

PERC PASSING THE BUCK

The Sunday Leader has been receiving very encouraging and enthusiastic responses to the recent analytical exposures that have been published in the public interest. Many written submissions and related documents are being regularly sent in by the reading public urging *The Sunday Leader* that they be probed and analytically exposed in the public interest. This alone demonstrates the concern and interest the reading public have in the need for transparency and public accountability; a policy very vocally upheld by the government at the highest levels.

It is most pertinent and apt to quote once again from the Lord Nolan Report to the British Parliament - "public scrutiny of what people do is probably the most powerful pressure towards probity of conduct." *The Sunday Leader* is committed to uphold such important tenet and accordingly, pursue the policy of investigative journalism to publish analytical exposures for public scrutiny without fear or favour.

Public exposure by a vigilant media is one of the most effective strategies to prevent, contain and minimise malpractice in the conduct of public affairs. Those who seek and hold public office, cannot shirk and disown responsibility and hide away from public scrutiny and accountability. Since they deal with public affairs, naturally they are transparently and openly accountable to the public. Surely, such public office ought not to be held as mere prestigious social embellishments ?

Amidst the encouraging and spontaneous responses had from the public was the pleasant surprise of an unannounced personal visit to *The Sunday Leader* office by certain very large foreign investors to give several informations and documents in relation to wheeling and dealing on some controversial transactions.

"NOT WE SIR, BUT THEY SIR?"

Interestingly, on the recent analytical exposures on the plantation privatisations, the following letter addressed to the Editor of *The Sunday Leader* was received from a group identifying themselves as "Third Eye Group"

" We refer to your newspaper articles on Sunday 4 and 11 May 1997 by one '*Bismarck*' on Plantation Privatizations.

There is clarification needed in regard to the above articles as the finger has been pointed out in the wrong direction. The entire Plantation Privatization was conducted on the basis of a Cabinet directive. The Cabinet directive was based on the "Report of the Committee Appointed to Inquire into State Sector Plantations", dated February 1995. As the enclosed selected pages from the Report show, it was submitted on 6 February 1995 to the Hon. Minister of Plantations - before the PERC was formed.

The Cabinet fully accepted the Report and requested the PERC to implement the Recommendations of the Report. A Cabinet Memorandum in this regard is available. The PERC, we believe, did not have any statutory powers at that time (in 1995) to challenge a Cabinet directive. Thus the consequences of the privatization should not be attributed to the PERC, but to the A.S. Jayawardena led Committee Report on Plantations - which misled the Cabinet. Clearly, those

responsible are the members of the A.S. Jayawardena Committee, and not any other institution. Please bring this to the notice of 'Bismarck'.

While we appreciate your insightful reports, they must ensure to contain accurate information."

Amusingly, we leave to the Sherlock Holmes amongst the reading public to deduce as to, who such "Third Eye Group" might be - elementary my dear Watson,! "*The PERC, we believe, did not have statutory powers at that time (in 1995)*"

PLANTATION MINISTRY REPORT

Nevertheless, *The Sunday Leader* gratefully acknowledges, on behalf of the public, to whoever it may be, who sent in this letter with valuable informations from the Report referred to. However, ought not this Report have been exposed for public scrutiny and debate to gauge public opinion prior to the privatisation of the plantations - after all it is a national asset, the valuable properties of the public that have been dealt with and disposed of to a selected few, without proper valuations at the lowest price, on a ludicrously absurd price formula bound to have doomed, and without open competitive bidding in an era of free market economy.

Attached to this letter was the cover page of the report titled "Report of the Committee Appointed to Inquire into State Sector Plantations", together with the table of contents, pages 8 to 15 of the Report and the covering letter dated February 6th, 1995, bearing reference No. MPI/6/T/174 addressed to Hon. Rathnasiri Wickramanayake, signed by the Chairman of the Committee, A.S. Jayawardena and other members of the Committee, R.S. Jayaratne, Ajith Goonathilake, T.P. Gunawardene, Dr. R.L. de Silva, G.B. Wickramanayake, and Secretary/Convenor, S.M.J. Bandara.

The Committee apparently had been appointed by Minister Rathnasiri Wickramanayake, who inter-alia, is in charge of the Plantations. From the available pages 8 to 15 of this Report of the Ministry Committee Appointed to inquire into State Sector Plantations, relevant and pertinent extracts are published. Such extracts make very revealing and interesting reading.

