**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

PUBLIC INTEREST LITIGATION : LD-VC-PIL NO.54/2020

Adv. Arvind K. Waghmare,

..Petitioner.

..**VERSUS**..

1. PM Cares Fund (Prime Ministers Citizens Assistance and Relief in Emergency Situation), A Public Charitable Trust Created by Union Cabinet of India through its Chairperson and Board of Trustees, at the Office of PMO South Block, New Delhi 110 011.

2. PM Cares Fund (Prime Ministers Citizens Assistance and Relief in Emergency Situation), A Public Charitable Trust Created by Union Cabinet of India, through its Under Secretary (Funds), at the Office of PMO South Block, New Delhi – 110 011.

3. Union of India, Department of Defence, through its Principle Secretary, New Delhi.

4. Union of India, Department of Home Affairs, through its Principle Secretary, New Delhi.

5. Union of India, Department of Finance, through its Principle Secretary, New Delhi.

6. The Divisional Commissioner, Nagpur Division, Nagpur.

7. The Divisional Commissioner, Amravati Division, Amravati.

8. The Collector, Nagpur.

9. The Municipal Commissioner, Nagpur Municipal Corporation, Nagpur. ..Respondents.

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Shri. A.K. Waghmare, Advocate and the petitioner in person.
Shri Anil Singh, Additional Solicitor General of India for Respondent Nos.1 to 5.
Mrs. N.P. Mehta, Addl. Government Pleader for Respondent Nos.6 to 8.
Shri S.M. Puranik, Advocate for Respondent No.9.
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CORAM :- SUNIL B. SHUKRE AND ANIL S. KILOR, JJ.

JUDGMENT RESERVED ON : 20.08.2020
JUDGMENT PRONOUNCED ON : 27.08.2020

(Per Shri Sunil B. Shukre, J.)

1. Heard. **Rule**, made returnable forthwith. Heard finally by consent.

2. The petitioner, a citizen of India, a permanent resident of Nagpur and a Legal Practitioner having more than 20 years of standing at the Bar, feeling concerned about what he considers to be a case of nontransperancy in the operation and functioning of a public fund called "P.M. CARES Fund" (Prime Ministers Citizens Assistance

and Relief in Emergency Situation" (hereinafter called as "fund" for the sake of brevity), which is a registered charitable Trust, has filed this petition seeking four distinct reliefs elaborately set out in the prayer clauses of the petition.

3. In the beginning itself, the petitioner has made it clear in the petition that he does not challenge and dispute the creation of the P.M. CARES Fund on any ground, constitutional or otherwise rather, he is only concerned about what he considers to be presence of an element of seclusion in the fund in its functional and operational dynamics. The petitioner submits that as a citizen of India as well as a small donor to the P.M. CARES Fund, the petitioner has every right to know exact position of the account of the fund and as to why all the trustees on the Board of Trustees as per the scheme of the fund have not been nominated by the Hon'ble Chairperson of the fund. According to the petitioner, nomination of all the trustees on the Board is essential for the fund to operate equitably, and fairly, in the interest of welfare of the beneficiaries for whose assistance the fund has been set up. The petitioner also contends that the members to be appointed on the Board of Trustees must also include two persons of eminence belonging to opposite political parties, which provision, not expressly made in the scheme of the fund, needs to be incorporated.

According to the petitioner, as some persons have still not been nominated on the Board of Trustees by the Hon'ble Chairperson, the constitution of Board of Trustees is inadequate and, therefore, any decision taken by the Board of Trustees including the one relating to appointment of any private Auditor as has been done in the present case by appointing M/s SARC Associates, Chartered Accountant, New-Delhi as an Auditor for P.M. CARES Fund would not be a decision of the Board of Trustees and would be a decision taken not in the "wisdom" of the Board of Trustees. The petitioner further contends that in the interest of transparency, it is necessary to direct the Board of Trustees to make public all the moneys received in the fund as of date and also disbursements made from the fund from time to time.

4. The reply to this petition has not been filed by the respondents to whom the notices were issued. Shri Anil Singh, learned Additional Solicitor General of India appearing for the Union of India submits that as few more petitions involving more or less similar issues were pending adjudication before the Hon'ble Apex Court and as he desired to incorporate in the reply to be filed the decisions of the Hon'ble Supreme Court, one of which came recently in Writ Petition (Civil) No.546/2020 [Center for Public Interest Litigation V/s. Union of India] decided on 18th August, 2020, just a few days before, some

time was taken for preparing the draft reply and that it is now on the verge of completion. He also submits that copies of all the decisions which, in his opinion, would render assistance to this Court, have already been filed on record by him. Considering the fact that copies of the orders and judgments rendered by the Hon'ble Supreme Court of India now have been filed on record and also that learned A.S.G.I. through his oral submissions made elaborately has adequately assisted us, we no longer experience any handicap in finally deciding the petition on merits, even without formal reply filed on behalf of the Union of India.

5. Shri Waghmare, the petitioner appearing in person has submitted his argument on the same lines as his contentions are in the petition, which have been reproduced earlier.

6. According to Shri Anil Singh, learned A.S.G.I. appearing for the Union of India, this petition is not maintainable as it is more of a publicity interest litigation with underlying political agenda. He also submits that the improper intention of the petitioner can be gauged from the fact that just in order to make a show of the petitioner having *locus standi* in the matter, the petitioner paid donation of Rs.1,001/- by cheque dated 8th May, 2020 and immediately on the next day of 9th

May, 2020 the petitioner filed this public interest litigation petition. According to him, the petitioner has no *locus standi* for the reason that he is a donor to the fund and not the beneficiary of the fund and that it is the beneficiary of the fund who could be said to be a person aggrieved if any action or inaction on the part of the Trustees is considered by him as against law, object of the Trust or welfare of the beneficiaries. This is all refuted by Shri Waghmare, the petitioner in person.

