

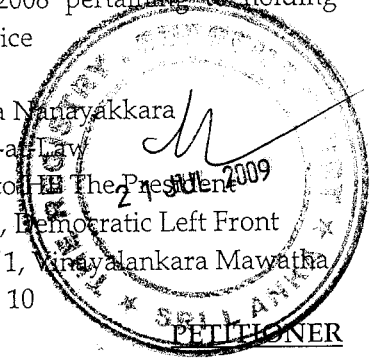
Level 14, West Tower
World Trade Center
Echelon Square
Colombo
Tel : + 94112394350
Fax : + 9411 2394353

AMENDED PETITION
IN THE SUPREME COURT
OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Case No. SC Application
No. SC FR 209/2007

In the matter of an Application for Relief pertaining to the undertaking in the Affidavit filed by the 8th Respondent-Petitioner dated 16th October 2008 pertaining to holding public office

Vasudeva Nanayakkara
Attorney-at-Law
Advisor to the President
Secretary, Democratic Left Front
No. 49 1/1, Nanayakkara Mawatha
Colombo 10



VS

1. K. N. Choksy P. C., MP
Former Minister of Finance
No. 23/3,
Sir Ernest de Silva Mawatha
Colombo 07
2. Karu Jayasuriya MP
Former Minister of Power and
Energy
No. 2, Amarasekera Mawatha
Colombo 5
3. Ranil Wickremesinghe MP
Former Prime Minister
No. 115, 5th Lane
Colombo 03
4. Chandrika Bandaranaike
Kumaratunga
Former President of Sri Lanka
Horagolla Walawwa
Horagolla
5. Milinda Moragoda MP
Former Minister of Economic Reform
No. 32, Allen Methiniyarama Road
Colombo 05

6. Sripathy Sooriyarachchi AAL, MP
Former Minister,
Public Enterprise Reforms
No. 22, Nivasa Mawatha
Rilaula, Kandana
(Now Deceased)
7. Charitha Ratwatte
Former Secretary to the Treasury
No. 16, Jawatte Road
Colombo 5
8. P. B. Jayasundara
Secretary to the Treasury
Former Chairman
Public Enterprises Reform
Commission
Secretariat
Colombo 1
9. P. Weerahendi
Former Secretary
Ministry of Power and Energy
No. 410/7 Baudhaloka Mawatha
Colombo 7
10. Daham Wimalasena
Former Chairman
Ceylon Petroleum Corporation
Member, Technical Evaluation
Committee
No. 22/11, Subhadre Mawatha
Madiwela
11. Upali Dahanayake
Former Director, Ministry of Finance
Member, Technical Evaluation
Committee
No. 32, Peiris Avenue, Idama
Moratuwa
12. A. W. C. Perera
Former Addl. Secretary
Ministry of Economic Reforms
Member,
Technical Evaluation Committee
No. 57/2, Rajamaha Vihara Road
Pita Kotte
13. Shamalee Gunewardena
Attorney-at-Law
Former Director Legal, PERC
No. 500/111, Thimbirigasyaya Road
Colombo 05

14. DFCC Bank
No. 73/5, Galle Road
Colombo 3
15. Commissioner of Lands
Land Commissioner's Department
No. 7, Gregory's Avenue
Colombo 7
16. Sri Lanka Ports Authority
No. 19, Church Street
Colombo 01
17. Ceylon Petroleum Corporation
No. 109, Rotunda Tower
Galle Road
Colombo 3
18. John Keells Holdings
No. 130, Glennie Street
Colombo 02
19. Lanka Marine Services Ltd.
No. 6, Walls Lane
Colombo 15
20. Susantha Ratnayake
Chairman
John Keells Holdings Ltd.
No. 130, Glennie Street
Colombo 02
21. V. Lintotawela
Former Chairman
John Keells Holdings Ltd
No. 55, A, Abdul Caffoor Mawatha
Colombo 05
22. Nihal Sri Amarasekera
Former Chairman, PERC
No. 167/4, Vipulasena Mawaha
Colombo 10
23. W. M. Bandusena
Former Chairman, PERC
No. XB 1/2/2, Edmonton Houses
Kirulapona
Colombo 05
24. W. A. S Perera
Chairman, PERC
West Tower, 11th Floor
World Trade Center
Colombo 01

