Sri Lankan government and Supreme Court clash over fuel pricing

Wije Dias
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A ruling by the Sri Lankan Supreme Court on December 17 to order a reduction in petrol prices is turning into a confrontation with the government. The cabinet has failed to cut the price of fuel sold by the state-owned Ceylon Petroleum Corporation (CPC), even though the court's deadline expired days ago.

The result is growing chaos. Last Friday, the Lanka Indian Oil Corporation (LIOC), CPC's only competitor, agreed to lower the price of petrol to 100 rupees a litre as required by the Supreme Court. Many CPC fuel stations are closed because of the uncertainty over pricing, with distributors unwilling to purchase supplies that they may be forced to sell later at a loss. In some areas, motorists were inundating LIOC stations; in others fuel was not available.

President Mahinda Rajapakse and his ministers met several times last week but put off making any decision on petrol pricing on the threadbare excuse that they had not formally received the court's written ruling. The real reason for the stalling is that the government is desperate for finances as it continues its costly war against the separatist Liberation Tigers of Tamil Eelam (LTTE). The treasury has raked in a windfall from fuel taxes.

The court case resulted from a disastrous hedging agreement entered into by the CPC when oil prices were skyrocketing. The deal with Standard Chartered Bank, CitiBank, Deutsche Bank and two local banks provided for the banks to pay CPC an agreed amount—up to a maximum $US1.5 billion a month—whenever oil rose between $100 to $135 a barrel. However, the particular hedging arrangement came with high risks: once oil fell below $100, the CPC had to pay the banks with no limits.

With oil prices plunging, CPC chairman Asantha del Mel acknowledged that the corporation was liable to pay the banks $300 million. News of the hedging arrangement provoked an outburst of recriminations, criticism and accusations of corruption. The banks have insisted that the deal was approved by cabinet and that the risks of the agreement were fully explained to the CPC and the government.

Seeking to capitalise on the scandal and widespread public hostility to high fuel prices, several opposition politicians and businessmen took out a fundamental rights petition in the Supreme Court, alleging irregularities and corruption in the functioning of the CPC under the Rajapakse administration. The petition called for the overturning of the hedging agreement and for fuel prices to be commensurate with world oil prices.

The court handed down an interim order on November 28 to temporarily suspend CPC payments to the banks under the hedging agreement. Already, by the time the petition was submitted, the CPC had paid $32 million and was about to hand over another instalment of $46 million. According to one estimate, the state-owned corporation could be liable for up to $1 billion by next May.

The judges called for the removal of de Mel as CPC chairman and the replacement of Petroleum Minister A.H.M. Fowzie. De Mel, an appointee and ally of Rajapakse, was suspended, but the president simply ignored the court directive to replace his minister.

Whether or not personal corruption was involved, the hedging agreement is symptomatic of Rajapakse's methods of rule. High oil prices had created a major political problem for the government. If the increases were passed on, Rajapakse, who is also finance minister, risked angry protests over rising transport prices. If prices were kept down through increased subsidies, there would be a crisis in the government finances, which were already burdened by huge military expenditures. No doubt the hedging arrangement seemed like an ideal way out, despite the high risks involved.

The agreement appears to have been rushed through by Rajapakse and his close associates without proper scrutiny by appropriate authorities. The deal was not presented to the CPC board of directors and, at this stage, it is not clear if cabinet approved the final draft. Lurching from one crisis to the next, Rajapakse simply pushed through what appeared to be immediately expedient to plug holes in the government's finances.

The Supreme Court hearing last week revealed the extent to which fuel taxes were subsidising the government budget. The judges instructed the Treasury to determine a price for petrol based on a benchmark of $56.05 a barrel and government taxes of no more than 100 percent. The treasury's submission made clear that, at the current price of 122 rupees a litre, the CPC's total costs and profit margin came to 48.77 rupees a litre. The remaining 73.23 rupees went into the government coffers via seven different levies.

The Supreme Court said the levies had all been imposed by executive order, were "unreasonable and arbitrary", denied the people "the equal protection of the law", and "excessive prices have a serious impact on the cost of living". The judges accepted a treasury formula that slashed the number of levies from seven to three and ordered that petrol prices be reduced to 100 rupees as of midnight on December 17.

The ruling provoked a bitter government reaction, with veiled accusations that the Supreme Court was undermining the government's communal war against the LTTE. Just a week earlier, Rajapakse attempted to pre-empt the decision by declaring his government was "not going to get trapped in price formulas". Speaking of the petitioners, he said: "They go to the courts to get taxes reduced. What is the difference between them and the [LTTE] terrorists who want to bring down this government?"

The Supreme Court has issued a number of recent rulings that have cut directly across the path of the Rajapakse administration. The most significant court order directed the government to establish the Constitutional Council, as provided by the country's constitution, to oversee a broad range of appointments, including commissions to supervise the administration of police, public service, judiciary and elections. Rajapakse has blocked the establishment of the body for more than three years and used his sweeping presidential powers to install his allies in key positions throughout the state bureaucracy.

Various commentators in the Colombo press have praised the Supreme Court decisions as defending ordinary working people and reining in the arbitrary powers of the Rajapakse government. An editorial in the *Sunday Times* last weekend likened the rulings to the role of the Pakistani judiciary and legal profession in the ousting of the military strongman President Pervez Musharraf.

The Supreme Court, however, is not acting in the defence of the living standards and democratic rights of working people. Rather, its decisions reflect the concerns of sections of the ruling elite that Rajapakse is concentrating power in his hands and using the executive president's powers to take arbitrary decisions outside of parliamentary oversight. While all the major political parties in Colombo back the renewed communal war, there are fears that Rajapakse's increasingly autocratic rule will provoke popular opposition over the social impact of the conflict and deepening global recession.

At present the Sri Lankan judiciary is in recess until January 5. If the government refuses to abide by the Supreme Court decision, the confrontation could spiral into a full-blown constitutional crisis.