

The Role of the Public Service

*Bradman Weerakoon**

The neutrality of the Public Service, which has always been utilised to conduct elections in Sri Lanka, became, as common in most elections conducted during the past two decades, a predominant issue during the recently concluded Presidential Elections.

The Public Service as a whole plays a critical role in any election in Sri Lanka. For the purposes of this discussion, the Public Service in its relation to elections may be taken as the Elections Department¹ and its staff, the generality of civilian government servants – from District Secretaries (former Government Agents) who act as Returning Officers through staff and clerical grades to support staff who together man the 10,000 odd polling stations throughout the country, and the Police. A fair election rests on the fundamental premise that all these officials who play a vital role in an election remain completely neutral insofar as the rival candidates in the electoral contest are concerned. None would contend from this that the public servant could not have political opinions or prefer a particular political party or ideology or indeed exercise the right of

* Former Adviser to the President, Consultant to the UN system and Director Centre for Policy Alternatives, Colombo.

¹ Article 103 of the 1978 Constitution of Sri Lanka provides for the appointment of a Commissioner of Elections by the President who shall hold office during good behaviour. One of the issues taken up by the Opposition during the Presidential Elections was, that on account apparently of the illness of the Commissioner of Elections, an 'outsider' holding the office of Chief Secretary of the Sabaragamuwa Province was appointed by the President to act as Commissioner of Elections to conduct the Presidential Elections. The Court of Appeal ruled subsequently that this appointment was in order.

his or her vote at an election. The acid test for each and every public servant participating in an election is whether he/she can overcome the loyalty they may feel to the party or candidate of their preference in contradistinction to the loyalty they owe to the country and thereby act impartially between the rival parties or candidates during election time. This was and will be a crucial existentialist question for the individual public servant.

The issue today is whether the current conditions and the prevalent reality makes the question irrelevant. Is this fundamental principle of the neutrality of the public service still valid or have the profound transformations that have gone on during the past years in the relationship between the political authority and the public service – commonly referred to as politicisation of the public service – invalidated the principle and rendered it redundant. An examination of the challenges to the presumed neutrality of the public service which, after all, underpins our democratic political model would it is considered be worthwhile since it highlights one of the perennial issues raised by any Opposition during an election.

Since they are deemed neutral in attitude – although working under and paid by the Government – they can hold the balance and ensure that the voice of the people as reflected in their vote is exercised freely and without let or hindrance. According to the law² and practice developed over many years and many elections, the public service is expected at election time to take on the role of a neutral umpire and act as custodians and facilitators of the right to a free vote of the electorate.

Why the public service assumes such importance at an election is that a multitude of vital tasks relevant to the election process has to be performed by the public service. To name a few important

² The conduct of elections including the Presidential is governed by the Ceylon (Parliamentary Elections) Order in Council 1946 as amended from time to time.

activities- **before** the election in the preparation of the voters register the Grama Sevaka has a vital function to perform. He can either drop an eligible voter from the list or include in it someone who has left the area. (It is rumoured that many of the half a million or so persons employed in the Middle East and elsewhere abroad are routinely kept on the Voters' Register providing a large and convenient pool for impersonation.); **on the day of the election**, the Senior Presiding Officer (SPO) and his staff of public servants have to ensure the efficient and fair conduct of the poll at the polling station: the degree of faith in the neutrality of the SPO is such that he is expected to help the blind and disabled voter to place his cross in the correct square on the ballot paper; **after** the close of polling, the Provincial Secretary as Returning Officer has to preside at the actual counting of the votes at the counting centre. Obviously, if any of these functions are subverted the election process will be flawed and may result in the choice of the people not being reflected in the final result.

