

# Synopsis of

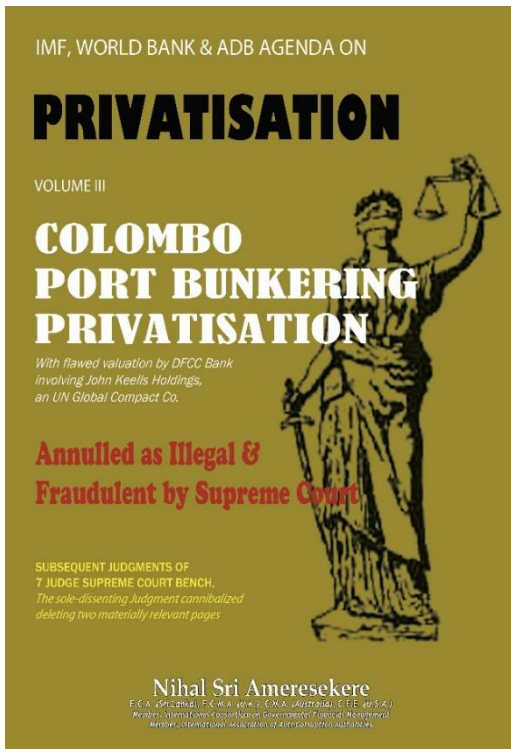
IMF, World Bank & ADB Agenda on

## PRIVATISATION

### COLOMBO PORT BUNKERING PRIVATISATION

Amazon Books – [‘IMF, World Bank & ADB Agenda on Privatisation – Vol. 3: Colombo Port Bunkering Privatisation – Annulled as Illegal & Fraudulent by Supreme Court’](#)

<http://www.consultants21.com/page-1-public-interest-litigations.php>



Size - 8.25" X 11" - Pages 456

The agenda of the IMF, World Bank and Asian Development Bank, mooted privatization. This startling Book well and truly exposes the fraudulent privatization of the oil bunkering monopoly and storage facilities of the Port of Colombo in Sri Lanka, owned and operated by the Sri Lanka Government owned Company, Lanka Marine Services Ltd.

The Supreme Court of Sri Lanka, the highest judiciary of the country, annulled this privatization as wrongful, unlawful, illegal and fraudulent.

The Author had prepared all documentations for this litigation and had dealt with the matter personally, appearing by himself, but due to a technical necessity, had got the Supreme Court Petition filed by his personal friend, Vasudeva Nanayakkara, Attorney-at-Law, who was then an Advisor to President Mahinda Rajapakshe; whilst the Author had named himself, as one of the Respondents, as a former Chairman of the Public Enterprises Reform Commission.

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Public interest challenge in the Supreme Court  
Re – Lanka Marine Services Ltd., (LMSL), the Colombo Port Bunkering Monopoly, Privatization  
SC (FR) Application No. 209/2007

This is to confirm that the above-styled Action was instituted by me at the earnest request of Mr. Nihal Sri Ameresekere, and all documentations were prepared by him and his Office, with advice from Lawyers.

Mr. Ameresekere named himself as a Respondent, and appeared in person making extensive written and oral submissions, and it his endeavours that resulted in the annulment as wrongful, unlawful, illegal and fraudulent of the privatization of Lanka Marine Services Ltd., the Colombo Port bunkering monopoly, which was re-vested in the State by the Supreme Court.

It is my very longstanding personal friendship Mr. Nihal Sri Ameresekere that I consented to be the Petitioner having absolute trust and faith in him in acting *bona-fide*.

  
Vasudeva Nanayakkara M.P.

The Author, as such Respondent, had appeared in person in the Supreme Court, and having investigated relevant facts and data, had made extensive Oral and Written Submissions, and had successfully obtained the above Supreme Court Judgment in the public interest and being of cognizable benefit to the public of Sri Lanka.

John Keells Holdings Ltd., had been the 'sole bidder', and given the exclusive option to purchase the Government Shares of Lanka Marine Services Ltd., which had been accepted spontaneously – viz:

12<sup>th</sup> July 2002

Mr. Susantha Ratnayake  
Director  
John Keells Holdings Limited  
130, Glennie Street  
Colombo 2

P15(a)

Amex xi  
LMS.

John Keells Holdings

John Keells Holdings Limited  
P.O. Box 76, 130, Glennie Street, Colombo 2, Sri Lanka  
Telephone: 3309000/110 Lines/ 421101/18 Lines Fax: 421087, 439076  
e-mail: JKH@keells.com Website: www.keells.com

P16

rex xi

79.3

Dear Sir

Sale of 90 per cent shares of LMSL

Reference the Undertaking to Pay forwarded by you to purchase the above shares, in terms of the provisions contained in the relevant Request for Proposal document (RFP).

We are pleased to inform you that as per the provisions contained in the RFP, you have been qualified to bid. Since you are the sole qualified party, the bidding process that was envisaged is not warranted. As such it is proposed to conclude the transaction upon the payment of the purchase consideration by you excluding the amount that would be drawn down on your Undertaking to Pay and signing the relevant agreements by July 24<sup>th</sup> 2002. Please confirm receipt of this letter.

Yours faithfully

  
P.B. Jayasundera  
Chairman

July 12, 2002

Dr. P.B. Jayasundera  
Chairman  
Public Enterprise Reform Commission  
Level 11, West Tower  
World Trade Centre  
Colombo 1.

