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Submitted by asiaadmin2 on Sun, 09/23/2012 - 08:23

Paper 783

09.09.2003

by Dr. S. Chandrasekharan

In compliance with the Supreme Court's judgement and directive of 18th July, 2003, Qarase selected 14 members from the Fiji Labour Party, for induction to his cabinet.

The meeting that took place in the morning of 29th August between Qarase and Mahendra Chaudhry proved inconclusive with the latter insisting on 17 ministers from his party to the 14 offered by Qarase and also over the differences in perception over Article 99 of the 1997 Constitution. While Chaudhry maintained that the purpose of the section was to have a "government of national unity (GNU)", Qarase's position was that it was mandatory for the Prime minister under the constitution to have a multi party cabinet and nothing more.

A copy of the letter sent by Qarase to Mahendra Chaudhry is given as an [Appendix](#) [1]. The letter highlights the following points:

* The issue in the Supreme Court was about Labour Party's participation in a multi party cabinet and not the formation of a GNU or a coalition multi party cabinet.

- * The Labour party is entitled to 14 positions in the cabinet in proportion to 27 members it has in a total of 71 members and not 17 members as is being interpreted by Chaudhry on the basis of para 142 of the judgement of the Supreme Court.
- * Para 142 of the judgement is not binding as it was only a general comment of the Court.
- * Separately an approach is being made to the Supreme Court to make a determination of the legal meaning of Article 99 (5) on the entitlement of an entitled party in a multi party cabinet.
- * In view of the Supreme Court directive to implement the decision without delay he is not waiting for the clarification from Supreme Court on the numbers or the list to be furnished as requested by Chaudhry.
- * He would be proceeding with a list of fourteen initially to be appointed as ministers and in the event Supreme Court decides in favour of 17, an additional list of 3 will be recommended for appointment.

Some surprise has been expressed over the non inclusion of Chaudhry himself and some other senior members of the Labour Party like Dr. Ganesh Chand. Firstly when Qarase is not looking at the cabinet as part of GNU, the question of inclusion of Chaudhry would never arise. Qarase had also expressed that he would find it uncomfortable to work with Chaudhry. Secondly, Chaudhry did not produce a list which he should have and Qarase was free to choose whomsoever he wanted.

Do numbers matter?

A strict interpretation of section 5 of Article 99 gives the impression that Qarase could be right. The section says that : "In establishing the cabinet, the Prime Minister must invite all parties whose membership in the house comprises at least 10 % of the total membership of the House to be represented in the cabinet in proportion to the numbers in the House." Thus FLP having 27 seats in a House of 71 gets 14 seats in the cabinet.

Also section 4 makes mention that a cabinet should as far as possible represent the parties represented in the House of Representatives. With this in view Qarase has taken members of other parties in his cabinet.

But section 6 of Article 99 says that when selection is made of representatives of other parties not entitled to be represented, that selection is deemed to be a selection from his own party. This read with para 142 of the judgement which says that the number "will be measured by the proportion of the number of parliamentary seats held by the government or coalition party and all eligible parties." (Emphasis ours). Here the eligible parties are only the SQL and the FLP and the proportion should therefore be 19 :17. This is the contention of Chaudhry of the FLP.

But the point is, do the numbers count? Does it make a difference that the interests of Indo Fijians will be better protected by an increase of 3 persons in the cabinet? Chaudhry needs to ponder over this issue instead of dragging the issue once again to the Supreme Court. Is it better to fill up the cabinet with people with unimportant portfolios or act as a solid and responsible opposition to take care of the interests of the party in general and the Indo Fijians in

particular?

He is doing no service to the cause by issuing statements condemning the Qarase government which has been lawfully elected in regional and international fora.

Appendix



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29th August, 2003

Hon. Mahendra Chaudhry
Parliamentary Leader
Fiji Labour Party
Parliament Complex
Veitoto

Dear Sir,

re: Multi-party Cabinet

I am writing to confirm the views and decisions I conveyed to you at our meeting this morning. In this, I have taken into account your letter dated 28th August, 2003, in which you re-affirmed Labour's acceptance of the invitation to be represented in a multi-party Cabinet pursuant to section 99 (5) of the Constitution. I thank you for your letter.

To begin with, I refer to your public challenge that I should consider a Government of National Unity (GNU), which you now regard as the best way forward. I reiterate that a GNU is not an option under section 99 of the Constitution. The Supreme Court made it very clear in its Judgment on 18th July, 2003, that section 99 makes it mandatory for the Prime Minister to establish a multi-party Cabinet. Further, the Fiji Labour Party is entitled to be represented in this Cabinet because it has fulfilled the threshold requirement of eligibility to be invited under section 99 (5) and also because it has unconditionally accepted the Prime Minister's unconditional invitation to be represented in Cabinet. Finally, the Prime Minister must implement all this without any delay. It is Labour's participation in a multi-party Cabinet, not the formation of a GNU or a coalition multi-party Cabinet, that is the only specific issue in question.