PRESIDENTIAL SPECIAL TASK FORCE

The Public Enterprises Reform Commission [PERC] was established by the Public Enterprises Reform Commission of Sri Lanka Act No. 1 of 1996 presented to Parliament by Prof. G.L. Peiris and certified on February 9th, 1996, and Section 20 of the said Act reads:

" Any act done by the Special Task Force for the implementation of the programme of Public Enterprise Reform, appointed by the President, during the period commencing of March 1, 1995 and ending on the appointed date shall be deemed not to have been, or to be invalid by reason only of the fact that such Task Force was not lawfully authorised to do such act."

Accordingly, the members of PERC having functioned previously under and in terms of a warrant issued by Her Excellency the President, as a Presidential Special Task Force from March 1st, 1995, their acts and deeds since that date have been retroactively validated by the PERC Act No. 1 of 1996.

Significantly, had it not been the former Chairman PERC, Rajan Asirwartham, himself, who had insisted on the appointment of a Presidential Special Task Force with Presidential Secretary, Kusumsiri Balapatabendi to have such prestigious power, as opposed to the formation of a company to carry out the privatisation programme?

PLANTATION PRIVATISATION

Report of the Ministry Committee Appointed to Inquire into State Sector Plantations, containing also the Committee's recommendations had been forwarded on February 6th, 1995. Members of PERC having functioned with effect from March 1st, 1995 as a Presidential Special Task Force, the privatisation of the plantations would have been one of the more important foremost privatisations that the members of the Presidential Special Task Force [later established as PERC], would have been responsible to carry out on assuming office on March 1st, 1995, under the warrant issued by Her Excellency the President, whereby the Special Task Force had powers of a Presidential Commission.

In connection with the privatisations, the Offer Sale Documents of the first six profitable plantation companies, which have been hitherto dealt with by *The Sunday Leader*, were issued on the Colombo Stock Exchange on the following dates;

Bogawantalawa - August 18th,'95, Kotagala - August 30th,'95, Agalawatte - October 11th,'95, Kegalle - October 11th,'95, Horana - October 30th,'95 and Kelani Valley - November 2nd,'95.

The statutory signatories to these six Offer Sale Documents issued in respect of each of these six profitable plantations companies, have been the same five persons, namely, R.S. Jayaratne, T.P.G.N. Leelaratne, M.F. Mohideen, Dr. S.A.B. Ekanayake and Dr. Romesh Dias Bandaranaike, who have functioned as Directors of such companies. Having been Directors and having signed the Offer Sale Documents, they cannot now distance themselves from these questionable transactions, even if they seek to claim that they have merely placed their signatures on documents that had been prepared and proffered. In addition, Dr. Romesh Dias Bandaranaike was the Director, Plantation Management Monitoring Division, that had assisted PERC on the privatisation of the plantations and R.S. Jayaratne, was the Secretary of the Ministry in charge of plantations.

Members of PERC, who during the relevant period functioned as a Presidential Special Task Force had been responsible for carrying out the above privatisations, inter-alia, causing the preparation of the respective company profiles and the issuance of the Offer Sale Documents over a period of 4 months, August '95 to November '95. As a Presidential Special Task Force, obviously they had examined and considered the recommendations of the Ministry Committee. Accordingly, they had conclusively and decisively accepted some of the recommendations including the ludicrously absurd price formula for implementation, for which they necessarily have to now take the responsibility - after all, they were then empowered as a Presidential Special Task Force. Had they any serious reservations, whatsoever, then they ought to have voiced such reservations and acted to discharge their duties and responsibilities under such Presidential warrant or have resigned therefrom ? Were they expected merely to rubber stamp and act blindly?

In fact some of the recommendations of the Ministry Committee had not been adopted or had been modified in implementation; - eg: non-refundable deposit increased to Rs.5 million from Rs.100,000, allocation limits of 800,000 shares imposed for categories in the fragmented sale of 20% minority shareholdings, and distribution of ownership of 20% shares equally to all households in the country through a National Unit Trust abandoned. Chairman of the Ministry Committee, A.S. Jayawardena, then Secretary to the Treasury, was, himself, a member of the Presidential Special Task Force, that later was established as PERC, thereby having enabled dialogue and interaction on the strategies to be pursued on the privatisation of the plantations. Surely, could the collective responsibility be denied now and public accountability evaded?