Dear Sir,

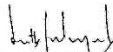
SALE OF LANKA MARINE SERVICES (PVT) LTD (LMSL)

Thank you for your letter of award dated 12<sup>th</sup> July 2002, confirming that John Keells Holdings is the successful bidder for the above transaction.

We are willing to conclude the transaction as set out in your letter dated 12<sup>th</sup> July, 2002.

Thanking you,

Yours faithfully  
JOHN KEELLS HOLDINGS LTD

  
Susantha Ratnayake  
Director



Appallingly and significantly, John Keells Holdings Ltd., an UN Global Compact Company had obtained this oil bunkering monopoly and storage facilities of the Port of Colombo in a flawed privatization process; and at the same time had made an Application to the Board of Investment of Sri Lanka to obtain concessions and benefits to set-up a new oil storage facility at the identical location, as though making a new investment by developing an existing oil storage facility, but without naming the existing facility, as that of Lanka Marine Services Ltd. ! viz – Application to Board of Investment of Sri Lanka

1. Particulars of Collaborators		Proposed Equity Contribution	
		Rs. Mn.	%
a. Name :-	JOHN KEELLS HOLDINGS		
Address :-	NO. 130, GLENNIE STREET, COLOMBO 02		
Citizenship :-	SRI LANKA		
National Identity Card/Passport No. :-			
Name & Address of Banker :-	BANK OF CEYLON, HATTON NATIONAL BANK, HSECC, NDB		
Current Business interests of Investor/s	INFRA-STRUCTURE, PLANTATIONS, IT, LEISURE, TRANSPORTATION, F&B		
Interests in other BOI Projects, if any :-			

I certify that the proposal constitutes a new project and does not involve the closure of an existing enterprise or similar nature or the transfer of any assets from an existing enterprise in Sri Lanka.

Name & Designation: Mr. Susantha Ratnayake  
Director

Signature of Investors: 

Date: 20/07/02

  
BOARD OF INVESTMENT OF SRI LANKA  
100, THE SQUARE, COLOMBO 02, SRI LANKA  
TELEPHONE: 3309000/110 LINES/421101/18 LINES FAX: 421087/439076  
E-MAIL: B.O.I@SRI.LK WEBSITE: WWW.B.O.I.SRI.LK

**Project Proposal**

2.1 a) New Project  (Tick as appropriate)

b) Expansion of Existing BOI Project

c) Expansion of Existing Non BOI Project

2.2 Summary of Proposed project (Give brief description of the project)

The primary objective of the project is to supply Heavy Fuel oil to the marine bunker market, whilst exploring the possibilities of supplying the power and similar sectors. This project will maintain the minimum requirement of 70% export income. If possible, the project envisages the purchase and expansion of an existing company in a similar business.

**Location**

1.1 Address of Location 69, WALLS LANE, COLOMBO 15  
(Please attach a sketch) OPTION - FLOATING STORAGE /OTHER

1.2 Extent of Land required 8A 2R 21.4P  
(in acres of/Sq.Mtrs.)

1.3 Ownership of the land

1.4 Covered Space of Buildings  
(in Sq.ft/Sq. Mtrs.) 300 - 2,500 sq. ft.

1.5 Whether it is an existing Building Yes

Proposed Financing	2002				2003 (Rs. Mn.)			
	YEAR 1		YEAR 2		YEAR 1		YEAR 2	
	1 ST HALF	2ND HALF	1 ST HALF	2ND HALF	1 ST HALF	2ND HALF	1 ST HALF	2ND HALF
Foreign								
Local								
Share Capital								
Debt Capital								
Others (Specify)								
TOTAL INVESTMENT								

ITEM	H.P	NO.OF ITEMS	CONDITION USED/NEW.
1. Upgrading of existing tank		12 Tanks	40 Years old
2. New Tanks		3 Tanks	

Name and designation: Mr. Susantha Ratnayake  
Director

Signature of Investors: 

Date: 20/07/02

Ironically, this fully owned Company of the Government of Sri Lanka, Lanka Marine Services Ltd., had been operating this monopoly of the oil storage bunkering facility in the Port of Colombo, and paying income taxes to the Government of Sri Lanka on the profits it had made.

However, the Board of Investment of Sri Lanka, which was then under Minister G.L. Peiris, had published a Special Gazette No. 1256/22 in October 2002 at the instance of then Chairman & Director General of the Board of Investment of Sri Lanka, namely, Arjuna Mahendran, who had apparently acted in concert with John Keells Holdings Ltd., and had shockingly afforded such Board of Investment of Sri Lanka's concessions and benefits, on the mere investment made in purchasing from the Government of Sri Lanka the Shares of Lanka Marine Services Ltd., appallingly affording a tax holiday to a Government owned Company, which was already paying income taxes to the Government of Sri Lanka !

The Gazette of the Democratic Socialist Republic of Sri Lanka  
EXTRAORDINARY

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අංක 1256/22 - 2002 වසරෙහිදී 01 වැනි කොටුවේදී - 20021001  
No. 1256/22 - TUESDAY, OCTOBER 01, 2002

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(Published by Authority)

**PART I : SECTION (I) — GENERAL**

Government Notifications

L.D.-B-478 III

**THE BOARD OF INVESTMENT OF SRI LANKA LAW No. 4 OF 1978**  
REGULATIONS made by the Minister of Enterprise Development, Industrial Policy, Investment Promotion and Constitutional Affairs under Section 24 of the Board of Investment of Sri Lanka Law, No. 4 of 1978.

