

## **DOUBLE STANDARDS OF PERC**

Whilst focusing upon some of the privatisation transactions, carried out by the Public Enterprise Reform Commission [PERC], the issue was that pointedly raised of public accountability and responsibility and the desirability of advancing the concepts of public interest litigations in this country to protect the interests of the public, which appear to be of least concern to politicians in power.

Some of the privatisation transactions carried out by PERC, as had been clearly exposed had revealed colossal losses caused to the state and the public, by such questionable privatisation transactions. The cases cited were the sales of the majority shareholdings of the most profitable plantation companies, as in the instant cases of Kotagala Plantations Ltd. and Kelani Valley Plantations Ltd., the sale of 60% shareholdings of Orient Lanka Ltd., and the sale of 90% shareholdings of Ceylon Steel Corporation Ltd.

### **PRIVATISING PRIVATELY ?**

In addition to the cognisable losses caused to the state and the public, the serious issues of the methods and manner, in which these privatisation transactions had been carried out by PERC had been focused upon, giving rise to pertinent questions, as to whether such transactions had been carried out in conformity with the mandatory regulatory systems and procedures, that govern the conduct of public sector transactions, or whether there had been gross and blatant breaches and violations thereof ? Has the privatisation of Air Lanka been a case in point ?

It is left to the intelligence of the public to make their own assessments and/or determinations on the exposures made, supported by unrefuted facts and documentary evidence on some of the privatisation carried out by PERC. In knowledgeable business and social circles, such privatisation transactions carried out by PERC have been decried and described, as astonishingly incredible, particularly coming from the People's Alliance government, that very emphatically pronounced and professed public accountability and responsibility in carrying out such privatisation transactions.

Whilst, socio-political cronyism was strongly decried on its political platform by the People's Alliance government, one finds that most of these privatisation transactions, that have caused colossal losses to the state and the public have questionably not been carried out, on an open competitive basis on the trading floor of the Colombo Stock Exchange. PERC however, had carried out its own peculiar bid enhancement auctions, that too, only amongst pre-selected parties, whilst in some instances, such transactions had been through negotiations by private treaty with one pre-selected party, such as in the cases of Ceylon Steel Corporation Ltd., with Hanjung and Air Lanka Ltd., with Emirates Airlines.

### **PRIVATISING TRANSPARENTLY**

In comparison and contrast to the method and manner, as to how PERC has been operating, virtually secretly closeted, even giving rise to concerns as to whether, privatisation transactions are being carried out by a coterie of few, without requisite and appropriate deliberations, discussions and decisions by PERC sitting as a Commission, with proper documentations and record thereof, it would be relevant to consider, the method and manner, as to how such privatisation transactions had been handled during the previous UNP regime, without such much ado about transparency.

In respect of each privatisation transaction, there was the Cabinet Appointed Divestiture Committee, chaired by the Secretary of the Ministry, under which such state owned enterprise, that was to be privatised functioned. The Cabinet openly made decision to privatise. Such Divestiture Committees comprised of different public officials. Invariably such Divestiture Committees were supported for detail evaluations, by Technical Evaluation Committees appointed by the respective Ministries and by professional experts, both local and foreign as appropriate, with valuations given by the Chief Government Valuer.

Privatisation transactions were consequently deliberated upon by an Economic Sub-Committee of Cabinet, before which Committee any aggrieved party could have gone to be openly heard, after having made any representations. The officials comprising those of the Cabinet Appointed Divestiture Committees, Technical Evaluation Committees and other concerned professionals were also required to be present for such open and transparent discussions. It was only upon the recommendations of the Economic Sub-Committee of Cabinet, on the recommendations of the Cabinet Appointed Divestiture Committees, that the Cabinet of Ministers made final decision.

Most privatisation transactions, particularly those pertaining to profitable state owned enterprises, were carried out by putting up for sale, the majority shareholdings of such profitable state owned enterprises, for open competitive bidding on the trading floor of the Colombo Stock Exchange, examples being, Distilleries Co. of Sri Lanka Ltd., Lanka Milk Foods Ltd., Lanka Canneries Ltd., Asian Hotels Corporation Ltd., Trans Asia Hotels Ltd., etc.

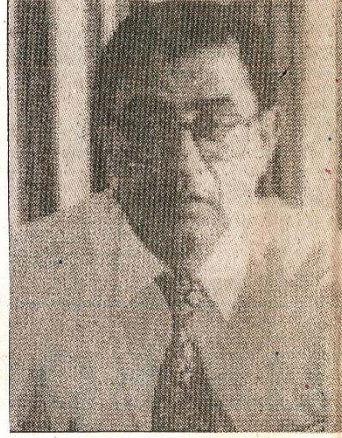
### **PERC CHECKMATED ?**

On the other hand, PERC had carried out the privatisation transactions of very profitable state owned enterprises, through negotiations by private treaty to pre-selected parties, whilst sometimes bidding amongst limited pre-selected parties, resulting in the sales of such shareholdings having been well below the market prices for such shareholdings, thereby causing cognisable losses to the state and the public, without any public accountability and responsibility, whatsoever, therefor.

Given such scenario, are the public of this country to watch and grin, whilst valuable public property is blatantly so being dealt with, in such questionable manner, resulting in colossal losses to the state and the public ? Should not public spirited persons, in such circumstances, intervene to subject such questionable transactions, that have caused such colossal losses to the state, to legitimate judicial inquiries, through public interest litigations ? Could not the judiciary of the country entertain such public interest litigations, to protect public property in the public interest and set aside such questionable transactions that have caused losses to the state and/or have been questionably carried out ?



