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BY COURIER

19th January 2012

Justice T.M.P.B. Warawewa
High Court of Colombo
Colombo 12.

Hon. Justice Warawewa,

As a professional engaged in public interest activity and litigation, the prominent headlined News Reports in the front pages of the *Ceylon Today* of 11th January 2012, and in its corresponding Sinhala Newspaper, *Mawbima*, of the same day, *vis-à-vis*, the delivery of justice was of concern.

You had been quoted to have, *inter-alia*, pronounced thus, which stand uncorrected:

> "Judges need to comprehend the moral implications of their verdicts and deliver verdicts that are in accordance with their conscience. They need not dispense Justice in fear; the doors of hell are open to Judges who deliver verdicts based on what they can get out of it; similarly those gates are closed to Judges who sentence justly. ….. Some Judges or politicians make decisions based on what gains it brings them. Judges should not be thinking about what promotions or perks they may lose while dispensing justice ….. Judges must adopt a middle path, things like perks and promotions should not be considerations for Judges when they are delivering verdicts."

The foregoing, no doubt, are serious concerns expressed, raising the questions, as to why and what prompted you to so pronounce, leaving it open to speculation ?

In the foregoing context, it is of relevance to *cite* the following personal experiences:

1. a) In D.C. Colombo Case No. 3155/Spl instituted by me on 13th September 1990 *vis-à-vis* the fraud perpetrated on Hotel Developers (Lanka) Ltd., (HDL) and the Government, as its Guarantor, the *Defendants were politically very powerful and influential parties* - some very close associates of President J.R. Jayawardene and President R. Premadasa, one of whom was K.N. Choksy, P.C., M.P., appearing for President R. Premadasa in the Supreme Court in the Presidential Election Petition Case.

   b) District Judge, P. Wijeyaratne demonstrating the true independence of the judiciary was simply blind and cared not, as to who those Defendants were.

   c) Dispensing justice fearlessly, District Judge, P. Wijeyaratne issued interim injunctions on 28th October 1991, restraining any payments being made to the Japanese Companies involved, also by the Government, under the State Guarantees issued to them, *inter-alia*, observing that;

      # *"persons are exercising the influence, that they have gained in society, acting together with the Company, to prevent the raising of the questions concerning the matters of the work in connection with the Contracts, the Prospectus …"* (In his Sinhala Order, he had interpolated the word '*influence'* to bring out the correct meaning, and leaving in doubt, as to whether anyone had in fact endeavored to influence him ?*)*

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"the significance, that is shown herein, is that generally, the Company which has to pay money, would be raising questions, in respect of such situation, and would not allow other parties to act arbitrarily...If the position, that explains this is correct, then this actually, is an instance of acting in fraudulent collusion".

2. a) Court of Appeal granted Leave in January 1992 against the above Order, having permitted the Attorney General, representing HDL, and the Counsel, representing K.N. Choksy P.C., M.P., to participate in the Court of Appeal, *regardless of the fact* that they had not participated in the District Court Inquiry, *observing that the Court of Appeal normally grants Leave in most cases* !

   b) Nevertheless, consequently the Supreme Court Bench, comprising Justices Tissa Bandaranayake, K.M.M.B. Kulatunga and S.W.R. Wadugodapitiya, upheld the objections of my Counsel, and refused to permit the Attorney General, representing HDL, and the Counsel representing K.N. Choksy P.C., M.P., to participate and be heard, *asserting that they were not necessary parties*.

3. Thereafter, the Supreme Court Bench, comprising Chief Justice G.P.S. De Silva and Justices A. R. B. Amerasinghe and K. M. M. B. Kulatunga, delivered Judgment on 2nd December 1992, upholding the Order of the District Judge P. Wijeyaratne, and the issuance of the interim injunctions, *inter-alia*, observing that;

"The Petitioner had a reasonable and real prospect of success, even in the light of the defences raised in the pleadings, objections and submissions of the Defendants"

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By holding that – '*it could not entirely be a matter of indifference to the Government'*, the Supreme Court demonstrated its true independence stating to the effect that – '*the Government could do no wrong*'.

