

More Retail Ltd Vs. The Excise Commissioner

More Retail Ltd Vs. The Excise Commissioner

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Court : Karnataka

Decided On : Jul-20-2021

Judge : P.B.Bajanthri

Appeal No. : WP 27610/2019

Appellant : More Retail Ltd

Respondent : The Excise Commissioner

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE20H DAY OF JULY, 2021 BEFORE THE HONBLE MR.JUSTICE P.B. BAJANTHRI WRIT PETITION NO.10639/2021 (EXCISE) C/W WRIT PETITION NOS.10013/2021, 10640/2021, 10642/2021, 10644/2021, 10645/2021, 27607/2019, 27608/2019, 27609/2019, 27610/2019, 27611/2019 AND276062019 (EXCISE) IN W.P.NO.10639/2021 BETWEEN: M/S. MORE RETAIL PRIVATE LIMITED (FORMERLY KNOWN AS MORE RETAIL LTD) A COMPANY INCORPORATED UNDER THE COMPANIES ACT, HAVING ITS REGISTERED OFFICE AT SKYLINE ICON, 86/92, 5TH AND6H FLOORS, NEAR MITTAL INDUSTRIAL ESTATE, ANDHERI KURLA ROAD, ANDHERI (E), MUMBAI, MAHARASHTRA - 400 059 REPRESENTED BY ITS AUTHORIZED SIGNATORY VIVEK. S., AGED ABOUT37YEARS, S/O MAHILNATH SHETTY PETITIONER (BY SRI. D.R. RAVISHANKAR AND LEX NEXUS, ADVOCATE) AND:

1. THE STATE OF KARNATAKA, EXCISE DEPARTMENT, GOVERNMENT OF KARNATAKA, VIKASA SOUDHA, AMBEDKAR VEEDHI, 2 BENGALURU - 560 001, REPRESENTED BY ITS SECRETARY.

2. THE EXCISE COMMISSIONER 2D FLOOR, TTMC A BLOCK, BMTC BUILDING, SHANTHINAGAR, BENGALURU - 560 027 3. DEPUTY COMMISSIONER (EXCISE), BENGALURU URBAN DISTRICT 5 BENGALURU - 560 038 ... RESPONDENTS (BY SRI. Y.D. HARSHA, AGA) THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENT TO EFFECT THE CHANGE OF NAME OF THE PETITIONERS COMPANY TO M/S. MORE RETAIL LIMITED TO M/S MORE RETAIL PRIVATE LIMITED IN THE LICENSE AT ANNEX-A PURSUANT TO THE APPLICATION (REPRESENTATION) DTD 1702.2021 VIDE ANNEX-E WITHIN A TIME TO BE STIPULATED BY THIS HONBLE COURT AND ETC., IN W.P.NO.10013/2021 BETWEEN: M/S. MORE RETAIL PRIVATE LIMITED (FORMERLY KNOWN AS MORE RETAIL LTD) A COMPANY INCORPORATED UNDER THE COMPANIES ACT, HAVING ITS REGISTERED OFFICE AT SKYLINE ICON, 86/92, 5TH AND 6TH FLOORS, NEAR MITTAL INDUSTRIAL ESTATE, ANDHERI KURLA ROAD, ANDHERI (E), MUMBAI, MAHARASHTRA - 400 059 REPRESENTED BY ITS AUTHORIZED SIGNATORY VIVEK. S., AGED ABOUT 37 YEARS, S/O MAHILNATH SHETTY PETITIONER (BY SRI. D.R. RAVISHANKAR AND LEX NEXUS, ADVOCATE) AND:

1. THE STATE OF KARNATAKA, EXCISE DEPARTMENT, 3 GOVERNMENT OF KARNATAKA, VIKASA SOUDHA, AMBEDKAR VEEDHI, BENGALURU - 560 001, REPRESENTED BY ITS SECRETARY.

2. THE EXCISE COMMISSIONER 2D FLOOR, TTMC A BLOCK, BMTC BUILDING, SHANTHINAGAR, BENGALURU - 560 027 3. DEPUTY COMMISSIONER (EXCISE), BENGALURU URBAN DISTRICT 1 BENGALURU - 560 026 ... RESPONDENTS (BY SRI. Y.D. HARSHA, AGA) THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO EFFECT THE CHANGE OF NAME OF THE PETITIONERS COMPANY TO M/S. MORE RETAIL LIMITED

TO M/S MORE RETAIL PRIVATE LIMITED IN THE LICENSE AT ANNEXURE-A PURSUANT TO THE APPLICATION (REPRESENTATION) DATED 17.02.2021 VIDE ANNEXURE-E WITHIN A TIME TO BE STIPULATED BY THIS HONBLE COURT IN THE ENDS OF JUSTICE AND EQUITY. IN W.P.NO.10640/2021 BETWEEN: M/S. MORE RETAIL PRIVATE LIMITED (FORMERLY KNOWN AS MORE RETAIL LTD) A COMPANY INCORPORATED UNDER THE COMPANIES ACT, HAVING ITS REGISTERED OFFICE AT SKYLINE ICON, 86/92, 5TH AND 6TH FLOORS, NEAR MITTAL INDUSTRIAL ESTATE, ANDHERI KURLA ROAD, ANDHERI (E), MUMBAI, MAHARASHTRA - 400 059 REPRESENTED BY ITS AUTHORIZED SIGNATORY VIVEK. S., AGED ABOUT 37 YEARS, S/O MAHILNATH SHETTY PETITIONER (BY SRI. D.R. RAVISHANKAR AND LEX NEXUS, ADVOCATE) 4 AND:

1. THE STATE OF KARNATAKA, EXCISE DEPARTMENT, GOVERNMENT OF KARNATAKA, VIKASA SOUDHA, DR.B.R. AMBEDKAR VEEDHI, BENGALURU - 560 001, REPRESENTED BY ITS SECRETARY.

