

**IN THE SUPREME COURT OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

*In the matter of an Application under Article 126 of
the Constitution of the Democratic Socialist
Republic of Sri Lanka*

Vasudeva Nanayakkara
Attorney-at-Law
Advisor to His Excellency the President
Secretary, The Democratic Left Front
49 1/1, Vinayalankara Mawatha
Colombo 10.

Petitioner

SC FR Application No. 209/2007

Vs

1. K.N. Choksy P.C., M.P.
Former Minister of Finance
23/3, Sir Ernst De Silva Mawatha
Colombo 7.
2. Karu Jayasuriya, M.P.
Former Minister of Power & Energy
2, Amarasekera Mawatha
Colombo 5.
3. Ranil Wickremesinghe M.P.
Former Prime Minister
115, 5th Lane
Colombo 3.
4. Chandrika Bandaranaike Kumaratunga
Former President of Sri Lanka
Horagolla Walawwa
Horagolla.
5. Milinda Moragoda M.P.
Former Minister of Economic Reform
3/2, Allen Methiniyarama Road
Colombo 5.
6. Sripathy Sooriyachchi, AAL, M.P.
Former Minister, Public Enterprise Reforms
22, Niwasa Mawatha
Rilaula
Kadana.
7. Charitha Ratwatte
Former Secretary to the Treasury
16, Jawatte Road
Colombo 5.

8. P.B. Jayasundera
Secretary to the Treasury / Former Chairman,
Public Enterprises Reform Commission (PERC)
Secretariat
Colombo 1.
9. P. Weerahandi
Former Secretary
Ministry of Power & Energy
410/7, Baudhaloka Mawatha
Colombo 7.
10. Daham Wimalasena
Former Chairman
Ceylon Petroleum Corporation
Member, Technical Evaluation Committee
22/11, Subadra Mawatha
Madiwela.
11. Upali Dahanayake
Former Director, Ministry of Finance
Member, Technical Evaluation Committee
32, Peiris Avenue, Idama
Moratuwa.
12. A.W.C. Perera
Former Addl. Secretary
Ministry of Economic Reforms
Member, Technical Evaluation Committee
57/2, Rajamaha Vihara Road
Pita Kotte.
13. Shamalee Gunawardene
Attorney-at-Law
Former Director Legal, PERC
500/111, Thimbirigasyaya Road
Colombo 5.
14. DFCC Bank
73/5, Galle Road
Colombo 3.
15. Commissioner of Lands
Land Commissioner's Department
7, Gregory's Avenue
Colombo 7.
16. Sri Lanka Ports Authority
19, Church Street
Colombo 1.
17. Ceylon Petroleum Corporation
109, Rotunda Tower
Galle Road
Colombo 3.

18. John Keells Holdings Ltd.
130, Glennie Street
Colombo 2.
19. Lanka Marine Services Ltd.
69, Walls Lane
Colombo 15.
20. Susantha Ratnayake
Chairman
John Keells Holdings Ltd.
130, Glennie Street
Colombo 2.
21. V. Lintotawela
Former Chairman
John Keells Holdings Ltd.
55, Abdul Caffoor Mawatha
Colombo 3.
22. Nihal Sri Ameresekere
Former Chairman, PERC
167/4, Vipulasena Mawatha
Colombo 10.
23. W.M. Bandusena
Former Chairman, PERC
XB 1/2/2, Edmonton Houses
Kirulapona
Colombo 5.
24. W.A.S. Perera
Chairman, PERC
West Tower, 11th Floor
World Trade Center
Colombo 11
25. Channa De Silva
Director General
Securities & Exchange Commission of Sri Lanka
(SEC), Level 11-01, East Tower
World Trade Center
Echelon Square
Colombo 1.
26. Lalith Weeratunga
Secretary to His Excellency the President
Presidential Secretariat
Colombo 1.
27. Wijeyadasa Rajapakse P.C., M.P.
Chairman, Parliamentary Committee on Public
Enterprises (COPE)
17, Wijeba Mawatha
Off Nawala Road
Nugegoda.

