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Former PERC Chairman hails SC judgement

By Namini Wijedasa

Nihal Sri Ameresekere, a consultant and public interest activist, was one of the respondents in the Lanka Marine Services Ltd case. In his landmark judgement, Chief Justice Sarath Silva observes: “It is clear that the bundles of documents produced in the case would not have surfaced if not for the probing scrutiny of Ameresekere.” In an interview with LAKBIMANEWS, Ameresekere did not mince words about the corrupt transaction. Excerpts:

Ln: What are the facts of this case?

NSA: A sale of shares of a state-owned bunkering company was carried out without cabinet approval, granting it a monopoly when the government policy was to liberalise the bunkering business. Land and facilities which are intrinsically a part of the Colombo Port were attempted to be transferred to a private party, in this case Lanka Marine Services Ltd, without right and authority.

Ln: The Supreme Court ruling says you made “scathing remarks” about the impugned transaction in court. What did you say?

NSA: I believe that the dicta of the judgement are so strong that whatever I said is outdone by it. I stated in my submissions that the Penal Code has specific provisions governing the conduct of public officers and others who deal with public officers. This transaction needs to be examined in the context of the provisions and the provisions of the Offences against Public Property Act 12 of 1982 which covers mischief to, theft and robbery of public property, misappropriation or criminal breach of trust of public property as well as cheating, forgery or falsification in relation to public property. It holds that punishment for any of those offences is imprisonment not exceeding 20 years and a fine of three times - that is 300 per cent — the value of the public property in respect of which such offence is committed.

Ln: Did the Supreme Court mete out the maximum punishment possible?

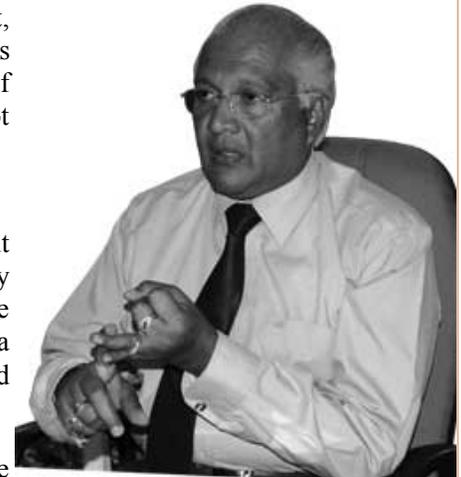
NSA: Let me point to a final pronouncement in the judgement which says: “All parties to the proceedings will take necessary action on the basis of the findings stated above”. The parties to the proceedings include the Secretary to the President, the Inspector General of Police, Deputy Inspector of Police of the CID, Chairman of the Permanent Commission to Investigate Allegations of Bribery or Corruption, the Director General of the Securities Exchange Commission and the Attorney General. One looks forward to these respondents respecting the dicta of the Supreme Court judgement in the interest of the country and upholding the rule of law irrespective of the personalities concerned - taking action as would be warranted and is taken globally now against this type of conduct.

Ln: How would you describe the judgement?

NSA: The Supreme Court must be paid tribute for upholding the judicial power of the people and preventing the pillage and plunder of the resources that rightfully belong to the people and are held only in trust by the government.

Ln: The judgement makes several observations on the role of Dr P B Jayasundera - who was then the Chairman of the Public Enterprises Reform Commission and is now the Secretary to the Ministry of Finance and Treasury - in this corrupt transaction. How would you describe his behaviour?

NSA: It is indeed appalling. Leave the personality aside. We are dealing with someone we refer to as the chief accounting officer of the government - holding the statutory office of the secretary to ministry of finance and secretary



to the treasury. He is the highest public officer in the financial realm and has to set an example so that the financial officers in the government machinery below him can emulate him. On the contrary, when he behaves in such a manner as disclosed and found by the Supreme Court, it's a severe indictment. It will undermine the entire public service and he cannot lead by example. By that alone, he disqualifies himself from holding such office.

Ln: In plain English, are you saying Dr Jayasundera must resign?

NSA: He should have left by now. The Secretary to the Ministry of Finance and Treasury is the primary person with whom international financial institutions like IMF, World Bank, ADB and OECD deal with on the implicit premise of trust. Wouldn't this judgement disclose a serious question about such an official can now be trusted to uphold the norms of governance, particularly in the context of UN Convention against Corruption of 2005 to which Sri Lanka is a signatory?