2. THE EXCISE COMMISSIONER 2D FLOOR, TTMC A BLOCK, BMTc BUILDING, SHANTHINAGAR, BENGALURU - 560 027 3. DEPUTY COMMISSIONER (EXCISE), BENGALURU URBAN DISTRICT, BENGALURU - 560 027 ... RESPONDENTS (BY SRI. Y.D. HARSHA, AGA) THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO EFFECT THE CHANGE OF NAME OF THE PETITIONERS COMPANY TO M/S. MORE RETAIL LIMITED TO M/S MORE RETAIL PRIVATE LIMITED IN THE LICENSE AT ANNEXURE-A PURSUANT TO THE APPLICATION (REPRESENTATION) DATED 17.02.2021 VIDE ANNEXURE-E WITHIN A TIME TO BE STIPULATED BY THIS HONBLE COURT IN THE ENDS OF JUSTICE AND EQUITY. IN W.P.NO.10642/2021 BETWEEN: M/S. MORE RETAIL PRIVATE LIMITED (FORMERLY KNOWN AS MORE RETAIL LTD) A COMPANY INCORPORATED UNDER THE COMPANIES ACT, HAVING ITS REGISTERED OFFICE AT SKYLINE ICON, 86/92, 5TH AND 6TH FLOORS, NEAR MITTAL INDUSTRIAL ESTATE, ANDHERI KURLA ROAD, ANDHERI (E), MUMBAI, MAHARASHTRA - 400 059 REPRESENTED BY ITS AUTHORIZED SIGNATORY VIVEK. S., 5 AGED ABOUT 37 YEARS, S/O

MAHILNATH SHETTY PETITIONER (BY SRI. D.R. RAVISHANKAR AND LEX NEXUS, ADVOCATE) AND:

1. THE STATE OF KARNATAKA, EXCISE DEPARTMENT, GOVERNMENT OF KARNATAKA, VIKASA SOUDHA, AMBEDKAR VEEDHI, BENGALURU - 560 001, REPRESENTED BY ITS SECRETARY.

2. THE EXCISE COMMISSIONER 2D FLOOR, TTMC A BLOCK, BMTC BUILDING, SHANTHINAGAR, BENGALURU - 560 027 3. DEPUTY COMMISSIONER (EXCISE), BENGALURU URBAN DISTRICT 7 BENGALURU - 560 027 ... RESPONDENTS (BY SRI. Y.D. HARSHA, AGA) THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO EFFECT THE CHANGE OF NAME OF THE PETITIONERS COMPANY TO M/S. MORE RETAIL LIMITED TO M/S MORE RETAIL PRIVATE LIMITED IN THE LICENSE AT ANNEXURE-A PURSUANT TO THE APPLICATION (REPRESENTATION) DATED 17.02.2021 VIDE ANNEXURE-E WITHIN A TIME TO BE STIPULATED BY THIS HONBLE COURT. IN W.P.NO.10644/2021 BETWEEN: M/S. MORE RETAIL PRIVATE LIMITED (FORMERLY KNOWN AS MORE RETAIL LTD) A COMPANY INCORPORATED UNDER THE COMPANIES ACT, HAVING ITS REGISTERED OFFICE AT SKYLINE ICON, 86/92, 5TH AND 6TH FLOORS, NEAR MITTAL INDUSTRIAL ESTATE, ANDHERI KURLA ROAD, ANDHERI (E), MUMBAI, MAHARASHTRA - 400 059 REPRESENTED BY ITS AUTHORIZED SIGNATORY VIVEK. S., AGED ABOUT 37 YEARS, S/O MAHILNATH SHETTY PETITIONER (BY SRI. D.R. RAVISHANKAR AND LEX NEXUS, ADVOCATE) AND:

1. THE STATE OF KARNATAKA, EXCISE DEPARTMENT, GOVERNMENT OF KARNATAKA, VIKASA SOUDHA, DR.B.R. AMBEDKAR VEEDHI, BENGALURU - 560 001, REPRESENTED BY ITS SECRETARY.

2. THE EXCISE COMMISSIONER 2D FLOOR, TTMC A BLOCK, BMTC BUILDING, SHANTHINAGAR, BENGALURU - 560 027 3. DEPUTY COMMISSIONER (EXCISE), BENGALURU URBAN DISTRICT 7 BENGALURU - 560 027 ... RESPONDENTS (BY SRI. Y.D. HARSHA, AGA) THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF

INDIA PRAYING TO DIRECT THE RESPONDENTS TO EFFECT THE CHANGE OF NAME OF THE PETITIONERS COMPANY TO M/S. MORE RETAIL LIMITED TO M/S MORE RETAIL PRIVATE LIMITED IN THE LICENSE AT ANNEXURE-A PURSUANT TO THE APPLICATION (REPRESENTATION) DATED 17.02.2021 VIDE ANNEX-E WITHIN A TIME TO BE STIPULATED BY THIS HONBLE COURT IN THE ENDS OF JUSTICE AND EQUITY. IN W.P.NO.10645/2021 BETWEEN: M/S. MORE RETAIL PRIVATE LIMITED (FORMERLY KNOWN AS MORE RETAIL LTD) A COMPANY INCORPORATED UNDER THE COMPANIES ACT, HAVING ITS REGISTERED OFFICE AT SKYLINE ICON, 86/92, 5TH AND 6TH FLOORS, NEAR MITTAL INDUSTRIAL ESTATE, ANDHERI KURLA ROAD, ANDHERI (E), MUMBAI, MAHARASHTRA - 400 059 REPRESENTED BY ITS AUTHORIZED SIGNATORY VIVEK. S., AGED ABOUT 37 YEARS, S/O MAHILNATH SHETTY PETITIONER (BY SRI. D.R. RAVISHANKAR AND LEX NEXUS, ADVOCATE) AND:

1. THE STATE OF KARNATAKA, EXCISE DEPARTMENT, GOVERNMENT OF KARNATAKA, VIKASA SOUDHA, DR.B.R. AMBEDKAR VEEDHI, BENGALURU - 560 001, REPRESENTED BY ITS SECRETARY.

2. THE EXCISE COMMISSIONER 2D FLOOR, TTMC A BLOCK, BMTc BUILDING, SHANTHINAGAR, BENGALURU - 560 027 3. DEPUTY COMMISSIONER (EXCISE), BENGALURU URBAN DISTRICT 8 BENGALURU - 560 027 ... RESPONDENTS (BY SRI. Y.D. HARSHA, AGA) THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO EFFECT THE CHANGE OF NAME OF THE PETITIONERS COMPANY TO M/S. MORE RETAIL LIMITED TO M/S MORE RETAIL PRIVATE LIMITED IN THE LICENSE AT ANNEX-A PURSUANT TO THE APPLICATION (REPRESENTATION) DTD 17.02.2021 VIDE ANNEXURE-E WITHIN A TIME TO BE STIPULATED BY THIS HONBLE COURT. IN W.P.NO.27607/2019 BETWEEN: MORE RETAIL LTD, A COMPANY INCORPORATED UNDER THE COMPANIES ACT, HAVING ITS REGISTERED OFFICE AT SCAN LINE ICON, 86/92, 5TH AND 6TH FLOORS, NEAR MITTAL INDUSTRIAL ESTATE, ANDHERI KURLA ROAD, ANDHERI (E), MUMBAI, MAHARASHTRA - 400 059. 8 REPRESENTED BY ITS AUTHORIZED

