

WHO WILL WATCH THE WATCHFUL?

The Sunday Leader last week analytically exposed some of the more important salient aspects of the privatisation of Sri Lanka Telecom, the negotiations and details pertaining to which, appear to have been closeted away from the public glare, view and focus, by those who handled such a major privatisation of a crucially important public utility; presumably such privatisation transaction had been carried out solely by the members of the Public Enterprises Reform Commission [PERC].

Most ironically, PERC's advertisements published in the print media, repetitively carry the slogan - "*Watchful in the public interest*". *The Sunday Leader* leaves it to the intelligence and the judgement of the reading public to examine and compare such repetitive slogan, with the analytical exposures published by *The Sunday Leader* in the public interest on some of the major privatisation transactions carried out by PERC, particularly, Plantation Companies, Orient Lanka, Thawakkal and Steel Corporation.

PERC, who is supposedly acting "*watchful in the public interest*", as so proclaimed by they, themselves, have not been able to even respond to such exposures published by *The Sunday Leader* in the very public interest, that PERC, themselves, proclaim that they are watchful of !

Is PERC's slogan - "*watchful in the public interest*", a meaningless and empty self-proclaimed eulogy, persistently carried repetitively to merely make belief and mislead the public ? *The Sunday Leader's* analytical exposures, which had been carried out in the very public interest, clearly brings into focus, as to whether PERC had in fact been actually acting "*watchful in the public interest*", as often so proclaimed by PERC, so holding out to the public of this country.

It is quite incomprehensible to understand, as to why those, who proclaimingly claim to act "*watchful in the public interest*" appear to want, to keep the privatisation transactions that had been carried out in the very public interest, closeted away from the public glare, view and focus, preventing requisite public disclosure and thereby suppressing the very necessary public discourse, which alone would only protect such very public interest and give real life and meaning to PERC's proclaimed eulogy "*watchful in the public interest*".

The Sunday Leader last week focused upon the protected business lines and monopolistic status afforded to Sri Lanka Telecom, questionably coupled with guaranteed minimum annual upward telecommunications tariff revisions of 25%, 25%, 20%, 15% and 15% for the years 1998, 1999, 2000, 2001 and 2002 respectively, resulting in a minimum cumulative upward revision of 200% to 250% of the present telecommunication tariffs over the next 5 years, depending on whether such minimum annual increases are to be on a compounding or cascading basis or otherwise.

TELECOM DEAL?

The Sunday Leader also brought into focus, that if the profit percentage to turnover is 20%, then such 25% upward revision in telecommunications tariffs would enhance the profit by about 100%, without making provision for escalation of operational costs. This gives a prima-facie insight into, what the impact on profitability would be over the next 5-years, where the cumulative minimum upward telecommunication tariffs revision would be 200% to 250%. Such telecommunication upward tariff revisions could even be very much more, since what is stipulated is only the minimum barriers above which, the telecommunications tariffs would be upwardly revised.

The government's own proclamation is that annual inflation would be contained to single digit levels, which would indicate the likely cost escalation levels of Sri Lanka Telecom's operational costs. Given such scenario predicted by the qualified economists handling the economic affairs of the government, one could easily postulate, what the enhancement of profitability of Sri Lanka Telecom would be over

the next 5-years, given a minimum cumulative annual telecommunications tariffs increase of 200% to 250% or possibly even very much more.

In such context, the most cogent and pertinent question, that comes into focus and which is of utmost public interest is - given such a scenario of enhanced profitability, that too with protected lines of business and monopolistic status, what is the pay-back period on the US \$ 225 million investment made for a 35% shareholding in Sri Lanka Telecom by Nippon Telegraph and Telephone Corporation [NTT] ?

Is this not in simple terms, the bottom line of such negotiated privatisation deal ? If PERC is acting "*watchful in the public interest*", as so proclaimed by them, the Chairman, PERC, Dr. P.B. Jayasundera ought to explain and disclose to the public, such and several other issues in this regard, specifically posed by *The Sunday Leader* in the very public interest, ironically which public interest PERC is proclaiming to be watchful of.

According to knowledgeable circles, emanating from Japan, NTT is not supposedly the largest telecommunications operator in Japan, but Kokusai Denshin Denwa [KDD], which telecommunications operator is reported to be enjoying 60% of the Japanese telecommunications market, and the balance shared amongst the other competitors in the telecommunications sector.

