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Full Text: Letter By Chief Justice Shirani Bandaranayake To DG Bribery Commission

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The Commission to Investigate Allegations of Bribery and Corruption was in possession of enough evidence pertaining to ex-CJ Shiranee Bandaranayake to prove bribery and corruption allegations against her, state run Daily News today (11th) reported.

"The charges include the amassing of wealth beyond the means of an ordinary public servant and the submission of falsified reports regarding her assets and liabilities. The Commission had subject these allegations received several months ago to an initial investigation since prima facie evidence revealed that there was truth in the charges proffered before the commission. The commission summoned the ex-CJ to obtain a statement. Ex-CJ Shiranee Bandaranayake who raised objections to the investigations obtained a further date to make submissions. The ex-CJ who dodged making submissions on two earlier occasions yesterday appeared before the commission and made a statement after making written submissions. The commission is now due to consider the statement and submissions made by the ex-CJ within the next four days and decide whether to proceed with the case. If the oral and written submissions made by her are found insufficient to exonerate her, the commission will conduct further investigations in keeping with its powers irrespective of whether she assisted the investigations or not and if she is found guilty, the commission will file a case against her on bribery and corruption charges. Meanwhile, the Immigration and Emigration Department has impounded the ex-CJs passport at the request of the Commission, to prevent her from going abroad." the state run daily further said.

We publish below the letter sent by CJ Shirani Bandaranayake to the Director General of the Commission to investigate Allegations of Bribery and Corruption;

Director General

Commission to investigate Allegations of Bribery and Corruption

Colombo 07.

Dear Madam,

I have been noticed by the Director General of the Permanent Commission to Investigate Allegations of Bribery and Corruption to be present before the Commission to make a statement on purported allegations against me. I attended the Commission on the 18th March 2013 on which date I informed that I would be raising a preliminary objection to the Commission. Thereafter on the 1st of April 2013 I informed the officers of the Commission that I will be making a statement on the next day both on the objections and on the question of bank accounts which I was informed was the scope of the inquiry. I have not been given a copy of the complaint, but was specifically informed that the scope of the inquiry was my bank accounts.



Chief Justice Shirani Bandaranayake

At the outset I state that I am surprised to have received your letter of 2.4.2013 in that it was clearly understood that the objections and statements would be made on the 17.5.2013; the date was specifically agreed upon for inter alia the reason that my lawyers were not available prior to the 6th of May. Knowing this, you have now asked for objections to be filed on the 10th.

Before dealing with the contents of the letter under reference, I draw your attention to the fact that I have received a letter dated 18.4.2013 from the Director General Immigration and Emigration to the effect that in terms of an order given by your commission I have been prevented from travelling abroad.

Please note that the last time I travelled abroad was on 25.12.2006; at no time thereafter have I ever attempted to travel abroad, I have never applied for a visa to any country and save and except to Singapore I cannot travel abroad without visa

I am surprised Justice Balapatabendi violated the law of Confidentiality by giving various statements to the Press regarding the matter. Justice Balapatabendi could not have been unaware of Section 17 which reads as follows

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ALL ENTRIES BY DATE

"Every member of the Commission, the Director-General and every officer or servant, appointed to assist the Commission shall, before entering upon the duties of his office, sign a declaration that he will not disclose any information received by him, or coming to his knowledge, in the exercise and the discharge of his powers and functions under this Act, except for the purposes of giving effect to the provisions of this Act."

Your decision to prevent me from travelling abroad has been given wide publicity in the press though by law, the Commission is bound by secrecy. In the circumstances I have to conclude that there was no necessity whatever to prevent my travelling abroad and in any event it is against the law to give publicity to such a decision.

In my view neither Justice Balapatabendi nor Mr. Jayantha Wickramaratne should participate in any inquiry against me. I would briefly set out the reasons for such statement.