SIGNATORY, VIVEK. S, AGED ABOUT 35 YEARS, SON OF MAHILNATH SHETTY. PETITIONER (BY SRI. D.R. RAVISHANKAR, ADVOCATE) AND:

1. THE EXCISE COMMISSIONER KARNATAKA, II FLOOR, TTMC A BLOCK, BMTc BUILDING, SHANTHINAGAR, BANGALORE - 560 027.

2. DEPUTY COMMISSIONER (EXCISE) BANGALORE EAST, BYATARAYANAPURA, BANGALORE - 560 092 ... RESPONDENTS (BY SRI. Y.D. HARSHA, AGA) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO CONSIDER THE REPRESENTATION ANNEXURE- C, C1, C2 DATED 2006/2019, 18.5.2019, 6.5.19 AND CONSEQUENTLY, CHANGE THE NAME OF THE LICENSE FROM M/S ADITYA BIRLA RETAIL LTD AND TO M/S MORE RETAIL LTD AND TO EXTEND THE LICENSE IN THE NAME OF M/S MORE RETAIL LTD FOR THE YEAR 2019-20 COMMENCING FROM 17.2.2019 ON SUCH TERMS AS THIS HONBLE COURT MAY DEEM FIT AND PROPER, UNDER THE CIRCUMSTANCES OF THE CASE AND ETC., IN W.P.NO.27608/2019 BETWEEN: MORE RETAIL LTD, A COMPANY INCORPORATED UNDER THE COMPANIES ACT, HAVING ITS REGISTERED OFFICE AT SCAN LINE ICON, 86/92, 5TH AND 6TH FLOORS, NEAR MITTAL INDUSTRIAL ESTATE, ANDHERI KURLA ROAD, ANDHERI (E), MUMBAI, MAHARASHTRA - 400 059. REPRESENTED BY ITS AUTHORIZED SIGNATORY, VIVEK. S, AGED ABOUT 35 YEARS, SON OF MAHILNATH SHETTY. PETITIONER (BY SRI. D.R. RAVISHANKAR, COUNSEL) 9 AND:

1. THE EXCISE COMMISSIONER KARNATAKA, II FLOOR, TTMC A BLOCK, BMTc BUILDING, SHANTHINAGAR, BANGALORE - 560 027.

2. DEPUTY COMMISSIONER (EXCISE) BANGALORE EAST BYATARAYANAPURA, BANGALORE - 560 092 ... RESPONDENTS (BY SRI. Y.D. HARSHA, AGA) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO CONSIDER THE REPRESENTATION ANNEXURE- C, C1, C2 DATED 2006/2019, 6.5.19, 18.5.2019 AND CONSEQUENTLY, CHANGE THE NAME OF THE LICENSE FROM M/S ADITYA BIRLA RETAIL LTD AND TO M/S

MORE RETAIL LTD AND TO EXTEND THE LICENSE IN THE NAME OF M/S MORE RETAIL LTD FOR THE YEAR201920 COMMENCING FROM17.2019 AND ETC., IN W.P.NO.27609/2019 BETWEEN: MORE RETAIL LTD, A COMPANY INCORPORATED UNDER THE COMPANIES ACT, HAVING ITS REGISTERED OFFICE AT SCAN LINE ICON, 86/92, 5TH AND6H FLOORS, NEAR MITTAL INDUSTRIAL ESTATE, ANDHERI KURLA ROAD, ANDHERI (E), MUMBAI, MAHARASHTRA - 400 059. REPRESENTED BY ITS AUTHORIZED SIGNATORY, VIVEK. S, AGED ABOUT35YEARS, SON OF MAHILNATH SHETTY. PETITIONER (BY SRI. D.R. RAVISHANKAR, COUNSEL) AND:

1. THE EXCISE COMMISSIONER KARNATAKA, II FLOOR, 10 TTMC A BLOCK, BMTc BUILDING, SHANTHINAGAR, BANGALORE - 560 027.

2. DEPUTY COMMISSIONER (EXCISE) BANGALORE EAST, BYATARAYANAPURA, BANGALORE - 560 092 ... RESPONDENTS (BY SRI. Y.D. HARSHA, AGA) THIS WRIT PETITION IS FILED UNDER ARTICLE226OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO CONSIDER THE REPRESENTATION ANNEXURE- C, C1, C2 DATED2006/2019, 6.5.19, 18.5.2019 AND CONSEQUENTLY, CHANGE THE NAME OF THE LICENSE FROM M/S ADITYA BIRLA RETAIL LTD AND TO M/S MORE RETAIL LTD AND TO EXTEND THE LICENSE IN THE NAME OF M/S MORE RETAIL LTD FOR THE YEAR201920 COMMENCING FROM17.2019 ON SUCH TERMS AS THIS HONBLE COURT MAY DEEM FIT AND PROPER, UNDER THE CIRCUMSTANCES OF THE CASE AND ETC., IN W.P.NO.27610/2019 BETWEEN: MORE RETAIL LTD, A COMPANY INCORPORATED UNDER THE COMPANIES ACT, HAVING ITS REGISTERED OFFICE AT SCAN LINE ICON, 86/92, 5TH AND6H FLOORS, NEAR MITTAL INDUSTRIAL ESTATE, ANDHERI KURLA ROAD,ANDHERI (E), MUMBAI, MAHARASHTRA - 400 059. REPRESENTED BY ITS AUTHORIZED SIGNATORY, VIVEK. S, AGED ABOUT35YEARS, SON OF MAHILNATH SHETTY. PETITIONER (BY SRI. D.R. RAVISHANKAR, ADV.,) AND:

1. THE EXCISE COMMISSIONER KARNATAKA, II FLOOR, 11 TTMC A BLOCK, BMTc BUILDING, SHANTHINAGAR, BANGALORE - 560 027.

2. DEPUTY COMMISSIONER (EXCISE) BANGALORE EAST, INDIRANAGAR. BANGALORE - 560 032 ... RESPONDENTS (BY SRI. Y.D. HARSHA, AGA) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO CONSIDER THE REPRESENTATION ANNEXURE- C, C1, C2 DATED 2006/2019, 6.6.19, 2.5.2019 AND CONSEQUENTLY, CHANGE THE NAME OF THE LICENSE FROM M/S ADITYA BIRLA RETAIL LTD AND TO M/S MORE RETAIL LTD AND TO EXTEND THE LICENSE IN THE NAME OF M/S MORE RETAIL LTD FOR THE YEAR 2019-20 COMMENCING FROM 17.2.2019 AND ETC., IN W.P.NO.27611/2019 BETWEEN: MORE RETAIL LTD, A COMPANY INCORPORATED UNDER THE COMPANIES ACT, HAVING ITS REGISTERED OFFICE AT SCAN LINE ICON, 86/92, 5TH AND 6TH FLOORS, NEAR MITTAL INDUSTRIAL ESTATE, ANDHERI KURLA ROAD, ANDHERI (E), MUMBAI, MAHARASHTRA - 400 059. REPRESENTED BY ITS AUTHORIZED SIGNATORY, VIVEK. S, AGED ABOUT 35 YEARS, SON OF MAHILNATH SHETTY. PETITIONER (BY SRI. D.R. RAVISHANKAR, ADV.) 12 AND:

