

Cashiering of a General

Following are extracts from the official proceedings of the General Court Martial's final day which went into charges that former Army Commander (Retd.) Gen. Sarath Fonseka dabbled in politics while still in uniform

PROCEEDINGS OF THE GENERAL COURT MARTIAL HELD ON 13TH AUGUST 2010 AT THE WARD ROOM, NAVY HEADQUARTERS, COLOMBO 01

Accused: 0/50536 General GSC Fonseka RWP RSP VSV USP redds psc (Retired).

Court opened at 0955 hrs.

Judge Advocate: (Shavindra Fernando) Lieutenant Colonel PS Thilakarathne, Commanding Officer, Military Hospital, Colombo 5, has certified after medical examination, that the Accused is fit for Court Martial today. Can the Accused please stand? Yesterday you were informed of the options that you could take. At this stage you can inform what is the option? Whether you are going to give evidence, whether you want to make a statement from wherever you are, or whether you intend calling evidence on your behalf on the facts or on the character. So you can state to court now what option you will be taking.

Accused General: I will inform only through the counsel, when they are present.

Judge Advocate: If you don't inform now, the court will take it as that you will not be leading any evidence and the court will proceed thereafter.

Accused General: My answer remains the same.

Judge Advocate: You will not answer the court as to what option you wish to take?

Accused General: Only through the counsels.

Judge Advocate: At this stage the accused was explained the options yesterday at the end of the Prosecution case and he was told to inform this court what his options would be. Having been questioned today, the accused answers that he will inform only after the counsel is present. The Accused was further explained that if he does not give his options today the court will have to take it that he will not be leading evidence and will have to proceed to trial thereafter to which the Accused answered that his answer is the same.

Since the Accused has refrained from giving his options at the time the opportunity was given to him, the court will proceed on the basis that no defence was made and therefore at this stage decide on the next step which is although the Accused has not expressly stated that he does not wish to give evidence as a witness and does not intend to call any witnesses to the facts of the case, the court having given an opportunity will have to proceed on the basis that the Accused does not wish to give evidence as a witness and does not intend to call witnesses to the facts of the case, if he is not represented by a counsel or by an officer subject to military law, the Accused may if he wishes may call witnesses as to his character under Regulation 73(a)(i). So at this stage I ask the Accused whether he intends calling any witness as to his character.

Accused General: I do not do anything until the counsel comes.

Judge Advocate: Then I will act under Regulation 73(a)(ii) and invite the Prosecutor to make the final address for the purpose of summing up the evidence for the Prosecution.

Prosecuting Counsel: Before I commence my address I just thought I would bring this to Your Honour's notice. That is, yesterday, Your Honour's court afforded an opportunity to the Accused General to communicate with his counsel and indicate to court the options that Your Honour's court afforded to him yesterday. For the purpose of record I feel it is pertinent to have it recorded as to that opportunity was afforded and whether that facility was used by the Accused General.

Accused General: This is wrong information. The facility was given only at 9.30 in the night. That was too late to contact anybody. Then the facility was only given here at 9.15 in the morning after that.

Judge Advocate: Were you able to contact your counsel at 9.15 in the morning?

Accused General: I left a message but they have given the message back saying they will only come on the dates they are supposed to come. They have given the dates already.

Judge Advocate: So they take the position that they will not come during the court vacation. The Prosecution brought to the notice of court that the court after giving the options yesterday, gave an opportunity and made an order that the Accused be given an opportunity to consult lawyers and for that purpose to allow him access to a telephone and if the lawyers wish to meet the Accused General that facility should be made available. The Accused

