

**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD**

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**IN**

**CIVIL MISC. WRIT PETITION (P.I.L) NO. .... OF 2020**

**(Under Article 226 of the Constitution of India)**

**District- Allahabad**

Divya Pal Singh and ANR.

..... **Petitioners**

**Versus**

Union of India and ANR.

..... **Respondents**

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**Dated:** [ 19/06/2020 ]

**[SHASHWAT ANAND] [DEVESHE SAXENA] [ANKUR AZAD]**

**Advocates**

Counsels for the Petitioners

High Court, Allahabad.

**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD**

**DATES AND EVENTS**

**IN**

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**(Under Article 226 of the Constitution of India)**

**District- Allahabad**

Divya Pal Singh and ANR. .... **Petitioners**

**Versus**

Union of India and ANR. .... **Respondents**

<b>S. No.</b>	<b>Dates</b>	<b>Events</b>
<b>1.</b>	24/01/1948	Notably, prior to the 2005 Act, there was no public charitable fund/trust, in place, to deal with effective management of disasters or for matters connected therewith or incidental thereto, but for the Prime Minister National Relief Fund (PMNRF), a public charitable trust, created in the pre-Constitutional and pre-2005 Act era, as far back as on 24/01/1948, to deal with disaster situations.
<b>2.</b>	--	With the commencement of the 2005 Act, and the constitution of the National Disaster Response Fund (NDRF), having all the trapping of a public trust, thereunder, by the Central Government, covering the field of the PMNRF, the said Trust has lost its utility, necessity

		and efficacy and has became otiose, redundant and void due to its clash of interests with the NDRF. Curiously, the said fund is still in currency.
3.	28/03/2020	Similarly, the PM-CARES Fund, constituted by the Central Government on 28/03/2020 in the aftermath of the COVID-19 disaster outbreak, could not be constituted, legally, in that, the NDRF, a statutory fund under the 2005 Act was already in place, covering the field of PM-CARES Fund.
4.	--	Remarkably, the PM is the Chairman of both the PMNRF and the PM-CARES Funds, and is also the Chairperson of the NDMA, the National Authority under the 2005 Act, which controls the NDRF.
5.	--	<p>The creation of this Trust (PM-CARES) is also redundant and void (just like the PMNRF), inasmuch as, it strikes at the very source of income of the NDRF as contemplated under Section 46(1)(b) of the 2005 Act, <i>infra</i>. The Prime Minister is calling for money and promoting the non-statutory ‘PM-CARES Fund’ instead of calling for money and promoting the NDRF which is the statutory fund, under the 2005 Act needed to combat the COVID-19 crisis, and the same cannot be justified in any view of the matter.</p> <p>The Prime Minister is not only bound in law, but also in conscience, to carry out the object and mandate of the 2005 Act in its very letter and spirit. Accordingly, the</p>

		new trust (PM-CARES) being contrary to the 2005 Act and the statutory fund of NDRF as well, is void <i>ab initio</i> .
6.	--	<p>It is astounding, that the Prime Minister at the costs of the NDRF, <i>supra</i>, and without any lawful justification, has called upon to the public generally and other institutions, giving them rebate under Section 80(G) of Income Tax Act, 1961 to donate charitably to the PM-CARES Fund.</p> <p>However, <u>most importantly, the Section 46(1)(b) of the 2005 Act provides for donations and grants from public and institutions, to be sought for in the NDRF.</u></p>
7.	--	<p>Notably, <u>as per Section 72 of the 2005 Act, supra, the Act has an overriding effect and prevails, notwithstanding anything inconsistent therewith, over every instrument or law for the time being in force.</u> Manifestly, NDRF would prevail over the express trust created by the PM, the PM-CARES Fund.</p> <p>Manifestly, the action of the Government, in seeking donations in the PM-CARES Fund, instead of the NDRF is unwarranted in law, apart from being unjust and improper.</p>
8.	--	<p>Over and above, <u>the Government has no power to create a Trust otherwise than by an authority of law, in that the provision for creating a Trust is a subject under Entry 10 of the Concurrent List, under the Seventh Schedule of the Constitution.</u></p> <p>Obviously, the Constitutional Mandate for creating a trust by making a law is an implicit, mandatory and</p>

		<p>binding prohibition on the power of the Central Government or Prime Minister (PM) to create a non-statutory express trust (PM-CARES Fund), opaque in nature, to collect money from institutions and public generally to cope with the challenges of the COVID-19 disaster, while, there is a statutory fund already in place (NDRF), which is most transparent, democratic as well as auditable by the constitutional functionary (Comptroller and Auditor General (CAG)) and constituted for the same purpose by the Central Government under the 2005 Act.</p>
9.	--	<p>Clearly, a competition and scramble for funds has broken out from the same source, between the statutory (NDRF) and non-statutory (PM-CARES) funds and as such, the clash of interests between the two is no longer a secret fact. It is noteworthy, that the PM-CARES Fund is contrary to the provisions of the 2005 Act, as it has trespassed upon the field already occupied by the NDRF and has struck hard at its very source of money, and as such is void <i>ab initio</i>.</p>
10.	--	<p>The creation of a separate public trust/fund, i.e., the PM-CARES, by the Central Government to deal with and manage disaster situations would in effect amount to substituting the statutory fund (NDRF) by a non-statutory fund (PM-CARES), which is uncalled for, unwarranted, arbitrary and illegal and would make the 2005 Act crippled and ineffective.</p>