G. L. PEIRIS,  
Minister of Enterprise Development,  
Industrial Policy, Investment Promotion and  
Constitutional Affairs.

Colombo,  
25th September, 2002.

**Regulations**

The Board of Investment of Sri Lanka Regulation, No. 1 of 2002 published in *Gazette Extraordinary* No. 1242/29 of 28th June, 2002 are hereby amended as follows:—

(a) In regulation 2 thereof, by the insertion, immediately after paragraph (i) of that regulation, of the following new paragraph (ii):—

(ii) that the provisions of the Inland Revenue Act, No. 38 of 2000 relating to the imposition, payment and recovery of income tax shall not apply to the profits and income for a period specified in column II below reckoned from the commencement of the commercial operation or production or from a date specified by the Board, of any existing or a new enterprise which is formed by the acquisition of assets of any existing enterprise to engage in the business relating to petroleum, power generation, transmission and development of highways, sea ports, air ports, railways, water services, public transport or any other infrastructure project approved by the Minister with an investment or additional investment of such value as specified in column I below, as the case may be within a period as may be determined by the Board.

Column I Additional investment (Rs. M.)	Column II Tax exemption period (No. of years)
1,250-2,499	05
2,500-4,999	08
Above 5,000	10

In given circumstances, this too was held to be fraudulent by the Supreme Court, which had ordered that income taxes, which had not consequently been paid be recovered by the State, annulling such approval granted by the Board of Investment of Sri Lanka.

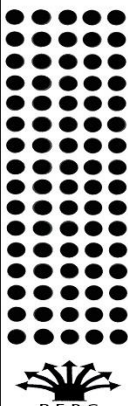
What had shockingly transpired during the proceedings in the Supreme Court had been that another Company, namely, Sri Lanka Shipping Co. Ltd., had intervened in the above Supreme Court Case, as an Interventient-Petitioner. This Interventient-Petitioner had established in the Supreme Court that they too had made an Application to be pre-qualified to purchase the Shares of Lanka Marine Services Ltd., and that John Keells Holdings Ltd., had been pre-qualified to bid only because they had undertaken to do so in collaboration with an internationally reputed Company, namely, Fuel & Marine Marketing LLC. However having thus got pre-qualified, John Keells Holdings Ltd., had been shockingly permitted to participate in the bidding process, *without* the collaboration of the said internationally reputed Company, Fuel & Marine Marketing LLC !

The policy of the Government of Sri Lanka had been to liberalize the oil bunkering business – viz:

**EXPRESSIONS  
OF  
INTEREST**

Sunday Observer 28th October, 2001

### LIBERALISATION OF BUNKERING



The Public Enterprises Reform Commission (PERC), on behalf of the Government of Sri Lanka invites proposals from private sector operators to participate in the marine fuel market in Sri Lanka. Successful applicants will be permitted to import and distribute marine fuel within the territorial waters of Sri Lanka including the ports.

Sri Lanka's strategic positioning in the Eastern Naval Route and its close proximity to the Indian subcontinent offers considerable potential for the development of bunkering which is presently a State monopoly.

There will be no restriction in the number of licenses issued. However licenses will only be issued to limited liability companies that meet with predetermined requirements with regard to bunker vessels.

Interested parties are requested to collect a Request for Proposal (RFP) from PERC which sets out the selection process and specimen application forms.

The RFP may also be downloaded from the PERC website at [www.perc.gov.lk](http://www.perc.gov.lk)

Public Enterprises Reform Commission  
 Level 11, West Tower  
 World Trade Center  
 Colombo 1.  
 Tele: 94-1-346831-4 Fax: 94-1-326116

Hence, the Interventient-Petitioner, Sri Lanka Shipping Co. Ltd., had been rejected by the Technical Evaluation Committee, only because they had requested for a 8-year monopoly, which had been refused. However, shockingly in the final stages of the Sale of the Government Shares of Lanka Marine Services Ltd., to John Keells Holdings Ltd., in the Sale & Purchase Agreement, a condition had been *surreptitiously* included, affording Lanka Marine Services Ltd., a *perpetual* monopoly !

John Keells Holdings Ltd., had paid Rs. 1200 Mn., to purchase the fully owned Government Shares of Lanka Marine Services Ltd. The Net Profits of Lanka Marine Services Ltd., disclosed thereafter had been revealed as follows – viz:

	Rs.
Financial Year 2002/03	402,733
Financial Year 2003/04	235,876
Financial Year 2004/05	574,062
Financial Year 2005/06	1,089,393

Have not the above Net Profits been are after John Keells Holdings Ltd., having recovered whatever charges and costs from Lanka Marine Services Ltd.

Furthermore, this oil bunkering monopolistic facility had been valued by a reputed Bank, namely, DFCC Bank on an intriguingly questionable valuation, whereas this Colombo Port Land in extent 8½ Acres was far more valuable, and as at 30.6.2016, the market value would have been around Rs. 15,000 Mn., and in addition thereto, the storage facilities and the oil pipe infrastructure, and the value of a *monopolistic* captive business ! – viz:

5<sup>th</sup> October, 2004

Mr. Dayantha De Mel  
Executive Vice President  
DFCC Bank  
73/5, Galle Road,  
Colombo 03

15  
DFCC Bank  
P.O. Box 1397  
73/5 Galle Road, Colombo 03  
SRI LANKA  
Tel: +94-11-2443442  
Fax: +94-11-2440375  
E-mail: info@dfccbank.com  
Web: www.dfccbank.com



Mr. Chandu Epatawala  
Director  
Public Enterprises Reform Commission of Sri Lanka  
11-01, West Tower  
World Trade Centre  
Echelon Square  
Colombo 01

October 12<sup>th</sup> 2004

Dear Sir,

Dear Sir,

**LMSL VALUATION DATED 10 JUNE, 2002**

Valuation of Lanka Marine Services Limited (LMSL)

I refer to the above business valuation done by DFCC Bank at the request of PERC.

