

(1990) 07 BOM CK 0033

In the Bombay High Court

Case No : Writ Petition No. 1704 of 1983

Colgate-Palmolive and others

APPELLANT

Vs

Dr. K.V. Swaminathan and another

RESPONDENT

Date of Decision : 19-07-1990

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 22
Patents, Designs, and Trade Marks Act, 1883 — Section 87
Trade and Merchandise Marks Act, 1958 — Section 133, 2, 48, 49(3)
Trade and Merchandise Marks Rules, 1959 — Rule 85
Trade Marks Act, 1938 — Section 28
Trade Marks Act, 1940 — Section 41
Trade Marks Act, 1955 — Section 74(3)

Citation : AIR 1991 Bom 111 : (1990) 3 BomCR 452

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Advocate : Virendra V. Tulzapurkar, instructed by M/s. Crawford Bayley and Co, for the Appellant; R.C. Master, for the Respondent

Judgement

1. The petitioner No. 2 are a public limited company incorporated under the Indian Companies Act No. VII of 1913 and are engaged in the business of manufacture and sale of tooth paste, cosmetics and toilet preparations. The petitioner No. 2 was incorporated in the year 1937 as a private company limited by shares. Subsequently, in the year 1978, it was converted into a public limited company and 60% of its capital is held by Indian shareholders, while the balance of 40% is held by petitioner No. 1. Petitioner No. 1 Company is incorporated under the laws of the State of Delaware, U.S.A. and also carries on business of manufacture and sale of tooth paste, cosmetics and toilet preparations. The petitioner No. 2 is an Indian Company for the purpose of both the Industries (Development and Regulation) Act, 1951 and the Foreign Exchange Regulations Act, 1971. The petitioner No. 2 are not a Company to which Part "A" of Chapter III of the Monopolies and Restrictive Trade Practices Act, 1969 applies.

The petitioner No. 1 are world renowned manufacturers of tooth paste, a variety of cosmetics and toilet preparations. The petitioner No. 1 Company are generally known as Colgate-Palmolive and the products are sold under various trade marks, word marks, label marks and as well as device marks which have been registered as trade marks in several countries of the world including India. The petitioner No. 1 company till the year 1949 were exporting to India Colgate Dental Cream, Palmolive soap and various other goods bearing their trade marks. The petitioner No. 1 when incorporated in the year 1937 was a wholly owned subsidiary of petitioner No. 1. From the year 1949 onwards, in deference to the policy of Government of India, petitioner No. 2 commenced manufacturing of Dental Cream, Shaving Cream and other cosmetics and toilet products in this country and for that purpose, petitioner No. 1 made available the know-how, information and data and techniques in respect of products to be manufactured. The products manufactured by petitioner No. 2 include tooth brushes and shaving brushes.

2. The petitioner No. 1 had entered into a Registered User Agreement dated October 11, 1954 with petitioner No. 2 for using trade marks of petitioner No. 1 in India and which were set out in the Schedule to the agreement. Two supplemental agreement both dated February 11, 1957 were also entered into between the parties. Pursuant to the said agreements, applications were made to the Registrar of Trade Marks to register petitioner No. 2 as a Registered User and the applications were duly granted by the Registrar. After the amendment of the Trade and Merchandise Marks Act, 1958, a fresh agreement dated June 28, 1963 was entered into between the parties to confer the right of Registered User of the mark as petitioner No. 2. The applications were made by the parties to register petitioner No. 2 as Registered User of the Trade Marks and these applications were also granted enabling petitioner No. 2 to be considered as Registered User till June 27, 1970.

The parties entered into a fresh Registered User Agreement dated June 4, 1974 and in pursuance of this agreement, applications were filed by petitioners Nos. 1 and 2 on June 6, 1974 for recording petitioner No.2 as Registered User of the trade marks No. 86935 and 42 others. On September 17, 1974, further applications were filed in respect of trade marks No. 86932 and 10 others. The applications were taken on file by the Registrar of Trade Marks and the information sought by the Registrar was supplied from time to time by the petitioners. A supplemental agreement dated September 28, 1978 was also entered into between petitioners Nos. 1 and 2 modifying Cl. (10) of the Registered User Agreement dated June 4, 1974.