I state that both of them are disqualified from conducting any investigation or proceeding against me on the ground that their participation would violate the principles of natural justice, inter-alia, the Rule against bias. This will be dealt with after I set out my position regarding Bank Accounts which are the subject matter of the purported inquiry. I reiterate that I have not been informed of the reason as to why it is alleged that there is a discrepancy in the Bank Accounts.

BANK ACCOUNTS

On the last occasion your officers informed us that the scope of this inquiry would be regarding my bank accounts. There is nothing whatsoever incorrect in my bank accounts. They are perfect. There is absolutely nothing incorrect in my declarations of Assets and Liabilities.

I have been wrongly accused by the Parliamentary Select Committee of having more than 20 bank accounts in various banks. This was false, I said this was false, and there was no evidence whatsoever to substantiate this accusation though the P.S.C. had written to several banks in the country and had summoned the CEO of NDB to give evidence which evidence he gave.

Thus it was clear that at all times material, I had no accounts in any other Bank [false accusation against me that I had several accounts in several Banks] and that I did not have 20 accounts in the NDB [another false accusation].

All operative bank accounts have been declared by me in my assets and liabilities declarations. In fact, I had one current account, one savings account, one joint savings account and one RFC Account (in Australian Dollars) and two joint RFC Accounts (in Sterling Pounds and US Dollars). No money was deposited to the US Dollar RFC Account and Pounds Sterling RFC Account after I became a Judge of the Supreme Court. The RFC in Australian Dollars account solely consist of the money (Australian Dollars) (together with interest thereon) gifted to me by my sister in Australian Dollars by way of a cheque in 2011.

I have not only declared my bank accounts but also that of my son though I need not have done so, my son being a major. As at the date of the of the Declarations of Assets and Liabilities, neither my son nor my husband had any Bank Account except what had been declared by me. This shows transparency and honesty with which I made the declaration.

I have duly properly and correctly declared all my assets inclusive of investments in treasury bills and fixed deposits. As you are well aware the bank maintains routing accounts for investments in Treasury Bills; that is when the Treasury Bills matures, money is credited to routing account and on the same day the said routing account is debited when the money is reinvested in Treasury Bills. There have been two such routing accounts in the NDB. I have no cheque books in respect of such accounts, nor have I in any way or manner dealt with these accounts.

These accounts were maintained by the Bank solely for the purpose of crediting the accounts with the proceeds of Treasury Bills which matured and for the reinvestment of such proceeds in fresh Treasury Bills. The opening and closing balance of such accounts on any one day was zero, the money remains in such accounts only for a few hours for reinvestment. I could not withdraw such monies.

I may add that the full sums of money invested in Treasury Bills [which matured and were credited to these accounts] was fully and completely declared by me.

I reiterate that all assets and liabilities have been duly and properly declared by me.

In the circumstances all bank accounts have duly declared in my declaration of assets and liabilities.

I trust this should completely deal with all bank accounts and that this matter will be laid to rest if conducted in an impartial manner.

I may add that I have fully and completely declared all my Assets and Liabilities in my Declarations of Assets and Liabilities.

This statement is made without prejudice to my legal rights.

BIAS

I state that as set out earlier both Justice Balapatabendi and Mr. Jayantha Wickramaratne are disqualified from conducting any investigation or proceeding against me or taking any decision in the process on the ground that their participation would violate the principles of natural justice, inter-alia, the Rule against bias.

February 2016

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I state that Justice Jagath Balapatabendi , the Chairman of the Commission is not entitled to participate in the proceedings or investigations being conducted against me or to take any decision in respect of me for the following reasons:

1. Justice Balapatabendi has acted contrary to the provisions of the Commission to Investigate Allegations of Bribery and Corruption Act No. 19 of 1994 by violating the provisions relating to secrecy which he is bound to comply, thus demonstrating that he is biased against me and is not in a position to conduct a fair and impartial investigation in respect of the allegations made against me.

2. I state that Section 17 of the said Act states as follows;

“Every member of the Commission, the Director-General and every officer or servant, appointed to assist the Commission shall, before entering upon the duties of his office, sign a declaration that he will not disclose any information received by him, or coming to his knowledge, in the exercise and the discharge of his powers and functions under this Act, except for the purposes of giving effect to the provisions of this Act.”

