

**IN THE SUPREME COURT OF INDIA**  
(CIVIL ORIGINAL JURISDICTION)  
**WRIT PETITION (CIVIL) NO. 546 OF 2020**  
(PUBLIC INTEREST LITIGATION)

**IN THE MATTER OF:**

CENTRE FOR PUBLIC INTEREST LITIGATION ...PETITIONER

VERSUS

UNION OF INDIA ...RESPONDENT

**REJOINDER AFFIDAVIT ON BEHALF OF THE PETITIONER**

I,

of India, New Delhi-110 001, do hereby solemnly affirm and state on oath as under:

1. That I am General Secretary of the Petitioner society and being familiar with the facts of the case, I am competent and authorised to swear this rejoinder affidavit. I have gone through the counter affidavit filed by the respondent Union of India and am submitting my reply as follows.

**ABOUT THE PETITIONER**

2. That the respondent has firstly raised a so-called preliminary objection with regard to the petitioner society. In this regard it is submitted that the Petitioner has, since long, established its credibility before this Hon'ble Court and various High Courts by filing a number of genuine PILs in which large number of favourable

judgments have been passed. CPIL was established as a registered society 36 years ago (on 19.06.1984) by its Founder President, Late Shri V M Tarkunde. The object of the society is to put in place a system which would take up issues involving serious public interest before the Courts in an organised manner.

3. The role played by the petitioner organisation was recognized by this Hon'ble Court in the 2G scam case vide its judgment cancelling the telecom licenses and allocation of spectrum. This Hon'ble Court in *Centre for Public Interest Litigation vs. Union of India* reported in (2012) 3 SCC 1 stated: "...we consider it imperative to observe that but for the vigilance of some enlightened citizens.... and Non Governmental Organisations who have been constantly fighting for clean governance and accountability of the constitutional institutions, unsuspecting citizens and the Nation would never have known how the scarce natural resource spared by Army has been grabbed by those who enjoy money power and who have been able to manipulate the system." A list of some of the important cases filed by CPIL in which substantive judgments/ orders have been passed by this Hon'ble Court is annexed herewith as **ANNEXURE P15** (pg\_\_\_\_\_).

#### **NATIONAL PLAN**

4. It is respectfully submitted that the country today is not only facing a severe Covid-19 crisis, but is also facing an economic, medical and social crisis. The entire crisis has got magnified and amplified due to arbitrary and *ad hoc* decision making of the Central Government, which has passed draconian orders without planning, strategy, consultation and transparency.

5. It is submitted that though the current pandemic has hit the entire world, India is the only country where the pandemic other than a public health disaster, has also caused a huge humanitarian crisis. A situation has thus arisen that public health facilities are proving to be inadequate, social and economic life has plummeted, and millions are facing a risk of financial collapse.
6. The writ petition has therefore pointed out that while the Disaster Management Act, 2005 (hereinafter 'the DMA') is a sea of power, it is also an *ocean* of responsibilities. The humanitarian, social, medical and economic crisis that the country is facing today is a result of the Government exercising all powers under DMA & passing unprecedented draconian orders, while not exercising its responsibilities provided under the very same enactment.
7. The petition has therefore sought implementation of certain important provisions of the DMA which would not only act as a check on *ad hoc* decision making, but would also go a long way in providing relief to the most vulnerable sections of society.
8. Central Government has declared Covid-19 to be a notified disaster under the DMA and has passed various orders, like an unprecedented nationwide complete lockdown, in exercise of powers conferred by DMA. As per the catalogue of notifications maintained by 'PRS Legislative Research' (a highly respected body), Central Government has passed a whopping 865 major notifications (and many more minor ones) dealing with Covid-19 till 13.07.2020. Further, arbitrary lockdowns are also being imposed by state government and local authorities which are not pursuant to any laid out strategy or plan.

