

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

*In the matter of an Application under Article
126 of the Constitution of the Democratic
Socialist Republic of Sri Lanka*

Vasudeva Nanayakkara
Attorney-at-Law
Advisor to His Excellency the President
Secretary, The Democratic Left Front
49 1/1, Vinayalankara Mawatha
Colombo 10

Petitioner

No: SC/FR/209/2007

Vs.

1. K. N. Choksy P.C., M.P.
Former Minister of Finance
23/3, Sir Ernst De Silva Mawatha
Colombo 7
2. Karu Jayasuriya, M.P.
Former Minister of Power & Energy
2, Amarasekera Mawatha
Colombo 5
3. Ranil Wickremesinghe M.P.
Former Prime Minister
115, 5th Lane
Colombo 3
4. Chandrika Bandaranaike Kumaratunga
Former President of Sri Lanka
Horagolla Walawwa
Horagolla
5. Milinda Moragoda M.P.
Former Minister of Economic Reform
3/2, Allen Methiniyarama Road
Colombo 5

6. Sripathi Sooriarachchi, AAL, M.P.
Former Minister, Public Enterprise Reforms
22, Niwasa Mawatha
Rilaulla
Kadana
7. Charitha Ratwatte
Former Secretary to the Treasury
16, Jawatte Road
Colombo 5
8. P. B Jayasundera
Secretary to the Treasury/ Former Chairman,
Public Enterprises Reform Commission
(PERC)
Secretariat
Colombo 1
9. P. Weerahandi
Former Secretary
Ministry of Power and Energy
410/7, Baudhaloka Mawatha
Colombo 7
10. Daham Wimalasena
Former Chairman
Ceylon Petroleum Corporation
Member, Technical Evaluation Committee
22/11, Subadra Mawatha
Madiwela
11. Upali Dahanayake
Former Director, Ministry of Finance
Member, Technical Evaluation Committee
32, Peiris Avenue, Idama
Moratuwa
12. A. W. C. Perera
Former Addl. Secretary
Ministry of Economic Reforms
Member, Technical Evaluation Committee
57/2, Rajamaha Vihara Road
Pita Kotte

13. Shamalee Gunawardene
Attorney-at-Law
Former Director Legal, PERC
500/111, Thimbirigasyaya Road
Colombo 5
14. DFCC Bank
73/5, Galle Road
Colombo 3
15. Commissioner of Lands
Land Commissioner's Department
7, Gregory's Avenue
Colombo 7
16. Sri Lanka Ports Authority
19, Church Street
Colombo 1
17. Ceylon Petroleum Corporation
109, Rotunda Tower
Colombo 3
18. John Keells Holdings Ltd.
130, Glennie Street
Colombo 2
19. Lanka Marine Services Ltd.
69, Walls Lane
Colombo 15
20. Susantha Ratnayake
Chairman
John Keells Holdings Ltd.
130, Glennie Street
Colombo 2
21. V. Lintotawela
Former Chairman
John Keells Holdings Ltd.
55, Abdul Caffoor Mawatha
Colombo 3
22. Nihal Sri Ameresekere
Former Chairman, PERC
Vipulasena Mawatha
Colombo 10

23. W. M. Bandusena
Former Chairman, PERC
XB 1/2/2, Edmonton Houses
Kirulapona
Colombo 5
24. W. A. S. Perera
Chairman, PERC
West Tower, 11th Floor
World Trade Center
Colombo 11
25. Channa De Silva
Director General
Securities & Exchange Commission of Sri Lanka (SEC), Level 11-01, East Tower
World Trade Center
Echelon Square
Colombo 1
26. Lalith Weeratunga
Secretary to His Excellency the President
Presidential Secretariat
Colombo 1
27. Wijeyadasa Rajapakshe P.C., M.P.
Chairman, Parliamentary Committee on Public Enterprises (COPE)
17, Wijeba Mawatha
Off Nawala Road
Nugegoda
28. Inspector General of Police
Police Headquarters
Colombo 1
29. Deputy Inspector General of Police
Criminal Investigation Department
4th Floor, New Secretariat Building
Colombo 1
30. Chairman, Commission to Investigate Allegations of Bribery or Corruption
36, Malalasekera Mawatha
Colombo 7

31. Hon. Attorney General
Attorney General's Department
Colombo 12

Respondents

AND NOW

In the matter of an Application under and in terms of Article 134(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka

1. Sri Lanka Shipping Company Limited
46/5, Nawam Mawatha,
P.O. Box 1125
Robert Senanayake Building,
Colombo 02.
2. Lanka Maritime Services Limited.
3rd Floor, Robert Senanayake Building,
46/5, Nawam Mawatha,
Colombo 02.
3. Lanka Bunkering Services (Pvt.) Limited
1st Floor, Robert Senanayake Building,
46/5, Nawam Mawatha,
Colombo 02.