Over the years and with increasing intensity from the 1970's the subtle relationship between the political authority and the public service began to change. From a position of mutual trust and respect and a recognition of the equal validity of the respective roles, the politician came to assume a position of dominance and the public servant that of subservience. There are possibly both formal and informal reasons for this change. In a formal structural/institutional sense the breach is said to have been initiated by the 1972 Constitution which replaced the Public Service Commission (Soulbury Constitution) by the Cabinet of Ministers as the constitutional authority responsible for the appointment, promotion, transfer and disciplinary control of all public servants. Up until then, from 1948, this preeminent function of control of the public service was vested in the Public Service Commission composed of generally three persons of high integrity and appropriate experience appointed by the Head of State on the advice of the Prime Minister. Although it was not impossible for high political

authority to influence the PSC on occasion, this was to a limited extent and usually after a degree of negotiation between the political authority and the PSC.

The 1972 reform brought the public service directly under the Cabinet of Ministers and legitimised political control of the administration. Most, if not all, decisions of the administration thereby took on a political colouration and the authority of the political authority over the public servants work and destiny was unchallenged. Ostensibly, the reason for the change was said to be the need to get the political aspirations of the government implemented without obstruction by an administrative machine which was alleged to be either inefficient or obstructive, or both. The net effect of this negative movement, however, was to make the public servant, especially at the local level, the servant of the government politician in power and not of the public at large. The deterioration was most severe and profoundly significant in the case of the police. The hapless police became in many instances the hand maid of the local politician and it is public knowledge that on critical occasions the OIC's chair has been physically occupied by the politician who directs operations from that position. Regrettably, the public perception is that things will only get done if it is at the behest of the politician and the politicisation of the public service today at every level seems almost irremediable. The UNP government that enacted the 1978 Constitution found the pliable public servant as convenient as its predecessor, and though it reintroduced the PSC in name, its powers were seriously attenuated and the Cabinet of Ministers continued to exercise control over the public service. This is the situation which prevailed at the time of the December 21st Presidential Elections.

The Opposition which, at every election is wary of the extent to which the Public Service may be subverted, makes the issue of the neutrality of the Public Service a major one. The government which holds the whip hand since the Public Service is constitutionally

under the direction of the Cabinet of Ministers –after the 1972 and 1978 Constitutions³ – have less to worry about the loyalty of the Public Service. So a constant concern of the Opposition parties and a subject of current debate has been that of an Independent Public Service Commission, an independent Elections Commission and an independent Police Commission. The draft Constitutional proposals attempt to provide for some balance between the government and the Opposition through the instrumentality of the Constitutional Council which will be made responsible for the selection of members to the PSC and other high level bodies. This is certainly a step in the direction of remedying the present unsatisfactory situation and ensuring that the Public Service will be progressively depoliticised and enabled to play its expected neutral role.

While reform of the structural elements which subvert neutrality can certainly help, a change in the mindset of the public servants themselves, leading hopefully to a glorification of neutrality as a value in itself, should be the ideal situation. This may not be as difficult as it sounds and what would be helpful in creating this paradigm shift would be a critical mass of role-models at high levels of the public service who show by their behaviour under pressure that they are unbendable. Such examples are usually infectious.

Election time, especially general and Presidential elections when there is a possibility of change, provide unique opportunities where public servants come into their own. For a short period of time they and the electorate become the masters and the politicians, the servant who is seeking their vote. This was especially so in former times when an election was called, and the Parliament was dissolved. The MP's lost their seats, their vehicles, their bodyguards and power and even the Prime Minister and Cabinet continued on

³ "The appointment, transfer, dismissal and disciplinary control of public officers is hereby vested in the Cabinet of Ministers, and all public officers shall hold office at pleasure," Article 55 (1), Constitution of the Democratic Socialist Republic of Sri Lanka, 1978.

a caretaker basis. Precisely at this moment the public servant found himself vested with a welcome authority to hold the scales as freely and squarely as possible. Unfortunately, under the present Executive President system there is no interregnum when executive power before an election can be even temporarily abrogated. Take the December 21st experience when the Cabinet and MP's continued to exercise power and use their considerable muscle in support of the incumbent President who was also one of the candidates for office and who continues to exercise all the powers of office to the end. The issue of a *level playing field* for all the candidates contesting the Presidency also came up in many forms, directly and indirectly in the recent election. It was articulated using as a point of comparative reference the last Bangladeshi Presidential election when a caretaker machinery was installed with the incumbent President who was contesting the poll temporarily standing down, and the Chief Justice running a caretaker administration up until the election. There is little doubt that in the event of such an apolitical environment being created the public service would be motivated to act evenhandedly and neutrally between rival candidates and ensure, to the extent possible, within their control a free and fair election.