11.	--	<p>Apart from this, India is a country not ruled by a monarch or a despot, but it is a democracy and every action of the Government must be informed by democratic ideals and principles. The ethos of our Constitution frowns upon the way and manner of creation of such a trust of public importance, without consulting the other members of the house of people, much less, the opposition or its leaders. For this count also, the PM-CARES is bad in law.</p>
12.	--	<p>In addition to the above, the NDRF is audited by the Comptroller and Auditor General of India (CAG); its abuse, misappropriation, and misuse is an offense and punishable under the 2005 Act. What is more, the same is transparent and subject to the annual report (giving accounts of its activities) to be tabled in the Parliament, and the Right to Information (RTI) Act, 2005 and thus fully under the public scanner, while the trust affairs, <i>supra</i>, do not qualify such rigor or statutory obligations. They are opaque, undemocratic, beyond the purview of the RTI Act, non-auditable by the CAG and wholly beyond the public reach and scanner.</p>
13.	--	<p>Hence, it is picturesque, that there was no need or propriety, at all, of creating such non-statutory post-2005 Act trust, under the pretext of combating COVID-19, without any legal mechanism or control, more so, while there were NDRF and SDRF already in place, which are transparent, open to all and sundry, and manned by</p>

		statutory public authorities, covering the field of such non-statutory trusts.
14.	--	<p>Most importantly, the actions of the Government must be informed by reasonableness, under the constitutional precincts. In view of all that has been adumbrated hereinbefore, it is conspicuous that the PM-CARES Fund is not only arbitrary, unreasonable and undemocratic, but also not backed by any law.</p> <p>Further, it is disquieting that the purpose, motive, and manner behind the creation of the same, under the cover of the COVID-19 outbreak, in the face of NDRF, is unclear and is left to public imagination and guesswork, and is best known to the PM and none else.</p>
15.	--	<p>It is pertinent to mention, that all the steps and measures taken by the Government have been under the 2005 Act, including the issuance of the nation-wide lockdown. Needless to say, the COVID-19 pandemic is a ‘disaster’ under the 2005 Act, within the definition of “disaster,” under Section 2(d) (quoted <i>infra</i>) of the said Act, <i>infra</i>, and all the measures taken by the Government in combating the coronavirus pandemic have been undertaken under the 2005 Act, <i>inter alia</i>, the nation-wide lock-down(s).</p>
16.	--	<p>Further, it goes without saying, the Chapter 7.15 of the National Disaster Management Plan, 2019 framed under Section 11 of the 2005 Act deals with ‘Biological and</p>

		Public Health Emergencies (BPHE)', which covers within its sweep the coronavirus outbreak, and also, the COVID-19 pandemic was declared a 'notified disaster' under the 2005 Act by the Government of India as evinced by the Letter No. 33-4/2020-NDM-I of the Ministry of Home Affairs, Disaster Management Division addressed to the Chief Secretaries of All States dated 14/03/2020 <b>(Annexure No. 2).</b>
17.	--	What is astounding, that the Government has exercised powers under the 2005 Act to combat the COVID-19 disaster, but has substituted the statutory fund/trust, the NDRF, constituted under the said Act, by the PM-CARES, a non-statutory trust/fund, and the same is arbitrary and bad in both fact and law.
18.	--	Further, it is desirable, indispensable, pragmatic and expedient that the funds collected to cope with the COVID-19 pandemic, must not be strewn under different non-statutory trusts, rather they must be in statutory consolidated fund(s), well-guarded by the provisions of law, so as to effectively address the COVID-19 disaster, keeping in view the availability of funds. However, it is unfortunate and a matter of great pity, that by its action(s) the Government has rendered the 2005 Act maimed, crippled, unworkable and ineffective.
19.	--	In addition to above, since the PMNRF and PM-CARES are unconstitutional and void: the money collected by the

		Central Government as public trusts (PMNRF and PM-CARES Fund) deserves to be deemed as money collected towards the NDRF, constituted by the Central Government under the 2005 Act, and the funds so collected deserve to be transferred/credited to the NDRF.
<b>20.</b>	19/06/2020	Hence, this writ petition.

**Dated:** [ 19/06/2020 ]

**[SHASHWAT ANAND] [DEVESH SAXENA] [ANKUR AZAD]**

**Advocates**

Counsels for the Petitioners

High Court, Allahabad.

**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD**

**CIVIL MISC. (INTERIM) APPLICATION NO. ....OF 2020**

**(Under Chapter XXII, Rule 1, read with Section 151 of C. P. Code)**

**OF**

Divya Pal Singh and ANR.

..... **Petitioners/Applicants**

**IN**

**CIVIL MISC. WRIT PETITION (P.I.L) NO. ....OF 2020**

**(Under Article 226 of the Constitution of India)**

**District- Allahabad**

1. Divya Pal Singh
2. Anubhav Singh

.....**PETITIONERS**

**VERSUS**

1. Union of India, through the Secretary, Ministry of Home Affairs, North Block, Central Secretariat, New Delhi – 110001.
2. National Disaster Management Authority, Through its Secretary, Government of India, NDMA Bhawan, A-1, Safdarjung Enclave, New Delhi – 110029.