1. THE EXCISE COMMISSIONER KARNATAKA, II FLOOR, TTMC A BLOCK, BMTc BUILDING, SHANTHINAGAR, BANGALORE - 560 027.

2. DEPUTY COMMISSIONER (EXCISE) BANGALORE EAST, INDIRANAGAR. BANGALORE - 560 038 ... RESPONDENTS (BY SRI. Y.D. HARSHA, AGA) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO CONSIDER THE REPRESENTATION ANNEXURE- C, C1, C2 DATED 2006/2019, 2.5.2019, 18.5.2019 AND CONSEQUENTLY, CHANGE THE NAME OF THE LICENSE FROM M/S ADITYA BIRLA RETAIL LTD AND TO M/S MORE RETAIL LTD AND TO EXTEND THE LICENSE IN THE NAME OF M/S MORE RETAIL LTD FOR THE YEAR 2019-20 COMMENCING FROM 17.2.2019 AND ETC., IN W.P.NO.27606/2019 BETWEEN: MORE RETAIL LTD, A COMPANY INCORPORATED UNDER THE COMPANIES ACT, HAVING ITS REGISTERED OFFICE AT SCAN LINE ICON, 86/92, 5TH AND 6TH FLOORS, NEAR MITTAL INDUSTRIAL ESTATE, ANDHERI KURLA ROAD, ANDHERI (E), MUMBAI, MAHARASHTRA - 400 059. REPRESENTED BY ITS AUTHORIZED

SIGNATORY, VIVEK. S, AGED ABOUT 35 YEARS, SON OF MAHILNATH SHETTY. PETITIONER (BY SRI. D.R. RAVISHANKAR, LEX NEXUS, ADV.,) 13 AND:

1. THE EXCISE COMMISSIONER KARNATAKA, II FLOOR, TTMC A BLOCK, BMTc BUILDING, SHANTHINAGAR, BANGALORE - 560 027.

2. DEPUTY COMMISSIONER (EXCISE) BANGALORE EAST, INDIRANAGAR. BANGALORE - 560 038 ... RESPONDENTS (BY SRI. Y.D. HARSHA, AGA) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH ANNEXURE-F DATED 28.5.2019 ISSUED BY THE RESPONDENT PASSED BY R-2 AND ETC., THESE PETITIONS HAVING BEEN HEARD AND RESERVED ON 29/06/2021 AND COMING ON FOR PRONOUNCEMENT OF

ORDER

THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In these bunch of petitions, petitioners have sought for direction to the respondents to effect the change of name of the petitioners Company i.e. M/s More Retail Limited to M/s More Retail Private Limited in excise license Form CL-2 issued by the Government of Karnataka, Department of Excise on various dates like 13.07.2020, 15.07.2020, 14.07.2020, 10.07.2020, 05.07.2018 and 17.07.2018. Some of them have expired on 30.06.2019 and 30.06.2021. 14 In W.P.27606/2019 the petitioner has sought for quashing Annexure - F dated 28.05.2019 issued by the second respondent and for a direction to consider the representations vide Annexures - C, C1, C2 dated 20.06.2019, 06.05.2019 and 06.05.2019 and consequently, change the name of the licensee from M/s Aditya Birla Retail Limited to M/s More Retail Limited and to extend the license in the name of M/s More Retail Limited for the year 2019-20 commencing from 01.07.2019. The license dated 05.07.2018 was issued in the name of M/s Aditya Birla Retail Limited and M/s More Retail Limited wanted its name to be incorporated pursuant to the change of name from M/s Aditya Birla Retail Limited to M/s More Retail Limited.

2. The licenses were issued in the name of M/s More Retail Limited with reference to its directors viz., Sunil Rewachand, Chandiramani, Kiran Mittal, Vikram Ranjan Agarwal, Girish Manjanath Bhat, Paurush Roy. Petitioners are having large number of outlets spread over the State. For some of the outlets, petitioners have obtained excise license CL-2. Earlier the company was called as M/s Aditya Birla Retail Limited, thereafter, the name was changed to 15 M/s More Retail Limited and further, the name was changed from M/s More Retail Limited to M/s More Retail Private Limited. In these bunch of petitions, excise license CL-2 were issued in the name of M/s More Retail Limited with reference to the directors existing as on the date of issuance of licenses on various dates cited supra. On 20.06.2019 M/s Aditya Birla Retail Limited was renamed as M/s More Retail Limited, thereafter, it was further renamed as M/s More Retail Private Limited on 15.12.2020. In W.P.27606/2019 excise license stands in the name of M/ s Aditya Birla Retail Limited whereas M/s More Retail Limited intends to have the same excise license in its name.

3. Petitioners - M/s More Retail Private Limited submitted applications/representations on 17.02.2021, 20.06.2019, 06.05.2019, 18.05.2019, 06.05.2019 to the Department of Excise for change of name in the respective excise licenses which stood in the name of M/s More Retail Limited to that of M/s More Retail Private Limited. The official respondents have not acted on the petitioners grievance relating to change of name in the excise license CL-2 issued in the name of M/s More Retail Limited to that 16 of M/s More Retail Private Limited. Hence the present petitions. In W.P.27606/2019 the official respondents have issued notice with reference to Rule 17-B of Rules, 1967 and demanded transfer of excise license fee vide endorsement dated 28.05.2019 in respect of license dated 05.07.2018 is the subject matter of writ petition.

4. Learned counsel for the petitioners submitted that initially the Companys name was M/s Aditya Birla Retail Limited and it was changed to M/s More Retail Limited and further to M/s More Retail Private Limited. The excise license CL-2 stands in the name of M/s More Retail Limited. Government of India, Ministry of Corporate Affairs permitted change of name from M/s Aditya Birla Retail Limited to M/s More Retail Limited on 10.04.2019. Consequently, it was further renamed as M/s More

Retail Private Limited on 15.12.2020.

