

AIR LANKA: MORE FOLLY

Obviously since several serious questions and issues raised during the Air Lanka debate in Parliament on May 19, 1998 had not been satisfactorily answered and/or clarified, the Public Enterprise Reform Commission [PERC] published in *The Sunday Observer* May 24, 1998 on page 6 a statement under the caption – "Air Lanka: Allegations Refuted".

MINISTERS FAILED TO ANSWER ?

The Sunday Observer carried the following preamble to such PERC statement :- "The following is a summary of the allegations made by the opposition about the restructuring of Air Lanka during last week's adjournment debate in Parliament, and the answers to them compiled by the Public Enterprise Reform Commission [PERC], the body which handled the restructuring on behalf of the Government". This in itself is a clear admission, that the questions and issues raised by the opposition during the debate in Parliament, in PERC's opinion, had not been satisfactorily answered and/or clarified and hence such answers compiled and published by PERC thereafter.

EXTRACTS FROM HANSARD COLUMNS 2994, 2995 & 2996 OF DECEMBER 16, 1997 [Sinhala parts translated into English]

Hon. Gamini Atukorale

I wish to know another matter. It is said that 'Air Lanka' institution is going to be privatised. I wish to know whether the hon. minister would clarify matters in such regard.

Hon. Prof. G. L. Peiris

At this stage I will not make a statement in that regard. In such regard, a full statement will be made later. I will be making a statement this afternoon on some matters regarding the transactions of 'PERC'. On all other matters, I very clearly promise to table comprehensive reports prior to February 15 1998.

Hon. Gamini Atukorale

Before that whether 'AirLanka' will be given to 'Emirates' I do not know.

Hon. Mahinda Rajapakse

Will not be given without telling.

Hon. Gamini Atukorale

Yes, I know. I know that Minister Mahinda Rajapakse speaks according to his conscience. Tell us whether or not AirLanka will be privatised before February 15 1998. Then we will be satisfied.

Hon. Prof. G.L. Peiris

It is not proper at this stage to place everything before parliament regarding the 'AirLanka' transaction. We should decide whether it is appropriate or not, to disclose, when negotiations on a transaction are in progress.

Hon. Gamini Atukorale

When transacting we do not say, that so and so requested this amount, and this person is such. At the end of the transaction, will parliament be told before handing over.

Hon. Prof. G. L. Peiris

Yes. We have no objection to a statement being made to parliament in such regard.

Hon. Gamini Atukorale

Is it after making a statement to parliament that AirLanka will be handed over?

Hon. Prof. G. L. Peiris

Certain responsibilities have been imposed on the government under the PERC laws. That is to say, a responsibility has been cast upon the government to make a full statement to parliament on any transaction. Under the said law we will appropriately comply therewith. There is no question about that.

Hon. Prof. G. L. Peiris

I am not able to answer detailed questions about to Air Lanka. It is only proper to have the line minister answering them.

Hon. Prof. G. L. Peiris

Surely you must be reasonable? Does that mean that all questions concerning privatisations with regard to plantations, with regard to AirLanka, with regard to industries I must answer? That is not proper.

This is symptomatic of a very serious issue, in that, if with senior Cabinet Ministers having participated in the Air Lanka debate, several serious questions and/or issues had not been satisfactorily answered and/or clarified, with PERC having to issue such statement thereafter, then it only exposes and/or precipitates the question, as to why and how such senior Ministers had not been fully aware of the said several matters, giving credence to the allegation, that PERC and/or a coterie of handpicked officials had acted very much in isolation.

In addition to the statement issued by PERC published in *The Sunday Observer*, Chairman PERC, Dr. P.B. Jayasundera and Director-General PERC, Mano Tittawella had also given an interview to the *Business Today* magazine in the May 1998 issue, endeavouring to dispel doubts and give clarifications and explanations on some of the concerns pertaining to the Air Lanka privatisation, that had been expressed in the media. The interview had been by Lucien Rajakarunanayake described as a leading journalist and political commentator.

LEGALITY OF ACTION ? WHY NO ANSWER?

Nevertheless, both such endeavours by PERC i.e. in the statement published in *The Sunday Observer* and the interview in the *Business Today* have failed to address some of the cogent issues that had been raised and had not satisfactorily answered some of the serious questions that had caused public concern. The most important and the very basic issue had been, as to whether PERC had acted ultra-vires its own powers under the Public Enterprise Reform Commission Act No. 1 of 1996 in dealing with Air Lanka Ltd., which was a company that did not come within the purview of such Act ? *The Sunday Leader* even as far back as April 5, 1998 pointedly raised this issue and have been further clarifying this matter argumentatively thereafter. There has been no answer by PERC.