4. a) In the context of certain conduct and actions of, and baseless and false statements made by, then Justice Minister & Deputy Minister of Finance, G.L. Peiris, I filed D.C. Colombo Case No. 19849/MR on 21st July 1997 claiming damages.

   b) In the said Case, *turning a blind eye to the fact that the Defendant was the Minister of Justice, as so required of a Judge*, District Judge, S.J.W. Ambepitiya by his Order dated 30th July 1998, *inter-alia*, observing as follows, *struck out the Answer* of Justice Minister & Deputy Minister of Finance, G.L. Peiris, and fixed the Case for *ex-parte* Trial - *viz*:

   # *"A fact that is evident thereby is that, whilst the Defendant on the one hand, states that the documents relevant to the case in his capacity as a contesting party in the case, are in his possession, on the other hand states that they are not in his personal possession. It is the conclusion of this Court that the Defendant is not entitled to hold on to both these arguments at one and the same time."*

   # *"According to the facts set out hereinabove, this Court holds that the Defendant has defaulted complying with the order made by this Court under Section 102 for declaration of documents. Accordingly, in terms of my application, acting under Section 109(1), I strike out the Defendant's answer and fix the case for ex-parte trial. Petitioner is entitled to recover costs of this inquiry from the Defendant."*

The foregoing Orders and Judgment were around 20 years ago, when I was much younger and relatively unknown, whilst the Defendants held high socio-political status and wielded power. I had never met the Judges concerned, and paid my last respects to Late Justices P. Wijeyaratne and S.J.W. Ambepitiya.

House of Lords Review Judgment in *re* Pinochet (*1998-99)*

In the context of moral implications on the part of Judges in delivering verdicts, which you have pronounced upon, the Opinions of the Lords of Appeal in Judgments in the House of Lords, in *re Pinochet* (*1998-99*) would be of relevance.

A Committee of the House of Lords delivered Judgment on 25th November 1998 allowing an Appeal by a majority 3 to 2 verdict, against the quashing by the Queen's Bench Divisional Court of an arrest warrant against former Head of State of Chile, Senator Pinochet, to be extradited from the UK; against whom there had been allegations of crimes against humanity, for the prosecution of which, the Spanish Supreme Court had issued international warrants for his arrest.

Thereafter, upon discovery, that one of the Lords, who allowed such Appeal, namely, Lord Hoffmann and his wife, Lady Hoffmann, had connections with Amnesty International, who had intervened to move for the arrest and extradition of Senator Pinochet, his Lawyers in such circumstances proffered a Petition to the House of Lords to review and correct their own Judgment. *Facts pertaining to this are set out in the Judgment of Lord Browne-Wilkinson* - relevant '*extracts'* therefrom are given in the attached Note.

In the context of the sentiments in your pronouncements and the Opinions in the Judgment of the Lords of Appeal of the House of Lords in *re – Pinochet* (*1998-99*), the association which may be perceived with the executive, in circumstances of political appointments, after retirement and for kith and kin, could be of relevance.

Another Committee of the House of Lords unanimously held that they have jurisdiction to rescind or vary an earlier order to correct an injustice caused – *viz*: *dicta* of Lord Browne-Wilkinson, with the other Lords *agreeing:*

> "Jurisdiction
>
> As I have said, the respondents to the petition do not dispute that your Lordships have jurisdiction in appropriate cases to rescind or vary an earlier order of this House. In my judgment, that concession was rightly made both in principle and on authority.
>
> In principle it must be that your Lordships, as the ultimate court of appeal, have power to correct any injustice caused by an earlier order of this House. There is no relevant statutory limitation on the jurisdiction of the House in this regard and therefore its inherent jurisdiction remains unfettered."

By Judgment of 17th December 1998, with reasons given on 15th January 1999, the new Committee of the House of Lords, set aside the previous Judgment of 25th November 1998 of the House of Lords, directing a re-hearing by a differently constituted Committee, without any of their Lords, who had heard the matter.

