

Dr. P.B. Jayasundera,
Secretary Ministry of Finance

NOTE

Perverse Tax Amnesty Law of previous UNF Government

Role of Attorney General K.C. Kamalabayson P.C.

Re-the attached draft Letter given to you and the discussion had today on the above subject, I bring to your attention the following:

1. The Attorney-General K.C. Kamalabayson has disqualified himself from advising the present Government on the perverse Tax Amnesty Law, and how it should be dealt with in view of his past conduct on this matter.
2. He, in terms of Article 77 of the Constitution, deemed that the perverse Tax Amnesty Law presented to Parliament in January 2003 to be not repugnant with the Constitution [several Bills he so certified were struck down by the Supreme Court last year. When H.E. made a Reference to the Supreme Court, he defended the Defence Minister, when he had only to assist Court and was rebuked by the Chief Justice]
3. When I through K. Kang-Isvaran P.C. challenged this perverse Tax Amnesty Law, he personally appeared in the Supreme Court and prevented the Supreme Court from hearing the Application, taking objection that I had not challenged the same within 7 days, even though the Bill was not available to the public to have done so.
4. He also intimated to me in Supreme Court that if the Chief Justice interferes in this matter that the Chief Justice would be impeached by the UNF Government. Questioning how he was privy to such politics of the UNF Government, I documented this matter in a Letter to then Prime Minister, Ranil Wickremasinghe, with copy to him.
5. Thereafter, on being apprised by me H.E. addressed a specific Letter to him pointing out the perverse and obnoxious features of the Tax Amnesty Law and called for his specific opinion thereon.
6. He gave a vague and evasive reply to H.E., notwithstanding that she was the Head of the State. He affirmed that the Tax Amnesty Law was consistent with the Constitution
7. H.E. pointing out the perverse and the obnoxious features forwarded a Note to Cabinet in July 2003 requiring that the perverse Tax Amnesty Law be suspended forthwith and steps be taken to repeal the same.
8. Regardless of the above the UNF Cabinet of Ministers recklessly presented a Bill in Parliament, which was passed in end August 2003. This too was endorsed by him notwithstanding the above.
9. He was aware that in the absence of such law, Tax Amnesty declarations were being processed even after 1st July 2003. This he has admitted in Court

10. When I challenged through Mr. K. Kanag-Isvaran P.C. once again the Bill to extend the operative date of the perverse Tax Amnesty Law, he caused the Addl. Solicitor General to oppose the same and personally supervised the Written Submission without putting his name thereon.
11. Subsequently, when I filed the Writ Application in the Court of Appeal challenging the unlawful Tax Amnesty declarations made after 1st July 2003 up to 31st August 2003, since the Speaker had certified the law to extend the operative date only thereafter on 22nd October 2003, he once again caused the Addl. Solicitor General to oppose the granting of Notice. The Court however granted Notice.
12. The Secretary to the President filed Statement in the Court of Appeal on 15th December 2003 concurring with my Application and all the Prayers prayed for in my Application.
13. H.E. thereafter referred the perverse Tax Amnesty Law to the Supreme Court under Article 129 of the Constitution for an Opinion. Mr. K. Kanag Isvaran P.C. and Mr. M. A. Sumanthiran appeared for H.E.
14. A 5-Member Bench of the Supreme Court unanimously pronounced that, not only was the perverse Tax Amnesty Law inconsistent with the Constitution, but also that it was a fraud perpetrated misappropriating public funds causing extensive loss to the State, and that it was also antithetic to the Rule of Law.
15. Therefore, his stance persistently taken was found to be not only wrong, but it tantamounts to a continuous attempt by him to cover-up a colossal fraud on the public of this country, notwithstanding having being apprised and alerted thereof.
16. In the context of the foregoing, he stands disqualified from affording any further opinion or advice to the present Government on the steps being taken on this perverse Tax Amnesty Law, where he acted in collusion with the former Prime Minister, Finance Minister, Secretary Finance and all those who, were actively involved
17. If he had any self respect, after the Supreme Court Opinion, he ought to have resigned.
18. I have kept Mr. K. Kanag-Isvaran P.C., Mr. M.A. Sumanthiran and Mr. M. Radhakrishnan Attorneys-at-Law of the strategies I have advised to pursue and the documents forwarded. In the light of the foregoing there is no question of collusion. Any responsible Government and Attorney-General would agree with what is right in the public interest. It is not for me as a private citizen to fight for such cause.
19. I have to believe that he having acted as a cat's paw of the previous UNF Government, that he would now be subjected to heavy influences and pressures from those quarters to scuttle the efforts being made by the P.A. Government to rectify a grave wrong, which was decried by the public at the last general elections

Nihal Sri Ameresekere
11.6.2004

FAX NO. 2436421

11th June 2004

Hon. K.C. Kamalabayson P.C.+
Attorney General

Dear Sir,

Supreme Court (Spl) LA 50/2004
(CA Application 1661/2003)

I refer to the telephone conversation I had intimating the policy of the new Government, just prior to the above matter coming up in the Supreme Court on 1.6.2004, in the context of you representing me, the Minister, the Commissioner General of Inland Revenue, Director General Customs, Exchange Controller, Excise Commissioner, Chairman of the Bribery Commission, etc.

I now understand that the matter had been re-fixed for 15.6.2004 and that you had requested written confirmation of the oral instructions given.

Accordingly, please consent in the Supreme Court for me and the other Government Officials to be parties in the above Case, so that this matter could be resolved and a finality reached in Court, at the very earliest.

I draw your attention to the fact that the Secretary to Her Excellency the President had already filed in Court on 15.12.2003 a Statement, together with an Affidavit, supporting CA Application No. 1661/2003 and praying that all prayers in the Application be granted.

As you are aware, Her Excellency the President had also referred this matter in terms of her powers under the Constitution for an Opinion of the Supreme Court, and the unanimous Opinion pronounced by a 5-Member Bench of the Supreme Court, I understand had already been tendered to Court in this Case with copy to you.

Yours faithfully,

Secretary to the Treasury