

D J De S Balapatabendi
The Chairman
Commission to Investigate Allegations of Bribery and Corruption
36, Malalasekara Mawatha
Colombo 7

18th Jan 2015

Complaint on an Offence of Corruption committed by Mohan Peiris former AG and CJ

This is a formal complaint of a criminal offence of Corruption, causing a colossal loss of government revenue of over 619 million rupees, committed by the person now holding the Office of the Chief Justice of the Supreme Court of Sri Lanka, Mr Mohan Peiris. The relevant information of this of this offence of corruption that attracts the provisions of Section 70 of the Bribery Act is set out below.

Relevant Facts of the Government Revenue fraud

1. On 09th October 2000, the Deputy Superintendant of Custom Mr T R Ratnasiri, whilst serving at the Customs fraud prevention directorate (Preventive Office) received a precise about a major revenue fraud running into 619 million rupees committed by the Colombo Dockyard Ltd (hereinafter referred to as CDL).
2. The investigation conducted into this revenue fraud was completed on 12th October 2001 and it revealed the following.
 - a. The Colombo Dockyard Ltd had sold 21 marine crafts manufactured with BOI concessions locally, an act of which is prohibited unless authorised by the BOI and Customs. The law requires that any enterprise which intends to sell any finished products manufactured with raw material imported on duty free basis for export trade, should first apply for permission from BOI, followed by Customs authorization and then pay all fiscal levies [Customs duties and other taxes] on the value of the goods so determined by the Customs on a Bill of Entry [Customs Declaration] furnished for Customs purposes as provided by Section 47 of the Customs Ordinance.
 - b. The CDL had not applied for BOI and Customs permission for the sale of 21 marine crafts.
 - c. The CDL included the duty component in the sale price of the marine crafts and recovered the total amount of fiscal levies from the buyers namely the Sri Lanka Ports Authority and the Sri Lanka Navy.
 - d. The CDL had misappropriated and or cheated the total fiscal levy component recovered from the buyers, amounting to a sum of Rs.619,483,827.00, thereby violating the provisions of Section 50A of the Customs Ordinance.
 - e. The contravention of the said provision of law attracts a minimum forfeiture of the value of the marine crafts. Further, under Section 129 of the Customs Ordinance, the CDL was also liable to be forfeited and impose a fine of (300%) treble the value of the marine crafts for being knowingly concerned in the fraudulent evasion of the fiscal levies.
3. Whilst the said Customs investigation was in progress, the CDL, conceding the violations referred to above, deposited a sum of Rs.94, 015,050.00 with Customs on two occasions [25th July 2001 and 15th August 2001]. These funds were to be applied against the final determination of the Customs inquiry and still remain in a special deposit account with Customs.

UNLAWFUL ATTEMPTS MADE TO COVER-UP THE FRAUD

4. The formal Customs inquiry [Case No: P/Misc/93/2000] into this fraud was commenced on 07th February 2002 however it was not dealt with as required by law but came to a standstill due to interference, no action being taken for over two years for no apparent reason.
5. Then on 05th March 2004, purportedly acting in terms of the Tax Amnesty Law [Act No 10 of 2003] the then Director General of Customs (hereinafter referred to as DGC), Mr. Sarath Jayathilake, abusing his office granted an unauthorised amnesty to the CDL and terminated the Customs Inquiry.
6. Then on 25th of June 2004, the Customs Officer Mr Ratnasiri challenged this illegal tax amnesty before the Court of Appeal [Case No: CA/1397/2004]. Further to this Court action the DGC was forced to withdraw the tax amnesty granted and to give an undertaking to the Court to resume and complete the Customs inquiry 'as expeditiously as possible' and accordingly on 09th February 2005 the officer Mr Ratnasiri withdrew the said Court action.

CA/1413/2005 Petitioned by Colombo Dockyard Ltd.

7. However, this undertaking given to the Court of Appeal was not honoured and the Customs Inquiry was never conducted as per the undertaking, instead the CDL was permitted to challenge the Customs Inquiry before the Court of Appeal **(CA/1413/2005)** on 29th August 2005.
8. Then on 27 March 2009 the Court of Appeal issued a Writ of Prohibition against the continuance of the Customs inquiry. This decision was evidently flawed. Therefore DGC made several requests to AG, Mohan Peiris, to Challenge the said order. However, the AG refused to accommodate the DGC's request.
9. Thereafter further to representations made to the then Solicitor General Mr Priyasath Dep by the Customs Officer Mr Ratnasiri and the DGC on 13th May 2009, having found the merits in the representations made, he challenged the Court of Appeal decision in the Supreme Court [SC/SLA/100/2009] on 05th June 2009.

AG Mohan Peiris refused to proceed with the action filed in Court

10. Even after filing this action before the Supreme Court [SC/SLA/100/2009] the AG Mr Mohan Peiris refused to proceed with the Court action initiated by the Solicitor General Mr. Priyasath Dep. Instead he was determined to withdraw the Court action, permitting the Colombo Dockyard Ltd to evade any penal sanction being imposed on them for wilful defrauding of government revenue.
11. However, the AG, Mohan Peiris was prevented from doing so owing to an aggressive media exposure made by 'Sunday Leader' on 06th Sep 2009 against AG Mr Mohan Peiris's abuse of office of the AG.
12. With this media exposure the AG Mohan Peiris was forced to call for a high level conference at his office 04th Nov 2009. It was attended by the AG, Mr Mohan Peiris the Solicitor General Mr Priyasath Dep, Deputy Solicitor General Mr Saniav Raiaratnam. the then DGC Mr Sarath Jayathilake. Mr Z. A M Iazeel

[Director of Customs, Legal Affairs], Mr Peter Goonawardena [OIC, Legal Affairs] **and Mr T R Ranasiri, the investigating Officer.** At the said meeting, the AG, in explicit terms advised the Customs to proceed with the Customs inquiry against the CDL and informed that he would defend the Customs Department's right to proceed with the inquiry paving way for the invoking of the penal sanctions [Section 50A and 129] against the CDL and imposing and collecting additional revenue by way of forfeitures for wilful defrauding of government revenue.