25. Channa de Silva
Director General
Securities & Exchange Commission
of Sri Lanka (SEC) level 11-01, East
Tower
World Trade Center
Echelon Square, Colombo 01
26. Lalith Weeratunga
Secretary to His Excellency the President
Presidential Secretariat
Colombo 01
27. Wijeyadasa Rajapaksha P.C. M.P.
Chairman
Parliamentary Committee on Public
Enterprises
(COPE)
No. 17, Wijayaba Mawatha
Off Nawala Road
Nugegoda
28. Inspector General of Police
Police Headquarters
Colombo 01
29. Deputy Inspector General of Police
Criminal Investigation Department
4th Floor, New Secretariat Building
Colombo 01
30. Chairman
Commission to Investigate Allegations of
Bribery and Corruption
No. 36, Malalasekera Mawatha
Colombo 07
31. Hon. Attorney General
Attorney General's Department
Colombo 12

RESPONDENTS

AND NOW BETWEEN

P. B. Jayasundera
No. 761/C, Pannipitiya Road
Pelawatte
Battaramulla

8TH RESPONDENT - PETITIONER

VS

The Attorney-General
Attorney-General's Department
Colombo 12

31ST RESPONDENT - RESPONDENT

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

On this 21st day of July 2009,

The Amended Petition of the 8th Respondent-Petitioner abovenamed (hereinafter referred to as "the present Petitioner") appearing by his Attorneys-at-Law Mahinda Haradasa, Sittampalam Kumaranathan, Nimal Weeraratne, Hareed Mohamed Zafrullah, Kumutharanjani Nandakumar, Rajaratnam Selvaskandan, Ravidranath Perera, Yasmin Haradasa, Sita Vinothini Amarasekara practicing in Partnership under the name and style and firm VARNERS with their Assistants Surani Wickramaratna, Geethangani Jayasundara, Nilanthi Perera, Lankika Dayaratne, Rosheni Wickremaratne, Radeeka Tissera, Shamini Halpe, Mihirini Perera, Lanka Bandara, Lakshika Ketawalage, Nadhra Zanoon, Pubudu de Silva, Lakdini Perera Herath, Anuruddha Wijayarathne and Manahari Wickrama Attorneys-at -Law states as follows:

1. The present Petitioner abovenamed was appointed in April 2004, as Secretary, Ministry of Finance and Planning/Secretary to the Treasury by His Excellency the President in terms of Article 51(2) of the Constitution. His Excellency the President being also the Minister of Finance and Planning, the present Petitioner whilst functioning in the said post was subject to the direction and control of His Excellency the President. At the time material to the above Application, the present Petitioner held the said post of Secretary, Ministry of Finance and Planning/Secretary to the Treasury and was cited as the 8th Respondent in SC FR Application No. 209/2007.

2. His Lordship Sarath N. Silva the Chief Justice and Their Lordships Justice R. A. N. G. Amaratunga and Justice D. J. de S. Balapatabendi delivered judgment in the said Application on 21st July 2008 granting specifically "the relief prayed for in paragraphs (g), (h) and (i) of the prayer to the Petition", which are in the following terms:
 - (i) Make Order declaring that the execution of the instrument of grant (P30) purporting to transfer the Bloemendhal land A8-R2-P21.44 to Lanka Marine Services Limited (19th Respondent) had been carried out in a wrongful, unlawful and fraudulent manner;
 - (ii) Make Order declaring that the execution of the instrument of grant (P30) purporting to transfer the Bloemendhal land A8-R2-P21.44 to Lanka Marine Services Limited (19th Respondent) is fraudulent and *ab initio* invalid, null and void and of no force or avail in law;
 - (iii) Make Order canceling, annulling and making void the instrument of grant (P30) purporting to transfer the Bloemendhal land A8-R2-P21.44 to Lanka Marine Services Limited (19th Respondent).
3. Their Lordships directed the present Petitioner to pay a sum of Rs.500,000/= as compensation to State on the basis that his conduct was arbitrary, *ultra vires*, biased and collusive. However, their Lordships did not grant specific relief as prayed for in paragraphs (o), (q) and (r) against the present Petitioner.
4. The present Petitioner respectfully states that he is not guilty of any misconduct and for that reason will take appropriate legal action to move Your Lordships' Court to establish the same.
5. The present Petitioner by letter dated 25th July 2008 addressed to His Excellency the President stated that he would be paying the said sum of Rs.500,000/= as directed by Your Lordships' Court and noted that throughout his career in public service he had "maintained the highest level of honesty and integrity and discharged duties with utmost commitment in good faith and in the best interests of the country, and never compromised under any circumstances the public interest...". By the said letter, the present Petitioner requested His Excellency the President to relieve him of the responsibilities as Secretary, Ministry of Finance and Planning/Secretary to the Treasury at the earliest convenience.

