



BY FAX / COURIER

7th August 2014

A Hon. D.E.W. Gunasekera
Chairman, Committee on Public Enterprises (COPE)
Parliament of Sri Lanka
Sri Jayawardenepura
Kotte.

Palitha Fernando Esqr., P.C.
Hon. Attorney General
Attorney General's Department
Hultsdorf Street
Colombo 12.

Hon. COPE Chairman and Hon. Attorney General,

Ceylon Petroleum Corporation's *purported* Oil Hedging Deals

Totality of facts not disclosed in the COPE Interim Report

I refer to the COPE Interim Report presented to Parliament on 5.8.2014, particularly re - the following paragraphs scanned from paragraph 2, under the heading 'Ceylon Petroleum Corporation' on page 12 thereof;

12

Parliamentary Series No.

	Ceylon Petroleum Corporation Ministry of Petroleum Industries	02nd December 2013
2.	The Committee enquired the current position with regard to the Hedging transaction and the losses incurred. The Committee further revealed that the CPC had to pay US \$ 60 million to the Standard Chartered Bank under the Deed of Settlement entered with them. The legal and other costs the CPC had to incur had been US \$ 15.3 million whereas only US \$1.3 million had been earned from the Hedging transaction.	The CAO AO stated that the total loss incurred by the CPC in the Hedging transaction had been US \$ 75.28 million as at 30.09.2013. With regard to the Citi-bank transaction the Court delivered the decision in favour of the CPC, and the decision with regard to Deutsche Bank transaction was pending.

I endeavoured in the public interest, **to litigate in our country** concerning the above **unlawful and illegal** transactions to **prevent colossal losses being caused to public funds**.

I observe that the COPE Interim Report does not disclose the totality of the facts, whereby the reality of what had transpired had been suppressed from COPE, the Parliament and the public.

Having come to know in May 2009 that Standard Chartered Bank, in violation of the provisions of the Exchange Control Act, pertaining to Capital Account Transactions, had remitted **US \$ 107,778,700/-**, to its Head Office in UK (*admitted by Letter dated 13.5.2009 of the Controller of Exchange addressed to Standard Chartered Bank*), without the prior permission of the Central Bank, and also disregarding the specific directive given on 16.12.2008 by the Monetary Board to Standard Chartered Bank prohibiting such remittance, and that Standard Chartered Bank was endeavouring to remit a further sum of **US \$ 20 Mn.**, I, in the public interest, promptly on 25.5.2009 filed SC (FR) Application No. 404/2009.

Consequently on 16.3.2011, acting under and in terms of Sections 51 and 52 of the Exchange Control Act, the Controller of Exchange had imposed a penalty of **Rs. 27,577,019,612/-** (*approximately US \$ 250 Mn.*) on Standard Chartered Bank, against which Standard Chartered Bank had filed Writ Application No. 409/2011 on 16.6.2011 in the Court of Appeal.

Thereafter upon coming to know on 2.6.2009, whilst supporting the aforesaid SC (FR) Application No. 404/2009 in the Supreme Court, that Standard Chartered Bank, Citibank and Deutsche Bank had instituted legal proceedings in foreign jurisdictions, promptly on 25.6.2009, I filed a further Action in the public interest in SC (FR) Application No. 481/2009, *inter-alia*, seeking '**anti-suit injunctions**' to **estop** foreign legal proceedings, ***as Sri Lanka was the proper forum.***

Though, I had filed the above two Fundamental Rights Applications, in the public interest, as stipulated in Article 126 of the Constitution, **well within the 30 days of the aforesaid specific acts**, the then Hon. Attorney General, Mohan Peiris P.C., appearing for Ceylon Petroleum Corporation and the Secretary to the Treasury, and also as *amicus-curiae*, **having admitted by Affidavits settled by him**, that the purported Oil Hedging Deals **were, *inter-alia*, illegal and/or ultra-vires and were null and void and/or unenforceable**, however *curiously* **vehemently objected** to my Applications for the Supreme Court of our country to exercise jurisdiction - *vide* Proceedings of 14.7.2009:

“Mr. Mohan Peiris P.C. AG too informs Court that he vehemently objects to the Leave to proceed being granted, as he is defending the action filed abroad vigorously and the arbitrations”

The foregoing was notwithstanding, the then Minister of Petroleum Industries, having assured me that the then Hon. Attorney General, Mohan Peiris P.C., *would be instructed to support my endeavours.*

Finally, when the matter came up on 11.5.2010, the then Hon. Attorney General, Mohan Peiris P.C., continuing to vehemently oppose the prosecution by me, in our country, invoking the jurisdiction of the Supreme Court, ***pqmpously unequivocally assured in open Court, that he would successfully defend the foreign litigation and arbitrations, and advised me to ‘lay my head at rest’***, *even though I had pointed out to him that he was on the defence, whilst I was on the offence!* Contrary thereto, private Counsel appearing for the Controller of Exchange and Director Bank Supervision supported my Applications.

The Supreme Court, comprising Justices N.A. Amaratunga, S. Marsoof and K. Sripavan, upheld such objection of '**time bar**', and in fact delivered a **gravely erroneous** Order, that I should I have filed my Applications within one month of 27.1.2009, on which date, the aforesaid act of unlawful remittance of monies by Standard Chartered Bank, and the foreign litigation and arbitrations **never existed**, thereby rendering such Order to be a **farce!**

It was so held, since I had endeavoured to intervene in two previous public interest actions, regarding the matter of the purported Oil Hedging Deals, but though present in Court on 27.1.2009, I was not made an Intervient Party, since the Supreme Court terminated the said two Applications on that date, **and in any case, such matter had no relevance whatsoever to the foregoing, which were distinctly different matters.**

Consequently, by Letter dated 24.6.2010, recording correctly the chronology of facts, I put the then Hon. Attorney General, Mohan Peiris P.C., on notice of his foregoing **unequivocal public assurance and guarantee**, that **no monies whatsoever of public funds would be paid to the aforesaid Banks, and that he would recover total costs incurred in spending public funds.**

Making a *sheer mockery* of what was so held out and asserted publicly in the Supreme Court by the then Hon. Attorney General, Mohan Peiris P.C., subsequently in Case No. 209 Folio 375 in the High Court of Justice, Queens Bench Division, Commercial Court in London, in Judgment dated 11.7.2011, the Claim against the Ceylon Petroleum Corporation of **US \$ 161,733,500/- plus Interest from 2008** had been awarded to Standard Chartered Bank. I verily believe that the settlement referred to in the aforesaid COPE Interim Report had been a compromise, as a consequence of the aforesaid penalty of **US \$ 245 Mn.**, which had been imposed by the Controller of Exchange, and ought have been so fully disclosed.

Thereafter, further making such assurances to be **mere hollow rhetoric** by Award dated 31.10.2012, the International Centre for Settlement Disputes in Washington DC awarded Deutsche Bank **US \$ 60,368,993/- plus Interest from 2008** and a further **US \$ 7,995,127.36** as legal fees and expenses. I learned that the present Hon. Attorney General had appealed against the said Arbitral Order, though the grounds of Appeal are very restrictive, and *that the outcome of the Appeal is not yet known.*

Notwithstanding the London Commercial High Court Judgment dated **11.7.2011** held in favour of Standard Chartered Bank having been tendered before the Arbitral Tribunal of the London Court of International Arbitration, sitting in Singapore, the Citibank Claim of **US \$ 194 Mn.**, against Ceylon Petroleum Corporation, was won by the Ceylon Petroleum Corporation, even thereafter by Award dated **31.7.2011** declared as **null and void** and *ultra-vires* and **beyond the capacity** of Ceylon Petroleum Corporation. I verily believe that this was directly as a result of my publishing a Book released globally on **25.4.2011** titled – “*Derivative / Hedging Deals by Citibank, Standard Chartered Bank, Deutsche Bank, with Sri Lanka Government's Petroleum Corporation - Dubious & Illegal ?*”

