

IN THE HON'BLE SUPREME COURT OF INDIA
(EXTRAORDINARY WRIT JURISDICTION)
W.P.(C) No. _____ OF 2020
(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

1. K. P. FABIAN

2. M. G. DEVASAHAYAM

3. MEENA GUPTA

4. SOMASUNDAR BURRA

5. AMIT BHADURI

6. MADHU BHADURI,

...PETITIONERS

Versus

UNION OF INDIA
THROUGH ITS SECRETARY
MINISTRY OF HOME AFFAIRS
NORTH BLOCK, CENTRAL SECRETARIAT
NEW DELHI, 110001

...RESPONDENT

WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR ENFORCEMENT OF FUNDAMENTAL RIGHTS UNDER ARTICLES 14, 19 AND 21 AND FOR DIRECTIONS FOR APPOINTMENT OF A COMMISSION UNDER THE COMMISSIONS OF INQUIRY ACT, 1952 TO CONDUCT AN INDEPENDENT INQUIRY INTO THE VIOLATIONS OF FUNDAMENTAL RIGHTS AS WELL AS STATUTORY OBLIGATIONS COMMITTED BY THE RESPONDENT IN MANAGEMENT OF THE COVID-19 PANDEMIC.

To the Hon'ble Chief Justice of India
alongwith His Lordship's Companion Justices
of the Hon'ble Supreme Court

The humble petition of the Petitioner abovenamed

MOST RESPECTFULLY SHOWETH:

1. The present writ petition has been filed under Article 32 of the Constitution of India seeking an independent inquiry by a Commission appointed under Section 3 of the Commissions of Inquiry Act, 1952 into the Respondent's gross mismanagement of

the COVID-19 pandemic in India. It is submitted that such an inquiry is essential for seeking accountability from the Respondent with respect to failure of the Respondent to institute a timely and effective screening and surveillance programme for inbound travelers from foreign countries, non-dissemination of public awareness material in relation to COVID-19 in a timely manner, non-compliance with critical statutory obligations under the Disaster Management Act, 2005, failure to seek and abide by expert advice while formulating policy, unpreparedness and lack of planning in respect of the consequences of the draconian lockdown imposed upon citizens, and neglect in procurement of PPEs for healthcare workers. These lapses on the part of the Respondent have vitiated India's fight against the COVID-19 pandemic with the number of new cases rising every day in spite of the over 60-day lockdown and the disease spreading to the rural areas even as the Respondent withdraws restrictions one by one. It is submitted that the Respondent has compromised the right to health of its citizens, which right has been held to be a part of the right to life. Furthermore, the Respondent's policies have disproportionately impacted the lives of India's poorest citizens including daily-wage earners, and migrant workers who were suddenly rendered without a means of livelihood owing to the lockdown with inadequate social security apparatus being provided by the State. This was a blatant encroachment on the right to livelihood of these citizens which has been recognized as a fundamental right under Article 21 of the Constitution. Finally,

the inexplicable delay and lethargy on the part of the Respondent in procurement of PPEs for healthcare workers who are the most vulnerable to the virus has jeopardized the right to life of these workers.

2. That from the material available in the public domain, it is evident that the Respondent acted in wilful disregard of expert advice while imposing and subsequently extending the lockdown, which has been described as the harshest and most restrictive lockdown in the entire world. As early as February, scientists including prominent epidemiologists and public health experts of the country had advised against imposing a lockdown akin to the Chinese model, and had instead advocated the adoption of alternative measures for containment of the disease, including community surveillance, symptomatic testing, and quarantining. The Respondent ignored the advice of these experts and went ahead with imposing a lockdown that has spawned a humanitarian and economic crisis of Biblical proportions while at the same time failing to contain the spread of the disease. It is submitted that the actions of the Respondent are arbitrary, whimsical and capricious and fall foul of Article 14 of the Constitution.
3. That the issues raised in the present writ petition constitute a definite matter of public importance and warrant an independent inquiry by a Commission appointed by the Respondent under the Commissions of Inquiry Act, 1952 as per directions of this Hon'ble Court. Such an inquiry would elicit the complete facts pertaining

to the aforesaid lapses committed by the Respondent as well as provide valuable lessons for dealing with future pandemics of this nature. It is submitted that an inquiry of this nature is all the more important given the fact that the Respondent has stalled an inquiry by the Parliamentary Public Accounts Committee (PAC) into the Respondent's response to the COVID-19 pandemic. Moreover, an inquiry of this nature would be necessary to learn lessons on how to deal with such pandemics in the future.

I. INTRODUCTION OF THE PETITIONERS

4. That the Petitioners in the captioned writ petition are retired bureaucrats who have served the country with distinction as well as renowned academicians. The Petitioners have come together to file the present petition owing to their anxiety and concern over the Respondent's mismanagement and misgovernance of the COVID-19 pandemic and the deleterious impact it has had on the fundamental rights of Indian citizens. The Petitioners are motivated purely by considerations of public interest, and have no oblique or private interest whatsoever in the matter.
5. The Petitioner No.1 K.P. Fabian served in the Indian Foreign Service from 1964 to 2000. His last posting was as Ambassador to Italy and Permanent Representative to FAO and other UN bodies in Rome. He has held the KPS Menon Chair at Mahatma Gandhi University, Kottayam and is currently Distinguished Fellow at Symbiosis University, Pune. Drawing from his wide experience in diplomacy and international relations, the Petitioner No.1 has authored a number of books that have been widely published. His

Aadhar Card Number is : _____

6. The Petitioner No.2 M.G. Devasahayam is an army veteran who served in the Indian Administrative Service for twenty-one years before taking voluntary retirement as Secretary, Government of Haryana. He was Chief Consultant, IIT Madras Research Park and is presently Chairman, People-First, a pan-India Network, Chairman of Kanyakumari based Cape Comorin Resource Foundation, Managing Trustee, Citizens' Alliance for Sustainable Living and Convener, Forum for Electoral Integrity. He has been awarded the Samar Seva Star, General Service (Nagaland) Medal, Loyola World Alumni Lifetime Achiever Award, and LoknayaJayaprakash Narayan Memorial Lifetime Achiever Award. His Aadhaar number is _____
7. The Petitioner No.3 Meena Gupta retired from the Indian Administrative Service in 2008 as Secretary to the Government of India in the Ministry of Environment & Forests. During her career as a civil servant, she worked mainly in the sectors of environment, forests, tribal affairs, labour and health. She has also worked for 4 years with the International Labour Organization in Delhi, on secondment from the government. After retirement, she served on the Council of the International Union for the Conservation of Nature (IUCN) as Regional Councillor for Asia and on the Board of IIM, Calcutta. She has also been and continues to be a member of the Boards of several non-

governmental organisations in India.