Intervenient - Petitioners

Vs.

Vasudeva Nanayakkara
Attorney-at-Law
Advisor to His Excellency the President
Secretary, The Democratic Left Front
49 1/1, Vinayalankara Mawatha
Colombo 10

Petitioner - Respondent

1. K. N. Choksy P.C., M.P.
Former Minister of Finance

23/3, Sir Ernst De Silva Mawatha
Colombo 7

2. Karu Jayasuriya, M.P.
Former Minister of Power & Energy
2, Amarasekera Mawatha
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3. Ranil Wickremesinghe M.P.
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7. Charitha Ratwatte
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11. Upali Dahanayake
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57/2, Rajamaha Vihara Road
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Attorney-at-Law
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25. Channa De Silva
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Securities & Exchange Commission of Sri
Lanka (SEC), Level 11-01, East Tower
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26. Lalith Weeratunga
Secretary to His Excellency the President

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27. Wijeyadasa Rajapakse P.C., M.P.
Chairman, Parliamentary Committee on
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4th Floor, New Secretariat Building
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30. Chairman
Commission to Investigate Allegations of
Bribery or Corruption
36, Malalasekera Mawatha
Colombo 7

31. Hon. Attorney General
Attorney General's Department
Colombo 12

Respondents - Respondents

On this 30th day of August 2007

**TO HIS LORDSHIP THE CHIEF JUSTICE AND THE OTHER HONOURABLE
JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

The **Petition** of the **Intervenient** - **Petitioners** above-named appearing by NIHAL HUBERT GUNARATNA, SENATHI RAJAH, JAYANTA MOOTATAMBY SWAMINATHAN, SAKEEN ABDUL CADER, ANOMI INDIRA GOONESINGHE, THOMAS GERALD GOONERATNE, MALLIKARATCHIGE DILRUKSHI LALANI PERERA, JANAKI KUMARAGURU, MARY THERESA CONSTANCE FERNANDO,

MANILAL JOHN BLESSINGTON ADHIHETTY, SUBODHINI DAVID and AMILA MAREE FERNANDO, Attorneys-at-Law of the Honourable the Supreme Court of the Democratic Socialist Republic of Sri Lanka, carrying on business in partnership under the name and style of **JULIUS & CREASY** and their Assistants: JOSEPH LALINDRA MENDIS ABEYSEKERA, NILMINI CHANDRIKA EDIRIWEERA, NELUN SHIRANI MALINEE SENANAYAKE, KULATUNGA MUDIYANSELAGE AYOMI MADIRA KULATUNGA, THILAK DAMMIKA WICKRAMASEKARA RAJAPAKSE WIMALAGUNARATNE, ANANDI KRISHNAJINA GUNAWARDHANA, MAITHRI VAJIRA JAYATHILAKA and DILRUKSHI SIVASURIAM its Registered Attorneys at Law states as follows:

1. The 1st, 2nd and 3rd Interventient-Petitioners above-named (hereinafter referred to as 'the Petitioners') are limited liability companies incorporated and registered in Sri Lanka under and in terms of the Companies Act, No.17 of 1982, and have their registered offices at the above-mentioned addresses.
2. The 1st Petitioner is engaged in the business of shipping, and are, *inter alia*, ship-owners, ship's agents, bunker-brokers and off-shore marine service providers.
3. The 2nd Petitioner is a fully-owned subsidiary of the 1st Petitioner, and is engaged, *inter alia*, in the procurement and supply of marine petroleum fuels to ships, and the chartering of tankers to be used for the supply of marine petroleum fuels to ships, and has been granted Board of Investment (BOI) status under the Board of Investment of Sri Lanka Law, No.04 of 1978.
4. The 3rd Petitioner is an associate company of the 2nd Petitioner, and was established for the purpose of engaging in the procurement and supply of marine petroleum fuels to ships, and has been granted Board of Investment (BOI) status under the Board of Investment of Sri Lanka Law, No.04 of 1978.
5. The 1st Petitioner is an equal shareholder of the 3rd Petitioner.
6. The Petitioners state that the Petitioner-Respondent above-named instituted the main application on or about 28/06/2007, seeking, *inter alia*,
 - a) an Order declaring that the sale of 90% shares of the 19th Respondent-Respondent (hereinafter referred to as 'LMSL') to the 18th Respondent-Respondent (hereinafter referred to as 'John Keells') had been carried out in a wrongful, unlawful and irregular manner;
 - b) an Order declaring that the said purported sale of 90% shares of LMSL to John Keells was *ab initio* invalid, null and void, and of no force or avail in law; and

