDA Master Agreement of the International Swaps and Derivatives Association, Inc., and in terms of the Directions of the Central Bank of Sri Lanka.

*True copies of the ISDA Master Agreement, together with the Schedule thereto, and Directions of the Central Bank of Sri Lanka dated 21.12.2005 and 28.11.2006, are annexed respectively marked “P4(a)”, “P4(b)”, “P5(a)” and “P5(b)”, pleaded as part and parcel hereof*

- (e) He verily believes that the 1<sup>st</sup> Respondent (CPC) has been and is a Customer of the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondent Banks, *whereby the said Respondent Banks owed a professional and fiduciary duty of care to act in the best interest of the 1<sup>st</sup> Respondent (CPC).*
- (f) That one of the main causes for the present global financial crisis in the Banking Sector have been such aforesaid transactions, under the name and *guise* of '**derivative products**', and that the Secretary Treasury of the United States of America and the Government of America are reported to be formulating Laws and/or Regulations to regulate and control such dubious transactions.
9. The Petitioner verily believes that
- (a) *Notwithstanding and regardless of, specific directions in regard to the aforesaid, given in or about December 2008 by the Monetary Board, Central Bank of Sri Lanka, the 3<sup>rd</sup> Respondent Standard Chartered Bank has remitted in valuable foreign exchange a sum exceeding US \$ 100 Mn. between December 2008 and April 2009, and was endeavouring to remit a further sum exceeding US \$ 20 Mn., on 'Back to Back Agreements' entered into with foreign party / ies,*
- (b) The said sum exceeding US \$ 20 Mn. had not been remitted after the Petitioner filed on 25.5.2009 his aforesaid SC (FR) Application No. 404/2009.
- (c) The aforesaid sum exceeding US \$ 100 Mn. had been remitted by 3<sup>rd</sup> Respondent Standard Chartered Bank by utilizing Foreign Currency Deposits of the Public held by the said Bank, inasmuch as the said Bank did not have Reserves in Sri Lanka to have remitted such sum exceeding US \$ 100 Mn., *thereby jeopardizing public deposits; and which said remittance in exceeding US \$ 100 Mn. ought be directed to be brought back in to the country .*
10. (a) The Petitioner on 2.6.2009 in Your Lordships' Court came to be aware that the 5<sup>th</sup> Respondent, Deutsche Bank has filed for Arbitration at the International Center for Settlement of Investment Disputes in the US (ICSID), coming under the purview of the World Bank. **The said Claim would be against the Government of Sri Lanka and not against the 1<sup>st</sup> Respondent (CPC).**
- (b) Similarly, the Petitioner came to be aware that the 4<sup>th</sup> Respondent, Citibank has instituted Arbitration Proceedings in the U.K, in the London Court of International Arbitration, under the ISDA Master Agreement, and is being defended by the 9<sup>th</sup> Respondent, Attorney General, with the assistance of Foreign Lawyers, costing the 1<sup>st</sup> Respondent (CPC) and/or the Government of Sri Lanka, considerable costs by way of Foreign Lawyers and Experts Fees, etc., *which to date the Petitioner understands on this Arbitration alone has amounted to around Rs. 25.0 Mn., which is public money.*
- (c) The Petitioner also understands that the 3<sup>rd</sup> Respondent, Standard Chartered Bank, the lead Bank that initiated the dubious transactions put in issue has instituted Legal Action in the UK High Court, making a Claim against the 1<sup>st</sup> Respondent (CPC).
- (d) The foregoing acts based upon '**wagering contracts**', *which are illegal and/or unlawful and/or fraudulent, and are therefore not enforceable in a Court of Law,* alone jeopardizes the Government of Sri Lanka's foreign borrowing ability, and the standing in the international community for attracting foreign investments into the country.

11. The Petitioner states that

(a) The Government of Sri Lanka has entered into Agreements for the Promotion and Protection of Investments *inter-alia* with the following countries

- (i) Germany
- (ii) United States
- (iii) United Kingdom

*True Copies of the Agreements for Investment Promotion and Protection with Germany, United States and United Kingdom are annexed respectively marked "P6(a)", "P6(b)" and "P6 (c)", pleaded as part and parcel hereof*

(b) The aforesaid Agreements signed by the Government of Sri Lanka, with Germany and United States, have been passed by Parliament under and in terms of the Article 157 of the Constitution, whilst the said Agreement signed with the United Kingdom had only been tabled in Parliament and not passed under and in terms of Article 157 of the Constitution.

