

THAT PERCKY FAIT ACCOMPLI

The Sunday Leader last week turned the focus on to the highly controversial privatisation transaction of Kotagala Plantations Ltd., that had been carried out by the Public Enterprise Reforms Commission [PERC] in August 1995, *The Sunday Leader* quoted several extracts from various media reports published, since the time the controversy broke out with a public hue and cry, with even President Chandrika Bandaranaike Kumaratunga reportedly having publicly decried the transaction - vide *The Island* of June 6, 1996.

The relevant and pertinent extracts from the media, that were published last week also included several statements that had been made, since such controversy broke out, by various personalities, that had been directly and/or indirectly associated with this privatisation transaction of Kotagala Plantations Ltd.

The Sunday Leader last week also referred to the reported inquiries and investigations by the Controller of Exchange and the imposition of fines on various parties and persons, presumably with the advice of the Attorney General. *The Sunday Leader* also referred to a CID investigation that had been initiated on a complaint made the then Chairman, PERC, Rajan Asirwatham, on the exposures published by the *Ravaya* in the public interest.

THE JIGSAW PUZZLE?

The crucial and very cogent question, that is now being focused upon by *The Sunday Leader* is, as to whether all the relevant and pertinent facts had been elucidated, and the jigsaw puzzle put together as it were, to reveal the true and correct picture and disclose as to what had in fact and reality transpired?

The lurking question that necessarily has to entertained would be, as to whether the extensive media exposures through the process of investigative journalism, and whether the inquiries and investigations carried out by the Controller of Exchange, and whether the investigations by the CID had in fact revealed the true and correct facts? If so, what action had been taken?

PERC ON NOTICE IN OCT '1995

The Parliamentary Consultative Committee and PERC had both been presented with some of the pertinent facts, by a former Director of George Steuart & Co. Ltd. David Janze. Excerpts from his memorandum to the Parliamentary Consultative Committee, dealing also with his representations that had been made to PERC, had been prominently published in the *Sunday Island* of February 16, 1997. Having been a senior Director of George Steuart & Co. Ltd., the facts given by David Janze, prima-facie, ought to be considered as correct, since such facts emanate from an insider, notwithstanding the colouration and insinuations, vis-a-vis his internal turmoils and squabbles had with his co-directors of George Steuart & Co. Ltd.

One very significant disclosure, that had been made by David Janze is that he had been given the privileged opportunity to address a Board Meeting of PERC on the afternoon of Wednesday, October 4, 1995. David Janze had disclosed, that he, at the said meeting had put on notice the members of PERC of the impending transaction of George Steuart Management Services (Pvt) Ltd., with the Malaysian consortium of foreign investors, vis-a-vis the acquisition of 51% controlling shareholdings of the Kotagala Plantations Ltd.

In his memorandum to the Parliamentary Consultative Committee, this is what David Janze had very significantly stated, on what had transpired at his meeting had with the members of PERC on the afternoon of Wednesday, October 4, 1995 - "I was assured by the Chairman of PERC, in the presence of its other members, that he would be alert to this, but could take no action until it actually materialized. However, after it became public that such a transaction had taken place, the Chairman of PERC declared in the press that now that it was a `fait accompli', there was nothing he would do about it."

PURCHASE CONSIDERATION TO PERC IN NOV '1995

Another person, who was very closely associated with the privatisation of the plantations was Dr. Romesh Dias Bandaranaike, who was the Director, Plantation Management Monitoring Division, which handled the privatisation transaction of Kotagala Plantations Ltd., under the overall control, direction and supervision of PERC.

Dr. Romesh Dias Bandaranaike had given an interview to the *Sunday Times*, which was published on June 16, 1996. In his wide ranging interview, Dr. Romesh Dias Bandaranaike had, inter-alia, disclosed the details of the purchase consideration paid by George Steuart Management Services (Pvt) Ltd., to PERC for the purchase of 51% controlling shareholdings of Kotagala Plantations Ltd.

