

**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 8th Respondent-
Petitioner dated 16th 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, 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. Sripathy Sooriyarachchi, 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 & 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, 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 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
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

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

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

34. **Lanka Services (Pvt) Ltd.**
1st 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

8TH RESPONDENT PETITIONER

VS

The Attorney General
Attorney General's Department
Colombo 12.

31ST 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

On this 20th day of August 2009

The **Statement of Objections** of the 22nd Respondent above-named, appearing in person, to the further Petition (3rd) titled **Amended Petition** dated 31.7.2009 (hereinafter referred to as the "**Amended Petition**") of the *former* 8th Respondent, (without prejudice thereto, sometimes referred as the "**8th Respondent**"), and his corresponding further *purported Affidavit* (3rd) also dated 31.7.2009, respectfully states that:

1. The 22nd Respondent,
 - a) filed a Statement of Objections dated 27.7.2009 to the (1st) Petition and *purported* (1st) Affidavit, both dated 7.7.2009 of the *former* 8th Respondent.
 - b) filed a limited Statement of Objections dated 29.7.2009 to the Amended Petition (2nd) and the *purported* Amended Affidavit (2nd), both dated 21.7.2009 of the *former* 8th Respondent.
 - c) respectfully files this Statement of Objections to the Amended Petition (3rd) and the *purported* Affidavit (3rd), both dated 31.7.2009 of the *former* 8th Respondent.
2.
 - a) On 3.8.2009, Counsel for the *former* 8th Respondent, intimated to Your Lordships' Court, that an Amended Petition (i.e. 2nd Petition) had been tendered to the Registry of Your Lordships' Court on 21.7.2009 and *the Counsel's information was that these papers had gone missing from the Registry of Your Lordships' Court, (Emphasis added)* and
 - b) when Counsel received such information, he submitted a 'fresh set of papers' on 31.7.2009, which are identical i.e. *to that of 21.7.2009 (Emphasis added)*
 - c) 22nd Respondent on 3.8.2009, objected to the filing of the said 'fresh set of papers' on 31.7.2009, and intimated to Your Lordships' Court, that upon receipt of a copy of the same, he would tender his Objections.
 - d) Counsel for the *former* 8th Respondent also intimated to Your Lordships' Court, that he intends to file an Additional Affidavit (i.e. 4th Affidavit), which he said is of a 'sensitive' and 'confidential' nature .
3. 22nd Respondent very respectfully states that,
 - a) as to whom the contents of such Additional Affidavit (4th) would be 'sensitive' was not disclosed
 - b) extraneous matters, to confuse and/or camouflage the real issues before Your Lordships' Court, other than those facts, upon which Judgment was delivered and consequential Orders and Directions were made by Your Lordships' Court, ought not be entertained and ought be rejected.
 - c) This Case having been filed in the public interest, there ought not be any *sensitivity* or *confidentiality* for any matter in that regard to be not made known to the public.
4.
 - a) In the circumstances of such alleged 'sensitivity', the 22nd Respondent very respectfully tenders, marked "22RX18", pleaded as part and parcel hereof, a Report of the Washington based Government Accountability Project, the leading *Whistleblower* organization in the US, on the findings in the Judgments of Your Lordships' Court, in this Case, as well as in the SLIC Case (*SC (FR) No. 158/2007*), which Report contain facts 'sensitive' to the people of our country, in whose interests the said two Cases had been instituted.
 - b) The said Report has highlighted, among other, the conduct and actions, castigated in the Judgments by Your Lordships' Court, of the 8th Respondent, both as *former* Secretary to the Treasury and *former* Chairman, PERC.
 - c) The 22nd Respondent has been made to understand, that this Report would be circulated at the relevant levels within the IMF, World Bank and ADB, in the context of deliberations on the release of funds, under Loans approved to our country.