5. Learned counsel for the petitioners is not disputing the fact that there is no provision under the Karnataka Excise Act, 1965 (Hereinafter referred to as the Act, 1965 for short) read with The Karnataka Excise (General Conditions of Licenses) Rules, 1967 (hereinafter 17 referred to as the Rules, 1967 for short) for change of name in the excise licenses issued under the aforesaid Act/Rules. Therefore, it is submitted that under the Companies Act, 1956 read with Companies Act, 2013, Government of India permitted for change of name. Consequently, there is no hurdle in effecting change of name in the respective excise licenses CL-2 which stood in the name of M/s More Retail Limited to M/s More Retail Private Limited. Insofar as W.P.27606/2019 is concerned from M/s Aditya Birla Retail Limited to M/s More Retail Limited.

6. In the present bunch of petitions it was further submitted by the learned counsel for the petitioners that petitioners have sought only for replacing/change of name from M/s More Retail Limited to that of M/s More Retail Private Limited in the respective existing excise license CL-2 stood in the name of M/s More Retail Limited and not transfer of excise license CL-2. For change of name of the Company, Government of Indias decision under the Companies Act, 1956 read with Companies Act 2013 would suffice. Therefore, petitioners are entitled to seek a direction to the respondents/Excise Department for change 18 of name which stood in the name of M/s More Retail Limited in the respective excise licenses CL-2 and further, for renewal of licenses.

7. In support of the aforesaid contentions, learned counsel for the petitioners cited the following decisions:

1. M/S. MYSORE-INTERCONTINENTAL HOTELS PVT LTD., V/S THE COMMISSIONER OF EXCISE. in W.P.No.40825/17 (Excise) disposed of on 09/10/2017 (paras 3 &

5) 2. STARLIGHT BRUCHEM LTD. V/S STATE OF RAJASTHAN & ORS. reported in 2015 SCC OnLine Raj 4640.(para 8 &

9) 3. JOSHY V/S STATE OF KERALA in W.A.No.1551/2018 disposed of on 03/07/2019 8. Per contra, learned counsel for the State submitted that in terms of Rule 17, 17A and 17-B of Rules, 1967, excise license holder is entitled to transfer excise licenses which stood in the name of license holder under various circumstances as stated in the aforesaid Rules, 1967. There is no provision for change of name in the excise license under the Act, 1965 read with Rules, 1967. In such an event, question of interpreting provisions of General Clauses Act, Companies Act, 1956 read with Companies Act, 19 2013 would not assist the grievance of the petitioners. Petitioners have remedy of obtaining afresh license in terms of Act, 1965 read with Rule, 1967 and allied Rules issued under the Act, 1965. Therefore, prima facie, petitioners have not made out case for issuance of direction to the excise department to incorporate petitioners name viz., M/s More Retail Private Limited and replacing the existing name of M/s More Retail Limited in licenses dated 13.07.2020, 15.07.2020, 14.07.2020, 10.07.2020, 05.07.2018 and 17.07.2018 furnished along with respective petitions.

9. In W.P.27606/2019, Excise Department permitted for transfer of excise license CL-2 from M/s Aditya Birla Retail Limited to M/s More Retail Limited. Merely directors being common in respect of both Limited and Private Limited Company, that does not empower change of name in the excise license. That apart, Act, 1965 and allied Rules do not provide for replacing/changing names of license holders. What is permitted is only transfer under three circumstances stipulated under Rule 17, 17-A and 17-B of Rules, 1967. It is further submitted that even though the representation of M/s More Retail Limited dated 08.05.2019 20 cited in the endorsement dated 28.05.2019 in W.P.27606/2019 with reference to Rules 17-B, it is to be noted that license stood in the name of M/s Aditya Birla Retail Limited and application was submitted by M/s More Retail Limited for change of name. Even though, the gist of the representation dated 08.05.2019 is to change the name, since there is no provision for change of name under Act, 1965 read with allied Rules, Excise Department has issued an endorsement that only transfer under Rule 17-B of Rules, 1967 is permissible. In the light of the aforesaid legal issue read with the factual aspect of the matter that M/s More Retail Limited be incorporated in the excise license CL-2 which stood in the name of M/s Aditya Birla Retail Limited is impermissible. Petitioner has no statutory right to seek writ of

mandamus for change of name from M/s Aditya Birla Retail Limited to that of M/s More Retail Limited. The statutory right is not created or vested with the petitioners in seeking writ of mandamus.

10. Heard the learned counsels for the respective parties. 21

11. The core issue involved in the present petitions are: (i) Whether petitioners are entitled to writ of mandamus in respect of change of name in the excise license CL-2 which stands in the name of M/s More Retail Limited to that of M/s More Retail Private Limited or not?. (ii) In W.P.27606/2019 whether petitioner is entitled to writ of mandamus in respect of change of name in the excise license CL-2 which stands in the name of M/s Aditya Birla Retail Limited to that M/s More Retail Limited and decision of the Excise Department transfer of license under Rule 17B is permissible or not?.

12. Undisputed facts are that originally the name of the Company was M/s Aditya Birla Retail Limited and it was renamed as M/s More Retail Limited and further, renamed as M/s More Retail Private Limited. Petitioners are not entitled to have the name M/s More Retail Private Limited by replacing M/s More Retail Limited in the excise license CL-2 22 issued in the aforesaid companys name under the Act, 1965 read with allied Rules, 1967. It is necessary to take note of Rule 2 - Application of Rules, 1967 and definition under sub- rule (2) relates to licensee under Rule 3. Rule 2 of Rules, 1967 reads as under: 2. Application.-. These rules shall apply to all licenses issued under the Karnataka Excise Act, 1965 for sale of liquors and every such license shall be deemed to include the conditions prescribed by these rules as general conditions. Rule 3 of Rules, 1967 reads as under: 3. Definitions - In these rules unless the context otherwise requires.- (1) Educational Institution XXXX (2) Licensee means a person to whom a license to sell Liquor is granted.