.....**RESPONDENTS**

**TO,**

**THE HON'BLE THE CHIEF JUSTICE AND  
HIS LORDSHIP'S COMPANION JUSTICES  
OF THE HON'BLE COURT, AFORESAID.**

**THE HUMBLE APPLICATION ON  
BEHALF OF THE APPLICANTS  
ABOVE-NAMED,**

**MOST RESPECTFULLY, RUNS AS UNDER:**

1. That, full facts and circumstances in support of this application have been given in the accompanying writ petition and the affidavit filed in support thereof.

2. That, under the facts and circumstances of the case, it is expedient and necessary in the interests of justice: to pass an ad interim order, direction or writ, directing the respondent no. 1 to make full disclosure of the accounts, activity and expenditure details of the PM-CARES Fund to this Hon'ble Court and the public at large; Along with a further ad interim order, writ or direction, to produce the Trust-Deed of the PM-CARES Fund, before this Hon'ble Court and to make public the same for the people generally, both, desirably, by publishing the aforesaid details and trust-deed, upon the Government website for all to see; And a further ad interim order, direction or writ, directing the audit of the PM-CARES Fund to be done by the Comptroller and Auditor General of India (CAG), until the disposal of this writ petition, otherwise the entire nation and the petitioners shall be put to great hardships and irreparable loss. And/or to pass such other and further order(s), in addition to or in substitution for, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

### **Prayer**

It is, therefore, humbly prayed that this Hon'ble Court may be graciously be pleased to pass: an ad interim order, direction or writ, directing the respondent no. 1 to make full disclosure of the accounts, activity and expenditure details of the PM-CARES Fund to this Hon'ble Court and the public at large; Along with a further ad interim order, writ or direction, to produce the Trust-Deed of the PM-CARES Fund, before this Hon'ble Court and to make public the same for the people generally, both, desirably, by publishing the aforesaid details and trust-deed, upon the Government website for all to see; And a further ad interim order, direction or writ, directing the audit of the PM-CARES Fund to be done by the Comptroller and Auditor

General of India (CAG), until the disposal of this writ petition, otherwise the entire nation and the petitioners shall be put to great hardships and irreparable loss. And/or to pass such other and further order(s), in addition to or in substitution for, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

**Dated:** [ 19/06/2020 ]

**[SHASHWAT ANAND] [DEVESH SAXENA] [ANKUR AZAD]**

**Advocates**

Counsels for the Petitioners

High Court, Allahabad.

**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD**

**CIVIL MISC. WRIT PETITION (P.I.L) NO. .... OF 2020**

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1. Divya Pal Singh
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**VERSUS**

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2. National Disaster Management Authority, Through its Secretary, Government of India, NDMA Bhawan, A-1, Safdarjung Enclave, New Delhi – 110029.

.....RESPONDENTS

**WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 226 OF  
THE CONSTITUTION OF INDIA, 1950 TO CHALLENGE THE  
CONSTITUTIONAL VALIDITY OF THE PRIME MINISTER NATIONAL  
RELIEF FUND (PMNRF), CONSTITUTED IN THE PRE-  
CONSTITUTIONAL ERA, AS FAR AS BACK AS ON 24/01/1948, TO  
DEAL WITH DISASTROUS SITUATIONS WHEN THERE WAS NEITHER  
A LAW, NOR ANY STATUTORY FUND ALREADY CONSTITUTED,  
AND THE PRIME MINISTER'S CITIZEN ASSISTANCE AND RELIEF IN  
EMERGENCY SITUATIONS FUND (PM-CARES FUND), CONSTITUTED  
BY THE CENTRAL GOVERNMENT ON 28/03/2020 IN THE AFTERMATH  
OF THE COVID-19 DISASTER OUTBREAK, WHILE THERE WAS  
ALREADY IN PLACE, THE 'NATIONAL DISASTER RESPONSE FUND  
(NDRF)', FOR THE SAME PURPOSE, AS CONSTITUTED BY THE  
CENTRAL GOVERNMENT UNDER SECTION 46 OF THE DISASTER  
MANAGEMENT ACT, 2005: AND THE ISSUANCE OF WRIT, ORDER OR  
DIRECTION DECLARING BOTH THE PMNRF AND THE PM-CARES AS  
UNCONSTITUTIONAL AND VOID; AND FURTHER, A WRIT, ORDER  
OR DIRECTION IN THE NATURE OF MANDAMUS, DIRECTING THE  
CENTRAL GOVERNMENT TO TRANSFER/CREDIT THE  
MONEY/FUNDS, COLLECTED AND CONTAINED IN THE PMNRF AND**

THE PM-CARES FUND, TO THE ACCOUNT OF THE NDRF, SUPRA, IN  
THE FITNESS OF THINGS AND IN THE INTERESTS OF JUSTICE AND  
FAIRNESS, FOR THEIR PROPER USE AND APPROPRIATION, UNDER  
THE STATUTORY OUTLINES AND MANDATE OF THE 2005 ACT, IN  
THE LARGER GOOD OF THE CITIZENS OF INDIA.