BLIND & DUMBFUNDED?



President Kumaratunga — Why no action on PERC's questionable transactions ?

Given the detailed analytical exposures and the litany of nearly two dozen questionable specific issues posed by *The Sunday Leader* in relation to the privatisation of Orient Lanka, no answers, whatsoever, have forthcome from PERC, of which the present Chairman, Dr. P.B. Jayasundera was also a then member, responsible for such privatisation of Orient Lanka. In such circumstances, how could one honestly proclaim or claim that PERC is acting "*watchful in the public interest*" ? One could only deduce, that such empty eulogy is repeatedly proclaimed to merely make belief and lull the public into a false sense of complacency, that PERC in fact is really acting "*watchful in the public interest*".

If PERC really is acting "*watchful in the public interest*", not only should there have been prompt and effective answers to the public of this country on the several analytical exposures and questionable issues focussed upon in the very public interest by *The Sunday Leader* in relation to several

privatisation transactions carried out by PERC, but also failure to so act "*watchful in the public interest*", as so exposed by *The Sunday Leader* in the very public interest, ought to have resulted, in the least, in the honourable resignation of all those, who carried out and were responsible for such privatisation transactions.

On the contrary, those proclaimingly claiming to be acting "*watchful in the public interest*", appear to be blindly and blissfully indifferent and dumbfound to the real issues, that have been logically raised and argumentatively dealt with, supported by analytical data and relevant documentations, that stand unrefuted and uncontradicted.

CANVASSING PROHIBITED?

It is in the background of such given fiasco, that one must consider one of the very latest Cabinet Decisions, pertaining to the interaction between the private sector and the government, on matters of business concerning both.

It was extensively reported in the media, as announced by Cabinet spokesman, Media, Posts and Telecommunications Minister Mangala Samaraweera, that the Cabinet had decided to disqualify any bidder or firm that canvasses for a tender and that it was also decided to blacklist any bidder, contractor or commission agent found canvassing a minister, deputy minister or any official in support of any bid made by his or her firm or institution.

In the same press announcement in the Daily News of November 21, 1997, Her Excellency President Kumaratunga is reported to have said that - "all forms of canvassing should be halted immediately and the tender procedure adhered to in the interests of fairness and transparency".

Minister Samaraweera was further reported to have stated, that - "Any bidder or tenderer who feels that the tender was not fairly and justly awarded would be permitted to appeal to a special unit that would be set up under the direct supervision of the President".

The Daily News Report further stated that - "The government prepared a well defined tender procedure soon after it assumed office to put a stop to large scale corruption that prevailed in the awarding of tenders during the previous regime".

PRACTICAL REALITIES

Given the reality and nuances of conducting business in contemporary society, how could this ever be realistically achieved in real life? The business community or the private sector is all the time, essentially canvassing and lobbying at various fora and at various levels to promote their business interests. This is an integral phenomenon prevalent in a free and open economy, with competition in operation. On the contrary, what has to be provided more importantly, is a level playing field to ensure free and fair competition. Has this really happened, as revealed by the various analytical exposures published by *The Sunday Leader*?

One cannot simply understand, as to how business interests could be promoted, if one is prevented from making representations, canvassing and lobbying to promote ones business interests, prior to the occurrence of injustice and unfairness. What is the purpose of an appeal to a special unit or otherwise, after an award has been contractually made?

The facet of conduct of canvassing and/or lobbying, invariably is bound to continue in the conduct of business between the government and the business community, that is, the private sector. Such conduct would only be more intense, where endeavours are made to negotiate deals, closeted away from the public glare and view, essentially on the basis of private treaty.

If for instance, the majority shareholdings of the major privatisations carried out by PERC had been put up for sale for open competitive bidding, stipulating minimum floor prices, on the established trading floor of the Colombo Stock Exchange, then there would not have arisen the need for government ministers or deputy minister or officials to be harassed with canvassing, in regard to such transactions. On the contrary, the brokering firms would have promoted such sales, on an open competitive basis, getting the best possible prices for the government. Regretfully, this was not so, and hence naturally, would not interested parties have resorted to canvassing and/or lobbying in connection with such negotiations?