7. Learned A.S.G.I. further submits that the issues involved in this petition are substantially covered by the orders and judgments passed by the Hon'ble Supreme Court in the cases of Shashwat Anand and others V/s. Union of India and others, Writ Petition (Civil) Diary No.10891/2020, Manohar Lal Sharma V/s. Narender and others, Writ Petition (Criminal) Diary No.10896/2020 and Center for Public Interest Litigation V/s. Union of India, Writ Petition (Civil) No.546/2020. Shri Waghmare, the petitioner in person, however, disagrees and emphatically submits that the issues involved in all these cases were undoubtedly different and do not cover the questions raised in the present petition.

8. Shri Anil Singh, learned A.S.G.I. further submits that by asking for induction of members of opposite political parties on the Board of Trustees, the petitioner is seeking rewriting of the scheme approved and registered as a Charitable Trust under law, which is not the course permissible under the law. He also submits that if the petitioner admits that he does not challenge the scheme, on constitutional grounds or otherwise, the petitioner cannot seek any change in the scheme of the fund.

Shri Anil Singh also submits that the provision conferring power upon the Hon'ble Chairperson to nominate three trustees to the Board from the category of eminent persons does not cast any obligation to exercise the power and that mere conferral of the power cannot be interpreted to mean that the power must also be exercised forthwith and at all times. He, therefore, sees no illegality in absence of nomination of three trustees from amongst the eminent persons. He also submits that appointment of private Auditor is only as per scheme of the fund and that demand for public disclosure of accounts of the fund is something already covered under the provisions of the Trust Act applicable to the fund and it cannot be raised in a public interest litigation. Thus, learned A.S.G.I. seeks dismissal of this petition to which Shri Waghmare is completely at odds with.

9. Smt. Mehta, learned Additional Government Pleader appearing for respondent Nos.6, 7 and 8 submits that no relief has been claimed against these respondents. Therefore, she may not add anything to what has been submitted on behalf of the Union of India.

10. Shri Sudhir Puranik, learned Counsel appearing for respondent No.9, Municipal Commissioner, submits that he adopts the argument of Shri Anil Singh, learned A.S.G.I. and has nothing to say any further.

11. Shri Anil Singh, learned A.S.G.I. has raised question mark over the intention of the petitioner in person and also the *locus standi* of the petitioner in person. We are, however, of the view that it is not necessary for us to go into these aspects of the matter for two reasons. Firstly, there is hardly any material placed on record to discern the improper intention on the part of the petitioner in person and though the petition has been filed just on the next day of the petitioner remitting the donation of Rs.1,001/- through cheque, this fact by itself would not be sufficient to attribute any ill-motive to the petitioner. Secondly, this petition raises such questions as would deserve their consideration and resolution more on merits of the matter rather than on some preliminaries relating to the standing and intention of the petitioner in person.

12. As stated earlier, the petitioner seeks four distinct reliefs. The third relief as claimed originally has been withdrawn by the petitioner and another relief has been substituted by him in its place, after obtaining leave from this Court. In order to appreciate the rival arguments it would be convenient that these reliefs are reproduced here. They read as under:-

> *"i. Issue appropriate directions to the respondents to immediately appoint-nominate other three trustees on the public trust created by union cabinet-through deed name and styled as "PM CARES FUND" created to fight emergent health situation and crises created by corona virus (Covid 19) in India;*
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> *ii. Further appropriate directions be issued to the respondents to appoint-nominate at least two trustees (Our of 3) from the opposition parties from Lok Sabha and Rajya Sabha in order to have proper check and balance and also to strengthen the confidence of general public of the country and for transparency about the high profile National Dedicated Fund called as PM Cares Fund;*
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> *iii. By appropriate order and or directions quash and set aside/cancel the unilateral decision taken by the respondent no.1 to 5 (without there being full Board of Trustees) to appoint M/s SARC Associates, Chartered Accountants, New Delhi as auditor for PM Cares Fund and thereby further order to cancel the said appointment forthwith; with further directions to appoint independent auditor for PM Cares Fund only after formation-appointment of full Board of Trustees as per the Rules and Guidelines of the PM Cares Fund;*
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> *iv. Further issue appropriate directions to immediately make public the entire funds received as on date, whether domestically or from oversees i.e from NRI's and foreign nationals and/or*

> *organization on the official websites of the "PM Cares Fund" in order to strengthen trust and confidence of the general public of the country who donated there hard earned money to the said national dedicated fund called as "PM Cares Fund" and also give directions to update the donations received and expenditure incurred from the said account on its official websites by at least every seven days in order to have transparency."*

13. Although it is submitted by Shri Anil Singh, learned A.S.G.I. that the issues underlying the aforestated reliefs are substantially covered by the orders and judgments of the Apex Court, we beg to differ with him.

14. In the case of Shashwat Anand (supra) the questions raised, in so far as they pertained to the fund, were about the justification for constitution of the fund in view of Prime Ministers National Relief Fund (N.R.F.) and also constitution of the similar fund under the Disaster Management Act, 2005 and the need for issuing a direction for transfer of moneys received in the fund to the funds already created earlier. The relevant prayers made in this petition were of the following nature.