**TO,**

**THE HON'BLE THE CHIEF JUSTICE AND  
HIS LORDSHIP'S COMPANION JUSTICES  
OF THE HON'BLE COURT, AFORESAID.**

**THE HUMBLE PETITION OF THE  
PETITIONERS ABOVE-NAMED,**

**MOST RESPECTFULLY SHOWETH:**

1. That, this is the first writ petition of the petitioners, filed pro bono publico in this Hon'ble High Court with regard to the cause of action or matter(s) contemplated and the reliefs claimed herein.
2. That, the petitioners have not received any notice of caveat in this matter, lodged by the respondents, jointly or severally, and sent by them directly or on their behalf through their counsel(s).
3. That, the petitioners are practicing Advocates of this Hon'ble Court, and have also made contributions to the PM-CARES Fund of their own accord, and as such, they are well aware of their rights and duties as public spirited citizens of India and are concerned with the rights of the public generally. The ID Proof of the petitioner no. 2 is Annexure No. 1 to the instant petition.
4. That, this is a Public Interest Litigation, inasmuch as, the petition is bona fide and purports to genuinely espouse the cause of the public at large, and is in the interest(s) of the public generally, as there are no personal or private

interests of the petitioners, of any sorts, involved in the matter involved in the instant writ petition.

Further, there is no authoritative pronouncement by the Supreme Court or High Court on the question(s) raised herein and the result of the litigation shall not lead to any undue gain to the petitioners or anyone associated with them, or any undue loss to the respondents or any person(s), body of persons or the State, or any prejudice to the public at large.

**5. That, by means of this writ petition in public interest, the petitioners are, *inter alia*, seeking:**

To challenge the constitutional validity of the Prime Minister National Relief Fund ('PMNRF,' for short), constituted in the pre-Constitutional era, as far as back as on 24/01/1948, to deal with disastrous situations when there was neither a law, nor any statutory fund already constituted, and the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (referred to as 'PM-CARES Fund'), constituted by the Central Government on 28/03/2020 in the aftermath of the COVID-19 disaster outbreak, while there was already in place, the 'National Disaster Response Fund (NDRF)', for the same purpose, as constituted by the Central Government under Section 46 of the Disaster Management Act, 2005 ('2005 Act,' for short): and the issuance of writ, order or direction declaring both the PMNRF and the PM-CARES as unconstitutional and void.

And further, a writ, order or direction in the nature of Mandamus, directing the Central Government to transfer/credit the money/funds, collected and contained in the PMNRF and the PM-CARES Fund, to the account of the NDRF, *supra*, in the fitness of things and in the interests of justice and fairness, for their proper use and appropriation, under the statutory outlines and mandate of the 2005 Act, in the larger good of the citizens of India.

**6. That, significantly, the COVID-19 disaster is wholly covered by the 2005 Act:**

Needless to say, currently the entire world is suffering from the coronavirus outbreak and the COVID-19 pandemic is a ‘disaster’ under the 2005 Act, within the definition of “disaster,” under Section 2(d) (quoted *infra*) of the said Act, *infra*, and all the measures taken by the Government in combating the coronavirus pandemic have been undertaken under the 2005 Act, *inter alia*, the nation-wide lock-down(s).

Further, it goes without saying, the Chapter 7.15 of the National Disaster Management Plan, 2019 framed under Section 11 of the 2005 Act deals with ‘Biological and Public Health Emergencies (BPHE)’, which covers within its sweep the coronavirus outbreak, and also, the COVID-19 pandemic was declared a ‘notified disaster’ under the 2005 Act by the Government of India as evinced by the Letter No. 33-4/2020-NDM-I of the Ministry of Home Affairs, Disaster Management Division addressed to the Chief Secretaries of All States dated 14/03/2020.

A true copy of the Letter No. 33-4/2020-NDM-I dated 14<sup>th</sup> March, 2020 of the Government of India, Ministry of Home Affairs, Disaster Management Division, downloaded from the Government website, is germane and the same is being filed herewith and marked as **Annexure No. 2** to instant petition.

**7. That, the factual matrix of the ‘lis’ involved herein, falls in a narrow compass and the same may be encapsulated as under:**

Notably, prior to the 2005 Act, there was no public charitable fund/trust, in place, to deal with effective management of disasters or for matters connected therewith or incidental thereto, but for the PMNRF, *supra*.

With the commencement of the 2005 Act, and the constitution of the National Disaster Response Fund (NDRF), having all the trappings of a public trust, thereunder, by the Central Government, covering the field of the PMNRF, the said Trust has lost its utility, necessity and efficacy and has became otiose, redundant and void due to its clash of interests with the NDRF. Curiously, the said fund is still in currency.

Similarly, the PM-CARES Fund could not be constituted, legally, in that, the NDRF, a statutory fund under the 2005 Act was already in place, covering the field of PM-CARES Fund.

Remarkably, the PM is the Chairman of both the PMNRF and the PM-CARES Funds, and is also the Chairperson of the NDMA, the National Authority under the 2005 Act, which controls the NDRF.

8. That, it is submitted that the creation of this Trust (PM-CARES) is also redundant and void (just like the PMNRF), inasmuch as, it strikes at the very source of income of the NDRF as contemplated under Section 46(1)(b) of the 2005 Act, *infra*. The Prime Minister is calling for money and promoting the non-statutory ‘PM-CARES Fund’ instead of calling for money and promoting the NDRF which is the statutory fund, under the 2005 Act needed to combat the COVID-19 crisis, and the same cannot be justified in any view of the matter. The Prime Minister is not only bound in law, but also in conscience, the carry out the object and mandate of the 2005 Act in its very letter and spirit. Accordingly, the new trust (PM-CARES) being contrary to the 2005 Act and the statutory fund of NDRF as well, is void *ab initio*.