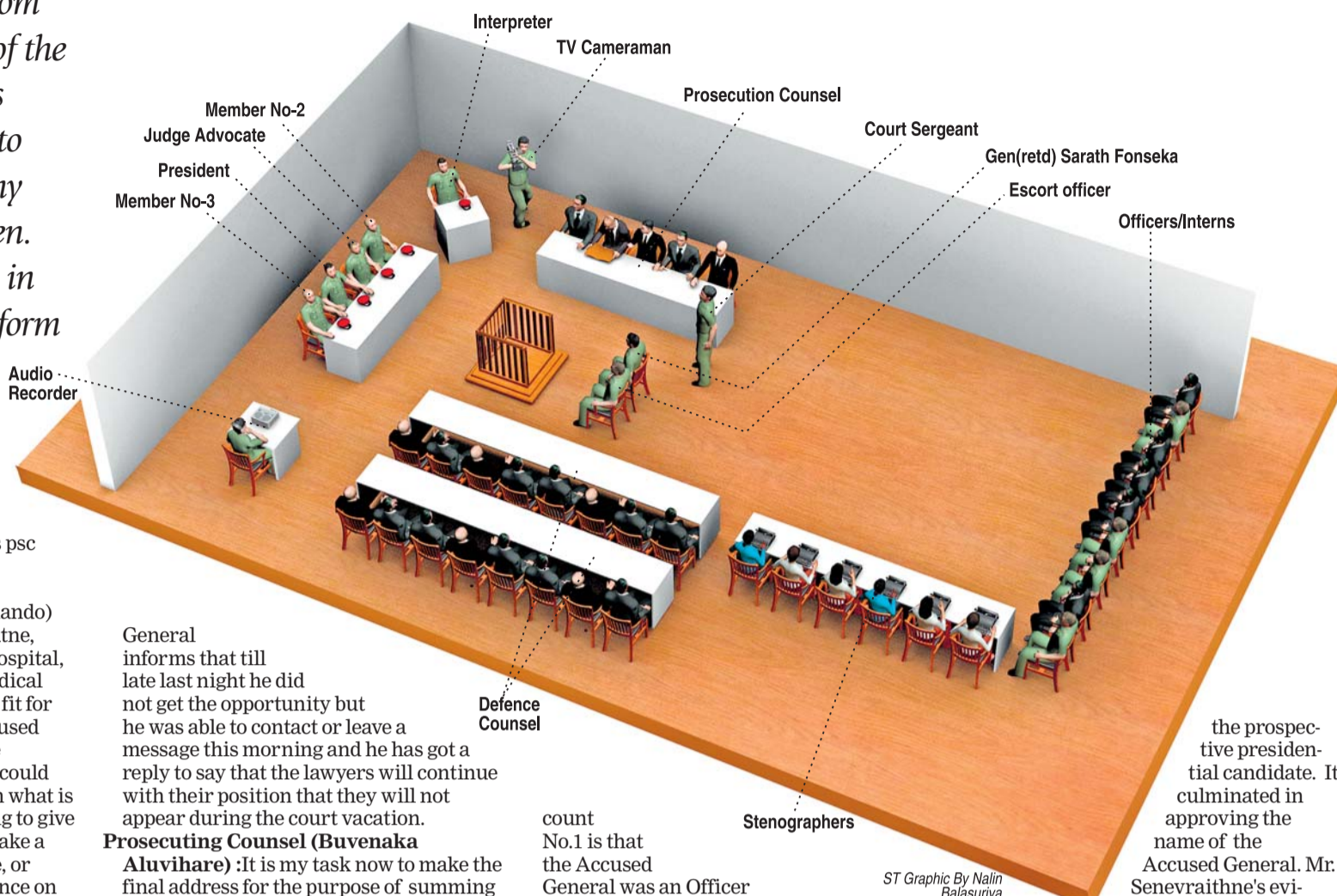
General informs that till late last night he did not get the opportunity but he was able to contact or leave a message this morning and he has got a reply to say that the lawyers will continue with their position that they will not appear during the court vacation.