3. By letter dated February 15, 1979, the Registrar of Trade Marks informed the petitioners of the Government of India's proposal to refuse the Registered User registration applications on the ground that the registration sought by the petitioners was not in the interest of general public and the development of indigenous industry in India. The Registrar informed the petitioners that

Government of India has no objection to permit petitioner No. 2 to be registered as Registered Users provided the petitioners agreed to use the marks only on the products to be exported. The petitioners did not accept the suggestion and entered into correspondence with the Government. The Registrar then informed the petitioner by notice dated May 19, 1981 that the Government of India proposes to refuse the applications for registration in respect of the remaining trade marks and the refusal was on the ground that it is not in the interest of general public and the development of indigenous industry in India, and the manufacture of brushes including tooth brushes was reserved for exclusive development in Small Scale Sector. The petitioners sent reply on September 29, 1981 claiming that the grounds supplied by the Government are totally vague and inadequate and registration cannot be declined. The Government of India then gave hearing to the petitioners and thereafter on December 17, 1982, the Registrar intimated to the petitioners the order, rejecting the registration of petitioner No. 2 as Registered User, in accordance with the directions given by the Government. The grounds communicated for rejection of applications are:

1. The trade marks for which petitioner No. 2 is sought to be registered as Registered User are foreign owned brand name and it is the general policy of the Government not to allow use of foreign owned brand names on items meant for mass consumption like cosmetics and toiletries.
2. The Government had reserved manufacture of brushes including tooth brushes for exclusive development in the Small Scale Sector and there are number of units which are manufacturing various types of brushes and if petitioner No. 2 is allowed to use foreign brand names, then it would adversely affect the development of indigenous industry.

The order of rejection in accordance with S. 49(3) of the Trade and Merchandise Marks Act, 1958 communicated to the petitioners on December 17, 1982 is under challenge in this petition filed under Art 226 of the Constitution of India on July 2, 1983.

4. Before advertng to the submissions urged in support of the petition, it would be advantageous to briefly refer to the Legislative History leading to enactment of Ss. 48 and 49 of the Trade and Merchandise Marks Act, 1958 (hereinafter referred to as the "Act"). Prior to year 1940, there was no statutory law relating to trade marks in India and the law which was applicable to the subject was based on common law which was substantially the same as that applied in England before the passing of the first registration Act in the year 1875. For the first time, the provisions analogous to the registration of Registered User is found in S. 87 of the Patents, Designs and Trade Marks Act, 1983. That Section provided for entry of assignments and transmissions in Registers and prescribed that where a person becomes entitled by assignment, transmission, or other operation of law to a registered trade mark, the Comptroller shall on request, cause the name of such person to be entered as proprietor of the trade mark. The person for the time being entered in the Register of trade marks shall be

vested with rights appearing from such Register. In the subsequent Legislation passed in England between year 1905 to 1938, such provision do not find place but S. 28 of Trade Marks Act, 1938 provides for registration of Registered Users. This Section prescribes that the person other than the proprietor of a trade mark may be registered as a registered user thereof in respect of all or any of the services in respect of which it is registered and either with or without conditions or restrictions. Sub-section (5) of S. 28 then provides that if the Registrar is satisfied that the use of the trade mark would not be contrary to the public interest, then the Registrar may register the proposed registered user as a registered user in respect of the goods as to which he is so satisfied.

The statutory provision in respect of trade marks was first enacted in India in the year 1940 and S. 41 of the Trade Marks Act, 1940 provides for application for registration as Registered User. Sub-sec. (1) provides for application by the petitioner and the proposed registered user and the documents which are to be annexed to such application. Sub-sec. (2) of S. 41 of the Act provides that when the requirements of sub-sec. (1) are complied with and if the Registrar is satisfied that in all the circumstances the use of the trade mark by the proposed registered user would not be contrary to the public interest, then the Registrar may register the proposed registered user as a registered user in respect of the goods to which he is so satisfied. The provisions S. 41 of the Trade Marks Act, 1940 are almost identical to that of S. 28 of the Trade Marks Act, 1938 prevalent in England. The Trade Marks Act, 1940 was repealed by the Trade and Merchandise Marks Act, 1958 and which came into force from November 23, 1959. Before setting out the provisions of S. 48 which deals with the topics of registered users and S. 49 which deals with the topic of application for registration as registered user, it would be proper to make reference to the definition of expressions "permitted use" and "registered user" in S. 2(m) and (s) of the Act. The expression "registered user" means a person who is for the time being registered as such under S. 49 and expression "permitted use" in relation to a registered trade mark means the use of the trade mark by a registered user of the trade mark in relation to goods for which he is registered as registered user. S.48, inter-alia, prescribes that the person other than the registered proprietor of a trade mark may be registered as a registered user thereof in respect of any or all of the goods in respect of which the trade mark is registered but otherwise than as a defensive trade mark. The Section enables the Central Government to make rules and provide that no application for registration shall be entertained unless the agreement between the parties complies with the conditions laid down in the rules for preventing trafficking in trade marks. Sub-sec.(1) of S.49 provides that the registered proprietor and the proposed registered user shall jointly apply in writing to the Registrar for registration and the application shall be accompanied by (a) an agreement in writing entered into between the registered proprietor and the proposed registered user, (b) an affidavit by the registered proprietor giving particulars of the relationship between the parties, stating the goods in respect of which registration is

