

1955

Present : K. D. de Silva, J.

THE CEYLON COCONUT PRODUCERS CO-OPERATIVE
SOCIETIES UNION LTD., Petitioner, and L. G.
WEERAMANTRY *et al.*, Respondents

*S. C. Application 140 of 1954—In the matter of the
Application for a Writ in the nature of Certiorari
and Prohibition*

*Co-operative Societies Ordinance (Cap. 107)—Section 45—Rule 38 (14)—“ Legal
practitioner ”.*

Rule 38 (14) of the Co-operative Rules of 1950 provides : “ In proceedings
before the Registrar or an arbitrator or arbitrators no party shall be represented
by a legal practitioner. ”

Held, that an Advocate who has ceased to practise as a lawyer for such a
long period as eighteen years cannot be regarded as a legal practitioner within
the meaning of the Rule. The fact that he is entitled to practise as a lawyer
at any time does not affect the position.

Obiter : There is no valid objection to a legal practitioner who is a member of
the Committee or an office-bearer of a Co-operative Society representing that
Society in his capacity as a member of the Committee or an officer-bearer.

APPPLICATION for a writ in the nature of *Certiorari* and Prohibition.

E. R. S. R. Coomaraswamy, for the petitioner.

D. S. Jayawickrama, Q.C., with *H. L. de Silva*, for the 2nd respondent.

Cur. adv. vult.

September 9, 1955. K. D. DE SILVA, J.—

The petitioner and the 2nd respondent are Co-operative Societies, duly registered under the provisions of the Co-operative Societies Ordinance (Cap. 107). A dispute touching the business of these two Societies having arisen the matter was referred to the Registrar of Co-operative Societies for decision in terms of Section 45 of the Ordinance. On or about the 14th February, 1954, the Registrar referred this dispute for disposal to the 1st respondent as arbitrator. When the matter came up for inquiry before the 1st respondent on the 3rd day of March, 1954, Mr. S. W. R. D. Bandaranaike, a committee member of the 2nd Respondent Society appeared before him and informed him that he had been appointed to represent the 2nd respondent. The petitioner objected to the 2nd respondent being represented by Mr. Bandaranaike, on the ground that he was a legal practitioner, being an advocate of the Supreme Court. This objection was based on Rule 3S (14) of the Co-operative Rules of 1950. The 1st respondent overruled the objection. Thereafter the petitioner made this application for a writ in the nature of *Certiorari* and Prohibition.

At the hearing of this application Mr. Coomaraswamy conceded that he was not entitled to apply for a writ of *Certiorari* and restricted the application to a writ of Prohibition. The Rule 3S (14) reads as follows :—

“ In proceedings before the Registrar or an arbitrator or arbitrators no party shall be represented by a legal practitioner. ”

Mr. Bandaranaike has stated that he is not a legal practitioner although he is an advocate of this Court. He has not practised his profession for a period of 18 years. For the purpose of this argument, Mr. Coomaraswamy while conceding that Mr. Bandaranaike is not in active practice, invited the ruling of this Court on the following two points :—

(1) Is a lawyer who is not actively practising his profession a legal practitioner within the meaning of rule 3S (14) ?

(2) Is a legal practitioner who is also a member of the Committee or an office-bearer of a Co-operative Society entitled to represent that Society in arbitration proceedings under Section 45 of the Co-operative Societies Ordinance (Cap. 107) as amended by Acts Nos. 21 of 1949 and 17 of 1952 ?

The 1st Respondent held that Mr. Bandaranaike was a legal practitioner although he is not in active practice, because his name appears on the role of Advocates and he has a right to appear in Courts of Law. He further held that Mr. Bandaranaike was entitled to represent the 2nd respondent because he was seeking to do so not in his legal capacity but as a member of the Committee of the 2nd Respondent Society. I am unable to agree with the 1st respondent's view that Mr. Bandaranaike is a legal practitioner within the meaning of Rule 3S (14). The word “ practise ” is defined in the “ Oxford Concise Dictionary ” as “ to

perform habitually " " to exercise a profession " and gives as examples practising Doctor and practising Barrister as opposed to a retired Doctor or Barrister or one who is merely qualified as such. " Practitioner " is defined as " one engaged in the practice of any art, profession or occupation ". Mr. Bandaranaike who has ceased to practise as a lawyer for such a long period as eighteen years cannot therefore be regarded as a legal practitioner within the meaning of Rule 3S (14). The fact that he is entitled to practise as a lawyer at any time does not affect the position. Whether a person qualified to practise a profession is or is not a practitioner of that profession is a question of fact to be decided on the circumstances of each case. This disposes of the 1st point raised by Mr. Coomaraswamy. For the purpose of this case it is not necessary to give a ruling on the 2nd point raised by him. I might however observe that I see no valid objection to a legal practitioner who is a member of the Committee or an office-bearer of the Co-operative Society representing that Society not in the capacity of a lawyer but in his capacity as a member of the Committee or an office-bearer. I therefore dismiss the application with costs.

Application dismissed.