Prosecuting Counsel (Buvaneka Aluvihare): It is my task now to make the final address for the purpose of summing up the evidence of the Prosecution of the evidence led before Your Honour's court. Firstly, I would refer to count No. 1 on the charge sheet that is in terms of Section 124 of the Army Act, Traitorous/Disloyal Words. Under count No. 1 the Prosecution has to establish three elements. One - the Accused Officer used disloyal words regarding the sovereign; Two - did so as a member of the Regular Force of the Sri Lanka Army, and the Third aspect would be these utterances were made or disloyal words were uttered between 1st of October 2009, and 14th November 2009. As to whether the Accused General used disloyal words the evidence placed before court on that regard emanated from witness, Minister Johnston Fernando. In his evidence he clearly stated that he had a telephone conversation with the Accused General in the early part of October 2009 and he was positive that the person to whom he spoke to over the phone was none other than the Accused General. And the witness identified the Accused General in court as well. I will briefly refer to his evidence or the portion of his evidence which is relevant to count No.1. I'll be basically referring to the proceedings of 12th July 2010 page 13 and page 14. I will just read it over. Mr. Fernando in his evidence said, the Accused General during this conversation said, I will use his words in verbatim, "මම කියන්න කියන දේවල්, ඇමරිකාවට දඩයම් කරන දේවල් සාක්ෂි සපයලා මම විරාජයන් වලට එන්නෙ. එදාට දඩක් නොදුටුවලට බලකොටුවලට සේවයකරලා ඇවිල්ලා මාව පිටින්න. මම විරාජයන් වලට නමයි බලන්නෙ." He also said Your Honours to his effect, "දැනට සමස්තයට ඇමරිකන් ආණ්ඩුවයි අතින් ජනාධිපතිවරයාට ප්‍රජාවයි බලකොටු ඉන්නෙ ජනාධිපතිවරයායි ආරක්ෂක ලේකම්වරයායි බලකොටුයි. එකට දඩයම් කරන සාක්ෂි මම ලා ඇතිවෙන්න කියනවා" "දී සියලුම දේවල් ඇමරිකන් ආණ්ඩුවට ලබාදීලා මේලොල්ලන්ට බිරි කලා කමයි ලංකාවට එන්නෙ කියලා කිව්වා ඒ දඩයම් කරන සාක්ෂි ලබාදීලා." What I stated before Your Honour's court is basically the reproduction of what this witness, Mr. Fernando stated before Your Honour's court.

Judge Advocate: That is on the 12th of July?

Prosecuting Counsel: I will repeat that portion Your Honour, "දැනට සමස්තයට ඇමරිකන් - ආණ්ඩුවයි අතින් ජනාධිපතිවරයාට ප්‍රජාවයි බලකොටු ඉන්නෙ. ජනාධිපතිවරයායි ආරක්ෂක ලේකම්වරයායි බලකොටුයි. එකට දඩයම් කරන සාක්ෂි මම ලා ඇතිවෙන්න කියනවා" "දී සියලුම දේවල් ඇමරිකන් ආණ්ඩුවට ලබාදීලා මේලොල්ලන්ට බිරි කලා කමයි ලංකාවට එන්නෙ කියලා කිව්වා ඒ දඩයම් කරන සාක්ෂි ලබාදීලා." What I stated before Your Honour's court is basically the reproduction of what this witness, Mr. Fernando stated before Your Honour's court.

count No.1 is that the Accused General was an Officer of the Regular Force of the Sri Lanka Army. The liability on the Accused General in count No.1 is imposed by the fact that he is subject to military law as the CDS. That is an officer of the Regular Force, not as a member of the Security Council. I do not have to repeat this issue had been argued before court earlier and an order had been given that CDS is considered as an officer of the Regular Force of the Sri Lanka Army. My respectful contention is that the basis of this allegation is that this Accused General committed or violated this particular provision as an officer of the Regular Force of the Sri Lanka Army. With regard to count No.2 and 3 both counts are based on the Army Order 13/79. First, I will address Your Honours on the Army Order. Basically the Army Order 13/79 expressly states 'all ranks of Sri Lanka Army are prohibited on pain of dismissal from engaging in any form of political activity'. My respectful contention here is that, these words 'any form of political activity' must be given widest possible meaning or widest possible interpretation. All ranks of the Sri Lanka Army must adhere to this Army Order. The question here is, whether the Accused General had violated this Army Order and therefore whether he had committed the offences stipulated in count 2 and 3. In this regard the Prosecution led the evidence of Mr. Fernando, evidence of witness Gamini Abeyratne and also led the evidence of Member of Parliament, Lakshman Seneviratne. With regard to count No.2 which is, based on the conversation the Accused General is supposed to have had with Mr. Fernando, the witness's evidence was that he spoke to the General over the phone and this telephone conversation was organized by a person by the name of Ruwan Weerakoon. During the phone conversation the General requested that Mr. Seneviratne, be requested to propose the name of the Accused General at the working committee of the UNP as the presidential candidate and also requested Mr. Fernando to confirm that proposal, so that he can be the presidential candidate of the UNP. This position was confirmed by witness, Mr. Abeyratne to whom Mr. Fernando had related his conversation. Mr. Abeyratne also confirmed that soon after the meeting Mr. Fernando met him and conveyed the conversation Mr. Fernando had with the Accused General over the phone. He also stated that Mr. Abeyratne said Mr. Fernando related to him the request made by the Accused General. If this evidence is accepted, that is a clear instance where the person concerned had engaged in political activity. It is also in evidence at the time of this telephone conversation, the Accused General had with Mr. Fernando he was still functioning in the post of Chief of Defence Staff. Therefore it is clear, that this Accused General had engaged in political activities while being a member of the Sri Lanka Army or on the Regular Force of the Sri Lanka Army. Therefore, I say with respect, as far as count No. 2 is concerned the ingredients of the count had been established. Mr. Seneviratne gave evidence and he did say such a conversation took place between the Accused General and the Member of Parliament and he specifically said, on all those occasions they discussed politics. Though his evidence was not specific, I shall demonstrate that whatever discussions that the Accused General had with Mr. Seneviratne over the phone had been in relation to the candidacy of the Accused General at the forthcoming Presidential election. According to Mr. Seneviratne, he said for about 3 or 4 weeks, discussions took place at the UNP Party office as to the nomination of the Accused General as