A true copy of the said letter dated 25. 07. 2008 is annexed herewith marked "A" and pleaded as part and parcel hereof.

6. The present Petitioner paid the said sum of Rs.500,000/= as compensation to the State on 28. 07. 2008.

7. In response to his said letter marked "A", by letter dated 31st July 2008, the Secretary to the President informed the present Petitioner that the President appreciated his concerns but required him to continue to serve until a suitable replacement was found.

A true copy of the said letter dated 31. 07. 2008 is annexed herewith marked "B" and is pleaded as part and parcel hereof.

8. On 17th September 2008, the Secretary to the President informed the present Petitioner that as requested by his letter of 25th July 2008, he had been relieved from the post of Secretary, Ministry of Finance and Planning/Secretary to the Treasury with effect from 17th September 2008.

A true copy of the said letter dated 17. 09. 2008 is annexed herewith marked "C" and pleaded as part and parcel hereof.

9. The present Petitioner states that after delivery of Judgement, the Petitioner Respondent filed a Motion dated 2nd September 2008 before Your Lordships' Court.

A certified copy of the said Motion dated 2nd September 2008 is annexed herewith marked "C1" and pleaded as part and parcel hereof.

10. Consequent to the said Motion, the case was mentioned on 8th September 2008 before a Bench of Your Lordships' Court consisting of His Lordship Sarath N. Silva Chief Justice, Her Ladyship Justice Tilakawardane and His Lordship Justice Amaratunga. Counsel for the Petitioner Respondent submitted that "the officer in respect of whose conduct adverse findings have been made by Court is yet continuing to hold public office notwithstanding the fact that finding of this Court is that this officer has violated the provisions of the Constitution and thereby breached the Oath taken in terms of Article 53 of the Constitution" and is disqualified from holding public office. The Court observed that "there is merit in this submission" and made order that "the matter should be referred to the Bench which heard the case" and directed that the matter be mentioned on 29. 09. 2008 "before the same Bench that heard the main case".

A certified copy of the said proceedings of 08.09.2008 is annexed herewith marked "C2" and pleaded as part and parcel hereof.

11. The present Petitioner states that the submission of Counsel for the Petitioner in the Original application that "the findings of this Court is that this officer has violated the provisions of the Constitution and thereby breached the Oath taken in terms of Article 53 of the Constitution and is disqualified from holding public office" is unsupported by the Judgement of Your Lordships' Court.
12. The present Petitioner states that on 29th September 2008, the case was mentioned before a Bench consisting of His Lordship Sarath N. Silva Chief Justice, Her Ladyship Justice Thilakawardane and His Lordship Justice Amaratunga. His Lordship Justice Balapatabendi who heard the "main case" was not a member of the said Bench. Your Lordships' Court observed that there was a firm finding that the present Petitioner "has infringed the fundamental rights guaranteed by Article 12(1) of the Constitution" and noted that the "motion indicates that notwithstanding these findings which clearly show that he has acted in flagrant violation of the Constitution the 8th Respondent (*the present Petitioner*) is yet continuing to hold public office".
13. The present Petitioner received a Notice dated 03.10.2008 from Your Lordships' Court requiring him to appear before Your Lordships' Court on 08.10.2008 and reveal to Court ;
 - (i) whether the present Petitioner was continuing to hold office under the Republic and if so, the nature of such office and the place at which he is functioning;
 - (ii) whether he is holding office in any establishment in which the Government of Sri Lanka has any interest, purporting to represent the interest of the Government of Sri Lanka and if so the nature of such office.
14. The Court also directed the Attorney General to assist the Court on the matter since he is not appearing for any particular party.