13. Similarly, in W.P.27606/2019 change of name from M/s Aditya Birla Retail Limited to that M/s More Retail Limited Rules 17, 17-A and 17-B provide for transfer of various excise licenses under different circumstances. Rules 17, 17-A and 17-B are reproduced hereunder:

17. Transfer of lease not permitted.- The right of retail vend of liquor shall not be transferred by the licensee except with the previous permission of the Deputy Commissioner. 23

17.A. Transfer in the even of death.- In the event of death of the licensee or the lessee, the Deputy Commissioner may on an application by the legal heirs of the deceased with the previous sanction of the Excise Commissioner, transfer the license or the lease as the case may be, in their favour. 17.B. Transfer of license in other cases.- (1) Notwithstanding anything contained in Rule-2, licenses issued.- (i) for Sale of India Liquor (other than arrack) or Foreign Liquor or both, in Form No.CL-1 (Wholesale license) or CL-2 (retail shop licenses) [CL-6A (Star Hotel License)]. or CL-7 (Hotel and Boarding House Licenses) or CL-9 (Refreshment room (Bar) License under the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968, or (ii) for sale of Beer under the Karnataka Excise (Lease of Right of Retail Vend or Beer) Rules, 1976; The Deputy Commissioner may on an application by the licensee and [subject to payment of transfer fee equivalent to twice the annual license fee]. specified in Rule 8 of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 or Rule 5 of the Karnataka Excise (Lease of Right of Retail Vend of Beer, Rules, 1976, as the case may be, and with the prior approval of the Excise commissioner, transfer such license in favour of any person named by such license, if such person is eligible for grant of a license under the Karnataka Excise Act, 1965 or the rules made there under: (2) Nothing in this rule shall apply to transfer of license under Rule 17-A. 24

14. In view of the aforesaid statutory provision, petitioners have only remedy of making necessary applications through M/s More Retail Limited for transfer of excise license CL-2 in the name of M/s More Retail Private Limited. Similarly, in W.P.27606/2019 M/s Aditya Birla Retail Limited has to make application for transfer of excise license in the name of M/s More Retail Limited. Petitioner - M/s More Retail Limited has no locus standi to seek change of name in the absence of statutory provision under the Act, 1965 read with Rules, 1967 and other allied Rules under Act, 1965. Even for transfer of CL-2 license only M/s More Retail Limited has to make application for transfer of license in the name of petitioners

M/s More Retail Private Limited, since CL-2 license stand in the name of M/s More Retail Limited. Similarly, in W.P.No.27606/2019 the same yardstick is applicable viz., license holder M/s Aditya Birla Retail Limited has to make application in favour of M/s More Retail Limited. Therefore, petitioners have not made out statutory right to seek writ of mandamus under Article 226 of the Constitution of India. 25

15. Merely change of name of M/s More Retail Limited to that of M/s More Retail Private Limited under the Companies Act, 1956 read with Companies Act, 2013, the petitioners do not have the right to change the name in excise licenses CL-2 issued by the Excise Department under the Act, 1965 read with Rules, 1967. It is to be noted that the aforesaid statute are applicable to the respective issues. In the present case, for change of name from M/s More Retail Limited to that of M/s More Retail Private Limited, similarly, in W.P.27606/2019 from M/s Aditya Birla Retail Limited to that M/s More Retail Limited there is no provision. In the absence of any statutory provision provided in Act, 1965 read with allied Rules, this Court cannot issue a direction to the official respondents to change the name of M/s More Retail Limited to that of M/s More Retail Private Limited in the respective excise licenses cited supra. Similarly, in W.P.27606/2019 M/s Aditya Birla Retail Limited is not the petitioner whereas the excise license stands in its name. Under the statutory rule, only the license holder can make application for transfer/change of excise license. Therefore, application for change of name by M/s More 26 Retail Limited is without authority of law. A change in name will not disturb a Company's legal entity. As specified in Section 13(6) of Income Tax Act, 1961, A Company changes its name by a special resolution and with due approval from the Central Government, but this only pertains to the name change and not other pivotal aspects. Even assets and liabilities and obligations would continue depending upon the terms and conditions. Whereas, name of the excise license holder cannot be changed as Act, 1965 read with Rules, 1967. On the other hand the aforesaid provision provides only for transfer with reference to three circumstances under Rule 17, 17A and 17B of Rules, 1967.

16. If the Act and Rules are silent in respect of issue/subject, in that event, it is not possible for this Court to give any directions for amending the Act or statutory

Rules. It is for the Parliament/Legislature to amend the Act and Rules. It is well established law that no direction could be given in framing statute as it would be contrary to the Act and Rules. 27

17. Learned counsel for the petitioners in support of change of name from M/s. More Retail Limited to that of M/s. More Retail Private Limited in the excise CL-2 license cited the following decisions:

1. High Court of Kerala - W.A. No.1551/2018 (Joshy Vs/ State of Kerala) D.D.03.07.2019 2. 2015 SCC OnLine Cal 6191 (M/s. Fresenius Kabi Oncology Limited Vs. The State of West Bengal & Ors.) 3. 2018 SCC OnLine HP2069(Fresenuis Kabi Oncology Limited V. H.P. State Industrial Development Corporation Limited 18. In Joshys case supra Foreign Liquor Rules, 1953 is interpreted whereas in the cases on hand the provisions of Karnataka Excise Act, 1965 read with The Karnataka Excise (General Conditions of Licenses) Rules, 1967 are to be taken note of. Therefore, aforesaid decision has no application to the present case.

19. The decisions in STATE OF WEST BENGAL supra and HP STATE INDUSTRIAL DEVELOPMENT CORPORATION LIMITED supra are in respect of 28 interpretation of Sections 21 and 23 of the Companies Act, 1956. Each statute is required to be taken note of with reference to the factual aspects of the matter read with relevant provisions. Therefore, the aforesaid decisions do not assist the petitioners.

20. At this juncture, it is necessary to take note of the Apex Court decision in the case of T. Beermasthan vs. Nair Service Society reported in (2009) 5 SCC545at Para 48 held as under: 48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.

21. In view of the decision in the case of Nair Service Society supra, what is required to be taken into consideration is the relevant provision read with the 29 case/s on hand. In the present case, Act 1965 read with allied Rules is required to be taken into consideration for the purpose of determining, Whether petitioners are entitled to change of company's name from M/s More Retail Limited to that of M/s More Retail Private Limited or not in the excise license CL-2 and similarly, in W.P.27606/2019 whether petitioner is entitled to change of company's name from M/s Aditya Birla Retail Limited to that M/s More Retail Limited in the excise license dated 05.07.2018 issued in favour of M/s Aditya Birla Retail Limited. Therefore, cited decisions do not assist the petitioners case.

22. Learned counsel for the petitioners submitted that it is only change of name of the Company and directors and other aspects remain unchanged. However, it is to be noted that there is difference between Limited and Private Limited Company. The differences are as under: Parameter LTD Pvt LTD of Comparison Shareholders In a public limited In a private limited 30 company, the company, shares are shares are held by held by the private the public promoters. Minimum A Ltd company A Pvt Ltd enterprise number of requires at least requires at least two shareholders seven shareholders shareholders. in the company. Maximum A public Ltd A Pvt Ltd company can number of company has no have a maximum of 50 shareholders upper limit for the shareholders. number of shareholders. Transfer of The transfer of The shares of a private shares shares in a public limited company are limited company is generally confined done through the within a group of stock market. people and therefore are transferred with the approval of all shareholders.