In addition to the formal or systemic constraints referred to above which militate against neutrality and which can be removed by reform of institutional structures, there are the informal, once upon a time subtle, now increasingly less so, pressures which are exerted on the public service to favour the government candidate. While these were always present to some extent, they reached their zenith –or nadir– in the now infamous Wayamba Provincial Council election of last year. Threatening of polling station staff by the brandishing of weapons, forcible marking of ballot papers by outsiders who invaded the polling station, stuffing of ballot paper boxes and booth capture –a practice perfected, it is reported, in some parts of India– have been described in detail in the reports of People's Action for Free and Fair Elections (PAFFREL) and the

Centre for Monitoring Election Violence (CMEV). The following extracts from the Commissioner of Elections in respect of the 1989 election and the CMEV report after the 1999 Presidential election are telling in respect of the climate of intimidation that the public service is compelled to function in during election time.

According to the Report of the Commissioner of Elections on the 1988 Presidential election:⁴

It was not at all surprising that the public service which forms part of this society suffered the same fear psychosis and pleaded that the elections be not held, or if they were to be held and they were to participate, that they be provided with heavy security. No one could convince the public service the situation was not so alarming because, both as householders in their areas of residence as well as officers in the public institutions, they had the occasion to hear, see and sometimes experience the dangers of this situation. This attitude of alarm and desperation on the part of the public servants cast an absolutely gloomy shadow on our capacity to man the 8060 polling stations.

According to the CMEV Final Report on Election-related violence of the Presidential Election 1999:⁵

At around 1.30 pm on December 21st 1999 Polling stations No 10 and 11 in Colombo West were forcibly entered by a posse of unidentified persons who proceeded to stuff the ballot boxes to the tune of 37 and 72 votes respectively. The SPO's and other officials remained powerless to resist this act of terror. ...To cite a more general case, in the Puttalam District

⁴ Report of the Commissioner of Elections on the Second Presidential Election of Sri Lanka held on 18. 12. 1988., Para 282.

⁵ Final Report on Election-Related Violence of the Presidential Election 1999: –21st December 1999. Centre for Monitoring Election Violence, (CMEV) pp 35 and 36.

CMEV recorded that 15 Polling Stations were subjected to ballot stuffing by armed gangs, the approximate total of votes illegally cast exceeding 2000. Yet none of these stations appear to have been recorded by the Elections Commissioner as being flawed in any way. the general climate of nationwide violence was not conducive to the unfettered exercise of the franchise, with over 50 incidents of shooting and/or bomb throwing at Polling Centres, with at least 3 murders and over a hundred people injured.

One of the paramount issues that the public service itself brought up, not for the first time, before the December 21st Presidential election was their very real fear of intimidation and physical danger to life and limb while on election duty. The Public Service Trade Unions followed their complaints up with the threat of non co-operation and non-attendance at election duty – a virtual strike – if the intimidation and threat to the public servants at the elections from either the government or the opposition was not prevented by the government. In the face of the CMEV reports it is not possible to aver that this counter-threat by the Public Service Trade Unions has had any salutary effect on reducing the intimidation exerted on public servants by persons euphemistically referred to as “unidentified groups.” The extent of intimidation of the public service cannot be said to be any less during the December 21st election as compared to the more notable elections held in the decade of the 1990’s.