The other cogent and important issue had been, whilst selling the shares held by the Government in Air Lanka Ltd., how did PERC usurp the statutory rights and duties of the Board of Directors of Air Lanka Ltd., to have negotiated and/or transacted and/or made decisions pertaining to the internal management, and/or operations and/or functioning of Air Lanka Ltd., without express sanction and/or authority and/or empowerment to do so from the Board of Directors of Air Lanka Ltd. ? When had the Air Lanka Board of Directors expressly authorised and/or empowered PERC to have done so ? If not, how did PERC do so?

ENDORSEMENT FROM THOSE WITHIN?

Prior to addressing the several concerns, that have been quite pertinently raised in the media in the public and national interest, Chairman PERC, Dr. P.B. Jayasundera and Director-General PERC, Mano Tittawella ought to first allay and/or dispel the doubts created in the public mind, that arise from within the inner circle of those, who had been associated and/or connected with the Air Lanka privatisation. Could Dr. P.B. Jayasundera and Mano Tittawella, in the first instance, cause public clarifications in such regard. If not, why?

One such party was the Financial Advisory Group consisting of, Simat, Halliesen & Eichner, Inc. [SH &E] New York, Chase Manhattan Bank and the People's Merchant Bank. In its statement in *The Sunday Observer* PERC admits, that the Financial Advisory Group assisted PERC in the privatisation of Air Lanka and in fact, SH&E through its Chairman & CEO David H. Treitel have communicated in writing with parties, including the Texas Pacific Group, USA, holding out "The Government of Sri Lanka, through PERC, is very interested in your participation in the Air Lanka privatisation. I think that the Government of Sri Lanka's positions are ones that you can work around. If you need further clarification of the Government of Sri Lanka's position, I would be pleased to get it for you ..."

It is patently clear, that the Financial Advisory Group had been acting with authority in relation to the privatisation of Air Lanka Ltd. Could PERC make known, in the public interest, whether the Financial Advisory Group was so actively involved in the privatisation of Air Lanka Ltd. upto its conclusion on March 31, 1998? If not, why and upto what point of time had they been so involved? The public of this country are entitled to know, as to whether the Financial Advisory Group fully endorsed the privatisation of Air Lanka Ltd. vis-a-vis Emirates Airlines, in its totality, including all the conditions and contractual obligations pertaining thereto, keeping in mind, that PERC had admitted to COPE on March 23, 1998, that the Air Lanka privatisation negotiations were still underway. If that had been so, then when had the Financial Advisory Group professionally signed off on the Air Lanka privatisation transaction? If they had not, could it be explained why?

Another such person from within the inner-circles, had been Rajan Brito Muthunayagam, a Chartered Accountant, who had been the specially selected visiting Consultant from London to the Ministry of Finance, attached to PERC, particularly in relation to privatisation transactions carried out by PERC. In fact, it was he who had met the Weitnauer Group from Switzerland on the privatisation of Orient Lanka Ltd., in place of the Government Appointed Evaluation Committee, as PERC had previously held out in writing. Rajan Brito Muthunayagam had also been a Director of Air Lanka Ltd., during the relevant time, the Air Lanka privatisation transaction had been underway. As one of the key persons so associated and/or involved in the Air Lanka Ltd., privatisation transaction, had he fully endorsed the totality of the Air Lanka privatisation transaction, including all aspects and contractual conditions pertaining thereto ? Could PERC provide the public of this country such endorsement ? If not, why ?

Another very important and relevant person from the innermost circles, would be Harry Jayawardene, Chairman of Air Lanka Ltd. Could PERC confirm to the public of this country, that the Chairman, Air Lanka Ltd., had been fully aware of the process of privatisation of Air Lanka Ltd., that particularly pertained to the management, operations and functioning of Air Lanka Ltd. of which he was Chairman? At what meetings of the Board of Directors of Air Lanka Ltd., had these aspects pertaining to the management, operations and functioning of Air Lanka Ltd., arising from the privatisation of Air Lanka Ltd. been considered and deliberated upon by the Board of Directors of Air Lanka Ltd.? If not, why and how?