- c) an Order canceling, annulling and making void the Common User Facility (CUF) Agreement in the said Petition of the Petitioner Respondent as P19(a), the Sale and Purchase Agreement P19(c), and Agreement P27 pertaining to the said purported sale of 90% shares of LMSL to John Keells.
7. The Petitioners state that the pith and substance of the main application of the Petitioner-Respondent, which clearly appears to be supported by the documents annexed to the main petition, as well as the findings of the Parliamentary Committee on Public Enterprises (COPE), is that the said purported sale of 90% shares of LMSL to John Keells, as well as the consequential agreements entered into, including the said Common User Facility (CUF) Agreement P19(a), were effected and/or executed in a wrongful, unlawful and fraudulent manner, *inter alia*, by failing to adhere to imperative dictates of transparency, equitability and accountability.
8. The Petitioners very specifically state that they have been shocked, dismayed and alarmed by the serious allegations contained in the said main petition of the Petitioner-Respondent, including the allegation that John Keells was granted far-reaching and iniquitous favouration and/or concessions and/or advantages in respect of the said purported sale of 90% shares of LMSL, without the knowledge or approval of the Cabinet of Ministers.
9. The Petitioners further state that the Petitioners' said consternation is compounded by the fact that the 1st Petitioner above-named was a legitimate and *bona fide*, albeit unsuccessful, bidder for the aforesaid purchase of 90% shares of LMSL, and was thereby directly affected by the aforesaid alleged irregularity and/or fraud and/or illegality.
10. The Petitioners state that the circumstances surrounding the 1st Petitioner's said legitimate and *bona fide* bid to purchase 90% shares of LMSL can be summarized as follows:
- a) the service of providing marine petroleum fuels to ships that lay in port, in anchorage, or off-shore, also referred to a 'bunkering', is widely recognized as a shipping-related operation possessing tremendous potential as a means of generating substantial foreign exchange revenue, both for the service-provider, and the relevant government;
- b) in fact, certain hub ports like the port of Singapore have developed and enhanced their capacity to provide this service to such an extent that they supply approximately 18, 000,000 metric tons of marine petroleum fuels *per annum*, thus generating foreign exchange revenue of phenomenal proportions;
- c) however, despite the port of Colombo's unique and advantageous geographic location close to major shipping lines, the port of Colombo was unable to exploit this lucrative market due mainly to the fact that the exclusive rights to

import and supply marine petroleum fuels was vested in the CPC, who lacked the infra-structure or facilities to embark on a large-scale bunkering operation in the port of Colombo;

- d) the said monopoly was vested in the Ceylon Petroleum Corporation (hereinafter referred to as 'the CPC') in terms of the Ceylon Petroleum Corporation Act, No.28 of 1961 (hereinafter referred to as 'the CPC Act'), which provides, *inter alia*, that the CPC possesses exclusive rights to the importation, exportation, sale, supply or distribution of petroleum products in Sri Lanka (including marine fuels), subject to the power vested in the minister in charge of the subject of power and energy to authorize any party to engage in the said activities;
- e) consequently, until the year 2002, the CPC stringently exercised the said exclusive rights over the importation, exportation, sale, supply or distribution of marine petroleum fuels in Sri Lanka, and no private enterprise or company was authorized to engage in that activity, except as transporters of marine petroleum fuels to ships off-shore on behalf of the CPC;
- f) during this period, the CPC (through its subsidiary company LMSL) utilized facilities which consisted mainly of an oil terminal and approximately 12 oil tanks, to engage in its exclusive right to supply marine petroleum fuels to ships *via a* network which later came to be referred to as common user facility which consisted of, *inter alia*, the Dolphin Berth, the South Jetty and various inter-connecting pipelines;
- g) however, the obvious restrictions created by the said monopoly, and the severe adverse consequences arising therefrom, more particularly the prohibitive cost of marine petroleum fuels in the port of Colombo, were acutely felt by the stakeholders in the shipping industry in Sri Lanka, who were compelled to lobby the Government to liberalize the import and supply of marine petroleum fuels;