*True Copies of the respective Hansards disclosing the passing by Parliament of the aforesaid Agreements with Germany and United States, and the tabling of the aforesaid Agreement with United Kingdom, are annexed respectively marked "P7(a)", "P7(b)" and "P7(c)", pleaded as part and parcel hereof*

(c) For easy reference of Your Lordships' Court the Petitioner cites below **Article 157** of the Constitution.

**"International Treaties and Agreements**

**157.** Where Parliament by resolution passed by not less than two-thirds of the whole number of Members of Parliament (including those not present) voting in its favour approves as being essential for the development of the national economy, any Treaty or Agreement between the Government of Sri Lanka and the Government of any foreign State for the promotion and protection of the investments in Sri Lanka of such foreign State, its nationals, or of corporations, companies and other associations incorporated or constituted under its laws, such Treaty or Agreement shall have the force of law in Sri Lanka, and otherwise that in the interests of national security no written law shall be enacted or made, and no executive or administrative action shall be taken, in contravention of the provisions of such Treaty or Agreements. "

12. The Petitioner respectfully states that

(a) He reiterates that the Agreements camouflagingly described as "**Petroleum Oil Hedging Agreements**" Agreements referred to at paragraph 8 of the Petition in SC (FR) Application No. 404/2009, marked as (P2) at paragraph 3(b) hereinabove, in actual fact, being '**deals**' in the nature of '**speculating**' and/or '**gambling**' and/or '**betting**' and/or '**wagering**', are unlawful and illegal in Sri Lanka and internationally, and **cannot be enforced in a Court of Law.**

(b) Such purported Claims under such '**wagering**' Agreements **do not fall within the scope and/or meaning and/or definition of 'Investments'** covered by the aforesaid Agreements for Investment Promotion and Protection (P6(a), P6(b), P6(c)), which the Government of Sri Lanka, has signed as referred to hereinbefore.

- (c) ISDA Master Agreement (P4(a)/(b)) provides for termination, *inter-alia*, for 'illegality' or 'unlawfulness', and that 'nothing in such Agreement shall exclude any liability of a party for fraud' – (*vide* paragraphs 5(b) on page 8 and 9(a) on page 16), with the 'right to bringing of Proceedings in any one or more jurisdictions' - (*vide* paragraph 13(d)(iii) on page 20).
- (d) 'Directions' by the Central Bank of Sri Lanka cannot confer any legality, whatsoever, to transactions which are *ab-initio*, illegal and/or unlawful.

13. The Petitioner very respectfully brings to the kind attention of Your Lordships' Court that:

- (a) Petroleum Oil Imports, which causes the public a huge burden, are being carried out in the most questionable and dubious manner.
- (b) In one instance, in respect of the purchase of 220,000 to 300,000 Barrels of Gas Oil, Invitations for Offers dated 4.6.2009 had been **faxed on the same night** by the Ministry of Finance & Planning, with the closing date and time for Offers being the following day i.e. 5.6.2009 at 3.00 p.m.
- (c) According to practicalities and realities, making of such competitive Offers, is an impossibility; and that it is quite apparently evident that this has been a 'fix'.

*A true Copy of Letter of Invitation for Offers dated 4.6.2009 of the Ministry of Finance & Planning is annexed marked "P8", pleaded as part and parcel hereof*

14. (a) With the Petition filed on 25.5.2009 in SC (FR) Application No. 404/2009 (P2), as per paragraph 10 thereof the Petitioner compendiously marked as (P5), copies of Invoices in respect of Air Travel Costs of Public Officers involved in the transactions put in issue, evidently paid for by the 3<sup>rd</sup> Respondent, Standard Chartered Bank.
- (b) As to who had paid for accommodation and other costs incurred overseas in connection with such foreign travel of Public Officers involved in the transactions put in issue, was / is not known to the Petitioner, and could be obtained from the 3<sup>rd</sup> Respondent Bank, who had met such costs / made payments or any other Respondent Banks if they also had made such payments.
  - (c) Petitioner was appalled to read the Newspaper Reports in the '*The Sunday Leader*' of 21.6.2009 making several alleged disclosures in regard to the foregoing costs incurred overseas; and also locally, to compromise Public Officers.
  - (d) Allegations in the said Newspaper Reports also include the alleged involvement of the former Secretary, Ministry of Finance & Planning / Secretary to the Treasury, P.B. Jayasundera, who had appointed a Committee and forwarded a Report, recommending to carryout the transactions, described as "**Petroleum Oil Hedging Agreements**".