Ln: There is still no official call for Jayasundera to resign...

NSA: There is no necessity for an official call. I must consider whether I am fit to hold office in the face of severe indictment and castigation from the highest judiciary in the country, delivered by the Chief Justice himself. A responsible person with any self respect would not continue to hold such office if he can understand the plain English of the dicta of the Supreme Court judgement. The judgement has several references to the unlawful and illegal aspects of the transaction, warranting the said transaction to be annulled as it was by the Supreme Court.

Ln: What exactly had Jayasundera done?

NSA: It is very clear from the judgement that he, as head of PERC, had acted outside or ultra vires the PERC Act. Furthermore, he had done it without cabinet approval and committed the government, without cabinet approval, into transactions or commitments. As chairman of PERC and subsequently as chief financial officer of the state, he should have been more cautious and circumspect than the questionable haste with which this transaction had been effected.

Ln: Did he do this wilfully?

NSA: The only person who can answer whether or not he did this wilfully would be him, according to his conscience. But whether the action had been done wilfully or otherwise, intentionally or otherwise, the judgement of the Supreme Court speaks for itself.

Ln: What role did Chandrika Kumaratunga - who was president at the time - play in this deal?

NSA: She has placed the public seal of the republic on an instrument of transfer, obviously at the behest of those who initiated and prepared such document. The document falsely states that consideration was paid and received by the government to the land when there had been no such payment, rendering the document to be a nullity. What would the consequences be if two private parties were to execute a deed of transfer on such fictitious basis?

Ln: John Keells Holdings, for all intents and purposes, is a respected blue chip company but the Supreme Court has faulted them on serious counts and annulled the LMSL transaction. What can you say about companies that engage in such corrupt activity?

NSA: It is regrettable. I have been advocating the liberalisation of our economy from a socialist to private sector regime. If the private sector acts without adhering to norms of governance and conduct, it erodes public confidence in the system of moving towards a privatised economy. John Keells Holdings is considered a coveted organisation and has received awards for corporate social responsibility. I believe it's a UN Global Compact Company committed to combating corruption. The revelations in this judgement are diametrically contrary to the commitments of the Global Compact Initiative of the UN.

Ln: Should the Securities Exchange Commission take action against listed public companies?

NSA: The chambers of commerce regularly try to tell the government how to run the government. But I think it's more important for the chambers of commerce to put their own house in order first. They must ensure that their own members - whether big or small - conform to the norms of good governance and corporate social responsibility that they themselves propound, pontificate on and make believe in the public domain with awards ceremonies et al.

The Securities Exchange Commission Act of 1987 was amended in 1991, giving the SEC power to investigate into the conduct of affairs of listed public companies. We hear of codes of conduct and rules and regulations propounded, not only by the SEC but also by the Colombo Stock Exchange, to regulate the conduct of affairs of listed public companies. This is primarily to protect the interest of the investors whose funds are custodially managed by the boards of directors of listed public companies. The Companies Act No. 7 of 2007 also statutorily imposes duties and responsibilities on the conduct of directors of companies. So, given the disclosures made by the highest judiciary in the country, one would like to see what action the SEC and stock exchange take in respect of the judgement - particularly as the SEC is a

respondent in the case.

Ln: What action should JKH take on this matter?

NSA: Given the statutory provisions of the Companies Act and the codes of conduct for boards of directors, one waits to see what action the board of directors of John Keells Holdings - comprising of seven luminaries - would take after having digested and understood the dicta of the judgement for which I believe they should be given some reasonable space of time.

Ln: Should Susantha Ratna-yake resign?

NSA: I will repeat what I said about Dr Jayasundera - it is up to their consciences to consider whether they ought to continue holding public office. Under the Companies Act, a shareholder can intervene for action to be taken by the company in the event that a company acts outside the law, perpetrates fraud or illegality.

Ln: What inspired you to drive this case?

NSA: On a personal note, this transaction was carried out in 2002. I became Chairman of PERC in 2004 and this land was transferred on an illegal instrument, as now disclosed by the Supreme Court, in January 2005 while I was Chairman PERC. It happened without my knowledge, even as I had directed PERC officials to examine the matter and to go into the aspects of land ownership and valuation of the land as disclosed by documents produced in court.

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