Given below are some relevant '*extracts*' from the Judgment of the Lords of Appeal (*Emphasis added*):

> **LORD BROWNE-WILKINSON**
>
> "The contention is that there was a real danger or reasonable apprehension or suspicion that Lord Hoffmann might have been biased, that is to say, **it is alleged that there is an appearance of bias not actual bias**."
>
> "The second application of the principle is where a judge is not a party to the suit and does not have a financial interest in its outcome, but in some other way his conduct or behaviour may give rise to a suspicion that he is not impartial, **for example because of his friendship with a party**."
>
> **LORD NOLAN**
>
> "I would only add that in any case where the impartiality of a judge is in question **the appearance of the matter is just as important as the reality**. "
>
> **LORD HUTTON**
>
> "No one can suppose that Lord Cottenham could be, in the remotest degree, influenced by the interest that he had in this concern; but, my Lords, it is of the last importance that the maxim that no man is to be a judge in his own cause should be held sacred. And that is not to be confined to a cause in which he is a party, **but applies to a cause in which he has an interest**."
>
> However I am of opinion that there could be cases where the interest of the judge in the subject matter of the proceedings arising from his strong commitment to some cause or belief **or his association with a person or body involved in the proceedings could shake public confidence in the administration of justice** ….. I find persuasive the observations of Lord Widgery C.J. in Regina v. Altrincham Justices, Ex parte Pennington [1975] 1 Q.B. 549, 552F:

"There is no better known rule of natural justice than the one that a man shall not be a judge in his own cause. In its simplest form this means that a man shall not judge an issue in which he has a direct pecuniary interest, but the rule has been extended far beyond such crude examples **and now covers cases in which the judge has such an interest in the parties or the matters in dispute as to make it difficult for him to approach the trial with the impartiality and detachment which the judicial function requires**.

Accordingly, application may be made to set aside a judgment on the so-called ground of bias without showing any direct pecuniary or proprietary interest in the judicial officer concerned."

A similar view was expressed by Deane J. in Webb v. The Queen (1994) 181 C.L.R. 41, 74:

"The area covered by the doctrine of disqualification by reason of the appearance of bias encompasses at least four distinct, though sometimes overlapping, main categories of case. The first is disqualification by interest, that is to say, **cases where some direct or indirect interest in the proceedings, whether pecuniary or otherwise, gives rise to a reasonable apprehension of prejudice, partiality or prejudgment**. . . . **The third category is disqualification by association**. It will often overlap the first and consists of cases **where the apprehension of prejudgment or other bias results from some direct or indirect relationship**, **experience or contact with a person or persons interested in, or otherwise involved in, the proceedings**."

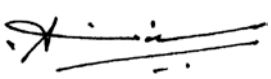
In his judgment in Reg. v. Gough [1993] A.C. 646, 659G my noble and learned friend Lord Goff of Chieveley made reference to the great importance of confidence in the integrity of the administration of justice, and he said:

"In any event, **there is an overriding public interest that there should be confidence in the integrity of the administration of justice**, which is always associated with the statement of Lord Hewart C.J. in Rex v. Sussex Justices, Ex parte McCarthy [1924] 1 K.B. 256, 259, that it is 'of **fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done**."

"The nature of the interest is such that public confidence in the administration of justice requires that the decision should not stand."

Reference is drawn to Article 116 of the Constitution prohibiting interferences or attempts to interfere with the exercise or performance of the judicial powers or functions of a Judge. No person is above the rule of law, which is the basis of the Constitution.

Yours respectfully,



Nihal Sri Ameresekere, F.C.A., F.C.M.A., C.M.A., C.F.E.

'EXTRACTS' ON FACTS FROM JUDGMENT OF LORD BROWNE-WILKINSON

Re – Lord Hoffmann's connection with Amnesty International

Senator Pinochet was the Head of State of Chile from 11 September 1973 until 11 March 1990. It is alleged that during that period there took place in Chile various crimes against humanity (torture, hostage taking and murder) for which he was knowingly responsible.

The Spanish Supreme Court has held that the courts of Spain have jurisdiction to try him. Pursuant to those international warrants, on 16 and 23 October 1998 Metropolitan Stipendiary Magistrates issued two provisional warrants for his arrest under section 8(1)(b) of the Extradition Act 1989. Senator Pinochet was arrested. He immediately applied to the Queen's Bench Divisional Court to quash the warrants. The warrant of 16 October was quashed and nothing further turns on that warrant. The second warrant of 23 October 1998 was quashed by an order of the Divisional Court of the Queen's Bench Division (Lord Bingham of Cornhill C.J., Collins and Richards JJ.) However, the quashing of the second warrant was stayed to enable an appeal to be taken to your Lordships' House on the question certified by the Divisional Court as to "the proper interpretation and scope of the immunity enjoyed by a former Head of State from arrest and extradition proceedings in the United Kingdom in respect of acts committed while he was Head of State."