*True Copies of the Report dated 16.11.2006 forwarded by the Committee appointed by former Secretary, Ministry of Finance & Planning / Secretary to the Treasury P.B. Jayasundera, and Newspaper Reports of the Sunday Leader of 21.6.2009, are annexed respectively marked "P9" and "P10", pleaded as part and parcel hereof*

15. The Petitioner respectfully states that the 8<sup>th</sup> Respondent, Director, Bank Supervision, Central Bank of Sri Lanka;
- (a) Is entitled to call for all relevant informations, documents and records pertaining to the transactions put in issue, including all particulars and documents in relation to the aforesaid foreign travel costs incurred on Public Officers, including any other local or foreign costs and/or any other payments made in connection with the said “**Petroleum Oil Hedging Agreements**”.
  - (b) Could obtain evidence of expenses incurred and/or any payments made overseas, particularly by the 3<sup>rd</sup> and/or 4<sup>th</sup> and/or 5<sup>th</sup> Respondents, by obtaining such information either through;
    - (i) The Criminal Investigation Department *via* Interpol, or
    - (ii) The Financial Intelligence Unit established at the Central Bank of Sri Lanka under and in terms of the UN Convention Against Corruption, which provides for **mutual** assistance for the obtaining of information from the Financial Intelligence Units of the respective relevant foreign countries
  - (c) The Respondent Banks operate as Licensed commercial Banks under and in terms of Licenses therefor granted by the 8<sup>th</sup> Respondent, Director, Bank Supervision, Central Bank of Sri Lanka.
  - (d) Accordingly, the Respondent Banks are bound to conduct Banking Business strictly in conformity with the applicable Laws and the Regulations made thereunder and Directions issued by the 8<sup>th</sup> Respondent, Director, Bank Supervision, Central Bank of Sri Lanka or by its Monetary Board.
  - (e) The 8<sup>th</sup> Respondent, Director, Bank Supervision, Central Bank of Sri Lanka has statutory power and authority to conduct and/or cause investigations into the conduct and actions, and state of affairs of licensed commercial Banks and to take action for violation of the Law, Regulations and Directions and also where necessary to impose fines and/or penalties and/or take warranted action against the Directors and/or Officers concerned and/or consider as to whether the Banking Licenses granted ought be suspended and/or cancelled.
16. In the foregoing premises the Petitioner very respectfully states as follows:
- (a) Reiterating the averments made in his Petition in SC (FR) Application No. 404/2009, reiterates that Your Lordships’ Court be pleased to intervene and grant the relief as prayed for therein.
  - (b) Given the fact that the purported Claims made by the 3<sup>rd</sup> and/or 4<sup>th</sup> and/or 5<sup>th</sup> Respondents are purported Claims arising from ‘wagering’ contracts, which are illegal and unlawful and unenforceable in law, that such purported Claims do not fall within the scope, meaning and definition of ‘Investments’ in the respective aforesaid Agreements for Investment Promotion and Protection signed by the Government of Sri Lanka (**P6(a), P6(b), P6(c)**), and two of which has passed into Law under Article 157 of the Constitution; and hence cannot be proceeded with in Arbitration or otherwise under the relevant Agreements for Investment Promotion and Protection.
  - (c) Given the fact that the purported Claims made by the 3<sup>rd</sup> and/or 4<sup>th</sup> and/or 5<sup>th</sup> and/or 6<sup>th</sup> and/or 7<sup>th</sup> Respondents are purported Claims arising from ‘wagering’ contracts, which are illegal and unlawful and unenforceable in law, that such purported Claims cannot be proceeded with in Arbitration or otherwise, under the aforesaid ISDA Agreement, which, *inter-alia*, prohibits illegality and/or unlawfulness and/or fraud.
  - (d) Your Lordships’ Court be pleased to declare that no right or entitlement, whatsoever, would flow to parties under and in terms of the Agreements in respect of the transactions put in issue, under and in such circumstances of the said Agreements being illegal and/or unlawful and/or fraudulent.