According to the Auditor General, as reported in the Daily Mirror of 12.5.2014 **Rs. 480 Mn.**, had been alleged to have been paid as Legal Fees to defend these Oil Hedging Deals in foreign jurisdictions, whereas the Supreme Court of Sri Lanka had *ex-facie* restrained these Oil Hedging Deals, and I was **wrongly prevented on baseless grounds** from having these Oil Hedging Deals adjudicated upon in our country, **resulting in the foregoing colossal losses of public monies, for which those responsible, necessarily ought be held accountable and responsible.**

Hon. Attorney General, Palitha Fernando, P.C., I have noted with interest your interview published in the Daily Mirror of 8.4.2013 captioned – “**We are men of integrity: Attorney General**”. I attach a copy thereof, and urge you to take action, without fear or favour, regardless of the status of the persons concerned, upholding the noble principles, **which you have asserted assuring the public.**

Yours truly,



Nihal Sri Ameresekere, F.C.A. F.C.M.A., C.M.A., C.G.M.A., C.F.E.
Associate Member, American Bar Association
Director, International Consortium on Governmental Financial Management
Member, International Association of Anti-Corruption Authorities

WE ARE MEN OF INTEGRITY: ATTORNEY GENERAL



By Hafeel Fariz

The 27th Attorney General of Sri Lanka, Palitha Fernando PC in a one on one discussion with the Daily Mirror refuted all allegations and assertions to the effect that the Department has been politicised and runs according to the whims and fancies of a powerful few.

"This department is not politicised, there is not an iota of truth in the assertion that officials of this department would act based on any political interferences. I could assure you that during my time at the helm of this department there has never been an instance where anyone tried to interfere with the work that we do" he said.

Speaking to the Daily Mirror, Fernando emphasised that his duty is towards the public of the country.

"We are all men of integrity and all of us have a conscience, if there was sound evidence against some person how could we withdraw a case or release them on a phone call? We have never received such calls and would never give into such interference if there was any" he said.

"I have nothing more to achieve and there is nothing more for me to look forward to. There are two cornerstones that have guided me throughout my life-They are my longing for a good night's sleep and a peaceful death. My duty is towards the public of this country and I will do my duty towards them with utmost dignity and perseverance" he said.

The Attorney General functions as the Principal Law officer of the state, heading a department comprising a Solicitor General, three Additional Solicitor Generals, Senior State Counsels, and State Counsels.

"We are not bothered as to who the accused is, the Police is in charge of investigating a crime, thereafter once a file reaches us we take decisions accordingly" he said.

“ I HAVE NOTHING MORE TO ACHIEVE AND THERE IS NOTHING MORE FOR ME TO LOOK FORWARD TO. THERE ARE TWO CORNERSTONES THAT HAVE GUIDED ME THROUGHOUT MY LIFE- THEY ARE MY LONGING FOR A GOOD NIGHT'S SLEEP AND A PEACEFUL DEATH. MY DUTY IS TOWARDS THE PUBLIC OF THIS COUNTRY AND I WILL DO MY DUTY TOWARDS THEM WITH UTMOST DIGNITY AND PERSEVERANCE ”

The procedure adopted by the Department is when a file reaches the Attorney General's Department, it is registered and sent to an allocating officer who is a senior officer in the Department. The senior officer allocates it to a State Counsel for necessary action. The State Counsel studies the case and submits a report to his supervising officer who is invariably a Senior State Counsel. The report shall discuss the facts of the case, analyse the evidence available and make certain recommendations relevant to the case.

The current Attorney General of the country who possesses with him an experience of over three decades within the department

which he joined as a State Counsel in 1980, subsequently served as Additional Solicitor General, Solicitor General and as Judge Advocate of the Sri Lanka Navy prior to his appointment.