A true copy of a representation dated 23/11/1999 made in this regard by the Ceylon Association of Ships' Agents to the Minister in charge of the subject of Power and Energy, with copies to, *inter alia*, the Secretary to H.E. the President, Secretary - Ministry of Finance and Planning, Secretary - Ministry of Port Development, and Chairman - SLPA is annexed hereto marked IP1.

- h) IP1 highlighted the vast disparity in the prices offered by hub ports close to the port of Colombo, and those offered by the CPC at the port of Colombo, and the resultant decrease in marine petroleum fuels sales in the port of Colombo;
- i) in the teeth of such legitimate representations, and on the basis of studies made by various state organs, including the Ministry of Shipping

Development, it was proposed at various levels of Government, including the Cabinet of Ministers, that bunkering operations needed to be liberalized in order to develop bunkering facilities at the Port of Colombo;

A copy of a Cabinet Memorandum submitted by the Minister of Shipping and Shipping Development in this regard is annexed hereto marked IP2.

- j) IP2 highlights that not a single ship had obtained bunkering services from the Port of Colombo in the year 2000, and also cites the Government's Shipping Policy Document which stated, *inter alia*, that "*For the bunkering industry to succeed it is necessary that the industry has access to good supply vessels, storage facilities and competitive products. Sri Lankan companies have the financial resources, skills and the experience to operate bunker services. The private sector in Sri Lanka will thus be encouraged to invest and operate in the bunkering industry*";
- k) consequently, in or around 2002, there was a fundamental shift in the Government's policy in respect of the state-monopoly on petroleum-related business activity, more particularly bunkering operations, and manifested itself, *inter alia*, in a proposal put forward by the Government, acting through the Public Enterprises Reform Commission (hereinafter referred to as 'PERC'), for the sale of approximately 90% of the issued share capital of LMSL to the private sector, thereby paving the way for the private sector to engage in bunkering operations;
- l) the said shift in policy was in pursuance of the Government's desire to liberalize bunkering operations by stimulating and promoting private-sector participation and contribution in the said industry;
- m) in consequence, the 1st Petitioner, in collaboration with Chemoil Corporation of the United States of America, submitted an Expression of Interest in the purchase of the said shareholding in LMSL;

A true copy of the said Expression of Interest is annexed hereto marked IP3.

- n) thereafter, the 1st Petitioner was informed by PERC by its letter dated 09/04/2002 that the 1st Petitioner had been short-listed as a bidder for the said share holding in LMSL;

A true copy of the said letter is annexed hereto marked IP4.

- o) responding to IP7, the 1st Petitioner inquired from PERC by its letter dated 11/04/2002 whether LMSL would continue to hold a monopoly over the import and sale of marine bunkers after its privatization, or whether other organizations would be permitted to import and sell marine bunkers in

competition with LMSL, as the response to the said query would be a deciding factor in the quantum of the bid;

A true copy of the said letter is annexed hereto marked IP5.

- p) PERC responded by its letter dated 23/04/2002, stating, *inter alia*, that “*The objective of the government is to deregulate all petroleum related activities and promote private sector participation. In this context, there will be no restrictions on the import and sale of marine fuel by any other party consequent to the sale of LMSL subject to regulatory requirements;*”

A true copy of the said letter is annexed hereto marked IP6.

- q) the afore-said position was further confirmed at the pre-bid conference of prospective bidders held on 30/04/2002, where it was unequivocally stated by PERC that LMSL would not have a monopoly on the import and sale of bunkers subsequent to its sale;

True copies of the pre-bid conference minutes, and the covering letter from PERC dated 08/05/2002 accompanying the said minutes are annexed hereto marked IP7 and IP7a respectively, and the attention of Court is respectfully drawn to items 1.1 and 1.5 in the said minutes.

- r) subsequently, the 1st Petitioner submitted an indicative bid for the purchase of 90% of the issued share capital of LMSL; and

A true copy of the said bid dated 28/05/2002 is annexed hereto marked IP8.