- (e) Unless the Interim Orders prayed for are granted until the hearing and final determination of this Application, grave irreparable mischief and irreparable loss and damage would be caused to the Petitioner, and the **People of the country**.
  - (f) In the given facts and circumstances, the Petitioner is entitled to seek the reliefs sought for herein, for himself and more particularly, **for the People of the country**.
17. (a) The Petitioner respectfully states that the fundamental right to equality before law, guaranteed under Articles 12(1) and 12(2), read with Articles 17, 3 and 4 and Chapters III and VI of the Constitution have been infringed, and continue to be infringed, causing irreparable loss and damage and irreparable mischief to the Petitioner and the **People of the country**.
- (b) It is very respectfully submitted that the foregoing adduces good, sufficient and valid causes to entail the exercise of the judicial power of the People by Your Lordships' Court to arrest and prevent, grave loss, damage and detriment of national economic proportions and significance being caused to the People of the country.
- (c) In the given circumstances, a cause of action has arisen to the Petitioner, to invoke the Jurisdiction of Your Lordships' Court, for the exercise of the judicial power of the People, and for remedial action to be taken, to protect national and public interest, in conformity with the dictates of the Constitution, and to seek the reliefs prayed for herein.
- (d) The Petitioner respectfully states that the Petitioner filed Intervening Petitions in SC (FR) Applications Nos. 535/2008 and 536/2008, and the Petitioner misdirecting himself having not been present in Your Lordships' Court on 13.1.2009, the Petitioner's Intervening Applications were not considered and the Petitioner was not added as a Intervenant-Respondent, unlike another Intervening Petitioner, Vasudeva Nanayakkara, whose Application had been allowed by Your Lordships' Court, upon having heard his Counsel, and he had been added as the 9<sup>th</sup> Respondent in SC (FR) Application No. 535/2008.
- (e) Therefore, the Petitioner very respectfully states that the Petitioner had not been an Added-Party in the above Applications, which had been terminated on the Applications made by the respective Petitioners.
- (f) Except the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and the 9<sup>th</sup> Respondent, Hon. Attorney General, who has been made a party in terms of Article 134 of the Constitution, all other Respondents above-named were not Respondents in the aforesaid SC(FR) Applications Nos. 535/2008 and 536/2008, whereas, the Petitioner's Intervening Application in SC(FR) No. 535/2008 was to have added the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondent Banks, being direct parties to the transactions put in issue, as necessary parties.
18. (a) The Petitioner has received some of the documents annexed to the Petition, and verily believes them to be true, and has no reason to suspect the genuineness thereof, and relies on the 9<sup>th</sup> Respondent, Hon. Attorney General, to verify the genuineness thereof.
- (b) The Petitioner respectfully reserves the right to seek to adduce, with the permission of Your Lordships' Court, further documents and facts pertaining to this matter of national and public importance, should the necessity arises and/or to seek to add any other necessary party, with the permission of Your Lordships' Court.

- (c) Significantly, the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondent Banks, being principal parties to the transactions put in issue, had not been made parties in either of the aforesaid SC (FR) Applications Nos. 535/2008 and 536/2008, whereas the Petitioner in his Intervening Petition in SC (FR) Application No. 535/2008 had prayed that the said Respondent Banks be added as necessary parties.
- (d) The Petitioner very respectfully states, that he reserves the right to sue those, who had been directly involved in directing the transactions in issue to be carried out, and those who had carried out the transactions in issue, for the recovery by the State of losses and damages, if any, caused to the People of the country.