5. In the context of the Statement made by Counsel for the *former* 8th Respondent, that the papers of 21.7.2009 filed in the Registry of Your Lordships' Court *'had gone missing'*, the 22nd Respondent very respectfully tenders, pleaded as part and parcel hereof, a set of the said papers, without the Annexures marked "A" to "F" thereto, respectively marked "**22RX19(a), (b), (c) and (d)**" comprising:
 - a) Undated **Motion** date stamped on 22.7.2009 by the Registry of Your Lordships' Court, disclosing that **33 copies** of the said papers dated 21.7.2009 had been tendered to be served on the Petitioner and Respondents. (*This is a certified copy obtained on 29.7.2009 by the 22nd Respondent from the Registry of Your Lordships' Court*) - marked **22RX19(a)**
 - b) **Notice** dated 23.7.2009 received by the 22nd Respondent from the Registry of Your Lordships' Court date stamped by the Registry on 22.7.2009 - marked **22RX19(b)**.
 - c) **Amended Petition** (2nd) dated 21.7.2009 date stamped by the Registry of Your Lordships' Court on 21.7.2009 - marked **22RX19(c)**, *forwarded with the aforesaid Notice*.
 - d) **Amended Affidavit** (2nd) dated 21.7.2009 date stamped by the Registry of Your Lordships' Court on 21.7.2009 - marked **22RX19(d)**, *forwarded with the aforesaid Notice*.
6.
 - a) On being questioned by Your Lordships' Court on 3.8.2009, Hon. Attorney General, who was present, confirmed that he had received copy of the said papers dated 21.7.2009.
 - b) Wijeyadasa Rajapakshe, P.C., M.P., 27th Respondent, former Chairman COPE, who was present in Your Lordships' Court, also confirmed to the 22nd Respondent, that he too had received a copy of the said papers dated 21.7.2009.
 - c) Only the Petitioner's Counsel intimated, that he had not been served with any of the papers. The 22nd Respondent understands that after the said date 3.8.2009, the Petitioner's Counsel also has received a copy of the said papers dated 21.7.2009.
7. The 22nd Respondent very respectfully states that in the given circumstances, there was no necessity to have tendered to Your Lordships' Court a '**fresh set of papers**' dated 31.7.2009, which are said to be **identical** to those tendered on 21.7.2009, inasmuch as,
 - a) the Respondents, including the Hon. Attorney General, having received copies thereof, and
 - b) the *former* 8th Respondent having copy thereof, to have served a copy of the same after 3.8.2009 on the Petitioner's Counsel.
8. The 22nd Respondent very respectfully states that the said copies of the papers of 21.7.2009 could have been adopted, *subject however to having sought and received approval for the amendments to the Petition from Your Lordships' Court*, in place of those papers said to '*have gone missing*' from the Registry of Your Lordships' Court, to have formed part and parcel of the record of Your Lordship's Court; which the 22nd Respondent verily believes is the normal practice in Court, if and when papers in the record are missing and/or destroyed.

9. a) On **8.8.2009**, the 22nd Respondent received copies of the following from the Attorneys-at-Law for the *former* 8th Respondent
- (i) Motion dated 29.7.2009
 - (ii) Motion dated 31.7.2009
 - (iii) Amended Petition dated 31.7.2009
 - (iv) Affidavit dated 31.7.2009
 - (v) Annexures marked "A" to "F"
- b) The 22nd Respondent states that he did not receive copy of any Application made to Your Lordships' Court by the *former* 8th Respondent, *seeking the permission of Your Lordships' Court to amend the original Petition and Affidavit*, both dated **7.7.2009**, and **disclosing clearly and distinctly, the amendments sought to be made.**
10. a) In the context of the Counsel of the 8th Respondent having stated, that the papers i.e. **Amended Petition** (3rd) and *purported Affidavit* (3rd), both dated **31.7.2009** are **identical** to the Amended Petition (2nd) and *purported* Amended Affidavit (2nd) both dated **21.7.2009**, the 22nd Respondent very respectfully reiterates, to be read, construed and considered as part and parcel hereof, his Statement of Objections and the averments of his corresponding Affidavit, both dated **29.7.2009** filed in response to the said **Amended Petition** (2nd) and *purported Amended Affidavit* (2nd) both dated **21.7.2009**, of the *former* 8th Respondent.
- b) Though stated to be **identical**, the *purported* Affidavit (2nd) dated **21.7.2009** is titled as an **Amended Affidavit**, whilst the *purported* Affidavit (3rd) dated **31.7.2009** is titled as **Affidavit**.
- c) The 22nd Respondent very respectfully reiterates, to be read, construed and considered as part and parcel hereof, his Statement of Objections and the averments of his corresponding Affidavit, both dated **27.7.2009**, filed in response to the Petition (1st) and Affidavit (1st), both dated 7.7.2009 of the *former* 8th Respondent.
11. a) Without prejudice to the foregoing, the 22nd Respondent denies all and singular the several averments contained in the said **Amended Petition** (3rd) and the corresponding *purported Affidavit* (3rd) both dated 31.7.2009, save and except those
- (i) averments which are not inconsistent with the averments in the Statement of Objections and the corresponding Affidavit, both dated 27.7.2009 of the 22nd Respondent,
 - (ii) averments which are not inconsistent with the averments in the Statement of Objections and the corresponding Affidavit, dated 29.7.2009 of the 22nd Respondent, and
 - (iii) which have been specifically admitted in the 22nd Respondent's aforesaid Statements of Objections and corresponding Affidavits dated 27.7.2009 and 29.7.2009, to the averments in the respective paragraphs of Petitions dated 7.7.2009 and 21.7.2009 of the *former* 8th Respondent, which are **identically repeated** in the *former* 8th Respondent's **Amended Petition**, and the corresponding *purported Affidavit*, both dated **31.7.2009**.
- b) In addition, the 22nd Respondent reiterates the averments in the **Preliminary Objections** in the 22nd Respondent's Statements of Objections dated **27.7.2009** and **29.7.2009**, and the corresponding Affidavits of the same respective dates.