9. That, in the above context, a panoramic survey on the scheme of the 2005 Act is a must. Accordingly, at the very threshold, the Preamble of the said Act along with other relevant provisions, which are germane to the ‘*lis*’ involved herein, at one place, for ready reference, at opportune time are excerpted

hereunder, at one place, for ready reference, at opportune time, and easy grasp of the matter(s) in controversy:

**Preamble:** “An Act to provide for the effective management of disasters and for matters connected therewith or incidental thereto.”

**Section 2(d)** ““disaster” means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;”

**Section 2(j)** ““National Authority” means the National Disaster Management Authority established under sub-section (1) of section 3;”

**Section 3 “Establishment of National Disaster Management Authority.**—(1) With effect from such date as the Central Government may, by notification in the Official Gazette appoint in this behalf, there shall be established for the purposes of this Act, an authority to be known as the National Disaster Management Authority.

(2) The National Authority shall consist of the Chairperson and such number of other members, not exceeding nine, as may be prescribed by the Central Government and, unless the rules otherwise provide, the National Authority shall consist of the following:—

(a) the Prime Minister of India, who shall be the Chairperson of the National Authority, *ex officio*;

(b) other members, not exceeding nine, to be nominated by the Chairperson of the National Authority.

(3) The Chairperson of the National Authority may designate one of the members nominated under clause (b) of sub-section (2) to be the Vice-Chairperson of the National Authority.

(4) The term of office and conditions of service of members of the National Authority shall be such as may be prescribed.”

**Section 6 “Powers and functions of National Authority.**—(1) Subject to the provisions of this Act, the National Authority shall have the responsibility for laying down the policies, plans and guidelines for disaster management for ensuring timely and effective response to disaster.

(2) Without prejudice to generality of the provisions contained in sub-section (1), the National Authority may —

(a) lay down policies on disaster management;

(b) approve the National Plan;

(c) approve plans prepared by the Ministries or Departments of the Government of India in accordance with the National Plan;

(d) lay down guidelines to be followed by the State Authorities in drawing up the State Plan;

(e) lay down guidelines to be followed by the different Ministries or Departments of the Government of India for the purpose of integrating the measures for prevention of disaster or the mitigation of its effects in their development plans and projects;

- (f) coordinate the enforcement and implementation of the policy and plan for disaster management;
- (g) recommend provision of funds for the purpose of mitigation;
- (h) provide such support to other countries affected by major disasters as may be determined by the Central Government;
- (i) take such other measures for the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary;
- (j) lay down broad policies and guidelines for the functioning of the National Institute of Disaster Management.

(3) The Chairperson of the National Authority shall, in the case of emergency, have power to exercise all or any of the powers of the National Authority but exercise of such powers shall be subject to *ex post facto* ratification by the National Authority.”

**Section 46 “National Disaster Response Fund.—(1)** The Central Government may, by notification in the Official Gazette, constitute a fund to be called the National Disaster Response Fund for meeting any threatening disaster situation or disaster and there shall be credited thereto—

- (a) an amount which the Central Government may, after due appropriation made by Parliament by law in this behalf provide;
- (b) any grants that may be made by any person or institution for the purpose of disaster management.

(2) The National Disaster Response Fund shall be made available to the National Executive Committee to be applied towards meeting the expenses for emergency response, relief and rehabilitation in accordance with the guidelines laid down by the Central Government in consultation with the National Authority.”

**Section 48. “Establishment of funds by State Government.—(1)** The State Government shall, immediately after notifications issued for constituting the State Authority and the District Authorities, establish for the purposes of this Act the following funds, namely:—

- (a) the fund to be called the State Disaster Response Fund;
  - (b) the fund to be called the District Disaster Response Fund;
  - (c) the fund to be called the State Disaster Mitigation Fund;
  - (d) the fund to be called the District Disaster Mitigation Fund.
- (2) The State Government shall ensure that the funds established—
- (i) under clause (a) of sub-section (1) is available to the State Executive Committee;
  - (ii) under sub-clause (c) of sub-section (1) is available to the State Authority;
  - (iii) under clauses (b) and (d) of sub-section (1) are available to the District Authority.”