Ironically, in the controversial Puttalam Cement case, the Cabinet Decision of March 23rd, 1995 was not implemented by PERC, but such Cabinet Decision was re-canvassed by Cabinet Memorandum of June 16th, 1995 on the basis of a proposal of Vanik Incorporation Ltd., being recommended to the Cabinet of Ministers, "as a reasonable, practical and commercially acceptable solution" in the face of a draft Cabinet Memorandum dated May 18th, 1995 seeking to implement the Cabinet Decision of March 23rd, 1995 - vide *The Sunday Leader* of March 30th, 1997, 'More insights on Thawakkal deal'.

NOBLE OBJECTIVES & GOALS MISSED

By no way does it mean, that those, who were members of the Ministry Committee are not responsible or accountable to the public - certainly they are! They sat, deliberated and reported upon the divestiture of public assets, which they, themselves, in their report refer to as a national asset, the largest and the most important segment of the national economy, and recommend that the benefits of the privatisation be passed on to all citizens of the country in an equitable manner and that it is desirable that the citizens of the country have a more direct stake in the plantation sector. These, no doubt, are most noble ideals that ought to have been achieved! The question is, has the privatisation of the plantations achieved such noble goals and objectives? Have not the very mechanisms of privatisation that they recommended in their very Report, been contradictory to the achievement of such very noble goals and objectives and irreconcilable therewith?

A.S. Jayawardane and R.S. Jayaratne were two very senior secretaries of the Ministries of Finance and Plantations, G.B. Wickramanayake and T.P. Gunawardene were two very senior Chartered Accountants, with public/private sector experience, Ajit Goonathilake and Dr. R.L. de Silva, were very senior experienced persons from the plantation sector. Is it not a truism, that those who nurtured, developed and held sway in an era of a control economy are not the most suited persons to be visionaries and change agents to comprehend and conceptualise economic restructuring to create and develop a free and open market economy in contemporary times ? Open competitive bidding on a level playing field is one of the very basics of such an economy.

The Committee Report, inter-alia, sets out the goals "Ensure maximum transparency and public accountability at each level of operations of the state plantations" and "Ensure greater social justice in the allocation of shares of the national assets". Has this happened? Should not the Report itself have been issued as a White Paper, to have facilitated public debate and discussion on this most important segment of the economy, to have achieved such goals?

It would be wrong and out of place to allege that the Cabinet of Ministers had been misled - after all they would have been privy to the Ministry Committee Report. It would be an insult to the intellect, particularly to the likes of Oxford educated learned Ministers Lakshman Kadirgamar and G.L. Peiris, to allege that they had been misled! The Cabinet of Ministers would be collectively responsible for the decisions they made. The private sector entrepreneurs cannot be blamed or faulted. They have done very well, without even bargaining, purely by buying at the price offered they have handsomely benefitted and profited, whereas those who were responsible for such sales causing a loss to the public ought to be responsible and accountable therefor. The Ministry Committee Report ironically had stated; "the proposed scheme for disposal of shares should result in maximising government revenue." Did this happen?

It cannot be a case of finger pointing and passing the buck - "Not I sir, but he sir! " This is the largest and the most important segment of the national economy - Has not the plantation privatisation been a fiasco? - Ought not those who were responsible be held publicly accountable? Does it not cry out for a commission of public inquiry, whereas much less important issues have been so dealt with? Or are the public to simply grin and bear it, when valuable public assets are so disposed of? This is not the mere family silver, but the very valuable land itself!

WHAT ACTION?

Comparatively, would not the privatisations rightfully criticised, faulted and re-vested in the state under the Rehabilitation of Public Enterprises Act, be very much in the shade, in comparison with this plantation privatisation fiasco? Minister G.L. Peiris in moving the re-vesting of these enterprises in Parliament had exhorted that the government will invoke criminal and civil jurisdiction against those who caused such loss to the state. Former Finance Minister Ronnie de Mel readily agreed and even urged the government to do more to bring those who have erred to book.

Accordingly, would not the public expect the former Minister Ronnie de Mel, who was responsible for ushering in the free and open economy in this country, bringing it out from the doldrums of a control economy, to initiate action on the plundering of the plantations as it were, to bring to book those responsible? He could not say that he is not in the country now! Will Minister G.L. Peiris invoke criminal and civil jurisdiction to deal with this, a far more greater issue, under his very stewardship as the Deputy Minister of Finance, and one who enacted the PERC Act, as well as the RPEA or would he on the contrary, conceive a monstrous media bill to gag *The Sunday Leader* from publishing these analytical exposures - an easy way out?

- *Published in The Sunday Leader on 18.5.1997 by Nihal Sri Ameresekere under the pseudonym 'Bismark'*