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Eppawala: Issues from politics to governance

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To any one who makes a thorough scrutiny of the Minerals Investment Agreement (MIA) on Eppawala initialled in August 1997, these words may sound as if they were part of that scenario, but they are not. They are taken from another scenario — an interview by Prof. Jeffrey Winters of the Northwestern University, U.S.A., held on June 21, 1989, with Mohamed Saldi, a former Gabinet Minister of Suharto's government. Saldi was reminiscing the events at the time Freeport McMoran came to Indonesia as the pioneer major investor. *(Jeffrey Winters: "Power in Motion", Cornell University Press. (1988 p 75).*

There are few parallels between the Indonesian situation when Freeport McMoran entered the investment scene there, and the proposal to mine and develop the phosphate resources at Eppawala nearly a quarter century later by the IMC-Chemicals and later by Freeport McMoran Resources Partners which is a subsidiary of IMC-Global. These are worth recalling in order to understand the situation with regard to MIA on Eppawala. The only difference, if at all, between the two situations is that the multinational conglomerates have become stronger, with mergers, change of faces, and are far better equipped to meet challenges on grounds of human right violations, other accusations and to meet adverse publicity and criticism. The concept of globalization accepted by developing countries has, in addition, introduced an ethical dimension to exploitation in the now uni-polar international economic order.

Mohamed Saldi is quoted again saying. "With Freeport which was the first generation of new investments in Indonesia, they were ready to invest even before we had an investment agreement....Having n[illegible]players like Freeport blaze the investment trail is extremely important to others who want to invest but are afraid they will lose everything".

The remarks of Ali Budiarjo, who ran Freeport Indonesia for almost two decades quoted by Jeffrey Winters are also relevant. He stated:

"When Freeport approached us in 1966, it immediately became clear that no one had any idea of how to proceed. There was no foreign investment law. We were in a very awkward position because we had no legal basis on which to conclude the investment agreement... (Interview with Jeffrey Winters dated March 24, 1989, "Power in Motion" in 75).

World market situation

In 1992/93 when Freeport McMoran Resource Partners made an offer for the mining project in response to the UNP government's second invitation, the world market situation was at its worst point, prices having plummeted owing to over supply and the global mining industry being in no mood to develop new phosphate deposits. It could not have been the advantageous moment to initiate action. Of the few proposals received only that of FMRP was accepted. The PA government which came to power in 1994 also readily accepted the proposal, but it was in late 1995 when fertilizer prices recovered that FMRP began lobbying with the new government earnestly.

The government guarantee which was demanded earlier by the foreign Company under a proposal made in 1978 was dropped but several other terms advantageous to the new investor Company were incorporated. This is a situation that is to be expected when there are no rival companies. For no justifiable reason the investor's capital commitment was increased from US$ 260 million to US$425 million which naturally sent up the equity position of the investor and kept the government's equity low (10 percent) and without any role in management. A new term to export 3.6 millions metric tons of raw phosphate rock to meet the cash flow of the investor Company was also incorporated, the nett sales value of which is over 50 percent of the original capital investment. This was to meet the cash flow of the project Company during the first twelve years.

The environmental bond was fixed at an unbelievably low figure of US$500,000. An 'Escrow' account of 0.5 per cent of nett income to commence from the tenth year of commercial operation which was provided to meet environmental rehabilitation costs at the end of the project had such a low rate of build-up, that it could not be aiming at more than a superficial reclamation and not a wholesale environmental rehabilitation. It is even suspect as any financial expert or legal expert could advise - and the development has been well advised on this point — whether the Escrow account, based on nett income of the Company would ever be realized to a degree to meet the required costs of environmental rehabilitation.

Above all, the parent Companies — the investors - avoided being direct signatories to the project, becoming only shareholders in the "Project Company" set up, which would shoulder the responsibilities arising from the MIA. The shareholders could withdraw selling or disposing of their shares at advantageous times. International arbitration provided for in the MIA would be a costly process which the government could ill afford to engage in. These are only a few disadvantageous terms on the MIA one could spot at a glance. There are many others.

In contrast to Indonesia a quarter century earlier, the negotiations on above terms by the P.A. government has been conducted while the country was equipped with the legal framework for negotiations — an Investment Law, an Environmental Law, and Mining Laws. Our economists, bureaucrats, and other advisors who participated in the policy development process, through the provision of their technical inputs, seem to have been groping in the dark; or were simply lured by the prospects of securing the first major breakthrough in attracting mobile investment and technology, when these terms disadvantageous to the country were incorporated in the MIA.

Perhaps, they also acted on political direction. In the case of Indonesia, riddled with problems and ripe with corruption of a new type, it was understandable, as Ali Budiarjo claimed, but in Sri Lanka's case with a different administrative tradition, submission to the multi-national sacrificing national interests for reasons of their possession of technology and capital alone was inexcusable. After all, the P.A. government had come to power in 1994 promising to weed out "crony capitalism" but it may have been a mere slogan. Realities are different. That is perfectly understandable.

Irreparable damage

To give the negotiations a veneer of responsibility and transparency Government spokesmen point out that a Committee comprising of eminent geologists, scientists, agricultural experts and others was appointed by the President and has made their recommendations; and a Cabinet Appointed Negotiating Committee (CANC) comprised of local and foreign specialists, has been involved in negotiations. The question is not over who adviced and who negotiated the deal. That does not answer the real issue which is, whether or not, these efforts resulted in guaranteeing the best terms to the country, specially in regard to financial and economic benefits.