PERC had written a letter on October 26, 1995 requesting payment for such shareholding in Kotagala Plantations Ltd., in two installments. Previously Rs. 5 million had been paid on August 4, 1995. The balance payment was paid in two instalments by George Steuart Management Services (Pvt) Ltd.

- i. On November 2, 1995 Rs. 17.2 million by cheque forwarded to PERC
- ii. On November 25, 1995 Rs. 79.8 million by a bankdraft handed over by the representatives of George Steuart Management Services (Pvt) Ltd., who had called over at the office of the Plantation Management Monitoring Division, together with Ms. Ong, whom Dr. Romesh Dias Bandaranaike had stated, that he had met for the first occasion then.

The aforesaid payment amounted to the total purchase consideration of Rs. 102.0 million made to the Secretary to the Treasury for the 51% controlling shareholdings of Kotagala Plantations Ltd., which comprised of 10,200,000 ordinary shares of Rs. 10/- each.

The Sunday Leader understands that the payments for the mandatorily convertible debentures in Kotagala Plantations Ltd., amounting to Rs. 120 million had also been paid by George Steuart Management Services (Pvt) Ltd., to PERC on November 24, 1995 in the name of Kotagala Plantations Ltd.

Furthermore, Dr. Romesh Dias Bandaranaike had disclosed, that it was the then Director General PERC, Ananda Weerasinghe, who had requested him to handle the collection of the final payment of Rs. 79.8 million.

PERC TRANSACTED NOTWITHSTANDING NOTICE

Thereafter, on November 27, 1995, at the Plantation Management Monitoring Division, Dr. Romesh Dias Bandaranaike had handed over the Share Certificate for 10,200,000 ordinary shares of Rs. 10/- each of Kotagala Plantations Ltd., in the name of George Steuart Management Services (Pvt) Ltd., to Ms. Ong of Malaysia, who had called over with Kotagala Plantations Ltd.'s Chief Executive Officer, Rohan Gunaratne, who had been the principal representative of George Steuart Management Services (Pvt) Ltd., and who had been dealing with PERC previously according to Dr. Romesh Dias Bandaranaike.

On November 29, George Steuart Management Services (Pvt) Ltd., had forwarded to the Plantation Management Monitoring Division the receipt for such share certificate of Kotagala Plantations Ltd.

The aforesaid dates of payments in November 1995 received by PERC for the purchase consideration by George Steuart Management Services (Pvt) Ltd., for the 51% controlling shareholdings of Kotagala Plantations Ltd., is quite significant, in the light of the fact that the members of PERC had been apprised of such foreign investment, previously on October 4, 1995 at a meeting had with them by David Janze, a

former Director of George Steuart & Co. Ltd., as disclosed in his memorandum to the Parliamentary Consultative Committee.

CHAIRMAN PERC REBUFFED ?

The above details had been given by Dr. Romesh Dias Bandaranaike in his answer in response to the following question that had been posed by the *Sunday Times*.

"A photograph has recently been published in the press showing you handing over a certificate for shares in Kotagala PL to a foreign lady, Ms. Mary Ong. In his interview Mr. Asirwatham criticises you for this and says `at least inquiries should have been made as to what this lady is doing on behalf of George Steuarts' Why did you hand over a share certificate to a foreigner and shouldn't you have made inquiries as Mr. Asirwatham says ?"

