

REGISTERED POST

1st April 2004

Mr. K.N. Choksy, P.C.,
Minister of Finance,
The Secretariat,
Colombo 1.

Dear Sir,

Statement issued to the Media on the Supreme Court Opinion on the Tax Amnesty

I refer to the above statement released by you to the media. In the public interest, I place the following facts before the people.

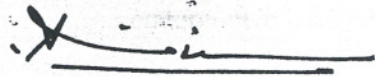
1. You being the Minister of Finance and a President's Counsel ought to have had the courage to have appeared before the Supreme Court and have made your submissions at the public hearing held on March 17, 2004 into the matter of the Reference made under Article 129(1) of the Constitution by Her Excellency the President, exercising the constitutional right vested in her to so seek the opinion of the Supreme Court on a matter of public importance, inasmuch as, I, though not a Lawyer, appeared in person and made submissions in the public interest.
2. Having not appeared before the Supreme Court and made submissions, the aforesaid statement is a puerile belated attempt on your part to mislead.
3. As regards, the unanimous opinion of a 5-Member Bench of the Supreme Court, that the provisions of Inland Revenue (Special Provisions) Act No. 10 of 2003, as amended by Act No. 31 of 2003, are inconsistent, more particularly with Article 12(1) of the Constitution, which guarantees every person to be equal before the law and to be entitled to equal protection of the law, was conceded to by all Counsel, who made submissions before the Supreme Court. They included President's Counsel K. Kanagisvaran, President's Counsel Ben Eliyathamby and Attorney-at-Law Cyrene Siriwardene, who appeared on behalf of the Center for Policy Alternatives.
4. The applicability of Article 80(3) of the Constitution, *vis-à-vis*, Article 129 of the Constitution has been dealt with by Their Lordships in their said opinion citing Indian authorities. You have failed to take cognisance of this in your belated endeavour to postulate your opinion in such regard.
5. In making your statement that Her Excellency the President had made such Reference "as long as one year after the Law was passed by Parliament", you have deliberately suppressed the fact that on or about July 10, 2003, Her Excellency the President had forwarded a Note to the Cabinet of Ministers to repeal this obnoxious law, setting out the reasons therefor.
6. You are also aware, that I have instituted on September 29, 2003 a Writ Application in the Court of Appeal seeking certain writs in the nature of certiorari, prohibition and mandamus, in which Application you are a Respondent, and as such, you could have stated your position to Court, but you did not; whereas you are aware that the Secretary to the President, as a Respondent in the said Application, tendered a Statement on December 15, 2003 supporting the said Application.

7. Whilst you have only dealt with the applicability of Article 80(3) of the Constitution, you have, *inter-alia*, avoided to deal with the following dicta of the Supreme Court Opinion – “It is to be borne in mind that public revenue is held in trust for the People of Sri Lanka who cannot be denied its benefit However, Act No. 10 of 2003 has permitted those companies and persons to retain the money collected from the public on behalf of the State and thereby condoned misappropriation of public funds In that it grants immunities and indemnities to persons who have contravened the laws that have been referred to and thereby defrauded public revenue causing extensive loss to the State”.
8. One of the effective questions referred by Her Excellency the President, as set out in the Supreme Court Opinion, had been - “(c) whether there has been misappropriation of public funds held in trust for the benefit of the people resulting in an erosion of the Rule of Law”.
9. You have also evaded to take cognisance of the Supreme Court dicta – “ The right to equality is statutorily enshrined in terms of Article 12 of our Constitution and is a component of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights (Article 2). It provides for all persons to be equal before the law and to be entitled to equal protection of the law. This guarantee of equal protection of the law is an injunction issued by the Constitution to the Legislature against enacting discriminatory laws”.
10. You also evaded to deal with the consequences of criminal offences under the several statutes smuggled into the Inland Revenue (Special Provisions) Act No. 10 of 2003, as amended, which said statutes are not administered by the Commissioner General of Inland Revenue, and some of which offences, I am advised, are non-bailable offences punishable under the Penal Code; and the consequential erosion of the Rule of Law and morals in society, contrary to the Directive Principles of State Policy and Fundamental Duties enshrined in Article 27 of the Constitution.
11. You have also evaded to deal with the issue of Sri Lanka's obligation under and in terms of the United Nations Security Council Resolution No. 1373 of September 28, 2001, in respect of which Regulations had been gazetted on October 16, 2001 under the United Nations Act No. 45 1968, *inter-alia*, to freeze and seize of funds of terrorists or funds related to terrorist activities. There is also the issue of money laundering, particularly in relation to drug peddling and gun running, in terms of international obligations.
12. Though the impugned law provides for absolute secrecy, except for the right given to the Commission to Investigate Allegations of Bribery or Corruption, such right had been given to be exercised in the course of “any proceedings instituted”, whereas for the very institution of proceedings the law enforcement authorities would require informations for the conduct of proper investigations. Thus, has Bribery and Corruption been buried, contrary to the recent international convention signed on corruption ?
13. Significantly, you have failed to deny the estimated loss of public revenue of Rs. 200 billion as had been stated to Court, nor have you disclosed the revenue loss to the people, as you ought to have. You state that there was Rs. 50 million as income tax in arrears as at end of 2001, whilst the Supreme Court dicta states that the taxes in arrears as at 31.12.2002 as Rs. 68,723 million as per the Performance Report of the Commissioner General of Inland Revenue for that year, and that no estimate has been made in respect of customs duties, excise duties and other dues.
14. Your statement that the number of taxpayers in comparison to over 18 million people is negligible has not taken into reckoning that this includes infants, children, the unemployed and the elderly, and the truism that a large volume of our people are in abject poverty, which clearly you are oblivious to.

15. You now concede that though there had been 51,000 declarations, that this will result in approximately 10,000 more tax files being opened, whereas in your statement reported in the media on or about March 15, 2004 you had held out that 51,000 new files had been opened, and to Parliament on August 21, 2003 you had stated that there would be 45,000 more tax files. What is the truth ?
16. Whilst stating that public revenue in the books of accounts of the State are not collectable, in the same breath, you state that such funds have been channelled into boosting the Stock Exchange. Did the Auditor General certify the specific schedule of non-recoverable debts owing to the State, as is ordinary required from a taxpayer by the Commissioner General of Inland Revenue, when bad debts are claimed ?
17. No responsible government could and would disregard an unanimous judicial opinion given by a 5-Member Bench of Supreme Court, inasmuch as the Prime Minister in or about June 2002, asserted in the presence of President's Counsel Desmond Fernando and others, that no responsible government, at least one in which he was a member, had disregarded an opinion given by the Hon. Attorney General.

Your statement issued to the public on a judicial opinion of the Supreme Court would appear to be an affront to the Supreme Court, which has exercised the judicial power of the people, which is an exercise of the sovereignty of the people, which is inalienable. You being a President's Counsel and an Officer of Court, I have requested my Lawyers to examine, as to whether your statement tantamounts to the contempt of the Supreme Court, and also to examine the same in the context of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules.

Yours faithfully,



Nihal Sri Ameresekere