We refer to your letter of October 5<sup>th</sup>, 2004 regarding the above assignment undertaken by DFCC Bank for the Public Enterprises Reform Commission in June 2002.

For the purpose of regularizing the land transfer to LMSL, we require confirmation from you whether the value of the land on which LMSL operations were carried out at Bloemendhal Road (approximately 8 Acres) was incorporated into the said valuation and if so, the value and the basis of the value attached to that land.

As indicated in our report, the LMSL valuation was carried out on the basis that the company's value was represented by future earnings; in other words that it was a going concern. Accordingly the methodology employed was the discount of future cash flows. These cash flows were projected forward over 15 years and at the end of this period a terminal value for the business was computed. In computing this terminal value, it was assumed, along with other factors, that by the end of the 15-year period, LMSL would have acquired freehold title to the Bloemendhal property following its transfer from the Ceylon Petroleum Corporation. As such, the value of the company would also include the future value of this property.

Thanking you for an early response.

Following consultation with valuers, the value of the land (at the valuation date) was placed at Rs. 150,000/- per perch and it was assumed that this value would appreciate by a factor of 9% per annum (based on inflation) over the 15-year period of the valuation. On this basis, the projected value of the property was estimated at approximately Rs. 699 million at the end of year 15. This figure has accordingly been incorporated into the valuation as a component of the terminal value of the company. This has then been aggregated with the future operational cash flows and discounted to arrive at the present value of the business enterprise.

Yours faithfully,

We trust this provides the clarification sought.

Yours truly

Chandu Epatawala  
Director

Dayantha De Mel  
Executive Vice President (Corporate Finance)

Shockingly, this 8½ Acres of Colombo Port Land had been transferred on a fraudulent Instrument of Grant by President Chandrika Kumaratunga, she, herself placing her signature thereon, together with the Official Seal of the Republic. What had been appallingly disclosed thereafter was that even though such Instrument of Grant had stated that the payment of Rs. 1,199,362,500/- had been received by the Treasury of the Government of Sri Lanka for this Land;



## Sale of 90% Shares of Lanka Marine Services Ltd. (LMSL)

1. Cabinet on 17.8.2000 decided to liberalise the bunkering business on the following lines:
  - \* to liberalise the bunkering sector and to permit a limited number of parties to operate bunkering services
  - \* that the monopoly given to LMSL to be restricted to one year, within which period privatisation of LMSL to be completed
  - \* new entrants to the bunkering sector to sell bunkers within the territorial waters of Sri Lanka, including the immediate vicinity of Port of Colombo
  - \* PERC to seek offers through an open tender process from investors. PERC initiate action make recommendations to Cabinet on the process to be followed

To facilitate the above, the Government enacted Petroleum Products (Special Provisions) Act, No. 33 of 2002.
2. PERC on 28.10.2001 called for Expression of Interest (EOIs) to issue Licences for bunkering and on 8.11.2002 called for EOIs for the Sale of 90% Shares of LMSL, with a closing date of 28.02.2002 giving only 3 weeks.
3. On 28.02.2002 Chairman PERC, P. B. Jayasundera caused Secretary to the Treasury, Charitha Ratwatte to appoint a TEC to evaluate both EOIs and final Bids. No Cabinet Appointed Tender Board was appointed. Since TEC was appointed after 28.02.2002, calling for EOIs and the relevant Documents had not been approved by TEC.
4. At the 'Pre-Bid Conference' on 30.04.2002, PERC Chairman, P. B. Jayasundera, confirmed;
  - \* "LMS will not have a monopoly on the import and sale of bunkers subsequent to the sale of Lanka Marine Services Ltd."
  - \* "The Government cannot takeover Court Cases."
  - \* "Land - within one year of the closing date. PERC to revert by 7th May 2002 regarding the terms of the transfer including any payments that would have to be made by LMSL."
5. The RFP has stated;
  - \* The SLPA have indicated a rent of 10 \$ /MT for the use of the Dolphin Pier and the pipelines upto the Bloemendhal Installation.
  - \* The SLPA proposes to develop the South Jetty as a common user facility and have indicated a fee of 3 \$ /sq. ft. for the office space."
  - \* Bidders shall conduct and are solely responsible for conducting their own independent research.....Bidders shall conduct and are solely responsible for conducting their own due diligence.....No written or oral information provided shall be considered legally binding by the Bidders"
6. PERC Chairman P. B. Jayasundera forwarding Chief Valuer's 1993 Valuation of LMSL, had called for an updated valuation of LMSL from the Chief Valuer, who had confirmed that the 'assets valuation' was completed and the 'business valuation' is to be started.
7. Questionably abounding the Chief Valuer's valuation, DFCC Bank had been selected by PERC without competitive offers to do a 'business valuation' of LMSL. DFCC Bank has placed the 'floor price' of the 'business valuation' for bidding at Rs. 1,200,000,000/-, on the basis that LMSL was not to have a monopoly. DFCC Bank's valuation had also been erroneous.