> *"b) Issue a writ, order or direction, in the nature of Mandamus directing the Central Government and the States to transfer/credit the funds, collected and contained in the PMNRF and the PM-Cares Fund, and the CM-Relief Funds, to the National Disaster Response Fund (NDRF) established by the Central Government under Section 46 and the State Disaster*

Response Fund (SDRF) established by the State Government under Section 48, respectively, of the Disaster Management Act, 2005, and that the said Act may apply to the same for all uses, intents and purposes, and the funds may be used for combating corona virus and the procurement of testing kits, personal protective equipments (PPEs), creation and maintenance of quarantine centers, etc. and matters ancillary and incidental thereto, as far as the instant COVID-19 pandemic is concerned, in the larger good of the citizens of India.

c) Issue a writ, order or direction, declaring the non-statutory trusts/funds being PMNRF, PM-CARES Fund and the CM-Relief Funds as collection agencies for collecting money for and in relation to the statutory funds/trusts NDRF/SDRF constituted by the Central and State Governments under Section 46 and Section 48 of the Disaster Management Act, 2005, respectively, in exercise of its inherent power under Article 142 of the Constitution, in the interest of justice and fairness."

By the order passed on 27.4.2020, the Hon'ble Apex Court permitted the petitioner in person to withdraw the petition and accordingly, the writ petition was dismissed as withdrawn.

15. In Manoharlal Sharma's case (supra) also, the issues involved were different from the ones involved herein which is evident from the reliefs sought in that petition. These reliefs claimed a declaration about the fund being unconstitutional and a direction for transferring the entire amount received in the fund to the Consolidated Fund of

India. The relevant prayer clauses, for the sake of convenience, are reproduced as below:-

> *"a) Be pleased to quash / cease impugned Public trust "Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM-CARES Fund)" being unconstitutional, violated Art 266, 266(2), 267 & 284 of the Constitution of India, and ultra vires to the Constitution of India AND*
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> *b) Be pleased to issue writ of mandamus to transfer entire amount of donation received in PM care fund account by the R-1 to R-4 into the consolidated fund of India."*

By order passed on 13.4.2020 the Hon'ble Supreme Court dismissed this petition.

16. In the third petition, Center for Public Interest Litigation (supra), the challenge and reliefs claimed were of different nature and in so far as the questions raised in this petition are concerned, such distinction between these two petitions can be seen from prayer clause (c) of the petition filed in Center for Public Interest Litigation. This prayer clause has been reproduced in detail in the judgment of the Hon'ble Apex Court rendered on 18th August, 2020. To demonstrate the point, this prayer clause (c) is reproduced as below:-

> *"c. Issue a writ, order or direction to the Union of India to utilize NDRF for the purpose of providing assistance in the fight against COVID-19 pandemic in compliance with Section 46 of the DM Act, all the contributions/grants from individuals and*

> *institutions shall be credited to the NDRF in terms of Section 46(1)(b) rather than to PM CARES Fund and all the fund collected in the PM CARES Fund till date may be directed to be transferred to the NDRF."*

As regards this prayer clause (c), the Hon'ble Apex Court has held that there is no statutory prohibition for the Union of India utilizing the NDRF for providing assistance in the fight of COVID-19 in accordance with the guidelines issued for Administration of NDRF and that there is no statutory prohibition in making any contribution by any person or institution in the NDRF as per Section 46(1)(b) of the Act of 2005.

17. The discussion thus far made would make it clear that the issues involved in this petition are quite different and distinct from the ones involved in the aforestated petitions decided by the Hon'ble Supreme Court of India. However, we must make it clear here that inspite of such distinction in the issues involved, there are some observations made by the Hon'ble Apex Court which would not only be relevant for us to bear in mind while examining the issues involved here but they would also bind us to the extent they decide the issues which arise even indirectly in the present petition.

18. Now, we would specifically consider the legality or otherwise of all the reliefs claimed herein.

19. First relief, as aforestated, is founded by the petitioner on the premise that the guidelines supplied to the petitioner-in-person by the Authorities of the fund clearly mention that the Chairperson of the Board of Trustees of the fund has power to nominate three trustees to the Board who shall be eminent persons in the field of research, health, science etc. He submits that as per the information supplied to him under the Right to Information Act, so far, no appointment from the category of eminent persons in the field of research, health, science etc. has been made. According to him, without such appointment having been made, the Board of Trustees would be incomplete and any decision taken by the Board of Trustees would not be the decision of the Board of Trustees as such. He submits that these are the own guidelines of the fund and yet the fund has failed to follow the guidelines. He further submits that such failure brings in opacity to the functioning of the fund. This is all disagreed to by learned A.S.G.I.

20. The petitioner has filed on record the information that he has received under the provisions of Right to Information Act. The information supplied to him in response to his question regarding nomination of three trustees (page 28 of the paper book) is as follows:-

> *"The Chairperson of the Board of Trustees (Prime Minister) of PM CARES Fund has the power to nominate three trustees to the Board who shall be eminent persons in the field of research, health, science, social work, law, public administration and philanthropy. However, no such appointment has been made so far. All the Trustees of the PM CARES Fund act in a pro bono capacity."*