In a wide ranging discussion, hot on the heels of suspects and accused persons being discharged or released, and cases being withdrawn on the advice of the Attorney General in many high profile cases,

the Attorney General said that the officials of the department could only work on the evidence they possess. "We could only act on the evidence, not on suspicion or assumption".

Following are excerpts of the 'no holds barred' discussion in which the Attorney General spoke of the specifics of cases that has caused a certain degree of dissension among the public.

The Kotakethana double murder and



the subsequent release of two suspects including Godakawela Pradeshiya Sabha member L.H. Dharmasiri who is said to have connections to the powerful minister in the Ratnapura District.

The suspect who is said to be a member of the Pradeshiya Sabha had a son who worked at the Prisons Department, who was arrested for carrying drugs and subsequently remanded. It is said that the suspect had an issue with the two females who were murdered who were suspected to have been the informants to the Police regarding the son's involvement in narcotics.

So when these two females were murdered naturally he was suspected to have been involved in the murder and was arrested.

First of all it must be noted that if he is such a powerful person why did he not secure the release of his son?

Police continued with their investigations and the Criminal Investigations Department

was also brought in and ultimately they arrested the brother of this man (Chandrasiri) and his Sister-in-law in connection to the murder.

Four people were accordingly remanded including this Pradeshiya Sabha member.

When we looked into the evidence however, there was not an iota of evidence implicating him. On the day of the incident he was in Dondra and evidence revealed that it was his brother and Sister-in-law who were involved in the murder.

We will be filing indictments very soon against the two of them. There will also be a special prosecutor who will conduct the case against the accused.

Evidence did not reveal any connection between him and the incident nor did it reveal anything to implicate him being behind these murders.

The acquittal of the son of Minister Mervyn Silva and five others.

The most important facet of any case is the evidence. We are guided by the evidence ordinance.

For whatever reason if the injured party in a sworn affidavit tells court that there was no incident then there is nothing more that we can do because there are no witnesses. The evidence ordinance which we are governed by is very clear on this.

Video evidence is only corroborative evidence. The main weapon that an accused has in any case against him is cross examination.

You can't put on a video in court and expect the judge to make a decision. The law doesn't work like that. Video evidence is only used to corroborate the evidence given by a witness and for nothing more. Fortunately or unfortunately these are the rules that we are governed by.

If so why was the Army Major not implicated for making a false statement?

Because, as a Policy we don't take such action. This is of course guided by policy.

we don't know the reason or under what circumstances he withdrew his complaint- this is common to any complainant who withdraws unless there are exceptional circumstances.

Making Minister Mervyn Silva's Parliamentary Affairs Secretary and his Coordinating Secretary, who were in remand over their alleged involvement in the Kelaniya UPFA Pradeshiya Sabha member Hasitha Madawala's murder, state witnesses.

The two suspects were accused of providing shelter and guarding the accused after he confessed to the killing of the Kelaniya Pradeshiya Sabha member.

Sri Lankan law does not recognise 'abatement' as an offence after committing a crime. It should either before or while the crime is being committed. What better evidence do we have other than the two people to whom the accused had confessed to?

They will be used as concrete evidence against the accused when prosecuting. This was the rationale behind making the two suspects state witnesses.

Investigations into the massacre of 17 Aid workers in Muttur and five university students in Trincomalee.

We are in the process of investigating and gathering all evidence relevant to these two cases. The Ministry of External Affairs is also involved in these two issues.

We are currently analysing all possible evidence that we have gathered thus far, it is a difficult task because many years have passed since the crimes were committed but we are in the process of finding out who was responsible. The department has taken all measures to ensure that a comprehensive process is carried out to find those responsible despite the obstacles that arise with the lapse of time.

