

29.09.2022
Ct. 5
D/L 14
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WPA 22109 of 2022

Dys Impex Private Limited & Anr.

-Vs-

State of West Bengal & Ors.

Mr. Sabyasachi Chowdhury,
Mr. Rajarshi Dutta,
Mr. V.V.V. Sastry,
Mr. Vidhi Sharma

... for the petitioners

Mr. Amal Kumar Sen,
Mr. Jaladhi Das

... for the State

Mr. Kanishk Sinha

... private respondent in person

The petitioners claim to be in the business of manufacturing and sale of battery operated electric cycle rickshaws. The petitioners are aggrieved by the complaints received from the dealers with regard to non-registration of the e-vehicles of the petitioners by the authorities.

The petitioners' case is that the Registering Authority cannot refuse to register the petitioners' e-vehicles on the basis of the Alipore Court order since the parent order of injunction passed by a learned Single Judge of this Court was modified and vacated by the subsequent order. The parent order was of 17th

June, 2015, which was modified on 18th July, 2018. The modification was on an application made by the petitioners before this Court.

Although the charge of suppression has been levelled by the private respondent, who claims to be the patent-holder of the technology of the e-vehicles, against the petitioners, the only question which is to be seen is whether the private respondent patent-holder continues to enjoy an injunction in respect of the patent in the technology of the e-vehicles and is put in a position to restrain the registration of the petitioners' e-vehicles on that basis.

The records show that by an application for modification filed by the petitioners before this Court, the learned Judge recalled and modified the initial order of injunction in favour of the private respondent which was passed on 17th June, 2015. The relevant part of the order dated 18th July, 2018 states that the patent does not involve any novel invention or enhancement/advancement of existing technology and can simply be treated as duplication of the known devices. The order also records that the private respondent (plaintiff in the suit being CS No. 388 of 2014) could not produce any materials to show that the private respondent had actually used the patented invention in India. The order further records that the petitioners (being the applicants who sought for

modification) were already in trade and were manufacturing and selling their battery operated electric cycle rickshaws. The order ends with the observation of the learned Judge that the Court was prima facie satisfied with regard to the invalidity of the patent. The petitioners/applicants were, however, directed to file an undertaking by way of an affidavit to pay damages to the plaintiff/private respondent before the Court in the event the plaintiff succeeds in the suit.

By later order dated 27th August, 2018, the learned Judge was pleased to record that the petitioners/applicants had not complied with the order dated 18th July, 2018 and that the interim order initially granted to the plaintiff on 17th June, 2015 would continue till compliance of the order by the petitioners.

The relevant pleadings and documents in the present writ petition indicate that the petitioners thereafter filed affidavits of undertaking on 31st July, 2018 and also in July, 2022 in terms of the direction of the learned Judge in the order dated 18th July, 2018.

It is significant that the order of the Alipore Court dated 24th February, 2020 does not refer to the orders of 17th June, 2015 and 18th July, 2018, but instead proceeds to grant an injunction in favour of the plaintiff (private respondent before this Court) and restrain the respondents from repeating any infringement of the

plaintiff's patent. Significantly, the petitioners in the present writ petition were not parties to the said proceeding in T.S. No. 27 of 2018.

It is also relevant that the petitioners made a representation before the Authority on 11th July, 2022 bringing the relevant facts on record but continued to face inaction on the part of the Registering Authorities in terms of the order of the Alipore Court.

The other orders shown to the Court including in PIL dated 17th August, 2018 do not indicate any existing embargo on the Registering Authorities to register e-vehicles of concerned entities. The affidavit of undertaking shown to the Court subsequent to the order passed by the learned Judge on 18th July, 2018 makes it clear that the observations in the said order revived upon the petitioners furnishing those undertakings by way of affidavits. The undertaking in essence is for damages in the event the private respondent succeeds in the suit and for filing of accounts. The accounts have been filed till July, 2022.

This Court is hence not inclined to accept the contentions of the private respondent to enjoy with certain rights for restricting the petitioners from registering their e-vehicles. The order of 18th July, 2018 makes it clear that the petitioners, who had applied for modification of the initial order of injunction are free to

have their e-vehicles registered in accordance with the provisions of The Motor Vehicles Act, 1988.

The private respondent shall be at liberty of seeking appropriate relief under the law. The Registering Authorities in the meantime are directed to proceed with registration of the e-vehicles of the petitioners in accordance with the applicable statutory provisions.

WPA 22109 of 2022 is disposed of by directing the respondent authorities to forthwith register the electric/battery operated vehicles including e-rickshaws manufactured, marketed and soled by the petitioners.

(Moushumi Bhattacharya, J.)