According to this information, the Hon'ble Chairperson of the Board has been vested with power to nominate three trustees from amongst the eminent persons in various fields as stated therein. The words "has the power to nominate" are clearly enabling. They only confer capacity, power or authority and imply a discretion (*See Commissioner of Police Bombay Vs. Gordhandas Bhanji, AIR (39) 1952 SC 16, P 20*). This provision nowhere says that it shall be mandatory for the Hon'ble Chairperson to nominate three trustees. There is nothing in the provision which even hints at some duty to exercise the power. Creation of power in an Authority without any accompanying duty only equips the Authority with discretion to exercise the power and in this sense conferral of power upon the Hon'ble Chairperson of the Board of Trustees is nothing but an enabling act. Whenever any enabling provision, pure and simple and without any obligation, is made, it only facilitates doing of a thing in a particular way and such provision stops there only, without going any further. Such a provision cannot be interpreted also to mandate the Authority on whom the power is conferred to exercise the power

rather, it would have to be considered as optional and discretionary power. Exercise of power, which is discretionary and not obligatory, depends upon various facts and circumstances obtaining in a given situation and also the guidelines, if there are any as regards the manner in which the power is to be exercised. So, it is for the authority to use it's discretion and decide on the question of exercising the power in the facts and circumstances of the case. There may be a case where conditions in which a power is to be exercised are also stated. In such a case only, on fulfillment of the conditions, the power conferred becomes annexed with a duty to exercise it in that manner (*See The Official Liquidator Vs. Dharti Dhan (P) Ltd., AIR 1977 SC 740, Page 745*). In such a case only, in an effort to discern the object of the conditions prescribed, one can say, to use the words of LORD BLACKBURN, "the enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right" (*See Julius Vs. Bishop of Oxford (1880) 5 AC 214, P. 244, Punjab Sikh Regular Motor Service, Moudhapara, Raipur Vs. Regional Transport Authority Raipur and another, AIR 1966 SC 1318 and Sub-Committee of Judicial Accountability Vs. Union of India and others, AIR 1992 SC 320, Page 352*). In the present case, no such conditions are prescribed at all and the provision is enabling only without any duty annexed to it.

21. It should be clear now that an enabling provision pure and simple, neither imposes any duty nor confers any right. Article 16(4) of the Constitution of India not imposing any constitutional duty, has also been interpreted in the same manner in several judgments of the Hon'ble Supreme Court. This constitutional provision has been interpreted to be only conferring a discretion on the State. This has been held by a Five Judges Bench of the Hon'ble Supreme Court in the judgment delivered in the case of Ajit Singh and others (II) V/s. State of Panjab and others [**(1999) 7 SCC 209**], in which reference has been made to similar interpretation given in the earlier judgments of the Hon'ble Supreme Court. It would be worth reproducing the observations of the Hon'ble Apex Court made in paragraph Nos.29 and 30 herein and they read as under:-

> *"29. We may in this connection point out that the attention of the learned Judges who decided Ashok Kumar Gupta[6] and Jagdish Lal[3] was not obviously drawn to a direct case decided by a Constitution Bench in C.A. Rajendran vs. Union of India[8] which arose under Article 16(4). It was clearly laid down by the five Judge Bench that Article 16(4) was only an enabling provision, that Article 16(4) was not a fundamental right and that it did not impose any constitutional duty. It only conferred a discretion on the State. The passage in the above case reads as follows:*
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> > *"Our conclusion therefore is that Article 16(4) does not confer any right on the petitioner and there is no constitutional duty imposed on the Government to make a reservation for Scheduled Castes and Scheduled Tribes, either at the initial stage of recruitment or at the*

> *stage of promotion. In other words, Article 16(4) is an enabling provision and confers a discretionary power on the State to make a reservation of appointments in favour of backward class of citizens which, in its opinion, is not adequately represented in the services of the State."*
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> *(emphasis supplied)*

> *30. The above principle was reiterated in two three-Judge Bench judgments in P & T Scheduled Caste/Scheduled Tribe Employees' Welfare Assn. (Regd.) vs. Union of India[9] and in State Bank of India Scheduled Caste/Scheduled Tribe Employees' Welfare Assn. vs. State Bank of India[10]. In fact, as long back as in 1963, in M.R. Balaji vs. State of Mysore[11] (SCR at p.474) which was decided by Five learned Judges, the Court said the same thing in connection with Articles 15(4) and Article 16(4). Stating that Article 15(4) and 16(4) were only enabling provisions, Gajendragadkar, J. (as he then was) observed:*
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> *"In this connection, it is necessary to emphasise that Article 15(4) like Article 16(4) is an enabling provision, it does not impose an obligation, but merely leaves it to the discretion of the appropriate government to take suitable action, if necessary."*

(6. (1997) 5 SCC 201, 3. (1997) 6 SCC 538, 8. AIR 1968 SC 507, 9. (1988) 4 SCC 147, 10. (1996) 4 SCC 119, 11. AIR 1963 SC 649)

22. Thus, we find that even though the power has been conferred upon the Hon'ble Chairperson to nominate three trustees, the power is of enabling nature only making it possible for the Authority to nominate three trustees to the Board, and that there is no further

mandate that the power must also be exercised in order to fully constitute the Board of Trustees. No other provision has been brought to our notice by the petitioner in person to show that without presence of three nominated eminent persons on the Board, the Board of Trustees would be incomplete or non-functional.

23. We are, therefore, of the view that there is no merit in the submissions made in support of the first relief claimed in the petition by the petitioner in person and that there is great substance in the argument made by the learned A.S.G.I. opposing the same and as such the first relief deserves rejection by this Court.