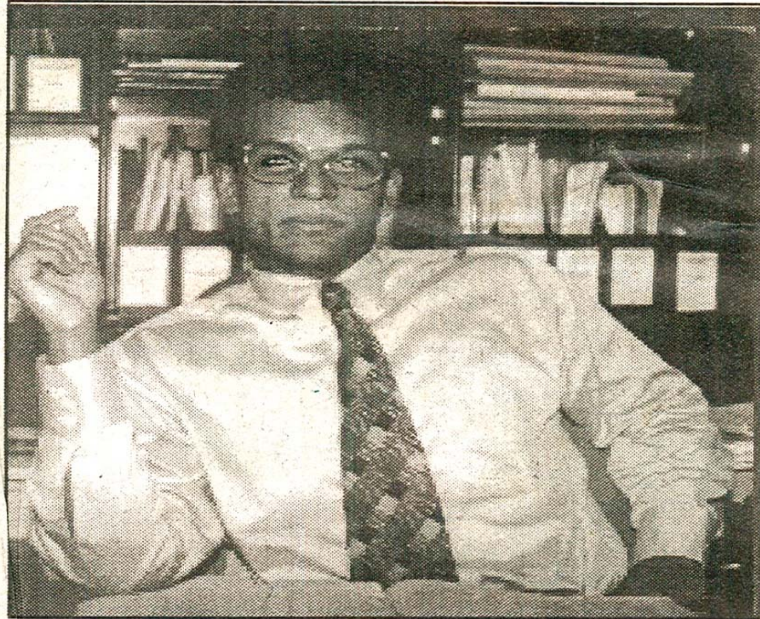
Dr. Romesh Dias Bandaranaike in his answer, in addition has explained that he handed over the share certificate of Kotagala Plantations Ltd., in the name of George Steuart Management Services (Pvt) Ltd., to Ms. Ong at the request of those, who had accompanied her, presumably the representatives of George Steuart Management Services (Pvt) Ltd.

In specific reference to the criticisms that had been levelled at him by then Chairman PERC, Rajan Asirwatham, Dr. Romesh Dias Bandaranaike in his reply, inter-alia, had stated " I have come to know that BOI had already granted permission to Mr. Aiyadurai to take up a 40% stake in GSMSL long prior to the transfer of Kotagala PL shares to GSMSL and that PERC is aware of this fact. A copy of the approval will be straightforward for PERC to obtain from the BOI and is most likely already available in PERC's files. So why is Mr. Asirwatham speaking about my checking up on Ms. Ong, when he already knows that BOI had given permission for the foreign shareholding in GSMSL ? "

FOREIGN INVESTMENT AGREEMENT ?

The Sunday Leader reliably understands, that the consortium of foreign investors in George Steuart Management Services (Pvt) Ltd., had been Naganathan Ayadurai of Thailand and Ms. Mary Ong of Malaysia and Rovenco Co. Ltd. of Thailand. They had entered into an Agreement with George Steuart & Co. Ltd. and George Steuart Management Services (Pvt) Ltd., on December 4, 1995 to purchase shares in George Steuart Management Services (Pvt) Ltd.

Quite significantly, Clause 23 of the said Agreement stipulated, that in the case of the consortium of foreign investors and George Steuart Management Services (Pvt) Ltd., notices under the said Agreement had to be addressed to KPMG Ford, Rhodes, Thornton & Co., 32A, Sir Macan Marker Mawatha, Colombo 3 for the attention of M.R. Mihular, a Partner of KPMG Ford, Rhodes, Thornton & Co., of which, the then Chairman PERC, Rajan Asirwatham is a senior partner. To receive Notices under and in terms of the said Agreement would it not imply, that KPMG Ford, Rhodes, Thornton & Co./M.R. Mihular had been privy to such Agreement ? If not, how ?