3. I state that Justice Balapatabendi whilst being the Chairman of the Commission is considered a member of the Commission and is thus duty bound not to disclose information received by him or coming to his knowledge in the exercise and discharge of his powers and functions – except for the purposes of giving effect to the provisions of the Act.

4. Notwithstanding the aforesaid provisions Justice Balapatabendi has as Chairman of the Commission on numerous occasions violated the secrecy provisions by making public statements to the media with regard to the investigation being carried out against me, by the Commission.

5. I state that the following instances demonstrate the manner in which Justice Balapatabendi has violated the provisions of the law:

a. On 11th November 2012 in the Sunday Lankadeepa newspaper on page 01 under the heading “අල්ලස් කොමසම අගවිනිසුරුවරියගෙන් ජරණ කරන්න යයි” Justice Balapatabendi has stated that the Chief Justice would be questioned with regard to the complaint received. Further on page 23 in the continuation of the same news item he states that

i. An officer of the Commission was dispatched to the Chief Justice to obtain a statement of reasons for her innocence

ii. In order to prove the charges levelled against the Chief Justice documents from private and state banks, the Inland Revenue department and the Land Registry would be obtained

b. On 18th November 2012 in the Sunday Lankadeepa newspaper on page 01 Justice Balapatabendi has stated that a ‘Show Cause Notice’ had been sent to the Chief Justice (which at that time was factually incorrect).

c. On 16th December 2012 in the Sunday Lankadeepa newspaper on page 01 and page 11 under the heading “අගවිනිසුරුවරියගේ වත්කම් සොයන්න අල්ලස් කොමසම ඕස්ට්‍රේලියා යයි?” Justice Balapatabendi has stated that a number of teams of investigators are being utilised to investigate the charges levelled against the Chief Justice

d. On 16th December 2012 in the Sunday Times newspaper on page 01 under the heading “Bribery Commission probes complaint against CJ” Justice Balapatabendi has stated

“We have received a complaint against the Chief Justice about accumulation of assets. We are investigating the complaint. It has been sent under a name and therefore like any other complaint we receive we are investigating the allegations”

e. On 24th March 2013 in the Sunday Lankadeepa newspaper on page 23 under the heading “දේශපාලකයන් හැත්තෑ පහකට එරෙහිව අල්ලස් පැමිණිලි” Mr. Balapatabendi has stated that, as the complaints are against politicians of various levels the secrecy of the investigations and proceedings have to be maintained. Although Justice Balapatabendi has sought to maintain secrecy in respect of investigations and proceedings against politicians he has failed to observe the same duty of confidentiality in respect of the investigations against me.

6. I further state that based on the statement made by Justice Balapatabendi on the 24th March 2013 in the Sunday Lankadeepa and his actions prior to that date with regard to the investigation being carried out it is evident that he is acting in violation of Section 17 of Act No. 1994 and opened himself up for prosecution under Section 22 of the aforesaid Act. I further state that Section 22 of the Commission to Investigate Allegations of Bribery and Corruption Act No. 19 of 1994 provides for the consequences of breaching the secrecy provisions in section 17 of the said Act. It states;

“Every person who acts in contravention of the duty imposed on him by section 17 to maintain secrecy shall be guilty of an offence and shall on conviction after summary trial before a

Magistrate be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand rupees or to both such fine and imprisonment."

7. I state that Justice Balapatabendi has made a statement to the "Ceylon Today" newspaper of the 2nd April 2013 that I had tried to buy time and delay proceedings. He is quoted as saying "she is trying to drag the proceedings." The newspaper also quoted him as saying that the Commission would proceed to take legal action, based on my brief statement given to the Commission, should I ask for more time. I state the aforesaid statement to the Ceylon Today is not only a breach of confidentiality but also confirms that he has already made up his mind- even before I have been heard. I state that this statement disqualifies Mr.Balapatabendi from taking any further part in the proceedings against me on the ground of bias.