ST Graphic By Nalin Balasuriya

the prospective presidential candidate. It culminated in approving the name of the Accused General. Mr. Seneviratne's evidence went further to say, in that coalition of

parties the UNP was the most strongest party. Others were splinter groups, which had not much significance. If the party had deliberated for 3 or 4 weeks in deciding as to whether the parties were agreeable to put forward the Accused General as a Presidential candidate that couldn't have happened unless the candidate himself had consented to become the candidate at the Presidential Election. Certainly, a party of the magnitude of the UNP would not endeavour to decide on the candidate for an important election as such as the Presidential Election unless the party had the consent of that individual to come forward. Therefore I say, court can draw a clear inference on the cumulative material on that aspect that the accused by conversing with Mr. Seneviratne, had engaged in political activity.

Three witnesses gave evidence. That is Minister Johnston Fernando, Gamini Abeyratne and Member of Parliament Mr. Lakshman Seneviratne. Now under cross examination certain allegations were made against the minister to the effect that he is giving evidence because of his allegiance to a different political party. Though these allegations had been made, none of these had been proved before this court. There is no evidence whatsoever that Mr. Fernando has a reason to give false evidence. And when we consider the standing of the minister in society, he is a cabinet minister who had engaged in politics for a long time and he also said that he is a person who appreciated the work done by the Accused General during the war. I don't think there would be any reason for the minister to make a false allegation against the Accused General. With regard to other two witnesses both of them had been hard core members of the UNP, the very party that supported the candidacy of the Accused General at the last Presidential Election who promoted the candidacy of the Accused General and subsequently supported the Accused General at the Presidential Election. Therefore, one cannot say that there could be any reason whatsoever; for those two witnesses to make a false allegation against the Accused General, unless what they said in court under oath in fact did happen.

(COURT ADJOURNED AT 1215 HRS.)

(COURT RE-OPENED AT 1435 HRS.)

Judge Advocate: Before the summing up, under Regulation 73 it is stated, 'if the accused states that that he does not wish to give evidence as a witness himself and does not intend to call any witness to the facts of the case, the procedure shall be as follows,

- (a) if he is not represented by counsel or by an officer subject to military law -
 - (i) the accused may, if he wishes, call witnesses as to his character; he has decline to do so
 - (ii) the prosecutor may make a final address for the purpose of summing up the evidence for the prosecution; that has already been done and
 - (iii) the accused may then make an address in his defence giving his account of the subject of the charge against him. The address may be made orally or in writing.'
- The accused is now given an opportunity if he wishes to state anything under Regulation 73(a)(iii). Do you wish to make a statement?

Accused General: I don't wish to say anything without the counsel. I will not do anything without the counsel

Judge Advocate: The accused informs that he will not do anything without the counsel. Since that is the case I will not begin my summing up.

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5th Column

No-balling keeps snowballing in politics

Thaaththa, Bindu Udagedera asked, "what is all this fuss about a no-ball?"

"Oh," Bindu's father Percy recalled, "that is something that happened in the cricket match against India..."

"What happened at the match?" Bindu wanted to know.

"One of our bowlers bowled a no-ball when the match was about to end and an Indian batsman was on ninety-nine..." Percy explained.