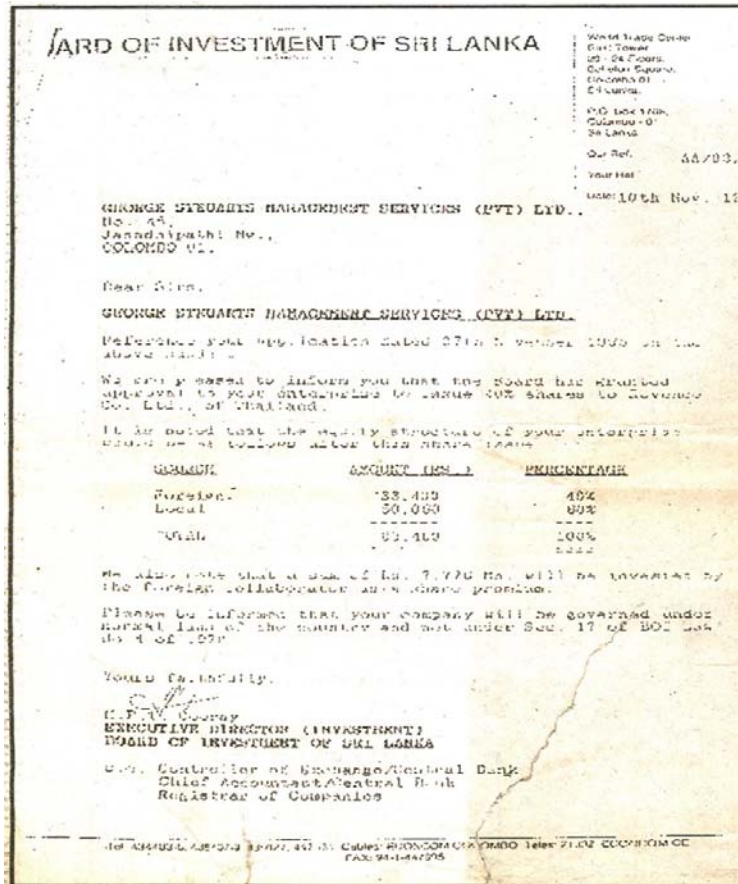


Once BOI has approved foreign investment, does KPMG Ford, Rhodes & Thornton become the foreign investors' post box? Above: BOI Chairman Thilan Wijesinghe. Below: Now PERC Chairman Dr. P. B. Jayasundera



M.R. Mihular has also been the President of the Institute of Chartered Accountants of Sri Lanka and in such capacity, has been an ex-officio member of the Securities & Exchange Commission of Sri Lanka.

Previous to the said Agreement, the Board of Investment of Sri Lanka [BOI], Chairman of which, Thilan Wijesinghe is also a member of PERC, had by its letter dated November 10, 1995, bearing Ref. AA/83/95 given approval for George Steuart Management Services (Pvt) Ltd., to issue 40% of its shares to Rovenco Co. Ltd. of Thailand. A copy of the said letter of approval granted by the BOI is given.



RESPONSIBILITY & ACCOUNTABILITY ?

PERC was established as a statutory authority by the Public Enterprise Reforms Commission Act No. 1 of 1996 certified on January 9, 1996 and gazetted on January 12, 1996. Therefore, previously in 1995 PERC had functioned, as an adhoc Commission, and presumably had been so appointed by President Chandrika Banaranaik Kumaratunga, under incidental powers of the President, as per Article 33(f) of the Constitution.

In such circumstances in August 1995, at the time Kotagala Plantations Ltd., privatisation transaction was carried out, PERC had functioned as a group of persons and accordingly, would not the then members of PERC have carried joint and several responsibility and accountability for the conduct and actions of the other members of PERC, in relation to the transactions handled by PERC at that time ? PERC having functioned under the Ministry of Finance, would not the Secretary, Ministry of Finance, the Deputy Minister of Finance and the Minister of Finance, have carried responsibility for the functioning of PERC and the conduct of its affairs ?

George Steuart & Co. Ltd. has been a very old agency house, that had been founded in this country by James Steuart, as far back as 1835. The Commission of Inquiry on Agency Houses and Brokering Firms, appointed by the then Governor General, William Gopallawa, comprising, amongst others, of the late Bernard Soysa, Chairman, Dr. Mrs. Kumari Jayawardena, wife of Lal Jayawardena, Economic Advisor to President Kumaratunga, P.M.W. Wijesuriya, former Auditor General, Dr. S.T.G. Fernando, former Chairman, People's Bank and Senior Deputy Governor, Central Bank and famous lawyer Kenneth Shinya, in its report published in December 1974, had not made any adverse findings against George Steuart & Co. Ltd., who have ever since enjoyed a good business name and reputation in this country.

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