Rajan Brito



P. B. Jayasundera



Mano Titawela

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There has been no response, whatsoever, PERC, on the scandalous analytical exposures on several privatisation transactions carried out by PERC, clearly being unable to refute and/or contradict such analytical exposures, thereby PERC conceding the correctness of such analytical exposures. Nevertheless, would not Members of PERC be accountable and responsible for such transactions and such losses caused to the state and the public ?

### **PERC'S CRITICISM OF NYLON 6**

Quite ironically, whilst PERC has been carrying out privatisation transactions, PERC has been unable to refute and/or contradict the analytical exposures thereon, PERC commenced its operations by reviewing and criticising some of the privatisation transactions carried out by the previous UNP government, one such case being the privatisation of the Nylon 6 Plant.

PERC's evaluations and conclusions dated April 24, 1995, bearing reference PERC/BM/LB are reproduced, on the privatisation of the Nylon 6 Plant, making critical observations thereon and concluding that the case should be sent to the Presidential Commission for inquiry. It is left to the intelligent public of this country to consider, as to how PERC in fact had carried out its own programme of privatisation, in comparison with PERC's own conclusions on the privatisation of the Nylon 6 Plant by the previous UNP government ?

PUBLIC ENTERPRISE REFORM COMMISSION

Tele : 333277/78  
 Fax : 447174  
 Doc Ref :  
 Your Ref :

Bank of Ceylon Building  
 (30th Floor)  
 No. 4 Bank of Ceylon Building  
 Colombo 1.

LANKA SYNTHETIC FIBRE COMPANY LTD.  
 NYLON 6 PLANT

CONCLUSIONS

1. The urgency and hurry to privatise and the haste in which events moved, leaves a lot of unanswered questions and leaves much doubt as to the transparency of this company's commercialisation. See separate schedule A.

2. Nylon 6 was part of the Petroleum Corporation. Hence privatisation would normally have been carried out by the Petroleum Corporation (CPC), with only approvals and advice from the Ministry of Power & Energy and Ministry of Finance.

However, CPC has been kept out of this privatisation (confirmed by R. Piyasena - D.N. Finance to Mr. S. Jayasinghe).

3. It appears negotiations have been carried out with only one bidder Tongyong Nylon Co. Ltd. (TNYC) together with Mr. Upali Dharmadasa (Dhawaloka Trading). Why?

- Advertisement appeared in Daily News of 11.2.94. Foreign Form 22.2.B with a 31 March 1994 closing date. No advertisements placed in technical magazines as requested by CPC.

- CPC objected an foreign buyer would not have time to inspect the plant and carry out feasibility tests before the closing date.

- As 31 March 1994 was a Sunday, offer extended till 15 April 1994. There is doubt whether all the papers carried an advertisement on this extension.

4. VALUATION OF COMPANY

The Valuation Department valued the enterprise at Rs. 1585M on an open market value and at Rs. 945 Million on trading potential. Considering both figures Rs. 1200 million was given as a floor price for the transfer of ownership.

Ernst & Young for the purpose of converting the Nylon 6 Plant to a Limited Liability Company, placed a value of Rs. 175 million as initial capital of the Company to be formed upon incorporation.

Members: H. H. Arinathum (Chairman), A. H. Jayawardena,  
 A. de Silva Gunawardena, Dr. Saman Kelegama,  
 Chandra Jayaratne, Nimal Hattharasakera

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Their report states "In revaluation of fixed assets is currently being carried out by the Chief Government Valuer. As these values are not available to us at present, we have used book values."

The Cabinet approval has been obtained mainly on the basis of Ernst & Young Valuation, which was not on an open market value basis.

QUESTIONS

- (a) As there was such a marked difference between the two values, either another valuation should have been obtained or a committee set up to investigate this large discrepancy.
- (b) Is Ernst & Young's valuation report misleading, confusing & vague. Did they follow instructions.
5. On 27/4/94 the employees sent an undated memo alleging that the Company :
  - (i) came out of a loss, because it underinvoices export products
  - (ii) racketa in repatriating foreign exchange by importing 15-20 years old Korean machinery purporting to be new
  - (iii) Dismissal of employees on deliberately fabricated charges.

FINAL CONCLUSION : This case should be sent up to the Presidential Commission for enquiry with the following being questioned :-

- |                            |   |   |
|----------------------------|---|---|
| Ministry of Power          | - | M/A. K. E. K. C. Bandara, (previous Minister); M. Aekiel Mohamed, D.C.P. Janak. |
| CPC                        | - | Mr. S. Mahipalawa and Mr. Piyasena.   |
| Purchasers                 | - | Tongyong Co. Ltd. and Mr. Upali Dharmadasa.                                     |
| Re. Valuation & Evaluation | - | Ernst & Young & NDB   |
| Finance Ministry           | - | K. Shanmugalingam, Mrs. C. Anuraadkura  |

PREPARED  
 24 April, 1995.

Would not the reference PERC/BM/LB reveal, as to who had carried out such review on the privatisation of the Nylon 6 Plant by the previous UNP government ? Why then is there such silence on exposures on PERC's own privatisation transactions, which appear to be far worse ?

The former Chairman PERC, R.N. Asirwatham, the present Chairman PERC, Dr. P.B. Jayasundera, the visiting Consultant to the Ministry of Finance & Planning/PERC, Brito-Muthunayagam or any other person associated with the privatisation programme of the People's Alliance government are invited, to respond to the analytical exposure, in comparison with PERC's own criticism of the privatisation of the Nylon 6 Plant by the previous UNP government.

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