8. The Petitioner No. 4 Somasundar Burra joined the IAS in 1974. After serving in many field posts, he joined the LBS National Academy of Administration in Mussoorie as Deputy Director. Later he was posted as Deputy Secretary in the Ministry of Agriculture, GoI, and then as Director of the World Bank Project in Maharashtra, looking after slum upgradation and low-income group housing. He took premature retirement and worked for 20 years with an NGO in Mumbai on issues of urban poverty.

9. The Petitioner No. 5 Amit Bhaduri has taught in various universities around the world as professor/ visiting professor including Presidency College, Institute of Management Calcutta, Delhi School of Economics, Jawaharlal Nehru University, Centre for Development Studies Trivandrum, El Colegio de Mexico, Stanford University, Universities of Vienna and Linz in Austria, Norwegian University of Science and Technology, Bremen University in Germany, and the Universities of Bologna and Pavia in Italy. He has also been a Fellow of various Institutes of Advanced Studies in Austria, Sweden, Germany and Italy, worked on various expert bodies of the United Nations, and served as member on some national and international commissions. He has published more than seventy papers in standard international

journals and is currently on the editorial boards of five such journals. He has also written eight books. Several of his books and articles have been translated into various European and Asian languages. He recently resigned as professor emeritus in Jawaharlal Nehru University in New Delhi.

10. The Petitioner No. 6 Mrs. Madhu Badhuri Joined the Indian Foreign Service in 1968 and has served as a diplomat in Hanoi, Mexico City, Vienna and Hamburg. She was India's ambassador to Belarus, Lithuania and Portugal.

11. The Petitioners have no civil, criminal or revenue litigations pending against them in respect of the issues raised in the present PIL. The information contained in the PIL is based on material available in the public domain. The Petitioners have not sent any representation to the Respondent regarding the issues raised in this PIL.

BRIEF FACTUAL MATRIX

12. That the brief facts necessary for adjudication of the present writ petition are provided herein below:

(i) On 31.12.2019, China reported to the World Health Organization (hereinafter referred to as "the WHO") regarding the spread of a peculiar pneumonia having unknown causes. On 05.01.2020, the WHO published first Disease Outbreak News on the new virus addressed to the scientific and public health community as well as

global media. On 30.01.2020, the WHO declared the outbreak of the disease in China as a 'Public Health Emergency of International Concern'. Finally, on 11.02.2020, the WHO coined the name "Coronavirus Disease 2019" or COVID-19 for the new disease. True copy of extracts from the website of the WHO depicting chronology of the events is annexed herewith as **Annexure P-1 (Pages 55 to 59)**.

(ii) On 24.01.2020, the WHO published updated advice on the novel coronavirus disease pertaining to international traffic wherein it was emphasised that international spread of the disease beyond Chinese borders was highly likely and countries ought to institute screening and surveillance procedures for inbound passengers. A true copy of the updated advice dated 24.01.2020 published by the WHO is annexed herewith as **Annexure P-2. (Pages 60 to 62)**

(iii) On 25.01.2020, the Respondent released Guidance Document for PoEs, States and UTs for Surveillance of 2019-NCov which envisaged screening and surveillance mechanism at Indian airports only for inbound passengers from China, even though, admittedly, cases had been reported from 11 other countries. A true copy of the Guidance Document dated 25.01.2020 is annexed herewith as **Annexure P-3 (Pages 63 to 76)**.

- (iv) In a public statement by the Ministry of Information & Broadcasting, it was admitted that other than China and India, the total number of affected countries as on 30.01.2020 were 20 with a total of 99 cases. However, in spite of this, screening and surveillance was only being carried out qua passengers coming from China. Meanwhile, on 30.01.2020, the first case of COVID-19 was reported in India. A true copy of the public statement dated 30.01.2020 released by Ministry of Information & Broadcasting is annexed herewith as **Annexure P-4 (Pages 37 to 39).**
- (v) On 31.01.2020, the Respondent banned the export of Personal Protective Equipment or PPEs which consists of gloves, mask, gown, face protection, goggles head cover, and rubber boots. PPEs are extremely essential to protect medical workers from the extremely high viral loads that they are exposed to in hospitals while treating COVID patients. On 08.02.2020, the aforesaid order was partially amended so as to allow export of surgical masks/disposable masks and all gloves. A true copy of the order dated 08.02.2020 issued by the Respondent is annexed herewith as **Annexure P-5 (Pages 80 to).**
- (vi) The WHO's report dated 31.01.2020 stated that two cases of COVID-19 had been reported in Italy. The WHO specifically classified the risk assessment for COVID-19 at

the global level as high. In spite of this report, the Respondent failed to expand screening and surveillance of inbound passengers at Indian airports from countries other than China. A true copy of the WHO report dated 31.01.2020 is annexed herewith as **Annexure P-6 (Pages 81 to 88)**.

- (vii) On 04.02.2020, the National Disaster Management Authority (hereinafter referred to as "NDMA") issued Guidelines to all States and UTs emphasizing the importance of carrying out extensive social media, print media and television media campaign to spread public awareness on do's and don'ts in relation to COVID-19 as well as to promote sanitary practices like wearing of face masks, use of hand sanitizers, avoiding travel and mass gatherings, isolation of patients etc. A true copy of Guidelines dated 04.02.2020 published by NDMA is annexed herewith as **Annexure P-7 (Pages 89 to)**.
- (viii) In derogation of the NDMA's Guidelines dated 04.02.2020 advising against mass gatherings, a mega-road show and public event attended by more than one lakh people was held on 24.02.2020 at the SardarVallabhbhai Patel Stadium in Ahmedabad, Gujarat to welcome US President Donald Trump.
- (ix) Even as the Respondent continued to follow a policy of limited screening and surveillance of international

passengers at Indian airports, one person travelling from Italy and another travelling from Dubai tested as COVID positive at Delhi and Telangana respectively. Furthermore, 14 Italian tourists and 1 Indian person travelling with them tested positive for COVID-19 in Jaipur on 04.03.2020. The Respondent finally, albeit belatedly, commenced universal screening of all international passengers at Indian airports with effect from 04.03.2020. True copies of updates dated 02.03.2020, 04.03.2020 and 28.03.2020 released by the Ministry of Health and Family Welfare are annexed herewith as **Annexure P-8 (Pages 90 to 94)**.

- (x) The WHO issued guidelines dated 27.02.2020 warning that the current stockpile of PPEs globally was insufficient to meet the potential demand and that countries should ramp up production of PPEs to successfully mitigate the risk posed by COVID-19. A true copy of the WHO Guidelines is annexed herewith as **Annexure P-9 (Pages 95 to 101)**.