28. Inspector General of Police
Police Headquarters
Colombo 1.
29. Deputy Inspector General of Police
Criminal Investigation Department
4th Floor, New Secretariat Building
Colombo 1.
30. Chairman
Commission to Investigate Allegations of Bribery or
Corruption
36, Malalasekera Mawatha
Colombo 7.
31. Hon. Attorney General
Attorney General's Department
Colombo 12.

Respondents

TO: HIS LORDSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS AND LADYSHIPS THE OTHER HONOURABLE JUSTICES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

I, NIHAL SRI AMERESEKERE of 167/4, Vipulasena Mawatha, Colombo 10 in the Democratic Socialist Republic of Sri Lanka, being a Buddhist, do hereby solemnly, sincerely and truly affirm and declare as follows:

1. a) I am the Affirmant and the 22nd Respondent abovenamed and affirm to the facts herein contained of my own personal knowledge and belief and from the documents herein referred to and as advised.
 - b) I received on 28.7.2007 by Registered Post from the Registry of Your Lordships' Court, Notice issued on me, together with copies of the Petition dated 28.6.2007 of the Petitioner, and his supporting Affidavit and the Documents marked therewith.
 - c) I have been the Chairman, Public Enterprise Reforms Commission (PERC) from 24.5.2004 to 10.11.2005.
 - d) I respectfully state that, I concur and agree with the contentions of the Petitioner, and to the grant by Your Lordships' Court of the reliefs prayed for by the Petitioner in his Petition.
 - e) In response to the Petition of the Petitioner, I state as follows:
2. a) I admit averments in paragraphs 2(t), 20(e), 25(i)(ii), 30, 32(b), 34 and 35 of the Petition and the corresponding averments in the Affidavit and admit the Documents **P10(a), P10(b), P28(b), P32 and P34** marked with the Petition.
 - b) I am aware of the averments in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18(a), 19(b), 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32(a), 33 and 36 of the Petition and the corresponding averments in the Affidavit, and admit the same, subject to paragraph 2(c) hereinbelow.
 - c) I verily believe the averments in paragraphs 8(f), 18(b), 18(c), 18(d) and 19(a) of the Petition .
 - d) Further answering paragraph 32(b), I admit that, as had been required, I gave evidence and tendered written representations before the Parliamentary Committee on Public Enterprises (COPE).

3. I respectfully adduce before Your Lordships' Court, the following further facts, which would be material to be taken cognisance of, in the adjudication of the matters in this Application before Your Lordships' Court.
4. a) I verily believe that the transaction put in issue by the Petitioner would have been dealt with by the Economic Sub-Committee of the Cabinet.
- b) The Minutes of the Economic Sub-Committee of the Cabinet during the relevant period, would reveal the decisions taken thereat and the persons, who had taken such decisions
- c) Letter dated 15.8.2002 (**P20**) referred at paragraph 18(a) of the Petition had been copied, among others, to R. Paskaralingam, Advisor to the then Prime Minister (3rd Respondent).
5. a) Further answering paragraphs 25, 26, 27, 28, 29, 30 and 31 of the Petition, I state that I, as then Chairman PERC, was totally unaware of the steps that had been taken to purport to transfer the Bloemendhal Land 8A 2R 21.44P to Lanka Marine Services Ltd. (LMSL) (19th Respondent).
- b) It is without such knowledge of the surreptitious actions taken as stated in the Petition, pertaining to the purported transfer of the said Land, that I addressed Letter dated 1.7.2005 (**P32**) to the then Chairman (21st Respondent) of John Keells Holdings Ltd., (John Keells) (18th Respondent), *inter-alia*, stating:

"4. As regards the purchase consideration of Rs. 1,200,000/-, you have referred to: this as per the records available had been based on a valuation, which had been done by DFCC on a basis of a 'discounted cash flow'. On a question raised by the Chairman CPC, as to whether this valuation had included the Market Value of the Land at Bloemendhal 8A 2R 21.44P that had been agreed to be transferred to Lanka Marine Services (Pvt) Ltd., it has been disclosed that the Market Value of such an extent of land had not been taken into reckoning"