proposed, stating the conditions or restrictions, if any, and stating whether permitted use is for a fixed period or without limit of period. Sub-sec. (2) of S. 49 then provides that when such requirements are complied with, the Registrar shall forward the application together with his report to the Central Government. Sub-sec. (3) of S. 49 sets out that the Central Government having regard to all the circumstances of the case and to the interests of the general public, and development of any industry, trade or commerce in India, may direct the Registrar to refuse the application or to accept the application either absolutely or subject to the conditions, restrictions or limitations which the the Central Government may think proper to impose. Sub-sec. (4) of S.49 demands that the Registrar shall dispose of the application in accordance with the directions issued by the Central Government under sub-sec. (3). The change effected between the provisions of S.41 of Trade Marks Act, 1940 and S. 49 of the present Act is two-fold. In the former Act, the decision as to whether the application for being registered as registered user should be granted or otherwise was left to the Registrar of Trade Marks, while in the present Act, the decision has to be taken by the Central Government and the Registrar is merely required to dispose of the application in accordance with the decision and direction of the Central Government. The second change is that while in the former Act, the Registrar of Trade Mark had to bear in mind all the circumstances of the case and to enquire whether registration would not be contrary to the public interest, in the present Act, the Central Government can take into consideration all the circumstances of the case and the interest of the general public and the development of the industry, trade or commerce of India.

5. The Central Government in exercise of powers conferred by S. 133 of the Act read with S. 22 of the General Clauses Act, 1897 have framed Rules known as the Trade and Merchandise Marks Rules, 1959. R. 85 deals with the topic of consideration of the application for registration as registered user by the Central Government and it, inter-alia, provides that the Central Government shall consider whether the application should be allowed having regard to the matter specified in sub-sec. (3) of S. 49 and in doing so may take into account all or any of the following matters :

- (1) whether the permitted use if allowed would contravene the policy of the Act which is to prevent trafficking in trade marks;
- (2) whether the registered proprietor has registered the trade mark without any bona fide intention to use it in relation to his goods in the course of trade or solely or mainly for the purpose of permitting other to use it under agreement for registered user; and
- (3) whether the registered proprietor has acquired title to the trade mark by assignment without any bona fide intention to use it in relation to his goods in the course of trade or solely or mainly for the purpose of permitting others to use it under agreement for registered user.

Explanation I and Explanation II then prescribes what should be the consideration for determining the bona fides of the proposed registered proprietor. From these statutory provisions, it is clear that the Government while examining the application under sub-sec. (3) of S. 49 has to bear in mind all the circumstances of the case and the interest of the general public and the development of indigenous industry.

