

CBK'S MIXED PRIORITIES

The performance of public servants has been criticised by the president, but what about the performance of political appointees ?

The dramatic and alarming downward trends in the number of foreign investment projects approved by the Board of Investment of Sri Lanka [BOI] and the number of BOI projects going into commercial operations have come to light.

Transparency and public accountability have been vigorously pronounced by this government as high profile priorities in the government's policy agenda. Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office. In the United States of America undisputedly the country most committed to the systems of free and open economy and democracy-such probe and scrutiny would have been by congressional committees in the view of full public glare, where not only matters of public duties, but also matters of private interests conflicting with public duties would be subject to such scrutiny and examination. Even the first lady of the United States without exception was subject to such democratic and civic norms.

PERFORMANCE OF PUBLIC SERVANTS UNDER FIRE

The recent public criticism of the public service in general, by President Chandrika Bandaranaike Kumaratunga, as was widely reported in the print media has already been focused upon. The unproductiveness, inefficiency and lethargy of and the corrupt practices in the public service were pronounced by the president, to be a greater challenge facing national development than even the challenge of the threat of separatist terrorism. In the context of political mismanagement and the erosion of political values which right thinking persons see as abnes to the socio-economic development of this country since independence – whether the public service in general could be relegated as the 'whipping boy' in the given circumstances was put in issue. It is the political leadership and the adherence to laws and norms in the political realms, that has made Singapore, what it is today.

If the traditional public service and public servants are being rebuked for unproductiveness, inefficiency, lethargy and corruption – where corruption has been defined by legislation enacted by this government, *inter-alia*, as that of causing loss to the government-then one is very well and reasonably entitled to expect political appointees to public office by the government to have performed wonderfully and exceptionally well by the very standards by which the public service has now been rebuked.

In this background of public criticism and rebuking of the traditional public service, how does one review, measure and evaluate the performance of some of the key political appointees to public office by the present government, some of whom have ironically been handpicked by the president herself ? It is left to the intelligent public of this country to make such review, measurement, evaluation and judgment, by the very norms and standards, pronounced by the president in relation to the public service.

PERFORMANCE OF POLITICAL APPOINTEES CONDONED?

The performance of public servants has been criticised by the president, but what about the performance of political appointees, asks BISMARCK



Startling exposures on the performance of the BOI, particularly in relation to crucial performance parameters of the number of BOI projects approved and the number of BOI projects going into commercial operation during the tenure of Chairman, Director General, BOI, Thilan Wijesinghe, no doubt would be performance barometers pertaining to one of such political appointees to public office by this government – in this instance by the president herself.

Similar exposures on some of the privatization transactions carried out by the Public enterprise Reform Commission [PERC] – particularly those of the plantation companies, forming a very valuable and vital sector of the national economy, where colossal losses have been caused to the government and the public by the pursuit of absurd questionable strategies, resulting in some of the plantations virtually being gifted without open market competition, that too with unbelievable bonanzas readily realizable in cash-undisputedly speaks volumes of the performance of PERC, which was then headed by Rajan Asirwathan, handpicked for such public office by President Kumaratunga herself. Some of the other exposures on the Merchant Bank of Sri Lanka and the Puttalam Cement / Thawakkal issue and the public hue and cry on the Colombo Gas Company privatization, would no doubt also be of relevance in this regard.

The exposures on the Securities and Exchange Commission [SEC] and the role played by former Chairman, SEC, C.P. de Silva, who had been taken to task by the then Director General, SEC, Arittha Wikramanayake, himself, [who had been described as an officer of excellent caliber by President Kumaratunga herself] would be a further case in point. Chairman, SEC, C.P. de Silva, was appointed to such public office by this government, and the SEC coming within the purview of the finance minister, such appointment was made by Finance Minister Kumaratunga.

In the face of all such exposures, the government has maintained a deafening silence. Such exposures made in the very public interest and moreso importantly, in the very context of this government's high profile policies vigorously advocated on transparency and public accountability. The irony is that on the other hand, the public service has been publicly rebuked for unproductiveness, inefficiency, lethargy and corrupt practices!