9. The exercise of completely arbitrary power without a plan or transparency has had devastating consequences. Not only Covid-19 cases have exploded despite draconian orders passed, the unprecedented humanitarian crisis which was witnessed in India has no parallel anywhere in the world, even though pandemic has spread in all continents and has afflicted both developed and developing world. Therefore, the government's stand in its counter that our country has dealt with the crisis "in the best possible manner" is misplaced and shows that it is not even acknowledging that mistakes were made because of lack of planning which need to be rectified.
10. Covid-19 had called for a response where dignity of the citizens had to be protected while ramping up testing and medical facilities, but instead police force was unleashed on the millions of poor people with arbitrary powers, in the hope that Covid-19 can be contained by the police. The results are for everyone to see, while the millions suffered, coronavirus continued to surge across the country, much more than anywhere in the world.
11. Despite the fact that India witnessed an extremely long nationwide lockdown which was widely acknowledged as the harshest in the world, locking up more than 1.3 billion people, including millions of daily-wagers and people who live below poverty line, coronavirus cases have exploded.
12. The Hon'ble Delhi High Court had, in fact, observed: "***This Court can take judicial notice of the fact that the lockdown has resulted in loss of jobs for several lakhs of people. Scores of people were forced to walk considerable distance during the lockdown and stand in long queues at food distribution centres***

*just to have two square meals a day. Several have gone hungry and were not able to get one meal. Many were left shelterless. Several lakhs of migrant labour had to walk on foot and go back to their native places. The economic situation in the country has taken a terrible hit due to the lockdown. In fact, many analysts have opined that the lockdown has caused more human suffering than Covid-19 itself. Economist have forecasted that Indian economy will shrink as a result of the steps taken to contain Corona virus pandemic. Indian economy virtually came to a standstill during nationwide lockdown. Production in the country came to a grinding halt during the lockdown period. Construction activities in the country have stopped. People have become unemployed which raises grave concerns regarding the law and order situation in the country.”* (Emphasis supplied) A copy of the judgment of the division bench of the Hon’ble Delhi High Court dated 12.06.2020 passed in WPC 3449 of 2020 is annexed as **ANNEXURE P-16 (Pg. \_\_\_\_\_)**.

13. Former Chief Economic Advisor to Government of India and former Chief Economist of the World Bank, Mr. Kaushik Basu wrote an article in The Indian Express how government’s arbitrary decisions far from containing the coronavirus itself became a source of its spread. The article states: *“I am assuming that for such a major announcement with a four-hour notice, there must have been a team of senior bureaucrats who knew and planned this policy in advance. And I know how talented India’s bureaucracy is. Surely, they should have acted to execute the plan. The stories that appeared in the news all over the world, of tens of millions of poor Indians trying to walk hundreds of miles to get home, were tragic. In addition, it*

*damaged India's global image; India got far worse international press than it may have received any time since independence. The Economist magazine (June 13) estimated that India issued "well over 4,000 different rules" during the first two months of the lockdown, many of those rules being corrections of many of those rules. **Quite how this policy disaster happened will take time to uncover. But one thing has now become clear. The way in which the lockdown was executed, the lockdown itself became the source of the virus's spread. By having people huddle together, infecting one another, and then having the same people travel hundreds of miles, the pandemic has been made much worse than it need have been.*** A copy of the article dated 08.07.2020 published in The Indian Express is annexed as **ANNEXURE P-17 (Pg. \_\_\_\_\_)**.

14. The respondent has relied upon the National Plan 2019 framed under the DMA to argue that the plan is in existence and therefore no further National Plan needs to be framed to deal with Covid-19 pandemic. It is submitted that the petitioner is aware of the said Plan and had also annexed the relevant portion of the said Plan in the petition. It is submitted that the said plan does not deal with various issues which have become central in the current epidemic such as the lockdown, social distancing, lack of medical facilities and equipment, the plight of migrant workers, small industries, jobs and food security for millions.

15. It is also not the case of the government that it has followed the broad strategy outlined in the aforesaid National Plan of 2019 and has taken measures in implementation of that plan. It is also not the case of the government that citizens can have a fair idea of the steps

government is going to take in the next few months to deal with Covid-19 by perusing the National Plan 2019. It is submitted that the said National Plan 2019, which was in existence before the pandemic started, is *ex facie* inadequate and limited in scope.

