

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

*In the matter of an Application for Relief pertaining to the  
undertaking in the Affidavit filed by the 8<sup>th</sup> Respondent-  
Petitioner dated 16<sup>th</sup> October 2008 pertaining to holding public  
office*

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

**PETITIONER**

SC FR Application No. 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, 5<sup>th</sup> 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. Sripathy Sooriyarachchi, AAL, M.P.  
Former Minister, Public Enterprise Reforms  
22, Niwasa Mawatha  
Rilaula  
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 & 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  
Galle Road  
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  
167/4, 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, 11<sup>th</sup> 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 Rajapakse 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  
4<sup>th</sup> 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**

32. **Sri Lanka Shipping Company Limited**  
46/5, Nawam Mawatha  
P.O. Box 1125  
Robert Senanayake Building  
Colombo 2.

33. **Lanka Maritime Services Limited**  
3<sup>rd</sup> Floor, Robert Senanayake Building  
46/5, Nawam Mawatha  
Colombo 2.

34. **Lanka Services (Pvt) Ltd.**  
1<sup>st</sup> Floor, Robert Senanayake Building  
46/5, Nawam Mawatha  
Colombo 2.

**ADDED-RESPONDENTS**

**AND NOW BETWEEN**

P.B. Jayasundera  
No. 761/C, Pannipitiya Road  
Pelawatte  
Battaramulla

**8<sup>TH</sup> RESPONDENT - PETITIONER**

**VS**

The Attorney General  
Attorney General's Department  
Colombo 12.

**31<sup>ST</sup> RESPONDENT - RESPONDENT**

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

**WHEREAS** having filed an extensive Statement of Objections to the instant Application of the *former* 8<sup>th</sup> Respondent and similarly Written Submissions, due to the non-availability of time, the 22<sup>nd</sup> Respondent was afforded only a very limited time yesterday to make Oral Submissions

**AND WHEREAS** in deference to the request made by Your Lordships' Court, the 22<sup>nd</sup> Respondent made very limited Oral Submissions, that too, very briefly, and was thus not able to make all the submissions, which had been intended to be made

**AND WHEREAS** in such circumstances, the following material submissions in brief are set out very respectfully Moving that Your Lordships' Court be pleased to accept the same:

1. Adverting to the 22<sup>nd</sup> Respondent's Statement of Objections dated 27.7.2009, supported by an Affidavit of same date, it was pointed out that upto date, the adverse findings against and/or the unbecoming conduct of the former 8<sup>th</sup> Respondent set out therein, *inter-alia*, as per the Reports by the Auditor General, COPE, PAC and Judgments of Your Lordships' Court, had not been controverted and/or refuted and/or denied by the former 8<sup>th</sup> Respondent, whereby they stood and stand admitted.

Among such vitally and materially important adverse findings made against the former 8<sup>th</sup> Respondent were;

- a) by the Auditor General in a Special Audit Report on the Management of Government Revenue, submitted to Parliament in July 2006 under Article 154(6) of the Constitution - *vide page 23 of the 22<sup>nd</sup> Respondent's Statement of Objections dated 27.7.2009*:

"The responsibilities devolving on the Secretary to the relevant Ministry in terms of the provisions in the Constitution, and on the Secretary to the Treasury and the respective Heads of Departments as the Accounting Officers through the Financial Regulations had not been discharged properly.

Questionable responses made instead of taking the immediate steps necessary to be taken even after serious lapses are brought to the notice of the institutions concerned by audit, pose problems." (*Emphasis added*)

- b) in SC (SD) No. 3 of 2008 Your Lordships' Court, *inter-alia*, held as follows - *vide pages 26 / 27 of 22<sup>nd</sup> Respondent's Statement of Objections dated 27.7.2009*:

"That is nearly Rs. 21 Billion have been transferred by Treasury officials during the period from the "Development Activities Program" to other activities under a large number of Heads. The transfers reveal that many of them have been for foreign travel, purchase of vehicles and for other miscellaneous items of expenditure far removed from "Development Activities". Furthermore this report does not specify any reason which required the particular deviations to be made. Hence there has been no compliance of the determination made by this Court.