THE UDA AND THE SPECIALIST CENTRE



UDA Chairman Suren Wickremasinghe, (above), BOI Chairman Thilan Wijesinghe, former PERC Chairman Rajan Asirwathan, former SEC Chairman C. P. de Silva (L-R).

In such context of criticism of the public service, it is relevant to back to yet another exposure in relation to the Urban Development authority [UDA] and the official response thereon by the Ministry of Housing, Construction & Public Utilities, under which Ministry the UDA functions. Chairman, UDA, Suren wickremasinghe, has been another political appointee to public office by this government and is known to be a personal friend of President Kumaratunga.

As per the official release of the ministry of housing, construction and public utilities, the facts pertaining to the UDA's lease of very valuable urban land in the heart of the Colombo city to Specialist center (Pvt.) Ltd., a company known to be in the Nawaloka group of companies, had been as follows:

- “(1) The original lease of the land bearing assessment No. 110 at Sir James Peiris Mawatha, Colombo 02 in extent 157.5 perches to the Specialist Centre (Pvt.) Ltd. had been executed following a cabinet decision dated 10th February 1993. This cabinet decision relates to a recommendation of the cabinet committee on economic affairs on 10th February and a cabinet paper 93/250/016 dated 13.01.93 by the minister of policy planning & implementation.
- (2) The above approval covers the following conditions included in the cabinet memorandum, which were subsequently incorporated in a lease agreement entered into by the UDA with the Specialist Centre (Pvt.) Ltd., dated 14th May 1993.
- (i) The land to be leased to Specialist Centre (Pvt.) Ltd., on a 99 year lease at a premium of Rs. 55,125,000/- at Rs. 350,000/- per perch as decided by the chief valuer.
 - (ii) Development to be completed within five years from the date of lease agreement
 - (iii) The annual rental decided by the chief valuer to be paid during the above development period.
 - (iv) Shares representing 30% of the issued capital to be issued in favour of the UDA as lessor. The value of shares to be set off against the premium mentioned at para (i) above.
 - (v) Debentures to be issued in favour of UDA for the balance premium of the and after deducting the value of 30% of the shares mentioned at para (iv). These debentures to carry an interest of 10% per annum and redeemable within 15 years commencing at the expiry of the development and grace period.
 - (vi) Interest on debentures at 10% per annum to be charged at the expiry of the grace period of 2 ½ years from the date of the lease agreement.
 - (vii) An annual nominal ground rent of Rs. 150 per acre or part thereof to be charged commencing at the expiry of the development and grace period upto the date the property is given on outright basis.
 - (viii) The property to be given on outright basis on the completion of the development and fulfillment of the following requirements.
 - (a) Issuing shares and debentures to the UDA, (b) redeeming debentures on the due dates, (c) paying rents on the due dates

30% OWNERSHIP WAS A CARDINAL CONDITION

It is quite plain and clear to anyone with common sense that the UDA, during the tenure of the then government as had been specifically approved by the cabinet, had leased this land on the above terms, and the basis for granting outright transfer of freehold interest of such land to Specialist Centre (Pvt.) Ltd. had been on the cardinal condition, that the UDA is given the ownership of 30% shareholdings in such company, which had undertaken to develop such property. In other words, the cabinet approval for the granting of an outright transfer of this valuable land was on the cardinal condition that the UDA owned 30% of the share capital of this property development company, i.e. – Specialist Centre (Pvt.) Ltd.

No doubt such leasehold consideration and such concessions of the low interest of 10% p.a. on the balance lease premium, after a 2 ½ year grace period, that to be converted as debentures and redeemed within a period of 15 years, after such 2 ½ year grace period, had been afforded by the UDA to facilitate such development of the property and for the UDA also to have a stake of 30% ownership in such property development. Quite plainly, that was the UDA's return for making available such land for such development, affording such concessions without any upfront cash payment. This valuable land being situated just across the road from the already established Nawaloka Hospital, the UDA had given this land for the very specific fundamental purpose of setting up a hospital for specialized treatment. This had been a fundamental condition of such land lease approved by cabinet.

TRANSACTION BY PRESENT GOVERNMENT

With the change of government, the UDA under its chairman, Suren Wickremasinghe, consequent to negotiations had with the Specialist Centre (Pvt.) Ltd., had agreed to change the fundamental purpose for which this land had originally been leased to Specialist Centre (Pvt.) Ltd. by the UDA, which was to set up a hospital with specialised treatment as had been approved by cabinet, and for which fundamental purpose the land had been made available and on such concessionary terms.