True copies of the proceedings of 29.09.2008 and Notice dated 03.10.2008 are annexed hereto marked "C3" and "C4" respectively and pleaded as part and parcel hereof.

15. Upon receipt of the said Notice, the present Petitioner appeared before a Bench of Your Lordships' Court consisting of His Lordship Sarath. N. Silva Chief Justice, Her Ladyship Justice Tilakawardane and His Lordship Justice Ratnayake on 08. 10. 2008. Counsel appearing on behalf of the present Petitioner submitted *inter alia* that the present Petitioner "does not hold any office in any Government Establishment nor in any Establishment in which the Government has any interests".
16. The present Petitioner states that Your Lordships' Court made Order granting the present Petitioner time to file an "appropriate Affidavit in which he may consider including the said expression of regret and a firm statement that he would not hold any office in any Government institution either directly or indirectly or purport to exercise in any manner executive or administrative functions". Your Lordships' Court also directed that the case be mentioned on 20.10.2008 for a final order.

A true copy of the proceedings of 08.10.2008 is annexed hereto marked "C5" and pleaded as part and parcel hereof.

17. The present Petitioner respectfully states that the notice dated 03.10.2008 required him to reveal only whether he was holding public office under the Republic or in any Establishment in which the Government of Sri Lanka had any interest and that as such submissions made by the Petitioner's Counsel related only to that issue. The present Petitioner respectfully states that the Order of 08.10.2008 pertaining to the filing of an Affidavit containing a "firm statement" that he will not hold any office in any government institution or exercise executive or administrative functions was made without any submission in that regard on behalf of the Attorney General, or on behalf of any other party and without the present Petitioner being granted an opportunity of being heard in that regard.
18. In the circumstances, the Petitioner states that the Order relating to the inclusion of a "firm statement" in the terms set out in the said Order that he would not hold any office in any Governmental institution either directly or indirectly or purport to exercise in any manner executive or administration functions has been made without granting the Petitioner an opportunity of being heard and as such has been made in breach of the principles of natural justice.

19. The present Petitioner further states that in as much as the said Order was made without the Attorney General or the Petitioner or any other party being heard in that regard, the Petitioner verily believed that the Court would not have entertained any objection thereto.
20. The present Petitioner respectfully states that in view of the manner in which the said Order was made and the tenor of same, the present Petitioner had reasonable grounds to believe that the said Order was coercive in nature and that he would not be permitted to object thereto.
21. In view of the fear of punitive consequences in the event of non compliance the Petitioner submitted an Affidavit dated 16.10.2008 stating *inter alia* that "I state that I do not hold office under the Republic or in any establishment in which the Government of Sri Lanka has an interest, purporting to represent the Government of Sri Lanka and I will not hold office in any Government institution either directly or indirectly or purport to exercise in any manner executive or administrative function."

A true copy of the said Affidavit and the annexures thereto are annexed hereto compendiously marked "D" and pleaded as part and parcel hereof.

22. On 20.10.2008 the case was mentioned before a Bench of Your Lordships' Court consisting of His Lordship Sarath N. Silva Chief Justice, Her Ladyship Justice Tilakawardane and His Lordship Justice Ratnayake. Counsel representing the present Petitioner submitted an Affidavit in terms of the Order made by Your Lordships' Court on 08.10.2008 had been filed and Your Lordships' Court made order that the case be mentioned on 15th December 2008, on which date the proceedings were terminated.

True copies of the proceedings of 20.10.2008 and 15.10.2008 are annexed hereto compendiously marked "D1" and "D2" and pleaded as part and parcel hereof.

23. The present Petitioner further states that he received a letter dated 25th May 2009 from the Secretary to the President directing the present Petitioner to resume duties as Secretary, Ministry of Finance and Planning and Secretary to the Treasury. In the said letter the Secretary to the President stated, *inter alia* ;
- (i) that with the successful liberation of the North and East the country needs to embark on a massive development program and that the country is confronted with several challenges that required to be managed to restore the desired socio economic progress, the impact of the global economy that is confronted with a financial crisis being one such major challenge;

- (ii) that several major infrastructure development activities are in the final stage of implementation and many others are to be launched for which domestic and external funding and other resources need to be mobilized;
- (iii) that the implementation of post-war development program in the North and East also demand experienced and committed public officers.