- s) notwithstanding the said *bona fide* bid, subsequently, the 1st Petitioner learnt that the said 90% share-holding in LMSL had been sold to John Keells.

11. The Petitioners state that even at the time of the said purported sale and purchase, the bunkering industry in general, and the *bona fide* but unsuccessful bidders (including the 1st Petitioner) in particular, verily believed that John Keells had been unfairly and/or wrongfully favoured in the process of evaluating the relevant bids, but in the absence of adequate documentary evidence, neither the 1st Petitioner, nor any of the other unsuccessful bidders, challenged the said purported sale and purchase.

12. Without prejudice to the above, the Petitioners state that notwithstanding the said purported privatization of LMSL, the inherent operational limitations attendant upon its shore-based bunkering operation resulted in a situation where there was no significant improvement in the provision of bunkering services in the Port of Colombo.

13. Consequently, in pursuance of the Government's stated policy of liberalizing bunker operations in Sri Lanka the 2nd Petitioner sought and obtained the requisite approvals, and was issued by the then Minister of Power and Energy, a temporary licence on 30/10/2002, and commenced bunkering operations.
14. Thereafter under and in terms of Section 5(4) of the Petroleum Products (Special Provisions) Act, No.63 of 2002, the 2nd Petitioner was issued a Licence dated 15/07/2003 valid for five years, to "import, export, sell, supply or distribute marine petroleum fuels that is Marine Diesel Oil, Marine Gas Oil and Marine Fuel Oil for the sole purpose of providing fuel for marine ships...".
15. The Petitioners state that the 2nd Petitioner's entry to the bunkering arena was widely publicized and hailed by the shipping industry as a positive indication that bunkering would become a competitive industry in Sri Lanka.
16. The 2nd Petitioner utilized the services of the Motor Tankers 'LMS DIYALUMA', 'LMS DUNHINDA' and 'LMS RAMBODA', which it owned, for the purposes of its bunkering operations, and used to transport and to transfer marine fuels for the Petitioner, to recipient ships that were mainly lying in the Port of Colombo and outer harbour.
17. The 2nd Petitioner adopted a system whereby floating storage ships holding quantities of marine fuel, would either lie in anchorage or berth at the port, and then discharge its cargo of marine fuels directly or discharge them to other tankers of the Petitioner, to be delivered to ships in the Port of Colombo or off-shore.
18. The system of bunkering based on 'floating storage' is accepted internationally as the quickest, most efficient and cost-effective, and hence profitable, method of bunkering.
19. In the afore-said manner, the 2nd Petitioner made regular deliveries of marine fuel to numerous ships, more particularly to those lying **within** the Port of Colombo, investing a sum of approximately Rs.260,000,000/- (Rupees 260 Million) in carrying out its operations.
20. The 2nd Petitioner was at no point prevented from delivering marine fuel to ships lying in the Port of Colombo by the Sri Lanka Ports Authority (hereinafter referred to as 'the SLPA'), or any other party. On the contrary, the 2nd Petitioner carried out its bunkering operations with the express knowledge and permission of the SLPA.
21. The 1st Petitioner also set up the 3rd Petitioner to engage in bunkering operations, and was granted a licence effective 23/03/2004.
22. The Petitioners state that the 3rd Petitioner chartered a tanker named 'SERIFOS' to transport 51,000 metric tons of marine fuel valued at approximately USD 9

Million to Sri Lanka. It was the intention of the 3rd Petitioner to engage the 2nd Petitioner's Motor Tankers to transfer the marine fuel and provide bunkering services to ships lying in the Port.