The Divisional Court having unanimously quashed the provisional warrant of 23 October on the ground that Senator Pinochet was entitled to immunity, he was thereupon free to return to Chile subject only to the stay to permit the appeal to your Lordships' House. The matter proceeded to your Lordships' House with great speed. It was heard on 4, 5 and 9-12 November 1998 by a committee consisting of Lord Slynn of Hadley, Lord Lloyd of Berwick, Lord Nicholls of Birkenhead, Lord Steyn and Lord Hoffmann. However, before the main hearing of the appeal, there was an interlocutory decision of the greatest importance for the purposes of the present application. Amnesty International ("AI"), two other human rights bodies and three individuals petitioned for leave to intervene in the appeal. Such leave was granted by a committee consisting of Lord Slynn, Lord Nicholls and Lord Steyn subject to any protest being made by other parties at the start of the main hearing. No such protest having been made AI accordingly became an intervener in the appeal. At the hearing of the appeal AI not only put in written submissions but was also represented by counsel, Professor Brownlie Q.C., Michael Fordham, Owen Davies and Frances Webber. Professor Brownlie addressed the committee on behalf of AI supporting the appeal.

Judgment in your Lordships' House was given on 25 November 1998. The appeal was allowed by a majority of three to two and your Lordships' House restored the second warrant of 23 October 1998. Of the majority, Lord Nicholls and Lord Steyn each delivered speeches holding that Senator Pinochet was not entitled to immunity: Lord Hoffmann agreed with their speeches but did not give separate reasons for allowing the appeal. Lord Slynn and Lord Lloyd each gave separate speeches setting out the reasons for their dissent.

As a result of this decision, Senator Pinochet was required to remain in this country to await the decision of the Home Secretary whether to authorise the continuation of the proceedings for his extradition under section 7(1) of the Extradition Act 1989. The Home Secretary had until the 11 December 1998 to make that decision, but he required anyone wishing to make representations on the point to do so by the 30 November 1998.

After the representations had been made to the Home Office, Senator Pinochet's legal advisers received a letter dated 1 December 1998 from the solicitors acting for AI written in response to a request for information as to Lord Hoffmann's links. The letter of 1 December, so far as relevant, reads as follows:

> "Further to our letter of 27 November, we are informed by our clients, Amnesty International, that Lady Hoffmann has been working at their International Secretariat since 1977. She has always been employed in administrative positions, primarily in their department dealing with press and publications. She moved to her present position of Programme Assistant to the Director of the Media and Audio Visual Programme when this position was established in 1994.

> "Lady Hoffmann provides administrative support to the Programme, including some receptionist duties. She has not been consulted or otherwise involved in any substantive discussions or decisions by Amnesty International, including in relation to the Pinochet case."

On 7 December a man anonymously telephoned Senator Pinochet's solicitors alleging that Lord Hoffmann was a Director of the Amnesty International Charitable Trust. That allegation was repeated in a newspaper report on 8 December. Senator Pinochet's solicitors informed the Home Secretary of these allegations. On 8 December they received a letter from the solicitors acting for AI dated 7 December which reads, so far as relevant, as follows:

> "On further consideration, our client, Amnesty International have instructed us that after contacting Lord Hoffmann over the weekend both he and they believe that the following information about his connection with Amnesty International's charitable work should be provided to you.
>
> "Lord Hoffmann is a Director and Chairperson of Amnesty International Charity Limited (AICL), a registered charity incorporated on 7 April 1986 to undertake those aspects of the work of Amnesty International Limited (AIL) which are charitable under UK law. AICL files reports with Companies' House and the Charity Commissioners as required by UK law. AICL funds a proportion of the charitable activities undertaken independently by AIL. AIL's board is composed of Amnesty International's Secretary General and two Deputy Secretaries General.
>
> "Since 1990 Lord Hoffmann and Peter Duffy Q.C. have been the two Directors of AICL. They are neither employed nor remunerated by either AICL or AIL. They have not been consulted and have not had any other role in Amnesty International's interventions in the case of Pinochet. Lord Hoffmann is not a member of Amnesty International.
>
> "In addition, in 1997 Lord Hoffmann helped in the organisation of a fund raising appeal for a new building for Amnesty International UK. He helped organise this appeal together with other senior legal figures, including the Lord Chief Justice, Lord Bingham. In February your firm contributed £1,000 to this appeal. You should also note that in 1982 Lord Hoffmann, when practising at the Bar, appeared in the Chancery Division for Amnesty International UK."