**Section 53. “Punishment for misappropriation of money or materials, etc.—**Whoever, being entrusted with any money or materials, or otherwise being, in custody of, or dominion over, any money or goods, meant for providing relief in any threatening disaster situation or disaster, misappropriates or appropriates for his own use or disposes of such money or materials or any part thereof or wilfully compels any other

*person so to do, shall on conviction be punishable with imprisonment for a term which may extend to two years, and also with fine."*

**Section 55. "Offences by Departments of the Government.—(1)**

*Where an offence under this Act has been committed by any Department of the Government, the head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.*

*(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the head of the Department, such officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."*

**Section 56. "Failure of officer in duty or his connivance at the contravention of the provisions of this Act.—***Any officer, on whom any duty has been imposed by or under this Act and who ceases or refuses to perform or withdraws himself from the duties of his office shall, unless he has obtained the express written permission of his official superior or has other lawful excuse for so doing, be punishable with imprisonment for a term which may extend to one year or with fine."*

**Section 70. "Annual report.—(1)** *The National Authority shall prepare once every year, in such form and at such time as may be prescribed, an annual report giving a true and full account of its activities during the previous year and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before both Houses of Parliament within one month of its receipt.*

*(2) The State Authority shall prepare once in every year, in such form and at such time as may be prescribed, an annual report giving a true and full account of its activities during the previous year and copies thereof shall be forwarded to the State Government and that Government shall cause the same to be laid before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House."*

**Section 72. "Act to have overriding effect.—***The provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."*

10. That, it is astounding, that the Prime Minister at the costs of the NDRF, *supra*, and without any lawful justification, has called upon to the public generally and other institutions, giving them rebate under Section 80(G) of Income Tax Act, 1961 to donate charitably to the PM-CARES Fund. However,

most importantly, the Section 46(1)(b) of the 2005 Act provides for donations and grants from public and institutions, to be sought for in the NDRF.

Manifestly, the action of the Government, in seeking donations in the PM-CARES Fund, instead of the NDRF is unwarranted in law, apart from being unjust and improper.

11. That, notably, as per Section 72 of the 2005 Act, *supra*, the Act has an overriding effect and prevails, notwithstanding anything inconsistent therewith, over every instrument or law for the time being in force. Manifestly, NDRF would prevail over the express trust created by the PM, the PM-CARES Fund.

12. That, over and above, the Government has no power to create a Trust otherwise than by an authority of law, in that the provision for creating a Trust is a subject under Entry 10 of the Concurrent List, under the Seventh Schedule of the Constitution.

Obviously, the Constitutional Mandate for creating a trust by making a law is an implicit, mandatory and binding prohibition on the power of the Central Government or Prime Minister (PM) to create a non-statutory express trust (PM-CARES Fund), opaque in nature, to collect money from institutions and public generally to cope with the challenges of the COVID-19 disaster, while, there is a statutory fund already in place (NDRF), which is most transparent, democratic as well as auditable by the constitutional functionary (Comptroller and Auditor General (CAG)) and constituted for the same purpose by the Central Government under the 2005 Act.

13. That, further, the funds being sought and channelized for the pre-2005 Act trust being the PMNRF and the newly created PM-CARES Trust, would restrict the inlet and flow of funds into the NDRF from the general public and other institutions, and would thus hit hard upon the very source of the funds of the NDRF. Hence, there is a competition and clash of interest between the

statutory and non-statutory funds, and in the course of time the NDRF would lose its relevance and worth. Manifestly, the said trusts have trenched on the field of the statutory fund, NDRF, and are as such redundant and void.

Further, the creation of a separate public trust/fund, i.e., the PM-CARES, by the Central Government to deal with and manage disaster situations would in effect amount to substituting the statutory fund (NDRF) by a non-statutory fund (PM-CARES), which is uncalled for, unwarranted, arbitrary and illegal and would make the 2005 Act crippled and ineffective.

14. That, to the utter dismay of the petitioners, it is submitted that there was no need or propriety of creating a non-statutory public charitable trust (the PM-CARES), which is non-transparent and opaque, and without any legal and governmental mechanism or control, hereinbefore referred to, while there is already NDRF in place, constituted under the 2005 Act, which is under the public scanner of statutory public authorities, covering the field of such trusts.

15. That, it is desirable, indispensable, pragmatic and expedient that the funds collected to cope with the COVID-19 disaster, must not be strewn and scattered under different non-statutory trusts, rather they must be in a statutory consolidated fund, well-guarded by the provisions of law, so as to effectively address the COVID-19 disaster, keeping in view the availability of funds. Although, it is unfortunate and a matter of great pity, that by its action(s) the Government has rendered the 2005 Act maimed, crippled, unworkable and ineffective.

16. That, the funds collected are supposed to be in relation to and for the purposes of coping with the disaster situation, in the public charitable trusts as against the 2005 Act, muchless creating blockade to the flow of funds from the general public and other institutions to the statutory fund NDRF, are void as defeating specific provisions of law by those in the helm of affairs who are also

in control of the NDRF. Thus, there is clearly a clash of interest among the non-statutory public charitable trust on one hand, and the NDRF scheme on the other, and the same is against the interests of the public at large.

17. That, apart from what has been stated hereinbefore, India is a country not ruled by a monarch or a despot, but it is a democracy and every action of the Government must be informed by democratic ideals and principles. The ethos of our Constitution frowns upon the way and manner of creation of such a trust of public importance, without consulting the other members of the house of people, muchless, the opposition or its leaders. For this count also, the PM-CARES is bad in law.

18. That, in addition to above, the NDRF is audited by the Comptroller and Auditor General of India (CAG); its abuse, misappropriation and misuse is an offence and punishable under the 2005 Act. What is more, the same is transparent, subject to annual report (giving accounts of its activities) to be tabled in the Parliament, and the Right to Information (RTI) Act, 2005 and thus fully under the public scanner, while the trust affairs, *supra*, do not qualify such rigour or statutory obligations. They are opaque, undemocratic, beyond the purview of RTI Act, non-auditable by the CAG and wholly beyond the public reach and scanner.