DFCC Bank has not valued the Net Assets of LMSL particularly Bloemendhal Land of 8A 2R 21.44p, which the Chief Valuer had confirmed had been completed, but PERC had questionably avoided. Chief Valuer had valued this land in 1993 at Rs. 82,866,000/-

Normally the 'net assets valuation' and the 'business valuation' are both taken into reckoning in placing a valuation on an ongoing business.
8. The Minister of Power & Energy, Karu Jayasuriya has submitted Cabinet Memorandum on 21.06.2002, as per the TEC recommendations for the Sale of 90% Shares of LMSL on the basis of a 'floor price' of Rs. 1,200,000,000/-, (The 'net assets valuation', particularly the Land, had not been taken into reckoning) on a bidding process on the Colombo Stock Exchange, and sought the following Cabinet Approvals :
  - \* authorise CPC to sell 90% Shares of LMSL to successful bidder on the process identified, and terms and conditions stipulated in the Share Sale & Purchase Agreement and the Common User Facility Agreement, and to gift the balance 10% Shares to the employees of LMSL.
  - \* authorise the sale of 90% Shares of LMSL at or about the 'benchmark /floor price' of Rs. 1,200,000,000/-, which would be introduced for bidding on the Colombo Stock Exchange
  - \* authorise the Secretary to the Treasury, CPC and SLPA to enter into the Share Sale & Purchase Agreement, Common User Facility Agreement and any other ancillary agreement
  - \* authorise SLPA, in association with the CPC, to acquire and manage the Common User Facilities, until the formation of the proposed terminal company.
  - \* authorise allocation of funds required for upgrading the Common User Facilities to be milty - user capable from the sale of 90% Shares of LMSL, and CPC or any other party to carry out such works

Cabinet Memorandum of 21.06.2002 had not expressly disclosed the extent of Government Land of 8A 2R 21.44p at Bloemendhal Road and its Market Value.
9. Cabinet Approval for the Cabinet Memorandum of 21.06.2002 has been given only on 14.08.2002, and has been confirmed and notified on 21.08.2002. Hence, between 21.06.2002 and 21.08.2002, no action, whatsoever, could have been taken on this matter.

10. *Before conformation and notification of Cabinet Approval on 21.08.2002*, PERC Chairman, P. B. Jayasundera ;

- (i) on 12.07.2002 on exchange to Letters with John Keells Holdings Ltd., had made the 'award' for the Sale of 90% Shares of LMSL to John Keells Holdings Ltd.
- (ii) The 'award' to John Keells Holdings Ltd. had been made on the basis that John Keells Holdings Ltd., had been the only party, who had submitted a 10% Bid Bond on the 'floor price' of Rs. 1,200,000,000/- as required by letter dated 25.06.2002 to be submitted by 10.07.2002. This has been alleged by the other Bidders as 'foul play'.
- (iii) On 2.08.2003 on exchange of letters with John Keells Holdings, PERC Chairman, P. B. Jayasundera has agreed to grant a 'monopoly' to LMSL after John Keells Holdings purchases 90% Shares of LMSL. Previously the TEC had rejected the Bid of Sri Lanka Shipping Co. Ltd., for requesting a monopoly for 8 years for LMSL.
- (iv) On 20.08.2002 PERC Chairman, P. B. Jayasundera, Secretary to the Treasury Charitha Ratwatte and Director Legal PERC, Shamalee Gunawardene, acting in concert had signed the Share Sale & Purchase Agreement and CUF Agreement with John Keells Holdings Ltd. CUF Agreement included the following new Clause 8.2, which was not there previously:

**"8.2 GOSL / SLPA / CPC shall ensure that all bunkers / marine fuels handled and transport within the Port of Colombo would be handled and transported using the CUF"**

The above acts have been prior to confirmation and notification of Cabinet Decision on 21.8.2002 and are therefore bad in law and invalid, null and void.

11. The Court of Appeal has held that the inclusion of the above 'monopoly' clause has been *ultravires* Petroleum Products (Special Provisions) Act No. 33 of 2002.
12. Consequently, being confronted with the above monopoly clause, DFCC Bank reneged on their 'business valuation' of LMSL of Rs. 1,200,000,000/- and confirmed in writing that on the basis of a 'monopoly' their 'business valuation' is Rs. 2,400,000,000/-, confirming that had they been required to give a 'net assets valuation' they would have engaged the services of a professional real estate valuer for the Land 8A 2R 21.44P.
13. Central Bank's Annual Report 2004 stated;

**"The high cost of bunkering fuel has been discouraging the fleet of vessels arriving at Colombo for bunkering. The privatisation of Lanka Marine Services Ltd., has not yielded the required low prices and competition, indicating the need for further reforms in this sector".**

14. Though the RFP had disclosed the following Case and stated that the Government would not takeover cases of LMSL, which had been confirmed by PERC Chairman, P. B. Jayasundera at the Pre-bid Conference, but in the Share Sale & Purchase Agreement signed with John Keells Holdings Ltd., the Claim by Oxford Jay International (Pte) Ltd., Singapore of US \$ 9.2 Mn. had been takeover by the Government. The Government has paid advance costs of US \$ 170,000/-.
15. The draft Share Sale & Purchase Agreement issued with the RFP has stated;

**"The vendor (i.e. CPC) agrees to transfer freehold title of the premises located at No. 69, Walls Lane, Colombo 15 to the Company (i.e. LMSL) within a period of 1 year from the Closing Date."**

The above could not by any means have committed the Government to transfer the Land in extent 8A 2R 21.44P 'free of valuable consideration' for the 'unjust enrichment' of a buyer of LMSL.