19. The Affidavit of the Petitioner is annexed in support of the averments contained herein

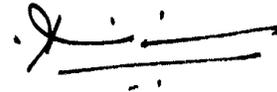
**WHEREFORE** the Petitioner respectfully prays that Your Lordships' Court pleased to:

- (a) grant Leave to Proceed with this Application in the first instance,
- (b) make Order to issue Notice of this Application on the Respondents,
- (c) make Order declaring that the fundamental rights guaranteed under Article 12(1) and 12(2) of the Constitution of the Petitioner, and the People of the Republic of Sri Lanka, have been infringed and are continuing to be infringed, also in violation of other dictates of the Constitution,
- (d) make Interim Order directing the 8<sup>th</sup> Respondent, Director, Bank Supervision, Central Bank of Sri Lanka,
  - (i) to call for and tender to Your Lordships' Court all relevant informations, documents and records pertaining to Agreements described as "Petroleum Oil Hedging Agreements" referred to at paragraph 8 of the Petition in SC (FR) Application No. 404/2009, marked as **(P2)** at paragraph 3(b) hereinabove, including all particulars and documents in relation to the foreign travel costs incurred on Public Officers, including any other local or foreign costs and/or any other payments, whatsoever, made in connection with the said "Petroleum Oil Hedging Agreements".
  - (ii) to obtain and tender to Your Lordships' Court, evidence of expenses incurred and/or any payments, whatsoever, made overseas, particularly by the 3<sup>rd</sup> and/or 4<sup>th</sup> and/or 5<sup>th</sup> Respondents, by obtaining such information, either through,
    - (a) the Criminal Investigation Department *via* Interpol, or
    - (b) the Financial Intelligence Unit established at the Central Bank of Sri Lanka, under and in terms of the UN Convention Against Corruption, which provides for Mutual Assistance for the obtaining of information from the Financial Intelligence Units of the respective relevant foreign countries
- (e) make Interim Order directing the 3<sup>rd</sup> Respondent, Standard Chartered Bank to remit back to the country the sum exceeding US \$ 100 Mn., and other such remittances, which had been remitted disregarding the Directives of the Central Bank of Sri Lanka not to make such remittances, and also directing the 4<sup>th</sup> and/or 5<sup>th</sup> and/or 6<sup>th</sup> and/or 7<sup>th</sup> Respondent Banks, who have in violation of such Central Bank Directives made payments on 'back to back' Agreements entered into in relation to Agreements described as "Petroleum Oil Hedging Agreements" referred to at paragraph 8 of the Petition in SC (FR) Application No. 404/2009, marked as **(P2)** at paragraph 3(b) hereinabove, which being 'wagering contracts', are illegal and / or unlawful and/or fraudulent, and not enforceable in law,