- (xi) In the February and March edition of the Indian Journal for Medical Research, two extremely important scientific papers were published that were authored by scientists and doctors from prominent institutions, including Dr. Raman Gangakhedkar, Deputy Director of the Indian Council for Medical Research (hereinafter referred to as "ICMR"). The first paper was titled "*The 2019 novel*

coronavirus disease (COVID-19) pandemic: A review of the current evidence' and argued that instead of imposing a lockdown, civil society and community led self-quarantine and monitoring measures were likely to be more effective. An extract from the research paper is reproduced hereinbelow:

*"On January 23, 2020, the Government of the People's Republic of China imposed a lockdown on Wuhan to quarantine and prevent the spread of the disease. This was a drastic public health measure. **While the benefits of such a move remain to be seen, the long-lasting negative impacts of such a measure should not be underplayed. Such drastic measures can lead to social, psychological and economic stressors on the whole population, leading to long-lasting adverse health outcomes. Instead of coercive top-down quarantine approaches, which are driven by the authorities, community and civil-society led self-quarantine and self-monitoring could emerge as more sustainable and implementable strategies in a protracted pandemic like COVID-19.**"(emphasis supplied)*

A true copy of the research paper titled "*The 2019 novel coronavirus disease (COVID-19) pandemic: A review of the current evidence'*" published in the February-March

edition of the Indian Journal for Medical Research is annexed herewith as **Annexure P-10 (Pages 102 to 114)**.

In so far as the second paper is concerned, the same was titled "*Prudent public health intervention strategies to control the coronavirusdisease 2019 transmission in India: A mathematical model-basedapproach*". In this paper, based on evidence about the nature of the disease as well as mathematical modelling, the scientists concluded that the spread of COVID-19 could be significantly arrested by doing widespread testing of at least 50% of symptomatic persons and quarantining those who emerged positive. Nowhere did the scientists advocate an absolute lockdown on the entire country. An extract from the said research paper is reproduced hereinbelow:

"...The increasing numbers would make it impractical to use laboratory testing to confirm each case, and therefore, use of symptomatic surveillance should become the primary public health strategy to detect and respond in the most effective and timely manner. We could draw examples from the syndromic surveillance approach for influenza-like illness in the context of H1N123. In practice, this could be achieved either through public advisories for sick individuals to self-quarantine, along with active engagement with

the community, or through intensive surveillance for symptoms, followed by testing and quarantine. A combination of both approaches is likely to be needed, although promoting self-quarantine is likely to be more sustainable in the event that transmission becomes widespread. Engagement of local volunteers and community-based organizations can provide the much-needed boost to the efforts of the public health system. Considering the widespread use of mobile phones in the country, mobile applications can be used to self-monitoring and sharing of symptom information on a real-time basis. The same was done for monitoring the passengers on the cruise ship off the Japanese coast."

A true copy of the research paper titled "*Prudent public health intervention strategies to control the coronavirus disease 2019 transmission in India: A mathematical model-based approach*" published in the February-March edition of the Indian Journal for Medical Research is annexed herewith as **Annexure P-11 (Pages 115 to 124)**.

- (xii) On 18.03.2020, the Respondent formed a National Task Force for dealing with the COVID-19 pandemic in India which consisted of 21 experts from a wide cross-section of the medical field and public health fraternity. This Task Force was headed by Dr. V.K. Paul, Member,

- NitiAayog. A true copy of an article dated 15.04.2020 titled "*Modi administration did not consult ICMR-appointed COVID task force before key decisions*" written by Vidya Krishnan published in the Caravan magazine detailing the circumstances under which the aforesaid National Task Force was constituted is annexed herewith as **Annexure P-12 (Pages 125 to 128)**.
- (xiii) On 19.03.2020, i.e. long after the guidelines dated 27.02.2020 issued by WHO, the Respondent passed an order reimposing the prohibition on export of PPEs which had been partially relaxed on 08.02.2020. A true copy of the order dated 19.03.2020 passed by the Respondent is annexed herewith as **Annexure P-13 (Pages 129 to)**.
- (xiv) On 22/23.03.2020, the Central Government, in consultation with the State Governments decided to impose lockdowns in only 75/80 districts that were COVID-19 hotspots. True copies of news reports dated 22/23.03.2020 published by India Today and the Hindu are annexed herewith as **Annexure P-14 (Pages 130 to 137)**.
- (xv) Contrary to the decision taken on 22/23.03.2020, on 24.03.2020, at 8 pm, the Hon'ble Prime Minister announced a nationwide lockdown with effect from the midnight of 25.03.2020 till 14.04.2020. It is pertinent to note that only four hours notice was given to people

before imposing the largest lockdown in the world. However, as per a report published on Article 14, an online news website, the National Task Force consisting of experts was not consulted at all before imposing the nationwide lockdown. In fact, the said Task Force met for the first time on 29.03.2020. A true copy of the report titled "*Frustration In National Covid-19 Task Force*" published on 24.04.2020 by Article 14 online news website is annexed herewith as **Annexure P-15 (Pages 138 to 146)**.

- (xvi) The sudden announcement of the lockdown took both the people as well as State Governments by surprise and spawned a humanitarian crisis of gargantuan proportions. Daily-wage earners and migrant workers were suddenly left without a means of livelihood. Although the Respondent as well as the State Governments set up relief shelters and food distribution facilities, however, as documented in a report published by the Stranded Workers Action Network ("SWAN"), the relief was inadequate to deal with the scale of the crisis. According to the survey conducted in the said report, 96% of migrant workers who were surveyed said that they had not received any rations from the government, whereas 70% said that they had not received any cooked food. Further, 89% said that they had not been paid at all by their employers during the period of the lockdown.

A true copy of the report published by SWAN pertaining to Lockdown 1.0 is annexed herewith as **Annexure P-16 (Pages 145 to 175)**.

- (xvii) According to multiple news reports, migrant workers who were suddenly rendered without food and shelter were housed by the Respondent and the State Governments in temporary shelters where they were kept in extremely unhygienic conditions with no social distancing, and sparse supply of food. True copies of the Hindu news report dated 01.06.2020 titled "*A rude welcome to Odisha's migrants as villages lack basic facilities*" and news report by The Wire dated 21.05.2020 titled "*Ground Report: Why migrants think they are being held captive in Delhi's shelters*" are annexed herewith as **Annexure P-17 (Pages 176 to 188)**.
- (xviii) To mitigate the crisis of food, shelter and livelihood caused by the lockdown, the Respondent, in exercise of its powers under Section 10(2)(m) of the Disaster Management Act, 2005 could have sought the assistance of the Indian Armed Forces for providing, food, shelter, and other provisions to migrant workers as well as to transport them to their villages. Even the National Disaster Management Guidelines for Management of Biological Disasters issued by the National Disaster Management Authority in 2008 provide for deployment of the armed forces to respond effectively to pandemics.