There is one final function of the public service at the closure of the election that remains a perennial issue. This is the overseeing of the transition of power that may come if the end result of the election is that the incumbent in office loses and the rival candidate has to be installed in position. That this issue too, as in all general and Presidential elections in the past, was being actively discussed recently is undoubted. Would the transition be smooth with the incumbent gracefully moving out with the announcement of the

final results, or would there be attempts – legalistic or otherwise – to stay on? The role of the principal public service officers – Secretary, Advisors etc.- around the Prime Minister (PM) or President is crucial in this respect. Two personal examples of the variety of issues that arise in attempting to observe the well-known principle of “the king is dead; long live the king” are recorded here.

The present writer who oversaw the transition or handing-over of several incumbents of the highest office during his 40-year tenure of public service has two recollections, which may illuminate this point. Since anecdotal evidence is now academically recognised as being the gateway to the truth no apology is made for their repetition here.

The first concerns the ‘going’ of Mr. Dudley Senanayake who lost the election in July of 1965. The writer asked the tired PM returning after the count at Kegalle early in the morning whether the usual letter of resignation of the government to the Governor-General should be prepared for his signature and whether the Cabinet needed to be summoned to be so informed. The reply was characteristically short. “Yes, get the letter ready immediately. There is no Cabinet to summon. All the fellows have lost.”

The other is reflected in an extract from a tribute written in a volume dedicated to H.E. William Gopallawa, Governor-General in the period 1961- 1977. It indicates to some extent the manifold pressures, which incumbent office holders are subject to, and their own commitment to due process.

The general elections of 1965 called by Prime Minister Sirimavo Bandaranaike were inconclusive in that the SLFP had not obtained an outright majority of parliamentary seats. Mrs. Bandaranaike who always wanted to scrupulously observe rules and procedures had asked me as her Secretary

to prepare the letter of resignation of herself and the government she had headed. However as often happens on such occasions there were other political forces at work attempting to persuade her to consider other options such as holding on and facing a vote of confidence in parliament which was to meet in ten days time. The debate at Temple Trees on whether the Prime Minister should stay or go was fast and furious and tempers ran high for much was at stake. I recall very clearly the alignment of forces. Those on the Left arguing for the Prime Minister to do something unprecedented by staying, and letting the issue be decided by parliament when it met, and those, mainly her family members and persons like Felix and Lakshmi Bandaranaike and James and Siva Obeysekere, who were for her doing what she wanted to do which was to resign and allow the Governor-General to call whomever he thought could form a government to do so. Throughout these anxious hours while the country waited with growing impatience and the crowds grew boisterous outside 'Temple Trees' Mr. Gopallawa acted with impeccable integrity. It is at times like these that the role of Governor-General comes into its own. In normal times his role is like that of a constitutional monarch. The highest in the land protocol-wise but with no effective power to act on his own. After a general election however and one which is indecisive, he is endowed with enormous discretionary power. He is the authority who can summon a leader of a political party to form a government if in his view that political leader can command the confidence of the house.

What an excruciatingly difficult time it would have been for Mr. Gopallawa. It was Mrs. Bandaranaike who had recommended his name to Her Majesty the Queen for appointment as Governor-General. There were links of kinship between the Bandaranaike's and the Gopallawa's.

The other party -the UNP- might deal harshly with him since he had been appointed by the SLFP. I do not think that any of these considerations bothered Mr. Gopallawa when it came to doing his duty. During those critical hours when the country's fate hung in the balance as it were, Mr. Gopallawa was unshakable in his devotion to his duty. Almost every hour he would call me to ask whether the Prime Minister had made up her mind. Once, though not in exasperation, he asked me whether he should send over Erskine May with the relevant portions highlighted. I begged for time. When finally the decision was made and I went over to Queens House with the letter signed his relief knew no bounds. For my part I knew that this was no ordinary person. His had been a supreme act of patriotism; an act of loyalty to the state which transcended party, kinship and even personal obligation.

References:

Report of the Commissioner of Elections on the Second Presidential Election of Sri Lanka held on 18.12.1988

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