8. I further state that Justice Balapatabendi has at no instance denied the fact that he has in fact made public statements to the media with regard to the investigation being carried out against me, thus confirming that he has revealed particulars of the investigations against me in violation of the law.

9. I state that Justice Balapatabendi breaching the duty of confidentiality in respect of the purported investigations against me by the Commission, whilst striving to safeguard confidentiality pertaining to other investigations especially against politicians, has manifestly demonstrated a clear bias against me. I state that it is apparent from the said statements that Justice Balapatabendi has failed to maintain the necessary standard of impartiality and independence required by the Chairman of the Permanent Commission to Investigate Allegations of Bribery and Corruption.

10. I further state that Justice Balapatabendi has also issued statements to the media claiming that the Commission has already sufficient material to prosecute me and also claiming that I am attempting to delay investigations. I state that these statements too demonstrate that Justice Balapatabendi is not acting in an impartial manner but is demonstrating malice and bias towards me.

11. I state that without any reasonable cause Justice Balapatabendi has caused the Controller of Immigration and Emigration to prevent me from travelling abroad. I state that the said move had been given wide publicity in the media by Justice Balapatabendi, in violation of the law. I state that the said move too demonstrates manifest bias since I had made no arrangements whatsoever to leave the country at any point of time.

12. I state that I verily believe that among the reasons for Justice Balapatabendi to demonstrate bias against me arises as a result of his relationship to retired Chief Justice Mr. Asoka de Silva. I state that Justice Balapatabendi's son Isuru is married to Mr. Asoka de Silva's daughter Kanishka.

13. I state that during the course of the impeachment proceedings against me I submitted to the Parliamentary Select Committee that in fact former Chief Justice Asoka de Silva himself purchased a housing unit at Trillium Residencies whilst the case with regard to the Ceylinco Group of Companies was ongoing, demonstrating the fact that there was no impediment to my sister and brother-in-law to purchase such a housing unit. I state that Mr. de Silva had written a letter to the Parliamentary Select Committee and made numerous statements against me in the print and electronic media.

14. I state that I verily believe that Justice Balapatabendi's daughter-in-law Mrs.Kanishka de Silva Balapatabendi is a co-owner of the said Trillium Apartment purchased by her father.

15. I state that in view of the aforesaid Justice Balapatabendi is disqualified from participating in the proceedings or decisions of the Commission in respect of the allegations against me.

16. I state that Mr.Jayantha Wickremeratne (also known as H.A.S.K. Wickremeratne) a Member of the Commission is not entitled to participate in the proceedings or investigations being conducted against me or to take any decision in respect of me for the reasons set out below.

17. I state Mr Wickremeratne instituted a Fundamental Rights Application bearing No. 671/2003 in the Supreme Court. This application was dismissed and on the 10th February 2004, and I was a member of the bench which dismissed the aforesaid Fundamental Rights Application bearing number 671/2003 filed by Mr.Wickremeratne.This was an application pertaining to his promotion. I state that since I was the presiding judge of the bench which dismissed the aforesaid case filed by Mr.Wickremeratne there is a strong likelihood of bias against me.

18. I state that Mr.Jayantha Wickramaratne is the husband of Mrs.Anoma Gunathilake, Attorney-at-Law and Notary Public who has demonstrated ill-will and bias towards me and who has cast personal aspersions against me. I state that the manifest ill will and animosity shown by Mrs.Gunathilake against me creates a strong likelihood of bias against me by Mr.Wickremeratne.