However, the Respondent failed to deploy the armed forces with the result that migrant workers continued to suffer. Relevant extracts from the National Disaster Management Guidelines for Management of Biological Disasters issued by the National Disaster Management Authority in 2008 are annexed herewith as **Annexure P-18 (Pages 189 to 192)**.

- (xix) In spite of prior warnings by the WHO, the Respondent issued guidelines to domestic PPE manufacturers on quantity and specifications of PPEs as late as 24.03.2020. A true copy of the interview dated 03.04.2020 conducted by the Quint online news website with the Chairman of the Preventive Wear Manufacturer Association of India is annexed herewith as **Annexure P-19 (Pages 193 to 200)**.
- (xx) According to numerous newspaper reports, doctors and medical workers across the country raised complaints about the paucity of PPEs as more of them started getting infected with COVID-19. True copies of reports by AlJazeera dated 31.03.2020, Hindustan Times dated 06.04.2020, and the Hindu dated 23.04.2020 are annexed herewith as **Annexure P-20 (Pages 201 to 208)**.
- (xxi) On 29.03.2020, the National Task Force met and the members thereof expressed dissatisfaction with the amount of testing for COVID that was taking place in the

country. The importance of going house to house to test was emphasized, especially in view of the fact that many infected and symptomatic persons would not come to the hospitals owing to the lockdown.

- (xxii) The Respondent finally realized the consequences of the drastic step of imposing the lockdown and issued an order dated 29.03.2020 to address the problem of migrant workers travelling back to their hometowns in violation of social distancing norms. As per the said order, State Governments were directed to house the migrant workers in temporary shelters and make provisions for their food etc.
- (xxiii) According to the report dated 24.04.2020 published by Article 14 titled "*Govt Knew Lockdown Would Delay, Not Control Pandemic*", during the first week of April, the Head of the National Task Force, Dr. V.K. Paul, gave a presentation to the Respondent wherein it was emphasized that the lockdown by itself would not be enough to mitigate the spread of COVID-19 and the government would have to ramp up surveillance and testing mechanisms. Dr. Paul stated in that presentation that the lockdown would only delay the peak in the number of daily fresh cases, but ultimately, with or without the lockdown, the total number of infected cases would be the same. The only utility of the lockdown according to Dr. Paul was to give time to the government

to undertake other measures that would be more effective for dealing with the pandemic including house-to-house screening, quarantining those with symptoms, preparing health infrastructure to deal with the influx of patients, etc. A true copy of the report dated 24.04.2020 published by Article 14 titled "*Govt Knew Lockdown Would Delay, Not Control Pandemic*" is annexed herewith as **Annexure P-21 (Pages 209 to 215)**.

However, in spite of the advice of numerous experts to ramp up screening and increase the number of tests, even as on date, after four successive lockdowns, India is currently performing the least number of tests in the world per 1000 people as documented by a graph provided by Our World in Data. A true copy of the said graph published by ourworldindata.org is annexed herewith as **Annexure P-22 (Pages 216 to —)**.

- (xxiv) On 11.04.2020, the Indian Public Health Association (IPHA) and the Indian Association of Preventive and Social Medicine (IAPSM) whose members were part of the COVID-19 National Task Force released a joint-statement calling for a review of the nation-wide lockdown and recommending alternative measures like source containment, testing, tracking and isolating infected persons, etc. A true copy of the joint-statement dated 11.04.2020 released by IPHA and IAPSM is

annexed herewith as **Annexure P-23** (Pages 217 ²² to 243).

(xxv) On 14.04.2020, the Hon'ble Prime Minister announced Lockdown 2.0 and extended the lockdown till 03.05.2020. According to the Caravan Report by Vidya Krishnan, the National Task Force did not meet at all in the week preceding the announcement of the lockdown extension.

(xxvi) According to the second report by SWAN, the condition of migrant workers hardly improved during Lockdown 2.0. Following are some disturbing facts stated in the report:

- 50% of workers said that they had rations left only for 1 day;
- 4 out of 5 workers said that they did not have access to government rations while 68% of them did not have access to cooked food from the government;
- More than 97% migrant workers received no cash support from the government;
- 64% workers said that they had less than Rs. 100/- with them;

A true copy of the SWAN report pertaining to Lockdown 2.0 is annexed herewith as **Annexure P-24** (Pages 244 to 292).

(xxvii) During Lockdown 2.0, State Governments acknowledged their failure to house and feed all the migrant workers and started arranging buses for them to return to their respective hometowns. The Respondent also organized Shramik Trains for these migrant workers from 01.05.2020. However, as per numerous reports in the media, there were inadequate provisions for food and water on these trains. Resultantly, nearly eighty persons died while travelling on Shramik Trains. The video of one extremely disturbing incident was circulated widely in the media where a toddler at Muzzafarnagar railway station was seen trying to wake up his dead mother who had died due to starvation and exhaustion. True copies of the newspaper reports about deaths on Shramik Trains are annexed herewith as **Annexure P-25 (Pages ~~293~~ to ~~296~~)**.

(xxviii) However, as these migrant workers, who had been cooped up in temporary shelters without any regard for social distancing norms, started pouring into their home States, there was a spike in the number of COVID-19 infected cases in these States, especially Bihar, Kerala, Assam, Jharkhand and Orissa. True copies of newspaper reports by Indian Express and Hindustan Times regarding spiking of cases pursuant to exodus of migrants are annexed herewith as **Annexure P-26 (Pages ~~297~~ to ~~301~~)**.

(xxix) The Respondent further extended the lockdown from 03.05.2020 to 17.05.2020 (Lockdown 3.0) and from 18.05.2020 to 31.05.2020 (Lockdown 4.0). During Lockdowns 3.0 and 4.0, the Respondent relaxed most of the restrictions on public movement and economic activity even as the number of new infected cases continued to grow each day. As per a report published by the Observer Research Foundation, although the lockdown did slow the rate of spread of COVID-19 in India, however, the number of new infections are continuing to grow each day. The number of infections are far from peaking any time soon, while at the same time, owing to the migrant exodus, the disease which was earlier only restricted to urban areas, has now spread to rural areas also. A true copy of the report published in May 2020 by the Observer Research Foundation is annexed herewith as **Annexure P-27 (Pages 302 to 316)**. Furthermore, as per a report published in the Business Standard dated 16.07.2020 annexed herewith as **Annexure P-28 (pages 317 to -)**. India now has the third-highest number of COVID-19 cases in the world. On 11.05.2020, the Respondent released a response to an RTI application wherein it was revealed that between 15.01.2020 to 18.03.2020, only 15,24,266 inbound passengers coming from abroad were screened at Indian

airports, whereas the total number of such passengers during this period was 78.4 lakhs. Therefore, only 19% of such passengers coming from foreign countries were screened or subjected to any surveillance. A true copy of the RTI response dated 11.05.2020 issued by the Respondent along with the newspaper report published by the Printare annexed herewith as **Annexure P-29** (Pages 318 to 320).