16. Petitioner submits that there must be a National Plan approved by NDMA after following the due procedure outlined in the DMA to deal with the Covid-19 pandemic. The said Plan must clearly spell out a plan and detailed strategy which the governments and authorities must follow in order to contain the pandemic, provide medical relief to those affected by Covid-19 or need medical treatment for other diseases, and also provide a strategy to safeguard livelihoods and rights & dignity of the vulnerable sections of society.
17. It is submitted that the present crisis situation has arisen and has got much worse because of arbitrary and *ad hoc* decision making by authorities without seeking inputs from experts in various fields. Many of these decisions have been implemented without giving adequate warning, without requisite preparation, without taking into consideration the consequences affecting the lives of millions of men, women and children. It can further be said that there has also been no timely change of strategy when the measures taken were not working and causing misery eg. movement of migrant workers, which ultimately resulted in huge spread of corona throughout the country.
18. The fact that national lockdown was announced with only 4 hours notice without any plan to handle the expected consequences and without any necessary support itself warrants a Covid specific

National Plan for the coming times. This is also important in light of the fact that many countries are now experiencing what is called a “second wave” of pandemic. In case such a situation as to occur in our country, it is necessary that there is a National Plan in place to deal specifically with Covid-19 pandemic.

- 19.** That at present, as per various experts the pandemic is yet to peak itself in the country. Even thereafter, the pandemic might continue to afflict the country for an year or so. In such a situation the people of the country, the public health officials must know what the government plans to do in a given situation or contingency if it were to arise. They must know under what situation a further lockdown can be declared and what are their entitlements in case a further lockdown were to be announced. It is submitted that such knowledge for the administration as well as for the public at large would help deal with the situation better as people would be aware of the steps government may take in the coming months and years.
- 20.** Moreover, there is a need to provide the governments and authorities a blueprint so that they are able to deal with the disaster while providing the minimum standards of relief so as to avoid ancillary disasters and so that further adversities may be avoided.
- 21.** At present, without a National Plan specific to Covid-19, the people (or even governmental authorities) are not sure of what awaits them. There are myriad possibilities that may occur that the government may have to deal with. In such a situation a comprehensive plan, with clearly spelt out roles for the various limbs of administration given any kind of contingency that may occur, rules and procedures for maintaining safety, minimum guaranteed

entitlements for the people, rights of the people needs to be formulated. For instance, while in the pandemic various hospitals have been declared Covid-19 hospitals, there has been no alternative plan for those suffering from other life-threatening or serious illness who require serious and constant medical care and supervision.

**22.** Fortunately there is already a legal regime under the DMA to ensure that there is no arbitrary and *ad hoc* decision making. The DMA has already been invoked by the government to exercise powers. The petitioner submits that the DMA needs to be implemented in a way that squarely deals with Covid-19. The submission by the respondent that National Plan of 2019 suffices in the ongoing situation is not acceptable because that plan does not deal with Covid and is of no use presently when the challenges being faced by the people in the country are severe and multifold.

**23.** It is not the case of the Petitioner that once a National Plan to deal with Covid-19 is drawn by NDMA after due consultation with all stakeholders and experts in accordance with the procedure prescribed in DMA, then it would be a permanent plan and cannot be amended if situation so warrants. It is submitted that even after National Plan is issued, it can be further amended by NDMA (a high-powered body) after following due procedure under DMA.

**24.** It is also not the case of the Petitioner that National Plan must provide for minutest of details in a way that circumscribes the decision making power of the governments in totality. Petitioner submits that National Plan would only provide a broad strategy, plan and blueprint which would lay down actionable targets, would guide

all authorities towards common goals and would improve predictability and transparency.

- 25.** Such a National Plan would act as a check on completely arbitrary decision making as is the present where over 850 major notifications have been issued by the Central Government causing huge uncertainty, indignity, and curtailing basic rights and freedoms of the citizens in a totally disproportionate response.
- 26.** Under Section 10(2) of the DM Act, the National Executive Committee has the responsibility to prepare a National Plan and to monitor its implementation. It is to be noted that under Section 11(2), a National Plan is mandatorily required to be prepared by the National Executive Committee having regard to the National Policy and in consultation with the State Governments and expert bodies or organisations in the field of disaster management to be approved by the National Authority.
- 27.** It is pertinent to mention herein that prominent Indian experts in the field of epidemiology and public health have severely criticized the Central Government's handling of the COVID-19 crisis in their joint statement (annexed with the writ petition) submitted to the Hon'ble Prime Minister on 25.05.2020. They have also given various significant recommendations. The signatories of the joint statement include former advisors to the health ministry, current and former professors at the All India Institute for Medical Sciences, Benaras Hindu University, Jawaharlal Nehru University, Postgraduate Institute of Medical Education and Research, among others. All the said signatories are members of the Indian Public Health Association (IPHA), the Indian Association of Preventive and Social Medicine