“ WE ARE ALL MEN OF INTEGRITY AND ALL OF US HAVE A CONSCIENCE, IF THERE WAS SOUND EVIDENCE AGAINST SOME PERSON HOW COULD WE WITHDRAW A CASE OR RELEASE THEM ON A PHONE CALL?. WE HAVE NEVER RECEIVED SUCH CALLS AND WOULD NEVER GIVE INTO SUCH INTERFERENCE IF THERE WAS ANY ”

BY FAX / COURIER

1st September 2014

Hon. D.E.W. Gunasekera M.P.
Chairman, Committee on Public Enterprises (COPE)
Parliament of Sri Lanka
Sri Jayawardenepura
Kotte.

Hon. COPE Chairman,

Ceylon Petroleum Corporation's *purported* Oil Hedging Deals

Totality of facts not disclosed in the COPE Interim Report

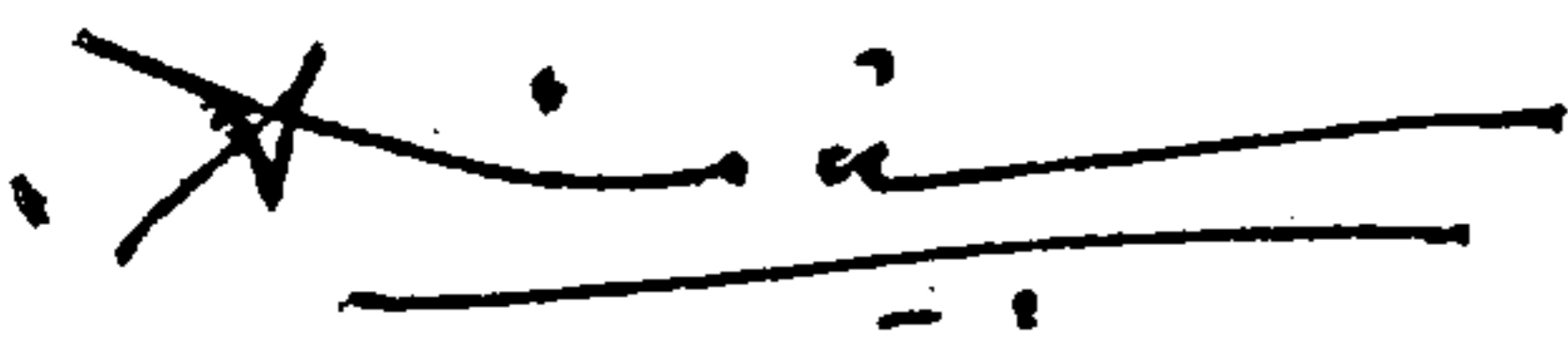
I thank you for directing the Actg. Secretary COPE to inform me, by his Letter dated 27.8.2014, that my Letter dated 7.8.2014 addressed to you and the Hon. Attorney General, has been referred to the Auditor General, calling for his observations, prior to me being summoned.

To assist the Auditor General in this matter, I set out the following queries, very briefly, to be considered, to be referred to him.

1. Were not these transactions *ultra-vires* the Ceylon Petroleum Corporation Act (CPC Act), particularly Sections 5 and 5B defining its specific objects ?
2. The applicability of and/or transgression with the Public Corporations (Financial Control) Act ?
3. Had Section 22 of CPC Act mandating the sealing of an instrument by 2 Directors been violated ?
4. Had the true nature of these transactions been understood ? Had they been fair transactions ?
5. Why were these transactions entered into, bypassing the normal procedure of consulting Hon. Attorney General, and consulting a private Law Firm ? Would they not stand accountable and responsible ?
6. Were not the Directors of CPC, who held Office at the relevant time, be accountable and responsible ?
7. Had not these transactions been introduced *via* the Central Bank ?
8. Had not the Secretary Treasury appointed a Study Group, who had had only 3 Meetings in one month, and recommended to the Secretary Treasury that CPC proceeds with these transactions ? Were not the Study Group members accountable and responsible ?
9. Were not certain Officials of CPC and the Study Group compromised by foreign trips arranged by the respective foreign Banks, admitted by them in Affidavits / Statements tendered to the Supreme Court in SC FR Application No. 404/2009 ? What action had been taken against such persons ? (*In fact, one Bank had the gumption to produce a copy of the Minutes of one such Meeting in its Objections filed in SC FR Application No. 404/2009*).
10. Had not a Cabinet Paper been prepared on the basis of such recommendation obtained by Secretary Treasury from the Study Group ? How was it that they were unaware of the restrictions in the CPC Act, and the illegality of these transactions ?
11. What is the total legal costs, experts costs, travelling costs, etc. incurred by CPC and the Treasury and what were the losses incurred by the CPC and the Treasury ?