24. The second relief, as aforestated, is about issuance of direction to the Authority of the fund to nominate at least two out of three Trustees in the category of eminent persons from the opposition parties from Lok Sabha and Rajya Sabha with a view to introduce appropriate system of checks and balances and also to strengthen the confidence of general public of the country, in the interest of transparency in functioning of the fund. According to the petitioner in person, this is essential because as per the information supplied to him (page 28) the fund is a dedicated national fund with primary object of dealing with any kind of emergency or distress situation such as the

one posed by the COVID-19 pandemic and to provide relief to the affected persons. He submits that it is an admitted fact that the fund so set up is a dedicated national endeavour to provide relief to the persons in distressed situation, and so there would be a requirement of maintaining high transparency in operation of the fund and this would be possible if at least from amongst three trustees of eminence, two trustees are nominated and appointed from opposition parties of national character.

25. Shri Anil Singh, learned A.S.G.I., in reply, submits that in the case of Center for Public Litigation (*supra*), the Hon'ble Apex Court has held that fund is a charitable trust registered under the Registration Act, 1908 at New-Delhi on 27.3.2020 and that the trust does not receive any budgetary support or government money and, therefore, if any such direction as sought by the petitioner in person is issued by this Court, it would amount to rewriting the Deed of Trust, which governs the fund. He also submits that the petitioner is blowing hot and cold by stating on one hand that he does not question the constitutionality or otherwise of the fund and on the other hand, he seeks to introduce amendments to the Trust Deed on the ground that the provision made for nomination of eminent persons as trustees on the Board of Trustees is inadequate to address the concerns about

transparency and proper distribution of moneys received through donations. He further submits that the donations to be made to the fund are voluntary in nature and, therefore, a donor who has made the donation has no say over the disbursement of the fund money amongst the needy persons.

26. In the case of Center for Public Interest Litigation (*supra*), the Hon'ble Supreme Court has held that fund is a charitable trust registered under the Registration Act, 1908 and that it does not receive any budgetary support or government money. In paragraph 69 of the judgment, the Hon'ble Apex Court has held thus:-

> *"69…… The PM CARES Fund is a charitable trust registered under the Registration Act, 1908 at New Delhi on 27.03.2020. The trust does not receive any Budgetary support or any Government money……"*

27. So, it is clear that P.M. CARE Fund is a charitable trust registered under the Registration Act, 1908 and that it does not receive any budgetary support or any government money. The petitioner in person does not dispute the character of the fund as charitable trust registered under the Registration Act. What he contends is that the fund is set up for public purposes and, therefore, it is necessary that persons from various walks of life holding different positions and perspectives are also there on the Board of Trustees so

that the ultimate beneficiary is the person in need of the fund money. However, the wish so nurtured by the petitioner in person, in our considered view, cannot be fulfilled as it has no mooring in law. Once it is settled that the P.M. CARE Fund is a charitable trust registered under the Registration Act, it requires no further clarification from the Court that such a registered charitable trust would be governed by its own Deed of Trust on the basis of which the trust gets its registration and special laws applicable to it. If there is no provision made in the Trust Deed for inducting some members of the opposition political parties into Board of Trustees by nomination, and there is also no such requirement of law, which is the case here without any dispute, there is no way that an outsider like the petitioner in person would knock at the doors of this Court to invoke the extraordinary jurisdiction of this Court to seek the direction to the trust to amend its Trust Deed. The direction sought in the second prayer clause is really a command for amending the Trust Deed which cannot be initiated at the behest of a person stranger to the Trust like the petitioner in person in a public interest litigation, much less by invoking extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India. If any such direction is given, it would only amount to what the learned A.S.G.I. calls, rewriting of the Trust Deed which is not

permissible here. Remedy, if at all any, lies elsewhere and that too only for the aggrieved as contemplated under applicable Trust Act.

28. There is also another angle from which the issue regarding need for having some members of the opposition political parties on the Board of Trustees deserves to be examined. In paragraph 4 of the memorandum of petition, the petitioner in person has categorically stated that he is not challenging and / or disputing the creation of the public trust in the name and style as "P.M. CARES Fund" on any ground, whether constitutional or otherwise. This is again repeated in paragraph 5 of the memorandum of petition. But, through the prayer clause (ii), the petitioner in person has sought a relief, *albeit* in the name of transparency, which is nothing but impliedly questioning the correctness of the provision made in the Trust Deed regarding nomination of three trustees from amongst eminent persons on the Board of Trustees. Validity and correctness of the provisions governing the fund are already upheld by the Hon'ble Apex Court when it dismissed petition of Manoharlal Shamra (supra) and so this ground of challenge cannot be heard by us. Still, it is contended by the petitioner in person that the fund does not belong to any particular party and that it is a fund dedicated to national cause and, therefore, at least two major political parties must find their representation in

the Board of Trustees. We can only say that the argument is fallacious when we consider the character of the fund which has been held by the Hon'ble Apex Court to be a charitable trust registered under the Registration Act, which does not receive any budgetary support or any government money. This is sufficient to indicate that will of the founding trustees and not the wishful thinking of outsiders in such a case, is what matters, is what prevails over desire of strangers, and is what will receive reverence from law, as long as the will is expressed by the trustees in tandem with law, about which there can be no dispute here.

Further, the Hon'ble Apex Court in paragraph 71 of the judgment rendered in Center for Public Interest Litigation (PIL), while noting the situation of biological public health emergency on account of outbreak of COVID-19 pandemic, has observed as under :-

> *"71……. At this need of the hour no exception can be taken to the constitution of a public charitable trust, namely, PM CARES Fund to have necessary financial resources to meet the emergent situation."*

If the relief as sought by the petitioner for nomination of at least two trustees from the opposition parties is granted, this Court would be failing in its duty to abide by the forewarning issued by the Hon'ble Supreme Court that at this need of the hour no exception can be taken to the constitution of a public charitable trust, namely, P.M. CARES Fund, for the relief sought is in the nature of correcting the

constitution of a public charitable trust by paving the way for two trustees from the opposition parties to enter the field. The argument made in this regard by the petitioner in person is, therefore, rejected and consequently, we find that the relief claimed in prayer clause (ii) also deserves its rejection.