- (xxx) On 19.05.2020, an article titled "*For Over a Month Modi Govt. Did not Adhere To NDMA Advisory*" written by Ravi Nair was published on NewsClick, an online news website. According to the said article, the Ministry of Health & Family Welfare under the Respondent started large-scale public awareness activities only on 06.03.2020 when it published a set of do's and don'ts in relation to COVID-19. This was more than a month after the NDMA had issued guidelines on 04.02.2020 for spreading public awareness about COVID-19 and ways to prevent it. A true copy of the article dated 19.05.2020 titled "*For Over a Month Modi Govt. Did not Adhere To NDMA Advisory*" written by Ravi Nair published on NewsClick is annexed herewith as **Annexure P-30** (Pages 321 to 327).

- (xxxi) On 25.05.2020, IPHA and IAPSM released a second joint-statement slamming the Respondent for imposing a

poorly planned lockdown. Following is an extract from the statement:

"India's nationwide "lockdown" from March 25, 2020 to May 30, 2020 has been one of the most stringent; and yet COVID cases have increased exponentially during this phase from 606 cases on March 25 to 1,38,845 on May 24. This draconian lockdown is presumably in response to a modelling exercise from an influential institution which was a 'worst-case simulation'. The model had come up with an estimated 2.2 million death globally. Subsequent events have proved that the predictions of this model were way off the mark. Had the Government of India consulted epidemiologists who had better grasp of disease transmission dynamics to modellers, it would perhaps been better served. From the limited information available in the public domain, it seems that the government was primarily advised by clinicians and academic epidemiologists with limited field training and skills. Policy makers apparently relied overwhelmingly on general administrative bureaucrats. The engagement with expert technocrats in the areas of epidemiology, public health, preventive medicine and social scientists was limited. India is paying a heavy price both in terms of humanitarian crisis and disease spread. The incoherent and rapidly

shifting strategies and policies especially at the national level are more a reflection of "afterthought" and "catching up" phenomenon on part of the policy makers rather than a well thought cogent strategy with an epidemiologic basis."

A true copy of the joint-statement dated 25.05.2020 released by IPHA and IAPSM is annexed herewith as **Annexure P-31 (Pages 328 to 334).**

- (xxxii) While four stages of the lockdown cumulatively failed to arrest the spread of the disease, the Indian economy is in the midst of an unprecedented crisis. As per data released by foreign brokerages, the Indian GDP is expected to contract by 2-5% in FY 2020-21 and even the RBI has stated that during this financial year, the Indian economy will undergo a recession. Furthermore as per a report by the National Institute of Urban Affairs, a new class of poor people had emerged post the lockdown as many households were pushed below the poverty line. A true copy of the report dated 01.06.2020 published in the Economic Times is annexed herewith as **Annexure P-32 (Pages 335 to 337).** True copy of the article dated 02.06.2020 published in The Print titled "*New class of poor' emerging after job losses in lockdown, 95.7% BPL slum families hit: Study*" citing

the report by NIUA is annexed herewith as **Annexure P-33** (Pages 338 to 340)

(xxxiii) On 26.05.2020, this Hon'ble Court finally took suo-motu cognizance of the difficulties being faced by migrant workers and highlighted the need for the Central and State Governments to make concentrated efforts to redeem the situation. On 28.05.2020, this Hon'ble Court issued a slew of directions to the Respondent as well as the State Governments for the benefit of migrant workers.

(xxxiv) In the month of July, the Public Accounts Committee (PAC), an important parliamentary body, met for the first time after lifting of the lockdown. During the meeting, even though some members of the PAC moved a proposal for conducting an inquiry into the government's handling of the COVID-19 pandemic, however, this was blocked by members of the ruling party. Resultantly, no consensus could be arrived at by the PAC for conducting such an inquiry. A true copy of the news report by NDTV dated 11.07.2020 is annexed herewith as **Annexure P-34** (Pages 341 to 342).

II. FAILURE OF THE RESPONDENT TO TAKE TIMELY ACTION TO CONTAIN THE SPREAD OF COVID-19

13. That from the material available in the public domain, it is evident that the Respondent failed to take adequate measures to contain the transmission of COVID-19 at an early stage even after

being intimated about the nature and potency of the disease by the WHO in early January itself. Had timely measures been taken, not only number of lives would have been saved from COVID-19, but also, the abrupt and economically devastating lockdown could have been avoided.

14. That the Respondent failed to take adequate measures to prevent importation of COVID positive cases from abroad. As early as 24.01.2020, the WHO advised countries to institute effective screening and surveillance procedures for international travelers and on 31.01.2020, the WHO categorized the risk of transmission of the disease at the global level as high. However, from 15.01.2020 onwards, the Respondent adopted a policy of only screening passengers arriving from China and universal screening of all international travelers was commenced only as late as 04.03.2020. The limited screening policy of the Respondent was wholly inexplicable given the fact that as on 30.01.2020, there were at least 90 confirmed cases in more than 20 countries other than China and India. Resultantly, only 19% of all international travelers were screened at Indian airports from 15.01.2020 to 18.03.2020 as was revealed by the Respondent itself in a RTI reply dated 11.05.2020.

15. That the Respondent failed to act in a timely manner on the Guidelines dated 04.02.2020 issued by the NDMA for spreading public awareness about the nature of COVID-19 and preventive measures to be taken like washing hands, wearing masks, avoiding mass gatherings, quarantining of patients, etc. During

the entire month of February, the Respondent did not disseminate any material on social media, newspapers or television regarding with the result that public events and mass gatherings continued to take place as usual. A prime example of this is the mega road-show and public event organized by the Respondent itself on 24.02.2020 to welcome the US President Donald Trump in Ahmedabad which was attended by more than 1 lakh people.

III. FAILURE OF THE RESPONDENT TO ABIDE BY STATUTORY OBLIGATIONS

16. That the COVID-19 pandemic has been notified as a "disaster" under the Disaster Management Act, 2005. Accordingly, the Respondent is bound to observe the statutory obligations under the said Act while combating the pandemic. It is submitted that the Respondent has failed to draw up a National Plan for dealing with the COVID-19 pandemic nor issued guidelines for minimum standards of relief for affected persons which it was statutorily required to do under the Act. This non-compliance with statutory obligations has severely compromised India's response to the pandemic.
17. That Section 2(l) of the DM Act defines a "National Plan" to mean a plan for disaster management for the whole of the country prepared under Section 11. Section 11 of the DM Act makes it mandatory for a National Plan to be drawn up for the whole of the country. Section 11 of the DM Act is provided hereinbelow:

"11. National Plan.—(1) There shall be drawn up a plan for disaster management for the whole of the country to be called the National Plan.