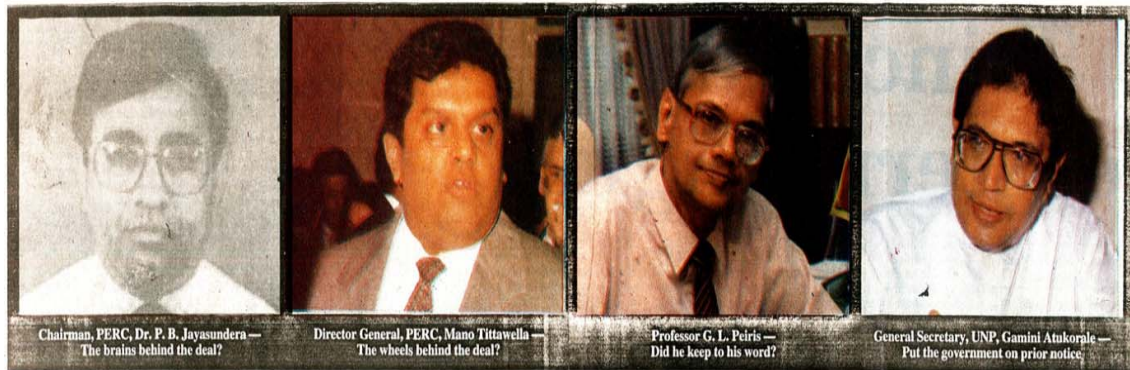
Could PERC confirm to the public of this country, that the Air Lanka Ltd., Chairman knowingly and willingly had fully endorsed the totality of the Air Lanka privatisation transaction, including all aspects and contractual conditions pertaining thereto? If not, why? Had not the Air Lanka Ltd., Chairman in writing confirmed that he had been given absolutely no time, to examine, consider, approve and sign voluminous contractual agreements? If not, what did the Air Lanka Ltd., Chairman state and/or stipulate?

STATUTORY OBLIGATIONS OF PERC & SEC

At what meetings of the Public Enterprise Reform Commission, had its members, considered and deliberated upon the progress of the privatisation of Air Lanka Ltd., as they statutorily ought to have, with each and every one of them participating therein being responsible therefor ? Did the Director-General, SEC, Kumar Paul, as a member of PERC knowingly endorse and approve the authority given to the minority shareholder of Air Lanka Ltd., to contractually commit Air Lanka Ltd. including the right to acquire new Aircraft, without reference for deliberation and approval to the Board of Directors of Air Lanka Ltd., as it ought to have been in proper corporate governance. Under such highly questionable arrangements, which go against established case law of such unilateral rights being exercised even by majority shareholders, how did the Director-General, SEC, agree to the future public issue of shares of Air Lanka Ltd.? Would other companies be permitted by the SEC to do so? If not, why not?

In both *The Sunday Observer* statement and the interview in the *Business Today* PERC had admitted, that the decision to re-fleet Air Lanka Ltd., with Airbuses had been a principle decision taken during the initial stages of the Air Lanka Ltd., privatisation, without even considering the option of Boeing aircraft, for the reasons given in such statement and interview. Ought not such principle decision of such exclusive selection, have been canvassed with the Cabinet of Ministers in the first instance, before PERC so proceeded for whatever reason? When was such Cabinet approval obtained? If not, why?

FOOLING THE PUBLIC ?



To quote from the *Business Today* interview given by Chairman, PERC, Dr. P. B. Jayasundera and Director-General PERC, Mano Tittawella, this is what they said in this regard – "Then there is also the other rationale. Some people ask why Airbus, and why not Boeing, or other manufacturers. The first fact is that there are only two really major airline manufacturing companies in the world. Airbus and Boeing. You have to choose from one of them. And, for a small sized airline such as Air Lanka, it does not make much commercial sense to have three Airbuses and three Boeings. Because, there is need for synergy in spares. When you have seven or eight aircraft of the same make, it is cheaper to buy spares. Also, the A330s and A340s which we will keep, have a lot of things in common. Pilot training is very easy to do. You just do a very simple course to upgrade. Most spares are common to both." The irony is, that for the very same reasons espoused in the case of the Railway Locomotive Procurement Tender, the former Secretary, Ministry of Finance, B.C. Perera, was publicly rebuked and he left the public service.

Both Dr. P.B. Jayasundera and Mano Tittawella have held out to the public of this country, that they are authorities in the airline industry, with statements such as – "Anyone with any knowledge of the airline business should understand this.", whilst Prof. G.L. Peiris during, the Air Lanka debate in Parliament took great pains to labouriously explain to the public of this country, that airplanes could not be stopped in mid-air for repairs ! Are the public of this country taken to be so uninitiated and mundane fools ?

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