*A true copy of the said Letter dated 1.7.2005 (**P32**) to the then Chairman (21st Respondent) of John Keells (18th Respondent), for convenience of Your Lordship's Court is annexed marked **22R(1)** to my Statement of Objections, pleaded as part and parcel thereof*

6. a) My said Letter dated 1.7.2005 (**P32**) / (**22R(1)**) was also forwarded by Letter dated 1.7.2005 by a Director of PERC to V. Kanagasabapathy, Director General, Public Enterprises Department, Treasury, for him to brief the Secretary to the Treasury, P.B. Jayasundera (8th Respondent) on the contents thereof.

*A true copy of the said Letter dated 1.7.2005 is annexed marked **22R(2)** to my Statement of Objections, pleaded as part and parcel thereof*

- b) My said Letter dated 1.7.2005 (**P32**) / (**22R(1)**) was responded to by Letter dated 4.7.2005 by the then Chairman (21st Respondent) of John Keells (18th Respondent), even in which, the fact that the said Land in fact had been purported to be transferred on 19.1.2005, was significantly and questionably suppressed.

*A true copy of the said Letter dated 4.7.2005 of then Chairman (21st Respondent) of John Keells (18th Respondent) is annexed marked **22R(3)** to my Statement of Objections, pleaded as part and parcel thereof*

- c) i) My said Letter dated 1.7.2005 (**P32**) / (**22R(1)**) was also forwarded to the Secretary to the Treasury, P.B. Jayasundera (8th Respondent) by LMSL (19th Respondent) by their Letter dated 6.7.2005.

- ii) Even then, the Secretary to the Treasury, P.B. Jayasundera (8th Respondent), who was also a Commission Member of PERC, did not disclose to me or to PERC, that the said Land, in fact, had been purported to be transferred to LMSL (19th Respondent) on 19.1.2005.

A true copy of the said Letter dated 6.7.2005 is annexed marked 22R(4) to my Statement of Objections, pleaded as part and parcel thereof

- d) Subsequently, shortly before my resignation as PERC Chairman, when such fact was brought to my attention by a member of the PERC Staff, I directed the then Director General, PERC, Leel Wickramarachchi to obtain copies of all relevant documents from the Land Registry and to file the said copies in the PERC File pertaining to the subject matter, which he did.
7. a) Further answering paragraph 32(b) and paragraphs 25, 26, 27, 28, 29, 30 and 31 of the Petition, I state that, whilst I was being examined on 28.11.2006 by COPE, on the transaction put in issue by the Petitioner, the COPE's Sub-Committee clarified, as to whether I had concurred with the aforesaid transfer of the Land, referring to a copy of my Letter dated 15.7.2004, which had been addressed to V. Kanagasabapathy, Director General, Public Enterprises Department, Treasury, which had been written shortly, after I had assumed Office as PERC Chairman on 28.5.2004, and therefore had not studied the said matter at that time.

A true copy of the said Letter dated 15.7.2004 is annexed marked 22R(5) to my Statement of Objections, pleaded as part and parcel thereof

- b) I promptly clarified to the COPE Sub-Committee, that I had not concurred with the same, and that such purported transfer of the said Land had taken place, without my knowledge, and that Letter dated 15.7.2004 had been written by me, to consider the avoidance of the incidence of stamp duty, subject however, to the concurrence of the Hon. Attorney General, by a double transfer i.e. from the Government (the said Land at that time was believed to be Government Land) to Ceylon Petroleum Corporation (17th Respondent), and thereafter to LMSL (19th Respondent), since the Ceylon Petroleum Corporation (17th Respondent) had to bear the cost of stamp duty payable on the purchase consideration, on such transfer.
- c) Consequently, I addressed my Letter dated 1.12.2006 to Dilan Perera M.P., Chairman, COPE Sub-Committee, clarifying the said matter, and *inter-alia*, stated as follows:

“Also when questioned, I stated that I was totally unaware of the ‘transfer’ of this Land. I did not elaborate on this matter at the Meeting in view of the presence of others. Dr. P.B. Jayasundera telephoned me one day and wanted this Land transfer effected immediately – ‘*Hetama karala dhanna*’. I refused to do so without examining the matter. Subsequently, unknown to me, the Land had got ‘transferred’ at the instance of the then Secretary, Ministry of Power & Energy, Mr. P. Weerahandi. I enclose Letter dated 3.11.2004 from John Keells Holdings Ltd. addressed to the Ministry of Power & Energy and Mr. P. Weerahandi’s Letter of the very same date to Mrs. C. Athurugiriya, Addl. Secretary to the President, after a telephone conversation he had had.”

A true copy of the my said Letter dated 1.12.2006 is annexed marked 22R(6) to my Statement of Objections, pleaded as part and parcel thereof

- d) The above referred to telephone call to me by the Secretary to the Treasury, P.B. Jayasundera (8th Respondent) requiring me to have the said Land transferred immediately, was made, no sooner, I was appointed Chairman PERC on 29.5.2004.

- e) I was made to understand, that it was Secretary to the Treasury, P.B. Jayasundera (8th Respondent), who had attempted to implicate me in this matter, when he was being examined by COPE, whereas I had resisted and desisted from taking steps to transfer this Land, and on 5.10.2004 had directed a then Director PERC to pursue on the matter of valuation of the said Land, which he did by Letter dated 5.10.2004 (**P28(b)**) addressed to DFCC Bank (14th Respondent).
- f) It is significantly thereafter, that John Keells (18th Respondent) had addressed Letter dated 3.11.2004 to the Ministry of Power & Energy (**P29(a)**), and the then Secretary, Ministry of Power & Energy, P. Weerahendi (9th Respondent) by Letter of the same date 3.11.2004 (**P20(b)**) had promptly initiated the process to effect a purported transfer of said Land, without any consideration having been paid to the Government– *vide* (**P31(a)**) and (**P31(b)**).
- g) I intimated to COPE that I did not concur with the basis of valuation that had been done by DFCC Bank (14th Respondent), who had been selected without due process, as referred to at paragraphs 10 and 11 of the Petition.
8. a) Further answering paragraph 30 of the Petition, I quote the following paragraph of my Letter dated 1.7.2005 (**P32**) / (**22R1**) which was addressed to then Chairman (21st Respondent) of John Keells (18th Respondent):
- “Requests for the Annual Audited Accounts of Lanka Marine Services (Pvt) Ltd., for the Post-Divesture Period, in the context of an overall Post Divestiture Review & Survey that PERC was carrying out in respect of all Public Enterprises, which had been Divested, had not been responded to by you, notwithstanding Lanka Marine Services (Pvt) Ltd., being a subsidiary of a listed Public Company, and the public being entitled to copies of the said Annual Accounts in terms of the provisions of the Companies Act No. 17 of 1982. PERC had thus to obtain copies of the Annual Accounts of Lanka Marine Services (Pvt) Ltd., from the Registrar of Companies in terms of the Law.”
- b) The then Deputy Chairman, Susantha Ratnayake, present Chairman (20th Respondent) of John Keells (18th Respondent) urged Mano Tittawela, the then Senior Advisor to H.E. the President and Chairman SEMA, to prevent PERC from persisting to call for the Accounts of LMSL (19th Respondent), at a Meeting had with me.
- c) Consequently, in terms of Section 427 of the Companies Act No. 17 of 1982, I obtained for PERC copies of LMSL (19th Respondent) Accounts from the Registrar of Companies.
9. a) Further answering paragraph 20 of the Petition, I state that the subject matter of the litigations referred to therein, resulted in time consuming unproductive correspondence, discussions and endeavours, as evidenced by the annexed Letters dated 3.3.2004 (**P21**), 18.11.2004, 18.3.2005, 18.5.2005, 20.5.2005, 1.7.2005 (**P32**) / (**22R(1)**), 1.7.2005 (**22R(2)**) and 6.7.2005 (**22R3**).
- True copies of the said Letters dated 3.3.2004 (P21), 18.11.2004, 18.3.2005, 18.5.2005, 20.5.2005 are annexed marked 22R7(a), 22R7(b), 22R7(c), 22R7(d) and 22R7(e), respectively, to my Statement of Objections, pleaded as part and parcel thereof*
- b) The said disputed matter was ended by the Order of the Court of Appeal on 1.8.2005 (**P22**), referred to at paragraph 20(e) of the Petition.
10. Further answering paragraph 24 of the Petition, I state that the said Claim too, involved endeavours and efforts to be made for the Government to have succeeded in the Arbitration referred to in the said paragraph, which involved a Claim of US \$ 9.2 Mn. against the Government, which, if had to be paid by the Government, on the Arbitration being lost, would have amounted to the wipe out of almost the entire purchase consideration of Rs. 1,200 Mn. paid by John Keells (18th Respondent) to the Government for the 90% Shareholding of LMSL (19th Respondent).