"So," Bindu asked, "what is so special about that?"

"Why, Bindu," Percy said, "they say the bowler did that purposely so that the match would end and the batsman would not be able to get to his hundred..."

"But thaaththa," Bindu argued, "the bowler didn't break any rules of the game, did he?"

"No, he didn't," Percy agreed, "but they say that he has acted against the spirit of the game..."

"So," Bindu wanted to know, "what has happened now?"

"I believe they have suspended the bowler for one game..." Percy explained.

"But that is not fair, *thaaththa*..." Bindu protested.

"Why do you say that?" Percy asked, "Don't you think that we should play not only according to the rules of the game but also according to the spirit of the game?"

"But *thaaththa*," Bindu said, "this happens all the time in everyday life, so why should we bother so much about it and punish people when it happens in a cricket match?"

"What do you mean by that?" Percy inquired.

"Why, *thaaththa*, do you remember how Satellite wanted to go on for her full two terms in office for twelve years but how she couldn't get there because she was no-balled by a political party which went to court challenging her plans?" Bindu recalled.

"Yes, I do," Percy said, "and that is what paved the way for the early elections that brought Mahinda *maama* to power..."

"And that political party," Bindu remembered, "far from being punished, went on to form part of Mahinda *maama*'s government after those elections..."

"If I remember correctly," Percy observed, "even at those elections, someone was no-balled..."

"Who was that?" Bindu was curious.

"Why, Bindu, Uncle Ranil was widely expected to win the election but Velu suddenly no-balled him by calling for a boycott in the North and East..." Percy pointed out.

"That is true," Bindu agreed, "because Uncle Ranil lost by a very small margin that was much lesser than the number of votes available to him in the North and East..."

"But of course," Percy pointed out, "in that instance, the person who no-balled him did get punished..."

"Why do you say that, *thaaththa*?" Bindu asked.

"Why, Bindu," Percy explained, "Velu who no-balled Uncle Ranil paid the price because Mahinda *maama* wiped him out along with his organization..."

"But *thaaththa*," Bindu said, "someone was no-balled, even in the process of wiping out Velu and his men..."

"Who was that?" Percy was puzzled.

"Why, *thaaththa*, the General who helped wipe out Velu is today behind bars while Velu's two most trusted lieutenants, the one who was in the East and the other who was overseas, are enjoying great privileges, so the General has indeed been no-balled!" Bindu declared.

"That is true," Percy conceded, "but he is not alone..."

"Why do you say that, *thaaththa*?" Bindu queried.

"Why," Percy recalled, "don't we all remember how Mahinda *maama* no-balled Uncle Ranil by inviting him for discussions and then stealing seventeen of his MPs while those discussions were going on, depriving the Greens of most of their party members..."

"Yes, indeed," Bindu said, "but the problem is that although all of us seem to remember it, someone else appears to have conveniently forgotten it..."

"Why do you say that, Bindu?" Percy wanted to know.

"Because," Bindu pointed out, "even after all that, Uncle Ranil is still going for discussions with Mahinda *maama*..."

"But what is wrong with that?" Percy wondered.

"Why, *thaaththa*," Bindu recalled, "just after Uncle Ranil went for discussions with Mahinda *maama* this time, he lost two more MPs..."

"Well," Percy conceded, "that might be considered unfortunate..."

"No, *thaaththa*," Bindu said, "it reminds me of what someone said about something unfortunate happening twice..."

"And what was that?" Percy demanded.

"When it happens once, it is considered a misfortune but when it happens again, it must be carelessness..." Bindu declared.

"I don't quite agree with that, Bindu," Percy declared.

"Why do you say that, *thaaththa*?" Bindu asked, "Don't you think that Uncle Ranil has been no-balled once again?"

"No, Bindu," Percy said, "I don't think that is quite what is happening here..."

"What do you think is happening, then?" Bindu asked.

"Remember how the bowler didn't mind bowling a no-ball and conceding a run just so he could deprive the batsman of his century, Bindu?" Percy asked.

"Yes, I do," Bindu said, "that is what started all this fuss..."

"I think Uncle Ranil doesn't mind conceding a few MPs just so he could deprive someone else of something..." Percy proposed.

"Then," Bindu said, "it is Uncle Ranil who is no-balling someone else..." Bindu declared.

Percy didn't disagree.