23. In order to seek writ of mandamus one must have statutory and legal right. Therefore, it is necessary to analyse Writ of Mandamus. According to the Ninth Edition of Blacks Law Dictionary, Writ of Mandamus can be issued against an inferior court, a governmental body or officer by a superior court to rectify an action of the past or omission to act along the lines of the responsibility that they are entitled to. Writ of Mandamus can also be issued against public 31 corporations and tribunals. As it is directed to set the indolent authorities to task, it is also described as a wakening call, dictating their activity and setting them in action in

pursuance of discharging public duty. Mandamus according to Wharton's Law Lexicon, 15th Edition, 2009 "A high prerogative writ of a most extensive remedial nature. In form it is a command issuing in the King's name from the King's Bench Division of the High Court only, and addressed to any person, corporation, or inferior court of judicature requiring them to do something therein specified, which appertains to their office, and which the court holds to be consonant to right and justice. It is used principally for public purposes, and to enforce performance of public duties. It enforces, however, some private rights when they are withheld by public officers."

Under the following circumstances, Writ Court can examine issuance of writ of mandamus: - Mandamus A writ of mandamus or mandamus (which means "we command" in Latin), or sometimes mandate, is the name of one of the prerogative writs in the common law, and is "issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly". The word "mandamus" appeared in a number of orders issued by the sovereigns who ruled England in the live centuries following the Norman Conquest. These orders however were 32 not concerned with the grievances of the citizens. The first instance of mandamus being used for enforcing the right of a private citizen was in 1615 when it was issued to a mayor and corporation to restore a burgess to his office unless they could show cause to the contrary. As no cause was shown, a peremptory order to restore him to the office was issued. By the early eighteenth century, it was used to compel performance of a variety of public duties which had been wrongly refused. Mandamus lies to enforce a public duty in the performance of which the petitioner has a sufficient legal interest, but he must show that he has demanded performance which has been refused. It is discretionary and will not be granted if there is an alternative remedy equally beneficial, convenient and effective. The project covers the judicial control of the administrative actions by way of mandamus in India and the landmark judgments given by the apex Court in relation to it. It also elaborates the position of the Doctrine in U.K. Definition of Mandamus The order of mandamus is of a most extensive remedial nature, and is in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their

office and is in nature of a public duty. Mandamus is not a writ of right, it is not consequently granted of course, but only at the discretion of the court to whom the application for it is made; and this discretion is not exercised in favour of the applicant, unless some just and useful purpose may be answered by the writ. A writ of mandamus or remedy is pre-eminently a public law remedy and is not generally available against private wrongs. It is used for enforcement of various rights of the public or to compel the public statutory authorities to discharge their duties and to act within the bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. Interpretation of Public right and mandamus Mandamus lies against authorities whose duty is to perform certain acts and they have failed to do so. Under following circumstances mandamus can be issued : (i) The applicant must have a legal right to the performance of a legal duty. It will not issue where to do or not to do an act is left to the discretion of the authority. It was refused where the legal duty arose from an agreement which was in dispute. The duty to be enforced by a writ mandamus could arise by a provision of the Constitution or of a statute or of the common law. (ii) The legal duty must be of a public nature. In *The Praga Tools Corporation v. C.V. Imanual*, A.I.R. 1969 S.C. 1306 and *Sohanlal v. Union of India*, A.I.R. 1957 S.C. 529: (1957) S.C.R. 738 the Supreme Court stated that mandamus might under certain circumstances lie against a private individual if it is established that he has colluded with a public authority. It will not issue against a private individual to enforce a private right such as a contract. Even though mandamus does not lie to enforce a contract inter parties, it will lie where the petitioner's contractual right with a third party is interfered with by the State. Mandamus will not issue to enforce departmental manuals or instructions not having any statutory force which do not give rise to any legal right in favour of the petitioner as in the cases of *Raman & Raman v. 34 State of Madras*, A.I.R. 1959 S.C. 694; *State of Assam v. Ajit Kumar*, A.I.R. 1965 S.C.

1196. However if the authority were under law obliged to exercise discretion, mandamus would lie to exercise it in one way or the other. Mandamus can be issued to compel an income-tax officer to carry out the instructions issued by income-tax appellate tribunal exercising its appellate power. Again it can be issued to a municipality to discharge its statutory duty. There are however exceptions to

this rule. Where there is no statutory provision, executive instructions fill in the gap and are capable of conferring rights on the citizen imposing obligations on the authorities. In appropriate cases the courts may even compel the performance of such a duty. Mandamus is not available where the order upon which the alleged right of the petitioner is founded is itself ultra vires. Similarly it was held that the grant of dearness allowance at a particular rate is a matter of grace and not a matter of right and hence mandamus cannot issue to compel the Government to pay dearness allowance at a particular rate. Article 320 (3) of the Constitution which provides that before a government servant is dismissed, the Union Public Service Commission should be consulted, does not confer any right on a public servant and hence failure to consult the Public Service Commission does not entitle the public servant to get mandamus for compelling the government to consult the Commission. Where provisions are merely directory, non-compliance with them does not render an act invalid and hence no mandamus issues. (iii) The right sought to be enforced must be subsisting on the date of the petition. If the interest of the petitioner has been lawfully terminated before that date, he is not entitled to the writ. (iv) As a general rule, mandamus is not issued in anticipation of injury. There are exceptions to this rule. Anybody who is likely to be affected by the order of a public officer is entitled to bring an application for mandamus if the officer acts in contravention of his statutory duty. Thus an intending bidder at an auction is entitled to apply if the authority holding the auction acts contrary to the statute under which the auction is held or fails to perform his statutory duties in connection with the auction. A person against whom an illegal or unconstitutional order is made is entitled to apply to the court for redress even before such order is actually enforced against him or even before something to his detriment is done in pursuance of the order. For, the issue of such order constitutes an immediate encroachment on his rights and he can refuse to comply with it only at his peril. Hence the writ of mandamus is to protect the interest of the public from the powers given to them to affect the rights and liabilities of the people. This writ makes sure that the power or the duties are not misused by the executive or administration and are duly fulfilled. It safeguards the public from the misuse of authority by the administrative bodies. Although there are certain conditions also which were discussed in the project like all the alternative remedies should be exhausted and

it should be a statutory duty and not discretionary in nature. Hence it forms one of basic tool in the hands of the common people against the administrative bodies if they do not fulfil the duties which by statutes they are bound to perform. 36 It is necessary to discuss the writ of mandamus to Right of Constitutional Remedies for violation In pursuance of the Right to Constitutional Remedies for the violation of any of the enlisted fundamental rights under Part III or others that are enshrined in the Constitution of India or otherwise, both the Supreme Court and the High Courts have been vested with the authority of issuing writs under Article 32 and 226 respectively. There are five types of writs that are issued in India: Habeas Corpus, Prohibition, Certiorari, Mandamus and Quo Warranto. Out of these, the writ of mandamus, which is a Latin term for we command, is an authoritative writ issued by a higher court to oblige a lower court or some government official(s) to dispense their sanctioned duties compulsorily and correctly. According to the ninth edition of Blacks Law Dictionary, for writ of mandamus, the following issues are required to be taken note of: Justification of the writ of mandamus Mandamus is remedial in nature and cannot be expressed as a writ of right as it is issued only at the discretion of the court after the applicant of the same is able to prove to the Court that some utilitarian or just question would be answered by the writ. The essential grounds necessary for the issuance of Mandamus have been enlisted below: (cid:1) There exists a legally sanctioned right of the petitioner or the applicant of the writ and a violation or compromise of this right has been committed. 37 (cid:1) The infringement of the rights of an applicant can be done by a public authority in the following manners:

1. Crossing the limits of the powers and duties vested to their office.
2. Failure or omission to act responsibly according to the conditions laid down by the law for the exercise of their power.
3. Denial by an official or authority to perform their statutory duties.
4. A complete disregard for or contravention of the principles of natural justice. (cid:1) Another ground for the legality of issuing the writ of mandamus is the failure to act or perform the legal duty despite being demanded by the applicant for the same. This was also upheld by the Supreme Court in Saraswati Industrial

Syndicate v. Union of India. The writ of mandamus can be rightly described as a legal instrument of ensuring general public interest, safeguarding their rights promised to them in the Constitution and other laws of the land. It is also an effective mechanism for maintaining accountability of the state or public authorities and mandating them to comply with their constitutional and statutory obligations. Thus, writ of mandamus is essentially a pro- democratic mechanism which empowers the common people to get their rights enforced by the administrative bodies.

24. Writ Court cannot issue writ of mandamus in the absence of statutory right read with duties of the public authorities. Supreme Court in Mani Subrat Jain 38 V. State of Haryana reported in (1977)1 SCC486 held as under:

"9. The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something (See Halsbury's Laws of England 4th Ed. Vol. 1, paragraph 122; State of Haryana v. Subash Chander Marwaha & Ors. (1) Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed & Ors. (2) and Ferris Extraordinary Legal Remedies paragraph 198."

Honble Supreme Court in Kolkata Metropolitan Development Authority vs- Pradip Kumar Ghosh and others reported in (2018)13 SCC623 has dealt with the matter (Refer paras. 18, 19, 20, 21, 22, 23, 24, 25,

26) considered the issue relating to mandamus/direction under Article 226 of Constitution, while reiterating demand/ representation read with legal right, judicially enforceable right as well as on a legally protected right.

25. In the light of the aforesaid analysis of factual and legal aspects, the following order is passed:

39.

ORDER

(i) Petitioners - M/s More Retail Private Limited have not made out case for issuance of Writ of Mandamus to the official respondents in permitting the change of name in the excise license CL-2 from M/s More Retail Limited to that of M/s More Retail Private Limited. Accordingly, all these petitions have no merit. Writ Petitions are dismissed with no order as to costs. W.P.27606/2019 26. In W.P.27606/19, petitioner is M/s More Retail Limited in which petitioner has questioned the validity of the endorsement dated 28.05.2019 issued by respondent No.2 (Annexure - F) and further, sought for consideration of representations vide Annexures - C, C1 and C2 dated 20.06.2019, 06.05.2019 and 06.05.2019 respectively and for change of license from M/s Aditya Birla Retail Limited to M/s More Retail Limited and to extend the license in 40 the name of the petitioner - M/s More Retail Limited for the year 2019-20 commencing from 01.07.2019.

27. The excise license CL-2 was issued on 05.07.2018 in the name of M/s Aditya Birla Retail Limited whereas Government of India, Ministry of Corporate Affairs on an application changed the name of M/s Aditya Birla Retail Limited to M/s More Retail Limited on 10.04.2019. Consequently, M/s More Retail Limited submitted application for change of Companys name from M/s Aditya Birla Retail Limited to M/s More Retail Limited on 20.06.2019, 06.05.2019 and 06.05.2019 (Annexures C, C1 and C2) respectively.

28. On 28.05.2019 Excise Department issued an endorsement that excise license CL-2 which stood in the name of M/s Aditya Birla Retail Limited be changed to M/s More Retail Limited for the year 2018-19 would come under purview of Rule 17-B of Rules, 1967. Consequently, fee for transfer of license and application be filed. In this regard, necessary license fee and documents be filed. 41

29. Learned counsel for the petitioner vehemently contended that for change of name from M/s Aditya Birla Retail Limited to that of M/s More Retail Limited, Rule 17-B of Rules, 1967 is not attracted. He has not disputed that there is no provision under Act,1965 read with allied Rules. His entire case is that Government of India, Ministry of Corporate Affairs changed the name of M/s Aditya Birla Retail Limited

to that of M/s More Retail Limited on 10.04.2019 in effect, petitioner is entitled to change of name in excise license CL-2 issued on 05.07.2018 with reference to the Companies Act, 1956. In the present case, for the purpose of invoking Rule 17-B of Rules, 1967 M/s Aditya Birla Retail Limited should have made an application for transfer of CL-2 license in the name of the petitioner. There is no application from M/s Aditya Birla Retail Limited. Consequently, at threshold, Excise Department should have rejected the petitioners representation/application instead of issuing endorsement. The impugned endorsement dated 28.05.2019 could have been appreciated if M/s Aditya Birla Retail Limited had submitted an application for 42 transfer of CL-2 license date 24.01.2020 in the name of M/s More Retail Limited along with necessary fee etc. Therefore, Excise Department has committed patent error in issuing endorsement dated 28.05.2019 and endorsement is not in accordance with the statutory provision provided under Act, 1965 read with allied Rules and the factual aspect of the present case.

30. Hence, the following:

ORDER

(ii) The impugned endorsement dated 28.05.2019 issued by the Office of the Excise Deputy Commissioner vide Annexure - F in W.P.27606/2019 is non est in the eye of law, since source of law is not available so as to permit petitioner - M/s More Retail Limited to transfer the excise license which stands in the name of M/s Aditya Birla Retail Limited in the name of M/s More Retail Limited. (iii) Petitioner in W.P.27606/2019 is not entitled for consideration of his grievance with reference to 43 prayer (b) for issuance of writ of mandamus. On this issue, detailed order has been passed in Writ Petition No.10639/2021 and connected matters in which matter has been dealt at length. Accordingly, Writ Petition stands dismissed with no order as to costs. Sd/- JUDGE Brn

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