29. The third relief sought by the petitioner in person is about issuance of a direction to quash and set aside the unilateral decision taken by the fund, without there being full Board of Trustees, to appoint M/s SARC Associates as Chartered Accountant for conducting the audit of the fund.

30. The petitioner in person contends that as three trustees have not been nominated on the Board of Trustees, the present Board of Trustees is incomplete and as such it is incapable of taking any decisions. He maintains that even if a decision has been taken by it to appoint a private Chartered Accountant, the decision is without “wisdom” of the Board of Trustees. Shri Anil Singh, learned A.S.G.I. submits that the fact that the power to nominate three trustees conferred upon the Hon’ble Chairperson of the fund is an enabling equipment, it itself is sufficient to show that it would be entirely within the discretion of the Hon’ble Chairperson to nominate or not

nominate three eminent persons on the Board of Trustees, which would make it clear that presence of three nominated persons on the Board of Trustees is optional. He also relies upon the view recently taken by this Court in the case of Deepak S/o Sampatrao Sane and others V/s. PM CARES Fund and others (LD-VC P.I.L. NO.618/2020), decided on 23.07.2020 that a power to distribute the fund money amongst needy persons is discretionary and, therefore, this Court left it to the Authorities of the fund to decide the question in their own wisdom. Thus, in the opinion of learned A.S.G.I., the third relief can also not be granted.

31. We have already found that the power of the Hon'ble Chairperson of the fund to nominate three eminent persons as trustees is enabling in its nature, not mandating the Hon'ble Chairperson to nominate the three trustees always and at all times. An enabling provision simplicitor, by its very nature, facilitates doing of a particular act by the Authority but it never compels the Authority to do that particular act and leaves it to the discretion of the Authority to perform it, as per the exigency of the situation. In this sense, an enabling provision confers a discretion on the enabled Authority and that being so, no writ can lie to compel the Authority to exercise the discretion and that too the way it is desired by a party. This is also the view expressed by us in the case of Deepak S/o Sampatrao Sane

and others V/s. PM CARES Fund and others (supra). So, what we find here essentially and as rightly submitted by Shri Anil Singh, learned A.S.G.I., that presence of the nominated persons as trustees on the Board of Trustees is optional. It then goes without saying that absent the nominated trustees, Board of Trustees is neither deficit, nor incomplete, nor incapable of taking any decision in it's wisdom.

Shri Waghmare, the petitioner in person refers to "wisdom" of the Board of Trustees in taking a decision. He, however, does not elaborate the concept of "wisdom" of the Board of Trustees, except for assertion that "wisdom" is reflected only when a decision is taken by all the members of the Board of Trustees, *ex officio* and nominated. "Wisdom" means the power of true and right discernment : conformity to the course of action dictated by such discernment, good practical judgment, common sense, a high degree of knowledge, learning. (See New International Websters Comprehensive Dictionary, Deluxe Encyclopedic Edition, First Indian Re-print 2001, page 1445). This definition connotes that the word "wisdom" is suggestive of the ability to think and act using knowledge, experience, understanding, common sense and insight and it indicates unbiased and wise judgment based upon knowledge and application of mind. To put it plainly, a decision taken in "wisdom" would be a decision taken after application of mind by the makers of the decision. If the decision is

taken on application of collective mind by the makers of the decision even when some of the members of the decision making body whose presence is not mandatory are absent, it would be a decision taken in the "wisdom" of the body of decision makers. It would, however, be a different matter when a decision is taken in absence of the members whose presence is mandatory. However, it is not the case here and so we need not look at such a different case. The decision to appoint private but approved Chartered Accountant in this case has been taken collectively and on application of mind by the trustees present on the Board of Trustees, as seen from the material available on record, and, therefore, there is no gainsaying that the decision is *sans* the "wisdom" of Board of Trustees.

32. The discussion so made would lead us to conclude that decision of the Board of Trustees to appoint M/s SARC Associates as Chartered Accountant is the decision taken by the Board of Trustees in its wisdom and knowledge and upon application of mind and, therefore, it cannot be assailed on the ground of it being not of the Board of Trustees. The third prayer thus would also meet the same fate as the earlier two prayers.

33. As regards the last relief, as claimed in the forth prayer clause, demanding public disclosure of the moneys received in the fund and

the disbursement of the fund money, we must say that this relief as rightly submitted by the learned A.S.G.I., is already adequately taken care of by the provisions made in the Registration Act, 1908 and the Trust Act applicable to the fund which is a charitable trust registered under the Registration Act. Of course, it is the contention of the petitioner in person that as the public money is lodged in the fund, the fund is within public domain and in any case, it is not a party fund and, therefore, public disclosure of the receipts and outgoings into and from the fund is necessary. In the opinion of learned A.S.G.I., the fund is outbound the public domain as the Hon'ble Apex Court has already held that the trust does not receive any budgetary support or any government money.