6. Shri Tulzapurkar, learned counsel appearing on behalf of the petitioners, submitted that the impugned order turns down the application on two counts: (1) general policy of the Government not to allow the use of foreign owned brand names on items of mass consumption like cosmetics and toiletries, and (2) in case of brushes including tooth brushes, their manufacture has been reserved for exclusive development in the Small Scale Sector and the use of foreign brand names would adversely affect the development of indigenous industry. The learned counsel urged that both these grounds are entirely unrelated to what is prescribed as relevant consideration under sub-sec. (3) of S. 49 and R. 85. The learned counsel urged that the decision to turn down the application is based entirely on alleged policy of Government and the relevant consideration are totally ignored. It was submitted that petitioner No. 2 Company is a Public Limited Company with 60% of capital held by Indian shareholders and thus the Company is an Indian Company. The marks "Colgate" and "Palmolive" constitute the corporate name, trade name and trading style of the Company and incidentally these also happen to be used as trade marks, and, therefore, the Company has right to use its own corporate trade mark on the grounds produced by it. It was also contended that by virtue of strict control exercised by the registered proprietors, the petitioner No. 2 Company is maintaining a very high standard in the quality of products and that their marketing under the known trade marks such as those sought to be registered is very essential to prevent the spurt in the sale of spurious goods. Shri Tulzapurkar submitted that refusal of registration in respect of the marks already used for over several years would amount to disposition of substantive rights and would lead to very unusual results, as there is danger of marks being removed for non-user. The principal contention urged on behalf of the petitioners is that the Central Government ignored the interest of general public and declined registration by taking into consideration the interest of only Small Scale Sector and in whose favour, the Government claims that the manufacture of brushes has been reserved. Shri Tulzapurkar also submitted that neither the impugned order, nor the return filed by Shri R. A. Acharya, Controller General of Patents, Designs and Trade Marks, on July 17, 1990 indicate any material or date to support the claim that the registration is refused by taking into consideration the development of Small Scale Sector. Shri Master, learned counsel appearing on behalf of the respondents, on the other hand, submitted that the order of refusing registration is barred on the policy decision taken by the Central Government and it is not permissible in the exercise of writ jurisdiction to disturb the conclusion. It was also urged that the Central Government desired to protect the interest of Small

Scale Sector and it is the policy of the Central Government not to permit use of foreign owned brand names like "Colgate" and "Palmolive".

7. The impugned order recites that it is the general policy of the Government not to allow the use of the foreign owned brand names like "Colgate" and "Palmolive". There is considerable merit in the submission of Shri Tulzapurkar that the Act makes no distinction between the foreign or Indian brand names, apart from the fact that the foreign owned brands names are permitted to be used on items of mass consumption. The return does not set out when the policy decision was taken and whether it is in force even now. It is well-known that the policy decision changes from time to time and judicial notice can also be taken that several foreign owned brand names like, "Suzuki", "Pepsi" etc. are permitted to be used in respect of items of mass consumption. Indeed, the policy of the Government is announced by answers given by Minister to a star question on the floor of the Parliament that hybrid brand names like "Maruti Suzuki" and "Pepsi Lahore" are permissible for use on items of mass consumption. It is, therefore, difficult to accept the conclusion that it is the general policy of the Government not to allow use of foreign owned brand names. Apart from this consideration, it cannot be overlooked that sub-sec. (3) of S. 49 does not entitle the Central Government to reject registration on the basis of general policy of the Government. What sub-sec. (3) provides is that the registration can be refused if it is not in the interest of general public. Now, expression "interest of general public" under sub-sec. (3) Of S.49 must have nexus or relation to the object for which the Act was enacted. The preamble to the Act provides that legislation was passed to provide for the registration and better protection of trade marks and for the prevention of the use of fraudulent marks on merchandise. S. 48(1) also recites that the application for registration shall not be entertained unless the agreement between the proprietor and the registered user complies with the conditions laid down in the rules for preventing trafficking in trade marks. It is, therefore, obvious that while examining whether the registration would affect the interest of general public, the Central Government must restrict the enquiry to the effect on the general public of the fact of registration of registered user in respect of the mark. The expression "interest of general public" does not entitle the Central Government to travel beyond the ambit of the Act and to take into consideration factors dehors the object of the Act and proceed to turn down the application.

Shri Tulzapurkar, in this connection, relied upon "Goschen Committee Report" which was submitted before enactment of Trade Marks Act of 1938 in England. The report, inter-alia, recites that it should be regarded as contrary to the public interest for this purpose that the proprietor of the trade mark should obtain or hold it merely for the purpose of trafficking in the mark. The report does indicate that the enquiry as to what is in the public interest must have reference or nexus to the object to be achieved under the Act and factors or circumstances which have no relation to the object of the Act cannot be imported for concluding that registration is not in the public interest.