19. I state that the following instances support my contention:

a. On 20th December 2012 in the Dinamina newspaper on page 01 and 04 under the heading "අනවිනිසුරුවරිය පිටුපස එල්ලවීම් නිතරවැදීන්" Mrs.Anoma Gunathilake has stated at a Conference that the LTTE organisation & Non-Governmental Organisations are supporting the Chief Justice.

b. On 20th December 2012 in the Daily News newspaper on page 01 under the heading "CJ's Writ Application to Discredit House" Mrs.Anoma Gunathilake has stated that there is no provision in the constitution that enables Chief Justice Shirani Bandaranayake to make any application before a Court of Appeal against a Parliamentary Select Committee that has conducted an impeachment trial against her. Mrs.Anoma Gunathilake is quoted as stating,

"I think the Chief Justice Bandaranayake has done this in an attempt to drag the process with an intention to discredit the House"

"We have reasons to believe that she is trying to complicate a normal constitutional process that impeached her on charges of misbehaviour with her current actions"

c. On 22nd December 2012 in the Dinamina newspaper on page 01 and 04 under the heading "දෝෂාභියෝගය අවසන් වී නොකිවියදී ඊට එරෙහි නීතිමය පියවර ගන්න බැහැ" Mrs.Anoma Gunathilake has stated that when impeachment proceedings are commenced against other Chief Justices' the law is good but when it is against Chief Justice Shirani Bandaranayake the law is not good. She further states that the Chief Justice has no basis upon which institute action against the Parliamentary Select Committee.

20. I further state that subsequent to the General Meeting of the Bar Association of Sri Lanka on the 15th of December 2012 and consequent to making these statements to the media Mrs.Anoma Gunathilake resigned from her post as deputy president of the Bar Association of Sri Lanka (BASL) as she was supportive of the impeachment process whereas the vast majority of the BASL was of the view that it was unconstitutional.

21. I state that Mrs.Gunathilake has appeared several times on the State Media including the Independent Television Network (ITN) criticising me.

22. I verily believe that Mrs.Gunathilake's animosity towards me has inter alia arisen from the fact that on the 10th February 2004, I was a member of the bench which dismissed the Fundamental Rights Application bearing number 671/2003 filed by her husband Mr.Wickremeratne, an application pertaining to his promotion. I state that since I was the presiding judge of the bench which dismissed the case filed by Mr.Wickremeratne there is a strong likelihood of bias against me.

23. Given the above circumstances Mr.Wickramaratne would be influenced by the strong views of his wife against me and also the fact that I dismissed his fundamental rights application bearing No. 671/2003 and therefore there would be a strong likelihood of bias against me.

24. As such I state that I state that in view of the aforesaid Mr.Wickremeratne is disqualified from participating in the investigation, proceedings or decisions of the Commission in respect of the allegations against me.

25. In support of my statement I am tendering to the officer recording my statement the following newspaper articles as proof of what I have contended above.

- a. Sunday Lankadeepa Newspaper – 11th November 2012 – pg 01
- b. Sunday Lankadeepa Newspaper – 18th November 2012 – pg 01 & 27
- c. Sunday Lankadeepa Newspaper – 25th November 2012 – pg 01 & 23
- d. Sunday Lankadeepa Newspaper – 09th December 2012 – pg 01
- e. Sunday Lankadeepa Newspaper – 16th December 2012 – pg 01
- f. Sunday Lankadeepa Newspaper – 23rd December 2012 – pg 01
- g. Sunday Lankadeepa Newspaper – 30th December 2012 – pg 01
- h. Lankadeepa Newspaper – 25th December 2012 – pg 01
- i. Sunday Lankadeepa Newspaper – 06th January 2013 – pg 01
- j. Rivira Newspaper – 04th November 2012 – pg 01
- k. Rivira Newspaper – 16th December 2012 – pg 01
- l. Dinamina Newspaper – 20th December 2012 – pg 01 & 04
- m. Dinamina Newspaper – 22nd December 2012 – pg 01 & 04
- n. Divayina Newspaper – 17th December 2012 – pg 01 & 04
- o. Daily News Newspaper – 20th December 2012 – pg 01 & 13
- p. Daily News Newspaper – 21st December 2012 – pg 01,09 & 13
- q. A copy of the deed of the Trillium Apartment co-owned by Mr.Balapatabendi's daughter-in-law
- r. Ceylon Today- 2nd April 2013
- s. Certified copy of the order dated 10th February 2004 in SCFR 671/2003.

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