(2) The National Plan shall 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.

(3) The National Plan shall include—

(a) measures to be taken for the prevention of disasters, or the mitigation of their effects;

(b) measures to be taken for the integration of mitigation measures in the development plans;

(c) measures to be taken for preparedness and capacity building to effectively respond to any threatening disaster situations or disaster;

(d) roles and responsibilities of different Ministries or Departments of the Government of India in respect of measures specified in clauses (a), (b) and (c).

(4) The National Plan shall be reviewed and updated annually.

(5) Appropriate provisions shall be made by the Central Government for financing the measures to be carried out under the National Plan.

(6) Copies of the National Plan referred to in sub-sections (2) and (4) shall be made available to the Ministries or

Departments of the Government of India and such Ministries or Departments shall draw up their own plans in accordance with the National Plan."

18. That under the DM Act, 2005, there shall also be State Plans (Section 23) and District Plans (Section 31) for States and districts respectively. Under Section 22, the State Executive Committees shall have the responsibility for implementing the National Plan and State Plans and act as the coordinating and monitoring bodies for management of disaster in the States. Further, under Section 30, the District Authorities are required to coordinate and monitor the implementation of the National Policy, State Policy, National Plan, State Plan and District Plan. It is pertinent to mention herein that under Section 31(2), the District Plans are required to be prepared by the District Authorities having due regard to the National Plan and the State Plans. Further, under Section 37, every Ministry or Department of the Government of India is mandatorily require to prepare a disaster management plan specifying the measures to be taken by it for prevention and mitigation of disasters in accordance with the National Plan.
19. That the latest National Plan uploaded on the website of National Disaster Management Authority is of the year 2019 and the same does not deal comprehensively with situations arising out of the current pandemic and has no mention of measures like lockdown, containment zones, social distancing etc. in it. The part

of the said National Plan which deals with 'Biological and Public Health Emergencies' does not mention any of the measures that are being taken today in order to contain the instant pandemic and therefore, unduly harsh disruptions are being caused in enforcing the same. That to deal with the present pandemic, the Respondent ought to have drawn up a National Plan containing the comprehensive strategy for combating the pandemic, allocating sufficient funds to States for the proper implementation of various measures, coordination mechanism between Centre and States, social distancing norms keeping in mind the predicaments of the lower strata of the society, least disruption of public transports and essential activities, large scale ramping up of quarantining facilities along with rapid manufacturing of testing and PPE kits.

20. That under Section 12 of the DM Act, the Respondent was obligated to recommend statutory guidelines specifying the minimum standards of relief for persons affected by COVID-19 and the resultant lockdown measures. However, no such guidelines have been issued by the Respondent even as on date. Section 12 of the DM Act is provided hereinbelow:

"12. Guidelines for minimum standards of relief.—The National Authority shall recommend guidelines for the minimum standards of relief to be provided to persons affected by disaster, which shall include,—

(i) the minimum requirements to be provided in the relief camps in relation to shelter, food, drinking water, medical cover and sanitation;

(ii) the special provisions to be made for widows and orphans;

(iii) ex gratia assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood;

(iv) such other relief as may be necessary."

21. That lakhs of destitute people have been moved in shelter homes and relief camps as a result of loss of their livelihoods and means of income. While few of the them have been doing well in providing relief to the people sheltered therein, numerous reports have been coming about the lack of hygiene and sanitation, non-availability of edible food and clean drinking water in the shelter homes and relief camps. It is submitted that in absence of such minimum requirements being meted out, these shelter homes and relief camps have become hotbeds for the spread of COVID-19 infection. The exodus of migrant workers sheltered at these relief camps back to their home states has caused a spike in the number of infections in these States like Bihar, Assam, Odisha, West Bengal, etc.

22. That the reports by SWAN document the untold misery undergone by migrant workers during the lockdown thereby refuting the claims of the Respondent that food, shelter and cash

benefits have been provided to the migrants. The failure of the Respondent to issue Guidelines under Section 12 has had a detrimental impact on these migrant workers.

IV. VIOLATION OF RIGHTS UNDER ARTICLES 14, 19 AND 21 OF MIGRANT WORKERS AND HEALTH WORKERS

23. That the lockdown imposed by the Respondent, in so far as it deprived migrant workers, daily-wage earners and other vulnerable groups of their livelihood, is *prima facie* an infringement of their right to life under Article 21 of the Constitution. In *Olga Tellis vs. Bombay Municipal Corporation (1985) 3 SCC 545*, it was held as under:

32. ...The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life

impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live: only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood."

24. That as is evident from numerous reports available in the public domain, the Respondent as well as the State Governments abdicated their responsibility of providing adequate food and shelter to migrant workers during the period of the lockdown. It is submitted that this amounted to a betrayal of the obligations of the State under Articles 38, 39, 41 and 42 of the Constitution to ensure welfare of the people. It is for this reason, and for no other reason that large numbers of these migrants starting walking thousands of kilometres back to their villages, and many

perished due to exhaustion or starvation. Even the inadequate arrangements for food and water on the Shramik Trains organized by the Respondent with effect from 01.05.2020 led to the deaths of over eighty persons due to starvation.

25. That the Respondent is also guilty of violating the right to life of doctors and medical staff who are the foot-soldiers of the country's battle against the virus. The lives of doctors and medical staff have been put in grave danger owing to the paucity of Personal Protective Equipment or PPEs which consists of gloves, mask, gown, face protection, goggles head cover, and rubber boots. PPEs are extremely essential to protect medical workers from the extremely high viral loads that they are exposed to in hospitals while treating COVID patients. However, even though the World Health Organization (hereinafter referred to as "WHO") issued guidelines as early as 27.02.2020 advising countries to radically increase the existing stockpile of PPEs, however, as per various news reports, PPE manufacturers in India were only informed of requirements and specifications by the Respondent on 24.03.2020. The delayed and lethargic response of the Respondent in the matter of PPEs led to the deaths of several medical workers as reported in the media.

26. That in *Maneka Gandhi vs. Union of India (1978) 1 SCC 248* it was held that any law that deprives a person of his right to life under Article 21 must be "fair, just and reasonable". The law must also meet the touchstone of Article 14 of the Constitution and should not be arbitrary or capricious. It is submitted that

based on the evidence in the public domain which is available to the Petitioner, the imposition of the lockdown by the Respondent was hasty, arbitrary and without due application of mind. As is evident from numerous reports annexed with the present petition, the Respondent did not consult any experts prior to imposition of the lockdown and in fact acted contrary to the prescription of experts who had advised against imposing a China-style lockdown in two research papers published in February, 2020 itself. Furthermore, even the subsequent extensions of the lockdown were effected without due consultation with experts.