8. Reference in this connection can be made to some decisions cited at the Bar. Mr. Justice Aickin of the High Court of Australia at Melbourne in the judgment reported in 1978 RPC 716 , Pioneer Electronic Corpn. v. Registrar of Trade Mark examined the ambit of expression "contrary to public interest" occurring in S. 74(3) of the Trade Marks Act, 1955. The learned Judge observed that the provision was copied from the United Kingdom Trade Marks Act, 1938. It was held that the fears entertained by the Registrar that the registered user's trade in goods bearing the mark might involve breaches of laws with respect to prices, taxation, exchange control and the like, relate to matters of "public interest" is not correct and justified. The learned Judge held that expression "public interest" must relate to the purposes of the Act and which is concerned with the use of the mark. The single Judge of the Calcutta High Court in the case of The J.B. Williams Co., INC and Another Vs. Registrar of Trade Marks and Others, held that the expression "interest of general public" in sub-sec. (3) of S. 49 of the Act must be limited to the relation or for the purpose for which the Trade and Merchandise Marks Act was promulgated. The Act was promulgated in order to provide for the registration and better protection of trade marks and for the prevention of the use of fraudulent marks on merchandise. The interest of the general public cannot be enlarged to any public interest in which the general public may be interested. I am in respectful agreement with the view taken by the single Judge of the Calcutta High Court.

The decision of the single Judge of the Calcutta High Court was carried in appeal and was set aside by Division Bench in the judgment reported in 1978-80 Industrial Property Law Reporter 9, Registrar of Trade Mark v. J. B. Williams and Co. Inc. It must be mentioned at once that before the Division Bench, the counsel appearing for proposed registered user stated that his client has no interest to seek the relief granted by the single Judge and, therefore, he was not interested in defending the appeal. The appeal was, therefore, heard by the Division Bench without any contest. The Division Bench set aside the decision of the single Judge holding that while it is permissible to look at the preamble of the Act for understanding the import of various clauses, full effect should be given to the express provisions of the Act even though they appeared to be beyond the terms of the preamble. The Division Bench held that the Courts could not start with the preamble for construing the provisions of the Act, though resort to it would be justified if the language used by the Parliament was ambiguous or too general. The Division Bench felt that there is no ambiguity in the language of S. 49(3) of the Act and, therefore, it was not permissible to construe it in the light of the preamble of the Act and the statement of objects and reasons for enacting it. The Division Bench then held that it was for the Central Government to consider whether particular policy was likely to promote the interest of general public or encourage the development of any industry, trade or commerce in India and it is not open for the Court exercising writ jurisdiction to disturb that conclusion. The conclusion of the Division Bench that resort is not permissible to the preamble of the Act to appreciate the exact ambit of various provisions of the

Act is not accurate in view of the decision of the Supreme Court in the case of R.S. Nayak Vs. A.R. Antulay, . The Supreme Court observed that reports of the Committee which proceeded the enactment of a legislation, reports of Joint Parliamentary Committee, report of a commission set up for collecting information leading to the enactment are permissible external aids to construction. The Supreme Court held that if the basic purpose underlying construction of a legislation is to ascertain the real intention of the Parliament, then the environment necessitating enactment of the legislation, and the object sought to be achieved cannot be denied to Court whose function is primarily to give effect to the real intention of the Parliament in enacting the legislation. The Supreme Court held that the modern approach has to a considerable extent eroded the exclusionary rule even in England. The conclusion of the Division Bench that it is not permissible for the Writ Court to disturb the decision of the Central Government on the issue of whether it is in the interest of general public or whether it is for the benefit of indigenous industry also cannot be accepted in every case, unless the decision sets out what factors were taken into consideration by the Central Government to reach such conclusion and whether the Central Government has enough data and material to warrant such conclusion. It is now well-settled that it is not open for the authority merely to communicate the conclusions by quoting the wording of the Section and decision must be supported by factors which were taken into consideration to arrive at such conclusion for the purpose of judicial review. A reference can be usefully made to the decision J.M.A. Industries Ltd. and Another Vs. Union of India and Another, . It was held that the administrative authorities exercising powers under statutory provisions should realise that whether they are issuing a show cause notice why a certain action should not be taken or are communicating the reasons for decisions, it is not sufficient merely to recite the language of the statutory provisions but it is also necessary that the actual facts on which the decision is based should also be indicated. The Delhi High Court was examining the challenge to the action of the Central Government in refusing application filed u/S. 49 of the Act and observed that the words "interest of the general public and the development of indigenous industry in India" cannot give a true idea as to what facts or circumstances or reasons arising out of their application could be described as coming under these phrases. The Delhi High Court held that irreparable loss would be caused to the applicant if specific facts are not furnished to enable the applicants to controvert the objection raised by the Central Government. It is, therefore, obvious that the order rejecting the application should not merely refer to the general policy of the Government or to the claim that the manufacture of brushes is reserved for exclusive development of Small Scale Sector. It is essential to produce material in support of the claim that the user of the trade marks by petitioner No. 2 would be against the interest of general public and it is also not in the interest of general public that user of the trade marks in respect of brushes would adversely affect the development of indigenous industry.