23. When the tanker 'SERIPHOS' arrived off the Port of Colombo on or around 08/07/2004, and sought the allocation of a berth it was informed that the "SLPA will not permit the bunker tanker (mother vessel) to be placed within the port for any bunker deliveries or transfers to other vessels" without assigning any reason whatsoever therefore.
24. Thereafter, the Petitioners learnt that the motor tanker 'LMS DIYALUMA' which was chartered by the 3rd Petitioner, and was transferring a consignment of marine fuel from the said tanker 'SERIFOS' to ships at port 'DONG BAN' and 'FUJISAN MARU', had been prevented from doing so without any notice to the Petitioners.
25. Consequently, the Chairman of the 2nd Petitioner met with the Chairman of the SLPA in the latter's office at approximately 5 p.m. on 15/07/2004, and was informed that neither the 2nd Petitioner, nor the 3rd Petitioner, would be permitted to deliver marine fuel to ships lying within the Port of Colombo, as LMSL had wanted SLPA to enforce the terms of the Common User Facility (CUF) agreement entered into between the Government, CPC, SLPA and LMSL (P19(a)), wherein SLPA had purportedly agreed to compel all organizations engaged in bunkering operations to use the Common User Facility to deliver the said marine fuels to ships within the Port of Colombo.
26. The Petitioners specifically state that such a condition could not be enforced against the Petitioners, more particularly the 2nd and 3rd Petitioners, inasmuch as, *inter alia*, the operational restriction sought to be enforced by the said condition could, if at all, be enforced only on a shore-based bunker operation, and not a floating storage bunkering operation, in view of the vast disparity in the *modus operandi* of the two operations.
27. Furthermore, the said purported undertaking in an agreement between parties to a contract could not override or affect detrimentally the rights secured under a Bunkering Licence which had been granted by the Hon Minister in terms of the law, which did not have any such limitation or prohibition, but which on the other hand, was intended, as it was held out by the Governmental authorities repeatedly, to permit the same rights which any other party had in respect of Bunkering.
28. Furthermore as averred above, a substantial number of marine fuel deliveries had been made in the Port of Colombo subsequent to the said agreement being entered into, and neither the SLPA nor any other party had prevented or sought to prevent the said deliveries, thereby indicating their acquiescence of this position;
29. The Petitioners further state that

- a. the Petitioners are not parties to the said purported agreement between SLPA and LMSL;
 - b. the said condition, i.e., compelling all organizations engaged in bunkering operations to use the Common User Facility to deliver the said marine fuels to ships within the Port of Colombo, was in anyway not contemplated by the Government, SLPA or CPC initially, or made know to the prospective bidders for the afore-said shareholding in LMSL; and
 - c. the said condition had been surreptitiously and insidiously introduced, by way of Clause 8.2 to the said CUF Agreement, to create a monopoly for the company using the Common User Facility, i.e., John Keells through LMSL, inasmuch as the fact that this is linked directly to the storage tanks of LMSL effectively ensures that no one other than LMSL can use the said facility.
30. In this background, the Petitioners instituted two applications in the Court of Appeal, i.e., Writ Application Nos. **1534/2004** and **2173/2004**, seeking to vindicate their rights, and obtain appropriate relief.

The Petitioners have not burdened this record with copies of the case records in the said Court of Appeal Writ Application Nos. **1534/2004** and **2173/2004**, which are voluminous, but undertake to tender copies of the same, if Your Lordships' Court is pleased to so direct, and/or upon being added as party Respondents to the main application.

31. The Petitioners state that the main petition of the Petitioner-Respondent has specifically referred to the aforesaid applications (*vide* paragraph 20 thereto).
32. Whilst the said Writ Application Nos. **1534/2004** and **2173/2004** were pending, and the SLPA was in the process of settling the matter by permitting the Petitioners to provide bunkering services in terms of its licences, LMSL filed C.A. Writ Application No. **829/2005** on or around 25/05/2005, seeking to prevent the Petitioners from providing bunkering services in terms of its licences.

However, the Court of Appeal, by its Order dated 01/08/2005 refused notice and dismissed the Petition of LMSL.

The Petitioners have not burdened this record with a copy of the case record in the said Court of Appeal Writ Application No. **859/2005**, which is voluminous, but undertake to tender a copy of the same, if Your Lordships' Court is pleased to so direct, and/or upon being added as party Respondents to the main application.

33. The Petitioners state that LMSL subsequently filed an application in the Supreme Court, i.e., S.C. (Special Leave) Application No. 169/2005, challenging the aforesaid Order of the Court of Appeal, but the same was not supported.

The Petitioners have not burdened this record with a copy of the case record in the said Supreme Court Special Leave to Appeal Application No. 169 /2005, which is voluminous, but undertake to tender a copy of the same, if Your Lordships' Court is pleased to so direct, and/or upon being added as party Respondents to the main application.

34. The Petitioner states that with all these applications pending and alive, LMSL filed a further action in the Commercial High Court (Holden in Colombo), i.e., High Court (Civil) Case No. 244/2005(1), seeking once again to prevent the Petitioners from providing bunkering services in terms of its licences, on the alleged basis that the provisions of the aforesaid CUF Agreement had priority, and should be given effect.