13. However it was only an act of deception adopted by the AG Mohan Peiris. Further to that meeting the AG Mohan Peiris failed to take action on the matter and when several times the case was called in Court for support the AG avoided proceedings with it and asked for further time.
14. Then on **10th May 2010**, *after having waited for a period of almost one year the AG* informed DGC that he would withdraw the case on the next date it was due to be called in for support i.e 30th August 2010.
15. Then, the DGC Mrs Sudharma Karunarathna, on 24th May 2010 took a firm stand against the evasive action of the AG. On 03rd August 2010 referring to the AG Mohan Peiris's own conflicting stand expressed to the DGC at his chambers on 04th Nov 2009, the DGC informed the AG Mohan Peiris that, considering the colossal revenue loss incurred by the government it would be inappropriate to withdraw the Supreme Court (true copy of the DGC's reply dated 03rd Aug 2010 is enclosed herewith marked **X1**).
16. However, AG was determined to act as he pleased, disregarding the written instructions given by the DGC to proceed with case. And on 30th Aug 2010 the AG withdrew the Supreme Court case (SC/SLA/100/2009), against the written instructions of the DGC causing a colossal loss of 619 million rupees of revenue to the Government.
17. Thereafter, having deliberately acted against the written instructions of the DGC and having caused a huge revenue loss, to cover-up his fraudulent AG 'hand-delivered' a letter to the DGC on 31st Aug 2010, with a false date printed in it to read as 26th August 2010. The fraudulent letter carried the following paragraph apparently to give an impression that the case was withdrawn with the consent of the DGC, implying that AG pursued the DGC to change her firm stand expressed in her letter dated 03rd Aug 2010.

'...please be advised that the Petition of Appeal was filed in the ordinary course as a matter of caution only. I am of the considered view that there is no merit in pursuing this appeal and in the circumstances the said appeal would be withdrawn...'

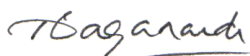
This shameful act was clearly tantamount to a sheer deception on the part of the AG, Mohan Peiris, who was under duty to uphold the Rule of Law and to discharge the functions of the office of the AG faithfully.

18. The Customs date stamp imprinted on the AG's letter dated 26th Augst 2010, hand delivered to the DGC affirms that the said was received by the DGC on 31st August 2010 (true copy of the said letter sent by the AG to DGC is attached

19. Thereafter on 17th October 2010, I challenged this blatantly fraudulent conduct of AG, Mohan Peiris before the Supreme Court (SCFR/536/2010) as per the instructions of the Deputy Superintendant of Customs, Mr T R Ratnasiri.
20. And further to this Court action the DGC Mrs Sudharma Karunaratne was called upon to submit her observation on the Petition filed in Court. The DGC stood firm and with unequivocal terms informed the Court that the AG's letter sent to her dated 26th August 2010 was in fact delivered at her office only after withdrawal of the case, an act of clear deception of the Supreme Court and the DGC by the AG Mohan Peiris (copy of her observation marked X3 is enclosed).
21. However, the case filed before the Supreme Court (SCFR/536/2010) was never allowed to be supported by the Attorney General for almost two years until the accused Mr Mohan Peiris was appointed to the Office of the Chief Justice on 15th January 2013.
22. On 31st January 2013 the accused appointed himself to hear his own case, which tantamount a travesty of justice. However, further to a strong objection raised for his hearing his own case that violated the principles of natural justice, it was postponed for the following day (01st Feb 2013).
23. On 01st February 2013 a 2-judge bench (Eva Wanasundara J, former AG and Sathya Hettige J, former Deputy Solicitor General) was appointed by the accused. And the said bench summarily dismissed the rights application of the Petitioner Customs Officer with no permission afforded to support it before the Court, vividly displaying that the entire justice system under Rajapakse administration was nothing but a mockery.

Perform the office as required by the Bribery Act

24. I expect you to perform your statutory duty as required by law (the Bribery act) and to initiate a credible investigation into this complaint that refers to a deceitful and fraudulent act committed by the AG Mohan Peiris (now holds the Chief Justice), causing a colossal loss of government revenue running into over 619 million rupees, a punishable criminal offence that falls within provisions of Section 70 of the Bribery Act.
25. You may well aware that most wanted fraudsters and cheats have already left the country after the new administration was established and therefore I urge you to take appropriate measures to impound the passport of the accused Mohan Peiris forthwith.



Nagananda Kodituwakku

Attorney-at-Law (Sri Lanka) & Solicitor (UK)

CC: written communication will be delivered with the documents marked in this complaint

Copies to: 1. Anti-corruption drive, 100/19, Welikadawatte, Rajagiriya,

2. Transparency International (Sri Lanka), 183/5, High Level Road, Colombo 6