34. In this petition, the question involved is really not about the nondisclosure of receipts and disbursements but it is about ensuring that the receipts into the fund are from proper sources and the outgoings from the fund are consistent with the objects of the fund for which purpose public disclosure is essential. In other words, the real question is- ***why the public disclosure rather than why not the public disclosure?*** There can be no two opinions about the underlying object of public disclosure. It is of ensuring proper utilization of the fund money sourced from proper persons. This very object can be seen to

be more than fulfilled in the present case by registration of the fund as a charitable trust under the Registration Act, 1908, and making of an appointment of a Chartered Accountant as Auditor who would be bound to balance and audit accounts of the fund in accordance with the provisions contained in the Trust Act applicable to the fund, a registered charitable trust.

35. Reason why we hold so is that the fund would be subject to and governed by the framework of law provided under the applicable Trust Act. In different States, different Acts have been enacted by the State Legislatures but basically they contain more or less similar provisions and have a similar framework within which the affairs of the Trust and its properties are to be administered and managed. These Trusts Acts have several provisions touching on various aspects of which relevant aspects are as follows:-

(i) Appointment of the Auditor to prepare balance sheet of the public trust, and to report the irregularities, if any;

(ii) Duty of the Auditor to mention in his report irregularity, illegality or improper expenditure, failure or omission to recover moneys or other property belonging to the public trust, if any and so on and so forth;

(iii) Power of the Assistant Commissioner to issue necessary directions on an application filed by any person having interest in the public trust or otherwise that (a) the original object of the trust has failed; (b) the trust property is not being properly managed or administered or; (c) the direction of the Court is necessary for the administration of the public trust;

(iv) Provision of appeal to the Charity Commissioner when Assistant Commissioner rejects an application of the person interested in a public trust or otherwise;

(v) Power of Assistant Commissioner to ask for explanation of the working trustees;

(vi) Provision of appeals against orders of Assistant Charity Commissioner or Deputy Charity Commissioner.

It can thus be seen that various statutory provisions contained in the applicable Trust Act provide an effective mechanism to ensure that the working of the charitable trust does not go haywire and that its affairs and properties are managed in a way as to fulfill the objects of the trust. When such mechanism is available, the Hon'ble Supreme Court has time and again cautioned entertaining of civil writ petitions and even public interest litigations for redressal of the grievances relating to charitable trust. In one such case, *Jaipur Shahar Hindu Vikas Samiti V/s. State of Rajasthan and others* [**(2014)**

5 SCC 530] the Hon'ble Apex Court had an occasion to consider various provisions contained in Rajasthan Public Trust Act, 1959 and their efficacy to provide a forum for effective redressal of all the disputes pertaining to the trust. The Supreme Court referred to various provisions contained in the Act in paragraph 37 and took a view that when the statutory provisions give extensive powers to the Assistant Commissioner and Commissioner, in some cases, the civil Courts would have no jurisdiction to adjudicate on the issues of the public trusts. The Hon'ble Supreme Court by making observations in paragraph 49 has even discouraged the tendency of the Courts to entertain public interest litigations in relation to the issues arising from the affairs of the public trust. These observations appearing in paragraph 49, being relevant here, are reproduced thus:-

> *"49. The concept of public interest litigation is a phenomenon which is evolved to bring justice to the reach of people who are handicapped by ignorance, indigence, illiteracy and other downtrodden people. Through the public interest litigation, the cause of several people who are not able to approach the Court is espoused. In the guise of public interest litigation, we are coming across several cases where it is exploited for the benefit of certain individuals. The courts have to be very cautious and careful while entertaining public interest litigation. The Judiciary should deal with the misuse of public interest litigation with iron hand. If the public interest litigation is permitted to be misused the very purpose for which it is conceived, namely to come to the rescue of the poor and downtrodden will be defeated. The courts should discourage the unjustified litigants at the initial stage*

> *itself and the person who misuses the forum should be made accountable for it. In the realm of public interest litigation, the courts while protecting the larger public interest involved, should at the same time have to look at the effective way in which the relief can be granted to the people, whose rights are adversely affected or at stake. When their interest can be protected and the controversy or the dispute can be adjudicated by a mechanism created under a particular statute, the parties should be relegated to the appropriate forum instead of entertaining the writ petition filed as public interest litigation.*"

Viewed in this manner, we are of the considered opinion that the purpose for which public disclosure has been sought in this petition is fulfilled more than it is desired by the petitioner in person and this way, in our view, the fourth prayer has already worked itself out.

36. There is one more dimension involved in this public interest litigation which, we feel must be dealt with. The dimension is about judicious use of public interest jurisdiction so carefully crafted by the Hon'ble Apex Court over a period of time. The jurisdiction is exceptional in nature and powerful in its impact. It was developed as an effective remedy for the redressal of the grievances of marginalized and oppressed. That was the intention on which public interest jurisdiction was judicially recognized in the situations such as those in *Bandhua Mukti Morcha V/s. Union of India and others* **[AIR 1984 SC 802]**. The hallmark of a public interest litigation is that a class of

persons, unable to pursue individual rights, is indirectly before the Court through a person who moves the Court, having no personal interest in the outcome of the proceedings apart from his general standing as a citizen before the Court. Over a period of time, it was realized that this jurisdiction was capable of being and had been brazenly misused by persons lurking with personal agenda. At one end of the spectrum of such misdirected cases were the public interest petitions motivated by a desire to seek publicity and at the other end lay the petitions instituted at the behest of business or political rivals to settle personal scores behind the facade of the public interest litigation. In such petitions more often than not the true face of the litigant behind his outwardly gentleness is seldom revealed. These concerns have been reflected in the judgment of the Hon'ble Supreme Court in the State of Uttranchal V/s. Balwant Singh Chaufal and others [**(2010) 3 SCC 402**], when it observed in paragraph 143 as under:-

> *"Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure*

its abuse on the basis of monetary and non-monetary directions by the courts."