27. That the most damning indictment of the arbitrary approach of the Respondent is the joint-statement dated 25.05.2020 issued by IPHA and IAPSM whose members were also part of the National Task Force appointed by the Respondent. It has categorically been stated in this joint-statement that the Respondent has acted in complete disregard of the advice of epidemiologists, public health and preventive medicine experts, and social scientists.
28. That under the Disaster Management Act, 2005, as per Sections 7 and 17, the National Disaster Management Authority and the State Disaster Management Authorities respectively are mandatorily required to constitute advisory committees consisting of experts to make recommendations to the said Authorities on different aspects of disaster management. From the material available in the public domain, it is evident that while the

Respondent did constitute a National Task Force consisting of experts, however, the recommendations of these experts were disregarded.

V. FAILURE OF THE LOCKDOWN IN CONTAINING THE DISEASE

29. That the Respondent's arbitrary decision to impose the harshest lockdown in the world has failed to control the spread of COVID-19 in the country and the people today are more vulnerable to the disease as they were before imposition of the lockdown. This amounts to a violation of the right to health of the people which has been recognized to be a part of right to life under Article 21 of the Constitution.
30. That the number of COVID cases have increased exponentially in spite of the lockdown from 606 cases on March 25 to 2,08,000 cases as on 03.06.2020. The number of new cases are rising on a daily basis and according to ICMR, India's graph is likely to peak only in July-August. To make matters worse, the Respondent's mismanagement of the migrant workers' crisis has led to the disease spreading aggressively in States like Bihar, Assam, West Bengal and Odisha as the migrant workers pour into their hometowns/villages. In spite of the rising number of cases, the Respondent has now lifted the lockdown and is gradually withdrawing restrictions one by one, thereby defeating the Respondent's own logic for the lockdown which was to cut the chain of transmission of the disease.

VI. NEED FOR AN INDEPENDENT INQUIRY

31. That the mismanagement on the part of the Respondent of the COVID-19 pandemic in India exemplified by failure to take early measures for containment of the disease, abrupt and arbitrary declaration of lockdown, failure of the lockdown to contain transmission of the disease, and the misery wrought upon ordinary citizens owing to the unplanned and sudden nature of the lockdown warrants a fact-finding inquiry by an independent Commission appointed under the Commissions of Inquiry Act, 1952 to determine the following, among other avenues of inquiry:
- (i) What were the screening and surveillance mechanisms put in place by the Respondent for international passengers at Indian airports and whether they were timely and adequate to prevent importation into the country of COVID positive cases?
 - (ii) Why were the guidelines dated 04.02.2020 issued by the NDMA for spreading public awareness about COVID-19 not implemented by the Respondent until 06.03.2020?
 - (iii) Whether the Respondent imposed the lockdown with effect from 25.03.2020 on the basis of any advice/recommendations from experts? If so, what was the content of that advice/recommendations?
 - (iv) Whether the subsequent extensions of the lockdown with varying restrictions were imposed on the basis of any advice/recommendations from experts? If so, what was the content of that advice/recommendations?

- (v) Whether any planning/arrangements were made by the Respondent prior to imposition of the lockdown for cushioning the blow of the lockdown for migrant workers, daily wage earners and other vulnerable sections of society? If not, why not?
 - (vi) Whether the Respondent has promulgated any National Plan under Section 11 of the Disaster Management Act, 2005 for dealing with the COVID-19 pandemic? If not, why not?
 - (vii) Whether the Respondent has released any guidelines under Section 12 for providing relief in the form of shelter and food to migrant workers, and other vulnerable sections of society who have been hit the hardest by virtue of the lockdown? If not, why not?
 - (viii) Whether timely information and specifications were provided to domestic PPE manufacturers by the Respondent for ramping up the domestic production of PPEs in line with the guidelines issued by WHO on 27.02.2020? If not, then what was the reason for the delay?
32. That it is settled law that this Hon'ble Court, in exercise of its inherent power under Article 32 of the Constitution, is competent to appoint a commission for the purpose of fact-finding, especially in public interest litigations where the petitioners are from weaker sections of society or a public-spirited individual, who may not have access to relevant material for

producing the same before the Court. In *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161, it was held as under:

"14. Now it is obvious that the poor and the disadvantaged cannot possibly produce relevant material before the Court in support of their case and equally where an action is brought on their behalf by a citizen acting *pro bono publico*, it would be almost impossible for him to gather the relevant material and place it before the Court. What is the Supreme Court to do in such a case? Would the Supreme Court not be failing in discharge of its constitutional duty of enforcing a fundamental right if it refuses to intervene because the petitioner belonging to the underprivileged segment of society or a public spirited citizen espousing his cause is unable to produce the relevant material before the Court. If the Supreme Court were to adopt a passive approach and decline to intervene in such a case because relevant material has not been produced before it by the party seeking its intervention, the fundamental rights would remain merely a teasing illusion so far as the poor and disadvantaged sections of the community are concerned. **It is for this reason that the Supreme Court has evolved the practice of appointing commissions for the purpose of gathering facts and data in regard to a complaint of breach of a fundamental right made on behalf of the weaker sections of the society. The report of the Commissioner would furnish prima**

facie evidence of the facts and data gathered by the Commissioner and that is why the Supreme Court is careful to appoint a responsible person as Commissioner to make an inquiry or investigation into the facts relating to the complaint. It is interesting to note that in the past the Supreme Court has appointed sometimes a District Magistrate, sometimes a District Judge, sometimes a professor of law, sometimes a journalist, sometimes an officer of the Court and sometimes an advocate practising in the Court, for the purpose of carrying out an inquiry or investigation and making report to the Court because the Commissioner appointed by the Court must be a responsible person who enjoys the confidence of the Court and who is expected to carry out his assignment objectively and impartially without any predilection or prejudice. Once the report of the Commissioner is received, copies of it would be supplied to the parties so that either party, if it wants to dispute any of the facts or data stated in the report, may do so by filing an affidavit and the court then consider the report of the Commissioner and the affidavits which may have been filed and proceed to adjudicate upon the issue arising in the writ petition. It would be entirely for the Court to consider what weight to attach to the facts and data stated in the report of the Commissioner and to what extent to act upon such facts and data.... Now it is true that Order 46 of the Supreme

Court Rules, 1966 makes the provisions of Order 26 of the Code of Civil Procedure, except Rules 13, 14, 19, 20, 21 and 22 applicable to the Supreme Court and lays down the procedure for an application for issue of a commission, but Order 26 is not exhaustive and does not detract from the inherent power of the Supreme Court to appoint a commission, if the appointment of such commission is found necessary for the purpose of securing enforcement of a fundamental right in exercise of its constitutional jurisdiction under Article 32. Order 46 of the Supreme Court Rules, 1966 cannot in any way militate against the power of the Supreme Court under Article 32 and in fact Rule 6 of Order 47 of the Supreme Court Rules, 1966 provides that nothing in those Rules "shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice"... The petitioner in the writ petition specifically alleged violation of the fundamental rights of the workmen employed in the stone quarries under Articles 21 and 23 and it was therefore necessary for the Court to appoint these Commissioners for the purpose of enquiring into the facts related to this complaint." (emphasis supplied)

33. That the issues raised in the present writ petition constitute definite matters of public importance warranting the appointment of a Commission under Section 3 of the Commissions of Inquiry Act, 1952 by the Respondent. Therefore, given the large-scale

violation of fundamental rights of citizens owing to the gross mismanagement of the COVID-19 pandemic by the Respondent, this Hon'ble Court should direct the Respondent to appoint a Commission for making an inquiry into the same so as to provide a template for dealing with such pandemics/disasters in the future.