On 10 December 1998, Senator Pinochet lodged the present petition asking that the order of 25 November 1998 should either be set aside completely or the opinion of Lord Hoffmann should be declared to be of no effect. The sole ground relied upon was that Lord Hoffmann's links with AI were such as to give the appearance of possible bias. It is important to stress that Senator Pinochet makes no allegation of actual bias against Lord Hoffmann; his claim is based on the requirement that justice should be seen to be done as well as actually being done. There is no allegation that any other member of the Committee has fallen short in the performance of his judicial duties.

AI itself is an unincorporated, non profit making organisation founded in 1961 with the object of securing throughout the world the observance of the provisions of the Universal Declaration of Human Rights in regard to prisoners of conscience. It is regulated by a document known as the Statute of Amnesty International. AI consists of sections in different countries throughout the world and its International Headquarters in London. Delegates of the Sections meet periodically at the International Council Meetings to co-ordinate their activities and to elect an International Executive Committee to implement the Council's decisions. The International Headquarters in London is responsible to the International Executive Committee. It is funded principally by the Sections for the purpose of furthering the work of AI on a worldwide basis and to assist the work of Sections in specific countries as necessary. The work of the International Headquarters is undertaken through two United Kingdom registered companies Amnesty International Limited ("AIL") and Amnesty International Charity Limited ("AICL").

AIL is an English limited company incorporated to assist in furthering the objectives of AI and to carry out the aspects of the work of the International Headquarters which are not charitable.

AICL is a company limited by guarantee and also a registered charity. In McGovern v. Attorney-General [1982] Ch. 321, Slade J. held that a trust established by AI to promote certain of its objects was not charitable because it was established for political purposes; however the judge indicated that a trust for research into the observance of human rights and the dissemination of the results of such research could be charitable. It appears that AICL was incorporated on 7 April 1986 to carry out such of the purposes of AI as were charitable.

Under Article 3(a) of AICL the members of the Company are all the elected members for the time being of the International Executive Committee of Amnesty International and nobody else. The Directors are appointed by and removable by the members in general meetings. Since 8 December 1990 Lord Hoffmann and Mr. Duffy Q.C. have been the sole Directors, Lord Hoffmann at some stage becoming the Chairperson.

There are complicated arrangements between the International Headquarters of AI, AICL and AIL as to the discharge of their respective functions. From the reports of the Directors and the notes to the annual accounts, it appears that, although the system has changed slightly from time to time, the current system is as follows. The International Headquarters of AI are in London and the premises are, at least in part, shared with AICL and AIL. The conduct of AI's International Headquarters is (subject to the direction of the International Executive Committee) in the hands of AIL. AICL commissions AIL to undertake charitable activities of the kind which fall within the objects of AI. The Directors of AICL then resolve to expend the sums that they have received from AI Sections or elsewhere in funding such charitable work as AIL performs. AIL then reports retrospectively to AICL as to the monies expended and AICL votes sums to AIL for such part of AIL's work as can properly be regarded as charitable. It was confirmed in the course of argument that certain work done by AIL would therefore be treated as in part done by AIL on its own behalf and in part on behalf of AICL.

I can give one example of the close interaction between the functions of AICL and AI. The report of the Directors of AICL for the year ended 31 December 1993 records that AICL commissioned AIL to carry out charitable activities on its behalf and records as being included in the work of AICL certain research publications. One such publication related to Chile and referred to a report issued as an AI report in 1993. Such 1993 reports covers not only the occurrence and nature of breaches of human rights within Chile, but also the progress of cases being brought against those alleged to have infringed human rights by torture and otherwise in the courts of Chile. It records that "no one was convicted during the year for past human rights violations. The military courts continued to claim jurisdiction over human rights cases in civilian courts and to close cases covered by the 1978 Amnesty law." It also records "Amnesty International continued to call for full investigation into human rights violations and for those responsible to be brought to justice. The organisation also continued to call for the abolition of the death penalty." Again, the report stated that "Amnesty International included references to its concerns about past human rights violations against indigenous peoples in Chile and the lack of accountability of those responsible." Therefore AICL was involved in the reports of AI urging the punishment of those guilty in Chile for past breaches of human rights and also referring to such work as being part of the work that it supported.