At the 'Pre-Bid Conference' PERC Chairman, P. B. Jayasundera had confirmed;

**"Land - within one year of the closing date. PERC to revert by 7th May 2002 regarding the terms of the transfer including any payments that would have to be made by LMSL." - (As per Item 5(b) of the Minutes)**

16. Secretary, Ministry of Power & Energy, P. Weerahandi has initiated action on 3.11.2004 to have this Land transferred to LMSL. Consequently by Letter dated 11.1.2005, Addl. Secretary, Ministry of Lands, W. M. Jayathilake has stated that the Secretary to the President has informed the Land Commissioner that the President has approved the vesting of this Land to LMSL, after recovering the purchase consideration of Rs. 1,199,362,500/-.
17. Though the Instrument of Grant dated 19.1.2005 has stated that the Government has received Rs. 1,199,362,500/- from LMSL, Director General, Department of Treasury Operations, by Letter dated 18.8.2006 has confirmed that the Government has not received any money for the transfer of this Land, in response to Letter dated 21.3.2006 addressed to the Secretary Treasury, P. B. Jayasundera by Chairman, PERC, W. M. Bandusena, seeking confirmation as to whether the Government has received the purchase consideration as stated in the Instrument of Grant.

**LMSL Accounts for the Financial Year ended 31.3.2005 do not disclose that LMSL has made a payment of Rs. 1,199,362,500/- to the Government for this Land in extent 8A 2R 21.44P.**

In fact, the payment of Rs. 1,199,362,500/- is the payment made in August 2002 by John Keells Holdings Ltd., to CPC for the Sale of 90% Shares of LMSL, to be paid to the Secretary Treasury, and this could not be interpreted or construed to be a payment made in January 2005 by LMSL to the Secretary to the Treasury for the Land.

18. Therefore, this Government Land has been purported to be 'transferred' to LMSL 'without receipt of any consideration', in January 2005, for a 'purported payment' of Rs. 1,199,362,500/-.
- Hence, the Instrument of Grant is a 'fraudulent document' and a 'fiction', in that, no payment had been made by LMSL and has been received by the Government, as acknowledged in the Instrument of Grant for the transfer of the Government Land at Bloemendal in extent 8A 2R 21.44P to LMSL. Therefore, there could not be a legal transfer of this Land, inasmuch as this Instrument of Grant is *ex-facie* fraudulent and a 'fiction'.
19. A Valuation by the Chief Valuer and a professional private Valuer will disclose the Market Value of this Land in August 2002 i.e. when the Share Sale & Purchase Agreement was executed.
20. The 'business valuation' in June 2002 by DFCC Bank for LMSL on an 'earnings basis' reckoned for the Financial Year 2002/03, at a multiple of 8 had been given as Rs. 1,405 Mn. and at a multiple of 10 had been given as Rs. 1,757 Mn.

However, LMSL's Net Profits after Tax for the following Financial Years have been :

	Rs.
Financial Year 2002/03	402,733
Financial Year 2003/04	235,876
Financial Year 2004/05	574,062
Financial Year 2005/06	1,089,393

The above Net Profits are after John Keells Holdings Ltd., having recovered whatever charges and costs from LMSL.

21. This transaction had been executed blatantly without Cabinet Approval, with several flaws causing loss and detriment to the Government, and demonstrating it to be a questionable "fix", and is therefore *ab-initio* bad in law, null and void,

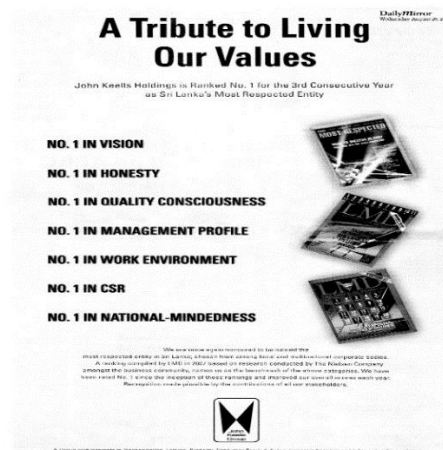


In the consequent Supreme Court Judgment, the then Secretary, Ministry of Finance, P.B. Jayasundera and Chairman, John Keells Holdings Ltd., Susantha Ratnayake had been severely castigated, making several charges against them, as had been itemized in the Judgment. The actions that had been disclosed have been detrimental to democracy and an open economy.

As a consequence, the Supreme Court ordered Secretary, Ministry of Finance to pay Rs. 500,000/- as compensation to the State, and to promptly resign, as Secretary, Ministry of Finance and Treasury, and from all posts he held as a Public Officer, directing that he should not hold any such Public Office. In conformity with such Supreme Court Order he had promptly submitted an Affidavit declaring and affirming, that he would not hold any Public Office, directly or indirectly.

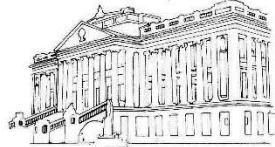
What is shockingly disclosed is that democratic leaders, large corporates and professionals condone such shameful perpetration of fraud and corruption, particularly the pillaging and plundering of State property, and subsequently obstructing the exercise of the judicial power of the people. On the other hand, unashamedly appallingly affording such corporate leaders recognition in Chambers of Commerce *et al* !