24. In the said letter the Secretary to the President stated further as follows:

"As we know, His Excellency the President accepted your resignation from the post of Secretary, Ministry of Finance and Planning and other positions in the Government reluctantly, in view of your insistence. Considering the vast knowledge and experience you command while acknowledging your honesty and integrity, His Excellency the President is of the view that it is a waste that your services are not available to the Government, particularly in the present context. In this background, His Excellency the President has instructed me to inform you to resume duties as Secretary, Ministry of Finance and Planning and assist the Government in its endeavours."

A true copy of the said letter dated 25. 05. 2009 is annexed hereto marked "E" and pleaded as part and parcel hereof.

25. Responding to the said letter, the present Petitioner by his letter dated 3rd June 2009 re-iterated that he had always conducted himself with utmost propriety and that he is not guilty of any wrongdoing. In the said letter, the present Petitioner also expressed his gratitude to His Excellency the President for the confidence placed in him and stated that he was unable to make a commitment in response to His Excellency's direction to resume office in view of the undertaking contained in the Affidavit dated 16th October 2008 tendered by the present Petitioner pursuant to the Order made by Your Lordships' Court. (A true copy of which said Affidavit has been annexed hereto marked "D").

A true copy of the said letter dated 3rd June 2009 is annexed hereto marked "F" and pleaded as part and parcel hereof.

26. Thereafter the present Petitioner was summoned by His Excellency the President and His Excellency impressed upon him that his services as the Secretary, Ministry of Finance and Planning/Secretary to the Treasury were urgently required in the national interest. The present Petitioner submits that His Excellency the President is vested with the power under Article 52(1) of the Constitution to appoint a Secretary to each Ministry. A Secretary holds office under Article 52(3) of the Constitution, until the dissolution of the Cabinet of Ministers or upon a determination by the President which results in the relevant Ministry ceasing to exist.

27. In the circumstances, the present Petitioner makes this Application to Your Lordships' Court for relief as hereinafter prayed for, in order to enable the present Petitioner to comply with the direction of His Excellency the President that the present Petitioner's services are required in the national interest.
28. The present Petitioner respectfully states that the Order dated 08.10.2008 relating to the inclusion of a firm statement in the Affidavit which the Petitioner was required to file in terms of the said Order that he would not hold any public office or exercise any executive or administrative functions in the future has been made without jurisdiction in as much as :
- a) The present Petitioner was not granted a full and complete hearing before the making of the said Order;
 - b) Your Lordships' Court finally disposed of the matter by the delivery of Judgement on 21.07.2008 and as such in terms of Article 126(5) of the Constitution was not competent to make the said Order;
 - c) the said Order dated 08.10.2008 has been made by a Bench other than the Bench which delivered the main Judgement ;
 - d) in any event the said Order had been made in breach of the directions of Your Lordships' Court that the case be mentioned for consideration of further Orders "before the same Bench that heard the main case".
29. The present Petitioner further states that the said Order has been made *per incuriam* and is in violation of the fundamental right guaranteed to the Petitioner under Article 14(1)(g) of the Constitution.
30. The present Petitioner has given notice of this Application to the Attorney General and all other Respondents in the original Application and proof of same is annexed to the accompanying motion.
31. The present Petitioner has not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.

WHEREFORE the 8th Respondent-Petitioner prays that Your Lordships' Court be pleased to:

- (a) vacate the said Order dated 08.10.2008 in so far as it relates to the inclusion in the Affidavit of a firm statement that the present Petitioner "would not hold any office in any Governmental institution either directly or indirectly or purport to exercise in any manner executive or administrative functions."
- (b) make an order relieving the present Petitioner of the undertaking contained in paragraph 13 of the said Affidavit dated 16. 10. 2008 tendered by the present Petitioner pursuant to the Order of Your Lordships' Court and produced marked "D" to this Application;
- (c) grant such other and further relief as to Your Lordships' Court shall seem fit and meet.



VARNERS
Level 14, West Tower,
World Trade Center, Echelon Square,
Colombo - 00100. Sri Lanka.

ATTORNEYS-AT-LAW FOR THE 8TH
RESPONDENT-PETITIONER