The Directors of AICL do not receive any remuneration. Nor do they take any part in the policy-making activities of AI. Lord Hoffmann is not a member of AI or of any other body connected with AI.

Hon. Judge Warawewa

What made you say what you said

T.M.P.B. Warawewa

Chartered Accountant and public interest activist Nihal Sri Ameresekere, well known for exposing corruption, fraud and nepotism within the Sri Lankan Government writes an open letter to High Court Judge T.M.P.B. Warawewa asking what prompted him to declare the headline statement 'Judges should deliver justice.'

Justice T.M.P.B. Warawewa
High Court of Colombo
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b) In the said Case, turning a blind eye to the fact that the Defendant was the Minister of Justice, as so required of a Judge, District Judge, S.J.W. Ambepitiya by his Order dated 30th July 1998, inter-alia,

You had been quoted to have, inter-alia, pronounced thus, which stand uncorrected: "Judges need to comprehend the moral implications of their verdicts and deliver verdicts that are in accordance with their conscience"

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- "A fact that is evident thereby is that, whilst the Defendant on the one hand, states that the documents relevant to the case in his capacity as a contesting party in the case, are in his possession, on the other hand states that they are not in his personal possession. It is the conclusion of this Court that the Defendant is not entitled to hold on to both these arguments at one and the same time."
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House of Lords Review Judgment in re Pinochet (1998-99)

In the context of moral implications on the part of Judges in delivering verdicts, which you have pronounced upon, the Opinions of the Lords of Appeal in Judgments in the House of Lords, in re Pinochet (1998-99) would be of relevance.

A Committee of the House of Lords delivered Judgment on 25th November 1998 allowing an Appeal by a majority 3 to 2 verdict, against the quashing by the Queen's Bench Divisional Court of an arrest warrant against former Head of State of Chile, Senator Pinochet, to be extradited from the UK; against whom there had been allegations of crimes against humanity, for the prosecution of which, the Spanish Supreme Court had issued international warrants for his arrest.

Thereafter, upon discovery, that one of the Lords, who allowed such Appeal, namely, Lord Hoffmann and his wife, Lady Hoffmann, had connections with Amnesty International, who had intervened to move for the arrest and extradition of Senator Pinochet, his Lawyers in such circumstances proffered a Petition to the House of Lords to review and correct their own Judgment. Facts pertaining to this are set out in the Judgment of Lord Browne-Wilkinson - relevant 'extracts' therefrom are given in the attached Note.

In the context of the sentiments in your pronouncements and the Opinions in the Judgment of the Lords of Appeal of the House of Lords in re – Pinochet (1998-99), the association which may be perceived with the executive, in circumstances of political appointments, after retirement and for kith and kin, could be of relevance.

Another Committee of the House of Lords unanimously held that they have jurisdiction to rescind or vary an earlier order to correct an injustice caused – viz: dicta of Lord Browne-Wilkinson, with the other Lords agreeing:

"Jurisdiction

As I have said, the respondents to the petition do not dispute that your Lordships have jurisdiction in appropriate cases to rescind or vary an earlier order of this House. In my judgment, that concession was rightly made both in principle and on authority.

In principle it must be that your Lordships, as the ultimate court of appeal, have power to correct any injustice caused by an earlier order of this House. There is no relevant statutory limitation on the jurisdiction of the House in this regard and therefore its inherent jurisdiction remains unfettered."

By Judgment of 17th December 1998, with reasons given on 15th January 1999, the new Committee of the House of Lords, set aside the previous Judgment of 25th November 1998 of the House of Lords, directing a re-hearing by a differently constituted Committee, without any of their Lords, who had heard the matter.

Given below are some relevant 'extracts' from the Judgment of the Lords of Appeal (Emphasis added):

LORD BROWNE-WILKINSON

"The contention is that there was a real danger or reasonable apprehension or suspicion that Lord Hoffmann might have been biased, that is to say, it is alleged that there is an appearance of bias not actual bias."