Accordingly, Central Government has no power to constitute such public trusts as may adversely affect the funds/trusts, i.e., the NDRF, so constituted under the 2005 Act.

19. That, most importantly, the actions of the Government must be informed by reasonableness, under the constitutional precincts. In view of all that has been adumbrated hereinbefore, it is conspicuous that the PM-CARES Fund is not only unreasonable but also not backed by any law. Further, it is disquieting that the purpose, motive and manner behind the creation of same, under the

cover of COVID-19 outbreak, in the face of NDHF, is unclear and is left to public imagination and guesswork, and is best known to the PM and none else.

20. That, it is pertinent to mention, that all the steps and measures taken by the Government have been under the 2005 Act, including the issuance of the nation-wide lockdown. What is astounding, that the Government has exercised powers under the 2005 Act to combat the COVID-19 disaster, but has substituted the statutory fund/trust, the NDHF, constituted under the said Act, by the PM-CARES, a non-statutory trust/fund, and the same is arbitrary and bad in both fact and law.

21. That, in the facts and circumstances of the case and in the light of the submissions adumbrated hereinbefore, it is imperative that this Hon'ble Court may issue a writ, order or direction declaring both the PMNRF, constituted in the pre-Constitutional era, as far as back as on 24/01/1948, to deal with disastrous situations when there was neither a law, nor any statutory fund already constituted, and the PM-CARES Fund, constituted by the Central Government on 28/03/2020 in the aftermath of the COVID-19 disaster outbreak, as unconstitutional and void.

22. That, in addition to above, the money lying scattered as collected by the Central Government as public trusts (PMNRF and PM-CARES Fund) deserves to be deemed as money collected towards the NDHF constituted by the Central Government under the 2005 Act, and the funds so collected deserve to be transferred/credited to the NDHF: so as to be under the public scanner and to be used fairly and under the existing efficient and effective statutory procedure as per the mandate of the 2005 Act.

23. That, in the facts and circumstances of the case, it is expedient and necessary in the interests of justice, that this Hon'ble Court may pass an ad interim order, direction or writ, directing the respondent no. 1 to make full

disclosure of the accounts, activity and expenditure details of the PM-CARES Fund to this Hon'ble Court and the public at large; Along with a further ad interim order, writ or direction, to produce the Trust-Deed of the PM-CARES Fund, before this Hon'ble Court and to make public the same for the people generally, both, desirably, by publishing the aforesaid details and trust-deed, upon the Government website for all to see; And a further ad interim order, direction or writ, directing the audit of the PM-CARES Fund to be done by the Comptroller and Auditor General of India (CAG), until the disposal of this writ petition, otherwise the entire nation and the petitioners shall be put to great hardships and irreparable loss. And/or to pass such other and further order(s), in addition to or in substitution for, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

24. That, the instant petition is based upon the information/documents which are well within the public domain and it is in the pleasure of this Hon'ble Court to take a judicial notice thereof.

25. That, the petitioners have no other equally efficacious and alternative remedy except to invoke the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution by filing the instant writ petition in public interest, inter alia, on the following grounds: –

### **GROUND**

a. **Because**, the PMNRF and PM-CARES are unconstitutional and void, as not being backed by any law and being at odds with the NDRL, constituted by the Central Government under Section 46 of the 2005 Act.

b. **Because**, notably, the 2005 Act, pregnant with the statutory Fund, having all the trappings of a public trust, the NDRL, constituted thereunder, occupied the field to deal with disaster situations.

Accordingly, the pre-Constitutional and pre-2005 Act public and charitable trust, PMNRF of 1948, which earlier had covered the said field lost its necessity and efficacy, and became otiose and redundant with the coming into force of the 2005 Act; And the post-2005 Act Trust being the PM-CARES Fund (dt. 28/03/2020) is void from its very inception, owing to the reasons recorded above and also owing to its clash of interests with the NDRF (constituted under the said Act), which is managed and controlled by the National Disaster Management Authority (NDMA), of which none other than the PM is the Chairperson *ex-officio*.

- c. **Because**, importantly, as per Section 72 of the 2005 Act, the Act has an overriding effect and prevails, notwithstanding anything inconsistent therewith, over every instrument or law for the time being in force. Manifestly, NDRF would prevail over the express trust created by the PM, the PM-CARES Fund.
- d. **Because**, most importantly, the Section 46(1)(b) of the 2005 Act provides for donations and grants from public and institutions, to be sought for in the NDRF. However, at the cost of NDRF, it is astounding that the PM is seeking donations for his non-statutorily created PM-CARES Fund and is, thus, promoting the same, instead of promoting the NDRF and seeking donations therefor. Accordingly, this action of the PM/Government has shockingly, blocked the smooth inlet and flow of funds in the NDRF and cannot be justified in any view of the matter; The Prime Minister is not only bound in law, but also in conscience, to carry out the object and mandate of the 2005 Act in its letter and spirit.
- e. **Because**, over and above, the Government has no power to create a Trust otherwise than by an authority of law, in that the provision for

creating a Trust is a subject under Entry 10 of the Concurrent List under the Seventh Schedule of the Constitution. Manifestly, the Constitutional Mandate for creating a trust by making a law is an implicit, mandatory and binding prohibition on the power of the Central Government or Prime Minister (PM) to create a non-statutory express trust (PM-CARES Fund), opaque in nature, to collect money from institutions and public generally during outbreak of disaster (the COVID-19), while, there is a statutory fund, already in place (NDRF) for the same purpose constituted by the Central Govt. under 2005 Act.