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To be acceptable such results should adequately compensate the great sacrifices Sri Lanka herself is making by way of bypassing the interests of the people including those of future generations, the irreparable damage to land which could also in its train lead to the spread of diseases and dislocation and unemployment among inhabitants, destroying the vegetation cover, and giving away also free of charge, the valuable timber resources and water in the area to the Company.

From the point of view of negotiations, are we, therefore, not in a worst situation than Indonesia was in the 1960s, considering that ours is a land not richly endowed as Indonesia is; and despite all the legal frame work and other infrastructure in our hand? Indonesia, unlike Sri Lanka, had strong teams of negotiators— Ministers, including Mohamed Saldi, as Chairman of the Planning Council, Ibunu Sowoto, head of the powerful Pertamina, economists, planners and others' yet it could not shake off individual interests as Sowoto displayed on financial and economic issues, and the corruption in the system.

The scenario in Sri Lanka in 1987 when Agrico-Chemicals made the first offer on Eppawala was not altogether different from that of Indonesia as far as the political situation was concerned. The concentration of executive power in President J. R Jayewardene, under the second Republican Constitution, following the period of economic chaos experienced during Mrs. Bandaranaike's experimentation with the socialist economy was the starting point. The situation here though not so chaotic as in Indonesia had its similarities in the situation that General Suharto sidelined and ousted President Soekarno from power and in the way President Jayewardene sidelined Mrs. Bandaranaike but through the medium of the Presidential Commission, a mechanism which even the present government in power has found not without its purpose and usefulness. Economically wedded to a free market economy the country was gearing itself to receive foreign aid and foreign investment. For the latter purpose, investor-friendly legislation was enacted; trade union rights were interfered with: and a series of investment agreements were signed with individual countries.

Collective responsibility

The Executive Presidency system at times worked ignoring the collective responsibility of the Cabinet. The system has continued on track under President Premadasa and now under the P.A. government with even greater momentum. President Premadasa made the investor-orientation even more liberal to the extent of offering citizenship on a platter in order to attract specially the Hong Kong investors to in an effort to make capital out of an over-exaggerated panic situation over the prospects of the Hong Kong being restored to the People's Republic of China. The result, however, was not the type of investment expected but a proliferation of Chinese restaurants, casions, massage parlours, including Chinese underworld gang wars fought here on our soil.

For Freeport McMoran conglomerate with its Indonesian experience in hand, a gold and copper mining project virtually turned into a proverbial 'gold mine', Sri Lanka may have been a less alluring prospect. An aspect that deserves consideration, however, is whether or not a word could have passed from the U.S. government as in Indonesia, to help Sri Lanka which was desperately looking for foreign investment and which had now turned the best advocate for the capitalist economic system in South Asia (If there is over emphasis on this point it must be understood against my background as a former senior diplomat under the J. R. Jayewardene government). As the leader of the opposition, J. R Jayewardene had been even prophetic over events that would take place in the Soviet Union. He saw the writing on the wall in Gorbechev's "Perestroika" and used it in his election campaign of 1977 to attack the socialist order of Mrs. Bandaranaike. He had to be supported.

This is a direction in the inquiry one cannot help avoiding in the light of the Indonesian analogy. Former U.S. Under Secretary George W. Ball a former diplomat advocating to his country's investors to come to the assistance of Indonesia stated: "As a personal judgment based on some experience as a diplomat - I would regard the stability of Indonesia as a first - rate business risk". Reflecting a clear concern with the geopolitical implications of failing to stabilize the country's economy, as Jeffrey Winters emphasized he said "I think we have a real obligation, given the strategic importance of Indonesia, to investigate with an open mind the possibilities of investment in that country and to undertake the investigating on a comprehensive and systematic basis" (Time Inc. 1967:34).

It would be entering into a long debate to ask whether or not the State Department had a stake in Sri Lanka-a strategic one as was the case in Indonesia—but that is a legitimate question to raise nonetheless, against what was taking place in the Indian ocean area until late 1980s with the background of Diego Garcia, Afghanistan, Somaliya, Ethiopia, Yemen and even Oman and South Airica earlier, receiving much attention of both the West and the Soviet Union. Western concern for the security of the major sea lanes supplying vital oil resources for western industries, was not a matter that could have been easily dropped from their agenda. Conspicuously, India had a clear perception of U.S. interests in Sri Lanka. She saw the proposal to develop the oil tanks at Trincomalee by U.S. connected company as a move in the direction of establishing U.S. hegemony in that important and useful naval base and as a threat to her own security.

Earlier, India had given Sri Lanka a baby to hold-the Indian Occan Peace Zone proposal— over which Mrs. Bandaranaike's government was preoccupied with but the J. R. Jayewardene government was less enthusiastic. The idea of developing the oil farms in Trincomalee which came up in greater earnest only after J. R. Jayewardene's government took office upset the Indians so much that eventually under the Letters exchanged along with the Indo- Sri Lanka Agreement of 1987, they brought Trincomalee under their wing making the farming to oil tanks to a party other than India, a closed chapter. Sri Lankan government's hold on Trincomalee was further sealed for the future through the Indian insistence on the amalgamation of the Northern Province and the Eastern Province as a single unit of devolution.

Strategic importance

U.S. interest in Sri Lanka's stability, if not in its strategic importance, was seen from the response at the annual Sri Lanka Aid Consortium meeting held in Paris in 1978, soon after the defeat of Mrs. Bandaranaike's left coalition government and the emergence of a politically pro-west and economically capitalistic oriented government under Mr. J. R. Jayewardene of which I had a ringside view as a participant in nine meetings of the Aid Consortium held in Paris, which included the last two held under Mrs. Bandaranaike's regime and the first three meetings held under the J. R Jayewardene regime.

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