12. What actions were taken against the Banks concerned, with CPC having been their Customer, and thereby they having known the financial predicament of CPC ?
13. Why had the services of a foreign expert not been engaged, whereas services of foreign expert had been engaged, after losses had been claimed in these transactions ?
14. Had not the CPC by its Affidavit dated 10.7.2009, settled by Hon. Attorney General, in SC FR Application No. 404/2009, admitted that these transactions are illegal, *ultra-vires* and/or unauthorized, and their true nature had been misrepresented, and are null and void and/or unenforceable ?
15. Was not the then Hon. Attorney General accountable and responsible for foolhardily having assured that he would most certainly succeed in defending the foreign litigations, and on such premise having strenuously objected and prevented these transactions being adjudicated upon by the Supreme Court of Sri Lanka ?
16. Having admitted as aforesaid at 14. above, what action had the Hon. Attorney General taken against those accountable and responsible ?
17. Should the tax payers' monies be used to finance such colossal losses, recklessly incurred, or foreign borrowing made therefor ?

Yours truly,



Nihal Sri Ameresekere, F.C.A., F.C.M.A., C.M.A., C.G.M.A., C.F.E.

Associate Member, American Bar Association

Director, International Consortium on Governmental Financial Management

Member, International Association of Anti-Corruption Authorities

12 SEP 2014

දුරකථන } 2777301, 2777382
தொலைபேசி } 2777100 - Ext. 5240, 5242
Telephones : } 5249, 5264
5269

ෆැක්ස් } 2777559
தொலைநகல் }
Fax :



මගේ අංකය }
எனது இல. } COPE/7/1/2014
My No. }

ඔබේ අංකය }
உமது இல. }
Your No. }

පොදු ව්‍යාපාර පිළිබඳ කාරක සභාව
அரசாங்க பொறுப்பு முயற்சிகள் பற்றிய குழு
COMMITTEE ON PUBLIC ENTERPRISES

ශ්‍රී ලංකා පාර්ලිමේන්තුව **இலங்கை பாராளுமன்றம்** Parliament of Sri Lanka
ශ්‍රී ජයවර්ධනපුර කෝට්ටේ **ஸ்ரீ ஜயவர்தனபுர, கோட்டை** Sri Jayewardenepura Kotte

10th of September, 2014

**Auditor General,
Auditor General's Department.**

Dear Sir,

Ceylon Petroleum Corporation's Oil Hedging Deal.

I am directed by the Hon. DEW Gunasekara. M.P., Chairman of the Committee on Public Enterprises to forward a copy of the letter dated 1st September 2014 addressed to him by Mr. Nihal Amarasekera on the above matter to you and obtain your comments. (copy attached)

02. I shall therefore, be glad if you would send me your comments on the facts indicated in the attached letter of Mr. Amarasekera, to be forwarded to Hon. DEW Gunasekara.

03. Your early response is highly appreciated.

Yours faithfully,

**Actg. Secretary
Committee on Public Enterprises**

Copies : 1. Hon DEW Gunasekara, Chairman COPE
✓ 2. Mr. Nihal Ameresekere – Consultants 21 Limited