What is disclosed even more shockingly is that John Keells Holdings Ltd., being an UN global Compact Company, had acted in complete contradiction and violation of the Articles of the UN Convention Against Corruption, which they had been committed to uphold, thereby disclosing the socio-political realities, and what had been held out to be a fiction ! John Keells Holdings Ltd., was a listed public Company coming under the purview of the Securities & Exchange Commission of Sri Lanka.



What is further unashamedly disclosed in this Book is that good governance and transparency had been breached, and the rule of law not been taken cognizance of by powerful Public Officers and those in the hierarchy of the Corporate Sector, and thereby disregarding national and public interest to protect the pillage and plunder of public property, a constitutional mandate.

Thereafter, once Chief Justice Sarath N. Silva went on retirement, a 7-Judge Bench of the Supreme Court, presided by new Chief Justice Asoka de Silva, comprising Justices Shirani Bandaranayake, Shiranee Tilakawardane, D.J.De.S. Balapatabendi. S. Marsoorf. K. Sripavan and P.A. Ratnayake, *vicariously* permitted P.B. Jayasundera once again to assume Office, as Secretary, Ministry of Finance, by holding that the President of Sri Lanka in terms of the Constitution had unlimited power to appoint anyone whom he chooses. Thus, P.B. Jayasundera assumed Office once again, as the Secretary, Ministry of Finance – *viz*:



ජනාධිපති කාර්යාලය  
சனாதிபதி செயலகம்  
THE PRESIDENTIAL SECRETARIAT

July 31, 2008

Dr P B Jayasundera  
Secretary  
Ministry of Finance & Planning

I refer to your letter dated July 25, 2008, addressed to His Excellency the President.

His Excellency the President appreciates your concerns, but requires you to continue to serve as Secretary to the Ministry of Finance & Planning, until a suitable replacement is found.

Lalith Weeraratna  
Secretary to the President

E-mail - prsec@presidentoffice.lk

"A"



මගේ අංකය  
எனது இல  
My No.

ඔබේ අංකය  
உமது இல  
Your No.

කොළඹ 1,  
கொழும்பு 1,  
Colombo 1.

English Translation

7th September 2008

Dr. P.B. Jayasundera  
Secretary  
Ministry of Finance & Planning

Sir,

Releasing from Post

This refers to your Letter dated 25th July 2008 addressed to His Excellency the President on the above matter.

H.E. the President had directed me to inform you that the request made by you to release you from the post of Secretary Ministry of Finance & Planning and from the post of Secretary to the Treasury has been accepted to be effective from 17th September 2008.

I convey my gratitude for the assistance rendered by you in the performance of duties.

Yours faithfully,

Lalith Weeraratna  
Secretary to the President

E-mail - prsec@presidentoffice.lk

Cc:-

1. Secretary to the Prime Minister
2. Secretary to the Cabinet of Ministers
3. Secretary, Ministry of Finance & Planning
4. Secretary, Ministry of Public Administration & Internal Affairs
5. Auditor General
6. Secretary, Public Service Commission

"B"



ජනාධිපති කාර්යාලය  
சனாதிபதி செயலகம்  
THE PRESIDENTIAL SECRETARIAT

මගේ අංකය  
எனது இல  
My No.

ඔබේ අංකය  
உமது இல  
Your No.

කොළඹ 1,  
கொழும்பு 1,  
Colombo 1.

The above was as a consequence of P.B. Jayasundera having filed a Petition and Affidavit in the Supreme Court, praying to be relieved of the previous undertaking he had given to the Supreme Court, not to hold any Public Office, directly or indirectly, and to review the same and free him from such undertaking given by Affidavit.

P.B. Jayasundera having filed a further Petition and Affidavit, amending the first Petition, without the *prior* permission of the Supreme Court, disclosed that the said Affidavit did not have the attestation of a Notary, and therefore had been a *nullity - viz:*

33. I respectfully pray that Your Lordships Court be pleased to grant the relief prayed for in the Amended Petition.

Read over and explained to the Affirmant abovenamed and he having understood the contents thereof placed his signature before me on this 21<sup>st</sup> day of July 2009 at Colombo

BEFORE ME

JUSTICE OF PEACE/  
COMMISSIONER FOR OATHS

Thereafter, P.B. Jayasundera once again, without the *prior* permission of the Supreme Court, had amended his Petition for the second time, forwarding a further Affidavit. Though this was against Supreme Court Rules, *the Supreme Court ignored such violation of its Rules*, and had entertained such Amended Petition to be heard !

At the very same time, the Supreme Court so acted permitting the violation of its own rules, the Author in the public interest had filed another action in the Supreme Court, challenging the controversial Oil Hedging Deals, and had amended the Petition with the permission of the Registrar of the Supreme Court. Nevertheless Justice Shirani Bandaranayake, herself, who had permitted the above breach of the Supreme Court Rules by P.B. Jayasundera, had informed the Author that to amend his Petition, he must get *prior* permission of the Supreme Court, and had fixed the Case for a date for the Author to do so. - "*Derivative / Hedging Deals by Citibank, Standard Chartered Bank, Deutsche Bank, with Sri Lanka Government's Petroleum Corporation - Dubious & Illegal ?*"

The 'prayers' in the Petition of P.B. Jayasundera had been the following:

- (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.

The Counsel who appeared for the Petitioner, Vasudeva Nanayakkara, Attorney-at-Law, strongly opposing the grant of the main prayers, together with the Author supporting, the Supreme Court was compelled to hold that they were unable to grant relief under the above two main prayers (a) and (b).