The Petitioners have not burdened this record with a copy of the case record in the said High Court (Civil) Case No. 244/2005(1), which is voluminous, but undertake to tender a copy of the same, if Your Lordships' Court is pleased to so direct, and/or upon being added as party Respondents to the main application.

35. Notwithstanding LMSL's strident and persistent attempts to wrongfully enforce the terms of the said CUF Agreement on the Petitioners and the other players in the bunkering industry, and thereby create for itself a monopoly in the said industry, as aforesaid, the Petitioners now verily believe, on the basis of the documents annexed to the main Petition, as well as the findings of the Parliamentary Committee on Public Enterprises (COPE), that the said Common User Facility (CUF) Agreement P19(a), was effected in a wrongful, unlawful and fraudulent manner, without the knowledge or approval of the Cabinet of Ministers, and is in fact an insidious artifice designed to unjustly enrich LMSL and/or John Keells.

36. The Petitioners also verily believe, on the basis of the documents annexed to the main Petition, as well as the findings of the Parliamentary Committee on Public Enterprises (COPE), that that the said purported sale of 90% shares of LMSL to John Keells, as well as the consequential agreements entered into, were effected and/or executed in a wrongful, unlawful and fraudulent manner, *inter alia*, by failing to adhere to imperative dictates of transparency, equitability and accountability.

37. In view of the totality of the aforesaid, the Petitioners very specifically state that they, as members of the general public of this Country, and more particularly, the 1st Petitioner, as legitimate and *bona fide* bidder for the said purchase of 90% shares of LMSL, are entitled to be heard in the main application of the Petitioner-Respondent.

38. The Petitioners further state that, as a legitimate and *bona fide* bidder whose bid for the said purchase of 90% shares of LMSL was evidently stymied and/or frustrated by the impugned wrongful, unlawful and fraudulent acts and/or omissions, the 1st Petitioner's rights, in particular, would be gravely prejudiced and/or affected if the Petitioners are not heard in the main application of the Petitioner-Respondent.

39. The Petitioners also specifically and most respectfully state that they verily believe that, in the very likely event that Your Lordships' Court, upon consideration of all relevant facts, matters and documents, holds in favour of the Petitioner-Respondent and grants the relief sought, the relevant Governmental authorities would be compelled to follow the proper procedure in effecting the sale of 90% shares of LMSL, in strict conformity with the imperative dictates of transparency, equitability and accountability, thus ensuring a level playing field for all prospective *bona fide* bidders, including the 1st and/or 2nd and/or 3rd Petitioners.

The Petitioners very specifically state that the Petitioners are entitled to be heard in support of the said likely eventuality.

40. Without prejudice to the above, the Petitioners state that, in any event, both as parties who directly participated in the process leading to the aforesaid purported sale of 90% shares of LMSL, and as parties engaged in the bunkering industry, the Petitioners are in a position to assist Your Lordships' Court on the subject matter of the main application.

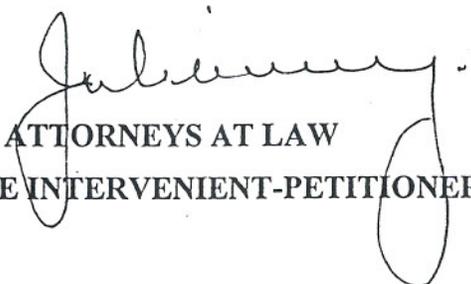
41. In the circumstances aforesaid, the Petitioners state that their presence before Your Lordships' Court as Interventient-Respondents is necessary in order to better enable Your Lordships' Court to effectually and completely adjudicate upon and settle the questions and issues involved in the main application.

42. The Petitioners most respectfully reserve the right to file fuller and further particulars relative to this application, upon being added as party Respondents.

WHEREFORE, the Interventient-Petitioners pray that Your Lordships' Court be pleased to:

- (a) make Order adding the Interventient-Petitioners as Respondents to the main application;

- (b) make Order permitting the Interventient-Petitioners to intervene in this application and to file necessary pleadings in support of their position in respect of the matters arising therein;
- (c) grant costs; and
- (d) grant such other and further relief as to Your Lordships' Court shall seem meet.


ATTORNEYS AT LAW
FOR THE INTERVENIENT-PETITIONERS