- (f) make Interim Order directing the respective Chief Executive / Operating Officers and Chief Financial Officers of the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents, and all persons, who have signed the Agreements described as "Petroleum Oil Hedging Agreements" referred to at paragraph 8 of Petition in SC (FR) Application No. 404/2009, marked as **(P2)** at paragraph 3(b) hereinabove, and for the said Officers and persons to explain to Your Lordships' Court by Affidavit, supported by Documents, the circumstances under which the said "Petroleum Oil Hedging Agreements" came to be signed,
- (g) make an Interim Order directing the respective Chief Executive / Operating Officers and Chief Financial Officers of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents Banks, to make a complete disclosure to Your Lordships' Court by Affidavit, supported by Documents, of all expenses, costs and payments, whatsoever, incurred and/or paid by their respective Banks, whether in Sri Lanka or through their overseas Head Offices and/or Branch Network, in connection with the Agreements described as "Petroleum Oil Hedging Agreements" referred to at paragraph 8 of the Petition in SC (FR) Application No. 404/2009, marked as **(P2)** at paragraph 3(b) hereinabove,
- (h) make Order declaring that the purported Claims made by the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondent Banks under the Agreements described as "Petroleum Oil Hedging Agreements" referred to at paragraph 8 of the Petition in SC (FR) Application No. 404/2009, marked as **(P2)** at paragraph 3(b) hereinabove, are purported Claims arising from 'wagering contracts', which are illegal and/or unlawful and/or fraudulent, and not enforceable in law,
- (i) make Order declaring that the Agreements described as "Petroleum Oil Hedging Agreements" referred to at paragraph 8 of the Petition in SC (FR) Application No. 404/2009, marked as **(P2)** at paragraph 3(b) hereinabove being 'wagering contracts', which are illegal and unlawful and/or fraudulent and not enforceable in law, that no right or entitlement, whatsoever, would flow to parties under and in terms of the said "Petroleum Oil Hedging Agreements",
- (j) make Order declaring that purported Claims of the 4<sup>th</sup> and 5<sup>th</sup> Respondents, made under Agreements described as "Petroleum Oil Hedging Agreements" referred to at paragraph 8 of the Petition in SC (FR) Application No. 404/2009, marked as **(P2)** at paragraph 3(b) hereinabove, being purported Claims arising from 'wagering contracts', which are illegal and/or unlawful and/or fraudulent, and not enforceable in law, do not fall within the scope, meaning and definition of 'Investments' in the respective Agreements for Investment Promotion and Protection signed by the Government of Sri Lanka, with the Government of United States of America **(P6(b))** and the Government of the Federal Republic of Germany **(P6(a))**, which have passed into Law, under Article 157 of the Constitution,
- (k) make Interim Order restraining until the final determination of this Application, the 4<sup>th</sup> and 5<sup>th</sup> Respondents from proceeding with Arbitration or any other litigation, under and in terms of the Agreements for Investment Promotion and Protection between the Government of Sri Lanka and the Government of United States of America **(P6(b))** and the Government of the Federal Republic of Germany **(P6(a))** respectively, to claim and/or demand directly or indirectly, from the 1<sup>st</sup> Respondent (CPC) and/or 2<sup>nd</sup> Respondent, representing the Government of Sri Lanka, and/or from the Government of Sri Lanka, any payment of monies, whatsoever, under Agreements described as "Petroleum Oil Hedging Agreements" referred to at paragraph 8 of the Petition in SC (FR) Application No. 404/2009, marked as **(P2)** at paragraph 3(b) hereinabove, which being 'wagering contracts', are illegal and / or unlawful and/or fraudulent, and not enforceable in law,
- (l) make Order restraining the 4<sup>th</sup> and 5<sup>th</sup> Respondents from proceeding with Arbitration or any other litigation, under and in terms of the respective Agreements for Investment Promotion and Protection between the Government of Sri Lanka and the Government of United States of America **(P6(b))** and the Government of the Federal Republic of Germany **(P6(a))**, respectively, to claim and/or demand, directly or indirectly, from the 1<sup>st</sup> Respondent (CPC) and/or 2<sup>nd</sup> Respondent, representing the Government of Sri Lanka, and/or from the Government of Sri Lanka, any payment of monies, whatsoever, which being 'wagering contracts', are illegal and/or unlawful and/or fraudulent, and not enforceable in law,

