

23.08.2023
rc/ct.no.10
Item No.165

WPA No. 12992 of 2023
M/s AVL Electric Vehicles Private Limited
Versus
The State of West Bengal & Ors.

Mr. Sanjib Dutta ...for the petitioner

Mr. Gunjan Sinha @ Kanishk Sinha
....respondent No.6 in person

Mr. Pantu Deb Roy
Mr. Pannalal Bandopadhyay ...for the State

Heard learned counsels for the parties.

The Memos issued on January 13, 2022 and July 13, 2022 are assailed in the writ petition.

Placing reliance on the affidavit submitted by him, the 6th respondent submits that he entered into an agreement with AVL Electric Vehicles represented by its proprietor Mr. Amit Makhija on July 21, 2019. Subsequently, the proprietorship firm has been converted into M/s AVL Electric Vehicles Pvt. Ltd., a company registered under the Companies Act, 2013 but the signatory of the said company is the same person being Mr. Amit Makhija. Therefore, the petitioner cannot ignore the agreement merely on account of change of status of the company.

The 6th respondent further submits that an agreement entered into under Section 108 of the Patents Act can be adjudicated by the Civil Court and not by this Court in exercising extra ordinary jurisdiction under

Article 226 of the Constitution of India. Secondly, he has patent over the technology itself and not merely over any kind of battery.

Learned counsel for the petitioner submits that the earlier proprietorship firm being converted into the present petitioner's firm, the earlier firm does not exist at present.

Be that as it may, it *prima facie* appears from the agreement referred to by the 6th respondent that the agreement is in respect of the patent held by him in respect of fuel cell system and an efficient eco friendly vehicle mounted with fuel cell system. In the present writ petition, the petitioner submits that the battery manufactured by the petitioner is lead cell battery which is distinct and different from the battery manufactured by the patentee, i.e., the 6th respondent herein.

Therefore the agreement entered into by and between the parties is not relevant in the context of the present writ petition.

The memos issued on 13th January, 2022 and 13th July, 2022 have been assailed by the writ petitioner in the present writ petition. The memo dated 13th January, 2022 restricts registration of battery operated eco-friendly e-rickshaw in terms of the order passed in Title Suit No.27 of 2018 by learned Additional District Judge, 13th Court, Alipore on 24th February, 2020. The said order restrains the authority from registering the battery operated eco-friendly e-rickshaw till disposal of the suit.

The memo dated 13th July, 2022 allows registration of e-rickshaws manufactured by M/s. Mahindra & Mahindra Ltd.

It is submitted on behalf of the petitioner that the battery manufactured by the petitioner is lead cell battery which is distinct and different from the battery manufactured by the plaintiff in the title suit.

A co-ordinate Bench of this Court, in an order passed on 16th February, 2022 in WPA 2070 of 2022, has dealt with a similar issue and has directed the Transport Directorate, Government of West Bengal to instruct the concerned regional transport offices to grant registration to the e-vehicles manufactured by the petitioner therein subject to the said vehicles being different and distinct from the category forming the subject matter of the title suit.

The petitioner claims to be similarly circumstanced with the petitioner in the earlier writ petition since the battery manufactured by them is distinct and different from that of the battery which is the subject matter of the title suit.

The petitioner further submit that Rule 126 of the Central Motor Vehicles Rules, 1989 has been complied with by them.

Learned counsel for the 6th respondent seeks an order in terms of the order passed by the co-ordinate bench on 18th February, 2022 in modifying the earlier

order passed on 16th February, 2022. The order passed on 16th February, 2022 was modified to the extent that the registering authority shall be at liberty to consider all the relevant materials with regard to the pending proceedings in Title Suit No.27 of 2018 at the time of registration of the petitioner's e-vehicles.

The petitioner concedes to an order being passed in terms of the modified order passed by the co-ordinate Bench.

Learned counsel for the 6th respondent draws the attention of this Court to a judgment passed by a Division Bench of this Court on 2nd May, 2023 in FMA 623 of 2022 wherein the Hon'ble Division Bench has deprecated an application for special leave to appeal under Section 96 of the Code of Civil Procedure by the petitioner therein on the ground that the petitioner filed an application before the trial court under Order I Rule 10 of the Code for being added as a party respondent therein. The petitioner chose not to pursue the said application and approached the Hon'ble Division Bench under Section 96 of the Code. In the judgment under reference the Hon'ble Division Bench held that the appropriate course of action would be to pursue the application already made in Order I Rule 10 of the Civil Procedure Code before the trial Court. The ratio of the said judgment can be distinguished from the facts and circumstances of the present case wherein the petitioner

has not applied before the learned trial Court for being added as a party therein.

In view of the above, the writ petition is disposed of directing the Director, Transport Directorate, Government of West Bengal, being the 3rd respondent herein, to issue necessary direction upon the concerned regional transport offices to grant registration to the e-vehicles manufactured by the petitioner subject to the said vehicles being different and distinct from the category forming subject matter of the title suit pending before the learned Additional District Judge, 13th Court, Alipore and also subject to compliance with Rule 126 of the Central Motor Vehicles Rules, 1989 and all other formalities prescribed under the Act/Rules by the petitioner and also upon consideration of relevant documents to be placed by the petitioners before the authority. The registering authority shall be at liberty to consider all relevant material regarding the pending proceedings in the title suit No.27 of 2018 at the time of registration of the petitioner's e-vehicles.

The entire exercise should be completed within two months from the date of communication of this order.

With the above observations and directions this writ petition being WPA 12992 of 2023 is disposed of.

However, there shall be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh,J)