Furthermore, with the change of such fundamental condition, for which such land had been made available, the UDA had agreed to convey and transfer outright the freehold interest of such land to Specialist Centre (Pvt.) Ltd. on the payment of a further balance consideration of Rs. 21,625,000/- together with payment of Rs.. 49,125,000/- towards the full redemption of the debentures.

Chairman, UDA, Suren Wickremasinghe had executed a new agreement to effect such transaction. The new agreement, *inter-alia*, stated:

- (a) a sum of rupees six million (Rs. 6,000,000/-) against the divestment of the vendor's holding of six hundred thousand (600,000) ordinary shares in the purchaser by the execution of the transfer therefore and the surrender of the original script
- (b) a sum of rupees forty nine million one hundred and twenty five thousand (49,125,000/-) to be applied in the redemption of all the debentures issued by the purchaser to the Urban Development Authority against the surrender of debenture certificate No. 001 dated June 9, 1993, for the face value of rupees forty nine million one hundred and twenty five thousand (Rs. 49,125,000/-) the vendor having waived the interest due thereunder and,
- (c) the payment by the purchaser of the balance sum of rupees twenty one million six hundred and twenty five thousand (Rs. 21,625,000/=) in cost at or before the execution of this conveyance

It is quit clear, that the UDA's transaction was with the company, i.e. Specialist Centre (Pvt) Ltd. However, in addition to the outright conveyance of the freehold interest of such land to Specialist Centre (Pvt.) Ltd., the UDA had agreed to transfer UDA's 30% shareholdings in Specialist Centre (Pvt.) Ltd. for the mere nominal value of Rs. 6,000,000/- This no doubt, could not have been a transaction with Specialist Centre (Pvt.) Ltd., since these were shareholdings in Specialist Centre (Pvt) Ltd., itself, and therefore obviously was a transaction with someone else, whomsoever it may be. The very conveyance of the freehold interest of the land to Specialist Centre (Pvt) Ltd., would have by itself enhanced the value of its shareholdings.

Significantly, in and around the same time, the Nawaloka Group of companies, presumably the balance 70% shareholders of Specialist Centre (Pvt.) Ltd., had been negotiating with Sampath Bank to sell the 100% shareholdings in Specialist Centre (Pvt.) Ltd. for a consideration of Rs. 745,000,000/-, which sale transaction in fact has taken place subsequently, at or about such price level. Obviously for such purpose,

30% shareholding in Specialist Centre (Pvt.) Ltd, had been released by the UDA for a mere Rs. 6,000,000/- whereas in the context of the above sale transaction at about the same time, such 30% shareholding had a value of Rs. 223,500,000/-, and the UDA's sale price of Rs. 6,000,000/- amount to only 2.68% thereof. Such colossal loss was in fact the profit the UDA ought to have made for its contribution of such land on such terms with no upfront payment, to have enabled and facilitated such development, to realize such market value for such development.

In the given circumstances, it would be quite interesting to ascertain whether the UDA's 30% shareholdings in fact got registered directly as a transfer to Sampanth Bank ? Or else, how could stamp duty have been effected on such 30% shareholdings, firstly at a value of Rs. 6,000,000/- and thereafter, at a value of around Rs. 223,500,000/- ?

NO CABINET APPROVAL ?

The original transaction was as per a decision by the cabinet thereby having warranted cabinet approval for the subsequent transactions, whereas the subsequent transactions quite apparently had no cabinet approval as per the official response of the ministry of housing, construction and public utilities, which, *inter-alia*, stated: "This ministry wishes to emphatically state that neither her excellency the president nor any officer serving in the presidential secretariat were aware of any negotiations that was taking place between the investor and the UDA, and neither her excellency nor any officers serving at the presidential secretariat was in any way involved or had at any time given any instructions with regard this transaction."

Quite clearly had there been a cabinet decision, the president would have been aware. Who takes responsibility for such colossal loss and the non-adherence to established rules, regulations, norms and practices, that govern public sector transactions ?

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