- (m) make Order declaring that the purported Claims made by the 3<sup>rd</sup> and/or 4<sup>th</sup> and/or 5<sup>th</sup> and/or 6<sup>th</sup> and/or 7<sup>th</sup> Respondent Banks, from the 1<sup>st</sup> Respondent (CPC) and/or the 2<sup>nd</sup> Respondent, representing the Government of Sri Lanka, and/or from the Government of Sri Lanka under the Agreements described as "Petroleum Oil Hedging Agreements" referred to at paragraph 8 of the Petition in SC (FR) Application No. 404/2009, marked as **(P2)** at paragraph 3(b) hereinabove, which being 'wagering contracts', which are illegal and/or unlawful and/or fraudulent, and not enforceable in law, and therefore, cannot be claimed under the ISDA Master Agreement **(P4(a) / (b))** , which, *inter-alia*, prohibits illegality and/or unlawfulness and/or fraud,
- (n) make Order declaring that the purported Claims of the 3<sup>rd</sup> and/or 4<sup>th</sup> and/or 5<sup>th</sup> and/or 6<sup>th</sup> and/or 7<sup>th</sup> Respondent Banks made from the 1<sup>st</sup> Respondent (CPC) and/or 2<sup>nd</sup> Respondent, representing the Government of Sri Lanka and/or the Government of Sri Lanka, under the Agreements described as "Petroleum Oil Hedging Agreements" referred to at paragraph 8 of the Petition in SC (FR) Application No. 404/2009, marked as **(P2)** at paragraph 3(b) hereinabove, which being purported Claims arising from 'wagering contracts', which are illegal and/or unlawful and/or fraudulent, and not enforceable in law, and therefore are unenforceable under the aforesaid ISDA Master Agreement **(P4(a) / (b))**, which, *inter-alia*, prohibits illegality and/or unlawfulness and/or fraud ;
- (o) make Interim Order restraining until the final determination of this Application, the 3<sup>rd</sup> and/or 4<sup>th</sup> and/or 5<sup>th</sup> and/or 6<sup>th</sup> and/or 7<sup>th</sup> Respondent Banks from making Claims from the 1<sup>st</sup> Respondent (CPC) and/or 2<sup>nd</sup> Respondent, representing the Government of Sri Lanka and/or the Government of Sri Lanka, under the Agreements described as "Petroleum Oil Hedging Agreements" referred to at paragraph 8 of the Petition in SC (FR) Application No. 404/2009, marked as **(P2)** at paragraph 3(b) hereinabove, which being purported Claims arising from 'wagering contracts', which are illegal and/or unlawful and/or fraudulent, and not enforceable in law, and therefore are unenforceable under the aforesaid ISDA Master Agreement **(P4(a) / (b))**, which, *inter-alia*, prohibits illegality and/or unlawfulness and/or fraud,
- (p) make Order restraining the 3<sup>rd</sup> and/or 4<sup>th</sup> and/or 5<sup>th</sup> and/or 6<sup>th</sup> and/or 7<sup>th</sup> Respondent Banks from making Claims from the 1<sup>st</sup> Respondent (CPC) and/or 2<sup>nd</sup> Respondent, representing the Government of Sri Lanka and/or the Government of Sri Lanka, under the Agreements described as "Petroleum Oil Hedging Agreements" referred to at paragraph 8 of the Petition in SC (FR) Application No. 404/2009, marked as **(P2)** at paragraph 3(b) hereinabove, which being purported Claims arising from 'wagering contracts', which are illegal and/or unlawful and/or fraudulent, and not enforceable in law, and therefore are unenforceable, under the aforesaid ISDA Master Agreement **(P4(a) / (b))**, which, *inter-alia*, prohibits illegality and/or unlawfulness and/or fraud,
- (q) make Interim Order restraining until the Final Determination of this Application, the 1<sup>st</sup> Respondent (CPC) and/or the 2<sup>nd</sup> Respondent, representing the Government of Sri Lanka and/or the Government of Sri Lanka from participating in and/or proceeding with any Arbitration and/or Litigation, other than this Application and SC (FR) Application No. 404/2009, in regard to the Agreements described as "Petroleum Oil Hedging Agreements" referred to at paragraph 8 of the Petition in SC (FR) Application No. 404/2009, marked as **(P2)** at paragraph 3(b) hereinabove, instituted and/or commenced by the 3<sup>rd</sup> and/or 4<sup>th</sup> and/or 5<sup>th</sup> and/or 6<sup>th</sup> and/or 7<sup>th</sup> Respondent Banks under the ISDA Master Agreement **(P4(a)/(b))** and/or under the respective Agreements for Investment Promotion and Protection between the Government of Sri Lanka and the Federal Republic of Germany **(P6(a))** and the United States of America **(P6(b))**; and to make Order converting the Interim Order into a Permanent Order upon the Final Determination of this Application,
- (r) direct the 8<sup>th</sup> Respondent, Director, Bank Supervision, Central Bank of Sri Lanka to conduct and/or cause investigations, in terms of applicable laws, into the conduct and actions of the Respondent Banks, its Directors and Officers, and to impose penalties and/or fines on anyone or more of the Respondent Banks for any offences and/or violations found to have been committed as a licensed commercial Banks, and/or take warranted action against the Directors and/or Officers concerned and/or consider, as to whether the Banking Licenses granted ought be suspended and/or cancelled,

- (s) make Interim Order directing the 2<sup>nd</sup> Respondent and/or the 1<sup>st</sup> Respondent (CPC) to tender to Your Lordships' Court formulated Guidelines with stipulated Time Schedules for the procurement of Petroleum Oil Products, to ensure transparency and competition, so that Petroleum Oil Products are procured at the most competitive prices, and that after approval by Your Lordships' Court of such Guidelines, with the Time Schedules, they be made public and always adhered to; and to make Order converting the Interim Order into a Permanent Order upon the Final Determination of this Application,
- (t) grant costs, and
- (u) grant such other and further relief as to Your Lordships' Court shall seem meet .

A handwritten signature in black ink, consisting of a stylized initial followed by a long horizontal stroke.

Petitioner