(IAPSM) and the Indian Association of Epidemiologists (IAE) and are part of the Joint COVID-19 Task Force to help the Government of India for containment of COVID-19 pandemic in the country.

- 28.** It is thus submitted that the National Executive Authority under DMA must be entrusted with the task of preparing this plan with the assistance of experts, which should further be approved by the National Authority. Guidelines being issued by various Ministries, especially by Secretary, Ministry of Health, almost everyday, can not be a substitute for a comprehensive National Plan approved by NDMA.
- 29.** The government's submission in its counter affidavit that since many guidelines, notifications and orders have been issued by various Ministries and therefore there is no need for a National Plan to deal with Covid-19, is neither sustainable in law nor in view of the mounting evidence to the contrary.

### **MINIMUM STANDARDS OF RELIEF**

- 30.** In view of Section 12 of the DMA, it is obligatory on the Central Government to recommend statutory guidelines specifying the minimum standards of relief for persons affected by national disaster. Therefore, the Petitioner submits that it is the duty of the Government to lay down guidelines under Section 12 specifically for the COVID-19 disaster and the resultant lockdown measures. General guidelines for shelter home etc laid down before the Covid-19 disaster are not at all adequate to deal with the challenge.
- 31.** The minimum standards of relief would need to cover all disaster affected persons including those who suffer from Covid-19, those who are afflicted with other ailments and the millions who are

suffering deprivation as a result of collapse of economic activity. The standards laid down would be enforceable and be available as a matter of right. The authorities would be duty bound to implement them and provide necessary relief.

**32.** For the government to say that they have launched certain schemes which provide limited relief to a limited section of society without giving them statutory status under Section 12 is not acceptable. The schemes launched by the government are not only limited but do not have the same enforceability that statutory guidelines under Section 12 would entail.

**33.** The Centre's 20 Lakh Crores of economic stimulus is mostly counting on the pre-COVID-19 schemes. In any case, the said package is dealing mostly with the medium and long term concerns of farmers, small industries and other sections of the society. There has been lack of short-term measures and guidelines for providing immediate relief to the worst affected sections of people, which must include cash transfers to the poor and vulnerable citizens.

**34.** Therefore, it is submitted that the Government must be directed to lay down guidelines providing minimum standards of relief specifically for Covid-19 disaster in compliance of Section 12 of the DMA. The schemes and measures already announced, though inadequate, must be incorporated as part of the statutory guidelines under DMA and made enforceable as a matter of right.

#### **NDRF AND PM CARES FUND**

**35.** The Respondent in its counter affidavit has not dealt with the averments made in the writ petition regarding the mandatory requirement for credit of the grants made by any person or institution

for the purpose of disaster management to the National Disaster Response Fund (NDRF) in terms of Section 46(1)(b) of the DM Act. The sole contention of the Respondent herein in this regard has been made in Para 30 of its affidavit that there does exist a NDRF under Section 46 which so far consisted of budgetary provisions made by the Central Government without any private contributions and that PM CARES is a fund with voluntary donations which is amongst several funds which are either established earlier or now for carrying out various relief works. The Respondent herein has submitted that mere existence of a statutory fund under Section 46 of the DMA would not prohibit the creation of a different fund like PM Cares Fund for receiving voluntary donations.

- 36.** The Respondent's silence on certain other critical issues is also quite eloquent. Respondent in its counter affidavit has not stated under what legal provision PM Cares has been set-up, who all are the trustees, who is managing the fund and who is the auditor.
- 37.** The Respondent has also significantly not disclosed how much money has so far been collected in PM Cares fund and how it has been used. It is learnt that several thousands of crores have been collected since many companies have diverted their CSR funds from all social, educational and health activities to donate to the PM Cares Fund.
- 38.** Respondent has also not answered why all RTI queries concerning the fund have been stonewalled, why CAG audit has been denied despite the fact it is public money and why a private auditor close to ruling party has been appointed.