"The second application of the principle is where a judge is not a party to the suit and does not have a financial interest in its outcome, but in some other way his conduct or behaviour may give rise to a suspicion that he is not impartial, for example because of his friendship with a party."

LORD NOLAN

"I would only add that in any case where the impartiality of a judge is in question the appearance of the matter is just as important as the reality. "

LORD HUTTON

"No one can suppose that Lord Cottenham could be, in the remotest degree, influenced by the interest that he had in this concern; but, my Lords, it is of the last importance that the maxim that no man is to be a judge in his own cause should be held sacred. And that is not to be confined to a cause in which he is a party, but applies to a cause in which he has an interest."

However I am of opinion that there could be cases where the interest of the judge in the subject matter of the proceedings arising from his strong commitment to some cause or belief or his association with a person or body involved in the proceedings could shake public confidence in the administration of justice ..... I find persuasive the observations of Lord Widgery C.J. in Regina v. Altrincham Justices, Ex parte Pennington [1975] 1 Q.B. 549, 552F:

"There is no better known rule of natural justice than the one that a man shall not be a judge in his own cause. In its simplest form this means that a man shall not judge an issue in which he has a direct pecuniary interest, but the rule has been extended far beyond such crude examples and now covers cases in which the judge has such an interest in the parties or the matters in dispute as to make it difficult for him to approach the trial with the impartiality and detachment which the judicial function requires.

Accordingly, application may be made to set aside a judgment on the so-called ground of bias without showing any direct pecuniary or proprietary interest in the judicial officer concerned."

A similar view was expressed by Deane J. in Webb v. The Queen (1994) 181 C.L.R. 41, 74:

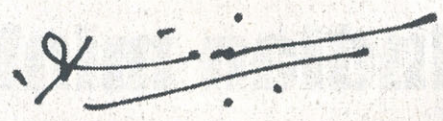
"The area covered by the doctrine of disqualification by reason of the appearance of bias encompasses at least four distinct, though sometimes overlapping, main categories of case. The first is disqualification by interest, that is to say, cases where some direct or indirect interest in the proceedings, whether pecuniary or otherwise, gives rise to a reasonable apprehension of prejudice, partiality or prejudgment. . . . The third category is disqualification by association. It will often overlap the first and consists of cases where the apprehension of prejudgment or other bias results from some direct or indirect relationship, experience or contact with a person or persons interested in, or otherwise involved in, the proceedings."

In his judgment in Reg. v. Gough [1993] A.C. 646, 659G my noble and learned friend Lord Goff of Chieveley made reference to the great importance of confidence in the integrity of the administration of justice, and he said:

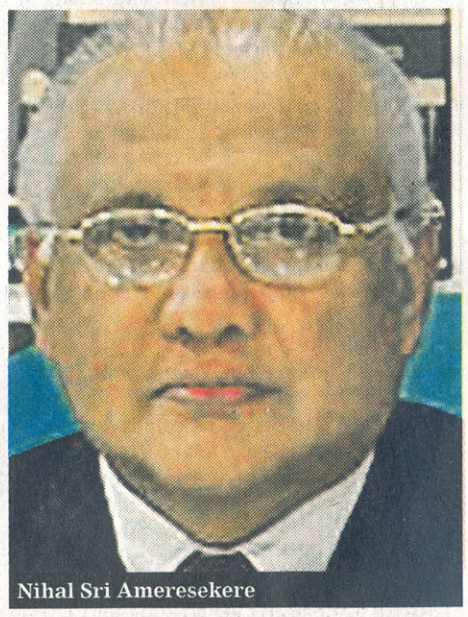
"In any event, there is an overriding public interest that there should be confidence in the integrity of the administration of justice, which is always associated with the statement of Lord Hewart C.J. in Rex v. Sussex Justices, Ex parte McCarthy [1924] 1 K.B. 256, 259, that it is 'of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."

"The nature of the interest is such that public confidence in the administration of justice requires that the decision should not stand."Reference is drawn to Article 116 of the Constitution prohibiting interferences or attempts to interfere with the exercise or performance of the judicial powers or functions of a Judge. No person is above the rule of law, which is the basis of the Constitution.

Yours respectfully,



Nihal Sri Ameresekere, F.C.A., F.C.M.A., C.M.A., C.F.E.



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