According to Supreme Court Rules, a party is entitled to make Oral Submissions before the Supreme Court, only if such party had tendered Written Submissions. Only the Author, as a Respondent, had tendered exhaustive Written Submissions, whilst the Counsel for P.B. Jayasundera had not tendered any Written Submissions. Nevertheless, the Supreme Court permitted the said Counsel unlimited time to make exhaustive Oral Submissions.

On the other hand, even though the Author had filed Written Submissions according to the Supreme Court Rules, and thus had been justifiably entitled to make Oral Submissions, due to the lack of time, Chief Justice Asoka de Silva requested Author to restrict his Oral Submissions to only 10 minutes, whilst this 7-Judge Bench had exclusively sat the whole day solely to hear the above Application made by P.B. Jayasundera.

In such background, the most Senior Judge, Justice Shirani Bandaranayake, showing great interest in the matter, had stated that relief must be somehow granted, and had urged that relief be granted under the prayer "*(c) grant such other and further relief as to Your Lordships' Court shall seem fit and meet*", in that, President Mahinda Rajapakshe in terms of the Constitution, was not estopped to appoint P.B. Jayasundera once again as Secretary, Ministry of Finance. Thus, raising the question, as to how '*such other and further relief*' could be granted, when the main reliefs had been refused ?

However, not concurring therewith, the courageous Justice Shiranee Tilakawardane pointing out that P.B. Jayasundera's amended Petition had been without the *prior* approval of the Supreme Court, and that one had been without a proper Affidavit, stated that his Application should be rejected *in-limine*, and determined that the President too had to act within the Constitution, and that he does not enjoy unrestricted powers, and that he had to respect public morality and democracy, and that all organs of the State are bound to act lawfully according to the Constitution and the Law.

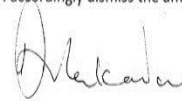
However, appallingly the Author had discovered that two complete pages of the above sole *dissenting* Judgment of Justice Shiranee Tilakawardane had been *omitted* by the manipulation on the computer of the font type and size of the text. This had been done by changing the font to a 'larger size' viz – '*Century Gothic Font*' of the first 15 pages, the text of the first 15 pages had thus occupied 17 pages, and the 16<sup>th</sup> and 17<sup>th</sup> pages of such 'larger font' viz – '*Century Gothic Font*', had been removed.

Thereafter, the first 14 pages of such larger font viz – '*Century Gothic Font*' had been photocopied on the two sides of 7 sheets, and the 8<sup>th</sup> sheet contained the photocopy of the 15<sup>th</sup> page of such 'larger font' viz – '*Century Gothic Font*' on the front side, and on the reverse of the 8<sup>th</sup> sheet was photocopied the 16<sup>th</sup> page of the 'smaller font' viz – '*Calibri Font*', bearing the signature of Justice Shiranee Tilakawardane at the end disclosing page 15 ending with a completed paragraph and page 16 commencing with an incomplete paragraph ! – viz:

Finally can the Court on its own volition free him from this undertaking merely because the President has expressed a concern to have him back? In considering this I am mindful of the fact that despite affidavits being tendered to Court, apologies being made to Court and the findings of the judgment, the Petitioner has *falsely made contrary representations* to the Secretary to the President in letters (marked "A") dated 25<sup>th</sup> July 2008 and (marked "F") dated 3<sup>rd</sup> June 2009. In his letters to the Secretary he contradicts the contents of his own affidavit, the submissions of his own counsel made at the time in Court and which is recorded in contemporaneous proceedings, and, in that sense, appears to be uncertain and confused. Did the Petitioner, in his affidavit, mean what he said or has he fabricated his stance? To say the least his word, in its varied contradictions, appears fickle.

leads to a halt in the growth of the other. The promptings of a kind compassionate heart or sympathetic urgings must necessarily be bridled in dealing with the resources of the State, for it ultimately belongs to the People and must be in the custodianship of honest, disciplined, hardworking and effective public officers.

I accordingly dismiss the amended petition. No Costs.



JUDGE OF THE SUPREME COURT



15



16

By such 'manipulation' two pages of the text of the *sole dissenting Judgment* of Justice Shiranee Tilakawardane had been *omitted* and issued by the Supreme Court Registry on 13<sup>th</sup> October 2009, and based upon which, media reports had been widely published on 14<sup>th</sup> October 2009 and thereafter, *without having reported the important and relevant contents on the Constitutional limitations of the exercise of executive power by the President*, which ought to have been reported in the media, in the very public interest; whereas by such 'manipulation' such important and relevant contents of the *sole dissenting Judgment* had been caused to be suppressed from being published in the media !

Even though in the above Case, the Criminal Investigation Department, including the Inspector General of Police, Commission to Investigate Allegations of Bribery or Corruption, and the Securities & Exchange Commission had been made Respondents, even after the delivery of the above Judgment exposing this colossal fraud perpetrated on public property, and further notwithstanding the Supreme Court having issued directions to these Respondents to take action thereon, and with further Complaints having been made, these Institutions had not taken any action, whatsoever, and followed a policy of sheer indifference, thereby rendering the enforcement of the rule of law a mere 'mockery' !

The foregoing had warranted immediate action, *inter-alia*, in terms of the Offences Against Public Property Act No. 12 of 1982, *vis-à-vis* -

1. Mischief to public property.
2. Theft of public property
3. Robbery of public property
4. Misappropriation or criminal breach of trust of public property
5. Cheating, forgery or falsification in relation to public property
6. Attempting to commit any one of the above offences

However, no such action, whatsoever, had been taken !