39. It is a well settled principle of law that when a statute requires a certain thing to be done in a certain way, then that thing must be done in that way only and that all other methods of its performance are necessarily forbidden. A three-judge bench of this Hon'ble Court in *Ramchandra Keshav Adke v. Govind Joti Chavare*, (1975) 1 SCC 559 held:

*“24. Next point to be considered is, what is the consequence of non-compliance with this mandatory procedure?”*

*25. A century ago, in Taylor v. Taylor [(1876) 1 Ch D 426] Jassel, M.R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy Council, in Nazir Ahmed v. Emperor [AIR 1936 PC 253 : LR 63 IA 372] and later by this Court in several cases [Shiv Bahadur Singh v. State of U.P., AIR 1954 SC 322 : AIR 1954 SC 1098 : 1954 SCR 1098 : 1954 Cri LJ 910; Deep Chand v. State of Rajasthan, AIR 1961 SC 1527 : (1962) 1 SCR 662 : (1961) 2 Cri LJ 705] , to a Magistrate making a record under Sections 164 and 364 of the Code of Criminal Procedure, 1898. This rule squarely applies “where, indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other.” [Maxwell's Interpretation of Statutes, 11th Edn., pp. 362-63] The rule will be attracted with full force in the present case, because non-verification of the surrender in the requisite manner would frustrate the very purpose of this provision. Intention of the legislature to prohibit the verification of the surrender in a manner other than the one prescribed, is implied in these provisions. Failure to comply with these mandatory provisions, therefore, had vitiated the surrender and rendered it non est for the purpose of Section 5(3)(b).”*

- 40.** Section 46(1)(b) of the DM Act provides that the Central Government would constitute NDRF for meeting any disaster and any grants that may be made by any person or institution for the purpose of disaster management shall be credited to the said NDRF. Thus, it is humbly submitted by the Petitioner herein that in view of the aforesaid well settled legal principle, any grants made by any person or institution for the purpose of fighting COVID-19 pandemic was, and is, mandatorily required to be credited to the NDRF and to no other fund.
- 41.** It is pertinent to mention herein that the letter dated 14.03.2020 (Annexure P-10 of writ petition) shows that as a special one-time dispensation, the Central Government decided to treat Covid-19 as a notified disaster for the purpose of State Disaster Relief Fund (SDRF) and not for the NDRF. It is submitted that it was done precisely so that NDRF cannot be utilised for Covid-19 and rather PM Cares could be created in derogation of the NDRF.
- 42.** That even though the Preliminary Counter-Affidavit was filed by the Respondent on 08.07.2020, there is no mention in it about the Office Memorandum dated 19.06.2020 issued by the Department of Expenditure, Ministry of Finance on the subject of Contributions/Grants by individuals/institutions towards NDRF as per Section 46(1)(b) of the DM Act. It is submitted that the said Office Memorandum was issued after a series of emails were written by Commodore (Retd.) Mr. Lokesh Batra to various senior officials of the NDMA, MHA and DEA and also RTI application, dated 13.05.2020, was filed with the DEA.

43. That vide letter dated 23.04.2020, addressed to the Member Secretary of the NDMA, Commodore Batra had asked: *“In the context of Section 46(1(b) of the Act, I humbly request for your guidance to how a person or an institute can make contribution in the National or State Disaster Response Fund’. Another question is-if the said fund is eligible for foreign funding?”* The same query was also addressed to Secretary (Expenditure), MOF vide letter dated 14.05.2020 and to the Home Secretary vide letter dated 20.05.2020. Further, vide the RTI application, dated 13.05.2020, addressed to the CPIO of DEA, Commodore Batra had asked for *“certified copies of the laid down rules/process and procedures under which any person or institution, can participate and make grants or say contribution to the ‘National Disaster Response Fund’, and also to the ‘National Disaster Mitigation Fund’.”* A copy of the letter, dated 23.04.2020 sent to the Member Secretary of the NDMA is annexed as **ANNEXURE P-18 (Pg. \_\_\_\_\_)**. A copy of the RTI application addressed to the CPIO of DEA, dated 13.05.2020, is annexed as **ANNEXURE P-19 (Pg. \_\_\_\_\_)**.