Would not an Economic Sub-Committee of Cabinet, to transparently and openly entertain grievances and representations by aggrieved parties, in the very presence of all other parties, including all relevant officials, after the Technical Evaluation Committee and the Cabinet Appointed Tender Board had made their choice or selection, but prior to the award by Cabinet, provide a forum for facilitating fairness and openness and prevent wrongful decisions being made? This was the practice previously, which appears to have been abandoned now. Why ? Was not the questionable Orient Lanka award hastily announced to the public by PERC, even prior to a Cabinet decision?

Would such proclamation of prohibition of canvassing and/or lobbying mean, that no contending party could make oral/personal representations, interpreted to tantamount to canvassing and/or lobbying, to promote and/or protect ones own business interests, which is a normal ongoing phenomenon all the time, with even resident Ambassadors of foreign countries, invariably indulging in such canvassing, to promote the business interests of their respective countries. Would they all be snubbed hereafter?

POLITICAL CRONIES



Opposition Leader Wickremesinghe — A government of the corrupt, by the corrupt and for the corrupt

How could such rigid practice of prohibition be enforced? On the contrary, how could one ensure and believe, in all certainty, that all those ministers, deputy ministers and officials would rigidly, prayerfully and faithfully conduct themselves accordingly? Or is it, that such lobbying and/or canvassing will be discreetly permissible, privately to a selected few, appropriately termed "political cronies", who invariably surround every government?

It is an open secret in contemporary politics, openly discussed today, even in the political forums of the United Kingdom and in the United States of political donations by the business community, with consequential strength of influential canvassing and/or lobbying ability to influence peddle, to promote business interests.

Can one in proper senses, really believe, that the local political scene in this country, particularly at the contemporary time, is going to be a unique exception to this reality ? The exposures made by *The Sunday Leader* speaks volumes to cry out aloud, that this could never be so. Have those loud cries about corruption, have got bogged down and drowned in the quagmire of socio-political realities or on the contrary, were such loud cries on corruption mere political rhetoric to capture power?

One would only be prompted to compare such proclamation on prohibition of canvassing and/or lobbying, with PERC's empty eulogy - "*watchful in the public interest*". If government business is conducted transparently, on a level playing field with equality of opportunity for free and fair competition, then minimum would be the need to canvass and/or lobby to promote business interests. But has this really been so?

REAL ISSUE & ACTION

The Foreign Corrupt Practice Act of the United States places this phenomenon in the correct perspective, whereby it makes it unlawful for any person or firm, as well as persons acting on behalf of such firm, to offer a payment or promise to pay or authorise any such payment or promise, money or anything of value to any foreign official or foreign political party or candidate for foreign political office for the purpose of obtaining or retaining business interest.

The crime is not the canvassing and/or lobbying to promote business interests, but on the contrary to make payment of money or anything of value to a politician and/or official for the purpose of obtaining or retaining business. Would this not be the real core issue that needs focussing upon, with real action and not the phenomenon of canvassing and/or lobbying ? The Right Honourable Lord Nolan Report on Standards in Public Life, presented to the British Parliament in May 1995, has set out seven principles of public life.

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their families or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that may influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all their decisions and the actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

In the context of the announcement made by Minister, Mangala Samaraweera, that any bidder or tenderer, who feels that the tender was not fairly and justly awarded would be permitted to appeal to a special unit, that would be set up under the direct supervision of the President — to establish credibility, would not the right and proper thing that ought to be done, would be to examine and review, some of the major privatisation transactions carried out by PERC, that have been analytically exposed by *The Sunday Leader*, such as, the Plantation Companies, Orient Lanka, Thawakkal and Steel Corporation [more exposures to follow] and exposures on transactions with Nawaloka Specialist Centre and Pacific Shore, Hong Kong, by such special unit to be set up, as so announced ?

But then, to examine PERC's privatisation transactions, could such special unit be under the direct supervision by the President, since PERC functions directly under the President ?

Ought not the setting up of an independent autonomous committee, to deal with such questionable transactions and to take action thereon, such as the Congressional Committees of the United States with public hearings, be the right and proper thing to do, if the government is genuine and serious in upholding the policies and promises, that were held out to the public of this country to come to power ?

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