By your confirmation this morning of the FLP's decision to take up its entitlement in a multi-party Cabinet, your party itself has obviously decided that your proposal for a GNU is not a relevant issue.

For my part, I reaffirm my compliance with sections 99 and 103 of the Constitution in establishing a multi-party Cabinet of 36 Ministers, in determining in accordance with the express provision of section 99 (5) that Labour's entitlement based on its 27 Members in the House as a proportion of the total membership of the House of Representatives is 38%, or 14 positions, and in assigning specific portfolio responsibilities to Labour's 14 positions.

You have argued that Labour's entitlement should be 47%, or 17 positions, and you base this on a general statement and assumption by the Supreme Court Judges in paragraph 142 of their Judgment that an eligible party's "entitlement to representation (in a multi-party Cabinet) will be measured by the proportion of the number of parliamentary seats it holds to the total number of parliamentary seats held by the Government or Coalition Party and all eligible parties." I maintain the view that this is not a correct interpretation of the express provision of the entitlement of an entitled party under section 99 (5).

You, yourself, have deliberately not acknowledged that this general comment by the Judges is not actually part of the Supreme Court ruling on the Government's appeal in the multi-party Cabinet case, and it is, therefore, not binding.

However, acting in good faith to ensure there is no doubt on this issue, I have obtained Cabinet approval for an approach to be made to His Excellency the President to invoke section 123 of the Constitution and refer the issue to the Supreme Court for it to make a determination of the legal meaning of section 99 (5) on the entitlement in a multi-party Cabinet of an entitled party, and in this case, the FLP.

On the selection of persons from the FLP for appointment as Ministers in accordance with Labour's entitlement, I have complied with my obligation to consult with you as the leader of the FLP. We have now met on four occasions. From the outset, I requested you to give me a list of your 25 nominees to assist me in making my selection in accordance with the authority vested in me under section 99.

You have asked me today to defer making my selections from Labour until the Supreme Court has made a determination of your party's entitlement under section 99 (5), when you will submit your preferred FLP nominees.

Given the Supreme Court's directive in its Judgment on 18th July, 2003, that I must implement the multi-party Cabinet without any delay, I have decided to proceed, starting with an initial fourteen (14) from Labour I will recommend to His Excellency the President for appointment as Ministers in accordance with section 99 (1). In the event the Supreme Court rules in your party's favour in determining Labour's full legal entitlement under section 99 (5), I will then consider a further three (3) selections from the FLP.

The fourteen (14) are as follows:

1. Ministry of National Reconciliation and Unity - Hon Pratap Chand
2. Ministry for Special Education, the Disabled and National Library Services - Hon Krishna Dutt
3. Ministry for Fair Trading & Consumer Affairs - Hon Vijay Singh
4. Ministry for Environment - Hon Satendra Singh
5. Ministry for Natural Disaster Management - Hon James Shiu Krishna

6. Ministry for National Parks & Recreational Areas - Hon Surendra Lal
7. Ministry for Employment Opportunities - Hon Udit Narayan
8. Ministry for Health Promotion - Hon Dr Gunasagran Gounder
9. Ministry for Arts, Culture and Heritage - Hon Ram Sharan
10. Ministry for Drainage and Flood Protection & Management - Hon Ragho Nand
11. Ministry for Prisons - Hon Gaffer Ahmed
12. Ministry for Transport - Hon Perumal Mupnar
13. Ministry for Veterans Affairs - Hon Vyas Deo Sharma
14. Ministry for State Properties - Hon Pravin Singh

In making these selections, I have taken into account Labour's consistent and persistent opposition to my Government's policies since it came into office in September, 2001. I have, therefore, selected those in whom I have confidence and trust to work in close co-operation with Ministers from the SDL and its coalition partners in furthering our national interest and the collective interests of all communities in our multi-ethnic and multi-cultural society.

His Excellency the President will be away overseas on an official visit to the People's Republic of China from 1st to 12th September, 2003. I deem it as my duty to inform His Excellency on Monday, 15th September, 2003 on the progress in the establishment of a multi-party Cabinet with your party, as required by Fiji's Constitution.

I would, therefore, be grateful if you could confirm with me by Wednesday, 10th September, 2003, your agreement that we can proceed with the swearing-in of the fourteen (14) whilst we await the determination by the Supreme Court of your full legal entitlement.

Yours faithfully,

[L Qarase]

Prime Minister

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