44. That the Ministry of Home Affairs, vide reply dated 09.06.2020, referring to aforesaid RTI application stated:

*“Information sought by you does not form part of records held by this office. In this context, it is to inform that since collection of cess/ taxes and budgetary provision of the NDRF is dealt by the Department of Expenditure, Ministry of Finance and as such the information sought by the Applicant falls under the domain of Department of Expenditure, your application is therefore being transferred to the Department of Expenditure*

*under Section 6(3) of the RTI Act, 2005 for providing a suitable reply to you directly.”*

A copy of reply dated 09.06.2020 by the Ministry of Home Affairs is annexed as **ANNEXURE P-20 (Pg. \_\_\_\_\_)**.

**45.** That significantly, on 19.06.2020, the Department of Expenditure issued an Office Memorandum on the subject of Contributions/Grants by individuals/institutions towards NDRF as per Section 46(1)(b) of the DM Act. The said Office Memorandum states that *“the matter has been consulted with the Budget Division of the Department of Economic Affairs and this Department has No objection to the proposal of contributions/ grants from individuals / institutions towards the NDRF as per Section 46 (1)(b) of the DM Act 2005, subject to the following procedure...”* A copy of the Office Memorandum, dated 19.06.2020, issued by the Department of Expenditure is annexed as **ANNEXURE P-21 (Pg. \_\_\_\_\_)**.

**46.** That the NDMA has therefore now allowed individuals/institutions to contribute to the NDRF. As per the information provided on the official website of NDMA (<https://ndma.gov.in/en/>), such contributions can be made through any of the following modes: physical instruments, RTGS/NEFT/UPI or Bharatkosh portal <https://bharatkosh.gov.in> using Net banking, Debit Cards, Credit Cards, & UPI. A copy of the methods of contribution to NDRF as provided on the website of NDMA (<https://ndma.gov.in/en/>) is annexed as **ANNEXURE P-22 (Pg. \_\_\_\_\_)**.

**47.** The Respondent’s argument that there are several funds which are established for carrying out various relief measures and

PM Cares Fund in one such fund with voluntary donations, is unsustainable. One such fund is Prime Minister National Relief Fund (PMNRF) which was established in 1948 with public contributions to assist Partition displaced persons. Just like PM Cares Fund, the PMNRF is also a trust and is managed by the Hon'ble Prime Minister. However, it is pertinent to note that whereas the PMNRF is a pre-DMA entity, the PM Cares Fund has been created after 15 years of the DMA having come into force, even though the NDRF as provided under Section 46 of the DMA envisages its usage for exactly the same purpose for which PM Cares Fund has been created. Moreover, PMNRF is audited by the CAG whereas Government has refused audit of PM Cares Fund by the CAG. The Respondent herein has also not explained that when NDRF and PMNRF are already existing, why another fund has been created.

**48.** That pertinently, Section 72 of the DM Act (*Act to have overriding effect*) provides that the provisions of the DM 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 the DMA.

**49.** It is submitted that the PM Cares Fund has been created as a trust without any authority of law. Significantly, the trust deed, government orders, notification or circulars related to creation and operation of PM Cares Fund have not been made public and have been expressly refused to be disclosed in the RTI reply given by PMO (Annexure P-14 of the writ petition).

**50.** The Central Government cannot escape from the mandatory working of Section 46 read with Section 72 of the DMA according to

which NDRF should have been used for meeting Covid-19 pandemic and all voluntary contributions have to be deposited in the NDRF. Therefore, it is submitted that all the donations/grants/contributions credited to PM Cares Fund till date should be transferred to NDRF so as to fulfill the mandate of Section 46(1)(b) of the DM Act.

**DEPONENT**

**VERIFICATION:**

I, the above named Deponent, do hereby verify that the contents of the above Affidavit are true and correct to my knowledge, that no part of it is false and that nothing material has been concealed therefrom.

Verified at New Delhi on this 15<sup>th</sup> day of July 2020.

**DEPONENT**