Thus during the period of 2 1/2 months transfers have been made approximately Rs. 69 Billion. An examination of the subjects in respect of which and the amounts of such transfers reveal that the then Secretary to the Treasury has been operating a "Budget" of his own." (*Emphasis added*)

- c) in a Report of the PAC & COPE in August 2007 it had been stated as follows – *vide pages 25 / 26 of 22<sup>nd</sup> Respondent's Statement of Objections dated 27.7.2009*

"The revision of the budget by Rs.220.2 Billion at the discretion of the officers in terms of provisions in Section 5 of the Appropriation Act, No. 39 of 2005 including Rs.166 Billion in terms of authority granted under Section 6 of the said Act raises the question whether it tantamount to a partial abdication of the powers of full control over the Public Finance vested in the Parliament by Article 148.

Even though provision has been made in Sections 13, 14 and 15 of the Fiscal Management (Responsibility) Act, No. 3 of 2003 for carrying out a statements of the approved Budget and the actual Budget and report thereon to Parliament, the Annual Report for the year 2006 presented by the Ministry of Finance and Planning does not clearly and adequately facilitate a comparison. Therefore the opportunity afforded to report the actual position to the Parliament had been abandoned."

The bureaucrats have spent Rs.220.2 Billion of Public Funds in the year 2006 through the opportunity granted in terms of Section 5(1) and 6 of the said Act at their discretion against the approved budget without any knowledge or approval of the Parliament." (Emphasis added)

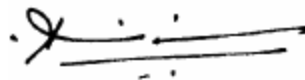
2. The Constitutional Council not functioning at present, and consequently the Public Service Commission having become defunct, the duties, functions and responsibilities of the Public Service Commission, to maintain discipline in the public service, had been reported to have been vested by Cabinet Decision, in the Secretaries of the respective Ministries. Hence -
  - a) in the face of the several grave and serious adverse findings by Your Lordships' Court in this Case, and as disclosed above, the question arises, as to whether the *former* 8<sup>th</sup> Respondent stands qualified and/or competent to discharge the functions to maintain discipline in the public service, as the Secretary, Ministry of Finance / Treasury
  - b) until the conclusion of investigations being carried out, as per the directions given by Your Lordships' Court by the IGP / CID and the Bribery Commission, the *former* 8<sup>th</sup> Respondent stands disqualified from being appointed to the Office of Secretary, Ministry of Finance / Treasury
3. Article 28 of the Constitution setting out the **Fundamental Duties** stipulates, that the exercise and enjoyment of rights and freedoms is **inseparable** from the performance of duties and obligations, and accordingly it is the duty of every person in Sri Lanka - '(d) to preserve and protect public property, and to combat misuse and waste of public property'. Hence it is respectfully submitted, that if a person does not perform his fundamental duties and obligations, *conversely* such person is **debarred** from the exercise and enjoyment of rights and freedoms, inasmuch as they are **inseparable** - *vide Note "A" to the 22<sup>nd</sup> Respondent's Written Submissions dated 9.9.2009*

**AND WHEREAS** according to the 22<sup>nd</sup> Respondent's understanding of the proceedings in Your Lordships' Court yesterday 24.9.2009, the Counsel for the Petitioner in response to observations made by Your Lordships' Court, conceded that the Judgment dated 21.7.2008 and the incidental / consequential Orders made thereafter upto termination on 15.12.2008, were not being impeached and/or sought to be reviewed, and in such circumstances, the main prayers (a) and (b) to the *former* 8<sup>th</sup> Respondent's amended Petition dated 31.7.2009 were being abandoned by him, thereby only standing on prayer - '(c) grant such other and further relief as to Your Lordships' Court shall seem fit and meet'

**WHEREFORE** in the given circumstances, the foregoing brief submission is being respectfully placed before Your Lordships' Court for due consideration thereof, and the 22<sup>nd</sup> Respondent most respectfully reiterates the following '*dicta*' of the Determination of the 7-Member Bench of Your Lordships' Court on the aborted 19<sup>th</sup> Amendment to the Constitution

"If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the Rule of Law and under the Constitution, **it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the Rule of Law meaningful and effective"** (Cited from *Indian Judgment*) (Emphasis added)

Colombo, on this 25<sup>th</sup> day of September 2009



22<sup>nd</sup> Respondent