

1967 Present : T. S. Fernando, A.C.J., Tambiah, J.,
and Alles, J.

In re U. BATUVANTUDAVE

*S. C. No. B 52 of 1967—In the matter of an application by
Upali Batuvantudave for readmission and re-enrolment as an
Advocate of the Supreme Court*

*Advocate—Name struck off roll of Advocates—Readmission on proof of re-establishment
of character—Whether recall to English Bar is condition precedent if he was
called to that Bar.*

The applicant had been called to the English Bar and was subsequently enrolled as an Advocate in Ceylon on August 4, 1932. His name was struck off the Roll of Advocates on October 8, 1937, because he was convicted of certain offences in the District Court of Colombo on June 19, 1936. About 13 years after he was disbarred, his application for readmission as an Advocate was dismissed on April 5, 1950. The present application for readmission was presented by him more than 17 years after the rejection of the first. There was sufficient proof that he expiated his offences and re-established his character.

Held, that the applicant's name should be restored to the Roll of Advocates. It was not a pre-condition to his readmission that he should have been recalled to the English Bar.

THIS was an application by the petitioner for readmission and re-enrolment as an Advocate of the Supreme Court.

E. B. Wikramanayake, Q.C., with *M. Rufeek*, for the applicant.

A. C. M. Ameer, Q.C., Attorney-General, with *M. Kanagasunderam*, Crown Counsel, as *amicus curiae* on notice from the Court.

A. H. C. de Silva, Q.C., with *E. R. S. R. Coomaraswamy* and *Desmond Fernando*, for the General Council of Advocates, as *amicus curiae* at the instance of the Court.

Cur. adv. vult.

December 11, 1967. T. S. FERNANDO, A.C.J.—

The applicant who had been called to the English Bar was admitted and enrolled as an Advocate of this Court on August 4, 1932. Rule 51 (as it then stood) of the Rules set out in the Second Schedule to the Courts Ordinance permitted persons called to the English Bar to be so admitted and enrolled. He was convicted on June 19, 1936 in the District Court of Colombo on charges which alleged that he had committed "very serious offences involving gross fraud in each". His name was struck off the Roll of Advocates on October 8, 1937. Some thirteen years after his disenrolment he applied to the Court for re-admission as an Advocate, and this Court, having given the matter very careful consideration, dismissed his application on April 5, 1950—see *In re Batuvantudave*¹. This second application for readmission has been presented more than 17 years after the rejection of the first, and nearly a third of a century after the disenrolment.

In an affidavit attached to his petition the applicant sets out the manner in which he has since his conviction by the court and subsequent disenrolment from the profession led an honest and industrious life devoting his time to religious and cultural pursuits. We must take note also of the fact that during this period he had been elected to the country's then legislature, the State Council, and served as a member thereof for some seven years. To this affidavit he has attached a number of certificates from men who have held high and distinguished office in this Country, certificates which go to prove that the applicant has expiated his offences and re-established his character. In these circumstances he is entitled to a favourable reception by us of his present application.

Where an advocate had been convicted of cheating and had subsequently been disenrolled, this Court,—(see *In re Seneviratne*²)—while it refused readmission where an application therefor had been made even before five years had elapsed since disenrolment, however accepted the proposition that it had power to readmit when an applicant has expiated his offence and redeemed his character. While the present applicant's earlier attempt to gain readmission, although made some thirteen years after disenrolment, failed, we have to remember that thirty years have now passed since the day the applicant lost his right to practise his profession in our Courts. He is said to be 57 years of age today, and the offences which entailed the loss of his professional rights were committed in 1935 when he was but 25 years old.

It is not clear whether he intends actively to pursue a professional career, but in regard to our inquiry relative thereto, we have been referred by the learned Attorney-General to the observations of this

¹ (1950) 51 N. L. R. 513.

² (1928) 30 N. L. R. 299.

Court in *In re an Advocate*¹. The Court, while there affirming the view taken on an earlier occasion that "we should be very careful in admitting to the profession a man who has been guilty of a crime of dishonesty", went on to endorse the following opinion:—"But that is not to say that character once lost cannot be redeemed". In that case the Court also observed that it saw no reason why the intention of the applicant before it to continue his career as a teacher should stand in the way of his readmission to the profession of advocates.

A point touching procedure did at one stage of the hearing cause us some concern. As the applicant came to be admitted here by virtue of his call to the English Bar from which too we assume he has been disbarred, the question did arise in our minds whether a pre-condition to his readmission is not a recall to the English Bar. The learned Attorney-General and the learned Queen's Counsel who appeared on behalf of the General Council of Advocates both submitted that such a recall is not imperative, a submission endorsed by the applicant's counsel as well.

I might add that for the first time in the case of applications of this nature the Court invited the presence at the hearing of counsel on behalf of the General Council of Advocates, as we deemed it prudent to hear any submission the Council wished to make either for or against the application. Counsel who so appeared made no submission and offered no argument tending towards a rejection of this application. Nor indeed did the learned Attorney-General. In these circumstances we make order in this case directing a restoration of the name of the applicant to the Roll of Advocates of this Court.

TAMBIAH, J.—I agree.

ALLES, J.—I agree.

Application allowed.