11. a) Whilst this Application is pending Hearing before Your Lordships' Court, there appears to be a concerted attempt in the media, to project John Keells (18th Respondent) and its Chairman, Susantha Ratnayake (20th Respondent), who, as disclosed, have been impleaded in this transaction put in issue by the Petitioner, ironically to be projected in the public domain, as Sri Lanka's 'most respected entity', *inter-alia*, in 'honesty', 'corporate social responsibility' and 'national-mindedness', with its Chairman, Susantha Ratnayake (20th Respondent) projecting that he puts the 'country before self'.
- b) i) It is to the 20th Respondent, Susantha Ratnayake, as then Director, John Keells (18th Respondent), that the 8th Respondent, P.B. Jayasundera, then Chairman PERC, had addressed Letter dated 12.7.2002 (**P15(a)**) awarding the sale of 90% Shareholding of LMSL (19th Respondent) to John Keells (18th Respondent).
- ii) It is the (20th Respondent) Susantha Ratnayake, as then Director, John Keells (18th Respondent), who had promptly addressed a reply also dated 12.7.2002 (**P16**) to the 8th Respondent, then Chairman PERC, accepting the award and agreeing to conclude the transaction.
- iii) It is the 20th Respondent, Susantha Ratnayake, as then Director, John Keells (18th Respondent), who had addressed Letter dated 31.7.2002 (**P18(a)**) to PERC, requesting for several concessions, (including the impugned 'monopoly' struck down by the Court of Appeal (**P22**)) consequent to which, the 8th Respondent is noted on the said Letter (**P18(a)**) to have met John Keells (18th Respondent) on 2.8.2002.
- iv) It is the 20th Respondent, Susantha Ratnayake, as then Director, John Keells (18th Respondent), who had addressed Letter of same date 2.8.2002 (**P18(b)**) to P.B. Jayasundera (8th Respondent), then Chairman PERC, confirming the said Meeting had on the said date, and thanking P.B. Jayasundera (8th Respondent), then Chairman PERC, for agreeing to the issues in the said Letter dated 31.7.2002 (**P18(a)**).

True copies of the 'cover page' of the LMD Magazine of August 2007 and a full page advertisement carried in the newspapers in August / September 2007 are annexed marked 22R8(a) and 22R8(b), respectively, to my Statement of Objections, pleaded as part and parcel thereof

12. In the foregoing premises, I reiterate that I concur and agree with the contentions of the Petitioner and pray that Your Lordships' Court be pleased to grant the reliefs prayed for in his Petition.

The foregoing Affidavit having been read over and explained by me to the affirmant thereof and he having admitted to have understood the contents thereof affirmed to and signed at Colombo on this 7th day of September 2007




BEFORE ME

TRUE COPY

V. Wimalakuru Attorneys

Attorneys-at-Law for the **22R8**
~~Plaintiffs~~ ~~Defendants~~ ~~Appellants~~
~~Petitioners~~ ~~Respondents~~

S. Navartanam
 JUSTICE OF THE PEACE

 S. NAVARTANAM
 Justice of the Peace
 No. 25/10, Wipulasona Mawatha,
 Colombo - 10.

007/09/07