9. The Central Government must appreciate that the expressions "interest of general public" and the "interest of indigenous industry" are not the magic words and the Central Government must support the conclusion by requisite material. It must be remembered that petitioner No. 2 are users of trade marks "Colgate" and "Palmolive" for last over several years. Initially, the products manufactured by petitioner No. 1 were imported in this country and subsequently, petitioner No. 2 are manufacturing the products and selling it under the trade marks of petitioner No. 1 in view of the agreement of registered user. It is not in dispute that these marks are user from the year 1949 onwards and the Registrar, on more than one occasion, has registered petitioner No. 2 as a registered user of the marks. To deprive petitioner No. 2 from this advantage on vague and undisclosed grounds is not permissible. It also cannot be overlooked that in case petitioner No. 2 is prevented from using the trade mark, then there is every danger that the marks of petitioner No. 1 which are registered in this country would be removed from the register for non-user. While considering whether the registration of petitioner No. 2 as registered user and thereby enabling petitioner No. 2 to use the trade mark would be against the interest of general public, it must be borne in mind that the interest of a particular sector or a segment of people is not only to be taken into consideration. As regards the ground that the manufacture of brushes has been reserved for exclusive development in the Small Scale Sector, the contention cannot be accepted because petitioner No. 2 has been given permission under the (Industrial Development and Regulation) Act to manufacture brushes. It was open for the Central Government not to grant licence under I.D.R. to petitioner No. 2 for manufacture of brushes, but after grant of licence it is not permissible to deprive them of user of trade mark by declining application u/S. 49(3) of the Act. I enquired from Mr. Master as to whether respondents are in possession of any material or data to indicate what is the demand for brushes including tooth brushes in the country and whether Small Scale Sector is in a position to meet such demand. I also enquired whether the Small Scale Sector would be able to maintain the price level of the brushes and the tooth brushes. Shri master stated that he is not in a position to make any statement on this aspect. Unless and until the Government has relevant data to reach the conclusion that it is possible for the Small Scale Sector to meet the demands of the customers in respect of tooth brushes and allowing user of foreign brand name in respect of tooth brushes would adversely affect the development and existence of indigenous industry, the application of proposed registered user could not be summarily thrown out. Even assuming that the conclusion of the Government that user of foreign brand name in respect of tooth brushes would affect the development of industry is correct, still the application could not have been thrown out and at the most a restriction could have been imposed in respect of the user of the trade marks on tooth brushes. The rejection of the application for user of trade marks for all commodities manufactured by petitioner No. 2, therefore, was clearly erroneous. The conclusion of the Central Government as reflected in the order that the quality of the products is of no relevance is also not accurate. Sub-sec. (3) of S. 49

demands that all the circumstances of the case are to be examined and the fact that trade marks are allowed to be used for over several years and the goods manufactured by petitioner. No. 2 are of quality and acquired reputation in the market could not have been overlooked. In these circumstances, the order passed by the Central Government declining grant of applications of petitioners Nos. 1 and 2 cannot be sustained and as the order passed by the Central Government and communicated by the Registrar of Trade Marks is vitiated, it is necessary to set aside the order and direct the Central Government to re-examine the applications and arrive at a fresh conclusion.

10. Accordingly, petition succeeds and the order dated December 14, 1982 communicated by the Registrar of Trade Marks and copy of which is annexed as Ex."I" to the petition is set aside and respondent No. 2 is directed to reconsider the applications jointly filed by petitioners Nos. 1 and 2 and arrive at a fresh decision. The respondent No. 2 may permit the petitioners to file additional material, if any, in support of their claim and is also at liberty to call upon the petitioners to produce further material which the Government deems proper. The Government should take decision within a period of three months from the date of service of this writ. In the circumstances of the case, there will be no order as to costs.

11. Petition allowed.