- c) The 22nd Respondent also reiterates the following paragraph 1 (g) (iii) of his Statement of Objections dated 27.7.2009

"22nd Respondent relies on the *dicta* in the Determination made by a 7 Member Bench of Your Lordships' Court on the aborted 19th Amendment to the Constitution, which, *inter-alia*, included the following:

"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)"

- d) However, *should the need arise*, the 22nd Respondent respectfully reserves the right to file an **additional** Statement of Objections and Affidavit to the **additional** and/or **modified** averments in the **Amended Petition** (3rd) of the *former* 8th Respondent and his *purported Affidavit* (3rd), both dated 31.7.2009

12. Without prejudice to the foregoing, the 22nd Respondent, by way of further responses, very respectfully states as follows :

- a) In response to the new paragraphs 9, 10, 11, 12, 14, 17, 18, 19, 20, 21, 28 and 29, read with new modified paragraphs 13, 15 and 16 of the Amended Petition dated 31.7.2009, the 22nd Respondent states that the attempt and/or endeavour to purport -
- after a lapse of nearly 10 – 12 Months, after Judgment delivered on 21.7.2008, and Orders made on 29.9.2008 and 8.10.2008,
 - that there were no adverse findings in the Judgment against the *former* 8th Respondent
 - and to impugn the said Judgment
 - and that the said Orders had been made *per incuriam*,
 - and also by a *different Bench of Your Lordships' Court*

is a futility in sheer desperation.

- b) Similar attempts and/or endeavours, which were made in the Water's Edge Case SC (FR) No. 352/2008, have been lucidly dealt with, citing precedents of Your Lordships' Court, in the Order delivered by Your Lordships' Court on 3.8.2009.
- c) The said Order made by your Lordships' Court on 3.8.2009, in the Water's Edge Case SC (FR) No. 352/2008 is aptly applicable, to likewise warrant the refusal of the reliefs sought by the *former* 8th Respondent from Your Lordships' Court, and warrant the rejection and/or dismissal *in-limine* of the *former* 8th Respondent's Application/s.
- d) The enjoyment of fundamental rights and freedoms are **inseparable** from the **performance of fundamental duties** in terms of Article 28 of the Constitution, and hence, in the face of the several grave and serious findings by Your Lordships' Court of flagrant violations, more particularly of Article 28 (d) of the Constitution, by the *former* 8th Respondent, **he stands debarred** from seeking refuge under the Constitution, to endeavour to enforce his fundamental rights and freedoms.

13. Responding to paragraphs 26 and 27 of the Amended Petition dated 31.7.2009, the 22nd Respondent respectfully states, that His Excellency the President cannot commit an unlawful act, moreso particularly, in the face of an express bar by the Constitution.

14. a) The 22nd Respondent respectfully states that an undertaking given to a Court of Law, whether by Affidavit or otherwise, cannot be retracted, inasmuch as Courts of Law dispose of Cases based on such undertakings given, and in this instance in terms of an Order / Direction of Your Lordships' Court.
- b) To have stated that the manner in which the Orders were made by Your Lordships' Court and the tenor thereof, was of a coercive nature, and that the *former* 8th Respondent did not object thereto in view of fear of punitive consequences in the event of non-compliance, is baseless, in that, the 22nd Respondent was personally present in Court, and the same Counsel making submissions on 8.10.2008 submitted thus, as per the Proceedings of 8.10.2008 -

"He (*Counsel*) further submits that the 8th Respondent **tenders an unreserved apology** to Court for having continued functioning after the Judgment of this Court" (*Emphasis added*)

- c) Even in his recent Letter dated 3.6.2009 addressed to the Secretary to the President (*marked "F" with his Petition*) the *former* 8th Respondent had *inter-alia* stated –

"In this context, my Lawyers had advised me prior to the delivery of the Judgment in the said case that if the Court were to take into account all the relevant material, **there could be no adverse findings against me.**" (*Emphasis added*)

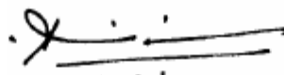
whereby *former* 8th Respondent had admitted there were, in fact, adverse findings made by Your Lordships' Court against him, whilst in the same breath at paragraph 5 of his *purported* Affidavit dated 31.7.2009 (so also at paragraphs 5 of his *purported* Amended Affidavit dated 21.7.2009 and his *purported* Affidavit dated 7.7.2009) he states that –

"I am not guilty of any misconduct and for that reason will take appropriate legal action to move Your Lordships' Court to establish the same".

- d) Hence, the 8th Respondent stands estopped from purporting to state otherwise, now after a lapse of 10-12 Months.
15. Affidavit of the 22nd Respondent in support of the foregoing averments is attached hereto.

WHEREFORE the 22nd Respondent respectfully prays that Your Lordships' Court be pleased to:

- a) reject and/or dismiss *in-limine* the **Amended Petition** and *purported Affidavit*, both dated 31.7.2009, of the *former* 8th Respondent
- b) reject and/or dismiss *in-limine* the Petition and *purported* Affidavit both dated 7.7.2009, and the **Amended Petition** and *purported Amended Affidavit*, both dated 21.7.2009 of the *former* 8th Respondent
- c) grant costs, and
- d) grant such other and further relief as to Your Lordships' Court shall seem meet


22nd Respondent