**f.** **Because**, the creation of a separate public trust/fund, i.e., the PM-CARES, by the Central Government to deal with and manage disaster situations would in effect amount to substituting the statutory fund (NDRF) by a non-statutory fund (PM-CARES), which is uncalled for, unwarranted, arbitrary and illegal and would make the 2005 Act crippled and ineffective.

**g.** **Because**, obviously, a competition and scramble for funds has broken out from the same source, between the statutory (NDRF) and non-statutory (PM-CARES) funds and as such, the clash of interests between the two is no longer a secret fact. It is noteworthy, that the PM-CARES Fund is contrary to the provisions of the 2005 Act, as it has trespassed upon the field already occupied by the NDRF and has struck hard at its very source of money, and as such is void *ab initio*.

**h.** **Because**, India is a country not ruled by a monarch or a despot, but it is a democracy and every action of the Government must be informed by democratic ideals and principles. The ethos of our Constitution frowns upon the way and manner of creation of such a trust of public importance, without consulting the other members of the house of

people, muchless, the opposition or its leaders. For this count also, the PM-CARES is bad in law.

- i. **Because**, the creation of a separate non-statutory public charitable trust/fund (PM-CARES) by the Central Government amounts to substituting the statutory fund/trust (NDRF), and only tends to maim, weaken and paralyze the 2005 Act and the statutory trust/fund thereunder, being the NDRF.
- j. **Because**, the NDRF is audited by the Comptroller and Auditor General of India (CAG); its abuse, misappropriation and misuse is an offence and punishable under the 2005 Act. What is more, the same is transparent, subject to annual report (giving accounts of its activities) to be tabled in the Parliament, and the Right to Information (RTI) Act, 2005 and thus fully under the public scanner, while the trust affairs, *supra*, do not qualify such rigour or statutory obligations. They are opaque, undemocratic, beyond the purview of RTI Act, non-auditable by the CAG and wholly beyond the public reach and scanner.
- k. **Because**, there was no need or propriety, at all, of creating such non-statutory post-2005 Act trust(s), under the pretext of combating COVID-19, without any legal mechanism or control, more so, while there were NDRF and SDRF already in place, which are transparent, open to all and sundry, and manned by statutory public authorities, covering the field of such non-statutory trusts.
- l. **Because**, it is desirable, indispensable, pragmatic and expedient that the funds collected to cope with the COVID-19 pandemic, must not be strewn under different non-statutory trusts, rather they must be in statutory consolidated fund(s), well-guarded by the provisions of law, so as to effectively address the COVID-19 disaster, keeping in view the

availability of funds. However, it is unfortunate and a matter of great pity, that by its action(s) the Government has rendered the 2005 Act maimed, crippled, unworkable and ineffective.

**m.** **Because**, the actions of the Government must be informed by reasonableness, under the constitutional precincts. In view of all that has been adumbrated hereinbefore, it is conspicuous that the PM-CARES Fund is not only unreasonable but also not backed by any law. Further, it is disquieting that the purpose, motive and manner behind the creation of same, under the cover of COVID-19 outbreak, in the face of NDRF, is unclear and is left to public imagination and guesswork, and is best known to the PM and none else.

**n.** **Because**, the money collected by the Central Government as public trusts (PMNRF and PM-CARES Fund) deserves to be deemed as money collected towards the NDRF constituted by the Central Government under the 2005 Act, and the funds so collected deserve to be transferred/credited to the NDRF.

### **PRAAYER**

It is, therefore, Most Respectfully prayed that this Hon'ble Court may graciously be pleased to:

- i.** Issue a writ, order or direction, declaring the non-statutory trusts/funds being the PMNRF and the PM-CARES Fund as unconstitutional and void; And/or
- ii.** Issue a writ, order or direction, in the nature of Mandamus, directing the Central Government to transfer/credit the money/funds, collected and contained in the PMNRF and the PM-CARES Fund, to the account of the NDRF, *supra*, in the fitness of things and in the interests of justice and fairness, for their proper use and appropriation,

under the statutory outlines and mandate of the 2005 Act, in the larger good of the citizens of India; And/or

- iii. In the alternative: Issue a writ, order or direction, in the nature of Mandamus, commanding the respondent no. 1 to make full disclosure of the accounts, activity and expenditure details of the PM-CARES Fund to the public at large: And to make public the Trust-Deed of the PM-CARES Fund for the people generally, both, desirably, by publishing the aforesaid details and trust-deed, upon the Government website for all to see, and the accounts to be updated regularly: And to direct the audit of the PM-CARES Fund to be done by the Comptroller and Auditor General of India (CAG), in the fitness of the things and in the interests of justice and the public at large; And/or
- iv. Pass such other and further order(s) in addition to or in substitution for, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case; And/or
- v. To award the costs of the writ petition.

**Dated:** [ 19/06/2020 ]

[SHASHWAT ANAND] [DEVESH SAXENA] [ANKUR AZAD]

**Advocates**

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