

GAHC010003622023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/162/2023

M/S SUMOTEK INNOVATION PVT. LTD AND ANR.
A PRIVATE LIMITED COMPANY,
INCORPORATED UNDER THE COMPANIES ACT, 1956,
REPRESENTED BY SRI GAESH SWAMY,
SON OF LATE ANGU SWAMY,
ONE OF ITS DIRECTORS/ OFFICER,
DULY AUTHORIZED BY ITS BOARD OF DIRECTORS,
HAVING ITS OFFICE AT 602, WING B, DLH METRO VIEW,
PLOT NO. 195 PT J.P. ROAD,
OPPOSITE SHANKAR NAGAR,
ANDHERI (W), P.O. MUMBAI- 400058,
MAHARASHTRA.

2: GIRISH MANOHARRAO BACHATE
SON OF MANOHARRAO BACHATE

RESIDENT OF PARIJAT COLONY

NEAR PRAKASH NAGAR
BARSHI ROAD

P.O.- LATUR- 413512
REPRESENTED BY SRI GANESH SWAMY
THE DULY AUTHORIZED ATTORNEY

VERSUS

ASSAM POWER DISTRIBUTION CO. LTD. A
REPRESENTED BY ITS MANAGING DIRECTOR,
HAVING ITS REGISTERED OFFICE AT BIJULI BHAWAN,
A.T. ROAD, PALTAN BAZAR, P.O.- GUWAHATI- 781008,
DISTRICT- KAMRUP(M), ASSAM.

Advocate for the Petitioner : M. DEY

Advocate for the Respondent : SC, APDCL

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 18.01.2023

Heard Mr. J. C. Gaur, learned counsel for the petitioners and Mr. B. Choudhury, learned standing counsel for the respondent APDCL by filing this writ petition under Article 226 of the Constitution of India.

2. The petitioner no. 2 claims to have a certificate for patent No. 208216 issued under the Patents Act, 1970 for prepaid/postpaid Electricity Supply Machine, which was granted on 13.05.2004 and is valid for up to 20 years.

3. The learned counsel for the petitioners has submitted that the respondent has floated tender for purchasing smart electricity meters through which the electricity supply would be routed, which will enable the authorities to supply electricity energy on prepaid and postpaid basis to the consumers through a smart meter.

4. The learned counsel for the petitioners has submitted that the only relief which the petitioners are presently praying for is to restrain the respondent authority from procuring any electricity supply device which would cause infringement of the patent rights available to the petitioner.

5. The learned standing counsel for the respondent has submitted that the tender has been floated by the respondent for purchasing smart meters using technology which would not violate the patent right of the petitioners.

6. To show that there are other patent holders for smart meters, the learned standing counsel for the respondent has made reference to the information available in the internet to show that for a smart electricity meter, patent has been granted, amongst others, to one Hardik Chothani under patent No. 219434.

7. Having regard to the nature of the dispute raised in the petition, this Court is of the considered opinion that under Section 48 of the Patents Act 1970, the patentees have a right to prevent the third parties, who do not have consent of the patentee from the act of making, using, offering for sale, selling or importing such product in India. Such rights can be enforced through the redressal process, as prescribed under the Patents Act, 1970 by approaching the competent Court having jurisdiction. It is not in dispute that the Court having jurisdiction would also have the power to pass an appropriate interim order as it may deem fit and proper.

8. In this present stage, there is no record to show the procurement of smart meter, which is proposed to be made by the respondent, would be in contravention to the patent granted to the petitioner no.2.

9. Nonetheless, if the petitioners apprehend that their patent right would be infringed, it would be open to the petitioners to approach the competent Court having jurisdiction in the matter. Therefore, as alternative and efficacious judicial remedy is provided for under the Patents Act 1970, this Court is disinclined to invoke the power under Article 226 of the Constitution in the

present case.

10. Accordingly, in view of the observations made above the present writ petition stands closed with liberty to the petitioners to approach the jurisdictional Court.

JUDGE

Comparing Assistant