34. That the Petitioner has not preferred any other similar petition praying for similar reliefs before this Hon'ble Court or before any other Court or Tribunal.
35. That the present writ petition is preferred on the following, amongst other Grounds:

GROUND

- A. BECAUSE the Respondent failed to take timely measures for preventing the spread of COVID-19 in spite of being informed about the same in early January by the WHO. The Respondent's policy of only screening passengers coming from China with effect from 15.01.2020 was inexplicable given the fact that even as on 30.01.2020, the disease had spread to nearly 20 other countries. The Respondent only commenced universal screening of international passengers on 04.03.2020 by which time number of COVID positive passengers from countries like Italy and Dubai had already arrived in India and were spreading the disease.
- B. BECAUSE the Respondent failed to disseminate material on public awareness about COVID and preventive measures to be undertaken by people, including using masks, sanitizing hands,

avoiding mass gatherings, etc. This was in derogation of the guidelines released by the NDMA dated 04.02.2020. The Respondent's public awareness campaign only began on 06.03.2020 by which date number of public events and political rallies had already taken place, including the Namaste Trump event in Ahmedabad.

- C. BECAUSE the Respondent's belated response to the pandemic and failure to take timely measures for screening international passengers and spreading public awareness about COVID-19 not only led to transmission of the disease among citizens, but also impelled the Respondent to impose the draconian lockdown which caused immense economic suffering among the people. Therefore, the Respondent's omissions were a clear violation of Article 21 of the Constitution which includes the right to health as well as right to livelihood.
- D. BECAUSE the material available in the public domain in the form of media reports, research papers, surveys etc. make it amply evident that the present lockdown and its subsequent extensions have been imposed by the Respondent without consultation with experts and contrary to the mandate of Section 12 of the Disaster Management Act. In fact, as early as February, 2020, prominent scientists in the country had advised against a China-style lockdown in two important research papers published in the Indian Journal for Medical Research. It is submitted that an independent inquiry by a commission appointed by this Hon'ble Court is indispensable

for determining whether the Respondent acted in accordance with or in complete disregard of expert advice.

E. BECAUSE the Respondent failed to adhere to the advice of prominent epidemiologists and public health experts to carry out community surveillance, house-to-house screening, widespread testing and quarantining infected cases within 48 hours of becoming symptomatic. Even as on date, India is doing the lowest number of tests in the world per 1000 persons. Instead, the Respondent decided to impose the harshest lockdown in the world has failed to contain the spread of the disease rendering the people more vulnerable than ever before to contracting the disease. This is a clear violation of the right to health of people which has been held to be an integral part of right to life under Article 21 of the Constitution. The number of new cases are rising every day and even States like Bihar, Assam, West Bengal and Odisha that earlier did not have too many infected cases have recently witnessed a spike in the number of cases owing to the exodus of infected migrant workers to their hometowns/villages.

F. BECAUSE an independent inquiry is also required into the aspect of whether the Respondent had carried out any planning or adopted any measures for mitigating the impact of the lockdown on the lives and livelihoods of millions of migrant workers, daily-wage earners and other vulnerable sections of society. It is amply evident from material available in the public domain that the efforts of the Respondent in providing food,

water, shelter, and transportation to the migrant workers were grossly inadequate forcing many of these migrants to walk thousands of kilometres to their hometowns/villages while many perished due to hunger and exhaustion on the way itself. Even this Hon'ble Court has taken cognizance of this issue in SMWP No. 6/2020 where a slew of directions have been issued for the welfare of migrants. It is submitted that the way the lockdown was implemented by the Respondent without providing adequate safety net for these weaker sections of society amounted to a violation of their right to livelihood under Article 21 of the Constitution which has been held to be a fundamental right in *Olga Tellis*(supra.) judgment.

- G. BECAUSE in light of the numerous cases of doctors and medical workers being infected and ultimately succumbing to COVID-19 because of lack of PPEs, an independent inquiry is required to be done to investigate whether the Respondent took adequate measures and within timely fashion to ramp up the domestic production of PPEs in accordance with the guidelines issued by the WHO as early as 27.02.2020. It is submitted that from the media reports and other material available in the public domain, it is evident that the Respondent did not take timely steps thereby violating the rights of doctors and medical workers under Article 21 of the Constitution.
- H. BECAUSE an independent inquiry is essential to determine as to whether or not the Respondent has complied with its

statutory obligations under Sections 11 and 12 of the Disaster Management Act, 2005 to frame a National Plan for combating the pandemic as well as issuing guidelines for providing minimum standards of relief to weaker sections of society. It is submitted that the policies of the Respondent have so far failed to contain the pandemic which is largely owing to the failure of the Respondent to draw up a National Plan containing the coherent strategy for arresting the spread of the disease, responsibilities of various government ministries and departments, coordination between Centre and States, etc. Moreover, the fallout of the Respondent's failure to issue guidelines for minimum relief has been the humanitarian crisis that the migrant workers have undergone and continue to undergo, in particular, the lack of proper food, water and hygiene at relief camps, inadequate access to direct cash benefits, the non-availability of transport during the initial stages of the lockdown, lack of food and water on Shramik Trains, etc.

PRAYER

Therefore, in light of the submissions made hereinabove, it is most respectfully prayed that this Hon'ble Court may be pleased to grant the following reliefs to the Petitioner herein:

- (i) Issue a writ of mandamus or any other suitable writ, order or direction to the Respondent for appointment of a Commission under Section 3 of the Commissions of

Inquiry Act, 1952 headed by a retired Supreme Court judge and comprising experts from fields of medical science, epidemiology, public health, law and social sciences to conduct an independent inquiry on the issues identified in para. 31 of the present petition;

- (ii) Any other relief as may be necessary in the facts and circumstances of the present case.

PETITIONER THROUGH:

(PRASHANT BHUSHAN)¹
COUNSEL FOR THE PETITIONERS

DRAWN BY: SHYAM AGARWAL, Advocate
DRAWN AND FILED ON: 21.07.2020
NEW DELHI