37. The Hon'ble Apex Court has, time and again, issued cautions against casually entertaining public interest litigation. Just as misuse of public interest litigation has been a serious matter of concern for a judicial process, it's overuse too has been. We must bear in mind that Courts have a long list of pending cases where the personal liberty of citizens is involved. Those who await trial or resolution of appeals against the orders of conviction have a legitimate expectation of early justice and it would be a travesty of justice for the resources of the legal system to be consumed on an avalanche of misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are found to promote a personal business or political agenda. This has spawned an industry of vested interest in litigation. The Hon'ble Apex Court has, therefore, warned that there is a grave danger that if such state of affairs is allowed to continue, it would seriously denude the efficacy of judicial system by procrastinating the ability of the Court to devote its time and resources to cases which legitimately require attention, worse still, such petitions pose a great danger to the credibility of the judicial process. The Hon'ble Supreme Court has further observed that there is a threat that the judicial process will be reduced to a charade, if

disputes on illegal parameters occupy the judicial space. A useful reference in this regard may be made to the observations of the Hon'ble Apex Court in the case of *Union of India and others V/s. J.D. Suryawanshi* [**(2011) 13 SCC 167, page 171**].

38. The Hon'ble Supreme Court has also held that not every matter of public interest or curiosity can be subjected to the scrutiny of Court through a public interest litigation and it is only when there is an injury to public because of dereliction of constitutional obligations on the part of the government, Court can perhaps scrutinize the impugned action. These observations of the Apex Court have appeared in the case of *BALCO Employees' Union (regd.) V/s. Union of India* and others [**(2002) 2 SCC 333**]. The observations made in paragraph 97 being relevant are reproduced as under:-

> *"97. Judicial interference by way of PIL is available if there is injury to public because of dereliction of Constitutional or statutory obligations on the part of the government. Here it is not so and in the sphere of economic policy or reform the Court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of Constitutional or statutory provisions or non-compliance by the State with it's Constitutional or statutory duties. None of these contingencies arise in this present case."*

39. In *Sachidanand Pandey and another V/s State of West Bengal* and others [**(1987) 2 SCC 295** the Hon'ble Supreme Court highlighted the necessity to delineate parameters of public interest litigation. It noted the fact that in present times pubic spirited litigants rush to Court to file cases in profusion under this attractive name. It further noted that such class action must, however, inspire confidence of Court and amongst public and must be above suspicion. The Hon'ble Supreme Court then went on to hold that it is only when Courts are apprised of gross violation of fundamental rights by a group or class of action or when basic human rights are invaded and when there are complaints of such acts sending shock waves to judicial conscience that the Courts would leave aside procedural shackles to hear such petitions and extend their jurisdiction under all available provisions for remedying hardships and providing relief to the needy, the underdogs, the neglected, and the society in general.

40. Having considered the nature and purpose of the public interest litigation jurisdiction and also its perils and pitfalls, a doubt immediately arises in our mind as to whether or not a prayer asking for public disclosure of the receipts into and outgoings from the fund could be looked into even cursorily and on a deeper contemplation on the issue, our answer is in the negative for more reasons than one.

Firstly, we have already found that in the Trust Act which is applicable to the fund there is already provided an effective mechanism for achieving the purpose for which the public disclosure has been sought in this petition. Any person having interest in the trust is free to resort to that mechanism for redressal of his grievance, if any. Secondly, as held in BALCO Employees Union (Regd.) (supra), every matter of public interest or curiosity cannot be the subject matter of PIL and that the Constitutional Courts are not expected to conduct the administration of the country, or to be more precise, of a charitable trust. If the direction as sought for by the petitioner in person is granted, it would only amount to interference in the administration of the affairs of the fund and also power of the Authorities to exercise superintendence and control over the affairs and properties of a charitable trust like the fund under the applicable Trust Act. When statutory provisions comprehensively covering all aspects of the administration and management of the trust and its properties exist and they also provide a mechanism for effective redressal of grievances in a specific manner, there is no room left for hearing the very grievances by way of a public interest litigation. Thirdly and lastly a case must be made out with proper research and study that there is a gross violation of constitutional or statutory provisions, if the exceptional public interest jurisdiction is sought to be invoked, which

effort, however, is lacking here. Our conclusion is now inevitable and we find that there is no way for us to consider in any manner and grant the fourth relief as claimed in prayer clause (iv).

41. There is yet another perspective to look at the afore-stated fourth prayer clause. The contributions which are to be made to the fund are voluntary in nature and that there is no compulsion for anyone to donate. If any person has any doubt about the application of the money, he intends to donate, may we remind such person of the words of Falstaff, a cowardly character portrayed by William Shakespeare in his play Henry IV, (Henry The Fourth Part 1 Act 5, Scene 4, 115-121) that, "***The better part of Valour is Discretion; in the which better part, I have sav'd my life***". Here "life" can be taken to be "money". So, such a person would well be within his right to not donate his money to the fund. From this perspective also no insistence can be made by a person donating his money in his discretion upon making of public disclosures of utilization of the fund money on a public platform bypassing the proper platform provided under the Trust Act applicable to a charitable trust like the "P.M. CARES Fund".

42. In the result, we find no merit in this petition. All the four reliefs sought by the petitioner in person are refused.

43. The petition stands **dismissed**. No costs.

44. This judgment and order be communicated to the Advocates appearing for the parties, either on the email address or on Whats App or by such other mode as is permissible in law.

JUDGE **JUDGE**

Tambaskar.